



European Affairs Committee

Protocol on Ireland/Northern Ireland Sub-Committee

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

Thursday 26 May 2022

9.15 am

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

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Questions 57 - 70

Witnesses

I: Rt Hon James Cleverly MP, Minister of State for Europe and North America, Foreign, Commonwealth & Development Office; Mark Davies, Director, Northern Ireland Protocol Task Force, Cabinet Office.

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Examination of witnesses

Rt Hon James Cleverly MP and Mark Davies.

Q57 **The Chair:** Good morning and welcome to this public meeting of the Sub-Committee on the Protocol on Ireland/Northern Ireland. This is the fifth evidence session of our follow-up inquiry into the impact of the protocol on Ireland/Northern Ireland and this inquiry is a follow-up to the committee's introductory report published last July and the committee's examination of individual aspects of the protocol's operation in the period since then.

We are very pleased indeed to be joined this morning by the Minister for Europe and North America, the right honourable James Cleverly, whose ministerial responsibilities include the protocol, and by Mark Davies from the FCDO. You are both very welcome and we much look forward to the evidence that you will give us. We know that you have to leave us at 10.15 for an Urgent Statement in the House of Commons. We understand that, but we will ask if it is possible for you to let us have answers in writing to any questions that we do not manage to reach during the course of the hour we have with you, Minister.

James Cleverly: I am more than happy to.

The Chair: Thank you very much. Today's meeting is being broadcast and a verbatim transcript will be taken for subsequent publication, which will be sent to you in the normal way to check for accuracy. I should refer to the list of members' interests as published on the committee's website. Welcome again to both of you. Welcome, Minister. I will ask Lord Dodds to ask the first question.

Q58 **Lord Dodds of Duncairn:** It is good to see you, Minister, and Mark. Thank you for coming today. To kick off, it would be useful to set out the rationale behind the Government's announcement about their intention to legislate on the protocol and what you make of the EU's response to that initial statement, given the fact that, as the Government say, it does not do any harm to the EU's position on the single market. Then if you could say what you expect the legislative programme to look like, how long it will take and so on.

James Cleverly: Thank you. The first thing I want to say is that the Government's position remains that our preference is to resolve this through a negotiation and an amendment to the protocol. In parallel to whatever domestic action we might take—I will answer your question as to why we feel the need to move down this route—we will, of course, continue our negotiations and our dialogue with the European Union and Vice-President Šefčovič and his negotiating team.

In the situation we found ourselves in the lead-up to the elections in Northern Ireland earlier this month we had already seen a significant amount of disquiet and discomfort with the implementation of the protocol, the difficulties for businesses to transact east-west between Northern Ireland and the rest of the UK. We could see that that was

causing tensions, disquiet and problems. In our negotiations we highlighted those challenges with the EU. Our concern is that the standstill position is causing problems, and that was demonstrated post election by the fact that a power-sharing Executive have not been reformed. Our other concern is that the proposals currently on the table from the EU will envisage more checks and more administration on that east-west trade, which far from alleviating the tensions that we are already seeing has a real risk of amplifying those tensions.

Ultimately, we want to see the Executive back up and running, and Northern Ireland governing Northern Ireland. Ultimately, we want to see free-flowing trade both north-south and east-west. That is why the Foreign Secretary made the announcement that we are starting a process where we can address the specific pinch points and specific problems that are being communicated to us. We have maintained a policy of no surprises in our negotiations with the EU, hence the announcement before the introduction of the Bill and explanation as to the likely timescale, which we envisage being a full parliamentary process but done with as much pace as possible. Certainly we hope to do this within months rather than years as in some cases with legislation. It will be limited to just those areas that we feel need to be addressed.

On the reception, I think we have had a communication of disappointment rather than anger. The personal relationships with the negotiating team remain cordial and when I have spoken in capitals around Europe and to representatives of EU Governments they have said, "We would rather you did not go down this route. We would much prefer to resolve this through the negotiated settlement. We would much prefer to get beyond this". I think there is genuinely a desire to get this resolved, and there is no desire on either side of the table to have a row about this, but there are issues that need to be addressed and this is a mechanism to address them. As I say, if we are able to get a negotiated settlement through the protocol that addresses these concerns we would be more than happy to rely exclusively on that.

Q59 The Chair: I think you said that negotiations will continue. Is a further round of negotiations planned now at ministerial and official level?

James Cleverly: I know that immediately prior to making her announcement to the House, the Foreign Secretary spoke with Vice-President Šefčovič, again in that policy of no surprises and to talk about when we might formally meet again to continue. I am not sure whether a formal date has been agreed, but certainly the desire on both sides is to continue talking throughout this process. Do we have a date?

Mark Davies: No. I think, as the Foreign Secretary said in her statement to the House, she has logged a request for a withdrawal agreement joint committee. That is something to continue to discuss, but the Minister is quite right about keeping channels open for discussion and that happening in parallel with proceedings on the Bill.

The Chair: The channel is open but no meeting is planned.

James Cleverly: No formal dates are planned. I have not been privy to the details of the call, but I have not detected, either from the Commission or from member states, any pushback against the idea of continuing discussions—far from it; they are very keen that in parallel to the legislative process here in the UK we maintain what has been actually a very good-natured dialogue. It has not progressed quite as far or as fast as we would like, but the tone is positive and I think there is a desire to resolve this, even though at the moment there is a bit of a logjam on how we go about doing that.

The Chair: Thank you very much for that.

Q60 **Baroness Ritchie of Downpatrick:** Minister and Mark, you are very welcome to our committee this morning. I have several questions to follow on from those of Lord Dodds and the Lord Chair. We have heard some rumours that the legislation could be published around Monday 6 June, directly after recess. Could you confirm if that is the case or, if not, when the date is likely to be?

James Cleverly: As I say, we are keen to move quickly with this, because the longer this drags out the more pressure is imposed upon businesses that transact across the Irish Sea. I am rather loath to tie our hands completely to a very specific date, but I can assure the committee that we are looking to move quickly on this. Obviously that first day back from the recess would be the earliest that it could be laid, but we are looking to move quickly because we recognise that there is a process. We want to do it properly, but we want to do it at decent pace as well.

Q61 **Baroness Ritchie of Downpatrick:** Thank you, Minister. As a follow-on to what you said earlier, the Foreign Secretary is already on record as stating, "In parallel with the legislation being introduced, we remain open to further talks if we can achieve the same outcome through a negotiated settlement". I think she also said that during her visit to Belfast yesterday. How will parallel processes of legislation and talks be pursued in practice? What, therefore, is the status of the protocol in the meantime?

James Cleverly: Well, it is one of these things that nothing changes until something changes. We have the standstill position at the moment. That is the status quo that will be maintained until the full implementation of the protocol, if we can get one negotiated into a shape that addresses the concerns that we have as the UK Government and have been expressed to us by businesses and communities and politicians in Northern Ireland.

Ultimately it is the output that we are focused on, and the output is to protect the issues that are important to the European Union to protect the integrity of the single market. We completely understand and respect that and we think the proposals that we have put forward address that in every practical sense. It is also about protecting the Good Friday agreement, re-establishing a power-sharing Executive and ensuring that we have that devolved government in Northern Ireland, as it should be, as it has been envisaged. It is also about protecting the free flow of

business and trade within the United Kingdom. That is the three-legged stool.

If we can get something that addresses those things, ideally through an amendment to the protocol, that is what we want and that is what we would be very happy with. Until we can get the protocol to that place, we feel that we have to take these modest domestic actions to address a couple of areas that are not quite working, most notably the east-west trade between Northern Ireland and the rest of the UK and the re-establishment of the power-sharing Executive. Those are the two things that self-evidently are not working properly at the moment. Once we get there, we are happy.

Q62 **Baroness Ritchie of Downpatrick:** Thank you, Minister. Could you also explain in the current state of play of the talks with the EU in what areas has progress been made and in what areas has progress not been made? In that respect, have any EU Ministers written to the Foreign Secretary about the possibility of the UK Government taking unilateral action on the protocol?

James Cleverly: There has been lots of progress. I feel a bit guilty and often the case with government is that you tend to focus on the things that still need fixing rather than things that have been fixed. Plenty has been done. I think probably one of the most visible is the situation with medicines. We have been able to get progress there and that is good news. Generally I think that the sticking point is on the level of reassurance that the EU seeks. I do not want to put words in its mouth, but it strikes me that it is the level of reassurance that the EU seeks about the integrity of the single market. It is looking to put in processes that are not just practically but also theoretically watertight.

Our argument is that because of the unique geography of Ireland as a member state of the EU, in that it has a land border with only one other country, and that is the UK, there is a whole load of practical fixes that address the real world concerns of the EU about the integrity of the single market without introducing onerous or excessive checks or bureaucracy or delays or time with east-west trade across the Irish Sea between different parts of the United Kingdom, and protects the north-south trade between the UK and Ireland.

We think we are there. We think we have proposals that do it in the real world. I think the concern that the EU has expressed to us is that whatever it does for us it has to do elsewhere and that could cause problems. Our position is that we genuinely think that with a big dose of good will and trust and a big dose of technology we can get through and address both our sets of concerns. They do not quite agree and that is where the logjam is.

Baroness Ritchie of Downpatrick: Therefore the EU is willing to continue talks in that context.

James Cleverly: All the mood music that I have detected, from the readouts that I have from the Foreign Secretary's conversations with Vice-President Šefčovič and the conversations that I have had in capitals and with politicians from member states, is that they want this resolved through negotiation. They are not happy with the idea that we are looking at a legislative route to address the issues that we have brought up. I think they understand even if they are not happy with it, but ultimately what they want—and indeed what we want—is a negotiated settlement.

Baroness Ritchie of Downpatrick: Is there a suggested deadline for those talks to make progress and an end date?

James Cleverly: Our argument is that whatever we do we need to do quickly, because everyone rushes. You set a date and everyone delays everything until that date. We have seen this over and over again with negotiations: how many deals are done in the small hours of the morning before people jump on trains to get back to their respective capital cities? Our argument is that whatever we are looking to do we should do as quickly as possible. The legislative process will take the time it takes to go through both Houses, the usual process. Even if we act with real alacrity, it will take some time and we should not wait for that process before we get back involved with trying to get this resolved.

Baroness Ritchie of Downpatrick: Has there been any correspondence from EU Foreign Ministers to the Foreign Secretary about the proposed unilateral action as suggested by the Foreign Secretary?

James Cleverly: I will double check on that. I do not want to give you a hard yes or no.

Baroness Ritchie of Downpatrick: Maybe you could come back to the committee through the Chair.

James Cleverly: Yes. There is regular interaction, both formally and informally, as you can imagine. I do not want to say what has formally been communicated because sometimes I cannot remember what has been formal or informal, but I will double check on that and I will update the committee.

Baroness Ritchie of Downpatrick: Thank you, Minister.

The Chair: Thank you very much. It would be very helpful to have a letter on that point.

Q63 **Lord Empey:** Good morning, Minister. Good morning, Mark. What do the Government mean in the context of the protocol when they state that, "We need to restore balance" in the Belfast Good Friday agreement? How would you summarise the concerns of the unionist community over the protocol and the Government's response to it? How would you reconcile the Government's commitment to command the broadest possible cross-community support for years to come with the opposition of all the non-unionist parties in the Assembly, as well as the Irish Government, to the

Government's plan to legislate?

James Cleverly: I am very conscious that the membership of this committee has an awful lot more real-world experience of the dynamics within Northern Ireland and Northern Irish politics. I will tell you my observations, and if at any point I am drifting off the path of righteousness, please forgive me.

What I am hearing is that communities in Northern Ireland can see that the relationship as structured through the protocol, the relationship between Northern Ireland and Ireland, particularly when it comes to business and the flow of goods, is working well. In contrast, the practical relationship, the business relationship, the flow of goods between Northern Ireland and GB, between two parts of the UK, is not working as well as between Northern Ireland and Ireland. That is visible and that is causing tensions. By my understanding, it is one of the major reasons why the Executive have not been re-formed. Ultimately, from the UK Government point of view, we want the Executive up and running. We want north-south trade to be effortless and free flowing and we want east-west trade to be effortless and free flowing as well.

While there is such a visible differential between north-south and east-west, there are tensions that need to be resolved. There are difficulties that then flow into the re-form of the power-sharing Executive and then have all kinds of ripple effects in other areas of government, including how we might address some of the cost of living crisis, which we can do in GB but we cannot do in Northern Ireland because there is no power-sharing Executive. That is what we talk about when it comes to balance. We want every element of the UK to be and feel part of the UK, and we want every part of the UK to be able to have a good relationship, a trading relationship, with Ireland as well. That is demonstrably not the case at the moment, and that is when we talk about the imbalance.

Lord Empey: Without putting words in your mouth, can I try to summarise what you are trying to do here? Are you trying to make the operation of the protocol less invasive, but you are not seeking to fundamentally change the geometry of the protocol?

James Cleverly: That is a pretty fair assessment. We envisage the protocol being the way to resolve this. I know there are many voices, thoughtful voices, in the unionist community and the unionist political sphere who are very unhappy with the protocol. I think we can get it to a place where all the communities in Northern Ireland and the businesses in Northern Ireland and in Ireland and in GB are happy with the protocol. If we can get to that, we would be happy with it also.

Q64 **Lord Empey:** I asked your ministerial colleague a question last week. He is a very skilful operator and I do not think, reading *Hansard*, that it shed an awful lot of light on what I asked him. What I asked him was: does this mean that in perpetuity Northern Ireland will be in a position where laws will be made governing a significant portion of its economic activity going forward over which it will have no control ever and that that

situation remains? What concerns a lot of us is the long-term diversion, potentially, between the regulatory regimes in our part of the United Kingdom and the regulatory regimes here in Great Britain.

James Cleverly: I would not see it like that. Northern Ireland has a unique geography and a unique history, and it is absolutely right that we make sure that the philosophy that underpinned the Good Friday agreement—which is a seminal document and one that we take incredibly seriously—when it comes to the policies on this, that it is at the heart of our decision-making in all respects about the relationship both east-west and north-south and the need to protect that.

Ultimately, we want to get to a position where Northern Ireland could have a real advantage and businesses have a choice about the regulatory environment under which they operate. We envisage Northern Ireland having a strong and free-flowing business relationship with the rest of the UK but also with Ireland and, therefore, by extension with the EU. That will take some hard work and some creativity and, as I say, a big dollop of good will, but that has been the formula for success in Northern Ireland since the Good Friday agreement.

We need to recognise that Northern Ireland is unique. It also means that we have a duty to be creative and work hard to resolve the tensions and issues when they are presented to us, but also to make sure that all the communities in Northern Ireland feel that they are being listened to and respected and their needs and their wants are being addressed.

Lord Empey: You would accept, would you not, Minister, that that leaves a huge democratic deficit unresolved?

James Cleverly: The way we discharge the traditional duty of representative democracy, which is to listen to the voters to represent their needs, is more complex in Northern Ireland than it is in many other parts of the world. That reality means that we have to work that little bit harder, but we are totally happy to. We are totally committed to making sure that the UK Government properly service the needs, the wants and the democratic will of the people of Northern Ireland. As I say, that will always be a foundation stone principle in whatever decisions we take.

Q65 **Lord Dodds of Duncairn:** To follow up on the point about differences in laws in Northern Ireland and the rest of the UK, and turning to your proposal for the dual regulatory system whereby if companies in Northern Ireland can meet the standards of the UK that is fine, they can trade between Northern Ireland and Great Britain with no problems, that is not currently the position. It is my understanding that the issue of divergence, for instance, would be solved by that dual regulatory system, because the statutory instruments and so on that apply to Great Britain would apply to Northern Ireland. Is that correct, or is that not correct?

James Cleverly: The dual regulatory regime will allow businesses to choose. We envisage that it will allow businesses to choose between UK or EU regulations. In practice, I suspect that, in many areas, to all intents and purposes there will be no difference between those. We share very

similar attitudes towards animal husbandry, health and safety and so on. Of course, in the future there may be some modest divergence, but again in practical terms I do not think that it would be particularly difficult or onerous for businesses to be in a situation where their product standards, whether organic products or manufactured products, match both sets of regulatory regimes anyway. We want to make sure that there is something that is flexible and future-proof. That will also go a long way to addressing the EU's concerns about the integrity of its single market.

Mark Davies: In response to both, I think you are right that part of the proposals that we have made, and that the Foreign Secretary has pointed to in the legislation, is about protecting against that future risk because of the flexibility. If you are within the green lane, as conceived, they are the goods in meeting UK standards and UK rules, and if they are otherwise unable to move they would be able to move within the green lane. In areas where people are operating within the UK markets—exactly as the Minister said, that would not be the case if you are trading into the EU market and meeting those rules—those would be on the basis of UK regimes, and you can meet those if you want to trade within the UK market. That is the principle of what is being proposed, and I think that tends to both of those concerns.

Q66 **Lord Hain:** You are very welcome this morning. Having done the Minister of Europe job, and found it incredibly busy without a European war, I especially appreciate your presence.

I want to ask you about your view on bringing together the different divergent concerns and priorities that there are in Northern Ireland. We heard from three parties yesterday who support the protocol, for example, but think that there should be changes in its implementation to get the Assembly up and running. In that context, it seems to me, as a former Secretary of State, that the Government are not trusted as an honest broker—John Major's term was "an honest broker"—in the way they were under his Government, Tony Blair's Government and Gordon Brown's Government. How is it possible to bring together all these different concerns into a common position if that is not the case?

James Cleverly: Again, it is one of these situations where I find myself answering questions from someone who I know has a huge amount of experience in the Minister of Europe job and the Northern Ireland portfolio.

The world today is not the same as it was in the mid to late 1990s, and we recognise that. The UK Government's desire absolutely is to protect the Good Friday agreement, to get the power-sharing Executive up and running, to ensure that the relationships between Northern Ireland and Ireland and Northern Ireland and the rest of the UK are stable, secure and free flowing. There is no one in Government who does not subscribe to that as a desired end state. I know that there are tensions and maybe even a degree of distrust, and we will have to find a way of working through that. I think the area of success, the landing zone, is the fact that pretty much across the board there is a recognition that the protocol

needs adjusting. Even the voices that are most supportive of the protocol accept the fact that it is not perfect. Basically, that is the UK Government's position as well.

Lord Hain: Adjusting or amending? You used the term "amending" earlier. I think there is common agreement on that, as you said.

James Cleverly: Yes. Our view is that the voices that are very pro-protocol recognise that there need to be changes. I think the concerns of the voices who are very anti-protocol can be addressed if we can sort out the pinch points and concerns, and demonstrate to those voices that the protocol can work for them as well. If we can do that, I think we can get the parties back together. We have a credible chance of getting the Executive back up and running and cutting a deal or striking a deal with the EU that addresses their concerns or our concerns.

There are a lot of moving parts and we do not pretend that it is simple or straightforward. As I say, the tone of the response to the Foreign Secretary's announcement about legislation could have been much worse. Generally we are hearing voices saying, "Let us keep talking, let us seek to resolve this", rather than people flinging over the chess table and storming out of the room. The relationship with the EU and with the communities in Northern Ireland is an environment where we can get a deal done.

Lord Hain: I very much welcome your expectations and hope on that. Having had contact with Dublin, going back many years in my case, and with Brussels, frankly there is not the trust that you need for negotiations to succeed. In my experience, and I guess you would agree, people will make more concessions to you—that is to say, to HMG—if they trust you fully and if they do not think you will simply pocket those and then up the ante through legislation or whatever. That trust issue is critical, is it not?

James Cleverly: I have spent a lot of time negotiating in a commercial environment, and although it is not the same when it comes to these kind of negotiations, there are some things that are true. I have always found that a good way of building trust is to help the counterparty to understand your motivations, what is in it for you. The questions I have often asked are: why would we want to prolong this disagreement? Where is the benefit to HMG of prolonging this impasse and not resolving this issue?

The big lesson that we took from the 2019 general election is that the people in all parts of the United Kingdom want to get this resolved. Particularly now that we are seeing inflation because of global events, they want all of us—the Executive in Northern Ireland, the UK Government and in Dublin—to be getting on with the important things that we should be getting on with. There is no political or economic benefit to HMG dragging this out. We see tensions in Northern Ireland that we want to see resolved and there is no benefit to having those dragged out. There is no incentive for us to be difficult over this.

If there was a deal that we genuinely believed addressed the issues that we have highlighted, why would we not have taken it already? When I have that conversation with representatives from the Commission or member states, I say, "If you can tell me what you think HMG's incentive is not to negotiate in good faith, where might I harvest benefit? Please let me know, because genuinely I cannot see it. Even if you don't trust us one iota, follow the money, as they say. It's in our political and economic interest to get this resolved. Even if you think we're a bunch of liars, which by the way we are not, look at where our best interests lie".

Lord Hain: I did not say that.

James Cleverly: Of course you did not, but the point I am making is that even if we were acting in our most cynical best interests—political, financial, economic, whatever—that still sits with getting this resolved and getting it resolved quickly.

Lord Hain: Thank you, I welcome that. I also found it very significant that you said that your priority was to get the adjustments to the protocol that are necessary.

Q67 **Lord Thomas of Gresford:** The problem with restoring trust is that the promotion of this Bill appears to be no more than a negotiating tactic to strengthen your negotiations, since you have already said that your prime purpose is for these negotiations to result in adjustments of the protocol. What is the basis for the Foreign Secretary's statement that proceeding with the Bill is consistent with our obligations in international law? Our obligations in international law are set out in the treaty, which we have signed. A proposal to break the treaty cannot possibly be—and I have found no lawyer in this country who can say that it is—consistent with our obligations in international law.

James Cleverly: I will take a step back to the first part of your question. We are taking these actions through domestic law, while still saying that we want to have a negotiated outcome, as a safety net. It is a safety net, because we can see the Executive are not up and running and we can see east-west business flows are being constrained, and if these negotiations were to drag on, that situation cannot endure indefinitely. Our rationale for starting to build that safety net legislation is because we had been negotiating for quite a protracted period with the EU. The last couple of rounds of negotiation were not shifting things as quickly as they needed to, and we have now seen, subsequent to the elections in Northern Ireland, that the Executive have not been re-formed. We cannot wish those things away and we cannot let those things endure indefinitely.

The legislative process that we have outlined is a safety net. Our desire is to negotiate the protocol. We are confident that this sits well within the law, within international law. We will be setting out through the process our rationale for that belief as we set out the details that we seek to address. Ultimately, no one would be more happy than us if all that work became obsolete. It is purely about building that safety net, because the facts on the ground—the Executive not being re-formed, east-west trade

across the Irish Sea not flowing as it should—are real and we have to take action to address those realities.

Lord Thomas of Gresford: What I call a negotiating tactic you call a safety net, but a safety net with a hole in it, because it will not catch anything. There are lawyers in the European Union who will fully understand that position. In that context, what is the significance of the Foreign Secretary's reference to the Government's prior obligations to the Belfast Good Friday agreement? How does the protocol impinge upon the Belfast agreement, which I have read?

James Cleverly: The protocol is being pointed at as one of the big reasons why the Executive have not been re-formed. The power-sharing Executive, of course, are not the only element of the Good Friday agreement, but they are one of the very important manifestations of the agreement. They are not up and running, and while that remains the case, we have to do something about that.

Lord Thomas of Gresford: The fact that the DUP will not play ball and play their part under the Belfast Good Friday agreement does not mean that the protocol is inconsistent with the Belfast/Good Friday agreement. I would like to know what obligations are breached in that agreement by the protocol. I cannot find any.

James Cleverly: I am a politician rather than a lawyer, and the thing that strikes me is that the Executive are not up and running—I am very conscious that there are people who are much more deeply involved in this and have been for many decades longer than I have—but, ultimately, the philosophy that underpins the Good Friday agreement is the consent of both communities. At the moment, we do not have that, so for me we need to take actions to resolve that.

The DUP has not put forward nominations for roles as part of the power-sharing Executive. As I say, if that circumstance was to endure, I do not think we could credibly say that the principles of the Good Friday agreement were being discharged or displayed in Northern Ireland.

Lord Thomas of Gresford: You kowtow to the DUP to get them back into an Executive.

James Cleverly: That is a very unhelpful way of phrasing it, if you do not mind me saying. Politicians listening to voters is not kowtowing, it is the golden thread that binds politicians to the people that they vote for.

Lord Thomas of Gresford: The majority in Northern Ireland in the recent election voted for the protocol.

James Cleverly: The Good Friday agreement was never about the minority being silenced by the majority. It is my understanding that at its heart it is about making sure that the minority view and the majority view have a voice. I would be very uncomfortable if we suggested that it is fine now for a minority voice, if that were the case, to be silenced by

the majority voice. That is not how it works under the Good Friday agreement, in my understanding.

Lord Thomas of Gresford: You would break an international treaty to appease a minority view in Northern Ireland. Is that right?

James Cleverly: Addressing the concerns of minority voices in Northern Ireland goes to the heart of the Good Friday agreement. If we were to suggest, or if you were to suggest, that the principles underpinning the Good Friday agreement are no longer valid, that we scrap a power-sharing Executive and that the party that gets the majority vote takes all the executive positions—that pattern exists in many other political systems, including the Westminster political system—that is not how Northern Ireland politics is envisaged under the Good Friday agreement.

When in the past other political parties have not put forward names for the power-sharing Executive, we took action to listen to their concerns. Just yesterday, legislation was introduced by my good friend the Secretary of State for Northern Ireland addressing specific concerns of the republican community as put forward by Sinn Féin. There are plenty of people in the unionist community who are not at all happy with that. We recognise that, but we listen to all communities in Northern Ireland, and it would be deeply dangerous if we were to send the message that we pick and choose which communities in Northern Ireland we listen to. We listen to all communities in Northern Ireland, and the Good Friday agreement codifies that, but even if that were not the case we would be very foolish to start editing out minority views in Northern Ireland.

Lord Thomas of Gresford: I am not suggesting that for a single moment.

James Cleverly: I think that would be the inevitable by-product of—I am deeply uncomfortable with your word “kowtow”—stopped listening to minority voices in Northern Ireland. I recognise that it would be much more simple and straightforward, but it would be a catastrophic error.

Q68 **Lord Hannan of Kingsclere:** I will make the observation that I do not think it is just the DUP. In my understanding, it is every unionist MLA.

James Cleverly: Yes.

Lord Hannan of Kingsclere: Good morning, Minister. It is nice to see you here. I want to take you back to a couple of things you said in response to Lord Hain. First, we wanted a swift resolution—I think everyone will spot your logic on that—and that the other side is happy to keep talking. Well, of course they are, for exactly the same reason: the status quo suits them very well. Every day that passes we are creating more of an all-Ireland economy, there is more trade diversion, and the regulatory divergence between one part of our country and another becomes normalised. If there is no swift resolution on this, we are making a decision if we do not act.

I want to ask you specifically about the landing zone that you flagged up

in answer to Lords Empey and Dodds. It seems to me that the most contentious issue is the jurisdictional one. We heard from a number of pro-protocol party leaders yesterday who said that the EU will be very flexible eventually on the green channel and so on. Maybe, but the thing that it will plainly not be flexible about is who is the ultimate arbiter. We had before this committee the EU ambassador who, in an article separately and in an interview, said, "We need to have a referee, and that, in our system, is always the ECJ", which was an unintentionally revealing statement.

It is not normal for the referee to be the team captain of one of the two teams, to pursue his association football metaphor. Is this a red line, if I ask you frankly? I can well see a situation where the EU is more flexible on goods with a local destination, on the regulatory regime for firms in Northern Ireland that do not export, but I detect absolutely no sign of flexibility from them on this issue, which leaves part of our country governed by foreigners. I think "democratic deficit" understates the nature of what is going on, which is overseas jurisdiction of part of UK territory. Could you see a landing zone where we concede on the arbitration in the court in return for an agreement on freer flow of goods?

James Cleverly: We do not envisage a role for the ECJ in what is internal UK trade. That should not be contentious; Northern Ireland is as much part of the UK as Cornwall, north Essex or Scotland. We see a landing zone; it is a landing zone that would, as I said to Lord Hain, require some changes to the proposals that have been put forward. I am not sure if I said—I should have done—that we have to recognise that standstill position, and your view that it is obviously something that the Commission is comfortable with makes the point that its proposals as unchanged would envisage more checks and disruption east-west. Rather than making it better, the proposals would make the status quo worse.

We envisage a landing zone. We do not envisage a landing zone where the UK, having left the European Union, is therefore under the jurisdiction of European institutions, and we envisage a landing zone that requires some changes to the protocol. We have not just sat there and said, "Right, you change it and come back when you have done so". We have proactively put forward ideas that we think address the concerns of both the Commission and the UK Government. We have been active and proactive in this.

I am not going to be drawn on red lines, because I do not think that negotiating in this room rather than that room would be wise.

Lord Hannan of Kingsclere: Do you believe that the EU's stated concerns are its real concerns? Do you think that for them this is purely about the possibility of leakage across the border, or are there secondary issues, unstated but important, such as preventing the UK gaining any commercial or competitive advantage, encouraging more of an all-Ireland economy or indeed showing that leaving the EU carries a price?

James Cleverly: I cannot make a window into other people's souls. We can only judge the Commission on what the Commission tells us. I think Lord Hain's point about trying to find an environment where we trust each other more is a smart one. My observation is that an economically successful UK trading extensively with an economically successful Ireland and an economically successful EU is in everybody's interests, particularly if we zoom out and see some of the global trends and challenges that we all face. I think that trying to trip each other over when we are part of the same baton-passing team would be foolish.

The member states, the EU and the Commission are not foolish people, they are smart people, and the smart thing in all negotiations is win-win. A win for the UK would not come at the cost of a win for the EU. Successful intra-UK trade is good news for Ireland and good news for the EU, and that is what we should pursue. That is the UK Government's desired aim. We need to take them at their word, and the reciprocal points are the ones I mentioned, such as us showing the Commission our homework and our motivations and saying to them, "These should also be your motivations". The UK succeeding is in their interests just as much as it is in the interests of the UK.

Q69 **Baroness Goudie:** Good morning, Minister. Good morning, Mr Davies. It is nice to see you again. What is the Government's overall assessment of the economic impact of the protocol, including the balance of trade between Northern Ireland, Great Britain and the EU? What figures are available to demonstrate this impact? Following on from that, what economic and political benefits, if any, do you believe the protocol provides for?

James Cleverly: The protocol unchanged as it is currently being implemented—and it is not even the full implementation that is currently on the table from the EU side—is causing problems in Northern Ireland. I know that there are some voices that say it is not. I have to disagree. The Road Haulage Association, for example, said that the protocol is causing a 34% to 35% increase in costs to move goods to Northern Ireland. I think it is also worth saying that that is not a consequence of Brexit; it is a consequence of the protocol.

Logistics UK calculates that since January around half its businesses have had exports to Northern Ireland delayed or cancelled due to the challenges of the new border requirement. Mark & Spencer has said, "We are a big company that can make almost anything work, but for the smaller producer things would be impossible. At the moment, it takes about an hour to prepare the paperwork for goods moving to Northern Ireland. If full EU checks were to come in"—this is their current proposal—"every piece of butter in a sandwich would need to have a vet certificate". This is why we are saying that the proposals need to be adjusted, because the implementation is having real world problems in that east-west trade.

Baroness Ritchie of Downpatrick: Sandwiches by Marks & Spencer are now made by a firm in Newry that supplies the whole island of Ireland.

The firm is called Deli Lites and it is based in my former constituency of South Down.

Q70 **Lord Godson:** I share in the welcome to you from all across the spectrum here on the committee. Going a little further on Lord Hannan's question, to dig down a bit deeper, could you explain a little more the basis of the Government's assessment that the EU's proposals as set out in the four non-papers of October 2021 "would go backward from the situation we have today with the standstill"? A little more detail on that, please.

James Cleverly: With reference to the example I gave just there, I think there is a bit of a misunderstanding that the standstill position is not the protocol as envisaged in implementation by the EU. Its proposals in those non-papers envisaged more and tighter checks, which would add increased friction between GB and NI trade. The standstill position has already been communicated to us as not working. Our position is that we cannot envisage practically the Commission's proposals, as they currently stand, working in this context. This is why we are creating the safety net and suggesting that there need to be changes to the protocol. It needs to be amended, adjusted, changed, whatever the phraseology you want, so that it works. Our desire is to get a protocol that works.

Lord Godson: A final thought on the Government's statement that the EU's mandate needs to change. Again, can you flesh that out in what specific ways?

James Cleverly: The personal and professional relationship between Vice-President Šefčovič and our team is good. We do not believe that he is being obstinate. We do not believe he is digging his heels in for fun. We believe that he and his team have looked at various angles to see whether they can make it work, and we believe that he is doing that in good faith, yet we have reached an impasse. Those things being true, something has to give. We have been very flexible, we put forward some very flexible ideas, and we believe Šefčovič and his team have genuinely attempted to be flexible. Nevertheless, as I say, we have reached an impasse. Something has to give. If he has been as flexible as he can be within the current constraints that he has, our view is that his constraints need to be amended a bit, hence our call to have his mandate amended so that we can get this agreement done and dusted. That is in all our interests.

Our desire is to get this done as soon as possible. It is in no one's interest—Ireland, Northern Ireland, GB or EU—to have this drag out any longer than it absolutely needs to.

The Chair: Thank you very much, Minister, for the evidence you have given to us. It has been extremely helpful to us. There are one or two points that we wanted to cover had we had more time. Those include a bit more detail on how the green and red lanes would operate, and the difference between that and the EU's proposals. Another question is a bit more detail on regulatory divergence and on what the business attitudes

to regulatory divergence are. Finally, how would you see questions about the VAT and subsidy control provisions of the protocol being addressed? Those are just some questions we would have liked to have covered with you, but we are very grateful for the evidence you have given to us. Thank you very much indeed.