The UK-EU Withdrawal Agreement and the Backstop for Northern Ireland

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The Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union (WA) and its Protocol on Ireland/Northern Ireland (the ‘Protocol’) provide for new post-Brexit governance arrangements relating to certain aspects of public policy in Northern Ireland. This raises important questions, many of which are included in the call for evidence for this inquiry.

We offer here observations on issues relevant to section (ii) on scrutiny arrangements. Our key concern is how Northern Ireland’s interests can be identified and represented in the proposed structures and processes.

The Withdrawal Agreement and Northern Ireland

1. New post-Brexit arrangements would commence with the entry into force of the Withdrawal Agreement (scheduled for 30 March 2019) with responsibilities changing over time as the transition period (to 31 December 2020) is implemented and potentially extended (up to 31 December 2022).

2. In the absence of alternative arrangements or an extension to the transition period being agreed by the United Kingdom (UK) and the European Union (EU) prior to 1 July 2020, the Protocol’s ‘backstop’ for Northern Ireland/Ireland and other provisions will come fully into force on 1 January 2021. The new post-Brexit arrangements will then assume a wider set of responsibilities until the relevant Protocol provisions cease to apply.

3. It is important to note that although the Protocol itself will only apply from the end of the transition period, certain provisions will apply with the entry into force with the Withdrawal Agreement (Article 185 WA).

The new governance arrangements

4. Three new bodies will have important responsibilities regarding the implementation of the Protocol:
   a. The Joint Committee

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5. Each will be comprised of representatives from the UK and the EU.

6. The body with overall responsibility for managing the implementation of the Withdrawal Agreement is the **Joint Committee** (Articles 164 and 166 WA). It also has specific responsibilities relating to the Protocol.

7. These responsibilities include: adopting (before 1 July 2020) the detailed rules relating to trade within the backstop’s single customs territory; determining access to the EU market for fish landed by vessels form Northern Ireland; keeping under constant review the extent to which the implementation and application of the Protocol maintains the necessary conditions for North-South cooperation; and deciding on whether new EU rules should be added to the Protocol.

8. The Joint Committee – meeting at ministerial level – also considers any UK or EU-initiated review of the continued need for any of the Protocol’s provisions (Article 20 WA). The EU and UK may decide within the Joint Committee that the Protocol, in whole or in part, is no longer necessary to achieve its objectives. If so, the Protocol shall cease to apply, in whole or in part (Article 20 Protocol).

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<table>
<thead>
<tr>
<th>Composition</th>
<th>UK-EU Joint Committee</th>
<th>Specialised Committee</th>
<th>Joint Consultative Working Group</th>
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<td>UK and EU Representatives at ministerial level, or by high-level officials</td>
<td>UK and EU Representatives “with the appropriate expertise with respect to the issues under discussion”</td>
<td>UK and EU Representatives</td>
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| Meetings | at least annually, and by request of UK or EU; meeting agenda to be set by mutual consent | at least annually, and by request of UK or EU; meeting agenda to be set by mutual consent | as agreed, but from end of transition period monthly, unless otherwise decided by the UK and EU by mutual consent |

| Responsibilities | implement and apply agreement adopt binding decisions make recommendations amend agreement | facilitate and consider proposals concerning implementation and application of protocol make recommendations to Joint Committee | serve as a forum for the exchange of information and mutual consultation |

| Other attendees | experts or other persons may be invited to attend to provide subject information | experts or other persons may be invited to attend to provide subject information |  |

b. The *Specialised Committee on issues related to the implementation of the Protocol on Ireland/Northern Ireland*

c. The *Joint Consultative Working Group*. 
9. The Joint Committee is supported by six Specialised committees (Article 165 WA).[^4] They include the **Specialised Committee on issues related to the implementation of the Protocol on Ireland/ Northern Ireland** (Specialised Committee).

10. From the entry into force of the Withdrawal Agreement, this Specialised Committee is responsible for:

a. facilitating the implementation and application of the Protocol;

b. examining proposals from the North-South Ministerial Council (NSMC) and North-South Implementation bodies concerning implementation;

c. considering 'any matter of relevance' brought to its attention by designated bodies relating to the implementation of the Protocol’s citizens’ rights provisions;[^5]

d. discussing ‘any point… of relevance’ to the Protocol that ‘gives rise to a difficulty’;

e. and making recommendations to the Joint Committee as regards the functioning of the Protocol.

11. The Specialised Committee also has indirect responsibility for keeping under ‘constant review’ the conditions for North-South cooperation (e.g. in light of the addition of new EU acts) (Article 13(2) Protocol).

12. Reporting to this Specialised Committee is the **Joint Consultative Working Group (JCWG)** as well as bodies established as a result of the 1998 Belfast (Good Friday) Agreement.

13. The JCWG exchanges information and acts as a forum for mutual consultation in respect of the Protocol between the UK and the EU. The focus is on ‘planned, ongoing and final relevant implementation measures’ relating to EU acts listed in the Annexes to the Protocol.

14. As such the JCWG provides the UK in respect of Northern Ireland with a ‘decision-shaping’ role regarding EU legislation and policy in the areas covered by the Protocol.

[^4]: The other Specialized Committees cover: citizens' rights; ‘other separation provisions’; the Protocol relating to the Sovereign Base Areas in Cyprus; the Protocol on Gibraltar; and financial provisions.

[^5]: The bodies entitled to bring matters to the attention of the Specialised Committee are: 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.
Ensuring the representation of Northern Ireland’s interests

15. Given the extent of the obligations assumed by the UK in respect of Northern Ireland, and the importance of properly functioning governance in the unique circumstances of Northern Ireland, it is imperative that effective use is made of the governance arrangements established by the Withdrawal Agreement to ensure maximum representation of Northern Ireland interests in relevant EU and UK-EU decisions.

16. The same applies to any implementing arrangements that the UK government includes in the EU (Withdrawal Agreement) Act to be adopted as part of the ratification of the Withdrawal Agreement or oversight arrangements the UK Parliament establishes as a consequence.

17. Gaps in the envisaged arrangements need to be identified and filled accordingly. Among the notable omissions are arrangements for parliamentary oversight and engagement with civil society.6

18. Due consideration also needs to be given to the governance status of Northern Ireland within the UK. Three basic scenarios need to be considered: a) functioning devolution; b) a return to direct rule; c) a continuation of the current arrangements of dysfunctional devolution. The Withdrawal Agreement assumes functioning devolution.

19. Consideration needs also to be given to the roles that can be played by the full complement of ‘institutions created by the 1998 Agreement’ and enhanced or supplementary arrangements that might be established.

20. Much depends on the proper functioning of the 1998 Agreement institutions. For example, the Northern Ireland Executive and Northern Ireland Assembly have to be operational in order for the North South Ministerial Council to fully function, and, thus, for it to be able to submit proposals to the Specialised Committee.

Inquiry questions

21. How should the views of Northern Ireland be represented on the Joint Committee?

   (i) The Joint Committee will comprise either UK and EU representatives at ministerial level or UK and EU high-level officials. Terms of reference also permit ‘experts or other persons who are not part of delegations’ to be invited to attend to provide information on specific subjects.

   (ii) The UK government will determine the composition of the UK delegation. It has already stated, however, that it will agree a Memorandum of Understanding (MoU) with a future Northern Ireland Executive setting out arrangements for the Executive’s role in respect of the Joint Committee as well as the Specialised Committee and the Joint Consultative Working Group.7 The MoU will set out the ‘appropriate’ UK delegation to those forums when Northern Ireland-specific issues are being discussed.

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6 The Political declaration setting out the framework for the future relationship between the European Union and the United Kingdom references the establishment civil society dialogue, dialogue between the EP and the UK Parliament, and thematic dialogues at ministerial and senior official level as part of the future UK-EU relationship

(iii) The role of the Northern Ireland Executive should include:

- the presence, with speaking rights, of the First Minister and deputy First Minister (or their nominees) in all meetings of the Joint Committee held at ministerial level where those meetings discuss issues relating to Northern Ireland whether as part of the Protocol or the Withdrawal Agreement more generally;
- the presence, with speaking rights, of relevant senior officials from the Northern Ireland Civil Service in all other meetings of the Joint Committee where those meetings discuss issues relating to Northern Ireland whether as part of the Protocol or the Withdrawal Agreement more generally.

(iv) The UK Government has also stated that the MoU will ‘set out the agreed processes and forums to ensure effective dialogue and information-sharing with the Executive on the implementation of the Protocol’. \(^8\)

(v) The Northern Ireland Executive should therefore:

- receive from the UK government all papers relating to meetings of the Joint Committee;
- be formally consulted by the UK government in advance on all issues relevant to Northern Ireland being discussed at meetings of the Joint Committee;
- be formally consulted by the UK government in advance on all issues relevant to Northern Ireland for decisions as part of the written procedure provided for in the Rules of Procedure;
- be formally consulted in a timely manner by the UK government on the agenda for all meetings of the Joint Committee;
- be formally consulted in advance on any proposed notification to the EU under the review process (Article 20 Protocol) that the UK government considers the Protocol, in whole or in part, no longer necessary to achieve the objectives set out in Article 1(3); \(^9\)
- be permitted to determine which experts and other persons with subject information should accompany the First Minister and deputy First Minister (or their nominees) or senior officials to meetings.

(vi) Arrangements should also be put in place to ensure that there is effective parliamentary scrutiny of the Joint Committee. The UK and the EU should establish a UK-EU Joint Parliamentary Committee to oversee the activities of the Joint Committee and the Specialized Committee. This Joint Parliamentary Committee should comprise members of the UK Parliament and the Northern Ireland Assembly as well as members of the European Parliament.

(vii) The House of Commons Northern Ireland Affairs Committee should receive from the UK Government an oral or written report on issues relevant to Northern Ireland following each meeting of the Joint Committee.

(viii) The First Minister and deputy First Minister (or their nominees) and senior officials should report on all meetings to a relevant committee of the Northern Ireland Assembly. The

\(^8\) *Ibid.* point 27

\(^9\) Consultation of all ‘institutions created by the 1998 Agreement’, as per Article 20 Protocol should be mandatory.
relevant committee(s) of the Northern Ireland Assembly should be consulted by the Northern Ireland Executive on relevant agenda items in advance of meetings of the Joint Committee.

(ix) The Joint Committee’s Annual Report should be considered by the UK Parliament and the Northern Ireland Assembly. Their responses should be reported to and considered by the Joint Committee. The Joint Committee’s Annual Report should include details and assessments of the activities of the Specialised Committee and the JCWG.

22. In the continued absence of devolved Northern Ireland Ministers, should UK politicians or Northern Ireland civil servants represent Northern Ireland?

(i) The UK Government has stated that the ‘voice of Northern Ireland’ will be ‘critical’ as it moves forward with work in advance of the implementation of the Protocol and in advance of ‘any decision to bring the Northern Ireland Protocol into effect’. It intends that ‘that voice is heard’. Although the focus of the UK government is on ‘giving a restored Executive and Assembly a strong voice’, it also states that it is ‘committed to ensuring that Northern Ireland’s voice is heard at all stages both in any decision to bring the backstop into effect, and in its implementation should it be needed’. The commitment to ensure that the Northern Ireland voice should apply to the current situation (which could persist or be repeated) in which there is no Northern Ireland Executive.

(ii) In the absence of Northern Ireland Ministers, representation should as a minimum be ensured through senior officials from the Northern Ireland Civil Service. Where the Joint Committee meets at ministerial level, representation of the Northern Ireland voice should be through the Secretary of State for Northern Ireland. The Northern Ireland Office should establish consultative sectoral fora in which relevant interests from Northern Ireland can be represented and the Northern Ireland voice established for the Secretary of State to represent at meetings of the Joint Committee.

(iii) The UK government is committed to ‘consult the parties in Northern Ireland’ on its proposals for ‘a strong role for the Northern Ireland Assembly before the ‘backstop’ could ever be brought in to force’. The unspecified mechanisms it envisages for these consultations could also serve, in the absence of a Northern Ireland Executive and Northern Ireland Assembly as a means for consulting the political parties in Northern Ireland on the position to be taken by UK representatives, in respect of Northern Ireland, in meetings of the Joint Committee.

23. To what extent can the Joint Committee behave dynamically to develop the backstop during its implementation?

(i) If the ‘backstop’ arrangements provided for in the Protocol enter into force it is anticipated that there will be evolution in the regulatory alignment. Where the EU adopts revisions or updates to or replaces existing EU acts referred to in the Protocol and its annexes, these revisions and replacements will apply automatically. The JCWG provides a forum for discussion of proposals before their adoption by the EU.

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10 HM Government, op cit. point 14
11 ibid. point 15
12 ibid. points 16 and 20
(ii) Where the EU adopts new acts in areas covered by the Protocol, these will only apply to the UK in respect of Northern Ireland by mutual consent of the UK and the EU in the Joint Committee.

(iii) The UK Government has already committed to seeking the agreement of the Northern Ireland Assembly if it ‘were ever to consider agreeing’ to such new acts applying. It will legislate in domestic law ‘to ensure that a UK Minister will be required to seek agreement of the Northern Ireland Assembly before reaching any agreement in the UK-EU Joint Committee to add additional alignment provisions to the scope of the Protocol’ (emphasis added).\(^\text{13}\) It remains unclear whether under this so-called ‘Stormont lock’ the Minister will need to ‘secure’ or merely ‘seek’ agreement of the Northern Ireland Assembly. Either way, there is potential for the number of acts with which the UK, with respect to Northern Ireland, will be aligned will increase. Alignment will only concern acts within the scope of the Protocol.

(iv) The Joint Committee may until the end of the fourth year following the end of the transition period adopt decisions amending the Withdrawal Agreement and therefore the Protocol (Article 164(5)(d) WA). Such amendments can only be made, however, if they are deemed ‘necessary to correct errors, to address omissions or other deficiencies, or to address situations unforeseen when this Agreement was signed, and provided that such decisions may not amend the essential elements of this Agreement’. A limited opportunity therefore exists to amend the Protocol. Any amendment would require the mutual consent of the UK and the EU.

24. How will membership of the Specialised Committee on the Northern Ireland Protocol be constituted?

(i) The Specialised Committee comprises representatives of the EU and the UK. The representatives should have ‘the appropriate expertise with respect to the issues under discussion’ (Article 165 WA).

(ii) The level of representation is not specified. However, it is standard practice in EU relations with non-member states that in bodies subordinate to the main decision-making body – here the Joint Committee – the Commission represents the EU and senior government officials – not ministers – represent the non-member state.

(iii) The European Commission has proposed that it will represent the EU in the Specialised Committee. It has also proposed, however, that Ireland will have the right to request that it is represented at meetings alongside the Commission.\(^\text{14}\)

(iv) The UK government, as with the Joint Committee, has committed to an ‘appropriate’ UK delegation to the Specialised Committee. Given its focus is explicitly on ‘Ireland/Northern Ireland’, representation from Northern Ireland at meetings should be the position.

(v) Assuming the level of representation is officials, Northern Ireland should be represented, with speaking rights, in all meetings of the Specialised Committee by relevant senior officials from the Northern Ireland Civil Service.

\(^{13}\) Ibid. point 23

(vi) As with the Joint Committee experts or other persons who are not part of delegations may be invited to attend to provide information on specific subjects. The Northern Ireland Executive should be permitted to determine which experts and other persons with subject information should accompany senior officials to meetings.

(vii) In order to ensure effective representation of Northern Ireland interests in the work of the Specialised Committee, the Northern Ireland Executive should:

- receive from the UK government all papers relating to and be formally consulted in advance on the agenda for and positions to be taken at meetings;
- be formally consulted by the UK government in advance on all issues relevant to Northern Ireland for decisions as part of the written procedure provided for in the Rules of Procedure.

25. Should consideration be given to cross-community representation?

(i) Representation from Northern Ireland should be on the basis of sectoral need and according to expertise. Participation in meetings should not be limited to officials. To ensure effective representation of sectoral expertise from Northern Ireland participants should include representatives of relevant trade and professional bodies and interest groups, including those operating

(ii) Whether or not such non-governmental participation is established, mechanisms should be established within Northern Ireland to ensure that relevant trade and professional bodies and interest groups are consulted by officials from Northern Ireland attending meetings of the Specialised Committee

(iii) Effective oversight of the activities of the Specialised Committee should be established with UK representatives reporting to the committee of the Northern Ireland Assembly responsible.

(iv) A relevant committee of the Northern Ireland Assembly should receive an oral report on all meetings of the Specialised Committee.

(v) Presumably the suggestion that there should cross-community representation rests on the principle of consent as it is manifest in the Northern Ireland Act (1998). The relevant provision here relates to the concept of ‘parallel consent’. As a matter of law, parallel consent formally only applies to the adoption of certain decisions, e.g. the appointment of the Assembly speaker. The UK’s relationship with the EU is an “excepted matter” in the Northern Ireland Act 1998, which is the constitution for devolved government in Northern Ireland, and is therefore outside the remit of the Northern Ireland Executive and Assembly.

(vi) To make the view of the UK representation subject to the principle of parallel consent in the Northern Ireland Assembly would be tantamount to a portion of the Northern Ireland Assembly assuming the power of veto over the outcome of international negotiations undertaken by the UK government. It would be far too crude a mechanism for cross-community representation, and one open to exploitation.

(vii) More broadly, the emphasis on the role of the NSMC in submitting proposals to the Committee is a sensible one because it means that the views of the NSMC would already in principle reflect an agreed position between unionists and nationalists in a Northern Ireland Executive.

26. How will the Joint Working Group on Northern Ireland be constituted?

(i) The JCWG will exchange information and acts as a forum for mutual consultation in respect of the Protocol. The focus is on ‘planned, ongoing and final relevant implementation measures’ relating to EU acts listed in the Annexes to the Withdrawal Agreement.

(ii) The JCWG will comprise representatives from the UK and the EU; the exact composition is not specified in either the WA or the Protocol, but will include, following existing examples of consultative bodies in the EU’s external relations, Commission officials and officials representing the UK. The JCWG will adopt its own rules of procedure during the transition period (Article 17(6) Protocol).

(iii) It follows from the composition of the Specialized Committee that the members of the JCWG will included UK and EU representatives “with the appropriate expertise with respect to the issues under discussion” and that experts or other persons may be invited to attend to provide subject information.

(iv) Participation in meetings should not be limited to officials. To ensure effective representation of sectoral expertise from Northern Ireland participants should include representatives of relevant trade and professional bodies and interest groups, including those operating

(v) Mechanisms should be established within Northern Ireland to ensure that relevant trade and professional bodies and interest groups are consulted by officials from Northern Ireland attending meetings of the JCWG.

(vi) The JCWG will be an important body for ensuring the interests of Northern Ireland feature in EU consultative fora. It will meet more frequently than either Joint Committee or the Specialised Committee and so has potential for providing officials from Northern Ireland with valuable opportunities to develop networks of contacts with EU officials. This can supplement other informal mechanisms for ensuring Northern Ireland interests are fed as effectively as possible into EU decision-making process.

(vii) Effective oversight of the activities of the JCWG should be established with UK representatives reporting orally and in writing to the relevant committee of the Northern Ireland Assembly.

27. Should consideration be given to cross-community representation?

As with the Specialised Committee, representation from Northern Ireland should be based on sectoral need and according to expertise.

28. What lessons can be learnt about the mechanisms in the Withdrawal Agreement from the experience of the Eastern Partnership countries, Moldova, Ukraine and Georgia, who have accession treaties with the EU?
(i) None of the countries mentioned have ‘accession treaties’ with the EU. They have, however, concluded association agreements with the EU. These include dedicated bilateral arrangements for dialogue and, with respect to the agreements, decision-making. They do not involve the automatic adoption of updates and replacements to EU acts covered by the association agreements and so do not include a decision-shaping element akin to JCWG. The JCWG is a privileged arrangement.

(ii) The institutional arrangements provided for in the association agreements with Moldova, Ukraine and Georgia have only been operating since 2015 and so few lessons can be learnt from them. Lessons on how best institutional arrangements can be utilised to ensure the interests of a non-member state of the EU are reflected wherever possible in EU decision-making can, however, be learnt from more long-standing institutional arrangements. An important example is the European Economic Area where participating states from the European Free Trade Area (EFTA) – so, Iceland, Liechtenstein and Norway – are obliged to adopt relevant new EU rules in order to ensure the legal homogeneity of the EEA.

(iii) The EEA Agreement involves Iceland, Liechtenstein and Norway in a ‘decision-shaping’ role where the three states are automatically consulted on proposals from the Commission. The Commission also ‘informally’ seeks advice from experts of the EFTA states in elaborating its proposals. The EEA’s institutional arrangements also include a Joint Parliamentary Committee and an EEA Consultative Committee of representatives from the social partners of the EU and EEA EFTA states.

(iv) Informal mechanisms of consultation and dialogue are important aspects of any policy-making processes. The EFTA states involved in the EEA benefit from regular informal dialogue with EU member states so that those states, in adopting their positions on Commission proposals, may informally reflect the EFTA states positions in theirs. In promoting awareness of Northern Ireland interests in the EU’s adoption of updates/replacements to or of new acts, use should be made of informal contacts with relevant member states. In this respect, clear opportunities exist to build on contacts and cooperation with the Irish government to ensure it is fully aware of the Northern Ireland interest.

29. To what extent does the Article 20 review clause provide an exit route from the backstop?

(i) Article 20 (Protocol) sets out the procedure by which the Protocol will cease to apply in whole or in part. It is therefore the exit route from the backstop arrangements contained in the Protocol.

(ii) If the UK and the EU agree that alternative arrangements have been put in place – e.g. via the post-Brexit UK-EU relationship – such that the necessary conditions exist ‘to address the unique circumstances on the island of Ireland, maintain the necessary conditions for continued North-South cooperation, avoid a hard border and protect the 1998 Agreement in all its dimensions’, the relevant provisions will cease to apply.

(iii) The procedure set out in Article 20 involves the EU or UK notifying the other party at any time after the transition period has ended that they consider that all or part of the Protocol should cease to apply. The matter is then considered by the Joint Committee at ministerial level within six months. The Joint Committee may seek an opinion from ‘institutions created by the 1998 Agreement’, so including the Northern Ireland Executive and the Northern Ireland Assembly.
(iv) Article 20 does not provide for a unilateral exit route from the backstop; nor should it. The UK and the EU have agreed the content of the Protocol to avoid a situation where, if the post-Brexit UK-EU relationship does not deliver appropriate arrangements to address the unique circumstances on the island of Ireland, maintain the necessary conditions for continued North-South cooperation, avoid a hard border and protect the 1998 Agreement in all its dimensions, backstop provisions are triggered and will remain in place until appropriate arrangements are in place. It should be noted that the commitments regarding avoidance of a hard border are shared UK and EU commitments.

(v) It should also be noted that the UK and the EU have agreed to use their ‘best endeavours’ to conclude an appropriate future relationship to supersede the Protocol in whole or in part by 31 December 2020 (Article 2 Protocol).

30. If the backstop is triggered, should Northern Ireland maintain some representation on EU bodies in recognition of the fact it would be subject to a greater level of EU supervision and control?

(i) The EU has, throughout its existence, insisted on its own decision-making autonomy. Participation in decision-making is the preserve of member states. However, with the EEA, as noted, the EU has provided for a ‘decision-shaping’ role for the participating EFTA states. This involves Iceland, Liechtenstein and Norway participating in a ‘continuous information and consultation process’ in the EEA Joint Committee and experts from the three countries in preparatory work of the Commission. The experts also participate in various Commission committees.

(ii) These arrangements inspired those for the UK during transition period. Article 128(5) WA provides that UK representatives or experts ‘may, upon invitation, exceptionally attend meetings or parts of meetings’ of Commission committees and expert groups as well as of ‘bodies, offices or agencies’ where these involve EU member state representatives. Attendance is without voting right and only concerns specific agenda items related to the transition period.

(iii) The same arrangements were originally included in the version of the Protocol contained in the draft Withdrawal Agreement first published in February 2018. They were subsequently removed. Instead the provisions for the dedicated JCWG were inserted. These, as noted, provide for a form of decision-shaping; and should be fully exploited to ensure the greatest possible awareness of the significance of relevant Commission proposals for Northern Ireland and the operation of the Protocol.

(iv) By way of a complement to the JCWG and in line with proposed arrangements in the draft Withdrawal Agreement of February 2018, the principle of UK participation in Commission Committees and expert groups could be extended beyond the transition period with regard to Northern Ireland and obligations under the Protocol, assuming its full entry into force.

31. **What conditions would be required to extend the transition period in lieu of triggering the backstop?**

(i) The decision on whether to request an extension of the transition period rests with the UK. Any request may be made at any time before 1 July 2020 (Article 3 Protocol) request the extension of the transition period referred to in Article 126 WA. If the UK makes such a request, the transition period may be extended in accordance with Article 132 WA. No conditions are specified. It will therefore be a political decision of the UK whether to opt for an extension of the transition period.

(ii) The UK Government has committed to consulting the Northern Ireland Assembly on the option to seek extension of the transition period.\(^\text{17}\)

32. **What are the advantages and disadvantages of this approach?**

(i) The advantage of this approach is that the decision on whether to request an extension of the transition period rests with the UK.

(ii) The disadvantage is that the option to extend the transition period is not automatically conditional on whether an agreement on the future UK-EU relationship is in place that negates the need for the Protocol in whole or in part. The UK will not have availed of every opportunity to avoid the Protocol entering fully into force and the backstop arrangements applying.

**Additional Comments**

33. If the representation of Northern Ireland’s interests is to be as effective as possible, the North-South and British-Irish strands of the 1998 Agreement should be exploited to their full potential, with additional arrangements being introduced as necessary to ensure enhanced means of coordination and consultation with the Northern Ireland Assembly and Northern Ireland Executive.

34. There will also need to be changes in the dynamics of coordination within the UK and its constituent regions and nations. The UK Government has already indicated an intention to increase the decision-making powers of all the devolved administrations.\(^\text{18}\) Another step would be to increase the frequency and importance of meetings of the Joint Ministerial Committees.

35. Ultimately the best means of securing Northern Ireland’s interests in the governance arrangements of the Protocol is to see the devolved Assembly and Executive restored.

\(^{23}\text{January 2019}\)

\(^{17}\text{HM Government, op cit. points 18-20.}\)

\(^{18}\text{ibid. point 42.}\)