

EXPLAINER FOR THE NEW IRELAND/NORTHERN IRELAND PROTOCOL AND THE POLITICAL DECLARATION ON THE FUTURE RELATIONSHIP

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Summary

1. The United Kingdom and the European Union have reached political agreement on a new Withdrawal Agreement and Political Declaration on the framework for the future relationship. This publication explains the changes to these documents in relation to those which were agreed by the previous Government in November 2018.
2. The changes in the Withdrawal Agreement are all to the Ireland/Northern Ireland Protocol (the Protocol), apart from some minor consequentials such as cross-references in the Agreement proper. The new Protocol abolishes the backstop entirely. Instead of the United Kingdom remaining in a customs union with the EU with no means to exit unless and until future arrangements were agreed, the new arrangements ensure that the whole of the United Kingdom will be a single customs territory with control of its independent trade policy, including as regards Northern Ireland. It replaces other backstop provisions with a system whereby Northern Ireland remains aligned with the EU on goods (including certain laws for VAT on goods), and applies EU tariffs in Northern Ireland except for movements within the single customs territory of the United Kingdom, but only for as long as Northern Ireland wishes this system to continue. Rules for defining this ongoing consent are set out in the Protocol. This system also achieves the common aim of avoiding a hard border on the island of Ireland.
3. The changes to the Political Declaration set out the clear intention to conclude a future trading relationship with the EU that is centred on a comprehensive free trade agreement, with zero tariffs, accompanied by a broad and ambitious security partnership, and cooperation in areas such as research. It also sets out that the future relationship must encompass robust level playing field measures to uphold current high standards in areas including social and employment standards, environment and climate change.
4. Other elements of the Protocol remain unchanged, including the commitments that there should be no diminution of certain rights, safeguards and equality of opportunity as enshrined in the Belfast (Good Friday) Agreement, the maintenance of North-South cooperation, and the Common Travel Area between the United Kingdom and Ireland.
5. The other elements of the Withdrawal Agreement, such as citizens' rights and the transition period, also reflect the previous agreement.

Context

6. The previous Government reached political agreement on a Withdrawal Agreement and Political Declaration with the EU on 25 November 2018. These documents were submitted for Parliamentary approval on 15 January 2019 and 12 March 2019, and the Withdrawal Agreement only was submitted for approval on 29 March 2019. They were defeated on each occasion.
7. In pursuing a new approach to the Protocol, the Government has maintained its absolute commitment to the Belfast (Good Friday) Agreement. The Government has been clear that it will not, under any circumstances, place infrastructure, checks or controls, at or near the Ireland/Northern Ireland border. The Protocol recognises the specific circumstances in Ireland and Northern Ireland in the context of the Belfast (Good Friday) Agreement.

Ireland / Northern Ireland Protocol

PART ONE: Alignment provisions

8. Articles 5-10 set out the provisions under which Northern Ireland can remain aligned with specific EU rules in customs, goods, VAT, and the Single Electricity Market. As this is defining a single regulatory system in which Northern Ireland goods are in the same competitive environment as those in Ireland, State aid rules apply for any measures affecting trade between Northern Ireland and the EU, including the operation of the Single Electricity Market. All these arrangements are subject to the ongoing consent of the Northern Ireland Assembly, and lapse if that consent is not given.
9. The arrangements work as follows. The backstop included in the previous Protocol would have kept the whole of the United Kingdom in a single customs territory with the EU. This would have required the United Kingdom to have continued to align with EU tariff rates, and therefore the United Kingdom would not have had a fully independent trade policy. In addition, unlike the rest of the United Kingdom, Northern Ireland would also have remained aligned with EU goods regulation and would have been subject to various level playing field provisions. Moreover, although Great Britain and Northern Ireland were in the same customs territory, they were in different customs relationships with the EU.

10. In the new Protocol, by contrast, Great Britain is not in any regulatory or customs relationship with the EU. The new Protocol provides that Northern Ireland is in the United Kingdom's customs territory (Article 4). It makes clear that Northern Ireland may be included in the United Kingdom's future trade deals with third countries, and that Northern Ireland will be included in the United Kingdom's WTO schedules. The conditions for this are set out in Article 5.

11. Article 5 sets out the detail of the customs arrangements as they affect Northern Ireland. They work as follows.

12. Paragraph 1 makes clear that, reflecting the principle that tariffs are not payable on movements of goods between different parts of the same customs territory, no tariffs are payable on goods moving from Great Britain to Northern Ireland, unless those goods are at risk of moving on into the EU (in which case they will pay the EU tariff). It similarly sets out that the tariff on goods coming into Northern Ireland from another country outside the EU should be the United Kingdom's tariff, again unless the good is at risk of moving into the EU. This latter provision ensures that Northern Ireland businesses can benefit from free trade deals that the United Kingdom will strike with third countries after the United Kingdom leaves the EU. These tariff provisions are achieved as follows:

- Paragraph 2 sets out the conditions in which goods are not considered "at risk of moving into the EU". A range of criteria are provided for, and final decisions are delegated to the UK/EU Joint Committee.
- Paragraph 6 gives the United Kingdom the power to reimburse or waive tariffs on goods brought into Northern Ireland not exempted by paragraph 2, subject to State aid rules which must take into account the circumstances in Northern Ireland.
- Paragraph 6 also notes that customs duties collected in Northern Ireland on EU tariffs are retained by the United Kingdom, not paid to the EU.

13. Paragraph 3 provides that EU administrative customs procedures apply in Northern Ireland in order to make sure that goods destined for the EU comply with the correct process.

14. It should be noted that this new arrangement has been designed to operate without a Free Trade Agreement between the United Kingdom and the EU in place. If an ambitious agreement with low or zero tariffs and quotas is concluded before the Protocol comes into force, then a significant proportion of goods would qualify for zero tariffs in any case.

15. Paragraph 4 of the same Article then establishes a single regulatory zone on the island of Ireland. This involves Northern Ireland aligning with the specific EU regulations listed in Annex 2 on agri-food products and manufactured goods.
16. These provisions also ensure that an open border is maintained on the island of Ireland, a key objective for all sides in this negotiation. Any processes normally required on goods entering the EU will be implemented at the Northern Ireland-Rest of World border or on trade moving East-West between Great Britain and Northern Ireland. For as long as Northern Ireland participates in the customs arrangements and regulatory zone, there will therefore be processes to ensure that goods entering Northern Ireland destined for the EU pay the right duty and that all goods comply with the appropriate rules. These processes will be largely electronic in nature and any checks on goods will principally relate to regulatory alignment rather than customs compliance (noting, for example, that the UK currently checks only 4% of movements notified through customs declarations, with under 1% involving physical checks of the consignment).
17. Articles 6 and 7 set out a range of specific technical requirements connected (largely) to the regulatory zone. They also specifically enable the UK to ensure that Northern Irish businesses and farmers will continue to have unfettered access to the rest of the UK market, as this Government has guaranteed. The Government remains committed to protecting Northern Ireland's position in the United Kingdom's internal market.
18. Article 8 covers VAT. The arrangements require Northern Ireland to maintain alignment on goods with the EU VAT and excise rules set out in Annex 3. HMRC will continue to be responsible for the operation and collection of the revenues, which will not be passed on to the EU. The United Kingdom has a new power to apply VAT exemptions and reductions, including zero rating, to goods in Northern Ireland corresponding to those applicable in Ireland (for example sanitary products). The specific practical arrangements will be the subject of discussions within the Joint Committee.
19. Article 9 provides for the continuance of the Single Electricity Market.
20. Finally, provisions on State aid are set out in Article 10. These limit the application of State aid rules to cases when aid affects trade between Northern Ireland and the Union, in areas covered by the Protocol.
21. The implementation and application of these arrangements will be managed by United Kingdom authorities (Article 12(1)) and in accordance with the arrangements set out in (Article 12(4)). EU representatives can also request to be present at customs or regulatory inspections (Article 12(2)). The CJEU will have oversight for the application of Union law in Northern Ireland.

22. The practical effect of these provisions taken together is that, for as long as it wishes it, Northern Ireland is part of a single regulatory zone on the island of Ireland in which it aligns on a set of EU rules covering trade in goods. But all these arrangements will lapse if there is not consent to sustain them in Northern Ireland.

PART TWO: Democratic consent in Northern Ireland (Article 18)

23. All the arrangements in Part I above are underpinned by the right of Northern Ireland to withdraw its consent from them. If this happens, they all cease to apply. The default in these circumstances would be standard EU-UK arrangements, but the EU and United Kingdom would have two years after any consent decision to allow the transition to be properly managed and, if appropriate, to bring a new set of arrangements into force, whether as part of the future relationship or otherwise.
24. The details of how consent would work are set out in Article 18. The United Kingdom has also made a unilateral declaration concerning its operation, which is referred to in Article 18 and whose provisions are therefore binding on the United Kingdom.
25. The following paragraphs explain how Article 18 and the provisions of that declaration work together. Article 18(2) makes clear that consent shall be sought in a way which is compatible with the Belfast (Good Friday) Agreement and the arrangements below are designed accordingly.
26. The consent process must first take place four years after the end of the transition period. Two months before the end of that four-year period, the UK Government initiates the democratic consent process. There will then be a one month period during which the First Minister and deputy First Minister, acting jointly, can table the motion seeking to test the Assembly's consent to continued alignment. They would consider the matter in line with normal practice and procedure, including providing the Assembly with explanatory materials as appropriate. If, at the end of that month, the motion has not been tabled, it would then be open to any Member of the Legislative Assembly to table the motion.

27. The following consequences flow from a democratic consent decision by the Assembly:

- a. If Northern Ireland votes in favour of alignment by a simple majority, then it will continue. If it does not, Northern Ireland's alignment with EU law will come to an end two years later.
- b. If there is only a simple majority to continue alignment, a further consent decision will be required at the end of the next four year period. In addition, the Government will launch an independent review into the functioning of the Protocol, including with regard to any new arrangements that could command cross-community support.
- c. If there is cross-community support to continue alignment, a further consent process will be required only at the end of a period of eight years. Cross-community support is defined at article 18(6): broadly, it means either a majority of Assembly members and a majority of both communities, or 60% of Assembly members and at least 40% of each community.

28. The declaration makes it clear that the democratic consent process should primarily be a matter for the Northern Ireland Assembly and Northern Ireland Executive. However, if it is not possible to seek the view of the Assembly, the UK Government will undertake an alternative process in which consent can be provided by Members of the Legislative Assembly, outside the normal structures of the Assembly, with the same consequences.

Political Declaration on the future relationship

29. The revised Political Declaration provides a framework for the negotiations on the UK's future relationship with the European Union. The new text replaces the Political Declaration published in November 2018 and March 2019, and the 11 March joint statement supplementing the Political Declaration. It is a political commitment not a legal agreement.

30. The future relationship will be negotiated on behalf of the whole of the United Kingdom and on behalf of all territories for whose external relations the United Kingdom is responsible.

31. The previous Political Declaration stated that the United Kingdom and EU would build on the single customs territory set out in the Protocol during negotiations of their future trading relationship. The revised Political Declaration makes clear, in contrast, that the future relationship will have a ‘comprehensive and balanced’ Free Trade Agreement at its core, alongside agreements on security and wider areas of cooperation. It removes references to the backstop, as this is no longer part of the Withdrawal Agreement. All elements of the text suggesting a customs union-type future relationship have been removed. Alignment on EU law is still possible, but the Declaration includes no specific commitment to do so.
32. As set out in Part II of the Political Declaration, the Free Trade Agreement would aim to facilitate trade in goods and services with the EU, including through customs arrangements and ambitious goods market access with zero tariffs and no quotas, and underpinned by provisions ensuring open and fair competition commensurate with the scope and depth of the future relationship. The agreement will support financial stability, market integrity, and investor and consumer protection.
33. The Political Declaration also allows for additional agreements including on: aviation, to preserve connectivity; civil nuclear, to safeguard trade in nuclear materials; fisheries, and to agree access arrangements to each other’s waters. It makes clear that freedom of movement will end as the United Kingdom leaves the EU and allows for the establishment of arrangements in defined areas to facilitate mobility between the EU and the United Kingdom. The United Kingdom will have a sovereign choice as to its plans for its future immigration system.
34. Amendments to the level playing field commitments in paragraph 77 make it clear that these should be commensurate with the scope and depth of the future relationship as well as the economic connectedness of the Parties. They should prevent distortions of trade and unfair competitive advantages as well as uphold current high standards in areas including social and employment standards, environment and climate change.
35. As set out in Part III, the Political Declaration provides for an ambitious future security relationship, respecting the sovereignty of the UK and the autonomy of the EU, and covering law enforcement and judicial cooperation, with a focus on strong operational capabilities, as well as arrangements on foreign policy, security and defence, and in other specific areas such as cyber security. It paves the way for the negotiation of a security relationship that will enable the United Kingdom and the EU to continue to combat jointly the shared threats faced by our citizens. The declaration makes clear that cooperation on security and defence is a sovereign choice for the United Kingdom, not an obligation.

36. The new Part IV of the Political Declaration describes the basis of the institutional arrangements for future dialogue and dispute settlement between the United Kingdom and the EU. Important changes have been made, again reflecting the fact that the future economic relationship will take the form of a Free Trade Agreement based on international law. The dispute settlement arrangements are based on those of a Free Trade Agreement. The CJEU will not resolve disputes between the United Kingdom and the EU. Every attempt will be made to resolve any dispute through dialogue and consultation, including politically at the Joint Committee. If that is not possible, an independent arbitration panel will make a binding determination. The Declaration recognises that the CJEU is the authoritative interpreter of EU law, but nothing in the Political Declaration binds the United Kingdom to accepting any alignment on EU law in future.
37. Finally, Part V sets out the forward process for negotiations on the future relationship. This confirms, as set out in the Withdrawal Agreement, the intent of both parties to begin the formal process for negotiations as soon as possible after the United Kingdom's exit from the EU, so that agreements on the future relationship can come into effect by the end of 2020.