

Royal Society for the Protection of Birds (RSPB) Written evidence, July 2020 (NIP0020)

Key points

- There is currently a risk of **regulatory divergence**, both between the UK and EU and between Northern Ireland and Great Britain, which neither the Protocol, nor forthcoming post-Brexit legislation have fully addressed;
- A future relationship agreement between the UK and the EU that ensures close cooperation on regulatory standards and effective, trusted governance arrangements will reduce the risks associated with this worrying regulatory divergence. The closer the regulatory alignment is maintained, the easier access from NI into GB, and vice versa, will be;
- UK-wide common frameworks will help reduce the risk that one or more of the four countries will adopt substantively differing approaches regarding agricultural regulation and standards. Such differences could create further obstacles to the future function of the UK internal market.
- In addition to avoiding these impacts, UK-wide common frameworks will support the sustainable management of shared natural resources and address trans-boundary objectives, and enable the UK to meet its international environmental obligations and commitments;
- An approach to ensure the full function of the UK internal market will only be effective if it builds on the equal participation and consensus of all four administrations of the UK – it must be co-designed and co-owned. It must not only respect the existing devolution settlements but work through a new spirit of cooperation and must respect the provisions and effective implementation of the Ireland/Northern Ireland Protocol.
- Improvements to both the Agriculture Bill and the Environment Bill are needed in order to uphold vital environmental protections, while ensuring that Northern Irish producers are able to operate on a fair and level playing field to their counterparts in in Great Britain and further afield.

The Northern Ireland agri-food sector is a key element of the Northern Irish economy and has developed a growing reputation, based on its high food, environmental and animal welfare standards. These have been used to market NI produce locally and internationally as well as assure the public of the provenance and integrity of the food they eat. The Northern Ireland agri-food sector exports the majority of food it produces, with nearly three quarters of agri-food produce being sold to markets outside of Northern Ireland.¹ While international exports are significant for the Northern Ireland agricultural sector,

¹ DAERA, Statistical Review of Northern Ireland Agriculture 2017, March 2018, p 58

Great Britain is the largest market, being the destination for 64.1% of exported agri-food products and 48.9% of all agri-food products produced²

However, agriculture and land use are key factors in the many environmental challenges Northern Ireland currently faces. These include increasing agricultural Greenhouse gas emissions, widespread declines in biodiversity, negative impacts on water and air quality. The implementation of the Northern Ireland Protocol could have significant ramifications on the future long-term viability of the agri-food sector, environmental governance in Northern Ireland, and the future functioning of the UK internal market.

Regulatory Divergence and the UK internal market

While primary and secondary legislation has thus far transferred existing EU law into a new category of domestic UK law (EU retained law), little provision is currently in place that would assure continued regulatory alignment, equivalence or recognition between the four countries of the UK or between the UK and the EU. This means there is currently a significant risk of regulatory divergence between the UK and the EU and between Northern Ireland and the island of Great Britain, which neither the Protocol, nor forthcoming post-Brexit legislation have fully addressed.

- Despite promises to uphold at least existing levels of environmental protection, standards and obligations no adequate provision has been made in domestic legislation to date that would effectively guard against regression on current requirements.
- Whilst the Protocol outlines a range of EU Regulations and Directives that will continue to apply to the Northern Ireland farming and agri-food sector, key environmental Directives that have formed a vital component of UK and NI farming standards and regulation, such as the Birds and Habitats Directives, the Nitrates Directive and the Water Framework Directive, have been omitted.
- This creates a risk that vital environmental protections may be overturned, watered down, fail to be effectively enforced or may be undermined by policies that fail to take account of them, such as those which enable the further intensification of agricultural production.
- The potential for further agricultural intensification may be heightened if the agri-food sector is put under additional economic pressure, due to increasingly restricted market access to Great Britain.

The Westminster Environment Bill has the potential to play an important role in ensuring that, as a minimum, current environmental protections are upheld, which would serve to minimise the risk of significant regulatory divergence

² DAERA, Statistical Review of Northern Ireland Agriculture 2017, March 2018, p 58

within the UK, particularly between Northern Ireland and the rest of GB. However, at present the Environment Bill fails to deliver on this ambition. There are numerous elements to the Bill that need to be strengthened in terms of how it applies to both England and Northern Ireland specifically. For example, a clear, unequivocal and substantive commitment to non-regression of environmental law must be contained in the Bill³.

Although the Protocol does not secure a number of vital environmental protections either, as mentioned above there are at least a number of EU regulations and Directives that will continue to apply to Northern Ireland producers and the agri-food sector more broadly. These include regulations and Directives related to food safety, pesticides, GMOs, animal welfare and others. While these will continue to apply in Northern Ireland, as the equivalent rules affecting producers and authorities in England, Scotland and Wales will be largely open to be dispensed with or altered, due to the EU law they come from no longer having supremacy.

This again presents the possibility of divergence between NI and GB which would pose implications for the UK internal market. For example, if rules applicable to producers in GB diverge from those currently equivalent to EU standards in any of these areas, it could leave NI producers at a competitive disadvantage to their GB counterparts. Conversely, if new regulations in the UK raise standards above what is required under current EU frameworks, and are not mirrored in NI or by the EU, this may restrict the possibility of NI productions not being able to enter the GB market as they may not meet these higher standards⁴.

Future Free Trade Agreements

In order to ensure that NI businesses benefit from future trade agreements and as agreed in the NI Executive's New Decade New Approach Agreement⁵, future trade deals struck with third countries will need to be compatible with the NI protocol⁶. To date, there has been minimal explanation on how negotiations on new free trade agreements (such as with the US, Japan or New Zealand) will address the provisions of the NI Protocol. It is evident that future trade negotiations and legislation passing through the UK parliament will have major implications for the NI agri-food sector. As previously underlined, in continuing to adhere to a number of EU regulations under the protocol, NI

³ https://greeneruk.org/sites/default/files/download/2020-02/GreenerUK_Environment_Bill_summary_briefing_for_MPs.pdf

⁴ <https://blogs.sussex.ac.uk/uktpo/publications/the-protocol-on-ireland-northern-ireland-the-implications-for-wales-external-trade/>

⁵ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/856998/2020-01-08_a_new_decade_a_new_approach.pdf

⁶ <https://www.instituteforgovernment.org.uk/publications/implementing-brexit-northern-ireland-protocol>

(producers, companies and public authorities) will be an important element of future trade negotiations with other countries.

To ensure NI farmers can compete on a level playing field with both other UK producers and those producers in countries with which future trade deals are agreed, it is essential that these common, high standards are upheld. The UK Agriculture Bill has the potential to play a critical role in this, by introducing legal guarantees that ensure that agricultural imports meet at least current domestic standards in terms of animal welfare, the environment and food safety⁷. These, safeguards would help ensure that farmers in Northern Ireland are not unfairly disadvantaged by virtue of the standards to which they are required to operate under the NI protocol.

What the UK-EU future relationship agreement will mean for the impact of the Protocol

A comprehensive Future Relationship Agreement that ensures a continued close association between the EU and UK on standards and governance could minimise the burden of checks on GB-NI trade considerably. While existing UK proposals regarding customs arrangements, along with provisions in the NI protocol, render checks on goods into NI from GB inevitable (even where goods are not destined for EU markets), ensuring regulatory alignment (in terms of standards *and* governance and enforcement) and recognition of equivalence would reduce the additional steps needed to prove that goods were produced on a level playing field. However, a less binding, more general agreement or one that fails to provide assurance that standards and regulation are equivalent and enforced, would result in increased burdens in place to assure equivalence with sanitary and phytosanitary measures on goods and products moving between GB-NI, thereby creating additional administrative cost, even where products and production are compliant. This would likely push up prices on agri-food both for end consumers and those relying on GB imports of animal feed, for example. Without a close legal relationship between the UK and the EU and means by which to ensure neither party regresses in its protections and both can broadly keep pace with each other, it is likely that some form of regulatory divergence will occur over time. Where this divergence is considerable, or where it reduces standards (and in the absence of mechanisms for managing such divergence within the agreement), either party could demand increased surveillance or additional administrative requirements to prove goods are compliant and to protect their respective markets and producers. Where regulatory standards do not themselves act as a guarantee of compliance with market access requirements, not only does this increase the risk of non-compliance but passes the burden of proving that compliance onto the market. This is particularly

⁷ <https://greeneruk.org/sites/default/files/download/2020-07/Greener%20UK%20Link%20Ag%20Bill%20Lords%20Committee%20Stage%20briefing.pdf>

relevant in relation to 'at risk' products which could end up in the single market following transportation to NI.

The future relationship has the potential to lessen regulatory divergences, ensure fair competition and minimise the burden of customs checks and tariffs. The greater the degree of regulatory alignment maintained (and mutually recognised either in the agreement or on an ongoing base, the more likely goods will be able to move easily between NI and GB. Similarly, there would be less need for onerous EU inspections and controls if the EU was willing and able to trust that all UK produce met the required production and product standards and was allowed freely on the EU market.

The future relationship has the potential to influence a broad range of policy matters that extend beyond trade, including environmental protection. As such, these negotiations are an important and unique opportunity to agree necessarily ambitious environmental co-operation measures. The future relationship agreement will not address all environmental issues faced by the EU and the UK. However, for any environment-related provisions to have a meaningful impact, they must be supported by well-designed oversight mechanisms which break new ground in ensuring accountability and bolstering environmental governance. These mechanisms must enable both sides to co-operate transparently, engage both parties and their respective civil societies in monitoring compliance with the agreement, and offer robust enforcement. Provisions should bolster the achievement of environmental ambition and uphold environmental law internationally and domestically⁸.

It is welcome news that the NI Executive have finally committed to the establishment of an Independent Environmental Protection Agency (IEPA), within the New Decade New Approach Agreement; after a long history of poor environmental governance, the formation of an IEPA will send a powerful message that NI will be taking environmental protection seriously. In addition to the domestic need, an IEPA is needed to ensure compliance with the Protocol's many EU environmental regulations and Directives which require such an independent environmental competent authority (see attached Appendix I for a number of examples). To ensure compliance with these elements of the Protocol, the formation of an IEPA should be progressed as a matter of urgency.

The need for Common Frameworks

While trade remains a reserved UK government power, many areas of agriculture and the environment fall within devolved competencies. This creates additional political and logistical complexity to the future integrity of the UK internal market. The absence of an overarching UK framework that both respects

⁸ https://greeneruk.org/sites/default/files/download/2020-07/GreenerUK_Monitoring_and_enforcement_paper_0720.pdf

existing devolved settlements (and with them different national contexts for environment and farming) and assures alignment and coherence between the regulations and standards across the UK (and with it a fair and level playing producers) is a major hurdle to overcome. With this in mind, UK-wide common frameworks will help reduce the risk of regulatory discrepancies between jurisdictions and avoid either additional checks on the movement of goods or a “race to the bottom” where competitive advantage can be generated by these differences. For NI, being bound by the range of rules specified within the NI protocol⁹ would mean it could be at a greater disadvantage as the other UK nations.

To avoid this, it is imperative that Northern Ireland, Wales, Scotland and England work together on an ambitious common framework for agriculture that prevents a deregulatory race to the bottom. This must include an appropriate degree of flexibility to allow implementation to be tailored to the specific environmental and legislative context in each nation. This must also include robust shared governance arrangements (e.g. clear monitoring and reporting obligations and associated enforcement mechanisms) as a means of holding all four nations to account and resolving disputes following the loss of the functions currently carried out by the EU institutions. There is a clear need for common frameworks, in order to achieve sustainable management of shared natural resources and address trans-boundary objectives, such as climate change and biodiversity conservation, ensuring that the UK Government can meet its international environmental obligations.

In order to effectively ensure the integrity of the UK internal market, common frameworks must be developed through a genuinely participative and collaborative approach and in conjunction with all four governments, *and parliaments*, of the UK. The UK government cannot and should not undertake actions which undermine, or appear to undermine, the existing devolution settlements and must acknowledge not only the right and legitimacy of all four countries to be represented at the table but the need for this in order for an effective set of arrangements to be reached. Neither can the establishment of common frameworks be imagined as a “negotiation” where differing interests can be traded off against each other but a project of partnership among equals. Amid the desire to negotiate trade deals quickly, the UK government cannot and must not exercise a “power grab” that, while expediting the establishment of UK-wide arrangements, serves to undermine the political trust and competencies upon which any credible and effective “internal market” will ultimately rest.

Where common frameworks intersect with areas covered by the protocol, the four governments of the UK should commit to maintaining existing EU standards.

⁹ <https://blogs.sussex.ac.uk/uktpo/publications/the-protocol-on-ireland-northern-ireland-the-implications-for-wales-external-trade/>

Not doing so, would mean excluding Northern Ireland from certain common frameworks, thereby placing it further outside the UK's internal market¹⁰. As such all four administrations of the UK must agree how they will approach the internal market and common frameworks with respect to the Ireland/Northern Ireland protocol.

How is COVID-19 affecting the agri-food sector's preparation for the Protocol?

Covid19 has had a significant impact across the sector in Northern Ireland, with extreme volatility in agricultural markets being experienced, especially at the beginning of the crisis. This has lessened in recent months, with prices for a number of products rising since April. A support package of £25 million has been delivered for the sectors most affected, particularly, beef, dairy and horticulture. There are also concerns relating to the availability of labour with a consequent impact on supply chains if future outbreaks occur. Inevitably, the disruption to supply chains at the beginning of Covid19 will have implications for the industry's preparations to deal with the implementation of the protocol.

¹⁰ <https://www.instituteforgovernment.org.uk/publications/implementing-brexit-northern-ireland-protocol>

Appendix I

Table of NI Protocol's continued EU environmental legislation requirements and need for a competent authority

Regulation	Long title	Consolidated text web link	Page ref in NI protocol	Mandatory competent authority requirement?	Examples/Notes
Invasive Species Regulation	Regulation (EU) No 1143/2014 of the European Parliament and of the Council of 22 October 2014 on the prevention and management of the introduction and spread of invasive alien species	https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02014R1143-20191214	361, 509	Yes	<p>Article 9 provides that Member States shall establish a permit system allowing research on invasive alien species. Member States shall empower their competent authorities to issue those permits and carry out inspections of permit holders.</p> <p>Article 15 (2) provides that competent authorities shall carry out risk-based controls on goods to prevent invasive species from entering the EU. The competent authority must detain the goods if they fail the checks (Art 15(5)).</p>

<p>Illegal Timber Regulation</p>	<p>Regulation (EU) No 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market</p>	<p>https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02010R0995-20200101</p>	<p>362</p>	<p>Yes</p>	<p>Article 7 provides that each Member State shall designate one or more competent authorities responsible for the application of this Regulation.</p> <p>Article 8 provides for monitoring organisations to maintain and evaluate a due diligence system for timber. It is the role of the competent authority to check that these monitoring organisations are meeting the requirements of the Regulation, and inform the Commission in the event of non-compliance.</p> <p>Article 10 provides that competent authorities shall carry out timber operator checks. It must keep records of these checks (Article 11) and cooperate with other competent authorities (Article 12).</p> <p>Notably Article 13(3) specifically requires that any Member State technical assistance provided to timber operators “shall be provided in a manner which avoids compromising the responsibilities of competent authorities and preserves their independence in enforcing this Regulation.” i.e. a strong independence requirement/ separation of advisory and enforcement roles requirement.</p>
<p>Industrial</p>	<p>Directive</p>	<p>https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02010R0405-20200101</p>	<p>405</p>	<p>Yes</p>	<p>Many references to competent authorities.</p>

Emissions Directive (IED)	2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control)	lex.europa.eu/legal-content/EN/XT/?uri=CELEX:02010L0075-20110106			<p>Article 5- competent authorities are responsible for granting permits for installation or combustion plants, waste incineration plants or waste co-incineration plants (see Article 4). They are responsible for reconsidering and updating permit conditions (Article 21) and monitoring emissions (various Articles of the Directive).</p> <p>Article 23- competent authorities must carry out environmental inspections.</p>
REACH Regulation	Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive	https://eur-lex.europa.eu/legal-content/EN/XT/?uri=CELEX:02006R1907-20200428	358, 507	Yes	<p><i>This regulation sets out an EU-wide scheme for assessing the safety of chemicals.</i></p> <p>Many references to competent authorities.</p> <p>Notable that Article 121 states “Member States shall place adequate resources at the disposal of the competent authorities to enable them, in conjunction with any other available resources, to fulfil their tasks under this Regulation in a timely and effective manner.”</p> <p>Article 122: Duty of co-operation between different</p>

	<p>1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC</p>				<p>Member State competent authorities.</p> <p>Article 123: The competent authorities of the Member States shall inform the general public about the risks arising from substances where this is considered necessary for the protection of human health or the environment.</p> <p>Article 124 requires competent authorities to report to the European Chemicals Agency in some circumstances.</p> <p>Competent authorities are heavily involved in the EU substance evaluation process- see e.g. Article 45, Article 46, Article 48.</p>
Hazardous Chemicals Regulation	<p>Regulation (EU) No 649/2012 of the European Parliament and of the Council of 4 July 2012 concerning the export and import of hazardous chemicals</p>	<p>https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02012R0649-20190501</p>	357	<p>Yes- though referred to as 'designated national authority'</p>	<p>Referred to as a 'designated national authority'- Article 4.</p> <p>Designated national authorities carry out various administrative functions under the Regulation. Article 8 provides the designated national authority shall receive information from chemical exporters and check compliance with the Regulation. Article 16 requires the designated national authority to send on exporter</p>

					information to the Agency and Commission. Article 21 requires the designated national authority to promote technical assistance and training in conjunction with other state authorities, the Commission and the European Chemicals Agency.
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