

**Briefing note to The Scottish Parliament's Constitution, Europe, External Affairs and Culture
(CEEAC) Committee**

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Submission from Declan Billington (MBE, BSc (Hons), FCA, FLoD, ARAgS, Prof of Practice)

1. Relevant Background

- 1.1. I am CEO of John Thompson and Sons Limited – Northern Ireland's largest animal feed company.
- 1.2. I am former Chair and remain on the Executive of the following Northern Ireland Trade bodies.
 - CBI Northern Ireland
 - Northern Ireland Food and Drink Association
 - Northern Ireland Grain Trade Association
- 1.3. I am the current Chair of the Northern Ireland Poultry Industry Federation and I chair the CBI NI's Energy Working Group. I also represent the Northern Ireland Poultry Industry Federation on the Northern Ireland Business Brexit Working Group, an alliance of trade bodies in NI that engage with both the UK and EU on the Northern Ireland Protocol.
- 1.4. I was a member of DEXU's Alternative Arrangements Expert Working Group in 2020.

2. Context

3. This briefing note is produced from the perspective of Agri-food businesses and therefore focuses on the practical experiences of the implementation of the Protocol and on what has been learned from interaction with UK Government on the regulatory frameworks that are applied.

4. Dynamic alignment

- 4.1. We are still in the early days of the operation of the Protocol and of the mechanisms employed for dynamic alignment. However early observations indicate issues around timeliness of sharing of information on proposed legislative changes issued through the Joint Consultative Working Group "the JCWG" (one of the Joint Committees established under the Protocol) and of subsequent communication to affected businesses. I understand at the beginning there was a backlog of EU changes to be addressed but current experience has indicated poor communication is an early feature of the roll out of dynamic alignment. From observation it is unclear if this is as a result of the length of notice given by the EU to the UK or as a result of failure on the UK to rapidly disseminate within the relevant UK Departments (who are the respective Competent Authorities in respect of Northern Ireland) the changes notified by the EU and in turn for those relevant Departments to communicate the changes to Business.

4.2. In reality it is only by working through early post Brexit changes and their impacts are we able to refine the processes by which such changes are managed, communicated and implemented. By way of example in one early case study I noted the following:

- Short notice communication to the industry on changes and effective date for compliance. I was aware of changes in Ireland before the Business Community were made aware the same changes were applicable in Northern Ireland.
- Misalignment between how the areas open to interpretation of the legislative change were initially implemented between Ireland and Northern Ireland. (Now rectified)
- Disagreement between Industry and UKG on the applicability of the change on goods destined for the GB marketplace (discussions parked as I await the detail underpinning the Northern Ireland Protocol Bill).

4.3. More generally the business community also see issues of interpretation of EU law coming to the fore: -

- On understanding the application of EU Customs rules on the administrative processes used on for example import supplementary declarations – where UK and EU have given us two different views on what is required.
- On UK interpretation of application of EU rules and its interaction with UK Legislation.

The Agri food sector feels there is a need for a mechanism that involves business which allows for rapid determination of differences in interpretation as between UK and EU and as between Business and UK Departments seeking to interpret the application of EU law in Northern Ireland. In theory this is the role of the Joint Consultative Working Group (JCWG) set up under the Protocol, but in practice without the presence of business, who are at the sharp end of practical implementation, practical issues around clarification are not being anticipated or addressed in a timely manner. Nor is there a mechanism I am aware of for the Business community to refer concerns on interpretation to the JCWG.

4.4. I also note confusion on the UK side as to who is the Competent Authority in respect of implementing EU Regulations, with, in Agri-food, some falling to DEFRA and some falling to their devolved equivalent – DAERA (Department for Agriculture, Environment and Rural Affairs). Much of the foregoing are hopefully teething issues but it makes for a confusing regulatory environment within which business is expected to operate. The industry has asked for a map of the regulations attached to the Protocol to be cross referenced to the relevant Competent Authority in order to aid navigation of the regulatory framework.

5. Scrutiny of legislation that applies under the Protocol

5.1. The Business Community does not have visibility over the operation and performance of the Committees created under the Protocol and in particular of the JCWG, (the Committee established under the Protocol to review changes in EU legislation that impact on the operation of the Protocol and oversee their adoption if appropriate. It is worth noting that the Committee is made up of representatives of the UK Government and of the EU, but Northern Ireland officials are not included as part of the UK's delegation. I understand however that there may be observer status (to some degree) for Northern Ireland Officials.

5.2. Business is concerned at the lack of its ability to feed into the Committee practical concerns around implementation and indeed feels disadvantaged in that Northern Ireland, unlike other non-member states subject to EU law, is not consulted on prospective changes in EU legislation which will impact upon it. I understand there are EU proposals around stakeholder engagement for Northern Ireland Society and it remains to be seen if such issues can be addressed through this proposed mechanism.

6. Interaction of Protocol with UK Common Frameworks

6.1. It is still early days in terms of the operation of both the Protocol, its interactions with the UK Common Frameworks and more recently on the possible implications of the proposed Northern Ireland Protocol Bill. Initial observations and concerns are set out below:

6.2. UK Divergence from EU

- Within the Common Frameworks Ministers of devolved regions can raise objections to proposed UK changes, including divergence with EU, however if the UK risk assessment determines no risk, then, whilst devolved regions can in certain circumstances legislate in their own jurisdiction, they cannot bar goods conforming to a different standard circulating in the rest of GB from being sold in their devolved region. As most divergences in Agri-food are likely to be around driving down cost through application of technology (gene editing for example) it is likely that businesses operating in regions of the UK seeking to persevere alignment with EU may find themselves less competitive selling into the GB marketplace.
- Reflecting on the UK's approach to risk assessments I understand the UK is moving to a risk-based approach for assessing changes to existing standards whereas the EU will continue to operate under the "precautionary principle." It is under the risk-based approach that such things as growth promoters are used in US livestock. Whilst I do not anticipate the UK moving quickly to approve growth promoters, over time and with the roll out of international trade agreements with countries that do, it is hard to see how the UK risk-based approach can arrive at a different conclusion than that of the US. This in turn may likely impact on UK food exports to the EU as a result of the heightened risk of, (by EU standards), non-conforming goods circulating in GB or the UK single market finding their way into the export channel to the EU.

6.3. EU Divergence from the UK.

- This is perhaps the biggest challenge, again a region of the UK may wish to follow the divergence but cannot object to goods of a different standard sold in other parts the UK single market from being traded into its territory. Thus, Europe will remain concerned around the dual standards that will exist in the marketplace from which goods exported to Europe are sourced.

6.4. The implications of the above are that whilst a region of the UK may wish to continue to align with EU practice, the fact that goods that have diverged on EU standards are freely circulating within a devolved regions Authority may place greater checks and burdens on that region's exports to the EU regardless of the standards it is adhering to. Further, working to a different and perhaps more expensive standards for production in that devolved region may negatively impact

on those businesses competitive position within the UK internal market unless the standards it works to commands a price premium.

7. Ramifications of the Brexit Freedoms Bill

7.1. Whilst the direct intention of the Brexit freedoms Bill is to reduce regulatory burden for business (quoted at £1bn pa) there are likely to be negative implications for those businesses exporting to the EU:

- Simplifications or easements on the regulatory framework of inspection / certification may undermine the assurances those systems provide for goods sold into the export markets of Europe and whilst one could argue those businesses could continue to operate to the EU standards (the dual regulatory approach), if their supply chains do not, those businesses will find it challenging to give the level of assurance needed for certification that processed goods meet EU requirements.

8. Conclusion

8.1. We are still in the early stages of bedding down our new regulatory framework and a number of the challenges currently faced are likely to be addressed over time as we work our way through real life examples and take learnings from them. However, in the years to come divergence at a UK level with Europe is likely to place additional burdens on UK trade with the EU regardless of the desires of individual devolved regions to minimise those divergences.