

TUV – Written evidence (NIP0005)

Response by TUV to House of Lords call for evidence on the Northern Ireland Protocol Bill

Overview

1. While the Protocol is hugely damaging to Northern Ireland's economy, which is largely integrated into the U.K. single market, it is in sovereignty and constitutional terms that it has wreaked monumental damage.
2. By reason of being abandoned to the EU single market, customs code and vat regime, Northern Ireland has been reduced, in terms of much of our economy, to an EU colony, subject to laws we do not make and cannot change, overseen by a court of foreign jurisdiction and with GB treated as a foreign country.
3. Pursuant to the Protocol, GB - the other part of our nation - is deemed a 'third' or 'foreign' country whose goods must be checked for compliance with alien law to secure passage to Northern Ireland. Therein lies the gravest of constitutional assault on our supposed position as a part of the United Kingdom - and all this constitutional change without consent!
4. The constitutional havoc wrought by the Protocol is well illustrated by the finding of the NI Court of Appeal that the Protocol has 'subjugated' Article 6 of the Acts of Union.
5. Article 6 is no antiquated anachronism but what creates the economic union that is the United Kingdom. It does it by guaranteeing that all parts of the Kingdom will be on 'the same footing' in respect of trade and movement of goods - the very thing the Protocol deliberately destroys.
6. Hence, the constitutional effect of the Protocol is indisputable and a challenge to every legislator who professes belief in our Union.
7. In bringing forward the NI Protocol Bill HMG is taking preliminary steps which might remedy some of the constitutional and economic vandalism of the Protocol, though as mere enabling legislation confidence in the degree to which that may happen is subject to the content of any regulations actually produced on foot of the Bill.
8. The Bill is of itself opaque as to what it will actually deliver and provides only a framework which is disappointing in particular in the lack of follow-through content in terms of delivering the promise of Clause 1(c). We do not see within the Bill that which makes good on the promise of 1(c). Such delivery would require a clause preventing the making of any regulation or agreement which subjugates or in any way departs from Article 6 of the Acts of Union.

9. Having witnessed the orchestrated peddling of the lie that the Protocol was essential to the protection of the Belfast Agreement, it is ironically true and necessary to recognise that it is the Protocol which has derailed the Belfast Agreement, both in terms of its trashing of east/west arrangements and rendering power sharing unviable because unionists have seen their constitutional position altered without their consent. Who makes your laws goes to the very heart of your constitutional arrangements.

Economic, political and legal impact of the Bill

10. Insofar as the Bill could restore equilibrium by taking back the EU's ill-gotten sovereignty over Northern Ireland, it may go some way to restoring stability to the economic and political climate in Northern Ireland. But, again, this largely depends on the content of the resulting regulations being adequate and wholly restorative of and compliant with Article 6 of the Acts of Union.
11. If Stormont is to have any chance of restoration, then Northern Ireland's place, both economically and politically, wholly within the U.K. must be restored. If the price of Stormont continues to be implementation of the Union-dismantling Protocol, then its prospects are non-existent. Stormont or Protocol remains the choice!
12. As the sovereign power HMG has not just the right but the obligation to recover sovereignty from the EU over Northern Ireland and its economy. Thus, the legal and political justification for the Bill is unassailable. As indicated above the Protocol is, above all, a sovereignty issue and no Government worthy of the name can equivocate on that, especially when the boast of Brexit was 'taking back control.' Sadly, in the Protocol HMG surrendered control of much of the laws and economy of Northern Ireland to a foreign power. That wrong must be righted.

Specific aspects of the Bill

13. We question the need for a dual regulatory regime for goods. The practical reality that if goods are to be exported, they must be manufactured to the standards of the importing country should be enough. U.K. companies seeking to export must meet the requirements of the relevant foreign market; that should prevail whether that company is in London, Cardiff, Edinburgh or Belfast. Such does not require the formality and bureaucracy of a dual regulatory regime.

14. A practical difficulty of a dual regulatory regime arises particularly in the farming sector. A farmer, generally, cannot know or tell where his produce will end up. He sells to a processor or wholesaler who then chooses the market. Under a dual regulatory regime all farm produce would have to be produced according to EU standards, lest any end up in the EU. So, there would be no choice for the huge agri-food industry in Northern Ireland. Even vegetables which end up on British tables would have to be produced according to restrictive EU rules on what pesticides etc can be used, because the farmer cannot rule out EU export.
15. Thus, in practice, especially for farming, dual regulation is no advantage, rather a burden.
16. Moreover, the consequence of dual regulation is to leave Northern Ireland subject to huge swathes of foreign law.
17. Red and green lanes themselves signify a customs border in the Irish Sea - something which lies at the core of objection to the Protocol. It is at borders you have green and red lanes so of themselves they confirm - rather than remove - the partitioning of the United Kingdom.
18. Further, even green lanes necessitate burdensome paperwork involving customs declarations and, probably, trusted trader schemes. How is one trading on 'the same footing' within the U.K. if you must belong to a trusted trader scheme before you can send goods from GB to NI, or fill out customs declarations?
19. So green and red lanes offend the equality of status within the U.K. single market. They are proposed as a protection for the EU's single market. Why does the U.K. think it necessary to be the EU's surrogate when it comes to protecting its single market. If the EU wants to defend its single market - which is wholly understandable - then, why doesn't it do it for itself on its own territory?
20. Liberating Northern Ireland from both EU state aid rules and its VAT regime will not only restore U.K. wide equilibrium and make all subject to domestic rules and legislation (as should be the norm) rather than foreign jurisdiction, but will also facilitate the full operation of the all-important internal U.K. single market and remove any knock-on detriment or threat to parent GB companies arising from EU restrictions on state aid.
21. Restoring U.K. sovereignty over its own territory and thereby ending any governance of NI by EU laws will of itself remove the relevance and authority of the ECJ from this part of the United Kingdom. Subjection to

the ECJ only arises from subjection to EU laws and single market/custom/vat rules and, therefore, applying the axe to the root of the problem deals effectively with ECJ interloping.

Article 16

22. By reason of the societal upheaval flowing directly from the Protocol - most compellingly illustrated by the collapse of the Belfast Agreement institutions - and the evident diversion of trade which has resulted from the impediments imposed on GB/NI free movement of goods, the grounds for activating Article 16 have long since been met. However, as itself a creature of the Protocol, Article 16 is not a long term or sufficient answer, though activating it to coincide with the introduction of the Protocol Bill might have been a useful declaration of serious intent by HMG.
23. Deference to how the EU - who itself notoriously resorted to Article 16 to block medicines to NI - would respond is indicative of caring more about that foreign power than the rights and liberties of a part of the United Kingdom. Doing right by Northern Ireland trumps, or should trump, the sensitivities of an often aggressive EU.

The EU's response

24. With the aid of anti-Brexit parliamentarians, the EU wiped the U.K. Government's eye in the negotiations which led to the Protocol so that it secured legislative and economic control over part of the U.K. Having obtained such a triumph, the EU, unsurprisingly, has been trenchant in refusing to give up that ill-gotten sovereignty. Whereas it has been prepared to 'talk' about how the Protocol could be better implemented, its negotiating mandate prohibits renegotiation of its core tenets. Hence, the folly of placing faith in ongoing 'technical talks.'
25. The problems with the Protocol are not centred on how it is being implemented (remembering the continuing grace periods mask its full practical and economic impact) but on its core principles and scope. It is its subjection of part of the U.K. to EU governance and control, through retention of NI in its single market and under its customs code and vat regime, which must be negated if progress is to be made.
26. The EU's relaunch of infringement proceedings in response to the Protocol Bill only confirms the belligerence of its Protocol power grab.

HMG needs to pick up the gauntlet and act decisively to show who governs its territory.

The way forward

27.As indicated above mere tinkering and seeking to make the Protocol operate more smoothly will not resolve the issues. Above all, sovereignty is the issue. That can only be resolved by full retrieval by HMG. If the Protocol Bill aids that process, then good, but 'technical talks' will never do so.

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