

The Revised Protocol on Ireland/Northern Ireland: Summary of Key Points

Why there is a Protocol on Ireland/N.Ireland in the Withdrawal Agreement

- The [Joint UK-EU Report](#) of 8 December 2017 set down the UK and EU's commitments to (i) avoiding a hard border on the island of Ireland, (ii) protecting north/south cooperation, and (iii) upholding the Good Friday (Belfast) Agreement in all its parts.
- The [Protocol on Ireland/Northern Ireland in the Withdrawal Agreement](#) is intended to ratchet these principles into legally binding text, ensuring that they will be protected regardless of the final nature of the UK-EU relationship.
- The first version of the Protocol ([14 November 2018](#)) contained the 'backstop'. This would have avoided making the Irish border be a customs border by having all of the UK in a single customs territory with the EU plus with NI *de facto* part of the EU's single market (SM) for goods. In a White Paper (9 January 2019), the UK government committed to align with those same SM rules, in order to avoid east-west barriers to trade. The backstop was expected to be replaced, in part or in full, by the future terms of the UK-EU relationship.
- The version of the withdrawal agreement negotiated by Johnson's government ([17 October 2019](#)) has changed significantly with respect to (i) the closeness of the future UK-EU relationship envisaged and (ii) the uniqueness of the arrangements to apply in NI.

The future relationship between the UK and EU

- The revised [Political Declaration on the Future UK-EU Relationship](#) points the direction of travel being to a Free Trade Agreement, i.e. looser ties, with greater scope for divergence.
- This is made compatible with the commitments of the Joint Report by having *specific arrangements for NI* that are different to the rest of the UK, i.e. the Irish border remains open through NI alignment to EU rules on customs and goods, whilst Great Britain is free to diverge from those rules. This has ramifications for movement of goods within the UK.

The revised Preamble to the Protocol

- The preamble is *different in three main ways* to that of the previous version.
- (i) This is assumed to be a permanent arrangement.
 - There is no mention of an intention to replace the Protocol in future.
 - This is confirmed by the fact that the relevant part of the old Article 1 (i.e. that the Protocol provisions are only intended to apply temporarily) has been removed.
- (ii) Freedom for the UK to have a distant relationship with the EU is made possible by ensuring that the ambitions of the Joint Report are met via distinct arrangements for NI.
 - There is no expression of a common UK-EU objective of a close future relationship.
- (iii) The *transition period* will end on 31 December 2020 (not extended despite fact it will start 10 months later than originally envisaged). This allows the bare minimum of time for decision-making and scrutiny of the arrangements, inc. rules of procedure for institutions.
 - The transition period may still be extended by mutual consent for up to 2 years (as per Withdrawal Agmt) but reference to this possibility has been removed from the Protocol.

The Northern Ireland-specific arrangements

- *Much of the Protocol remains unchanged*, e.g. no diminution of rights, safeguards and equality of opportunity as set out in [B/GFA](#); conditions for north/south cooperation to be maintained; common travel area unaffected; safeguards; protection of financial interests.
- *Articles 5-10 are new*. They cover customs, movement of goods, VAT, UK internal market, technical regulations, and the single electricity market. NI will be able to opt out these articles following a vote by NI MLAs. The rest of the Protocol would continue to apply.

- *Customs*: NI is part of the customs territory of the UK, so it will be incorporated into future UK trade agreements. Yet the EU's Union Customs Code will apply in NI and not in GB.
- *VAT*: NI applies the EU's VAT rules, which will not apply in GB.
- *Single Market for Goods*: NI to follow the EU's rules and regulations which affect trade in goods, including product regulations, environmental standards, sanitary and phytosanitary standards, and State Aid. These will not automatically apply in GB.
- *Single Electricity Market*: NI to follow EU regulations governing wholesale elec. markets.
- The institutions for governing the Protocol are the UK-EU Joint Committee (high level, overseeing the whole Withdrawal Agreement); the Specialised Committee on the Protocol on NI/Ireland (officials); and a Joint Consultative Working Group – a new type of body.

Potential controls on movement of goods between GB and NI

- *NI to GB declarations*: NI will apply the Union Customs Code. Article 271 of this means that exit summary declarations are compulsory in absence of customs declarations, i.e. all goods moving from NI to GB will have to make these declarations.
- *Products of animal origin* moving from GB into NI will have to be subject to documentary and physical checks, even if there's not a tariff issue.
- *GB to NI declarations*: It is likely that all commercial goods GB-NI will need to be subject to customs declarations, especially if the future UK-EU relationship is a simple FTA.
- *GB to NI tariffs*: There could be tariffs on GB-NI goods which are deemed to be at risk of entering the single market. There will be a tariff rebate if the goods remain in NI.

What is still to be determined (by the UK-EU Joint Committee)

- Which goods will be 'at risk' of leaking into the EU, and thus subject to tariffs GB-NI.
- The conditions under which fisheries and aquaculture will be exempted from duties.
- Practical arrangements for VAT in NI (although the rate will still be set in the UK).
- The watching brief of the UK-EU Joint Committee will include:
 - Keeping under review a paragraph re: the UK internal market, which is about the UK and EU using best endeavours to facilitate trade within the UK.
 - Keeping under constant review the conditions necessary for north-south co-operation, including a wide range of areas as identified by the UK-EU [mapping exercise](#).

Democratic consent of NI

- There is a *new process proposed* for 'affording or withholding consent' from NI for the application of Protocol Arts 5-10. According to the UK's [Unilateral Declaration](#) on consent, the objective is 'to achieve agreement that is as broad as possible in NI'.
- The intention that agreement will be found via 'a thorough process of public consultation', inc. cross-community and cross-sectoral, led by the NI Executive and supported by the UK Government. B/GFA institutions will be involved in consultation.
- The MLAs will be voting 4 years after the end of the transition period on the motion put forward that Arts 5-10 will continue to apply in NI (i.e. earliest Nov 2024; latest Dec 2026).
- If there is no sitting Assembly, the UK Government will convene the MLAs for such a vote. Those present and voting will be considered, i.e. not possible to thwart by boycott.
- If there is a cross-community vote in favour, the next vote will be in 8 years. If it is a simple majority vote in favour, the vote will be in 4 years, after an independent review.
- *If they vote to opt-out*, Arts 5-10 will no longer apply after 2 years. The choice is framed as a binary one, i.e. to opt-out of EU rules in order to follow UK rules on customs, goods etc.
- Then Joint Committee would make recommendations as to measures necessary to avoid a hard border. What these are would depend on nature of UK-EU relationship at that point.