

Written evidence submitted by the Northern Ireland Retail Consortium (FRE0142)

The Northern Ireland/Ireland Protocol: What remains unanswered for NI Business.

At the end of May 2020, the Northern Ireland Business Brexit Working Group submitted a set of questions to the UK Government, urging it to make urgency progress on 10 specific matters, building on commitments that it had already made, most specifically in its [Command Paper on the Protocol](#).

This document is a quick update on:

- what has been answered,
- what has been partially answered, and
- what remains unaddressed.

With some key additional questions that have emerged in the intervening time period.

1.

To Ensure there are no Legal Impediments to Trade at the end of the Transition Period

What the Government has promised:

- [The Government has not committed on this. Instead Paragraph 1 of the Command Paper states:
'Our trading arrangements at the end of the transition period on 31 December this year will either be based on the Withdrawal Agreement only, or also on a Free Trade Agreement concluded with the EU.'

What remains unanswered:

1. A 'No Deal' scenario would create legal impediments to NI trade with GB as well as with the EU (e.g. in respect of services, etc.). How will the government avoid such a scenario were a deal not in place by 31 December 2020?
2. Does UKG intend there to be a staggered sector-by-sector implementation of any UK-EU FTA and how would that work?

2.

To Guarantee and Legislate for Unfettered Access to GB for NI Goods

What the Government has promised:

- No additional process or paperwork on trade from NI to rest of the UK

- Legislation for unfettered access for NI to GB movement of goods to be in force by 1 January 2021
- To define a qualifying status for goods and businesses in NI to benefit from unfettered access
- To have no exit or summary declarations on goods leaving NI. [This is to be negotiated with the EU]

What remains unanswered:

3. **How to protect the quality and status of NI goods in GB?**
 - a. How does the UKG propose striking the balance between unfettered access and protecting the reputation and integrity of NI produce?
 - b. How will rules of origin and cumulation work for manufactured and processed goods if they are to qualify as NI origin, even though components from other countries will be used in final production?
 - c. What protections will be given to ensure that NI goods do not face competitive disadvantage or discrimination when placed on the market in GB? [*UKIM white paper; 7 August guidance states that CE Mark and UK[NI] mark to be recognised in GB, but no protections on commercial discrimination*]
 - d. What checks will be used to ensure that only NI-defined goods enter GB with unfettered access?
4. **How to manage UCC Exit Summary Declarations?**
 If the UKG fails to have the requirement for exit summary declarations lifted on NI-GB movement:
 - e. What will this cost and who will bear this cost?
 - f. What training support packages will be given to NI firms?
 - g. Where will the customs office of exit be?
 - h. Can the exit summary declaration be submitted electronically, and to whom?
 - i. How long in advance of the consignment arriving at the port of departure must paperwork be submitted?
 - j. What is the procedure for clearing a consignment at the post of exit, and what time will this require?

3.

To Minimise the Impact of Exit Checks, Declarations or Processes as Goods leave GB for NI

What the Government has promised:

- No new physical customs infrastructure in NI
- To use the latest technology, risk and compliance techniques
- To actively seek to simplify and minimise electronic documentary requirements for agri-food trade

- To review the new procedures for goods entering NI from GB on an annual basis. And ‘if they should turn out to impose a disproportionate burden on goods moving wholly within the UK it will consider *how this burden can be reduced further or removed*’

What remains unanswered:

5. What documents will be required, at what cost, and how administered? E.g.
 - a. Entry Summary Declarations (at £15-£65)
 - b. **Export health certificates be required (at £200 each)**
 - c. Rules of Origin certificates
 - d. Export control certificates
 - e. SPS checks and controls

[7 August guidance goes some way towards answering this, but the cost is not spelled out and full detail not clear yet.]
6. How will these processes work in practice?
 - f. Can all relevant documents be lodged electronically, if so how and where?
 - g. How far in advance of departure of a consignment should the declarations etc. be lodged?
 - h. What will be the inspection protocol when the consignment arrives in NI, and where will this take place?
 - i. Where and how will the checks take place and/or compliance be enforced away from the points of entry?

[7 August guidance goes some way towards answering this, as have HMRC briefings to stakeholder representatives on the GVMS, but this has not been widely publicised yet, nor (as far as we know) piloted. We have been told that checks will take place away from ports of entry as far as possible, but not who will conduct these or how]
7. What systems will be set-up to allow these processes, and when?
 - j. What infrastructure will be required?
 - k. What IT system(s) will be developed and used for managing this?
 - l. Will a new AEO system be developed for GB-NI trade?
 - m. When will NI firms receive the necessary upskilling to manage the new systems and processes?

[7 August guidance goes some way towards answering this. We know that ‘no new infrastructure’ is planned for ports in NI or for NI-facing GB ports to manage customs. We know that the Trader Support Service is being established to assist the new processes associated with moving goods from GB into NI. We know to expect a new AEO system but not the details. The TSS assists with managing the system but training and information more widely about the new processes is far from sufficient in terms of provision and take-up.]

To Guarantee that no Tariffs will be Paid for Goods Remaining in the UK's Customs Territory

What the Government has promised:

- There will be no tariffs for goods remaining in the UK's customs territory

What remains unanswered:

8. How does the application of EU Duties GB-NI and the 'at risk' test occur?
 - When will the system for 'rebate' be designed and rolled out?
 - Are there any conditions under which intermediate processing in Northern Ireland will be permissible without being deemed 'at risk'?
 - Could a form of 'Inward processing' relief be used and would this be economically viable for all sectors concerned?
 - How will goods bound only for the UK internal market (in NI) be protected?
[UKIM white paper and 7 August guidance promise these, and promise more guidance to come]
 - How can impact on price and choice be avoided or at least mitigated for NI businesses and consumers?
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5.

To Give Businesses the Information they Need to Prepare for any New Arrangements

What the Government has promised:

- To produce full guidance to business and third parties before the end of the transition period on the movement of goods GB into NI
- To provide further guidance for NI traders placing certain highly *regulated goods* on the GB market

What remains unanswered:

9. When will this guidance be published?
10. What training will be provided for NI businesses having to comply to these new rules?
11. What financial support will be given to mitigate the additional costs incurred by compliance?

[The [7 August guidance](#) goes quite far in outlining the scale of changes for the movement of goods from GB into NI. However, it also identifies [24 additional areas](#) that are in need of decision before more guidance or information can be given. The [Trader Support Service](#) announced at the same time goes some way to relieving the scale of the adjustment and administrative burden on NI companies bringing goods in from GB, but it does not avoid all costs (e.g. costs of Export Health Certificates) nor does it mitigate the need for information and training for NI and GB companies about movement of goods across the Irish Sea.]

6.

To Fully Support Businesses in the Transition to any new Regime

What the Government has promised:

- To set out more detailed plans for *extensive HMRC support* for businesses engaged in new electronic processes for east-west movement
- To provide further information on how *state aid provisions should be operated* by public authorities before the end of the transition period
- To *fund the costs of implementing the agri-food requirements* set out in the command paper

What remains unanswered:

12. Full support must mean (with details for each strand set out by the summer):

- a. A dedicated Business Transition Fund: to help meet the costs of adapting to any new requirements for checks, controls or administrative processes
[This is not the same as the Trader Support Service, but that is a welcome and necessary investment]
- b. To ensure that these costs are minimised on an ongoing basis *[the TSS is only for 2 years. No commitment about wider costs of adaptation to the new intra-UK situation.]*
- c. Urgent work on how to fund, incentivise and stimulate an adequate supply of customs agents and other intermediaries on whom businesses will rely for any new regime. This should include consideration of centrally deployed Government resource (for example veterinary or other staff) that could help businesses complete any formalities without additional costs.
[This has been mitigated to a large extent by the TSS, but more information needed on staff for on-site compliance checks and veterinary staff, for example]
- d. A practical, funded Transport Plan that ensures goods can flow through NI ports without delays or queues.

7.

To Prepare for two VAT Regimes within NI: EU VAT rules for goods & UK VAT rules for services

What the Government has promised:

- HMRC will continue to be responsible for the operation and collection of the revenues
- ‘The Government is confident that we can use the flexibilities available... to implement these aspects of the Protocol in a way which minimises new costs and burdens on businesses in Northern Ireland’.

- The Protocol allows the Government to apply in Northern Ireland VAT exemptions and reductions, including zero rating, corresponding to those applicable in Ireland. ‘This means Northern Ireland will benefit in the same way as the rest of the UK from the Government’s commitment in the Budget to scrap the 5% rate on sanitary products from 1 January next year.’

What remains unanswered:

13. HMRC needs to clarify how NI remaining in the UK VAT area but complying with EU rules will work in practice.
- How will it be ensured that is not unduly complicated for NI businesses having to apply dual VAT rules and VAT legislation (depending on whether they are trading in goods or services)
 - Will deferred accounting be permitted rather than a point of entry system (as was proposed during no deal planning in phase 1)?
 - As announced for UK importers in the March 2020 budget, will deferred accounting for all imports from EU and non-EU countries take effect from 1 January 2021? [What happens in a No Deal]?
 - How will HMRC approach the issue of services which attach to goods moved under the Protocol arrangements?

8.

To Protect Access to Labour in accordance with the Needs of NI Businesses

What the Government has promised:

- [Nothing in particular has been promised in relation to access to labour, other than that NI will be subject to the ‘new sovereign immigration system’, which explicitly restricts access to EU workers]
- The command paper commits the UK Government to ‘work closely with the Irish Government to explore how to strengthen cooperation and bilateral work over the coming years’.

What we need:

14. How will the CTA will be protected in legal form?
- a. What measures will be put in place to protect mutual recognition of qualifications between the UK and Ireland to allow British and Irish citizens to fully exercise the rights and privileges under the CTA?
 - b. How to ensure British and Irish citizens’ rights to live and work across the UK and Ireland?
15. How to prevent exploitation of different immigration systems on the island of Ireland?
- c. What measures will be put in place to ensure that differential immigration systems on the island of Ireland are not exploited by criminal gangs, undermining legitimate businesses in NI?

- d. What steps can be taken to avoid greater and more onerous immigration and modern slavery compliance controls being imposed on NI businesses relative to GB competitors as a result of an open border?
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9.

Preventing Northern Ireland being at Economic Disadvantage to GB and Ireland

What the UK Government has promised

- That it remains committed to a New Deal for Northern Ireland. ‘That includes appropriate commitments to help boost economic growth and Northern Ireland’s competitiveness, and to support infrastructure and connectivity North-South and East-West.’
- To provide further information on how state aid provisions should be operated by public authorities before the end of the transition period.
- NI is to benefit from new UK FTAs

What remains unanswered:

16. How to protect NI’s position in the UK internal market?

- a. What measures will be put in place to ensure that NI firms are not at a competitive disadvantage relative to the rest of GB despite the potential new costs (in terms of tariffs, paperwork or staff hours)?
- b. How can we ensure costs arising as a result of the Protocol (which specifically place NI businesses and consumers at potential disadvantage), do not exceed product margin, thus rendering the product or business model unviable?
- c. What impact will new GB-NI ‘administrative processes’ have on just in time supply chains in particular?
- d. *Will there be mechanisms in place to manage regulatory divergence over time? [The [UKIM white paper](#) goes some way towards addressing this. There are serious omissions and challenges around this. We have not yet seen the UKIM bill.]*
- e. *No guidance yet on healthmark unlike GB operators*
- f. *GB operators are getting 21 month derogation. There is no such derogation in NI*

17. How to protect NI’s position as part of the all-island economy?

- e. If the Protocol allows free movement of goods across the border, how do we transport (and service) those goods across the border in absence of an agreement on services?
- f. How can NI firms compete on the island of Ireland in accessing the EU market when RoI has continued free movement of services, capital and labour in addition to goods?

18. What will happen with state aid rules?

- g. Does the Protocol mean NI may not be able to benefit from UKG schemes if they do not adhere to SARs? *[From what we have seen from the EU and DfE, the answer is Yes. This is not good news for NI.]*
- h. Will UKG have to apply to EU for permission to apply schemes to NI? *[From what we have seen from the EU and DfE, the answer is Yes. This is not good news for NI.]*
- i. Is it possible that NI will not be able to avail of UKG schemes, and will be ineligible to avail of EU schemes? *[From what we have seen from the EU and DfE, the answer is Yes. This is not good news for NI.]*

19. What about NI's access to UK and EU FTAs?

- j. If the UK decides to set tariffs at zero, to what extent will NI firms will still have to pay tariffs for goods coming into Northern Ireland from outside GB or EU?
- k. If UK diverges significantly from the EU, how will UK ensure NI will have access to UK FTAs with other countries?
[The UK has repeated its commitment, but it has not guaranteed that it will place NI inclusion in FTAs as a red line. NI firms will have to pay tariffs on ROW goods, but they can be rebated. We don't yet know how this system will work.]

10.

To Put Comprehensive Business Engagement at the Heart of the UK's Approach

What the Government has promised:

- To create a *Business Engagement Forum* which will:
 - (i) meet regularly,
 - (ii) allow NI businesses to put forward proposals and
 - (iii) provide feedback on how to maximise the free flow of trade',
 - (iv) develop proposals around the east-west movement of goods and clamping down on risk of illegal trade,
 - (v) consider all proposals for NI to make maximum use of regulatory freedoms.

What remains unanswered:

20. How will this work in practice?

- a. When will this be established?
- b. How often will it meet?
- c. Who will be included?
- d. Will it have sub-groups for various sectors?

[This has been established in practice; it is more ad hoc than we would have liked to have seen, but are glad that it is a forum that the government make use of. The challenge is coordination between government departments, e.g. a lot of issues raised need to be collaborated on across Whitehall [BEIS, DIT, NIO, Cabinet Office, HMRC]]

- e. **Terms of reference**

21. What impact will this group have?

- f. How can we be guaranteed that this will not be ‘window dressing’ or mere ‘consultation’ or ‘cover’ but a Forum in which the potential solutions are considered, problems outlined in detail and evidence-based discussions take place?

[We are pleased to see some key points raised coming through in the TSS and 7 Aug reassurance, for example. However, too many points are taken ‘away’ with promises of more information or ‘consultation’ and then remain unresolved.]

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New Urgent Issues of Concern that have come to light since May 2020

Labelling

The new status of Northern Ireland effectively administering the EU Single Market Standards means that there will be new labels needed for goods going from Great Britain for the Northern Ireland Market. This leads to several questions:

- What address will need to be on the labels?
- What nutritional information will need to be on the new labels?
- Is there a time frame for implementation of this as we are now past the time needed for label changes for Jan 2021?
- What rules apply for the following?
 - Healthmark
 - Protected Food Names
 - Beef Labelling Legislation
 - COO Labelling
 - Organic
 - Implications for product produced before 1/1/20 bearing the old healthmark and trading into different markets
 - Ability to produce product bearing the new healthmark before 1st January
 - Mixed loads / batches of products bearing different healthmarks e.g. GB/UKEC/UK(NI)

Unfettered Access from NI

The UKG has increasingly made clear that Unfettered Access only applies to *direct* movement of goods from NI into GB. This means that goods entering GB via Dublin will be subject to delays and customs procedures, including paperwork. This could come from requirements both on the ROI/EU side as well as from the GB side. This is a serious concern,

especially for agrifood and just in time supply chains, which rely on the Dublin route in order to access the south of England as quickly as possible.

- How will unfettered access be achieved on the non-direct routes between NI and GB?
- Is there still the need for Exit Declarations or Exit Summary Declarations and how with those be dealt with to allow full “unfettered access”?

Accessing EU FTAs

There is still no movement on NI accessing EU FTAs. If this does not happen, all NI goods produced with component parts that come from countries that the EU has FTAs with will be subject to tariffs and quotas.

- What is the status of the request of NI businesses to have access to EU FTAs?

UK FTAs

There are outstanding concerns about the inclusion of NI in future UK FTAs and we need to get clarification on this.

- Does the UK rule out making provision for UKG to introduce checks on goods NI – GB if a third country (potential FTA partner) requested this?

GB-NI movement

- The longer that there is not agreement between the EU and UK on the question of third country listing, the harder it will be for business to prepare. **When can we expect this matter of third country listing to be resolved on both sides?**
- **Are existing non-negotiated EHCs (in the event of no deal or no deal) sufficient to cover all existing trade from GB to NI, i.e. do all of the necessary certificates exist and can existing trade flows continue under the terms of those certificates?**

Regulatory compliance

- Now that DAERA has been allocated £40m by Defra to prepare BCPs in NI, can we have an indication of what level of readiness DAERA is aiming for, and the way in which these BCPs will operate, not only for GB – NI but also NI-GB?
- Will NI traders follow the new UK system for REACH, rather than face two separate systems for GB & NI/EU?

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