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SPICe Briefing

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# Issue 3: EU-UK future relationship negotiations

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Following the UK's departure from the EU, the negotiations to determine the future relationship began on 2 March 2020. Over the course of the negotiations, SPICe will publish briefings outlining the key events, speeches and documents published. This third briefing covers developments following the first round of negotiations, including in the context of the COVID-19 pandemic.



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# Executive Summary

This is the third in a series of SPICe briefings that will be published regularly during the negotiations on the future relationship between the EU and the UK.

This briefing:

- reports how COVID-19 has led to a disruption in the negotiations, and discusses the question of extending the transition period.
- analyses the EU's newly-published draft agreement text, highlighting parts of the text already subject to disagreement and/or which relate to devolved responsibilities.
- reports on the UK Government's plans to "table" a draft agreement text based on its negotiating objectives.
- reports on Michael Gove's answers to questions from the House of Commons Committee on the Future Relationship with the EU.
- summarises the joint approach taken by eight Commons Select Committees to scrutiny of the Withdrawal Agreement's implementation.
- describes and provides updates on the role of the Joint Committee in implementing the Withdrawal Agreement.

# Negotiations shift in response to COVID-19

The second round of formal UK-EU negotiations were scheduled to start on 18 March 2020. However in light of the COVID-19 pandemic this 'Round 2' was cancelled by mutual agreement. Given the likely length of the COVID-19 outbreak, it is likely future negotiating rounds may also be postponed.

The UK Government issued a [statement on 17 March](#) indicating that both sides were looking at ways to continue discussions:

“ Both sides remain fully committed to the negotiations and we remain in regular contact with the European Commission to consider alternative ways to continue discussions, including looking at the possibility of video conferencing or conference calls, and exploring flexibility in the structure for the coming weeks.”

The COVID-19 delay to the negotiations, has raised the question of whether an [extension to the transition period](#) should be sought. This is discussed in a [SPICe Spotlight blog on the impact of COVID-19 on the future relationship negotiations](#) published on 23 March. This blog concludes:

“ The impact of Coronavirus (COVID 19) appears to have increased the likelihood that the UK government will seek an extension to the transition period to allow more time for the EU and UK to negotiate the future relationship.”

“ However, any decision to request an extension presents both political and logistical challenges for the UK government. The logistical challenges around length of extension and the need for a change in the law appear to point to a decision being made nearer to the end of June for requesting an extension. And the political challenges may be addressed by the economic impact and timeframe of Coronavirus (COVID 19) as the year unfolds.”

“ Politically, it might be easier for the UK government if the EU choose to request an extension. This approach might make it more palatable for the UK government to accede to such a request as opposed to making the request itself. An EU request would not however remove the logistical challenges the UK government faces if it wishes to ensure an extension to transition.”

On 24 March, the [Welsh First Minister Mark Drakeford wrote to the Prime Minister](#) to suggest that as a result of the coronavirus (COVID-19), the UK-EU negotiations should be paused and an extension to the transition period sought.

# EU publishes a draft agreement text

On the day Round 2 negotiations were due to begin (18 March 2020), the European Commission published a draft legal agreement. This document translates the European Commission's [negotiating mandate](#) into legal text. [An accompanying press release explained](#) that the document:

“...translates into a legal text the negotiating directives approved by Member States in the General Affairs Council on 25 February 2020, in line with the Political Declaration agreed between the EU and the UK in October 2019.”

“Today's text follows consultations with the European Parliament and Council, and aims to provide a tool to support the negotiations and to enable progress with the UK.”

The UK had previously indicated that it also intended to "table" a legal text. This was [reiterated by the UK's chief negotiator David Frost on 13 March](#). In [evidence to the Committee on the future relationship with the EU](#), Michael Gove set out more detail about the UK government's plans in response to a question from the committee chair Hilary Benn:

“It is fair to say that while we have and are preparing draft treaty text, the question of publication is one that has still not been decided on, both the timing of publication and with whom it will be shared. I very much take on board your point that at the point that it might be shared with the EU's negotiating team that it may also be shared with Parliament. However, even if it is shared with the EU negotiating team the EU negotiating team may not therefore be sharing it beyond its own UK taskforce team.”

When pressed as to whether it was possible the EU would publish its text and the UK government might not, Michael Gove said:

“If the EU decides to publish a full text then that is its decision, but of course it will be the case that they may share parts of its text, parts of the draft treaty with us, without fully publishing everything. It is important to recognise that while we can have parts of the proposed treaty being shared during the course of the negotiations in the spirit of confidence and confidence building, either side of course may publish its treaty in full at an appropriate moment, but we reserve the right to decide when that publication should occur.”

Michael Gove told the Committee, no decision had been made as to when the UK will publish its negotiating text.

## Analysis of the draft text

The European Commission's [draft legal text](#) is structured very similarly to its negotiating mandate and the Political Declaration:

- Part one: Common provisions
- Part two: Economy and trade (i.e. the "economic partnership")
- Part three: Security partnership

- Part four: Participation in Union programmes, sound financial management and financial provisions
- Part five: Institutional and horizontal provisions
- Part six: Final provisions
- Annexes

SPICe have highlighted some aspects of the EU's draft text in the analysis below. Our focus here is on areas already subject to disagreement and/or which relate to devolved responsibilities. The aspects covered are not exhaustive.

## Part 1: common provisions

The first paragraph of Part One immediately suggests a divergence in the approaches taken by the EU compared with the UK. Part One, Title I of the EU draft text states:

"This Agreement establishes a comprehensive partnership between the Parties... Where the Union and the United Kingdom conclude other bilateral agreements between them, such agreements shall constitute supplementing agreements to this Agreement. Such supplementing agreements shall be an integral part of the overall bilateral relations as governed by this Agreement and shall form part of the overall framework."

The UK, on the other hand, has [proposed](#) a suite of different agreements that are not necessarily linked.

Part one also covers the role of the Court of Justice of the European Union (CJEU) in interpreting parts of the draft Agreement:

"Concepts... or provisions of Union law referred to in this Agreement or in any supplementing agreement, shall in their application and implementation be interpreted in accordance with the methods and general principles of Union law and in conformity with the case-law of the Court of Justice of the European Union."

The UK, on the other hand, has [stated](#) that there should be "no role for the Court of Justice" in any agreements.

## Part 2: economic partnership

This part of the EU draft text describes a wide ranging agreement covering:

- Title I: Transparency
- Title II: Good regulatory practices and regulatory cooperation
- Title III: Level Playing Field and Sustainability \*

- Title IV: Trade in goods
- Title V: Fisheries \*
- Title VI: Services and investment
- Title VII: Digital trade
- Title VIII: Capital movements, payments, transfers and temporary safeguard measures
- Title IX: Intellectual property
- Title X: Public procurement
- Title XI: Mobility of natural persons
- Title XII: Transport
- Title XIII: Energy and raw materials
- Title XIV: Civil Nuclear
- Title XV: Small and medium-sized enterprises
- Title XVI: Exceptions
- Title XVII: Other provisions

The topics with an asterisk (\*) are discussed below because they are both devolved and identified by the UK and EU as areas of disagreement.

### **Level playing field**

Disagreements between the UK and EU are known to exist on the parties' approaches to a ['level playing field'](#), and in particular on State Aid.

On **State Aid**, the EU's draft text includes an annex listing current EU rules on State Aid which the UK must continue to apply.

The text also proposes a mechanism should new State Aid rules be created by the EU:

"As soon as reasonably practical after the Union has informed the United Kingdom in the Specialised Committee on the Level Playing Field and Sustainability, the Specialised Committee on the Level Playing Field and Sustainability shall either:

(a) adopt a decision adding the new act or provision to ANNEX LPFS-X; or

(b) where an agreement on adding the new act or provision to ANNEX LPFS-X cannot be reached, examine all further possibilities to maintain the good functioning of this Section and take any decision necessary to this effect, without prejudice to the possibility for the Union to take appropriate interim measures under Article LPFS.2.9.1(c) [Interim measures]."

There are further provisions covering enforcement, cooperation, courts, information sharing and dispute settlement.

Separate arrangements are proposed for the state subsidy of agriculture. State Aid rules for agriculture at an EU level have ensured compliance of the EU as a whole with specific WTO rules on state aid for agriculture, set out in the [WTO Agreement on Agriculture](#). As part of the UK's exit from the EU, the UK and EU now have to agree what arrangements will apply for the UK as a single state. In this policy area, the draft text proposes that maximum levels of support should be agreed by a joint UK-EU committee following specific procedures:

The determination of the maximum exempted overall annual level of support and the minimum percentage shall be set by the Specialised Committee on the Level Playing Field and Sustainability and governed by the procedures set out in Article LPFS.2.3 [Procedures referred to in Article LPFS.2.1(2)].

[...]

The initial maximum exempted overall annual level of support shall be informed by the design of the United Kingdom's future agricultural support scheme as well as by the annual average of the total amount of domestic support incurred in the United Kingdom during the period of the current Multiannual Financial Framework 2014-2020. The initial minimum percentage shall be informed by the design of the United Kingdom's agricultural support scheme as well as by the percentage to which the overall domestic support in the Union complied with the provisions of Annex 2 to the WTO Agreement on Agriculture as notified for the period concerned.

The EU's draft legal text also contains 'level playing field' provisions covering the devolved areas of **environmental protection and climate change**.

The draft text proposes "non-regression" clauses to maintain the levels of environmental and climate protections as they will be at the end of the transition period. The text also contains clauses to prevent non-regression from future increases in protection levels so long as both parties have increased their standards.

The draft text sets out requirements for an independent monitoring body able to bring legal actions to court:

Each Party shall establish a system for the effective monitoring of the domestic enforcement of their law and practices... by an independent and adequately resourced body or bodies ("the independent body").

The independent body shall have powers to conduct inquiries on its own initiative concerning alleged breaches by public bodies and authorities, and to receive complaints for the purposes of conducting such inquiries. It shall have all powers necessary to carry out its functions, including the power to request information. The independent body shall have the right to bring a legal action before a competent court or tribunal in an appropriate judicial procedure, with a view to seeking an adequate remedy."

The draft text is explicit that the European Commission is this body for the EU.

The UK Government is in the process of setting up a new environmental governance body to replace the oversight and enforcement functions of the Commission. The UK Government published the [Environment Bill](#) on 30 January 2020, the reintroduction of a UK Government Bill from the previous Parliamentary session. The Bill creates a new public body, a 'body corporate' called the Office for Environmental Protection (OEP). The aim is to establish a domestic independent watchdog who will be responsible for taking action in relation to breaches of environmental law. The OEP will have scrutiny, advice and enforcement functions and is expected to be set up as an independent Non-Departmental Public Body (NDPB).

Most of the Environment Bill applies to England only, although the OEP is expected to have a limited remit in Scotland in relation to reserved functions falling within the definition of environmental law.

The Scottish Government [conducted its own consultation on environmental governance and principles in 2019](#), and is expected to include provisions to set up a new Scottish environmental governance body in the forthcoming Continuity Bill. This Bill has also been delayed due to current circumstances.

On carbon pricing, the text states that the UK:

"shall implement a system of carbon pricing of at least the same scope and effectiveness as that provided by the EU Emissions Trading System (EU ETS).

Should the United Kingdom create its own emissions trading system and request it to be linked to the EU ETS, the Union shall give serious consideration to such request, provided that it does not risk affecting the integrity of the EU ETS, in particular its balance of rights and obligations, and that an increase in scope and effectiveness is ensured."

## **Fisheries**

The EU's draft legal text proposes to generally maintain the current arrangements on access to waters and quota shares under the EU's Common Fisheries Policy (CFP).

The text would establish a reciprocal right of access for UK and EU fishing vessels to fish in each others' waters.

#### Article FISH.10: Reciprocal access to waters

1. Each Party shall authorise the fishing vessels of the other Party to engage in fishing activities in its waters in accordance with the provisions set out in ANNEX FISH-3.
2. The authorisation shall cover access to pursue fishing of stocks subject to joint management and all other stocks.
3. Specific conditions set by each Party when authorising access to its waters shall be directly related to the fishing opportunities established pursuant to Article FISH.11 [Fishing opportunities].

ANNEX FISH-3 lists the fish species to which fishing vessels will have access:

- Outside of 12 nautical miles this includes all fish species.
- Within 12 nautical miles the annex defines certain geographies and species.

The EU's draft text proposes annual negotiations on "fishing opportunities", i.e. the total amount of fish that can be collectively caught by the UK and EU fleet.

#### Article FISH.11: Fishing opportunities

1. By 31 January of each year, the Parties shall set the agenda for consultations with the aim to agree on fishing opportunities in Union and United Kingdom waters for the following year.

The provisions for these quota negotiations are set out in more detail, including:

The Parties shall establish... the fishing opportunities for the following year... in accordance with the allocation set out in ANNEX FISH-2.

ANNEX FISH-2 does not yet explicitly set out an allocation sharing the total allowable catch out between the UK and EU. But a note in the annex states "It is planned to uphold here existing quota shares". It is assumed this refers to the fixed "[relative stability key](#)" which is the existing way that total allowable catch is shared out between Member States. In other words, the EU's text proposes that the UK's existing share of quota under the CFP is maintained.

This is at odds with the UK's approach to the future relationship negotiations. The UK's [approach paper](#) emphasises the fact that the UK will become an "independent coastal state" after the transition period and says:

“ The UK will no longer accept the ‘relative stability’ mechanism for sharing fishing quotas, which is outdated, based on historical fishing activity from the 1970s. This means that future fishing opportunities should be based on the principle of zonal attachment, which better reflects where the fish live, and is the basis for the EU’s fisheries agreement with Norway.”

The process for agreeing quotas between independent coastal states and under the current CFP is [described in the SPICe Spotlight series: How fishing quotas are set](#).

## Part 3: security partnership

The EU's draft legal text on a security partnership covers:

- Law enforcement and judicial cooperation in criminal matters
- Thematic Cooperation (covers irregular migration, health and cyber security)

A [separate text has been published](#) on Foreign Policy, Security and Defence.

Law enforcement and judicial cooperation in criminal matters is discussed below because this topic is both devolved and identified by the UK and EU as an area of disagreement.

### Law enforcement and judicial cooperation in criminal matters

Under this title, the EU's draft legal text covers the following issues:

- General Provisions
- Exchanges of DNA, Fingerprints and vehicle registration data (“PRUM”)
- Transfer and processing of passenger name record data (PNR)
- Cooperation on operational information
- Cooperation with Europol
- Cooperation with Eurojust
- Surrender
- Mutual assistance
- Exchange of information extracted from criminal records
- Anti-money laundering and counter-terrorism financing
- Other provisions

Much of this draft legal text contains provisions to:

- facilitate the sharing of information (e.g. DNA, passenger records, intelligence on criminality) and to protect personal data;
- establish cooperation with Europol and Eurojust
- establish an arrest warrant to surrender suspected and convicted persons between the UK and Member States
- cooperate on anti-money laundering and counter-terrorism

While there are likely to be differences in detail, both the UK and EU's approaches support cooperation in these matters.

Both parties also agree there should be a mechanism to suspend or terminate parts of the agreement. The EU's draft text details the following conditionality on adhering to the European Convention on Human Rights (ECHR):

The cooperation under this Title shall be conditional upon the United Kingdom's continued adherence to the European Convention on Human Rights and Protocols 1, 6 and 13 thereto, as well as upon the United Kingdom giving continued effect to these instruments under its domestic law.

Brexit has no direct impact on the UK's obligations under the ECHR (and the Human Rights Act 1998 [gives effect to the ECHR in UK domestic law](#)). However, the UK's approach paper stated:

“ The agreement should not specify how the UK or the EU Member States should protect and enforce human rights and the rule of law within their own autonomous legal systems.”

These positions are not necessarily incompatible, but are likely to be subject to further discussion and negotiation.

Finally, the key issue in negotiations on cooperation in criminal matters is likely to be linked to the role of the Court of Justice of the European Union (CJEU). See the [governance section for further discussion](#) on this.

### **Separate text on foreign policy, security and defence**

The European Commission also published a separate [draft legal text covering foreign policy, security and defence](#) issues. This was published separately by the Commission because the UK does not intend to negotiate for these issues to be addressed in an "institutionalised framework", preferring instead to take a case-by-case approach to initiatives.

The UK Government's paper outlining its [approach to the negotiations](#) stated:

“ The Government agrees that all the areas of policy set out in the Political Declaration will be relevant to the UK's future cooperation with the EU. But the Government does not agree that that requires every area to be incorporated into a negotiated Treaty or similar arrangement. Many policy areas – for example foreign policy or immigration policy – are for the UK Government to determine, within a framework of broader friendly dialogue and cooperation between the UK and the EU: they do not require an institutionalised relationship.”

None of the issues covered by the Commission's separate draft text would generally be considered to be devolved to the Scottish Parliament or Scottish Ministers.

## Part 4: participation in EU programmes, etc.

Part 4 of the EU's draft legal text provides for a framework for the UK's participation in EU programmes. This includes general conditions for participation and financing, but the draft text does not as yet define specific programmes or the detailed terms.

The UK has indicated it may wish to participate in a limited number of EU programmes, including Horizon Europe and "elements of Erasmus+ on a time-limited basis".

The UK's approach paper does not list [European Territorial Cooperation](#) as programmes it wishes to participate in. In light of this the Scottish Government is exploring Scotland-only participation. In this context it is worth noting that Part 4 does not apply here:

This Chapter shall not apply to the participation of the United Kingdom in cohesion programmes supporting cross-border cooperation with third countries, which takes place on the basis of the acts of one or more Union institutions applicable to those programmes.

## Part 5: governance arrangements

Part 5 of the EU's draft legal text covers "institutional and horizontal provisions" organised into three titles:

- Institutional framework
- Dispute settlement
- Fulfilment of obligations and safeguard measures

The key institutional framework proposed by the text is the creation of a "Partnership Council" with representatives from the UK and EU.

The Partnership Council shall supervise and facilitate the implementation and application of this Agreement and any supplementing agreement. Each Party may refer to the Partnership Council any issue relating to the implementation, application and interpretation of this Agreement or of any supplementing agreement.

The Partnership Council's powers and specialised committees are proposed, but any detailed rules governing how the Partnership Council would operate and make decisions are not yet set out in the text. No role is set out in the current text for devolved administrations or legislatures.

Provisions on dispute resolution are set out, including consultations at the Partnership Council followed by an arbitration tribunal if the dispute is not resolved. In instances where the dispute raises a question relating to an area of EU law, the draft text requires the Court of Justice of the European Union (CJEU) to rule on the question rather than the arbitration panel:

## Article INST.16: Disputes raising questions of Union law

1. Where a dispute submitted to arbitration raises a question of interpretation or application of a concept of... or of a provision of Union law referred to in this Agreement or any supplementing agreement, the arbitration tribunal shall not decide on any such question. In such case, it shall request the Court of Justice of the European Union to give a ruling on the question. The Court of Justice of the European Union shall have jurisdiction to give such a ruling which shall be binding on the arbitration tribunal.

This is a known area of disagreement. The UK's [approach paper](#) states that the arrangements for managing the Agreement:

“ will reflect the regulatory and judicial autonomy of the UK and accordingly there will be no role for the Court of Justice of the European Union in the dispute resolution mechanism. ”

# Commons Committee begins inquiry on the future relationship

The House of Commons Committee on the Future Relationship with the EU has begun an inquiry into the [Progress of the negotiations on the UK's Future Relationship with the EU](#). On 11 March, the Committee [took evidence](#) from Michael Gove, Chancellor of the Duchy of Lancaster, Minister for the Cabinet Office.

During the evidence session, Michael Gove addressed issues about [timing of publication of the UK's negotiating text](#) and whether the government would produce an impact assessment of its desired deal with the EU. On the question of an impact assessment, Michael Gove said the UK government did not intend to publish an impact assessment on its EU negotiating position telling the Committee:

“ Because we are going to take a different approach. We are going to invite, from across a range of organisations, their views on what the impact of a free trade agreement with the EU and consequent changes might be. I am personally sceptical of efforts to say that any given impact assessment by a Government Department is an accurate prediction of the future. As load-bearing devices go, they are perhaps not the most effective ways of delivering a proper range of views about what the economic consequences of a course of action might be.”

This approach runs counter to the UK government's approach to the US trade deal negotiations for which it published a 60 page impact assessment.

Asked about the impact of the coronavirus (COVID 19) on the negotiations, Michael Gove said:

“ It is a live question. We were looking forward to the Joint Committee meeting in the UK on 30 March, and we were obviously looking forward to the next stage of negotiations going ahead. However, we have had indications today from Belgium that there may be specific public health concerns, so I will keep the House and the Committee updated on progress.”

Given the disruption to the negotiations, on the possibility of extending the transition period, the Minister said:

“ No, there will not be any extension to the deadline.”

Michael Gove told the Committee that the approach to alignment and divergence from EU rules would be one for the parliament (and future parliaments) to take:

“ Ultimately it will be for this Parliament and future parliaments to decide. This Parliament and future parliaments will be influenced by business and changing economic circumstances, but as a number of people have said, there is no point in diverging for the sake of divergence. When we think about alignment it is also important to underline that we will not be dynamically aligning with the EU. We will not be aligning in a way that means that we will be following ECJ jurisprudence or subject to any European agency. Of course, it may well be the case that individual businesses, observing what the rules are to sell into the EU market quite properly, produce and manufacture goods that can sell easily into that market.”

On the strength of the UK government position in relation to fisheries and agriculture, the Minister told the Committee:

“ We are in a strong position in both those areas. I know that there are Defra officials and others who form part of the negotiating team. There are two things in particular that I would mention. The first is, as all members of this Committee know, in the United Kingdom’s exclusive economic zone we have the majority of fishing resource that has been in the past within the EU. This is a great sovereign asset and other countries have been clear that they wish to retain access to it. Their access will only be on our terms. We will be an independent coastal state, and that is a strong position for the United Kingdom to be in.”

“ On agriculture and agrifood overall I would say several things. The first is that we import more from the EU than we export to the EU, so there is an interest from particular sectors in the EU in maintaining access to our markets. Obviously there are some sectors, particularly the sheep meat sector, that currently rely heavily on the EU, but there are other opportunities for that sector to diversify as well. Outside the EU we can develop a bespoke system of agricultural support that will enable our farmers to be paid for the environmental benefits that they provide, as well as making a success of marketing British food.”

Michael Gove also set out detail on the UK government's position with regards to fisheries telling the Committee:

“ The first thing to say is that there are some on the EU side who said to the UK, “When you are out of the EU you cannot have the same rights that you had when you were in the EU”. The same thing applies to others countries’ access to our fishing waters. They cannot simultaneously say that now that we are out of the EU there are certain rights of access that we lose to their market and that they must maintain exactly the same rights of access to our fishing waters. ”

“ The approach that we propose to take is going to change. We have made it clear that we are going to move away from what is called relative stability, towards something like zonal attachment. That means we will be managing our stocks in the interests of conservation more effectively than has been the case in the CFP, and for our coastal communities. Michel Barnier is a tough negotiator, but it is the case that this is a sovereign UK resource and we will decide access to it on our terms.”

On the potential role for the devolved administrations in the negotiations, the Minister told the Committee:

“ More broadly, Mike Russell on behalf of the Scottish Government has made a number of suggestions about how we can involve devolved administrations in negotiations that have informed our approach. You will appreciate that Mike is a very robust guy and there are aspects of what we are doing with which he profoundly disagrees, but nevertheless it is the case that he lands arguments well and those arguments do weigh with us.”

Michael Gove also confirmed the UK government wished to opt-in to some EU programmes, such as Erasmus, assuming it provided value for money. However, he added that the UK would not participate in any EU programme or initiative that fell under the jurisdiction of the European Court of Justice, for example REACH.

On 18 March, the Committee [took evidence](#) from:

- Stephen Booth, Head of the Britain in the World Project, Policy Exchange;
- Professor Anand Menon, Professor of European Politics and Foreign Affairs, King's College London; and
- Christophe Bondy, Partner, International Trade and Investment Law Group, Steptoe & Johnson LLP, London

The [transcript of the evidence session](#) is now available.

# Withdrawal Agreement: scrutiny of implementation

## UK Parliament committees' approach to scrutiny

On 23 March, the [chairs of eight Select Committees wrote to Michael Gove](#), the Chancellor of the Duchy of Lancaster to set out their views on how Parliament can scrutinise the [Joint Committee which is overseeing operation of the Withdrawal Agreement](#).

The letter sets out that during the parliamentary passage of the European Union (Withdrawal Agreement) Act, the UK government stated that the Minister acting as UK co-chair of the Joint Committee "will be personally accountable to Parliament for their actions in this forum". The Select Committee chairs letter to Michael Gove seeks to establish what this accountability will look like during the transition period. The committee chairs made the following recommendations:

- That the UK government should facilitate the maximum possible transparency in relation to proceedings in the Joint Committee and specialised committees. This commitment to transparency should include publication of schedules and agendas for each Joint Committee and specialised committee meeting and publish documents considered at those meetings wherever possible.
- Following each meeting of the Joint Committee, the UK government should make a statement to parliament on progress on the implementation of the Withdrawal Agreement including on matters discussed in that Joint Committee meeting. The statement should also include details of any decisions taken or recommendations made in the Joint Committee or the specialised committees.
- Where the Joint Committee is due to make any decisions that would be binding on the UK under Article 166 of the Withdrawal Agreement or make amendments to the Withdrawal Agreement under Article 164(4)(f), the UK government should set this out in a statement to Parliament ahead of the meeting. The statement should indicate its position on the proposal which it will take in the Joint Committee meeting. Following the meeting, the UK government should update parliament on the outcome of the meeting. In this instance, the appropriate committee may also wish to take evidence from the Minister.
- The European Scrutiny Committee will continue to scrutinise proposed Council Decisions which will establish the EU's position on any measures to be considered by the Joint Committee.
- The UK government must make a statement to parliament in the event an arbitration panel is convened under the Withdrawal Agreement and a decision is made with regards to interpretation of the Agreement.
- Finally, the UK government should make an oral statement to parliament when the Joint Committee annual report on the functioning of the Withdrawal Agreement is published.

The committee chairs who signed the letter represent the following committees:

- Committee on the Future Relationship with the European Union
- European Scrutiny Committee
- Home Affairs Select Committee
- Northern Ireland Affairs Committee
- International Trade Committee
- Justice Committee
- Treasury Committee
- Foreign Affairs Committee

# Withdrawal Agreement: role of the Joint Committee

The outcome of the future relationship negotiations will also be dependent on successful implementation of the Withdrawal Agreement, including the provisions of the Ireland and Northern Ireland protocol. The successful implementation of the Withdrawal Agreement will be monitored by a Joint Committee. This section of the update provides some background information on the Joint Committee including details of its first meeting.

Part 6 of the Withdrawal Agreement addresses Institutional and Final Provisions. Title II of Part 6 establishes a Joint Committee (Article 164) which will be responsible for the implementation and application of the Agreement. The Joint Committee will be composed of representatives of the EU and of the UK. Title II also sets out how the Joint Committee will operate. It will be co-chaired by both sides. In terms of the operation of the Joint Committee, the Agreement states that either the UK or the EU may refer to the Joint Committee any issue relating to the functioning of the Withdrawal Agreement. The Joint Committee will then be empowered to make decisions and recommendations by mutual consent. The Agreement does not address what mutual consent within the Joint Committee means in practice.

The Joint Committee will meet at least once a year or by request of either the EU or the UK.

The Withdrawal Agreement sets out the role of the Joint Committee in terms of what it “shall do” and “may do”. In terms of what the Joint Committee shall do, these tasks include:

- (a) supervise and facilitate the implementation and application of this Agreement;
- (b) decide on the tasks of the specialised committees and supervise their work;
- (c) seek appropriate ways and methods of preventing problems that might arise in areas covered by this Agreement or of resolving disputes that may arise regarding the interpretation and application of this Agreement;
- (d) consider any matter of interest relating to an area covered by this Agreement;

In terms of what the Joint Committee may do, these tasks include:

- (a) delegate responsibilities to specialised committees
- (b) establish specialised committees other than those established by the Withdrawal Agreement, in order to assist the Joint Committee in the performance of its tasks;
- (c) change the tasks assigned to specialised committees and dissolve any of those committees;

Beneath the Joint Committee, the Agreement includes provision for 6 sub-committees:

1. the Committee on citizens' rights
2. the Committee on the other separation provisions

3. the Committee on issues related to the implementation of the Protocol on Ireland/Northern Ireland
4. the Committee on issues related to the implementation of the Protocol relating to the Sovereign Base Areas in Cyprus
5. the Committee on issues related to the implementation of the Protocol on Gibraltar; and
6. the Committee on the financial provisions

The sub-committees are required to report to the Joint Committee both ahead of and following meetings. Further sub-committees can be established if deemed necessary.

Under the Agreement, the Joint Committee will have the power to adopt decisions in respect of all matters for which the Agreement provides and to make appropriate recommendations to the EU and the UK. Any decision adopted by the Joint Committee will be binding on the EU and the UK and so must be implemented. Decisions will have the same legal effect as the Withdrawal Agreement.

Annex VIII of the Agreement provides the rules of procedure for the Joint Committee and sub-committees.

## UK membership

On 1 March 2020, the [UK Government confirmed](#) that Chancellor of the Duchy of Lancaster and Minister for the Cabinet Office, Michael Gove MP, will be the UK's co-chair of the Joint Committee. Paymaster General, Penny Mordaunt MP will act as the alternate co-chair.

[Section 34 of the European Union \(Withdrawal Agreement\) Act 2020](#) requires the UK Government to appoint a serving UK minister as the UK co-chair.

## EU membership

On 26 February 2020, the European Commission President, Ursula von der Leyen [appointed](#) Maroš Šefčovič, Vice-President for Interinstitutional Relations and Foresight, as the EU's representative and Co-Chair of the Joint Committee. Šefčovič will work in close coordination with Michel Barnier and the Task Force on Relations with the United Kingdom.

## First meeting of the Joint Committee

On 25 March, Michael Gove, the Chancellor of the Duchy of Lancaster and Minister for the Cabinet Office made a [written statement](#) in Parliament indicating that the first meeting of the Joint Committee would take place on 30 March. According to the statement the agenda will include the following items:

1. Introduction and opening remarks from co-chairs

2. UK/EU Updates on implementation of the Withdrawal Agreement
3. Tasks and responsibilities of the Specialised Committees
4. AOB

The UK Delegation will include:

- Chancellor of the Duchy of Lancaster, Rt Hon Michael Gove MP
- The Paymaster General, Rt Hon Penny Mordaunt MP

## **The Joint Committee and the Ireland and Northern Ireland Protocol**

Ensuring effective operation of the Ireland and Northern Ireland Protocol will be a key role for the Joint Committee, and the Committee on issues related to the implementation of the [Protocol on Ireland/Northern Ireland](#).

The Protocol leaves responsibility for establishing criteria to assess whether goods entering Northern Ireland should be deemed “at risk” of entering the EU to the Joint Committee. The criteria to be applied by the Joint Committee includes reference to:

“ The Joint Committee will also have responsibility for keeping under constant review the extent to which the implementation and application of this Protocol maintains the necessary conditions for North-South cooperation.”

The Joint Committee will also have a role where the Union adopts a new piece of legislation which falls within the remit of the Protocol. In this instance:

“ the Union shall inform the United Kingdom of the adoption of that act in the Joint Committee.”

“ Upon the request of the Union or the United Kingdom, the Joint Committee shall hold an exchange of views on the implications of the newly adopted act for the proper functioning of this Protocol, within 6 weeks after the request. ”

“ As soon as reasonably practical after the Union has informed the United Kingdom in the Joint Committee, the Joint Committee shall either: ”

“ (a) adopt a decision adding the newly adopted act to the relevant Annex to this Protocol; or ”

“ (b) where an agreement on adding the newly adopted act to the relevant Annex to this Protocol cannot be reached, examine all further possibilities to maintain the good functioning of this Protocol and take any decision necessary to this effect.”

The Committee on issues related to the implementation of the Protocol on Ireland/Northern Ireland has the following role:

- (a) facilitate the implementation and application of this Protocol;

(b) examine proposals concerning the implementation and application of this Protocol from the North-South Ministerial Council and North-South Implementation bodies set up under the 1998 Agreement;

(c) consider any matter of relevance to Article 2 of this Protocol brought to its attention by 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;

(d) 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

(e) make recommendations to the Joint Committee as regards the functioning of this Protocol.

The Joint Committee also has a role in ensuring the democratic consent of the people of Northern Ireland continues to be in place to allow the Protocol to remain in force. In this instance, the Joint Committee's role relates to a situation where the Protocol is no longer to apply in Northern Ireland. In this instance:

“ In such a case the Joint Committee shall address recommendations to the Union and to the United Kingdom on the necessary measures, taking into account the obligations of the parties to the 1998 Agreement. Before doing so, the Joint Committee may seek an opinion from institutions created by the 1998 Agreement.”

The Joint Committee also has a role in determining levels of agricultural support in Northern Ireland.

## Role for devolved ministers in the Joint Committee?

The “[New Decade, New Approach](#)” agreement document, published jointly by the UK and Irish Governments in January 2020, states:

“ the Government will ensure that representatives from the Northern Ireland Executive are invited to be part of the UK delegation in any meetings of the UK-EU Specialised or Joint Committees discussing Northern Ireland specific matters which are also being attended by the Irish Government as part of the European Union's delegation.”

Clearly given the unique issues surrounding the Ireland and Northern Ireland Protocol, this approach makes sense. The UK Government has made no commitments with regards to representation of the other devolved administrations in the Joint Committee. On this issue, Professor David Phinnemore told the [Scottish Parliament's European Committee](#):

“ It is up to the UK Government to decide who attends those meetings, but ultimately, in the joint committee, it would be a UK minister making the decision. ”

“ The understanding is that, because there is a specialised committee that is dedicated to the implementation of the protocol, which obviously has significant implications for Northern Ireland, there is a just reason for including Northern Irish voices as part of the delegation. The same would apply at the joint committee when the decisions on implementing some of the recommendations that come out of the specialised committee are taken, because that advice needs to be there. ”

“ At the moment, there is a lack of clarity about exactly how that will operate, and there is some slight concern about the way in which the UK Government has phrased the clause about the presence of Northern Irish representatives as part of the UK delegation. The concern is that it is contingent on the Irish being present alongside the European Commission, because it does not necessarily follow that there needs to be an Irish representative there alongside the commission to justify someone from Northern Ireland being there. What role they are going to have is still to play out. ”

“ There is another group that exists below the specialised committee: the joint consultative working group, which I think is going to deal with a lot of the fine detail of what is being proposed. The UK Government is yet to be clear about what role Northern Ireland is going to have in that. There is a good argument for Northern Ireland representatives being on that group, and for those representatives to include civil servants and, ideally, experts—provision exists in the protocol for experts to be involved. In essence, that is because, as we have seen this morning, there is a series of detailed issues that are specific to Northern Ireland and the implications of the protocol, and the level of understanding of those issues is probably most developed in Northern Ireland.”

“ Over the past three years—this can be appreciated from a Scottish perspective—it has not always been clear that representatives of the UK Government have had the fullest understanding of the implications of Brexit for the devolved Administrations. That is particularly the case in relation to the implications for Northern Ireland. ”

“ The level of understanding has increased enormously over the past two to three years. It is probably now at the level where a lot of the issues that are being thrown up by the nature of the protocol are understood well in Northern Ireland, because there has been effective engagement between businesses, civil servants and politicians. However, we need to ensure that there is not a very centralised UK approach, whereby only UK Government ministers and Whitehall-based civil servants are involved. If we are to address all the issues in the protocol, we need the understanding and expertise that has been developed in Northern Ireland to be part of the process.”

# The European Union (Withdrawal) Act and Common Frameworks

The European Union (Withdrawal) Act requires the UK government to report to Parliament periodically on matters relating to Common Frameworks and the use if any made by the UK government of powers under section 12 of the Act (the so-called 'freezing powers') temporarily to maintain existing EU law limits on devolved competence.

The [6th report](#) was laid in the UK Parliament on 19 March.

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