

## **EXPLANATORY MEMORANDUM ON A PROPOSAL FOR A DECISION OF THE COUNCIL ESTABLISHING AN EU POSITION AHEAD OF A WITHDRAWAL AGREEMENT OR TRADE AND COOPERATION AGREEMENT GOVERNANCE COMMITTEE**

2023/0066 (NLE)  
COM(2023) 123 final/2 + ANNEXES 1 TO 3

Proposal for a COUNCIL DECISION on the position to be taken on behalf of the European Union in the Joint Committee established by the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community as regards a decision to be adopted, and recommendations and joint and unilateral declarations to be made.

[AND]

2023/0065 (NLE)  
COM(2023) 120 final

Proposal for a COUNCIL DECISION on the position to be taken on behalf of the European Union in the Joint Consultative Working Group established by the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community as regards the amendment of its rules of procedure.

Submitted by the Foreign, Commonwealth and Development Office

21 March 2023

### **SUBJECT MATTER**

1. The EM concerns two proposed Council Decisions setting out proposed positions to be adopted by the EU at the Withdrawal Agreement Joint Committee on the Windsor Framework. The Government set out the detail of the Windsor Framework through a Command Paper on 27 February<sup>1</sup>. The Prime Minister made a statement to the House on the same day. The legal texts underpinning the package were also published and are available on gov.uk (with those texts to be considered at the Joint Committee on Friday 24 March considered in this Explanatory Memorandum).

### ***Relating the proposal for a COUNCIL DECISION on the position to be taken on behalf of the European Union in the Joint Committee***

2. This proposal seeks the agreement of the European Council for the EU to agree to adopt the package of measures that underpin the Windsor Framework. These are described in detail below. This would enable the Windsor Framework to be endorsed at the next UK-EU Withdrawal

---

<sup>1</sup> [Windsor Framework Command Paper](#)

Agreement Joint Committee meeting, which is due to take place on Friday 24 March (the provisional agenda is set out in a separate Written Ministerial Statement which has been attached for reference).

3. As a result of the issues the Government had consistently identified with the old Northern Ireland Protocol, the Government intensively pursued the changes necessary to find new arrangements that safeguard the Belfast (Good Friday) Agreement in all its parts, and uphold Northern Ireland's integral place in the UK. These efforts, and the negotiations that have followed, concluded with the Windsor Framework. The full detail of these are set out in the 27 February Command Paper, *the Windsor Framework: A new way forward*<sup>2</sup>.
4. The Windsor Framework makes fundamental amendments to the Protocol to restore the smooth flow of trade within the UK internal market, removing burdens that have disrupted East-West trade; safeguard Northern Ireland's place in the Union, by addressing practical problems affecting the availability of goods from Great Britain, and the ability of Northern Ireland to benefit from UK-wide tax and spend policies; and address the democratic deficit otherwise at the heart of the old Protocol. To do so, the Framework allows for the changing of EU law pursuant to the Framework on goods movements and agrifood to protect internal UK trade, including through a new green lane; legally binding Joint Committee Decisions to put in place elements of the new green lane and make amendments to the text of the treaty, including to establish the new Stormont Brake; and further declarations by the UK and EU, with effect in international law, to entrench unfettered access and other important protections.
5. This proposal for a Council Decision is part of the process to put the Windsor Framework in place, beginning with agreement to a series of the texts at the next meeting of the UK-EU Joint Committee. The annex to the Council Decision contains each of the negotiated texts that are to be adopted at the Joint Committee. These are explained in detail below.
6. As this EM concerns those texts to be agreed at the UK-EU Joint Committee, it does not cover in detail the proposals, also set out on 27 February, on sanitary and phytosanitary products (providing the basis for the agrifood retail green lane); on medicinal products (providing for UK-wide licensing of all medicines); and on tariff rate quotas (part of the agreement to safeguard tariff-free movements of all types of steel into Northern Ireland). These will be provided as separate EMs to the Committee in line with the Government's existing scrutiny arrangements.

*Draft Decision No/2023 of the Joint Committee established by the agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community of XX 2023...laying down arrangements relating to the Windsor Framework*

---

<sup>2</sup> [Windsor Framework Command Paper](#)

7. The Joint Committee Decision sets out a series of legally binding changes to the text of the Treaty. It also sets out a new set of arrangements for goods movements within the UK internal market, superseding a prior Joint Committee Decision.

*UK internal trade*

8. Article 1 amends Article 6(2) of the Protocol to lock in a commitment by both sides to establish and maintain specific arrangements for internal UK trade. This is the provision underpinning the establishment of the new system of green lanes provided for in the Windsor Framework. It is on the basis of this commitment that both parties set out the new goods movement arrangements for the green lane which are set out below, as well as the new agrifood retail arrangements (which will be subject to later agreement at the Withdrawal Agreement Joint Committee, and will be covered in a separate Explanatory Memorandum). This obligation is subject to arbitration, rather than the jurisdiction of the Court of Justice of the European Union (CJEU).
9. This change, along with the other amendments to the text of the treaty, are made under the power provided in Article 164(5)(d) of the Withdrawal Agreement. This enables the UK-EU Joint Committee to adopt decisions which amend the Withdrawal Agreement to correct errors, address omissions, or address situations unforeseen when the Agreement was signed “in line with the conditions for the use of that power”. Each of the amendments deal with elements that have led to issues that were not foreseen when the Withdrawal Agreement was signed in 2019, in this case to lock in a clear commitment to specific and unique arrangements for trade within the UK internal market and customs territory.

*Stormont Brake*

10. Article 2 inserts a new Article 13(3a) into the text of the original Protocol to establish the Stormont Brake, a powerful new democratic safeguard at the heart of the new Windsor Framework.
11. The Stormont Brake enables amended or replaced EU goods rules pursuant to the Framework, which would otherwise be applied automatically in Northern Ireland, to be subject to a Brake and UK veto in a process that provides a genuine and powerful role for the Northern Ireland institutions. It is broad in scope and will apply to all changes to EU customs, goods, and agriculture rules within the scope of the Windsor Framework.
12. The United Kingdom already has a veto at the Joint Committee regarding any new EU rules that are proposed to be added to the Windsor Framework under Article 13(4). The effect of this new article is that this process can be extended to amended or replaced EU goods rules pursuant to the Framework, providing a new role for the Northern Ireland Assembly in determining whether significant new goods rules impacting on everyday life in Northern Ireland should be applied.

13. The process works by allowing 30 Members of the Legislative Assembly from two or more parties to make a notification in cases where an amended or replaced EU rule would have a significant impact specific to the everyday life of communities. This trigger will operate on the same basis as the separate 'Petition of Concern' mechanism within the Belfast (Good Friday) Agreement, as updated by the *New Decade, New Approach* Agreement in 2020. This means, for example, that the two parties can be of the same community designation under the Northern Ireland Act 1998. MLAs may not seek to use the Brake in trivial cases: as well as the rule's potential impact, the content or scope of the amended or replaced act must also significantly differ from the previously applied rule. MLAs must also set out in writing how these conditions are met, and do so after seeking prior substantive discussion on other routes to resolving the underlying issue. This safeguard will also only become available once the power-sharing institutions in Northern Ireland are restored. These conditions are set out in Article 2, as well as the accompanying Annex I of the Decision, which sets out a unilateral declaration by the United Kingdom on the involvement of the Northern Ireland institutions.
14. When MLAs make a valid notification in line with those conditions, the UK is required to notify the EU that the Brake has been triggered. At this point the application of the rule is suspended. It is then subject to a specific UK decision at the Joint Committee as to whether the rule should be applied, under the process set out under Article 13(4). Should the rule be disapplied through that Article 13(4) process, as the Article already provides, the EU would have the ability to take 'appropriate remedial measures'. Where the concerns relate only to part of an EU act, the text provides that the Brake will be applied only to that part of the act, so as to enable the specific issues to be targeted and addressed even if they arise in relation to only one element of a proposed rule.
15. This provides the Government with a veto on the application of amended or replaced goods rules. As the text sets out, this is available to amended or replaced rules under Annex 2 of the Windsor Framework (subject only to several narrow exceptions which concern EU-third country trade relationships). The process under which it operates is solely an internal one within the United Kingdom. The European Union is only able to challenge the use of the Brake after a decision has been made and the rule is suspended, and may do so only through arbitration (with no role for the Court of Justice of the European Union). During the process set out in Article 2, the EU may only ask for further information on the basis for a decision to trigger the Brake within two weeks of the brake being triggered. The UK must provide that further explanation within two weeks of the request from the EU. The EU act is then suspended three days after the UK provides that further explanation.
16. This amendment is also made under Article 164(5)(d), allowing a substantive change to the treaty to lock in the Brake as a core part of the Windsor Framework. This provides a permanent and powerful democratic safeguard in the text of the treaty itself.

17. The Government has separately laid before Parliament a statutory instrument to enshrine the operation of the Brake in domestic law, reflecting its importance. This enshrines a domestic law duty on the Government to trigger the Brake when MLAs submit a valid notification. In addition, it would prohibit the Government from later agreeing to apply any EU rule through the 13(4) process where it did not have cross-community support, or did not impose new regulatory borders within the UK, other than in exceptional circumstances. This latter commitment is a unilateral one by the Government, recognising that the decisions under 13(4) are sovereign ones for the UK alone to take, and does not derive from the Joint Committee Decision itself.

#### *VAT and Excise*

18. The Windsor Framework secures substantive, legally binding changes to the treaty to provide new freedoms to set VAT and excise rules across the United Kingdom.
19. Article 3 provides for future-facing, permanent powers for the Joint Committee to make legally binding changes to the application of VAT and excise law in Northern Ireland, should there be further issues which arise from EU rules in the future. It does this by enabling further amendments to be made to Annex 3 in the future.
  - a. It sets out that there is complete flexibility for the setting of VAT rates on goods supplied and installed in immovable property in Northern Ireland. This change immediately enables the Government to introduce support for the installation of energy saving materials which has been available in the rest of the United Kingdom for a year. These measures will lower the rate of VAT from 5% to 0% for five years on the domestic installation of insulation, solar panels, heat pumps, wood-fuelled boilers and heating controls, and introduce new zero rates for wind and water turbines. Complex eligibility criteria are also removed, making the support available in more homes.
  - b. The Article also removes any limit on the applicable number of reduced and zero VAT rates which can apply in Northern Ireland - which for EU Member States are limited at 24 categories for reduced rates, and seven categories for zero rates.
  - c. It means that the UK is not required to implement several new VAT rules for small businesses under the EU VAT Scheme for Small Businesses, coming into force in 2025. Among other benefits, this avoids 2,000 additional Northern Ireland businesses from needing to register from VAT under revised thresholds, ensuring that the existing UK-wide threshold continues to apply.
  - d. It removes the application of the EU Import One Stop Shop VAT accounting system for internal UK movements from Great Britain to Northern Ireland. This is an electronic portal for dealing with VAT on e-commerce sales, and its removal will avoid unnecessary burdens on movements into Northern Ireland.
  - e. It carves out rules on excise duty structures applied under the old Protocol. This allows reforms from the UK Alcohol Duty Review, which would have been incompatible with the old Protocol, to apply for all

types of businesses across the whole of the UK. As a result, all alcohol sales will be taxed in line with strength and support for pubs and small producers will be available in Northern Ireland. This is subject to rates in Northern Ireland remaining above EU duty minimums and thresholds remaining below EU maximums; but as the Budget demonstrated, this does not pose any constraint in practice given that UK rates are substantially higher than EU minimums. For example, there is no EU minimum rate on alcohol duty for cider or wine, and the effective UK rate for spirits is six times higher than the EU minimum. These reforms will apply wherever the alcohol is sold and the strength-based reforms announced at the Budget will apply to alcohol sold in Northern Ireland in supermarkets as well as off licences, pubs and other establishments. In addition, the Article also enables specific initiatives, such as Draught Relief for alcohol sold in hospitality venues, to be applied in Northern Ireland.

20. Article 4 builds on this by providing for permanent powers for the Joint Committee to make legally binding changes to the application of VAT and excise law in Northern Ireland, should there be further issues which arise in the future. It does this by enabling further amendments to be made to Annex 3 in the future.
21. This provision should be read alongside Articles 17 to 20, which provide for a new Enhanced Coordination Mechanism. This is a UK-EU forum to review future changes to EU VAT and excise rules which could lead to potential impacts specific to Northern Ireland, or to consider any issues that may arise in applying UK VAT and excise changes UK-wide. In either case, the Mechanism would enable intensive UK-EU engagement to avoid any practical difficulties, with the ability for recommendations to be made to the Joint Committee, and for the Joint Committee to propose specific changes to Annex 3. Article 21 provides that the operation of that Mechanism will be reviewed regularly, with the first such review to take place by 1 January 2027.
22. It should also be read alongside the Joint Declaration, covered below, which outlines a forward programme of work between the UK and EU to set out a further Joint Committee decision to define categories of goods which should be subject to final consumption in Northern Ireland - further expanding the freedoms provided for under the Framework's VAT and excise changes.

#### *Movement of goods*

23. Under Section 2, Articles 5 - 16 replace the previous set of arrangements governing the movement of goods into Northern Ireland, which were set out in Joint Committee Decision No 4/2020 (part of the arrangements agreed between the UK and EU in December 2020). This provides for the basis of the new internal UK trade scheme. This will expand the range of businesses who can benefit from these arrangements, which was constrained in the old Protocol. The articles also provide for the establishment of the new Green Lane which will enable the majority of goods to move on the basis of ordinary commercial information, removing the need for full international customs

processes as applied under the old Protocol, including the need for burdensome supplementary declarations and complex commodity codes for each individual goods movement.

24. Eligibility - Articles 9 - 11 set out the information requirements and eligibility criteria to join the UK Internal Market Scheme. Principally this removes previous restrictions requiring a physical premises in Northern Ireland, meaning businesses throughout the UK will now be eligible for the scheme. Otherwise these articles require that businesses joining the scheme have suitable record-keeping; do not have serious issues with their compliance previously, and are of good financial standing. It also requires that businesses have an indirect representative in Northern Ireland if they do not have a physical premises in Northern Ireland, though as has been the case since 2021 this function can be discharged by the UK's Trader Support Service. Beyond that, the core element of the scheme is that traders undertake to bring goods into Northern Ireland for sale or final use in the United Kingdom, ensuring that it works for internal trade within the UK, and is not used by traders moving goods into the EU. Annexes II and III sets out further details on these requirements.
25. Article 6 expands the cases in which goods can be moved using the green lane even if they are subject to further processing in Northern Ireland.
  - a. First, it quadruples the turnover threshold, beneath which a firm processing goods in Northern Ireland can move goods under the new UK Internal Market scheme. This sets it at £2m, meaning four-fifths of manufacturing and processing companies in NI who trade with Great Britain will automatically be in scope.
  - b. Even if firms are above the turnover threshold, goods brought in for processing may also use the green lane where they are within a set of sectoral exemptions. The sectoral exemptions include the sale of food to end consumers in the UK. The Article also expands the previous sectoral exemptions for the animal feed, healthcare, construction and not-for-profit sectors, enabling those movements to qualify where they are used by a business in NI who is not the importer. This means firms can use the green lane even as intermediaries or if they sell on the eventual product, in a significant improvement to the existing arrangements.
26. Criteria - Articles 7 and 8 set out the criteria for considering goods to qualify for movement through the green lane, using the prior definition of being 'not at risk' of subsequently entering the EU. Where goods are 'not at risk' and moving from Great Britain to Northern Ireland, they will benefit from the radically simplified process for goods movements that the Windsor Framework sets out, the new Green Lane, where traders are authorised in accordance with Articles 9 to 11. As well as allowing goods to move on the basis of ordinary commercial information, without the need for supplementary declarations or commodity codes for each movement, it will mean no tariffs, no rules of origin requirements, and no customs checks, except for risk-based and intelligence-led operations targeting criminality and smuggling. Articles 7 and 8 provide those benefits to goods brought into Northern Ireland via the

Green Lane for sale to, or final use by, end consumers in the United Kingdom. Goods may also qualify as 'not at risk' depending on the applicable EU tariffs, in line with the arrangements agreed in 2020. There are also specific arrangements relating to a small subset of highly controlled goods, as set out in Annex IV.

27. Parcels - The Windsor Framework also safeguards movements of goods from GB to NI by parcel. Article 7 ensures that for parcels sent to friends and family in Northern Ireland, the process will not place any requirements on either the sender or recipient. For movements from businesses to consumers, the agreement removes the requirements for customs declarations, pre-notification, and presentation of goods to customs authorities. Instead authorised carriers manage a process of sharing data, in batches, to monitor and manage any risks of smuggling into the EU market. Importantly, this new approach will apply even to goods otherwise classified as prohibited or restricted under EU rules (though domestic UK law prohibitions and normal carrier terms and conditions will still apply). To do this, Article 7 changes the definition of goods classified as 'not at risk' of entering the EU to ensure that consumer parcel deliveries are always classified as goods destined to stay within the UK. The Article also sets out the definition of "parcels" in this context, as either multiple items in a package not exceeding a gross mass 31.5kg, or a single item not exceeding 100kg.
28. Articles 12 and 13 concern the obligations of those authorised carriers for parcels sent by businesses to consumers to support those arrangements. These carriers will manage a process of sharing data to support monitoring of smuggling or other abuse. The Articles therefore require those carriers to be capable of identifying where parcels are being sent to consumers to benefit from those arrangements, and manage systems to gather relevant information which they can share with the UK authorities. It also requires those carriers to be able to carry out controls if required in cases of abuse. This will enable the effective operation of these arrangements when they take effect in autumn 2024 (with existing arrangements continuing in the meantime).
29. Data-sharing - Article 14 provides for the exchange of information on relevant goods movements. These data-sharing arrangements will help to monitor and manage risks, supporting the smooth flow of trade within the UK internal market.
30. Safeguards - Article 15 provides for a set of mutual safeguards in terms of review and suspension of the arrangements, setting out the grounds on which the EU and UK may take steps where there are issues in the operation of these green lane arrangements. These set out high bars for any such safeguards to be used, such as serious mismanagement of the underpinning arrangements. Even in those cases, either side must set out their reasons clearly and seek to resolve the issues through the Joint Committee. It is only once those processes have been exhausted that any of these safeguards would take effect. And in any case, there is an obligation to identify alternative arrangements which should operate during any period of suspension. There is also a separate provision enabling either party to terminate the arrangements



in case of very serious issues - though again there is a prior requirement for consultations to avoid that outcome; and there is a 2-year period before it takes effect in that case, with the ability up to six months before that point to continue their operation. These safeguards provide both parties with the means to respond to very significant and sustained concerns, but puts the onus on identifying joint solutions and avoiding recourse to safeguards in practice. These safeguards are without prejudice to the broader safeguard measures available to both parties under the Framework.

31. Entry into force - Finally, Article 23 provides for the entry into force of the Decision as a whole. This happens immediately after adoption in the case of the VAT and excise changes, Stormont Brake and Article 6(2) amendments. For the movement of goods provisions, their entry into force is linked to the development of the underlying systems to support the operation of the green lane, such as the data-sharing arrangements and the internal market trade scheme itself. It envisages that an initial set of changes, including the expansion of the green lane, will take effect from the autumn of 2023, with the full set of arrangements operating from autumn 2024 - providing time for detailed work with operators and other stakeholders in the meantime.

*Draft Joint Declaration No XX/2023 of the Union and the United Kingdom in the Joint Committee established by the agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community of XX 2023*

32. This Joint Declaration makes clear that the new set of arrangements, in the light of the fundamental set of changes involved, will be set out as the Windsor Framework in the UK and EU, including in any joint forums such as the Joint Committee. This also enables the Windsor Framework to be the appropriate reference in UK and EU domestic law.

*Draft Unilateral Declaration by the United Kingdom in the Joint Committee established by the agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community of xxx/2023 on export procedures for goods moving from Northern Ireland to other parts of the United Kingdom.*

33. The old Protocol called for export declarations on all movements between Northern Ireland and Great Britain, and a subsequent agreement between the UK and EU in 2020 looked to provide “equivalent information” in their place. But each of those proposed arrangements risked significant and unacceptable frictions for trade, and as such were not being operated in practice. As such they had been a source of disagreement between the UK and EU, with the EU taking legal actions against the UK in response.
34. The unilateral declaration instead provides a permanent guarantee of unfettered access for NI goods to the whole UK market, a core part of the Windsor Framework overall. It outright removes requirements to provide export declarations, or any equivalent information, for businesses moving goods from Northern Ireland to Great Britain. As the declaration sets out, the

only circumstances in which this will not be the case will be where strictly necessary to manage our international obligations, such as for movements of endangered species, or cases where traders use one of a variety of voluntary procedures for moving goods (as has been the case since 2021 without any practical issues). As part of this the Government will share information regarding the movement of the goods subject to some of those obligations, such as cultural goods, again as part of meeting respective international commitments. The declaration also fully replaces the old declaration made in December 2020, to avoid any doubt about the arrangements. As noted in the Government's Command Paper, we will underscore this protection through specific provisions in domestic law in due course to provide permanent guarantees on unfettered access for Northern Ireland businesses to their most important market.

*Draft Recommendation No [...]/2023 of the Union and the United Kingdom in the Joint Committee established by the agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community of XX 2023 ... on Article 13(3a) of the Protocol on Ireland/Northern Ireland*

*Draft Joint Declaration of the Union and the United Kingdom in the Joint Committee established by the agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community of [XX] 2023 on Article 13(3a) of the Windsor Framework*

35. The Recommendation and Joint Declaration supplement the provision at Article 13(3a) of the Windsor Framework, which establishes the Stormont Brake. Both set out expectations regarding any future dispute concerning their use.
36. The Recommendation sets out the approach in the event an arbitration ruling determines that the Stormont Brake has been triggered incorrectly. As set out above, arbitration proceedings are the only route of challenge for any use of the Stormont Brake, and take place after the rule has already been suspended (with the rule remaining suspended in the meantime). independent arbitration.
37. In a similar manner, the Joint Declaration confirms that the requirements of good faith include notifying the use of the Stormont Brake only in circumstances in which the conditions set out in the UK's Unilateral Declaration are met. As with any other proceedings on the use of the Brake, this would not be subject to ECJ oversight, and any dispute on this issue would be resolved through subsequent independent arbitration according to international, not EU, law. It repeats the understanding set out in the Recommendation that, in the event of an adverse arbitral finding, the UK would meet its international obligations and abide by that finding.

*Draft recommendation No[...] /2023 of the Joint Committee established by the agreement on the withdrawal of the United Kingdom of Great Britain and Northern*

*Ireland from the European Union and the European Atomic Energy Community of...on market surveillance and enforcement*

*Draft Unilateral Declaration by the United Kingdom in the Joint Committee established by the agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community of xxx/2023 on market surveillance and enforcement.*

38. As the Government has recognised, the result of this new Framework is the prospect of significant divergence between the two distinct economies on the island of Ireland - from food and drink rules, to plants and pets, building on existing differences in every area of economic and political life such as services, migration, currency and taxation. Given the many unique arrangements for internal UK trade, and the importance of guarding against these being abused to move goods into the EU without the full range of checks and controls, the Framework contains a Joint Committee Recommendation, and a unilateral declaration by the UK, concerning enhanced market surveillance and enforcement, as well as strengthening cooperation with the Irish Government to avoid risks to the Single Market.
39. The Recommendation underlines that this should not require new checks or controls at the border between Northern Ireland and Ireland, though should involve knowledge-sharing and joint action to tackle illegal activity and smuggling. The unilateral declaration underlines the Government's commitment to ensure there is proper intelligence and data-gathering, as well as risk-based activity from authorities, to avoid abuse of these new arrangements. Our approach will be to manage this sensitively with sensible practical arrangements, focused on maintaining market access for Northern Ireland while protecting the UK and EU internal markets.

*Draft Joint Declaration of the Union and the United Kingdom in the Joint Committee established by the agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community of XX 2023 on the application of Article 10(1) of the Windsor Framework*

40. Under the original Protocol, EU state aid rules were applied in cases where any aid could 'affect trade' in goods and electricity between Northern Ireland and the EU. The potential breadth of that wording risked 'reach back' - the much broader application in cases where there was only a theoretical or highly tangential link between aid to a company in Great Britain and potential trade on the island of Ireland. This has not prevented the Government providing vital support through the pandemic or energy crisis throughout the whole of the United Kingdom, but has nonetheless been raised as a potential source of concern in the future
41. The Joint Declaration addresses those risks and constrains the limited circumstances in which the Framework applies to subsidies, preserving the functioning of the UK internal market. It underscores Northern Ireland's integral place in the UK market, alongside its unique access to the EU market.

As such it sets out a stringent materiality test as to the real, foreseeable effects of aid on relevant trade between Northern Ireland and the EU. This sets out factors relevant to that judgement including the size of the undertaking, the size of the subsidy and the market presence of the undertaking in the relevant market in Northern Ireland. In the Government's view this rules out all but the largest subsidies, and those where firms have no material presence in the NI market, keeping the overwhelming majority of subsidies under the UK's own subsidy control regime. In the Government's view this confines the application of Article 10 of the Framework to cases where there is a genuine, material effect on trade between Northern Ireland and the EU - recognising that those provisions should apply only where necessary to avoid trade distortions. Even in those cases, there will remain a range of exemptions to allow aid to be granted in Northern Ireland without any need for notification or approval. At the same time, the Framework does not affect the important flexibilities available to traders in Northern Ireland, including the uniquely flexible agricultural subsidy arrangements in Northern Ireland. Northern Ireland will remain outside the Common Agricultural Policy and able to design its own future subsidy arrangements consistent with WTO rules.

42. Overall, we consider that this would address any concerns around the operation of the old Protocol rules in real-world terms, ensuring that the Trade and Cooperation Agreement (TCA) serves as the overall framework governing subsidy control issues between the UK and EU, as we have always argued should be the case.

*Draft Joint Declaration of the Union and the United Kingdom in the Joint Committee established by the agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community of [XX 2023 number X].*

43. This Joint Declaration focuses on the use of the Withdrawal Agreement structures to oversee the operation of the new Framework, and ensure it works effectively.
44. In particular it underlines the importance of using the UK-EU joint bodies to look ahead to identify any future issues and look to resolve them through dialogue and joint solutions wherever possible. This is allied to a commitment to find mutually satisfactory resolution to any issues, using the full powers of the Joint Committee. In both respects it stresses a shared commitment to resolve issues jointly, rather than through swift recourse to formal dispute proceedings.
45. It also envisages the use of those joint bodies to ensure that, as UK rules change in the future and diverges from those in the EU, the Windsor Framework does not inadvertently lead to any new regulatory barriers. This is not intended, nor will it serve, to preclude the UK choosing to diverge from EU rules. Instead it will enable discussion on practical steps that could be taken to avoid issues emerging as those rules change, through a new Special Goods Body. This would enable recommendations to be made to the Joint

Committee, enabling appropriate solutions to be found that work in practice. This will be an important part of providing reassurance that Northern Ireland's place in the UK internal market will continue to be protected into the future.

46. The Declaration also underscores the UK's existing commitment to invite the First and deputy First Minister to the UK's Joint Committee delegation when the power-sharing institutions are in operation.

*Draft Joint Declaration of the Union and the United Kingdom in the Joint Committee established by the agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community of XX 2023 on the VAT regime for goods not being at risk for the Union's internal market and on the VAT arrangements for cross border refunds.*

47. As noted above, this Joint Declaration sets out a joint commitment to set out a list of further goods which will be subject to full rate flexibility, by virtue of their nature as goods that are consumed in Northern Ireland. This declaration also sets out both parties' intention to evaluate and, where appropriate, adapt current VAT arrangements for cross-border refunds between the UK and EU Member States.

*Draft Unilateral Declaration by the United Kingdom in the Joint Committee established by the agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community of xxx/2023 on the democratic consent mechanism in Article 18 of the Windsor Framework.*

48. The UK's Unilateral Declaration underlines the importance of the democratic consent mechanism in Article 18 of the Windsor Framework. In particular it recalls that, in the absence of cross-community support for the arrangements in the consent vote in 2024, the Government is committed to commission an independent review into the operation of the Windsor Framework, with a view to determining the reason for its failure to command support across the community. The Declaration underlines the Government's commitment to bring the outcome of any such review before the Joint Committee for proper and full consideration, given the importance of its findings in that context in the future, with a view to identifying means of addressing any issues it identifies.

*Draft Unilateral Declaration by the United Kingdom in the Joint Committee established by the agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community of xxx/2023 on strengthening enforcement action for goods moved in parcels from another part of the United Kingdom to Northern Ireland.*

49. The Windsor Framework safeguards the movement of parcels by maintaining the process for consumers as it applies today, and ensuring the same internal market scheme available to freight movements can apply to movements of parcels between businesses, as set out above. The arrangements set out in the Windsor Framework do not, though, take effect until autumn 2024, with

the existing set of arrangements applying in the meantime. This Unilateral Declaration sets out that until autumn 2024, the Government will ensure that there is ongoing work with operators, and engagement with the EU, to manage the risks of abuse of those arrangements by those moving goods into the EU without full checks and controls. This will include work with operators to use data to support existing risk and intelligence-led activity. This will not involve any change in the experience for businesses or consumers in the meantime, and is solely concerned with reinforcing existing activities of UK authorities.

***Relating to the proposal for a COUNCIL DECISION on the position to be taken on behalf of the European Union in the Joint Consultative Working Group***

50. Separately, the Commission has made a proposal for a Council Decision approving the position the EU will take in the Joint Consultative Working Group (JCWG), to amend its rules of procedure. This is also part of the Windsor Framework package.
51. Under Article 15(1) of the Windsor Framework, the Joint Consultative Working Group serves as a forum for the exchange of information and mutual consultation on the Framework. It is composed of representatives of the EU and the UK and carries out its functions under the supervision of the Specialised Committee (itself established under Article 165 of the Withdrawal Agreement) to which it reports. It is co-chaired by the EU and the UK and meets at least once a month, unless otherwise decided by the EU and the UK by mutual consent.
52. The proposed Council Decision proposes to adopt amendments to the Joint Consultative Working Group Rules of Procedure to provide for a new system of structured sub-groups to assist the JCWG in carrying out its functions. This will enable experts from both the UK and EU to engage regularly on the operation of all aspects of the Framework. This will support joint UK-EU working to look ahead at any potential issues and to be able to resolve them. Separately, and as noted in the UK-EU Political Declaration, it is also expected that, at all levels of the Withdrawal Agreement joint forums, the UK and EU would establish regular engagement with Northern Ireland stakeholders. These are welcome developments to make full use of UK-EU structures to deal with any issues in operating the Framework, and to resolve them jointly through dialogue.

**SCRUTINY HISTORY**

53. The Government has submitted EMs on previous European Commission proposals for Council decisions on the position to be taken on behalf of the EU within the Joint Committee established by the Agreement on withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community as regards:
  - a. The adoption of a decision to amend the Agreement: EM 12271/21 submitted on 19 October 2021.

- b. The amendment of the decision establishes a list of 25 persons who are willing and able to serve as members of an arbitration panel under the Agreement: EM 12277/21 submitted on 12 October 2021.
- c. Practical working arrangements relating to the exercise of the rights of Union representatives. EM 13917/20 submitted on 8 January 2021.
- d. The adoption of a decision to amend the Protocol on Ireland/Northern Ireland. EM 13914/20 submitted on 8 January 2021.
- e. The adoption of a decision establishing a list of 25 persons who are willing to serve as members of an arbitration panel under the Agreement and on a reserve list of persons who are willing and able to serve as Union members of an arbitration panel under the Agreement. EM 13919/20 submitted on 4 January 2021.
- f. The determination of goods not at risk. EM 13912/20 submitted on 8 January 2021.
- g. Agricultural subsidies. EM 13910/20 submitted on 8 January 2021.
- h. The date from which the provisions of title III of part Two of the Agreement shall apply to nationals of Iceland, the Principality of Liechtenstein, the Kingdom of Norway, and the Swiss Confederation. EM 13458/20 submitted on 10 December 2020.
- i. The adoption of a decision to amend the Agreement. EM 8038/20 submitted on 3 June 2020.
- j. In respect of the proposal for a Council decision on the position to be taken on behalf of the European Union in the Joint Consultative Working Group established by the UK/EU Withdrawal Agreement as regards the amendment of its rules of procedure, the Government previously submitted an EM on EU document 11643/20 dated 23 October 2020.

## MINISTERIAL RESPONSIBILITY

54. Responsibility for the Windsor Framework lies with the Foreign Secretary.

## INTEREST OF THE DEVOLVED ADMINISTRATIONS

55. In line with existing commitments on intergovernmental engagement, the Minister for Europe chaired a meeting of the Interministerial Group on UK-EU Relations with the Devolved Administrations on Monday 20 March, ahead of the UK-EU Joint Committee on 24 March.

## LEGAL AND PROCEDURAL ISSUES

56. **Legal Base:** The European Union's legal basis for this decision is Article 218(9) of the Treaty on the Functioning of the European Union (TFEU).
57. **Voting Procedure:** The European Council shall act on the basis of a qualified majority.
58. **Timetable for adoption and implementation:** A decision will be taken by the Council ahead of the Withdrawal Agreement Joint Committee on 24 March.

## **POLICY IMPLICATIONS**

59. The proposed Decision sets out texts jointly agreed between the UK and EU to establish important elements of the Windsor Framework. They will be subject to adoption and endorsement at the next meeting of the UK-EU Joint Committee. Overall, the Government considers, as set out in the 27 February Command Paper, that the arrangements deliver on the core objectives that the Government set out as necessary to address the full range of issues that the old Protocol had caused in Northern Ireland. It addresses the barriers and burdens that had affected trade East-West; protects Northern Ireland's place in the UK internal market now and in the future; supports UK-wide policymaking in a range of key areas, such as food safety and medicines; and addresses the democratic deficit that was otherwise at the heart of the issues with the old Protocol. As such it brings certainty, puts beyond doubt Northern Ireland's place in our Union, and provides the basis for a more sustainable and prosperous future for Northern Ireland and the whole United Kingdom.
60. The UK and EU will respectively take forward legislative measures to translate the full range of solutions into law in both legal orders. Elsewhere, we will set out further detail, including through guidance to traders, on the forward pathway for these changes to take effect. Some will take effect immediately or once the relevant legislation is in force. Others will require further changes to UK systems or joint work with the EU to provide the necessary underpinning for them to take effect. This will be set out in further detail in due course. In the meantime, we will work with business groups, traders and other operators to set out more detail on these arrangements; help prepare for the changes ahead; and ensure that we have provided clarity and certainty to businesses and citizens on the way forward following this agreement.

## **CONSULTATION**

61. This proposal is the result of bilateral UK and EU discussions. The Government consulted extensively with a broad range of stakeholders in the process of agreeing the Windsor Framework.

## **FINANCIAL IMPLICATIONS**

62. There are no financial implications for the UK arising from this pair of Council Decisions. Implementation of the Windsor Framework will have financial implications for relevant departments and the Northern Ireland Executive, to be considered for approval separately.

## **MINISTERIAL NAME AND SIGNATURE**

The Rt Hon James Cleverly MP  
Secretary of State for Foreign, Commonwealth and Development Affairs



Foreign, Commonwealth and Development Office

A handwritten signature in blue ink, consisting of several fluid, connected strokes. The signature is positioned centrally below the text 'Foreign, Commonwealth and Development Office'.