



HOUSE OF LORDS

European Affairs Committee

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5th Report of Session 2021–22

Report from the Sub-Committee on the  
Protocol on Ireland/Northern Ireland:

**Scrutiny of EU  
legislative proposals  
within the scope of the  
Protocol on Ireland/  
Northern Ireland**

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## *The European Affairs Committee and the Sub-Committee on the Protocol on Ireland/Northern Ireland*

The European Affairs Committee was appointed to consider matters relating to the United Kingdom's relationship with the European Union and the European Economic Area, including the implementation and governance structures of any agreements between the United Kingdom and the European Union; to consider European Union documents deposited in the House by a minister; and to support the House as appropriate in interparliamentary cooperation with the European Parliament and the Member States of the European Union.

The Sub-Committee on the Protocol on Ireland/Northern Ireland was appointed by the European Affairs Committee to consider all matters related to the Protocol, including scrutiny of: EU legislation within the scope of the Protocol; relevant domestic UK legislation and policy; the Northern Ireland-related work of the governance bodies established under the UK-EU Withdrawal Agreement; the Protocol's political and socio-economic impact on Northern Ireland; and its impact on UK-Irish bilateral relations; as well as conducting interparliamentary dialogue, including with the Northern Ireland Assembly and Irish Oireachtas.

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The Members of the European Affairs Committee are:

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<a href="#">Lord Faulkner of Worcester</a>	<a href="#">Lord Lamont of Lerwick</a>	<a href="#">Viscount Trenchard</a>
<a href="#">Lord Foulkes of Cumnock</a>	<a href="#">Lord Liddle</a>	<a href="#">Lord Tugendhat</a>
<a href="#">Lord Hannay of Chiswick</a>	<a href="#">Lord Purvis of Tweed</a>	<a href="#">Lord Wood of Anfield</a>
<a href="#">Lord Jay of Ewelme</a>		

The Members of the Sub-Committee on the Protocol on Ireland/Northern Ireland, which conducted this inquiry are:

<a href="#">Lord Dodds of Duncairn</a>	<a href="#">Lord Jay of Ewelme</a> (Chair)	<a href="#">Baroness O'Loan</a>
<a href="#">Lord Empey</a>	<a href="#">Lord Hain</a>	<a href="#">Baroness Ritchie of Downpatrick</a>
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Publications, press notices, details of membership, forthcoming meetings and other information is available at: <https://committees.parliament.uk/committee/520/protocol-on-irelandnorthern-ireland-subcommittee/>

General information about the House of Lords and its Committees is available at <https://www.parliament.uk/business/lords>

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Evidence is published online at <https://committees.parliament.uk/work/1539/impact-of-the-protocol-on-the-provision-of-medicines-to-northern-ireland/publications/8/scrutiny-evidence/> and available for inspection at the Parliamentary Archives (020 7219 3074).

## SUMMARY

Under the Protocol on Ireland/Northern Ireland, over 300 pieces of EU legislation set out in its Annexes apply to Northern Ireland on a dynamic basis (that is, as amended or replaced). The Protocol also provides for the possible addition to its Annexes of new EU legislation within the scope of the Protocol. In view of the socio-economic and political implications of the Protocol for Northern Ireland, in particular in the context of its relationship with the rest of the UK, EU legislation applying to Northern Ireland must be subject to detailed parliamentary scrutiny.

Such scrutiny is, and will continue to be, a key priority of the House of Lords Sub-Committee on the Protocol on Ireland/Northern Ireland, which over the past year has written over 90 letters to Government Ministers on over 40 EU legislative proposals across a wide range of policy areas and of considerable technical complexity. As well as liaising with the Government in relation to this work, the Committee prioritises engagement with other Committees of the House, in the House of Commons and in the Northern Ireland Assembly, with key stakeholders who stand to be affected by EU legislation applying to Northern Ireland, and with the EU itself. This scrutiny work is without prejudice to the positions of individual members of the Committee either in support of, or opposing, the Protocol, including its application of aspects of EU law to Northern Ireland.

The Government in turn has an obligation to facilitate such scrutiny, and we welcome its commitment to do so as far as it goes. However, the Government needs to go further. Any new EU legislation within the scope of the Protocol of which the EU has informed the UK should automatically be deposited in Parliament for scrutiny at that stage. The Government should deposit draft EU proposals which are relevant to the provisions of Article 2 of the Protocol, on rights of individuals. The Government must also ensure that any other EU legislative proposals with significant implications for Northern Ireland in the context of the Protocol are promptly deposited in Parliament. Furthermore, the Government needs to establish formal mechanisms for prompt communication to Parliament of information received from the EU in the Joint Consultative Working Group on planned or adopted EU legislation falling within the scope of the Protocol.

The Committee has repeatedly expressed concern about the quality of Government Explanatory Memoranda and correspondence on EU legislation within the scope of the Protocol. Although the quality of some documents has improved, others have remained variable, and in some cases, frankly poor. Notwithstanding the ongoing discussions with the EU over the future of the Protocol, the Government has an obligation, in the meantime, to set out the full implications of EU legislation applying to Northern Ireland under the Protocol as it currently operates.

The Government must set out, as a minimum:

- (1) The views on each proposal, where available, of the Northern Ireland Executive, as well as the other devolved Administrations.
- (2) The Government's assessment of the merits or otherwise of the proposal.

- (3) Whether the proposal will lead to regulatory divergence between Great Britain and Northern Ireland, and the practical implications of this.
- (4) What steps the Government is taking to address such regulatory divergence, including considering the case for introducing equivalent measures in England or Great Britain (according to the extent of the Government's powers of competence in each case).
- (5) The impact, if any, of the proposals for Northern Ireland's participation in the UK's Free Trade Agreements.
- (6) The relevance and impact of the proposals for Northern Ireland's participation in UK Common Frameworks, and how Common Frameworks intersect with the Protocol.
- (7) Whether and how EU legislation will be implemented in domestic law.
- (8) What consultation has taken place with business representatives and other key stakeholders on the impact of EU legislation, and whether a regulatory impact assessment has been undertaken.

The Committee has previously drawn attention to the democratic deficit under the Protocol as negotiated, agreed and ratified by the UK and the EU. While we welcome the EU's proposals for enhanced engagement with Northern Ireland stakeholders and authorities, they are not sufficient in themselves to resolve the issues to which the democratic deficit gives rise. The EU needs to do more to enhance transparency around the application of EU law to Northern Ireland, take account of the impact of EU law on Northern Ireland's particular circumstances, and engage with Northern Ireland stakeholders at an early stage to give them a voice concerning the application and implications of such legislation. The EU should explicitly state whether a proposed EU legal act engages the UK's obligations under the Protocol, the basis on which such legislation should apply to Northern Ireland, and how the EU has taken into account Northern Ireland's particular circumstances in the application of the legislation in question.

In the context of the ongoing discussions between the UK and the EU on the future of the Protocol, all sides have a continuing obligation to ensure that the operation of the Protocol, including the application to Northern Ireland of EU law listed in its Annexes, takes into account the delicate balance between North-South and East-West relations as provided for under the Belfast/Good Friday Agreement, and to demonstrate how it is compliant with that Agreement in all its Strands.

# Scrutiny of EU legislative proposals within the scope of the Protocol

## CHAPTER 1: INTRODUCTION

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### Introduction

1. The Sub-Committee on the Protocol on Ireland/Northern Ireland was appointed by the European Affairs Committee in April 2021, following the recommendation of the Liaison Committee in its December 2020 *Review of investigative and scrutiny committees: strengthening the thematic structure through the appointment of new committees*.<sup>1</sup>
2. In that report, the Liaison Committee identified six core tasks for the Protocol Sub-Committee, including document-based scrutiny of new or amended EU legislation within the scope of the Protocol, given that “more than 300 EU directives or regulations will automatically continue to apply to Northern Ireland on a dynamic basis after the end of the transition period”.
3. In our introductory report, published in July 2021, the Protocol Sub-Committee endorsed the six core tasks outlined by the Liaison Committee, including document-based scrutiny of new or amended EU legislation within the scope of the Protocol.<sup>2</sup>
4. This report summarises the Committee’s work in relation to this core task during its first year of operation, and sets out its key findings and recommendations thus far. It does so by summarising, in turn, the Commission’s approach to its scrutiny work, the Government’s obligations to facilitate such scrutiny, and the EU’s obligations to take into account the full implications for Northern Ireland of the application to it of aspects of EU law within the scope of the Protocol.<sup>3</sup>
5. Our membership, drawn from Northern Ireland and the rest of the UK, has a wide range of expertise in Northern Ireland affairs. While some of us support the Protocol (including its application of aspects of EU law to Northern Ireland), others of us oppose it (and its application of aspects of EU law to Northern Ireland) in principle. Our conclusions are without prejudice to those positions.
6. **We make this report for debate.**

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1 Liaison Committee, *Review of investigative and scrutiny committees: strengthening the thematic structure through the appointment of new committees* (5th Report, Session 2019–21, HL Paper 193)

2 European Affairs Committee, *Report from the Sub-Committee on the Protocol on Ireland/Northern Ireland: Introductory report* (2nd Report, Session 2021–22, HL Paper 55)

3 We note that, at the time of writing, discussions concerning post-Brexit scrutiny arrangements between the European scrutiny Committees of both Houses and the Cabinet Office remain ongoing. We make the conclusions and recommendations in this report to feed into these discussions so that they can be considered before any subsequent Ministerial agreement and final confirmation by the Committees is achieved.

## CHAPTER 2: THE SCRUTINY WORK OF THE COMMITTEE

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### Background

7. Throughout the period of UK membership of the EU, the House of Lords remitted to the European Union Committee and its Sub-Committees the task of documentary scrutiny of EU documents and legislative proposals. A scrutiny reserve mechanism was in place under a Resolution of the House, by which Government Ministers were not permitted to give the UK's assent to EU legislative proposals in the Council of the European Union until the Committee had completed its scrutiny. An equivalent process operated in the House of Commons to facilitate the work of its European Scrutiny Committee.
8. Such scrutiny typically took the form of deposit in Parliament of EU documents, receipt from the Government within ten working days of an Explanatory Memorandum (EM) on each document, a weekly 'Chair's sift', by which the EU Committee Chair, advised by Committee officials, would decide which documents were significant enough to merit detailed scrutiny by one of the specialist EU Sub-Committees, followed by an exchange of correspondence on the documents in question between the relevant Sub-Committee and Government Minister. This scrutiny system continued, in modified form, during the post-Brexit transition period (which concluded on 31 December 2020) in view of the continued direct application of EU law to the UK during that period.
9. Following UK withdrawal and the end of the transition period, the term of appointment of the EU Committee expired on 31 March 2021. A new European Affairs Committee was appointed in April 2021, with overarching responsibility for scrutiny of the implications of EU legislation for the UK post-Brexit. This includes scrutiny of EU legislation directly applying to Northern Ireland under the terms of the Protocol on Ireland/Northern Ireland, which came into force on 1 January 2021. Scrutiny of this legislation was remitted to the Protocol Sub-Committee.

### Documents within the scope of the Protocol subject to scrutiny

10. Under the terms of the Protocol, such scrutiny primarily relates to two categories of EU acts: amendments or replacements of EU law listed in the Annexes to the Protocol (including, as we set out in Chapter 3, EU delegated and implementing legislation (tertiary legislation) brought forward to supplement the EU law listed in the Annexes to the Protocol and deposited in Parliament by the Government for scrutiny); and new EU legislation within the scope of the Protocol which does not amend or replace EU acts listed in the Annexes.

### *Amendments or replacements of EU law listed in the Annexes to the Protocol*

11. Article 13(3) of the Protocol states that, unless otherwise provided, references in the Protocol to a [European] Union act "shall be read as referring to that Union act as amended or replaced". The Protocol at various points sets out the provisions of EU law that will apply to the UK in respect of Northern Ireland:
  - Article 5(3) applies EU customs legislation to Northern Ireland;

- Article 5(4) creates a single regulatory zone for goods on the island of Ireland by applying those technical rules and product standards as set out in Annex 2 to the Protocol;
  - Article 5(5): Articles 30 and 110 of the Treaty on the Functioning of the European Union (TFEU) apply, prohibiting customs duties, internal taxation and quantitative restrictions on exports and imports between the EU and Northern Ireland;
  - Article 7(1): Articles 34 and 36 TFEU (restricting quantitative restrictions on imports other than in specified circumstances), together with the law of the UK, shall govern the lawfulness of placing goods on the market in Northern Ireland;
  - Article 8: The provisions of EU law on VAT and excise set out in Annex 3 are applied;
  - Article 9: The provisions of EU law governing wholesale electricity markets listed in Annex 4 are applied;
  - Article 10(1): The provisions of EU law on State aid set out in Annex 5 are applied;
  - Article 12(4): Elements of Article 267 TFEU as regards the powers of EU institutions and agencies are applied;
  - Article 13(7): Articles 346 and 347 TFEU as regards measures taken for the purposes of security are applied.
12. These provisions amount in total to around 300 pieces of EU legislation that apply to Northern Ireland on a dynamic basis (that is, as amended or replaced). Article 15(3) sets out how the UK will be notified of such changes: within the Joint Consultative Working Group (established under Article 15(1) as “a forum for the exchange of information and mutual consultation” between the UK and the EU), the EU shall inform the UK about planned Union acts that amend or replace Union acts listed in the Protocol.

*New EU legislation within the scope of the Protocol which does not amend or replace EU acts listed in the Annexes*

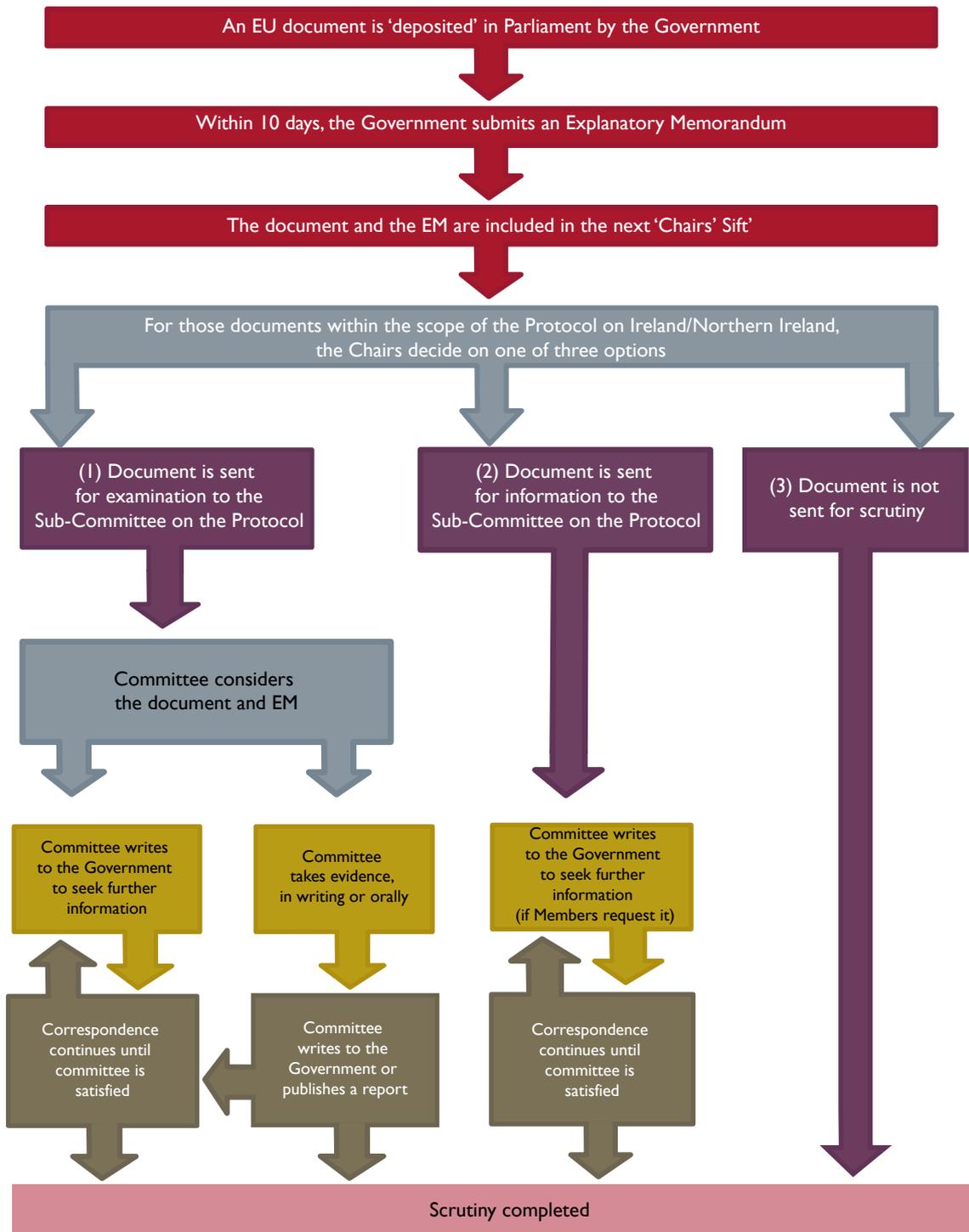
13. There is a different process in the case of a new Union act that falls within the scope of the Protocol which neither amends nor replaces an act listed in the Annexes. In such cases, the EU is obliged first, under Article 15(3)(b) of the Protocol, to inform the UK through the Joint Consultative Working Group of any such planned act, and second, under Article 13(4), to inform the UK in the Withdrawal Agreement Joint Committee of the adoption of that act. Upon the request of either side, the Joint Committee shall hold an exchange of views within six weeks of the request on the implications of the new act for the proper functioning of the Protocol. Following this, the Joint Committee shall either a) add the newly adopted act to the relevant Annex to the Protocol, or b) where agreement cannot be reached, examine “all further possibilities to maintain the good functioning of this Protocol” and take any necessary decision. If the Joint Committee fails to take a decision within a reasonable time, the EU shall, after giving notice to the UK, be entitled to take appropriate remedial measures.

14. We explore the scope of the Government’s commitment to facilitate parliamentary scrutiny of such documents in Chapter 3.

**The scrutiny process**

15. The process of scrutiny undertaken by the Sub-Committee is a modified form of that undertaken by the EU Committee during the years of UK membership of the EU, and is set out in the flow chart below.

**Figure 1: The scrutiny process for EU legislation within the scope of the Protocol on Ireland/Northern Ireland**



16. A ‘Chairs’ sift’ mechanism continues, determining which documents should be subject to detailed scrutiny and correspondence with Government Ministers. Documents applying to Northern Ireland under the Protocol are remitted to the Protocol Sub-Committee. These sift decisions are then notified to Government departments, and published.<sup>4</sup>
17. For legislative proposals sent to it for detailed scrutiny, the Protocol Sub-Committee will typically write to the Government Minister responsible for the EM with a number of questions and comments on the document in question. The Committee’s correspondence, and replies received from Government Ministers, are published in a regularly updated volume of ‘Correspondence with Ministers’ on the Committee’s website.<sup>5</sup> A ‘Progress of scrutiny’ volume is also published on a quarterly basis, setting out the current status of scrutiny of each proposal.<sup>6</sup>
18. **Given the socio-economic and political implications of the Protocol for Northern Ireland, in particular in the context of its relationship with the rest of the UK, EU legislation applying to Northern Ireland must be subject to detailed parliamentary scrutiny. Scrutiny of such documents is, and will continue to be, a key priority of the Protocol Sub-Committee’s work.**

### Volume of documents

19. In its report proposing the establishment of the Protocol Sub-Committee, the Liaison Committee noted that “analysis by the Institute for Government suggests that an average of around 12 new legislative acts in areas covered by the Protocol, or amendments to existing acts, are likely each year”.<sup>7</sup>
20. In the event, the volume of documents deposited and subject to scrutiny has been significantly higher than anticipated. The Protocol Sub-Committee was appointed in April 2021. As of 15 March 2022, 74 EMs on EU legislation relevant to Northern Ireland under the Protocol have been received. Of these, 38 have been sent to the Sub-Committee for detailed scrutiny, 34 have been sent to it for its information, and two have not required any scrutiny. In addition, the Sub-Committee inherited a small number of legislative items relevant to the Protocol from the EU Committee, which had begun scrutiny of these documents before the expiry of its term of appointment on 31 March 2021. Overall, as of 15 March 2022, the Committee had engaged in detailed correspondence with the Government on 41 separate Explanatory Memoranda, sending 94 and receiving 61 letters across that period.

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4 European Affairs Committee, ‘New items of scrutiny’: <https://committees.parliament.uk/committee/516/european-affairs-committee/content/155371/new-items-of-scrutiny/>

5 Sub-Committee on the Protocol on Ireland/Northern Ireland, ‘Correspondence with Ministers’: <https://committees.parliament.uk/committee/520/protocol-on-irelandnorthern-ireland-subcommittee/news/155688/correspondence-with-ministers/>. Unless otherwise stated, all scrutiny correspondence cited in this report can be found in this document.

6 European Affairs Committee, ‘Progress of scrutiny’: <https://committees.parliament.uk/committee/516/european-affairs-committee/content/156671/progress-of-scrutiny/>

7 *Review of investigative and scrutiny committees: strengthening the thematic structure through the appointment of new committees*, p 13

### Policy range of documents

21. The full list of the documents subject to detailed scrutiny by the Committee is set out in Appendix 2. These cover a wide range of policy areas, including:

- Entry summary declarations and pre-departure declarations
- Tariff rate quotas, import quotas and tariff preferences
- Resilience of critical entities
- Use of antimicrobials
- Products of animal origin, including hygiene of foodstuffs and animal by-products
- Movement of animals, including pets
- Plant imports
- Classification, labelling and packaging of substances and mixtures
- VAT
- Cosmetics
- Machinery products
- Batteries
- Motor vehicles and vehicle safety information
- Artificial Intelligence
- Geographical Indications
- Exchange and storage of information
- Food health claims and marketing standards
- Animal feed
- Toys
- Environmental policy, including greenhouse gas emissions, persistent organic pollutants and a carbon border adjustment mechanism
- State aid
- The energy and electricity markets, including taxation of energy products
- Product safety
- Medicines
- Veterinary medicines
- Radio equipment

22. Around half of all EMs subject to detailed scrutiny were received either from Department for Environment, Food and Rural Affairs (Defra) or Department for Business, Energy and Industrial Strategy (BEIS) Ministers. However, the wide range of policy areas which the Protocol covers is demonstrated by the large number of other Government departments that have submitted EMs over this period, including HM Treasury, the Department for International Trade, the Cabinet Office, the Department of Health and Social Care, the Department for Work and Pensions, the Department for Transport, and the Department for Digital, Culture, Media and Sport.
23. The Government has also indicated that a number of the EU’s forthcoming legislative proposals as set out in the Commission’s Work Programme for 2022 would apply to Northern Ireland under the Protocol, “in particular those that concern regulation and standards for goods. These include the proposals on hazardous substances in electronics, detergents, the type approval of motor vehicles, and proposals relating to pharmaceutical and medicines legislation, as well as EU customs, VAT and excise legislation concerning goods.”<sup>8</sup>

### Case studies

24. We set out below three case studies by way of illustration of the Committee’s approach to scrutiny of EU legislative proposals.

**Box 1: EM 7007/21: Commission Delegated Regulation (EU) .../ ... of 11 March 2021 amending, for the purposes of its adaptation to technical and scientific progress, Part 3 of Annex VI to Regulation (EC) No 1272/2008 of the European Parliament and of the Council on classification, labelling and packaging of substances and mixtures**

This amending Delegated Regulation added new harmonised classifications for 22 hazardous chemical substances, revised 41 existing entries and removed one entry from the Annexes of the EU Regulation on classification, labelling and packaging of substances and mixtures (the CLP Regulation). As the CLP Regulation is listed in Annex 2 to the Protocol, the amending Delegated Regulation applied to Northern Ireland, but not to the rest of the UK.

On 20 May 2021, the Committee wrote to Mims Davies MP, Parliamentary Under Secretary of State, Department for Work and Pensions. The Committee acknowledged the Government’s “detailed and informative” EM. However, the Committee noted a lack of clarity over the areas in which regulatory divergence between Great Britain and Northern Ireland was likely to develop. The Committee asked the Minister a number of questions concerning:

- The practical implications for regulatory divergence between Great Britain and Northern Ireland and for movement of affected products between them.

8 Cabinet Office, EM 13003/21 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Commission work programme 2022: Making Europe stronger together, p 5: [https://europeanmemoranda.cabinetoffice.gov.uk/files/2021/11/2021.11.30\\_COM\(21\)645\\_.pdf](https://europeanmemoranda.cabinetoffice.gov.uk/files/2021/11/2021.11.30_COM(21)645_.pdf) [accessed 22 February 2022]; and Council of the European Union, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Commission work programme 2022: Making Europe stronger together, [COM\(2021\) 645 final](#)

- The likelihood of Great Britain taking a distinct approach, the likely impact of this divergence, and what steps the Government was taking to mitigate the impact of this divergence.
- How the proposal interacted with the Chemicals and Pesticides UK Common Framework, and if it had been considered through the mechanism for dialogue set out in the Common Framework.
- The views of the Northern Ireland Executive on the proposal, any concerns that they expressed, and what action had been taken in response.
- What technical and resource support the Government was providing to the Northern Ireland Executive and Civil Service in terms of implementing this Delegated Regulation.
- How the Government and the Northern Ireland Executive were engaging with affected businesses and suppliers in Great Britain and Northern Ireland, what work the Health and Safety Executive was undertaking in this regard, and what guidance was being provided to help suppliers and businesses to make the requisite changes.
- The likely costs of the changes for suppliers in Northern Ireland.

Further exchanges of correspondence with the Minister followed, including on the views of environmental stakeholders and the Devolved Administrations.

**Box 2: EM 8537/21: Commission Regulation (EU) .../... of XXX amending Annex IV to Regulation (EC) No 999/2001 of the European Parliament and of the Council as regards the prohibition to feed non-ruminant farmed animals, other than fur animals, with protein derived from animals**

This amending Regulation re-authorised the use of processed animal protein (PAP) of porcine origin in poultry feed and of processed animal protein of poultry origin in the feed of porcine animals, and other related changes. It formed part of the EU's efforts to align animal health prevention, control and eradication measures with the evolution of the epidemiological situation on BSE. As an amendment to animal health and welfare legislation set out in Annex 2 to the Protocol, the re-authorisation applied to Northern Ireland but not to the rest of the UK.

On 22 July 2021, the Committee wrote to Rt Hon Lord Benyon, Parliamentary Under Secretary of State, Defra. The Committee noted that the amending Regulation had attracted considerable media and political comment in view of historic sensitivities over BSE. The Committee asked a number of questions concerning:

- Negotiations on the Regulation in the European Parliament and Council, including the position of Ireland.
- When the Regulation was expected to come into force in Northern Ireland.
- Whether the Government was aware of, and supported, these proposals prior to UK withdrawal from the EU.
- The Government's policy position, and whether the Regulation was supported by the scientific evidence base.

- The Government's engagement with the Northern Ireland Executive and other Northern Ireland stakeholders (including the Ulster Farmers' Union) on the impact of the proposals, including on food standards in Northern Ireland.
- Whether Northern Ireland farmers would retain discretion on whether or not to use such feed.
- In view of the Government's statement that it may review its own legislation in England in the future, what its assessment was of the case for or against equivalent regulatory change.
- When and on what basis the Government would engage in stakeholder consultation before such a review.
- The views of the Scottish and Welsh Governments on the EU's proposals, discussions in the context of the Common Framework on inspections and food sampling, and whether the Scottish or Welsh Governments had indicated any intention to bring forward similar proposals.
- The Government's overall assessment of the impact of the Regulation for regulatory divergence and movement of produce between Great Britain and Northern Ireland.
- The impact of the Regulation on Northern Ireland's full participation in UK Free Trade Agreements.

The Minister provided a detailed and informative reply, clarifying that Northern Ireland farmers would retain discretion on whether or not to use such feed. The Committee subsequently invited the Minister to keep the Committee informed of the reviews of animal feed controls being conducted by the UK, Scottish and Welsh Governments.

**Box 3: EM 6871/21: Commission Regulation (EU) .../... of XXX amending Annexes II and III to Regulation (EC) No 1223/2009 of the European Parliament and of the Council on cosmetic products**

This Regulation added one chemical (Deoxyarbutin) to the list of substances prohibited from use in cosmetics within the EU, and added another (Dihydroxyacetone) to the list of permitted substances. As an amendment to the EU Cosmetics Products Regulation listed in Annex to 2 the Protocol, it applied to Northern Ireland, but not to the rest of the UK.

On 10 June 2021, the Committee wrote to Paul Scully MP, Parliamentary Under Secretary, BEIS, on the above Regulation. The Committee asked a number of questions, including in relation to:

- The Government's assessment of the merits or otherwise of the Regulation, and the case for introducing equivalent measures for products placed on the market in Great Britain.
- The views of the Northern Ireland Executive and the other Devolved Administrations on the proposal.
- The practical impact of potentially divergent regulatory standards between Northern Ireland and Great Britain pending the introduction of equivalent measures in Great Britain.

- The information that Northern Ireland traders would be required to supply in order to place products on the market in Great Britain, and whether such suppliers had been made aware of these requirements.
- Whether the Government planned to conduct an impact or cost assessment of the Regulation.

The Minister replied to state that there would be no long-term practical implications for Northern Ireland products being placed on the market in Great Britain, and that the impact of such technical changes would be minimal. The Committee wrote back, noting that the principal impact of any regulatory divergence would be on the placement of products originating in Great Britain on the Northern Ireland market.

### **Engagement with other Committees**

25. The Committee also engages with other parliamentary Committees with an interest in EU legislation applying to Northern Ireland under the Protocol. To that end, the Committee's correspondence with Ministers is copied to Chairs of relevant Committees in the House of Lords, the House of Commons and Northern Ireland Assembly. A brief description of their own approach to scrutiny follows below.

#### *House of Lords*

26. UK Common Frameworks are being developed between the UK Government and the Devolved Administrations as a mechanism mutually to agree a cooperative approach for policy areas where returning EU powers post-Brexit are within devolved competence. As reflected in the above case studies, many EU legislative proposals applying to Northern Ireland under the Protocol have relevance to Common Frameworks, and questions are frequently raised in the Committee's correspondence with Ministers about the implications for Common Frameworks of EU legislation applying to Northern Ireland. The Common Frameworks Scrutiny Committee has been appointed by the House to scrutinise and consider matters relating to these Frameworks, and relevant correspondence is therefore copied to the Chair of the Common Frameworks Scrutiny Committee, and that Committee's feedback sought. We note that the work of the Common Frameworks Scrutiny Committee will conclude in July 2022 and we hope that rigorous parliamentary scrutiny of the Common Frameworks Programme will continue in the House of Lords.
27. As EU legislation is frequently implemented via domestic Statutory Instruments, the Protocol Sub-Committee and the Secondary Legislation Scrutiny Committee have a mutual interest in their respective scrutiny activity at the beginning and end of the legislative process. Each Committee ensures that the attention of the other is drawn to its relevant scrutiny correspondence and reports.
28. As we highlight in Chapter 3, EU legislation may also have implications for Northern Ireland's participation in the UK's Free Trade Agreements. The International Agreements Committee has sought to take account of the implications for Northern Ireland in its scrutiny of such agreements.

#### *House of Commons*

29. After the UK's withdrawal from the EU, the House of Commons European Scrutiny Committee has continued to undertake EU document scrutiny,

while at the same time moving towards inquiry-based work and standalone oral evidence sessions with Government Ministers and stakeholders.

30. With regard to the Protocol, the Committee has adapted its document scrutiny Reports to draw attention to EU legislative proposals and policy initiatives that are relevant to Northern Ireland. The titles of these Report chapters are prefixed with ‘Northern Ireland Protocol’. As was the case before UK withdrawal from the EU, the Committee assesses the legal and/or political importance of EU deposited documents. Those which are considered to have met this threshold are reported to the House in the Committee’s weekly Reports, and the reasons why are summarised in a box at the top of each Report chapter. Some of the Committee’s scrutiny Reports include an Annex of documents that are not considered legally and/or politically important. This Annex often includes EU documents that engage the Protocol. Documents listed in this Annex are almost always deemed to have completed scrutiny and the Committee does not undertake any follow-up.
31. The House of Commons Northern Ireland Affairs Committee scrutinises the work of the Northern Ireland Office, as well as UK Government policy relating to Northern Ireland more generally, including in relation to the Protocol. As part of this work, the Committee monitors new EU legislation that may apply in Northern Ireland under the Protocol and the work of the Withdrawal Agreement Joint Committee as it relates to Northern Ireland. The Committee has written to Commission Vice-President Maroš Šefčovič to propose that, in the interest of transparency, future EU legislation states whether and on what basis it will apply in Northern Ireland under the Protocol.<sup>9</sup> We return to this issue in Chapter 4.

#### *Northern Ireland Assembly*

32. In its report, the Liaison Committee noted that the Protocol Sub-Committee’s EU scrutiny work “would need to be coordinated with that of relevant committees of the Northern Ireland Assembly, given the overlap between reserved and devolved competences in this area.”<sup>10</sup>
33. We recognise that the Assembly may wish to continue to carry out scrutiny of EU exit related matters insofar as they related to devolved responsibilities in the next Assembly mandate. It is likely that such scrutiny will include the operation of the Protocol, any additions/amendments to the legislation listed in the Annexes; any potential areas of divergence between Northern Ireland and Great Britain as UK Government and/or Northern Ireland Executive policy evolves; and other post EU exit arrangements. In addition, the first vote on the continued application of Articles 5 to 10 of the Protocol under the democratic consent mechanism set out in Article 18 will take place in the Assembly in 2024.

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<sup>9</sup> Letter from Simon Hoare MP, Chair of the House of Commons Northern Ireland Affairs Committee, to Maroš Šefčovič, Vice-President of the European Commission, 9 June 2021: <https://committees.parliament.uk/publications/6862/documents/72447/default/>

<sup>10</sup> *Review of investigative and scrutiny committees: strengthening the thematic structure through the appointment of new committees*, p 13

34. Regarding amendments or additions to the Protocol's Annexes, the Assembly's Chairpersons' Liaison Group agreed at its meeting of 28 September 2021:

“Chairpersons agreed that, in the context of the statutory duty of Assembly committees to advise and assist Ministers in the formulation of policy, to write to the First Minister and deputy First Minister to request that where the views of NI Executive Departments are sought by the UK Government on amendments to EU law listed in the Annexes to the Protocol on Ireland/Northern Ireland; or on new EU legislation within the scope of the Protocol but which does not amend or replace EU acts listed in the Annexes, that each Department engages with the relevant Assembly committee prior to finalising its input to the final Government Explanatory Memorandum and provides a final copy of the Explanatory Memoranda to the committee.”<sup>11</sup>

35. **Given the implications for Northern Ireland and its relationship with the UK, we stress the continuing importance of effective scrutiny of EU legislative proposals by Committees in the House of Commons and the Northern Ireland Assembly. In that context we welcome the approach to Assembly scrutiny proposed by its Chairpersons' Liaison Group, which would improve transparency and strengthen the ability of the Assembly to carry out oversight of relevant legislative developments in relation to devolved matters falling within the scope of the Protocol. In that context, we stress in particular the importance of timely provision of necessary information to Assembly Committees, including Explanatory Memoranda, either by the Government or the Northern Ireland Executive.**
36. **We will continue to work closely with these Committees, drawing their attention to the findings of our scrutiny work. Given our mutual interest in these issues, we would welcome opportunities for enhanced cooperation in our scrutiny work, and we stress our commitment to continued inter-parliamentary dialogue in that context.**
37. **We also welcome the scrutiny work relevant to the Protocol being undertaken by other Committees of the House, including the Common Frameworks Scrutiny Committee, the International Agreements Committee and the Secondary Legislation Scrutiny Committee. We will continue to work closely with those Committees. In that context, we note that the work of the Common Frameworks Scrutiny Committee will conclude in July 2022 and we hope that rigorous parliamentary scrutiny of the Common Frameworks Programme will be continued in the House of Lords.**

### **Stakeholder engagement**

38. The Committee has also sought the views of other stakeholders on EU legislative proposals, and reflected their concerns in correspondence with Ministers. We provide below examples of three occasions on which the Committee has sought the views of stakeholders.

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11 Northern Ireland Assembly, Chairpersons' Liaison Group, *Minutes of Proceedings, Tuesday 28 September 2021*, p 5: <http://www.niassembly.gov.uk/globalassets/documents/committees/2017-2022/clg/minutes-of-proceedings/2021---2022/chairpersons-liaison-group-minutes-of-proceedings---28-september-2021.pdf> [accessed 17 February 2022]

39. CHEM Trust (a leading environmental NGO) wrote to the Committee setting out concerns about the potential impact on trade between Great Britain and Northern Ireland of the Commission amending Delegated Regulation on classification, labelling and packaging of substances and mixtures, in the event of regulatory divergence between Great Britain and the EU (and Northern Ireland), described in Box 1, above.
40. The Ulster Farmers' Union and the National Pig Association both provided feedback on the Commission Amending Regulation as regards the prohibition to feed non-ruminant farmed animals, other than fur animals, with protein derived from animals (Box 2, above). The Ulster Farmers' Union also set out its views on the Commission amending Implementing Regulation with regard to the configuration of the animal identification code for the traceability of certain kept terrestrial animals in the United Kingdom in respect of Northern Ireland (which proposed the introduction of an 'XI' identification code for Northern Ireland livestock).
41. The Committee also sought the feedback of pharmaceutical industry stakeholders PAGB—the consumer healthcare association,<sup>12</sup> the Healthcare Distribution Association<sup>13</sup> and Teva UK<sup>14</sup> on the Commission amending Directive and Regulation as regards derogations concerning medicinal products made available in the UK in respect to Northern Ireland as well as in Cyprus, Ireland and Malta, published on 17 December 2021. These proposals were brought forward by the EU in an attempt to resolve the problems with supply of medicines to Northern Ireland under the Protocol. The Committee set out stakeholder views in a detailed letter to the Foreign Secretary.<sup>15</sup>
42. The Equality Commission for Northern Ireland and the Northern Ireland Human Rights Commission have an explicit role under the 'dedicated mechanism' to uphold Article 2 of the Protocol, on the rights of individuals, and the two Commissions have both stressed the importance of scrutiny of EU legislative proposals relevant to Article 2. We return to this issue in Chapter 3.
43. **The Committee has consistently highlighted in its correspondence with Ministers the importance of engagement with key stakeholders who stand to be affected by EU legislation applying to Northern Ireland under the Protocol. We welcome the feedback that we have received from such stakeholders on a variety of legislative proposals. We will continue to invite such feedback in the months ahead, and to share with the Government the views and concerns put to us.**

### Engagement with the EU

44. We have also drawn our scrutiny work to the attention of the EU. On 23 July 2021, the Committee Chair wrote to HE João Vale de Almeida, EU Ambassador to the UK, explaining the Committee's approach to scrutiny of

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12 [Written evidence from PAGB—the consumer healthcare association](#)

13 [Written evidence from the Healthcare Distribution Association](#)

14 [Written evidence from Teva UK Limited](#)

15 Letter from Lord Jay of Ewelme, Chair of the Sub-Committee on the Protocol on Ireland/Northern Ireland, to Rt Hon Elizabeth Truss MP, Secretary of State for Foreign, Commonwealth and Development Affairs, 28 January 2022: <https://committees.parliament.uk/publications/8666/documents/88026/default/>. These documents were sent to the Sub-Committee for scrutiny on 3 March 2022, following receipt of the Government EM on 24 February 2022.

EU legislation, drawing his attention to its published correspondence, and seeking his views on the Commission amending Regulation as regards the prohibition to feed non-ruminant farmed animals, other than fur animals, with protein derived from animals, highlighted in Box 2 above.<sup>16</sup> The Committee also wrote in similar terms to the Irish Ambassador, HE Adrian O’Neill.<sup>17</sup>

45. The Committee has also engaged in correspondence with the EU Ambassador on the provision of medicines to Northern Ireland under the Protocol, and has drawn his attention to the evidence received from pharmaceutical industry representatives on the EU’s legislative proposals on medicines published on 17 December 2021 (as described in paragraph 41 above).<sup>18</sup>
46. **In Chapter 4, we explore the EU’s obligations in relation to the application to Northern Ireland of EU legislation within the scope of the Protocol. In that context, we will seek to enhance our engagement with the EU institutions, including through dialogue with the EU Ambassador to the UK, in relation to our scrutiny of EU legislation applying to Northern Ireland under the Protocol.**

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16 Letter from Lord Jay of Ewelme, Chair of the Sub-Committee on the Protocol on Ireland/Northern Ireland, to HE João Vale de Almeida, Ambassador, EU Delegation to the UK, 23 July 2021: <https://committees.parliament.uk/publications/7008/documents/72904/default/>

17 Letter from Lord Jay of Ewelme, Chair of the Sub-Committee on the Protocol on Ireland/Northern Ireland, to HE Adrian O’Neill, Ambassador, Embassy of Ireland, 23 July 2021: <https://committees.parliament.uk/publications/7009/documents/72905/default/>

18 Letter from Lord Jay of Ewelme, Chair of the Sub-Committee on the Protocol on Ireland/Northern Ireland, to HE João Vale de Almeida, Ambassador, EU Delegation to the UK, 13 September 2021: <https://committees.parliament.uk/publications/7281/documents/76345/default/>; Letter from HE João Vale de Almeida, Ambassador, EU Delegation to the UK, to Lord Jay of Ewelme, Chair of the Sub-Committee on the Protocol on Ireland/Northern Ireland, 14 September 2021: <https://committees.parliament.uk/publications/7363/documents/77071/default/>; and letter from Lord Jay of Ewelme, Chair of the Sub-Committee on the Protocol on Ireland/Northern Ireland, to Rt Hon Elizabeth Truss MP, Secretary of State for Foreign, Commonwealth and Development Affairs, 28 January 2022: <https://committees.parliament.uk/publications/8666/documents/88026/default/>.

## CHAPTER 3: THE GOVERNMENT'S SCRUTINY OBLIGATIONS

### The Government's scrutiny commitment

47. The then Chancellor of the Duchy of Lancaster, Rt Hon Michael Gove MP, confirmed in oral evidence to the EU Committee in December 2020,<sup>19</sup> and subsequently in writing in January 2021, that “until such time that new permanent arrangements for future scrutiny are agreed, the Government will continue to deposit any new proposals for EU legislation that fall within the scope of the Protocol. Ministers will continue to provide accompanying Explanatory Memoranda on these documents as per existing arrangements.”<sup>20</sup>
48. On 23 September 2021, Mr Gove's successor as Minister with responsibility for UK-EU relations, Rt Hon Lord Frost CMG, wrote to Lord Kinnoull, Chair of the European Affairs Committee, and Sir William Cash MP, Chair of the House of Commons European Scrutiny Committee. He stated that, as part of the “final Government offer on scrutiny of EU-related business by the EU Scrutiny Committees”, the Government was “committed to continuing the submission of EMs on EU proposals which amend or replace existing proposals that fall under scope of the NI Protocol (including tertiary legislation)”.<sup>21</sup>
49. The Government has thus far fulfilled this commitment as follows:
  - (1) Submitting Explanatory Memoranda (which have been on occasion inadequate) on any proposal for legislation to amend or replace any piece of legislation that applies to Northern Ireland by virtue of being included in Annexes 2–5 to the Protocol; and depositing and commissioning an EM in such cases.
  - (2) Consulting Committee officials to determine whether EMs are required on Commission Delegated Acts made under legislation listed in the relevant Annexes to the Protocol.
  - (3) Consulting Committee officials to determine whether EMs are required on Commission Implementing Acts made under legislation listed in the relevant Annexes to the Protocol.
50. The commitment to consult officials on the deposit of Commission Delegated and Implementing Acts (tertiary legislation) is consistent with the approach during the period of UK membership of the EU. In that period the requirement for deposit of such documents was frequently waived as the changes introduced through such tertiary legislation were generally of a technical nature and in any case applied across the whole of the UK. However, such tertiary legislation has added significance in the context of the Protocol as it now applies only to Northern Ireland within the UK, thereby creating the potential for regulatory divergence between Northern Ireland and the rest of the UK. Therefore, since the Protocol came into force, the Committee

19 Oral evidence taken before the European Union Committee on 17 December 2020 (Session 2019–21), [Q 12](#)

20 Letter from the Chancellor of the Duchy of Lancaster, Rt Hon Michael Gove MP, to Lord Kinnoull, Chair of the European Union Committee, 14 January 2021: <https://committees.parliament.uk/publications/4317/documents/43764/default/>

21 Letter from Rt Hon Lord Frost CMG, Minister of State, Cabinet Office, to Lord Kinnoull, Chair of the European Affairs Committee and Sir William Cash MP, Chair of the House of Commons European Scrutiny Committee, 23 September 2021: <https://committees.parliament.uk/publications/8797/documents/88964/default/>

has requested that a larger volume of such documents is deposited, in order to allow it to assess the implications for Northern Ireland and the potential for regulatory divergence between Northern Ireland and the rest of the UK.

51. **We note that the Government’s stated intention in pursuing the particular form of Brexit it has chosen is to give the opportunity for the UK (in respect of Great Britain) to diverge from EU Single Market rules. Therefore in view of the continued application of EU law as set out in the Annexes to the Protocol on a dynamic basis to Northern Ireland, and the potential implications for Northern Ireland and its relationship with the rest of the UK, we welcome the Government’s continuing commitment to deposit in Parliament and submit Explanatory Memoranda on EU proposals which amend or replace existing proposals within the scope of the Protocol on Ireland/Northern Ireland.**
52. **Given the potential implications for regulatory divergence between Northern Ireland and the rest of the UK, we also welcome the Government’s continuing commitment to consult the Committee on the deposit of Commission Delegated and Implementing Acts (tertiary legislation). The Committee will continue to request deposit of such documents where issues of regulatory divergence arise.**

**Outstanding questions regarding the scope of the Government’s commitment**

53. Beyond the Government’s core commitment, uncertainty remains over specific aspects of its scrutiny offer, as follows.

*New EU legislation within the scope of the Protocol which does not amend or replace EU acts listed in the Annexes.*

54. In Chapter 2, we described the mechanism for potential application to Northern Ireland of new EU legislation within the scope of the Protocol which does not amend or replace EU acts listed in the Annexes. In its June 2020 report on *The Protocol on Ireland/Northern Ireland*, the EU Committee concluded that, “given the provisions of Article 13(4), this scrutiny should cover any new draft legislation that falls within the scope of the Protocol, whether or not it amends or replaces EU law listed in the Annexes to the Protocol. The Government in turn has an obligation to facilitate such scrutiny.”<sup>22</sup> However, the Government did not clarify for several months whether it was willing to agree to this recommendation.
55. In his letter of 23 September 2021 outlining the “final Government offer” on scrutiny, Lord Frost committed the Government to:

“continuing the submission of EMs on ... new EU proposals falling under the scope of [the] Protocol when agreed by the Joint Committee [and] consulting with the Clerks of the Committee on whether an EM should be provided when the UK is informed of any draft EU legislation through the [Joint Consultative Working Group] which the EU have indicated they would like to add to the [Protocol] Annexes under the Article 13(4) processes. Any agreement to share an EM is on the understanding that we would not be able to share anything that might

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22 European Union Committee, *The Protocol on Ireland/Northern Ireland* (9th Report, Session 2019–21, HL Paper 66), p 99

reveal our negotiating position ahead of the relevant Joint Committee meeting.”<sup>23</sup>

56. The Government subsequently stated that it is “committed to continuing to submit EMs on ... new EU proposals within scope of the [Protocol] when agreed by the Withdrawal Agreement Joint Committee”.<sup>24</sup>
57. In our view, the Government’s commitment to facilitate scrutiny of EU legislation relevant to the Protocol should automatically include new EU legislation within the scope of the Protocol which does not amend or replace EU acts listed in its Annexes. However, the extent of the Government’s commitment in that regard remains uncertain. It is also unclear if all such new legislation within the scope of the Protocol brought to the UK’s attention by the EU has in turn been brought to the notice of the Committee.
58. **We welcome as far as it goes the Government’s commitment to deposit in Parliament new EU legislation within the scope of the Protocol which does not amend or replace EU acts listed in the Annexes to the Protocol. Nevertheless, we urge the Government to go further.**
59. *In particular, any new EU legislation within the scope of the Protocol of which the EU has informed the UK should automatically be deposited in Parliament at that stage, with the Explanatory Memorandum providing, without prejudice to the Government’s negotiating position, as much information as possible on the addition of such legislation to the Annexes to the Protocol.*
60. *We invite the Government to set out:*
  - (1) *each piece of new EU legislation within the scope of the Protocol which does not amend or replace EU acts listed in the Annexes to the Protocol of which it has been notified by the EU since the Protocol came into force; and*
  - (2) *whether in each case the document was deposited and an EM produced.*

*Developments of EU law in relation to Article 2 (rights of individuals)*

61. Article 2 of the Protocol (rights of individuals) states that “the United Kingdom shall ensure that no diminution of rights, safeguards or equality of opportunity” as set out in the Belfast/Good Friday Agreement “results from its withdrawal from the Union, including in the area of protection against discrimination, as enshrined in the provisions of Union law listed in Annex 1 to this Protocol, and shall implement this paragraph through dedicated mechanisms.” The Government has stated:

“In the event that certain provisions of EU law setting out minimum standards of protection from discrimination—those listed in Annex 1 to the Protocol—are updated or replaced by the EU, relevant domestic

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23 Letter from Rt Hon Lord Frost CMG, Minister of State, Cabinet Office, to Lord Kinnoull, Chair of the European Affairs Committee and Sir William Cash MP, Chair of the House of Commons European Scrutiny Committee, 23 September 2021: <https://committees.parliament.uk/publications/8797/documents/88964/default/>

24 [EM 13003/21 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Commission work programme 2022: Making Europe stronger together](#), p 5 [accessed 17 February 2022]

law in Northern Ireland will be amended, as necessary, to reflect any substantive enhancements to those protections ...

“It should be noted that the directives in Annex 1, which have a future-facing dimension, represent only a subset of the protections in scope of the wider ‘no diminution’ commitment. There are other pieces of EU law that are relevant to the ‘Rights, Safeguards and Equality of Opportunity’ chapter of the Agreement which have been implemented in retained EU law—via the EU (Withdrawal) Act 2018—or domestic law in Northern Ireland. These include, but are not limited to, the Victims’ Directive, the Parental Leave Directive and the Pregnant Workers’ Directive, as well as specific measures aimed at protecting the rights of persons with disabilities. We do not envisage any circumstances in which those rights would be rolled back. However, provided that the rights in question are relevant to the aforementioned chapter of the Agreement, they are in scope of the UK Government’s commitment that there will be no diminution of rights as a result of the UK leaving the EU.”<sup>25</sup>

62. Article 2(2) commits the UK to continue to facilitate the work of the Northern Ireland Human Rights Commission, the Equality Commission for Northern Ireland and the Joint Committee of Representatives of the Human Rights Commissions of Northern Ireland and Ireland, in upholding human rights and equality standards. In its report on *Legislative Scrutiny and the Dedicated Mechanism for monitoring Article 2 of the Ireland/Northern Ireland Protocol*, the Equality Commission for Northern Ireland noted that scrutiny may be required not only of new or amended EU legislation which specifically relates to the Directives listed in Annex 1 to the Protocol, but also other EU legislation that has a relevant impact on the operation of the rights protected under Article 2 to the Protocol, such as the Pay Transparency Directive. It concluded that “a clear expectation must be established that the UK Government ... will provide explanatory memoranda for any measures”, including EU proposals, “which it believes will engage the terms of Article 2(1)”.<sup>26</sup>
63. The nature and extent of the Government’s commitment to provide Explanatory Memoranda either on changes in EU law listed in Annex 1 to the Protocol, or on other EU legislative proposals relevant to Article 2, remains opaque. On 25 October 2021, the Committee wrote to Rt Hon Brandon Lewis MP, Secretary of State for Northern Ireland (in view of his ministerial responsibility for upholding the Government’s commitments under Article 2 of the Protocol) asking:

“What steps is the Government taking to ensure that the human rights and equality Commissions, as well as Parliament (including this Committee), are kept informed of developments in EU law relevant to Article 2 of the Protocol? Will you agree to ensure that ... Explanatory Memoranda for draft EU proposals which amend or replace the

25 Northern Ireland Office, *Explainer: UK Government commitment to “no diminution of rights, safeguards and equality of opportunity” in Northern Ireland: What does it mean and how will it be implemented?* (August 2020): [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/907682/Explainer\\_UK\\_Government\\_commitment\\_to\\_no\\_diminution\\_of\\_rights\\_safeguards\\_and\\_equality\\_of\\_opportunity\\_in\\_Northern\\_Ireland.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/907682/Explainer_UK_Government_commitment_to_no_diminution_of_rights_safeguards_and_equality_of_opportunity_in_Northern_Ireland.pdf) [accessed 17 February 2022]

26 Equality Commission for Northern Ireland, *Legislative Scrutiny and the Dedicated Mechanism for monitoring Article 2 of the Ireland/Northern Ireland Protocol* (December 2021) p 71: <https://www.equalityni.org/ECNI/media/ECNI/Publications/Delivering%20Equality/DMU/DMU-LegislativeScrutiny-Art2Protocol.pdf> [accessed 17 February 2022]

Directives listed in Annex 1 of the Protocol, as well as other relevant EU legislation that the Commissions judge are relevant to the provisions of Article 2, such as the Victims Directive and the Parental Leave Directive, are submitted?”<sup>27</sup>

64. In his reply dated 24 November 2021, Rt Hon Conor Burns MP, Minister of State in the Northern Ireland Office, did not make such a commitment, citing instead “ongoing discussions to establish the future arrangements for scrutiny of legislation applying under the Protocol” following Lord Frost’s letter of 23 September.<sup>28</sup>
65. ***In view of the importance of Article 2 of the Protocol, we invite the Government to confirm that it will deposit in Parliament and provide Explanatory Memoranda on draft EU proposals which amend or replace the Directives listed in Annex 1 to the Protocol, as well as other EU legislation relevant to the provisions of Article 2.***
66. ***We also invite the Government to set out how it intends to ensure that the Equality Commission for Northern Ireland and the Northern Ireland Human Rights Commission, as well as Committees in Westminster and the Northern Ireland Assembly, are kept informed of wider developments in EU law relevant to Article 2.***

*Other EU legislation relevant to Northern Ireland under the Protocol*

67. On occasion, EU legislative proposals arise which either do not fall within the categories of documents that the Government has committed to deposit in Parliament, or it is unclear whether they do. One example concerns the Commission amending Directive and Regulation as regards derogations concerning medicinal products made available in the UK in respect to Northern Ireland as well as in Cyprus, Ireland and Malta, published on 17 December 2021. Despite the self-evident importance of these documents in view of their implications for the provision of medicines to the people of Northern Ireland, it was not immediately clear whether these documents would be deposited for scrutiny. Following a request by Committee officials that they should be, these documents were deposited and an EM received on 24 February 2022, over two months after the legislation was published.
68. ***We urge the Government to ensure that any EU legislative proposals not falling within the definition of documents that the Government has committed to deposit, but which nevertheless have significant implications for Northern Ireland in the context of the Protocol, are promptly deposited in Parliament, and that scrutiny Committees are provided with an Explanatory Memorandum as soon as possible.***

*Provision of information received from the EU within the Joint Consultative Working Group about planned Union acts within the scope of the Protocol*

69. In its June 2020 report, the EU Committee called on the Government:

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27 Letter from Lord Jay of Ewelme, Chair of the Sub-Committee on the Protocol on Ireland/Northern Ireland, to Rt Hon Brandon Lewis MP, Secretary of State for Northern Ireland, 25 October 2021: <https://committees.parliament.uk/publications/7641/documents/79851/default/>

28 Letter from Rt Hon Conor Burns MP, Minister of State, Northern Ireland Office, to Lord Jay of Ewelme, Chair of the Sub-Committee on the Protocol on Ireland/Northern Ireland, 24 November 2021: <https://committees.parliament.uk/publications/8296/documents/84460/default/>

“to establish formal mechanisms for prompt communication to Parliament of information received from the EU in the ... Joint Consultative Working Group on planned or adopted EU legislation falling within the scope of the Protocol. ... We recommend that the Government establish a clear process to share any information it receives on planned and adopted EU law within the scope of the Protocol with the Northern Ireland Executive, Parliament, and, where relevant, the other devolved administrations.”<sup>29</sup>

70. The Government has stated that the Joint Consultative Working Group is now meeting regularly.<sup>30</sup> However, the Government has yet to respond to the request that it put in place mechanisms to pass on to parliamentary scrutiny committees information received from the EU on planned legislative acts within the scope of the Protocol. Consequently, the work of the Joint Consultative Working Group, and the information that the Government receives from the EU on its legislative proposals in that forum, remains opaque. While this is largely due to the confidential nature of its discussions, we note that the EU indicated in its October 2021 ‘non-paper’ on ‘Engagement with Northern Ireland stakeholders and authorities’ that it was willing to show flexibility in this regard.<sup>31</sup>
71. *We note that the EU has recently indicated flexibility regarding the confidentiality of the discussions of the Joint Consultative Working Group. In view of this, we once again urge the Government to establish formal mechanisms for prompt communication to Parliament (and to other stakeholders) of information received from the EU in the Joint Consultative Working Group on planned or adopted EU legislation falling within the scope of the Protocol. In that context, we would welcome the opportunity to engage directly with the Joint Consultative Working Group and other UK-EU governance structures regarding the findings of the Committee’s scrutiny work.*

### **The quality of Explanatory Memoranda and ministerial correspondence**

72. A further issue has been the inconsistent and at times poor quality of Government Explanatory Memoranda and ministerial correspondence on EU legislative proposals applying to Northern Ireland under the Protocol. The following case studies illustrate the point.

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29 *The Protocol on Ireland/Northern Ireland*, pp 60, 82

30 Cabinet Office, *Government response to the Protocol on Ireland/Northern Ireland Sub-Committee’s introductory report* (28 September 2021): <https://committees.parliament.uk/publications/7459/documents/78392/default/>

31 European Commission, *Protocol on Ireland/Northern Ireland: Non-Paper: Engagement with Northern Ireland stakeholders and authorities* (13 October 2021): [https://ec.europa.eu/info/system/files/attachment\\_iv\\_ni\\_participation\\_non-paper.pdf](https://ec.europa.eu/info/system/files/attachment_iv_ni_participation_non-paper.pdf) [accessed 17 February 2022]

**Box 4: Case studies of poor quality Explanatory Memoranda and ministerial correspondence**

**EM 12183/21: Proposal for a Directive of the European Parliament and of the Council amending Directive 2014/53/EU on the harmonisation of the laws of the Member States relating to the making available on the market of radio equipment**

The Committee wrote to the Government on 29 November 2021, pointing out that the Government had not yet made an assessment of “whether it would benefit the UK internal market and the consumer to put in place similar measures in Great Britain” or “an assessment of the effect of any period of regulatory divergence between GB and NI.”

The Minister replied on 13 December, noting that “I have provided responses as best I can at this time ... I trust you will understand that until the [UK-EU] negotiations have concluded I will be unable to offer further detail or give definitive answers to your questions on this matter.”

The Committee wrote again on 14 January 2022, stating:

“We are disappointed at the lack of detail in your reply, on the premise (repeated in correspondence from you on other legislative proposals) that, until the discussions with the EU on the future of the Protocol have concluded, it will not be possible to offer further detail or to give definitive answers to the Committee’s questions. While those discussions are of course important context to bear in mind, they should not prevent you from undertaking and sharing with the Committee the Government’s initial analysis of the Directive.”

**EM 10872/21: Proposal for a Council Directive restructuring the Union framework for the taxation of energy products and electricity (recast).**

On 14 October 2021, the Committee wrote to the Government noting that its EM was:

“of an extremely poor quality which, because of its paucity of information, inhibits this Committee from fulfilling its remit of scrutinising the impact of EU legislation applying to Northern Ireland under the Protocol. In particular, it is not sufficient simply to state that the Government will continue to monitor EU proposals as they develop, without sharing with Parliament any details of your current analysis of the Directive’s implications for Northern Ireland. While the EM outlines the Government’s proposals for changes to the Protocol, this Committee’s task in the meantime is to scrutinise the impact on Northern Ireland of EU legislation that applies to it under the Protocol as it currently operates. ... the Government in turn has a duty to facilitate such scrutiny through the deposit of full and informative Explanatory Memoranda.”

**EM 10894/21: Commission Delegated Regulation (EU) .../ ... of 14 July 2021 amending and correcting Delegated Regulation (EU) 2020/688 supplementing Regulation (EU) 2016/429 of the European Parliament and of the Council, as regards animal health requirements for movements within the Union of terrestrial animals and hatching eggs**

The Committee wrote to the Government stating that its EM was:

“of an unacceptably poor quality, and provides scant information and insufficient context on the proposals in the Delegated Regulation. In particular, save for your statement that ‘there might be implications for NI under the Protocol in the movements of poultry, pets and wild animals’, it provides little clarity on the practical impact of this Delegated Regulation for Northern Ireland. ... To enable us to fulfil our scrutiny function effectively, we would therefore be grateful for a full account and explanation of the impact of this proposal on the movement of affected animals and animal products between Northern Ireland and EU Member States, and upon affected industries in Northern Ireland.”

73. The poor quality of EMs and correspondence highlighted in these examples is by no means universal. There have also been some high quality EMs and correspondence, and in the case studies outlined in Boxes 1 and 2, the Government provided detailed and informative EMs and correspondence. Indeed, the quality of documentation received from Defra in particular has been of a generally high quality. Yet too many documents from other Government departments do not contain sufficient information about the implications of EU legislation for Northern Ireland.

74. In view of this, the Chair wrote to Lord Frost on 26 July 2021, to:

“express concern about the variable quality of Government EMs and ministerial correspondence on EU legislation applying to Northern Ireland under the Protocol. While there have been some examples of good quality EMs and correspondence, others have failed adequately to summarise the effect of EU legislative proposals and their ramifications for Northern Ireland in the context of the Protocol.”

The Committee identified a number of issues which Government EMs and correspondence should, as a minimum, cover, which we repeat in para 79 below.<sup>32</sup>

75. Lord Frost replied on 6 August. He agreed that:

“the information Government provides should be of the highest quality so that it supports scrutiny. Whilst the level of detail it is possible to go into will vary from issue to issue, and it will ultimately be a matter for individual Ministers to decide upon, I am concerned to ensure consistency and a good standard of information. We have reinforced

<sup>32</sup> Letter from Lord Jay of Ewelme, Chair of the Sub-Committee on the Protocol on Ireland/Northern Ireland, to Rt Hon Lord Frost CMG, Minister of State, Cabinet Office, 26 July 2021: <https://committees.parliament.uk/publications/7007/documents/72903/default/>

with Departments the importance of covering the broad areas you mention in an appropriately detailed and substantive way.”<sup>33</sup>

76. Yet the problem has continued since Lord Frost’s reply. Ministers in a number of Government departments have repeatedly cited the ongoing UK-EU discussions over the future of the Protocol with words to this effect: “I trust you will understand that until the negotiations have concluded I will be unable to offer further detail or give definitive answers to your questions on this matter”.<sup>34</sup>
77. The Chair wrote to the Foreign Secretary on 17 January 2022 stating:
- “The quality of Governments EMs and correspondence has remained highly variable and, in some cases, extremely poor. There has in particular been a tendency to use the ongoing UK-EU discussions on the future of the Protocol as a justification for a failure to provide full information on the implications of EU legislation for Northern Ireland, or to answer the Committee’s specific questions. As we have pointed out in correspondence with departmental Ministers, notwithstanding the ongoing discussions with the EU, the Government has an obligation in the meantime to set out the full implications of EU legislation applying to Northern Ireland under the Protocol as it currently operates. In view of this, I would be grateful for your reassurance that you and your officials will remind ministerial colleagues and Government departments of the importance of full and detailed EMs, and high-quality responses to the Committee’s specific questions.”<sup>35</sup>
78. **Although the quality of some Government EMs and correspondence on EU legislation relevant to Northern Ireland under the Protocol has improved, others have remained variable and, in some cases, frankly poor. Notwithstanding the ongoing discussions with the EU over the future of the Protocol, the Government has an obligation, in the meantime, to set out the full implications of EU legislation applying to Northern Ireland under the Protocol as it currently operates.**
79. *We therefore urge the Government to ensure that EMs and correspondence set out, as a minimum:*
- (1) *The views (where these are available) of the Northern Ireland Executive and those of the Scottish and Welsh Governments*

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33 Letter from Rt Hon Lord Frost CMG, Minister of State, Cabinet Office, to Lord Jay of Ewelme, Chair of the Sub-Committee on the Protocol on Ireland/Northern Ireland, 6 August 2021: <https://committees.parliament.uk/publications/7371/documents/77158/default/>

34 See for instance ministerial letters dated 29 November 2021 on EM 12183/21: Proposal for a Directive of the European Parliament and of the Council amending Directive 2014/53/EU on the harmonisation of the laws of the Member States relating to the making available on the market of radio equipment; dated 13 December 2021 on Unnumbered EM: Commission Implementing Decision (EU) 2021/867 of 28 May 2021 on harmonised standards for toys drafted in support of Directive 2009/48/EC of the European Parliament and of the Council; dated 13 January 2022 on Unnumbered EM: Commission Regulation (EU) 2021/850 of 26 May 2021 amending and correcting Annex II and amending Annexes III, IV and VI to Regulation (EC) No 1223/2009 of the European Parliament and of the Council on cosmetic products; and dated 1 February 2022 on EM 10872/21: Proposal for a Council Directive restructuring the Union framework for the taxation of energy products and electricity (recast).

35 Letter from Lord Jay of Ewelme, Chair of the Sub-Committee on the Protocol on Ireland/Northern Ireland, to Rt Hon Elizabeth Truss MP, Secretary of State for Foreign, Commonwealth and Development Affairs, 17 January 2022: <https://committees.parliament.uk/publications/8525/documents/86267/default/>

*on each proposal, any concerns that they expressed, and what action has been taken in response.*<sup>36</sup>

- (2) *The Government's initial assessment of the merits or otherwise of EU regulatory proposals.*
- (3) *Whether the proposals will lead to regulatory divergence between Great Britain and Northern Ireland, and what practical implications this will have, in particular in terms of the movement of goods and products a) between Great Britain and Northern Ireland, and b) between Northern Ireland and Great Britain in the context of the Government's statutory commitment to unfettered access for Northern Ireland goods on the UK market.*
- (4) *What steps, if any, the Government plans to address such regulatory divergence, for instance through the introduction of equivalent measures in England or Great Britain (according to the extent of the Government's powers of competence in each case), and the timetable for doing so.*
- (5) *What factors the Government is taking into account in deciding whether or not to introduce equivalent measures, and its reason for not doing so if it is choosing not to.*
- (6) *The impact, if any, of the proposals for Northern Ireland's participation in the UK's Free Trade Agreements.*
- (7) *The relevance and impact of the proposals for Northern Ireland's participation in UK Common Frameworks.*
- (8) *Whether EU legislation directly applies in Northern Ireland, or whether and how it will be implemented in domestic law.*
- (9) *What consultation, either by the Government or the Northern Ireland Executive, has taken place with key stakeholders (such as businesses based in or trading with Northern Ireland) on the impact of the EU legislation, and whether a regulatory impact assessment has been undertaken.*

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<sup>36</sup> In the absence of the Northern Ireland Executive, the Committee reserves the right to ask the Government to seek, and provide us with a summary of, the views of Ministers and political parties represented in the Northern Ireland Assembly.

## CHAPTER 4: THE EU'S OBLIGATIONS

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### EU legislative scrutiny and the democratic deficit

80. This report has described the process by which the Committee undertakes its scrutiny of EU legislation under the Protocol as it currently operates. It does so against the backdrop of continuing discussions between the UK and the EU over the operation of the Protocol, and in the context of the Government's proposals in its July 2021 Command Paper *Northern Ireland Protocol: the way forward* for a dual regulatory regime in Northern Ireland to reduce the volume and scope of EU rules applying to it.<sup>37</sup> The Committee's analysis of those discussions is being undertaken separately and is therefore beyond the immediate scope of this report. Our analysis is also without prejudice to the views of individual members either on the Protocol itself, or on the case for or against the continued direct application on a dynamic basis to Northern Ireland of EU law as set out in the Annexes to the Protocol.
81. That said, in our July 2021 introductory report, we noted the Government's acknowledgement at the time of the agreement of the Protocol in October 2019 that the creation of a "zone of regulatory compliance across Northern Ireland and the EU ... will mean Northern Ireland will be, in significant sectors of its economy, governed by laws in which it has no say. That is clearly a significant democratic problem."<sup>38</sup> The Committee's report cited evidence from several witnesses that this amounted to a fundamental democratic deficit at the heart of the Protocol.<sup>39</sup> This led the Committee to draw attention to "the pervasive sense that the Protocol creates a democratic deficit, in that significant aspects of EU law with wide-ranging political and economic implications apply to Northern Ireland subject neither to UK Government participation in the EU institutions, nor to consent from parliamentarians either at Westminster or Stormont."<sup>40</sup>
82. The Committee took further evidence on this issue during the autumn, including through a seminar with key stakeholders, including Northern Ireland business and civic society representatives, academics, and parliamentarians from Westminster, the Northern Ireland Assembly, the Irish Oireachtas and the European Parliament. In a letter to Lord Frost on 16 December,<sup>41</sup> we cited evidence put to us that "there is a problem in principle" with a democratic deficit under the Protocol,<sup>42</sup> that this problem was "absolutely obvious, and the current Government were well aware of it when they signed

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37 HM Government, *Northern Ireland Protocol: the way forward*, CP 502, 21 July 2021: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1008451/CCS207\\_CCS0721914902-005\\_Northern\\_Ireland\\_Protocol\\_Web\\_Accessible\\_1.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1008451/CCS207_CCS0721914902-005_Northern_Ireland_Protocol_Web_Accessible_1.pdf) [accessed 17 February 2022]

38 HM Government, *Explanatory Note: UK Proposals for an amended protocol on Ireland/Northern Ireland* (2 October 2019): [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/836116/Explanatory\\_Note\\_Accessible.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/836116/Explanatory_Note_Accessible.pdf) [accessed 17 February 2022]

39 *Report from the Sub-Committee on the Protocol on Ireland/Northern Ireland: Introductory report*, paras 182–206

40 *Ibid.*, p 79. In this respect, so far as trade in goods is concerned, Northern Ireland is in a similar position to the three European Free Trade Association members of the European Economic Area (Iceland, Norway and Liechtenstein), although in the case of the Protocol relevant EU law applies only to Northern Ireland, not to the UK as a whole.

41 Letter from Lord Jay of Ewelme, Chair of the Sub-Committee on the Protocol on Ireland/Northern Ireland, to Rt Hon Lord Frost CMG, Minister of State, Cabinet Office, 16 December 2021: <https://committees.parliament.uk/publications/8298/documents/84463/default/>

42 Oral evidence taken before the Sub-Committee on the Protocol on Ireland/Northern Ireland on 27 October 2021 (Session 2021–22), [Q 8](#) (Professor Ronan McCrea)

the Protocol”,<sup>43</sup> and that “Assembly votes on the overall operation of the Protocol are not the same as active involvement in law making.”<sup>44</sup>

*A case study*

83. As the case study set out in Box 5 illustrates, one particular concern highlighted in our scrutiny work is that EU legislation applying under the Protocol does not pay sufficient regard in its application to the particular circumstances of Northern Ireland.

**Box 5: EM 10309/21: Commission Delegated Regulation (EU) .../ ... of 23 June 2021 supplementing Regulation (EU) 2019/2144 of the European Parliament and of the Council by laying down detailed rules concerning the specific test procedures and technical requirements for the type-approval of motor vehicles with regard to their intelligent speed assistance systems and for the type-approval of those systems as separate technical units and amending Annex II to that Regulation**

The EM on this Delegated Regulation, from Baroness Vere of Norbiton, Parliamentary Under Secretary, Department for Transport, noted:

“Manufacturers of vehicles that are sold in Northern Ireland will be required to comply with these Regulations once they are in force. The proposed regulation on speed warning systems includes an Annex showing speed limit signs used in the EU and EEA but does not include Northern Ireland’s speed limit signs. This might result in some speed warning systems not functioning in the expected manner when being used in Northern Ireland.”<sup>45</sup>

In its letter to the Minister dated 14 October 2021, the Committee expressed concern that, notwithstanding positive dialogue between the Government and the Commission in an attempt to resolve the issue, Northern Ireland speed limit signs were not included by the Commission in the first place. The Committee asked what steps the Government was taking to remind the Commission of its responsibility to take into account the specific circumstances of Northern Ireland in the application of EU legislation under the Protocol.

The Minister replied on 29 October stating that she shared the Committee’s concerns, and that departmental officials continued to remind the Commission to “consider the need for specific provisions for Northern Ireland if this is relevant”.

**Ensuring that EU legislation takes account of the specific circumstances of Northern Ireland**

84. Various proposals have been put forward to identify ways in which EU legislation can take account of the specific circumstances of Northern Ireland.

43 Oral evidence taken before the Sub-Committee on the Protocol on Ireland/Northern Ireland on 1 December 2021 (Session 2021–22), [Q 10](#) (George Peretz QC)

44 [Written evidence from Dr Sylvia de Mars and Mr Colin Murray](#)

45 Cabinet Office, EM 10309/21 COMMISSION DELEGATED REGULATION (EU) .../... of 23.6.2021 supplementing Regulation (EU) 2019/2144 of the European Parliament and of the Council by laying down detailed rules concerning the specific test procedures and technical requirements for the type-approval of motor vehicles with regard to their intelligent speed assistance systems and for the type-approval of those systems as separate technical units and amending Annex II to that Regulation: [https://europeanmemoranda.cabinetoffice.gov.uk/files/2021/08/210727\\_EM\\_on\\_amendments\\_to\\_Regulation\\_2018-858\\_+\\_2019-2144\\_Signed1.pdf](https://europeanmemoranda.cabinetoffice.gov.uk/files/2021/08/210727_EM_on_amendments_to_Regulation_2018-858_+_2019-2144_Signed1.pdf) [accessed 17 February 2022]

We set out in Chapter 2 our own efforts to engage with the EU as regards our scrutiny of EU legislation. We also described the proposal of the House of Commons Northern Ireland Affairs Committee that “each proposed EU legal act include a recital stating whether it engages the UK’s obligations under the Protocol: and the explanatory memorandum accompanying the proposed act set out the basis on which the European Commission considers that it should apply in Northern Ireland.”<sup>46</sup>

85. In its July 2021 Command Paper *Northern Ireland Protocol: the way forward*, the Government argued:

“We should also take the opportunity to ensure that in any areas where EU law is applied or replicated in Northern Ireland under a rebalanced settlement, there are more robust arrangements to ensure that, as rules are developed, they take account of those in Northern Ireland to whom they apply (including the Northern Ireland Assembly and Executive, and wider Northern Ireland civic society and business).”<sup>47</sup>

86. The Commission responded in October 2021 with a ‘non-paper’ on ‘Engagement with Northern Ireland stakeholders and authorities’, which acknowledged the “real interest in Northern Ireland for greater transparency and for Union measures to take account of implications for Northern Ireland.” It proposed six strands for further action:

- (1) Increasing transparency: the Commission proposed a website showing EU legislation applicable to Northern Ireland, which could also include information on pending public consultations for relevant measures.
- (2) Enhancing the role of the Joint Consultative Working Group as a forum for information exchange and consultation with Northern Ireland authorities, including on EU measures relevant to the Protocol.
- (3) Fora providing for structured dialogue between EU institution and UK experts with Northern Ireland authorities and stakeholders, in order to establish a “dedicated space for dialogue between Northern Ireland stakeholders and experts in certain fields (e.g. customs, sanitary and phytosanitary measures, and environment) to allow for the views of Northern Ireland stakeholders to be expressed” and for a better mutual understanding of EU rules and their impact on Northern Ireland.
- (4) Structured dialogue between Northern Ireland business and civil society stakeholders and the UK and EU co-chairs of the Withdrawal Agreement Joint Committee.
- (5) Participation of stakeholders in meetings of the Ireland/Northern Ireland Specialised Committee (whose role, as set out in Article 14 of the Protocol, is to facilitate the implementation and application of the Protocol, to consider matters relevant to North-South cooperation and Article 2 of the Protocol (on rights of individuals), to “discuss any point raised by the Union or the United Kingdom that is of relevance to this Protocol and gives rise to a difficulty”, and to make recommendations

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46 Letter from Simon Hoare MP, Chair of the House of Commons Northern Ireland Affairs Committee, to Maroš Šefčovič, Vice-President of the European Commission, 9 June 2021: <https://committees.parliament.uk/publications/6862/documents/72447/default/>

47 *Northern Ireland Protocol: the way forward*, p 21

to the Withdrawal Agreement Joint Committee (to which it reports) as regards the functioning of the Protocol).

- (6) Stronger links between the Northern Ireland Assembly and the EU-UK Parliamentary Partnership Assembly.<sup>48</sup>

Further details are awaited on how and when these proposals will be taken forward.

87. In our letter to Lord Frost on 16 December, we set out various proposals put to us as means to enhance Northern Ireland's influence over EU legislation applying to it under the Protocol.<sup>49</sup> These included:

- (1) An early warning system to allow specific issues relating to Northern Ireland in relation to EU legislation to be flagged up and taken into account.
- (2) A willingness by the EU to show flexibility in the application of EU law to Northern Ireland, where its particular circumstances need to be taken into account.
- (3) Structured engagement by the Northern Ireland Executive and other stakeholders in the relevant deliberations of the Withdrawal Agreement Joint Committee and other UK-EU governance bodies.
- (4) Providing a means for the Northern Ireland Assembly to express a collective view or decision on EU legislation, for instance via pre-legislative consultation or a Legislative Consent Mechanism.
- (5) Enhanced engagement, including through statutory consultation and impact assessments, with business and other stakeholders about the implications of EU legislation applying to Northern Ireland.

### Conclusions

88. **We reiterate the conclusion of our introductory report that as a consequence of Brexit, the Protocol, negotiated by the Government and the EU and implemented in the UK via the European Union (Withdrawal Agreement) Act 2020, has created a democratic deficit, in that EU law as set out in the Annexes to the Protocol applies to Northern Ireland on a dynamic basis, subject neither to UK Government participation in the EU institutions, nor to consent from parliamentarians either at Westminster or Stormont. While steps to ensure parliamentary scrutiny of such legislation and to enhance Northern Ireland's voice and influence in relation to their application are necessary, they are not themselves sufficient to resolve the issues to which the democratic deficit gives rise.**
89. **We welcome the proposals in the EU's October 2021 non-paper on 'Engagement with Northern Ireland stakeholders and authorities', as far as they go. Yet it needs to do more. We therefore urge the EU to enhance transparency around the application of EU law to**

48 *Protocol on Ireland/Northern Ireland: Non-Paper: Engagement with Northern Ireland stakeholders and authorities*

49 Letter from Lord Jay of Ewelme, Chair of the Sub-Committee on the Protocol on Ireland/Northern Ireland, to Rt Hon Lord Frost CMG, Minister of State, Cabinet Office, 16 December 2021: <https://committees.parliament.uk/publications/8298/documents/84463/default/>

**Northern Ireland, take account of the impact of EU law on Northern Ireland's particular circumstances, and engage with Northern Ireland businesses, civic society and political institutions at an early stage in order to give them a voice concerning the application and implications of such legislation.**

90. *We endorse the proposal by the House of Commons Northern Ireland Affairs Committee that each proposed EU legal act should include a recital stating whether it engages the UK's obligations under the Protocol, and that accompanying explanatory material should set out the basis on which the European Commission considers that it should apply in Northern Ireland. This material should also explain how the EU has taken into account Northern Ireland's particular circumstances in the application of the legislation in question.*
91. **In the context of the ongoing discussions between the UK and the EU, and as the Preamble to the Protocol acknowledges, all sides have a continuing obligation to ensure that the operation of the Protocol, and the dynamic application to Northern Ireland of EU law listed in the Protocol's Annexes, takes into account the delicate balance between North-South and East-West relations as provided for under the Belfast/Good Friday Agreement, and to demonstrate how it is compliant with that Agreement in all its Strands.**

## **SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS**

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Below is a list of all of the Committee's conclusions and recommendations (recommendations appear in italics).

### **The scrutiny work of the Committee**

1. Given the socio-economic and political implications of the Protocol for Northern Ireland, in particular in the context of its relationship with the rest of the UK, EU legislation applying to Northern Ireland must be subject to detailed parliamentary scrutiny. Scrutiny of such documents is, and will continue to be, a key priority of the Protocol Sub-Committee's work. (Paragraph 18)
2. Given the implications for Northern Ireland and its relationship with the UK, we stress the continuing importance of effective scrutiny of EU legislative proposals by Committees in the House of Commons and the Northern Ireland Assembly. In that context we welcome the approach to Assembly scrutiny proposed by its Chairpersons' Liaison Group, which would improve transparency and strengthen the ability of the Assembly to carry out oversight of relevant legislative developments in relation to devolved matters falling within the scope of the Protocol. In that context, we stress in particular the importance of timely provision of necessary information to Assembly Committees, including Explanatory Memoranda, either by the Government or the Northern Ireland Executive. (Paragraph 35)
3. We will continue to work closely with these Committees, drawing their attention to the findings of our scrutiny work. Given our mutual interest in these issues, we would welcome opportunities for enhanced cooperation in our scrutiny work, and we stress our commitment to continued inter-parliamentary dialogue in that context. (Paragraph 36)
4. We also welcome the scrutiny work relevant to the Protocol being undertaken by other Committees of the House, including the Common Frameworks Scrutiny Committee, the International Agreements Committee and the Secondary Legislation Scrutiny Committee. We will continue to work closely with those Committees. In that context, we note that the work of the Common Frameworks Scrutiny Committee will conclude in July 2022 and we hope that rigorous parliamentary scrutiny of the Common Frameworks Programme will be continued in the House of Lords. (Paragraph 37)
5. The Committee has consistently highlighted in its correspondence with Ministers the importance of engagement with key stakeholders who stand to be affected by EU legislation applying to Northern Ireland under the Protocol. We welcome the feedback that we have received from such stakeholders on a variety of legislative proposals. We will continue to invite such feedback in the months ahead, and to share with the Government the views and concerns put to us. (Paragraph 43)
6. In Chapter 4, we explore the EU's obligations in relation to the application to Northern Ireland of EU legislation within the scope of the Protocol. In that context, we will seek to enhance our engagement with the EU institutions, including through dialogue with the EU Ambassador to the UK, in relation to our scrutiny of EU legislation applying to Northern Ireland under the Protocol. (Paragraph 46)

### The Government's scrutiny obligations

7. We note that the Government's stated intention in pursuing the particular form of Brexit it has chosen is to give the opportunity for the UK (in respect of Great Britain) to diverge from EU Single Market rules. Therefore in view of the continued application of EU law as set out in the Annexes to the Protocol on a dynamic basis to Northern Ireland, and the potential implications for Northern Ireland and its relationship with the rest of the UK, we welcome the Government's continuing commitment to deposit in Parliament and submit Explanatory Memoranda on EU proposals which amend or replace existing proposals within the scope of the Protocol on Ireland/Northern Ireland. (Paragraph 51)
8. Given the potential implications for regulatory divergence between Northern Ireland and the rest of the UK, we also welcome the Government's continuing commitment to consult the Committee on the deposit of Commission Delegated and Implementing Acts (tertiary legislation). The Committee will continue to request deposit of such documents where issues of regulatory divergence arise. (Paragraph 52)
9. We welcome as far as it goes the Government's commitment to deposit in Parliament new EU legislation within the scope of the Protocol which does not amend or replace EU acts listed in the Annexes to the Protocol. Nevertheless, we urge the Government to go further. (Paragraph 58)
10. *In particular, any new EU legislation within the scope of the Protocol of which the EU has informed the UK should automatically be deposited in Parliament at that stage, with the Explanatory Memorandum providing, without prejudice to the Government's negotiating position, as much information as possible on the addition of such legislation to the Annexes to the Protocol.* (Paragraph 59)
11. *We invite the Government to set out:*
  - (1) *each piece of new EU legislation within the scope of the Protocol which does not amend or replace EU acts listed in the Annexes to the Protocol of which it has been notified by the EU since the Protocol came into force; and*
  - (2) *whether in each case the document was deposited and an EM produced.* (Paragraph 60)
12. *In view of the importance of Article 2 of the Protocol, we invite the Government to confirm that it will deposit in Parliament and provide Explanatory Memoranda on draft EU proposals which amend or replace the Directives listed in Annex 1 to the Protocol, as well as other EU legislation relevant to the provisions of Article 2.* (Paragraph 65)
13. *We also invite the Government to set out how it intends to ensure that the Equality Commission for Northern Ireland and the Northern Ireland Human Rights Commission, as well as Committees in Westminster and the Northern Ireland Assembly, are kept informed of wider developments in EU law relevant to Article 2.* (Paragraph 66)
14. *We urge the Government to ensure that any EU legislative proposals not falling within the definition of documents that the Government has committed to deposit, but which nevertheless have significant implications for Northern Ireland in the context of the Protocol, are promptly deposited in Parliament, and that scrutiny*

*Committees are provided with an Explanatory Memorandum as soon as possible. (Paragraph 68)*

15. *We note that the EU has recently indicated flexibility regarding the confidentiality of the discussions of the Joint Consultative Working Group. In view of this, we once again urge the Government to establish formal mechanisms for prompt communication to Parliament (and to other stakeholders) of information received from the EU in the Joint Consultative Working Group on planned or adopted EU legislation falling within the scope of the Protocol. In that context, we would welcome the opportunity to engage directly with the Joint Consultative Working Group and other UK-EU governance structures regarding the findings of the Committee's scrutiny work. (Paragraph 71)*
16. *Although the quality of some Government EMs and correspondence on EU legislation relevant to Northern Ireland under the Protocol has improved, others have remained variable and, in some cases, frankly poor. Notwithstanding the ongoing discussions with the EU over the future of the Protocol, the Government has an obligation, in the meantime, to set out the full implications of EU legislation applying to Northern Ireland under the Protocol as it currently operates. (Paragraph 78)*
17. *We therefore urge the Government to ensure that EMs and correspondence set out, as a minimum:*
  - (1) *The views (where these are available) of the Northern Ireland Executive and those of the Scottish and Welsh Governments on each proposal, any concerns that they expressed, and what action has been taken in response.*
  - (2) *The Government's initial assessment of the merits or otherwise of EU regulatory proposals.*
  - (3) *Whether the proposals will lead to regulatory divergence between Great Britain and Northern Ireland, and what practical implications this will have, in particular in terms of the movement of goods and products a) between Great Britain and Northern Ireland, and b) between Northern Ireland and Great Britain in the context of the Government's statutory commitment to unfettered access for Northern Ireland goods on the UK market.*
  - (4) *What steps, if any, the Government plans to address such regulatory divergence, for instance through the introduction of equivalent measures in England or Great Britain (according to the extent of the Government's powers of competence in each case), and the timetable for doing so.*
  - (5) *What factors the Government is taking into account in deciding whether or not to introduce equivalent measures, and its reason for not doing so if it is choosing not to.*
  - (6) *The impact, if any, of the proposals for Northern Ireland's participation in the UK's Free Trade Agreements.*
  - (7) *The relevance and impact of the proposals for Northern Ireland's participation in UK Common Frameworks.*
  - (8) *Whether EU legislation directly applies in Northern Ireland, or whether and how it will be implemented in domestic law.*
  - (9) *What consultation, either by the Government or the Northern Ireland Executive, has taken place with key stakeholders (such as businesses based in*

*or trading with Northern Ireland) on the impact of the EU legislation, and whether a regulatory impact assessment has been undertaken. (Paragraph 79)*

### **The EU's obligations**

18. We reiterate the conclusion of our introductory report that as a consequence of Brexit, the Protocol, negotiated by the Government and the EU and implemented in the UK via the European Union (Withdrawal Agreement) Act 2020, has created a democratic deficit, in that EU law as set out in the Annexes to the Protocol applies to Northern Ireland on a dynamic basis, subject neither to UK Government participation in the EU institutions, nor to consent from parliamentarians either at Westminster or Stormont. While steps to ensure parliamentary scrutiny of such legislation and to enhance Northern Ireland's voice and influence in relation to their application are necessary, they are not themselves sufficient to resolve the issues to which the democratic deficit gives rise. (Paragraph 88)
19. We welcome the proposals in the EU's October 2021 non-paper on 'Engagement with Northern Ireland stakeholders and authorities', as far as they go. Yet it needs to do more. We therefore urge the EU to enhance transparency around the application of EU law to Northern Ireland, take account of the impact of EU law on Northern Ireland's particular circumstances, and engage with Northern Ireland businesses, civic society and political institutions at an early stage in order to give them a voice concerning the application and implications of such legislation. (Paragraph 89)
20. *We endorse the proposal by the House of Commons Northern Ireland Affairs Committee that each proposed EU legal act should include a recital stating whether it engages the UK's obligations under the Protocol, and that accompanying explanatory material should set out the basis on which the European Commission considers that it should apply in Northern Ireland. This material should also explain how the EU has taken into account Northern Ireland's particular circumstances in the application of the legislation in question. (Paragraph 90)*
21. In the context of the ongoing discussions between the UK and the EU, and as the Preamble to the Protocol acknowledges, all sides have a continuing obligation to ensure that the operation of the Protocol, and the dynamic application to Northern Ireland of EU law listed in the Protocol's Annexes, takes into account the delicate balance between North-South and East-West relations as provided for under the Belfast/Good Friday Agreement, and to demonstrate how it is compliant with that Agreement in all its Strands. (Paragraph 91)

## APPENDIX 1: LIST OF MEMBERS AND DECLARATIONS OF INTEREST

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### Members

Lord Dodds of Duncairn  
 Lord Empey  
 Lord Godson  
 Baroness Goudie  
 Lord Hain  
 Lord Hannan of Kingsclere  
 Lord Jay of Ewelme (Chair)  
 Baroness O’Loan  
 Baroness Ritchie of Downpatrick  
 Lord Thomas of Gresford

### Declarations of interest

Lord Dodds of Duncairn  
*No relevant interests declared*

Lord Empey  
*Member, British-Irish Parliamentary Assembly Committee A (Sovereign Matters)*

Lord Godson  
*Director, Policy Exchange*

Baroness Goudie  
*No relevant interests declared*

Lord Hain  
*Secretary of State for Northern Ireland May 2005–June 2007*

Lord Hannan of Kingsclere  
*No relevant interests declared*

Lord Jay of Ewelme (Chair)  
*Trustee (non-executive director), Thomson Reuters Founders Share Company*  
*Chair, European Policy Forum Advisory Council*  
*Member, European & International Analysts Group (a group that prepares briefing papers on European Affairs)*

Baroness O’Loan  
*No relevant interests declared*

Baroness Ritchie of Downpatrick  
*Member, House of Lords Common Frameworks Scrutiny Committee*  
*Member, Board of Co-operation Ireland (non-remunerated)*  
*Member, Advisory Board of PeopleHawk—online digital platform for human resources based in Belfast with international connections*  
*Associate Member, British-Irish Parliamentary Assembly Committee C (Economic)*

Lord Thomas of Gresford  
*No relevant interests declared*

The following Members of the European Affairs Committee attended the meeting at which the report was approved:

The Earl of Kinnoull (Chair)  
 Baroness Couttie  
 Lord Faulkner of Worcester  
 Lord Hannay of Chiswick  
 Lord Jay of Ewelme  
 Lord Lamont of Lerwick  
 Lord Liddle  
 Lord Purvis of Tweed  
 Baroness Scott of Needham Market  
 Viscount Trenchard  
 Lord Tugendhat  
 Lord Wood of Anfield

During consideration of the report the following Members declared an interest:

Lord Hannay of Chiswick  
*Member, Advisory Board of Centre for European Reform*  
*Member, European Leadership Network*  
*Chair, European & International Analysts Group*

A full list of Members' interests can be found in the Register of Lords' Interests: <https://members.parliament.uk/members/lords/interests/register-of-lords-interests/>

**APPENDIX 2: LIST OF EU LEGISLATIVE PROPOSALS SUBJECT TO DETAILED SCRUTINY BY THE SUB-COMMITTEE ON THE PROTOCOL ON IRELAND/NORTHERN IRELAND: APRIL 2021–MARCH 2022**

<b>Date first scrutinised by the Sub-Committee</b>	<b>EU legislative proposal</b>
19 May 2021	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the resilience of critical entities (COM(20) 829)
19 May 2021	COMMISSION REGULATION (EU) 2021/382 of 3 March 2021 amending the Annexes to Regulation (EC) No 852/2004 of the European Parliament and of the Council on the hygiene of foodstuffs as regards food allergen management, redistribution of food and food safety culture (Unnumbered)
19 May 2021	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EU) 2017/625 as regards official controls on animals and products of animal origin exported from third countries to the Union to ensure compliance with the prohibition of certain uses of antimicrobials (6916/21)
19 May 2021	COMMISSION IMPLEMENTING REGULATION (EU) 2021/419 of 9 March 2021 amending Implementing Regulation (EU) 2018/2019 as regards certain plants for planting of Jasminum polyanthum Franchet originating in Israel and adapting Combined Nomenclature codes for Ullucus tuberosus and amending Implementing Regulation (EU) 2020/1213 as regards the phytosanitary measures for the introduction of those plants for planting into the Union territory (Unnumbered)
19 May 2021	COMMISSION DELEGATED REGULATION (EU) .../ ... of 11.3.2021 amending, for the purposes of its adaptation to technical and scientific progress, Part 3 of Annex VI to Regulation (EC) No 1272/2008 of the European Parliament and of the Council on classification, labelling and packaging of substances and mixtures (7007/21)
26 May 2021 (having previously been scrutinised by the EU Committee)	COMMISSION DELEGATED REGULATION (EU) ... / ... of 20.11.2020 amending Delegated Regulation (EU) 2015/2446 as regards the time-limits for lodging entry summary declarations and pre-departure declarations in case of transport by sea from and to the United Kingdom of Great Britain and Northern Ireland, the Channel Islands and the Isle of Man (C(20) 8072)

<b>Date first scrutinised by the Sub-Committee</b>	<b>EU legislative proposal</b>
26 May 2021 (having previously been scrutinised by the EU Committee)	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the application of Union tariff rate quotas and other import quotas (COM(20) 375)
26 May 2021 (having previously been scrutinised by the EU Committee)	Proposal for a COUNCIL DIRECTIVE amending Directive 2006/112/EC on the common system of value added tax as regards the identification of taxable persons in Northern Ireland (COM(20) 360)
9 June 2021	Draft COMMISSION REGULATION (EU) amending Annexes II and III to Regulation (EC) No 1223/2009 of the European Parliament and of the Council on cosmetic products (6871/21)
9 June 2021	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on machinery products (8095/21)
22 July 2021 (having previously been scrutinised by the EU Committee)	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL concerning batteries and waste batteries, repealing Directive 2006/66/EC and amending Regulation (EU) No 2019/1020 (13944/20)
14 July 2021	COMMISSION DELEGATED REGULATION (EU) .../ ... of 19.4.2021 supplementing Regulation (EU) 2019/2144 of the European Parliament and of the Council by laying down detailed rules concerning the alcohol interlock installation facilitation in motor vehicles and amending Annex II to that Regulation (7997/21)
14 July 2021	COMMISSION DELEGATED REGULATION (EU) .../ ... of 23.4.2021 supplementing Regulation (EU) 2019/2144 of the European Parliament and of the Council by laying down detailed rules concerning the specific test procedures and technical requirements for the type-approval of motor vehicles with regard to their driver drowsiness and attention warning systems and amending Annex II to that Regulation (8164/21)
14 July 2021	COMMISSION IMPLEMENTING REGULATION 2021/646 of 19 April 2021 laying down rules for the application of Regulation 2019/2144 as regards uniform procedures and technical specifications for the type-approval of motor vehicles with regard to their emergency lane-keeping systems (Unnumbered)

<b>Date first scrutinised by the Sub-Committee</b>	<b>EU legislative proposal</b>
14 July 2021	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL laying down harmonised rules on Artificial Intelligence (Artificial Intelligence Act) and amending certain Union legislative acts (8115/21)
14 July 2021	COMMISSION DELEGATED REGULATION (EU) .../ ... of 12.5.2021 supplementing Regulation (EU) 2019/787 of the European Parliament and of the Council with rules concerning applications for registration of geographical indications of spirit drinks, amendments to product specifications, cancellation of the registration and the register (8793/21)
14 July 2021	COMMISSION IMPLEMENTING REGULATION (EU) 2021/414 of 8 March 2021 on technical arrangements for developing, maintaining and employing electronic systems for the exchange and storage of information under Regulation (EU) NO 952/2013 of the European Parliament and of the Council (Unnumbered)
14 July 2021	COMMISSION IMPLEMENTING REGULATION (EU) 2021/686 OF 23 April 2021 authorising a health claim made on foods, other than those referring to the reduction of disease risk and to children's development and health, and amending Regulation (EU) No 432/2021 (Unnumbered)
22 July 2021	COMMISSION IMPLEMENTING DECISION (EU) 2021/845 of 26 May 2021 amending Implementing Decision (EU) 2019/1202 as regards determination of the spontaneous ignition behaviour of dust accumulations (Unnumbered)
22 July 2021	COMMISSION REGULATION (EU) .../... of XXX amending Annex IV to Regulation (EC) No 999/2001 of the European Parliament and of the Council as regards the prohibition to feed non-ruminant farmed animals, other than fur animals, with protein derived from animals (8537/21)
22 July 2021	COMMISSION DELEGATED REGULATION (EU) ... / ... of 20.5.2021 amending Annex X to Regulation (EU) 2018/858 of the European Parliament and of the Council as regards the standardised access to vehicle on-board diagnostics information and repair and maintenance information, and the requirements and procedures for access to vehicle security information (8978/21)

<b>Date first scrutinised by the Sub-Committee</b>	<b>EU legislative proposal</b>
22 July 2021	COMMISSION DELEGATED REGULATION (EU) ... / ... of 4.6.2021 amending Delegated Regulation (EU) 2017/654 supplementing Regulation (EU) 2016/1628 of the European Parliament and of the Council with regard to the acceptance of approvals granted in accordance with Regulations Nos 49 and 96 of the Economic Commission for Europe of the United Nations (UNECE) (9534/21)
8 September 2021	COMMISSION REGULATION (EU) 2021/850 of 26 May 2021 amending and correcting Annex II and amending Annexes III, IV and VI to Regulation (EC) No 1223/2009 of the European Parliament and of the Council on cosmetic products (unnumbered)
8 September 2021	COMMISSION IMPLEMENTING DECISION (EU) 2021/867 of 28 May 2021 on harmonised standards for toys drafted in support of Directive 2009/48/EC of the European Parliament and of the Council (Unnumbered)
13 October 2021	COMMISSION DELEGATED REGULATION (EU) ... / ... of 23.6.2021 amending Annexes II and VII to Regulation (EU) 2018/858 of the European Parliament and of the Council (10165/21)
13 October 2021	COMMISSION DELEGATED REGULATION (EU) ... / ... of 23.6.2021 supplementing Regulation (EU) 2019/2144 of the European Parliament and of the Council by laying down detailed rules concerning the specific test procedures and technical requirements for the type-approval of motor vehicles with regard to their intelligent speed assistance systems and for the type-approval of those systems as separate technical units and amending Annex II to that Regulation (10309/21)
13 October 2021	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive 2003/87/EC establishing a system for greenhouse gas emission allowance trading within the Union, Decision (EU) 2015/1814 concerning the establishment and operation of a market stability reserve for the Union greenhouse gas emission trading scheme and Regulation (EU) 2015/757 (10875/21)
13 October 2021	COMMISSION REGULATION (EU) .../... of 23.7.2021 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 (C(2021) 5336)

<b>Date first scrutinised by the Sub-Committee</b>	<b>EU legislative proposal</b>
13 October 2021	Proposal for a COUNCIL DIRECTIVE restructuring the Union framework for the taxation of energy products and electricity (recast) (10872/21)
13 October 2021	COMMISSION DELEGATED REGULATION (EU) .../ ... of 2.8.2021 amending Implementing Regulation (EU) No 543/2011 as regards marketing standards in the fruit and vegetables sector (C(2021) 5584)
13 October 2021	COMMISSION DELEGATED REGULATION (EU) .../ ... of 14.7.2021 supplementing Regulation (EU) No 576/2013 of the European Parliament and of the Council with regard to rules for non-commercial movements of pet birds into a Member State from a territory or a third country (11019/21)
13 October 2021	COMMISSION DELEGATED REGULATION (EU) .../ ... of 14.7.2021 amending and correcting Delegated Regulation (EU) 2020/688 supplementing Regulation (EU) 2016/429 of the European Parliament and of the Council, as regards animal health requirements for movements within the Union of terrestrial animals and hatching eggs (10894/21)
27 October 2021	COMMISSION REGULATION (EU) 2021/1317 of 9 August 2021 amending Regulation (EC) No 1881/2006 as regards maximum levels of lead in certain foodstuffs (Unnumbered)
27 October 2021	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on general product safety, amending Regulation (EU) No 1025/2012 of the European Parliament and of the Council, and repealing Council Directive 87/357/EEC and Directive 2001/95/EC of the European Parliament and of the Council (10381/21)
27 October 2021	COMMISSION IMPLEMENTING REGULATION (EU) 2021/1280 of 2 August 2021 as regards measures on good distribution practice for active substances used as starting materials in veterinary medicinal products in accordance with Regulation (EU) 2019/6 of the European Parliament and of the Council (Unnumbered)
24 November 2021	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive 2014/53/EU on the harmonisation of the laws of the Member States relating to the making available on the market of radio equipment (12183/21)

<b>Date first scrutinised by the Sub-Committee</b>	<b>EU legislative proposal</b>
24 November 2021	COMMISSION IMPLEMENTING REGULATION (EU) 2021/1064 of 28 June 2021 amending Implementing Regulation (EU) 2021/520 with regard to the configuration of the animal identification code for the traceability of certain kept terrestrial animals for the United Kingdom in respect of Northern Ireland (Unnumbered)
24 November 2021	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing a carbon border adjustment mechanism (10871/21)
15 December 2021	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on applying a generalised scheme of tariff preferences and repealing Regulation (EU) No 978/2012 of the European Parliament and of the Council (12184/21)
15 December 2021	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Annexes IV and V to Regulation (EU) 2019/1021 of the European Parliament and of the Council on persistent organic pollutants (COM(21) 656)
12 January 2022	COMMISSION DELEGATED REGULATION (EU) .../ ... of 21.10.2021 amending Delegated Regulation (EU) 2020/692 as regards additional requirements for the entry into the Union of certain ungulates which originate in the Union, are moved to a third country or territory to participate in events, exhibitions, displays and shows and are then moved back to the Union (C(2021) 7461)
12 January 2022	COMMISSION REGULATION (EU) 2021/1891 of 26 October 2021 amending Annexes XIV and XV to Regulation (EU) No 142/2011 as regards imports into and transit through the Union of animal by-products and derived products (C(2021) 7567)

<b>Date first scrutinised by the Sub-Committee</b>	<b>EU legislative proposal</b>
12 January 2022	COMMISSION IMPLEMENTING REGULATION (EU) 2021/1469 of 10 September 2021 amending Implementing Regulation (EU) 2020/2235 as regards the addition of a new model certificate for products of animal origin that originate in the Union, are moved to a third country or territory and moved back to the Union after unloading, storage and reloading in that third country or territory, amending Implementing Regulation (EU) 2021/404 as regards the list of third countries authorised for entry into the Union of products of animal origin originated in and returning to the Union from a third country or territory, and amending Implementing Regulation (EU) 2021/405 as regards the list of third countries or regions thereof authorised for entry into the Union of products of animal origin and certain goods originated in and returning to the Union from a third country or region thereof (C(2021) 6590)
2 February 2022	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on shipments of waste and amending Regulations (EU) No 1257/2013 and (EU) No 2020/1056 (14135/21)
Sent to the Committee for scrutiny on 3 March 2022—scheduled for consideration on 16 March 2022	COMMISSION IMPLEMENTING REGULATION (EU) 2021/2285 of 14 December 2021 amending Implementing Regulation (EU) 2019/2072 as regards the listing of pests, prohibitions and requirements for the introduction into, and movement within, the Union of plants, plant products and other objects, and repealing Decisions 98/109/EC and 2002/757/EC and Implementing Regulations (EU) 2020/885 and (EU) 2020/1292 (Unnumbered)
Sent to the Committee for scrutiny on 3 March 2022—scheduled for consideration on 16 March 2022	COMMUNICATION TO THE COMMISSION Approval of the content of a draft Commission Notice on the application of the Union’s pharmaceutical acquis in markets historically dependent on medicines supply from or through parts of the United Kingdom other than Northern Ireland (C(21) 9668)
Sent to the Committee for scrutiny on 3 March 2022—scheduled for consideration on 16 March 2022	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directives 2001/20/EC and 2001/83/EC as regards derogations from certain obligations concerning certain medicinal products for human use made available in the United Kingdom in respect of Northern Ireland, as well as in Cyprus, Ireland and Malta (15188/21)

<b>Date first scrutinised by the Sub-Committee</b>	<b>EU legislative proposal</b>
Sent to the Committee for scrutiny on 3 March 2022—scheduled for consideration on 16 March 2022	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EU) No 536/2014 as regards a derogation from certain obligations concerning investigational medicinal products made available in the United Kingdom with respect to Northern Ireland as well as in Cyprus, Ireland and Malta (15189/21)
Sent to the Committee for scrutiny on 3 March 2022—scheduled for consideration on 16 March 2022	COMMISSION DELEGATED REGULATION (EU) .../ ... of 17.12.2021 amending Delegated Regulation (EU) 2016/161 as regards the derogation from the obligation of wholesalers to decommission the unique identifier of medicinal products exported to the United Kingdom (15291/21)
Sent to the Committee for scrutiny on 3 March 2022—scheduled for consideration on 16 March 2022	Proposal for a COUNCIL IMPLEMENTING REGULATION amending Implementing Regulation (EU) No 282/2011 as regards the update of the VAT and/or excise duty exemption certificate (5394/22)