

**Written evidence submitted by the Northern Ireland Business Brexit  
Working Group (FRE0145)**

***Making the Protocol Work for NI: Doing Business in and through Northern  
Ireland Post-Transition***  
**15.05.20**

***Section 1. Key Questions to be Answered***

**1. Overarching Objectives**

To ensure that the implementation of the Protocol is consistent with its formal objectives as well as the intentions of the UK and the EU as set out in the Preamble to the Protocol, including (amongst others):

- (i) that the 1998 Belfast (Good Friday) Agreement should be protected 'in all its dimensions';
- (ii) that the 'unique circumstances on the island of Ireland' are addressed;
- (iii) that the UK and the EU are determined that application of the Protocol should impact 'as little as possible on the everyday life of communities' in Northern Ireland; and
- (iv) that the UK and the EU have regard to the importance of maintaining the 'integral place of Northern Ireland in the United Kingdom's internal market'.

As a business group, we are concerned that, put simply, supply chains need to be as smooth as possible. Northern Ireland is highly interconnected with Ireland and Britain. About 13,500 lorries cross the land border each day; around 2,500 lorries cross the Irish Sea between Great Britain and Northern Ireland each day. The more friction in any of these border crossing, the greater the costs/risks and the lower the profitability – and thus the greater the threat to the Northern Ireland economy.

Coming on top of the devastating effects of the coronavirus pandemic, all efforts must be made to avoid unnecessary risks and costs to Northern Ireland business.

**2. Movement of Goods: NI to GB**

**• UCC Exit Summary Declarations:**

Northern Ireland has comparatively low levels of export, ranking 11<sup>th</sup> among regions of the UK. If exit summary declarations will need to be made on goods travelling from Northern Ireland to Great Britain, there are several questions that arise:

- What will this cost?
- Who will bear this cost?
- How will this be managed and enforced?
- What training support packages will be given to NI firms?
- Where will the customs office of exit be?
- Can the exit summary declaration be submitted electronically, and to whom?
- How long in advance of the consignment arriving at the port of departure will the paper work have to be submitted?

- What is the procedure for clearing a consignment at the post of exit, and what time will this require?
- **Managing unfettered access for NI goods:**

There is a conundrum with granting unfettered access in one direction only. Unfettered access NI-GB cannot be so lax as to allow non-NI goods easy entry, as this will undermine the UK market and NI sales into GB. The definition of a NI-qualifying good therefore needs to be tight and well-considered. However, if the cost of bringing goods from GB into NI is made too costly, NI companies may find it necessary to orientate ingredient supply chains towards the EU single market. They could subsequently find it difficult to meet the definition of a NI good when seeking to sell these products into the GB market. There is a risk of being caught outside the edge of both the GB and the EU markets unless the definitions of 'unfettered access' and 'NI qualifying goods' are handled very carefully and based on evidence. Some questions that arise:

  - How does the UKG propose striking the balance between unfettered access and protecting the reputation and integrity of NI produce?
  - 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?
  - What protections will be given to ensure that NI goods do not face competitive disadvantage or discrimination when placed on the market in GB?
  - What checks will be used to ensure that only NI-defined goods enter GB with unfettered access?

### 3. Movement of Goods: GB (and from anywhere outside of the EU) to NI

- **Application of EU Duties GB-NI and the "at risk" test**

70% of trade across the Irish Sea is retail and NI consumers have the lowest discretionary spend in the UK. The application of duties on goods coming from GB to NI raises many questions, including:

- 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?
- How can impact on price and choice be avoided or at least mitigated for NI businesses and consumers? (This question goes beyond the at risk test into regulatory issues)
- **Application of other UCC and regulatory checks**

It is imperative that businesses are told as soon as possible what specific additional administration and checks will be required, not least so that the preparation for managing these and for taking account of the additional costs can commence in good time. These include:

  - Entry Summary Declarations (at £15-£65)
  - Export health certificates be required (at £200 each)
  - Rules of Origin certificates (in order to benefit from EU market tariff free)

- Export control certificates
- SPS checks and controls
- **Practical application**
  - Can the documents be lodged electronically?
  - How far in advance of departure of a consignment should the declarations etc. be lodged?
  - What will be the inspection protocol when the consignment arrives in NI, and where will this take place?
  - Where and how will the checks take place and/or compliance be enforced away from the points of entry?
  - What infrastructure will be required?
  - What IT system(s) will be developed and used for managing this?
  - When will NI firms receive the necessary upskilling to manage the new systems and processes?
  - What impact will this have on just in time supply chains in particular?
  - Will a new AEO system be developed for GB-NI trade?
  - Will there be mechanisms and timelines in place to manage regulatory divergence over time?

#### 4. What potential economic effects will the revised Protocol have on Northern Ireland?

We have three priority areas of concern:

- **Viability:**  
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?
- **UK market:**  
Supply chains will always take the path of least resistance and businesses seek to reduce unnecessary uncertainties and risks. 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)?
- **All-Island Market:**  
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?  
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?  
***But in all these concerns we cannot be specific until we know detail of implementation.***

#### 5. Other issues and challenges arising from the implementation of the Northern Ireland Protocol

- **Changes to VAT rules**  
HMRC needs to clarify how NI remaining in the UK VAT area but complying

with EU rules will work in practice. This needs to be done in a way 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.

Questions include:

- Will deferred accounting be permitted rather than a point of entry system (as was proposed during no deal planning)
- 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?
- How will HMRC approach the issue of services which attach to goods moved under the Protocol arrangements?
- **Disadvantages vis-à-vis other FTAs**
  - If NI is in the UK customs territory, does this mean it will not have access to EU trade or association agreements?
  - If this is the case, will it lose access to EU import tariff rate quotas?
  - If the UK decides to set tariffs at zero, to what extent will NI firms still have to pay tariffs for goods coming into Northern Ireland from outside GB or EU?
  - If UK diverges significantly from the EU, how will UK ensure NI will have access to UK FTAs with other countries?
- **Access to labour**
  - 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?
  - Will the responsibility for ensuring the operation of the points-based system be pushed further onto NI employers and what additional burdens will this entail?
- **Article 10 of the Protocol**
  - Does this mean that NI may not be able to benefit from UKG schemes if they do not adhere to SARs?
  - Will UKG have to apply to EU for permission to apply schemes to NI?
  - Is it possible that NI will not be able to avail of UKG schemes, and will be ineligible to avail of EU schemes?

## 6. Pressures that are particular to Northern Ireland business during the transition period

It is important to recognise and accommodate the fact that NI businesses face additional challenges and uncertainty arising from the Protocol. Northern Ireland businesses face changes in operation both with the EU single market and within the UK internal market. A lot of this relates to time, in particular:

- (a) There is a need for time to reach agreement with the EU on decisions required for the implementation of the Protocol;
- (b) There is a need to prepare for the implementation of unprecedented (and in some cases as yet still unknown) arrangements in the Protocol;
- (c) There is a need to prepare for the arrangements established by the future UK-EU relationship in respect of NI and implementation of the Protocol.

This must be done with adequate information, time for preparation and, where appropriate, support and mitigations.

## ***Section 2. Our Asks of the EU and the UK Govt.***

### **ASKS OF THE UK GOVERNMENT**

Businesses in NI have faced severe challenges in dealing with the Covid-19 impact right across the economy. At the very least, it has distracted from preparations that would otherwise have been intensively focused on the legal regime to apply at the end of the transition period. This increases the importance of using the remaining time effectively, and for business and Government to work together to deliver a pragmatic regime that will support the next critical phase of economic recovery for businesses right across the UK.

With this in mind, we are calling on the UK Government to:

- **Guarantee Unfettered Access for NI Goods –**  
The UK Government has repeatedly underlined that NI goods will enjoy unfettered access when moving from NI to GB. The UK Government must urgently set out their proposals for: (i) how this will be achieved; (ii) how this will ensure that these benefits are provided only to NI goods/businesses; (iii) the timeframes within which those proposals will be enshrined in law – as committed to in the *New Decade, New Approach* agreement.
- **Minimise the impact of Exit checks, Declarations or Processes as Goods Leave GB for NI –**  
The UK Government has made clear that it considers some checks or controls will be needed as goods move from GB into NI under the obligations of the Protocol.  
However, it remains the UK Government's gift to minimise the impact of processes that may otherwise be applied to goods leaving GB.
- **Guarantee that no Tariffs will be Paid for Goods Remaining in the UK's Customs Territory –**  
The Prime Minister and others in the UK Government have repeatedly set out that goods remaining in the UK's customs territory should not face any tariffs. The UK Government must underscore that commitment and back it up with action, setting out both how this will be assured and delivered without unnecessary burdens on business (for example through exploration of ambitious trusted trader schemes for traders whose goods stay within the UK).
- **Ensure That There are no Legal Impediments to Trade at the end of the Transition Period –**  
There are a variety of defaults that apply to a third country trading with the EU – for example agri-food trade only being possible through appropriately approved "Border Control Posts" for those movements. The UK Government must therefore commit unequivocally to concluding, by the end of the transition period, all necessary preparations and negotiations with the EU. It would not be acceptable for any lack of clarity or dispute with the EU threaten the lawful basis for trade.
- **Put Comprehensive Business Engagement at the Heart of the UK's Approach –** It is critical that the UK Government's proposals are guided by the real concerns of businesses. This perspective is vital if costs and burdens are to be minimised. The UK Government should therefore urgently convene a business engagement group, drawing on representatives from across sectors, whose input will genuinely inform the UK Government's approach to implementing the Protocol.
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- **Give Businesses the Information They Need to Prepare for**

### **any New Arrangements –**

The UK government needs to create and roll-out the operation of the new systems for moving goods across the Irish Sea, including IT systems, with enough time for businesses to adjust to these new conditions. Businesses must be given the time and support to prepare for any new arrangements that apply as goods move between Great Britain and Northern Ireland. That requires clear, operational-level detail as to what changes the Protocol will entail and what businesses need to do in response.

*The UK Government should therefore publish guidance, by the end of July at the latest, and tailored for different sectors as required, on the steps businesses need to take to be ready for the end of the transition period.* It is not for Business to interpret but for the government to be clear

- **Fully Support Businesses in the Transition to any new Regime –**  
While appropriate guidance is critical, so too is proper support from Government as businesses adapt to any new systems or processes. This must mean (with details for each strand set out by the summer):
  - o A dedicated Business Transition Fund to help meet the costs of adapting to any new requirements for checks, controls or administrative processes – and to ensure that these costs are minimised on an ongoing basis
  - o 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.
  - o A practical, funded transport plan that ensures goods can flow through NI ports without delays or queues.

### **ASKS OF THE EUROPEAN UNION**

Just as there is reassurance that businesses are seeking from the UK Government, so too must there be signals from the EU that it is willing to see the Protocol developed in a pragmatic way that takes account of the needs of businesses and individuals right across Northern Ireland. That is why we are calling for the EU to:

- **Require no Export Declarations from NI to GB –**  
Such goods pose no risk to the EU Single Market. Yet declarations could add burdens and costs for vital goods movements. The EU must signal its flexibility to getting any necessary reassurances that are ordinarily provided by export declarations by other means.
- **Trusted Trader Scheme for ‘UK only’ businesses –**  
Many businesses in the NI only operate within the UK. As such these businesses pose no risk to the Single Market as their goods never cross into the Republic of Ireland or beyond.

The ‘UK-only businesses’ exemption principle is already established for customs duties in Article 5.1. of the Northern Ireland Protocol. This principle should be extended to enable the creation of a bespoke Trusted Trader Scheme for UK only businesses, i.e. businesses which only trade between GB and NI and vice versa. This scheme would enable businesses, who can give assurances that

their goods are not at risk of entering the EU, to trade freely between NI and GB and vice versa without the need for additional friction.

- **Take a Pragmatic, Business-Informed Approach to Tariff Discussions** – The Protocol, at its most maximalist, could lead to almost all movements being considered “at risk” of moving into the EU, or being involved in “commercial processing”. That would be a disaster for NI business and would sit at odds with the practical reality of how goods flow. We urge the European Commission to engage urgently with NI businesses to understand key trade flows and business models, and have that engagement inform a light-touch and common sense approach that avoids tariffs on goods that stay within the United Kingdom (including those that go to “dead end hosts”).
  
- **Negotiate a Sensible, Proportionate Level of Checks on Agrifood Goods** – The UK starts from the same high level as the EU in terms of its agrifood standards, and there is no prospect of these standards slipping. The EU should therefore come to the table to negotiate in good faith a regime of agrifood checks and controls that reflect those high standards. At the very least this should entail an equivalence agreement that matches that in place for New Zealand, e.g. minimising checks on products of animal origin to 1%.
  
- **Provide for Ambitious Simplifications for GB/NI Movements** – EU law and international conventions, including the CTC, already allow for significant trade facilitations to minimise burdens on businesses. The EU should be prepared to deploy these facilitations, or to negotiate additional facilitations, in a way that reflects its obligations to take account of the unique circumstances of Northern Ireland. That should include:
  - Appropriate simplifications that make transit accessible for businesses whose models rely on the use of the land bridge;
  - Ensuring that any required forms for movements are as streamlined as possible to minimise costs – for example allowing a broad use of simplified declarations for customs purposes.
  - Waiving the requirement for safety and security exit entry summary declarations
  
- **Enshrine NI’s access to the EU’s Trade Deals** – The unique status of Northern Ireland under the Protocol means it will be aligning with EU goods rules and its goods will be in free circulation throughout the EU. In return, and as repeatedly implied during the course of negotiations, the EU should take the necessary steps to ensure NI’s businesses can enjoy the benefits of EU trade deals (including by accessing an appropriate portion of its Tariff Rate Quotas).

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