



Northern
Ireland
Office

Secretary of State for Northern
Ireland

1 Horse Guards Road
London
SW1 2HQ

Stormont House
Belfast
BT4 3SH

E: correspondence@nio.gov.uk

www.gov.uk/nio

Follow us on Twitter @NIOgov

Simon Hoare MP

Chair, Northern Ireland Affairs Committee

By email: northircom@parliament.uk

30 November 2021

Thank you for your letter of 19 August 2021 regarding the Northern Ireland Protocol (“the Protocol”) and the Government’s proposals set out in the 21 July Command Paper.

As the Command Paper sets out, the Protocol was agreed at a particular moment as part of a broader deal that delivered on the referendum result and delivered on the democratic will of the British people to leave the EU. We knew some elements of the Protocol would possibly be difficult to make work in practice and some aspects of it were left open for discussions in 2020 and afterwards. It is not unreasonable now in this different political situation - with no consent amongst Unionist political parties for the Protocol - that we are asking to look at it and find a different balance.

The Protocol’s purpose was to protect the peace process and the Belfast (Good Friday) Agreement but it is now doing the exact reverse. In addition to the disruption to supply chains there is now a serious risk to the Northern Ireland institutions and to the Belfast (Good Friday) Agreement. The underlying political problem is that the Protocol has completely lost consent in one community in Northern Ireland, with all the Unionist parties signing a joint declaration against it in its current form.

We put forward proposals to fix the problems in the Command Paper. They work with the grain of the Protocol but they do require significant changes to processes and governance if the Protocol is to work in future. More recently, the UK Government shared with the European Commission a new legal text of an amended

Protocol which supports - not undermines - the Belfast (Good Friday) Agreement, based on the proposals set out in the Command Paper.

The EU published its own proposals in response to the Command Paper in October this year and we welcome the EU's recognition that there are serious problems which cannot be solved simply through further implementation of the existing Protocol. Vice President Šefčovič's acknowledgement last Friday that the Protocol has led to unintended consequences in Northern Ireland is welcome. Addressing these issues is the urgent task before us.

The UK and EU teams have been engaged in intensive and constructive talks. It is clear to us, and to businesses, that the EU's proposals do not currently deal effectively with the fundamental difficulties in the way the Protocol is operating, nor, indeed, do they deliver what they claimed when they published them. There remains a substantial gap between our two positions. The EU's proposals do not free up goods movements between Great Britain and Northern Ireland to the extent necessary for a durable solution, nor do they yet engage with the changes needed in other areas, such as subsidy policy, VAT, and governance of the Protocol, including the role of the Court of Justice.

Our proposal is simple. Goods which both we and the EU agree are not going to leave Northern Ireland should not be treated as if they were moving from one country to another - because they are not. Goods going from GB to Ireland should be checked to protect the EU single market and to avoid a hard border between Northern Ireland and Ireland.

Any solution must constitute a significant change from the current situation, materially ease practical problems on the ground, and safeguard political, economic and societal stability in Northern Ireland.

You asked about the steps taken by the Government to analyse the operational impact on UK businesses of triggering Article 16 and whether such analysis would be published.

We have been clear that the test for using Article 16 is passed, but our preference is to move forward on the basis of consent with the EU if possible. We will always consider using all legitimate options, including Article 16, to meet our overriding responsibilities for peace, prosperity and stability in Northern Ireland. It is worth remembering that Article 16 is a mechanism explicitly provided for under the Withdrawal Agreement, and therefore not contrary to international law - and indeed the EU has already sought to exercise it earlier this year.

The safeguards in Article 16 are designed to ease acute problems, not to cause or compound them. Triggering Article 16 in this case would ease trade and make the lives of those people and businesses currently struggling with the significant burdens of the Protocol much easier.

However, if we were to use Article 16, it would obviously be open to the EU to consider countermeasures if it wished, and we of course will undertake analysis of the potential impacts of any EU response. Given we are still in discussions with the EU and that we cannot know what the precise response might be it would clearly not be appropriate to publish any analysis at this time. We will continue to keep the situation under review and look to share further information subject to how discussions progress and any decision on the use of Article 16.

I would note that everyone has an interest in avoiding needless deterioration of trade and needless further economic difficulties for either side, at a time when supply chain and trade costs are so significantly raised already.

The current problems with the Protocol go to the heart of territorial integrity - of what it means to be one country and one market. There is an opportunity for both parties to the Protocol to find more effective arrangements which deliver on everyone's interests. Doing so would have a hugely positive effect in Northern Ireland.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Brandon Lewis', written in a cursive style.

**THE RT HON BRANDON LEWIS CBE MP
SECRETARY OF STATE FOR NORTHERN IRELAND**