



HM Government

EXPLANATORY NOTE

UK PROPOSALS FOR AN AMENDED PROTOCOL ON IRELAND/NORTHERN IRELAND

2 October 2019

EXPLANATORY NOTE ON UK PROPOSALS FOR AN AMENDED PROTOCOL ON IRELAND/NORTHERN IRELAND

1. The UK sets out below a proposal for an agreement which should be acceptable to both sides and which delivers the objectives of the Belfast (Good Friday) Agreement. This proposal would:
 - a. be based first and foremost on our commitment to find solutions which are compatible with the Belfast (Good Friday) Agreement, the fundamental basis for governance in Northern Ireland;
 - b. confirm our commitment to long-standing areas of UK / Ireland collaboration, including those provided for in the Belfast (Good Friday) Agreement, but also others, in some cases predating the European Union: the Common Travel Area, the rights of all those living in Northern Ireland, and North / South cooperation;
 - c. provide for the creation of an all-island regulatory zone on the island of Ireland, covering not just sanitary and phytosanitary (SPS) and agri-food rules but all goods, thus eliminating regulatory checks for trade in goods between Northern Ireland and Ireland;
 - d. make this regulatory zone dependent on the consent of those who live under it, through the Northern Ireland institutions;
 - e. ensure that Northern Ireland will be fully part of the UK customs territory, not the EU customs territory, after the end of the transition period, with all customs processes necessary to ensure compliance with the UK and EU customs regimes taking place electronically, and with the small number of physical checks needed conducted at traders' premises or other points on the supply chain. This should be coupled with a firm commitment (by both parties) never to conduct checks at the border in future.

(1) Overarching measures

2. The UK Government is absolutely committed to upholding the Belfast (Good Friday) Agreement. The Government has been clear that it will not, under any circumstances, impose a hard border between Northern Ireland and Ireland. The Protocol should make a firm commitment to avoiding customs checks, regulatory checks, or related physical infrastructure at the border between Northern Ireland and Ireland.
3. The Protocol is not intended to provide a model which can be transferred to other aspects of the future relationship between the UK and the EU. It constitutes a response to the specific conditions of Northern Ireland and Ireland in the context of the Belfast (Good Friday) Agreement. For example, the UK Government would not

see measures agreed here as setting a precedent for wider arrangements governing the movement of goods between the UK and EU, or in relation to specific entry points, such as Calais or Dover.

4. The previous Protocol contained, in Annex 4, a list of 'level playing field' measures. The amended Protocol represents a significant change to the customs relationship between the EU, Northern Ireland and the UK more broadly. The proposal set out in this note would see regulatory checks applying between Great Britain and Northern Ireland, whilst Northern Ireland and Ireland would be in separate customs territories with customs controls applied to trade in goods between them. There is therefore no need for the extensive level playing field arrangements envisaged in the previous Protocol. Measures regarding open and fair competition are most appropriately discussed in the context of the UK-EU future relationship.
5. The arrangements set out in this explanatory note are intended to provide a basis for the permanent future relationship between the UK and EU in due course, with any adaptations appropriate to reflect that new relationship.

(2) Regulatory compliance for goods

6. The introduction of a zone of regulatory compliance across Northern Ireland and the EU would remove the need for regulatory checks and related infrastructure at the border between Northern Ireland and Ireland, while enabling the UK and EU to maintain their own distinct customs regimes.
7. At the end of the transition period:
 - a. Building on the existing practice established to maintain the Single Epidemiological Unit (SEU) on the island of Ireland, Northern Ireland would **align with EU SPS rules, including those relating to the placing on the market of agri-food goods**. Agri-food goods entering Northern Ireland from Great Britain would do so via a Border Inspection Post or Designated Point of Entry as required by EU law, building on the provisions that already exist to support the SEU. They would be subject to identity and documentary checks and physical examination by UK authorities as required by the relevant EU rules.
 - b. In addition, **Northern Ireland would also align with all relevant EU rules relating to the placing on the market of manufactured goods**. This would reinforce the arrangements above by ensuring that regulatory checks can be implemented at the boundary of the zone, as appropriate and in line with relevant EU law, minimising the potential for non-compliance. This would be supplemented by on-the-market surveillance, as it is now.

- c. The **governance framework** for this zone would be as set out in the previous Protocol.
8. The EU measures which would apply within the single zone of regulatory compliance are those set out in Annex 5 of the previous Northern Ireland Protocol, excluding those measures covering areas dealt with in our proposals on customs in Section (4) below. Northern Ireland would align with updates to the measures within scope and the Joint Committee would determine whether any new measures should be included within scope, as set out in Article 15(4) and (5) of the previous Protocol.
9. To support this system of controls at the boundary of the zone, traders moving goods from Great Britain to Northern Ireland would need to notify the relevant authorities before entering Northern Ireland, in order to provide the necessary information to undertake the appropriate checks, and, where appropriate, prevent the entry of products prohibited or restricted by EU rules. At its boundary with other third countries, the EU currently captures much of this information through the application of the Union Customs Code. This would not be an appropriate approach under the amended Protocol, as Northern Ireland will be in the UK customs territory. A new notification requirement will therefore be needed to provide basic information to support the regulatory controls, covering:
 - a. the nature of the goods in the consignment, and where they were produced;
 - b. the people sending (exporting) and receiving (importing) the goods; and
 - c. where the goods will depart and arrive.

The precise arrangements for ensuring the effective operation of this approach would be decided through the Joint Committee before the end of the transition period.

10. As a result:
 - a. The regulatory checks and controls taking place on goods entering Northern Ireland from Great Britain would not apply when goods enter Ireland from Northern Ireland. The UK would not apply corresponding checks or controls on goods entering Northern Ireland from Ireland.
 - b. Third country goods arriving in Northern Ireland would, as now and in the rest of the UK, be subject to full customs processes, as well as the required regulatory checks.
11. The UK Government is committed to protecting Northern Ireland's position in the UK's internal market, and guarantees that Northern Irish businesses and farmers will

continue to have unfettered access to the rest of the UK market. In support of this, the provisions in Article 7 of the previous Protocol should be maintained. For the same reason the UK also supports maintaining the provisions in Article 8 of the previous Protocol.

(3) Consent

12. The zone of regulatory compliance will mean that Northern Ireland will be, in significant sectors of its economy, governed by laws in which it has no say. That is clearly a significant democratic problem. For this to be a sustainable situation, these arrangements must have the endorsement of those affected by them, and there must be an ability to exit them. That means that the Northern Ireland institutions – the Assembly and the Executive – must be able to give their consent on an ongoing basis to this zone (and to the Single Electricity Market, which raises similar issues).
13. Our proposal is that, before the end of the transition period, and every four years afterwards, the UK will provide an opportunity for democratic consent to these arrangements in the Northern Ireland Assembly and Executive, within the framework set by the Belfast (Good Friday) Agreement. If consent is withheld, the arrangements will not enter into force or will lapse (as the case may be) after one year, and arrangements will default to existing rules.

(4) Customs

14. It is a fundamental point that the UK will be exiting the EU Customs Union as a whole at the end of the transition period. This means that the UK and EU will operate distinct customs territories and that Northern Ireland will be part of the UK customs territory.
15. This means that the border between Ireland and Northern Ireland will be a customs border. That does not mean that customs checks and controls need to take place at, or even near, that border. Instead, we are making a proposal which ensures that no customs controls necessary to ensure compliance with the UK and EU customs regimes will take place at or near the border. This system will be underpinned by continuing close cooperation between UK and Irish authorities.
16. These arrangements will be based on the existing customs legislation of both parties, which will be the ultimate guarantee that an operable system is in place. But the intention is to make a series of simplifications and improvements to that legislation which will ensure that the commitment in the new Protocol to ensure no checks or infrastructure at the border will be fulfilled by the end of the transition period.
17. Specifically, our proposal consists of the following:

- a. **All goods movements between Northern Ireland and Ireland will be notified using a declaration;** regulatory checks will not apply. Goods would be imported or exported between Northern Ireland and Ireland under either i) a transit mechanism or ii) a prior declaration mechanism. Goods moved under either mechanism would be under customs supervision by one or other customs authority from the point at which they are declared for export until they are cleared by customs in the territory of import for free circulation or placed under an alternative customs procedure. Cooperation between relevant authorities would help to ensure compliance.
- b. Under either process **the relevant customs authority will be notified that the consignment has entered their customs territory.** Either mechanism would link the movement of the consignment over the border with the information provided to the customs authority, which could identify any goods requiring customs interventions. Physical checks – which would continue to be required only on a very small proportion of movements based on risk-assessment – could then take place at traders’ premises or other designated locations which could be located anywhere in Ireland or Northern Ireland.
- c. **Special provision would be made for small traders** to ensure that requirements on them could be simplified. These simplifications should respect the nature of economic activity between Northern Ireland and Ireland and should ensure that any special circumstances regarding the purpose for which goods move between customs territories, the nature of the goods, or the nature of the trader carrying out the movement, are all taken into account. Some small traders should be exempted from processes and from paying duty altogether. These measures would need to be carefully designed so they target the traders most in need of support while continuing to ensure compliance as far as possible.
- d. We also propose that the UK and EU should take an approach which ensures that goods movements between Ireland and Northern Ireland **should not require entry or exit summary declarations.**

18. These arrangements would be supported by a range of simplifications, which could be applied in the same way in Northern Ireland and Ireland, including:

- a. **Trusted trader scheme.** Authorised traders who meet agreed eligibility criteria could have access to benefits which make the customs process for goods moving from one territory to another easier to comply with. Authorities in both Ireland and Northern Ireland would commit to applying appropriate schemes, and could offer benefits to one another’s authorised traders, though would retain the flexibility to adjust these based on the specific circumstances of their territories.

- b. **Simplified customs procedures** would be used to make it easier for eligible traders to submit declarations for their cross-border trade whilst maintaining appropriate compliance standards.
- c. **Temporary admissions.** To minimise burdens on individuals or firms carrying goods across the border temporarily, there should be an ambitious temporary admissions arrangement.

19. In a similar way to the role envisaged for the Joint Committee under the previous Protocol, the Committee would, before the end of the transition period, adopt decisions establishing the detailed rules for the implementation of these customs arrangements.

20. The UK and the EU should continue to apply their own legislation with respect to **VAT and excise** in their respective territories, with the UK's legislation no longer subject to the EU's VAT and excise legislation at the end of the transition period. The proposal would establish that import VAT and excise duty arising on goods moving between Ireland and Northern Ireland should not be paid or accounted for at the border and the administration of VAT and excise will not give rise to checks or controls at the border. The UK and the EU should cooperate to minimise evasion and ensure payment of the tax in the country where it is due and the Joint Committee should make decisions about any arrangements for that cooperation.

21. Alongside our formal proposals, the UK Government would aim to support the market for intermediaries, on the expectation that many traders will use customs brokers, hauliers, freight forwarders and fast parcel operators. To boost the intermediaries market serving the island of Ireland, and respond to increased demand, the Government would put in place a package of interventions, for example grant schemes in the sector.

Conclusion

22. Taken together, these measures correspond to the core aims put forward by both the UK and EU. They constitute a proposal that: fulfils the Belfast (Good Friday) Agreement and avoids the need for checks or infrastructure at the border; maintains the integrity of the EU Single Market; supports the economy on the island of Ireland; preserves intact the UK customs territory; and provides for an extended transition and appropriate mechanisms for consent where Northern Ireland is bound by EU law. It is, as such, a proposal for an agreement which should be acceptable to both sides.