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Constitution, Europe, External Affairs and Culture Committee

Legislative Consent Memorandum for the Northern Ireland Protocol Bill (UK Parliament legislation)



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Constitution, Europe, External Affairs and Culture Committee

To consider and report on the following (and any additional matter added under Rule 6.1.5A)—

- (a) the Scottish Government's EU and external affairs policy;
- (b) policy in relation to the UK's exit from the EU;
- (c) the international activities of the Scottish Administration, including international development; and
- (d) any other matter falling within the responsibility of the Cabinet Secretary for the Constitution, External Affairs and Culture and any matter relating to inter-governmental relations within the responsibility of the Deputy First Minister.



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Introduction

1. As lead committee, the Constitution, Europe, External Affairs and Culture Committee (“the Committee”) is required under Rule 9B.3.5 of the Standing Orders to report on the Northern Ireland Protocol Bill Legislative Consent Memorandum (LCM).
2. The Committee heard oral evidence on the LCM and the Bill, including from the Cabinet Secretary for the Constitution, External Affairs and Culture (“the Cabinet Secretary”), at its meeting on 27 October 2022. The Committee thanks all those who gave evidence.
3. The Committee also considered the [report](#) of the Delegated Powers and Law Reform Committee (DPLRC) which considered the delegated powers in the Bill.ⁱ
4. The LCM states that—

” “The Scottish Government believes that the Parliament should not give consent to the Bill, for three reasons – its potential illegality; the impact it is already having on Scottish interests; and its potential future impact, in the event of further escalation in the UK Government’s associated dispute with the EU.” ¹
5. The Committee notes that the Scottish Government does not intend to lodge a legislative consent motion in relation to the Bill.
6. At our meeting on 6 October 2022, the Committee agreed to focus our scrutiny of the LCM on the issues raised in our recent report on *The Impact of Brexit on Devolution*. In particular, on the concerns identified in our report in relation to the operation of the Sewel Convention and the post-EU step change in the use of delegated powers both by UK Ministers and devolved Ministers. ²
7. **The Committee’s view is that its scrutiny of the LCM and the Bill provides further evidence for the need to re-set the constitutional arrangements within the UK following EU withdrawal, both in respect of relations between the UK Government and the devolved governments and between the four legislatures and governments across the UK. These relations are clearly not working as well as they should and this needs to be addressed.**
8. **The Committee welcomes the commitment of the previous Chancellor of the Duchy of Lancaster, Rt Hon Nadhim Zahawi MP, to submit a written response to us on the findings of our report on *The Impact of Brexit on Devolution* and to consider a possible oral evidence session once the Committee has received and considered the written submission.**
9. **The Committee understands that Ministerial responsibility for inter-governmental relations has now moved across to the Department for Levelling Up, Housing and Communities and we will write to the Secretary**

ⁱ Oliver Mundell MSP dissented from the DPLRC report

of State, Rt Hon Michael Gove MP, inviting him to meet the commitment of the previous Chancellor of the Duchy of Lancaster and to also respond to the findings of this report.

- 10. The Committee will also write to the Minister in charge of the Bill, Rt Hon James Cleverly MP, Secretary of State for Foreign, Commonwealth and Development Affairs and invite him to respond to the findings of this report in relation to the Bill.**

Sewel Convention

11. Professor Aileen McHarg has previously advised the Committee that the Sewel Convention performs two distinct functions—



- “A *defensive function*, providing reassurance to the devolved legislatures that their primary political authority in relation to devolved matters will be respected, despite the continuing assertion of Westminster’s legislative omnipotence;
- A *facilitative function*, enabling co-operation between the UK and devolved institutions in areas of intersecting competence or shared concern.”³

12. We considered the LCM within the context of the extent to which the UK’s withdrawal from the EU and subsequent impact on the UK’s internal constitutional dynamics has exposed the limitations of the Convention in relation to both these functions.

Defensive function

13. As we have noted previously, since 2018 a number of pieces of legislation to manage the UK’s exit from the EU have been passed at Westminster without the consent of at least one of the devolved legislatures. The Scottish Parliament has withheld consent in relation to the following—

- The European Union (Withdrawal) Act 2018;
- The European Union (Withdrawal Agreement) Act 2020;
- The European Union (Future Relationship) Act 2020;
- The UK Internal Market Act 2020;
- The Professional Qualifications Act 2022; and
- The Subsidy Control Act 2022.

14. Our Adviser, Dr Chris McCorkindale has suggested two important and interrelated changes to how Sewel operates. First, that while pre-Brexit there was “a well understood definition of the convention that included both policy and constitutional arms, now we find disagreement about the scope of the convention at least with regard to the latter.” Second, that “the requirement normally to obtain consent seems to be evolving into a requirement merely to seek consent (whether that consent is obtained or withheld).”⁴

15. In our report on *The Impact of Brexit on Devolution*, the Committee noted that even “prior to Brexit the lack of clarity regarding ‘not normally’ was widely considered as a weakness of the legislative consent process.” Our witnesses also emphasised during that inquiry that “this weakness has become much more evident post-Brexit especially in relation to the Brexit-related Bills passed by Westminster without the consent of at least one of the devolved legislatures.”²

Facilitative function

16. The LCM states that the UK Government “did not involve the Scottish Government in the preparation of the Bill, and the Scottish Government was provided with a copy of it only two hours before it was introduced.”¹
17. The Welsh Government has also stated that the Bill was introduced in the House of Commons “without any prior meaningful engagement by the UK Government with the Welsh Government about the Bill.”⁵
18. The Bill’s explanatory notes state that the Bill “contains provisions which cover devolved or transferred matters. Where the Bill engages the Legislative Consent Motion process, the UK Government will write to the devolved administrations to seek consent to legislate in the normal manner.”⁶
19. As we noted in our report on *The Impact of Brexit on Devolution*, the UK Government’s Devolution Guidance Note (DGN) 10 states that “there will be consultation with the Scottish Executive on policy proposals affecting devolved matters whether or not they involve legislative change”. For draft bills which do require consent, DGN 10 states that “the essential requirement is that by the time proposals reach LPⁱⁱ, devolution related issues have been substantively resolved.”⁷
20. A number of our witnesses during our inquiry into *The Impact of Brexit on Devolution* raised concerns about the extent to which the UK leaving the EU and its aftermath has exposed the limitations of the facilitative function of the Convention.
21. In considering the LCM, we asked our witnesses for their view on the operation of the Convention within the context of the NI Protocol Bill. The Hansard Society responded that it “is extremely worrying” and we “cannot exclude the possibility that we will end up at a point of constitutional crisis, if not on this bill, on some other bill.” They added that “we have a series of bills that are pulling on the question of who is and who should be making the law in areas of devolved competence” and “it is difficult to see, at least for the foreseeable future, how that will be resolved or alleviated.”⁸
22. The Cabinet Secretary told us during oral evidence on the LCM that the Convention “is very much observed in the breach” and “it is increasingly being interpreted in a different way by the UK Government to simply say that, as long as one has consulted on consent, that satisfies the convention.”⁸
23. **The Committee has previously reported that in our view the Sewel Convention is under strain following Brexit. Our consideration of the Northern Ireland Protocol Bill LCM reinforces that view.**

ii “LP” means the UK Government Cabinet Committee which signs off proposals for bills.

Delegated Powers

24. The Bill does not give any powers to the Scottish Ministers. It does, however:
- give regulation-making powers to UK Ministers that are exercisable within the legislative competence of the Scottish Parliament; and
 - enable UK Ministers to sub-delegate these powers to (among others) the Scottish Ministers.
25. A key theme in the Committee's report on *The Impact of Brexit on Devolution* was that there has been a significant step change in the approach to the use of delegated powers during the preparations for EU exit and its aftermath. When the Scottish Parliament was established in 1999, UK Ministers' powers to make secondary legislation in devolved areas were transferred to Scottish Ministers with only a few exceptions.
26. We identified two significant areas of concern in that report—
- the scope of delegated powers being conferred on UK Ministers in devolved areas and on Scottish Ministers where these powers are concurrent;
 - the Sewel Convention does not apply to secondary legislation.
27. These findings provide the framework for the Committee's consideration of the LCM and the delegated powers within the Bill.

Scope

28. The LCM states that the Bill "is also concerning for the breadth of powers that it confers on the UK Government." The LCM notes that the Bill "will enable UK Ministers to create broad swathes of 'new law' to replace the provisions of the Protocol which are dis-applied" and quotes the view of Professor Catherine Barnard that these measures are "eye wateringly broad."¹
29. Our Adviser, Dr McCorkindale notes that the Bill includes "a number of very broad powers for UK Ministers to act in devolved areas, buttressed by Henry VIII powers to suspend or repeal Acts of the Scottish Parliament, and enables UK Ministers to sub-delegate those powers to Scottish Ministers."⁹
30. In his view, this presents a significant challenge for the Scottish Parliament in the exercise of its legislative and scrutiny functions. First, because the number and scope of these powers undermine a fundamental principle of the UK constitution – the executive and legislative autonomy of the Scottish Government and Scottish Parliament in the devolved sphere. Second, because UK Ministers are accountable to the UK Parliament for the exercise of those powers, undermining the Scottish Parliament's scrutiny function in devolved areas.⁹
31. Our Adviser also points out that whereas Scottish legislation that encroaches upon reserved matters is vulnerable to judicial strike down, the regulation of UK legislation that encroaches upon devolved areas is political in nature. He suggests

“we are now pushing at the limits of a form of regulation that relies so heavily on the good will of, and shared understandings with, the centre in lieu of mutually agreed processes and the neutral arbitration of disagreement between the centre and the devolved administrations.” In his view, this highlights the underlying issue of the balance of power in the post-EU exit constitution which the Committee noted in our report on *The Impact of Brexit on Devolution*.⁹

32. The Hansard Society told us that they “broadly agree that the Bill presents a significant constitutional problem” given the following issues—
 - the nature of the Bill and the powers that are in it are so broad that the Bill grants considerable powers to UK Ministers across a broad range of areas;
 - the question of UK Ministers being able to legislate in areas of devolved competence;
 - in relation to the way in which powers can be sub-delegated to the Scottish Ministers, the Bill also undermines the role of Parliament because of the absence of the provisions for the scrutiny of the exercise of powers that you would normally see contained in Bills.⁸
33. Sir Jonathan Jones KC (Linklaters LLP), former head of the UK Government’s legal department, told us that the UK Government’s “tendency to introduce legislation that confers very wide powers on ministers with limited opportunity even for the UK Parliament to scrutinise their exercise is a serious problem” and the Bill “is a very strong example of that tendency.”⁸
34. The DPLRC notes in its report that the House of Lords Delegated Powers and Regulatory Reform Committee (DPRRC) is “highly critical of the delegated powers in the Bill.”¹⁰ The DPRRC state that the Bill is “a skeleton bill that confers on Ministers a licence to legislate in the widest possible terms” and “represents as stark a transfer of power from Parliament to the Executive as we have seen throughout the Brexit process.”¹¹
35. The DPLRC states that it shares the DPRRC’s “concerns that every power in the Bill is a ‘Henry VIII’ powerⁱⁱⁱ and moreover is capable of making any provision that could be made by an Act of Parliament.” The DPLRC is also of the view that “the blanket availability of ‘super Henry VIII’ powers in the Bill, exercisable by UK Ministers within devolved competence and capable of sub-delegation to Scottish Ministers, is not an appropriate delegation of power.”¹⁰
36. Sir Jonathan Jones KC told us that the “scope of the powers is so wide that one

ⁱⁱⁱ Henry VIII powers are those which enable secondary legislation to repeal or amend primary legislation. The usual constitutional principle is that primary legislation, passed by parliament, should be repealed or amended only by other primary legislation passed by parliament, not by secondary legislation made by the executive. Key to this principle is that where the executive wants to amend or repeal primary legislation which has been put in place by Parliament, it should do a way of a bill, which will receive full parliamentary scrutiny, and which Parliament has the opportunity to amend. Secondary legislation receives a far lower level of scrutiny and Parliament cannot amend it, only approve or reject it as a whole.

could have no certainty about how, whether or when they will be exercised and therefore what the legal effect will be at the end of the process.”⁸ The Bingham Centre for the Rule of Law are also of the view that “the scope of the powers in the bill is extremely wide.”⁸

37. The Hansard Society stated that the Bill “undermines the principles of parliamentary democracy, because you are being asked to confer powers on ministers without having any detail about how they will propose to use them.”⁸ They told us “the problem is that the nature and breadth of the powers and the lack of detail mean that you can read the entirety of the bill and have absolutely no real idea of what it is that the Government intends to do and how it will use the powers.”⁸
38. The Delegated Powers Memorandum published alongside the Bill states that the UK Government “has not taken the decision to seek powers lightly but considers them appropriate given the grave and imminent situation in Northern Ireland and the need to ensure the Government can act quickly and flexibly as appropriate to restore the balance of the institutions under the Belfast (Good Friday) Agreement.”¹²
39. Specifically, on the delegated powers within the Bill, the memorandum states “that some of the delegated powers provided for in this Bill are necessarily broad”. The memorandum notes that “concerns previously raised by Parliament regarding the appropriate degree of scrutiny on the exercise of delegated powers, particularly where they may amend an Act of Parliament or make retrospective provision, have been carefully considered”. As such, “where the powers in the Bill may be exercised so as to amend an Act of Parliament or to make retrospective provision, regulations may not be made unless they are first approved by each House of Parliament”.¹²

Sub-delegation

40. As noted above, the Bill enables UK Ministers to sub-delegate powers to (among others) the Scottish Ministers. The DPLRC points out that a “blanket sub-delegation provision is a novel approach to how powers are to be allocated between the UK and devolved governments” and it “has not seen this before, even in other post-EU bills.”¹⁰
41. Our Adviser, Dr McCorkindale also points out that this is an unusual approach given “one would normally expect to find both the delegation of powers, and the level of scrutiny to be applied to the exercise of those powers, on the face of the Bill.”⁹ He suggests that this has a number of significant implications for the role of the Scottish Parliament, which we discuss below.
42. The DPLRC has written to the UK Government asking for further explanation of why the sub-delegation model was chosen over the conventional approach of directly conferring powers on Scottish Ministers on the face of the Bill but has yet to receive a response. The DPLRC reports that, in the absence of further explanation, it “considers it inappropriate that the Bill gives UK Ministers the choice whether to sub-delegate to Scottish Ministers the powers in the Bill that are exercisable within devolved competence.”¹⁰
43. The Inter-Parliamentary Forum at its meeting on 28 October 2022, which was

attended by the Convener, noted "the increasing concern across each of our legislatures and from independent commentators in relation to the scope of delegated powers in UK legislation related to EU exit." Members attending from each legislature "agreed to report back to scrutiny committees in their respective legislatures, including those in Westminster scrutinising [the Northern Ireland Protocol Bill and Retained EU Law Bill] during their passage through the Commons and Lords." ¹³

44. **The Committee's view is that the scope of the delegated powers in this Bill, some of which may be sub-delegated to the Scottish Ministers, need to be viewed within the wider context of the scope of delegated powers in other Bills related to the UK leaving the EU. Taken together, this presents a significant risk to the balance of power between the Executive and the Legislature both at a UK and devolved level.**
45. **Given the extent of this risk, the Committee will write to the Presiding Officer highlighting these concerns and will copy the letter to the Speaker of the House of Commons, the Lord Speaker, and the Presiding Officer of Senedd Cymru.**

Legislative Consent

46. As noted above, the Bill gives UK Ministers sweeping powers. These powers may be exercised in areas of devolved competence within the responsibility of the Scottish Parliament and UK Ministers may also sub-delegate these powers, if they wish, including to Scottish Ministers.
47. This raises two scrutiny challenges for the Scottish Parliament—
 - Any use of these powers by UK Ministers in devolved areas;
 - Any decision to sub-delegate these powers to the Scottish Ministers and any subsequent use by the Scottish Ministers.
48. We discuss each in turn below.

Use of delegated powers by UK Ministers in devolved areas

49. The DPLRC notes that there "is no requirement in the Bill that UK Ministers obtain or seek the consent of the Scottish Parliament or Scottish Government before exercising any of the powers in the Bill in devolved areas." ¹⁰ The regulations would be laid in the UK Parliament only, giving no opportunity for scrutiny by the Scottish Parliament.
50. The DPLRC also notes that there "does not appear to be any political commitment in the accompanying documents that UK Ministers will seek/obtain the consent of the devolved authorities when exercising the delegated powers within devolved competence." This means that "[SI Protocol 2](#) will not operate effectively in relation to these powers because of the absence of a consent requirement." ¹⁰

51. The Hansard Society told us that the “problem is that the legislation at Westminster that is coming from the Government is silent about what should happen when UK ministers intend to legislate by statutory instrument in areas of devolved competence.”⁸
52. Our Adviser highlights that the higher the number and scope of powers taken by UK Ministers in devolved areas—in this Bill and elsewhere—the greater the opportunity for the UK Government to by-pass the legislative consent procedure altogether, by choosing to act through delegated rather than primary law-making powers.
53. He also points out that where, as with this Bill, there is no legal requirement or political commitment on the part of UK Ministers to seek consent from Scottish Ministers for the exercise of powers in devolved areas, there is no consent decision by the Scottish Government upon which the scrutiny function of the Scottish Parliament can bite. This means that the Scottish Parliament is increasingly dependent upon effective scrutiny in the UK Parliament to regulate the exercise of very broad powers in devolved areas.⁹
54. However, as the Committee has noted previously, a number of independent commentators have raised concerns about the level of scrutiny of Statutory Instruments at Westminster. The Hansard Society previously told us that through their research “we find that scrutiny of UK statutory instruments in Westminster does not, in our view, provide for adequate oversight by the legislature of Executive action to make regulations.”¹⁴ They believe “the system needs wholesale reform to prevent further erosion of Parliament’s legislative authority.”¹⁵
55. The Public Law Project share a similar view of delegated legislation at the UK Parliament, stating that the “UK’s system of scrutiny of delegated legislation does not have the capacity to provide proper parliamentary oversight for powers of wide breadth and scope” and “the lack of scrutiny also produces poorer quality laws and policy.”¹⁶
56. The DPLRC wrote to the UK Government on 12 July 2022 setting out its view that—
- “The Scottish Parliament should have the opportunity to effectively scrutinise the exercise of all legislative powers within devolved competence.
 - Where such powers are exercised by the Secretary of State in devolved areas, there is no formal means by which the Scottish Parliament can scrutinise such regulations or be notified that they had been laid before the UK Parliament.
 - Powers conferred on the Secretary of State should be subject to a requirement for the Scottish Ministers’ consent when exercised within devolved competence.
 - As a minimum, powers when exercised by the Secretary of State in devolved areas should be subject to the process set out in the SI Protocol 2 where the power is within the scope of that protocol.”¹⁷
57. As we have noted previously, the Secretary of State for Levelling Up, Housing and Communities responded that powers for the UK Government to make SIs in devolved areas “are not new and have been used across a wide range of policy

areas since the advent of devolution.” He also indicated that “[w]hether or not to include statutory consent requirements is considered on a case-by-case basis as each policy area has a different legislative context.”¹⁸

58. But as we have previously stated, prior to the UK leaving the EU, UK Ministers would principally make secondary legislation in devolved areas that implemented EU obligations and with the consent of Scottish Ministers. The UK Government did not generally have powers to make secondary legislation in devolved areas and did not often do so.

59. **The Committee reiterates our view that the extent of UK Ministers’ new delegated powers in devolved areas amounts to a significant constitutional change. Consequently, there is an urgent need to address the ad hoc and inconsistent approach to consent mechanisms for the exercise of delegated powers by UK Ministers in devolved areas. The Committee’s view is that it is an important constitutional principle that the Scottish Parliament should have the opportunity to effectively scrutinise the exercise of all legislative powers within devolved competence.**

Sub-delegation

60. Our Adviser, Dr McCorkindale suggests that the Scottish Parliament “should be alert to the existence and exercise of this power of sub-delegation, for a number of constitutionally significant reasons”, as follows—
- there is no requirement that UK Ministers consult with the Scottish Government or the Scottish Parliament before sub-delegating powers to Scottish Ministers under the Bill;
 - unlike other delegated powers contained in the Bill, there is no provision for the level of scrutiny to be applied to the exercise of sub-delegated powers (merely a commitment to make any sub-delegated power subject to ‘appropriate’ procedures before the Scottish Parliament);
 - with the content, purpose and regulation of sub-delegated powers left for another day, these devolution powers are the most ‘skeletal’ of this framework Bill’s provisions;
 - the scope of the sub-delegation powers includes the potential to confer constitutionally problematic powers such as powers to amend, suspend or repeal Acts of the Scottish Parliament, powers to make regulations with retrospective application or powers to make regulations that are incompatible with the NI Protocol itself (i.e. that enable Scottish Ministers to act incompatibly with the UK’s international obligations).⁹
61. The DPLRC “is concerned that the Scottish Parliament will have no opportunity to scrutinise whether or how the powers will in fact be sub-delegated” and recommends that “these powers should be conferred, on the face of the Bill, on Scottish Ministers. This is necessary (i) to enable the Scottish Parliament to

consider in its scrutiny of the LCM whether it is content with the way in which powers within its competence are being delegated; and (ii) to ensure the Scottish Parliament's role in scrutinising the use of those powers.”¹⁰

62. The DPLRC notes that the parliamentary procedure which would apply to the exercise of sub-delegated powers by the Scottish Ministers is not specified in the Bill. The Bill provides instead that the regulations making the sub-delegation may set down the scrutiny procedure that will apply to sub-delegated regulations. The DPLRC has asked the UK Government why it is not considered appropriate to set out the procedure on the face of the Bill, given that the chosen approach means that the Scottish Parliament has no say in how these powers, which are a delegation of matters within its competence, are to be scrutinised. In the absence of further explanation, the DPLRC considers that the parliamentary procedure for making sub-delegated regulations should be set out on the face of the Bill.
63. Sir Jonathan Jones KC told us that “UK ministers can decide, at their discretion, that some aspects of the powers are sub-delegated to, say, Scottish ministers, but we have no way of knowing whether that will happen.” He points out that there “is no opportunity—there is certainly no legal opportunity—for the Scottish Government or the Scottish Parliament to influence that decision; there is no obligation under the bill to consult.”⁸
64. The Hansard Society told us that the Bill “is granting power to be exercised by the devolved Government via a sub-delegated power to, in effect, make tertiary legislation” which “has legal force, but it is extremely difficult to scrutinise it. Fundamentally, it breaks the important link between those who are empowered to make the law and the accountability to Parliament, whether at Westminster or in Scotland.”⁸
65. The DPLRC highlight that consideration of the LCM is the only opportunity for the Scottish Parliament to “have a say in relation to the potential conferral of these powers on Scottish Ministers, because the actual conferral of the powers would be done by secondary legislation laid only in the UK Parliament.”¹⁰

66. **The Committee's view is that there are significant risks to the Scottish Parliament's legislative and scrutiny functions arising from—**
 - the lack of any requirement for UK Ministers to consult with the Scottish Government or the Scottish Parliament before sub-delegating powers to Scottish Ministers; and
 - the lack of detail in the Bill regarding the level of scrutiny to be applied to the exercise of sub-delegated powers.
67. **The Committee notes that this risk is heightened given the scope of the sub-delegation powers includes the potential to confer constitutional powers—**
 - such as those to amend, suspend or repeal Acts of the Scottish Parliament;

- **to make regulations with retrospective application; or**
- **to make regulations that are incompatible with the NI Protocol itself.**

Power to make provision that is incompatible with the Protocol

68. Clause 22(2)(b) of the Bill says: “Regulations under this Act may, in particular— (a) make provision notwithstanding that it is not compatible with the Northern Ireland Protocol or any other part of the EU withdrawal agreement...”
69. This gives explicit authority to UK Ministers, and to Scottish Ministers if power is sub-delegated to them, to make regulations that would be incompatible with the Protocol.
70. The LCM states that the Scottish Government cannot recommend providing legislative consent for a Bill that reneges on a legally binding international treaty that the UK Government signed less than two years ago, and which poses so great a risk of breaking international law.¹
71. The DPLRC, without taking a view on whether the exercise of the powers would in fact be compatible with international obligations, considers that the Scottish Ministers should not be given power to make provision that, on the face of it, would be in breach of an international agreement.¹⁰
72. The Law Society of Scotland have stated that “[a]s a matter of principle regulations should not be deployed to depart from the terms of an international agreement.”¹⁹
73. The Scotland Act 1998 empowers the Secretary of State to order the Scottish Government to refrain from taking actions that are incompatible with the UK’s international obligations or, conversely, to direct the Scottish Government to take action to give effect to the UK’s international obligations. However, our Adviser, Dr McCorkindale points out that “there are no meaningful safeguards in the Scotland Act where the UK Government intends for the Scottish Government to act incompatibly with international obligations or to enable the Scottish Government to do so.”⁹
74. **The Committee notes that the Scottish Parliament agreed the following motion without division on 29 June 2022—**

” “That the Parliament agrees that it is fundamentally unacceptable for the UK Government to unilaterally disapply key parts of the EU-UK Withdrawal Agreement, the signing of which the Prime Minister^{iv} hailed as a “fantastic moment”; further agrees that by proposing this course of action the UK Government is risking a disastrous trade dispute with the European Union, with damaging consequences for Scotland in the midst of a cost of living crisis and at a time when the UK is in danger of falling into recession; condemns that the Bill breaks international law and risks the integrity of the Good Friday Agreement, and calls, therefore, on the UK Government to withdraw the Northern Ireland Protocol Bill and restart negotiations with the EU immediately.”²⁰

75. The Committee also notes that since then, the Bill has passed through the House of Commons unamended and is now progressing through the House of Lords.

^{iv} The Prime Minister at the time of the motion was Rt Hon Boris Johnson MP

Annex A - Minutes

Constitution, Europe, External Affairs and Culture Committee - Meeting Minutes - 23rd Meeting, 2022 - Thursday 27 October 2022

2. Northern Ireland Protocol Bill (UK Parliament legislation): The Committee will take evidence on the legislative consent memorandum LCM(S6)24 from—

- Professor Catherine Barnard, Deputy Director, UK in a Changing Europe
- Dr Ruth Fox, Director, Hansard Society
- Sir Jonathan Jones KC, Senior Consultant, Linklaters LLP
- Dr Oliver Garner, Research Fellow, Bingham Centre for the Rule of Law

and then from—

- Angus Robertson, Cabinet Secretary for the Constitution, External Affairs and Culture, Scottish Government
- Frank Strang, Deputy Director of EU Relations, Scottish Government
- Chris Nicholson, Solicitor, Scottish Government

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- [6] Explanatory Notes for the Northern Ireland Protocol Bill. (2022, June 13). Retrieved from <https://publications.parliament.uk/pa/bills/cbill/58-03/0012/en/220012en.pdf>
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