

[Government response to the Protocol on Ireland/Northern Ireland Sub-Committee's introductory report.](#)

28 September 2021

1. The Government's responses to the issues raised in the Committee's introductory report of 29 July are set out below. Responses have been provided to each of the issues and questions raised, grouping them as appropriate. References to the "Command Paper" are to the Government's Command Paper "The Northern Ireland Protocol: the Way Forward" (CP 502) published on 21 July.

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.

2. The Protocol constitutes an attempt to reconcile multiple aims: maintaining the necessary conditions for North/South cooperation; respecting Ireland's obligations as an EU Member State (including protection of the EU Single Market); the integral place of Northern Ireland in the UK's internal market; and the need for minimal impact on the lives of citizens.
3. But the Committee is right that the text as it stands was not the only possible solution to the issues presented by Brexit. The Government set out alternative approaches to the current Protocol. Ultimately, however, the circumstances faced by the Government on entering office (as detailed in paragraphs 9-15 of the Command Paper) required a compromise in order to get Brexit done. It delivered the fundamental aim of a clear Brexit, enabling the UK as a whole to leave the EU in a genuine and meaningful way. And it contained several provisions specifically

enshrining Northern Ireland's status as part of the UK, as well as elements to be worked through during the transition period that would support these commitments.

4. On the basis of those arrangements, and the further elements negotiated during the course of Joint Committee discussions in 2020, we have tried to operate the Protocol in good faith and have taken forward an unprecedented programme of work to that end. We have gone to great lengths to make it work, including the delivery of four major IT systems, and we have put in place extensive support schemes worth over £500 million for businesses. These include the Trader Support Service, put in place in time for 1 January to provide bespoke support to traders to support them in adapting to new customs requirements. It is forecast to cost around £360 million through to the end of 2022, and has supported the movement of more than one million consignments, with nearly 40,000 traders registered for the scheme. We are giving unprecedented access to UK customs systems for the EU, providing assurance and visibility of consignments as part of a longer-term programme.
5. As to preparations at the end of last year, it is correct that some aspects of the Protocol's operation were necessarily agreed relatively late in the transition period (as they were subject to specific processes in the UK-EU Joint Committee). However, we have gone to great lengths to explain the Protocol at all levels to businesses in Great Britain and Northern Ireland. As we set out in our Command Paper, this includes bespoke, general, and targeted support at nearly 350 industry forums which have reached a combined audience of more than 50,000 people in the trade community; 200,000 calls to businesses; webinars for businesses across agri-food, customs and other requirements; 59 separate communications delivered to traders, reaching an audience of nearly 70,000; and Government-led forums such as the Brexit Business Taskforce.
6. Notwithstanding these efforts, however, the experience of operating the Protocol for just a few months demonstrates that there are serious societal, political, and economic problems that require significant action to address. Those effects flow from implementation of the Protocol, not from failure to implement it. The inflexible way in which the EU appears to want to operate the Protocol, the corresponding failure to take account of all the dimensions of the Belfast (Good Friday) Agreement, and the EU's decision in January to trigger Article 16 in order to impose processes connected to the border between Ireland and Northern Ireland, have all contributed to an undermining of cross-community confidence in the Protocol more broadly.
7. The Belfast (Good Friday) Agreement established conditions in which different aspirations and identities could be fully respected, in line with the principle of parity of esteem, but the extent, breadth and unanimity of opposition within the Unionist community and from those in the Unionist tradition risks undermining the functioning of the Belfast (Good Friday) Agreement institutions. As such, we agree with the Committee's conclusion that the EU's rigid focus on the Protocol as a tool to protect the integrity of the Single Market has failed to take account of its impact on the sense of identity of unionists and loyalists, inflaming the situation and compromising the delicate balance between the relations encapsulated in the Belfast (Good Friday) Agreement.
8. Thus, while the Protocol has delivered on its objectives of protecting the EU Single Market and maintaining the border between Ireland and Northern Ireland without

infrastructure and checks, it is clear that it has not delivered on some of its other fundamental objectives, notably the explicit treaty commitments to protect Northern Ireland's place in the UK internal market and to avoid disruption to everyday lives.

9. That is why the Government wants to agree significant changes to the Protocol's operation in order to deliver the balance needed between the different objectives. As outlined by Lord Frost in the debate on 13 September, if the proposals published in the Command Paper were agreed they would satisfactorily address many of the report's conclusions. These proposals represent a huge opportunity to find durable arrangements, moving away from argument and mistrust and putting UK-EU relations onto a better footing to deliver for Northern Ireland in the long term. We would urge the EU to engage with the need to find bold actions and solutions that do not look simply within the existing framework of the Protocol.

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 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.

10. The Government recognises that, despite the unprecedented programme of work that has been undertaken to make the Protocol work in its current form, the Protocol has led to considerable disruption. Traders of all sizes are facing additional burdens, supply chains have been disrupted, costs have increased due to new bureaucracy, at least 200 companies in Great Britain are no longer servicing the Northern Ireland market and a significant number of medicines are also at risk of discontinuation. These burdens would only be exacerbated if the grace periods were to end at some point in the future. Northern Ireland's leading supermarkets have said that in such circumstances there would be 'significant disruption to supply and an increase in cost for Northern Ireland consumers'.
11. As such, we agree with the Committee's conclusion that the new administrative requirements insisted on by the EU for moving goods from Great Britain to Northern Ireland have had the biggest impact on business. These current arrangements are wholly unsuited to the regional supply chains used by businesses in Great Britain and Northern Ireland where the risk of goods moving into the EU Single Market is extremely low.
12. We are also clear that the trade diversion we have seen requires significant measures to address it. Those impacts derive from the EU's rigid focus on protecting the Single Market over and above other elements of the Protocol, which has forced businesses to engage in burdensome and disproportionate customs and agri-food requirements. As was made clear in the debate on 13 September, in the worst cases we have seen companies considering the viability of operating in Northern Ireland at all. That is why the Government is clear that any solutions must fundamentally address those burdens on internal UK trade.
13. To that end, the Command Paper proposes a new framework to remove undue barriers on internal UK trade whilst ensuring rigorous controls on goods sent into the EU. This would remove the need for burdensome supplementary declarations and allow goods made to UK standards and regulated by UK authorities to circulate freely in Northern Ireland as long as they remain in Northern Ireland. For those goods moving to Ireland via Northern Ireland, we are ready to enforce customs rules and also stand ready to bring in new legislation to impose penalties on anyone in the UK looking to export goods to the EU which do not meet EU standards. This is an unprecedented step for the Government to consider, but it is one we are willing to take given the EU's legitimate interest in protecting the Single Market and our wider commitment to ensuring all aims of the Protocol are met.
14. On the issue of agri-food checks, decisions are being made on more than 300 entry documents for products of animal origin every day. The Northern Ireland Executive estimated that, from January to March, about 20% of all the EU's checks were being conducted in respect of Northern Ireland - even though Northern Ireland's population is just 0.5% of that of the EU as a whole. This is clearly disproportionate and must be addressed. The internal UK trade scheme that we have proposed would remove the costly burden of certificates and checks for agri-food goods remaining in the UK, while retaining a means for risk-based and intelligence-led checks where needed, and maintaining full controls for goods destined for onward movement into the EU.

15. It is also important to note that these more rigorous, evidence-based, and targeted approaches to preventing goods at risk entering the Single Market must be underpinned by an amended governance framework. If the arrangements in Northern Ireland are to be durable we need to remove the policing role of the EU institutions and the CJEU so as to give us a more balanced framework that has the confidence of both communities in Northern Ireland.
16. On the specific issue of parcels guidance, negotiations with the EU did not conclude in a timeframe that allowed guidance to be published in good time. Nonetheless, it should be noted that the Government was able to implement temporary arrangements to ensure that no customs declarations were required for the vast majority of these parcel movements.

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.

17. The Government has, at every stage, been guided by the need to reduce uncertainty and minimise disruption for businesses. That is why we have invested over £500 million in support schemes for businesses, including the Trader Support Service, which has processed declarations for more than one million consignments. It is also why we introduced easements in March aimed at ensuring that Northern Ireland businesses and citizens did not see their lives and livelihoods unacceptably disrupted as we sought to address outstanding issues with the Protocol. We have also, as set out above, invested in communications to business at a range of levels, including bespoke, general, and targeted support. However, we of course continue to review what more could be done in this area.
18. It is because we recognise that there has been significant disruption - in spite of the good faith with which we have sought to operate the Protocol - that we are looking to agree significant changes. As we take forward this urgent work, which is ultimately aimed at providing the durable settlement that businesses need, it is vital that we provide the certainty and stability required for trade to continue currently. That is why, having set out the approach in our Command Paper to the Commission over the summer, the Government outlined in a Written Ministerial Statement on 6 September that the Government will continue to operate the Northern Ireland Protocol on its current basis. This means there is a 'standstill' on current arrangements - with the current processes for moving goods between Great Britain and Northern Ireland maintained and the grace periods and easements remaining in place. The European Commission has noted this decision and have committed to not taking any legal

action at this time. We believe that the EU recognises the importance of providing stability for traders as our discussions proceed.

19. On the matter of EU Member States misunderstanding the arrangements for trading with Northern Ireland, the Government recognises that this has been an issue. In cases where Member State non-compliance with the Protocol has been highlighted, we have raised these issues with the Commission and will continue to be proactive in doing so to ensure that businesses are not disadvantaged by authorities in Member States not honouring their obligations under the Protocol.

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.

20. The Government supports all efforts to boost growth and productivity in Northern Ireland, as part of the "levelling up" agenda. The stability which would be brought by a durable resolution of the issues created by the Protocol would certainly help here.
21. On the specific issue raised with regards to increases in North-South trade, as was made clear in oral evidence before the Sub-Committee on 14 July, and subsequently in the debate on 13 September, access to the Single Market for goods (as the Committee notes, not services) does not, in the Government's view, compensate for the disruption to movements of goods between Great Britain and Northern Ireland. Indeed many Northern Ireland businesses, whether they sell into the EU or within the UK market, rely on inputs from the rest of the UK. Ultimately, trade between Northern Ireland and the rest of the United Kingdom is significantly higher in value terms than trade between Northern Ireland and Ireland, with Northern Ireland consumers purchasing £10.4bn of goods from Great Britain compared with £2.4bn of goods from Ireland¹, it is also a crucial part of the relationship between Northern Ireland and the rest of the UK. The engagements the Government has undertaken with businesses have confirmed that it is the difficulty of moving goods from Great Britain to Northern Ireland that is the overwhelming concern. In that context, it simply does not make sense for Northern Ireland to gain the "benefit" of access to the EU market at the

¹ Source: NISRA sales statistics, August 2021

expense of access to the rest of its own market.

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.

22. The Protocol is explicit that Northern Ireland remains in the UK customs territory. We will negotiate and deliver trade deals on behalf of the whole United Kingdom. International trade will benefit Northern Ireland exporters, whose goods will enjoy the preferential access we negotiate with trading partners around the world, as well as Northern Ireland importers and consumers, who will enjoy access to wider consumer choice. That has already been the case in the new Free Trade Agreements we have negotiated thus far, such as with Japan.

23. However, there are elements of the Protocol that are not benefiting Northern Ireland importers and consumers, particularly around the way in which the application of EU tariffs on goods 'at risk' of entering the EU is determined. Northern Ireland traders have been particularly disadvantaged by being unable to access Tariff Rate Quotas because of legislation introduced by the EU after the Protocol was agreed. That is unacceptable and must be addressed.

24. As we have set out in the Command Paper, the new settlement we are proposing seeks to address these tariff burdens on traders bringing goods from the rest of the world into Northern Ireland. The arrangements would also allow Northern Ireland businesses and consumers to access the same goods that are available to counterparts in Great Britain.

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.

25. The Government is unshakeable in its commitment to the Belfast (Good Friday) Agreement. This commitment has framed every aspect of the Government's approach to EU exit negotiations around Northern Ireland, and will continue to do so.
26. As the report sets out, we must recognise the implications of the current operation of the Protocol for society and politics in Northern Ireland. It has indeed been destabilising. The Belfast (Good Friday) Agreement recognised an interlocking and interdependent set of institutions and interests that needed to be balanced together. While the Protocol has successfully supported the North-South links that are a critical part of that balance, it has disrupted the East-West links that are just as important. This is evidently feeding a false but raw sense that Northern Ireland is being separated from the rest of the UK.
27. The cumulative effect of the disruption to trade flows and day-to-day lives have put the functioning of the devolved administration in Northern Ireland under strain and placed significant pressures on people and businesses in Northern Ireland. We need to find a balance in these arrangements that can support the careful settlement provided in the Belfast (Good Friday) Agreement. That is why we need to find a new, durable, long-term settlement that best provides for the unique circumstances in Northern Ireland.
28. The UK Government continues to engage with stakeholders in Northern Ireland, keeping in mind the fundamental need to ensure the Protocol operates in a way that is pragmatic and proportionate, and has the confidence of all communities in Northern Ireland.
29. We have been clear to the EU that it is essential that all decisions relating to the Protocol are informed by a strong understanding of the situation on the ground in Northern Ireland. We are of course content to see visits by EU political representatives or officials to Northern Ireland, but in doing so they must be mindful of the fact that the UK Government is also the Government of Northern Ireland and that the EU is not, but rather is one party to a Treaty with the UK.
30. The UK Government has invested in communities across Northern Ireland. Through the New Deal for Northern Ireland we are investing in skills, boosting growth, and helping Northern Ireland maximise opportunities in international trade. The Northern Ireland economy has transformed dramatically in recent decades, and we want to build on this success by continuing to see low unemployment, high educational achievement, and more international businesses choosing Northern Ireland as a place to invest.

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.

31. We agree with the Committee's conclusion that the way in which rules are made and automatically applied has established a sense in Northern Ireland of a democratic deficit.
32. It is worth noting that the same was true of the previous "backstop" arrangements negotiated by the previous Government. Indeed the Government's commitment to keep Great Britain aligned with rules undemocratically imposed on Northern Ireland within the "backstop" compounded the problem, and is why the Prime Minister described the backstop as "anti-democratic" in his letter of 19 August 2019 to then EU Council President Tusk. It is why the Government put such emphasis on the consent mechanism in the current Protocol, so that Northern Ireland has the choice, albeit after four years, to decide whether it wished to continue having laws imposed on it by another entity.
33. The Protocol also provides for the exchange of information on new EU legislation through the structures of the Joint Consultative Working Group. That group is meeting regularly, including most recently on 14 September, but is not yet operating as effectively as it could.
34. We now know, from the experience of this year, that the current arrangements under the Protocol will not be sustainable and durable. To ensure that we are able to achieve a more balanced framework that has the confidence of both communities in Northern Ireland, we must normalise the governance basis of the Protocol. That means removing the role of the EU institutions and the jurisdiction of the CJEU. These in particular have fostered a sense that, rather than a cooperative relationship to resolve issues that arise in Northern Ireland, the governance arrangements treat Northern Ireland more like an EU Member State to be held in compliance. Combined with the democratic deficit of rules being made and applied with no say or scrutiny by NI institutions, this has deepened the sense of separation between Northern Ireland and the rest of the UK for unionists, and the sense that arrangements are being decided by institutions and framework without a clear thread through to the people of Northern Ireland.
35. As we set out in para 71 of the Command Paper, we should also take the opportunity to ensure that in any areas where EU law is applied or replicated in Northern Ireland under a rebalanced settlement, there are more robust arrangements to ensure that rules take account of their implications for Northern Ireland. Moreover, for as long as some legislation affecting Northern Ireland continues to be made outside the United Kingdom, the consent mechanism will also remain an important part of the arrangements under the Protocol.

36. As was outlined in the debate on 13 September, we do not believe that providing for Northern Ireland's representation within the structures of the EU institutions is in any sense the right way forward. Northern Ireland is part of the UK, which is not a member state of the EU. It would not in any way be reassuring to those concerned about their identity and Northern Ireland's place within the UK if Northern Ireland were to be pulled further into the EU's systems and processes.

37. The Government continues to engage with all communities in Northern Ireland. We are clear on the importance of ensuring that all decisions relating to the Protocol are informed by a strong understanding of the situation on the ground in Northern Ireland. In the course of the last year, the Northern Ireland Office has held eight specific civic conversations in addition to regular engagement with a range of civic society actors and groups. This engagement is ongoing across a range of issues as well as on the Protocol specifically.

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 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.

38. We agree that, so far, the Protocol has only partially delivered upon its objectives. The border between Ireland and Northern Ireland has been successfully maintained without infrastructure or checks, and the EU Single Market has been protected. However, as the report notes, the Protocol has not delivered on its explicit commitments to protect Northern Ireland's place in the UK internal market and to avoid disruption to everyday lives. These are vital to the whole Protocol and the wider objective of supporting the Belfast (Good Friday) Agreement.

39. We therefore agree that more needs to be done to operate the Protocol in a pragmatic and proportionate way, and that the Protocol's sustainability will be undermined if the EU does not take into account the economic importance of East-West trade, the degree of risk that goods travelling to Northern Ireland pose to the Single Market, and the sensitive issues of identity that the Protocol gives rise to.

40. This is reflected in the proposals in our Command Paper. These arrangements would allow us to meet the objectives of the Protocol by normalising its governance basis; providing a genuinely differentiated approach that applies full controls on goods moving to the EU, while removing barriers to trade between Great Britain and Northern Ireland and ensuring consumers in Northern Ireland can access the goods from Great Britain on which they rely. On the issue of the threat to the EU Single Market, given that the Government has committed to imposing penalties on UK traders looking to export goods to the EU which do not meet EU standards, and the absence of any evidence so far of any 'leakage' into the Single Market, the Government agrees with the report's suggestion that the legitimate operation of

businesses within the UK customs territory poses minimal risk to the EU Single Market.

41. On the point raised with regards to the flexibilities explored by the EU, we would note that these proposals only partially dealt with some limited, specific issues and didn't engage with the underlying problems caused by the customs and agrifood requirements. This is the case for proposals such as those on medicines, which would not resolve the issues faced for citizens in Northern Ireland accessing vital medicines. That is why we have been clear that the significant issues faced need more significant solutions, and that is what the solutions we have put forward in the Command Paper aim to do.

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.

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 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.**

42. We are clear that we have, at all times, acted in good faith to operate the Protocol in the pragmatic and proportionate way intended. Where necessary we have taken action to avoid disruption to the flow of critical goods into Northern Ireland, including food and personal deliveries, to meet our responsibilities to the people of Northern Ireland. We would not consider such an approach to be provocative.

43. As was emphasised in the debate on 13 September, the Command Paper sets out that the tests for Article 16 are, in the Government's view, met. We would urge the European Union to take that judgment seriously. It would be a significant mistake to think that we are not ready to use Article 16 safeguards, if that is the only apparent way forward to deal with the situation in front of us. However, we would prefer to find a consensual path and we believe there is an opportunity for both parties to find more effective arrangements which deliver on everyone's interests, while doing a better job of protecting the peace process. Doing so would deal with the most sensitive and difficult issue in EU-UK relations, putting them on a stable footing for the long-term, and having a hugely positive effect in Northern Ireland itself.

44. On the specific points raised in the report, those easements would certainly ameliorate some of the issues being faced, and reflect several of the proposals that the Government advanced over the course of many months of technical discussions with the EU. However, it is in the light of those engagements, and in the light of the societal difficulties, political disruption and trade diversion that we have seen since the beginning of the year, that we consider more significant change is required if we are to find a durable, sustainable means for operating the Protocol. That is why the Command Paper puts forward ambitious proposals that allow the Protocol to deliver on its objectives in a more effective way.

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.

45. It was certainly welcome that we were able to agree an extension to the grace period for chilled meats, ensuring there remained a clear basis on which those movements could continue. However, as the Committee notes, fundamentally neither it, nor any of the other proposals made as a result of our extensive technical discussions with the EU, have engaged with the underlying problems caused by overly burdensome

customs and agri-food requirements for goods remaining in the UK's customs territory.

46. It is also important to note that we do not consider that the proposals made by the EU so far would be sufficient to address the issues with which we are concerned. On the issue of guide dog movements, for example, while we welcome the EU's signposting of a potential derogation for guide dogs, there are serious concerns that this may not be practically possible to implement, and would leave significant barriers for those taking pets and assistance dogs to Northern Ireland.
47. Similarly, while there has been a significant amount of constructive technical engagement on medicines, the EU's proposal on medicines would be complex to operate, onerous, and would not deal at all with the issues that stakeholders have raised with us, including the current requirement for new cancer drugs to be licensed by the European Medicines Agency in Northern Ireland. This is why, as noted above, we consider that more significant changes are required, as set out in the Command Paper. This would include taking medicines out of the scope of the Protocol altogether, to give patients in Northern Ireland a long-term sustainable solution that removes supply risks and helps ensure equity of access for new and innovative treatments.
48. The Government agrees with the Committee that further engagement with the EU is needed. Following the publication of our Command Paper, we have had a series of technical discussions with the EU, which remain ongoing. These engagements have been helpful, but we need to swiftly move into a more substantive process that addresses the fundamentals of the issues at hand.

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.

49. The UK is committed to agreeing an approach with the EU that is proportionate and based on an assessment of risk. That is why we have proposed a new internal UK trade scheme, which would remove the costly burden of certificates and checks for agri-food goods remaining in the UK, while retaining a means for risk-based and intelligence-led checks where needed. As previously mentioned, while we discuss this with the EU, we have announced a standstill on existing arrangements, including

the continued operation of the grace periods currently in force, to provide a stable context for discussions to progress.

50. As we set out in the Command Paper, we are open to providing additional confidence in these arrangements through an appropriately designed SPS agreement, along the lines already proposed by the UK, setting out where UK and EU SPS legislation provides for the same high standards, and providing a means to identify areas of significant difference where the level of risk-based controls might need to be higher.
51. However, as we have set out previously, an agreement based on dynamic alignment would compromise sovereignty over our own laws and impact our ability to strike trade deals or agree trade facilitations with non-EU countries. Alignment is also not an appealing proposal as a matter of substantive policy in that it would represent the UK binding itself to EU rules that are not right for UK industry or the economy.
52. Moreover, an agreement based on even temporary alignment would not provide sufficient stability or certainty for traders. In practice, any alignment would not be possible for long and as soon as we entered into another trade deal, for example, we would be back to square one - without a permanent solution. In such a context, it is entirely possible that temporary alignment could become permanent and there is the risk that the EU would be even less inclined to use their existing discretion to ease burdens in Northern Ireland.

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.

53. We recognise the issue raised regarding the role of the Northern Ireland institutions in how rules are agreed and applied under the Protocol. It is with that in mind that we have set out in our Command Paper the need for new and more robust arrangements to provide a stronger role for those in Northern Ireland to whom they apply (including the Northern Ireland Assembly and Executive, and wider Northern Ireland civic society and business).
54. The Common Frameworks programme continues to make progress towards full implementation, and the majority of frameworks are sufficiently advanced that they

are operational. Frameworks have been developed jointly by the UK Government and devolved administrations, with colleagues in the Northern Ireland Executive participating throughout. This allows for a four-way approach to managing post-EU exit regulatory divergence in around 30 areas of devolved competence.

55. We note our existing commitment from the *New Decade, New Approach* agreement that representatives from the Northern Ireland Executive are invited to be part of the UK delegation in any meetings of the UK-EU Specialised or Joint Committees discussing Northern Ireland specific matters which are also being attended by the Irish Government as part of the European Union's delegation. We note also that a representative from the Northern Ireland Executive is invited to the meetings of the Joint Consultative Working Group. We would certainly welcome any further views from the Committee regarding options for how these arrangements can be bolstered, alongside those proposals we have set out in the Command Paper.

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, 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.

56. The prospect of an EU office in Belfast was discussed at length between the UK and the EU during the transition period. Whilst we would welcome more dialogue between the EU and stakeholders on the ground in Northern Ireland, we maintain the view that a permanent office is unnecessary and unhelpful to resolving the issues which have arisen since the start of this year. More broadly, we would urge the Commission to be sensitive to the situation in Northern Ireland, and be wary of anything which could be interpreted as a belief that they alone are best placed to decide how the issues can be resolved.

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.

57. The Government agrees with the Committee's view that the use of Article 16 in the current circumstances would be a legitimate legal and political action. As the committee notes, Article 16 envisages the use of appropriate safeguards in the event of serious economic, societal or environmental difficulties. It is clear that the threshold for triggering Article 16 has been met and it is open to the UK Government to take a range of safeguard measures on this basis. The use of these measures would therefore be a legitimate means, centred in the Protocol, to deal with the significant disruption we are seeing in Northern Ireland.

58. However, at this stage, we would prefer to address the significant problems with the Protocol by pursuing the solution envisaged in Article 13(8) - the explicit provision that a subsequent agreement may replace the existing text. We agree with the Committee's view that, at this stage, it would be preferable for the UK and the EU to seek a consensual solution and that is the path we continue to pursue. We continue to encourage the EU to engage with us in meaningful negotiations on discussions on the substance of our July Command Paper.

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.

59. The Government is clear that if arrangements under the Protocol are to be durable they must have the support of both communities in Northern Ireland. It is evident that for unionists (as was illustrated by the statement by the four unionist parties on 28 September), the current arrangements are fostering a sense that Northern Ireland is being separated from the rest of the UK. That must be addressed and that is what the proposals in our Command Paper aim to do. However, it is important to be clear that our proposals do not in any way propose the introduction of North-South checks or infrastructure at the border. The Government is unequivocal in its commitment to protecting the Belfast (Good Friday) agreement in all its dimensions, within Northern Ireland; for the North-South dimension and the East-West dimension.

60. The Committee is right to stress the need to continue to consider alternatives to the Protocol. The proposals the Government have put forward in the Command Paper for significant change to the current protocol would of course represent a fair balance between the different interests. But in the end, however events develop this autumn, the continuance of any arrangements after 2024 must continue to be in the hands of the Northern Ireland institutions and it therefore makes sense for there to be a continuing debate about alternatives. We do not agree with the EU that the current Protocol is the only possible solution to the issues presented in Northern Ireland.

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 powersharing 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 in to, and that is the peace process.”

61. The Protocol is a unique document agreed in unique circumstances of intense political pressure, as set out in the Command Paper. As the committee has noted, it seeks to reconcile a number of important, but competing aims: protecting all dimensions of the Belfast/Good Friday agreement - the Protocol’s key purpose and *raison d’etre* in the first place; ensuring North/South cooperation and avoiding a hard border; respecting the essential state functions and territorial integrity of the United Kingdom; protecting Northern Ireland’s integral place in the UK internal market; and protecting the single market. All of these aims are at the heart of the Protocol - we cannot pick and choose between them, just as we cannot pick and choose between the relative importance of the various strands of the Belfast/Good Friday Agreement. So far, the Protocol has not delivered on all these objectives.

62. As the Committee notes, the ensuing disruption has brought to the fore broader political and societal difficulties, including around issues of identity. As we move

forward, it is imperative that all sides keep in mind the fact that the Protocol depends on cross-community consent and confidence if it is to work and deliver our common objective of protecting the Belfast (Good Friday) Agreement in all its dimensions, North-South and East-West.

63. The Government recognises that the situation we face is complex and challenging, but the proposals put forward in the Command Paper represent a real opportunity for both sides to find durable arrangements that can win the confidence of communities in Northern Ireland. We cannot look solely to small-scale or technical adaptations given the significant nature of the difficulties and disruption we have witnessed. That is why the Government is committed to working constructively with the EU to establish a new balance in the Protocol's operation that better reflects Northern Ireland's unique circumstances; but also is prepared to act using the safeguard measures that the Protocol itself provides, if that is the approach necessary to uphold our responsibilities for stability and prosperity in Northern Ireland. Providing a sustainable and durable means to maintain the hard-won gains of the past 23 years will always be our paramount guiding principle as the Government of the whole United Kingdom.