



Cabinet Office

The Northern Ireland Protocol

December 2020

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The Northern Ireland Protocol

Presented to Parliament by the Chancellor of the Duchy of Lancaster

By Command of Her Majesty

December 2020

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Foreword

As set out in the UK Government's Command Paper in May, the Northern Ireland Protocol exists to ensure that the progress made in the 22 years since the Belfast (Good Friday) Agreement is secured into the future. For the Protocol to work, it must be implemented in a way that respects the needs of all Northern Ireland's people, respects Northern Ireland's place in the UK's customs territory, and avoids disruption to lives and livelihoods in Northern Ireland.

To that end, the UK Government set out in May's Command Paper the need to implement the Protocol in a flexible and proportionate way - protecting the interests of the whole of the United Kingdom and the EU. We have worked intensively throughout 2020 in that spirit. This was guided by the need to give effect to the commitments we made about our approach: to maintain unfettered access to the rest of the UK market for Northern Ireland business; protect Northern Ireland's place in the UK's customs territory; and ensure that the Great Britain to Northern Ireland trade flows, on which so many lives and livelihoods depend, could flow as smoothly as possible without the need for new physical customs infrastructure.

This week I reached an agreement in principle on the implementation of the Protocol with my Joint Committee Co-Chair, European Commission Vice President Maroš Šefčovič. This is a significant milestone in all of these respects. It reflects the pragmatism and collaborative spirit of Maroš and his team, and the hard work of officials on both sides. It has benefited from the crucial and ongoing influence that the First Minister, deputy First Minister, and Northern Ireland Executive have brought to bear. And alongside the pragmatic approach we have taken to implementation, it means we are able to deliver in full our commitments to the people of Northern Ireland.

This agreement in principle upholds unfettered access for Northern Ireland businesses to their most important market, eliminating any risk of Northern Ireland to Great Britain export declarations. It safeguards Northern Ireland's place in the UK's customs territory, establishing the platform to preserve tariff-free trade for Northern Ireland businesses, protect internal UK trade and maintain the UK's VAT area. It keeps goods flowing between Great Britain and Northern Ireland, with important measures to maintain food supplies and the critical flow of medicines. And beyond that it equips the UK as a whole to make the most of the freedoms that come with the end of the transition period, giving the Northern Ireland Executive the scope it needs to support its agricultural and fisheries producers outside the Common Agricultural Policy (CAP) and the Common Fisheries Policy (CFP); and addressing the risk of "reach back" of EU state aid provisions for companies in Great Britain.

Taken together, this package provides the basis to give effect to the Protocol in the pragmatic and proportionate way intended. It achieves the necessary protections for the EU Single Market, while at the same time, and more importantly, protecting the territorial and constitutional integrity of the United Kingdom as a whole, and upholding the Belfast (Good Friday) Agreement in all its dimensions.

We must now use this platform to get on and support traders to make this agreement in principle work in practice. That will include the Trader Support Service we announced in the summer, the Movement Assistance Scheme we are putting in place by the end of the year, and further and full guidance on the specific arrangements on all aspects of this package. As we do so, we will always work with the interests of the people and businesses of Northern Ireland in mind. For we know that if the Protocol is to work, it must work for the whole community in Northern Ireland. And no matter what happens, whether it is maintained in the future will always be for the people of Northern Ireland to decide.

Rt Hon Michael Gove MP
Chancellor of the Duchy of Lancaster

Introduction

1. On 31 January 2020 the United Kingdom left the EU and the Withdrawal Agreement entered into force. Following the end of the transition period at 11.00pm on 31 December, the arrangements set out in the Northern Ireland Protocol will take effect. These will either come into force on their own, or alongside any Free Trade Agreement concluded with the EU.
2. In May this year, the UK Government published its Command Paper, *The UK's approach to the Northern Ireland Protocol*. It outlined the pragmatic and proportionate approach that has guided the UK's work in implementing the Protocol. It underlined that implementation has to proceed from the foundations on which the Protocol was agreed: upholding the Belfast (Good Friday) Agreement 1998 and the gains that have followed in the 22 years since. And it stressed that the practical and unique solutions contained in the Northern Ireland Protocol can sustain only for as long as they have the consent of the people of Northern Ireland.
3. The United Kingdom has upheld those responsibilities, working throughout 2020 to ensure a consensual and proportionate approach to Protocol implementation; one that recognises the importance of a strong economy in Northern Ireland, the important social and economic links both East-West and North-South, and the need - as the Protocol itself noted - for it to "*impact as little as possible on the everyday life of communities*".
4. There have been two key strands to our approach. The first has been the unilateral work that the UK Government, working closely with the Northern Ireland Executive, has taken forward in the context of the Protocol. Through this work the Government has ensured that Northern Ireland businesses will maintain unfettered access to the UK internal market; that those businesses will have the support needed to adapt to the new requirements that the Protocol involves; and that the systems and structures needed to administer the Protocol are in place, for as long as its alignment provisions are in force.
5. The second strand has been discussions through the structures established by the Withdrawal Agreement - the Ireland/Northern Ireland Specialised Committee and the UK-EU Joint Committee - to ensure that the Protocol's operation in practice takes proper account of the unique circumstances of Northern Ireland. And after four meetings of the Specialised Committee and four meetings of the Joint Committee, the deal the Co-Chairs have reached in principle has done just that, securing additional flexibilities and adaptations to support Northern Ireland business and citizens.

6. In *The UK's approach to the Northern Ireland Protocol*, the UK Government set out the essential commitments that needed to be respected in all scenarios:
 - a. Northern Ireland businesses must have **unfettered access to the rest of the UK market**.
 - b. Trade from Great Britain to Northern Ireland which remained in the UK customs territory should not be subject to tariffs; and Northern Ireland must benefit from the Free Trade Agreements we strike with third countries - **protecting Northern Ireland's place in the UK customs territory**.
 - c. The additional processes on goods arriving in Northern Ireland must take account of all flexibilities and discretion - ensuring a **smooth flow of trade with no need for new physical customs infrastructure**.
7. This paper details how those commitments have been pursued and fulfilled; and how they will be given effect from 1 January 2021. At the same time, the UK Government recognises the challenges that businesses in Northern Ireland face, particularly in the context of the COVID-19 pandemic. We are especially grateful for their continued engagement and input during this period, including through the Northern Ireland Secretary's Business Engagement Forum.
8. We also recognise that there is now very little time left before the end of the transition period. UK authorities - including those in Northern Ireland where matters are devolved - are responsible for implementing the Protocol. And while the United Kingdom will uphold our obligations and continue to do all we can to support business preparedness, this will require a sympathetic and pragmatic approach in the early stages of next year. This paper sets out some of the easements and practical arrangements that have been agreed in principle by the Co-Chairs of the Joint Committee; and the additional support we will provide for business to support them from the end of the year and beyond.

SECTION ONE: Ensuring unfettered access for Northern Ireland businesses to the UK market

9. This Government has been consistent in its unequivocal commitment to secure unfettered access for Northern Ireland businesses to the whole of the UK market. This is what we have done, and are doing, through legislation and through the agreement in principle we have now reached. We have introduced and legislated for a “qualifying status” which establishes those goods which will benefit from unfettered access. We will also ensure unfettered access for Northern Ireland goods on essential trade routes through Ireland to Great Britain. We will guarantee in law through the UK Internal Market Bill that those goods cannot be subject to new UK checks or controls in the future; and that they can always be placed throughout our internal market. And we have removed the requirement for export declarations for Northern Ireland traders moving their goods from Northern Ireland to Great Britain.

Delivering unfettered access

10. The Government has delivered our commitment to legislate for unfettered access for Northern Ireland business to the rest of the UK market. In the first instance, we have legislated to prevent disruption and maintain continuity. That is why, as we have previously set out, from 1 January 2021, the first phase of unfettered access will apply to goods in free circulation in Northern Ireland. It will be supported by anti-avoidance provisions to tackle any EU businesses who seek to route their goods through Northern Ireland to avoid the UK’s customs regime. And we will ensure that purchasers from Great Britain who buy Northern Ireland goods are not liable for tariffs, whether they move goods directly or via Ireland.
11. At the same time, we have listened to concerns in Northern Ireland that this definition should be tightly drawn so that only genuine Northern Ireland businesses benefit from unfettered access. That is why we will bring in a long-term regime in the second half of 2021 which focuses its benefits on those businesses established in Northern Ireland. This will identify “qualifying” traders as they ‘check in’ in the usual way at ports and airports, meaning that the system will be light-touch - with many traders auto-enrolled in the scheme - while still ensuring that goods are free of checks, controls or tariffs when moving from Northern Ireland to Great Britain. This is crucial to unfettered access.

12. Protections for qualifying businesses on arrival in Great Britain will apply whether goods are moved directly to Great Britain or indirectly via Ireland - meaning unfettered access whether goods leave Belfast for Cairnryan, or Dublin for Holyhead. They will also mean that we will be able to subject non-NI traders moving “non-qualifying goods” to the UK’s full process for third country customs and agri-food checks when these are implemented next year.
13. We also recognise the strong views expressed by the Northern Ireland agri-food industry, the Minister for Agriculture, Environment and Rural Affairs and the Northern Ireland Executive as a whole in favour of clearer qualification requirements for this sector in order to safeguard its excellent reputation. We will therefore introduce specific arrangements for agri-food trade, while ensuring that these do not impose any additional burdens for manufacturers or other traders using Northern Ireland ports.
14. Once moved into Great Britain, “qualifying” goods will be able to be placed on the market without any additional approvals, regardless of future decisions on legislation by the UK Government or devolved administrations. The only modifications will be for a very limited number of highly-regulated goods where human, animal or environmental health could be at stake, and only to the extent required to provide the normal information and transparency necessary to enable UK regulators to do their work effectively. These arrangements have already been communicated to relevant sectors through published guidance available on gov.uk.

Removing export declarations

15. As we recognised in the May Command Paper, unfettered access also requires the removal of the requirement for export declarations for Northern Ireland businesses moving goods from Northern Ireland to Great Britain.
16. The agreement in principle reached by the Co-Chairs achieves this: proposed declarations in the Joint Committee with legal standing will confirm that the Protocol does not require export or exit declarations for those internal UK movements. At the same time, we will ensure that the relevant authorities have access to equivalent information and reciprocal data sharing on Northern Ireland to Great Britain movements, drawing on data sources such as shipping manifests and enabling the UK to meet our obligations. This will mean we can maintain a seamless flow of goods from Northern Ireland to its most critical market in Great Britain, while maintaining our capacity for effective enforcement and tackling smuggling.

17. As set out in our May Command Paper, we accept that for a very small number of international obligations, or where goods are not in free circulation, placed into voluntary special procedures, dispatched from Ireland or where the trader seeks a specific facilitation, export declarations are needed. Specific arrangements are normally applied to 64 areas of trade by the UK and EU: for Northern Ireland to Great Britain movements we have further limited these processes to only 14 areas underpinned by specific international obligations. These concern only very limited categories of trade - such as those involving endangered species - and will have negligible implications for trade as a whole.

SECTION TWO: No tariffs on internal UK trade

18. The Protocol is clear that Northern Ireland is fully part of the UK's customs territory, and it has remained a priority to make sure that this fundamental principle is reflected in practice. The agreement in principle reached by the Co-Chairs affirms this, enabling us to put in place arrangements which mean that tariffs will not generally be paid on internal UK trade, irrespective of whether we have a wider Free Trade Agreement with the EU.

19. The Protocol confirmed that only those goods at risk of entering the EU's Single Market (i.e. not those remaining in Northern Ireland) should have to pay EU tariffs. The Joint Committee was given the task of determining which goods were to be considered "at risk" in that regard. Our agreement in principle will mean that goods which can be shown to remain in Northern Ireland and the UK's customs territory will not be subject to tariffs. It will only be goods destined for the EU, or where there is uncertainty or genuine risk of onward movement, where tariffs will be charged.

20. The tariffs arrangements within the agreement in principle will be administered through a new UK Trader Scheme that will allow authorised businesses to undertake that the goods they are moving into Northern Ireland are "not at risk" of onward movement to the EU, and therefore not liable to EU tariffs. The scheme will include safeguards to ensure that it is not available to those with serious criminal records or existing compliance issues. The scheme will be focused on goods being sold to, or provided for final use by, end consumers located in Northern Ireland or, for internal UK trade, elsewhere in the UK. The scheme will be open only to businesses established in Northern Ireland, or businesses who meet certain closely linked criteria. It will not be available to businesses established only in the EU.

21. The Co-Chairs' agreement in principle provides crucial protection to Great Britain to Northern Ireland trade, particularly in the event that a Free Trade Agreement with the EU is not reached. In its published July guidance, the European Commission envisaged a scenario where *“all goods brought into Northern Ireland from outside the Union shall be considered to be at risk of subsequently being moved into the Union and are as such subject to the Common Customs Tariff.”*¹ Under the international law default in the Protocol, this could have meant:

- every pint of milk going from Great Britain to a Northern Ireland supermarket incurring a 58% tariff;
- every packet of sugar going from Great Britain to a Northern Ireland supermarket incurring a 96% tariff; and
- every Thai chicken curry going from Great Britain to a Northern Ireland supermarket incurring an 11% tariff.

22. The agreement in principle removes this threat, and protects Northern Ireland businesses bringing in goods from Great Britain. In the event that a Free Trade Agreement is concluded, this standalone agreement in principle will remain important for goods moving into Northern Ireland. It would mean that Northern Ireland businesses using the UK Trader Scheme would not need to complete origin certification; and if goods could not qualify for tariff-free trade under a Free Trade Agreement's Rules of Origin requirements, they could still be traded tariff-free under this deal by those businesses within the scheme.

23. The Protocol also provided that any goods subject to commercial processing were automatically considered at risk of entering the EU market. The Co-Chairs' in principle agreement provides for critical new flexibilities in that respect. A series of sectors will be exempt from the default commercial processing definition and therefore can qualify to be not considered “at risk”. This includes food for sale to end consumers in the UK; as well as construction, direct health and care provision, and not for profit activities in Northern Ireland. Processing carried out by importers of animal feed for final use at their premises in Northern Ireland will also be covered by this exemption. HMRC will also support the increased use of the Inward Processing relief to allow goods to be processed and sold outside the EU tariff-free.

¹ https://ec.europa.eu/info/sites/info/files/brexit_files/info_site/guidance-customs-procedures_en_0.pdf

24. The UK Trader Scheme will be open to businesses moving goods into Northern Ireland from Great Britain irrespective of where those goods have originated. There is also a provision for the much smaller number of direct cargo shipments into Belfast from the rest of the world - with those movements benefiting from the scheme where the UK tariffs are higher than the EU equivalent, where UK and EU tariffs are the same, or where UK tariffs are up to 3% less than those applied by the EU.
25. Importantly, the UK Trader Scheme will enable goods to be routed from Great Britain through Irish ports to Northern Ireland without being liable for tariffs, provided these movements are done under transit procedures and goods are under customs supervision until cleared in Northern Ireland. This will support time sensitive routes for Northern Ireland businesses and help Welsh ports such as Holyhead.
26. The scheme includes a series of safeguards designed to prevent abuse, and an overall emergency brake mechanism in 2024 in the event of significant diversion of trade, or fraud or other illegal activities, and on the basis that replacement arrangements protecting Northern Ireland's place in the UK customs territory are then put in place. The UK Government is clear that we will not tolerate any abuse of these unique trading arrangements. We will ensure that HMRC and other public authorities are properly resourced to clamp down on any abuse and ensure that any traders engaging in abusive practices are removed from the UK Trader Scheme.
27. With these arrangements agreed in principle, we are confident that a significant majority of internal UK trade will be able to move without being subject to tariffs. However we recognise that there is always the potential for some cases not to be covered by the criteria and qualification for the scheme. As set out in the Command Paper in May, the Government will therefore separately establish a reimbursement scheme for goods that attract a tariff, but which can subsequently be shown to have remained in the UK customs territory.
28. The UK Government will also make full use of the provisions within the Protocol enabling tariff waivers for such movements, subject to state aid *de minimis* ceilings. The Trader Support Service will support and guide traders through the process for utilising these tariff waiver arrangements.

29. With these arrangements, our Trader Support Service, and the development of new systems to support Great Britain to Northern Ireland goods movements, we have taken all possible steps to protect trade between Great Britain and Northern Ireland. And just as we committed to do, they mean that we can deliver on our Protocol obligations without the need for any new physical customs infrastructure in Northern Ireland.

SECTION THREE: Supporting trade from Great Britain to Northern Ireland

30. The UK Government has acknowledged, throughout the process of implementing the Protocol, that making it work in practice will require some new administrative processes. As noted above, we have reached agreement in principle on the means to determine which goods are liable for tariffs, so that internal UK trade can remain tariff-free. The Protocol also requires that any other checks and controls are avoided as far as possible, in order to protect trade within the United Kingdom. We have upheld this essential point through our implementation work and the in principle agreement reached by the Co-Chairs, as well as giving businesses the time and support they need to adapt to the requirements of the Protocol.

Protecting the special status of agri-food movements from Great Britain to Northern Ireland

31. In the Prime Minister's letter to President Juncker in October 2019 and since, the UK Government has recognised that preserving the longstanding single epidemiological area on the island of Ireland rightly requires some limited processes on sanitary and phytosanitary (SPS) movements into Northern Ireland - some of which exist already today. However that cannot mean that those processes are allowed to put food supplies at risk. That is why the in principle agreement reached by the Co-Chairs, and the arrangements we have put in place to support agri-food traders and retailers, do what is necessary to protect and preserve Great Britain to Northern Ireland trade.

Supermarkets and food suppliers

32. The UK Government has consistently underlined the importance of specific solutions for authorised traders, like supermarkets, who have stable supply chains, comprehensive oversight of warehousing and distribution operations, and who move pre-packaged products for retail sale solely in Northern Ireland. In particular it is essential to take account of the time it will take for those operations to adapt to the SPS requirements of the Protocol, including the required certifications and authorisations.

This has been a priority throughout discussions with the EU, and the arrangements we have agreed provide a sensible phased solution in this regard.

33. This means that authorised traders, such as supermarkets and their trusted suppliers, will benefit from a grace period, through to 1 April 2021, from official certification for products of animal origin, composite products, food and feed of non-animal origin and plants and plant products. The UK Government and the Northern Ireland Department for Agriculture, Environment and Rural Affairs will engage in a rapid exercise to ensure these traders are identified prior to 31 December so they can benefit from the grace period. The Government will not discriminate against smaller suppliers or between different companies in implementing these practical measures. Monitoring and conditions will be attached to these arrangements to ensure there is no abuse or leakage of goods away from Northern Ireland. The arrangements are also based on the fact that UK and EU rules will be aligned during this period, prior to the introduction of a new package of EU rules relating to animal health on 21 April.
34. To support preparations for the end of the phased period we have secured, the UK Government will work with authorised traders to move to new, end-to-end digital systems that enable goods to be moved in accordance with the Protocol in the most streamlined possible way. This will be supported by a major injection of new UK Government funding. In addition a new dedicated team will be set up in the Department for Environment, Food and Rural Affairs, solely focused on delivering this project urgently and engaging with businesses to do so.

Addressing restricted products

35. The agreement in principle reached reflects the need for a solution to the legal restrictions and prohibitions placed on certain types of chilled meats, such as sausages, from Great Britain to Northern Ireland. To avoid disruption, it provides an immediate solution where these meats can continue to move between Great Britain and Northern Ireland throughout the first half of next year, subject to appropriate certificates and channelling procedures. We continue to believe that a comprehensive Free Trade Agreement, with an appropriate framework for agri-food issues, would help to support a wider reciprocal UK-EU resolution of general matters of mutual concern on SPS matters.

Points of entry and practical arrangements

36. In giving effect to these new procedures, we have been focused on keeping the facilities for checking animals and agri-food products at Belfast Port, Larne, Warrenpoint, and Foyle to a minimum, reflecting the proportionate approach we will adopt in practice. We have provided the funds for those facilities, with £50m in support thus far, including £5m for the interim facilities that will operate in some areas from 1 January 2021 while the full builds are completed.
37. Through technical engagement with the European Commission, the UK Government and Northern Ireland Executive have also developed helpful practical arrangements in respect of appropriate checks and controls on agri-food goods. Our system will be based on electronic checking as far as possible of documentation; “identity checks” focused on a simple check of the seal of a truck; and physical checks managed at a local level based on risk assessments and reflecting the full range of flexibilities provided in legislation. In practice, this means that physical checks on retail packs and supermarket goods can be reduced to zero, or close to zero, on a risk-assessed basis.

No disruption to the flow of medicines

38. The unprecedented challenge of COVID-19 demonstrated the imperative of maintaining critical goods flows into Northern Ireland.
39. Goods already on the market in the EU or the UK are able to continue to circulate from 1 January 2021, under the principles agreed in the Withdrawal Agreement. We have published detailed guidance setting out these arrangements, including the fact that this protects supply flows for medicines already on the market in Great Britain moving to Northern Ireland.
40. For the longer term, we recognise regulatory measures required by the Protocol with regards to batch testing, regulatory importation requirements and the Falsified Medicines Directive. However it is essential that businesses and industry are given time to prepare for those new requirements, and to help ensure that this can happen without disruption to supplies in Northern Ireland. That is why we have agreed a pragmatic application of these regulatory requirements to allow a time-limited period of adaptation with the EU. This will give businesses a phased process for implementing medicines regulation in Northern Ireland up to 31 December 2021.

41. We will support the pharmaceutical industry in using that time to make the changes it needs so supply chains will be fully compliant, such as support for the delivery of additional warehousing capacity in Northern Ireland, if appropriate. Where relevant, these arrangements will also apply to the important supply of veterinary medicines and investigational medicinal products.

Maintaining the UK's single VAT area

42. The Northern Ireland Protocol means that Northern Ireland maintains alignment with the EU VAT rules for goods, including on goods moving to, from and within Northern Ireland. However, Northern Ireland is, and will remain, part of the UK's VAT system. UK VAT rules related to transactions in services will apply across the whole of the UK. HMRC will continue to be responsible for the operation of VAT and collection of revenues in Northern Ireland.

43. As we set out in the May Command Paper, we have made use of existing flexibilities within the EU VAT rules to minimise the impacts of these arrangements on business. 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, which will contain the same boxes as now. We have also agreed a process for identifying Northern Ireland traders for VAT purposes; means to enable them to reclaim VAT through existing IT databases when trading in goods with the EU; and arrangements following the same principles for excise goods. Full guidance on all of these issues has been published.

44. We have also heard the concerns raised about the changes to the second-hand margin scheme on certain specific sectors moving goods from Great Britain to Northern Ireland. In particular the issue 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 that applies under the Protocol; meaning that sellers will have to account for the VAT on the full value of the goods, rather than only on the profit margin. While these changes will not affect stock bought in advance of 1 January 2021, even if sold at a later date, we acknowledge that this is not a longer-lasting solution to the issue. The Government is aiming to minimise disruption for Northern Ireland traders to the extent possible and is continuing to explore options for addressing the impacts.

Moving parcels into Northern Ireland

45. The movement of parcels into Northern Ireland is another important part of how the Protocol will work in practice for people in Northern Ireland. That is why the UK Government will take forward a pragmatic approach that draws upon available flexibilities to implement the Protocol without causing undue disruption to lives and livelihoods. HMRC is engaging with operators to finalise arrangements.

Comprehensive trader support

46. The agreement in principle reached by the Co-Chairs addresses concerns on tariffs and protects food supplies. Yet we have always recognised that the Protocol does involve new administrative processes for businesses as they move their goods into Northern Ireland. And we recognise that businesses, whatever their size, need to be supported as they adapt to them. That is why the Government has established two complementary schemes to support traders to get ready and to thrive from the end of the transition period.

47. The first is the **Trader Support Service** which was launched in August. This free-to-use service now has more than 19,000 businesses registered, with hundreds more joining every day. Those enrolled have access to significant training and other resources, as well as a service which - when given appropriate information by businesses - will complete customs import formalities (such as import and safety and security information) on their behalf.

48. The second is our new **Movement Assistance Scheme** for agri-food traders. This will mean that for those traders moving agri-food goods for which specific SPS controls apply - such as the need to secure Export Health Certificates (EHCs) from official vets - the UK Government will take care of reasonable costs. Businesses can be assured that, where new requirements may be imposed, new direct costs will not be, supporting ongoing trade flows and movements into Northern Ireland. The scheme will begin in mid-December with a dedicated helpline to guide businesses through the new requirements for moving their goods; and from the end of the year, will be ready to support businesses in meeting new certification costs that arise, a further signal of the support we will provide to business.

SECTION FOUR: OTHER ARRANGEMENTS TO SUPPORT DELIVERY OF THE PROTOCOL IN NORTHERN IRELAND

State aid

49. The Protocol sets out that EU state aid rules will apply in certain cases where this is relevant to trade between Northern Ireland and the EU. However this does not mean that state aid rules will apply to Northern Ireland as they do today: it is limited in scope to the movement of goods and wholesale electricity markets, and concerns only measures that “affect trade” between Northern Ireland and the EU. Northern Ireland will enjoy new freedoms in relation to support for its services and other sectors of the future.
50. The Government recognises the particular concern that provisions in the Protocol could be interpreted to enable unfair “reach back” of rules to subsidies given to companies in Great Britain. As set out in the Government statement of 17 September, we rejected in particular any scenario in which there was *“insistence that the EU’s state aid provisions should apply in GB in circumstances when there is no link or only a trivial one to commercial operations taking place in NI”*. This concern has now been addressed through agreement in principle to proposed declarations in the Joint Committee, which will have legal force in interpreting the Protocol, confirming that:
- a. for an aid measure to have an effect on trade between Northern Ireland and the European Union, and for the state aid provisions in the Protocol to apply, there must be a *“genuine and direct link”* to Northern Ireland;
 - b. Northern Ireland’s integral place in the UK internal market must be taken into account; and
 - c. the potential effects of an aid measure on trade between Northern Ireland and the EU must be real and foreseeable.
51. This agreement in principle addresses the concerns the UK Government had expressed and therefore ensures that the UK will be free to design its own independent subsidy regime, subject to the unique arrangements with respect to goods trade and wholesale electricity markets in Northern Ireland.

Single Electricity Market

52. The Protocol provides the basis for the continued operation of the Single Electricity Market and trade of wholesale electricity across the island of Ireland. The UK and the EU have engaged in technical discussions over recent months to ensure that the Protocol is implemented in a way which safeguards these arrangements and avoids disruption for people and businesses in the process.
53. Both sides have agreed to a focused, proportionate scope of the applicable rules. This will ensure that Northern Ireland will benefit from the Single Electricity Market, but is free to regulate its own retail market and rules for consumers as it sees fit. These arrangements will protect the Single Electricity Market, helping to reduce the cost of electricity and ensure security of supply across the island of Ireland.

Agricultural and fisheries subsidies

54. The Protocol sets out that agricultural subsidies in Northern Ireland will be exempted from EU state aid rules, with the Joint Committee tasked with agreeing on the maximum ceiling of such subsidies. We have worked closely alongside the Northern Ireland Executive in taking forward those Joint Committee discussions - focused on providing appropriate flexibility for Northern Ireland's agricultural and fishing industries, and maintaining the ability to respond to any market uncertainty and disruption.
55. These aims have been met in the agreement in principle reached by the Co-Chairs. It provides for a baseline of more than £380m of agricultural support to be exempt from EU state aid rules - with up to £25m of any of the cap which is not used to be rolled forward to the subsequent year. In addition it provides for nearly £7m of further support to be deployed in any year where there are crisis conditions which require it. In addition the agreement in principle also provides for an exemption for nearly £17m of fisheries spending from EU state aid rules every five years, with a maximum spend of £4m in any given year. These caps are able to be reviewed in the light of their operation, facilitating any adaptation that may be required.
56. These state aid exemptions enable the Northern Ireland Executive to provide their fisheries and agricultural sectors with the support they need. Northern Ireland will leave the Common Agricultural Policy along with the rest of the UK, with the freedom to design its own subsidy policy to suit local needs and with substantial flexibility with these state aid exemptions.

Supervision

57. The Protocol required the Joint Committee to agree to the practical working arrangements for the rights of EU officials, which Parliament agreed under Article 12, to be present during certain activities of UK authorities related to the Protocol. The UK has always recognised the need to determine these practical working arrangements, and to ensure that they are proportionate and strictly limited to what is required to ensure the proper functioning of the Protocol. This is the case not least because of the important facilitations that have been agreed as part of making the Protocol a workable arrangement in Northern Ireland.
58. Our position has been informed by the need to be aware of the political and practical sensitivities of this aspect of the Protocol's arrangements, in particular to avoid any return to the concept of joint controls. This has been reflected in the arrangements agreed in principle. There will be no EU Belfast embassy or mission. Instead the arrangements we have agreed will enable the EU to exercise their rights under Article 12, including with appropriate access to the information needed to do so, while fully respecting the sovereignty of the United Kingdom. A reciprocal arrangement has been agreed on database access, with both the EU and UK granting access to relevant databases subject to appropriate safeguards. UK access to EU databases has been secured through a separate Commission decision granting access to over 90 databases connected to the Protocol. EU officials will not be able to carry out any activities not directly related to rights under the Protocol, and both the UK and EU have agreed to cooperate in good faith and on a practical basis throughout. All procedures under the Protocol will be carried out by UK authorities.

Industrial goods

59. In our May Command Paper, we underlined that, though Northern Ireland would align with EU rules on industrial goods on the basis of democratic consent, those rules would be administered by the same bodies and authorities as today; and that the enforcement requirements the Protocol entails will be focused on market surveillance at business premises or on the market.

60. The same authorities and bodies operating today, whether they are based in Northern Ireland or the rest of the UK, will continue to be responsible for approving goods on the Northern Ireland market and enforcing these rules; while EU authorisations and approvals (providing access to the Northern Ireland and EU markets) would be recognised for placing goods on the Great Britain market. These building blocks have been put in place during the course of the year ready for the end of the transition period, with guidance published.

Rights of individuals

61. Article 2(1) of the Protocol sets out the UK's commitment to ensuring no diminution of rights, safeguards or equality of opportunity as set out in the Belfast (Good Friday) Agreement, resulting from the UK's withdrawal from the EU. This protection is also supported by six relevant equality directives.

62. Following the legislative changes made to give effect to this commitment, the Government has continued to work closely with the Northern Ireland Human Rights Commission and the Equality Commission for Northern Ireland. This has included confirming and providing resourcing for both Commissions to undertake recruitment and necessary preparatory work to ensure readiness for the end of the transition period when the Dedicated Mechanism will become operational.

Errors and omissions

63. The Withdrawal Agreement includes a mechanism for correcting errors, omissions and deficiencies, including to the Northern Ireland Protocol, subject to agreement by both parties through the Joint Committee. The UK and the EU have agreed in principle to 13 changes to Annex 2 of the Protocol. Eight changes are additional pieces of legislation and three are explanatory notes to be inserted alongside legislation already listed in Annex 2. There are two areas in which the changes in fact remove or limit provisions from the scope of the Annex: ensuring that Northern Ireland CO₂ emissions count towards UK rather than EU targets; and limiting the scope of EU trade defence instruments by excluding Northern Ireland industries from EU calculations on trade remedies investigations, preserving Northern Ireland's place in the UK's international trade regime. These targeted amendments do not occasion any significant new burdens, and indeed ensure that we are able to fully protect Northern Ireland's place in the UK's internal market.

Broader issues

64. The agreement in principle reached by the Co-Chairs delivers significant measures to support Great Britain to Northern Ireland trade. However, we recognise that they do not deal comprehensively with each and every instance of a new procedure that the Protocol may create. A number of smaller, sectoral issues in practice spanned both the discussions on the UK's potential Free Trade Agreement with the EU, and those on implementing the Protocol. We are clear that continued and intense work will be required across all such issues, respecting the Belfast (Good Friday) Agreement.