



Implementing Brexit

The role of the joint committee

Georgina Wright and Joe Owen

Introduction

The UK has formally left the European Union (EU) – but that is not the end of Brexit. The two sides have started negotiating their future relationship. They also need to implement the withdrawal agreement: the UK must pay the financial settlement; the rights of citizens in the UK and EU must be protected; and the UK needs to put in place agreed arrangements to prevent a hard border on the island of Ireland. The scale of the task is huge – and the outbreak of the [Covid-19 coronavirus](#) has cast doubts on whether everything can be done by the current deadline of 31 December 2020.¹

The withdrawal agreement commits the UK and the EU to establish a joint committee to oversee and monitor the application of the treaty. This joint committee is due to meet for the first time on 30 March 2020.² But despite its importance, there is still a lot of confusion about how it will work. The government urgently needs to answer several questions, not least on how frequently the joint committee (and subcommittees) will meet; what the government tells parliament about its meetings; and if there are any deadlines for key decisions, in particular those relating to the application of the Northern Ireland protocol.

This short paper looks at what we know, and what answers are still outstanding.

What we know

The joint committee is important

The UK–EU joint committee matters for two principal reasons.

First, it is the only forum for UK–EU consultation on the [withdrawal agreement](#). It is responsible for making sure there is no misunderstanding between both sides that would prevent them from meeting their treaty obligations. It can propose amendments for up to four years after the end of the transition period to “correct errors, address omissions or other deficiencies”.³ It also has the power to extend the transition period beyond 2020.

Second, it is responsible for resolving any disputes over the interpretation or application of the withdrawal agreement and its protocols. We look at how this will work below.

It is important the UK and EU get the operation of the joint committee right as a similar structure could form the basis for longer-term bilateral engagement.⁴ This was the intention in the October 2019 [political declaration](#), which sets out a EU–UK relationship after the transition period.

The joint committee concept is not unique to the UK and the EU

Joint committees are a common feature of legal agreements between two or more countries. These committees, made up of representatives from all the countries involved, act as a forum for signatories to monitor and review the agreement. They typically have three responsibilities:

- **Oversight:** to make sure there are no legal gaps that prevent the parties from meeting their treaty obligations. For example, the EU–Swiss joint committees meet to discuss policy changes on either side that might affect their co-operation.
- **Dispute settlement:** raise any concerns and try to resolve disputes by consensus or arbitration. For example, the joint steering committee between China and Hong Kong interprets provisions and resolves disputes arising from their Closer Economic Partnership Agreement (CEPA).
- **Amendment:** some joint committees have the right to make changes to the agreement. For example, the EU–Canada joint committee can amend the Comprehensive Economic and Trade Agreement (CETA), as well as its protocols and most annexes.

Joint committees are often supported by specialised subcommittees – each focusing on a different area of the agreement. For example, CETA has more than 10 subcommittees, covering trade issues from goods, agriculture, and wine and spirits. They also have ‘bilateral dialogues’ and ‘forums’ that meet annually.⁵ These tend to focus on areas other than trade such as climate change co-operation and promoting a rules-based international order. China and the Gulf Cooperation Council (GCC) have set up a joint committee to oversee commercial agreements and are considering separate sector-specific dialogues.

The UK–EU joint committee has been given specific responsibilities

The withdrawal agreement makes clear that the UK and EU will have one main joint committee, which will be supported by at least six 'specialised' subcommittees.⁶ In addition to monitoring the agreement, settling disputes and proposing amendments to correct deficiencies, the withdrawal agreement also gives the joint committee additional responsibilities.

First, it can decide to extend the transition period. The UK government has committed, in the European Union (Withdrawal Agreement) Act 2020, not to seek or agree an extension beyond 2020. But the spread of the coronavirus, and the pressures it places on government activity – on both the UK and EU's part – could change this.

Second, and perhaps more significantly, the committee has been given specific responsibilities relating to the [Northern Ireland protocol](#) – the part of the agreement that sets out a unique position for Northern Ireland with respect to the EU and Great Britain (see Box 1).

Box 1 **The role of the joint committee on the Northern Ireland protocol**

The Northern Ireland protocol, which accompanies the withdrawal agreement, states that Northern Ireland (NI) will continue to follow EU rules in customs and in areas of the single market necessary to avoid a hard border on the island of Ireland.

In particular, the protocol gives the joint committee specific responsibility for:

- determining the criteria according to which goods moving from Great Britain (GB) to NI will be considered *not* "at risk" of subsequently moving into the EU, and therefore will not be subject to EU customs duties
- establishing the conditions under which fisheries and aquaculture products landed by NI vessels will be exempt from EU duties
- determining the initial maximum level of agricultural support for NI farmers – any additional help would be subject to EU subsidy control
- deciding whether new EU law in areas covered by the protocol should be added to it
- determining the practical arrangements for EU supervision of UK implementation and enforcement of specific aspects of the protocol
- overseeing the implementation of VAT collection arrangements
- reviewing the implications of the protocol for the UK internal market, and north–south co-operation
- making recommendations to the UK and the EU in the event that NI institutions reject the provisions in the protocol covering issues such as trade in goods and single electricity market.*

* For more information, see articles 5 to 10 of the Northern Ireland protocol.

However, the UK and EU appear to have different interpretations of the role of the joint committee with respect to the protocol. Michael Gove recently told the House of Commons Select Committee on the Future Relationship that the joint committee was an opportunity to “develop” the protocol.⁷ This suggests it could act as a forum for negotiating derogations and additional flexibilities in the application of EU law at the new Irish Sea border.

As far as the EU is concerned, the protocol has already been agreed in the form of an international agreement and EU officials have pushed back at suggestions that the protocol is vague or requires further clarification. Instead, the EU considers the role of the joint committee to be limited to the responsibilities outlined above.⁸

The UK and EU will appoint representatives to the committee

The joint committee will have two chairs, one from the UK and one from the EU. The chancellor of the Duchy of Lancaster and minister for the Cabinet Office, Michael Gove, will chair on behalf of the UK. Maroš Šefčovič, the Slovakian vice-president of the EU Commission for Interinstitutional Relations and Foresight will chair on behalf of the EU. While the withdrawal agreement allows for the role of co-chair of the committee to be carried out by a senior official in the absence of a minister, the UK government has committed, in its domestic legislation, to only allow ministers to fulfil the role.

Six to ten senior officials are expected to accompany each chair. The Cabinet Office will be responsible for co-ordinating the work of the joint committee on behalf of the UK government, with input from other departments where relevant. In particular, the Treasury is expected to lead on the financial settlement. The Foreign Office is expected to do the same on issues relating to the UK’s sovereign military base areas in Cyprus, citizens’ rights and Gibraltar. The Cabinet Office will work with the Northern Ireland Office and the Northern Ireland executive on issues relating to the Northern Ireland protocol.

The EU Commission’s UK Task Force will co-ordinate the EU’s joint committee work, also with input from other departments and institutions (Trade, Internal Market, and the European External Action Service, among others). A member state can ask to send a representative as part of the EU delegation, but only if matters under discussion are of direct interest to it.⁹ Both sides must share a list of the delegates who will be representing them before the joint committee meets.

The joint committee is due to meet for the first time on 30 March 2020

The joint committee is to meet at least once a year – though either side can request more meetings. It will continue to meet at least up to four years after the end of the transition period and can propose specific amendments during that time. But its remit will change and could become more limited.

Any decisions must be agreed by consensus – and will be binding on the UK and EU. Committee members can use the written procedure to make recommendations, that is without meeting in person, if the two sides consent. The UK has ruled out, in legislation, using the written procedure for making any binding decisions. (Under Section 35 of

the European Union (Withdrawal Agreement) Act 2020 the UK co-chair of the joint committee cannot consent to the joint committee using the written procedure to make binding decisions.)

However, the co-chairs have said that they would explore alternatives to meeting in person to deal with the exceptional circumstances following the coronavirus outbreak.¹⁰

The UK and EU are under no obligation to disclose all committee discussions

The two chairs can decide whether to publish the agenda before the meeting takes place. The secretariat will write up a summary of the discussion and the chairs can decide again whether to publish its main points.

The joint committee intends to write an annual report. This could take stock of discussions and list amendments to the treaty, its three protocols and nine annexes. The deadline for writing it is 1 May 2021.

There will be some differences to the way the subcommittees work

There are six specialised subcommittees that report directly to the joint committee; each will focus on specific areas of the agreement. There are some differences to the way the joint committee and subcommittees work.

- **Remit:** the subcommittees can draft decisions and propose amendments, but the joint committee has the final say.
- **Composition:** subcommittees do not require ministerial representation, but will be made up of UK and EU officials from relevant departments. The UK and EU can also invite external experts to attend.

Table 1 **Subcommittee specialisms**

Subcommittee	Focus
Citizens' rights	To resolve any disputes relating to the status of EU citizens living legally in the UK (and vice-versa) before the end of the transition period. The UK will set up an independent monitoring authority to deal with complaints on EU citizens' rights in the UK. It can bring legal action before a court or tribunal in the UK and will have powers equivalent to those of the EU Commission in the EU for at least eight years after the transition period. The committee will consider these annual reports for a minimum of eight years after the transition period, at which point it could decide to abolish the independent authority.
The sovereign base areas in Cyprus	To oversee the protocol on the Sovereign Base Areas, which will come into force at the end of the transition period. This protocol seeks to protect the interests of Cypriots who live and work in the UK's military base areas in Cyprus. It must also make sure that EU law continues to apply where the relevant protocol says it should.

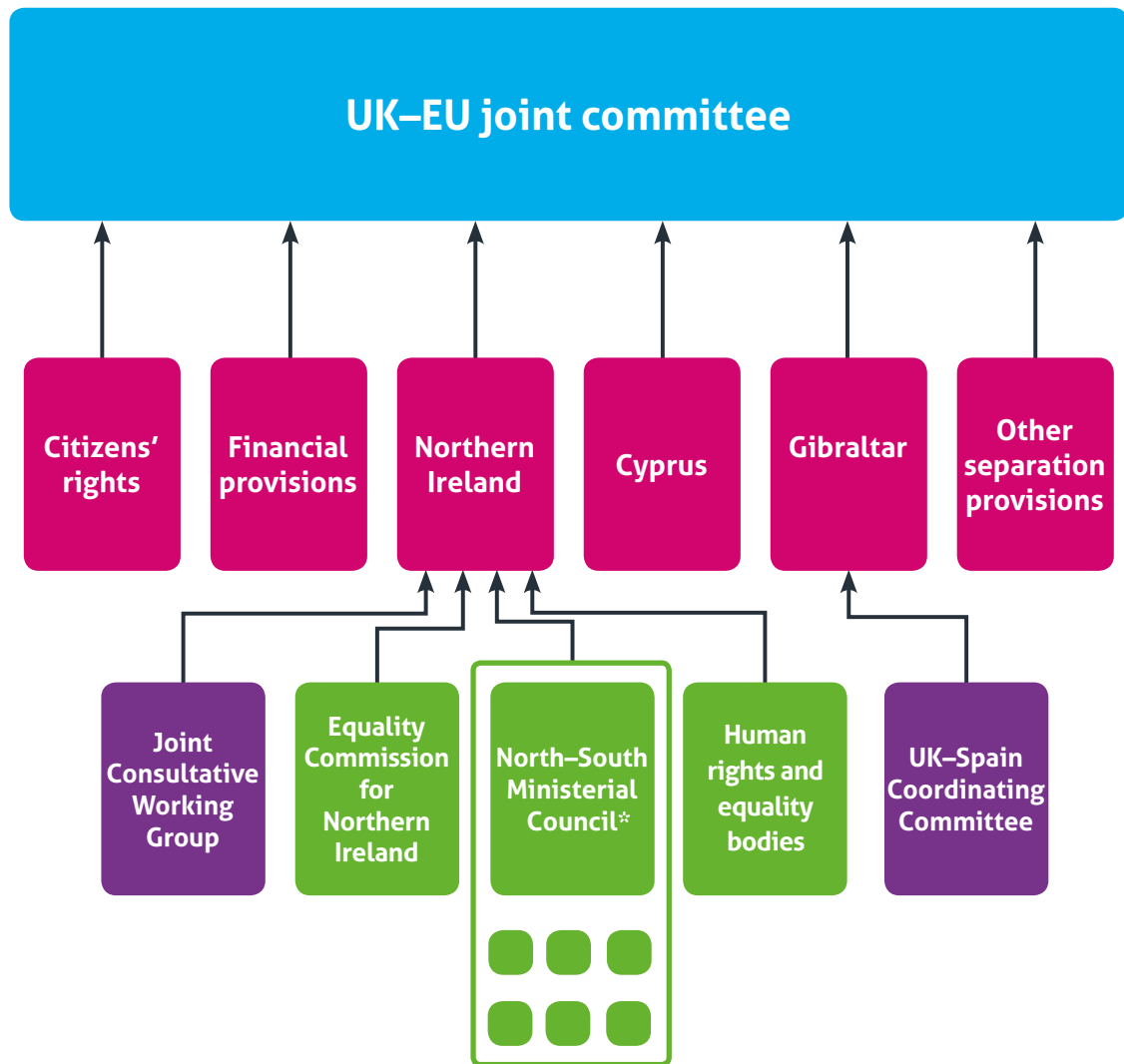
Subcommittee	Focus
Gibraltar	To oversee the protocol on Gibraltar, which will apply until the end of the transition period (except for provisions on citizens' rights, which will continue to apply). The UK and Spain have also set up a separate co-ordinating committee that will report directly to the subcommittee on Gibraltar.
Financial provisions	To oversee the UK's financial settlement to the EU. This subcommittee will also calculate any additional payments the UK needs to make to the EU if it wants to participate in EU programmes and activities – for example, if the UK continues to access the Secure Information Exchange Network Application (SIENA), which it can do for at least one year after the transition period. If the UK wants to stop participating in ongoing EU programmes and activities (which it committed to under the 2014–2020 EU multiannual financial framework), it is the subcommittee's responsibility to help the UK achieve this.
Northern Ireland	This subcommittee has a specific responsibility to examine proposals raised by the North–South Ministerial Council and its six implementation bodies, as well as any issues raised by human rights and equality bodies established by the 1998 Belfast/Good Friday Agreement (see Figure 1). It must submit any recommendations to the central committee for a binding decision. The subcommittee will meet so long as the protocol applies.
Other separation provisions	The UK and EU will call on this subcommittee for any issue that cannot be easily covered in one of the other subcommittees. There is the option to create new subcommittees in future. But the process of setting up a new one is not straightforward and can take time. So the UK and EU may want to call on this joint committee to discuss any aspects of the withdrawal agreement that cannot easily be resolved elsewhere.

The withdrawal agreement and protocols also establish co-ordinating committees that can provide expertise and make recommendations to relevant subcommittees.

The UK and EU will also set up a Joint Consultative Working Group as an additional forum for exchange of information on the implementation of the Northern Ireland protocol. It will report directly to the Northern Ireland subcommittee.* Once the protocol is up and running it will meet monthly from the end of the transition period.

* The full name of the subcommittee is the specialised subcommittee to oversee the implementation of the Northern Ireland protocol.

Figure 1 UK–EU joint committees and subcommittees

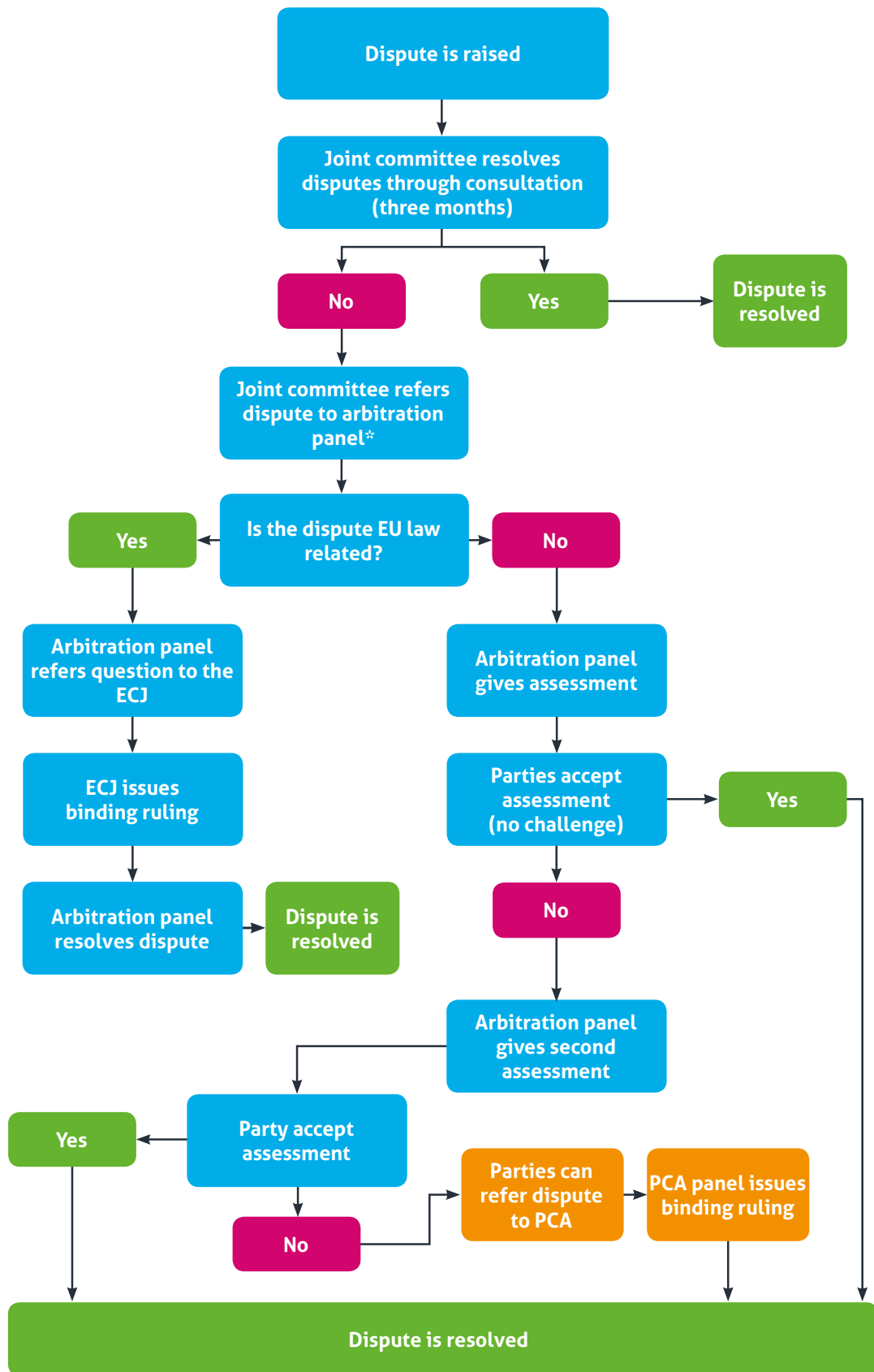


* North–South implementation bodies work under the policy direction of the North–South Ministerial Council but can make recommendations directly to the Northern Ireland sub-committee. These bodies include Waterways Ireland; Food Safety Promotion Board; Intertrade Ireland; Special European Union Programme Body; The Language Body; Foyle; Carlingford and Irish Lights Commission.

The joint committee can refer disputes to an arbitration panel

The withdrawal agreement sets out how the joint committee can resolve disputes over the interpretation and application of the withdrawal agreement.¹¹ The process is illustrated in Figure 2 (overleaf).

Figure 2 **Dispute settlement under the withdrawal agreement**



Source: Institute for Government analysis. PCA = Permanent Court of Arbitration. If, after three months of receiving the formal request to put together an arbitration panel, the UK and EU still have not agreed the five members they should appoint to it, they can ask the PCA to put together a panel.

The joint committee must first try to resolve a dispute by consensus. If this fails, it can defer the decision to an arbitration panel. By the end of the transition period, the UK and EU will need to have identified 25 people who can take part in an arbitration panel. This number is to include:

- Ten people “from the highest judicial office in their respective countries [with] specialised knowledge of union law and public international law”. Members of the arbitration panel cannot work for the UK government, member-state government departments or EU institutions.
- Five people to act as chairperson of the arbitration panel.

A dispute will be given to: two representatives from the UK list, two representatives from the EU list and one chairperson.

In terms of process, the arbitration panel has 12 months to deliver its ruling, which will become binding on the UK and the EU. If the case is urgent, either side can ask the panel to deliver a decision within six months. When a dispute concerns a matter of EU law, the panel must refer the dispute to the European Court of Justice (ECJ). This could include issues relating to the rights of EU citizens living in or moving to the UK before the end of the transition period (and vice-versa). The ECJ will then deliver a ruling on the question of EU law that will become binding on the panel.

If either party feels the other has failed to comply with the ruling, the arbitrators can apply temporary remedies, including penalty payments. If no payment is received within six months, the claimant can suspend part of the withdrawal agreement (apart from Part 2, on citizens’ rights). Any suspension must be proportionate and temporary.

What we do not know

There has been little information about the joint committee beyond what is written in the withdrawal agreement. And the UK parliament has seemingly paid little attention to it. But the committee has an important role to play – the following are the key questions the UK and EU need to answer as a matter of urgency.

1. What are the tasks of the specialised subcommittees?

The withdrawal agreement states that the joint committee will decide which questions the specialised subcommittees must answer – but the committee does not appear to have put them forward yet.

Specialised subcommittees will play an important role in making sure the withdrawal agreement is applied. For example, they will be expected to do much of the groundwork to resolve any disagreements over the application of the withdrawal agreement – deferring any final decisions to the joint committee. They will only be able to perform their tasks efficiently with guidance from the co-chairs and a clear understanding of the task ahead. Setting instructions, particularly on issues around citizens’ rights and the Northern Ireland protocol, will ensure any problems have a better chance of being remedied before the end of the transition period.

2. What will be the deadlines for key decisions, including those relating to the Northern Ireland protocol?

The withdrawal agreement highlights some key decisions that will need to be taken with respect to the Northern Ireland protocol. These are likely to have major practical implications for the way trade flows between Great Britain and Northern Ireland.

The decisions made by the joint committee must be timely – and the joint committee should consider setting a deadline for them. For example, the treaty states that some decisions must be taken by the end of the transition period, but any decision will need to be taken long before then – as the UK will need to reflect these changes in the practical preparations for the GB–NI ‘sea border’ for the same deadline.

3. How will Northern Ireland be represented on the joint committee, specialised subcommittee and the joint consultative work group?

It will be critical to make sure Northern Ireland voices are part of the decisions that affect it. First, the consent mechanism in the Northern Ireland protocol will periodically give the NI institutions the opportunity to reject the provisions covering issues such as trade in goods and single electricity market.* If the Northern Ireland assembly does not give consent to the continued application of those parts of the protocol, they will cease to apply two years later. If consent is withheld, there could be major disruption and potentially a return to a hard border on the island of Ireland.

The joint committee is a critical route for heading that off – if delegates from NI are in a position to clearly express concerns, the joint committee will get early warning.

The government has said that it would include the Northern Ireland executive in any joint committee meeting that discusses NI and when the Republic of Ireland government is part of the EU’s delegation to the joint committee.¹² However, it has yet to clarify how it will manage this delegation. Will NI representatives be able to articulate their specific concerns and opinions – or will they be obliged to stick to the UK government’s line?

Rather than simply offering NI whatever the EU is prepared to offer the Republic of Ireland, the UK should ensure there is a clear and consistent role for Northern Irish delegates, ensuring that NI voices are central to any decision making that will affect them. This should apply to the joint consultative working group too. As mentioned, this group will provide an early opportunity to discuss the practical workings of the protocol. It can also put forward recommendations to the joint committee on how to improve them.

The UK should consider including as part of its delegation those who will be required to comply with the protocol and have the technical expertise on how it will impact them—such as NI businesses, traders and hauliers.

* The first vote will take place four years after the end of the transition.

4. What role will there be for parliament in scrutinising the work of the joint committee?

The reporting requirements set out in the withdrawal agreement are limited. Discussions in the joint committee and specialised subcommittees will remain confidential, though the co-chairs can decide to publish minutes. The first annual report is not due until 2021.

The European Union (Withdrawal Agreement) Act 2020 states that the government will be required to report to parliament, but only if the joint committee initiates any dispute that requires the involvement of the ECJ. It is silent on the role of parliament in reviewing any other aspect of the committee's work. There are no plans for systematic reporting or statements to parliament or the devolved assemblies.

The EU Commission is also under no obligation to publish an update on the work of the joint committee on its website – though it is expected to discuss it behind closed doors in meetings with EU27 representatives in Brussels and to the European Parliament committee looking at the UK–EU relationship.

However, if the joint committee decides to make any changes to the withdrawal agreement, the European Parliament will be “immediately and fully informed”, in line with how it is always engaged during international negotiations (set out in Article 218 of the Treaty on the Functioning of the European Union).

Member states must also authorise any binding decision the joint committee intends to take; this authorisation will get recorded in the EU's Official Journal (which lists all EU decisions). This presents two immediate problems:

- **Accountability:** in the absence of any reporting requirements in the UK, there is no real opportunity for MPs to scrutinise the process.
- **Transparency:** MPs, as well as members of the public, will need to rely on the EU's Official Journal to find out what decisions (excluding those that involve the ECJ) the joint committee takes.

The government – and in particular Michael Gove, as UK joint committee chair – should make a statement to the House after each meeting. The Future Relationship or European Scrutiny Committees in the Commons, and the EU Committee in the Lords, should hold hearings with Gove as well as with senior UK representatives attending the various specialised subcommittees.

Conclusion

Eleven o'clock on 31 January 2020 was not the end of the Brexit process. The UK and EU now have less than 10 months to negotiate their future relationship and implement the withdrawal agreement. The joint committee will play a vital role in overseeing and monitoring the application of the treaty – yet there are still many questions as to how it will work in practice.

The UK and EU should answer these questions as a matter of urgency.

About the authors

Georgina Wright

Georgina is a senior researcher on the Brexit team, where she focuses on UK engagement and influence in the EU after Brexit. Her research interests include the EU27's views of Brexit, Franco-British relations and the future of the EU. Prior to joining the Institute, she was a research associate at Chatham House and has worked for the European Commission and NATO in Brussels. She frequently gives evidence to select committees in the House of Commons and House of Lords.

Joe Owen

Joe is the programme director working on our Brexit programme and is leading our research into Whitehall's preparation for exiting the European Union. He has also worked on the Institute's digital government and departmental transformation research.

Joe has worked with a number of government departments as a consultant, including the Ministry of Justice and Ministry of Defence, and spent a year in the strategy team at Transport for London working on the spending review and mayoral elections.

References

- 1 Owen J, 'Boris Johnson must be prepared for coronavirus to disrupt his Brexit timetable', blog, Institute for Government, 13 March 2020, retrieved 16 March 2020, www.instituteforgovernment.org.uk/blog/brexit-timetable-coronavirus
- 2 HM Government, 'Update on the Withdrawal Agreement Joint Committee', press release, 19 March 2020, www.gov.uk/government/news/update-on-the-withdrawal-agreement-joint-committee
- 3 HM Government, *Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community*, 19 October 2019, article 266 (4).
- 4 HM Government, *Political Declaration Setting Out the Framework for the Future Relationship between the European Union and the United Kingdom*, 19 October 2019, articles 129 and 132.
- 5 EU Commission, Directorate-General for Trade, 'CETA - Meetings and documents', February 2020, retrieved on 20 March 2020, <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1811>
- 6 HM Government, *Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community*, 19 October 2019, articles 164–6.
- 7 Gove M, Oral evidence, 11 March 2020, Select Committee on the Future Relationship, House of Commons, <https://committees.parliament.uk/work/138/progress-of-the-negotiations-on-the-uks-future-relationship-with-the-eu/publications/>
- 8 De Rynck S, 'Tweet', 16 February 2020, retrieved 22 March 2020, <https://twitter.com/StefaanDeRynck/status/1228994527156940801>
- 9 *Ibid.*, Annexe VIII, rule 3, article 2.
- 10 HM Government, 'Update on the Withdrawal Agreement Joint Committee', press release, 19 March 2020, www.gov.uk/government/news/update-on-the-withdrawal-agreement-joint-committee
- 11 *Ibid.*, Articles 167–81.
- 12 HM Government, *New Decade, New Approach*, Northern Ireland Office, 9 January 2020, annexe 9, section 9, www.assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/856998/2020-01-08_a_new_decade__a_new_approach.pdf

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**Institute for Government, 2 Carlton Gardens
London SW1Y 5AA, United Kingdom**

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