



HOUSE OF LORDS

Liaison Committee

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2nd Report of Session 2024–25

# **A Northern Ireland Scrutiny Committee**

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Ordered to be printed 18 October 2024 and published 23 October 2024

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Published by the Authority of the House of Lords

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# A Northern Ireland Scrutiny Committee

## Summary

1. This report recommends the appointment of a Northern Ireland Scrutiny Committee.

## Background

2. In April 2021, the European Affairs Committee appointed a Sub-Committee on the Protocol on Ireland/Northern Ireland.<sup>1</sup> The Sub-Committee was charged with examining relevant UK legislation and policy; the work of the governance bodies established under the UK-EU Withdrawal Agreement; and the implementation of the Protocol. It was also assigned responsibility for conducting inter-parliamentary dialogue with the Northern Ireland Assembly and the Irish Oireachtas. In 2023, it was renamed the Windsor Framework Sub-Committee, with an equivalent remit to scrutinise the operation of, and evolving context for, the Windsor Framework agreement relating to Northern Ireland.<sup>2</sup>
3. The Sub-Committee was originally intended to be temporary; a layer of parliamentary scrutiny playing a valuable role while the institutions, processes and systems envisaged under the Protocol, and then the Windsor Framework, found their feet. Accordingly, as planned, the Sub-Committee ceased to exist in May 2024, at the end of the 2019–2024 Parliament.

## Proposal for a new committee

4. At the start of the new Parliament, Lord Ricketts—the current Chair of the European Affairs Committee—and Lord Jay of Ewelme—the former Chair of the Windsor Framework Sub-Committee, wrote to this Committee, arguing that there is a continued need for a House of Lords committee focused on Northern Ireland scrutiny. Their letter is reproduced in the Appendix.
5. The Committee also received representations from five other former Members of the Sub-Committee, which are available online.<sup>3</sup>
6. In summary, the case is based on four main elements:
  - First, the Windsor Framework is still in the implementation phase, and the new bodies and governance structures outlined in the Safeguarding

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1 As recommended by the Liaison Committee: Liaison Committee, *Review of investigative and scrutiny committees: strengthening the thematic structure through the appointment of new committees* (5th Report, Session 2019–21, HL Paper 193), paras 24–27

2 As agreed to by the Liaison Committee on 13 June 2023: Letter from Lord Gardiner of Kimble, Chair of the Liaison Committee, to Lord Ricketts, Chair of the European Affairs Committee on the Sub-Committee on Protocol on Ireland/Northern Ireland, dated 19 June 2023: <https://committees.parliament.uk/publications/41082/documents/200034/default/>

3 Letter from Lord Empey to Lord Gardiner of Kimble, Chair of Liaison Committee in relation to Northern Ireland scrutiny, dated 9 May 2024: <https://committees.parliament.uk/publications/45393/documents/225076/default/>; Email from Lord Hain, Lord Lexden, Lord Dodds, Lord Empey and Baroness O’Loan to Lord Gardiner of Kimble, Chair of Liaison Committee in relation to Northern Ireland Scrutiny, dated 30 September 2024: <https://committees.parliament.uk/publications/45394/documents/225078/default/>.

the Union Command Paper<sup>4</sup> remain in the process of establishing their roles and ways of working. A select committee would play an important role in supporting the evolution of these bodies, structures and new relationships. This might, for example, include completing the inquiry that the former Sub-Committee had begun, into strengthening Northern Ireland's voice in the context of the Windsor Framework.<sup>5</sup> These matters remain fundamental to the evolving relationship between the UK and the EU, and the internal devolution settlement within the United Kingdom. A Lords Committee could monitor and support this developing political context.

- Second, there continues to be an important scrutiny role for a committee. This includes EU legislation applying in Northern Ireland under the terms of the Protocol/Windsor Framework. It also encompasses UK legislation with implications for Northern Ireland, and the exercise at the UK level of reserved powers which affect Northern Ireland.
- Third, a Northern Ireland-focused committee would indicate, and facilitate, the continued interest of the House in Northern Ireland matters, particularly given the legislative context under which certain EU legislation continues to have effect in Northern Ireland.
- Finally, given that there is important scrutiny work that needs to be done, Lord Jay and Lord Ricketts argued that the European Affairs Committee would be unable to absorb this function while maintaining its own scrutiny of the developing EU/UK relationship, including such important matters as the UK-EU security pact proposed by the Government, and expected review of the Trade and Co-Operation Agreement.

### Conclusion

7. **The Committee has considered carefully the case put forward, and agrees that a select committee on Northern Ireland scrutiny should be established. The terms of reference of the new committee should be similar to the remit of the Windsor Framework Sub-Committee in the last Parliament. This would allow the Committee to conduct inquiries relevant to the Windsor Framework, in addition to its focused scrutiny work.**
8. Importantly, a Northern Ireland Scrutiny Committee would be complementary to the work of other parliamentary committees. The Northern Ireland Assembly now appoints a Windsor Framework Democratic Scrutiny Committee which plays an important role but which has a statutorily defined remit focused on new or replacement EU acts. A House of Lords committee with a broader remit would complement the work of this Committee, including by scrutinising EU delegated or implementing legislation (which can be significant in effect); examining the decisions and

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4 HM Government, *Safeguarding the Union*, CP 1021 (January 2024): [https://assets.publishing.service.gov.uk/media/65ba3b7bee7d490013984a59/Command\\_Paper\\_1\\_.pdf](https://assets.publishing.service.gov.uk/media/65ba3b7bee7d490013984a59/Command_Paper_1_.pdf) [accessed 17 October 2024]

5 Windsor Framework Sub-Committee, 'Strengthening Northern Ireland's voice in the context of the Windsor Framework': <https://committees.parliament.uk/work/8426/strengthening-northern-irelands-voice-in-the-context-of-the-windsor-framework/>. Please also see letter from Lord Jay of Ewelme to Lord Gardiner of Kimble, Chair of Liaison Committee in relation to the work of the Windsor Framework Sub-Committee, dated 23 May 2024: <https://committees.parliament.uk/publications/45398/documents/225095/default/>

operation of the bodies and governance structures set up under the various agreements; reviewing the impact of proposed UK legislation on Northern Ireland; and assessing the UK-wide impact of the new Internal Market Scheme. All of these matters are outside the remit of the Northern Ireland Assembly Committee. We would, of course, expect the Lords Committee to liaise closely and constructively with the Committee of the Northern Ireland Assembly, as the predecessor Sub-Committee had already started to do.

9. We consider that a scrutiny-focused Lords Committee would also complement the rather different remit and role of the House of Commons Northern Ireland Affairs Committee. Again, we would expect constructive engagement between the two committees to avoid duplication of effort, as we regularly see in action across a wide range of House of Lords and House of Commons committee work.
10. **The institutional framework between the UK, including Northern Ireland, and the EU, continues to bed in, and its systems and processes continue to evolve. We therefore conclude that the new Committee should be reviewed after two years, at the end of 2026, to ensure that it continues to hold a distinctive and valuable remit and role. We will also, of course, keep under review any major change in the political and institutional context which might reduce or alter that distinctive role. We do not propose that this Committee should be appointed as a sessional committee of the House.**

#### **Recommendation**

11. *The Committee recommends the appointment of a select committee on Northern Ireland scrutiny, with a remit to scrutinise EU legislation within the scope of the Protocol/Windsor Framework, and relevant UK legislation and policy, and to examine related matters.*

## APPENDIX 1: LETTER FROM LORD JAY OF EWELME AND LORD RICKETTS TO THE SENIOR DEPUTY SPEAKER

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### *Future of Northern Ireland scrutiny work*

We write to you as Chair of the European Affairs Committee and the former Chair of the Sub-Committee on the Windsor Framework about the future of Northern Ireland scrutiny work in the House of Lords.

As you know, at its meeting on 13 June 2023, the Liaison Committee agreed that the Sub-Committee's term of appointment should be extended until the end of the Parliament. Consequently, the Sub-Committee's remit came to an end with the dissolution of Parliament on 30 May 2024, before the General Election on 4 July 2024. We understand that the presumption is now that the work of the Sub-Committee will revert to the European Affairs Committee. We have serious concerns about this approach, which we will outline in this letter, and we propose instead the creation of a new Northern Ireland Scrutiny Committee. We were grateful for the opportunity to discuss this with you before the dissolution of Parliament, and we would of course be happy to meet again, either with you or the Liaison Committee, if that would be helpful.

### *Political context*

It is our shared view, and the view of many former members of the Sub-Committee, that there remains an important role for a dedicated committee covering Northern Ireland and related matters. The Northern Ireland Assembly has only been reestablished relatively recently and the Windsor Framework is still in the implementation phase. In addition, the previous Government's Command Paper 'Safeguarding the Union' established a series of new bodies and governance structures which are complex and still in their infancy. Before the dissolution of Parliament, the Sub-Committee had been conducting an important inquiry on 'Strengthening Northern Ireland's voice in the context of the Windsor Framework'. The inquiry attempted to bring clarity to this nascent institutional structure and explore how the voices of Northern Ireland politicians, officials and stakeholders can be heard most effectively at a UK and EU level. The inquiry was welcomed by stakeholders and politicians from across communities. Indeed, a number of organisations have already contacted the secretariat asking to re-engage with the Sub-Committee on this subject under the new Parliament.

There are a series of political milestones in the year ahead which would benefit from the scrutiny of a dedicated committee. On 30 September 2024 the full UK Internal Market Scheme will take effect for goods moving from GB to NI and a new set of arrangements for the movement of parcels will apply. On 1 October, labelling requirements will also apply to all dairy products from GB using the Retail Movement Scheme and this will apply across the UK. Furthermore, by the end of the year, a vote must take place under the democratic consent mechanism in the Northern Ireland Assembly on the continued application of Articles 5-10 of the Windsor Framework.

Although the implementation of the Windsor Framework is not currently receiving the kind of media attention that it has at other points in the Brexit process, this topic remains a fundamental part of the UK's internal arrangements for devolution and the wider UK-EU relationship. At points in recent years, we have seen the extent to which the implementation of the Protocol, now known as the Windsor Framework, can be linked to a diverse range of policy areas such as UK



participation in the Horizon programme or the UK-EU relationship on financial services. If, for example, the democratic consent vote in the Assembly is not in favour of the continued application of Articles 5-10 of the Windsor Framework, this would re-open substantive negotiations between the UK and the EU on post-Brexit arrangements. Therefore, whilst we believe this topic to be of intrinsic importance, it is also helpful to keep in mind its potential to create repercussions for the wider UK-EU relationship.

### *Continued importance of scrutiny work*

In addition to its inquiry work, the Sub-Committee undertook detailed scrutiny of EU legislation which continues to apply in Northern Ireland under the terms of the Windsor Framework. In the 2022/23 parliamentary session, 110 Explanatory Memoranda were received from the Government, of which 40 were examined in detail by the Sub-Committee. Four were sent to the European Affairs Committee. In the same parliamentary session, the Sub-Committee sent 159 scrutiny letters and received 97 replies from ministers. This extensive legislative scrutiny work was undertaken in addition to scrutiny of domestic legislation with implications for Northern Ireland as well as conventional committee inquiries.

There is no other committee in the UK Parliament that focuses on the scrutiny of Windsor Framework-related matters in the same way as has the Sub-Committee. In the last Parliament, the Northern Ireland Affairs Committee in the House of Commons tended to concentrate on issues with wider implications for Northern Ireland than Brexit; importantly it did not undertake legislative scrutiny of the EU law that applies in Northern Ireland. Similarly, the European Scrutiny Committee in the House of Commons, which at the time of writing has not been re-instated, engaged in EU document-based scrutiny without any direct focus on the implications of Brexit for Northern Ireland or the Windsor Framework.

Some might consider the Sub-Committee's scrutiny work to be obsolete now that the Northern Ireland Assembly has been restored and the Windsor Framework Democratic Scrutiny Committee has been established. However, the Assembly's Democratic Scrutiny Committee has a strictly limited remit: to examine new or replacement EU Acts and to determine whether they engage the so-called Stormont Brake. Crucially, this means the Democratic Scrutiny Committee does not scrutinise delegated or implementing legislation (what we would call secondary legislation) which formed the majority of the Sub-Committee's legislative scrutiny work. Further, in evidence to the Sub-Committee's recent inquiry, witnesses argued that the Democratic Scrutiny Committee is under-resourced and under a huge amount of pressure, making it unlikely that the Committee will look to expand its remit.

There also remains a clear argument for a committee in Westminster to undertake this work. Under the UK's devolution settlement some matters, such as immigration or international treaties, remain the responsibility of the UK Government. Therefore, in scrutiny terms, responsibility for overseeing the exercise of these powers lies with the UK Parliament in Westminster. This reflects the legal reality that the Protocol on Ireland/Northern Ireland and the Windsor Framework are part of the wider Withdrawal Agreement agreed between the UK Government and the EU and is in accordance with the devolution framework. The requirement for Westminster-based scrutiny is even more important in light of the Windsor Framework (Implementation) Regulations 2024 which conferred broad powers on the Secretary of State to implement measures designed to facilitate the operation of the Windsor Framework. These powers, which include the implementation of

commitments set out in the previous government's Command Paper 'Safeguarding the Union', would be exercised in Westminster beyond the scrutiny of the Northern Ireland Assembly and its committees.

### *Reputational risk*

Since the establishment of the Sub-Committee in April 2021, all Reports have been agreed unanimously, notwithstanding the fact that throughout its life the Sub-Committee had a cross-party and diverse membership, including members from Northern Ireland representing different communities and with various views on the Protocol on Ireland/Northern Ireland and the Windsor Framework. The consensual nature of the Sub-Committee's Reports has given them weight, particularly at times of high political tension. Over the more than three years it has been in existence, the Sub-Committee has come to be highly regarded by politicians, policymakers and journalists, particularly within Northern Ireland, and its work consistently received extensive coverage in relevant media. The outcome of the Sub-Committee's most recent inquiry on veterinary medicines (a long letter to the Government) received over 200 pieces of individual media coverage, including in the BBC, Financial Times, Irish Independent and Irish Times along with radio coverage on BBC Good Morning Ulster, the Nolan Show and Farming Today.

The Sub-Committee worked hard to establish its good reputation, particularly in Northern Ireland, and it is our view that, if the House decides not to continue with a committee dedicated to Northern Ireland matters, that creates serious reputational risk. We know the importance the House attaches to Northern Ireland matters, and we would not wish it to appear that the House no longer considers this work to be important.

### *Impact on the work of the European Affairs Committee*

As this letter has made clear, the Sub-Committee has been heavily loaded with important legislative scrutiny and inquiry work. These demands will continue in the new Parliament. We have serious concerns about adding them to the existing wide remit of the European Affairs Committee. This Committee already faces a significant increase in its workload, in the light of the new Government's policy of negotiating closer relations with the EU, including the proposal for a Security Pact. The preparations for the review of the UK-EU Trade and Cooperation Agreement will also begin in 2025, adding further requirements for scrutiny in a number of highly technical areas of policy. Although additional staff support could be provided, the Committee will still in practice be limited to one meeting per week. Seeking to discharge the responsibilities of both Committees in the time available would inevitably lead to the Committee giving a less satisfactory service to the House both on the UK's relations with the EU, and the specific issues arising in respect of the implications of Brexit for Northern Ireland.

There is also a question about whether the European Affairs Committee, as currently constituted, has the necessary experience and expertise in Northern Ireland policy and politics to undertake detailed scrutiny and inquiry work in the context of the Windsor Framework. An asset of the Sub-Committee was that its membership always included a significant number of members drawn from different political traditions in Northern Ireland, and others with highly relevant experience, with the expertise and awareness of the political context to understand the ways in which the Windsor Framework and EU legislation affect the day-to-day lives of people and businesses in Northern Ireland. If the European Affairs

Committee were to take on the Sub-Committee's work, it might theoretically be possible to add additional members to the Committee with relevant expertise. However, this risks the Committee becoming unwieldy and creating a perception of two 'tiers' of committee membership.

*Proposal for a standalone Northern Ireland scrutiny committee*

Given the continued importance of the work previously undertaken by the Sub-Committee, and the difficulties associated with incorporating its work into the remit of the European Affairs Committee, we propose the creation of a new standalone committee. This new committee could be called the Northern Ireland Scrutiny Committee. We would suggest that the Liaison Committee review the appointment of this new committee after two years.

The Committee's remit would include scrutiny of EU legislation within the scope of the Protocol/Windsor Framework and relevant domestic UK legislation and policy. This legislation does not arise in a vacuum but is the product of wider developments in UK and EU policy. Moreover, the application of EU and UK legislation to Northern Ireland often gives rise to wider impacts on Northern Ireland politics and society. As such, we also propose that the Northern Ireland Scrutiny Committee is not strictly limited to document-based scrutiny and may conduct inquiries on related issues and trends. The former Sub-Committee's inquiry into strengthening Northern Ireland's voice in the context of the Windsor Framework would be a good example of such an inquiry.

We would suggest that this new committee be created as a standalone committee rather than as a sub-committee of the European Affairs Committee. In practice, the previous Sub-Committee on the Windsor Framework operated as a separate committee. In fact, in recent months the Sub-Committee favoured publishing long letters rather than reports because the reports required sign-off by the European Affairs Committee and there was some concern that a report which had been based on extensive evidence taking, carefully worded and unanimously agreed by the Sub-Committee could be amended at this review stage.

We believe the creation of this new Committee would send a strong signal that the UK Parliament remains committed to the scrutiny of EU legislation which continues to apply in Northern Ireland under the Windsor Framework, as well as to the wider socio-economic impact of the Windsor Framework on Northern Ireland.

We would be happy to discuss this proposal with you and other members of the Liaison Committee at the relevant meeting.

Yours sincerely,

Lord Ricketts, Chair of the European Affairs Committee

Lord Jay of Ewelme, Former Chair of the Sub-Committee on the Windsor Framework

29 July 2024