

Why don't businesses like the current protocol arrangements?

Businesses in Northern Ireland (NI) and Great Britain (GB) had a range of issues on the movement of goods between GB and NI under the Protocol arrangements. These included customs, checks and documentation for food and plant products, supply chains, VAT, state aid, and flexibility in implementing the agreement. Easements – some bilateral and some unilateral (by the UK) - had been in place since the Protocol started, but business wanted a permanent agreement which provided stability and certainty.

Businesses in GB and NI also wanted to see a reduction in paperwork and checks for goods only being sold or consumed in NI, and the same products being able to be marketed in GB and NI. For NI businesses, the Protocol provides friction-free access to the EU Single Market for traded goods, avoiding the need for border control arrangements between NI and the Republic of Ireland (ROI). The NI business community wanted to see that protected in any deal over the operation of the Protocol.

How does the new Windsor Framework make the situation better?

For business that join the Trusted Traders' Scheme, simplified records, for customs purposes, will be permitted on goods moving from GB to NI - where that is the destination of the goods (the green lane). GB as well as NI based companies will be able to join the scheme.

Similarly, members trading in plant products or products of animal origin will be able to use a single simplified certificate for mixed consignment movements between GB and NI under another trusted trader scheme. Physical checks of such goods will not ordinarily be required at NI ports where NI is the destination for consumption or usage of those products. Identity checks will be reduced to very low frequency as labelling conditions for “not for EU” retail goods are introduced in NI.

There will also be simplified customs procedures through an authorised operators' scheme. This can be used by businesses sending non plant or animal origin products by postal packages or packets from GB to NI, via for example online platforms, Royal Mail, or fast parcel operator delivered goods, for customers or businesses in NI.

Goods moving from GB to NI which will move onwards into the EU or are deemed to be at risk of entering the EU will follow full customs procedures (the red lane) at the port of entry in NI and border control posts will be created at NI ports for these purposes.

Does this affect trade between NI and Ireland or just with the mainland?

No – the effects of the Protocol with NI goods having tariff-free, friction-free access to the EU Single Market - will continue under these arrangements. No customs declarations, SPS

paperwork or import VAT accounting occur in relation to NI goods being sold within the EU Single Market. EU rules in relation to those products – agri-food, electrical, mechanical, and industrial goods – continue to apply.

What are the drawbacks of the new proposals?

The Trusted Trader Schemes on customs and plant/agri-food products will provide benefits through lower red tape for companies in NI and GB, but they will need to join them. There is also an element of political uncertainty in that the NI Assembly (if back in full operation) will vote in 2024 on whether to retain the Protocol for the next 4 or 8 years (depending upon the cross-community nature of the vote or otherwise).

How easy will it be to register with the Trusted Trader Schemes?

Full details of how to register have not yet been released. But the agreement indicates that to qualify as a trusted trader, firms must register with the relevant UK authority, fulfilling all relevant conditions, while also providing a detailed list of the products they usually transport. In addition, applicants will have to prove that they are of good financial standing, that they have a clear understanding of their obligations under the scheme and that they are able to correctly identify the goods they move to Northern Ireland, in particular, as regards goods that need to be declared with a higher level of detail.

Does this create any issues for future divergence between UK and NI, or NI and EU regulations and how does that affect businesses?

The Protocol and other legislation are being amended under a process which expires in 2024 so no further substantial changes via this route are likely. The Stormont Brake creates some uncertainty that regulations may differ between NI and the EU and NI access to the Single Market being altered could be one of the consequences of such action. It will not alter the flow of trade between NI and GB.

The Brake is to be used as a last resort option when discussion through the dispute resolution processes in the Protocol has not resolved a complaint over proposals for new or amended EU legislation, and where the regulation could cause long-lasting social or economic issues in NI.

Do you think further changes will be required to the protocol in the future?

Further operational level changes could be made, particularly in areas like VAT and excise where enhanced co-operation will apply, but in terms of amending the Treaty text itself, the power being used to make these amendments through the Windsor Framework falls away at the end of 2024.

Why are the DUP and European Research Group of Conservatives unlikely to welcome this deal in full?

The Windsor Framework continues to apply EU law to the movement of goods from NI to the EU, but also in relation to NI to GB movements of those goods regulated under the EU Single Market, such as food or chemicals products. A subset of EU law (quoted as 3% by the UK Government) will continue to apply under the Windsor Framework to NI. The Framework amendments overlay new rules on the existing ones (including on GB to NI goods movements), altering how they operate but without repealing them. The role of the European Court of Justice as the ultimate arbiter on issues of EU rules is also not removed. The ERG and DUP may not like these facets of the deal despite other areas, in terms of reduction of EU law on GB to NI goods movements, meeting what they had called for.

Does this new deal put NI businesses in a better trading position than GB firms?

NI businesses will be able to sell goods produced in NI into the EU with almost no red tape or compliance issues compared with businesses based in GB. This may lead to an increase in inward investment in NI as companies involved in trade in goods establish themselves and their staff there. During the last 12 months there is evidence that economic activity in NI has held up better than other parts of the UK, in part due to this special access to the EU Single Market in goods which it has.