

## **Ulster Unionist Party (UUP) – Written evidence (IIO0010)**

### **UUP response to the House of Lords European Affairs sub-committee of the Protocol on Ireland/Northern Ireland Inquiry**

The last-minute nature of the Trade and Co-Operation Agreement between the UK Government and the EU on 24th December made a difficult situation even worse for Northern Ireland. Despite the Protocol being agreed between the UK Government and EU in early December 2020, many questions remained about how it would function and how it would directly impact on trade and public services within the United Kingdom. For example, the Trader Support Service only went live on 21 December 2020, by which point a lot of the businesses which would be using it were already on Christmas holidays leaving no time for training or bedding in.

Public services were playing catch-up from the start and still haven't caught up.

Businesses in Northern Ireland had done as much planning as they could with very limited information. Although a lot of Northern Ireland businesses were as prepared as they could be, there seemed to be a breakdown in communication between Government and businesses in Great Britain. Government information was lacking across the UK and although systems were in place, they were not robust in nature and call handling remains very problematic. The processes were new, but difficult to comprehend and lacked simplicity. Despite many businesses in Northern Ireland attempting to prepare themselves as best as possible for new arrangements, we are increasingly being contacted by businesses who are struggling with the complex new paperwork they have to complete. It is particularly a burden for smaller businesses whose workforce are finding their time increasingly occupied with paperwork and they are left feeling unsupported and under-prepared.

The Government didn't seem to understand what they had agreed with the EU, with the Secretary of State for NI even denying the existence of a trade border between Great Britain and Northern Ireland despite all evidence to the contrary. While the Government were stating there was no border, the systems they put in place confirmed otherwise. These denials are frustrating for businesses and consumers who are being met with new barriers and a lack of availability of certain products. There is very little, if any, confidence that the UK Government have any detailed understanding of the full implications of the Protocol, in particular the almost daily emergence of new regulations.

The Protocol is having a negative impact on intra-uk trade particularly in a GB-NI direction. The Protocol has added approximately 3% to costs for those companies bringing goods across the Irish Sea, it has ended decades long trading relationships between businesses in Great Britain and Northern Ireland and continues to fracture Northern Ireland's historic trading links with the rest of the United Kingdom which should have been protected and preserved as part of the United Kingdom's internal market.

Hauliers are being hammered with increasing costs running into millions of pounds since the introduction of the Protocol. Hauliers tell us the issues are not just teething problems, but systemic.

Haulage costs from GB to NI have increased significantly as a result of new demands of the NI Protocol's disproportionate, time consuming, bureaucratic processes, delays at suppliers and the ports, having to bring trailers back to Northern Ireland empty and many opting for longer journeys to avoid the excessive delays at Dublin Port where exemption do not exist. They are very concerned should another layer of requirements be introduced on 1<sup>st</sup> April and again on the 1<sup>st</sup> July.

Already many on-line retailers have decided not to supply NI or to add distribution costs. Groupage and parcels remain particular areas of concern and small businesses in particular are suffering. Many medium or small GB suppliers have indicated that they cannot absorb the extra administrative costs and are increasingly unwilling to supply to NI.

Farmers who buy and sell livestock in Great Britain face a bill for quarantining for up to six months in Great Britain. The Protocol is also impacting on the provision of Guide Dogs and their ability to travel freely between Great Britain and Northern Ireland.

The Protocol has created a democratic deficit in Northern Ireland which doesn't exist in any other part of the United Kingdom. Members of the EU working with representatives of the UK Government on the Joint Committee will make decisions relating to Northern Ireland without any democratic scrutiny. The NI Assembly is now a rule-taker for thousands of EU regulations over which it has no say or scrutiny. There is now joint authority over Northern Ireland between the EU and UK Government and the ECJ retains jurisdiction over this part of the United Kingdom. In many instances the writ of the ECJ will stretch across areas of public regulation in NI that sit well outside the requirements of trade. The extraterritoriality of the ECJ, over a sovereign part of the United Kingdom, is a fundamental undermining of our rights as British Citizens, who should, in the final court, be subject to the ruling of the Supreme Court. This runs contrary to the Belfast Agreement which has cross-community decision making and the principle of consent at its core.

The Protocol has damaged relationships between Northern Ireland and the Republic of Ireland because it has been imposed without any democratic consent from the people of Northern Ireland to a border in the Irish Sea. This imposition is in direct contradiction to the Belfast Agreement. This opinion is endorsed by Lord Trimble, who was awarded the Nobel Peace Prize for his key role in authoring the Agreement and Lord Empey who was a lead negotiator of the Belfast Agreement.

The Ulster Unionist Party were key to the delivery of the Belfast Agreement in 1998, yet the genuine and legitimate concerns of all unionists have been sidelined by the imposition of the Protocol.

The Protocol speaks of “respecting the Belfast (Good Friday) Agreement”. However, the protocol has ignored the protection within the 1998 Belfast Agreement.

#### *ANNEX A*

- 1. (1) It is hereby declared that Northern Ireland in its entirety remains part of the United Kingdom and shall not cease to be so without the consent of a majority of the people of Northern Ireland voting in a poll held for the purposes of this section in accordance with Schedule 1.*

The NI protocol has been introduced without local consent, restricting our ability to trade with the rest of the UK, and has effectively placed an hard EU regulatory border down the Irish Sea.

The Protocol is upsetting the very finely balanced equilibrium of the Belfast Agreement. This has led to an exponential growth in distrust and it will take a lot of work to rebuild relationships. This will have a direct impact on inter-governmental co-operation between the two jurisdictions. What is clear is that even with the Protocol in place, the Government of the Republic of Ireland has continued to dither and delay in sharing passenger information from Dublin Airport with Northern Ireland`s Department of Health which is necessary in the ongoing battle against the Covid-19.

It is not yet clear what impact the Protocol will have on public service co-operation.

The Protocol has thrown up unexpected barriers to some elements of trade north-south, but the biggest and most fundamental barriers have been erected between Great Britain and Northern Ireland.

We recognise the right of the European Union to seek to protect its Single Market, however the Protocol reaches far beyond this intention. A key component of the Belfast Agreement was pragmatism and acknowledging the interconnectedness of these islands geographically, historically and economically. The Protocol appears void of any of the pragmatism that has seen relations change for the better over the last twenty years and that creates a tension that must be resolved.

The Protocol is a direct attack on the identity of those who would describe themselves as unionists. It`s an appalling breach of the Belfast Agreement because the genuine and legitimate concerns of unionists have been routinely dismissed and side-lined in the rush to impose a Protocol which annexes Northern Ireland from the rest of the United Kingdom via a border in the Irish Sea. Many unionists feel that they have been treated as second class citizens in their own country. The highest court for citizens from Northern Ireland will not be the UK Supreme Court, but rather the European Court of Justice which is another attack on sovereignty as Northern Ireland will be treated differently to any other part of the United Kingdom.

It is notable and concerning that the Westminster Northern Ireland Affairs Committee asks about citizens' rights on the island of Ireland, but doesn't ask a similar question about citizens' rights across the United Kingdom and the impact that the Protocol could have on those who identify as being British or pro-Union.

Just as many nationalists (and others) in Northern Ireland who cherish their sense of being European feel that Brexit has diminished their identity, so the Protocol has diminished the identity of those of us who cherish our Britishness. Thus, it creates the perfect storm where both main communities in NI feel aggrieved.

The Belfast Agreement in 1998 brought on a period of unprecedented stability for NI. Brexit destabilised that equilibrium. The Protocol has had a similar destabilising impact on political and community cohesion.

The full extent of impact on citizens' rights and access to public services remain to be seen. This is something that close attention must be paid to. A core tenant of the Belfast Agreement is the right to be British, Irish or both, without any lessening of your rights. The UK Government must robustly defend and protect the rights of UK Citizens in Northern Ireland.

The Protocol is erecting barriers to trade for the Northern Ireland Economy. We draw your attention to an article published by Ulster University's Senior Economist, Esmond Birnie and Queen's University Senior Lecturer in Economics, Graham Brownlow, on 1 February 2021: <https://www.economicsobservatory.com/how-is-brex-it-affecting-northern-irelands-economy>

It states the following:

**"Northern Ireland's most important trading partner is Great Britain. As we consider any frictions for those trading between NI and GB – the so-called 'border in the Irish Sea' – it is notable that in 2018, NI sales to GB were about two and half times greater than those to Ireland. In terms of purchases and imports, the flow from GB to NI was more than four times greater than the flow between Ireland and Northern Ireland."**

It is clear that North-South trade/relationships were prioritised in negotiations over West-East (GB-NI) trade/relationships despite GB-NI being vastly larger and more important given that Northern Ireland and Great Britain were historically part of a highly integrated UK internal market. The Protocol has driven a wedge into the United Kingdom's single market. As the article says, **'frictions have been introduced by adding EU regulatory compliance issues into the UK's internal market.'**

Costs to businesses have increased.

We also draw your attention to the latest Ulster Bank Northern Ireland PMI report by the Ulster Bank`s Chief Economist Richard Ramsey which was published on **8 February 2021**:

[https://ulstereconomix.com/wpcontent/uploads/2021/02/NIre PMI 2102.](https://ulstereconomix.com/wpcontent/uploads/2021/02/NIre_PMI_2102.pdf)

[pdf](#)

It states:

***"Indeed, Northern Ireland's firms signalled the highest rate of input cost inflation across the UK with input prices rising at their fastest rate since June 2018. Higher shipping costs were widely cited alongside higher raw material costs and increased transport costs linked to the new Brexit arrangements. As a result of these cost pressures, local firms, most notably retailers, hiked the price of their goods and services at the fastest pace since October 2018."***

And:

***"Meanwhile the rollout of red tape linked to the new Brexit arrangements will hinder Northern Ireland's economic recovery by adding costs to business and restricting trade. While Northern Ireland has the advantage of remaining within the EU's single market for goods, it finds itself on the wrong side of a regulatory sea-border which has effectively redrawn the map of the UK's single market and customs union."***

The Protocol has led to fundamental and structural change to the Northern Ireland economy with higher costs being an inevitable consequence due to the introduction of frictions within the United Kingdom`s internal market, which in effect, no longer exists.

- **Northern Ireland's position in the UK internal market;**

As per the two reports quoted above from Ulster University, Queen`s University and the Ulster Bank PMI survey, the Protocol is making fundamental changes to the UK internal market. There is no longer a free-flowing UK internal market between Great Britain and Northern Ireland. The market is imbalanced and citizens in Northern Ireland no longer have full and unfettered access to that market, as is their right.

- **Northern Ireland's ability to benefit from the UK's post-Brexit trade policy; and**

At this moment that is an unknown, but given the current problems it is difficult to face the future with positivity. We have been told it can be the 'best of both worlds' but we are yet to see evidence of this with the push/pull of Northern Ireland complying with EU Single Market regulations while remaining part of the United Kingdom internal market. The UK's post-Brexit trade policy must be robustly pan-UK, supporting businesses not just in trading within our

internal market, but in being positioned to seize opportunities globally.

There are particular concerns about how the EU will interpret state aid rules in relation to NI, and whether, if other EU countries see that NI could achieve a competitive advantage, they would then utilise the offices of the ECJ to argue that NI holds uncompetitive advantage. Having 'rights' to attend, but not to act, with the ECJ will further undermine NI businesses.

While there will be businesses that represent exceptions to the rule, as long as the EU retains the power to change the rules without proper democratic input from Northern Ireland, uncertainty, the factor business people detest, will continue to impact adversely on economic growth.

- **how the Protocol interacts with the UK's new system of common policy frameworks;**

We responded broadly positively to the new common policy framework, however we do hold concerns around just how robust scrutiny and consent will be under the new regime. The devolved regions (with particular consideration to the unique position of Northern Ireland) must feel their voices and will is being heard and has influence and that consultation is not just for consultation's sake.

There is a very real chance that devolution in Northern Ireland will not survive the next six months due to the imposition of the Protocol as well as the continuing UK and EU stance of ignoring Unionist concerns and alternatives. If devolution collapses again it will be difficult to see it ever being resurrected. In its place we are likely to see a void that may well be filled by extremists re-igniting serious violence across Northern Ireland. This prospect of violence from republicanism raised by mainstream nationalism as well as the Irish Government was partly responsible for the imposition of the Protocol in the first place. While the EU may have little concern if this violence takes place away from the Irish border, it will have a serious impact on the governance of any UK/EU trade agreement.

Impact on community relations cannot be overstated. Northern Ireland remains a divided nation on many issues but over the last 20 years that division has been reduced. We are now at the stage where serious conversations are taking place on things like a single education system. Northern Ireland is one of the few places in the world where state-funded segregated education still exists. This obviously has clear implications and consequences for our society. The Protocol and the EU hardline stance to it, that has unbalanced the fine nuance of the Belfast Agreement, has begun a chain of events that will set community relations back 10 years in the short term and further in the medium to long term if action is not taken to rectify the Protocol's impact soon.

- **the implications of new legislation on the operation of the Protocol;**

Unfortunately, even with many problems being highlighted since the Protocol came into force, the approach of the UK Government and EU to resolving these issues has been slow and sloth-like. Despite the EU unilaterally triggering Article 16 on 29th January in a brazen attempt to stop vaccines entering Northern Ireland, the Joint Committee which is meant to resolve issues, didn't even meet until 24th February. The outcome of that meeting was that they agreed to meet again before the end of March. It's very hard to judge what implications new legislation will have when the UK Government and EU have such a lacklustre approach to addressing the problems which the imposition of the Protocol has had and have failed abysmally to produce any solutions or alternatives via legislation or otherwise.

- **the interaction between the Protocol and the future relationship between the UK and the EU;**

Regrettably the Protocol will be used as further leverage in continuing negotiations between the UK Government and the EU for the foreseeable future. Despite the direct, negative impacts of the Protocol, Northern Ireland will once again become the filling in the sandwich. For too long Northern Ireland has been used a bargaining chip in negotiations, with actions not matching words and political promises becoming meaningless.

- **how the Protocol can be implemented effectively, including in a scenario where no UK-EU future relationship is agreed;**

We believe that the Protocol cannot be implemented effectively without causing further damage to the economy, community relations and the Belfast Agreement. It is a bad treaty which will lead to bad outcomes. It is unbalanced, divisive and disproportionate because north-south relations were prioritised over the vastly larger and as equally important east-west elements. Those negotiating the Protocol ignored the fact that the Belfast Agreement does **not** come under the exclusive ownership of Irish nationalism. If they had been serious about protecting the Belfast Agreement, they would have placed equal importance on east-west relationships and the genuine and legitimate concerns of unionists. Those were recognised within the Belfast Agreement, but were cast aside by the EU, UK and Irish Governments in the negotiations that led to the Protocol. Without the support and endorsement of unionists, there never would have been a Belfast Agreement. The current approach does not bode well for the future of the structures that were created with cross community agreement.

- **potential mechanisms to facilitate parliamentary scrutiny of the operation of the Protocol, including:**

- **scrutiny of any new UK or EU laws that would create divergence between Northern Ireland and other parts of the UK after the end of the transition period; and**

We believe that the Protocol should be replaced. The Ulster Unionist Party offered alternatives in February 2019 (link below):

<https://uup.org/assets/images/EU%20backstop%20alternative%20proposal.pdf>

While the Protocol remains in place, we have asked for immediate mitigations and offered solutions to the immediate problems in a paper which we published on 1 February 2021 (link below):

<https://uup.org/assets/images/UUP%20NI%20Protocol%20solutions%20paper.pdf>

Barriers to trade across the Irish Sea should be removed, rather than additional barriers planned to be introduced, such as will occur as a result of the planned removal of exemptions. Time consuming, disproportionate and costly processes which are barriers to trade should be removed.

Furthermore, while the Protocol remains in place, Northern Ireland political representatives should have seats on the Joint Committee. Observer status is no longer good enough.

Northern Ireland Assembly Committees should be granted immediate scrutiny of any future EU regulations which are due to be undemocratically imposed on Northern Ireland. They should not be imposed unilaterally by the EU.

The UK Government needs to immediately publish the question that will be placed before the Northern Ireland Assembly in four years time, if the Protocol remains in place.

We also call on the Government to set out its reasons for removing the cross-community voting mechanism for the vote in four years time. Until they do, the Government should put a legislative stay on proceeding with the removal of the cross-community vote.

Westminster Parliamentary Committees should also be scrutinising the impact of the Protocol on the UK`s Single Market, Northern Ireland`s place in the Union and giving immediate consideration to the legality or otherwise of the erection of internal borders within the United Kingdom.

The United Kingdom`s Supreme Court should be given precedence over EU law and the European Court of Justice in this part of the United Kingdom.

- **scrutiny of the UK-EU Withdrawal Agreement Joint Committee and its specialised committees.**



The Northern Ireland Assembly and the Westminster Parliament should be given immediate scrutiny of the operation of the Joint Committee and its specialised committees. While Northern Ireland representatives hold observer status on the Joint Committee, when they appear before The Executive Office scrutiny committee, they are able to offer little more than a readout of the meeting. This underlines the importance of Northern Ireland representatives being full members of the Joint Committee to enable them to have influence and accountability.

There should also be a re-evaluation of the lawfulness of effective joint authority in Northern Ireland between the UK Government and the EU by a Joint Committee making decisions on the future of Northern Ireland. We would ask that the office of the UK Attorney General undertake an immediate legal consideration of the lawfulness of the Protocol and its impact on the operation of the UK's single market, the Act of Union, the devolution settlement and the Belfast Agreement.

**11 June 2021**