

CONSTITUTION, EUROPE, EXTERNAL AFFAIRS AND CULTURE COMMITTEE

18th Meeting, 2022, Session 6

30 June 2022

Implementation of the Ireland/Northern Ireland Protocol

1. The Committee has agreed to hold a series of sessions on post-EU constitutional issues, and already covered legislative consent after Brexit, implementation of the Trade and Co-operation Agreement, and intergovernmental relations.
2. This meeting will focus on the Implementation of the Ireland/Norther Ireland Protocol and Retained EU Law, the latter being covered in a separate paper.
3. The focus of the meeting will be on the following areas—

NI Economy

- What is the most reliable evidence for the impact of the Protocol on Northern Ireland's economy?
- If Northern Ireland's 'people and its business' were put 'at the centre of the debate', as the NI Business Brexit Working Group asks, what would be different now in the UK-EU approach compared to as currently is the case?

Dynamic Alignment with EU Law

- What form is 'dynamic alignment' taking under the Protocol and what are the implications of it (e.g. examples, difficulties)? What lessons might there be from this for Scotland's intended continuity with EU legislation?

Potential solutions

- What are the implications of a dual regulatory regime for Northern Ireland? Who would benefit from it? Who would be particularly at risk? What would be the implications, in particular, for trade with Scotland?
- What are the basic principles behind a green/red channel for movement of goods across the Irish Sea, and what are the advantages/disadvantages of it?

NI Protocol Bill

- What are the potential economic implications of the NI Protocol Bill?
- What are the biggest questions that remain unanswered as yet about this Bill?

4. There is a briefing from the Committee's adviser and SPICe at **Annexe A**.

5. Papers from Queen's University Belfast and John Thompson and Sons Ltd are included at **Annexe B**.

CEEAC Committee Clerks
June 2022

CEEAC Adviser's Briefing for the Roundtable on the Protocol on Ireland/Northern Ireland, 30 June 2022

Katy Hayward, with Sarah McKay (SPICe)

The implementation of the Protocol

Current status

The [Protocol on Ireland/Northern Ireland](#) ("the Protocol") is part of the EU-UK Withdrawal Agreement. It sets out special arrangements for Northern Ireland to protect the Belfast/Good Friday Agreement, to avoid a hard border on the island of Ireland and to protect the integrity of the EU's single market. It came into effect on 1 January 2021 but is yet to be fully implemented.

There is currently a [standstill on grace periods](#) for the requirements for goods movement from GB into NI, including certification for SPS products and pets and a ban on chilled meats. The requirement of customs declarations on parcels has not been implemented by the UK government. Border Control Posts for the proper inspection of goods entering NI in sea and airports have not yet been constructed due to the refusal of the NI Minister, Edwin Poots, to grant permission. Temporary facilities are still being used.

There is currently a [legal case](#) in progress over the Minister's order to officials in the Department for Agriculture, Environment and Rural Affairs in February to cease checks on goods from GB under the Protocol. Minister Poots claimed that such checks required full Executive approval (there is currently no full Executive since the resignation of the First Minister and thus deputy First Minister in February). The full judicial review hearing in the High Court in Belfast is expected to be in September and to include representation from the UK Government (DEFRA officials) after Poots' legal defence argued that the responsibility for checks lies with the UK Government rather than at devolved level.

In a positive move on the Protocol, in April, the EU completed legislation to ensure the [security of supply of human medicines](#) to Northern Ireland from GB. It is notable that this was not publicised as a 'win' by the UK Government, nor as a sign that the EU conceded to the UK's demands on this topic. This issue was the Protocol issue which was of greatest concern among NI voters, according to previous [Post-Brexit Governance NI polling](#).

Recent developments on the Protocol

At official level

A meeting of the EU-UK Joint Committee (the first since June 2021) was held on 21 February 2022 with Foreign Secretary Liz Truss and her EU co-chair, Maroš Šefčovič. A meeting of the [Specialised Committee](#) for the Protocol (for senior officials) was then held on 8 March 2022. [The joint statements](#) after both these meetings reiterated both parties':

ongoing determination to ensure that outstanding issues in the context of the Protocol are addressed and durable solutions found for the benefit of citizens, businesses and stability in Northern Ireland.

They also stated that 'the joint bodies established by the Withdrawal Agreement should meet regularly, and agreed to discuss any point raised by the EU or the UK that is of relevance to the Withdrawal Agreement in general'.

However, whilst other Withdrawal Agreement Specialised Committees have met (meaning communication between the same senior officials has occurred), neither the Joint Committee nor the Specialised Committee on the Protocol have met since that point. However, at a technical level, the Joint Consultative Working Group has continued to communicate weekly and to meet monthly, to update the UK on amendments to EU law that applies in Northern Ireland under the Protocol.

The NI Assembly Election

There was no formal or technical communication on the subject of the Protocol between the UK and the EU on the Protocol in advance of the NI Assembly Election of 5 May 2022 – this was an informal acknowledgement of the significance of the topic in the election campaign.

Results from the latest Post Brexit Governance NI project [‘Testing the Temperature’ polling](#) (release date: 29 June) shows that for the majority (67%) of voters the Protocol was a significant factor in how they cast their vote(s) in the election (37% voting for those in favour, 30% for those against; only 28% said the Protocol was not a factor for consideration in how they voted).

However not all parties campaigned strongly on the issue of the Protocol. The Traditional Unionist Voice made it the focus of their campaign, with the tagline “No Sea Border” and they hoped to take votes from the DUP in an effort to make the largest unionist party prioritise the issue.

The Democratic Unionist Party did not give much space to the Protocol in its manifesto. But the First Minister, Paul Givan, had resigned from post in February stating the DUP would not engage in power sharing until the Protocol issues were ‘resolved’ and this point was repeated by party leader Sir Jeffrey Donaldson during the campaign.

The Ulster Unionist Party also made the removal of the Irish Sea Border a manifesto pledge, but it was unequivocal in stating that this should not come at the expense of power-sharing.

The election campaign was fairly lacklustre, although the Protocol was a contentious topic. The refusal of the UUP leader, Doug Beattie, to join platforms in the anti-Protocol rallies organised by a coalition of loyalist and unionists was criticised by the DUP and TUV. Beattie himself became the target of tactics of intimidation.

The Alliance Party, the SDLP and Sinn Féin did not campaign strongly on the Protocol. All recognised that there is a need for adjustment to the Protocol and urged this to come on the basis of UK-EU negotiations. The Alliance Party did historically well in the election, more than doubling its seat numbers. There remains a pro-Protocol majority in the Assembly (see Figure 1).

| Party | First Pref. Vote | Seats | Manifesto Position on the Protocol | Arts 5-10 | |
|--------------|------------------|-----------|---|-----------|-----------|
| | | | | Keep | Remove |
| Sinn Féin | 29.0 | 27 | Protocol as ‘an opportunity’ | 27 | |
| DUP | 21.3 | 25 | ‘Remove the NI Protocol’ | | 25 |
| Alliance | 13.5 | 17 | ‘Protocol pragmatists’ | 17 | |
| UUP | 11.2 | 9 | ‘Unionists cannot accept an internal [UK] border’ | | 9 |
| SDLP | 9.1 | 8 | ‘essential protection... huge economic potential’ | 8 | |
| TUV | 7.6 | 1 | ‘Protocol must go’ | | 1 |
| PBP | 1.1 | 1 | Oppose the politicisation of the Protocol | 1 | |
| Independents | 1.6 | 2 | - | | 2 |
| Total | | 90 | | 53 | 37 |

Figure 1. Summary of NI Assembly election results and positions on the Protocol (credit: PBGovNI)

After the election

Sinn Féin secured the most first preference votes and seats in the Assembly, meaning that its Vice-President, Michelle O'Neill MLA became First Minister designate. However, DUP leader, Jeffrey Donaldson, [announced after the election](#) that the DUP would nominate neither a Speaker to the Assembly nor a deputy First Minister until the UK government had taken 'decisive action' on the Protocol. Notably, although Donaldson won a seat in the Assembly Election, he decided to remain in Westminster and instead the [DUP co-opted](#) former MP and Special Advisor, Emma Little-Pengelly, in his place as a DUP MLA for Lagan Valley.

This has left Northern Ireland without a sitting Assembly, with only a caretaker Executive (rolled over from the previous mandate) and no First Minister or deputy First Minister. Polling from LucidTalk for the [Belfast Telegraph](#) suggests that this stance from the DUP is popular with their supporters, with 92% of DUP voters saying that the DUP should not return to Stormont until at least significant changes are made to the Protocol. Indeed, 40% of them think they should not go back until the Protocol is removed altogether – something that is rather stronger than the DUP's official position at the moment.

There are divisions within Unionism on this issue. According to the same polling, 76% of TUV voters say that the DUP should not go back until the Protocol is removed altogether. 68% of UUP voters say that the DUP should return to Stormont without delay.

The escalation of UK-EU tensions after the election

Soon after the election results, the UK government was not only insisting on substantive changes to the Protocol but also confirming reports that it would be proposing domestic legislation that would allow it to unilaterally disapply elements of the Protocol.

The reaction of the EU was to insist that joint solutions should and could be found 'within the framework of the Protocol' to 'legitimate practical issues raised by people and businesses in Northern Ireland'. These would be based on proposals it had made in October 2021. The EU published [factsheets](#) on these proposals in February, covering supply of medicines, movement of animals and animal products, customs, stakeholder engagement, and SPS.

The Northern Ireland Protocol Bill (author credit to Sarah McKay, SPICe)

Summary

The UK Government introduced the [Northern Ireland Protocol Bill](#) in the House of Commons on 13 June 2022. Unusually, at the same time, the UK Government published a statement on its [legal position on the Bill](#), explaining the reasons why it considered the Bill not to be incompatible with international law. It also published a [policy paper](#) outlining its proposed solutions to issues it perceives with the Protocol. The [Explanatory Notes](#) to the Bill set out the UK Government's position:

“the Government's assessment is that the ongoing practical issues, as well as challenges to political stability in Northern Ireland, linked to the Northern Ireland Protocol, demonstrate that it is not meeting its original objectives. Without change, those issues pose significant challenges to the functioning of the Belfast (Good Friday) Agreement and the institutions it establishes, as well as to broader social and economic conditions in Northern Ireland. The Government's assessment is that, while the preference is to find joint solutions, action is necessary to respond to the urgent and serious context in Northern Ireland and cannot await such an agreement.”

The Bill provides the basis to amend the operation of the Protocol. The UK’s Foreign Secretary, Liz Truss MP, [stated in the House of Commons](#) that the UK Government's preference remains “to reach a negotiated outcome with the EU” on changes to the Protocol but added that the EU’s proposals do not at present address the UK Government’s “fundamental concerns” with the Protocol.

What does the Northern Ireland Protocol Bill do?

The Bill, if enacted, will do two key things. First, it disapplies elements of the Protocol. The Explanatory Notes state: “the Bill ends the effect of – i.e. disapplies – specific areas of the Northern Ireland Protocol in domestic law”. This comes through effectively [‘switching off’](#) Section 7A of the EU Withdrawal Act (2018), which gives the Protocol legal effect in UK law, for a specific set of ‘excluded provisions’ set out in the Bill (see below).

Second, it allows UK Ministers to disapply further elements of the Protocol and relevant parts of the Withdrawal Agreement in domestic law. The Bill also provides UK Ministers with delegated powers to make “new law” in connection with the Protocol (i.e. the power to make new domestic law in place of what is set out in the Protocol).

The Bill disapplies the Protocol, and/or provides UK Ministers with the power to disapply it, in the following five key areas (each is explained in further detail below):

1. The movement of goods
2. The regulation of goods
3. Subsidy control
4. The governance of the Protocol
5. VAT and excise

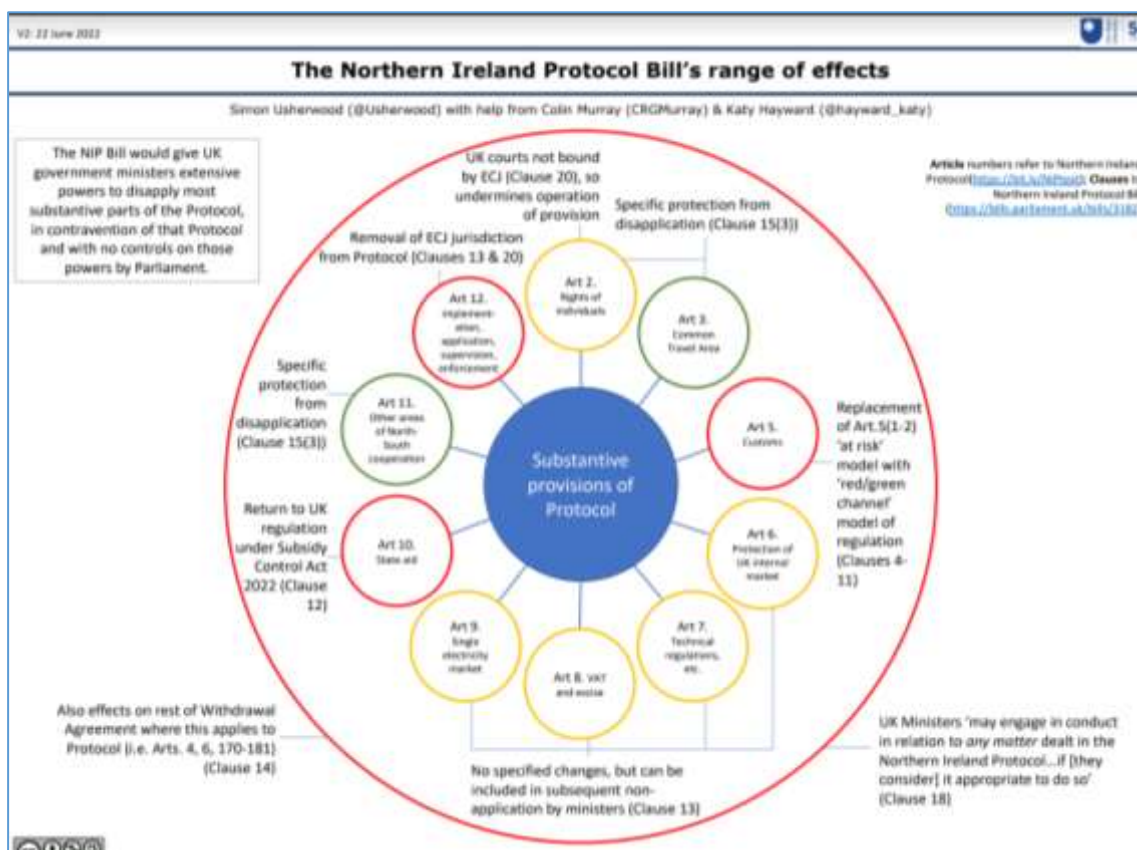


Figure 2. Summary of the NI Protocol Bill. Credit: [Simon Usherwood](#), University of Surrey

The movement of goods

The Bill proposes removing checks and paperwork for certain goods (including animals) moving from GB to Northern Ireland. Such goods are those which are destined to stay in the UK and which will not be moved into Ireland or the EU. The effect is that these goods would not be subject to the customs and other checks required under the Protocol. The Explanatory Notes to the Bill explain that this provision will, with others, provide:

“the basis for the Government to administer a regime which provides different channels and requirements for goods depending on their destination. This will allow for significantly revised arrangements for goods moving and remaining within the United Kingdom. For example, UK-destined goods could be moved as part of a new ‘green channel’ arrangement; while goods destined for the EU could enter a ‘red channel’ and be required to meet full EU requirements, including customs requirements and the payment of duty, where applicable.”

The regulation of goods

At present only goods which meet EU requirements can be placed on the market in Northern Ireland. The Bill introduces a dual regulatory regime in Northern Ireland for certain classes of goods, including manufactured goods, medicines and agri-food products. In effect, the Bill will give businesses a choice as to which regulatory regime (UK or EU) they follow for goods being supplied in or entering into Northern Ireland. Where EU and UK requirements are the same products can comply with both regulatory regimes.

Subsidy Control

At present, Northern Ireland follows EU state aid rules in relation to measures which affect trade in goods and wholesale electricity between Northern Ireland and the EU. The Bill would bring Northern Ireland into the subsidy control regime that applies in the rest of the UK under the Subsidy Control Act 2022.

The Governance of the Protocol

The Court of Justice of the EU (CJEU) has a role in settling disputes over the Protocol. The Bill removes the jurisdiction of the CJEU in relation to the Protocol. The Bill also provides that in any proceedings related to the Protocol or Protocol related aspects of the Withdrawal Agreement, a domestic court or tribunal is not bound by decisions or principles of the CJEU and the court cannot refer any matter to the CJEU.

UK Ministers are given power, however, to make any provision considered appropriate in connection with this, which can include establishing a procedure under which a domestic court could make a preliminary reference to the CJEU on a question of interpretation of EU law where the court considers that necessary before it can conclude proceedings.

VAT, excise and tax

At present the EU’s VAT and excise rules for goods apply in Northern Ireland. The Bill would allow changes to VAT and excise rates (as well as other taxes) in GB to be reflected in Northern Ireland so that the UK has one regime for VAT, excise and other taxes.

Permitted purposes

UK Ministers would be able to make secondary legislation to disapply areas of the Protocol, or any related provision of the Withdrawal Agreement, for nine wide-ranging reasons or “permitted purposes”:

1. safeguarding social or economic stability in Northern Ireland;
2. ensuring the effective flow of trade between— (i) Northern Ireland and another part of the United Kingdom, or (ii) a part of the United Kingdom and anywhere outside the United Kingdom;
3. safeguarding the territorial or constitutional integrity of the United Kingdom;
4. safeguarding the functioning of the Belfast (Good Friday) Agreement;
5. safeguarding animal, plant or human welfare or health;
6. safeguarding biosecurity or the environment;
7. safeguarding the integrity of the EU single market;
8. lessening, eliminating or avoiding difference between tax or customs duties in Northern Ireland and Great Britain;
9. securing compliance with other (non-Protocol/Withdrawal Agreement) international obligations.

The power to specify excluded provisions is exercisable whenever UK Ministers consider that it is necessary or ‘appropriate’ to do so for, or in connection with, one or more of these nine “permitted purposes”.

This applies to the whole of the Protocol with three exceptions. The exceptions are that UK Ministers are not given power to disapply articles 2, 3 and 11 of the Protocol, on: rights of individuals; common travel area; and other areas of North-South cooperation. There are concerns, however, that

The powers for UK Ministers to make “new law” in secondary legislation are also wide-ranging: they can generally be used to make “any provision which the Minister considers appropriate in connection with” the relevant part of the Protocol.

These are so-called Henry VIII powers because, with some exceptions, Ministers can use these powers to alter primary legislation. The new regulations they make would be subject to the negative resolution procedure, which means that Parliament does not have to vote in favour for them to be adopted.

Ending the direct effect of excluded provisions of the Protocol

At present, the Protocol has direct effect in, and supremacy over, domestic law, as provided in the European Union (Withdrawal) Act 2018. The Bill amends that Act to remove the direct effect and supremacy of “excluded” provisions of the Withdrawal Agreement and Protocol. The “excluded provisions” are those which are disapplied, that is:

- provisions of the Protocol and Withdrawal Agreement that are specified in the Bill
- any provision which UK Ministers, by regulations, specify is excluded.

Justification for the Bill (sub-section author: K. Hayward)

According to the [Foreign Secretary](#), purpose of the [Northern Ireland Protocol Bill](#) is to make ‘the changes necessary to restore stability and ensure the delicate balance of the [Belfast \(Good Friday\) Agreement](#) is protected’. The DUP’s refusal to participate in a new Executive, new Assembly or North/South Ministerial Council is being [interpreted by the Government](#) as evidence of ‘the strain that the arrangements under the Protocol are placing on institutions in Northern Ireland, and more generally on socio-political conditions’.

The [legal position](#) of the Government is to invoke the principle of necessity to justify non-performance of certain international obligations. This principle, it claims, is accepted by the International Court of Justice and reflected in the International Law Commission's 2001 Articles on State Responsibility. In so doing, the Government argues that this is a 'genuinely exceptional situation'. This justification persists as long as the state of necessity, and the current assessment of the government 'is that this situation and its causes will persist into the medium to long term'.

Its legal position also repeats the view that a 'negotiated solution' is preferable and argues that an agreement superseding the Protocol could come under Article 13(8) of it or Article 164(5)(d) of the Withdrawal Agreement. Noting existing provisions in the Withdrawal Agreement, it is notable that the UK Government has not invoked the safeguard measures of Article 16, the potential grounds for which include 'serious societal difficulties'.

Implications for Scotland ([author credit to S. McKay, SPICe](#))

Powers for Scottish Ministers

The Bill does not confer any delegated powers on Scottish Ministers. The Scottish Ministers are therefore not given any powers under the Bill to make secondary legislation. There would be power for UK Ministers to create such powers by regulations. UK Ministers may, by regulations, provide:

“for any other power to make regulations conferred by this Act to be exercisable to any extent by a devolved authority”

Implications for the Scottish Parliament

As introduced, the Bill provides that regulations made under it are subject to the negative procedure in the UK Parliament unless they amend an Act of the UK Parliament.

There is no reference to devolved legislation, including to devolved primary legislation. This means that Acts of the Scottish Parliament and of the other devolved legislatures could be amended by regulations made under the Act (if the Bill is enacted) by UK Ministers which are subject only to the negative procedure.

Legislative Consent

The Explanatory Notes to the Bill do not set out the usual table which indicates the UK Government's position on clauses which require consent under the Sewel Convention. The notes do, however, indicate that the UK Government anticipates seeking the consent of one or more of the devolved legislatures:

“The Bill contains provisions which cover devolved or transferred matters. Where the Bill engages the Legislative Consent Motion process, the UK Government will write to the devolved administrations to seek consent to legislate in the normal manner.”

The EU's reaction

The EU responded by (re-)launching infringement proceedings against the UK for non-implementation of obligations under the Protocol. These cover pet travel, parcels, full certification requirements for agri-food (as begun in March 2021, suspended in September to allow talks); there are new infringement proceedings on the UK Government's failure to construct Border Control Posts and to share real-time trade statistics data.

It also [published](#) expanded and revised versions of two of its October 2021 position papers (on customs and SPS), to demonstrate ‘solutions to the movement of goods between Great Britain and Northern Ireland can be found within the Protocol, and can be found quickly’.

Other options open to the EU include usual Dispute Resolution procedures, firstly through the Joint Committee, then to Binding Arbitration (independent panel), which may lead to financial sanctions or suspension of obligations under WA or from TCA.

The EU is not expected to escalate action unless and until the NI Protocol Bill is passed or comes into effect. At that point, it could in theory start a 12 month process to terminate the whole Trade and Cooperation Agreement (or 9 month to terminate the trade part). If it considers Article 26 of the Vienna Convention on Law of Treaties (Pacta sunt servanda - every treaty in force is binding upon the parties to it and must be performed by them in good faith) it could potentially terminate the WA.

Much more likely in the first instance is for it to demonstrate disapproval by ‘go slow’ on other aspects of the TCA (such as it is already doing on UK access to the Horizon programme, for example). There is no rush to build a hard Irish border in the absence of sufficient checks. However, [Vice President Šefčovič](#) has been clear that there is a risk of NI losing its unfettered access to the EU’s single market for goods if the Bill becomes law.

The reaction from Northern Ireland

52 of NI’s 90 MLAs [wrote to Prime Minister Johnson](#) rejecting any unilateral action on the Protocol as ‘utterly reckless’. The most recent polling (taken before the publication of the Bill) showed majority opposition to unilateral action from the UK Government to suspend elements of the Protocol, with 74% seeing a negotiated UK-EU outcome as preferable.

The DUP has not made any moves closer to full participation in the B/GFA institutions in response to the Bill. Indeed, when asked (BBC Radio Ulster Talkback, 14 June) whether the DUP will change its stance in response to the Bill, Sammy Wilson MP reasoned that ‘it goes against the government’s own argument as to why this Bill is essential’ if the DUP is too easily cajoled back into Stormont. The [TUV leader stated](#) that the Protocol Bill falls short and ‘the battle to save the Union’ continues.

The NI Business Brexit Working Group, a collaboration of 14 industry bodies, issued a [statement](#) saying: “Unilateral action is not at our request, and in these times, the parties have a responsibility to reach an agreement with a sense of urgency. We need to see the UK and EU engage in substantive talks on resolving issues raised by stakeholders in Northern Ireland. We also need the UK and the EU to engage with those stakeholders in finding workable solutions.”

Particular proposals

The NI Protocol Bill and UK Government solutions paper anticipates two most significant changes in the operation of the Protocol: the establishment of a dual regulatory regime in NI and the use of Green/Red channels for the movement of goods from GB to NI.

The dual regulatory regime would allow NI producers to decide whether to follow UK or EU standards. It would also remove regulatory barriers to GB goods being sold in NI. This may benefit GB producers but pose [serious difficulties](#) to NI, even aside from the likely loss of free access to the EU single market. These are administrative (Stormont capacity to manage two sets of regulations), operational (red tape and compliance costs), and reputational (off-putting for importers from NI).

For the Green/Red channels, this is intended to avoid ‘unnecessary’ checks and controls on goods entering NI. The EU has also suggested the potential use of an ‘express lane’ for authorised traders entering NI. Key differences between the two rest on how much information is needed in advance of crossing and how it is gathered and monitored.

What form is ‘dynamic alignment’ taking under the Protocol and what are the implications of it (e.g. examples, difficulties)? What lessons might there be from this for Scotland’s intended continuity with EU legislation?

Some 300 legislative instruments of the EU acquis apply to Northern Ireland under the Protocol. As these are updated/amended, these changes automatically apply in Northern Ireland. This brings consequences in terms of the rules that apply in NI, for production and for sale. As standards in the rest of the UK diverge from the EU (or even as they diverge in England alone), this will affect the GB market for NI products (e.g. in terms of market access and price).

This roundtable is an opportunity to gather evidence on the difficulties entailed in terms of keeping NI departments and stakeholders informed as to updates to regulatory rules and standards that apply. There are examples emerging now of where EU rules applying in NI have updated, with consequences for the marketability of NI products in GB; these can be explored. It is also an opportunity to discover what could have been done better in terms of preparing for ‘dynamic alignment’ in NI under the Protocol.

What are the challenges for scrutiny of legislation that applies under the Protocol?

The NI Assembly is currently not sitting and it has no committee dedicated to scrutinising the legislation that applies in NI under the Protocol. Instead, Westminster committees play a crucial role. The scrutiny work relevant to the Protocol is undertaken primarily by the European Scrutiny Committee in the Commons and the European Affairs Committee (particularly the Sub-Committee on the Protocol on Ireland/Northern Ireland) in the Lords. Other Committees in the Lords relevant to this work include the Common Frameworks Scrutiny Committee, the International Agreements Committee and the Secondary Legislation Scrutiny Committee.

The situation is highly complex, not least because the EU legislation that continues to be applicable includes not just the Protocol but the wider Withdrawal Agreement (WA) and the governance agreements underpinning the implementation of the WA and Trade and Cooperation Agreement (TCA). Moreover, the Protocol is evolving and is currently the subject of EU infringement proceedings against the UK, and potentially to future UK-EU negotiations. This adds a degree of sensitivity to the scrutiny of the arrangements. This is of concern to all devolved legislatures in the UK.

The House of Lords sub-committee on the Protocol conducted an [inquiry](#) into the scrutiny of legislative proposals within the scope of the Protocol. Figure 3 shows its diagram on the scrutiny process of EU legislation within the scope of the Protocol.

There are four main weaknesses to highlight in this process. First, there are no ‘formal mechanisms for prompt communication to Parliament (and to other stakeholders) of information received from the EU in the Joint Consultative Working Group on planned or adopted EU legislation falling within the scope of the Protocol’. Secondly, the detail of Explanatory Memorandums provided varies in quality and is often insufficient to deduce the ramifications for NI (or the rest of the UK). The House of Lords European Affairs Committee (and the sub-committee on the Protocol), and the European Scrutiny Committee in the Commons, receive copies of correspondence from Government ministers about amendments being made to EU legislative instruments that are to apply in NI under the Protocol. But it is often only at the request of Committee chairs that government ministers give more information on the potential implications for Northern Ireland.

Thirdly, communication with Northern Ireland Assembly is also patchy. The Government [affirmed](#) it will 'continue to share Explanatory Memoranda (EMs) submitted to the Sub-Committee with Northern Ireland Executive officials to inform the work of the Assembly Committees, and the Government will continue to involve Executive officials in the preparation of EMs provided to the Sub-Committee on EU legislation applying to Northern Ireland before they are submitted'. But the nature and quality of this engagement varies widely. Fourthly, transparency is inadequate. There is a reliance upon 'good relationships... between officials and the clerks of the Committees' and the dependence on those channels for providing information.

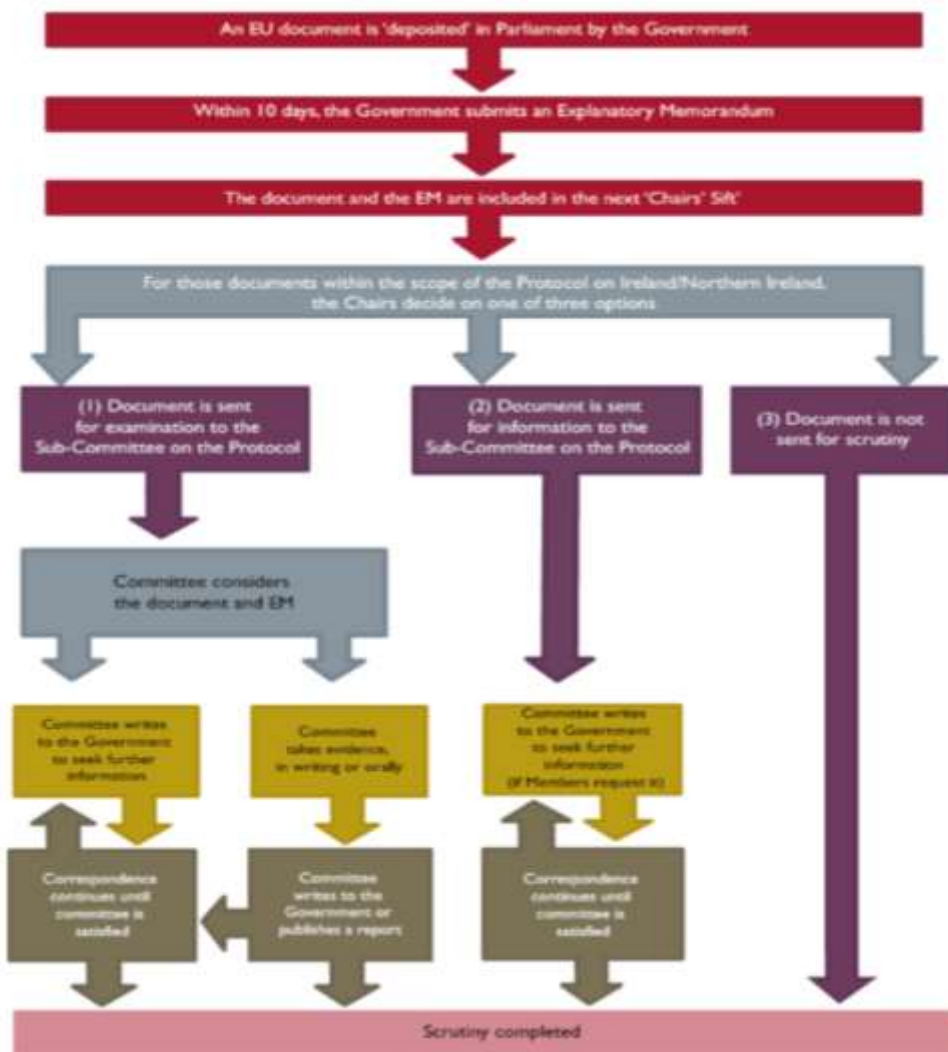


Figure 3. The scrutiny of EU legislation applying under the Protocol (Source: [House of Lords sub-committee on the Protocol](#))

How is the Protocol fitting in with Common Frameworks and are there any particular difficulties here?

Some of the EU laws applying in Northern Ireland fall within areas that are covered by common frameworks. In some cases the whole policy area of a framework is covered by the Protocol, meaning that NI will need to continue compliance with the relevant EU law. In other cases, at least part of the common framework has some intersection with the Protocol. Applicable EU law supersedes domestic law. This means that common frameworks can only operate in Northern Ireland if they do not

conflict with the EU law that applies in the same area through the Protocol (as listed in Annexes 1-5). This means that there are already exceptions made in common frameworks for Northern Ireland. This potentially puts into some doubt the effectiveness and logic of the common frameworks as a whole.

One point to note is that the NI Executive, unlike other devolved governments, agreed that final approval of the Common Frameworks had to be by the whole Executive. The lack of NI Executive (no First or deputy First Minister) means that this cannot happen for the outstanding provisional frameworks, which may add delay to the process.

What are the ramifications of the Brexit Freedoms bill and the replacement of the Human Rights Act in the UK for NI under the Protocol, thinking especially of devolved competence?

Article 2 of the Protocol to “no diminution of rights, safeguards and equality of opportunity” essential to the Belfast/Good Friday Agreement as a result of withdrawal from the EU. It means that the UK Government must ensure that the protections currently in place in Northern Ireland for the rights, safeguards and equality of opportunity provisions set out in the relevant chapter of the Agreement are not diminished as a result of the UK leaving the EU. The [Government stated](#):

We do not envisage any circumstances whatsoever in which any UK Government or Parliament would contemplate any regression in the rights set out in that chapter, but the commitment nonetheless provides a legally binding safeguard. It means that, in the extremely unlikely event that such a diminution occurs, the UK Government will be legally obliged to ensure that holders of the relevant rights are able to bring challenges before the domestic courts and, should their challenges be upheld, that appropriate remedies are available.

There are already concerns about the undermining of the UK Government commitment.¹ These include the Elections Act 2022, which withdraws the existing local council voting rights of EU citizens resident in Northern Ireland who arrived after the end of the transition period, unless there are reciprocal agreements by the Member State of the EU citizen. The [NI Human Rights Commission and the Equality Commission of NI have briefed that this is contrary to Article 2](#). The provisions in the Nationality and Borders Bill for Electronic Travel Authorisation across the Irish border have been [condemned](#) as possibly conflicting with Article 2. There are concerns that the repeal of the Human Rights Act 1998, and replacement with a UK Bill of Rights could breach Article 2. This includes from the [Equality Commission of NI](#) and the [Human Rights Centre in Queen’s University](#). The NI Human Rights Commission and the Equality Commission are also [concerned](#) that there is a considerable risk that repealing ‘retained EU law’ may breach Article 2. More broadly, there are concerns about the [scrutiny of UK compliance](#) with obligations under Article 2.

Human Rights organisations in NI have reacted with alarm to the [Bill of Rights](#) announced by the UK Government. The Human Rights Coalition, of almost 170 civil society organisations in NI, [stated](#):

The UK Governments proposals, if enacted, would represent a substantial weakening of rights and a violation of the Belfast/Good Friday Agreement by effectively scrapping the Human Rights Act (HRA). The proposals seek to minimise or withdraw many of the ways in which the HRA holds the Government to account either by weakening the role of courts, bypassing existing compliance with certain rights protections or removing them altogether.

¹ I gratefully acknowledge reference to the work of Prof Chris McCrudden in compiling this list.

Scottish Parliament: Constitution, Europe, External Affairs & Culture Committee
IMPLEMENTATION OF THE IRELAND / NORTHERN IRELAND PROTOCOL
Dr Lisa Claire Whitten¹, Evidence Submission, 30 June 2022

Executive Summary

This evidence, submitted to the Constitution, Europe, External Affairs and Culture Committee of the Scottish Parliament in advance of an oral evidence session on 30 June 2022, summarises the form and substance of post-Brexit Northern Ireland's 'dynamic alignment' to a selection of EU laws under the Ireland / Northern Ireland Protocol from the perspective of one year of full implementation of the Protocol. Additionally, the evidence provides an overview of the particular position of Northern Ireland in relation to Common Frameworks that arises as a consequence of its alignment with Protocol-applicable EU law and the continuation of North-South cooperation on the island of Ireland. Content presented here is intended to be descriptive of the substance legal and policy environment. The implications of this evidence in terms of political and policy developments in and for Northern Ireland as well as any potential implications for the Scottish Government and Scottish Parliament are not explicitly addressed here but are anticipated to be subject of discussion in the upcoming oral evidence session.

1. Dynamic Regulatory Alignment and the Protocol: One Year Review²

The first section of this evidence sets out a summary of the substance and implications of the 'dynamic regulatory alignment' of Northern Ireland under the Protocol from the perspective of the first full year of implementation (grace-periods notwithstanding).

1.1 Under Article 13(3) of the Protocol, EU acts listed in Annexes to the Protocol apply 'as amended or replaced' to the UK in respect of Northern Ireland. When the text of the Protocol was agreed by UK and EU negotiators as part of the UK-EU Withdrawal Agreement in October 2019, 338 EU acts were listed in the Protocol and its Annexes.

1.2 Under Article 13(4) of the Protocol, the UK and EU acting jointly in the UK-EU Joint Committee can agree to make additions or deletions to EU acts already listed in the text of the Protocol.

¹ Queen's University Belfast but this evidence is submitted in a personal capacity and should not be read to represent the views of my employer.

² Content in this section presents key points from a longer report on the first year of the 'dynamic alignment' under the Protocol written by Lisa Claire Whitten and available on the Post-Brexit Governance NI (PBGNI) website [here](#).

1.3 Between the end of the Transition Period on 1 January 2021 and the 1 January 2022 the body of EU law that applies to and in Northern Ireland under the Protocol has changed in several ways that are relevant for and apply to Northern Ireland as a consequence of the ‘dynamic alignment’ provisions of Article 13 of the Protocol; relevant changes fall into three broad categories: (i) additions to and deletions from the Annexes to the Protocol; (ii) repeal, replacement, and expiry of applicable EU law; (iii) changes to EU legislation that implements applicable EU law.

1.3.1 **Additions and Deletions**: Before the end of the UK Transition Period, in December 2020, the UK and EU [agreed](#) to add eight EU acts to Annex 2 of the Protocol. Of the eight acts added, five related to legislation that the Joint Committee decided, following review, should have been included in the original text of Annex 2.³ The three other additions were new EU acts adopted since the content of the Protocol had initially been agreed in November 2018. The Joint Committee decided that the following three acts fell within the scope of the Protocol, so added these to Annex 2.⁴ The Joint Committee also agreed to remove two EU acts listed in the same Annex which were deemed unnecessary to achieve the objectives of the Protocol.⁵

Taking these changes into account, when the Protocol entered into force on 1 January 2021 following the end of the Transition Period, 344 EU acts were listed in its Annexes.

No further additions or deletions have since been made.

1.3.2 **Repeal, Replacement and Expiry**: Of the 338 EU legal acts originally listed in the Annexes of the Protocol, 48 had been repealed as of 1 January 2022. Not all were directly replaced by a new piece of EU legislation, however. This is because several relevant changes consolidated provisions previously spread over numerous pieces of (now repealed) legislation, into one or two new, more comprehensive acts.

³ The five acts added concerned: rules for monitoring trade between the EU and third countries in drug precursors ([Council Regulation \(EC\) 111/2005](#)); use of indications or marks to identify the lot – or batch – to which food products belong ([Directive 2011/401/EU](#)); rules on the marketing of fodder plant seed ([Council Directive 66/401/EEC](#)); rules on the marketing of propagating material of ornamental plants ([Council Directive 98/56/EC](#)); and rules on the marketing of vegetable propagating and planting material other than seed ([Council Directive 2008/72/EC](#)).

⁴ The three acts added concerned: bilateral safeguard clauses and other mechanisms for the temporary withdrawal of preferences in certain EU trade agreements with third countries ([Regulation \(EU\) 2019/287](#)); measures to reduce the impact of certain plastic products on the environment ([Directive \(EU\) 2019/904](#)); and measures to control the introduction and import of cultural goods ([Regulation \(EU\) 2019/880](#)).

⁵ The two acts removed concerned CO₂ emissions standards for passenger cars ([Regulation \(EC\) 443/2009](#)) and light-duty commercial vehicles ([Regulation \(EU\) 510/2011](#)).

Of the 48 repealed acts, 18 have been replaced. In most instances, this dynamic alignment concerns changes to pieces of EU legislation that had been adopted prior to the UK's withdrawal from the EU on 31 January 2020. Of the 18 replacement acts, only three were adopted after the UK left the EU.

In terms of coverage, 23 of the repealed acts were replaced by the new EU 'Animal Health Law' Regulation ([Regulation \(EU\) 2016/429](#)) and a related, supplementary act ([Commission Delegated Regulation \(EU\) 2020/687](#)); while 7 of the repealed acts were replaced by the new EU 'Official Controls Regulation' ([Regulation \(EU\) 2017/625](#)).

Other policy areas where 'repeal and replacement' took place in the first year include: directives on medical devices; regulations on statistics; market surveillance of motor vehicles; controls on cash entering and leaving the EU single market; controls on trade in goods used in capital punishment; controls on the marketing of explosives and possession of weapons; rules on the labelling of tyres; provisions for the conservation of fisheries and marine ecosystems; controls on persistent organic pollutants; mutual recognition of goods between EU Member States; provisions for computerising the movement and surveillance of exercisable goods; and four EU acts relating to electricity markets and energy supplies.⁶

In addition to the repealed acts, two acts originally listed in the Annexes of the Protocol expired after the UK withdrew from the EU. These concerned the regulation of imports from third countries affected by the Chernobyl disaster ([Council Regulation \(EC\) 733/2008](#)) and temporary trade measures for goods originating in Ukraine ([Regulation \(EU\) 2017/1566](#)).

Taking all of these changes into account alongside those agreed by the Joint Committee in December 2020, the number of EU acts that apply in post-Brexit Northern Ireland has decreased since the Protocol entered into force. As indicated in the Table below, as of 1 January 2022, 312 EU regulations, directives and decisions applied; 26 less than when the Protocol was first agreed in October 2019.

| Annex | Area | Regulations, Directives, Decisions* | | |
|-------|-------------------|-------------------------------------|-----------|--------------|
| | | October 2019 | July 2021 | January 2022 |
| 1 | Individual Rights | 6 | 6 | 6 |
| 2 | Trade in Goods | 287 | 262 | 261 |
| 3 | VAT and Excise | 19 | 19 | 19 |

⁶ For more details including links to relevant old and new EU acts, please see the PBONI Explainer (n2).

| | | | | |
|---|---------------------------|------------|------------|------------|
| 4 | Single Electricity Market | 7 | 7 | 7 |
| 5 | State Aid | 19 | 19 | 19 |
| Total | | 338 | 313 | 312 |
| <p>EU Acts listed in the Annexes to the Protocol on Ireland/Northern Ireland</p> <p>Change during first year of Protocol’s implementation (2021) compared to when Protocol was agreed in October 2019</p> <p>* Not included are the small number of EU treaty articles referenced in the Articles of the Protocol, ‘soft law’ texts (e.g., commission communications) included in Annex 5, and two unspecific provisions noted in Annex 3 of the Protocol.</p> | | | | |

1.3.3 **Changes in Implementing Legislation:** The third category of change relates to legislation that implements the regulations, directives and decisions listed in the Annexes to the Protocol. As in the second category – repeal, replacement, and expiry – this type of change is the result of normal EU legislative processes. It also follows from Article 13(3) of the Protocol.

EU implementing legislation – including that relevant under the Protocol – is regularly adopted by either the European Commission or the European Council. Each year over [1000](#) pieces of implementing legislation are adopted; this high figure reflects the extent to which implementing legislation is used as a tool in the application of EU law and policy. It is important to note, however, that most implementing acts concern technical and specific issues, and they always remain within the scope of the original ‘parent’ act.

This is not to suggest that changes in relevant EU implementing legislation are unimportant for post-Brexit Northern Ireland; it is rather to put their significance in context. By definition, implementing legislation implements law that already applies. Changes under the Protocol arising from implementing legislation are unlikely to have much impact in terms of substantive policy, at least not often. Changes nevertheless do need to be tracked.

Tracking change, however, is not straightforward. New EU legislation is published in the [Official Journal of the European Union](#), but determining which pieces of EU law apply to Northern Ireland, and which do not, requires detailed study and timely cross-referencing.

Currently, no comprehensive and publicly accessible register of all EU law applicable under the Protocol exists. The European Commission has committed to developing a website dedicated to providing a “clear and comprehensive” record of such legislation as part of its October 2022 [package](#)

[of measures](#) for the implementation of the Protocol. At the time of submission of this evidence, that website has not been launched.

One way of tracking the amount of relevant change is by looking at ‘consolidated text’ versions of applicable acts. When a substantial amount of implementing legislation has been made under an EU Directive, Regulation or Decision, the original legal text – the parent act – is often ‘recast’ as a ‘consolidated text’ to incorporate changes since the parent act was adopted.

While not providing a comprehensive means of tracking change, this process of ‘recasting’ can be taken as an indicator of the extent of changes made to the application of a given EU act via implementing legislation. Since the UK left the EU on 31 January 2020, almost a quarter of the EU acts that apply in Northern Ireland under the Protocol have been recast as consolidated texts. Of those 90 recast EU acts 62 were recast during 2021.⁷

1.4 What is clear from the first year of ‘dynamic alignment’ of Northern Ireland under the Protocol is that its alignment to a specific selection of the EU *acquis* while remaining a full and integral part of the post-Brexit UK, creates extensive legislative complexity. Importantly, the majority of the most substantive ‘amendments and replacements’ to Protocol-applicable EU law in the first year of its full implementation enact changes agreed while the UK was still part of the EU; the possibility of significant intra-UK divergence as a consequence of post-Brexit NI dynamic alignment has, therefore, not yet begun to take effect. To manage this in the longer-term and ensure that policy in post-Brexit NI is both clear and coherent more robust mechanisms for tracking relevant EU legislative change and its implications for NI need to be developed, and fast.

⁷ For a full list see PBGNI Explainer (n2).

2. Common Frameworks and the Protocol: An Overview⁸

The second section of this evidence provides an overview of the relationship between the Common Frameworks and the Protocol; while key issues are highlighted, it should not be taken as an exhaustive account.

2.1 By way of context, it is worth noting that legislation that applies in post-Brexit Northern Ireland includes that which comes through (i) Stormont on devolved areas, (ii) Westminster for reserved and excepted areas, (iii) retained EU law (through the EU Withdrawal Act 2018), and (iv) directly applicable EU legislation (through the Protocol given direct effect by s7A of the 2018 Act as amended by s5 the EU Withdrawal Agreement Act 2020).

2.2 Notwithstanding the UK government recent introduction of draft legislation – the [Northern Ireland Protocol Bill](#) – which would, if enacted, end the supremacy of Protocol-applicable EU law, at present, this supersedes domestic law. This means that Common Frameworks will apply in Northern Ireland only, and to the extent that, they do not conflict with EU law that applies under the Protocol. This was reflected in the original definition of a Common Framework set out in the [Joint Ministerial Committee \(EU Negotiations\)](#) of 16 October 2017 that described a CF as setting out “a common UK, or GB, approach” (*added*).

2.3 As such, the dynamic alignment of Northern Ireland to roughly 300 EU law instruments under the Protocol means that UK-EU divergence over time will, by default, result in GB-NI divergence. Some of Protocol-applicable EU law instruments fall within areas covered by a Common Framework, in some cases the whole policy area of a CF is covered by the Protocol while in other cases only part of the CF has some intersection with Protocol-applicable EU law.

2.4 Alongside the relationship between CFs and Protocol-applicable EU law, some also have implications for areas of North-South cooperation on the island of Ireland, which are covered, in principle, by Article 11 of the Protocol and which are continuing to develop independent from the Protocol architecture as they did pre-Brexit, albeit in a much changed legal and political context.

⁸ Content in this section partly draws on two evidence submissions made to the House of Lords Common Frameworks Scrutiny Committee together with QUB colleagues Prof Katy Hayward, Dr Viviane Gravey and Dr Milena Komorova, both are available [here](#).

2.5 Focusing on ‘Category Two’ CFs for which non-legislative frameworks are being developed, the table below summarises the relationship between CFs, Protocol-applicable EU law and areas of N-S cooperation.⁹

| Common Framework | Protocol | N-S coop | Common Framework | Protocol | N-S coop | Common Framework | Protocol | N-S coop |
|---|------------|------------|--|------------|------------|--|----------|----------|
| Company Law | No | | Agriculture (Zootech) | Yes | Indirectly | Resources & Waste | Yes | Yes |
| Late Payment | No | | Animal Health & Welfare | Yes | Yes | Commercial Transport & Operator Licensing | No | Yes |
| Mutual Recognition Professional Qualifications | No | Yes | Air Quality | No | Yes | Rail Technical Standards | Yes | Yes |
| Radioactive Substances | Yes | Yes | Best Available Techniques | Indirectly | Indirectly | Driver Licensing | No | Yes |
| Services Directive | Indirectly | Indirectly | Chemicals & Pesticides | Yes | Yes | Roads – Motor Insurance | No | Yes |
| Specified Quantities and Packaged Goods Legislation | Yes | Indirectly | Food Compositional Standards & Labelling | Yes | Yes | Nutrition Labelling, Composition & Standards | Yes | Yes |
| Public Procurement | No | Yes | Ozone Depleting Substances | Yes | | Blood Safety & Quality | Yes | |
| Agriculture (Fertilisers) | Yes | Indirectly | Plant Health | Yes | Yes | Organs, Tissues and Cells | Yes | Yes |
| Agriculture (Organic Production) | Yes | Indirectly | Plant Varieties & Seeds | Yes | Yes | Public Health Protection & Health Security | No | Yes |
| Hazardous Substances | Yes | Yes | Food and Feed Safety & Hygiene Law | Yes | Yes | | | |

2.6 As indicated above, of the 29 category 2 CFs, 19 cross-cut with areas of EU law that still apply to NI under the Protocol and a different 19 cross-cut with pre-existing areas of N-S cooperation on the island of Ireland.

2.7 In the three CF policy areas where competence is currently disputed between the UK government and devolved governments, relevant EU laws apply to NI under the Protocol in relation to two areas – Food and Drink Geographical Indicators and State Aid – and, while the third area – data-sharing (Eurodac) – is not touched on by the Protocol, data-sharing between Ireland and Northern Ireland is a key facilitator of N-S cooperation across a range of areas.

2.8 Where CFs cross-cut in NI either with obligations under the Protocol or in relation to N-S cooperation, this does not *necessarily* prevent the operation of the relevant CF, it does however mean that the particular position of NI will need to be accounted for and accommodated in the outworking of the relevant CF.

⁹ This analysis is based on cross-reading of: EU law instruments listed in the Annexes of the Protocol (relevant links available [here](#)); EU law instruments identified by UK and EU negotiators as part of the ‘Joint Mapping Exercise’ carried out in 2017 to determine the extent to which North-South cooperation on the island of Ireland relied upon EU law and policy (see Scoping Document available [here](#)); and from the UK government ‘Frameworks Analysis 2021’ document (available [here](#)).

**Briefing note to The Scottish Parliament's Constitution, Europe, External Affairs
and Culture (CEEAC) Committee
30 June 2022**

**Submission from Declan Billington (MBE, BSSc (Hons), FCA, FLoD, ARAgS, Prof
of Practice)**

1. Relevant Background

- 1.1. I am CEO of John Thompson and Sons Limited – Northern Ireland's largest animal feed company.
- 1.2. I am former Chair and remain on the Executive of the following Northern Ireland Trade bodies.
 - CBI Northern Ireland
 - Northern Ireland Food and Drink Association
 - Northern Ireland Grain Trade Association
- 1.3. I am the current Chair of the Northern Ireland Poultry Industry Federation and I chair the CBI NI's Energy Working Group. I also represent the Northern Ireland Poultry Industry Federation on the Northern Ireland Business Brexit Working Group, an alliance of trade bodies in NI that engage with both the UK and EU on the Northern Ireland Protocol.
- 1.4. I was a member of DEXU's Alternative Arrangements Expert Working Group in 2020.

2. Context

3. This briefing note is produced from the perspective of Agri-food businesses and therefore focuses on the practical experiences of the implementation of the Protocol and on what has been learned from interaction with UK Government on the regulatory frameworks that are applied.

4. Dynamic alignment

- 4.1. We are still in the early days of the operation of the Protocol and of the mechanisms employed for dynamic alignment. However early observations indicate issues around timeliness of sharing of information on proposed legislative changes issued through the Joint Consultative Working Group "the JCWG" (one of the Joint Committees established under the Protocol) and of subsequent communication to affected businesses. I understand at the beginning there was a backlog of EU changes to be addressed but current experience has indicated poor communication is an early

feature of the roll out of dynamic alignment. From observation it is unclear if this is as a result of the length of notice given by the EU to the UK or as a result of failure on the UK to rapidly disseminate within the relevant UK Departments (who are the respective Competent Authorities in respect of Northern Ireland) the changes notified by the EU and in turn for those relevant Departments to communicate the changes to Business.

4.2. In reality it is only by working through early post Brexit changes and their impacts are we able to refine the processes by which such changes are managed, communicated and implemented. By way of example in one early case study I noted the following:

- Short notice communication to the industry on changes and effective date for compliance. I was aware of changes in Ireland before the Business Community were made aware the same changes were applicable in Northern Ireland.
- Misalignment between how the areas open to interpretation of the legislative change were initially implemented between Ireland and Northern Ireland. (Now rectified)
- Disagreement between Industry and UKG on the applicability of the change on goods destined for the GB marketplace (discussions parked as I await the detail underpinning the Northern Ireland Protocol Bill).

4.3. More generally the business community also see issues of interpretation of EU law coming to the fore: -

- On understanding the application of EU Customs rules on the administrative processes used on for example import supplementary declarations – where UK and EU have given us two different views on what is required.
- On UK interpretation of application of EU rules and its interaction with UK Legislation.

The Agri food sector feels there is a need for a mechanism that involves business which allows for rapid determination of differences in interpretation as between UK and EU and as between Business and UK Departments seeking to interpret the application of EU law in Northern Ireland. In theory this is the role of the Joint Consultative Working Group (JCWG) set up under the Protocol, but in practice without the presence of business, who are at the sharp end of practical implementation, practical issues around clarification are not being anticipated or addressed in a timely manner. Nor is there a mechanism I am aware of for the Business community to refer concerns on interpretation to the JCWG.

4.4. I also note confusion on the UK side as to who is the Competent Authority in respect of implementing EU Regulations, with, in Agri-food, some falling to DEFRA and some falling to their devolved equivalent – DAERA (Department for Agriculture, Environment and Rural Affairs). Much of the foregoing are hopefully teething issues but it makes for a confusing regulatory environment within which business is expected to operate. The industry has asked for a map of the regulations attached to the

Protocol to be cross referenced to the relevant Competent Authority in order to aid navigation of the regulatory framework.

5. Scrutiny of legislation that applies under the Protocol

- 5.1. The Business Community does not have visibility over the operation and performance of the Committees created under the Protocol and in particular of the JCWG, (the Committee established under the Protocol to review changes in EU legislation that impact on the operation of the Protocol and oversee their adoption if appropriate. It is worth noting that the Committee is made up of representatives of the UK Government and of the EU, but Northern Ireland officials are not included as part of the UK's delegation. I understand however that there may be observer status (to some degree) for Northern Ireland Officials.
- 5.2. Business is concerned at the lack of its ability to feed into the Committee practical concerns around implementation and indeed feels disadvantaged in that Northern Ireland, unlike other non-member states subject to EU law, is not consulted on prospective changes in EU legislation which will impact upon it. I understand there are EU proposals around stakeholder engagement for Northern Ireland Society and it remains to be seen if such issues can be addressed through this proposed mechanism.

6. Interaction of Protocol with UK Common Frameworks

- 6.1. It is still early days in terms of the operation of both the Protocol, its interactions with the UK Common Frameworks and more recently on the possible implications of the proposed Northern Ireland Protocol Bill. Initial observations and concerns are set out below:
- 6.2. UK Divergence from EU
 - Within the Common Frameworks Ministers of devolved regions can raise objections to proposed UK changes, including divergence with EU, however if the UK risk assessment determines no risk, then, whilst devolved regions can in certain circumstances legislate in their own jurisdiction, they cannot bar goods conforming to a different standard circulating in the rest of GB from being sold in their devolved region. As most divergences in Agri-food are likely to be around driving down cost through application of technology (gene editing for example) it is likely that businesses operating in regions of the UK seeking to persevere alignment with EU may find themselves less competitive selling into the GB marketplace.

- Reflecting on the UK's approach to risk assessments I understand the UK is moving to a risk-based approach for assessing changes to existing standards whereas the EU will continue to operate under the "precautionary principle." It is under the risk-based approach that such things as growth promoters are used in US livestock. Whilst I do not anticipate the UK moving quickly to approve growth promoters, over time and with the roll out of international trade agreements with countries that do, it is hard to see how the UK risk-based approach can arrive at a different conclusion than that of the US. This in turn may likely impact on UK food exports to the EU as a result of the heightened risk of, (by EU standards), non-conforming goods circulating in GB or the UK single market finding their way into the export channel to the EU.

6.3. EU Divergence from the UK.

- This is perhaps the biggest challenge, again a region of the UK may wish to follow the divergence but cannot object to goods of a different standard sold in other parts the UK single market from being traded into its territory. Thus, Europe will remain concerned around the dual standards that will exist in the marketplace from which goods exported to Europe are sourced.

6.4. The implications of the above are that whilst a region of the UK may wish to continue to align with EU practice, the fact that goods that have diverged on EU standards are freely circulating within a devolved regions Authority may place greater checks and burdens on that region's exports to the EU regardless of the standards it is adhering to. Further, working to a different and perhaps more expensive standards for production in that devolved region may negatively impact on those businesses competitive position within the UK internal market unless the standards it works to commands a price premium.

7. Ramifications of the Brexit Freedoms Bill

7.1. Whilst the direct intention of the Brexit freedoms Bill is to reduce regulatory burden for business (quoted at £1bn pa) there are likely to be negative implications for those businesses exporting to the EU:

- Simplifications or easements on the regulatory framework of inspection / certification may undermine the assurances those systems provide for goods sold into the export markets of Europe and whilst one could argue those businesses could continue to operate to the EU standards (the dual regulatory approach), if their supply chains do not, those businesses will find it challenging to give the level of assurance needed for certification that processed goods meet EU requirements.

8. Conclusion

8.1. We are still in the early stages of bedding down our new regulatory framework and a number of the challenges currently faced are likely to be addressed over time as we work our way through real life examples and take learnings from them. However, in the years to come divergence at a UK level with Europe is likely to place additional burdens on UK trade with the EU regardless of the desires of individual devolved regions to minimise those divergences.