



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Culture, Tourism, Europe and External Affairs Committee

**Thursday 16 January 2020**

**Session 5**



The Scottish Parliament  
Pàrlamaid na h-Alba

© Parliamentary copyright. Scottish Parliamentary Corporate Body

Information on the Scottish Parliament's copyright policy can be found on the website - [www.parliament.scot](http://www.parliament.scot) or by contacting Public Information on 0131 348 5000

---

**Thursday 16 January 2020**

**CONTENTS**

<b>ARTICLE 50 (NORTHERN IRELAND PROTOCOL) .....</b>	<b>Col. 1</b>
---	---------------

---

**CULTURE, TOURISM, EUROPE AND EXTERNAL AFFAIRS COMMITTEE**  
**2<sup>nd</sup> Meeting 2020, Session 5**

**CONVENER**

\*Joan McAlpine (South Scotland) (SNP)

**DEPUTY CONVENER**

\*Claire Baker (Mid Scotland and Fife) (Lab)

**COMMITTEE MEMBERS**

\*Donald Cameron (Highlands and Islands) (Con)

\*Annabelle Ewing (Cowdenbeath) (SNP)

\*Kenneth Gibson (Cunninghame North) (SNP)

\*Ross Greer (West Scotland) (Green)

Stuart McMillan (Greenock and Inverclyde) (SNP)

\*Mike Rumbles (North East Scotland) (LD)

\*Alexander Stewart (Mid Scotland and Fife) (Con)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Aodhán Connolly (Northern Ireland Retail Consortium)

Professor David Phinnemore (Queen's University Belfast)

Mairi Spowage (Fraser of Allander Institute)

**CLERK TO THE COMMITTEE**

Stephen Herbert

**LOCATION**

The Robert Burns Room (CR1)



# Scottish Parliament

## Culture, Tourism, Europe and External Affairs Committee

Thursday 16 January 2020

*[The Convener opened the meeting at 09:07]*

### Article 50 (Northern Ireland Protocol)

**The Convener (Joan McAlpine):** Good morning and welcome to the second meeting in 2020 of the Culture, Tourism, Europe and External Affairs Committee. Apologies have been received from Stuart McMillan MSP. I remind members and the public to turn off mobile phones. Any members who are using electronic devices to access committee papers should ensure that they are turned to silent mode.

Our first agenda item is to take evidence on the Northern Ireland protocol as part of the committee's article 50 inquiry. I welcome the witnesses to the meeting: Professor David Phinnemore is professor of European politics at Queens University Belfast; Mairi Spowage is deputy director of the Fraser of Allander institute; and Aodhán Connolly is director of the Northern Ireland Retail Consortium. Thank you all for coming.

It would, perhaps, be helpful to start with a general look at the protocol and where we are now. A majority of people in Northern Ireland—I believe that it was 56 per cent—voted to remain in the European Union. Do you think that the protocol on Ireland and Northern Ireland, which gives Northern Ireland partial access to the single market and customs union, will satisfy demands for a differentiated solution? The protocol will place Northern Ireland on a different customs and regulatory footing from the rest of the United Kingdom. What is your view of the main economic implications of that solution?

**Aodhán Connolly:** Thank you for the opportunity to appear before the committee and for your interest in the Northern Ireland protocol and Northern Ireland. As far as the protocol is concerned, the business community in Northern Ireland has been very clear. We have been united from day 1 and our message has not changed over the past three years. That message is very simple: for Northern Ireland not only to thrive after Brexit but to survive economically, we need unfettered access to both the EU market and the Great Britain market. That has never been an either/or choice.

The plan that is currently on the table is, frankly, better than no deal, and we will have to accept something that is better than no deal. However, by the same token, it is not the unfettered access that we have asked for. It provides a certain amount of much-needed certainty, but it also introduces frictions, complexities and costs that have never been present in NI-to-GB and GB-to-NI trade.

Retail—my industry—is a low-profit and high-volume industry. We do not, therefore, have the ability to absorb any cost rises, especially because, until quarter 3 of last year, we had deflation in retail prices. That was great for the consumer, but it squeezed the margins for the retail industry. On the other side is the Northern Ireland consumer, who has half the discretionary income of Great Britain households. We have about £113 per week of discretionary income, whereas the national average is £213. Scotland is bang on the national average. That means that the Northern Ireland consumer cannot afford cost rises and the people who will be most affected by cost rises are the most economically vulnerable people in Northern Ireland.

There is a lot of detail, and I am sure that we will go into that over the next hour or so, but I will finish my opening comments by saying that there is a very simple equation here. If the new costs—the frictions, whether they are tariffs, non-tariff barriers or checks—are higher than the profit margin, either the product or the business model will become unviable.

**Mairi Spowage (Fraser of Allander Institute):** We were invited because of a piece of work that we did looking at different scenarios and the impact that they would have on the trading relationship between GB and the EU and, within that, the Northern Irish situation and the impact on the Northern Ireland economy. We did that work prior to the protocol being agreed, so it was on the basis of the old backstop arrangement. However, there is a scenario in our report that, although it is not exactly the same, is similar to the protocol. In that, GB would be in a free trade agreement scenario and NI would be in a backstop scenario, which is not a million miles away from where we have ended up with the protocol.

It is clear that in those scenarios, trade frictions will arise between NI and GB and NI and the EU. Those will perhaps be different with regards to goods and services, but both sets of frictions will have an impact on the Northern Ireland economy. We have not modelled the degree of the impact of the scenario that we find ourselves in. There are a lot of practicalities to be worked out about exactly how it will work and, therefore, what the level of friction will be, and the kind of free trade agreement that there will be between the UK and the EU has still to be worked out. However, it is

clear that as soon as trade frictions are introduced, there will be an impact on the Northern Ireland economy that would not exist if Brexit did not take place.

**Professor David Phinnemore (Queen's University Belfast):** You asked whether the protocol will be accepted. There are considerable concerns around a lot of its trade implications. However, if we step back a bit, we can think about what the protocol achieves: it has minimised some of the disruption that Brexit will cause for northern Ireland; it has avoided a hard border on the island of Ireland, which has economic and political significance; it has gone a long way towards upholding the Good Friday agreement and addressing some of the rights agendas in that; and it has provided a space so that north-south co-operation can continue.

From that perspective, I think that the protocol will be viewed positively. However, the problem is that the revised version of the protocol raises significant questions about trade friction—not north-south friction, the avoidance of which was focused on throughout the negotiations, but east-west friction, as we have already heard. Much of whether people will buy into the protocol and accept it will depend on how those questions are addressed. At the moment, there is considerable uncertainty around that—far more than we have had at any other point in the process of the withdrawal negotiations.

09:15

The extent to which the protocol will be accepted will depend on how it is going to be implemented, because it is very much a bare-bones document. It does the absolute minimum to avoid north-south friction. The arrangement is not the most dynamic one. The protocol does not provide particular arrangements for Northern Ireland in a range of different EU policy areas, and we will have to see how it will be implemented.

It has already been indicated that a lot will depend on the nature and substance of the future UK-EU relationship. I suppose that a big concern in Northern Ireland is that London will think that the Northern Ireland dimension has been done—that Northern Ireland has its own special protocol, and that the matter is sorted. That might have been the case with the May deal, but it is certainly not the case with the Johnson deal. A huge number of issues are to be addressed, and there could be significant economic consequences for Northern Ireland, depending on how they are addressed.

**The Convener:** The European Union (Withdrawal Agreement) Bill says that Northern Ireland will be in the UK customs area and the EU

customs union at the same time, and the Prime Minister has said that there will not be any checks at all. From evidence that we have taken from trade experts before, my understanding is that that would be against international law and World Trade Organization rules. Is that your understanding?

**Professor Phinnemore:** The withdrawal agreement states that Northern Ireland will very much remain in the UK's customs union but, obviously, the "Union Customs Code" applies to the United Kingdom in respect of Northern Ireland, so, de facto, Northern Ireland will be in the EU's customs union but formally in the UK's customs union. There are questions about whether that will be acceptable to the WTO, but a security exemption is allowed. My understanding is that the arrangement has always been negotiated on the assumption that Northern Ireland has unique circumstances and particular challenges and, as far as I am aware, there have not been objections to that particular arrangement from other WTO members.

**The Convener:** If the checks go ahead, who would carry them out?

**Professor Phinnemore:** Under the European Commission's original proposal, the EU was going to carry them out, because they would be at the EU's external border. Under the deal, the arrangements are to be carried out by the UK, but with the EU having oversight of processes. One of the issues for the transition period is to determine the arrangements by which that scrutiny and oversight are carried out.

**Aodhán Connolly:** The easiest way to think of the implementation, who will do what and the de facto position versus the de jure position is to consider that, in Northern Ireland, for all intents and purposes, the UK will administer the EU customs and customs code and all the administration that comes with that while, de jure, Northern Ireland will still be part of the United Kingdom.

**The Convener:** I see. Where do you see the checks being carried out? We will visit the south-west of Scotland in a couple of weeks' time. Do you see an implication for the south-west of Scotland, and Stranraer and Cairnryan in particular?

**Aodhán Connolly:** A lot of checks are involved, and the checks that are needed will depend on the free trade agreement that will be—I hope—achieved this year. Closer alignment through the FTA will change the wall between GB and NI and between Scotland and NI from a brick wall to a paper wall.

It is yet to be decided where the checks will happen. Everything has to go through a border

inspection post and a point of entry. We are talking about VAT, access, customs, and sanitary and phytosanitary checks. That is how we have to look at the matter. Each of those things is part of the jigsaw of the overall standards and things that have to be adhered to.

There has been talk of some of the paperwork checks—barcoding checks or whatever—being done in Cairnryan and Stranraer before things get to Northern Ireland. Other checks could happen at the port of Belfast and at Larne. That is one of the things that we are seeking clarity on.

One of our members' concerns is about the just-in-time supply chain. Perhaps the best way to illustrate it is to tell you about one consolidated lorry that would be coming from a depot in Scotland or the north of England and going to Northern Ireland. On that lorry you would have about 1,500 products. Each of those would need a separate tariff code, and each of those would have to be spot on, otherwise each product would have to be checked. Of those 1,500 products, around 800 could be of animal origin, and each of those needs not only a rules of origin certificate but an export health certificate, which has a cost, and each certificate must be checked. Under that, there are also physical checks to make sure that what is in the lorry is what the documentation says.

All that paperwork must be checked before the products go on the lorry, and all that has to be done just in time. We can have something that comes from the south of Spain, comes across the land bridge and goes to Northern Ireland within a two-hour window. It is not the case that if a lorry misses a ferry there will be one in three hours' time and that will be fine. It is not a 20-minute delay or a three hours and 20-minutes delay. As soon as supermarket groceries arrive, they go to a distribution centre with a large picking bay, and if a lorry misses its window, the delay might be 24 hours. We already have 12 to 18 hours less shelf life than Birmingham or Bristol because of our geographical location. A lot of items within that just-in-time supply chain become unviable if there are delays.

Concerns have already been raised about the need for infrastructure at Stranraer and Cairnryan. We also need to consider the roads. If you imagine all those checks leading to delays, in the worst-case scenario we could have a car park on the A75 and the A77. There is a real need for the Scottish Government to look at the infrastructure impact of that, as well as the economic impact, just as the Department for Infrastructure in Northern Ireland is doing.

**The Convener:** My understanding is that a number of supermarkets in Northern Ireland are supplied from warehouses in the central belt of

Scotland. Is that your understanding? How would that be affected?

**Aodhán Connolly:** I always say that we represent the retail industry, not just supermarkets, and that industry is about 30 sectors. Regarding just-in-time supply, we are talking about not only groceries and supermarkets, but pharmacy, for example. We have some indigenous suppliers, and I came over yesterday to talk to some of our members here. They have grave concerns, about not only how they will get their goods over but the cost implications. It goes back to that simple equation that, if the new costs are higher than the profit margin, there is a viability issue.

The supply chain will always take the path of least resistance. If it is cheaper or easier to get things through Dublin, or to bypass Scotland, that could happen. Those principles do not change in retail: the supply chain will always take the path of least resistance. There are huge concerns not only from our Scottish indigenous members and those who have distribution centres in Scotland but from across the UK. The situation means that Cairnryan and Stranraer will be pressure points.

**Claire Baker (Mid Scotland and Fife) (Lab):** The protocol and the proposed arrangements for Northern Ireland have been portrayed by some people as giving an economic advantage to Northern Ireland. The Fraser of Allander institute report looks at a number of different scenarios. In one scenario, Northern Ireland has a Northern-Ireland-only agreement with the EU, and the UK has a free trade agreement with the EU. Is that the most likely scenario? If that is the outcome, the report suggests that there would be

“a substantial reduction in trade with GB, which is the region's main trade partner.”

That does not look very advantageous to Northern Ireland.

**Mairi Spowage:** You are talking about the backstop arrangement. Our modelling was done in the first half of 2019, prior to the protocol being agreed. There are a few things that it does not capture, so I want to be clear about the limitations of what we have done. We used a model of the Northern Ireland economy that is built on the “NI Economic Accounts Project—2012 Experimental Results”, and built on top of that are a number of equations about the behaviours of households and different actors in the economy. It is similar to the modelling approach used by HM Treasury and by the Scottish Government in looking at the effects of Brexit.

Some people might be surprised that the level of impacts over the medium to long term—15 years—are smaller than they are in some other models—for example, those that have been done

by the Treasury and by the Scottish Government. One of the issues about our modelling is that it looks only at the impact on Northern Ireland and does not take account of secondary impacts that might happen if Brexit has an impact on GB.

If, in the long run, the GB economy is smaller because of Brexit, that would have additional impacts to those that we have set out. Modelling that impact would require a two-region model that looks at Northern Ireland and GB. That way, the impact that weaknesses in the GB economy would have on Northern Ireland could be modelled, too. That is why the reduction in the gross domestic product—of about 2.7 per cent over the longer term—is smaller than some of the impacts that have been generated from other modelling. If you were to simulate the long-term impact on GB, it is likely that the figures would be weaker again, as demand in GB for Northern Ireland goods and services becomes lower than would have been the case in the absence of Brexit.

I point out the limitations of the modelling, albeit the different scenarios and their relative impact give you a feel for the impact on Northern Ireland as a result of frictions between Northern Ireland and the EU and between Northern Ireland and GB. A hard Brexit, in which there would be a hard border with the EU on the island of Ireland, is the scenario that we looked at that would be most damaging to the Northern Ireland economy.

We looked only at impacts on trade; we did not look at impacts on migration, productivity or anything like that. Some of the other analyses, such as those that have been done by the Treasury and by the Scottish Government, did look at those things. Again, those aspects would have larger effects. Even though we looked at a partial picture of the impact on the Northern Ireland economy, you can see that the scenarios, with their different frictions, have differential impacts on the economy, and on the different sectors of the economy, because the trade in goods and services is different depending on whether you are considering trade with GB or trade with the EU.

In all the scenarios, over the 15-year period, there is an impact on trade and on the overall size of the economy in Northern Ireland.

**Claire Baker:** The Scottish Government has expressed concern that Northern Ireland will have a competitive advantage over Scotland. Does that relate to a package of policies—that is, it is about more than just trade? Would the protocol produce unintended consequences? The Fraser of Allander institute report has identified that, over a longer timescale, there will be a reduction in trade between Northern Ireland and Great Britain, even though GB is Northern Ireland's main trading partner.

**Mairi Spowage:** Indeed. I think that it would be fair to characterise the protocol as giving Northern Ireland better access than GB to the EU market. However, that does not take account of the frictions that might be introduced between Northern Ireland and Great Britain. Whether that is an overall plus or minus for the Northern Ireland economy, compared with any other scenario, depends on the frictions between Northern Ireland and GB and the potential frictions between Northern Ireland and the EU on services, for example.

We cannot forget that a very large part of the economy involves services, but a lot of the arrangements cover goods, although that, too, is important, including for physical movement and the practicalities of checks. If there is regulatory divergence between the UK and the EU on services, that will also cause large frictions in trade and will potentially impact on the economy.

09:30

**Aodhán Connolly:** As far as having access to the EU is concerned, Northern Ireland will have an advantage. Unfortunately, the issue cannot be looked at in that singularity; there has to be a holistic approach. NI's access to the EU is guaranteed only for four years, and there will be a vote every four years on whether we want to continue with it.

Some 70 per cent of the value of all goods that cross the Irish Sea from GB to NI are for NI consumers and retailers. I go back to my earlier point that we need both markets to survive. Under this deal, we will have friction with our biggest market. That means customs, possibly tariffs, checks, new systems, delays and man-hours to facilitate all those things.

In response to the headline that we will have access to the EU and that that will be an advantage, of course it will be an advantage. However, if that is taken in the round with all the things that are either uncertain or detrimental to the NI economy and households, I would not argue that NI will have an advantage.

**Mairi Spowage:** I will give an example. There is quite a lot of trade between NI and GB and—whether because of reduced demand in GB, more weakness in the economy than there would have been in the absence of Brexit or friction—if there were to be a 5 per cent reduction in trade exports between NI and GB, the NI economy would be 4 per cent smaller. That is on top of those frictions that we have modelled in; in the report, we also test the sensitivity of our results. That gives an idea of the scale of what could happen if there was a reduction in trade between NI and GB.



**Claire Baker:** I will switch topic and ask about goods that are identified as being “at risk”. I would imagine that that ties into issues about delays. I know that this is to be decided by the new UK-EU Joint Committee, but do you have an idea of what items are likely to come into the at-risk category?

**Aodhán Connolly:** Anything and everything. What we need from the joint committee is some generosity of spirit and commonsense decisions.

If a subjective approach is taken, especially on the EU side, with the aim of protecting the single market and the customs union in the south and the EU at all costs, it will be very hard for us to prove that things are not at risk. However, if an objective approach is taken, either through mitigation, such as by having a trusted trader scheme, or through an evidence base, with retailers showing, for example, that they are dead-end hosts—that is, the goods are coming only to NI and not going any further—there could be a blanket ability to make decisions that things are not “at risk”.

In protecting the single market’s standards and EU consumers, the products that could be at risk are things such as foodstuffs. In protecting the customs union, it could be things such as alcohol and tobacco—items that have an excise duty or customs duty on them. However, it really depends on what Her Majesty’s Government’s representatives and the EU officials who make up the joint committee decide.

**Professor Phinnemore:** A lot of the focus at the moment is, quite understandably, on the EU’s concerns about goods coming from GB into NI and therefore being at risk of moving into the EU market.

There is also a risk the other way, with some of the UK’s potential international trade partners expressing concerns about goods coming into GB from the EU via Northern Ireland without checks and therefore entering the market without necessarily complying with the UK requirements. Those goods would comply if they were coming into the GB market directly from the EU.

In the longer term, goods that come in through that route may go into countries with which the UK has trade partnerships without necessarily fulfilling the checks that would otherwise be required. That is a small issue at the moment and we do not necessarily see it growing, but there are concerns that the UK might need to protect its market from goods coming into GB from the NI route, just as the EU is concerned about what is coming into its market from GB via NI.

**Aodhán Connolly:** I will give a quick example of that. Someone has a lorry-load of beef and manages to get it into Northern Ireland. It then suddenly has a stamp put on it saying that it is Northern Irish beef. That means that it can go into

the GB market and the person has just avoided paying between £50,000 and £80,000 of tariffs. That is a worry for our trading partners.

**Donald Cameron (Highlands and Islands) (Con):** I have questions on the democratic consent mechanism and on Professor Phinnemore’s online report, which deals with scenarios in which the Northern Ireland Assembly is functioning and not functioning. At the weekend, we had the welcome news that devolution has been restored to Northern Ireland. Your post is dated 6 January, which was just before last weekend. In light of the weekend’s agreement, do you have any general observations or reflections on what you have written?

**Professor Phinnemore:** I think that a supplementary paper that my colleague Katy Hayward and I wrote was circulated. That tries to tease out some of the implications of the “New Decade, New Approach” agreement for the implementation of the protocol. Obviously, we are at the very early stage of the process of the Northern Ireland Executive and Northern Ireland Assembly coming to terms with what is needed.

On the consent mechanism, obviously, with the return of the Assembly and the Executive, we will be able to have more informed debate in Northern Ireland among politicians through a structured process of committees and in particular the work of the sub-committee on Brexit, which is being established as part of the Executive team.

There will be more debate and discussion and, I hope, more consultation. That will mean that, when the consent mechanism is implemented, which we expect to happen in November 2024, assuming that transition is not extended, there will be an informed discussion and debate. However, the return of the Executive and Assembly does not fundamentally change my analysis in my initial report.

**Donald Cameron:** One of the potential scenarios, and perhaps the most likely one, is that the protocol will apply for four years. Obviously, there could be an eight-year application if there is a cross-community majority of members of the legislative Assembly. What strains might that timeframe place on the political situation in Northern Ireland? For instance, I am thinking of the electoral cycle that will coexist alongside that process.

**Professor Phinnemore:** On your point about the electoral cycle, the protocol was designed so that the consent mechanism would be deployed every four years and each Assembly would have a vote, or would have the opportunity to vote, on continuation of the protocol.

In referring to continuation of the protocol, I should say that the consent mechanism applies

only to articles 5 to 10, so it applies only to the continued regulatory alignment with the EU for the free movement of goods, the single electricity market and the application of the union customs code and Northern Ireland's being de facto part of the EU customs union. If those were voted down, the rest of the protocol would continue. It contains issues to do with north-south co-operation and citizens' rights. The protocol would not disappear.

That said, when the vote takes place, it will be on the package of all those alignment issues. Northern Ireland could not vote to stay in the customs union but leave the regulatory alignment or the single market. It could not simply keep the alignment to ensure the functioning of the single electricity market. It is a package.

It is difficult to know where we will be. Interestingly, a number of commentators have pointed out that the decision will be based very much on lived experience. Politics will come into it, but at the end of the day, many people will vote on the basis of the actual experience of the implementation of the protocol and, as we have heard, there are huge uncertainties about the economic implications for Northern Ireland. Therefore, it is difficult to predict what will happen four years down the line.

On the other hand, if the members of the Northern Ireland Assembly vote against continuation of the protocol, they would in effect be voting for a hard border on the island of Ireland, because, if they do not vote in favour of the continuation of articles 5 to 10, the default position is that, after two years, the situation will revert to whatever the UK-EU relationship is. We do not know at the moment what that will be, but according to the UK Government, it will not involve a customs union or participation in the single market to the extent that there will be regulatory alignment. All the frictions that we were trying to avoid over the past two years with regard to the need to secure the protocol would come back, which has not only economic implications north and south, but political implications.

During that two-year period, other arrangements could be found, but one must question the extent of the EU's energy to engage with the British Government on that question, particularly when the protocol would have been rejected by a vote of democratically elected representatives of the people of Northern Ireland.

**Donald Cameron:** Your report states that

"The provisions on democratic consent are unprecedented as far as ... the EU is concerned."

Could you expand on that?

**Professor Phinnemore:** The idea of allowing part of a subnational entity of a non-member state

to vote on continuation of its legal relationship via the state with the EU is unprecedented.

**Donald Cameron:** You refer to the difference between the cross-community mechanism in the Good Friday agreement and what is in the protocol. Could you explain that a bit further?

**Professor Phinnemore:** One of the interesting things about the democratic consent mechanism in the protocol is that the members of the Northern Ireland Assembly—whether or not it is a sitting—are being asked to determine whether an international legal obligation of the United Kingdom, which covers areas that are not devolved, should continue. In the context of the GFA, the consent mechanism applies only to devolved matters in the Assembly, apart from the question of the border poll and whether Northern Ireland is to remain in the United Kingdom or become part of United Ireland.

**Ross Greer (West Scotland) (Green):** I am interested in the scenario in which, if a majority of MLAs were to reject articles 5 to 10, a two-year process would be triggered. If we are to be optimistic and say that alternative proposals will be arrived at, so that the end result is not to default to the wider UK arrangement, would the Assembly's vote on the new proposals be in any way binding, or would that vote be essentially consultative?

**Professor Phinnemore:** My understanding of the democratic consent process is that if the MLAs vote against continued application of articles 5 to 10, articles 5 to 10 would go after two years. I have seen nothing to suggest that there is provision for MLAs to vote on successor arrangements. The default would be that the UK-EU relationship would apply to Northern Ireland.

**Ross Greer:** Given the recent instability in the Assembly, and the concerns that the Democratic Unionist Party has raised about the difference between the consent mechanism in the withdrawal agreement and use of simple majorities versus cross-community majorities, I am concerned that there is a recipe for Executive collapse. Every electoral cycle will have a moment of potential collapse because, with the numbers in the Assembly at the moment, it is possible to have a simple majority without a single unionist vote, but the DUP holds a unionist veto, because it has a majority of unionist MLAs.

That means that, even if every party but the DUP were to vote in favour of something, that would not meet the cross-community criterion because a majority of unionist MLAs would not have done so. Equally, depending on the numbers, the same situation could arise in relation to the nationalist community and Sinn Féin.

In every electoral cycle of the Assembly, there is a moment when it is potentially in the interests of

one of the two major parties to collapse the Executive because the scenario that it wants to play out is not the one that is playing out by a simple majority.

09:45

**Professor Phinnemore:** That is true, but if the Assembly were collapsed at any point, there would still be a vote among the MLAs who were in post, because the provision is not that the Northern Ireland Assembly per se votes, but that the MLAs vote. If the Assembly is collapsed, the democratic consent mechanism will still be deployed, but with the existing set of MLAs.

**Aodhán Connolly:** My bailiwick is definitely not the constitutional stuff, but even if we look at the issue purely through a business lens, what we have found with Brexit so far is that whenever a constitutional question is raised, it creates uncertainty. The one thing that business likes is certainty. The protocol provides that there will be uncertainty every four years. How can small and medium-sized enterprises, or even large multinationals, make business plans that last for longer than four or five years when they do not know what access they will have to one or other of their markets? Constitutionality aside, in purely business terms, the fact that there will be rolling uncertainty will be hugely detrimental to business.

**Ross Greer:** Has any forecasting been done on that? I realise that, because this is a totally unprecedented situation, forecasting is challenging, but it seems to be obvious that foreign direct investment, for example, will be significantly challenged by the four-year cycle. How can multinationals be persuaded to come to Northern Ireland and invest if, in two and a half years, two years or 18 months, circumstances could completely change and its business plan becomes non-viable?

**Aodhán Connolly:** For some large infrastructure projects, especially those to do with energy, it takes between 12 and 20 years before they start to make a profit. That is in the context of a vast amount of investment needing to be put into electricity grids, wind farms and so on.

For us, the issue is not as simple a question as, “Who’s going to support our businesses?” or “Where are we going to get that FDI in business?” It goes right down to the nuts and bolts of Northern Ireland’s infrastructure and private finance initiative projects—in other words, the things that are really needed to keep Northern Ireland moving.

**Ross Greer:** I will go back to where we started and the provisions under the Good Friday agreement for north-south co-operation. My reading of the protocol is that it is a very internal

UK process. The UK and Irish Governments are the co-guarantors of the Good Friday agreement, but it is very much the case that the provisions in the protocol are internal to the UK. Under the protocol, it is the responsibility of the Assembly and the UK Government to come up with alternative arrangements.

If the UK Government were to come up with alternative arrangements, they would have to have the agreement of the European Union. That is the point at which the Irish Government would exert its influence. There are other provisions in relation to the North-South Ministerial Council. Given, for example, the DUP’s concerns about compatibility with the Good Friday agreement—not that it would advocate greater involvement by the Irish Government—can the essential requirement for the Irish Government to be involved be fulfilled by the de facto reality that any involvement of the EU means that the consent of the Irish Government will be required?

**Professor Phinnemore:** With regard to any future arrangements to replace the arrangements that would fall if there were a democratic consent mechanism vote against the continuation of articles 5 to 10, it is my understanding that any adaptation of the UK-EU relationship to accommodate that would have to be approved by the EU as a whole, which would give the Irish Government a direct say in the arrangements to be agreed.

Also, we tend to focus on the bilateral UK-EU arrangements in the Government’s mechanisms for implementation of the protocol, but there are provisions that allow the institutions that were established by the Good Friday agreement—not just the Assembly and the Executive, but the north-south and east-west bodies—to play a role in monitoring its implementation. Certainly, as far as the North-South Ministerial Council is concerned, which obviously has Northern Irish and Irish representation on it, that will feed in recommendations to the specialised committee, which will then feed into the joint committee about the implementation of the protocol. Therefore, there are other mechanisms through which an Irish dimension can be brought to bear on implementation of the protocol.

**Ross Greer:** Is there any interplay between the consent mechanism, as defined in the protocol, and the process on reform of the petition of concern, which should now, in theory, begin off the back of the agreement over the weekend? I realise that those are separate processes, but the debate over the past few years on reforming the petition of concern has often proposed that that should look more like the consent mechanism.

**Professor Phinnemore:** My understanding is that a clear attempt was made to ensure that the

democratic consent mechanism in the protocol is very much a stand-alone mechanism. Although that draws on the principle and some of the practices of democratic consent, it is designed so that its being subject to the petition of concern can be avoided.

I do not anticipate any of the consequences of the attempts to reform the petition of concern necessarily impacting on implementation of the mechanism, although there will obviously be attempts in some quarters in Northern Ireland politics to ensure that the petition of concern can be applied to the mechanism. The mechanism is very much part of the UK-EU agreement on withdrawal: it is not part of the Good Friday agreement.

**The Convener:** What are the implications of the continuing jurisdiction of the Court of Justice of the European Union in Northern Ireland? My understanding is that the court will continue to have a role.

**Professor Phinnemore:** It will continue to have a role in implementing the obligations, such as articles 5 to 10 of the protocol and any new EU legislation that is applied to it.

**The Convener:** What are the political implications of that continuing role?

**Professor Phinnemore:** We are yet to see that. As a matter of principle, there will be resistance, because we are talking about a court. Equally, there will probably be an understanding that it is a court to which the UK has been subject for a long time. The principles that are likely to determine rulings on implementation of the *acquis* as it relates to free movement of goods will probably be fairly consistently in line with what has happened in the past. I do not anticipate there being too many surprises. That said, we do not know what will happen in the future, although I think that some people would have legitimate concerns about a court from the European Union having jurisdiction over Northern Ireland in certain areas of legislation.

**Aodhán Connolly:** The protocol sort of delineates the political, legal and enforcement elements. There is an expectation that the political arguments or negotiations will be conducted through the joint committee, with expert evidence being given, and that the legal and enforcement parts will be progressed by the European Court of Justice. I cannot answer on how that will work in practice and whether we are able to keep politics out of it.

**Annabelle Ewing (Cowdenbeath) (SNP):** I will pick up on that interesting area. It is fair to say that the *acquis* is the *acquis*, although it seems that many members of the UK Government do not want to be part of the *acquis* on goods or on

anything else. However, as regulations change over time—the withdrawal agreement covers goods, state aid and environmental standards, for example—a different body of EU law could pertain, to which the European Court of Justice must have recourse.

The ECJ also has recourse to a hierarchy of sources of law in interpreting the legal position under EU law. If I leave politics to one side, I can say that that will have political implications, because that is the legal position that the court is in. I cannot see that there will be an easy marrying, because part of a non-member state will be subject to the rules of the game that apply to the EU27.

**Professor Phinnemore:** Indeed, and some such concerns could be expressed early on. On regulatory alignment, we need to be aware that there is an extensive annex that indicates what legislation will apply to Northern Ireland when the protocol comes into force. If the EU replaces or changes any of that legislation, that will automatically apply to Northern Ireland. There is a provision that would allow for new pieces of EU legislation that do not replace or amend legislation that is listed in the annex to apply also to Northern Ireland, in order to maintain free movement of goods. Whether they will apply is to be left to decision by the joint committee. Therefore, technically, the UK would have a veto over that. We do not know what the implications would be if the United Kingdom did not agree to a new piece of legislation applying to Northern Ireland.

**Annabelle Ewing:** I want to clarify an important legal issue in that regard. The position is not clear to me. As far as the single market for goods is concerned, Northern Ireland is to follow the rules. Does that mean that Northern Ireland is not deemed to be part of the single market for goods? As a matter of law, it is an important distinction. Is it part of the single market for goods? Is it unilaterally deciding to align itself with the relevant regulations? From that will flow remedies both for businesses in Northern Ireland, to invoke the protection of EU law on goods, and for competitors to say that Northern Ireland—for example on state aid—is not complying with the rules. I am not sure.

**Professor Phinnemore:** I would prefer to leave that to a legal expert. Those are important questions. The UK is not “deciding” to align: according to the protocol, it is under a legal obligation to maintain alignment with the regulations, which continue to apply to Northern Ireland.

**Annabelle Ewing:** Under EU law, it is clear that there are remedies. There are four fundamental freedoms; one is on movement of goods. If Northern Ireland is part of the single market, it is part of the applicable legal system.

**Professor Phinnemore:** It is.

**Annabelle Ewing:** Therefore, remedies are available, which work both ways.

With regard to access to the Court of Justice, it is interesting to consider where the joint committee veto would come in. With regard to the other fundamental freedoms, the court has always taken the view that services and movement of workers and capital can be seen as part and parcel of delivering free movement of goods. That applies equally to the other three fundamental freedoms. The fact that the other free movement issues are excluded is not the end of the matter. If they are deemed to be essential in order to realise the freedom on goods, that is yet another issue.

**Professor Phinnemore:** Yes.

**Annabelle Ewing:** I noted that Aodhán Connolly looked interested in that. You represent the business sector.

**Aodhán Connolly:** Yes. Everything that has just been said has implications for our members—whether for things going from Northern Ireland to Great Britain or things going from Great Britain to Northern Ireland. There are a lot of implications. That brings up the central point for us in the business world, which is that there is a huge amount of uncertainty. To all intents and purposes, the UK is administering the single market and the union customs code in Northern Ireland. The UK has agreed that it will be under the jurisdiction and administration of the ECJ, as far as Northern Ireland is concerned. That brings lots of questions.

It is like an onion—under every layer that we peel off, there is more complexity. Plus, it makes us cry. [*Laughter.*]

I have 12 or 14 pages of questions from our members—

**Annabelle Ewing:** Good luck!

**Aodhán Connolly:** I have questions from our members on subjects such as at-risk goods, postage, whether the Northern Ireland consumer bringing something from GB into Northern Ireland becomes an importer and whether their goods are at risk, deliveries, internet sales, cost for consumers, labelling, VAT and alignment uncertainty. The further we go down that rabbit hole—let us say “this journey”, which is a lot less contentious—the more questions come.

10:00

I go back to the point that business likes certainty. We have heard a lot of warm words and promises, and some commitments. However, we do not have the specifics, details or legal clarity on our position now and in the future, and there are concerns for which remedies are needed right

through to the individual consumer and their responsibilities in relation to bringing things into Northern Ireland. We need that clarity.

Part of it will come with whatever FTA—please God—the UK ends up getting. However, as far as we are concerned, we need mitigations and commonsense decisions by the joint committee that are based on objective evidence, and we need generosity of spirit from the EU to allow those things to happen. As I said, we need mitigations and derogations.

We also need to look at alternative working arrangements. I was part of the alternative arrangements working group that was constituted by the Department for Exiting the European Union to consider what could be done, north and south, if there were a border. My plea to the Secretary of State for Exiting the European Union and to Her Majesty’s Government is this: let us, in the 11 months that we have, reconstitute that group very quickly to see what sort of mitigations we can get in place in relation to, for example, trusted-trader status, authorised economic operators or green and red channels. Quite simply, unless we get those mitigations and derogations, and unless we get support on things such as the detail of the new systems, the Northern Ireland economy and consumer will be in trouble.

**Annabelle Ewing:** I have two more questions on slightly different areas. To go back to the issue of at-risk goods that Claire Baker raised, how can you avoid smuggling—which will follow, as night follows day—without having some kind of north-south border infrastructure, and how can you have that kind of border infrastructure without getting into difficulties with the spirit of the Good Friday agreement?

**Aodhán Connolly:** A lot of questions still need to be answered. With trade from GB to NI, there will be checks relating to everything from VAT and sanitary and phytosanitary measures, to customs tariffs and the customs code and all the paperwork that comes with that. With trade from NI to GB, small declarations will need to be done. However, I have been reading some of the research over the past few days, and I note that Pauline Bastidon from the Freight Transport Association said yesterday that there could be some sort of checks on goods going from Northern Ireland to Great Britain as well.

It keeps boiling down to the need for certainty. As far as illegality and the potential for fraud or VAT evasion are concerned, quite simply it is a lot easier to police three ports and a couple of airports than it would be to police the 200-odd crossing points with the Irish border. For all intents and purposes, because Northern Ireland will be in the customs union and administering the single market, there should not be that friction. The

problem would be Great Britain protecting itself in relation to things that are coming in, and the EU protecting itself in relation to things that are coming from Great Britain.

**Annabelle Ewing:** I have one last question, which is perhaps for Mairi Spowage in particular. I understand that the Secretary of State for Scotland has stated that the Northern Ireland protocol will have no impact on Scottish exporters. Do you agree with that?

**Mairi Spowage:** I was thinking that through while we were talking about the uncertainties around the practicalities and all the questions that have been raised. In order even to attempt to model the actual impact of the protocol on the Northern Ireland economy, all those uncertainties need to be resolved. In order to try to quantify the friction relating to particular goods and services between Northern Ireland and GB and between Northern Ireland and the EU, we need that information about exactly how it will work. We need certainty on tariffs that will apply in any circumstances. Even more important is that we need certainty around non-tariff barriers—that is, frictions relating to things such as paperwork and regulatory divergence.

Because of those uncertainties, it is difficult to think about modelling the impact on the Northern Ireland economy. That was true even for the modelling that we did, which was based on the backstop persisting. The fact that the protocol is potentially temporary or could be there for four years and then perhaps not there makes modelling difficult. The uncertainty about the persistence of the arrangements makes it difficult to model the impact on the Northern Ireland economy, and it could have impacts on business investment and so on. We are developing a model to allow us to look at the impacts of the GB economy on Northern Ireland but, until we have certainty about all those issues, that will be difficult to quantify.

On the impact on Scotland's economy, one of the challenges of data in the UK on which I am working in another project is about trying to measure the flows of goods and services between the countries of the UK. That is not easy, because a lot of companies, particularly in GB, have their accounts at GB level. Talking about trade within the UK can be a difficult concept for a lot of companies, particularly with services. However, there is a significant trading relationship and sheer physical movement of goods between Scotland and Northern Ireland, whether they originate in Scotland or in Northern Ireland. Significant tonnages of goods go across the Irish Sea between Scotland and Northern Ireland.

Whether there will be an impact on the Scottish economy depends on the practicalities of the

implementation. That means things such as the infrastructure that might be required, other checks that might happen and whether other routes such as those through England to the Republic of Ireland are seen as more advantageous, depending on the checks that happen. The impact is uncertain, but it is certainly true that there is a significant amount of trading between Scotland and Northern Ireland.

**Annabelle Ewing:** On that basis, it might be precipitate to make a definitive statement that there will be no impact. I know that you cannot comment on that.

**Mairi Spowage:** It is difficult to quantify whether the impact will be negligible or significant.

**Aodhán Connolly:** There will also be displacement, but we do not yet know what it will be. I go back to the point that the supply chain always takes the path of least resistance. If there are more non-tariff barriers for the goods that would usually go from Holyhead to Dublin, we could see that they will go the extra six or seven hours to get across from Cairnryan to Belfast or Larne.

As far as our members are concerned, one of the guys who I was with yesterday is a retailer with small profit margins and large volumes and who has a quarter of all their estate in Northern Ireland. They are not at risk of tariffs, but the costs of non-tariff barriers and the extra paperwork could be bigger than their profit margins, so there is a concern about the viability of products and the possibility of needing to completely change the business model.

**Kenneth Gibson (Cunninghame North) (SNP):** I am interested in mitigation. A leaked Treasury report on the Northern Ireland protocol and unfettered access says that

“Customs declarations and documentary and physical checks on W/E and E/W trade will be highly disruptive to the NI economy”

and that

“98% of NI exporters to GB are SMEs who are likely to struggle to bear this cost.”

It goes on to say that

“Key employment sectors such as retail”

are “likely to be hit”.

Mr Connolly, you have spoken about mitigation and derogation. Can you be specific about what mitigations and derogations you are looking for? Obviously, there will be a financial implication, so I wonder what you feel those should be.

**Aodhán Connolly:** To be very clear, Northern Ireland is looking for a hand up, not a hand out. It is clear that this is a constitutional, business and

economic issue. As retailers, our main concern is to be able to continue to provide Northern Ireland's consumers and households with the same availability, choice and affordability as we can today. That ability will be under pressure unless we get those mitigations and derogations. The derogations will be from the EU customs code, perhaps to allow things to flow in an even more frictionless way than they do for other countries with which it has free trade agreements or understandings. We need the joint committee to make commonsense decisions about what is and is not at risk, and there will be a couple of expert committees feeding into that.

For us as businesspeople, one of the good things that has happened in the past three years is that members of the business community in Northern Ireland have truly found their voice. If I had been told five years ago that I would be standing shoulder to shoulder with farmers and people in transport and manufacturing, I would not have believed it, because we were usually taking lumps out of each other. However, we are now working together and we are clear that we need to have access to that joint committee or those expert committees, so that they look at the practicalities and what the agreement means for businesses and costs.

On mitigations, you are correct about SMEs. A lot of our members are large retailers, but the issue is also about our supply chain. It is called a chain and it is only as strong as its weakest link. Over the past three years, we have been going down through each layer to find out where the weaknesses are, even as far as composite products. There are people in Northern Ireland who manufacture everything from foodstuffs to clothing, but a lot of the materials come from GB, including Scotland, and through GB from Europe.

We will need mitigations through schemes such as trusted trader and authorised economic operator status. That can be a long and arduous process even for large retailers. It can take up to 18 months from application to get full status, and in other cases it takes around nine months, even though teams of people are working on it. Large retailers find that difficult, but SMEs will find it near impossible. Whatever scheme is brought in will need to be accessible and easy for small businesses to use.

We also need to look at things such as red channels and green channels to keep things flowing and we need to ensure that any paperwork is easily accessible. There is a raft of other things. Speaking frankly, the big concern is that we have only 11 months left before our next cliff edge; in fact, we have only five months before the decision needs to be made about whether to ask the EU for an extension to the transition period. That time—

five months or 11 months—does not give us scope to get everything in place that we need to make trade as frictionless as possible.

We are pragmatic about the situation. We know that there will be change and costs; how we do business will change and there will be a new normal. To protect the Northern Ireland economy and consumers, a lot of detail is needed and a lot of hard work needs to be put into delivering mitigations in those 11 months. That is one reason why I would ask Her Majesty's Government in London to reconstitute the alternative arrangements advisory group as soon as possible to help to design and deliver those mitigations.

**Kenneth Gibson:** Thank you for that comprehensive answer. According to the Treasury, 61 per cent of exports from Northern Ireland are from SMEs, so I understand how vulnerable that sector will be. I was going to ask about timescales, so I am glad that you touched on that.

Northern Ireland will remain aligned with the EU on goods, including VAT on goods. How can that issue be resolved?

**Aodhán Connolly:** One of the really good things about Theresa May's deal was the wonderful arrangement that we would be part of Her Majesty's Revenue and Customs and part of the VAT information exchange system, or VIES. We in the business community went to see the article 50 team before Theresa May's deal was published, and again afterwards. Before it was published, we were given some outline points and we said, "Thank you very much, but no thank you." The team was quite surprised, but we provided a list of our concerns. That is why the deal included things such as qualified persons, or QPs. Recognition of qualifications was in there and there was a wonderful thing about VAT, which had never been done before. We were quite happy that the team listened and delivered.

10:15

The new deal does not have that understanding of VAT, and that is one of the biggest complexities for us. For example, foods such as chocolate and crisps that are seen as luxury items have VAT on them at 20 per cent in Northern Ireland and 23 per cent in the Republic of Ireland. I wonder whether there will be a dispensation, or whether the VAT issue will create financial pressure. We have not been able to get an answer to that.

The Northern Ireland protocol requires the application of EU VAT law. One key area is the application of zero rates by the UK and Éire for food and children's clothing and footwear. The loss of all or part of our zero rate would increase costs for consumers in Northern Ireland. Other

issues are tax compliance costs and associated burdens; the administrative time taken to prepare third-party costs or for filing; the professional costs in fielding tax office queries; and a possible requirement for additional VAT returns for GB companies that have NI operations, given the requirement under the protocol for NI VAT revenues to be retained in NI. Once again, there is cost and complexity and there are no firm answers.

**Kenneth Gibson:** I thought that it was going to take you 11 months to list all the issues, never mind deal with them.

**Aodhán Connolly:** Sorry.

**Kenneth Gibson:** I am not criticising. That emphasises the complexity involved and the difficulty in dealing with it in the time available.

Professor Phinnemore, I saw you taking notes. Do you want to comment on that?

**Professor Phinnemore:** The protocol provides a framework for the development of Northern Ireland's relationship with the EU in the context of the UK's withdrawal. A huge amount of detail needs to be sorted out.

When the protocol was first produced, there was an expectation that we would probably have a three-year transition period for something that might or might not come into force. We now find ourselves facing the prospect of 11 months to put in place a deal that contains many unanswered questions. The pressure will be on. The extent to which those issues can be addressed depends significantly on the nature and content of the future UK-EU relationship, but it also depends on levels of trust between the EU and the UK.

**Kenneth Gibson:** I want to ask about another issue that you are involved with, which is fishing. In your submission, you say that there is a question not about fish and other agricultural products from the UK or third countries but about those that are brought into the EU customs territory by

"vessels flying the flag of the United Kingdom and having their port of registration in Northern Ireland".

There is a real concern in Scotland that Northern Ireland might have a competitive advantage over the Scottish fishing industry. How will the protocol impact on the fishing industry and what will that mean for Northern Ireland and Scotland? I mean not only fishermen but fish processors.

**Professor Phinnemore:** I am not particularly qualified to talk about the fishing industry or its implications. You have picked up on a point that I put in one of my papers that one question that should be addressed before the protocol comes into full effect on 1 January 2021 is about access

and whether boats that are registered in Northern Ireland will be able to land fish in EU customs territory.

My understanding of the wording of the protocol is that boats leaving Northern Ireland ports could face restrictions on the fish that they land in Northern Ireland. The expectation is that that will be addressed in the UK-EU fisheries arrangements, but there are potentially significant consequences for Northern Ireland if it is not addressed and no agreement is reached by the joint committee on the implementation of the protocol this year.

My hope and expectation is that something will be agreed but, at present, under the protocol, I cannot see Northern Ireland's fishing industry having any significant advantage over Scotland's fishing industry or other UK fishing industries. The protocol does not provide the Northern Ireland fishing industry with a privileged position in the way that it does in relation to goods that are produced in Northern Ireland, which will have free and unfettered access to the EU market.

**Kenneth Gibson:** That is really interesting.

I have a question for Mairi Spowage about the Fraser of Allander institute report. You wrote in the report that, under all Brexit scenarios, the Northern Ireland economy will be negatively impacted in terms of GDP, exports, wages and investment. From the graphs in the document, we can see that certain sectors will be affected disproportionately. For example, the agriculture, forestry and fishing sectors and the food and drink sector will be particularly impacted, as will retailers, as we discussed.

Earlier, I asked questions that Aodhán Connolly answered in detail about mitigations and derogations for SMEs specifically, and for Northern Ireland in general. What can be done to mitigate the effects of Brexit on the sectors that will be hardest hit?

**Mairi Spowage:** The sectors that are hardest hit in the modelling that we have done are, depending on the scenario, those that have the highest exposure to the EU or GB markets. Mitigation efforts should involve supporting exporters and focusing on the sectors that are likely to export into either the EU or GB. The sectors that are affected most significantly are food and drink and agriculture—the producers of primary goods.

We also see potential effects on services trading with the EU. In our scenarios, we assume that there will be frictions between Northern Ireland and the EU in services trade. That is based on work by the Department for the Economy in Northern Ireland that looked at the possible impacts of non-tariff barriers on services trade between Northern Ireland and the EU after Brexit.



There could be significant impacts on services trade, which is a concern regarding the overall impact on the economy, because it forms a large part of the economy. Although the majority of Scottish trade, for example, is still in goods, the growth in trade over the past 10 years has been in services, and we expect that to continue as services become a larger part of economies that are more advanced. What happens to services industries is a key factor, yet a lot of the discussion on trade so far has been about goods.

**Kenneth Gibson:** What should happen in order to mitigate the effects on that particular market? The bus is coming towards us: to avoid being run over, we want to do what can be done. What policy or economic mechanisms can be used to minimise the impact on those sectors? Mr Connolly said that they want

“a hand up, not a hand out”,

but it might have to be a combination of the two. I am sure that Northern Ireland’s politicians would like a combination.

**Mairi Spowage:** It is difficult—I do not want to get into a political area. From a purely economic point of view, any divergence in services trade regulation causes friction, which has an impact on trade between partners. If there is a divergence in regulation, you will have issues with services and goods trade, but it is a particular issue for services trade. From that purely economic point of view, the closer the regulations can be, the better. However, the political reality comes into it and that might not happen.

**Mike Rumbles (North East Scotland) (LD):** Good morning. I want to take us back to the direct impact of customs matters on Scottish and Northern Irish trade. So far, our questions and answers have been focused on Northern Ireland’s having to abide by the EU’s union customs code. However, the UK Government has made it quite clear that Northern Ireland will remain part of the United Kingdom customs territory.

Perhaps I am misunderstanding—I would like to have clarity on this, because perhaps I have got it wrong. It seems to me that businesses in Northern Ireland will have to abide by both the EU customs code and the UK customs regulations, because the UK Government wants to have trade deals and customs arrangements with the rest of the world. However, those two sets of regulations are different. Over time, will Northern Irish businesses have to abide by both the EU’s code and whichever customs arrangements are negotiated for the UK customs territory? Have I got that right? How will businesses in Northern Ireland be able to do that? We can imagine that, over time, as trade deals come in, customs regulations will differ.

**Aodhán Connolly:** I thought that I might be asked about that today, so I have put together a response. The Institute for Government did a wonderful précis of the Northern Ireland protocol, which says:

“For Northern Ireland–Republic of Ireland trade, the EU’s Union Customs Code”

applies and

“there would be no tariffs or restrictions.”

It goes on to say:

“Goods moving directly from Great Britain to Northern Ireland won’t be subject to a tariff unless the good is ‘at risk’ of being moved into the EU afterwards.”

That is an objective rather than a subjective thought on the matter.

The précis continues:

“Likewise, goods from third countries entering Northern Ireland will be subject to the UK tariff, unless they are at risk of being moved to the EU.

For goods deemed ‘at risk’, the EU tariff will be applied. If the UK tariff is lower, and those goods are proved to have stayed in Northern Ireland, the UK can reimburse traders.

The Joint Committee will establish further conditions under which goods coming into Northern Ireland from Great Britain would have to pay the EU tariff.”

Having to reclaim the differential would have implications for cash flow and for man hours, so the decisions that are made by the joint committee will be crucial. There will also be a burden on businesses in Northern Ireland to prove which goods have stayed there. How we might do that is still in question.

**Mike Rumbles:** How would you prove it?

**Aodhán Connolly:** We hope that the joint committee will look at the evidence from before. Because we are dead-end hosts and trusted traders we would have evidence to show that, for example, a lorry-load of widgets had come from GB to NI and reached the distribution centre and that an eighth of that load had gone to each of eight stores, and we would have proof that the widgets had then been sold in those stores. That would involve a lot of paperwork. As well as that, the joint committee would be trying to get proof that we had not got a lorry-load of widgets that had come into a distribution centre and then gone on another lorry to the south of Ireland.

There will be a burden of proof, but what that will be has yet to be defined. For us, it should be something as simple as proving the prior relationships and the prior deliveries of those goods that we have had.

**Mike Rumbles:** Let us take an example. Are you saying that if you have to abide by both sets of regulations, you will pay according to whichever rate is the higher of the two?

**Aodhán Connolly:** Yes, and we would then get a rebate if we could prove that the goods had not moved into the EU.

**Mike Rumbles:** As you said, that would create a huge amount of administration, especially for small businesses and microbusinesses. I suppose that the political get-out clause for the Government is that it has said that, every four years, the Assembly could make a democratic choice about whether it wants to keep such arrangements. However, is that really a choice? As I understand it, none of the political parties in Northern Ireland wants to see a hard border between there and the south. Is that correct?

**Aodhán Connolly:** Until a few weeks ago, there had been a lot of different interpretations of the way forward. Over the Christmas period, we were able to bring together the business community and representatives of the five parties to lodge amendments, which have been debated in the House of Commons and will be debated in the House of Lords next week.

We are all of one voice on the fact that we need a level playing field with the rest of the UK and to have unfettered access in both the north and the south. Before now, there were very different shades of political opinion, but at the moment we are all sailing in the one direction.

10:30

**Mike Rumbles:** So you want your cake and you want to eat it.

**Aodhán Connolly:** No, I do not think—

**Mike Rumbles:** I am only jesting. I am trying to make the point that in trying to sort out the issue of trade in practical terms, the Northern Ireland Assembly is being given a choice as to whether it wants to keep the system. I am questioning whether that is a real choice. Everyone seems to agree that if Northern Ireland voted against the system in four years and decided to go back into UK customs arrangements, that would not be a practical possibility.

**Aodhán Connolly:** In purely business terms, the uncertainty is unwelcome. In purely political terms, we simply cannot say. The political ebb and flow in Northern Ireland has changed a lot. The fact that all five parties now support the business community—and vice versa—and are going in the same direction is something that we are celebrating. However, we do not know how long that will last, or what will happen politically or constitutionally in the next couple of years before we have the first—

**Mike Rumbles:** My question was based on the fact that it appears that Northern Irish businesses have an advantage because they can access the EU market and they are part of the UK customs

territory. However, we assume that, over time, the two systems will diverge—otherwise, what is the point?—which will add real costs to the administration of Northern Irish businesses, so you will be at a real disadvantage.

**Aodhán Connolly:** That is exactly right. I try to explain it simply by saying that if we have close alignment, we have a paper wall between Great Britain and Northern Ireland, but if we have high levels of divergence, it is a brick wall, and for every brick that is put in that wall, the costs go up.

**Alexander Stewart (Mid Scotland and Fife) (Con):** You have given us a good overview of the risks that you have identified in sections of the economy and in infrastructure, and of the timescales. I think that you used the words “hope and expectation”; there is a lot of hope, but the key aspect is expectation. The trust in all that is being tried by the timescales, which are tight.

We find ourselves in a difficult scenario, and you have identified all the potential problems. In all that, creating a border in the Irish Sea has huge implications for things potentially to go in the wrong direction for many sectors. As I said, the timescales are tight. Realistically, where do you see us being in 11 months?

**Aodhán Connolly:** Quite simply, we do not know. We in the business community are pragmatic and realistic and we do not usually allow ourselves to go on flights of fancy, especially of hope. There is, however, a certain amount of hope now in the business community in Northern Ireland. We have a working Assembly again, and with the new Brexit committee we will have a voice that will be able to speak up for Northern Ireland business. However, let us be clear: what needs to be achieved in the next 11 months is a Herculean task and there is a lot to be done.

We have had reassurances from the Secretary of State for Northern Ireland and the Prime Minister, and, at the dispatch box last week, Robin Walker MP, who is an under-secretary of state in the Northern Ireland Office. We just need the detail and the specifics. As we have shown throughout the process—in both Theresa May’s time and Prime Minister Johnson’s time—if we are asked to support things, give evidence on them, or be critical friends of and cheerleaders for them, we will not be found wanting.

What we need is some quick action. I come back to the point about the need for the reconstitution of the alternative arrangements working group to look at what the mitigation can be in 11 months.

**Alexander Stewart:** You have identified that it is a mammoth task; that the economic consequences, and the impact that the situation could have, are detrimental; and that there is a necessity for action to be taken now, because

businesses in your own sector have pages of questions, some of which are being semi-answered, while others are not being answered at all. There needs to be a focus on what is imminent—on what can be done in the short term—because the long term is also very problematic.

We have touched on things such as smuggling. There is a real opportunity there for some people—organisations and individuals will see that. There is a question about how you manage that crisis. It could be a real problem for people in many sectors.

**Aodhán Connolly:** I completely agree. To be fair, and to give credit where credit is due, we have had very close contact with DEXEU and with the Department for Business, Energy and Industrial Strategy, and we have had immense support from the Department for the Economy in Northern Ireland. Those departments are similarly trying to work things through. There is a lot going on.

A lot of people are saying “How do you know this?”, “How will it be that bad?”, and suchlike. We are not saying, “Here’s the protocol; this is what could happen”. We are thinking about things as simple as, for example, if there were avian flu in Great Britain. If that happened, the walls would suddenly come up, and the checks, extra bits of paperwork, changes of licences and so on would bring delays and costs. That would have a tangible economic impact not only on goods such as poultry and eggs but on products of animal origin and other things that could be deemed to present a risk. If you multiply together those delays and costs, you can see that there could be a tangible problem on our doorstep in 11 months.

**Alexander Stewart:** Some people have indicated that Northern Ireland will gain an advantage as a result of the process, and that some of its sectors might be in a stronger position. Do you believe that that is the case?

**Aodhán Connolly:** A series of talks has gone on between the Northern Ireland business community and politicians. We have met every Friday during the past few weeks, especially during the passage of the withdrawal agreement bill. Involved are representatives from farming, dairy, meat exporting, the CBI, the Institute of Directors, the Federation of Small Businesses, Manufacturing Northern Ireland, the Freight Transport Association, Retail NI—the list goes on. Each of those organisations, which together represent more than 90 per cent of businesses in Northern Ireland, is clear that the deal, as it stands, will be detrimental both to the Northern Ireland economy and to their business.

**The Convener:** What about the scenario in which we do not get a trade deal with the EU in time for 31 December this year? How would that

affect Northern Ireland’s supposedly unfettered access to the UK single market?

**Aodhán Connolly:** It would affect it greatly. That is another of those deadlines that is looming for Northern Ireland. We might end up in a no-deal situation on WTO terms, or we might have a bare-bones FTA. There are so many acronyms and phrases—“bare bones”, “patchwork quilt”, “WTO” and “I can’t believe it’s not a deal”. If we leave with no deal, and there is WTO provision, Northern Ireland will have another great burden to carry.

I return to the fact that 70 per cent of the value of things for retailers that go across the Irish Sea from GB to NI involves products that have come through the EU. That could involve products that are using GB as a land bridge or that have come to GB to be processed and have value added before going on to Northern Ireland’s shelves. In that situation, if there are tariffs or costs involved in goods going from the EU to GB, and there is great divergence, that is the difference between a paper wall and a brick wall.

We have to pin our hopes on some sort of a deal being struck because, at the end of the day, a no-deal situation between GB and the EU would be detrimental to the NI economy.

**The Convener:** Does anyone else want to come in? Are you all in agreement with that?

**Professor Phinnemore:** Thinking back to what was said about the prospect of a no-deal exit before the withdrawal agreement was in place, there were huge concerns about what that would mean for the Irish border in relation to the economy, movement of goods and protections and controls. If we now leave the EU without a deal on the future relationship, a lot of the concerns that we had about the impact on the economy simply move to the Irish sea and the border that will be there.

**The Convener:** My last question is more of a technical one. The “New Decade, New Approach” agreement document states:

“the Government will ensure that representatives from the Northern Ireland Executive are invited to be part of the UK delegation in any meetings of the UK-EU Specialised or Joint Committees discussing Northern Ireland specific matters which are also being attended by the Irish Government as part of the European Union’s delegation.”

However, clause 34 of the withdrawal agreement bill says that only UK Government ministers can exercise the functions in reaction to the joint committee on behalf of the UK. Therefore, who can represent the UK on the joint committee and how are the Northern Ireland Executive and Northern Ireland stakeholders likely to be able to feed their views into the joint committee?

**Professor Phinnemore:** Those are good questions. One way to think about it is to consider the difference between delegation and representation. It is up to the UK Government to

decide who attends those meetings, but ultimately, in the joint committee, it would be a UK minister making the decision.

The understanding is that, because there is a specialised committee that is dedicated to the implementation of the protocol, which obviously has significant implications for Northern Ireland, there is a just reason for including Northern Irish voices as part of the delegation. The same would apply at the joint committee when the decisions on implementing some of the recommendations that come out of the specialised committee are taken, because that advice needs to be there.

At the moment, there is a lack of clarity about exactly how that will operate, and there is some slight concern about the way in which the UK Government has phrased the clause about the presence of Northern Irish representatives as part of the UK delegation. The concern is that it is contingent on the Irish being present alongside the European Commission, because it does not necessarily follow that there needs to be an Irish representative there alongside the commission to justify someone from Northern Ireland being there. What role they are going to have is still to play out.

There is another group that exists below the specialised committee: the joint consultative working group, which I think is going to deal with a lot of the fine detail of what is being proposed. The UK Government is yet to be clear about what role Northern Ireland is going to have in that. There is a good argument for Northern Ireland representatives being on that group, and for those representatives to include civil servants and, ideally, experts—provision exists in the protocol for experts to be involved. In essence, that is because, as we have seen this morning, there is a series of detailed issues that are specific to Northern Ireland and the implications of the protocol, and the level of understanding of those issues is probably most developed in Northern Ireland.

Over the past three years—this can be appreciated from a Scottish perspective—it has not always been clear that representatives of the UK Government have had the fullest understanding of the implications of Brexit for the devolved Administrations. That is particularly the case in relation to the implications for Northern Ireland.

The level of understanding has increased enormously over the past two to three years. It is probably now at the level where a lot of the issues that are being thrown up by the nature of the protocol are understood well in Northern Ireland, because there has been effective engagement between businesses, civil servants and politicians. However, we need to ensure that there is not a very centralised UK approach, whereby only UK Government ministers and Whitehall-based civil

servants are involved. If we are to address all the issues in the protocol, we need the understanding and expertise that has been developed in Northern Ireland to be part of the process.

10:45

**Aodhán Connolly:** One of the biggest problems that we have had throughout the whole process is lots of people talking about Northern Ireland, but very few people who actually understand Northern Ireland's situation, economic or political.

I highlight three words: access, access, access. We need to be able to meet with and feed into the expert committees. Over the past three years, that is what we have been doing with the article 50 team—now the task force for relations with the United Kingdom—the UK Government, the Northern Ireland Government and the Republic of Ireland Government. Our big ask—especially over the next 11 months—is for the Government, the EU and anyone else who will be making proclamations or decisions on the future of Northern Ireland to work with and listen to us.

**The Convener:** Given the timescales, that needs to start happening now. However, is it the case that you do not have any certainty? When do you expect to know whether you will be included?

**Professor Phinnemore:** The spirit and wording of the “New Decade, New Approach” document are, obviously, a recognition that there will be some Northern Ireland involvement in the process. However, as the convener said, it is a very tight time frame, and we do not have a clear sense of what groups will meet when, and what the agendas will be. The Government needs to move very quickly to ensure that the Northern Irish voice is at the table, and that we address the whole range of issues that has been highlighted today—as well others—in good time for the protocol coming into force.

**The Convener:** Is there a date for the joint committee meeting?

**Professor Phinnemore:** I am not aware of a date having been publicised. I think that there will be a reluctance to publish dates until the withdrawal agreement is, finally, agreed and ratified. However, we will not know that until—I think—30 January.

**The Convener:** Thank you for coming in to speak to the committee and for sharing your expertise with us today. Although, as has been said, there are many unanswered questions, it has been helpful.

10:47

*Meeting continued in private until 11:21.*

This is the final edition of the *Official Report* of this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

---

Published in Edinburgh by the Scottish Parliamentary Corporate Body, the Scottish Parliament, Edinburgh, EH99 1SP

---

All documents are available on  
the Scottish Parliament website at:

[www.parliament.scot](http://www.parliament.scot)

Information on non-endorsed print suppliers  
is available here:

[www.parliament.scot/documents](http://www.parliament.scot/documents)

For information on the Scottish Parliament contact  
Public Information on:

Telephone: 0131 348 5000

Textphone: 0800 092 7100

Email: [sp.info@parliament.scot](mailto:sp.info@parliament.scot)

---



The Scottish Parliament  
Pàrlamaid na h-Alba