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UK Exit from the EU Briefing Paper Series Withdrawal Agreement, Protocol and Political Declaration - Potential Implications for Single Electricity Market in Northern Ireland

Paper 6 of 6

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This is paper 6 of a 6-part series, which explores key potential implications arising from the Withdrawal Agreement, the “Protocol on Ireland and Northern Ireland” and the Political Declaration in relation to the Single Electricity Market in Northern Ireland.

This information is provided to Members of the Legislative Assembly (MLAs) in support of their duties, and is not intended to address the specific circumstances of any particular individual. It should not be relied upon as professional legal advice, or as a substitute for it.

Key points

The Protocol provisions addressing the Single Electricity Market (SEM) on the island of Ireland, seek to ensure the continued operation of that wholesale electricity market at the end of the transition period, which is due to end on 31 December 2020.

This is to be achieved by Northern Ireland (NI) continuing to align with a number of European Union (EU) directives on wholesale electricity.

The SEM is separate from the electricity market in Great Britain (GB), but does trade with the market *via* interconnection. The GB market will no longer be required to transpose and implement new EU directives on SME related wholesale electricity post transition. The United Kingdom (UK) Government has noted that this could result in the agreement of new trading arrangements between the two markets, which consequently could lead to “less efficient” trade.

Nonetheless, NI is to remain aligned to a range of EU wholesale electricity law. It will be required to implement that law if amended or replaced. The UK-EU Joint Committee (the Joint Committee) established under the Protocol, may agree to add newly adopted EU directives to the list of those already agreed under the Protocol. Questions therefore arise here as to how EU law will be scrutinised at the UK and the NI levels post transition. Additional questions arise regarding the extent to which NI could be in a position to influence developments in such law post-transition.

The Protocol provides for the Joint Committee and the related Specialised Committee for NI (the Specialised Committee), specifying their individual roles in overseeing the Protocol’s implementation, while ensuring the functioning of the SEM. The process by which these committees are to be scrutinised is unclear at the time of writing this paper. Moreover, the process by which SEM participants, operators and regulators (stakeholders) are to feed into the work of these committees is similarly unclear.

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Introduction

This briefing paper is prepared for the Committee for the Economy (the Committee), as the United Kingdom (UK) transitions after its formal departure from the European Union (EU) on 31 January 2020. This follows on from the *Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community* – commonly called “the Withdrawal Agreement”.¹

Throughout the UK’s transition period, the Committee continues to maintain a watching brief on how the UK will address a number of matters relating to:

- The “Protocol on Ireland and Northern Ireland” (the Protocol),² an integral part of the Withdrawal Agreement, which sets out various provisions that will inform how Northern Ireland (NI) is to be governed post-transition period, including the avoidance of a hard border on the island of Ireland.
- The “Political Declaration setting out the framework for the future relationship between the European Union and the United Kingdom” (Political Declaration), that was agreed and published alongside the Withdrawal Agreement.³ This Political Declaration is referenced in the Withdrawal Agreement, where it explains that the UK and the EU will negotiate an agreement governing their future relationship. The Political Declaration then specifies that such negotiation is to be based upon the framework set out in the Political Declaration.⁴

Ongoing negotiations under the Political Declaration between the UK and the EU about their future relationship commenced in March 2020. At the time of writing this paper, they are due to conclude before the end of the transition period, which is due to end on 31 December 2020. It is anticipated that any agreement reached during negotiations also will be ratified before the end of the transition period.⁵

It is important to note that a number of outstanding matters arising under the Withdrawal Agreement, the Protocol and the Political Declaration still require

¹ UK 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 (17 October 2019)

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/840655/Agreement_on_the_withdrawal_of_the_United_Kingdom_of_Great_Britain_and_Northern_Ireland_from_the_European_Union_and_the_European_Atomic_Energy_Community.pdf

² UK 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, Protocol on Ireland/Northern Ireland (19 October 2019)

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/840230/Revised_Protocol_to_the_Withdrawal_Agreement.pdf

³ UK Government, Political Declaration setting out the framework for the future relationship between the European Union and the United Kingdom (17 October 2019) paragraph 3

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/840231/Revised_Political_Declaration.pdf

⁴ The European Commission, the EU-UK Withdrawal Agreement (accessed 28 April 2020) https://ec.europa.eu/info/european-union-and-united-kingdom-forging-new-partnership/eu-uk-withdrawal-agreement_en

⁵ The House of Commons Library, What is happening in the UK-EU future relationship negotiations? (07 April 2020) <https://commonslibrary.parliament.uk/brexit/the-eu/what-is-happening-in-the-uk-eu-future-relationship-negotiations/>

agreement between the UK and the EU, before the end of the transition period, including those relating to the “UK-EU Joint Committee” (the Joint Committee). That Committee was established under Articles 164-166, Part Six, of the Withdrawal Agreement, has representation from both the UK and the EU.⁶ It is one of three bodies with oversight functions when implementing the above-noted Protocol. Of particular relevance to NI is that the Joint Committee must establish all of the following, prior to the end of the current transition period, which is scheduled for 31 December 2020:

- The criteria according to which goods moving from 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.
- The conditions to establish fisheries and aquaculture products landed by NI vessels that will be exempt from EU duties.
- The initial maximum level for agricultural support for NI farmers, noting any additional help would be subject to EU subsidy control.⁷

In regard to the Joint Committee, it should be noted that on an ongoing basis, it will be responsible for:

- 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.
- Reviewing the Protocol implications for the UK internal market, and north–south co-operation on the island of Ireland.
- Making recommendations to the UK and the EU in the event that NI institutions reject Protocol provisions regarding areas such as trade in goods and Single Electricity Market (SEM).⁸

The Protocol also provides for the Specialised Committee for NI (the Specialised Committee), which is discussed in more detail below.

As the above highlights, the Withdrawal Agreement, the Protocol and the Political Declaration all inter-relate. Collectively, the Withdrawal Agreement and the Protocol will serve to define the future relationship between the UK and the EU, defining how NI will be governed in a number of important areas. Additionally, the outcome of the ongoing negotiations mandated by the Withdrawal Agreement⁹ and specified in the

⁶ UK 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 (17 October 2019) Articles 164-166 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/840655/Agreement_on_the_withdrawal_of_the_United_Kingdom_of_Great_Britain_and_Northern_Ireland_from_the_European_Union_and_the_European_Atomic_Energy_Community.pdf

⁷ Institute for Government, Implementing Brexit the Role of the Joint Committee (March 2020)

https://www.instituteforgovernment.org.uk/sites/default/files/publications/implementing-brexit-role-joint-committee_0.pdf

⁸ *Ibid*

⁹ UK 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 (17 October 2019) Articles 184

Political Declaration, will define further outstanding issues relating to the future relationship between the UK and the EU, which will determine the application of the Protocol under the Withdrawal Agreement following transition. For example, if the UK and the EU agree a FTA that removes tariffs on trade between the two jurisdictions, this will have NI implications for the practical application of Articles 5 and 6 of the Protocol. This is explored in Section 2 of Paper 2 in this series. Equally, it is important to note that the Protocol is intended to apply no matter what the outcome of the future relationship negotiations under the Political Declaration.¹⁰

In light of the above, the Committee is interested in noted outstanding matters relating to the Protocol and the Declaration; in particular, those that are relevant to the Committee's portfolio, and inevitably will have implications for NI post transition.

To support the Committee in these areas, this paper - the second in a six-part series – has been compiled to address various themes of apparent relevance to the Committee. Note that none of the papers in the series is intended to provide a comprehensive assessment of the noted outstanding matters, as that is beyond the scope of the series.

Rather, in line with the overarching purpose of the series, this paper addresses Protocol provisions relating to customs and trade. It also considers how these could be impacted by the outcome of ongoing negotiations under the Political Declaration regarding the future relationship between the UK and the EU.

This paper – Paper 6 of 6 – addresses Protocol provisions relating to the SEM. The Protocol sets the conditions under which that Single Market can continue to function. In this respect, the Protocol seeks to protect an area of north-south cooperation. This is because – as explained in paper 2 of this series - the future relationship between the UK and the EU is to contain provisions that will govern trading between GB, the SEM and the EU more generally. As such, the final agreement on the outstanding matters related to the Protocol, and now to be decided under the Political Declaration, as part of those negotiations; that agreement or absence of such agreement will determine the extent to which electricity trading arrangements between GB and the SEM will occur following the transition period.

For context, Section 1 of this paper provides a brief overview of the SEM. This is followed by Section 2, which examines the two Protocol articles relating to future SEMs

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/840655/Agreement_on_the_withdrawal_of_the_United_Kingdom_of_Great_Britain_and_Northern_Ireland_from_the_European_Union_and_the_European_Atomic_Energy_Community.pdf

¹⁰ UK Government, Explainer for the new Ireland/Northern Ireland Protocol and the Political Declaration on the Future Relationship (18 October 2019)

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/840653/EXPLAINER_FOR_THE_NEW_IRELAND_NORTHERN_IRELAND_PROTOCOL_AND_THE_POLITICAL_DECLARATION_ON_THE_FUTURE_RELATIONSHIP.pdf

arrangements. After outlining each article's purpose, Section 3 then considers their potential impact on NI.

In closing, Section 4 sets out concluding remarks, drawing on the earlier sections. Potential scrutiny points are highlighted in blue boxes throughout the paper, aiming to support the Committee in its scrutiny role. A summary of the key points arising from the paper is contained in Table 1 below.

To consider other Protocol proposals and related potential NI implications, the following papers of this six-part series are available, namely:

- Paper 1 – Overview of Governance Arrangements;
- Paper 2 – Customs and Trade Arrangements;
- Paper 3 – Tax and Excise Duties;
- Paper 4 – Employment; and,
- Paper 5 – State Aid.

Table 1: “Protocol on Ireland and Northern Ireland” - Key Observations and Scrutiny Points for the Committee for the Economy

Protocol Article	NI position given Withdrawal Agreement, Protocol and Political Declaration	Key potential NI implications from Withdrawal Agreement, Protocol and Political Declaration	Key potential scrutiny points
<p>Article 9: Single Electricity Market (SEM) (see subsection 2.1 of this briefing paper)</p>	<ul style="list-style-type: none"> ▪ Aligns NI to a range of EU law in respect to wholesale electricity markets. ▪ States that this alignment is in respect to the <i>“the generation, transmission, distribution and supply of electricity, trading in wholesale electricity or cross-border exchanges in electricity”</i>. ▪ States that this alignment is not in respect to <i>“retail markets and consumer protection”</i>. 	<ul style="list-style-type: none"> ▪ Allows the continued function of the SEM an associated security of supply and end user price benefits. ▪ No longer aligns the GB market to EU law in the areas NI will be aligned. This may require new arrangements on electricity trade between the SEM. The extent to which this will be necessary will depend on the outcome of the ongoing future relationship negotiations. The UK Government has warned that this trade could become <i>“less efficient”</i>. ▪ Requires NI to implement a range of EU energy law. It will be required to implement this when amended or replaced. The Joint Committee may agree to add newly adopted EU directives to the Protocol. 	<ul style="list-style-type: none"> ▪ Have the Department for the Economy (DfE) carried out an assessment on the what the new electricity trading arrangements between the SME and GB might be? ▪ Have the DfE carried out an impact assessment on the potential impact on those new arrangements on security of supply, wholesale prices and consumer prices in NI? ▪ Have the DfE given any consideration as to how NI voices would be factored into the Joint Committee deliberations on how future new EU law would be reflected under the Protocol? ▪ Has the DfE considered what measures could be put in place to ensure that NI voices are factored into future development of EU law, which aligns to the Protocol? If so, please detail, including whether those considerations have been shared with the NI and the UK levels of government and or elsewhere? ▪ Has the DfE considered what structures could be put in place at the NI Executive and the UK Government levels to monitor the implementation under the Protocol of existing and future EU law in respect to NI? If so, please detail, including whether those considerations have been shared with the NI and the UK levels of government and or elsewhere? ▪ What structures will be put in place in the NI Assembly and at Westminster to enable the scrutiny of that EU law in respect to NI? ▪ Has the DfE considered how the NI Executive and the UK Government could assist business to keep up-to-date with changes to that EU law? If so, please detail, including whether those considerations have been shared with the NI and the UK levels of government and or elsewhere?

Protocol Article	NI position given Withdrawal Agreement, Protocol and Political Declaration	Key potential NI implications from Withdrawal Agreement, Protocol and Political Declaration	Key potential scrutiny points
<p>Article 11: Other areas of North-South Cooperation (see subsection 2.2 of this briefing paper)</p>	<ul style="list-style-type: none"> ▪ The Joint Committee will monitor the conditions for north-south energy cooperation and has the power to make recommendations to the UK and the EU with respect to the maintenance of these conditions. ▪ The Specialised Committee may make recommendations to the Joint Committee in respect to north-south energy cooperation. 	<ul style="list-style-type: none"> ▪ Joint Committee and Specialised Committee have roles in monitoring the interaction of Protocol implementation and the functioning of the SEM. ▪ The process by which these committees are scrutinised is unclear. ▪ The process by which SEM participants, operators and regulators (stakeholders) can feed into the work of these committees is unclear. 	<ul style="list-style-type: none"> ▪ Can the DfE shed any light on how will the work of the Specialised Committee be scrutinised? ▪ Can the DfE advise the Committee for the Economy on what role (if any) will there be for the UK Parliament in this scrutiny? ▪ What role (if any) will there be for the NI Assembly in scrutinising the work of the Joint Committee? ▪ What role (if any) will there be for the NI Assembly in scrutinising proposals to the Specialised Committee for NI? ▪ Has the DfE considered what measures could be put in place to ensure NI stakeholders in the SEM could make representation to the Specialised Committee for NI? If so, please detail, including whether those considerations have been shared with the NI and the UK levels of government and or elsewhere? ▪ Has the DfE considered what measures could be put in place to ensure effective scrutiny of the work of the Specialised Committee for NI? If so, please detail, including whether those considerations have been shared with the NI and the UK levels of government and or elsewhere? ▪ What role (if any) will there be for the UK Parliament in this scrutiny? ▪ Has the NI Assembly a role in scrutinising the work of the NI Specialised Committee? ▪ Has the NI representative of the Executive briefed the NI Assembly of the issues discussed in the meeting? If no, are there plans to do this?

Source: RaISE (2020)

1 What is the Single Electricity Market (SEM)?

To provide context for the analysis that follows in Sections 2 and 3 of this paper, this section briefly outlines the SEM on the island of Ireland.

NI's electricity wholesale market is separate from that of GB. Since 2007, NI has participated in the SEM with the Republic of Ireland (RoI). Through the SEM, all electricity on the island is bought and sold through a single pool. This is facilitated via interconnection between the two systems on the island. The systems are connected via a double circuit 275 kilovolt (kV) line between Tandragee and Louth. Two additional 110kV connections are in operating, one between Enniskillen and Corraclassey, and a second between Strabane and Letterkenny.¹¹

The SEM is operated by the Single Electricity Market Operator (SEMO), which is a joint undertaking by System Operator for NI (SONI) and its counterpart in the RoI, Eirgrid.¹² The Utility Regulator in NI and its RoI counterpart, the Commission for Energy Regulation, regulate the SEM through the SEM Committee.¹³

2 SEM arrangements under the Protocol

The paper now turns to the provisions of the Protocol that detail SEM arrangements in NI post-transition. First, it sets out the detail of Article 9 and Annex 4 of the Protocol, which both directly relate to the continued function of the SEM (subsection 2.1 of this paper). Next, it outlines the content of Article 11, which concerns North-South Cooperation in a number of areas (subsection 2.2). Finally, it examines the implications of those provisions on NI, post-transition (subsection 2.3).

2.1 What is the purpose of Article 9 of the Protocol?

Article 9 states simply that the provisions of EU law governing wholesale electricity markets, as outlined in Annex 4 of the Protocol, will apply *“to and in the United Kingdom in respect to Northern Ireland”*.¹⁴

Annex 4 lists a range of EU law that NI will remain aligned to in the post-transition period. These are summarised in Table 2 below:

¹¹ The Department for the Economy, Energy in Northern Ireland 2016 (10 March 2016) pp31-33 <https://www.economy-ni.gov.uk/sites/default/files/publications/deti/energy-northern-ireland-2016.pdf>

¹² *Ibid*

¹³ The Utility Regulator, SEM (accessed 19 May 2020) <https://www.uregni.gov.uk/sem>

¹⁴ UK 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 (17 October 2019) Article 9 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/840655/Agreement_on_the_withdrawal_of_the_United_Kingdom_of_Great_Britain_and_Northern_Ireland_from_the_European_Union_and_the_European_Atomic_Energy_Community.pdf

Table 2: Summary of areas of EU law included in Annex 4 of the Protocol¹⁵

Areas in which NI will be aligned to EU Wholesale Electricity law	
Internal market in electricity	Wholesale energy market integrity and transparency
Cross border exchange of electricity	Industrial emissions
Agency for the Cooperation of Energy Regulator	Greenhouse gas emissions allowance trading within the EU
Safeguarding the security of electricity supply and infrastructure investment	

Source: Withdrawal Agreement (19 October 2019), Annex 4 to the Protocol on Ireland/Northern Ireland

The Annex also sets out conditions as to when this law will apply, and when it will not. As per the Annex, the law outlined applies with respect to:

*...the generation, transmission, distribution and supply of electricity, trading in wholesale electricity or cross-border exchanges in electricity.*¹⁶

Provisions in the law outlined in Annex 4 will not apply in NI with respect to “*retail markets and consumer protection*”.¹⁷ Additionally, where the legislation outlined above makes reference to provisions contained in other EU law, those provision will apply in NI only if:

*...it is a provision governing the wholesale electricity markets which applies in [the RoI] and is necessary for the joint operation of the [SEM] in [the RoI] and [NI].*¹⁸

2.2 What is the purpose of Article 11 of the Protocol?

Article 11 of the Protocol seeks to maintain:

*...the necessary conditions for continued North-South cooperation, including in the areas of environment, health, agriculture, transport, education and tourism, as well as in the areas of **energy**, telecommunications broadcasting, inland fisheries, justice and security, higher education and sport. [emphasis added]*¹⁹

Article 11(2) states that the Joint Committee shall keep the extent to which the Protocol “*maintains the conditions*” for North-South cooperation “*under constant review*”. It also gives the Joint Committee the power to “*make appropriate recommendations*” to the EU and the UK in respect to North-South Cooperation. The Specialised Committee also may make recommendations in this area to the Joint Committee, which the Joint Committee then can make to the EU and UK.

¹⁵ *Ibid* Annex 4

¹⁶ *Ibid*

¹⁷ *Ibid*

¹⁸ *Ibid*

¹⁹ *Ibid* Article 11

3 What are potential implications for NI of Articles 9 and 11?

According to the UK Government, Article 9 of the Protocol:

...provides the basis for the continued operation of the Single Electricity Market and trade of wholesale electricity across the island of Ireland.²⁰

This is a positive development for NI. According to the Utility Regulator, the SEM brings the following benefits:

... efficient generation and downward pressure on consumer pricing and in addition ensures security of supply along with environmental benefits.²¹

The continued functioning of the SEM should enable these benefits to continue into the future.

The UK Government adds, however, that from 1 January 2021:

...[SEM] market participants should be aware that there may be alternative arrangements between [GB] and the [SEM].²²

As such the UK Government advises SEM participants to:

...engage with their Regulatory Authority where their preparation identifies significant concerns. Market participants should also check the status of contracts, and licence held in EU member states, which may be impacted from 1 January 2021.²³

The UK Government expands on these points, noting that from 1 January 2021 cross border flows into and out of GB will no longer be governed by EU legislation. This means that new trading relationships may be required for trade between the GB market and the SEM via interconnectors. The extent to which new arrangements are necessary will depend on the outcome of the future relationship negotiations between the UK and the EU and any agreement reached on electricity trade. The UK Government, however, has stated that “*trade on interconnectors may be less efficient*” after the transition period.²⁴

The SEM is connected to the GB market through two interconnectors: (i) the Moyle Interconnector, which connects NI to Scotland, and currently has the capacity to transfer up to 500 Megawatts (MW) of electricity from NI to GB and up to 450MW from GB to NI; and, (ii) the East-West Interconnector between the Rol and Wales, which has the capacity to transfer up to 500 Megawatts (MW) of electricity in either direction.

²⁰ Department for Business, Energy & Industrial Strategy, Guidance: trading electricity from 1 January 2021 (updated 6 November 2019) <https://www.gov.uk/government/publications/trading-electricity-if-theres-no-brexit-deal/trading-electricity-if-theres-no-brexit-deal>

²¹ The Utility Regulator, SEM (accessed 19 May 2020) <https://www.uregni.gov.uk/sem>

²² *Ibid*

²³ *Ibid*

²⁴ *Ibid*

According to the All-Island Generation Capacity Statement 2019-2028, produced by the two transmission system operators on the island of Ireland (Eirgrid and the SONI), as of 2019, there was a total of 8.3 Gigawatts (GW) of electricity generation connected to the electricity systems of NI and the RoI. Of this 0.5GW, or 6%, was from interconnection.²⁵

Two key questions arise here, namely: what impact might new trading relationships have on flows of electricity to and from the SEM and GB, and what impact will this have on security of supply, wholesale prices and consumer prices in both markets?

Potential scrutiny points:

1. Have the Department for the Economy (DfE) carried out an assessment on the what the new electricity trading arrangements between the SME and GB might be?
2. Have the DfE carried out an impact assessment on the potential impact on those new arrangements on security of supply, wholesale prices and consumer prices in NI?

As noted in subsection 3.1 of the paper, Article 11 of the Protocol requires NI to implement a range of EU energy law, with respect to the continued functioning of the SEM. This Article interrelates with Article 13 of the Protocol. Article 13(3) states that EU law will continue to apply in future, despite amendment or replacement of any of that law.²⁶ Additionally, Article 13(4) states that in addition to aligning to existing energy regulation as outlined in Table 3 below, NI may be required to align to future legislation adopted by the EU that “falls within the scope of this Protocol”. Where such a law is adopted, the Joint Committee will “adopt a decision” to add the new law to the Protocol. Alternatively, “where agreement on adding the newly adopted law” cannot be reached, the Joint Committee will:

*...examine all further possibilities to maintain the good function of this protocol and take any decision necessary to this effect.*²⁷

At present, NI is aligned with EU law. Issues may arise, however, when that law is amended or replaced, or when new laws are introduced into the Protocol, as enabled by Article 13. Such issues concern the monitoring and scrutiny of changes to EU law, as well as the implementation of that law. Questions arise over what role Westminster and the NI Assembly will play in scrutinising the evolution of EU law. There are

²⁵ Eirgrid and the SONI, All-Island Generation Capacity Statement 2019-2028 <http://www.eirgridgroup.com/site-files/library/EirGrid/EirGrid-Group-All-Island-Generation-Capacity-Statement-2019-2028.pdf>

²⁶ UK 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 (17 October 2019) Article 13(3) https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/840655/Agreement_on_the_withdrawal_of_the_United_Kingdom_of_Great_Britain_and_Northern_Ireland_from_the_European_Union_and_the_European_Atomic_Energy_Community.pdf

²⁷ *Ibid* Article 13(4)

additional questions as to how NI's voice could be heard in the development of new EU law and the amendment of existing laws.

Potential scrutiny points:

3. Have the DfE given any consideration as to how NI voices would be factored into the Joint Committee deliberations on how future new EU law would be reflected under the Protocol?
4. Has the DfE considered what measures could be put in place to ensure that NI voices are factored into future development of EU law, which aligns to the Protocol? If so, please detail, including whether those considerations have been shared with the NI and the UK levels of government and or elsewhere?
5. Has the DfE considered what structures could be put in place at the NI Executive and the UK Government levels to monitor the implementation under the Protocol of existing and future EU law in respect to NI? If so, please detail, including whether those considerations have been shared with the NI and the UK levels of government and or elsewhere?
6. What structures will be put in place in the NI Assembly and at Westminster to enable the scrutiny of that EU law in respect to NI?
7. Has the DfE considered how the NI Executive and the UK Government could assist business to keep up-to-date with changes to that EU law? If so, please detail, including whether those considerations have been shared with the NI and the UK levels of government and or elsewhere?

Article 11 of the Protocol places a responsibility on the Joint Committee to keep the conditions that maintain North-South cooperation in a range of areas, including energy, under constant review. It also enables the Specialised Committee to make recommendations to the Joint Committee with respect to these areas. The roles and responsibilities of the Joint Committee and the Specialised Committee are outlined in Paper 1 of this series. There it explains that the Specialised Committee's role is as a forum for the exchange of information and mutual consultation.²⁸ It also notes questions regarding scrutiny of the Specialised Committee. Additionally, it is unclear at this point as to how stakeholders in the SEM could make representation to the Specialised Committee.

Potential scrutiny points:

8. Can the DfE shed any light on how will the work of the Specialised Committee be scrutinised?
9. Can the DfE advise the Committee for the Economy on what role (if any) will there be for the UK Parliament in this scrutiny?

²⁸ *Ibid* Article 15(1)

10. What role (if any) will there be for the NI Assembly in scrutinising the work of the Joint Committee?
11. What role (if any) will there be for the NI Assembly in scrutinising proposals to the Specialised Committee for NI?
11. Has the DfE considered what measures could be put in place to ensure NI stakeholders in the SEM could make representation to the Specialised Committee for NI? If so, please detail, including whether those considerations have been shared with the NI and the UK levels of government and or elsewhere?
12. Has the DfE considered what measures could be put in place to ensure effective scrutiny of the work of the Specialised Committee for NI? If so, please detail, including whether those considerations have been shared with the NI and the UK levels of government and or elsewhere?
13. What role (if any) will there be for the UK Parliament in this scrutiny?
14. Has the NI Assembly a role in scrutinising the work of the NI Specialised Committee?
15. Has the NI representative of the Executive briefed the NI Assembly of the issues discussed in the meeting? If no, are there plans to do this?

4 Concluding remarks

The Protocol provisions addressing the SEM seek to ensure the continued operation of that wholesale electricity market at the end of the transition period, due to end on 31 December 2020 (at the time of writing). The Protocol aims to achieve this by ensuring that NI continues to implement a range of EU law with respect to wholesale electricity markets. Additional provisions place a responsibility on the Joint Committee to monitor the conditions that enable north-south cooperation in a number of areas, including energy. The Joint Committee has the power to make recommendations to the UK and the EU in respect to north-south cooperation. The Specialised Committee for NI also may make recommendations arising to the Joint Committee with the respect to north-south energy cooperation.

Section 3 of this paper identified a number of issues potentially arising out from these provisions. They are summarised here:

- The UK Government has noted that the GB market will no longer implement EU law with respect to its wholesale electricity markets. It has warned the electricity trade between GB and the SEM may become “*less efficient*” in the post-transition period (although the extent to which this occurs is dependent on the future relationship

agreed between the UK and the EU).²⁹ As of 2019, interconnection between the SEM and GB accounted for approximately 6% of NI generation capacity.³⁰

Questions arise as to what impact inefficiency will have on this interconnection; and what the “knock-on” effects on security of supply and the prices paid by end users will be.

- The provisions of the Protocol that deal with the SEM oblige NI to implement EU law. This law may be amended or replaced. Additionally, new law in this area may be added to the Protocol on the agreement of the Joint Committee. Questions arise as to how NI will keep up-to-date with changes to EU law in this area, as well as how the implementation of this law will be scrutinised, and the influence that NI might have on the development of EU law.
- As noted, the Protocol provides the Joint Committee with a role in monitoring and making recommendations with respect to energy as an issue of north-south cooperation. The Specialised Committee also may make recommendations to the Joint Committee in this area. Questions arise concerning the scrutiny of these two Committees, and how stakeholders in the SEM could feed into the work of those Committees.

²⁹ Department for Business, Energy & Industrial Strategy, Guidance: trading electricity from 1 January 2021 (updated 6 November 2019) <https://www.gov.uk/government/publications/trading-electricity-if-theres-no-brex-it-deal/trading-electricity-if-theres-no-brex-it-deal>

³⁰ Eirgrid and the SONI, All-Island Generation Capacity Statement 2019-2028 <http://www.eirgridgroup.com/site-files/library/EirGrid/EirGrid-Group-All-Island-Generation-Capacity-Statement-2019-2028.pdf>