



HOUSE OF LORDS

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

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Leo Docherty MP,
Minister for Europe
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9 February 2023

Dear Minister

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

We note your reply of 1 February 2023 to our letter of 6 December 2022 on the subject of a UK Government log of regulatory divergence between Northern Ireland and Great Britain arising from EU and domestic legislation. The House of Lords Sub-Committee on the Protocol on Ireland/Northern Ireland considered this document at its meeting on 8 February 2023.

We are disappointed at your confirmation that the “Foreign, Commonwealth and Development Office does not currently run a single central database of all divergence areas relating to the Protocol of the type described in your letter, nor does it intend to in future, as such matters are the responsibility of the relevant department.”

As we set out in our letter, the practical consequences of regulatory divergence will become ever more complex as both the EU and the UK bring forward further legislation. As a matter of transparency, we believe that such a log of all cases of regulatory divergence arising from UK and EU legislation since the Protocol came into force is essential, not least for the people of Northern Ireland and businesses based in or trading with Northern Ireland.

We note your reply that the Government “routinely sets out in explanatory notes or memorandums any potential implications that the legislation may have on regulatory divergence between Great Britain and Northern Ireland in areas where the Protocol applies” and that the “FCDO works with other Government departments to ensure that explanatory notes and memoranda provide clear information and an analytical toolkit is used to assess the potential impacts of divergence.”

Similar information on explanatory notes and memoranda was supplied by a previous Minister for Europe on 10 August 2022, in answer to the Committee’s first letter on the subject of log of regulatory divergence. As we set out then, and in our March 2022 report on *Scrutiny of EU legislative proposals within the scope of the Protocol on Ireland/Northern Ireland*, however, the Committee has repeatedly expressed concern about the quality of Government Explanatory Memoranda and correspondence on EU legislation within the

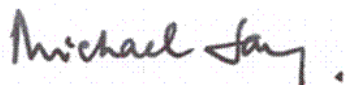
scope of the Protocol. While we welcome the improvements that have been made in the quality of such documentation, nevertheless the Committee's scrutiny work has shone a light on the sheer complexity of the evolving UK/EU legislative framework in the context of such divergence between Great Britain and Northern Ireland. While the Government's obligations to facilitate scrutiny through the provision of Explanatory Memoranda remain key, we nevertheless repeat our view that it is essential, in the interests of transparency, that the Government keeps a single published log over and above the existing scrutiny process.

We note your reply, in response to our question as to whether the Government has a dedicated Divergence Unit, that the Brexit Opportunities Unit has led the process to create the retained EU law dashboard. It is not clear from your reply whether the Government has a dedicated Divergence Unit or not, besides the Brexit Opportunities Unit. Could you confirm if the Government does or does not have a separate dedicated Divergence Unit? If not, who is coordinating work to monitor regulatory divergence across Whitehall? Is monitoring potential regulatory divergence between Northern Ireland and Great Britain arising from EU and domestic legislation part of the remit of the Brexit Opportunities Unit? Are individual Government departments keeping, or being encouraged to keep, their own logs of regulatory divergence within their departmental remit?

We would be grateful for a response to this letter by 23 February 2023.

I am copying this letter to Rt Hon Chris Heaton-Harris MP, Secretary of State for Northern Ireland; Sir William Cash MP, Chair of the Commons European Scrutiny Committee, George Wilson, Clerk of the Commons European Scrutiny Committee, Simon Hoare MP, Chair of the Commons Northern Ireland Affairs Committee; and the Secretariat of the Northern Ireland Assembly Committee for the Executive Office.

Yours sincerely,



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