



Northern Ireland
Assembly

Committee for The Executive Office

OFFICIAL REPORT (Hansard)

Protocol on Ireland/ Northern Ireland:
Lord David Frost, Cabinet Office

9 July 2021

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Members present for all or part of the proceedings:

Mr Colin McGrath (Chairperson)
Mr John Stewart (Deputy Chairperson)
Ms Martina Anderson
Mrs Diane Dodds
Mr Trevor Lunn
Mr Pat Sheehan
Ms Emma Sheerin
Mr Christopher Stalford

Witnesses:

Lord David Frost	Minister of State, Cabinet Office
Ms Rebecca Ellis	Cabinet Office

The Chairperson (Mr McGrath): David and Rebecca, welcome to our Committee today. We appreciate your attendance here to discuss what is, for us, a critical matter. The impact of Brexit will be most harshly felt in the North of Ireland. That is probably one of the reasons why the majority of us here did not support Brexit and do not want to see it implemented. The majority here are uneasy with Brexit and especially the significant impact that it will have on trade, on opportunities and, indeed, on communities across the North. Last week, we met Vice President Šeščovič and heard from him about the European Union's willingness to work flexibly with the UK in order to progress and move forward with the process, especially around the protocol. I trust that today we will likewise have some discussions about opportunities and the progress that we can make on that matter. I will pass over to you to make some opening remarks, after which we will open up into questions and answers and have some discussion.

Lord Frost (Minister of State, Cabinet Office): Thank you very much, Chair. It is a delight to be here. I am pleased to be here and am looking forward to a good discussion and some good questions. As you mentioned, my colleague from the Cabinet Office, Rebecca Ellis, is with me. She is responsible for this at official level. I promise not to speak for too long, because the questions are the important part of this. I will just say a few things to situate where we are at the moment on the protocol and where we are going.

The first thing is to recall that the protocol was a huge compromise by us to protect the Belfast/Good Friday Agreement. It was a compromise that we made willingly as part of the Brexit negotiations, but it is pretty exceptional. Sometimes, it is forgotten that we agreed to apply EU law and to control the movement of goods within the United Kingdom. If that highly unusual situation is to work, it will have to work in a pragmatic and proportionate way; it cannot be treated as just any other external border of the single market.

Sitting here today, the other thing to note is that, precisely because it was so unusual when I and the Prime Minister negotiated it, we thought that it was essential to have a democratic component in the way that it worked. It is only a component, but there is clearly an important role for the Assembly in the consent vote. That democratic ability to determine whether the arrangements in the protocol are fundamentally acceptable is an important part of the total construct and the way in which it works. That needs to be said, and it is why we thought it right to involve the Executive as fully as we could in the withdrawal agreement structures and so on.

The protocol is a delicate balance. It is a compromise, and it is there to support the Belfast/Good Friday Agreement. That is not just the North/South aspect of it and the very important — indeed, essential — element of keeping an open border on the island of Ireland; it is also about east-west and the integrity of the institutions here. The protocol recognises all those dimensions in the Belfast/Good Friday Agreement. If it is going to work, it has to work in a way that supports all those things. It has to respect things that are in the protocol and the fact that Northern Ireland is an integral part of the customs territory of the United Kingdom and bear as lightly as possible on the everyday lives of people in Northern Ireland. It must respect the fundamental place of Northern Ireland in the internal market of the UK. All those are important parts of the protocol, just as other parts are. Keeping that balance is extremely important.

My third point is that we have been implementing the protocol, and we reject suggestions that we have simply ignored it or not tried. We have delivered four new IT systems from scratch. We will spend the best part of half a billion pounds over the next year or two in schemes to support it and wholly new facilitations to make it work. We will provide access to some of our databases to the European Union to make it work. Indeed, the problems that are arising are problems of implementation, not of non-implementation. It is important to recognise that.

With all that, we have problems. The fundamental diagnosis that we make is that the zero-risk approach to how the rules should operate is, in practice, privileging one part of the Belfast/Good Friday Agreement and the protocol over the others. That is what underlies what we perceive to be a perception that there has been a shift in Northern Ireland's place in the Union, underlying the trade pattern changes and some of the societal and political disruption that we have seen in different ways in recent months.

Those are the issues. We see those sort of trade changes, and the impact is being felt in different ways. That is clear, but we are picking that up clearly in people's daily lives. There is a problem, and I have not yet, though I might do so today, spoken to people who have said that there is no problem with the way the protocol is being implemented. There are a range of views, but nobody whom I have spoken to from a wide range of political, civil society and business thinks that it is working perfectly as it should. All have suggested improvements. In that context, we have put forward improvements. We have put forward a dozen papers with detailed proposals, and I can go into the details of those in questioning, if it is useful.

It is welcome that the EU, on 30 June, suggested some further flexibilities and solutions, though we have not yet had anything in writing on most of those, which is part of the difficulty, but obviously we would like to discuss and are open to discussing all those things. However, it is true, all the same, that the current process is not dealing with the fundamental problems and there are underlying difficulties, and that is why we say that we need to find a new balance in the way that the protocol works if we are going to manage it. There will always need to be a tailored treaty relationship between us and the EU covering Northern Ireland; that is clear. We need to find arrangements that are sensible, proportionate and have consensus so that they can work. Fundamentally, we need to find a way to deliver that and ensure that goods flow as freely as possible between Great Britain and Northern Ireland, where they are destined for Northern Ireland consumers, and that goods moving on into Ireland are treated in an appropriate way so as to protect the single market.

To summarise and wrap up, in our view, the current situation is not consistent with the careful balance in the Belfast/Good Friday Agreement. It is not the way that the protocol should be implemented. That political reality needs to be acknowledged, and we cannot ignore it. We will always prefer a consensual approach to solving the question, and there are ways of finding a way through and delivering that. That is the responsible thing to do in the interests of everybody in Northern Ireland, and that is how we hope to proceed, but obviously all options remain on the table. As I said yesterday, we are considering next steps. We will set out our approach to Parliament in a considered way this month.

Finally, with my wider responsibilities in looking at UK-EU relationships more broadly, if we can find a new balance, the prize on offer to us is setting the relationship between us and the EU on a different trajectory. It is a little tense at the moment. Nobody wants that, and the protocol issues are at the core of that. If we can move on and find a way that works, we can get UK-EU relations onto the friendly, collaborative, cooperative and mutually beneficial trajectory that is what we want to see and where we would like to go. There is a big prize if we can get this right, but it needs both sides to take the situation seriously and fix the problems that currently exist.

The Chairperson (Mr McGrath): Thank you very much for those opening remarks. They are appreciated as they give us the context for our conversation and discussion. We will move on to questions. Almost all members have indicated that they want to speak, so we will try to work through questions as quickly as we can. I will begin.

In summarising some of the remarks that you made, you are, in some ways, saying that the deal is not being implemented as you thought it would be. You highlighted problems and issues, and you said that there are ramifications and impacts as a result of those. However, it is your deal. If your deal is so shoddy, why did you negotiate it?

Lord Frost: The underlying problem is that the way it is being implemented at the moment does not reflect the balance that, we believed, we had agreed and that we did agree. The way in which it is being implemented does not reflect that balance. We need to find a way of managing, principally, movements of goods from Great Britain to Northern Ireland in a way that is consistent with the overall aims of the protocol, which would support the Belfast/Good Friday Agreement in minimising disruption to everyday lives and so on. If those movements of goods and aspects associated with them take place in a way that undermines the protocol, that undermines its purpose; it is not working. We have to try to implement it in a way that reflects the balance that is in the protocol. For example, article 5 says that the EU customs code applies. Article 6(2) says we will make efforts to minimise checks at the ports of Northern Ireland. Those two things have to be read together. If you just read the first, you are not respecting the balance. Finding the right balance is a political question, and we do not think that we have found the right balance yet.

The Chairperson (Mr McGrath): As part of the negotiation, was there not any forward-looking vision that it could be taken out of context or that there could be a way to resolve or discuss that? There seem to be substantial problems with something that was negotiated and agreed. There seem to be massive numbers of problems afterwards, which seems inconsistent with working to come up with an agreement.

Lord Frost: It is not right to look at the protocol as a definitive text that was there in October 2019 and there was nothing more to say. From reading the text, it is clear that that is not the case. For example, the concept of goods at risk is at the core of some of the problems with movements between GB and Northern Ireland. That whole concept remains to be worked out and, indeed, was very controversial in the talks that Michael Gove led during 2020. That is one explicit, very clear area. Where you come to in that negotiation massively affects the way in which the protocol is meant to work. At that point, of course, we also did not know whether there would be a free trade agreement (FTA) between the UK and the EU. The fact that there is is a huge and positive change to that context. Given that the situation has changed in various ways, however, and that part of the protocol remains to be worked out, it is not reasonable to say that it is a definitive text and that, as of October 2019, that is it and there is nothing more to say. It is not that sort of document.

The Chairperson (Mr McGrath): Given that 85% of the sanitary and phytosanitary (SPS) checks could be removed if there were some form of agreement between the UK and the EU, do the British Government feel that free trade agreements with third-party countries are more important than dealing with the east-west SPS checks in the UK?

Lord Frost: To be honest, they are of similar importance. They all flow from the fundamental fact that Brexit was about re-establishing control, as far as possible, over our laws and rules. That applies to SPS and agri-food rules just as it does to everything else. The problem we have is that, at the moment, the EU seems to envisage only one solution to the problem. Its solution to all the problems is to say, "Why do you not just adopt our rules? Then there will not be a problem". That is not a reasonable approach to take. We are accused of being ideological on the question, but it is equally ideological for the EU to say, "The only solution is that you adopt our laws". That is a fairly ideological position to take. There are other solutions. We have proposed an agreement based on equivalence and sent in a document to that effect that we would like to discuss. We were clear in the negotiations

last year that we wanted an equivalence mechanism with the EU, but it was refused. It is one of the areas where we have to find a tailored solution that can reduce the processes. Intellectually, that is perfectly possible. Getting the politics in the right place seems to be more difficult.

The Chairperson (Mr McGrath): When Vice President Šefčovič was with us last week, he suggested that an agreement on equivalence might be accepted until such time as there was divergence. There certainly seems to be a sense that there is a middle ground to which people could move to help us in the short term. Is that a viable option?

Lord Frost: I can certainly see room for discussion between the positions. We have not quite got into a discussion on that. We are not going to agree to dynamic alignment; that is 100% clear. There is room for discussion, however, and we think that the mechanism that we have put forward, which recognises the high standards on both sides and ensures that, if there are changes, they can be reflected in the level of processes that apply, is reasonable. We would like to talk about that, but it has not happened yet.

The Chairperson (Mr McGrath): OK. Finally from me, we have a chorus of "doomers" in the North who will find the downside of everything without the balance of looking at positives. I am sure that some of that chorus will sing to you shortly. Do you see positives for business and trade in Northern Ireland coming out of the protocol? You have met many of the sectors, groups and organisations, and I am sure that they are not meeting you to talk about negatives. They want to see opportunities. What opportunities do you see, and how are you, as a Government, actively pursuing those positivities? Do you see room for, for example, a trade conference in partnership with the EU and the UK to sell the position that Northern Ireland finds itself in, if that helps us to deliver new trade, new enterprise and new jobs?

Lord Frost: The positive thing about the protocol and the reason that we agreed it was that it was intended — this is clear on the face of it — to support the Belfast/Good Friday Agreement and the peace process. It was designed to provide stability after Brexit so that business understood, in a durable way, how things would work. There is a set of trade-offs, and ensuring that there are no infrastructure and no checks on the land border is extremely important. I was in Newry this morning, and it is obvious that that has been extremely important to the economic success in that area. We think that it is absolutely essential that that is maintained. It is good that we have found a way to do it, but it is a question of finding the right balance. Aspects of the protocol are, as far as I can see, not particularly challenged and are working well. As I said, there will always need to be a treaty framework. We have got to get the core of it right.

On an investment conference or anything that we can do to encourage further investment into Northern Ireland, we are happy to work with the Commission or anyone else. We will have plans of our own to encourage that, but the more, the merrier.

Mr Stewart: Hopefully, I am not one of the "doomers" referred to by the Chair. I am sure that he would never accuse me of that.

You are very welcome, Lord Frost. Thank you very much for coming. I will not rehash the Ulster Unionist Party's opposition to the protocol; it is on record. We intend to meet you and the negotiating team again next week, and we look forward to articulating our concerns and putting forward our alternatives.

Yesterday, in a Policy Exchange meeting, and again today, you talked about a need for rebalancing. You also talked about bringing potential mitigations before Parliament. Will you set out in detail what you see as the need and the areas that need to be rebalanced and what those mitigations will look like when they come to Parliament in the coming weeks?

Lord Frost: Sure. I am afraid that you will probably have to wait until we make the statement to find out the full details, but obviously there are not many days until recess, so it will not be that far away. I do not want to repeat myself too much, but the fundamental is finding a way to ensure that goods can move from Great Britain to Northern Ireland in a freer way than is possible at the moment. It is clear that, because of the customs boundary, there is a chilling effect on GB companies wanting to trade with Northern Ireland. That is clear both anecdotally and in figures. We also see increases in trade between Northern Ireland and Ireland in both directions, which suggests that supply chains are reordering and so on, and that has the political and economic consequences that we know about.

The economic relationship between Northern Ireland and Great Britain is obviously super-important. It is essential. Northern Ireland is oriented towards Great Britain economically, and we need to find ways of operating that allow goods to flow in a way that reflects that reality. That is the direction of travel, and those are the ideas that we will want to put on the table.

Mr Stewart: You have said that the protocol is having not only a societal impact but an economic one in Northern Ireland and that that could lead to the triggering of article 16. Will you set out the threshold, as you see it, for triggering article 16 and what would need to happen for that to take place?

Lord Frost: It is not possible to give a trigger threshold. Obviously, article 16 is an unusual provision. Only a couple of other treaties have it, and there is not a great deal of international jurisprudence on the subject that tells you when there is a problem or not. It is sui generis. We cannot say that x% increase in trade in one direction is grounds for using article 16 and y% is not. You have to look at the total situation. We see increased trade in both directions between Northern Ireland and Ireland, as well as the chilling effects that I referred to. That trade diversion is there and is happening. As we said, we will keep all options on the table. We are not saying that a decision has been taken yet. All options are clearly on the table. We need to come to, I would say, a responsible assessment of the situation and of the right way to proceed in the interests of everybody in Northern Ireland.

Mr Stewart: Thank you for that answer, Lord Frost. I have one final point, which is on the supply of medicines. Can you give us an update on those negotiations? As you know, any supplier must give six months' notice to quit supplying medicines to Northern Ireland. That has an impact on the supply chain here, as well as on treatments. It is deeply alarming that that is happening. Can you give us a full update on that?

Lord Frost: Rebecca might want to add to what I say here. Medicines is the one area where we have had a proposal back from the Commission. We got that about a month after they told the 'Financial Times' that it was coming, but we are glad to have it anyway and are looking at it. There are a couple of aspects to the problem. One is the ability to license drugs across the whole of the UK, and the other is the ability to ensure that they can move effectively into a viable market in Northern Ireland. We are studying it carefully. It is not quite clear that it solves the entirety of the problem. The problem is complex, so we want to make sure that we do that. There is some evidence that drug suppliers are beginning to withdraw drugs or say that they will withdraw drugs at the end of the year. The longer the uncertainty persists, the more of that we will see. Do you want to add anything, Rebecca?

Ms Rebecca Ellis (Cabinet Office): Thanks, Lord Frost. As you said, we got a proposal in writing from the Commission relatively recently. That was welcome, because we had been having discussions with it for a good couple of months. There was a technical session with Commission officials where we were able to clarify a number of aspects of the proposal. That is enabling the experts to establish whether it appears to solve the problems and whether and in what order any changes are needed. Happily, those detailed discussions can now happen, and they are happening rapidly. Since we started the current phase of technical discussions at the end of March, we have stressed that this is a particularly urgent issue. We were unhappy to have to wait so long, but, now that we have a technical proposal, we are working on it as quickly as possible.

Mr Stewart: I do not think I need to stress how important that issue is. Everything in the protocol is massively important, but the supply of medicines is undoubtedly important. Thank you for the urgency on that. Thank you for your answers.

Lord Frost: 100%, absolutely.

Ms Anderson: You were Britain's chief negotiator for Brexit. Your eyes were wide open. Your fingerprints are on every page of the protocol: 63 pages of black and white. You know that the majority of people in the North rejected Brexit. You also know that the majority of the parties in the Assembly, representing the majority of the people out there, rejected Brexit but supported the protocol in nine separate debates. Do you accept that the protocol gives the North cost-free access to a single market and that the people in the North, who rejected Brexit, want to see the all-Ireland economy and the things that you referred to, such as the Good Friday Agreement, upheld in all their parts? You talk about balance, but your fingerprints are on every page of the protocol. You were the chief negotiator, and you were not asleep at the wheel. You knew that there would be trade adjustments. The dogs in the street knew that there would be trade adjustments. Even the DUP, who supported you throughout

this Brexit and were cheerleaders for Brexit, in their reaction to what happened, knew that there would be trade adjustments and felt that you threw them under a bus.

Lord Frost: I would agree with some of what you have said, but I do not agree with all of it, which is probably what you would expect. You are absolutely right that I was the chief negotiator in 2019 and 2020, and we agreed the protocol as the best option in a complex situation. We knew that it was, as I said at the start, unusual in its construct, notably by applying EU laws without any normal democratic scrutiny. That is why we had to put the consent mechanism in to ensure that that was the case. As I said, we knew that a lot had to be worked out. The protocol is a balance. Some of its provisions explicitly required detailed interpretation and negotiation afterwards, and how the boundary between GB and NI worked depended on those negotiations. It is also a purposive document, where, as I said, you have to read all of the provisions together. You cannot take one in isolation, and it is not reasonable to interpret it as a document that simply requires an EU external border to be established. The fact that that is what is happening is causing many of the core problems at the moment.

You are right to say that trade diversion was a risk. That is exactly why article 16 is there and why trade diversion is highlighted as one of the possibilities that justify the use of article 16. The protocol is a delicate balance. It has to be read in total. It is unusual and rests on complex democratic foundations, and a lot of it remains to be worked out. The core of the problem is that, for various reasons, it is not working out in the way that it should work if it is to achieve its purpose. That is why we need to carry on the process of finding a balance so that it achieves its purpose. That is the core of the issue here.

Ms Anderson: You will forgive me for believing that the reason it is not working out is that you, the British Government, are not implementing the protocol in full. Those of us who come from the North of Ireland from the republican/nationalist community believe that the next agreement that you honour in full will be your first. There is a lot of scepticism in relation to some of the things that you say, particularly as the Brexit chief negotiator. I was a Member of the European Parliament, and we witnessed and watched —

Lord Frost: I remember.

Ms Anderson: — the behaviour. You remember that? Good. Can I ask in relation to the High Court judgment last week? It said that the protocol does not change the constitutional position in the North. You know that I would like to have the constitutional position changed, but that is a topic for another day. You also told the Westminster Committee that article 1 of the protocol does not change the constitutional position in the North. Do you agree with the court's assessment?

Also, do you know that there was an opinion poll — since Brexit, there have been lots of opinion polls — last week, and it showed that only 6% of people polled in the North have trust in the British Government and only 6% believe the British Government. Therefore, you need to realise that there is a degree of honesty and dishonesty. I have concerns that some of the "Project Fear" that was rolled out prior to the Brexit referendum is at play here. I ask you not to use this place in any agreement or exchange that you have with the EU, because people here do not trust you and do not believe you. People here want to see the protocol implemented in full; not everyone does, but the majority of the parties here and the majority of the people here do.

Lord Frost: On the first part of your question, the decision in the court case has been appealed, so it would not be right for me to go into the ins and outs of the arguments there, which will now have to be argued out in a different forum. I can say that it is clear on the face of the protocol that nothing in it affects the territorial integrity of the United Kingdom. It is clear about Northern Ireland's place in the customs union and the place of Northern Ireland in the UK's internal market. That is fundamental and reflects the fundamental state powers of the UK. Nothing in the protocol affects that, and that is clear. Personally, I distinguish that from what we perceive, though others will tell me, to be a high level of unease in significant parts of Northern Ireland — across broad unionism but possibly more than that — about the way the protocol is working out. That has consequences for broader senses of identity and the relationship between Northern Ireland and Great Britain. That is not necessarily a formal constitutional thing, but it is a real thing, and we pick it up in what is said. That is what is at the core of the political problem in the current situation, and that is what we have to deal with.

I have certainly seen the poll that you mentioned, and it is a salutary one, no doubt, for how we take things forward. I have also seen polling that shows that there is more or less a 50:50 split in public opinion on whether the protocol is a desirable thing. A 50:50 division of opinion on something as

fundamental as that makes it hard to operate, and that is the situation that we are in. The protocol depends on a broader level of consent if it is to work, and, at the moment, that does not seem to be obvious. We have to find a way of getting that consent, and that political problem seems to us to be at the core of the difficulties that we are trying to solve.

Ms Anderson: I have many other questions that I would like to ask, but I will leave it there.

The Chairperson (Mr McGrath): I understand. Trevor, we move to you.

Mr Lunn: Thanks, Chair. You are both welcome; it is good to see you here.

I am sorry to go back to "dynamic alignment versus equivalence", but you have been quoted as saying, Lord Frost, that you aspire to the highest possible standards in SPS and veterinary matters. Has there been a problem between the UK and the EU in the past over those standards? Has there been an instance where perhaps we have wanted to aspire to a higher standard than the EU?

Lord Frost: Obviously, we have had no choice on whether to implement each EU SPS law. We were part of the debates that introduced the laws, and sometimes we supported them and sometimes we did not. We definitely aspire to do different things in the broad agri-food area, not necessarily always in SPS laws specifically but in, for example, animal welfare and the export of animals. It is noticeable that the first change that came in after the end of the year in agri-food rules was one that we brought in that prohibited a particular plant product, although I cannot remember the name offhand. The first change was actually us bringing in a higher standard, albeit in a limited area. The EU has already changed its agri-food rules once since the start of the year; another set of changes is coming in August. It has been widely noted that, although this is not agri-food as such, it plans to change food standards for animal feed. That is just natural. Some of those changes will happen. We will absolutely maintain high standards and high scientific rigour in the way in which we take those things forward. That is just part of the game.

Mr Lunn: Is the basic problem — I think that you have said this already — a matter of sovereignty rather than the standards?

Lord Frost: It is. Brexit is about sovereignty to a large extent. It is about the right to set our own rules. Obviously, the difficulty with the protocol is that there are two different jurisdictions as regards SPS rules. The very unusualness of that situation is why we have the consent mechanism and why you need broad consent. However, it is not an unusual thing in the world to have control of your own agri-food rules. That is totally normal; it is not having control of them that is the abnormal thing. That is why the current situation that we took on as part of the protocol has to be managed in a sensible, proportionate and pragmatic way if it is going to be deliverable.

Mr Lunn: It is hard to escape the possibility that standards can rise and fall. They can be lowered for particular reasons. I think particularly of the trade deal that has been agreed in principle with Australia, where animal welfare standards are lower than ours. You could probably say the same about chlorinated chicken coming from the States or even Brazilian beef. There is a lot of variation and a lot of opposition. Leaving aside the standards question, competition comes into it as well. I will not make an accusation, but would it be fair to suggest that Britain wants the option to lower standards as well as raise them?

Lord Frost: I do not think that it would. We were clear in our manifesto in 2019 and have been ever since that we intend to maintain high standards in this country, and we absolutely will. Animal welfare is part of that. Animal welfare standards in Australia are not quite as low as you suggest, but obviously each country comes to its own —

Mr Lunn: I just said that they were lower than ours.

Lord Frost: — views on that. Obviously, if you want to bring goods to this country, you have to meet UK standards. Every country is the same. The reason why it matters and why it is a sovereignty question is that it is connected to trade deals. It is not only connected to that, but it is connected to that. It is hard to ask a third country to do a deal with us if our agri-food rules might change in future in a way that we cannot foresee or control and that might affect their trade. That is why it is important to have control. That is why that is a problem as regards third-country agreements.

Mr Lunn: Just one more quick one. You said in your opening remarks that the UK had made major concessions to bring about the protocol agreement. Do you accept that the EU has made equivalent concessions? It has pushed its boundaries considerably to accommodate the particular situation of Northern Ireland.

Lord Frost: Both sides have pushed the boundaries of what is normal in a relationship between two jurisdictions to find a compromise in Northern Ireland that supports the peace process. I absolutely accept that. The problem is that what, we thought, was the right balance in 2019 has turned out not to be quite right because of events and reality since then. Absolutely, there is no doubt that it is unusual for both sides.

Ms Ellis: As Lord Frost highlighted earlier, the protocol and its terms are the prism through which the EU rules apply. Lord Frost cited a number of bits there, and the protocol itself recognises that it is a unique solution for a unique situation. Sometimes, in discussions with the EU about what it expects to happen in practice, it is as if the protocol — the prism through which the EU rules apply — is not there and the rules just apply to goods moving between Great Britain and Northern Ireland in the same way as if it were any EU external border. That is very much what it feels and sounds like in the conversations. The challenge with the aspects of the protocol that are about reflecting the uniqueness of the solution and the context in what happens in practice is that they are forgotten. In the conversations, we have been trying to get the uniqueness back into the discussion, because that is the best way to find that balance.

On the question of equivalence, that is one area where we have been putting forward ideas and options for a conversation that will not align with any of the EU's existing precedents, because we do not feel that this unique situation should be bound by precedents for vet agreements. There are ways of having a science-based approach to looking at the effect of rules, establishing whether there is any actual risk in practice and acting on that basis.

Mr Lunn: I hope we get there. Thank you very much for your answers.

Mr Sheehan: Thank you for coming along, David and Rebecca. You took your time, but you got here in the end, so well done. *[Laughter.]* First of all, a few myths are going around about the protocol. One is that the population here is almost up in arms. The subtext of your commentary thus far has been that there are major societal problems that need to be resolved. There is also a suggestion that there is major disruption to the supply chains, and that is not the case. The shelves in the supermarkets are fully stocked, and the supply chains are being reoriented. There are opportunities there for local businesses.

One of our issues with all of this is that the EU has recently resolved a number of issues about medicines, guide dogs, the green card for insurance and so on and that has not been fully acknowledged by the UK Government. That is an issue that might help resolve some of the tensions that exist here. Do you agree that, as we have access to the UK market and the EU single market, that can only benefit the economy here?

Lord Frost: It was certainly the intention when we agreed to the protocol that we should try to find that sort of balance. That sort of access was important to the success of the agreement. The problem is that we do not have that balance. The free flow of goods and what goes with that is not the same from Great Britain to Northern Ireland as it is North/South from Northern Ireland to Ireland. Of course, it was never going to be exactly the same, but it seems to us that we have a situation that is out of balance at the moment.

You are right, in one sense: the shelves are not empty, and that is obvious. Nevertheless, there is an adjustment to supply chains going on. There is trade diversion. I have spoken to companies here that cannot get their usual supplies from their usual suppliers in GB and have gone elsewhere, and that is persuasive that there is a problem that did not exist before. It is not a problem that is impossible to resolve. It is a problem that is very possible to resolve with goodwill, and the balance can be put back together again. It has to be done. The existence of the problem has to be taken seriously in a way that I do not feel it has entirely been in the discussions I have had with the EU so far. Rebecca suggested that in her comment too.

Final, final comment: it is not true to say that the EU has resolved problems such as guide dogs, the tagging of animals and so on. Last week, there were welcome suggestions that it would put forward solutions. Unfortunately, we have not had those solutions. We do not know what they are, so I cannot

tell whether they solve the problems. I hope that we get something soon and, if they solve the problems, so much the better. However, we have to talk about them. It is not enough to just come out at a press conference and say, "We have a solution", and expect that that will end the discussion. That is the start of the discussion, not the end. We have put forward our own solutions in all those areas. We have put forward papers, many of which — most of which — we have had no reaction to. If we are to resolve the problem, we have to have a better discussion than that. The political reality of the situation has to be taken seriously in the discussions that we have with the EU. At the moment, I do not feel that that is happening entirely.

Mr Sheehan: Thanks for that. You have acknowledged that there is no constitutional issue and that, in your mind, there is a political problem. I say to you that that is being completely overblown and that the vast majority of businesses and farmers support the protocol.

On goods coming from across the water to here, if people cannot get Cumberland sausages here, they will certainly be able to get local sausages.

Lord Frost: Of course.

Mr Sheehan: That is good for local businesses. Do you agree? That was always going to happen in this context. There was always going to be a reorientation of supply lines and businesses were going to find new markets and new opportunities.

Lord Frost: On the basis of the Northern Irish sausages that I have had on my visits here, I certainly agree with you that the local product is just as good. However, obviously, that is not really the point.

Mr Sheehan: Some of us would argue that they are better. *[Laughter.]*

Lord Frost: The point is that the opportunities have changed and disappeared for some producers. Yes, they may have opened up for others, but that was not what we were trying to achieve. Business can and does speak for itself very vigorously. I will not sit here and tell you what business thinks, because you will know that as well as or better than I will. All that I can say is that business values the legal certainty of having an agreement between us and the EU and being able to proceed by consensus if we can. That is absolutely reasonable and normal for business, wherever I have met it. I do not think that I have met a representative of the business community or a leader of a business who has said, "This is absolutely fine. There is absolutely no problem with it. There are no difficulties of any kind". Some significantly downplay the difficulties, and it obviously depends on what their business is. However, almost without exception, people point to the difficulties in moving goods from Great Britain to Northern Ireland — the delays, the complexity. For some businesses, that is extremely important; for others, it is only a small part of what they do. However, it is unusual for that not to be mentioned as an aspect of the protocol that could be improved. That cannot be dismissed when we are trying to find the way forward.

Mr Sheehan: Finally, I am glad to hear that you are talking about the protocol being improved rather than being done away with. Thank you very much.

Lord Frost: On that final point, just to repeat, we have said that there always will be the need for a treaty relationship between us and the EU covering Northern Ireland. That is self-evident, and we do not seek to deny it. Obviously, it is the content that needs talking about.

The Chairperson (Mr McGrath): David, we were 46 minutes into an hour-long session before we mentioned sausages. *[Laughter.]* Hopefully, you are impressed by that at least. *[Laughter.]* Pat, well done in getting that accolade for today's meeting.

We will now go to our members who are joining us online. Diane Dodds, we will pass over to you for some questions. We have about 12 minutes. No pressure, but we have two more after you.

Mrs Dodds: Good afternoon, Lord Frost. I apologise that I am not able to be with you in person; I have some other duties today.

Lord Frost, you mentioned at the start of your presentation that the protocol indicated that there had to be some significant compromises from the UK Government, in that you agreed to apply EU law to part of the United Kingdom and you agreed to barriers within the internal market of the United Kingdom.

Those are astonishing concessions in the first place. Do you now agree with the Prime Minister's sentiments, in his evidence to MPs earlier this week, that it was unfortunate and probably a mistake to give Brussels such leverage over the internal market of the United Kingdom and its trading arrangements through the protocol?

Lord Frost: I think that the PM was alluding to the fact that a feature of the concessions that we made on controlling goods and applying law is that the ultimate authority for the way in which that is applied is the EU institutions and the Court of Justice. It is obviously even more unusual, in some ways, to allow the continued jurisdiction of those institutions in part of the UK. It obviously is possible to control goods moving from one part of the UK to another without the European Court of Justice being the ultimate arbiter in that. That was what the EU insisted on at the time, but that did not have to be part of it, if we had done this differently. Part of the difficulty we have is that, as the Prime Minister said, the rules are not in our hands. It is not possible to have a normal debate amongst equals about the best way of satisfying the needs of both sides, because we are acting in this area under the legal authority of one party to the treaty. That is unusual, and it obviously affects the tone and balance of the discussions that we have. That is probably what the Prime Minister was alluding to when he made that comment.

Mrs Dodds: I take it from that, Lord Frost, that it was a mistake to allow such interference in the UK's internal market and the jurisdiction of a court outside the United Kingdom in the UK's internal market. It is an astonishing position for a Conservative and unionist Government to get themselves into.

I want to go on to another massively important element for Northern Ireland, and that is democratic accountability and consent. You will be aware that, in the Northern Ireland Assembly today, not one unionist party or unionist MLA supports the protocol. Now, the Chair may call us "doomsters" or whatever, but, respectfully and democratically, that is a shocking indictment of where we have now come to. What will you do to restore democratic accountability in Northern Ireland? We will be governed by laws over which we have no democratic accountability. No MLA and no MP will have any say in the laws relating to agri-food, goods and so on, so what will you do to restore democratic accountability?

On the issue of consent, consent in Northern Ireland, as defined by the Belfast Agreement, means consent from both communities. You and the EU have overridden that in the protocol and now want majority rule. What will you do to restore the balance of consent?

Lord Frost: There is a lot in that question. Chair, I do not mind running over a little to make sure that everyone gets a say and we deal with the questions.

Before answering your questions, I want to go back to the point about the court and the way in which that works. Was it a mistake? Just because you have the power to settle a dispute in a court does not mean that you have to use it. There are two mechanisms for solving discussions in the protocol: there is an arbitration process and a court process, and they overlap to some extent. Just because you have the power to impose does not make imposing something the right thing to do; sometimes, it can be better to proceed by discussion and agreement. The fact that the EU immediately began a legal process in March for our very low-level operational adjustments to one or two features of the way the protocol works does not help. The reason the court is there — in our minds, at least, at the time — is that we are operating EU law. In EU doctrine, the court is the ultimate arbiter of what that law means, and therefore we accept that as part of its doctrine. That does not make it sensible to bring every dispute ultimately to an infractions process in the European Court of Justice and to behave with us, when we raise problems, in a way that reflects that. There are other ways of doing these things through that framework, and we are not quite seeing that. If we could find ways of doing that, it would be a significant improvement.

You asked questions about democratic accountability, and I have a good deal of sympathy with what you say. We knew that this was a democratically extremely difficult imposition of another party's law, even if it is for, as we saw it and see it, the wider goal of protecting the Belfast/Good Friday Agreement, the peace process and the achievements that have been made. That is a very important wider goal that justifies things. Nevertheless, it is pretty unusual to have laws set by an outside entity. The consent mechanism, albeit imperfect, is a way of allowing the institutions here to say, looking at all the balances, whether things are working tolerably or not and whether we have to find a solution. That mechanism is fundamental to the workability of the arrangements. This is not simply something about four years' time: you need to have broad consensus to make the arrangements workable between now and then as well. That is why it worries us so much that we do not have it.

I do not have a good answer to your question, because it is extremely problematic and is justified only by the protocol's wider purpose. That is why it troubles us so much that it is operated in a way that seems to be undermining that purpose now.

Mrs Dodds: May I follow that up quickly, Chair? If you uphold the Belfast Agreement — the Commission indicates that as well — the idea that consent should not be drawn from both communities should be revisited as well, and not just ongoing consent, as you talked about in your answer to me.

There are a couple of other really important things that we have not highlighted today. This morning, I listened to a representative from the Jewish community in Northern Ireland on the radio explaining how the rules on bringing in chilled meats to Northern Ireland will affect their ability to get kosher products. Surely it is a fundamental right that we must protect the Jewish community's ability to get the products that they need into Northern Ireland. That should be uppermost in the mind of the Government as we go forward.

There is another area that we have not strayed into because it was relatively newly introduced to the House of Commons. It is an area where we will have ongoing difficulties with the protocol for some time to come. The Government have just introduced the Subsidy Control Bill to the House of Commons. That will control competition law and subsidies that can or cannot be made to firms throughout the United Kingdom. Under article 10 of the protocol, it will not apply to Northern Ireland in the area of goods, agri-food etc. That means, potentially, that Northern Ireland firms will not in future have access to the same rules, whether they are relaxed or more stringent, as firms in the rest of GB. That will leave companies here potentially uncompetitive. What will you do to resolve that issue?

Lord Frost: Let me take the two questions in order. I hugely share your concern — we all do — on the question of the Jewish community in Northern Ireland. None of the alternative ways of dealing with the problem seem remotely satisfactory. I would like to think that the EU will, in fact, resolve the problem with us in a consensual way, for very obvious reasons, now that it is out there on the table as a problem. I will be very surprised, frankly, if we cannot, because it is such an obvious thing where we need to find a pragmatic solution. Although it has been in the background for some time, it has only now emerged as an issue. I am sure that we will want to talk about that with the EU rapidly.

The subsidy control issue is an interesting and complex problem. As was pointed out, one of the features of the protocol is that, if you are a business trading goods in Northern Ireland, you have access to the whole of the single market. That is presented as an advantage of the protocol. I kind of understand the logic, in a way, that says you have to look at that when you are taking state aid decisions — that fact that there is a wider entity involved here. Whether the solution in the protocol is the right one remains to be tested. We reached an agreement with the EU in December that the provisions of the protocol would be applied to companies only where there was a clear connection with Northern Ireland and not a trivial one. The EU put out guidance in January that did not seem consistent with that, and we have challenged that, but it is still out there. It remains to be tested in practice whether they will implement this in a reasonable and pragmatic way or not. It is, of course, another area where the court and the institutions stand ultimately behind the decisions that are taken, and that is the problem. It remains to be tested. We now have a Subsidy Control Bill — hopefully, an Act soon — and we will have a good framework. Perhaps that will be reassuring to the EU when it is in place.

Ms Sheerin: Thanks to both of you for joining us this afternoon.

It has been outlined by others that Brexit was not supported by a majority of the people in the North of Ireland. We know now that Brexit arose only because of what was effectively a civil war in the Tory party. It led to a rising. It exposed and, in many parts, was caused by a nasty undercurrent of xenophobia and racism in elements of English nationalism — the same ideology that gave us "hostile environment" and the terms of the EU settlement scheme, which concluded last week. We have had the same negativity from a minority in the North since the onset of Brexit at the beginning of the year. We have had political unionism align itself with masked men on the street inciting violence, basically creating a situation from a trade agreement that was a threat to their identity and nationality, which is not the case, as you have outlined. We are now in the weekend of the Twelfth. Will you take the opportunity to condemn in totality any threat of violence or incitement to violence on the streets in the North?

Lord Frost: I do not agree with your characterisation of Brexit and how we got here and so on, but that is water under the bridge. Obviously, we do not want violence. Obviously, we condemn violence and condemn incitement to violence; that is wrong. We think that there should be calm and that the problems should be resolved politically, but the protests and so on that we see on the streets of Northern Ireland seem to me to be a manifestation of quite a lot of popular discontent about the protocol. Peaceful protest is a perfectly legitimate right in this country, and, where people do not support things, they protest about it. Obviously, nobody wants violence, nobody encourages that, and, absolutely, we do not in any way want to go back in that direction.

Ms Sheerin: For clarification of your reference to peaceful protests, we have had masked men on the streets. We have had threats of violence. We have had situations across parts of Belfast with vulnerable residents and elderly people asking for chicken wire to be put in front of their houses because of bonfires that, they are scared, will damage their homes. Will you condemn those who stand with loyalists on the street talking about violence over a protocol that, you have already acknowledged, does not change, much as I wish that it would, the constitutional position of the North of Ireland in the UK?

Lord Frost: As I understand it, it is illegal to commit acts of violence and to encourage others to do so, so obviously I condemn that. That is obvious.

Ms Sheerin: It was not to me. Thank you very much.

Mr Stalford: Thank you for your evidence. I appreciate that some may wish that those of us who oppose the protocol did not exist, but we do exist. We are one of the major political traditions in this place, and we deserve to be treated with respect, not dismissed as "doomsters" or "gloomsters". I am articulating the legitimately held concerns of my constituents.

How can you tell me that there has been no constitutional change in the status of Northern Ireland when laws made by foreign powers and implemented and overseen by foreign courts will apply here but not in the rest of the country of which I am a citizen? You describe that situation as "pretty unusual". It is not pretty unusual; it is a constitutional outrage.

Lord Frost: I have not got much to add to what I said, and I do not want anything I say to be interpreted as a comment on the ongoing legal proceedings. It would be wrong to prejudge those. All that I can do is repeat that the protocol is clear that it does not affect Northern Ireland's position as part of the UK or of the customs territory or of the internal market; that is on the face of the protocol, and that is the reality of the situation. As you say, a court case is going on on the subject, and this is not the right place to debate the legal arguments that will surface there in a very high forum relatively soon.

Mr Stalford: I will quote to you the noble lord, Lord Barwell, who recently said:

"It's tempting to believe that — despite all the warnings — the Government 'underestimated the effect of the protocol', but I'm pretty sure it's not true. They knew it was a bad deal but agreed it to get Brexit done, intending to wriggle out of it later."

Michael Gove negotiated a dog's breakfast of a deal, and you have been left to clean up the mess, have you not?

Lord Frost: I saw Lord Barwell's comments. Obviously, we intend to implement what we signed up to; it is the fact of implementation that is causing the problem. What we inherited from the previous Government and the previous negotiating team has been a significant part of the difficulty, and the reason that the protocol is shaped as it is is that we had a particular inheritance from the previous team, which could not — rightly, in my view — get its deal through Parliament. Unfortunately, we were not able to go back to scratch and do things a different way. The previous team are to a very large degree responsible for some of the infelicities in the protocol and the withdrawal agreement that we might be better without, but, unfortunately, we are where we are.

Mr Stalford: Why would applying systems designed for international trade to a highly integrated domestic market produce anything other than difficulties?

Lord Frost: That is exactly the problem. That is why the balancing provisions in the protocol are so important and why we put so much reliance on them when we agreed them. It is not an international border between Great Britain and Northern Ireland; the protocol is absolutely clear about that. It is a means of controlling goods for wider purposes. If you treat it as an international border with the normal implementation of the EU customs code, there will, obviously, be a problem. Goods do not move into Northern Ireland in containers on big ships; they come packaged up in small quantities in the back of HGVs. You have to have systems that are capable of dealing with that, and most international trade is not quite like that.

Mr Stalford: Do you accept that, for a country of our size and a border of that nature, the number of checks presently taking place is disproportionate and completely over the top?

Lord Frost: Of all the processes in the EU, 20% are taking place between Great Britain and Northern Ireland. Obviously, that makes no sense. It is because we are trying to apply rules designed for one situation to another situation. It makes no sense. We have to find a better way of doing it, in everybody's interest.

Mr Stalford: Do you think that the brutal and totally disproportionate implementation of border checks that you have mentioned is aimed at strong-arming the United Kingdom Government into an SPS agreement?

Lord Frost: The basic answer is no. No doubt, there are some in EU structures who still see things like that and have not moved on from the referendum. It is more that the EU comes to decisions laboriously and with great pain. It incorporates them in law and is then reluctant to move from them or reinvent them in ways that are tailored. To be honest, I think that we are more seeing those instincts than anything else. Obviously, there are probably a range of opinions on that question, if you ask EU officials.

Mr Stalford: One final point. I, like you, absolutely condemn violence or the threat of violence, and, unlike other parties, I always have done. When the DUP outlined its concerns about Theresa May's sea border, it was ignored. It has now outlined its concerns about Michael Gove's sea border. Why should the unionist community believe that you are listening to it now?

Lord Frost: Our actions show that we are listening to the concerns that, as far as we can tell, clearly exist about the way that this is working. I repeat: violence is wrong, and we condemn it. Encouraging violence is wrong, and we condemn it. The problems with the protocol that we face are political, economic and practical. Those problems should be resolved in that way, and that is what we are trying to do.

The Chairperson (Mr McGrath): That concludes the questions. Given the depth of the issue and the range of views in the room, we could probably talk all evening. We are often accused of not getting into enough depth in our questions, but, sometimes, in two or three questions, you do not get an opportunity to drill down into the level of detail that we would like. I hope that, on the back of that, we can meet you later in the year, virtually if needs be. If you are visiting again and it works, it would be useful to continue with that.

You have clarified a number of issues today. I hope that that can be amplified out into the community and that we maintain cool heads all around, especially at this time of year, to make sure that we do not see violence on our streets but that we see some settlement and practical outcomes from the negotiation that work for everyone.

Thank you very much for your attendance today, and we wish you all the best with your work.

Lord Frost: Thank you.

Mr Sheehan: Chair, may I make a very short contribution? It is not even a question. In relation to the tensions that are believed to exist here and the population being exercised about the protocol, several weeks ago, there was a protest against the Irish Sea border, and more press photographers turned up to the protest than protesters. That is an indication of how overblown the issue of tension in the community is. I hope to leave you with some facts on that.

The Chairperson (Mr McGrath): I thought that you were going to get an invitation to the West Belfast constituency for a tour, but it was a comment.

Lord Frost: Thank you. That is noted, and, of course, I am happy to try to find time later on in the year.

The Chairperson (Mr McGrath): Thank you.