

# Queen's Policy Engagement: Post-Brexit Clinic

29 June 2022 at 12:30

Organised in co-operation with the ESRC-funded project on *Governance for 'a place between': the multilevel dynamics of implementing the Protocol on Ireland/Northern Ireland*.



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[qub.ac.uk/sites/post-brexit-governance-ni](https://qub.ac.uk/sites/post-brexit-governance-ni) @PostBrexitGovNI



What's been happening with the Protocol?						
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- 17 May** Liz Truss announcement on proposed UK legislation allowing for unilateral UK disapplication of the parts of the Protocol
- 15 June** UK government publishes its *Northern Ireland Protocol bill*; legal advice and justification  
European Commission issues statement noting 'significant concern'; 52/90 MLAs sign letter to Prime Minister stating their opposition to the proposed legislation
- 17 June** European Commission launches infringement proceedings against the UK for non-compliance with "significant parts" the Protocol.  
European Commission publishes position papers on customs and SPS updating its non-paper proposals from October 2022
- 28 June** Northern Ireland Protocol bill receives its second reading and is supported by 295 v 221

## Testing the Temperature 5

What do voters in Northern Ireland think about the Protocol on Ireland/Northern Ireland?



## A BILL

TO

Make provision about the effect in domestic law of the Protocol on Ireland/ Northern Ireland in the EU withdrawal agreement, about other domestic law in subject areas dealt with by the Protocol and for connected purposes.

**B**E IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

# What's been happening with the Protocol?

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**17 June**

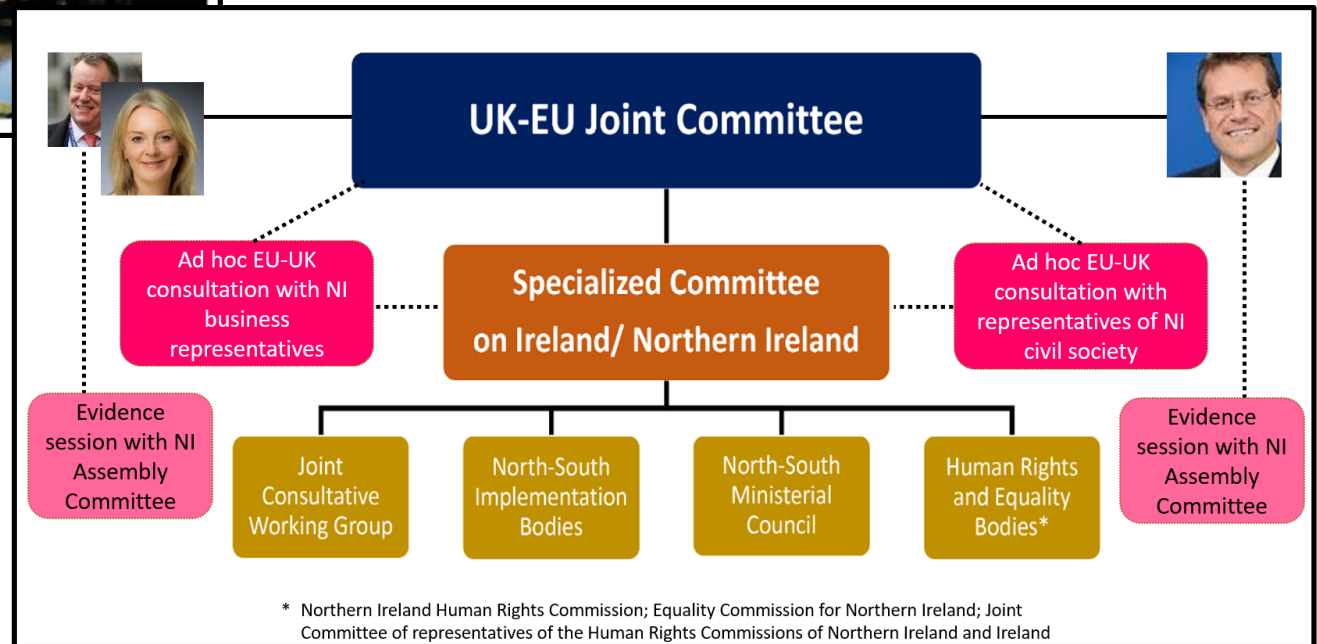
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# What's *not* been happening with the Protocol?



# Getting the UK and EU in the Same Room

**Truss:**

“Ideally, we would fix these problems through negotiation, but the EU has ruled out changing the text of the protocol... So we need the EU to change their mandate and accept the need to **change the protocol** itself, as was always provided for. **We are willing to enter those negotiations** and ready to implement the results through this legislation.”

(26 June 2022)

<https://www.gov.uk/government/speeches/we-have-a-duty-to-fix-the-problems-of-the-northern-ireland-protocol-article-by-liz-truss>

**Šefčovič:**

“Renegotiating the Protocol is unrealistic... Any renegotiation would simply bring further legal uncertainty for people and businesses in Northern Ireland... the European Union **will not renegotiate the Protocol**... With political will and commitment, the full potential of the **flexibilities** put forward [in October] **should be explored** – and **the European Commission remains keen to do that with the UK government as soon as possible**. Only joint solutions would create the legal certainty that people and businesses in Northern Ireland deserve.”

(13 June 2022)

[https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT\\_22\\_3698](https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT_22_3698)

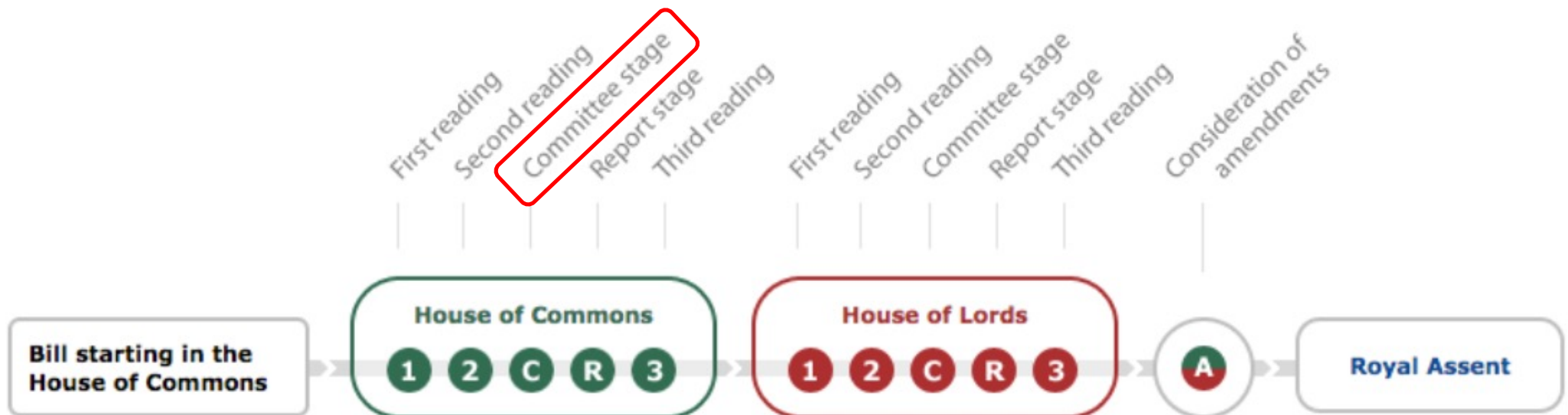
# What Next... The Northern Ireland Protocol Bill

A  
**B I L L**

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# Testing the Temperature V

## LucidTalk/QUB poll

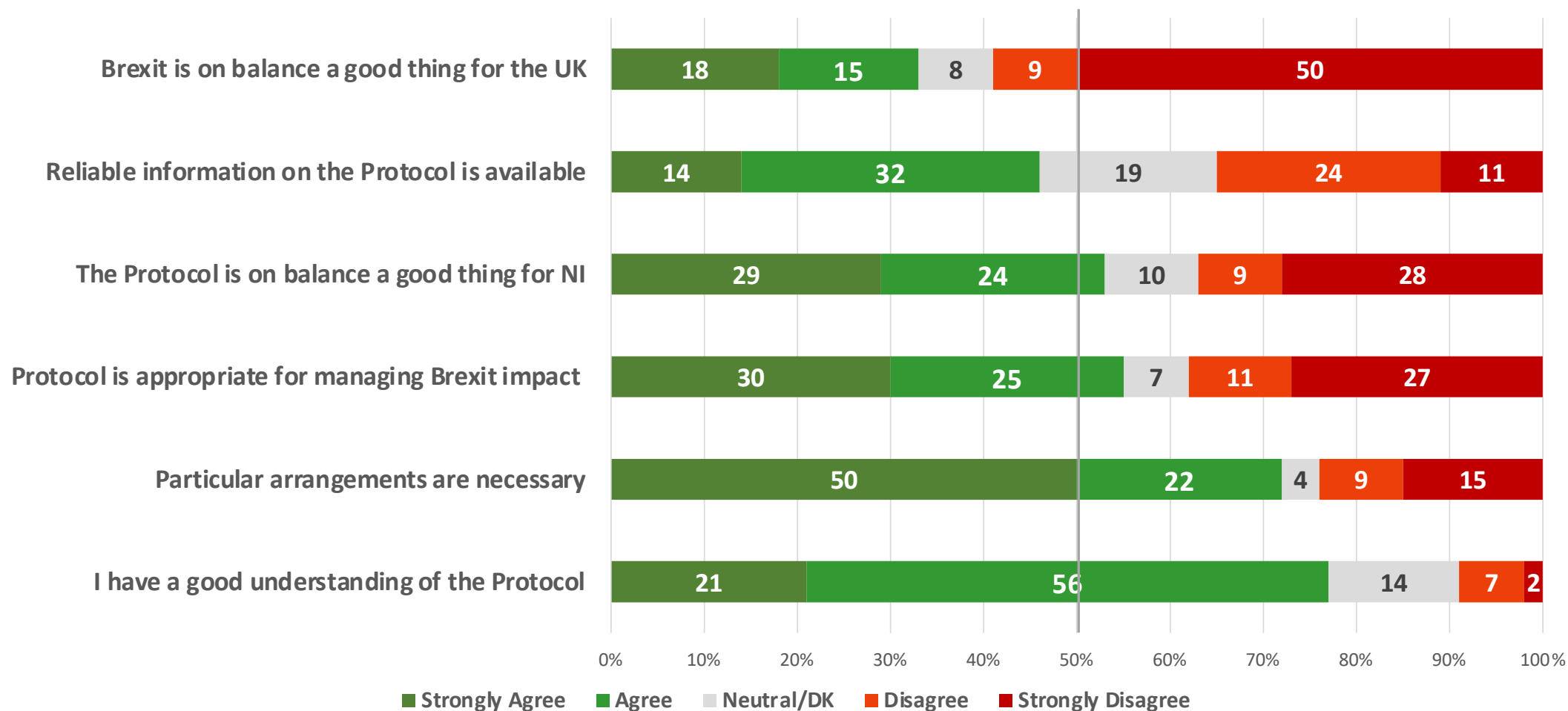
### 3-6 June 2022



**1,497 weighted sample**

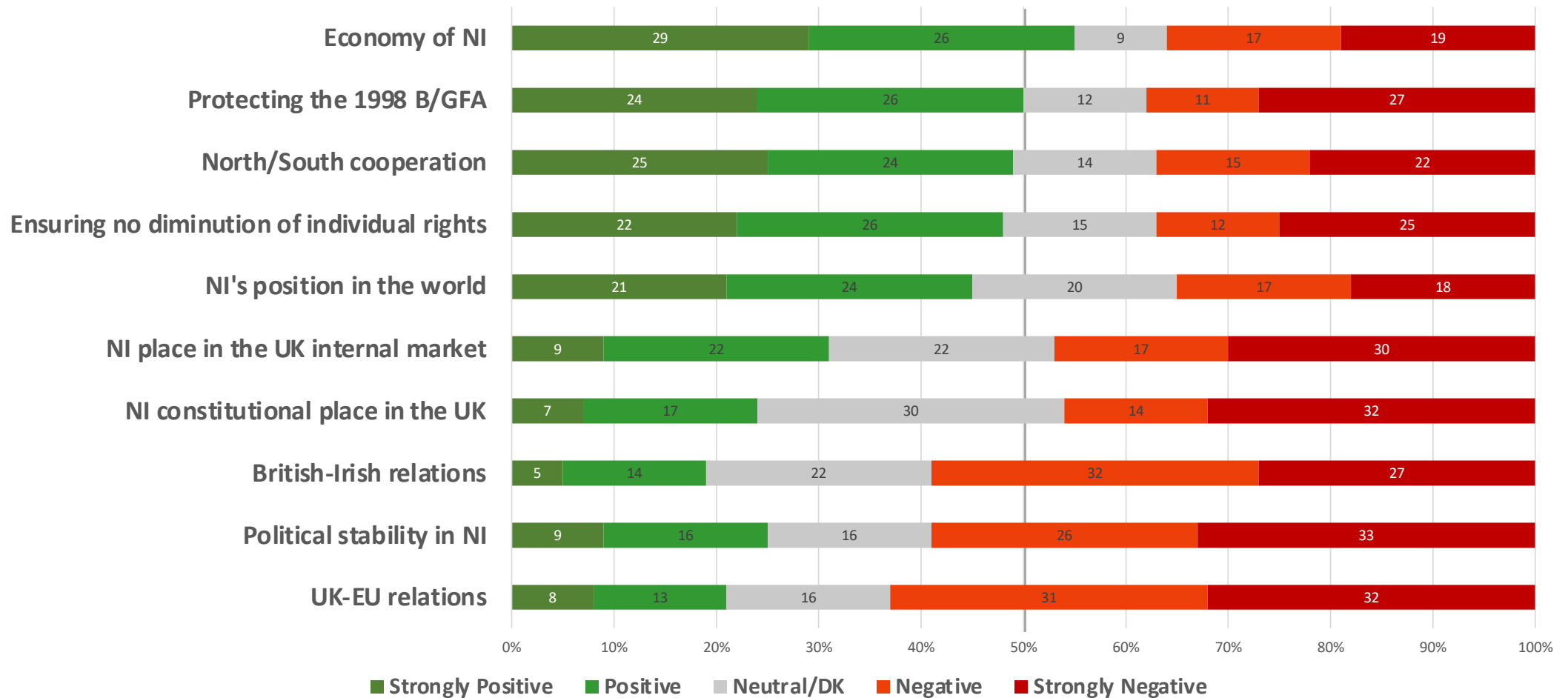
Margin of error +/- 2.3%

# Opinion of the Protocol

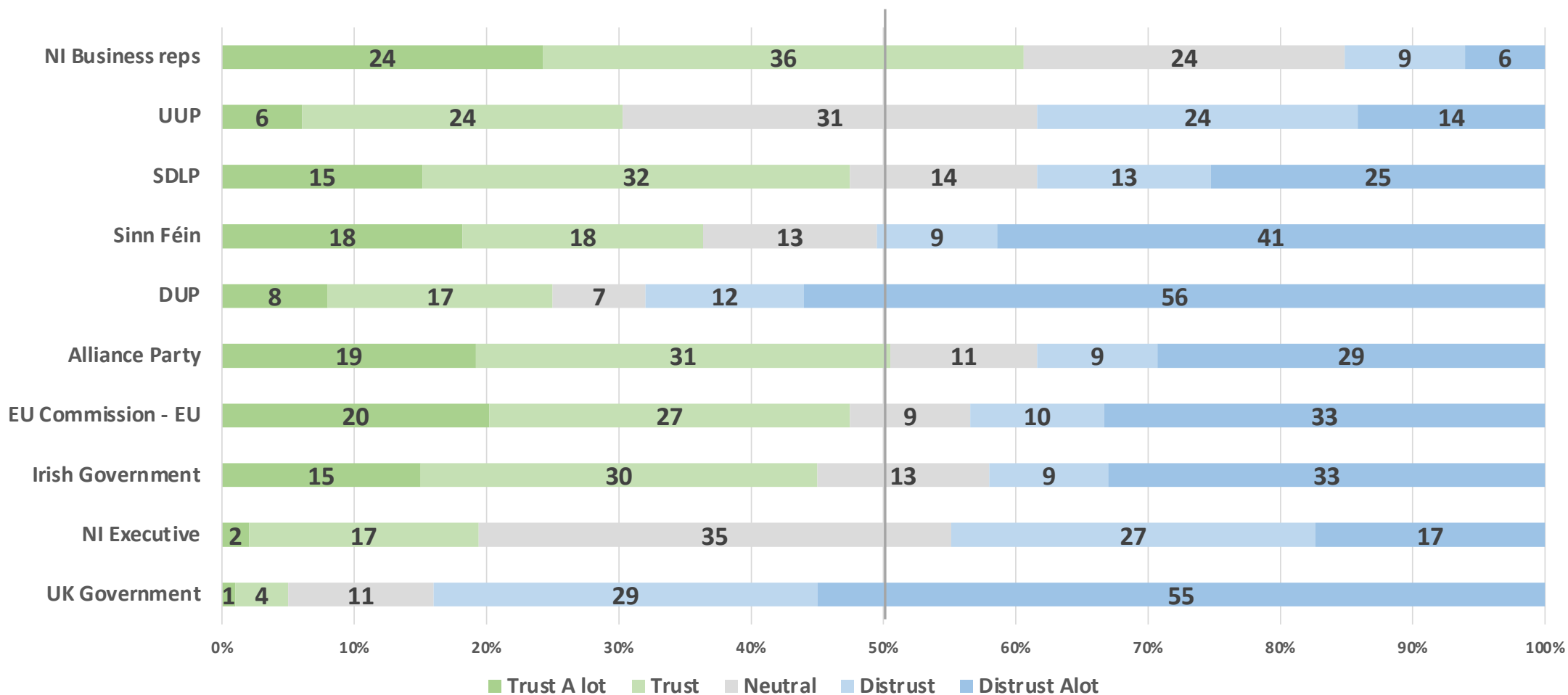




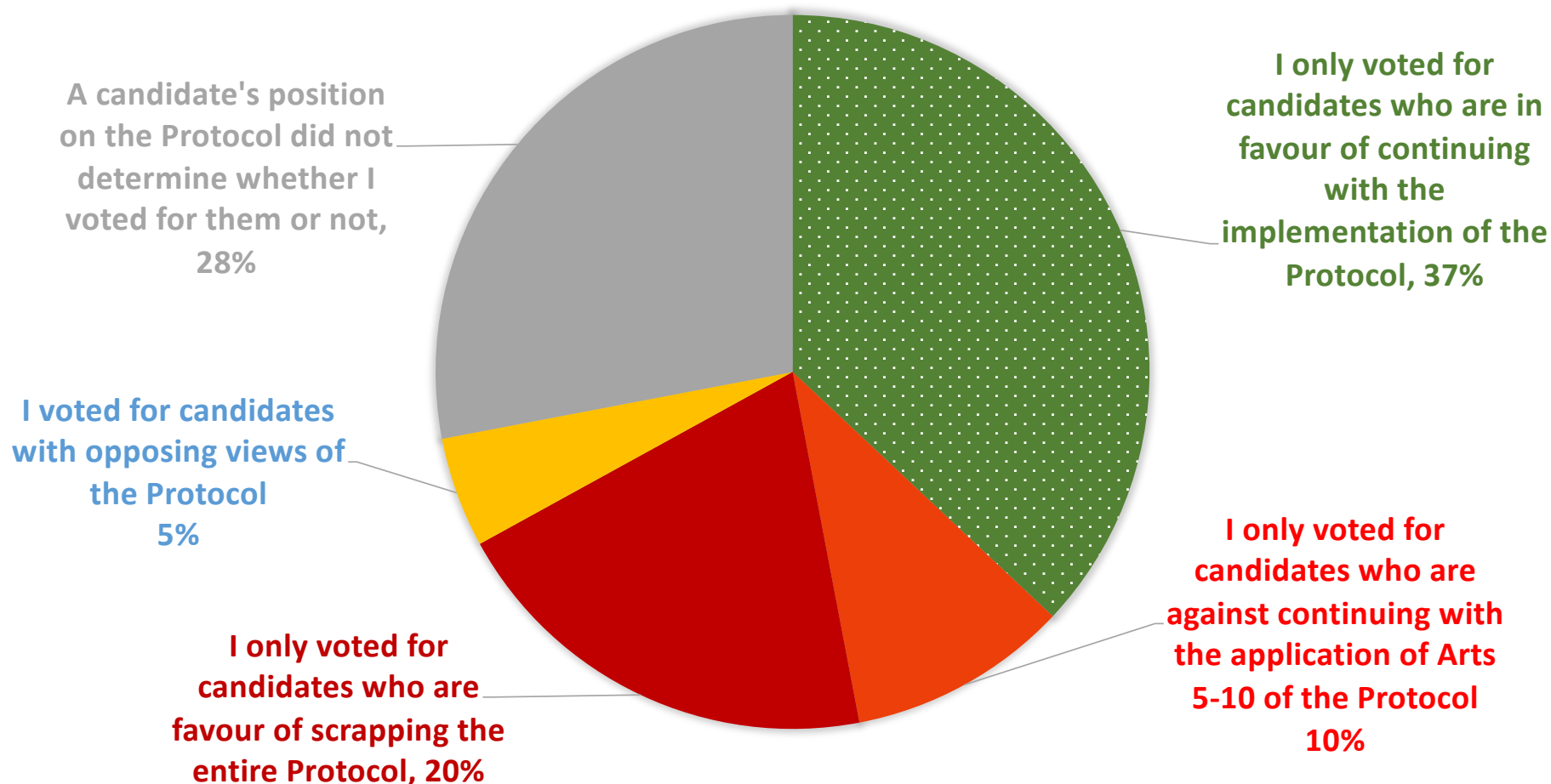
# Views on the Impact of the Protocol



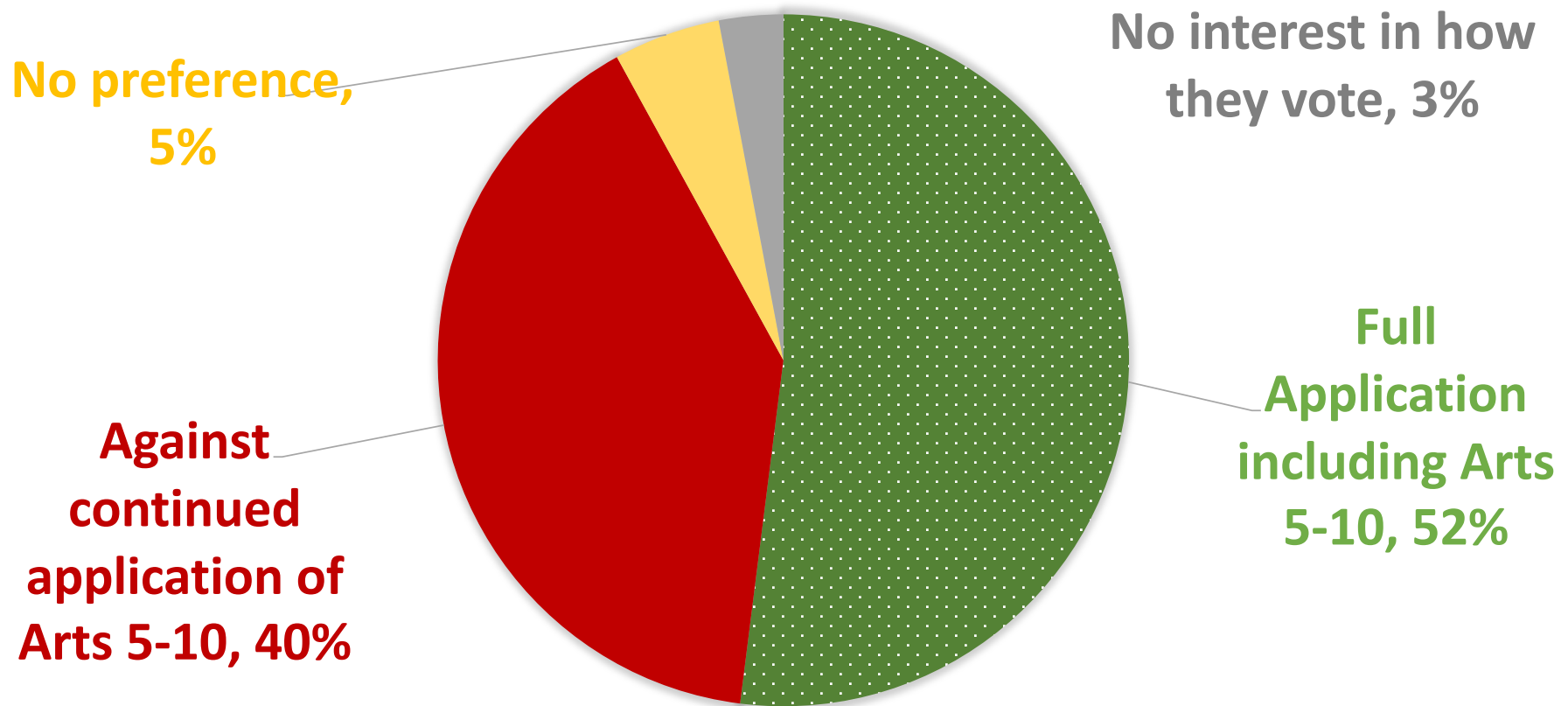
# Trust to manage NI's interests on the Protocol



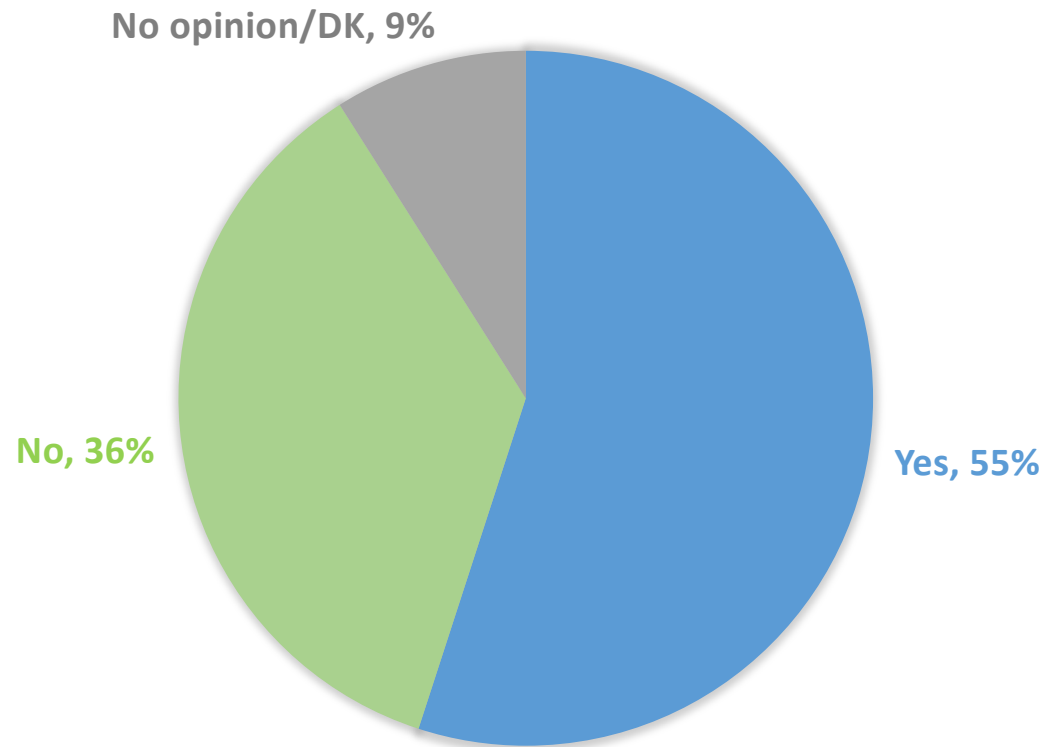
# How important was a candidate's position on the Protocol for your vote in the recent Assembly election?



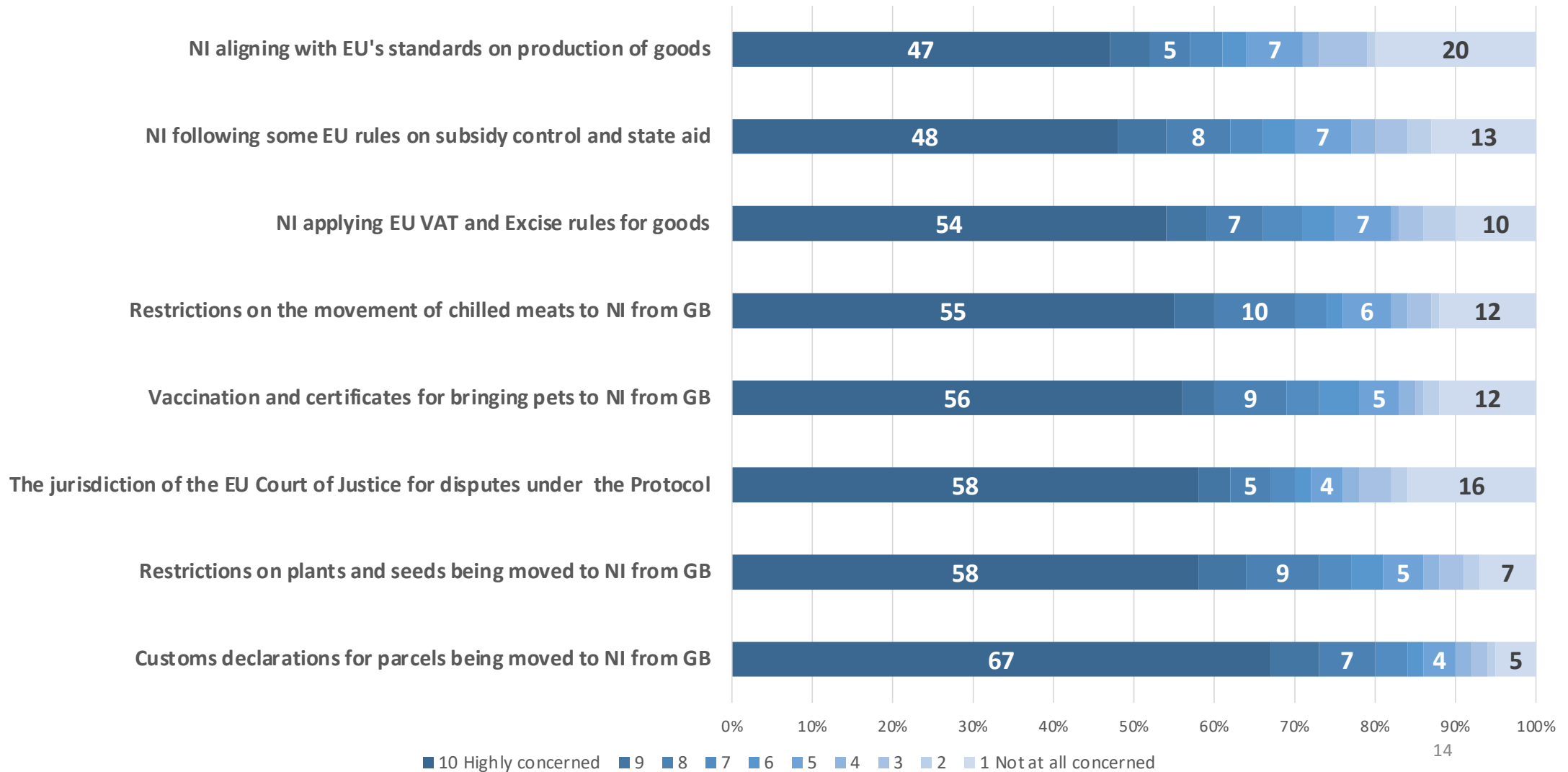
## How would you like MLAs to vote on the Protocol in 2024?



# Do you have any concerns about the full operational scope and impact of the Protocol?

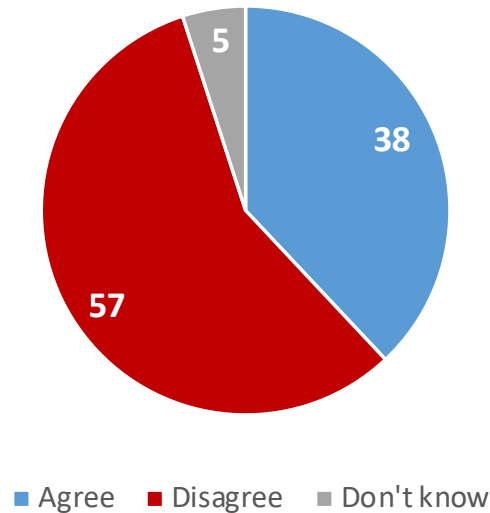


**Of those who have concerns over the Protocol, what are they concerned about?**



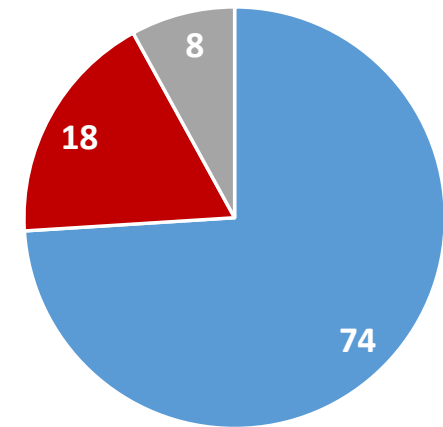
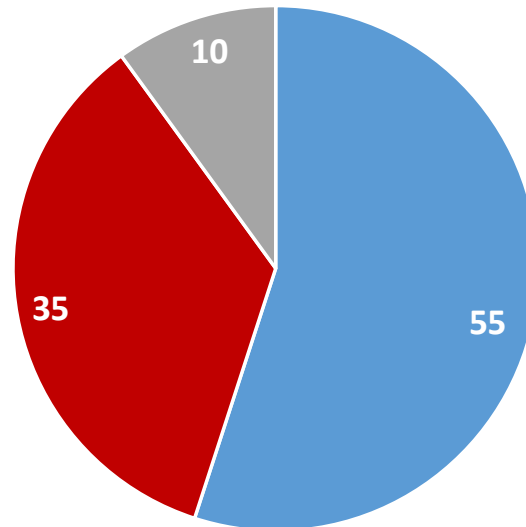
# Views on how to fix the Protocol

UKG justified in taking unilateral action to suspend elements of the Protocol



A negotiated UK-EU solution to the outstanding issues is preferable to the UK taking unilateral action

■ Agree ■ Disagree ■ Don't know



EU would be justified in taking retaliatory measures if the UK acted unilaterally

■ Agree ■ Disagree ■ Don't know



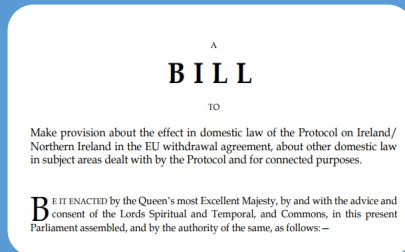
# The Northern Ireland Protocol Bill





# Northern Ireland Protocol Bill – Main Features

## “Excluded Provisions”

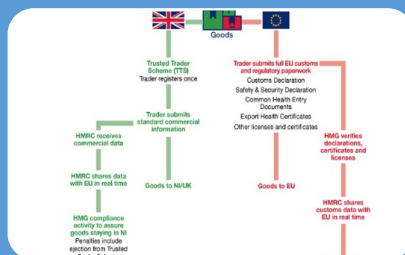


- Movement of goods
- VAT
- State aid
- Jurisdiction of CJEU



## Effect of Protocol in UK law

- Ministers can make domestic law in place of “excluded provisions”
- Clause 2 of Bill: supremacy and direct effect of EU law(Article 4 WA implemented by S. 7A EU Withdrawal Act) does not apply for excluded provisions
- Clause 2 of Bill >< Article 4 of WA



## New regime?

- 'Green lane/red lane' system
- Dual regulatory regime
- Diminished role of CJEU

# Northern Ireland Protocol Bill – The EU Response

## Enforcement action

### Pre-litigation stage

- Letter of formal notice
- Reasoned opinion (reasonable period to respond)
- Discretionary power

### Judicial stage

- Declaratory judgment
- Financial sanctions
- New procedure
- Daily penalties and/or lump sum amount

## EU Proposals

- Grace Period challenge:
  - Reasoned opinion
  - 2 month deadline for reply
- Two new infringement proceedings
  - Failure to carry out SPS controls and provide adequate staffing at BCPs
  - Failure to provide EU with trade statistics data



**Thank you**





**Presenters** Prof David Phinnemore  
Prof Katy Hayward  
Dr Billy Melo Araujo

**Filmed & streamed by** Alan Meban @alaninbelfast