

GOVERNMENT RESPONSE TO THE HOUSE OF LORDS EUROPEAN UNION SELECT
COMMITTEE'S 9TH REPORT OF SESSION 2019-21 - 'THE PROTOCOL ON IRELAND /
NORTHERN IRELAND'

- 1. We note that the obligation to ensure no diminution of rights extends the EU Directives listed in Annex 1 to the Protocol, as amended or replaced. Domestic legislation implementing these responsibilities will need to be amended as the Directives evolve. (Paragraph 32)**

In addition to the general Article 2 commitment that there will be no diminution of the rights, safeguards and equality of opportunity protections covered by Chapter 6 of the Belfast (Good Friday) Agreement, there are enhanced safeguards in respect of rights underpinned by the specific pieces of EU legislation listed in Annex 1.

Those pieces of legislation are designed to tackle discrimination on the grounds of protected characteristics and to promote equal treatment. They set minimum standards of protection.

In accordance with Article 13(3) of the Protocol, we have committed to ensuring that, if the EU decides to amend or replace the substantive rights in the listed directives to improve the minimum levels of protection available, corresponding substantive rights protections in Northern Ireland will also develop to take account of this.

- 2. We recommend that the Government publishes at the start and conclusion of each new trade negotiation, beginning with the UK-US trade negotiations, its assessment of any agreement's likely impact on and application to Northern Ireland. (Paragraph 51)**

We will negotiate and deliver trade deals on behalf of the whole United Kingdom. International trade will benefit Northern Ireland exporters, whose goods will enjoy the preferential access we negotiate with trading partners around the world, as well as Northern Ireland importers and consumers, who will enjoy access to wider consumer choice.

- 3. It is incumbent on the Government to explain how the new processes required under the Protocol can be undertaken, in the absence of new infrastructure. In particular, it needs to clarify whether and how existing infrastructure at ports will be used. (Paragraph 87)**

The Command Paper sets out our approach to implementing the Protocol and makes clear that "although there will be some limited additional process on goods arriving in Northern Ireland, this will be conducted taking account of all flexibilities and discretion, and we will make full use of the concept of de-dramatisation. There will be no new physical customs infrastructure and we see no need to build any. We will however expand some existing entry points for agrifood goods to provide for proportionate additional controls".

We have submitted applications to the EU for these entry points, and are taking forward engagement with the EU on those applications.

We will continue to engage with operators and businesses to support preparations.

- 4. The Government has suggested that regulatory checks could take place through market surveillance authorities at businesses premises and in the market on the basis of risk assessment, rather than at ports. The Government needs urgently to detail what this will involve. (Paragraph 88)**

We are continuing to engage with stakeholders on the operation of these processes, with further guidance to be set out in due course.

- 5. The Government needs to set out with urgency the detailed steps that it will take to ensure that the necessary [sanitary and phytosanitary] infrastructure is in place before 1 January 2021. (Paragraph 89)**

More detail is needed on the statement that “further designations may also be required at other existing sites”. The Government needs to clarify if the Chancellor of the Duchy of Lancaster’s suggestion that some checks could be conducted during the sea crossing from Great Britain to Northern Ireland remains a live proposal. The Government should also explain what it means when it states that it will “actively seek to simplify and minimise electronic documentary requirements” for agri-food. (Paragraph 90)

The Command Paper sets out that we will “expand some existing entry points for agrifood goods to provide for proportionate additional controls”. We have submitted applications to the EU for these entry points, and are taking forward engagement with the EU on those applications. We will continue to engage with operators and businesses to support preparations.

We are continuing to work closely with the Northern Ireland Executive on proposals to minimise requirements on the movement of food and agricultural products, in line with the approach that we set out in our Command Paper.

We have committed that the UK Government will also be engaging with businesses and other stakeholders on further Government support that could be provided to address the new requirements on sanitary and phytosanitary (SPS) goods moving from Great Britain to Northern Ireland. Further information on any support will be provided in light of that engagement.

- 6. The Government must therefore set out how it will support businesses in Great Britain and Northern Ireland in adapting to the Protocol, including providing information on and explanation of its provisions, and providing opportunities to test the new requirements before they become operational. (Paragraph 92)**

We have now published further guidance for business, including details of our extensive Trader Support Service to assist businesses engaging in new digital processes. Details are available online at <https://www.gov.uk/guidance/trader-support-service>.

- 7. The Government states that it will seek to streamline and simplify customs processes, but provides little detail on how it will do so. We call on the Government in the Joint Committee to investigate the potential for bespoke forms, and for the completion of single forms per load rather than for each individual consignment, thereby minimising the checks required. (Paragraph 115)**

We are looking actively at all options to streamline and simplify requirements under the Protocol to the maximum possible extent. Our guidance for businesses sets out more detail online at

<https://www.gov.uk/guidance/moving-goods-into-out-of-or-through-northern-ireland-from-1-january-2021>.

- 8. We call on the Government to explain the impact of Article 5(3) and Annex 2 of the Protocol on vessels registered both in Great Britain and in Northern Ireland and operating in UK territorial waters around Northern Ireland. The Joint Committee should, in implementing these provisions, take all the measures necessary to ensure the continued viability of Northern Ireland's fishing industry. (Paragraph 123)**

The Government is committed to supporting Northern Ireland's fishing industry.

The Protocol sets out some further negotiating tasks for the Withdrawal Agreement Joint Committee (WAJC), including on Article 5(3). This includes the treatment of UK flagged vessels registered in Northern Ireland and landing into Northern Ireland. The outcome is therefore subject to ongoing discussions there.

Information for UK flagged vessels registered in Great Britain and landing into Northern Ireland is set out in our business guidance available on GOV.UK.

- 9. We invite the Government to confirm whether it will reimburse businesses for intermediate processes incurred in paying customs duties, and to explain how it will support businesses with small profit margins, for whom the costs of paying and seeking reimbursement for customs duties may prove prohibitive. (Paragraph 127)**

We invite the Government to explain the impact of the Protocol's State aid provisions on its ability to reimburse duties and waive customs debt. (Paragraph 128)

Our position is clear: there should be no tariffs on internal UK trade because, as the Protocol acknowledges, the UK is a single customs territory. In any case, full use will be made of waivers and reimbursements to minimise the impact on business in any scenario. The Protocol sets out that there must be a UK-EU Joint Committee decision on the application of tariffs to 'at risk' goods moving into Northern Ireland, and that decision will inform the final regime that applies.

10. We therefore regret that the Government’s technical advisory group on alternative arrangements appears to have gone into abeyance since the revised Protocol was agreed. We invite the Government to provide an update on the work of the group, and in particular on the potential for technological solutions to reduce the friction arising from customs checks under the Protocol. (Paragraph 135)

The technical advisory group on alternative arrangements is no longer in operation. Its last meeting was on 18 September. It was established following the 2018 Withdrawal Agreement which made references to “alternative arrangements” in relation to replacing the backstop. Following the change of Government in 2019, a new Withdrawal Agreement was concluded with the EU in October 2019. This abolished the backstop, obviating the need for alternative arrangements.

The Government has established a Business Engagement Forum, which is proving an important channel for engagement with Northern Ireland businesses on our approach. It has met nine times in the period since May 2020 and provides important feedback as we take forward the implementation of the Protocol.

11. [Regarding NI to GB international obligations] - We invite the Government to set out the nature, scale and location of such checks and controls. (Paragraph 148)

The UK Government will guarantee unfettered access for Northern Ireland’s businesses (including businesses headquartered in Great Britain with operations in Northern Ireland) to the rest of the UK internal market from 1 January 2021, ensuring that trade from Northern Ireland to Great Britain continues for those businesses as it does now. There are extremely limited exceptions which apply only to goods falling within the very limited number of procedures relating to specific international obligations binding on the UK and the EU - for example, obligations on the movement of endangered species. The vast majority of movements will be entirely unaffected. This is detailed on GOV.UK and further specific guidance will follow.

12. [On unfettered access] - We urge the Government to intensify its engagement and consultation with Northern Ireland stakeholders. (Paragraph 173)

We have intensive engagement with Northern Ireland businesses including on our approach to unfettered access, and in particular how to deliver qualifying status for Northern Ireland businesses. That has included dedicated sessions of the Business Engagement Forum, that have been critical in informing our approach. We are also working closely with the Northern Ireland Executive.

13. We invite the Government to explain the impact of the Protocol upon Northern Ireland’s participation in UK-wide common frameworks being developed with the Devolved Administrations, which the Government has stressed are necessary to ensure the effective functioning of the UK internal market. (Paragraph 176)

The Committee will be aware that the Government is currently consulting on proposals to maintain and strengthen the UK internal market. Common Frameworks will nonetheless continue to operate in a number of areas that are within the ambit of the Protocol. Of the currently active frameworks, all but one have a Northern Ireland component. Work is ongoing to consider the impact of the Protocol on individual common frameworks areas.

14. We therefore call on the Government to provide detailed explanation of what the VAT provisions will mean for businesses based in or trading with Northern Ireland. (paragraph 185)

HMRC will continue to be responsible for the operation and collection of the revenues, which will not be passed on to the EU.

The Protocol notes that implementation of VAT and excise rules will take into account Northern Ireland's integral place in the UK's internal market.

The Government is confident that we can use the flexibilities available, in the context of the wider commitments to Northern Ireland's place in the UK internal market, to implement these aspects of the Protocol in a way which minimises new costs and burdens on businesses in Northern Ireland. Further guidance will be issued in due course.

15. We therefore invite the Government to clarify the implications of Article 10 for the UK's independent State aid regime, and the extent to which it will require the UK to adopt a model of support not exceeding the EU's approach. (Paragraph 195)

We welcome the fact that Annex 5 to the Protocol allows the UK to continue to designate Northern Ireland as an Assisted Area in line with EU law, thereby allowing it to continue to benefit from regional aid. We invite the Government to confirm that it will take up this option. (Paragraph 202)

The UK's domestic subsidy control regime will take due account of Article 10 of the Protocol. The Government will set out further details in due course.

16. We note that the provisions of Article 10 do not cover services, and we invite the Government to provide clarity on the operation of the future State aid regime for services in Northern Ireland. (Paragraph 204)

In the Command Paper we made clear that EU state aid rules will apply only in those cases where it is relevant to trade between Northern Ireland and the EU, as is set out in the Protocol. Northern Ireland will therefore enjoy new flexibilities with respect to support for its service industries. The Government will provide further information on how these provisions should be operated by public authorities before the end of the transition period.

17. We urge the Government to set out the steps it will take to mitigate any negative consequences of its post-Brexit immigration policy for Northern Ireland businesses. (Paragraph 220)

Immigration policy is led by the Home Office, who on 13 July 2020 published details on the UK's points-based immigration system which will come into effect from 1 January 2021. Immigration will remain a reserved matter and the Government is clear that the future immigration system must work for every nation, region and community in the UK, including Northern Ireland. Taking back control of our borders will benefit all nations of the UK.

The Government has commissioned the independent Migration Advisory Committee (MAC) to compile a shortage occupation list that reflects the expanded skills threshold in the points-based system. The MAC will consider whether there are occupations that need to be included on the separate Northern Irish, Scottish and Welsh lists, as well as the main UK-wide list. For each of its commissions, the MAC has run engagement events in all four nations, and dedicated a chapter in its most recent report to looking at the evidence of impacts in the regions.

The Government also operates official-led monthly devolved administration meetings, to provide regular updates and to ensure we are responding to specific needs across the nations of the United Kingdom.

18. We invite the Government to explain in what areas of exclusive EU competence such bilateral agreements [UK - IE] may be necessary or desirable. (Paragraph 222)

In accordance with Article 11 of the Protocol (*Other areas of North-South cooperation*), the Government notes its responsibility to implement and apply the Protocol so as to maintain the necessary conditions for continued North-South cooperation. The Government continues to work closely with the Irish Government on all matters relating to North-South cooperation.

19. We recommend that the Government establish a clear process to share any information it receives on planned and adopted EU law within the scope of the Protocol with the Northern Ireland Executive, Parliament, and, where relevant, the other devolved administrations. (Paragraph 232)

Article 15 of the Protocol establishes the Joint Consultative Working Group (JCWG), which will act as a forum for the exchange information about planned, ongoing and final relevant implementation measures in relation to the Union acts listed in the Annexes to this Protocol; and as a forum for the EU to inform the UK about planned Union acts within the scope of the Protocol.

20. We invite the Government to set out the likely scale of the regulations required before 1 January 2021 to give effect to the obligations contained in the Protocol that it intends a) to make alone, b) to invite the Northern Ireland Executive (or other devolved authorities) to make, and c) to make jointly with the Northern Ireland Executive (or other devolved authorities). We also invite the Government to set out its criteria for deciding which of these approaches will be adopted. In particular, the Government should explain the rationale for making regulations jointly with the Northern Ireland Executive (and other devolved authorities), and the principles

underpinning the emerging concept of shared competence in the context of the Protocol. (Paragraph 242)

Our objective is of course to ensure that the statute book is in working order at the end of the Transition Period and that the appropriate regulatory frameworks are in place to meet our obligations under the Protocol. We are working closely with the Northern Ireland Executive in this regard, given the devolved nature of some of these areas.

- 21. We call on the Government to set out the process by which it will consult and notify the Northern Ireland Executive and other devolved authorities on its proposed approach to making domestic regulations required under the Protocol. We also invite the Government to set out what action it will take if Northern Ireland Executive Ministers (or other devolved authorities) are unwilling or unable to make regulations necessary to implement the Protocol. (Paragraph 243)**

We are working closely with the Northern Ireland Executive as we bring forward legislation to give effect to our obligations under the Protocol, with regular engagement at official level and Ministerial level where appropriate. We have been clear that we will meet our obligations under the Protocol, and work on our legislative programme is proceeding at pace to meet this commitment.

- 22. We note concern that the Agriculture Bill, the Environment Bill and the Fisheries Bill will lead to regulatory divergence between Northern Ireland and the rest of the UK in these areas. We therefore call on the Government to explain the interaction between these bills and the Protocol, and to set out whether, and if so how, these bills are compliant with the terms of the Protocol. We also invite the Government to confirm whether or not it anticipates issues of compliance with the Protocol arising in relation to any other current or planned primary legislation. (Paragraph 245)**

The Government is committed to implementing the Protocol in accordance with its international obligations and in line with the approach set out in the Command Paper. The Agriculture, Environment and Fisheries Bills contain provisions that extend certain powers to the Environment Secretary to make regulations UK-wide (with the consent of the devolved administrations in devolved areas), or for DAERA in Northern Ireland for specific areas. These regulations could interact with Annex 2 of the Northern Ireland Protocol. More broadly, the Bills help to ensure consistency in a number of key areas – for example, the Fisheries Bill introduces a set of shared fisheries objectives that all four administrations will work towards delivering and promoting coherent fisheries policy making across the administrations. The Government does not anticipate any issues of compliance with the Protocol in relation to these bills.

- 23. (Right to be present) We call on the Government to confirm whether the EU is able to exercise such rights only within Northern Ireland, or also within Great Britain in relation to measures taken under the Protocol. (Paragraph 251)**

Discussions continue with the EU on the proportionate operation of Article 12. Further details

will be set out in due course.

- 24. We invite the Government to clarify how the Specialised Committee will engage with these bodies (Northern Ireland Executive (which will be present at its meetings), the North-South Ministerial Council, the North-South Implementation bodies set up under the Belfast/Good Friday Agreement, and the Equality and Human Rights Commissions operating in Ireland and Northern Ireland). (Paragraph 281)**

Some of these provisions are set out in the Protocol itself: under Article 14(c) of the Protocol NIHRC, ECNI and the Joint Committee of representatives of the Human Rights Commissions of Ireland and Northern Ireland can bring any matter of relevance to Article 2 of the Protocol to the attention of the Ireland/Northern Ireland Specialised Committee (INISC). The Northern Ireland Executive and Irish Government have also been represented at both meetings of the INISC thus far. Other aspects of engagement will be considered as the work of the Committee progresses.

- 25. We call on the Government to set out more details of how the Working Group will operate, including its schedule of meetings, how it will engage with stakeholders, and how transparency and visibility of its work will be ensured, as well as the steps the Government proposes to take to ensure that the Working Group's full potential is realised. (Paragraph 287)**

Article 15 of the Protocol sets out that the JCWG shall meet on a monthly basis, unless otherwise agreed by the EU and UK. The approach to attendees and transparency of the JCWG will be set out in the Rules of Procedure, which the JCWG will adopt. We are in the process of agreeing the Rules of Procedure with the Commission

- 26. We therefore call on the Government to establish formal mechanisms for prompt communication to Parliament of information received from the EU in the Joint Committee and Joint Consultative Working Group on planned or adopted EU legislation falling within the scope of the Protocol. (Paragraph 309)**

The JCWG, established under Article 15, will be the forum in which the Union informs the UK of planned union acts and changes to union acts, reporting to the WAJC. We are in the process of agreeing the Rules of Procedure for the JCWG with the Commission and once that Group is established it will consider future governance processes. The Government will also set out further detail on the role of the UK Parliament and Northern Ireland Assembly. No WAJC decisions will be taken on Northern Ireland legislation without sufficient consultation with the Northern Ireland Executive. The Government has already committed to provide as much information in Explanatory Memoranda (EMs) as feasible, though these will remain clear on the distinction between EU proposals and UK positions.

- 27. In particular, we repeat our call for meeting schedules, agendas, decisions and recommendations of the Ireland/Northern Ireland Specialised Committee and the Joint Consultative Working Group to be published. We also call for full and informative Written Ministerial Statements at appropriate points. (Paragraph 315)**

The Government has committed to lay Written Ministerial Statements (WMSs) both before and after WAJC meetings, and appear before the relevant select committees, including the Lords EU Committee at appropriate times.

These steps are proportionate and appropriate to enable robust Parliamentary scrutiny of WAJC.

The INISC and JCWG are official-level meetings with no decision-making powers and must be treated accordingly. INISC and WAJC officials have recently met with Committee clerks to brief on the background of their respective areas, and will continue to do so as and when this is necessary.