

European Affairs Committee

Protocol on Ireland/Northern Ireland Sub-Committee

Corrected oral evidence: Introductory inquiry on the operation of the protocol on Ireland/Northern Ireland

Wednesday 14 July 2021

4.15 pm

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

Evidence Session No. 6

Virtual Proceeding

Questions 60 - 77

Witnesses

I: Lord Frost CMG, Minister of State, Cabinet Office; Rebecca Ellis, Director, Northern Ireland/Ireland Unit, Cabinet Office; Mark Davies, Deputy Director, Northern Ireland Protocol, Northern Ireland/Ireland Unit, Cabinet Office.

Examination of witnesses

Lord Frost, Rebecca Ellis and Mark Davies.

Q60 **The Chair:** Good afternoon and welcome to this session of the European Affairs Sub-Committee on the Protocol on Ireland and Northern Ireland. Today, we are concluding our programme of oral evidence for our introductory inquiry examining the current situation in Northern Ireland as it relates to the protocol. We are continuing our work today through an evidence session with Lord Frost, Minister of State at the Cabinet Office with ministerial responsibility for the protocol, joined by two Cabinet Office officials, Rebecca Ellis and Mark Davies. You are all very welcome. Lord Frost, we are particularly grateful to you for agreeing to come and give evidence to us. Thank you very much for that. We very much look forward to your evidence.

Today's meeting is being broadcast and a verbatim transcript will be taken for subsequent publication, which will be sent to witnesses to check for accuracy. I also refer to the list of Members' interests as published on the committee's website. With that introduction, perhaps I could ask Lord Hain to ask the first question.

Q61 **Lord Hain:** Lord Frost, I add my thanks to you for giving this evidence. It is good to see you. Would you agree that building trust between opposing sides is an essential prerequisite for a successful negotiator?

Lord Frost: Thank you, Lord Hain. Before answering that, can I briefly say that I am very happy to be here and thank you for inviting me? As I said in my letter of 2 June, I do not think it is right for me to make an absolutely firm commitment about how often I appear, given all the calls on my time. This is my sixth Select Committee hearing in under two months, and I still have one to go before recess. I hope you agree that I am fulfilling my scrutiny responsibilities, but I am delighted to be here and looking forward to answering the questions.

On trust, you obviously need a degree of trust between negotiators to make things happen, but I would set that in a bit of context in this particular negotiation. First, I make no apology for telling things like it is. It is important to be clear about what you think so that the other side can understand that. Sometimes that is welcome and sometimes it is not, but it has been a feature of our approach that we try to be clear.

The trust issue, if I am honest about this, goes back a long way and all sides bear a degree of responsibility. In this particular negotiation, we had a sense, I suppose, that the Northern Ireland issue was part of a bigger play in the negotiations of 2018-19. Last year, as we said extensively at the time, threats were made against us during the negotiations, and we had the UK internal market Bill as a reaction to that. That has now been defused, but it is clearly part of the issue. We had the Article 16 vaccines hard border attempt at the end of January without any warning. We have the fact that the EU, having reached an agreement with us on Article 10 on state aid in December, put out a document in January without telling us that went in a different direction. It passed legislation in December last year on TRQs, of which we had no warning and which has caused us problems that we are now trying to deal with.

If we are talking about unilateralism and how the negotiations are happening, there are things that have happened on all sides that have caused the existing problem. What we need to do is not to dwell on that but to move on from it. That is why we have talked about the new balance that we need to try to find; we would prefer a consensual way forward to get there if we could. We need to move on. We need to have a constructive discussion about the way this protocol is working and put the history behind us, if we can.

Lord Hain: I have negotiated with the United Nations on behalf of the Government, the EU and in Northern Ireland, and I think trust is essential to get any sort of deal. It strikes me that you have done really well in

losing the trust of the Northern Ireland unionists, loyalists, nationalists and interlocutors in the EU and Dublin. That is pretty successful negotiation, is it not?

Lord Frost: I would not agree with the way you characterise the situation. I point to the fact that we successfully conducted the biggest bilateral free trade agreement negotiations ever last year and successfully concluded them. That points to the fact that quite a lot of trust exists between the two sides. It is important not to dwell on it. I would not really agree with the way you put the situation. We have productive discussions. The difficulty is that there are different views of the fundamentals, and obviously that produces a sense that we are talking past each other at times, but I think that is a different kind of problem.

Lord Hain: The loss of trust with Dublin is something that pains me particularly. I would urge you to go the extra mile to try to rebuild that because of the tangled history between the Republic of Ireland and the United Kingdom. It is really important to rebuild that trust, if I may say so.

Lord Frost: I agree with you. I do not think it is in quite such a parlous state as you suggest, if I may be honest about that.

Lord Hain: It is my impression, if I may say so, that it is.

Lord Frost: Well, we have different perceptions of this issue. Once again, things are said by all sides that do not necessarily land well, and that goes for certain people in the Irish Government as perhaps it has done for people on the UK side. It is important that we all try to act in a way that is conducive to a good negotiation.

Lord Hain: Megaphone diplomacy does not work, but perhaps I can leave it at that, Lord Chair.

The Chair: Thank you very much.

Q62 **Lord Dodds of Duncairn:** Thank you, Chair, and thank you, Lord Frost, for coming here today and answering our questions. Could you outline where we are at the moment on outstanding issues that still need to be addressed? There was some talk recently about 12 areas where there has been no or no satisfactory response from the European Union. Could you outline where things stand as of today?

Lord Frost: I will, and I may turn to colleagues, if that is useful, with your permission, Chair, if you want to get into the detail of this. We all group the precise number of issues that are outstanding in a different way, but it is fair to say there are probably 20 or maybe more different strands to the outstanding problems. Some of them are quite fundamental, such as how the "goods at risk" arrangements work, how we manage SPS goods movements and so on. Medicines is another very important one. Others are important but segmented issues that have been thrown up by the way the protocol is being implemented—for

example, pets movement, livestock movements, particular issues that probably have a particular solution if we could find it. There is quite a long list of those, and it is fair to say we have not made the progress we would really like to in moving any of those forward.

Lord Dodds of Duncairn: Clearly, time is short and some of these issues will come to a head again once grace periods run out. Even if they are addressed, we are still left with the problem of the democratic deficit in the direct application of laws. I would be interested to hear how you think that issue can be addressed. How do we restore democratic accountability and oversight of laws made for Northern Ireland? You talked recently about restoring a new balance in the way the protocol is operated. Clearly, for many people in Northern Ireland, it is felt that the balance of the Belfast agreement and subsequent agreements has been altered as a result of the protocol. Would you care to comment on those points?

Lord Frost: There is obviously a lot in there and we could talk for some time about the issues. The democratic deficit issue is a significant one. It is because this is quite an unusual arrangement in democratic terms that we had to include the consent mechanism in the protocol back in 2019 as at least a moment when the unusual nature of having lots of legislation imposed directly could be dealt with. It is not entirely satisfactory; I do not think anybody thinks that it is.

One of the issues of the flow of legislation is proving problematic. If you agree, Lord Chair, I might turn to Rebecca on this, who looks at this particular point day to day, and it has thrown up a few problems over the last few days.

The Chair: Please.

Rebecca Ellis: Thank you. As your Lordships will be aware, there is the Joint Consultative Working Group, which is designed to be a forum where measures that are coming down the line from the EU are notified, and the Northern Ireland Executive are represented there. We have been putting in a lot of effort in recent months to get that forum operating in a way that gives notification in advance and enables potential implications of draft measures to be properly understood.

We are making some progress in that the working methods have improved, it is meeting on a regular basis, and we welcome that the Commission has joined with us in trying to get that happening. But it is not yet there. We had what we might call a drop of new measures last Thursday, which included a list of over 800 measures, 666 of which had already been adopted. In many respects, no more information was provided than what you could read in the *Official Journal*.

We are very aware of this issue. It is important, and we will continue to work through that group to try to get the process working more effectively. It is important that within the EU the implications of this for Northern Ireland are fully understood and that that kind of mechanism

has to work better in order, as you say, to ensure that there is a proper understanding and a role for the Northern Ireland Executive in that process.

Lord Dodds of Duncairn: Thank you very much.

Q63 **Baroness Goudie:** Good afternoon, Lord Frost. Does the package of measures announced by the EU on 30 June, including the extension of the grace period on chilled meats, the supply of medicines, the movement of guide dogs and the retagging of animals, demonstrate flexibility and good faith on its part?

Further, what reciprocal steps will the UK take to demonstrate its own flexibility and good faith, and to what degree does the EU's legislative change to address the medicines issue solve the problem, which is really important to everyone? There has been much publicity on that issue above all.

Lord Frost: That is right. The announcement on 30 June of the extension of the grace period and these other measures is helpful. We have said that. The extension of the chilled meats grace period provides a bit of breathing space for things to happen, but it is only temporary and we will face the problem again at the end of September. There are some other grace periods in the mix as well during the year.

As regards the other issues—medicines, guide dogs, retagging of animals, and one or two others—the problem is that unless something has come in in the last day or so, with the exception of medicines we have not had anything in writing yet to tell us what the proposed solutions are, but we are very happy to work on them when we know what they are.

On medicines, the potential solution was trailed in the press a month before we received it. We received it a week or so, maybe a little longer, ago. It is quite complicated, and we are working through it. It is a valiant effort, I suppose, to deal with the problems. We are not convinced that it deals with absolutely all the difficulties, so we need to talk to the EU about that. We already have, and we are again shortly.

That is the difficulty. It is not that we want to be ungracious about this. There are very different levels of centrality to the problems presented by the protocol. It is good that they have been highlighted, but the problem is that we are simply not having the quality of discussion about them that we need in order to resolve the problem. Meanwhile, time is passing.

Baroness Goudie: There are scare stories that we could run out of certain medicines for more serious illnesses—of course, every illness is serious. Is there a guarantee, particularly on medicines, that we could get a further grace period before this one runs out?

Lord Frost: We talk to the industry about this all the time. The problem is that, because of the nature of the product, the lead times for supply markets are quite long, and although this grace period expires at the end of the year, firms are beginning to take decisions already about what

they can supply. We are hearing, as the PM and others have said, that some drugs are being withdrawn. If we cannot find a way through this, I would guess that might increase. We are absolutely clear that people in Northern Ireland have to have the same access to medicines as in every other part of the United Kingdom. If we can find a way quickly on the Commission's proposals or something like them, that will be helpful, but if we cannot, there is an obvious difficulty coming down the line.

Baroness Goudie: Thank you.

Q64 **Baroness Ritchie of Downpatrick:** It is good to meet you, Lord Frost, and your officials. I want to move on to the whole area of the SPS veterinary agreement. Various references have been made to that in committees giving evidence and more widely at conferences and in media interviews. There are various types of SPS veterinary agreements: the Swiss style, the New Zealand model and the Australian one. What progress has been made in relation to the SPS veterinary agreement, and how can compromise be reached between the respective UK and EU positions in favour of equivalence and alignment?

Lord Frost: Thanks, Baroness Ritchie. It is a very important area, and one that causes a degree of frustration in the way it is handled. If you go back to first principles on this, there are three possible situations between two territories. One is where one operates the rules of the other as regards SPS. That is the proposal the EU has made to us at the moment. The other, at the other end of the spectrum, is that two territories operate two sets of very different rules and have to deal with the reality of what that means for trade between them. Then there is a third situation where the two territories operate rules that are essentially providing for the same standards but have some differences in detail.

The third situation is the one that we are in. The differences of detail are very small at the moment, although the EU is bringing in more legislation that will expand that gap over time.

It is in that space that you can have an equivalence arrangement where you recognise legislation as equivalent and formally different but providing for the same standards. We have proposed such an agreement covering SPS goods, and we have discussed it a bit, but I do not think we have had the quality of discussion that we would really like.

So you are right to point to other models. The New Zealand model is one. The one that is incorporated in the Canada agreement is another. These are equivalence mechanisms leading to equivalence arrangements, so there are precedents. The Swiss one, which the EU tends to talk about, although it is quite an old agreement and different in some areas of detail, is more like the first arrangement where you essentially have to operate the rules of the other entity, and that is the problem with that.

That is the situation. We have proposed a solution. We are just, once again, not really able to have a good discussion about it.

Baroness Ritchie of Downpatrick: You say that you have not been

able to have a good discussion about that. When did you last meet Vice-President Šefčovič and his officials to discuss this particular issue? Alternatively, when do you intend to meet him to discuss these issues further? At the end of the day, the agri-food industry in Northern Ireland is looking for a solution, and the farming industry is central to our local economy.

Lord Frost: I absolutely agree with that. The food and farming industry in Northern Ireland is extremely important. The industry—both primary producers and every other bit of the supply chain—has done an amazing job in keeping things going, frankly, over the last few months, given all the difficulties.

I talk to Maroš pretty often, and this issue comes up between us. There are technical discussions all the time on all these issues. I do not know when we last discussed equivalence, but it was not that long ago. The difficulty is that the EU at the moment does not want to work on the kind of agreement that we are proposing. Quite recently, certainly last week, Maroš Šefčovič repeated that the best way forward was the Swiss-style alignment agreement. That is the problem: it is two different views.

Baroness Ritchie of Downpatrick: Finally, would this be one area where the UK Government would have plans as part of those you intend to publish within the next five to 10 days?

Lord Frost: You will have to wait and see what we say when we announce plans to Parliament before recess. I do not think I am breaking any secrets to say that we will set out an approach on SPS goods, as on any others, to try to find a constructive way forward.

Baroness Ritchie of Downpatrick: Thank you, Lord Frost.

The Chair: This is such an important area, Lord Frost. Would you say that you are looking for a compromise?

Lord Frost: Yes. We have sent in quite a detailed proposal. It is fair to say that our proposal would break new ground in the sense that it would be broader than existing equivalence arrangements. That is true, and the EU is right to point that out, but it is kind of inevitable, given the situation, that it will be broader.

We would love to get into a discussion on this that tried to find a pragmatic set of solutions to these problems. We are absolutely willing to talk around it. The only thing we cannot do is accept an ex ante commitment to apply the rules of the other party, for the reasons I have gone into frequently and which are probably clear. If that is off the table, obviously we can have a discussion.

The Chair: Thank you.

Q65 **Baroness O’Loan:** Lord Frost, you are welcome to the committee. The evidence you have given us so far has been, to me, somewhat challenging as someone who lives in Northern Ireland, because I do not

see much ground for hope.

My question is this. During the inquiry, we have heard that businesses based in Great Britain were not adequately prepared for new arrangements for trade with Northern Ireland under the protocol, and indeed many of us who live in Northern Ireland have had and continue to have experience of the problems that are manifest every day in Northern Ireland.

Why was that? Why was there no preparation? What steps are the Government taking now to ensure that GB businesses continue to supply the Northern Ireland market or are able to resume their supplies to the Northern Ireland market again, particularly in the uncertainty that you have been describing thus far today?

Lord Frost: It is a very fair question. There are a number of answers to it, I guess. One is that we did not reach agreement on the arrangements for some aspects of GB-Northern Ireland trade until quite late into December. That was Michael Gove's bit of this negotiation. We did not know that we were going to have a zero-tariffs deal until Christmas Eve, so necessarily some of this came in quite late, which is a practical problem.

Nevertheless, we have done a lot. We have put in place the trader support service and the movement assistance scheme. The digital assistance scheme is coming. We have done our very best to communicate, and standing those up from nothing, effectively, has been quite an achievement.

We have done a lot by way of industry forums, encouraging visits to the website, webinars, calls to business, and quite a lot of engagement with specific logistics operators and the people who make this work day to day. We write constantly to businesses about it. We have been doing what we can, and we have done quite a lot, but you cannot be quite sure who you are not reaching.

One of the things we have learned, which might have been foreseeable and predictable but has been more of a difficulty than we thought, is the chilling effect of companies in Great Britain deciding that it is all too much trouble, reasonably enough, and not being bothered to engage with the process. They are often SMEs or micro-businesses. Dealing with this is a significant call on their time, and they just decide that it is not worth it. That is why you are seeing some of the trade diversion and supply chain issues to Northern Ireland. That probably has been more marked than we thought, and it is at the root of some of the current difficulties that we have.

Q66 **Baroness O'Loan:** In the context of the services that you have described, such as the trader support service and the digital support service, have you done any analysis or quality assurance of whether those services are actually meeting the needs of the businesses that would wish to do business with Northern Ireland?

Lord Frost: There is a process. Companies are definitely finding it easier to interact with it, in the sense that, at least with a first go at a trader support service, the number of non-compliant declarations and non-engagement with the process has fallen dramatically to really quite low levels from relatively high levels at the start. The real-world effect shows that companies are getting to grips with it. Of course, that does not pick up companies that just decide that they do not wish to engage with it, and they will not show up in the statistics.

We have spent a lot of money on this. It would be surprising if we were not getting some results for it. We have spent £125 million on the TSS already. We will probably spend £350 million or so over the next two years if it remains operating on this basis. We have already spent £25 million on the digital assistance scheme and we will probably spend £150 million on that before it is all over. These are quite substantial sums of money for lots of companies. It is one reason why we find it a little bit frustrating when we are told that we are not implementing the protocol. Very large sums are being spent on this. We cannot reach everybody and cannot do everything, but a lot is happening.

Q67 **Baroness O’Loan:** Can I ask another very quick supplementary, because it is so important? You have described huge sums of money, but clearly that is not touching down in Northern Ireland in any way. Is the bulk of that money being spent on the procurement of IT systems and consultants’ reports on how to make things better?

Lord Frost: A lot of it will be spent on staff to make these schemes work. A lot of it is being spent on procurement of IT systems—you are right—and simply running the processes. That is the cost of the protocol.

Baroness O’Loan: Thank you.

Q68 **Lord Hannan of Kingsclere:** I would like, with permission, to go back to something you said, Lord Frost, right at the beginning in response to Lord Hain about trust and co-operation. Did I understand correctly from Rebecca’s answer to Lord Dodds that the EU had dumped 800 new measures without forewarning? Is that right? Is this a sustainable way of carrying on, if that is the level of consultation?

Lord Frost: That is correct. Basically, that is the problem. The Joint Consultative Working Group is supposed to give us advance warning. If all it is doing is giving us what is in the *Official Journal* in some other form, there is not much point in it. It needs to give some upstream warning.

The way it is working at the moment is a bit indicative of—how would I put it?—the EU not taking entirely seriously the fact that it is legislating for another territory. These are laws that are imposed on another territory without a process, and I think the least that can be done is to give some advance warning of that, some understanding, some chance to feed back and consult. That is not really happening at the moment. Rebecca, do you want to add to that?

Rebecca Ellis: Yes. The number I gave was the total number of measures that were notified to us. It happens on a cycle, so the notification that happened last week was for measures adopted over a three-month period. Some of those were prospective measures where we were given the name of the measure that was going through the system. Over 600 had already been adopted. It covered a three-month period.

Q69 **Lord Hannan of Kingsclere:** That would seem to me, prima facie, to indicate a striking lack of good will and good faith.

Could I ask a different question? Let us call it the Lord Thomas of Gresford question, because it has come up with several other witnesses. It is often said that the protocol gives Northern Ireland the best of both worlds by giving it access to both markets. Sitting where you sit, what do you see as the advantages of the status quo?

Lord Frost: It is a very good question. What would I say? One obvious advantage of the protocol that was never disputed at any point in the negotiation is the fact that there is no infrastructure at the border between Northern Ireland and Ireland. That was always a desired aim by all parties. It has delivered it, and it is essential. Even though sometimes it is taken for granted as a reality of life, it is important to note that the protocol delivers that, and it is really essential that it does.

On the best of both worlds argument, it sort of depends, but I do not entirely buy it. If you are a company that primarily trades with the EU rather than within the UK, you might well think that the protocol is a good arrangement and gives you benefits. But if you look at Northern Ireland as a whole, trade between Northern Ireland and the rest of the UK is five times as big as trade between Northern Ireland and Ireland. Northern Ireland's "exports" are 50% to Great Britain and only 20% to Ireland, so taking the average, taking it overall, it does not make sense for Northern Ireland to gain the "benefit" of access to the EU market while having quite restricted access to the rest of its own market. That is the fundamental problem.

It is fair to say that there is a range of view, particularly among business, on the protocol, but I do not think I have spoken to a single business that has not raised the issue of Great Britain to Northern Ireland goods movements as in some way a problem for them. For some it is less marked and for some it is a very serious problem, but it always seems to be there, and that is where the trade-off does not quite work.

A final point on this is that that balance of benefits and costs comes with a degree of societal disruption and weakening of identity in one community, and I do not think that trade-off stacks up. Even if you can point to individuals and companies and some within Northern Ireland for whom there is an advantage overall, I think it is problematic.

Lord Hannan of Kingsclere: Thank you very much.

Q70 **The Chair:** Following on from that question, is there more that the Government can do to explain that there are, for some companies at

least, potential benefits?

Lord Frost: I think those who benefit are quite well aware of that. That is the truth in Northern Ireland. I do not think it totally makes sense to encourage a situation that generates more of something that is a problem. There was always going to be some adjustment of supply chains and trade patterns after Brexit for wider reasons, but I think it is very clear that, over and above that, there is some trade diversion going on. It is clear that trade within the island of Ireland in both directions is going up. Given that that is, in many ways, a problem rather than an advantage, I do not think it totally makes sense for us to encourage more of that development rather than deal with the consequences of it. That is how I would put it.

The Chair: Why is it a problem?

Lord Frost: There are many reasons it is happening, but one is that firms in Northern Ireland are not necessarily able to choose their preferred suppliers in Great Britain, and they are having to find substitutes elsewhere. It might not be their first choice, but for wider reasons, because of the way the protocol works, it might be easier for them. To present that as an advantage or a benefit is not quite an accurate description of the situation, I would say.

The Chair: Thank you very much.

Q71 **Lord Thomas of Gresford:** You made the rather serious charge that the EU is not taking seriously that it is legislating for another territory. Is that really your view? Rebecca Ellis referred to the meetings of the Joint Consultative Working Group, which require a proper understanding and a role for Northern Ireland, and, as Lord Hannan referred to, she pointed to the overwhelming number of measures of which there has not been notice, and so on. What are you going to do about it?

Lord Frost: I think what we need to do about it is to find what we constantly talk about as the new balance that needs to be created in operating the protocol. The protocol exists because there is a delicate balance in the Good Friday agreement and because there are a lot of different interests and concerns that have to be satisfied through the protocol. I think that means that all sides have to act with a degree of respect and sensitivity.

Lord Thomas of Gresford: I am sorry to interrupt, but can you define the new balance that you are seeking if the balance set out in the protocol is not satisfactory? What is the new balance?

Lord Frost: Obviously, we will say more on this next week when we set out our approach more broadly. I think the fundamental thing that has to be rebalanced is that goods have to be able to flow as freely as possible between Great Britain and Northern Ireland. The reality of the UK customs territory as set out in the protocol, and the reality of the UK internal market as set out in the protocol, has to mean something, and be real, to the people who operate within it.

Lord Thomas of Gresford: Are you really arguing for scrapping the balance in the current protocol and setting out anew to find a new agreement?

Lord Frost: What we are arguing is that we need to find a different way of managing the situation. The protocol as is is not providing that.

Lord Thomas of Gresford: It is not fit for purpose is what you are saying, is it not?

Lord Frost: It is not being operated in a way that respects the balance in the Belfast/Good Friday agreement.

Lord Thomas of Gresford: But is it fit for purpose?

Lord Frost: I am not sure I would characterise it in that way. I do not think I would make a judgment on that point.

Lord Thomas of Gresford: Why would you not make a judgment on that point? You are in charge of policy in this area.

Lord Frost: Because we need to find out, which is what we have been trying to do over the last few months, whether it is possible to operate these arrangements in a way that gives a different balance. That is the kind of discussion we have not had with the EU but would like to.

Lord Thomas of Gresford: But you would have to have its agreement to a different balance, would you not? You cannot just impose it.

Lord Frost: We cannot just impose it, at least in those terms, and the most durable agreements are those where both sides agree to them. We have made no secret of the fact that we would prefer to proceed by consensus on this. Both sides have an interest in supporting the Belfast/Good Friday agreement. The delicate balance need not disrupt everyday lives in Northern Ireland. We are both committed to that—the EU as well as the UK. If the protocol as it is operating is not delivering that, both sides have, I think, an obligation to try to deal with the situation, and that is the discussion we would like to be having.

Lord Thomas of Gresford: What mechanism would you use for that? What forum is there in which you would come to a new agreement, a new balance?

Lord Frost: It depends what ground we are trying to cover. There are negotiations going on all the time between my teams and their opposite numbers. Whatever the kind of institutional framework for it, there is plenty of room to have a genuine negotiation between us and the EU about changes if necessary.

Lord Thomas of Gresford: Thank you, Chair.

Q72 **Lord Empey:** Good afternoon, Minister. What is your response to those arguing in favour of alternatives to the protocol?

Lord Frost: I would say that it kind of depends what they mean. There will always need to be some kind of tailored treaty relationship between us and the EU that covers Northern Ireland. What happens in Northern Ireland in this area will always be, to some extent, exceptional, and we will always need a treaty relationship to cover that. In that sense, to those who simply say the protocol should disappear and that would solve the problem, I would say that I do not think that is a realistic assessment of the situation.

The question is: what do we need to do? I think we need to have the quality of discussion with the EU that explores whether the current very serious difficulties can be resolved within the framework of the protocol, or whether we need a more fundamental discussion on some aspects of the way it works, and that remains to be tested at the moment.

Lord Empey: In your *Irish Times* piece you wrote, "If it is not possible to identify those issues we will of course have to consider all our options". Was it the late Baroness Thatcher who used the term, "There is no alternative"? I see that our EU colleagues are using that term as well, but you and I both know that there are always alternatives. So what would your options be?

Lord Frost: There are alternatives. In passing, I think the EU should be careful when it says that there are no alternatives to the protocol, because that implies that the consent vote that is there in the protocol is a meaningless vote. If there is no alternative to the protocol, what is that vote about? Self-evidently, there are alternatives to it.

Lord Empey: Obviously, both sides are obliged in Article 18, if the Assembly were to vote against Articles 5 to 10, to negotiate an alternative.

Lord Frost: Precisely.

Lord Empey: As regards the consent, what measure did you use back in 2019 to assess what consent was available for the protocol when it was agreed?

Lord Frost: It was a very delicate bit of the negotiation and was only unlocked quite late. Our original proposal, which we put out in writing I think at the beginning of October, suggested that there should be a consent vote at the start of the process; that it was not reasonable for Northern Ireland to have to go into this arrangement without some sort of act of democratic legitimisation of it in the circumstances. Unfortunately, we could not get that agreed, which is why we have the post-facto arrangements instead and the particular form that the consent vote takes. It was a product of the complicated negotiating situation in those last days in October.

Lord Empey: No doubt we will return to our views on that issue at another time. Thank you.

Q73 **The Chair:** Before passing the floor to Lord Caine, could I ask one other

question? Lord Empey referred to your article in the *Irish Times*. I think you also wrote in that article that "arrangements can work only if there is genuine cross-community consent". How do you think that could be achieved, given the strongly divergent views between the communities of Northern Ireland? How are you working with the European Union to build up a sense of community, which at the moment is not there?

Lord Frost: There are different meanings to the word "consent", I guess. There is the formal meaning of the vote in four years' time in the protocol. What we were trying to say in the *Irish Times* article is that in the real world it is very difficult to operate anything much if it does not enjoy broad support from the governed. In practice, it is difficult to make things work in those circumstances. We have pretty much a 50:50 split of opinion on the protocol in Northern Ireland, and that does not feel like a sustainable basis.

It is really important, though, to look at the consent issue in the broadest possible sense. The protocol is not working well, and that is affecting everybody in Northern Ireland, whoever they vote for and whatever their views on wider political questions. It is still affecting the availability of goods. It is still affecting your ability to take your pet on holiday to Scotland. Some of these basic things are still there. We talk to all parties. You will have seen that I was in the Assembly on Friday taking questions from everyone. A workable protocol, a workable arrangement, is in the interests of everybody in Northern Ireland, and it is only if we can find something that is in the interests of everybody that we will get something workable.

The Chair: Do you think that a workable protocol is achievable?

Lord Frost: I do, actually. If one looks at all the difficulties in the last few years and all the different versions of various agreements that we have gone through, we have tried a lot of things, and I believe that teams who have that sort of history and exploration of the issue can find a way forward. I genuinely do believe that. I think we all think that. If we can do it, that would be great. We would love to get into a discussion that is a bit more fundamental than the one we have been able to have at the moment.

The Chair: Thank you very much.

Q74 **Lord Caine:** Minister, you are very welcome, along with your officials. I am afraid I have become, in de Valera's words, "the Legion of the Rearguard" in this committee. I have two very quick questions.

Obviously, we look forward to whatever the Government might announce in the next few days before the parliamentary recess, and, as you know, I have supported efforts to make improvements to the protocol for the benefit of everybody in Northern Ireland. Do you accept that there are a good many people in Northern Ireland who will take the view that no amount of tinkering with the protocol will ever be satisfactory, and who object to it fundamentally on constitutional, democratic and political grounds?

I had an email this afternoon in response to my question in the House on kosher food basically saying that the whole thing has to go; it is impractical and a constitutional outrage. The first question is: how do you think the Government can better address those concerns?

Turning to the second question, you referred to the vote in four years' time. Can you give an outline of the process that would be followed should the Assembly vote down the protocol in four years' time? What would be the prospect of such a vote leading to the disappearance of the protocol, or would it simply precipitate a negotiation in which, essentially, the protocol is brought back in a slightly modified form but with very little difference? In other words, to coin a phrase, is the vote in the Assembly a meaningful vote?

Lord Frost: Thank you, Lord Caine. On your first question, I said before the Assembly on Friday that I did not have a very good answer to this question, and I kind of repeat that, because I think it is inherent in the structure of the protocol that the democratic legitimacy issue is a very difficult one. That is clear, and we were trying to find, to coin a phrase, a balance in which certain things were painful but acceptable in the broader interest, and trying to respect the different strands of the Good Friday agreement and the delicate balance in Northern Ireland. Clearly, we did not quite find that. We know that from experience now, even if we thought it at the time.

Those who are concerned about the democratic constitutional issue have a very fair point. Clearly, we did not quite find the right balance. We need to find a way of respecting that. There will probably always be an element of compromise rather than perfectionism, given the circumstances, but it is a totally legitimate concern and one that we felt very strongly at the time, to be honest, negotiating this.

On your second question, the first point is that the protocol provides for the protocol to disappear unless the Assembly votes for it to continue. That is the formal arrangement. If it disappears, there is a two-year process in which we would seek to agree something else. In those circumstances, personally I find it inconceivable that there would simply be a further process that produced something like the same outcome. One is speculating, obviously, but the politics would be quite significant at that point, and certainly if we were in that situation I would imagine that that would be taken as a vote to find a different way. As has been said, there are different ways, and we would need to seek to find one. Obviously, that is in four years' time and the problem is more urgent than that.

Q75 **Lord Caine:** Thank you very much. I think that final point is really important.

Might I take one liberty finally and return to the beginning on trust in negotiations. I have been involved in a number of Northern Ireland negotiations myself, and while I agree with people that building trust is absolutely essential, is it not also very important that the people across the table need to know that, ultimately, you are prepared to take

unilateral action to defend this country's interests?

Lord Frost: As we have said, all options are on the table. We are in a different situation now from the one in 2019. We were still a member of the European Union then and a lot of people wanted us to stay a member, and that was an important element of the politics that we were trying to manage. It is different now. The protocol exists, and we have a range of options for trying to improve the way it works, but certainly all options are on the table. We have been absolutely clear about that and continue to be so.

Lord Caine: That is very good to hear, Minister.

Lord Hain: I am sorry to interrupt, Minister, but does that mean reneging on an agreement that you have signed on behalf of the Government—a treaty obligation?

Lord Frost: There are options within the framework of the protocol that allow things to be worked in a different way. I have said before, for example, that there is a contrast between the provision in Article 5 for the Union customs code to be applied and Article 6 saying that we should all minimise checks at ports in Northern Ireland. What is the right settlement point between that? That is a perfectly reasonable point of negotiation for how it should be operated that does not involve any sort of unilateral action or disavowal at all. It is a perfectly legitimate subject for discussion within the framework of the existing protocol. That is one example, but that is where we are.

Lord Caine: Lord Frost, thank you very much for your answers. Back to you, Lord Chair.

The Chair: Thank you very much, Lord Caine, and Lord Hain for the question at the end. We have time for one more question if there is another one anybody would like to ask.

Q76 **Baroness O'Loan:** I will be very quick. Lord Frost, you say that all options are on the table and yet the evidence that we have received tells us that there are major difficulties in making this protocol even begin to work to supply goods to and from Northern Ireland.

Given the tenor of your evidence to the committee today, what I am perceiving is ongoing instability, ongoing doubt and ongoing lack of trust. Is there anything you can say to give us any reassurance that anything will improve?

Lord Frost: The first thing I would say is: look at what we say next week and see what we set out as an approach to this. You are absolutely right to worry about prolonged instability and uncertainty. Nobody wants that. The trouble is that we have that now. Simply saying that everything will be okay if we just ignore all that and implement the protocol is not a realistic way forward. We have to live with the uncertainty and the political disruption that we have, either way. The question is: do we live with something imperfect, or can we try to get something better? I do not

know why anyone would not want to get something better if we could do it, and that, I think, is what we should try to do.

Baroness O'Loan: If I may say so, it is not just political instability: it is economic instability, and that is profoundly important.

Lord Frost: They go together, I agree with you. They both exist.

Q77 **Baroness Ritchie of Downpatrick:** You do realise that there is a proportion of the population in Northern Ireland and the majority of political parties from the nationalist persuasion and the Alliance Party who actually support the implementation of the protocol, because all they are looking for—and I come from that part of the family, so to speak—is political and economic stability. Can you give us assurances that there will be continued working with the European Union and with the European Commission to devise the mitigations and solutions that undoubtedly are urgently required and that will be part of the plans that you will announce next week?

Lord Frost: One hundred per cent. They may not be visible, but there are discussions taking place all the time on this range of issues. Obviously, if we are to find a solution, we will have to do it, one way or another, with the European Commission, and that is absolutely part of it.

As regards opinion in Northern Ireland, you are absolutely right that different political parties have different views on this question, but the polling suggests that there is a fairly stark divide on the way the protocol is working. I have not spoken to many people who do not acknowledge some difficulties with the way it is operating, even if their broader views on some questions are different. That is what I hear, and we try to take it into account.

The Chair: Thank you, Baroness Ritchie. Thank you very much to you, Lord Frost, and to Rebecca Ellis, for the evidence you have given to us. It has been extremely valuable as we draw this inquiry to an end. Indeed, we hope to be able to produce a report in the next few days.

I heard what you said at the beginning about the number of Select Committees and others that you have to attend, and I feel for you, but we very much hope that we will none the less have the opportunity of talking to you again. We are a committee that has among its members many who live in and experience daily Northern Ireland and Northern Ireland affairs and take a profound interest in them, and it is terribly important to us to hear from you from time to time. On this occasion, thank you very much indeed for talking to us. We are extremely grateful to you.