

Chartered Accountants Ireland – Supplementary written evidence (NIP0006)

24 October 2022

Submission of written evidence – inquiry into the Northern Ireland Protocol Bill

1. Introduction

2. [Chartered Accountants Ireland](#) is a membership body representing over 31,000 influential members throughout the globe, including more than 5,200 members based in Northern Ireland and over 1,500 in Great Britain. Our members work in senior positions in industry and practice. Over two thirds of our members working in Northern Ireland work in businesses. They are prominent in all sectors of the Northern Ireland economy, which affords them valuable insights into the concerns, priorities, challenges and opportunities for business and industry and specifically in relation to the proposed legislation contained in the Northern Ireland Protocol Bill (“the Bill”) and its potential impact on those businesses. Chartered Accountants Ireland is also a member of the [UK Domestic Advisory Group](#), a consultative body which aims to enable the UK Government to hear from those most affected by the operation of the UK-EU Trade and Cooperation Agreement of which the Protocol on Ireland / Northern Ireland (“the Protocol”) is a part.
3. We welcome the opportunity to make a formal submission of evidence in respect of the Northern Ireland Protocol Bill.

4. Administrative arrangements

5. On 30 August 2022, we made an informal submission to this Committee in relation to the Bill in advance of this formal enquiry being opened. This was later accepted as evidence by the Committee. The comments therein were made solely in relation to critical administrative arrangements which facilitate the movement of goods in and out of Northern Ireland. In that submission, we outlined our concerns that there is insufficient customs intermediaries and capacity in the Northern Ireland market and recommended that the Trader Support Service (“TSS”) be extended for at least a three year period beyond 31 December 2022.
6. We continue to be concerned that there will be insufficient customs intermediaries in the Northern Ireland market even after the end of the now extended lifespan of the TSS which was recently extended for one year to 31 December 2023, beyond its original end date of 31 December 2022.
7. As mentioned previously, a period of transition, adjustment and change to current trading arrangements is likely to be required in 2023 and beyond either as a result of the new trade operating model contained within the Northern Ireland Protocol Bill or by virtue of revised implementation of the Protocol due to the current political negotiations with the EU.
8. Although the one year extension to the TSS is helpful, the TSS should be extended beyond 31 December 2023 so that Northern Ireland businesses have sufficient time and opportunity to develop their own internal customs

expertise while ensuring they can continue to fulfil their customs obligations in the meantime. This will also allow for the necessary period of time required to assess the impact of any changes in current trading arrangements in 2023 and beyond on the supply chains of businesses in the region.

9. The TSS is also a crucial means of providing support and education to businesses, and plays a vital role in assisting businesses in developing internal customs expertise. This role will be even more vital when any changes take effect as a result of either the Northern Ireland Protocol Bill or the current political talks which are expected to extend into at least the first half of 2023, if not beyond.
10. In addition to extending the TSS, the UK Government should therefore consider what further longer term supports can be provided to encourage growth in the Northern Ireland customs intermediaries market if it is not feasible that the TSS continue as a service in the longer term.

11. Proposed trade operating model

12. The Bill provides for a new trade operating model for goods (including animals) moving into Northern Ireland from Great Britain ("GB"). As the Bill continues its progress through the House of Lords, negotiations have now recommenced with the EU for the first time since February 2022. The mere existence of the Bill has the potential to overshadow these talks and leaves businesses in Northern Ireland in a high degree of uncertainty over future trading arrangements.
13. Current trading arrangements are now almost two years old. Many businesses have already adapted to these with previous "unknowns" becoming "knowns". Supply chains have been reworked and many have now bedded down. Businesses are already facing an uncertain future in the current inflationary economic environment – the Protocol Bill is adding unnecessarily to this uncertainty.
14. The proposed operating model in the Bill in Clauses 4 and 5 aims to alleviate concerns that east-west trading from GB to Northern Ireland has been disrupted by the trading arrangements in the Protocol. It provides for two trading channels for the movement of goods from GB into Northern Ireland; a red channel for goods entering the Single Market, and a green channel for goods entering Northern Ireland and remaining there.
15. In discussions over the summer with Government policy teams, the importance of Northern Ireland businesses continuing to have access to EU markets has been reiterated by us and other stakeholders. According to UK Government officials, the Bill does not seek to disapply this particular part of the Protocol and also aims to maintain those arrangements in their current format.
16. Under the Bill, goods moving via the green channel would generally not be subject to customs requirements, tariffs, and certain regulatory requirements (such as Sanitary and Phytosanitary ("SPS") controls) on "qualifying movements" including those from GB into Northern Ireland. This would be subject to certain conditions being met; that they are declared so in accordance with a prescribed scheme, such as a 'trusted trader' scheme. Overall, the green channel aim is to minimise paperwork and/or costs for goods movements from GB into Northern Ireland. Goods moving via the red channel would be required to meet full EU requirements, including customs requirements and the payment of duty, where applicable.

17. Impact of the proposed trade operating model

18. We are concerned that Clauses 4 and 5 of the Bill are too simplistic and do not sufficiently deal with the many and varied types of goods movements from GB into Northern Ireland. There are also no details available in the Bill, nor in draft guidance or accompanying legislation, in respect of the conditions which will need to be met to participate in green channel goods movements via the 'trusted trader' scheme. Businesses will therefore be reliant on detailed guidance from the Government to determine if they are able to participate or not.
19. The movement of goods from the EU to GB and then on to Northern Ireland is also not dealt with in the Bill nor is there draft guidance available or accompanying legislation. The treatment of these particular types of goods movements previously caused confusion under the Trade and Cooperation Agreement/the Protocol which increased business costs significantly in some supply chains and also caused delays in movement of goods. Many of these issues have largely been resolved now. However, unless detailed guidance is available at the outset to determine how these goods movements will be treated under the Protocol Bill, the disruption which previously occurred is likely to reoccur with an associated risk that many supply chains will simply cut out GB entirely and move goods directly to Northern Ireland via the EU.
20. Processors and wholesalers are likely to be particularly impacted by the Bill's proposed trade operating model. Many will be forced to use the red channel for partial or full loads due to mixed or unknown destination at the time of import. These goods movements will thus share use of the red channel with goods movements which are known to be EU bound goods at the time of import hence two unique supply chains will both use the red channel.
21. Goods which ultimately remain in Northern Ireland (but which had unknown destination at the time of import) will therefore be required to undergo full customs controls and administration, including the payment of duties/tariffs where applicable. This goes beyond the current requirements under the Protocol and arguably could create new and additional east-west trading barriers.
22. This is likely to increase the level of administration these businesses currently face when moving goods from GB to NI adding even more importance to the role played by the TSS and further supporting the need for a longer term solution beyond December 2023.
23. On a positive, but cautious note, the Bill may provide for an effective solution in respect of goods movements for the retail sector selling only to Northern Ireland consumers and for parcels being delivered to those consumers. These movements would theoretically be able to use the green channel. There are also reports that the trade operating model in the Bill may work for some logistics businesses where goods clearly fall within the green channel.
24. However, discussions in summer 2022 with Government policy teams working on the detailed policy proposals underpinning the Bill suggests that some green channel goods movements will still require certain checks hence the potential administrative burden for these and other goods movements in the green channel is not yet sufficiently clear.
25. We are also aware that groupage loads with even one single pallet bound

for the EU will be required to use the red channel. This means that Northern Ireland destined loads within groupage may be delayed as a result. This is likely to mean some hauliers will not accept mixes of red and green channel in groupage and could lead to a reduction in the services offered by carrier, reduced economies of scale for some hauliers and ultimately less options available to Northern Ireland businesses.

26. Clauses 4 and 5 also do not currently set out how it will be determined at the point of import if goods are intended only for end-use in NI. Trading arrangements vary from business to business and have different implications for businesses trading in different sectors and types of goods.
27. The grounds on which loads are categorised as qualifying for the green or red channels are critical. In order to determine if goods can use the green channel, some minimum information will always be required which ultimately will result in administration and paperwork, preventing the transaction from being completely frictionless.
28. Specific issues which other sectors are facing are being highlighted by other bodies. We do not therefore propose to add any further comments in this section except to conclude that overall there is a risk of fixing problems for some supply chains only to shift new and different problems, burdens and frictions onto other supply chains. Ultimately, until the accompanying legislation and detailed policy underpinning the trade operating model in the Bill is provided in either accompanying legislation or guidance, it is difficult for Northern Ireland businesses to fully assess and consider the Bill's practical impact on cross border trading (both GB-NI, EU-GB-NI and NI-EU) and identify any unintended or knock-on consequences.

29. Reimbursement scheme

30. Businesses with goods of mixed or unknown destination at the time of import into Northern Ireland may err on the side of caution and move these via the red channel which may require the payment of tariffs, where applicable. Goods which then subsequently remain in Northern Ireland will become entitled to a refund of tariffs. This will necessitate the establishment of a reimbursement scheme to claim a refund of any wrongly paid tariffs.
31. The current trading arrangements under the Protocol require the payment of tariffs, where applicable, on goods classed as being "at risk" of moving into the EU on import into Northern Ireland. If it can be proven that goods subsequently stay in Northern Ireland, the Joint Committee set up under the Protocol agreed that there would be measures to allow for exemptions, or a potential reimbursement of tariffs paid.
32. It is now almost two years since the end of the EU transition period. To date, the Government has not established a reimbursement scheme to enable businesses to claim refunds of tariffs wrongly paid. This is causing ongoing significant cash flow difficulties for businesses in Northern Ireland and is adding unnecessary additional pressures in the current economic environment.
33. Some businesses in Northern Ireland also import goods from GB under DDP ("Delivered Duty Paid") terms from suppliers in GB. Suppliers in GB may also therefore need to reclaim tariffs wrongly paid. The lack of a reimbursement scheme has resulted in additional cash flow costs meaning some suppliers in GB are reluctant to supply to Northern Ireland under DDP

as a result.

34. The importance of setting up a reimbursement scheme as a matter of urgency cannot be stressed enough as one is required irrespective of which trade operating model businesses will be operating under. Such a scheme should be simple to use and enable businesses in both GB and Northern Ireland to speedily reclaim refunds of overpaid tariffs.

35. SPS controls and checks

36. SPS controls and checks and Export Health Certificates are a specialised area. These issues are within the purview of other bodies to provide expert evidence on, hence, given their specialised nature, we do not propose to add any further comments except to say that based on discussions with Government policy teams, we are aware that there may still be some limited checks on live animal goods moving in the green channel. At present there is no detail on what exactly this means on a practical level.

37. Dual regulatory regime

38. The Bill provides for a dual regulatory regime in Clause 7. If a dual-regulatory regime is introduced in accordance with this Clause, both UK and EU standards will be recognised in Northern Ireland. The most immediate impact of this would be for GB businesses that do not manufacture goods to EU standards. Such businesses would no longer face regulatory barriers on exporting to Northern Ireland.

39. This would benefit those traders in GB currently unable to sell into Northern Ireland, but would pose a challenge for Northern Ireland businesses caught between the two regimes both for those businesses manufacturing products and/or importing from GB to process, manufacture and potentially sell on to the EU.

40. Although Northern Ireland businesses would be able to choose which standard to meet, this has the potential to impact on consumer choice in the region and would create an unfair competitive environment. Since the end of the EU transition period, many manufacturers have already changed their products to ensure they meet both EU and GB standards and can therefore continue to be sold

in both markets. Those businesses now able to choose to meet the lower of the two standards would have lower costs and be able to sell at a lower price.

41. This could potentially necessitate Northern Ireland's devolved government having a future role in introducing regulatory legislation to protect businesses from lower standard products.

42. There are also some concerns that the dual regulatory regime will result in an invisible border on the island of Ireland, ultimately damaging Northern Ireland's current free access to EU markets.

43. Northern Ireland businesses who sell to both the UK and the EU will effectively have to meet the highest of the two standards at all times, to ensure the ability to continue to sell into each market. Additional costs will arise for these businesses in the context of maintaining two different standards, which again will impact on consumer choice and pricing.

44. A dual regulatory regime could also create a unique market in Northern Ireland for cheaper, less effective medicines for citizens in the region.

45. Potential regulatory issues which specific sectors are facing are being

highlighted by other bodies. We therefore do not propose to add comments on specific sectors except to mention that we are aware of the concerns expressed by the dairy and agricultural sectors in Northern Ireland that a dual regulatory environment will make cross-border trade on the island of Ireland more difficult.

46. For example, the dairy industry has raised concerns that if grain fed to dairy cows in Northern Ireland meets UK standards but not EU standards, Northern Ireland farmers may not be able to sell their milk in the EU.

47. Overall, sectors of the Northern Ireland economy which are dependent on imports from GB or NI where EU standards are not met will be most impacted.

48. VAT

49. Clause 17 makes provision for potential new law in respect of VAT, excise duties and other taxes and is ultimately aimed at enabling the UK Government to implement VAT and excise measures UK-wide that might otherwise not be permitted in Northern Ireland under the Protocol.

50. Since the end of the EU transition period, Northern Ireland VAT registered businesses have been operating two different VAT regimes for cross-border supplies of goods and services. These have now largely bedded down.

51. Overall, we are concerned at the broad nature of this clause which seems to go against the stated aim of the Government of also maintaining the integrity of North-South/EU trade in goods.

52. The Single Electricity Market

53. Article 9 of the Protocol, together with Annex 4, secures the continuation of Northern Ireland's participation in the Single Electricity Market on the island of Ireland. This is operated by the two regulatory authorities in Northern Ireland and the Republic of Ireland, both of which are governed by EU legislation.

54. The Protocol Bill makes no mention that the SEM is an excluded sector under its various clauses and is currently silent on this aspect. There is therefore a risk that if existing arrangements were to change, this could call into question the operation of the SEM.

55. Experts in this area have stated that this would put upward pressure on prices because market operators would be obliged to price in any new risks created by this uncertainty. In the ongoing energy prices crisis, this is very concerning.

56. Conflict resolution

57. If the Bill is implemented in its current form, businesses must be provided with defined processes to engage with the Government and policy makers to assess the practical impact of the Bill. Future technical issues/disputes which arise should be resolved through forums such as the UK Domestic Advisory Group, of which Chartered Accountants Ireland is a member. This would enable negotiation on issues rather than disputes being raised which, as we already know, are very damaging for both economic and political stability in Northern Ireland.

58. If consensus cannot be reached on a particular issue, the UK Courts are likely to be the ultimate form of recourse for dispute resolution. The Protocol does provide a framework for the treatment of disputes and a roadmap for potential resolution. However, the Bill, in its current format,

does not.

59. Legality

60. The Bill has already created significant uncertainty for business and trade in Northern Ireland. In future, the potential legal basis on which goods would enter Northern Ireland could be in doubt. A changeover to the trade operating model in the Bill could potentially expose businesses in Northern Ireland to either a failure to comply with UK law or international law (the Protocol) where there are contradictory obligations and ultimately would damage Northern Ireland's international trading status and reputation.
61. The EU has also been very clear that unilateral change to the Protocol could result in Northern Ireland goods losing the right to enter the Single Market, with material consequences for the Northern Ireland economy and inward investment projects. This could include suspension of current arrangements affecting tariffs and other trading terms. Within the short-term, this potentially would increase opportunities for non-compliance and, consequently, cross-border smuggling. As mentioned earlier, UK Government officials have previously stated that the Bill does not seek to disapply Northern Ireland's current access to the EU and it aims to maintain those arrangements in their current format. This could therefore be an unintended consequence of the Bill.
62. The powers set out in the Bill and granted to Ministers are also very widely drawn and do not provide certainty that current trading arrangements would not change again. Although some flexibility may be needed to protect businesses and consumers, the current powers provided for in the Bill leave businesses in a highly uncertain position.

63. General comments

64. As set out earlier, no guidance nor accompanying legislation in respect of the Bill has been provided for formal consultation. Any guidance developed must contain practical examples and case studies, on a step-by-step basis, where possible. Previously, our members have reported to us that they found it difficult applying customs theory to their practical situation. Official guidance must therefore include more usable and relatable material.
65. Adequate time will also need to be given for any changes to be properly designed and implemented, likely to run into years. The design of new policies needs to be prepared with close engagement with businesses recognising that a system designed in theory does not always work in practice. It will also be important to embark on an education campaign for businesses in Northern Ireland and their suppliers in GB – based on previous experience, suppliers in GB have not been prepared for the changes in terms of customs paperwork and this has had significant knock-on effects for GB-NI trading. The TSS could have a vital role to play in this process.
66. In these uncertain times, businesses also need certainty of HMRC's approach to compliance. If new trading arrangements are introduced, HMRC should consider automatic suspension of penalties for at least a 12- 18 month period. This would mean businesses (and their agents) would not incur the cost of appealing against a penalty in that period. Handling such appeals adds to the workload and costs for businesses and HMRC alike. HMRC could, of course, seek to act if there is any evidence of deliberate behaviour. In conclusion, Northern Ireland remains in a political vacuum of

instability. The Bill further exacerbates this and brings new levels of uncertainty for the region from many perspectives.

67. Chartered Accountants Ireland would be happy to discuss any aspect of this written evidence in more detail. Do not hesitate to contact Leontia Doran or Bríd Heffernan should you require anything further.

24 October 2022