The European Research Group's Legal Advisory Committee

Review and Assessment of the "The Windsor Framework"

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EXECUTIVE SUMMARY

The 'Windsor Framework' deal of 27 February 2022 has provisionally been reached between the UK and EU. The deal involves each party taking a number of steps, legal and non-legal, whose implications (assuming each step is implemented in its proposed form) can be summarised in the following manner.

1. **Sovereignty.** Northern Ireland remains subject to the power and control of EU law, the Court of Justice of the European Union (ECJ) and EU administrative organs (such as the European Commission) in respect of goods and ancillary matters. EU State aid law (below) continues to apply across the whole of the UK in respect of aid which may affect Northern Ireland.

    (a) The Windsor 'Framework' deal makes only limited legal changes to the Northern Ireland Protocol, on the basis of temporary legal powers granted in the UK-EU Withdrawal Agreement which do not permit any changes to "essential elements" of that document. Those powers themselves expire at the end of 2024.

    (b) The obligation for Northern Ireland law to follow changes to relevant EU law is unamended, subject only to the possible use of the 'Stormont brake' (below).

    (c) The rights of the people of Northern Ireland under the Acts of Union 1800 are not restored.

    (d) The hard border remains between the two different legal systems, which comprise those of (a) Great Britain, and (b) the newly created EU law regime in Northern Ireland. This constitutional anomaly is the underlying cause of the checks and controls required between these two parts of the same country, and this underlying cause has not been addressed by the Windsor deal.

    (e) There will be limited easings from the hard border customs and regulatory requirements for businesses in Great Britain selling goods into Northern Ireland, but these will not benefit businesses in Northern Ireland. They will remain fully subject to all EU laws under the NI Protocol when making goods and when selling goods to Northern Ireland consumers in competition with goods of British origin.

2. **Doubling down.** The UK provides new commitments and undertakings which reaffirm and embed the status and structures of the Withdrawal Agreement and its NI Protocol.

    (a) The Government commits to new, tougher arrangements for market surveillance and enforcement under the NI Protocol. New commitments are made by the UK on "exports" from Northern Ireland to Great Britain.

    (b) The Government commits to stopping the progress of the Northern Ireland Protocol Bill which, if enacted, would allow for the restoration of UK sovereignty in Northern Ireland.

(c) The EU sets out how EU representatives will engage directly with Northern Ireland "stakeholders", undermining the status of Northern Ireland within the United Kingdom.

(d) Commitments are made by the UK immediately to enhance enforcement over parcels moving between Great Britain and Northern Ireland, prior to the Windsor arrangements coming into force.

3. **Removal of EU law?** Claims in the UK Command Paper that the Windsor deal will lead to EU laws being "disapplied" or "removed" from Northern Ireland are not correct.

4. **Limited (and conditional) easings.** Limited easings from the full application of EU external customs duties and customs and regulatory requirements are to be made, involving reduced checks for certain goods sent within the UK across the Irish Sea which are accepted by the EU as destined solely for Northern Ireland and as not placing any risk on the EU's "single market", under a misleadingly characterised "green lane".

(a) These easings, which cover customs and certain goods standards, are highly constrained and carefully defined.

(i) They cover certain aspects of East-West trade only. E.g. full EU customs checks and duties, if payable, will still apply to business acquisitions of input goods to be processed in Northern Ireland by larger companies.

(ii) The easings will not readily be available to smaller traders.

(iii) Registration will be required by UK traders and carriers.

(iv) Some elements of the new scheme require businesses to become authorised under a newly established mechanic, managed by the UK but overseen by the EU.

(v) Some of the elements contain new, detailed application, compliance and monitoring processes, with restrictions on how the UK applies the scheme.

(vi) Declarations will still be required, as will compliance checks.

(vii) Precautionary usage of the "red lane" involving full checks is likely, and there is no reimbursement mechanism for duties where goods end up solely in Northern Ireland.

(viii) The scheme is not on a secure legal base vis-à-vis the EU, since it is vulnerable to suspension by the EU on grounds of suspected fraud, or termination by the EU on "diversion of trade" grounds.

(ix) Many of the dispensations also fall away where the EU chooses to apply "trade defence measures", including anti-dumping and countervailing (anti-subsidy) duties on an ever-expanding list of goods. The NI Protocol

allows the unilateral imposition of trade remedies measures by the EU to the territory of Northern Ireland.

(b) Future deregulatory efforts in the UK, e.g. under the Retention of EU Law Bill, will call into question whether new checks will be required, triggering a fresh negotiation. The Windsor arrangement risks incentivising the UK and its future governments to copy future EU rules, and adjustments to existing EU rules, so as to avoid the imposition of new checks across the Irish Sea. Businesses in Northern Ireland will be denied the benefits of reformed post-Brexit UK law applied in Great Britain and will be faced in their home market with competition from goods supplied by mainland businesses which comply with UK rules without themselves being able to benefit.

(c) The reverse problem is likely to become increasingly important, where goods are sold in Northern Ireland under EU single market law which do not comply with UK law. Because it is necessary to allow Northern Ireland businesses to sell EU-standards good across the Irish Sea in order to avoid shutting them out from full participation in the UK's internal market, the UK as a whole loses its ability to decide that certain goods shall not be sold on its market.

5. **Conditional adjustments to EU law in NI.** Easings for very specific areas are to be made *under EU law directly applicable in Northern Ireland*, for medicines, some retail goods (mainly foods), pets and plants.

(a) These easings are to be made under EU law rather than as adjustments to the NI Protocol, or rules to be adopted bilaterally by the UK-EU Joint Committee. Accepting that these easings are to form part of EU law has adverse consequences:

(i) Their interpretation, enforcement and validity is automatically under the jurisdiction of the ECJ rather than of the Withdrawal Agreement arbitration panel.

(ii) The UK has no legal remedy if the EU does not pass these easings into law in the form the Commission now proposes, or if the EU decides to amend or repeal them in future.

(iii) This creates an incredibly dangerous precedent of allowing the EU to make Regulations which apply only within the territory of Northern Ireland, a precedent which could be turned against the UK in future.

(b) The easings are, by their terms, conditional upon the UK providing guarantees satisfactory to the EU, and resemble internal EU law mechanisms applicable to member states which involve enforcement actions and penalties for the UK for non-compliance, as well as processes for suspension and termination.

(c) The scheme for retail goods only applies where goods are moved from an "authorised establishment" such as a supermarket distribution warehouse, on one side of the Irish Sea, to an "authorised establishment" on the other side. It does not extend to general East-to-West trade outside this limited circle of authorised

establishments and, for example, would not cover mail order supplies to end customers in Northern Ireland (important for plants). It specifically excludes from its scope goods which originate in Northern Ireland, so businesses there will not be able to compete on an equal basis with mainland businesses who use the scheme. It also covers some but not all relevant EU laws, and requires compliances with formalities, including provision of "per consignment" certificates and submission to monitoring and checking.

(d) The scheme for medicines allows the UK's Medicines and Healthcare products Regulatory Agency (MHRA) to authorise new medicines which fall within the special categories which are "centrally authorised" within the EU. However, the MHRA will remain subject to EU law when authorising new medicines in Northern Ireland which fall outside these special categories, making it difficult or impossible to change the UK's new medicines approvals regime in future without putting at risk the availability in Northern Ireland of the same medicines that are available in Great Britain. EU law relating to other aspects of medicines regulation remains applicable in Northern Ireland, subject to specific exemptions from EU anti-counterfeiting measures and a special permission to allow for the movement of medicines into Northern Ireland via regulated pharmaceutical wholesalers. These carve-outs are subject to a number of onerous restrictions and caveats: e.g. medicines must bear a non-removable "UK only" label; and the MHRA must "continuously monitor the placing into the market" in Northern Ireland of these medicinal products. The UK must also provide "written guarantees" that the placing on the market of the medicinal products does not increase the risk to public health in the EU. The EU will "continuously monitor" the application by the UK of the specific rules, and has powers to address serious or repeated infringements. There are powers of suspension and termination.

6. **VAT and excise.** Ameliorations are made for VAT and excise, largely to address the few particular areas of actual recent or immediately anticipated divergences between the EU and UK VAT and excise systems on goods since 2020. The deal provides for a new "enhanced co-ordination mechanism" on VAT and excise on goods. These arrangements amount to limited and specific relaxations in EU law applicable to VAT and excise in Northern Ireland, but they fall well short of restoring to the UK the right of an independent country to decide on its tax structures and set its tax rates as it might wish across the country. Changing tax structures or rates outside the boundary of the specific relaxations will involve negotiation with the EU and their permission.

7. **EU State aid law and its "reach-back" into the UK.** EU State aid law, by virtue of Article 10 of the NI Protocol, is applicable in Northern Ireland and across the whole of the UK if aid might affect trade under the NI Protocol. Article 10 will not be amended and the Windsor deal will use the less legally secure method of an interpretative declaration which will seek to limit (but not eliminate) the reach-back of EU State aid law across the whole UK. Therefore the Windsor deal continues to accept the reach of EU State aid law and the jurisdiction of the EU Commission and the ECJ, not just over Northern Ireland but also over the whole of the UK. By accepting the continuation of the NI Protocol's imposition of EU State aid law over Great Britain, the government has removed much of the benefit that the UK would otherwise have won from its faster, more flexible, more certain subsidy

control regime under the Subsidy Control Act 2022 which applies in Great Britain and is in conformity with the TCA.

8. **The 'Stormont brake'.** A new 'Stormont brake' is to be inserted into the NI Protocol which gives a certain number of members of the NI Assembly the ability to call for the rejection of incoming EU laws. However, this only applies to future changes to EU law and confers no right to change any part of the existing body of EU laws imposed on Northern Ireland under the NI Protocol. The 'brake' is of very narrow application in theory and is likely to be useless in practice. It is a highly conditional version of a process contained in the European Economic Area (EEA) Agreement, and allows the EU to take "remedial" countermeasures. There has only been one attempt to use the EEA version of the brake, by Norway in 2011, which was abandoned in 2013. Norway failed.

REVIEW AND ASSESSMENT

1. The questions we address and our overall answers

We have been asked to consider: first, how far (if at all) would the Windsor deal[1] restore the full sovereignty of the United Kingdom as an independent State following Brexit? Secondly, how far (if at all) would the Windsor deal restore the constitutional integrity of the Union by allowing citizens in Northern Ireland to participate equally with citizens in Great Britain, politically, in shaping the laws which apply to them, and economically, within the United Kingdom's internal market?

Sovereignty: We regret that the Windsor deal does not advance the post-Brexit sovereignty of the United Kingdom. It leaves intact the basic structure of the Northern Ireland Protocol, under which foreign laws interpreted and enforced by a foreign court will continue to apply to and within Northern Ireland, as well as for some purposes reaching back over the whole United Kingdom. The deal contains certain easings, which are subject to fulfilment by the UK of conditions to be monitored by EU Commission, of the full application of some but not all relevant EU laws[2] in closely defined circumstances. It is claimed that these easings would simplify (but not remove) customs and regulatory formalities imposed under the NI Protocol on goods moving inside the United Kingdom from Great Britain to Northern Ireland, but the deal also contains a commitment by the UK to terminate the current unilaterally extended 'grace periods' which at present shield much of the East-West trade from the full rigours of the NI Protocol.

Regrettably, for reasons we cannot understand, the UK government has accepted that the easings of the full application of EU single market laws be incorporated into Regulations to be made under EU law, instead of incorporating them, as they should have been, into a Joint Committee decision or other bilateral instrument under international law. This is a separate point from whether these easings are adequate in scope or whether they will in fact lead to friction-free movement of goods within their scope.[3] The use of EU law instruments to implement these easings has the automatic effect of extending the jurisdiction of the Court of Justice of the European Union (ECJ) to the interpretation of the boundaries of these easings and giving it jurisdiction to invalidate them under EU law, and also over any disputes which might arise as to whether the European Commission is entitled to suspend or terminate these easings if it considers the UK has not fulfilled the conditions. Nor can we see that the deal gives the UK any enforceable legal right under international law to require the EU to maintain these easing Regulations in their proposed form if the EU were to decide in future to repeal

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1 The "deal" is not a single agreement text, but instead consists of a large number of different texts which we describe below. It would result in the NI Protocol, as amended, being referred to as the "Windsor Framework" (Draft Joint Declaration on the Windsor Framework; see also Preamble 5 to the Windsor draft decision). We consider below the question of whether or not the legal framework governing Northern Ireland has been changed as implied by this new terminology.

2 See our full analysis below and in Appendix E.

3 We cannot answer the question from the available legal texts of whether or not these easings are practical for businesses to comply with in their day-to-day operations. The legal texts indicate that it will be necessary for businesses to file online paperwork to take advantage of them, and we have been given to understand from more than one source that the UK government is holding back from releasing details of exactly what information will have to be supplied until after any votes in Parliament on the Windsor deal.

or amend them under EU law. Most worryingly, this involves acceptance of the principle that the EU has power to make laws in future *which apply only extraterritorially within the territory of the United Kingdom*.

The Windsor deal also contains an important commitment by the UK government to abandon the Northern Ireland Protocol Bill. By contrast with the Windsor deal, that Bill, if passed into law, would be effective in restoring the essential sovereignty of Northern Ireland and of the United Kingdom as a whole.[4]

Constitutional integrity of the Union: The Windsor deal will not restore to citizens in Northern Ireland their equality with citizens in Great Britain in the control of the laws which apply to them. The 'Stormont brake' would apply only to future changes to EU laws and, for reasons we explain below, is of very narrow application in theory and likely to be useless in practice. More fundamentally, the Windsor deal does not confer on Northern Ireland citizens the rights enjoyed by citizens elsewhere to change or repeal the body of EU laws which are imposed upon them. This body of EU laws remains fully applicable to Northern Ireland businesses even when they are trading inside Northern Ireland or elsewhere in the UK's internal market. The easing Regulation on Retail Goods etc[5] would exempt certain goods from Great Britain sold at retail in Northern Ireland from having to comply with some (but not all) EU single market laws, but it specifically excludes from its scope goods which originate in Northern Ireland. So while the easing would benefit consumers in Northern Ireland by increasing the range of goods which they can buy from Great Britain, it subjects Northern Ireland businesses to a competitive disadvantage if they are still subject to more restrictive EU laws.

Overall, it is clear that the rights of citizens in Northern Ireland under the Acts of Union of 1800 will not be restored by the Windsor deal and that in material respects those provisions will remain subjugated by the NI Protocol; those citizens will continue to be treated differently under a treaty with a foreign power from citizens in Great Britain. Although mitigated in import-to-retail circumstances, customs duties and associated full declarations will be applicable in many instances, e.g., in business acquisitions of input goods to be processed in Northern Ireland by larger companies. Furthermore, while the easings should reduce the formalities from what they would otherwise be, they will not result in no formalities at all, as should be the case in moving goods within a single united country, nor will the easings be readily available to smaller traders.

2. The legal form of the Windsor deal

What has been called the "Windsor agreement" is not in the form of a draft international treaty text which sets out the terms which have been agreed. Indeed, there is no single text embodying what has been agreed. Instead, there is a large collection of texts issued by one or other, or sometimes both, of the parties which are of varying legal status. We will refer to

[4] The Bill has passed all stages in the House of Commons and has passed second reading and committee stage in the House of Lords. Even if (as anticipated) the Lords were to obstruct the Bill at third reading stage, from July 2023 it would be possible for the Commons to send the Bill to the Lords again in the new session and for it then to be passed into law without the assent of the Lords under the Parliament Acts.

[5] See further below and in Appendix E.

the agreement as a whole with this collection of texts as "the Windsor deal". The deal amounts to a political (i.e., not legally binding) agreement to take certain actions: to take a decision within the Joint Committee established under the Withdrawal Agreement (of which the NI Protocol forms an integral part), for some interpretative declarations and declarations as to future conduct to be made, for the EU to make certain changes to its own laws, and for the UK to enhance its performance and commitments under the scheme of the NI Protocol.

The different legal statuses of the various elements of the deal complicate the analysis. The draft Joint Committee decision, which we refer to as the "Windsor draft decision", (once adopted) would have a legal effect akin to that of a treaty, since it is a formal bilateral act within the framework of the Withdrawal Agreement which would need the consent of both parties (UK and EU) to be varied. By contrast, the proposed changes to EU law (which would implement certain easings in the application of EU law under the NI Protocol) are not bilateral acts, with the consequence that their interpretation and validity fall within the jurisdiction of the ECJ. We cannot see what legal recourse the UK would have if the EU were either not to pass them into its law in the form anticipated, or if the EU were in future to decide to amend or repeal them under its own law.[6] The UK could then be reduced to pleading that the EU's intended changes were against the spirit of the political (i.e. not legally binding) aspects of the deal. The precedent set by this method of implementing the easings is very disturbing indeed, since the UK government has condoned the principle of the EU creating under its own law Regulations which do not apply within the EU's own territory and apply only within the territory of the UK, like a colonial power legislating for a colony. While the UK government welcomes these particular proposed Regulations, with this principle established, we cannot see what legal means the UK would have to prevent the EU from changing its laws to the disadvantage of Northern Ireland or the UK, for example, by implementing a ban on the importation of vaccines from the EU to Northern Ireland by amending the EU's medicines laws.[7]

3. The framework of the NI Protocol – will it change?

It is important to note that changes are to be effected to the text of the NI Protocol by way of a Joint Committee decision, using a power under Article 164(5)(d) of the Withdrawal Agreement. This allows for changes "which do not change essential elements" to be made by the Joint Committee to specified parts of the Withdrawal Agreement, including the NI Protocol, in order to address situations which were unforeseen, so long as this occurs before the end of 2024.[8] This narrow legal basis which the UK negotiators apparently accepted – as distinct from an agreed amending treaty which could make substantial changes – limits the

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6 It seems to us an avoidable negotiating error for the UK to have relied on these easings being incorporated into EU law, instead of insisting that they should be incorporated into a Joint Committee decision which would give the UK a veto on their repeal or amendment and would have brought their interpretation under the jurisdiction of the WA international arbitral panel rather than the ECJ.

7 It should be recalled that this is exactly what the EU attempted to do when COVID-19 vaccines were in short supply. On that occasion, it sought to do so by invoking Article 16 to suspend parts of the Protocol, but once the principle is accepted of the EU being able unilaterally to make changes to the law within Northern Ireland through its own legislative process, it could achieve the same result, and other results to the detriment of the UK and NI, without the need for it to invoke Article 16 with its procedures and safeguards.

8 In the Windsor Political Declaration, the changes are described as "meaningful changes to the Protocol and its operations" (page 3).

scope of the changes which can be made to the NI Protocol and would certainly rule out changes to its structure.

The actual amendments to the Protocol text proposed to be made are in three areas:[9] a new paragraph to be inserted in Article 6(2) of the NI Protocol which provides an explicit basis for the introduction of the limited easings on the movement of goods which we explain in detail below;[10] the insertion of a new paragraph 13(3a) relating to the 'Stormont brake', which we deal with below; and amendments within Annex 3 which disapply certain articles of a VAT Directive and an excise tax Directive.[11] The overwhelming bulk of the NI Protocol text will be unamended.[12]

Nor will the other parts of the Windsor deal change the existing framework of the NI Protocol.

Upon withdrawal by the UK from the EU, the EU insisted on a protective layer of EU law applying to Northern Ireland, overspilling EU boundaries and sitting on adjacent territory, in order (so it was claimed) to allow for an invisible north-south territorial border on the island of Ireland.[13] This central feature of the NI Protocol will remain in place under the Windsor deal, as will the other main elements of the NI Protocol, as follows:

- *Extraterritorial application.* The extraterritorial application of EU laws in Northern Ireland remains, save for certain specified limitations and exceptions.

- *EU executive, administrative and judicial sovereignty.* The legal mechanisms that are used to enforce, interpret and apply EU law in Northern Ireland like in a member state (including that EU laws which are applied within Northern Ireland by the NI Protocol have supremacy in the UK's (national) courts over all laws of UK origin) are not affected by the Windsor deal.

- *Severance of Northern Ireland from Great Britain.* The hard border between two different legal systems in Great Britain and Northern Ireland that is the underlying cause of the checks and controls required between these two parts of the same

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9 For ease of reference, the NI Protocol text marked up with the proposed amendments of the draft Windsor decision is published with this paper as Appendix A.

10 This new paragraph will read: "This includes specific arrangements for the movement of goods within the United Kingdom's internal market, consistent with Northern Ireland's position as part of the customs territory of the United Kingdom in accordance with this Protocol, where the goods are destined for final consumption or final use in Northern Ireland and where the necessary safeguards are in place to protect the integrity of the Union's internal market and customs union." As we have pointed out above, this wording could and should have been changed to make these specific arrangements a Joint Committee responsibility rather than leaving it to the EU to incorporate them in its own law.

11 This provides limited freedoms to the UK which allow Northern Ireland to be aligned with tax rates in GB where changes have been made since Brexit. As explained below, these changes are accompanied by restrictions which mean that the UK will not be free as a sovereign state to make whatever changes it likes to its internal tax rates in Northern Ireland.

12 Including the important Annex 2 which lists 293 EU legislative instruments relating to the single market for goods which apply "to and in the United Kingdom in respect of Northern Ireland" by virtue of Article 5(4) of the Protocol.

13 See Appendix C for the background and for a discussion of the EU's interpretation of the concept of goods being "at risk" of crossing the border as effectively requiring that there be no risk at all.

country is not addressed; the Windsor deal at best will create some circumscribed holes in that hard border.

A full background to the Windsor deal and how these elements have not been removed is set out in Appendix C.

4. Undertakings and commitments by the UK - toughening of existing arrangements

Overall, the documentation comprising the Withdrawal Agreement and its NI Protocol, which purport to override UK sovereignty by imposing foreign (EU) law in Northern Ireland, is to be treated as fully binding. As discussed above, the obligation of the UK to continue to apply EU law in Northern Ireland is unamended, as is the obligation to follow changes to EU law, subject only to the possible use of the 'Stormont brake' which we consider below. Furthermore, the existing arrangements in Northern Ireland are toughened in the following manner:

- Renewed commitments are made by the UK to the structures of the Withdrawal Agreement (which includes the NI Protocol).[14]

- In the Windsor Political Declaration of 27 February 2023, there is assertion of international obligations (*pacta sunt servanda* – i.e., that treaties must be observed), and the applicability of the Vienna Convention on the Law of Treaties 1969, stating that the Withdrawal Agreement and its Protocol fall under this Convention. This subservience by the UK to the Withdrawal Agreement is expressed despite a recent advisory opinion of the International Court of Justice which casts doubt on the effectiveness in international law of long-term encumbrances on a State's sovereignty where these were put in place before the State had emerged fully independent from a legal system in which it was a subordinate entity.[15]

[14] In the Windsor Political Declaration of the EU and UK of 27 February 2023, there is a statement (on page 1) of "continued commitment to… the Withdrawal Agreement, including its NI Protocol, and the Trade and Cooperation Agreement", which in turn contains a cross-default provision which covers defaults under the Withdrawal Agreement and NI Protocol (Inst.24. (4) on P. 391 of the TCA). Both parties also commit, in the same document "to the full implementation of the Withdrawal Agreement in all its parts" (page 4). There is a proposed new draft Joint Declaration on dialogue and goods in which the parties commit to the structures of the Withdrawal Agreement – the Joint Committee, the Specialised Committees and the Joint Consultative Working Group as envisaged in the Windsor Framework. There are new obligations of "full mutual respect" and "good faith" for these purposes, in accordance with Article 5 of the Withdrawal Agreement. In a draft Unilateral Declaration by the UK on the democratic consent mechanism, the UK notes that the joint "solutions" announced in Windsor "are intended to constitute a series of practical and sustainable measures to address, in a definitive way, deficiencies and situations unforeseen that have emerged since [these arrangements] entered into force".

[15] See the advisory opinion issued by the International Court of Justice (ICJ) on the Chagos Archipelago sovereignty dispute: https://icj-cij.org/sites/default/files/case-related/169/169-20190225-ADV-01-00-EN.pdf. The Court deemed the United Kingdom's separation of the Chagos Islands from the rest of Mauritius in 1965, when both were colonial territories, to be unlawful: https://icj-cij.org/sites/default/files/case-related/169/169-20190225-ADV-01-00-EN.pdf#page=46.

- The UK government commits to stopping the process of the Northern Ireland Protocol Bill[16] and not proceeding with it, so that it will fall in the UK Parliament at the end of the Parliamentary session.

- New, tougher arrangements are to be adopted by the UK for market surveillance and enforcement under the scheme of the NI Protocol.[17]

- New commitments are made by the UK to the EU on "exports" from Northern Ireland to Great Britain.[18]

- Most disturbingly, in the context of sovereignty, and its twin companion, democracy, the UK and European Commission agree to "establish regular engagement with Northern Ireland stakeholders including citizens and businesses".[19] In a new EU document entitled "Enhanced engagement with Northern Ireland stakeholders", the EU then sets out how EU representatives will engage on an annual basis with Northern Ireland stakeholders,[20] the Commission

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16 Windsor Political Declaration, page 4. The EU states that "these arrangements, when implemented, mean that there will no longer be grounds for the existing Commission legal proceedings against the [UK] relating to the [NI Protocol]" (*ibid*).

17 A draft Recommendation of the Joint Committee on market surveillance and enforcement (available here: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1139435/Draft_unilateral_declarations_by_the_United_Kingdom_of_Great_Britain_and_Northern_Ireland_in_the_Withdrawal_Agreement_Joint_Committee_on_on_market_surveillance_and_enforcement.pdf) cites Articles 166(3) and 182 of the Withdrawal Agreement and Article 6(2) of the NI Protocol in recommending the prioritisation (based on risk and intelligence) of collaborative market surveillance and enforcement tools to monitor and manage the flow of goods for illegal entry into the EU (or the UK). It proposes "enhanced cooperation" arrangements to underpin those arrangements, encompassing knowledge-sharing, information exchange, work with operators and joint activity "where appropriate", between authorities in Northern Ireland and "relevant Member States" to tackle illegal activity and smuggling, ensuring goods are not placed on the market which do not meet applicable standards. There is a draft Unilateral Declaration by the UK on market surveillance and enforcement that it will build the capabilities and capacity to perform its tasks under the above arrangements, with specifics as to how it will perform this task. These will include further enhancements to retail goods procedures and arrangements for goods "moved by parcel". The UK will also maintain a strong regime for penalties, with a view to increasing those penalties to provide a further deterrent "if necessary". The UK will take "effective, dissuasive and proportionate action in relation to non-compliance", underpinned by sanctions and penalties.

18 Under a draft Unilateral Declaration on export procedures, the UK commits to applying low-impact export procedures for "exports" from Northern Ireland to Great Britain, recalling "its commitment to ensure full protection" of EU law prohibitions and restrictions on the exportation of goods to Great Britain, which is that part of the UK which is to be treated as a "third country" under these arrangements. The UK will provide "meaningful information" to the EU as regards restricted goods moving from NI to Great Britain as regards "exports, transfer, brokering and transit of dual use items, exports of cultural goods and shipments of waste". (This replaces an earlier Unilateral Declaration on export declarations of 17 December 2020.)

19 Windsor Political Declaration, page 3, point 1. Statements are made for "shared commitment to support stability and prosperity in Northern Ireland" (page 1).

20 "Every year, [the EU's European Commission] representatives will engage with Northern Ireland stakeholders on the [European] Commission Work Programme for the following year. This will highlight proposals of particular interest for Northern Ireland stakeholders enabling timely engagement with them".

will organise information sessions upon request,[21] relevant consultations including Northern Ireland stakeholders will be included on the EU's website,[22] and new EU policy initiatives will have to consider Northern Ireland stakeholders' input.[23]

- Commitments are to be made by the UK immediately to enhance enforcement over parcels moving between Great Britain and Northern Ireland, prior to the above arrangements coming into force.[24]

5. Continued application of EU customs controls and duties, and regulatory controls to goods moved into NI, with a "red lane" and procedural easings for a so-called "green lane"

The apparent reference point for the so-called "green lane" is the green lane which exists at an airport. This is a customs lane which you can walk through when you have nothing to declare. You carry your goods through without having to do paperwork, pay duties or undergo checks (other than occasional spot checks to ensure compliance). Similarly, the "green lane" for Northern Ireland is meant to be a system under which goods can be moved from Great Britain into Northern Ireland, free of formalities, checks and tariffs, where those goods are destined to be consumed or used within Northern Ireland. By contrast, goods passing through Northern Ireland on their way to the Republic of Ireland would be in the "red lane" (explained below), where they would be subject to the full panoply of customs duties, formalities and regulatory checks which are applied at an EU external border, albeit that they are applied in transit on UK territory rather than at the land border with the Republic. The Northern Ireland Protocol Bill, if enacted into law, would be capable of establishing such a green lane/red lane system, but under the sovereign control of the UK rather than under EU law and supervision.

The government claims that the Windsor deal creates a green lane of the kind found in an airport. Indeed, at its highest, it is claimed that it will remove "any sense of the border in the Irish Sea for goods staying within the UK".[25]

There are two elements to consider in assessing whether or not such a green lane will be achieved:

- customs formalities and duties, and

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21 "If requested by Northern Ireland stakeholders, the [EU's European] Commission will organise information sessions and/or workshops on new initiatives".

22 "Relevant public consultations and/or involvement of Northern Ireland stakeholders in targeted consultations for specific cases will be included on the Protocol webpage".

23 "In relevant impact assessments for new EU policy initiatives, there will now be a dedicated overview of Northern Ireland stakeholders' input. This will set out their views on the implications of the initiative for Northern Ireland and how they have been taken into account in the final proposal".

24 By a draft Unilateral Declaration by the UK on strengthening enforcement action for goods moved in parcels, the UK commits immediately to providing protection to the EU internal market by strengthening enforcement action concerning goods moved in parcels from Great Britain to NI, including by way of data sharing, enhanced customs cooperation, and collaboration on enforcement and compliance, updating the Specialised Committee on implementation in respect of the same.

25 Prime Minister's Office, 10 Downing Street and The Rt Hon Rishi Sunak MP, Press release, "Windsor Framework unveiled to fix problems of the Northern Ireland Protocol" 27 February 2023.

- regulatory checks for compliance with EU single market laws which apply in Northern Ireland under the NI Protocol.

Before coming to the specifics of how the "green lane" would operate as regards movements of goods which would fall within it, it should first be pointed out that there will continue to be many goods moving from Great Britain to Northern Ireland which will fall outside the scope of the "green lane" arrangements and will therefore be subject to the full panoply of EU external border checks, even though those goods are not going to be exported into the Republic or elsewhere in the EU. Businesses within Northern Ireland acquiring goods from Great Britain which intend to sell their products within Northern Ireland, elsewhere in the United Kingdom or to the rest of the world will continue to be damaged by these controls and duties while receiving no conceivable benefit from the NI Protocol arrangements.

6. Continued application of customs controls and duties outside the "green lane"

The general position will remain that, outside the specific accommodations, EU customs laws will apply to the movement of goods from Great Britain to Northern Ireland (this internal movement is treated as an "importation"[26]) and to importations of goods from the rest of the world. In other words, there is a customs border, within UK territory, across the Irish Sea, and the EU's rather than the UK's external customs duties will apply to imports from the rest of the world. Importantly, goods which are to be used by businesses in Northern Ireland for "commercial processing" will be subject to EU customs duties, unless the business or the type of processing falls within a specific exemption.

Under the UK and EU Trade and Cooperation Agreement (TCA), duty free trade in goods between the UK and the EU is permitted but only in a highly qualified way, which creates the needs for checks and controls. Under the so-called "Rules of Origin", goods sold in the market in Great Britain will not necessarily be counted as of UK origin, meaning that businesses in Northern Ireland which acquire goods inputs from Great Britain either need to pay EU external tariffs on those goods, or need to have evidence that those goods do satisfy Rules of Origin and so are tariff exempt. The costs of EU customs compliance on input goods due to the application of EU Rules of Origin within UK territory will put Northern Ireland businesses who acquire inputs from Great Britain at a competitive disadvantage compared with businesses in Great Britain who can acquire their input goods in the UK market without such costs.

There is a further complication with regards to UK exports to Northern Ireland concerning Tariff Rate Quotas (TRQs), which is a topic that the Windsor deal does not adequately address, except in the limited case of certain steel products (for which the deal makes special provision).[27] TRQs are quantities of goods which are permitted to enter the importing country at a lower tariff, after which point (once the specified quantity limit has been reached) a

[26] We use the word "importation" under protest since what we are talking about is in fact the movement of goods internally within one country.

[27] Proposal for a Regulation of the European Parliament and the Council amending Regulation (EU) 2020/2170 as regards the application of Union tariff rate quotas and other import quotas to certain products transferred to Northern Ireland, Brussels, 27.2.2023 COM(2023) 125 final 2023/0063(COD) (this Regulation deals with safeguard duties and related TRQs imposed by the EU against certain steel products).

higher tariff takes effect. This creates a problem where the UK applies a TRQ either unilaterally or through a Free Trade Agreement (FTA). The applied UK import tariff under the TRQ might be the same or similar to that of the EU if the EU TRQ was factored in. However, since EU TRQs do not apply in Northern Ireland, the EU's out-of-quota (higher) tariff must apply instead. For imports into Northern Ireland from Great Britain, this will invariably result in a larger tariff differential vis-à-vis the UK tariff, which is well above the three percent level which automatically triggers the "at risk of entering the EU" element of imports.

These two highly technical points have a very detrimental effect since they force Northern Ireland out of UK supply chains and deny them the benefits of the UK's external arrangements. They are discussed in more detail in Appendix D.

The "red lane"

The default will be that customs are applied at the East-West border for goods going into Northern Ireland. The "red lane" envisaged in the Windsor deal appears merely to be a relabelling and toughening up of the existing scheme, whereby goods not falling within the "green lane" are required to undergo full EU checks and customs processes. It will also presumably apply to "mixed loads", consisting partially of green lane goods along with EU-destined red lane ones, undermining the practical advantage of the green lane.

There is no clarity regarding whether there will be a reimbursement scheme for goods which were assessed as needing "red lane" assessment, on a precautionary basis, but ended up staying in Northern Ireland and which fall within the dispensations in the Windsor deal. Given the EU's history of zealously applying its rules wherever possible, this outcome seems unlikely.

Customs formalities and duties

It is often, but wrongly thought that complying with EU external customs should not be a problem on goods brought from the UK because the EU-UK TCA provides for zero tariffs on almost all goods. This is not the case. As explained above, only goods which *originate within* the UK or EU according to Rules of Origin (which are complex) qualify for zero tariffs, so EU external tariffs must be paid on many goods in free circulation in the UK market which have sufficient non-UK/EU content that they do not satisfy Rules of Origin. Even if tariffs are not payable, there is significant administrative time, work and cost in complying with customs formalities which is only partly alleviated by the government-subsidised Trader Support Service. Further, despite the TCA, EU external anti-dumping tariffs apply to some goods, which include steel. As the EU and UK's trade remedies policies diverge over time, these costs could become more burdensome, particularly during an era of increased global trade protectionism.

The NI Protocol requires EU external customs formalities (including making declarations and making goods available for customs inspection) to be complied with and customs duties to be paid on goods brought into Northern Ireland from another part of the United Kingdom, subject to an exception (inserted during the Boris Johnson renegotiation of the NI Protocol) for goods which come into Northern Ireland "by direct transport" which are not "at risk" of subsequently being moved into the EU, whether by itself or after processing to form part of

another good.[28] The exception does not apply at all to goods which are moved into Northern Ireland from Great Britain by means other than "direct transport".

Unfortunately, the notion of "at risk" is in fact applied (by the EU) in a manner which involves "no risk" (in the view of the EU) to its single market. Thus, the apparent width of the exception from compliance with EU external customs formalities and duties is severely cut down by Article 5(2) of the NI Protocol, according to which a good is treated as "at risk" unless it is proved that the good will not be subject to commercial processing in Northern Ireland, *and* that it meets criteria established by the Joint Committee. The Joint Committee can only reach decisions by consensus, i.e., both the UK and the EU have to agree, giving the EU an effective veto over the "not at risk" rules. This has enabled the EU to insist on very narrow rules, since in the absence of agreement on a set of rules, all goods would be deemed "at risk" and subject to customs controls. An extremely restrictive set of "not at risk" rules was established in Joint Committee Decision No 4/2020.[29] Under the Windsor deal, an amendment to the Protocol is made which makes clear that specific arrangements can be considered "where the goods are destined for final consumption or final use in Northern Ireland and where the necessary safeguards are in place to protect the integrity of the [EU's single] market and customs union."[30]

The starting point in the NI Protocol is a presumption that goods which are going to be commercially processed in Northern Ireland are to be subject to EU customs if they are moved into Northern Ireland from Great Britain or imported from the rest of the world.[31] "Processing" is widely defined and includes any alteration or transformation of goods or subjecting them to any process other than for preserving them or marking or labelling them.[32] The reason for the inclusion of this provision in the NI Protocol appears to stem from the EU's paranoia that businesses in Northern Ireland might be at a competitive advantage if they were able to obtain supplies of goods inputs and pay only UK external tariffs on them, which might be zero in a case where the UK had an FTA with a country and the EU did not. The Joint Committee is given a power to define exceptions where activities are deemed not to be commercial processing for this purpose,[33] but again the exercise of this power is subject to an EU veto, and it has been used in a very limited way.

If one could count on the EU to implement the Windsor deal, and in particular to conduct itself in the Joint Committee in a good faith manner, in full accordance with the EU-UK political undertakings embodied in the deal, then one might have grounds for optimism that many EU checks would be eroded, and pragmatism would sweep away the EU law scheme. However, as noted, the EU is under no international law obligation to observe the political undertakings and, thus, retains a free hand when deciding whether or not to grant "not at risk" status to

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28 Article 5(1), NI Protocol.

29 Article 3, Joint Committee Decision No 4/2020.

30 By Article 1 of the Windsor Framework, a new Article 6(2) is inserted into the NI Protocol.

31 Article 5(2)(a), NI Protocol.

32 "Processing" is defined in Article 5(2) of the NI Protocol as "any alteration of goods, any transformation of goods in any way, or any subjecting of goods to operations other than for the purpose of preserving them in good condition or for adding or affixing marks, labels, seals or any other documentation to ensure compliance with any specific requirements". So, for example, even something like painting goods would count, and such operations as cutting up bread and ham and making sandwiches fall well within the scope of "processing".

33 Article 5(2), third subparagraph, NI Protocol.

products. Those familiar with the tenets and approach of EU law and its lawyers will know that those who might think pragmatism will prevail are engaging in wishful thinking. And having thrown away the powerful negotiating card of the Northern Ireland Protocol Bill, it is hard to see what negotiating power the UK will have to persuade the EU to allow further relaxations which the EU will regard as at least potentially undermining its own interests. We believe it is unrealistic to think that the Windsor deal will usher in an era of future flexibility on the part of the EU.

7. "Green lane" customs relaxations

The Windsor deal contains a complex set of provisions for its "green lane" which, like the NI Protocol itself, are drafted in EU style and subject to EU law methods of interpretation. They address customs formalities and duties applicable to goods being taken from Great Britain into Northern Ireland in those limited circumstances in which the EU has already accepted, in the Protocol, that these may be treated as being destined solely for Northern Ireland.

Under the Windsor deal there will be various limited, and carefully restricted, instances in which the processing in Northern Ireland of a good will be considered non-commercial, with the consequence that those goods are exempted from East-West customs controls unless the good after processing is "at risk" of going on to the EU.[34] These instances would replace those set out in the existing Joint Committee Decision No 4/2020.[35] A full flavour of the narrowness of the new (albeit generally wider than before) permissions is to be gained from how they are expressed. They essentially permit circumstances in which the processing is in Northern Ireland and is "for the sole purpose of":

(a) The sale of food to an end consumer in the UK.

(b) The incorporation of processed goods into a permanent structure constructed by the importer (or one "subsequent entity") in Northern Ireland.

(c) The direct provision to the recipient of health or care services by the importer or one subsequent entity.

(d) Not for profit activities by the importer or one subsequent entity, with no subsequent sale of the processed good.

(e) The final use of animal feed on Northern Ireland premises by the importer or one subsequent entity.[36]

There is also a separate safe harbour where the good is imported for "free circulation" by importers with an annual turnover of less than £2m (up from £500k), estimated to cover 80% of firms[37] in Northern Ireland, and a declaration is provided.[38]

Accordingly, it remains the case that, for the generality of goods moved from Great Britain to Northern Ireland, unless one of the above specific exceptions applies, EU external customs

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34 Article 6, Windsor draft decision.

35 Article 16, Windsor draft decision.

36 Article 6(b), Windsor draft decision.

37 We do not know what percentage of East to West trade this will represent. Larger firms with turnovers which fall outside the exemption are likely to acquire larger volumes of goods from Great Britain so we would expect the exemption to cover a lot less than 80% of the East to West trade.

38 Article 6(b), Windsor draft decision.

formalities need to be complied with and any applicable duties must be paid whenever goods are used by a Northern Ireland business in some process. It should be emphasised that goods used for processing in Northern Ireland which are not within the scope of one of the exemptions are subject to customs *regardless of whether the output goods are or are not at risk of being sent to the EU*. This imposes a very substantial compliance cost, which must be met either by the Northern Ireland business or its suppliers in Great Britain; for example, even if goods are imported from Great Britain for processing in Northern Ireland and then sent back to Great Britain in processed form.[39]

Where goods are not "considered to be subject to commercial processing", there are further narrow permissions for the movement of a set of goods into Northern Ireland, when the EU accepts they are not "at risk" of being moved into the EU.[40] These include permissions for goods carefully defined by reference to whether they attract the EU Common Customs Tariff, either at all or over a certain level; and whether they are of a non-commercial nature and are sent in a parcel by a private individual to another private individual residing in Northern Ireland. The term parcel is itself defined, by reference to weight.

There is an authorisation scheme for bringing goods into Northern Ireland by direct transport for sale to, or final use by, end consumers, which is set out in full.[41] It is supervised by the UK, but under EU oversight[42] and the overall EU legal architecture of the NI Protocol itself. This scheme contains a detailed application, compliance and monitoring process.[43] The scheme also contains various restrictions on when the UK should grant authorisations to firms, with a view to facilitating EU verification and oversight.[44] A further authorisation regime is established for carriers,[45] which contains responsibility, process, capability, systems, data, reporting, responsiveness and compliance requirements.[46] Additional requirements are also imposed.[47]

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39 This might possibly be mitigated by "inward processing relief" but claiming that relief involves compliance work and costs.

40 Article 7, Windsor draft decision.

41 Articles 9-11, Windsor draft decision.

42 Article 9(6), Windsor draft decision.

43 Including as specified under relevant EU customs legislation, referred to in Article 9(4), Windsor draft decision.

44 E.g., Article 11, Windsor draft decision.

45 Article 12, Windsor draft decision.

46 Article 13, Windsor draft decision.

47 The UK must provide monthly information to the EU, 15 days after the end of each month (and in electronic data form), on the application of customs duties provisions of the NI Protocol (Article 14, Windsor draft decision, which sets out the provisions on exchange of information on the application of Article 5(1) and (2) of the NI Protocol) and various of the above provisions of the Windsor Framework. This must comprise information on volumes and values, in aggregated form and per consignment, as well as means of transport (Article 14, Windsor draft decision). There is also an ability for the EU to audit the UK's authorisation schemes (i.e., those operating under Articles 9-12 of the Windsor draft decision). Furthermore, there is an ability for the EU to suspend various of the above provisions in instances of non-compliance or non-cooperation by the UK itself (Article 15, Windsor draft decision), whereby the arrangements under the current Joint Committee Decision No 4/2020 are reapplied. The UK can, by notification, lift the suspension and reinstate the Windsor deal arrangements (Article 15(3), Windsor draft decision). There is also a process for the switching off of provisions, on two years' notice, and the triggering of new Joint Committee discussions over a replacement set of provisions if either party considers there is a "significant diversion of trade", or fraud or illegal activities (Article

Many of these dispensations fall away where the EU chooses to apply "trade defence measures," including anti-dumping and countervailing (anti-subsidy) duties on an ever-expanding list of goods. It is noteworthy here also that the EU has not recognised the UK's subsidy control rules, outlined in the Subsidy Control Act 2022, as equivalent to EU State aid rules. Overall, the so-called "green lane" provisions are limited in scope and will result, in practice, in the continued application of EU customs formalities and duties to many goods moving from Great Britain into Northern Ireland when these will in practice never cross the border into the Republic or go elsewhere in the EU. Even within the scope of the scheme, it will impose significant compliance costs on traders, who will need to register under the scheme and make online declarations whenever they move goods into Northern Ireland, in contrast to when they supply goods to any other part of the UK. The scheme itself is not on a secure legal base vis-à-vis the EU, since it is vulnerable to suspension by the EU on grounds of suspected fraud, or termination by the EU on "diversion of trade" grounds. As mentioned above, it could also be disrupted by the unilateral imposition of trade remedies measures by the EU, which the NI Protocol allows the EU to apply to the territory of Northern Ireland.

8. The "green lane" - compliance with EU single market laws which apply in Northern Ireland under the NI Protocol, and the elusive "1,700 pages of EU law" which will be "disapplied" or "removed"

The Windsor deal would introduce a number of "specific rules"[48] which would provide as a matter of EU law for specified EU laws not to apply within the scope of the specific rule concerned. This is in effect the regulatory aspect of the "green lane" and is to be distinguished from the customs exemptions we discuss above. These easings are highly limited and revolve around the ability for processes to be implemented across the Irish Sea. [49]

15(4), Windsor draft decision). These types of provisions are not dissimilar to requirements on member states in certain contexts within the EU legal order.

While Great Britain-based companies are able to enrol in the green lane's trusted trader scheme, to do so they will need a customs representative in Northern Ireland, which may be burdensome. Northern Ireland destined goods will only require the simpler 6-digit customs code instead of the more complicated 10-digit one for red lane goods. However, some green lane products will require an 8-digit code, adding some complexity to the process.

[48] Using the terminology in the EU's draft Regulations.

[49] The UK and EU state in the Windsor Political Declaration (page 2) that there is a differentiation between goods at risk of moving into the EU single market, and goods that are destined for final consumption in Northern Ireland, with the accommodations arising in the latter context only. This declaration goes on to state that "[s]olutions have been found for the movement of food for their end consumption in Northern Ireland…. The new arrangements require effective safeguards that guarantee that goods moving from Great Britain to Northern Ireland are not moved further to the EU Single Market" (*ibid*). These safeguards are built on "three pillars: a trusted trader scheme with a robust authorisation and monitoring process; data-sharing on movements of goods allowing risk-assessments to be performed; and reinforced procedures, such as increased market surveillance, in place to guarantee that such goods will be consumed only in Northern Ireland." The measures on VAT "better reflect Northern Ireland's integral place in the UK Internal Market whilst protecting the EU from risks such as fiscal fraud or market distortion. A forward-looking coordination mechanism in the area of VAT and excise will be established to address future issues that may arise." The European Commission and the UK also commit to providing "further clarifications as regards the application of relevant State aid rules, providing certainty as to how and to whom they apply, including clarifying the conditions under which UK measures do not affect trade between Northern Ireland and the [EU] and therefore do not fall within the remit of the EU's State aid framework" (*ibid,* pages 2-3).

Outside the scope of these specific rules, businesses in Northern Ireland are obliged to comply with relevant EU laws. Goods made by a Northern Ireland business and sold on its market will remain subject to applicable EU single market rules covering their processes of production, on the standards to be satisfied when the goods are marketed and on how they are marketed (e.g., required labelling and information to be provided to consumers).

Many checks theoretically required under the NI Protocol are currently not required at all in practice because of action taken unilaterally by the UK to defer implementation on the basis of problems encountered in Northern Ireland arising from the lack of consent from the Unionist community. At a practical level, the situation which will prevail under these easings needs to be compared with the situation at present with the 'grace periods' since as part of the Windsor deal the UK is undertaking to bring these grace periods to an end.

The elusive "1,700 pages of EU law" which will be "disapplied" or "removed"

An important claim is made in the UK Command Paper that 1,700 pages of EU law have been disapplied;[50] and that this means that less than 3% of EU rules are applicable in Northern Ireland.[51] Despite questions posed to the UK government, we have been unable to verify these claims. These are important assertions. We have carefully looked for validation of them in the draft legal texts. Page-counting of itself is not a very useful exercise, but we would have welcomed some information about the make-up of this 1,700 pages of EU law – and, more importantly, identification of the legal texts by which this "disapplication" or "removal" of EU laws from Northern Ireland is to be achieved.[52] We would also have welcomed some explanation of what are said to be the "3% overall" of EU laws which the Command Paper states are still applicable in Northern Ireland. However, this has not been forthcoming.[53]

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50 The UK Command Paper, sub-paragraph (d) of the summary (emphasis added): "The agreement delivers a form of dual regulation that will work for business and consumers in Northern Ireland, based on the restoration of Northern Ireland's place in the UK internal market, and reflecting that by far the greatest portion of Northern Ireland's economic life will continue to be based on trade within the United Kingdom. As a result, **over 1,700 pages of EU law - with accompanying European Court of Justice (ECJ) jurisdiction - are disapplied,** meaning that core UK trade is based on core UK internal market rules, whether citizens and businesses are based in Belfast or Birmingham. This will ensure, for example, that the same UK food safety laws apply for retail goods moved into Northern Ireland; that VAT and excise rates apply UK-wide; and that medicines licensing will always be undertaken by the UK regulator for patients in Northern Ireland - without jeopardising access for Northern Ireland pharmaceutical firms to the EU market".

51 The UK Command Paper, paragraph 57: "[The Windsor deal] therefore narrows the range of EU rules applicable in Northern Ireland – to less than 3% overall by the EU's own calculations. The rules that do apply are there solely, and only as strictly necessary, in order to maintain the unique ability for Northern Ireland firms to sell their goods into the EU market."

52 The difficulty of validating assertions made in the UK Command Paper about the effects of the Windsor deal is greatly increased, on this as well as other issues, by the absence of normal cross-referencing and signposting to the provisions of the international texts which a normal government Paper of this kind would be expected to contain. It is most regrettable that the UK Command Paper should have been published in this condition.

53 See the written answer by Leo Docherty MP to the Parliamentary question by David Jones MP which sheds no light at all on the make-up of these "less than 3%" of EU rules, nor on the evidential basis for this claim as requested by the Question: https://questions-statements.parliament.uk/written-questions/detail/2023-03-08/161247

The Command Paper appears to be saying that "1,700 pages" of EU law will no longer apply to Northern Ireland. Regrettably, such a claim is not true. The assertion that a significant volume EU laws will be "disapplied" or "removed" from Northern Ireland is contradicted by an examination of the NI Protocol text as proposed to be amended by the draft Joint Committee decision.[54] Not a single EU law is to be deleted from the long list of EU single-market-for-goods laws in Annex 2, all of which apply "*to and in the United Kingdom in respect of Northern Ireland*" by virtue of Article 5(4) of the NI Protocol. Neither Article 5(4) nor Annex 2 are to be amended in any way. The only EU laws which will be disapplied (in part only) are certain specified parts of two VAT and Excise Directives through the amendments to be made to Annex 3 of the NI Protocol.[55]

We have been given to understand informally that the "disapplication" of EU law referred to in sub-para (d) of the Summary in the UK Command Paper is to be found in the proposals for new EU Regulations relating to Northern Ireland, which have been published by the EU Commission following the announcement of the Windsor deal. These Regulations would form part of the EU laws which apply in Northern Ireland under the NI Protocol. These proposed Regulations would provide for a number of narrowly defined and limited circumstances (referred to accurately as "special rules", in the texts of the proposed Regulations) where some (but not all) EU rules would not apply, subject to the UK complying with conditions which we describe below, breach of which can lead to these special rules being suspended or terminated.

As we have pointed out above, the general body of EU laws will continue to have full force in Northern Ireland. This is particularly important for businesses in Northern Ireland which make goods and place them on the market there. The proposed Regulations contain special rules which allow goods from Great Britain to be sold retail in Northern Ireland without needing to comply with some (but by no means all) EU rules, but ***a Northern Ireland business selling goods within Northern Ireland in competition with those goods from Great Britain will still be required to comply with the full panoply of EU rules***. The obligation of Northern Ireland businesses to comply with EU rules will not be limited to goods sold across the land border or exported to other parts the EU.

In fact, the general body of EU laws relating to the single market for goods will continue to apply pervasively across NI, and not a single one of those laws will be removed from Northern Ireland under the Windsor deal. What will be done is more akin to intricate keyhole surgery within that body of laws, under which circumscribed holes are cut, which will only be kept open if the UK jumps through the hoops of continuing to satisfy the EU Commission that it is fulfilling the conditions laid down.

The most important special rules are contained in two proposals[56] for Regulations published by the EU Commission. These formal proposals are the first step in the EU legislative system (analogous to introducing a Bill to Parliament) and they are subject to being passed, either with or without amendment, by the Council of Ministers and the European Parliament. Within the papers making up the Windsor deal, we have been unable to identify any

[54] For ease of reference, the NI Protocol text marked up with the proposed amendments of the draft Windsor decision is published with this paper as Appendix A.

[55] See Appendix A, Annex 3 as proposed to be amended.

[56] COM(2023) 124 final, 27.2.2023 on retail goods etc, and COM(2023) 122 final on medicines.

justiciable or arbitrable legal obligation on the EU to pass these Regulations in the form of the Commission proposals, or if they are passed, to maintain them in force without repeal or amendment. Even assuming that the member states are signed up to a political (i.e., legally non-binding) agreement that these Regulations should be passed into law in the form published, amendments made by the European Parliament could be a real possibility.

If passed by the EU, these Regulations will form part of the body EU law which applies within Northern Ireland under the NI Protocol. Being themselves part of EU law, their interpretation and validity will fall squarely within the jurisdiction of the ECJ under Article 12(4) of the NI Protocol. This means that the scope of these special rules or the conditions attached to their continued operation could be interpreted restrictively, against the interests of the UK, by a foreign court. Even more seriously, it is not beyond the bounds of possibility that parts of these Regulations might be ruled invalid by the ECJ, e.g., as being contrary to general principles of EU law. As far as we can see, there would be no recourse to an international arbitral panel under the Withdrawal Agreement if these Regulations were to be restrictively interpreted against the UK's interests by the ECJ or if a specific rule were to be ruled invalid as a matter of EU law. Invalidation of a specific rule would automatically lead to the general EU law which prevails under the NI Protocol filling the void.

The choice of this legal mechanism for securing the rights of a treaty party is contrary to the norms of international treaty practice. Such rights should be embodied in a legally binding international treaty or agreement. They should not be dependent on being unilaterally incorporated into the law of one treaty party, where that law and its interpretation are under the unilateral control of the courts and institutions of that treaty party. Where the law concerned extends into the territory of the other treaty party, as EU law does under the NI Protocol, that makes this arrangement even more unacceptable. In this regard the Windsor deal would materially worsen the position under the NI Protocol as it stands, through the UK conceding legal control to the EU and its institutions over the scope and existence of mitigations of EU law which are vital for the people of Northern Ireland.

We are at a loss to understand why these carve-outs are to be incorporated in draft EU legal instruments, when they could and should have been incorporated into rules adopted bilaterally by the Joint Committee. The draft amendment to Article 6(2) of the NI Protocol which authorises "specific arrangements for the movement of goods within the United Kingdom's internal market"[57] seems designed to cover carve-out arrangements of the kind included in these proposed EU Regulations. Annexing these carve-out rules to a Joint Committee decision would at least have removed them from the scope of EU law, protected them from unilateral amendment, repeal or invalidation by the EU or its institutions and would have shielded them from being bindingly interpreted by the ECJ against the UK's interests.

In our Appendix E, we discuss in more detail the draft Regulation relating to retail goods and the draft Regulation relating to Medicines. As explained there, the scheme relating to retail goods (mainly food and drink) moved from Great Britain into Northern Ireland (1) does not apply to all trade in retail goods, but only where goods are moved from an "authorised establishment" (such as a supermarket distribution warehouse) on one side of the Irish Sea

[57] See Appendix A, proposed amendment to Article 6.

to an "authorised establishment" on the other side, (2) specifically excludes from its scope goods which originate in Northern Ireland, so businesses there will not be able to compete on an equal basis with mainland businesses who use the scheme, (3) covers some but not all relevant EU laws,[58] and (4) requires compliances with formalities including provision of "per consignment" certificates and submission to monitoring and checking.

The proposed Regulation on Medicines is likewise highly restricted and conditional. As we explain in Appendix E, it allows the UK's Medicines and Healthcare products Regulatory Agency (MHRA) to authorise in Northern Ireland new medicines which fall within the special categories which are "centrally authorised"[59] within the EU. However, the MHRA will remain subject to EU law when authorising new medicines in Northern Ireland which fall outside these special categories, making it difficult or impossible to change the UK's new medicines approvals regime in future without putting at risk the availability in Northern Ireland of the same medicines that are available in Great Britain. EU law relating to other aspects of medicines regulation remains applicable in Northern Ireland, subject to specific exemptions from EU anti-counterfeiting measures and a special permission to allow movement of medicines into Northern Ireland via regulated pharmaceutical wholesalers.

The specific carve-outs are, however, accompanied by a number of restrictions and caveats.[60] Article 5 requires medicines within the carve-outs to bear a non-removable "UK only" label. Article 6 requires the UK MHRA to "continuously monitor the placing into the market" in Northern Ireland of these medicinal products. Article 8 requires the UK to provide "written guarantees" that the placing on the market of the medicinal products does not increase the risk to public health in the EU and that those medicinal products will not be moved to a Member State. Article 9 states that the EU Commission "shall continuously monitor the application by the United Kingdom of the specific rules", and, where there is evidence that the UK "does not take appropriate measures" to address serious or repeated infringements, it then lays down a procedure for the Commission to suspend all or parts of the "specific rules" – i.e., to suspend the above, limited, carve-outs from current EU law applicable to Northern Ireland, either temporarily or permanently.[61]

In addition to the abovementioned Regulations, the EU has also tweaked its existing Regulations in respect of *Ligustrum delavayanum* and *Ligustrum japonicum* plants to require that the UK certifies compliance with certain EU rules.[62]

These measures amount to an adjustment of certain highly specific areas of EU law applicable to Northern Ireland where these have given rise to immediate problems on the ground. No broader adjustment is envisaged.

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58 The EU laws affected are marked up with "RG" or "RG*" in green in our Appendix B, and amount to 62 out of the 293 single market laws made applicable to Northern Ireland by Annex 2 to the NI Protocol, together with 5 further EU laws (listed at the end of our Appendix B) which have come into force in Northern Ireland under the NI Protocol since the end of 2020.

59 I.e., authorised by the European Medicines Agency rather than authorised by Member States under the EU's Medicines Directive.

60 Articles 4(2) and 8, proposed EU Regulation on Medicines.

61 There is an "urgency procedure" for swift action: Article 11, proposed EU Regulation on Medicines.

62 C(2023)1500 final.

The fact that this is keyhole surgery rather than a disapplication of an area of EU law does not mean that the new retail goods and medicines Regulations are unimportant. It is clearly vital that the same new medicines should be available to people in Northern Ireland as in the rest of the UK, at the same time and without delays or shortages which literally could amount to matters of life and death. These specific rules seem clearly preferable to the current Heath Robinson patchwork of attempted mitigations of the malign impact of the NI Protocol on the supply of UK medicines to patients in Northern Ireland. However, the fact that the UK government in effect has to plead for limited exceptions from EU law in order to achieve this basic but vital goal graphically illustrates that the NI Protocol is profoundly flawed by placing a regulatory border between different parts of the United Kingdom, a flaw which the Windsor deal does not address.

9. Relaxations of EU law applicable in Northern Ireland for VAT and excise on goods

The NI Protocol currently provides that, so far as goods are concerned, EU VAT rules rather than UK domestic provisions are to be applicable in Northern Ireland, and the same for excise duties (such as levies on alcohol, tobacco and fuel).[63]

The Windsor deal relaxes this in certain specific ways, largely to address the few particular areas of actual recent or immediately anticipated divergences between the EU and UK VAT and excise systems on goods since 2021. The recitals prefacing the text note that these amendments should not lead to fiscal fraud risks or to any potential distortion of competition.[64]

In particular, the Windsor deal allows for VAT to apply in Northern Ireland at reduced rates below 5% in relation to goods installed in buildings, meaning that the zero UK VAT rate introduced for Great Britain in the 2022 Budget on the installation of energy saving materials such as heat pumps and solar panels can be extended to Northern Ireland. It also provides for the relaxation in Northern Ireland of certain other constraints on reduced VAT rates; that distance selling procedures for imported goods applicable to the EU since 2021 will not be required to apply to goods subject to final consumption in Northern Ireland on which UK VAT has been charged; and that a new system of EU VAT rules to deal with small businesses due to apply from 2025 will not be required to apply in Northern Ireland (although there will still be a constraint by reference to the EU VAT threshold of EUR85,000 to increasing the level of VAT registration threshold in Northern Ireland above the current £85,000).[65]

In relation to excise, under the Windsor deal EU requirements on the design of alcohol duty would no longer apply in Northern Ireland (although a floor on duty rates would remain applicable), which means that the revised alcohol duty system coming into effect in Great Britain from August 2023 could apply to the whole UK.[66]

Outside the above points dealing with specific points of actual or anticipated divergence since 2021, the Windsor deal provides for an "enhanced co-ordination mechanism" on VAT and excise on goods. This would involve the Joint Committee as a forum for discussion of the

63 Article 8 and Annex 3, NI Protocol.
64 Recital 8, Windsor draft decision.
65 Article 3(1), Windsor draft decision.
66 Article 3(2), Windsor draft decision.

effect on trade in goods in Northern Ireland of future divergences in VAT and excise rules between the UK and EU, with a view to adopting decisions and/or providing recommendations in order to address issues arising in relation to Northern Ireland and the NI Protocol while avoiding adverse impact on fiscal fraud risks and any potential distortion of competition in the EU.[67] The package of documents published together with the Windsor deal includes a draft joint declaration of the Joint Committee, stating that it intends to examine the possibility of providing for EU VAT rules governing the number and subject-matter of reduced VAT rates not to apply in the context of Northern Ireland to certain goods (other than goods installed in buildings in Northern Ireland; as discussed above, these would already be eligible for reduced rates of VAT under the Windsor deal itself), where the goods are by their nature and the conditions under which they are supplied subject to final consumption in Northern Ireland, and where making such a disapplication would not lead to fiscal fraud risks or potential distortion of competition. The draft declaration also states an intention to evaluate current arrangements for cross-border VAT refunds taking into account administrative burdens on taxpayers and tax authorities.[68]

These arrangements amount to limited and specific relaxations in EU law applicable to VAT and excise in Northern Ireland, but they fall well short of restoring to the UK the right of an independent country to decide on our tax structures and set our tax rates as we wish across our country. Changing tax structures or rates outside the boundary of the specific relaxations involve negotiation with the EU and their permission.

10. Democracy in Northern Ireland and the Stormont brake

The 'Stormont brake' is a proposed new procedure which is said to introduce an element of democratic consent for the people of Northern Ireland over the laws applicable to them, and to address the obvious point that their political representatives in the Assembly and Westminster have no say over the EU laws which are imposed upon them under the NI Protocol. The UK government claims that it allows Northern Ireland to block EU laws.[69]

Under the Protocol as it stands, if one of the many existing EU laws which the Protocol applies to Northern Ireland is amended or replaced by the EU, then that law in its amended or replaced from will automatically apply to Northern Ireland.[70] Where the EU law is a Regulation, it will apply in its amended or replaced form directly as part of the law in Northern Ireland and be enforceable in the courts, just like an Act of Parliament, without the need for any consent or action by the UK authorities or legislatures. Where the EU law is a Directive,

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67 Articles 17-21, Windsor draft decision.

68 Draft Joint Declaration of the Union and the United Kingdom in the Joint Committee Established by the Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community of XX 2023, on the VAT regime for goods not being at risk for the Union's internal market and on the VAT arrangements for cross-border refunds (https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1139440/Draft_joint_declaration_by_the_United_Kingdom_of_Great_Britain_and_Northern_Ireland_and_the_European_Union_in_the_Withdrawal_Agreement_Joint_Committee_on_the_VAT_regime_for_goods_not_being_at_risk_for_the_Union_s_internal_market.pdf).

69 HC Deb 27 February 2023 vol 728 col 574: "The Stormont brake does more than just give Northern Ireland a say over new EU laws; ***it means that it can block them***."

70 This is the effect of Article 13(3) of the NI Protocol, which states that "where this Protocol makes reference to a Union act, that reference shall be read as referring to that Union act as amended or replaced."

it will create a legal duty on the UK to "transpose" the required changes into national law within Northern Ireland, which will normally be achieved by a statutory instrument.[71]

When the EU passes a *new* law (i.e., a law which is not an amendment to an existing law nor a replacement for an existing law) which falls within the scope of the NI Protocol, then a different procedure applies.[72] The EU will table the new law at the Joint Committee and invite the UK to agree to it being incorporated into the NI Protocol. If the UK refuses, then the Joint Committee must "*examine all further possibilities to maintain the good functioning of this Protocol and take any decision necessary to this effect*." If, however, no agreement can be reached either to adopt the new EU law into the NI Protocol or to adopt substitute measures which maintain the functioning of the NI Protocol to the EU's satisfaction, the EU is then entitled after giving notice "*to take appropriate remedial measures*".

This procedure is modelled on Article 102 of the European Economic Area (EEA) Agreement. That gives the European Free Trade Association (EFTA) States who belong to the EEA (i.e., Norway, Iceland and Liechtenstein) a theoretical legal right to refuse to incorporate new or changed EU laws into the Annexes to the EEA Agreement. However, the EU then has a power to suspend the part of the Annex to the EEA Agreement which would be affected by the new EU legislation.[73]

Despite the existence of this clear legal right not to agree to take on board new or changed EU laws, there is only one significant occasion when this legal right was invoked. In 2011, Norway refused to agree to the incorporation of the Third Postal Services Directive, and the Article 102 procedure was invoked by the EU. In 2013, Norway caved in to EU pressure and agreed to the incorporation of the Directive.

Under the Windsor deal, the 'Stormont brake' is to be implemented by the insertion of a new paragraph 13(3a) into Article 13 of the Protocol (as part of the amendments to be made by the draft Joint Committee decision). The text of the new 13(3a) makes it clear that the procedure in Article 13(4) applies if it is invoked. The result is that, assuming that all the hurdles to its successful exercise were overcome, the EU would then be entitled to "*to take appropriate remedial measures*". The word "retaliatory" is not used, but "remedial measures" is wider than the limited suspension power in the EEA Agreement. If the brake is invoked, the EU cannot be relied upon not to use this power in a retaliatory or vindictive manner, for example by suspending or revoking some of the specific exceptions to the application of EU laws which we discuss elsewhere.

The difficulty which would be faced by Northern Ireland if it were to operate the Stormont brake is similar to that faced by Norway when it blocked adoption of the Post Office Directive. If you are embedded in a corpus of EU laws (or in Norway's case, EEA laws which mimic EU laws) you are then very vulnerable to adverse action which might be taken by the EU if you choose to exercise your theoretical legal right to refuse to adopt changes in this body of laws

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71 Section 8C of the European Union (Withdrawal) Act 2018 confers a power on ministers to make such regulations by statutory instrument. The power in section 8C mimics the "Henry VIII" power which previously existed when the UK was a Member State in section 2(2) of the European Communities Act 1972.

72 See Article 13(4) of the NI Protocol.

73 EEA Agreement, Article 102(5).

to which you are subject. For this reason, we regard the Stormont brake as likely to be of little use in practice, even if the considerable legal hurdles to its use were to be overcome. The legal and practical constraints on the use of the Stormont brake are discussed further in Appendix F.

The UK Government acknowledges that this brake will be rarely exercised.[74] Its assertion that a difficult to use blocking mechanism accompanied by what is effectively an EU retaliation power will "close the democratic deficit" cannot in our view be accepted. Elsewhere in the UK, the people are able to vote to repeal or change the body of EU retained law through their representatives in Parliament or in a devolved legislature where relevant. The people of Northern Ireland have no such power or right as regards EU law falling within the NI Protocol. A limited veto power on changes to that body of law is not a substitute for the normal right of a voter to have existing laws changed or removed. Since the people of Northern Ireland are left in a manifestly different position from the people elsewhere it the UK, it is clear that the Stormont brake would not remedy the subjugation caused by the NI Protocol of Article VI of the Articles of Union 1800, which require that "*in all treaties with foreign powers the subjects of Ireland shall have the same privileges as British subjects*."

11. De facto drag-along for the UK on EU Law

At present, most UK trading rules are still the same as when we were EU members. However, those rules will progressively diverge over time as a result of changes in UK rules (such as allowing gene edited crops), not least if the Retained EU Law Bill is properly implemented in order to achieve the advantages of Brexit. Even if UK rules were preserved in aspic, thereby ruling out any benefits from the freedom of action offered by Brexit, UK and EU rules will continue to diverge, unless the UK allows itself to be dragged along when the EU decides to change its rules. (Several hundred replacements or amendments to EU laws which apply to Northern Ireland under the NI Protocol have been notified by the EU via the Joint Committee since the NI Protocol was adopted).

We fear that, in practice, the Windsor arrangement will incentivise the UK and its future governments to copy future EU rules (and adjustments to existing rules) so as to avoid the imposition of new checks across the Irish Sea. The potential for goods to be labelled "UK only" and still be sent into Northern Ireland even if they do not conform with an EU law is a positive, but this will still be subject to agreement with and ultimately control by the EU in allowing such goods to be imported and sold inside the scope of one of the specific rules embedded in EU law. It does not resolve the problem that businesses in Northern Ireland will be denied the benefits of reformed post-Brexit UK law and will be faced in their home market with

[74] HC Deb 27 February 2023 vol 728 col 591: "The ability to block new law is a serious mechanism and it should not be used for trivial reasons. It should be used for those new laws that have a significant and lasting impact on the everyday lives of people in Northern Ireland. ***That is the right trigger, and it is one that we are in control of deciding***."
Rt Hon Chris Heaton Harris MP, "I am a former ERG chairman, and here's why I back this agreement", (*Conservative Home*, 28 February 2023): "…so we have put in place a mechanism that will allow for the Northern Ireland Assembly to ensure the sovereignty of Northern Ireland is maintained should a law look like it might threaten that….This closes the democratic deficit, giving Northern Ireland more than a say but the ability to act."

competition from goods supplied by mainland businesses which comply with UK rules, without themselves being able to benefit.

The reverse problem is likely to become increasingly important, where goods are sold under EU single market law but which do not comply with UK law. Because it is necessary to allow Northern Ireland businesses to sell EU-standards goods across the Irish Sea in order to avoid shutting them out from full participation in the UK's internal market, the UK as a whole loses its ability which it should have as a sovereign country to decide that certain goods shall not be sold on its market.

The Windsor deal arrangements are constructed to be dynamic. A proposed Joint Declaration envisages ongoing discussion in a Specialised Committee on future UK legislation on "relevant goods", allowing the UK and EU to assess the impact of this legislation on Northern Ireland, so as to anticipate and discuss any practical difficulties.[75] It is envisaged that the Specialised Committee may convene a Special Body on Goods, which can call on expert input, as well as representation from businesses and "civic society"; and that recommendations may be made to the Joint Committee. There is a commitment from the UK and EU to use these joint bodies to address implementation issues under the obligations of the Windsor deal.[76] The UK has also announced that it will set up a new Office of the Internal Market to monitor any impacts for Northern Ireland arising from relevant future regulatory changes.[77]

12. Continued application of EU State aid law with implications for whole of UK

Article 10 of the NI Protocol applies EU State aid law, as interpreted by the ECJ, to the whole of the UK insofar as aid granted by the UK is liable to affect trade governed by the NI Protocol. This was the widest reaching intrusion into the UK's sovereignty the NI Protocol created, generating extraordinary potential effects. For example, the UK could need to notify and await the EU Commission's approval before it grants aid to a car factory in Sunderland – on the basis that the resulting cars will be placed for sale in Northern Ireland and each such car sold represents a lost opportunity for EU car manufacturers.[78]

The EU Commission has so far avoided taking such cases. That has not stopped the EU Commission (we understand) from seeking information from the UK about aid schemes or

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75 See the draft Joint Declaration on dialogue and goods.

76 In typical EU legalese, there is then a statement in the proposed draft Joint Declaration on dialogue and goods that dialogue in the joint bodies under the Windsor Agreement is "without prejudice to the … decision-making and respective legal orders of the [EU] and the [UK]". However, this is merely a limiting factor to ensure the arrangements do not trample on the sovereignty of Parliament. It does not cut into the overall proposition that the intention is to agree that pretty much all dialogue, agreement and resolution should take place through these joint bodies.

77 See paragraph 52 of the UK Command Paper, which continues as follows: "[the UK] will commit that, in cases where Northern Ireland authorities (whether as an Executive or as individual departments) request that the OIM specifically investigates concerns around any future UK regulatory change, [the UK] will provide a full response to any OIM report on the concerns raised, taking into account the real-world impacts that the OIM identifies….[the UK] will ensure that appropriate authorities throughout the UK are clear as to how they should uphold their existing duties to pay special regard to the need to protect the UK internal market, as set out in section 46 of the UK Internal Market Act 2020. [The UK] will issue new guidance to underscore the need for ongoing vigilance, proper analysis of the impacts of their activities, and proactive steps to avoid new barriers to Great Britain-Northern Ireland trade and protect unfettered access to the whole UK market for Northern Ireland's firms."

78 Because exports from anywhere in the EU to Northern Ireland are trade under the NI Protocol.

individual aid grants to put it in a position to raise objections should the political winds favour doing so. The Commission has ten years from the grant of a given aid to challenge it.

The UK has also sought to avoid highlighting the consequences of Article 10 by refusing to notify any projects in Great Britain that may engage the NI Protocol – placing the risk of non-compliance on the companies participating in such schemes. If the EU Commission was retrospectively to review an aid grant that was not notified and finds it to be incompatible with EU State aid law, it could order the aid to be recovered from the recipients. This would be extremely damaging to the companies who have proceeded in good faith on the basis that the aid did not need to be pre-notified. The UK has also refused to notify any aid schemes in Northern Ireland – limiting aid there to existing EU exemptions and therefore undermining policies such as freeports or regionally differentiated tax that may help stimulate investment in Northern Ireland – an unsustainable position over the medium term.

Article 10 of the NI Protocol was agreed before the TCA, and before the Subsidy Control Act 2022 implementing the UK's obligations under the TCA came into force. The EU now has the protection of both those regimes, which it did not have when the NI Protocol was established. As such, the Windsor deal was a perfect opportunity to normalise the subsidy control arrangements and replace Article 10 with the same arrangements that apply to the rest of the UK under the TCA – and which the EU has accepted are sufficient to create a level playing field. There was wide consensus amongst subsidy control experts, lawyers and think tanks on both remain and leave side that it would be appropriate for the UK to seek this change and for the EU to agree to it.[79] This opportunity has been comprehensively missed. The Windsor deal makes no substantive change to the position that existed before, thereby accepting the reach of EU State aid law not just over Northern Ireland, but over the whole of the UK.

By accepting the continuation of Article 10 reach over subsidy in Great Britain, the Government has removed much of the benefit that the UK would otherwise have won from its faster, more flexible, more certain subsidy control regime under the Subsidy Control Act 2022. The EU has successfully neutralised a key Brexit benefit.

We address some of the practical and legal difficulties this will create in our Appendix G.

[79] See FT article "*UK proposal to rewrite section of Brexit deal wins lawyers' backing*" available at: https://www.ft.com/content/a1acf003-cc3f-41e7-800d-6d3aebed0732; and Tony Blair Institute proposals for Article 10 reform at: https://institute.global/policy/after-brexit-making-northern-ireland-protocol-work.

APPENDIX A:
PROPOSED AMENDEDNORTHERN IRELAND PROTOCOL

With Amendments to be made by the draft Joint Committee decision

Article 1

Objectives

1. This Protocol is without prejudice to the provisions of the 1998 Agreement in respect of the constitutional status of Northern Ireland and the principle of consent, which provides that any change in that status can only be made with the consent of a majority of its people.

2. This Protocol respects the essential State functions and territorial integrity of the United Kingdom.

3. This Protocol sets out arrangements necessary to address the unique circumstances on the island of Ireland, to maintain the necessary conditions for continued North-South cooperation, to avoid a hard border and to protect the 1998 Agreement in all its dimensions.

Article 2

Rights of individuals

1. The United Kingdom shall ensure that no diminution of rights, safeguards or equality of opportunity, as set out in that part of the 1998 Agreement entitled Rights, Safeguards and Equality of Opportunity results from its withdrawal from the Union, including in the area of protection against discrimination, as enshrined in the provisions of Union law listed in Annex 1 to this Protocol, and shall implement this paragraph through dedicated mechanisms.

2. The United Kingdom shall continue to facilitate the related work of the institutions and bodies set up pursuant to the 1998 Agreement, including the Northern Ireland Human Rights Commission, the Equality Commission for Northern Ireland and the Joint Committee of representatives of the Human Rights Commissions of Northern Ireland and Ireland, in upholding human rights and equality standards.

Article 3

Common Travel Area

1. The United Kingdom and Ireland may continue to make arrangements between themselves relating to the movement of persons between their territories (the "Common Travel Area"), while fully respecting the rights of natural persons conferred by Union law.

2. The United Kingdom shall ensure that the Common Travel Area and the rights and privileges associated therewith can continue to apply without affecting the obligations of Ireland under Union law, in particular with respect to free movement to, from and within Ireland for Union citizens and their family members, irrespective of their nationality.

Article 4

Customs territory of the United Kingdom

Northern Ireland is part of the customs territory of the United Kingdom.

Accordingly, nothing in this Protocol shall prevent the United Kingdom from including Northern Ireland in the territorial scope of any agreements it may conclude with third countries, provided that those agreements do not prejudice the application of this Protocol.

In particular, nothing in this Protocol shall prevent the United Kingdom from concluding agreements with a third country that grant goods produced in Northern Ireland preferential access to that country's market on the same terms as goods produced in other parts of the United Kingdom.

Nothing in this Protocol shall prevent the United Kingdom from including Northern Ireland in the territorial scope of its Schedules of Concessions annexed to the General Agreement on Tariffs and Trade 1994.

Article 5

Customs, movement of goods

1. No customs duties shall be payable for a good brought into Northern Ireland from another part of the United Kingdom by direct transport, notwithstanding paragraph 3, unless that good is at risk of subsequently being moved into the Union, whether by itself or forming part of another good following processing.

The customs duties in respect of a good being moved by direct transport to Northern Ireland other than from the Union or from another part of the United Kingdom shall be the duties applicable in the United Kingdom, notwithstanding paragraph 3, unless that good is at risk of subsequently being moved into the Union, whether by itself or forming part of another good following processing.

No duties shall be payable by, as relief shall be granted to, residents of the United Kingdom for personal property, as defined in point (c) of Article 2(1) of Council Regulation (EC) No 1186/2009 (174), brought into Northern Ireland from another part of the United Kingdom.

2. For the purposes of the first and second subparagraphs of paragraph 1, a good brought into Northern Ireland from outside the Union shall be considered to be at risk of subsequently being moved into the Union unless it is established that that good:

(a) will not be subject to commercial processing in Northern Ireland; and

(b) fulfils the criteria established by the Joint Committee in accordance with the fourth subparagraph of this paragraph.

For the purposes of this paragraph, "processing" means any alteration of goods, any transformation of goods in any way, or any subjecting of goods to operations other than for

the purpose of preserving them in good condition or for adding or affixing marks, labels, seals or any other documentation to ensure compliance with any specific requirements.

Before the end of the transition period, the Joint Committee shall by decision establish the conditions under which processing is to be considered not to fall within point (a) of the first subparagraph, taking into account in particular the nature, scale and result of the processing.

Before the end of the transition period, the Joint Committee shall by decision establish the criteria for considering that a good brought into Northern Ireland from outside the Union is not at risk of subsequently being moved into the Union. The Joint Committee shall take into consideration, inter alia:

(a) the final destination and use of the good;

(b) the nature and value of the good;

(c) the nature of the movement; and

(d) the incentive for undeclared onward-movement into the Union, in particular incentives resulting from the duties payable pursuant to paragraph 1.

The Joint Committee may amend at any time its decisions adopted pursuant to this paragraph.

In taking any decision pursuant to this paragraph, the Joint Committee shall have regard to the specific circumstances in Northern Ireland.

3. Legislation as defined in point (2) of Article 5 of Regulation (EU) No 952/2013 shall apply to and in the United Kingdom in respect of Northern Ireland (not including the territorial waters of the United Kingdom). However, the Joint Committee shall establish the conditions, including in quantitative terms, under which certain fishery and aquaculture products, as set out in Annex I to Regulation (EU) No 1379/2013 of the European Parliament and of the Council (175), brought into the customs territory of the Union defined in Article 4 of Regulation (EU) No 952/2013 by vessels flying the flag of the United Kingdom and having their port of registration in Northern Ireland are exempted from duties.

4. The provisions of Union law listed in Annex 2 to this Protocol shall also apply, under the conditions set out in that Annex, to and in the United Kingdom in respect of Northern Ireland.

5. Articles 30 and 110 TFEU shall apply to and in the United Kingdom in respect of Northern Ireland. Quantitative restrictions on exports and imports shall be prohibited between the Union and Northern Ireland.

6. Customs duties levied by the United Kingdom in accordance with paragraph 3 are not remitted to the Union.

Subject to Article 10, the United Kingdom may in particular:

(a) reimburse duties levied pursuant to the provisions of Union law made applicable by paragraph 3 in respect of goods brought into Northern Ireland;

(b) provide for circumstances in which a customs debt which has arisen is to be waived in respect of goods brought into Northern Ireland;

(c) provide for circumstances in which customs duties are to be reimbursed in respect of goods that can be shown not to have entered the Union; and

(d) compensate undertakings to offset the impact of the application of paragraph 3.

In taking decisions under Article 10, the European Commission shall take the circumstances in Northern Ireland into account as appropriate.

7. No duties shall be payable on consignments of negligible value, on consignments sent by one individual to another or on goods contained in travellers' personal baggage, under the conditions set out in the legislation referred to in paragraph 3.

Article 6

Protection of the UK internal market

1. Nothing in this Protocol shall prevent the United Kingdom from ensuring unfettered market access for goods moving from Northern Ireland to other parts of the United Kingdom's internal market. Provisions of Union law made applicable by this Protocol which prohibit or restrict the exportation of goods shall only be applied to trade between Northern Ireland and other parts of the United Kingdom to the extent strictly required by any international obligations of the Union. The United Kingdom shall ensure full protection under international requirements and commitments that are relevant to the prohibitions and restrictions on the exportation of goods from the Union to third countries as set out in Union law.

2. This includes specific arrangements for the movement of goods within the United Kingdom's internal market, consistent with Northern Ireland's position as part of the customs territory of the United Kingdom in accordance with this Protocol, where the goods are destined for final consumption or final use in Northern Ireland and where the necessary safeguards are in place to protect the integrity of the Union's internal market and customs union.

Having regard to Northern Ireland's integral place in the United Kingdom's internal market, the Union and the United Kingdom shall use their best endeavours to facilitate the trade between Northern Ireland and other parts of the United Kingdom, in accordance with applicable legislation and taking into account their respective regulatory regimes as well as the implementation thereof. The Joint Committee shall keep the application of this paragraph under constant review and shall adopt appropriate recommendations with a view to avoiding controls at the ports and airports of Northern Ireland to the extent possible.

3. Nothing in this Protocol shall prevent a product originating from Northern Ireland from being presented as originating from the United Kingdom when placed on the market in Great Britain.

4. Nothing in this Protocol shall affect the law of the United Kingdom regulating the placing on the market in other parts of the United Kingdom of goods from Northern Ireland that

comply with or benefit from technical regulations, assessments, registrations, certificates, approvals or authorisations governed by provisions of Union law referred to in Annex 2 to this Protocol.

Article 7

Technical regulations, assessments, registrations, certificates, approvals and authorisations

1. Without prejudice to the provisions of Union law referred to in Annex 2 to this Protocol, the lawfulness of placing goods on the market in Northern Ireland shall be governed by the law of the United Kingdom as well as, as regards goods imported from the Union, by Articles 34 and 36 TFEU.

2. Where provisions of Union law made applicable by this Protocol provide for the indication of a Member State, including in abbreviated form, in markings, labelling, tags, or by any other means, the United Kingdom in respect of Northern Ireland shall be indicated as "UK(NI)" or "United Kingdom (Northern Ireland)". Where provisions of Union law made applicable by this Protocol provide for the indication in the form of a numeric code, the United Kingdom in respect of Northern Ireland shall be indicated with a distinguishable numeric code.

3. By way of derogation from Article 13(1) of this Protocol and from Article 7 of the Withdrawal Agreement, in respect of the recognition in one Member State of technical regulations, assessments, registrations, certificates, approvals and authorisations issued or carried out by the authorities of another Member State, or by a body established in another Member State, references to Member States in provisions of Union law made applicable by this Protocol shall not be read as including the United Kingdom in respect of Northern Ireland as regards technical regulations, assessments, registrations, certificates, approvals and authorisations issued or carried out by the authorities of the United Kingdom or by bodies established in the United Kingdom.

The first subparagraph shall not apply to registrations, certifications, approvals and authorisations of sites, installations or premises in Northern Ireland issued or carried out by competent authorities of the United Kingdom, where the registration, certification, approval or authorisation may require an inspection of the sites, installations or premises.

The first subparagraph shall not apply to veterinary certificates or official labels for plant reproductive material that are required by provisions of Union law made applicable by this Protocol.

The first subparagraph is without prejudice to the validity, in Northern Ireland, of assessments, registrations, certificates, approvals and authorisations issued or carried out, on the basis of provisions of Union law made applicable by this Protocol, by the competent authorities of the United Kingdom or by bodies established in the United Kingdom. Any conformity marking, logo or similar required by the provisions of Union law made applicable by this Protocol which is affixed by economic operators based on the assessment, registration, certificate, approval or authorisation issued by competent authorities of the United Kingdom or by bodies established in the United Kingdom shall be accompanied by the indication "UK(NI)".

The United Kingdom in respect of Northern Ireland may not initiate objection, safeguard or arbitration procedures provided for in provisions of Union law made applicable by this Protocol to the extent that those procedures concern the technical regulations, standards, assessments, registrations, certificates, approvals and authorisations issued or carried out by competent authorities of the Member States or by bodies established in Member States.

The first subparagraph does not prevent the test and release by a qualified person in Northern Ireland of a batch of a medicinal product imported into or manufactured in Northern Ireland.

Article 8

VAT and excise

The provisions of Union law listed in Annex 3 to this Protocol concerning goods shall apply to and in the United Kingdom in respect of Northern Ireland.

In respect of Northern Ireland, the authorities of the United Kingdom shall be responsible for the application and the implementation of the provisions listed in Annex 3 to this Protocol, including the collection of VAT and excise duties. Under the conditions set out in those provisions, revenues resulting from transactions taxable in Northern Ireland shall not be remitted to the Union.

By way of derogation from the first paragraph, the United Kingdom may apply to supplies of goods taxable in Northern Ireland VAT exemptions and reduced rates that are applicable in Ireland in accordance with provisions listed in Annex 3 to this Protocol.

The Joint Committee shall regularly discuss the implementation of this Article, including as concerns the reductions and exemptions provided for in the provisions referred to in the first paragraph, and shall, where appropriate, adopt measures for its proper application, as necessary.

The Joint Committee may review the application of this Article, taking into account Northern Ireland's integral place in the United Kingdom's internal market, and may adopt appropriate measures as necessary.

Article 9

Single electricity market

The provisions of Union law governing wholesale electricity markets listed in Annex 4 to this Protocol shall apply, under the conditions set out in that Annex, to and in the United Kingdom in respect of Northern Ireland.

Article 10

State aid

1. The provisions of Union law listed in Annex 5 to this Protocol shall apply to the United Kingdom, including with regard to measures supporting the production of and trade in

agricultural products in Northern Ireland, in respect of measures which affect that trade between Northern Ireland and the Union which is subject to this Protocol.

2. Notwithstanding paragraph 1, the provisions of Union law referred to in that paragraph shall not apply with respect to measures taken by the United Kingdom authorities to support the production of and trade in agricultural products in Northern Ireland up to a determined maximum overall annual level of support, and provided that a determined minimum percentage of that exempted support complies with the provisions of Annex 2 to the WTO Agreement on Agriculture. The determination of the maximum exempted overall annual level of support and the minimum percentage shall be governed by the procedures set out in Annex 6.

3. Where the European Commission examines information regarding a measure by the United Kingdom authorities that may constitute unlawful aid that is subject to paragraph 1, it shall ensure that the United Kingdom is kept fully and regularly informed of the progress and outcome of the examination of that measure.

Article 11

Other areas of North-South cooperation

1. Consistent with the arrangements set out in Articles 5 to 10, and in full respect of Union law, this Protocol shall be implemented and applied so as to maintain the necessary conditions for continued North-South cooperation, including in the areas of environment, health, agriculture, transport, education and tourism, as well as in the areas of energy, telecommunications, broadcasting, inland fisheries, justice and security, higher education and sport.

In full respect of Union law, the United Kingdom and Ireland may continue to make new arrangements that build on the provisions of the 1998 Agreement in other areas of North-South cooperation on the island of Ireland.

2. The Joint Committee shall keep under constant review the extent to which the implementation and application of this Protocol maintains the necessary conditions for North-South cooperation. The Joint Committee may make appropriate recommendations to the Union and the United Kingdom in this respect, including on a recommendation from the Specialised Committee.

Article 12

Implementation, application, supervision and enforcement

1. Without prejudice to paragraph 4, the authorities of the United Kingdom shall be responsible for implementing and applying the provisions of Union law made applicable by this Protocol to and in the United Kingdom in respect of Northern Ireland.

2. Without prejudice to paragraph 4 of this Article, Union representatives shall have the right to be present during any activities of the authorities of the United Kingdom related to the implementation and application of provisions of Union law made applicable by this Protocol,

as well as activities related to the implementation and application of Article 5, and the United Kingdom shall provide, upon request, all relevant information relating to such activities. The United Kingdom shall facilitate such presence of Union representatives and shall provide them with the information requested. Where the Union representative requests the authorities of the United Kingdom to carry out control measures in individual cases for duly stated reasons, the authorities of the United Kingdom shall carry out those control measures.

The Union and the United Kingdom shall exchange information on the application of Article 5 (1) and (2) on a monthly basis.

3. The practical working arrangements relating to the exercise of the rights of Union representatives referred to in paragraph 2 shall be determined by the Joint Committee, upon proposal from the Specialised Committee.

4. As regards the second subparagraph of paragraph 2 of this Article, Article 5 and Articles 7 to 10, the institutions, bodies, offices, and agencies of the Union shall in relation to the United Kingdom and natural and legal persons residing or established in the territory of the United Kingdom have the powers conferred upon them by Union law. In particular, the Court of Justice of the European Union shall have the jurisdiction provided for in the Treaties in this respect. The second and third paragraphs of Article 267 TFEU shall apply to and in the United Kingdom in this respect.

5. Acts of the institutions, bodies, offices, and agencies of the Union adopted in accordance with paragraph 4 shall produce in respect of and in the United Kingdom the same legal effects as those which they produce within the Union and its Member States.

6. When representing or assisting a party in relation to administrative procedures arising from the exercise of the powers of the institutions, bodies, offices, and agencies of the Union referred to in paragraph 4, lawyers authorised to practise before the courts or tribunals of the United Kingdom shall in every respect be treated as lawyers authorised to practise before courts or tribunals of Member States who represent or assist a party in relation to such administrative procedures.

7. In cases brought before the Court of Justice of the European Union pursuant to paragraph 4:

(a) the United Kingdom may participate in the proceedings before the Court of Justice of the European Union in the same way as a Member State;

(b) lawyers authorised to practise before the courts or tribunals of the United Kingdom may represent or assist a party before the Court of Justice of the European Union in such proceedings and shall in every respect be treated as lawyers authorised to practise before courts or tribunals of Member States representing or assisting a party before the Court of Justice of the European Union.

Article 13

Common provisions

1. For the purposes of this Protocol, any reference to the United Kingdom in the applicable provisions of the Withdrawal Agreement shall be read as referring to the United Kingdom or to the United Kingdom in respect of Northern Ireland, as the case may be.

Notwithstanding any other provisions of this Protocol, any reference to the territory defined in Article 4 of Regulation (EU) No 952/2013 in the applicable provisions of the Withdrawal Agreement and of this Protocol, as well as in the provisions of Union law made applicable to and in the United Kingdom in respect of Northern Ireland by this Protocol, shall be read as including the part of the territory of the United Kingdom to which Regulation (EU) No 952/2013 applies by virtue of Article 5(3) of this Protocol.

Titles I and III of Part Three and Part Six of the Withdrawal Agreement shall apply without prejudice to the provisions of this Protocol.

2. Notwithstanding Article 4(4) and (5) of the Withdrawal Agreement, the provisions of this Protocol referring to Union law or to concepts or provisions thereof shall in their implementation and application be interpreted in conformity with the relevant case law of the Court of Justice of the European Union.

3. Notwithstanding Article 6(1) of the Withdrawal Agreement, and unless otherwise provided, where this Protocol makes reference to a Union act, that reference shall be read as referring to that Union act as amended or replaced.

3a. By derogation from paragraph 3, and subject to the fourth subparagraph of this paragraph, a Union act covered by this paragraph that has been amended or replaced by a specific Union act (hereinafter: "specific Union act") shall not apply as amended or replaced by the specific Union act as from two weeks after the day on which the United Kingdom has notified the Union in writing through the Joint Committee that the procedure set out in the unilateral declaration on involvement of the institutions of the 1998 Agreement made by the United Kingdom, as annexed as Annex I to Joint Committee Decision [XX]/20232 , has been followed. Such notification shall be made within two months of the publication of the specific Union act and shall include a detailed explanation of the United Kingdom's assessment as regards the conditions referred to in the third subparagraph of this paragraph, as well as of the procedural steps taken within the United Kingdom prior to the notification.

If the Union considers that the United Kingdom's explanation is insufficient as regards the circumstances referred to in the third subparagraph of this paragraph, it may request further explanation within two weeks as of the date of notification and the United Kingdom shall provide that further explanation within two weeks as of the date of the request. In that case the Union act covered by this paragraph shall not apply as amended or replaced by the specific Union act as from the third day after the day on which the United Kingdom has provided that further explanation.

The United Kingdom shall make the notification referred to in the first subparagraph of this paragraph only where:

(a) the content or scope of the Union act as amended or replaced by the specific Union act significantly differs, in whole or in part, from the content or scope of the Union act as applicable before being amended or replaced; and

(b) the application in Northern Ireland of the Union act as amended or replaced by the specific Union act, or of the relevant part thereof as the case may be, would have a significant impact specific to everyday life of communities in Northern Ireland in a way that is liable to persist.

Where the conditions set out in points (a) and (b) are met in relation only to a part of the Union act as amended or replaced by the specific Union act, the notification shall be made only in respect of that part, provided that the latter is severable from the other parts of the Union act as amended or replaced by the specific Union act. If the latter is not severable, the notification shall be made in respect of the smallest severable element of the Union act as amended or replaced by the specific Union act containing the part in question.

Where the notification is made in respect of a part of the Union act as amended or replaced by the specific Union act, in accordance with the second sentence of the previous subparagraph, the Union act shall not apply as amended or replaced by the specific Union act only in respect of that part.

Where the notification referred to in the first subparagraph of this paragraph has been made, paragraph 4 shall apply with regard to the Union act as amended or replaced by the specific Union act; in case the Union act as amended or replaced by the specific Union act is added to this Protocol, this shall be in lieu of the Union act before being amended or replaced.

This paragraph covers Union acts referred to in the first indent of heading 1 and headings 7 to 47 of Annex 2 to this Protocol, and the third subparagraph of Article 5(1) thereof.

4. Where the Union adopts a new act that falls within the scope of this Protocol, but which neither amends nor replaces a Union act listed in the Annexes to this Protocol, the Union shall inform the United Kingdom of the adoption of that act in the Joint Committee. Upon the request of the Union or the United Kingdom, the Joint Committee shall hold an exchange of views on the implications of the newly adopted act for the proper functioning of this Protocol, within 6 weeks after the request.

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

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

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

If the Joint Committee has not taken a decision referred to in the second subparagraph within a reasonable time, the Union shall be entitled, after giving notice to the United Kingdom, to take appropriate remedial measures. Such measures shall take effect at the earliest 6 months after the Union informed the United Kingdom in accordance with the first subparagraph, but in no event shall such measures take effect before the date on which the newly adopted act is implemented in the Union.

5. By way of derogation from paragraph 1 of this Article and from Article 7 of the Withdrawal Agreement, unless the Union considers that full or partial access by the United Kingdom or

the United Kingdom in respect of Northern Ireland, as the case may be, is strictly necessary to enable the United Kingdom to comply with its obligations under this Protocol, including where such access is necessary because access to the relevant information cannot be facilitated by the working group referred to in Article 15 of this Protocol or by any other practical means, in respect of access to any network, information system or database established on the basis of Union law, references to Member States and competent authorities of Member States in provisions of Union law made applicable by this Protocol shall not be read as including the United Kingdom or the United Kingdom in respect of Northern Ireland, as the case may be.

6. Authorities of the United Kingdom shall not act as leading authority for risk assessments, examinations, approvals and authorisation procedures provided for in Union law made applicable by this Protocol.

7. Articles 346 and 347 TFEU shall apply to this Protocol as regards measures taken by a Member State or by the United Kingdom in respect of Northern Ireland.

8. Any subsequent agreement between the Union and the United Kingdom shall indicate the parts of this Protocol which it supersedes. Once a subsequent agreement between the Union and the United Kingdom becomes applicable after the entry into force of the Withdrawal Agreement, this Protocol shall then, from the date of application of such subsequent agreement and in accordance with the provisions of that agreement setting out the effect of that agreement on this Protocol, not apply or shall cease to apply, as the case may be, in whole or in part.

Article 14

Specialised Committee

The Committee on issues related to the implementation of the Protocol on Ireland/Northern Ireland established by Article 165 of the Withdrawal Agreement ("Specialised Committee") shall:

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

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

(c) consider any matter of relevance to Article 2 of this Protocol brought to its attention by the Northern Ireland Human Rights Commission, the Equality Commission for Northern Ireland, and the Joint Committee of representatives of the Human Rights Commissions of Northern Ireland and Ireland;

(d) discuss any point raised by the Union or the United Kingdom that is of relevance to this Protocol and gives rise to a difficulty; and

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

Article 15

Joint consultative working group

1. A joint consultative working group on the implementation of this Protocol ("working group") is hereby established. It shall serve as a forum for the exchange of information and mutual consultation.

2. The working group shall be composed of representatives of the Union and the United Kingdom and shall carry out its functions under the supervision of the Specialised Committee, to which it shall report. The working group shall have no power to take binding decisions other than the power to adopt its own rules of procedure referred to in paragraph 6.

3. Within the working group:

(a) the Union and the United Kingdom shall, in a timely manner, exchange information about planned, ongoing and final relevant implementation measures in relation to the Union acts listed in the Annexes to this Protocol;

(b) the Union shall inform the United Kingdom about planned Union acts within the scope of this Protocol, including Union acts that amend or replace the Union acts listed in the Annexes to this Protocol;

(c) the Union shall provide to the United Kingdom all information the Union considers relevant to allow the United Kingdom to fully comply with its obligations under the Protocol; and

(d) the United Kingdom shall provide to the Union all information that Member States are required to provide to one another or to the institutions, bodies, offices or agencies of the Union pursuant to the Union acts listed in the Annexes to this Protocol.

4. The working group shall be co-chaired by the Union and the United Kingdom.

5. The working group shall meet at least once a month, unless otherwise decided by the Union and the United Kingdom by mutual consent. Where necessary, the Union and the United Kingdom may exchange information referred to in points (c) and (d) of paragraph 3 between meetings.

6. The working group shall adopt its own rules of procedure by mutual consent.

7. The Union shall ensure that all views expressed by the United Kingdom in the working group and all information provided by the United Kingdom in the working group, including technical and scientific data, are communicated to the relevant institutions, bodies, offices and agencies of the Union without undue delay.

Article 16

Safeguards

1. If the application of this Protocol leads to serious economic, societal or environmental difficulties that are liable to persist, or to diversion of trade, the Union or the United Kingdom

may unilaterally take appropriate safeguard measures. Such safeguard measures shall be restricted with regard to their scope and duration to what is strictly necessary in order to remedy the situation. Priority shall be given to such measures as will least disturb the functioning of this Protocol.

2. If a safeguard measure taken by the Union or the United Kingdom, as the case may be, in accordance with paragraph 1 creates an imbalance between the rights and obligations under this Protocol, the Union or the United Kingdom, as the case may be, may take such proportionate rebalancing measures as are strictly necessary to remedy the imbalance. Priority shall be given to such measures as will least disturb the functioning of this Protocol.

3. Safeguard and rebalancing measures taken in accordance with paragraphs 1 and 2 shall be governed by the procedures set out in Annex 7 to this Protocol.

Article 17

Protection of financial interests

The Union and the United Kingdom shall counter fraud and any other illegal activities affecting the financial interests of the Union or the financial interests of the United Kingdom.

Article 18

Democratic consent in Northern Ireland

1. Within 2 months before the end of both the initial period and any subsequent period, the United Kingdom shall provide the opportunity for democratic consent in Northern Ireland to the continued application of Articles 5 to 10.

2. For the purposes of paragraph 1, the United Kingdom shall seek democratic consent in Northern Ireland in a manner consistent with the 1998 Agreement. A decision expressing democratic consent shall be reached strictly in accordance with the unilateral declaration concerning the operation of the 'Democratic consent in Northern Ireland' provision of the Protocol on Ireland/Northern Ireland made by the United Kingdom on 17 October 2019, including with respect to the roles of the Northern Ireland Executive and Assembly.

3. The United Kingdom shall notify the Union before the end of the relevant period referred to in paragraph 5 of the outcome of the process referred to in paragraph 1.

4. Where the process referred to in paragraph 1 has been undertaken and a decision has been reached in accordance with paragraph 2, and the United Kingdom notifies the Union that the outcome of the process referred to in paragraph 1 is not a decision that the Articles of this Protocol referred to in that paragraph should continue to apply in Northern Ireland, then those Articles and other provisions of this Protocol, to the extent that those provisions depend on those Articles for their application, shall cease to apply 2 years after the end of the relevant period referred to in paragraph 5. In such a case the Joint Committee shall address recommendations to the Union and to the United Kingdom on the necessary measures, taking into account the obligations of the parties to the 1998 Agreement. Before doing so, the Joint Committee may seek an opinion from institutions created by the 1998 Agreement.

5. For the purposes of this Article, the initial period is the period ending 4 years after the end of the transition period. Where the decision reached in a given period was on the basis of a majority of Members of the Northern Ireland Assembly, present and voting, the subsequent period is the 4 year period following that period, for as long as Articles 5 to 10 continue to apply. Where the decision reached in a given period had cross-community support, the subsequent period is the 8-year period following that period, for as long as Articles 5 to 10 continue to apply.

6. For the purposes of paragraph 5, cross-community support means:

(a) a majority of those Members of the Legislative Assembly present and voting, including a majority of the unionist and nationalist designations present and voting; or

(b) a weighted majority (60 %) of Members of the Legislative Assembly present and voting, including at least 40 % of each of the nationalist and unionist designations present and voting.

Article 19

Annexes

Annexes 1 to 7 shall form an integral part of this Protocol.

ANNEX 1

PROVISIONS OF UNION LAW REFERRED TO IN ARTICLE 2(1)

Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services (176)

Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (177)

Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (178)

Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (179)

Directive 2010/41/EU of the European Parliament and of the Council of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC (180)

Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security (181)

ANNEX 2

PROVISIONS OF UNION LAW REFERRED TO IN ARTICLE 5(4)

1. General customs aspects (182)

Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (183)

Council Regulation (EC) No 515/97 of 13 March 1997 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters (184)

Council Directive 2010/24/EU of 16 March 2010 concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures (185)

2. Protection of the Union's financial interests

For the purpose of the application of the acts listed in this section, the proper collection of customs duties by the United Kingdom in respect of Northern Ireland shall be considered as part of the protection of the financial interests of the Union.

Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 (186)

Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests (187)

3. Trade statistics

Regulation (EC) No 638/2004 of the European Parliament and of the Council of 31 March 2004 on Community statistics relating to the trading of goods between Member States and repealing Council Regulation (EEC) No 3330/91 (188)

Regulation (EC) No 471/2009 of the European Parliament and of the Council of 6 May 2009 on Community statistics relating to external trade with non-member countries and repealing Council Regulation (EC) No 1172/95 (189)

4. General trade related aspects

Regulation (EU) No 978/2012 of the European Parliament and of the Council of 25 October 2012 applying a scheme of generalised tariff preferences and repealing Council Regulation (EC) No 732/2008 (190)

Without prejudice to the fact that the tariff preferences for eligible countries pursuant to the Union's General Scheme of Preferences shall be applicable in the United Kingdom in respect of Northern Ireland:

the references to 'Member State' in Article 9(1)(c)(ii) and Chapter VI [Safeguards and surveillance provisions] of Regulation (EU) No 978/2012 shall not be read as including the United Kingdom in respect of Northern Ireland;

the references to 'Union market' in Article 2(k) and Chapter VI [Safeguards and surveillance provisions] of Regulation (EU) No 978/2012 shall not be read as including the market of United Kingdom in respect of Northern Ireland; and

the references to 'Union producers' and to 'Union industry' in Regulation (EU) No 978/2012 shall not be read as including the producers or industry of the United Kingdom in respect of Northern Ireland.

Regulation (EU) 2015/479 of the European Parliament and of the Council of 11 March 2015 on common rules for exports (191)

Regulation (EU) 2015/936 of the European Parliament and of the Council of 9 June 2015 on common rules for imports of textile products from certain third countries not covered by bilateral agreements, protocols or other arrangements, or by other specific Union import rules (192)

Regulation (EU) 2017/821 of the European Parliament and of the Council of 17 May 2017 laying down supply chain due diligence obligations for Union importers of tin, tantalum and tungsten, their ores, and gold originating from conflict-affected and high-risk areas (193)

Council Regulation (EC) No 1215/2009 of 30 November 2009 introducing exceptional trade measures for countries and territories participating in or linked to the European Union's Stabilisation and Association process (Western Balkans) (194)

Regulation (EU) 2017/1566 of the European Parliament and of the Council of 13 September 2017 on the introduction of temporary autonomous trade measures for Ukraine supplementing the trade concessions available under the Association Agreement (195)

Obligations stemming from the international agreements concluded by the Union, or by Member States acting on its behalf, or by the Union and its Member States acting jointly, insofar as they relate to trade in goods between the Union and third countries

5. Trade defence instruments

Without prejudice to the fact that the Union's trade defence measures shall be applicable in the United Kingdom in respect of Northern Ireland, the references to 'Member States' or 'Union' in Regulation (EU) 2016/1036, Regulation (EU) 2016/1037, Regulation (EU) 2015/478 and Regulation (EU) 2015/755 shall not be read as including the United Kingdom in respect of Northern Ireland. In addition, importers that paid Union anti-dumping or countervailing duties on the importation of goods that were customs cleared in Northern Ireland may only ask for a refund of such duties pursuant to Article 11(8) of Regulation (EU) 2016/1036 or Article 21 of Regulation (EU) 2016/1037, respectively.

Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union (196)

Regulation (EU) 2016/1037 of the European Parliament and of the Council of 8 June 2016 on protection against subsidised imports from countries not members of the European Union (197)

Regulation (EU) 2015/478 of the European Parliament and of the Council of 11 March 2015 on common rules for imports (198)

Regulation (EU) 2015/755 of the European Parliament and of the Council of 29 April 2015 on common rules for imports from certain third countries (199)

Regulation (EU) 2015/476 of the European Parliament and of the Council of 11 March 2015 on the measures that the Union may take following a report adopted by the WTO Dispute Settlement Body concerning anti-dumping and anti-subsidy matters (200)

Regulation (EU) 2015/477 of the European Parliament and of the Council of 11 March 2015 on measures that the Union may take in relation to the combined effect of anti-dumping or anti-subsidy measures with safeguard measures (201)

6. Regulations on bilateral safeguards

Without prejudice to the fact that the Union's bilateral safeguard measures shall be applicable in the United Kingdom in respect of Northern Ireland, the references to 'Member States' or 'Union' in the regulations listed below shall not be read as including the United Kingdom in respect of Northern Ireland.

Regulation (EU) No 654/2014 of the European Parliament and of the Council of 15 May 2014 concerning the exercise of the Union's rights for the application and enforcement of international trade rules and amending Council Regulation (EC) No 3286/94 laying down Community procedures in the field of the common commercial policy in order to ensure the exercise of the Community's rights under international trade rules, in particular those established under the auspices of the World Trade Organization (202)

Regulation (EU) 2015/1145 of the European Parliament and of the Council of 8 July 2015 on the safeguard measures provided for in the Agreement between the European Economic Community and the Swiss Confederation (203)

Regulation (EU) 2015/475 of the European Parliament and of the Council of 11 March 2015 on the safeguard measures provided for in the Agreement between the European Economic Community and the Republic of Iceland (204)

Regulation (EU) 2015/938 of the European Parliament and of the Council of 9 June 2015 on the safeguard measures provided for in the Agreement between the European Economic Community and the Kingdom of Norway (205)

Regulation (EU) No 332/2014 of the European Parliament and of the Council of 11 March 2014 on certain procedures for applying the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Serbia, of the other part (206)

Regulation (EU) 2015/752 of the European Parliament and of the Council of 29 April 2015 on certain procedures for applying the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Montenegro, of the other part (207)

Regulation (EU) No 19/2013 of the European Parliament and of the Council of 15 January 2013 implementing the bilateral safeguard clause and the stabilisation mechanism for bananas of the Trade Agreement between the European Union and its Member States, of the one part, and Colombia and Peru, of the other part (208)

Regulation (EU) No 20/2013 of the European Parliament and of the Council of 15 January 2013 implementing the bilateral safeguard clause and the stabilisation mechanism for bananas of the Agreement establishing an Association between the European Union and its Member States, on the one hand, and Central America on the other (209)

Regulation (EU) 2016/400 of the European Parliament and of the Council of 9 March 2016 implementing the safeguard clause and the anti-circumvention mechanism provided for in the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Moldova, of the other part (210)

Regulation (EU) 2016/401 of the European Parliament and of the Council of 9 March 2016 implementing the anti-circumvention mechanism provided for in the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part (211)

Regulation (EU) 2015/941 of the European Parliament and of the Council of 9 June 2015 on certain procedures for applying the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the former Yugoslav Republic of Macedonia, of the other part (212)

Regulation (EU) 2015/940 of the European Parliament and of the Council of 9 June 2015 on certain procedures for applying the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and Bosnia and Herzegovina, of the other part, and for applying the Interim Agreement on trade and trade-related matters between the European Community, of the one part, and Bosnia and Herzegovina, of the other part (213)

Regulation (EU) 2015/939 of the European Parliament and of the Council of 9 June 2015 on certain procedures for applying the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Albania, of the other part (214)

Regulation (EU) No 511/2011 of the European Parliament and of the Council of 11 May 2011 implementing the bilateral safeguard clause of the Free Trade Agreement between the European Union and its Member States and the Republic of Korea (215)

Regulation (EU) 2017/355 of the European Parliament and of the Council of 15 February 2017 on certain procedures for applying the Stabilisation and Association Agreement between the

European Union and the European Atomic Energy Community, of the one part, and Kosovo (*1) of the other part (216)

Regulation (EU) 2016/1076 of the European Parliament and of the Council of 8 June 2016 applying the arrangements for products originating in certain states which are part of the African, Caribbean and Pacific (ACP) Group of States provided for in agreements establishing, or leading to the establishment of, economic partnership agreements (217)

Regulation (EU) 2019/287 of the European Parliament and of the Council of 13 February 2019 implementing bilateral safeguard clauses and other mechanisms allowing for the temporary withdrawal of preferences in certain trade agreements concluded between the European Union and third countries (218);

7. Others

Regulation (EC) No 816/2006 of the European Parliament and of the Council of 17 May 2006 on compulsory licensing of patents relating to the manufacture of pharmaceutical products for export to countries with public health problems (219)

8. Goods – general provisions

Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (220), with the exception of provisions relating to rules on information society services

Regulation (EU) No 1025/2012 of the European Parliament and of the Council of 25 October 2012 on European standardisation, amending Council Directives 89/686/EEC and 93/15/EEC and Directives 94/9/EC, 94/25/EC, 95/16/EC, 97/23/EC, 98/34/EC, 2004/22/EC, 2007/23/EC, 2009/23/EC and 2009/105/EC of the European Parliament and of the Council and repealing Council Decision 87/95/EEC and Decision No 1673/2006/EC of the European Parliament and of the Council (221)

Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93 (222)

Decision No 768/2008/EC of the European Parliament and of the Council of 9 July 2008 on a common framework for the marketing of products, and repealing Council Decision 93/465/EEC (223)

Regulation (EC) No 764/2008 of the European Parliament and of the Council of 9 July 2008 laying down procedures relating to the application of certain national technical rules to products lawfully marketed in another Member State and repealing Decision No 3052/95/EC (224)

Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety (225)

Council Regulation (EC) No 2679/98 of 7 December 1998 on the functioning of the internal market in relation to the free movement of goods among the Member States (226)

Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products (227)

9. Motor vehicles, including agricultural and forestry tractors

Council Directive 70/157/EEC of 6 February 1970 on the approximation of the laws of the Member States relating to the permissible sound level and the exhaust system of motor vehicles (228)

Regulation (EU) No 540/2014 of the European Parliament and of the Council of 16 April 2014 on the sound level of motor vehicles and of replacement silencing systems, and amending Directive 2007/46/EC and repealing Directive 70/157/EEC (229)

Directive 2005/64/EC of the European Parliament and of the Council of 26 October 2005 on the type-approval of motor vehicles with regard to their reusability, recyclability and recoverability and amending Council Directive 70/156/EEC (230)

Directive 2006/40/EC of the European Parliament and of the Council of 17 May 2006 relating to emissions from air conditioning systems in motor vehicles and amending Council Directive 70/156/EEC (231)

Regulation (EC) No 715/2007 of the European Parliament and of the Council of 20 June 2007 on type approval of motor vehicles with respect to emissions from light passenger and commercial vehicles (Euro 5 and Euro 6) and on access to vehicle repair and maintenance information (232)

Directive 2007/46/EC of the European Parliament and of the Council of 5 September 2007 establishing a framework for the approval of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles (Framework Directive) (233)

Regulation (EU) 2018/858 of the European Parliament and of the Council of 30 May 2018 on the approval and market surveillance of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles, amending Regulations (EC) No 715/2007 and (EC) No 595/2009 and repealing Directive 2007/46/EC (234)

Regulation (EC) No 78/2009 of the European Parliament and of the Council of 14 January 2009 on the type-approval of motor vehicles with regard to the protection of pedestrians and other vulnerable road users, amending Directive 2007/46/EC and repealing Directives 2003/102/EC and 2005/66/EC (235)

Regulation (EC) No 661/2009 of the European Parliament and of the Council of 13 July 2009 concerning type-approval requirements for the general safety of motor vehicles, their trailers and systems, components and separate technical units intended therefor (236)

Regulation (EC) No 79/2009 of the European Parliament and of the Council of 14 January 2009 on type-approval of hydrogen-powered motor vehicles, and amending Directive 2007/46/EC (237)

Regulation (EC) No 595/2009 of the European Parliament and of the Council of 18 June 2009 on type-approval of motor vehicles and engines with respect to emissions from heavy duty vehicles (Euro VI) and on access to vehicle repair and maintenance information and amending Regulation (EC) No 715/2007 and Directive 2007/46/EC and repealing Directives 80/1269/EEC, 2005/55/EC and 2005/78/EC (238)

Regulation (EU) No 168/2013 of the European Parliament and of the Council of 15 January 2013 on the approval and market surveillance of two- or three-wheel vehicles and quadricycles (239)

Regulation (EU) 2015/758 of the European Parliament and of the Council of 29 April 2015 concerning type-approval requirements for the deployment of the eCall in-vehicle system based on the 112 service and amending Directive 2007/46/EC (240)

Regulation (EU) No 167/2013 of the European Parliament and of the Council of 5 February 2013 on the approval and market surveillance of agricultural and forestry vehicles (241)

10. Lifting and mechanical handling appliances

Council Directive 73/361/EEC of 19 November 1973 on the approximation of the laws, regulations and administrative provisions of the Member States relating to the certification and marking of wire-ropes, chains and hooks (242)

Directive 2014/33/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to lifts and safety components for lifts (243)

11. Gas appliances

Council Directive 92/42/EEC of 21 May 1992 on efficiency requirements for new hot-water boilers fired with liquid or gaseous fuels (244)

Regulation (EU) 2016/426 of the European Parliament and of the Council of 9 March 2016 on appliances burning gaseous fuels and repealing Directive 2009/142/EC (245)

12. Pressure vessels

Council Directive 75/324/EEC of 20 May 1975 on the approximation of the laws of the Member States relating to aerosol dispensers (246)

Directive 2010/35/EU of the European Parliament and of the Council of 16 June 2010 on transportable pressure equipment and repealing Council Directives 76/767/EEC, 84/525/EEC, 84/526/EEC, 84/527/EEC and 1999/36/EC (247)

Directive 2014/68/EU of the European Parliament and of the Council of 15 May 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of pressure equipment (248)

Directive 2014/29/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of simple pressure vessels (249)

13. Measuring instruments

Directive 2009/34/EC of the European Parliament and of the Council of 23 April 2009 relating to common provisions for both measuring instruments and methods of metrological control (250)

Council Directive 75/107/EEC of 19 December 1974 on the approximation of the laws of the Member States relating to bottles used as measuring containers (251)

Council Directive 76/211/EEC of 20 January 1976 on the approximation of the laws of the Member States relating to the making-up by weight or by volume of certain prepackaged products (252)

Council Directive 80/181/EEC of 20 December 1979 on the approximation of the laws of the Member States relating to units of measurement and on the repeal of Directive 71/354/EEC (253)

Directive 2007/45/EC of the European Parliament and of the Council of 5 September 2007 laying down rules on nominal quantities for prepacked products, repealing Council Directives 75/106/EEC and 80/232/EEC, and amending Council Directive 76/211/EEC (254)

Directive 2011/17/EU of the European Parliament and of the Council of 9 March 2011 repealing Council Directives 71/317/EEC, 71/347/EEC, 71/349/EEC, 74/148/EEC, 75/33/EEC, 76/765/EEC, 76/766/EEC and 86/217/EEC regarding metrology (255)

Directive 2014/31/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of non-automatic weighing instruments (256)

Directive 2014/32/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of measuring instruments (257)

14. Construction products, machinery, cableways, personal protective equipment

Regulation (EU) No 305/2011 of the European Parliament and of the Council of 9 March 2011 laying down harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC (258)

Regulation (EU) 2016/425 of the European Parliament and of the Council of 9 March 2016 on personal protective equipment and repealing Council Directive 89/686/EEC (259)

Regulation (EU) 2016/424 of the European Parliament and of the Council of 9 March 2016 on cableway installations and repealing Directive 2000/9/EC (260)

Directive 2006/42/EC of the European Parliament and of the Council of 17 May 2006 on machinery, and amending Directive 95/16/EC (261)

Regulation (EU) 2016/1628 of the European Parliament and of the Council of 14 September 2016 on requirements relating to gaseous and particulate pollutant emission limits and type-approval for internal combustion engines for non-road mobile machinery, amending Regulations (EU) No 1024/2012 and (EU) No 167/2013, and amending and repealing Directive 97/68/EC (262)

Directive 2000/14/EC of the European Parliament and of the Council of 8 May 2000 on the approximation of the laws of the Member States relating to the noise emission in the environment by equipment for use outdoors (263)

15. Electrical and radio equipment

Directive 2014/30/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to electromagnetic compatibility (264)

Directive 2014/34/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to equipment and protective systems intended for use in potentially explosive atmospheres (265)

Directive 2014/35/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of electrical equipment designed for use within certain voltage limits (266)

Directive 2014/53/EU of the European Parliament and of the Council of 16 April 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of radio equipment and repealing Directive 1999/5/EC (267)

16. Textiles, footwear

Regulation (EU) No 1007/2011 of the European Parliament and of the Council of 27 September 2011 on textile fibre names and related labelling and marking of the fibre composition of textile products and repealing Council Directive 73/44/EEC and Directives 96/73/EC and 2008/121/EC of the European Parliament and of the Council (268)

Directive 94/11/EC of the European Parliament and the Council of 23 March 1994 on the approximation of the laws, regulation and administrative provisions of the Member States relating to labelling of the materials used in the main components of footwear for sale to the consumer (269)

17. Cosmetics, toys

Regulation (EC) No 1223/2009 of the European Parliament and of the Council of 30 November 2009 on cosmetic products (270)

Directive 2009/48/EC of the European Parliament and of the Council of 18 June 2009 on the safety of toys (271)

18. Recreational craft

Directive 2013/53/EU of the European Parliament and of the Council of 20 November 2013 on recreational craft and personal watercraft and repealing Directive 94/25/EC (272)

19. Explosives and pyrotechnic articles

Directive 2014/28/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to the making available on the market and supervision of explosives for civil uses (273)

Directive 2013/29/EU of the European Parliament and of the Council of 12 June 2013 on the harmonisation of the laws of the Member States relating to the making available on the market of pyrotechnic articles (274)

Regulation (EU) No 98/2013 of the European Parliament and of the Council of 15 January 2013 on the marketing and use of explosives precursors (275)

20. Medicinal products

Regulation (EC) No 726/2004 of the European Parliament and of the Council of 31 March 2004 laying down Community procedures for the authorisation and supervision of medicinal products for human and veterinary use and establishing a European Medicines Agency (276)

The references to Community in the second subparagraph of Article 2 and in the second subparagraph of Article 48 of that Regulation shall not be read as including the United Kingdom in respect of Northern Ireland.

Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use (277)

The references to Community in Articles 8(2) and 16b(1) of that Directive as well as the reference to Union in the second subparagraph of Article 104(3) of that Directive shall not be read as including the United Kingdom in respect of Northern Ireland, with the exception of authorisations by the United Kingdom in respect of Northern Ireland.

A medicinal product authorised in the United Kingdom in respect of Northern Ireland shall not be considered as a reference medicinal product in the Union.

Regulation (EC) No 1901/2006 of the European Parliament and of the Council of 12 December 2006 on medicinal products for paediatric use and amending Regulation (EEC) No 1768/92, Directive 2001/20/EC, Directive 2001/83/EC and Regulation (EC) No 726/2004 (278), with the exception of Article 36

Regulation (EC) No 141/2000 of the European Parliament and of the Council of 16 December 1999 on orphan medicinal products (279)

Regulation (EC) No 1394/2007 of the European Parliament and of the Council of 13 November 2007 on advanced therapy medicinal products and amending Directive 2001/83/EC and Regulation (EC) No 726/2004 (280)

Directive 2001/82/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to veterinary medicinal products (281)

The references to Community in Article 12(2) and the second paragraph of Article 74 of that Directive shall not be read as including the United Kingdom in respect of Northern Ireland, with the exception of authorisations by the United Kingdom in respect of Northern Ireland.

A veterinary medicinal product authorised in the United Kingdom in respect of Northern Ireland shall not be considered as a reference medicinal product in the Union.

Regulation (EC) No 470/2009 of the European Parliament and of the Council of 6 May 2009 laying down Community procedures for the establishment of residue limits of pharmacologically active substances in foodstuffs of animal origin, repealing Council Regulation (EEC) No 2377/90 and amending Directive 2001/82/EC of the European Parliament and of the Council and Regulation (EC) No 726/2004 of the European Parliament and of the Council (282)

Article 13 of Directive 2001/20/EC of the European Parliament and of the Council of 4 April 2001 on the approximation of the laws, regulations and administrative provisions of the Member States relating to the implementation of good clinical practice in the conduct of clinical trials on medicinal products for human use (283)

Chapter IX of Regulation (EU) No 536/2014 of the European Parliament and of the Council of 16 April 2014 on clinical trials on medicinal products for human use, and repealing Directive 2001/20/EC (284)

Directive 2009/35/EC of the European Parliament and of the Council of 23 April 2009 on the colouring matters which may be added to medicinal products (285)

Regulation (EU) 2016/793 of the European Parliament and of the Council of 11 May 2016 to avoid trade diversion into the European Union of certain key medicines (286)

21. Medical devices

Council Directive 93/42/EEC of 14 June 1993 concerning medical devices (287)

Directive 98/79/EC of the European Parliament and of the Council of 27 October 1998 on in vitro diagnostic medical devices (288)

Council Directive 90/385/EEC of 20 June 1990 on the approximation of the laws of the Member States relating to active implantable medical devices (289)

Regulation (EU) 2017/745 of the European Parliament and of the Council of 5 April 2017 on medical devices, amending Directive 2001/83/EC, Regulation (EC) No 178/2002 and Regulation (EC) No 1223/2009 and repealing Council Directives 90/385/EEC and 93/42/EEC (290)

Regulation (EU) 2017/746 of the European Parliament and of the Council of 5 April 2017 on in vitro diagnostic medical devices and repealing Directive 98/79/EC and Commission Decision 2010/227/EU (291)

22. Substances of human origin

Directive 2002/98/EC of the European Parliament and of the Council of 27 January 2003 setting standards of quality and safety for the collection, testing, processing, storage and distribution of human blood and blood components and amending Directive 2001/83/EC (292)

Directive 2004/23/EC of the European Parliament and of the Council of 31 March 2004 on setting standards of quality and safety for the donation, procurement, testing, processing, preservation, storage and distribution of human tissues and cells (293)

Directive 2010/53/EU of the European Parliament and of the Council of 7 July 2010 on standards of quality and safety of human organs intended for transplantation (294)

23. Chemicals and related

Regulation (EC) No 2003/2003 of the European Parliament and of the Council of 13 October 2003 relating to fertilisers (295)

Directive 2004/10/EC of the European Parliament and of the Council of 11 February 2004 on the harmonisation of laws, regulations and administrative provisions relating to the application of the principles of good laboratory practice and the verification of their applications for tests on chemical substances (296)

Directive 2004/9/EC of the European Parliament and of the Council of 11 February 2004 on the inspection and verification of good laboratory practice (GLP) (297)

Directive 2011/65/EU of the European Parliament and of the Council of 8 June 2011 on the restriction of the use of certain hazardous substances in electrical and electronic equipment (298)

Regulation (EC) No 648/2004 of the European Parliament and of the Council of 31 March 2004 on detergents (299)

Regulation (EC) No 850/2004 of the European Parliament and of the Council of 29 April 2004 on persistent organic pollutants and amending Directive 79/117/EEC (300)

Regulation (EU) No 649/2012 of the European Parliament and of the Council of 4 July 2012 concerning the export and import of hazardous chemicals (301)

Regulation (EU) 2017/852 of the European Parliament and of the Council of 17 May 2017 on mercury, and repealing Regulation (EC) No 1102/2008) (302)

Directive 2006/66/EC of the European Parliament and of the Council of 6 September 2006 on batteries and accumulators and waste batteries and accumulators and repealing Directive 91/157/EEC (303)

Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC (304)

Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures, amending and repealing Directives 67/548/EEC and 1999/45/EC, and amending Regulation (EC) No 1907/2006 (305)

Regulation (EC) No 273/2004 of the European Parliament and of the Council of 11 February 2004 on drug precursors (306)

Council Regulation (EC) No 111/2005 laying down rules for the monitoring of trade between the Union and third countries in drug precursors (307)

24. Pesticides, biocides

Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market and repealing Council Directives 79/117/EEC and 91/414/EEC (308)

Regulation (EC) No 396/2005 of the European Parliament and of the Council of 23 February 2005 on maximum residue levels of pesticides in or on food and feed of plant and animal origin and amending Council Directive 91/414/EEC (309)

The reference to Member States in Article 43 of that Regulation shall not be read as including the United Kingdom in respect of Northern Ireland.

Regulation (EU) No 528/2012 of the European Parliament and of the Council of 22 May 2012 concerning the making available on the market and use of biocidal products (310)

The references to Member State in Articles 3(3), 15(1) and 28(4) and point (g) of Article 75(1) of that Regulation shall not be read as including the United Kingdom in respect of Northern Ireland.

25. Waste

Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste (311)

Directive 94/62/EC of the European Parliament and of the Council 20 December 1994 on packaging and packaging waste (312)

Regulation (EU) No 1257/2013 of the European Parliament and of the Council of 20 November 2013 on ship recycling and amending Regulation (EC) No 1013/2006 and Directive 2009/16/EC (313)

Council Directive 2006/117/Euratom of 20 November 2006 on the supervision and control of shipments of radioactive waste and spent fuel (314)

Articles 2 to 7, Articles 14 and 17 and Parts A, B, C, D and F of the Annex to Directive (EU) 2019/904 of the European Parliament and of the Council of 5 June 2019 on the reduction of the impact of certain plastic products on the environment (315)

In relation to the application of those Articles and Parts to and in the United Kingdom in respect of Northern Ireland, any reference to '3 July 2021' in Articles 4 (1), 14 and 17 (1) is to be read as '1 January 2022'. Articles 2, 3, 14 and 17, and Part F of the Annex, shall only apply insofar as they relate to Articles 4 to 7.

26. Environment, energy efficiency

Regulation (EU) No 1143/2014 of the European Parliament and of the Council of 22 October 2014 on the prevention and management of the introduction and spread of invasive alien species (316)

Council Regulation (EC) No 708/2007 of 11 June 2007 concerning use of alien and locally absent species in aquaculture (317)

Regulation (EC) No 66/2010 of the European Parliament and of the Council of 25 November 2009 on the EU Ecolabel (318)

Directive 98/70/EC of the European Parliament and of the Council of 13 October 1998 relating to the quality of petrol and diesel fuels and amending Council Directive 93/12/EEC (319)

Council Directive (EU) 2015/652 of 20 April 2015 laying down calculation methods and reporting requirements pursuant to Directive 98/70/EC of the European Parliament and of the Council relating to the quality of petrol and diesel fuels (320)

Directive 2004/42/EC of the European Parliament and of the Council of 21 April 2004 on the limitation of emissions of volatile organic compounds due to the use of organic solvents in certain paints and varnishes and vehicle refinishing products and amending Directive 1999/13/EC (321)

Regulation (EU) No 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market (322)

Council Regulation (EC) No 2173/2005 of 20 December 2005 on the establishment of a FLEGT licensing scheme for imports of timber into the European Community (323)

Regulation (EU) No 517/2014 of the European Parliament and of the Council of 16 April 2014 on fluorinated greenhouse gases and repealing Regulation (EC) No 842/2006 (324)

Regulation (EC) No 1005/2009 of the European Parliament and of the Council of 16 September 2009 on substances that deplete the ozone layer (325)

Regulation (EU) 2017/852 of the European Parliament and of the Council of 17 May 2017 on mercury, and repealing Regulation (EC) No 1102/2008 (326)

Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein (327)

Council Regulation (EEC) No 3254/91 of 4 November 1991 prohibiting the use of leghold traps in the Community and the introduction into the Community of pelts and manufactured goods of certain wild animal species originating in countries which catch them by means of leghold traps or trapping methods which do not meet international humane trapping standards (328)

Regulation (EC) No 1007/2009 of the European Parliament and of the Council of 16 September 2009 on trade in seal products (329)

Regulation (EC) No 1523/2007 of the European Parliament and of the Council of 11 December 2007 banning the placing on the market and the import to, or export from, the Community of cat and dog fur, and products containing such fur (330)

Council Directive 83/129/EEC of 28 March 1983 concerning the importation into Member States of skins of certain seal pups and products derived therefrom (331)

Regulation (EC) No 106/2008 of the European Parliament and of the Council of 15 January 2008 on a Community energy-efficiency labelling programme for office equipment (332)

Regulation (EC) No 1222/2009 of the European Parliament and of the Council of 25 November 2009 on the labelling of tyres with respect to fuel efficiency and other essential parameters (333)

Directive 2009/125/EC of the European Parliament and of the Council of 21 October 2009 establishing a framework for the setting of ecodesign requirements for energy-related products (334)

Regulation (EU) 2017/1369 of the European Parliament and of the Council of 4 July 2017 setting a framework for energy labelling and repealing Directive 2010/30/EU (335)

27. Marine equipment

Directive 2014/90/EU of the European Parliament and of the Council of 23 July 2014 on marine equipment and repealing Council Directive 96/98/EC (336)

28. Rail transport

Directive (EU) 2016/797 of the European Parliament and of the Council of 11 May 2016 on the interoperability of the rail system within the European Union (337), insofar as conditions and technical specifications for the placing on the market, putting into service and free movement of railway products are concerned

29. Food – general

Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety (338)

The reference to Member State in the second subparagraph of Article 29(1) of that Regulation shall not be read as including the United Kingdom in respect of Northern Ireland.

Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers, amending Regulations (EC) No 1924/2006 and (EC) No 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC) No 608/2004 (339)

Regulation (EC) No 1924/2006 of the European Parliament and of the Council of 20 December 2006 on nutrition and health claims made on foods (340)

Directive 2011/91/EU of the European Parliament and of the Council of 13 December 2011 on indications or marks identifying the lot to which a foodstuff belongs (341)

30. Food – hygiene

Regulation (EC) No 853/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific hygiene rules for food of animal origin (342)

Regulation (EC) No 852/2004 of the European Parliament and of the Council of 29 April 2004 on the hygiene of foodstuffs (343)

Council Directive 89/108/EEC of 21 December 1988 on the approximation of the laws of the Member States relating to quick-frozen foodstuffs for human consumption (344)

31. Food – ingredients, traces, residues, marketing standards

Regulation (EC) No 1331/2008 of the European Parliament and of the Council of 16 December 2008 establishing a common authorisation procedure for food additives, food enzymes and food flavourings (345)

The reference to Member State in Article 3(1) of that Regulation shall not be read as including the United Kingdom in respect of Northern Ireland.

Regulation (EC) No 1332/2008 of the European Parliament and of the Council of 16 December 2008 on food enzymes and amending Council Directive 83/417/EEC, Council Regulation (EC) No 1493/1999, Directive 2000/13/EC, Council Directive 2001/112/EC and Regulation (EC) No 258/97 (346)

Regulation (EC) No 1333/2008 of the European Parliament and of the Council of 16 December 2008 on food additives (347)

Regulation (EC) No 1334/2008 of the European Parliament and of the Council of 16 December 2008 on flavourings and certain food ingredients with flavouring properties for use in and on foods and amending Council Regulation (EEC) No 1601/91, Regulations (EC) No 2232/96 and (EC) No 110/2008 and Directive 2000/13/EC (348)

Directive 2002/46/EC of the European Parliament and of the Council of 10 June 2002 on the approximation of the laws of the Member States relating to food supplements (349)

Regulation (EC) No 1925/2006 of the European Parliament and of the Council of 20 December 2006 on the addition of vitamins and minerals and of certain other substances to foods (350)

Regulation (EC) No 2065/2003 of the European Parliament and of the Council of 10 November 2003 on smoke flavourings used or intended for use in or on foods (351)

The reference to Member State in Article 7(2) of that Regulation shall not be read as including the United Kingdom in respect of Northern Ireland.

Council Regulation (EEC) No 315/93 of 8 February 1993 laying down Community procedures for contaminants in food (352)

Regulation (EU) 2015/2283 of the European Parliament and of the Council of 25 November 2015 on novel foods, amending Regulation (EU) No 1169/2011 of the European Parliament and of the Council and repealing Regulation (EC) No 258/97 of the European Parliament and of the Council and Commission Regulation (EC) No 1852/2001 (353)

Regulation (EU) No 609/2013 of the European Parliament and of the Council of 12 June 2013 on food intended for infants and young children, food for special medical purposes, and total diet replacement for weight control and repealing Council Directive 92/52/EEC, Commission Directives 96/8/EC, 1999/21/EC, 2006/125/EC and 2006/141/EC, Directive 2009/39/EC of the European Parliament and of the Council and Commission Regulations (EC) No 41/2009 and (EC) No 953/2009 (354)

Directive 1999/4/EC of the European Parliament and of the Council of 22 February 1999 relating to coffee extracts and chicory extracts (355)

Directive 2000/36/EC of the European Parliament and of the Council of 23 June 2000 relating to cocoa and chocolate products intended for human consumption (356)

Council Directive 2001/110/EC of 20 December 2001 relating to honey (357)

Council Directive 2001/111/EC of 20 December 2001 relating to certain sugars intended for human consumption (358)

Commission Implementing Regulation (EU) No 543/2011 of 7 June 2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors (359)

Commission Regulation (EC) No 1295/2008 of 18 December 2008 on the importation of hops from third countries (360)

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Commission Regulation (EC) No 1375/2007 of 23 November 2007 on imports of residues from the manufacture of starch from maize from the United States of America (361)

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Council Directive 2001/112/EC of 20 December 2001 relating to fruit juices and certain similar products intended for human consumption (362)

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Council Directive 2001/113/EC of 20 December 2001 relating to fruit jams, jellies and marmalades and sweetened chestnut purée intended for human consumption (363)

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Council Directive 2001/114/EC of 20 December 2001 relating to certain partly or wholly dehydrated preserved milk for human consumption (364)

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Directive (EU) 2015/2203 of the European Parliament and of the Council of 25 November 2015 on the approximation of the laws of the Member States relating to caseins and caseinates intended for human consumption and repealing Council Directive 83/417/EEC (365)

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Chapter IV of Title V of Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008 (366)

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Section 1 of Chapter I of Title II of Part II of Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 (367)

32. Food contact material

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Regulation (EC) No 1935/2004 of the European Parliament and of the Council of 27 October 2004 on materials and articles intended to come into contact with food and repealing Directives 80/590/EEC and 89/109/EEC (368)

The reference to Member State in Article 9(1) of that Regulation shall not be read as including the United Kingdom in respect of Northern Ireland.

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Council Directive 84/500/EEC of 15 October 1984 on the approximation of the laws of the Member States relating to ceramic articles intended to come into contact with foodstuffs (369)

33. Food – other

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Directive 1999/2/EC of the European Parliament and of the Council of 22 February 1999 on the approximation of the laws of the Member States concerning foods and food ingredients treated with ionising radiation (370)

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Directive 1999/3/EC of the European Parliament and of the Council of 22 February 1999 on the establishment of a Community list of foods and food ingredients treated with ionising radiation (371)

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Directive 2009/32/EC of the European Parliament and of the Council of 23 April 2009 on the approximation of the laws of the Member States on extraction solvents used in the production of foodstuffs and food ingredients (372)

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Directive 2009/54/EC of the European Parliament and of the Council of 18 June 2009 on the exploitation and marketing of natural mineral waters (373)

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Council Regulation (EC) No 834/2007 of 28 June 2007 on organic production and labelling of organic products and repealing Regulation (EEC) No 2092/91 (374)

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Regulation (EU) 2018/848 of the European Parliament and of the Council of 30 May 2018 on organic production and labelling of organic products and repealing Council Regulation (EC) No 834/2007 (375)

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Council Regulation (Euratom) 2016/52 of 15 January 2016 laying down maximum permitted levels of radioactive contamination of food and feed following a nuclear accident or any other case of radiological emergency, and repealing Regulation (Euratom) No 3954/87 and Commission Regulations (Euratom) No 944/89 and (Euratom) No 770/90 (376)

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Council Regulation (EC) No 733/2008 of 15 July 2008 on the conditions governing imports of agricultural products originating in third countries following the accident at the Chernobyl nuclear power station (377)

34. Feed – products and hygiene

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Regulation (EC) No 767/2009 of the European Parliament and of the Council of 13 July 2009 on the placing on the market and use of feed, amending European Parliament and Council Regulation (EC) No 1831/2003 and repealing Council Directive 79/373/EEC, Commission Directive 80/511/EEC, Council Directives 82/471/EEC, 83/228/EEC, 93/74/EEC, 93/113/EC and 96/25/EC and Commission Decision 2004/217/EC (378)

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Directive 2002/32/EC of the European Parliament and of the Council of 7 May 2002 on undesirable substances in animal feed (379)

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Regulation (EC) No 1831/2003 of the European Parliament and of the Council of 22 September 2003 on additives for use in animal nutrition (380)

The references to national reference laboratories in point 6 of Annex II to that Regulation shall not be read as applying to the United Kingdom in respect of Northern Ireland. This shall not prevent a national reference laboratory located in a Member State from fulfilling the functions of a national reference laboratory in respect of Northern Ireland. Information and material exchanged for that purpose between the competent authorities of Northern Ireland and a national reference laboratory in a Member State shall not be subject to further disclosure by the national reference laboratory without the prior consent of those competent authorities.

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Council Directive 90/167/EEC of 26 March 1990 laying down the conditions governing the preparation, placing on the market and use of medicated feedingstuffs in the Community (381)

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Regulation (EC) No 183/2005 of the European Parliament and of the Council of 12 January 2005 laying down requirements for feed hygiene (382)

35. GMOs

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Regulation (EC) No 1829/2003 of the European Parliament and of the Council of 22 September 2003 on genetically modified food and feed (383), with the exception of the second paragraph of Article 32

This shall not prevent a national reference laboratory located in a Member State from fulfilling the functions of a national reference laboratory in respect of Northern Ireland. Information and material exchanged for that purpose between the competent authorities of Northern Ireland and a national reference laboratory in a Member State shall not be subject to further disclosure by the national reference laboratory without the prior consent of those competent authorities.

The references to Member State in Articles 10(1) and 22(1) of that Regulation shall not be read as including the United Kingdom in respect of Northern Ireland.

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Regulation (EC) No 1830/2003 of the European Parliament and of the Council of 22 September 2003 concerning the traceability and labelling of genetically modified organisms and the traceability of food and feed products produced from genetically modified organisms and amending Directive 2001/18/EC (384)

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Regulation (EC) No 1946/2003 of the European Parliament and of the Council of 15 July 2003 on transboundary movements of genetically modified organisms (385)

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Part C of Directive 2001/18/EC of the European Parliament and of the Council of 12 March 2001 on the deliberate release into the environment of genetically modified organisms and repealing Council Directive 90/220/EEC (386)

36. Live animals, germinal products and products of animal origin

References to national reference laboratories in the acts listed in this section shall not be read as including the reference laboratory in the United Kingdom. This shall not prevent a national reference laboratory located in a Member State from fulfilling the functions of a national

reference laboratory in respect of Northern Ireland. Information and material exchanged for that purpose between the competent authorities of Northern Ireland and a national reference laboratory in a Member State shall not be subject to further disclosure by the national reference laboratory without the prior consent of those competent authorities.

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Regulation (EU) 2016/429 of the European Parliament and of the Council of 9 March 2016 on transmissible animal diseases and amending and repealing certain acts in the area of animal health ('Animal Health Law') (387)

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Council Directive 64/432/EEC of 26 June 1964 on animal health problems affecting intra-Community trade in bovine animals and swine (388)

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Council Directive 91/68/EEC of 28 January 1991 on animal health conditions governing intra-Community trade in ovine and caprine animals (389)

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Council Directive 2009/156/EC of 30 November 2009 on animal health conditions governing the movement and importation from third countries of 64quidae (390)

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Council Directive 2009/158/EC of 30 November 2009 on animal health conditions governing intra-Community trade in, and imports from third countries of, poultry and hatching eggs (391)

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Council Directive 92/65/EEC of 13 July 1992 laying down animal health requirements governing trade in and imports into the Community of animals, semen, ova and embryos not subject to animal health requirements laid down in specific Community rules referred to in Annex A (I) to Directive 90/425/EEC (392)

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Council Directive 88/407/EEC of 14 June 1988 laying down the animal health requirements applicable to intra-Community trade in and imports of semen of domestic animals of the bovine species (393)

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Council Directive 89/556/EEC of 25 September 1989 on animal health conditions governing intra-Community trade in and importation from third countries of embryos of domestic animals of the bovine species (394)

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Council Directive 90/429/EEC of 26 June 1990 laying down the animal health requirements applicable to intra-Community trade in and imports of semen of domestic animals of the porcine species (395)

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Council Directive 92/118/EEC of 17 December 1992 laying down animal health and public health requirements governing trade in and imports into the Community of products not subject to the said requirements laid down in specific Community rules referred to in Annex A (I) to Directive 89/662/EEC and, as regards pathogens, to Directive 90/425/EEC (396)

—

Council Directive 2006/88/EC of 24 October 2006 on animal health requirements for aquaculture animals and products thereof, and on the prevention and control of certain diseases in aquatic animals (397)

—

Council Directive 2004/68/EC of 26 April 2004 laying down animal health rules for the importation into and transit through the Community of certain live ungulate animals, amending Directives 90/426/EEC and 92/65/EEC and repealing Directive 72/462/EEC (398)

—

Council Directive 2002/99/EC of 16 December 2002 laying down the animal health rules governing the production, processing, distribution and introduction of products of animal origin for human consumption (399)

—

Regulation (EU) No 576/2013 of the European Parliament and of the Council of 12 June 2013 on the non-commercial movement of pet animals and repealing Regulation (EC) No 998/2003 (400)

—

Regulation (EC) No 1069/2009 of the European Parliament and of the Council of 21 October 2009 laying down health rules as regards animal by-products and derived products not intended for human consumption and repealing Regulation (EC) No 1774/2002 (Animal by-products Regulation) (401)

37. Animal disease control, zoonosis control

References to national reference laboratories in the acts listed in this section shall not be read as including the reference laboratory in the United Kingdom. This shall not prevent a national reference laboratory located in a Member State from fulfilling the functions of a national reference laboratory in respect of Northern Ireland. Information and material exchanged for

that purpose between the competent authorities of Northern Ireland and a national reference laboratory in a Member State shall not be subject to further disclosure by the national reference laboratory without the prior consent of those competent authorities.

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Regulation (EC) No 999/2001 of the European Parliament and of the Council of 22 May 2001 laying down rules for the prevention, control and eradication of certain transmissible spongiform encephalopathies (402)

—

Council Directive 77/391/EEC of 17 May 1977 introducing Community measures for the eradication of brucellosis, tuberculosis and leucosis in cattle (403)

—

Council Directive 78/52/EEC of 13 December 1977 establishing the Community criteria for national plans for the accelerated eradication of brucellosis, tuberculosis and enzootic leukosis in cattle (404)

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Council Directive 2003/85/EC of 29 September 2003 on Community measures for the control of foot-and-mouth disease repealing Directive 85/511/EEC and Decisions 89/531/EEC and 91/665/EEC and amending Directive 92/46/EEC (405)

—

Council Directive 2005/94/EC of 20 December 2005 on Community measures for the control of avian influenza and repealing Directive 92/40/EEC (406)

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Council Directive 2001/89/EC of 23 October 2001 on Community measures for the control of classical swine fever (407)

—

Council Directive 92/35/EEC of 29 April 1992 laying down control rules and measures to combat African horse sickness (408)

—

Council Directive 2002/60/EC of 27 June 2002 laying down specific provisions for the control of African swine fever and amending Directive 92/119/EEC as regards Teschen disease and African swine fever (409)

—

Regulation (EC) No 2160/2003 of the European Parliament and of the Council of 17 November 2003 on the control of salmonella and other specified food-borne zoonotic agents (410)

—

Council Directive 92/66/EEC of 14 July 1992 introducing Community measures for the control of Newcastle disease (411)

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Council Directive 92/119/EEC of 17 December 1992 introducing general Community measures for the control of certain animal diseases and specific measures relating to swine vesicular disease (412)

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Directive 2003/99/EC of the European Parliament and of the Council of 17 November 2003 on the monitoring of zoonoses and zoonotic agents, amending Council Decision 90/424/EEC and repealing Council Directive 92/117/EEC (413)

—

Council Directive 2000/75/EC of 20 November 2000 laying down specific provisions for the control and eradication of bluetongue (414)

38. Animal identification

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Council Regulation (EC) No 21/2004 of 17 December 2003 establishing a system for the identification and registration of ovine and caprine animals and amending Regulation (EC) No 1782/2003 and Directives 92/102/EEC and 64/432/EEC (415)

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Regulation (EC) No 1760/2000 of the European Parliament and of the Council of 17 July 2000 establishing a system for the identification and registration of bovine animals and regarding the labelling of beef and beef products and repealing Council Regulation (EC) No 820/97 (416)

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Council Directive 2008/71/EC of 15 July 2008 on the identification and registration of pigs (417)

39. Animal breeding

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Article 37 and Article 64(3) of Regulation (EU) 2016/1012 of the European Parliament and of the Council of 8 June 2016 on zootechnical and genealogical conditions for the breeding, trade in and entry into the Union of purebred breeding animals, hybrid breeding pigs and the germinal products thereof and amending Regulation (EU) No 652/2014, Council Directives 89/608/EEC and 90/425/EEC and repealing certain acts in the area of animal breeding ('Animal Breeding Regulation') (418)

40. Animal welfare

Council Regulation (EC) No 1/2005 of 22 December 2004 on the protection of animals during transport and related operations and amending Directives 64/432/EEC and 93/119/EC and Regulation (EC) No 1255/97 (419)

Council Regulation (EC) No 1099/2009 of 24 September 2009 on the protection of animals at the time of killing (420)

41. Plant health

Council Directive 2000/29/EC of 8 May 2000 on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community (421)

Regulation (EU) 2016/2031 of the European Parliament of the Council of 26 October 2016 on protective measures against pests of plants, amending Regulations (EU) No 228/2013, (EU) No 652/2014 and (EU) No 1143/2014 of the European Parliament and of the Council and repealing Council Directives 69/464/EEC, 74/647/EEC, 93/85/EEC, 98/57/EC, 2000/29/EC, 2006/91/EC and 2007/33/EC (422)

42. Plant reproductive material

Council Directive 66/402/EEC of 14 June 1966 on the marketing of cereal seed (423)

Council Directive 68/193/EEC of 9 April 1968 on the marketing of material for the vegetative propagation of the vine (424)

Council Directive 1999/105/EC of 22 December 1999 on the marketing of forest reproductive material (425)

Council Directive 2002/53/EC of 13 June 2002 on the common catalogue of varieties of agricultural plant species (426)

Council Directive 2002/54/EC of 13 June 2002 on the marketing of beet seed (427)

Council Directive 2002/55/EC of 13 June 2002 on the marketing of vegetable seed (428)

Council Directive 2002/56/EC of 13 June 2002 on the marketing of seed potatoes (429)

Council Directive 2002/57/EC of 13 June 2002 on the marketing of seed of oil and fibre plants (430)

Council Directive 2008/90/EC of 29 September 2008 on the marketing of fruit plant propagating material and fruit plants intended for fruit production (431)

Council Directive 66/401/EEC of 14 June 1966 on the marketing of fodder plant seed (432)

Council Directive 98/56/EC of 20 July 1998 on the marketing of propagating material of ornamental plants (433)

Council Directive 2008/72/EC of 15 July 2008 on the marketing of vegetable propagating and planting material, other than seed (434)

43. Official controls, veterinary checks

References to national reference laboratories in the acts listed in this section shall not be read as including the reference laboratory in the United Kingdom. This shall not prevent a national reference laboratory located in a Member State from fulfilling the functions of a national reference laboratory in respect of Northern Ireland. Information and material exchanged for that purpose between the competent authorities of Northern Ireland and a national reference laboratory in a Member State shall not be subject to further disclosure by the national reference laboratory without the prior consent of those competent authorities.

Regulation (EU) 2017/625 of the European Parliament and of the Council of 15 March 2017 on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products, amending Regulations (EC) No 999/2001, (EC) No 396/2005, (EC) No 1069/2009, (EC) No 1107/2009, (EU) No 1151/2012, (EU) No 652/2014, (EU) 2016/429 and (EU) 2016/2031 of the European Parliament and of the Council, Council Regulations (EC) No 1/2005 and (EC) No 1099/2009 and Council Directives 98/58/EC, 1999/74/EC, 2007/43/EC, 2008/119/EC and 2008/120/EC, and repealing Regulations (EC) No 854/2004 and (EC) No 882/2004 of the European Parliament and of the Council, Council Directives 89/608/EEC, 89/662/EEC, 90/425/EEC, 91/496/EEC, 96/23/EC, 96/93/EC and 97/78/EC and Council Decision 92/438/EEC (Official Controls Regulation) (435)

Regulation (EC) No 882/2004 of the European Parliament and of the Council of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules (436)

Regulation (EC) No 854/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific rules for the organisation of official controls on products of animal origin intended for human consumption (437)

Council Directive 91/496/EEC of 15 July 1991 laying down the principles governing the organization of veterinary checks on animals entering the Community from third countries and amending Directives 89/662/EEC, 90/425/EEC and 90/675/EEC (438)

Council Directive 97/78/EC of 18 December 1997 laying down the principles governing the organisation of veterinary checks on products entering the Community from third countries (439)

Council Directive 90/425/EEC of 26 June 1990 concerning veterinary and zootechnical checks applicable in intra-Community trade in certain live animals and products with a view to the completion of the internal market (440)

Council Directive 89/662/EEC of 11 December 1989 concerning veterinary checks in intra-Community trade with a view to the completion of the internal market (441)

44. Sanitary and phytosanitary – Other

Council Directive 96/22/EC of 29 April 1996 concerning the prohibition on the use in stockfarming of certain substances having a hormonal or thyrostatic action and of ß-agonists, and repealing Directives 81/602/EEC, 88/146/EEC and 88/299/EEC (442)

Council Directive 96/23/EC of 29 April 1996 on measures to monitor certain substances and residues thereof in live animals and animal products and repealing Directives 85/358/EEC and 86/469/EEC and Decisions 89/187/EEC and 91/664/EEC (443)

45. Intellectual property

Regulation (EC) No 110/2008 of the European Parliament and of the Council of 15 January 2008 on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks and repealing Council Regulation (EEC) No 1576/89 (444)

Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs (445)

Regulation (EU) No 251/2014 of the European Parliament and of the Council of 26 February 2014 on the definition, description, presentation, labelling and the protection of geographical indications of aromatised wine products and repealing Council Regulation (EEC) No 1601/91 (446)

Sections 2 and 3 of Chapter I of Title II of Part II of Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 (447)

Regulation (EU) No 608/2013 of the European Parliament and of the Council of 12 June 2013 concerning customs enforcement of intellectual property rights and repealing Council Regulation (EC) No 1383/2003 (448)

46. Fisheries and aquaculture

Commission Regulation (EEC) No 3703/85 of 23 December 1985 laying down detailed rules for applying the common marketing standards for certain fresh or chilled fish (449)

Council Regulation (EEC) No 2136/89 of 21 June 1989 laying down common marketing standards for preserved sardines and trade descriptions for preserved sardines and sardine-type products (450)

Council Regulation (EEC) No 1536/92 of 9 June 1992 laying down common marketing standards for preserved tuna and bonito (451)

Council Regulation (EC) No 2406/96 of 26 November 1996 laying down common marketing standards for certain fishery products (452)

Council Regulation (EC) No 850/98 of 30 March 1998 for the conservation of fishery resources through technical measures for the protection of juveniles of marine organisms (453), insofar as it concerns provisions relating to minimum sizes of marine organisms

Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy, amending Regulations (EC) No 847/96, (EC) No 2371/2002, (EC) No 811/2004, (EC) No 768/2005, (EC) No 2115/2005, (EC) No 2166/2005, (EC) No 388/2006, (EC) No 509/2007, (EC) No 676/2007, (EC) No 1098/2007, (EC) No 1300/2008, (EC) No 1342/2008 and repealing Regulations (EEC) No 2847/93, (EC) No 1627/94 and (EC) No 1966/2006 (454), insofar as it concerns provisions relating to marketing standards

Regulation (EU) No 1379/2013 of the European Parliament and of the Council of 11 December 2013 on the common organisation of the markets in fishery and aquaculture products amending Council Regulations (EC) No 1184/2006 and (EC) No 1224/2009 and repealing Council Regulation (EC) No 104/2000 (455), insofar as it concerns provisions relating to marketing standards and consumer information

Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy, amending Council Regulations (EC) No 1954/2003 and (EC) No 1224/2009 and repealing Council Regulations (EC) No 2371/2002 and (EC) No 639/2004 and Council Decision 2004/585/EC (456), insofar as it concerns provisions relating to marketing standards for fishery and aquaculture products

Council Regulation (EC) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing, amending Regulations (EEC) No 2847/93, (EC) No 1936/2001 and (EC) No 601/2004 and repealing Regulations (EC) No 1093/94 and (EC) No 1447/1999 (457)

Council Regulation (EC) No 1035/2001 of 22 May 2001 establishing a catch documentation scheme for Dissostichus spp. (458)

Regulation (EU) No 640/2010 of the European Parliament and of the Council of 7 July 2010 establishing a catch documentation programme for bluefin tuna Thunnus thynnus and amending Council Regulation (EC) No 1984/2003 (459)

Council Regulation (EC) No 1100/2007 of 18 September 2007 establishing measures for the recovery of the stock of European eel (460)

47. Other

Part III of Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products

and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 (461), with the exception of Chapter VI

Council Regulation (EC) No 2964/95 of 20 December 1995 introducing registration for crude oil imports and deliveries in the Community (462)

Council Regulation (EC) No 2182/2004 of 6 December 2004 concerning medals and tokens similar to euro coins (463)

Regulation (EC) No 1889/2005 of the European Parliament and of the Council of 26 October 2005 on controls of cash entering or leaving the Community (464)

Directive 2014/40/EU of the European Parliament and of the Council of 3 April 2014 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products and repealing Directive 2001/37/EC (465)

Council Regulation (EC) No 116/2009 of 18 December 2008 on the export of cultural goods (466)

Directive 2014/60/EU of the European Parliament and of the Council of 15 May 2014 on the return of cultural objects unlawfully removed from the territory of a Member State and amending Regulation (EU) No 1024/2012 (467)

Council Directive 69/493/EEC of 15 December 1969 on the approximation of the laws of the Member States relating to crystal glass (468)

Council Regulation (EC) No 428/2009 of 5 May 2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items (469)

Council Directive 91/477/EEC of 18 June 1991 on control of the acquisition and possession of weapons (470)

Regulation (EU) No 258/2012 of the European Parliament and of the Council of 14 March 2012 implementing Article 10 of the United Nations' Protocol against the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition supplementing the United Nations Convention against Transnational Organised Crime (UN Firearms Protocol), and establishing export authorisation, and import and transit measures for firearms, their parts and components and ammunition (471)

Directive 2009/43/EC of the European Parliament and of the Council of 6 May 2009 simplifying terms and conditions of transfers of defence-related products within the Community (472)

Council Regulation (EC) No 1236/2005 of 27 June 2005 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment (473)

Council Regulation (EC) No 2368/2002 of 20 December 2002 implementing the Kimberley Process certification scheme for the international trade in rough diamonds (474)

Restrictive measures in force based on Article 215 TFEU, insofar as they relate to trade in goods between the Union and third countries

Regulation (EU) 2019/880 of the European Parliament and of the Council on the introduction and the import of cultural goods

ANNEX 3

PROVISIONS OF UNION LAW REFERRED TO IN ARTICLE 8

1. Value Added Tax (475)

Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (476)

As regards goods supplied and installed in immovable property located in Northern Ireland by taxable persons, the United Kingdom in respect of Northern Ireland may apply reduced rates, rates lower than 5 % or an exemption with deductibility of the VAT paid at the preceding stage.

The United Kingdom in respect of Northern Ireland shall not be required to apply the third subparagraph of Article 98(1) and the first subparagraph of Article 98(2) of Directive 2006/112/EC and may therefore apply reduced VAT rates to supplies covered in more than 24 points in Annex III and may apply a reduced rate lower than the minimum of 5 % and an exemption with deductibility of the VAT paid at the preceding stage to supplies covered in more than seven points in Annex III of Directive 2006/112/EC.

The United Kingdom in respect of Northern Ireland shall not be required to apply the special scheme on small enterprises, laid down in Title XII, Chapter 1, of Directive 2006/112/EC, as amended by Council Directive (EU) 2020/285 of 18 February 2020 amending Directive 2006/112/EC on the common system of value added tax as regards the special scheme for small enterprises and Regulation (EU) No 904/2010 as regards the administrative cooperation and exchange of information for the purpose of monitoring the correct application of the special scheme for small enterprises3, to and in the United Kingdom in respect of Northern Ireland, and may therefore apply any exemption scheme to taxable persons whose annual turnover, attributable to supplies of goods and services, complies with the rules on the threshold of turnover laid down in Articles 284(1), 288 and 288a(1) and (3) of Directive 2006/112/EC, as amended by Council Directive (EU) 2020/285. The equivalent in pounds sterling of the threshold of turnover referred to in Article 284(1) shall be calculated by applying the exchange rate on the day following the date of entry into force of Directive (EU) 2020/285, as published by the European Central Bank. To take account of variations in this exchange rate over time, a maximum difference of 15 percent shall be allowed when calculating the equivalent of the threshold of EUR 85 000.

The United Kingdom in respect of Northern Ireland shall not be required to apply the special scheme for distance sales of goods imported from third territories or third countries, laid

down in Title XII, Chapter 6, Section 4, of Directive 2006/112/EC, as regards distance sales of goods from Great Britain to Northern Ireland, provided that the goods are subject to final consumption in Northern Ireland and that value added tax has been charged in the United Kingdom.

Council Directive 2008/9/EC of 12 February 2008 laying down detailed rules for the refund of value added tax, provided for in Directive 2006/112/EC, to taxable persons not established in the Member State of refund but established in another Member State (477)

Council Regulation (EU) No 904/2010 of 7 October 2010 on administrative cooperation and combating fraud in the field of value added tax (478)

Council Directive 2010/24/EU of 16 March 2010 concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures (479)

Thirteenth Council Directive 86/560/EEC of 17 November 1986 on the harmonization of the laws of the Member States relating to turnover taxes – Arrangements for the refund of value added tax to taxable persons not established in Community territory (480)

Council Directive 2007/74/EC of 20 December 2007 on the exemption from value added tax and excise duty of goods imported by persons travelling from third countries (481)

Council Directive 2009/132/EC of 19 October 2009 determining the scope of Article 143(b) and (c) of Directive 2006/112/EC as regards exemption from value added tax on the final importation of certain goods (482)

Council Directive 2006/79/EC of 5 October 2006 on the exemption from taxes of imports of small consignments of goods of a non-commercial character from third countries (483)

Obligations stemming from the Agreement between the European Union and the Kingdom of Norway on administrative cooperation, combating fraud and recovery of claims in the field of value added tax (484)

Obligations stemming from the Cooperation agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other part, to combat fraud and any other illegal activity to the detriment of their financial interests (485)

2. Excise

Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC (486)

Council Regulation (EU) No 389/2012 of 2 May 2012 on administrative cooperation in the field of excise duties and repealing Regulation (EC) No 2073/2004 (487)

Council Directive 2010/24/EU of 16 March 2010 concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures (488)

Council Directive 92/83/EEC of 19 October 1992 on the harmonization of the structures of excise duties on alcohol and alcoholic beverages (489)

The United Kingdom in respect of Northern Ireland shall not be required to apply Articles 3(1), 9, 13, 18 and 21 of Council Directive 92/83/EEC and may therefore apply excise duty rates on alcohol and alcoholic beverages always on the basis of alcoholic strength and may apply reduced duty rates to alcoholic beverages packaged in large draught containers served for immediate consumption in hospitality venues, provided such duty rates in the United Kingdom in respect of Northern Ireland are in no case, even after any applicable relief, below the duty minima rates as laid down in Articles 3(1), 4, 5 and 6 of Directive 92/84/EEC, and shall apply no less favourably to products supplied from the Union as they do to like domestic products.

The United Kingdom in respect of Northern Ireland shall not be required to apply Articles 4, 9a, 13a, 18a, 22(1) to (5) and 23a of Council Directive 92/83/EEC and may therefore define small producers and set reduced duty rates to alcohol and alcoholic beverages produced by small producers, provided that such reduced duty rates are in no case, even after any applicable relief, lower than the duty minima rates as laid down in Articles 3(1), 4, 5 and 6 of Directive 92/84/EEC, and that the annual production of the small producers entitled to benefit from the application of the reduced duty rate is in no case higher than the production thresholds laid down in the first indents of Articles 4(1), 9a(1), 13a(1), 18a(1) and 22(1) of Council Directive 92/83/EEC. The mutual recognition procedures laid down under Articles 4(3), 9a(3), 13a(5), 18a(4), 22(3) and 23a(3) of Directive 92/83/EEC shall not apply between Member States and United Kingdom in respect of Northern Ireland.

Council Directive 92/84/EEC of 19 October 1992 on the approximation of the rates of excise duty on alcohol and alcoholic beverages (490)

Council Directive 2011/64/EU of 21 June 2011 on the structure and rates of excise duty applied to manufactured tobacco (491)

Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity (492)

Council Directive 95/60/EC of 27 November 1995 on fiscal marking of gas oils and kerosene (493)

Decision No 1152/2003/EC of the European Parliament and of the Council of 16 June 2003 on computerising the movement and surveillance of excisable products (494)

Council Directive 2007/74/EC of 20 December 2007 on the exemption from value added tax and excise duty of goods imported by persons travelling from third countries (495)

Council Directive 2006/79/EC of 5 October 2006 on the exemption from taxes of imports of small consignments of goods of a non-commercial character from third countries (496)

ANNEX 4

PROVISIONS OF UNION LAW REFERRED TO IN ARTICLE 9

The following acts shall apply to and in the United Kingdom in respect of Northern Ireland insofar as they apply to the generation, transmission, distribution, and supply of electricity, trading in wholesale electricity or cross-border exchanges in electricity.

Provisions relating to retail markets and consumer protection shall not apply. References to a provision of another Union act in the acts listed in this Annex shall not render the provision referred to applicable where it does not otherwise apply to and in the United Kingdom in respect of Northern Ireland, unless it is a provision governing wholesale electricity markets which applies in Ireland and is necessary for the joint operation of the single wholesale electricity market in Ireland and Northern Ireland.

Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC (497)

Regulation (EC) No 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation (EC) No 1228/2003 (498)

Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators (499)

Directive 2005/89/EC of the European Parliament and of the Council of 18 January 2006 concerning measures to safeguard security of electricity supply and infrastructure investment (500)

Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency (501)

Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) (502)

Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a system for greenhouse gas emission allowance trading within the Union and amending Council Directive 96/61/EC (503)

ANNEX 5

PROVISIONS OF UNION LAW REFERRED TO IN ARTICLE 10(1)

1. State Aid rules in the TFEU (504)

Articles 107, 108 and 109 TFEU

Article 106 TFEU, insofar as it concerns State aid

Article 93 TFEU

2. Acts referring to the notion of aid

Commission notice on the notion of State aid (505)

Communication from the Commission on the application of the European Union State aid rules to compensation granted for the provision of services of general economic interest (506)

Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees (507)

3. Block exemption regulations

3.1 Enabling regulation

Council Regulation (EU) 2015/1588 of 13 July 2015 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to certain categories of horizontal State aid (508)

3.2 General block exemption regulation

Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (509)

3.3 Sectorial block exemption regulations

Commission Regulation (EU) No 702/2014 of 25 June 2014 declaring certain categories of aid in the agricultural and forestry sectors and in rural areas compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union (510)

Commission Regulation (EU) No 1388/2014 of 16 December 2014 declaring certain categories of aid to undertakings active in the production, processing and marketing of fishery and aquaculture products compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union (511)

Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70 (512)

Communication from the Commission on interpretative guidelines concerning Regulation (EC) No 1370/2007 on public passenger transport services by rail and by road (513)

Commission Decision of 20 December 2011 on the application of Article 106(2) of the Treaty on the Functioning of the European Union to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest (514)

3.4 De minimis aid regulations

Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid (515)

Commission Regulation (EU) No 360/2012 of 25 April 2012 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid granted to undertakings providing services of general economic interest (516)

Commission Regulation (EU) No 1408/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid in the agriculture sector (517)

Commission Regulation (EU) No 717/2014 of 27 June 2014 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid in the fishery and aquaculture sector (518)

4. Procedural rules

Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (519)

Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty (520)

Notice from the Commission — Towards an effective implementation of Commission decisions ordering Member States to recover unlawful and incompatible State aid (521)

Commission notice on the determination of the applicable rules for the assessment of unlawful State aid (522)

Commission notice on the enforcement of State aid law by national courts (523)

Communication from the Commission on the revision of the method for setting the reference and discount rates (524)

Communication from the Commission – Code of Best Practice for the conduct of State aid control procedures (525)

Commission communication C (2003) 4582 of 1 December 2003 on professional secrecy in State aid decisions (526)

5. Compatibility rules

5.1 Important Projects of Common European Interest

Communication from the Commission — Criteria for the analysis of the compatibility with the internal market of State aid to promote the execution of important projects of common European interest (527)

5.2 Agricultural aid

European Union guidelines for State aid in the agricultural and forestry sectors and in rural areas 2014 – 2020 (528)

5.3 Fisheries and aquaculture aid

Communication from the Commission – Guidelines for the examination of State aid to the fishery and aquaculture sector (529)

5.4 Regional aid

Guidelines on regional State aid for 2014-2020 (530)

5.5 Research and development and innovation aid

Communication from the Commission — Framework for State aid for research and development and innovation (531)

5.6 Risk capital aid

Communication from the Commission — Guidelines on State aid to promote risk finance investments (532)

5.7 Rescue and restructuring aid

Communication from the Commission – Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty (533)

5.8 Training aid

Communication from the Commission – Criteria for the analysis of the compatibility of State aid for training subject to individual notification (534)

5.9 Employment aid

Communication from the Commission – Criteria for the analysis of the compatibility of State aid for the employment of disadvantaged and disabled workers subject to individual notification (535)

5.10 Temporary rules in response to the economic and financial crisis

Communication from the Commission on the application, from 1 August 2013, of State aid rules to support measures in favour of banks in the context of the financial crisis (536)

Communication from the Commission on the treatment of impaired assets in the Community banking sector (537)

Commission communication on the return to viability and the assessment of restructuring measures in the financial sector in the current crisis under the State aid rules (538)

5.11 Export credit insurance

Communication from the Commission to the Member States on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to short-term export-credit insurance (539)

5.12 Energy and environment

5.12.1 Environment and energy

Communication from the Commission — Guidelines on State aid for environmental protection and energy 2014-2020 (540)

Communication from the Commission — Guidelines on certain State aid measures in the context of the greenhouse gas emission allowance trading scheme post-2012 (541)

5.12.2 Electricity (stranded costs)

Commission Communication relating to the methodology for analysis of State aid linked to stranded costs (542)

5.12.2 Coal

Council Decision of 10 December 2010 on State aid to facilitate the closure of uncompetitive coal mines (543)

5.13 Basic industries and manufacturing (steel)

Communication from the Commission concerning certain aspects of the treatment of competition cases resulting from the expiry of the ECSC Treaty (544)

5.14 Postal services

Notice from the Commission on the application of the competition rules to the postal sector and on the assessment of certain State measures relating to postal services (545)

5.15 Audiovisual, broadcasting and broadband

5.15.1 Audiovisual production

Communication from the Commission on State aid for films and other audiovisual works (546)

5.15.2 Broadcasting

Communication from the Commission on the application of State aid rules to public service broadcasting (547)

5.15.3 Broadband network

Communication from the Commission – Guidelines for the application of State aid rules in relation to the rapid deployment of broadband networks (548)

5.16 Transport and infrastructure

Communication from the Commission – Community guidelines on State aid for railway undertakings (549)

Community guidelines on State aid to maritime transport (550)

Communication from the Commission providing guidance on State aid complementary to Community funding for the launching of the motorways of the sea (551)

Communication from the Commission providing guidance on State aid to ship-management companies (552)

Communication from the Commission — Guidelines on State aid to airports and airlines (553)

5.17 Services of general economic interest (SGEI)

Communication from the Commission — European Union framework for State aid in the form of public service compensation (554)

6. Transparency of financial relations between Member States and public undertakings

Commission Directive 2006/111/EC of 16 November 2006 on the transparency of financial relations between Member States and public undertakings as well as on financial transparency within certain undertakings (555)

ANNEX 6

PROCEDURES REFERRED TO IN ARTICLE 10(2)

The Joint Committee shall determine the initial maximum exempted overall annual level of support and the initial minimum percentage referred to in Article 10(2), taking into account the most recent information available. The initial maximum exempted overall annual level of support shall be informed by the design of the United Kingdom's future agricultural support scheme as well as the annual average of the total amount of expenditure incurred in Northern Ireland under the Common Agricultural Policy under the current MFF 2014-2020. The initial minimum percentage shall be informed by the design of the United Kingdom's agricultural support scheme as well as by the percentage to which the overall expenditure under the Common Agricultural Policy in the Union complied with the provisions of Annex 2 to the WTO Agreement on Agriculture as notified for the period concerned.

The Joint Committee shall adjust the level of support and percentage referred to in the first paragraph informed by the design of the United Kingdom's agricultural support scheme to any variation in the overall amount of support available under the Common Agricultural Policy in the Union in each future Multiannual Financial Framework.

If the Joint Committee fails to determine the initial level of support and percentage in accordance with the first paragraph, or fails to adjust the level of support and percentage in accordance with the second paragraph, by the end of the transition period or within 1 year of the entry into force of a future Multiannual Financial Framework, as the case may be, application of Article 10(2) shall be suspended until the Joint Committee has determined or adjusted the level of support and percentage.

ANNEX 7

PROCEDURES REFERRED TO IN ARTICLE 16(3)

1. Where the Union or the United Kingdom is considering taking safeguard measures under Article 16(1) of this Protocol, it shall, without delay, notify the Union or the United Kingdom, as the case may be, through the Joint Committee and shall provide all relevant information.

2. The Union and the United Kingdom shall immediately enter into consultations in the Joint Committee with a view to finding a commonly acceptable solution.

3. The Union or the United Kingdom, as the case may be, may not take safeguard measures until 1 month has elapsed after the date of notification under point 1, unless the consultation procedure under point 2 has been concluded before the expiration of the state limit. When exceptional circumstances requiring immediate action exclude prior examination, the Union or the United Kingdom, as the case may be, may apply forthwith the protective measures strictly necessary to remedy the situation.

4. The Union or the United Kingdom, as the case may be, shall, without delay, notify the measures taken to the Joint Committee and shall provide all relevant information.

5. The safeguard measures taken shall be the subject of consultations in the Joint Committee every 3 months from the date of their adoption with a view to their abolition before the date of expiry envisaged, or to the limitation of their scope of application. The Union or the United Kingdom, as the case may be, may at any time request the Joint Committee to review such measures.

6. Points 1 to 5 shall apply, mutatis mutandis, to rebalancing measures referred to in Article 16(2) of this Protocol.

APPENDIX B:
PROVISIONS OF UNION LAW REFERRED TO IN ARTICLE 5(4) OF THE NORTHERN IRELAND PROTOCOL

This is an annotated version of Annex 2 of the Northern Ireland Protocol on which we have:

(1) numbered each item of EU legislation for ease of reference;

(2) marked with "RG" or "RG*" as the case may be the items of EU legislation listed in Annex I of the proposed Regulation on retail goods etc; and

(3) added at the end 5 items of EU legislation which appear in Annex I of the proposed Regulation but are not in Annex 2 of the Protocol

General customs aspects (182)

1. Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (183)

2. Council Regulation (EC) No 515/97 of 13 March 1997 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters (184)

3. Council Directive 2010/24/EU of 16 March 2010 concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures (185)

   Protection of the Union's financial interests

   For the purpose of the application of the acts listed in this section, the proper collection of customs duties by the United Kingdom in respect of Northern Ireland shall be considered as part of the protection of the financial interests of the Union.

4. Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 (186)

5. Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests (187)

   Trade statistics

6. Regulation (EC) No 638/2004 of the European Parliament and of the Council of 31 March 2004 on Community statistics relating to the trading of goods between Member States and repealing Council Regulation (EEC) No 3330/91 (188)

7. Regulation (EC) No 471/2009 of the European Parliament and of the Council of 6 May 2009 on Community statistics relating to external trade with non-member countries and repealing Council Regulation (EC) No 1172/95 (189)

   General trade related aspects

8. Regulation (EU) No 978/2012 of the European Parliament and of the Council of 25 October 2012 applying a scheme of generalised tariff preferences and repealing Council Regulation (EC) No 732/2008 (190). Without prejudice to the fact that the tariff preferences for eligible countries pursuant to the Union's General Scheme of Preferences shall be applicable in the United Kingdom in respect of Northern Ireland:

   the references to 'Member State' in Article 9(1)(c)(ii) and Chapter VI [Safeguards and surveillance provisions] of Regulation (EU) No 978/2012 shall not be read as including the United Kingdom in respect of Northern Ireland;

   the references to 'Union market' in Article 2(k) and Chapter VI [Safeguards and surveillance provisions] of Regulation (EU) No 978/2012 shall not be read as including the market of United Kingdom in respect of Northern Ireland; and

   the references to 'Union producers' and to 'Union industry' in Regulation (EU) No 978/2012 shall not be read as including the producers or industry of the United Kingdom in respect of Northern Ireland.

9. Regulation (EU) 2015/479 of the European Parliament and of the Council of 11 March 2015 on common rules for exports (191)

10. Regulation (EU) 2015/936 of the European Parliament and of the Council of 9 June 2015 on common rules for imports of textile products from certain third countries not covered by bilateral agreements, protocols or other arrangements, or by other specific Union import rules (192)

11. Regulation (EU) 2017/821 of the European Parliament and of the Council of 17 May 2017 laying down supply chain due diligence obligations for Union importers of tin, tantalum and tungsten, their ores, and gold originating from conflict-affected and high-risk areas (193)

12. Council Regulation (EC) No 1215/2009 of 30 November 2009 introducing exceptional trade measures for countries and territories participating in or linked to the European Union's Stabilisation and Association process (Western Balkans) (194)

13. Regulation (EU) 2017/1566 of the European Parliament and of the Council of 13 September 2017 on the introduction of temporary autonomous trade measures for Ukraine supplementing the trade concessions available under the Association Agreement (195)

    Obligations stemming from the international agreements concluded by the Union, or by Member States acting on its behalf, or by the Union and its Member States acting jointly, insofar as they relate to trade in goods between the Union and third countries

Trade defence instruments

Without prejudice to the fact that the Union's trade defence measures shall be applicable in the United Kingdom in respect of Northern Ireland, the references to 'Member States' or 'Union' in Regulation (EU) 2016/1036, Regulation (EU) 2016/1037, Regulation (EU) 2015/478 and Regulation (EU) 2015/755 shall not be read as including the United Kingdom in respect of Northern Ireland. In addition, importers that paid Union anti-dumping or countervailing duties on the importation of goods that were customs cleared in Northern Ireland may only ask for a refund of such duties pursuant to Article 11(8) of Regulation (EU) 2016/1036 or Article 21 of Regulation (EU) 2016/1037, respectively.

14. Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union (196)

15. Regulation (EU) 2016/1037 of the European Parliament and of the Council of 8 June 2016 on protection against subsidised imports from countries not members of the European Union (197)

16. Regulation (EU) 2015/478 of the European Parliament and of the Council of 11 March 2015 on common rules for imports (198)

17. Regulation (EU) 2015/755 of the European Parliament and of the Council of 29 April 2015 on common rules for imports from certain third countries (199)

18. Regulation (EU) 2015/476 of the European Parliament and of the Council of 11 March 2015 on the measures that the Union may take following a report adopted by the WTO Dispute Settlement Body concerning anti-dumping and anti-subsidy matters (200)

19. Regulation (EU) 2015/477 of the European Parliament and of the Council of 11 March 2015 on measures that the Union may take in relation to the combined effect of anti-dumping or anti-subsidy measures with safeguard measures (201)

Regulations on bilateral safeguards

Without prejudice to the fact that the Union's bilateral safeguard measures shall be applicable in the United Kingdom in respect of Northern Ireland, the references to 'Member States' or 'Union' in the regulations listed below shall not be read as including the United Kingdom in respect of Northern Ireland.

20. Regulation (EU) No 654/2014 of the European Parliament and of the Council of 15 May 2014 concerning the exercise of the Union's rights for the application and enforcement of international trade rules and amending Council Regulation (EC) No 3286/94 laying down Community procedures in the field of the common commercial policy in order to ensure the exercise of the Community's rights under international trade rules, in particular those established under the auspices of the World Trade Organization (202)

21. Regulation (EU) 2015/1145 of the European Parliament and of the Council of 8 July 2015 on the safeguard measures provided for in the Agreement between the European Economic Community and the Swiss Confederation (203)

22. Regulation (EU) 2015/475 of the European Parliament and of the Council of 11 March 2015 on the safeguard measures provided for in the Agreement between the European Economic Community and the Republic of Iceland (204)

23. Regulation (EU) 2015/938 of the European Parliament and of the Council of 9 June 2015 on the safeguard measures provided for in the Agreement between the European Economic Community and the Kingdom of Norway (205)

24. Regulation (EU) No 332/2014 of the European Parliament and of the Council of 11 March 2014 on certain procedures for applying the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Serbia, of the other part (206)

25. Regulation (EU) 2015/752 of the European Parliament and of the Council of 29 April 2015 on certain procedures for applying the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Montenegro, of the other part (207)

26. Regulation (EU) No 19/2013 of the European Parliament and of the Council of 15 January 2013 implementing the bilateral safeguard clause and the stabilisation mechanism for bananas of the Trade Agreement between the European Union and its Member States, of the one part, and Colombia and Peru, of the other part (208)

27. Regulation (EU) No 20/2013 of the European Parliament and of the Council of 15 January 2013 implementing the bilateral safeguard clause and the stabilisation mechanism for bananas of the Agreement establishing an Association between the European Union and its Member States, on the one hand, and Central America on the other (209)

28. Regulation (EU) 2016/400 of the European Parliament and of the Council of 9 March 2016 implementing the safeguard clause and the anti-circumvention mechanism provided for in the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Moldova, of the other part (210)

29. Regulation (EU) 2016/401 of the European Parliament and of the Council of 9 March 2016 implementing the anti-circumvention mechanism provided for in the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part (211)

30. Regulation (EU) 2015/941 of the European Parliament and of the Council of 9 June 2015 on certain procedures for applying the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the former Yugoslav Republic of Macedonia, of the other part (212)

31. Regulation (EU) 2015/940 of the European Parliament and of the Council of 9 June 2015 on certain procedures for applying the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and Bosnia and Herzegovina, of the other part, and for applying the Interim Agreement on trade and trade-related matters between the European Community, of the one part, and Bosnia and Herzegovina, of the other part (213)

32. Regulation (EU) 2015/939 of the European Parliament and of the Council of 9 June 2015 on certain procedures for applying the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Albania, of the other part (214)

33. Regulation (EU) No 511/2011 of the European Parliament and of the Council of 11 May 2011 implementing the bilateral safeguard clause of the Free Trade Agreement between the European Union and its Member States and the Republic of Korea (215)

34. Regulation (EU) 2017/355 of the European Parliament and of the Council of 15 February 2017 on certain procedures for applying the Stabilisation and Association Agreement between the European Union and the European Atomic Energy Community, of the one part, and Kosovo (*1) of the other part (216)

35. Regulation (EU) 2016/1076 of the European Parliament and of the Council of 8 June 2016 applying the arrangements for products originating in certain states which are part of the African, Caribbean and Pacific (ACP) Group of States provided for in agreements establishing, or leading to the establishment of, economic partnership agreements (217)

36. Regulation (EU) 2019/287 of the European Parliament and of the Council of 13 February 2019 implementing bilateral safeguard clauses and other mechanisms allowing for the temporary withdrawal of preferences in certain trade agreements concluded between the European Union and third countries (218);

    Others

37. Regulation (EC) No 816/2006 of the European Parliament and of the Council of 17 May 2006 on compulsory licensing of patents relating to the manufacture of pharmaceutical products for export to countries with public health problems (219)

    Goods - general provisions

38. Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (220), with the exception of provisions relating to rules on information society services

39. Regulation (EU) No 1025/2012 of the European Parliament and of the Council of 25 October 2012 on European standardisation, amending Council Directives 89/686/EEC and 93/15/EEC and Directives 94/9/EC, 94/25/EC, 95/16/EC, 97/23/EC, 98/34/EC,

2004/22/EC, 2007/23/EC, 2009/23/EC and 2009/105/EC of the European Parliament and of the Council and repealing Council Decision 87/95/EEC and Decision No 1673/2006/EC of the European Parliament and of the Council (221)

40. **RG** Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93 (222)

41. **RG** Decision No 768/2008/EC of the European Parliament and of the Council of 9 July 2008 on a common framework for the marketing of products, and repealing Council Decision 93/465/EEC (223)

42. Regulation (EC) No 764/2008 of the European Parliament and of the Council of 9 July 2008 laying down procedures relating to the application of certain national technical rules to products lawfully marketed in another Member State and repealing Decision No 3052/95/EC (224)

43. Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety (225)

44. Council Regulation (EC) No 2679/98 of 7 December 1998 on the functioning of the internal market in relation to the free movement of goods among the Member States (226)

45. Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products (227)

Motor vehicles, including agricultural and forestry tractors

46. Council Directive 70/157/EEC of 6 February 1970 on the approximation of the laws of the Member States relating to the permissible sound level and the exhaust system of motor vehicles (228)

47. Regulation (EU) No 540/2014 of the European Parliament and of the Council of 16 April 2014 on the sound level of motor vehicles and of replacement silencing systems, and amending Directive 2007/46/EC and repealing Directive 70/157/EEC (229)

48. Directive 2005/64/EC of the European Parliament and of the Council of 26 October 2005 on the type-approval of motor vehicles with regard to their reusability, recyclability and recoverability and amending Council Directive 70/156/EEC (230)

49. Directive 2006/40/EC of the European Parliament and of the Council of 17 May 2006 relating to emissions from air conditioning systems in motor vehicles and amending Council Directive 70/156/EEC (231)

50. Regulation (EC) No 715/2007 of the European Parliament and of the Council of 20 June 2007 on type approval of motor vehicles with respect to emissions from light

passenger and commercial vehicles (Euro 5 and Euro 6) and on access to vehicle repair and maintenance information (232)

51. Directive 2007/46/EC of the European Parliament and of the Council of 5 September 2007 establishing a framework for the approval of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles (Framework Directive) (233)

52. Regulation (EU) 2018/858 of the European Parliament and of the Council of 30 May 2018 on the approval and market surveillance of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles, amending Regulations (EC) No 715/2007 and (EC) No 595/2009 and repealing Directive 2007/46/EC (234)

53. Regulation (EC) No 78/2009 of the European Parliament and of the Council of 14 January 2009 on the type-approval of motor vehicles with regard to the protection of pedestrians and other vulnerable road users, amending Directive 2007/46/EC and repealing Directives 2003/102/EC and 2005/66/EC (235)

54. Regulation (EC) No 661/2009 of the European Parliament and of the Council of 13 July 2009 concerning type-approval requirements for the general safety of motor vehicles, their trailers and systems, components and separate technical units intended therefor (236)

55. Regulation (EC) No 79/2009 of the European Parliament and of the Council of 14 January 2009 on type-approval of hydrogen-powered motor vehicles, and amending Directive 2007/46/EC (237)

56. Regulation (EC) No 595/2009 of the European Parliament and of the Council of 18 June 2009 on type-approval of motor vehicles and engines with respect to emissions from heavy duty vehicles (Euro VI) and on access to vehicle repair and maintenance information and amending Regulation (EC) No 715/2007 and Directive 2007/46/EC and repealing Directives 80/1269/EEC, 2005/55/EC and 2005/78/EC (238)

57. Regulation (EU) No 168/2013 of the European Parliament and of the Council of 15 January 2013 on the approval and market surveillance of two- or three-wheel vehicles and quadricycles (239)

58. Regulation (EU) 2015/758 of the European Parliament and of the Council of 29 April 2015 concerning type-approval requirements for the deployment of the eCall in-vehicle system based on the 112 service and amending Directive 2007/46/EC (240)

59. Regulation (EU) No 167/2013 of the European Parliament and of the Council of 5 February 2013 on the approval and market surveillance of agricultural and forestry vehicles (241)

Lifting and mechanical handling appliances

60. Council Directive 73/361/EEC of 19 November 1973 on the approximation of the laws, regulations and administrative provisions of the Member States relating to the certification and marking of wire-ropes, chains and hooks (242)

61. Directive 2014/33/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to lifts and safety components for lifts (243)

Gas appliances

62. Council Directive 92/42/EEC of 21 May 1992 on efficiency requirements for new hot-water boilers fired with liquid or gaseous fuels (244)

63. Regulation (EU) 2016/426 of the European Parliament and of the Council of 9 March 2016 on appliances burning gaseous fuels and repealing Directive 2009/142/EC (245)

Pressure vessels

64. Council Directive 75/324/EEC of 20 May 1975 on the approximation of the laws of the Member States relating to aerosol dispensers (246)

65. Directive 2010/35/EU of the European Parliament and of the Council of 16 June 2010 on transportable pressure equipment and repealing Council Directives 76/767/EEC, 84/525/EEC, 84/526/EEC, 84/527/EEC and 1999/36/EC (247)

66. Directive 2014/68/EU of the European Parliament and of the Council of 15 May 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of pressure equipment (248)

67. Directive 2014/29/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of simple pressure vessels (249)

Measuring instruments

68. Directive 2009/34/EC of the European Parliament and of the Council of 23 April 2009 relating to common provisions for both measuring instruments and methods of metrological control (250)

69. Council Directive 75/107/EEC of 19 December 1974 on the approximation of the laws of the Member States relating to bottles used as measuring containers (251)

70. Council Directive 76/211/EEC of 20 January 1976 on the approximation of the laws of the Member States relating to the making-up by weight or by volume of certain prepackaged products (252)

71. Council Directive 80/181/EEC of 20 December 1979 on the approximation of the laws of the Member States relating to units of measurement and on the repeal of Directive 71/354/EEC (253)

72. **RG** Directive 2007/45/EC of the European Parliament and of the Council of 5 September 2007 laying down rules on nominal quantities for prepacked products, repealing Council Directives 75/106/EEC and 80/232/EEC, and amending Council Directive 76/211/EEC (254)

73. Directive 2011/17/EU of the European Parliament and of the Council of 9 March 2011 repealing Council Directives 71/317/EEC, 71/347/EEC, 71/349/EEC, 74/148/EEC, 75/33/EEC, 76/765/EEC, 76/766/EEC and 86/217/EEC regarding metrology (255)

74. Directive 2014/31/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of non-automatic weighing instruments (256)

75. Directive 2014/32/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of measuring instruments (257)

Construction products, machinery, cableways, personal protective equipment

76. Regulation (EU) No 305/2011 of the European Parliament and of the Council of 9 March 2011 laying down harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC (258)

77. Regulation (EU) 2016/425 of the European Parliament and of the Council of 9 March 2016 on personal protective equipment and repealing Council Directive 89/686/EEC (259)

78. Regulation (EU) 2016/424 of the European Parliament and of the Council of 9 March 2016 on cableway installations and repealing Directive 2000/9/EC (260)

79. Directive 2006/42/EC of the European Parliament and of the Council of 17 May 2006 on machinery, and amending Directive 95/16/EC (261)

80. Regulation (EU) 2016/1628 of the European Parliament and of the Council of 14 September 2016 on requirements relating to gaseous and particulate pollutant emission limits and type-approval for internal combustion engines for non-road mobile machinery, amending Regulations (EU) No 1024/2012 and (EU) No 167/2013, and amending and repealing Directive 97/68/EC (262)

81. Directive 2000/14/EC of the European Parliament and of the Council of 8 May 2000 on the approximation of the laws of the Member States relating to the noise emission in the environment by equipment for use outdoors (263)

Electrical and radio equipment

82. Directive 2014/30/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to electromagnetic compatibility (264)

83. Directive 2014/34/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to equipment and protective systems intended for use in potentially explosive atmospheres (265)

84. Directive 2014/35/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of electrical equipment designed for use within certain voltage limits (266)

85. Directive 2014/53/EU of the European Parliament and of the Council of 16 April 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of radio equipment and repealing Directive 1999/5/EC (267)

Textiles, footwear

86. Regulation (EU) No 1007/2011 of the European Parliament and of the Council of 27 September 2011 on textile fibre names and related labelling and marking of the fibre composition of textile products and repealing Council Directive 73/44/EEC and Directives 96/73/EC and 2008/121/EC of the European Parliament and of the Council (268)

87. Directive 94/11/EC of the European Parliament and the Council of 23 March 1994 on the approximation of the laws, regulation and administrative provisions of the Member States relating to labelling of the materials used in the main components of footwear for sale to the consumer (269)

Cosmetics, toys

88. Regulation (EC) No 1223/2009 of the European Parliament and of the Council of 30 November 2009 on cosmetic products (270)

89. Directive 2009/48/EC of the European Parliament and of the Council of 18 June 2009 on the safety of toys (271)

Recreational craft

90. Directive 2013/53/EU of the European Parliament and of the Council of 20 November 2013 on recreational craft and personal watercraft and repealing Directive 94/25/EC (272)

Explosives and pyrotechnic articles

91. Directive 2014/28/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to the making available on the market and supervision of explosives for civil uses (273)

92. Directive 2013/29/EU of the European Parliament and of the Council of 12 June 2013 on the harmonisation of the laws of the Member States relating to the making available on the market of pyrotechnic articles (274)

93. Regulation (EU) No 98/2013 of the European Parliament and of the Council of 15 January 2013 on the marketing and use of explosives precursors (275)

Medicinal products

94. Regulation (EC) No 726/2004 of the European Parliament and of the Council of 31 March 2004 laying down Community procedures for the authorisation and supervision of medicinal products for human and veterinary use and establishing a European Medicines Agency (276). The references to Community in the second subparagraph of Article 2 and in the second subparagraph of Article 48 of that Regulation shall not be read as including the United Kingdom in respect of Northern Ireland.

95. Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use (277). The references to Community in Articles 8(2) and 16b(1) of that Directive as well as the reference to Union in the second subparagraph of Article 104(3) of that Directive shall not be read as including the United Kingdom in respect of Northern Ireland, with the exception of authorisations by the United Kingdom in respect of Northern Ireland. A medicinal product authorised in the United Kingdom in respect of Northern Ireland shall not be considered as a reference medicinal product in the Union.

96. Regulation (EC) No 1901/2006 of the European Parliament and of the Council of 12 December 2006 on medicinal products for paediatric use and amending Regulation (EEC) No 1768/92, Directive 2001/20/EC, Directive 2001/83/EC and Regulation (EC) No 726/2004 (278), with the exception of Article 36

97. Regulation (EC) No 141/2000 of the European Parliament and of the Council of 16 December 1999 on orphan medicinal products (279)

98. Regulation (EC) No 1394/2007 of the European Parliament and of the Council of 13 November 2007 on advanced therapy medicinal products and amending Directive 2001/83/EC and Regulation (EC) No 726/2004 (280)

99. Directive 2001/82/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to veterinary medicinal products (281). The references to Community in Article 12(2) and the second paragraph of Article 74 of that Directive shall not be read as including the United Kingdom in respect of Northern Ireland, with the exception of authorisations by the United Kingdom in respect of Northern Ireland. A veterinary medicinal product authorised in the United Kingdom in respect of Northern Ireland shall not be considered as a reference medicinal product in the Union.

100. **RG*** Regulation (EC) No 470/2009 of the European Parliament and of the Council of 6 May 2009 laying down Community procedures for the establishment of residue limits of pharmacologically active substances in foodstuffs of animal origin, repealing Council Regulation (EEC) No 2377/90 and amending Directive 2001/82/EC of the European Parliament and of the Council and Regulation (EC) No 726/2004 of the European Parliament and of the Council (282)

101. Article 13 of Directive 2001/20/EC of the European Parliament and of the Council of 4 April 2001 on the approximation of the laws, regulations and administrative provisions of the Member States relating to the implementation of good clinical practice in the conduct of clinical trials on medicinal products for human use (283)

102. Chapter IX of Regulation (EU) No 536/2014 of the European Parliament and of the Council of 16 April 2014 on clinical trials on medicinal products for human use, and repealing Directive 2001/20/EC (284)

103. Directive 2009/35/EC of the European Parliament and of the Council of 23 April 2009 on the colouring matters which may be added to medicinal products (285)

104. Regulation (EU) 2016/793 of the European Parliament and of the Council of 11 May 2016 to avoid trade diversion into the European Union of certain key medicines (286)

Medical devices

105. Council Directive 93/42/EEC of 14 June 1993 concerning medical devices (287)

106. Directive 98/79/EC of the European Parliament and of the Council of 27 October 1998 on in vitro diagnostic medical devices (288)

107. Council Directive 90/385/EEC of 20 June 1990 on the approximation of the laws of the Member States relating to active implantable medical devices (289)

108. Regulation (EU) 2017/745 of the European Parliament and of the Council of 5 April 2017 on medical devices, amending Directive 2001/83/EC, Regulation (EC) No 178/2002 and Regulation (EC) No 1223/2009 and repealing Council Directives 90/385/EEC and 93/42/EEC (290)

109. Regulation (EU) 2017/746 of the European Parliament and of the Council of 5 April 2017 on in vitro diagnostic medical devices and repealing Directive 98/79/EC and Commission Decision 2010/227/EU (291)

Substances of human origin

110. Directive 2002/98/EC of the European Parliament and of the Council of 27 January 2003 setting standards of quality and safety for the collection, testing, processing, storage and distribution of human blood and blood components and amending Directive 2001/83/EC (292)

111. Directive 2004/23/EC of the European Parliament and of the Council of 31 March 2004 on setting standards of quality and safety for the donation, procurement, testing, processing, preservation, storage and distribution of human tissues and cells (293)

112. Directive 2010/53/EU of the European Parliament and of the Council of 7 July 2010 on standards of quality and safety of human organs intended for transplantation (294)

Chemicals and related

113. Regulation (EC) No 2003/2003 of the European Parliament and of the Council of 13 October 2003 relating to fertilisers (295)

114. Directive 2004/10/EC of the European Parliament and of the Council of 11 February 2004 on the harmonisation of laws, regulations and administrative provisions relating to the application of the principles of good laboratory practice and the verification of their applications for tests on chemical substances (296)

115. Directive 2004/9/EC of the European Parliament and of the Council of 11 February 2004 on the inspection and verification of good laboratory practice (GLP) (297)

116. Directive 2011/65/EU of the European Parliament and of the Council of 8 June 2011 on the restriction of the use of certain hazardous substances in electrical and electronic equipment (298)

117. Regulation (EC) No 648/2004 of the European Parliament and of the Council of 31 March 2004 on detergents (299)

118. Regulation (EC) No 850/2004 of the European Parliament and of the Council of 29 April 2004 on persistent organic pollutants and amending Directive 79/117/EEC (300)

119. Regulation (EU) No 649/2012 of the European Parliament and of the Council of 4 July 2012 concerning the export and import of hazardous chemicals (301)

120. Regulation (EU) 2017/852 of the European Parliament and of the Council of 17 May 2017 on mercury, and repealing Regulation (EC) No 1102/2008) (302)

121. Directive 2006/66/EC of the European Parliament and of the Council of 6 September 2006 on batteries and accumulators and waste batteries and accumulators and repealing Directive 91/157/EEC (303)

122. Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC (304)

123. Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and

mixtures, amending and repealing Directives 67/548/EEC and 1999/45/EC, and amending Regulation (EC) No 1907/2006 (305)

124. Regulation (EC) No 273/2004 of the European Parliament and of the Council of 11 February 2004 on drug precursors (306)

125. Council Regulation (EC) No 111/2005 laying down rules for the monitoring of trade between the Union and third countries in drug precursors (307)

Pesticides, biocides

126. **RG*** Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market and repealing Council Directives 79/117/EEC and 91/414/EEC (308)

127. **RG*** Regulation (EC) No 396/2005 of the European Parliament and of the Council of 23 February 2005 on maximum residue levels of pesticides in or on food and feed of plant and animal origin and amending Council Directive 91/414/EEC (309). The reference to Member States in Article 43 of that Regulation shall not be read as including the United Kingdom in respect of Northern Ireland.

128. **RG*** Regulation (EU) No 528/2012 of the European Parliament and of the Council of 22 May 2012 concerning the making available on the market and use of biocidal products (310). The references to Member State in Articles 3(3), 15(1) and 28(4) and point (g) of Article 75(1) of that Regulation shall not be read as including the United Kingdom in respect of Northern Ireland.

Waste

129. Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste (311)

130. Directive 94/62/EC of the European Parliament and of the Council 20 December 1994 on packaging and packaging waste (312)

131. Regulation (EU) No 1257/2013 of the European Parliament and of the Council of 20 November 2013 on ship recycling and amending Regulation (EC) No 1013/2006 and Directive 2009/16/EC (313)

132. Council Directive 2006/117/Euratom of 20 November 2006 on the supervision and control of shipments of radioactive waste and spent fuel (314)

133. Articles 2 to 7, Articles 14 and 17 and Parts A, B, C, D and F of the Annex to Directive (EU) 2019/904 of the European Parliament and of the Council of 5 June 2019 on the reduction of the impact of certain plastic products on the environment (315). In relation to the application of those Articles and Parts to and in the United Kingdom in respect of Northern Ireland, any reference to '3 July 2021' in Articles 4 (1), 14 and 17 (1) is to be read as '1 January 2022'. Articles 2, 3, 14 and 17, and Part F of the Annex, shall only apply insofar as they relate to Articles 4 to 7.

Environment, energy efficiency

134. Regulation (EU) No 1143/2014 of the European Parliament and of the Council of 22 October 2014 on the prevention and management of the introduction and spread of invasive alien species (316)

135. Council Regulation (EC) No 708/2007 of 11 June 2007 concerning use of alien and locally absent species in aquaculture (317)

136. Regulation (EC) No 66/2010 of the European Parliament and of the Council of 25 November 2009 on the EU Ecolabel (318)

137. Directive 98/70/EC of the European Parliament and of the Council of 13 October 1998 relating to the quality of petrol and diesel fuels and amending Council Directive 93/12/EEC (319)

138. Council Directive (EU) 2015/652 of 20 April 2015 laying down calculation methods and reporting requirements pursuant to Directive 98/70/EC of the European Parliament and of the Council relating to the quality of petrol and diesel fuels (320)

139. Directive 2004/42/EC of the European Parliament and of the Council of 21 April 2004 on the limitation of emissions of volatile organic compounds due to the use of organic solvents in certain paints and varnishes and vehicle refinishing products and amending Directive 1999/13/EC (321)

140. Regulation (EU) No 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market (322)

141. Council Regulation (EC) No 2173/2005 of 20 December 2005 on the establishment of a FLEGT licensing scheme for imports of timber into the European Community (323)

142. Regulation (EU) No 517/2014 of the European Parliament and of the Council of 16 April 2014 on fluorinated greenhouse gases and repealing Regulation (EC) No 842/2006 (324)

143. Regulation (EC) No 1005/2009 of the European Parliament and of the Council of 16 September 2009 on substances that deplete the ozone layer (325)

144. Regulation (EU) 2017/852 of the European Parliament and of the Council of 17 May 2017 on mercury, and repealing Regulation (EC) No 1102/2008 (326)

145. Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein (327)

146. Council Regulation (EEC) No 3254/91 of 4 November 1991 prohibiting the use of leghold traps in the Community and the introduction into the Community of pelts and manufactured goods of certain wild animal species originating in countries which

catch them by means of leghold traps or trapping methods which do not meet international humane trapping standards (328)

147. Regulation (EC) No 1007/2009 of the European Parliament and of the Council of 16 September 2009 on trade in seal products (329)

148. Regulation (EC) No 1523/2007 of the European Parliament and of the Council of 11 December 2007 banning the placing on the market and the import to, or export from, the Community of cat and dog fur, and products containing such fur (330)

149. Council Directive 83/129/EEC of 28 March 1983 concerning the importation into Member States of skins of certain seal pups and products derived therefrom (331)

150. Regulation (EC) No 106/2008 of the European Parliament and of the Council of 15 January 2008 on a Community energy-efficiency labelling programme for office equipment (332)

151. Regulation (EC) No 1222/2009 of the European Parliament and of the Council of 25 November 2009 on the labelling of tyres with respect to fuel efficiency and other essential parameters (333)

152. Directive 2009/125/EC of the European Parliament and of the Council of 21 October 2009 establishing a framework for the setting of ecodesign requirements for energy-related products (334)

153. Regulation (EU) 2017/1369 of the European Parliament and of the Council of 4 July 2017 setting a framework for energy labelling and repealing Directive 2010/30/EU (335)

Marine equipment

154. Directive 2014/90/EU of the European Parliament and of the Council of 23 July 2014 on marine equipment and repealing Council Directive 96/98/EC (336)

Rail transport

155. Directive (EU) 2016/797 of the European Parliament and of the Council of 11 May 2016 on the interoperability of the rail system within the European Union (337), insofar as conditions and technical specifications for the placing on the market, putting into service and free movement of railway products are concerned

Food – general

156. **RG*** Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety (338). The reference to Member State in the

second subparagraph of Article 29(1) of that Regulation shall not be read as including the United Kingdom in respect of Northern Ireland.

157. **RG*** Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers, amending Regulations (EC) No 1924/2006 and (EC) No 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC) No 608/2004 (339)

158. **RG*** Regulation (EC) No 1924/2006 of the European Parliament and of the Council of 20 December 2006 on nutrition and health claims made on foods (340)

159. Directive 2011/91/EU of the European Parliament and of the Council of 13 December 2011 on indications or marks identifying the lot to which a foodstuff belongs (341)

Food – hygiene

160. **RG*** Regulation (EC) No 853/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific hygiene rules for food of animal origin (342)

161. **RG*** Regulation (EC) No 852/2004 of the European Parliament and of the Council of 29 April 2004 on the hygiene of foodstuffs (343)

162. **RG*** Council Directive 89/108/EEC of 21 December 1988 on the approximation of the laws of the Member States relating to quick-frozen foodstuffs for human consumption (344)

Food – ingredients, traces, residues, marketing standards

163. **RG*** Regulation (EC) No 1331/2008 of the European Parliament and of the Council of 16 December 2008 establishing a common authorisation procedure for food additives, food enzymes and food flavourings (345). The reference to Member State in Article 3(1) of that Regulation shall not be read as including the United Kingdom in respect of Northern Ireland.

164. **RG*** Regulation (EC) No 1332/2008 of the European Parliament and of the Council of 16 December 2008 on food enzymes and amending Council Directive 83/417/EEC, Council Regulation (EC) No 1493/1999, Directive 2000/13/EC, Council Directive 2001/112/EC and Regulation (EC) No 258/97 (346)

165. **RG*** Regulation (EC) No 1333/2008 of the European Parliament and of the Council of 16 December 2008 on food additives (347)

166. **RG*** Regulation (EC) No 1334/2008 of the European Parliament and of the Council of 16 December 2008 on flavourings and certain food ingredients with

flavouring properties for use in and on foods and amending Council Regulation (EEC) No 1601/91, Regulations (EC) No 2232/96 and (EC) No 110/2008 and Directive 2000/13/EC (348)

167. **RG*** Directive 2002/46/EC of the European Parliament and of the Council of 10 June 2002 on the approximation of the laws of the Member States relating to food supplements (349)

168. **RG*** Regulation (EC) No 1925/2006 of the European Parliament and of the Council of 20 December 2006 on the addition of vitamins and minerals and of certain other substances to foods (350)

169. **RG*** Regulation (EC) No 2065/2003 of the European Parliament and of the Council of 10 November 2003 on smoke flavourings used or intended for use in or on foods (351). The reference to Member State in Article 7(2) of that Regulation shall not be read as including the United Kingdom in respect of Northern Ireland.

170. **RG*** Council Regulation (EEC) No 315/93 of 8 February 1993 laying down Community procedures for contaminants in food (352)

171. **RG*** Regulation (EU) 2015/2283 of the European Parliament and of the Council of 25 November 2015 on novel foods, amending Regulation (EU) No 1169/2011 of the European Parliament and of the Council and repealing Regulation (EC) No 258/97 of the European Parliament and of the Council and Commission Regulation (EC) No 1852/2001 (353)

172. **RG*** Regulation (EU) No 609/2013 of the European Parliament and of the Council of 12 June 2013 on food intended for infants and young children, food for special medical purposes, and total diet replacement for weight control and repealing Council Directive 92/52/EEC, Commission Directives 96/8/EC, 1999/21/EC, 2006/125/EC and 2006/141/EC, Directive 2009/39/EC of the European Parliament and of the Council and Commission Regulations (EC) No 41/2009 and (EC) No 953/2009 (354)

173. **RG*** Directive 1999/4/EC of the European Parliament and of the Council of 22 February 1999 relating to coffee extracts and chicory extracts (355)

174. **RG*** Directive 2000/36/EC of the European Parliament and of the Council of 23 June 2000 relating to cocoa and chocolate products intended for human consumption (356)

175. **RG*** Council Directive 2001/110/EC of 20 December 2001 relating to honey (357)

176. **RG*** Council Directive 2001/111/EC of 20 December 2001 relating to certain sugars intended for human consumption (358)

177. **RG*** Commission Implementing Regulation (EU) No 543/2011 of 7 June 2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007

in respect of the fruit and vegetables and processed fruit and vegetables sectors (359)

178. Commission Regulation (EC) No 1295/2008 of 18 December 2008 on the importation of hops from third countries (360)

179. Commission Regulation (EC) No 1375/2007 of 23 November 2007 on imports of residues from the manufacture of starch from maize from the United States of America (361)

180. **RG*** Council Directive 2001/112/EC of 20 December 2001 relating to fruit juices and certain similar products intended for human consumption (362)

181. **RG*** Council Directive 2001/113/EC of 20 December 2001 relating to fruit jams, jellies and marmalades and sweetened chestnut purée intended for human consumption (363)

182. **RG*** Council Directive 2001/114/EC of 20 December 2001 relating to certain partly or wholly dehydrated preserved milk for human consumption (364)

183. **RG*** Directive (EU) 2015/2203 of the European Parliament and of the Council of 25 November 2015 on the approximation of the laws of the Member States relating to caseins and caseinates intended for human consumption and repealing Council Directive 83/417/EEC (365)

184. Chapter IV of Title V of Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008 (366)

185. **RG*** Section 1 of Chapter I of Title II of Part II of Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 (367)

Food contact material

186. **RG*** Regulation (EC) No 1935/2004 of the European Parliament and of the Council of 27 October 2004 on materials and articles intended to come into contact with food and repealing Directives 80/590/EEC and 89/109/EEC (368). The reference to Member State in Article 9(1) of that Regulation shall not be read as including the United Kingdom in respect of Northern Ireland.

187. **RG*** Council Directive 84/500/EEC of 15 October 1984 on the approximation of the laws of the Member States relating to ceramic articles intended to come into contact with foodstuffs (369)

Food – other

188. RG* Directive 1999/2/EC of the European Parliament and of the Council of 22 February 1999 on the approximation of the laws of the Member States concerning foods and food ingredients treated with ionising radiation (370)

189. RG* Directive 1999/3/EC of the European Parliament and of the Council of 22 February 1999 on the establishment of a Community list of foods and food ingredients treated with ionising radiation (371)

190. RG* Directive 2009/32/EC of the European Parliament and of the Council of 23 April 2009 on the approximation of the laws of the Member States on extraction solvents used in the production of foodstuffs and food ingredients (372)

191. RG* Directive 2009/54/EC of the European Parliament and of the Council of 18 June 2009 on the exploitation and marketing of natural mineral waters (373)

192. Council Regulation (EC) No 834/2007 of 28 June 2007 on organic production and labelling of organic products and repealing Regulation (EEC) No 2092/91 (374)

193. RG* Regulation (EU) 2018/848 of the European Parliament and of the Council of 30 May 2018 on organic production and labelling of organic products and repealing Council Regulation (EC) No 834/2007 (375)

194. RG* Council Regulation (Euratom) 2016/52 of 15 January 2016 laying down maximum permitted levels of radioactive contamination of food and feed following a nuclear accident or any other case of radiological emergency, and repealing Regulation (Euratom) No 3954/87 and Commission Regulations (Euratom) No 944/89 and (Euratom) No 770/90 (376)

195. Council Regulation (EC) No 733/2008 of 15 July 2008 on the conditions governing imports of agricultural products originating in third countries following the accident at the Chernobyl nuclear power station (377)

Feed – products and hygiene

196. RG* Regulation (EC) No 767/2009 of the European Parliament and of the Council of 13 July 2009 on the placing on the market and use of feed, amending European Parliament and Council Regulation (EC) No 1831/2003 and repealing Council Directive 79/373/EEC, Commission Directive 80/511/EEC, Council Directives 82/471/EEC, 83/228/EEC, 93/74/EEC, 93/113/EC and 96/25/EC and Commission Decision 2004/217/EC (378)

197. RG* Directive 2002/32/EC of the European Parliament and of the Council of 7 May 2002 on undesirable substances in animal feed (379)

198. RG* Regulation (EC) No 1831/2003 of the European Parliament and of the Council of 22 September 2003 on additives for use in animal nutrition (380). The references to national reference laboratories in point 6 of Annex II to that Regulation

shall not be read as applying to the United Kingdom in respect of Northern Ireland. This shall not prevent a national reference laboratory located in a Member State from fulfilling the functions of a national reference laboratory in respect of Northern Ireland. Information and material exchanged for that purpose between the competent authorities of Northern Ireland and a national reference laboratory in a Member State shall not be subject to further disclosure by the national reference laboratory without the prior consent of those competent authorities.

199. Council Directive 90/167/EEC of 26 March 1990 laying down the conditions governing the preparation, placing on the market and use of medicated feedingstuffs in the Community (381)

200. **RG*** Regulation (EC) No 183/2005 of the European Parliament and of the Council of 12 January 2005 laying down requirements for feed hygiene (382)

GMOs

201. **RG*** Regulation (EC) No 1829/2003 of the European Parliament and of the Council of 22 September 2003 on genetically modified food and feed (383), with the exception of the second paragraph of Article 32. This shall not prevent a national reference laboratory located in a Member State from fulfilling the functions of a national reference laboratory in respect of Northern Ireland. Information and material exchanged for that purpose between the competent authorities of Northern Ireland and a national reference laboratory in a Member State shall not be subject to further disclosure by the national reference laboratory without the prior consent of those competent authorities. The references to Member State in Articles 10(1) and 22(1) of that Regulation shall not be read as including the United Kingdom in respect of Northern Ireland.

202. **RG*** Regulation (EC) No 1830/2003 of the European Parliament and of the Council of 22 September 2003 concerning the traceability and labelling of genetically modified organisms and the traceability of food and feed products produced from genetically modified organisms and amending Directive 2001/18/EC (384)

203. **RG*** Regulation (EC) No 1946/2003 of the European Parliament and of the Council of 15 July 2003 on transboundary movements of genetically modified organisms (385)

204. **RG*** Part C of Directive 2001/18/EC of the European Parliament and of the Council of 12 March 2001 on the deliberate release into the environment of genetically modified organisms and repealing Council Directive 90/220/EEC (386)

Live animals, germinal products and products of animal origin

References to national reference laboratories in the acts listed in this section shall not be read as including the reference laboratory in the United Kingdom. This shall not prevent a national reference laboratory located in a Member State from fulfilling the functions of a national reference laboratory in respect of Northern Ireland. Information and material exchanged for that purpose between the competent

authorities of Northern Ireland and a national reference laboratory in a Member State shall not be subject to further disclosure by the national reference laboratory without the prior consent of those competent authorities.

205. Regulation (EU) 2016/429 of the European Parliament and of the Council of 9 March 2016 on transmissible animal diseases and amending and repealing certain acts in the area of animal health ('Animal Health Law') (387)

206. Council Directive 64/432/EEC of 26 June 1964 on animal health problems affecting intra-Community trade in bovine animals and swine (388)

207. Council Directive 91/68/EEC of 28 January 1991 on animal health conditions governing intra-Community trade in ovine and caprine animals (389)

208. Council Directive 2009/156/EC of 30 November 2009 on animal health conditions governing the movement and importation from third countries of equidae (390)

209. Council Directive 2009/158/EC of 30 November 2009 on animal health conditions governing intra-Community trade in, and imports from third countries of, poultry and hatching eggs (391)

210. Council Directive 92/65/EEC of 13 July 1992 laying down animal health requirements governing trade in and imports into the Community of animals, semen, ova and embryos not subject to animal health requirements laid down in specific Community rules referred to in Annex A (I) to Directive 90/425/EEC (392)

211. Council Directive 88/407/EEC of 14 June 1988 laying down the animal health requirements applicable to intra-Community trade in and imports of semen of domestic animals of the bovine species (393)

212. Council Directive 89/556/EEC of 25 September 1989 on animal health conditions governing intra-Community trade in and importation from third countries of embryos of domestic animals of the bovine species (394)

213. Council Directive 90/429/EEC of 26 June 1990 laying down the animal health requirements applicable to intra-Community trade in and imports of semen of domestic animals of the porcine species (395)

214. Council Directive 92/118/EEC of 17 December 1992 laying down animal health and public health requirements governing trade in and imports into the Community of products not subject to the said requirements laid down in specific Community rules referred to in Annex A (I) to Directive 89/662/EEC and, as regards pathogens, to Directive 90/425/EEC (396)

215. Council Directive 2006/88/EC of 24 October 2006 on animal health requirements for aquaculture animals and products thereof, and on the prevention and control of certain diseases in aquatic animals (397)

216. Council Directive 2004/68/EC of 26 April 2004 laying down animal health rules for the importation into and transit through the Community of certain live ungulate animals, amending Directives 90/426/EEC and 92/65/EEC and repealing Directive 72/462/EEC (398)

217. Council Directive 2002/99/EC of 16 December 2002 laying down the animal health rules governing the production, processing, distribution and introduction of products of animal origin for human consumption (399)

218. Regulation (EU) No 576/2013 of the European Parliament and of the Council of 12 June 2013 on the non-commercial movement of pet animals and repealing Regulation (EC) No 998/2003 (400)

219. Regulation (EC) No 1069/2009 of the European Parliament and of the Council of 21 October 2009 laying down health rules as regards animal by-products and derived products not intended for human consumption and repealing Regulation (EC) No 1774/2002 (Animal by-products Regulation) (401)

Animal disease control, zoonosis control

References to national reference laboratories in the acts listed in this section shall not be read as including the reference laboratory in the United Kingdom. This shall not prevent a national reference laboratory located in a Member State from fulfilling the functions of a national reference laboratory in respect of Northern Ireland. Information and material exchanged for that purpose between the competent authorities of Northern Ireland and a national reference laboratory in a Member State shall not be subject to further disclosure by the national reference laboratory without the prior consent of those competent authorities.

220. Regulation (EC) No 999/2001 of the European Parliament and of the Council of 22 May 2001 laying down rules for the prevention, control and eradication of certain transmissible spongiform encephalopathies (402)

221. Council Directive 77/391/EEC of 17 May 1977 introducing Community measures for the eradication of brucellosis, tuberculosis and leucosis in cattle (403)

222. Council Directive 78/52/EEC of 13 December 1977 establishing the Community criteria for national plans for the accelerated eradication of brucellosis, tuberculosis and enzootic leukosis in cattle (404)

223. Council Directive 2003/85/EC of 29 September 2003 on Community measures for the control of foot-and-mouth disease repealing Directive 85/511/EEC and Decisions 89/531/EEC and 91/665/EEC and amending Directive 92/46/EEC (405)

224. Council Directive 2005/94/EC of 20 December 2005 on Community measures for the control of avian influenza and repealing Directive 92/40/EEC (406)

225. Council Directive 2001/89/EC of 23 October 2001 on Community measures for the control of classical swine fever (407)

226. Council Directive 92/35/EEC of 29 April 1992 laying down control rules and measures to combat African horse sickness (408)

227. Council Directive 2002/60/EC of 27 June 2002 laying down specific provisions for the control of African swine fever and amending Directive 92/119/EEC as regards Teschen disease and African swine fever (409)

228. **RG*** Regulation (EC) No 2160/2003 of the European Parliament and of the Council of 17 November 2003 on the control of salmonella and other specified food-borne zoonotic agents (410)

229. Council Directive 92/66/EEC of 14 July 1992 introducing Community measures for the control of Newcastle disease (411)

230. Council Directive 92/119/EEC of 17 December 1992 introducing general Community measures for the control of certain animal diseases and specific measures relating to swine vesicular disease (412)

231. Directive 2003/99/EC of the European Parliament and of the Council of 17 November 2003 on the monitoring of zoonoses and zoonotic agents, amending Council Decision 90/424/EEC and repealing Council Directive 92/117/EEC (413)

232. Council Directive 2000/75/EC of 20 November 2000 laying down specific provisions for the control and eradication of bluetongue (414)

Animal identification

233. Council Regulation (EC) No 21/2004 of 17 December 2003 establishing a system for the identification and registration of ovine and caprine animals and amending Regulation (EC) No 1782/2003 and Directives 92/102/EEC and 64/432/EEC (415)

234. Regulation (EC) No 1760/2000 of the European Parliament and of the Council of 17 July 2000 establishing a system for the identification and registration of bovine animals and regarding the labelling of beef and beef products and repealing Council Regulation (EC) No 820/97 (416)

235. Council Directive 2008/71/EC of 15 July 2008 on the identification and registration of pigs (417)

Animal breeding

236. Article 37 and Article 64(3) of Regulation (EU) 2016/1012 of the European Parliament and of the Council of 8 June 2016 on zootechnical and genealogical conditions for the breeding, trade in and entry into the Union of purebred breeding animals, hybrid breeding pigs and the germinal products thereof and amending Regulation (EU) No 652/2014, Council Directives 89/608/EEC and 90/425/EEC and repealing certain acts in the area of animal breeding ('Animal Breeding Regulation') (418)

Animal welfare

237. Council Regulation (EC) No 1/2005 of 22 December 2004 on the protection of animals during transport and related operations and amending Directives 64/432/EEC and 93/119/EC and Regulation (EC) No 1255/97 (419)

238. Council Regulation (EC) No 1099/2009 of 24 September 2009 on the protection of animals at the time of killing (420)

Plant health

239. Council Directive 2000/29/EC of 8 May 2000 on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community (421)

240. Regulation (EU) 2016/2031 of the European Parliament of the Council of 26 October 2016 on protective measures against pests of plants, amending Regulations (EU) No 228/2013, (EU) No 652/2014 and (EU) No 1143/2014 of the European Parliament and of the Council and repealing Council Directives 69/464/EEC, 74/647/EEC, 93/85/EEC, 98/57/EC, 2000/29/EC, 2006/91/EC and 2007/33/EC (422)

Plant reproductive material

241. Council Directive 66/402/EEC of 14 June 1966 on the marketing of cereal seed (423)

242. Council Directive 68/193/EEC of 9 April 1968 on the marketing of material for the vegetative propagation of the vine (424)

243. Council Directive 1999/105/EC of 22 December 1999 on the marketing of forest reproductive material (425)

244. Council Directive 2002/53/EC of 13 June 2002 on the common catalogue of varieties of agricultural plant species (426)

245. Council Directive 2002/54/EC of 13 June 2002 on the marketing of beet seed (427)

246. Council Directive 2002/55/EC of 13 June 2002 on the marketing of vegetable seed (428)

247. Council Directive 2002/56/EC of 13 June 2002 on the marketing of seed potatoes (429)

248. Council Directive 2002/57/EC of 13 June 2002 on the marketing of seed of oil and fibre plants (430)

249. Council Directive 2008/90/EC of 29 September 2008 on the marketing of fruit plant propagating material and fruit plants intended for fruit production (431)

250. Council Directive 66/401/EEC of 14 June 1966 on the marketing of fodder plant seed (432)

251. Council Directive 98/56/EC of 20 July 1998 on the marketing of propagating material of ornamental plants (433)

252. Council Directive 2008/72/EC of 15 July 2008 on the marketing of vegetable propagating and planting material, other than seed (434)

Official controls, veterinary checks

References to national reference laboratories in the acts listed in this section shall not be read as including the reference laboratory in the United Kingdom. This shall not prevent a national reference laboratory located in a Member State from fulfilling the functions of a national reference laboratory in respect of Northern Ireland. Information and material exchanged for that purpose between the competent authorities of Northern Ireland and a national reference laboratory in a Member State shall not be subject to further disclosure by the national reference laboratory without the prior consent of those competent authorities.

253. Regulation (EU) 2017/625 of the European Parliament and of the Council of 15 March 2017 on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products, amending Regulations (EC) No 999/2001, (EC) No 396/2005, (EC) No 1069/2009, (EC) No 1107/2009, (EU) No 1151/2012, (EU) No 652/2014, (EU) 2016/429 and (EU) 2016/2031 of the European Parliament and of the Council, Council Regulations (EC) No 1/2005 and (EC) No 1099/2009 and Council Directives 98/58/EC, 1999/74/EC, 2007/43/EC, 2008/119/EC and 2008/120/EC, and repealing Regulations (EC) No 854/2004 and (EC) No 882/2004 of the European Parliament and of the Council, Council Directives 89/608/EEC, 89/662/EEC, 90/425/EEC, 91/496/EEC, 96/23/EC, 96/93/EC and 97/78/EC and Council Decision 92/438/EEC (Official Controls Regulation) (435)

254. Regulation (EC) No 882/2004 of the European Parliament and of the Council of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules (436)

255. Regulation (EC) No 854/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific rules for the organisation of official controls on products of animal origin intended for human consumption (437)

256. Council Directive 91/496/EEC of 15 July 1991 laying down the principles governing the organization of veterinary checks on animals entering the Community from third countries and amending Directives 89/662/EEC, 90/425/EEC and 90/675/EEC (438)

257. Council Directive 97/78/EC of 18 December 1997 laying down the principles governing the organisation of veterinary checks on products entering the Community from third countries (439)

258. Council Directive 90/425/EEC of 26 June 1990 concerning veterinary and zootechnical checks applicable in intra-Community trade in certain live animals and products with a view to the completion of the internal market (440)

259. Council Directive 89/662/EEC of 11 December 1989 concerning veterinary checks in intra-Community trade with a view to the completion of the internal market (441)

Sanitary and phytosanitary - Other

260. **RG*** Council Directive 96/22/EC of 29 April 1996 concerning the prohibition on the use in stockfarming of certain substances having a hormonal or thyrostatic action and of ß-agonists, and repealing Directives 81/602/EEC, 88/146/EEC and 88/299/EEC (442)

261. Council Directive 96/23/EC of 29 April 1996 on measures to monitor certain substances and residues thereof in live animals and animal products and repealing Directives 85/358/EEC and 86/469/EEC and Decisions 89/187/EEC and 91/664/EEC (443)

Intellectual property

262. Regulation (EC) No 110/2008 of the European Parliament and of the Council of 15 January 2008 on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks and repealing Council Regulation (EEC) No 1576/89 (444)

263. Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs (445)

264. **RG*** Regulation (EU) No 251/2014 of the European Parliament and of the Council of 26 February 2014 on the definition, description, presentation, labelling and the protection of geographical indications of aromatised wine products and repealing Council Regulation (EEC) No 1601/91 (446)

265. Sections 2 and 3 of Chapter I of Title II of Part II of Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 (447)

266. **RG** Regulation (EU) No 608/2013 of the European Parliament and of the Council of 12 June 2013 concerning customs enforcement of intellectual property rights and repealing Council Regulation (EC) No 1383/2003 (448)

Fisheries and aquaculture

267. **RG** Commission Regulation (EEC) No 3703/85 of 23 December 1985 laying down detailed rules for applying the common marketing standards for certain fresh or chilled fish (449)

268. **RG** Council Regulation (EEC) No 2136/89 of 21 June 1989 laying down common marketing standards for preserved sardines and trade descriptions for preserved sardines and sardine-type products (450)

269. **RG** Council Regulation (EEC) No 1536/92 of 9 June 1992 laying down common marketing standards for preserved tuna and bonito (451)

270. **RG** Council Regulation (EC) No 2406/96 of 26 November 1996 laying down common marketing standards for certain fishery products (452)

271. Council Regulation (EC) No 850/98 of 30 March 1998 for the conservation of fishery resources through technical measures for the protection of juveniles of marine organisms (453), insofar as it concerns provisions relating to minimum sizes of marine organisms

272. **RG** Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy, amending Regulations (EC) No 847/96, (EC) No 2371/2002, (EC) No 811/2004, (EC) No 768/2005, (EC) No 2115/2005, (EC) No 2166/2005, (EC) No 388/2006, (EC) No 509/2007, (EC) No 676/2007, (EC) No 1098/2007, (EC) No 1300/2008, (EC) No 1342/2008 and repealing Regulations (EEC) No 2847/93, (EC) No 1627/94 and (EC) No 1966/2006 (454), insofar as it concerns provisions relating to marketing standards

273. Regulation (EU) No 1379/2013 of the European Parliament and of the Council of 11 December 2013 on the common organisation of the markets in fishery and aquaculture products amending Council Regulations (EC) No 1184/2006 and (EC) No 1224/2009 and repealing Council Regulation (EC) No 104/2000 (455), insofar as it concerns provisions relating to marketing standards and consumer information

274. **RG** Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy, amending Council Regulations (EC) No 1954/2003 and (EC) No 1224/2009 and repealing Council Regulations (EC) No 2371/2002 and (EC) No 639/2004 and Council Decision 2004/585/EC (456), insofar as it concerns provisions relating to marketing standards for fishery and aquaculture products

275. Council Regulation (EC) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing, amending Regulations (EEC) No 2847/93, (EC) No 1936/2001 and (EC) No 601/2004 and repealing Regulations (EC) No 1093/94 and (EC) No 1447/1999 (457)

276. **RG** Council Regulation (EC) No 1035/2001 of 22 May 2001 establishing a catch documentation scheme for Dissostichus spp. (458)

277. **RG** Regulation (EU) No 640/2010 of the European Parliament and of the Council of 7 July 2010 establishing a catch documentation programme for bluefin tuna Thunnus thynnus and amending Council Regulation (EC) No 1984/2003 (459)

278. **RG – "insofar as it concerns provisions relating to marketing standards"** Council Regulation (EC) No 1100/2007 of 18 September 2007 establishing measures for the recovery of the stock of European eel (460)

Other

279. Part III of Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 (461), with the exception of Chapter VI

280. Council Regulation (EC) No 2964/95 of 20 December 1995 introducing registration for crude oil imports and deliveries in the Community (462)

281. Council Regulation (EC) No 2182/2004 of 6 December 2004 concerning medals and tokens similar to euro coins (463)

282. Regulation (EC) No 1889/2005 of the European Parliament and of the Council of 26 October 2005 on controls of cash entering or leaving the Community (464)

283. Directive 2014/40/EU of the European Parliament and of the Council of 3 April 2014 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products and repealing Directive 2001/37/EC (465)

284. Council Regulation (EC) No 116/2009 of 18 December 2008 on the export of cultural goods (466)

285. Directive 2014/60/EU of the European Parliament and of the Council of 15 May 2014 on the return of cultural objects unlawfully removed from the territory of a Member State and amending Regulation (EU) No 1024/2012 (467)

286. Council Directive 69/493/EEC of 15 December 1969 on the approximation of the laws of the Member States relating to crystal glass (468)

287. Council Regulation (EC) No 428/2009 of 5 May 2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items (469)

288. Council Directive 91/477/EEC of 18 June 1991 on control of the acquisition and possession of weapons (470)

289. Regulation (EU) No 258/2012 of the European Parliament and of the Council of 14 March 2012 implementing Article 10 of the United Nations' Protocol against the

illicit manufacturing of and trafficking in firearms, their parts and components and ammunition supplementing the United Nations Convention against Transnational Organised Crime (UN Firearms Protocol), and establishing export authorisation, and import and transit measures for firearms, their parts and components and ammunition (471)

290. Directive 2009/43/EC of the European Parliament and of the Council of 6 May 2009 simplifying terms and conditions of transfers of defence-related products within the Community (472)

291. Council Regulation (EC) No 1236/2005 of 27 June 2005 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment (473)

292. Council Regulation (EC) No 2368/2002 of 20 December 2002 implementing the Kimberley Process certification scheme for the international trade in rough diamonds (474)

Restrictive measures in force based on Article 215 TFEU, insofar as they relate to trade in goods between the Union and third countries

293. Regulation (EU) 2019/880 of the European Parliament and of the Council on the introduction and the import of cultural goods

Additional items of EU legislation not listed in Annex 2 of the Protocol but which have come into force in Northern Ireland under the Protocol since they are amendments or replacements of items listed in Annex 2

294. **RG** Regulation (EU) 2019/4 of the European Parliament and of the Council of 11 December 2018 on the manufacture, placing on the market and use of medicated feed, amending Regulation (EC) No 183/2005 of the European Parliament and of the Council and repealing Council Directive 90/167/EEC

295. **RG*** Regulation (EU) 2019/6 of the European Parliament and of the Council of 11 December 2018 on veterinary medicinal products and repealing Directive 2001/82/EC

296. **RG*** Chapter II of Regulation (EU) 2019/787 of the European Parliament and of the Council of 17 April 2019 on the definition, description, presentation and labelling of spirit drinks, the use of the names of spirit drinks in the presentation and labelling of other foodstuffs, the protection of geographical indications for spirit drinks, the use of ethyl alcohol and distillates of agricultural origin in alcoholic beverages, and repealing Regulation (EC) No 110/200865 and Chapter 1 thereof insofar as it prohibits the use of synthetic alcohol and certain colourings

297. **RG** Regulation (EU) 2019/1241 of the European Parliament and of the Council of 20 June 2019 on the conservation of fisheries resources and the protection of marine ecosystems through technical measures, amending Council Regulations (EC) No 1967/2006, (EC) No 1224/2009 and Regulations (EU) No 1380/2013, (EU)

2016/1139, (EU) 2018/973, (EU) 2019/472 and (EU) 2019/1022 of the European Parliament and of the Council, and repealing Council Regulations (EC) No 894/97, (EC) No 850/98, (EC) No 2549/2000, (EC) No 254/2002, (EC) No 812/2004 and (EC) No 2187/200566, insofar as it concerns provisions relating to minimum sizes of marine organisms that also constitute minimum marketing sizes

298. **RG*** Commission Delegated Regulation (EU) 2022/2292 of 6 September 2022 supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council with regard to requirements for the entry into the Union of consignments of food-producing animals and certain goods intended for human consumption

APPENDIX C:
BACKGROUND

Upon withdrawal by the UK from the EU, the EU insisted on a protective layer of EU law applying to Northern Ireland (and various other matters), overspilling EU boundaries and sitting on adjacent territory, in order (in part) to allow for an invisible north-south territorial border on the island of Ireland. The EU claimed that the only alternatives were for it to erect border posts on the island of Ireland, north-south, or for the Republic of Ireland itself to be forced out of the EU law scheme which comprises its so-called "single market". In an extreme application of the EU's precautionary principle, the notion was that EU law would be extended, in its entirety, so far as was theoretically necessary to ensure that on no conceivable scenario would goods non-compliant with EU law and processes slip into the Republic of Ireland and thereby the EU market. This involved extending EU law right up to the sea, where *de facto* (under current technologies) the physical barrier and the time involved in transit would allow for EU law checks and avoid overlooked seepage of UK goods into the hallowed EU single market. For this is what the EU jurists clearly seek to prioritise above all interests of third parties. There was one exception: where there was literally "no risk" of UK (but not EU) compliant goods coming into Northern Ireland and then being moved on to the Republic of Ireland. This latter (extremely narrow) exception was expressed, deceptively, in the reverse, in terms of whether goods were "at risk" of moving into the Republic, and thereby the EU's single market. However, given that the scheme was drafted entirely as a matter of EU law, and subject to the oversight of the ECJ and controlled (positively or negatively) by EU administrative organs of state, the meaning of this term both in the text and in practice could be, and has been, applied in a manner involving no theoretical risk, as opposed to no practical risk, as would be the case were a pragmatic common law approach to have been adopted, or were international law norms to have been respected.

This unprecedented arrangement went beyond imperial precedents, since no attempt was made to ensure the overspilling of EU law paid any attention to the interests of the people of Northern Ireland. Laws would continue to be made solely for the EU, under the accountability procedures of the EU for the population of the EU, and would simply be extended beyond EU/Republic borders and applied directly (in part through the agency of the UK) to the people of Northern Ireland who did not benefit from or form part of those procedures. Additional complexity arises because it has been agreed, in 1998, that the people of Northern Ireland would not be subject to anything other than UK law unless they vote otherwise – under the Belfast/Good Friday Agreement. This inconvenient fact was brushed aside.

These arrangements could only be temporary, under the EU's own powers to negotiate such arrangements upon Brexit, contained in Article 50 of the Treaty on European Union. Furthermore, they are intrinsically limited by the foundational principle of international law for the self-determination of peoples. The arrangements themselves envisaged their replacement.[80] Since Brexit, in January 2020, the UK Government has been urgently seeking

[80] See Article 25 of the Political Declaration on the future EU-UK Framework, October 2019, whereby (under Article 184 of the EU-UK Withdrawal Agreement 2020) both parties agreed to use best endeavours to consider "ambitious arrangements… using all available facilitating arrangements and technologies" for ensuring "the absence of a hard border on the island of Ireland". Note this border was to be the proper north-south border, not a false border East-West. In addition, the Preambles to the Northern Ireland Protocol acknowledge the need for "possible new arrangements in accordance

to agree a replacement with the EU. This has necessitated both political engagement and also engagement with EU lawyers and the juristic tenets of the EU law scheme. The UK now claims to have resolved this longstanding problem.[81] The result is the Windsor deal.

It is important to stock-take how much of the NI Protocol will remain fully in force, and the circumstances in which it will do so, under the Windsor deal. Such a stock-take is regrettably absent from the UK Command Paper, which focusses almost entirely on what it claims will be changed under the Windsor deal rather than explaining what will remain the same. In general terms, the Windsor deal leaves the main elements of the NI Protocol in place, in the following ways.

- *Extraterritorial application.* The NI Protocol's central tenets involve applying a wide range of EU laws, internally within a part of the United Kingdom and outside the territory of the EU, as though Northern Ireland were an EU member state, but without its citizens having a vote and or being represented on the EU institutions. The NI Protocol applies to Northern Ireland the EU's laws on customs,[82] VAT and excise,[83] the whole *acquis* of the EU's laws of its single market relating to goods[84] and on the electricity market,[85] and EU laws on so-called "state aid" (i.e., subsidisation, in the broadest of senses).[86] This means that where EU and UK laws differ, businesses making and selling goods in Northern Ireland must comply with EU laws, and not with UK laws. There is no precedent for this arrangement in any of the EU's other external agreements. It is akin to the way the laws of an empire apply within a colonial territory, although in more sustained and sophisticated imperial systems there is locally accountable governance. This central feature (that Northern Ireland is an EU law territory, whilst accepting that mainland UK is not) then creates the need for checks, and other legal barriers, which prevent or disrupt the movement of goods from one part of the UK to the other when they cross the EU law boundary, erected as a result of the NI Protocol, particularly for goods passing in the East to West direction from Great Britain to Northern Ireland. It also results in the constitutional problem that people and businesses in Northern Ireland are governed by a wide range of foreign laws over which they have no democratic control, by votes of their representatives who make laws present at Westminster or in the NI Assembly.

  The Windsor deal would, if implemented, create some specific limitations and exceptions to the way EU law applies in Northern Ireland in certain circumstances with a view to easing some practical problems affecting East-West trade and the extremes of life in Northern Ireland as part of the UK. It is important to understand that the

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with the [Belfast/Good Friday] Agreement", and Article 13.8 of the Protocol allows for the replacement of the arrangements in the Protocol, in whole or in part. In addition, the UK expressly preserved its sovereign interests in section 38 of its European Union (Withdrawal Agreement) Act 2020.

81 UK Command Paper, sub-paragraph (c) of the summary: "This Windsor Framework ('the agreement') fundamentally amends the text and provisions of the original Protocol to uphold Northern Ireland's integral place in the United Kingdom, address the democratic deficit and set out a new way forward".

82 Article 5(3), NI Protocol.

83 Article 8 and Annex 3, NI Protocol.

84 Article 5(4) and Annex 2, NI Protocol.

85 Article 9 and Annex 4, NI Protocol.

86 Article 10 and Annex 5, NI Protocol.

envisaged limitations and exceptions are conditional and limited in scope. However, this does not mean that they are immaterial in practice.

- *EU executive, administrative and judicial sovereignty*. Under the NI Protocol, similar legal mechanisms are used to enforce, interpret and apply EU law in Northern Ireland as in a member state. EU laws which are applied within Northern Ireland by the NI Protocol have supremacy in the UK's (national) courts over all laws of UK origin. The UK's courts are obliged to interpret those laws in accordance with rulings of the ECJ which must be treated as binding not advisory, in a similar manner to when the UK was within the EU's Treaty-based scheme for pooled sovereignty between "member states". Thus, according to Article 12(4) of the NI Protocol, courts in Northern Ireland should make a preliminary reference to the ECJ to obtain a binding ruling in the same way as if the UK were still an EU member state. If questions of EU law are not clear from existing rulings and a case rises to the highest appellate level, the appellate court (which will normally be the Supreme Court on appeal from the Northern Ireland courts) is *obliged* to make a reference to the ECJ.[87]

  These mechanisms will not be affected by the Windsor deal. In particular, the above binding jurisdiction of the ECJ will not be affected or reduced in scope. The Commission has explicitly confirmed that "[t]here is no change to the role of the Court of Justice of the European Union. The Court of Justice remains the sole and ultimate arbiter of EU law".[88] Both the UK and the EU have politically committed to discussing possible issues within the Joint Committee and Withdrawal Agreement structures before resorting to litigation, but this does not prevent the European Commission from using the existing direct action jurisdiction of the ECJ if a dispute cannot be resolved, and this has no effect at all on the circumstances in which courts of the UK can or must make preliminary references to the ECJ.

- *Severance of Northern Ireland from Great Britain*. In consequence of the above scheme, Great Britain is regarded as a "third country" (i.e., an EU non-member state) under EU laws as they apply in Northern Ireland, with the automatic consequence that an EU hard external border arises within the United Kingdom between Great Britain and Northern Ireland. Checks and controls which then arise on the movement of goods within the UK from one part of the country to another are a secondary consequence (and a very serious one) which results from the primary cause of applying foreign laws to a part of the UK. The Windsor deal seeks to alleviate, largely as a procedural matter, some but by no means all of these checks and controls, but it does not address the underlying cause.

In fact, the broad range of EU laws which will apply to Northern Ireland under the NI Protocol will remain the same under the Windsor deal, with the exception of certain procedural easings, certain conditional adjustments to EU law on retail goods and medicines, and Articles of EU VAT and Excise Directives which will be disapplied or relaxed by the amendments to be made to Annex 3 of the NI Protocol to account for instances in

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87 This is the effect of the application of the third paragraph of Article 267 of the Treaty on the Functioning of the European Union (TFEU) by Article 12(4) of the NI Protocol.

88 Commission Q&A, https://ec.europa.eu/commission/presscorner/detail/en/qanda_23_1271

which the EU has (for now) determined that there is "no risk" (as defined by the EU) to the EU's single market. Importantly, the Windsor deal *will not involve the removal from the NI Protocol of any of the hundreds of EU single-market-for-goods laws which are listed out in Annex 2 of the NI Protocol*. Notably, there is no disapplication from Northern Ireland of the EU's Uniform Customs Code Regulation (UCC) or the other EU customs laws which are required to be applied in Northern Ireland under Article 5(3) of the NI Protocol, although exemptions will be widened for goods imported from Great Britain for consumption in Northern Ireland where there is no risk of the goods crossing into the EU.

APPENDIX D:
RULES OF ORIGIN AND TARIFF RATE QUOTAS

- *When do customs duties/tariffs apply under the NI Protocol?* The starting point is the UK and EU Trade and Cooperation Agreement (TCA), which allows for duty free trade in goods between the UK and the EU. However, this proposition is highly qualified, to the detriment of Northern Ireland under this EU scheme.

    - *What are "Rules of Origin"?* The duty exemption only applies to goods which "originate" within the EU according to so-called "Rules of Origin". This is a feature of all Free Trade Agreements (FTAs) and is designed to prevent goods which come from third countries and which have been insufficiently worked on or processed within the FTA members, in this case the UK or EU, from being allowed to by-pass the external tariff which the importing FTA member would have imposed on the goods from that third country in the absence of the FTA's preferential treatment.

    - *How these rules apply at the East-West GB-NI "border".* Goods sold in the market in Great Britain will not necessarily be counted as of UK origin under the TCA's Rules of Origin. The consequence is that businesses in Northern Ireland which acquire goods inputs from Great Britain either need to pay EU external tariffs on those goods, or need to have evidence that those goods do satisfy Rules of Origin and so are tariff exempt. This is at best administratively costly and may involve a significant monetary cost. In addition, these businesses in Northern Ireland will have to pay EU tariffs rather than UK external tariffs on goods inputs which they obtain from the rest of the world. UK tariffs will generally be lower where the UK has an FTA with a country with which the EU does not (e.g., Australia), and may be zero.

- *The detrimental consequences.* There are two highly technical but very detrimental effects of the EU-imposed scheme of the NI Protocol, since it forces Northern Ireland out of UK supply chains and denies Northern Ireland businesses the benefits of the UK's external arrangements.

    - *Northern Ireland businesses worse off than Great Britain businesses.* The costs of EU customs compliance on input goods due to the application of EU Rules of Origin within the UK territory will put Northern Ireland businesses who acquire inputs from Great Britain at a competitive disadvantage compared with Great Britain businesses who can acquire their input goods in the UK market without such costs. It is argued by the EU and some others including the Prime Minister[89] that Northern Ireland businesses are in the best of both worlds because they can export their products into the EU without having to comply with EU customs at the output stage, as a Great Britain-based business

[89] Sky News, Rishi Sunak, 28 February 2023 "Northern Ireland is in the unbelievably special position - unique position in the entire world, European continent - in having privileged access, not just to the UK home market, which is enormous... but also the European Union single market." https://news.sky.com/story/brexit-rishi-sunak-says-northern-ireland-in-unbelievably-special-position-because-of-access-to-eu-single-market-12821991

would have to do. However, that is of little or no benefit for businesses who are focussed within the UK market for their goods inputs and/or outputs (comprising more than half of all Northern Ireland exports by value in 2020).[90]

- *Worst of both worlds.* There is a further complication with regards to UK exports to Northern Ireland concerning Tariff Rate Quotas (TRQs), which is a topic that the Windsor deal does not adequately address, except in the limited case of certain steel products (for which the deal makes special provision).[91] TRQs are quantities of goods which are permitted to enter the importing country at a lower tariff, after which point (once the specified quantity limit has been reached) a higher tariff takes effect. The EU's 2020 TRQ Regulation prevents EU TRQs from applying in Northern Ireland. This creates a problem where the UK applies a TRQ either unilaterally or through an FTA. The applied UK import tariff under the TRQ might be the same or similar to that of the EU if the EU TRQ was factored in. However, since EU TRQs do not apply in Northern Ireland, the EU's out-of-quota (higher) tariff must apply instead. For imports into Northern Ireland from Great Britain, this will invariably result in a larger tariff differential vis-à-vis the UK tariff, which is well above the three percent level which automatically triggers the "at risk of entering the EU" element of imports. Since EU TRQs cannot be used in Northern Ireland (other than in the special case of steel products), the UK in-quota (normally, higher) rate is always compared to the EU's most favoured nation (MFN) rate (rather than in quota rate of a similar TRQ), exaggerating the tariff difference. For example, New Zealand sheep meat is subject to an EU and UK WTO TRQ, allowing for 114,184 tonnes and 114,205 tonnes respectively of New Zealand sheep meat to enter tariff-free. Despite technically tariff-free trade between the EU and UK under the TCA, Northern Ireland importers cannot benefit from these TRQs. The EU's full MFN tariff will apply to New Zealand sheep meat entering Northern Ireland, but New Zealand sheep meat entering Great Britain will be subject to the lower tariff applied to New Zealand sheep meat under the UK-NZ FTA, which will be even lower when the UK's TRQ is factored in. Since the difference in the two tariffs is therefore more than 3%, the meat is considered 'at risk' of entering the EU.

90 Overview of NI Trade, NISRA (18 May 2022).

91 Proposal for a Regulation of the European Parliament and the Council amending Regulation (EU) 2020/2170 as regards the application of Union tariff rate quotas and other import quotas to certain products transferred to Northern Ireland, Brussels, 27.2.2023 COM(2023) 125 final 2023/0063(COD) (this Regulation deals with safeguard duties and related TRQs imposed by the EU against certain steel products).

APPENDIX E:
SUMMARY OF PROPOSED EU REGULATIONS ON RETAIL GOODS ETC, PETS, PLANTS AND MEDICINES

(A) Specific Rules under EU Law: Retail goods etc

The first package of specific rules to consider is contained in the Commission's proposal for a Regulation entitled:

"*on specific rules relating to the entry into Northern Ireland from other parts of the United Kingdom of certain consignments of retail goods, plants for planting, seed potatoes, machinery and certain vehicles operated for agricultural or forestry purposes, as well as non-commercial movements of certain pet animals into Northern Ireland*"[92] (the " proposed Regulation on retail goods etc.")

These specific rules are of limited scope. They relate only to goods which are brought into Northern Ireland from other parts of the UK and "*where the food is consumed in Northern Ireland, the plants and seeds are used in Northern Ireland and the pets stay in Northern Ireland*".[93] These specific rules do not extend more generally, so EU laws under the Protocol would remain fully applicable to goods made within Northern Ireland and to the marketing of such goods to consumers within Northern Ireland. Within the scope of these specific rules, some but not all of the EU laws in Annex 2 of the Protocol would not apply, but the remainder would continue to apply.[94] Intriguingly, the UK Command Paper may be hinting that Annex I to this proposed Regulation on retail goods etc. accounts for 1,000 or so pages of the mysterious 1,700 pages of EU law which are allegedly removed, but the claim that these pages have actually been "removed"[95] is overstated when all of the EU rules will continue to apply throughout Northern Ireland outside the narrow ambit of these specific rules. And, even if so, the identity of the other 700 pages of EU laws which will supposedly be disapplied is a complete mystery to us. Having established the overstated nature of the claims made in the Command Paper about this "1,000 pages" when examined against the draft legal texts, we see no purpose in investigating government claims of which no details have been given of a further 700 pages of EU law being "removed" or the even less clear and indeed bizarre claim that "less than 3% of EU rules" will remain.

In order to assess which EU laws will continue to apply within the scope of these special rules, we have prepared (as Appendix B to this paper) a marked-up version of Annex 2 to the Protocol on which (1) we have numbered the EU laws it contains for ease of reference and (2) marked (with "RG" or "RG*" in green) those which are listed in Annex I of the proposed

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92 COM(2023) 124 final 2023/0062 (COD).

93 Explanatory Memorandum page 2, proposed Regulation on retail goods etc.

94 Draft Article 1(2), proposed Regulation on retail goods etc., which states that a number of provisions listed in Annex 2 do not apply "*in respect of consignments of retail goods entering into Northern Ireland from other parts of the United Kingdom for placing on the market in Northern Ireland that fall within the scope of Part 2 of this Regulation*". The second sentence of Article 1(2) is explicit that the provisions in Annex 2 other than those listed ***do continue to apply*** within the scope of the special rules.

95 Paragraph 21 of the Command Paper claims that "Overall, it will remove more than 60 EU food and drink rules in the original Protocol covering well over 1,000 pages of law".

Regulation on Retail Goods etc, as not applying within the scope of the specific rules.[96] Of the 293 items of EU legislation listed in Annex 2, some 62 are in Annex I to the proposed Regulation on retail goods etc. and therefore do not apply within the scope of the specific rules.[97]

However, this leaves some 231 items of EU legislation listed in Annex 2 which *will* continue to apply within the scope of the specific rules. Some of these can be dismissed as irrelevant since they are measures which will not apply to the types of goods or types of transactions which will take place within the scope of the specific rules. But this certainly cannot be said of all of them and there are puzzling anomalies. For example, a Regulation on geographical indications on "aromatised wine"[98] is listed in Annex I. By contrast, an EU Regulation on geographical indications on spirits[99] is not listed in Annex I. It is completely unclear to us why a trader who moves aromatised wine from Great Britain into Northern Ireland and sells it retail should be exempted from falling foul of EU geographical origin rules (which can be changed dynamically by the Commission), but a trader who moves spirits in that way – such as a supermarket stocking its shelves in Northern Ireland branches with the same range of wines and spirits as it sells in stores in Great Britain – should be at risk of infracting EU law on spirits.

We do not have either the time or resources to undertake an across-the-board review of the impact of the non-excluded EU laws on different kinds of goods in different sectors. But it is clear that traders who move into Northern Ireland and sell there a wide range of goods (such as supermarkets) will simply not be able to assume that if their goods comply with UK law when sold in Great Britain they will be safe in selling that same range of goods in Northern Ireland. Without an intricate study of this extremely complex "specific rule" Regulation and of those EU laws which it does and does not disapply from the scope of the scheme, such retailers will not be safe in selling their UK-wide range of goods within Northern Ireland.

A further difficulty which arises from this complex, rigid and tightly defined system of partial exemptions is that it cannot be amended by the UK government. Nor can we see what bargaining power the UK government would have to demand future changes to these schemes, having abandoned its intention to pass the Northern Ireland Protocol Bill into law. The UK government would be reduced to begging for favours from the EU Commission, e.g., to get the scheme extended to cover geographical indications on spirits. This is the reverse

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96 The items marked with an asterisk (*) are stated in Annex I to be relevant to public health and consumer information and under Article 6(6) of the proposed Regulation, and this allows the Commission to relax labelling requirements where it can assess that UK law requires the same information to the provided. This therefore imposes a convergence pressure on UK-wide law.

97 Annex I of the proposed Regulation on retail goods etc. also lists 5 items of EU law which are not listed in Annex 2 of the Protocol but which are replacements or amendments of items in Annex 2. These are listed at the end of Appendix B.

98 Item 264 in Appendix B: Regulation (EU) No 251/2014 of the European Parliament and of the Council of 26 February 2014 on the definition, description, presentation, labelling and the protection of geographical indications of aromatised wine products and repealing Council Regulation (EEC) No 1601/91.

99 Appendix B, item 262: Regulation (EC) No 110/2008 of the European Parliament and of the Council of 15 January 2008 on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks and repealing Council Regulation (EEC) No 1576/89.

of "taking back control" or restoring the sovereignty of the UK over the laws which apply to trade within the UK.

The specific rule relating to retail goods does not cover all retail goods sent from Great Britain for sale in Northern Ireland. First, it only applies to retail goods which are pre-packed in the packaging intended for the end consumer[100] and this packaging may be required to carry markings (such as "UK only").[101] This means that the specific rule will not be applicable when goods are bought in Great Britain in bulk and then repackaged for the consumer within Northern Ireland. The specific rule covers a limited range of types of goods, basically food and other products of animal or plant origin and plants (although not plants which are going to be planted).[102]

The specific rule does not cover all retail goods shipped from Great Britain to Northern Ireland. It covers them only in particular circumstances, when they form part of a "consignment" when:

> "(e) the retail goods are dispatched from listed establishments in parts of the United Kingdom other than Northern Ireland and received by listed[103] establishments in Northern Ireland";[104]

Each consignment passing between listed establishments has to be covered by a certificate. Nor does compliance with the scheme mean that there will be no checks on the goods as they pass from Great Britain to Northern Ireland: the frequency of checks will simply be reduced to a special rate of checks.

Goods which originate within Northern Ireland are specifically excluded from the scope of the scheme.[105] The restricted nature of the scheme is such that general traders in retail goods will not be able to benefit from the scheme, which appears to be narrowly focused around the needs of supermarkets and similar operations. But simply from an examination of the legal texts, we are not clear whether the scheme will bring a net benefit even to supermarkets and similar operations, bearing in mind that this scheme would be accompanied by an abandonment of the unilaterally extended "grace periods" which have been in effect since the beginning of 2021.

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100 Article 6(1), proposed Regulation on retail goods etc.

101 *Ibid*, Article 6, proposed Regulation on retail goods etc.

102 The products falling within the rule are listed in Article 3, which cross refers to complex definitions in Article 2. There are apparently bizarre anomalies within the definitions. For example, it covers "composite" products (defined in Article 2(i)) of both plant origin and *processed* products of animal origin (say, a pork pie), but why should a composite product consisting of plant origin together with *unprocessed* animal origin product be excluded?

103 According to Article 8, proposed Regulation on retail goods etc. this means listed by the UK authorities in accordance with Part 2 of Annex III of the Regulation, which requires listed establishments to be subject to risk-based and intelligence-led spot checks.

104 Article 4(e), proposed Regulation on retail goods etc.

105 Article 5(1)(b), proposed Regulation on retail goods etc. So goods made by Northern Ireland businesses and sold to retail in Northern Ireland cannot benefit, and nor would it cover goods made in Northern Ireland which are sent to Great Britain for packaging and then returned to Northern Ireland for retail sale.

The proposed Regulation on retail goods etc. also requires that the UK has given written guarantees in respect of certain matters, including that official import controls have been carried out in accordance with EU standards. The competent authorities of the UK are required to monitor the "import" of retail goods into Northern Ireland from the other parts of the UK. The member states are required to "apply effective dissuasive and proportionate sanctions" in the case of non-compliance. The Commission can suspend the provisions in the event of it finding a "systematic failure" to comply with the requirements by the UK. As we have pointed out above, the exercise of this drastic sanction would be subject only to the jurisdiction of the ECJ and the UK would not appear to have any other remedy.

Pet animals

At present, for the purposes of pet travel, the EU treats Northern Ireland as if it were within the EU. The EU has refused to recognise UK pet passports. However, an owner can take a pet to Northern Ireland from Great Britain on condition of "a microchip, a valid rabies vaccination, an animal health certificate and a tapeworm treatment."[106]

The proposed Regulation would lay down "specific rules" for the "non commercial" movement of pet dogs, cats and ferrets into Northern Ireland from other parts of the UK, where the pet will not travel on into the EU.[107] These are dependent on the UK providing a number of written guarantees, including on the onward travel of pets into the EU. This regime would require (subject to the EU accepting the UK's guarantees) a "pet travel document" for UK pets to travel to Northern Ireland, which would consist of a transponder, details of the pet (limited to a dog, cat or ferret) and the owner, and a declaration that the pet would not move onwards to the Republic of Ireland or the EU. The determination of the exact form of the required travel document and whether the requirement for guarantees has been met would reside with the Commission.

Plants for planting

Article 10 of the proposed Regulation contains specific rules covering the movement of plants for planting into Northern Ireland. It is required that they be presented for official controls at SPS Inspection Facilities on first Arrival in Northern Ireland (Article 10(1)(e)); and they are to be received by a "professional operator" in Northern Ireland who is registered under the scheme.

Concern has been expressed to us as to whether it will be possible for plants for planting to be supplied my mail order to retail customers in Northern Ireland, since apparently the UK's DEFRA has assured interested parties that this will be possible under the Windsor deal. This kind of supply will clearly not possible under the specific rules in Article 10. We are not aware of any other specific rule within the legal documents we have seen which would facilitate such a trade.

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106 UK Gov, existing rules for travel to Northern Ireland with a pet: https://www.gov.uk/taking-your-pet-abroad/travelling-to-an-eu-country-or-northern-ireland.

107 Article 12.

(B) Modification to EU Law: EU proposed measures on medicines

In addition to the proposed Regulation on retail goods etc, the EU Commission has published a proposed EU Regulation on Medicines. The Commission's Explanatory Memorandum explains clearly the history leading up to the adoption of this proposal and its intended effects.[108]

- *The normal EU law position.* There are two main EU laws relating to the regulation of human medicines, namely the EU Directive on the Community code relating to medicinal products for human use,[109] and an EU Regulation on EU procedures for the authorisation and supervision of medicinal products for human use and establishing the EU's "European Medicines Agency" (EMA).[110] Both the Directive and the Regulation are made applicable to and within Northern Ireland by Annex 2 to the NI Protocol.

  The Directive creates an EU-wide coordinated system for the authorisation of new medicines by national authorities acting within the EU-wide framework. The Regulation made the EMA responsible for the grant of EU-wide authorisations for certain classes of innovative medicines,[111] which member state national authorities are no longer permitted to grant. In addition to regulating the grant of authorisations for new types of medicines, the Directive and the Regulation, together with other EU instruments, also cover in great detail the regulation of the manufacture, testing and distribution of medicines, which is an equally vital if less glamorous area compared with authorising new medicines.

- *The Windsor deal on medicines.* As has already been pointed out, no steps will be taken under the Windsor deal to remove the Directive or the Regulation (or any of the other related EU medicines rules) from Annex 2 of the NI Protocol and therefore they will continue to form part of the law of Northern Ireland. The proposed EU Regulation on Medicines would reinforce this point by explicitly making clear in Recital (6) and Article 1(3) that "*[i]t is appropriate to clarify that the provisions listed in Annex 2 to the Protocol apply in respect of medicinal products for human use intended to be placed on the market in Northern Ireland unless specific provisions are laid down by this Regulation*".

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108 Explanatory Memorandum within the Commission's proposal at pages 1-3. In contrast to the UK government's publication, the European Commission memo clearly references the legal texts to which it refers.

109 Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use [2001] OJ L311/67.

110 Regulation (EC) No 726/2004 of the European Parliament and of the Council of 31 March 2004 laying down Union procedures for the authorisation and supervision of medicinal products for human use and establishing a European Medicines Agency [2004] OJ L136/1.

111 For example, those involving recombinant DNA technology or use of monoclonal antibodies, and more recently new medicines for AIDS, cancer and viral diseases etc.

The proposed EU Regulation on Medicines contains, however, a number of new "specific rules" relating to Northern Ireland.[112] Probably the most important is Article 4, which relates to medicines of a kind which can only be authorised by the EMA and not by member states under EU law. The Article has the effect that, within Northern Ireland, authorisations of medicines of this kind granted by the UK Medicines & Healthcare products Regulatory Agency (UK MHRA) under UK law shall be recognised instead of authorisations granted by the EMA, which will no longer be recognised in Northern Ireland. The specific rule *does not extend* to new medicines authorised by the UK MHRA, which fall outside this special category: EU law (specifically Directive 2001/83/EC) continues to govern the MHRA's powers to grant authorisations for new medicines in Northern Ireland. Since it is very strongly desirable that the same new medicines be authorised in Great Britain and Northern Ireland at the same time, this constitutes an effective fetter on the UK's exercise of its sovereignty to reform its new medicines authorisation system post Brexit.

Other Articles contain specific carve-outs from EU law such as allowing "imports" of medicines from other parts of the UK by holders of a wholesale distribution licence rather than just by manufacturers,[113] and allowing medicines within Northern Ireland not to have to follow the marking requirements under the EU's Falsified Medicines Directive.

The specific carve-outs are, however, accompanied by a number of restrictions and caveats.[114] Article 5 requires medicines within the carve-outs to bear a non-removable "UK only" label. Article 6 requires the UK MHRA to "continuously monitor the placing into the market" in Northern Ireland of these medicinal products. Article 8 requires the UK to provide "written guarantees" (the nature of which is not spelled out in the proposed EU Regulation on Medicines) to the Commission:

> "that the placing on the market of the medicinal products referred to in [the proposed EU Regulation on Medicines] does not increase the risk to public health in the [EU single market] and that those medicinal products will not be moved to a Member State, including guarantees to the effect that:
>
> (a) [UK] economic operators comply with the labelling requirements laid down in Article 5;
>
> (b) effective monitoring, enforcement and controls of the specific rules laid down in [the EU Regulation on Medicines] are in place and are carried out, by means of, inter alia, inspections and audits".

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112 Article 1(1), proposed EU Regulation on Medicines. The provisions in the Protocol are expressed to apply subject to the provisions of the new Regulation: Article 3(1) – i.e., this is in essence a modification of Annex 2 of the Protocol and its EU law scheme, received into UK law in respect of Northern Ireland.

113 Article 3, proposed EU Regulation on Medicines, which also establishes certain conditions for that licence.

114 Articles 4(2) and 8, proposed EU Regulation on Medicines.

Most fundamentally, the UK MHRA is required to "continuously monitor" this process,[115] and Article 9 states that the EU Commission "shall continuously monitor the application by the United Kingdom of the specific rules", and, where there is evidence that the UK "does not take appropriate measures" to address serious or repeated infringements, it then lays down a procedure for the Commission to suspend all or parts of the "specific rules" – i.e., to suspend the above, limited, carve-outs from current EU law applicable to Northern Ireland, either temporarily or permanently.[116] In addition, the member states are required to "apply effective dissuasive and proportionate sanctions" in the case of non-compliance.[117] There is no UK governance over the EU's exercise of its powers as, of course, they arise under EU law alone. Were a dispute to arise between the UK and the European Commission, and the Commission sought to invoke the suspension procedure in Article 9 of the proposed Regulation, we consider that it is doubtful whether the international arbitration panel would have jurisdiction to annul a European Commission decision, leaving the UK with no recourse but to submit to pleading its case before the ECJ.

115 Article 6, proposed EU Regulation on Medicines.

116 There is an "urgency procedure" for swift action: Article 11, proposed EU Regulation on Medicines.

117 Article 7(2), proposed EU Regulation on Medicines.

APPENDIX F:
OPERATION OF THE STORMONT BRAKE

The Stormont brake is to be inserted into the NI Protocol by the draft Joint Committee decision,[118] so that it will become a legally binding change to the Protocol text. Unlike paragraph 13(4) (which will remain in place and continue to govern completely new EU laws which fall within the Protocol), the new paragraph 13(3a) applies where existing EU laws are amended or replaced. It does not apply all EU laws across the width of the Protocol; it is limited to those set out in Headings 1 and 7 to 47 of Annex 2[119] to the Protocol, and the EU laws which define the relief from duties on personal possessions brought into Northern Ireland by UK residents under Article 5(1).[120] It does not cover, e.g., VAT and excise, most of the EU customs code as it applies to movements of goods across the Irish Sea, the electricity market, and EU state aid law.[121]

It is envisaged that, if the Assembly is sitting, and Ministers are in place, 30 Members of the Legislative Assembly (MLA) from two parties by way of a petition of concern (which might include a vote in the Assembly),[122] could trigger a process[123] which might lead to amended or replacement EU laws not applying in Northern Ireland[124] in the following circumstances:

- The laws objected to must "significantly differ" from the laws which they replace or amend and their imposition must have a "significant impact specific to everyday life of communities in Northern Ireland in a way that is liable to persist".[125]

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118 By inserting a new sub-paragraph (3a) into Article 13 of the Protocol.

119 Annex 2 lists the single market for goods EU laws which apply to NI under Article 5(4) of the Protocol. Headings 2 to 6 (which the Stormont brake does not apply to) include measures for the protection of the financial interests of the EU and EU trade defence measures.

120 The new proposed Article 13(3a), Windsor draft decision states: "This paragraph covers Union acts referred to in the first indent of heading 1 and headings 7 to 47 of Annex 2 to this Protocol, and the third subparagraph of Article 5(1) thereof."

121 This would exclude the EU's customs code under Article 5, except for 3rd paragraph of 5 (1) relating to "residents of the United Kingdom for personal property", Annexes 3 (VAT and Excise), 4 (electricity) & 5 (State aid). Also excluded from the brake are indents 2-6 of Annex 2, which includes duties and trade remedies. These exclusions limit the areas where the brake can apply effectively to single market rules under Annex 2 which fall within headings 7 to 47.

122 It is unclear whether the 30 MLAs (of two parties) can petition as a group or whether, under Annex B of the "New Decade New Approach" agreement referenced in Annex 1 to the unilateral Declaration, a vote is required of the Assembly "in accordance with the cross community consent procedure."

123 The procedure in the Assembly is governed by Annex 1 of the Windsor draft decision that sets out the stages that need to happen before the UK notifies the Joint Committee. The following all needs to be evidenced: (i) the Assembly needs to be sitting and Ministers in place; (ii) 30 MLAs of two parties need to petition (and seek to operate the assembly in good faith); (iii) the Petition of Concern must be done via the New Decade New Approach procedure (including Annex B, which allows for a cross-community consent procedure); (iv) there must be consultation of business, civic society, the UK government and via the EU's processes; and (v) the conditions on significantly different and significant impact need to be met. Once that is done the UK must then decide if the tests are met and the explanations are sufficient.

124 Annex 1, Windsor draft decision. The unilateral declaration incudes the requirements of the Assembly and ties the UK Government to only invoking this power if the Assembly has followed these procedures.

125 The tests in the inserted para 13(3a) are: "The United Kingdom shall make the notification referred to in the first subparagraph of this paragraph only where:

- The 30 MLAs of two parties must seek discussions with the UK Government, consult business and civic society and "*make all reasonable use of applicable consultation processes provided by the European Union for [EU] acts relevant to Northern Ireland*". Once this has been done, the 30 MLAs must publish an explanation of their consultations and how the other conditions for using the brake have been met.

- The UK Government then has to agree that the conditions have been fulfilled, and subsequently notify the EU through the Joint Committee.

- In the Joint Committee, the UK and EU shall then, under Article 14(4)(b), "examine all further possibilities to maintain the good functioning of this Protocol and take any decision necessary to this effect", and if that does not lead to an agreement, the EU can "take appropriate remedial measures".[126]

- The EU can challenge whether the notification was lawful in terms of the Assembly procedure, the tests regarding significance, and whether the impact on everyday life is "liable to persist". The EU may take the matter to arbitration under Article 170 of the Withdrawal Agreement, which can lead to the UK being directed to apply the law or be subject to sanctions. If the UK were then not to apply the law following an adverse arbitration ruling, under Article 178 of the Withdrawal Agreement, the panel could authorise lump sum penalties or authorise the EU to make retaliatory suspensions of parts of the NI Protocol or other parts of the Withdrawal Agreement.

It is untrue to say that the UK determines whether the thresholds have been met for the use of the Stormont brake. In this regard the Stormont brake is notably inferior to the veto power enjoyed by the EFTA States under Article 102 of the EEA Agreement, which contains no similar preconditions or restrictions on its exercise. The determination whether the threshold has been met will ultimately come down to arbitration (although the arbitration panel would be bound to refer to the ECJ any relevant point of EU law[127]), and this could lead to a determination that the UK is in contravention of the NI Protocol. It is also worth noting that the procedure following the non-application of EU laws is largely the same as that which already exists under the NI Protocol in the case of a new law, as distinct from a replacement or amending law, with the addition of arbitration.

(a) the content or scope of the Union act as amended or replaced by the specific Union act significantly differs, in whole or in part, from the content or scope of the Union act as applicable before being amended or replaced; and

(b) the application in Northern Ireland of the Union act as amended or replaced by the specific Union act, or of the relevant part thereof as the case may be, would have a significant impact specific to everyday life of communities in Northern Ireland in a way that is liable to persist".

126 Once the notification has been made to the EU, the EU law that has been objected to is then treated as if it were a new EU law and "[w]here the notification referred to in the first subparagraph of this paragraph has been made, paragraph 4 shall apply with regard to the Union act…" If this is not possible the normal procedure will apply whereby "the Union shall be entitled, after giving notice to the United Kingdom, to take appropriate remedial measures". The EU can then insist on Arbitration under article 170 which can make binding recommendations including reapplying the EU law.

127 The question under Article.13(3a) third paragraph (a) of whether the content or scope of the EU act as amended or replaced "significantly differs" from before would involve questions of interpretation of EU law which, unless *acte claire*, would have to be referred to the ECJ for a binding interpretative ruling under Article 174 of the Withdrawal Agreement.

A further constraint is included in the draft Joint Declaration on the Stormont brake.[128] This sets out that the UK's notification of a disapplication must be made in "in good faith in accordance with Article 5".[129] Article 5 of the Withdrawal Agreement states that parties "shall refrain from any measures which could jeopardise the attainment of the objectives of this Agreement. This Article is without prejudice to the application of [EU] law pursuant to this Agreement, in particular the principle of sincere cooperation."

The draft Joint Declaration on the Stormont brake adds that "in relation to a notification under Article 13(3a) of the Windsor Framework, swift compliance with the ruling of the arbitration panel should be achieved, as set out in Recommendation [XX]/2023."[130] The draft recommendation of the Joint Committee further states that "*in order to comply with the arbitration panel ruling, and as the case may be, to the extent set out therein, the Union act applies as amended or replaced*" leading to the EU law being reapplied.

The Stormont brake is similar, but narrower in concept to the safeguarding article 16 which allows for unilateral disapplication of provisions of the Protocol if there is "serious economic, societal or environmental difficulties that are liable to persist, or to diversion of trade, the Union or the United Kingdom may unilaterally take appropriate safeguard measures." It is unclear how the new 'Stormont brake' relates to Article 16.

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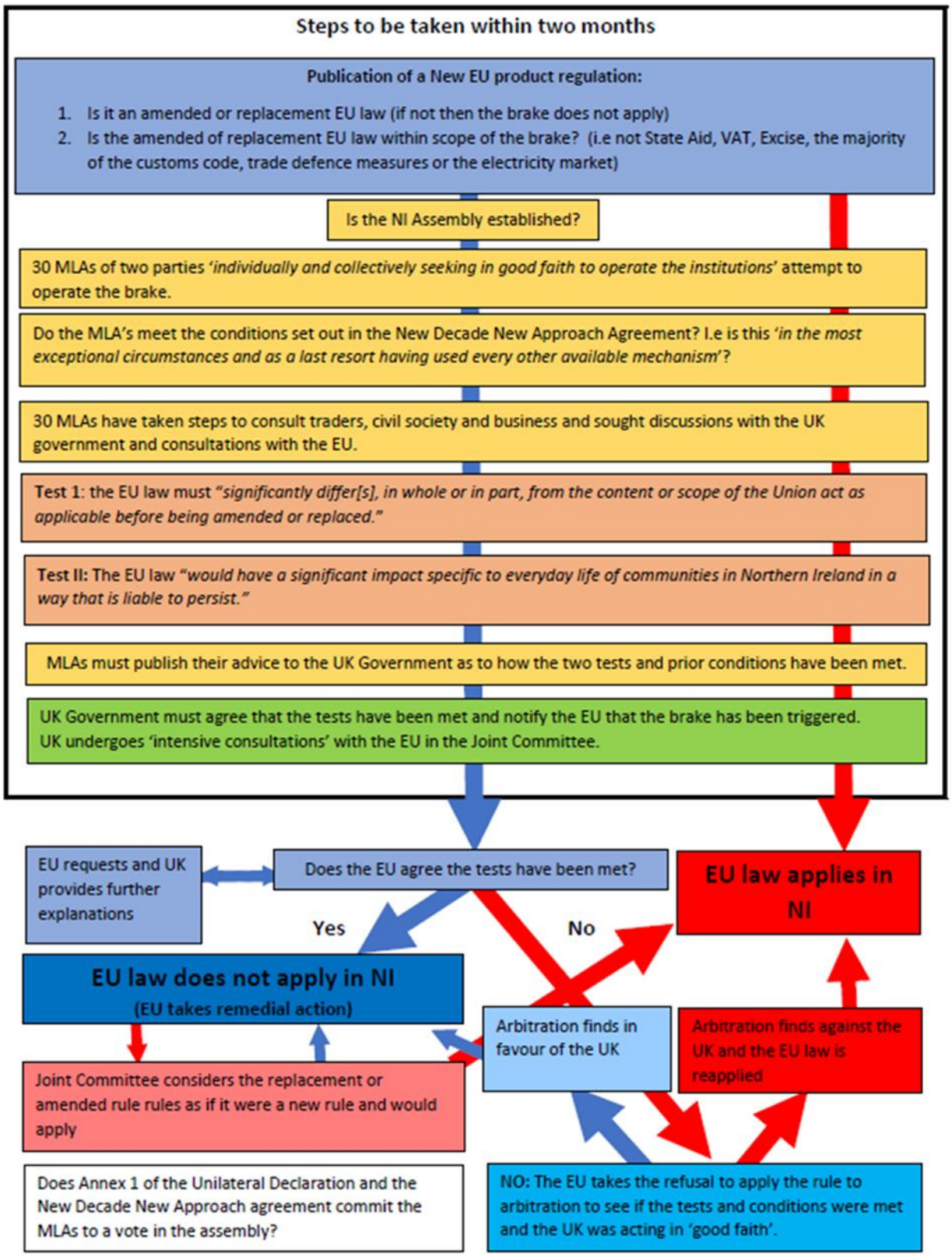
128 Draft Declaration on 13 3 (a): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1139426/Draft_joint_declaration_by_the_United_Kingdom_of_Great_Britain_and_Northern_Ireland_and_the_European_Union_in_the_Withdrawal_Agreement_Joint_Committee_on_Article_13_3a_.pdf

129 It is clear that, were the UK to action its own initiative to block a new law in this area, the UK would lose any case at Arbitration. The UK is required to follow the procedures and tests in good faith, as by extension are the 30 MLAs, although the UK is ultimately responsible for the operation of the Treaty. If it does not comply with the tests, the UK would be subject to an arbitration procedure and potential infraction procedures. The UK is therefore not in charge of whether a decision can be made or the thresholds met. The EU is clear that the UK will be bound by strict interpretations of both the Stormont procedures and the thresholds and the good faith provisions as ruled upon by an arbitration panel: "where an arbitration panel has ruled that the United Kingdom has failed to comply with the conditions for such notification as laid down in the third subparagraph of that paragraph, swift compliance with such an arbitration panel ruling should be achieved." Para 3.5.2, proposed Council Decision on the EU's position to be taken.

130 Draft Recommendation [XX]/2023 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1139425/Draft_Recommendation_of_the_Withdrawal_Agreement_Joint_Committee_on_Article_13_3__a_.pdf

Appendix F – The Stormont brake



APPENDIX G:
APPLICABILITY OF EU STATE AID LAW

The application of EU State aid law to the UK,[131] by virtue of Article 10 of the NI Protocol, is extremely significant. In addition to the loss of UK sovereignty, the practical difficulties this creates will worsen over time.

In Northern Ireland, the Government will soon have to start notifying aid projects to the Commission. Having now accepted EU law and jurisdiction in this area, it is unsustainable to continue starving Northern Ireland of public investment that engages the EU's State aid rules in order to avoid political embarrassment. The Government will have to accept the consequences of its choices. Once a notification is made, the UK cedes control over the relevant fiscal decision to a foreign power. The EU can either approve, require changes to the policy or prohibit it. Any appeal against the European Commission's decision on the proposed aid can only be heard by the ECJ.

In Great Britain, it will remain politically difficult to notify projects with beneficiaries in Great Britain to the European Commission, regardless of their indirect effect on Northern Ireland. However, failing to do so does not solve the issue or mean it is not there. It merely pushes the problem onto others and places a substantial risk on investors, which is one of the most significant costs of the approach to Article 10 of the NI Protocol in the Windsor deal. The UK courts, especially the Competition Appeal Tribunal (under section 70 of the Subsidy Control Act 2022) and the Administrative Court (TCA, by way of section 29 of the European Union (Future Relationship) Act 2020) will be asked to define the perimeter of Article 10 and the extent to which aid in Great Britain could be said to engage it. In doing so, they will take account of the joint declarations within the Windsor deal. These undoubtedly provide some constraint on the reach of Article 10, and the Windsor deal provides incremental improvements in this area. The improvements stem from the wording of the joint declaration on Article 10(1)[132] which seeks to define the key concept of a "genuine and direct link" to Northern Ireland. This phrase is not contained in Article 10 itself but emerged from an earlier unilateral declaration by the EU from 17 December 2020. The relevant paragraphs of the Windsor deal draft joint declaration are improvements on the December 2020 declaration.

Given that other parts of the text of the Protocol are to be amended by the draft Joint Committee decision, it is unclear why the text of Article 10 is to be left unamended, and the far less certain and robust route of using a declaration to "tweak" its interpretation is being used. In our view it would have been greatly preferable to have amended to text of Article 10 in order to ensure that the test is not the same as that which applies under EU State aid

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131 Article 10 is *not* limited "the UK in respect of Northern Ireland", in contrast to the Articles of the Protocol which apply EU customs, single market and tax laws.

132 Draft joint declaration by the United Kingdom of Great Britain and Northern Ireland and the European Union in the Withdrawal Agreement Joint Committee on the application of Article 10(1), available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1139443/Draft_joint_declaration_by_the_United_Kingdom_of_Great_Britain_and_Northern_Ireland_and_the_European_Union_in_the_Withdrawal_Agreement_Joint_Committee_on_the_application_of_Article_10_1_.pdf.

law to the question of whether there can be an effect on trade between Member States, where a theoretical risk is enough.

The declaration will now make it arguable in Court that aid to a beneficiary in Great Britain does not engage Article 10 (and hence does not need to be notified to the European Commission) because:

(i) sales in Northern Ireland are insufficient, of themselves, to trigger Article 10;[133]

(ii) the beneficiaries' sales in Northern Ireland are too small or immaterial;[134]

(iii) the *economic effect* of the aid is not passed through the beneficiary to Northern Ireland.[135]

The declaration suggests that the ECJ test for effect on trade between member states in a State aid context is not the correct frame of reference for the test under Article 10 of effect on trade under the Protocol. This is because, under the ECJ test, sales alone are sufficient (they do not even need to be cross-border[136]) and there is no requirement to show that there is any economic effect.

However, the most obvious difficulty created is that litigation becomes more vexed. Beneficiaries and public authorities seeking to defend claims that Article 10 was breached (a claim that is made routinely because it provides a claimant with a total win on a hard-edged point of law) will need to collect expert and factual evidence on materiality and economic effects. This adds cost and difficulty to defending litigation and is likely to have a chilling effect on subsidy policy as a result.

The more major difficulty is less obvious but much larger – in fact, very large indeed. In failing to remove the "reach back" jurisdiction of Article 10 into Great Britain and merely limiting its scope, the Windsor deal has created jeopardy for investors into Great Britain. Imagine a company seeking to build a Gigafactory in Great Britain and the UK is competing for this mobile investment, including against jurisdictions in the EU. In addition to all the incremental

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133 The relevant paragraph of the joint declaration states: "For measures granted to any beneficiary that is located in Great Britain, factors relevant to materiality may include the size of the undertaking, the size of the subsidy, and the market presence of the undertaking in the relevant market in Northern Ireland. While **the mere placement of goods on the Northern Ireland market is not sufficient, on its own**, to represent a direct and genuine link engaging Article 10(1) of the Windsor Framework, measures that are granted to beneficiaries located in Northern Ireland are more likely to have material effects".

134 The relevant paragraph of the joint declaration states: "For a measure to be considered to have a genuine and direct link to Northern Ireland and thus to have an effect on the trade between Northern Ireland and the Union that is subject to the Windsor Framework, that measure needs to have real foreseeable effects on that trade. The relevant real foreseeable effects should be **material**, and not merely hypothetical or presumed".

135 The relevant paragraph of the joint declaration states: "For measures granted to any beneficiary that is located in Great Britain that have a material effect, it must be **further demonstrated that the economic benefit of the subsidy would be wholly or partially passed on to an undertaking in Northern Ireland**, or through the relevant goods placed on the market in Northern Ireland, for example through selling below market price, for there to be a direct and genuine link engaging Article 10(1) of the Windsor Framework".

136 See for example: *R (Eventech) v Parking Adjudicator* on preliminary reference to the CJEU, C-518/13 see paragraph 65

cost and risk that the TCA represents in terms of market access, subsidies offered by the UK are doubly vulnerable from the EU. First, this is so under the Foreign Subsidies Regulation (FSR), a new protectionist measure the EU has adopted to supervise the subsidisation of its trade partners. Under the FSR (which enters into force in July 2023) the EU will have the power to require the mandatory pre-notification of certain M&A transactions and public procurement processes as well as a broad *ex officio* power to investigate the award of subsidies from any non-EU member state where the EU suspects a subsidy may distort the EU single market. Second, the problem arises from the possibility of a claim (potentially years after the event) that the subsidy engages Article 10 and is unlawful for lack of prior notification, as discussed above. This is a unique risk that the UK suffers from, under the NI Protocol, that is not shared by any other jurisdiction in the world, and one that the UK Government is powerless to prevent, other than by protective notification of the project to the European Commission. While that is politically impossible under the current Government, a future Government would not be so constrained and could act to protect an investor in this scenario by filing a notification to the EU. As soon as this step is taken, the UK will delegate entirely the definition of "genuine and direct link" to Northern Ireland to the European Commission and the ECJ. Much of the advantage of an independent subsidy control policy will then disappear. The State aid position in the Windsor Framework is incrementally better than the Protocol, which is a reflection of just how poor the Protocol was. By accepting the continuation of Article 10 reach over subsidies in Great Britain, the Government has removed much of the benefit that the UK would otherwise have won from its faster, more flexible, more certain subsidy control regime under the Subsidy Control Act 2022. The EU has successfully neutralised a key Brexit benefit.