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Chamber of  
Commerce

NORTHERN  
IRELAND

# NORTHERN IRELAND PROTOCOL

ISLE OF MAN

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IRELAND

Irish Sea

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## Background

Since the Protocol came into effect in January 2021 (at the end of the Brexit transition period on 31 December 2020) some companies in GB (Great Britain) and NI (Northern Ireland) have complained about the quantity of additional paperwork and checks required, particularly on movements of animal origin products, small customs packets, and medicinal products from GB to NI.

The Protocol applies specified EU (European Union) legislation to trade in goods – the only part of the UK where that remains. In practice, this means around 300 pieces of EU legislation apply – covering food checks, customs, VAT, state aid, and subsidies. Enforcing these rules in full would require checks on goods arriving in NI from GB – described by some as Irish Sea border checks. On the other hand, the Protocol provides NI with friction-free access to the GB market for its goods moving from West to East across the Irish Sea, and for friction-free access to the EU Single Market for trade in goods but not services.

New EU legislation can automatically apply in NI where this updates pre-existing EU rules but requires the consent of the UK Government to apply in NI if it is a new set of EU rules. The Assembly is due to hold a vote in 2024 on continued application of the key parts of the Protocol. If consent is given, but not cross-community in NI, this would be repeated in 2028, and every four years. If cross-community consent is given, the next vote would be 2032. Politicians representing the Unionist community in NI have called for the replacement of the Protocol. A majority of members of the Assembly elected in May do not agree with this position.

Various easements of a unilateral and bilateral nature have applied since early 2021, so the full range of checks implicit from the Protocol have not been fully applied. The UK Government initially sought changes to the way the Protocol was being implemented but has now called for its replacement, either by negotiation with the EU, or reserving the right to unilaterally over-write the Protocol to remove Irish sea border checks.

Within NI, a large majority of SMEs the NI Chambers surveyed are not experiencing great problems with the Protocol – only 8% of SMEs specified deep concerns. Furthermore, there has been a 64% increase in NI-ROI trade as reordering of supply chains has taken place since early 2021.

## Negotiations between the UK Government and European Commission so far...

In mid-2021, the UK Government Cabinet Office produced a Command Paper summarising the list of asks on SPS, VAT, medicines, customs treatment of small packages, and state aid. Discussions between Ministers and the European Commission began on these issues.

In October 2021, the European Commission produced new proposals via 4 “non-papers”. The current easements applied by the UK Government were then made open-ended, and the European Commission noted these. In the run up and period beyond the Northern Ireland Assembly elections in May 2022, relations became difficult between both sides.

In June 2022, the UK Government published a policy document and primary legislation, specifying that if it cannot achieve its key outcomes on replacement of the Protocol and no checks or controls on goods moving from GB to NI, then it would be prepared to pass laws unilaterally to over-write the Protocol, to disapply its key legal effects on trade in goods, and replace it with UK legislation and rules instead. The UK Government says these steps would provide certainty for business.

## What does the Bill contain?

The Northern Ireland Protocol Bill switches off key areas of the Protocol affecting trade in goods, VAT, state aid, and customs and provides Ministers with powers to create new rules in these areas. It would permit Ministers to make the movement of goods between GB and NI feel like goods movements within GB, i.e., with no checks or associated paperwork.

It closes off the pipeline whereby EU legislation which amended existing legislation given effect to by the Protocol automatically takes effect in NI. It removes the jurisdiction of the European Court of Justice from most of the functioning of the Protocol. The EU considers the legislation to constitute a breach of the treaties and thus contrary to those and international law. The UK Government is justifying the measures on the grounds of the international law doctrine of necessity.

Ministers have yet to decide when the Bill will have its Second Reading debate in the House of Commons. It is possible that the Bill could clear the Commons by the summer recess towards the end of July 2022. It would then move to the House of Lords where it may face outright challenge or months of further debate and amendments. The Bill could take the best part of a year to clear both Chambers of the UK Parliament. If the Bill were rejected outright in the Lords, it could delay the UK Government's efforts by a year. Although the European Commission is taking legal action, it is not seeking to impose tariffs on UK exports for now and will not unless or until the Bill becomes law.

## What is in the UK Government's policy paper on solving the compliance issues which have arisen?

The fundamental difference now is that the UK Government believes that without negotiated replacement of the Protocol by another agreement (minus the Irish Sea Border and application of EU law in NI) unilateral measures are now necessary. The European Commission believes that flexibility within the current negotiations, existing agreement and EU rulebook can develop negotiated solutions which work for both sides.

Alongside the Bill, the FCDO (Foreign, Commonwealth and Development Office) published a policy paper outlining the UK Government's proposed solutions:

- Establish a green channel at ports or border entry locations in NI whereby goods through trusted trader schemes, destined only for use in NI, can go through with reduced regulatory paperwork or checks, including for SPS (Sanitary and Phytosanitary). Small individual packages would not require customs declarations. Would require the introduction of a purpose-built IT system to deliver on this. A red lane with paperwork and checks would be required for goods whose ultimate destination is ROI (Republic of Ireland) or the rest of the EU Single Market.
- Set up a dual regulatory standards system for goods – a form of mutual recognition for traded goods. Would mean goods could be made or marketed either to EU standards or UK standards, and for goods requiring markings, these could have either the UKCA mark, CE mark, or both (for a NI-made good to be sold in either market).
- Allow UK Government VAT and subsidy control policies to apply in NI.
- Remove the role of the European Court of Justice in dispute settlement in relation to NI.

“Green lanes” have been discussed as potential solutions for movement of agri-food products between GB and NI for some time. The UK solution is to remove customs declarations completely as well as requirements for most SPS and other order paperwork for goods moving only from GB to NI.

The EU’s preferred solution is to examine flexibilities within current EU regulatory frameworks or make very limited amendments to these.

The dual standards system is more problematic for business, particularly in NI. It would require either separate production lines as regulations diverge over time between the UK and EU, or dual conformity assessments costs and markings. Either way, it would make NI goods uncompetitive in terms of trade with the EU Single Market. Furthermore, the UKNI mark under the Protocol would be dispensed with. It would also create anomalies such as a CE marked good from NI being freely allowed to be placed on the market in the UK internal market, but a CE marked good from Asia not allowed to be placed on the UK market from January 2023.

## What has been the EU’s response?

The European Commission has outlined its position on the UK actions re legal and dispute resolution processes within the Withdrawal Agreement and the TCA (Trade & Cooperation Agreement). It has also published two new position papers which further clarify its preferred solutions on customs and SPS on GB-NI goods movements:

*Customs* – create an expanded trusted trader system requiring less than 30 pieces of data together

with other customs simplifications.

*SPS* – 80% reduction in SPS checks. One form for an entire truckload of goods.

## How does this affect UK-EU trade?

There are linkages between the two. Either side can use the dispute resolution processes either within the Withdrawal Agreement or the TCA if issues of non-performance of obligations or over obligations are being performed arise. The European Commission had raised then paused an action before the European Court of Justice on the unilateral easements applied by the UK Government. Those proceedings will now re-start. Additional proceedings will now be brought by the European Commission on claimed lack of access to UK customs databases and information. If these cases found against the UK, it could face a fine for any non-performance or lack of performance of obligations under the Protocol.

## Is there a risk of tariffs on UK exports to the EU?

For now, the European Commission is proceeding down the dispute resolution process and litigation routes. Should the Protocol Bill become law, it could use provisions within the treaties to apply safeguard measures (tariffs) on specific UK exports to the EU. These could be targeted at particular parts of the UK economy or sectoral products. Obvious areas would include the automotive, food and drink sectors. Previous EU sanctions against the US in a dispute over steel tariffs included 25% additional duties on Florida orange juice, motorbikes, and bourbon whiskey, and 50% additional duties on footwear and some clothing items. The UK Government through Minister Jacob Rees-Mogg has said it would not respond in kind to such measures.

## What is are British Chambers doing to raise business views with both sides?

Engaging frequently with both sides. Spoke at the EU Embassy in June 2022 and have frequent EU level and member state-level discussions with (including the Irish Embassy) teams based in London. Engaging with FCDO political advisers and other UK Government officials. Keen to hold further policy and technical level discussions. Colleagues at Northern Ireland Chamber of Commerce and Industry are also engaging with both sides and are key members of the NI Business Brexit Group. Northern Ireland Chamber of Commerce and Industry issued comments on the Bill in June 2022. BCC line is in lockstep with this - best solution is a negotiated one which provides business with certainty and good environment for inward investment and growth in NI. Best solution for businesses across the UK. Strongly need to avoid circumstances where dispute drags on or escalates towards tariffs on UK exports, or a fully blown trade war.

### Get In touch:

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