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European Scrutiny Committee

**Twenty-First Report of
Session 2022–23**

Documents considered by the Committee on 12 July 2023

Report, together with formal minutes

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Notes

Numbering of documents

Three separate numbering systems are used in this Report for European Union documents:

Numbers in brackets are the Committee's own reference numbers.

Numbers in the form "5467/05" are Council of Ministers reference numbers. This system is also used by UK Government Departments, by the House of Commons Vote Office and for proceedings in the House.

Numbers preceded by the letters COM or SEC or JOIN are Commission reference numbers.

Where only a Committee number is given, this usually indicates that no official text is available and the Government has submitted an "unnumbered Explanatory Memorandum" discussing what is likely to be included in the document or covering an unofficial text.

Abbreviations used in the headnotes and footnotes

AFSJ	Area of Freedom Security and Justice
CFSP	Common Foreign and Security Policy
CSDP	Common Security and Defence Policy
ECA	European Court of Auditors
ECB	European Central Bank
EEAS	European External Action Service
EM	Explanatory Memorandum (submitted by the Government to the Committee)*
EP	European Parliament
EU	European Union
JHA	Justice and Home Affairs
OJ	Official Journal of the European Communities
QMV	Qualified majority voting
SEM	Supplementary Explanatory Memorandum
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union

Euros

Where figures in euros have been converted to pounds sterling, this is normally at the market rate for the last working day of the previous month.

Further information

Documents recommended by the Committee for debate, together with the times of forthcoming debates (where known), are listed in the European Union Documents list, which is published in the House of Commons Vote Bundle each Monday and is also available on the parliamentary website. Documents awaiting consideration by the Committee are listed in "Remaining Business": www.parliament.uk/escom. The website also contains the Committee's Reports.

*Explanatory Memoranda (EMs) can be downloaded from GOV.UK: <https://www.gov.uk/government/collections/explanatory-memoranda-on-eu-documents>. EMs can be searched by Council or Commission reference number. Letters from the Committee and those issued by Ministers can be found in the correspondence section of the Committee's website: <https://committees.parliament.uk/committee/69/european-scrutiny-committee/publications/3/correspondence/>.

Explanatory Memoranda and letters published before 31 March 2022 can be found on the National Archives website—<https://webarchive.nationalarchives.gov.uk/search/>—by restricting searches to <https://europeanmemoranda.cabinetoffice.gov.uk/>

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

All correspondence should be addressed to the Clerk of the European Scrutiny Committee, House of Commons, London SW1A 0AA. The telephone number for general enquiries is (020) 7219 3292/8185. The Committee's email address is escom@parliament.uk.

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1 Windsor Framework: compulsory licensing of patents to tackle an EU-wide crisis¹

The proposed Regulation is legally and politically important because:

- it has implications for Northern Ireland under the Windsor Framework and may affect access to innovative patent-protected products or technologies needed to address a public health crisis or other emergencies affecting critical supply chains.

Action

- Write to the Minister.
- Draw to the attention of the Northern Ireland Affairs Committee.

Overview

1.1 In its [Work Programme for 2023](#), the European Commission highlighted “a collision of crises”—Russia’s illegal full-scale invasion of Ukraine, spiralling energy costs, geopolitical tensions, and disruption to supply chains during and after the Covid-19 pandemic—to underscore the need for the EU to strengthen its resilience to future challenges and its ability to respond more quickly to new crises. Intellectual property rights play an important strategic role in stimulating creativity and innovation. The Commission anticipates that the introduction of an EU [Unitary Patent system](#) in June 2023 providing patent protection across most EU Member States based on a single application will ensure a simpler, more cost-effective and predictable legal framework to encourage investment in new products and technologies. It considers that these incentives for innovation also need to be balanced against speed of access to critical products and technologies so that they can be used for public good in times of crisis and suggests that compulsory licensing, a recognised feature of patent law, offers a solution. It allows governments acting within the legal framework established by the World Trade Organisation in the [Agreement on Trade-Related Aspects of Intellectual Property Rights](#) (‘TRIPS Agreement’) to authorise a third party to manufacture and distribute a patent-protected product without the consent of the patent holder.

1.2 There are no harmonised EU rules on compulsory licensing. The Commission considers that the current patchwork of 27 national compulsory licensing regimes is inefficient and hinders the EU’s ability to respond at pace to a crisis, particularly for products which depend on cross-border supply chains. Member States can only grant a compulsory licence for their own territory, leading to fragmentation within the EU Single Market and an inability to guarantee supplies of critical products throughout the EU. The Commission has therefore put forward a [proposed Regulation](#) which would not replace

¹ Proposal for a Regulation on compulsory licensing for crisis management and amending Regulation (EU) 816/2006; COM(23) 224; Articles 114 and 207 TFEU; ordinary legislative procedure; Department for Science, Innovation and Technology; Devolved Administrations consulted; 42210.

these national systems but establish an overarching EU framework for the compulsory licensing of intellectual property rights² to be used for crises within the EU that have a cross-border dimension. While recognising that voluntary agreements are likely to remain the most effective means to accelerate the manufacturing of patent-protected products, the Commission believes that an EU-wide framework for compulsory licensing would provide an essential safety net in an emergency if voluntary agreements cannot be reached.

1.3 Under the proposed Regulation, an EU-wide compulsory licence would only be granted once a crisis or emergency had been declared under one of five existing or planned EU instruments and the Commission considered it necessary to enable a patent-protected ‘crisis relevant product’—one that is ‘indispensable’ to respond to the crisis—to be exploited. The instruments concern crises affecting the functioning of the EU Single Market and its supply chains,³ public health emergencies,⁴ and significant shortages affecting the supply of semiconductors⁵ or the security of gas supply.⁶ They are intended to provide the EU with a means of ensuring access to products needed to tackle a crisis, such as new vaccines or other critical products or components. The EU compulsory licence would cover all EU countries affected by the crisis and/or with relevant manufacturing capacity.

1.4 The proposed Regulation sets out the procedures and conditions for granting an EU compulsory licence. It would require the Commission to consult an advisory body before granting a licence, explore the possibility of reaching a voluntary licensing agreement, consider the rights and interests of the holder of the patent and the person (licensee) to whom the compulsory licence is to be granted, and ensure adequate remuneration for the holder of the patent.⁷ Products manufactured under the compulsory licence would need to be clearly labelled as such and distributed exclusively within the EU. The Commission would have a power to impose fines or penalty payments on the patent holder or the licensee if it found either to be in breach of obligations relating to the compulsory licence.⁸

1.5 The proposed Regulation would ban the export of most products covered by an EU compulsory licence, but an exception is made for the export of medical products to eligible—mainly low income—countries outside the EU experiencing public health problems and lacking their own manufacturing capability.⁹ This would avoid the need for these countries to seek separate national compulsory licences for a medical product in each EU country involved in the manufacturing process.

2 The EU compulsory licence would apply to the following intellectual property rights: patents and patent applications, utility models and supplementary protection certificates.

3 [Proposal for a Regulation establishing a Single Market emergency instrument](#) (COM(22) 459).

4 [Regulation \(EU\) 2022/2371 on serious cross-border threats to health](#) and [Regulation \(EU\) 2022/2372 on a framework of measures for ensuring the supply of crisis-relevant medical countermeasures in the event of a public health emergency at Union level](#).

5 [Proposal for a Regulation establishing a framework of measures for strengthening Europe’s semiconductor ecosystem \(Chips Act\)](#), COM(22) 46

6 [Regulation \(EU\) 2017/1938 concerning measures to safeguard the security of gas supply](#).

7 Remuneration for the patent holder would be capped at 4% of the total gross revenue generated by the licensee under the compulsory licence.

8 The licensee or patent holder would have a right to be heard before the Commission acts and to appeal to the EU Court of Justice.

9 This would be implemented through an amendment to [Regulation \(EU\) 816/2006 on compulsory licensing of patents relating to the manufacture of pharmaceutical products for export to countries with public health problems](#).

1.6 The Commission anticipates that a compulsory EU licence would only be granted “during major crises affecting the EU, as a measure of last resort” and that the frequency of use is likely to be “very low”.¹⁰ To ensure that it has an overview of measures being taken across the EU and determine whether a compulsory licence at EU level is justified, EU Member States would have to notify the Commission of any national compulsory licences they grant to address national crises or emergencies.

The Government’s position

1.7 In his [Explanatory Memorandum dated 14 June 2023](#), the Minister for AI and Intellectual Property (Viscount Camrose) says that the introduction of a new EU-wide compulsory licensing system for crisis management within the EU *would not* apply in Northern Ireland. By contrast, the provisions on the grant of a compulsory EU licence for the manufacture within the EU of medical products for export to countries with public health problems *would* apply in Northern Ireland as the proposed Regulation would amend an existing EU law (Regulation (EU) 816/2006) which continues to apply in Northern Ireland under the Windsor Framework.¹¹ The Minister suggests that an EU-wide compulsory licence granted for these limited purposes “may” apply in Northern Ireland unless the ‘Stormont Brake’ (discussed below) is used, but he expects the impact on the Northern Ireland market to be “minimal” because compulsory licensing is “a last resort and rarely used mechanism”. He says the WTO website records only two notifications of requests for compulsory licences in relation to the manufacture of pharmaceutical products for export to countries with public health problems.

1.8 The Minister notes that the UK Government “has not had any substantive engagement with the EU in relation to the development of the proposal”, nor has it prepared its own impact assessment. The Government will continue to analyse “potential practical implications” as the proposed Regulation progresses through the EU’s legislative process, but he does not expect there will be any impact on Northern Ireland’s participation in UK Free Trade Agreements or in UK-wide Common Frameworks. He adds that the UK Government has no plans to amend the compulsory licensing provisions which form part of UK domestic patent law.

Our analysis

1.9 We note the lack of any substantive engagement with the EU on the development of the proposed Regulation, even though it may have implications for Northern Ireland because it includes provisions amending an EU law which continues to apply in Northern Ireland. The amended law would apply in Northern Ireland under a process of dynamic alignment provided for in Article 13(3) of the original Protocol on Ireland/Northern Ireland. The Windsor Framework has introduced a new emergency brake mechanism (the Stormont Brake) which will only become operational once the Northern Ireland Executive and Assembly have been restored. The Stormont Brake could be used in relation to those parts of the proposed Regulation which would amend EU law already applicable in Northern Ireland, provided sufficient Members of the Assembly (a minimum of 30 ‘MLAs’ from at least two parties) wish to oppose the application of the amended EU law (assuming it

¹⁰ See page 8 of the Commission’s explanatory memorandum accompanying the proposed Regulation.

¹¹ The Windsor Framework in this context refers to the UK/EU Withdrawal Agreement Protocol on Ireland/Northern Ireland as amended by [Joint Committee Decision 1/2023](#).

is adopted by the EU) and the UK Government is satisfied that the stringent criteria for applying the Brake have been met.¹² These criteria are that the amended EU law differs significantly in content or scope from the law it would replace and that it would have a sustained and significant impact specific to the everyday life of communities in Northern Ireland. The UK’s Unilateral Declaration relating to the operation of the Stormont Brake also makes clear that MLAs should only seek to apply the Brake “in the most exceptional circumstances and as a last resort”.¹³ The Minister does not indicate whether he considers that the amending provisions in the proposed Regulation might satisfy these criteria. Nor does he tell us whether the proposal has been discussed in the Joint Consultative Working Group, an official-led body established amongst other things as a forum for the EU to inform the UK of planned EU laws that would apply in Northern Ireland.

1.10 Under the proposed Regulation an EU compulsory licence could only be granted by the Commission to tackle a crisis or emergency within the EU which has been declared under one of five existing or planned EU instruments listed in the Annex. The Minister does not explain which, if any, of these instruments apply (or might apply) in Northern Ireland and whether this would affect his assessment that those parts of the proposed Regulation which are entirely ‘new’ (rather than amend already applicable law in Northern Ireland) are not within the scope of the Windsor Framework. We note, for example, that one of the planned EU laws—a proposal for a Single Market Emergency Instrument to ensure vital supply chains can continue to function in a crisis affecting the EU Single Market—could affect laws that do apply in Northern Ireland under the Windsor Framework.

1.11 Northern Ireland is not included in the Commission’s Impact Assessment on the proposed Regulation and the Government has not prepared its own impact assessment. The Minister says that any impact on Northern Ireland would be limited because compulsory licensing is “a last resort and rarely used mechanism”. He nonetheless recognises that the possibility of obtaining an EU compulsory licence through a centralised procedure might make its use more attractive in a crisis where speed and ease may be of the essence. Given recent experience of vaccine procurement during the COVID-19 pandemic, the Commission’s aborted attempt to apply safeguard measures to exclude Northern Ireland from the EU Single Market’s COVID-19 vaccine supply chain, and the strain it placed on UK/EU relations, we consider that a deeper analysis of the potential impact of the proposed Regulation on Northern Ireland in the event of a similar pandemic is warranted. We note, for example, that Article 5 of the proposed Regulation provides that an EU compulsory licence “shall be limited to the territory of the [European] Union”, that Article 11 prohibits the export of products manufactured under an EU compulsory licence (other than the limited exception for certain pharmaceutical products), and that Article 22 requires Member States to notify the Commission when they grant a national compulsory licence to address a national crisis. It is unclear how these provisions would affect Northern Ireland given that it remains part of the UK’s customs territory but is treated as if it were an EU Member State in areas where EU law continues to apply.

1.12 The Minister indicates that the Government does not intend to make any changes to the compulsory licensing provisions contained in the UK’s domestic patent laws. This domestic law, it seems, would continue to apply in Northern Ireland to address a crisis affecting only the UK. As the Covid-19 pandemic has demonstrated, the globalisation

12 See Article 13(3a) of the Windsor Framework. In this context, the Windsor Framework refers to the Protocol on Ireland/Northern Ireland as amended by [Decision 1/2023](#) of the UK/EU Withdrawal Agreement Joint Committee.

13 See [Annex 1 to Decision 1/2023](#) of the UK/EU Withdrawal Agreement Joint Committee.

of supply chains means that crises are difficult to contain within national borders. This suggests at least the potential for confusion or conflict if two different compulsory licencing systems may apply in Northern Ireland but not elsewhere in the UK.

Action

1.13 We have written to the Minister requesting further information on the potential implications of the proposed Regulation for Northern Ireland. We have drawn this chapter to the attention of the Northern Ireland Affairs Committee.

Letter to the Parliamentary Under-Secretary of State (Viscount Camrose), Department for Science, Innovation and Technology

We have considered this proposal, which would allow the European Commission to grant an EU compulsory licence of intellectual property rights if necessary to respond to a crisis or emergency affecting the EU, as well as your accompanying Explanatory Memorandum. You state that the proposed Regulation would not as such apply in Northern Ireland under the Windsor Framework but that the amendments it makes to another EU law (Regulation (EC) 816/2006) on compulsory licensing of patents relating to the manufacture of medicines for export would apply unless the Windsor Framework ‘Stormont Brake’ is invoked. We welcome your response to the following questions to aid our scrutiny of the proposal.

- Noting that the EU is required to inform the UK of planned EU acts within the scope of the Windsor Framework so that the UK can comply fully with its obligations, has the proposed Regulation been discussed in the Joint Consultative Working Group and, if not, do you intend to raise it? What difference would the enhanced engagement with Northern Ireland stakeholders announced by the European Commission as part of the Windsor Framework agreement have made to your understanding of the proposal?
- Have you considered which, if any, of the existing or planned EU instruments listed in the Annex to the proposed Regulation that could prompt the grant of an EU compulsory licence, might apply in Northern Ireland? If any might apply, would this affect your assessment that those parts of the proposed Regulation which are entirely ‘new’ are not within the scope of the Windsor Framework?
- Given recent experience of vaccine procurement during the Covid-19 pandemic, the Commission’s aborted attempt to apply safeguard measures to exclude Northern Ireland from the EU Single Market’s Covid-19 vaccine supply chain, and the strain it placed on UK/EU relations, how do you anticipate that the proposed Regulation (if agreed by the EU) would affect Northern Ireland in the event of a similar pandemic (or crisis of a similar magnitude) in the future? We note, for example, that Article 5 of the proposal provides that an EU compulsory licence “shall be limited to the territory of the [European] Union”, that Article 11 prohibits the export of products manufactured under an EU compulsory licence (other than the limited exception for certain pharmaceutical products), and that Article 22 requires Member States to notify the Commission when they grant a national compulsory licence to address a national crisis. How would

these provisions affect Northern Ireland given that it remains part of the UK's customs territory but is treated as if it were an EU Member State in areas where EU law continues to apply?

- The globalisation of supply chains means that crises are difficult to contain within national borders. We understand that the compulsory licensing provisions contained in the UK's domestic patent laws will continue to apply in Northern Ireland to address a crisis affecting only the UK. Is it possible that two different compulsory licencing systems—a domestic and an EU one—could apply in Northern Ireland if the EU is affected by the same crisis, and how would you address the risk of potential confusion or conflict?

We look forward to receiving your response by 4 September 2023.

2 Windsor Framework: the EU’s Artificial Intelligence Act (update)¹⁴

This EU document is legally and politically important because:

- it would establish a new set of requirements for the use of Artificial Intelligence (AI) applications within the EU. Aside from wider potential implications for UK industry, especially exporters, certain elements of the EU AI Act may also apply directly in Northern Ireland under the Windsor Framework but their impact on the UK’s regulatory approach to AI is unclear.

Action

- Write to the Minister seeking a further update.
- Draw to the attention of the Business and Trade Committee, the Northern Ireland Affairs Committee and the Science, Innovation and Technology Committee.

Overview

2.1 The use of Artificial Intelligence (AI) systems in a range of public and private sector applications has become widespread and is likely to grow.¹⁵ While policy-makers have recognised the potential benefits of AI for “optimising operations and resource allocation”,¹⁶ there are also concerns of existing AI technology leading, or having the potential to lead, to dangerous, unlawful or discriminatory outcomes for individuals or groups (for example as a result of biased or manipulated data).¹⁷ As a result, the technology’s political profile has become much more prominent, and with it the question of if and how it should be regulated.

2.2 In the EU, the policy approach is that the use of AI is broadly beneficial where deployed appropriately, but requires an “appropriate ethical and legal framework”. Since 2021, negotiations have been on-going on a draft Regulation to establish an EU ‘[Artificial Intelligence Act](#)’ (AIA). This would, for the first time, introduce general legal requirements for AI systems put on the market in the entire European Union. The aim is to address risks associated with the technology while also providing improved legal certainty on its use, encouraging its uptake where appropriate. There is also a competitiveness angle, as an EU-wide regulatory approach is intended to allow developers of AI applications to benefit from economies of scale.¹⁸ In practice, the AIA would ban certain uses of AI altogether,¹⁹

14 Proposal for a Regulation laying down harmonised rules on Artificial Intelligence; Department: Digital, Culture, Media and Sport; COM number: COM(2021) 206; ESC number: 41828.

15 European Commission, ‘[Impact Assessment for a proposal for a Regulation laying down harmonised rules on Artificial Intelligence](#)’ (SWD(2021) 84, 21 April 2021), p. 14.

16 European Commission, ‘[Proposal for a Regulation laying down harmonised rules on Artificial Intelligence](#)’ (COM(2021) 206, 21 April 2021), p. 1.

17 *ibid.*

18 European Commission, ‘[Proposal for a Regulation laying down harmonised rules on Artificial Intelligence](#)’ (COM(2021) 206, 21 April 2021), p. 6.

19 For example, the law would ban ‘social scoring’ systems by public authorities to evaluate the “trustworthiness of natural persons” (to decide, for example, on access to certain benefits).

while imposing significant regulatory requirements on ‘high-risk’ deployment such as AI technology that provides a safety function in a piece of machinery or acts as a gatekeeper in a recruitment process. While the AIA is the most prominent piece of new European legislation in this policy space, it is by no means the only one, in particular, the EU’s new [Machinery Regulation](#)²⁰ and [General Product Safety Regulation](#),²¹ contain provisions on the use of Artificial Intelligence in physical products. The EU is also considering a draft Directive to make it easier for individuals harmed specifically by AI systems to [obtain compensation under tort laws](#).²²

2.3 We last considered the substance of the draft Artificial Intelligence Act in our [Fourth Report of Session 2021–22](#).²³ Since then, the European Parliament and the EU’s Council of Ministers have reached their respective positions on the draft law, with final legislative negotiations scheduled for the second half of 2023. In addition, in the UK the Government in March 2023 published its [AI White Paper](#), in which it said it did not intend to introduce specific legislation in this area.²⁴ However, the Prime Minister more recently said the UK wants to lead on developing “guard rails” for the safe use of the technology,²⁵ and will host an [international summit on AI](#) in December this year.

Potential implications for the UK

2.4 Based on an [Explanatory Memorandum](#) submitted by the then-Department for Digital, Culture, Media and Sport, we concluded that the EU’s regulatory approach to AI remained of direct relevance for the UK, because British exports of high-risk AI software to the EU—a market segment the Government is keen to develop²⁶—would have to meet requirements under the AIA. In addition, the EU is explicitly seeking to ensure that future international standards relating to AI are modelled on its own regulatory approach, which could also affect the UK insofar as those standards are followed by industry here.²⁷

2.5 More specifically however, we also noted that the AIA could have specific legal implications for the UK directly: parts of the ‘Act’ that relate to goods²⁸ might apply as a matter of law in Northern Ireland under the terms of the Northern Ireland Protocol (renamed the Windsor Framework in March 2023). This is because the Framework requires Northern Ireland to remain aligned with EU rules on goods, and the AIA would, amongst other things, regulate the use of AI as a “safety component”²⁹ in physical products like cars, toys and machinery. While most of the Act creates a stand-alone regulatory framework for AI in goods that would not appear to apply directly in Northern Ireland

20 European Scrutiny Committee, Nineteenth Report (2022–23) HC 119–xvii, [chapter 1](#) (20 June 2023).

21 European Scrutiny Committee, Fourteenth Report (2022–23) HC 119–xiii, [chapter 1](#) (14 February 2023).

22 European Scrutiny Committee, Fourteenth Report (2022–23) HC 119–xiii, [chapter 2](#) (14 February 2023).

23 European Scrutiny Committee, Fourth Report of Session 2021–22 HC 121–iv, [chapter 2](#) (29 June 2021).

24 Department for Science, Innovation and Technology, [‘Policy paper: A pro-innovation approach to AI regulation’](#) (23 March 2023).

25 The Guardian, [‘UK will lead on ‘guard rails’ to limit dangers of AI, says Rishi Sunak’](#) (18 May 2023).

26 Department for Science, Innovation and Technology, [‘Policy paper: A pro-innovation approach to AI regulation’](#) (23 March 2023).

27 In its Memorandum, the Government said the EU proposal “could have implications for areas such as health, transport, finance, public sector uses of AI, security, product regulation [and] legal services”.

28 Northern Ireland is not required to remain aligned with EU rules relating to services, so the aspects of the AIA not related to use of the technology in physical goods would not be directly applicable under the Windsor Framework.

29 AI would be considered a “safety component” for these purposes if it “fulfils a safety function for that product or system” or if its “failure or malfunctioning [...] endangers the health and safety of persons or property”.

under the Framework unless the UK agreed to this,³⁰ it also explicitly amends certain EU product laws (covering cars, buses and trucks; agricultural vehicles like tractors; motorbikes and quad bikes; marine equipment; and rail infrastructure) that *do* apply in Northern Ireland. Those changes could therefore apply there automatically.³¹ More specifically, those consequential amendments would empower the European Commission to regulate the use of AI in the products covered by those laws through further legal acts in the future, based on the AIA.³² For the same reason, the AI-related provisions of the new EU Machinery Regulation and General Product Safety Regulation could also apply automatically in Northern Ireland.

2.6 As the legislative negotiations on the AIA are still on-going in Brussels (with the aim of being finalised before the end of 2023), we have not reassessed the substance of the law and its general implications for the UK. However, the interaction between the Windsor Framework and the AIA deserves further consideration at this junction.

The Government’s position on the EU Artificial Intelligence Act under the Windsor Framework

2.7 In his initial [Explanatory Memorandum](#) in spring 2021, and subsequent letter dated 17 August 2021, the then-Minister for Digital Infrastructure (Matt Warman MP) did not make clear whether the amendments to be made by the AIA to EU product safety laws applicable in Northern Ireland would mean that future EU legislation setting AI-related requirements for the relevant product groups, introduced on the basis of those amendments, could apply in Northern Ireland under Article 13 of the Windsor Framework.

2.8 In the original Memorandum, the Government argued that the AIA as a whole was “not already within scope of the Protocol” (and therefore would not apply in NI) but added that it was nevertheless “considering how the proposals interact with the existing EU product safety legislation that is included in [...] the Northern Ireland Protocol”. The follow-up letter, in response to our questions, stated that “the proposed Regulation neither amends nor replaces provisions in [the Framework]”.³³ However, the proposed AIA, as noted, does contain a number of explicit amendments to several pieces of EU product legislation listed in the Windsor Framework. We are not aware of the Government having provided any further information to Parliament on the interaction between the AIA and the Framework since the letter of 17 August 2021.³⁴

30 Article 13(4) of the Windsor Framework allows the EU to request a new EU legal act be added to the Framework and therefore apply in Northern Ireland because it is in scope but does not amend or replace an earlier EU legal act already applicable in Northern Ireland. This would require a Decision of the UK/EU Joint Committee, meaning the UK has a veto. The Government has also published, but not yet made, [regulations](#) that would require any such decision under Article 13(4) to have the approval of the NI Assembly.

31 Under Article 13(3) of the Windsor Framework, new EU legal acts that ‘amend or replace’ existing EU laws that already apply in Northern Ireland under the Framework also take effect automatically.

32 European Commission, ‘[Proposal for a Regulation laying down harmonised rules on Artificial Intelligence](#)’ (COM(2021) 206, 21 April 2021), p. 4.

33 Letter from Matt Warman MP to Sir William Cash CH MP, dated 17 August 2021.

34 The Minister in that letter also referred to the Government’s talks with the EU on the operation of the then-Northern Ireland Protocol, and in particular its proposals for a ‘dual regulatory regime’ under which manufacturers could decide whether to comply with UK or EU product safety laws when selling goods in Northern Ireland. While those talks have since concluded, culminating in the Windsor Framework agreement in spring 2023, the Government ultimately dropped the idea of dual regulatory regime in Northern Ireland for manufactured products. It is therefore no longer directly relevant in this context.

Analysis

2.9 The EU’s proposed AIA is an important piece of legislation. Aside from its broader implications for the UK’s approach to AI governance, of particular relevance to us at this stage is that it makes a number of explicit amendments to EU product legislation on road vehicles (including cars, tractors and trucks, marine equipment and rail infrastructure) that continue to apply in Northern Ireland under the Windsor Framework. These amendments will give the European Commission a power to set AI-related regulatory requirements for those product groups based on the AIA. It seems to follow that these will also have legal effect there automatically under Article 13(3) of the Framework.

2.10 In themselves, the amendments will not have any practical effect in Northern Ireland: they are consequential in nature. The more important question is whether the empowerment they create for the EU to introduce AI-related regulation for goods covered by those laws—in particular road vehicles—would also apply automatically in Northern Ireland. That would mean that such goods when sold in Northern Ireland, would have to comply with EU law regulating the use of AI, as and when the EU adopts such regulatory measures in the future. The same is likely to apply to goods covered by the EU’s new Machinery Regulation and General Product Safety Regulation, which also have specific provisions relating to the use of AI.

2.11 The application of EU rules on AI in Northern Ireland under the Windsor Framework risks creating a fragmented regime in Northern Ireland itself (where use of AI in some, but not all goods, could be subject to EU rules) as well as broader divergence between the way the technology is regulated in Northern Ireland and Great Britain. Products that use AI, and which are legal for sale and use in Great Britain, may not be permitted on the market in Northern Ireland if they do not meet the requirements under applicable EU legislation. Conversely, under the Government’s principle of ‘unfettered access’, goods that incorporate AI technology that are legal for sale in Northern Ireland under EU rules but would normally be prohibited in Great Britain may still be legal for sale in the latter if they are brought in from Northern Ireland. Aside from the general legal complexity of the situation, the practical ramifications of such GB-NI divergence could become more pronounced as the EU and UK continue to develop their separate AI governance regimes. However, it is unclear to what extent the Government’s [Product Safety Review](#), which was due to lead to detailed proposals for consultation by the end of 2022 but has been repeatedly delayed, will cover AI-related product safety issues.³⁵

2.12 We note that the UK and EU have agreed the introduction of the ‘Stormont Brake’, a mechanism allowing the UK to block the application of new EU laws ‘amending or replacing’ existing EU laws already applicable in Northern Ireland at the request of the Northern Ireland Assembly. This could apply to the relevant provisions of the draft AIA, as well as those of the EU’s new Machinery Regulation and the General Product Safety Regulation, if the conditions for its use are met. The Stormont Brake cannot be used while the Northern Ireland Assembly is not sitting.³⁶

35 Office for Product Safety and Standards, [‘UK Product Safety Review: Call for Evidence Response’](#) (November 2021).

36 We considered the Stormont Brake in more detail in our [Eighteenth Report of this Session](#). Similarly, if the EU were to ask for the entirety of the Artificial Intelligence Act as it applies to goods to be added to the Windsor Framework, this would require approval by the Northern Ireland Assembly approving a Decision of the UK/EU Joint Committee to that effect under Part 4 of the draft Windsor Framework (Democratic Scrutiny) Regulations 2023, once these become law.

Conclusions

We stand by our previous assessment that the EU’s Artificial Intelligence Act could have a significant impact on the governance of AI in the UK, given the Government itself acknowledged as much in its Explanatory Memorandum in 2021. However, at this time, we are keen to receive further information from the Government about the potential legal ramifications of the AIA for the UK under the Windsor Framework. We have therefore written to the Minister for Artificial Intelligence at the Department for Science, Innovation and Technology (Viscount Camrose), to seek certain clarifications in that regard. A copy of that letter is included at the end of this chapter. In anticipation of the Minister’s reply, we draw this update to the attention of: the Business and Trade Committee; the Science, Innovation and Technology Committee; and the Northern Ireland Affairs Committee.

Letter to the Parliamentary Under-Secretary of State (Viscount Camrose), Department for Science, Innovation and Technology

We are writing regarding the on-going discussions in Brussels in the EU’s proposed Artificial Intelligence Act (AIA), and its potential implications for the UK. We shared some initial conclusions about the potential impact of the AIA with your predecessor in the Department Digital, Culture, Media and Sport in our Fourth Report of Session 2021–22.

As you will be aware, the draft AIA makes certain explicit amendments to various pieces of EU product safety legislation which continue to apply in Northern Ireland under the Windsor Framework. The affected laws set safety requirements for road vehicles, marine equipment and rail infrastructure. The amendments would empower the European Commission to establish the safety requirements for the use of AI systems in these goods, based on the provisions of the AIA. As Article 13(3) of the Windsor Framework provides that amendments to existing EU laws that apply in Northern Ireland will also automatically take effect there, it would seem to follow that these changes—and consequently any new EU AI safety rules for these product groups—might also apply in NI in due course. Similarly, the EU’s new Machinery Regulation and General Product Safety Regulation will apply in Northern Ireland under Article 13(3), and both contain provisions on the use of AI in products within the scope of those laws. That creates obvious risks for fragmentation of the regulatory approach to AI within the UK, both within Northern Ireland itself and through divergence between Northern Ireland and Great Britain.

In 2021, the Government acknowledged in its original Explanatory Memorandum on the AIA that it was “considering how the proposals interact with the existing EU product safety legislation that is included in [the] Protocol”. With the UK now seeking a leading role in setting the international governance framework for AI, and negotiations in Brussels having progressed significantly since we last considered the proposal, we are particularly keen to obtain further clarifications at this stage about the interaction between the AIA for the UK, and Northern Ireland in particular, under the Windsor Framework. We would be grateful if you could answer the following questions:

- In the Government’s view, what is the legal effect under the Windsor Framework of the explicit amendments the AIA will make to EU product safety laws on vehicles, marine equipment and rail infrastructure that continue to apply in

Northern Ireland? In particular, would any future European Commission acts introducing AI-related regulatory requirements for those goods on the basis of these amendments be applicable in Northern Ireland?

- Similarly, what is the Government's view on whether the AI-related provisions of the EU's new General Product Safety Regulation (GPSR) and Machinery Regulation (MR) will apply to products sold in Northern Ireland that are within the scope of those laws?
- What risks, if any, does the Government see for fragmentation of the regulatory approach to AI within the UK, if elements of EU law in this area apply to certain goods sold in Northern Ireland?
- Would any amendments to EU product laws already applicable under the Windsor Framework that the AIA may make be within the scope of the 'Stormont Brake'? Similarly, would any future Delegated or Implementing Acts that set AI-related requirements for products governed by those laws on the basis of those amendments be within the scope of the Brake?
- What, if any, discussions has the Government had with the EU about the potential interaction between the AIA (and the AI provisions of other relevant EU legislation) and the Windsor Framework, in particular via the UK/EU Joint Consultative Working Group?

We look forward to receiving your reply by 15 September 2023.

3 Windsor Framework: Batteries Regulation³⁷

This EU document is politically important because:

- it will apply in Northern Ireland under the terms of the Northern Ireland Protocol;
- it has implications for UK-wide batteries and electric vehicle policy as legislative divergence between Great Britain and Northern Ireland could affect the UK internal market;
- but the degree of divergence, and its impact, is challenging to assess as a domestic review of batteries regulation is expected by the end of this year.

Action

- Write to the Minister as set out below.
- Draw to the attention of the Business and Trade Committee and the Northern Ireland Affairs Committee.

Overview

3.1 In December 2020, the European Commission proposed a wide-ranging new Regulation to promote the development, and sustainability, of all batteries, but notably for use in electric vehicles (EVs). Once in force, the Regulation will apply in Northern Ireland as it replaces the existing EU Batteries Directive, with which Northern Ireland (NI) is already required to remain aligned. The Regulation could affect the UK because of the impact of NI's alignment on the UK internal market and the impact of lower waste standards in Great Britain compared to NI and the EU. It has been agreed³⁸ and is in the final stages of formal adoption.

3.2 In summary, the draft Regulation seeks to ensure that: battery raw materials are supplied sustainably and responsibly; battery cells, modules and packs are manufactured using clean energy, contain low amounts of hazardous substances, are energy efficient and designed to last for a long time; and that batteries are properly collected, recycled or repurposed so that the materials they contain feed back into the economy. Further information on the content of the original draft Regulation, and the Government's

37 Proposal for a Regulation concerning batteries and waste batteries, repealing Directive 2006/66/EC and amending Regulation (EU) No 2019/1020; [13944/20](#) + ADDs 1–4, COM(20) 798; Legal base Article 114 TFEU, QMV, Ordinary legislative procedure; Department: Environment, Food and Rural Affairs; Devolved Administrations: Consulted; ESC number: 41721.

38 Council of the European Union and European Parliament, 'REGULATION (EU) 2023/... OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of ... concerning batteries and waste batteries, amending Directive 2008/98/EC and Regulation (EU) 2019/1020 and repealing Directive 2006/66/EC', [PE-CONS 2/23](#), 28 June 2023.

initial response, was set out in our [Report](#)³⁹ of 20 January 2021. We then [wrote](#)⁴⁰ to the Government, requesting further analysis of the proposal and its implications for the UK, and [wrote again](#)⁴¹ on 14 April 2021.

The Government's position

3.3 The Minister for Environmental Quality and Resilience (Rebecca Pow MP) provided a [further update](#) to us⁴² on 11 May 2023.

3.4 The Minister noted that, on 9 December 2022, the European Parliament (EP) and Council reached provisional political agreement on the new EU Batteries Regulation, which was [summarised](#)⁴³ by the EP. Formal adoption was delayed although, since the Minister wrote, the EP has formally accepted the text.⁴⁴ The Council is yet to do so.

3.5 The Minister said that the implications of divergence in NI, as a result of EU regulatory change, will be dependent on how the new rules dovetail with the UK's own regulation review, both in timing and substance. Summarising the outcome, the Minister explained that the Regulation introduces new requirements relating to both the placing on the market and waste treatment of batteries for all categories and chemistries of batteries, including those used for traction power in electric vehicles. These include circular economy measures such as the setting of new sustainability requirements on carbon footprint, recycled content and performance and durability which are set to be introduced gradually from 2024 onwards, and new waste collection targets for batteries used in light means of transport, such as those in e-bikes and e-scooters that will be introduced from 2027. Other measures are set to be introduced on a timeline contingent on the date of formal adoption of the Regulation.

3.6 The Minister said that the review of the domestic batteries regulations, which was originally scheduled for 2021, is now expected by the end of 2023. The review covers the whole lifecycle of a battery, including what happens to batteries at waste. As waste is a devolved policy area, the review continues to be undertaken in close cooperation with all the devolved administrations through regular workshops and discussions at working level and through the Waste and Resources Common Framework.

3.7 Officials have continued to work closely with the NI Department for Agriculture, Environment and Rural Affairs (DAERA), and the UK Mission to the European Union, to understand what the implications of the EU Regulation are for NI and to what extent the UK may wish to adopt similar rules under the ongoing review of the domestic batteries regulations. The Government hopes that the Windsor Framework agreement provides a constructive political backdrop and a new set of institutions within which possible divergence issues can be identified.

3.8 The Minister went on to say that this remains a challenging and frequently changing set of circumstances in which to carry out any meaningful analysis of the impact of the

39 European Scrutiny Committee, Thirty-fourth Report (2019–21) HC 229–xxx, [chapter 3](#) (20 January 2021).

40 Letter from Sir William Cash CH MP to Rebecca Pow MP, dated 20 January 2021.

41 Letter from Sir William Cash CH MP to Rebecca Pow MP, dated 14 April 2021.

42 Letter from Rebecca Pow MP to Sir William Cash CH MP, dated 11 May 2023.

43 European Parliament, 'Batteries: deal on new EU rules for design, production and waste treatment' (9 December 2022).

44 European Parliament, [Legislative Resolution](#) of 14 June 2023 on the proposal for a regulation of the European Parliament and of the Council concerning batteries and waste batteries.

new EU Regulation on NI and the UK internal market more widely. Officials are, however, working through proposals to analyse the different impacts of divergence. It remains the Government's intention to limit the indirect and cumulative effects, distortion of competition or trade and the impact on prices, quality and choice for consumers of both sets of regulation on NI and the UK internal market. The Minister will keep the Committee informed of any significant developments.

Analysis

3.9 In her [letter](#) to us of 1 February 2021, the Minister acknowledged that all batteries placed on the NI market—including those from Great Britain—would need to meet EU requirements in order to be placed on the NI market. The Minister acknowledged then that there would inevitably be additional processes and costs for GB battery producers in meeting those requirements. The Government's intention at that time was to minimise the impacts in NI and GB, as far as it was possible to do so. That recognition emphasised how important this EU Regulation is for the UK as a whole and how relevant the domestic review was.

3.10 We are therefore very concerned at the slow pace of the UK's review, which does indeed make it challenging to assess the impact of the Regulation on NI and on the UK internal market. It is also, we believe, a strategic error. One of the underlying reasons for the new EU Regulation is the desire to promote greater EU production of EV batteries, with less reliance on third countries such as China. Post-Brexit, the UK could have moved swiftly in this area to demonstrate its commitment to building a UK EV supply chain, including battery production. Instead, there is a risk that the UK will have little flexibility other than to largely mirror the EU's rules. We consider this to be the case because of NI's alignment with the EU legislation, but also because—in the absence of a revised UK rulebook—we assume that industry will follow the stronger EU rules around manufacture and placement on the market. UK exports to the EU will, of course, have to align with the EU rules in any event. Concerning waste management rules, we see a risk of waste batteries from the EU being diverted to the UK if waste management rules for batteries are weaker. We will raise our concerns with the Minister and seek her view. We will also clarify why the review has been delayed.

3.11 While the UK may still be considering its future regulatory approach in this area, we do at least now have a final EU Regulation. We will ask the Minister to prepare an assessment of the Regulation's impact on NI and the UK internal market against the current UK-wide baseline. While we recognise that UK policy may develop, such an analysis would help to inform the review of the domestic regulations later this year.

3.12 Finally, the Minister previously told us that any UK concerns with the legislation would be addressed to the EU institutions through the Joint Consultative Working Group (JCWG) established under the original NI Protocol. Since then, the Windsor Framework has strengthened the arrangements for consultation and engagement on legislation applicable to NI. The Government has been unable to provide us with any substantive analysis, so we will clarify on what basis it may have been engaging with the Commission on this proposal under the arrangements agreed for dialogue, or whether it simply has not been engaging.

Action

3.13 We have written to the Minister as set out below.

3.14 We are reporting the Minister’s response to the House as politically important and drawing it to the attention of the Business and Trade Committee and the Northern Ireland Affairs Committee.

Letter from the Chair to the Parliamentary Under-Secretary of State (Rebecca Pow MP), Department for Environment Food and Rural Affairs

We considered your letter of 11 May 2023 at our meeting of 15 July 2023.

Despite the conclusion of the EU decision-making process, we note that you are unable to provide any substantive analysis because the UK’s own review has been delayed by two years. We find the position in which the Government finds itself very disappointing. Why was the review delayed, and why for two years?

We believe that the delay is a strategic error. While the UK could have taken the lead in legislating in this area as part of promoting the development of a UK EV supply chain, we are concerned that the UK will have little flexibility other than to largely mirror the EU’s rules. We consider this to be the case because of NI’s alignment with the EU legislation, but we also assume that—in the absence of a revised UK rulebook—UK industry will follow the stronger EU rules around manufacture and placement on the market. UK exports to the EU will, of course, have to align with the EU rules in any event. Concerning waste management rules, we see a risk of waste batteries from the EU being diverted to the UK if waste management rules for batteries are weaker. We would welcome your response to our concerns, including how much flexibility you believe the UK really does have to legislate in this area in a manner that is distinct from the EU.

Despite the delay to the UK’s review, there is at least now an agreed EU Regulation. We ask that you prepare an assessment of the Regulation’s impact on NI and the UK internal market against the current UK-wide baseline. While we recognise that UK policy may develop, such an analysis would help to inform the review of the domestic regulations later this year.

Finally, you previously told us that any UK concerns with the legislation would be addressed to the EU institutions through the Joint Consultative Working Group (JCWG) established under the original NI Protocol. Since then, the Windsor Framework has strengthened the arrangements for consultation and engagement on legislation applicable to NI. Given the lack of analysis that you have been able to provide to us, on what basis have you been engaging—if at all—with the Commission on this draft legislation under the arrangements agreed for dialogue?

We look forward to your response, including your completed assessment, by 31 October 2023.

4 Windsor Framework: deforestation and forest degradation⁴⁵

This EU document is legally and politically important because:

- while it is likely to apply, at least in part, to Northern Ireland there is considerable uncertainty about how much of it should apply;
- separately, the UK is developing its own similar, but not identical, system; and
- any divergence between the EU and UK approaches could prove challenging both within the UK but also internationally given global efforts in this area.

Action

- Write to the Minister seeking a further update.
- Draw to the attention of the Environmental Audit Committee, and the Northern Ireland Affairs Committee.

Overview

4.1 The European Union has just adopted a new Regulation⁴⁶ to curb EU-driven deforestation and forest degradation. The Regulation will guarantee that soy, beef, palm oil, wood, cocoa, coffee, rubber and some of their derived products placed on the EU market, do not contribute to global deforestation and forest degradation. It also includes new ‘deforestation-free’ criteria, in addition to requirements for compliance with relevant local laws. The Regulation will apply from 30 December 2024. Between now and then, the European Commission will adopt detailed legislation enabling Member States to apply the Regulation, and will begin the process of benchmarking the risk associated with importing countries. Checks on goods will be dependent on the degree of risk associated with that country.

4.2 The Regulation is relevant to the UK for two linked reasons. First, under the Environment Act 2021, the UK is developing its own similar policy with the same objective but a distinct design. Notably, the UK system defines illegal production of commodities by reference to local laws only, rather than any further “deforestation-free” criteria. Any differences between the respective approaches will have an impact on affected third countries. The details of the UK system are to be set out in secondary legislation which is yet to be laid before Parliament.

4.3 Second, the legislation may be applicable in full—or in part—to Northern Ireland (NI) under the terms of the Windsor Framework (previously known as the ‘Northern

45 Proposal for a Regulation on the making available on the Union market as well as export from the Union of certain commodities and products associated with deforestation and forest degradation and repealing Regulation (EU) No 995/2010; [14151/21](#), COM(2021) 706; Department: Environment, Food and Rural Affairs; ESC number: 42035.

46 [Regulation \(EU\) 2023/1115](#) of the European Parliament and of the Council of 31 May 2023 on the making available on the Union market and the export from the Union of certain commodities and products associated with deforestation and forest degradation and repealing Regulation (EU) No 995/2010

Ireland Protocol’). The new law repeals an existing law, the EU Timber Regulation (the [‘EUTR’—Regulation \(EU\) No 995/2010](#)), which has a more limited scope and objective and which must be applied in NI under the terms of the Windsor Framework. Given the wide scope of the new Regulation, it remains unclear whether it will officially ‘replace’ the EUTR and therefore apply automatically under the Windsor Framework or whether it will need to be added to the Windsor Framework by the EU-UK Joint Committee.⁴⁷

4.4 We summarised the Commission’s original draft Regulation in our document scrutiny Report of 11 May 2022,⁴⁸ following which we [wrote](#)⁴⁹ to the then Minister of State (Rt Hon. Lord Goldsmith of Richmond Park). We [wrote](#)⁵⁰ again on 7 September 2022, asking about the UK’s international collaboration in this area, including any discussions with the EU and others to reach consensus on the design of supply chain measures designed to tackle deforestation and forest degradation. In a further [letter](#), dated 7 December 2022, we re-iterated our view that the UK risks ending up as a rule-taker whereas it has an opportunity to be a rule-maker.

The Government’s position

4.5 In his [reply](#) of 27 February 2023, the Minister, Rt Hon. Lord Benyon, recognised our concerns around divergent approaches to tackling deforestation. To address this risk, the Government has been working collectively with partner countries across the globe to combat deforestation. The UK’s proposals have been developed to help achieve the UK’s commitment to the Glasgow Leaders’ Declaration on Forests and Land Use,⁵¹ in which world leaders agreed to work collectively to halt and reverse forest loss and land degradation by 2030, while delivering sustainable development and promoting an inclusive rural transformation.

4.6 As part of secondary legislation to implement the Environment Act 2021, the Government will also provide guidance to businesses to help them understand if, and how, due diligence requirements will apply to them.

4.7 In addition, the Government has worked with other governments and authorities, including the EU, within the Forest, Agriculture and Commodity Trade (FACT) Dialogue, which the Government considers a transformational forum for global dialogue and action. The UK launched the Dialogue in February 2021. It convenes 28 major producer and consumer countries of internationally traded agricultural commodities to collectively agree actions to protect forests and other critical ecosystems, while promoting sustainable trade and development.

47 Subject to agreement in the Joint Committee, comprising representatives of the EU and the UK, new EU laws within the scope of the Protocol may be added to the list of legislation with which Northern Ireland must comply. If the EU identifies an EU law that it thinks should be added, but the Joint Committee fails to agree, the Parties should “examine all further possibilities to maintain the good functioning of the Protocol and take any decision necessary to this effect.” If the situation remains unresolved, the EU may take remedial measures once the EU law in question is implemented in the EU.

48 European Scrutiny Committee, First Report (2022–23) HC 119-I, [chapter 4](#), 11 May 2022 and European Scrutiny Committee, Eleventh Report (2022–23) HC 119–x, [chapter 1](#), 7 December 2022.

49 Letter from Sir William Cash CH MP to Rt Hon. Lord Goldsmith of Richmond Park, dated 11 May 2022.

50 Letter from Sir William Cash CH MP to Rt Hon. Lord Goldsmith of Richmond Park, dated 7 September 2022.

51 United Nations Convention to Combat Desertification, [‘Glasgow Leaders’ Declaration on Forests and Land Use’](#) (1 November 2021).

4.8 The 28 countries that have participated in FACT represent over 90% of global exports of palm oil, 80% of cocoa, and 57% of soya, paired with the countries who are major consumer markets of these commodities. They also account for eight million hectares, or 34%, of annual global tree cover loss.

4.9 The Minister emphasised that the Government will only be able to fully understand the impact of the EU Regulation on the UK as a whole, and NI under the terms of the Windsor Framework, once the final text of the new Regulation has been released, and the Government completes its analysis on both its potential applicability under Article 13(3) of the Windsor Framework and the implications of its application.

4.10 The Regulation will be analysed, said the Minister, both in terms of its legal basis (i.e. whether it can be interpreted as an amendment or replacement of the existing EU Timber Regulation) as well as its substance, including the potential burden on operators. Once the Government has completed this analysis, it will be able to provide an assessment of whether the Regulation should apply in NI and what the impact would be.

4.11 The Minister said that the Government continued to formally engage with the EU on the impact of this Regulation on NI and had been doing so for over a year (by February 2023).

Analysis

4.12 Now that the final Regulation has been published, the Government is able to finalise its assessment of the impact of the Regulation upon the UK, including the extent to which the Regulation should apply to NI under the terms of the Windsor Framework. We will ask the Minister to submit that analysis to us, setting out the timeline for reaching agreement with the EU on application to NI. We will also ask the Government to update us on the progress of drafting secondary legislation to implement the provisions of the Environment Act 2021 in respect of this topic.

4.13 We note concerns by Indonesia and Malaysia—key palm oil producers—that the Regulation will harm their domestic industries given the expense of compliance.⁵² This followed an earlier intervention at the World Trade Organization (WTO) in the form of a joint⁵³ letter circulated to the Committee on Agriculture.⁵⁴ It regretted that the EU had decided to adopt legislation unilaterally instead of tackling these shared objectives through international engagement. The Minister highlighted the UK's leading role in promoting dialogue globally on this issue. We will ask the Government why the FACT Dialogue appears not to have supported international engagement on the matters covered by the EU Regulation. We will also ask the Government if it intends to pursue a more collaborative approach, than that of the EU, with international partners before adopting its own regulatory framework.

52 Politico, [“EU is no rating agency”: Indonesia, Malaysia hit out at deforestation rules](#) (31 May 2023).

53 The letter was signed by Argentina, Columbia, Brazil, Ghana, Guatemala, Indonesia, Ivory Coast, Nigeria, Paraguay, Peru, Honduras, Malaysia, Ecuador and Bolivia.

54 World Trade Organization Committee on Agriculture, [‘Joint Letter: EUROPEAN UNION PROPOSAL FOR A REGULATION ON DEFORESTATION-FREE PRODUCTS’](#) (29 November 2022).

Action

4.14 We have written to the Minister as set out below.

4.15 We are drawing this letter to the attention of the Environmental Audit Committee, and the Northern Ireland Affairs Committee.

Letter from the Chair to the Parliamentary Under-Secretary of State (Rt Hon. Lord Benyon), Department of Environment Food and Rural Affairs

We considered your letter of 27 February 2023 on the above document at our meeting of 12 July 2023.

Now that the final Regulation has been published, we look forward to receiving your assessment of the Regulation's impact upon the UK, including the extent to which the Regulation should apply to Northern Ireland under the terms of the Windsor Framework. In doing so, please set out the timeline for reaching agreement with the EU on application to Northern Ireland. Please also update us on the progress of drafting secondary legislation to implement the provisions of the Environment Act 2021 in respect of this topic.

You helpfully explained how you have been working at a global level on this matter, including through the FACT Dialogue. We are aware that some producer countries are disappointed at the EU's decision to pursue a unilateral regulatory approach rather than work cooperatively with international partners. Why do you think the FACT Dialogue appears not to have supported international engagement on the matters covered by the EU Regulation? Before adopting its own regulatory framework, does the UK plan to pursue a more collaborative approach with international partners other than the EU?

We look forward to a response by 30 August, including your final assessment of the Regulation's impact on the UK.

5 Windsor Framework: veterinary medicines⁵⁵

This EU document is politically important because:

- it relates to the implementation of the new EU veterinary medicines framework in Northern Ireland (NI) which—if implemented in full—risks halving the amount of veterinary medicines placed on the NI market;
- in recent negotiations, the UK and EU did not reach a permanent solution concerning veterinary medicines but did agree to extend the current ‘grace period’ until the end of 2025; and
- the grace period extension places a number of obligations on the UK, with which the Government has just confirmed it is complying. These include the identification of products at risk of being removed from the NI market and the measures being taken to apply EU veterinary rules to those products.

Action

- Write to the Minister.
- Draw to the attention of the Northern Ireland Affairs Committee.

Overview

5.1 A new EU Regulation on veterinary medicines ([Regulation \(EU\) 2019/6](#)) applied from 28 January 2022.⁵⁶ Under the terms of the Windsor Framework, the Regulation applies in NI, including restrictions on the import into the EU and NI of veterinary medicines from Great Britain. An initial grace period was in place until 31 December 2022⁵⁷ and was recently extended until 31 December 2025.⁵⁸ The full application of the new rules to NI would leave potentially half of all veterinary medicines for a variety of animals and livestock facing discontinuation in NI.⁵⁹

55 Proposal for a Regulation laying down transitional rules for the packaging and labelling of veterinary medicinal products authorised in accordance with Directive 2001/82/EC and Regulation (EC) No 726/2004; [6864/22](#), COM (22) 76; Legal base: Articles 114 and 168(4) (b) TFEU, QMV, Ordinary legislative procedure ; Department: Environment, Food and Rural Affairs; Devolved Administrations: Consulted; ESC number: 42041.

56 Regulation (EU) 2019/6 of the European Parliament and of the Council on veterinary medicinal products and repealing Directive 2001/82/EC

57 European Commission Notice, ‘Application of the Union’s pharmaceutical acquis in markets historically dependent on medicines supply from or through parts of the United Kingdom other than NI’ [2021/C 524/02](#)

58 European Commission Notice, ‘Application of the Union’s veterinary medicines acquis in markets historically dependent on medicines supply from or through parts of the United Kingdom other than Northern Ireland’ [2022/C 494/03](#)

59 HM Government, [‘Northern Ireland Protocol: the UK’s solution’](#) (13 June 2022).

5.2 We set out further details in our document scrutiny [Report](#)⁶⁰ of 18 July 2022, following which we exchanged correspondence⁶¹ with the Minister for Rural Affairs and Biosecurity (Rt Hon. Lord Benyon), expressing our profound concerns about the impact of the Windsor Framework on the availability of veterinary medicines in NI.

5.3 In our last [letter](#),⁶² of 14 June 2023, we welcomed the extension of the grace period but regretted that the EU and UK had failed to establish a long-term solution. We noted that the grace period was foreseen as the final extension and that, to prepare for full application of EU law from 1 January 2026, the UK was expected to meet a number of deadlines, the first of which was to submit to the Commission by 28 February 2023 a list of the veterinary medicinal products the supply of which would be at risk if the grace period measures were not in place. The UK was then expected to put in place measures to ensure that supplies of the identified products conform with EU law. We asked for an update on implementation of these provisions.

UK Government position

5.4 The Minister [responded](#)⁶³ on 29 June 2023 confirming that, on 28 February 2023, the Government sent the Commission a single list of products that would be considered at risk in NI if the full EU *acquis* came into effect. The Government’s focus has now turned to the second milestone—submission of the measures that will be taken to ensure that supplies of the identified products conform to EU laws—as well as discussions with the EU on a long-term solution.

5.5 The Government considers that there needs to be a long-term and permanent solution to resolve the issues relating to veterinary medicines. Full compliance with the EU *acquis* is not a solution and will not resolve the issues. The Government believes the best way to work toward the long-term resolution of the issues is through the joint UK-EU action plan contained within the Commission notice in December. To support work towards a long-term solution, the Government will continue to work with the EU and industry throughout the grace period.

Our assessment

5.6 The Minister expresses a preference to resolve the issues through the joint UK-EU Action Plan set out in the Commission Notice last December. We note that the Action Plan consists of the various deadlines and steps required of the UK i.e. identification of ‘at risk’ veterinary products, identification of measures being taken to ensure that supplies of the identified products conform to EU laws and then an assessment of those measures every three months.

5.7 The first assessment of the measures taken is due by 31 January 2024. We will ask the Minister for an update by 14 February 2024. In that update, we expect the Government to set out for us the at risk veterinary medicinal products, the measures identified and the Government’s initial assessment of implementing those measures.

60 European Scrutiny Committee, Sixth Report (2022–23) HC 119–v, [chapter 1](#) (18 July 2022).

61 Letters from Sir William Cash CH MP to Lord Benyon dated [18 July 2022](#) and [7 December 2022](#), and Letters from Lord Benyon to Sir William Cash CH MP, dated [28 November 2022](#) and [11 January 2023](#).

62 Letter from Sir William Cash CH MP to Rt Hon. Lord Benyon, dated 14 June 2023.

63 Letter from Lord Benyon to Sir William Cash CH MP, dated 29 June 2023.

Action

5.8 We are reporting the Minister's response to the House and have written to him as set out below.

5.9 We are drawing the letter, this Report chapter and our response to the attention of the Northern Ireland Affairs Committee.

Letter from the Chair to the Parliamentary Under-Secretary of State (Rt Hon. Lord Benyon), Department of Environment Food and Rural Affairs

We considered your letter of 29 June 2023 on the above document at our meeting of 12 July 2023.

Please update us on progress by 14 February 2024, by which time you should have submitted the first progress report on implementing the measures to apply EU veterinary rules to 'at risk' veterinary medicinal products. In your response, please identify the at risk products, the measures taken and the progress of their implementation.

6 Windsor Framework: Fluorinated Greenhouse Gases⁶⁴

This EU document is politically important because:

- it will apply in Northern Ireland, creating divergence with regulation currently applicable in Great Britain; and
- the Government intends to take the Commission’s proposal into account when reviewing GB legislation in this area.

Action

Write to the Minister.

- Draw to the attention of the Environmental Audit Committee and the Northern Ireland Affairs Committee.

Overview

6.1 The European Commission [is proposing](#) measures to intensify the phasedown of harmful greenhouse gases—hydrofluorocarbons (HFCs)⁶⁵—in the EU. The measures revoke and replace existing legislation, which is applicable in Northern Ireland (NI) under the Windsor Framework (previously known as the Northern Ireland Protocol). As such, they potentially have implications across the UK and could affect the UK’s own policy review for Great Britain (GB).

6.2 As well as intensifying the phasedown of HFCs, the proposal introduces some additional prohibitions to those already in place. These include prohibitions on: air-conditioners and heat pumps containing, or whose functioning relies upon, Fluorinated Greenhouse Gases (F-Gases); non-refillable containers; different types of switchgear (equipment used on the electricity grid); personal care products; skin-cooling equipment; fire protection; and the use of desflurane as an anaesthetic gas.

6.3 We set out further information on the Commission’s proposal and the Government’s response in our [Report](#) of 8 June 2022,⁶⁶ when we also [wrote](#)⁶⁷ to the then Parliamentary Under-Secretary of State (Jo Churchill MP) seeking further information. We [wrote again](#)⁶⁸ on 12 October 2022, noting that a potentially significant area of divergence is the approach to phasing-down the use of F-gases in heat pumps. We requested an update within six months, including on the Government’s approach to the use of F-gases in heat pumps.

64 Proposal for a Regulation on fluorinated greenhouse gases, amending Directive (EU) 2019/1937 and repealing Regulation (EU) No 517/2014; Council and COM numbers: 8042/22, [COM\(2022\) 150](#); Department: Environment, Food and Rural Affairs; ESC number: 42050.

65 Hydrofluorocarbons are one of several Fluorinated Greenhouse Gases (F-Gases), which are human-made gases used in a range of everyday and industrial products and processes. Their global warming effect is substantially greater than carbon dioxide, and emissions are rising.

66 European Scrutiny Committee, Third Report (2022–23) HC 119–iii, [chapter 1](#) (8 June 2022)

67 Letter from Sir William Cash CH MP to Jo Churchill MP, dated 8 June 2022.

68 Letter from Sir William Cash CH MP to Scott Mann MP, dated 12 October 2022.

UK Government position

6.4 In his [letter](#)⁶⁹ of 20 April 2023, the Minister for Biosecurity, Marine and Rural Affairs (Rt Hon. Lord Benyon) said that the Government was continuing to monitor developments around the Commission’s proposal. The Government was aware that the refrigeration, air conditioning and heat pump industry had pushed back on the proposal, highlighting the potential impact on the sector—particularly on heat pump deployment—of the revised quota phasedown for HFCs and new gas-type prohibitions.

6.5 These concerns, said the Minister, were reflected in the European Parliament’s position. While, said the Minister, the European Parliament has put forward stretching amendments to the Commission proposal to drive even faster reductions in F-Gas use generally, they have included an amendment for the Commission to assess the impact of the HFC phasedown on the heat pump market and a power to allow a limited amount of additional quota to be added to the system to cover HFC use in heat pumps (until 2029) if required. In a subsequent letter⁷⁰ to the House of Lords European Affairs Committee Sub-Committee on the Protocol on Ireland/Northern Ireland, the Minister confirmed that both the European Parliament and Council had adopted their positions and that negotiations to agree a final text had begun. The Minister expected that the focus of the negotiations will be on the phasedown and prohibition dates.

6.6 The Minister explained that the Government was in the process of developing proposals to amend the F-Gas legislation in Great Britain and intended to go out to consultation with those proposals in due course. The impact on the rollout of heat pumps will be a key consideration as the proposals are developed. The Government will also continue to take into account progress in the EU, with considerations for the impact on the UK internal market and businesses.

Analysis

6.7 Since the Minister wrote to us, the European Parliament and Council have started negotiations to reach final agreement on the EU Regulation. We will request an update by the end of the year, assessing the outcome of the EU’s deliberations and its implications for UK policy.

Action

6.8 We have written to the Government as set out below.

6.9 We are drawing the Minister’s letter and our response to the attention of the Environmental Audit Committee and the Northern Ireland Affairs Committee.

69 Letter from Lord Benyon to Sir William Cash CH MP, dated 20 April 2023.

70 House of Lords European Affairs Committee, Protocol on Ireland/Northern Ireland Sub-Committee, [Correspondence with Ministers 10 May 2022–13 June 2023](#), page 35 (Letter to Lord Jay from Lord Benyon, dated 5 June 2023).

Letter from the Chair to the Parliamentary Under-Secretary of State (Rt Hon. Lord Benyon), Department of Environment Food and Rural Affairs

We considered your letter of 20 April 2023 on the above document at our meeting of 12 July 2023.

Your update was helpful. We note that, since you wrote, the European Parliament and Council have begun their negotiations to agree a final text. We look forward to a further update from you by the end of the year, assessing the outcome of the EU's deliberations and its implications for UK policy.

7 Windsor Framework: ecodesign for sustainable products⁷¹

This EU document is politically important because:

- it will affect the UK under all scenarios, likely applying in some form under the Northern Ireland Protocol and introducing new sustainability requirements with which Great Britain exports to the EU will need to comply; and
- domestic policy in this area is being developed but may be influenced by EU policy.

Action

- Write to the Minister seeking a further update.
- Draw to the attention of the Environmental Audit Committee and the Northern Ireland Affairs Committee.

Overview

7.1 We first considered the European Commission’s proposed new [Ecodesign for Sustainable Products Regulation](#) (ESPR)—aiming to reduce the negative environmental impacts of almost all physical products produced or sold in the EU—on 7 September 2022. We summarised the initiative in our subsequent document scrutiny [Report](#),⁷² noting likely applicability of the legislation to Northern Ireland under the terms of what is now known as the Windsor Framework, as well as emerging UK policy in this area. We therefore [wrote](#) to the Minister requesting further information on UK policy developments and on the implications of the EU’s initiative for the UK and subsequently [wrote again](#),⁷³ asking for specific information on the Government’s approach to ecodesign in textiles and asking how the Government is engaging with the EU on its initiative. Our consideration of the Government’s response was delayed by our scrutiny of the Windsor Framework Agreement.

UK Government position

7.2 The Minister for Environmental Quality and Resilience, Rebecca Pow MP, [responded](#)⁷⁴ to our letter as the issues raised fell within her remit rather than that of Lord Callanan.

7.3 Concerning the Government’s approach to ecodesign in textiles, the Minister noted that the Government’s 2018 Resources and Waste Strategy for England identified textiles as a priority sector for action, due to significant waste and environmental impacts.

71 Proposal for a Regulation establishing a framework for setting ecodesign requirements for sustainable products and repealing Directive 2009/125/EC; Council and COM number: 7854(22), [COM \(2022\)142](#); Department: Environment, Food and Rural Affairs; ESC number: 42103; Third consideration.

72 European Scrutiny Committee, Seventh Report (2022–23) HC 119–vi, [chapter 1](#), 7 September 2022 and European Scrutiny Committee, Tenth Report (2022–23) HC 119–ix, [chapter 1](#), 23 November 2022.

73 Letter from Sir William Cash CH MP to Lord Callanan, 23 November 2022.

74 Letter from Rebecca Pow MP to Sir William Cash CH MP, dated 3 February 2023.

7.4 A key part of the strategy is working with industry to reduce their environmental impact. The Sustainable Clothing and Action Programme (SCAP) 2020 initiative—delivered by WRAP (the Waste and Resources Action Programme)—helped signatories to reduce their water and carbon footprints per tonne of clothing by 18.2% and 21.6% respectively (between 2012 and 2020). In 2021, the Government funded Textiles 2030, a new programme with signatories representing more than 62% of all clothing placed on the UK market. Targets include a 50% reduction in carbon footprint of new products and 30% reduction in water footprint, both by 2030.

7.5 The Government recognises that voluntary action alone is not sufficient to drive the level of impact required for Net Zero and to support the UK’s legally binding target to reduce residual waste (excluding major mineral wastes) per capita by 50% by 2042 relative to 2019 levels.

7.6 Complementary to the UK’s efforts to support voluntary action, the UK is considering what framework of policy options could best help reduce textiles and fashion waste, potentially using a range of powers under the Environment Act 2021.

7.7 The Minister notes the mandatory requirements for textiles to be introduced under the EU’s ESPR and welcomes the EU’s ambition in this area. The Government looks forward to seeing whether textiles is to be one of the priority products for which delegated acts will be developed first and to seeing final proposals. The Government will soon consider how these might fit with the UK’s own regulatory framework.

7.8 Engagement with the EU, says the Minister, has not been restricted to considerations of applicability under the Windsor Framework. The Government has engaged with the team working on the EU Strategy for Sustainable and Circular Textiles and facilitated engagement with members of the UK’s Textiles 2030 policy working group.

7.9 As the Government set out in its Energy-related Products Policy Framework, it is taking an evidence-based approach to resource efficiency requirements for energy-related products, including those currently being prioritised in respect of energy efficiency. Additional research commissioned by the Government was published in December 2022, focussed on ecodesign for material resource efficiency for additional energy-related product groups.⁷⁵

7.10 For products that are not energy-related and beyond textiles, the Government will continue to build the evidence base and assess priorities. Contributing significantly to this, says the Minister, is a recently commenced, two-year, research project jointly funded by Defra and the then Business Energy and Industrial Strategy Department covering 11 priority sectors. This will provide a robust assessment of the carbon abatement potential of resource efficiency measures, and the role for Government in realising them.

75 DSS+, ‘[Development of policy options for resource efficient eco-design of energy-related products](#)’, December 2022.

Analysis

7.11 Since the Minister wrote, negotiations have intensified in Brussels. The Council of Ministers agreed its position in May,⁷⁶ while the European Parliament (EP) is expected to finalise its position in July. The two institutions will then negotiate in the autumn to reach an agreement on the final text.

7.12 Among the amendments agreed by Member States was a ban on the destruction of unsold textiles, with small and micro-enterprises exempted. The European Commission had originally proposed a two-step approach of first requiring companies to disclose how many unsold products they destroy annually, before considering a ban on the practice. The EP's Environment Committee—which has drafted the EP's position—called for a similar ban as well as a ban on premature obsolescence, meaning that manufacturers must not limit the lifetime of a product through design features and must make available software updates, consumables, spare parts and accessories for an appropriate period.⁷⁷

7.13 Concerning UK policy, we also note that the Government published its first [‘Environmental Improvement Plan’](#) on 31 January 2023. This signalled that the Government would publish a new ‘maximising resources and minimising waste programme in England’ programme to manage resources and waste in accordance with the waste hierarchy. It will set out priorities for action across seven key sectors: construction; textiles; furniture; electronics; vehicles; food; and plastics, packaging and single-use items.

7.14 In our earlier scrutiny, we determined that the Regulation—once in force—was likely to affect the UK for two reasons in particular. The first was its likely applicability to goods produced and marketed in Northern Ireland and the second was the reality that UK companies exporting to the EU market would need to apply the provisions. Given these factors, there was, we considered, potential for the EU rules to affect the development of domestic legislation in this area. As the EU rules are yet to be finalised and there is little sign of clear policy emerging from the UK Government, it is impossible to discern at this stage how divergent the approaches may be. We shall nevertheless monitor with close interest how domestic policy evolves, including the extent to which it reflects the EU's direction of travel.

7.15 We will request a further update from the Government within six months, reflecting the progress—or conclusion—of the EU negotiations and the Government's assessment of the implications for the UK. In the same letter, we expect an update on developments in relevant domestic policy. Finally, we will ask the Government to clarify whether some, or all, of the Regulation will indeed apply in Northern Ireland.

Action

7.16 We have written to the Minister as set out below.

7.17 We are drawing this document to the attention of the Environmental Audit Committee and the Northern Ireland Affairs Committee.

76 Council of the European Union, [‘General Approach’](#) (23 May 2023) and Council of the European Union, [‘Ecodesign regulation: Council adopts position’](#) (22 May 2023)

77 European Parliament. [‘Ecodesign: new EU rules to make sustainable products the norm’](#), 15 June 2023.

***Letter from the Chair to the Parliamentary Under-Secretary of State
(Rebecca Pow MP), Department for Environment Food and Rural Affairs***

We considered your letter of 3 February 2023 on the above document at our meeting of 12 July 2023. Our consideration of your letter was delayed by our scrutiny of the Windsor Framework.

Since you wrote, both the European Parliament and the Council have made progress. Inter-institutional negotiations are expected this autumn. With that in mind, we would like you to update us within six months, covering the following matters:

- the progress—or conclusion—of the EU negotiations and the Government’s assessment of the implications for the UK;
- developments in relevant domestic policy; and
- clarification of whether some, or all, of the Regulation will indeed apply in Northern Ireland.

We expect a response by 8 January 2024 at the latest, but ideally earlier subject to the progress of EU-level negotiations.

8 Windsor Framework: packaging and packaging waste⁷⁸

This EU document is politically important because:

- it applies, in full or in part, to Northern Ireland under the terms of the Windsor Framework;
- the UK Government and Devolved Administrations are already legislating in some areas covered by the legislation, but not in others, and will need to, at least, be aware of EU policy developments as domestic policy evolves; and
- the recent Windsor Framework agreement included enhanced consultation and engagement mechanisms on laws applicable to Northern Ireland, but the Government does not intend to provide any meaningful analysis of the draft Regulation’s impact until it has been agreed.

Action

- Write to the Minister.
- Draw to the attention of the Environmental Audit Committee, the Northern Ireland Affairs Committee, the Scottish Affairs Committee and the Welsh Affairs Committee.

Overview

8.1 To boost sustainability and protect the EU Single Market, the Commission [proposed](#) a Regulation that repeals and replaces the Packaging and Packaging Waste Directive ([Directive 94/62/EC](#)). It includes measures to ban unnecessary packaging and to encourage re-filling of packaging. Under the terms of the Windsor Framework (previously known as the Northern Ireland Protocol), Northern Ireland (NI) must remain aligned with Directive 94/62/EC, including amending or replacement legislation. While the UK is already regulating in some areas covered by the proposal, the Commission is also proposing to act in areas where the UK administrations have not signalled an intention to legislate.

8.2 The list of laws that NI is obliged to apply is set out in the Windsor Framework’s Annex 2. Article 13(3) of the Windsor Framework provides that legislation amending or replacing laws set out in Annex 2 (such as Directive 94/62/EC) will automatically apply in NI. Subject to agreement in the Joint Committee, comprising representatives of the EU and the UK, Article 13(4) of the Protocol provides that new EU laws within the scope of the Protocol may also be added to Annex 2. If the EU identifies an EU law that it thinks should be added to Annex 2, but the Joint Committee fails to agree, the Parties should “examine all further possibilities to maintain the good functioning of the Protocol and take any decision necessary to this effect.” If the situation remains unresolved, the EU may take remedial measures once the EU law in question is implemented in the EU.

⁷⁸ Proposal for a Regulation on packaging and packaging waste, amending Regulation (EU) 2019/1020 and Directive (EU) 2019/904, and repealing Directive 94/62/EC; Council and COM number: [15581/22](#), COM(2022) 677; Department: Environment, Food and Rural Affairs; ESC number: 42151.

The Government is still assessing the extent to which the draft Regulation should be automatically applicable under Article 13(3) or should be considered as ‘new’ legislation under Article 13(4) due to its broader scope than the original Directive.

8.3 We summarised the Commission’s proposal in our [Report](#)⁷⁹ of 8 February 2023 and [wrote](#)⁸⁰ to the Minister for Environmental Quality and Resilience (Rebecca Pow MP) requesting further information about: the key differences between Directive 94/62/EC and the Commission’s draft Regulation; and, with reference to each chapter of the proposal, a comparison with policies either in place, or under development, across the UK. We noted that, without a clear sense of where different approaches are emerging, it is difficult to assess where this proposal may create the greatest difficulties or, indeed, opportunities.

UK Government view

8.4 The Minister [responded](#)⁸¹ on 13 March 2023. She said that the Government’s analysis of the key differences between Directive 94/62/EC and the Commission’s draft Regulation remained ongoing. She warned that a definitive comparison between the Directive and the new Regulation would only be possible once the final text of the Regulation had been agreed among the EU institutions.

8.5 The Government, she said, was committed to undertaking further analysis of the Regulation, including the extent to which any of it should be applicable in NI under Article 13(3) or Article 13(4) of the Windsor Framework. As such, officials were preparing an initial consideration of the Regulation’s applicability. This would not be finalised until the Regulation had been adopted. While there was no definitive timeline for that process, it was unlikely to be before the end of 2023.

8.6 In correspondence⁸² with the House of Lords Sub-Committee on the Protocol on Ireland/Northern Ireland, the Minister communicated the same points and noted that the Government was already taking forward reform of the current Producer Responsibility Obligations (Packaging Waste) Regulations following a UK-wide consultation. She said that the Department of Agriculture, Environment and Rural Affairs (DAERA) for NI had been part of this process and the new domestic Regulations would apply UK-wide and therefore in NI. These new Regulations, she said, would take the existing Directive into account and were in-line with some of the EU’s proposals in its draft Regulation, though those proposals did go further in several respects according to the Minister. The Minister later clarified that the Government’s analysis of the impacts of divergence and possible steps to take domestically to mitigate the impact would only be possible once the final version of the Regulation was clear. The Minister also confirmed that any changes to Directive 94/62/EC were within scope of the Stormont Brake, a new mechanism that gives the NI Assembly the power to object to changes to EU laws that apply in NI.

79 European Scrutiny Committee, Fourteenth Report (2022–23) HC 119–xii, [chapter 3](#) (8 February 2023).

80 Letter from Sir William Cash CH MP to Rebecca Pow MP, dated 8 February 2023.

81 Letter from Rebecca Pow MP to Sir William Cash CH MP, dated 13 March 2023.

82 House of Lords European Affairs Committee Protocol on Ireland/Northern Ireland Sub-Committee, [‘Correspondence with Ministers: 10 May 2022—13 June 2023’](#), pages 103–106.

Our assessment

8.7 We are struck by the Minister’s reluctance to provide any substantive analysis to either the House of Commons or Lords, insisting that any analysis must await the final text of the Regulation. We disagree. It is imperative that the Government undertakes, and publishes, analysis of the potential implications of the legislation for NI and for intra-UK divergence. This analysis, while not definitive, need not await the final adoption of the Regulation. We take this view for the reasons set out below.

8.8 First, under the Windsor Framework agreement, the Government negotiated enhanced engagement between the EU and UK on draft EU legislation applicable—or potentially applicable—to NI and on the development of any divergent UK legislation that may interact with obligations under the Windsor Framework. Clearly, analysis of the relevant draft law is required to identify any concerns to raise during that enhanced engagement and, crucially, before the Regulation is finally adopted. Similarly, it is clearly relevant to consider the draft legislation as the UK develops its own reform of the current Producer Responsibility Obligations (Packaging Waste) Regulations. We therefore trust that the Government is indeed undertaking relevant analysis so that it can raise any concerns, and address those of the EU. We do not think it unreasonable for the Government to share that analysis with Parliament in a spirit of scrutiny and transparency.

8.9 Second, under the Windsor Framework agreement, the Government also negotiated a ‘Stormont Brake’, allowing the UK Government—at the request of the Northern Ireland Assembly—to block the application of new EU laws ‘amending or replacing’ existing EU laws already applicable in Northern Ireland. The NI Assembly can only make this request if the changes “would have a significant impact specific to everyday life of communities in NI in a way that is liable to persist”.⁸³ The Brake must be activated within two months of publication of the final EU act, and the Assembly must show that it has “made all reasonable use of applicable consultation processes provided by the European Union for new Union acts relevant to Northern Ireland.”⁸⁴ If the Government publishes no analysis of the impact of the legislation until after final agreement, we query how all applicable consultation processes could have been used and, furthermore, whether the Assembly will have had access to all relevant analytical information when undertaking its own assessment.⁸⁵

8.10 Third, it is the nature of EU decision-making that assessments must be made of the original draft text proposed by the Commission and then updated as changes are made through the decision-making process. It was standard practice during the UK’s membership of the EU for the Government to undertake an initial assessment of a draft EU law and then update that analysis during negotiations. The Government would share with Parliament the issues that it was pursuing, allowing Parliament to hold the Government to account. We do not understand why the same principles of analysis and transparency should not apply post-Brexit to draft EU laws applicable in NI, and with potential implications for the rest of the UK.

8.11 In our earlier scrutiny of this proposal, we recognised that there are legislative developments in the UK in this area, which are similar or—in the case of deposit return

83 Article 13(3)(a) of the Protocol on Ireland/Northern Ireland, as amended by [Joint Committee Decision 1/2023](#) of 24 March 2023.

84 Unilateral Declaration by the United Kingdom, Annex 1 of [Joint Committee Decision 1/2023](#) of 24 March 2023.

85 We considered the Stormont Brake in more detail in our [Eighteenth Report of this Session](#).

schemes—more ambitious than that set out in the Commission’s proposal. We noted too that the proposal includes policies that have not yet been proposed by the UK Government or Devolved Administrations. These include measures to tackle unnecessary packaging, to improve labelling for consumers and to boost composting of packaging where that is feasible. The recent delay⁸⁶ to Scotland’s Deposit Return Scheme due to UK Government concerns about intra-UK divergence demonstrates how a UK-wide approach to packaging and packaging waste is important and therefore why policy developments in NI are relevant to the UK as a whole.

8.12 We will re-iterate the requests for information that we previously made. We will also note that this instrument is a helpful case study of the information flow required to support the enhanced consultation and engagement mechanisms established under the Windsor Framework. We will seek confirmation that the Government is committed to those arrangements, including the Stormont Brake, and how that commitment can be reconciled with a reluctance to undertake and share analysis before relevant EU laws are finalised.

Action

8.13 We have written to the Minister as set out below.

8.14 We are reporting the document to the House as politically important. We draw it, and our letter, to the attention of the Environmental Audit Committee, the Northern Ireland Affairs Committee, the Scottish Affairs Committee and the Welsh Affairs Committee.

Letter from the Chair to the Parliamentary Under-Secretary of State (Rebecca Pow MP), Department for Environment Food and Rural Affairs

We considered your letter of 13 March 2023 at our meeting of 12 July 2023. Our consideration was delayed by our scrutiny of the Windsor Framework.

Your reluctance to share your analysis of the proposal with us is very disappointing. It was standard practice during the UK’s membership of the EU for the Government to undertake an initial assessment of a draft EU law and then update that analysis during negotiations. The Government would share with Parliament the issues that it was pursuing, allowing Parliament to hold the Government to account. We do not understand why the same principles of analysis and transparency should not apply post-Brexit to EU laws applicable in Northern Ireland, and with potential implications for the rest of the UK. Furthermore, we are concerned that your approach undermines the enhanced consultation and engagement mechanisms that the Government negotiated under the Windsor Framework agreement.

We re-iterate our request for the following information:

- the key differences between Directive 94/62/EC and the Commission’s draft Regulation; and
- with reference to each chapter of the proposal, a comparison with policies either in place, or under development, across the UK.

86 Scottish Government, [‘Deposit Return: Scottish scheme delayed until October 2025 at the earliest’](#) (7 June 2023).

We furthermore ask you to clarify how the draft Regulation is being taken into account as you develop domestic policy and, specifically, whether you will await the final adoption of the EU Regulation before finalising UK domestic policy in this area.

We consider this draft Regulation to be a helpful case study of the information flow required to support the enhanced consultation and engagement mechanisms established under the Windsor Framework. Can you confirm that the Government is committed to making those arrangements, including the Stormont Brake, work? If so, how can that be reconciled with a reluctance to undertake and share analysis before relevant EU laws are finalised?

We expect a response by 30 August 2023.

9 Windsor Framework: Classification, Labelling and Packaging of Chemicals⁸⁷

These EU documents are politically important because:

- they apply in Northern Ireland (NI) and will create further divergence between Great Britain and NI, potentially affecting the supply of relevant goods to the NI market; and
- they may influence the direction of future policy in Great Britain.

Action

- Write to the Minister.
- Draw to the attention of the Northern Ireland Affairs Committee.

Overview

9.1 Workers and consumers handle chemicals on a daily basis and require information so that chemicals can be supplied, handled and used safely. Given that many chemicals are traded internationally, the United Nations developed the UN Globally Harmonized System of classification and labelling of chemicals (UN GHS)⁸⁸ so that information can be provided consistently across languages, alphabets and different levels of literacy. It includes the use of pictograms⁸⁹ to communicate hazard information.

9.2 While the UN GHS is a voluntary framework, it was made mandatory in the EU in 2008 through the Classification, Labelling and Packaging (CLP) Regulation.⁹⁰ The EU recently added six new hazard classes to the EU CLP Regulation.

9.3 Under the terms of the Windsor Framework (previously known as the Northern Ireland Protocol),⁹¹ Northern Ireland (NI) must continue to apply various EU laws, including the EU CLP Regulation. This means that the changes will affect the placement of chemicals on the NI market, including by suppliers from Great Britain (GB).

87 (a) Proposal for a Regulation amending Regulation (EC) No 1272/2008 on classification, labelling and packaging of substances and mixtures; 16258/22, [COM\(22\)748](#); Legal base: Article 114(1) TFEU; Department: Health and Safety Executive (Department for Work and Pensions); Devolved Administrations: Consulted; ESC number: 42166; (b) [Commission Delegated Regulation \(EU\) 2023/707](#) of 19.12.2022 amending Regulation (EC) No 1272/2008 as regards hazard classes and criteria for the classification, labelling and packaging of substances and mixtures; C(2022) 9383 + Annex; Legal base: Regulation (EC) No 1272/2008; Department: Health and Safety Executive; Devolved Administrations: Consulted; ESC Number: 42169.

88 United Nations Economic Commission for Europe, '[About the GHS](#)' [Accessed 20 April 2023].

89 United Nations Economic Commission for Europe, '[GHS pictograms](#)' [Accessed 20 April 2023].

90 [Regulation \(EC\) No 1272/2008](#) of 16 December 2008 on classification, labelling and packaging of substances and mixtures, amending and repealing Directives 67/548/EEC and 1999/45/EC, and amending Regulation (EC) No 1907/2006

91 The European Union and the United Kingdom agreed on 24 March 2023 that the Protocol on Ireland/Northern Ireland as amended by [Joint Committee Decision No 1/2023](#) should be known as the 'Windsor Framework'. This was confirmed in [Joint Declaration No 1/2023](#) of the Union and the United Kingdom 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.

9.4 In her [Explanatory Memorandum](#) (EM)—submitted before agreement was reached on changes to the implementation of the NI Protocol—the responsible Minister (Mims Davies MP) described the EU’s adoption and establishment of six new hazard classes into the EU CLP Regulation, without first gaining UN GHS agreement as “a significant break with the established international convention”. The UK has no plans to establish similar hazard classes into the GB CLP Regulation without consensus at UN GHS and will consider its position and feed into discussions at UN GHS in the first instance. The Minister considered that the EU’s approach could harm trade and could harm businesses in NI.

9.5 Since her EM was submitted, the House of Lords Ireland/Northern Ireland Protocol Sub-Committee has engaged in correspondence⁹² with the Minister. The Minister confirmed that the legislation still applies to NI under the terms of the Windsor Framework, including goods moved from GB to NI.

The Commission’s proposal

9.6 The Commission published two separate legal texts.

9.7 The first text is a [proposal](#) to amend the EU CLP Regulation. These changes need to be debated and agreed by both the Council and the European Parliament before they take effect. The proposal suggests the following changes:

- more comprehensive identification and classification of chemical hazards by improving the efficiency and effectiveness of the EU CLP Regulation’s harmonised classification process and strengthening incentives and provisions for duty holders to appropriately classify substances;
- improved hazard communication by introducing obligatory labelling rules for readability such as minimum font size and colour, greater use of fold-out labels, a new framework for the sale of chemicals in refillable containers, simplified rules and additional derogations for chemicals sold to consumers in bulk (such as fuel) and in very small packaging, and voluntary digital labelling of chemicals; and
- addressing legal gaps and ambiguities in relation to distance sales, including online sales, and extending the requirement to notify hazard information on mixtures to poison centres to include distributors placing chemicals on the market across borders or rebranding/relabelling mixtures.

9.8 The second text is a [Delegated Regulation](#).⁹³ Tabled by the Commission in December 2022, it is now law as it was not opposed by either the Council or European Parliament within two months.

9.9 The proposed new hazard classes introduced into the EU CLP Regulation by the delegated act are:

- endocrine disrupting (‘ED’) (one for human health and one for the environment);

92 House of Lords European Affairs Committee Protocol on Ireland/Northern Ireland Sub-Committee, ‘[Correspondence with Ministers 10 May 2022–13 June 2023](#)’, p.117–123.

93 Commission Delegated Regulation (EU) 2023/707 of 19 December 2022 amending Regulation (EC) No 1272/2008 as regards hazard classes and criteria for the classification, labelling and packaging of substances and mixtures.

- persistent, bioaccumulative and toxic ('PBT');
- very persistent and very bioaccumulative ('vPvB');
- persistent, mobile and toxic ('PMT'); and
- very persistent and very mobile ('vPvM').

9.10 To support the new classes, the delegated act adds new definitions and scientific and technical criteria to classify substances and mixtures under the various classes.

UK Government position

Concerns about the EU policy initiatives

9.11 The Minister said in her EM that the adoption and establishment of six new hazard classes into the EU CLP Regulation, without first gaining agreement at the United Nations Globally Harmonized System of classification and labelling of chemicals (UN GHS), is a significant break with the established international convention. This would result, she said, in not only greater divergence between the GB Classification Labelling and Packaging Regulation ('GB CLP Regulation') and EU CLP systems but greater differences between the EU CLP Regulation and other countries and jurisdictions that adopt UN GHS. This works against an underlying principle of UN GHS to harmonise regulations at a global level and to facilitate trade.

9.12 The Minister considered it likely that the introduction of new hazard classes unilaterally by the EU without agreement at UN GHS would have a significant impact on trade and the ability of companies outside the EU to access the EU Single Market. The need to comply with them could be seen as offering a competitive advantage in the market to companies in the EU (who need to comply with EU legal requirements to place their products on the market) in relation to accessing the EU Single Market over countries outside of the EU.

9.13 In her correspondence with the House of Lords, the Minister confirmed that a working group on "potential hazard issues and their presentation in GHS" was agreed by the UN GHS Sub-Committee of experts in December meeting. The working group is focusing on the hazard issues identified in the EU's Delegated Regulation. This work is likely, explained the Minister, to take a considerable amount of time to complete, potentially beyond the current UN GHS 2023–2024 biennium work programme. UK officials are involved and have already attended relevant meetings.

Windsor Framework

9.14 In her [EM](#), the Minister noted that the legislation would apply to NI under the terms of the NI Protocol. Since the EM was written, the Protocol has been amended and is now known as the Windsor Framework. The Minister has written⁹⁴ to the House of Lords confirming that the legislation will still apply under the terms of the Windsor Framework.

94 Letter from Mims Davies MP to Lord Jay of Ewelme, dated 30 March 2023, [Correspondence with Ministers 10 May 2022–13 June 2013](#), p.121

9.15 In her correspondence with the House of Lords, the Minister noted that, under the Windsor Framework, the UK and the EU have agreed to establish new mechanisms for stakeholder engagement within those structures, including business and civic society groups, to ensure their expertise and insight can inform discussions about how the agreement operates in practice. The UK and the EU will also establish new structured expert groups to allow detailed UK-EU discussion of new rules applied under the Windsor Framework across the full range of issues—including on goods regulation—with new commitments to engage earlier and more intensively to look at the implications of new rules. She added that, through the new Special Goods Body, there is also the opportunity for early engagement on new rules, with the ability to find appropriate solutions through the Joint Committee. This, she said, would be an important mechanism for considering future UK and EU rule changes to ensure that their interaction does not inadvertently lead to any new unnecessary regulatory barriers.

Impact on Northern Ireland

9.16 NI businesses will be required to classify and label substances placed on the EU Single Market (including within NI) considering the new hazard classes and criteria where they apply. This, said the Minister, would result in a cost of training and familiarisation for competent persons to accurately classify the hazards in accordance with the new rules.

9.17 The Minister noted that there are a number of changes affecting packaging and labelling, with which NI businesses would need to comply. For the first time, for example, the sale of chemicals (such as, but not limited to, detergents) at refill stations will be regulated. NI businesses will be required to comply with this, which may bring about changes to labelling and packaging, such as dispensers.

9.18 In correspondence with the House of Lords, the Minister said that the Government would continue to work with officials in NI government departments on any practical steps that might be taken to mitigate the impact of the legislation.

Divergence between GB and NI

9.19 The Minister noted divergence between the GB CLP and EU CLP Regulations has occurred since the UK's withdrawal from the EU and the end of the implementation period but will be exacerbated by the EU's establishment of new hazard classes.

9.20 Importers, said the Minister, have a legal obligation to ensure their substances and mixtures are compliant with the EU CLP Regulation requirements. For movements from GB to NI, the legal obligation therefore falls on NI-based businesses importing the substances, rather than GB-based suppliers. However, the Health and Safety Executive encourages GB-based suppliers and NI-based businesses to co-operate to meet classification and labelling requirements by sharing any necessary information, evidence or data wherever possible and where business contracts permit.

9.21 The Minister cautioned that some GB-based businesses may become dissuaded from engaging with the NI market when faced by regulatory barriers, in particular if policies in England, Scotland or Wales move in a different direction while NI's options are constrained by the Windsor Framework.

UK-wide considerations

9.22 The Minister confirmed that the Government would take note of the revised EU rules as part of considering potential future reforms to the GB CLP Regulation. Chemicals policy engages a mix of reserved and devolved competence. In GB, occupational safety and health, consumer safety, and product labelling are reserved matters under the devolution settlements while environmental protection and public health are devolved competences to the devolved administrations.

9.23 The GB CLP Regulation is covered under the UK Chemicals and Pesticides Provisional Common Framework, developed jointly by the UK Government, Devolved Governments, the Health and Safety Executive and the Environment Agency. The GB administrations will consider how to address any issues raised by the NI Executive, including potentially modifying their proposals to mitigate any negative impacts that may have been identified.

Our assessment

9.24 We are largely content with the information provided by the Minister in her Explanatory Memorandum. There are three outstanding issues on which we will seek further information. The first is the extent to which the arrangements for enhanced EU-UK dialogue under the Windsor Framework have been useful in this instance. The second is to note that the focus of the Government appears to have been on the impact of the new legislation on NI and how to mitigate that impact. We are keenly aware, however, that GB businesses will face the same rules whether shipping to NI or to the EU. We will ask the Minister if there is any indication that GB businesses will choose in any case to self-classify along the lines of the new hazard classes, thus pre-empting to a degree both the international discussion as well as consideration of future GB policy options. Finally, we will seek confirmation from the Minister that the Government will not base its domestic policy on the approach adopted by the EU but will, instead, continue to pursue international-level dialogue in the first instance.

Action

9.25 We have written to the Minister as set out below. We are drawing the proposal and our chapter to the attention of the Northern Ireland Affairs Committee

Letter from the Chair to the Parliamentary Under-Secretary of State (Mims Davies MP), Department of Work and Pensions

We considered your Explanatory Memorandum on the above EU instruments at our meeting on 12 July 2023. We took note too of the information that you have provided in response to correspondence from the House of Lords the Ireland/Northern Ireland Protocol Sub-Committee.

We would welcome your response to the following queries:

- To what extent have the arrangements for enhanced EU-UK dialogue under the Windsor Framework been useful for discussions on these texts?

- Is there any indication that GB-based businesses will choose to self-classify along the lines of the new hazard classes, thus pre-empting to a degree both the international discussion as well as consideration of future GB policy options?
- Can you assure us that the Government will not base its domestic policy on the approach adopted by the EU but will, instead, continue to pursue international-level dialogue in the first instance.

We look forward to a response within ten working days.

10 Windsor Framework: standards for equality bodies⁹⁵

These EU documents are legally and politically important because:

- they are relevant to the commitment in Article 2 of the Windsor Framework to ensure that the UK’s withdrawal from the EU does not diminish protection against discrimination as set out in the 1998 Belfast/Good Friday Agreement.

Action

- We have written to the Minister of State for Northern Ireland (Steve Baker MP) and have drawn this chapter to the attention of the Joint Committee on Human Rights, the Northern Ireland Affairs Committee, and the Women and Equalities Committee.

Overview

10.1 There are six ‘core’ EU equal treatment Directives establishing minimum standards which all EU Member States must apply to combat discrimination on grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. The European Commission considers that the effective application and enforcement of these core Directives has been hampered by significant differences in the way that national equality bodies are structured and resourced, the scope of their powers, and the way they operate.

10.2 Rather than propose substantive changes to existing EU equality laws, the European Commission has instead proposed two new Directives which are intended to strengthen the role and independence of national equality bodies (‘the proposed equality bodies Directives’). It anticipates that a set of binding common standards would bolster the contribution these bodies can make in ensuring that individuals are aware of their rights and that these rights can be effectively enforced. Two separate proposals are deemed necessary, even though their content is broadly the same, as different legal bases and decision-making rules apply for the adoption of EU laws on sex discrimination in employment and on other grounds or in different areas of discrimination.

10.3 Although the proposed equality bodies Directives will not apply in the UK if they become EU law, the Government has deposited them for scrutiny because they may be relevant to the implementation of Article 2 of the Windsor Framework.⁹⁶ The purpose of

95 (a) Proposal for a Directive on standards for equality bodies in the field of equal treatment and equal opportunities between women and men in matters of employment and occupation, and deleting Article 20 of Directive 2006/54/EC and Article 11 of Directive 2010/41/EU; COM(22) 688; Article 157(3) TFEU, ordinary legislative procedure, QMV; Department: Northern Ireland Office; ESC number 42164.

(b) Proposal for a Directive on standards for equality bodies in the field of equal treatment between persons irrespective of their racial or ethnic origin, equal treatment in the field of employment and occupation between persons irrespective of their religion or belief, disability, age or sexual orientation, equal treatment between women and men in matters of social security and in the access to and supply of goods and services, and deleting Article 13 of Directive 2000/43/EC and Article 12 of Directive 2004/113/EC; COM(22) 689; Article 19(1) TFEU, special legislative procedure, unanimity and EP consent; Department: Northern Ireland Office; ESC number 42165.

96 The term ‘Windsor Framework’ refers to the Protocol on Ireland/Northern Ireland which forms part of the UK/EU Withdrawal Agreement, as amended by [Decision 1/2023 of the UK/EU Joint Committee](#).

Article 2 is to ensure that the rights and equality protections set out in the 1998 Belfast/Good Friday Agreement are not diminished as a result of the UK leaving the EU. The proposed equality bodies Directives would apply to the six core EU equal treatment Directives that are referred to in Article 2 and listed in Annex 1 of the Windsor Framework (‘the Annex 1 Directives’).

10.4 In his Explanatory Memorandum dated 7 February 2023, the Secretary of State for Northern Ireland, Rt Hon. Chris Heaton-Harris MP, told us that the Government had consulted the Equality Commission for Northern Ireland (ECNI) and the Northern Ireland Human Rights Commission (NIHRC), part of the ‘dedicated mechanisms’ entrusted with ensuring that Article 2 of the Windsor Framework is implemented, but had not yet determined whether the proposed equality bodies Directives were within the scope of Protocol Article 2. This is important as the Government has said it will match any enhancement of the substantive rights contained in the Annex 1 Directives so that rights protection in Northern Ireland does not fall behind the standards set by the EU. The Minister indicated that the proposed Directives concerned “the procedural functioning of equality bodies” and would “not alter substantive discrimination protections in the Annex 1 Directives.”

10.5 We set out details on the content of the proposed Directives, the purpose of Article 2 of the Windsor Framework, and the Government’s initial position in our Report of 4 April 2023.⁹⁷ We asked the Minister to tell us:

- when he expected the ECNI and NIHRC to complete their detailed review of the proposed Directives and what weight he would give to their advice in reaching a view on whether the proposals were within the scope of Article 2 and in determining whether changes to Northern Ireland law might be necessary;
- whether he intended to ask the European Commission if it considered that the proposed Directives were within the scope of Article 2 and/or to raise the matter within the Specialised Committee on the implementation of the Protocol on Ireland/Northern Ireland or the Joint Consultative Working Group (‘JCWG’—an official-led body established by the Windsor Framework which provides a forum for the exchange of information and mutual consultation);
- when he expected to complete his analysis to determine whether the proposed Directives were within the scope of Article 2 and how the requirements set out in Article 13(3) and (4) of the Windsor Framework would inform that analysis;
- whether he considered that procedural or structural changes intended to facilitate the more effective implementation and enforcement of rights and obligations under the Annex 1 equality Directives could constitute a ‘substantive enhancement’ of the protections that those Directives afford, even if the rights themselves remained unchanged; and
- whether Northern Ireland equality bodies already met the minimum standards set out in the proposed equality Directives, where there might there be differences or gaps, and how difficult or costly they would be to remedy.

97 European Scrutiny Committee, Sixteenth Report (2022–23) HC 119–xiv, [chapter 4](#), 4 April 2023.

The Minister’s response

10.6 In his letter dated 13 June 2023, the Minister of State for Northern Ireland, Steve Baker MP, told us that:

- the Government will consider carefully the advice provided by the ECNI and NIHRC once they have completed their detailed review;
- the Government is continuing to assess whether the proposed Directives are within the scope of Article 2 of the Windsor Framework and maintains a “continuous dialogue” with the European Commission through the JCWG;
- he expects the Government’s analysis of the proposed Directives to continue as negotiations within the EU progress, noting the need to engage with Northern Ireland departments as much of the content concerns transferred matters;
- the proposed Directives will be relevant to the Government’s Article 2 ‘keeping pace’ commitment and the automatic (or dynamic) alignment provisions in Article 13(3) of the Windsor Framework insofar as they update and replace provisions of the Annex 1 equality Directives which relate to relevant rights in the Belfast/Good Friday Agreement;
- it will be necessary to consider on a case-by-case basis whether procedural or structural changes constitute a substantive enhancement of rights covered in the Annex 1 Directives and as such need to be reflected in Northern Ireland’s domestic law if that is not already the case; and
- the Government will continue to monitor the progress of the proposed Directives to identify “if and where there are any differences or gaps between the final minimum standards contained in the proposals and those that are in place in Northern Ireland” while also engaging with relevant Northern Ireland departments, adding that “it is a matter for them to reach a view on the difficulty and costs of any changes which may be required” in respect of transferred matters.

10.7 The Minister offers to provide a further update as the Government develops its analysis of the proposals and their interaction with Article 2 of the Windsor Framework.

Analysis

10.8 The EU Council agreed its positions on the proposed Directives on 12 June 2023.⁹⁸ This means the Council has a mandate to negotiate a jointly agreed text with the European Parliament on the proposal relating to equal treatment between women and men in employment. By contrast, the European Parliament will not have an equal say in shaping the content of the proposal relating to equal treatment in employment, social security and access to goods and services which covers wider grounds of discrimination but will still have some influence insofar as its ‘consent’ (approval) will be required for the Council’s position.

98 EU Council press release, ‘Standards for equality bodies: Council agrees its positions’ (12 June 2023).

10.9 The European Parliament has referred the proposed Directives to its Committees on Women’s Rights and Gender Equality and Employment and Social Affairs. As the substance of the measures is intended to be the same, it seems unlikely that the European Parliament will be willing to consent to one before it has had an opportunity to negotiate with the Council on the content of the other. We note that the Council has made substantial changes to the texts proposed by the European Commission which, it says, are intended to “accommodate the diversity and particularities” of systems already in place in EU Member States.⁹⁹

10.10 While ECNI is continuing to review the proposed Directives, its initial view is that they do amend provisions of a number of the Annex 1 equality Directives and that Northern Ireland equality law should be amended to keep pace with these changes.¹⁰⁰ ECNI will doubtless wish to consider whether the modifications made by the Council affect its preliminary assessment and review any changes which the European Parliament may propose. We therefore welcome the Minister’s assurance that he will consider carefully any recommendations made by the ECNI and NIHRC as well as his offer to provide a further update as the proposed Directives develop during negotiations within the EU. As we indicated in our earlier Report, we are particularly interested in the Government’s view on whether procedural or structural changes intended to facilitate the more effective implementation and enforcement of rights and obligations under the Annex 1 equality Directives constitute a substantive enhancement of the protections that those Directives afford.

Action

10.11 We have written to the Minister of State for Northern Ireland, Steve Baker MP, requesting a further update as negotiations on the proposals progress within the EU.

Letter to the Minister of State for Northern Ireland (Steve Baker MP)

Thank you for your letter of 13 June 2023. We note that you are continuing your analysis of two EU Directives proposed by the European Commission in December 2022 which are intended to strengthen the role and independence of national equality bodies to determine how they interact with Article 2 of the Windsor Framework.

The EU Council has now agreed its position on both proposals but they await consideration by the European Parliament. We would welcome a further update once the European Parliament has agreed its negotiating position on the proposed Directive relating to equal treatment between women and men in employment as we assume its position is also likely to affect the content of the proposed Directive relating to equal treatment in employment, social security and access to goods and services which covers wider grounds of discrimination. Your update should include progress you have made in your analysis of the proposals and their interaction with Article 2 of the Windsor Framework.

In its preliminary assessment of the European Commission proposals, the Equality Commission for Northern Ireland (‘ECNI’) has said that they would be:

99 See [Council General Approach](#) (12 June 2023)

100 Equality Commission for Northern Ireland, [‘Equality Commission for Northern Ireland response to the European Commission’s proposals on Binding standards for Equality Bodies’](#) (3 February 2023)

Of great value, not only to the ECNI in carrying out its role and remit as the designated equality body for Northern Ireland in the areas covered by the relevant Protocol Annex 1 equality Directives, but, in turn, also of value to individuals in Northern Ireland seeking redress against discrimination in areas covered by these Annex 1 equality Directives”.¹⁰¹

This suggests that there may be gaps or omissions which the proposals might help to address if reflected in Northern Ireland’s domestic law.

We would be grateful if your next update included details of your response to any further advice provided or recommendations made by either the ECNI or the Northern Ireland Human Rights Commission in relation to the proposed Directives. As we indicated in our letter of 29 March 2023, we are particularly interested in the Government’s view on whether procedural or structural changes intended to facilitate the more effective implementation and enforcement of rights and obligations under the Annex 1 equality Directives constitute a “substantive enhancement” which should be reflected in Northern Ireland’s domestic law.

101 Equality Commission for Northern Ireland, [Equality Commission for Northern Ireland response to the European Commission’s proposals on Binding standards for Equality Bodies](#) (3 February 2023).

11 Documents not considered to be legally and/or politically important

Department for Business and Trade

- (42198) Commission Regulation (EU) 2023/1315 of 23 June 2023 amending Regulation (EU) No 651/2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty and Regulation (EU) 2022/2473 declaring certain categories of aid to undertakings active in the production, processing and marketing of fishery and aquaculture products compatible with the internal market in application of Articles 107 and 108 of the Treaty.
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- C(2023) 1712

Department of Energy Security and Net Zero

- (42202) Commission Regulation (EU) 2023/826 of 17 April 2023 laying down ecodesign requirements for off mode, standby mode, and networked standby energy consumption of electrical and electronic, household and office equipment, pursuant to Directive 2009/125/EC of the European Parliament and of the Council and repealing Commission Regulations (EC) No 1275/2008 and (EC) No 107/2009.
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- C(2023) 2448

Department for Environment, Food and Rural Affairs

- (42175) Commission Delegated Regulation (EU) 2023/119 of 9 November 2022 amending Delegated Regulation (EU) 2020/692 supplementing Regulation (EU) 2016/429 of the European Parliament and of the Council as regards rules for entry into the Union, and the movement and handling after entry of consignments of certain animals, germinal products and products of animal origin.
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- C(2022)7913
- (42199) Commission Delegated Regulation (EU) 2023/751 of 30.1.2023 amending Delegated Regulation (EU) 2020/687 supplementing Regulation (EU) 2016/429 of the European Parliament and the Council as regards rules for the prevention and control of certain listed diseases.
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- C(2023) 636
- (42201) Commission Delegated Regulation (EU) 2023/905 of 27 February 2023 supplementing Regulation (EU) 2019/6 of the European Parliament and of the Council as regards the application of the prohibition of use of certain antimicrobial medicinal products in animals or products of animal origin exported from third countries into the Union.
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- C(2023) 1272

Department of Health and Social Care

- (42174) Regulation (EU) 2023/607 of the European Parliament and of the Council amending Regulations (EU) 2017/745 and (EU) 2017/746 as regards the transitional provisions for certain medical devices and in vitro diagnostic (IVD) medical devices.
- 5139/23
- COM(2023)10

(42179) Commission Delegated Regulation (EU) 2023/439 of 16 December 2022 amending the Annex to Regulation (EU) No 609/2013 of the European Parliament and of the Council to allow the use of nicotinamide riboside chloride as a source of niacin in food for special medical purposes and total diet replacement for weight control.
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C(2022)9048

(42189) Proposal for a Regulation of the European Parliament and of the Council on fees and charges payable to the European Medicines Agency, amending Regulation (EU) 2017/745 of the European Parliament and of the Council and repealing Council Regulation (EC) No 297/95 and Regulation (EU) 658/2014 of the European Parliament and of the Council.
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COM(22) 721

Food Standards Agency

(42196) Commission Regulation (EU) 2023/465 of 3 March 2023 amending Regulation (EC) No 1881/2006 as regards maximum levels of arsenic in certain foods.
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C(2023)1389

Foreign, Commonwealth and Development Office

(42213) Proposal for a Council Decision establishing the EU's position in the UK/EU Withdrawal Agreement Joint Committee: social security coordination.
10449/23
COM(23) 322

Annex

Documents drawn to the attention of select committees:

(‘SNC’ indicates that scrutiny (of the document) is not completed; ‘SC’ indicates that scrutiny of the document is completed)

Business and Trade Committee: Windsor Framework: Batteries Regulation [Proposed Regulation][SNC]; Windsor Framework: the EU’s Artificial Intelligence Act (update) [Proposed Regulation][SNC].

Environmental Audit Committee: Windsor Framework: deforestation and forest degradation [Proposed Regulation][SNC]; Windsor Framework: ecodesign for sustainable products [Proposed Regulation][SNC]; Windsor Framework: Fluorinated Greenhouse Gases [Proposed Regulation][SNC]; Windsor Framework: packaging and packaging waste [Proposed Regulation][SNC].

Joint Committee on Human Rights: Windsor Framework: standards for equality bodies [Proposed Directives][SNC].

Northern Ireland Affairs Committee: Windsor Framework: Batteries Regulation [Proposed Regulation][SNC]; Windsor Framework: Classification, Labelling and Packaging of Chemicals [(a) Proposed Regulation, (b) Commission Delegated Regulation] [SNC]; Windsor Framework: compulsory licensing of patents to tackle an EU wide crisis [Proposed Regulation][SNC]; Windsor Framework: deforestation and forest degradation [Proposed Regulation][SNC]; Windsor Framework: ecodesign for sustainable products [Proposed Regulation][SNC]; Windsor Framework: Fluorinated Greenhouse Gases [Proposed Regulation][SNC]; Windsor Framework: packaging and packaging waste [Proposed Regulation][SNC]; Windsor Framework: standards for equality bodies [Proposed Directives][SNC]; Windsor Framework: the EU’s Artificial Intelligence Act (update) [Proposed Regulation][SNC]; Windsor Framework: veterinary medicines [Proposed Regulation][SNC].

Scottish Affairs Committee: Windsor Framework: packaging and packaging waste [Proposed Regulation][SNC].

Science, Innovation and Technology Committee: Windsor Framework: the EU’s Artificial Intelligence Act (update) [Proposed Regulation][SNC].

Welsh Affairs Committee: Windsor Framework: packaging and packaging waste [Proposed Regulation][SNC].

Women and Equalities Committee: Windsor Framework: standards for equality bodies [Proposed Directives][SNC].

Formal Minutes

Wednesday 12 July 2023

Members present:

Sir William Cash, in the Chair

Margaret Ferrier

Mr David Jones

Craig Mackinlay

Greg Smith

Document scrutiny

Draft Report, proposed by the Chair, brought up and read.

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

Paragraphs 1.1 to 11 read and agreed to.

Annex agreed to.

Resolved, That the Report be the Twenty-first Report of the Committee to the House.

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

Adjournment

Adjourned till Wednesday 19 July 2023 at 2.10 pm

Standing Order and membership

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

- a) to report its opinion on the legal and political importance of each such document and, where it considers appropriate, to report also on the reasons for its opinion and on any matters of principle, policy or law which may be affected;
- b) to make recommendations for the further consideration of any such document pursuant to Standing Order No. 119 (European Committees); and
- c) to consider any issue arising upon any such document or group of documents, or related matters.

The expression “European Union document” covers—

- i) any proposal under the Community Treaties for legislation by the Council or the Council acting jointly with the European Parliament;
- ii) any document which is published for submission to the European Council, the Council or the European Central Bank;
- iii) any proposal for a common strategy, a joint action or a common position under Title V of the Treaty on European Union which is prepared for submission to the Council or to the European Council;
- iv) any proposal for a common position, framework decision, decision or a convention under Title VI of the Treaty on European Union which is prepared for submission to the Council;
- v) any document (not falling within (ii), (iii) or (iv) above) which is published by one Union institution for or with a view to submission to another Union institution and which does not relate exclusively to consideration of any proposal for legislation;
- vi) any other document relating to European Union matters deposited in the House by a Minister of the Crown.

The Committee’s powers are set out in Standing Order No. 143.

Current membership

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

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

[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*)