

TECHNICAL EXPLANATORY NOTE: ARTICLES 6-8 OF THE PROTOCOL ON NORTHERN IRELAND

This technical note reflects discussions between the UK and EU as to how Articles 6 to 8 of the Protocol would operate in any scenario in which the provisions came into effect.

1. The provisions within the Protocol are intended to apply only in the scenario where, at the end of the transition period, the parties have not yet established arrangements under their future relationship which would address the unique circumstances on the island of Ireland, avoid a hard border and protect the 1998 Belfast Agreement in all its dimensions. Both parties are committed to using their best endeavours to reaching an agreement which would supersede the Protocol in whole or in part by the end of December 2020.
2. In any circumstances in which it would be required, Article 6 of the Protocol establishes a single UK-EU customs territory, with the details of its operation to be codified by the UK-EU Joint Committee. Accordingly, Northern Ireland is part of the same customs territory as Great Britain with no tariffs, quotas, or checks on rules of origin between Great Britain and Northern Ireland. The UK will represent itself, including Northern Ireland, at the WTO.
3. Articles 6-7 also sets out provisions related to Northern Ireland specific regulatory alignment in order to avoid a hard border on the island of Ireland and to ensure that Northern Ireland businesses can place products on the EU Single Market without restriction. The application of the Union Customs Code in Northern Ireland is necessary since the UCC covers all provisions for a good to be released for free circulation in the EU. These include all of the overarching requirements for regulatory compliance. Once a good has completed such formalities it can be considered a 'Union good' and in free circulation.
4. Both parties agree that the practical operationalisation of such a regime, in the event that this came in to effect, would clearly require further work and discussion between the UK and the EU, and would be informed by the overall relationship between the UK and the EU at that stage. Article 7(2) is clear that, in administering these arrangements, the parties should use their best endeavours to seek to facilitate trade between Great Britain and Northern Ireland. With that in mind there are a number of principles that both the UK and the EU agree:
 - a. Nothing in the Protocol prevents unfettered market access for Northern Ireland products in Great Britain.
 - b. There will be no tariffs, quotas, or checks on rules of origin between Great Britain and Northern Ireland.
 - c. For the movement of industrial goods from Great Britain to Northern Ireland, except in cases of interception on the basis of risk, checks can mostly be undertaken on the market or at a traders' premises by relevant authorities. Such checks will always be carried out by UK authorities.

- d. Noting the island of Ireland's status as a single epidemiological area, existing checks at ports and airports, and the licensing regime in operation for the movement of agricultural products from Great Britain to Northern Ireland, will provide a platform for continued protection of animal and public health. It is recognised in particular, though, that access without restriction to the EU Single Market for Northern Ireland business necessitates an increased proportion of checks on live animals and on products of animal origin given the relevant regulatory requirements, although the objectives in Article 7(2) shall be taken into account by the Joint Committee to determine the practical arrangements for administering relevant controls. In that respect, the regulatory regimes in the UK and the EU, and their practical implementation, will be taken into account. Relevant checks would always be carried out by UK or Northern Ireland authorities as is the case now.
 - e. The operational regime would ensure that relevant information will be provided on goods moving from Great Britain to Northern Ireland through appropriate declarations, in order to provide for risk-based approach to assessment and checks.
 - f. Ensuring Northern Ireland continues to be able to operate the EU's VIES system to share data with Ireland will require alignment with EU VAT rules with respect to goods, and therefore the information declaration requirement referred to above will be necessary for VAT purposes. However, Northern Ireland will remain part of the UK's VAT area; with HMRC responsible for operation and collection of VAT, and for the setting of VAT rates, across the UK in line with the Northern Ireland Act 1998. Specifically, the UK will ensure that no registered business is required to pay VAT upfront when moving goods between Great Britain and Northern Ireland, and that accounting for VAT can continue to be done through postponed accounting and UK VAT returns.
5. There are different potential approaches that could be adopted to give effect to these Articles. For example, the European Commission has proposed that transit procedures currently operating for some movements of goods within the European Union would allow goods to move smoothly from Great Britain to Northern Ireland in a way that facilitates trade and business (see for example, the infographic which the European Commission has published). Both parties note that it would be for the United Kingdom or Northern Ireland authorities as appropriate to operate this system.
6. The text also contains several key protections for Northern Ireland businesses while maintaining the integrity of the EU and UK internal markets. For example, it provides (at Article 8(1)) that UK authorities can approve and authorise the placing of goods onto the market throughout the UK, including in Northern Ireland where products meet the applicable regulatory standards. It also sets out (at Article 7(3)) that nothing in the text prevents a product originating from Northern Ireland as being considered as a UK good when placed on the market in Great Britain. And at Article 7(4) it makes clear that the placing of non-harmonised goods onto the whole of the UK market continues to be a matter for UK authorities.
7. Both parties therefore believe that the backstop protects both the EU single market and the UK internal market without prejudice to the future UK-EU relationship, as set out in the December Joint UK-EU Report, and respecting the overarching requirement to avoid a hard border.