



HOUSE OF LORDS

European Affairs Sub-Committee on the Protocol
on Ireland/Northern Ireland

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Rt Hon James Cleverly MP
Secretary of State for Foreign,
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22 November 2022

Dear Foreign Secretary

Findings of the House of Lords Sub-Committee on the Protocol on Ireland/Northern Ireland's inquiry into the Northern Ireland Protocol Bill

1. On 30 August 2022, the House of Lords Sub-Committee on the Protocol on Ireland/Northern Ireland launched an inquiry into the Northern Ireland Protocol Bill currently before the House. Since then, we have held 11 evidence sessions with business representatives, community representatives, academics, legal experts and political commentators, including during a visit to Newry and Belfast in October. We have also received nearly 40 submissions of written evidence from a range of stakeholders and experts, including the Alliance Party, DUP and TUV. We also met in private each of the five largest parties in the Northern Ireland Assembly during the course of our visit to Belfast. The oral and written evidence submitted to the Committee can be found [here](#), and we are grateful to all of our witnesses for their assistance.
2. This letter sets out the findings of our inquiry. It is designed to complement the reports already published by the Delegated Powers and Regulatory Reform Committee and by the Constitution Committee. Consequently, this letter does not focus on the major themes of those Committees' reports, including the use of Henry VIII powers in the Bill. Rather, in line with our remit, it focuses on the economic, political and legal impact on Northern Ireland, both of the Protocol, and of the Northern Ireland Protocol Bill, following on from the analysis set out in our report published in July 2022, which set out our initial analysis of several of the key themes of the Bill.
3. The cross-party membership of the Sub-Committee, drawn from Northern Ireland and the rest of the UK, has a wide range of expertise in Northern Ireland affairs. Our membership represents a range of views, on Northern Ireland's constitutional position on the Protocol, and on the Bill itself. In view of this, and without prejudice to the views of individual members, we see our task as not to argue for or against either the Protocol or the Northern Ireland Protocol Bill, but rather to scrutinise them in an objective and evidence-based manner. This letter and the conclusions that we reach should be read in that context.
4. In the letter, we set out a number of questions, under the following headings:

The economic context of the Bill

The general economic impact of the Bill

5. What analysis has the Government undertaken of the overall economic impact of the Northern Ireland Protocol Bill? Will you share this analysis with Parliament? What is your analysis of the likely economic impact of the Bill in terms of Northern Ireland's trade with a) the rest of the UK, b) Ireland and c) the rest of the EU? What reassurance can you provide that the Bill, in its attempts to address

problems with East-West trade, will not damage the benefits some businesses perceive in terms of North-South trade and trade with the EU? When will the Government publish further information on the regulations pursuant to the Bill, to aid understanding and scrutiny of its economic impact?

The dual regulatory regime

6. We note the Government's intention that a dual regulatory regime should facilitate both East-West and North-South trade for the benefit of all businesses based in and trading with Northern Ireland. However, we note concern of businesses about the lack of detail around how it will work in practice, and, for some, over its impact on North-South trade and trade with the EU.
7. Bearing in mind the statistical evidence of the larger volume of Northern Ireland's trade in goods with the rest of the UK compared to that with Ireland and the EU as a whole, what further information can the Government provide to explain the benefits of such a model, and the practical implications for businesses? How can you address the concerns of businesses with cross-border supply chains on the island of Ireland, notably the dairy industry, or those trading with the EU, about the impact of a dual regulatory regime on their operations? More generally, what assessment has been made of the infrastructure, resourcing and costs required to establish and operate a dual regulatory regime? What is the timescale for its introduction and operation, and how will changes to EU law be treated in the interim? What would be the economic impact if businesses are required to choose to follow either UK or EU standards? How will the dual regulatory regime be applied in relation to domestic food production? How will market enforcement work in practice? What consideration has been given to producers and manufacturers producing commodities for further export in the design of the dual regulatory framework?

Red and green lanes

8. We note the recognition by witnesses of the potential for red and green lanes to provide solutions to some of the difficulties under the Protocol, notwithstanding some concerns around how such a model will operate. What details are you able to provide to explain to business how the Government's proposed red and green channels-based system would work in practice? How do you respond to concerns from business that they will still be required to complete burdensome processes to provide which lane should be used, and the disproportionate burden on SMEs? How large is the gap between the UK and the EU on how a "lanes" approach to goods would work in practice, and what are the main outstanding points of difference? How can this gap be bridged? Is the Government willing to share the necessary data in real time as the EU has requested, and is there the capability to do so?

VAT and State aid

9. While noting divergent views among our witnesses in favour or against the Government's approach in the Bill, we acknowledge the importance of addressing issues concerning VAT and State aid arrangements under the Protocol. In that context, what assessment has the Government made of the extent to which its stated policy objectives can be achieved via existing flexibilities in EU law? Has the Commission acknowledged or indicated a willingness to address the Government's concerns? How can changes be agreed to ensure Northern Ireland's full participation in the UK internal market, while at the same time not endangering its access to the EU Single Market for goods?

Business perspectives on political uncertainty, unilateral action and a negotiated solution

10. We acknowledge the importance for business of resolution of the ongoing political uncertainty over the Protocol. In that context, what reassurance can the Government provide to business representatives that the Bill will mitigate, rather than exacerbate, the negative economic impact of political uncertainty? What assessment has the Government made of the possible economic impact on Northern Ireland, and on UK-EU trading relations overall, of retaliation from the EU in the event of a trade dispute? What steps is the Government taking to ensure that such an escalation does not happen?

The political context of the Bill

Political perspectives on the UK's unilateral action through the Bill, the EU's response and obligations, and the prospects for a negotiated solution

11. While we welcome the fact that discussions between the UK and the EU have recommenced, it remains to be seen if a mutually acceptable agreement can be reached. What update can you provide on the progress of discussions with the EU? What formal dialogue has taken place since discussions were paused in February 2022? Has such dialogue involved ministers or officials, and on which occasions? Overall, how many technical and ministerial meetings have taken place? Is there a deadline for the current round of talks? What is your response to suggestions of a staged approach to discussions so as to build momentum and confidence between the two sides?
12. Our witnesses have warned the EU against an inflexible approach to talks while the Bill is subject to parliamentary proceedings. However, they have also warned that passing the Bill will inevitably lead to retaliatory measures by the EU. What is your response? How would you respond to proposals that the progress of the Northern Ireland Protocol Bill should be paused as a quid pro quo for the EU pausing its infringement proceedings, in order to create space for constructive dialogue between the UK and the EU?

The impact on community relations

13. We note the evidence we have received highlighting the importance of acknowledging and responding to the concerns of all communities in Northern Ireland. What steps will the Government take to ensure that the full range of views in relation to the Protocol are taken into account? How can a solution be reached that enjoys the support of all communities in Northern Ireland? What practical steps will the Government take to work with community representatives and organisations to ease tensions within the communities of Northern Ireland that have arisen in the context of Brexit and the Protocol?

Engagement with Northern Ireland stakeholders

14. It is crucial that both the UK and the EU enhance their engagement with stakeholders in Northern Ireland, including business, civic society and political representatives, to assure them that the issues in relation to the Protocol are being resolved with their full co-operation and involvement, rather than being imposed upon them.
15. What account has the Government taken of the views of all such stakeholders in finalising their negotiating position? What stakeholder consultation has taken place so far, and what practical steps can be taken to enhance engagement with Northern Ireland stakeholders, including community groups, business representatives and political parties, in relation to the impact of and operation of the Protocol? Will the Government consider engaging jointly with the EU with Northern Ireland stakeholders in an effort to reach a common understanding of the challenges and solutions that are needed to overcome them? Can greater use be made of existing mechanisms for engagement under the Belfast/Good Friday Agreement and the UK-EU Withdrawal Agreement, while at the same time respecting concerns around the constitutional implications of the creation of new mechanisms for engagement?

The legal implications of the Bill

The Government's legal justification for the Bill

16. What is your response to the range of views put to the Committee regarding the doctrine of necessity, including with respect to the political situation in Northern Ireland, the Government's responsibilities as a co-signatory of the Withdrawal Agreement, and its decision not to invoke Article 16? Why has the Government chosen not to invoke Article 16 at the present time?

The role of the CJEU

17. We note the view of our witnesses that the role of the CJEU may be the most difficult issue to resolve in the discussions with the EU. Do you see any scope for compromise between the UK and EU positions to resolve this issue? We acknowledge that membership of the CJEU's judiciary is currently limited by the EU Treaties to nationals of the Member States. In that context, how feasible are suggestions that a mechanism might be found to ensure that UK (and in particular Northern Ireland) judges were able to contribute to the CJEU's consideration of matters arising from the Protocol?
18. What is your response to concerns that the Bill's provisions on the CJEU would call into question the operation of the Single Electricity Market on the island of Ireland?

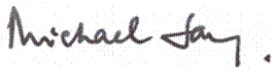
Article 2 of the Protocol and other legal issues

19. We note the concerns put to us by the Northern Ireland Human Rights Commission and the Equality Commission for Northern Ireland about the impact of the Northern Ireland Protocol Bill on Article 2 of the Protocol. What consideration did the Government give to compliance of the Bill with Article 2? What is your response to the arguments by the Northern Ireland Human Rights Commission and the Equality Commission for Northern Ireland that amendments to Clauses 13, 14(4) and 15(3) and 20 of the Bill are necessary to uphold this commitment?
20. What reassurance can you provide that environmental protection and standards will not be undermined by the Bill?

Conclusion: the need for trust

21. We reiterate the conclusion of our July 2022 report, by urging the UK and the EU, together with the political parties in Northern Ireland, Northern Ireland stakeholders and the Irish Government, to make a renewed commitment to work together to prioritise Northern Ireland's interests, participate together in constructive engagement, rebuild trust, and engage in effective relationship-building, in order to resolve the issues that have arisen in relation to the Protocol.
22. In order to inform the House's further scrutiny of the Bill, we would be grateful for a response to these questions by 13 December 2022.
23. We also invite you to give oral evidence to the Committee before the Christmas recess, to discuss these important issues.
24. I have copied this letter to Maroš Šefčovič, Vice-President, European Commission; HE Pedro Serrano, EU Ambassador to the UK; Leo Docherty MP, Parliamentary Under Secretary of State (Europe), Foreign, Commonwealth and Development Office; and Simon Hoare MP, Chair of the House of Commons Northern Ireland Affairs Committee.

Yours sincerely,



Lord Jay of Ewelme
Chair of the Protocol on Ireland/Northern Ireland Sub-Committee

**APPENDIX TO THE LETTER FROM LORD JAY OF EWELME TO THE FOREIGN
SECRETARY, DATED 22 NOVEMBER**

**INQUIRY INTO THE NORTHERN IRELAND PROTOCOL BILL: FINDINGS OF THE
HOUSE OF LORDS SUB-COMMITTEE ON THE PROTOCOL ON
IRELAND/NORTHERN IRELAND**

The economic context of the Bill

The general economic impact of the Bill

1. In our July 2022 report, we noted that the volume of incoming trade/imports to Northern Ireland is as follows: from Great Britain (£10.6 billion), Ireland (£2.5 billion), the rest of the EU (£2.0 billion) and the rest of the world (£1.8 billion). The equivalent figures for outgoing trade/exports from Northern Ireland are: to Great Britain (£6.7 billion), Ireland (£3.1 billion), the rest of the EU (£1.8 billion) and the rest of the world (£3.0 billion).¹
2. Against that backdrop, we heard a range of views on the general economic impact, both of the Protocol and the Northern Ireland Protocol Bill. Reflecting the findings of our recent report that the Protocol meant “feast or famine”, there was a view from some witnesses that the Protocol was working for some businesses and not for others. Dr Esmond Birnie, Senior Economist, Ulster University, stated that “there are some winners and some losers.” Roger Pollen, Head of the Federation of Small Businesses (FSB) Northern Ireland agreed, telling us that some businesses “are suffering significantly” under the Protocol, as they “tend not to have the resources that larger companies would have to find workarounds and accommodate the new processes”, while others are benefiting because “the way it is working at the moment gives them good access to two markets, and they are doing well because of it and they see that it is a great benefit.”
3. Those most positive about the Protocol were those involved in, or representing those involved in, cross-border trade on the island of Ireland, or with the EU as a whole. In written evidence, Ibec (Ireland’s largest lobby and business representative group) told us that “the Protocol has provided welcome stability and growth for cross-border business and trade between Northern Ireland and Ireland and the EU.” Similarly, InterTradelreland said that removing requirements “for customs paperwork for cross-border traders through the Protocol on Ireland/Northern Ireland is positive from an all-island trade and business development perspective.” Gareth Chambers, CEO of Around Noon, a food manufacturer based in Newry, told us: “The unfettered access to the single market and the frictionless access to GB has given NI a phenomenal opportunity in terms of a manufacturing hub.”
4. For this reason, cross-border businesses were generally more critical of the Bill. For example, Michael Hanley, CEO of Lakeland Dairies, said that if unchanged, the Bill “will have an immediate negative impact on our business, as well as the whole of the Northern Ireland dairy sector”, which largely operates on an all-island basis. According to Mr Hanley, in 2021, the Protocol enabled his company to export from Northern Ireland to Europe and the rest of the world “more than £427 million-worth of product, which represents about 27% of overall UK dairy exports.”
5. Similarly, Julie Gibbons, President of Newry Chamber of Commerce, did not believe that “the Bill is a viable means to address the issues that some businesses have with the Protocol, as it is fundamentally working for our members.” The Bill, she said, “might make it easier for GB

¹ These figures are derived from the most up-to-date comparable figures for 2020 published by the Northern Ireland Statistics and Research Agency in April 2022. See Department for the Economy, Northern Ireland Broad Economy Sales and Exports Statistics: Trade in Goods and Services Results 2020 (6 April 2022): <https://www.economy-ni.gov.uk/news/northern-ireland-broad-economy-sales-and-exports-statistics-trade-goods-and-services-results-2020>

companies to trade with Northern Irish customers, but it offers very little for the cross-border element of trade within Northern Ireland. In fact, we fear it may be likely that it could remove our access to the EU Single Market, which ... is a significant competitive advantage for our membership and places us in a stronger economic position.”

6. On the other hand, we heard from a number of businesses who pointed to economic problems with the way that the Protocol was currently operating. This was particularly true of the road haulage sector, whose business model relies heavily on East-West trade. Peter Summerton, Managing Director, McCulla Ireland, said that he sees “a Northern Ireland Protocol that is not working.” This was a consequence of “the application of the rules of international trade, SPS and customs to a fast-moving consumer goods trail between Great Britain and Northern Ireland.” Paul Jackson, Director of McBurney Transport Group, agreed. He said that “the Northern Ireland Protocol has been a complete disaster for us as a company. It simply does not work for the vast majority of our customers, apart from the internal Ireland customers. ... We are watching our customers here in Northern Ireland especially telling us how uncompetitive they are becoming with their competitors based in Manchester and servicing the same internal market that we have been servicing for customers.” Mark Tait, Director of Target Transport (whose business transports day-to-day materials such as timber, concrete and pipework), said that, due to the processes under the Protocol, “we have bureaucracy that is so complex, cumbersome and time consuming, it really is pushing small businesses such as ours, and many of our customers, to the brink.”
7. Ashley Pigott, of AJ Power, a manufacturer of diesel-generating equipment, also pointed to increased costs of doing business. He told us his business has 15,251 components in its manufacturing system, each with a code. “It is really quite simple,” he said: “for every pallet, box and trailer we have a cost line today of between £30 and £50, so the value of what is in that box does not matter—we are paying £30 to £50.” This has led to cost increases from the pre-introduction of the Protocol of around 1.25% when inflation is excluded, impacting the competitiveness of his business. “The impacts are huge, in our eyes ... and I just cannot see any real solution to it in the short term. The Protocol is very damaging to our business. If it hurts us with 15,251 components, what is it to a really large manufacturer?”
8. The different experiences of how the Protocol is currently operating contributed to divergent perspectives on the Bill as a potential solution to the current situation. There was, however, a wish among some witnesses to avoid the Bill creating new problems in trying to solve current ones. Mr Pollen told us, while “the Bill contains a lot of good suggestions and solutions to the problems that have been brought to our attention by members”, he hoped that the Bill’s proposals “do not do damage and that we do not lose the benefits that we think the Protocol has brought” to some of his members “in trying to solve the problems for the others.”
9. Finally, some witnesses felt that there was insufficient evidence to quantify the economic impact of the Bill, as the Government has not yet published draft or indicative regulations. As Mark Tait told us, when asked about the economic impact: “The honest answer is that I do not know. We know that the Protocol Bill itself is not the end solution. It is only a Bill to enable Ministers to take further decisions if they so wish. Until you know what these decisions would be and exactly where they are applied, you do not know the answer to that question.”
10. **What analysis has the Government undertaken of the overall economic impact of the Northern Ireland Protocol Bill? Will you share this analysis with Parliament? What is your analysis of the likely economic impact of the Bill in terms of Northern Ireland’s trade with a) the rest of the UK, b) Ireland and c) the rest of the EU? What reassurance can you provide that the Bill, in its attempts to address problems with East-West trade, will not damage the benefits some businesses perceive in terms of North-South trade and trade with the EU? When will the Government publish further**

information on the regulations pursuant to the Bill, to aid understanding and scrutiny of its economic impact?

The dual regulatory regime

11. In its response to our July 2022 report, the Government argued that its proposed dual regulatory regime would allow goods to be sold in Northern Ireland that meet either EU or UK rules, and therefore “provide a long term, sustainable solution to UK and EU regulatory divergence and its impact on Northern Ireland”. It also argued that, together with the proposed green channel, it would “give businesses and consumers new freedoms and choices, and address the democratic deficit inherent in how the Protocol currently operates, providing a greater role for UK elected representatives and allowing arrangements to properly take account of Northern Ireland’s unique circumstances.”
12. Some witnesses raised particular concerns about the dual regulatory regime proposed in the Bill. Michael Hanley warned that the proposals would produce veterinary certification challenges for the agri-food sector, in particular the dairy industry. If a dairy product is not certified by vets in the Department of Agriculture, Environment and Rural Affairs (DAERA), Mr Hanley explained, “it cannot move to ... Ireland, the EU or export markets. It is as simple as that. The issue is certification, and the dual regulatory regime puts a question mark over all of that.” These challenges “would prevent 30% of Northern Ireland milk and dairy products manufactured in Northern Ireland travelling to the Republic of Ireland for further processing”, resulting in “economic difficulties for Northern Ireland dairy farmers, the dairy processors and the Northern Ireland rural economy as a whole, and would undermine the economic benefits of the Good Friday Agreement.” Overall, while he felt that the dual regulatory regime “is well intended” and “will possibly work for retail, it will not work where you are in primary processing and where product has to be certified by vets otherwise the product will not move.”
13. This was reinforced by the Dairy Council for Northern Ireland, who said that the Bill “would result in large scale dumping of milk on farms ... with the concomitant environmental and animal health and welfare implications.” Similar points about the importance of the all-island market to the agri-food sector were made by the Northern Ireland Grain Trade Association. The Ulster Farmers’ Union also doubted that the proposal could work for agri-food in general, because “for an agri-food business that sells parts of products to the EU market that means by default the whole product must be produced to EU standards, removing choice.”
14. Liam Nagle, Chief Executive and Chairman of Norbrook Laboratories, also doubted whether the dual regulatory regime would work for the pharmaceuticals sector, since it was a highly regulated industry. “When we make, for argument’s sake, 2,000 litres of a medication that might be put into anything from a 5 milligram vial to a 1 litre vial, we can only make that to one standard, and that is the highest possible standard. We shape our products globally, and we cannot operate in a regulatory environment where there are all different types of standards.” Similarly, the Ethical Medicines Industry Group told us “the proposal to unilaterally introduce a dual regulatory regime for goods, including medicines, supplied to Northern Ireland risks creating additional complexity to manufacturing and supply chains, given the ways in which regulatory requirements for UK and EU medicines could diverge in future.” Teva UK told us that “any situation that leads to the need for two product licences and two [stock keeping units] creates an administrative and cost burden that will make many medicines unviable to supply to Northern Ireland.”
15. On the other hand, Ashley Pigott told us that some businesses already produce to multiple standards, and therefore “dual regulation is not an issue”. His business must “meet standards in various countries”, and they “do this on a constant basis.” Similarly, Lyle Pyper, Managing Director of EA Martin and Sons, was unconcerned by dual regulation and felt it was a “privilege” to be “classed as both” UK and EU “at this point in time.”

16. Dr Esmond Birnie argued that a dual regulatory regime “can probably be no worse than the status quo under the Protocol where some companies, those selling into both GB and EU, may find themselves forced to operate under both the UK and EU systems of regulations. At best, if it worked as intended it would allow a business selling only into Northern Ireland plus GB to operate under solely the GB system of regulations.” He acknowledged the necessity of oversight to ensure products made under GB regulations were not being moved into the EU Single Market, and suggested this could be achieved through a system of mutual enforcement.
17. The British Retail Consortium stated that a dual regulatory system “will allow retailers to maintain the choice and affordability for their consumers. The majority of the food sold in Northern Ireland supermarkets is produced in Great Britain. This delivers the choice consumers are familiar with, and through economies of scale keeps costs down. Retailers also source from Northern Ireland and the EU, including the Republic of Ireland. The dual regulation clauses would allow products sourced from either market to be sold alongside one another.” However, they acknowledged that such a system could be complicated by future regulatory divergence.
18. Mr Pollen called for a flexible approach in designing the dual regulatory regime to mitigate some of the possible negative consequences. He said that “it could achieve a way to have the retail and hospitality sectors carrying on largely as they have until now” but that it “would need a completely different carve-out for producers and manufacturers that are then exporting out.” He suggested that a dual regulatory zone “agreed between the EU and the UK” could be positive if certain sectors had flexibility on whether to opt-in or not, depending on the implications for their business models. The Northern Ireland Business Brexit Working Group posed a large number of specific questions about the operation of a dual regulatory regime, including:
- what assessment has been made of the infrastructure, resourcing and costs required to establish and operate effectively the dual regulatory regime proposed in the Bill;
 - the timescales for introducing and operating a dual regulatory regime, and how changes to EU law will be treated in the interim;
 - what would be the economic impact if businesses are forced to choose to follow either UK or EU standards;
 - how the dual regulatory regime will be applied in relation to domestic food production;
 - how market enforcement will work in practice.
19. **We note the Government’s intention that a dual regulatory regime should facilitate both East-West and North-South trade for the benefit of all businesses based in and trading with Northern Ireland. However, we note concern of businesses about the lack of detail around how it will work in practice, and, for some, over its impact on North-South trade and trade with the EU.**
20. **Bearing in mind the statistical evidence of the larger volume of Northern Ireland’s trade in goods with the rest of the UK compared to that with Ireland and the EU as a whole, what further information can the Government provide to explain the benefits of such a model, and the practical implications for businesses? How can you address the concerns of businesses with cross-border supply chains on the island of Ireland, notably the dairy industry, or those trading with the EU, about the impact of a dual regulatory regime on their operations? More generally, what assessment has been made of the infrastructure, resourcing and costs required to establish and operate a dual regulatory regime? What is the timescale for its introduction and operation, and how will changes to EU law be treated in the interim? What would be the economic impact if businesses are required to choose to follow either UK or EU standards? How will the dual regulatory regime be applied in relation to domestic food production? How will market enforcement work in practice? What consideration**

has been given to producers and manufacturers producing commodities for further export in the design of the dual regulatory framework?

Red and green lanes

21. Witnesses also addressed the Bill's provisions to enable the introduction of red and green lanes. Mr Summerton said that: "We need to be really careful how we understand a green lane or a red lane will work and, even more notably, how products that have an undetermined end use whenever they enter Northern Ireland will fit into the model." He said that clarity was needed on the definitions: the Government had previously explained that "the green lane was for goods coming into Northern Ireland and the red lane was for goods that were destined for the Republic. We need to make sure that those definitions are maintained."
22. Paul Jackson was concerned that the proposal would still result in extra paperwork for hauliers. "Talking about red lanes and green lanes does not stop the paperwork, the bureaucratic donkey work, which is absolutely a waste of time for us." He said that it will still be necessary for hauliers to do "all the paperwork ... just to satisfy our friends in the EU that it is actually okay to go in the green lane" and this imposes additional costs on business. Mark Tait told us that even for goods deemed as not at risk, "I still have to complete all that paperwork right now to do that. That is typical. You could get three or four pages, so maybe 40 or 50 different products on one pallet. That is the problem. ... If the process behind the green lane is the same as the red lane, what is the point in the green lane?"
23. The British Retail Consortium said that the proposed approach for red and green lanes would be beneficial for retail. It "would reduce any friction in retail supply chains moving food from Great Britain to Northern Ireland", which is important given that the "majority of food sold in Northern Ireland supermarkets is transported from Great Britain." They stated: "We believe the approach suggested in the Bill, allowing trusted trader businesses who are only supplying to stores in Northern Ireland, is appropriate and could be the basis of a negotiated agreement with the EU."
24. However, Dwyer Magee, Chief Financial Officer at Deli Lites, told us that while "the green lane would work perfectly well for the large retailers that are bringing goods across the Irish Sea for consumption in Northern Ireland", he did not "believe that would work at all for manufacturers that are exporting some or all of the goods that they are bringing across into Europe." He said that it was "another uncertainty, and I can only imagine additional bureaucracy, additional cost and additional time. All those plus European customers looking in at that scenario bring risks to business, and those are risks we can do without."
25. Conor Patterson, CEO, Newry and Mourne Enterprise Agency, highlighted the importance of basing any new scheme on real-time data sharing and a trusted trader framework. He said that "the status of being in the green lane has to be based on the provision of data" and a problem was likely to arise without a trusted trader framework. "If there is a trusted trader framework the aim would be to have traders posting their data in advance so they could drive through the green lane unless they were transiting onto the Republic. The system will only work if it is based on the provision of credible information." Lyle Pyper also argued that the Intrastat system, for collecting statistics relating to the trading of goods between EU Member States, could be used to streamline the requirements.
26. Chartered Accountants Ireland added that a "period of transition, adjustment and change as a result of the new trade operating model contained within the Northern Ireland Protocol Bill (green and red lanes) will also be required after December 2022."
27. Sir Julian King, former EU Commissioner and Board Member, Co-operation Ireland, noted that "you have proposals from the UK side around some kind of green lane; you have proposals from

the EU side around an express lane with simplified procedures around customs and indeed SPS. The question there is whether you can find some accommodation that spans the difference between simplified procedures and no procedures at all ... to rebalance things and ... reflect a less precautionary approach to the risk of goods going on into wide circulation in the Single Market.”

28. **We note the recognition by witnesses of the potential for red and green lanes to provide solutions to some of the difficulties under the Protocol, notwithstanding some concerns around how such a model will operate. What details are you able to provide to explain to business how the Government’s proposed red and green channels-based system would work in practice? How do you respond to concerns from business that they will still be required to complete burdensome processes to provide which lane should be used, and the disproportionate burden on SMEs? How large is the gap between the UK and the EU on how a “lanes” approach to goods would work in practice, and what are the main outstanding points of difference? How can this gap be bridged? Is the Government willing to share the necessary data in real time as the EU has requested, and is there the capability to do so?**

VAT and State aid

29. We received a limited amount of evidence on the Bill’s provisions on State aid and VAT. On State aid, Dr Billy Melo Araujo, Queen’s University Belfast, explained that the UK’s main concern was that, under Article 10 of the Protocol, “any UK measure (whether adopted at devolved level or national level) that has an effect on trade in goods between Northern Ireland and the EU would be subject to EU state aid rules.” He noted that Article 10 “creates a system whereby UK measures are subject to two separate subsidy regimes at the same time: EU State aid law and UK anti-subsidy legislation. The proposal to disapply EU state aid law would address these criticisms by subjecting UK measures to a single anti subsidy regime (UK anti subsidy law). The UK would, however, remain subject to the subsidy control provisions and the EU UK Trade and Cooperation Agreement.”
30. Some witnesses defended the Government’s attempt to address these issues through the Bill. The DUP told us that the Bill’s provisions in these areas “will, subject to regulations, help recreate the UK single market for goods.” Similarly, the TUV said that: “Liberating Northern Ireland from both EU State aid rules and its VAT regime will not only restore UK wide equilibrium and make all subject to domestic rules and legislation (as should be the norm) rather than foreign jurisdiction, but will also facilitate the full operation of the all-important internal UK single market and remove any knock-on detriment or threat to parent GB companies arising from EU restrictions on State aid.”
31. Dr Esmond Birnie said: “As a matter of principle such economic/industrial policy decisions should be made by authorities within the UK (whether at the London or Belfast level) held accountable by the electorate. The democratic deficit aspect of the Protocol, in its current form, is a massive problem.”
32. Other witnesses criticised the Government’s approach. Dr Billy Melo Araujo argued that “the disapplication of obligations under Article 10 of the Protocol would constitute a breach of the Protocol unless justified by an exception under international law.” Professor Andrea Biondi, King’s College London, and Dr Maria Kendrick, City Law School, said that the Government should explore a consensual solution to State aid and subsidy control within existing flexibilities in the EU system. They noted that, as the EU’s system itself is not totally harmonised, a differentiated approach would be preferable.

33. Similarly, the Alliance Party, while recognising that “there are genuine concerns about State aid and VAT”, said that a “resolution has to be via negotiation with the European Union.” They noted that “Clauses 17 and 24 of the Bill would grant significant powers to the Treasury to make unilateral changes to the VAT and Excise provisions of the Protocol. If such changes were not made in negotiation with the EU a likelihood arises of significant risk in cross border trade”. They argued that there is scope for VAT rates in Northern Ireland to be modified by agreement with the Commission. Chartered Accountants Ireland made similar arguments about the risk to North-South trade.
34. The Northern Ireland Business Brexit Working Group asked a number of practical questions about the Bill’s provisions on VAT, including whether EU VAT rules for goods would continue to apply in Northern Ireland (and the implications for access to the Single Market for goods if they would not), how ministerial powers to make VAT regulations in Northern Ireland would work, and whether there was scope to explore existing flexibilities under EU law within the structure of the Protocol.
35. **While noting divergent views among our witnesses in favour or against the Government’s approach in the Bill, we acknowledge the importance of addressing issues concerning VAT and State aid arrangements under the Protocol. In that context, what assessment has the Government made of the extent to which its stated policy objectives can be achieved via existing flexibilities in EU law? Has the Commission acknowledged or indicated a willingness to address the Government’s concerns? How can changes be agreed to ensure Northern Ireland’s full participation in the UK internal market, while at the same time not endangering its access to the EU Single Market for goods?**

Business perspectives on political uncertainty, unilateral action and a negotiated solution

36. Several witnesses argued that the political uncertainty surrounding the Protocol and the Bill was having an adverse economic impact on business. Liam Nagle told us that the “biggest issue we have had with the Protocol is that it created certainty when it was put in place ... The constant questioning of it and of its fundamental long-term ability to survive, and the political questioning of it in particular, has caused our customer base to be anxious.”
37. InterTradeIreland stated that “businesses are dealing with many challenges and the uncertainty around the Protocol on Ireland/Northern Ireland is an unwelcome additional pressure”. The Northern Ireland Business Brexit Working Group told us that “an ongoing and protracted UK-EU dispute about the framework for trading in and through Northern Ireland is not conducive to either trade or investment in Northern Ireland.”
38. Some of this uncertainty was seen by some witnesses to flow from the prospect of unilateral action by the UK Government. Gareth Chambers said that “the only way through” the current impasse “is obviously by negotiation and by a willingness to come to an agreement on both sides.” He argued that the “uncertainty that has been caused by the notion of the Protocol potentially being ripped up has been very damaging to business and has caused a number of customers to ask questions and to put a contingency in place, potentially, which is damaging and costs the economy here locally.” He said that, while improvements would be beneficial, “unilateral action causes uncertainty and causes damage, and that is something that we would not want to see.” Julie Gibbons said that “uncertainty is never good for business planning or investment”, and called for “a negotiated agreement, made in good faith, that befits our unique circumstances, rather than unilateral action with the Protocol Bill that will just set us apart, probably further than ever.” Several pharmaceutical industry representatives expressed their concern at the impact of unilateral action on their highly regulated sector.

39. Liam Nagle said: “A negotiated settlement is the only approach. All parties have to get around the table.” Asked about the UK Government’s approach, Dwyer Magee agreed: “In the business world, everything is about negotiation. Unilateral action does not work. In my view, the parties need to get around the table and come to a resolution. That is not going to be easy, but I believe that, if there is a will on both sides, that is something that we should strive for, and that is the outcome that all the parties should be striving for.”
40. On the other hand, some of those representing sectors negatively impacted by the Protocol welcomed unilateral action in the form of the Bill. John Martin, Policy Manager of the Road Haulage Association, told us that “we see the Bill as largely addressing the issues and concerns of the haulage sector and freeing up the movement of goods between GB and Northern Ireland.” Mr Martin argued that the EU’s current proposals did not go far enough: “The EU and the UK Government need to put Northern Ireland front and centre of the negotiations. Take the politics out of it and make a decision based on addressing the concerns of the business sector and consumers within Northern Ireland, as opposed to trying to get one up on each other.”
41. Ashley Pigott argued that the Bill was necessary to allow the UK to negotiate from a position of strength. However, he was doubtful whether the Bill would resolve the problems under the Protocol. He was equally sceptical whether the renewed EU-UK talks would lead to agreement. Likewise, Paul Jackson was sceptical regarding a potential landing zone for negotiations: “If it is broken, it does not work. The two sides can talk about it. The EU knows this does not work and HMG knows it does not work. Put it away. Just take it away. There is no landing zone, because it is not going to work.” Mark Tait agreed: “At the moment I am quite pessimistic, despite the good mood music from, say, the Irish Government, the UK Government and the EU. We have been here before, 12 months ago; 12 months later, we are still in the same position. I do not know. Is there a landing zone? ... I am not sure.”
42. The British Retail Consortium told us that their “ideal outcome has always been for the UK to achieve a negotiated settlement with the EU that recognises their concerns on protecting the Single Market but takes account of existing supply chains to deliver that without excessive bureaucracy and cost.” While the Bill addresses “key concerns with the Protocol” by simplifying transport methods, “the advantage of a negotiated settlement with the EU is it removes the risk of any kind of retaliation over trade.” A trade dispute, they said, “would have consequences for all UK consumers, including those in Northern Ireland as 80% of the imported food retailers sell is from the EU and currently tariff free.”
43. **We acknowledge the importance for business of resolution of the ongoing political uncertainty over the Protocol. In that context, what reassurance can the Government provide to business representatives that the Bill will mitigate, rather than exacerbate, the negative economic impact of political uncertainty? What assessment has the Government made of the possible economic impact on Northern Ireland, and on UK-EU trading relations overall, of retaliation from the EU in the event of a trade dispute? What steps is the Government taking to ensure that such an escalation does not happen?**

The political context of the Bill

Political perspectives on the UK’s unilateral action through the Bill, the EU’s response and obligations, and the prospects for a negotiated solution

44. Further to the views of business representatives set out above, we heard a range of political perspectives on whether the Government was justified in proposing a unilateral response via the Bill, or whether it should focus instead on agreeing a negotiated solution with the EU.

45. In her speech opening the Second Reading debate on the Northern Ireland Protocol Bill in the House of Commons, the then Foreign Secretary, Rt Hon Liz Truss MP, set out the Government's position as follows: "We are taking this action to uphold the Belfast/Good Friday Agreement, which has brought peace and political stability to Northern Ireland. The Northern Ireland Protocol is undermining the function of the Agreement and of power sharing. It has created fractures between east and west, diverted trade and meant that people in Northern Ireland are treated differently from people in Great Britain. It has weakened their economic rights. That has created a sense that parity of esteem between different parts of the community, an essential part of the agreement, has been damaged."
46. On the day of publication of the Bill, Commission Vice-President Šefčovič said that "only joint solutions would create the legal certainty that people and businesses in Northern Ireland deserve. It is with significant concern that we take note of today's decision by the UK Government to table legislation disapplying core elements of the Protocol. Unilateral action is damaging to mutual trust. The Commission will now assess the UK draft legislation. ... Our aim will always be to secure the implementation of the Protocol. Our reaction to unilateral action by the UK will reflect that aim and will be proportionate. ... We call on the UK government to engage with us on joint solutions. The Commission stands ready to play its part – as it has from the outset."
47. The DUP argued that the Bill was "a very important step forward" in restoring the constitutional integrity of the UK, and "an absolutely essential first step to help save the Belfast/Good Friday Agreement". They stressed that "any negotiated solution, as an alternative to the Bill, would need to result in the amendment of the Withdrawal Agreement Act so the Protocol is no longer directly effective in UK law", or changes to the Protocol "so that the Union subjugating elements are replaced with UK laws and regulations that restore and respect Northern Ireland's place in the Union".
48. The TUV argued that the Bill was a necessary preliminary step to "remedy some of the constitutional and economic vandalism of the Protocol ... As the sovereign power HMG has not just the right but the obligation to recover sovereignty from the EU over Northern Ireland and its economy." Nevertheless, they stressed that this was subject to the content of regulations brought forward pursuant to the Bill.
49. Dr Esmond Birnie argued that the Bill was necessary as the Protocol had damaged the East-West aspect of the Belfast/Good Friday Agreement. He further argued that, given the Protocol's stated aim to "impact as little as possible on the everyday life of communities" had not been met, the Government had a right to legislate.
50. The Grand Orange Lodge of Ireland likewise argued that the primary damage caused by the Protocol (in which the Government had been complicit) has been constitutional, in that Northern Ireland is "still subject to EU laws, customs, VAT regime and subservient to the [CJEU]. The NI Protocol Bill goes some way to addressing the concerns of those issues, however it is light on detail and is effectively merely enabling legislation." They wished the Bill to be "more robust so that its content effectively removes and supersedes the harmful constitutional and economic threats contained in the Protocol."
51. Other witnesses, however, argued that unilateral action in the form of the Bill was counter-productive. The Alliance Party asserted that the Bill made the prospects for negotiations with the EU harder, as unilateral action undermines trust. Irish in Britain argued that the Bill "risks the UK's international reputation and threatens decades of positive British-Irish relations."
52. The Centre for Cross Border Studies argued that unilateral action "only serves to add further uncertainty and destabilised relations", and, although it could alleviate economic issues in the short-term, could lead to retaliatory measures in the long-term. They stressed the need for the

Government and the Commission to “deepen their re-engagement in the search for durable and acceptable solutions”. They added that it may be unrealistic to resolve all issues in the short term, and that it may be necessary to address them in an incremental way: “this implies patience, understanding and perseverance from all parties.”

53. Professor David Phinnemore, Professor Katy Hayward and Dr Lisa Claire Whitten, Queen’s University Belfast, noted that the Government had raised expectations with the Bill without necessarily being in a position to deliver on them. They argued that it was more likely to increase than reduce instability and uncertainty.
54. Several witnesses called on the UK and EU both to take confidence-building steps to facilitate bilateral dialogue on the Bill. Sir Julian King called for a staged approach to negotiations so as to rebuild trust and damaged confidence through initial confidence-building measures, thereby opening up the possibility of addressing more difficult issues: “I think that is a more hopeful way of trying to explore these difficult issues than one side legislating in a way that the other side would be bound to respond to in ways that would make the situation for the UK as a whole, and Northern Ireland as well, more difficult.” He suggested that issues such as steel tariffs and medicines could be addressed first, followed by “the more difficult but still perhaps not the most difficult issues around customs, SPS and veterinary”. He also said that the status of the grace periods needed to be addressed.
55. Sir Julian King added that, from the EU perspective, the introduction of the Bill had had a chilling effect, limiting the scope to show flexibility in discussions on the Protocol. However, he cautioned the EU against taking “an overly hard line on the Bill” by arguing that it needed to be withdrawn before progress could be made: “I hope that one of our messages, collectively, is that, if we are going to give space and a certain amount of time to try to find an agreed way forward, that requires all sides to engage in that process positively, HMG and the EU. That might be possible during the continued examination of the Bill.” He also suggested that, in order to build confidence on the UK side, the EU infringement proceedings could be slowed or frozen.
56. Nevertheless, Sir Julian King warned that “it is very difficult to see how passing the Bill can help the situation. I cannot see how it will assist north-south, east-west particularly, or indeed the internal relations within Northern Ireland. It certainly will not facilitate continued discussions between Northern Ireland, HMG and the EU about how to manage this situation into the future. ... If the Bill were to be passed, we would have to be ready for the EU to react. In those circumstances, it would be faced with a partner that had legislated to undo an international agreement. From the EU’s perspective, that goes to the heart of the relationship it has with HMG, but also ... much wider. It has a whole network of agreements that it relies upon with dozens of countries around the world. Its core internal functioning relies upon the effective respect of agreements reached. In those circumstances, you would have to expect that it would react.” He said that precedents, including its engagement with the US, suggested that the EU was willing to draw up “long, extensive and targeted lists of trade sanctions in order to inflict some economic discomfort ... for what it perceives to be breaches of international agreements.”
57. Peter Sheridan, CEO of Co-operation Ireland, argued that, to improve the chances of reaching resolution, “the UK Government could consider pausing the passage of the Bill. I did not say ‘withdraw’; I said ‘pause’. The EU could consider ... either pausing those infringement proceedings or conceding that much of the GB-NI trade, for example, moving to supermarkets does not pose a risk to the single market, and therefore the ground rules would change and the atmosphere may change.” Dr Tom Kelly, Columnist, *Irish News*, also called for the Government to “hit the pause button” on the Bill “and allow the Prime Minister to do his job and inject some common sense into the actual process.” Similarly, the Alliance Party, Irish in Britain and Raymond Jackson, CEO, Confederation of Community Groups, also called for the EU to pause legal proceedings against the UK to allow space for dialogue.

58. On the other hand, Dr Esmond Birnie argued that the Bill was an important bargaining chip for the Government, whose negotiating position would be weakened if the legislative process was paused. The TUV warned that whereas “the EU has been prepared to ‘talk’ about how the Protocol could be better implemented, its negotiating mandate prohibits renegotiation of its core tenets. Hence, the folly of placing faith in ongoing ‘technical talks.’”
59. In his speech on the first day of Committee Stage of the Bill, Lord Bew argued that the continuing parliamentary passage of the Bill “is simply not a contentious matter in these negotiations. That is a simple fact. ... The EU has decided, for its own perfectly good reasons ... that this Bill will not stop substantive negotiation. ... Dropping this Bill will not transform those negotiations into a better or worse state. ... But it is ... deeply irrelevant to keep arguing and going on about the need to drop the Bill because it would lead to greater faith in negotiation. The negotiations are already in play, in good faith—end of story.”
60. **While we welcome the fact that discussions between the UK and the EU have recommenced, it remains to be seen if a mutually acceptable agreement can be reached. What update can you provide on the progress of discussions with the EU? What formal dialogue has taken place since discussions were paused in February 2022? Has such dialogue involved ministers or officials, and on which occasions? Overall, how many technical and ministerial meetings have taken place? Is there a deadline for the current round of talks? What is your response to suggestions of a staged approach to discussions so as to build momentum and confidence between the two sides?**
61. **Our witnesses have warned the EU against an inflexible approach to talks while the Bill is subject to parliamentary proceedings. However, they have also warned that passing the Bill will inevitably lead to retaliatory measures by the EU. What is your response? How would you respond to proposals that the progress of the Northern Ireland Protocol Bill should be paused as a quid pro quo for the EU pausing its infringement proceedings, in order to create space for constructive dialogue between the UK and the EU?**

Addressing unionist concerns

62. Whether or not they supported the Bill itself, several witnesses acknowledged the need to address unionist concerns over the Protocol. Ben Lowry, Editor of the *News Letter*, observed that the Protocol had had a slow-burning effect on unionist opinion due to its complexity and mixed signals from the Government. Nevertheless, “there has been a gradual but more or less unanimous movement ... against the Protocol and a realisation that the Protocol is a damage to the principle of consent.” He warned of unionist concerns over a quick deal with the EU that “would not match the rhetoric ... with regard to protecting the Belfast Agreement.”
63. Professor Henry Patterson, Emeritus Professor, Ulster University, told us that “the Protocol provides an answer to nationalist disquiet about the Brexit dilemma by avoiding any form of regulatory border on the island of Ireland.” However, he argued that the “core problem at the moment is the perception and belief among unionists that the Protocol as currently structured drives a coach and horses through the structures of the Good Friday Agreement, privileging the north-south relationship at the expense of the erection of a customs and regulatory border at Derry, Larne, Belfast and Warrenpoint.”
64. Brian Dougherty, CEO, North West Cultural Partnership, likewise referred to the perception that the EU had taken the side of Irish nationalism and that the Protocol was unbalanced in its approach

to North-South and East-West issues. He called on the EU to engage with unionist and loyalist young people.

65. Peter Sheridan said that “the unique nature of Northern Ireland politics means it only functions on the basis of a carefully constructed balance of power between the communities. ... It is undoubtedly true that, in one half of Northern Ireland’s delicate political balance, they reject the Protocol, even in its current half-administered form during the grace periods. ... There is no doubt that many in the unionist community would be supportive of the Bill simply as a way of restoring their position in the United Kingdom, if that position cannot be reached through negotiations with the EU.”
66. Professor David Phinnemore, Professor Katy Hayward and Dr Lisa Claire Whitten acknowledged the “deep concern for many people in Northern Ireland, particularly those who identify as unionist, [which] has clearly contributed to political instability and a clear sense among unionists that Northern Ireland’s position in the UK is being threatened as a consequence of agreed post-Brexit arrangements for Northern Ireland. If there is to be broad consensus on maintaining the 1998 Agreement, concerns about the impact of Brexit and the Protocol on Northern Ireland need to be addressed.”
67. The DUP stated that it supported the Belfast/Good Friday Agreement, as amended by the St Andrews Agreement. However, they asserted that the Agreement was on life support because of the EU’s conduct. The DUP argued that this was exacerbated by the way in which the political cost of the Protocol “does not fall equally on unionism and nationalism”.
68. The Grand Orange Lodge of Ireland argued that “without the support and consent of the unionist community on the arrangements regarding the Protocol, there should be no return to the political institutions of the Northern Ireland Assembly. If the Protocol Bill delivers its aims of restoring sovereignty over NI to the UK Government, then there will certainly be a better chance of restoring political stability.”

Addressing the concerns of the nationalist community and other communities of Northern Ireland

69. However, several witnesses warned that the Government’s attempt to meet unionist concerns through the Bill would lead to an equal and opposite reaction in the nationalist community, and other communities of Northern Ireland.
70. Professor David Phinnemore, Professor Katy Hayward and Dr Lisa Claire Whitten argued that, as the Bill “goes against the wishes of three of the largest parties in Northern Ireland, those of the Irish Government and the EU, it is quite evident that unilateral action will not create the improved relations necessary to shore up the 1998 Agreement.”
71. Dr Niamh Gallagher, University of Cambridge, argued that the current Protocol is not discriminatory in so far as it applies to all people in Northern Ireland equally. However, the Bill “has dealt with one section of the self-defined designation of the Good Friday Agreement and, therefore, does break that parity of esteem”. She argued that the Bill “will drive a coach and horses” through Strand 1 of the Belfast/Good Friday Agreement by provoking the opposition of nationalist parties and parties who take no position on the constitutional position of Northern Ireland.
72. Our witnesses in Newry shared their concerns about the impact of the Bill on North-South relations. Julie Gibbons warned that any solution must not be at the expense of creating barriers on the island of Ireland. Conor Patterson stressed the way in which the removal of trade controls and the security border had transformed the region around Newry. Raymond Jackson said that,

for people in the local border area, the “obvious key benefit” of the Protocol is the avoidance of a hard land border, and “anything that is going to jeopardise that or create any political instability will be an issue and a worry”.

73. Peter Sheridan said that “the difficulty in this for everybody is that the lack of consent for the Protocol on the side of one part of the community could easily be replaced by a lack of wider consent for any unilateral alternative. ... The Bill deals with a lot of the lack of consent for the Protocol that is in one community in Northern Ireland. ... I suppose that you can replace one lack of consent with another lack of consent if the Bill goes through as it is.”
74. Dr Andrew McCormick, former Director General for International Relations at the Northern Ireland Executive, warned that “the Bill would impose the view of one section of Northern Ireland opinion over that of the majority. While unionists may be happy with the prospect of the implementation of the NI Protocol Bill, nationalists and others are strongly opposed to it, and hence the Bill does not and cannot promote cross-community consent. The current approach would risk (at the minimum) reinforcing the view of nationalists and republicans that there is little point in them working within the framework agreed in 1998, or (at worst) lead to them withdrawing from the institutions. My view is that, even in its own terms, the Bill would solve nothing.”

The impact on community relations

75. In view of these divergent perspectives, several witnesses expressed concern over the deleterious impact of post-Brexit political tensions on community relations in Northern Ireland. Dr Tom Kelly told us that “there is a polarisation going on at the moment that is not helpful to community relations in general. It is actually quite a threat to stability in Northern Ireland.” Ben Lowry detected significant levels of anger on both sides of the community, due in large part to Brexit and the Protocol. The Irish Central Area Border Network reflected on surveys of people living in the border region, which indicated rising concerns about social divisions and community tensions, a sense of vulnerability, and a hardening of views.
76. Kate Clifford, Director, Rural Community Network, said that the post-Brexit situation in Northern Ireland was “hugely difficult for those of us engaged in peacebuilding. There are communities out there who feel disenfranchised. ... we then have a Bill that people are really not sure about but which is being sold to them as something that impacts on their cultural identity—with no real dialogue with those communities as to how or why that is the case. ... Very quickly after the Brexit referendum, we began to hear communities talk about identity and we heard conversations that we had not heard for a long time about who they had allegiance to—‘themuns’ across the border in Ireland, ‘themuns’ in the UK, ‘themuns’ in Europe and ‘Everybody else is making decisions for us’. People were taking a stance for the first time in a long time and it felt very wrong, but we also felt extremely vulnerable.”
77. Jacqueline Irwin, Chief Executive, Community Relations Council, agreed that the Protocol, in combination with a range of other societal factors, had deepened an ‘us or them’ mentality between unionist and nationalist communities. Raymond Jackson was also concerned that “the identity question is now very much back in vogue, and it was not until Brexit came along.”
78. Nicole Parkinson-Kelly and Chris Kelly, representing the Northern Ireland Youth Forum, referred to the relative levels of ignorance of the Protocol among young people. They and Brian Dougherty agreed that concerns around the Protocol had become enmeshed with wider issues concerning the constitutional status of Northern Ireland, which had led to heightened tensions as people felt that their identity was under threat. They stressed the importance of giving young people from all communities a voice.

79. Women's Platform argued that "the initial impact of the current situation, including introduction of the Bill, has been to exacerbate uncertainty and polarise already deeply divided political debate. From the perspective of women in Northern Ireland, the Protocol has become a politicised issue, which makes it difficult to discuss at community level, particularly in shared environments."
80. **We note the evidence we have received highlighting the importance of acknowledging and responding to the concerns of all communities in Northern Ireland. What steps will the Government take to ensure that the full range of views in relation to the Protocol are taken into account? How can a solution be reached that enjoys the support of all communities in Northern Ireland? What practical steps will the Government take to work with community representatives and organisations to ease tensions within the communities of Northern Ireland that have arisen in the context of Brexit and the Protocol?**

Engaging with Northern Ireland stakeholders

81. In light of this, several witnesses stressed the importance of enhanced engagement by the UK and the EU with communities and stakeholders in Northern Ireland. Sir Julian King said: "If we are to find a sustainable way forward, a greater degree of cross-community consent is going to have to be built somehow." He stressed "the need, recognised by everybody but also recognised and acknowledged by the Commission, to find ways to properly represent Northern Ireland's participation in decision-making and governance. ... Through the negotiation of the withdrawal agreement and to an extent the TCA, the process suffered from an absence of an official Northern Ireland voice. ... The result, and part of the reason we are in the situation we are in, reflects that absence of a shared Northern Ireland voice. If we are going to find a way forward, that needs to be rectified."
82. Peter Sheridan noted that, in the context of the Belfast/Good Friday Agreement negotiations, "all of the parties were involved, including, if you remember, people who were affiliated with paramilitary organisations at the time. That allowed them to take ownership rather than feeling that this was imposed on them from the outside. I suspect that a lot of people in Northern Ireland feel this is being imposed. Finding a way for the parties to become involved might be helpful in that."
83. Professor Katy Hayward and Dr Milena Komorova, Queen's University Belfast, stressed the importance of direct engagement with stakeholders in Northern Ireland. They set out a number of models for how such engagement could work in practice, including sectoral advisory groups reporting to an overarching Protocol advisory group, a standing panel of experts, and a civil society congress on the Protocol.
84. Women's Platform agreed that engagement with communities "can go a long way towards easing tensions, building a basis of trust and identifying issues at the core of concerns, which include poverty and a sense of powerlessness, arising not least from the volatile political structures and developments in Northern Ireland." The Civil Society Alliance made similar arguments.
85. Witnesses also stressed the importance of business involvement in such dialogue. The UK Trade and Business Commission called for a process involving local business working with the Northern Ireland Executive, UK Government and EU Commission to identify a sensible resolution." Peter Summerton said that business engagement was vital to ensure that suggestions to resolve the current issues "work logistically for the supply chain between Britain and Northern Ireland." The Ulster Farmers' Union agreed, and noted that "for too long NI has been consulted as an afterthought by the UK Government and the EU Commission."

86. Dr Tom Kelly said that there needed to be recognition that “Northern Ireland is a completely unique place. ... Everything we have had to create in Northern Ireland to create stability means that we have to reflect diversity. He called for greater use of existing structures under the Belfast/Good Friday Agreement. However, Ben Lowry warned against any suggestions for enhanced engagement or representation, such as direct representation from Northern Ireland in the EU, with constitutional implications. He said that ways to address the democratic deficit that did not have constitutional implications would be welcome, but they were secondary to the economic and political impact that the Protocol had had.
87. **It is crucial that both the UK and the EU enhance their engagement with stakeholders in Northern Ireland, including business, civic society and political representatives, to assure them that the issues in relation to the Protocol are being resolved with their full co-operation and involvement, rather than being imposed upon them.**
88. **What account has the Government taken of the views of all such stakeholders in finalising their negotiating position? What stakeholder consultation has taken place so far, and what practical steps can be taken to enhance engagement with Northern Ireland stakeholders, including community groups, business representatives and political parties, in relation to the impact of and operation of the Protocol? Will the Government consider engaging jointly with the EU with Northern Ireland stakeholders in an effort to reach a common understanding of the challenges and solutions that are needed to overcome them? Can greater use be made of existing mechanisms for engagement under the Belfast/Good Friday Agreement and the UK-EU Withdrawal Agreement, while at the same time respecting concerns around the constitutional implications of the creation of new mechanisms for engagement?**

The legal implications of the Bill

The Government’s legal justification for the Bill

89. Several witnesses commented on the Government’s legal justification for the Bill. The DUP said that the significance of the doctrine of necessity is that “it provides a right for a state to be excused in a specific situation from having to comply with international law.” They also pointed out that the Protocol “clearly subjects itself to a prior treaty, the Belfast/Good Friday Agreement, in its foundational Articles”.
90. Dr Austen Morgan, Barrister at 33 Bedford Row Chambers, argued that the Bill is not a breach of international law, as it addresses “the misuse of the Belfast Agreement” in the Protocol. He argued that developments since the Protocol came into force were evidence of “a grave and imminent peril’ for the UK in NI, while there is no serious impairment to the EU protecting its internal market.” He argued that the UK may rely either on “Article 16 first with the risks of reciprocity; and, if forced to breach by circumstances”, the International Law Commission codification on which the doctrine of necessity rests: “But the justification only becomes necessary after commencement, and actions by the UK on the international plane.”
91. The Grand Orange Lodge of Ireland argued that “the UK Government does not require any justification for taking steps to undo the damage caused to the nation’s constitution. Northern Ireland intentionally or otherwise has been created a ‘place apart’ under the Brexit arrangements ... It is therefore entirely right that the UK Government seek to make good on their promises to the people of Northern Ireland and take whatever steps necessary to fix the mess they helped create.”
92. Ben Lowry supported the doctrine of necessity in this case: “The one thing that is not unreasonable for the UK Government to argue is that they signed under duress in a paralysed Parliament at the

end of 2019.” He also stressed that the principle of consent in the pre-existing international agreement, the Belfast/Good Friday Agreement, meant that there was “legal justification for radical change to the Northern Ireland Protocol”.

93. Professor Alan Boyle, Emeritus Professor, Edinburgh Law School, argued that “there is no legal argument for saying that the Bill is a violation of international law. ... [and] no incompatibility between the Bill and any of the international treaties by which the UK is bound, provided—this is the key proviso—that the Government can justify the Bill’s derogations in terms of Article 16. I do not see a difficulty in doing that. The collapse of devolved government in Northern Ireland is a societal difficulty, and part of the purpose of the Protocol was to sustain power-sharing under the Belfast Agreement.”
94. On the other hand, Professor Boyle said that to rely, as the Government is, on the international principle of necessity rather than Article 16 is “nonsense. The international principle of necessity has no place in this debate or discussion”, since the Government’s case was inconsistent with the parameters of the principle as set out by the International Law Commission, not least because the collapse of power-sharing was foreseeable. In his view, if the Government’s “legal position is to try to avoid Article 16, then ... they have had it. But if they engage in required consultation and locate their defence in Article 16 and the restoration of power-sharing, then I think they have a very strong case and in my view the European Commission will be lost for decent arguments.”
95. Professor Mark Elliott, University of Cambridge, argued that the Government’s reliance on the international law doctrine of necessity was “entirely untenable”, as it “clearly does not apply here”. He said that one of the criteria for its use was that the state invoking it is not responsible for the situation that it is trying to address. He said that, while the Government was arguing that the condition is met because the Protocol is being applied in a different way from what was anticipated, the Government’s impact assessments suggested that the impact of the Protocol was foreseen.
96. Professor Elliott acknowledged that Article 16 “provides a possible escape route”, but stressed that “it lays down a process, which is set out in Annex 7 to the Protocol, that the UK would need to trigger before Article 16 would provide a legal basis for departing from the Protocol. The bottom line is that, unless the UK is willing to go through and trigger that process under Article 16 and Annex 7, there is no conceivable way in which Article 16 can provide a legal basis to reconcile the Bill with the UK’s existing obligations under the Withdrawal Agreement and the Protocol.” He suggested that a potential reason why the Government had not used Article 16 was because it was not confident it “would cover the full range of things that they wanted to do”, notably Clause 13 of the Bill excluding the jurisdiction of the CJEU.
97. The Alliance Party argued that the high bar for use of the doctrine of necessity had not been reached, in particular as the dispute resolution mechanisms laid out in the Protocol itself had not been used.
98. Dr Sylvia de Mars and Professor Colin Murray, Newcastle Law School, agreed that it was “untenable” for the UK to invoke the doctrine of necessity in the context of the Bill, since the Bill was unlikely to restore power-sharing but would rather precipitate a new crisis. They also argued that the Government’s own conduct had contributed to the current situation, and that, since the Government had not attempted to use the Article 16 mechanism to address societal concerns and trade dislocations, “it is unacceptable for a state party to reach for necessity without first attempting the mechanisms built into the Withdrawal Agreement.” The Human Rights Consortium, Dr Billy Melo Araujo (Queen’s University Belfast) and Dr Andrew McCormick made similar arguments.
99. **What is your response to the range of views put to the Committee regarding the doctrine of necessity, including with respect to the political situation in Northern**

Ireland, the Government's responsibilities as a co-signatory of the Withdrawal Agreement, and its decision not to invoke Article 16? Why has the Government chosen not to invoke Article 16 at the present time?

The role of the CJEU

100. Some witnesses defended the Government's attempts through the Bill to exclude the role of the CJEU in Northern Ireland under the Protocol. Dr Esmond Birnie argued that addressing the role of the CJEU was necessary as "non-accountable government is wrong in principle". He said that otherwise, policy proposals such as Free Trade Agreements, freeports and tax devolution would be very difficult to apply to Northern Ireland given the application of EU Single Market rules to Northern Ireland as interpreted by the CJEU.
101. The DUP argued that "while it is entirely appropriate for the CJEU to give internal EU judgments, it would be no more appropriate to ask it to adjudicate in an international dispute between the UK and EU, than would giving this task to UK courts to do so." The TUV asserted that "restoring UK sovereignty over its own territory and thereby ending any governance of NI by EU laws will of itself remove the relevance and authority of the [CJEU] from this part of the United Kingdom. Subjection to the [CJEU] only arises from subjection to EU laws and single market/custom/VAT rules and, therefore, applying the axe to the root of the problem deals effectively with [CJEU] interloping."
102. The Grand Orange Lodge of Ireland stated that "those who negotiated and signed up to the Protocol should never have allowed the [CJEU] to retain interventionist powers in the internal affairs of the United Kingdom. By removing the need to comply with EU laws, the need for [CJEU] oversight and intervention is also removed."
103. Others questioned the Government's approach. Dr Sylvia de Mars and Professor Colin Murray asserted that CJEU oversight was intrinsic to the functioning of the EU Single Market, meaning that the EU would not negotiate an agreement containing references to EU law that would not be ultimately interpreted by the CJEU. If it did, the CJEU would be likely to declare that entire agreement contrary to EU law, as it did the original EEA agreement. They argued that "Clause 13(1) and Clause 20 of the Bill consequently cast so wide a net as to risk the entire Protocol being declared contrary to the EU Treaties."
104. Dr de Mars and Professor Murray suggested that some flexibility may be possible on the CJEU's role in relation to dispute settlement. They noted that the Withdrawal Agreement handles most dispute settlement via arbitration, "but this 'freedom' from the CJEU as final authority comes with a significant caveat: whenever arbitration panels have to consider EU law concepts, they must pause proceedings and refer those to the CJEU for interpretation. This is once again because any findings by the arbitral panel will be binding on both the UK and the EU, and as such, any interpretation of EU law by the arbitral panel has to be carried out by the CJEU." Dr Billy Melo Araujo made a similar argument.
105. The Alliance Party argued that compliance with EU law, including the jurisdiction of the CJEU, was crucial to securing Northern Ireland's access to the EU Single Market, and that being within the jurisdiction of the CJEU is actively in Northern Ireland's interests. Professor David Phinnemore, Professor Katy Hayward and Dr Lisa Claire Whitten stated that moving away from the current arrangements without the agreement of the EU would threaten Northern Ireland's access to the EU Single Market for goods: "This would re-introduce uncertainty around post-Brexit arrangements for cross-border trade on the island of Ireland and raise questions about whether a physical hardening of the border through new checks and controls can continue to be avoided."

106. Professor Phinnemore, Professor Hayward and Dr Whitten also noted that, under Article 12(4) of the Protocol, the CJEU has jurisdiction over the Single Electricity Market (SEM), and its operation is required to be interpreted in light of CJEU case law. They argued that “the scope of Clause 13 and Clause 14 of the Northern Ireland Protocol Bill makes this impossible, despite the Government’s stated wish to protect the SEM.” Dr Andrew McCormick and Chartered Accountants Ireland similarly noted that the Government’s proposals would call into question the operation of the Single Electricity Market.

107. Sir Julian King stressed that the role of the CJEU “is undoubtedly one of the harder issues from an EU perspective. ... The EU is a community of law. When it comes to EU law, the EU can only recognise one body as final adjudicator, and that is the [CJEU]. That reality goes to the core of how the EU works. It is very difficult for it to depart from that.” He did, however, acknowledge that “how that is applied in practice is something that is done in different ways in different contexts”, such as the EEA and EFTA arrangements.

108. **We note the view of our witnesses that the role of the CJEU may be the most difficult issue to resolve in the discussions with the EU. Do you see any scope for compromise between the UK and EU positions to resolve this issue? We acknowledge that membership of the CJEU's judiciary is currently limited by the EU Treaties to nationals of the Member States. In that context, how feasible are suggestions that a mechanism might be found to ensure that UK (and in particular Northern Ireland) judges were able to contribute to the CJEU's consideration of matters arising from the Protocol?**

109. **What is your response to concerns that the Bill's provisions on the CJEU would call into question the operation of the Single Electricity Market on the island of Ireland?**

Article 2 of the Protocol and other legal issues

110. In their joint submission, the Northern Ireland Human Rights Commission and the Equality Commission for Northern Ireland welcomed the Government’s “non-controversial” commitment to upholding Article 2 of the Protocol, on rights of individuals. However, they identified a number of concerns about the impact of the Bill on the implementation of Article 2. They sought clarity on what consideration was given by the Government to compliance with Article 2 in development of the Protocol Bill, and recommended that:

- Clause 13 be amended to make clear that subsection 1 does not restrict the role of the CJEU where it is asked to give a ruling under Article 174 of the Withdrawal Agreement (Disputes raising questions of Union law) relating to the interpretation of EU law relevant to Article 2.
- Clause 15(3) be amended to supplement the restriction preventing Ministers from designating Article 2 as excluded provision, to ensure that Ministers are also prevented from designating as excluded provision, any provision of the Withdrawal Agreement or Protocol insofar as it affects the interpretation, implementation and/or enforcement of Article 2.
- The Bill be amended to make clear that a Minister’s powers under Clause 14(4), or any other Clause of the Bill, do not extend to taking any action that weakens the interpretation, implementation or enforcement of Article 2, either by excluding provisions of the Protocol or Withdrawal Agreement insofar as they relate to Article 2, or by any other exercise of delegated powers under the Bill.
- Clause 20 be amended to ensure that it does not impact on the duty, under Article 13(2), on domestic courts and tribunals to interpret EU law relevant to Article 2 in conformity with the relevant case law of the CJEU.

- There are no changes to the Protocol that would result in a weakening of either the Article 2(1) commitment or the Protocol's rights, safeguards and oversight mechanisms relating to this commitment.

111. Dr Sylvia de Mars and Professor Colin Murray, Rights and Security International, and the Human Rights Consortium likewise expressed concern that the Bill, and in particular its provisions concerning the role of the CJEU, could affect aspects of the operation of Article 2 of the Protocol.

112. Given that the Protocol applies several important environmental laws to Northern Ireland, Greener UK and the RSPB expressed concern at the impact of the Bill on environmental protection and standards in Northern Ireland, including cross-border cooperation on the island of Ireland.

113. **We note the concerns put to us by the Northern Ireland Human Rights Commission and the Equality Commission for Northern Ireland about the impact of the Northern Ireland Protocol Bill on Article 2 of the Protocol. What consideration did the Government give to compliance of the Bill with Article 2? What is your response to the arguments by the Northern Ireland Human Rights Commission and the Equality Commission for Northern Ireland that amendments to Clauses 13, 14(4) and 15(3) and 20 of the Bill are necessary to uphold this commitment? What reassurance can you provide that environmental protection and standards will not be undermined by the Bill?**

Conclusion: the need for trust

114. Several witnesses stressed the need for trust, between the UK and the EU, as well as the political parties and communities in Northern Ireland, and the Irish Government, as a precondition of a successful resolution of these issues.

115. Peter Sheridan said: "On the upside, the language has certainly changed over this last while. If both the EU and the UK are saying they want to find agreed solutions, that is a good place to be. Clearly, it is neither in the UK's nor the EU's interests to allow matters to escalate further. It is a lose-lose for both. Arguing who loses most is a zero-sum game."

116. Jacqueline Irwin told us: "Next year is the 25th anniversary of the Good Friday Agreement, which represents a great moment to take stock. It is important not only for us to see where we are now, when some things that were in our landscape have changed—for instance, the European umbrella in relation to identity—but for the British and Irish Governments to work closely together and create a safe ground for everyone. Those notions of working in lockstep, keeping very close contact with each other and no surprises—all the political skills that were learned in the run-up to the agreement—need to be rehearsed and reimagined in the context that we are in now."

117. **We reiterate the conclusion of our July 2022 report, by urging the UK and the EU, together with the political parties in Northern Ireland, Northern Ireland stakeholders and the Irish Government, to make a renewed commitment to work together to prioritise Northern Ireland's interests, participate together in constructive engagement, rebuild trust, and engage in effective relationship-building, in order to resolve the issues that have arisen in relation to the Protocol.**