HOUSE OF LORDS
European Affairs Committee

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The Sub-Committee on the Protocol on Ireland/Northern Ireland was appointed by the European Affairs Committee to consider all matters related to the Protocol, including scrutinising EU legislation applying to Northern Ireland under the terms of the Protocol. This scrutiny is frequently carried out through correspondence with Ministers. Such correspondence, including Ministerial replies and other materials, is published below.

This edition includes correspondence from 26 March – 17 September 2021

PROTOCOL ON IRELAND/NORTHERN IRELAND SUB-COMMITTEE

CONTENTS

Letter to the Chair from the Rt Hon Jesse Norman MP, Financial Secretary to the Treasury, HM Treasury

Thank you for your letter dated 10 March regarding the above Explanatory Memorandum (EM).

You asked when an assessment will be available of the volume of goods for which export declarations will be required. The declarations in the Joint Committee with legal standing confirm that the Protocol does not require export or exit declarations for internal UK movements except in extremely limited circumstances. The Government is working with relevant administrations to monitor these volumes against other data on overall NI to GB movements.

On your question about Commission Vice-President Šefčovič's letter, the Government is working to ensure that the relevant authorities have access to equivalent information and reciprocal data sharing on Northern Ireland to Great Britain movements and is making positive progress.

The 24-hour notification period you outlined in your letter is for the movement of live animals and animal products subject to sanitary and phytosanitary (SPS) controls, and is required under EU regulation 2019/1013. Article 1(2) of that regulation provides a derogation for consignments where logistical constraints prevent compliance with the 24-hour time limit to allow a period of pre-notification of at least four hours. The UK Government engages regularly with its Irish counterparts through cross-Whitehall and departmental fora.

Finally, you asked about goods imported into Great Britain and then transported to Northern Ireland or Ireland. I can confirm that under the EU–UK Trade and Cooperation Agreement (TCA) goods that enter free circulation in GB from the EU cannot claim preferential duty when moved to Northern Ireland or Ireland unless they have been processed into a product with UK origin under the TCA rules of origin. If the goods are moved to Northern Ireland, there will be no tariffs to pay unless they are at risk of moving to EU. The Trader Support Service will support traders to make this movement. In addition, there are a range of customs facilitations available to traders to assist with the movement of third-country goods through GB, including transit, customs warehousing and returned goods relief.

The Government intends to engage further with the EU on rules of origin and customs procedures via the Trade Specialised Committee on Customs Cooperation and Rules of Origin committee later this year. It has provided guidance and support which is available to all UK businesses to ensure tariffs are correctly applied on all processed and non-processed goods.

26 March 2021

Letter from the Chair to the Rt Hon Jesse Norman MP, Financial Secretary to the Treasury

Thank you for your letter to Lord Kinnoull, dated 26 March 2021, on the above Delegated Regulation. Responsibility for scrutiny of this document has been transferred from the former House of Lords EU Select Committee to the new European Affairs Sub-Committee on the Protocol on Ireland/Northern Ireland, which considered it at its meeting on 26 May 2021.

We note that this Delegated Regulation has now come into force, and consequently we now draw our exchange of correspondence on this document to a close. Nevertheless, we would be grateful to be kept informed of developments in relation to the issues raised in your letter, including your assessment of the volume of goods requiring exit/export declarations and the reciprocal sharing of data on movement of goods from Northern Ireland to Great Britain, dialogue with the Irish Government on the movement of goods via Irish ports, the handling of unprocessed goods such as Spanish tomatoes imported to Great Britain from the EU and then subsequently distributed to Ireland or Northern Ireland, and your engagement with the EU on rules of origin and customs processes.

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON THE APPLICATION OF UNION TARIFF RATE QUOTAS AND OTHER IMPORT QUOTAS (COM(20) 375)

Letter to the Chair from the Rt Hon Greg Hands MP, Minister of State, Department for International Trade

Thank you for your letter of 24th March regarding the Commission's proposal for a regulation on the application of Union tariff rate quotas and other import quotas. This proposal was adopted by the European Parliament and the Council in December 2020 as Regulation (EU) 2020/2170 of the European Parliament and of the Council of 16 December 2020 on the application of Union tariff rate quotas and other import quotas ("EU Regulation 2020/2170"). I am grateful for your consideration of this matter, and I have provided answers to your questions in the Annex to this letter.

You are correct that this is one of the issues that the Chancellor of the Duchy of Lancaster presented as an area that needs to be resolved with the EU. In order to do this we are currently discussing the application of tariff rate quotas for goods entering Northern Ireland as part of the discussions in the Withdrawal Agreement Joint Committee and Ireland / Northern Ireland Specialised Committee.

You will be aware that on the specific issue of steel, steps have been taken by HM Government, including in the Finance Bill, to enable UK and Rest of World steel to be brought into Northern Ireland tariff-free as long as the relevant EU quota is open. This is necessary to avoid a scenario where NI businesses are uniquely disadvantaged compared to GB and EU businesses by being unable to use either UK or EU quotas.

Please find enclosed Annex A, where I have sought to answer the questions and clarify the issues that you have highlighted.

ANNEX A – Responses to points and questions raised by House of Lords' European Union Committee

1. **What update can you provide of your assessment of the impact of this Regulation upon trade to and from Northern Ireland?**

Goods brought into Northern Ireland which are "not at risk" can access United Kingdom quotas. While in theory the Regulation purports to affect all goods subject to EU quotas entering Northern Ireland and therefore is potentially significant, there are mitigations that ensure the real impact is minimal, and we are exploring measures to further address the anomalies caused by the EU's unilateral steps.

HM Government has also committed to establishing a reimbursement scheme for goods that attract a tariff, but which can subsequently be shown to have remained in the United Kingdom customs territory.

2. **What is the Government's response to the Commission's proposals outlined in Vice-President Šefčovič's letter of 10 February to the Chancellor of the Duchy of Lancaster?**

As the Chancellor of the Duchy of Lancaster pointed out in his letter, the unilateral EU Regulation 2020/2170 on import quotas is a wider issue than that accounted for by the Commission's proposals. The Commission does not take account of either imports of steel from the rest of the world into Northern Ireland, nor does it bring forward any proposals to mitigate the wider potential impact of EU Regulation 2020/2170 on other quota goods. We therefore continue to engage with the Commission on these matters.

3. **In view of its more limited scope in relation to imports of steel to Northern Ireland from the rest of the world, does it go far enough to assuage your concerns?**

The proposal that the UK-EU steel quota may be accessed in Northern Ireland for GB-NI movements is welcome. However, this only resolves part of the challenge.

4. **What update can you give on the timetable for the commission to bring forward such amendments [outlined in Vice-President Šefčovič's letter]?**

It is up to the EU to take forward its internal processes.

5. **Are you aware of any other products that are also subject to such anomalies?**

The Regulation purports to affect access for other quota goods entering Northern Ireland directly – either by affecting the 'at risk' calculation by creating a tariff differential above 3 percentage points, or by forcing 'at risk' goods to pay the out of quota (Most Favoured Nation or MFN) rate.

6. **Which countries is the United Kingdom negotiating with [at the WTO], how much trade is at stake, and when do you expect these matters to be resolved?**

HM Government has been engaging in constructive discussions with WTO Members where they have asked questions regarding the interaction between EU Regulation 2020/2170 and the 'at risk' decision, most notably New Zealand. We have been clear that we want to work constructively through the United Kingdom-EU Joint Committee to address these issues.

We will continue to engage with affected WTO Members, and NI importers, on these issues over the coming months.

15 April 2021

Letter from the Chair to the Rt Hon Greg Hands MP, Minister of State, Department for International Trade

Thank you for your letter to Lord Kinnoull, dated 14 April 2021, on the above Regulation. Responsibility for scrutiny of this document has been transferred from the former House of Lords EU Select Committee to the new European Affairs Sub-Committee on the Protocol on Ireland/Northern Ireland, which considered it at its meeting on 26 May 2021.

We note that, while this Regulation has now been adopted, the application of tariff rate quotas for goods, including steel, entering Northern Ireland continue to be discussed with the EU in the Withdrawal Agreement Joint Committee and Ireland/Northern Ireland Specialised Committee.

Therefore, while we hereby draw our exchange of correspondence on this Regulation to a close, we would be grateful for further updates on the outcome of discussions with the EU on these matters.

27 May 2021

PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON THE RESILIENCE OF CRITICAL ENTITIES (COM(20) 829)

Letter from the Chair to the Rt Hon Penny Mordaunt MP, Paymaster General, Cabinet Office

Thank you for the EM dated 11 March 2021 on the above Directive with implications for the Protocol on Ireland/Northern Ireland. The House of Lords Committee on the Protocol on Ireland/Northern Ireland considered this document at its meeting on 19 May 2021.

We note the work that is currently underway to clarify the interaction between the proposed CER Directive and the Protocol. In your EM you acknowledge that the Directive "may impact the Northern Ireland Protocol due to its potential impacts on the Single Electricity Market", but later this impact seems to be more significant, as you state: "There will be minimal direct impact on the sectors in scope of the 2008 ECI directive, Energy and Transport, as a result of the changes to the EU directives (other than in Northern Ireland)." We were disappointed that the impact on Northern Ireland was understated and would have anticipated more detailed information on this in the EM.

We would, therefore, welcome information on the outcome of your legal assessment. We note that the 2008 ECI Directive is not included in the list of EU acts applying in Northern Ireland in connection to the Single Electricity Market listed in Annex 4 to the Protocol. In view of this, does the

proposal affect the substance of EU law that will remain in effect under the Protocol or is it likely to be the subject of a request by the EU to be added to the Protocol under Article 13(4)?

What are the wider policy implications of the proposed CER Directive on the Single Electricity Market and on suppliers in Northern Ireland? What specific considerations are needed to assess the impact on UK suppliers operating within EU member states in the context of the Protocol?

We would also be grateful to receive information on the outcome of your consultation with the Northern Ireland Executive in preparing this EM.

We would be grateful for a response to this letter by 3 June 2021. In the meantime the Committee continues to retain an active interest in this document.

20 May 2021

Letter to the Chair from the Rt Hon Penny Mordaunt MP, Paymaster General, Cabinet Office

Thank you for your letter of 20 May.

As you note, the 2008 ECI Directive is not included in Annex 4 of the Protocol as applying in Northern Ireland for the purposes of the Single Electricity Market (SEM). However, legislation not included under Annex 4 can still apply in Northern Ireland where it is cross-referenced in legislation which itself falls under Annex 4. In this case, the 2008 ECI Directive is cross-referenced in Article 4(7) of Regulation 1227/2011 (REMIT) applying the definition of 'sensitive critical infrastructure protection related information' in relation to the right of market participants to delay publication of certain data in respect of assets they own which have been designated as critical infrastructure. This cross reference is applied for very specific purposes and the remainder of the Directive remains out of scope.

The proposed CER Directive is intended to replace the 2008 ECI Directive and therefore will fall outside the scope of the NI Protocol other than a reference to the definition as referred to above. We are unaware of any proposals by the EU to amend Annex 4 of the NI Protocol to include the CER Directive. As such, the proposed CER Directive is not expected to have any implications for Northern Ireland regarding the operation of the SEM or on market participants.

As Energy is a devolved issue, responsibility for implementation of the Protocol in respect of SEM operations lies with the Department for the Economy (DfE) in Northern Ireland. However, officials in the Department for Business, Energy and Industrial Strategy have been working closely with their colleagues in DfE over the past 18 months to support implementation.

21 June 2021

Letter from the Chair to the Rt Hon Penny Mordaunt MP, Paymaster General, Cabinet Office

Thank you for your letter, dated 21 June 2021, on the above proposed Directive within the scope of the Protocol on Ireland/Northern Ireland. The House of Lords Committee on the Protocol on Ireland/Northern Ireland considered this document at its meeting on 22 July 2021.

We note your statement that the proposed Directive should not have any impact on Northern Ireland or the Single Electricity Market. As such, we are now content to draw our exchange of correspondence on the file to a close.

23 July 2021

COMMISSION REGULATION (EU) 2021/382 OF 3 MARCH 2021 AMENDING THE ANNEXES TO REGULATION (EC) NO 852/2004 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON THE HYGIENE OF FOODSTUFFS AS REGARDS FOOD

Letter from the Chair to Lord Bethell, Parliamentary Under-Secretary of State, Department of Health and Social Care

Thank you for the EM dated 7 April 2021, on the above Regulation within the scope of the Protocol on Ireland/Northern Ireland. The House of Lords Committee on the Protocol on Ireland/Northern Ireland considered this document at its meeting on 19 May 2021.

We note your statement that "there is nothing in this amendment that should significantly impact on Northern Ireland food business operators or guidance that already exists". Nevertheless, can you confirm that the amending Regulation places new legal requirements upon food business operators in Northern Ireland, whereas their counterparts in Great Britain are only subject to best practice guidance? What are the practical implications of this, in particular for food business operators operating both in Great Britain and Northern Ireland? What steps will the Government and the Northern Ireland Executive take to inform food business operators of these changes?

Parliamentary committees have previously stressed that Government EMs should make clear (a) that the devolved administrations have been consulted; (b) whether they have expressed any concerns; and (c) if they have expressed any concerns, what they were and what action has been taken to address them. We note your statement that the Northern Ireland Executive was consulted in the preparation of this EM. Can you therefore set out in more detail their views, any concerns that they expressed, and what action has been taken in response?

In view of the new obligations placed upon them under the Protocol, what technical support is the Government providing to the Northern Ireland Executive and Civil Service in terms of implementing this Regulation? What steps is the Government taking to ensure they have sufficient resources to undertake these tasks?

We also note that the amending Regulation came into force on 24 March 2021, before the EM was received, and following a Commission consultation in July and August 2020. Why were parliamentary committees not informed of this Regulation sooner, and what steps will the Government take to ensure prompt communication regarding Regulations applying to Northern Ireland under the Protocol in the future?

We would be grateful for a response to this letter by 3 June 2021. In the meantime the Committee retains an active interest in this document.

20 May 2021

Letter to the Chair from Lord Bethell, Parliamentary Under-Secretary of State

1. Thank you for your letter dated 20 May 2021, on the above Explanatory Memorandum to Commission Regulation (EU) 2021/382. I have set out below responses to the questions raised by the House of Lords Committee on the Protocol on Ireland/Northern Ireland.

Legal Requirements

2. Food business operators in Northern Ireland will be required to meet the new requirements as set out in the amended Regulation. The Food Hygiene Regulations (Northern Ireland) 2006 provides for the enforcement of Regulation (EC) 852/2004 and therefore no additional national legislation is required for these amendments. As this amending Regulation came into force after 1 January 2021, it does not apply within the territory of Great Britain, however food business operators in Great Britain are of course, required to meet the requirements for GB to NI movements of goods and the export of GB goods to the EU.

Practical Implications

3. As outlined in the EM, there is nothing in the amendment that should significantly impact on Northern Ireland food business operators or those GB food business operators moving product to NI or exporting their goods to the EU. Specific comments on implications for food allergen management, food redistribution and food safety culture follow.

Food Allergen Management

4. Prior to the amendment coming into force, an obligation existed for food business operators (FBOs) in the United Kingdom to protect products of primary production from contamination and ensure that food at all stages after primary production is protected from contamination likely to render the food unfit for human consumption. This obligation is maintained in retained EU Law in Great Britain.

5. The amendment will not practically affect FBOs within the supply chain, who are required to adhere to the requirements of Regulation (EC) 852/2004, as well as the food safety requirements and responsibilities in Regulation (EC) 178/2002 which, if followed, result in effective allergen management to the level stipulated by the new amendment. The Food Establishment Intervention Rating Schemes which are part of the Food Law Code of Practice in each UK country already include consideration of allergen cross contamination as part of the 'confidence in management' assessment of food business operators.

Redistribution of Food

6. With regards to the redistribution of food, the conditions set out in the amendment are already established in food safety and labelling legislative requirements, therefore there are little practical implications of this amendment.

Food Safety Culture

7. As explained in the EM, in the UK, the Food Law Code of Practice in each country considers the attitudes of management towards food hygiene and food safety, which are elements of food safety culture. These elements are assessed against the 'confidence in management' section of the Food Establishment Intervention Rating Scheme. As this is a new requirement the full implications for Northern Ireland food business operators will not be known until the European Commission publishes guidance to provide further clarity and consistency in the application of the new provisions.

Informing Food Business Operators

8. The Food Standards Agency (FSA) as the central competent authority is engaging with both FBOs and the relevant enforcement agencies on some of the EU regulatory changes. District Councils in NI, the first point of contact for most food and feed businesses, were informed of the changes via the smarter comms platform which the FSA routinely uses for updating local authorities on changes. The FSA is currently considering what a systematic approach to communicating these changes would look like on an ongoing basis to provide consistent communications for business.

Devolved Administration consultation

9. With regards to consultation with the Devolved Administrations, the Northern Ireland Executive Office informed the FSA on 24 March 2021 that the original Explanatory Memorandum request from Cabinet Office was circulated to relevant departments in Northern Ireland to ascertain if they have an interest in or comments regarding the EM. The Executive Office received no responses from the relevant departments therefore responded with a nil return.

10. The draft Explanatory Memorandum was also circulated to the devolved Administrations in Scotland and Wales (on the 24 March 2021) with a request for comments. No comments were received from either of these devolved administrations.

Technical Support

11. The FSA is the central competent authority in NI for food safety and food hygiene. They oversee official food controls undertaken by enforcement authorities and seek to work in partnership with them to support the delivery of these official food controls. This includes providing guidance and advice on the implementation of any new food law requirements. To facilitate the administration of new obligations placed on the FSA by the Northern Ireland Protocol, the FSA are currently undertaking a phased recruitment campaign to increase staff capacity within their NI office. This has been supported by funding from the Northern Ireland Executive's Department of Finance.

Future Communication

12. While part of the EU, the UK was involved in the development of EU measures and through its membership of the committees, which facilitated the opportunity to scrutinise at the points EU legislation was being proposed.

13. More recently, the approach for Parliamentary Scrutiny has been based on public documents, such as the publication of EU legislation on EU Council, Commission and other EU institutional sites, for example, in the Official Journal of the European Union (OJ). The approach to proposed legislation coming within scope of the Northern Ireland Protocol is expected to be formalised soon under the Joint Consultative Working Group, which is the forum for information exchange between the UK and EU. Until those new processes bed in Cabinet Office will seek to keep your Committee Secretariat informed of NIP related legislation as early as possible explaining the implications arising from the proposals for NI.

9 June 2021

Letter from the Chair to Lord Bethell, Parliamentary Under-Secretary of State

Thank you for your letter, dated 9 June 2021, on the above Regulation within the scope of the Protocol on Ireland/Northern Ireland. The House of Lords Committee on the Protocol on Ireland/Northern Ireland considered this document at its meeting on 14 July 2021.

We are grateful for your response, and given that the Regulation has already come into force, we are now content to draw our exchange of correspondence on the file to a close. However, we would be grateful to be kept informed regarding the Commission's guidance on the application of the new food safety culture provisions, as well as on the FSA's development of its communication and recruitment strategies to take account of its new obligations under the Protocol.

15 July 2021

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AMENDING REGULATION (EU) 2017/625 AS REGARDS OFFICIAL CONTROLS ON ANIMALS AND PRODUCTS OF ANIMAL ORIGIN EXPORTED FROM THIRD COUNTRIES TO THE UNION TO ENSURE COMPLIANCE WITH THE PROHIBITION OF CERTAIN USES OF ANTIMICROBIALS (6916/21)

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

Thank you for the EM dated 30 March 2021 from Lord Gardiner of Kimble on the above Regulation within the scope of the Protocol on Ireland/Northern Ireland. The House of Lords Committee on the Protocol on Ireland/Northern Ireland considered this document at its meeting on 19 May 2021.

While we note that the amending Regulation is technically straightforward, it raises a number of questions in terms of the implications of its application to Northern Ireland under the Protocol, as follows:

1. Parliamentary committees have previously stressed that Government EMs should make clear (a) that the devolved administrations have been consulted; (b) whether they have expressed any concerns; and (c) if they have expressed any concerns, what they were and what action has been taken to address them. We note your statement that the devolved administrations were consulted in the preparation of this EM. In view of their devolved competencies on antimicrobial resistance and imports of animals and animal products (and, in the case of the Northern Ireland Executive, veterinary medicines), can you therefore set out in more detail the views of the Northern Ireland Executive (as well as the Scottish Government and Welsh Government) on this proposal, any concerns that they expressed, and what action has been taken in response?
2. In view of the new obligations placed upon them under the Protocol, what technical support is the Government providing to the Northern Ireland Executive and Civil Service in terms of

implementing this Regulation? What steps is the Government taking to ensure they have sufficient resources to undertake these tasks?

3. What is the current policy position of the UK Government and the devolved administrations on the use of antimicrobials in imports of animals and products of animal origin?
4. In that context, what will be the practical impact of potentially divergent regulatory standards between Northern Ireland and Great Britain in terms of the use of antimicrobials in imports of animals and products of animal origin from third countries into the UK?
5. In view of the fact the UK is a third country from the EU's perspective, what will be the practical impact of this Regulation on the movement of animals and products of animal origin between Great Britain and Northern Ireland, and vice versa?
6. Can you explain the interaction between the direct application in Northern Ireland of EU Regulations in this field with Northern Ireland's participation in the Common Framework on Animal Health and Welfare? How has this Regulation been considered through the mechanism for dialogue set out in the Common Framework?
7. Can you elaborate on the likely cost to and enforcement obligations placed upon Northern Ireland authorities and stakeholders? In view of these costs and obligations, what steps will the UK Government and Northern Ireland Executive take to consult with and inform relevant Northern Ireland stakeholders as appropriate?

We would be grateful for a response to this letter by 3 June 2021. In the meantime the Committee continues to retain an active interest in this document.

20 May 2021

Letter to the Chair from the Rt Hon Lord Benyon, Parliamentary Under Secretary of State, (Minister for Rural Affairs and Biosecurity)

Thank you for your letter of 20 May 2021. Under the Northern Ireland Protocol, the proposed Regulation will, like EU Regulation 2019/6 (on veterinary medicinal products), apply in Northern Ireland. Northern Ireland's import regime therefore will need to be adapted to implement official controls on imported animals and products of animal origin from third countries to confirm compliance with Article 118(1) of EU Regulation 2019/6. The Veterinary Medicines Regulations 2013, as they have an effect in Great Britain, do not contain provision similar to Article 118(1) and there is no requirement for similar official controls in Great Britain.

As explained in the Explanatory Memorandum, Article 118(1) sets out prohibitions for operators in third countries on the use of antimicrobial medicines in animals for the purpose of promoting growth or increasing yield, and on the use in animals of antimicrobials or groups of antimicrobials reserved for treatment of certain infections in humans, where this relates to animals and products of animal origin exported from those countries to the EU (and those moved from Great Britain to Northern Ireland). EU Regulation 2019/6 has previously been subject to Parliamentary scrutiny. During the scrutiny process, implications of the import requirements as set out in Article 118(1) were discussed.

My officials from the Veterinary Medicines Directorate (VMD) have indeed consulted on the Explanatory Memorandum with officials from the Scottish and Welsh Governments and the Northern Ireland Executive. No concerns were raised on the proposed Regulation by the Devolved Administrations, but officials from the Northern Ireland Department of Agriculture, Environment and Rural Affairs (DAERA) have requested to be kept informed of future supplementing legislation relating to Article 118(1) of EU Regulation 2019/6, which the VMD has agreed to. Officials from the Welsh Government did enquire about the implication of Article 118(1) of EU Regulation 2019/6 for operators in Great Britain exporting to the EU and the farms supplying them. They are aware that those operators, and by extension the farms supplying them, need to adhere to the prohibitions set out in Article 118(1), should they wish to continue exporting animals or products of animal origin to the EU.

As the Government has acknowledged, the Protocol does give rise to some additional controls and processes on the movement of agrifood goods from Great Britain to Northern Ireland. We have been clear that these need to be implemented in such a way as to minimise disruption to the everyday lives

of people in Northern Ireland. We are working closely with colleagues in DAERA, and in the EU, in order to achieve this.

DAERA and/or the Northern Ireland Department of Health (DoH(NI)) continue to be responsible for the devolved activities in Northern Ireland relating to veterinary medicines and import of animals and products of animal origin. VMD officials have engaged extensively, and continue to meet regularly, with DAERA officials to provide advice and expertise on the implementation of the Veterinary Medicines Regulations 2013 as well as EU Regulation 2019/6 in Northern Ireland. The VMD continues to advise DAERA/DoH(NI) on requirements to deliver the devolved activities relating to veterinary medicines and the resources/expertise they will need to have in place.

You asked about the current policy position of the UK Government and Devolved Administrations on the use of antimicrobials in imports of animals and products of animal origin. I take 'the use of antimicrobials' in your letter to mean 'the use of antimicrobial medicines in animals for the purpose of promoting growth or increasing yield, and on the use in animals of antimicrobials or groups of antimicrobials reserved for treatment of certain infections in humans'. All products of animal origin imported into the UK, including those under free trade agreements, must continue to comply with our existing import requirements. Existing EU legislation and standards on food safety and animal health and welfare were enshrined in UK law on 31 December 2020 under the European Union (Withdrawal) Act 2018 and associated legislation. This means that our import conditions reflect those of the EU as of 31 December 2020. Our import requirements include clear controls on limits of veterinary medicine residues, including antimicrobials, in meat and other products of animal origin. Changes to our regulations will be considered through Parliamentary and public scrutiny in the same way as any legislative initiative and will always be in the best interest of UK citizens and businesses.

A key priority for the UK Government and Devolved Administrations is to protect human and animal health by minimising the development and spread of antimicrobial resistance. The UK Government and Devolved Administrations are committed to working alongside global partners to encourage responsible antibiotic use. We promote global 'One Health' action on antimicrobial resistance through our commitments under the UK National Action Plan for Antimicrobial Resistance (AMR) (2019-24). The inclusion of similar prohibitions on certain uses of antimicrobials in animals and products of animal origin imported from other countries, to those set out in Article 118(1) of EU Regulation 2019/6, in legislation in Great Britain is under consideration. The development of such policy involves officials from several policy areas across the UK Government and Devolved Administrations who work closely together to ensure appropriate legislation and policy is in place.

Animals or products of animal origin entering Northern Ireland will have to meet EU requirements, whether they are UK origin or from other non-EU countries. In terms of the practical impact of Article 118(1) of EU Regulation 2019/6, animals or products of animal origin not reared or produced in accordance with the prohibitions set out in Article 118(1) cannot be imported from non-EU countries into the EU or into Northern Ireland.

The use of antibiotics as growth promoters remains banned in the UK under retained EU law (EU Regulation 1831/2003). Article 107(2) of EU Regulation 2019/6 supplements the ban in EU Regulation 1831/2003 by prohibiting the use of antibiotic veterinary medicines for the purpose of promoting growth or increasing yield. The Government intends to make provision corresponding or similar to Article 107(2) of EU Regulation 2019/6 in the Veterinary Medicines Regulations 2013 for Great Britain. Any changes to the Veterinary Medicines Regulations 2013 as they will have an effect in Great Britain will be subject to formal public consultation to allow stakeholders to give their views on the proposed changes.

As such, with regard to movement or export of animals or products of animal origin to Northern Ireland/the EU by operators based in Great Britain, or from Northern Ireland to Great Britain, the prohibition on the use of antimicrobials for growth promotion/increase of yield is not foreseen to create a barrier.

Article 118(1) also prohibits the use in animals of antimicrobials or groups of antimicrobials reserved for treatment of certain infections in humans. The European Medicines Agency have published guidance on the decision-making process which will be followed when designating these reserved antimicrobials. This will be based on assessment of their importance for human health, importance for animal health and the risk of transfer of resistance. The Delegated Regulation setting out the criteria for the designation of antimicrobials to be reserved for the treatment of certain infections in humans

has recently been adopted by the European Commission. The reserved list has not yet been published, and whilst we do not anticipate that it will limit the availability of existing antibiotics used in veterinary medicine, it is not possible to establish the full implications prior to seeing the release of named antimicrobials/groups of antimicrobials.

With regard to the content of the list of reserved antimicrobials, the UK has had limited input. However, the UK Government played a significant role in the negotiations on EU Regulation 2019/6 and agrees with the principle of reserving certain Critically Important Antimicrobials for treatment of infections in humans. It should be noted that there are currently at least three lists setting out relative importance of antimicrobials/groups of antimicrobials, which all differ. These are lists created by the World Health Organization, the World Organisation for Animal Health (OIE) and the European Medicines Agency (through their Antimicrobial Advice Ad Hoc Expert Group (AMEG)).

You also asked about the interaction between the direct application in Northern Ireland of EU Regulations in the field of veterinary medicines, with Northern Ireland's participation in the Animal Health and Welfare Common Framework. I can assure you that the Framework, which is being developed collaboratively between the UK Government and the three Devolved Administrations, will be a UK-wide Framework and will provide the necessary governance structures to manage any divergence which may occur within the UK, irrespective of the source. The Northern Ireland Protocol has implications for a number of the Common Frameworks currently under development, and my officials are therefore continuing to work closely with their counterparts in the Cabinet Office and the Devolved Administrations to finalise the detailed arrangements.

While the Framework is being developed, the established ways of working between the UK Government and Devolved Administrations at official level continue when it comes to veterinary medicines. The VMD continues to regulate veterinary medicines in Great Britain and to co-ordinate with DAERA. The VMD holds regular Regulatory Committee meetings to keep under review the Veterinary Medicines Regulations 2013 and to provide governance and oversight for projects and plans for amending or supplementing that legislation, using the primary powers in the Medicines and Medical Devices Act 2021. Policy representatives for the Devolved Administrations, which includes representatives for DAERA, are members of this Committee, ensuring that the Devolved Administrations are updated on and involved in discussions around the Veterinary Medicines Regulations 2013 and any changes proposed to them.

Tertiary legislation has yet to be drafted and adopted by the European Commission under Article 118(2) of EU Regulation 2019/6. When made, it will provide detailed rules on the application of Article 118(1). Those rules will allow DAERA to consider any potential implications arising from Article 118(1) and engage with Northern Ireland stakeholders as appropriate.

17 June 2021

Letter from the Chair to the Rt Hon Lord Benyon, Parliamentary Under Secretary of State, (Minister for Rural Affairs and Biosecurity)

Thank you for the EM dated 17 June 2021 on the above Regulation within the scope of the Protocol on Ireland/Northern Ireland. The House of Lords Committee on the Protocol on Ireland/Northern Ireland considered this document at its meeting on 22 July 2021.

We note your statement that, for Great Britain, the inclusion of similar prohibitions on certain uses of antimicrobials in animals and products of animal origin imported from other countries is under consideration, and that the Government intends to make provision corresponding or similar to the EU's prohibition on the use of antibiotic veterinary medicines for the purpose of promoting growth or sustaining yield, subject to consultation. We would be grateful for you to keep the Committee updated of developing policy in these areas. In particular, can you confirm if the Government intends any such legislation to come into effect at the same time as the EU amending Regulation comes into effect in January 2022, so as to avoid regulatory barriers between Great Britain and Northern Ireland? What are the implications if this is not possible?

We also invite you to provide further information, once received, on the EU list of antimicrobials reserved for treatment of certain infections in humans, and the implications for existing antibiotics used in veterinary medicines both in Great Britain and Northern Ireland.

Finally, we invite you to provide clarification, once received, of the detailed rules on the application of Article 118(1).

We would be grateful for an update on these matters by 22 October 2021. In the meantime the Committee continues to retain an active interest in this document.

23 July 2021

COMMISSION IMPLEMENTING REGULATION (EU) 2021/419 OF 9 MARCH 2021 AMENDING IMPLEMENTING REGULATION (EU) 2018/2019 AS REGARDS CERTAIN PLANTS FOR PLANTING OF JASMINUM POLYANTHUM FRANCHET ORIGINATING IN ISRAEL AND ADAPTING COMBINED NOMENCLATURE CODES FOR ULLUCUS TUBEROSUS AND AMENDING IMPLEMENTING REGULATION (EU) 2020/1213 AS REGARDS THE PHYTOSANITARY MEASURES FOR THE INTRODUCTION OF THOSE PLANTS FOR PLANTING INTO THE UNION TERRITORY (UNNUMBERED)

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

Thank you for the EM dated 12 April 2021 from Lord Gardiner of Kimble, on the above Regulation within the scope of the Protocol on Ireland/Northern Ireland. The House of Lords Committee on the Protocol on Ireland/Northern Ireland considered this document at its meeting on 19 May 2021.

We note this detailed and informative EM, and its explicit acknowledgement that the Implementing Regulation "represents a further divergence of plant health regimes between the EU and GB. Over time, these regimes will continue to diverge as the EU and GB introduce further changes to their own import requirements. This divergence impacts upon NI, as it maintains alignment with phytosanitary-related EU regulations, including the Plant Health Regulation".

In that context, we would be grateful for your response to the following questions:

1. Parliamentary committees have previously stressed that Government EMs should make clear (a) that the devolved administrations have been consulted; (b) whether they have expressed any concerns; and (c) if they have expressed any concerns, what they were and what action has been taken to address them. We note your statement that the devolved administrations were consulted in the preparation of this EM. In view of their devolved competencies, can you therefore set out in more detail the views of the Northern Ireland Executive on this proposal, any concerns that they expressed, and what action has been taken in response?
2. In view of the new obligations placed upon them under the Protocol, what technical support is the Government providing to the Northern Ireland Executive and Civil Service in terms of implementing this Regulation? What steps is the Government taking to ensure they have sufficient resources to undertake these tasks?
3. Can you explain in more detail the interaction between the direct application in Northern Ireland of EU Regulations in this field with Northern Ireland's participation in the Common Framework on Plant Health? How has this Regulation been considered through the mechanism for dialogue set out in the Common Framework?
4. What are the practical implications of the further divergence in plant health regimes between Great Britain and Northern Ireland which you state will inevitably occur in the future, and of which this Implementing Regulation is an example?
5. Your assessment that pests associated with Jasminum imports are not present in Northern Ireland is unsurprising given that the Implementing Regulation has only been in force for a short time. Might it become necessary to utilise existing or new NI:GB checks for the purpose of dealing with a threat to biosecurity in Great Britain if such pests are detected in Northern Ireland in the future?
6. Given the Government's assessment of the low biosecurity risk posed by Jasminum imports from Israel, the desirability of minimising regulatory divergence between Great Britain and Northern Ireland, and your knowledge since 2019 of Israel's request to the Commission, why did the

Government wait until March 2021 to proactively engage with Israel in order to enable the UK to undertake its own risk assessment?

7. What update can you give as regards Israel's response to the Government's request, and the Government's assessment of the case for regulatory change in relation to Jasminum imports to Great Britain?

We would be grateful for a response to this letter by 3 June 2021. In the meantime the Committee continues to retain an active interest in this document.

20 May 2021

Letter to the Chair from the Rt Hon Lord Benyon, Parliamentary Under-Secretary of State, (Minister for Rural Affairs and Biosecurity)

Following your letter on the Regulation (EU) 2021/419, dated 20 May 2021, I would like to address the points raised by the European Affairs Sub-Committee on the Protocol on Ireland/Northern Ireland.

The Committee requested further detail on the views of the Northern Ireland Executive on this proposal. I can confirm that the draft Explanatory Memorandum was circulated to the relevant NI departments by the Northern Ireland Executive Office to ascertain whether they had an interest or any comments on the proposal. The Northern Ireland Executive Office confirmed that no responses were received.

The Government was also queried on what technical support it is providing to the Northern Ireland Executive and Civil Service in terms of implementing the Regulation (EU) 2021/419. I can reiterate that no concerns were raised by the Northern Ireland Executive regarding this Regulation or its implementation. The UK Plant Health Risk Group ("PHRG") is the main technical and decision-making body for plant health (attended by the Devolved Administrations, Forestry Commission and observed by the Crown Dependencies) providing advice and support on all plant health matters. One of the responsibilities of this group is to advise on technical matters relating to Northern Ireland, supporting decision-making by DAERA, in the context of the Northern Ireland Protocol.

I can also reassure the Committee that the Government has sufficient resources to undertake this task. In 2019, ahead of leaving the European Union, the Government took steps to ensure that the PHRG was sufficiently supported. Technical sub-groups were added to the PHRG to draft policy proposals for decision and to provide a supporting role in specific areas (e.g. surveillance and contingency planning). The UK National Plant Protection Organisation ("NPPO") group was also established to sit above the PHRG and provide it with strategic direction. If the issue or recommendation under consideration has wider policy, stakeholder or business/trade implications, the PHRG would ask the UK NPPO group for a decision. DAERA are represented on these groups.

The Committee also asked for more detail on the interaction between the application of EU Regulations in Northern Ireland (such as Regulation (EU) 2021/419) with its participation in the Common Framework on Plant Health. The Common Framework on Plant Health recognises the likelihood of divergence as a result of Northern Ireland implementing the EU legislative framework. However, to ensure the continued cooperation between all four UK administrations, the framework will apply across the UK for technical assessments, international representation, and trade work (excluding import requirements which, for Northern Ireland, will remain within the EU regime). Northern Ireland is represented in the various governance bodies that underpin the framework, including the PHRG and NPPO group, but has observer status for reserved matters which affect GB biosecurity.

Defra is responsible for coordinating a position across the UK, giving due consideration to the requirements of the Northern Ireland Protocol. In light of this and its commitment to collaboration in the Common Framework, Defra consulted the Devolved Administrations on their views of Regulation (EU) 2021/419. Had concerns been raised, a policy decision would have been made by the PHRG or, if escalated, by the NPPO group.

Responding to the query on the implications of further divergence in GB and NI plant health regimes; there are no direct implications for NI suppliers, who have unfettered market access to the GB market. It is already the case that GB suppliers must meet certain EU requirements to move

regulated plant material into Northern Ireland and this will remain the case in future, including as divergence takes place.

The Committee enquired whether it may become necessary to utilise existing or new NI:GB checks if pests associated with the Jasminum imports were found in Northern Ireland. Even if such pests were detected in Northern Ireland in the future, the vast majority of pests related to Jasminum are unregulated in the UK, and all associated pests have other unregulated hosts. Therefore, we do not believe that it would be necessary to introduce new NI:GB biosecurity checks under the provisions of the United Kingdom Internal Market ("UKIM") Act 2020.

The Government was queried why it waited until March 2021 to request a dossier from Israel. I can confirm that Defra was not aware of the outcome of the dossier request until August 2020. As such, Defra could not have predicted in 2019 if the regulation would be changed by the EU Commission and, if so, how.

The Committee also requested an update regarding the Government's engagement with Israel. Israel has not yet responded to the Government's request for a dossier. The Government needs to conduct their own risk assessment when a dossier has been received (this would include a Pest Risk Analysis, and where necessary an audit) to assess the risk to GB before the Government can adopt similar measures.

I hope the noble Lords find this information helpful. Please do not hesitate to write if you have any further questions.

1 June 2021

Letter from the Chair to the Rt Hon Lord Benyon, Parliamentary Under-Secretary of State, (Minister for Rural Affairs and Biosecurity)

Thank you for your letter, dated 1 June 2021, in reply to my letter of 20 May on the above Implementing Regulation within the scope of the Protocol on Ireland/Northern Ireland. The House of Lords Committee on the Protocol on Ireland/Northern Ireland considered this document at its meeting on 9 June 2021.

We note your response, and would be grateful for further updates in due course on the issues set out in the Committee's letter, and in particular in relation to the Government's bilateral engagement with Israel as regards the potential adoption of similar measures in Great Britain.

In the meantime, we would be grateful for clarification of your statement that "Northern Ireland is represented in the various governance bodies that underpin the [plant health common framework], including the PHRG and NPPO group, but has observer status for reserved matters which affect GB biosecurity." Does 'observer status' imply any constraints on the Northern Ireland Executive's full and equal participation in common frameworks and their dispute avoidance and resolution mechanisms? Is such observer status consistent with, or a departure from, the structures for the Northern Ireland Executive's participation in other common frameworks?

I would be grateful for a response to this letter by 24 June 2021. In the meantime the Committee continues to retain an active interest in this document.

10 June 2021

Letter to the Chair from the Rt Hon Lord Benyon, Parliamentary Under-Secretary of State, (Minister for Rural Affairs and Biosecurity)

Thank you for your letter of 10 June on behalf of the Protocol on Ireland/Northern Ireland Sub-Committee seeking clarification concerning the Northern Ireland Executive's (NIE) participation in the UK common framework on plant health.

The NIE participates in the plant health framework fully and on an equal basis to the other UK administrations. This includes involvement in all stages of policy development and in discussions to resolve disputes, which are open to NIE officials and ministers. NIE officials are, for example, represented alongside officials from the other UK administrations in the governance bodies that operate under the plant health framework, including the Plant Health Risk Group (PHRG) – the main

technical and decision-making body for plant health – and the UK National Plant Protection Organisation (NPPO) Group, which sits above and provides strategic direction to the PHRG. At ministerial level, the NIE Agriculture, Environment and Rural Affairs minister, along with ministerial counterparts in UK government, Scottish Government and Welsh Government, comprise the Inter-Ministerial Group for Environment, Food and Rural Affairs (IMG-Efra), which acts as the ministerial decision-making and dispute resolution body for the plant health framework (and other frameworks which fall within the Efra portfolio).

The implementation of the Protocol on Ireland/Northern Ireland (the Protocol) means that in some instances it will not be possible to implement the policy approaches agreed under UK common frameworks in Northern Ireland. This is the case with respect to plant health as well as several other EFRA frameworks, where, pursuant to article 5(4) of the Protocol, relevant provisions of Union law listed in Annex 2 to the Protocol[1] will apply, under the conditions set out in that Annex, to and in the United Kingdom in respect of Northern Ireland. Accordingly, pursuant to the Protocol, certain measures that may be adopted under the plant health common framework in the future would only be capable of being applied in England, Wales and Scotland. In any such instances, whilst the NIE would not have a direct role in the delivery of these measures, the NIE would be kept fully informed throughout.

Nevertheless, the arrangements established under the plant health framework reflect Northern Ireland's integral place in the United Kingdom, and provide the necessary consensus-based governance and dispute resolution mechanisms to facilitate continued cooperation between all four UK administrations on plant health matters.

I hope this provides the noble Lords with the clarification sought, but please do not hesitate to write if you have any further questions.

24 June 2021

Letter from the Chair to the Rt Hon Lord Benyon, Parliamentary Under-Secretary of State (Minister for Rural Affairs and Biosecurity)

Thank you for your letter, dated 24 June 2021, in reply to my letter of 10 June on the above Implementing Regulation within the scope of the Protocol on Ireland/Northern Ireland. The House of Lords Committee on the Protocol on Ireland/Northern Ireland considered this document at its meeting on 22 July 2021.

We note your explanation of the interaction between the Protocol and the application of this Implementing Regulation to Northern Ireland, and the Northern Ireland Executive's participation in the Plant Health Common Framework. We have passed your letter to the Common Frameworks Scrutiny Committee, to inform its work.

We once again invite you to keep the Committee informed of the Government's bilateral engagement with Israel as regards the potential adoption of similar measures in Great Britain. In the meantime the Committee continues to retain an active interest in this document.

23 July 2021

[1] Such references being subject to article 6(3) of 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, and article 13(3) of the Protocol.

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

Thank you for the EM dated 1 April 2021 on the above delegated regulation within the scope of the Protocol on Ireland/Northern Ireland. The House of Lords Committee on the Protocol on Ireland/Northern Ireland considered this document at its meeting on 19 May 2021.

We note this detailed and informative EM, and its explanation of the way in which the delegated act would require Northern Ireland suppliers to reclassify and relabel their chemicals in accordance with new harmonised classifications. However, there is a lack of clarity over the areas in which regulatory divergence between Great Britain and Northern Ireland is likely to develop.

In that context, we would be grateful for your response to the following questions:

1. What are practical implications of this delegated regulation for regulatory divergence between Great Britain and Northern Ireland and for movement of such products between them?
2. You note that "GB businesses placing products on the EU/EEA and NI markets might be affected if GB were to take a distinct or different approach to mandatory classifications under the GB CLP Regulation and the GB MCL system." How likely is it that Great Britain will take this distinct approach and what is your assessment of the likely impact of this divergence? How is the Government seeking to mitigating the impact of this divergence?
3. How does the delegated act interact with the Chemicals and Pesticides Common Framework? How has it been considered through the mechanism for dialogue set out in the Common Framework?
4. Parliamentary committees have previously stressed that Government EMs should make clear (a) that the devolved administrations have been consulted; (b) whether they have expressed any concerns; and (c) if they have expressed any concerns, what they were and what action has been taken to address them. We note your statement that the devolved administrations were consulted in the preparation of this EM. In view of their devolved competencies, can you therefore set out in more detail the views of the Northern Ireland Executive on this proposal, any concerns that they expressed, and what action has been taken in response?
5. In view of the new obligations placed upon them under the Protocol, what technical support is the Government providing to the Northern Ireland Executive and Civil Service in terms of implementing this Delegated Regulation? What steps is the Government taking to ensure they have sufficient resources to undertake these tasks?
6. How are you and the Northern Ireland Executive engaging with affected businesses and suppliers in Great Britain and Northern Ireland? We note that the HSE "encourages GB-suppliers and Northern Ireland businesses to work together and co-operate to meet classification and labelling requirements by sharing any necessary information, evidence or data wherever possible." In what practical ways does it do so? What other guidance exists to aid suppliers and businesses to make the requisite changes?
7. You provide some detail on the financial implications of the delegated regulation, stating that these relate to familiarisation costs for chemical manufacturers, importers and downstream users, as well as for employees who may need to be aware of classifications, and for the relabelling of packaging for the affected substances and mixtures. What are the likely costs for suppliers in Northern Ireland?

We would be grateful for a response to this letter by 3 June 2021. In the meantime the Committee continues to retain an active interest in this document.

20 May 2021

Letter to the Chair from Mims Davies MP, Parliamentary Under-Secretary of State (Minister for Employment)

Thank you for your letter requesting further information on the EM 7007/21 concerning changes to Regulation (EC) No. 1272/2008 on Classification, Labelling and Packaging (CLP) dated 1 April 2021, to clarify areas in which regulatory divergence between Great Britain and Northern Ireland is likely to develop.

I welcome the opportunity to respond on behalf of the Government to the questions that the House of Lords Committee on the Protocol on Ireland/Northern Ireland has raised following consideration of the EM. The responses are set out in the Annex attached to this document.

I appreciate your continued active interest in the EM, I hope that this letter provides you with sufficient information to address the questions raised.

Annex

1. What are practical implications of this delegated regulation for regulatory divergence between Great Britain and Northern Ireland and for movement of such products between them?

The effects of the Northern Ireland Protocol (NIP), and the primacy of European Union (EU) law in that territory, establish two distinct regulatory CLP regimes; one in Great Britain (GB), the other in the EU and Northern Ireland (NI). The practical implications of divergence will depend on the direction of supply (GB to NI / NI to GB) and the final destination of the substances and mixtures. Where GB diverges from the EU in determining mandatory (harmonised) classification and labelling, businesses supplying to either market must comply with the CLP regulatory requirements of that market.

For CLP, the practical implications will most likely be seen in the need to provide different hazard labelling in each regulatory jurisdiction to reflect the different hazard classifications required by the GB CLP and EU CLP Regulations respectively. Provided a compliant CLP hazard label appears on supplied substances and mixtures in each jurisdiction, CLP does not introduce any hindrance to that supply.

This delegated act will enter into force in NI and the new and revised harmonised classification and labelling will apply in that territory. In the medium term, there will therefore be a divergence between NI and GB markets for the affected substances and different labelling will be required. It is anticipated that the majority of the changes in the delegated act will be agreed for the GB market in due course, but some divergence may be introduced.

2. You note that "GB businesses placing products on the EU/EEA and NI markets might be affected if GB were to take a distinct or different approach to mandatory classifications (MCL) under the GB CLP Regulation and the GB MCL system." How likely is it that Great Britain will take this distinct approach and what is your assessment of the likely impact of this divergence? How is the Government seeking to mitigating the impact of this divergence?

Divergence from the Committee for Risk Assessment (RAC) Opinion is not very likely. HSE as the Agency expects to make similar decisions to the EU because the same scientific information and datasets are being used to inform the Agency recommendation on whether to align with the RAC Opinion, under the procedures in Article 37 of the GB CLP Regulation.

However, now that GB has left the EU, the Agency does reserve the right to make decisions independent of the EU, including the right to recommend not aligning with an EU RAC Opinion. Where this is the case, the GB CLP Agency (HSE) has the option to pursue a GB-only MCL proposal under Article 37A.

The Agency (HSE) will consider any detrimental impacts of divergence on a case by case basis in the course of producing Agency Opinions under both the Article 37 and Article 37A processes. Agency Opinions will include an Impact and Policy Assessment which will consider the impact of any NI/GB divergence and will make recommendations on any mitigating measures that may be appropriate.

3. How does the delegated act interact with the Chemicals and Pesticides Common Framework? How has it been considered through the mechanism for dialogue set out in the Common Framework?

As the delegated act itself will be implemented directly under the Northern Ireland Protocol without the need for any policy or regulatory decision making in GB or NI, it does not directly interact with the Common Framework.

However, the RAC Opinions of the European Chemicals Agency that preceded the EU Commission's delegated act are currently being evaluated by HSE specialists as provided for under Article 37 of the GB CLP Regulation, with a view to producing an Agency Opinion on whether GB mandatory classification and labelling should align with those Opinions. Should HSE recommend alignment with the RAC Opinions, HSE officials will engage in dialogue with the Devolved Administrations with a view to seeking the consent of their ministers to a decision by the Secretary of State, in line with the procedures set out in the GB CLP Regulation and the UK Chemicals and Pesticides Common Framework.

4. Parliamentary committees have previously stressed that Government EMs should make clear (a) that the devolved administrations have been consulted; (b) whether they have expressed any concerns; and (c) if they have expressed any concerns, what they were and what action has been taken to address them. We note your statement that the devolved administrations were consulted in the preparation of this EM. In view of their devolved competencies, can you therefore set out in more detail the views of the Northern Ireland Executive on this proposal, any concerns that they expressed, and what action has been taken in response?

Officials in the NI Executive raised no substantive concerns about the delegated act itself. However, they raised comments which included the following:

- The Department of Justice in NI should be consulted on civil explosives aspects of CLP in NI. The Department of Justice were invited to comment on the EM but confirmed that the EM was not within their competence.
- Further clarification was needed on how the NIP was being interpreted and what process the Commission Delegated Regulation will follow before becoming applicable. The EM was amended to confirm that the delegated act will amend Annex VI of the EU CLP Regulation when it comes into force. Therefore, once the EU CLP Regulation is amended, it will apply in Northern Ireland by operation of Article 13(3) of the NIP. It was noted that, as the first delegated act to make a change to a Union Act included in Appendix 2 of the NI Protocol, the Act was of interest to NI officials in a number of Departments.
- NI officials noted that divergence in timing of decisions between the EU and GB could affect approval processes for biocide and pesticide active substances. HSE will take this into account in planning its work on active substance approvals so as to minimise the impact of any divergence that arises.

5. In view of the new obligations placed upon them under the Protocol, what technical support is the Government providing to the Northern Ireland Executive and Civil Service in terms of implementing this Delegated Regulation? What steps is the Government taking to ensure they have sufficient resources to undertake these tasks?

HSE is committed to help HSE Northern Ireland (HSENI) as it builds the capability to deliver the NI Protocol as part of its normal regulatory practices. HSE has agreed an agency agreement under the Health and Safety at Work Act with the NI authorities to outline support HSE will provide in the area of classification, labelling and packaging of substances and mixtures. Supporting memoranda of understanding (MoUs) with NI authorities covering the detailed practical arrangements, including resourcing, will also be agreed.

a) How are you and the Northern Ireland Executive engaging with affected businesses and suppliers in Great Britain and Northern Ireland?

HSE has worked with other Government Departments to deliver a multi-channelled stakeholder engagement plan to support business readiness and engage with chemical suppliers regarding the GB CLP Regulation and the NIP. This included the following activities:

- HSE delivered a series of webinars and supported online stakeholder events organised by HSE, HSE NI and the NI Executive, BEIS and chemical associations such as the British Coatings Federation. These events reached over 12 000 stakeholders. HSE continues to support business readiness events covering CLP.
- HSE released a series of six podcasts covering business readiness, two of which focussed on CLP. The podcast has 2 551 podcast subscriptions and 2 126 podcast downloads.
- HSE launched comprehensive web guidance on the GB chemical regimes (including CLP) on 1 January 2021. Over 50 000 visits to the GB CLP webpages were recorded in the first three months of 2021.
- CLP e-Bulletins (reaching approximately 25 000 subscribers) are regularly issued, alerting stakeholders to upcoming events, changes to the GB CLP Regulation or updates to the GB CLP website.

b) We note that the HSE "encourages GB-suppliers and Northern Ireland businesses to work together and co-operate to meet classification and labelling requirements by sharing any necessary information, evidence or data wherever possible." In what practical ways does it do so?

- HSE encourages suppliers to share information through a number of channels. This includes written guidance provided on the GB CLP website and by email, in response to helpdesk enquiries. Presentations made to stakeholders in GB and NI emphasise the need to share information and data with other actors in the supply chain.
- HSE alerts stakeholders to public consultations conducted by international organisations such as the European Chemicals Agency (ECHA), where additional information can be submitted. Stakeholders are encouraged to respond and use such consultations as conduit to share information with other actors in the supply chain and with HSE.

c) What other guidance exists to aid suppliers and businesses to make the requisite changes?

- For NI, the HSE NI website hosts information for NI suppliers supplying the NI market, with links to further guidance on ECHA's website. HSE maintains a website containing all the required information and guidance needed to comply with the GB CLP Regulation, including contact details for the CLP helpdesk.
- HSE also supported the launch of a telephone helpline (NCCC) on 1 January 2021 to handle general enquiries on chemicals regulation.
- HSE's CLP helpdesk provides technical advice by email, on issues raised by suppliers; GB and NI suppliers are encouraged to contact the CLP helpdesk when they have specific questions. In addition, ECHA maintains a helpdesk to answer queries on EU CLP which is open to enquiries from NI suppliers.

6. You provide some detail on the financial implications of the delegated regulation, stating that these relate to familiarisation costs for chemical manufacturers, importers and downstream users, as well as for employees who may need to be aware of classifications, and for the relabelling of packaging for the affected substances and mixtures. What are the likely costs for suppliers in Northern Ireland?

The cost to suppliers in NI is expected to be small or negligible. Previous estimates have advised that where relabelling is necessary, the costs per substance or mixture are expected to be in the region of £165 to £537 per company. Costs for pesticides are expected to be higher as some have booklet style labels, which could cost up to £5,000 to update. However, considering that labels are typically changed quite frequently for marketing purposes and during transitional periods, it is estimated that, in the normal course of business, most suppliers should be able to achieve compliance without

incurring any additional costs of updating labels. In terms of familiarisation, costs are also expected to be insignificant, as the act of checking changes to a classification is likely only to take a few minutes.

9 June 2021

Letter from the Chair to Mims Davies MP, Parliamentary Under-Secretary of State (Minister for Employment)

Thank you for your letter, dated 9 June 2021, on the above Delegated Regulation within the scope of the Protocol on Ireland/Northern Ireland. The House of Lords Committee on the Protocol on Ireland/Northern Ireland considered this document at its meeting on 14 July 2021.

We are grateful for your response, and given that the Delegated Regulation has already come into force, we are now content to draw our exchange of correspondence on the file to a close.

15 July 2021

Letter from the Chair to Mims Davies MP, Parliamentary Under-Secretary of State (Minister for Employment)

Further to our letter of 15 July, which drew to a close our correspondence on EM 7007/21 on changes to Regulation (EC) No. 1272/2008 on the Classification, Labelling and Packaging (CLP), please find attached a letter we received on 22 July from the environmental NGO CHEM Trust. The letter expresses serious concerns about the potential impact on trade between Great Britain and Northern Ireland if Great Britain diverges from the latest update to the EU's CLP Regulation.

We would be grateful if you could provide a response to the specific concerns expressed in CHEM Trust's letter by 30 September 2021. In the meantime the Committee continues to retain an active interest in this document.

10 September 2021

Letter from the CHEM Trust dated 22 July 2021

Early indication of the extent to which the UK could diverge from EU CLP on classification and labelling & potential impact on Northern Ireland/Great Britain trade

I write further to your letter of 9th June to the Minister of Employment about EM 7007/21 concerning changes to Regulation (EC) No. 1272/2008 on Classification, Labelling and Packaging (CLP), and the reply you received from the Minister.

CHEM Trust is an environmental NGO which focuses on chemicals policy. Our work covers the EU CLP Regulation, which relates to the classification, labelling and packaging of chemicals to ensure hazard information is given so they can be supplied, handled and used safely.

In your letter, you raised pertinent issues about the potential impact on trade between Great Britain and Northern Ireland, if Great Britain diverges from the latest update to the EU's CLP Regulation – known informally as the 17th adaptation to technical progress (ATP). You asked the Minister how likely it was that Great Britain will take a distinct approach, the Department's assessment of the likely impact of this divergence and how the Government would mitigate this impact.

In her reply, the Minister reassured you that "divergence from the Committee for Risk Assessment (RAC) Opinion" on proposed mandatory EU CLP classifications "is not very likely". However, **since your correspondence, the Health and Safety Executive (HSE) has declined to support almost a fifth of the European Chemicals Agency (ECHA) Risk Assessment Committee (RAC) Opinions published in 2019 and 2020** on proposed mandatory EU CLP classifications. Divergence cannot be considered "not very likely" when it occurs in 16% of cases or classifications. According to a comprehensive audit by Chemical Watch, in 13 of 81 'technical reports' the Agency published on 30 June, the HSE said it could not back the Opinions adopted by ECHA's RAC. In the majority of these cases, the deviations are less protective of health or the environment, despite Government promises to maintain high levels of protection for the environment and health. (The RAC adopts Opinions on the proposed harmonised classification of substances - e.g. as carcinogenic, mutagenic, toxic for reproduction - and these opinions are later adopted by the European

Commission as EU CLP. The changes in the 17th ATP correspond to 50 RAC Opinions adopted in 2019).

Considering and mitigating the impact of divergence

In her letter to you, the Minister said that HSE would consider any detrimental impacts of divergence on a case-by-case basis. It is difficult to see whether it has yet done so. If it had, it seems unlikely it would have made so many individual decisions to diverge. These decisions suggest divergence for the sake of it: the exercise of new regulatory freedoms to take a different approach because the HSE now can, but without consideration of the unintended costs and consequences on deepening trade barriers between Northern Ireland and Great Britain. We are also concerned about a range of other political and economic costs – from reduced protections for UK consumers and the environment from hazardous chemicals to the risk of chemical dumping or triggering rebalancing mechanisms under the UK-EU Trade & Cooperation Agreement. The Minister has promised impact and policy assessments, alongside the Agency Opinions that are due in 12 months on each of these classifications. If this is the point at which the impact of divergence on NI/GB trade is considered, we would therefore hope that many Agency Opinions will reverse the conclusions of its earlier technical reports to generally align with RAC Opinions, although this is unclear.

Estimating the potential costs of divergence

In your letter you asked about the potential impact of divergence on costs for suppliers, the figures the minister supplied seem quite low. It is also unclear where these figures come from and it would be useful to know if the Minister has spoken to industry about the costs. In addition, while the Minister has estimated the cost of providing different hazard labelling in each regulatory jurisdiction, labelling is just half the picture. The other half is classification, which is very important in its own right. Classification in CLP is often the starting point for risk management measures in other legislation such as REACH or cosmetics. For example, those that those which are identified as carcinogenic, mutagenic, reprotoxic (CMR) are automatically restricted from use in consumer products. The ultimate effect of divergence between the two systems may result in a chemical being deemed safe in Great Britain, but unsafe in the EU and Northern Ireland, and vice versa. Divergence in classification would also increase costs on businesses that would need to dedicate more resources to monitoring regulations.

Consultation with the devolved administrations and stakeholders

You also raised the vital issue of consultation with the devolved administrations and the Northern Ireland Executive, alongside engagement with stakeholders in Northern Ireland, as well as more widely. In her reply, the Minister said: "officials in the NI Executive raised no substantive concerns about the delegated act itself", but it's not clear if they were consulted on or involved in technical reports by HSE. It also appears that the devolved administrations only give their consent to any decision to align, but not to diverge. In her reply, the Minister said: "Should HSE recommend alignment with the RAC Opinions, HSE officials will engage in dialogue with the Devolved Administrations with a view to seeking the consent of their ministers to a decision by the Secretary of State, in line with the procedures set out in the GB CLP Regulation and the UK Chemicals and Pesticides Common Framework". This is a long-standing concern of CHEM Trust which we raised as part of our feedback on the draft common framework. In our view, it's vital that the consent mechanism works in relation to any decision by HSE not to match action at EU level. This is more significant, we believe, to ensuring the regime is active in protecting people and the environment from harmful chemicals than any decision to legislate; otherwise, a lower standard could effectively be unilaterally imposed on the other parties. The list of stakeholder engagement events provided by the Minister appears to have been largely UK-wide, HSE's engagement with NI businesses and suppliers appears to be quite limited.

Need to adopt a general assumption of alignment

In her letter, the Minister's view that divergence wasn't very likely was based on the reasonable assumption that both Agencies (the HSE and ECHA) were using the "same scientific information and datasets" to inform their recommendations. This view was also echoed in DWP's Memorandum on the 17th ATP (point 41). The scientific evidence that is used by HSE for developing its opinions is almost entirely that within the EU REACH system, which has been published by ECHA and made publicly accessible on its website – from the EU CLH report proposing classification and its annexes,

to the RAC opinion and information submitted during the EU's public consultation process. While the Agency "reserve[s] the right to make decisions independent of the EU", it is surprising it has taken a different view of the same scientific evidence in almost a fifth of cases. It should also be highlighted that in addition, while RAC has unrestricted access to the full datasets on which the proposals have been based, HSE does not. For example, HSE does not have access to the full chemical safety database available within EU REACH, and has given companies staggered deadlines to provide it with full chemical safety data of up until 28th October 2027.

In comparing the two systems - from proven track-record to transparency - the UK REACH system has considerably less capacity and resources, experience and expertise of personnel at HSE to replicate the functions of ECHA in such a complex field. It also does not have a comparatively transparent structure to provide effective scrutiny and oversight. In comparison to ECHA, the HSE process is completely hidden; it is unclear who may have contributed to the technical report and what contribution they made.

It is also worth noting that GB based companies had the opportunity to input into proposed harmonised EU classifications; ECHA holds a 60-day public consultation on these, to which companies in the EU, UK, US or China can provide input about potential impact. We also do not see any GB-specific reasons or circumstances, why EU controls should not be automatically adopted in the UK.

Extend transparency requirements for GB CLP to other chemical protections

We are grateful to the GB CLP Regulation which – unlike other new EU controls – requires HSE to respond formally to new EU controls on substances, and within a set time frame. There are no corresponding requirements for transparency around decisions to consider new EU restrictions or additions to the Candidate List of Substances of Very High Concern. We are already seeing GB falling behind these EU protections, because of the lack of staffing and resources in HSE to consider these new controls at the same pace as EU action. But in addition, due to a lack of transparency, we do not know when – or even if - restrictions adopted by ECHA will be considered in UK REACH. Divergence from these controls on harmful substances will also have unintended consequences, including harming GB-NI trade.

We welcome your further engagement on this issue. Please do not hesitate to get in touch if you require any further information or have any queries about the above.

Dr Michael Warhurst, Executive Director, CHEM Trust

PROPOSAL FOR A COUNCIL DIRECTIVE AMENDING DIRECTIVE 2006/112/EC ON THE COMMON SYSTEM OF VALUE ADDED TAX AS REGARDS THE IDENTIFICATION OF TAXABLE PERSONS IN NORTHERN IRELAND (COM(20) 360)

Letter from the Chair to the Rt Hon Jesse Norman MP, Financial Secretary to the Treasury, HM Treasury

I am writing in relation to the above Directive, which was previously subject to scrutiny by the former House of Lords EU Goods Sub-Committee, and has now been passed to the new European Affairs Sub-Committee on the Protocol on Ireland/Northern Ireland. The Protocol Sub-Committee considered this document at its meeting on 26 May 2021.

In your letter to Lord Kinnoull dated 5 October 2020, you stated that discussions on a specific VAT identifier to Northern Ireland and on sharing of data via the EU VAT IT systems were subject to technical discussions with the Commission, and that, while you could not provide further detail at the time, you would write to the Committee "once we have a determinate conclusion".

We would therefore be grateful for an update on the outcome of these discussions, and a further update on the practical operation of Article 8 of the Protocol, on VAT and excise, by 10 June 2021. We continue in the meantime to take an active interest in this document.

27 May 2021

Letter to the Chair from the Rt Hon Jesse Norman MP, Financial Secretary to the Treasury

Thank you for your letter of 27 May in which you asked for an update on the European Commission discussions on the specific VAT indicator to Northern Ireland (NI) and on the sharing of data via the EU VAT IT systems. I also thank the former House of Lords EU Goods Sub-Committee for its scrutiny of this issue, and look forward to further discussion now that it has moved under the remit of the European Affairs Sub-Committee on the Protocol on Ireland/Northern Ireland.

Following the Government's discussions with the European Commission, businesses involved in trading goods between NI and the EU will need an 'XI' prefix before their normal 9-digit UK VAT number when transacting with EU suppliers or customers. These businesses will not be required to apply for a separate VAT registration number. The only change will be to the prefix which they use for transactions that fall within the scope of the Protocol.

The 'XI' prefix is not required when NI businesses trade with the EU in services, nor is it required for transactions in goods or services between NI and GB or NI and the rest of the world. The 'XI' prefix does not change the means by which goods and services are invoiced, which continues in the same way as they were prior to the end of the Transition Period.

To help traders understand the 'XI' indicators and how to apply it, HMRC have published guidance on its use and application at: https://www.gov.uk/vat-registration/selling-or-moving-goods-in-northern-ireland.

Regarding the sharing of NI VAT data via EU VAT systems, the UK began exchanging European Sales List data via the VAT Information Exchange Service from 1 January, and data related to EU VAT refunds from 1 April. However, technical discussions with the EU are in progress in remaining areas of VAT data sharing. I will of course update the Sub-Committee when discussions on these matters have been concluded.

More generally, the Government has worked to ensure that any impact from NI remaining aligned with EU VAT rules in respect of goods on businesses and consumers is minimised.

14 June 2021

Letter from the Chair to the Rt Hon Jesse Norman MP, Financial Secretary to the Treasury

Thank you for your letter, dated 14 June 2021, on the above Directive. The House of Lords Committee on the Protocol on Ireland/Northern Ireland considered this document at its meeting on 22 July 2021.

While we are grateful for your response, we regret that it is the first update provided since October last year. We stress the need for the Committee to receive regular updates on EU legislation with implications for Northern Ireland under the Protocol. While we are now content to draw our exchange of correspondence on this particular Directive to a close, we welcome your offer to keep the Committee on the outcome of technical discussions with the EU on VAT sharing and invite you to do so on this and other matters in connection to Article 8 of the Protocol and the application of VAT and excise once discussions conclude.

23 July 2021

DRAFT COMMISSION REGULATION (EU) AMENDING ANNEXES II AND III TO REGULATION (EC) NO 1223/2009 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON COSMETIC PRODUCTS (6871/21)

Letter from the Chair to Paul Scully MP, Parliamentary Under Secretary of State, Department for Business, Energy and Industrial Strategy

Thank you for the EM dated 11 March 2021 on the above Regulation with implications for the Protocol on Ireland/Northern Ireland. The House of Lords Committee on the Protocol on Ireland/Northern Ireland considered this document at its meeting on 9 June 2021.

The Regulation raises a number of questions in terms of the implications of its application to Northern Ireland under the Protocol, as follows:

Parliamentary committees have previously stressed that Government EMs should make clear (a) that the devolved administrations have been consulted; (b) whether they have expressed any concerns; and (c) if they have expressed any concerns, what they were and what action has been taken to address them. We note your statement that the devolved administrations were consulted in the preparation of this EM. Can you therefore set out in more detail the views of the Northern Ireland Executive (as well as the Scottish Government and Welsh Government) on this proposal, any concerns that they expressed, and what action has been taken in response?

What would be the practical impact of potentially divergent regulatory standards between Northern Ireland and Great Britain in relation to cosmetic products? In addition, we welcome your assertion that the Government "will have due consideration for the timing of the entry into force of the regulations in NI and any SI to apply the same changes to GB, to minimise the period where different rules apply." Has the Government made an assessment of the effect of a temporary period of regulatory divergence?

We note that the Government will, "in due course", make a decision for products placed on the GB market based on assessment of the available scientific evidence on permitted levels of chemicals in cosmetics "if there is either sufficient scientific evidence that there is a potential risk to human health from the use of a substance, or where the Secretary of State considers there is insufficient data to be able to determine whether there is a potential risk to human health." In view of this, what is the Government's initial assessment of the merits or otherwise of this Regulation? What factors will the Government take into account in making its decision, and will this process be completed before the Regulation takes effect in Northern Ireland?

We welcome the Government's commitment that "cosmetics that meet the technical requirements to be placed on the market in Northern Ireland will be able to be placed on the GB market" as long as the Government is "informed of various matters" including regulatory checks and other information. Could you provide more detail about the information Northern Ireland suppliers will be required to supply in order to put the products in question on the GB market? Have Northern Ireland suppliers been informed of this and what support have they been offered to provide this information? In addition, what would be the practical implications of this in terms of cosmetic products of different regulatory standards circulating in Great Britain?

We were disappointed to learn that while an impact assessment would be conducted to assess the impact of the changes on GB businesses, no impact assessment was taken to assess the impact of the changes on NI business. In addition, we note that the Government does not have any data on the financial impact expected from these changes. Does the Government have any plans to conduct an impact assessment? We would urge the Government, working with the Northern Ireland Executive, to at least carry out a full cost assessment of the impact on Northern Ireland businesses and to share this with our committee.

You state that there has been no consultation on this proposal in the UK. In view of this, what plans does the Government and the Northern Ireland Executive have to engage with and inform Northern Ireland businesses and stakeholders in relation to the regulatory changes that will take effect under this Regulation?

We would be grateful for a response to this letter by 24 June 2021. In the meantime the Committee continues to retain an active interest in this document.

10 June 2021

Letter to the Chair from Paul Scully MP, Parliamentary Under Secretary of State

Thank you for your two letters[2], dated 10 June 2021, in response to the Explanatory Memoranda (EM) on the above draft Regulations.

[2] Letters from the Committee dated 10 June 2021, regarding 6871/21 and 8095/21

You have raised a number of questions on the implications of the application of the Regulations to Northern Ireland under the Protocol. I have provided responses for each of these EMs in the attached Annexes A and B below.

As you have noted, the Regulations are still in draft form and therefore will not apply in the EU or in Northern Ireland until they are formally adopted and published in the European Union Official Journal.

I trust the attached will provide reassurances with regards to the impact of this EU Regulation on Northern Ireland.

ANNEX A – EM 6871/21: DRAFT COMMISSION REGULATION (EU) AMENDING ANNEXES II AND III TO REGULATION (EC) NO 1223/2009 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON COSMETIC PRODUCTS

1. Can you therefore set out in more detail the views of the Northern Ireland Executive (as well as the Scottish Government and Welsh Government) on this proposal, any concerns that they expressed, and what action has been taken in response?

The NI Executive, and Scottish and Welsh Governments, did not express any concerns about this Regulation. A nil response was received from all of the Devolved Administration Governments.

2. What would be the practical impact of potentially divergent regulatory standards between Northern Ireland and Great Britain in relation to cosmetic products?

Under the terms of the Protocol relevant products would need to be compliant with the regulations as they apply in Northern Ireland regardless of where they were manufactured.

Under the Government's commitments to Northern Ireland's unfettered access to the rest of the UK market, cosmetics that meet the technical requirements to be placed on the market in Northern Ireland will be able to be placed on the GB market.

In this particular case, products that meet the (new) requirements for these two chemicals used in cosmetic products in NI will also meet the threshold set in the current requirements for the GB market.

3. Has the Government made an assessment of the effect of a temporary period of regulatory divergence?

The Government has begun the process of assessing its approach to the use of these two chemicals in cosmetic products on the GB market (see below for the timeline) and therefore has not made a final assessment of the effect of a temporary period of regulatory divergence between GB and NI. However, as stated above, should a manufacturer meet the requirements of the legislation in NI they will also be able to demonstrate compliance with the restrictions on the use of these chemicals in current GB market requirements.

4. In view of this, what is the Government's initial assessment of the merits or otherwise of this Regulation? What factors will the Government take into account in making its decision, and will this process be completed before the Regulation takes effect in Northern Ireland?

As with the Government's approach, the purpose of the Regulation is to protect human health. While the advice of the EU's scientific advisory committee is known for its evidence-based approach, we will be seeking our own independent advice from the UK's Scientific Advisory Group (SAG) as established by the Office for Product Safety and Standards (OPSS). The UK SAG has been commissioned to provide a recommendation to Government on the merit of the DHA and deoxyarbutin changes with regards to human health and are due to consider this specific issue in July and September 2021.

It would be premature to make an assessment until that advice has been sought and considered. However, should the UK SAG recommend that we make the same changes as the EU Regulation then we will do so via a Statutory Instrument which will be laid with a view to it coming into force as close as possible to the date the changes in NI take effect.

As indicated in the draft Regulation and the EM a date has not yet been set for when this change in the EU regime will be published in the European Union Official Journal. This means we do not yet know the date the changes will come into effect. Our working assumption is that publication is not likely to be before mid-summer of 2021. We also know that under the draft Regulation products that

meet the current requirements will continue to be permitted on the EU market for up to nine months after the date that the Regulation comes into force.

5. Could you provide more detail about the information Northern Ireland suppliers will be required to supply in order to put the products in question on the GB market?

All cosmetic products placed on the GB market require a "responsible person" based in the UK to notify that product onto the UK cosmetics database with information about the product including ingredients used. This information is required to allow relevant authorities to take steps to ensure human health. The information required to notify on the GB database is the same information required to notify products onto the EU database when placing a product onto the EU or NI market. This is the same notification information that was required to place a product onto the EU or UK market prior to 1 January 2021.

6. Have Northern Ireland suppliers been informed of this and what support have they been offered to provide this information?

Guidance is clear that all cosmetics businesses who place products on the GB or NI markets have an obligation to notify cosmetic products before making them available on the market. OPSS has engaged extensively with businesses and have provided detailed guidance to provide businesses with support in meeting their obligations in relation to the notification procedure. OPSS has also engaged with the UK cosmetics trade association, the Cosmetics, Perfumery and Toiletry Association (CTPA) to provide training to members and support the creation of CTPA guidance for businesses. The CTPA were also specifically consulted on this particular amendment to the annexes.

7. In addition, what would be the practical implications of this in terms of cosmetic products of different regulatory standards circulating in Great Britain?

As stated above, products that meet the requirements in NI will qualify for unfettered access to the GB market and will also meet the threshold set in the current requirements for the GB market, so will have no practical impact on the regulation of goods in GB. All other regulatory requirements in GB remain unchanged.

8. Does the Government have any plans to conduct an impact assessment?

As this is a directly applicable technical change to the EU regulation, it is not planned that an impact assessment will be produced for these – or similar – amendments where human health is the primary factor to be considered.

9. In view of this, what plans does the Government and the Northern Ireland Executive have to engage with and inform Northern Ireland businesses and stakeholders in relation to the regulatory changes that will take effect under this Regulation?

OPSS will continue to engage with CTPA to ensure that UK cosmetics businesses are aware of the changes to permitted levels of all chemicals in cosmetic products on the NI and EU markets.

24 June 2021

Letter from the Chair to Paul Scully MP, Parliamentary Under Secretary of State

Thank you for your letter, dated 24 June 2021, on the above Regulation within the scope of the Protocol on Ireland/Northern Ireland. The House of Lords Committee on the Protocol on Ireland/Northern Ireland considered this document at its meeting on 22 July 2021.

We note your clarification that there should be no long-term practical implications arising from this Regulation because cosmetics that meet the technical requirements to be placed on the market in Northern Ireland will also be able to be placed on the GB market.

We would invite you to keep the Committee informed of the Government's assessment both of its approach to the use of Deoxyarbutin and Dihydroxyacetone in cosmetic products and of the effect of a temporary period of regulatory divergence should the Government decide to make equivalent changes.

We note your statement that the Government does not intend to produce impact assessments for directly applicable technical changes to EU Regulations. What is the rationale for this decision, given

that EU legislation within the scope of the Protocol will have a potentially significant implications for Northern Ireland, and for its place within the UK internal market?

We would be grateful for an update on these matters, as well as a response to this question, by 6 September 2021. In the meantime the Committee continues to retain an active interest in this document.

23 July 2021

Letter to the Chair from Paul Scully MP, Parliamentary Under Secretary of State

Thank you for your letter, dated 23 July 2021, in response to my letter of 24 June on the above Regulation.

I can confirm that I will keep the Committee informed of the Government's assessment of its approach to the use of Deoxyarbutin and Dihydroxyacetone in cosmetic products and of the effect of any period of regulatory divergence based on the Government's decision on this matter. Additionally, you asked about the Government's approach to Impact Assessments for changes to EU Regulations that are applicable in Northern Ireland under the current implementation approach. For technical changes to Regulations which apply automatically in Northern Ireland as a result of the Northern Ireland Protocol - in this case the EU Cosmetics Regulation - a full Impact Assessment would not be appropriate as our engagement with businesses suggests the impact will be minimal. If a manufacturer meets the requirements of the legislation for Deoxyarbutin and Dihydroxyacetone, they will also be able to demonstrate compliance with the current restrictions on the use of those chemicals in products on the Great Britain market, so in practice there should be limited impact from divergence. Any impacts arising from divergence will be taken into consideration by the Government, alongside the SAG recommendation, on whether to make equivalent changes in Great Britain.

As set out in our previous exchange, the Government is seeking to find a new balance in operating the Northern Ireland Protocol to place it on a more sustainable footing. These proposals, set out in the Government's July 2021 Command Paper (Northern Ireland Protocol: the way forward), include the arrangements covering trade in goods and the institutional framework. This includes a dual regulatory regime in Northern Ireland that would allow goods made to either UK or EU rules to circulate within Northern Ireland, reducing burdens on businesses trying to put goods from Great Britain on the market. This would mean that the chemical limits here would apply only if manufacturers wished to make goods to EU rules to access the EU as well as the NI market.

I trust this letter has addressed your concerns.

6 September 2021

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON MACHINERY PRODUCTS (8095/21)

Letter from the Chair to Paul Scully MP, Parliamentary Under Secretary of State, Department for Business, Energy and Industrial Strategy

Thank you for the EM dated 11 May 2021 on the above Regulation within the scope of the Protocol on Ireland/Northern Ireland. The House of Lords Committee on the Protocol on Ireland/Northern Ireland considered this document at its meeting on 9 June 2021.

The Regulation raises a number of questions in terms of the implications of its application to Northern Ireland under the Protocol, as follows:

1. Parliamentary committees have previously stressed that Government EMs should make clear (a) that the devolved administrations have been consulted; (b) whether they have expressed any concerns; and (c) if they have expressed any concerns, what they were and what action has been taken to address them. We note your statement that the devolved administrations were consulted in the preparation of this EM. Can you therefore set out in more detail the views of the Northern Ireland Executive (as well as the Scottish Government and Welsh

Government) on this proposal, any concerns that they expressed, and what action has been taken in response?

2. We note that the Government "will make its own decision for products placed on the GB market based on an assessment of the final Regulation and with due consideration of any impacts on the UK internal market, in due course." In view of this, what is the Government's initial assessment of the merits or otherwise of this Regulation? What factors will the Government take into account in making its decision, and will this process be completed before the Regulation takes effect in Northern Ireland?
3. What would be the practical impact of potentially divergent regulatory standards between Northern Ireland and Great Britain in relation to machinery products?
4. We welcome the Government's commitment that qualifying goods placed on the market in Northern Ireland will be able to be placed on the GB market. Notwithstanding this, what would be the practical implications of this in terms of machinery products of different regulatory standards circulating in Great Britain?
5. Can you elaborate on the possible requirement to lay a statutory instrument to ensure that provisions for enforcement powers and sanctions are properly implemented? What measures will this cover?
6. You state that there has been no consultation on this proposal in the UK. In view of this, what plans does the Government and the Northern Ireland Executive have to engage with and inform Northern Ireland businesses and stakeholders in relation to the regulatory changes that will take effect under this Regulation?
7. We welcome the Government's commitment to undertake a full cost assessment of this Regulation for Northern Ireland. Will you commit to sharing this assessment with the Committee once completed? However, given the implications for an important sector of the Northern Ireland economy, we regret that an impact assessment has yet to be undertaken. What steps will the Government, working with the Northern Ireland Executive, take to undertake such an assessment?

We would be grateful for a response to this letter by 24 June 2021. In the meantime the Committee continues to retain an active interest in this document.

10 June 2021

Letter to the Chair from Paul Scully MP, Parliamentary Under Secretary of State

Thank you for your two letters[3], dated 10 June 2021, in response to the Explanatory Memoranda (EM) on the above draft Regulations.

You have raised a number of questions on the implications of the application of the Regulations to Northern Ireland under the Protocol. I have provided responses for each of these EMs in the attached Annexes A and B below.

As you have noted, the Regulations are still in draft form and therefore will not apply in the EU or in Northern Ireland until they are formally adopted and published in the European Union Official Journal.

I trust the attached will provide reassurances with regards to the impact of this EU Regulation on Northern Ireland.

ANNEX B – EM 8095/21: PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON MACHINERY PRODUCTS

1. Can you set out in more detail the views of the Northern Ireland Executive (as well as the Scottish Government and Welsh Government) on this proposal, any concerns that they expressed, and what action has been taken in response?

[3] Letters from the Committee dated 10 June 2021, regarding 6871/21 and 8095-21

The Northern Ireland Executive, and Scottish and Welsh Governments, did not express any concerns on this proposal for a Regulation. A nil response was received from all of the Devolved Administration Governments.

2. What is the Government's initial assessment of the merits or otherwise of this Regulation? What factors will the Government take into account in making its decision, and will this process be completed before the Regulation takes effect in Northern Ireland?

The Regulation published by the European Commission is at present still only a proposal that sets out their vision and intention to future proof the existing machinery regulations, which came into force in 2008. Since then technology has progressed significantly meaning that the existing regulations could not have taken account of emerging technology such as artificial intelligence, machine learning capabilities, or cyber security. The proposals are still to be adopted by member states, meaning that the existing regulations as well as the newly proposed amendments may change. Once finalised the Government will be in a position to fully evaluate their benefit and impact for GB and NI.

3. What would be the practical impact of potentially divergent regulatory standards between Northern Ireland and Great Britain in relation to machinery products?

Until the proposals are finalised and assessed in detail, we are unable to confirm whether there would or would not be divergence between the GB and NI regulatory framework, nor what the practical impact would be.

4. We welcome the Government's commitment that qualifying goods placed on the market in Northern Ireland will be able to be placed on the GB market. Notwithstanding this, what would be the practical implications of this in terms of machinery products of different regulatory standards circulating in Great Britain?

As the regulations are still under development it is not possible to assess what the practical impact would be on the regulation of goods circulating in GB. However, qualifying goods would be subject to unfettered access to the GB market and as currently drafted the EU proposal would mean that products that meet the regulatory requirements in NI will also meet the regulatory requirements established in current GB legislation.

5. Can you elaborate on the possible requirement to lay a statutory instrument to ensure that provisions for enforcement powers and sanctions are properly implemented? What measures will this cover?

As any changes the Commission makes to the regulations will apply directly to goods placed on the Northern Ireland market under the Northern Ireland Protocol, we have assessed that there is a potential need to lay a statutory instrument to ensure that enforcement provisions are operable in Northern Ireland. We will make a full assessment once the final provisions are known.

6. You state that there has been no consultation on this proposal in the UK. In view of this, what plans does the Government and the Northern Ireland Executive have to engage with and inform Northern Ireland businesses and stakeholders in relation to the regulatory changes that will take effect under this Regulation?

The European Commission carried out an evaluation of the existing machinery regulations and drafted the proposals in response to the issues it found. Once the final proposals are ratified and known, the Government and the Northern Ireland Executive will be able to engage with businesses and stakeholders on the regulatory changes that may be implemented.

7. We welcome the Government's commitment to undertake a full cost assessment of this Regulation for Northern Ireland. Will you commit to sharing this assessment with the Committee once completed? However, given the implications for an important sector of the Northern Ireland economy, we regret that an impact assessment has yet to be undertaken. What steps will the Government, working with the Northern Ireland Executive, take to undertake such an assessment?

A decision on the production of an impact assessment will be made once the final proposals are ratified by the EU as at that point the measures can be considered and costed.

24 June 2021

Letter from the Chair to Paul Scully MP, Parliamentary Under Secretary of State

Thank you for your letter, dated 24 June 2021, on the above Regulation within the scope of the Protocol on Ireland/Northern Ireland. The House of Lords Committee on the Protocol on Ireland/Northern Ireland considered this document at its meeting on 22 July 2021.

We note your response that until the proposals are adopted by Member States, the Government will be unable to fully evaluate the benefit and impact of the proposed amendments on Northern Ireland.

In light of this, we would invite you to keep the Committee informed of the Government's assessment of the impact of the proposed amendments on Northern Ireland once the Regulation is ratified and the proposals are adopted by Member States. In the meantime, we retain an interest in this document

23 July 2021

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL CONCERNING BATTERIES AND WASTE BATTERIES, REPEALING DIRECTIVE 2006/66/EC AND AMENDING REGULATION (EU) NO 2019/1020 (13944/20)

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

I thank the European Union Committee for its letter of the 24 February, responding to mine of 8 February, asking to be kept updated on progress of the draft EU Batteries Regulation and our plans for its implementation in Northern Ireland. I am responding to the new Protocol on Ireland/Northern Ireland Sub-Committee who now have responsibility for scrutinising the document. I will cover both the continuing EU discussions on the Regulation and our plans for implementation in Northern Ireland.

Through UKMis, we are aware that discussions within the EU are continuing on the proposed EU Batteries Regulation. There have been a number of areas of contention including the legal base, where there are views that an environmental treaty base would be more appropriate than the single market for matters dealing with waste as well as whether a framework approach, offering greater Member State flexibility, would also be more appropriate for the part of the Regulation dealing with waste. We understand that the proposed 65% portable battery collection target has also been another area of challenge, with a number of Member States questioning whether this is achievable. The attached 28th May Presidency progress report provides further detail. As a result, the Regulation is not as far advanced as the Commission had hoped with consequent implications for the proposed 2022 coming into force date.

We continue to consider in detail the government approach to the EU Batteries Regulation and how this will affect businesses, stakeholders and others in the context of our wider Protocol implementation. As is evident from the ongoing EU discussions, the final content of the Regulation itself is not yet clear. I will continue to keep you updated as matters crystallise.

17 June 2021

Letter from the Chair to Rebecca Pow MP, Parliamentary Under Secretary State

Thank you for your letter dated 17 June 2021 on the above Regulation within the scope of the Protocol on Ireland/Northern Ireland. The House of Lords Committee on the Protocol on Ireland/Northern Ireland considered this document at its meeting on 22 July 2021.

We are grateful for your letter, and for sight of the progress report considered by the Environment Council on 10 June. We note the slow progress of discussions in the EU institutions, and welcome your commitment to write again with further updates as the situation develops.

We would be grateful for a further update by 22 October 2021, reflecting further on the questions raised in the letter from the former EU Committee of 24 February on the Government's assessment

of the Regulation and its implications for Northern Ireland under the Protocol. In the meantime the Committee continues to retain an active interest in this document.

23 July 2021

COMMISSION DELEGATED REGULATION (EU) …/... OF 19.4.2021 SUPPLEMENTING REGULATION (EU) 2019/2144 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL BY LAYING DOWN DETAILED RULES CONCERNING THE ALCOHOL INTERLOCK INSTALLATION FACILITATION IN MOTOR VEHICLES AND AMENDING ANNEX II TO THAT REGULATION (7997/21)

COMMISSION DELEGATED REGULATION (EU) …/... OF 23.4.2021 SUPPLEMENTING REGULATION (EU) 2019/2144 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL BY LAYING DOWN DETAILED RULES CONCERNING THE SPECIFIC TEST PROCEDURES AND TECHNICAL REQUIREMENTS FOR THE TYPE-APPROVAL OF MOTOR VEHICLES WITH REGARD TO THEIR DRIVER DROWSINESS AND ATTENTION WARNING SYSTEMS AND AMENDING ANNEX II TO THAT REGULATION (8164/21)

COMMISSION IMPLEMENTING REGULATION 2021/646 OF 19 APRIL 2021 LAYING DOWN RULES FOR THE APPLICATION OF REGULATION 2019/2144 AS REGARDS UNIFORM PROCEDURES AND TECHNICAL SPECIFICATIONS FOR THE TYPE-APPROVAL OF MOTOR VEHICLES WITH REGARD TO THEIR EMERGENCY LANE-KEEPING SYSTEMS (UNNUMBERED)

Letter from the Chair to Baroness Vere of Norbiton, Parliamentary Under Secretary of State, Department for Transport

Thank you for your EM dated 24 May 2021, summarising the five items of delegated and implementing legislation listed above falling within the scope of the Protocol on Ireland/Northern Ireland. The House of Lords Sub-Committee on the Protocol on Ireland/Northern Ireland considered these documents at its meeting of 14 July 2021.

You acknowledge in paragraph 12 of your EM, that subject to a forthcoming consultation, the introduction of these measures in July 2022 is likely to lead to regulatory divergence between the motor vehicle market in Northern Ireland and Great Britain. We note that you leave open the possibility of regulatory divergence being avoided should motor manufacturers producing vehicles for the GB market voluntarily comply with the various safety standards introduced by these proposals by, for example, "voluntarily fitting the relevant system in order to reduce complexity at the factory or due to customer demand".

Unfortunately, there is little information included in the EM to assist us in assessing the practical impact of these proposals on the respective motor markets of Northern Ireland and Great Britain or your statement about the likelihood of the market voluntarily ameliorating their impact. We would be grateful therefore if you could supply us with the following information addressing:

- the size of the motor industry market in Northern Ireland likely to be affected by these proposals;
- the direct economic impact of these proposals on Northern Ireland's motor industry;
- the economic impact of the regulatory divergence introduced by these proposals on both Northern Ireland's and Great Britain's motor industry; and,
- the practical impact of the precise regulatory divergence introduced by these proposals on the respective motor industry markets of Northern Ireland and Great Britain.

We also note that you look forward to a "planned consultation" with stakeholders on these matters: when does the Government plan to launch this and will it be completed before these new standards come into force in 2022?

Turning to the source of motor industry technical safety standards. You raise in your EM the matter of international standards adopted by the United Nations Economic Commission for Europe (UNECE) and anticipate, in this regard, a forthcoming proposal from the Commission introducing six further driver safety standards drawing upon UNECE standards. In future, would the adoption of motor industry standards through the UNECE be the Government's preferred model? If so, why?

We note that at least one of the measures introduced by the Commission in this package of proposals, the requirement on manufacturers to engage with the *alcohol interlock installation facilitation system*, is built around a European standard agreed by the *Comité Européen de Normalisation* (CEN). As you will be aware, CEN is a pan-European standards body of which the relevant UK standard body, the BSI, remains a member post-Brexit, so the product standards that underpin the *alcohol interlock installation facilitation system* will be ones into which the relevant UK body will have had some input. To what extent, if any, has CEN (or its sister body CENELEC) played a role in the enactment of the other standards underpinning this package of legislation brought forward by the Commission?

Finally, in paragraph 15 of your EM, you say briefly that the motor industry and road safety organisations were consulted during the development of the General Safety Regulation II 2019/2144 and the Commission prepared a "detailed impact assessment" on the benefits of these measures "with which the Government was in general agreement". However, little information was included in the EM on the practical merits of these proposals. Could we ask that in future information is included addressing the merits (or otherwise) of EU legislation as it will help us in our assessment of the impact of specific EU legislation on Northern Ireland.

We would be grateful for a response to this letter by 27 August 2021. In the meantime, the Committee continues to retain an active interest in these documents.

15 July 2021

Letter to the Chair from Baroness Vere of Norbiton, Parliamentary Under Secretary of State

Thank you for your letter of 15 July 2021. I am writing to respond to your request for further information regarding our recent Explanatory Memorandum on various implementing measures introduced by the European Commission concerning the General Safety Regulation (Regulation (EU) 2019/2144). We will also be happy to include more detailed information in EMs on future proposals, as the Committee requests.

The Committee asked about the size of the motor industry market in Northern Ireland likely to be affected by these proposals. Northern Ireland typically accounts for just over 2% of new vehicles sold in the UK (56,752 vehicles in 2019-2020 according to DVLA figures).

The Committee asked about the direct economic impact of these proposals on Northern Ireland's motor industry. The impact of introducing these technologies was originally addressed as part of the wider package of measures under the General Safety Regulation. The Explanatory Memorandum on the proposal for the General Safety Regulation (EM 9006/18) noted that the Government was in general agreement with the Commission's assessment of an overall benefit from General Safety Regulation as a whole with a cost benefit ratio of 1.27. Although that assessment was made for the EU, the Department concluded that it would be of similar benefit to the UK. Based on the Commission's estimate of the cost for each individual measure, the combined cost would likely result in an increase in the cost of a new car of approximately £134 to £206. However, the benefits of the technologies in this proposal cannot be disaggregated from the Commission's impact assessment in the same way. There has been no specific analysis of the General Safety Regulation with respect to Northern Ireland.

The Committee asked about the practical impact of the precise regulatory divergence introduced by these proposals on the respective motor industry markets of Northern Ireland and Great Britain. The regulatory divergence brought about by the application of the General Safety Regulation in Northern Ireland will mean that manufacturers may need to add additional safety technologies to vehicles in

order to sell them in Northern Ireland compared to those being sold in Great Britain. However, in practice vehicles in both markets are already fitted with some of the technologies to earn higher ratings on the EuroNCAP (European New Car Assessment Protocol) consumer information programme. More embedded features that have been mandated are also likely to be present in any case as manufacturers will want to avoid costly and complicated diversity in production lines that will cover the whole of Europe.

As the Committee will of course know, the Government is seeking to find a new balance in operating the Protocol. This includes a dual regulatory regime in Northern Ireland that would allow goods made to either UK or EU rules to circulate within Northern Ireland. This would mean that the requirements of the General Safety Regulation would apply only if manufacturers wished to make goods to EU rules in order to access the EU as well as the NI market.

The Committee asked for further information on our plans for consultation with stakeholders. It will only be possible to consider similar requirements to that of the General Safety Regulation for Great Britain once the full GB type approval scheme is in place. Given the volume of legislation involved, the number of deficiencies in retained legislation, and the complexities of the Northern Ireland Protocol, this is likely to be by mid-2022. This means that while the Department may be able to consult on equivalent requirements, which is expected to commence in the autumn, it will not be possible to have them implemented and applicable in a similar timeframe to that of the General Safety Regulation.

The adoption of technical regulations at UNECE level is the Government's preferred approach to regulating the safety and environmental performance of new motor vehicles as it promotes greater harmonisation across more countries than the EU's approach. We are, however, prepared to regulate nationally if required and where it would prove beneficial to do so.

Comité Européen de Normalisation (CEN) had no active role in the development of the legislation. The EU Commission made use of pre-existing, established voluntary technical standards created by CEN in the proposal to facilitate the installation of alcohol interlocks. The other technical standards in this package of legislation, driver drowsiness detection and attention warning systems, and emergency lane-keeping systems, were developed by the EU Commission and do not reference existing technical standards created by CEN or CENELEC.

3 September 2021

Letter from the Chair to Baroness Vere of Norbiton, Parliamentary Under Secretary of State

Thank you for your letter dated 3 September 2021, on the above delegated and implementing legislation falling within the scope of the Protocol on Ireland/Northern Ireland. The House of Lords Sub-Committee on the Protocol on Ireland/Northern Ireland considered these documents at its meeting of 15 September 2021.

We note your statement that it will not be possible for equivalent legislation for Great Britain to come into effect on the same timetable as that for the EU (and Northern Ireland). We also note your statement that manufacturers will want to avoid diversity in production lines across Europe, and that the Government's proposals for a dual regulatory regime would provide mitigation. However, given that the EU has yet to agree to the Government's proposal, do you agree that there nevertheless remains the potential for regulatory divergence between Great Britain and Northern Ireland once these EU rules come into effect?

In your letter you cite the previous cost/benefit analysis conducted by the Commission in 2018 for the overall General Safety Regulation, and the Government's assessment that this analysis would broadly apply to the UK were such changes to be introduced there. To what extent will this, together with the Government's stated aim of promoting greater harmonisation across Europe as a whole, be taken into account in the context of the Government's forthcoming consultation on equivalent provisions in Great Britain? We would be grateful to be kept updated on these consultations in the context of the full GB type approval scheme, and any proposals to introduce equivalent legislation for Great Britain.

We also note your statement that there has been no specific analysis of the General Safety Regulation with respect to Northern Ireland. What steps will the Government, working with the Northern

Ireland Executive, take to correct this lack of specific analysis, both for this and for other EU legislation applying to Northern Ireland under the Protocol?

We would be grateful for a response to this letter by 16 November 2021. In the meantime, the Committee continues to retain an active interest in these documents.

16 September 2021

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL LAYING DOWN HARMONISED RULES ON ARTIFICIAL INTELLIGENCE (ARTIFICIAL INTELLIGENCE ACT) AND AMENDING CERTAIN UNION LEGISLATIVE ACTS (8115/21)

Letter from the Chair to Matt Warman MP, Minister for Digital Infrastructure, Department for Digital, Culture, Media and Sport

Thank you for the EM dated 24 May 2021 on the above proposal for a Regulation. The House of Lords Committee on the Protocol on Ireland/Northern Ireland considered this document at its meeting on 14 July 2021.

We note your statement that "this is a new EU proposal for Regulation and so not already within scope of the Protocol." However, you also say that "the Government is currently considering how the proposals interact with the existing EU product safety legislation that is included in Annex 2 of the Northern Ireland Protocol." What is your assessment of this interaction?

Does the Commission agree that this is a new proposal, or is it likely to argue that the Regulation amends or replaces existing EU legislation listed in Annex 2, and should therefore automatically apply to Northern Ireland? Has the Commission given the Government notice that it believes this legislation should apply to Northern Ireland, either within the Withdrawal Agreement Joint Committee or the Joint Consultative Working Group? What position will the Government take in the Withdrawal Agreement Joint Committee under Article 13(4) in the event that the Commission argues either that it automatically applies or that it should be added to the Annexes to the Protocol?

Do you share the Commission's view that EU legislation will need to be amended in light of the proposal, including the Regulation for Machinery Products, and on civil aviation, agricultural and forestry vehicles, rail systems, marine equipment and motor vehicles? You will be aware that the Committee is currently scrutinising the updated Regulation for Machinery Productions (EM 8095/21). What is the interaction between these two proposals?

What is your assessment of the merits (or otherwise) of this proposed Regulation and to what extent does the UK plan to mirror EU standards? If the UK does so, what are the likely financial and regulatory effects for UK businesses? If the Government chooses not to do so, what will be the impact of any potentially divergent regulatory standards in relation to AI systems between Northern Ireland and Great Britain?

We note that you have "engaged with the Devolved Administrations in the preparation of this EM". We would be grateful if you could provide more detail about the extent of your engagement with the Northern Ireland Executive, as well as with the Scottish and Welsh Governments. Did they have any concerns about this proposal and, if so, what action has been taken in response?

What plans do the Government and Northern Ireland Executive have to engage with Northern Ireland businesses and stakeholders who are likely to be affected by this proposal? Does the Government plan to undertake an impact assessment of the implications for Northern Ireland? If so, will you commit to sharing this impact assessment with the Committee?

We would be grateful for a response to this letter by 27 August 2021. In the meantime, the Committee continues to retain an active interest in this document.

15 July 2021

Letter to the Chair from Amanda Solloway MP, Minister for Science, Research & Innovation, Department for Business, Energy & Industrial Strategy, and Matt

Warman MP, Minister for Digital Infrastructure, Department for Digital, Culture, Media and Sport

Thank you for your letter dated 15 July 2021 on the recent European Commission's 'Proposal for a Regulation of the European Parliament and of the Council laying down harmonised rules on Artificial Intelligence (Artificial Intelligent Act)' published on 21 April 2021. We are issuing a joint response to your letter as the issues you raise cross over our respective ministerial remits.

Implications of proposed AI Regulation on UK interests

The Committee has raised specific questions on the Government's current assessment of how the proposed AI Regulation may interact with product safety legislation listed in Annex 2 of the Northern Ireland Protocol. As the proposed Regulation is a new act that neither amends nor replaces an existing EU act listed in Annex 2, if it is proposed by the EU that this be added to the Protocol, that would be a matter for decision by the Joint Committee. The Commission has not yet formally notified the Government of its position on whether this legislation should apply to Northern Ireland within either the Withdrawal Agreement Joint Committee or the Joint Consultative Working Group.

It should be noted however that the Government is seeking to find a new balance in the Protocol in order to place it on a more sustainable footing, as set out in the 'Northern Ireland Protocol: the way forward' July 2021 Command Paper. This includes proposals to establish a dual regulatory regime for manufactured goods, in order to ensure that consumers in Northern Ireland do not face barriers in accessing goods from Great Britain, and which would enable goods made to UK rules to circulate and be placed on the market in Northern Ireland. In this scenario, should the proposed AI Regulation be added to the Protocol, AI-integrated products would only need to meet the relevant EU requirements if manufacturers wished to sell them in NI and the EU, whilst goods made to relevant UK requirements would be able to circulate across the UK. Additionally, we are seeking more robust arrangements to ensure that, as rules are developed, they take into account their implications for Northern Ireland – and provide a stronger role for those in Northern Ireland to whom they apply.

The Committee has also asked specific questions on the Government's assessment of the merits (or otherwise) of the proposed AI Regulation, to what extent the UK intends to mirror EU standards, and the possible financial and regulatory implications of aligned UK/EU regulations for UK businesses. Given that the EU proposal is an early-stage draft of legislation, the Government's assessment of the potential ramifications of the AI proposal on the UK is ongoing and will continue to evolve as the Regulation is shaped through the EU legislative process. We are monitoring global developments on the governance and standardisation of AI, including in the EU and further afield, to assess how these might inform our own approach.

The Government will continue to monitor the potential impacts of the Regulation on UK interests and will keep under review its possible implications for Northern Ireland. The impact of any potential divergence in UK/EU regulatory standards in relation to implications for Northern Ireland will be considered as part of the Government's ongoing review of the interaction between the EU proposals and the Protocol outlined above. We note the Committee's interest in our ongoing assessment of this legislation and will endeavour to keep you informed of key developments.

Interaction of proposed AI Regulation with EU legislation

Your letter also asks whether the Government shares the Commission's view that various pieces of EU product legislation will need to be amended in light of the AI proposal, and for our current assessment of the potential interaction between the proposed AI Regulation and the EU Regulation for Machinery Productions. The question of whether the legal text of individual EU product Regulations will need to be updated to reflect new requirements within the AI proposals is one for the Commission itself. However, as the Committee has identified, the Commission has been clear it is looking to ensure consistency between these initiatives. The Machinery Regulation is at present still only an early proposal that sets out the Commission's vision and intention to future proof the existing machinery regulations. Once the final proposals for both the Machinery Regulation and AI Regulation are known and ratified, the Government will have a clearer view of the interplay between these proposals. However, at present the proposed pieces of EU legislation suggest that the safety risks of AI systems used in machinery would be covered by the AI Regulation, whilst the Machinery Regulation would seek to ensure the safe integration of these AI systems into the overall machinery, so as not to compromise the safety of the machinery as a whole.

Engagement with Devolved Administrations and stakeholders

Lastly, we will look to address the Committee's questions on engagement with the Devolved Administrations and Northern Ireland businesses. We recognise that Scotland, Wales and Northern Ireland all have their own plans or strategies for AI and there are devolved interests in the EU's AI Regulation proposal, given its horizontal nature and extraterritorial scope. We are engaging with the Devolved Administrations on AI issues and offices were invited to comment on the draft EM to ensure we covered areas of interest. Given the importance of the EU market, we recognise the importance of seeking to minimise potential trade barriers for AI businesses, particularly SMEs - and will work together to further explore the implications as the proposal develops.

The UK's National AI Strategy will be published later this year and will set out a vision for the future use of AI that encourages innovation whilst balancing risks and opportunities. During development of the UK's National AI strategy, experts from the AI ecosystem in Northern Ireland, Wales, Scotland and England have been consulted. This included specific meetings aimed at the needs of Northern Ireland, Wales and Scotland, as well as considerations gathered from around 400 responses to consultations by the AI Council. The AI Council, who were closely consulted throughout, includes senior representatives of the AI ecosystem from all parts of the UK. We will continue to engage with the AI ecosystem, including the Devolved Administrations, as we develop the UK's approach to AI, beyond the publication of the AI Strategy.

We will carry on working together to maximise the benefits of AI for Northern Ireland, Wales, Scotland, England and the UK as a whole, as well as ensuring that AI businesses and ecosystems are ready when the EU legislation eventually comes into effect.

We trust this letter addresses your questions with regards to the potential impact of this proposed EU Regulation.

25 August 2021

Letter from the Chair to Amanda Solloway MP, Minister for Science, Research & Innovation, Department for Business, Energy & Industrial Strategy, and Matt Warman MP, Minister for Digital Infrastructure, Department for Digital, Culture, Media and Sport

Thank you for your letter, dated 25 August 2021, on the above proposal for a Regulation. The House of Lords Committee on the Protocol on Ireland/Northern Ireland considered this document at its meeting on 15 September 2021.

We welcome your commitment to keep the Committee informed of relevant developments in relation to this Regulation, and we invite you in particular to inform us if and when the Commission notifies the UK that it wishes to add the Regulation to the Annexes to the Protocol, and the Government's response.

We note your acknowledgement of the importance of the EU market and the need to minimise potential trade barriers for AI businesses, in particular SMEs. That being the case, your statement that the Government's assessment of the ramifications of the proposal for the UK is "ongoing and will continue to evolve" is insufficient, in particular given its potential implications for Northern Ireland under the Protocol. What further information can you provide on the Government's assessment of the merits (or otherwise) of the proposal, and its implications, in particular for Northern Ireland, and also for the UK as a whole, whether the other nations of the UK choose to mirror, or to diverge from, the EU's approach?

We note your statement that the Government's proposal in its Command Paper on the Protocol for a dual regulatory regime for manufactured goods would mean that AI-integrated products would only need to meet the relevant EU requirements as set out in the Regulation if manufacturers wished to sell them in Northern Ireland and the EU. Given that the EU has yet to agree to the Government's proposal, what assessment has the Government made of the impact of this Regulation for Northern Ireland in the meantime?

We also note your reference to the Regulation's "horizontal nature and extraterritorial scope". Can you explain what you mean by this?

Given that the potential implications of the Regulation for Northern Ireland remain uncertain at the present time, the Committee retains an active interest in the proposal. We would therefore be grateful for a response to these questions, as well as an update on developments in relation to the negotiation of the Regulation, by 16 November 2021

16 September 2021

COMMISSION DELEGATED REGULATION (EU) …/... OF 12.5.2021 SUPPLEMENTING REGULATION (EU) 2019/787 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL WITH RULES CONCERNING APPLICATIONS FOR REGISTRATION OF GEOGRAPHICAL INDICATIONS OF SPIRIT DRINKS, AMENDMENTS TO PRODUCT SPECIFICATIONS, CANCELLATION OF THE REGISTRATION AND THE REGISTER (8793/21)

Letter from the Chair to Victoria Prentis MP, Parliamentary Under Secretary of State, Department for Environment, Food and Rural Affairs

Thank you for your EM dated 4 June 2021 summarising the Delegated Regulation referenced above falling within the scope of the Protocol on Ireland/Northern Ireland. The House of Lords Sub-Committee on the Protocol on Ireland/Northern Ireland considered the document at its meeting of 14 July 2021.

We note that these rules governing Geographical Indications for alcoholic spirits will affect the producers in Northern Ireland of Irish Whiskey, Irish Cream and Irish Poteen and you anticipate that "in practice" its effect will be "minimal".

The focus of the EM was on the consequences of this legislation for the protection of intellectual property rights within the EU's Single Market but there was little information dealing with the UK implications of this matter. We ask you therefore what impact, if any, do you expect the introduction of these rules and their regulation on an "island of Ireland basis" to have on the producers of these products' relationship with the UK/GB market; in particular, on the protection of their intellectual property rights in the UK through Geographical Indications?

We would be grateful for a response to this letter by 27 August 2021. In the meantime, the Committee continues to retain an active interest in these documents.

15 July 2021

Letter to the Chair from Victoria Prentis MP, Parliamentary Under Secretary of State, Department for Environment, Food and Rural Affairs

Thank you for your letter of the 15th July regarding the above Explanatory Memorandum.

In your letter, you asked 'what impact, if any, do you expect the introduction of these rules and their regulation on an "island of Ireland basis" to have on the producers of these products' relationship with the UK/GB market; in particular, on the protection of their intellectual property rights in the UK through Geographical Indications?'

The directly applicable EU regulations on geographical indications for spirit drinks that apply in Northern Ireland and the Republic of Ireland, and the retained versions that apply in Great Britain, specifically provide for trans-border products. These are products that can be produced in more than one territory, whether in the EU or not.

The geographical indication status of Irish Whiskey, Irish Cream and Irish Poteen has not been changed by these regulations. They are protected in the EU and Northern Ireland under directly applicable EU law, and in Great Britain, having been added to the UK GI scheme register following its establishment after IP completion day.

The specific regulation to which the Explanatory Memorandum refers provides further rules on the implementation of geographical indications for spirit drinks in the EU and Northern Ireland, expanding on those contained in the main regulation which became applicable prior to the end of the transition

period. In substance, these rules do not differ greatly from the provisions contained in the retained Great Britain version of the main regulation. Overall, the impact of this regulation to trans-border GI holders in the island of Ireland is minimal.

27 July 2021

Letter from the Chair to Victoria Prentis MP, Parliamentary Under Secretary of State, Department for Environment, Food and Rural Affairs

Thank you for your letter dated 27 July 2021 on the above Delegated Regulation falling within the scope of the Protocol on Ireland/Northern Ireland. The House of Lords Sub-Committee on the Protocol on Ireland/Northern Ireland considered the document at its meeting of 8 September 2021.

We note your statement that the Geographical Indication status or Irish Whiskey, Irish Cream and Irish Poteen has not been changed by these regulations, and that the overall impact of this regulation to trans-border Geographical Indications holders in the island of Ireland is minimal.

That being the case, we are now content to draw our scrutiny of this delegated regulation to a close, and do not require a response to this letter. However, we reserve the right to return to the matter should any issues arise in the future.

10 September 2021

COMMISSION IMPLEMENTING REGULATION (EU) 2021/414 OF 8 MARCH 2021 ON TECHNICAL ARRANGEMENTS FOR DEVELOPING, MAINTAINING AND EMPLOYING ELECTRONIC SYSTEMS FOR THE EXCHANGE AND STORAGE OF INFORMATION UNDER REGULATION (EU) NO 952/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL (UNNUMBERED)

Letter from the Chair to the Rt Hon Jesse Norman MP, Financial Secretary to the Treasury, HM Treasury

Thank you for the EM dated 21 May 2021 on the above Implementing Regulation within the scope of the Protocol on Ireland/Northern Ireland. The House of Lords Committee on the Protocol on Ireland/Northern Ireland considered this document at its meeting on 14 July 2021.

While we note that the Implementing Regulation is already in force, it raises a number of questions in terms of the implications of its application to Northern Ireland under the Protocol.

We note your statement that the "the Executive Office have raised no comments regarding Regulation 414/21". We would be grateful if you could provide more detail about the extent of your consultation with the Northern Ireland Executive.

We note your commitment that "any relevant consultation amended, or new guidance will be made available to customers to support NI businesses in adapting to any new system requirements or changes to current processes/procedures." We would welcome a fuller explanation of the likely impact of this Implementing Regulation on Northern Ireland businesses, including an explanation of when any changes to procedures or systems are likely to take effect, the role of the Trader Support Service and, more broadly, what support will be offered to businesses to assist any necessary adaptions.

We would also be grateful if you could outline any practical implications for businesses in Great Britain exporting to Northern Ireland, including the implications of any regulatory divergence.

Finally, the EM states that HMRC is "currently assessing the requirements for the Centralised Clearance for Import (CCI) system authorisation". Can you provide an update on the requirements for the CCI and any relevant adaptations to systems or processes that will be necessary?

We would be grateful for a response to this letter by 27 August 2021. In the meantime, the Committee continues to retain an active interest in this document.

15 July 2021

Letter to the Chair from the Rt Hon Jesse Norman MP, Financial Secretary to the Treasury

Thank you for your letter of 15 July 2021 on the Explanatory Memorandum in relation to EU Regulation 2021/414.

Since your letter was received the Government has published the command paper, 'Northern Ireland Protocol: the way forward'. This explains that the Government is seeking to negotiate with the EU significant changes to the NI Protocol (NIP). The Command Paper also sets out changes needed to make the Protocol sustainable, such as the removal of burdens on trade in goods within the UK, while also managing risks to the EU Single Market and ensuring that businesses and consumers in Northern Ireland can continue to have normal access to goods from the rest of the UK.

Under the existing arrangements, the UK agreed to remain aligned with the EU's customs legislation, namely the Union Customs Code (UCC). The Multi Annual Strategic Plan (MASP) is the EU's work programme on delivering IT changes, enhancements or new systems for customs, should that prove necessary. The UK Government is obliged to implement these changes under the existing Protocol in Northern Ireland. They are designed to support taxpayers in meeting any obligations under the NIP, while retaining alignment with EU systems and reducing burdens to a minimum wherever possible.

Regulation 2021/414 provides information for Member States, and the UK in relation to NI, related to enhancements and changes to existing systems under MASP. Therefore, in this instance, changes are not to meet entirely new obligations but rather to enable taxpayers to continue their current access to relevant systems and processes.

You asked specifically for information about the extent of the consultation with the Northern Ireland Executive Office. The EM request was shared with the European Policy and Co-Ordination Unit in the Executive Office, as required under the long-standing EM procedure for EU documents which may involve DA interest. Colleagues of the Executive Office circulated the EM request to relevant NI departments and confirmed they did not have any comments to provide on this particular regulation.

You also asked for a more detailed explanation of the likely impact that the Regulation could have on NI businesses, including when any changes to procedures or systems are likely to take effect, the role of the Trader Support Service and, more broadly, what support will be offered to businesses to assist any necessary adaptions. The Trader Support Service (TSS) has been specifically designed to support businesses trading with NI. It will be adapted to support these new MASP requirements and will continue to provide customers with a mechanism to comply with them. HMRC and the TSS will continue to provide support to all taxpayers in respect of any new requirements or revised data and will ensure that they will be digitally supported in sharing data with EU systems.

You asked for further information in respect of systems and processes yet to be implemented. With regards to the different systems, HMRC have advised that:

Import Control System 2 (ICS2) which is a new EU Safety and Security declaration system will be delivered in 3 phases – for NI these are (Annex 1 provides further detail):

- August 2021 – Postal and express operators moving goods into the EU/NI via air. ICS2 introduces the new requirement of preloading data
- March 2023 – All operators moving goods by air
- March 2024 – All operators moving goods using other modes of transport

Automated Export System (AES) which is a replacement service to automate the completion of export procedures. (Annex 2 provides further detail.)

New Computerised Transit System (NCTS5) which is an enhanced system for Transit movements. (Annex 3 provides further detail.)

With regards to the practical implications for businesses in Great Britain selling to Northern Ireland customers, GB businesses will not have to make any export declarations for goods moving from GB-NI, but import declarations and processes are required and the changes under MASP are designed to improve the process for traders.

EU regulatory requirements currently apply in Northern Ireland for imported goods. However, as set out in the Command paper, through negotiations the Government is aiming to simplify processes for internal UK movements as much as possible, and to ensure that businesses and consumers in Northern Ireland can continue to have normal access to goods from the rest of the UK. The regulatory environment in Northern Ireland has been designed to work with different standards, allowing goods made to UK standards and regulated by UK authorities to circulate freely in Northern Ireland as long as they remain in Northern Ireland.

Finally, you asked for an update on the position for Centralised Clearance for Imports (CCI). CCI is an entirely voluntary authorisation and is only available to businesses that hold Authorised Economic Operator status who are established in NI. This will limit the number of potential customers who could be interested in this type of authorisation. The vast majority of IT changes would be for HMRC to manage and expectations are that the system changes would be minimal for the taxpayer – they would continue to provide their customs data as they do today into the relevant HMRC systems.

HMRC advise that high level impact analysis has taken place and early indications are that this is a complex IT build for their systems and will require new funding. HMRC will be able to provide more detail on any customer impacts after further project development.

23 August 2021

ANNEX 1

MASP - ICS2
Introduction

ICS background

Since the 9/11 attacks in the US the EU has taken steps to put in place processes to address Safety and Security issues for goods moving into or out of the EU. The Import Control System (ICS1) was the EU's response to these emerging risks.

ICS1 introduced the requirement for electronic pre-arrival information to be provided to the customs authorities on all goods entering or passing through the customs territory of the Community. It uses EU wide agreed common risk rules, the pre-arrival information will undergo risk analysis and any appropriate safety and security data will be passed to other Member States where they are identified as being included in the itinerary of the means of transport. Data exchange of safety and security information between customs authorities is carried out through system networks in each Member States which manages and controls the receipt, risk analysis and exchange of pre-arrival information.

MASP and ICS2

Although the UK exited from the EU on 31/12/20, under the Northern Ireland Protocol the UK agreed to remain aligned with EU customs legislation (the Union Customs Code - UCC). The Multi Annual Strategic Plan (MASP) is the EU work programme to deliver systems or system enhancements which the UCC have legislated for. The Programme currently runs until 2025 and covers the customs requirements that apply to Northern Ireland (NI) customs activities.

One of the key deliveries of MASP is the new Import Control System 2 (ICS2) – this handles the data in relation to Safety and Security declarations

Under the UCC legislative work programme (Commission Implementing Decision (EU) 2019/2151 - UCC Work Programme), the Import Control System 2 (ICS2) will be operational in three releases. Each release affects different Economic Operators (EOs) and modes of transport. EOs will begin declaring their goods to ICS2 depending on the type of services they provide.

What is ICS2 not?

ICS2 is not an import system and it is not used to process customs declarations for release into free circulation.

Is ICS2 an upgrade of ICS1?

No. ICS2 will fully replace ICS1 with an entirely new business process in accordance with the UCC legal requirements and the strategic operational needs expressed in the EU Customs Risk Management Strategy & Action Plan (2014).

Are ICS1 and ICS2 going to run in parallel?

They will operate in parallel until all 3 releases are developed and delivered. After the roll-out of ICS2 Release 3 on 1 March 2024, ICS1 will be phased out after a transitional period of 200 days.

What are the ICS2 releases?

ICS2 aims to provide an extra security layer to the existing civil aviation security requirements. Pre-loading advance cargo information – PLACI, as a subset of the ENS will be used by the EU customs authorities to perform air cargo and mail security risk assessments. The scope of these assessments is to detect immediate threats to aviation security i.e. bringing on board an aircraft articles that could lead to the destruction of the plane and/or loss of lives – improvised explosive (IED) or incendiary device (IID) a.k.a. 'bomb in the box'. The following table sets out each of the three phases, which operators/mode of transport is affected and the effective dates.

Phase		Who is affected?	Requirements	Effective Date
Phase 1		Air Express Operators Air Postal Operators 3rd Country Postal Operators	Pre-loading Advanced Cargo Information (PLACI) using minimum Entry Summary Declaration Dataset.	Effective across EU 15th March 2021 UK negotiated LID **31st August 2021.** Latest delivery **1/10/21.**
Phase 2		Air Express Operators Air Postal Operators Air Carriers Freight Forwarders	Operators are required to complete the ENS dataset for all goods in air transport. All goods transported by air in postal, express and general cargo consignments will be subject, in addition to pre-loading filing requirements, to complete pre-arrival ENS data requirements.	**1st March 2023**
Phase 3		Maritime Inland waterways Roads Rail	Operators must complete ENS dataset for all goods in these sectors, including postal and express consignments. Maritime, road and rail carriers required to submit ENS data to ICS2. This includes postal and express carriers who transport goods using these modes of	**1st March 2024**

			transport as well as other parties, e.g. logistic providers. In certain circumstances final consignees established in the EU, will have to submit ENS data to ICS2.	

ANNEX 2

MASP – Automated Export System (AES)
Introduction

AES background

Due to the increased security threats globally, the EU amended previous customs legislation to enable the introduction of systems capable of handling pre-departure (exports) information. Customs authorities are expected to carry out risk analysis at both an EU and a national level. The systems were designed to address weaknesses in the paper-based control systems. This led to the UK introducing the Export Control System (ECS) which forms part of the export declaration process.

The Union Customs Code (UCC) set the requirements for a new system that will continue to enhance the current Export procedures and Exit formalities, while the next iteration introduces new processes, new data elements, changes to the existing processes and changes to existing data elements – this is AES.

AES will enable the full automation of export procedures and exit formalities and will replace the current Export Control System (ECS).

What AES is?

AES is the system which will, by 1/12/2023, become the main Exporting system replacing the Export Control System.

Is AES an upgrade of ECS?

Yes. AES will further develop and enhance ECS using an entirely new business process in accordance with the UCC legal requirements.

Are AES and ECS going to run in parallel?

They will operate in parallel until AES is fully developed and delivered.

AES: The Two Components

AES has 2 main components as summarised below:

Component 1:

- 'Trans-European AES' - The aim of the project is to further develop the existing trans-European Export Control System in order to implement a full AES that will cover the business requirements for processes under UCC legislation.
- The AES will enable the full automation of export procedures and exit formalities.
- The AES covers parts to be developed centrally and nationally, including the national components in which the export declaration is lodged, processed and which enables the subsequent exchange of information with the customs office of exit via the common components of the AES.

Component 2:

- National Export Systems upgrade'. In a process outside the scope of the AES but closely linked, separate national systems are to be upgraded for specific national elements related to export and/or exit formalities.

- Where these elements do not impact on the common domain for AES, they can be covered under this component.

ANNEX 3

MASP – New Computerised Transit System (NCTS)
Introduction

NCTS background

The Transit procedure facilitates the movement of goods through the territory of the Union or a common transit country, by suspending duties and other charges on imported goods until they entered into another customs procedure upon arrival at their destination. Transit reduces administrative burdens on traders by removing the need for additional import/export declarations when transiting across multiple customs territories. It also provides cash flow benefits by allowing the movement of goods across a customs territory without the payment of duties until the final destination.

The New Computerised Transit System (NCTS) is a system of electronic declaration and processing that traders must use to submit Common Transit declarations. NCTS must also be used to submit Transports Internationaux Routiers (TIR) declarations electronically when entering the territory of the EU. This requirement also applies to NI.

NCTS will process the declaration and control the transit movement. It's used by the UK, all member states of the EU and the signatories of the Common Transit Convention.

The Common Transit procedure can be used for movements between the UK, the EU and other Common Transit Countries.

The current NCTS4 needs to be adapted and enhanced to the next iteration - NCTS5. This will achieve alignment with UCC legal requirements, incorporates all the new data elements and the new message exchange mechanisms.

It is a legal requirement to use the New Computerised Transit System (NCTS) for all eligible transit declarations.

Delivery Timescale

From 1/3/2021 – 01/12/2023 (Component 1 - phase 5):

- the aim of this phase is to align the NCTS system with the new UCC requirements
- It introduces an entirely new Office of Incident role for all transit Office to for the registration of 'en route' events, the ability to amend pre-lodged declarations, integration with Automated Export System (ECS successor) and the alignment of information exchanges with Union Customs Code data requirements, and the upgrade and development of interfaces with other systems

From 3/6/2024 – 2/6/2025 (Component 2 - phase 6)

- the aim of this phase is to implement the specific new requirements for safety and security data elements in combined transit and safety and security declarations (also known as TSADs) for goods brought into the customs territory of the Union
- The scope and implementation solution is yet to be agreed

What is NCTS5?

The New Computerised Transit System (NCTS) is a system of electronic declarations and processing.

Is NCTS5 an upgrade of the Common Transit System?

Yes. NCTS5 will be an upgraded version of Common Transit System (CTS) and will further develop CTS using an entirely restructured business process.

Letter from the Chair to the Rt Hon Jesse Norman MP, Financial Secretary to the Treasury

Thank you for your letter, dated 23 August 2021 on the above Regulation within the scope of the Protocol on Ireland/Northern Ireland. The House of Lords Committee on the Protocol on Ireland/Northern Ireland considered this document at its meeting on 15 September 2021.

We are grateful for your detailed response to our letter. We note the publication of the Government's Command Paper, setting out its intention to negotiate significant changes to the Protocol. The Committee will be conducting detailed scrutiny of the Command Paper, the EU's response, and any negotiations that follow, in the coming weeks.

In that context, we are now content to draw our scrutiny of this Implementing Regulation to a close. While we do not require a response to this letter, we would be grateful to receive, in due course, further information on HMRC's impact analysis of the Centralised Clearance for Imports (CCI) authorisation once further project development has taken place.

16 September 2021

COMMISSION IMPLEMENTING REGULATION (EU) 2021/686 OF 23 APRIL 2021 AUTHORISING A HEALTH CLAIM MADE ON FOODS, OTHER THAN THOSE REFERRING TO THE REDUCTION OF DISEASE RISK AND TO CHILDREN'S DEVELOPMENT AND HEALTH, AND AMENDING REGULATION (EU) NO 432/2021 (UNNUMBERED)

Letter from the Chair to Ed Argar MP, Minister of State for Health, Department for Health and Social Care

Thank you for the EM dated 8 June 2021 on the above Implementing Regulation with implications for the Protocol on Ireland/Northern Ireland. The House of Lords Committee on the Protocol on Ireland/Northern Ireland considered this document at its meeting of 14 July 2021.

We note this detailed and informative EM. We note your statement that this is "the first instance of the EU/GB nutrition and health claims lists diverging". However, we welcome your explicit acknowledgment that, as provided for in the UK Internal Market Act 2020, qualifying NI goods that comply with the requirements to use this new authorised health claim in Northern Ireland may be placed on the GB market.

We would be grateful for your response to the following questions:

1. Parliamentary committees have previously stressed that Government EMs should make clear (a) that the devolved administrations have been consulted; (b) whether they have expressed any concerns; and (c) if they have expressed any concerns, what they were and what action has been taken to address them. We note your statement that the devolved administrations were consulted in the preparation of this EM and that Northern Ireland requested to review it. In view of their devolved competencies, can you therefore set out in more detail the views of the Northern Ireland Executive on this proposal, any concerns that they expressed, and what action has been taken in response?

2. You write that the Nutrition Related Labelling, Composition and Standards (NLCS) provisional common framework, with which this Implementing Regulation interacts, "has been developed to maintain a consistent and co-ordinated policy approach across the UK sets out arrangements for co-operation between officials in the four nations of the UK with regard to NLCS policy." Can you explain in more detail the interaction between the direct application in Northern Ireland of EU Regulations in this field with Northern Ireland's participation in the (NLCS) provisional common framework? You also mention that the NLCS "stresses Northern Ireland's continued participation in risk management considerations." Can you elaborate on the practical impact of the Protocol's application to Northern Ireland upon this participation?

3. You note that because of the unfettered access for qualifying NI goods granted in the UK Internal Market Act and the fact that adding new health claims is not mandatory, the impact of regulatory divergence should be minimal. Does the Government see any practical implications of the further divergence in food labelling between Great Britain and Northern Ireland and, if so, what are they?

4. The point of Regulation (EC) No 1924/2006 and Regulation No 432/2012 is to harmonise nutritional and health claims on commercial products in order to ensure a high level of consumer protection and prevent barriers to international trade arising from the existence of distinct misleading or incorrect labelling across EU member states. Does the UK intend in the future to add this and/or any other new health claim added to the EU's list of authorised health claims to its own list? If not, why not, and does the Government anticipate there being any impact on competition as a result of divergence?

We would be grateful for a response to this letter by 27 August 2021. In the meantime the Committee continues to retain an active interest in this document.

15 July 2021

Letter to the Chair from the Lord Bethell, Parliamentary Under Secretary of State for Innovation, Department of Health & Social Care

Thank you for your letter dated 15 July relating to the above unnumbered explanatory memorandum on Commission Implementing Regulation (EU) 2021/686.

You have raised a number of points, which I will respond to in turn below.

1. Parliamentary committees have previously stressed that Government EMs should make clear (a) that the devolved administrations have been consulted; (b) whether they have expressed any concerns; and (c) if they have expressed any concerns, what they were and what action has been taken to address them. We note your statement that the devolved administrations were consulted in the preparation of this EM and that Northern Ireland requested to review it. In view of their devolved competencies, can you therefore set out in more detail the views of the Northern Ireland Executive on this proposal, any concerns that they expressed, and what action has been taken in response?

Northern Ireland (NI) Department of Health requested to review this explanatory memorandum (EM) as the regulation which it amends falls under scope of the Protocol on Ireland and Northern Ireland (NIP). NI Department of Health confirmed they had no comments on the EM and did not express any concerns relating to the EM. NI Department of Health also advised as Commission Implementing Regulation (EU) 2021/686 is a delegated regulation from the EU which is directly applicable to NI, rather than legislation made at Westminster, it would not necessarily be raised with the NI Executive Committee, and was not referred to the Committee on this occasion.

2. You write that the Nutrition Related Labelling, Composition and Standards (NLCS) provisional common framework, with which this Implementing Regulation interacts, "has been developed to maintain a consistent and co-ordinated policy approach across the UK sets out arrangements for co-operation between officials in the four nations of the UK with regard to NLCS policy." Can you explain in more detail the interaction between the direct application in Northern Ireland of EU Regulations in this field with Northern Ireland's participation in the (NLCS) provisional common framework? You also mention that the NLCS "stresses Northern Ireland's continued participation in risk management considerations." Can you elaborate on the practical impact of the Protocol's application to Northern Ireland upon this participation?

The Nutrition Labelling Composition and Standards (NLCS) common framework (which has been developed to maintain a consistent and co-ordinated policy approach across the UK)[4] sets out arrangements for co-operation between officials in the Department for Health and Social Care

[4] ES1019747_CCS207_CCS092027911O-001_NLCS Framework v02_PRINT.pdf (publishing.service.gov.uk)

(DHSC), Food Standards Scotland (FSS) (representing Scottish Government), Welsh Government (WG) and the Food Standards Agency Northern Ireland (FSANI) with regard to NLCS policy. The framework supports the continuation of good practice among the four administrations and will ensure recognition of the economic and social linkages between Northern Ireland (NI) and Ireland and that Northern Ireland will be the only part of the UK which shares a land frontier with the EU.

The NLCS common framework was provisionally agreed by the JMC(EN) on 03 September 2020. Good progress continues to be made to finalise the framework; however, until the UK Government and the devolved administrations agree wording on a number of cross cutting issues – particularly a process for reflecting powers in the UK Internal Markets (UKIM) Act (2020), the Northern Ireland Protocol and a consensual approach to intergovernmental relations the enduring framework cannot be finalised. In the meantime, the provisional framework is implemented and operates in a similar way to the proposed enduring framework but is agreed without prejudice to any future joint decisions that the Governments may take.

The agreements as set out within the provisional NLCS framework provide for close collaboration with consistency of approach across all four nations always being sought in the first instance. All future policy proposals relating to nutrition are therefore considered on a four nation basis via the NLCS policy group, with the impact assessed on the UK as a whole not just each individual nation or Great Britain (GB). Under the terms of the Protocol on Ireland/Northern Ireland (NIP), EU regulations which are included in the annexes of the NIP will apply in respect of NI. Regulations which are in scope of the provisional NLCS framework as shown in Appendix II of the framework (excluding nation-specific derogations and directives) are also included in the annexes of the NIP.

Northern Ireland's full participation in risk assessment (which includes seeking scientific evaluation where appropriate) and risk management processes of amendments to legislation in scope of the provisional NLCS framework, ensure that any decisions taken in GB fully consider the potential impacts on GB, NI and the UKIM. It is important to note that if there is divergence in the regulatory approach between GB and NI, through the principles of mutual recognition and non-discrimination the UKIM Act 2020 allows qualifying NI goods meeting only EU rules to continue to be able to be placed on the market in GB.

3. You note that because of the unfettered access for qualifying NI goods granted in the UK Internal Market Act and the fact that adding new health claims is not mandatory, the impact of regulatory divergence should be minimal. Does the Government see any practical implications of the further divergence in food labelling between Great Britain and Northern Ireland and, if so, what are they?

Retained EU legislation Regulation (EC) No 1924/2006 as amended by the Nutrition (Amendment etc.) (EU Exit) Regulations 2019 requires the GB authorities to develop and establish a list of permitted health claims. As with applications for amendments to the EU Nutrition and Health claims lists/registers, industry may submit applications or dossiers requesting GB nutrition and health claim lists/registers be amended to permit new nutrition or health claims for use on the GB market. Applications for a new claim can be submitted for authorisation for use GB wide, or alternatively for use in any one or more of the GB nations.

To date no such request has been submitted to GB appropriate authorities for the assessment and approval of a "*carbohydrate solutions*" health claim for use on the GB market. Until such a request is received, the health claim approved in the EU cannot be considered and will not be added to the GB nutrition and health claims register. Should an application be received, which is supported by the same scientific evidence as that submitted to the EU, we would not expect that GB scientific opinion and risk-management decisions to be meaningly different from the EU's. The practical implication of deciding whether to approve a GB application for a claim would certainly be considered as part of the NLCS risk management decision.

However, as you have noted, the UKIM Act 2020 provides for continued seamless flow of goods and services across the UK through the principles of mutual recognition and non-discrimination. In accordance with the mutual recognition principle in the Act, qualifying NI goods that comply with the requirements to use this new authorised health claim in NI, may therefore be placed on the GB market. The Act disapplies the requirements in GB – section 2(3) for qualifying NI goods (section 11).

Aside from labelling changes to include the health claim on qualifying NI goods that comply with the requirements to use this new authorised health claim, we do not see any further practical implications of the further divergence in food labelling between GB and NI related to this implementing act. Powers for enforcement of legislation in scope of the NLCS framework are provided by domestic legislation in each of the four UK nations, and enforcement is an area where there is already divergence across the UK. As there are different labelling requirements in GB and NI there could be a practical implication on enforcement and enforcement officers understanding the requirements of qualifying NI goods, however the Department for Business, Energy and Industrial Strategy are developing guidance on enforcement of legislation when there are different requirements across the UK.

4. The point of Regulation (EC) No 1924/2006 and Regulation No 432/2012 is to harmonise nutritional and health claims on commercial products in order to ensure a high level of consumer protection and prevent barriers to international trade arising from the existence of distinct misleading or incorrect labelling across EU member states. Does the UK intend in the future to add this and/or any other new health claim added to the EU's list of authorised health claims to its own list? If not, why not, and does the Government anticipate there being any impact on competition as a result of divergence?

With regard to future EU legislative changes (including technical amendments and authorisations), as noted in the provisional NLCS framework, UK authorities cannot assume mutual recognition will be in place across the EU/GB or between GB nations and therefore must consider the way forward with regards as to what might best for each individual territory and the UK as a whole. There is no mutual recognition of applications for the approval and authorisation of nutrition and health claims to EU/GB, the company will need to consider where they want to apply for the claim to be approved for use. For example, there could be an application to GB which is not similarly made to the EU.

As noted above to date no industry request has been submitted to UK authorities for the assessment and approval of a "*carbohydrate solutions*" health claim for use on the GB market. Until such a request is received the approved EU health claim cannot be considered and it will not be added to the GB nutrition and health claims register.

Should UK authorities receive an application from industry to request an assessment and authorisation of this health claim or any other nutrition or health claim, by using the process set out in the NLCS provisional common framework and through the NLCS policy group the four nations would make a recommendation to ministers in each nation on whether the application should be approved or rejected and the GB lists/registers updated accordingly.

There could be some impact on competition if a NI manufacturer used a particular claim on a product that a GB manufacturer would not be able to use, however we are unable to assess the scope of this impact as the use of nutrition and health claims are optional and it would be down to the individual manufacturer to decide if they would want to use the permitted claim. Industry are able to apply for the same claim to be considered for approval in GB.

As there is no mutual recognition of applications for the authorisation of nutrition and health claims between EU/GB, only applications which are submitted by industry to a UK appropriate authority can be considered for assessment. We cannot influence future impact of divergence between the EU and GB registers as it is only those products which comply with the conditions of the relevant claim and produced in NI that can benefit from unfettered access.

I hope this response helps clarify how as a department we have worked with the devolved administrations to understand the implications of Commission Implementing Regulation 2021/686 on the four UK nations.

20 August 2021

Letter from the Chair from to Lord Bethell, Parliamentary Under Secretary of State for Innovation, Department of Health & Social Care

Thank you for your letter, dated 20 August 2021 on the above Regulation within the scope of the Protocol on Ireland/Northern Ireland. The House of Lords Committee on the Protocol on Ireland/Northern Ireland considered this document at its meeting on 15 September 2021.

We are grateful for your detailed response to our letter. As such, we are now content to draw our scrutiny of this Implementing Regulation to a close. While we do not require a response to this letter, we would be grateful to receive, in due course, further information on the Department for Business, Energy and Industrial Strategy's guidance on enforcement of legislation when there are different requirements across the UK and any information on engagement with stakeholders.

16 September 2021

COMMISSION IMPLEMENTING DECISION (EU) 2021/845 OF 26 MAY 2021 AMENDING IMPLEMENTING DECISION (EU) 2019/1202 AS REGARDS DETERMINATION OF THE SPONTANEOUS IGNITION BEHAVIOUR OF DUST ACCUMULATIONS (UNNUMBERED)

Letter from the Chair to Paul Scully MP, Parliamentary Under Secretary of State Department for Business, Energy and Industrial Strategy

I am writing in response to the Unnumbered EM on the above Implementing Decision, dated 1 July 2021, within the scope of the Protocol on Ireland/Northern Ireland. The House of Lords Committee on the Protocol on Ireland/Northern Ireland considered this document at its meeting on 22 July 2021.

I am writing to express my concern about the poor quality and incomprehensible nature of this EM, which does not offer the Committee a coherent explanation of the legislation nor its impact on Northern Ireland under the Protocol, thus preventing the Committee from undertaking its scrutiny work effectively. Given the poor quality of the EM, can you confirm that due to the imminent adoption by the UK of similar standards by the British Standards Institute (BSI) that there will be no divergence between the relevant markets in Great Britain and Northern Ireland?

I would be grateful for a response to this letter by 27 August 2021. In the meantime the Committee continues to retain an active interest in this document.

23 July 2021

Letter to the Chair from Paul Scully MP, Parliamentary Under Secretary of State Department for Business, Energy and Industrial Strategy

Thank you for your letter dated 23 July 2021, in response to the Explanatory Memorandum (EM) on the above Implementing Decision. You asked about the status of this Implementing Decision on Northern Ireland under the Northern Ireland Protocol; and specifically, whether there would be divergence between the relevant markets in Great Britain and Northern Ireland due to the imminent adoption by the UK of similar standards by the British Standards Institution (BSI).

Further to your European Scrutiny Committee hearing with Lord Frost on 19 July, it should be noted that the Government is seeking to find a new balance in the Northern Ireland Protocol to place it on a more sustainable footing. This includes proposals to establish a dual regulatory regime to ensure that consumers in Northern Ireland do not face barriers in accessing goods from Great Britain, which would enable goods made to UK rules to circulate and be placed on the market in Northern Ireland. For harmonised standards, the interaction would be minimal for the reasons explained below.

I would like to take the opportunity to clarify the position in order to respond more effectively to your concerns. Therefore, it may be helpful if I start by explaining that the purpose of the Implementing Decision was to update an existing harmonised standard previously published in the Official Journal of the European Union. Manufacturers, other economic operators, or conformity assessment bodies can use harmonised standards to demonstrate that products, services or processes comply with the essential requirements of the relevant EU legislation. Conformity with harmonised

standards gives rise to a rebuttable presumption of compliance with the essential requirements of the relevant EU legislation. Harmonised standards are developed by a recognised European Standards Organisation at the request of the European Commission and then published in the Official Journal of the European Union. Compliance with the essential requirements set out in EU legislation is mandatory but the use of harmonised standards to demonstrate compliance with these essential requirements is voluntary. This means a manufacturer or service provider may choose another technical solution to fulfil the legal requirements and demonstrate compliance with the law.

At national level, standardisation is managed by the national standardisation bodies. It is their role to adopt and publish national standards. BSI is the national standards body of the UK and the adoption of this standard by BSI has already happened as part of the conditions of BSI's membership of the European Standards Organisations. BSI remains a member of these organisations because they are European, rather than European Union, bodies.

Harmonised standards remain relevant standards for providing a presumption of conformity with EU law and for placing goods on the Northern Ireland market where EU rules continue to apply.

On leaving the EU the UK undertook an exercise to 'designate' all relevant standards as a means to demonstrate a presumption of conformity with the relevant domestic legislation. In practice this meant BEIS, on behalf of Government, considered all EU harmonised standards and where they were relevant to retained EU law, they were designated. However, to be clear, the designation of standards by the UK Government is separate to the BSI adoption process.

To designate a standard, the Government considers their ability to assist economic operators in meeting the technical requirements of the regulations and publishes a reference on the Gov.uk website. The standard is then considered to offer a rebuttable presumption of conformity with relevant aspects of domestic (GB) law. In this case, the standard has been adopted by BSI but the Government is yet to take a decision on whether it should be designated. Until this happens, the updated version of the standard does not provide a rebuttable presumption of conformity to essential domestic (health and safety) requirements of the legislation. It can, however, still be used by business, alongside other actions, to help demonstrate that their product is safe and compliant with domestic (GB) legislation.

The concessions contained within the Implementing Decision mean that both versions of the standard are an acceptable way to demonstrate compliance with regulations as they apply in Northern Ireland until November 2022. This means that trade will not be impacted and can continue as it does now.

However, in theory, beyond this date, if the UK has not designated the updated version of the standard, there will be a divergence of a sort, although this would be of limited practical consequence because:

- Harmonised standards are just one method available to manufacturers to demonstrate that their products are safe and compliant with relevant essential requirements before placing them on the EU market;

- Unlike Regulations, citing harmonised standard is voluntary, and businesses can use alternative means to demonstrate that their product is safe and meets the essential requirements of the law;

- Under the Government's commitments to Northern Ireland's unfettered access to the rest of the UK market, qualifying Northern Ireland goods covered by this change that meet the relevant essential requirements to be placed on the market in Northern Ireland will still be able to be placed on the Great Britain market.

I hope this explanation is sufficiently clear. I can also confirm that the development of the revised standard was uncontroversial, with active representation and participation on the working group from UK representatives. These include representatives of key stakeholders and regulators representing the interests of the intended users of the standard. With such support, there is unlikely to be opposition to the updated standard being designated.

I trust this information provides the necessary reassurances you seek about the impact of this Implementing Decision on Northern Ireland.

6 September 2021

COMMISSION REGULATION (EU) …/… OF XXX AMENDING ANNEX IV TO REGULATION (EC) NO 999/2001 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AS REGARDS THE PROHIBITION TO FEED NON-RUMINANT FARMED ANIMALS, OTHER THAN FUR ANIMALS, WITH PROTEIN DERIVED FROM ANIMALS (8537/21)

Letter from the Chair to The Rt Hon Lord Benyon, Parliamentary Under Secretary of State (Minister for Rural Affairs and Biosecurity), Department for Environment, Food and Rural Affairs

Thank you for your Explanatory Memorandum, dated 18 June 2021, on the above amending Regulation within the scope of the Protocol on Ireland/Northern Ireland. The House of Lords Committee on the Protocol on Ireland/Northern Ireland considered this document at its meeting on 22 July 2021.

We note that this amending Regulation has attracted considerable media and political comment in view of the historic sensitivities over BSE. What update can you give us on discussions in the European Parliament and the Council? Can you confirm reports that a move to block the Regulation led by Green MEPs failed, and that the Council has approved the Regulation, notwithstanding the abstention of Ireland? Can you also confirm that the Regulation is therefore expected to come into force, including in Northern Ireland, in August?

We note your statement that the UK signed up to the EU's TSE Road Map 2 as an EU Member State. Were you aware of proposals prior to withdrawal from the EU to remove the ban on animal feed as set out in this amending Regulation, and did you support them? What is the Government's overall policy position on the amending Regulation? Is it supported by the scientific evidence base? To what extent is it driven by the EU's desire not to be undercut by lower standards in other countries?

We note that the amending Regulation applies directly to Northern Ireland under Annex 2 to the Protocol. What steps are you and the Northern Ireland Executive taking to engage with each other and with Northern Ireland stakeholders on the impact of the proposals? What views have Northern Ireland stakeholders expressed? What is yours and the Northern Ireland Executive's assessment of the impact on food standards in Northern Ireland? Notwithstanding that certain animal feed will be re-authorised by the Regulation, do Northern Ireland farmers retain discretion in whether or not to use such feed?

We note your statement that the Government may review its own legislation in England in the future, subject to scientific advice and stakeholder consultation. What is your current assessment of the case for and against equivalent regulatory change? You state that formal stakeholder engagement and consultation will take place during the course of developing policy and before introducing any changes. When and what basis will you engage in stakeholder consultation, and what issues will be borne in mind in reaching a judgement? What, if any, informal stakeholder consultation has already taken place on the EU's proposals, and what is the response of the industry to the proposals?

You state that the other Devolved Administrations have noted the content of the EM. What views have they expressed on the EU's proposals, and what discussions have taken place within the context of the Common Framework on inspections and feed sampling? Have the Scottish and Welsh Governments indicated any intention to bring forward similar proposals?

In that context, what is your assessment of the impact of the amending Regulation for regulatory divergence and movement of produce between Great Britain and Northern Ireland, either until such time as similar measures are adopted in the other nations of the UK, or indefinitely if they choose not to do so? Will Northern Ireland produce subject to lower regulatory standards be permitted to enter the Great Britain market, and will unfettered access for Northern Ireland produce to the UK market be retained?

In view of the historic caution of nations such as the USA over meat imports over perceived BSE risks, what impact will this Regulation have on Northern Ireland's full participation in UK FTAs?

We would be grateful for a response to this letter by 27 August 2021. We will consider your response when the House returns in September, on the basis of which we may invite you and officials

to appear before the Committee later in the autumn to discuss the implications of the proposal in more detail. In the meantime the Committee continues to retain an active interest in this document.

In view of the significant concerns in relation to this proposal, I am copying this letter to HE João Vale de Almeida, EU Ambassador to the UK, and HE Adrian O'Neill, Irish Ambassador to the UK.

23 July 2021

Letter to the Chair from the Rt Hon Lord Benyon, Parliamentary Under Secretary of State (Minister for Rural Affairs and Biosecurity)

Thank you for your letter of 23 July regarding the above Explanatory Memorandum.

Background

In 1996 the UK introduced a ban on feeding animal protein to farmed animals. This followed the announcement by the Spongiform Encephalopathy Advisory Committee (SEAC) of a likely link between BSE in cattle and variant Creutzfeldt-Jakob Disease (vCJD) in humans. The EU ban was introduced in 2001 in response to an increase in BSE cases in mainland Europe. At those times there had been far less scientific research into this area than exists now. One reason for the blanket ban on feeding animal protein to farmed animals was that no tests existed to differentiate between pig, poultry and ruminant protein, so it would not have been possible to ensure compliance if the bans had applied only to ruminant protein.

Internationally, GB is currently classified as having 'controlled' BSE risk while NI has the higher status of 'negligible' risk. All EU countries are either controlled or negligible. This classification system sits under the World Organisation for Animal Health (generally known by its French abbreviation, OIE). We are working on an application to submit this year for the higher status of 'negligible' risk for England and Wales.

Changes to EU feed controls

The EU's TSE Roadmap and TSE Roadmap 2 set out plans for future relaxations in the EU's TSE controls between 2005 and 2015 in line with the declining incidence of BSE and following the latest scientific advice and technological advancement. No TSE have been identified as occurring in non-ruminant farmed animals under natural conditions and tests have now been validated to distinguish between ruminant, pig and poultry processed animal protein (PAP).

The EU is now making changes to its own feed legislation allowing:

- Processed Animal Protein (PAP) of porcine origin to be fed to poultry;
- PAP of poultry origin to be fed to porcine animals;
- PAP derived from insects to be fed to poultry and porcine animals, under the same conditions as are already required for feeding aquaculture animals; and
- products containing ruminant collagen and gelatine to be fed to poultry and porcine animals.

The EU's feed controls will still prohibit intra-species recycling and the feeding of any PAP to ruminants.

Now that the UK has left the EU, we are not privy to discussions within the European Council of Ministers. The EU's proposed amending Regulation has been adopted by the European Parliament and the Council. This was published in the Official Journal in August and can be found at:

https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2021:295:FULL&from=EN

It will come into force for EU Member States and Northern Ireland on 8th September.

Position of the UK Government

Historically, the UK broadly supported the principles in the Roadmaps of amending the controls only when lower incidence of BSE and scientific developments supported making the changes without an increase of risk to animal and human health. The Annex sets out the UK position at the time in more detail.

The EU's recent decision follows recommendations by the European Food Safety Authority (EFSA). UK scientists participated in the production of the published Opinions on Potential BSE risk posed by the use of ruminant collagen and gelatine in feed for non-ruminant farmed animals (adopted 22 September 2020) and the Updated quantitative risk assessment (QRA) of the BSE risk posed by processed animal protein (adopted 7 June 2018). EFSA Opinions are published and we the UK Government therefore have access to them.

You may wish to note that the revised EU rules for the production of animal feed are still more stringent than those of the OIE which only bans the use of ruminant proteins in feed for ruminant animals. Neither the UK nor the EU bans the imports of animals or products of animal origin from countries where the feed rules comply with the OIE requirements. Under current rules, therefore, imports of animals or products of animal origin from the EU and NI will continue to be accepted into Great Britain after the EU has implemented its changes.

The UK Government is working with the Devolved Administrations, Animal and Plant Health Agency and the Food Standards Agency to assess the implications of these changes for the UK and will use the latest scientific evidence to decide if any policy changes should be made in England in response to the EU's changes.

Review of TSE-related feed controls in England

Following our exit from the EU, Defra has reviewed parts of the animal health legislation. Many aspects remain to be assessed: the future of our feed controls and how they work alongside animal health controls is one such area and requires careful consideration, assessment of the scientific evidence, and consultation.

We are now in the early stages of a review of the TSE-related feed controls in England. The review will consider whether there is case to change our own TSE-related feed controls and will also assess the impact of the EU's changes on the UK and whether any changes are needed to our import regime, such as labelling or testing requirements.

The review will use risk assessments by Government scientists at APHA and any additional advice from the FSA and the Advisory Committee on Dangerous Pathogens (ACDP).

If, following analysis of the risk assessments, we decide to consider changes to our feed controls, we will follow the usual processes, including consulting a wide variety of stakeholders to gather evidence on the impacts, risks, costs and benefits of a range of options. Issues to consider would include farmers', retailers' and customers' appetite for changes, the economic case, the potential impact on the export or disposal of animal protein, potential environmental benefits if the use of PAP reduces the use of imported soya in livestock feed, and potential impact on exports.

This review is being carried out in close partnership with our Animal and Plant Health Agency (APHA), the Food Standards Agency and the Devolved Administrations. The Scottish and Welsh Governments have confirmed that they will follow a similar process, reviewing the evidence from full risk assessments and scientific advice and carrying out formal consultation with stakeholders across the feed and food chain to understand the full implications of the options under consideration, before making informed decisions.

Northern Ireland and potential GB-NI divergence

Feed controls are a devolved matter and Defra and DAERA officials work closely together on this and other TSE issues. DAERA will enforce the new feed controls in NI, and it will be for farmers in NI to decide whether to use pig or poultry feed containing PAP, in line with other EU Member States. It is difficult to estimate the potential uptake by pig and poultry farmers. The majority of pig producers in NI are members of the UK-wide Red Tractor Quality Assurance scheme, which currently prohibits the use of PAP in feed for pigs.

Engagement with Northern Ireland stakeholders is a matter for DAERA. Colleagues in DAREA report that while there have been some questions from Members of the Legislative Assembly (MLAs) and others, these proposals have generated little comment so far by stakeholders such as the Ulster Farmers' Union (UFU), the Northern Ireland Meat Exporters' Association (NIMEA) or poultry stakeholders. The issue will be raised at the next meeting of Animal Health and Welfare Stakeholders.

The Food Standards Agency Northern Ireland (FSANI) have also recorded that their stakeholders have made little comment.

You asked for an assessment of the impact of divergence between GB and NI. After the amending Regulation comes into effect on 8 September, unfettered access for NI produce to the UK market will continue. The revised EU feed controls will continue to be more stringent than the OIE requirements and the whole of the UK currently allows imports of animals and products of animal origin from countries where the feed controls comply with the OIE requirements. Animals and products of animal origin from the EU and NI will therefore continue to have access to GB when the revised feed controls are introduced. DAERA have informed us that there is relatively little movement of compound feed to GB from NI or the Republic of Ireland, mainly because of the transport costs. Given NI's official BSE negligible risk status, this Regulation will not have any impact on NI's full participation in UK free trade agreements.

I would like to use this opportunity to remind you that this government is seeking a new, consensual approach to implementing the Protocol, that ensures it operates in an enduring way. As outlined in the Command Paper – 'The Northern Ireland Protocol: the way forward' published on 21 July 2021, the government proposes to remove unnecessary burdens on trade in goods within the UK, while respecting the EU's Single Market. We recognise that these are ambitious proposals that require significant changes to the existing Protocol. Our proposals build on the foundations and concepts of the Protocol and are intended to deliver on its core objectives in a more proportionate way. As these discussions progress, there may be an y impact on how the Northern Ireland Protocol is applied in relation to this matter.

I hope you feel this addresses your questions on this important issue and I would be happy to write to the committee with a further update on our thinking when the initial risk assessments have been received.

6 September 2021

Annexes

You requested information about the UK Government's position on the EU's TSE Roadmaps. Attached are an explanatory memorandum setting out the Government's position on the first TSE Roadmap (2005) and Defra's summary of responses to the Informal Consultation Paper on the European Commission's TSE Roadmap 2 (2010)[5].

COMMISSION DELEGATED REGULATION (EU) .../... OF 20.5.2021 AMENDING ANNEX X TO REGULATION (EU) 2018/858 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AS REGARDS THE STANDARDISED ACCESS TO VEHICLE ON-BOARD DIAGNOSTICS INFORMATION AND REPAIR AND MAINTENANCE INFORMATION, AND THE REQUIREMENTS AND PROCEDURES FOR ACCESS TO VEHICLE SECURITY INFORMATION (8978/21)

Letter from the Chair to Baroness Vere of Norbiton, Parliamentary Under Secretary of State, Department for Transport

Thank you for your EM dated 29 June 2021, on the above Delegated Regulation within the scope of the Protocol on Ireland/Northern Ireland. The House of Lords Committee on the Protocol on Ireland/Northern Ireland considered this document at its meeting on 22 July 2021.

We are concerned about the possible implications for independent contractors in Northern Ireland, who will need to gain a new accreditation, and for vehicle manufacturers selling in Northern Ireland, which are not addressed in your EM.

In that context, we would be grateful for your response to the following questions:

[5] Annexes not published here.

1. Parliamentary committees have previously stressed that Government EMs should make clear (a) that the devolved administrations have been consulted; (b) whether they have expressed any concerns; and (c) if they have expressed any concerns, what they were and what action has been taken to address them. We note your statement that the devolved administrations were consulted in the preparation of this EM. In view of their devolved competencies, can you therefore set out in more detail the views of the Northern Ireland Executive on this proposal, any concerns that they expressed, and what action has been taken in response?

2. We note that "manufacturers of vehicles that are sold in Northern Ireland will be required to comply with these Regulations once they are in force." Could you lay out the practical implications of this for manufacturers of vehicles sold in Northern Ireland, and for trade in vehicles between Great Britain and Northern Ireland? You state that there are no financial implications arising from these Regulations in the UK, but will complying with the Regulations in respect of Northern Ireland lead to any costs to manufacturers? In a worst case scenario, might these costs discourage vehicle manufacturers in GB from selling on the NI market?

3. We also note that "to access security related vehicle repair and maintenance information, independent operators based in Northern Ireland will have to gain accreditation from a conformity assessment body." What are the practical implications of this on independent operators in Northern Ireland? Again, you state that there are no financial implications arising from these Regulations in the UK, but will seeking accreditation from a conformity assessment body incur any costs for independent contractors in Northern Ireland?

4. Has the Government or the Northern Ireland Executive engaged with stakeholders in the motor vehicle manufacturing industry and repair sector? If so, what was the outcome of such stakeholder engagement? And if not, why not?

We note your statement that the Government's decision on whether to align rules in Great Britain with those in the EU will be taken once the full GB type approval scheme is established. We would be grateful for an update on the outcome of this decision once it is reached.

We would also be grateful for a response to our questions by 6 September 2021. In the meantime the Committee continues to retain an active interest in this document.

23 July 2021

Letter to the Chair from Baroness Vere of Norbiton, Parliamentary Under Secretary of State, Department for Transport

Thank you for your letter of 23 July 2021, I am happy to provide the further information requested by the Committee.

The Committee asked for more detail on the views of the Northern Ireland Executive on this proposal, any concerns that they expressed, and what action has been taken in response. Type-approval is a reserved matter, however, the Government is aware that changes to EU legislation will affect businesses in Northern Ireland and those in Great Britain selling products in Northern Ireland. My officials consulted with all the devolved administrations in preparation of the Explanatory Memorandum, as we always do, and no concerns were raised by any of them.

Given the challenges in implementing the Northern Ireland Protocol, my officials are in regular contact with the Northern Ireland Executive to discuss proposed changes to type-approval policy and potential implications for businesses in Northern Ireland. No issues with this change have been raised in those discussions.

The Committee asked about the practical implications for manufacturers of vehicles sold in Northern Ireland, and for trade in vehicles between Great Britain and Northern Ireland, whether complying with the Regulations in respect of Northern Ireland will lead to any costs to manufacturers and, in a worst case scenario, whether these costs might discourage vehicle manufacturers in GB from selling on the Northern Irish market.

The practical implications of this EU Regulation for manufacturers of vehicles sold in Northern Ireland is that the manufacturers will have to provide access to repair and maintenance information for authorised independent repair operators (IO) in a standardised format set out in International Standard ISO 18541. This change affects mass produced vehicles produced to EU standards, and as major manufacturers in GB all sell into the EU, we do not expect them to be discouraged from selling vehicles in Northern Ireland.

Smaller manufacturers in both Northern Ireland and Great Britain producing vehicles in limited quantities can use the national small series scheme, under which these requirements will not apply. Those manufacturers will therefore not be affected and will incur no costs. As a result, we do not expect trade between Great Britain and Northern Ireland in either mass-produced, or low volume vehicles, to be affected by this regulation.

The Committee asked for information about the practical implications of the accreditation process on independent operators in Northern Ireland, and whether seeking accreditation from a conformity assessment body will incur any costs for independent contractors in Northern Ireland.

The practical implications will only apply to those IOs that want to access the security-related parts of vehicle repair and maintenance information. They will have to obtain a certificate from a conformity assessment body (CAB) to prove they are authorised to access such information. This will entail an inspection of the IO by the CAB. The IO will have to demonstrate that it is a legitimate business engaged in vehicle repair and maintenance and that any employees who will have access to the information do not have a criminal record. Once they have such certification, they will be able to access the information via a website. There will be a fee for this certification, which will be determined by the authorising CAB chosen by the IO. As there is competition between different CABs the fee is likely to be modest. In addition, this will set a standardised process for authorisation and access to the information so should simplify the process for IOs, and potentially reduce their costs as they will not have to obtain separate authorisation from each manufacturer.

The Committee asked whether the Government or the Northern Ireland Executive is engaged with stakeholders in the motor vehicle manufacturing industry and repair sector, and if so, what was the outcome of such stakeholder engagement. We have discussed the proposal with two of the main industry bodies, the Society of Motor Manufacturers and Traders and the Independent Automotive Aftermarket Federation. They raised no immediate concerns about the proposal, and we will continue to engage with affected stakeholders to ensure that they understand their obligations before the regulation applies in July 2023.

Finally, I note the Committee's request to be provided with an update on the Government's decision on whether to align rules in Great Britain with those in the EU, which will be taken once the full GB type approval scheme is established. I will be happy to update the Committee on the outcome of the consultation on the GB type-approval scheme once it is complete, and on the Government's decision once it is reached.

3 September 2021

Letter from the Chair to Baroness Vere of Norbiton, Parliamentary Under Secretary of State, Department for Transport

Thank you for your letter dated 3 September 2021 on the above Delegated Regulation falling within the scope of the Protocol on Ireland/Northern Ireland. The House of Lords Sub-Committee on the Protocol on Ireland/Northern Ireland considered the document at its meeting of 15 September 2021.

We note your assertion that the overall impact of this Regulation is minimal, and that manufacturers of smaller and mass-produced vehicles will not incur any costs from this change.

We are now content to draw our scrutiny of this delegated regulation to a close, and do not require a response to this letter. However, we look forward to receiving information on the outcome of the consultation on the GB type-approval scheme once this is complete. We also reserve the right to return to the matter should any issues arise in the future.

16 September 2021

COMMISSION DELEGATED REGULATION (EU)…/... OF 4.6.2021 AMENDING DELEGATED REGULATION (EU) 2017/654 SUPPLEMENTING REGULATION (EU) 2016/1628 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL WITH REGARD TO THE ACCEPTANCE OF APPROVALS GRANTED IN ACCORDANCE WITH REGULATIONS NOS 49 AND 96 OF THE ECONOMIC COMMISSION FOR EUROPE OF THE UNITED NATIONS (UNECE) (9534/21)

Letter from the Chair to Rachel Maclean MP, Parliamentary Under Secretary of State, Department for Transport

Thank you for your Explanatory Memorandum, dated 29 June 2021, on the above Delegated Regulation within the scope of the Protocol on Ireland/Northern Ireland. The House of Lords Sub-Committee on the Protocol on Ireland/Northern Ireland considered this document at its meeting on Thursday 22 July 2021.

We note your statement that "as the amendments do not impact upon the stringency of the emissions requirements and provide additional options for approval based upon internationally harmonised standards, the amendments are broadly viewed as positive". Yet you also state that the Government is yet to make a decision on whether any similar requirements will be mandated in Great Britain. When will the Government make such a decision, what will be the basis for its decision, and is it likely to bring forward equivalent measures for Great Britain?

In the meantime, what are the implications for the trade in and movement of such machinery between Great Britain and Northern Ireland? Are there any practical implications in terms of divergence in approach to type approvals, if only temporary?

We would be grateful for a response to these questions by 6 September 2021. In the meantime we retain an active interest in this document.

23 July 2021

Letter to the Chair from Rachel Maclean MP, Parliamentary Under Secretary of State

Thank you for your letter regarding my Explanatory Memorandum of 29 June 2021, requesting clarification on certain points. I have addressed these in more detail below and hope this answers your questions satisfactorily.

This amendment introduces provisions that allow manufacturers of engines intended for use in non-road mobile machinery additional options to obtain EU type approval by obtaining approvals under relevant UNECE Regulations. You have asked what the implications of this on trade in and movement of machinery between Great Britain (GB) and Northern Ireland (NI) are, and when the Government will make a decision on whether to mandate such requirements in GB.

This amendment does not change the technical requirements applying to engines intended for use in mobile machinery being placed on the market in GB or NI. It simply formalises in the EU and NI the recognition of relevant UNECE approvals as equivalent to the latest EU emissions standards for mobile machinery.

Harmonisation with UNECE technical standards is generally supported by industry as it allows manufacturers to test and approve to a single standard and access markets in multiple regions.

The Department therefore intends to consider the options for inclusion of similar provisions in future amendments to regulations on non-road mobile machinery. A decision on whether to introduce similar provisions will take place once a full GB type approval scheme for non-road mobile machinery is established. This will follow, and take account of, planned consultation with stakeholders, including consideration of requirements that will apply in other global markets.

In the meantime, we do not foresee any practical implications on trade and movement of machinery associated with allowing additional routes to approval. New mobile machinery from a producer in NI with a valid EU type approval will continue to be accepted in both GB and NI. UNECE approvals can also continue to be issued by the UK type approval authority and will be accepted internationally by countries applying that regulation.

COMMISSION REGULATION (EU) 2021/850 OF 26 MAY 2021 AMENDING AND CORRECTING ANNEX II AND AMENDING ANNEXES III, IV AND VI TO REGULATION (EC) NO 1223/2009 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON COSMETIC PRODUCTS (UNNUMBERED)

Letter from the Chair to Paul Scully MP, Parliamentary Under Secretary of State, Department for Business, Energy and Industrial Strategy

Thank you for the EM dated 9 July 2021 on the above Regulation with implications for the Protocol on Ireland/Northern Ireland ("the Protocol"). The House of Lords Committee on the Protocol on Ireland/Northern Ireland considered this document at its meeting on 8 September 2021.

We note the work that is due to be undertaken by the UK's Scientific Advisory Group in September to inform the Government's decision of whether to make equivalent changes for cosmetics placed on the GB market. We would welcome information on the outcome of SAG's assessment, how this has informed the Government's decision and, if the Government decides not to make equivalent changes, what impact this regulatory divergence will have on Northern Ireland suppliers and manufacturers. How would the Government seek to mitigate the impact of this divergence? Should the Government decide to make equivalent changes, what reassurance can you provide that you will lay an SI as close as possible to when the Regulation comes into force? However, given that the assessment is due to be made in September and the Regulation comes into force on 1 October, this may not be possible. What assessment has the Government made of the implications of a temporary period of regulatory divergence between NI and GB? In particular, what are the implications for placing GB goods on the market in Northern Ireland?

In view of the new obligations placed upon them under the Protocol to remove TiO2 from cosmetics products placed on the EU market, what technical support is the Government providing to the Northern Ireland Executive and Civil Service in terms of implementing this Regulation? What steps is the Government taking to ensure they have sufficient resources to undertake these tasks? How is the Government and the Northern Ireland Executive engaging with affected businesses and suppliers in Northern Ireland? Although we note your assertation that there is no data on the financial implications of these changes, have you made any estimate of the likely costs for suppliers in Northern Ireland?

In order to take account of the outcome of the SAG's assessment and the Regulation coming into force, we would be grateful for a response to this letter by 4 October 2021. In the meantime, the Committee continues to retain an active interest in this document.

10 September 2021

COMMISSION IMPLEMENTING DECISION (EU) 2021/867 OF 28 MAY 2021 ON HARMONISED STANDARDS FOR TOYS DRAFTED IN SUPPORT OF DIRECTIVE 2009/48/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL (UNNUMBERED)

Letter from the Chair to Paul Scully MP, Parliamentary Under Secretary of State, Department for Business, Energy and Industrial Strategy

Thank you for the EM dated 9 July 2021 on the above Implementing Decision within the scope of the Protocol on Ireland/Northern Ireland. The House of Lords Committee on the Protocol on Ireland/Northern Ireland considered this document at its meeting on 8 September 2021.

We note that this Implementing Decision applies to Northern Ireland under Annex 2 to the Protocol, and that the UK in respect of Great Britain will make its own decision on revisions to designated standards for products placed on the GB market in due course. What is the timetable for such a decision to be made, and does the Government see merit in introducing equivalent standards in Great Britain?

We welcome the Government's commitment, in the meantime, that toys that meet the technical requirements to be placed on the market in Northern Ireland will be able to be placed on the GB market. However, can you clarify the implications of the Implementing Decision for toys manufactured in Great Britain to be placed on the market in Northern Ireland, in particular in the event that equivalent standards are not introduced in Great Britain? What are the implications of this for toy manufacturers who supply both the Great Britain and Northern Ireland markets?

We also note your statement that a public consultation was held in the process of developing this standard. Have UK businesses, whether supplying the GB or Northern Ireland markets, or both, expressed any views on the impact of the revised standards?

We would be grateful for a response to this letter by 23 September 2021. In the meantime the Committee continues to retain an active interest in this document.

10 September 2021

GENERAL CORRESPONDENCE

PEACE PLUS PROGRAMME

Letter to the Chair from the Rt Hon Brandon Lewis CBE MP, Secretary of State for Northern Ireland, Northern Ireland Office

I am writing to update members on upcoming negotiations with the EU Commission to discuss the UK-EU Financing Agreement on the PEACE PLUS Programme, and on matters relating to PEACE PLUS more generally.

As you may be aware and confirmed by the Prime Minister in a Written Statement on 7 September, responsibility for the PEACE PLUS Programme has now transferred from the Department for Business, Energy and Industrial Strategy to the Northern Ireland Office.

You will recall the UK committed to continue to participate in the PEACE PLUS programme as part of the Northern Ireland Protocol. Within this the UK recalled its commitments to North-South Peace and Interreg funding programmes and to maintaining current funding proportions for the programme. In December 2020, it was agreed that in addition to the £300 million already committed, the UK Government will provide more than £200 million extra to PEACE PLUS between now and 2027.

To support delivery of the programme, a standalone UK-EU Financing Agreement is required. My department will start discussions with the EU on this agreement in the coming weeks.

You may also have seen that the Special EU Programmes Body, who administer the programme, launched their public consultation on PEACE PLUS on 10 March 2021, which is a vital step towards finalising the programme and making funds available for those eligible to apply. This will run for a full two months until 12 May 2021 and we would encourage you to consider.

I look forward to future correspondence and I will provide a substantive update once a draft of the text has been agreed in principle. I appreciate your keen interest and I want to reiterate the UK Government's continued commitment to the PEACE PLUS programme, which I am confident will contribute to a more prosperous and stable society in Northern Ireland.

16 April 2021

THE PROTOCOL ON IRELAND/NORTHERN IRELAND AND 3 MARCH ANNOUNCEMENT

Letter to the Chair from Lord Frost CMG, Minister of State, Cabinet Office

1. Thank you for your two letters of 11 March on the Protocol on Ireland/Northern Ireland. I am sorry to have been slow replying but as you will appreciate these issues have been the focus of intensive work in recent weeks.

2. Before turning to your specific questions, as a general comment I think it is important to keep in mind that the Protocol represents a unique solution to a unique and complex set of challenges, and decisions about it must reflect this context. Moreover, unusually in an international agreement, the continued operability of most of its provisions depends upon the exercise of democratic consent - and, as such, in giving it effect, account must be taken of the importance of commanding confidence across a wide spectrum of opinion in Northern Ireland. To achieve this it is very important that the underlying purpose of the Protocol must be kept in mind - that is, to support and protect the Belfast (Good Friday) Agreement in all its aspects, North-South and East-West, avoiding a hard border on the island of Ireland, while upholding Northern Ireland's integral place in the United Kingdom, our customs territory, and our internal market.

3. I now turn to each of the issues and questions you raise, grouping them as appropriate.

Initial practical and implementation issues

What update can you give on the problems with supply of goods to supermarkets in Northern Ireland? To what extent have the issues encountered in January been alleviated? (Paragraph 11)

4. We have been monitoring the situation closely with retailers. The consistent feedback we have received is that there are no systemic issues. This has also been set out publicly by retailers including Tesco and Lidl. While there were some issues with supply lines in early January, these were rectified quickly and, as the Northern Ireland Retail Consortium have noted, these represented a small proportion of overall product offerings (Aodhán Connolly to Northern Ireland Assembly Infrastructure Committee on 20 January: http://aims.niassembly.gov.uk/officialreport/minutesofevidencereport.aspx?AgendaId=24989&evelD=12710).

5. The situation in the first three months of this year did of course depend on the existence of the three-month grace period for agrifood certification requirements. We always anticipated the need to take a pragmatic view as to whether that period would suffice for supermarkets and their suppliers to adapt to new requirements, and it became clear during February that further time would indeed be required. That is why we announced on 3 March an operational extension of this period for a further six months until 1 October.

How will the Government address concerns about the Trader Support Service's capacity to offer swift and accurate advice to businesses based in or trading with Northern Ireland? (Paragraph 12)

What steps is the Government taking to improve the understanding of Great Britain-based businesses of the requirements of trade with Northern Ireland under the Protocol? How will the Government support and incentivise continued trade and engagement by businesses in Great Britain with the Northern Ireland market, in order to correct the perception that "Northern Ireland is drifting away from the UK internal market"? (Paragraph 13)

6. As regards Trader Support Service capacity, we believe that it has sufficient capacity for its work and that it has performed strongly overall. To date, it has over 36,000 users registered and has processed declarations for over 310,000 consignments, with 98% of declarations processed within 15 minutes. The TSS contact centre has over 700 staff now on hand to assist, and, since launching, 38,000 outbound calls have been made to support trader registration and queries, and 30,000 inbound calls have been received from traders. Of these inbound calls, 98% of have been answered in under 30 seconds, the average call duration is nine minutes, with inbound calls answered within six seconds on average. TSS system uptime has been 100% available to date with no outages and over 80% of enquiries are being raised online - making it very much a digital-first service. There have also been over 167,000 downloads of guides and educational materials on the new trade processes. Reception in satisfaction surveys has so far been positive, with 75% customer satisfaction noted in February.

7. As regards broader issues of support for Great Britain-based traders trading with Northern

Ireland, we agree that there have been some issues of awareness or willingness to engage with the processes (though as the numbers above demonstrate large numbers of businesses have got to grips with the issues). We have sought to publicise the arrangements as necessary and details of support arrangements can easily be found on gov.uk. We receive feedback through various routes, for example the broader Brexit business support consultation arrangements, letters from Parliamentarians and members of the public, media reporting, and so on. BEIS is also undertaking activity through its regular business fora and discussion with trade standards bodies. DHSC and the MHRA also hold webinars to support supplier readiness, and have regular stakeholder engagements on the Protocol requirements. We try to engage with individual businesses to support the development of practical solutions to issues raised. To take a specific example, our engagement has led to various retailers resuming deliveries to Northern Ireland in cases where they had been temporarily paused, such as John Lewis or Amazon.

What update can you provide on the status of discussions with the EU in identifying permanent solutions to each of these issues [ie those listed in paragraph 20), and in particular the extension of the various grace periods? To what extent will it be possible to agree mitigations within the Joint Committee that are compatible with the TCA? (Paragraph 21)

8. We are concerned at the many practical difficulties in the operation of the Protocol. Discussions continue in the bodies established by the Withdrawal Agreement to find solutions. The temporary operational steps taken on 3 March were intended to allow for this engagement to continue without the prospect of disruption to the everyday life of people in Northern Ireland. Most recently, the Specialised Committee met on 26 March to take stock of the outstanding issues raised by both parties and to discuss the way forward, and I met Vice President Šefčovič in Brussels on 15 April. In all these we have been clear that continued progress would require action from the EU as well as the UK. We are continuing to discuss all the Protocol-related issues intensively but, although there is momentum in these discussions, significant issues remain.

9. Two of the issues you raise relate primarily to relations with Ireland rather than the Protocol:

    - On the issue of the mutual recognition of professional qualifications, both we and the Irish Government are encouraging our respective regulatory bodies to engage with their counterparts to provide for the continued recognition of professional qualifications. Joint working between the Department for Business, Energy, and Industrial Strategy and the Irish Department of Education to settle profession-specific issues is underway, with the Department for the Economy in Northern Ireland regularly updated on its progress.

    - On the issue of easements at Irish ports, we are engaging intensively with Irish authorities and the TSS has expanded its remit to support movements from Great Britain to Ireland. On movements into Northern Ireland from Great Britain via the EU without further processing, the UK Trader Scheme provides the basis for Northern Ireland traders to bring those goods in without tariffs.

Can you provide more details of the Government's operational plan with respect to supermarkets and their suppliers, and its proposal for additional investment in digital solutions for traders? (Paragraph 21)

10. The Digital Assistance Scheme (DAS) aims to streamline the processes for the movement of agri-food goods from Great Britain to Northern Ireland in full compliance with the Protocol. The DAS digitises the certification and verification processes and is backed by a major new injection of Government funding. DAS is one part of the wider package of measures to support industry moving agri-food goods into Northern Ireland and Defra is continuing to work closely with industry to take forward both this work and the rest of our support measures.

How is the Government responding to Vice-President Šefčovič's calls for UK action to implement the agreements of December 2020 in relation to Border Control Posts/Entry Posts, labelling of packaging and monitoring of consignments, providing EU representatives with real-time access to UK IT systems, and the submission of 'equivalent information' to customs authorities? By when will the Government have satisfied its obligations arising out of the agreements of December 2020? What is the Government's response to the

Northern Ireland Executive Minister for Agriculture's subsequent order to officials to stop work on new permanent Border Control Posts? (Paragraph 22)

11. We are working to deliver on the agreements of December 2020.

    - DAERA have put in place temporary infrastructure, processes, resources and IT at all the Northern Ireland points of entry to allow Official Controls to be conducted in line with the Official Control Regulation (OCR);

    - We are meeting the conditions of the grace periods in operation for certification and chilled meat products, including for labelling of packaging and monitoring of consignments;

    - We have given effect to the UK Trader Scheme (UKTS), a new authorisation that has been introduced under the terms of the Joint Committee Decision to enable eligible traders bringing goods into Northern Ireland to declare they are not 'at risk'. This has received nearly 3,000 applications thus far, and excellent progress is being made authorising these traders before the end of their provisional authorisation period;

    - We are making progress on access to UK databases for EU officials, as agreed at the Joint Committee, though this will need to ensure that GB data is appropriately separated from NI data to meet our data protection obligations.

12. Decisions on the construction of agrifood points of entry are a matter for the Northern Ireland Executive, though the Government will continue to engage with the Northern Ireland Executive on these issues, and the Secretary of State for Environment, Food and Rural Affairs has recently written to the Northern Ireland Minister of Agriculture, Environment and Rural Affairs setting out clearly our understanding of the requirements and responsibilities in this area. Agrifood processes required under the Protocol continue to be discharged using the interim facilities that have been in place since 1 January.

In view of the Government's call for an "urgent reset" of the Protocol, how can the fundamental tensions at its heart be satisfactorily resolved so as to alleviate the friction in trade between Great Britain and Northern Ireland and the consequent disruption to communities and businesses in Northern Ireland, while not jeopardising the open land border on the island of Ireland or the integrity of the EU Single Market? What is the Government's response to the proposal for a bilateral UK/EU veterinary agreement in order to mitigate some of the most burdensome requirements of the Protocol? (Paragraph 27)

13. The Protocol sets out a number of specific requirements, notably a guarantee of unfettered access from Northern Ireland to the rest of the United Kingdom; maintenance of the smooth flow of trade from Great Britain to Northern Ireland; protection of Northern Ireland's place in the UK customs territory and single market; ensuring minimum disruption to everyday lives of people in Northern Ireland; and avoiding a hard border on the island of Ireland. These requirements can only be fulfilled, and consent sustained, if the Protocol is operated in a pragmatic and proportionate way.

14. We continue to be open to discussions about an SPS or veterinary arrangement based on equivalence. We could not agree to any arrangement based on dynamic alignment, as this would make us a rule-taker as regards an important area of domestic law and could constrain our ability to reach trade agreements with other countries.

What practical steps is the Government, working with the Northern Ireland Executive, taking to alleviate political and community tensions? How will the Government engage with all communities in Northern Ireland to ensure that their views and concerns are taken into account? In particular, how will you seek to calm tensions ahead of the 2022 Northern Ireland Assembly elections? (Paragraph 31)

15. We are of course acutely conscious of the current tensions in Northern Ireland. The violence we have witnessed is of course totally unacceptable. The tensions have a range of underlying causes but clearly the current difficulties in operating the Protocol are among them. The Secretary of State for Northern Ireland is in close contact with all party leaders and the PSNI and set out the Government's latest assessment in his statement to Parliament on 13 April.

Following the various disputes over the unilateral actions taken by both sides in the context of the United Kingdom Internal Market Bill, the Commission Implementing Regulation on COVID vaccine supply, and the measures announced on 3 March, what steps is the Government taking in dialogue with the EU to ensure that the actions of both sides do not in the future give rise to further similar tensions? (Paragraph 34)

16. We have been clear that we want to see discussions proceed through the Withdrawal Agreement to ensure that the Protocol can protect the gains of the Belfast (Good Friday) Agreement and deliver our common objective of protecting it in all its dimensions, North-South and East-West. As you note it is important that those discussions encompass consideration of the outstanding issues we have raised as well as pragmatic, long-term arrangements that meet the fundamental purposes of the Protocol. As I have set out above, those discussions are under way and are continuing.

What steps will you take to strengthen and underpin bilateral dialogue with the EU, and in particular with Vice-President Šefčovič, in relation to the Protocol? Can you confirm reports that a UK-EU 'hotline' will be established to deal with issues of difficulty as they arise? Will you seek to ensure that the Withdrawal Agreement Joint Committee, and the governance bodies that report to it, have a regular rhythm of meetings to ensure that they are able to anticipate problems before they occur, as well as react to them when they do? (Paragraph 37)

17. We are committed to working through the Withdrawal Agreement structures to discuss the Protocol and these structures are currently working well, with a good rhythm of meetings (most recently the Joint Consultative Working Group on 15 April). I am in close touch with Vice President Šefčovič and we are able to contact each other directly when we need to. The Joint Committee will continue to meet at dates agreed by the co-chairs.

What update can you provide on the engagement by the UK and the EU with Northern Ireland stakeholders, including the Northern Ireland Executive and Assembly, political parties, and business and civil society representatives? What formal consultation mechanisms will be established to ensure their full participation in and engagement with the work of the Withdrawal Agreement Joint Committee, the Ireland/Northern Ireland Specialised Committee and the Joint Consultative Working Group? (Paragraph 39)

18. Representatives of the Northern Ireland Executive attend the Joint Committee and the Specialised Committee (the latter most recently on 26 March).

19. Ensuring that the voice of Northern Ireland businesses and stakeholders are heard as part of that process is essential. Through the Northern Ireland Secretary's Business Engagement Forum and other structures for engaging with civic society, and through the Protocol sub-group of the Brexit Business Taskforce, we have regular mechanisms for constructive dialogue. The joint engagement with business and civic society by the Withdrawal Agreement co-chairs on 18 February was very valuable and both we and the EU have committed to continuing this engagement in the coming weeks.

What practical steps would you wish the Irish Government to take to ensure that the Protocol operates as smoothly as possible? (Paragraph 42)

In the context of the Irish Government's review of the bilateral relationship with the UK, what steps is the Government taking to enhance its bilateral engagement with the Irish Government? (Paragraph 43)

Do you see any scope for enhanced use of the North-South and East-West intergovernmental machinery established under Strands Two and Three of the Belfast/Good Friday Agreement, including the North-South

Ministerial Council, the British-Irish Council and the British-Irish Intergovernmental Conference, as a means for dialogue on Protocol-related matters? (Paragraph 44)

What steps will the Government take to support continuing North-South dialogue between the Northern Ireland Executive and the Irish Government in the context of rising tensions over the Protocol? (Paragraph 45)

20. We are committed to working closely with the Irish Government as co-guarantors of the Belfast (Good Friday) Agreement in all its elements. The instruments established through this agreement, principally the British-Irish Parliamentary Assembly and the British Irish Intergovernmental Conference, which provides a Ministerial level platform, and the British-Irish Council, which facilitates both Ministerial and official-level engagement, all work together to promote a positive, practical relationship to the mutual benefit of the people of these islands. The British-Irish Council has met regularly and continues to do so. The British-Irish Intergovernmental Conference has met three times in the last three years. We will look for the appropriate time for the next meeting of the BIIGC.

21. There is regular bilateral engagement between Irish and UK Ministers and senior officials across a wide range of priority areas including climate change and security. Our COP26 chairman, Alok Sharma, and the Home Secretary spoke recently with their Irish counterparts. The FCDO's Permanent Secretary, Sir Philip Barton has recently discussed climate change, Ireland's Shared Ireland Initiative and global foreign policy issues with officials in the Department of the Taoiseach and with Parliamentarians. Alongside this regular discourse, several Whitehall Permanent Under Secretaries meet their Irish Secretary-General counterparts on a biannual/annual basis to discuss sustainable development, prosperity and security. In addition, in August 2020, the Prime Minister and the Taoiseach also agreed to undertake a Joint Review of bilateral relations, which will be taken forward shortly.

Parliamentary scrutiny of the Protocol

When will the Government facilitate the commencement of official-level dialogue on the scope of its commitment to deposit for scrutiny Explanatory Memoranda on EU legislation applying to Northern Ireland under the Protocol? (Paragraph 47)

22. I am happy for officials to speak to your Committee on future Withdrawal Agreement scrutiny arrangements and I look forward to confirming these arrangements formally with you soon.

What steps will the Government take to facilitate enhanced parliamentary scrutiny of the Protocol-related decisions and deliberations of the Withdrawal Agreement Joint Committee, Ireland/Northern Ireland Specialised Committee and Joint Consultative Working Group, including providing sight of meeting schedules, agendas and summary minutes? (Paragraph 48)

23. We will continue to lay Written Ministerial Statements before and after each Withdrawal Agreement Joint Committee meeting. Scrutiny of these meetings will be discussed in more detail between our officials soon.

24. As I did before the last meeting of the Ireland/Northern Ireland Specialised Committee, I will inform you of the meeting date and share the agenda in advance.

Will the Government establish formal mechanisms for prompt communication to Parliament of information received from the EU in the Joint Consultative Working Group on planned or adopted EU legislation falling within the scope of the Protocol? (Paragraph 49)

25. As set out in my response to your earlier letter on the Joint Consultative Working Group, the public communication of information is still under consideration as we continue to formalise the arrangements for the JCWG with the EU.

Will you commit to appearing regularly before the relevant new Lords Committees, to discuss the issues related to the Protocol and other matters within your ministerial remit? (Paragraph 50)

26. I look forward to working constructively with the European Affairs Committee.

The Government's 3 March unilateral announcement of temporary operational steps in relation to the Protocol on Ireland/Northern Ireland

Notwithstanding the economic and political case for the measures proposed, why did the Government announce them as a set of unilateral actions on 3 March, rather than seeking to reach mutual agreement with the Commission in the Withdrawal Agreement Joint Committee?

27. As you note, the steps taken were temporary operational measures. They were briefed in advance to the EU at an appropriate level, explaining that they were necessary and that they could not be delayed if we were to avoid significant disruption on the ground. Before they were taken, discussions had been undertaken with a view to finding joint and sustainable solutions to these actions. Agreement to that end was not forthcoming and action could not be delayed without adverse impacts on critical goods flows (including food supplies).

What is your response to Vice-President Šefčovič's description of the Government's action as a violation of the substantive provisions of the Protocol, the good faith obligation under the Withdrawal Agreement, and a potential breach of international law? Has the Commission given notice of the actions it intends to take in response?

28. The Government considers that the measures taken were lawful and consistent with giving effect to the Protocol in a progressive and good faith manner. The steps taken were a response to risks of significant disruption to goods flows and day-to-day lives. As noted above, the Commission has commenced formal proceedings with respect to some of those measures, to which we will respond making our case clear.

Can you elaborate on the Government's counter-argument that these measures are lawful, consistent with the Government's obligation to exercise good faith, do not change the legal obligations set out under the Protocol, and are consistent with the common trade practice adopted by countries internationally?

29. I would not propose to pre-empt the Government's response to the formal legal proceedings, as set out earlier.

What steps can be taken to rebuild trust and confidence between the UK and the EU, in order to provide a basis for mutual agreement of these and other future measures necessary to minimise the negative impact of the Protocol on the communities and businesses of Northern Ireland?

30. The right way forward is to make progress through the structures of the Withdrawal Agreement to address outstanding issues.

28 April 2021

SCRUTINY OF EU LEGISLATION WITHIN THE SCOPE OF THE PROTOCOL

Letter from the Chair to the Rt Hon Lord Frost CMG, Minister of State, Cabinet Office

We were grateful to you for giving evidence to the House of Lords Committee on the Protocol on Ireland/Northern Ireland on 14 July 2021. The Committee will be publishing its introductory report, taking account of your evidence, on 29 July. We also note the Government's Command Paper Northern Ireland Protocol: the way forward, published on 21 July. We will analyse the Government's proposals, and the EU's response, in the autumn. In that context, we hope that you will be willing to appear before the Committee again in the coming months to reflect on political developments in relation to the Protocol.

I am writing to you today in relation to another core task of the Committee, namely to undertake document-based scrutiny of new or amended EU legislation within the scope of the Protocol that applies to Northern Ireland. As you know, we undertake such scrutiny on the basis of Explanatory Memoranda received from the UK Government on EU legislative proposals applying to Northern Ireland under the Protocol. The Committee typically writes to the relevant Government Minister setting out its views and asking questions of clarification. The Committee's exchange of correspondence is published online, and the latest volume is available here.

We are grateful for recent confirmation via Government officials that the Government will continue to submit such Explanatory Memoranda. We note that discussions continue between our officials on the detail of this commitment, which we hope can be resolved soon.

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

The Committee has identified a series of issues which Government EMs and correspondence should, at a minimum, cover, as follows:

1. Parliamentary committees have previously stressed that Government EMs should make clear (a) that the devolved administrations have been consulted; (b) whether they have expressed any concerns; and (c) if they have expressed any concerns, what they were and what action has been taken to address them. While EMs state whether the Devolved Administrations have been consulted, they rarely provide further detail. EMs and correspondence should therefore set out in more detail the views of the Northern Ireland Executive (as well as the Scottish Government and Welsh Government) on each proposal, any concerns that they expressed, and what action has been taken in response.

2. The Government's initial assessment of the merits or otherwise of EU regulatory proposals.

3. Whether the proposals will lead to regulatory divergence between Great Britain and Northern Ireland, and what practical implications this will have, in particular in terms of the movement of goods and products a) between Great Britain and Northern Ireland, and b) between Northern Ireland and Great Britain in the context of the Government's statutory commitment to unfettered access for Northern Ireland goods on the UK market.

4. What steps, if any, the Government plans to address such regulatory divergence, for instance through the introduction of equivalent measures in England or Great Britain, as the case may be, and the timetable for doing so.

5. What factors the Government is taking into account in deciding whether or not to introduce equivalent measures, and its reason for not doing so if it is choosing not to.

6. The impact, if any, of the proposal for Northern Ireland's participation in UK Free Trade Agreements.

7. The relevance and impact of the proposal for Northern Ireland's participation in UK Common Frameworks.

8. Whether EU legislation directly applies in Northern Ireland, or whether and how it will be implemented in domestic law.

9. What consultation, either by the Government or the Northern Ireland Executive, has taken place with key stakeholders (such as businesses based in or trading with Northern Ireland) on the impact of the EU legislation.

10. Whether the Government has, or plans to undertake, a cost or impact assessment of the proposals for Northern Ireland.

I would be grateful if you can give an assurance that you will invite Government departments to provide such information in their Explanatory Memoranda and ministerial correspondence.

26 July 2021

Letter to the Chair from the Rt Hon Lord Frost CMG, Minister of State, Cabinet Office

1. Thank you for your letter of 26 July, regarding information provided to the committee through Government Explanatory Memoranda (EMs) and replies to Committee correspondence.

2. First, I too hope that we can reach agreement soon on the final shape of future scrutiny arrangements following the discussions between our officials. Once they are finalised, I agree that it will be important for our officials to work together to ensure that the EM template and scrutiny guidance for departments reflects the information requirements agreed with the Committees.

3. Your letter suggests a number of areas where the Committee would be keen to see additional detail added to EMs as a matter of routine. I understand the concerns that underpin these suggestions, and agree that the information Government provides should be of the highest quality so that it supports scrutiny.

4. Whilst the level of detail it is possible to go into will vary from issue to issue, and it will ultimately be a matter for individual Ministers to decide upon, I am concerned to ensure consistency and a good standard of information. We have reinforced with Departments the importance of covering the broad areas you mention in an appropriately detailed and substantive way.

5. My officials will work with the Clerks of the scrutiny committees to update the EM template and scrutiny guidance for Departments once we have concluded discussions on future scrutiny arrangements.

6. Meanwhile I am grateful for the copy of your Committee's introductory report on the Northern Ireland Protocol and look forward to debating it in the House in September.

6 August 2021