

Operation of the Protocol on Ireland/Northern Ireland

Written evidence submitted to the House of Lords European Affairs Sub-Committee on the Protocol on Ireland/Northern Ireland

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1. Is there a viable alternative to the Protocol?

Alternatives that are technically feasible may not be politically acceptable – e.g., the original backstop. Critically, in devising alternatives to the Protocol and/or in fully implementing the Protocol both sides should consider the whole range of issues covered by the Protocol, including the environment. The island of Ireland being a single biogeographic unit, and a single unit for plant and animal health as well, this requires not only alignment but active cooperation between both sides of the island, and on an East/West basis, notably to limit frictions between GB and NI.

2. 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?

The Protocol is a dynamic arrangement – not only in terms of levels of checks which may vary, but in term of policy scope, as we saw in December with the late addition of the Single Use Plastics directive to Annex II. The NI Executive has a key role to play, together with UK government, in identifying developments in EU law which could lead to additions or amendments to Protocol Annexes, those that may be difficult for NI to comply with, and those it may chose to draw inspiration from to develop its own domestic legislation (to the same extent that it should also review Scottish, Welsh and English developments).

Here the Office of the NI Executive in Brussels could play a critical role in supporting the NI Executive in having early notice of relevant EU level developments. Full use could also be made of the provision for joint working between the Northern Ireland Executive and Irish Government on Protocol related matters via the North South Ministerial Council; doing so would allow Northern Ireland to get 'early sight' of potentially relevant EU law developments through the Irish Government continued involvement in the EU legislative process.

3. 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?

There has been no engagement with the environmental NGO sector in NI by the UK government on the Protocol, despite its impact – both current and potential – on the environment on the island of Ireland.

This stands in contrast with more active engagement between environmental NGOs in ROI and the Irish government. ENGOs are represented in the Brexit Stakeholder Forum (Department of Foreign Affairs) which has regular meetings and also have regular meetings with Department of the Environment as well as with the Department of the Taoiseach on Shared Island initiative and Social Dialogue which both include cross-border/all-island environmental dimensions. While tensions surrounding checks have required particular focus from governments, it's important that in the future a broader range of stakeholders are included to consider all the dimensions of the Protocol, though dynamic, interactive engagement between government (both UK and NI executive) and civil society.

4. What practical steps can the UK and EU take through the Withdrawal Agreement Joint Committee and Ireland/Northern Ireland Specialised Committee to mitigate the Protocol's negative impact on the people and businesses of Northern Ireland?

The work of the Joint Committee and Specialised Committee to find solutions to address specific technical issues that have been identified since the Protocol came into operation (notwithstanding 'grace periods') is an essential means of mitigating any negative impacts of Brexit and/or the Protocol on people and businesses in Northern Ireland. Trade disruptions evident in the first months of implementation are unsurprising given that the Protocol's provisions were untested, and in view of the lack of preparation time given NI and GB businesses in advance of entry into force, with significant operational matters regarding the Protocol only resolved in Joint Committee decisions of 17 December 2020, and the UK-EU Trade and Cooperation Agreement only finalized 24 December 2020. As such, the role of the Joint/Specialised Committees in identifying technical problems and devising mutually agreeable solutions has been, and will continue to be, the best way of mitigating any negative effects of Brexit and/or the Protocol in Northern Ireland. Part of such mitigation will also have to include support for seizing the opportunities for NI people and businesses through continued access to the EU Internal Market.

So far, the Joint Consultative Working Group (JCWG) has been under-utilized in the management of the Protocol, however, in the medium- to long-term it could become a very important means of identifying and addressing any potential negative impacts, and indeed positive impacts, as its terms of reference anticipate for more regular meetings than the Joint/Specialised Committee and require detailed exchanges of information likely to be necessary for reaching solutions to operational issues.

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

Such an agreement would ensure the UK government delivers on its promises to not lower SPS standards after Brexit, facilitating both GB to NI and GB to EU trade. While certain checks would still need to be carried out (for example, checks which were carried out before Brexit in NI on live animals coming from GB) it would ensure a level playing field for producers and protect consumers.

Such an agreement, especially if Swiss-style of alignment with EU rules, is often criticized as putting the UK in the role of a 'rule-taker'. But it is critical to first, remember that the UK as an influential EU member state shaped many of these rules. Second, if the UK, as the government has repeated many times, does not intend to lower these standards and indeed will keep them, it should benefit from such continued alignment. An SPS agreement would allow it to do so. If the UK were to decide to diverge at a later date, then the SPS agreement could be rescinded.

6. 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?

This will need to be addressed through a variety of channels. Part of the democratic deficit discussion stems from concerns about policies which would be cumbersome for NI/go against NI interests/do not take NI specific situation into account being adopted. Here, the UK Mission to the EU and the NI Executive Office in Brussels need to build relationships with member states and MEPs willing to relay their concerns early in the development of legislation. Again, close working with the Irish Government would also be beneficial – either at Northern Ireland to Ireland level (via the North South Ministerial Council) or at a UK to Ireland level (via the British Irish Intergovernmental Conference).

The democratic deficit also needs to be addressed domestically in terms of providing an open forum for discussion about forthcoming changes – ministers making a statement to the Assembly and/or to the House of Commons/Lords at a regular frequency on the implementation of the Protocol would allow this. Additionally, establishing a clear process for scrutiny and/or reporting of any changes in domestic implementing legislation related to the Protocol would help mitigate the democratic deficit in real terms – at present, under the European Union (Withdrawal) Act 2018 (as amended by 2020 Act) ministers can make changes by secondary legislation with minimal parliamentary oversight and no clear delineation tends to be made between changes relating to 'retained EU law' (relevant to GB/UK) and those relating to 'protocol related law' (relevant to NI).

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

The Protocol covers a wide range of issues – the Committee has a key role to play in investigating different challenges in the Protocol that are not necessarily high on the political agenda but would have practical implications – for example, discussions on relationships between UK and EU Emission Trading Systems and the practical challenges of Annex 4 of the Protocol.