



Protocol on Ireland / Northern Ireland

Working Group of the Advisory Group in relation to the withdrawal of the UK from the EU

DG SANTE
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1. General information

- Since 1 February 2020, the UK is a **third country**.
- The Protocol provides a legally operational solution **to avoid a hard border** on the island of Ireland while safeguarding the integrity of the Single Market. It is **not open for renegotiation**.
- As Protocol enters in application at the end of the transition period, **time to prepare is very short**.

2. Some essentials

To respond to the unique situation on the island of Ireland, the Protocol foresees that Northern Ireland will **remain aligned to a limited set of rules** that are essential for avoiding a hard border between Ireland and Northern Ireland, e.g.:

- The Union's Customs Code (UCC) and other customs legislation;
- EU rules on VAT and excise in respect of goods;
- EU rules on product standards and sanitary and phyto-sanitary rules;
- EU state aid rules.

3. How are EU rules made applicable? (1)

Example: Article 5 IE/NI

Customs, movement of goods

4. The provisions of Union law listed in Annex 2 to this Protocol shall also apply, under the conditions set out in that Annex, to and in the United Kingdom in respect of Northern Ireland.

Article 6 WA

References to Union law

3. For the purposes of this Agreement, references to provisions of Union law made applicable by this Agreement shall be understood to include references to the relevant Union acts supplementing or implementing those provisions.

3. How are EU rules made applicable? (2)

Annex 2 includes, for example:

20. *Medicinal products*

24. *Pesticides, biocides*

29. *Food – general*

34. *Feed – products and hygiene*

36. *Live animals, germinal products and products of animal origin*

37. *Animal disease control, zoonosis control*

43. *Official controls, veterinary checks*

NB: In some cases the annexes themselves restrict the extent to which the listed rules apply, or how they apply to NI

4. How do EU rules apply?

Article 7 WA

References to the Union and to Member States

1. For the purposes of this Agreement, all references to Member States and competent authorities of Member States in provisions of Union law made applicable by this Agreement shall be understood as including the United Kingdom and its competent authorities [...].

Article 13 IE/NI

Common provisions

1. For the purposes of this Protocol, any reference to the United Kingdom in the applicable provisions of the Withdrawal Agreement shall be read as referring to the United Kingdom or to the United Kingdom in respect of Northern Ireland, as the case may be.

5. What is the legal effect?

Article 4 WA

Methods and principles relating to the effect, the implementation and the application of this Agreement

1. The provisions of this Agreement and the provisions of Union law made applicable by this Agreement shall produce in respect of and in the United Kingdom the same legal effects as those which they produce within the Union and its Member States. [...]
2. The United Kingdom shall ensure compliance with paragraph 1, including as regards the required powers of its judicial and administrative authorities to disapply inconsistent or incompatible domestic provisions, through domestic primary legislation.

6. How are they interpreted?

Article 4 WA

Methods and principles relating to the effect, the implementation and the application of this Agreement

3. The provisions of this Agreement referring to Union law or to concepts or provisions thereof shall be interpreted and applied in accordance with the methods and general principles of Union law.

Article 13 IE/NI

Common provisions

2. Notwithstanding Article 4(4) and (5) of the Withdrawal Agreement, the provisions of this Protocol referring to Union law or to concepts or provisions thereof shall in their implementation and application be interpreted in conformity with the relevant case law of the Court of Justice of the European Union.

7. What if EU rules change? (1)

Article 13 IE/NI Common provisions

3. Notwithstanding Article 6(1) of the Withdrawal Agreement, and unless otherwise provided, where this Protocol makes reference to a Union act, that reference shall be read as referring to that Union act as amended or replaced.
4. Where the Union adopts a new act that falls within the scope of this Protocol, but which neither amends nor replaces a Union act listed in the Annexes to this Protocol, the Union shall inform the United Kingdom of the adoption of that act in the Joint Committee. [...]

7. What if EU rules change? (2)

Article 13(4) IE/NI (cont.)

As soon as reasonably practical after the Union has informed the United Kingdom in the Joint Committee, the Joint Committee shall either:

- (a) adopt a decision adding the newly adopted act to the relevant Annex to this Protocol; or
- (b) where an agreement on adding the newly adopted act to the relevant Annex to this Protocol cannot be reached, examine all further possibilities to maintain the good functioning of this Protocol and take any decision necessary to this effect.

8. How are EU rules supervised? (1)

Article 12 IE/NI

Implementation, application, supervision and enforcement

1. Without prejudice to paragraph 4, the authorities of the United Kingdom shall be responsible for implementing and applying the provisions of Union law made applicable by this Protocol to and in the United Kingdom in respect of Northern Ireland.
4. As regards ... Article 5 ... the institutions, bodies, offices, and agencies of the Union shall in relation to the United Kingdom and natural and legal persons residing or established in the territory of the United Kingdom have the powers conferred upon them by Union law. In particular, the Court of Justice of the European Union shall have the jurisdiction provided for in the Treaties in this respect. The second and third paragraphs of Article 267 TFEU shall apply to and in the United Kingdom in this respect.

8. How are EU rules supervised? (2)

Article 12 IE/NI

Implementation, application, supervision and enforcement

2. ... Union representatives shall have the right to be present during any activities of the authorities of the United Kingdom related to the implementation and application of provisions of Union law made applicable by this Protocol, ... and the United Kingdom shall provide, upon request, all relevant information relating to such activities. ... Where the Union representative requests the authorities of the United Kingdom to carry out control measures in individual cases for duly stated reasons, the authorities of the United Kingdom shall carry out those control measures. ...
3. The practical working arrangements relating to the exercise of the rights of Union representatives referred to in paragraph 2 shall be determined by the Joint Committee, upon proposal from the Specialised Committee.

9. Any exceptions? (1)

Article 7 WA

References to the Union and to Member States

1. For the purposes of this Agreement, all references to Member States and competent authorities of Member States in provisions of Union law made applicable by this Agreement shall be understood as including the United Kingdom and its competent authorities, except as regards:
 - (a) the nomination, appointment or election of members of the institutions, bodies, offices and agencies of the Union, as well as the participation in the decision-making and the attendance in the meetings of the institutions;
 - (b) the participation in the decision-making and governance of the bodies, offices and agencies of the Union;
 - (c) the attendance in the meetings of the committees ..., of Commission expert groups or of other similar entities ...

→ Article 15 IE/NI: Joint Consultative Working Group

9. Any exceptions? (2)

Article 13 IE/NI Common provisions

6. Authorities of the United Kingdom shall not act as leading authority for risk assessments, examinations, approvals and authorisation procedures provided for in Union law made applicable by this Protocol.

Article 7 IE/NI Technical regulations, assessments, registrations, certificates, approvals and authorisations

1. Without prejudice to the provisions of Union law referred to in Annex 2 to this Protocol, the lawfulness of placing goods on the market in Northern Ireland shall be governed by the law of the United Kingdom as well as, as regards goods imported from the Union, by Articles 34 and 36 TFEU.

9. Any exceptions? (3)

Article 7 IE/NI (cont.)

2. Where provisions of Union law made applicable by this Protocol provide for the indication of a Member State, ... the United Kingdom in respect of Northern Ireland shall be indicated as "UK(NI)" or "United Kingdom (Northern Ireland)".

Where provisions of Union law made applicable by this Protocol provide for the indication in the form of a numeric code, the United Kingdom in respect of Northern Ireland shall be indicated with a distinguishable numeric code.

9. Any exceptions? (4)

Article 7 IE/NI (cont.)

3. ... in respect of the recognition in one Member State of technical regulations, assessments, registrations, certificates, approvals and authorisations issued or carried out by the authorities of another Member State, or by a body established in another Member State, references to Member States in provisions of Union law made applicable by this Protocol shall not be read as including the United Kingdom in respect of Northern Ireland as regards technical regulations, assessments, registrations, certificates, approvals and authorisations issued or carried out by the authorities of the United Kingdom or by bodies established in the United Kingdom.

The first subparagraph shall not apply to registrations, certifications, approvals and authorisations of sites, installations or premises in Northern Ireland issued or carried out by competent authorities of the United Kingdom, where the registration, certification, approval or authorisation may require an inspection of the sites, installations or premises.

9. Any exceptions? (5)

Article 7(3) IE/NI (cont.)

The first subparagraph shall not apply to veterinary certificates or official labels for plant reproductive material that are required by provisions of Union law made applicable by this Protocol.

The United Kingdom in respect of Northern Ireland may not initiate objection, safeguard or arbitration procedures provided for in provisions of Union law made applicable by this Protocol to the extent that those procedures concern the technical regulations, standards, assessments, registrations, certificates, approvals and authorisations issued or carried out by competent authorities of the Member States or by bodies established in Member States.

The first subparagraph does not prevent the test and release by a qualified person in Northern Ireland of a batch of a medicinal product imported into or manufactured in Northern Ireland.

9. Any exceptions? (6)

Article 7(3) IE/NI (cont.)

The first subparagraph is without prejudice to the validity, in Northern Ireland, of assessments, registrations, certificates, approvals and authorisations issued or carried out, on the basis of provisions of Union law made applicable by this Protocol, by the competent authorities of the United Kingdom or by bodies established in the United Kingdom.

Any conformity marking, logo or similar required by the provisions of Union law made applicable by this Protocol which is affixed by economic operators based on the assessment, registration, certificate, approval or authorisation issued by competent authorities of the United Kingdom or by bodies established in the United Kingdom shall be accompanied by the indication "UK(NI)".

9. Any exceptions? (7)

Article 8 WA

Access to networks, information systems and databases

Unless otherwise provided in this Agreement, at the end of the transition period the United Kingdom shall cease to be entitled to access any network, any information system and any database established on the basis of Union law. ...

Article 13 IE/NI

Common provisions

... unless the Union considers that full or partial access by the United Kingdom or the United Kingdom in respect of Northern Ireland ... is strictly necessary to enable the United Kingdom to comply with its obligations under this Protocol ..., in respect of access to any network, information system or database established on the basis of Union law, references to Member States ... in provisions of Union law made applicable by this Protocol shall not be read as including ... the United Kingdom in respect of Northern Ireland ...

9. Any exceptions? (8)

Article 6 IE/NI

Protection of the UK internal market

1. ... Provisions of Union law made applicable by this Protocol which prohibit or restrict the exportation of goods shall only be applied to trade between Northern Ireland and other parts of the United Kingdom to the extent strictly required by any international obligations of the Union. ...

9. Any exceptions? (9)

Article 5 IE/NI Customs, movement of goods

1. No customs duties shall be payable for a good brought into Northern Ireland from another part of the United Kingdom by direct transport, notwithstanding paragraph 3, unless that good is at risk of subsequently being moved into the Union, whether by itself or forming part of another good following processing.

The customs duties in respect of a good being moved by direct transport to Northern Ireland other than from the Union or from another part of the United Kingdom shall be the duties applicable in the United Kingdom, notwithstanding paragraph 3, unless that good is at risk of subsequently being moved into the Union, whether by itself or forming part of another good following processing.

...

9. Any exceptions? (10)

Article 5 IE/NI (cont.) Customs, movement of goods

2. For the purposes of the first and second subparagraph of paragraph 1, a good brought into Northern Ireland from outside the Union shall be considered to be at risk of subsequently being moved into the Union unless it is established that that good:
- (a) will not be subject to commercial processing in Northern Ireland;
and
 - (b) fulfils the criteria established by the Joint Committee in accordance with the fourth subparagraph of this paragraph.
- ...
- Before the end of the transition period, the Joint Committee shall by decision establish the conditions under which processing is to be considered not to fall within point (a) of the first subparagraph, taking into account in particular the nature, scale and result of the processing.

9. Any exceptions? (11)

Article 5(2) IE/NI (cont.) Customs, movement of goods

Before the end of the transition period, the Joint Committee shall by decision establish the criteria for considering that a good brought into Northern Ireland from outside the Union is not at risk of subsequently being moved into the Union. The Joint Committee shall take into consideration, inter alia:

- (a) the final destination and use of the good;
- (b) the nature and value of the good;
- (c) the nature of the movement; and
- (d) the incentive for undeclared onward-movement into the Union, in particular incentives resulting from the duties payable pursuant to paragraph 1.

10. Summary (1)

- **All goods entering Northern Ireland** from outside the EU will have to undergo the same procedures and controls as goods entering a Member State from outside the EU
- Similarly, **all goods departing from Northern Ireland** to Great Britain or a third country will have to undergo the same procedures as exports from Member States
- **All goods produced and marketed in Northern Ireland** will have to comply with EU standards

NB: Changes to authorisation, certification etc.

10. Summary (2)

- The **UK authorities will be in charge of applying EU rules**, as listed in Annex 2 of the Protocol, in Northern Ireland.
- The EU will be in a position to **supervise closely the activities of UK authorities** under the Protocol:
 - EU institutions, bodies and agencies – including OLAF, Commission or ECJ – will have the same competences vis-à-vis the UK (NI) as they do vis-à-vis MS
 - The EU also has an additional right to be present in Northern Ireland, request any information from UK authorities and ask them to carry out specific activities. This will allow the EU to verify that UK authorities correctly apply the relevant EU law.

10. Summary (3)

There are some exceptions:

- UK participation in meetings
- UK's access to IT systems and Databases
- Recognition of authorisations, certificates, etc. issued by UK authorities or UK bodies
- UK cannot act as leading authority
- Limited application of export restrictions
- Tariff treatment for goods not at risk of onward movement

11. Next steps (1)

Joint Committee is tasked with taking certain decision during the transition period:

Article 5(2)	Criteria under which processing does not count as commercial Risk criteria for goods entering NI to enter later the Union	Joint Committee decision	Before the end of the transition
Article 5(3)	Exemptions from duties for NI fishermen	Joint Committee decision	Before the end of the transition
Article 10(2)	The maximum amount of support for agricultural products Minimum percentage of green box compliance	Joint Committee decision	Before the end of the transition
Article 12(3)	Practical working arrangements for Union representatives in NI	Joint Committee decision based on proposal from the Specialised Co.	Before the end of the transition

Particular case of Border Control Posts (BCPs)



Movement of animals or SPS goods...

... from Liverpool

Exit modalities (if any, up to UK)

... to Belfast

EU import formalities

- Presentation to a designated BCP at the 1st point of entry
- Official checks
 - against EU rules,
 - performed by UK authorities,
 - in presence of EU representatives

If the animals/goods are compliant with EU import requirements :

- ➔ Issuance of a Common Health Entry Document (CHED)
- ➔ Free circulation in Northern Ireland and in the EU