

Declaration by Her Majesty's Government of the United Kingdom of Great Britain and

Northern Ireland concerning the operation of the 'Democratic consent in Northern Ireland' provision of the Protocol on Ireland/Northern Ireland

The United Kingdom reiterates its wish to establish a future partnership that is as close and strong as possible, given the global challenges it shares with the European Union, and underlines its commitment to embark on preparations immediately after the signature of the Withdrawal Agreement to ensure that negotiations on the future relationship can start as soon as possible after withdrawal.

In that light, the The United Kingdom notes, subject to recalls its obligation under Article 1(4)18 of the Protocol on Ireland/Northern Ireland, that the objective of the Withdrawal Agreement is not to establish a permanent relationship between the Union and the United Kingdom, and that the provisions of the Protocol are therefore intended to apply only temporarily, taking into account the commitments of the Parties set out in Article 2(1). The preamble to the Protocol further recalls that the Withdrawal Agreement, which is based on Article 50 TEU, does not aim at establishing a permanent future relationship between the Union and the United Kingdom: to provide the opportunity for democratic consent in Northern Ireland to the continued application of certain provisions in that Protocol in a manner consistent with the 1998 Agreement. It notes that under that Article, the modalities for determining democratic consent must be in accordance with this declaration.

The United Kingdom wishes to record its understanding of the effect of this provision if, contrary to the intentions of the parties, it is not possible for them to conclude an agreement which supersedes the Protocol in whole or in part due to a breach of Article 5 of the Withdrawal Agreement by the Union. The United Kingdom would not consider its application to be temporary in these circumstances, as in its view the Protocol would then constitute a permanent relationship between the Union and the United Kingdom. Article 1(4) makes clear this is not the Parties' intention. If under these circumstances it proves not to be possible to negotiate a subsequent agreement as envisaged in Article 2 of the Protocol, the United Kingdom records its understanding that nothing in the Withdrawal Agreement would prevent it from instigating measures that could ultimately lead to disapplication of obligations under the Protocol, in accordance with Part Six, Title III of the Withdrawal Agreement or Article 20 of the Protocol, and under the proviso that the UK will uphold its obligations under the 1998 Agreement in all its dimensions and under all circumstances and to avoid a hard border on the island of Ireland.

The notification to the European Union of the outcome of the democratic consent processes under Article 18 of the Protocol is a matter for the Government of the United Kingdom under paragraph 3 of Schedule 2 to the Northern Ireland Act 1998.

The United Kingdom affirms that the objective of the democratic consent process set out below should be to seek to achieve agreement that is as broad as possible in Northern Ireland and, where possible, through a process taken forward and supported by a power sharing Northern Ireland Executive which has conducted a thorough process of public consultation. This should include cross-community consultation, upholding the delicate balance of the 1998 Agreement, with the aim of achieving broad consensus across all communities to the extent possible.

The United Kingdom Government will provide support as appropriate to the Northern Ireland Executive in consulting with businesses, civil society groups, representative organisations (including of the agricultural community) and trade unions on the democratic consent decision. Where the democratic consent process is operating under the alternative process provided for in paragraph 5, the United Kingdom Government will provide support as appropriate to Members of the Legislative Assembly in consulting with businesses, civil society groups, representative organisations (including of the agricultural community) and trade unions on the democratic consent decision. The

North South Ministerial Council and British-Irish Intergovernmental Conference should be involved in any consultation process.

The United Kingdom affirms that the process for affording or withholding consent does not have any bearing on or implications for the constitutional status of Northern Ireland, which is set out in the 1998 Agreement and remains wholly unaffected by the Withdrawal Agreement. The United Kingdom remains able to make further provision for the role of the Northern Ireland Executive and Assembly within its own constitutional arrangements, and providing these are without prejudice to this declaration, the Withdrawal Agreement and the 1998 Agreement.

Commitment to legislate for a democratic consent process

1. The United Kingdom undertakes to reflect as necessary in the legislation of the United Kingdom the commitments in respect of the democratic consent mechanism set out in this Declaration in advance of the date on which notice is first provided

under paragraph 2, including in respect of the independent review set out in paragraph 7.

Transmission of the notice

2. The United Kingdom Government will give two months' written notice to the First Minister and deputy First Minister, the Presiding Officer, and / or the Clerk to the Northern Ireland Assembly of each date on which the United Kingdom will provide notification to the European Union as to whether there is democratic consent in Northern Ireland to the continued application of Articles 5 to 10 of the Protocol.

Democratic Consent Process

3. The United Kingdom undertakes to provide for a Northern Ireland democratic consent process that consists of:

a. A vote to be held in the Northern Ireland Assembly on a motion, in line with Article 18 of the Protocol, that Articles 5 to 10 of the Protocol shall continue to apply in Northern Ireland.

b. Consent to be provided by the Northern Ireland Assembly if the majority of the Members of the Assembly, present and voting, vote in favour of the motion.

c. The Northern Ireland Assembly notifying the United Kingdom Government of the outcome of the consent process no less than 5 days before the date on which the United Kingdom is due to provide notification of the consent process to the European Union.

4. The United Kingdom will make provision such that if the motion for the purpose of paragraph 3(a) has not been proposed by the First Minister and deputy First Minister, acting jointly, within one month of the written notice in paragraph 2 being given, the motion can instead be tabled by any Member of the Legislative Assembly. Where the motion for the purpose of paragraph 3(a) has been proposed by the First Minister and deputy First Minister the Northern Ireland Executive should consider the matter in line with normal practice and procedure, including providing the Assembly with explanatory materials as appropriate.

Alternative process

5. The United Kingdom will provide for an alternative democratic consent process in the event that it is not possible to undertake the democratic consent process in the manner provided for in paragraphs 3 and 4.

6. The alternative process referred to in paragraph 5 will make provision for democratic consent to be provided by Members of the Legislative Assembly if the majority of the Members of the Legislative Assembly, present and voting, vote in favour of the continued application of Articles 5 to 10 of the Protocol on Northern Ireland and Ireland in a vote specifically arranged for this purpose. This alternative process will also provide for the United Kingdom Government to be notified of the outcome of the consent process.

Independent review

7. In the event that any vote in favour of the continued application of Articles 5 to 10 of the Protocol, held as part of the democratic consent process or alternative democratic consent process, is passed by a simple majority in line with paragraph 3b rather than with cross community support, the United Kingdom Government will commission an independent review into the functioning of the Northern Ireland Protocol and the implications of any decision to continue or terminate alignment on social, economic and political life in Northern Ireland.

8. The independent review will make recommendations to the Government of the United Kingdom, including with regard to any new arrangements it believes could command cross-community support.

9. The independent review will include close consultation with the Northern Ireland political parties, businesses, civil society groups, representative organisations (including of the agricultural sector) and trade unions. It will conclude within two years of the vote referred to in paragraph 7 above.