

The Northern Ireland Protocol is currently caught between an untrusting Brussels and an unrealistic London



While a number of issues in the Northern Ireland protocol require technical and legal fixes, at this point there seems to be very little point in discussing them, writes [Colin Murray](#). This is because the key actors are talking at such cross-purposes that the most contentious issues cannot be resolved.

Hosting a G7 should have provided a golden opportunity for Boris Johnson to promote the UK's post-Brexit agenda on the world stage. Instead, almost inevitably given the events of recent years, the summit headlines were dominated by spats over the Northern Ireland Protocol. Northern Ireland increasingly comes across as a plaything tossed about on the whim of London and Brussels in a whirlwind blame game.

Part of the problem has been a lack of clarity over the issues with the protocol's operation. In ministerial statements from recent months, the protocol has been described as suffering everything from teething problems to a few '[barnacles](#)' needing to be sanded down to improve its performance, to requiring major readjustment. It could indeed be argued that a mix of these factors is in play. Some issues, such as the impact of [steel tariffs](#) or how the protocol affected people moving between different parts of the UK with assistance animals such as [guide dogs](#) were not fully considered before the protocol came into effect (teething problems). Some issues were deliberately parked when negotiations concluded in December 2020, with sufficient grace periods to allowed for a meaningful solution to be worked out between the UK and EU, as can be seen with regard to authorisation for medicines (unresolved issues).

And then there are the potential major alterations. Throughout the Brexit transition period in 2020, Sanitary and Phytosanitary (SPS) checks were flagged as a major issue with the protocol. These checks matter for public safety and episodes like the [horse-meat scandal](#) demonstrate how quickly public confidence in food standards can collapse if supply chains are not carefully monitored. Some short-term grace periods were put in place in the [December 2020 agreement](#) to mitigate the impact of some, but not all of those checks. That outcome, however, has led to a considerable number of SPS checks on trade coming from Great Britain into Northern Ireland in the early months of the protocol's operation (with more to come once grace periods expire). In reaching the December 2020 agreement, it must be remembered, the UK government accepted that this would happen. It is not surprising that a high proportion of the SPS checks for the whole of the EU are currently conducted on this trade; these measures entered force with a [sudden impact](#) on active supply chains. It takes time for trade relationships to adjust to the changes wrought by Brexit.

At its core, the UK and the EU have conceived of the trade aspects of the protocol very differently from its inception. The EU regarded the deal as keeping Northern Ireland in the EU Single Market for Goods, together with all that entails. The UK government regarded the deal as a necessary evil to get Brexit over the line, and that it could be dismantled, or at least profoundly reshaped, once the UK had left the EU. The problem with that approach is that the legal mechanisms within the protocol work towards the EU's understanding, and so what is left to the UK in terms of adjustments or mitigations that can be implemented on its own initiative are evident breaches of the protocol's terms.

The [UK government](#) has thus presented the EU as being prepared to jeopardise the Northern Ireland peace process because of its dogmatic maintenance of the Single Market, and also suggested that the protocol's consequences could not have been understood when it was concluded. There is something of a contradiction in these arguments. The EU has long maintained a highly integrationist set of Single Market arrangements; Brussels' red tape was indeed anathema to Brexit's supporters. Once the UK government accepted that the provisions of the protocol maintained Northern Ireland within the EU's Single Market for Goods, it was accepting that Northern Ireland's alignment with the EU in terms of trade in goods was not a threat to the 1998 Agreement.

The UK government signed up to this, but it has never accepted its share of the ownership of these arrangements. There is also an unattractiveness to asserting that the EU is being dogmatic, for responses to EU proposals over SPS alignment have been met by strident assertions that such alignment would limit the UK government's freedom to reach trade agreements with other countries. The UK has raced to conclude a trade agreement with Australia, including acceptance of agricultural imports which the EU would exclude, thereby potentially stymying further discussion of [UK-EU SPS alignment](#) (the extent to which it does have this impact versus being claimed to have this impact will be closely examined once the full terms of the deal are published). Such unabashed assertions of sovereignty are indeed 'monolithic' and no less dogmatic, given that the UK government has agreed that part of its territory is locked into a set of trade rules it cannot control.

This can be reduced to a clash between UK-EU SPS alignment (even if temporary), favoured by the EU, and the UK and EU accepting the equivalence of each other's SPS standards with targeted interventions based on identified risks, favoured by the UK. Once again, the protocol to which the UK government agreed puts the best cards in the EU's hand. Northern Ireland is governed by the rules of the EU Single Market, and any unilateral extensions of grace periods are an evident breach of the protocol. Supply chains were going to have to adjust to Brexit and that means that EU to Northern Ireland trade likely being substituted for more cumbersome or expensive Great Britain to Northern Ireland trade. In demanding that the EU agree mitigations on the UK's terms, the UK government is pushing a risk-based model which conflicts with the alignment model on which the Single Market is based and is also asking the EU to give up on these benefits for its businesses.

This would be a difficult sell in the best of negotiations. In reality, Brussels has come to regard the UK as an unreliable partner, seeking to generate rolling tension with the aim of hollowing out the protocol – the UK accepted short grace periods in the negotiations which concluded in December 2020 and within months put in place unilateral extensions. Indeed, the reassurances that the UK government put to its supporters, that the protocol's terms could be fudged, both overplayed its capacity for unilateral action and contributed to the impression that it is seeking to [gradually undo](#) what it agreed in 2019.

Northern Ireland's own representatives are not playing much of a role in resolving this impasse. Unionists risk being treated by Brussels as willing stooges of London, as tensions over the protocol's implementation play into the Johnson Government's case for major adjustments to the protocol. The DUP has certainly played into this narrative across the Brexit negotiations. Michel Barnier's [memoirs](#) present the DUP's leadership as never being positively engaged with post-Brexit problem-solving. Although the new DUP leader Edwin Poots has recognised the importance of protecting the EU Single Market, he has not explained how this can be achieved, the protocol abandoned, and no additional barriers to trade emerge on the island of Ireland.

Perhaps the DUP's position, 'it's all [Brussels'/Dublin's](#) fault' (or, to be precise, the previous Fine Gael-led Irish Government's fault), was inevitable given that Northern Ireland's elected representatives have such a limited direct say in the protocol's post-Brexit governance arrangements. There is no obligation to problem-solve, and maintaining tensions energises political support ahead of pivotal Assembly elections in 2022. Being so inflexibly intertwined with the Johnson administration, however, undermines any prospect of EU engagement with Unionist concerns. Positive Unionist engagement over protocol mitigations, from either the DUP or more likely a resurgent UUP under Doug Beattie, might be the only way to change this picture. Without that development, the EU has all-but reached the conclusion that there is little point in substantive engagement with Unionist concerns because nothing on the table will be ever be acceptable if the Protocol is indeed 'unimplementable'.

Two factors need to be kept in mind. First, there is no workable alternative to the protocol: Brexit imposes barriers to trade, and these must come into effect somewhere. Northern Ireland businesses are already struggling to adapt to the protocol, but throwing everything up in the air imposes the requirement of more adaptation. Second, everyone in Northern Ireland benefits if the protocol can be mitigated; doing so lowers the costs of doing business with Northern Ireland. If efforts towards wrecking the protocol are profoundly destabilising, talk of its rigorous implementation potentially denies any space for beneficial adjustments. Implementation and agreed mitigation are not mutually exclusive.

In short, there seems to be very little point in discussing technical/legal fixes at the moment, because the key actors are talking at such cross-purposes that the most contentious protocol issues cannot be resolved. This is not to say that adjustments won't be forthcoming in the near future; they will likely address issues like medicines, steel imports, and assistance animals which were either deliberately parked in earlier phases of negotiations or which the early operation of the protocol has exposed as issues. When it comes to checks on chilled meats, etc, further unilateral extensions to grace periods by the UK loom (bringing the issue ever closer to the doors of the EU's Court of Justice).

About the Author



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