




# Queen's Policy Engagement: Post-Brexit Clinic




16 February 2021

Organized in cooperation with the ESRC-funded project on *Governance for 'a place between': the multilevel dynamics of implementing the Protocol on Ireland/Northern Ireland*.



# Brexit, Northern Ireland and the Protocol: where are we?



Prof David Phinnemore (@DPhinnemore)

# Now the transition period is over... Real Brexit

**31 December 2020**    **Transition period ends**

UK leaves EU customs union and internal market

UK leaves EU cooperation arrangements

**1 January 2021**

**UK-EU Trade and Cooperation Agreement** provisionally enters into force

**Protocol on Ireland/Northern Ireland** enters fully into force... Northern Ireland remains subject to EU customs code and in the EU internal market for goods

# UK-EU Trade and Cooperation Agreement (TCA)

## Partnership Agreement for Cooperation and Trade

### Trade, economic, social & environmental partnership

#### Free, fair & sustainable trade

- Trade in goods
- Customs & regulatory cooperation
- Trade in services & investment
- Public procurement
- Rules for fair competition & sustainability
- Intellectual Property Rights

#### Connectivity, sustainability & shared opportunities

- Transport
- Energy and climate
- Fisheries & natural resources
- Social security coordination
- Union programmes

#### Internal security partnership for citizens' safety

- Law enforcement & judicial cooperation in criminal matters
- Protection of fundamental rights
- Data exchange
- Anti-money laundering

### New EU-UK governance framework for a lasting partnership

- Partnership Council
- Dispute settlement, enforcement & sanctions mechanisms
- Periodic reviews

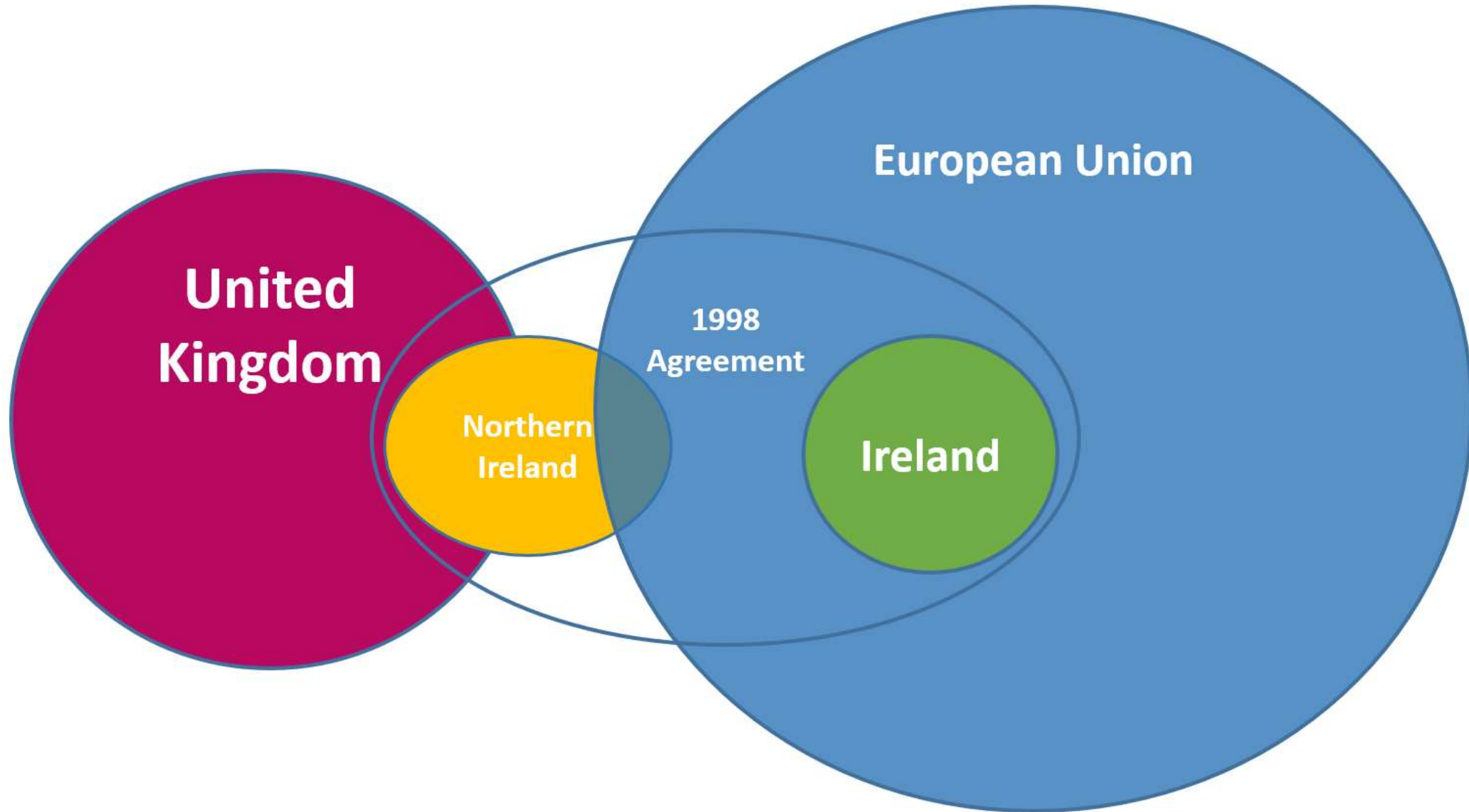
#### EU unilateral measures

Not covered by the negotiations:

- Equivalences in financial services
- Adequacy decision on data protection
- UK third-country SPS listing



# Northern Ireland with the Protocol



# UK-EU Trade and Cooperation Agreement

**Fundamentally important that agreement exists:**

*zero-tariff, zero-quota UK-EU trade*

But...

- + TCA is a 'thin' agreement: no free movement of services, no mutual recognition of professional qualifications, no regulatory alignment (e.g. for goods, SPS)
- + TCA does little to 'soften' the Irish Sea 'border'
- + TCA does little to facilitate north-south movement of services and people

So...

- + How will evolution of UK-EU relationship address/exacerbate issues?

# Implementing the Protocol

**17 December 2020 - UK-EU Joint Committee**

**Decisions and Unilateral Declarations**

## Operation of Protocol

Export Declarations (NI-GB)

Levels of Support for Agriculture and Fisheries  
Definition of 'commercial processing' and 'not at risk' goods moving GB-NI

Authorized Trader Scheme for goods moving GB-NI  
8 EU acts added to – and 2 removed from – Annex 2  
Monitoring arrangements for EU officials in NI

## Grace Periods

Export Health Certificates – 31 March 2021

Meat Products – 30 June 2021

Medicines acquis – 31 December 2021

[Parcels – 31 March 2021]

## Conditions:

- *Export Declarations*: equivalence via other means and using appropriate electronic data-processing techniques
- *'Not at Risk' Goods*: authorized traders only; end-consumers in Northern Ireland; data on flows to EU; review option before 1 August 2023
- *Export Health Certificates*: NI-specific labelling; UK compliance with EU *acquis*; non-renewable; EU retains powers
- *Meat Products*: NI-specific labelling; certification; end consumers in NI; UK to remain aligned to relevant *acquis*; EU retains powers

# Implementing the Protocol - Issues



Guidance

## Sending parcels between Great Britain and Northern Ireland

Find out what you need to do if you are a business or individual using an express carrier (including Royal Mail Group) to move parcels between Great Britain and Northern Ireland.

Published 31 December 2020  
From: [HM Revenue & Customs](#)

## Article 16 - Safeguards



## The Problematic 'Ps':

- *Pets*
- *Parcels*
- *[seed] Potatoes*
- *Plants*
- *Plant Products*



(16) Exports of goods from Northern Ireland to other parts of the United Kingdom cannot be restricted by Union law unless this is strictly required by international obligations of the Union. Therefore, movements of goods covered by this Regulation between the Union and Northern Ireland should be treated as exports. Whilst quantitative restrictions on exports are prohibited between the Union and Northern Ireland, in accordance with Article 5 (5) of the Protocol on Ireland/Northern Ireland, this is justified as a safeguard measure pursuant to Article 16 of that Protocol in order to avert serious societal difficulties due to a lack of supply threatening to disturb the orderly implementation of the vaccination campaigns in the Member States.

Grace Periods... *not long enough*: Export Health Certificates/Parcels – 31.03.21; Meat Products – 30.06.21



# ... with and within the Protocol

## **Joint statement by European Commission Vice-President Šefčovič and the UK Chancellor of the Duchy of Lancaster Gove**


London, 11 February 2021

The co-chairs of the EU-UK Joint Committee on the Withdrawal Agreement – European Commission Vice-President Maroš Šefčovič and the UK Chancellor of the Duchy of Lancaster Michael Gove – met to prepare the upcoming Joint Committee on the implementation of the Protocol on Ireland / Northern Ireland and the outstanding issues.


After a frank but constructive discussion, and taking into account the views expressed on 3 February by the First Minister and deputy First Minister of Northern Ireland, the two co-chairs agreed to:

- reiterate their full commitment to the Good Friday (Belfast) Agreement, and to the proper implementation of the Protocol – protecting the gains of the peace process, maintaining stability, avoiding a hard border on the island of Ireland and impacting as little as possible on the everyday life of communities in both Ireland and Northern Ireland;
- spare no effort to implement solutions mutually agreed on 17 December, as they form a foundation for our cooperation;
- intensify the work of the Specialised Committee on the Protocol in order to address all outstanding issues, with the shared objective to find workable solutions on the ground;
- underpin this work by further joint engagement by the UK and the EU with business groups and civic society in Northern Ireland; and
- convene the Joint Committee no later than on 24 February to provide the necessary political steer and approval to this work in the spirit of collaboration, responsibility and pragmatism.

STATEMENT/21/565

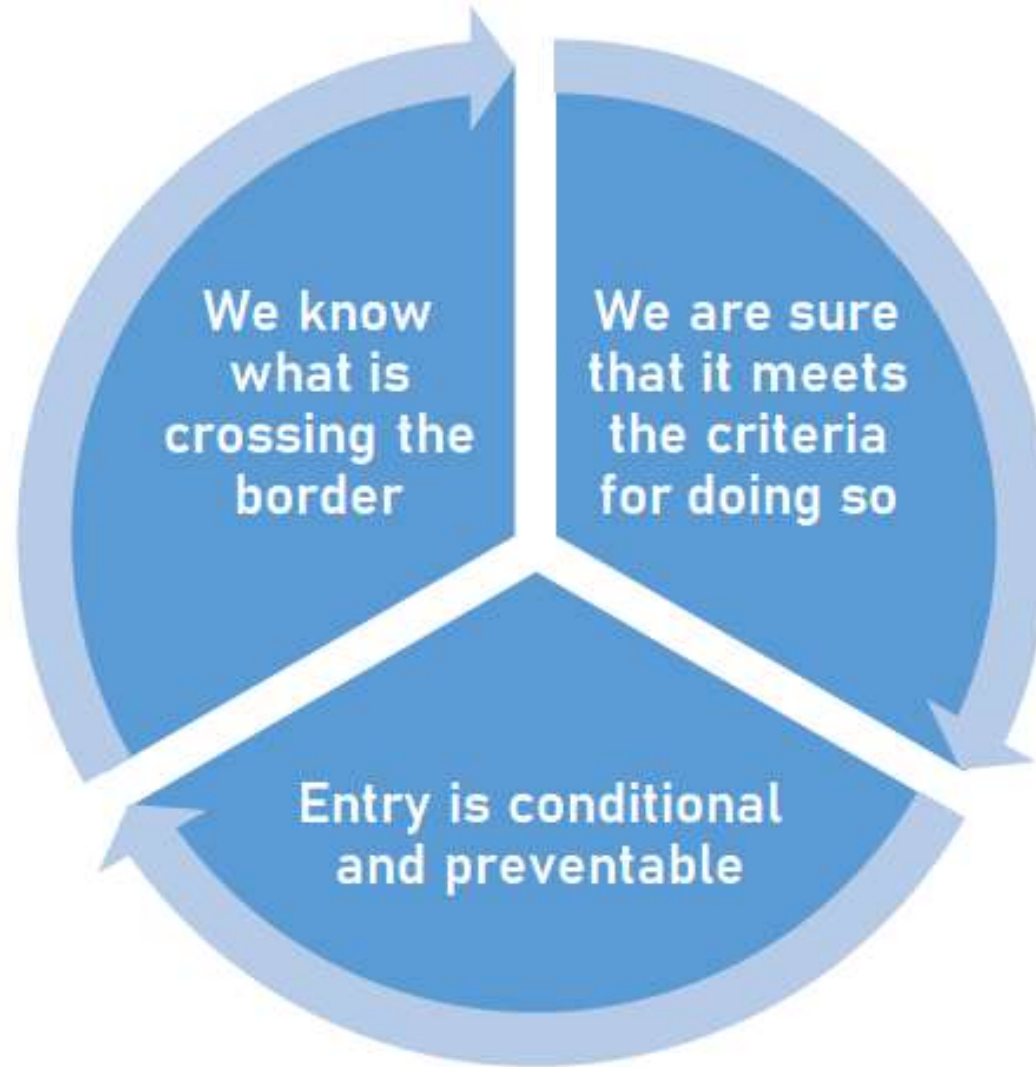


# Brexit, Northern Ireland and the Protocol: where might we go?

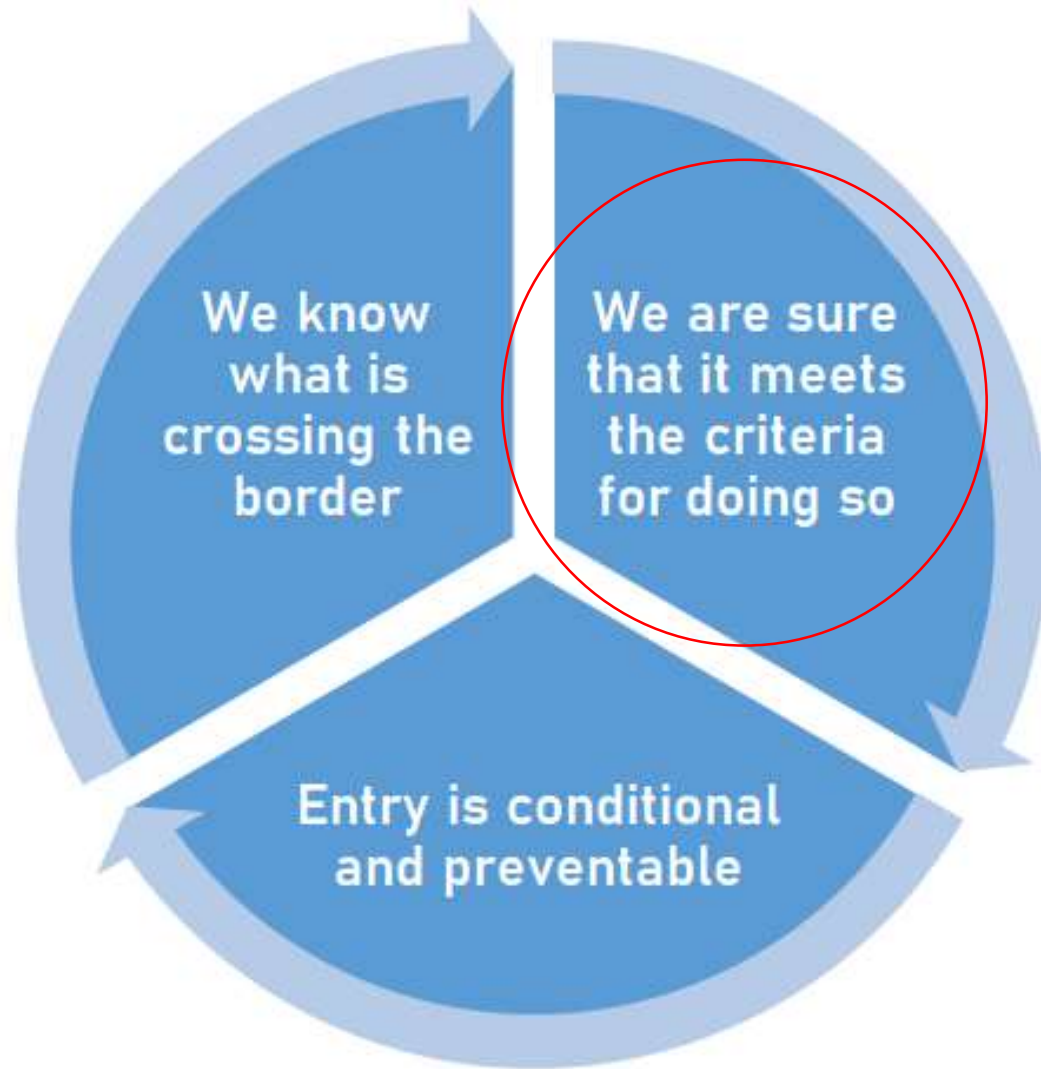


Prof Katy Hayward (@hayward\_katy)

# What is the problem?

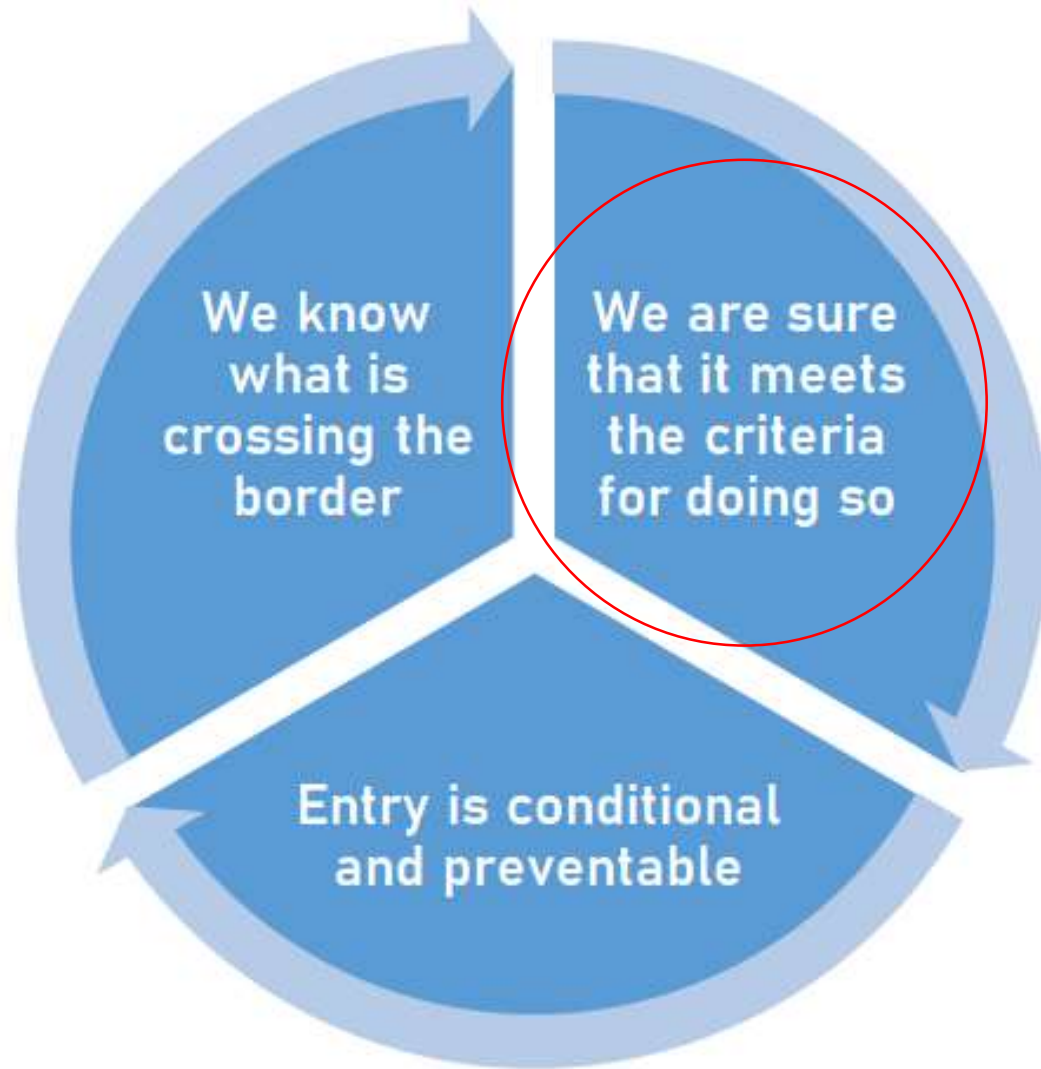


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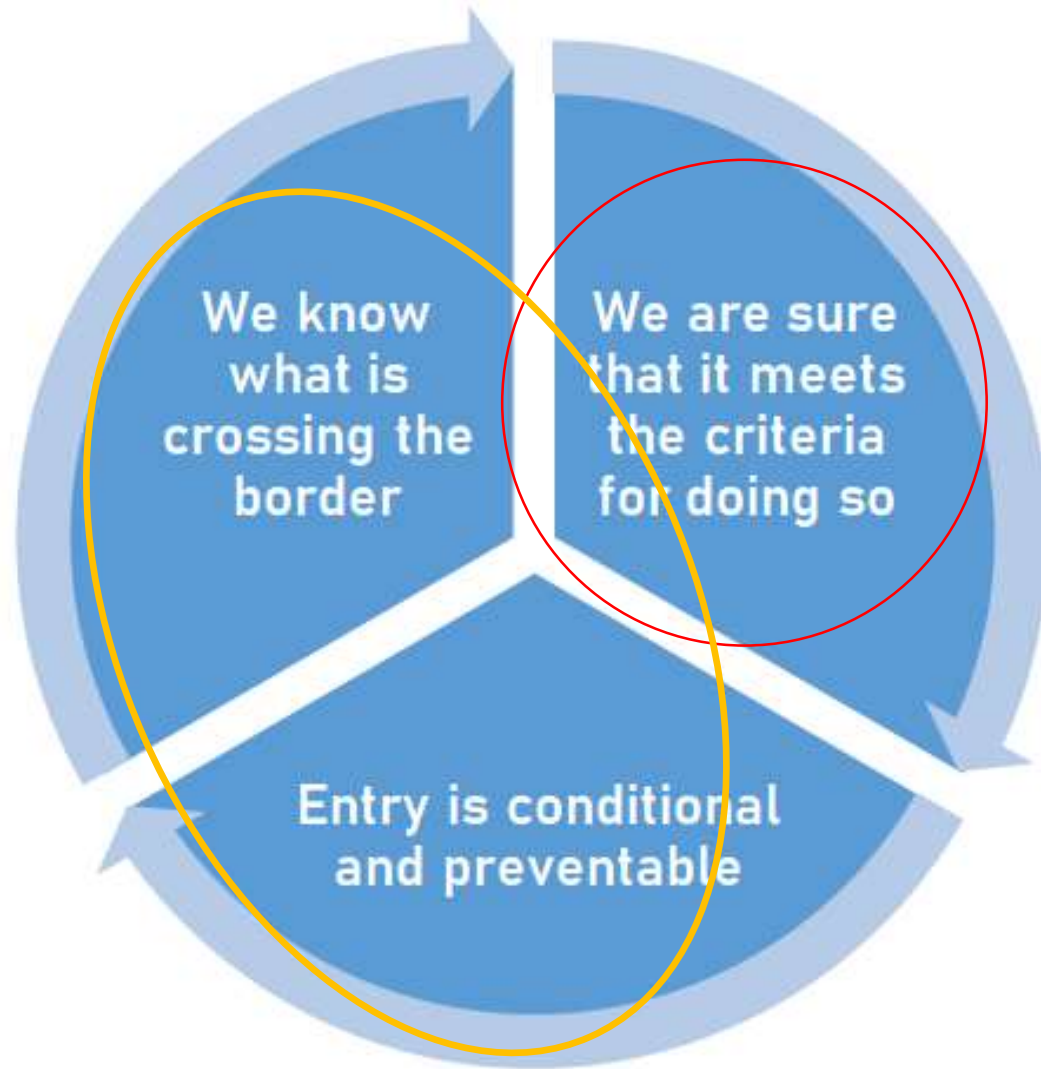
**The Backstop**

# What is the problem?



**The Protocol**

# What is the problem?

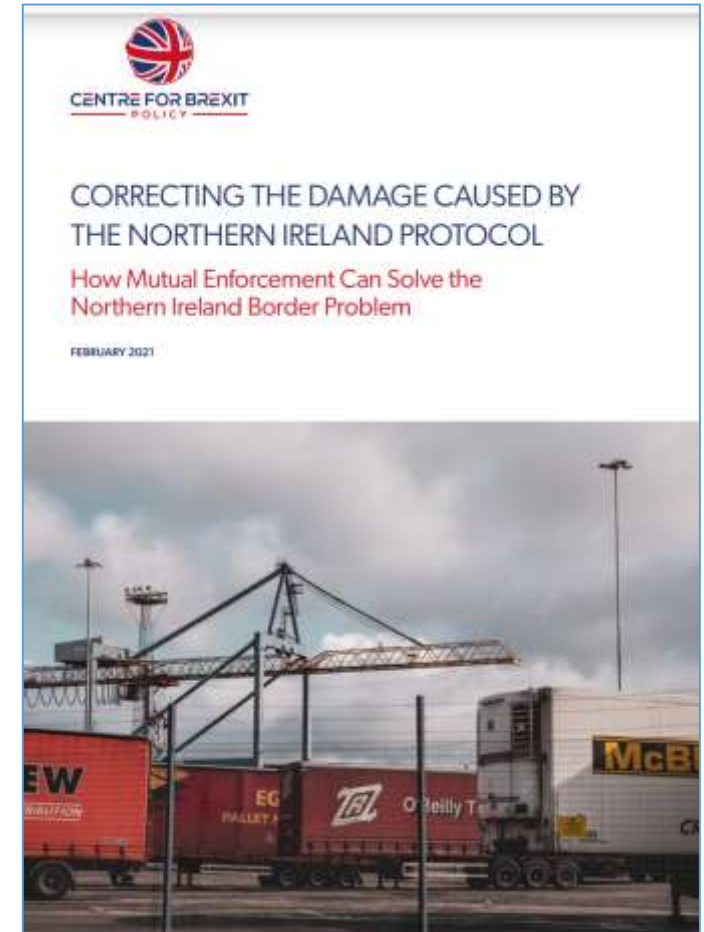


**The Protocol**

# Are there alternatives to the Protocol?

## + Mutual enforcement

- + ‘replaces the controversial minutiae of operational and technical procedures with a legal obligation on each side to ensure the enforcement of the other side’s rules and standards’
- + ‘waving through goods at the Irish border is defensible under the essential security provision of Article XXI of the GATT, allowing the reasonable transgression of GATT rules on the basis of safeguarding public order’



# Article 16: Safeguard Measures

## + Grounds

- + 'serious economic, societal or environmental difficulties that are liable to persist'
- + 'diversion of trade'

## + Types of measures

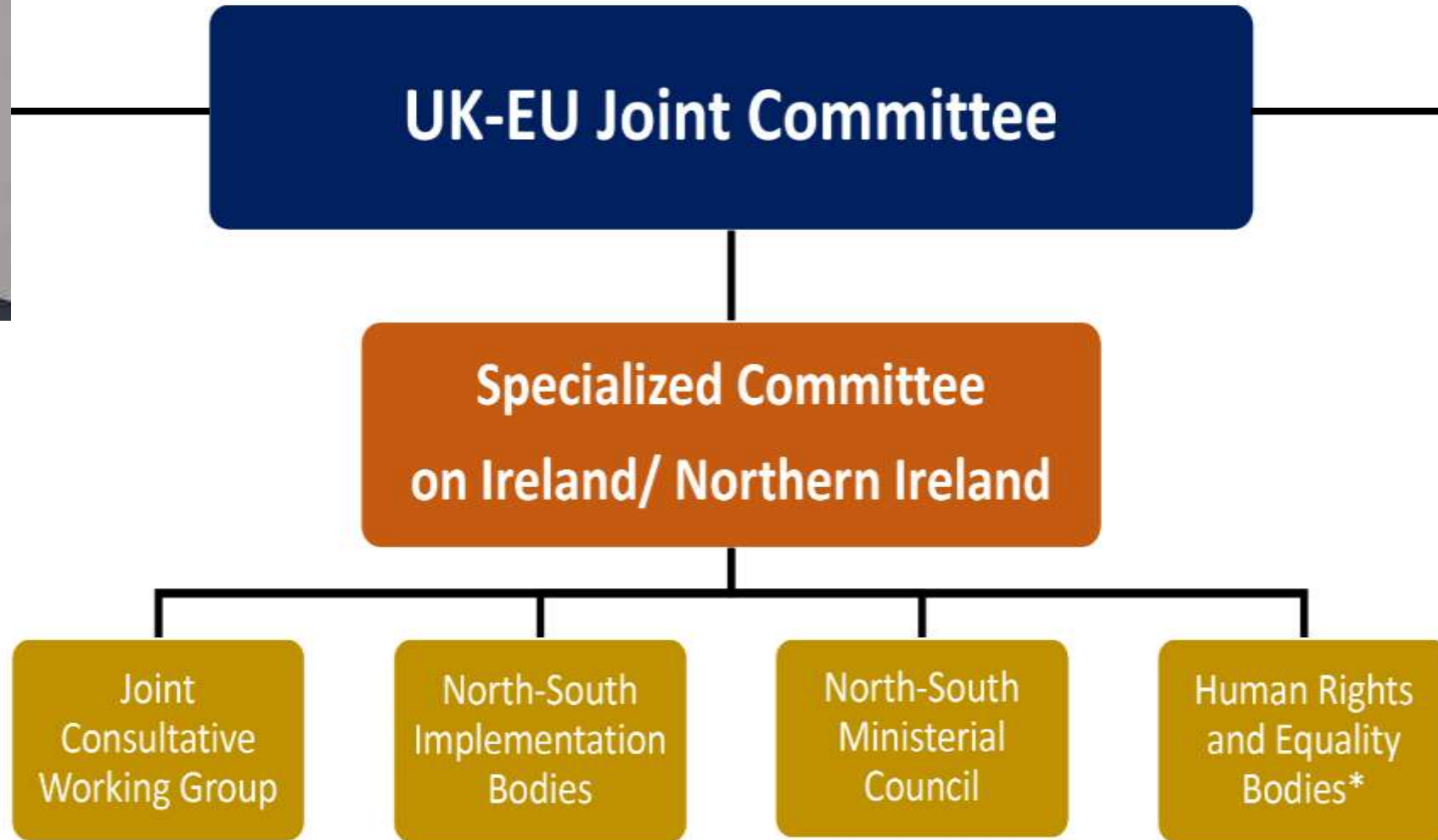
- + 'restricted with regard to their scope and duration to what is strictly necessary in order to remedy the situation'
- + 'proportionate rebalancing measures as are strictly necessary to remedy the imbalance'
- + priority 'to such measures as will least disturb the functioning of this Protocol'

## + Process

- + Notification through the Joint Committee and provide all relevant information
- + Joint Committee consultations (one month) 'with a view to finding a commonly acceptable solution'
- + Notification of measures... consultations every three months 'with a view to their abolition before the date of expiry envisaged, or to the limitation of their scope of application'
- + 'When exceptional circumstances requiring immediate action exclude prior examination... [x] may apply forthwith the protective measures strictly necessary to remedy the situation'



# Managing the Protocol



\* Northern Ireland Human Rights Commission; Equality Commission for Northern Ireland; Joint Committee of representatives of the Human Rights Commissions of Northern Ireland and Ireland

# Ten responsibilities of the UK-EU Joint Committee

1. 'At risk' goods (Art 5ii): may at any time amend its decisions on this
2. The operation of the *UK Trader Scheme*: (as per 17 Dec decision, review 2024)
3. Facilitation of trade within the UK (Art. 6ii)
4. VAT and Excise: 'Regularly discuss' (Art. 8)
5. Agricultural support scheme limits (Annex 6)
6. Conditions for north-south cooperation (Art. 11)
7. 'Practical working arrangements' for EU presence (Art. 12)
8. If there is no majority consent for the continuation of Arts 5-10 after an Assembly vote (Art. 18)
9. The adoption of new EU acts that fall within the scope of the Protocol (Art. 13iv)
10. The adoption of decisions amending the Protocol (up to end 2024)



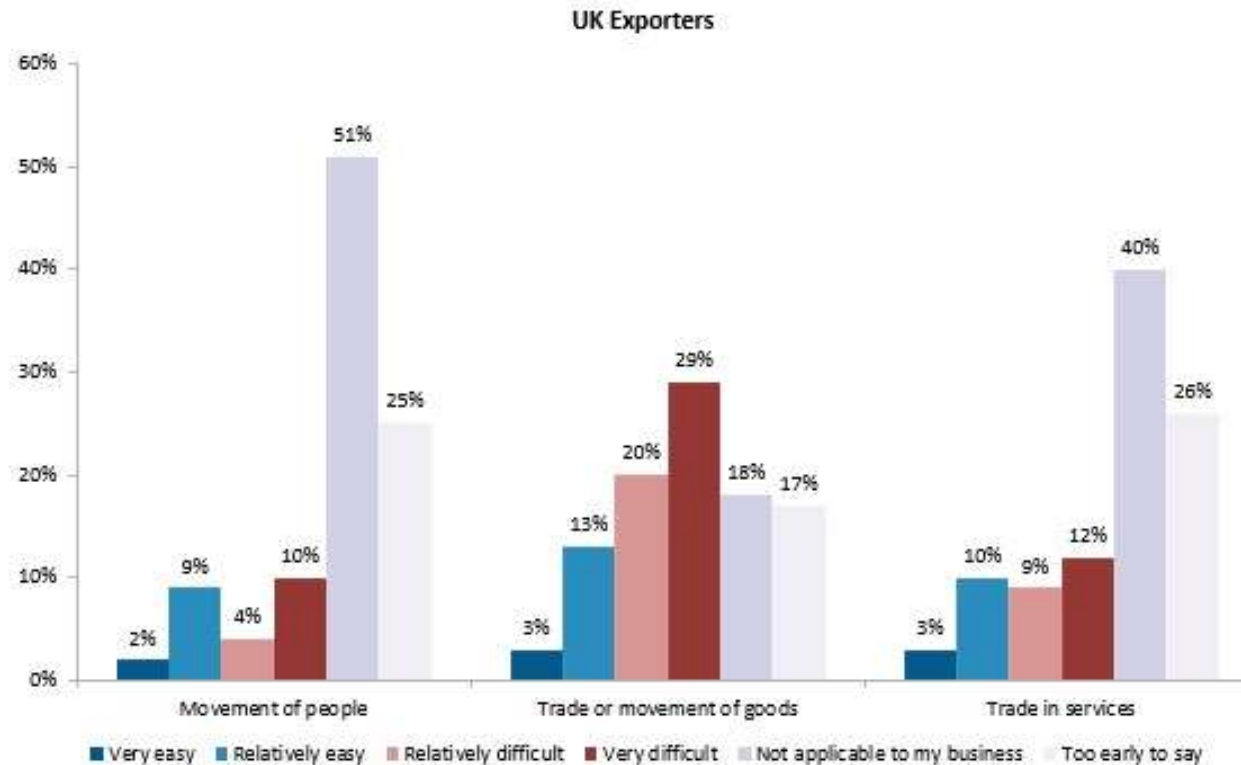
# The Protocol and Brexit realities – a view from environment/agri- food



Dr Viviane Gravey

# Brexit reality hitting UK businesses hard

**For UK exporters, 49% report difficulties in adapting to changes in the trade or movement of goods**



- Mixed messages from government?
- Difficulties to prepare during Covid19
- Very late agreement UK-EU
- Depth of change and ramifications difficult to prepare
- Many businesses created *since* Single Market, no prior experience of trading with EU outside of it.



[q13] On 1 January 2020, the UK and EU entered into the EU-UK Trade and Cooperation Agreement. Across each of the following broad areas, how easy or difficult has it been for your business or supply chain to adapt to changes flowing from the EU-UK agreement?

BASE: (Movement of people: N = 453; Trade or movement of goods: N = 465; Trade in services: N = 457)

Covid-19 and Brexit Survey 2021

# SPS checks, consumer choice and local businesses

SPS goods include;

- Live animals
- Products of Animal Origin (POAO)
- High risk food not of animal origin
- Plants and plant products
- Wood packaging material (must be ISPM 15 compliant)

**THE RULES  
HAVE CHANGED**

**From 01 January 2021**

If moving SPS goods from GB to NI you **MUST** pre-notify the consignment by creating a CHED (Common Health Entry Document) on TRACES-NT 24 HOURS before it arrives in NI.



## British cheeses may become rarity in Northern Ireland next year, businesses warn

Food products coming from Great Britain to Northern Ireland will face further checks following the end of the Brexit transition period.



Mark Brown, of Arcadia Deli in Belfast, said he fears that, from April, he will no longer be able to offer as much choice for his customers (Liam McBarney/PA).



It is with great sadness we must stop sending our cheese to the EU. Due to an oversight in the Free Trade deal it is impossible for us to send cheese to our EU online consumers. DEFRA has told us not to expect an exemption or change anytime soon. Investment & hope is lost today 😞



9:33 AM · Jan 22, 2021 · Twitter Web App

8,867 Retweets · 2,390 Quote Tweets · 16.7K Likes

5 'Ps' – underpinned by SPS issues

- Pets
- Plants
- (seed) Potatoes
- Plant products
- Parcels

- Why SPS matters
- What is and is not possible within the Protocol
- For whom (short-term) derogations and grace periods are negotiated
- What can be done by the UK government internally (e.g. Movement Assistance Scheme)
- What can be done by the UK government vis-à-vis the EU

*'any flexibility would entail the United Kingdom committing to align with the relevant EU rules'*

# Not just SPS - 'Unfettered access' and Lough Neagh Eels

- Situation today; Lough Neagh eels cannot be sold to GB ; glass eels to re-stock Lough Neagh cannot be imported from GB.
- Eels fishers long warned of issue – eels are an endangered species and as such trade in eels is heavily regulated to protect specie.
- 'Unfettered access' commitments can be restricted 'to the extent strictly required by any international obligations of the Union.' In this case, the Convention on International Trade in Endangered Species (CITES), which is implemented in EU law by a regulation (338/97) which is listed at Annex II of the Protocol.



# Not just checks, but alignment too

- Dynamic alignment will start to bite soon – but is the UK ready?
- Early example: the ban of lead shot in wetlands, agreed under REACH
- Key test for:
  - NI ability to deliver on dynamic alignment in Protocol
  - Scottish commitments to keep pace under UK Withdrawal from the EU (Continuity) (Scotland) Act of 2021
  - Common Frameworks



TheOtherKev |  
Pixabay

<https://www.brexitenvironment.co.uk/2021/01/22/why-dynamic-alignment-is-alive-lead-shots-and-wetlands/>

# Beyond agri-food, lack of preparation on the environment?

- Environment Bill delayed in Jan 2021 (yet again) until the Autumn
- Consequences for England, NI – as well as Scotland and Wales
- Shows difficulty to move beyond ‘green Brexit’ slogans to reality

## Fury as long-awaited UK environment bill is delayed for third time

Green campaigners attack further delay ‘to most important piece of legislation for decades’



▲ A deforested coca field in Colombia. The bill includes rules intended to stop the import of goods to the UK from areas of illegally deforested land Photograph: Raúl Arboleda/AFP/Getty Images