



BRIEFING PAPER

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Background to Taxation (Post-Transition Period) Bill 2019-21

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1. Background

This briefing has been prepared as background to the Second Reading of the *Taxation (Post-Transition Period) Bill 2019-21* on 9 December 2020. Details of the Bill and accompanying documents can be found on the [Bill page](#) on Parliament's website. As the Bill is a Bill of Aids and Supplies, it was introduced on Ways and Means Resolutions debated on 8 December 2020.

The Bill had originally been expected to deal with the issue of "at risk" goods exported from Great Britain to Northern Ireland. Under the terms of the Northern Ireland Protocol, part of the 2019 Withdrawal Agreement with the EU, such goods considered "at risk" of moving into the EU single market would pay tariffs. Under the terms of the Protocol, the UK/EU Joint Committee was to determine criteria for "at risk" goods.

The Bill had been expected to give the Government powers to determine these criteria unilaterally. It was therefore expected to be highly controversial, in the same way that the United Kingdom Internal Market Bill had been.

On 8 December, however, the Government announced that the Joint Committee had reached agreement in principle on the issue of "at risk" goods and that the controversial clauses of the Bill would be dropped.¹ In the debate on the Ways and Means resolutions, Jesse Norman, the Financial Secretary to the Treasury, said the Bill would contain some measures on "at risk" goods, subject to agreement.

This Bill should be seen alongside the [United Kingdom Internal Market Bill](#) which had given Ministers powers to unilaterally reinterpret and disapply parts of the Northern Ireland Protocol, as well as ignore legal obligations under both domestic and international law to enact the Protocol. The Internal Market Bill was in the "ping-pong" stage as the *Taxation (Post-Transition Period) Bill* was introduced. The Government's announcement on 8 December also said that a number of contentious clauses would be withdrawn from the Internal Market Bill.²

¹ Cabinet Office, [EU-UK Joint Committee statement on implementation of the Withdrawal Agreement](#), 8 December 2020

² Cabinet Office, [EU-UK Joint Committee statement on implementation of the Withdrawal Agreement](#), 8 December 2020

2. The Northern Ireland Protocol & customs

2.1 Overview of the Protocol

The Protocol on Ireland/Northern Ireland (the Protocol) is part of the Withdrawal Agreement (WA), which laid out the terms of the UK's exit from the EU. It sets out the relationship Northern Ireland will have with both the EU and Great Britain (the rest of the UK) at the end of transition period on 31 December 2020.

The principal purpose of the Protocol is to maintain the open border that currently exists between Ireland and Northern Ireland. Our [briefing paper on the WA](#) sets out in detail what is in the Protocol.

In summary, the Protocol will see Northern Ireland following EU Single Market rules for goods, apply the EU's customs code (its rules on how goods move in and out of the EU) and apply EU VAT rules, while still remaining part of the UK's customs territory and VAT area, and still able to benefit from UK trade agreements. This approach necessitates implementing new checks and controls for goods moving both from Great Britain to Northern Ireland but also, to a lesser extent, from Northern Ireland to Great Britain. There will also be a "consent mechanism", with the Northern Ireland Assembly given an opportunity to periodically vote on whether it wants this set of arrangements to continue.

Joint Committee

The WA established a Joint Committee, which is "responsible for the implementation and application of [the] Agreement" (Article 164). Decisions need to be jointly agreed by the UK and EU. The Committee is co-chaired by the UK and the EU.

The WA did not set out the detail of all arrangements relating to the UK's withdrawal from the EU. It delegated some tasks to the Joint Committee to implement or decide upon. These include several decisions on how to implement the Protocol. For more information see Library CBP: [The UK-EU Withdrawal Agreement Joint Committee: functions and tasks](#).

One of the most significant decisions the Committee has to undertake on the Protocol was to define "at risk goods". Under the Protocol, goods moving from Great Britain to Northern Ireland will not be subject to customs duties (tariffs) unless they are considered "at risk" of subsequently of being moved into the EU (Article 5(1) NIP). This is explored in detail in the next section on Customs.

Negotiations in the Joint Committee

As well as decisions the Committee were empowered to make under the Protocol, the Government have sought further easing of rules and checks that would apply to goods moving to and from NI after the end of the transition period.

In May 2020 the UK Government published a [Command Paper](#) (CP) that set out its approach to implementing the Northern Ireland Protocol. It stated two main areas where it sought flexibility on implementing the Protocol:

- **Export and exit summary declarations:** The CP states that in the Government's view it "makes no sense" for businesses in Northern Ireland to complete export or exit summary declarations (these are customs forms) – when they send goods to the rest of the UK, as they will not be entering the EU's Single Market, and will be subject to other checks en route to their destination. These forms are required under

the EU's Customs Code, which the Protocol states applies to Northern Ireland (Article 5(3) NIP). As this is a piece of EU law, it seems that it would be for the EU to decide if such a waiver could be made. The IMB gifted the Government powers to unilaterally decide to waive these declarations. However, with the announcement that the Government may now drop these clauses in the IMB, the full details of the [Committee's decision on implementing the Protocol](#), will now shape how these declarations will operate from the end of the transition period.

- **Agri-food checks:** The UK Government acknowledged in the CP that some checks on agri-food moving from Great Britain to Northern Ireland will be required. It went on to say that the process and frequency of checks required will need to be discussed with the EU in the Joint Committee "within the context of the provision in the Protocol that both parties must use their 'best endeavours' to avoid controls at Northern Ireland ports as far as possible". Article 6 (2) NIP does state that the two sides "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 EU's laws on checks on agri-food are contained in Annex 2 of the Protocol and will apply to Northern Ireland. Therefore, it again seems likely that the EU would need to decide if it would consider changing the application and/or interpretation of these laws in order to avoid checks. Again, further details should be forthcoming in the Joint Committee decision on implementing the Protocol.

Announcement of Joint Committee agreement in principle

Michael Gove and Maroš Šefčovič, the co-chairs of the Joint Committee, held a political meeting on 7 December 2020 to address the outstanding issues on the implementation of the Withdrawal Agreement. On 8 December, the UK and EU announced that

the two co-chairs [of the Joint Committee] can now announce their agreement in principle on all issues, in particular with regard to the Protocol on Ireland and Northern Ireland.³

The announcement said that "an agreement in principle" had been reached in a number of areas including:

- Border Control Posts/Entry Points specifically for checks on animals, plants and derived products,
- export declarations,
- the supply of medicines,
- the supply of chilled meats, and other food products to supermarkets,
- a clarification on the application of State aid under the terms of the Protocol.

The announcement went on to say:

The parties have also reached an agreement in principle with respect to the decisions the Joint Committee has to take before 1 January 2021. In particular, this concerns the practical arrangements regarding the EU's presence in Northern Ireland when UK authorities implement checks and controls under the Protocol, determining criteria for goods to be considered "not at risk" of entering the EU when moving from Great Britain to Northern Ireland, the exemption of agricultural and fish subsidies from State aid rules, the finalisation of the list of chairpersons of the arbitration panel for the

³ Cabinet Office, [EU-UK Joint Committee statement on implementation of the Withdrawal Agreement](#), 8 December 2020

dispute settlement mechanism so that the arbitration panel can start operating as of next year, as well as the correction of errors and omissions in Annex 2 of the Protocol.

In the light of these agreements, the Government said that it would withdraw clauses 44, 45 and 47 of the UK Internal Market Bill “and not introduce any similar provisions in the Taxation Bill.”

The draft texts arising from this agreement in principle will be subject to the UK and EU’s internal procedures. A meeting of the Joint Committee will then be convened to formally adopt them. This meeting “will take place in the coming days and before the end of the year.”

The Chancellor of the Duchy of Lancaster, Michael Gove is to make a statement to the House of Commons on Wednesday 9 December, where it is expected he will update the House on the provisional decisions the Committee have made on implementing the Protocol.

2.2 Customs

Summary

Brexit means that the Irish border becomes the EU’s border with a non-EU country (the UK⁴). The EU’s single market and customs union mean checks on goods entering its territory are usually carried out at the EU border. The wish to avoid such a border in Ireland led to the agreement of the Northern Ireland Protocol as part of the [Withdrawal Agreement](#). The Protocol’s arrangements apply regardless of whether there is a trade deal between the UK and the EU. This is to ensure no hard border in Ireland in the event of no trade deal.

The Protocol avoids the need for checks at the Irish border by applying EU customs rules and some single market rules in Northern Ireland, allowing goods to cross the Irish border without the need for further checks. As rules in Great Britain may diverge from those of the EU, these arrangements mean some checks need to be applied on exports from Great Britain to Northern Ireland.

In particular, exports from Great Britain to Northern Ireland will pay tariffs where they are “at risk” of moving into the EU single market. The Protocol requires the Joint Committee to provide a definition of “at risk” goods by the end of the Transition Period.

The Government’s approach to the Protocol

The Government’s approach has been to emphasise the Northern Ireland’s ‘s place in the UK internal market and customs territory and that the Protocol should not interfere with trade which remains within the UK. The Government’s response to the Northern Ireland Affairs Committee report on customs said that the Government was committed to “no tariffs on goods remaining in the UK’s customs territory.”⁵ At Northern Ireland questions on 2 December 2020, the Secretary of State said:

We accept that tariffs should be paid on goods moving from Great Britain into the EU, but there should not be any tariffs on internal UK movements that begin in Great Britain and end in Northern Ireland; they are internal movements.⁶

⁴ The United Kingdom refers to the sovereign state comprising England, Northern Ireland, Scotland and Wales. Great Britain refers to England, Scotland and Wales only i.e. not Northern Ireland.

⁵ [Government response to Unfettered Access: Customs arrangements in Northern Ireland after Brexit](#), HC 783, 14 September 2020, para 2

⁶ [HC Deb 2 December 2020, c 293](#)

The Protocol

Articles 4, 5 and 6 of the Protocol are relevant to customs:

- Article 4: Customs territory of the United Kingdom
- Article 5: Customs, movement of goods
- Article 6: Protection of the UK internal market

Article 4: Customs territory of the United Kingdom

Article 4 of the Protocol says that Northern Ireland is part of the customs territory of the UK. This, however, needs to be read in conjunction with Article 5 which applies significant parts of EU law to Northern Ireland. In particular, Article 5(3) applies EU customs rules to Northern Ireland and article 5(4) applies a number of other EU rules to Northern Ireland.

Article 5: "At risk goods"

Article 5 relates to "at risk" goods. This article provides that there shall be no duties on GB to NI trade unless that good is "at risk" of subsequently being moved into the EU.

Article 5(1) says:

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.

Article 5(2) sets out some of the considerations to be taken into account in deciding whether a good is "at risk" of moving into the EU. It requires the Joint Committee to decide on criteria for assessing whether goods are "at risk". The Protocol requires this decision to be taken by the end of the transition period.

Article 5(2) defines at risk:

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.

Article 5(3) applies EU customs rules, with some limited exceptions, to Northern Ireland. Article 5(4) applies a number of other EU rules, including some single market rules, to Northern Ireland.⁷

Article 5(6) of the Protocol allows the UK to:

- reimburse duties levied pursuant to the provisions of Union law made applicable by paragraph 3 in respect of goods brought into Northern Ireland;
- provide for circumstances in which a customs debt which has arisen is to be waived in respect of goods brought into Northern Ireland;
- 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
- compensate undertakings to offset the impact of the application of paragraph 3.

These provisions are subject to the state aid provisions in Article 10 of the Protocol. In June, the Chancellor of the Duchy of Lancaster, Michael Gove, told the Northern Ireland Affairs Committee “we want to make sure that, in the event of there not being a free trade agreement of whatever kind with the EU, we are in a position to indemnify and reimburse companies for tariffs.”⁸

Article 6: Protection of the UK Internal Market

Article 6 of the Protocol relates to the UK internal market. In particular, paragraph 2 refers to the “integral place” of Northern Ireland in the UK internal market. The UK and the EU “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 is required to keep these arrangements under review “and shall adopt appropriate recommendations with a view to avoiding controls at the ports and airports of Northern Ireland to the extent possible.”

2.3 The Internal Market Bill

Background

This Bill is bound up with the [UK Internal Market Bill](#) (IMB) as part of the negotiations on implementing the Protocol in the Joint Committee and those on the future relationship agreement.

Part 5 of the IMB related to the Protocol and empowered Ministers to prevent the application of, and unilaterally re-interpret and disapply parts of the Protocol, as well as ignore their legal obligations under both domestic and international law to enact the Protocol. Three clauses in Part 5 caused the most controversy:

- Clause 44 gave Ministers powers to disapply or modify the application of exit procedures. Certain exit procedures are mandated by the EU’s customs code that applies to Northern Ireland under the Protocol.

⁷ [Withdrawal Agreement, Protocol and Political Declaration -Potential Implications for Customs and Trade in Northern Ireland](#), Northern Ireland Assembly Research and Information Service Briefing Paper, 21 May 2020, p23

⁸ Northern Ireland Affairs Committee, [Unfettered Access: Customs Arrangements in Northern Ireland after Brexit](#), HC 161, 14 July 2020, para 81

- Clause 45 gave the Secretary of State an enabling power to make regulations that can interpret Article 10 of the Protocol, and further disapply and modify its effects, including disapplying it entirely. Article 10 applies EU state aid rules to “measures which affect that trade between Northern Ireland and the EU” (so potentially not just subsidies given in NI, but UK-wide).
- Clause 47 was a “notwithstanding clause”, that allowed Ministers to use the powers in Clauses 44 & 45 notwithstanding their obligations in domestic and international law, and substantially curtailed domestic judicial review of these powers.

While conceding that the use of powers given in Part 5 may break international law “in a limited and specific way”⁹, the Government argued that such powers were only included as a “safety net” to protect the UK against “extreme or irrational interpretations of the protocol” by the EU.¹⁰

EU response

The [European Commission stated](#) that since the two sides ratified the Withdrawal Agreement in February 2020 “neither the EU nor the UK could unilaterally change, clarify, amend, interpret, disregard or disapply the agreement”.¹¹ They further stated that if the Bill were to be adopted, “it would constitute an extremely serious violation of the Withdrawal Agreement and of international law”.¹² The [Commission said](#) that if the UK did not withdraw the measures by the end of September, they would be forced to take action.

In [a statement](#) on 1 October the European Commission President, Ursula von der Leyen, confirmed that the Commission had initiated infringement proceedings against the UK.

Lords stages

At Committee stage, the Lords resolved to remove clauses that would enable a breach of international law by allowing the Government to interpret the Northern Ireland Protocol and override parts of the UK-EU Withdrawal Agreement. [According to the House of Lord’s Library](#), the majorities voting against these clauses were amongst the largest since the House was reformed in 1999.

Further clauses of Part 5 were removed by an agreement through the [usual channels](#). As a result, the rest of Part 5 was also deleted without further votes.

Government reaches potential agreement with EU

The Government [said](#) that it would reinstate the clauses when the Bill returned to the Commons. The Bill returned on 7 December and the Clauses were reinstated.

However, on the same day, the Government released [a statement](#) on discussions in the Joint Committee on the Protocol saying that since it had set out the case for why Clauses 44, 45 & 47 in Part 5 were necessary, progress had been made in discussions with the EU and it would be prepared to deactivate the clauses under certain conditions:

The UK and the EU have worked constructively together through the Withdrawal Agreement Joint Committee. Discussions continue to progress and final decisions are expected in the coming days. If the solutions being considered in those discussions are agreed, the UK Government would be prepared to remove clause 44 of the UK Internal Market Bill, concerning export declarations. The UK Government would also

⁹ [HC Deb 8 September 2020 Vol 679 c509](#)

¹⁰ [6 HC Deb, 10 September 2020 Vol 679 c618](#)

¹¹ European Commission, ‘[Statement by the European Commission following the extraordinary meeting of the EU-UK Joint Committee](#)’, 10 September 2020.

¹² Ibid.

be prepared to deactivate clauses 45 and 47, concerning state aid, such that they could be used only when consistent with the United Kingdom's rights and obligations under international law.

The IMB is returning to the Commons on Thursday 10 December as part of the "ping pong" stage of the Bill's passage.

On 8 December, the [EU and UK announced](#) that "an agreement in principle" on the implementation of the Protocol had been reached in a number of areas including on export declarations.

The Chancellor of the Duchy of Lancaster, Michael Gove, [is expected to](#) make a statement to the Commons on Wednesday 9 December, giving further details on the agreement in principle.

2.4 Future Relationship Agreement

Both the UK and the EU's negotiating objectives included zero tariffs on UK-EU trade as part of an agreement on their future relationship. It has been suggested that such an agreement would go some way to dealing with the issue of "at risk" goods, as no tariffs would be payable on UK-originating exports to the EU. It is also likely that there would be much more goodwill between the UK and EU if there was a deal.

For example, a report by the Northern Ireland Affairs Committee said:

The effect of tariffs would be mitigated by a Free Trade Agreement between the UK and the EU. Angela McGowan of CBI Northern Ireland told us that "a zero-tariff trade deal... would ease things a lot."¹³

The Institute for Government has commented:

A zero-tariff deal may increase both the proportion and the quantity of goods likely to be considered 'not at risk' of moving into the EU, as UK-originating goods will be eligible for tariff-free access. However, it will not eliminate the need for a scheme entirely, as some goods may not be able to meet high rules of origin thresholds to prove they qualify. Questions remain about whether – and if so, how – traders will need to prove they qualify for the scheme.¹⁴

John Campbell, BBC Northern Ireland Economics and Business editor, said:

But if there is trade deal, which eliminates tariffs on all goods, then the at risk goods issues is hugely reduced.

If there are no tariffs then there is no risk.

However, as the customs expert Anna Jerzewska explains the issue does not go away entirely because of rules of origin.

That means that GB goods would have to show they really are GB goods and therefore qualify for the zero tariff treatment.¹⁵

The House of Lords EU Committee report on the Protocol said that there is a provision allowing a UK-EU trade agreement to supersede the Protocol and that this could reduce, but not eliminate checks on goods exported from Great Britain to Northern Ireland.

Article 13(8) makes provision for a future UK-EU trade agreement to supersede the Protocol (or parts thereof). A UK-EU free trade agreement could reduce (but not eliminate) the friction caused by customs and regulatory checks on goods moving

¹³ Northern Ireland Affairs Committee, [Unfettered Access: Customs Arrangements in Northern Ireland after Brexit](#), HC 161, 14 July 2020, para 64 (see also para 80)

¹⁴ [Preparing for Brexit: How ready is the UK?](#) Institute for Government, 3 November 2020, p21

¹⁵ BBC News, [Brexit: What would a trade deal mean for Northern Ireland?](#) 5 December 2020

between Great Britain and Northern Ireland. The greater the future regulatory alignment between the UK and the EU, the less burdensome such checks will be.¹⁶

Northern Ireland business groups, unions and civic organisations wrote to the UK and EU urging them to reach a free trade agreement. The letter urged the parties to reach a comprehensive free trade agreement to minimise trade friction at the end of the transition period. It also called for the Joint Committee to devise solutions to remove friction and ensure that the Protocol impacts as little as possible on everyday life in Northern Ireland.¹⁷

2.5 Border readiness

There are concerns over how ready government agencies and businesses will be for changes at the Great Britain /Northern Ireland border on 1 January 2021. The Financial Times reported on 7 December that border arrangements had been described as a “mess”. The Northern Ireland Retail Consortium has said that it will not be possible for the border to be ready in time, despite the creation of the Trader Support Service by the Government. Northern Ireland trade associations have asked the Government for a one year implementation period to allow time for businesses to adapt to the new border arrangements.¹⁸

In November, a report by the National Audit Office said that departments faced “a significant challenge” in implementing the Protocol by 1 January and that implementing the Protocol was “very high-risk”.¹⁹ The NAO also observed that the Government has left itself little time to prepare the Trader Support Service and there remains a significant risk that traders will not be ready.²⁰

2.6 VAT

Article 8 of the [Northern Ireland Protocol](#) deals with 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.

¹⁶ House of Lords European Union Committee, [The Protocol on Ireland/Northern Ireland](#), HL Paper 66, 1 June 2020, para 141

¹⁷ [Twitter](#) 7 December 2020

¹⁸ [Plans for Irish Sea trade border after Brexit in ‘a mess’](#), Financial Times, 7 December 2020

¹⁹ NAO, [The UK border: preparedness for the end of the transition period](#), HC371, 6 November 2020, p13

²⁰ NAO, [The UK border: preparedness for the end of the transition period](#), HC371, 6 November 2020, p14

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.

At the time of the Protocol's agreement the Commission published an FAQ document, summarising the purpose of Article 8:

What about VAT?

Northern Ireland will remain part of the UK's VAT area, with HMRC remaining responsible for applying VAT legislation, including the collection of VAT, and the setting of VAT rates. UK will keep revenues accruing from this tax. In order to avoid a hard border on the island of Ireland, while protecting the integrity of the Single Market, the EU's VAT rules for goods will continue to apply in Northern Ireland. In addition, VAT exemptions and reduced rates applied in Ireland may also be applied in Northern Ireland in order to avoid distorting the level playing field on the island. Northern Ireland continues to be able to operate the EU's VIES system (VAT Information Exchange System) and to share data with Ireland and other Member States.²¹

Further to this, the Cabinet Office's paper, *The UK's Approach to the Northern Ireland Protocol*, says the following about this provision:

VAT and excise

41. The Protocol means that Northern Ireland maintains alignment on some administrative processes included within the EU VAT and excise rules for goods. Northern Ireland is, and will remain, part of the UK's VAT and excise system, reflecting the fact that each jurisdiction across Europe already operates separate VAT and excise regimes. HMRC will continue to be responsible for the operation and collection of the revenues, which will not be passed on to the EU.

The Protocol notes that implementation will take into account Northern Ireland's integral place in the UK's internal market. The Government is confident that we can use the flexibilities available, in the context of the wider commitments to Northern Ireland's place in the UK internal market, to implement these aspects of the Protocol in a way which minimises new costs and burdens on businesses in Northern Ireland.

42. As regards VAT rates, Northern Ireland remains bound by EU rules, which provide a good deal of flexibility already. There is a specific provision in the Protocol which allows the Government to apply in Northern Ireland VAT exemptions and reductions, including zero rating, corresponding to those applicable in Ireland. This means Northern Ireland will benefit in the same way as the rest of the UK from the Government's commitment in the Budget to scrap the 5% rate on sanitary products from 1 January next year.²²

It is anticipated that from the end of the transition period businesses in Northern Ireland that are involved in trade with goods with the EU will use a specific geographic VAT identifier code – adding an 'IX' prefix in front of their VAT number when communicating with an EU customer or supplier.²³

The European Commission has published draft legislation to this effect – [COM\(2020\) 360 final](#). In its report on this draft legislation, published on 10 November, the European Scrutiny Committee provides an overview of the aim of Article 8:

Under Article 8 of this Protocol, EU legislation on Value Added Tax (VAT) "concerning goods", as well as EU excise duty legislation for alcohol, tobacco and fuel, will remain applicable in Northern Ireland beyond the end of the transition period. By contrast,

²¹ European Commission, *Brexit: What did you agree with the UK today?: Questions and answers*, 17 October 2019

²² Cabinet Office, *The UK's Approach to the Northern Ireland Protocol*, Cp226, May 2020 pp15-6

²³ HMRC, *Check if you're trading under the Northern Ireland protocol and what to do*, 7 December 2020

VAT rules for the provision of services in, to or from Northern Ireland will be set by the UK without being legally constrained by EU tax law.

On goods arriving at the EU from outside its Customs Union, checks are normally carried out at ports and borders to ensure the importer pays the correct amount of VAT. The ultimate aim of Article 8 is to render unnecessary any such VAT-related formalities on goods being moved across the land border on the island of Ireland. To achieve this, businesses active in Northern Ireland will continue—as businesses in the whole of the UK will do until the end of the transition period—to submit information on cross-border sales and purchases of goods²⁴ to the EU’s confidential [VAT Information Exchange System \(VIES\)](#). This information will allow the tax authorities of the EU 27 Member States, and HM Revenue & Customs, to check if VAT is being accounted for on cross-border transactions of goods involving a company in the EU and a counterparty in Northern Ireland.

In return for continued compliance with the relevant EU rules, businesses that trade in goods from Northern Ireland are also expected to have continued access to VAT-related facilitations for intra-EU trade available under European law, including [an electronic refund system](#) for business purchases and the ‘One Stop Shop’ mechanism for business-to-consumer sales.²⁵ Northern Ireland is also expected to remain bound by the EU’s rules on minimum VAT rates for specific goods, although it is permitted to vary them to match those applicable in Ireland.²⁶

By contrast, businesses active only in Great Britain—irrespective of whether they deal in goods or services—will be outside the scope of EU VAT law completely from the end of transition on 31 December. The Government will be free to alter how VAT is charged, rated and administered in the rest of the UK. This also means such companies will no longer have access to the aforementioned facilitations when they buy or sell goods involving a counterparty in the EU, unlike competitors in who carry out such activities from Northern Ireland.²⁷ They will not have to submit statements to VIES, but instead fiscal controls—documentary and physical—will take place on British exports entering the EU, to ensure VAT is charged correctly.

More pressingly, the legal logic of the Protocol dictates that the avoidance of VAT-related customs controls on the land border in Ireland creates the need for such checks on goods arriving in Northern Ireland by sea and air from outside the EU instead, *including from the rest of the UK*.²⁸

... and the purpose of this EU VAT identifier as follows:

The Commission considers the introduction of a separate VAT identification code for businesses in Northern Ireland engaged in activities covered by Article 8 “essential” for the “EU VAT system to function properly”, by ensuring that such companies “are identified for VAT purposes” in a way “different from any UK VAT identification numbers (starting with GB) which will be granted according to the UK legislation”.

²⁴ Between Northern Ireland and the EU, not any non-EU territories.

²⁵ VAT is a consumption tax and therefore normally payable in the country where the final consumer of a good or service is located. The EU’s ‘One Stop Shop’ mechanism allows a company in one EU country selling to a consumer in another EU country to pay the VAT at the rate applicable in the latter to their domestic tax authority, which then remits to its counterpart in the Member State of the consumer. This means that the company does not have to register for VAT, with its attendant legal obligations, in every EU country where it has customers. See for more information the European Scrutiny Committee’s Report of [30 January 2019](#).

²⁶ This is why, for example, the Government could zero-rate VAT on women’s sanitary products from 1 January 2021, since that is the rate applicable in Ireland, thanks to a country-specific derogation, even though the EU VAT Directive generally requires the lower rate of VAT on such products. It is not clear, however, if Northern Ireland will be permitted to maintain the various exemptions from the default minimum rates for goods which the UK negotiated while it was still a Member State.

²⁷ This means, among other things, that a business in Great Britain making a business purchase in an EU country on which they wish to claim an input VAT refund will need to do so by means of a paper-based application, as the electronic VAT refund system for such purposes under EU law is available only to businesses within the scope of EU VAT legislation.

²⁸ [“Northern Ireland Protocol: EU VAT identifier for businesses”](#), *Twenty-seventh Report of Session 2019-21*, HC 229-xxiii, 10 November 2020 pp16-25 para 4.1-4

As noted, UK businesses which operate exclusively in Great Britain will no longer be covered by EU VAT law at all, and by extension lose access to the various systems established to facilitate accounting for VAT on intra-EU trade without customs controls. By contrast, businesses involved in the trade in goods carried out from Northern Ireland with the EU will remain part of those mechanisms. The identifier would be used to differentiate between the two categories of businesses in the UK in relation to cross-border supplies and acquisitions of goods involving the EU and Northern Ireland.²⁹

The Committee has raised a number of issues as to the implications of Article 8 for the VAT system in the past,³⁰ and in this report argued that “a lack of clarity persists”, noting that as of early November 2020, “the UK Government ... has been unable to specify publicly which elements of EU VAT law it considers to ‘concern goods’ for the purposes of the Protocol... [and] has not yet issued practical guidance on how Article 8 of the Protocol will be implemented in practice.”³¹

In this context, it is worth highlighting that HMRC published updated guidance on the procedure for accounting for VAT on goods moving between Great Britain and Northern Ireland on 7 December; an extract is reproduced below:

Under the obligations in the Protocol, import VAT will be due on goods that enter Northern Ireland from Great Britain (England, Scotland and Wales). The same will also broadly apply to goods entering Great Britain from Northern Ireland. However, existing flexibilities within the EU VAT rules have been used to ensure that the Government priority to minimise business impacts is met. In particular, Articles 201 and 211 of Directive 2006/112/EC mean that it is for the UK Government to determine important practical details as to how this will operate. Our approach will preserve the integrity of both the UK and EU single markets.

Under the Protocol, transactions in goods between Northern Ireland and EU businesses and consumers will continue as they do today. The same processes and reporting requirements will apply and Northern Ireland businesses intending to make transactions under the Protocol should ensure they are able to continue to operate in this way. The only change is related to the use of the ‘XI’ prefix when [trading under the Northern Ireland protocol](#).

VAT on goods sold between Great Britain and Northern Ireland

VAT will continue to be accounted as it is currently on goods sold between Great Britain and Northern Ireland. This means that the seller of the goods will continue to charge its customers VAT and should show this on its invoices. The VAT charged will be accounted for as output VAT on the VAT return in the same box as it is now. The seller will not be able to claim this back as input VAT.

Where the customer receives an invoice from the seller showing that VAT has been charged, it may use this as evidence in order to reclaim the VAT as input VAT, subject to the normal rules.

However, there are a small number of exceptions to this where goods are:

- declared into a [special customs procedure](#) when they enter Northern Ireland or Great Britain
- currently subject to [domestic reverse charge rules](#) including on [sales of gold](#) or gas and electricity to a VAT registered business

²⁹ [“Northern Ireland Protocol: EU VAT identifier for businesses”](#), *Twenty-seventh Report of Session 2019-21*, HC 229-xxiii, 10 November 2020 para 4.9

³⁰ [Letter from the Chair to Rt Hon. Jesse Norman MP regarding Article 8 of the Ireland/Northern Ireland Protocol: continued application of EU VAT law in Northern Ireland](#), 14 May 2020. See also, reports by the Committee’s predecessors: [28 March 2018](#) and [30 January 2019](#).

³¹ [“Northern Ireland Protocol: EU VAT identifier for businesses”](#), *Twenty-seventh Report of Session 2019-21*, HC 229-xxiii, 10 November 2020 para 4.7

- subject to an [Onward Supply procedure](#)
- [sold by an overseas seller through an online marketplace](#)

Where the movement of goods is declared into a special customs procedure, the customer or importer will be liable to account for the VAT. Importers will need to select how to pay or account for the VAT when discharging goods from the special procedure. If they are VAT registered they will be able to use Postponed VAT Accounting to account for the VAT on their VAT return. Alternatively, like businesses that are not VAT registered, they can pay the VAT upfront, or use their duty deferment account.

Where goods are subject to domestic reverse charge rules, including on sales of gold or gas and electricity to a VAT registered business, the customer will continue to account for the VAT on these goods.

Where goods are sold between Great Britain and Northern Ireland by an overseas seller to a consumer through an online marketplace, the online marketplace will be liable to account for the VAT on these goods.

VAT on goods sold from Great Britain, transported via Northern Ireland, to an EU member state

This refers to goods transported via Northern Ireland to an EU Member State, for example the Republic of Ireland. Similar to accounting for a direct movement from Great Britain to Northern Ireland, the seller will be liable to account for the import VAT and zero-rating the goods on export to the EU. The VAT charged will be accounted for as output VAT on the UK VAT return by the seller. The seller will not be able to claim this back as input VAT.

There will be an exception to this rule where goods are declared into a [special customs procedure](#) or Onward Supply procedure when they enter Northern Ireland or before arriving at the first EU member state.³²

In its report the Committee noted that there appeared to be a divergence between the UK and the EU as to the interpretation of Article 8 ...

In particular, the Treasury has previously hinted that it does not necessarily consider areas of EU VAT law which apply equally to the provision of goods and services to fall within the scope of the Protocol, which raises the question, for example, of whether the EU's minimum VAT threshold for small businesses will continue to apply in Northern Ireland.³³ It does not appear that the EU shares this interpretation, but no further clarity has been provided.³⁴

... and in this context mentioned the *Internal Market Bill*, and the Government's previous indications – prior to the [Leader of the House's statement on 3 December](#) – that it would bring forward further legislation:

³² HMRC, [Accounting for VAT on goods moving between Great Britain and Northern Ireland from 1 January 2021](#), updated 7 December 2020

³³ Treasury officials have previously indicated to the Committee that there are 'reasonable grounds' to exclude EU VAT law from being applicable in or to Northern Ireland under the Protocol if it covers both types of supply. For example, the Department told our predecessors in November 2019—in relation to the new maximum EU-wide VAT threshold for small businesses, which will be set at €85,000 from 2025—that this could be excluded from being applicable under Article 8 to Northern Irish firms selling goods. The reason offered was that the threshold applies to all supplies made by a business, so both goods and services.

³⁴ In many cases, the EU VAT rules listed in the Protocol appear to apply equally to both goods and services. It is unclear why the EU would have requested (and the UK accepted) their inclusion, if it did not envisage them being applied in Northern Ireland in some form. The European Commission has also explicitly stated that the intra-EU VAT refund process for businesses under Directive 2008/9/EC—which is listed in the Annex to the Protocol and normally applies to refunds on purchases of goods and services for business use equally—will be available to Northern Irish firms "insofar as the refund relates to VAT which they have paid on acquisitions of goods". This suggests that the EU takes the view that, where EU VAT laws listed in the Protocol apply to goods and services equally, they 'concern goods' and will therefore also apply in and to Northern Ireland with respect to any supply of goods.

In addition, there has of course also been the recent controversy surrounding the divergent interpretations between the Government and the EU of the UK's legal obligations under the Northern Ireland Protocol more broadly. In particular, the [Internal Market Bill](#)—currently being considered by the House of Lords—contains several clauses that would give Ministers the power to unilaterally dis-apply certain provisions of the Protocol, because of their perceived undesirable effects.

Although the Protocol-related clauses proposed by the Government in that Bill do not relate directly to Article 8 or the question of EU VAT law in Northern Ireland, the Government has [hinted](#) that it may seek “similar [...] provisions” in future Acts of Parliament, such as the upcoming Finance Bill 2020–21, if the EU insisted that “import VAT should be charged” on trade from Great Britain to Northern Ireland “in ways that are not related to the real risk of goods entering the EU single market”.

This indicates a broader concern within Government about the implications of Article 8 of the Protocol for the smooth flow of goods between the different parts of the UK, in which the discussions around a VAT identifier for Northern Ireland have undoubtedly been caught up

With respect to these broader unresolved issues, we can only reiterate our earlier requests that the Government should issue further guidance on the practical consequences for the VAT system of Northern Ireland as soon as possible and in light of its discussions with the European Commission on implementation of the Protocol.

It is unclear even at this late stage whether—and if so when—the UK-EU Joint Committee, which is given certain tasks by the Withdrawal Agreement to adopt implementing measures for the Protocol,³⁵ is going to take a formal Decision covering how EU VAT law on goods is to be applied under Article 8.³⁶

As it transpired on 8 December the EU-UK Joint Committee issued a statement on having reached an agreement “in principle on all issues, in particular with regard to the Protocol on Ireland and Northern Ireland”, and confirming that the UK would withdraw these controversial clause of the Internal Market Bill “and not introduce any similar provisions in the Taxation Bill.”³⁷

3. The status of the Bill & Parliamentary procedure

3.1 Bill of Aids and Supplies

The Bill will be brought in on the basis of Ways and Means resolutions which were debated on 8 December. According to Erskine May:

Although the Finance Bill is the most common form of bill brought in upon Ways and Means resolutions, other bills the main object of which is to create a charge upon the people may also be brought forward by the Government, which must also be brought in upon such resolutions.³⁸

Bills brought in upon Ways and Means resolutions are Bills of Aids and Supplies.³⁹ In the House of Lords, a Bill of Aids and Supplies is usually referred to as a “supply bill”.

³⁵ Article 8 states the UK-EU Joint Committee will “regularly discuss the implementation of this Article” and “shall where appropriate, adopt measures for its proper application, as necessary”. It also may (not shall), “as necessary [...] adopt appropriate measures” to ‘take into account’ Northern Ireland’s “integral place in the United Kingdom’s internal market”

³⁶ [“Northern Ireland Protocol: EU VAT identifier for businesses”](#), *Twenty-seventh Report of Session 2019-21*, HC 229-xxiii, 10 November 2020 para 4.27, 4.29-31

³⁷ Cabinet Office, [EU-UK Joint Committee statement on implementation of the Withdrawal Agreement](#), 8 December 2020

³⁸ Erskine May, [para 36.43](#)

³⁹ Erskine May [para 36.43](#)

Established practice is that a supply bill is not amended in the House of Lords.⁴⁰ Erskine May says:

So completely do the Lords accept the restriction resulting from the Commons' privileges upon their power to amend Bills of Aids and Supplies, that the committee stage of such bills is now invariably negated.⁴¹

Examples of bills brought in on Ways and Means resolutions include the *National Insurance Contributions Bill 2001–02*, the *HGV Road User Bill 2012–13*, the *Stamp Duty Land Tax Bill 2014–15* and the *Taxation (Cross-border Trade) Bill 2017–19*.

The Bill will not be published until the Ways and Means resolutions have been passed.

3.2 Money Bills

Although the Bill is a Bill of Aids and Supplies, we do not know yet whether it will be certified as a money bill. Bills of Aids and Supplies are not necessarily certified as money bills.⁴²

A money bill is defined in section 1(2) of the *Parliament Act 1911*:

A Money Bill means a Public Bill which in the opinion of the Speaker of the House of Commons contains only provisions dealing with all or any of the following subjects, namely, the imposition, repeal, remission, alteration, or regulation of taxation; the imposition for the payment of debt or other financial purposes of charges on the Consolidated Fund, the National Loans Fund or on money provided by Parliament, or the variation or repeal of any such charges; supply; the appropriation, receipt, custody, issue or audit of accounts of public money; the raising or guarantee of any loan or the repayment thereof; or subordinate matters incidental to those subjects or any of them. In this subsection the expressions "taxation", "public money", and "loan" respectively do not include any taxation, money, or loan raised by local authorities or bodies for local purposes.⁴³

The 1911 Act requires the Speaker to certify any bill which in his opinion falls within this definition. The Speaker does not consider the question of certifying a bill until it has reached the form in which it will leave the House of Commons.⁴⁴ Under section 3 of the *Parliament Act 1911* the Speaker's certificate is "conclusive for all purposes".

If a bill is certified as a Money Bill it can receive Royal Assent without the House of Lords agreeing to it, as long as it was sent to the House of Lords at least one month before the end of a session.⁴⁵

⁴⁰ Constitution Committee, *Taxation (Cross-border Trade) Bill*, 23 February 2018, HL Paper 80, para 2

⁴¹ Erskine May [para 37.16](#)

⁴² Erskine May [para 37.31](#)

⁴³ *Parliament Act 1911* (chapter 13), section 1(2) (as amended)

⁴⁴ Erskine May [para 37.30](#)

⁴⁵ Erskine May [para 37.30](#)

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