

# BREXIT BRIEF

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## Introduction

The Brief seeks to provide up-to-date information on the progress and content of the UK-EU negotiations, and bring together relevant statements and policy positions from key players in Ireland, the UK and the EU.

The Brief is part of a wider communications programme covering the work of the IIEA's UK Project Group – including commentaries, speeches, texts and event reports – which are highlighted on the Institute's website. ([www.iiea.com](http://www.iiea.com))

## Section One: State of Play

### Talk and Opinion Pieces - No Solutions Yet

The Protocol on Ireland/Northern Ireland saga has continued with more speeches, interviews and opinion pieces but no solutions so far. As London voices speak of 'all options on the table' and those in Brussels refer to 'stepping up legal actions', Belfast has welcomed visits by Lord Frost and Sir Keir Starmer. The UK has indicated its intention to produce its detailed plans to resolve the troublesome issues before the commencement of the Westminster Parliamentary recess on Thursday, 22 July 2021. And, Prime Minister Johnson, at a joint

press conference with Chancellor Angela Merkel, said he hoped the "*wurst* is behind us" when it came to the chilled meat saga."

### Prime Minister's Questions, House of Commons, 7 July 2021

David Jones MP stated that "while the extension of the grace period for the supply of chilled meat from Great Britain to Northern Ireland is welcome, Lord Frost is entirely right to say that it amounts in truth to no more than a temporary 'sticking plaster'". He then asked the Prime Minister to confirm that, unless the European Union adopts a more proportionate approach to the application of the Northern Ireland protocol, the UK would do whatever

is necessary, legislative or otherwise, to fix the problem permanently". The Prime Minister replied by saying:

*My right hon. Friend is, sadly, completely right in his analysis. There remain very serious problems in what I believe is the misapplication—the excessively legally purist application—of that protocol. What we are hoping for is some progress from the European Commission—some repairs that I think that they should make to the way this is working—but to echo what he has said, we certainly rule nothing out in our approach.*

## UK Proposals Planned

Lord Frost has stated that the British Government will set out its proposals on the measures needed to resolve issues surrounding the Protocol on Ireland/Northern Ireland (the Protocol) in coming weeks, in time to have them on the table before the commencement of the Parliamentary recess on Thursday, 22 July 2021. He said that "all options remain on the table" but that "we are confident given everything that we've been through the last few years that there are ways of finding a new balance and finding the necessary adjustments."

Lord Frost emphasised that the UK will not be delivering any form of ultimatum. "There are no deadlines here. We are not putting something on the table and saying take it or leave it, or you must work to this particular timetable", he said. He told a London think tank that he wanted a consensual approach but that "the current situation is not consistent with the careful balance in the Belfast Agreement and is not how the Protocol should be working". "That political reality must be acknowledged and dealt with", he cautioned.

He concluded that "the prize on offer for us all, if we can re-establish a new balance in a way that works for us all, is that we can set relations between the UK and the EU onto a new trajectory, one that moves beyond the current tensions that moves beyond the challenges of the last few years, and realises the real, genuine potential for friendly co-operation".

Speaking at the Northern Ireland Assembly Executive Office Committee, Lord Frost said that the post-Brexit arrangement to prevent a hard border on the island of Ireland was a "huge compromise" by London that was "made willingly." The "wider goal" of maintaining peace in the North "justifies the deal."

European Commission Vice-President Maroš Šefčovič commented that the biggest challenge for Brussels was how to rebuild trust and realign its relationship with London. The UK must provide pathways to compliance with the Protocol as soon as possible. In the absence of such developments the EU would 'step up' legal action against the UK. He highlighted the need to reach agreement on issues surrounding agri-food products and argued for a deal along the lines of the existing EU-Switzerland agreement which has yet to find favour in London.

## Frost-Lewis Op-Ed in the Irish Times, 3 July 2021

On Saturday, 3 July 2021, Lord David Frost and Northern Ireland Secretary Brandon Lewis published a joint article in The Irish Times, with the title We must find a new balance in how the protocol is operated. Below is an excerpt from the article:

*In October 2019 the British government reached a remarkable, indeed unprecedented, agreement with the EU,*

*enshrined in the Protocol on Ireland and Northern Ireland. It was that we would control the circulation of certain goods within our own country, in the interests both of the overriding goal of supporting the peace process and the Belfast (Good Friday) Agreement, and of protecting the EU's single market.*

*Such arrangements can work only if there is genuine cross-community consent for them and if people can see that the commitments to prevent disruption to their lives, or the diversion of trade, are real in practice. But the EU's attempt in January to use Article 16 of the protocol to put in place a vaccines control at the land border has had a particularly damaging and long-lasting effect on exactly this consent. Recent polling from LucidTalk shows that there is a 50/50 split in public opinion in Northern Ireland on the protocol. Opposition is growing, including among many people who are not normally active in political life. That is not a stable basis for the future.*

*In short, a seriously unbalanced situation is developing in the way the protocol is operating. This risks economic harm in Northern Ireland and damage, in turn, to the essential balance within the Belfast Agreement itself. The way forward is to find a new balance in the way the protocol is operated. We must make a serious effort to do so rapidly.*

*The situation is now urgent. The UK and Ireland have huge, and very direct, interest in finding solutions here. But we need constructive and ambitious discussions with the EU which deal with the actual reality. To simply say "the protocol must be implemented in full"*

*is to take a theological approach that is frozen in time and does not deal with the reality that now exists.*

*We look to find solutions. If that is not possible, we will of course have to consider all our options, because we have an overriding responsibility and obligation to support peace, prosperity and stability in Northern Ireland. Either way, we need to find a way forward, a new balance of arrangements, adapted to the practical reality of what we have seen since January, and based on the common interests we all share.*

Foreign Minister Simon Coveney responded to the article, saying that EU leaders feared the worst after what could be seen as a provocative approach by the British ministers. "Many in the EU are interpreting the UK's response as essentially saying: "Look, concessions don't matter. What is required now is to dismantle elements of the protocol piece by piece. That is going to cause huge problems".

## **John Bruton Responds to UK Ministers**

The former Taoiseach John Bruton replied to the UK ministers in *The Irish Times* on Wednesday, 7 July 2021:

*The UK's European Union negotiator and its secretary of state for Northern Ireland published a remarkable article in *The Irish Times* last week. They complained of what they called the 'inflexible requirement to treat movement of goods [from Britain] into Northern Ireland, as if they were crossing an EU external frontier, with the full panoply of checks and controls'.*

*It appears they never read the Ireland/Northern Ireland Protocol which is part of the Agreement under which the UK withdrew from the EU. For this is precisely what the UK agreed to, in great detail, in the Protocol. Annex 2 of this Protocol lists the EU laws which are to apply "in and to the UK in respect of Northern Ireland". The first item on this very long list is Customs Code of the EU. This is a rigorous code with exacting procedures, as the UK knows well.*

*The UK ministers, writing in The Irish Times, say preventing a hard land border on the island of Ireland remains essential. So, if the controls are not to be exercised on the land border in Ireland, where do the UK ministers propose to exercise them? The two ministers make no attempt to answer this question. They offer no constructive suggestions at all, apart from using slogans such as "balance" and "flexibility" in the implementation of the very precise laws listed in the Protocol. At the end of the article, the two ministers say that, if solutions are not found (although they do not offer any), "we will of course have to consider all our options". In diplomatic terms, for British ministers to use such words, in an Irish newspaper, is menacing.*

*Brexit was a British idea. Brexit means border controls. They should deal with the logical consequences of their own freely chosen policies.*

## **Keir Starmer in Northern Ireland**

The Leader of the British Labour Party, Keir Starmer, entered into the Protocol debate with a visit to Northern Ireland preceded by an article in *The Times*.

Speaking in Belfast, where he met the five Stormont Assembly parties and the PSNI Chief Constable Simon Byrne, Keir Starmer accused the Prime Minister of betraying the people of Northern Ireland and said that he was not trusted as an honest broker. Boris Johnson had not been straight about the consequences of the Protocol and "is now pretending it is someone else's problem."

The Labour Party visitors discussed with the parties the possibility of agreement on a deal on veterinary standards which would reduce the need for checks on the Irish Sea and indicated that there had been "relative consensus that this is part of the solution. It is not the only thing but ultimately we need to see the British government getting back round the negotiating table with the European Union and using the mechanisms of the Protocol to find that agreement". "It is not a sustainable solution to keep proposing unilateral mechanisms. Unfortunately that's what we anticipate will happen in the next couple of weeks from David Frost", he added.

In his piece for *The Times*, Keir Starmer wrote that "I am sad to say that, after nearly three decades of slow but steady progress, we now have a prime minister who has put his own narrow interest above those of the people of Northern Ireland. We have a prime minister who has refused to take responsibility for his decisions, who is risking through his dishonesty, the stability of the peace process. The Prime Minister personally negotiated the Northern Ireland Protocol and he has a personal responsibility to make it work."

Sir Keir made it clear that he understood the concerns of the unionist community and businesses in the region about the barriers introduced by the protocol, but added that it is now time for solutions. "These were problems

that the UK Government knew were possible when they signed it. It is time for serious, practical solutions.”

Sir Keir also criticised the UK Brexit negotiator Lord Frost, following the recent joint opinion piece with Brandon Lewis in *The Irish Times* which warned of damage to the Belfast (Good Friday) Agreement if a “new balance” is not found for customs checks:

*It is hard to know whether Lord Frost is merely naive or deliberately provocative. Whichever it is, the strategy of brinkmanship and picking fights in Northern Ireland is not the work of a serious politician. Does he not think the people of Northern Ireland deserve better than this?*

## High Court Judgement

In the Belfast High Court, on Wednesday, 30 June 2021, Mr Justice Colton threw out the legal challenge to the Northern Ireland Protocol, refusing a judicial review and rejecting the argument of the Democratic Unionist Party and others that the Protocol breached the 1800 Acts of Union. He declared that “much constitutional water has passed under the bridge” since then.

In his detailed judgment, Mr Justice Colton agreed with the applicants that the Brexit Withdrawal Act conflicted with the 1800 Acts of Union, but ruled that the recent legislation including the Protocol overrode the provisions of the 200-year old law, as they in effect repealed part of the Acts of Union. While the Protocol conflicts with the Acts of Union, subsequent treaties – such as the Withdrawal Agreement between the UK and the EU – were elements of prerogative power over which the courts had little oversight.

The judge went on to dismiss other grounds for a judicial review, such as the contention that the post-Brexit trade arrangements breached key provisions of the 1998 Northern Ireland Act that legislated for the peace agreement. Significantly, he determined that the 1800 Acts of Union and the Brexit withdrawal legislation were both laws of a constitutional character but said his role was to rule on which one should prevail in law. The judge said a starting point, based on fundamental legal principles, was that the most recent legislation should take precedence.

He said there was no legal precedent whereby the Acts of Union had operated to “nullify a subsequent act of parliament” but there was capacity for “implied repeal” of statute with the passing of latter laws. Concluding on that issue, he said:

*The acts (2018 and 2020 Withdrawal Agreement Acts) have been approved and implemented pursuant to the express will of parliament and any tension with article six of the Acts of Union should be resolved in favour of the agreement acts of 2018 and 2020.” The Government had argued in court that the Protocol “is an orthodox application of Parliamentary sovereignty” and that the applicants were effectively “asking the court to ignore the will of Parliament expressed in primary legislation.*

It is expected that the judgement of Mr Justice Colton will be appealed, even as far as the Supreme Court, by the applicants, led by TUV leader Jim Allister, and including Lord Trimble, Arlene Foster MLA, Steve Aiken MLA, Baroness Kate Hoey and the former Brexit Party MEP Ben Habib.

## Brexit Opinion Poll

The latest survey in a three-year Queen's University research project on the Protocol has produced interesting insights into current opinion in Northern Ireland.

The poll shows a high degree of distrust in both Northern Irish and UK politicians over the Protocol. 86% distrust Boris Johnson and the UK Government with only 6% expressing trust. Up to 78% distrust the DUP and 56% distrust Sinn Fein. The Alliance Party and the SDLP are the most trusted parties. And, a majority distrust both the European Commission and the Dublin Government. Only business leaders – at 56% - record a positive trust rating.

Queen's Professor Katy Hayward said that the findings indicate that people in Northern Ireland are "highly exercised" by the Protocol. While a majority – 67% – believe that special arrangements are needed for Northern Ireland in the aftermath of Brexit there is a clear split on support or opposition for the Protocol with 47% agreeing and 47% disagreeing when asked whether the Protocol "provides appropriate means for managing the effects of Brexit on Northern Ireland". As many as 56% agree that the Protocol offers Northern Ireland a "unique set of economic opportunities." Three-quarters of voters indicate that they will be "mindful" of the Protocol when voting in the next Assembly election.

More than a third of those questioned continue to think that Brexit is, on balance, a good thing for the United Kingdom, while a clear majority – 57% – disagree or disagree strongly. 57% of voters want the UK to align with EU regulations as a solution to perceived problems with the Protocol.

## Naomi Long Opinion Piece

The Alliance Party leader and NI Justice Minister, Naomi Long, contributed a lengthy article on the Protocol to *The Guardian* on Thursday, 8 July 2021.

*The protocol is the product of Brexit, and in particular the choices made by the government and many unionist politicians, who pushed for a hard Brexit. In the absence of any plausible alternative, it is the means to address the challenges posed by Brexit to a shared and interdependent Northern Ireland. Those opposed to the protocol continue to engage in fantasy politics, calling for its removal but not providing any workable solutions for what would replace it.*

*Despite not causing this situation, the adults in the room must think about how we deal with it in practical terms. The recent high court ruling in the case seeking a judicial review of the protocol brought by some of those same opponents confirmed it is legal and that Northern Ireland remains a part of the UK via the principle of consent, which is hardwired into the EU withdrawal agreement.*

*The government knows there is no alternative to the protocol. It knows that to renounce the protocol would have major consequences for the trade and cooperation agreement and for wider international partnerships, especially with the Biden administration in the US. Yet the government continues to deny the reality of the protocol that it negotiated, signed and put through parliament. It has suited this prime minister to engage in cliched rhetoric around a "sausage war". Brexit and its consequences are much more serious than that. But*

*ultimately, people in Northern Ireland who are British will be no more or less British due to the protocol, no matter where they get their sausages.*

## Section Two: The Evolving Debate

### Brexit Divorce Bill

A new point of dispute between London and Brussels has arisen with the publication of the Commission's 2020 budget accounts which deal with the UK's financial liabilities for spending commitments made up to the end of the Brexit transition period on Thursday, 31 December 2020. The total amount of the liabilities – at £41 billion (€47.5 billion) – compared with previous UK Treasury estimates of £35-39 billion. The EU had insisted that the financial settlement was included in the initial list of three issues to be settled in the aftermath of the Brexit decision.

The British Government has challenged the EU figures and insist that they should be lower. The idea of a 'divorce bill' of this magnitude has been rejected by Eurosceptics with Boris Johnson, as Foreign Secretary, telling the House of Commons that the EU could "go whistle" if it expected the UK to pay up.

UK Treasury officials have told the *The Financial Times* that the quoted figures are estimates and subject to change. The Irish member of the European Court of Auditors, Tony Murphy, has told RTÉ that while the sums reported are provisional the annual audit is complete and the figures are not expected to change.

### EU-UK Policy Developments

The European Commission has granted the UK access to EU data in what has been described as a key decision that can have

significant bearing on post-Brexit relations. The Commission has formally recognised UK data protection rules as 'adequate' and accepts that personal data can flow from the EU to the UK. The Commission stated that data would benefit "from an essentially equivalent level of protection to that guaranteed under EU law. The decision has been adopted under the EU's General Data Protection Regulation (GDPR) and Law Enforcement Directive.

In a positive development in post-Brexit relations, the EU and UK are negotiating an arrangement providing for closer cooperation on antitrust enforcement through information sharing and joint investigations. Under the plans being discussed the two sides will join in confidential hearings and co-ordinate actions on evidence collection. Consideration is also being given to creating a formal early-warning mechanism on cases of interest to either side. There have been a number of cases in which the UK and EU authorities have cooperated in the period since Brexit.

In another area the UK has unveiled a new policy on industrial subsidies which will replace EU rules. Business Secretary Kwasi Kwarteng said that the Subsidy Control Bill, which will grant government and local councils' greater freedom to support businesses, is "a clear departure from the EU state aid regime" and argued that it will allow government to be "more agile, targeted and timely in its interventions with business." The Confederation of British Industry commented that a new, swift, system could be a "useful tool to meet the government's ambitions for the economy".

### Northern Ireland Business Views

During his one-day visit to Northern Ireland, Lord Frost visited the border town Newry where he met local business representatives. He received a clear message, summed up by

Politico as “Quit exaggerating the problems associated with the Protocol and commit to fully enforcing it”. The CEO of Newry Chamber of Commerce, Colm Shannon, told the Minister “our businesses are broadly happy with the Protocol. A lot of them are benefitting from it”. It was pointed out that businesses are building trade with Ireland as the Protocol keeps cross-border commerce flowing freely with its EU neighbour.

In his meeting with the Northern Ireland Assembly Executive Office Committee, Lord Frost was told, by nationalist speakers, that problems were being “completely overblown. The vast majority of businesses and farmers support the Protocol...finding new markets and new opportunities”.

The Northern Ireland Retail Consortium has spoken of “real frustration” in the business community. Whether the protocol situation has brought opportunities or challenges is dependent on the nature of the business and its supply chains. Retailers are seen to be working through new ways of trading and there is agreement that “certainty and stability is what we need. We are still trying to find the new normal and how we make the best of it”.

## North-South Research Programme

A new North-South research programme will receive €40 million in funding from the €500 million Shared Island Fund. Projects involving two individual researchers based in the Republic and Northern Ireland could receive as much as €100,000 per year for up to two years while larger projects between North-South research teams and institutions could get up to €1 million each year for four years.

The Shared Island Fund has already allocated funds for long-standing cross-border projects in infrastructure such as the Ulster Canal and the Narrow Water Bridge.

## Section Three: Background Material and Further Reading

### Background Material

**European Commission** EU-UK relations: solutions found to help implementation of the Protocol on Ireland and Northern Ireland, 30 June 2021. [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_21\\_3324](https://ec.europa.eu/commission/presscorner/detail/en/IP_21_3324)

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## Further Reading

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