

Grand Orange Lodge of Ireland – Written evidence (NIP0007)

House of Lords Sub-Committee on NI Protocol Call for Evidence

A response from the Grand Orange Lodge of Ireland.

Overview

How would you summarise the impact (both positive and negative) of the Protocol as it currently operates on Northern Ireland?

The primary damage caused by the Protocol has been constitutional. This constitutional change has been found to be at odds with the Act of Union. This constitutional change received no consent from the people of Northern Ireland and does not command cross community support. There has of course been significant disruption to Northern Ireland's economy due to the displacement of trade, the unavailability of goods and the erosion of Northern Ireland's place in the UK single market.

What is your overall assessment of the UK Government's approach to the Protocol, including bringing forward the Northern Ireland Protocol Bill? To what extent will it alleviate the issues with the Protocol that it seeks to address?

The UK Government may have 'got Brexit done' for Great Britain, but they certainly have not delivered Brexit for the United Kingdom. The UK Government have been expedient and complicit in delivering the wholly unacceptable position whereby a constituent part of the UK has been 'left behind' – still subject to EU laws, customs, vat regime and subservient to the ECJ.

The NI Protocol Bill goes some way to addressing the concerns of those issues however it is light on detail and is effectively merely enabling legislation. In order to properly address the issues of the NI Protocol, the Bill needs to be more robust so that its content effectively removes and supersedes the harmful constitutional and economic threats contained in the Protocol.

What is your assessment of the Government's argument that the Bill, and the measures contained within it, are necessary to safeguard the Belfast/Good Friday Agreement?

The Grand Orange Lodge of Ireland did not support the Belfast Agreement. Our members believe that it has delivered an appeasement process rather than a peace process. However, it must be recognised that the Protocol clearly contravenes the spirit and substance of that Agreement. The Protocol ignores the need for cross community consent for constitutional change. Furthermore it undermines the East-West dimension of the Agreement to protect and enhance, at all costs, the North-South dimension.

Economic, political and legal impact of the Bill

What impact will the Northern Ireland Protocol Bill have on the economic and political climate in Northern Ireland, and on North-South and East-West relations, if and when it comes into law?

Without the support and consent of the Unionist community on the arrangements regarding the Protocol, there should be no return to the political institutions of the Northern Ireland Assembly.

If the Protocol Bill delivers its aims of restoring sovereignty over NI to the UK Government, then there will certainly be a better chance of restoring political stability.

Due to the excesses of the Protocol, Northern Ireland's economy has become increasingly orientated towards Dublin with a huge upturn in cross border trade. As Unionists, we believe this is to the detriment of our place within the United Kingdom and that the resulting increased economic homogeneity, is a dangerous precursor which strengthens the case of those seeking political unification.

Any resolution which restores NI's place within the UK single market and removes impediments to free trade within the UK will have a positive impact on the NI and UK economies.

What is your assessment of the Government's legal justification for the Bill? What would you identify as the principal legal issues and consequences arising in relation to the Northern Ireland Protocol Bill?

The UK Government does not require any justification for taking steps to undo the damage caused to the nation's constitution.

Northern Ireland intentionally or otherwise has been created a 'place apart' under the Brexit arrangements despite the assurances of successive Prime Ministers that no such constitutional damage would occur. It is therefore entirely right that the UK Government seek to make good on their promises to the people of Northern Ireland and take whatever steps necessary to fix the mess they helped create.

Specific aspects of the Bill

What will be the practical and legal impact of the UK Government's proposals for a dual regulatory regime for goods (clauses 7-11 of the Bill)?

If Northern Ireland's sovereignty within the UK is to be fully restored and respected the imposition of any checks for goods staying within the UK single market is unacceptable.

If the EU are insistent that goods moving to the EU via Northern Ireland need to be checked, these checks must be carried out in a territory where the EU has jurisdiction.

What will be the practical and legal impact of the disapplication of EU customs and goods regulations for specific goods destined for the UK or non-EU countries only, and to allow for the introduction of a system of red and green lanes (clauses 4-6)?

Red and Green lanes sound plausible in theory – however this solution still requires a ‘hard border’ between UK and NI when these checks, if needed should be carried out by the EU in the Republic of Ireland for goods entering that jurisdiction.

Any solution which treats NI to UK trade, or UK to NI trade, differently than the same trade within other UK regions simply reinforces the fact that NI is a place apart – a ‘third country’ in trading terms.

What are the economic and legal implications of the Government’s proposals to give ministerial powers to override the provisions of the Protocol in relation to VAT/excise (clauses 17 and 24)?

There should be no legal implications of the UK Government making decisions on the fiscal and constitutional integrity of its territory.

Such a development would facilitate the restoration of the UK single market in its true sense and remove the interference of a foreign power in the tax and vat affairs of the UK.

What are the practical and legal implications of removing the jurisdiction of the European Court of Justice in the UK to oversee the implementation of the Protocol and stating that UK courts are not bound by decisions of the CJEU on matters related to the Protocol?

Those who negotiated and signed up to the Protocol should never have allowed the ECJ to retain interventionist powers in the internal affairs of the United Kingdom. By removing the need to comply with EU laws, the need for ECJ oversight and intervention is also removed.

We reiterate the fact that there should be no legal implications of the UK Government making decisions on the fiscal and constitutional integrity of its territory.

Article 16

What would be the economic, political and legal implications of a decision by the UK Government to invoke Article 16? How would the EU respond?

The threshold for triggering Article 16 has been met long ago. The lack of functioning government in Northern Ireland precipitated by the withdrawal of the DUP from the Northern Ireland executive clearly constitutes ‘societal difficulties’. The ongoing reorientation of the NI economy towards Dublin also clearly illustrates ‘financial difficulties’ and the inability of NI consumers to source basic items including medical items from GB suppliers clearly illustrates ‘environmental difficulties’.

Article 16 is of course not an answer in itself to the difficulties caused by the Protocol – but by enacting it the UK Government would show a statement of intent and a recognition that the status quo cannot continue.

The EU's response

What is your overall assessment of the EU's approach in relation to the Protocol? Is the EU going far enough in addressing the problems that have arisen under the Protocol?

The EU have been bullish and arrogant in their approach to Northern Ireland. They have clearly ignored the concerns of the Unionist community and have made no constructive effort to understand the flaws and consequence of their policy. They have been aided in this regard by the Dublin government who have been irresponsible at times in their commentary.

What is your assessment of the EU's response to the publication of the Bill, including the recommencement of paused and the launching of new infringement proceedings?

There has been no evidence to suggest that recent 'warm words' from the EU or Dublin will in fact deliver any satisfactory outcome on the Northern Ireland Protocol. The recommencement of infringement proceedings again brings into question the EU's willingness to offer any form of compromise.

It must be remembered that many of the worst excesses of the Protocol are yet to be felt in Northern Ireland thanks to the continuing 'grace periods'.

The way forward

What, in your view, is the best way forward to resolve the current impasse?

The UK Government needs to act unilaterally to restore sovereignty to all parts of the United Kingdom.

The mistakes made in the Brexit withdrawal agreement need to be corrected and Northern Ireland fully restored as an integral part of the UK internal market.

In the context of the recommencement of talks between the UK and the EU, how realistic is it to expect the issues which the Bill attempts to tackle to be addressed through a mutually agreed settlement with the EU?

It seems unlikely that the EU will voluntarily give away the ability to enforce their laws and tax/vat arrangements on Northern Ireland.

Whilst negotiations may help smooth some operational difficulties, our problem is not with how the Protocol operates – it is fundamentally with the very existence of the Protocol.

Do you see, and how would you describe, a potential landing zone for compromise and agreement between the two sides?

Both sides should recognise the shortcomings of their previous negotiations which resulted in a flawed withdrawal agreement and Protocol.

Northern Ireland must be treated in exactly the same way as the other constituent regions of the United Kingdom. There should be no hindrance or additional bureaucracy applied to GB-NI trade. In doing so, economic and constitutional sovereignty will be restored.

If the EU want to check goods entering their trading area – then they should be free to do so on territory over which they have jurisdiction. Furthermore, the EU must move to permanently postpone the ending of so called 'grace periods' which have the potential to effectively deprive Northern Ireland of essential medical and veterinary supplies.

27 October 2022