

The Northern Ireland and Ireland Protocol ^[1]



The Northern Irish Protocol aims to avoid the introduction of a hard border on the island of Ireland in the event that there is no deal. It is a crucial part of the [November Draft Withdrawal Agreement](#) ^[2].

The table below describes some of the key provisions in the Protocol that would apply – either to the UK as a whole or Northern Ireland specifically – if it came into force.

Area

Common Travel Area

What the draft Withdrawal Agreement says

The UK commits to ensuring that all the rights and privileges contained in the Common Travel Area (CTA) between Ireland, the EU and the UK are upheld.

What it means

The CTA allows free movement of British and Irish citizens between the UK, Ireland, the Channel Islands and the Isle of Man and provides access to various government services in each country. This also comes with certain rights for family members. The CTA does not provide any rights to travel to the rest of the EU.

Single customs territory

What the draft Withdrawal Agreement says

A single customs territory between the EU and the UK will come into force if there is no deal by December 2020 and the transition period has not been extended. The UK has to maintain the EU's common external tariff on third countries.

There would be no tariffs or quotas for goods traded between the UK and EU, and no need for proof of origin.

Northern Ireland would be part of the same customs territory as Great Britain, but unlike Great Britain would have to apply EU customs law as set out in the Union's Customs Code.

Fisheries are excluded from the customs territory, pending an agreement on fishing rights before the end of the transition.

What it means

Fisheries have been excluded as other EU members have been reluctant to concede tariff-free market access for UK fish without an agreement on rights to fish in UK waters once the UK has left the Common Fisheries Policy. This could prove difficult to negotiate.

'Level playing field'

What the draft Withdrawal Agreement says

The UK, including Northern Ireland, and the EU commit to ensuring a level playing field covering taxation, environmental protection, labour and social standards, and state aid and competition policy, on a UK-wide basis.

The UK will align with future EU changes to competition and state aid rules. The commitment on environmental protection, and social and labour standards, is not to lower them – so-called "non-regression". The UK commits to the EU's principles on good governance on tax.

The Joint Committee of the overarching Withdrawal Agreement would may amend the commitments to set higher standards in future, if both sides agreed.

Independent bodies will oversee the UK's commitments, working in co-operation with the EU Commission (see Enforcement and Supervision below).

What it means

The EU has insisted on conditions to prevent the UK, as part of the UK–EU customs territory, engaging in unfair competition. The commitments are strongest on state aid and competition, where the UK will stay aligned with EU rules (something the Prime Minister envisaged in her Chequers white paper, which also accepted the principle of non-regression on social and environment standards).

See below on enforcement and supervision arrangements.

Regulation

Northern Ireland will also be obliged to align with specific EU rules.

What the draft Withdrawal Agreement says

In particular, it will have to stick to the rules of the EU's Single Market in areas such as technical regulation of goods, agricultural and environmental production and regulation, state aid and other areas of North-South cooperation between Northern Ireland and the Republic. It will also be included within parts of EU VAT and excise regimes.

Northern Ireland will also remain part of the EU's Single Electricity Market.

What it means

In order to avoid the need for regulatory checks in Ireland, Northern Ireland will have to stay in line with some Single market rules. As the rest of Britain could diverge, there will need to be some checks on goods moving from Great Britain to Northern Ireland, but both sides agree to look at ways of easing the compliance burden.

These sort of rules were the ones the PM envisaged in including in her proposed "common rulebook" which the EU has not agreed for the UK. But Northern Ireland would become an EU rules taker.

Enforcement and supervision

Northern Ireland's compliance with EU rules is enforced by the European Commission and the European Court of Justice.

What the draft Withdrawal Agreement says

Great Britain's compliance with the level playing field commitments is enforced by UK domestic authorities but with a developed oversight role for the Commission. The EU also retains the right to apply tariffs to UK goods if it deems that the UK is not living up to its commitments on the customs territory.

UK authorities enforce regulatory checks on trade between GB and NI.

What it means

The UK has conceded a strong role for the Commission and the ECJ in Northern Ireland and given the Commission wide-ranging rights to ask for information and intervene in the way UK enforcement bodies are acting. Most notably in the area of state aid, the Commission can bring legal cases to UK courts – which is not usually a feature of international agreements.

Exiting the backstop

What the draft Withdrawal Agreement says

The UK or EU can at any time notify the other party that the protocol should, in whole or in part, cease to apply. Within six months of the notification the Joint Committee will meet at ministerial level to consider the notification. The committee can seek an opinion from the institutions set out in the Belfast/Good Friday agreement of 1998.

What it means

The UK cannot unilaterally leave the backstop – but can propose it to the Joint Committee. If the committee does not agree (for example because it does not think that the future trade relationship avoids the need for a hard border in Ireland), it can decide against. There is an option to refer the decision to joint UK–Republic of Ireland institutions.

Area	What the draft Withdrawal Agreement says	What it means
Common Travel Area	<p>The UK commits to ensuring that all the rights and privileges contained in the Common Travel Area (CTA) between Ireland, the EU and the UK are upheld.</p> <p>A single customs territory between the EU and the UK will come into force if there is no deal by December 2020 and the transition period has not been extended. The UK has to maintain the EU's common external tariff on third countries.</p>	<p>The CTA allows free movement of British and Irish citizens between the UK, Ireland, the Channel Islands and the Isle of Man and provides access to various government services in each country. This also comes with certain rights for family members. The CTA does not provide any rights to travel to the rest of the EU.</p>
Single customs territory	<p>There would be no tariffs or quotas for goods traded between the UK and EU, and no need for proof of origin.</p> <p>Northern Ireland would be part of the same customs territory as Great Britain, but unlike Great Britain would have to apply EU customs law as set out in the Union's Customs Code.</p> <p>Fisheries are excluded from the customs territory, pending an agreement on fishing rights before the end of the transition.</p> <p>The UK, including Northern Ireland, and the EU commit to ensuring a level playing field covering taxation, environmental protection, labour and social standards, and state aid and competition policy, on a UK-wide basis.</p> <p>The UK will align with future EU changes to competition and state aid rules. The commitment on environmental protection, and social and labour standards, is not to lower them – so-called “non-regression”. The UK commits</p>	<p>Fisheries have been excluded as other EU members have been reluctant to concede tariff-free market access for UK fish without an agreement on rights to fish in UK waters once the UK has left the Common Fisheries Policy. This could prove difficult to negotiate.</p> <p>The EU has insisted on conditions to prevent the UK, as part of the UK–EU customs territory, engaging in unfair competition. The commitments are strongest on state aid and competition, where the UK will stay aligned with EU rules (something the Prime Minister envisaged in her</p>
'Level playing field'		

Area	<p>to the EU's principles on</p> <p>What the draft Withdrawal Agreement says</p> <p>The Joint Committee of the Agreement would may amend the commitments to set higher standards in future, if both sides agreed.</p> <p>Independent bodies will oversee the UK's commitments, working in co-operation with the EU Commission (see Enforcement and Supervision below).</p>	<p>Chequers white paper, which also accepted the principle of non-regression on social and environment standards).</p> <p>What it means</p> <p>See below on enforcement and supervision arrangements.</p>
<p>Regulation</p>	<p>Northern Ireland will also be obliged to align with specific EU rules.</p> <p>In particular, it will have to stick to the rules of the EU's Single Market in areas such as technical regulation of goods, agricultural and environmental production and regulation, state aid and other areas of North-South cooperation between Northern Ireland and the Republic. It will also be included within parts of EU VAT and excise regimes.</p> <p>Northern Ireland will also remain part of the EU's Single Electricity Market.</p>	<p>In order to avoid the need for regulatory checks in Ireland, Northern Ireland will have to stay in line with some Single market rules. As the rest of Britain could diverge, there will need to be some checks on goods moving from Great Britain to Northern Ireland, but both sides agree to look at ways of easing the compliance burden.</p> <p>These sort of rules were the ones the PM envisaged in including in her proposed "common rulebook" which the EU has not agreed for the UK. But Northern Ireland would become an EU rules taker.</p>
<p>Enforcement and supervision</p>	<p>Northern Ireland's compliance with EU rules is enforced by the European Commission and the European Court of Justice.</p> <p>Great Britain's compliance with the level playing field commitments is enforced by UK domestic authorities but with a developed oversight role for the Commission. The EU also retains the right to apply tariffs to UK goods if it deems that the UK is not living up to its commitments on the customs territory.</p> <p>UK authorities enforce regulatory checks on trade between GB and NI.</p> <p>The UK or EU can at any time notify the other party that the protocol should, in whole or</p>	<p>The UK has conceded a strong role for the Commission and the ECJ in Northern Ireland and given the Commission wide-ranging rights to ask for information and intervene in the way UK enforcement bodies are acting. Most notably in the area of state aid, the Commission can bring legal cases to UK courts – which is not usually a feature of international agreements.</p> <p>The UK cannot unilaterally leave the backstop – but can propose it</p>

Writing the backstop

in part, cease to apply. Within
What the draft Withdrawal Agreement says
of the notification the Joint Committee will meet at ministerial level to consider the notification. The committee can seek an opinion from the institutions set out in the Belfast/Good Friday agreement of 1998.

to the Joint Committee. If the committee does not agree (for example because it does not think that the future trade relationship avoids the need for a hard border in Ireland), it can decide against.
What it means
There is an option to refer the decision to joint UK–Republic of Ireland institutions.

Update date:

Thursday, November 15, 2018

Copyright 2018 Institute for Government | [Home](#) | [Privacy](#) | [Accessibility](#) | [Site map](#) | [Contact](#) | [Work for us](#)

The Institute is a company limited by guarantee registered in England and Wales No. 6480524 Registered Charity No. 1123926

Links

[1] <https://www.instituteforgovernment.org.uk/explainers/northern-ireland-ireland-protocol-brexit>

[2] <https://www.instituteforgovernment.org.uk/explainers/draft-brexit-withdrawal-agreement-november>