



Northern Ireland  
Assembly

Committee for The Executive Office

# OFFICIAL REPORT (Hansard)

United Kingdom Exit from the European  
Union: Mr Declan Kearney MLA and Mr Gary  
Middleton MLA, Junior Ministers, Executive  
Office

30 June 2021

# NORTHERN IRELAND ASSEMBLY

## Committee for The Executive Office

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**Members present for all or part of the proceedings:**

Mr Colin McGrath (Chairperson)  
Mr John Stewart (Deputy Chairperson)  
Ms Martina Anderson  
Mrs Diane Dodds  
Mr Trevor Lunn  
Mr George Robinson  
Ms Emma Sheerin  
Mr Christopher Stalford

**Witnesses:**

Mr Kearney	junior Minister
Mr Middleton	junior Minister

**The Chairperson (Mr McGrath):** I welcome to the meeting Minister Kearney and Minister Middleton, who have come along to give us the regular update on EU matters and, I am sure, to address any other matters that we can raise while we have them here. Ministers, you are very welcome. As ever, thank you very much for coming to the Committee. We always look forward to having a catch-up with you. We will pass over to you for a short presentation, and then we can move into questions and answers. I will pass over to whomever wants to take the lead.

**Mr Middleton (Junior Minister, The Executive Office):** Thanks, first of all, for the invitation and the opportunity to come to speak to all of you about EU-exit matters. The Committee will have received a written briefing from junior Minister Kearney and me, and that will provide an update up until 16 June. I will now provide another short update, and junior Minister Kearney will come in with more information.

First, I apologise that we have not been able to respond to the requests following the last Committee briefing for further information on the status of the common frameworks. We have been trying to get the information and to check the position on the frameworks, which, of course, sit with DAERA, and we will respond to you as soon as that response is received.

Work is continuing across Departments to address the residual withdrawal agreement issues related to the end of the transition period. Addressing those issues remains an ongoing and fluid process as the UK and the EU continue to engage on a number of areas, including those that are subject to additional grace periods. Ministers and officials have continued to take the opportunities available to them not only to ensure that the UK Government and the EU are fully aware of the impacts of the end of the transition period on our local businesses and citizens but to emphasise the need for ongoing

engagement with us. We have been clear in our representations to the Government that it is essential that we are represented in the governance structures of the Trade and Cooperation Agreement (TCA) and the withdrawal agreement, particularly where that falls within the devolved competence of the Executive and the Northern Ireland Assembly.

Lord Frost has set out the Government's approach to engagement on the TCA implementation. Whitehall Departments will be primarily responsible for the detailed implementation in their policy areas of the Trade and Cooperation Agreement, including chairing the relevant specialised committee and engaging directly with their counterparts in each jurisdiction. Executive members will attend the partnership council, which oversees the implementation and operation of the TCA at a political level, when items of devolved competence are included on the agenda. While it is unlikely that there will be an opportunity for our Ministers to speak at the partnership council, a ministerial pre-meeting with Lord Frost will be convened prior to each meeting to enable our Ministers to put forward their views on the position taken by the Government on each agenda item. The first meeting of the partnership council was held on 9 June, and, in preparation, the former First Minister and the deputy First Minister attended a ministerial pre-meeting chaired by Lord Frost at which there was an opportunity to put forward their views. The agenda for the partnership council included discussions on sanitary and phytosanitary (SPS) and customs facilitation, fisheries, law enforcement, long-term visa fees, union programmes and TCA governance structures.

The next steps are for the first meetings of the 19 specialised committees under the TCA to take place, with the SPS and fisheries committees being considered a priority. The TCA will have interdependencies and interactions with the withdrawal agreement, and that means that there is significant potential for a decision to be taken jointly on the operation of both agreements, which can impact on our businesses, our economy and our citizens. There are also implications for both agreements in the case of dispute resolution for non-compliance. That is why it is important for our Ministers and officials to be able to ensure that our position is understood in advance of the partnership council meetings and that the engagement is meaningful and effective.

The Committee will be aware that the European Union settlement scheme (EUSS) will close to new applications today. We have continued to do all we can to encourage applications from EU, EEA and Swiss citizens living here, and we recognise the valuable contribution that they make to our economy, our culture and our wider society.

The Committee will also be aware that we have been supplementing the Home Office media campaign with our local campaign, which, over the last number of weeks, has focused on the deadline and the fact that time to apply is running out. Officials have continued to support the work of the two advocacy agencies, namely the South Tyrone Empowerment Programme (STEP) and Advice NI, on final messaging, with important reminders also being sent to key organisations, including but not limited to consulates, faith leaders, Departments and local councils, asking that they continue to do all that they can to encourage applications. Finally, the Executive Office will continue to engage with our stakeholders in the Home Office to identify and encourage flexibility for those who may need to make a late application.

I will now pass over to junior Minister Kearney.

**Mr Kearney (Junior Minister, The Executive Office):** Is é bhur mbeatha go léir, agus go raibh maith agaibh as ucht cuireadh a thabhairt domh bheith libh tráthnóna. Thanks to Gary for those initial remarks.

To continue on the theme of rights, I will provide an update on article 2 of the protocol, which deals with the rights of individuals. The Committee will appreciate the importance of good communication and close relationships in allowing us to be aware of any EU developments that may be relevant to the commitments detailed in article 2. Our briefing note to the Committee sets out how it is anticipated that information will flow from the NIO in respect of article 2. The Executive Office has commenced regular meetings with the NIO and separately with the Human Rights Commission and the Equality Commission at a working level in order to allow for the identification of emerging areas of focus in relation to article 2, any impacts of British Government activity and any changes that might affect the Executive. There are also ongoing monthly meetings at official level between the NIO, the Human Rights Commission and the Equality Commission to allow for an exchange of information and the provision of updates, including for the commissions to provide information on their work, in relation to article 2. Last year, our officials facilitated the delivery of a webinar on article 2 for the Civil Service, which was delivered by NIO officials. It is planned that a further general awareness-raising article will

be disseminated shortly, as it is understood that there is further work to be done on training and awareness raising.

I will now provide an update on the recent meeting of the Joint Committee. The then First Minister and the deputy First Minister attended the eighth meeting of the Joint Committee on 9 June. At the meeting, David Frost set out the challenges that the British Government consider to be associated with the introduction of the protocol. The EU called for the protocol to be implemented in full. The then First Minister expressed her support for David Frost's position and stated that trade from Britain to the North is of critical economic and political importance. The deputy First Minister intervened to urge the British Government and the EU to work together to find long-term solutions to the political agreements that have been made.

While the discussion at the Joint Committee confirmed that progress has been made on finding solutions in some areas, there is still significant divergence between the British Government and the EU, particularly on SPS issues. We understand that the EU considers that it may have found solutions on medicines, VAT on second-hand cars and tariff rate quotas. However, it has not shared the detail of that with us.

There have also been indications that the EU has agreed to an extension to the grace period on chilled meats, as requested recently by the British Government, and an announcement is expected imminently. I believe that it may come this afternoon. While the extension is welcome, in that it avoids immediate issues, it will bring a range of issues to a head in October, given the simultaneous ending of the grace period for supermarkets and the British Government's introduction of controls associated with the first phase of a British border operating model. We will need to monitor that to ensure that we understand the impacts for us.

There are no further meetings of the Joint Committee scheduled. We will continue to monitor progress on ongoing discussions as well as the engagement of our officials in the Specialised Committee.

To conclude, it is clear that there are real challenges remaining that must be addressed. We welcome the discussions that are ongoing on a wide range of issues and the fact that David Frost and Maroš Šefčovič continue to engage with our businesses and civic society. The message from our business community continues to be that there is a need for agreed long-term solutions that will give businesses the stability to enable them to invest and grow. We will continue to amplify that message in our discussions with the British Government and the EU. I hope that that provides you with a helpful update on EU matters this afternoon.

**The Chairperson (Mr McGrath):** Ministers, thank you very much indeed for that update. We will now move to questions and see whether we can get some discussion.

Ministers, today's High Court judgement has, I think, underscored the fact that any decision on the constitutional future of the North will be taken by the people of Northern Ireland. Brexit does not impact that. That is clear. Trade conditions that are in place east-west are similar to the existing SPS checks that already take place, and they do not threaten the constitutional status of the North. Will the Ministers agree that this is a time for facts and level heads and not a time for hyperbole, which could cause many outcomes, including, as we know, violence on our streets?

**Mr Kearney:** Yes, Colin, absolutely. I completely concur with your point. We need to get into the realm of facts and dispense with the fake news that has had a very regressive effect on the wider public discourse. We have touched on that in the Committee before. The current constitutional situation has also been addressed in the Committee before, but it is explicitly provided for in article 1 of the protocol.

David Frost himself, at a recent Westminster hearing, pointed out in an emphatic way that the protocol poses no present constitutional threat to the status quo. He made a clear distinction between the operation of the protocol and any wider constitutional or political issues, which do not apply in our situation. Your comments about ensuring that we have level heads in this period is especially relevant as we come into what can often be a contentious, controversial and, at times, problematic time of year, when issues of rancour and discord can become more amplified.

It is, therefore, particularly important that we take on board your observation as we approach the Twelfth period and that all the celebrations of the Orange tradition that surround the eleventh and Twelfth and the general time of year take place in a calm, reasoned and enjoyable atmosphere for those who wish to participate in the traditional annual celebrations.

**Mr Middleton:** Chair, I will, obviously, disagree with most of what you said. The one thing that I do agree with — this is a position I have taken since the result of the referendum — is that we need to deal with facts and have calm heads. Unfortunately, we have seen the opposite of that over the past four years. We have seen a deliberate upping of the ante around the refusal to accept the fact that the United Kingdom voted to leave the European Union.

We need level heads, because we have seen a politically significant finding in the High Court today. I know that there will be a lot of time after today to digest exactly what the result of that will be. As political leaders, we have to recognise that the consequences of the finding could be very difficult for us locally. We need to ensure that we do all we can to address not only the concerns that are being felt across the unionist community but the issues brought about by the protocol, which, as I have said time and time again, are not orange and green issues but matters that affect all our communities.

I agree with the point about level heads, but we have to respect the fact that an entire community — I mean all the unionist elected representatives in the Northern Ireland Assembly — does not accept the Northern Ireland protocol. The judgement today confirms the fact that the protocol damages the constitutional position of the United Kingdom, as it conflicts with the Act of Union. That was found today, and it is important that we recognise it and do not downplay the very serious situation that we find ourselves in.

**The Chairperson (Mr McGrath):** I agree, Minister Middleton, that it is a serious matter, but how, exactly, does the protocol threaten the constitutional position, given that the judgement refers to the fact that the constitutional status of Northern Ireland will be decided, as per the Good Friday Agreement, by the people of Northern Ireland?

You referred to concerns among unionists. What direct threat is there to unionism if it is accepted that the constitutional status of Northern Ireland will be changed only when the people of Northern Ireland — it will be changed not by the protocol, not by the European Union and not by the UK Government — make that decision? That was underscored today and has been referenced right from the time of the Good Friday Agreement. Where is the threat that people refer to?

**Mr Middleton:** Chair, you will be aware that the very nature of the Northern Ireland protocol creates a barrier in east-west trade. There is an economic border there, and, constitutionally, that creates a problem. Given the judgement today, it is clear that there is a conflict between that agreement and the Act of Union. No unionist will ever accept a situation where there is a differentiation in treatment between the rest of the United Kingdom and people in Northern Ireland. That situation will never be acceptable. When you look at the situation — we will, no doubt, get on to it — on chilled meats, for example, you can see that Northern Ireland is treated as a third country compared with the rest of the United Kingdom, and anybody who looks at that situation and says, "This has no effect on the constitutional position of Northern Ireland in the United Kingdom" is not living in the real world. I agree with you that it is a matter for the people of Northern Ireland to decide their constitutional future, but the difficulty is that the Northern Ireland protocol does not have the consent of the people of Northern Ireland, despite the fact that the UK-wide referendum decided in favour of leaving the European Union.

**The Chairperson (Mr McGrath):** OK. Thank you for that. As we start to talk these things out, it seems that there are some elements, Minister, that we agree on. I hope that a message can be passed out today that, if there are differences or people feel they are being treated differently, we can work to try to address and iron those out, but, constitutionally, nobody's position today is any different than it was yesterday or back in 1998 when the Good Friday Agreement was supported. That is a very clear message to send out to people in case they interpret from some of the messages today that there is a change in the constitutional status, because there clearly is not.

Gary, you talked about the applications closing today for the EU settlement scheme. You said at the end that you will continue to liaise with the Home Office on late applications or special conditions. Could you detail to us how that relationship works with the Home Office? I know that MLAs frequently have difficulty accessing the Home Office, and if our constituents suddenly find, in the next week or the next month or two, that they cannot make an application in time or have difficulties, is there a methodology that allows MLAs to come to the Executive Office and have those views represented to the Home Office? Is there a formalised route for that?

**Mr Middleton:** Thanks for that, Chair. Apologies, I am getting a bit of interference on the line. I do not know where it is coming from.

I have some more information on that, so bear with me, Chair, and I will go through it. We are aware that, unfortunately, despite the extensive communications from our First Minister and deputy First Minister and from the Home Office, it is still likely that some eligible citizens will not have applied to the scheme on time and so will lose their existing rights, such as, the right to work and to benefits, including their pensions, if previously eligible, their access to free healthcare, if previously entitled, and access to education or study. Those issues are obviously of great concern, and we understand that many applicants have required a huge level of assistance.

The Home Office has provided assurance to us and to officials that it will engage throughout the application process to address any issues or concerns that people may have about missing evidence, for example, and it also made it very clear to us that those who have applied by the deadline but have not yet received their outcome will continue to have their existing rights, which is very important, and will be issued with a certificate of application to demonstrate that. Importantly, applications to the scheme can still be made after the deadline by eligible citizens who have reasonable grounds to make a late application. Unfortunately, however, the Home Office has confirmed that, from tomorrow, any EEA citizen making a late application will lose their existing rights until status can be granted under the late-application process. Those who already have the rights will continue to have them, but for new applicants, that is, unfortunately, a different situation. We have also been advised that the Home Office will adopt a "compassionate and flexible approach". That is its terminology. The loss of the right to work or the right to benefits, however, risks causing hardships. Our officials continue to engage with the Home Office on that. For example, we understand that those who are already in receipt of benefits will not lose them immediately. As I said, whilst the late applications will be processed, those making new claims will not be eligible.

We assure you that officials continue to engage with our counterparts. I have not yet spoken to officials on that basis, but should MLAs require assistance, I am sure that the Home Office will be accessible. I have no doubt that junior Minister Kearney will agree to this, but we will come back to the Committee with information on how MLAs can raise concerns directly. I take your point that, when we raise issues on behalf of constituents, the Home Office is not always the most accessible. I am happy to endeavour to get a response, but, hopefully, that gives you some clarity on the current status.

**The Chairperson (Mr McGrath):** That is great. Thank you very much, Minister. That is appreciated. I will make a final point. Travel agents are absolutely desperate for the support that was announced. Is there any update on that scheme? We are going to write to you for an update, but it is crucial that we send a message to the travel industry that the support that was promised to them is there and that that help can be forthcoming very quickly. They are finding this summer's trading conditions very difficult, even with some travel opening up, never mind what they have been through in the past. Can we get some assurance that that scheme is imminent and that payments will be made?

**Mr Kearney:** Yes, I will come in on that, Colin. The funding for that scheme has been ring-fenced. TEO undertook to develop the scheme and to oversee its implementation. I do not have a date for the release of funds, but, like you, I am an MLA who has received representations from small, family-based travel agents that have experienced huge pressures. They have really been put to the pin of their collar as a result of everything we have come through in the last 15 months and more. There has been a response to those representations. In order to try to ensure that particular need is effectively addressed, TEO agreed to take the scheme under its remit. The funding has been ring-fenced. Following this meeting, I will go back today and establish when we hope to have an indicative date for the release of funds to the affected travel agents.

I will make one other point, which goes back to your exchange with Gary. The whole issue needs to be very quickly de-dramatised and depoliticised. It is quickly getting out of control. I understand that there are apprehensions in the unionist section of our community. I get that; I hear it. I am concerned by the fact that those apprehensions exist. I think that there are extremist elements who are manipulating and seeking to inflame those apprehensions. It is important to note that, worst of all, it is the British Government, and this Tory Administration in particular, that have effectively gained from and inflamed those apprehensions. They have gained from and inflamed them purely on the basis of pushback against the European Union. It is not an agenda that is in any way associated with managing new trading realities. It is entirely about the primacy of a narrow form of English sovereignty, and I think that our society is being played in the middle of that stand-off. That is entirely inappropriate when it was, in fact, this British Government that, with their eyes wide open, negotiated every element of the withdrawal agreement and the detail of the protocol.

To that extent, it is important that we ensure that the conflation of issues stops. You cannot mix up new trading realities that are a direct consequence of the protocol with broader constitutional issues.

Let us remember that the protocol is a direct consequence of Brexit. In the final analysis and going back to first principles, Brexit brought about this calamitous situation. We should not mix up the new trading realities that have been brought about by the protocol with broader constitutional issues. Let us not muddy the waters with references to arcane and anachronistic pieces of legislation that no longer apply. The Act of Union was superseded by the Government of Ireland Act, the Government of Ireland Act was superseded by the Good Friday Agreement, and the Good Friday Agreement sets out the road map for how, when people in this part of the island decide, there will be a change to the current constitutional situation.

**The Chairperson (Mr McGrath):** Thank you for that, Minister. I will pass over to the Deputy Chair, John Stewart. John, if you are there, please go on ahead.

**Mr Stewart:** I am indeed, Colin. Thanks very much, junior Ministers. It is good to see you, Declan and Gary. Gary, it is nice to see you on the other side this time. I hope that you are settling well. It is great to see.

I have a couple of points. First, I echo the Chair's concerns about independent travel agents and consultants. I am pleased to hear from you both that that is in the pipeline. Having spoken to many of them — we take our hat off to those who attended Stormont last week as part of the protest — I know, and you will be aware, that they are massively under the cosh. Knowing that the money is now ring-fenced, I hope that that can be delivered into their bank accounts as quickly as possible. There is nothing more disheartening than hearing that the money is coming and then having to wait, sometimes, three, four or five months to get it, which is what happened to those who availed themselves of other schemes. For many, that will be too long. They will probably be the last to come out of the pandemic, given the impact on their business. Whatever can be done, let us make that happen as quickly as possible. I am sure that you agree with me on that.

I agree with the Chair that today's judgement is significant but not entirely, as you can imagine, with his analysis of it. I agree that, whatever people's position, it remains a time for cool heads and for engaging with each other to find solutions. Of that there is no doubt. I put on record the fact that the judge found today that the withdrawal agreement itself, which includes the protocol, does conflict with the 1800 Act of Union in respect of free trade between GB and Northern Ireland, and that should be of grave concern to us all.

We keep hearing about cliff edges, be they for chilled meats, medicines or something else. We cannot have continuing instability on those. While I welcome the grace periods, do you both agree that, at some stage, we will need security and clarity? Is it your take that the extensions to the grace periods are to provide the time to find alternative solutions or to reorientate supply lines? If it is the latter, that would concern me. I am interested to hear your thoughts.

**Mr Kearney:** Good to see you, John. Congratulations on your new position.

It may be that, in the spaces created through further extension of the grace periods, supply chains will reorientate and adapt. I am aware, for example, that Tesco is now increasingly procuring from local producers to ensure that its supply chains in the region are effectively addressed, rather than running the risk of possible disruption to imports from Britain. That is an illustration of practical adjustments in the supply chains.

Absolutely, grace periods should be used in order to establish permanent, long-term solutions to those issues, and I believe that they are achievable. Maroš Šefčovič on Monday confirmed, as he did previously in the Joint Committee on 9 June, that the European Union is prepared to change legislation in order to get a permanent fix on the matter of medicines. Clearly, that needs to be done expeditiously, because the clock is ticking on the issue of medicines itself.

The development on chilled meats is very welcome; it is a further indication of the willingness to be pragmatic and find solutions. However, good grace and flexibility need to, in turn, be reciprocated. I take you back to the Joint Committee on 9 June, when Maroš Šefčovič made a very telling observation in his comments to David Frost. He said:

*"You seem to think we don't take your concerns on board, but your flexibilities are moving targets, constantly moving the issue, and we need assurance that you will work towards compliance."*

This is a two-way street. We now have additional flexibility on chilled meats. Let us ensure that that space is properly utilised to find the kind of permanent solution that can remove the issue as one of the irritants that we have all been living with. I believe that a permanent solution is to be found in the Swiss model or ourselves joining the European Union SPS zone, where you can achieve that level of alignment.

Currently, food health standards reflect the no-risk standards that apply in the European Union. So it is achievable. This can be a rollover; it does not require further negotiation. If we can de-dramatise the issues in the way that they need to be de-dramatised, and get David Frost and his colleagues to focus on what is good for our local businesses, processors and producers, those businesses will benefit from the necessary stability and certainly that they are currently denied.

**Mr Middleton:** John, I agree with you that the SPS checks and the grace periods are a significant issue. Discussions are ongoing, and, hopefully, we will get clarity later today.

That said, it is not really clarity, because grace periods, by their nature, do not provide stability. We need long-term solutions. Earlier this week, I listened to Vice President Šefčovič say that flexibility was required and that the EU was willing to be flexible but on the other hand say that the Northern Ireland protocol needed to be implemented in full. Those two positions do not match. They are not compatible, and we need to see a change in that respect.

When I speak to consumers — I am one myself — and businesses, they cannot understand why animal and plant products from GB are no longer safe for our economy and why it is not possible to have flexibilities, particularly since Northern Ireland itself is such a small market.

I do not know whether you want more information on the medicines, John, but my understanding, and our understanding, is that the UK Government have proposed bespoke arrangements to the EU to enable medicines to move through GB into Northern Ireland without the need for expensive and burdensome retesting. The Department of Health is still awaiting an outcome of those discussions.

Whether medicines, chilled meat products and sausages or pet passports, those issues are of huge concern for those affected. We owe it to all those people to provide stability and flexibility to allow them to continue trading as they should.

**Mr Stewart:** I totally agree. Thanks, Gary. Our Health Minister has been working tirelessly on the medicines side of things — it keeps him and many others awake at night because of the impact that it could have here. I urge yourselves and the Executive Office to continue to do all that you can to support him in that. It is wrong that we still do not have clarity on such an important issue.

Pragmatism and flexibility on all sides are essential. How does the EU's zero-risk approach factor into that? What I got from Mr Šefčovič the other day was: do everything that we ask of you and it will be OK. How does pragmatism fit alongside zero risk, and do you see a willingness on their behalf to adapt and to allow special arrangements?

Finally, what engagements have you had with the EU and the UK about Northern Ireland having full representation on the Joint Committee rather than just observer status?

**Mr Kearney:** On the last point, John, that is a huge democratic deficit; it is a matter that we have raised time and again. For example, to illustrate a very unyielding and resistant approach in ensuring that our voice is heard, in our pre-meeting with David Frost, prior to the Partnership Council, he advised us and our colleagues from Scotland and Wales who were present that we were present to hear but not to speak and that any expression of our interests would be solely through himself, David Frost, in relation to the Partnership Council. He also made the point that we are really only entitled to attend the Joint Committee. I thought it an unnecessary comment, but he said that we are only entitled to attend the Joint Committee because Ireland, the Southern Irish state, attends and speaks when issues arise.

That is a particular problem for us, and it is also a problem for our colleagues in Scotland and Wales, who also want to have attendance and participation rights at the Joint Committee. The two joint Ministers are entitled to speak, and they reflect their positions. We get all the issues ventilated, including issues that divide us, because there is a fair representation of the concerns of all the various parties by both Ministers, even though they have a separate position that is not agreed in the Executive Office. We know what the common ground is, but there are clearly points of divergence.



We need a much more effective form of engagement and representation for ourselves, our region, our Executive and the Assembly, and for our business and wider civic society in relation to Joint Committee issues and how we proceed in the time ahead, particularly with regard to increased engagement with the European Union.

It has been very helpful to hear from the European Union, and Maroš Šefčovič's unprecedented attendance at the Committee last Monday reflects that. They are willing to have a direct engagement with our region, our political institutions and our civic society. We should double down on that. We continue to make strong representations to the British Government for increased democratic access, but I do not think that we will find any resistance on the part of the European Union in giving us both bilateral access and ability to represent our interests, as well as a flexibility in involving us in the relevant committees that fall within the remit and the aegis of the Partnership Council and also in relation to the Joint Committee and its work in the time ahead.

**Mr Stewart:** Thanks, Declan.

**The Chairperson (Mr McGrath):** Thank you, John.

**Ms Anderson:** Thank you to the junior Ministers. As an MLA on other Committees, I find it helpful that the First Minister and the deputy First Minister, and the junior Ministers, attend those meetings.

I welcome Gary, as a colleague from the city, to his new role. It is something that you have inherited, so forgive me for this, but it really is not good enough that we are still waiting on the response to the common framework. We cannot do our job; we cannot scrutinise properly. We have had the junior Ministers in front of us on a number of occasions, and we have been promised it. I believe that your end is holding it up, as the DUP have not signed off on it. This is the first opportunity for you, Gary, but the last time for us to ask before we go into recess. Is there any possibility that the Committee will get a response on the common framework before recess?

**Mr Middleton:** Thanks, Martina, for your kind words. I know that you raised it. I looked back at Hansard, as I do, and saw that you raised this on previous occasions. As I said in my opening remarks, on behalf of the junior Ministers and the Executive Office, I genuinely apologise that we have not been able to get that further information. We have requested it from DAERA, which is the responsible Department. It has assured us that it will respond as soon as possible. That having been said, it is my understanding that the Agriculture Minister has sought further legal advice. I cannot go into any more detail because I do not have it. That is my understanding.

However, you are right that, from my experience in the Executive Office, the First Minister, the deputy First Minister and the junior Ministers have always been keen to come to the Committee. As soon as we have the information to share with you, we will do so. Of course, I will feed back the fact that you are not happy about the time that it has taken. I assure you that, when we have it, we will share the information with you.

**Ms Anderson:** OK. I am sure that, Declan, you have heard us say it often enough. I know that the hold-up is not at your end.

I want to comment on the High Court judgement today and its rejection of the challenge on all grounds. I am conscious of what was said about facts being important, because, as the judgement states, the Brexit withdrawal agreement Act, which is the more recent legislation, automatically overrides the older laws. Facts are important. People talk about the 1800 Act of Union. However, the Act of Union was repealed, as we all know, by the Government of Ireland Act 1920, and that Act was subsequently repealed after the Good Friday Agreement. Therefore, Britain's claim to the North was reduced to the principle of consent. However, that principle of consent, which is something that we have all talked about, still applies. Brexit has not changed that. It is important that we deliver that message to people. I am not taking away from the fact that there is a harder border at sea. We are pleased to hear some of the solutions coming forward. Hopefully, there will be another one on chilled meats before the end of this meeting. However, I am conscious of what the junior Ministers have said: let us not waste this grace period.

I want to ask you about the democratic deficit, because a lot of parties have mentioned it. We have no Members of the European Parliament. Of course, we now have two former MEPs on the Committee. I do not know whether you have seen the poll that came out today showing that 71% of those polled felt that there was a lack of oversight, which, of course, there is. You may say that it is fortunate for Sinn

Féin, because we are the only party in the North that has representation in the European Parliament. We still have an MEP there. On the grounds that there is, at least, cross-party agreement that a democratic deficit exists, and given the fact that we need participation, linkage and involvement in the post-COVID period and post-protocol environment, can you give us your views on the possibility of pursuing observer status for the North so that we can, in some way, address the democratic deficit that has been talked about?

**Mr Middleton:** I will go first, Declan. With regard to the democratic deficit, junior Minister Kearney highlighted the fact that, prior to the Joint Committee and the Partnership Council, we would have tended to meet Lord Frost, and the items on the agenda would be SPS checks or medicines.

The difficulty, Martina, is that, whilst I believe that it is important that Northern Ireland have a voice no matter where it is — Westminster or Europe — one of my frustrations, and I think that you would agree, is that we have been vocal about our concerns on behalf of the business community, albeit, at times, we are coming from different angles. None of us sets out deliberately, at least I would not like to think so, to harm the business community or any other community. We are out to get the best for Northern Ireland. However, the unwillingness either to listen to or to act upon the genuine concerns that have been raised is more of a frustration for me. The issues have been highlighted time and time again, yet, once again, we are looking at three-month extensions; for example, for chilled meat products. That does nothing to create stability.

Whilst I am all for being in the Joint Committee, or in any other working group, it is important that views are not only heard but actioned. We will continue to make the case, Martina, that we should be in there, that we should be heard, and that actions should come out of that.

**Mr Kearney:** A number of things can be addressed in this regard, Martina, starting with what currently exists. We have the prospect of a parliamentary partnership assembly. I have asked our officials whether discussions have progressed on what that means for the democratic representation for the Executive and for the Assembly. They have not been able to clarify that at this point in time.

I have also raised repeatedly the importance of ensuring that civic society in the North has deep-rooted involvement and participation in all the relevant subsidiary structures that are due to be established and that it has full access to consultation and when seeking accountability from both the European Commission and the British Government. We have to pursue that vigorously to ensure that our role in a parliamentary partnership assembly is not some bit part of little meaning or substance.

The observer status proposal is an idea that I share, and I believe that it can be delivered on if the political will exists. There is precedent: the Cypriot Turks have observer status in the EU. I see no reason why we, as an Executive and as an Assembly, should not seek similar participation and representation. The more engagement that we have with the European Commission and with the European Union as a multilateral institution, the better. We have an NI bureau in Brussels, and I think that we have to look at how that can become much more embedded in the political institutions and the access that is available to that in the European Union. That ensures that our voice is heard directly.

Frankly, I have no faith whatsoever in the British Government officials who engage with our officials. I know that our officials genuinely and energetically represent our case, but, when you look at some of the issues that we have tried to progress on the basis of working through British officials and you look at the manner in which we have been excluded from negotiations in the past — right up until December 2020 — you could, frankly, excuse us for having no faith in the British Government demonstrating a real interest or concern with taking on board our ideas, our views or our concerns or those of our business community or, indeed, directly involving us in a democratic, representative way.

We find ourselves outliers in this particular British Government's approach. The Welsh and Scottish Administrations are very discontented with how they have been treated and how they have been pushed to the sidelines and treated as outliers. We have to work very hard at ensuring that sessions like last Monday's with Maroš Šefčovič are repeated and that we use the access that we have with him and the access that we have with the European Union embassy in London, which has jurisdiction for the North, and increase our engagement with the EU ambassador for this place and his officials to ensure that all our concerns, political, economic and those of wider society, are properly heard by the European Union and that we seriously explore the potential for securing the prize of observer status.

**Ms Anderson:** I find it most disappointing, but not surprising, to hear that the British Government have told our representatives at the Partnership Council that they could listen but not speak. I do not think that that is in keeping with strand two of the Good Friday Agreement.

Has any consideration been given to telling the North/South Ministerial Council (NSMC) that it will consider the EU dimensions of all relevant matters, including the implementation of EU policies, and that the NSMC's views will be taken into account and represented on all appropriate EU matters at meetings? In that context, there should be some kind of effective challenge. It may not do anything. However, I am sure that you raised that with the British Government at the meeting and pointed out that you could listen but not be heard. That is quite insulting. It is in the context of strand two of the Good Friday Agreement. Maybe, at a later date, the junior Ministers could come back and explore how that could be actioned further with us.

**Mr Kearney:** Yes, we can ask officials to give some attention to that, Martina. We have summer recess to get feedback from officials on what they think might be possible in relation to a NSMC intervention.

More broadly, the disregard displayed to this place, our representatives, and our institutions by the British Government has been characteristic, in my experience, of dealing with the British Government through the negotiations and the Joint Ministerial Committee. That view is shared by the Scottish and Welsh representatives, who are very disaffected. It also reflects this particular Tory Administration's lack of commitment to respecting the regional arrangements, devolved settlements, regional Assemblies and Executive Committees. I do not think that they are serious about working with us in any transparent or democratic way, and that feeds directly into all those other associated difficulties as we try to navigate our way through Brexit.

**Mr Middleton:** I will come in on the Partnership Council issue. I do not take the same view as Declan or Martina about Northern Ireland voices being shut out. I think that it is important that we have the pre-meetings and have our voices heard. That said, it is a group that has been established between the European Union and the United Kingdom Government. People will judge for themselves whether they believe that the European Union has listened to their concerns. It may have listened to the concerns of one side of the community, and that is not the basis of the Northern Ireland that the majority of our citizens or I want to be part of.

Martina touched on today's survey. Like all surveys, we take them as they come. Interestingly, the survey pointed out that the majority of people do not feel that, on balance, the Northern Ireland protocol is good for Northern Ireland. If you are going to use survey figures, it is important that we point out that general public opinion is not in favour of the Northern Ireland protocol. It is important to highlight that as well.

**Ms Anderson:** OK [*Inaudible owing to poor sound quality.*]

**Mr Kearney:** [*Inaudible owing to poor sound quality*] one concluding point on that. A point that, I think, Gary misses. The Partnership Council and the relevant governance structures that now exist were negotiated by the British Government, Gary. The democratic deficits in the structure that now applies are a direct result of the terms that the British Government negotiated. That is why we constantly need to look for a workaround. If the British Government have turned a deaf ear to all those issues, let us use the access that has been offered to us by the European Commission and the European Union to ensure that the concerns of business and wider society are heard.

**The Chairperson (Mr McGrath):** OK. Martina, there is obviously Brexit and a democratic deficit, but it does give us nearly 25% of our Committee membership, so that matter is not lost on us either. I also note that, while those questions were being answered, an extension to the protocol grace period until 30 September has been announced. For Gary, Martina and my esteemed party leader, Doherty's sausages will continue to have competition for a few more months yet. As I said, an announcement has been made about the extension to that grace period.

**Ms Sheerin:** Thanks to both Ministers. My questions follow on from the conversation that we have just had about the protocol. There are different views, but, notwithstanding those, when we talk about the impact of the protocol, people refer to either benefits or negatives. The contract that was awarded to Dale Farm last week, the news at the beginning of this week about how well flour mills across the North are doing and the impact of the protocol on our chilled-meat producers are all benefits.

I ask for an assessment of the rights situation. Earlier this year, we received presentations from the Human Rights Commission and the Equality Commission. I expressed the view that, because of the COVID-19 situation and the fact that people have not been using their free-movement entitlements this year in the way in which they would have done had we not been in lockdown, there has perhaps been a delay in seeing the real impact of our rights losses as a result of Brexit.

There are also all the other benefits to which people previously had access. For example, surgeries were put on hold. While we have been in this meeting, I have received another query from a constituent about Minister Swann's one-year temporary scheme. That is a sort of replacement for the cross-border health directive that we previously had access to as members of the European Union, through which people could get elective surgeries elsewhere and be reimbursed. Minister Swann released the detail of that. The scheme does not open until tomorrow, so applications to it cannot be made yet, but we know that it will be a cross-border scheme on the island of Ireland only. Previously, people could access surgeries elsewhere in Europe. The right to see a particular specialist or surgeon in another European country has therefore been lost.

There have also been references made to the EUSS, and we know that that closes today. We have had "assurances" from the British Government about continued access to the EUSS owing to special circumstances, but we do not have clarity on what exactly constitutes extenuating circumstances should people have to make a late application. In recent times, we have heard about the panic among people who had not realised that they also had to apply for their children. I have had messages, even over the weekend, from people who wanted to know whether they had to apply for their child. For example, if one parent is Irish and the other is from another EU country, they are not sure what they have to do. Can you therefore give us an assessment of the rights deficit as a result of Brexit? What can we do in the Assembly to address the issues?

**Mr Middleton:** Junior Minister Kearney spoke briefly on the rights positions in his opening remarks. I disagree with the use of the terminology "rights deficit".

As you highlighted, the UK Government have committed to ensuring that there will be no diminution of the rights, safeguards and equality of opportunity provisions in Northern Ireland and the wider United Kingdom. I understand that the Equality Commission and the Northern Ireland Human Rights Commission have agreed to monitor and scrutinise our situation to ensure that there is no diminution of rights, safeguards or equality of opportunity for our people in Northern Ireland.

You also highlighted a number of individual cases. We are happy to take those away and come back to you on them. We are particularly happy to do that for the health issues that you raised concerning Minister Swann. We have been assured, however, that those rights issues are being addressed through the dedicated mechanism and that there are processes in place to ensure that, where people feel that there are rights issues, there is a mechanism to monitor, scrutinise and address those.

**Mr Kearney:** Gary is correct, Emma, in that the existing dedicated mechanism invites the Human Rights Commission and the Equality Commission to focus specifically on article 2. The fault line, in my opinion, is that we are dealing with an Administration — it is manifest in this place through the NIO — that have a very poor rights-based record. I have absolutely no doubt about the commitment of the officials from and leadership of the two commissions and the resolve that they will bring to the dedicated mechanism. Sometimes, you know what you had only when you lose it. Sometimes, you learn to appreciate what you had only when you lose it.

Many distressing situations will now arise, not least around the resettlement scheme. I have constituents who have expressed concerns to me about the situation in which they will find themselves, because, even though their applications were submitted in good time, three or four months ago, the system has not as yet responded to inform them of the status of those applications. My fear is that people will fall between the cracks, and that throws up many difficulties. Gary mentioned the hot-button rights issues that could be directly adversely affected should people lose their settlement status here. A number of the leading rights organisations in Britain have indicated that, even if the compassionate approach vocalised by the British Government is taken, that is neither good enough nor codified well enough to ensure that everyone will, in fact, be included in the scheme. There are therefore concerns abroad about how effective an approach will be taken.

We have to rely on our own dedicated mechanism and our regional rights organisations and hope that they will stay very focused on the challenges and difficulties. Truth be told, there is a hard border when it comes to rights. We no longer have access to the EU Charter of Fundamental Rights. In your opening remarks, you referenced the fact that we are no longer going to have access to the cross-

border health directive as a result of the changes that have been wrought. I am quite sure that the Minister of Health will do his utmost to ensure that our citizens here continue to have access to the same standard of services on an all-island basis. Nevertheless, you are correct in saying that, in the past, there was a facility for family members and people in our neighbourhoods to travel beyond this island and these islands in order to access essential medical services. All of that is now very much up in the air. Let us work closely with the Human Rights Commission and the Equality Commission to do everything possible to ensure that no one falls between the cracks on any of those issues in future.

**The Chairperson (Mr McGrath):** A few other members have still to come in. I remind you all to keep your questions short. I will not ask whether the answers could be shorter, but if they could be shorter than they have been to date, that would be appreciated, because we sometimes need to take two answers in each round of questions.

**Mrs Dodds:** We have just heard that there has been an extension to the deadline for resolving the chilled-meats issue. That is no way for business to go on, and we cannot sustain that. On Monday, the vice president said that that was done to allow for further discussion until October. We keep hitting deadlines and crisis situations, and that, I suggest, is not good for business. It is clear that the EU sees this as an opportunity to reorient supply lines, which is in direct contravention of what the protocol should be about. It is not that we cannot make sausages in Northern Ireland: of course we can. We have the best food and produce anywhere, and I buy my sausages local. The fact remains that access to our main market is impeded, and it is the protocol that impedes it.

I want to focus on a couple of important things. Although today's judgement says that the protocol is lawful, it also says that it alters the constitutional arrangements. That is in direct contravention of those constitutional arrangements, which, as Maroš Šefčovič and Lord Frost indicated previously, are mentioned in article 1 of the TCA. I am therefore quite concerned about that. I am also concerned about the impact on stability in Northern Ireland. We keep saying over and over again that we need to make political progress and that the only way in which to do so is to have consent from both parts of the community. Clearly, the protocol does not have the consent of the wider unionist community. Everybody in the Committee should be very concerned about the implications of that. I do not want to see any disruption in Northern Ireland. That is not in our interests, nor for our good. We should all be concerned, however, about the lack of consent from the unionist community. The vice president chose not to answer that point for me on Monday and instead changed tack, but the Committee has to face up to the issue.

A Swiss-style SPS agreement is of value only if the whole of the United Kingdom signs up to it. Although we focus on SPS, there are myriad other issues that affect Northern Ireland's economy. I have spoken to businesses over and over again. One Northern Ireland business tells me that the bureaucracy — just the form-filling — from the protocol costs it £10,000 a month. The impact on competitiveness is huge in those areas. Another firm tells me that we are still subject to EU anti-dumping taxes on steel, aluminium etc brought in from GB. For aluminium, that tax is 34%. GB firms do not have to pay it, because GB has done away with it, but Northern Ireland firms do. When we make our product and send it back to market in GB, that affects our competitiveness. The Trader Support Service (TSS) is not really fit for purpose. Issues such as the anti-dumping taxes and how we will fully partake in new UK trade deals should concern the Committee. When the EU affairs manager gets all the research done that she is going to do, perhaps we should look at that. Fair competition is another issue. How do we ensure fair competition for Northern Ireland firms? All those issues should be on TEO's agenda.

**Mr Middleton:** Thanks for that, Diane. I, of course, very much agree with everything that you have raised. Although today's announcement on chilled meat products prevents another cliff edge, it just extends the deadline for resolving the issue by another three months, which does nothing for stability. When I speak to businesses and local employers, they tell me that they want and need long-term solutions. Long-term solutions will give them the ability not only to be sustainable but to grow and invest. That is what we want as well. We need that long-term stability. You are right, however: the issues are not just about sausages and chilled meat; they are much wider than that. There are political issues. I agree with you about today's High Court decision. It would be wrong for us to downplay that. At the same time, we have to be responsible and say to people that we do not want to see disruption. The reality is, however, that, unless the concerns that have been highlighted, particularly by the unionist community, are listened to, we are leading our country down a path that we do not want to go down. We need to ensure that we provide that stability and that assurance that people will be listened to.

As the Executive Office goes forward, we will continue to amplify the messages and concerns that you have highlighted. Overall, today is not a very good day, particularly for Northern Ireland. We need to take stock of the judgement and move forward on the basis that people are genuinely going to listen to the concerns that have been raised right across society.

**Mr Kearney:** Chair, I have taken on board your point about trying to keep the answers shorter. I will do my best. Diane raised the point about the judgement. I am not picking on unionist leaders. Rather, I make this point because they articulate the issues. If anything is to come out of today's meeting, it is essential that unionist leaders show great restraint in, and take a very sober approach to, how they publicly respond to and politically engage with today's ruling.

The reality is that Brexit did not command the consent of the majority in this society. We therefore have to move away from the zero-sum approach of what is good for unionists or for republicans and nationalists. Brexit has been bad for everybody. Going back to 2015 and 2016, when I complained about and criticised the Brexit project and spoke about the economic dangers that it would pose, I was talking not just about the dangers for citizens in the North or to the island economy. My concern extended to businesses in England, Scotland and Wales and to workers and their families there. Diane made the point that an overall deal might be needed for Britain, and there is something in that. In the past few days, the Food and Drink Federation (FDF) has reported a loss of £2 billion in exports to the EU in the first quarter of 2021. The FDF's analysis is not that the loss is some kind of teething problem with Brexit. Its assessment is that the loss is a structural consequence of Brexit itself. When we talk about Brexit being a calamity, there are bigger concerns and effects. Brexit is a calamity for not just this place.

My final point is simply to note that post-Brexit checks rejected less than 1% of British imports into the South of Ireland during the past few months. I understand that, in a 24-week period, inspectors carried out some 28,000 checks on consignments coming into various ports, particularly Dublin. Up until 20 June, just 175 consignments out of the total 28,000 were rejected. That is 0.7% of all those processed. We can bring efficiencies to how those matters are dealt with in the time ahead. We need permanent solutions, of course, but we do not need cliff edges and more uncertainty.

**The Chairperson (Mr McGrath):** Thank you, Minister. Thank you for that question, Diane, and for the insight into the sausages on the plates in the Dodds household. I am sure that they are local to Craigavon.

George, do you have any questions?

**Mr Robinson:** No questions, Chair, just observations. It will come as no surprise that I support everything that my colleagues Gary the junior Minister and Diane have said about the protocol. I know that there has been a ruling today, but there will be an appeal. Watch this space.

I want to mention travel agents, and I know that the matter has been discussed. Like other MLAs, I have had many letters from travel agents about their situation. I am very supportive of their plight at the present time. This may have been touched on earlier, but will the Ministers give us a wee update on when that situation will be resolved? That is my contribution, Chair.

**The Chairperson (Mr McGrath):** Thank you very much, George. You have brought us together at the end of the session by bringing us back to something that we all agree on, which is support for the travel agent scheme. Earlier, both Ministers undertook to come back to us very quickly in writing with an update on and a date for that scheme. I do not want to speak for them, but if the Ministers are happy with that, we know that they will do that for us. Thank you, George, for bringing us to agreement at the end of the session.

I thank Ministers Kearney and Middleton for coming along today and for being so generous with their time. We have gone 20 minutes over, as we always do, but these are important issues, so there is lots to discuss. We enjoy having the engagement with you so that we can get an update on where we are at. Ministers, thank you very much indeed for your time today. We look forward to engaging with you again very soon. Thank you.

**Mr Middleton:** Thank you.

**Mr Kearney:** Thanks, Colin. Go raibh maith agat. Ádh mór.