



HOUSE OF LORDS

European Affairs Sub-Committee on the Protocol
on Ireland/Northern Ireland

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Rt Hon James Cleverly MP
Secretary of State for Foreign,
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Foreign, Commonwealth and
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King Charles Street
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6 December 2022

Dear Foreign Secretary

UK Government log of regulatory divergence between Northern Ireland and Great Britain arising from EU and domestic legislation

On 9 June, we wrote to you in your former capacity as Minister of State for Europe and North America, asking for your response to a specific question arising from the House of Lords Sub-Committee on the Protocol on Ireland/Northern Ireland's March 2022 report on *Scrutiny of EU legislative proposals within the scope of the Protocol on Ireland/Northern Ireland*. In our letter, we asked if the Government is keeping, as the Committee would urge, or is planning to keep, an audit or log of all EU legislation, as amended or replaced, applying to Northern Ireland which gives rise to issues of regulatory divergence. The Committee also asked if the Government would share this log with the Committee, and/or make it publicly available.

We received a response from your successor as Minister of State for Europe, Graham Stuart MP, on 10 August 2022. In his reply, Mr Stuart cited the Government's engagement with the EU on legislation listed in the Annexes to the Protocol, the Government's submission to the Committee of Explanatory Memoranda on EU legislation applying to Northern Ireland, and the submission of explanatory notes accompanying all Government Bills. He stated that "this sets out any potential implications that the legislation may have on regulatory divergence between Great Britain and the EU in areas where the Protocol applies. Additionally, the Government provides details of any operational differences that materialise as a result of legislative changes in the relevant gov.uk guidance." The Minister's reply did not answer the Committee's specific question around an audit or log.

Following the completion of our inquiry into the Northern Ireland Protocol Bill and our letter to you of 22 November, the Committee considered this matter again at its meeting on 29 November. The Committee agreed that we should write to you again to reiterate the importance of the Government keeping a comprehensive audit or log both of EU and domestic UK legislation that leads, or could potentially lead, to regulatory divergence between Northern Ireland and Great Britain. By way of illustration of the importance of this issue, since we were set up in April 2021, this Committee has written over 100 letters to Government Ministers on the implications for Northern Ireland of over 50 EU legislative proposals applying under the Protocol. Likewise, the Committee has written to Government Ministers on the interaction of the Protocol with domestic legislation including the Subsidy Control Bill, Nationality and Borders Bill, Health and Care Bill, Elections Bill, Product Security and Telecommunications Infrastructure Bill, UK Infrastructure Bank Bill, and the Northern Ireland Protocol Bill itself. A key theme of much of this correspondence has been the scope for, and implications of, regulatory divergence between Northern Ireland and Great Britain.

As both the EU and the UK bring forward further legislation, the practical consequences in terms of regulatory divergence will become ever more complex. In order to inform Parliament, the Northern Ireland Assembly, businesses based on or trading with Northern Ireland, other key stakeholders, and the people of Northern Ireland of the implications of such divergence, and as a matter of transparency, we believe it to be essential that the Government keeps a single published log of all cases of regulatory divergence arising from UK and EU legislation since the Protocol came into force.

We therefore repeat our question: Is the Government keeping, as the Committee would urge, or is it planning to keep, an audit or log of all EU legislation applying to Northern Ireland under the Protocol, as well as relevant domestic UK legislation, which gives rise to issues of regulatory divergence between Northern Ireland (and the EU) and Great Britain? If so, will the Government share this log with the Committee, and/or make it publicly available?"

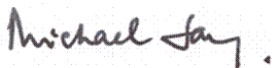
We would also be grateful for clarification of a number of related matters. Does the FCDO have overall responsibility for monitoring such divergence? How does the FCDO engage with the Cabinet Office and Northern Ireland Office, as well as other Government departments and the Northern Ireland Executive, in monitoring and logging such divergence and its impact? Does the Government have a dedicated Divergence Unit, and if so, where is it based and what are its functions?

In our letter of 22 November we invited you to appear before the Committee before the Christmas recess. While we appreciate that it was not possible to agree a date before the recess, we stress the importance of your engagement with the Committee in January. We will ask you about this matter and wider issues relating to the Protocol at that meeting.

We would be grateful for a response to this letter by 6 January 2023.

I have copied this letter to Rt Hon Chris Heaton-Harris MP, Secretary of State for Northern Ireland; Leo Docherty MP, Parliament Under-Secretary of State (Europe), FCDO; Sir William Cash MP, Chair of the House of Commons European Scrutiny Committee; and Simon Hoare MP, Chair of the House of Commons Northern Ireland Affairs Committee.

Yours sincerely,



Lord Jay of Ewelme
Chair of the Protocol on Ireland/Northern Ireland Sub-Committee