

Prof. David Phinnemore, Prof. Katy Hayward, Dr. Billy Melo Araujo, Lisa Whitten (Queen's University Belfast) - Written evidence (IIO0023)

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1. The United Kingdom (UK) formally withdrew from the European Union (EU) on 31 January 2020. It then entered a post-Brexit 'transition' period. This meant that almost all of the disruption that Brexit, by definition, was going to cause, particularly regarding trade, was deferred until after that transition period ended on 31 December 2020 and the UK left the EU customs union and the EU internal market with its free movement of goods, services, capital and people. It is in this context, that any assessment of the impact of the Protocol on Ireland/Northern Ireland upon Northern Ireland needs to be considered.
2. The effects of the Protocol also cannot be assessed without appreciation of the extensive changes that withdrawal from the EU brings to the UK's relationship with the EU and the role of the Protocol on Ireland/Northern Ireland, jointly agreed by the UK and the EU, in seeking to manage and minimize at least some of that disruption in the case of Northern Ireland and the island of Ireland more generally.
3. In this respect, the Protocol has ensured that there has been no *physical* hardening of the 499km land border on the island of Ireland. That border has become harder in other respects, however, given that the Protocol does not involve the free movement of services, capital and people (other than UK and Irish nationals) across the island.
4. The most obvious effect of the Protocol is that formalities, checks and controls on the movement of goods between the UK and the EU are now effectively on movements of goods between Great Britain and the EU *plus* Northern Ireland, and so on movements across the Irish Sea.
5. Moreover, those formalities, checks and controls are more onerous and extensive than they might be owing to the UK government's preference for a 'hard' Brexit, namely one that avoids customs and regulatory alignment with the EU and insists on the option to pursue regulatory divergence from EU rules, even where those apply in the UK 'in respect of Northern Ireland' owing to provisions in the Protocol. It is important to note here that the UK government made no evident effort to address any of the challenges posed by the terms of the Protocol in the negotiation of the UK-EU Trade and Cooperation Agreement concluded in December 2020; this is a case of an opportunity missed.
6. Any assessment of the impact of the Protocol has to be considered in this context. Indeed, it is difficult, arguably impossible in many instances, to disentangle the impact of the Protocol *per se* from the wider process of Brexit.

¹ This evidence is submitted as part of three-year academic research project on *Governance for 'a place between': the Multilevel Dynamics of Implementing the Protocol on Ireland/Northern Ireland* funded by the Economic and Social Research Council. For further details see: www.qub.ac.uk/sites/post-brexit-governance-ni.

What is your assessment of the overall socio-economic and political impact upon Northern Ireland of the Protocol on Ireland/Northern Ireland since it came into force on 1 January?

7. Brexit and the Protocol have clearly had an impact on Northern Ireland, particularly since 1 January 2021 when Brexit became 'real' and the Protocol entered into force, albeit with certain previously agreed and unilateral 'grace periods' for its full implementation. The purpose of these grace periods is to prepare for, minimize and potentially remove through agreed measures that disruption. Consequently, the full effects of the Protocol and the choices made by the UK government with regard to its post-Brexit relationship with the EU are still to be felt.
8. The most obvious effects of the Protocol have been seen in the changes to arrangements for the movement of goods between Great Britain and Northern Ireland. These have proved challenging for many traders particularly given the lack of time to prepare during 2020, the lack of clarity around many issues, the lack of awareness of changes among suppliers in the rest of the UK, and an evident unwillingness of some to accept the increased burdens involved in moving goods to Northern Ireland.
9. Businesses have sought to adapt and, in many instances, have done so, albeit with costs. Supplies of the vast majority of goods, including foodstuffs, into Northern Ireland have been maintained, despite early disruptions and some shelves being temporarily empty in January. Some of the Protocol's most vociferous opponents maintain the Protocol threatens to 'starve' the people of Northern Ireland. Such claims are hyperbole, although clearly the terms of what the UK government has agreed with the EU do mean that there has been and will be disruption to supplies as grace periods end, restrictions and prohibitions on certain goods entering Northern Ireland from the rest of the UK come in, and alternative EU-based supplies are secured. Looming large for the agri-food sector is the end of the unilaterally extended grace period for the application of export health certificates on 1 October 2021.
10. The political reaction to the Protocol in Northern Ireland has been mixed. Evidently, there has been extremely vocal opposition to the Protocol from within unionism and loyalism, and this has contributed to protests and some violence, but it is important to note that the violence was due to a range of socio-economic and political factors. There are also legal challenges in progress and calls for the Protocol to be scrapped; the latter are unlikely to be heeded.
11. With the UK government and the EU working on identifying and finding solutions to the various practical issues that the Protocol's implementation in the context of the UK government's chosen Brexit course has caused, the likelihood of the Protocol being abandoned is extremely low, at least in the short- to medium-term. The focus, increasingly if reluctantly acknowledged by at least some of the Protocol's opponents, is on implementation.
12. Moreover, just as there are calls for the Protocol to be abandoned, there is support for the Protocol and its implementation. The focus of most groups representing business in Northern Ireland is on making the Protocol work. Political parties beyond unionism are broadly supportive, and opinion poll findings indicate as much support for the Protocol as opposition.
13. We recently commissioned LucidTalk to conduct regular (i.e. quarterly) opinion polls to gauge attitudes in Northern Ireland to Brexit and the Protocol. The first poll was conducted in March 2021.² A second poll was conducted in mid-June. The first

poll revealed that in the anticipated 2022 election for the Northern Ireland Assembly 42% of voters will only vote for candidates who are favour of the continued application of Articles 5-10 of the Protocol; 39% say they will only vote for candidates opposed to its continued application.

14. As in the rest of the UK, Brexit has been a divisive issue in Northern Ireland. The challenges adapting to the terms of withdrawal and the realities of the Protocol and its interaction with the wider UK-EU relationship have exacerbated existing tensions. These are tensions that are likely to be sustained in the coming years as adaptation challenges persist, positions on the Protocol become a key issue in the next Northern Ireland Assembly election, and in 2024 MLAs are given the opportunity to give their 'democratic consent' to the continued application of Articles 5-10 of the Protocol.

Is there a viable alternative to the Protocol?

15. The extent to which there is viable alternative to the terms of the current Protocol depends on the extent to which the UK and the EU wish to achieve their objectives in agreeing its terms and the wider context of the UK-EU relations. The UK and the EU have agreed that the Protocol "sets out arrangements necessary to address the unique circumstances on the island of Ireland, to maintain the necessary conditions for continued North-South cooperation, to avoid a hard border and to protect the 1998 Agreement in all its dimensions". Those arrangements can be changed, but to do so would require prioritisation. And this would require joint agreement of the UK and the EU.
16. The most contentious issue arising from the Protocol is the 'Irish Sea border' and the increased formalities, checks and controls on the movement of goods from the rest of the UK into Northern Ireland. This has not only practical, economic implications, but the additional differentiated treatment of Northern Ireland that this involves offends and concerns many unionists.
17. With the EU insisting on safeguarding the integrity of its internal market and the UK having chosen not to enter into a customs union with the EU and rejecting participation in the EU's internal market, formalities, checks and controls have to occur on the movement of goods into the EU. Those formalities, checks and controls have to take place somewhere, and with the UK and the EU agreeing on the need to avoid a hard (physical) border on the island of Ireland, it follows that they need to occur on the movement of goods between the rest of the UK and Northern Ireland. The choice is a logical conclusion of the established position of the EU – which the UK chose to leave – and the policy choices of the UK government.
18. It is important to note that the Protocol covers issues beyond UK-EU trading arrangements and where checks and controls on the movement of goods will occur. It also contains provisions necessary to safeguard certain rights of individuals, maintain the conditions for north-south cooperation and the operation of a single electricity market on the island of Ireland. The 'thinness' of the UK-EU Trade and Cooperation Agreement would not provide for shared UK and EU objectives here to be met. Again, the nature of the wider UK-EU relationship is a key determinant of the need for, and impact of, the Protocol.

² This evidence draws on the report on the first poll. The report is available via <https://www.qub.ac.uk/sites/post-brexit-governance-ni/> where reports on future polls will also be published.

How would you characterise the attitudes of the communities in Northern Ireland in relation to the Protocol?

19. As noted at paragraph 13, we recently commissioned LucidTalk to conduct regular opinion polls to gauge attitudes in Northern Ireland to Brexit and the Protocol. The results from the first poll in late March 2021 reveal that 65% of respondents share the view that 'particular arrangements' for Northern Ireland are needed to manage the effects of Brexit, with 45% strongly of this view. Opinion on the Protocol itself, however, is more divided. When asked whether the Protocol 'provides appropriate means for managing the effects of Brexit on Northern Ireland', 46% agree that it does and 42% disagree. Similarly, on the matter of whether the Protocol is on balance 'a good thing' for Northern Ireland, opinions are even more closely split: overall as many disagree (44%) as agree (43%).
20. This is despite the fact that a slightly larger proportion of respondents (50%) regard the Protocol as providing economic opportunities for Northern Ireland (whilst one third of respondents disagree). Although views on whether the Protocol is 'on balance a good thing' are evenly split, a substantial majority of respondents view the Protocol as having a negative impact on a range of matters, notably politics in Northern Ireland, Northern Ireland's constitutional position in the UK, UK-EU relations, Northern Ireland's position in the UK internal market, and British-Irish relations. No more than a third of respondents see the *current* impact of the Protocol to be positive in relation to the topics about which we asked.
21. The survey results also indicate that more than two-thirds of respondents, based on their current experience, are either concerned or very concerned about the effects of Brexit and/or the Protocol on the Northern Ireland economy (71%), on the cost of certain products (71%), and on political stability in Northern Ireland (72%). A similar proportion of respondents are concerned or very concerned about Northern Ireland's voice being heard on the implementation of the Protocol (73%), about the public availability of clear and detailed information on the Protocol (69%), and about scrutiny of the UK-EU bodies taking decisions on its implementation (68%). A majority of respondents are also concerned about the effects of Brexit and the Protocol on the choice of goods available in Northern Ireland (64%) and checks and controls on the movement of goods into Northern Ireland from Great Britain (61%). Reflecting the general uncertainty around the implications of Brexit and the Protocol, more respondents were concerned overall (47%) than unconcerned (40%) about the consequences for Northern Ireland's constitutional position in the UK.
22. The survey results also reveal an evident lack of trust in a range of actors to manage the interests of Northern Ireland in respect of the Protocol. This is particularly true of UK actors, where overall levels of trust in UK political parties (3%), UK government (5%), and Whitehall civil servants (6%) were strikingly low. Correspondingly, more than four-fifths of respondents report that they distrust/distrust a lot the UK government (86%). Negative views of the UK government presented in comments focus on its enacting of a 'hard' Brexit and apparent lack of regard for Northern Ireland in this. Many such views come from unionist/pro-Leave respondents. On whether people in Northern Ireland believe their views will be heard and addressed in the implementation of the Protocol, half of respondents think not in the case of the EU (51%) and the Irish government (50%). The proportion rises to three-quarters (75%) in the case of the UK government.
23. The group of actors that does enjoy comparatively high levels of trust are Northern Ireland business representatives. They are trusted by 41% of

respondents and trusted a lot by a further 11%, with only a quarter expressing distrust of them in managing NI interests.

What action would you wish to see the Northern Ireland Executive take in relation to the Protocol, including in its engagement with the UK Government, the EU and the Irish Government?

24. The Northern Ireland Executive has an important role in ensuring that the Protocol delivers the best possible outcomes for Northern Ireland. These include: assuming relevant responsibilities for its implementation; identifying and ensuring Northern Ireland's interests are effectively represented in its implementation and in UK policy decisions concerning UK-EU relationships; and providing leadership in managing political expectations around the Protocol.
25. The Protocol is evidently contested, and there are calls from within unionism for its 'scrapping'. However, it is a legal reality and can be expected to remain so. Change is possible via the democratic consent mechanism. The earliest that any significant change to the Protocol might formally occur through this route is from 1 January 2027 when Articles 5-10 would be disapplied by default if members of Northern Ireland Assembly (MLAs) failed to approve a democratic consent motion. However, in the event of MLAs not approving a consent motion, the UK and the EU are expected to adopt 'necessary measures, taking into account the obligations of the parties to the 1998 Agreement'. What those measures might be and how they would differ from those in the Protocol is unclear.
26. For the duration of the current and next mandates of the Northern Ireland Assembly, therefore, there should be a focus on working to manage the implementation of the Protocol and exploit the relative opportunities it provides for Northern Ireland.
27. To achieve this, there needs to be effective engagement with the UK government on identifying issues of concern to Northern Ireland, developing options and solutions, representing those to the UK government, and ensuring that the UK government in its implementation of the Protocol and its relations with the EU and other partners pursues policies that align with Northern Ireland's interests.
28. The Northern Ireland Executive needs to ensure that its interests are represented effectively to the EU. This requires maintaining a representative presence in Brussels through the Office of the Northern Ireland Executive in Brussels, and maintaining and developing links with European Commission officials. It should also revisit the nature of the EU presence in Northern Ireland such that it can be developed so that the EU's understanding of the local challenges relating to the implementation of the Protocol can be contextualized. A revised presence would also provide a direct channel for dialogue and information sharing with EU officials.
29. The Protocol provides for joint Northern Ireland Executive and Irish Government input via the North South Ministerial Council and North-South implementation bodies; this option ought to be fully utilised, not least given the extent of cross-over – direct and indirect – between areas of existing North-South cooperation and areas of EU policy that continue to apply to Northern Ireland under the Protocol. Engagement with the Irish Government would also provide opportunities for Northern Ireland's interests to be presented indirectly within EU decision-making processes.

What is your assessment of the UK Government's approach to the Protocol, and its engagement with Northern Ireland stakeholders, since it came into force?

30. It can at times be difficult to determine with any certainty what the UK government's policy is on the Protocol and the extent to which, in its engagement with the EU, it wishes to secure what is in the interest of Northern Ireland as a whole, or simply revisit or even override its obligations.
31. The initial preparations for the implementation of the Protocol in the first half of 2020 were affected by the government's querying of its responsibilities under the Protocol. This led to delays in securing agreements on key implementation questions, notably around 'at risk' goods, and permissible levels of support for the agriculture and fishing industries. The tabling of the Internal Market bill in September with its proposed 'law-breaking' clauses also created uncertainty. This was not conducive to a smooth and managed implementation of the Protocol. It also seriously undermined trust in the UK Government within the EU, which only diminished its willingness to show 'flexibility' and patience on the matter.
32. Policy decisions on the Protocol have often been viewed as being adopted 'for' as opposed to 'with' Northern Ireland. A key challenge with the Protocol is therefore for improved engagement such that its implementation is a process undertaken essentially 'with' Northern Ireland. This will require a more structured approach to the integration of the Northern Ireland perspective into UK government positions on UK-EU relations, especially with regard to the implementation of the Protocol. This should be achieved through more regular and effective engagement of officials and ministers.
33. The mix of *ad hoc* and semi-structured engagement with stakeholders (e.g., business representative, civic representatives) that has been developed should be sustained and regularized. This includes joint UK-EU engagement initiatives. Such engagement deepens understanding of the context for the Protocol's implementation and can be a valuable source of and testing ground for potential solutions to issues.
34. The UK government also needs to ensure transparency around the operation of the Protocol and make reliable information available to people in Northern Ireland. This could help restore some trust. It should also be mindful of its commitment to support the Northern Ireland Executive in ensuring a 'thorough process of public consultation' prior to the 2024 democratic consent vote.

What is your assessment of the EU's approach to the Protocol, and its engagement with Northern Ireland stakeholders, since it came into force?

35. As a rules-based entity, the EU relies on its member states and partners recognizing and implementing agreed commitments. Much of the work of the European Commission is on ensuring that member states and partners fulfil their legal obligations. The EU's insistence that the Protocol – the terms of which were jointly agreed by the EU and the UK – is implemented in full should not surprise. *Pacta sunt servanda* matters for the EU.
36. This is capable, however, of flexibility and being sensitive to political contexts. Indeed, viewed from an EU perspective, the content of the Protocol demonstrates this: part of a non-member state has privileged access to the internal market for goods and the EU has outsourced the management of its external border to a non-member state. And, in implementing the Protocol, the EU has arguably already

demonstrated flexibility to what was agreed with the UK in accepting and, on medicines, proposing grace periods for the implementation of certain Protocol provisions. Other flexibilities also appear likely, even if they too may not be as extensive as the UK may wish.

37. For the EU, there are, however, limits to the flexibility it is willing to consider. This is evident in its position on the movement of goods. It has always prioritised safeguarding the integrity of its own internal market and can be expected to continue to do so. However, as is the UK, it is formally committed to implementing the Protocol and in a manner that is consistent with the aspirations and commitments set out in the preamble. This includes, but is not limited to, 'the application of this Protocol... impact[ing] as little as possible on the everyday life of communities in both Ireland and Northern Ireland'. It has engaged with business representatives and others to identify issues and explore options. The willingness to introduce additional flexibilities on implementation of the Protocol and easements concerning obligations has not, however, been helped by the UK's approach to the Protocol and the evident lack of trust that exists in the UK government actually recognizing and fulfilling its obligations.

What practical difference would a UK-EU veterinary/SPS agreement have on the operation of the Protocol?

38. An agreement on the mutual recognition of SPS rules would lead to a significant reduction of barriers to agri-food trade between Great Britain and Northern Ireland. The level of the reduction in trade barriers will vary depending on the type of agreement. The EU-Swiss veterinary agreement, where Switzerland ensures regulatory alignment with EU SPS rules, removes nearly all physical checks on agri-food goods. By contrast, agreements on regulatory equivalence (e.g. EU-New Zealand and EU-Canada veterinary agreements) vary in terms of scope of goods covered and do not necessarily remove all physical checks. It is also worth noting that neither option would remove documentary checks on agri-food trade.

How can concerns about the perceived democratic deficit at the heart of the Protocol, in view of the continued dynamic application of significant areas of EU law to Northern Ireland in the absence of UK participation in the EU institutions, be addressed?

39. With a few exceptions, EU laws applicable in Northern Ireland under the Protocol were adopted while the UK was a member of the EU and UK ministers participated in Council decisions on their adoption. Moreover, many of those EU laws were adopted either jointly or in consultation with the European Parliament with elected members from Northern Ireland and the rest of the UK participating. Their application in Northern Ireland under the Protocol has also been approved by the UK parliament, albeit admittedly with no MP from Northern Ireland, for a range of different reasons, voting in favour of the Withdrawal Agreement. This is not to downplay the existence of a democratic deficit in the Protocol, but to provide context.
40. With the Protocol, Northern Ireland is faced with the automatic application of amendments and replacements to applicable EU law listed in its annexes. And this is without any direct say in the adoption of the amendments and replacements. Northern Ireland is not alone, however, in being subject to a form of dynamic alignment with important areas of EU law. The members of the European Economic

Area – Iceland, Liechtenstein and Norway – remain aligned with the full EU internal market *acquis*. Other non-member states maintain other forms of alignment including in other areas. Lessons can be learnt from these states’ experiences of seeking to influence EU decision-making.

41. Were relevant new EU laws are concerned, they will only be made applicable in Northern Ireland if added to the Protocol by joint decision of the UK and the EU in the Joint Committee.
42. Important here is effective UK engagement – with representation from Northern Ireland – with the mechanisms providing for consultation on proposed amendments and replacements as well as new EU laws. Use needs to be made of the Joint Consultative Working Group (JCWG) – a unique consultative mechanism established by the Protocol – to ensure timely and substantial information exchange. Its potential needs to be exploited, particularly as far as involving relevant experts. Consideration could also be given to reviving the idea contained in the original draft of the Protocol for UK officials ‘in respect of Northern Ireland’ participating, albeit without a vote, in relevant meetings of Commission and Council working groups as well as relevant meetings of agencies and other EU bodies.
43. A further option is to formalize and regularize the joint UK-EU engagement activities with representative business groups and civil society representatives.
44. Similarly, there needs to be greater transparency around the activities of the Joint Committee, the Specialised Committee and the JCWG. Each has met on an *ad hoc* basis, generally at short notice, and with limited publicity and reporting of activities. Northern Ireland Executive Ministers and officials from the Northern Ireland Civil Service have participated but on an observer basis. A regularization of these meetings, evidence of substantive engagement and an openness about their deliberations could contribute to an improved sense that implementation of the Protocol is something that is being done ‘with’ and in the interests of Northern Ireland rather than ‘to’ Northern Ireland by the UK and the EU.

What work would you like to see this Committee undertake in scrutinising the operation and impact of the Protocol?

45. At present, there is no established process for documenting or scrutinising revisions or additions to EU laws applicable to Northern Ireland under the Protocol at the domestic level. Under the EU (Withdrawal) Act 2018, as amended by the EU (Withdrawal Agreement) Act 2020, necessary changes will be made via secondary legislation with (currently) very limited opportunity for scrutiny at Westminster or Stormont.
46. While the extent of relevant secondary legislation changes are, at present, minimal, there is potential for these to become more significant due to developments at the EU level and at domestic level as the UK Internal Market and common frameworks initiatives are taken forward. As such, the Committee could usefully establish dedicated procedures for the regular scrutiny and review of secondary legislation made to implement the Protocol. This could be part of the ongoing work of the Committee and could be carried out in partnership with a Northern Ireland Assembly sub-committee with the same purpose.

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