



House of Commons  
European Scrutiny Committee

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# The Windsor Framework and Prime Ministerial accountability

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**Fifteenth Report of Session 2022–23**

*Report, together with formal minutes relating  
to the report*

*Ordered by the House of Commons  
to be printed 13 March 2023*

## European Scrutiny Committee

The European Scrutiny Committee is appointed under Standing Order No.143 to examine European Union documents.

### Current membership

[Sir William Cash MP](#) (*Conservative, Stone*) (Chair)

[Tahir Ali MP](#) (*Labour, Birmingham, Hall Green*)

[Mr John Baron MP](#) (*Conservative, Basildon and Billericay*)

[Jon Cruddas MP](#) (*Labour, Dagenham and Rainham*)

[Geraint Davies MP](#) (*Labour, Swansea West*)

[Allan Dorans MP](#) (*Scottish National Party, Ayr Carrick and Cumnock*)

[Richard Drax MP](#) (*Conservative, South Dorset*)

[Margaret Ferrier MP](#) (*Independent, Rutherglen and Hamilton West*)

[Mr Marcus Fysh MP](#) (*Conservative, Yeovil*)

[Dame Margaret Hodge MP](#) (*Labour, Barking*)

[Adam Holloway MP](#) (*Conservative, Gravesham*)

[Mr David Jones MP](#) (*Conservative, Clwyd West*)

[Stephen Kinnock MP](#) (*Labour, Aberavon*)

[Craig Mackinlay MP](#) (*Conservative, South Thanet*)

[Gavin Robinson MP](#) (*Democratic Unionist Party, Belfast East*)

[Greg Smith MP](#) (*Conservative, Buckingham*)

### Powers

The Committee's powers are set out in Standing Order No. 143. The scrutiny reserve resolution, passed by the House, provides that Ministers should not give agreement to EU proposals which have not been cleared by the European Scrutiny Committee, or on which, when they have been recommended by the Committee for debate, the House has not yet agreed a resolution. The scrutiny reserve resolution is printed with the House's Standing Orders, which are available at [www.parliament.uk](http://www.parliament.uk).

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Committee reports are published on the [Committee's website](#) and in print by Order of the House.

### Staff

The staff of the Committee are Ravi Abhayaratne (Committee Operations Assistant), Hannah Barlow (Committee Specialist), Joanne Dee (Deputy Counsel for European and International Law), Alistair Dillon and Leigh Gibson (Senior Committee Specialists, European Affairs Unit), Nat Ireton (Committee Operations Officer), Daniel Moeller (Committee Operations Manager), Foeke Noppert (Senior Committee Specialist, European Affairs Unit), Indira Rao MBE (Counsel for European and International Law), Emily Unwin (Deputy Counsel for European and International Law), Dr George Wilson (Clerk).

### Contacts

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## Background

1. On 2 March 2023, we wrote to the Prime Minister, Rt Hon. Rishi Sunak MP, inviting him to appear before us to give evidence on the Northern Ireland Protocol and the Windsor Framework.<sup>1</sup> On 10 March he wrote to our Chair, Sir William Cash MP, declining the Committee’s invitation.<sup>2</sup>

2. This Report is published on the day the Prime Minister was initially invited to give evidence to us, however, our Chair later offered him alternative dates of either Thursday 16 or Friday 17 March.

3. The Windsor Framework is a political agreement (in principle) between the UK Government and the European Commission on the operation of the Northern Ireland Protocol.<sup>3</sup> The Windsor Framework was presented by the Government to the House on 27 February as the culmination of its efforts to renegotiate the Northern Ireland Protocol.<sup>4</sup>

4. We have longstanding concerns and questions regarding the operation of the Northern Ireland Protocol, in particular, that:

- the application of EU law in Northern Ireland (NI)—and oversight of this law by the Court of Justice of the European Union (CJEU)—is not compatible with the UK’s sovereignty outside of the EU;
- alignment in NI with EU rules is leading to regulatory divergence with Great Britain, which is damaging the territorial integrity of the Union; and
- people and business in NI are subject to EU rules, the form and application of which they have no real influence or say over.<sup>5</sup>

5. The Windsor Framework is a set of texts, which the Government explains are designed to recast existing arrangements under the Protocol in three main areas: restoring the smooth flow of trade within the UK internal market; safeguarding Northern Ireland’s place in the Union; and addressing the democratic deficit.<sup>6</sup> The European Commission have explained that solutions in these areas have been found “within the framework of the Withdrawal Agreement” and that “all new arrangements fall within the pre-established [Withdrawal Agreement] framework.”<sup>7</sup>

6. The Windsor Framework is by any standards both legally and politically complicated. It is defined as the Northern Ireland Protocol, as amended by a Decision of the Withdrawal

1 [Letter from Sir William Cash MP to the Prime Minister, Rt Hon. Rishi Sunak MP](#), dated 2 March 2023

2 Letter from the Prime Minister, Rt Hon. Rishi Sunak MP, to Sir William Cash MP, dated 10 March 2023

3 The Protocol is a part of the UK/EU Withdrawal Agreement and has as its primary objective the maintenance of an open land border between the Republic of Ireland and Northern Ireland

4 See HM Government, [‘The Windsor Framework: A new way forward’](#) CP 806 (February 2023)

5 These concerns were most recently expressed by our members in our oral evidence session of 1 February 2023. See European Scrutiny Committee, [‘Government Northern Ireland Protocol negotiations’](#) HC 1101 (1 February 2023). The Committee also scrutinises proposals for EU legislation that may become applicable in Northern Ireland under the terms of the Northern Ireland Protocol. For further information on the Committee’s document scrutiny arrangements see European Scrutiny Committee, [‘Revised EU Scrutiny Arrangements’](#), First Special Report (2022–23) HC 721 (18 October 2022)

6 HM Government (n 4), p.4

7 European Commission, [‘Questions and Answers: political agreement in principle on the Windsor Framework, a new way forward for the Protocol on Ireland / Northern Ireland’](#) (27 February 2023)

Agreement Joint Committee (WAJC).<sup>8</sup> It is also, however, necessary to have regard to a range of other documents, including: a UK/European Commission political declaration; draft joint Declarations of the UK and EU, draft Recommendations of the WAJC; draft UK unilateral Declarations; a draft Decision of the Withdrawal Agreement Joint Consultative Working Group; and proposals for EU Regulations.

### The Prime Minister's invitation and his decision not to appear

7. We are disappointed with the Prime Minister's decision not to appear before us.
8. We did not take the decision to invite the Prime Minister to give evidence lightly and recognise and appreciate the demands on his time. This having been said, the deal the Prime Minister has negotiated with the EU is, to date, one of the most consequential developments in the UK's post-Brexit relationship with the EU.
9. We appreciate the hard work and determination of the Government—and officials—to reach a positive outcome on Northern Ireland Protocol negotiations. We say this without prejudice to our views on the content of the Windsor Framework.
10. An agreement of the political importance and legal complexity of the Windsor Framework demands close scrutiny and attention by those with specialist EU law and policy expertise. This is the very function our Committee was set up by the House to perform, and our purchase on inquiring into the legal and/or political importance of EU matters is provided for in our Standing Order.<sup>9</sup>
11. Appearing before us would have provided the Prime Minister with an opportunity to discharge what we consider to be his obligation to the House to subject the Windsor Framework to close and detailed parliamentary scrutiny. It would also have made good on his commitment to our Chair on the floor of the House on 27 February that “as far as questions, I am happy to move as quickly as he is able to provide questions for me and I look forward to engaging in that dialogue with him.”<sup>10</sup>
12. The Prime Minister briefing us and providing cogent and compelling answers to questions on recent developments would have strengthened the Government's position that Members (of all political parties) should vote to approve the Windsor Framework when it is put to the House.
13. In his letter of 10 March, the Prime Minister states that he is in discussions regarding his next appearance before the Liaison Committee and that he “would be happy to answer questions about the Framework then should [that] Committee decide it should be one of the issues for discussion.” It has subsequently been confirmed that the Prime Minister will appear before the Liaison Committee on 28 March. We value the work of the Liaison Committee, of which our Chair is a member. The Liaison Committee was not, however, constituted to inquire into matters relating to EU law and policy, as we explicitly were.

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8 [As defined by the draft joint declaration by the United Kingdom of Great Britain and Northern Ireland and the European Union in the Withdrawal Agreement Joint Committee on the Windsor Framework; draft Decision of the Withdrawal Agreement Joint Committee on laying down arrangements relating to the Windsor Framework](#)

9 Standing Order No. 143

10 HC Deb 27 February, vol 728, col 587

14. We note the Prime Minister’s suggestion that we might instead hear evidence from the Secretary of State for Northern Ireland, Rt Hon. Chris Heaton-Harris MP.

### Meaningful influence or voting on a done deal?

15. The Secretary of State for Northern Ireland recently said that the House will have an opportunity to vote on the Windsor Framework.<sup>11</sup> It remains unclear when this will be and if the vote will be politically binding, with rejection of the deal by the House sending a signal that the Government should not move forwards with agreeing the Windsor Framework with the EU.

16. It is likely that the Council of the European Union will meet shortly to approve the Windsor Framework. This process involves the Council adopting the draft Council Decision published on 27 February,<sup>12</sup> which will in effect give the European Commission, on behalf of the EU, authority to agree the deal with the UK in the WAJC. After this point, change to the key legal text of the Windsor Framework—the WAJC Decision—is highly unlikely. This is because revision to the draft WAJC Decision could require the Commission to go back to the Council, and the 27 EU Member States, for a new authorisation.

17. This situation means that, at the moment, the EU’s processes lead the UK’s and the deadline for meaningful change to the Windsor Framework could be as early as the week beginning 20 March (when it appears likely the Council will meet to agree the position to be taken on behalf of the EU on the WAJC Decision).<sup>13</sup> It is possible that the WAJC could meet to sign off the deal as soon as the end of that week.

18. The issue of timing was an important motivating factor in our decision to invite the Prime Minister to give evidence. It is vitally important that debate on the deal takes place in good time before the WAJC meets, so that the House has the opportunity to inform and influence its terms. Failure to provide for scrutiny before the WAJC meets, could be construed as giving rise to a *fait accompli*; with the House voting on an issue that has already been decided by the Government and the EU.

19. The complexity of the Windsor Framework demands sufficient time for Members to digest and fully understand its detail. As a key stakeholder in the process, time and space should be provided for the Democratic Unionist Party (DUP) to form an opinion on the deal.

**20. We urge the Prime Minister to reject any proposal for a WAJC meeting this month and to resist setting unnecessary deadlines. We are not aware of any reason as to why the WAJC should meet and agree the deal before the end of March.**

**21. The House should have the opportunity for meaningful input into the shape of the deal, well in advance of sign off by the WAJC and without the threat of artificial Government or EU deadlines.**

11 [Sky News, ‘Windsor Framework: MPs will get vote on new Brexit deal for Northern Ireland ‘by end of the month’’ \(9 March 2023\)](#)

12 [Proposal for a Council Decision on the position to be taken on behalf of the European Union in the Joint Committee established by the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community as regards a decision to be adopted, and recommendations and joint and unilateral declarations to be made](#)

13 [The draft Council Decisions appear on the \[provisional agenda for the EU General Affairs Council on 21 March\]\(#\)](#)

## Areas of concern

22. Our invitation to the Prime Minister remains open and we can flexibly accommodate his appearance over the course of the coming week. We have identified a number of significant areas of concern about which the House should be further informed. These include:

- the amount and extent of EU law that would remain applicable in Northern Ireland under the Windsor Framework;
- the operation of the ‘Stormont Brake’ and whether it would act effectively as a full stop on new EU law which amends or replaces EU law applicable in Northern Ireland, or whether it merely amounts to the insertion of an additional process into the current schema, as created by the Northern Ireland Protocol;
- the operation of ‘red’ and ‘green’ lanes and the practical implications of the Windsor Framework for the people and businesses of Northern Ireland and the extent of CJEU jurisdiction over these;
- how, if at all, the Windsor Framework alters the jurisdiction of the CJEU over the entirety of the Northern Ireland Protocol, including arrangements for UK/EU arbitration which engage questions on the application and interpretation of EU law;
- the placing of goods on the Northern Ireland market made to UK, not EU, standards;
- VAT arrangements; and
- how the Windsor Framework deals with the granting of UK State aid.

23. We wrote to the Prime Minister on the first point on 2 March requesting a definitive list of the EU rules that would remain applicable in Northern Ireland under the terms of the Windsor Framework.<sup>14</sup> This letter was sent on the back of a commitment the Prime Minister made to one of our members, Rt Hon. David Jones MP, on 27 February.<sup>15</sup>

**24. We again urgently request a definitive list of the EU rules that would remain applicable in Northern Ireland under the terms of the Windsor Framework.**

**25. We ask that the Government expedite its response to this Report owing to the legal and political significance of the issues it raises.**

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14 [Letter from Sir William Cash MP to the Prime Minister, Rt Hon. Rishi Sunak MP](#), dated 2 March

15 [HC Deb 27 February 2023, vol 728, col 606](#)

# Formal minutes

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**Monday 13 March 2023**

**Members present:**

Sir William Cash, in the Chair

Richard Drax

Craig Mackinlay

Gavin Robinson

Greg Smith

**The Windsor Framework and Prime Ministerial accountability**

Draft Report (*The Windsor Framework and Prime Ministerial accountability*), proposed by the Chair, brought up and read.

*Ordered*, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 25 read and agreed to.

*Resolved*, That the Report be the Fifteenth Report of the Committee to the House.

*Ordered*, That the Chair make the Report to the House.

**Adjournment**

Adjourned till Wednesday 22 March 2023 at 1.45 pm



## List of Reports from the Committee during the current Parliament

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All publications from the Committee are available on the [publications page](#) of the Committee's website.

### Session 2022–23

Number	Title	Reference
1st	Documents considered by the Committee on 11 May 2022	HC 119-i
2nd	Documents considered by the Committee on 25 May 2022	HC 119-ii
3rd	Documents considered by the Committee on 8 June 2022	HC 119-iii
4th	Documents considered by the Committee on 22 June 2022	HC 119-iv
5th	Retained EU Law: Where next?	HC 122
6th	Documents considered by the Committee on 18 July 2022	HC 119-v
7th	Documents considered by the Committee on 7 September 2022	HC 119-vi
8th	Documents considered by the Committee on 12 October 2022	HC 119-vii
9th	Documents considered by the Committee on 26 October 2022	HC 119-viii
10th	Documents considered by the Committee on 23 November 2022	HC 119-ix
11th	Documents considered by the Committee on 7 December 2022	HC 119-x
12th	Documents considered by the Committee on 11 January 2023	HC 119-xi
13th	Documents considered by the Committee on 25 January 2023	HC 119-xii
14th	Documents considered by the Committee on 8 February 2023	HC 119-xiii
1st Special	Revised EU Scrutiny Arrangements	HC 721
2nd Special	Retained EU Law: Where next?: Government response to the Committee's Fifth Report	HC 885

### Session 2021–22

Number	Title	Reference
1st	Documents considered by the Committee on 12 May 2021	HC 121-i
2nd	Documents considered by the Committee on 26 May 2021	HC 121-ii
3rd	Documents considered by the Committee on 9 June 2021	HC 121-iii
4th	Documents considered by the Committee on 23 June 2021	HC 121-iv

<b>Number</b>	<b>Title</b>	<b>Reference</b>
5th	Documents considered by the Committee on 7 July 2021	HC 121-v
6th	Documents considered by the Committee on 19 July 2021	HC 121-vi
7th	Documents considered by the Committee on 8 September 2021	HC 121-vii
8th	Documents considered by the Committee on 22 September 2021	HC 121-viii
9th	Brexit divorce bill and UK participation in EU programmes: how much and who pays?	HC 815
10th	Documents considered by the Committee on 20 October 2021	HX 121-ix
11th	Documents considered by the Committee on 3 November 2021	HC 121-x
12th	Documents considered by the Committee on 17 November 2021	HC 121-xi
13th	Documents considered by the Committee on 1 December 2021	HC 121-xii
14th	Documents considered by the Committee on 8 December 2021	HC 121-xiii
15th	Documents considered by the Committee on 12 January 2022	HC 121-xiv
16th	Documents considered by the Committee on 26 January 2022	HC 121-xv
17th	Documents considered by the Committee on 9 February 2022	HC 121-xvi
18th	Documents considered by the Committee on 23 February 2022	HC 121-xvii
19th	Documents considered by the Committee on 9 March 2022	HC 121-xviii
20th	Documents considered by the Committee on 30 March 2022	HC 121-xix
21st	Documents considered by the Committee on 28 April 2022	HC 121-xx

### Session 2019–21

<b>Number</b>	<b>Title</b>	<b>Reference</b>
None	Documents considered by the Committee on 25 November 2020	HC 229-xxvi
1st	The EU's mandate for negotiating a new partnership with the UK	HC 218
2nd	COVID-19 pandemic: the EU's policy response and its implications for the UK	HC 275
3rd	Documents considered by the Committee on 26 March 2020	HC 229-i
4th	Documents considered by the Committee on 23 April 2020	HC 229-ii

<b>Number</b>	<b>Title</b>	<b>Reference</b>
5th	The EU's mandate for negotiating a new partnership with the UK: outcome of Select Committee consultation	HC 333
6th	Documents considered by the Committee on 30 April 2020	HC 229-iii
7th	Documents considered by the Committee on 7 May 2020	HC 229-iv
8th	Documents considered by the Committee on 14 May 2020	HC 229-v
9th	Documents considered by the Committee on 21 May 2020	HC 229-vi
10th	Documents considered by the Committee on 4 June 2020	HC 229-vii
11th	Documents considered by the Committee on 11 June 2020	HC 229-viii
12th	UK-EU Joint Committee: Decision of 12 June 2020 amending the Withdrawal Agreement	HC 465
13th	Documents considered by the Committee on 18 June 2020	HC 229-ix
14th	Documents considered by the Committee on 25 June 2020	HC 229-x
15th	Documents considered by the Committee on 2 July 2020	HC 229-xi
16th	Documents considered by the Committee on 9 July 2020	HC 229-xii
17th	Documents considered by the Committee on 16 July 2020	HC 229-xiii
18th	Documents considered by the Committee on 23 July 2020	HC 229-xiv
19th	Documents considered by the Committee on 3 September 2020	HC 229-xv
20th	Documents considered by the Committee on 10 September 2020	HC 229-xvi
21st	Documents considered by the Committee on 16 September 2020	HC 229-xvii
22nd	Documents considered by the Committee on 24 September	HC 229-xviii
23rd	Documents considered by the Committee on 1 October 2020	HC 229-xix
24th	Documents considered by the Committee on 8 October 2020	HC 229-xx
25th	Documents considered by the Committee on 15 October 2020	HC 229-xxi
26th	Documents considered by the Committee on 21 October 2020	HC 229-xxii
27th	Documents considered by the Committee on 4 November 2020	HC 229-xxiii
28th	Documents considered by the Committee on 11 November 2020	HC 229xxiv
29th	Documents considered by the Committee on 19 November 2020	HC 229-xxv
31st	Documents considered by the Committee on 3 December 2020	HC 229-xxvii
32nd	Documents considered by the Committee on 9 December 2020	HC 229-xxviii

<b>Number</b>	<b>Title</b>	<b>Reference</b>
33rd	Documents considered by the Committee on 16 December 2020	HC 229-xxix
34th	Documents considered by the Committee on 20 January 2021	HC 229-xxx
35th	Documents considered by the Committee on 3 February 2021	HC 229-xxxi
36th	Brexit: The future operation of the Channel Tunnel Fixed Link	HC 1062
37th	Documents considered by the Committee on 10 February 2021	HC 229-xxxii
38th	Documents considered by the Committee on 24 February 2021	HC 229-xxxiii
39th	Documents considered by the Committee on 10 March 2021	HC 229-xxxiv
40th	Documents considered by the Committee on 17 March 2021	HC 229-xxxv
41st	Northern Ireland Protocol: Withdrawal Agreement Joint Committee Decisions and declarations of 17 December 2020	HC 1343
42nd	Documents considered by the Committee on 24 March 2021	HC 229-xxxvi
43rd	Documents considered by the Committee on 14 April 2021	HC 229-xxxvii
44th	Documents considered by the Committee on 21 April 2021	HC 229-xxxviii