House of Lords

European Affairs Committee

2nd Report of Session 2021-22

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

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

The European Affairs Committee was appointed 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.

Membership

The Members of the European Affairs Committee are:

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

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

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

Further information

Publications, press notices, details of membership, forthcoming meetings and other information is available at https://committees.parliament.uk/committee/520/protocol-on-irelandnorthern-ireland-subcommittee/.


Sub-Committee staff

The current staff of the Sub-Committee are Stuart Stoner (Clerk), Tim Mitchell (European Legal Adviser), Genevieve Richardson (Policy Analyst) and Breda Twomey (Committee Operations Officer).

Contact details

Contact details for the Sub-Committees are given on the website. General correspondence should be addressed to the Clerk of the European Affairs Committee, Committee Office, House of Lords, London, SW1A 0PW. Telephone 020 7219 5791. Email hleuroaffairs@parliament.uk.

Twitter

You can follow the Committee on Twitter: @LordsEuCom.
Summary

Chapter 1: The Protocol Sub-Committee
Introduction
The proposal for a Sub-Committee on the Protocol on Ireland/Northern Ireland
The remit of the Protocol Sub-Committee
(a) Document-based scrutiny of new or amended EU legislation within the scope of the Protocol
(b) Scrutiny of the implications of relevant domestic UK legislation and policy for Northern Ireland
(c) Scrutiny of the Northern Ireland-related work of the governance bodies established under the UK–EU Withdrawal Agreement, including the Joint Committee, the Ireland/Northern Ireland Specialised Committee, and the Joint Consultative Working Group
(d) Monitoring the Protocol’s political and socio-economic impact on Northern Ireland
(e) Reviewing the ongoing impact of the Protocol (and of UK withdrawal from the EU more broadly) on the UK–Irish bilateral relationship
(f) Developing interparliamentary dialogue in relation to the Protocol, including with the Northern Ireland Assembly and the Irish Oireachtas

Chapter 2: The development of the Protocol and the current position
The genesis of the Protocol
The Northern Ireland backstop—a UK-wide solution
The revised Protocol on Ireland/Northern Ireland—checks and controls in the Irish Sea
Developments since 1 January 2021
Analysis
Lack of transparency
Lack of readiness
Lack of balance and understanding
Lack of flexibility
Lack of trust
Conclusion

Chapter 3: The economic impact of the Protocol
Initial disruption
Trade flows
Table 1: Northern Ireland trade statistics (2018)
Business costs
Case studies
The sectoral impact
Agri-food
Medicines and medical supplies
| The motor industry | 27 |
| The impact on businesses in Great Britain | 28 |
| Lack of preparedness | 28 |
| Risk of withdrawal from the Northern Ireland market | 28 |
| The impact on EU-based businesses | 29 |
| The impact on consumers | 29 |
| The impact of the end of the grace periods | 30 |
| Economic benefits | 30 |
| Northern Ireland access to the UK and EU markets | 30 |
| North-South trade | 32 |
| Foreign direct investment | 32 |
| The long-term impact and the need for stability | 33 |
| Conclusions | 33 |

**Chapter 4: The political and social impact of the Protocol**

| Political instability in Northern Ireland | 36 |
| Community unrest | 36 |
| The impact on identity | 39 |
| Perceptions of UK Government lack of transparency | 39 |
| The perceived use of Northern Ireland as a bargaining chip | 41 |
| Support for the Protocol | 41 |
| The impact on the Belfast/Good Friday Agreement | 43 |
| A democratic deficit | 45 |
| Engagement with Northern Ireland communities and civic society | 46 |
| Conclusions | 49 |

**Chapter 5: Mitigations and solutions**

| Introduction | 50 |
| Proportionality | 50 |
| Implementation of the UK Government’s commitments | 52 |
| Mitigating measures | 53 |
| Medicines | 54 |
| The definition of goods ‘at risk’, Supplementary Declarations and the UK Trader Scheme | 54 |
| A UK-EU veterinary agreement | 55 |
| Dialogue in the Withdrawal Agreement Joint Committee | 56 |
| Conclusions | 58 |

| Maximising Northern Ireland’s influence | 60 |
| Within the UK | 60 |
| With the EU | 60 |
| The role of the Northern Ireland Executive | 62 |
| The intergovernmental institutions established under the Belfast/Good Friday Agreement | 63 |
| Box 1: The role of the intergovernmental mechanisms established under the Belfast/Good Friday Agreement in relation to the EU | 63 |
| The role of the Irish Government | 64 |
| Conclusions | 65 |

**Unilateral action and Article 16**

| Box 2: Article 16 of the Protocol on Ireland/Northern Ireland | 67 |
| The Commission’s abortive announcement of 29 January 2021 | 67 |
| Unilateral action by the UK Government | 68 |
| Conclusions | 70 |

| Alternatives to the Protocol | 70 |
| Conclusions | 74 |
Evidence is published online at https://committees.parliament.uk/work/1207/introductory-inquiry-into-the-operation-of-the-protocol-on-irelandnorthern-ireland/ and available for inspection at the Parliamentary Archives (020 7219 3074).

Q in footnotes refers to a question in oral evidence.
SUMMARY

Addressing the implications for Northern Ireland and Ireland of UK withdrawal from the EU has been the most fraught, technically complex and politically divisive element of the entire Brexit process. The Protocol on Ireland/Northern Ireland that emerged from the Brexit negotiations has therefore been contentious from the start, and even more so since it came into force on 1 January 2021.

In recognition of this, the House of Lords has established a dedicated Committee on the Protocol, as a Sub-Committee of the European Affairs Committee. Our membership, drawn from Northern Ireland and the rest of the UK, has a wide range of expertise in Northern Ireland affairs. While some of us support the Protocol, others of us oppose it in principle, and our conclusions are without prejudice to those positions. Yet whatever our views, we have unanimously agreed this report as demonstration of our mutual commitment to the economic, social and political wellbeing of Northern Ireland, and to the maintenance of North-South and East-West relations, and the delicate equilibrium between them, as encapsulated in the Belfast/Good Friday Agreement.

Our report sets out the economic impact of the Protocol. We find that there has been significant disruption to trade between Great Britain and Northern Ireland, in particular because of the administrative business costs of compliance with the Protocol, creating a risk that British businesses will withdraw from the Northern Ireland market. Yet there are also potential opportunities, in terms of dual access to the UK and EU markets, North-South trade and foreign direct investment. These benefits will take time to bear fruit, and are dependent on political stability and certainty.

We assess the political and social impact of the Protocol against the backdrop of continued political instability and community unrest. While this unrest has many deep-seated causes, Brexit and the Protocol have once again brought borders and questions of identity to the fore. While unionists and loyalists object to the Protocol being imposed without their consent, nationalists and republicans point out that Brexit was imposed on Northern Ireland against the wishes of its people. This is against the backdrop of a democratic deficit, whereby significant aspects of EU law apply to Northern Ireland without its prior consent. Public opinion in Northern Ireland on the Protocol is split down the middle, and the UK and the EU need to take urgent steps together to arrest the deepening political divide, not least by ensuring that Northern Ireland’s voice is heard both within the UK and in the EU.

Business representatives identified a host of practical and specific measures that should be taken to ease the economic burden of the Protocol. Resolving these issues is not easy, and they will not be enough to assuage those who disagree with the Protocol in principle. Nevertheless, the UK and the EU urgently need to agree practical steps that would ensure the proportionate application of the Protocol. The EU argues that a UK/EU veterinary agreement on the basis of dynamic alignment could reduce the volume of checks by up to 80%, but the UK favours an equivalence model. The UK and the EU need to find a route to compromise between their respective positions in the interests of the people of Northern Ireland.

Yet the search for solutions has been hampered by fundamental flaws in the UK and EU’s approach: lack of clarity, transparency and readiness on the part
of the UK; lack of balance, understanding and flexibility on the part of the EU. These are exacerbated by a corrosive and mutual lack of trust: on the part of the EU, that the UK is seeking to undermine the Protocol and will not live up to its political and legal commitments; and on the part of the UK, that the EU will always prioritise the integrity of the Single Market over the interests and unique circumstances of Northern Ireland. This has contributed to a serious deterioration in relations between London, Belfast, Dublin and Brussels. Unless urgent steps are taken to correct this, Northern Ireland and its people will become permanent casualties in the post-Brexit landscape.

The tensions over the Protocol currently seem insoluble. Yet 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.
CHAPTER 1: THE PROTOCOL SUB-COMPITTEE

Introduction

1. House of Lords Committees have taken a close interest in the implications for Northern Ireland of UK withdrawal from the EU since the months leading up to the 2016 referendum. Before its term of appointment came to an end on 31 March 2021, the EU Select Committee had lead responsibility for scrutiny of these issues, publishing the following relevant reports:

- December 2016: Brexit: UK/Irish relations;
- July 2017: Brexit: devolution;
- February 2018: a follow-up inquiry on Brexit: UK/Irish relations;
- December 2018: Brexit: the Withdrawal Agreement and Political Declaration;
- January 2020: Brexit: the revised Withdrawal Agreement and Political Declaration;

The proposal for a Sub-Committee on the Protocol on Ireland/Northern Ireland

2. In December 2020, the House of Lords Liaison Committee published its Review of investigative and scrutiny committees: strengthening the thematic structure through the appointment of new committees. The report recommended that, in light of UK withdrawal from the EU, the EU Select Committee should be succeeded by a new European Affairs Committee.

3. The Liaison Committee report further suggested that, in view of the large remit of that Committee and the specific issues arising in the context of the Protocol on Ireland/Northern Ireland negotiated and agreed by the EU and UK negotiators in October 2019, it should appoint a Sub-Committee on the Protocol, subject to a review in or before November 2022.

4. The House agreed the Liaison Committee report on 13 January 2021. The new European Affairs Committee was appointed by the House on 14 April,
and the Sub-Committee on the Protocol on Ireland/Northern Ireland was appointed by the European Affairs Committee at its first meeting later the same day. The Sub-Committee met for the first time on 21 April.

The remit of the Protocol Sub-Committee

5. The Liaison Committee review proposed six core tasks for the Protocol Sub-Committee, which were endorsed by the Sub-Committee at its first meeting.

(a) Document-based scrutiny of new or amended EU legislation within the scope of the Protocol

6. Under the terms of the Protocol, more than 300 EU Directives or Regulations continue to apply to Northern Ireland on a dynamic basis (i.e. as amended or replaced) following the end of the transition period. In view of the end of formal UK participation in the EU institutions, parliamentary scrutiny of such legislation is an important task for the Sub-Committee, as well as for counterparts in the House of Commons and the Northern Ireland Assembly.

7. The Sub-Committee has begun its scrutiny on the basis of Explanatory Memoranda received from and exchanges of correspondence with UK Government Ministers, focusing in particular on:

- The Government’s consultation with the Northern Ireland Executive;
- The impact of EU legislation upon the movement of goods between Great Britain and Northern Ireland, and Northern Ireland’s participation in the UK internal market;
- The practical impact of regulatory divergence between Northern Ireland and Great Britain;
- The requirements in domestic legislation to implement new EU rules in Northern Ireland;
- Consultation and engagement with businesses and other stakeholders in Northern Ireland; and
- Impact and cost assessments of EU legislation for Northern Ireland.8

(b) Scrutiny of the implications of relevant domestic UK legislation and policy for Northern Ireland

8. The Liaison Committee noted the “inherent tension within the Protocol, between the continuing application of EU rules in Northern Ireland and the requirement that Northern Ireland should enjoy ‘unfettered access’ to the UK’s internal market. Domestic developments such as the development of common frameworks could have unpredictable consequences, and will need careful monitoring.”

9. Scrutiny of the implications of domestic UK legislation for Northern Ireland in the context of the Protocol is therefore another key task for the Sub-Committee. We intend to consider the implications of relevant domestic legislation for Northern Ireland at the time of a Government bill receiving Second Reading in the House of Lords, thus complementing the Constitution

---

8 European Affairs Sub-Committee on the Protocol on Ireland/Northern Ireland, Correspondence with Ministers: https://committees.parliament.uk/committee/520/protocol-on-irelandnorthern-ireland-subcommittee/news/155688/correspondence-with-ministers/
Committee’s work in scrutinising the constitutional implications of Government legislation.

10. There is also synergy with the work of the Common Frameworks Scrutiny Committee, in view of the implications of EU legislation applying to Northern Ireland for its participation in UK Common Frameworks. We will continue to work closely with the Common Frameworks Committee in the months ahead.

(c) Scrutiny of the Northern Ireland-related work of the governance bodies established under the UK–EU Withdrawal Agreement, including the Joint Committee, the Ireland/Northern Ireland Specialised Committee, and the Joint Consultative Working Group

11. We will scrutinise the work of these bodies, which together form the key UK-EU governance and decision-making structures in relation to the Protocol. The Withdrawal Agreement Joint Committee, co-chaired by Rt Hon Lord Frost CMG and Commission Vice-President Maroš Šefčovič, is the forum for high-level discussions and decisions on the operation of the Protocol (as well as wider issues relating to the implementation of the Withdrawal Agreement, including citizens’ rights).

12. The role of the Ireland/Northern Ireland Specialised Committee, which reports to the Joint Committee, is set out in Article 14 of the Protocol. It is the technical, official-level committee tasked with facilitating the implementation and application of the Protocol, and the technical agreements that it reaches are passed to the Joint Committee for a formal, political decision.

13. The role of the Joint Consultative Working Group is set out in Article 15 of the Protocol. It is designed to act as a “forum for the exchange of information and mutual consultation”, including for notification by the EU to the UK of planned EU acts within the scope of the Protocol (and therefore of relevance to the Sub-Committee’s scrutiny work).

(d) Monitoring the Protocol’s political and socio-economic impact on Northern Ireland

14. The significant political, social and economic developments in Northern Ireland since the Protocol came into effect on 1 January have demonstrated the key importance of this area of work. The Sub-Committee quickly identified it as its first priority, and it is the focus of this report.

(e) Reviewing the ongoing impact of the Protocol (and of UK withdrawal from the EU more broadly) on the UK-Irish bilateral relationship

15. Our remit as a Sub-Committee of the European Affairs Committee also extends to scrutinising the wider impact of UK withdrawal from the EU and evolving UK-EU relations upon the UK-Irish bilateral relationship. The Irish Government’s programme for government includes a commitment to undertake a strategic review of the British-Irish relationship, and the UK Government has committed to participate in this process. This aspect of our work will necessitate particular engagement with the Irish Government, and scrutiny of the work of the British-Irish Council and the British-Irish Intergovernmental Conference.
Developing interparliamentary dialogue in relation to the Protocol, including with the Northern Ireland Assembly and the Irish Oireachtas

16. The European Union Select Committee previously established effective mechanisms for interparliamentary dialogue with equivalent committees in the Northern Ireland Assembly and the House of Commons, as well as the Irish Oireachtas, European Parliament, and Scottish and Welsh Parliaments.

17. We will maintain and enhance dialogue with the Northern Ireland Assembly and its Committees, establishing a basis for cooperation and dialogue on issues of mutual interest, while acknowledging the respective competences of Westminster and Stormont.

18. The Sub-Committee will also maintain dialogue with Committees and members of other legislatures with an interest in Northern Ireland and the Protocol, notably the Irish Oireachtas, the US Congress, and, in conjunction with the European Affairs Committee, the European Parliament. A delegation of the Sub-Committee had the opportunity to give evidence to the Oireachtas Joint Committee on European Union Affairs in June.9

This report

19. 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 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.

20. 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.

21. This report seeks to achieve this by assessing in turn:

- The current state of play in relation to the implementation and operation of the Protocol;
- The economic impact of the Protocol;
- The political and social impact of the Protocol; and
- Possible mitigations and solutions.

22. The report takes account of evidence given to the Sub-Committee by Lord Frost, the UK Government Minister with responsibility for the Protocol, as well as oral and written evidence received in response to a Call for Evidence launched on 21 May (see Appendix 3) from business, community and civic society representatives, political parties in Northern Ireland, academic and political experts, and the Irish Ambassador to the UK, HE Adrian O’Neill. It also reflects on evidence to the European Affairs Committee by the EU

---

Ambassador to the UK, HE João Vale de Almeida. We are grateful to all our witnesses for their assistance, who are listed in Appendix 2.

23. This report sets out the position as of 21 July 2021, the day on which this report was agreed. Earlier the same day, the Government set out its proposals for the future of the Protocol in its Command Paper *Northern Ireland Protocol: the way forward*. Consequently, we were not in a position to take account of or analyse the Government’s proposals in this report. In the context of the Government’s proposals, and as we await the EU’s considered response, the long-term outlook for the Protocol, and its implications for Northern Ireland, remain uncertain. The Sub-Committee will take forward its analysis of the Government’s proposals, subsequent political developments, and the individual issues highlighted in this report in the autumn, and will aim to produce further update reports approximately twice-yearly.

---

CHAPTER 2: THE DEVELOPMENT OF THE PROTOCOL AND THE CURRENT POSITION

The genesis of the Protocol

24. 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 Community11 (hereafter referred to as the Withdrawal Agreement). Within it was a revised Protocol on Ireland/Northern Ireland.

25. The genesis of the Protocol was complex. In summer 2017, at the outset of the withdrawal negotiations, the UK and the EU agreed first to address three specific areas: the protection of citizens’ rights after Brexit, the financial settlement, and issues relating to the border between Ireland and Northern Ireland. They also agreed that “sufficient progress” would be needed on these withdrawal issues before discussions could begin on the framework for the future EU-UK relationship.

26. On 8 December 2017 the EU and the UK published a Joint Report on progress during phase 1 of the negotiations, including a dedicated section on Ireland and Northern Ireland. The report was published in the wake of several days of intensive dialogue between the then Prime Minister, Rt Hon Theresa May MP, and the Democratic Unionist Party (DUP) (who were the Government’s confidence and supply partners at the time), in view of the DUP’s concerns over the Report. It stated, among other things, that both parties would respect the provisions of the 1998 Belfast/Good Friday Agreement and avoid the creation of a hard border between Ireland and Northern Ireland, “including any physical infrastructure or related checks and controls”. It stated that the UK’s intention was to:

“achieve these objectives through the overall EU-UK relationship. Should this not be possible, the United Kingdom will propose specific solutions to address the unique circumstances of the island of Ireland. In the absence of agreed solutions, the United Kingdom will maintain full alignment with those rules of the Internal Market and the Customs Union which, now or in the future, support North-South cooperation, the all-island economy and the protection of the 1998 Agreement. In the absence of agreed solutions … the United Kingdom will ensure that no new regulatory barriers develop between Northern Ireland and the rest of the United Kingdom, unless, consistent with the 1998 Agreement, the Northern Ireland Executive and Assembly agree that distinct arrangements are appropriate for Northern Ireland. In all circumstances, the United Kingdom will continue to ensure the same

unfettered access for Northern Ireland’s businesses to the whole of the United Kingdom internal market.”

27. In parallel, the Prime Minister made six “principled commitments” to Northern Ireland:

- To uphold and support Northern Ireland’s status as an integral part of the UK, consistent with the principle of consent;
- To fully protect and maintain Northern Ireland’s position within the single market of the UK;
- To ensure no new borders within the United Kingdom;
- That the whole of the UK, including Northern Ireland, would leave the EU customs union and Single Market;
- To uphold the commitments and safeguards in the Belfast/Good Friday Agreement regarding North-South cooperation; and
- That the whole of the UK, including Northern Ireland, would no longer be subject to the jurisdiction of the CJEU.

28. In February 2018, the Commission published a draft Withdrawal Agreement, which proposed a “common regulatory area comprising the [European] Union and the United Kingdom in respect of Northern Ireland. The common regulatory area shall constitute an area without internal borders in which the free movement of goods is ensured and north-south cooperation protected”. However, the Government stated that it would not agree to “anything that threatens the constitutional integrity of the UK”.

29. A period of intensive negotiations followed, which ultimately led to the negotiation of what became known as the ‘Northern Ireland backstop’, which was attached as a Protocol to the November 2018 version of the Withdrawal Agreement. This original Protocol stated that the Union Customs Code and relevant regulatory and technical obligations deriving from EU law would apply “to and in the United Kingdom in respect of Northern Ireland.”

---


13 HC Deb 11 Dec 2017, cols 26–27


Ireland”. It would also have ensured that the UK and the EU temporarily remained part of a single customs territory, until such time as a UK-EU future relationship achieving the same objectives, such as avoiding a hard border, came into force. On four occasions the House of Commons voted against the Withdrawal Agreement and Political Declaration, leading to the announcement in May 2019 of the resignation of the then Prime Minister, Rt Hon. Theresa May MP.

The revised Protocol on Ireland/Northern Ireland—checks and controls in the Irish Sea

30. On 19 August 2019 the new Prime Minister, Rt Hon. Boris Johnson MP, sent a letter to the then President of the European Council, Donald Tusk, indicating his wish to renegotiate elements of the Withdrawal Agreement. He confirmed that the changes sought by the Government related primarily to the Protocol on Ireland/Northern Ireland.

31. On 2 October, the Government published an Explanatory Note on the UK proposals for an amended Protocol on Ireland/Northern Ireland. The Government proposed a “zone of regulatory compliance across Northern Ireland and the EU” which would “remove the need for regulatory checks and related infrastructure at the border between Northern Ireland and Ireland, while enabling the UK and EU to maintain their own distinct customs regimes”. This would involve:

“regulatory checks applying between Great Britain and Northern Ireland ... supplemented by on-the-market surveillance, as it is now. ... Northern Ireland would align with EU SPS rules, including those relating to the placing on the market of agri-food goods. Agri-food goods entering Northern Ireland from Great Britain would do so via a Border Inspection Post of Designated Point of Entry as required by EU law ... They would be subject to identity and documentary checks and physical examination by UK authorities as required by the relevant EU rules. In addition, Northern Ireland would also align with all relevant EU rules relating to the placing on the market of manufactured goods ... ensuring that regulatory checks can be implemented at the boundary of the zone, as appropriate and in line with relevant EU law, minimising the potential for non-compliance.”

32. The Government proposed to “make this regulatory zone dependent on the consent of those who live under it”, through “an opportunity for democratic consent to these arrangements in the Northern Ireland Assembly and Executive, within the framework set by the Belfast (Good Friday) Agreement. If consent is withheld, the arrangements will not enter into force or will lapse (as the case may be) after one year, and arrangements will default to existing rules.”

33. On 17 October 2019 the new Protocol on Ireland/Northern Ireland that had been negotiated and agreed by the UK and the EU was published. There were two significant changes from the previous iteration:

- Replacement of Article 6, which created a Single Customs Territory between the EU and the UK, with new Articles 4 and 5, on the

---

customs territory of the UK and revised arrangements for customs and movement of goods;\(^{18}\)

- Deletion of the provisions for replacement of the Protocol, replaced with a new democratic consent mechanism in Article 18. This modified the Government’s proposal by stating that the Northern Ireland Assembly would have a vote on the continued application of Article 5–10 of the Protocol four years after the Protocol came into force (i.e. by the end of 2024). In the event of a simple majority in favour of their continued application, further votes would follow at four-year intervals (or, in the event of cross-community support for their continued application, eight-year intervals). In the event that the Assembly votes against their continued application, the provisions cease to apply after a further two years, and the UK and the EU in the Joint Committee are required to make recommendations on necessary measures, taking into account their obligations under the Belfast/Good Friday Agreement.

34. The Government explained the changes as follows:

“The new Protocol abolishes the backstop entirely. Instead of the United Kingdom remaining in a customs union with the EU with no means to exit unless and until future arrangements were agreed, the new arrangements ensure that the whole of the United Kingdom will be a single customs territory with control of its independent trade policy, including as regards Northern Ireland. It replaces other backstop provisions with a system whereby Northern Ireland remains aligned with the EU on goods (including certain laws for VAT on goods), and applies EU tariffs in Northern Ireland except for movements within the single customs territory of the United Kingdom, but only for as long as Northern Ireland wishes this system to continue.”\(^{19}\)

35. 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.

36. Ahead of the expiry of the transition period, dialogue continued between the UK and the EU on the implementation and operation of the Protocol. On 30 April 2020, the Commission published a technical note on the implementation of the Protocol, calling on the UK to clarify the steps it intended to take to ensure the Protocol was operational, and its timetable for doing so.\(^{20}\) The Government responded on 20 May with a Command

---

\(^{18}\) Withdrawal Agreement (19 October 2019), New Article 8, on VAT and excise, was also as a consequence expanded from the original iteration.


Paper entitled *The UK’s Approach to the Northern Ireland Protocol*. While the Command Paper shed helpful light on some areas, it lacked detail on the practical steps required to implement the Protocol.\(^{21}\)

37. In September 2020, the Government brought forward the United Kingdom Internal Market Bill. Part 5 of the Bill sought to address the Government’s concern that a rigid interpretation of the Protocol, by creating barriers between Northern Ireland and Great Britain, could undermine the Belfast/Good Friday Agreement. The Bill sought to override the Protocol’s provisions in relation to export declarations and the application of State aid rules, and the Government suggested that further measures in relation to movement of goods between Great Britain and Northern Ireland might be contained in the forthcoming Finance Bill.

38. On 8 September, the Secretary of State for Northern Ireland, Rt Hon Brandon Lewis MP, told the House of Commons that the Bill “break[s] international law in a very specific and limited way”.\(^{22}\) This led on 16 September to the resignation of Lord Keen of Elie as Advocate General for Scotland and Justice Minister. Lord Keen had told the House of Lords that the bill did not “constitute a breach of international law or the rule of law”.\(^{23}\) On 1 October, the Commission sent the UK a letter of formal notice for breaching its obligations under the Withdrawal Agreement, on the grounds that Part 5 of the Bill would “flagrantly violate” the Protocol.\(^{24}\)

39. UK-EU dialogue continued in parallel with the parliamentary progress of the Bill during the autumn of 2020. This led to the publication on 8 December 2020 of a Joint Statement by the co-chairs of the EU-UK Withdrawal Agreement Joint Committee on the implementation and operation of the Protocol on Ireland/Northern Ireland. This was followed on 10 December by the publication of a Command Paper on the Protocol, together with a series of draft UK-EU Withdrawal Agreement Joint Decisions on agricultural subsidies; the determination of goods not at risk and commercial processing; amendments to the Protocol to correct omissions or other deficiencies; and on the practical working arrangements relating to the exercise of the rights of EU representatives in overseeing the Protocol’s operation.

40. These were complemented by a series of UK and EU unilateral declarations 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; a three-month grace period on the certification for certain food products brought into Northern Ireland; arrangements regarding the application of Union law with regard to export declarations for goods moving from Northern Ireland to other parts of the UK; and the application of the State aid provisions of the Protocol.


\(^{22}\) HC Deb, 8 September 2020, cols 497 and 509

\(^{23}\) HL Deb, 15 September 2020, col 1129

41. These Decisions and unilateral declarations were subsequently confirmed at the meeting of the Joint Committee on 17 December. In parallel, the Government accepted the removal of the relevant clauses of the United Kingdom Internal Market Bill, and did not bring forward any further relevant measures in the Finance Bill. The EU did not pursue legal proceedings further.

42. These agreements were then supplemented by a further grace period on the movement of parcels, which was announced on 31 December, just hours before the Protocol came into force.

Developments since 1 January 2021

43. The Protocol, subject to these grace periods and mitigations, came into force on the night of 31 December 2020/1 January 2021. Reports quickly emerged of disruption to supermarket supply chains, leading to calls by some for the UK Government to invoke the safeguarding mechanism set out in Article 16 of the Protocol (see Chapter 5, Box 2).

44. On 29 January, in response to the EU’s difficulties in accessing supplies of COVID-19 vaccine, the Commission announced its intention to invoke Article 16 in the context of its Implementing Regulation on COVID vaccine provision. Following strong protests from the UK and Irish Governments, the Commission reversed its position later the same day, before the Implementing Regulation had come into effect. However, its abortive action added to unrest in Northern Ireland and contributed to growing calls within the unionist and loyalist community for the Protocol to be scrapped.

45. On 2 February, the Chancellor of the Duchy of Lancaster and then UK co-chair of the Withdrawal Agreement Joint Committee, Rt Hon Michael Gove MP, wrote to his EU counterpart, Commission Vice-President Šefčovič, protesting at the Commission’s action, and requesting the extension of the various grace periods until 1 January 2023, and other mitigating steps.

46. On 3 February, Mr Gove and Vice-President Šefčovič made a joint statement setting out their “full commitment to the Belfast (Good Friday) Agreement, and to the proper implementation of the Protocol”, However, in his 10 February reply to Mr Gove’s letter, Vice-President Šefčovič wrote that “blanket derogations from provisions of Union law made applicable in respect of Northern Ireland cannot be agreed beyond what the Protocol foresees already”, and that “any flexibility would entail the United Kingdom committing to align with the relevant EU rules”.

47. On 1 March Lord Frost was appointed as Minister of State at the Cabinet Office and as a full member of Cabinet. Lord Frost assumed from Mr Gove

---

25 Commission Implementing Regulation (EU) 2021/111 of 29 January 2021 making the exportation of certain products subject to the production of an export authorisation [OJ L 311/1 (31 January 2021)]
ministerial responsibility for oversight of the implementation of the Trade and Cooperation Agreement and Withdrawal Agreement, including the Protocol, and for acting as UK co-chair of the Withdrawal Agreement Joint Committee and TCA Partnership Council.

48. On 3 March and in subsequent guidance published over the following days, the Government 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”.

49. On 15 March 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 second formal infringement process against the UK.29 The same day, Vice-President Šefčovič wrote to Lord Frost citing “insufficient progress towards compliance on the ground” in implementing the Protocol and the Joint Committee’s Decisions of December 2020.30

50. In parallel, the Northern Ireland Executive Department for Agriculture, Environment and Rural Affairs (DAERA) issued guidance stating that there would be no checks on persons travelling with pets from Great Britain to Northern Ireland until at least 1 July 2021. On 1 June DAERA further extended this period until 1 October 2021.

51. In late March and early April, community disturbances erupted in various parts of Northern Ireland, including Belfast, Derry/Londonderry, and Carrickfergus, Ballymena and Newtownabbey in County Antrim. Tensions over the Protocol were cited as one of the contributory causes of the violence, and there were several street protests against the Protocol. Protests against the Protocol have continued to take place in various locations in the period since.

52. This took place against the backdrop of party political instability in Northern Ireland. In April 2021 Rt Hon Arlene Foster MLA announced her impending resignation as First Minister of Northern Ireland. She was succeeded in May as DUP Leader by Edwin Poots MLA, and then in June as First Minister by Paul Givan MLA. Also in May, Doug Beattie MLA replaced Steve Aiken MLA as Leader of the Ulster Unionist Party (UUP). Mr Poots then resigned as DUP leader within hours of Mr Givan’s appointment as First Minister, on 17 June, and was replaced by Rt Hon Sir Jeffrey Donaldson MP.

53. In the meantime, technical discussions continued in the Joint Committee and the Ireland/Northern Ireland Specialised Committee, with a view to defining and identifying solutions to the outstanding matters of concern in relation to the operation of the Protocol. The Joint Committee met most

---


recently on 9 June. The UK and the EU published separate statements after the meeting, identifying progress in some areas but not in others.⁴¹

54. On 17 June the Government requested the extension of the grace period on chilled meats from the end of June until the end of September. At his appearance before the Northern Ireland Assembly Committee for the Executive Office on 28 June, Commission Vice-President Šefčovič indicated that the EU was likely to agree to the extension.⁴² 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. Alongside this, the EU announced that it had identified solutions in relation to the movement of medicines, guide dogs and the re-tagging of animals.⁴³ The UK in turn agreed not to amend the rules applicable to meat products already in force in the rest of the UK.⁴⁴

55. On 21 July, the same day as this report was agreed, the Government published its Command Paper *Northern Ireland Protocol: the way forward*.⁴⁵ We will set out our analysis of the Government’s proposals, and the EU’s response, in the autumn.

**Analysis**

56. When our witnesses reflected on this chronology of events, they identified five interlocking problems or failures by the UK Government or the EU, or both:

*Lack of transparency*

57. Jonathan Powell, former Chief of Staff to Prime Minister Tony Blair (1995–2007) and Chief British Negotiator on Northern Ireland (1997–2007), said that while the Prime Minister accepted a border in the Irish Sea in 2019 to get a deal, he had failed to acknowledge or explain the implications of this decision: “He said it was not a border in the Irish Sea … A lot of people believed what Boris Johnson had said”.⁴⁶ Professor Katy Hayward, Professor of Political Sociology, Queen’s University Belfast, cited “several examples of what was publicly stated by Government Ministers about what the Protocol meant and the implications of it and what they were prepared to do for

---


36 Q 50
Northern Ireland and those statements being disproved by actions later, which … only go to increase people’s sense of betrayal”.37

58. The Centre for Cross Border Studies observed “a failure to take responsibility for political choices made and to be honest with citizens in regards to the consequences of those choices, therefore making it more difficult to arrive at realistic solutions”.38

59. The Social Democratic and Labour Party (SDLP) argued:

“The political impact of the Protocol is impossible to separate from the broader impact of Brexit. … The UK’s decision to leave not just the European Union, but its Customs Union and Single Market, presented a fundamental challenge to the architecture of Northern Ireland’s settlement. … It is to our immense frustration that we and others have been left to take responsibility for explaining and implementing an agreement Boris Johnson and his Government negotiated while they have sought to deny, disown and destabilise—and refuse to take responsibility.”39

Lack of readiness

60. Professor David Phinnemore, Professor Katy Hayward, Dr Billy Melo Araujo and Lisa Whitten, Queen’s University Belfast, argued that the initial preparations for the implementation of the Protocol in the first half of 2020 were undermined by the Government’s querying of its responsibilities under the Protocol. This led to delays in securing agreements on key implementation questions.40

61. The Ulster Unionist Party said that the last-minute nature of the TCA made a difficult situation even worse for Northern Ireland, given that there were so many outstanding questions about how the Protocol would work, and even though businesses in Northern Ireland did their best to prepare:

“The Government didn’t seem to understand what they had agreed with the EU, with the Secretary of State for NI even denying the existence of a trade border between Great Britain and Northern Ireland despite all evidence to the contrary … There is very little, if any, confidence that the UK Government have any detailed understanding of the full implications of the Protocol, in particular the almost daily emergence of new regulations.”41

62. Dr Tom Kelly, Columnist, Irish News, said that “from a communications point of view, this has been a disaster”:

“With the emphasis to try to get a deal done by the 31st [December], the reality is that nothing had been thought out. There was no communication plan to roll out to people … The Protocol is ostensibly about trade, but it was going to have a wider impact on people’s perception of their identity. That should have been spelled out to people. The intervening time that

37  Q 44
38  Written evidence from the Centre for Cross Border Studies (IIO0020)
39  Written evidence from the SDLP (IIO0033)
40  Written evidence from Professor David Phinnemore, Professor Katy Hayward, Dr Billy Melo Araujo and Lisa Whitten (IIO0023)
41  Written evidence from the UUP (IIO0010)
we have spent should not have been wasted in grandstanding but should have been used to communicate with constituencies.”

**Lack of balance and understanding**

63. Several witnesses argued that, with its focus on North-South relations and avoiding a hard border on the island of Ireland, the Protocol itself fails adequately to recognise the equally legitimate political importance of East-West relations (and the greater economic significance of trade relations with Great Britain), and the delicate balance between them as encapsulated in the Belfast/Good Friday Agreement.

64. The Ulster Unionist Party brought out this point:

“If [the UK and EU] had been serious about protecting the Belfast Agreement, they would have placed equal importance on east-west relationships and the genuine and legitimate concerns of unionists. Those were recognised within the Belfast Agreement, but were cast aside by the EU, UK and Irish Governments in the negotiations that led to the Protocol.”

**Lack of flexibility**

65. Our witnesses argued that the EU’s overriding desire to protect the integrity of the EU Single Market led to an unnecessarily rigid approach, which was wholly unsuited to the sensitivities and compromises of politics in Northern Ireland. Former Northern Ireland Office senior official Mary Madden referred to the EU’s focus on “rules and rules and rules”, and a lack of understanding of the impact of trading arrangements on issues of identity.

66. In a similar assessment, Ian Marshall, Institute for Global Food Security, Queen's University Belfast (and former Irish Senator), wrote that the EU’s legal-purist nature was incompatible with the need for “flexibility and pragmatism” in Northern Ireland.

**Lack of trust**

67. These factors have contributed to a growing lack of trust between the UK and the EU. The SDLP argued:

“Having lauded the Withdrawal Agreement when it was concluded in late 2019, and spent most of 2020 denying that it would involve significant disruption, UK Government policy—insofar as a coherent policy is discernible—appears to be to disown the Protocol gradually, casting doubt on its workability, taking unilateral action and occasionally threatening invocation of Article 16. Firstly, it is not credible for UK Ministers to claim that they did not realise [what] the impacts of the Protocol that they negotiated and signed would be. It is unsurprising that the EU expects an international treaty signed in good faith to be upheld and for the UK Government to suggest otherwise is disingenuous. Virtually everything about the UK Government approach since the end of the transition period—but particularly since Lord Frost replaced Michael Gove as lead minister—has been destabilising. They have

42 Q 58
43 Written evidence from the UUP (IIO0010)
44 Q 28
45 Written evidence from Ian Marshall (IIO0003)
managed to lose the trust of every major political party and tradition in Northern Ireland, as well as the Irish Government.\textsuperscript{46}

68. Jonathan Powell said:

“Any agreement depends on trust for its implementation, and unfortunately trust has been really badly undermined by the steps taken, particularly by the British negotiator, David Frost, on this. I feel that what he has done by his unilateral steps and by his rhetoric is to destroy trust with European partners, which means that they are now on their guard. They are much less likely to look for creative ways of solving this problem than they were before.”\textsuperscript{47}

69. The DUP argued:

“Despite cynically positioning itself as a guarantor of the peace process in order to secure support for the Protocol, the triggering of Article 16 in January to prevent vaccines entering Northern Ireland confirmed that the EU is not afraid to erect a hard border if it is in their interests. This has demonstrated that Northern Ireland will never have the assurance of unconditional membership of the EU single market.”\textsuperscript{48}

Conclusion

70. The Protocol on Ireland/Northern Ireland 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. Yet the Government did not make adequately clear to the people of Northern Ireland what the Protocol would mean in practice. Details of its practical operation were provided extremely late in the day, leaving businesses unprepared, in spite of their best efforts. The practical operation of the Protocol since 1 January has therefore come as a shock, contributing to political instability in Northern Ireland and exacerbating underlying community tensions, which could even reverse the progress made under the Belfast/Good Friday Agreement.

71. The EU’s rigid focus on the Protocol as a tool to protect the integrity of the Single Market has failed to account of its impact on the sense of identity of unionists and loyalists, inflaming the situation still further. Thus the delicate balance between North-South and East-West relations encapsulated in the Belfast/Good Friday Agreement has been compromised.

72. Both 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, have led to a mutual lack of trust, hindering the ability to identify and implement solutions. If urgent steps are not taken to restore trust, Northern Ireland is destined to become a casualty of the post-Brexit serious deterioration in relations between the UK and the EU.

\textsuperscript{46} Written evidence from the SDLP (IIO0033)
\textsuperscript{47} Q 54
\textsuperscript{48} Written evidence from the DUP (IIO0025)
CHAPTER 3: THE ECONOMIC IMPACT OF THE PROTOCOL

Initial disruption

73. Aodhán Connolly, Director, Northern Ireland Retail Consortium and Convener of the Northern Ireland Business Brexit Working Group, said that there had been a “skewed narrative” at the start of the year, amid media stories of food shortages and empty supermarket shelves. While there were some problems, only a few hundred product lines out of 40–50,000 were initially affected.49 Disruption to the movement of goods from the EU due to COVID-19 restrictions over the Christmas period had an impact, as did typical seasonal supply patterns and global commodity supply issues.50

74. Nevertheless, Mr Connolly said that the lack of time to prepare for the Protocol to become operational did cause disruption:

“We did not know what the regulations would be for sending parcels to Northern Ireland until less than 18 hours before the end of the transition period. Three new computer systems—TSS, CDS and GVMS51—came in and were not really tested with businesses until two weeks beforehand. It is not as if you can flick a switch.”52

75. Stephen Kelly, CEO, Manufacturing NI, noted that 77% of manufacturers surveyed by Manufacturing NI had experienced some negative impact to their business, in particular because of the late provision of information, and 36% believed these difficulties were likely to persist.53

76. Seamus Leheny, Policy Manager for Northern Ireland, Logistics UK, noted that delays in customs processes had reduced since the early part of the year.54 There were minimal delays at departure ports in Great Britain or arrival ports in Northern Ireland, and a parking site for trucks at the Scottish port of Cairnryan had been closed because of lack of use. However, problems sometimes arose at the temporary Border Control Posts in Belfast, because of lack of space.55

77. The DUP cited Manufacturing NI’s surveys showing a sharp drop in confidence between February and April 2021 that the Protocol could work in the long term. They argued that this showed that business preparedness, while important, was not a panacea because it would not deal with the Protocol’s disruptive impact on trade between Great Britain and Northern Ireland.56

78. Lord Frost told us that £125 million had already been spent on the UK Trader Support Service, and £25 million on the Digital Assistance Scheme. In that context, “the number of non-compliant declarations and non-engagement with the process has fallen dramatically to really quite low levels from relatively high levels at the start. The real-world effect shows that companies are getting to grips with it.”57

49 Q 11
50 Q 14. See also Stuart Anderson in answer to the same question.
52 Q 18
53 Q 12
54 Q 13
55 Q 16
56 Written evidence from the DUP (IIO0025)
57 Q 66
Trade flows

79. Table 1 sets out data published by the Northern Ireland Statistics and Research Agency (NISRA) on Northern Ireland’s trade statistics for goods and services in 2018.

Table 1: Northern Ireland trade statistics (2018)

<table>
<thead>
<tr>
<th></th>
<th>Rest of the UK</th>
<th>Ireland</th>
<th>Rest of the EU</th>
<th>Rest of the world</th>
</tr>
</thead>
<tbody>
<tr>
<td>External sales (including exports)</td>
<td>£10.6 billion (£6.5 billion in goods; £4.0 billion in services)</td>
<td>£4.2 billion (£3.1 billion in goods; £1.1 billion in services)</td>
<td>£2.5 billion (£2.1 billion in goods; £0.4 billion in services)</td>
<td>£4.5 billion (£3.5 billion in goods; £1.0 billion in services)</td>
</tr>
<tr>
<td>Internal purchases (including imports)</td>
<td>£13.4 billion (£10.4 billion in goods; £3.0 billion in services)</td>
<td>£2.8 billion (£2.4 billion in goods; £0.4 billion in services)</td>
<td>£2.6 billion (£2.4 billion in goods; £0.2 billion in services)</td>
<td>£2.4 billion (£2.1 billion in goods; £0.3 billion in services)</td>
</tr>
</tbody>
</table>


80. We asked our witnesses about the Protocol’s impact on these trade patterns. Dr Esmond Birnie, Senior Economist, Ulster University, noted that, although there was still “a statistical fog”, additional costs of trade across the Irish Sea could possibly total an additional £600 million per annum.58 On the other hand, Dr Birnie noted that Ireland’s Central Statistics Office had shown a €230 million increase in Northern Ireland exports to Ireland year-on-year in the first quarter of 2021 (though such data was likely to be adjusted).59

81. Professor Duncan Morrow, Director of Community Engagement, Ulster University, noted that since 1 January there has been an increase in trade via Northern Ireland ports, and a decrease in goods moving from Great Britain to Northern Ireland via Ireland. He also noted a decline in imports and exports between Great Britain and Ireland of between a third and two-thirds in January and February. However, different sectors had been affected differently.60

82. Seamus Leheny suggested that evidence of diversion of trade to the Great Britain to Northern Ireland route may have been due to increased friction in trade between Great Britain and Ireland under the TCA, including new sanitary and phytosanitary (SPS) controls and export declarations.61 However, he and Stephen Kelly agreed that the long-term impact on trade flows would only start to become clear towards the end of the year.62 Another factor to bear in mind in this context is the fall in value of the euro against the pound during 2021.

58  Q 39
59  Q 40 (Dr Esmond Birnie), Q 15 (Stephen Kelly)
60  Q 1
61  Q 16
62  Q 17
83. Ambassador O’Neill said that UK withdrawal inevitably meant that goods could not move as seamlessly as before from Great Britain to Ireland. Nevertheless, he noted that over 85% of goods movement traffic from Britain through the ports at Dublin and Rosslare are green-routed at present and face no delays.63

**Business costs**

84. Several witnesses reflected on the increased costs to businesses of compliance with the Protocol, and in particular the completion of Supplementary Customs Declarations, which are required in order to determine if tariffs will be applied in the case of goods deemed to be at risk of moving from Northern Ireland into the EU Single Market.

85. Seamus Leheny cited frustration at these time and resource costs, given that most goods entering Northern Ireland from Great Britain were not at risk of moving into the EU.64 Stuart Anderson, Senior Policy Adviser, CBI Northern Ireland, noted that the Supplementary Declaration needs to be completed on all goods entering Northern Ireland, regardless of the level of risk.65

**Case studies**

86. We heard evidence of a medium-sized Northern Ireland-owned company, which estimated an increase in staff costs of approximately £3,000 per month, plus one-off advisors’ fees of £130,000. Others estimated an additional 20% in costs to their main product.66

87. Johnson Brothers (Belfast) Ltd employ 90 people in Lisburn, and act on behalf of GB companies selling and distributing consumer goods in Northern Ireland. They highlighted the “sheer volume of red tape”, often with an “Alice in Wonderland” aspect, such as the requirement for confirmation that goods are not organic or from China. They argued that these bureaucratic requirements were designed for the shipment of containers of goods from Asia or the Americas, but were “wholly unfit” to deal with a regional supply chain of mixed goods.67

88. SDC Trailers Limited stated that they had been issued with approximately 900 Supplementary Declaration requests, each with ten submission lines requiring up to 160 individual pieces of data. Suppliers had not expected the “avalanche of data requests”, which led to delays in meeting the HMRC deadline.68

**The sectoral impact**

89. Dr Birnie said that the Protocol was likely to have a differential long-term effect on individual sectors of the Northern Ireland economy. Research by the Fraser of Allander Institute suggested that while sectors with a strong North-South dimension were likely to benefit, those dependent on East-
West trade stood to suffer.\textsuperscript{69} We received detailed evidence on the impact on the agri-food, medicines and motor industries.

\textbf{Agri-food}

90. Seamus Leheny noted the administrative burden of sanitary and phytosanitary processes, notwithstanding the grace periods. These included STAMNI declarations,\textsuperscript{70} export health certificates, and pre-notification of arrival of goods in Northern Ireland.\textsuperscript{71}

91. The Ulster Farmers’ Union drew attention to problems including the cessation of traditional trade in breeding sheep from Scotland due to scrapie controls; the requirement to replace cattle tags within 20 days; a six-month residency requirement in Great Britain for Northern Ireland livestock at shows and sales before re-entry to Northern Ireland; disruption in trade in machinery from Great Britain resulting from soil contaminant certification requirements; testing and labelling requirements for cereal seed; and the new regulatory environment for the supply of plant protection products.\textsuperscript{72}

92. The National Farmers’ Union of England and Wales noted that in May 2021 DAERA reported that over 40,000 Export Health Certificates and 4,000 Phytosanitary Certificates had been issued since the start of the year for Great Britain-Northern Ireland movements of animal, plant and food products. They noted that only businesses based in or with a fixed place of business in Northern Ireland are eligible to access the UK Trader Scheme, which allows traders to declare their goods not at risk. The British Veterinary Association estimates that between 230 and 700 official vets will be needed to manage the movement of live animals and products of animal origin from Great Britain to Northern Ireland.\textsuperscript{73}

93. In the longer term, Dr Birnie questioned whether the Northern Ireland agri-food sector would be able to benefit from trade deals signed by the UK, given its alignment with EU animal and food standards.\textsuperscript{74} In that context, we draw attention to the inquiry by the International Agreements Committee into the UK-Australia trade deal, which among other issues is addressing the agreement’s potential impact on Northern Ireland in the context of the Protocol.\textsuperscript{75}

94. Article 4 of the Protocol states that nothing in it shall prevent the UK from including Northern Ireland in the territorial scope of its agreements with third countries, provided that those agreements do not prejudice the application of the Protocol. It further states that nothing in the Protocol shall prevent the UK from concluding agreements with a third country that grant goods produced in Northern Ireland preferential access to that country’s market on

\begin{itemize}
\item \textsuperscript{69} Q 40
\item \textsuperscript{70} Scheme for Temporary Agri-Food Movements to Northern Ireland. See Department for Environment, Food and Rural Affairs, \textit{Scheme for Temporary Agri-food Movements to Northern Ireland (STAMNI) Compliance Declaration}: \url{https://www.daera-ni.gov.uk/sites/default/files/publications/daera/STAMNI%20Compliance%20Declaration_Authorised%20Trader_V9.3.pdf} [accessed 21 July 2021].
\item \textsuperscript{71} Q 13
\item \textsuperscript{72} Written evidence from the Ulster Farmers’ Union (IIO0021)
\item \textsuperscript{73} Written evidence from the NFU (IIO0019)
\item \textsuperscript{74} Q 40
\item \textsuperscript{75} House of Lords International Agreements Committee, ‘UK-Australia trade negotiations and agreement: Call for evidence’: \url{https://committees.parliament.uk/call-for-evidence/518/ukaustralia-trade-negotiations/}. The call for evidence was launched on 30 June 2021 and closes on 6 September 2021.
\end{itemize}
the same terms as goods produced in other parts of the UK. The question we ask is how the Government is taking into account the implications of its trade deals for Northern Ireland, including its ability to benefit from them, and their impact on the conditions for smooth trade between Great Britain and Northern Ireland.

Medicines and medical supplies

95. Several pharma-chem firms expressed concern about the Protocol’s potential impact on medicine supplies to Northern Ireland when the 12-month grace period agreed in the Joint Committee in December 2020 comes to an end. Alliance Healthcare UK warned that Northern Ireland could become a small and uneconomic marketplace, leading to product withdrawals or supply issues.76

96. The Ethical Medicines Industry Group noted that, after the expiry of the grace period, medicines supplied from Great Britain to Northern Ireland will require: importation via a Manufacture and Importation Authorisation holder; batch testing; certification by a qualified person; registration of marketing authorisation; and new unique identifier requirements. Their survey of members showed that, while only 6% had withdrawn or ceased trading any products in Northern Ireland via Great Britain, 56% planned to do so following the end of the grace period, assuming no extension or revision.77

97. The Healthcare Distribution Association, whose members are responsible for distributing 92% of NHS medicines, estimated that the operational cost of the Protocol for wholesale distributors in the first quarter of 2021 was £2.1 million. Only 20% of medicine products available to Northern Ireland patients are warehoused in Northern Ireland, while the rest are held in Great Britain and transported daily, as the medicines supply chain operates on a just-in-time basis.78

98. PAGB, the consumer healthcare association, estimated that between 75% and 98% of over-the-counter medicines currently available in Northern Ireland could be discontinued. Differences in availability, legal status, pack size, statutory information, and manufacturing/product processes mean it is not possible to supply medicines from Ireland.79

99. Teva UK Limited, a leading pharmaceutical company and the leading supplier by volume of prescription medicines to the NHS, noted that, while they supplied 631 stock keeping units to Northern Ireland and 310 to Ireland, there was direct overlap in only 77 units. Clarity was also needed on whether the MHRA had authority to issue UK-wide Marketing Authorisation, including for Northern Ireland. Without this, separate licenses for every single medicine supplied to Northern Ireland will be required.80

The motor industry

100. Gray and Adams Ltd, a manufacturer of premium specialist vehicles based in Scotland and with a depot in Newtownabbey, stated that the Supplementary

---

76 Written evidence from Alliance Healthcare UK (IIO0008)
77 Written evidence from Gray and Adams Ltd (IIO0011)
78 Written evidence from the Healthcare Distribution Association (IIO0032)
79 Written evidence from PAGB (IIO0015)
80 Written evidence from Teva UK Limited (IIO0014)
Declaration process had led many suppliers to withdraw from Northern Ireland.81 We heard evidence of a motor retailer who had to complete 300 Supplementary Declarations per month, two-thirds of which were for goods not at risk.82

101. The Society of Motor Manufacturers and Traders cited problems with Supplementary Declarations and the VAT treatment on finished vehicles for direct sales from Great Britain to Northern Ireland. Some automotive companies are paying duties on movements of finished vehicles and parts and components due to goods being deemed ‘at risk’. Lead times had increased by up to five days, resulting in more stock having to be held in Northern Ireland.83

The impact on businesses in Great Britain

Lack of preparedness

102. We heard that businesses based in Great Britain were also unprepared for the new requirements that the Protocol imposed on trade with Northern Ireland. Aodhán Connolly said that “millions were spent on getting ready to trade with the EU and nothing was spent on getting ready to trade with Northern Ireland … there was no actual campaign to say, ‘Northern Ireland is open for business. Northern Ireland consumers still want to buy your goods. Some 1.9 million people still want to avail themselves of your services and your goods’.”

103. Stuart Anderson added that around 13,000 Northern Ireland-based SMEs were trading between Great Britain and Northern Ireland. They faced particular challenges in terms of human capital, customs requirements, and the digital skills required to automate and improve their processes.84

104. Lord Frost acknowledged that the late agreement with the EU in December of trading arrangements, both in relation to the Protocol and the Trade and Cooperation Agreement, had hindered business preparedness. However, he argued that establishing the Trader Support Service, the Movement Assistance Scheme and the Digital Assistance Scheme from a standing start had been “quite an achievement”. He said that there was active engagement with businesses, for instance through industry forums, “but you cannot be quite sure who you are not reaching”.85

Risk of withdrawal from the Northern Ireland market

105. Witnesses feared that GB businesses would decide (or had already decided) to withdraw from the Northern Ireland market. Aodhán Connolly said:

“There is a simple equation. It does not matter whether it is retail or any other industry. If the new frictions and new costs are higher than the profit margin, either the product or the business model becomes unviable. Some businesses that sent business to business have already stopped that. Some that sent business to consumer are seeing the extra burden as unprofitable or unmanageable.”86

---

81 Written evidence from the Ethical Medicines Industry Group (H00009)
82 Q 13 (Stuart Anderson)
83 Written evidence from the Society of Motor Manufacturers and Traders (H00030)
84 Q 12
85 Q 65
86 Q 18
106. Stephen Kelly said that more than 50% of manufacturers surveyed said that their GB suppliers continued to be unprepared for the requirements of moving goods to Northern Ireland, while 20% said that their GB suppliers were unwilling to supply to Northern Ireland: “That dial has not moved at all since the beginning of the year. It continues to be the single biggest struggle that our members face.” Sir Nigel Hamilton and Mary Madden called on the Government urgently to embark on a major initiative, with the support of Northern Ireland business, to educate and train supply chains and customers on the requirements under the Protocol.

108. Lord Frost conceded that “the chilling effect of companies in Great Britain deciding that it is all too much trouble … and not being bothered to engage with the process” had been “more of a difficulty than we thought”. He added that SMEs and micro-businesses were particularly affected: “dealing with this is a significant call on their time, and they just decide that it is not worth it.” This had led to trade diversion and supply chain issues for Northern Ireland, “and is at the root of some of the current difficulties that we have”.

The impact on EU-based businesses

109. Stephen Kelly told us that 46% of manufacturers surveyed said EU suppliers were also unaware, unprepared or unwilling to supply Northern Ireland. He argued that the EU had not done enough to make it clear that Northern Ireland has a different status for the free circulation of goods:

“We have experience of bottles of wine being turned around on every three loads from German customs. We have transit documents not being recognised in Finland for stuff that moves across from Hull port. Containers of scrap steel are sitting portside in Lisbon. I have a guy in Newtownabbey whose ties continue to be opened up and returned by Italian customs.”

The impact on consumers

110. The upshot of these problems is that the Protocol is having a tangible impact not only on businesses, but also on Northern Ireland consumers. Mary Madden said: “If you are trying to get potted plants or seeds across, or you are trying to move your pets or receive parcels, all those things are impacting right across the community on both sides.”

111. Peter Sheridan, Chief Executive, Co-operation Ireland, agreed that the Protocol was having a material impact on people’s daily lives:

“If we took as our yardstick that both the EU and the UK said that there should be as little impact as possible on everyday life of communities in both Ireland and Northern Ireland, that is not what is happening because almost every household is affected by it … a lot of us understood

---

87 QQ 12 and 14
88 Q 18
89 Written evidence from Sir Nigel Hamilton KCB and Mary E Madden CBE (H00006)
90 Q 65
91 QQ 12, 14 and 17
92 QQ 24 and 27
at the time that the only people who this border would be visible to were the lorry drivers going through Larne, Warrenpoint or Belfast. It was not meant to affect every household.”

The impact of the end of the grace periods

112. We have already noted the concerns of the pharma-chem industry about the expiry of the grace period for medicine and medical supplies. We heard from other industries that the full economic impact of the Protocol had not yet been felt due to the various grace periods agreed by the UK and the EU in December 2020, and in certain cases extended, either unilaterally by the UK Government or in agreement with the EU.

113. Aodhán Connolly said that business would not have had the capacity to provide export health certificates as of 1 April. While he did not agree with the UK’s unilateral action, extension of the grace period was nevertheless necessary, as several large retailers were two days away from having to make decisions about the supply of goods and food to Northern Ireland. He warned of severe problems when the grace periods expire in October.

114. The leading parcels carrier firm, DPD, warned that the end of the grace period for moving parcels to Northern Ireland would lead to a replication of the significant disruption to UK-EU trade flows after the end of the transition period. Import tariffs, VAT and customs clearance charges, complex administrative burdens, non-tariff barriers and the consequent charges from transporters had all led consumers in both the UK and the EU to stop buying goods across borders. They stressed that industry would need a minimum 12-month period of transition to adapt to new processes and procedures.

115. SDC Trailers Limited noted that the 900 Supplementary Declarations thus far completed represented only 20% of the anticipated volume once the grace period for parcels ends. The company feared that it would be unable to comply once the grace period expires.

Economic benefits

116. Notwithstanding these concerns, we were also told of a range of potential economic benefits under the Protocol.

Northern Ireland access to the UK and EU markets

117. Jess Sargeant, Senior Researcher, Institute for Government, said that the obvious positive economic feature of the Protocol, and one which was too quickly dismissed, was that Northern Ireland will have unfettered access to both the EU and GB markets. She said that Invest NI (the Economic Development Agency for Northern Ireland) has been making the case that Northern Ireland is the only place where businesses can operate without customs declarations, rules of origin certificates or non-tariff barriers to both the GB and EU markets. She noted the potential for attracting investment, in particular in highly-regulated sectors such as chemicals or agri-food. However, she argued there needed to be “an active effort to ensure

---

93 Ibid.
94 See paras 95–99.
95 Q 11
96 Written evidence from DPD (IIO0017)
97 Written evidence from SDC Trailers Limited (IIO0024)
118. Professor Peter Shirlow, Director, Institute of Irish Studies, Liverpool University, observed that “Northern Ireland is uniquely placed in three important economic interdependencies: the UK, Ireland and the European Union.” He noted that Northern Ireland businesses have an advantage trading with the EU compared to those in Great Britain, and that firms had begun talking about moving their supply of goods to Northern Ireland to avoid regulatory checks and additional costs. Johnson Brothers (Belfast) Ltd cited potential growth opportunities from helping British suppliers navigate the new administrative requirements under the Protocol.

119. The SDLP argued:

“There are also very real economic opportunities which are being obscured by political noise and the failure of the UK Government to engage constructively. ... Having been relatively uncompetitive for most of its existence, Northern Ireland now has a unique competitive advantage ... It is clear that there is significant business enthusiasm for this opportunity, notwithstanding a desire to minimise disruption in terms of goods imports under the Protocol. Invest NI has had large numbers of enquiries and had intended to begin selling the investment potential of Northern Ireland under the Protocol—but the political climate, not least in London, has so far proved a barrier.”

They called for a “collective commitment to working to deliver economic benefits from the Protocol and Northern Ireland’s unique position—coordinated across Northern Ireland’s devolved institutions, governments in London and Dublin, and the relevant directorates general in Brussels.”

120. On 7 July, the Northern Ireland Chamber of Commerce and Industry/ BDO NI Quarterly Economic Survey found that 67% of those surveyed believed that Northern Ireland’s unique status under the Protocol presented opportunities, and 47% perceived benefits for their own businesses.

121. Ambassador Vale de Almeida said that there were “huge opportunities” for Northern Ireland in terms of its access to the “biggest internal market in the world for goods” in the EU Single Market, and to the UK market; “no one else has this access for industry, farmers and retailers”. He called for the discussion to move “from a very negative and depressing approach to the problems in Northern Ireland to a much more constructive, forward-looking and positive attitude towards the potential of Northern Ireland”.

122. Lord Frost said that he did not “entirely buy ... the best of both worlds argument”, as Northern Ireland’s economy was more dependent on trade with Great Britain. Although Northern Ireland businesses trading primarily with the EU may benefit, “it does not make sense for Northern Ireland to gain

98 Q 2
99 Q 40
100 Written evidence from Johnson Brothers (Belfast) Ltd (H000001)
101 Written evidence from the SDLP (H000033)
103 Oral evidence taken before the European Affairs Committee on 24 June 2021 (Session 2021–22), Q 13
the ‘benefit’ of access to the EU market while having quite restricted access to the rest of its own market.”\textsuperscript{104} He did not see a case for the Government setting out the benefits of the Protocol, since “those who benefit are quite well aware of that”, and “I do not think it totally makes sense to encourage a situation that generated more of something that is a problem”.\textsuperscript{105}

**North-South trade**

123. Witnesses told us that benefits under the Protocol are particularly evident in terms of the potential for growth in North-South trade. As we have seen, Ireland’s Central Statistics Office trade figures for the first quarter of 2021 showed that exports from Northern Ireland to Ireland had grown by 44% (€230 million year-on-year).\textsuperscript{106} Seamus Leheny added that the proportion of UK exports to Ireland coming from Northern Ireland had jumped from 12% to 25% year-on-year. Some Irish retailers were now sourcing goods from Northern Ireland rather than Great Britain, with beneficial effects for the local economy.\textsuperscript{107}

124. Professor Shirlow argued that the growth in trade between Northern Ireland and Ireland showed that the intention of the Protocol to “protect the north-south dynamic has actually worked”.\textsuperscript{108} He said that 7,000 companies were benefiting from a growth in North-South trade.\textsuperscript{109} Aodhán Connolly added that the growth was particularly pronounced for agri-food goods.\textsuperscript{110}

125. Notwithstanding his prediction (shared by the DUP\textsuperscript{111}) that the costs would outweigh the benefits, Dr Birnie said that Northern Ireland businesses could benefit from displacing Great Britain counterparts in supplying the market in Ireland and the rest of the EU. He agreed that there were already signs of this in the food processing sector. Similarly, supermarket chains were now sourcing local products for their Northern Ireland stores.\textsuperscript{112}

126. Lord Frost acknowledged that a “really essential … obvious advantage” of the Protocol was that it had ensured that there is no infrastructure at the border between Northern Ireland and Ireland, “even though sometimes it is taken for granted as a reality of life”.\textsuperscript{113} However, he said that the increase in trade within the island of Ireland in both directions was “in many ways, a problem rather than an advantage”, because “firms in Northern Ireland are not necessarily able to choose their preferred suppliers in Great Britain, and they are having to find substitutes elsewhere”.\textsuperscript{114}

**Foreign direct investment**

127. Aodhán Connolly said that wider opportunities would arise from foreign direct investment taking advantage of Northern Ireland’s ability to sell into the EU and the UK. Stephen Kelly saw early signs of this happening: Invest NI was looking at 30 potential investors for Northern Ireland, based on the

\begin{thebibliography}{114}
\bibitem{104} Q\textsuperscript{69}
\bibitem{105} Q\textsuperscript{70}
\bibitem{106} QQ\textsuperscript{39–40} (Dr Esmond Birnie)
\bibitem{107} Q\textsuperscript{13}
\bibitem{108} Q\textsuperscript{39}
\bibitem{109} Q\textsuperscript{40}
\bibitem{110} Q\textsuperscript{17}
\bibitem{111} Written evidence from the DUP (IIO0025)
\bibitem{112} Q\textsuperscript{39–40}
\bibitem{113} Q\textsuperscript{69}
\bibitem{114} Q\textsuperscript{70}
\end{thebibliography}
island of Ireland, in Great Britain, or across the globe. One such lead had the potential to create 500 jobs and a £100 million investment. He said that he had never before experienced such a high volume of potential investment opportunities.\textsuperscript{115}

\textbf{128.} Dr Birnie noted that foreign direct investment into Northern Ireland had previously benefited service sectors (which are not covered by the Protocol) rather than manufacturing.\textsuperscript{116} Gray and Adams Ltd predicted that the fintech sector was likely to benefit from foreign direct investment, whereas traditional manufacturing companies were likely to lose out.\textsuperscript{117} On the other hand, Sir Nigel Hamilton and Mary Madden noted that Invest NI was negotiating major projects with considerable employment potential across the IT, finance, manufacturing and distribution sectors.\textsuperscript{118}

\textit{The long-term impact and the need for stability}

\textbf{129.} Our witnesses stressed that the benefits of such investment would be long-term, and dependent on political stability. Professor Morrow said that, while short-term disruption would be the dominant initial picture, benefits would emerge in the longer term as the new arrangements bedded in.\textsuperscript{119} Mary Madden agreed that, while businesses may perceive potential benefits, “the man in the street does not yet see what the benefits are.”\textsuperscript{120} She added that community unrest “sends out a very negative signal to investors … They will look at any conflict playing out in the streets and say, ‘Why would I want to go into Northern Ireland and invest?’”\textsuperscript{121} Stephen Kelly also stressed that political stability was needed to give investors confidence that Northern Ireland is a great place to invest: “Pictures of buses burning in parts of Belfast do not portray that.”\textsuperscript{122}

\textbf{130.} The Northern Ireland Business Brexit Working Group wrote:

\begin{quote}
“The current instability does not allow businesses to plan, nor to garner investment for the future. This year’s political, social and economic instability could be the foundation for five years of economic stagnation or worse. … Half of our [survey] respondents saw potential opportunities with respect to the Republic of Ireland, and more than a third for local, GB and EU/EEA markets. This shows that the Protocol could contribute to the long-term prosperity of NI. The challenge would be finding the conditions of stability and competitiveness that would enable businesses to turn those ‘potential’ opportunities into a reality.”\textsuperscript{123}
\end{quote}

\textbf{Conclusions}

\textbf{131.} The disruption in Great Britain-Northern Ireland trade at the beginning of 2021 had many causes, including COVID-19 disruption, global supply chain issues and the impact of the Trade and Cooperation Agreement on UK-EU trade, as well as the Protocol itself. The initial impact was also more limited in scope than some media reports

\begin{itemize}
\item \textsuperscript{115} Q 15
\item \textsuperscript{116} Q 39–40
\item \textsuperscript{117} Written evidence from Gray and Adams Ltd (IIO0011)
\item \textsuperscript{118} Written evidence from Sir Nigel Hamilton KCB and Mary Madden CBE (IIO0006)
\item \textsuperscript{119} Q 2
\item \textsuperscript{120} Q 27
\item \textsuperscript{121} Q 31
\item \textsuperscript{122} Q 19
\item \textsuperscript{123} Written evidence from the Northern Ireland Business Brexit Working Group (IIO0036)
\end{itemize}
suggested, and some initial problems in the movement of goods have been addressed.

132. Despite the best efforts of businesses, they were significantly hindered in their preparation for the implementation of the Protocol by the lack of clarity, and the late provision of guidance, on its practical operation. The publication of guidance on movement of parcels just 12 hours before the Protocol came into effect was particularly egregious.

133. The long-term impact of Brexit and the Protocol on trade flows remains uncertain, and will not become clear for several months. But there are early signs of a shift away from Great Britain-Ireland movements towards movements between Great Britain and Northern Ireland ports, as well as a growth in North-South trade.

134. On the other hand, the new administrative requirements for moving goods from Great Britain to Northern Ireland have had the biggest impact on business. Firms have complained in particular about the burdensome, repetitive and disproportionate requirements for completion of Supplementary Customs Declarations. This has led to increased staff costs and difficulties with suppliers. These requirements, 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.

135. While sectors that are dependent on North-South trade links may benefit under the Protocol, those that rely on East-West supply chains may suffer. While the agri-food sector shows signs of benefiting from North-South links, new sanitary and phytosanitary processes have hindered East-West trade. We have heard serious concerns about the impact on supply of medicines and medical products to Northern Ireland in the absence of further mitigating measures. The motor industry reported that new administrative requirements are deterring suppliers in Great Britain from delivering to Northern Ireland.

136. Their experience points to a wider problem: the lack of preparedness of businesses in Great Britain for the changes in trading arrangements with Northern Ireland. There are widespread fears that businesses in Great Britain will withdraw from the Northern Ireland market. The Government urgently needs to correct the lack of understanding among businesses in Great Britain of the new requirements for trading with Northern Ireland. Likewise, the EU and its Member States must address the lack of awareness among EU businesses of the opportunities for trade with Northern Ireland under the Protocol.

137. The impact has been felt not just by businesses but also by consumers in Northern Ireland. The fear of the business community is that this impact will worsen when the various grace periods expire, and the full economic impact of the Protocol is felt.
138. Yet there are potential economic benefits under the Protocol, given Northern Ireland is the only place where businesses can operate without customs declarations, rules of origin certificates or non-tariff barriers to both the GB and EU markets. There are early signs of a growth in North-South trade, and evidence that Northern Ireland businesses are stepping into the gap left by suppliers in Great Britain who have vacated the market in Ireland.

139. Northern Ireland also stands to benefit from foreign direct investment from firms wishing to sell into the UK and EU markets. We welcome Invest NI’s discussions with 30 potential investors in Northern Ireland across the IT, finance, manufacturing and distribution sectors. However, we note that such investment in Northern Ireland has historically been strongest in the service sector, which is not within the scope of the Protocol.

140. Yet such benefits and investment will only manifest themselves in the long-term, and on the basis of political and economic stability. This requires all sides to work together to calm political and community tensions, provide certainty for business and investors, and to seek to maximise the economic opportunities for Northern Ireland.

141. Article 4 of the Protocol states that nothing in it shall prevent the UK from including Northern Ireland in the territorial scope of its trade agreements with third countries, provided that those agreements do not prejudice the application of the Protocol. In that context, the Government has an obligation to ensure that Northern Ireland is able to benefit from, and is in no way disadvantaged by, the Free Trade Agreements that the UK is currently negotiating, or will negotiate in the future.
CHAPTER 4: THE POLITICAL AND SOCIAL IMPACT OF THE PROTOCOL

Political instability in Northern Ireland

142. The period since the 2016 referendum has been characterised by deep political volatility in Northern Ireland. The Northern Ireland Executive and Assembly were re-established in January 2020 after a three-year hiatus in which they did not function, but the institutions are fragile and their stability has been called into question since the implementation of the Protocol.

143. Some of our witnesses expressed fears about the future of the power-sharing institutions. Columnist and political commentator Dr Tom Kelly told us: “We are on the brink of [not having a government] at the moment.” 124 Similarly, the Ulster Unionist Party wrote that, as a result of the implementation of the Protocol, “there is a very real chance that devolution will not survive the next six months”, in which eventuality the party said it would be difficult to see it ever being resurrected. 125 The changes in leadership of the DUP and the Ulster Unionist Party, outlined in Chapter 2, underline the destabilising political impact of the Protocol.

Community unrest

144. Between 29 March and 9 April 2021, violent unrest broke out in Belfast, Derry/Londonderry, and Ballymena, Carrickfergus, and Newtownabbey in County Antrim. 126 Protestors threw petrol bombs and fireworks, and set fire to cars. 127 Water cannon was deployed for the first time in six years 128 in what PSNI Assistant Chief Constable Jonathan Roberts referred to as the worst street violence in years. 129 During the two-week period, 90 police officers were injured, and 18 people were arrested. 130

145. The immediate trigger for the rioting was reported to have been the Public Prosecution Service’s decision not to prosecute 24 Sinn Féin politicians who had attended the funeral of former IRA head of intelligence Bobby Storey in June 2020. The funeral drew a crowd of 2,000 people at a time when COVID-19 restrictions were in place, 131 leading to allegations that Sinn Féin were being given apparent preferential treatment by the police. 132 There were also reports that a police crackdown on criminal activity in loyalist

124 Q 50
125 Written evidence from the UUP (IIO0010)
communities had contributed to the unrest. Mary Madden told us that “there was a lot of build-up to this”, and the prosecution decision “coincided with the implementing of the Protocol”, which created a “perfect storm”.

146. After the death of HRH the Duke of Edinburgh on 9 April, unionist and loyalist groups called for protests to be halted as a mark of respect. However, further lower-level protests have continued since.

147. Most of our witnesses argued the Protocol was not the primary cause of the community disturbances, but rather the “spark” or the “trigger”. Indeed, Jonathan Powell told us: “There is no doubt that the issue of identity and of the Protocol was tinder lying on the ground waiting to be lit.”

148. We heard that the Protocol was perceived as the embodiment of five years of dissatisfaction with political leadership and a sense of disenfranchisement. Professor Morrow told us:

“The word used when you talk to people is ‘void’ … The biggest single consequence of the Protocol has been disorientation, confusion, and a certain type of fog about direction and who is actually in charge.”

149. We explored the extent to which people in Northern Ireland, including those protesting, were aware of the Protocol’s provisions. Witnesses thought that while most people had little understanding of the minutiae of it, they were aware that something had changed, symbolised by the advent of checks on goods between Great Britain and Northern Ireland. Ian Marshall said that “the ‘perception’ of what the Protocol actually threatens is crucially important.” Similarly, Louise Coyle, Director of the Northern Ireland Rural Women’s Network (NIRWN), said: “There is a … belief, by many people in those communities, that the problem is the Protocol and that it needs to go or be fixed.”

150. As several witnesses pointed out, other concerns contributed to the unrest. These include the short-term issues of the controversy over Bobby Storey’s funeral and wider issues around policing, the impact of COVID-19 restrictions on young people, and a general feeling that, in Ian Marshall’s...
words, “no one has been listening to [the] concerns [of people in Northern Ireland] for the last three years”. \(^\text{148}\) They also include wider socioeconomic issues. As the SDLP wrote:

“Opposition to the Protocol is being used as a vehicle for airing decades of grievance and frustration about a lack of political delivery. And indeed as a manifestation of many very real frustrations within the Protestant working classes about lack of economic opportunity, feelings of cultural exclusion and political marginalisation.” \(^\text{149}\)

Or, as Dr Tom Kelly told us: “When you strip it back and listen to a lot of those young, articulate, loyalists speak, after two minutes they are talking about inequalities in their community, disadvantage and a lack of opportunity.” \(^\text{150}\)

151. It should also be noted that the violence occurred in some of the most deprived areas in the UK. \(^\text{151}\) According to the Poverty and Social Exclusion in United Kingdom research project (PSE:UK), \(^\text{152}\) Northern Ireland has higher levels of multiple deprivation \(^\text{153}\) than the rest of the UK. \(^\text{154}\) We were told that many people in Northern Ireland feel that the peace dividends promised after the signing of the Belfast/Good Friday Agreement had not materialised, \(^\text{155}\) and that Northern Ireland had been left behind the rest of the UK. \(^\text{156}\)

152. Jackie Redpath confirmed that the lack of focus on “social transformation” following the Belfast/Good Friday Agreement had contributed to societal fragility in Northern Ireland, and made the political situation more volatile. He told us:

“One of the downsides of the Good Friday/Belfast Agreement at the time was that the peace dividend did not go into the communities that were most affected by the conflict. That was because the economic collapse happened around the world. Instead of 6,000 jobs going into north Belfast and west Belfast and giving young people a chance and opportunity, mothers and fathers lost their jobs. That bounce or peace dividend never happened for the communities that were most affected by it. There may be an opportunity in the EU and UK Governments to have an economic focus on Northern Ireland. ... Let us see the investment and jobs and factories being built and businesses coming to Northern Ireland that allow people to trade in both directions, that

---

148 Written evidence from Ian Marshall (IIO0003)
149 Written evidence from the SDLP (IIO0033)
150 Q 50
152 PSE:UK is a major collaboration between the University of Bristol, Heriot-Watt University, The Open University, Queen’s University Belfast, University of Glasgow and the University of York working with the National Centre for Social Research and the Northern Ireland Statistics and Research Agency.
153 According to the Northern Ireland Statistics and Research Agency, multiple deprivation measures refer to 38 different indicators relating to seven ‘domains’ of deprivation. These are: income deprivation; employment deprivation; health deprivation and disability; education, skills and training deprivation; access to services; living environment; and crime and disorder. Northern Ireland Statistics Research Agency, Northern Ireland Multiple Deprivation Measures 2017: Description of Indicators (2017): https://www.nisra.gov.uk/sites/nisra.gov.uk/files/publications/NIMDM17_Description%20of%20Indicators.pdf [accessed 21 July 2021]
154 Poverty and Social Exclusion, ‘Northern Ireland’: https://www.poverty.ac.uk/community/northern-ireland [accessed 21 July 2021]
155 Q 39 (Professor Peter Shirlow)
156 Q 29 (Jackie Redpath)
give young people jobs and hope and give them an opportunity that is different than in the past.  

**The impact on identity**

153. Witnesses from all communities observed that the Protocol had had a destabilising impact on unionist and loyalist identity. The presence of checks on goods between Great Britain and Northern Ireland, and the resulting economic difficulties, led to perceptions of the “differentiated treatment of Northern Ireland”, which “offends and concerns many unionists”. Louise Coyle told us that the Protocol had led to “significant numbers of unionist people feeling that their British identity is being challenged and undermined”.

154. The Ulster Unionist Party wrote: “The Protocol is a direct attack on those who would describe themselves as unionists.” The SDLP touched on a similar theme: “The symbolic meaning of the presence of checks is disliked by many unionists and we would not seek to minimise or dismiss these concerns.”

155. Ambassador Vale de Almeida said that the EU was “very much aware of the sensitivities” of the unionist community and wanted to discuss how to address the problems created by Brexit:

> “But the underlying message is very clear. We respect the territorial integrity of the United Kingdom, we respect the respective identities of different communities, no question about that, and we want, sincerely, to find the best solutions for the problems created by Brexit in Northern Ireland and promote a vision of a positive and forward-looking future for Northern Ireland in these circumstances.”

156. Lord Frost said that the “societal disruption and weakening of identity in one community” was problematic:

> “in the real world it is very difficult to operate anything much if it does not enjoy broad support from the governed. In practice, it is difficult to make things work in those circumstances. We have pretty much a 50:50 split of opinion on the Protocol in Northern Ireland, and that does not feel like a sustainable basis.”

**Perceptions of UK Government lack of transparency**

157. Another contributory factor to unrest over the Protocol has been the perception that the UK Government had not been transparent in explaining the consequences of the Protocol. Shortly before the 2019 General Election, the Prime Minister said: “There’s no question of there being checks on..."
goods going NI/GB or GB/NI because they are part of ... the same customs territory and it’s very clear that there should be unfettered access between Northern Ireland and the rest of GB.”

On 1 January, the Secretary of State for Northern Ireland, Rt Hon Brandon Lewis MP, tweeted that “there is no ‘Irish Sea Border’.” Jonathan Powell told us: “A lot of people believed what Boris Johnson had said about there being no border.”

158. Our witnesses also argued that the Government had demonstrated an apparent lack of understanding of the agreement it signed. The Prime Minister, addressing the House of Commons on 3 February 2021, pledged that the Government would “do everything we need to do, whether legislatively or indeed by invoking Article 16 of the Protocol, to ensure that there is no barrier down the Irish Sea”. Our witnesses variously characterised this as, at best, demonstrating ignorance of the provisions of the mutually agreed Protocol, which imposes checks on goods between Great Britain and Northern Ireland or, at its most egregious, as a deliberate evasion of responsibility and parcelling of blame onto the EU. Rather than, as Professor Phinnemore and colleagues suggested, seeking “to address ... the challenges posed by the terms of the Protocol in the negotiation of the UK-EU Trade and Cooperation Agreement”, the Government waited until the Protocol was implemented to raise grievances. This was “an opportunity missed”.

159. Several witnesses took issue with the way in which they felt the Government had underplayed the precise consequences of the UK’s departure from the EU for Northern Ireland. Jess Sargeant’s assessment of the Government’s “tendency to perhaps not acknowledge the reality of what the Protocol means on the ground” corroborated Sir Nigel Hamilton and Mary Madden’s testimony that the Government “seriously minimised the difficulties” and the SDLP’s assertion that the Government “spent most of 2020 denying that [the Withdrawal Agreement] would involve significant disruption”. Professor Morrow saw a continuing lack of clarity in the Government’s position on the Protocol.

160. The Centre for Cross Border Studies wrote that a lack of honesty about the consequences of the Protocol had turned it into “the scapegoat that must be sacrificed immediately, even in the absence of any viable and agreed alternative in place”.


168  Q 50 (Jonathan Powell)

169  HC Deb, 3 February 2021, col 950

170  Written evidence from Professor David Phinnemore, Professor Katy Hayward, Dr Billy Melo Araujo and Lisa Whitten (IIO0023)

171  Q 6 (Jess Sargeant), Q 50 (Dr Tom Kelly); Written evidence from Sir Nigel Hamilton KCB and Mary E Madden CBE (IIO0006), Professor Colin Harvey (IIO0007), and the SDLP (IIO0033)

172  Q 6

173  Written evidence from Sir Nigel Hamilton KCB and Mary E Madden CBE (IIO0006)

174  Written evidence from the SDLP (IIO0033)

175  Q 9

176  Written evidence from the Centre for Cross Border Studies (IIO0020)
161. Lord Frost said that in negotiating the Protocol the Government had sought to find:

“a balance in which certain things were painful but acceptable in the broader interest, and trying to respect the different strands of the Good Friday Agreement and the delicate balance in Northern Ireland. Clearly, we did not quite find that. We know that from experience now, even if we thought it at the time.”177

The perceived use of Northern Ireland as a bargaining chip

162. There was an overwhelming feeling, in particular among unionists and loyalists, that Northern Ireland had been used in the Brexit negotiations, in Jackie Redpath’s words, as “collateral”,178 and in the DUP’s words, as a “bargaining chip”.179 This, Mr Redpath told us, had “destabilised things to the point of destabilising the peace process”.180

163. Mary Madden said:

“The Belfast/Good Friday Agreement was very complex relationship building and it protected and settled the constitutional question. Unfortunately, Brexit and then the Protocol have unsettled and destabilised those relationships. In any contested jurisdiction—and this is a very contested jurisdiction—you cannot have winners or losers … When you have a contested space, you need to have compromise.”181

164. The Ulster Unionist Party warned:

“The Protocol will be used as further leverage in continuing negotiations between the UK Government and the EU for the foreseeable future. Despite the direct, negative impacts of the Protocol, Northern Ireland will once again become the filling in the sandwich. For too long Northern Ireland has been used as a bargaining chip in negotiations, with actions not matching words and political promises becoming meaningless.”182

165. Business community representatives also made similar points. Aodhán Connolly said that “we need to remove the politics of this. Northern Ireland, and especially the business community, can no longer be that football in the game of soccer going on between the EU and the UK. Most of all, we need to see that our faith in this process is well founded.”183

Support for the Protocol

166. Others argued that the Protocol was a necessary response to Brexit. Jonathan Powell said that Brexit was always going to pose a problem for Northern Ireland: “If we are going to leave the Single Market and the customs union, there has to be a border somewhere. You cannot just magic it away. That border will infringe the rights of one group or another under the Good Friday Agreement.”184 He said that a sea border “could be managed and

177  Q 74
178  Q 24
179  Written evidence from the DUP (H00025)
180  Q 24
181  Q 26
182  Written evidence from the UUP (H00010)
183  Q 21
184  Q 50
it is certainly better than a land border, which would create much more significant problems”. 185

167. Surveys of public opinion suggest a strong division of opinion on the Protocol. In an opinion poll commissioned by Queen’s University Belfast in March 2021, 46% agreed that the Protocol “provides appropriate means for managing the effects of Brexit on Northern Ireland”. 186 Professor Hayward noted that the polling showed that while “the majority of people think that particular arrangements for Northern Ireland were necessary as a result of Brexit”, opinion on the Protocol itself was split down the middle. 187 She added that, according to the poll, “the younger you are, the more likely you are to think that the Protocol is a good thing; and the older you are, the less likely you are to think that it is good”. 188

168. A further poll in June 2021 found that 67% thought that “particular NI arrangements are necessary”; when asked if “the Protocol is on balance good for NI”, 43% agreed and 48% disagreed; and when asked if “the Protocol is appropriate for managing Brexit in NI”, 47% agreed and 47% disagreed; and while 46% wanted MLAs to vote in favour of the continued application of Articles 5–10 of the Protocol through the democratic consent mechanism under Article 18, 45% wanted them to vote against. 189

169. Support for the Protocol is particularly prevalent in nationalist and republican communities. Ian Marshall acknowledged that, just as the implementation of the Protocol feels undemocratic for unionists such as himself, so do nationalists feel “that Brexit was foisted on them against their will”. 190 He saw the Protocol as “the outworking of this and a necessary component of the new relationship between NI, the UK, ROI and EU”—a relationship which, in his opinion, is “something [the nationalist] community is quite content to accept”. 191

170. The SDLP expressed frustration at the UK Government’s lack of political leadership, urging it to “deliver on legally binding promises and stop reckless rhetoric”, while making a concerted effort to “maximise the economic benefits of the Protocol for NI”. They considered that the Protocol, “while imperfect, offers important protections from some of the most disruptive potential consequences from the UK’s chosen method of leaving the EU”. 192

171. Sinn Féin judged that Brexit, rather than the Protocol, had caused “damage to north–south links, at a time when interactions across the island [had] been increasing year-on-year”. The party emphasised the need for “a stable trading environment” on the island of Ireland in the post-COVID-19 and post-Brexit landscape, in order “to attract inward investment to create jobs and strengthen our economy”. 193

185 Q 52
186 Written evidence from Professor David Phinnemore, Professor Katy Hayward, Dr Billy Melo Araujo and Lisa Whitten (IIO0023)
187 Q 39
188 Ibid.
189 Professor David Phinnemore, Professor Katy Hayward, Lisa Whitten and Dr Billy Melo Araujo, Testing the Temperature II: What do voters in Northern Ireland think about the Protocol on Ireland/Northern Ireland? (Belfast: Queen’s University Belfast, June 2021): https://www.qub.ac.uk/sites/media/Media,1125200,smxx.pdf [accessed 21 July 2021]
190 Written evidence from Ian Marshall (IIO0003)
191 Ibid.
192 Written evidence from the SDLP (IIO0033)
193 Written evidence from Sinn Féin (IIO0013)
172. Despite the views expressed to us by nationalist and republican witnesses, Professor Colin Harvey, School of Law, Queen’s University Belfast, felt that “there seems to be limited appreciation within the Westminster/Whitehall systems in general of nationalist/republican perspectives”.194

The impact on the Belfast/Good Friday Agreement

173. In the context of these divergent perspectives, we reflected on the impact of Brexit and the Protocol on the Belfast/Good Friday Agreement.195 We did so against the backdrop of two applications for judicial review challenging the Protocol and the European Union (Withdrawal) Act 2018 and the European Union Withdrawal Act 2020. On 30 June, the High Court in Belfast dismissed the applications for judicial review on various grounds, including: that the Withdrawal Acts of 2018 and 2020 overrode Article VI of the Act of Union; that Section 1(1) of the Northern Ireland Act 1998 has no impact on the legality of changes effected by the Protocol; and that there had been no breach of the applicants’ rights under Article 3, Protocol 1 of the European Convention on Human Rights that ensures the “free expression of opinion of the people in the choice of the legislature”.196 The judgment is likely to be appealed.

174. In summarising the evidence we received, and in view of the legal proceedings that were ongoing during our inquiry, we do not reflect in this report on the legality of the Government’s actions in concluding the Protocol. Rather our focus is on the broader political impact of the Protocol on the Belfast/Good Friday Agreement. However, in that context we acknowledge that the legal proceedings have been a significant factor in recent political debate in Northern Ireland.

175. The Belfast/Good Friday Agreement was underpinned by the frictionless and seamless trade afforded within the EU Single Market, and the Agreement ‘settled’ the issue of identity by allowing people in Northern Ireland to identify as British, Irish or both. Yet these foundations have been undermined. As Mary Madden told us: “The Belfast/Good Friday Agreement allowed people to feel both Irish and British. Unionists now feel like they are not as British as they were before the Protocol was implemented.”197 Professor Morrow agreed that “there is no doubt whatsoever that [the Protocol] has been very destabilising” to the Belfast/Good Friday Agreement”.198

176. Professor Morrow, the DUP and Unionist Voice Policy Studies raised concerns about the interaction between the Protocol and the principle of cross-community consent enshrined in both the Belfast/Good Friday Agreement and the Northern Ireland Act 1998, which devolved powers from

---

194 Written evidence from Professor Colin Harvey (IIO0007)
195 A timeline of key events in the agreement and implementation of the Belfast/Good Friday Agreement is published at ‘Good Friday Agreement timeline of key events’, The Belfast Telegraph (10 April 2018): https://www.belfasttelegraph.co.uk/news/good-friday-agreement/good-friday-agreement-timeline-of-key-events-36792138.html [accessed 21 July 2021]
197 Q 26
198 Q 2
the UK Government to Northern Ireland.199 The DUP argued that “the requirement for cross-community support in Northern Ireland [has been] discarded and ignored.”200 Peter Sheridan told us that the perception among unionist and loyalists was that there has been a change in Northern Ireland’s relationship with the United Kingdom without their consent.201

177. The Centre for Cross Border Studies highlighted the strain placed on the North-South institutions established under Strand 2 of the Belfast/Good Friday Agreement, as demonstrated by the DUP’s reluctance to participate in North–South ministerial meetings. They argued that this was “ultimately reducing the space to find potential resolutions”.202

178. Several witnesses stressed that Brexit, rather than the Protocol, was the root cause of this destabilising effect, in particular given that 55.8% of votes cast in the referendum in Northern Ireland were to remain in the EU.203 Sinn Féin argued:

“There is no good Brexit for Ireland, North or South. The majority of people here voted against it. Our membership of the EU was a fundamental component of the peace process and formed the foundation of the Good Friday Agreement. The Protocol is not perfect, but it mitigates the worst of Brexit. It is an internationally agreed and binding treaty that prevents a catastrophic hard land border. We would not be debating trade barriers if the British Government did not go down a path of a hard Brexit with maximum disruption and divergence.” 204

179. Ambassador Vale de Almeida reasserted the EU’s position that the Protocol “is the only mechanism identified that protects the Good Friday/Belfast Agreement in all its strands, the all-island economy, North-South cooperation, the integrity of the Single Market and Ireland’s place in it”. He sought to provide reassurance of “the EU’s enduring support for peace and stability in Northern Ireland, and for the Belfast/Good Friday Agreement”, which is supported monetarily through a €1 billion (approximately £855 million) endowment through the Peace Plus Fund.205

180. Ambassador O’Neill stressed the need for the Irish Government and the UK Government to work together to uphold the Belfast/Good Friday Agreement, and stressed the importance of using the North–South and East-West institutions established under the Agreement “to advance constructive discussion around managing the challenges arising from Brexit”.206

181. A number of witnesses referred to the interaction of Article 2 of the Protocol (on the rights of individuals) with the Belfast/Good Friday Agreement.207 While the provisions of that Article have not been the focus of this report,

199 Northern Ireland Act 1998, Part I, Section 4(5)
200 Written evidence from the DUP (IIO0025). See also Q 3 (Professor Duncan Morrow) and written evidence from Unionist Voice Policy Studies (IIO0016).
201 Q 24
202 Written evidence from the Centre for Cross Border Studies (IIO0020)
203 Q 52 (Jonathan Powell); written evidence from Ian Marshall (IIO0003), Ambassador Adrian O’Neill (IIO0035), and Harry Maguire (IIO0028)
204 Written evidence from Sinn Féin (IIO0013)
205 Written evidence from Ambassador João Vale de Almeida (IIO0034)
206 Written evidence from Ambassador Adrian O’Neill (IIO0035)
207 See in particular written evidence from the Northern Ireland Human Rights Commission and the Equality Commission for Northern Ireland (IIO0031); The Committee on the Administration of Justice (IIO0018); and the Northern Ireland Women’s European Platform (IIO0022).
we acknowledge their importance, and we intend to return to them through a focused piece of work in the autumn.

**A democratic deficit**

182. In its October 2019 Explanatory Note on the UK proposals for an amended Protocol on Ireland/Northern Ireland, the Government acknowledged that its proposal for a “zone of regulatory compliance across Northern Ireland and the EU … will mean Northern Ireland will be, in significant sectors of its economy, governed by laws in which it has no say. That is clearly a significant democratic problem.”

183. Notwithstanding the provisions of the democratic consent mechanism subsequently set out in Article 18 of the Protocol, some witnesses identified a fundamental democratic deficit at the heart of the Protocol. Dr Birnie saw the Protocol as a classic case of taxation without representation, and warned that Northern Ireland “will be increasingly a sort of protectorate of the European Union, without democratic legitimacy or accountability.”

184. The DUP argued that the Protocol’s “central failing” was that it was “imposed without providing the people of Northern Ireland or their elected representatives with an opportunity to provide prior consent”, meaning it “cannot feasibly secure the support of both communities and traditions”. They condemned “the failure to command the support of both unionists and nationalists on such a controversial issue”, and stated that the Government’s decision to implement the Protocol “without the consent of any quarter of political unionism in Northern Ireland … has seriously undermined support for devolution within the unionist community.”

185. The DUP added:

> “Under the Protocol, laws can be devised, debated and imposed on Northern Ireland by the EU without direct or meaningful representation from our devolved legislature or national parliament. The consent mechanism imposed by the Government only permits Stormont a vote on whether to retain or disapply this every four years. It is clear that within such a framework the capacity for business and civic stakeholders to inform the rules which affect their lives and livelihoods would be severely hampered, particularly when compared with their counterparts in Great Britain or the Irish Republic.”

186. The Ulster Unionist Party stated:

> “Members of the EU working with representatives of the UK Government on the Joint Committee will make decisions relating to Northern Ireland without any democratic scrutiny. The NI Assembly is now a rule-taker for thousands of EU regulations over which it has no say or scrutiny. There is now joint authority over Northern Ireland between the EU and UK Government and the ECJ retains jurisdiction over this part of the United Kingdom.”

---


209 Q 49

210 Written evidence from the DUP (IHO0025)

211 Written evidence from the UUP (IHO0010)
187. Professor Phinnemore and colleagues wrote: “Policy decisions on the Protocol have often been viewed as being adopted ‘for’ as opposed to ‘with’ Northern Ireland”, and Professor Morrow told us that, while the Protocol had been a central area of debate, “Many people in Northern Ireland feel that they have no ultimate input into the final decisions.” Louise Coyle told us: “The elected representatives who agreed the Protocol failed to take the electorate with them on this.”

188. The Environmental Governance Island of Ireland Network pointed to the practical impact in terms of concerns about the EU policies being adopted which would be cumbersome for Northern Ireland, would go against Northern Ireland’s interests or do not take its specific situation into account.

189. Lord Frost said that “it is inherent in the structure of the Protocol that the democratic legitimacy issue is a very difficult one”. While the Government “felt very strongly at the time” of the negotiations that the democratic deficit issue needed to be addressed, he conceded that “we did not quite find the right balance”, in particular as the Government’s initial proposal for a prior consent vote in the Northern Ireland Assembly was not accepted. Lord Frost acknowledged that the democratic consent mechanism that emerged under Article 18 was “quite an unusual arrangement in democratic terms”, to take account of “the unusual nature of having lots of legislation imposed directly … It is not entirely satisfactory; I do not think anybody thinks that it is.” He added that “we need to find a way of respecting” concerns about the democratic deficit, although “there will always be an element of compromise rather than perfectionism, given the circumstances.”

Engagement with Northern Ireland communities and civic society

190. There was also concern at a lack of engagement with civic society stakeholders in Northern Ireland. In an opinion poll commissioned by Queen’s University Belfast in March 2021, 73% of those polled were “concerned or very concerned about Northern Ireland’s voice being heard on the implementation of the Protocol”.

191. We were told that women and young people were among specific sections of the population whose voices have not been heard. Both the Northern Ireland Women’s European Platform (NIWEP) and Louise Coyle told us that women’s voices had either been “underrepresented” or “absent” in conversations around the Protocol, and that this was part of an historic trend of women’s exclusion in peacebuilding talks. This was despite the fact that “community and voluntary sector leaders in Northern Ireland are predominantly women”. The NIWEP also wrote that “in meetings between the Withdrawal Agreement Joint Committee and Northern Ireland civil society this year, “no more than two representatives have been women, ...
and only one has had any connection to the women’s sector in Northern Ireland.”

192. The NIWEP wrote:

“Women [have been] at the forefront of addressing [recent] unrest at community level … this contribution receives very little public attention, and is all but ignored in funding for the community and voluntary sector and community level initiatives.”

193. As we have seen, there are fears that the impact of the Protocol on trade will have deleterious effects on households, particularly among low-income groups. Citing a 2019 report from the Women’s Regional Consortium, and the gendered socioeconomic impact of the COVID-19 pandemic, the NIWEP warned: “Women are likely to experience the most significant impact, as many women from low income backgrounds have long reported difficulties in making ends meet and even going hungry or without basic necessities.”

194. Louise Coyle and the NIWEP expressed concern about “specific issues for women in the border regions, whose everyday lives are often lived on both sides of the border with regard to accessing jobs, education and services as well as connecting families”. They also highlighted the loss of access to the European Protection Order, which allows mutual recognition of protection orders when moving from one EU Member State to another, a UK-wide issue but with “specific implications in Northern Ireland and in particular the border regions”.

195. In addition, given that young people tended to be identified with the recent community unrest—with children as young as 12 involved in some of the incidents—there remains a need to engage meaningfully with younger generations. Mary Madden told us of “young people in some areas feeling very underrepresented and very unheard and feeling that they have no hope and that no one is listening”.

196. A March 2021 opinion poll commissioned by Queen’s University Belfast revealed “an evident lack of trust in a range of actors to manage the interests of Northern Ireland in respect of the Protocol”—86% of respondents said
that “they distrust/distrust a lot the UK government”. Jackie Redpath gave sobering testimony to the feeling among communities that “politics does not work, that our politicians are powerless in this situation”.

197. In light of these concerns, our witnesses agreed that there was a vital and urgent need for both the UK and the EU to intensify their engagement with stakeholders in Northern Ireland.

198. Although business representatives told us that their engagement with the Government had increased, there was a perception that engagement with community representatives and civic society had been more uneven or, in Louise Coyle’s words, “ad hoc”. Peter Sheridan told us that he had monthly meetings with the Secretary of State for Northern Ireland, but that it was a case of raising the same issues time and time again, without seeing results. This was echoed by Louise Coyle:

“It is imperative to show how these meetings are part of that process, so instead of just a series of isolated opportunities, which is what I would say there have been so far, for participants to voice their concerns, there needs to be follow-up and feedback as a result of these engagements.”

199. The Centre for Cross Border Studies agreed that there was a “vital need to show how these meetings are part of a structured process rather than a series of isolated opportunities for participants to voice concerns”. Informal, local and community-level cooperation was imperative to avoid “those charged with monitoring the Protocol’s implementation … basing their conclusions on narrow criteria to marginalise forms of cooperation undertaken by community organisations”.

200. Jackie Redpath said that his organisation had not been given the opportunity to engage with government officials. He and Louise Coyle did concede, though, that community engagement had increased since January and following the period of unrest.

201. As for the EU’s engagement with Northern Ireland stakeholders, Ambassador Vale de Almeida assured us that “we fully understand the need for [local engagement in Northern Ireland] and have conducted as much outreach as possible within the limits of the existing Covid-19 restrictions”. He pointed to engagement by Vice President Šefčovič with business and society stakeholders, as well as with political leaders in Northern Ireland, and his own visits to Belfast and Derry/Londonderry. In that context, we once again note Vice-President Šefčovič’s evidence to the Northern Ireland Assembly Committee for the Executive Office on 28 June.
Conclusions

202. 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. Both the UK and the EU have affirmed their commitment to uphold the Belfast/Good Friday Agreement, but Brexit and the Protocol have evidently placed the delicate equilibrium established by the Agreement under considerable strain, as borders and questions of identity have once more come to the fore. Just as unionists and loyalists object to the Protocol being imposed without their consent, so nationalists and republicans point out that Brexit was imposed on Northern Ireland even though the majority of votes there were to remain in the EU.

203. The unionist and loyalist communities are deeply concerned that Northern Ireland’s place within the United Kingdom has been undermined by the Protocol. Yet the violent unrest seen in late March and early April 2021, while arguably triggered by the Protocol, was also an expression of wider dissatisfaction with the political process and a perception that some voices in Northern Ireland are not listened to. This sense of alienation has been a factor going back many years, and has multiple causes, including the lack of access to employment, skills and investment opportunities within communities that are among the most economically deprived in the UK.

204. This dissatisfaction is exacerbated by the pervasive sense that the Protocol creates a democratic deficit, in that significant aspects of EU law with wide-ranging political and economic implications apply to Northern Ireland subject neither to UK Government participation in the EU institutions, nor to consent from parliamentarians either at Westminster or Stormont. While there are mitigating steps that can be taken, as we set out in the next chapter, there is no apparent way to eliminate the democratic deficit. We intend to return to this issue in the coming months.

205. There is a widespread perception that the Protocol was imposed on Northern Ireland without meaningful engagement with its communities, and without a full and transparent explanation of the impact it would have. Where there was engagement, it was perceived as uneven.

206. Given the implications of the Protocol for people in Northern Ireland, both the UK Government and the EU must develop and expand formal mechanisms for long-term engagement with all sectors of Northern Ireland civic society. As part of this, there should be a particular effort to engage those who have so far felt side-lined in discussions of Brexit and the Protocol, including young people and women.
CHAPTER 5: MITIGATIONS AND SOLUTIONS

Introduction

207. In this Chapter we set out potential mitigations and solutions for the problems that have been outlined in Chapters 3 and 4. As we set out in Chapter 1, our analysis is without prejudice to the views of individual members in terms of overall support for or opposition to the Protocol.

Proportionality

208. A common theme emerging from our evidence was that the Protocol needed to be applied in a proportionate manner if the commitment in the Preamble that it should “impact as little as possible on the everyday life of communities in both Ireland and Northern Ireland” was to be honoured.240 The Northern Ireland Business Brexit Working Group stressed five key principles to achieve this: stability, certainty, simplicity, affordability, and clarity.241

209. Professor Shirlow said that the EU needed to take account of the modest risk that Northern Ireland posed to the integrity of the Single Market: “We have a limited air, road and port infrastructure and … it is very easy to monitor the east-west movement of goods. It is a small place. If goods at risk are at the heart of the EU’s understanding, surely it must understand infrastructural scale.”242

210. Professor Shirlow added that the £13 billion total value of East-West movement of goods amounted to 0.0008% of the EU’s GDP. The EU needed to be cognisant of the core importance of the East-West relationship for the Northern Ireland economy and to ask itself:

“Why is this being so overengineered? … If you want to support the peace process, you will have as much frictionless movement as you can on the east-west chain of movement of goods, especially from Great Britain … It cannot just be a process of looking at rules and regulations.”243

211. Dr Birnie criticised the EU for its perceived lack of flexibility and urgency in agreeing mitigations in the Withdrawal Agreement Joint Committee.244 Peter Sheridan also stressed the need to resolve the issues affecting people’s daily lives quickly, “not leaving them for six months but resolving them now”.245

212. Mary Madden detected a “serious difficulty”, threatening the Protocol’s sustainability, in the EU’s tendency to see the Protocol through the lens of a trade agreement to protect the Single Market, without understanding the wider impact on sensitive issues of identity.246

---

240 Q 21 (Aodhán Connolly)
241 Written evidence from the Northern Ireland Business Brexit Working Group (IIO0036). See also Q 20 (Stephen Kelly).
242 Q 45
243 Ibid.
244 Q 45
245 Q 28
246 QQ 28 and 35
213. Although the Ulster Unionist Party acknowledged the right of the European Union to seek to protect its Single Market, it argued that the Protocol was the wrong solution:

“The Protocol reaches far beyond this intention. A key component of the Belfast Agreement was pragmatism and acknowledging the interconnectedness of these islands geographically, historically and economically. The Protocol appears void of any of the pragmatism that has seen relations change for the better over the last twenty years and that creates a tension that must be resolved.”

214. Likewise, the DUP argued that “a fair, flexible and proportionate solution must be identified which respects every market and every border equally”.

215. Ambassador Vale de Almeida said that the EU has:

“an economic, diplomatic and even an emotional and financial commitment to Northern Ireland, which is without any doubt. We are very much aware of the situation. That is why we have shown, and Vice-President Šefčovič in particular and all of us have shown, a great deal of understanding and flexibility. We are turning our regulations upside down to try to find solutions to this problem. … this is the first time in history that the European Union has outsourced to a third country … the control of the external border of its single market, and that is a major sign of confidence and trust in our relationship. … We are applying specific, innovative and creative procedures and concepts to a very particular situation like the one in Northern Ireland, so I think that you can count on us to exercise the maximum pragmatism, but we have the legal and economic constraints that are linked to the protection of the single market.”

216. Lord Frost told us that a “new balance” needed to be created in operating the Protocol, as it is “not being operated in a way that respects the balance of the Belfast/Good Friday Agreement”:

“The Protocol exists because there is a delicate balance in the Good Friday Agreement and because there are a lot of different interests and concerns that have to be satisfied through the Protocol. I think that means all sides have to act with a degree of respect and sensitivity. … the fundamental thing that has to be rebalanced is that goods have to be able to flow as freely as possible between Great Britain and Northern Ireland. The reality of the UK customs territory as set out in the Protocol, and the reality of the UK internal market as set out in the Protocol, has to mean something, and be real, to the people who operate within it.”

217. We acknowledge the EU’s concern to protect the integrity of its Single Market, and its argument that it has already shown pragmatism in exploring flexibilities allowed under EU law and by outsourcing to the UK the control of the external border of its Single Market. Nevertheless, it needs to do more to ensure that the Protocol is applied in a flexible and proportionate manner. The Protocol’s sustainability

247 Written evidence from the UUP (IIO0010)
248 Written evidence from the DUP (IIO0025)
249 Oral evidence taken before the European Affairs Committee on 24 June 2021 (Session 2021–22), QQ 12 and 14
250 Q 71
will be undermined if the EU does not take all relevant factors into account, including the economic importance of East-West trade, the degree of risk that the Northern Ireland market presents to the EU Single Market, and the sensitive issues of identity that the Protocol gives rise to. In that context, we note that the £13 billion total value of movement of goods between Great Britain and Northern Ireland amounts to 0.0008% of the EU’s GDP.

Implementation of the UK Government’s commitments

218. Professor Hayward argued that the EU’s approach was because it “hears just as much as everybody does the UK Government’s apparent willingness to breach the Protocol”. The SDLP agreed that “as long as the UK flirts with upending the entire treaty, these solutions become more difficult. Not least as Member States become ever more suspicious of British intentions and wary of giving them another perceived concession only for it to be twisted ... later.”

219. Jonathan Powell argued that the EU had a legitimate concern about opening a back door to the Single Market, in particular as direct trading routes between Ireland and the EU mainland grow, and given the history of smuggling across the Irish border:

“If you want to persuade the EU and particularly the French Government to implement this in a way that will be light touch, they need to believe the UK genuinely intends to implement the agreement it has reached. So far, they would be rather justified in thinking that is the opposite of what we intend to do. Instead, we unilaterally start extending things. We do not implement the things we have promised to do. We do not recruit the staff. We do not put things in place. If we started ... trying to build the trust and demonstrating we were going to implement it, they would be a lot more sympathetic to making it light touch.”

220. In its statement after the 9 June Withdrawal Agreement Joint Committee, the Commission welcomed the UK's commitment to providing concrete plans regarding IT access, as agreed in the Joint Committee in December. However, it identified three remaining outstanding areas where it argued that the Government had not met its commitments to implement the Protocol, including construction of permanent Border Control Posts; the capacity of temporary facilities; and traceability of food supply to supermarkets. The Commission stated that it “remains open to exploring technical solutions provided that the UK Government commits to the full implementation of the Protocol and demonstrates this through concrete action”.

251 Q 46
252 Written evidence from the SDLP (IIO0033)
253 QQ 54–55
221. Ambassador Vale de Almeida said that the EU was willing to be flexible, but this was contingent on the UK implementing the flexibilities that had been mutually agreed in December, in order to enhance goodwill and a constructive atmosphere.257

222. Lord Frost acknowledged the need for trust between negotiators. However, he added: “I make no apology for telling things like it is. It is important to be clear about what you think so that the other side can understand that.” He said that all sides bore responsibility for the problems of trust that had arisen, and he argued that the EU’s actions in relation to Article 16, State aid and tariff rate quotas, taken without warning, had caused problems. He stressed the need for all sides to move on in a constructive and consensual way to achieve “the new balance that we need”, because “the Protocol is not working well, and … a workable Protocol, a workable arrangement, is in the interests of everybody in Northern Ireland, and it is only if we can find something that is in the interests of everybody that we will get something workable.”258

223. The Government’s actions in relation to the Protocol, including unilateral extension of grace periods and a perceived failure to implement previous agreements reached in the Withdrawal Agreement Joint Committee, have been regarded as provocative by the EU, and have contributed to a lack of trust and cooperation between the two sides. The UK Government has argued that its actions were necessary in the interests of the people and businesses of Northern Ireland. However, in order to maximise the prospect of the EU taking a flexible approach to the implementation of the Protocol, the Government needs to rebuild trust by demonstrating its good faith. This requires open and constructive engagement, meetings its legal obligations and fulfilling its outstanding political commitments.

Mitigating measures

224. The Northern Ireland Business Brexit Working Group called for the UK and the EU to agree 12 specific mitigating measures:

- An enhanced Trusted Trader Scheme to facilitate a green channel at ports reflecting the low level of risk;
- A veterinary agreement;
- Adjustment of rules on notice for food supply;
- Narrowing the definition of goods ‘at risk’;
- Extending the UK Trader Scheme easement for businesses with no fixed place of business in Northern Ireland;
- Clarity and simplification in relation to rules of origin requirements;
- A process review of the Supplementary Declaration requirement and the consideration of other viable alternatives, and/or reducing or eliminating the requirement for them to be completed for goods not at risk;

257 Oral evidence taken before the European Affairs Committee on 24 June 2021 (Session 2021–22), Q 13
258 QQ 61 and 73
• Continued improvement in the platforms for submitting data, in particular the Trader Support Service;
• Extended use of technology, for instance automated identity checks of trailers and seals;
• Simplification or elimination of the requirement for a declaration for business to consumer parcels moving from Great Britain to Northern Ireland from 1 October;
• Urgent delivery of the promised rebate scheme for goods at risk; and
• The establishment of a Business Consultative Group with the UK and EU.259

225. We received detailed evidence on a number of these and other proposals.

**Medicines**

226. Alliance Healthcare UK, the Ethical Medicines Industry Group, Norgine Pharmaceuticals, the College of Podiatry, the Healthcare Distribution Association and PAGB all called for a Mutual Recognition Agreement on medicines standards, allowing UK/GB licensed products to be supplied to pharmacies and hospitals in Northern Ireland.260 Teva UK Limited further called on the UK and EU to confirm that an entity established anywhere in the UK will be allowed to act as a Marketing Authorisation Holder for authorisations valid in Northern Ireland.261

*The definition of goods ‘at risk’, Supplementary Declarations and the UK Trader Scheme*

227. Stephen Kelly said that the single biggest request from the manufacturing sector was for an expansion of the definition of goods not at risk of moving from Northern Ireland into the EU Single Market.262

228. Gray and Adams Ltd argued that goods destined for consumption in Northern Ireland and materials used in the manufacture or processing of goods destined for Great Britain or Northern Ireland should not be subject to the Supplementary Declaration process. They also called for the replacement of the Supplementary Declaration process with a simplified declaration process, modelled on the EU’s ‘Intrastat’ model.263 The Society of Motor Manufacturers and Traders and SDC Trailers Limited agreed, and called for GB-established businesses moving or selling their products to an address in Northern Ireland to be able to use the UK Trader Service to self-declare their goods not ‘at risk’.264

229. Seamus Leheny noted the potential for an audited movement/trusted trader scheme for moving goods from Great Britain to Northern Ireland, using

259  Written evidence from the Northern Ireland Business Brexit Working Group (IIO0036)
260  Written evidence from Alliance Healthcare UK (IIO0008), Gray and Adams Ltd (IIO0011), Norgine Pharmaceuticals (IIO0026), College of Podiatry (IIO0012), Healthcare Distribution Association (IIO0032) and PAGB (IIO0013)
261  Written evidence from Teva UK Limited (IIO0014)
262  Q 20
263  Written evidence from Gray and Adams Ltd (IIO0011)
264  Written evidence from Society of Motor Manufacturers and Traders (IIO0030) and SDC Trailers Ltd (IIO0024)
GPS and smart seal technology.\(^{265}\) Aodhán Connolly said that 70\% by value of goods crossing from Great Britain to Northern Ireland are destined for retailers’ shelves, and a trusted trader scheme should be based on the low risk of those goods entering the EU Single Market, covering as wide a group of goods and traders as possible.\(^{266}\)

**A UK-EU veterinary agreement**

230. Professor Morrow identified a UK/EU veterinary agreement as “probably the single biggest thing that could be done in practical terms” to alleviate the burden of the Protocol.\(^{267}\) The National Farmers’ Union and Ulster Farmers’ Union stated that they would welcome a long-term SPS agreement covering all affected products, including live animals, products of animal origin, plants and plant products, prohibited and restricted goods, growing media, and machinery.\(^{268}\)

231. Jess Sargeant said that a UK-EU veterinary agreement could take several forms, including a Swiss-style agreement, with complete regulatory alignment and removing the need for almost all paperwork and checks, or a New Zealand-style agreement, which would reduce the frequency of checks.\(^{269}\) Peter Sheridan said that it was in Northern Ireland’s interests for there to be an agreed common approach to food safety and veterinary standards to reduce the large number of checks,\(^{270}\) though Mary Madden feared that such a model was incompatible with the UK Government’s trade policy.\(^{271}\)

232. Jonathan Powell noted that US President Biden had made clear that an SPS agreement that alleviated tensions over the Protocol would not stand in the way of a US-UK trade agreement, “so that excuse is gone. There is no excuse, apart from an ideological wish to avoid harmonising with the EU, because there are no practical problems with such harmonisation that people can point to.”\(^{272}\)

233. On 9 June, the UK stated that it had “made a proposal which recognises the high standards of both Parties and establishes mechanisms to identify and address any risk arising from changes made on either side”.\(^{273}\) The EU responded that it had suggested that the UK should continue to follow, if only temporarily, EU rules, so that “most checks on Great Britain-Northern Ireland trade would be removed”. It stated that the UK had refused this option, even though the EU had suggested that this temporary agreement could be reviewed once the UK concludes new trade deals.\(^{274}\)

234. Ambassador Vale de Almeida said that the EU calculated that an “encompassing SPS veterinary agreement” would remove 80\% of controls.

\(^{265}\) Q 21
\(^{266}\) Q 21
\(^{267}\) Q 9
\(^{268}\) Written evidence from the NFU (IIO0019) and the Ulster Farmers’ Union (IIO0021)
\(^{269}\) Q 9
\(^{270}\) Q 27
\(^{271}\) Q 28
\(^{272}\) Q 54
\(^{274}\) European Commission, Examples of flexibilities identified by the European Commission in an effort to ensure the full implementation of the Protocol on Ireland/Northern Ireland (9 June 2021): [https://ec.europa.eu/info/sites/default/files/20210607_flexibilities_public_version_df_002-final.pdf] [accessed 21 July 2021]
Such an agreement, if only temporary pending the agreement of UK trade deals, would remove checks at the border and allow time for infrastructure in Northern Ireland to be built. He called for both sides to “find a way through with some creativity”.275

235. Lord Frost said that the UK could not sign up to the EU’s proposal for a Swiss-style arrangement, whereby the UK operated the rules of the EU. Rather, there was space for an equivalence arrangement in a “situation where the two territories operate rules that are essentially providing for the same standards but have some differences in detail”. He pointed to the EU’s agreements with New Zealand and Canada as potential precedents. He said that the UK had provided the EU with a detailed proposal, which he acknowledged would “break new ground in the sense that it would be broader than existing equivalence arrangements”. Though there had been some discussion with the EU, it had not been of the quality that he would have liked.276

Dialogue in the Withdrawal Agreement Joint Committee

236. The UK and the EU acknowledged the case for flexibilities in their separate statements after the 9 June Withdrawal Agreement, in the context of reports that they were examining a list of over 25 specific issues of contention in relation to the Protocol.277 The UK Government noted “progress towards solutions” in relation to:

- Assistance dogs entering Northern Ireland from Great Britain;
- EU access to UK customs IT systems and databases;
- The process for allocating Economic Operator Registration and Identification numbers (EORI) for those trading in Northern Ireland;
- The application of VAT to imports of second-hand vehicles from Great Britain;
- A technical interface between UK and EU data systems; and
- Implementation of the Export and Transit Trans-European Systems in Northern Ireland.

237. The Government stated that it “has been led to understand that further proposals will be received from the EU” in relation to:

- The supply of medicines to Northern Ireland;
- Approval processes for high-risk plants intended for export to the EU to be moved into Northern Ireland; and
- Livestock movements between Great Britain and Northern Ireland.

238. On the other hand, the Government expressed concern that “substantive progress has not yet been made” in relation to:

- SPS/veterinary arrangements;

---

275 Oral evidence taken before the European Affairs Committee on 24 June 2021 (Session 2021–22), Q 12
276 Q 64
• Arrangements further to reduce and remove burdens for trusted agri-food traders moving goods for use or consumption in Northern Ireland;

• Prohibition on imports to Northern Ireland of fresh minced meat or other SPS commodities such as seed potatoes;

• Pet travel from Great Britain to Northern Ireland;

• The application of tariff rate quotas (TRQs) for goods entering Northern Ireland, including on steel;

• The criteria for the UK Trader Scheme (UKTS) and the application of the concept of “goods not at risk”; and

• Movements of parcels from Great Britain to Northern Ireland.

239. In parallel, the Commission published examples of flexibilities that it had identified to ensure the full implementation of the Protocol, in relation to:

• SPS measures;

• Connecting EU and UK SPS databases;

• Facilitating guide dogs accompanying persons entering Northern Ireland from Great Britain;

• High-risk plants intended for export to the EU;

• Tagging of animals moving between Great Britain and Northern Ireland;

• Scrapie risk control for breeding animals and the movement of livestock from and to Great Britain to attend trade and exhibition fairs;278

• Medicines: the EU is “particularly sensitive to public health issues and wants to find solutions to ensure the continuity of medicines supply to Northern Ireland”. The Commission stated that it is “currently exploring solutions to provide a long-term perspective for medicines supply to Northern Ireland. More details on this will follow as soon as possible”;

• VAT on second-hand cars: the EU is exploring “legally and technically sound … solutions to sustain the access to affordable second-hand cars for citizens in Northern Ireland”, and said that “significant progress in this area is expected in the coming weeks”;279

• Tariff rate quotas: the Commission noted that imports of goods into Northern Ireland cannot benefit from the quota system of either the EU or the UK, leading to higher customs duties. The Commission is exploring solutions, and stated that legislative changes would be necessary. Progress is expected over the coming weeks.279


240. On 30 June, the Commission published “a balanced package of measures to address some of the most pressing issues related to the implementation of the Protocol”, which it argued demonstrated its “strong commitment to finding creative solutions—including by changing its own rules—with the core purpose of benefitting people in Northern Ireland”. These included:

- Agreeing to the UK’s request to extend the grace period for chilled meats until 30 September;
- In order to ensure the long-term supply of medicines from Great Britain to Northern Ireland, a change in EU rules so that regulatory compliance functions for medicines authorised by the UK for the Northern Ireland market may be located in Great Britain, subject to conditions ensuring that medicines are not further distributed into the EU Single Market. A legislative proposal will be brought forward in the autumn with a view to implementation before the end of the grace period;
- A solution to facilitate the movement of guide dogs has been communicated to the Government, and Northern Ireland competent authorities now need to define the details of implementation on the ground;
- Adoption of an Implementing Regulation to remove the need for re-tagging when animals move multiple times between Great Britain and Northern Ireland; and
- Ongoing work on a solution regarding the risk control of scrapie.280

241. Lord Frost said that the 30 June announcement was helpful, although more was needed. On medicines, he acknowledged that the EU had made a “valiant effort … to deal with the problems”. However, the Government was not convinced that it dealt with all the difficulties, and dialogue with the EU continued. Although the grace period for medicines expires at the end of the year, Lord Frost said that firms were already taking decisions about supply of drugs, and there were reports that some drugs are being withdrawn: “we are absolutely clear that people in Northern Ireland have to have the same access to medicines as in every other part of the United Kingdom.”281

242. Lord Frost said that the extension of the grace period for chilled meats provided breathing space, although it did not resolve the problem. He said that details had yet to be received in writing on the other proposals. Overall, “the problem is that we are simply not having the quality of discussion about them that we need in order to resolve the problem. Meanwhile, time is passing.”282

Conclusions

243. If they are to ensure the proportionate application of the Protocol, and meet the commitment in the Preamble that it should impact as little as possible on the everyday life of communities in both Ireland and Northern Ireland, the UK and the EU urgently need to agree

281 Q 63
282 Ibid.
practical solutions in a number of specific areas. Many have already been identified both by our witnesses and in dialogue between the UK and the EU in the Withdrawal Agreement Joint Committee. They include:

- An enhanced Trusted Trader Scheme;
- Adjustment of rules on notice for food supply;
- Broadening the definition of goods ‘not at risk’;
- Extending the UK Trader Scheme easement for businesses with no fixed place of business in Northern Ireland;
- Simplification of rules of origin requirements;
- Simplifying or eliminating the Supplementary Declaration requirement;
- Continued improvement in the platforms for submitting data;
- Introducing automated identity checks of trailers and seals;
- Simplification or elimination of declarations for business to consumer parcels;
- Urgent delivery of the promised rebate scheme for goods at risk;
- The establishment of a Business Consultative Group with the UK and EU;
- Permitting UK licensed medicines and medical devices to be supplied to Northern Ireland, and an entity established anywhere in the UK to act as a Market Authorisation Holder in Northern Ireland;
- Easements for pet travel (including assistance dogs) between Great Britain and Northern Ireland;
- Granting EU access to UK customs IT systems and databases;
- Simplifying the allocation of “XI” Economic Operator Registration and Identification numbers (EORI) for those trading in Northern Ireland;
- Extending the VAT margin scheme for second-hand vehicles brought in from Great Britain;
- Implementation of the Export and Transit Trans-European Systems in Northern Ireland;
- Addressing approval processes for high-risk plants brought into Northern Ireland intended for export to the EU;
- Easements for livestock movements between Great Britain and Northern Ireland;
- Addressing the prohibition on imports of fresh minced meat and seed potatoes;
• Addressing the application of tariff rate quotas (TRQs) for goods entering Northern Ireland, including on steel; and

• Eliminating duties on unprocessed goods moving from the EU to Great Britain and then on to Northern Ireland.

244. We welcome the Commission’s announcement on 30 June of agreement to the extension of the grace period for chilled meats, as well as technical solutions facilitating the supply of medicines, the movement of guide dogs, and the movement of animals between Great Britain and Northern Ireland. However, a large number of outstanding technical issues still remain to be resolved.

245. 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. The EU has suggested that a Swiss-style agreement based on dynamic alignment would remove 80% of checks. The UK has argued in favour of a New Zealand-style equivalence framework. The two sides have yet to find a compromise between their positions.

246. While it is clearly desirable to minimise the volume of checks as far as possible, an SPS/veterinary agreement of any form is manifestly in the interests of Northern Ireland, and the failure to reach it suggests that political and economic stability in Northern Ireland is a lower priority for the EU than the protection of the Single Market, and a lower priority for the UK Government than regulatory sovereignty and the integrity of its trade policy. We regret that the UK and the EU have been unable to reach a compromise between their respective preferences for equivalence or alignment. We call on them to intensify the search for an agreed SPS/veterinary solution, in the interests of the people and businesses of Northern Ireland.

Maximising Northern Ireland’s influence

Within the UK

247. Professor Morrow argued that the UK Government, in its relations with the EU, has a responsibility to include Northern Ireland within its thinking, rather than treat it as a separate consideration. Jess Sargeant agreed on the need to amplify the voice of Northern Ireland in Westminster and Whitehall, because “the Brexit process has shown that there is sometimes a lack of understanding in both those institutions about Northern Ireland”.

248. Jess Sargeant also cited the importance of the Common Frameworks programme as a tool for the UK Government, and the devolved governments in Scotland and Wales, to consider the impact of changes in EU law on regulatory divergence between Northern Ireland and Great Britain, and the steps they could take to mitigate any negative impact.

With the EU

249. Witnesses also highlighted the importance of maximising Northern Ireland’s influence in the EU. The Environmental Governance Island of Ireland...
Network called for the Northern Ireland Executive to build relationships, in particular through its Brussels office, with the EU institutions, MEPs and Member States, to receive early notice of relevant EU legislative developments, and to feed in the Executive’s perspective.286

250. Professor Hayward stressed the need for democratic representation from Northern Ireland to feed into the work of the Joint Committee and the EU institutions, including access to relevant EU committees, agencies and bodies. The Office of the Northern Ireland Executive in Brussels had a key role to play, and the EU needed to show flexibility in allowing a sub-state region to play such a role. She also called on the UK-EU governance bodies, including the Joint Consultative Working Group, to engage with Northern Ireland business and civic society.287

251. Jess Sargeant agreed that the UK-EU governance bodies should be a genuine forum for consultation with Northern Ireland stakeholders. She also said that the Joint Committee should consider how EU law applied in Northern Ireland, with the option of adjusting the application of EU law in Northern Ireland. She cited opportunities for Northern Ireland to participate, through observer status or other methods, in relevant EU institutional programmes, for instance by attending working groups or through the Committee of the Regions.288

252. Rebecca Ellis, Director, Northern Ireland/Ireland Unit, Cabinet Office told us that the Joint Consultative Working Group was designed as a forum where measures that are coming down the line from the EU are notified to the UK, with representation from the Northern Ireland Executive. She said that the Government and the Commission had worked together to establish the Working Group and it is now meeting on a regular basis. However, she and Lord Frost asserted that more effective mechanisms were needed to give both the Government and the Northern Ireland Executive upstream warning of EU measures applying to Northern Ireland.289 Lord Frost argued:

“The EU is not taking entirely seriously the fact that it is legislating for another territory. These are laws that are imposed on another territory without a process, and I think the least that can be done is to give some advance warning of that, some understanding, some chance to feed back and consult. That is not really happening at the moment.”290

253. Professor Morrow underlined the need to develop channels of communication, given that the Commission “has taken on a formal, consequential role in the internal affairs of Northern Ireland in a way that was not true before”.291 The EU in turn needed to learn from the dramatic political effect in Northern Ireland of its abortive intention to invoke Article 16.292 He called on the EU to establish an early warning system, to factor the consequences for Northern

286 Written evidence from the Environmental Governance Island of Ireland Network (IIO0029)
287 QQ 46, 49
288 QQ 4
289 QQ 62, 68–9. They stated that the Commission had recently notified the UK in the Joint Consultative Working Group of a “drop of new measures”, including list of over 800 measures, many of which had already been adopted, covering a three-month period. Our understanding is that the Commission offers a different perspective on the circumstances of the provision of this information. We will investigate this issue, and the work of the Joint Consultative Working Group, in the coming months.
290 QQ 68
291 QQ 6
292 QQ 5
Ireland into the way that the Commission makes its decisions. He suggested that the Irish Government could have a key role in this regard.  

254. Dr Tom Kelly argued that:

“A huge mistake was made in not maintaining some form of EU office in Belfast so that a lot of the practical issues could have been worked out on the ground … nothing beats that kind of engagement on the ground to make sure that issues never arise. We do it with parades, policing and lots of very sensitive issues … As a confidence-building measure, that would have been practical and would have made a lot of sense.”

255. Ambassador O’Neill agreed that the UK’s decision not to allow a European Commission representative office in Belfast “restricted an opportunity to facilitate even better understanding and communications between the EU and Northern Ireland.”

The role of the Northern Ireland Executive

256. We were told that the Northern Ireland Executive had a key role to play in maximising Northern Ireland’s influence, as a unified position would have a significant impact on the decisions being made by the UK and EU.”

257. Dr Tom Kelly cited the August 2016 letter from the then First and deputy First Ministers, Arlene Foster MLA and Martin McGuinness MLA, which set out the key issues and priorities from the point of view of the Executive, including Northern Ireland’s status as the only part of the UK sharing a land border with the EU, business competitiveness and labour costs, energy supply, EU funding, the agri-food sector, dialogue with the Irish Government, and the need to protect the peace process. He regretted that this letter “got lost in the shenanigans at Westminster”. However, it represented “the seed of how to work out the Protocol to everybody’s understanding and betterment … All we have to do is to go back and recapture that spirit of generosity”.

258. Arlene Foster wrote a second joint letter, with Mr McGuinness’ successor as deputy First Minister, Michelle O’Neill MLA, to Vice-President Šefčovič in November 2020, stressing the need to give businesses clarity over the operation of the Protocol, and to identify practical and effective working arrangements for SPS controls that did not disrupt daily food supplies and costs for consumers, in order to uphold the Protocol’s commitment that it should “impact as little as possible on the everyday life of communities in both Ireland and Northern Ireland”.

259. The DUP and the Ulster Unionist Party both stressed that the role of Executive Ministers on the Withdrawal Agreement Joint Committee needed
to be strengthened to give them an ability to influence its decisions, rather than offering the “window dressing” of observer status. 300

The intergovernmental institutions established under the Belfast/Good Friday Agreement

260. Dr Tom Kelly and Professor Morrow called for the intergovernmental mechanisms established under the Belfast/Good Friday Agreement to be used to draw attention to concerns over the Protocol (see Box 1). 301

Box 1: The role of the intergovernmental mechanisms established under the Belfast/Good Friday Agreement in relation to the EU

The International Agreement between the British and Irish Governments underpinning the Belfast/Good Friday Agreement expresses the two nations’ intentions as follows: “Wishing to develop still further the unique relationship between their peoples and the close co-operation between their countries as friendly neighbours and as partners in the European Union”.

The Agreement contains a number of references to the EU, including, at paragraph 31 of Strand One (Democratic Institutions in Northern Ireland), that “terms will be agreed between appropriate [Northern Ireland] Assembly representatives and the Government of the United Kingdom to ensure effective co-ordination and input by Ministers to national policy-making, including on EU issues”.

Strand Two of the Agreement (on North/South relations) provides for a North/South Ministerial Council to be established to bring together those with executive responsibilities in Northern Ireland and the Irish Government, to develop consultation, co-operation and action within the island of Ireland—including through implementation on an all-island and cross-border basis—on matters of mutual interest within the competence of the Administrations, North and South.

Paragraph 3 of Strand Two (North/South relations) states that the North/South Ministerial Council will meet “in an appropriate format to consider institutional or cross-sectoral matters (including in relation to the EU) and to resolve disagreement”. Paragraph 17 states that the North/South Ministerial Council is “to consider the European Union dimension of relevant matters, including the implementation of EU policies and programmes and proposals under consideration in the EU framework. Arrangements to be made to ensure that the views of the Council are taken into account and represented appropriately at relevant EU meetings”. The Annex to Strand Two states that areas for North-South co-operation and implementation may include “relevant EU programmes such as SPPR, INTERREG, Leader II and their successors”.

Strand Three (East/West relations) states that a British-Irish Council (BIC) will be established “to promote the harmonious and mutually beneficial development of the totality of relationships among the peoples of these islands”. Strand Three states that suitable issues for discussion in the British Irish Council could include “approaches to EU issues”.

300 Written evidence from the DUP (IIO0025) and the UUP (IIO0010)
301 Q 54 (Dr Tom Kelly) and Q 4 (Duncan Morrow)
Strand Three also states that there will be a “standing British-Irish Intergovernmental Conference … The Conference will bring together the British and Irish Governments to promote bilateral co-operation at all levels on all matters of mutual interest within the competence of both Governments.”


261. The Environmental Governance Island of Ireland Network also called for the North South Ministerial Council to be used to allow Northern Ireland early sight of relevant EU developments through the Irish Government’s continued involvement in the EU legislative process.302

262. In that context, we note that both the British-Irish Council and the British-Irish Intergovernmental Conference met in June.

The role of the Irish Government

263. Several witnesses referred to the key role that the Irish Government could play. Mary Madden argued that there was a perception during the Brexit negotiations that the Irish Government was not acting impartially but rather advancing a nationalist agenda, and that “when push came to shove we were on our own”.303 She and Sir Nigel Hamilton argued that the Irish Government did not have “any appreciation of the [Protocol’s] detrimental impact on business and trade in Northern Ireland”, claiming that they “hide behind their membership of the EU, ignoring their responsibilities as co-guarantors of the Belfast Good Friday Agreement”.304 They called on the Irish Government to maximise its influence in the EU to help deliver solutions.305

264. Jackie Redpath said that there had been disappointment in the loyalist community at the “strong insider position” with the EU that the Irish Government had taken. He and Peter Sheridan called on the Irish Government to do more to take account of unionist and loyalist concerns.306

265. Jonathan Powell said that it was “tragic” that the UK’s good relationship with the Irish Government had been undermined by Brexit and the Protocol: “We need the Irish Government to work with us on Northern Ireland if it is to be stable and peaceful … To deliberately go round provoking them rather than trying to co-operate with them is a big mistake.”307

266. Dr Tom Kelly said that “at times, neither the British Government nor the unionist politicians in the north realise that the Taoiseach is a friend in this, in a non-threatening way. He is a bridge, in some ways, between the EU, Britain and Northern Ireland, and he has been trying pretty hard to reach out and listen to people’s concerns.”308 This point was further emphasised by the Taoiseach in a public statement on 27 June.309

302 Written evidence from the Environmental Governance Island of Ireland Network (IIO0029)
303 Q 36 and note by witness inserted as a footnote to the transcript.
304 Written evidence from Sir Nigel Hamilton KCB and Mary Madden CBE (IIO0006)
305 Ibid.
306 QQ 36–37
307 Q 54
308 Ibid.
267. Ambassador O’Neill stressed the Irish Government’s engagement with Northern Ireland stakeholders: “We are listening carefully to the genuine concerns of business and civil society and are committed to supporting engagement between the UK and EU to address them.” He added that the Irish Government “has been and remains committed to actively listening and engaging with those from the Unionist and Loyalist communities who have expressed genuinely held concerns with respect to the Protocol, and to working to help address those concerns where possible.”310

268. Lord Frost acknowledged the particular importance of rebuilding trust between London and Dublin, although he denied they were in “such a parlous state”. He said that “things are said by all sides that do not necessarily land well”, and “it is important that we all try to act in a way that is conducive to a good negotiation”.311

Conclusions

269. **We endorse the proposals by our witnesses to maximise Northern Ireland’s influence both within the UK and with the EU, including:**

- Strengthening Northern Ireland’s voice in Westminster and Whitehall, including through the work of this and other Committees, and the Common Frameworks programme;
- Formal and informal mechanisms for dialogue and engagement between the Northern Ireland Executive and Assembly, and the EU institutions;
- Strengthening the formal role of Northern Ireland Executive Ministers in the Withdrawal Agreement Joint Committee and other governance bodies;
- Using the UK-EU governance mechanisms as a means for formal and informal consultation with Northern Ireland stakeholders, and for assessing the impact of EU legislation in Northern Ireland; and
- Establishing mechanisms for the EU institutions to factor in the implications for Northern Ireland of their actions, including an early warning system to flag up Northern Ireland-related concerns.

We will consider proposals to maximise Northern Ireland’s influence in more detail in the coming months.

270. **Some of our witnesses have stressed the importance of establishing an EU office in Belfast to allow the EU to engage directly with Northern Ireland stakeholders. The case for this and the timing of any such move needs to be handled sensitively, in close consultation with communities in Northern Ireland.**

271. **The Northern Ireland Executive has a key role to play in maximising Northern Ireland’s influence. We note the significance of the joint letters sent by Arlene Foster and Martin McGuinness in August 2016,**

310  Written evidence from Ambassador Adrian O’Neill (H00035)
311  Q 61
and by Arlene Foster and Michelle O’Neill in November 2020. We urge
the Executive, notwithstanding the different views on the Protocol
within it, to work together to promote Northern Ireland’s collective
interest both to the UK and EU.

272. We also acknowledge the potential role of the intergovernmental
institutions established under the Belfast/Good Friday Agreement,
including the North South Ministerial Council, the British-Irish
Council and the British-Irish Intergovernmental Conference, to
discuss, by agreement of all parties, issues of mutual interest and
concern in relation to Brexit and the Protocol. We welcome the recent
meetings of both the British-Irish Council and the British-Irish
Intergovernmental Conference.

273. We also note the important role of the Irish Government in facilitating
dialogue between the UK Government and the Northern Ireland
Executive on the one hand, and the EU on the other. We urge the
Irish Government to enhance its dialogue with stakeholders and
communities in Northern Ireland, including the unionist and loyalist
communities, so as to increase the EU’s awareness and understanding
of their concerns.

Unilateral action and Article 16

274. For some witnesses, from the loyalist and unionist community in particular,
the mitigations we have described, while necessary, will not be sufficient, as
they fail to address what are perceived to be the Protocol’s fundamental (and
unresolvable) economic, political and constitutional flaws.

275. The DUP stated that “steps to temporarily alleviate burdens on businesses
and communities [are] a useful starting point but we are clear that it should
not be the end point”. They asserted that the EU and the UK needed to
accept that the Protocol was unworkable, and that fundamental rather than
technical change was therefore needed.\footnote{Written evidence from the DUP (H00025)}

276. Traditional Unionist Voice (TUV) argued that while mitigations may tinker
with how the Protocol is implemented, they cannot undo “the constitutional
violence done by the construct of the Protocol”:

“It is the transfer of sovereignty which is the key and determining issue.
Thus, so long as this part of the United Kingdom is a rule taker from
Brussels, subject to laws we did not make and cannot change, then so
long will the Protocol in all its parts be unacceptable.”\footnote{Written evidence from the TUV (H00002)}

277. This has led to calls for the UK Government to take unilateral steps,
including through the safeguarding mechanism in Article 16 of the Protocol
(see Box 2).
Box 2: Article 16 of the Protocol on Ireland/Northern Ireland

Article 16(1) of the Protocol on Ireland/Northern Ireland enables either party to the Agreement unilaterally to take “appropriate” safeguard measures if the application of the Protocol leads to “serious economic, societal or environmental difficulties” (or “to diversion of trade”), where these negative outcomes “are liable to persist”. Such safeguards must be “restricted” in their scope and “strictly necessary” to remedy the specific situation. The Article also states that “priority” should be given to measures that will “least disturb” the functioning of the Protocol.

Where such safeguard measures are taken by either Party and they create “an imbalance between the rights and obligations under this Protocol”, Article 16(2) allows the other party to take any proportionate “rebalancing measures” that are “strictly necessary” to remedy the “imbalance”.

Recourse to Article 16 by either Party (and any “rebalancing measures” taken under Article 16(2)) is governed by a procedure set out in Annex 7 to the Protocol. Where either Party is considering taking safeguard measures:

(i) it must “without delay” notify the other Party through the Joint Committee and provide all relevant information;

(ii) both Parties must “immediately” enter into consultations within the Joint Committee “with a view to finding a commonly acceptable solution”;

(iii) the Party considering safeguard measures may not undertake those measures until one month has elapsed after the date of notification under point (i), unless the consultation procedure under point (ii) has been concluded before the expiration of the stated limit. But, in “exceptional circumstances” that require “immediate action” that exclude “prior examination”, either Party “may apply forthwith the protective measures strictly necessary to remedy the situation”, and the relevant Party must “without delay” notify these measures taken to the Joint Committee and shall provide all relevant information; and,

(iv) any safeguard measures taken under these arrangements must be subject to “consultations” in the Joint Committee every three months from the date of their adoption with a view to their abolition before the date of expiry envisaged, or to the limitation of their scope of application, and they can be reviewed at any point by the Joint Committee following a request by either Party.


278. Our witnesses reflected on the impact of unilateral action by either side, in the context of the Commission’s abortive announcement in January 2021 of its intention to trigger Article 16 in relation to COVID vaccine supplies, and the UK’s unilateral extension of grace periods in March 2021.

The Commission’s abortive announcement of 29 January 2021

279. On 29 January 2021, the Commission announced its intention to invoke Article 16 in the context of its Implementing Regulation on COVID vaccine
provisions. Following strong protests from the UK and Irish Governments, the Commission changed its position and removed references to Article 16 later the same day, before the Implementing Regulation had come into effect. However, its abortive action contributed to unrest in Northern Ireland over the Protocol.

280. Professor Morrow said that the EU’s action, if implemented, would have had the alarming effect of “effectively reimposing a hard border in Ireland without any consequence and without any use of any mechanism”, with “immediate and sudden impact on the ground in Northern Ireland”. Jess Sargeant agreed that “it is easy to underestimate the implications of what happened over Article 16 and how that changed the debate. It is important that the Commission takes responsibility for that. Even if it says it was an accident, it still had those consequences.”

281. Dr Birnie feared that the Commission’s explanation that it had overlooked the political ramifications of its abortive announcement was itself concerning, because it reflected how little thought was given to Northern Ireland’s particular circumstances and interests.

282. The SDLP, while acknowledging that “the European Commission’s near-miss in relation to Article 16 in January was unhelpful and ill-judged”, also argued that “the UK Government has used this (quickly corrected) error to justify a campaign bordering on misinformation and provocation”.

Unilateral action by the UK Government

283. As we have seen, business groups told us that, while they did not agree with the Government’s unilateral action in extending the grace periods in March 2021, an extension was nevertheless urgently required.

284. The DUP said that there was a duty on the Government to exercise and exhaust every tool at its disposal under the Withdrawal Agreement, including unilateral powers, to remedy the harmful effects of the Protocol. They called on the Government to trigger Article 16 to “fully and permanently restore Northern Ireland’s place in the UK internal market”, as the threshold of “serious economic, societal or environmental difficulties that are liable to persist, or to diversion of trade” had been exceeded.

285. Professor Shirlow, on the other hand, said that “the UK Government, whether we like it or not, exercised their proper constitutional power and decided to ratify this international agreement with the EU. Articles 16 and 18, which have been voiced as a way to get rid of the Protocol, are no such thing. It is a completely inaccurate description of either. Article 16 is not a unilateral mechanism in any shape or form.”

314 Commission Implementing Regulation (EU) 2021/111 of 29 January 2021 making the exportation of certain products subject to the production of an export authorisation OJ L 311/1 (31 January 2021)
315 Q 6
316 Q 8
317 Q 45
318 Written evidence from the SDLP (IIO0033)
319 See para 113.
320 Written evidence from the DUP (IIO0025)
321 Article 18 is the so-called democratic consent mechanism.
322 Q 41
286. Several witnesses warned of the negative consequences of further unilateral action by the UK. Professor Morrow stressed the importance of the UK complying with international law, and warned that “unilateralism and uncertainty are probably the single biggest risks that Northern Ireland faces. In the middle of uncertainty and unilateralism, we tend to get pre-emptive violent action.”

287. Professor Morrow also warned that continued unilateral actions by the UK would lead directly to a more legalistic approach to enforcement by the EU, meaning that “the consequence in the long run is the opposite of what is intended”. Instead, he said, the dispute mechanisms contained in the Protocol and the Withdrawal Agreement should be used.

288. Professor Hayward questioned how the UK’s repeated implicit threats to use Article 16 or take further unilateral action “can build stability in Northern Ireland when you are undermining an international agreement that you yourself negotiated”. Dr Tom Kelly agreed that “acting unilaterally does not make sense for either side, because you are trying to focus on a solution. If you keep threatening the right to act unilaterally because you are not getting your own way, you will never build the trust to actually come up with a solution.”

289. Jonathan Powell commented on the “toxic relationship” between the UK and the EU, and warned that further unilateral steps by the UK would lead to a generalised trade war with the EU:

“It is a lot harder to get out of a trade war than it is to get into one … If we are to avoid that trade war, we need to decommission the rhetoric straightaway, to stop the unilateral threats straightaway, and to focus on the practical discussion … That requires co-operation, which in turn requires trust, and it is the politicians’ job to build that. If we go down the trade war route instead, I really worry about what the implications will be for Northern Ireland.”

290. Ambassador Vale de Almeida said that the UK Government’s decision not to take further unilateral measures in relation to the extension of the grace period for chilled meats pointed to “a new, more constructive climate in our relations” and was “encouraging [the EU’s] willingness to address some difficult issues”.

291. Lord Frost said that “the most durable agreements are those where both sides agree to them. We have made no secret of the fact that we would prefer to proceed by consensus on this. … but certainly all options are on the table.”

323 Q 5
324 Q 6
325 Q 8
326 Q 45
327 Q 57
328 Q 53
329 QQ 54–5
330 Oral evidence taken before the European Affairs Committee on 24 June 2021 (Session 2021–22), Q 10
331 QQ 71 and 75
Lord Frost was asked if that included reneging on a treaty obligation. He said:

“There will always need to be some kind of tailored treaty relationship between us and the EU that covers Northern Ireland. … if we are to find a solution, we will have to do it, one way or another, with the European Commission. … There are options within the framework of the Protocol that allow things to be worked in a different way. … for example, there is a contrast between the provisions in Article 5 for the Union Customs Code to be applied and Article 6 saying that we should all minimise checks at ports in Northern Ireland. What is the right settlement point between that? That is a perfectly reasonable point of negotiation for how it should be operated that does not involve any sort of unilateral action or disavowal at all. It is a perfectly legitimate subject for discussion within the framework of the existing Protocol.”

Conclusions

292. The use by either side of the safeguarding mechanism set out in Article 16 of and Annex 7 to the Protocol is a legitimate legal and political action in the event, in the Protocol’s words, of “serious economic, societal or environmental difficulties that are likely to persist, or to diversion of trade”. The use of Article 16 should therefore be distinguished from other unilateral action outside the scope of the Protocol and Withdrawal Agreement which would constitute a breach of either side’s legal obligations.

293. We note the strong views of some of our witnesses that the disruptive effect of the Protocol highlighted in Chapters 3 and 4 of this report already justifies Article 16 being triggered. However, we also note the views of other witnesses that any unilateral action by either side, including triggering Article 16, has destabilising political and economic consequences. In any event, the Article 16 mechanism is not designed as a means to abrogate the Protocol, but rather as a carefully calibrated mechanism of proportionate measure and counter-measure, underpinned by obligations to continued dialogue to resolve the issues of concern.

294. It would be preferable for the UK and EU, through dialogue with each other and Northern Ireland stakeholders, urgently to identify mutually agreeable solutions.

Alternatives to the Protocol

295. Some witnesses, in particular from the unionist and loyalist communities, stressed that alternatives to the Protocol were necessary to address their principled opposition to it. The DUP stated that they remained “wholly opposed to the provisions of the Northern Ireland Protocol, which we believe represent a serious and ongoing threat to political stability and economic prosperity in Northern Ireland as well as the integrity of the United Kingdom.”

296. The Ulster Unionist Party has proposed the introduction in UK domestic law of a provision that would prohibit the use of UK territory to export goods

332 QQ 72 and 73
333 Written evidence from the DUP (HIO0025)
to the EU that are not compliant with EU regulations and standards. This would be backed up by the creation of a new Treaty-based cross-border body to provide an educational role to businesses on the island of Ireland and to visit premises to ensure that goods and companies were compliant with EU Single Market rules. The UK would also commit to indemnifying the EU (including Ireland) if it was found that UK territory had been used to export non-compliant goods to the EU via the land border.334

297. In the meantime, the Ulster Unionist Party argued for extension of the grace periods for at least 12 months, a UK Government cross-departmental Taskforce to identify the problems with the Protocol; an awareness campaign among businesses in Great Britain; and UK domestic legislation to require companies based in Great Britain to ensure equality of provision to all regions of the UK internal market.335

298. The Loyalist Communities Council advocated a new Protocol, with no customs declarations for goods or services moving in either direction between Northern Ireland and the rest of the United Kingdom for goods or products produced in the UK. Instead, “goods or produce originating in Northern Ireland and bound for consumption in the Republic of Ireland (and vice-versa) should either be subject to a special customs derogation (granted by UK and EU jointly) or subject to pre-clearance at the point of departure but only if they diverge from common UK/EU standards.” 336

299. The Centre for Brexit Policy has advocated a model of mutual enforcement, which would replace “the controversial minutiae of operational and technical procedures with a legal obligation on each side to ensure the enforcement of the other side’s rules and standards”.337

300. Stephen Kelly said that the proposal for mutual enforcement would not resolve SPS issues, the source of most frictions.338 Aodhán Connolly agreed that the stumbling block with alternatives to the Protocol “always seem to be SPS. If you have a container full of milk, you cannot tell which part of the milk came from northern cows and which part came from southern cows.” Mutual enforcement would involve different customs regulations:

“What level of intrusion would be needed to get both the evidence on SPS and what is being carried? What sort of bonding would be needed? The levels of complexity start building up. That is the other point of this. Even if it could be done immediately, what is the level of checks, the level of complexity, the level of technology and the investment needed to do it in a way that satisfies the requirements of both the UK protecting its borders and the EU protecting its borders? What then would be the final cost to the end user? Should it be more expensive for our goods to be sold in the south or, vice versa, things coming in? There is a cost


336 Written evidence submitted by the Loyalist Communities Council (NIP0031) to the House of Commons Northern Ireland Affairs Committee inquiry on Brexit and the Northern Ireland Protocol


338 Q 23
implication. There is a technology implication. But the biggest one for me is that exam question about SPS. If we could solve that in an affordable way, we would be close to a solution.”

301. Other witnesses doubted that a viable alternative to the Protocol existed. The SDLP stated that they “did not want Brexit, and the Protocol was certainly not our preferred mitigation for the island of Ireland from hard Brexit. But on the basis of choices in London, special arrangements for Northern Ireland were essential and indeed inevitable … The Protocol must be delivered, not least because of the absence of any credible alternatives.” They argued that the balance of opinion in the business community is that making the Protocol work, mitigating challenges and exploiting opportunities is the most sensible course.

302. As we have seen, Sinn Féin acknowledged that “the Protocol is not perfect, but it mitigates the worst of Brexit. It is an internationally agreed and binding treaty that prevents a catastrophic land border … The Protocol is the only way forward, and both parties must be honest and willing to compromise in order to produce real and lasting solutions.”

303. Professor Morrow said that any alternatives were “fraught with difficulties”:

“Northern Ireland poses problems to anything that is designed on a bilateral basis and is designed to create what might be called firm or hard frontiers. Enforcement by one state of regulations against another, or at least in the face of another, is always going to create huge difficulties in Northern Ireland.”

304. Louise Coyle said that “we have to find resolutions within the Protocol until such time as something else is proposed and agreed. At the minute, we are where we are. That can be achieved only through dialogue, developing trust and looking at where the difficulties are.”

305. Jonathan Powell told us:

“It is possible to solve the practical problems … but the identity problems cannot be solved. There will be identity problems one way or another … In the last six years, we have been looking for different solutions that might not impact the Good Friday Agreement in such a serious way. So far, no one has come up with a convincing alternative. There is the alternative of putting the border in the Celtic Sea between the island of Ireland and the rest of the European Union, but in no circumstances would that be acceptable to the Irish Government or to the EU, so we can rule that one out. People have talked about technology as a solution. All the way through the referendum campaign, people talked about a magic solution that could get rid of borders all around the world, but so far that solution has not yet realised itself.

“This all takes us back to the Protocol … That is why it is so important to make the Protocol work instead of wasting time saying that there is an

339  Q 23
340  Written evidence from the SDLP (IIO0033)
341  Written evidence from Sinn Féin (IIO0013)
342  Q 6
343  Q 55
alternative, because there is not one. We have not found one and we are not going to find one.”**344**

306. In its statement after the 9 June Withdrawal Agreement Joint Committee, the Commission stated:

“The Protocol is the solution that was found together with the UK, after four years of intense negotiations, to address the serious consequences that Brexit and the UK choice to leave the EU Single Market and Customs Union would have for Northern Ireland … There is no alternative to the Protocol. Its full implementation is a priority for the EU and we will not accept anything less from our UK partners.”**345**

307. Notwithstanding the EU’s view, and that of some witnesses, that there is no alternative to the Protocol, the reality is that the Protocol itself contains significant qualifications to such an assertion. Under the democratic consent mechanism in Article 18, Articles 5–10 of the Protocol (governing customs, the movement of goods, the UK internal market, VAT and excise, the Single Electricity Market and State aid), will cease to apply two years after a vote by the Northern Ireland Assembly that they should do so. Furthermore, Article 18(4) places an obligation on the UK and the EU, in the Withdrawal Agreement Joint Committee, to bring forward recommendations for subsequent necessary measures in line with the Belfast/Good Friday Agreement.

308. Lord Frost said that “the EU should be careful when it says that there are no alternatives to the Protocol, because it implies that the consent vote that is there in the Protocol is a meaningless vote. If there is no alternative to the Protocol, what is that vote about?”**346**

309. As we have noted, Lord Frost acknowledged:

“There will always need to be some kind of tailored treaty relationship between us and the EU that covers Northern Ireland. What happens in Northern Ireland in this area will always be, to some extent, exceptional, and we will always need a treaty relationship to cover that. In that sense, to those who simply say the Protocol should disappear and that would solve the problem, I would say that I do not think that is a realistic assessment of the situation.”**347**

310. Lord Frost said that he believed that a workable Protocol was deliverable, but:

“The question is: what do we need to do? I think we need to have the quality of discussion with the EU that explores whether the current very serious difficulties can be resolved within the framework of the Protocol, or whether we need a more fundamental discussion on some aspects of the way it works … Both sides have an interest in supporting the Belfast/Good Friday Agreement. The delicate balance need not disrupt

---

**344 QQ 50, 52, 53**
**346** Q 72
**347** Ibid.
everyday lives in Northern Ireland. ... If the Protocol as it is operating is not delivering that, both sides have ... an obligation to try to deal with the situation”.348

Conclusions

311. We acknowledge the principled opposition of many in the unionist and loyalist communities to the Protocol, in view of the Protocol’s impact on Northern Ireland’s relationship with the rest of the UK. But we also acknowledge the position of many nationalists and republicans, in particular, that the Protocol, while imperfect, is a necessary (and the only) means to avoid a hard border on the island of Ireland following UK withdrawal from the EU.

312. Witnesses have put forward a number of alternatives to the Protocol, including provisions in UK law, a new UK-Irish treaty, customs derogations or a model of mutual enforcement. While such suggestions should be taken seriously, they all present their own challenges. A consensus has yet to emerge behind any alternative, notwithstanding an intensive search for solutions in the five years since the referendum. We invite those opposed to the Protocol in principle to submit proposals for a comprehensive practical alternative consistent with the method of Brexit (with no alignment to EU trading or customs rules) adopted by the Government, or any other alternatives, and which are also consistent with the Belfast/Good Friday Agreement. We will examine the feasibility of any such submitted proposals in our future work.

313. Given its wish to uphold the Withdrawal Agreement and to hold the UK to its legal obligations under it, the Commission is anxious to stress that “there is no alternative to the Protocol”. Yet under Article 18 of the Protocol, the EU and the UK have an obligation in the Joint Committee to propose necessary measures in the event that the Northern Ireland Assembly does not support the continued operation of Articles 5 to 10 of the Protocol. That being the case, both sides have a continuing obligation to consider alternatives.

314. In the meantime, there is an equal obligation on all sides to find resolutions within the Protocol, to provide stability and certainty to the businesses and people of Northern Ireland, and to meet the commitment in the Protocol that it should have as little impact as possible on the everyday life of communities in both Ireland and Northern Ireland. That requires the UK and the EU to uphold their obligations under international law and to work together in a renewed spirit of urgency, partnership and trust.
315. The Preamble to the Protocol on Ireland/Northern Ireland acknowledges that “the United Kingdom’s withdrawal from the [European] Union presents a significant and unique challenge to the island of Ireland”; that “the achievements, benefits and commitments of the peace process will remain of paramount importance to peace, stability and reconciliation there”; that the Belfast/Good Friday Agreement and subsequent agreements “should be protected in all its parts”; and that there should be “no customs and regulatory checks or controls and related physical infrastructure at the border between Ireland and Northern Ireland”. But it also stresses “the importance of maintaining the integral place of Northern Ireland in the United Kingdom’s internal market”, and that “the application of this Protocol should impact as little as possible on the everyday life of communities in both Ireland and Northern Ireland”.

316. The UK and the EU were able to agree these underlying principles in theory: the difficulty has come in upholding seemingly contradictory principles, as the Protocol has become a reality. The upshot has been economic disruption and further political division, which has contributed to community unrest. This has undermined the advantages of dual access to the UK and EU markets that the negotiators sought to preserve. It has also led in turn to a breakdown in trust between London, Brussels, Belfast and Dublin.

317. Technical solutions to ease some of the burden of the Protocol’s practical operation can be found, as long as there is goodwill and flexibility on all sides. Yet 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.

318. 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.

319. We conclude with the words of Jackie Redpath, who has been working in the loyalist Shankill community for 50 years:

“The peace process … continues to be a tender plant that needs to be carefully looked after by all who have been involved in it—locally, nationally and internationally … The way forward … is to create a new ground of engagement. That is not primarily [about] the Protocol … It is not even about the Good Friday/Belfast
Agreement. The ground of engagement needs to be something that all parties can buy into, and that is the peace process.”
SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

The development of the Protocol and the current position

1. The Protocol on Ireland/Northern Ireland 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. Yet the Government did not make adequately clear to the people of Northern Ireland what the Protocol would mean in practice. Details of its practical operation were provided extremely late in the day, leaving businesses unprepared, in spite of their best efforts. The practical operation of the Protocol since 1 January has therefore come as a shock, contributing to political instability in Northern Ireland and exacerbating underlying community tensions, which could even reverse the progress made under the Belfast/Good Friday Agreement. (Paragraph 70)

2. The EU’s rigid focus on the Protocol as a tool to protect the integrity of the Single Market has failed to account of its impact on the sense of identity of unionists and loyalists, inflaming the situation still further. Thus the delicate balance between North-South and East-West relations encapsulated in the Belfast/Good Friday Agreement has been compromised. (Paragraph 71)

3. Both 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, have led to a mutual lack of trust, hindering the ability to identify and implement solutions. If urgent steps are not taken to restore trust, Northern Ireland is destined to become a casualty of the post-Brexit serious deterioration in relations between the UK and the EU. (Paragraph 72)

The economic impact of the Protocol

4. The disruption in Great Britain-Northern Ireland trade at the beginning of 2021 had many causes, including COVID-19 disruption, global supply chain issues and the impact of the Trade and Cooperation Agreement on UK-EU trade, as well as the Protocol itself. The initial impact was also more limited in scope than some media reports suggested, and some initial problems in the movement of goods have been addressed. (Paragraph 131)

5. Despite the best efforts of businesses, they were significantly hindered in their preparation for the implementation of the Protocol by the lack of clarity, and the late provision of guidance, on its practical operation. The publication of guidance on movement of parcels just 12 hours before the Protocol came into effect was particularly egregious. (Paragraph 132)

6. The long-term impact of Brexit and the Protocol on trade flows remains uncertain, and will not become clear for several months. But there are early signs of a shift away from Great Britain-Ireland movements towards movements between Great Britain and Northern Ireland ports, as well as a growth in North-South trade. (Paragraph 133)

7. On the other hand, the new administrative requirements for moving goods from Great Britain to Northern Ireland have had the biggest impact on business. Firms have complained in particular about the burdensome,
repetitive and disproportionate requirements for completion of Supplementary Customs Declarations. This has led to increased staff costs and difficulties with suppliers. These requirements, 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. (Paragraph 134)

8. While sectors that are dependent on North-South trade links may benefit under the Protocol, those that rely on East-West supply chains may suffer. While the agri-food sector shows signs of benefiting from North-South links, new sanitary and phytosanitary processes have hindered East-West trade. We have heard serious concerns about the impact on supply of medicines and medical products to Northern Ireland in the absence of further mitigating measures. The motor industry reported that new administrative requirements are deterring suppliers in Great Britain from delivering to Northern Ireland. (Paragraph 135)

9. Their experience points to a wider problem: the lack of preparedness of businesses in Great Britain for the changes in trading arrangements with Northern Ireland. There are widespread fears that businesses in Great Britain will withdraw from the Northern Ireland market. The Government urgently needs to correct the lack of understanding among businesses in Great Britain of the new requirements for trading with Northern Ireland. Likewise, the EU and its Member States must address the lack of awareness among EU businesses of the opportunities for trade with Northern Ireland under the Protocol. (Paragraph 136)

10. The impact has been felt not just by businesses but also by consumers in Northern Ireland. The fear of the business community is that this impact will worsen when the various grace periods expire, and the full economic impact of the Protocol is felt. (Paragraph 137)

11. Yet there are potential economic benefits under the Protocol, given Northern Ireland is the only place where businesses can operate without customs declarations, rules of origin certificates or non-tariff barriers to both the GB and EU markets. There are early signs of a growth in North-South trade, and evidence that Northern Ireland businesses are stepping into the gap left by suppliers in Great Britain who have vacated the market in Ireland. (Paragraph 138)

12. Northern Ireland also stands to benefit from foreign direct investment from firms wishing to sell into the UK and EU markets. We welcome Invest NI’s discussions with 30 potential investors in Northern Ireland across the IT, finance, manufacturing and distribution sectors. However, we note that such investment in Northern Ireland has historically been strongest in the service sector, which is not within the scope of the Protocol. (Paragraph 139)

13. Yet such benefits and investment will only manifest themselves in the long-term, and on the basis of political and economic stability. This requires all sides to work together to calm political and community tensions, provide certainty for business and investors, and to seek to maximise the economic opportunities for Northern Ireland. (Paragraph 140)

14. Article 4 of the Protocol states that nothing in it shall prevent the UK from including Northern Ireland in the territorial scope of its trade agreements
with third countries, provided that those agreements do not prejudice the application of the Protocol. In that context, the Government has an obligation to ensure that Northern Ireland is able to benefit from, and is in no way disadvantaged by, the Free Trade Agreements that the UK is currently negotiating, or will negotiate in the future. (Paragraph 141)

The political and social impact of the Protocol

15. 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. Both the UK and the EU have affirmed their commitment to uphold the Belfast/Good Friday Agreement, but Brexit and the Protocol have evidently placed the delicate equilibrium established by the Agreement under considerable strain, as borders and questions of identity have once more come to the fore. Just as unionists and loyalists object to the Protocol being imposed without their consent, so nationalists and republicans point out that Brexit was imposed on Northern Ireland even though the majority of votes there were to remain in the EU. (Paragraph 202)

16. The unionist and loyalist communities are deeply concerned that Northern Ireland’s place within the United Kingdom has been undermined by the Protocol. Yet the violent unrest seen in late March and early April 2021, while arguably triggered by the Protocol, was also an expression of wider dissatisfaction with the political process and a perception that some voices in Northern Ireland are not listened to. This sense of alienation has been a factor going back many years, and has multiple causes, including the lack of access to employment, skills and investment opportunities within communities that are among the most economically deprived in the UK. (Paragraph 203)

17. This dissatisfaction is exacerbated by the pervasive sense that the Protocol creates a democratic deficit, in that significant aspects of EU law with wide-ranging political and economic implications apply to Northern Ireland subject neither to UK Government participation in the EU institutions, nor to consent from parliamentarians either at Westminster or Stormont. While there are mitigating steps that can be taken, as we set out in the next chapter, there is no apparent way to eliminate the democratic deficit. We intend to return to this issue in the coming months. (Paragraph 204)

18. There is a widespread perception that the Protocol was imposed on Northern Ireland without meaningful engagement with its communities, and without a full and transparent explanation of the impact it would have. Where there was engagement, it was perceived as uneven. (Paragraph 205)

19. Given the implications of the Protocol for people in Northern Ireland, both the UK Government and the EU must develop and expand formal mechanisms for long-term engagement with all sectors of Northern Ireland civic society. As part of this, there should be a particular effort to engage those who have so far felt side-lined in discussions of Brexit and the Protocol, including young people and women. (Paragraph 206)

Mitigations and solutions

20. We acknowledge the EU’s concern to protect the integrity of its Single Market, and its argument that it has already shown pragmatism in exploring flexibilities allowed under EU law and by outsourcing to the UK the control of the external border of its Single Market. Nevertheless, it needs to do more
to ensure that the Protocol is applied in a flexible and proportionate manner. The Protocol's sustainability will be undermined if the EU does not take all relevant factors into account, including the economic importance of East-West trade, the degree of risk that the Northern Ireland market presents to the EU Single Market, and the sensitive issues of identity that the Protocol gives rise to. In that context, we note that the £13 billion total value of movement of goods between Great Britain and Northern Ireland amounts to 0.0008% of the EU’s GDP. (Paragraph 217)

21. The Government’s actions in relation to the Protocol, including unilateral extension of grace periods and a perceived failure to implement previous agreements reached in the Withdrawal Agreement Joint Committee, have been regarded as provocative by the EU, and have contributed to a lack of trust and cooperation between the two sides. The UK Government has argued that its actions were necessary in the interests of the people and businesses of Northern Ireland. However, in order to maximise the prospect of the EU taking a flexible approach to the implementation of the Protocol, the Government needs to rebuild trust by demonstrating its good faith. This requires open and constructive engagement, meetings its legal obligations and fulfilling its outstanding political commitments. (Paragraph 223)

22. If they are to ensure the proportionate application of the Protocol, and meet the commitment in the Preamble that it should impact as little as possible on the everyday life of communities in both Ireland and Northern Ireland, the UK and the EU urgently need to agree practical solutions in a number of specific areas. Many have already been identified both by our witnesses and in dialogue between the UK and the EU in the Withdrawal Agreement Joint Committee. They include:

- An enhanced Trusted Trader Scheme;
- Adjustment of rules on notice for food supply;
- Broadening the definition of goods ‘not at risk’;
- Extending the UK Trader Scheme easement for businesses with no fixed place of business in Northern Ireland;
- Simplification of rules of origin requirements;
- Simplifying or eliminating the Supplementary Declaration requirement;
- Continued improvement in the platforms for submitting data;
- Introducing automated identity checks of trailers and seals;
- Simplification or elimination of declarations for business to consumer parcels;
- Urgent delivery of the promised rebate scheme for goods at risk;
- The establishment of a Business Consultative Group with the UK and EU;
- Permitting UK licensed medicines and medical devices to be supplied to Northern Ireland, and an entity established anywhere in the UK to act as a Market Authorisation Holder in Northern Ireland;
• Easements for pet travel (including assistance dogs) between Great Britain and Northern Ireland;
• Granting EU access to UK customs IT systems and databases;
• Simplifying the allocation of “XI” Economic Operator Registration and Identification numbers (EORI) for those trading in Northern Ireland;
• Extending the VAT margin scheme for second-hand vehicles brought in from Great Britain;
• Implementation of the Export and Transit Trans-European Systems in Northern Ireland;
• Addressing approval processes for high-risk plants brought into Northern Ireland intended for export to the EU;
• Easements for livestock movements between Great Britain and Northern Ireland;
• Addressing the prohibition on imports of fresh minced meat and seed potatoes;
• Addressing the application of tariff rate quotas (TRQs) for goods entering Northern Ireland, including on steel; and
• Eliminating duties on unprocessed goods moving from the EU to Great Britain and then on to Northern Ireland. (Paragraph 243)

23. We welcome the Commission’s announcement on 30 June of agreement to the extension of the grace period for chilled meats, as well as technical solutions facilitating the supply of medicines, the movement of guide dogs, and the movement of animals between Great Britain and Northern Ireland. However, a large number of outstanding technical issues still remain to be resolved. (Paragraph 244)

24. 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. The EU has suggested that a Swiss-style agreement based on dynamic alignment would remove 80% of checks. The UK has argued in favour of a New Zealand-style equivalence framework. The two sides have yet to find a compromise between their positions. (Paragraph 245)

25. While it is clearly desirable to minimise the volume of checks as far as possible, an SPS/veterinary agreement of any form is manifestly in the interests of Northern Ireland, and the failure to reach it suggests that political and economic stability in Northern Ireland is a lower priority for the EU than the protection of the Single Market, and a lower priority for the UK Government than regulatory sovereignty and the integrity of its trade policy. We regret that the UK and the EU have been unable to reach a compromise between their respective preferences for equivalence or alignment. We call on them to intensify the search for an agreed SPS/veterinary solution, in the interests of the people and businesses of Northern Ireland. (Paragraph 246)
26. We endorse the proposals by our witnesses to maximise Northern Ireland’s influence both within the UK and with the EU, including:

- Strengthening Northern Ireland’s voice in Westminster and Whitehall, including through the work of this and other Committees, and the Common Frameworks programme;

- Formal and informal mechanisms for dialogue and engagement between the Northern Ireland Executive and Assembly, and the EU institutions;

- Strengthening the formal role of Northern Ireland Executive Ministers in the Withdrawal Agreement Joint Committee and other governance bodies;

- Using the UK-EU governance mechanisms as a means for formal and informal consultation with Northern Ireland stakeholders, and for assessing the impact of EU legislation in Northern Ireland; and

- Establishing mechanisms for the EU institutions to factor in the implications for Northern Ireland of their actions, including an early warning system to flag up Northern Ireland-related concerns.

We will consider proposals to maximise Northern Ireland’s influence in more detail in the coming months. (Paragraph 269)

27. Some of our witnesses have stressed the importance of establishing an EU office in Belfast to allow the EU to engage directly with Northern Ireland stakeholders. The case for this and the timing of any such move needs to be handled sensitively, in close consultation with communities in Northern Ireland. (Paragraph 270)

28. The Northern Ireland Executive has a key role to play in maximising Northern Ireland’s influence. We note the significance of the joint letters sent by Arlene Foster and Martin McGuinness in August 2016, and by Arlene Foster and Michelle O’Neill in November 2020. We urge the Executive, notwithstanding the different views on the Protocol within it, to work together to promote Northern Ireland’s collective interest both to the UK and EU. (Paragraph 271)

29. We also acknowledge the potential role of the intergovernmental institutions established under the Belfast/Good Friday Agreement, including the North South Ministerial Council, the British-Irish Council and the British-Irish Intergovernmental Conference, to discuss, by agreement of all parties, issues of mutual interest and concern in relation to Brexit and the Protocol. We welcome the recent meetings of both the British-Irish Council and the British-Irish Intergovernmental Conference. (Paragraph 272)

30. We also note the important role of the Irish Government in facilitating dialogue between the UK Government and the Northern Ireland Executive on the one hand, and the EU on the other. We urge the Irish Government to enhance its dialogue with stakeholders and communities in Northern Ireland, including the unionist and loyalist communities, so as to increase the EU’s awareness and understanding of their concerns. (Paragraph 273)

31. The use by either side of the safeguarding mechanism set out in Article 16 of and Annex 7 to the Protocol is a legitimate legal and political action
in the event, in the Protocol’s words, of “serious economic, societal or environmental difficulties that are likely to persist, or to diversion of trade”. The use of Article 16 should therefore be distinguished from other unilateral action outside the scope of the Protocol and Withdrawal Agreement which would constitute a breach of either side’s legal obligations. (Paragraph 292)

32. We note the strong views of some of our witnesses that the disruptive effect of the Protocol highlighted in Chapters 3 and 4 of this report already justifies Article 16 being triggered. However, we also note the views of other witnesses that any unilateral action by either side, including triggering Article 16, has destabilising political and economic consequences. In any event, the Article 16 mechanism is not designed as a means to abrogate the Protocol, but rather as a carefully calibrated mechanism of proportionate measure and counter-measure, underpinned by obligations to continued dialogue to resolve the issues of concern. (Paragraph 293)

33. It would be preferable for the UK and EU, through dialogue with each other and Northern Ireland stakeholders, urgently to identify mutually agreeable solutions. (Paragraph 294)

34. We acknowledge the principled opposition of many in the unionist and loyalist communities to the Protocol, in view of the Protocol’s impact on Northern Ireland’s relationship with the rest of the UK. But we also acknowledge the position of many nationalists and republicans, in particular, that the Protocol, while imperfect, is a necessary (and the only) means to avoid a hard border on the island of Ireland following UK withdrawal from the EU. (Paragraph 311)

35. Witnesses have put forward a number of alternatives to the Protocol, including provisions in UK law, a new UK-Irish treaty, customs derogations or a model of mutual enforcement. While such suggestions should be taken seriously, they all present their own challenges. A consensus has yet to emerge behind any alternative, notwithstanding an intensive search for solutions in the five years since the referendum. We invite those opposed to the Protocol in principle to submit proposals for a comprehensive practical alternative consistent with the method of Brexit (with no alignment to EU trading or customs rules) adopted by the Government, or any other alternatives, and which are also consistent with the Belfast/Good Friday Agreement. We will examine the feasibility of any such submitted proposals in our future work. (Paragraph 312)

36. Given its wish to uphold the Withdrawal Agreement and to hold the UK to its legal obligations under it, the Commission is anxious to stress that “there is no alternative to the Protocol”. Yet under Article 18 of the Protocol, the EU and the UK have an obligation in the Joint Committee to propose necessary measures in the event that the Northern Ireland Assembly does not support the continued operation of Articles 5 to 10 of the Protocol. That being the case, both sides have a continuing obligation to consider alternatives. (Paragraph 313)

37. In the meantime, there is an equal obligation on all sides to find resolutions within the Protocol, to provide stability and certainty to the businesses and people of Northern Ireland, and to meet the commitment in the Protocol that it should have as little impact as possible on the everyday life of communities in both Ireland and Northern Ireland. That requires the UK and the EU to
uphold their obligations under international law and to work together in a renewed spirit of urgency, partnership and trust. (Paragraph 314)

Conclusion

38. The Preamble to the Protocol on Ireland/Northern Ireland acknowledges that “the United Kingdom's withdrawal from the [European] Union presents a significant and unique challenge to the island of Ireland”; that “the achievements, benefits and commitments of the peace process will remain of paramount importance to peace, stability and reconciliation there”; that the Belfast/Good Friday Agreement and subsequent agreements “should be protected in all its parts”; and that there should be “no customs and regulatory checks or controls and related physical infrastructure at the border between Ireland and Northern Ireland”. But it also stresses “the importance of maintaining the integral place of Northern Ireland in the United Kingdom's internal market”, and that “the application of this Protocol should impact as little as possible on the everyday life of communities in both Ireland and Northern Ireland”. (Paragraph 315)

39. The UK and the EU were able to agree these underlying principles in theory: the difficulty has come in upholding seemingly contradictory principles, as the Protocol has become a reality. The upshot has been economic disruption and further political division, which has contributed to community unrest. This has undermined the advantages of dual access to the UK and EU markets that the negotiators sought to preserve. It has also led in turn to a breakdown in trust between London, Brussels, Belfast and Dublin. (Paragraph 316)

40. Technical solutions to ease some of the burden of the Protocol's practical operation can be found, as long as there is goodwill and flexibility on all sides. Yet 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. (Paragraph 317)

41. 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 318)

42. We conclude with the words of Jackie Redpath, who has been working in the loyalist Shankill community for 50 years:

“The peace process ... continues to be a tender plant that needs to be carefully looked after by all who have been involved in it—locally, nationally and internationally ... The way forward ... is to create a new ground of engagement. That is not primarily [about] the Protocol ... It is not even about the Good Friday/Belfast Agreement. The ground of engagement needs to be something that all parties can buy into, and that is the peace process.” (Paragraph 319)
APPENDIX 1: LIST OF MEMBERS AND DECLARATIONS OF INTEREST

Members

Lord Caine
Lord Dodds of Duncairn
Lord Empey
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 Caine
No relevant interests to declare

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

Baroness Goudie
No relevant interests to declare

Lord Hain
I was Secretary of State for Northern Ireland May 2005–June 2007
I have worked closely with WAVE Trauma group to secure a pension for those victims severely injured through no fault of their own

Lord Hannan of Kingsclere
No relevant interests to declare

Lord Jay of Ewelme (Chair)
Trustee (non-executive director) Thomson Reuters Founders Share Company
Chair, European Policy Forum Advisory Council
Member, Senior European Experts Group (a group that prepares briefing papers on European Affairs)

Baroness O’Loan
No relevant interests to declare

Baroness Ritchie of Downpatrick
Member of the House of Lords Common Frameworks Scrutiny Committee
Member of the Board of Co-operation Ireland (non-remunerated)
Member of the Advisory Board of PeopleHawk–online digital platform for human resources based in Belfast with international connections
Economic Affairs sub-committee of the British/Irish Parliamentary Assembly

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:

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

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

- Lord Hannay of Chiswick
  
  *Member of the Advisory Board of the Centre for European Reform*
  
  *Chair of the Senior European Experts Group*

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/1207/introductory-inquiry-into-the-operation-of-the-protocol-on-irelandnorthern-ireland/publications/ and available for inspection at the Parliamentary Archives (020 7219 3074).

Evidence received by the Committee is listed below in chronological order of oral evidence session and in alphabetical order. Those witnesses 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

** Jess Sargeant, Senior Researcher, Institute for Government

* Professor Duncan Morrow, Director of Community Engagement, Ulster University

** Aodhán Connolly, Director, Northern Ireland Retail Consortium

* Seamus Leheny, Policy Manager for Northern Ireland, Logistics UK

* Stuart Anderson, Senior Policy Adviser, CBI Northern Ireland

** Stephen Kelly, CEO, Manufacturing NI

* Peter Sheridan, Chief Executive, Co-operation Ireland

* Jackie Redpath, CEO, Greater Shankill Partnership

** Mary Madden, former Northern Ireland Office senior official

* Dr Esmond Birnie, Senior Economist, Ulster University

* Professor Peter Shirlow, Director, Institute of Irish Studies, Liverpool University

** Professor Katy Hayward, Professor of Political Sociology, Queen’s University Belfast

* Dr Tom Kelly, Columnist, Irish News

* Louise Coyle, Director, Northern Ireland Rural Women’s Network (NIRWN)

* Jonathan Powell, former Chief of Staff to Prime Minister Tony Blair (1995–2007) and Chief British Negotiator on Northern Ireland (1997–2007)

* Rt Hon Lord Frost CMG, Minister of State, Cabinet Office

* Rebecca Ellis, Director of the Northern Ireland/Ireland Unit, Cabinet Office
* Mark Davies, Deputy Director, Northern Ireland Protocol in the Northern Ireland/Ireland Unit, Cabinet Office  

Alphabetical list of all witnesses

Alliance Healthcare UK  

* Stuart Anderson, Senior Policy Adviser, CBI Northern Ireland (QQ 11–23)  

Anonymous  

* Dr Esmond Birnie, Senior Economist, Ulster University (QQ 39–49)  

Centre for Cross Border Studies  

College of Podiatry  

Committee on the Administration of Justice (CAJ)  

* Louise Coyle, Director, Northern Ireland Rural Women’s Network (NIRWN) (QQ 50–59)  

** Aodhán Connolly, Director, Northern Ireland Retail Consortium (QQ 11–23)  

* Mark Davies, Deputy Director, Northern Ireland Protocol in the Northern Ireland/Ireland Unit, Cabinet Office (QQ 60–77)  

Democratic Unionist Party (DUP)  

DPD  

Environmental Governance Island of Ireland (EGII) Network  

* Rebecca Ellis, Director of the Northern Ireland/Ireland Unit, Cabinet Office (QQ 60–77)  

Ethical Medicines Industry Group (EMIG)  

* Rt Hon Lord Frost CMG, Minister of State, Cabinet Office (QQ 60–77)  

Gray and Adams Ltd  

Sir Nigel Hamilton KCB and Mary E Madden CBE  

Professor Colin Harvey, School of Law, Queen’s University Belfast  

** Professor Katy Hayward, Professor of Political Sociology, Queen’s University Belfast (QQ 39–49)  

Healthcare Distribution Association (HDA UK)  

Johnson Brothers (Belfast) Ltd  

* Stephen Kelly, CEO, Manufacturing NI (QQ 11–23)  

* Dr Tom Kelly, Columnist, Irish News (QQ 50–59)
* Seamus Leheny, Policy Manager for Northern Ireland, Logistics UK (QQ 11–23)

** Mary Madden, former Northern Ireland senior official (QQ 24–38)

Harry Maguire, Director, Community Restorative Justice Ireland

Ian Marshall, Institute for Global Food Security, Queen’s University Belfast

* Professor Duncan Morrow, Director of Community Engagement, Ulster University (QQ 1–10)

Colin Murray and Dr Clare Rice

National Farmers’ Union of England and Wales (NFU)

Norgine Pharmaceuticals

Northern Ireland Business Brexit Working Group

Northern Ireland Human Rights Commission (NIHRC) and the Equality Commission for Northern Ireland (ECNI)

Northern Ireland Women’s European Platform (NIWEP)

HE Ambassador Adrian O’Neill, Irish Ambassador to the UK

PAGB

Professor David Phinnemore, Professor Katy Hayward, Dr Billy Melo Araujo and Lisa Whitten (Queen’s University Belfast)

* Jonathan Powell, former Chief of Staff to Prime Minister Tony Blair (1995–2007) and Chief British Negotiator on Northern Ireland (1997–2007) (QQ 50–59)

* Jackie Redpath, CEO, Greater Shankill Partnership (QQ 24–38)

Road Haulage Association (RHA)

** Jess Sargeant, Senior Researcher, Institute for Government (QQ 1–10)

SDC Trailers Limited

** Peter Sheridan, Chief Executive, Co-operation Ireland (QQ 24–38)

* Professor Peter Shirlow, Director, Institute of Irish Studies, Liverpool University (QQ 39–49)

Sinn Féin

Society of Motor Manufacturers and Traders (SMMT)
Social Democratic and Labour Party (SDLP)  IIO0033
Teva UK Limited  IIO0014
Traditional Unionist Voice (TUV)  IIO0002
Ulster Farmers’ Union  IIO0021
Ulster Unionist Party  IIO0010
Unionist Voice Policy Studies  IIO0016
HE Ambassador João Vale de Almeida, EU  IIO0034
Ambassador to the United Kingdom
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.

The Sub-Committee is holding an introductory inquiry into:

- the current situation in Northern Ireland as it relates to the Protocol, including the views and concerns of communities and stakeholders;
- the current state of play regarding the Protocol’s operation;
- the continuing dialogue between the UK and the EU regarding the Protocol in the Withdrawal Agreement Joint Committee and the governance bodies reporting to it; and
- efforts to identify solutions to the problems thus far identified.

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 is 9am on Monday 14 June 2021.

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

(1) What is your assessment of the overall socio-economic and political impact upon Northern Ireland of the Protocol on Ireland/Northern Ireland since it came into force on 1 January?

(2) What would you identify as the main practical issues that have so far arisen in relation to the Protocol’s operation, including both for GB and Northern Ireland-based businesses? How significant have these problems been, and what impact have they had on the ground?

(3) What impact has the Protocol, and UK withdrawal more broadly, had on trade flows between Great Britain, Northern Ireland and Ireland, and the rest of the EU?

(4) Has the Protocol had any positive impact for Northern Ireland?

(5) Is there a viable alternative to the Protocol?

(6) How would you characterise the attitudes of the communities in Northern Ireland in relation to the Protocol? How significant, compared to other issues and concerns, has the Protocol been as a contributory factor to the recent community disturbances in Northern Ireland?
(7) What action would you wish to see the Northern Ireland Executive take in relation to the Protocol, including in its engagement with the UK Government, the EU and the Irish Government?

(8) What is your assessment of the UK Government's approach to the Protocol, and its engagement with Northern Ireland stakeholders, since it came into force?

(9) What is your assessment of the EU's approach to the Protocol, and its engagement with Northern Ireland stakeholders, since it came into force?

(10) What practical steps can the UK and EU take through the Withdrawal Agreement Joint Committee and Ireland/Northern Ireland Specialised Committee to mitigate the Protocol's negative impact on the people and businesses of Northern Ireland?

(11) What practical steps can the UK and EU take through the Withdrawal Agreement Joint Committee and Ireland/Northern Ireland Specialised Committee to mitigate the Protocol's negative impact on the people and businesses of Northern Ireland?

(12) 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?

(13) What work would you like to see this Committee undertake in scrutinising the operation and impact of the Protocol?