

Dr. Mary Dobbs and Dr. Viviane Gravey - Written evidence
(NIP0016)

Submission to the EU Environment Sub-committee on the issue of Northern Ireland agrifood and the Protocol

This evidence is written by Dr Mary Dobbs and Dr. Viviane Gravey, from Queen's University Belfast. Mary Dobbs is a Lecturer in Law, with expertise in agri-environmental issues and is currently co-authoring a book on Brexit and Agriculture. Viviane Gravey is a Lecturer in European Politics, co-chair of the Brexit & Environment network, which brings together academics analysing how Brexit is affecting the UK and EU environments. We would also refer you to our evidence submitted to the Northern Ireland Assembly's Committee on Environment, Agriculture and Rural Affairs regarding the UK Agricultural Bill and Future Post-Brexit Agricultural Policy in Northern Ireland.¹
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1. What is the worst-case scenario here for the Northern Ireland agrifood sector, and what is the best case? Which issues are you most worried about?

- I. Overall, there are three key interlinked objectives here in play: viability of the agri-food industry; environmental sustainability; and food quality and safety.
- II. The best-case scenario would involve the following: 1) easy access for produce to local, GB and EU markets; and 2) that in preparing for Brexit and addressing the challenges of Covid-19, Northern Ireland agriculture would be revamped in a manner that ensures it is resilient, socially, economically and environmentally sustainable, ensuring high quality produce. Short supply chains would become the norm – strengthening each of these aspects. This would also have knock-on advantages such as supporting rural tourism and wider economic opportunities for NI rural communities.
- III. The worst-case scenario would involve the following: the collapse of the agri-food industry and wide-scale land abandonment (or at least significant changes in land-use) and/or the intensification of farming and cutting of corners to the detriment of the environment and/or food quality, and/or rural employment.
- IV. It is quite possible for NI agri-food industry to go down either route and much will depend on what happens in relation to implementing the Protocol (and on the Joint Committee), the development of a Future Relationship with the EU, other trade agreements, and the various agricultural, environmental and trade policies being developed within the UK currently – including in the current UK Bills. There are 3 issues that concern us most:

¹ <http://www.niassembly.gov.uk/globalassets/documents/committees/2017-2022/agriculture-environment-and-rural-affairs/legislative-consent-motions/agriculture-bill/written-submissions/brexit-and-environment-group-the-uk-agricultural-bill-and-future-ni-policy.pdf>

- a. Reduced access in practice. Difficulties in access in practice to GB markets and variations in criteria for entry to the ROI market/the rest of the EU (relative to now), all of which may increase costs and reduce potential income.
- b. Persisting uncertainties, hindering planning. This includes the Future Relationship between the EU and the UK, but also the UK and NI agricultural policies and the related issue of financing. The last is an essential issue in NI due to the current heavy reliance on subsidies currently available under the Common Agricultural Framework² – without similar levels of financing, a high proportion of NI farms would not be financially viable.³
- c. Downward environmental divergence. While the possibility to diverge upwards existed when the UK was an EU member, downward divergence was not possible. Such divergence is now possible, including in NI – the Protocol addresses environmental issues minimally. Some of the environmental directives which have had the most influence on UK and NI farming are *not* included in the annex of environmental directives NI has to continue applying: the Nitrates directive, the Water Framework directive, the Birds and Habitats directives. There is the potential for divergence between NI and the EU (including the ROI), NI and GB, and especially GB and the EU. If the NI agrifood industry is put under economic pressure due to less funding or more restricted access to markets, then the temptation may arise to diverge downwards.

2. What challenges do you anticipate for Northern Ireland agrifood products going into Great Britain?

a. What do you hope to see from the UK Common Frameworks in the relevant areas?

- V. There will be a range of challenges posed, most of which are dependent on the Future Relationship and potential regulatory divergences. However, some export (and import) controls will apply due to international obligations, e.g. checks to ensure compliance with the Convention on International Trade in Endangered Species of Wild Fauna and Flora will now be required between the UK and the EU, with NI being treated as the EU for this purpose.⁴ Permits will therefore need to be checked on exports

² DAERA (Department of Agriculture, Environment and Rural Affairs) (2017), 'Farm Incomes in Northern Ireland: 2015/16', March (<https://www.daera-ni.gov.uk/sites/default/files/publications/daera/16.17.285%20Farm%20Incomes%20in%20Northern%20Ireland%202015-16%20final.PDF>).

³ See comments regarding England seeing the loss of 25% of farms made by Ludivine Petetin at the Game and Wildlife Conservation Trust All-Party Parliamentary Group in March 2018, <https://www.gwct.org.uk/policy/appg/march-2018/>; in the Farmers Guardian, <https://www.fginsight.com/news/news/defra-makes-decision-to-let-quarter-of-uk-farms-disappear-57116>; and in UK Business Insider; <http://uk.businessinsider.com/quarter-english-farms-bankrupt-after-brex-2018-4>). As less profitable farms would be those mainly hit, a larger proportion would be affected in NI.

⁴ Department for Exiting the European Union, *Protocol on Ireland/Northern Ireland*, 2019, www.gov.uk/government/publications/new-protocol-on-ireland-northern-ireland-and-political-declaration, Article 6 of the Protocol. <https://www.gov.uk/guidance/trading-and-moving-endangered-species-protected-by->

from NI to GB. This is likely to be of limited impact on the agrifood industry, but any extra administrative requirements (whether followed by checks or not) add up and increase delays and costs.

VI. More practical impacts may arise if GB diverges down – for example regarding environmental or product standards or labelling – or opens up its market to lower quality produce via trade agreements in particular. This clearly may lead to environmental and human health harms, as well as being generally detrimental to the consumers. However, it also may place NI farmers at a competitive disadvantage if they maintain or enhance their standards, thereby creating a practical barrier to access even if not a legal one. Alternatively, if GB were to heighten or simply vary their regulatory standards, then NI agrifood industry might be blocked legally from accessing the GB market unless they were to match those standards.

VII. Furthermore, if any eventual Future Relationship agreement does not provide for ease of access of EU products into the UK as a whole, then NI produce risks being subject to enhanced paperwork demands and checks and controls in order to access GB – all of which leads to increased delays and costs.

VIII. UK Common Frameworks could help in easing access to an extent (the Future Relationship with the EU in particular would still be a major factor) and also in addressing our broader concerns noted above. They should maintain minimal regulatory alignment to minimise the competitive (dis)advantages that apply to specific parts of the UK, as well as ensuring consistency and high standards regarding the environment and human health. To this end, they should address: (i) production methods (including broad environmental standards); (ii) quality of food; and (iii) labelling and traceability. Some divergence would still be possible and variations that reflect the differing contexts and priorities.

3. What do you expect the impact to be on the agrifood sector of any additional formalities in the following areas after the transition period, for goods moving from Great Britain to Northern Ireland?

a. Sanitary and phytosanitary (SPS) formalities

b. customs (including tariffs), VAT and excise, and product-related regulatory controls.

IX. This depends on a range of factors. A Future Relationship Agreement could minimise these significantly. However, the less that is agreed or the looser the relationship between the UK and the EU, then the greater the formalities and controls that can be expected. Post-Brexit and without a very close legal relationship, regulatory divergence can be expected between the UK and the EU – especially between GB and the EU. Where this is considerable or where the divergence is downwards, in particular

[cites-if-theres-no-withdrawal-deal](https://www.instituteforgovernment.org.uk/sites/default/files/publications/implementing-brexit-northern-ireland-protocol.pdf). See more generally, J. Sargeant, A. Stojanovic, H. Etherington and J. Kane, 'Implementing Brexit – The Northern Ireland Protocol', Institute for Government, May 2020, <https://www.instituteforgovernment.org.uk/sites/default/files/publications/implementing-brexit-northern-ireland-protocol.pdf>.

regarding the eventual products, then clearly the EU will want more formalities and controls to protect the integrity of the EU Single Market. Further, Article 5 of the Protocol refers to checks and indeed customs on products 'at risk' of entering the EU via NI – we do not yet know the details regarding how this will be implemented, but logically products might be deemed more at risk where they are produced more cheaply in the UK than in the EU (perhaps due to regulatory divergence) or if the trust between the two parties decreases. If deemed at risk, then there would likely be greater surveillance required even after import, including where used in the production of final products.

- X. The impact on imports into NI is mainly on GB industry rather than on NI industry, however it is relevant in particular where NI industry uses produce, components or ingredients imported from GB. For these, there may be considerable knock-on costs.

4. How can the UK-EU future relationship reduce any possible negative impacts of the Protocol on the agrifood sector?

- XI. Potential negative impacts include regulatory divergence between GB and NI with potential higher standards in NI, restrictions on access to markets and wide approaches to the concept of 'at risk' products. The future relationship has the potential to lessen regulatory divergences, smooth out competitive (dis)advantages and minimized controls in the form of customs/tariffs. The greater the level of alignment that is maintained, the easier the access from NI into GB will be and vice versa. Similarly, there would be less need for EU inspections and controls if the EU were willing and able to trust that all UK produce met the requisite production and product standards and was allowed freely on the EU market. Essentially, the closer to the existing regime that the future relationship brought the EU and the UK, the more any impacts would be minimized.
- XII. Clearly, the more detailed the Future Relationship Agreement is and the more it tied the UK to EU law/policy, then the more it would necessarily curtail the UK's freedom to negotiate in other trade agreements. However, the EU is a significant market in close proximity, we currently have the requisite regulatory alignment (sunk costs) and much would be through agreeing mutually not to lower or substantially vary current standards. This could be achieved through including a broader list of EU (or indeed UK) laws and the non-regression principle. Even simply the latter applied to the environment and food quality would provide some broad reassurance, perhaps supplemented by inclusion of objectives of a high level of human health and environmental protection.

5. How can the Government better engage with and provide support to the Northern Ireland agrifood sector?

- XIII. The UK Government can work with the NI administration and stakeholder groups (looking initially to those represented in the stakeholder group run by DAERA whilst the Assembly was in absentia) to help ensure that there is a NI agricultural policy in place and its continued funding. For funding, it

must be noted that most farmers in NI are highly dependent on the current subsidies provided under the EU's Common Agricultural Policy and a significant proportion would likely be unable to continue farming without continued financial support. Most farms in NI are also very small, in less favoured areas and limited to cattle or sheep – potentially making significant changes more challenging. Continued funding from Westminster will be necessary, replacing that from the CAP. Such funding would need to go beyond the block grant, but instead be linked to the reasonable needs within NI to maintain the viability of the agrifood industry and ensure that its environmental sustainability is enhanced.

- XIV. The UK Government (in conjunction with the devolved administrations) could also create common frameworks across the UK, but care would need to be taken in how these are created and their nature – they should not simply be created and imposed by the UK Government on the entirety of the UK, e.g. due to devolution and variations in contexts and approaches. Neither should common frameworks be only discussed between governments – if they are to severely reduce the margins of maneuver for internal divergence, involvement of the four parliaments and stakeholder consultation is needed to bolster the legitimacy of these arrangements.
- XV. The UK Government could also introduce guarantees in the Agriculture and Trade Bills regarding the quality of food and not facilitating imports of low-quality food – as it has repeatedly been asked by the NFU and environmental groups. The Government could also strengthen its Environmental Bill considerably – as it has repeatedly been asked by the Greener UK coalition.
- XVI. It is essential that the UK Government reflect carefully on any trade agreements it seeks to conclude and consider the broad effects on the society and environment within the UK, but also the potential impacts on the Protocol's implementation. E.g., if the UK Government agrees to reduced standards in processes or products, how will this affect NI agrifood industry's access to the GB market (and vice-versa)? Will NI be included or excluded from the scope of any agreements? The UK Government must comply with the Protocol and must also undertake its best endeavours to facilitate trade between NI & GB – this must be borne in mind in concluding any trade agreements.
- XVII. An EU office in Belfast/NI would be of considerable assistance in the implementation of the Protocol, even through simply providing for EU experts who can assist in sharing information or interpretations of relevant EU law.

6. What are the most pressing actions needed from the Joint Committee and its supporting bodies?

- XVIII. Whilst the Joint Committee is responsible for addressing new EU Acts under Article 13 of the Protocol, that is of less urgency than other aspects. In particular the Joint Committee in conjunction with the Specialised Committee will need to address Article 12(3) regarding the exchange of information and the Joint Committee must establish of criteria for determining what products are 'at risk' under Article 5. The last is essential prior to January.

7. Do you expect the Protocol arrangements to be ready for 1 January 2021?

- XIX. Unlikely – based on the UK Government’s statements regarding timing for implementing controls between NI and GB, their only relatively recent acknowledgement that controls need to be introduced, NI’s calls for an extension to the transition period, Covid-19 etc. all indicate that we are unlikely to be completely ready for January. Considerable infrastructure, financial and human resources, and training are all required in advance, as well as clearer detail on what implementation will require.
- XX. Much is also needed from the Joint Committee as noted, but that is also affected by any Future Relationship Agreement.
- XXI. The nuances of implementation also need to be resolved fully, e.g. Article 12(1) lays the responsibility for implementation and application of EU law upon the UK authorities. However, Article 13(6) states that the UK shall not act as a leading authority for risk assessments, examinations, approvals and authorisation procedures provided for in applicable EU law. Similarly, Article 7(3)(1) provides for the Member States to include the UK in respect of NI in some circumstances, but not all. E.g. Article 7(3)(2) excludes registrations, certificates etc in NI issues or carried out by competent authorities of the UK, where the regulation etc may require an inspection of sites, installations or premises and Article 7(3)(3) excludes veterinary certificates for plant reproductive material.

8. How is COVID-19 affecting the agrifood sector’s preparation for the Protocol?

- XXII. Industry are better placed to answer this question. However, we would note that across the UK there have been some considerable impacts and shifts in behaviour due to Covid-19, e.g. consumer have turned more towards high quality foods, local produce, smaller specialist shops etc.⁵ We are seeing the increased appreciation of the quality of foods and short supply chains. However, we also saw the initial lack of flexibility in the supply chain – the supply is tailored to the normal balance of types of purchasers, including retailers, restaurants etc and it can be difficult to adapt at short notice to new types of demands, reflected in oversupply of some produce such as blue cheese and fish and temporary lack of availability of produce such as flour and eggs. It took time, but the industry gradually adapted to the new demands and many have benefited from the new focus on local produce and high-quality food. Whilst Covid-19 will no doubt have had profound impacts upon the agrifood sector and will continue to do so, it is hoped that some of these impacts will also be positive in the long run.

⁵ L. Petetin, ‘COVID-19: Is It Time to Integrate Food Democracy into Post Pandemic Food Systems?’, (2020) 11:2 *EJRR* 326, <https://www.cambridge.org/core/journals/european-journal-of-risk-regulation/article/covid19-crisis-an-opportunity-to-integrate-food-democracy-into-postpandemic-food-systems/486D3CB338D1043228183A942E8CF8C9>.

XXIII. Clearly one major issue that will continue to resonate is that of labour – already a significant issue in the context of Brexit in light of the dependence on migrant workers in harvesting in particular, but also for instance as veterinary workers, this was highlighted by Covid-19.

9. Will the Protocol solve the issues it is intended to?

XXIV. The Protocol will help facilitate trade between NI and the ROI/the rest of the EU, but it left a lot open to implementation by the Joint Committee and also to development in the Future Relationship. Trade and food quality issues in NI are addressed to a reasonable extent, but for instance environmental issues are barely covered. Further, as noted above, the Future Relationship Agreement between the UK as a whole and the EU will affect also the relationship between GB and NI – NI will be bound in part to the EU, whereas GB may diverge further. Consequently, the Protocol (whilst it is in play) does not eradicate the potential for the crystallisation of a border through regulatory divergence, administrative requirements and checks around NI, but simply shifts such a regulatory border from being between NI and the ROI for these issues to being potentially between GB and NI.