



HOUSE OF LORDS

## European Affairs Committee

### Protocol on Ireland/Northern Ireland Sub-Committee

#### Corrected oral evidence: Follow-up inquiry on impact of the protocol on Ireland/Northern Ireland

Wednesday 25 May 2022

5.15 pm

[Watch the meeting](#)

Members present: Lord Jay of Ewelme (The Chair); Lord Empey; Lord Godson; Baroness Goudie; Lord Hain; Lord Hannan of Kingsclere; Baroness Ritchie of Downpatrick; Lord Thomas of Gresford.

Evidence Session No. 6

Heard in Public

Questions 49 - 56

#### Witness

I: Declan Kearney MLA, Sinn Féin.

## Examination of witness

Declan Kearney.

Q49 **The Chair:** Good afternoon and welcome back to this public meeting of the sub-committee on the protocol on Ireland/Northern Ireland. We now continue our engagement with the five largest political parties in the Northern Ireland Assembly after the Assembly elections on 5 May. Our third and final witness today is Declan Kearney, Sinn Féin MLA for South Antrim. You are very welcome. Thank you for joining us. We very much look forward to hearing your evidence.

Today's meeting is being broadcast, and a verbatim transcript will be taken for subsequent publication, which will be sent to you to check for accuracy. I refer to the list of members' interests as published on the committee's website. Perhaps I could begin the session by asking if you would just set out Sinn Féin's overall position in relation to the protocol. Once again, welcome and thank you very much for joining us.

**Declan Kearney:** : Mo bhuíochas daoibh go léir as ucht an cuireadh seo a thabhairt domh bheith libh tráthnóna inniu. Cuireann sé gliondar ar mo chroí an deis seo a ghlacadh chun dearcadh páirtí s'againn a chur i láthair.

Thank you all very much for your kind invitation. It is a pleasure to be with you today. Yes, I am very happy to briefly summarise Sinn Féin's position on the issue of the protocol. Our position fundamentally stems from our opposition to Brexit. We believe that, were there in fact no Brexit, there would be no need for the protocol. The democratic majority in the north of Ireland in 2016 voted to remain within the EU. Our own party campaigned against that position being adopted. We forecast at the time that Brexit would be a catastrophe not only for the people in the north of Ireland but for the island economy overall. I was one of the Sinn Féin spokespersons most to the fore in making this point.

We highlighted that it would in fact be a disaster for citizens in England, Scotland and Wales, and that the repercussions for workers and their families in Ireland would be equalled by those for workers, families and businesses in the British state itself. As a consequence of Brexit and the engagement between the British Government and the European Union, the process to try to deal with some of those worst implications led initially to the decisions around the backstop under the premiership of Theresa May. That agreement was unceremoniously dumped, and, as a consequence of moving beyond that position, the negotiation around withdrawal of the British state arrived at the point of the protocol.

I would much rather that there was no Brexit. As a consequence, I would much rather that there was no need for a protocol, but it is our party's very firm view that the protocol is not only an integral part of an international agreement that has now been struck and, therefore, must be accepted and complied with, but the only and the best way to mitigate the worst effects of Brexit for people living in the north of Ireland and across the island in its entirety. The protocol that exists is a necessity. It

is an integral part of international law. It is integral to an international treaty that has been made and struck. Therefore, it must be accepted by all parties to that agreement.

We have a protocol impasse at the moment. That is unnecessary. A considerable amount of fiction has been generated around the issue of the protocol itself. While the Tory Government are one net contributor to the fictionalising and weaponising of the protocol, we have seen how the Democratic Unionist Party and some other sections of political unionism in the north of Ireland have also used the protocol for entirely illegitimate purposes by attempting to conflate the issue and implementation of the protocol with constitutional issues that do not have any relevance or application to the current situation.

In conclusion, we have a protocol. It is a necessary requirement given the circumstances that we have all had thrust upon us by the decisions of the Tory Government. We need to see the smooth implementation of that protocol. The impasse should end. This British Government should adhere to the treaty they signed, to the agreement they negotiated, and get on with the business of implementing the detail of the protocol of which they are a co-signatory. That can be accomplished only if there is the requisite good faith engagement by the British Government with the European Commission, which I believe is prepared to take the necessary steps to ensure that we see smooth implementation of the protocol, but it is going to require the British Government to go the extra step.

Therefore, the cant and the sabre rattling of recent times, the latest iteration of the cant and sabre rattling that we have heard over an extended period, must discontinue. We need to see this British Government and the relevant principals engage in a proper way with the European Commission to achieve the landing zones that I and Sinn Féin believe are available, and to ensure that the protocol is smoothly implemented and that the net benefits that will accrue from it to the north of Ireland, the regional economy and the island economy overall are optimised. I hope that is useful by way of some opening remarks.

**The Chair:** That was very useful indeed. Thank you very much for that. You raise a number of questions that I think we will take up in subsequent questions to you.

Q50 **Lord Hannan of Kingsclere:** Thank you for joining us. Could I just pick you up on the answer you gave there? It is not on the criticisms of the UK Government, with which we are familiar. We know where Sinn Féin stands on that. There was a moment where you said you were confident that the EU would take the necessary steps. Focusing for a second on that side of the negotiation, what are those necessary steps specifically? What should the EU do, if anything?

**Declan Kearney:** Let us look at what the EU has already done. We had considerable levels of concern over the issue of access to drugs and critical medicines. When these matters were brought to the attention of the European Commission, as a result of the necessary engagement and

focus, that issue of medicines and drugs was removed as a concern and an element of potential disruption that could have arisen as an unintended consequence of the protocol being signed and implemented. That was one particular point that all parties in the north agreed needed to be addressed and successfully resolved. The EU has now proceeded through the Parliament to move the necessary legislation to change European jurisprudence in order to ensure that the practical issue of drugs and medicines is removed from the anxiety and concern around the protocol itself.

The European Union, back in October, brought forward a number of papers and set out its intent and willingness to address key points. Drugs and medicines was one of those. SPS and custom checks were two others. It also highlighted how it was prepared and wanted to address the issue of governance, democratic participation and accountability on the part of civic society and political parties here in the north. There needs to be further work done in relation to SPS and customs checks, and we need to ensure that the implementation of the protocol gives due regard for the democratic input and participation of civic society and all parties in the north, especially, albeit that this is impossible at this juncture, the role of the northern Executive and Assembly.

**Lord Hannan of Kingsclere:** Just to be clear, you are happy with the position of the EU as set out. You would not modify it in any way. Sinn Féin would not add to or subtract from the EU's position papers.

**Declan Kearney:** No, other than that we accept and respect that this was a negotiation and a treaty that was brokered between the European Commission and the British Government. There is now an unnecessary impasse. I believe that the greater responsibility for that impasse stems from the intransigence of the British Government, not because I believe they are incapable of dealing with some of the trading issues that have arisen from the protocol. Their position is negatively ideological. That is really at the core of this difficulty.

Two parties were signatories to the negotiation. Two parties, being the British Government and the European Commission, are responsible for the protocol. Therefore, any matters that continue to affect or deflect from the smooth implementation of the protocol need to be addressed through proper engagement by both of those parties. The European Commission can and should do more, but that needs to be met more than half way by the kind of will, good faith, participation and urgency on the part of the British Government to build the trust that I believe the British Government have effectively dismantled throughout this process with the European Commission.

Q51 **Lord Thomas of Gresford:** You did not want Brexit at all, and the protocol is a part of Brexit. How would you assess the economic impact of the protocol since it came into force? What are the benefits and drawbacks that you would identify?

**Declan Kearney:** From the outset, the protocol opened up the strategic prospect of giving both the regional economy and the island economy, particularly the regional economy, a unique selling point with its dual access to the British single market and then to the European single market. All the indications to date are that that opportunity exists and that significant sectors of the regional economy are benefiting from that.

Our officials have told us that all the macroeconomic analysis indicates that there have been no adverse impacts upon the regional economy since the inception of the protocol, notwithstanding the fact that, in my opinion, it has not been fully implemented. As a consequence, because there is a degree of unsmooth implementation, we have not seen the opportunities fully optimised. I would draw your attention to the report from the National Institute of Economic and Social Research, which, even at this stage, is reporting that the protocol is beginning to assist the regional economy of the north to outperform the bigger economy in the British state itself.

You are beginning to see green shoots, demonstrating that, if the protocol is given fair wind, if we all put our shoulder to the wheel and if we all work in a collegiate and collaborative way—and I look specifically to this British Tory Government to lift the load in relation to their responsibility—there can be much better days ahead, given the opportunities afforded by the protocol.

**Lord Thomas of Gresford:** That is very encouraging. No doubt there are green shoots, but is the price that you pay for that the democratic deficit that the DUP keeps going on about?

**Declan Kearney:** In what sense, please?

**Lord Thomas of Gresford:** The price paid for having the access to both Europe and to the UK economies is that you have a European Government passing various pieces of legislation over which you have no representation.

**Declan Kearney:** I believe that more can be done to enable greater democratic participation by both civic society and political parties when we restore our power-sharing Executive in the north and the Executive can be fully involved in the necessary deliberations around the protocol itself. It is to confuse issues to suggest that the protocol in and of itself has created a democratic deficit in the north of Ireland. In my opening remarks, what I highlighted was an entirely spurious position that has been fictionalised by the Democratic Unionist Party in particular. That is to try to conflate the issue of the protocol with constitutional and political issues that do not in fact apply and have no relevance to the current situation.

They have quite consciously created a distraction by raising those issues. In the process, they have, within some sections of society here in the north, weaponised the protocol. The protocol is all about how we manage new trading realities and economic circumstances in the north of Ireland

which stem directly from the imposition of Brexit. I said also that I would prefer there was no Brexit. Therefore, I would much prefer there was no need for a protocol, but the protocol has given us a framework that allows us to navigate those new economic and trading realities. That process of navigating those challenges has absolutely nothing to do with the political process in the north of Ireland.

Those who actively try to manipulate the protocol for entirely nefarious political reasons should hold their head in shame. I might add that this British Tory Government have played a very negative and egregious role in inflaming tensions in the north of Ireland and actively trying to manufacture a crisis that should not exist in the first place.

**Q52 Lord Empey:** Good afternoon. How would you assess the political and social impact of the protocol in the context of the recent elections, including on the function or non-functioning of the Executive and the Assembly?

**Declan Kearney:** You will know yourself that the majority of MLAs who have been returned as a result of the recent Assembly election are politicians who have a very pragmatic or, indeed, supportive view of the protocol itself. Therefore, the people have spoken once again in the north of Ireland. We registered a majority opposing the imposition of Brexit. Successive debates within the Assembly have demonstrated a majority view there that we need to ensure a smooth implementation of the protocol and remove this issue as a source of contention within our political process.

Now, in quite a resounding way, as a result of the Assembly election, we see the majority of parties represented in the Assembly and the greater number of MLAs adopting a pragmatic protocol position or a pro-protocol position.

**Lord Empey:** How do you see attitudes to the protocol evolving within the communities in Northern Ireland?

**Declan Kearney:** I believe that we can see an evolution of thinking within broader society in a favourable and pragmatic way towards the protocol. It is my view that significant sections of civic society, very substantial sectors within our economy, and lead figures within our business community and agri-food sector, have already adopted a very pragmatic approach towards the existence of the protocol.

If we go back to first principles and the importance of the British Government and the European Commission engaging together in a collegiate way, in good faith, to alleviate the remaining issues that are causing some disruption in relation to the protocol, to close out those issues, and to ensure that they are smoothly addressed and that we see an effective implementation of the protocol, as a direct consequence of that leadership, I think you will see a much more progressive and evolutionary approach within wider society to the protocol.

If I can just offer this point anecdotally, I was involved in the longest election campaign ever in my experience connected to the last Assembly campaign. I have never had such a level of engagement within my constituency and right across all sectors of society. In the course of my campaign, I canvassed and engaged directly with unionist voters, businesspeople and farmers as well as republican and nationalist voters, businesspeople and farmers. Not on one occasion was I confronted with the protocol as an issue of contention or source of deep concern in relation to the development of the regional economy. It was quite the opposite.

I found in my engagements with people from the unionist section of our community that they were very seized with the potential that the protocol presents to the development of some of our key economic sectors, if we could see the European Commission and the British Government sit down and cover off the remaining issues of disagreement between them. That gives me a considerable amount of optimism about where society is and where society in the north can be taken in relation to this issue.

**Baroness Ritchie of Downpatrick:** Good afternoon, Declan.

**Declan Kearney:** Hello, how are you? It is good to hear and see you again.

Q53 **Baroness Ritchie of Downpatrick:** I am very well, thank you. Last week, the Foreign Secretary, Liz Truss, issued a statement to the House of Commons indicating her intention to introduce legislation in the coming weeks to make changes to the protocol. Today, she visited Northern Ireland, or the north, and she said that the issues with the protocol are soluble but cannot be allowed to drift. She also indicated that she preferred a negotiated outcome with the EU. What is your response to both those positions, which seem slightly contrary?

**Declan Kearney:** You would know as well as I would, Margaret, that these are words and that is a tone that we have heard before from both Liz Truss and even, arguably, on occasions, from David Frost. We have certainly heard the same from Boris Johnson. While I agree entirely that the issues that exist are all soluble, I am very concerned that, until we see and hear emphatic decisive action by the British Government to move away from the threat of unilateral action, this Tory Government will continue to ride two horses. They will on the one hand sabre rattle, and on the other hand speak the language of compromise and talk about the potential for issues being resolved and solved through the appropriate level of engagement.

What we need to hear conclusively from this Tory Government is that they are going to discontinue the negative and reckless approach they have taken towards all their engagements with the European Commission to date; that they are going to set aside threats of unilateral action; that they are going to accept that this is now an international treaty for which they are co-guarantor and co-signatory; that they are going to seek out the appropriate level of engagement with the European Commission to

conclude on the remaining issues; and that they are going to show good faith and commit absolutely to building the kind of trust that I believe they have diminished and broken with the European Commission in recent times.

**Baroness Ritchie of Downpatrick:** Bearing in mind your latter comments, Declan, how optimistic are you that the Foreign Secretary and the Foreign Office will conduct positive negotiations with the EU to a good outcome for the people and businesses of Northern Ireland or the north?

**Declan Kearney:** Regrettably, I am not a clairvoyant—would that I was. I would like to be able to answer that question positively with certainty. If this British Government continue on this reckless and, at best, ambiguous stance or pathway, they need to listen to what is being said to them by the US Administration. The lead US trade negotiator, just a few weeks ago, doubled down on the position of the Biden Administration. They need to listen to the positive interventions of the ways and means CODEL, which has been visiting in Brussels, has visited Britain and is currently in Ireland.

They also need to listen to the European Commission. I am convinced that Maroš Šefčovič and his Cabinet, Ursula von der Leyen and Roberta Metsola, the President of the Parliament, all speak in good faith when they say that no issue is beyond resolution from the perspective of either the Commission or the European Parliament.

Finally, the British Government need to listen to the majority of politicians elected as a result of the recent Assembly election and to civic society in the north of Ireland. They need to listen to what our business community is saying. I regularly meet business leaders from all sectors, and all of them are looking for pragmatic solutions to these issues. They believe that it is entirely deliverable. When you have a political impasse, it can be difficult to negotiate outcomes, although our experience tells us that there is no challenge beyond resolution. However, these are trading and economic issues. This is about how you navigate new economic circumstances. The truth and experience that we know is that none of those issues is beyond pragmatic resolution. There is always a way to find greater simplicity and certainty when we are dealing with matters of trade, business and commerce.

Q54 **Baroness Goudie:** Good afternoon, Declan. What is your perspective on the EU's proposals to modify the protocol? Do they go far enough to address the concerns over its operation?

**Declan Kearney:** Yes, I believe they do. However, I also believe colleagues such as Maroš Šefčovič and Mairead McGuinness, one of the Irish-appointed Commissioners, when they say that none of these issues is beyond resolution and that the European Commission will do whatever it takes to ensure that smooth and effective resolutions are found. When you take the instance of drugs and medicines that I highlighted earlier, there is an example of where the European Parliament was prepared to do what others may have thought was the unthinkable. That was to move

significant bodies of European law in order to ensure that an effective resolution was found in relation to that matter.

Q55 **Lord Godson:** Thank you, Declan, for your testimony. As you said, if there is sufficient pragmatism, nothing is beyond solution. This is a question in line with the question I asked the previous witness from the Alliance Party. What is your own party's position on full implementation of the protocol, which, according to some reports in Northern Ireland, has evolved? Some items regarding your position that were previously on the Sinn Féin website are no longer so. Could you state what the party's position is on full implementation in light of an evolving situation, as you say?

Perhaps even more significantly, if there were to be full implementation of the protocol, what would that mean for businesses in Northern Ireland as a further turning of the screw, to use a term of art?

**Declan Kearney:** Sorry, the last few words that you spoke dropped out on me. They were not very audible.

**Lord Godson:** Let me make them even more audible. What would a full implementation of the protocol, as perhaps described in the four EU non-papers of last autumn, mean for business and the rest of civil society in Northern Ireland? Would that full implementation, in your view, be negative or positive?

**Declan Kearney:** I believe it would be positive. We need to ensure that there is minimum friction in relation to trade on an east-west basis. We need to see smooth and effective implementation of the protocol. Most importantly, we need to de-weaponise and depoliticise the protocol. While it continues to be used in the way that it is by some sections of political opinion, that creates impediments to the two parties to the negotiation and the agreement sitting down in a rational and reflective way to ensure that customs checks are minimised and removed, and that we find a landing zone in relation to SPS checks.

We have already resolved the issue of medicines and drugs, but there needs to be a very comprehensive involvement of our political institutions here in the north with the processes that are relevant to the implementation of the protocol for the north. The reality is that this Tory Administration and their officials in Whitehall have at every wheel and turn kept our officials out of discussions. They have minimised the role of former Ministers such as me in relation to discussions around all these issues. We are given a minimal role in bodies such as the Joint Committee. That all needs to be, in my opinion and Sinn Féin's view, addressed in a comprehensive way.

The best people to speak on behalf of citizens, business, workers and families in the north are the political representatives and the leaders of civic society, and it is a democratic deficit that we do not have the kind of access and are not given the opportunity and space to represent the needs, concerns and priorities of our business and agri-food sectors here in the north of Ireland.

**Lord Godson:** Finally, on the question of full implementation of Sinn Féin's position on that, make it absolutely clear for the committee.

**Declan Kearney:** I repeat what I said. We want to see a smooth and effective implementation of the protocol. None of the issues that are currently creating difficulty is beyond pragmatic resolution.

Q56 **Lord Hain:** Hello, Declan, and good to see you again. You are very welcome at our committee, and we are grateful that you have given your evidence. Before I address the main question about bringing together all the divergent views in Northern Ireland, I think you will agree, and I hope you do, that, when the 2007 settlement brought Ian Paisley and Martin McGuinness in to share power for the first time, the UK played an honest broker role. We did not side with any interest within Northern Ireland. Do you agree with that and do you think that is what is being done now by the current UK Government?

**Declan Kearney:** It is good to see you again, Peter. It has been too long. I hope we will have an opportunity to meet up again at some time in the near future. Yes, I agree that the role played by the Labour Administration in 2007 made a very substantive and fundamental contribution to stabilising the political process in the north. It made a net contribution to the sustainability of our peace process. No, I do not believe that the current Tory Administration are applying themselves with the same type of diligence, concern, application and commitment to either the peace or the political process in the north of Ireland.

You will know, Peter, because we have discussed this matter in the past, that it is my assessment that, since 2010 and the arrival to power of the Tories, successive Administrations have played a very negative role in relation to oversight of the political process and have been derelict in their co-guarantor responsibilities for the implementation of the Good Friday agreement. We now see the culmination of all that negative mismanagement in the approach they have taken towards, first, the undemocratic imposition of Brexit in the north of Ireland, and, secondly, in an absolute failure to engage in good faith with the European Commission to try to find the landing spots, those being the backstop, which, as I said, was dumped, and more recently the protocol, as mechanisms that could avert the worst impacts of Brexit on the regional economy and the island economy overall.

I do not believe that that is because there is some distortion in the assessment of this Administration in relation to the economic or trading issues, because I do not believe that Brexit is a product or a consequence of an economic assessment or analysis that had any foundation in reality. I think that Brexit was a consequence of an internal civil war within the Tory party that continues to reverberate right up until the present moment.

**Lord Hain:** Sorry to interrupt, but your position has been very clear to the committee on that. In terms of bringing people together in the future, presumably under a Sinn Féin First Minister as the election result

requires, Sorcha Eastwood made a very powerful point in her evidence just before you. I am not sure whether you have the same view. She sensed a sense of hurt, which was the phrase she used, among her unionist constituents, who felt that their identity was being threatened by the current context of the protocol and so on. Among your unionist constituents in South Antrim, do you see that issue being addressed? Would a Sinn Féin First Minister seek to recognise that in terms of bringing people together in this current context to move things forward, to move the peace process forward?

**Declan Kearney:** We have to take the protocol out of the political process. Let us navigate new economic and trading realities on the basis of just that. Let us de-weaponise that issue and take it out of the political process. We have seen today moves made to remove another issue that has been unnecessarily weaponised and politicised, and then used as a divisive matter within the political process in the north of Ireland, that being the matter of Acht na Gaeilge, the official status for the Irish language and rights for Irish language speakers. That issue has existed for much too long as a source of contention. I hope now that that will be properly legislated for and, as a consequence, we can then see that issue taken off the political stage.

We should do the same with the protocol and then allow politicians in the north of Ireland, with good faith engagement by both the Irish Government and this British Government in relation to the Good Friday agreement, with all the support and good will of our friends in the United States and in the European Union, to work together to ensure, under the leadership of Sinn Féin, a republican First Minister, which is historically unparalleled. This state has existed for 101 years. It was designed and built to prevent this very eventuality taking place.

We have now changed history and the political landscape. This gives us the opportunity to open up a new phase of our peace process, one which would be based upon reconciliation and healing, and to bring forward a system of proper power-sharing where all political representatives, all political parties and all sections of our community are respected and included in an equal way, and all their rights and concerns are respected.

**The Chair:** Thank you very much indeed for the evidence you have given us today. That has been extremely helpful to our inquiry, and we are very grateful to you for sparing the time to be with us this afternoon. The committee will continue its discussions with the main political parties in Northern Ireland at our next meeting with conversations with the DUP and the UUP. Meanwhile, I would like to bring this session formally to a close. Thank you very much again.