



HM Government

**UK GOVERNMENT COMMITMENTS TO NORTHERN IRELAND AND ITS
INTEGRAL PLACE IN THE UNITED KINGDOM**

9 January 2018

EXECUTIVE SUMMARY

1. This Government has made clear on many occasions that we will never be neutral in expressing our support for the Union. Our steadfast belief is that Northern Ireland's future is best served within a stronger United Kingdom. And as set out by the Prime Minister in her Lancaster House speech and since, strengthening our precious Union has been a key priority throughout the UK's exit negotiations. At each stage of the UK's withdrawal we have worked closely with the devolved administrations; engaged on an ongoing basis with the Northern Ireland parties and across the community in the absence of the Northern Ireland Executive; and made a clear commitment that, as powers flow back to the UK from the EU, those powers will be returned to the devolved administrations wherever possible consistent with each devolution settlement.
2. The Government has also set out consistently the need to recognise the unique circumstances of Northern Ireland. It is the only part of the United Kingdom sharing a land border with an EU Member State. Its political institutions and devolution settlement are also unique, reflecting the historic achievement of the 1998 Belfast Agreement. That Agreement established not just a set of institutions: it defined the principles that underpin their legitimacy for people across the community. It set out Northern Ireland's status as an integral part of the United Kingdom, consistent with the principle of consent - under which Northern Ireland's constitutional status is determined by the wishes of the people of Northern Ireland. It also recognised its unique relationship with Ireland, fostering the development of a seamless border which now enables unprecedented levels of trade and cooperation. Together they provided the bedrock for the two decades of peace and stability we have seen since the Agreement was signed.
3. The Government has consistently made clear that protecting our Union and recognising Northern Ireland's unique circumstances must mean avoiding a hard border, whilst upholding Northern Ireland's integral place in the United Kingdom and its internal market. These commitments were set out unequivocally in the December 2017 Joint Report, where both sides made clear that these issues would best be addressed through the future relationship agreed between the UK and EU. This remains the commitment of both sides, as affirmed in the Political Declaration. The principles of the Joint Report have also been endorsed overwhelmingly by Parliament and enshrined in the EU Withdrawal Act 2018.

4. Avoiding a hard border is itself critical to meeting our commitment to strengthening the Union. As the Prime Minister has said, Northern Ireland's constitutional future is a matter for its people, and it is essential therefore to listen to the people and communities there who do not want a return to a hard border or disruption to daily life. The Union will only endure - as is this Government's clearly expressed preference - with the consent of the people of Northern Ireland.
5. The Joint Report recognised that arrangements would be required to guarantee the absence of a hard border and uphold the Belfast Agreement in the event that permanent arrangements were not ready. Reflecting that, the Withdrawal Agreement provides for a Northern Ireland "backstop", which sets out a limited set of measures that would apply in the event the future relationship or alternative arrangements were not in place by the end of the Implementation Period. The Joint Report and the Withdrawal Agreement both set out unequivocally that the constitutional status of Northern Ireland and the principle of consent will be fully respected.
6. Both the UK and EU have been clear, however, that there is no intention for the backstop to be used. That is why the Withdrawal Agreement commits both the UK and the EU to use their best endeavours - an obligation with clear precedents in international law - to supersede it. The Withdrawal Agreement also provides an option for the Implementation Period to be extended instead; and makes explicit that the backstop cannot be a permanent arrangement. As EU leaders have recognised, it would be an uncomfortable outcome for the European Union: providing quota-free, tariff-free access to the EU market without any accompanying financial obligations; without any access to UK fishing waters in the absence of a further agreement; and without any commitments to align with the majority of so-called level playing field measures. As such, we fully expect that permanent arrangements to avoid a hard border will be ready by the end of the Implementation Period, meaning that the backstop would never be required.
7. We nevertheless recognise that concerns have been raised about the backstop and what it would mean for Northern Ireland's relationship with the rest of the UK, and the role of the Northern Ireland Executive and Assembly. For this reason the Government remains in discussions with the European Union about further assurances to address these concerns.
8. This paper sets out additional unilateral commitments by the Government to help address the concerns that have been raised, and build on the commitments made in paragraph 50 of the UK-EU Joint report to protect Northern Ireland's place in, and maintain access for Northern Ireland businesses to, the the UK internal market.

9. These commitments reflect the unique circumstances of Northern Ireland and the safeguards enshrined in the Belfast Agreement. They include in particular a strong role for a restored Northern Ireland Executive and Assembly. Where appropriate we will legislate to ensure that these commitments have legal force.

10. In particular, the paper sets out commitments to:

- Ensure a **strong role for the Northern Ireland Assembly** before Northern Ireland specific backstop provisions are given effect in domestic law;
- Seek the agreement of the Northern Ireland Assembly if the UK Government were ever to consider agreeing to add **new areas of law** applying specifically to Northern Ireland to the Protocol;
- Provide a guarantee that nothing in the Protocol will change the scope, functions or remit of the North-South Ministerial Council or the North-South Implementation Bodies, in particular, the current basis on which the discussions of these bodies observe the three stranded approach - or change any areas of **North-South Cooperation** without explicit agreement from the Northern Ireland Executive;
- Set out a commitment to a role for the **Northern Ireland Executive through the UK's presence on the Joint Committee, Specialised Committee on the Northern Ireland Protocol and the Joint Consultative Working Group** established by the Withdrawal Agreement where Northern Ireland-specific issues are to be discussed;
- Provide a guarantee that the UK will ensure that all engagement and dialogue under the governance arrangements applying to the Withdrawal Agreement will be consistent with the **well-established three stranded approach** set out in the Belfast Agreement, with no change to the role of the UK or Irish Governments;
- Outline measures to guarantee the **integral place of Northern Ireland in the UK economy**, guaranteeing the same unfettered access for Northern Ireland businesses to the rest of the UK;
- Ensure there would be **no divergence in practice** between the rules in Great Britain and NI covered by the Protocol in any scenario in which the backstop took effect;

- Work with a restored Northern Ireland Executive to deliver on the **enhanced role for Stormont to support the Northern Ireland economy** the backstop provides - with Government support to facilitate the Executive using its new powers to drive growth across Northern Ireland; and
- Ensure that the voice of a restored Northern Ireland Executive, along with the other devolved administrations, is at the heart of our work in negotiations on our future relationship.

THE NORTHERN IRELAND PROTOCOL

11. Northern Ireland is the only part of the UK with a land border with an EU Member State, and the free and unfettered movement of goods and people across that border is vital to the lives and livelihoods of the people on both sides of the border.
12. The UK Government remains firmly committed to negotiating a future relationship that permanently avoids the need for a hard border between Ireland and Northern Ireland. This is reflected in both the Political Declaration and the Withdrawal Agreement. However, as an additional insurance policy, the UK and the EU have agreed a Protocol on Ireland and Northern Ireland which guarantees that, even in the event that our future relationship with the EU is not in place by the end of the implementation period, there will be no hard border between Northern Ireland and Ireland or a splitting of the UK customs territory.
13. Key provisions of the Protocol include:
 - (a) the safeguarding of the Belfast Agreement and the principle of consent it enshrines;
 - (b) the ongoing protection of rights protected in the Rights, Safeguards and Equality of Opportunity chapter of the Belfast Agreement;
 - (c) the continuation of the Common Travel Area between the United Kingdom and Ireland;
 - (d) the continuation of the Single Electricity Market (SEM) on the island of Ireland;
 - (e) the establishment of a single customs territory comprising the United Kingdom and the European Union, with accompanying commitments for open and fair competition on tax, environment and labour practices, as well as ongoing harmonisation of rules on state aid; along with the application of some EU rules concerning standards and regulations for goods (a small fraction of those rules currently underpinning the single

market) in Northern Ireland - in order to avoid a hard border and grant full access for NI businesses to the UK and EU markets.

14. The Withdrawal Agreement and the Political Declaration are clear that neither the UK nor the EU intends for the backstop to ever be brought into effect. It would also require significant further work in advance of any implementation, as the technical explanatory note agreed between the UK and EU sets out. The voice of Northern Ireland will therefore be critical as we move forward. As such, this paper sets out the measures which the Government intends to take to protect the Belfast Agreement and ensure that voice is heard - both in any decision to bring the Northern Ireland Protocol into effect, and in its implementation in that scenario.

THE ROLE OF THE NORTHERN IRELAND EXECUTIVE AND ASSEMBLY

15. The devolved institutions are not currently functioning, though the Government is committed to their restoration at the earliest opportunity. This has meant it has not proved possible to restore the Executive and Assembly in time for them to consider the Withdrawal Agreement and Political Declaration on our future relationship. The Government remains strongly committed, though, to giving a restored Executive and Assembly a strong voice in any scenario where the backstop would be brought into force, as is set out below. This would be without prejudice to our commitment to abide by our international law obligations.

A STRONG ROLE FOR THE NORTHERN IRELAND ASSEMBLY

16. The Government is committed to a **strong role for the Northern Ireland Assembly** before the backstop could ever be brought in to force. We do not think this will be necessary in practice: as we have set out, we fully expect that alternative arrangements will be in place by the end of the Implementation Period.
17. In the event that those arrangements will not be ready by the end of 2020, the United Kingdom will face a choice as to whether to seek to extend the Implementation Period or to bring the backstop into effect. As we have set out elsewhere, Parliament will have a decisive role in that decision, reflecting the sovereignty of Parliament under our constitutional system.
18. The choice has implications throughout the UK, and we will ensure that the views of all the devolved legislatures are taken into account as it is made. Yet we recognise that its impact is especially significant for Northern Ireland. We will therefore provide in law for a mandatory process of consultation with the Northern Ireland Assembly in that scenario.

19. Thus before any decision is taken on whether to seek to extend the Implementation Period, the Assembly would be given an opportunity, ahead of any Parliamentary scrutiny, to express its views by debating and voting on the question. How this is done would primarily be a matter for the Assembly and its internal procedures - though an opportunity would need to be provided for a clear statement of the Assembly's views. The Assembly would also alternatively be able to vote in favour of the Government reopening Joint Committee discussions with the EU or - alternatively - bringing forward and accelerating negotiations on specific aspects of the future relationship relating solely to the border and trade in goods.

20. Those views would then to be brought before Parliament prior to a vote at Westminster. This procedure would be robust, placing clear obligations on the UK Government and guaranteeing a strong voice for Northern Ireland. We will consult the parties in Northern Ireland on the detail of these proposals and how best to provide for them in law.

A STRONG ROLE FOR THE NORTHERN IRELAND ASSEMBLY AND EXECUTIVE IF THE BACKSTOP COMES INTO EFFECT

21. In the event that the backstop did come in to force, we would also ensure a strong role for Executive and Assembly in its operation in order to provide democratic accountability and oversight.

Inclusion of New Areas of Law in the Protocol

22. The Protocol provides for alignment in Northern Ireland with a small fraction of EU Single Market rules, and only those strictly necessary to avoid a hard border on the island of Ireland. Where those laws are updated or replaced, they would apply in Northern Ireland as updated. However, Article 15(5) of the Protocol sets out that that where there is a proposal for a new EU law, which is within the scope of the backstop (for example, relating to goods regulation) but concerns a new area of regulation that addition needs the consent of the United Kingdom. The EU could not mandate the UK to accept that such a regulation must apply in Northern Ireland.

23. The addition of new areas of Northern Ireland specific alignment subsequent to the backstop coming into force is clearly significant and, the Government believes, necessitates oversight from the democratically elected representatives of the people of Northern Ireland. We will therefore legislate in domestic law to ensure that a UK Minister will be required to seek agreement of the Northern Ireland Assembly before reaching any agreement in the UK-EU Joint Committee to add additional alignment provisions to the scope of the Protocol

Ongoing Involvement in the Joint Committee, Northern Ireland Specialised Committee and Joint Consultative Working Group

24. The Withdrawal Agreement establishes a number of forums in which the Protocol will be discussed, overseen, and developed in operational terms: a Joint Committee, a Specialised Committee on the Northern Ireland Protocol, and a Joint Consultative Working Group.
25. The Joint Committee established by the Withdrawal Agreement will manage the implementation of the Withdrawal Agreement generally, including by looking at and developing aspects of its operation to ensure it is able to work effectively in practice. The Specialised Committee on the implementation of the Northern Ireland Protocol will be responsible for facilitating the implementation and application of the Protocol. The Joint Consultative Working Group will report to the Specialised Committee, and will be a forum for consultation and exchanging information.
26. The Joint Committee, the Specialised Committee and the Joint Consultative Working Group will be comprised of representatives of the UK and the EU. While the formal representation of the UK in international forums is and will continue to be a matter for the UK Government, we fully recognise the importance of the involvement of the Northern Ireland Executive in developing and implementing any Northern Ireland specific solutions.
27. The Government will therefore commit to agreeing a Memorandum of Understanding with a future Northern Ireland Executive setting out arrangements for the Executive's role in respect of the Joint Committee, the Specialised Committee and the Joint Consultative Working Group. This will apply solely to Northern Ireland specific issues - UK wide provisions are rightly a matter for the UK Government. The MoU would agree the appropriate UK delegation to those forums when Northern Ireland-specific issues are being discussed. It would also set out the agreed processes and forums to ensure effective dialogue and information-sharing with the Executive on the implementation of the Protocol. This would ensure that the Northern Ireland voice was represented and heard at each level of the institutional structures that would give effect to the Protocol.

SAFEGUARDING THE BELFAST AGREEMENT

28. The Government has been clear in its commitment to the Belfast Agreement. That is reflected in the Protocol and it will continue to be upheld in any backstop scenario. We will continue to uphold the rights protected in the rights, safeguards and equality of opportunity section of the Agreement. Crucially, we will maintain absolutely the principle of consent, whereby the constitutional status of Northern Ireland is for the people of Northern Ireland to determine. The Government's statement on the legal position and the

Attorney General's statement in the House of Commons make clear that the Protocol and the UK's withdrawal from the European Union do not affect the principle of consent, or any other provision of the 1998 Agreement, in any way.

29. We will also uphold the well-established three-stranded approach underpinned by the Agreement - the basis for two decades of historic progress, peace and stability in Northern Ireland.
30. In particular, we will preserve the Belfast Agreement concerning North South Cooperation - those arrangements underpinned by Strand Two - in the implementation of the Protocol. Article 13 requires that the Protocol be implemented so as to maintain the necessary conditions for continued North-South Cooperation. Article 13(1) lists some examples of cooperation that have already been agreed on a cross-community basis, or between the UK and Irish Governments in respect of non-devolved issues such as telecoms. The areas the Protocol outlines covers those agreed as affected by EU exit in the North-South Ministerial Council (NSMC) in November 2016, and which are reflected in the North-South mapping exercise carried out in the first phase of negotiations, which the Government published on 7 December 2018. The list reflects the range of formal and informal cooperation that currently occurs between Northern Ireland and Ireland, and in some cases cooperation pre-dates the Agreement.
31. This text, however, explicitly preserves and protects the principle that decisions here are decided under Strand Two. As the legal position published by the Government sets out clearly, Article 13 does not alter the remit or functions of the NSMC or the North-South Implementation bodies, nor does it alter Strand II of the Agreement in any way. This means that arrangements for North-South cooperation remain a matter for the Northern Ireland Executive and the Government of Ireland to determine through the arrangements set out in Strand II of the 1998 Agreement.
32. It is also important to note that Article 13 does not require any application of EU law in Northern Ireland. It is therefore exempt from the specific EU supervision and enforcement provisions set out for some elements of the Protocol. Cooperation will remain a matter for the two sovereign jurisdictions on the island of Ireland to decide in accordance with their respective legal regimes. There is no provision for the Joint Committee or Specialised Committee to decide on, or recommend, the expansion of those areas, nor to alter the functions, scope and remit of the North-South Ministerial Council or the North-South Implementation Bodies.

33. For the avoidance of any doubt, we will preserve the existing position explicitly in domestic legislation, by providing that no recommendations made under Article 13(2) of the Protocol will be capable of altering the scope of North-South Cooperation as facilitated and managed by the North-South Ministerial Council, nor establishing new implementation bodies or altering the arrangements set out in the Belfast Agreement in any way. This will underline the importance for this Government of maintaining the careful and interlocking balance of responsibilities the Belfast Agreement provides.
34. It is right, however, to ensure that the necessary conditions for practical cooperation are maintained. The net legal effect of the UK's withdrawal and the implementation of a backstop arrangement would be substantial legal divergence of Northern Ireland away from the rules applying in Ireland, which will be governed throughout by EU laws in all relevant areas and will be subject to full EU supervision and enforcement mechanisms. This applies even in the context of the small fraction of EU Single Market rules that will continue to apply in Northern Ireland in a backstop scenario - the vast majority of Single Market rules and associated supervision and enforcement will cease to apply in Northern Ireland but will apply in full in Ireland. That is why it is right that there is a high level commitment to maintaining the conditions for cooperation, including on practical issues where there is widespread support for cooperation, such as on habitats and cross-border management of Special Areas of Conservation.

PROTECTING NORTHERN IRELAND'S INTEGRAL PLACE IN, AND ACCESS FOR NORTHERN IRELAND BUSINESSES TO, THE UNITED KINGDOM INTERNAL MARKET

35. At the heart of preserving the economic and constitutional integrity of the United Kingdom is the maintenance of the UK's internal market as we leave the European Union. This was reflected in the December 2017 Joint Report between the UK and EU. At paragraph 50 it set out that, in all circumstances, the UK will ensure the same unfettered access for all Northern Ireland businesses to the whole UK internal market. This commitment provided the platform for maintaining the integrity of the UK internal market, and ensuring that sales by Northern Ireland businesses to Great Britain, which are so critical for business and the economy, are protected.
36. The Protocol protects Northern Ireland's position in the UK internal market through a series of safeguards and provisions within the legal text. For goods that are moving from Northern Ireland to Great Britain, the Government has committed to ensuring that Northern Ireland businesses will continue to enjoy the same unfettered access to the whole of the UK's internal market.

The Protocol expressly confirms that nothing provided within it will prevent the UK from ensuring this unfettered access. It is also clear that there will be no tariffs, quotas, or checks on rules of origin between Great Britain and Northern Ireland.

37. At the same time, we recognise the imperative to underscore that protection domestically as well. And that protection must be robust and lasting. That requires strong protections in law that guarantee **unfettered access for Northern Ireland businesses** when placing goods on the rest of the UK market. This of course must recognise the devolved competences of the Scottish and Welsh governments, and recognise that we need to preserve a level playing field for businesses throughout the UK. But it is critical that the law is unequivocal in setting out that businesses in Northern Ireland would retain full access to the whole UK internal market, even in a backstop scenario. **We will enshrine this protection in primary legislation.**

38. One of the questions raised in relation to the UK internal market has been the potential for different rules between Great Britain and Northern Ireland in a backstop scenario. In any case, the rules to which NI would align would be only a small fraction of EU rules overall, with the majority of laws being a matter for the UK regardless. It is also important to recognise that under the devolution settlement there are areas where rules can and already do diverge, reflecting the powers available to each nation - which enhances rather than diminishes our Union.

39. With that said, it is right that where steps can be taken to avoid divergence, they should be taken. And as the Protocol sets out, the relevant legal regimes in GB and NI will be one of the factors taken into account in bringing into operation relevant checks and controls in a backstop scenario. As such, and reflecting commitments that the Prime Minister has already given, we would ensure that **there would be no divergence in the rules applied in Great Britain and Northern Ireland in areas covered by the Protocol.** By so doing we would ensure everything possible had been done to avoid any additional preventable barriers within the UK internal market.

AN ENHANCED ROLE FOR STORMONT IN BOOSTING THE NORTHERN IRELAND ECONOMY

40. As has been noted, the application of relevant EU rules in Northern Ireland in a backstop would be limited to a small fraction of Single Market legislation strictly necessary to avoid a hard border and give frictionless access to the EU market for Northern Ireland's businesses. The net effect in a backstop, therefore, would be significantly increased powers and flexibility for a restored Northern Ireland Assembly to enact laws on a wide range of devolved areas currently governed by EU law.

41. This will allow a restored Executive and Assembly to consider new approaches and options to boost the local economy across a wide swathe of policy areas, from transport to consumer or environmental law. Northern Ireland will be out of the Common Agricultural Policy, with the devolved institutions deciding the right approach for agricultural and subsidy policy for the future. And the institutions will be able to boost and support fishing communities as the UK as a whole leaves the Common Fisheries Policy.
42. So in leaving the EU, there is an opportunity, to which this Government is committed, to significantly increasing the decision making powers of the Devolved Administrations in Scotland, Wales and Northern Ireland, as decisions previously taken in Brussels, that are otherwise within areas of devolved competence, return to the UK. Alongside that, in some areas vital to the operation of the UK's internal market and to the protection of common resources, we should continue to take common UK approaches. This will represent a new chapter for devolution in the United Kingdom, strengthening the powers available to the Scottish and Welsh governments as well as the Northern Ireland Executive.
43. We are committed to working with the restored institutions to enable that opportunity to be grasped. We will engage with the restored institutions on the right way forward in this respect, including by supporting much-needed work to transform education and health services to put them on a sustainable footing. And we will also continue to reflect on how to ensure the flexibilities available can drive growth, building on work already underway - such as the technical working group announced at the last Budget to consider the challenges in changing short-haul APD in Northern Ireland. This will establish a platform for a restored Executive and Assembly to forge a new path to boost Northern Ireland's economy.

ROLE OF NORTHERN IRELAND IN THE FUTURE RELATIONSHIP

44. This paper has focused particularly on the role that the Northern Ireland institutions will play in any scenario in which the backstop would take effect. But as we have set out elsewhere, we neither hope nor expect the backstop to be used. Both the UK and the EU are under binding international obligations to use their best endeavours to seek an agreement to replace the backstop in full by the end of 2020, using alternative arrangements to ensure permanently that there will be no hard border on the island of Ireland.
45. It will therefore ultimately be in the development of our future relationship with the EU where it is most essential to establish the means for Belfast, Cardiff, Edinburgh and Westminster to come together to deliver growth and prosperity right across the UK. And we will ensure those interests are properly represented and reflected as we negotiate that future partnership with the EU.

This will be alongside our existing commitment to ensure that all devolved institutions and interests are properly represented as we take forward our independent trade policy.

CONCLUSION

46. The Government has been clear that getting the right Brexit deal means getting a deal that is right for the whole of the United Kingdom, for the whole of our economy – and for all of our future security and prosperity. From the beginning, we have been absolutely clear that Brexit must protect our precious Union and the political settlement in Northern Ireland, protect and uphold the rights enshrined in the Belfast Agreement, and ensure no hard border on the island of Ireland. And for businesses in Northern Ireland – that means ensuring frictionless trade with Ireland, alongside continued access to the UK's internal market.
47. Just as we have put the protection of the Union, and delivery of a deal that works for the whole of the United Kingdom at the heart of negotiations, so too will those objectives be at the heart of how the deal is implemented domestically. We are committed to ensuring that Northern Ireland's voice is heard at all stages both in any decision to bring the backstop into effect, and in its implementation should it be needed. The Belfast Agreement will be protected in full, with no expansion of North-South cooperation without the cross-community consent requirements set out in that Agreement. We will continue to ensure protections for Northern Ireland businesses and will provide for an enhanced role for the devolved institutions in Northern Ireland, when they are restored, in shaping our future relationship with the EU and in ensuring that domestic law continues to reflect the unique circumstances of Northern Ireland.