

European Scrutiny Committee

Oral evidence: Product safety in the UK and the Northern Ireland protocol, HC 786

Wednesday 3 November 2021

Ordered by the House of Commons to be published on 3 November 2021.

[Watch the meeting](#)

Members present: Anne Marie Morris (Chair); Margaret Ferrier; Mr Marcus Fysh; Mr David Jones; Marco Longhi; Craig Mackinlay.

Questions 1 - 46

Witnesses

I: Paul Scully MP, Minister for Small Business, Consumers and Labour Markets, Department for Business, Energy and Industrial Strategy; and Graham Russell MBE, Chief Executive Officer, Office for Product Safety and Standards, Department for Business, Energy and Industrial Strategy.

Examination of Witnesses

Witnesses: Paul Scully and Graham Russell.

Q1 Chair: Mr Scully, thank you for appearing to give evidence this afternoon. Sir William has asked me to pass on his apologies. He is currently dealing with another matter. I am therefore taking the Chair this afternoon for our public evidence session.

As you will be aware, we are deeply concerned with the current operation of the Northern Ireland protocol and continue to assess its impact on the people and businesses of Northern Ireland, and of course Great Britain. In evidence before us last week, your colleague Lord Frost very clearly articulated the areas of the protocol that are not working and the Government's proposals for how it could operate more effectively and equitably. The protocol creates arrangements concerning the people, communities and businesses of Northern Ireland that are legally and in terms of their day-to-day operations incredibly complicated, as well you know.

It our hope that today, as the Minister with responsibility for a small part of this operation, you can shed some light on how the protocol is actually working, specifically with regard to the UK's product standards framework. This is an area that we have reported on previously and remain interested in, especially when considering the implications of the protocol for the integrity of the UK internal market.

Just to give you some focus on our particular areas of interest, first, we are very concerned as to how the Government will ensure Northern Ireland is not cast adrift from Great Britain considering that, under the protocol, Northern Ireland is required to give effect to changes in EU law on product safety standards. Secondly, we are concerned as to how the Government will prevent backdoor access through Northern Ireland for European Union CE-marked goods imported to the UK and ensure compliance with UK product standards.

Mr Scully, I can see that you have an official appearing alongside you. Before we start and for the benefit of those watching at home, Mr Russell, perhaps you would briefly introduce yourself and outline your areas of responsibility.

Graham Russell: My name is Graham Russell. I am the director of the Office for Product Safety and Standards, which is a part of the Department for Business, Energy and Industrial Strategy. We are responsible for the enforcement of product safety and other regulations, including metrology and hallmarking. We have policy responsibility for product safety, including market surveillance co-ordination, standards and accreditation, which, as you have just introduced, includes elements of the application of the Northern Ireland protocol.

Q2 Chair: Excellent, I am delighted you are here, because your contribution will be of as much value as the Minister's. Thank you both. If I may, I will



HOUSE OF COMMONS

ask the first question to begin to unpick this rather challenging area. Under unfettered access, goods are currently entering Great Britain from the EU via Northern Ireland without any customs controls. The Government said in its July command paper that the risk that “goods made to EU rules are moved to the market in Great Britain” through Northern Ireland is “manageable and acceptable, given existing strong market surveillance.” Minister, what is your evidence for that assessment?

Paul Scully: Before I respond to that directly, can I reflect on what you said in your opening remarks? The operation of the protocol is a fast-moving area of policy and politics, and therefore I may be limited in what I can say today on some issues but, there again, as you say, you have had the benefit of Lord Frost’s direct evidence, which I am sure is far more productive on those wider scopes.

We are seeking to find a new balance for the protocol, to place it on a more sustainable footing. That includes the proposals to move to a dual regulatory regime. Doing so, it ensures that consumers in Northern Ireland do not face the barriers of accessing goods from Great Britain, which is something that we are seeing at the moment in my feedback from working with businesses across GB and Northern Ireland, alongside Lord Frost in regular meetings that we have.

What I am saying today is on the application of EU laws in Northern Ireland as things currently stand, but they need to be taken in view of the context of taking forward our objectives in the command paper. Essentially, in terms of what we are finding at the moment, we have been unequivocal in our commitment to unfettered access for qualifying Northern Ireland goods moving to the rest of the UK market. We have enshrined it in law and that is what we have seen in practice. We are committed to maintaining and strengthening their place in the UK internal market. It is important that the UK is able to take advantage of the new freedoms.

We are finding that there are certain exemptions, clearly, where goods are starting their journey in the EU that will not qualify for unfettered access if they are moving for an avoidance purpose. We have measures in place. We have anti-avoidance provisions already in place to deter businesses from moving their goods through Northern Ireland, if they wish to do this simply to avoid UK customs formalities. That applies to all traders routing goods through Northern Ireland for the sole purpose of avoiding those checks. As I say, for any further changes to the regime, they will need to take account of the position reached in discussions with the EU.

Graham Russell: The risk you describe would come around only where there was a divergence in the requirements from a safety perspective between the requirements in the European Union and the requirements in GB. More specifically than that, it would only come around if there was a divergence that reduced the requirements in the European Union or



increased the requirements in GB. These are early days for such divergence to occur. We clearly need to be very cognisant of that risk, and we are, but at the moment we have provisions in place, as the Minister has described, for the main risk, which is a customs risk. We have market surveillance, which is operative, to ensure we manage other risks.

Just to give you an example of how that works in practice, we use a border profiling approach, for example at Felixstowe, which is the main point of import for container goods, not principally from the EU but from other parts of the world. We look there at the risks of the product, the hazard implicit in the product, the performance of the trader and the issues around the particular supply route. Then we use those same approaches, for example here, to make a comparison with goods that were coming from the EU directly, through Dover or, as your question alluded to, through Northern Ireland. At the moment, the risk profile would not indicate that is where we should be placing any of our resources.

Q3 Chair: That is very helpful. I have a couple of comments on that. Mr Russell, as a result of leaving the EU, the UK in any event created its own CA mark, which is different from the European CE mark, because it had to. While at the moment there may not be much of a technical difference, there is a difference. The risk therefore does exist, and we will come on later in the session to tease out the likelihood and risk of further divergence. It is fair to say that it is a risk, and it is clearly one that has to be managed.

Mr Russell, you are absolutely right in your very clear exposition as to how you balance the risk versus the benefit and therefore determine the extent to which you engage in the interventions to make sure you have the appropriate surveillance in place. However, I have a more basic concern. Given that this is a risk, big or small, and there are many places where goods can enter, what sort of systems as a generic protocol do you have in place to make sure you can monitor what is coming in and what is going out?

As you rightly say, not all of it is going to have unfettered access. Not all of it is going to be brought in with the right intentions, if I can put it like that. Therefore, it is very important that, whether it is for customs purposes or whether it is for product safety purposes, we have a mechanism in all places of entry to ensure we have surveillance of what is coming in. Otherwise, our systems break down. Minister, I wonder whether you might be able to give us a little more information as to the systems and protocols in place to make sure that sort of surveillance is there.

Paul Scully: What I should say about the UKCA mark is that we had a standstill within that to be able to accept both CE and UKCA until the end of this year. We have extended that to the end of next year. Again, this is



HOUSE OF COMMONS

starting to touch on Lord Frost's negotiations around the protocol and the dual operating system that I was talking about.

There were a few reasons that we did that. It was not so much the capacity for market surveillance that you alluded to, but more to do with business readiness in itself and, indeed, conformity assessment to ensure there are enough conformity assessment bodies to accredit UKCA marks in the first place, which we are seeking to increase.

Graham Russell: Essentially, we do two things apart from the work at the border that you have already alluded to. Clearly, in the Northern Ireland protocol, statements are made around the existence of borders between Northern Ireland and Ireland. There are two things beyond that.

One is support for business. It is really important that businesses know what the requirements are; as the Minister has just said, that is one of the reasons for the pause in the introduction of the UKCA mark. In Northern Ireland, we work through district council environmental health officers, who are at the frontline of working with particularly smaller businesses to ensure they understand the requirements and have the capacity to meet those requirements. We have carried out training with them; we have given them resources; I have just deployed an officer to work directly with them, based in Belfast. It is important that we do that, because otherwise we are not helping those businesses to thrive.

The other side of it, which you have already alluded to, is that unfortunately not everybody is equally well motivated to comply with either safety requirements or any other requirements. It is important that our market surveillance is risk-based and is capable of dealing with those issues. That is where we lead efforts on behalf of the UK, working with local authorities. We have an intelligence function. We work with our colleagues in Border Force, HMRC and many other responsible agencies to detect those patterns, to deter and, where necessary, to take formal enforcement action. That market surveillance does not just happen at the point of entry. It also happens right through the distribution channel.

Q4 **Chair:** That is helpful. With such a system in place, perhaps you could share with us how many products have come across your radar through that search that do not qualify for unfettered access, yet that is how they are trying to make their way through.

Graham Russell: At this point, because of the absence of divergence that I alluded to earlier, we are not aware of products that are creating that risk in the way you describe. I would be happy to take advice from HMRC in regard to the points the Minister made around access they are deterring. If there is information I can provide to the Committee, I will.

Paul Scully: Ms Morris, one of the areas you may want to explore later is the product safety database that we are trying to work through. We stand ready to work with the EU on a better way of making sure we can exchange data, as was in the negotiations. Actually, the amount of



information we are getting from the UK database that we have set up has increased by about 600%, I believe. The UK database we stood up to look at unsafe products and issues around product safety has already borne fruit in terms of increasing intelligence.

Q5 Chair: You are saying that right now, because there isn't divergence, you are less concerned, but going forward you are putting in place secondary practices and processes across agencies. That being the case, will you be producing statistics on the relevant number of inspections or penalties, so we can see, when and if there is divergence, that the system works and those who are trying to avoid customs or product safety rules have been identified and caught?

Paul Scully: We want to be as transparent as possible on what we have at the moment. The first test is the machinery directive and the changes to it that are being considered by the EU at the moment. That will be the first test of divergence that we will be looking at to see the impacts, if and when it comes into force. We have some way to go before we get to that place, but we want to be as transparent as possible.

Q6 Chair: Finally, Minister, in December 2020 the Government decided not to require full export declaration on goods sent from Northern Ireland to Great Britain, but instead asked traders to submit equivalence information. Has that worked in practice?

Paul Scully: Obviously, there are pressures on the protocol in general terms, which is why Lord Frost is negotiating it, but we are awaiting the results of the talks before we go through to any phase 2 system.

Q7 Chair: I conclude from that that you are making good efforts to work with businesses, so that they understand how the system works. By and large, at the moment you are not finding businesses failing to comply, in a way, perhaps, because of the rather looser arrangements at this point.

Paul Scully: I do not think so. In the wider context of the protocol, we are finding real challenges for businesses trying to put items on the Northern Ireland market. Specifically within this, that is the case, exactly as you just described.

Q8 Craig Mackinlay: The holy grail we were all looking for over the last five years, where we hoped common sense would prevail, would have been the whole concept of mutual recognition between us and the EU. I am sure that is a place we would have been happy to have settled, but of course it is a doctrine that the EU does not seem to want to go down.

Minister, you said we have allowed a further year's derogation on accepting CE approval as good enough. We have not yet developed the whole concept of the UKCA marking regime. We have established that at the moment it is perfectly permissible, because we accept CE anyway, for products to come via Northern Ireland into GB, no different really from if they came directly from France to GB, because we are accepting the CE standard.



HOUSE OF COMMONS

When we have established a UKCA standard, we are going to have two regimes running in Northern Ireland. We are going to have the acceptability because of the Northern Ireland protocol, as it currently stands, of CE-marked goods being sold in any shop in Northern Ireland. As long as the EU is satisfied there is no risk of leakage into its dear single market, there will be an acceptance, I assume, of UKCA-marked goods being sold in Northern Ireland shops as well. That is a matter for a year or so hence when the derogation of CE marking has gone.

Is that the status we may be looking at in Northern Ireland, parallel goods, with both UKCA-marked for domestic use and the potential for CE-marked, which may or may not be good enough for GB sale, being sold in Northern Ireland as well? Is that a possibility?

Paul Scully: Effectively, yes, it is. In Northern Ireland, because it still remains within many of the rules of the CE and UKCA, it would be there. Please correct me if I am wrong. You talked about the UKCA regime, and it has been formed. The UKCA mark is being used now, but it is just that we are not requiring it because of business readiness and there not being enough capacity for those bodies to accredit. There is capacity, but not enough to go the whole gamut at the moment. It is better to give businesses as much certainty as we can.

Q9 Craig Mackinlay: I know all this is rather hypothetical until there is a state where we have decided to do things very much differently. We all lived through the vast number of statutory instruments leading up to our withdrawal, which onshored all these EU rules. The Internal Market Act, as I understand it, will allow unfettered access of Northern Ireland to GB trade into the future. It does not take much thinking about the politics—if we start going up the route of stopping lorries coming from Northern Ireland to GB, with rather more physical controls—to know that is probably not where we want to be.

I had a meeting a while ago with the previous Chancellor of the Duchy of Lancaster regarding the good old sausage wars that were going on. My wife is Hungarian, and I was making the point that Hungarian sausages, fresh meat, were being sold and were easily available in the UK, whereas even at that time we would not be allowed to sell British sausages into France. He made the point that we are rather more sanguine about these things, because that is just what we are like. I can see we are almost going to get into a status of unilateral mutual recognition where we turn a slightly Nelsonian blind eye on these things, on the common-sense assumption that if it is good enough for sale in the EU it is probably good enough for here, but it does not work the other way.

Where are we going to be when we have diverged on a product under the UKCA marking, when the CE regulation has fallen away because we do not recognise it anymore, and goods are likely to be transferred from NI to GB? This is your office, Mr Russell. Are we going to rely on trusted traders doing the right thing because they are usually big companies that have traceability? How are we going to cope with that? Is it going to be



HOUSE OF COMMONS

more intelligence-led, or is it going to be some physical stopping of lorries coming from NI to GB?

Paul Scully: Clearly that is a problem we have to square, and these are the decisions. Now we are able to take advantage of the new freedoms that are brought about by no longer being part of the EU, we have to bear in mind these differences. We will take the decisions based on the UK's specific interests.

Graham Russell: I want to go back to one thing in your previous question, because we are keen that businesses understand their obligations really clearly. One way of interpreting the conversation might have misled people, so I just want to clarify that. Where items are placed on the market in Northern Ireland and they are certified by a UK accreditation body, they would have a UKNI mark. The implication might have been that a UKCA mark would apply. I just wanted to clarify that, because we are trying to be really clear with business, particularly Northern Ireland business. It does not change the tenor of the conversation at all, but I just wanted to clarify that.

Apart from that, it is exactly as said. The future arrangements are subject to the negotiations that we are currently engaged in.

Paul Scully: I know how difficult this is, because we are smack bang in the middle of the negotiations, so it is difficult to allude much further. All I can say is we are going to be very much doing this in the UK interest to make sure we can avoid much of the angst that you were describing. Graham is absolutely right; I should have said it. We have the UKCA mark. There is a specific UKNI mark, which does much the same thing but specifically in Northern Ireland.

Q10 **Craig Mackinlay:** If it has that UKNI mark, will it be able to flow freely into the EU market as well?

Graham Russell: That is in regard to it being tested for placing on the Northern Ireland market, and then it could flow into the GB market.

Q11 **Craig Mackinlay:** And into the European market? Would there be some new, unique UKNI mark, a hybrid mark that allows those goods to go into the EU?

Graham Russell: I want to get this precisely correct.

Craig Mackinlay: I am worried we are now introducing a third type of mark that we are going to have to look for on the back of our phones or whatever.

Graham Russell: Forgive me, that would require a CE mark and it would mean it is certified against European requirements by a relevant conformity assessment body.

Q12 **Craig Mackinlay:** I see. Whatever the UKCA mark standard may be, if it goes to Northern Ireland, it will have to be stamped as UKNI.



Graham Russell: That is right. If it was to be sold into the European Union, it would have to be CE-marked.

Q13 **Craig Mackinlay:** Just on the potential risk, as we have established, we are fairly sanguine on these matters and we are commonsensical as a nation. We will not want politically to be stopping stuff physically coming from NI to GB. Say we have a UKCA standard that is quite expensive for a product to go through—all these things cost money to be labelled and tested—is there a risk that Northern Ireland could become a hub as a backdoor way in, because they know we are pretty easy-going, for products coming from the EU via NI and into GB to try to escape the new UKCA marking regime? Do you think that is likely?

Paul Scully: I am not sure if it is likely. There is clearly always a risk, but it is not necessarily likely because our approach is risk-based and intelligence-based, so we can put measures in place to tackle this, even to act as a deterrent as much as the actual anti-avoidance measures that I was talking about earlier. There are clearly opportunities, not least under the command paper proposals, for Northern Ireland to act as a bit of a hub looking both ways. There is a risk, but it is not necessarily likely.

Graham Russell: Under product safety requirements there are standards, which are normally voluntary: a way of a business showing that it meets the essential safety requirement. Although BSI is the UK's national standards body, very few standards are UK-specific, or for that matter European-specific. They are generally global because companies need to operate on global levels. In that sense, we would not necessarily always be thinking about a different standard operating in GB and, in the case you referred to, Northern Ireland.

What tends to be different is the way of ensuring that we reach that standard. You do not get quite the opportunity for criminality that you are describing. Hopefully you get an opportunity for people to build businesses, thrive and innovate.

Paul Scully: On a slightly wider matter, one of the drivers between UKCA and making sure that we are supporting BSI, the British Standards Institute, is that we are quite a world-leading and respected body. When you look at the wider ISO and the standards across the world, we are very influential in that. We want to retain that influence, so that UK standards can be the gold standards, if you like.

Q14 **Craig Mackinlay:** I am glad you clarified that. We often forget that it is not just the UKCA or CE. There is a global standard where companies want to be able to sell in markets in Japan, the US or anywhere else.

I am glad you are here today, Mr Russell, because I did a period of work with the Public Accounts Committee, which I serve on, on a lot of these topics and your Office for Product Safety and Standards. There seems to be a bit of a grey area, which is the area that might develop differently in the UK from where the EU may go. A lot of products we now buy have in-



HOUSE OF COMMONS

built software—the smart products, whether it is the home camera or whatever it might be. How much is your office getting involved in looking at the underlying software in a lot of these products? We have concerns about malware and all of that type of stuff. That is an area where Britain could, under its own data-type rules, start to diverge more rapidly than we are ever likely to do on the rules about pens.

It is the underlying software I have had concerns over, and it seems to be a weakness in the system. There are agents around the world who may use some of these products to try to get through firewalls, our personal computer security and all the rest of it. This is going to go from fridges to whatever you fancy. It is going to have a lot more smart connectivity. Where is your office involved in that route? Have you considered the difference of view that the UK and the EU might take? It is a growing and interesting area, in my view.

Paul Scully: I am glad Mr Russell is here as well.

Graham Russell: Thank you, Minister. With the Chair's permission, I suspect we are going slightly into other areas, but I am happy to answer the question.

Craig Mackinlay: There will be a Northern Ireland mention in there somewhere, because you could have the same product being sold in Northern Ireland with different connectivity requirements because it is CE. Hence, the same product that might be suitable for the UK market may be more robust in that underlying software.

Chair: Yes, Mr Russell, a brief answer would be appreciated, because we then need to move on in a bit more detail into this whole divergence issue.

Graham Russell: I have a feeling Mr Mackinlay heard me at length on this in the Public Accounts Committee, so I will give a shorter answer, because I totally agree with you. This is the emerging issue of product safety risk, but also product safety innovation opportunity. We have to grasp that opportunity, while protecting people.

We have just held an event in combination with the white goods manufacturers association and City, University of London, where we looked at what fridges will look like in 2050, precisely from this angle. While there are great opportunities for fridges to be connected, not only ordering your food for you but telling you if they become unsafe or need repair, there are also opportunities for people to breach that cyber-security and create risks. We have recently seen that with products like online doorbells, which have been in the media quite a lot.

Absolutely, that is the responsibility of my office, because we are responsible for the safety of that product, whether it is the hardware, the software or the way it interacts. Of course, that means we have to work very closely with colleagues in DCMS, who are responsible and are currently taking through the online harms Bill. We will make sure there is



HOUSE OF COMMONS

a completely co-ordinated and cohesive system. Yes, your question is exactly right. The product safety review call for evidence has just concluded. We are looking forward to publishing the Government response in due course, which will address exactly that and some of the opportunities we think we see in the area, to help UK business to be at the forefront of driving that innovation.

Chair: Can I ask Mr Longhi to take us down this interesting road of what happens if we diverge?

Q15 **Marco Longhi:** Are there any areas where the Government are planning to introduce higher product standards because the current EU rules could be too lax? Conversely, would you be aware of any EU proposals on the table to change or lower its product standards that could give us cause for concern?

Paul Scully: I am not sure about lowering or increasing. Both sides are looking at the product safety regimes on the whole. We have our product safety review going through. The EU has the general product safety directive that it is looking at configuring. That is something that businesses that are currently exporting to the EU from GB are interested in. We would not necessarily comment on the EU's process now we are a sovereign country again, but it is very much for businesses that export to the EU. Many of them have had their say. I talked a little bit about the machinery directive as well.

We have been looking at the product safety review to ensure that we can look at the highest levels of product safety, going back to the last question, so that we can embed any fast-moving technological change within that safety regime.

Q16 **Marco Longhi:** Are you confident that any EU proposal would not create a risk to the UK's own product standards?

Paul Scully: Nothing comes into force that quickly. You do not tend to do that kind of review. Even the machinery directive will take several months to come in, when they are ready to do so. That gives us a good chance to review and to work out what our response is in terms of market surveillance and the impact it will have. I am not sure there is anything specific that I can think of.

Graham Russell: We are certainly not aware of anything at the moment.

Q17 **Marco Longhi:** In September the Government delayed the introduction of a tighter definition of "qualifying goods" that benefit from unfettered access from Northern Ireland to the GB market. Are you aware of why this has been delayed?

Paul Scully: Essentially, it is something we are still happy to do, but we are waiting to see what happens in light of the negotiations that are going on at the moment. Obviously, the dual regulatory regime we are proposing would allow both to sit alongside each other anyway.



HOUSE OF COMMONS

Q18 Chair: Minister, that is helpful but Mr Longhi is probably looking for a little more flesh on the bone. Once we start distinguishing between those that are qualifying goods and those that are not for unfettered access purposes, we will need to have mechanisms in place to separate them. What will you do once we have these different categories to identify them early? Otherwise, we run the risk of products coming in that do not meet the safety standards and have not had the safety checks that we would require.

Graham Russell: This is very definitely in the category the Minister alluded to right at the start, which is, without knowing the outcome of the conversations that are currently taking place with the European Union, we are not clear on what the future requirements and the future regime will be. We have set out in the command paper very clearly what the UK's position is. Under that regime, yes, we would have a certain approach to unfettered access. Obviously, under the current regime we have a certain approach to unfettered access; as you set out in your question, we had intended to take it through a series of increased requirements as time went on. To speculate further than that would be beyond what we could do at the moment.

Q19 Chair: A number of changes have been proposed by both sides in this area. I appreciate that, while it is being negotiated, it is more challenging for you to give us a definitive answer. Let me propose this. If the EU were to accept the Government's suggested changes to the protocol, would it still be possible for EU goods to enter the GB market via Northern Ireland without any customs or product safety controls at our border?

Paul Scully: Is that specifically for the NI market? If they are coming in, would they be able to come into NI?

Chair: Via Northern Ireland, without any customs or product safety controls at the border. We are specifically looking at a scenario where the EU accepts the Government's changes to the protocol, as opposed to the other way round. Then I am interested to know what the position is going to be for EU goods coming into Great Britain through Northern Ireland and the issue with regard to customs and product safety checks at that border.

Paul Scully: To be fair, I am not sure I can speculate at this moment how that might look at the time. You would effectively have minimal disruption from both sides, hence the dual regulatory model. I am not really able to flesh out much more than that at this stage.

Q20 Marco Longhi: It feels like we are rather scuppered by the fact that we are in a rather fluid period of time for the negotiations. It might be a way forward if, when a position may be agreed, even in draft form, those proposals can then be scrutinised. That is the only thing I can think of.

Paul Scully: We are happy to come back.

Q21 Mr Jones: I am concerned about this, because the scenario that the



HOUSE OF COMMONS

Chair put to you is that the European Union accepts the British proposals in full. Surely, on the basis of that, you should be able to say what would be the consequences for EU goods. Could they come unfettered into Great Britain? That must be a scenario you gave consideration to when the proposal was formulated and before it was put to the European Union.

Paul Scully: We are talking about unfettered access. We have spent a lot of time working on unfettered access between GB and NI, clearly. With the TCA, we wanted to restrict any disruption, whether to GB or, indeed, Northern Ireland. Northern Ireland has that unusual position because of the Belfast agreement, the Good Friday agreement, and the Northern Ireland protocol itself. I am not able to flesh out much more than the current situation, of goods flowing from the EU into Northern Ireland at the moment that are specifically just going into the Northern Ireland market.

Q22 **Mr Jones:** What concerns me is that you have already mentioned the new machinery regulation. That would clearly change the specifications of goods or machinery coming on to the market in the European Union. Those goods would not be approved in the United Kingdom. It seems to me that, frankly, despite what you say, even if the EU were to accept the British proposals in their entirety, there would still be a scenario whereby EU goods that were not compliant with British standards, because in that particular case they would comply with the new machinery regulation, could flow into Great Britain and the British Government would be virtually powerless to do anything about it.

Paul Scully: This is why it is difficult to get into speculation because, as you say, we are starting off in one place now, but we are already looking to the machinery directive, which is another jump entirely. I understand your concern. I am certainly not discounting the concern, but that is why it is really difficult, as Mr Longhi said, to put as much flesh on the bones as you would like and, frankly, as I would like as well.

Q23 **Mr Jones:** Forgive me, but I do not think it is. The scenario the Chair has put to you is quite clear, that the EU accepts the British proposals in their entirety. It seems that, even in those circumstances, non-compliant EU goods could come into the market in Great Britain quite legally.

Paul Scully: While there is no divergence, they could. Once you talk about the machinery directive and those kinds of things, that is another leap entirely.

Q24 **Mr Jones:** Are you telling us those goods would be stopped from coming into Great Britain?

Paul Scully: No, I was just going to say that is another leap.

Graham Russell: Not on that point, because there is nothing to add to what the Minister has said. I was just going to comment on something you said earlier about unfettered access. The commitment to unfettered



HOUSE OF COMMONS

access, which is set out in the UK internal market legislation, is for goods placed on the market in Northern Ireland. There is no intention to allow that to become a backdoor route for goods to be brought into GB other than for that purpose.

Q25 Mr Jones: I appreciate that there is no intention, but those goods could come into Northern Ireland. There would be nothing to stop those goods coming into Northern Ireland. It seems to me that it is very difficult to stop those goods flowing into Great Britain once they have arrived in Northern Ireland.

Graham Russell: This is where the Minister pointed out that it is speculation. The requirements that might be there for traceability, for labelling, for online requirements, for market surveillance, for risk measurement would all be dependent on the arrangements that have not yet been made.

Marco Longhi: There is a broader point. If products or goods arriving in Northern Ireland are not to GB standards, would we want them to be arriving in Northern Ireland anyway?

Mr Jones: How would you stop it?

Q26 Chair: You could not stop it. Where we have got to, after the interrogation from Mr Longhi and the additional very helpful comments from Mr Jones, is that, Minister, with the greatest respect, we are not getting an answer to a question that is capable of an answer. I think Mr Jones would say that the answer to the question does not depend upon the specifics of what happens in terms of manufacturing changes within the EU. It is a very basic question. Britain has put forward a proposal. You know what those proposals are. We know there will be changes, because the EU is already making those changes. We had rather assumed that you would therefore have made the assumption that there will be change. Therefore, what would be the Government's position and approach?

Paul Scully: Let me try to help with one of the key things here. The dual regulatory model we are proposing essentially means that products from the EU can come into Northern Ireland as they are now.

A lot of the blockage is not on that route but on the other route. It is GB into Northern Ireland. In many ways, that is the problem we are trying to solve, rather than this route. There would be little change in that regard. What we would have are the systems we already have in place in terms of making sure that goods that are placed in Northern Ireland are not bound for the GB market—the anti-avoidance measures that I mentioned right at the beginning. They are there now. They will continue to be developed along the way to make sure they are even more robust as our intelligence improves and as the system improves, without necessarily becoming stringent in the checks. Essentially, the problem we are solving through this is GB to Northern Ireland.



HOUSE OF COMMONS

Q27 **Chair:** If I could maybe summarise this rather than carry on the debate, where we have got to is that, understandably, Minister and Mr Russell, you are looking at the current negotiations and you are looking at where you want to be, as opposed to where we are. The questions we are asking are about where we are. Therefore, Mr Longhi's proposal is that you come back, whether in person or in writing, to clarify for us the answer to some of these questions. We can follow up with a letter setting it out so we get some clarity further down the line as to how this will in fact operate.

Paul Scully: I am happy to do either or both of those, as you see fit.

Chair: That is very helpful, Minister.

Q28 **Mr Fysh:** I want to come back to the GB-NI flow. I heard what you said about the divergence issue. We need to keep an eye on it and see what happens there. Are the Government considering, as they are for customs checks within the scope of potentially invoking Article 16, such applications of Article 16 to the substantive rules on products such as for labelling? That is the UKCA mark, enabling goods to be sold in NI under that, if we invoked Article 16.

Paul Scully: I am not sure there is a lot I can say about that, not because I am being obstructive, but I am not sure we have even gone down that line.

Q29 **Mr Fysh:** We would invoke it only as regards customs checks, then, and the CA mark.

Paul Scully: It is not something that I am aware we have been considering. There is not a lot I can add.

Q30 **Mr Fysh:** It might be worth trying to think about that, because it would not make sense to do one but not the other.

Paul Scully: Yes, I am probably not across the entire Government. I appreciate that.

Q31 **Mr Fysh:** How much are the European Commission's published proposals on what it suggests as solutions to the GB-NI flow consistent with our Government's demands on the ability to send goods freely from GB to NI?

Paul Scully: That is a good question. It is good to see movement. There is clearly a big gulf between the two. It does not address some of the key areas about the Court of Justice and others. It does not free up the goods movements between Great Britain and Northern Ireland, a problem that we were trying to resolve, sufficiently for that durable solution. There is still some way to go, but it is a start. A few months ago, it was an impossible situation to resolve. Now we have something on the table to discuss and we are in the middle of discussions.

Q32 **Mr Jones:** As you know, Lord Frost recently announced a series of post-Brexit regulatory reforms. Have the product standards requirements



HOUSE OF COMMONS

under the Northern Ireland protocol been taken into account when drawing up the list of Brexit opportunities? In other words, to what extent are the Government prioritising consistency of product standards across the entire UK internal market over reforms of rules in Great Britain that may cause a divergence between Great Britain and Northern Ireland?

Graham Russell: In principle, the announcement looking at the reform of EU-derived legislation is largely around the way in which regulation works and the requirements in that sense. For example, we are looking at things like the allowance of imperial measurements, crown stamps and potentially e-labelling on products. In that sense, they are not really about asking, "Shall we have this standard or that standard?" They are about asking, "How can a business operating in this country really succeed and thrive? Can we find ways of enabling it to be successful on global markets potentially?"

That is not to say we would not have divergence where it is in the best interests of British businesses and consumers. As all the questions you have asked us so far have quite sensibly pointed out, what if we get that divergence? What if we pursue higher requirements in the UK? Of course, all the previous questions allude to that.

The precise question you are asking is whether those reforms were more about the way in which we seek to regulate the requirements, rather than saying, "Shall we take this opportunity to increase or decrease standards?" because we are committed to protecting UK consumers. We have, for example, created a science advisory group to advise Ministers on the science of chemicals in cosmetics and in other uses around product safety, to ensure that Ministers have the best possible advice on what is going to protect UK consumers.

That inevitably might mean that at some point we have divergence. That is built into what we now have. All the previous things we said about how we manage that, how we minimise those risks, how we mitigate those risks, then come into play.

Q33 **Mr Jones:** The Government are not shying away from divergence in that case. Let us say, for the sake of argument, you wanted to go into a shop to buy a two-pound bag of Tate & Lyle sugar. You could buy it in, for example, Liverpool, but not in Belfast. Isn't that right?

Paul Scully: It is more to do with choice, in terms of imperial measure. It is choice for consumers and for those businesses.

Q34 **Mr Jones:** Would Northern Ireland consumers have that choice? Could they have the choice to buy a two-pound bag of Tate & Lyle sugar?

Paul Scully: We will have to see where we go with that because, to be frank, we are nowhere near making that sort of decision yet.

Q35 **Mr Jones:** There was a study by Queen's University Belfast that indicted that it would not apply to consumers in Northern Ireland. They would not



HOUSE OF COMMONS

have the benefit of imperial measures. That creates divergence between constituent parts of the United Kingdom. It seems to me that the Government are not shying away from that, given the measures Lord Frost announced just before the summer recess.

Paul Scully: The measures come under the protocol—the units of measurement directive in annex 2 to the protocol. There are some exemptions, like the pint and those kinds of things. The example you gave would not be in that list. This is again subject to talks, because that is the protocol as it is. We need to see where we go with the talks.

To answer your question, in the current situation, yes, there is a difference.

Q36 **Mr Jones:** Do you see any risk that divergence between Northern Ireland and Great Britain product standards could deter mainland-based companies from selling into the Northern Ireland market?

Paul Scully: Again, going back to the example you gave of the Tate & Lyle sugar bag, that is why I suspect the imperial unit measure in itself will not be quite as expansive as it might have been 20 years ago, because businesses tend to keep things simple in terms of labelling and the international standards we are talking about. The majority of things are metric in this part of the world and in the neighbouring markets, so it would make business sense.

Q37 **Mr Jones:** What if there were different labelling requirements? What if we had a different labelling requirement in Northern Ireland from mainland GB? Do you think the divergence that causes different labelling requirements might deter British companies?

Paul Scully: In terms of imperial, for example, it is a choice. That example is not a requirement; it is a choice, because you can go imperial if you want to, but you can still be metric.

Q38 **Mr Jones:** Labelling is not a choice. You have to comply with certain labelling standards.

Paul Scully: What I am saying is that if you were just doing it in imperial, such as the Tate & Lyle bag I was talking about, it would be a business decision. If I was running Tate & Lyle and working on a global scale, I probably would not go down imperial just for one smaller market.

Q39 **Mr Jones:** I appreciate that. Let us say you are not a large company like Tate & Lyle. Let us say, for example, you are a British-based producer of smoked salmon and there are different labelling requirements. Can you see divergence disrupting established trade patterns, even after we have resolved the issues we have at the moment over the protocol?

Paul Scully: It is different. If you are looking at requirements, I am not sure there are that many because imperial is the obvious one, but that is not a requirement; it is a choice. If divergence appears later on down the



HOUSE OF COMMONS

line, if the EU starts changing its requirements to diverge from us, we are not going to diverge just for the sake of divergence.

Mr Jones: I appreciate that.

Paul Scully: It is to do with what is in the best interests of the UK and, importantly, the businesses and consumers within the UK. I go back to the example you gave of imperial measures. That would be a business choice. It would be a commercial decision that the businesses make.

Q40 **Mr Jones:** I accept that, but we all accept that, as time goes by, there is likely to be more divergence in standards between mainland GB and the European Union. Northern Ireland, of course, is subject to the EU's requirements. I am really interested to know whether you see that continuing divergence over the years as something that is likely to result in mainland British companies being deterred from entering the Northern Ireland market.

Paul Scully: I know Graham wants to come in, but this is one of the issues we have found, even before divergence, with the protocol itself. There are undoubtedly British companies that are deterred from stocking some products in Northern Ireland. That is exactly the feedback we are getting. There are differences of opinion on the extent, which is one of the key issues we are trying to resolve.

Q41 **Mr Jones:** Is it fair to say that the only way of curing it is to resolve the problem of the protocol to the satisfaction of the United Kingdom?

Paul Scully: Yes.

Sitting suspended for a Division in the House.

On resuming—

Q42 **Margaret Ferrier:** The EU has a rapid alert scheme, which allows the exchange of information on dangerous and defective goods, operating on a real-time basis. On 31 December last year, as we know, the UK automatically lost access to that scheme. Bearing that in mind, under Article 96 of the TCA, the UK and the EU agreed they would explore reconnecting the UK to the EU's Safety Gate database for this information. I have three questions. That was supposed to happen by June this year, but it did not. How close are you now to making that a reality? What is the cause of the delay? What progress did you make on this issue at last month's Trade Specialised Committee?

Paul Scully: We remain committed to agreeing that annex, which was agreed under the TCA, so that we can have reciprocal arrangements to exchange data relating to product safety. We stand absolutely ready to agree the legal text that is needed to provide the gateways for exchanging and using that data. We are content with the proposed scope of information and we can agree in principle the mechanisms suggested by the EU for transferring that data. It remains in both parties' interests to do so. Good progress has been made.



HOUSE OF COMMONS

I would encourage the EU to come back and discuss this. You would need to ask the EU why it has taken the approach that it has taken, to be honest. I would definitely encourage the EU to continue with the engagement, to make sure we can reach that agreement as soon as possible, because if we get that done there will be a far more comprehensive and reciprocal exchange of information between the two parties.

We were always due to discuss this, as you say, at the first meeting of the Trade Specialised Committee on Technical Barriers to Trade. We had hoped to have signed off the agreement at that meeting. It was not possible to do so, but both sides took note of the progress so far and the work that is still to be done. We stressed the benefits of finishing the annex at that meeting and getting the arrangements in place, but the EU confirmed that its priority was understanding the use of these systems in Northern Ireland.

In conclusion, we have continued in the meantime with our database. We see that making really good progress because it is particularly user friendly. It means there are a lot more entries on it, which does not mean that anything is more unsafe. It just means that people are coming forward to tell us of the situation. Since its launch in November 2019, over 5,200 products have been notified on that database. That compares to 2,217 on the RAPEX database across the whole of the EU. There has been a 600% increase in notifications, which we take as a really good sign of the approach of our database. None the less, as I say, we still want that to take place with the EU.

Q43 Margaret Ferrier: Is the delay in reconnecting the UK to the EU a political decision by the EU or is it technical?

Paul Scully: It is a different priority. You would need to ask them, to be frank, but they have said their priority is to understand the use of the systems in Northern Ireland. That is all I can say really.

Q44 Chair: On the same topic, Minister, I have a final question. Clearly, we have had to live without access to the EU Safety Gate database. What has been the impact of that?

Paul Scully: It be far better to have reciprocal arrangements in that regard. We do not particularly want a one-off or imbalanced situation, where in Northern Ireland we have had some scope to upload data but we cannot download it in quite the right way. There is certainly an imbalance there. It is in both of our interests to make sure we can get those arrangements done. As I say, for the database that we have, we have a lot of notifications going on. There is a bureaucracy that we need to tackle, but we have mitigated it as best we can with our own user-friendly database.

Q45 Chair: Should I be in any way concerned that there might have been a lower level of security checks because we do not have access to this



HOUSE OF COMMONS

database? Clearly, our database is new. I am sure it will be absolutely state of the art but, none the less, anything new is always going to be challenging. Do we think that, until we get agreement with the EU that we can reconnect, we are at an increased risk of products that do not meet our product standards coming into the country?

Graham Russell: The short answer is no. Just in general, to the whole conversation we have had this afternoon, which has been very helpful, I do not perceive that we are at greater risk because of any of the things we have been talking about. We have a risk-based system in the UK. It is well established. It is intelligence-led. It is well co-ordinated.

Specifically on your point, we built our database recently and, therefore, it is more effective, more efficient and more user-friendly. It is generating, as the Minister said, six times the previous rate and considerably more input than we have seen across the EU. Even when we were within what was then called RAPEX, the UK was normally the first or second biggest provider of data across the EU. In that sense, we continue to have a very healthy enforcement regime that works well with industry, works well with consumers and generates really good data.

We have access, as the Minister said, to the public-facing part of Safety Gate. In that sense, where there are any concerns, of course we are already alerted to that. It is worth noting that the EU has just started work on revising its system. In that sense, it will be bringing in a new system. We already have a new system.

With your permission, Chair, I might just make one comment, which refers to some comments that were made right at the beginning. It is helpful for business that I am as clear as I can be. With your indulgence, it will just be one second. There are three marks. The CE mark is the self-assessment by manufacturer or third party, assessed by EU bodies for use in the EU or in Northern Ireland. The CE and UKNI mark is the third-party assessment by UK bodies against EU rules for use in Northern Ireland. The UKCA mark is for meeting UK requirements within Great Britain. We talked about the pause in that. I am grateful for the opportunity to clarify that.

Q46 **Chair:** My pleasure, Mr Russell. It is very important that we get these things right and on the record. That has been a very useful and informative session. One of the key messages for me and for the Committee is that, while you are in this process of negotiation, things are to some extent in flux. I am grateful to you, Mr Scully, for having agreed to come back to the Committee. We will aim to look for an in-person appearance in mid-December, if we can manage that.

Mr Russell, thank you for the clarifications. There were one or two other pieces of clarification and, if I may, I will ask the Clerk of the Committee to be in touch. If we could give you a list of those clarifications and then if you could respond within five days of receipt of that notification, would that be acceptable?



HOUSE OF COMMONS

Paul Scully: Yes.

Chair: I thank both of you for your time. I apologise it has been somewhat disrupted. We wish you the best with your negotiations. I am sure you will come up with a solution that is undoubtedly in the interests of the United Kingdom as a whole. Thank you, gentlemen. Thank you, Committee.