

Mid and East Antrim Borough Council – Written evidence

House of Lords European Affairs Sub-Committee Operation of the Protocol on Ireland/Northern Ireland

Date: 13 August 2021

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Written Evidence

A. Background

1. Council is pleased to engage with the House of Lords European Affairs Sub-Committee on the operation of the Protocol on Ireland/Northern Ireland. We welcome the report "*Introductory inquiry into the operation of the Protocol on Ireland/Northern Ireland*", published by the Sub-Committee on 29 July 2021 and are in agreement with the key issues raised within the report. As the transition period has ended and the Northern Ireland Protocol has come into force, managing the practical implications is of the utmost importance for our local businesses and citizens.
2. As an award winning organisation, Mid and East Antrim Borough Council leads the way in the delivery and the transformation of ever-more efficient, improved public services for our 139,000 citizens.
3. Traditionally referred to as 'the engine room' of the Northern Ireland economy, the area is synonymous with manufacturing, industry, power generation, agri-food as well as the strategic port of Larne.
4. The Port of Larne continues to be a key gateway for Northern Ireland. As the shortest, fastest crossing between Northern Ireland and Scotland, it continues to be a critical arterial route between Northern Ireland, Scotland and England. With strong road and rail links, there are 2,400 sailings per year, carrying 200,000 freight units, half a million passengers and 100,000 tonnes of general cargo each year. Larne is also the only approved port in NI for the import of livestock.
5. As a Local Authority in Northern Ireland, we are responsible for local economic development. 'Sustainable Jobs and Tourism' is one of the key strategic priorities at the heart of the 15-year Community Plan for the Borough "Putting People First". Council's Corporate Plan for 2019-2023 is aligned with this.
6. Whilst the Borough has traditionally been very strong in the areas of manufacturing, industry, power generation and agri-food, it has suffered a number of economic shocks including recent large-scale job losses within the manufacturing sector. In response, we have spearheaded an economic fight-back plan, refocusing economic activity on innovative and emerging job growth and the development of investment areas.

7. We are now faced, however, with the double challenge of managing the impact of the COVID-19 pandemic as well as the implementation of the Northern Ireland Protocol and we have been monitoring developments on both very closely.

B. The current situation in Northern Ireland as it relates to the Protocol, including the views and concerns of communities and stakeholders.

- *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?*
- *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?*

8. The Northern Ireland Protocol (the Protocol) officially came into force on 1 January 2021 and the Protocol is one of the most significant elements of the UK-EU Withdrawal Agreement.
9. As the clear majority of Northern Ireland's trade is with Great Britain, safeguarding the free flow of goods within the UK's internal market is of critical importance to Northern Ireland economy.
10. Council has made significant efforts to ensure the free movement of goods between NI and GB remains a key priority for the UK Government and has engaged with relevant key stakeholders at all opportunities.
11. Since the Protocol came into force, there has been widespread disruption reported on the movement of goods. As a result, a number of politicians have called for the UK Government to trigger Article 16 of the Northern Ireland Protocol, which would allow the EU or the UK to 'unilaterally take appropriate safeguard measures' if its application leads to 'serious economic, societal or environmental difficulties that are liable to persist'. The UK Prime Minister has expressed his preparedness to use Article 16 if necessary.
12. The value of Ireland's exports of goods to Northern Ireland is trending far above historical levels in 2021: up by nearly 40% this year compared to the same period in 2020, and by more than 50% on the same period in 2018.
13. In the first quarter of 2021, Northern Ireland exports to the Republic of Ireland were up by 60% to more than €1bn (£859m). The value of trade in the other direction was up by 40% to €977m (£841m).
14. Since the implementation of the Northern Ireland Protocol, incidents of unrest within local communities have been widely reported.
15. Following concerns over staff safety, Council agreed to suspend the operation of the Protocol at Larne Port on a temporary basis. Council are continuing to

monitor the situation and are working closely with staff to support them and eliminate any concerns that they may have.

16. Council are aware that there remains a level of uncertainty on the impact the Protocol and EU Exit will have on job security and staff wellbeing. This is in combination with the ongoing impacts of the COVID pandemic and the economic climate that Council is now facing. Council are concerned about staff capacity to manage the multiple layers of the Withdrawal Agreement and the impacts on staff confidence and ability to further their job role.

C. The current state of play regarding the Protocol's operation

- *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?*
- *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?*
- *Has the Protocol had any positive impact for Northern Ireland?*

UK Internal Market Bill

17. On 17 December 2020, the UK Internal Market Bill received Royal Assent and is now an Act of Parliament. The Bill aims to create a UK wide internal market and is designed to enable goods and services to flow freely across England, Scotland, Wales and Northern Ireland once the transition period is over.
18. Council is concerned with the practical outworking's in respect of NI where EU Single Market rules will continue to apply under the Protocol. NI could therefore fall under two sets of regulations with the UK responsible for implementing EU law in NI.
19. The Bill also allows the UK Government to make payment to any person in the UK for the purposes of economic development, infrastructure, cultural and sporting activities, and international and domestic educational and training activities. Concerns have been expressed about the impact of the Bill upon the powers of the devolved administrations as it will allow the UK Government to make funding decisions in devolved areas.

Impact of NI Protocol

20. Council notes that the Protocol affirms that the 1998 Good Friday Agreement (GFA) will be protected. The Protocol sets out the UK's commitment to ensuring no diminution of rights, safeguards or equality of opportunity as set

out in the 1998 Agreement, resulting from the UK's withdrawal from the EU. These commitments have been given effect in UK domestic law in the European Union (Withdrawal Agreement) Act 2020, which establishes a 'dedicated mechanism' for the implementation of these provisions and ensures that individuals can challenge alleged breaches of the commitment before the domestic courts.

21. Council believes that unfettered access is vital in order to successfully maintain the internal market of the United Kingdom. The additional administrative processes required under the protocol have added friction to trade and has resulted in significant delays in the free movement of goods between Great Britain and Northern Ireland. Much of Northern Ireland's trade, production and commerce is based on 'Just-in-time' delivery, meaning that any delays have a significant and detrimental impact on local businesses.
22. In addition to the movement of goods, Council is concerned that the additional costs associated with customs checks will put local businesses at a competitive disadvantage. There is a risk that goods are becoming more expensive for NI consumers as suppliers pass on additional costs of doing business here. Council is concerned that there will be associated job losses, due to difficulties transporting goods, delays and increased fees.

Trade Disruption

23. Council is aware of a number of concerns raised by local retailers and haulage firms who are facing delays in receiving goods from Great Britain. The delays are believed to be as a result of increased administrative and bureaucratic processes, increased fees and a lack of understanding of the new requirements. Council has raised these concerns with the DAERA Minister and the Secretary of State on various occasions and continues to do so.
24. Council welcomed the announcement of the UK and EU's agreement to extend some grace periods, for chilled meat products, until 1 October 2021. Council is concerned that if long-term solutions are not agreed before the extension expires that trade will be significantly disrupted from GB to NI.
25. It is of critical importance that the UK Government continues to engage with the European Commission to put workable solutions in place to ensure that disruption to the supply chain between and Great Britain and Northern Ireland is avoided. It is also imperative that our businesses are given sufficient time and information to prepare for additional processes which will be placed upon them. This includes the training of staff to complete paperwork accurately to ensure that goods are not stopped at the Ports.
26. Council is working closely with local businesses to provide support as they work to implement the Protocol. In the Mid and East Antrim Borough, small and medium sized enterprises make up 91% of all businesses. Most of them have not traded beyond the UK and have not therefore been required to complete customs declarations before. Local businesses within the Borough are struggling, first and foremost, to cope with the impact of the COVID-19 pandemic and Council remains concerned that some businesses are struggling further with the implications of the implementation of the Protocol. Council is

actively promoting the Trader Support Scheme and has held a number of webinar workshops to provide support.

Port of Larne

27. Council continues to closely monitor the situation at the Port of Larne and is working to ensure the new administrative processes are implemented as efficiently as possible. Since 1 January 2021, EU observers have generally had a weekly presence in the ports.
28. The governance framework for inspections at the ports is unclear in terms of who local government are accountable to and the roles of DAERA, FSA and DEFRA.
29. Council remains unclear as to the governance arrangements for the Protocol, and what Council's responsibilities and accountabilities are. For example, a work plan or accountability framework has not been provided by the lead competent authority and the workload and work type remains unclear after the end of grace periods. It is a continuing matter of great concern that there is insufficient clarity in the governance arrangements between Council and the central competent authorities in relation to border control duties. Council believes that the lead central competent authority is DAERA and the secondary central competent authority is the Food Standards Agency NI (FSA).
30. There is still no confirmation on the number of additional staff that will be required for the Border Control Post when grace periods end. The FSA have recruited additional staff to help them collate up-to-date movement data from retailers that will provide the necessary research and analysis to determine the number of staff that will be required. A comprehensive assessment of the staffing level requirements at the ports is required, particularly now that a more accurate picture of traffic coming through the ports can be used. The current staffing level at Larne Port does not appear to be sufficient to meet the volume of inspections required.
31. Significant concerns remain in relation to long-term resourcing for regulatory services at the Port of Larne. The Food Standards Agency has confirmed that EHO posts will only be funded until March 2022 and that Councils will be responsible for funding the posts via income generated through charging at the ports for 'inspections'. Officials from the FSA have stated that EU legislation states that local Government, as the authority completing the 'inspections' at Ports, will be required to implement charges for the service.
32. The responsibility for implementing charging could fall to Councils that have Port Authorities within their Boroughs and the implications that this will have both locally and across the region.
33. Council is highly concerned that the cost of implementing the EU imposed inspections through the Northern Ireland Protocol could fall to the ratepayers of Mid and East Antrim. We strongly believe that the residents of Mid and East Antrim should not be expected to pay for services which will be availed of by businesses from across Northern Ireland. Clarity and assurances are urgently sought as to the long-term funding of border control posts and checks.

34. In addition, Council is concerned that charging for inspections to goods arriving in Northern Ireland from Great Britain would create an additional burden on businesses, deviating from the level playing field within the internal market. This would have a significant impact for the Northern Ireland economy.
35. Council has raised its concerns relating to charging to both the DAERA Minister and Food Standards Agency.
36. In May 2021, Council gave approval to appoint a Queen's Counsel to draft proceedings to seek a declaration from the High Court of Council's statutory duty in accordance with Food and Feed law, should the Department not accept their full responsibility immediately and further how Council reconciles its statutory obligation under S46 of the Internal Markets Act (2020) not to fetter the free flow of goods.

Freeports

37. Council welcomed the UK Government's announcement that it plans to create up to 10 Freeports across the UK. Sea, air and rail ports in England and Scotland have been invited to bid for Freeport status with the government aiming for the first of the new sites to be open for business in 2021.
38. Council is concerned that Northern Ireland is the area of the UK most likely to be impacted by trade issues now that the transition period has ended. We believe there is significant potential for Northern Ireland and its residents to benefit from a Freeport. The Freeport model has the potential to be a catalyst for enterprise, fuelling economic growth to maximise regional prosperity. The securing of a Freeport for Northern Ireland will contribute to the wider economic agenda of supporting the UK economy post-departure from the European Union and promote levelling up across the UK.
39. Council's Union Connectivity Working Group fear that uncertainties regarding the implementation of the Northern Ireland Protocol have delayed the development of the Northern Ireland Freeport model.
40. It is important that Northern Ireland benefits from the Freeport model, and the proposals are moved forward in parallel with the developments in the rest of the UK.

Possible benefits

41. Council are aware of possible advantages in some sectors, such as Life and Health sciences where a company can service two markets. This may in turn attract Foreign Direct Investment (FDI) interest – especially if linked to 'special status' to offer low regulatory landing zone for access in to GB and EU markets as part of the FDI offer.

42. The out-workings of the Protocol have the potential for Northern Ireland to benefit from trading opportunities; however, further clarity is required to ensure unfettered access is secured.

D. 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

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

43. Council is pleased to note that discussions are ongoing with the UK Government, EU and First Minister and Deputy First Minister to agree a way forward for addressing the current issues with the implementation of the Protocol.

44. Council notes that a representative from the Northern Ireland Executive is always present during meetings of the Withdrawal Agreement Joint Committee.

45. Council understands that the UK Government is actively working with the Joint Committee to agree long-term sustainable solutions. It is of vital importance that these solutions are agreed as soon as possible, ensuring the protection of the Belfast (Good Friday) Agreement, safeguarding Northern Ireland's place in the United Kingdom and also protecting the residents and businesses of Northern Ireland.

46. Council believe that local government within Northern Ireland is best placed to provide practical and comprehensive examples of issues being faced at Points of Entry. Therefore, Council would encourage the Joint Committee to extend an invitation to local government within Northern Ireland.

47. On 28 June 2021, European Commission Vice President, Maroš Šefčovič met virtually with the Northern Ireland Executive Committee. We note the European Commission's preparedness to accommodate flexibilities, to reduce Irish Sea trade checks to a minimum.

48. Mr Šefčovič confirmed that the EU Commission is keen to develop a relationship with Northern Ireland and wants to engage with the Executive to ensure the smooth implementation of the Protocol. He stated his belief that the Protocol provides Northern Ireland with a unique opportunity to have the best of both worlds by remaining in the Single Market but also part of the UK.

49. We note Dr Šefčovič's comments that there is a willingness to establish a special Northern Ireland sub-committee and we would request that local government be invited to participate, if such a sub-committee is established.

50. Council further welcomes the recent engagement between the Northern Ireland Executive Committee and Lord Frost. Lord Frost stated that while there are elements of the Protocol that are working well, the UK and EU need to find a 'new balance' to ensure problems with the Protocol's implementation were resolved.

Common Frameworks

51. Council understands that the UK Government has been working jointly with the Scottish and Welsh Governments and the Northern Ireland Executive to ensure a common approach is taken where needed on policy areas that intersect with devolved competence by developing UK Common Frameworks.

52. Council agrees with the Committee for the Executive Office, which has written to the Chancellor of the Duchy of Lancaster (11 November 2020) stating that it is "unclear how the common frameworks process will provide for the special and specific circumstances of Northern Ireland with respect to adherence to the Protocol and potential conflict with intra UK common frameworks".

Draft UK-EU Work Programme

53. On 17 May 2021, the UK Government announced that it is proposing to phase in new Irish Sea border checks on food products in four stages from October 2021. Council is aware that details of the proposed stages have not yet been made public; however, they are included within a 'Northern Ireland Protocol – Roadmap', which has been shared with the European Union and with members of the Northern Ireland Executive.

54. There are no indicative dates yet for the commencement of Phases 3 and 4, with the current information advising that a full timeline "requires additional clarity on infrastructure and staffing" as well progress on integrating the UK and EU certification systems.

55. Council notes that the Roadmap document covers more than 20 separate issues including medicines, access to databases, pet travel and the VAT treatment of second-hand cars and that delivery will be supported with the rollout of the new 'Digital Assistance Scheme' (DAS), to digitise the agri-food certification and verification processes.

56. As a Council, we welcomed the announcement of the 'Draft UK-EU Work Programme'. However, full details of the Programme have not been shared with local Councils in Northern Ireland that are currently carrying out some of these checks.

57. Due to the lack of detail, we are unclear as to the duties and responsibilities that will be required of Council to carry out additional checks at the Port of Larne. This presents difficulties, particularly in terms of planning ahead and

ensuring adequate resource to fulfil the requirements of full implementation. Council has written to Lord Frost requesting clarity.

Northern Ireland Protocol – the way forward

58. Council welcomed the announcement of the UK Government's Command Paper '*Northern Ireland Protocol – the way forward*' during July 2021. We note that the Command Paper highlighted that there has been significant disruption to longstanding trade flows between Great Britain and Northern Ireland.

59. The Paper highlights that societal and economic impacts are also clear:

- consumers face higher costs and real risks to goods supplies on which they rely;
- businesses face increased operating costs that put their survival in jeopardy; and,
- as many businesses and business organisations have made clear, if the flexibility provided by the grace periods were to be removed, there would be questions as to whether food supplies and parcel deliveries would continue without serious disruption, with significant knock-on impacts for day-to-day lives.

60. Council is pleased to note that discussions are ongoing and possible solutions are being identified. We would welcome any opportunity to engage with the UK and EU to assist in identifying possible solutions.

Union Connectivity

61. Mid and East Antrim Borough Council welcomed the Prime Minister's announcement of a review to boost connectivity across the UK. This review, led by Sir Peter Hendy, will focus on making sure the right connections are in place to support, sustain and strengthen our communities, to level-up across the UK. Council provided a submission to the Union Connectivity Review in December 2020.

62. Mid and East Antrim Borough Council were pleased to submit a response to the 'Call for Evidence' in December 2020. The 'Union Connectivity Review: Interim Report' was published on 10 March 2021 and Council noted that a number of the emerging recommendations strongly aligned with Council's submission to the 'Call for Evidence'.

63. The Interim Report highlighted a number of areas that will provide Northern Ireland with opportunities to develop and improve regional infrastructure and further strengthen the Northern Ireland economy and tourism offering.

64. To enable Council to maximise the opportunities highlighted within the Union Connectivity Review and to bolster economic, social and cultural relations across the four UK regions, Council have established a Union Connectivity Working Group.

65. An Action Plan has agreed to guide the work of the group, focussing on 4 themes: (1) Engagement, (2) East-West Economic Corridor, (3) Air Passenger Duty and (4) Northern Ireland Protocol.
66. The Group have engaged extensively with regional and national government as well as key decision makers across the UK.
67. Council welcomes the opportunity to contribute towards the UK Government's consultation '*Reforming the Framework for Better Regulation*'.

North Channel Partnership

68. In March 2019, Council agreed to re-establish links with Dumfries and Galloway Council, through the North Channel Partnership, to develop strategic relations and explore opportunities to collaborate. The two Councils are working together, along with a range of key stakeholders, including the Ferry companies, to progress a number of common interests, including those of ports, infrastructure and union connectivity.

DAERA SPS Operational Readiness and Support Project Board

69. The DAERA SPS Operational Readiness and Support Project Board has recently been established and is run by the NI Department for Agriculture, Environment and Rural Affairs (DAERA). The Project Board includes members from DAERA, Customs & Excise, as well as local government, including Mid and East Antrim Borough Council representation.
70. The aim of the Board is to oversee the preparations being made at all the main Points of Entry - Larne, Belfast, Warrenpoint & Londonderry - to deal with goods coming into NI. It looks at the building of facilities, understanding the rules and dealing with the operational issues so that trade is interrupted as little as possible. The most recent meeting was held on 30 June 2021.

E. Efforts to identify solutions to the problems thus far identified

- *Is there a viable alternative to the Protocol?*
- *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?*
- *What practical difference would a UK-EU veterinary/SPS agreement have on the operation of the Protocol?*
- *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?*
- *What work would you like to see this Committee undertake in scrutinising the operation and impact of the Protocol?*

71. The integrity of the United Kingdom's internal market is of the utmost importance to our council. We remain of the view that the implementation of the Northern Ireland Protocol infringes the free flow of goods within the United Kingdom.
72. On 30 June 2021, the High Court in Belfast ruled that the Protocol conflicts with the Act of Union but is not unlawful. Mr Justice Colton said that "political and constitutional tumult" had followed the vote for Brexit and that the case before him involved a "complex and contentious" situation.
73. Council notes that there is provision for elements of the Protocol to be dis-applied if Northern Ireland's Elected Representatives vote in favour. The first opportunity will be in 2024, four years after the end of the Transition Period.
74. The need for unfettered access has been extensively highlighted. Residents and businesses within Northern Ireland should not face any difficulty in receiving goods from GB. It is vital to maintain the free flow of goods to ensure that businesses can avail of their first choice suppliers.
75. Council believes that additional administration or bureaucracy should be kept to an absolute minimum. NI businesses should not be left with any additional burdens or responsibilities that may negatively impact on them.
76. Council notes that Dr Maros Šefčovič is eager to support the introduction of a 'Swiss-style' veterinary agreement, believing that this style of agreement would alleviate most checks in the movement of goods between Northern Ireland and Great Britain.
77. Northern Ireland is now outside the EU and has no representation in EU institutions. Additionally, it has no decision-making powers in the UK-EU Joint and Specialised Committees overseeing the Northern Ireland Protocol. Divergence in regulation over time, such as that already signalled by the UK, could mean Northern Ireland being stretched between two jurisdictions, as it will have to continue to meet EU rules and regulations.
78. Council would welcome any opportunity to engage with the Withdrawal Agreement Joint Committee to assist in the identification and development of viable alternatives to the Northern Ireland Protocol. As home to the strategic Port of Larne, we can provide the most comprehensive and practical examples of the difficulties being reported by local businesses and can help to form viable solutions.

13 August 2021