

# IMPLEMENTATION OF THE IRELAND - NORTHERN IRELAND PROTOCOL

December 2020

## Executive Summary

The UK and the EU have reached an agreement in principle in respect of the implementation of the Ireland/Northern Ireland Protocol (the "Protocol") to take effect in January 2021. The [Protocol](#), agreed as part of the Withdrawal Treaty ratified earlier this year, seeks to avoid a hard border on the island of Ireland, protect the EU single market and maintain Northern Ireland's place in the UK internal market when the UK leaves the EU single market and customs union at the end of the transition period.

To achieve these aims it was agreed in the Protocol that, amongst other things, Northern Ireland would continue to apply the EU Customs Code, and single market rules on goods entering and leaving Northern Ireland. It was also agreed that customs duties would be payable on goods coming into NI, unless those goods were not "at risk" of onward movement into the EU.

On 10 December 2020, the UK government published a [Command Paper](#) and the relevant draft decisions of the Joint Committee setting out details of what had been agreed in principle for the implementation the Protocol.

In summary, the key points of agreement include:

1. **Unfettered access:** Goods can move freely from Northern Ireland to Great Britain without the need for export or exit summary declarations that would otherwise be required under the EU Customs Code;
2. **Tariff Free Internal UK trade:** A trusted trader scheme will be established to ensure movements of goods into Northern Ireland from the rest of the UK continue free of EU tariffs where those goods were sold to, or provided for final use by, end consumers located in Northern Ireland or, for internal UK trade;
3. **Grace Periods:**
  - a. **3 months:** authorised traders such as supermarkets and their trusted suppliers will be given a 3-month grace period from official certification for products of animal origin, composite products, food and feed of non-animal origin and plants and plant products.
  - b. **6 months:** a 6-month grace period has also been agreed to facilitate authorised movements of restricted products such as chilled meats from GB-NI.
  - c. **12 months:** a 12-month phasing in of regulatory requirements for medicines to avoid disruption to the flow of medicines from GB-NI.
4. **Movements Assistance Scheme:** For traders moving agri-food goods which require certain "SPS" controls such as Export Health Certificates (EHCs), the UK Government will take care of reasonable costs.
5. **State Aid:** Whilst State Aid rules apply to measures affecting trade between NI and the EU under the Protocol, it has been agreed that for measures to "have an effect on trade between Northern Ireland and the European Union", there must be a "genuine and direct link" to Northern Ireland.

While businesses will welcome the clarity and the ambitious support package provided by the UK government, the absence of a universal adjustment period and the full application of the customs code for goods moving into NI poses acute challenges for business readiness for the end of transition. The Protocol is however a dynamic document with specific commitments to keep the arrangements under "constant review". The EU and the UK must therefore intensify and sustain their engagement with Northern Ireland's businesses to ensure that the Protocol functions as effectively as possible.

## Unfettered Access – Northern Ireland to Great Britain

While the Protocol specifically provides that “nothing in the Protocol shall prevent unfettered access to Great Britain from Northern Ireland” this was “without prejudice to the application of the Protocol”. This presented a challenge to frictionless NI-GB trade because under the EU Customs Code, exit summary declarations would have been required for movements of goods from Northern Ireland into Great Britain. It has been agreed in principle that no such exit summary declarations, or indeed export declarations of any kind, will be required for “qualifying goods”, meaning that such goods can flow freely into GB from NI. To facilitate this, the EU will be granted access to equivalent information and reciprocal data sharing on NI to GB, drawing on data sources such as shipping manifests.

“Qualifying Goods” were defined [in law](#) by the UK government in October 2020, to mean goods:

- that are present in Northern Ireland and are not subject to any customs supervision, restriction or control which does not arise from the goods being taken out of the territory of Northern Ireland or the European Union; or are
- Northern Ireland processed products.

A limited number of goods will be subject to standard export procedures as set out in the [draft decision](#). It is understood that a further, more developed, framework for qualifying status will be introduced in 2021.

The protections offered to qualifying goods “on arrival” in Great Britain also apply to goods being moved from Northern Ireland to Great Britain via Ireland.

## GB-NI: Goods “at Risk”

The Protocol provides that goods entering NI, “at risk of onward movement in the EU” will be subject to EU tariffs. To support duty free internal UK trade, it has been agreed in principle that an authorised trusted trader scheme will be developed to allow authorised businesses, established in NI to provide an undertaking that the goods they are moving into NI are not “at risk”, meaning goods being sold to, or provided for final use by, end consumers located in Northern Ireland or, for internal UK trade. The scheme will apply to goods entering Northern Ireland directly from GB and also from GB via the EU, namely Irish Ports under transit procedures and customs supervision.

The scheme will incorporate certain safeguards including an overall emergency brake mechanism in 2024, and it will not be open applicants with any record of serious criminal offences relating to his economic activity. A provisional authorisation will issue for a period of 4 months, which will be followed by a permanent authorisation.

The scheme will apply to goods moving GB-NI irrespective of where those goods have originated. It will also cover movements from the rest of the world where the UK tariffs are higher, where UK and EU tariffs are equal, or where UK tariffs are no more than 3% below those of the EU. A rebate scheme will also apply for goods to which EU tariffs are applied if it can be proved that they remained within the UK customs territory. It is understood that support will be provided under the Trader Support Service to assist traders with the rebate process.

The information required to avail of the authorisation is set out in the annex to the draft [decision](#).

The Protocol also provides that any goods subject to commercial processing in Northern Ireland were considered at risk of entering the EU market and therefore subject to tariffs. A number of [carve outs](#) have been agreed in principle including where processing is in Northern Ireland and is for the sole purpose of:

- the sale of food to an end-consumer in the UK;
- construction, where the processed goods form a permanent part of a structure that is constructed and located in Northern Ireland by the importer;

- direct provision to the recipient of health or care services by the importer in Northern Ireland;
- not for profit activities in Northern Ireland, where there is no subsequent sale of the processed good by the importer; or
- the final use of animal feed on premises located in Northern Ireland by the importer.

## Grace Periods – Official Certifications and Meat Products

### Agri-food/SPS

It has been agreed that a 3 month grace period will apply for authorised traders such as supermarkets and their trusted suppliers “*from official certification for products of animal origin, composite products, food and feed of non-animal origin and plants and plant products*”, subject to the conditions set out in the relevant [decision](#). The UK Government and DEARA will engage in a “rapid exercise” to identify eligible traders. The eligibility list will be prepared by the UK government. After 3 months, as a matter of law, such certifications will be required, and the relevant EU decision notes that this grace period is not renewable. However, the UK government intends to establish a “Movement Assistance Scheme” to cover “reasonable costs” of specific SPS controls such as export health certificates.

A 6-month grace period has been provided for restricted products including:

- minced meat of poultry, of ratites and of wild game-birds, frozen or chilled,
- chilled minced meat from animals other than poultry,
- chilled meat preparations,
- any unprocessed meat produced from meat initially imported in Great Britain from the EU's SPS area,

that would otherwise be restricted or prohibited under EU law, subject to the conditions set out in the relevant draft [decision](#). Each grace period is also conditional upon the United Kingdom remaining fully aligned to the applicable EU laws for the relevant periods.

### Medicines

A 12-month grace period has been agreed in principle in respect of batch testing, regulatory importation requirements and the requirements of Falsified Medicines Directive. It is said that these three elements will apply to human and veterinary medicinal products including investigational medical products where relevant.

The EU will shortly publish a notice setting out each of the three elements to its approach for the supply of medicinal products to Northern Ireland after the end of the transition period in detail. It is hoped that the precise scope of this grace period is clarified upon publication of the relevant notice.

### Comment

It should be noted on the face of the Command Paper and relevant draft decisions, the grace periods do not extend beyond the matters outlined above in any of the draft decisions. It is also the case that EU customs code will apply in full in respect of goods coming into NI from 1 January.

## State Aid

The Protocol provides that EU state aid regime shall apply in respect of measures that have “an effect on trade between Northern Ireland and the EU. The UK government sought clarity around the “reach back” of this provision to businesses in Great Britain. This interpretation of the state aid provisions has been clarified and confirmed by the EU to state that “an effect on trade” between Northern Ireland and the EU which is subject to the Protocol

- cannot be merely hypothetical, presumed, or without a genuine and direct link to Northern Ireland.
- It must be established why the measure is liable to have such an effect on trade between Northern Ireland and the Union, based on the real foreseeable effects of the measure.

NI agricultural subsidies are exempt from state aid under the Protocol, with limits to be set by. It has been agreed in principle that the initial maximum overall cap of £382,200 of agricultural support to be exempt from EU state aid rules.

## **Other Matters to Note**

### **VAT**

Under the Protocol, NI will remain in the UK VAT area but will continue to be subject to EU VAT rules. In applying these provisions, in practice this will mean that there will be no requirement for a new VAT registration for sales of goods in Northern Ireland. VAT will continue to be accounted through a single UK VAT return. A process for identifying Northern Ireland traders for VAT purposes has been agreed to enable them to reclaim VAT through existing IT databases when trading in goods with the EU.

In the Command Paper, the UK government further noted that after the end of the transition period, second-hand goods bought in Great Britain to be re-sold in Northern Ireland will not be in scope of the Northern Ireland second-hand margin scheme meaning that sellers will have to account for the VAT on the full value of the goods, rather than only on the profit margin. This is an area of particular concern for the sale of second hand cars currently benefiting from the scheme, however, the Command Paper specifically notes that the government is looking at measures to address the potential impacts.

### **Parcels**

The Command Paper acknowledges that movement of parcels into Northern Ireland is another important part of how the Protocol will work in practice and commits to looking at “flexibilities” and pragmatic solutions but as yet these arrangements have not been finalised.

### **Supervision**

The Protocol provides that the EU will have “supervisory rights” over the operation of the Protocol, whilst all procedures will be carried out by UK officials. It has been agreed in principle, that there will be no permanent EU establishment in Northern Ireland, but the EU will have a “hot desking arrangement” in place, with reciprocal rights of access to databases related to the Protocol. The EU and the UK have agreed to co-operate in good faith on a practical basis.

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