



HOUSE OF LORDS

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

House of Lords
London
SW1A 0PW

Tel: 020 7219 5864
Fax: 020 7219 6715
hlprotocol@parliament.uk
www.parliament.uk/lords

Lord Callanan
Parliamentary Under Secretary of State
(Minister for Business, Energy and Corporate Responsibility)
Department for Business, Energy & Industrial Strategy
1 Victoria Street
London SW1H 0ET

21 January 2022

Dear Martin,

SUBSIDY CONTROL BILL

In its December 2020 *Review of investigative and scrutiny Committees*, which first proposed the establishment of the Sub-Committee on the Protocol on Ireland/Northern Ireland, the Liaison Committee identified the six core tasks of the Protocol Committee, one of which was **“Scrutiny of the implications of relevant domestic UK legislation and policy for Northern Ireland”**. In our *Introductory report* of July 2021, we set out our intention to consider the implications of relevant domestic legislation for Northern Ireland in this context at the time of a Government Bill receiving Second Reading in the House of Lords. We therefore considered the Subsidy Control Bill at our meeting on 20 January 2022.

We note that the Bill establishes a UK-wide subsidy control regime and that subsection 48(3) exempts subsidies given, or subsidy schemes made, in accordance with Article 10 of the Protocol from the subsidy control requirements in the Bill. We also understand from the assurances given by Paul Scully MP, Parliamentary-Under Secretary of State for Business, Energy and Industrial Strategy, that the purpose of subsection 48(3) is to “avoid double regulation of subsidies” and ensure there will be “no double jeopardy” of having to comply with both EU State aid rules and the UK regime in respect of the same subsidy.¹

We note that BEIS has published guidance to public authorities covering the practical application of Article 10 of the Protocol, intended to help them reach a view on whether the Protocol applies to subsidies granted in Northern Ireland and the rest of the UK.² **What actions is the Government taking to publicise the guidance and ensure public authorities throughout the whole of the UK are aware of Article 10 and the need to seek advice from BEIS about its applicability to proposed subsidies?**

We heard evidence from George Peretz QC that there are potential conflicts between the Government’s guidance on when Article 10 applies and the guidance produced by the European Commission, and that lack of clarity over which regime should apply could make

¹ Public Bill Committee, [Subsidy Control Bill](#), 2 November 2021, 6th sitting, cols 208 and 209.

² Department for Business, Energy and Industrial Strategy, [‘Guidance on the UK’s international subsidy control commitments’](#), updated 24 June 2021.

public authorities reluctant to give subsidies.³ **What assessment has the Government made of the legal risks of the UK and the European Union taking differing views of the applicability of Article 10, notwithstanding the UK and EU unilateral declarations on Article 10(1) of December 2020? Does the Government consider the potential for differing legal interpretations on the applicability of Article 10 by the UK and the EU could have an impact on the willingness of public authorities to give subsidies? Does the Government believe there is a risk of beneficiaries having to repay subsidies found to be unlawful by the European Commission or the domestic courts?**

We note that at second reading in the House of Commons, the Secretary of State said the Bill would “empower” public authorities to make their own decisions about whether to grant a subsidy and allow them to “act with far greater agility than before” under a quicker process than that of the EU.⁴ **What is the Government’s assessment of the major differences between the EU State aid regime and the subsidy control framework introduced by the Bill, in terms of procedural requirements, timescales (for instance for referrals) and the types and amounts of subsidy that are allowed or prohibited by each system? What are the comparative advantages and disadvantages of each set of rules, in particular in the context of the implications for Northern Ireland?**

The BEIS guidance states that “the state aid provisions of Article 10 will, in practice, primarily apply to aid for manufacturers and sellers of goods located in Northern Ireland that trade with the EU”.⁵ **Does the Government therefore consider that Northern Ireland will be placed at a disadvantage compared to Great Britain where Northern Ireland has to continue to comply with the EU rules? Conversely, are there any advantages for Northern Ireland of the continued application of EU State aid rules, for instance in terms of consistency of approach with the period of UK membership of the EU? What assessment has the Government made of the potential impact of this on the UK internal market, and for the comparative attractiveness of Northern Ireland, compared to other parts of the UK, as a destination for Foreign Direct Investment?**

We note the Government’s argument in the July 2021 Command Paper *Northern Ireland Protocol: the way forward* that the provisions of the Bill and commitments in the Trade and Cooperation Agreement “provide a more than sufficient basis to guarantee that there will be no significant distortion to goods trade between the UK and the EU, whether from Great Britain or Northern Ireland” and that the provisions of Article 10 are therefore “redundant in their current form”.⁶ We further note that Lord Frost said in December 2021 that there had been “some limited discussions with the EU over subsidy control”.⁷ **What update can you give on discussions with the EU about Article 10 since then? Would the Government consider pausing progress on the Bill while these talks are ongoing? Does the Government intend to table amendments to the Bill to reflect any outcome from the talks, including the possibility of no agreement with the EU to amend Article 10?**

³ House of Lords Protocol on Ireland/Northern Ireland Sub-Committee, [Corrected Oral Evidence: Legal Implications of any Invocation of Article 16, and of the Current Operation of the Protocol](#), 1 December 2021, Q6.

⁴ [HC Hansard, 9 September 2022, cols 336–9](#).

⁵ Department for Business, Energy and Industrial Strategy, ‘[Guidance on the UK’s international subsidy control commitments](#)’, updated 24 June 2021.

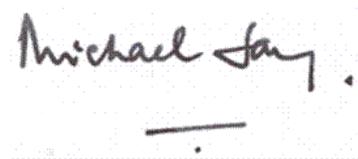
⁶ HM Government, [Northern Ireland Protocol: The Way Forward](#), July 2021, CP 502, p 20.

⁷ Cabinet Office, ‘[Lord Frost statement on the Protocol on Ireland/Northern Ireland](#)’, 17 December 2021.

In order to inform the Committee Stage deliberations on the Bill, we would be grateful for a response to this letter by 31 January 2022.

I am copying this letter to Baroness Drake, Chair of the Constitution Committee, Sir William Cash MP, Chair of the Commons European Scrutiny Committee, George Wilson, Clerk of the Commons European Scrutiny Committee, Simon Hoare MP, Chair of the Commons Northern Ireland Affairs Committee, Les Saunders and Donald Harris, Cabinet Office, Graeme Winchester, Department for Business, Energy and Industrial Strategy; and Dr Caoimhe Archibald MLA, Chair of the Northern Ireland Assembly Committee for the Economy.

Yours sincerely,

A handwritten signature in black ink that reads "Michael Jay". The signature is written in a cursive style. Below the signature is a horizontal line, and there is a small dot below the line.

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