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European Affairs Committee

2nd Report of Session 2022–23

Report from the Sub-Committee on the
Protocol on Ireland/Northern Ireland:

Follow-up report

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The European Affairs Committee and the Sub-Committee on the Protocol on Ireland/Northern Ireland

The European Affairs Committee was appointed by the House of Lords to consider matters relating to the United Kingdom's relationship with the European Union and the European Economic Area, including the implementation and governance structures of any agreements between the United Kingdom and the European Union; to consider European Union documents deposited in the House by a minister; and to support the House as appropriate in interparliamentary cooperation with the European Parliament and the Member States of the European Union.

The Sub-Committee on the Protocol on Ireland/Northern Ireland was appointed by the European Affairs Committee to consider all matters related to the Protocol, including scrutiny of: EU legislation within the scope of the Protocol; relevant domestic UK legislation and policy; the Northern Ireland-related work of the governance bodies established under the UK-EU Withdrawal Agreement; the Protocol's political and socio-economic impact on Northern Ireland; and its impact on UK-Irish bilateral relations; as well as conducting interparliamentary dialogue, including with the Northern Ireland Assembly and Irish Oireachtas.

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The Membership of the Sub-Committee on the Protocol on Ireland/Northern Ireland, which conducted this inquiry are:

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Publications, press notices, details of membership forthcoming meetings and other information is available at:

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Q in footnotes refers to a question in oral evidence.

SUMMARY

The economic data necessary to conduct a comprehensive statistical analysis of the impact of the Protocol on Ireland/Northern Ireland is not yet available. Nevertheless, our engagement with businesses based in or trading with Northern Ireland demonstrates that the economic impact of the Protocol is becoming clearer. Our witnesses have described a dichotomy of experience, characterised by one as “feast or famine”.

On the one hand, businesses reliant on East-West trade between Great Britain and Northern Ireland, on which the Northern Ireland economy has historically been dependent, have been negatively affected. This impact has been felt in terms of increased bureaucracy, staff resources, cost and delivery times, as well as restricting the ability of firms to respond flexibly to supply and demand. There has been a disproportionately negative impact on SMEs, and there remain concerns about the continued unwillingness of many firms in Great Britain to service the market in Northern Ireland. There is also widespread concern within the business community about the impact on Northern Ireland of increasing regulatory divergence between the UK and the EU.

On the other hand, we have heard from businesses about the Protocol’s beneficial impact for Northern Ireland firms able to benefit from or reliant on North-South trade on the island of Ireland as well as trade with the rest of the EU. Industry representatives have stressed the importance of the Protocol for sectors of the economy such as the dairy and meat processing industries that are dependent on complex cross-border supply chains on the island of Ireland, and the damage that would be caused to these sectors should access to the EU Single Market be lost. However, others have warned that such benefits have arisen due to trade diversion rather than growth, and the overall impact on the Northern Ireland economy therefore remains uncertain.

Business representatives have called on the UK and the EU to agree a number of mitigations and solutions, including: reversing the default position under the Protocol whereby all goods moving from Great Britain to Northern Ireland are considered at risk of moving into the EU Single Market unless deemed otherwise; the need for proportionality in the application of rules on notice for food supply, supplementary declarations and import controls on goods moving from Great Britain to Northern Ireland; proposals for green and red lanes, supported by an enhanced trusted trader scheme with audited supply chains and facilitated movements of known products; the continuation of the various grace periods and derogations which have been unilaterally extended by the UK, as well as making permanent the UK’s Trader Support Service and Movement Assistance Scheme; and a UK-EU SPS/veterinary agreement. We note, without prejudice to the views of individual members on the Protocol and on the UK and EU positions, that several of these proposals are reflected in the proposals put forward by the Government, and by the EU. However, while there is some support for the concept, there is widespread concern among business about the practical feasibility and implications for cross-border supply chains of the Government’s proposals for a dual regulatory regime.

Business representatives have repeatedly stressed the damaging economic impact of continued political uncertainty over the Protocol, and, notwithstanding their acknowledgement of the economically beneficial impact of the continuation of

the grace periods, their concerns over the economic implications of unilateral action.

Our intention is to begin scrutiny of the Northern Ireland Protocol Bill currently before Parliament, and the EU's response, in September, to inform consideration of the Bill in the House of Lords. Without prejudice to the views of individual members on the Bill, or the EU's response, we stress that a mutually agreed solution is the best outcome. Yet this requires flexibility and compromise on both sides.

In our July 2021 introductory report, we stressed the need for dialogue to resolve the issues arising under the Protocol in the interests of the people of Northern Ireland. It is a matter of deep regret that, in the intervening twelve months, the situation, if anything, has deteriorated still further. We therefore urge the UK and the EU, together with the political parties and stakeholders in Northern Ireland, and the Irish Government, to make a renewed commitment to work together to put Northern Ireland's interests first, participate together in constructive engagement, rebuild trust and engage in effective relationship-building.

In the words of one of our witnesses, those who negotiated the Belfast/Good Friday Agreement “were able to do so because of their ability to appreciate the perspectives of others and willingness to work together and take risks to achieve a common goal despite historic differences. Such a courageous approach is needed now.”

Follow-up report

CHAPTER 1: THE POLITICAL CONTEXT

The Sub-Committee on the Protocol on Ireland/Northern Ireland

1. On 19 October 2019 the Government laid before Parliament the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and from the European Atomic Energy Community. Within it was a revised Protocol on Ireland/Northern Ireland. Following the December 2019 general election, the European Union (Withdrawal Agreement) Bill, giving effect to the revised Withdrawal Agreement and Protocol agreed by the UK and EU, was introduced, receiving Royal Assent on 23 January 2020. The UK withdrew from the European Union on 31 January 2020, and the Protocol was scheduled to come into force at the same moment as the post-withdrawal transition period expired, at midnight CET (11:00pm GMT) on the night of 31 December 2020/1 January 2021.
2. The Sub-Committee on Ireland/Northern Ireland was established in April 2021 as a Sub-Committee of the European Affairs Committee, following a recommendation of the Liaison Committee in its December 2020 *Review of investigative and scrutiny committees: strengthening the thematic structure through the appointment of new committees*.¹
3. The Sub-Committee undertakes six core tasks, as proposed by the Liaison Committee:
 - Document-based scrutiny of new or amended EU legislation within the scope of the Protocol.
 - Scrutiny of the implications of relevant domestic UK legislation and policy for Northern Ireland.
 - Scrutiny of the Northern Ireland-related work of the governance bodies established under the UK-EU Withdrawal Agreement, including the Withdrawal Agreement Joint Committee, the Ireland/Northern Ireland Specialised Committee, and the Joint Consultative Working Group.
 - Monitoring the Protocol's political and socio-economic impact on Northern Ireland.
 - Reviewing the ongoing impact of the Protocol (and of UK withdrawal from the EU more broadly) on the UK-Irish bilateral relationship.
 - Developing inter-parliamentary dialogue in relation to the Protocol, including with the Northern Ireland Assembly and Irish Oireachtas.

The Sub-Committee's July 2021 introductory report

4. On 29 July 2021, the Sub-Committee published its introductory report into the operation and impact of the Protocol on Ireland/Northern Ireland since

1 Liaison Committee, *Review of investigative and scrutiny committees: strengthening the thematic structure through the appointment of new committees* (5th Report, Session 2019–21, HL Paper 193)

it came into force on 1 January 2021.² The report noted that “the Protocol was not created in a vacuum, but rather as a consequence of Brexit. However, the Protocol that emerged was not an inevitable result of Brexit, but rather of the political decisions taken during negotiations both by the UK and the EU on what form it should take.”

5. The report also noted that public opinion in Northern Ireland in relation to the Protocol was split—while unionists and loyalists objected to the Protocol being imposed without their consent, nationalists and republicans pointed out that Brexit was imposed on Northern Ireland against the wishes of its people. The report drew attention to the democratic deficit, whereby significant aspects of EU law apply to Northern Ireland without its prior consent.
6. The report also analysed practical measures proposed by business representatives and other stakeholders to ease the economic burden of the Protocol, while at the same time noting that they would not be enough to assuage those who disagreed with the Protocol in principle. Nevertheless, the Committee found that the UK and the EU urgently needed to agree practical steps that would ensure the proportionate application of the Protocol, including a UK/EU veterinary agreement.
7. The report found that the search for solutions up to that point had been hampered by fundamental flaws in the UK and EU’s approach: the EU’s rules-based rigidity consequent upon maintaining the integrity of the Single Market and customs union, combined with the Government’s apparent reluctance to accept its obligations under the Protocol, and indeed the consequences of its own policy choices, had led to a corrosive and mutual lack of trust: on the part of the EU, that the UK was seeking to undermine the Protocol and would not live up to its political and legal commitments; and on the part of the UK, that the EU would always prioritise the integrity of the Single Market over the interests and unique circumstances of Northern Ireland. The Committee found that this had contributed to a serious deterioration in relations between London, Belfast, Dublin and Brussels. It concluded that, unless urgent steps were taken to correct this, Northern Ireland and its people would become permanent casualties in the post-Brexit landscape.

Subsequent political developments

8. We summarise below the key political developments since the publication of our introductory report.

The Government’s July 2021 Command Paper

9. On 22 July 2021 (shortly before the Committee’s report was released), the Government published its Command Paper *Northern Ireland Protocol: the way forward*.³ The Command Paper analysed in turn the Government’s analysis of the process of agreeing the Protocol, how the Protocol was working, and the Government’s assessment that the case for invoking the

2 European Affairs Committee, *Report from the Sub-Committee on the Protocol on Ireland/Northern Ireland: Introductory report* (2nd Report, Session 2021–22, HL Paper 55)

3 HM Government, *Northern Ireland Protocol: the way forward*, CP 502, 21 July 2021: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1008451/CCS207_CCS0721914902-005_Northern_Ireland_Protocol_Web_Accessible_1_.pdf [accessed 11 July 2022]

safeguarding mechanism set out in Article 16 of the Protocol had been met. Notwithstanding this, the Government set out an “alternative way forward: finding an agreed new balance”, including:

- Arrangements under which it would be the primary responsibility of any UK trader moving goods to Northern Ireland to declare whether the final destination of those goods was Northern Ireland or Ireland. Full customs formalities would be required for goods going to Ireland and the UK would undertake to enforce them. Other goods would not require customs processes.
 - Similar arrangements for sanitary and phytosanitary (SPS) goods, supplemented by pre-notification of movements and “an appropriately designed SPS agreement”, and arrangements for the movement of pets within the UK.
 - Greater freedom to set VAT and excise rates and structures in Northern Ireland, but underpinned by clear safeguards where changes would introduce significant distortions on the island of Ireland.
 - Strong reciprocal data-sharing arrangements, and, for SPS goods, appropriate labelling requirements, increased market surveillance, and penalties for non-compliant traders.
 - Elimination of export declarations for goods moving to Great Britain from Northern Ireland except in the narrow cases of specifically controlled goods.
 - A “full dual regulatory regime in Northern Ireland”, whereby “goods, whether manufactured or SPS goods, should be able to circulate within Northern Ireland if they meet either UK or EU rules, as determined by UK or EU regulators, and should be labelled accordingly.”
 - Specific provisions for medicines. In the Government’s view, “the simplest way forward may be to remove all medicines from the scope of the Protocol entirely.”
 - Removal of the existing provisions of Article 10 of the Protocol (on State aid), which, in the Government’s view, were “redundant in their current form” following the agreement of subsidy control commitments in the UK-EU Trade and Cooperation Agreement (TCA).
 - Changes to “normalise the governance basis of the Protocol”, so that, instead of it being “ultimately policed by the EU institutions including the Court of Justice”, alternative dispute settlement arrangements should be established on the basis of “a normal treaty framework, similar to other international agreements including our Trade and Cooperation Agreement, in which governance and disputes are managed collectively and ultimately through international arbitration.”
 - “More robust arrangements to ensure that, as rules are developed, they take account of their implications for Northern Ireland—and provide a stronger role for those in Northern Ireland to whom they apply”.
10. The Government called for agreement with the EU of a ‘standstill’ on existing arrangements, including the continued operation of the various

grace periods and derogations in force in relation to agri-food, medicines, parcels and movement of pets, and a freeze on existing legal actions and processes, to ensure there was “room to negotiate without further cliff edges, and to provide a genuine signal of good intent to find ways forward.”

11. In a statement the same day, European Commission Vice-President Maroš Šefčovič said:

“We will continue to engage with the UK, also on the suggestions made today. We are ready to continue to seek creative solutions, within the framework of the Protocol, in the interest of all communities in Northern Ireland. However, we will not agree to a renegotiation of the Protocol.”⁴

The EU subsequently confirmed on 27 July that it was not, at that stage, moving to the next stage of legal proceedings against the UK initiated in March 2021.

12. On 6 September, Lord Frost, in his capacity as Minister of State in the Cabinet Office with ministerial responsibility for the Protocol, made a written ministerial statement confirming that “initial technical talks” had commenced between the UK and the EU, and that, while they continued, “the Government will continue to operate the Protocol on the current basis. This includes the grace periods and easements currently in force.”⁵
13. In a choreographed move, the Commission made its own statement the same day noting the Government’s announcement “regarding the operation of the Protocol on the current basis, including the continuation of existing grace periods”, and confirming that, while reserving its rights in respect of infringement proceedings, it was “not moving to the next stage of the infringement procedure launched in March 2021, and is not opening any new infringements for now.”⁶

The EU’s October 2021 ‘non-papers’

14. Against the backdrop of these discussions, the Commission published in October 2021 a set of “bespoke arrangements to benefit Northern Ireland” in the form of four ‘non-papers’ (i.e. non-legislative texts) on:
- Engagement with Northern Ireland stakeholders and authorities, including “establishing structured dialogues between Northern Ireland stakeholders (authorities, civic society and businesses) and the Commission”, and a dedicated website “to show in a clear and comprehensive way the EU legislation applicable in Northern Ireland.”
 - Customs, including “measures that will simplify and make customs formalities and processes easier”, such as potential expansion of the scope of goods not at risk of moving into the EU Single Market, which the Commission argued would “cut in half the documentation currently needed for goods moving from Great Britain to Northern Ireland.”

4 European Commission, *Statement by Vice-President Maroš Šefčovič following today’s announcement by the UK government regarding the Protocol on Ireland / Northern Ireland* (21 July 2021): https://ec.europa.eu/commission/presscorner/detail/en/statement_21_3821 [accessed 11 July 2022]

5 Written statement [HLWS257](#), Session 2021–22

6 European Commission, *Statement by the European Commission following the UK announcement regarding the operation of the Protocol on Ireland / Northern Ireland* (6 September 2021): https://ec.europa.eu/commission/presscorner/detail/en/statement_21_4586 [accessed 11 July 2022]

- Sanitary and Phytosanitary (SPS) issues, including a “Northern Ireland-specific solution in the area of public, plant and animal health”, which the Commission claimed would mean “vastly simplified certification and a significant reduction (approximately 80%) of official checks for a wide range of retail goods moving from Great Britain to be consumed in Northern Ireland.” This was subject to UK commitments on construction of permanent Border Control Posts, packaging and labelling, and monitoring of supply chains. The Commission stated that its SPS and customs proposals would together “create a type of ‘Express Lane’ for the movement of goods from Great Britain to Northern Ireland, while at the same time providing for a robust monitoring and enforcement mechanism in order to protect the integrity of the Single Market.”
- Medicines, including proposals to ensure that “Great Britain can continue acting as a hub for the supply of generic medicines for Northern Ireland, even though it is now a third country. In this way, the long-term supply of medicines from Great Britain to Northern Ireland can be ensured.”⁷

Developments in December 2021 and February 2022

15. Discussions continued during the autumn of 2021 without resolution, leading to the Commission’s announcement on 17 December of a unilateral package of measures (including legislation) in relation to medicines. On the same day, Lord Frost made a statement that, while acknowledging positive talks in relation to medicines and (to a lesser extent) VAT and excise control, noted that there had been “much less progress” in relation to customs and SPS arrangements, placing manufactured goods on the market in Northern Ireland, subsidy control and governance. Lord Frost also stated that:

“Our preference would be to reach a comprehensive solution dealing with all the issues. However, given the gravity and urgency of the difficulties, we have been prepared to consider an interim agreement as a first step to deal with the most acute problems, including trade frictions, subsidy control, and governance. Such an agreement would still leave many underlying strains unresolved, for example those caused by diverging UK and EU rules over time. It would therefore be inherently provisional by nature and would accordingly need to include mechanisms for addressing outstanding issues and resolving new concerns as they arise. The UK has proposed a number of possible ways forward, but regrettably it has not so far been possible to make progress even on what the core elements of an interim agreement might be.”⁸

16. Lord Frost announced his resignation from the Government the next day, citing disagreements with the Government’s Covid strategy.⁹ Ministerial responsibility for the Protocol (including acting as co-chair of the Withdrawal Agreement Joint Committee and leading the continuing discussions with the

7 European Commission, Press release: *Protocol on Ireland/Northern Ireland: Commission proposes bespoke arrangements to benefit Northern Ireland* (13 October 2021): https://ec.europa.eu/commission/presscorner/detail/en/ip_21_5215 [accessed 11 July 2022]

8 Cabinet Office, Press release: *Lord Frost statement on the Protocol on Ireland/Northern Ireland* (17 December 2021): <https://www.gov.uk/government/news/lord-frost-statement-on-the-protocol-on-irelandnorthern-ireland-17-december-2021--2> [accessed 11 July 2022]

9 BBC, ‘Lord Frost’s resignation letter in full’ (18 December 2021): <https://www.bbc.co.uk/news/uk-politics-59714710> [accessed 11 July 2022]

EU) passed to the Foreign Secretary, Rt Hon Elizabeth Truss MP, supported initially by the then Minister for Europe, Chris Heaton-Harris MP, who was succeeded in February 2022 by Rt Hon James Cleverly MP, following his appointment as Minister for Europe and North America.

17. On 2 February 2022, the Democratic Unionist Party (DUP) Minister for Agriculture, Environment and Rural Affairs in the Northern Ireland Executive, Edwin Poots MLA, directed officials to stop conducting SPS checks on goods moving to Northern Ireland from Great Britain. The other parties in the Executive disagreed with this move, and the direction was challenged by a judicial review, with checks continuing in the meantime.
18. The next day, on 3 February, the DUP First Minister of Northern Ireland, Paul Givan MLA, announced his resignation. Under the power-sharing mechanism, this automatically triggered the resignation of the Sinn Féin deputy First Minister, Michelle O'Neill MLA. The Northern Ireland (Ministers, Elections and Petitions of Concern) Act 2022 received Royal Assent on 8 February. This allowed the Executive to continue to function in limited form without necessitating early elections. The UK Government then ruled out early elections, meaning that the Assembly was dissolved on schedule on 28 March, ahead of the Assembly elections on 5 May.

The May 2022 Northern Ireland Assembly elections

19. The status and operation of the Protocol was a key campaigning theme during the elections for the unionist parties, although the other parties represented in the Assembly tended to emphasise other issues. At the elections, Sinn Féin became the largest party in the Assembly for the first time. Overall, the unionists remained the largest designation, with 37 seats, while nationalists won 35 and Others won 18. While the MLAs in the latter two designations (53 out of 90 MLAs overall) broadly support the Protocol, all 37 unionist MLAs have stated their opposition to it.
20. As the largest party overall, Sinn Féin was entitled to nominate a First Minister, while, as the largest party of the largest designation in the Assembly, the DUP was entitled to nominate a deputy First Minister. However, the DUP Leader, Sir Jeffrey Donaldson MP, stated that the DUP would not nominate a deputy First Minister (and thus facilitate the full restoration of the Executive) until “decisive action” was taken over the Protocol. The DUP declined to nominate a Speaker to the Assembly on the same grounds, meaning that the Assembly was unable to meet.

The Northern Ireland Protocol Bill and the EU's response

21. Following several weeks of media speculation, the Foreign Secretary made a statement to the House of Commons on 17 May announcing the Government's “intention to introduce legislation in the coming weeks to make changes to the Protocol”, while at the same time stating that its “preference remains a negotiated solution with the EU”.¹⁰
22. Later that day, Vice-President Šefčovič made a statement that:

“Should the UK decide to move ahead with a bill disapplying constitutive elements of the Protocol as announced today by the UK Government, the EU will need to respond with all measures at its disposal. Our

¹⁰ HC Deb, 17 May 2022, [col 547](#)

overarching objective is to find joint solutions within the framework of the Protocol. That is the way to ensure legal certainty and predictability for people and businesses in Northern Ireland.”¹¹

23. The Northern Ireland Protocol Bill was published on 13 June. In an explainer document published alongside the Bill, the Government stated that it was seeking to achieve four key aims, which had previously been reflected in the July 2021 Command Paper:
- “Establish new ‘green channel’ arrangements for goods staying in the UK.”
 - “Establish a new ‘dual regulatory’ model to provide flexibility to choose between UK or EU rules.”
 - “Ensure the Government can set UK-wide policies on subsidy control and VAT.”
 - Deal with the Protocol’s “unequal governance” by “removing the role of the CJEU in dispute settlement.”¹²
24. On 15 June, the Commission responded by announcing that it was taking forward the infringement proceedings that had been put on hold to allow for discussions following publication of the July 2021 UK Command Paper, as well as launching two new infringement proceedings against the UK for failing to carry out its obligations under the EU’s SPS rules, and for failing to provide the EU with certain trade statistics data.
25. In parallel with this, the Commission published two position papers, on customs and SPS issues, expanding on its October 2021 proposals. The Commission argued that these would lead to a 50% reduction in customs paperwork and a reduction of 80% of “official checks for a wide range of retail goods moving from Great Britain to be consumed in Northern Ireland.”¹³
26. However, the Government argued that “the EU’s proposed approach, which doesn’t differ from what they have said previously, would increase burdens on business and citizens and take us backwards from where we are currently.”¹⁴
27. The Northern Ireland Protocol Bill received its Second Reading in the House of Commons on 27 June, and Committee Stage proceedings were expected to conclude on 20 July, followed immediately by Third Reading of the Bill.

11 European Commission, *Protocol on Ireland/Northern Ireland: Statement by Vice-President Maroš Šefčovič following today’s announcement by the UK Foreign Secretary* (17 May 2022): https://ec.europa.eu/commission/presscorner/detail/en/statement_22_3142 [accessed 11 July 2022]

12 Foreign, Commonwealth and Development Office, *NI Protocol: The UK’s solution* (13 June 2022): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1082474/northern-ireland-protocol-the-uks-solution.pdf [accessed 11 July 2022]

13 European Commission, *Protocol on Ireland / Northern Ireland - Position paper on possible solutions: Customs* (15 June 2022): https://ec.europa.eu/info/system/files/protocol_on_ireland_northern_ireland_-_position_paper_on_possible_solutions_-_customs.pdf [accessed 11 July 2022]; European Commission, *Protocol on Ireland / Northern Ireland - Position paper on possible solutions - Sanitary and Phytosanitary Issues* (15 June 2022): https://ec.europa.eu/info/system/files/protocol_on_ireland_northern_ireland_-_position_paper_on_possible_solutions_-_sanitary_and_phytosanitary_issues.pdf [accessed 11 July 2022]; and European Commission, *Questions and answers on the Commission’s reaction to the United Kingdom’s bill overriding core parts of the Protocol on Ireland / Northern Ireland* (15 June 2022): https://ec.europa.eu/commission/presscorner/detail/en/qanda_22_3679 [accessed 11 July 2022]

14 BBC, ‘NI Protocol: Three-page certificate for GB lorries entering NI-EU’ (15 June 2022): <https://www.bbc.co.uk/news/uk-northern-ireland-61808606> [accessed 11 June 2022]

28. On 7 July, the Prime Minister announced his intention to resign once a new leader of the Conservative Party had been elected. As part of the Government reshuffle that took place the same day, James Cleverly was appointed as Secretary of State for Education. He was replaced as Minister for Europe by Graham Stuart MP. The new Prime Minister and leader of the Conservative Party is expected to be announced by 5 September.

The work of the Sub-Committee

29. In the months after the publication of its July 2021 introductory report, and against the backdrop of these political developments, the Committee scrutinised individual aspects of the Protocol's impact and operation, leading to a series of detailed letters to Government Ministers on:
- Article 2 of the Protocol, on rights of individuals.¹⁵
 - The provision of medicines to Northern Ireland under the Protocol.¹⁶
 - The democratic deficit under the Protocol, whereby areas of EU law apply to Northern Ireland without its prior consent, and means to enhance Northern Ireland's voice and influence in relation to the Protocol.¹⁷
 - The role of the Court of Justice of the European Union (CJEU) in relation to the Protocol.¹⁸
30. Although we received follow-up evidence in relation to each of these areas in the context of this inquiry,¹⁹ in view of the Committee's previous detailed scrutiny, this report does not focus on these issues. However, we do reflect on subsequent developments in relation to medicines in Chapter 3.

15 Letter from Lord Jay of Ewelme to Rt Hon Brandon Lewis MP on Article 2 of the Protocol on Ireland/Northern Ireland (Rights of Individuals), 25 October 2021: <https://committees.parliament.uk/publications/7641/documents/79851/default/> and letter from Lord Jay of Ewelme to Rt Hon Conor Burns MP on Article 2 of the Protocol on Ireland/Northern Ireland (rights of individuals), 16 December 2021: <https://committees.parliament.uk/publications/8299/documents/84467/default/>

16 Letter from Lord Jay of Ewelme to Rt Hon Lord Frost on the Provision of Medicines to Northern Ireland under the Protocol on Ireland/Northern Ireland, 18 November 2021: <https://committees.parliament.uk/publications/7886/documents/81840/default/> and letter from Lord Jay of Ewelme to Rt Hon Elizabeth Truss MP on provision of medicines to Northern Ireland under the Protocol on Ireland/Northern Ireland, 28 January 2022: <https://committees.parliament.uk/publications/8666/documents/88026/default/>

17 Letter from Lord Jay of Ewelme to Rt Hon Lord Frost CMG on the democratic deficit under the Protocol on Ireland/Northern Ireland and ways to enhance Northern Ireland's voice and influence, 16 December 2021: <https://committees.parliament.uk/publications/8298/documents/84463/default/>

18 Letter from Lord Jay of Ewelme to Rt Hon Elizabeth Truss MP on the role of the Court of Justice of the European Union (CJEU) in relation to the Protocol on Ireland/Northern Ireland, 11 February 2022: <https://committees.parliament.uk/publications/8871/documents/89300/default/>

19 On Article 2, see in particular joint written evidence from the Northern Ireland Human Rights Commission and Equality Commission for Northern Ireland (FUI0023), written evidence from the Human Rights Consortium (FUI0007), written evidence from Committee on Administration of Justice (FUI0009), written evidence from Professor Monica McWilliams and Emma DeSouza (FUI0017). On the democratic deficit, see in particular Q 72 (Doug Beattie MLA), QQ 78, 83 (Sir Jeffrey Donaldson MP), QQ 37, 39 (Matthew O'Toole MLA), QQ 50, 51, 55 (Declan Kearney MLA), written evidence from Dr Sylvia de Mars, Dr Colin Murray and Dr Clare Rice (FUI0006), written evidence from Ibec (FUI0011), and written evidence from Professor Monica McWilliams and Emma DeSouza (FUI0017). On the role of the CJEU, see written evidence from Dr Sylvia de Mars, Dr Colin Murray and Dr Clare Rice (FUI0006), written evidence from the Human Rights Consortium (FUI0007), written evidence from Victoria Hewson (FUI0015), Q 75 (Doug Beattie MLA) and Q 68 (Rt Hon James Cleverly MP).

31. The Committee also held evidence sessions in October 2021 with academic experts and political commentators on the July 2021 Command Paper, in December 2021 with academic and legal experts on the political and legal ramifications of any decision to invoke Article 16 of the Protocol, and also in December 2021 with representatives of the port authorities in Northern Ireland on the effect of the Protocol on their operations.
32. In addition, in March 2022 the Committee published a report on *Scrutiny of EU legislative proposals within the scope of the Protocol on Ireland/Northern Ireland*.²⁰ This report summarised the Committee's scrutiny work to date (including sending over 90 letters to Government Ministers on over 40 EU legislative proposals), and concluded that both the UK and the EU needed to do more to explain the impact of EU legislation on Northern Ireland, and to enhance the voice and influence of Northern Ireland stakeholders over the application of such legislation.
33. The Committee has also scrutinised the implications of relevant domestic UK legislation and policy for Northern Ireland in the context of Brexit and the Protocol, including the Elections Bill, the Nationality and Borders Bill and the Subsidy Control Bill, as well as continuing its inter-parliamentary engagement with Committees in the House of Commons, Northern Ireland Assembly and the Irish Oireachtas.

This inquiry

34. The Committee began a follow-up inquiry into the impact of the Protocol in March 2022, by hearing from businesses, economists and trade organisations on the economic impact of the Protocol. The inquiry was then paused for the duration of the Northern Ireland Assembly election campaign. The Committee took further evidence from business representatives, representatives of the five largest political parties in the Assembly after the elections, and the then Minister of State for Europe and North America, Rt Hon James Cleverly MP. A call for written evidence was also published on 13 May, and the Committee received 25 written responses from business representatives, trade organisations, academics, legal experts, and civic society representatives. We are grateful to all our witnesses for their assistance.
35. The Northern Ireland Protocol Bill was published shortly after the conclusion of the Committee's programme of oral evidence, and the deadline for receipt of written evidence. The Government's intention to legislate, and much of the likely content of the Bill, was reported several weeks before this, and as such, this report reflects on many of the themes of the Bill. However, the report does not aim to set out a detailed analysis of the legislation itself. Rather, in order to inform parliamentary scrutiny of the Bill, it sets out our analysis, based on the evidence received, of the impact of the Protocol at the point of the Bill's publication. Our intention is then to begin scrutiny of the Bill itself, and the EU's response, in September, to inform consideration of the Bill in the House of Lords.
36. The cross-party membership of the Sub-Committee, drawn from Northern Ireland and the rest of the UK, has a wide range of expertise in Northern Ireland affairs. Our membership represents a range of views, both on

²⁰ European Affairs Committee, *Report from the Sub-Committee on the Protocol on Ireland/Northern Ireland: Scrutiny of EU legislative proposals within the scope of the Protocol on Ireland/Northern Ireland* (5th Report, Session 2021–22, HL Paper 177)

Northern Ireland's constitutional position and on the Protocol itself. While some of us support the Protocol (subject to mitigations to alleviate practical problems with its operation that have arisen), others of us oppose the Protocol in principle, even were such mitigations to be agreed. In view of this, and without prejudice to the views of individual members, we see our task as not to argue for or against the Protocol itself, but rather to scrutinise its operation and impact in an objective and evidence-based manner. Our report and the conclusions that we reach should be viewed in that context.

37. In that spirit, **we make this report for debate.**

CHAPTER 2: THE ECONOMIC IMPACT OF THE PROTOCOL

Introduction

38. In this chapter, we set out the evidence received on the emerging economic impact of the Protocol over the past year, including for trade and movement of goods between Great Britain and Northern Ireland, for North-South trade on the island of Ireland and trade with the EU, and specific issues identified by our witnesses that need to be addressed. However, we begin by setting out some caveats to this analysis.

Distinguishing the economic impact of the Protocol from other factors

39. A number of witnesses stressed that it was difficult to distinguish the economic impact of the Protocol from other issues. Owen Reidy, Assistant General Secretary, Irish Congress of Trade Unions (ICTU) Northern Ireland, said that it was hard to disentangle the effect of “three fundamental shocks” of Brexit, Covid and the cost of living crisis, exacerbated by the war in Ukraine.²¹ Dr Esmond Birnie, Senior Economist, Ulster University²², agreed that, while it was difficult to distinguish between the impact of various factors, that of Covid and the energy and food price shock were likely to be larger than the Protocol. Nevertheless, he argued that the Protocol, unlike other issues, was a “policy choice”.²³ Some witnesses, such as Matthew O’Toole MLA, representing the Social Democratic and Labour Party (SDLP), stressed that the Protocol needed to be viewed through the prism of Brexit itself.²⁴
40. Other witnesses pointed to the wider impact of other economic factors, such as labour shortages, not connected to the Protocol. Conall Donnelly, Executive Director, Northern Ireland Meat Exporters Association, said that in late 2021, the meat industry was facing labour shortages of between 10 and 15%—equivalent to a loss of £1 million per week to the local economy in Northern Ireland.²⁵ Stephen Kelly, CEO, Manufacturing NI, agreed, warning that, following Brexit and Covid, “instead of the usual 100,000 people coming into the workforce, we will have fewer than 10,000 people in the next decades.”²⁶

Conflicting, unclear or incomplete data

41. Some witnesses pointed to various economic data as demonstrating the drawbacks or benefits of the Protocol, including increases in costs of moving products from Great Britain to Northern Ireland,²⁷ data pointing to a growth in North-South trade, or economic modelling showing Northern Ireland performing relatively well compared to other parts of the UK.²⁸ However, the reliability or significance of these figures were disputed by others, which sometimes led witnesses to reach opposite conclusions.
42. Witnesses also stressed that economic data on the impact of the Protocol remained unclear or incomplete. Dr Esmond Birnie noted that “we do not

21 [Q 11](#)

22 Giving evidence in a personal capacity.

23 [Q 11](#)

24 [Q 33](#)

25 [Q 1](#)

26 [QQ 11, 17](#)

27 [Q 58](#) (Rt Hon James Cleverly MP), citing the Road Haulage Association.

28 Written evidence from Ibec ([FUI0011](#)), citing statistics from Ireland’s Central Statistics Office and the Office for National Statistics, respectively.

yet have a full suite of statistics”, and there would be a data gap until the end of the year, when the statistics on Northern Ireland-Great Britain trade would emerge. He also said that initial data could be revised.²⁹

43. The Northern Ireland Business Brexit Working Group likewise noted that official UK data on trade to and from Northern Ireland with Great Britain for 2021 will not be available until later in 2022.³⁰ The Northern Ireland Food and Drink Association pointed out that “trade flows are still settling post Covid and are likely to be distorted as a result. It is our view that it is too early to have access to meaningful statistics to understand impacts.”³¹
44. This report sets out the views about the economic impact of the Protocol we heard from those who gave evidence. We have not sought to provide an independent economic analysis or to analyse existing economic or statistical data. In that context, we note that, as well as being an early stage at which to be able to draw any clear conclusions, various data are emerging from different sources.³²

Trade between Great Britain and Northern Ireland

Overview

45. Several witnesses drew attention to the negative impact of the Protocol upon trade between Great Britain and Northern Ireland, noting that Northern Ireland’s trade with Great Britain was considerably larger than with Ireland, as set out in the table below.

Table 1: Northern Ireland trade in goods (2020)

	Great Britain	Ireland	Rest of the EU	Rest of the world
Incoming trade /imports to Northern Ireland	£10.6 billion	£2.5 billion	£2.0 billion	£1.8 billion
Outgoing trade/exports from Northern Ireland	£6.7 billion	£3.1 billion	£1.8 billion	£3.0 billion

Source: Data from the Northern Ireland Statistics and Research Agency published at: Department for the Economy, Northern Ireland Broad Economy Sales and Exports Statistics: Trade in Goods and Services Results 2020 (6 April 2022): <https://www.economy-ni.gov.uk/news/northern-ireland-broad-economy-sales-and-exports-statistics-trade-goods-and-services-results-2020> [accessed 14 July 2022]

46. Dr Esmond Birnie argued that, while all Brexit scenarios may well have led to a decline in Northern Ireland’s GDP, the Protocol was “peculiarly damaging” because of the greater size of trade flows between Great Britain

29 [QQ 13, 15](#)

30 Written evidence from Northern Ireland Business Brexit Working Group ([FUI0025](#))

31 Written evidence from the Northern Ireland Food and Drink Association ([FUI0020](#))

32 For example, the Office for National Statistics produces a quarterly series on regional Gross Value Added (GVA), including Northern Ireland: Office for National Statistics, ‘Model-based early estimates of regional gross value added in England, Wales, Scotland, and Northern Ireland Statistical bulletins’: <https://www.ons.gov.uk/economy/grossvalueaddedgva/bulletins/modelbasedearlyestimatesofregionalgrossvalueaddedgvaintheregionsofenglandandwales/previousReleases> [accessed 11 July 2022]. The Irish Central Statistics Office (CSO) similarly publishes regular data measuring trade between Northern Ireland and Ireland: Central Statistics Office, ‘Goods Exports and Imports April 2022’: <https://www.cso.ie/en/releasesandpublications/ep/p-gei/goodsexportsandimportsapril2022/> [accessed 11 July 2022]

and Northern Ireland.³³ Dr Birnie cited HM Treasury analysis and business reporting as pointing to an increase of at least 6% in costs for businesses bringing goods into Northern Ireland from Great Britain, equating to £600 million per annum.³⁴

47. Stephen Kelly acknowledged that, in respect of East-West trade, “the Protocol costs businesses in Northern Ireland money”, and estimated that it costs about £75 per consignment from Great Britain to Northern Ireland for businesses who use a broker, totalling £128 million for 1.7 million annual consignments: this provided “a decent idea of the actual administrative cost of the movement of goods from Great Britain into Northern Ireland”, while not accounting for “the free movement of goods elsewhere in our supply chains”.³⁵ Stephen Kelly noted businesses in Northern Ireland reliant on supplies from Great Britain and selling internally “have all of the pain and none of the gain”. On the other hand, those with GB supply chains but also selling externally “have some of the pain, but they have significant gain. As a result they are willing to endure that pain.”³⁶ Doug Beattie MLA, Leader of the Ulster Unionist Party, described this as “feast or famine. We have people doing very well and people on their knees.”³⁷
48. The Northern Ireland Business Brexit Working Group cited figures from the Northern Ireland Chamber of Commerce and Industry that, in the first quarter of 2022, 65% of consultees said that they had adapted to the new trading arrangements (up from 52% in the second quarter of 2021), while 29% are finding trading conditions challenging (down from 37% in the second quarter of 2021). Around half of businesses surveyed have had to use existing or new staff resources, and/or pay for external support to deal with new trading arrangements. One in three have had to divert internal resources to deal with new rules and paperwork.³⁸

The sectoral impact

49. We heard evidence on the impact on individual sectors of the economy.

Retail

50. Sacha Berendji, Managing Director, Marks and Spencer Ireland and Northern Ireland, said that his company had opened a new export centre in Motherwell in Scotland to facilitate deliveries to its stores on the island of Ireland, where separate vehicles for Northern Ireland and Ireland are dispatched. In both cases, an extra 24 hours is required for deliveries, with an impact on shelf life. However, the process for Northern Ireland was “much simpler” due to the grace periods and easements in place, and there had been a greater impact on availability in Ireland (where 600 lines out of 7,000 could not be exported) than in Northern Ireland. It can take an hour to dispatch every vehicle with the correct documentation to Northern Ireland, whereas it can take eight hours for Ireland. Overall, while the process for Northern Ireland was “significantly easier” than for Ireland, “it is still much more complex than it used to be.”³⁹ For instance, Marks and Spencer was not able to offer

33 [Q 11](#)

34 [Q 12](#)

35 *Ibid.*

36 [Q 14](#)

37 [Q 73](#)

38 Written evidence from Northern Ireland Business Brexit Working Group ([FUI0025](#))

39 [Q 23](#)

Christmas food to order to consumers in Northern Ireland. Nevertheless, it was able to deliver most products for their customers in Northern Ireland.⁴⁰

51. Walgreens Boots Alliance (of which Boots UK is a division) stated that they had already stopped supplying Boots branded sandwiches, salads, sushi, fruit and cakes to Northern Ireland, as well as reducing chilled food product lines to 30% of those available elsewhere in the UK.⁴¹
52. Andrew Opie, Director of Food and Sustainability, British Retail Consortium, noted that, overall, 75% of food sold in Northern Ireland supermarkets came from Great Britain. He said that GB-based firms serving Northern Ireland had faced initial start-up costs, for instance establishing new distribution centres. They now had to deal with the 24-hour pre-notification and channelling process, whereby companies had to notify DAERA that the product has arrived at its destination. He said that, while this added bureaucracy and had led to minor changes in range, availability and price, it is manageable, as shown by the maintenance in Northern Ireland of product ranges and “the same kind of price for the basic ranges across the UK”.⁴²
53. Stephen Kelly stated that retailers supplying Northern Ireland from Great Britain faced the additional burden of moving goods to Northern Ireland that may already have been customs-cleared when entering Great Britain via international supply chains. He acknowledged that applying the full EU customs code was disproportionate to the risk posed by a supermarket in Strabane, for example, where “they may well have the odd meal travelling across the Lifford Bridge in Donegal, but there is no significant move in terms of an impact on the EU’s market.”⁴³

Manufacturing

54. Manufacturing NI’s Protocol Tracker showed that the Protocol was fourth of four current concerns among businesses in the sector, below availability of labour. The numbers struggling with processes in the Irish Sea was below 25%, down from 40% six months before. Just over half reported a negative impact from the Protocol, down from 77% in April 2021. One in four reported a positive impact, up from one in six on 2021. GB sales appeared to have fully recovered after confusion at the beginning of 2021, and EU supply chains have almost fully recovered.⁴⁴
55. However, Dr Esmond Birnie cited analysis by the Fraser of Allander Institute showing a larger net negative effect of the Protocol in manufacturing, and argued that there was not yet evidence of a bounce in manufacturing investment.⁴⁵

Logistics

56. Sarah Hards, Sales Director, AM Logistics, said that, for the logistics industry, there was an initial 40% increase in costs for moving goods into Northern Ireland from Great Britain, with no decrease in costs since the first half of 2021.⁴⁶ She also said that the requirements under the Protocol

40 [Q 24](#)

41 Written evidence from Walgreens Boots Alliance ([FUI0024](#))

42 [Q 24](#)

43 [Q 14](#)

44 Written evidence from Northern Ireland Business Brexit Working Group ([FUI0025](#))

45 [QQ 14, 17](#)

46 [Q 9](#)

had added 24 hours to delivery schedules, although many customers had adjusted to this.⁴⁷ On the other hand, the impact of the Protocol on the movement of goods from Northern Ireland to Great Britain was limited: “we are sending more goods from Northern Ireland than receiving, which is a first for us. We can tell that businesses here are taking advantage of the free access to the GB mainland.”⁴⁸

57. The then Minister for Europe and North America, Rt Hon James Cleverly MP, said that Logistics UK had calculated that since January around half of its businesses have had exports to Northern Ireland delayed or cancelled due to the challenges of the Protocol.⁴⁹

Aerospace

58. ADS, the trade association for the UK’s aerospace, defence, security, and space industries, reported that, in respect to the aerospace sector, Northern Ireland manufacturing firms report a 2–3% rise in additional material burden and a 7–15% rise in logistics costs. They stressed that supplementary declarations will add significantly to administration costs, by between 10 and 15%, and logistics providers to the UK are likely to charge a premium for the service. They argued that “the additional costs and administrative burden placed on NI companies is not sustainable in the long-term.”⁵⁰

Meat processing and agri-food

59. Conall Donnelly noted that the meat processing and wider agri-food sectors had managed the impact of the Protocol reasonably well. This was due in part to the key role of large businesses with experience in transporting SPS products to third countries, who were moving full loads of raw material as a single consignment with the same commodity code from one single site to another single site in Northern Ireland, with no groupage involved.⁵¹
60. Nevertheless, the Ulster Farmers’ Union stated that, for the farming industry, “many outstanding issues still remain on livestock, plant, and related product movements from GB to NI despite in certain instances solutions having already supposedly being found.”⁵²
61. Anne Randles, Director of Corporate Affairs, Ornuu, Ireland’s largest exporter of Irish dairy products, said that, while businesses and customers had adapted, “selling into Northern Ireland from GB involves a lot more paperwork, resources and complexity. Lead times have grown. We are also perhaps less capable of responding to unplanned orders and additional demand.”⁵³
62. Sarah Hards said that:
- “It is the SPS goods that prove a massive challenge. Even at the moment with the grace period, it is still an awful lot of work and really puts customers off sending SPS goods into the country. They prefer to source

47 [Q 4](#)

48 [Q 2](#)

49 [Q 69](#)

50 Written evidence from ADS ([FUI0010](#))

51 [QQ 2, 4](#)

52 Written evidence from Ulster Farmers’ Union ([FUI0019](#))

53 [Q 23](#)

them in the island of Ireland, which is great but not always ideal when it comes to contracts they have in place.”⁵⁴

Small and Medium-sized Enterprises

63. Doug Beattie said that businesses in Northern Ireland reliant on the Great Britain market, and in particular Small and Medium-sized Enterprises, “are absolutely on their knees”.⁵⁵
64. The Northern Ireland Business Brexit Working Group (of whom the Federation of Small Businesses Northern Ireland is a member) likewise reported that SMEs have been negatively impacted in particular, as they may not have the financial or human resources necessary to deal with the additional challenges.⁵⁶

The impact of derogations and grace periods

65. The genesis of the current derogations and grace periods is complex. In December 2020, in the weeks before the Protocol came into force, a series of UK and EU unilateral declarations were made in the Joint Committee, including the agreement of a one-year grace period for the supply of medicinal products; a six month grace period for the import of “certain meat products” into Northern Ireland from Great Britain; and a three-month grace period on the certification for certain food products brought into Northern Ireland. These unilateral declarations were subsequently confirmed at the meeting of the Joint Committee on 17 December. These agreements were then supplemented by a further grace period on the movement of parcels, which was announced on 31 December 2020, just hours before the Protocol came into force.
66. On 3 March 2021, and in subsequent guidance published over the following days, the Government unilaterally announced “temporary operational steps to avoid disruptive cliff edges ... as part of the pragmatic and proportionate implementation” of the Protocol. These included extending the grace period for supermarkets and their suppliers from 1 April until 1 October 2021, and phased introduction of certification requirements; mitigating guidance on movements of parcels, plants, seeds, bulbs, vegetables and agricultural machinery from Great Britain to Northern Ireland; and a statement that flexibilities in relevant regulations mean that “no charging regime is required for agri-food goods”. On 15 March 2021 the Commission sent a letter of formal notice to the UK for breaking the substantive provisions of the Protocol and the good faith obligation under the Withdrawal Agreement, marking the beginning of a further formal infringement process against the UK.
67. On 17 June 2021 the Government requested the extension of the grace period on chilled meats from the end of June until the end of September 2021. On 30 June the EU agreed to the extension, subject to accompanying official health certificates, products being sold exclusively to end consumers in Northern Ireland supermarkets, and packaging and labelling requirements.
68. As we have seen, following the publication of its Command Paper in July 2021, the Government called for agreement with the EU of a ‘standstill’

54 [Q 3](#)

55 [Q 73](#)

56 Written evidence from Northern Ireland Business Brexit Working Group ([FUI0025](#))

on existing arrangements, including the continued operation of the various grace periods and derogations in force in relation to agri-food, medicines, parcels and movement of pets, and a freeze on existing legal actions and processes, to ensure there was “room to negotiate without further cliff edges, and to provide a genuine signal of good intent to find ways forward”.

69. The Commission subsequently confirmed on 27 July 2021 that it was not, at that stage, moving to the next stage of legal proceedings against the UK initiated in March 2021.⁵⁷ However, on 15 June 2022, the Commission announced that, following publication of the Northern Ireland Protocol Bill, it was taking forward the infringement proceedings that had been put on hold.
70. A number of witnesses drew attention to the importance of the various derogations and grace periods in terms of mitigating the negative impact of the Protocol. James Cleverly stressed that “the Protocol unchanged as it is currently being implemented—and it is not even the full implementation that is currently on the table from the EU side—is causing problems in Northern Ireland.”⁵⁸
71. As we have seen, Marks and Spencer said that the derogations meant that supply of goods to Northern Ireland was easier than supplying goods to Ireland.⁵⁹ Walgreens Boots Alliance stated that ending the derogations under the various grace periods could affect over 300 products immediately (2.5% of Boots’ overall product lines), including 22% of its food supplement offer and 44% of its baby food offer.⁶⁰
72. Conall Donnelly noted that “the retail sector, were it not for the grace periods, would have major challenges”, in particular because of its reliance on groupage, which made delays more likely if forms were not completed correctly.⁶¹
73. Stephen Kelly gave the example of the derogation for parcels:

“If that parcels grace period were removed, the likely impact on business would be a five-to-seven-times multiple of the customs requirements that businesses would have to endure in what they receive via fast parcel operators.”⁶²
74. Andrew Opie stressed the importance of the simplified STAMNI⁶³ process for sending food between Great Britain and Northern Ireland. If these arrangements were not in place, it “would have made a significant impact on our ability to continue to sell the same range of affordable products in Northern Ireland”, due to the high level of cost for compliance with checks and certification processes. Because each range of products requires an

57 Euronews, ‘EU halts legal action against UK over Northern Ireland Protocol breaches’ (27 July 2021): <https://www.euronews.com/2021/07/27/eu-halts-legal-action-against-uk-over-northern-ireland-protocol-breaches> [accessed 20 July 2022]

58 [Q 69](#)

59 [Q 23](#)

60 Written evidence from Walgreens Boots Alliance ([FUI0024](#))

61 [QQ 2–3](#)

62 [Q 20](#)

63 Scheme for Temporary Agri-Food Movement to Northern Ireland. See Department for Agriculture, Environment and Rural Affairs, ‘Scheme for Temporary Agri-food Movements to Northern Ireland (STAMNI) Compliance Declaration’ (January 2021): <https://www.daera-ni.gov.uk/publications/stamni-compliance-declaration> [accessed 11 July 2022]

export health certificate, a lorryload could entail hundreds of certificates requiring veterinary approval, thus pushing up costs and consumer prices. More broadly, “because of the standstill processes we have largely been able to maintain the same service and affordability that we had pre-Brexit, which is great for Northern Ireland consumers, who have the lowest disposable income of consumers across the UK.”⁶⁴

The Trader Support Service and Movement Assistance Scheme

75. A number of witnesses stressed the importance of the Trader Support Service and Movement Assistance Scheme in facilitating trade. Conall Donnelly noted that they had both been “critical in providing certainty and simplicity, where possible, and affordability.”⁶⁵ Sarah Hards said that SMEs in particular were reliant on the Trader Support Service.⁶⁶
76. ADS agreed that the Trader Support Service “has been useful to companies to help guide them through the new requirements and raise awareness that tariffs on ‘at risk’ goods will be required to be paid upfront. However, they warned that companies making extensive use of customs special procedures such as Inward Processing Relief (IPR) have found that their business models are not compatible with the current functionality of the Trader Support Service. This has required additional time and a general diversion of resources across businesses, stakeholders and Government officials to get goods through the customs process correctly.”⁶⁷

Willingness of GB-based companies to supply Northern Ireland

77. Notwithstanding these mitigations, a number of witnesses cited ongoing issues with the willingness of businesses based in Great Britain to supply the market in Northern Ireland, because of the actual or perceived bureaucratic burden of the Protocol. Sarah Hards said that, while businesses in Northern Ireland had good awareness of the new requirements under the Protocol, the same was not true of business in Great Britain wishing to trade with Northern Ireland:⁶⁸

“We lost a fairly large retail customer at the beginning of Brexit because there were too many hurdles with their SPS goods coming in. ... We lost customers straightaway overnight because they could not fathom the cost of veterinary certificates, et cetera. ... It is GB to NI that has decreased due to lack of education, and people not wanting to educate themselves sometimes. It is too much work to send their goods to Northern Ireland. It is not worth it for them.”⁶⁹

78. The Northern Ireland Business Brexit Working Group stated that, among businesses surveyed by Manufacturing NI, GB supplier readiness and willingness remains the big issue, although the situation is improving—one in seven now report that GB suppliers are still unwilling to supply Northern Ireland, down from one in five in 2021. Almost 40% say it is ‘business as usual’ with their GB supplier, although 36% report that preparedness of GB suppliers is their biggest challenge. They stressed that “communication and

64 [QQ 23–24](#)

65 [Q 4](#)

66 [Q 7](#)

67 Written evidence from ADS ([FUI0010](#))

68 [Q 1](#)

69 [Q 5](#)

clarity is required from both the UK and EU about what is required for businesses to conduct their trade in compliance with the law. This is needed to be conveyed to GB businesses as well as NI ones.”⁷⁰

79. The Northern Ireland Food and Drink Association likewise emphasised the need to “educate and support GB businesses trading into Northern Ireland. Smaller business or those with a marginal exposure to NI trade are perceived to have stepped back from trade due to the perception of it being ‘too difficult to trade’.”⁷¹

The impact of regulatory divergence

80. Several witnesses argued that regulatory divergence between the UK (in respect of Great Britain) and the EU exacerbated problems with the Protocol, and made it more difficult to identify solutions.
81. Conall Donnelly said that divergence was a “major challenge” and a “big issue”:

“There must be a recognition that when the UK diverges from the EU it is actually diverging from Northern Ireland. ... Our concern would be that divergence would eventually get to the point where you would struggle to source EU-compliant raw material in GB for processing in Northern Ireland. We think that could happen owing to something as simple as a change to a withdrawal period on an animal medicine, or a change to maximum residue limits on an animal medicine, which could create circumstances where a GB-based vet would be unable to sign an export health certificate.”⁷²

82. Mr Donnelly called for “a UK internal market assessment or a Northern Ireland impact assessment, to ensure that consideration is given to the impact on Northern Ireland of any changes” either by the UK or EU:

“Both sides have to recognise that they have a responsibility. I do not really sense that they are owning the responsibility of the impact of divergence. Their respective stances will put pressure on the long-term sustainability of the Protocol, and something has to give. There needs to be an agreement that works for both sides, specifically for Northern Ireland business. It also has to work for us.”⁷³

83. Andrew Opie called for dialogue on “how we stop divergence becoming a problem in the range and availability that Northern Ireland consumers have access to.”⁷⁴ Walgreens Boots Alliance noted that certain cosmetics and food supplements ingredients had been banned by the EU but not yet in the UK, meaning that they were technically not allowed to sell the same products in Great Britain and Northern Ireland, leading to logistical costs and complexity.⁷⁵
84. The Civil Society Alliance stressed the necessity of the Government’s review of retained EU law taking account of the impact on Northern Ireland. They also emphasised the importance of active monitoring and tracking of

70 Written evidence from Northern Ireland Business Brexit Working Group ([FUI0025](#))

71 Written evidence from Northern Ireland Food and Drink Association ([FUI0020](#))

72 [QQ 3–4, 6](#)

73 [QQ 6, 8](#)

74 [Q 27](#)

75 Written evidence from Walgreens Boots Alliance ([FUI0024](#))

changes to EU law and their impact on Northern Ireland in the context of the Protocol.⁷⁶

85. The Northern Ireland Business Brexit Working Group warned that “the more UK/EU standards diverge, the greater the difficulties posed for NI business. ... There remains no suitable nor available process to manage divergence in relations to NI. An urgent resolution to this is required.”⁷⁷

Conclusions

86. **The most significant negative economic impact of the Protocol has been on trade between Great Britain and Northern Ireland, upon which the Northern Ireland economy has historically been dependent. This impact has been felt in terms of increased bureaucracy, staff resources, cost, and delivery times, as well as restricting the ability of firms to respond flexibly to supply and demand. This has had some impact on product availability and cost for consumers, although we note evidence that a number of companies have been able to mitigate this impact, and are adapting to the new rules in place.**
87. **The Protocol has created difficulties in relation to East-West trade across a number of sectors, including retail, manufacturing, logistics, aerospace, and agri-food, although they have not been felt consistently: some sectors such as retail have been affected more significantly, while some within the manufacturing sector have been able to take advantage of the offsetting effects of the Protocol. Furthermore, the nature of the Protocol has meant that the problems have largely arisen in relation to movement of goods from Great Britain to Northern Ireland rather than the other way round. Nevertheless, there are a number of consistent patterns.**
88. **Businesses and sectors that are reliant on supply chains from Great Britain are disproportionately affected. While larger firms have proved somewhat able to adapt to the new requirements and absorb their costs, there has been a disproportionately burdensome impact on SMEs. It is also accepted across all sectors of the economy that the Government’s unilateral continuation of the grace periods and derogations has significantly mitigated the full economic impact of the Protocol on East-West trade. The Government’s Trader Support Service and Movement Assistance Scheme have also helped facilitate the movement of goods from Great Britain to Northern Ireland, albeit that this support is only in place on a temporary basis.**
89. **In our July 2021 report, we reported on the lack of preparedness of businesses in Great Britain for the new arrangements under the Protocol, and widespread fears that businesses in Britain will withdraw from the Northern Ireland market. It is worrying that, in spite of some signs of improvement, these problems and fears largely persist. *We repeat our call for the Government to take urgent action to encourage businesses in Great Britain to continue to trade with Northern Ireland.***

76 Written evidence from Civil Society Alliance ([FUI0008](#))

77 Written evidence from Northern Ireland Business Brexit Working Group ([FUI0025](#))

90. **There is also widespread concern within the business community about the impact on Northern Ireland of increasing regulatory divergence between the UK and the EU. We call on the Government and the EU to undertake a full impact assessment of the implications for Northern Ireland of regulatory divergence brought about by their legislative proposals, and for them to work together with business to formulate an effective process for managing such divergence in order to minimise its impact on Northern Ireland.**

North-South trade and trade with the EU

91. A number of witnesses described the impact of the Protocol in terms of North-South trade on the island of Ireland, as well as trade between Northern Ireland and the EU.
92. Sacha Berendji said that Marks and Spencer were now sourcing 450 products locally via 25 key suppliers on the island of Ireland. A supplier in Newry will provide the full sandwich range to all 38 stores on the island of Ireland (20 in Northern Ireland and 18 in Ireland) by September. He said that this would “definitely lead to more employment”.⁷⁸ Conall Donnelly said that the Protocol provided some Northern Ireland businesses in the food processing and manufacturing sectors with a competitive advantage compared to others who have lost market access.⁷⁹
93. Sarah Hards welcomed her own business’ increase in trade with Ireland. She noted that a number of GB retailers had opened distribution centres on the island of Ireland, with economic benefits for the local economy: “jobs are being created and there is sourcing from local suppliers.” However, she noted that it took longer for goods to get from Irish distribution centres to stores in Ireland and Northern Ireland, as they used consolidated loads from Great Britain so as to minimise customs declarations.⁸⁰
94. Stephen Kelly said that the “two big opportunities in the Protocol are in manufacturing and in distribution”, in particular in highly regulated sectors, in terms of import substitution and increases in cross-border trade. He said there were “countless examples” of small manufacturing businesses in Northern Ireland picking up trade with GB supermarkets, supplying stores not only in Northern Ireland but also in the rest of the UK.⁸¹ He cited the announcement by pharmaceutical firm Almac of 1,800 jobs, including 1,000 relocating to Northern Ireland, as it was “signing batches of drugs off into the UK and EU markets, and that that has given it an advantage”. He also said that Ardagh Metal Packaging had announced the single largest investment since the 1980s to service its customers in Northern Ireland, the UK and the EU.⁸² Overall, “people who are responsible for investment into Northern Ireland are reporting their healthiest-ever order book when it comes to interest in potentially investing in Northern Ireland.”⁸³

78 [QQ 23–24, 26](#)

79 [Q 5](#)

80 [Q 2](#)

81 [QQ 12, 14](#)

82 [Q 18](#)

83 [Q 17](#)

95. Stephen Kelly added that 28% of manufacturers surveyed reported an increase in sales with the EU:⁸⁴

“Our manufacturing exporters are having the time of their lives, frankly. They are seeing that Great Britain’s export sales to the EU have declined by 15%. Their export sales to Ireland have increased by 60%.”⁸⁵

96. Dr Esmond Birnie agreed that statistics indicated that Northern Ireland’s trade surplus with Ireland in goods had improved, with a positive growth in trade of roughly £200 million.⁸⁶ However, he said that this was due to trade diversion following the creation of a trade barrier in the Irish Sea, meaning that “the overall impact on the economy and people’s welfare may not be as good as the individual case studies of businesses that are ... taking the opportunity from these changed markets.”⁸⁷

97. Anne Randles stressed the importance of the Protocol for the operations of dairy firms such as Ornuia, and the dairy industry on the island of Ireland as a whole:

“We export dairy products that contain both milk from Northern Ireland and milk from the Republic of Ireland. Having had to segregate that and separate it would have had serious implications for efficiencies, in processing efficiencies and in staff management. That is definitely an advantage. To be fair, that is what the Protocol was designed to do. It is working from a dairy farmer and a dairy processor perspective. ... about 800 million litres of milk are delivered annually across the border from Northern Ireland. ... There are no more additional veterinary requirements now than there were prior to the UK withdrawing from the EU, or prior to the implementation of the Protocol. ... Importantly, the Protocol preserves the important supply chains and value chains that have been built up on the island of Ireland between companies and by companies. Of course it allows ... for the free movement and unencumbered movement of products containing Northern Irish milk into the Single Market, which is a huge advantage without a doubt for Northern Irish dairy farmers.”⁸⁸

98. The Northern Ireland Food and Drink Association stressed the importance of the Protocol in terms of avoiding disruption to cross-border trade in semi-processed products requiring multiple movements across the border for further processing. They stressed that these gains have been ‘banked’ and are seldom debated, but could be at risk if the Protocol is changed by solutions solely focused on GB to Northern Ireland trade: “NIFDA members must not be asked to choose between UK and EU access, both of which were expressly promised.”⁸⁹

99. Declan Kearney MLA, representing Sinn Féin, argued that:

“From the outset, the Protocol opened up the strategic prospect of giving both the regional economy and the island economy, particularly the regional economy, a unique selling point with its dual access to the

84 [Q 11](#)

85 [Q 12](#)

86 [Q 15](#)

87 [Q 13](#)

88 [Q 26](#)

89 Written evidence from Northern Ireland Food and Drink Association ([FUI0020](#))

British Single Market and then to the European Single Market. All the indications to date are that that opportunity exists and that significant sectors of the regional economy are benefiting from that. ... You are beginning to see green shoots, demonstrating that, if the Protocol is given fair wind ... there can be much better days ahead, given the opportunities afforded by the Protocol.”⁹⁰

100. Notwithstanding his concern at the impact on businesses trading with Great Britain, Doug Beattie acknowledged that:

“many [businesses] are absolutely booming because of the Protocol. Almac ... is absolutely booming because of the Protocol. I met an agricultural machinery company that is booming because of the Protocol. I went to a pet-food store that does 60% of its trade in the Irish Republic, and it is booming because of the Protocol, so there are people benefiting because of the Protocol.”

However, as we have seen, he stressed that this was evidence of the “feast or famine” impact of the Protocol, depending on whether a business was dependent on North-South or East-West trade.⁹¹

101. Sir Jeffrey Donaldson MP, Leader of the Democratic Unionist Party, argued that:

“the idea that there is an all-Ireland economy simply does not add up to any test that one would put forward to judge whether an economy exists. There are arrangements for cooperation. That is true, and we want to protect those arrangements, but the idea that the Protocol is necessary to protect an economy that does not exist while harming an economy that does exist—the United Kingdom internal market, of which we are an integral part—causes a real difficulty for us.”⁹²

102. On the other hand, Matthew O’Toole argued that Brexit had created barriers to cross-border services on the island of Ireland not covered by the Protocol, and that “Northern Ireland and the Republic of Ireland are moving further apart in services because we are outside the EU”. He gave examples of the banking sector, movement of data and recognition of professional qualifications, affecting sectors including the legal profession and healthcare.⁹³

103. Ibec, Ireland’s largest lobby and business representative group, agreed, and called on the EU and the UK to work together in areas of mutual interest such as financial services, to facilitate the mutual recognition of professional qualifications, and to maintain the free flow of data.⁹⁴

Conclusions

104. **We note evidence of the beneficial impact of the Protocol in particular for Northern Ireland businesses trading with Ireland and the rest of the EU, including in the retail, logistics, manufacturing, pharmaceutical and agri-food sectors. A number of businesses have**

90 [Q 51](#)

91 [Q 73](#)

92 [Q 80](#)

93 [QQ 35, 38](#)

94 Written evidence from Ibec ([FUI0011](#))

been able to take advantage of the Protocol in terms of product substitution (for instance providing locally sourced goods previously supplied by GB-based suppliers) or trade outside Northern Ireland (whether supplying goods to Great Britain, Ireland and/or the rest of the EU) because they enjoy a competitive advantage compared to businesses in Great Britain or Ireland whose access to each other's markets is now constrained.

105. We also note the evidence we have received of the importance of the Protocol for sectors of the economy such as the dairy and meat processing industries that are dependent on complex cross-border supply chains on the island of Ireland, and the damage that would be caused to these sectors should access to the EU Single Market be lost. We take note of business fears that the benefits of the Protocol in terms of facilitating North-South trade are being taken for granted, and may be placed at risk by steps to mitigate the impact on East-West trade.
106. Nevertheless, we acknowledge concerns that these benefits have arisen due to trade diversion rather than growth, and that the overall impact on the economy therefore remains uncertain. We also take note of concerns that they are evidence of the 'feast or famine' impact of the Protocol, whereby businesses able to take advantage of the Protocol benefit, while those dependent on trade with Great Britain lose out.
107. We also acknowledge concerns over the impact of Brexit upon cross-border service provision on the island of Ireland. *We urge the UK and the EU (working with the Northern Ireland Executive, as and when it is functioning fully, and the Irish Government) to work collaboratively to provide the conditions for cross-border service provision on the island of Ireland.*

Mitigations and solutions

108. Our witnesses set out their views on a range of potential mitigations and solutions to the problems to which the Protocol has given rise, including those put forward by the Government in its July 2021 Command Paper (and subsequently reflected in the Northern Ireland Protocol Bill), and by the EU in its October non-papers (since expanded on in its June 2022 position papers on customs and sanitary and phytosanitary issues).

The Government's position

109. We invited James Cleverly to set out the rationale behind the Government's proposals. He told us that it was a "three-legged stool", seeking to protect the EU Single Market, protect the Belfast/Good Friday Agreement and secure the re-establishment of the power-sharing Executive, and "protecting the free flow of business and trade within the United Kingdom".⁹⁵
110. Mr Cleverly said:

"The sticking point is on the level of reassurance that the EU seeks ... about the integrity of the Single Market. It is looking to put in processes that are not just practically but also theoretically watertight.

Our argument is that because of the unique geography of Ireland as a member state of the EU, in that it has a land border with only one other country, and that is the UK, there are a whole load of practical fixes that address the real world concerns of the EU about the integrity of the Single Market without introducing onerous or excessive checks or bureaucracy or delays or time with East-West trade across the Irish Sea between different parts of the United Kingdom, and protects the North-South trade between the UK and Ireland.”⁹⁶

Flexibility and proportionality

111. Several witnesses stressed the need for both sides to show maximum flexibility and proportionality in order to identify solutions reflective of Northern Ireland’s unique circumstances.
112. Owen Reidy said that “both parties to the Protocol should not be overly precious about it. No one should get too hung up about any flexibility that can make a Protocol work better or more differently.”⁹⁷ Sorcha Eastwood MLA, representing the Alliance Party, said that “it is incumbent on all partners within this to be creative and flexible, and that applies to the EU as much as the UK.”⁹⁸ The British Irish Chamber of Commerce stated that “a pragmatic approach to the Protocol is needed by both the EU and the UK to ensure that an Agreement that works in theory will work in practice.”⁹⁹
113. The Ulster Farmers’ Union stated that “we do not accept that the EU have gone far enough on these issues nor that the UK Government is taking the pragmatic approach necessary.”¹⁰⁰ The Northern Ireland Business Brexit Working Group underlined its six core principles for trading arrangements under the Protocol: stability, certainty, simplicity, affordability, education and representation. They argued that these objectives were in accordance with the respective regulatory regimes of the UK and EU, and in line with the objectives and integrity of the Protocol as a legal agreement.¹⁰¹
114. Matthew O’Toole argued that the EU had demonstrated flexibility through the publication of its non-papers, but:
- “Unfortunately, in Westminster, particularly in certain quarters in London, we have got sucked into this discourse that the EU is being unbelievably unreasonable and that this has all been inflicted on the UK. It is, I am afraid, just not true. There has been movement from the EU. I am not just coming here as someone who is being blasé and saying the EU is a perfect organisation. It is not, but it is not reasonable to say that it has not moved.”¹⁰²
115. Declan Kearney told us:
- “The European Commission can and should do more, but that needs to be met more than half way by the kind of will, good faith, participation and urgency on the part of the British Government to build the trust that

96 [Q 62](#)

97 [Q 19](#)

98 [Q 43](#)

99 Written evidence from British Irish Chamber of Commerce ([FUI0012](#))

100 Written evidence from Ulster Farmers’ Union ([FUI0019](#))

101 Written evidence from Northern Ireland Business Brexit Working Group ([FUI0025](#))

102 [Q 37](#)

I believe the British Government have effectively dismantled throughout this process with the European Commission.”¹⁰³

116. Mr Kearney was asked whether full implementation of the Protocol, for instance as envisaged in the October 2021 EU non-papers, would be negative or positive. He replied:

“I believe it would be positive. We need to ensure that there is minimum friction in relation to trade on an east-west basis. We need to see smooth and effective implementation of the Protocol. Most importantly, we need to de-weaponise and depoliticise the Protocol. While it continues to be used in the way that it is by some sections of political opinion, that creates impediments to the two parties to the negotiation and the agreement sitting down in a rational and reflective way to ensure that customs checks are minimised and removed, and that we find a landing zone in relation to SPS checks. ... We want to see a smooth and effective implementation of the Protocol. None of the issues that are currently creating difficulty is beyond pragmatic resolution.”¹⁰⁴

117. On the other hand, Sir Jeffrey Donaldson noted that:

“It is estimated that somewhere around 0.02% of all trade crosses the Irish border. In EU terms, this is minuscule. This is small beer. ... I cannot believe that the solution to that is to create a customs and regulatory border between Great Britain and Northern Ireland, when one considers that Northern Ireland purchases four times more goods from Great Britain than it does from the whole of the European Union combined.”¹⁰⁵

Goods ‘at risk’

118. Victoria Hewson, Head of Regulatory Affairs, Institute of Economic Affairs, said that, from an economic standpoint:

“The difficulties have been caused by the Protocol’s default setting that all goods are at risk of moving from NI to Ireland or elsewhere in the Single Market. ... Reversing the default so that full customs and regulatory requirements apply only to goods declared for onward movement to Ireland or the rest of the Single Market would make the Protocol operate more efficiently by eliminating the costs that are currently borne by importers of the majority of goods brought to or produced in NI that are for domestic consumption or part of UK supply chains. These costs are out of all proportion to the risks to the Single Market.”¹⁰⁶

119. Stephen Kelly likewise stressed the need to address the “presumption of guilt” in relation to goods moving from Great Britain to Northern Ireland ‘at risk’ of moving into the EU:

“It is a function of the Protocol itself. If the outcome were flipped on its head, we would have a much better outcome for Northern Ireland in which the presumption would be that the goods were not destined

103 [Q 50](#)

104 [Q 55](#)

105 [QQ 81–82, 86](#)

106 Written evidence from Victoria Hewson ([FUI0015](#))

for the EU. That would remove quite significant burdens upon very many traders in Northern Ireland. Through other evidence such as VAT returns, company returns and a whole raft of other publicly available documents, you could quite clearly see who was trading with the EU and who was not, and who was providing goods to the EU and who was not.”¹⁰⁷

120. Anne Randles agreed that addressing the ‘goods at risk’ issue was:

“where the focus of attention needs to be in improving overall practicality. If those goods can be identified up front prior to movement, they can be treated differently from a customs, veterinary and control perspective, because either the UK authorities or the EU authorities will have the surety and knowledge that the product is going where it is supposed to be going and is being consumed in Northern Ireland.”¹⁰⁸

Simplifying checks, processes and regulatory requirements

121. Witnesses reflected on various means to simplify, streamline or clarify checks, processes and regulatory requirements under the Protocol in the context of proposals from the UK and the EU.

122. The Northern Ireland Business Brexit Working Group stressed the need to adjust rules on notice for food supply:

“Having to submit information ... 24 hours in advance of shipment will be impossible for some GB-NI food suppliers as their supply chain is built around items that they need to declare which are picked, packed and shipped on the same day. They would not be able to complete all of the detailed information required 24 hours in advance of dispatch in case the manifest was incorrect due to lack of availability.”¹⁰⁹

123. The Northern Ireland Business Brexit Working Group also called for clarity and a “simpler approach” around rules of origin “that can be easily understood and delivered upon from the largest to the smallest trader.” They also requested a process review in relation to supplementary declarations, and the consideration of viable alternatives that would reduce “needless bureaucracy for traders”, as “the work associated with this return continues to be onerous and information is not readily available”. They noted in particular that for goods not at risk:

“Supplementary declarations are a purely bureaucratic activity of no value, given that the entry summary declarations and trader declarations provide all the information at point of entry to make the goods at risk decision. It should be noted that the EU say these are not required but the UK are insisting on them. This is one area in particular where a tripartite meeting with business could quickly provide clarity.”¹¹⁰

124. Sacha Berendji welcomed the movement on the part of the EU in its non-papers, but said that its proposals lacked detail as to what they would mean in practice, in particular in regard to simplified certification in terms of who

107 [Q 16](#)

108 [Q 25](#)

109 Written evidence from Northern Ireland Business Brexit Working Group ([FUI0025](#))

110 *Ibid.*

would sign and what level of information is required.¹¹¹ Andrew Opie agreed that, in terms of the EU’s proposal for a global certificate, “it is difficult to see how much supporting paperwork and authorisation would be required to operate that system.”¹¹²

125. Mr Opie said that it was difficult for the EU to move away from its import systems model, which was “quite a bureaucratic system of import controls”. He explained the difficulty of:

“adherence to the EU rules in terms of official controls that are not set up for this type of transport. Those export/import rules around certification work for things like a big boatload of New Zealand lamb, which has [taken] four or five weeks [to come] from New Zealand, and maybe has two or three certificates with it. We are moving thousands of products every day between Great Britain and Northern Ireland, each of which potentially requires a certificate. It is absolutely impossible to manage that system. ... there are hundreds of lorries criss-crossing the Irish Sea delivering complex loads, each requiring an individual certificate signed by a vet. The bureaucracy is ridiculous, frankly, and I am not sure it adds much in food safety. ... We need a bespoke system.”¹¹³

126. Anne Randles agreed:

“You are under huge time constraints when you are shipping either from Great Britain into Northern Ireland or from Ireland into Great Britain. There is a very short sea journey of three hours, yet built into it are systems where you need prenotification of 24 hours or longer. Officially, it could be up to four days. You have very onerous export checks and veterinary controls.”¹¹⁴

127. The Commission argued that its proposals would make a “tangible difference on the ground”.¹¹⁵ Its June 2022 customs position paper proposed a “durable solution” based on an expanded trusted trader scheme, simplified customs formalities for all trusted traders if their goods are not at risk of entering the EU, and a reduced data set for customs declarations from 80 pieces of data to 30. The Commission argued that this would lead to a 50% reduction in paperwork. Its SPS position paper proposed a “Northern Ireland-specific solution”, including a simplified three-page form for an entire truckload of retail goods moving from Great Britain to Northern Ireland (or, in the case of goods such as chilled meat subject to restrictions for import into the EU, an individual official certificate). The Commission argued that this would result in “vastly simplified certification and a significant reduction (approximately 80%) of official checks for a wide range of retail goods moving from Great Britain to be consumed in Northern Ireland.”¹¹⁶

111 [Q 29](#)

112 [Q 30](#)

113 [QQ 25, 29, 30](#)

114 [Q 29](#)

115 European Commission, *Remarks by Vice-President Maroš Šefčovič at the press conference on the Protocol of Ireland / Northern Ireland* (15 June 2022): https://ec.europa.eu/commission/presscorner/detail/en/speech_22_3758 [accessed 11 July 2022]

116 [Protocol on Ireland / Northern Ireland - Position paper on possible solutions - Customs](#); [Protocol on Ireland / Northern Ireland - Position paper on possible solutions - Sanitary and Phytosanitary Issues](#); and [Questions and answers on the Commission’s reaction to the United Kingdom’s bill overriding core parts of the Protocol on Ireland / Northern Ireland](#)

128. However, as we have seen, the Government has argued that “the EU’s proposed approach, which doesn’t differ from what they have said previously, would increase burdens on business and citizens and take us backwards from where we are currently.”¹¹⁷

Red and green lanes/ express lane

129. We heard evidence on whether the UK’s proposals for ‘red and green lanes/ channels’, and the EU’s proposal for an ‘express lane’, were a solution to these issues, and whether the two concepts were compatible with one another.

130. Dr Sylvia de Mars, Senior Lecturer at Newcastle Law School, Newcastle University, Dr Colin Murray, Reader at Newcastle Law School, Newcastle University, and Dr Clare Rice, Research Associate, Department of Politics, University of Liverpool¹¹⁸, argued that such a concept can be accommodated as an agreed application of what amounts to goods ‘at risk’ of entering the Single Market, “and thus amounts to talks about the application of the Protocol, and not a renegotiation of it”. They nevertheless noted that it relied on a high degree of trust between the UK and EU, including an agreed approach to data sharing in order to facilitate it.¹¹⁹

131. Victoria Hewson argued that the proposals for a green channel would help address both economic and constitutional concerns about the Protocol, and that “it would be in the EU’s interests to participate fully in data sharing and oversight of enforcement.”¹²⁰ The Northern Ireland Food and Drink Association argued that the UK and EU proposals “are perhaps different ways of saying the same thing.”¹²¹

132. Doug Beattie said that, based on the engagement he had undertaken, all sides accepted that:

“The landing zone is to get things moving with no checks on goods between Great Britain and Northern Ireland if those goods are staying in Northern Ireland ... For some reason, we cannot get to it, and that is deeply frustrating. We are having this circular argument with a landing site we all know but cannot reach.”¹²²

133. Sorcha Eastwood acknowledged that “the concept of the red and green channels itself is perhaps not out of reach, but how we get there is key.”¹²³ Matthew O’Toole agreed that the EU had not ruled out the Government’s calls for a green lane, “but the question is whether you are serious about engaging in the discussions, practicalities and modalities of that. That would involve live data sharing, for example, and that is something that the UK Government have not done as yet.”¹²⁴

134. HE Adrian O’Neill, Ambassador of Ireland to the United Kingdom, argued that the EU’s proposals for an express lane for goods staying in Northern Ireland “would significantly reduce checks on goods moving between Great

117 BBC, ‘NI Protocol: Three-page certificate for GB lorries entering NI - EU’ (15 June 2022): <https://www.bbc.co.uk/news/uk-northern-ireland-61808606> [accessed 11 July 2022]

118 Written evidence submitted jointly and in a personal capacity.

119 Written evidence from Dr Sylvia de Mars, Dr Colin Murray and Dr Clare Rice (FUI0006)

120 Written evidence from Victoria Hewson (FUI0015)

121 Written evidence from Northern Ireland Food and Drink Association (FUI0020)

122 Q 75

123 Q 44

124 Q 37

Britain and Northern Ireland”, and “were not presented as a fait accompli, but as a basis for discussion”. He also stressed the commitment of the Irish Government and the EU as a whole to:

“respond to legitimate concerns in Northern Ireland, particularly on the issue of making a significant differentiation between goods that are staying in Northern Ireland to be purchased and consumed there and those at risk of moving further into the EU Single Market.”¹²⁵

Audited supply chains, trusted traders and facilitated movements

135. Several witnesses stressed that, in order for such a green or express lane scheme to work, it needed to be underpinned by a mechanism for audited supply chains by trusted traders. Andrew Opie said:

“We should be looking at authorised and audited supply chains rather than necessarily looking at quite an old-fashioned approach to trade, which is to move goods every time with a piece of paper, or even an electronic piece of paper. ... We can demonstrate, through traceability on our IT systems, that they are going out of one of our depots in Great Britain to a store in Northern Ireland and will be only within the Northern Ireland market.”¹²⁶

136. Sacha Berendji advocated:

“a facilitated movement scheme ... where we would certificate the products and only need to change the certificates if the product composition changed. ... we are certificating every product every day. The reality is that the certificate that was issued on the Monday came from the same source as it did on the Sunday. If we could move to a trusted model, where we only had to do that either once every certain period of time or on an auditable basis, and our obligation was to keep those records up to date, and make sure that they complied, it would take a lot of the friction out of the movement. ... The theory of it is absolutely right. If you can separate goods going to Northern Ireland that will not go to the EU, there should not need to be checks on those products. We believe that most large food retailers ... with a combination of date and batch codes would be able to identify where the products were going and prove it.”¹²⁷

137. Anne Randles likewise said that an audited trusted trader arrangement was “not an outrageous or new concept. Trusted trader schemes are operated under customs rules all over the place, but you need end-to-end monitoring.”¹²⁸
138. The Northern Ireland Business Brexit Working Group called for a digitised, auditable trusted trader agreement “proportionate to the low level of risk that UK retail goods coming into Northern Ireland might pose to the EU Single Market”, thereby facilitating a green channel at ports, and encompassing “as wide as possible a group of goods and traders from food to non-food, electronics and clothing.”¹²⁹

125 Written evidence from HE Adrian O’Neill ([FUI0021](#))

126 [Q 25](#)

127 *Ibid.*

128 *Ibid.*

129 Written evidence from Northern Ireland Business Brexit Working Group ([FUI0025](#))

139. On the other hand, Victoria Hewson warned:

“The reliance on trusted trader schemes ... could have anti-competitive effects, with only supermarkets and larger retailers able to benefit and smaller retailers, wholesalers and manufacturers facing the greatest costs and distortions. According to UK government figures, of 16,000 businesses in NI that purchase goods from GB, 15,000 are small or micro enterprises with fewer than 50 employees. Such businesses have limited capacity to complete checks or meet the qualification criteria for the trusted trader facilitations that have been offered.”¹³⁰

140. The Government has already established a UK Trader Scheme, and has stressed that “the green lane would be reserved for those in a new, trusted trader scheme covering all goods movements. Traders will provide detailed information on their operations and supply chains to support robust audit and compliance work.”¹³¹ The Commission has proposed extending the scope of the UK Trader Scheme to cover businesses established in Great Britain as well as Northern Ireland, more manufacturing sectors in Northern Ireland, in particular covering SMEs, and goods returning to Great Britain after processing in Northern Ireland.¹³²

A dual regulatory regime

141. When invited to explain the rationale behind the Government’s proposal for a dual regulatory regime, James Cleverly told us:

“The dual regulatory regime will allow businesses to choose. We envisage that it will allow businesses to choose between UK or EU regulations. In practice, I suspect that, in many areas, to all intents and purposes there will be no difference between those. We share very similar attitudes towards animal husbandry, health and safety and so on. Of course, in the future there may be some modest divergence, but again in practical terms I do not think that it would be particularly difficult or onerous for businesses to be in a situation where their product standards, whether organic products or manufactured products, match both sets of regulatory regimes anyway. We want to make sure that there is something that is flexible and future-proof. That will also go a long way to addressing the EU’s concerns about the integrity of its Single Market.”¹³³

142. Some witnesses welcomed the concept. Victoria Hewson said it “would largely eliminate the issues with the subordination of UK law to EU law in NI that unionist parties see as undermining its constitutional position, without reintroducing formal border controls and infrastructure that nationalist communities would reject.” She further suggested that the concept could viably be extended to the whole of the UK, given that “conformity with regulations is not generally controlled at international borders”.¹³⁴

143. While not commenting on the specifics of the Government’s proposal, Sir Jeffrey Donaldson told us that he was prepared to accept “arrangements whereby goods that flow from Great Britain into the European Union via Northern Ireland—and the quantity is small—are subject to arrangements

130 Written evidence from Victoria Hewson ([FUI0015](#))

131 *NI Protocol: The UK’s solution*

132 *Protocol on Ireland/Northern Ireland: Position Paper on Possible Solutions - Customs*

133 [Q 65](#)

134 Written evidence from Victoria Hewson ([FUI0015](#))

that ensure that they respect and meet the requirements of EU regulations for goods entering the European Union.”¹³⁵

144. However, a number of business representatives expressed reservations about the feasibility of the proposal. Conall Donnelly said:

“What is in the Command Paper probably sounds attractive, until you consider that we import whole carcasses from GB. We break them up and send each cut to the best possible market. Much of that product will return to GB because it is a GB product and British beef is in high demand in the UK market. However, certain cuts are more attractive to sell in Europe, or there is only a market for them in Europe. We need to be able to sell into both markets. Under current conditions, we have a kind of once-and-done approach to SPS. ... We would like to retain that. My reading of the Command Paper is that it would not be a once-and-done approach. Processors would be able to import non-EU compliant product into Northern Ireland, but then they would be required to prove that that product will not enter the EU Single Market, so you are into extra costs to try to track and trace the product throughout the supply chain.”¹³⁶

145. Sorcha Eastwood argued that the mechanism carried “a huge risk” in terms of business compliance with UK and EU rules, and was not being called for by the business community.¹³⁷ The Northern Ireland Business Brexit Working Group stated that “a proposed dual regulatory regime would work for some, for instance retailers, but not others, particularly agri-food”, leading to “an existential issue for some sectors. It is clear that a ‘one size fits all’ is not possible.”¹³⁸

146. Andrew Opie expressed concern about the proposal on the grounds that:

“Although we start in a very close position on alignment—we obviously adopted the EU legislation in UK legislation on food—I can see that there will be more divergence going forward, and I really worry that, unless there is some kind of agreement on that, it will be too difficult for the EU to accept that we could put products on the market that met either UK or EU standards.”¹³⁹

147. The Northern Ireland Food and Drink Association warned that if the Government implemented the concept of dual regulatory standards:

“It is likely that the EU will require a border on the island to manage the risk of SPS divergence and tariff avoidance arising. Criminality seeking to arbitrage tax and standards differentials that will exist either side of the border will undermine the integrity of both marketplaces in their respective export markets. Europe will recognise this risk and thus, in response to legislation to implement dual regulatory standards, may seek to respond through the TCA, rather than resigning itself to creating a border. The result: a possible trade war.”¹⁴⁰

135 [Q 81](#)

136 [Q 6](#)

137 [Q 44](#)

138 Written evidence from Northern Ireland Business Brexit Working Group ([FUI0025](#))

139 [QQ 27, 30](#)

140 Written evidence from Northern Ireland Food and Drink Association ([FUI0020](#))

148. Subsequent to publication of the Northern Ireland Protocol Bill, Vice-President Šefčovič asserted that “a dual set of rules—EU and UK—would lead to a mountain of paperwork and bureaucracy, enough to bury a small business in Northern Ireland that wants to profit from access to both, the UK’s internal and EU’s Single Market at once.”¹⁴¹

Continuation of the grace periods

149. There was strong support among business representatives for the view that the various grace periods and derogations currently in operation needed to form part of any permanent solution.
150. Stephen Kelly argued that “no one believes that the Protocol as written in the operational plan in December 2020 will be delivered ... Our expectation is that some of the things that are already in a grace period will be permanently in a grace period”. He argued that the EU would be amenable to this because of the evidence that businesses in Northern Ireland could not sustain their removal, and that the grace periods would therefore ultimately be “replaced with something else”.¹⁴² The Northern Ireland Business Brexit Working Group called on the EU to acquiesce to their continuation “to give improved stability to NI businesses and those who supply Northern Ireland.”¹⁴³
151. Anne Randles said that the standstill arrangements “definitely work for Northern Ireland”, and needed to be incorporated into the long-term implementation of the Protocol.¹⁴⁴ Sacha Berendji agreed that they were welcome.¹⁴⁵
152. Walgreens Boots Alliance stated that the current derogations for full border controls for Products of Animal Origin needed to be maintained as a minimum. Given that the company sends 5,000 parcels per week to Northern Ireland, ending the derogation for parcels would lead to significant additional operating costs for managing customs declarations, as their current system cannot segregate between customers based in Northern Ireland or Great Britain.¹⁴⁶
153. The Government has contended that the EU’s proposals are based on the assumption that the grace periods will come to an end. James Cleverly stated:
- “The standstill position is not the Protocol as envisaged in implementation by the EU. Its proposals in those non-papers envisaged more and tighter checks, which would add increased friction between GB and NI trade. The standstill position has already been communicated to us as not working. Our position is that we cannot envisage practically the Commission’s proposals, as they currently stand, working in this context.”¹⁴⁷
154. Andrew Opie acknowledged that “the EU has moved”, but expressed concern that the proposals in its non-papers were “a long way from where we are with the STAMNI process and would undoubtedly bring additional costs and burdens, and potentially reduce the availability that Northern Ireland

141 *Remarks by Vice-President Maroš Šefčovič at the press conference on the Protocol of Ireland / Northern Ireland*

142 [Q 20](#)

143 Written evidence from Northern Ireland Business Brexit Working Group ([FUI0025](#))

144 [Q 25](#)

145 [Q 28](#)

146 Written evidence from Walgreens Boots Alliance ([FUI0024](#))

147 [Q 70](#)

consumers have at the moment if we were to follow the approach in the non-papers.”¹⁴⁸

155. Victoria Hewson agreed that the EU’s proposals:

“come from a starting point of full implementation (i.e. an end to the grace periods and other ad hoc deviations currently operating) and UK alignment with relevant EU laws. Fully implementing the Protocol and then embedding the enhanced administrative facilitations set out in the non-papers would leave consumers and businesses in NI in a worse position than they are at present. ... the partial implementation of the Protocol so far has been criticised by the Commission as not fit for purpose, and infringement proceedings against the UK in respect of the continuation of the grace periods were initiated (and then paused), but there is no evidence that the absence of the full border controls expected from strict implementation has led to leakage of unauthorised goods into Ireland or elsewhere in the Single Market.”¹⁴⁹

156. In that context, we note that, following the publication of the Northern Ireland Protocol Bill, Vice-President Šefčovič announced that the Commission had decided to take the infringement procedure launched in March 2021—which had been “put on hold ... in a spirit of constructive cooperation to create the space to look for joint solutions with the UK”—to its second stage by issuing a Reasoned Opinion, “as the UK’s unwillingness to engage in meaningful discussion since February—and this week’s unilateral action—goes directly against this spirit”.¹⁵⁰ The Commission also stressed its position that “the current trading arrangements are not the benchmark, as the UK side is currently breaking its international legal commitments by having introduced unilateral grace periods that disapply specific parts of the Protocol in the customs and SPS areas.”¹⁵¹

An SPS agreement

157. Several witnesses stressed the importance of an SPS agreement to alleviate the burden of the Protocol. Stephen Kelly said that a UK-EU SPS agreement was business’ “number one call”.¹⁵² The Northern Ireland Business Brexit Working Group stated that a veterinary agreement could remove up to 80% of checks and documentation that would otherwise be needed.¹⁵³

158. Anne Randles said: “We absolutely need an SPS agreement. It is at the basis of a lot of the problems in controls. ... Unless you have an SPS agreement on the veterinary side, you will not eliminate the need for export health

148 [Q 29](#)

149 Written evidence from Victoria Hewson ([FUI0015](#))

150 European Commission, Press release: *Commission launches infringement proceedings against the UK for breaking international law and provides further details on possible solutions to facilitate the movement of goods between Great Britain and Northern Ireland* (15 June 2022): https://ec.europa.eu/commission/presscorner/detail/en/ip_22_3676 [accessed 11 July 2022]. The Commission also began two new infringement procedures against the UK for failing to: (i) carry out the UK’s obligations under the EU’s sanitary and phytosanitary (SPS) rules; and, (ii) to provide the EU with certain specific trade statistics data in respect of Northern Ireland, as required by the Protocol.

151 [Questions and answers on the Commission’s reaction to the United Kingdom’s bill overriding core parts of the Protocol on Ireland / Northern Ireland](#)

152 [Q 19](#)

153 Written evidence from Northern Ireland Business Brexit Working Group ([FUI0025](#))

certificates.”¹⁵⁴ Ibec and the British Irish Chamber of Commerce argued likewise.¹⁵⁵

159. Conall Donnelly was “anxious to see” an SPS agreement, as without it, “divergence will always be a major issue for us in Northern Ireland”:

“People talk about a New Zealand style agreement and they talk about a Swiss style alignment that would rule out 80% of checks. We are probably going to need something specific to Northern Ireland. ... [that] falls somewhere between equivalence and dynamic alignment in certain areas.”¹⁵⁶

Labelling

160. Both the UK and the EU’s potential solutions involve labelling requirements—in its July 2021 Command Paper, the Government stated that goods manufactured either to UK or EU rules under the dual regulatory regime “should be labelled accordingly”,¹⁵⁷ while the EU’s June 2022 position paper on SPS envisaged, as a condition for simplified certification requirements, labels stating “products for sale only in the United Kingdom”.¹⁵⁸
161. Several witnesses pointed to the practical challenges of solutions around labelling. Walgreens Boots Alliance said that the introduction of dual labelling marks in a small market such as Northern Ireland created challenges for businesses. They called for UK-wide recognition of the CE mark, or, failing that, allowing products with either marking to circulate in Northern Ireland so as to remove the dual conformity assessment requirements.¹⁵⁹
162. Sacha Berendji added that separate labelling requirements for goods destined for Northern Ireland would be even more cost-prohibitive than current arrangements, and was “definitely not the solution”.¹⁶⁰ Anne Randles agreed that the proposals on labelling were “not the way to go. It does not work for a small market like Northern Ireland, and it would be cost-prohibitive.”¹⁶¹

Tariff Rate Quotas

163. Some witnesses also stressed the need for resolution of issues in relation to Tariff Rate Quotas. Conall Donnelly noted that Northern Ireland cannot directly access Tariff Rate Quotas on third-country products moving into Belfast Port. Traders had got around this by importing products via Great Britain, but “the sustainable solution is to allow us to import directly into Belfast Port.”¹⁶²
164. The Northern Ireland Food and Drink Association stated that lack of access to UK or EU Tariff Rate Quota allowances puts Northern Ireland agri-food and steel businesses at a competitive disadvantage compared to Irish and British counterparts. They also pointed to the loss of tariff-free access to

154 [QQ 25, 27](#)

155 Written evidence from Ibec ([FUI0011](#)) and written evidence from British Irish Chamber of Commerce ([FUI0012](#))

156 [Q 8](#)

157 [Northern Ireland Protocol: the way forward](#) [accessed 11 July 2022]

158 [Protocol on Ireland/Northern Ireland - Position paper on possible solutions - Sanitary and Phytosanitary Issues](#)

159 Written evidence from Walgreens Boots Alliance ([FUI0024](#))

160 [QQ 25, 29](#)

161 [Q 29](#)

162 [Q 4](#)

goods from the EU entering Northern Ireland if they are distributed via Great Britain, as well as future challenges, including access to Tariff Rate Quotas for agricultural cereals and steel products, “without which NI may at times be the most expensive place in the British Isles to land such products for local production and consumption.”¹⁶³

Technological developments

165. Witnesses discussed the potential for technological solutions to these issues. Conall Donnelly noted their capacity to alleviate customs processes, but stressed that SPS checks were more of a challenge, as “technology as yet does not allow you to see into the back of the trailer and remotely scan bar codes, animal ear tags ... so there is a limit to what can be achieved with technology on border checks.”¹⁶⁴
166. Anne Randles agreed that the digitisation of trade may alleviate import controls, but warned that:
- “Digitisation works only when the data is good. Somebody has to input that data. Food business operators will still have to input the data. It will probably be more beneficial for the customs authorities and the veterinary authorities. There will still be quite a considerable burden on data collection and data inputting by companies.”¹⁶⁵
167. The Northern Ireland Business Brexit Working Group called for “continued improvement in the platforms for submitting data”, including automation of processes to remove repetitiveness. They noted that, because EU legislation requires that identity checks of trailers containing SPS products must be done by a person rather than any automated system, all SPS loads must undergo an inspection at the Border Control Post upon arrival in Northern Ireland. They called on the UK and the EU to agree to the introduction of an automated seal check system, to improve the efficiency and processing of SPS consignments from Great Britain into Northern Ireland.¹⁶⁶

VAT and State aid

168. Two other key elements of the Government’s proposals are in relation to VAT and State aid. The Committee received limited evidence on these issues.
169. Sir Jeffrey Donaldson supported the Government’s intention to address VAT and State aid, arguing that Northern Ireland was not able to benefit from measures applying to the rest of the UK.¹⁶⁷
170. Dr Sylvia de Mars, Dr Colin Murray and Dr Clare Rice noted that the Foreign Secretary had told the House of Commons in May 2022 that “citizens in Northern Ireland are unable to benefit fully from the same advantages as the rest of the UK, like the reduction in VAT on solar panels”. In their view:
- “It is not clear how this is causing either practical or constitutional problems in general in Northern Ireland, and so the EU’s appetite for renegotiating the VAT arrangements in place to enable goods to move across the island of Ireland (and into the EU) without charging VAT is

163 Written evidence from Northern Ireland Food and Drink Association ([FUI0020](#))

164 [Q 7](#)

165 [Q 27](#)

166 Written evidence from Northern Ireland Business Brexit Working Group ([FUI0025](#))

167 [Q 82](#)

likely to be limited. This does not preclude collaborative adjustments to VAT, or even temporary exceptions to the EU VAT regime that the UK Government can present as working to address economic or societal difficulties.”¹⁶⁸

171. We also note that, in evidence previously submitted to the Committee, both Martin Howe QC, 8 New Square and Chair of Lawyers for Britain,¹⁶⁹ and James Webber, Shearman and Sterling LLP,¹⁷⁰ argued that Article 10 of the Protocol should be removed as it had been superseded by the TCA, and that the TCA’s provisions should be applied to Northern Ireland instead.

Conclusions

172. **We note the proposed mitigations and solutions put forward by business representatives and other stakeholders to ease the practical impact of the Protocol, many of which are unchanged since the Committee’s July 2021 introductory report. We note, without prejudice to the views of individual members on the Protocol and on the UK and EU positions, and recalling the position set out in paragraph 36 of this report, that several of these recommendations are reflected in the proposals brought forward by the Government and by the EU.**
173. **Businesses have stressed the key importance that the default position under the Protocol, whereby all goods moving from Great Britain to Northern Ireland are considered at risk of moving into the EU Single Market unless deemed otherwise, should be reversed. *We accept this criticism, and urge the two sides through the Joint Committee to undertake a further review setting out realistic criteria for determining risk under Article 5 of the Protocol.***
174. **We also repeat our concern that the rules on notice for food supply, supplementary declarations and import controls, while suitable for the shipment of containers of goods from across the globe, appear wholly unsuited to the regional supply chains used by businesses in Great Britain and Northern Ireland, many of whom are SMEs with limited resources, and where the risk of goods moving into the EU Single Market is low. The EU has argued that its proposals will ease the amount of paperwork involved considerably, which the Government disputes. These claims need to be tested against the views and experience of the companies that would need to implement any revised systems, and we will seek further feedback from them in the autumn.**
175. **The UK has proposed a system of green and red lanes or channels: green for goods destined for Northern Ireland only, and red for goods moving into the EU Single Market. The EU also proposes an express lane for goods moving to Northern Ireland only. This ‘lane’ approach, which in the UK case requires changes to the Protocol itself, and in the case of the EU requires a lighter touch application of existing Protocol articles, has widespread support in the business community, but there is frustration that the two sides have not been**

168 Written evidence from Dr Sylvia de Mars, Dr Colin Murray and Dr Clare Rice ([FUI0006](#))

169 Oral evidence taken before the Sub-Committee on the Protocol on Ireland/Northern Ireland on 20 January 2022 (Session 2021–22), [Q 10](#) (Martin Howe), giving evidence in a personal capacity.

170 Oral evidence taken before the Sub-Committee on the Protocol on Ireland/Northern Ireland on 1 December 2021 (Session 2021–22), [Q 13](#) (James Webber), giving evidence in a personal capacity.

able to agree a common position or understanding on its operation. *We call on the UK and the EU swiftly to reach agreement on how such a mechanism would work in practice. In that context, we stress the importance of a robust and mutually acceptable approach to real-time data sharing, monitoring and enforcement.*

176. We also note the widespread calls for such a system to be supported by an enhanced trusted trader scheme with audited supply chains and facilitated movements of known products. Such a system would have significant benefits for the free flow of goods, although we note concerns that, depending on its scale, it could benefit larger companies at the expense of SMEs. Both the UK and the EU accept the need for an enhanced trusted trader scheme in principle, but disagree over how it should work in practice. *We urge the two sides to work together with business to reach agreement on its scale and application, and to ensure that it covers as wide a range of businesses as possible.*
177. We acknowledge the intention behind the Government's proposals for a dual regulatory regime. We note that some witnesses welcomed the concept. However, there is widespread concern among business about its practical feasibility and implications for complex cross-border supply chains, in particular in the context of growing regulatory divergence between the UK and the EU. There are also concerns that such a regime may not suit all sectors of the economy. *The Government urgently needs to explain how its proposals will ensure in practice that, as well as facilitating East-West trade, they do not imperil North-South trade, and to provide reassurance that businesses will not be forced to choose between trade within the UK and trade with Ireland and the EU. In that context, we urge the Government to engage with and address the specific concerns of business representatives over the feasibility of its proposals.*
178. We acknowledge widespread support for the continuation of the various grace periods and derogations, amidst warnings of the serious economic impact should they come to an end without being replaced. In that context, we note that the grace periods have been unilaterally extended by the UK, and there are concerns that the EU's proposals for changes to the Protocol appear to be based on the assumption that the grace periods will come to an end, amplified by its decision to continue the infringement procedure against the UK in relation to the grace periods begun in March 2021 but subsequently put on hold. *In view of business concerns over the negative impact should they come to an end without being replaced, we urge both sides to agree to the permanent continuation of the grace periods and derogations.*
179. We reiterate the conclusion of our July 2021 introductory report, that one of the most significant single measures to alleviate the regulatory and administrative burden of the Protocol would be a UK-EU SPS/veterinary agreement. It is regrettable that there has been no compromise in the intervening period between the EU's preference for a dynamic alignment model, and the UK's preference for an equivalence framework. *We again urge both sides to work towards a common position on an SPS agreement designed with the specific circumstances of Northern Ireland in mind.*

180. **Both the UK and the EU envisage specific labelling requirements in relation to goods in circulation in Northern Ireland. We note the concern of business representatives around the feasibility of a system of differential or dual labelling for goods in a market as small as Northern Ireland. We stress the need for both sides to identify a mutually agreed, practical solution to this issue.**
181. **We also underline the importance of resolution of outstanding issues and difficulties regarding the application of Tariff Rate Quotas in Northern Ireland, and in particular to address concerns that Northern Ireland businesses are placed at a competitive disadvantage.**
182. **Although we have taken limited evidence on the Government’s proposals in relation to VAT and State aid, business urgently needs clarity on the application of the Protocol in these areas. We will scrutinise these important issues further in the autumn.**
183. **While we note the potential for technological solutions and mitigations in relation to many of these issues, we also acknowledge that they cannot resolve all of the issues in relation to the movement of goods, at least in the short term. Nevertheless, we call on both sides to work with business to explore what solutions technological developments can provide.**

Business support and engagement

184. Our witnesses stressed the crucial importance of support and engagement by the UK and the EU for businesses affected by the Protocol.

Joint engagement with the UK and EU

185. Conall Donnelly welcomed the “great level of engagement “ by both the UK and the EU with business.¹⁷¹ However, the business community was:

“talking to both sides independently, so each side then takes different things away from the same conversation. It would make more sense to have joint technical meetings with industry. I have no doubt that that would be uncomfortable for some of the officials on both sides, but I think it would be helpful, none the less, because there would be no question of people coming back and taking different things from meetings.”¹⁷²

186. The Northern Ireland Business Brexit Working Group stated that:

“A long term workable solution is one that is done with business not to business. ... The UK and EU should be engaging on a tripartite basis with business and its technical and administrative experts to: (i) audit where we are now, (ii) provide a firm and shared foundation for reignited negotiations, (iii) overcome confusion, mistranslation and suspicion, and (iv) test to ensure that proposals are workable and durable.”

They also expressed disappointment that the joint business consultative group first promised by Rt Hon Michael Gove MP (the then Chancellor of the Duchy of Lancaster) and Vice-President Šefčovič in February 2021 “so

171 [Q 8](#)

172 [Q 6](#)

that we could have a direct conduit into both the EU and UK ... has still not happened.”¹⁷³

187. The Northern Ireland Food and Drink Association supported calls for a tripartite working group, in particular as “misunderstandings are arising from apparently conflicting advice given by the UK and EU”, for instance in relation to supplementary declarations, labelling and State aid.¹⁷⁴

Trader Support Service and Movement Assistant Scheme

188. As we have seen, several witnesses drew attention to the importance of the Trader Support Service and Movement Assistance Scheme in facilitating trade between Great Britain and Northern Ireland. In its July 2021 Command Paper, the Government summarised the “extensive support schemes” for business, including the Trader Support Service through to the end of 2022, and the Movement Assistance Scheme confirmed in place until the end of 2023.¹⁷⁵
189. Conall Donnelly stated that the Government’s rolling 18 month commitment was “not great. It would be good to see an indefinite commitment. It is fundamental to Northern Ireland’s participation in the UK internal market that you have these facilitations in place.”¹⁷⁶
190. Sarah Hards likewise called for the permanent extension of the Trader Support Service: “If it were to disappear overnight, I think the trade would almost disappear overnight as well.”¹⁷⁷ As we have already noted, ADS warned that some business models were not compatible with the current functionality of the Trader Support Service.¹⁷⁸

Tariff reimbursement scheme

191. Likewise, Stephen Kelly stressed the need for the Government to meet its commitment to set up a tariff reimbursement scheme:

“The UK Government committed to reimbursing that tariff for all the goods that may be subject to a tariff being applied that remain in Northern Ireland or go back to the UK. That scheme should have been in place by July last year, but we are sitting here today on 23 March and that still has not been applied.”¹⁷⁹

192. The Northern Ireland Business Brexit Working Group stressed that “it is essential that this is delivered urgently to protect businesses from unaffordable cash flow implications given the current broad reach of the at-risk rules.”¹⁸⁰

Conclusions

193. **We welcome the engagement by both the UK and the EU with businesses affected by the Protocol. However, business representatives have stressed that there is an urgent need for the UK and the EU to engage jointly with business representatives, to ensure they send and receive**

173 Written evidence from Northern Ireland Business Brexit Working Group ([FUI0025](#))

174 Written evidence from Northern Ireland Food and Drink Association ([FUI0020](#))

175 *Northern Ireland Protocol: the way forward*, para 18

176 [Q 4](#)

177 [Q 7](#)

178 Written evidence from ADS ([FUI0010](#))

179 [Q 14](#)

180 Written evidence from Northern Ireland Business Brexit Working Group ([FUI0025](#))

a consistent message, and to prevent mutual misunderstanding or misinterpretation. *We urge the UK and the EU to provide for such dialogue by fulfilling their commitment, first given in February 2021, to set up a joint consultative business group.*

194. **We welcome the support and assistance provided by the UK’s Trader Support Service and Movement Assistance Scheme. However, there are concerns over the compatibility of the Trader Support Service’s functionality with some existing business models. Furthermore, both are temporary measures, and there are significant concerns around the impact on businesses of the discontinuation of this support. We also note that the Government’s promised tariff reimbursement scheme is now significantly overdue. *We urge the Government to make permanent the Trader Support Service and Movement Assistance Scheme and to ensure that as many businesses as possible are able to benefit from this support. We also call on the Government to implement the promised tariff reimbursement scheme without delay.***

Economic impact of political uncertainty

195. Several witnesses stressed the negative economic impact of continued political uncertainty over the Protocol.
196. Sarah Hards said that Northern Ireland was in a unique position in terms of its trading relationship with the UK and the EU, but that it would not be possible to take advantage of this position without certainty over what procedures should be in place to govern trade:
- “Uncertainty of any type will always have a negative impact on the economy. To have such political uncertainty around the Protocol makes everyone uneasy. It makes suppliers in GB uneasy; it makes anyone who would want to invest in Northern Ireland uneasy. The quicker we can get answers, get this resolved and get processes in place, the quicker we will see improvements in the economy.”¹⁸¹
197. Stephen Kelly said that uncertainty “is a real risk to boardrooms and Northern Ireland’s potential attractiveness as a place to invest.”¹⁸² Walgreens Boots Alliance agreed that ongoing uncertainty hindered business planning and investment.¹⁸³ The Northern Ireland Business Brexit Working Group warned that “if solutions are not forthcoming, multiple pressures will increase on businesses, as tensions grow UK-EU and within NI. The current instability does not allow businesses to plan, nor to garner investment for the future”.¹⁸⁴
198. Sacha Berendji underlined the importance of “a stable environment and to reach a mutual agreement that creates a predictable business environment for us to do business in.”¹⁸⁵ The British Irish Chamber of Commerce warned that “any temptation to place the economic burden of political differences on the shoulders of businesses must be resisted.”¹⁸⁶

181 [Q 9](#)

182 [Q 17](#)

183 Written evidence from Walgreens Boots Alliance ([FUI0024](#))

184 Written evidence from Northern Ireland Business Brexit Working Group ([FUI0025](#))

185 [QQ 27, 30](#)

186 Written evidence from British Irish Chamber of Commerce ([FUI0012](#))

199. Witnesses were concerned at the loss of momentum in the discussions between the UK and EU. The Northern Ireland Business Brexit Group stated:

“Whilst we were heartened by increased levels of engagement between the UK and the EU in the second half of 2021 and at the beginning of 2022, we are frustrated at both the pace and the delivery from these discussions since February 2022.”¹⁸⁷

200. Doug Beattie regretted that:

“Both the UK Government and the EU decided that, in February, they would stop the negotiations and keep it at a far lower level, and they lost momentum. We have lost complete momentum since February of this year. There are no substantive negotiations between the EU and the UK to deal with the Protocol issue. We have had the election. We are the other side now, and we are in salvage mode and a circular conversation.”¹⁸⁸

201. Notwithstanding the acknowledgement by business representatives that the continuation of the grace periods was economically beneficial, some witnesses expressed concern at the economic impact of unilateral action by either side. The Ulster Farmers’ Union argued that “confrontational approaches will not build the necessary stability nor certainty which business and investors need.”¹⁸⁹

202. ADS said that the consistent feedback from its members was that scrapping the Protocol “would be the worst possible outcome, with a preference to continuously seek improvements to current arrangements.” They expressed concern that unilateral legislation, and retaliatory action by the EU, would have a damaging economic impact.¹⁹⁰

203. The Northern Ireland Business Brexit Working Group stated that “it remains our view that anything other than a negotiated outcome is sub-optimal and that the UK and EU should use the time during the Bill’s passage to negotiate and find agreement.”¹⁹¹ Andrew Opie stressed that “our preference would absolutely be to find an agreed solution between both sides. From our interaction with both sides, that should be possible.”¹⁹²

Conclusion

204. **Business representatives have repeatedly stressed the damaging economic impact of continued political uncertainty over the Protocol. Notwithstanding their acknowledgement of the economically beneficial impact of the continuation of the grace periods, they have also set out serious concerns over the economic consequences of unilateral action. Without prejudice to the views of individual members on the Northern Ireland Protocol Bill or the EU’s response, we stress that a mutually agreed solution is the optimal outcome, and that the continued lack of agreement between the two sides is having an economically damaging effect. We therefore call on the UK and**

187 Written evidence from Northern Ireland Business Brexit Working Group ([FUI0025](#))

188 [Q 75](#)

189 Written evidence from the Ulster Farmers’ Union ([FUI0019](#))

190 Written evidence from ADS ([FUI0010](#))

191 Written evidence from Northern Ireland Business Brexit Working Group ([FUI0025](#))

192 [QQ 25, 27](#)

the EU urgently at a political and technical level to resume dialogue, in a spirit of flexibility and proportionality, and including full engagement and consultation with business, with a view to reaching such agreement.

CHAPTER 3: THE PROVISION OF MEDICINES TO NORTHERN IRELAND UNDER THE PROTOCOL

205. In this chapter, we consider a discrete set of issues in relation to the provision of medicines to Northern Ireland, which have economic implications for the pharmaceutical industry and consumers, as well as healthcare implications for the people of Northern Ireland.

Previous scrutiny

206. In October 2021, the Committee held an evidence session with representatives of the pharmaceutical industry on the impact of the Protocol on the provision of medicines to Northern Ireland. Their evidence was summarised in a letter to Lord Frost in November 2021, which highlighted industry concerns over:

- The cost and operational impact of Brexit and the Protocol, including testing requirements, specific issues for provision of over-the-counter (OTC) medicines, the costly impact of application of the EU Falsified Medicines Directive, and the requirement for separate marketing authorisations for Northern Ireland.
- The scale and risk of product withdrawal in Northern Ireland. Witnesses told us that a wide range of medicines could be affected, albeit in terms of product choice rather than discontinuation of entire categories of medicine.
- The limited scope for cross-border provision on the island of Ireland (and therefore limited risk to the EU Single Market), due to the different models for medicines provision in Ireland and Northern Ireland.
- The positive impact of the Government's unilateral extension of the grace period for medicines in September 2021, notwithstanding the need for long-term stability and a mutually agreed solution.
- Support for the Government's proposal in its July 2021 Command Paper that medicines should be withdrawn from the scope of the Protocol entirely, so long as this was subject to mutual agreement between the UK and the EU.
- Concern that the Government's proposal for a dual regulatory regime would not be viable in the context of medicines provision, given the practical challenges in such a highly regulated sector.
- Support for the Commission's October 2021 'non-paper' on medicines as a constructive step forward, but which left a number of technical issues outstanding, including in relation to wholesale dealers' licenses, authorisation codes, centrally authorised products, a single medicine pack and single leaflet for patient information, the application of the Falsified Medicines Directive to Northern Ireland, and Mutual Recognition and Decentralised Procedures (DCP/MRP).
- The need for a mutually agreed solution, due to the uncertainty that would arise from unilateral action.

- The importance of continued industry engagement, in order for the UK and EU to understand the technical complexities of the issues at hand.¹⁹³
207. The Committee sought further evidence from industry representatives after the EU’s publication of proposals for medicines in December 2021, resulting in a further letter to the Foreign Secretary in January 2022.¹⁹⁴ This letter noted the views of stakeholders that the Commission proposals represented significant progress towards addressing the issues that had been identified, in particular regarding continued provision of OTC medicines, UK-wide licensing, the elimination of requirements for batch testing and import licenses for products moving from Great Britain to Northern Ireland, and the use of a single pack and leaflet across the whole of the UK.
208. Nevertheless, witnesses drew attention to a number of outstanding issues, including concerning UK-based qualifying persons, Wholesale Dealers Authorisation, DCP/MRP and combining UK and GB licences, the need to retain equivalent standards between the UK and the EU, concerns that Centralised Procedure licences are not covered by the EU proposals, changing ‘GB only’ product licences to UK-wide licences, and the continued application of the Falsified Medicines Directive to Northern Ireland.
209. In his reply of 25 March 2022,¹⁹⁵ James Cleverly noted that industry had been broadly positive about the EU proposals, but that there were two remaining supply risks: EU authorised packs of novel medicines are still required for Northern Ireland, “which may lead to some companies discontinuing novel medicines in [Northern Ireland] or not launch them at all”, and concerns over the continued application of the EU Falsified Medicines Directive in Northern Ireland. Mr Cleverly highlighted that, by way of mitigation, the Northern Ireland MHRA Authorised Route (NIMAR) is being used to support the continuity of supply in Northern Ireland.

Further evidence received

210. The Commission proposals came into force in April, and several pharmaceutical witnesses submitted evidence to this inquiry on the current position.
211. Walgreens Boots Alliance (of which Boots UK is a division) said that the derogations to the full implementation of the Protocol had enabled them to maintain product availability in Northern Ireland. Nevertheless, continuing uncertainty had meant their wholesale partner was expecting to stop distributing some products in Northern Ireland. While they welcomed the EU’s proposals, they noted that:
- The proposals do not cover Centralised Procedure products, meaning that manufacturers will have to create separate packs for new centrally

193 Letter from Lord Jay of Ewelme to Rt Hon Lord Frost CMG on the provision of medicines to Northern Ireland under the Protocol on Ireland/Northern Ireland, 18 November 2021: <https://committees.parliament.uk/publications/7886/documents/81840/default/>

194 Letter from Lord Jay of Ewelme to Rt Hon Elizabeth Truss MP on provision of medicines to Northern Ireland under the Protocol on Ireland/Northern Ireland, 28 January 2022: <https://committees.parliament.uk/publications/8666/documents/88026/default/>

195 Letter from Rt Hon James Cleverly MP to Lord Jay of Ewelme on the Court of Justice of the European Union under the Northern Ireland Protocol, 25 March 2022: <https://committees.parliament.uk/publications/9553/documents/161909/default/>

authorised products for Great Britain and Northern Ireland. This may affect supply to Northern Ireland given the small size of its market.

- Application of the Falsified Medicines Directive is a challenge as it implies that all products entering Northern Ireland from Great Britain need to be verified by wholesalers.
- The sale of medical devices in Northern Ireland has also been impacted by the Protocol, with new regulatory and labelling requirements amounting to £10,000 per product initially and £5,000 per annum thereafter.
- There are issues regarding labelling of own brand or proprietary medical devices sent to Northern Ireland in compliance with EU importer requirements, which, without a manageable solution, will lead to increased costs.

Their preference was to remove all medicines from the scope of the Protocol entirely “and build specific arrangements for this category of products”.¹⁹⁶

212. The National Pharmacy Association (NPA) likewise welcomed the EU’s proposals, but also pointed out concerns around “residual issues” pertaining to the Falsified Medicines Directive and the application of EU law for centrally authorised products. They noted that a number of suppliers have already withdrawn from the Northern Ireland market, and reported shortages in OTC and pharmacy only medicines. They too called for the removal from the Protocol of medicines in their entirety.¹⁹⁷
213. Teva UK, the leading supplier by volume of medicines to the NHS, also welcomed the progress made, which had enabled them to halt proposed discontinuation of medicines in Northern Ireland. They too highlighted the treatment of Centralised Procedure product licences as the “one very significant issue which remains outstanding”, as a requirement for separate marketing authorisations for Northern Ireland could make many medicines unviable there. There was also uncertainty as to how the contingency arrangements being planned by the MHRA would work in practice.¹⁹⁸
214. The Ethical Medicines Industry Group (EMIG) stated that the EU proposals were “hugely welcome” and provided stability for the sector, as they removed checks on medicines moving from Great Britain to Northern Ireland, which in turn facilitated the uninterrupted supply of medicines. However, they acknowledged that many companies had already switched supply routes at great expense. They warned that the Government’s proposal unilaterally to bring forward legislation on the Protocol was “hugely worrying”, as it may lead to retaliatory action by the EU, with a “profound impact” on the pharmaceutical sector given the global nature of medicines supply.¹⁹⁹
215. PAGB (the consumer healthcare association) stated that they were “enormously encouraged” by the steps taken by the UK and the EU to address the issue of medicines, including through the adoption of EU legislation and the contingency measures put in place by the UK. They acknowledged that the issues with centrally authorised products and the Falsified Medicines

196 Written evidence from Walgreens Boots Alliance ([FUI0024](#))

197 Written evidence from National Pharmacy Association ([FUI0022](#))

198 Written evidence from Teva UK ([FUI0003](#))

199 Written evidence from EMIG ([FUI0005](#))

Directive need to be “ironed out”, but stated that the EU’s proposals had “helped ensure continuity in the supply of medicines to patients in Northern Ireland ... the current arrangements are working well.” However, PAGB added that they had co-signed a letter from industry representatives to the Foreign Secretary, warning that:

“Wholesale changes to these agreements would cause significant disruption and uncertainty, both for our members and patients in Northern Ireland. As a result, they must be avoided, and outstanding issues should be resolved via negotiations—building on what has been achieved to date—rather than unilateral action by the UK.”²⁰⁰

216. The Northern Ireland Human Rights Commission (NIHRC) and Equality Commission for Northern Ireland (ECNI) stressed in particular the need to monitor and address any outstanding issues relating to the supply of medicines in order to allay fears relating to future availability, including for disabled people.²⁰¹

Conclusion

217. **Given the importance of these issues for the people of Northern Ireland, we welcome the steps that have been taken to alleviate problems with the supply of medicines to Northern Ireland through the EU’s legislation that came into force in April 2022. Nevertheless, we note that it would have been preferable for these solutions to have been taken forward on the basis of mutual agreement rather than unilateral action by the EU. In that context, we note the concerns of the Government and pharmaceutical industry representatives that a number of issues remain outstanding, notably in relation to centrally authorised products, the application of the Falsified Medicines Directive, and the supply of medical devices. *We urge the UK and the EU to work together in constructive dialogue, and in full consultation with industry representatives, to identify sustainable solutions to these issues in the months ahead.***

200 Written evidence from PAGB ([FUI0004](#))

201 Joint written evidence from Northern Ireland Human Rights Commission and the Equality Commission for Northern Ireland ([FUI0023](#))

CHAPTER 4: THE POLITICAL IMPACT OF THE PROTOCOL

Political perspectives on the Protocol

218. In our July 2021 introductory report, we concluded that “there is no doubt that Brexit and the Protocol have had a destabilising effect on the political situation in Northern Ireland and on community relations.”²⁰² We took evidence from a range of witnesses to understand how the political situation has subsequently evolved over the past year. This chapter outlines the evidence put to us. This outline is without prejudice to the views of individual members on the Protocol, and to our task as a Committee not to argue for or against the Protocol itself, but rather to scrutinise its operation and impact in an objective and evidence-based manner. We therefore do not seek to draw conclusions on the strength or validity of the arguments put to us.
219. Subsequent to the May 2022 Northern Ireland Assembly elections, we took evidence from each of the five largest political parties in the Assembly. This confirmed the sharp divisions in view on the Protocol between Sinn Féin, the Alliance Party and the SDLP, on the one hand, and the Democratic Unionist Party and the Ulster Unionist Party on the other.
220. Declan Kearney MLA, representing Sinn Féin, told us:
- “Our position fundamentally stems from our opposition to Brexit. We believe that, were there in fact no Brexit, there would be no need for the Protocol. The democratic majority in the north of Ireland in 2016 voted to remain within the EU. Our own party campaigned against that position being adopted. We forecast at the time that Brexit would be a catastrophe not only for the people in the north of Ireland but for the island economy overall. ... I would much rather that there was no Brexit. As a consequence, I would much rather that there was no need for a Protocol, but it is our party’s very firm view that the Protocol is not only an integral part of an international agreement that has now been struck and, therefore, must be accepted and complied with, but the only and the best way to mitigate the worst effects of Brexit for people living in the north of Ireland and across the island in its entirety.”²⁰³
221. Matthew O’Toole MLA, representing the SDLP, said that “the framing of the debate on the Protocol” had been “constructed around the notion that the Protocol itself is *sui generis*, as if it was dropped from the sky on the UK out of nowhere.” He argued, on the contrary:
- “The Protocol is not just a product of Brexit ... it is inextricably linked to Brexit. To the extent that the Protocol is a problem, the problem is Brexit, specifically hard Brexit; that is, the decision by the UK to leave both the Single Market and the customs union. ... We need the Protocol not just because it offers protections from the creation of a hard border in goods ... but because it offers the unique economic advantage of dual market access, from which we are already benefiting as data shows, but for which the constant threats and destabilisation are damaging that potential investment.”²⁰⁴

202 *Report from the Sub-Committee on the Protocol on Ireland/Northern Ireland: Introductory report*, para 202

203 [Q 49](#)

204 [Q 32](#)

222. Sorcha Eastwood MLA, representing the Alliance Party, argued that:

“What we are seeing reflected in our politics across and between these islands is the fallout of Brexit. ... It is clear that the Protocol exists as a means to manage the outworkings of a hard Brexit and what that entails in practical terms. We would not have one without the other, and that is a point that bears repeating. However, since January 2021, Alliance has been proactive in seeking to put forward solutions. You could perhaps best characterise our approach as that of Protocol pragmatists or Protocol realists.”²⁰⁵

223. These views were echoed by HE Adrian O’Neill, Ambassador of Ireland to the United Kingdom, who set out the Irish Government’s view:

“It is Brexit, and specifically the type of Brexit chosen by the British Government, which creates many of the challenges being faced in Northern Ireland today. The Protocol sought to accommodate those choices and respond to the challenges arising. It is still the only agreed EU-UK solution that protects the Good Friday Agreement and mitigates the consequences of a hard Brexit for Northern Ireland and the whole island of Ireland.”²⁰⁶

224. Doug Beattie MLA, Leader of the Ulster Unionist Party, said that his party had opposed Brexit because they thought it would be destabilising for Northern Ireland and for the Belfast/Good Friday Agreement: “If we did not support Brexit, we certainly did not support the Protocol. The Protocol is not working. ... It is a bad deal, and it is simply not going to work.” This was because, in his view, it had unbalanced the Belfast/Good Friday Agreement by imposing a “border down the Irish Sea”. However, he acknowledged that there needed to be some form of treaty between the UK and the EU governing the issues around Northern Ireland and the frontier between the UK and the EU.²⁰⁷

225. Sir Jeffrey Donaldson MP, Leader of the Democratic Unionist Party, said:

“We have consistently opposed the Protocol from the moment it was agreed between the UK Government and the European Union. We believe that the Protocol threatens our place in the United Kingdom. It endangers jobs for our people, drives up costs for consumers and reduces choice on our supermarket shelves. It is costing hundreds of millions of pounds to the Northern Ireland economy every year. ... The Irish Sea border has eroded the unified internal market of the United Kingdom and, indeed, has undermined the union itself. The union is not just a political union; it is an economic union. Article 6 of the Acts of Union states very clearly that there should be no barriers to trade between the constituent parts of the United Kingdom. ... It has harmed the very delicate constitutional balances at the heart of the Belfast Agreement. It undermines the cross-community consensus that is essential for the Agreement and political institutions to operate.”²⁰⁸

226. These divergent perspectives on the Protocol also characterise attitudes towards its political impact, as we explore below.

205 [Q 40](#)

206 Written evidence from HE Adrian O’Neill ([FUI0021](#))

207 [Q 71](#)

208 [Q 80](#)

Public attitudes towards the Protocol

227. Witnesses stressing the necessity of the Protocol argued that a growing number (or even a majority) of people in Northern Ireland either supported the Protocol, or at least were willing to accept it as a necessity in the light of Brexit. Ambassador O’Neill cited the Northern Ireland Life and Times Survey and Queen’s University Belfast’s *Testing the Temperature* surveys as suggesting that the numbers who regarded the Protocol as on balance “a good thing” for Northern Ireland were increasing.²⁰⁹
228. Matthew O’Toole likewise pointed to these surveys as indicating a “small but appreciable majority in favour of the Protocol being implemented, yes, in a way that works and is as practicable as possible, but that there is still an anti-Brexit majority in Northern Ireland.”²¹⁰ Professor Monica McWilliams, Co-founder of the Northern Ireland Women’s Coalition and former Chief Commissioner of the Northern Ireland Human Rights Commission, and Emma DeSouza, human rights campaigner and writer, Coordinator at the National Women’s Council of Ireland and Chairperson of the All-island Women’s Forum²¹¹, also drew attention to the same polling, which they said suggested that 63% of respondents agreed that the Protocol provides Northern Ireland with “a unique set of post-Brexit opportunities compared to the rest of the UK which if exploited could benefit Northern Ireland.”²¹²
229. Ambassador O’Neill argued that the Assembly election results, which saw a majority of MLAs (53 out of 90) elected who were in favour of the Protocol, were proof of this.²¹³ Declan Kearney likewise said that:
- “The majority of MLAs who have been returned as a result of the recent Assembly election are politicians who have a very pragmatic or, indeed, supportive view of the Protocol itself. Therefore, the people have spoken once again in the north of Ireland. We registered a majority opposing the imposition of Brexit. Successive debates within the Assembly have demonstrated a majority view there that we need to ensure a smooth implementation of the Protocol and remove this issue as a source of contention within our political process. Now, in quite a resounding way, as a result of the Assembly election, we see the majority of parties represented in the Assembly and the greater number of MLAs adopting a pragmatic Protocol position or a pro-Protocol position.”²¹⁴
230. Mr Kearney, Mr O’Toole and Sorcha Eastwood, as well as Professor Monica McWilliams and Emma DeSouza, all asserted that the Protocol was not a dominant issue on the doorstep during the election campaign, compared to wider issues with the economy and healthcare. Ms Eastwood argued that “the vast majority of people in Northern Ireland want stability and a level of certainty in which to operate.”²¹⁵

209 Written evidence from HE Adrian O’Neill ([FUI0021](#))

210 [Q 34](#)

211 Written evidence submitted jointly and in a personal capacity.

212 Written evidence from Professor Monica McWilliams and Emma DeSouza ([FUI0017](#))

213 Written evidence from HE Adrian O’Neill ([FUI0021](#))

214 [Q 52](#)

215 [QQ 34](#), [42](#), [52](#) and written evidence from Professor Monica McWilliams and Emma DeSouza ([FUI0017](#))

231. On the other hand, those expressing deepest concerns about the Protocol underlined its politically divisive impact, and the lack of cross-community consensus for its operation. Doug Beattie said:

“Societal division is getting worse ... We have come an awful long way since the Belfast Agreement and communities have been coming together, but they are slowly being driven apart. There is a small wedge being pushed between them, which is expanding each time because of the Protocol.”²¹⁶

232. Sir Jeffrey Donaldson said:

“Not a single unionist MLA elected to the Northern Ireland Assembly in May this year supports the Protocol—not one. Over 40% of the seats in the Northern Ireland Assembly are held by unionists opposing the Protocol. ... An opinion poll published earlier this week indicates very clearly that over 75% of unionists believe that the unionist parties should not re-enter a power-sharing Executive until the Protocol is being dealt with decisively. The Protocol has polarised opinion in Northern Ireland, and that is unhelpful when you have to operate political institutions on the basis of consensus. The more the community is polarised, the more difficult it is to achieve that consensus.”²¹⁷

233. Victoria Hewson, Head of Regulatory Affairs, Institute of Regulatory Affairs, stressed that “any negotiated solution that does not respect Northern Ireland’s place in the UK’s legal order and internal market will continue to be unstable and undermine the Belfast Agreement.”²¹⁸

234. The then Minister for Europe and North America, Rt Hon James Cleverly MP, characterised the situation as follows:

“Communities in Northern Ireland can see that the relationship as structured through the Protocol, the relationship between Northern Ireland and Ireland, particularly when it comes to business and the flow of goods, is working well. In contrast, the practical relationship, the business relationship, the flow of goods between Northern Ireland and GB, between two parts of the UK, is not working as well as between Northern Ireland and Ireland. That is visible and that is causing tensions. ... While there is such a visible differential between north-south and east-west, there are tensions that need to be resolved.”²¹⁹

Attitudes towards community concerns

235. There were divergent views among our witnesses regarding the scale and validity of unionist concerns over the Protocol. Matthew O’Toole said that he acknowledged the sincere objections of many unionists to the Protocol, but argued that the severity of the discontent was “significantly smaller” than had been portrayed: “I do not see mass disruption on the streets of Northern Ireland, to be honest. There have clearly been demonstrations of a scale.”²²⁰ He also argued that “there is, within moderate unionism, a degree of pragmatism and subtlety that comes out from the research that has been

216 [Q 74](#)

217 [Q 83](#)

218 Written evidence from Victoria Hewson ([FUI0015](#))

219 [QQ 63, 67](#)

220 [Q 32](#)

done.” He “absolutely” wished that more unionists were comfortable with the Protocol, but was concerned about “the idea that we can solve everything by upending the Protocol because of one group”.²²¹

236. Sorcha Eastwood said that “Brexit has profoundly created shockwaves across and between these islands and is making people question their own identity. ... We are now seeing the outworkings of that, and it is extremely complex.” She acknowledged the legitimate concerns of those in the unionist community who viewed the Protocol as a threat to their identity, and “are feeling a deep hurt and a deep frustration”.²²² However, she also argued that there were unionists who “feel that some of the rhetoric coming from elected unionism is not chiming with what their view would be.”²²³

237. Declan Kearney accused the Government and the DUP of conflating:

“the issue of the Protocol with constitutional and political issues that do not in fact apply and have no relevance to the current situation. They have quite consciously created a distraction by raising those issues. In the process, they have, within some sections of society here in the north, weaponised the Protocol ... [and are] actively trying to manufacture a crisis that should not exist in the first place.”²²⁴

238. Professor Monica McWilliams and Emma DeSouza acknowledged that:

“There are valid concerns being expressed from within the unionist community, that do not diverge greatly with the concerns voiced by the nationalist community, who largely voted against any form of Brexit. Both communities have been impacted negatively by the UK’s decision to leave the European Union with concerns over a democratic deficit in Northern Ireland growing.”²²⁵

239. The Human Rights Consortium argued that:

“It is perhaps understandable that sections of our community who value Northern Ireland’s place within the United Kingdom are upset at the placement of regulatory checks for goods moving from GB to NI. However, concerns about these provisions affecting Northern Ireland’s place within the union are more perceptual, rather than practical. There was already a level of checks on certain goods moving between GB and NI before the UK’s exit from the EU.”²²⁶

240. However, the leaders of the main unionist parties underscored the deep impact of the Protocol on the unionist community. Doug Beattie said:

“The Protocol is deeply disheartening for the unionist communities—not all of course; there are unionists who will support the Protocol. I do not pretend to speak for all, but there are large swathes of unionism for which the Protocol is deeply damaging. They feel that their identity is under threat. ... The nationalist community—but not all nationalists, of course—is saying, “Let’s just get on and make Northern Ireland work”.

221 [Q 34](#)

222 [Q 47](#)

223 [Q 42](#)

224 [Q 51](#)

225 Written evidence from Professor Monica McWilliams and Emma DeSouza ([FUI0017](#))

226 Written evidence from Human Rights Consortium ([FUI0007](#))

That is driving the two communities apart, so we are having genuine problems in regard to this. ... My big fear is that ... if people are not moving and trying to fix the problems we have in Northern Ireland, those frustrations could come to the boil. I have said this to everybody who is willing to listen to me: it does not take much to go from a brick to a stone to a petrol bomb to a bullet to a coffin. It does not take long in Northern Ireland; those who know Northern Ireland will know it does not take long.”²²⁷

241. Sir Jeffrey Donaldson said:

“Both the EU and Irish Government are blind to this particular issue that, for unionists, ... it is also about our sense of citizenship and belonging to the country of which we are citizens. It undermines our rights under the economic and political union we are part of. The EU’s proposals do not even scratch the surface of those problems. ... the Irish Government are tone deaf to the concerns of unionists on this—absolutely, utterly tone deaf. They do not get it, and, if they do, they ignore it.”²²⁸

242. On the other hand, Ambassador O’Neill stressed that “the Government of Ireland acknowledges that there are genuine concerns regarding the Protocol in Northern Ireland, particularly among unionists.”²²⁹

243. In terms of respecting the concerns of other communities around North-South relations, the Government has stated that its commitment remains to “ensure that there is no hard border on the island of Ireland”.²³⁰ Sir Jeffrey Donaldson stressed that “none of us is arguing for a hard border on the island of Ireland.”²³¹ Doug Beattie likewise said:

“If somebody said to me they were going to put a hardened border on the island of Ireland north and south, I would be really upset, for two reasons. First, I have manned that border before and I do not want to do it again. Secondly, I know it would upset my nationalist friends and neighbours, and I would not want to do that. In the same instance, I would like to think that they are looking at me as a unionist who says the Irish Sea border is upsetting me and that they would want to do all they can to get rid of that.”²³²

The impact on the power-sharing institutions

244. There were also divergent views on the impact of the Protocol upon the functioning of the power-sharing institutions, and specifically on the DUP’s decision after the Assembly elections not to nominate a deputy First Minister or to agree to the nomination of a Speaker of the Assembly.

245. Sir Jeffrey Donaldson justified the DUP’s position as follows:

“I gave months and months and months to the UK Government and the EU to find solutions. The talks went on and on and on, and no solution was forthcoming. I felt I had to act to send a very clear message to both London and Brussels, and indeed to Dublin as well, that we cannot go

227 [Q 74](#)

228 [QQ 82, 84, 85](#)

229 Written evidence from HE Adrian O’Neill ([FUI0021](#))

230 HC Deb, 17 May 2022, [col 547](#)

231 [QQ 81–82](#)

232 [QQ 78–79](#)

on like this. The Assembly and Executive can function only on the basis of cross-community consent. ... We need to get back to that consensus, which means we need to address the problems created by this Protocol, find a solution that people can live with and move on so that we can restore the fully functioning political institutions, which is what I want to see happening.”²³³

246. Doug Beattie said:

“We are getting deeper and deeper into a mess that is going to be harder to get out of. We have no Assembly; no Executive; a cost of living crisis, which is not a strapline but a lived experience for many people in Northern Ireland; absolutely horrific hospital waiting lists; and everything else that is going wrong in Northern Ireland at this time. We need a functioning Assembly and Executive, but we do not have them. That is the outcome of the election on 5 May and is, in part, because of the Protocol.”²³⁴

247. Declan Kearney stressed the need for the restoration of the power-sharing Executive, which he argued was not functioning due to “an entirely spurious position that has been fictionalised by the Democratic Unionist Party in particular”.²³⁵

248. Matthew O’Toole said that:

“The deceptively obvious answer being promulgated by UK Ministers at the minute is that, because there is no Assembly and Executive, the Protocol is to blame and, therefore, we should get rid of the Protocol. This is, I am afraid, a preposterous and utterly disingenuous way of looking at it. ... Frankly, I do not think that the DUP’s position is in any way acceptable. It is not acceptable to say that, because you do not like this one consequence of Brexit, which, of course, you championed and helped steward through, you should not allow devolved institutions to function. That is not good, but that is part of a broader consequence of Brexit.”²³⁶

249. Sorcha Eastwood argued:

“The most important thing would be to have a functioning Assembly and Executive in Northern Ireland immediately. The importance of that cannot, in any shape or form, be discounted. The vast majority of people in Northern Ireland, regardless of who they voted for in the Assembly election just under a month ago, regardless of their view on the Protocol, are not happy with this being used as leverage and an impediment to having an Assembly and an Executive”.²³⁷

Consent and the Belfast/Good Friday Agreement

250. We also heard contradictory evidence about the Protocol’s impact on and interaction with the Belfast/Good Friday Agreement.

233 [Q 83](#)

234 [Q 74](#)

235 [Q 51](#)

236 [Q 34](#)

237 [Q 47](#)

251. In her speech opening the Second Reading debate on the Northern Ireland Protocol Bill in the House of Commons, the Foreign Secretary set out the Government's position as follows:

“We are taking this action to uphold the Belfast/Good Friday Agreement, which has brought peace and political stability to Northern Ireland. The Northern Ireland Protocol is undermining the function of the Agreement and of power sharing. It has created fractures between east and west, diverted trade and meant that people in Northern Ireland are treated differently from people in Great Britain. It has weakened their economic rights. That has created a sense that parity of esteem between different parts of the community, an essential part of the agreement, has been damaged.”²³⁸

252. James Cleverly told us:

“Ultimately, the philosophy that underpins the Good Friday Agreement is the consent of both communities. At the moment, we do not have that, so for me we need to take actions to resolve that. ... The Good Friday Agreement was never about the minority being silenced by the majority. ... at its heart it is about making sure that the minority view and the majority view have a voice. ... Addressing the concerns of minority voices in Northern Ireland goes to the heart of the Good Friday Agreement. ... we listen to all communities in Northern Ireland, and it would be deeply dangerous if we were to send the message that we pick and choose which communities in Northern Ireland we listen to.”²³⁹

253. However, Ambassador O'Neill asserted that “nothing in the Protocol contradicts the Good Friday Agreement”:

“The Protocol was drafted and designed specifically to protect the Good Friday Agreement in all its dimensions, taking account of the form of Brexit pursued by the British Government. It fully recognises the constitutional position of Northern Ireland and protects the principle of consent enshrined in that Agreement. The Protocol preserves the hard-won gains of the peace process by establishing the framework that prevents a hard border on the island, maintaining the necessary conditions for North-South cooperation, and protecting the all-island economy. At the same time, it ensures that there will be no ‘diminution of rights, safeguards, or equality of opportunity’ as promised by the terms of the Good Friday Agreement.”²⁴⁰

254. The Ambassador argued that the Protocol did not breach the principle of consent in the Belfast/Good Friday Agreement:

“On the contrary, Article 1 of the Protocol itself specifically acknowledges that the constitutional status of Northern Ireland can only be changed with the consent of the majority of its people. A variation of this false assertion is that the Protocol can only be sustained if it enjoys cross-community support in Northern Ireland. While the Good Friday Agreement provides for cross-community support on certain key decisions within the devolved competence of the Assembly or Executive,

238 HC Deb, 27 June 2022, [col 38](#)

239 [Q 67](#)

240 Written evidence from HE Adrian O'Neill ([FUI0021](#))

the Protocol—as an excepted matter—is outside that scope and therefore no such requirement arises.”²⁴¹

255. The Ambassador asserted on the contrary that “threats by the UK Government to take unilateral action have placed the Good Friday Agreement under strain by damaging the foundations of trust and partnership between both Governments, upon which the Agreement is based.”²⁴²

256. Matthew O’Toole argued that:

“Virtually all non-unionists, whether nationalists or constitutionally unaligned, strongly oppose and opposed Brexit itself. ... The question of unionist consent is used as an argument against the Protocol’s existence, but many of the people making those arguments never breathed a word about the consent of nationalists or non-unionists generally for either Brexit or the type of Brexit that has been visited upon all of the UK but specifically Northern Ireland. ... The same people who dismissed any and all concerns about the impact of Brexit on Northern Ireland are now citing the need for the delicate balance of the Northern Ireland settlement to be respected.”²⁴³

257. The Centre for Cross Border Studies noted that a core reason put forward by the UK Government for bringing forward domestic legislation “is the need to protect the 1998 Agreement, of which it is a co-guarantor. And yet, what it appears to be considering would not only ignore the views of the other co-guarantor, it would also ignore the results of the recent Northern Ireland Assembly elections.”²⁴⁴

258. The Committee on the Administration of Justice argued that it was not credible for the Government to have “devised and agreed the Protocol as the mechanism to protect the Good Friday Agreement in all its dimensions”, only to entertain “a counter argument that the Protocol itself conflicts with the Agreement”. They argued that, as the Protocol was a treaty agreed by the UK and the EU, it is a matter of reserved competence (and therefore outside those areas of devolved competency requiring cross-community consent). They added that the principle of consent in the Belfast/Good Friday Agreement refers specifically to the provisions determining whether by a simple majority Northern Ireland continues in the Union with Great Britain or joins a sovereign united Ireland. Otherwise, “Brexit would also have required such consent from the people of Northern Ireland, who instead voted to remain in the EU ... there was no cross-community nor simple majority consent for any form of Brexit”. They argued that the Government was proposing a “selective” precedent “based apparently on political expediency” whereby unionist (or in theory nationalist) parties could exercise a veto over UK international obligations.²⁴⁵

259. Professor Monica McWilliams and Emma DeSouza likewise stated that “there has been a concerted effort to misapply the cross-community vote ... as being applicable to the Northern Ireland Protocol.” They also argued that it was “difficult to square this argument with the lack of nationalist consent

241 *Ibid.*

242 *Ibid.*

243 [Q 32](#)

244 Written evidence from the Centre for Cross Border Studies ([FUI0016](#))

245 Written evidence from Committee on the Administration of Justice ([FUI0009](#))

for Brexit itself.”²⁴⁶ Dr Sylvia de Mars, Dr Colin Murray and Dr Clare Rice made similar arguments.²⁴⁷

260. On the other hand, Sir Jeffrey Donaldson argued that the Protocol “fundamentally ... undermines the Good Friday Agreement”:

“The Good Friday Agreement, in Article 1, states that there shall be no change to the constitutional status of Northern Ireland without the consent of its people. Some hold that to mean simply that that question can only apply when we have a referendum or a border poll. I disagree with that. Lord Trimble has stated publicly that he regards Article 1 of the Good Friday Agreement as meaning that any change to constitutional status ... relates to our constitutional relationship with the rest of the United Kingdom. That has been fractured by the Protocol. It has harmed the very delicate constitutional balances at the heart of the Belfast Agreement.”²⁴⁸

261. As we have seen, Victoria Hewson stated that:

“Any negotiated solution that does not respect Northern Ireland’s place in the UK’s legal order and internal market will continue to be unstable and undermine the Belfast Agreement. ... Both sides’ stated priorities, reflected in the wording of the Protocol itself, include protection of the Belfast Agreement. The obvious ground for compromise is that the Protocol as currently formulated does not achieve this objective, indeed has had the opposite effect.”²⁴⁹

262. Dr Austen Morgan, barrister practising from 33 Bedford Row Chambers²⁵⁰, argued that the Belfast/Good Friday Agreement had been weaponised by the EU in the Brexit negotiations, in spite of its marginal relevance in the context of UK membership of the EU. He also criticised the Irish Government for abandoning the bilateralism with the UK “arguably required by the Belfast Agreement” in favour of “full EU multilateralism”.²⁵¹

263. Co-operation Ireland noted these divergent views on whether and to what extent the Protocol formally infringes elements of the Belfast/Good Friday Agreement:

“What has to be acknowledged, however, is that there are genuine fears within the unionist community that its place in the Union is under threat and, as Britain continues to diverge from the EU over time, that Northern Ireland will increasingly become separated from the rest of the UK. These fears must be understood in the context of concessions already made, including provisions for a Border Poll, within the [Belfast/Good Friday Agreement]. At the same time for the estimated 85% of Catholics who voted to remain Brexit has brought to the fore dis-satisfaction with Northern Ireland’s continuing place in the UK, increasing calls for a Border Poll.”²⁵²

246 Written evidence from Professor Monica McWilliams and Emma DeSouza ([FUI0017](#))

247 Written evidence from Dr Sylvia de Mars, Dr Colin Murray and Dr Clare Rice ([FUI0006](#))

248 [QQ 80, 82](#)

249 Written evidence from Victoria Hewson ([FUI0015](#))

250 Written evidence submitted in a personal capacity.

251 Written evidence from Dr Austen Morgan ([FUI0018](#))

252 Written evidence from Co-operation Ireland ([FUI0014](#))

264. We also note that some witnesses pointed to the democratic deficit as a fundamental democratic objection to the Protocol.²⁵³ For instance, Sir Jeffrey Donaldson said that the Protocol created a “deep flaw” in that it breached the principle of ‘no taxation without representation’, since “elected representatives in Northern Ireland have no say in how major issues and decisions on taxation are made that impact on our economy and our people”.²⁵⁴ The Government’s explainer document published alongside the Northern Ireland Protocol Bill referred to “a democratic deficit as rules are made and imposed on Northern Ireland without ongoing democratic consent”, adding that “there are no structures for UK or NI representatives to have a say in EU rules”.²⁵⁵ Doug Beattie agreed that the lack of oversight in Northern Ireland of EU rules that apply there constituted a democratic deficit. He said that one option would be to establish a statutory committee in the Northern Ireland Assembly to scrutinise EU laws that apply to Northern Ireland.²⁵⁶
265. Others stressed the need for enhanced engagement with Northern Ireland stakeholders. For instance, Matthew O’Toole called for “agreed and approved processes for ... signposting when changes to EU legislation are going to affect Northern Ireland”, “better and more visible engagement from Northern Ireland politicians, business stakeholders and affected groups”, and observer status for MLAs in the EU Committee of the Regions.²⁵⁷ Sorcha Eastwood said that “it can only be beneficial if the voice of Northern Ireland is being heard” within the EU, including through the Withdrawal Agreement Joint Committee.²⁵⁸ Declan Kearney said that Executive Ministers had been given a minimal role in relation to the deliberations of the Joint Committee, and called for them to be given “the opportunity and space to represent the needs, concerns and priorities of our business and agri-food sectors” in relation to the operation of the Protocol.²⁵⁹

Attitudes regarding the Northern Ireland Protocol Bill and the UK and EU’s responsibilities

266. Shortly before its publication, James Cleverly outlined the rationale behind the Northern Ireland Protocol Bill:

“The Government’s position remains that our preference is to resolve this through a negotiation and an amendment to the Protocol. ... If we are able to get a negotiated settlement through the Protocol that addresses these concerns we would be more than happy to rely exclusively on that. ... We are taking these actions through domestic law, while still saying that we want to have a negotiated outcome, as a safety net. ... Our rationale for starting to build that safety net legislation is because we had been negotiating for quite a protracted period with the EU. The last couple of rounds of negotiation were not shifting things as quickly

253 The Committee has previously examined this issue in detail, for instance in the letter from Lord Jay of Ewelme to Rt Hon Lord Frost CMG on the democratic deficit under the Protocol on Ireland/Northern Ireland and ways to enhance Northern Ireland’s voice and influence, 16 December 2021: <https://committees.parliament.uk/publications/8298/documents/84463/default/>

254 [QQ 82–83](#)

255 Foreign, Commonwealth and Development Office, *NI Protocol: The UK’s solution* (13 June 2022): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1082474/northern-ireland-protocol-the-uks-solution.pdf [accessed 11 July 2022]

256 [Q 72](#)

257 [QQ 37, 39](#)

258 [Q 47](#)

259 [Q 55](#)

as they needed to, and we have now seen, subsequent to the elections in Northern Ireland, that the Executive has not been re-formed. We cannot wish those things away and we cannot let those things endure indefinitely.”²⁶⁰

267. Sir Jeffrey Donaldson said that he “would very much welcome legislation that would address the problems and difficulties created by the Protocol.”²⁶¹ He stressed that the legislation was justified because of the EU’s failure to adapt its own approach:

“The mandate given to Maroš Šefčovič is ... limited to how the Protocol is implemented. It does not deal with the fundamental flaws in the Protocol or the impact the Protocol has on political stability in Northern Ireland, on our relationship with the rest of the United Kingdom, and on inter-community and cross-community relationships in Northern Ireland. It does not do any of those things. Therefore, as the Foreign Secretary has said, unless the EU changes the mandate for negotiation, those negotiations are going nowhere.”²⁶²

268. Doug Beattie described the Bill as “agitator legislation”, in that it would have a short-term detrimental impact on UK-EU relations, “but it will bring people back to the table after the summer ... things are likely to get worse before they get better, but we believe they will get better if we keep engaging.” Mr Beattie said that the UK and EU had engaged in a blame game over the breakdown in dialogue, which meant it was difficult to understand who was most at fault. He stressed that negotiations are “always going to be the best solution, and that is what we will always advocate for.”²⁶³

269. Ambassador O’Neill asserted that:

“The UK Government’s stated intention to table legislation to unilaterally dis-apply elements of the Protocol is deeply disappointing and clearly contrary to international law. The Government of Ireland believes that such unilateral action is unhelpful and unnecessary and, if the UK engages constructively in the period ahead, that a sustainable outcome can be agreed to address legitimate concerns with the practical operation of the Protocol. ... It also undermines trust between the UK and the EU, and makes it significantly more challenging to find agreed and sustainable solutions.”²⁶⁴

270. Those political parties who emphasised the necessity of the Protocol were also critical of the UK Government’s approach and action. Matthew O’Toole accused the UK Government of being “an agent of chaos”:

“In terms of some of the societal impacts, there has been a campaign of distortion and exaggeration, bluntly, about the Protocol. ... with some of what the UK Government have done recently around talking up instability and the threat to the peace process, we are getting close to a self-fulfilling prophecy at times. ... If I am a unionist in Northern Ireland, in a sense, the UK Government are telling me that I am being ripped off here. At the minute, the UK Government are telling me in

260 [QQ 58, 67](#)

261 [Q 84](#)

262 [Q 85](#)

263 [Q 75](#)

264 Written evidence from HE Adrian O’Neill ([FUI0021](#))

every utterance, ‘God—Brussels, the Dublin Government and a load of ill-begotten nationalists and liberals are taking away your Britishness because they want Northern Ireland to be subject to the EU customs code and in an SPS area’. At a certain point, the UK Government will have to say, ‘No, that is not what this is. We need to have particular arrangements for Northern Ireland because it is on a different land mass and has a unique context’.”²⁶⁵

271. Sorcha Eastwood said that “walking away from engagement will not work. It simply entrenches positions, and unilateral action is deeply unhelpful. ... Now is the time for clarity, honesty and a collegiate approach, not simply speaking to a base in isolation.”²⁶⁶

272. In the view of Declan Kearney, the Government was attempting to:

“ride two horses ... They will on the one hand sabre rattle, and on the other hand speak the language of compromise and talk about the potential for issues being resolved and solved through the appropriate level of engagement. What we need to hear conclusively ... [is] that they are going to set aside threats of unilateral action; that they are going to accept that this is now an international treaty for which they are co-guarantor and co-signatory; that they are going to seek out the appropriate level of engagement with the European Commission to conclude on the remaining issues; and that they are going to show good faith and commit absolutely to building the kind of trust that I believe they have diminished and broken with the European Commission in recent times.”²⁶⁷

273. A number of other witnesses, including civic society representatives, offered their reflections on the UK and the EU’s responsibilities.

274. Dr Sylvia de Mars, Dr Colin Murray and Dr Clare Rice argued that:

“The introduction of domestic legislation to override aspects of the Protocol is not conducive to creating stability in post-Brexit Northern Ireland. Such approaches generate uncertainty in the short term and provide no solid solution for the long term. Anything short of a negotiated outcome will fall short of providing the most stable foundation possible.”²⁶⁸

275. The Centre for Cross Border Studies stated that “unilateral action, from either party responsible for the implementation and operation of the Protocol, will only further undermine trust and make the search for joint solutions ... all the more difficult.”²⁶⁹

276. However, Victoria Hewson stressed that there was a particular onus on the EU to resolve the *impasse*:

“The EU has little to lose from a restructuring of the Protocol, other than its leverage against the UK. A collaborative, negotiated solution would surely be more reflective of the EU’s preference for rules-based order than the alternative, which seems at present to be unilateral action

265 [QQ 34–35](#)

266 [QQ 40, 44–45](#)

267 [Q 53](#)

268 Written evidence from Dr Sylvia de Mars, Dr Colin Murray and Dr Clare Rice ([FUI0006](#))

269 Written evidence from the Centre for Cross Border Studies ([FUI0016](#))

by the UK, which may in turn lead to protracted legal actions. At a time when the EU and its member states face economic and security challenges on a number of fronts, this is surely a ground for it to seek compromise.”²⁷⁰

277. Sir Jeffrey Donaldson stated that “there needs to be the will” to overcome the challenges the Protocol presents:

“I have to be honest. I do not see that from the European Union. There is too much ideology in this debate and not enough pragmatism. This is too much about, on the one side, punishing the UK for daring to leave the European Union and, on the other side, whatever Brexit means to some people.”²⁷¹

278. On the other hand, while acknowledging that it needed to do more, in particular in relation to SPS and customs checks, Declan Kearney argued that EU leaders were speaking “in good faith when they say that no issue is beyond resolution”, and that the Commission “will do whatever it takes to ensure that smooth and effective resolutions are found.”²⁷²

279. James Cleverly acknowledged the EU’s concerns that any arrangements under the Protocol could create a precedent. He also acknowledged that Vice-President Šefčovič and Commission officials:

“have looked at various angles to see whether they can make it work, and we believe that he is doing that in good faith, yet we have reached an impasse. Those things being true, something has to give. ... If he has been as flexible as he can be within the current constraints that he has, our view is that his constraints need to be amended a bit, hence our call to have his mandate amended so that we can get this agreement done and dusted. That is in all our interests.”²⁷³

280. Given that we concluded taking evidence for this inquiry before the publication of the Northern Ireland Protocol Bill and the Government’s legal position, questions concerning the Bill’s compatibility with international law are beyond the scope of this report. We will explore this issue in the context of our scrutiny of the Bill in the autumn.

270 Written evidence from Victoria Hewson ([FUI0015](#))

271 [Q 86](#)

272 [QQ 50, 53–54](#)

273 [QQ 62, 70](#)

CHAPTER 5: CONCLUSION—THE NEED FOR A RESET

The need for a reset

281. Given the divergent and at times contradictory political perspectives on the Protocol that were put to us in evidence, identifying solutions to the issues that we have identified in this report may seem at first sight an impossible task. Yet, as Sir Jeffrey Donaldson MP, Leader of the Democratic Unionist Party, told us:

“I grew up in the shadow of the Mountains of Mourne, and, therefore, I often use this analogy. The mountains in front of us are no higher than the ones we have already climbed. In Northern Ireland, we have overcome great adversity. We have met many challenges, faced them and found ways to overcome them. I am convinced we can find ways to overcome these current difficulties and challenges.”²⁷⁴

282. However, if the mountain before us is to be climbed, the UK and the EU, as well as the political parties in Northern Ireland, Northern Ireland stakeholders and the Irish Government, urgently need to reset the unproductive and self-destructive cycle of claim and counter-claim on the Protocol.
283. Our witnesses identified four core interlinking principles that are needed to underpin this reset: prioritising Northern Ireland’s interests, constructive engagement, trust, and a renewed commitment to relationship-building.

Prioritising Northern Ireland’s interests

284. Sir Jeffrey Donaldson said:

“I do not believe that it has been right for Northern Ireland to be used as a political football in this ideological game that has developed since the referendum in 2016. Northern Ireland has been used as a pawn. ... when you play around with the politics of Northern Ireland, you undermine the progress and put that progress at real risk. Therefore, we must find a solution. ... we need the European Union and our own Government to put first in this debate Northern Ireland, the peace process and the political progress that has been made, to set the ideology aside, and to find practical solutions.”²⁷⁵

Constructive engagement

285. Co-operation Ireland stressed that:

“Overcoming the political disagreements over the Protocol will require greater engagement by both the EU and UK politicians and officials with impacted stakeholders, including those from politics, business and civic society. It will also require a willingness from those stakeholders to understand the EU and UK perspectives and accept compromises for the sake of progress.”²⁷⁶

286. The Civil Society Alliance and the Centre for Cross Border Studies also stressed the need for the Government to intensify its engagement with a

274 Q 86

275 *Ibid.*

276 Written evidence from Co-operation Ireland (FUI0014)

broader range of civil society groups.²⁷⁷ Women’s Platform (formerly known as the Northern Ireland Women’s European Platform), a membership organisation working to promote the implementation of international human rights standards in Northern Ireland, underlined the importance of representation of women in public debate, and in particular engagement beyond professionals with grassroots women and communities. They stressed that such engagement “can go a long way towards easing tensions, building a basis of trust and identifying issues at the core of concerns.”²⁷⁸

287. Doug Beattie MLA, Leader of the Ulster Unionist Party, said:

“When the Protocol started to come to fruition in 2019 we warned that, without buy-in from politicians in Northern Ireland and the Northern Irish people, it would simply not work. ... the issue with the Protocol is that it did not have people from Northern Ireland in the room trying to organise it. ... If Northern Ireland politicians had not been in the room when the Belfast Agreement was being talked about, it would never have come to fruition.”²⁷⁹

288. Declan Kearney MLA, representing Sinn Féin, argued that:

“There needs to be a very comprehensive involvement of our political institutions here in the north with the processes that are relevant to the implementation of the Protocol for the north. ... The best people to speak on behalf of citizens, business, workers and families in the north are the political representatives and the leaders of civic society.”²⁸⁰

Trust

289. The Centre for Cross Border Studies warned that “we are at an extremely low ebb of trust. This is affecting internal relations, as well as relations across these islands.”²⁸¹ Professor Monica McWilliams and Emma DeSouza stressed that “the importance of trust in delicate negotiations cannot be overstated.”²⁸²

290. Co-operation Ireland stated:

“Resolving the political impasse will require action by all parties to restore this trust. This includes a recommitment to a multilateral process, cessation of unilateral or legal action and working together to identify and implement improved post Brexit trading arrangements, involving stakeholders most impacted in Northern Ireland and the Republic of Ireland.”²⁸³

291. Professor Simon Usherwood, Department of Politics and International Relations, The Open University²⁸⁴, likewise stressed the need:

“to provide a basis for a progressive rebuilding of the UK-EU relationship on the Protocol. Material actions will matter but can only create positive

277 Written evidence from Civil Society Alliance ([FUI0008](#)) and written evidence from the Centre for Cross Border Studies ([FUI0016](#))

278 Written evidence from Women’s Platform ([FUI0013](#))

279 [QQ 71–72](#)

280 [Q 55](#)

281 Written evidence from the Centre for Cross Border Studies ([FUI0016](#))

282 Written evidence from Professor Monica McWilliams and Emma DeSouza ([FUI0017](#))

283 Written evidence from the Co-operation Ireland ([FUI0014](#))

284 Written evidence submitted in a personal capacity.

effects in that relationship if they are accompanied by constructive rhetoric and an acknowledgement that reaching a steady state for Northern Ireland’s position in the post-withdrawal environment will take considerable time and patience.”²⁸⁵

292. Sorcha Eastwood MLA, representing the Alliance Party, said that the “key element” is trust:

“Ultimately, this is an issue between the UK Government and the EU. If trust is lacking between those two partners, that fundamentally needs to be addressed. It needs to be at the core and at the nub. I do not think any outcome will be arrived at that is in good faith or positive to all parties if there is not that trust at the heart of it.”²⁸⁶

293. The then Minister for Europe and North America, Rt Hon James Cleverly MP, acknowledged that “there are tensions and maybe even a degree of distrust, and we will have to find a way of working through that. ... I have always found that a good way of building trust is to help the counterparty to understand your motivations.”²⁸⁷

Relationship-building

294. Owen Reidy, Assistant General Secretary, Irish Congress of Trade Unions (ICTU) Northern Ireland, said: “the real problem is the political interpretation and connotations around how people perceive the Protocol in Northern Ireland, particularly how the two large traditional communities perceive the Protocol. Unless we can square that circle, I cannot see how ultimately we will make progress.”²⁸⁸ Sir Jeffrey Donaldson emphasised that “we need to get an outcome that both unionists and nationalists can support.”²⁸⁹

295. Matthew O’Toole MLA, representing the SDLP, regretted that Brexit had placed London and Dublin on opposite sides of a table, which “has had an impact on how parties and communities in Northern Ireland are able to interact with one another.” He said that the key to the peace process had been:

“relationship building, trust and people feeling that they owed one another something more than just shouting at them and stating a position. There does have to be trust, but a lot of that comes from acknowledging that there is a degree of interdependence and co-operation that we need.”²⁹⁰

296. Dr Sylvia de Mars, Dr Colin Murray and Dr Clare Rice stressed that:

“The UK Government’s relationship with the Irish Government also needs to be rebuilt. Political stability in Northern Ireland cannot be disentangled from UK-Ireland relations, and a fractious relationship between the UK and Irish governments makes it difficult to support Northern Ireland’s parties in the process of returning to power-sharing.”²⁹¹

285 Written evidence from Professor Simon Usherwood ([FUI0001](#))

286 [QQ 43, 45](#)

287 [Q 66](#)

288 [Q 19](#)

289 [Q 81](#)

290 [Q 38](#)

291 Written evidence from Dr Sylvia de Mars, Dr Colin Murray and Dr Clare Rice ([FUI0006](#))

297. Co-operation Ireland likewise emphasised the need to rebuild relationships between the UK and Ireland. They added:

“Compromises between the UK and EU’s position that respect both sides’ concerns can be found if actions are first taken to rebuild trust and if all parties expend intellectual effort thinking their way into the perspectives of the other parties to the negotiation. This must include developing an appreciation of the concerns both Northern Ireland unionists and the EU hold about precedents that may be set by any concessions made now regarding NI/UK/EU trading arrangements. It requires all parties to rethink their political approach to the Protocol and to work together to find a more stable platform for NI/ROI/UK/EU relations.”²⁹²

298. Co-operation Ireland concluded that critical to the relationship-building that underpinned the peace process was a growing level of formal and informal contact between officials, leading to a high level of trust and mutual understanding, “which encouraged and reinforced an appreciation of alternative perspectives”, but:

“It appears that at present there is no equivalent attempt to understand the very difficult issues that underlie the dispute over the Northern Ireland Protocol from the perspective of those who find themselves holding opposing views. The observation is too frequently made that in the current context trust and mutual understanding have diminished to a level not seen since the period before the [Belfast/Good Friday Agreement] negotiations.”²⁹³

Conclusions

299. **Our July 2021 introductory report concluded that “addressing the issues of conflicting identity that first Brexit, and then the Protocol, have brought to the fore seems for the moment an insoluble problem. That was also true of the political situation in Northern Ireland during the Troubles. But through a slow and painstaking process led by political leaders in Northern Ireland and successive governments in London and Dublin, the peace process took root and flourished, leading to the Belfast/Good Friday Agreement and the subsequent steps towards a power-sharing arrangement. This process took time, patience, dialogue, and most of all trust. The same is true in addressing the problems that Brexit and the Protocol present for Northern Ireland. There is therefore an urgent imperative for all sides to make concerted efforts to build trust by recommitting themselves to that process of dialogue, repairing the damage caused to relations across these islands during the past five years, in the interests, as the Protocol rightly acknowledges, of communities in both Ireland and Northern Ireland.”**²⁹⁴
300. **It is a matter of deep regret that, in the intervening twelve months, so little progress has been made towards achieving these aims. If anything, the situation has deteriorated still further. We therefore**

292 Written evidence from Co-operation Ireland ([FUI0014](#))

293 *Ibid.*

294 *Report from the Sub-Committee on the Protocol on Ireland/Northern Ireland: Introductory report*, paras 317

urge the UK and the EU, together with the political parties in Northern Ireland, Northern Ireland stakeholders and the Irish Government, to make a renewed commitment to work together to prioritise Northern Ireland’s interests, participate together in constructive engagement, rebuild trust, and engage in effective relationship-building.

301. **In the words of one of our witnesses, those who negotiated the Belfast/ Good Friday Agreement “were able to do so because of their ability to appreciate the perspectives of others and willingness to work together and take risks to achieve a common goal despite historic differences. Such a courageous approach is needed now.”²⁹⁵**

295 Written evidence from Co-operation Ireland ([FUI0014](#))

SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

Below is a list of all of the Committee's conclusions and recommendations (recommendations appear in italics).

The economic impact of the Protocol

Trade between Great Britain and Northern Ireland

1. The most significant negative economic impact of the Protocol has been on trade between Great Britain and Northern Ireland, upon which the Northern Ireland economy has historically been dependent. This impact has been felt in terms of increased bureaucracy, staff resources, cost, and delivery times, as well as restricting the ability of firms to respond flexibly to supply and demand. This has had some impact on product availability and cost for consumers, although we note evidence that a number of companies have been able to mitigate this impact, and are adapting to the new rules in place. (Paragraph 86)
2. The Protocol has created difficulties in relation to East-West trade across a number of sectors, including retail, manufacturing, logistics, aerospace, and agri-food, although they have not been felt consistently: some sectors such as retail have been affected more significantly, while some within the manufacturing sector have been able to take advantage of the offsetting effects of the Protocol. Furthermore, the nature of the Protocol has meant that the problems have largely arisen in relation to movement of goods from Great Britain to Northern Ireland rather than the other way round. Nevertheless, there are a number of consistent patterns. (Paragraph 87)
3. Businesses and sectors that are reliant on supply chains from Great Britain are disproportionately affected. While larger firms have proved somewhat able to adapt to the new requirements and absorb their costs, there has been a disproportionately burdensome impact on SMEs. It is also accepted across all sectors of the economy that the Government's unilateral continuation of the grace periods and derogations has significantly mitigated the full economic impact of the Protocol on East-West trade. The Government's Trader Support Service and Movement Assistance Scheme have also helped facilitate the movement of goods from Great Britain to Northern Ireland, albeit that this support is only in place on a temporary basis. (Paragraph 88)
4. In our July 2021 report, we reported on the lack of preparedness of businesses in Great Britain for the new arrangements under the Protocol, and widespread fears that businesses in Britain will withdraw from the Northern Ireland market. It is worrying that, in spite of some signs of improvement, these problems and fears largely persist. (Paragraph 89)
5. *We repeat our call for the Government to take urgent action to encourage businesses in Great Britain to continue to trade with Northern Ireland.* (Paragraph 89)
6. There is also widespread concern within the business community about the impact on Northern Ireland of increasing regulatory divergence between the UK and the EU. (Paragraph 90)
7. *We call on the Government and the EU to undertake a full impact assessment of the implications for Northern Ireland of regulatory divergence brought about by their legislative proposals, and for them to work together with business to formulate an*

effective process for managing such divergence in order to minimise its impact on Northern Ireland. (Paragraph 90)

North-South trade and trade with the EU

8. We note evidence of the beneficial impact of the Protocol in particular for Northern Ireland businesses trading with Ireland and the rest of the EU, including in the retail, logistics, manufacturing, pharmaceutical and agri-food sectors. A number of businesses have been able to take advantage of the Protocol in terms of product substitution (for instance providing locally sourced goods previously supplied by GB-based suppliers) or trade outside Northern Ireland (whether supplying goods to Great Britain, Ireland and/or the rest of the EU) because they enjoy a competitive advantage compared to businesses in Great Britain or Ireland whose access to each other's markets is now constrained. (Paragraph 104)
9. We also note the evidence we have received of the importance of the Protocol for sectors of the economy such as the dairy and meat processing industries that are dependent on complex cross-border supply chains on the island of Ireland, and the damage that would be caused to these sectors should access to the EU Single Market be lost. We take note of business fears that the benefits of the Protocol in terms of facilitating North-South trade are being taken for granted, and may be placed at risk by steps to mitigate the impact on East-West trade. (Paragraph 105)
10. Nevertheless, we acknowledge concerns that these benefits have arisen due to trade diversion rather than growth, and that the overall impact on the economy therefore remains uncertain. We also take note of concerns that they are evidence of the 'feast or famine' impact of the Protocol, whereby businesses able to take advantage of the Protocol benefit, while those dependent on trade with Great Britain lose out. (Paragraph 106)
11. We also acknowledge concerns over the impact of Brexit upon cross-border service provision on the island of Ireland. (Paragraph 107)
12. *We urge the UK and the EU (working with the Northern Ireland Executive, as and when it is functioning fully, and the Irish Government) to work collaboratively to provide the conditions for cross-border service provision on the island of Ireland.* (Paragraph 107)

Mitigations and solutions

13. We note the proposed mitigations and solutions put forward by business representatives and other stakeholders to ease the practical impact of the Protocol, many of which are unchanged since the Committee's July 2021 introductory report. We note, without prejudice to the views of individual members on the Protocol and on the UK and EU positions, and recalling the position set out in paragraph 36 of this report, that several of these recommendations are reflected in the proposals brought forward by the Government and by the EU. (Paragraph 172)
14. Businesses have stressed the key importance that the default position under the Protocol, whereby all goods moving from Great Britain to Northern Ireland are considered at risk of moving into the EU Single Market unless deemed otherwise, should be reversed. (Paragraph 173)

15. *We accept this criticism, and urge the two sides through the Joint Committee to undertake a further review setting out realistic criteria for determining risk under Article 5 of the Protocol. (Paragraph 173)*
16. We also repeat our concern that the rules on notice for food supply, supplementary declarations and import controls, while suitable for the shipment of containers of goods from across the globe, appear wholly unsuited to the regional supply chains used by businesses in Great Britain and Northern Ireland, many of whom are SMEs with limited resources, and where the risk of goods moving into the EU Single Market is low. The EU has argued that its proposals will ease the amount of paperwork involved considerably, which the Government disputes. These claims need to be tested against the views and experience of the companies that would need to implement any revised systems, and we will seek further feedback from them in the autumn. (Paragraph 174)
17. The UK has proposed a system of green and red lanes or channels: green for goods destined for Northern Ireland only, and red for goods moving into the EU Single Market. The EU also proposes an express lane for goods moving to Northern Ireland only. This ‘lane’ approach, which in the UK case requires changes to the Protocol itself, and in the case of the EU requires a lighter touch application of existing Protocol articles, has widespread support in the business community, but there is frustration that the two sides have not been able to agree a common position or understanding on its operation. (Paragraph 175)
18. *We call on the UK and the EU swiftly to reach agreement on how such a mechanism would work in practice. In that context, we stress the importance of a robust and mutually acceptable approach to real-time data sharing, monitoring and enforcement. (Paragraph 175)*
19. We also note the widespread calls for such a system to be supported by an enhanced trusted trader scheme with audited supply chains and facilitated movements of known products. Such a system would have significant benefits for the free flow of goods, although we note concerns that, depending on its scale, it could benefit larger companies at the expense of SMEs. Both the UK and the EU accept the need for an enhanced trusted trader scheme in principle, but disagree over how it should work in practice. (Paragraph 176)
20. *We urge the two sides to work together with business to reach agreement on its scale and application, and to ensure that it covers as wide a range of businesses as possible. (Paragraph 176)*
21. We acknowledge the intention behind the Government’s proposals for a dual regulatory regime. We note that some witnesses welcomed the concept. However, there is widespread concern among business about its practical feasibility and implications for complex cross-border supply chains, in particular in the context of growing regulatory divergence between the UK and the EU. There are also concerns that such a regime may not suit all sectors of the economy. (Paragraph 177)
22. *The Government urgently needs to explain how its proposals will ensure in practice that, as well as facilitating East-West trade, they do not imperil North-South trade, and to provide reassurance that businesses will not be forced to choose between trade within the UK and trade with Ireland and the EU. In that context, we*

urge the Government to engage with and address the specific concerns of business representatives over the feasibility of its proposals. (Paragraph 177)

23. We acknowledge widespread support for the continuation of the various grace periods and derogations, amidst warnings of the serious economic impact should they come to an end without being replaced. In that context, we note that the grace periods have been unilaterally extended by the UK, and there are concerns that the EU's proposals for changes to the Protocol appear to be based on the assumption that the grace periods will come to an end, amplified by its decision to continue the infringement procedure against the UK in relation to the grace periods begun in March 2021 but subsequently put on hold. (Paragraph 178)
24. *In view of business concerns over the negative impact should they come to an end without being replaced, we urge both sides to agree to the permanent continuation of the grace periods and derogations. (Paragraph 178)*
25. We reiterate the conclusion of our July 2021 introductory report, that one of the most significant single measures to alleviate the regulatory and administrative burden of the Protocol would be a UK-EU SPS/veterinary agreement. It is regrettable that there has been no compromise in the intervening period between the EU's preference for a dynamic alignment model, and the UK's preference for an equivalence framework. (Paragraph 179)
26. *We again urge both sides to work towards a common position on an SPS agreement designed with the specific circumstances of Northern Ireland in mind. (Paragraph 179)*
27. Both the UK and the EU envisage specific labelling requirements in relation to goods in circulation in Northern Ireland. We note the concern of business representatives around the feasibility of a system of differential or dual labelling for goods in a market as small as Northern Ireland. (Paragraph 180)
28. *We stress the need for both sides to identify a mutually agreed, practical solution to this issue. (Paragraph 180)*
29. We also underline the importance of resolution of outstanding issues and difficulties regarding the application of Tariff Rate Quotas in Northern Ireland, and in particular to address concerns that Northern Ireland businesses are placed at a competitive disadvantage. (Paragraph 181)
30. Although we have taken limited evidence on the Government's proposals in relation to VAT and State aid, business urgently needs clarity on the application of the Protocol in these areas. We will scrutinise these important issues further in the autumn. (Paragraph 182)
31. While we note the potential for technological solutions and mitigations in relation to many of these issues, we also acknowledge that they cannot resolve all of the issues in relation to the movement of goods, at least in the short term. (Paragraph 183)
32. *Nevertheless, we call on both sides to work with business to explore what solutions technological developments can provide. (Paragraph 183)*

Business support and engagement

33. We welcome the engagement by both the UK and the EU with businesses affected by the Protocol. However, business representatives have stressed that

there is an urgent need for the UK and the EU to engage jointly with business representatives, to ensure they send and receive a consistent message, and to prevent mutual misunderstanding or misinterpretation. (Paragraph 193)

34. *We urge the UK and the EU to provide for such dialogue by fulfilling their commitment, first given in February 2021, to set up a joint consultative business group.* (Paragraph 193)
35. We welcome the support and assistance provided by the UK's Trader Support Service and Movement Assistance Scheme. However, there are concerns over the compatibility of the Trader Support Service's functionality with some existing business models. Furthermore, both are temporary measures, and there are significant concerns around the impact on businesses of the discontinuation of this support. We also note that the Government's promised tariff reimbursement scheme is now significantly overdue. (Paragraph 194)
36. *We urge the Government to make permanent the Trader Support Service and Movement Assistance Scheme and to ensure that as many businesses as possible are able to benefit from this support. We also call on the Government to implement the promised tariff reimbursement scheme without delay.* (Paragraph 194)

Economic impact of political uncertainty

37. Business representatives have repeatedly stressed the damaging economic impact of continued political uncertainty over the Protocol. Notwithstanding their acknowledgement of the economically beneficial impact of the continuation of the grace periods, they have also set out serious concerns over the economic consequences of unilateral action. Without prejudice to the views of individual members on the Northern Ireland Protocol Bill or the EU's response, we stress that a mutually agreed solution is the optimal outcome, and that the continued lack of agreement between the two sides is having an economically damaging effect. (Paragraph 204)
38. *We therefore call on the UK and the EU urgently at a political and technical level to resume dialogue, in a spirit of flexibility and proportionality, and including full engagement and consultation with business, with a view to reaching such agreement.* (Paragraph 204)

The provision of medicines to Northern Ireland under the Protocol

39. Given the importance of these issues for the people of Northern Ireland, we welcome the steps that have been taken to alleviate problems with the supply of medicines to Northern Ireland through the EU's legislation that came into force in April 2022. Nevertheless, we note that it would have been preferable for these solutions to have been taken forward on the basis of mutual agreement rather than unilateral action by the EU. In that context, we note the concerns of the Government and pharmaceutical industry representatives that a number of issues remain outstanding, notably in relation to centrally authorised products, the application of the Falsified Medicines Directive, and the supply of medical devices. (Paragraph 217)
40. *We urge the UK and the EU to work together in constructive dialogue, and in full consultation with industry representatives, to identify sustainable solutions to these issues in the months ahead.* (Paragraph 217)

Conclusion—the need for a reset

41. Our July 2021 introductory report concluded that “addressing the issues of conflicting identity that first Brexit, and then the Protocol, have brought to the fore seems for the moment an insoluble problem. That was also true of the political situation in Northern Ireland during the Troubles. But through a slow and painstaking process led by political leaders in Northern Ireland and successive governments in London and Dublin, the peace process took root and flourished, leading to the Belfast/Good Friday Agreement and the subsequent steps towards a power-sharing arrangement. This process took time, patience, dialogue, and most of all trust. The same is true in addressing the problems that Brexit and the Protocol present for Northern Ireland. There is therefore an urgent imperative for all sides to make concerted efforts to build trust by recommitting themselves to that process of dialogue, repairing the damage caused to relations across these islands during the past five years, in the interests, as the Protocol rightly acknowledges, of communities in both Ireland and Northern Ireland.” (Paragraph 299)
42. It is a matter of deep regret that, in the intervening twelve months, so little progress has been made towards achieving these aims. If anything, the situation has deteriorated still further. We therefore urge the UK and the EU, together with the political parties in Northern Ireland, Northern Ireland stakeholders and the Irish Government, to make a renewed commitment to work together to prioritise Northern Ireland’s interests, participate together in constructive engagement, rebuild trust, and engage in effective relationship-building. (Paragraph 300)
43. In the words of one of our witnesses, those who negotiated the Belfast/Good Friday Agreement “were able to do so because of their ability to appreciate the perspectives of others and willingness to work together and take risks to achieve a common goal despite historic differences. Such a courageous approach is needed now.” (Paragraph 301)

APPENDIX 1: LIST OF MEMBERS AND DECLARATIONS OF INTEREST

Members

Lord Dodds of Duncairn
 Lord Empey
 Lord Godson
 Baroness Goudie
 Lord Hain
 Lord Hannan of Kingsclere
 Lord Jay of Ewelme (Chair)
 Baroness O'Loan
 Baroness Ritchie of Downpatrick
 Lord Thomas of Gresford

Declarations of interest

Lord Dodds of Duncairn
No relevant interests to declare

Lord Empey
Dr Esmond Birnie was my special advisor when I was Minister at the Department of Employment and Learning in Belfast 2007–2010

Lord Godson
Director, Policy Exchange

Baroness Goudie
No relevant interests to declare

Lord Hain
Secretary of State for Northern Ireland May 2005 - June 2007

Lord Hannan of Kingsclere
No relevant interests to declare

Lord Jay of Ewelme (Chair)
Chairman, Advisory Council, European Policy Forum
Member, European and International Analysts Group

Baroness O'Loan
No relevant interests to declare

Baroness Ritchie of Downpatrick
Economic Affairs sub-committee of the British/Irish Parliamentary Assembly
Honorary Professor of Practice, Department of Engagement, Queen's University Belfast
Member of the Advisory Board of PeopleHawk - online digital platform for human resources based in Belfast with international connections
Member of the Board, Co-operation Ireland (non-remunerated)

Lord Thomas of Gresford
No relevant interests to declare

The following Members of the European Affairs Committee attended the meeting at which the report was approved:

Baroness Couttie
Lord Faulkner of Worcester
Lord Foulkes of Cumnock
Lord Hannay of Chiswick
Lord Jay of Ewelme
The Earl of Kinnoull (Chair)
Lord Lamont of Lerwick
Lord Liddle
Lord Purvis of Tweed
Baroness Scott of Needham Market
Viscount Trenchard
Lord Tugendhat
Lord Wood of Anfield

During consideration of the report the following Members declared an interest:

Baroness Couttie
Non-Executive Director, Mitie
Deputy Chairman, Guernsey Financial Services Commission
Lord Hannay of Chiswick
Chair, European and International Analysts Group
Member of the Advisory Board, Centre for European Reform
Member, European Leadership Network

A full list of Members' interests can be found in the Register of Lords' Interests: <https://members.parliament.uk/members/lords/interests/register-of-lords-interests/>

APPENDIX 2: LIST OF WITNESSES

Evidence is published online at <https://committees.parliament.uk/work/6568/followup-inquiry-on-the-impact-of-the-protocol-on-irelandnorthern-ireland/publications/> and available for inspection at the Parliamentary Archives (0207 219 3074).

Evidence received by the Committee is listed in chronological order of oral evidence session and in alphabetical order. The witness marked with ** gave both oral and written evidence. Those marked with * gave oral evidence and did not submit any written evidence. All other witnesses submitted written evidence only.

Oral evidence in chronological order

*	Sarah Hards, Sales Director, AM Logistics	QQ 1-9
*	Conall Donnelly, Executive Director, Northern Ireland Meat Exporters Association	QQ 1-9
*	Dr Esmond Birnie	QQ 10-21
*	Stephen Kelly, CEO, Manufacturing NI	QQ 10-21
*	Owen Reidy, Assistant General Secretary, Irish Congress of Trade Unions Northern Ireland	QQ 10-21
*	Sacha Berendji, Managing Director, Marks and Spencer Ireland and Northern Ireland	QQ 22-31
*	Anne Randles, Director of Corporate Affairs, Ornu	QQ 22-31
*	Andrew Opie, Director of Food and Sustainability, British Retail Consortium	QQ 22-31
*	Matthew O'Toole MLA, Social Democratic and Labour Party (SDLP)	QQ 32-39
*	Sorcha Eastwood MLA, Alliance Party	QQ 40-48
*	Declan Kearney MLA, Sinn Féin	QQ 49-56
**	Rt Hon James Cleverly MP, Minister of State (Minister for Europe and North America), Foreign, Commonwealth and Development Office	QQ 57-70
*	Doug Beattie MLA, Leader, Ulster Unionist Party	QQ 71-79
*	Sir Jeffrey Donaldson MP, Leader, Democratic Unionist Party (DUP)	QQ 80-86

Alphabetical list of all witnesses

	ADS	FUI0010
*	Doug Beattie MLA, Leader, Ulster Unionist Party (QQ 71-79)	
*	Sacha Berendji, Managing Director, Marks and Spencer Ireland and Northern Ireland (QQ 22-31)	
*	Dr Esmond Birnie (QQ 10-21)	
	British Irish Chamber of Commerce	FUI0012

	Centre for Cross Border Studies	FUI0016
	Civil Society Alliance	FUI0008
**	Rt Hon James Cleverly MP, Minister of State (Minister for Europe and North America), Foreign, Commonwealth and Development Office (QQ 57-70)	FUI0026
	Committee on the Administration of Justice	FUI0009
	Co-operation Ireland	FUI0014
	Dr Sylvia de Mars, Dr Colin Murray and Dr Clare Rice	FUI0006
*	Sir Jeffrey Donaldson MP, Leader, Democratic Unionist Party (DUP) (QQ 80-86)	
*	Conall Donnelly, Executive Director, Northern Ireland Meat Exporters Association (QQ 1-9)	
*	Sorcha Eastwood MLA, Alliance Party (QQ 40-48)	
	Ethical Medicines Industry Group (EMIG)	FUI0005
*	Sarah Hards, Sales Director, AM Logistics (QQ 1-9)	
	Victoria Hewson, Institute of Economic Affairs	FUI0015
	Human Rights Consortium	FUI0007
	Ibec	FUI0011
*	Declan Kearney MLA, Sinn Féin (QQ 49-56)	
**	Stephen Kelly, CEO, Manufacturing NI (QQ 10-21)	
	Professor Monica McWilliams and Emma DeSouza	FUI0017
	Dr Austen Morgan	FUI0018
	National Pharmacy Association (NPA)	FUI0022
	Northern Ireland Business Brexit Working Group	FUI0025
	Northern Ireland Human Rights Commission (NIHRC) and Equality Commission for Northern Ireland (ECNI)	FUI0023
	Northern Ireland Food and Drink Association	FUI0020
	HE Adrian O'Neill, Ambassador of Ireland to the United Kingdom	FUI0021
*	Andrew Opie, Director of Food and Sustainability, British Retail Consortium (QQ 22-31)	
*	Matthew O'Toole MLA, Social Democratic and Labour Party (SDLP) (QQ 32-39)	
	PAGB	FUI0004
*	Anne Randles, Director of Corporate Affairs, Ornu (QQ 22-31)	

* Owen Reidy, Assistant General Secretary, Irish
Congress of Trade Unions Northern Ireland ([QQ 10-
21](#))

Teva UK Limited [FUI0003](#)

Ulster Farmers' Union [FUI0019](#)

Professor Simon Usherwood [FUI0001](#)

Walgreens Boots Alliance [FUI0024](#)

Women's Platform [FUI0013](#)

APPENDIX 3: CALL FOR EVIDENCE

The House of Lords European Affairs Sub-Committee on the Protocol on Ireland/Northern Ireland was appointed in April 2021, to consider all matters related to the Protocol, including scrutinising EU legislation applying to Northern Ireland under the Protocol, the Protocol's overall socio-economic and political impact on Northern Ireland, and to engage in inter-parliamentary dialogue, notably with the Northern Ireland Assembly. In July 2021, the Committee published an introductory report into the socio-economic and political impact of the Protocol in its first seven months of operation. The Committee is undertaking a follow-up inquiry into developments in relation to the Protocol since July 2021, including the Northern Ireland Assembly elections on 5 May 2022 and subsequent reports that the UK Government is considering bringing forward domestic legislation in relation to the Protocol. The Committee began taking oral evidence in March before the commencement of the Assembly election campaign, and will continue to do so during May. The Committee also welcomes submissions of written evidence via this Call for Evidence.

If you wish to contribute your experience and expertise to the inquiry, please respond to the questions below. There is no obligation to answer every question.

The deadline for submissions is 9am on Monday 6 June 2022.

Diversity comes in many forms, and hearing from a range of different perspectives means that Committees are better informed and can more effectively scrutinise public policy and legislation. Committees can undertake their role most effectively when they hear from a wide range of individuals, sectors or groups in society affected by a particular policy or piece of legislation. We encourage anyone with experience or expertise of the issues under investigation to share their views with the committee, with the full knowledge that their views have value and are welcome.

Questions

Overview

- (1) What is your assessment of the overall socio-economic and political impact of the Protocol on Ireland/Northern Ireland since the publication of this Committee's introductory report in July 2021? What lessons can be drawn from the Protocol's operation since it came into force?
- (2) How can the current political impasse between the UK and the EU over the Protocol be resolved?

The practical impact of the Protocol

- (3) What would you identify as the main practical issues that have arisen in relation to the Protocol's operation, including both for GB and Northern Ireland-based businesses? To what extent have these issues been ameliorated or exacerbated over the past year?
- (4) Which aspects of the Protocol's operation are creating most difficulties? Which practical modifications to the operation of the Protocol would make it operate more effectively?
- (5) What impact has the Protocol, and UK withdrawal more broadly, had on trade flows between Great Britain, Northern Ireland and Ireland,

and between Northern Ireland and the EU? What trade data is available to illustrate these impacts?

- (6) What is the impact of regulatory divergence between the UK (in respect of Great Britain) and the EU upon the operation of the Protocol and the ability to identify solutions to the current problems?

Benefits and potential opportunities

- (7) What, if any, benefits has the Protocol had for Northern Ireland, and what, if any, potential opportunities might it provide for?

Alternatives to the Protocol

- (8) Is there a viable alternative to the Protocol? To what extent would such alternatives address the priorities and concerns of each side?

Social and political attitudes to the Protocol

- (9) How would you characterise the attitudes of the communities in Northern Ireland in relation to the Protocol? Are these attitudes evolving, and what impact is this having on inter-community relations?
- (10) What impact has the Protocol had on continued political instability and uncertainty in Northern Ireland, and vice versa? In the context of the outcome of the May 2022 Northern Ireland Assembly elections, how can these political disagreements over the Protocol be overcome?
- (11) How can concerns about the perceived democratic deficit at the heart of the Protocol, in view of the continued dynamic application of significant areas of EU law to Northern Ireland in the absence of UK participation in the EU institutions, be addressed?

The UK and EU approach

- (12) What is your assessment of the UK Government's approach to and management of the impact of the Protocol since the publication of its Command Paper in July 2021?
- (13) What would be the political, legal and socio-economic impact if the UK Government a) brings forward domestic legislation in relation to the Protocol, and/or b) uses the safeguarding mechanism contained in Article 16 of the Protocol?
- (14) What is your assessment of the EU's approach to and management of the impact of the Protocol over the past year, including the publication of its four 'non-papers' in October 2021? Has it done enough to take account of concerns over the Protocol?
- (15) Are the EU's proposals sufficient to mitigate the impact of the Protocol on movement of goods between Great Britain and Northern Ireland?
- (16) Do you see any grounds for compromise between the UK and EU's positions that would respect both sides' concerns?