

European Affairs Committee

Protocol on Ireland/Northern Ireland Sub-Committee

Corrected oral evidence: the Northern Ireland Protocol Bill

Wednesday 2 November 2022

10.45 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 O'Loan; Baroness Ritchie of Downpatrick; Lord Thomas of Gresford.

Evidence Session No. 10

Heard in Public

Questions 74 - 85

Witnesses

[I](#): Sir Julian King, Former EU Commissioner, Board Member, Co-operation Ireland; Peter Sheridan, CEO, Co-operation Ireland.

Examination of witnesses

Sir Julian King and Peter Sheridan.

Q74 **The Chair:** Good morning, and welcome to this public meeting of the Sub-committee on the Protocol on Ireland/Northern Ireland. Today we are holding the 10th evidence session of our inquiry into the Northern Ireland Protocol Bill, ahead of the continuation of Committee stage deliberations on the Bill on the Floor of the House this afternoon. This inquiry follows the publication of our follow-up report into the economic and political impact of the protocol on Ireland/Northern Ireland in July.

We are joined today by Sir Julian King, former EU Commissioner and board member of Co-operation Ireland, and Peter Sheridan, chief executive officer of Co-operation Ireland. Both our witnesses are joining us today remotely. You are both very welcome and we very much look forward to your evidence. Perhaps I could ask you to introduce yourselves briefly the first time you speak, not for our information but for

the information of our listeners.

Today's meeting is being broadcast and a transcript will be taken for subsequent publication. We will send that to you to check for accuracy. I should also refer to the list of Members' interests, as published on the committee's website.

I will ask the first question to get us going. How would you characterise the political, economic and social impact of the protocol as it is currently operating on Northern Ireland?

Sir Julian King: Good morning. I am very glad to be with you, albeit virtually.

The current situation is clearly very unsatisfactory. It has added to division, you might even say polarisation, between the communities in Northern Ireland, and between the unionist community in particular and the Government of the Republic of Ireland. It conditions and chills the relationship between HMG in the UK and our neighbours in the EU, and indeed more widely; for example, in the US.

The lack of an Executive and an Assembly has various negative consequences, which we might go on to. The possibility of elections is, in many people's views, likely to harden positions and not necessarily facilitate finding a way forward.

Some of the potential positives of the situation are, for example, economic. You have the situation that businesses in Northern Ireland uniquely have unrestricted access to both the UK market and the EU single market. That should act as a big incentive for investment. Some of those potential positives are themselves being undermined by the political uncertainty.

I wanted to say, very briefly, that we have to remember how we got here. After 2016, the EU, led by the Commission—I was there then—but backed by the member states, really quite quickly reached the view that, if you were going to avoid a border on the island of Ireland, the whole of the island needed to be within the single market. That meant that single market rules needed to apply in Northern Ireland. A number of us at the time said that that was going to be difficult and was going to raise issues, and that it needed to be done in a way that was sensitive to the particular history and situation in Northern Ireland.

There was some recognition of that from the outset. For example, the Commission and the EU member states agreed that the rules should be applied and upheld by the UK and Northern Ireland authorities. That is completely unique. They do not, anywhere else in the world, delegate the implementation of EU rules to third-country authorities. Their legal position was very firm, reflecting the nature of the EU as a legal community.

Then those arrangements were agreed with HMG in the UK. That now engages the EU's position on agreements, including international agreements. It has dozens of such agreements with countries all over the

world. It is important that we remember that context as we review the conditions that we have at the moment and the current situation, which is so unsatisfactory.

Peter Sheridan: I am the chief executive for Co-operation Ireland and have been for the last 12 years. To reflect on the board of Co-operation Ireland, it is a very mixed board from right across the communities. On that board, there are many individual perspectives and experiences. Collectively, we do not have one view. We did not have one view at the 2016 referendum. The board are more motivated by trying to assist others to reach agreement and using their experiences to do that.

We have made previous submissions, both verbally and written, to the Committee. Most recently, in the last evidence session, we drew attention to the importance of trust between both sides as an essential prerequisite to any sort of compromise that is currently needed.

To your question, I will break it down into three parts: the political impact, the economic and the societal. On the political impact, the unique nature of Northern Ireland politics means it only functions on the basis of a carefully constructed balance of power between the communities. Both sides of the communities have to give their consent to any major changes. The lesson of Northern Ireland's history is that power is either shared between the two communities or imposed, and, if it is imposed, it is more likely to lead to instability and unrest.

Undoubtedly, since the 2016 referendum, and more recently the protocol, support for power-sharing is draining away, leading to a threat to the very foundations of the Belfast/Good Friday agreement. It is undoubtedly true that, in one half of Northern Ireland's delicate political balance, they reject the protocol, even in its current half-administered form during the grace periods. As a result of that, the north-south architecture is not working and the Executive and the Assembly are no longer in place. With that, there is a risk that power-sharing might not easily be resurrected again in the future.

There are also significant concerns, particularly in the unionist community, that Northern Ireland will have no say about rules and regulations made in Europe that, in the future, impact on Northern Ireland. We need power-sharing back on a sounder footing if the agreement and settlement is to survive. From a wider perspective, in UK relationships with Europe, the Republic of Ireland and Washington, the lack of trust is very evident.

From a positive perspective, the protocol has, as everybody wanted, avoided the return of a hard border between Northern Ireland and the Republic of Ireland. But it has meant the moving of the trade border between Northern Ireland and the rest of the UK. There are also positives for some of the businesses, with unrestricted access to the EU market and the UK market for imports and exports. But because of the divisive nature of Northern Ireland politics, not everybody is willing to put their hand up and say publicly that the protocol is working for them.

From an economic perspective, there is a profusion of statistics that support either the view that the protocol is working or the view that it is economically damaging. It is very difficult for ordinary people to judge the accuracy of either of those claims. Unsurprisingly, people tend to quote statistics that support their position of being pro-protocol or anti-protocol. It is very difficult for people to find what the right answer is in the middle of all that.

Undoubtedly, there are practical implications. I have spoken to businesses that are adversely affected by the working of the protocol, and the excess paperwork, et cetera, in it. Although businesses are affected by the protocol, there is little evidence of how it is impacting on the lives of everyday people. To most people, other than potential future political consequences, there is little visibility of the impact of the protocol at the minute. That may be to do with the grace periods, or it may be the fact that it is masked by the cost of living crisis that is happening, but the impact of the protocol on everyday life is not clear to see.

On economic performance, there is evidence of considerable trade diversion. Equally, there are suggestions that Northern Ireland's economic growth is better than that of the UK, and that Northern Ireland has had an economic net benefit. Current uncertainty with the protocol is no doubt undermining confidence of other manufacturers that may have considered locating in Northern Ireland. They do not know what the final outcome will be, so they are not prepared to make decisions until there is some more certainty around it. The EU response to the enactment of the protocol Bill, which could remove the right of Northern Ireland to enter the EU single market, also could have material economic consequences in the medium to long term.

Finally, on the social impact, the current situation has added to division and polarisation between the communities, and between the unionist community and the Republic of Ireland Government, with that continual lack of support for the institutions. The lack of the Northern Ireland Executive and the possibility of a future election is likely to harden positions and not assist positions.

The Chair: Thank you very much. Those were two very helpful introductions to our discussion today.

Q75 **Baroness O'Loan:** What is your overall assessment of the Government's approach to the protocol? What, if any, impact do you expect the appointment of Rishi Sunak as Prime Minister to have on that approach?

Peter Sheridan: From the UK Government's point of view, if the protocol is to work it has to respect the needs of all the people in Northern Ireland and respect the fact that Northern Ireland is an integral part of the customs territory of the United Kingdom. There is the need for whatever happens to bear as lightly as possible on the everyday life of people in Northern Ireland.

It is difficult to understand how the Government argued on the one hand that the protocol was necessary to protect the Belfast/Good Friday agreement and now argue that the protocol Bill is necessary to protect the Belfast/Good Friday agreement. I suspect that the recent disruptions in the Conservative Party have meant that there has not been the bandwidth in government for sustained political engagement with the EU on these issues.

There are concerns about the long-term reputational damage to the UK with the unilateral breach of the international treaty. The Government have acknowledged that it would breach the legal obligations but are justifying it as a necessity—although I am not sure many agree that that high bar will be easily met. To reach agreed solutions, they will need to repair trust as a prerequisite to resolving those issues.

On the appointment of the Prime Minister, he made his first visit to Northern Ireland during the previous leadership hustings, but there is little detail on where his policies will be in Northern Ireland. There is no doubt that the UK is deeply in debt, with a deficit that is viewed by the markets as an unsustainable path. The mini-Budget and the subsequent reaction from the markets have undoubtedly made that situation significantly more challenging. The new Prime Minister has set out as his priority economic stability and the need to restore fiscal credibility. I suspect that other policies will then follow from that.

Given that emphasis on economic stability, it would seem likely that he will want to avoid the protocol dispute escalating into whatever would happen thereafter, whether it is a trade war or whatever response the EU would make to it. I noted back in March 2022 that the Prime Minister had said that uncertainty about the UK's final relationship with the EU had dampened business investment in the period since the referendum in 2016. Finally, it is also clear that the Government have a twin-track approach of trying to rewrite the treaty through talks with the EU, with a back-up of unilaterally changing it if those talks do not work out. I have not seen the Prime Minister demur from that.

Sir Julian King: Perhaps I could most usefully pick up where Peter finished, on the question of what impact the arrival of Rishi Sunak as Prime Minister has on the way people see this process. The important thing to underline is that he does not have some of the baggage of his immediate predecessors, as seen from the EU side. I do not think it is a secret that Boris Johnson had something of a trust deficit in Brussels, some might suggest going back some time to his role as a journalist. There was the EU perception of his handling of the negotiations, the process around the withdrawal agreement and, to an extent, the TCA. Those were problems if your objective is to reach solutions through managing a relationship that is difficult and needs to be based on trust.

Liz Truss came in as Foreign Secretary. She reached out and was perceived by the EU side to be making an attempt to have a warmer relationship, but quite quickly that stopped. There have not been negotiations from February until quite recently, so for a long period when

she was Foreign Secretary, and during her time as Prime Minister, there were no negotiations going on between HMG and the EU side. Rightly or wrongly, many on the EU side perceived that to be because Liz Truss concluded, while Foreign Secretary, that conducting the kind of negotiations that she had started was going to be very difficult for her in terms of managing her relationships across the Conservative Party. Rightly or wrongly, many on the EU side saw the person who was charged with leading the negotiations prioritising party management over progressing the relationship with the EU and resolving the problems around the Northern Ireland protocol.

Now we have new personnel, including a new Prime Minister. As Peter said, he is seen as economically realist. A lot of people are assuming that therefore he would not want to add to the economic challenges by triggering any form of trade dispute with the EU. A number of people have also noted that he appears to be very committed to the UK union, with some of his first bits of outreach being to the Scottish and Welsh First Ministers, and he and his team engaging on Northern Ireland as well. There are those in Brussels who note his long-standing support for Brexit, in principle, and there is still this lurking suspicion that questions of party management will be a factor in how all this is approached by HMG. We shall see in the days and weeks ahead.

There are now some negotiations. We will probably get on to talk about that in a little bit more detail. That is helpful if we are going to find a way forward. The one thing I will say at this stage is that, so far, HMG appear to have taken the position that they want negotiations to be treated as a whole. They have reacted negatively to some suggestions that have been made that perhaps negotiations could be in some way sequenced to deal with some issues before other issues. We can talk about this a little bit more. I can understand why that is a starting position, but it is potentially going to get in the way of making concrete progress.

The Chair: That was an interesting point right at the very end there, which we should perhaps come back to.

Q76 **Lord Hain:** Thank you very much for joining us this morning. Julian, in your old role as a commissioner, what would you say if you were advising your colleagues, fellow commissioners, on changes that the EU should make to, on the one hand, satisfy unionists' legitimate interests and concerns over this, but, on the other hand, maybe be less rigid, given that, as you said, the EU is a legal entity and tends to see things in that context, understandably? What flexibilities could it show in the operation of the single market, beyond derogating to the UK authorities in the way that it has?

Sir Julian King: Good morning. The first thing I would say about the EU approach is that it does now—some might say belatedly, but nevertheless—recognise that adjustments need to be made to the structure and application of the protocol. I am not inside the EU negotiating team, but I think it is fair to say that it recognises that it probably will need to go further, in some respects, than the package of

what it called enhanced opportunities that Maroš Šefčovič brought forward last October. You will recall that it had various short-term measures around medicines, with various proposals on how SPS and customs might work, and some proposals for enhanced participation by Northern Ireland authorities and stakeholders in the governance and decision-making. All those are areas that need to be further explored through discussion and negotiation.

From the EU perspective, the introduction of the Bill—we may go on to this a little more in further questions—has undoubtedly had a chilling effect on the overall relationship and has limited the scope for the EU to show flexibility in those discussions. Indeed, it is limiting the prospects for wider engagement between the EU and the UK in ways that I find frustrating and negative. Beyond co-operation on Ukraine sanctions, there are lots of other things that currently would be in the shared mutual interest of the UK and the EU to be working on—for example, around energy and energy security—which is not happening as much as it could because of the freeze in the wider relationship at the moment.

We will discuss it a little more, but it is limiting the scope for the EU to explore flexibilities in the discussions that are going on. It is having wider negative consequences on the relationship, and it is leading some on the EU side to take what I think is an overly hard line on the Bill. They occasionally argue that the Bill would need to be withdrawn before it would be possible to make progress on further flexibilities.

In as far as I am asked by my ex-colleagues you referred to, I caution that that is a very tough position to take. There may be opportunities to make progress while the Bill is being discussed, over whatever period it is discussed, that we should not ignore by camping on a very hard line that we will not at least explore in negotiations various options unless the Bill is withdrawn.

Lord Hain: Could I pick you up on your phrase, “adjustments”? You said that the EU could make adjustments. Would that include amendments to the protocol, or a more light-touch implementation of its effect across the Irish Sea?

Sir Julian King: The proposals that are on the table at the moment deal with the implementation. As you know, there are important areas still under discussion, especially around customs, SPS and governance. Those issues need further discussion. There needs to be flexibility on both sides, but there is scope for some flexibility on what has been published on the EU side. How you then capture the outcome of those discussions is something that would have to be discussed in the negotiations.

Lord Hain: Would that include the operation of the European Court of Justice? I do not know whether you have seen the ideas floated by a member of our committee, Lord Thomas of Gresford; he talks about a side part of the Court of Justice, which could include British judges in the event of some dispute. Is the EU up for that kind of thinking?

Sir Julian King: That is undoubtedly one of the harder issues from an EU perspective. As you acknowledged, the EU is a community of law. When it comes to EU law, the EU can only recognise one body as final adjudicator, and that is the ECJ. That reality goes to the core of how the EU works. It is very difficult for it to depart from that. How that is applied in practice is something that is done in different ways in different contexts. As I am sure you know, in the EEA and the EFTA arrangements, how it is applied in practice is reflected in the agreements that the EU has reached with those countries. At the core, if there is a question for the EU on how EU law is going to work, it will look to the ECJ.

There are wider issues on governance, which we might come back to, around the need, recognised by everybody but also recognised and acknowledged by the Commission, to find ways to properly represent Northern Ireland's participation in decision-making and governance.

Peter Sheridan: Building briefly on what Sir Julian said, on the upside, the EU is also saying that its preferred outcome would be a negotiated settlement, but we know that the two sides are a long way apart on that. The current EU proposals, which adjust the protocol to cover a wide range of areas, including SPS products and medicines, as well as stakeholder engagement, show some flexibility, but there is room for further flexibility. There should and would be further flexibility in a negotiated settlement. The proposals as they sit currently still constitute an increase in regulatory barriers from the current state of affairs, and so issues such as the UK-wide subsidy control or the jurisdiction of Court of Justice of the European Union are some of the most difficult.

Lord Hain: Julian, you left us with a tantalising remark that the EU recognised that there is a democratic deficit. That was not your term, but could you elaborate briefly on that?

Sir Julian King: You asked about the ECJ, and that is often the subject that is brought to the fore when the question of governance is raised. I wanted to say that there are other aspects of governance that it is acknowledged need to be addressed, including acknowledged by the EU side.

There is a lack of provision, as things stand, for an active Northern Ireland voice to be heard in the management of the protocol arrangements. It is very important that that is addressed, not only for current issues but looking ahead to, if you imagine a settlement and an agreed way forward, how that would work in future.

There are various management bodies and committees that are envisaged in the withdrawal agreement, and indeed in the trade and co-operation agreement, some of which are specific to Northern Ireland. You need to look at how the bodies, when they operate between the UK and the EU, are going to take adequate account of the Northern Ireland perspective.

To take a step back, I felt that, through the negotiation of the withdrawal agreement and to an extent the TCA, the process suffered from an absence of an official Northern Ireland voice. The Northern Ireland Executive, as we all know, were not in a position to make their position as an Executive heard, though there were attempts within individual parties. The result, and part of the reason we are in the situation we are in, reflects that absence of a shared Northern Ireland voice. If we are going to find a way forward, that needs to be rectified.

The Chair: That is very helpful. Those are views also that this committee has expressed in the past, so we are very glad to hear those.

Q77 **Baroness Ritchie of Downpatrick:** I would like to register my interest as a member of the board of Co-operation Ireland. Peter and Julian, you are very welcome. What is your overall assessment of the political, economic and legal impact of the Northern Ireland Protocol Bill? What are the most significant elements of the Bill?

Peter Sheridan: I will divide those into the political, economic and legal impacts, and then I will come to the last bit, the legal justification. There is no doubt that many in the unionist community would be supportive of the Bill simply as a way of restoring their position in the United Kingdom, if that position cannot be reached through negotiations with the EU. They also see it as a way of redressing the democratic deficit we were just speaking about, where they see that the community in Northern Ireland has no say in laws made in Europe that affect the community in Northern Ireland.

Julian said earlier that the Bill has had a chilling effect on EU-UK relationships, not least because it could result in non-performance of certain UK obligations and Northern Ireland could lose its right to enter the single market. There would be material consequences flowing from that. The Bill itself departs from the Northern Ireland protocol, but it also enables Ministers to depart from the protocol even further, should they decide to do that.

On the economic impact, it is difficult to see how the Bill will not add to the uncertainty that is already there. It could add to further trade disruption, as companies would be, in some instances, unclear of their legal obligations, particularly if there are any contradictory provisions. Passages of the protocol provide benefit that the Bill appears to leave untouched. The Bill appears to leave untouched those parts of the protocol that are seen as working.

On the legal impact, clearly I am not a legal expert, so it is a layperson's view, but I have watched many of the debates in the House of Lords and the House of Commons and kept abreast of the commentary. I am aware that the Government acknowledge, as I said, that it disapplies international law, but they have given the justification on the grounds of necessity. Listening to the debate last week, it was very difficult to see how that defence can be invoked, particularly when the state was a party

to the agreement—there is an agreement. We will have to see where that goes.

On the significant elements of the Bill, again I am not a legal expert, but certainly the breach of international obligations does not sit comfortably with me. That goes to the heart of the UK's reputation. Even in any agreements that the UK might reach currently with the EU, it would not be unreasonable for the EU side to say, "How do we know you will stick to those? You did not the last time round". The Bill unilaterally departs from the Northern Ireland protocol and gives Ministers additional powers. As such, it represents a stark transfer of power from Parliament to the Executive. As I read it, it seems that the Government are giving significant powers to themselves, to amend not just existing primary legislation but the provisions of the Northern Ireland Protocol Bill itself.

Q78 Baroness Ritchie of Downpatrick: I will ask you a further question, Peter, and tease out the Government's legal justification. I accept that you are not coming from a legal training perspective. From your assessment, what do you think of the assessment of the Government's legal justification for the Bill? You have referred to the powers that Ministers or prospective Ministers may have as a result of the implementation of this legislation.

Peter Sheridan: I listened intently in the debate on Tuesday last week in the House of Lords, and particularly to those who came from a legal background. It seems that, as I said, there is an extremely high bar or high test for the doctrine of necessity to be accepted. I could not find many arguments or a demonstration of how it would reach that test, but that is only a layperson's view on it.

Baroness Ritchie of Downpatrick: I would like to ask Sir Julian all those questions.

Sir Julian King: I am very conscious that your House is deep in the detail of this at the moment. You are going through it in fine detail, including later on today. I agree with what Peter has just said. I want to take half a step back and say that, first and obviously, the fact that the Bill is there is having this chilling effect and is certainly complicating not only addressing the issues that we are talking about today but the wider relationship between HMG and the EU.

I am concerned that some on the EU side are taking an overly hard view on what is, after all, an ongoing parliamentary process. Beyond a chilling effect, this might freeze discussions, because there are some who have argued that, unless the Bill is withdrawn, the EU should not make further attempts to find solutions through additional flexibilities and engage in that way in the discussions that are now back under way. That would be a mistake.

I hope that one of our messages, collectively, is that, if we are going to give space and a certain amount of time to try to find an agreed way forward, that requires all sides to engage in that process positively, HMG

and the EU. That might be possible during the continued examination of the Bill.

If the Bill were to be passed, we would have to be ready for the EU to react. In those circumstances, it would be faced with a partner that had legislated to undo an international agreement. From the EU's perspective, that goes to the heart of the relationship it has with HMG, but also, as I said at the outset, much wider. It has a whole network of agreements that it relies upon with dozens of countries around the world. Its core internal functioning relies upon the effective respect of agreements reached. In those circumstances, you would have to expect that it would react.

There are various precedents around, none of them very encouraging. In the past, when it has been perceived that agreements have been broken, the EU side has drawn up various trade sanctions. It is willing to do that, including with very important trade partners such as the United States, where in the past it has drawn up long, extensive and targeted lists of trade sanctions in order to inflict some economic discomfort on the United States for what it perceives to be breaches of international agreements. In those circumstances—let us hope we do not get there—the impact of the Bill, if enacted, would be very significant.

Baroness Ritchie of Downpatrick: What are the most significant elements of the Bill for you, Sir Julian?

Sir Julian King: I am commenting consciously on the fact of the Bill. If you go within the Bill, I think that the EU, as Peter suggested, will view the powers that the Bill gives Ministers to further depart, potentially, from an agreed framework as compounding their concerns about the approach of the Bill.

Q79 **Lord Dodds of Duncairn:** Peter and Julian, it is good to see you again. I am always interested and intrigued, with some experience of the European Parliament for a number of years myself, by the EU being concerned about the removal of powers from a legislature to an executive. It is a concept that it is quite used to. People complain about Henry VIII clauses and the removal of powers to the executive, but in Northern Ireland we have seen the removal of powers and law-making decisions not just from any legislator but from any government Minister to Brussels, which is quite a unique situation. It goes far beyond the concerns about Henry VIII clauses.

Does the Bill itself represent a means to address issues? You mentioned the October EU proposals, which deal with four areas, but the Bill goes much further in dealing with democratic deficit, state aid and VAT issues, which are not addressed at all in the EU October proposals. How else are these issues addressed, if the EU is not willing to negotiate them, in order to put right things that are required by many people in Northern Ireland?

Sir Julian King: I hope it follows from what I have said already that I agree with you that these questions of democratic accountability are very important and, I would say, essential if you are going to find a viable,

long-term way forward. I referred earlier, and the Chair picked it up, to understanding why, in a negotiation, you try to take an overall approach. Indeed, the EU very often takes the position that things have to be considered as a whole and that nothing is agreed until everything is agreed, but there are different sorts of issues here.

You need to think creatively about whether there is some kind of staged approach that might work in these circumstances. As you are trying to rebuild, let us face it, a damaged trust and confidence, probably on both sides, you need to think about whether there are some confidence-building measures—if I can use that kind of language—that you can start to try to agree on to open up the possibility of addressing other issues that are more difficult for either side.

If you were in that mindset—we can talk a little more about the detail if that is useful—there are things that you could look at around the kinds of issues that have already been put on the table, including the October package. If you were making progress on those, it might then allow you to have further discussions on other issues that, at the moment, are not on the table, be those issues around VAT and subsidies or indeed the difficult issues around governance.

I think that is a more hopeful way of trying to explore these difficult issues than one side legislating in a way that the other side would be bound to respond to in ways that would make the situation for the UK as a whole, and Northern Ireland as well, more difficult.

Lord Dodds of Duncairn: I accept what you are saying about staged negotiations. I understand what you are saying, but some of the issues that I have referred to that are in the Bill require changes to the protocol itself. Are you saying that you think that the EU may well be willing, if progress is being made on some implementation measures in some areas, to open up the protocol in relation to dealing with things such as state aid and VAT, for instance?

Sir Julian King: I no longer speak on behalf of the EU. I am not in the engine room of its negotiating team. I am fairly clear that, whether or not that is going to work, it certainly has a better chance of working than the legislative route, because the EU will be bound to respond in the way that we have already touched on. That will make it much harder to make progress. I am not, on its behalf, promising that these issues would come on to the table, but I can see that there is a chance that is much higher than if there is a stand-off. As I said earlier, one of the things that would need to be discussed is how any agreements reached would then need to be encapsulated. That is obviously one of the things that would have to be discussed.

Q80 **Lord Dodds of Duncairn:** I have a final question for Julian, since he is so well placed, knows Brussels so well and has experience of the Northern Ireland scene as well, before I come to Peter. Is there a sense from the people you talk to in Brussels, in and around the Commission and so on, that they are waiting for Starmer? They see what is going on

at Westminster and think, "Why give an awful lot? Let us see this period out. Let us see what happens at the next election." It is a well-known approach by the EU. It can sit things out a long time. I have heard that said by people I know in Brussels: that really they are waiting for a change of government.

Sir Julian King: I have heard that said as well, and indeed you can read it in the press. It is clear that they had very limited expectations around the Johnson Administration. They felt some frustration with the lack of contact after February with Truss. They note that there is a new team in place, not just the Prime Minister. They also know that the current situation, for all the reasons we discussed right at the start of this session, is deeply unsatisfactory for everybody involved, including the EU. Sitting on your hands and waiting, as it were, is not a cost-free option.

Lord Dodds of Duncairn: Peter, on the Bill, you have touched on some of those issues already.

Peter Sheridan: The fact that the Government's clear preference is for a negotiated solution with the EU suggests that there is a better way to resolve it than the Bill, but let us take it that the Bill happens. The Bill deals with a lot of the lack of consent for the protocol that is in one community in Northern Ireland.

The opposite side is, if the Bill were to pass in that way, that lack of consent may well be replaced by a wider lack of consent on any alternative unilateral action taken. If, for example, the Bill were to lead to a serious confrontation with the EU, it is unlikely that issues will have been resolved and the Bill will have resolved the issues, because it could lead to that further damage to the Northern Ireland economy. Of course, we do not know what action the EU will take. I suppose that you can replace one lack of consent with another lack of consent if the Bill goes through as it is.

Lord Dodds of Duncairn: It is a bit like the protocol itself.

Peter Sheridan: Yes, exactly.

Q81 **Baroness Goudie:** Good morning. It is nice to see you again, Peter and Sir Julian. I would like to ask you about the Government's arguments in the Bill that it is necessary to safeguard the Belfast/Good Friday agreement. Does the protocol engage in the agreement's provision on cross-community consent? Also, what impact did the protocol have and what impact will the Bill have on the three strands of the Belfast/Good Friday agreement?

Peter Sheridan: The Government said that the protocol was necessary to safeguard the Belfast/Good Friday agreement and now it says that the protocol Bill is necessary to safeguard the Belfast/Good Friday agreement, so there is certainly a contradiction there. To be fair to the Government, they are reacting to a lack of support, particularly in the unionist community, for the protocol. They are also reacting to a lack of support among some Conservative MPs and some of the business

community about the protocol and the material consequences it has for power-sharing, the Belfast/Good Friday agreement and Northern Ireland's position within the union. There has to be some recognition that that is why the Government are engaged in it.

On the future regulatory differences between Northern Ireland and the rest of the UK, that could grow over time. Should regulations in the rest of the UK diverge further from the EU, the unionist view would be that Northern Ireland would become further separate and distinct from the rest of the United Kingdom. From the unionist perspective, the view is that the EU has made little or no attempt to deal with their significant concerns that the protocol raises for their future as part of the United Kingdom.

On the cross-community consent, the Belfast agreement was based on the principle of consent and, in particular, cross-community consent. That, if you like, vital importance of consent was recognised in the provision for alignment in the protocol or for it to be disapplied if Northern Ireland's political representatives concluded it was no longer viable or desirable after four years. Embedding that recognition of consent in the protocol was built in to its acceptance by the UK Government.

For the protocol to work, it must respect the needs of all of Northern Ireland's people, respect the fact that Northern Ireland is an integral part of the customs territory of the United Kingdom—that is under Article 4 of the protocol—and respect the need to have as little impact as possible on the everyday life of people in Northern Ireland. The consent mechanism that the Johnson Government secured when the withdrawal deal was reached did not introduce a requirement for cross-community consent. I suppose their view was that it would be wrong for one or other of the larger communities in Northern Ireland to have a veto over a treaty between the UK and the EU. Nevertheless, there are two different styles of consent in it. There is no doubt from Co-operation Ireland's perspective that the cross-community consent is highly desirable and would secure greater stability for the post-Brexit arrangements if it was there.

On your question of the impact of the protocol on the Belfast/Good Friday agreement, with the political situation in Northern Ireland and the position taken by the DUP, vis-à-vis not entering the Executive, there is evidence of damage being done to the 1998 Belfast/Good Friday agreement by the protocol and the result of, to some extent, the 2016 referendum. As a consequence, Northern Ireland has no properly functioning Executive or Assembly. We may well be facing an election and the north-south dimensions are not operating and currently not working. They are all outworkings of where we are currently.

As I said to Lord Dodds, the difficulty in this for everybody is that the lack of consent for the protocol on the side of one part of the community could easily be replaced by a lack of wider consent for any unilateral alternative.

Sir Julian King: I echo and agree with what Peter has just set out. I remember the arguments around consent. It was important that the EU recognised at the time that building consent into the process was reflecting the need to take account of Northern Ireland voices. It was the Johnson Government that chose the form of consent now in the withdrawal agreement. They did not, at that stage, introduce a requirement for cross-community consent.

We can all see that, if we are to find a sustainable way forward, a greater degree of cross-community consent is going to have to be built somehow. Talking to people in Brussels, the EU recognises that as well. That will be one element of discussion, if we get that far, on constructive ideas for future governance.

I also echo what Peter has said, and this is very important perspective. It is very difficult to see how passing the Bill can help the situation. I cannot see how it will assist north-south, east-west particularly, or indeed the internal relations within Northern Ireland. It certainly will not facilitate continued discussions between Northern Ireland, HMG and the EU about how to manage this situation into the future.

Q82 **Lord Godson:** Thank you again for noting the deliberations of this House at Second Reading and Committee stage on the Northern Ireland Protocol Bill. I was interested, listening to those debates in the House in the last fortnight. As you rightly point out, many critical things were said about that legislation by lawyers, non-lawyers and all the others. If it is such a disaster, why are negotiations still going on at all? Why indeed is there a sign of some promise in the negotiations, including pragmatism from the southern Irish Government, which has been appreciable? I would be keen to get a sense, particularly in this case from Sir Julian, as a former commissioner and a former ambassador to the Irish Republic, of why any progress is being made at all.

Secondly, to Sir Julian again in those capacities, you made one or two historical allusions to events since 2016. What are your views of lessons learned in terms of over-negotiation? Although most of the criticism has been of the UK Government, I am sure you knew Rory Montgomery well as a senior Department of Foreign Affairs official in the Irish Republic. He made some remarks about the utter obliteration of the UK Government's position in the negotiations and the implicit criticism of the Irish Republic's stance of over-negotiating, leading to the subsequent imbalance that has been noted.

Finally, Mr Sheridan, there was a bit of a controversy a few years ago—there were reports in the *Irish Independent*—over the remarks of a special adviser to the then Taoiseach about instability on the island of Ireland and the potential of dissident republican violence in consequence of controversy around the protocol and the post-Brexit situation on the island of Ireland.

I am just interested in your latest thoughts on potential threats on the island of Ireland, in the light of your previous career, although you are a few years out from that. Again, the worst fears about that dissident

threat, which appeared to be foreshadowed in those *Irish Independent* reports, have not so far materialised. I would be grateful for your collective opinions on any one or all of those queries.

Sir Julian King: Why are the discussions going on? It is because both sides live in hope that those discussions might produce a productive way forward. There was a long gap between February this year and last month, during which there were not discussions. It is not inevitable that discussions go ahead.

Last month, as I understand it, there were three weeks of discussions—and contacts are continuing subsequently—which looked at customs and data, SPS and some of the questions around governance, including this question of democratic accountability. I have seen various comments from the UK side, noting that those discussions have restarted and sounding quite hopeful about the fact of discussions.

Talking to ex-colleagues in Brussels on the EU side, I have to say that they would have a slightly cooler view of those re-engaged discussions. One person said to me that there was nothing new in those discussions and they had made no difference. If and as those contacts continue, I hope we can move beyond that. The alternative to trying to make progress in some kind of staged and managed way through discussions is the legislative stand-off we have been discussing in answer to the last few questions, which does not seem to me to help the situation and will almost certainly make it worse.

On the questions about lessons learned, I was not actively engaged in the negotiations. I was in the Commission doing a job on security, but we received reports of the negotiations. One of the reflections I had—I agreed at the time with my Irish colleague in the Commission then, Phil Hogan—was that the absence of a Northern Ireland Executive voice in the negotiation process in that period was significant and led to some of the suboptimal outcomes that we are now having to deal with.

Although the Commission sought to engage with individual parties, it did not, through that engagement, get any kind of shared messaging or shared position, and it did not have an official executive position that it would have felt it had to take more account of. We cannot rerun history. We have to deal with that.

You talk about the Irish negotiating position. The Irish Government undoubtedly negotiated hard, which was entirely legitimate for them to do, to seek to preserve and protect their interests as they perceive them. I also note that there was a structural issue there as well. The structural issue there was that Ireland remains an EU member state. The EU, when negotiating, was bound to take account of the position of one of the member states. Even if the Irish diplomats had been slightly less good at negotiating than they proved to be, that would still have been the structural situation.

Lord Godson: Out of curiosity, as a former UK diplomat, did we

negotiate hard enough on our side? Of course one would expect the Irish Republic's representatives to stand up for its own interests. Did the UK Government's representatives stand up hard enough for the UK, from your vantage point, having been dual-hatted, both as a UK rep and a commissioner?

Sir Julian King: Again, during this period I was working for the EU, not for the UK. I was doing a job on security, not the negotiations, so I was at a remove from the negotiating process.

The people who were involved in the negotiating process from the UK side were very seasoned and experienced. I am sure they did their job to the very best of their abilities and with great professionalism. The situation that we are dealing with now, as I said at the outset, was agreed by the Johnson Government. That is a fact. That is one of the conditions that we have to deal with.

Peter Sheridan: Lord Godson, on the security end, first of all, I find no appetite for violence in any community around this. In fact, I was with a number of people who would be very close to the loyalist community yesterday, and we had this very discussion. They were saying the same things.

In this place, we have a habit of moving very quickly from having people who vehemently disagree with some political situation to disorder or street unrest and then a full-blown terrorist campaign. I can assure you that it is not easy to move along that continuum or to get access to the weapons and explosives that would see a violent campaign resurrected on any side very quickly. I have absolutely no doubt that the police, the guards and the security services will be very alert to all that currently.

In the community, although there is a lot of disagreement—vehement disagreement—about this, I do not detect among the vast majority of people any move to bring violence to bear on this. There were some commentaries in the papers at the weekend that we were within hours of some event happening at a government building in the Republic of Ireland because of the conversations that started around joint authority, but that was then stopped very quickly. How accurate that is I do not know.

Clearly, when Minister Coveney was up there was a bomb hoax up at the Houben Centre in Belfast when he was there, but the police responded and people appeared before the courts on that.

You referred to an article in the *Irish Independent*. Was it the *Irish Times* article?

Lord Godson: No, it was in the *Independent*. It would have been a few years ago. As I said, one of the special advisers in the then Irish Government was quoted, and it caused some interest on both sides of the Irish Sea.

Peter Sheridan: My recollection may be wrong on this.

Lord Godson: It may have been covered in the *Irish Times* as well, but it was originally in the *Independent*.

Peter Sheridan: My memory from all of that was that this was before the withdrawal agreement was signed. It had not been decided where the trade border was going to go, and there were still discussions about it being on the land border and how difficult that would be.

The reflection was that, even during the security situation, none of us ever thought that when customs posts along the border were attacked, the police would then have to go in and guard customs officers along the border; that when the police or communities were attacked along the border, the Army would have to come in to support the police; or that when the Army was attacked along the border, they would end up having to build fortifications on the border. Nobody ever set out with that plan in mind.

The question at the time was about whether, if we turbocharged smuggling because we could not get agreement on free trade across the border, both the guards and the police would have to respond, and the reality is that the response would be along the border. What would the implications for that be? As I recall, that is what the article was about.

In other words, you moved from what was a simple customs border in the 1970s to the situation in the 1990s, where we had 12 Army watchtowers within 10 miles of South Armagh, 40-odd roads sealed off and six permanent checkpoints on roads. Nobody ever set off with the intention of that being the architecture, but that is how things rolled out as attacks happened on it.

Q83 **Lord Empey:** Good morning, gentlemen. Thank you for your attendance. We have covered the first part of my question through discussion already. Could we come to the nitty-gritty of a resolution? What do you see the possible landing zone being for a solution between the two sides? Answers on a postcard, please.

Sir Julian King: Consistent with what I have said already, the chances of finding a sustainable basis for the future are markedly higher if we manage to do it through some kind of negotiating process with shared investment than if we resort to the stand-off of the UK on one side and the EU on the other.

If you were pursuing that track, there is a strong case for finding some way of doing it if not in a staged approach then at least by starting with some confidence-building measures and seeing whether those could pave the way to other more difficult issues. There is some scope there. There have been problems over steel, with which I know the committee is familiar. The EU could make a move there around a specific quota for steel going from GB to Northern Ireland. That would address that issue.

There has been some progress already on medicines. There were issues around medicines and medical devices that affect the whole of the UK, which need to be pinned down. The EU infraction proceedings—the legal

proceedings, two waves of which have been started or restarted—could be slowed or frozen, which would help build confidence as well.

Then you get on to the more difficult but still perhaps not the most difficult issues around customs, SPS and veterinary. It is not an easy measure, and it would not come early in discussions, but at some point—again, this would require movement on the EU side—there could be an acknowledgment of the existing grace periods on a number of these issues. It is quite difficult to see those being unwound. How do you capture the reality of the existing grace periods in a way that is acceptable to both sides?

On veterinary issues, there are a number of much-discussed international precedents that could be adopted. That would require some movement on HMG's part because at the moment they have not signalled interest in any of the main internationally available precedents.

On customs, you have proposals from the UK side around some kind of green lane; you have proposals from the EU side around an express lane with simplified procedures around customs and indeed SPS. The question there is whether you can find some accommodation that spans the difference between simplified procedures and no procedures at all. It would be technically complicated and technically complex, but the customs area is inherently quite complicated. That might give you scope to rebalance things and could reflect a less precautionary approach to the risk of goods going on into wide circulation in the single market.

That would benefit from improved data exchange. Again, HMG would need to make that data available in a form that could be used by EU authorities to offer reassurance, internally and to any EU member state that raised issues. That is not inconceivable.

If you were able to make some progress along those lines, other issues—Lord Dodds referred to some earlier—might come on to the table. I am not underestimating at all the difficulty of making progress on those issues, but at least you would have created some momentum. I do not know whether that is helpful.

Lord Empey: Yes, it is. Thank you very much, Sir Julian. Peter, you have your plan sitting there. Share it with us.

Peter Sheridan: On the upside, the language has certainly changed over this last while. If both the EU and the UK are saying they want to find agreed solutions, that is a good place to be. Clearly, it is neither in the UK's nor the EU's interests to allow matters to escalate further. It is a lose-lose for both. Arguing who loses most is a zero-sum game.

What would change the circumstances and allow agreed solutions to be more preferable? To improve those chances, the UK Government could consider pausing the passage of the Bill. I did not say "withdraw"; I said "pause". The EU could consider, as Julian says, either pausing those infringement proceedings or conceding that much of the GB-NI trade, for example, moving to supermarkets does not pose a risk to the single

market, and therefore the ground rules would change and the atmosphere may change.

Sir Jonathan Stephens, former Permanent Secretary in the NIO, also made an interesting comment recently. He talked about how a lot of what has happened in the protocol has tended to focus on the desired outcomes and less attention has been paid to the process to get to those outcomes. He agreed that the process was as important as, if not more important than, the outcome and that we need to find ways for the process to engage the key stakeholders and enable them to take ownership.

That is what happened in the Good Friday agreement. All of the parties were involved, including, if you remember, people who were affiliated with paramilitary organisations at the time. That allowed them to take ownership rather than feeling that this was imposed on them from the outside. I suspect that a lot of people in Northern Ireland feel this is being imposed. Finding a way for the parties to become involved might be helpful in that.

Q84 Lord Empey: May I ask you both a supplementary? Is it fair to say, Sir Julian, that what you are saying is that we are looking at adjustments to the implementation of the protocol to make it less invasive but currently we are not looking at changes to the protocol itself? Are we making that distinction?

Sir Julian King: As we touched on a little bit earlier, the existing parameters of the negotiation on the EU side are as you describe them. Any chance of changing those would depend on the progress of the negotiation. And with any changes that you reached, for example, on VAT or subsidies, one of the elements you would have to discuss is how any agreed changes would be reflected in the legislation and legal framework.

Lord Empey: Peter, would you agree with that?

Peter Sheridan: The position of the EU at the minute is that it is about the implementation. Who knows what will happen if the atmosphere changes, movement starts to happen and we start to get agreed solutions? That opens up all sorts of possibilities from people's fixed positions currently.

Lord Empey: What happens if our House significantly amends the Bill to the point that it becomes toothless?

Sir Julian King: Again, as we were touching on earlier, the handling of Bill—the passage of the Bill—is being very closely watched on the EU side. It certainly conditions the EU's willingness to engage in anything like the process that Peter and I were just describing. I am sure your House will have that in mind as you consider what treatment you give the Bill as it goes forward.

Again, we all collectively need to send a message that, if you are going to have positive engagement and a degree of flexibility through that

engagement, it is a mistake to have too thick red lines. That applies on the UK side to certain aspects of the Bill and it applies on the EU side to anybody who said, "We are not going to engage until the Bill is withdrawn".

Peter Sheridan: This is why I referred to the Bill being paused. If there are reciprocal agreements from the EU, that will change the atmosphere. You would not get to the stage where the Bill becomes toothless. If the Bill becomes toothless and we cannot get agreed solutions, we are back in the same place we are now. A large part of the community in Northern Ireland feels that its identity is being lost in the middle of that.

Lord Dodds of Duncairn: Sir Julian, I just want to clarify something. Did you say earlier that you had picked up from some of your EU friends that there was nothing new that the UK Government were bringing to the table as things stood at the moment? Did I pick you up right in saying that? Did you reference something about nothing new being brought from the British side?

Sir Julian King: I was reporting a comment from one person on the EU side following the short period of recent discussions. I do not know whether that reflects a wider view and I do not know whether that would reflect, as it were, a considered view of the overall position of the new Government.

Lord Dodds of Duncairn: In the absence of any explanation from anyone about where talks are at, it is hard to guess where things stand. Thank you for clarifying that. I appreciate it.

Baroness Ritchie of Downpatrick: I have a quick follow-up on that. I have listened intently to what Sir Julian has said about the issue around negotiations. Maybe it is time for political negotiations to begin, now we seem to have some settlement around the appointment of the Prime Minister. I was wondering whether Sir Julian had any view on that.

Sir Julian King: If these negotiations are going to progress, they will be inherently technically complicated, but agreement is not likely to be built from the technical level up.

Baroness Ritchie of Downpatrick: It will be the political level.

Sir Julian King: Agreement will be framed politically.

Q85 **The Chair:** There is a final question from me on timescales, Sir Julian. Talks are going on now, although, as you said, there are rather different opinions from the Commission and the British Government about how much progress they are making. You have talked about confidence-building measures being introduced at some stage in the negotiations. What would be the likely timescale for the negotiations from now on? To where do they take us in the firmament of Northern Ireland events?

Sir Julian King: Again, I am not in the engine room of the negotiations. Mine is an opinion based on second and third-hand accounts and should

be treated accordingly. It seems inherently quite difficult to reach a deal on some of the more complicated subjects in the next few weeks.

That has a bearing on, to the point of your question, the question of whether there is going to be a substantive deal in time for the Secretary of State for Northern Ireland not to call an election.

The Chair: Going one stage further from there, a number of us were in Belfast recently and it was put to us that the prospect of a visit from President Biden was a relevant factor in this context. Do you see it as a relevant factor? Is that a point that might cause people to think, "We had better get this done sooner rather than later or at least by next April"?

Sir Julian King: The US Administration have a lot of other things on their plate but, among the highest levels in the White House and actively in the White House staff, the US Administration follow this process very closely, make a point of actively engaging and making their engagement known both in the UK and in Brussels. People on both the EU side and the UK side will be in no doubt about what this Administration think.

The Chair: Thank you very much indeed to both of you. It has been extremely helpful. That has really helped our inquiry a lot.