

Brexit deal: the Northern 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 a no-deal Brexit. It is a crucial part of the [draft Withdrawal Agreement](#) ^[2].

The table below describes some of the key provisions in the protocol that would apply if it came into force and how it differs to the previous version of the deal agreed by Theresa May's government.

What does it say?

Common Travel Area

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

What does it mean?

The Common Travel Area 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 Common Travel Area does not provide any rights to travel to the rest of the EU.

What has changed from Theresa May's deal?

Nothing has changed.

The UK customs territory

Northern Ireland is part of the customs territory of the United Kingdom. It would be included in any future agreements with third countries.

What does it mean?

Northern Ireland will remain part of the UK's customs territory. That means that if the UK signs a free trade with another country, Northern Irish goods would be included as part of that agreement.

What has changed from Theresa May's deal?

In the previous protocol, there would have been a customs union between Great Britain and the EU, with Northern Ireland in the EU's customs territory. It means the whole of the UK and EU would have a common external tariff.

Now the whole of the UK will manage its own tariffs and will be able to sign agreements to lower them, which would include Northern Ireland.

In addition, the EU and the UK will be able to levy safeguard measures against each other and other countries in the event of unfair trade.

Customs, movement of goods

For Northern Ireland–Republic of Ireland trade, the EU’s Union Customs Code (customs rules) apply and there would be no tariffs or restrictions.

Goods moving directly from Great Britain to Northern Ireland won’t be subject to a tariff unless the good is “at risk” of being moved into the EU afterwards. Likewise, goods from third countries entering Northern Ireland will be subject to the UK tariff, unless they are at risk of being moved to the EU.

For goods deemed “at risk”, the EU tariff will be applied. If the UK tariff is lower, and those goods are proved to have stayed in Northern Ireland, the UK can reimburse traders.

The Joint Committee will establish further conditions under which goods coming into Northern Ireland from Great Britain would have to pay the EU tariff.

No duties will be paid on personal baggage and goods of “negligible value”, which will be defined by the Joint Committee.

While Northern Ireland will remain part of the customs territory of the UK, customs checks and controls will apply for goods moving from Great Britain to Northern Ireland. That ensures no customs checks or controls are required between Northern Ireland and the Republic.

What does it mean?

The deal sets out the conditions under which goods can move tariff-free between Great Britain and Northern Ireland and at the same time move without customs controls between Northern Ireland and the Republic.

The Joint Committee will decide on detailed criteria for what goods are “at risk” of being shipped on to the EU and will therefore have to pay the EU tariff. The definition of “at risk”, which will be agreed during the transition, will determine the volume of GB–NI trade where checks are required.

What has changed from Theresa May’s deal?

The dual tariff regime has replaced the customs union in the original backstop.

This would introduce customs checks between GB and NI, whereas the previous deal included a customs union so there was no need for tariffs or rules of origin checks.

Northern Ireland will still be subject to most of the EU’s customs rules as in the 2018 protocol.

Regulation

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

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 co-operation between Northern Ireland and the Republic of Ireland.

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

Northern Ireland would need to automatically adopt any changes to these regulations made by the EU. New areas of regulation can be added to the protocol through agreement at the Joint Committee.

In order to avoid the need for regulatory checks in Ireland, Northern Ireland will have to stay in line with some Single Market rules for goods, including the level playing field.

What does it mean?

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.

For goods like agri-food, these checks are likely to be significant – although some checks already take place.

What has changed from Theresa May's deal?

Nothing has changed.

VAT and excise in Northern Ireland

Northern Ireland will remain in the UK VAT area, but in full alignment with EU VAT laws and will have access to the EU's IT system.

Reduced rates for VAT that apply in Ireland may be applied to Northern Ireland. The UK will keep revenue accrued from VAT in Northern Ireland.

UK authorities will be responsible for implementing EU law in this area. It will remain subject to the European Court of Justice.

What does it mean?

Importers have to pay VAT on UK goods when they enter the EU, which could have prompted the need for border checks between Northern Ireland and the Republic of Ireland.

To solve this, Northern Ireland will remain part of the EU's IT systems and will be subject to EU law on VAT – though the UK will be responsible for implementing those rules.

What has changed from Theresa May's deal?

There are no major changes to the original approach.

Enforcement and supervision

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

EU institutions will also enforce arrangements relating to customs in Northern Ireland.

What does it mean?

The UK has agreed that the European Commission and the European Court of Justice will have jurisdiction to enforce EU rules in Northern Ireland. However, UK bodies will often be tasked with enforcement duties on the ground.

The European Commission will have wide-ranging rights to ask for information and intervene in the way UK enforcement bodies are acting.

What has changed from Theresa May's deal?

The role of EU institutions and enforcement bodies is the same as the original protocol – they have the same status under EU law in member states as they do in Northern Ireland.

However, references to the level playing field arrangements for Great Britain have largely been removed as it will not be in a customs union with the EU.

Consent and exit mechanism

Four years after the end of the transition period, the UK must provide Northern Ireland with the opportunity to give consent to the trade elements of the protocol. The UK will

unilaterally determine the exact process for decision making.

The Northern Ireland Assembly will periodically vote on whether to consent to the continued operation of the protocol for as long as it remains in force. The frequency of the vote will depend on how the decision is made.

If a decision is made on the basis of a simple majority in the Assembly, the Assembly will have the opportunity to vote again four years later. If a decision is made on a cross-community basis - either a majority of members and a majority of both communities, or 60% of members and 40% of unionists and nationalists - then the Assembly will not vote again for eight years.

If consent is withheld at any point, the arrangements will cease to apply two years later. In this circumstance, Joint Committee will make recommendations to the UK and the EU on how to protect the Good Friday Agreement.

The consent article will periodically give the Northern Ireland institutions the opportunity to reject the protocol. If the Assembly vote against it, it will cease to apply two years later.

What does it mean?

The agreement itself does not specify the decision-making process; this is specified in the accompanying UK declaration. The declaration states that the Assembly will vote on a motion that the protocol will continue to apply and that the exact wording will be proposed by the first minister and deputy first minister, unless they fail to do so.

It also states that consent will be provided by simple majority. It is not clear if a petition of concern - which could give one community a veto - could be triggered on the decision, or whether UK legislation will override normal Assembly procedures.

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This is a new article and gives Northern Ireland the potential exit from the protocol, something that was not in the previous deal.

Theresa May proposed to give the Northern Ireland Assembly a vote on NI-GB divergence in areas covered by the Northern Ireland protocol in the previous version of the Withdrawal Agreement. But these arrangements were to be codified in UK law, rather than in the Withdrawal Agreement itself.

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