
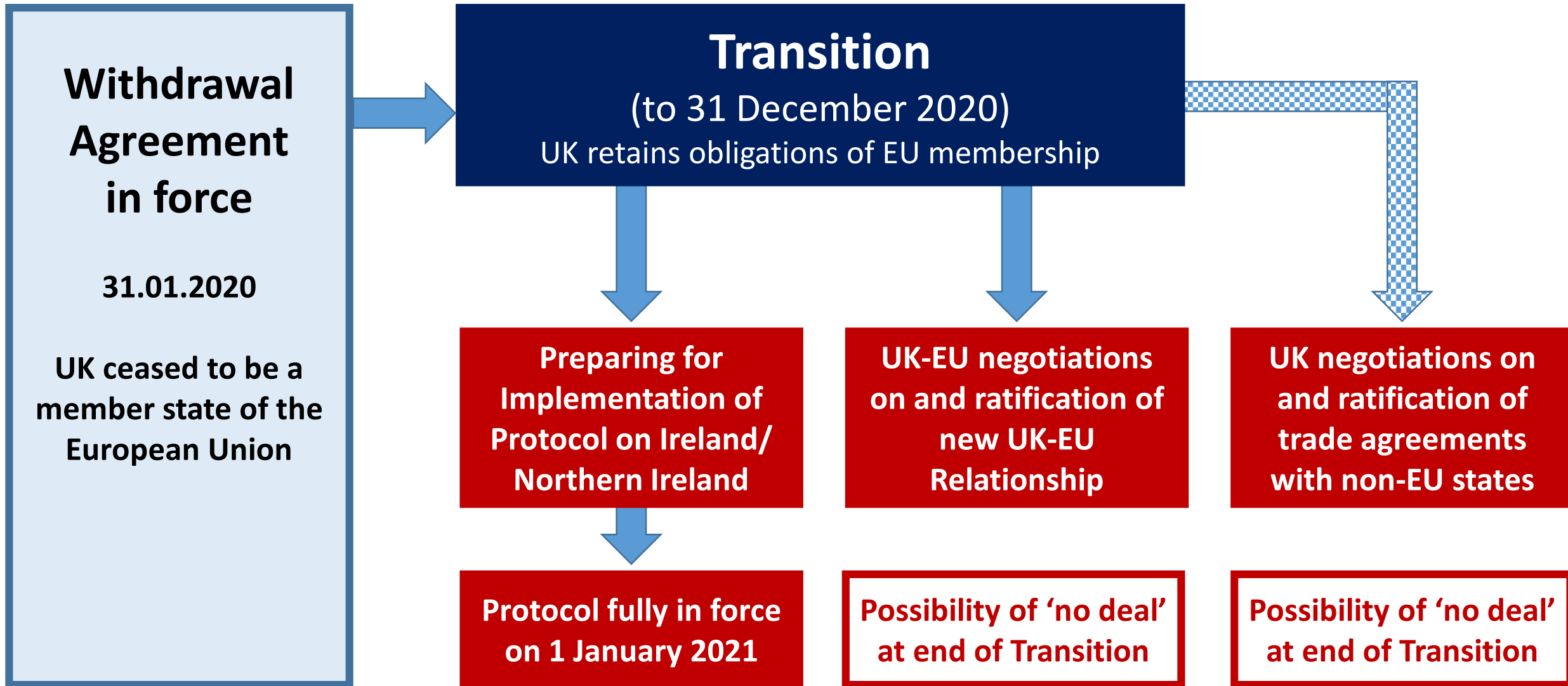


Brexit: where are we... with 100 days of transition to go?



Prof David Phinnemore (@DPhinnemore)

Brexit... now the UK has left the EU



Implementing the Protocol

Engagement

- Joint Committee – two meetings **and one extraordinary meeting; next meeting on 28 September**
- Specialized Committee – two meetings
- Joint Consultative Working Group – **still to be established**

Decisions Pending

- Criteria for 'at risk' goods and exemptions from tariffs
- Levels of permissible agricultural support
- Fish products exempt from tariffs
- Monitoring arrangements

UK implementation

- *The UK's Approach to the Northern Ireland Protocol* (20 May) – assurances on commitments, but **very little detail around implementation**
- *Moving goods under the Northern Ireland Protocol* (7 August) – **partially addresses operational detail for GB-NI movements**; Trader Support Service
- *UK Internal Market Bill* (9 September) – unfettered access... and **'safety net' provisions allowing UK minister to disapply/modify NI-GB exit procedures and to interpret Article 10 (state aids) and disapply or modify its effect**
- Finance bill (expected October/November) – **UK minister to determine criteria for GB-NI goods 'at risk' of onward movement into the EU internal market and so subject to applicable tariffs**

Reaction

- Breach of obligations in jointly agreed Protocol/WA
- Trust in UK to implement treaty obligations?
- Parliamentary lock on 'safety net' powers
- EU insists on removal of offending UKIM bill clauses
- Legal remedies that EU 'will not be shy in using'

UK-EU Negotiations on Future Partnership

8th Round of Negotiations

(8-10 September)

- EU: 'the UK has not engaged in a reciprocal way on fundamental EU principles and interests. Significant differences remain in areas of essential interest for the EU'
- UK: 'These were useful exchanges. However, a number of challenging areas remain and the divergences on some are still significant'

Outstanding Issues

State Aid

Level Playing Field

Fisheries

Governance

Key Dates - 2020

~~24.09 Special European Council (to 25.09)~~
28.09 Ninth round of negotiations (to 02.10)
28.09 Joint Committee
01.10 Special European Council (to 02.10)
15.10 UK government 'deadline' for deal
15.10 European Council (to 16.10)
31.10 EU 'deadline' for deal
14.12 Final EP plenary of 2020 (to 16.12)
31.12 Transition Period ends

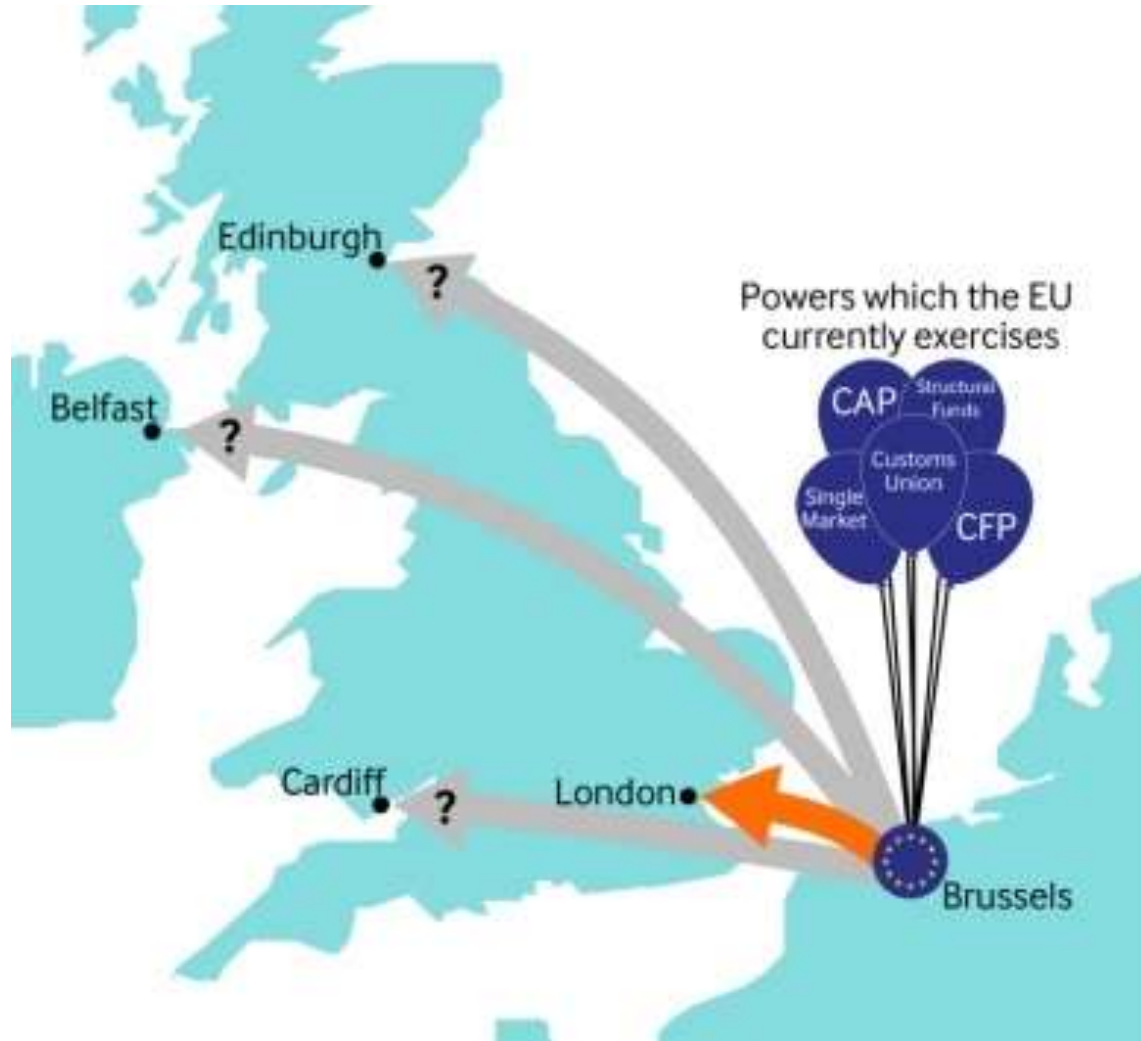
Power Surge or Power Grab? The Internal Market Bill and Devolution

Dr Viviane Gravey (@VGravey)

The Bill and its principles

- **Mutual recognition:**
 - S2: If a product is authorized for use/sale in one part (whether produced *or imported*), then it can be sold anywhere else free from any 'relevant requirements'.
 - S2 and S3: Relevant requirements are very broadly interpreted, e.g. environmental, production, labelling, or food characteristics criteria and generally no exemptions/justifications found here.
 - Applies to *new* requirements.
 - Schedule 1 provides for exclusions in very limited circumstances: where threat to human, animal or plant health, e.g. where pest or disease and unsafe.
- **Non-discrimination:**
 - S5-8. Similar approach, with some variations, e.g. regarding indirect discrimination (s8(6)).

Power Surge?



“ there is no power grab; this is a power surge. We are ensuring that all devolved policy areas stay devolved, and additional powers are returning to the devolved Administrations.”

[Alok Sharma, 16.07.2020](#)

Power Grab?

Less subsidiarity

- Fewer exceptions to Internal Market Principles
- Centralisation of financial assistance power

Skewed institutional power balance

- Who sets the norm, who diverges?

Skewed market power balance

- Who can afford to diverge?
- Whose rules matter?

Practical examples

Internal Market Principles & devolved competences

Mutual recognition



Minimum Alcohol
Pricing



Single Use Plastic
ban



Chlorinated
chicken



GMOs

Old v. New
policy

Produced v
Imported

Non discrimination



Short supply chains

Direct or
Indirect?

Conclusions

Devolved competences at risk

- Hollowed out powers ?
- Centralisation of funding?
- Incentives for harmonisation?
- Inclusive trade policy even more urgent

What about NI?

- Insulated from *some* of these changes
- Affected by others
- Competitive disadvantage, or badge of quality?



The NI/IRL Protocol: still signs of life?



Prof Katy Hayward (@hayward_katy)

The UK Internal Market Bill: And the Protocol

PART 5

NORTHERN IRELAND PROTOCOL

Northern Ireland's place in the UK internal market and customs territory

40 Northern Ireland's place in the UK internal market and customs territory

Unfettered access

41 Unfettered access to UK internal market for Northern Ireland goods

42 Power to disapply or modify export declarations and other exit procedures

Notifications under Article 10 of the Northern Ireland Protocol

43 Regulations about Article 10 of the Northern Ireland Protocol

44 Notification of State aid for the purposes of the Northern Ireland Protocol

Certain provisions to have effect notwithstanding inconsistency or incompatibility with international or other domestic law

45 Further provision related to sections 42 and 43 etc

- **Key points:**

- Not about GB to NI
- To legislate for unfettered access
- Powers for the Secretary of State: affirmative procedure to be used
- Neill amendment: 'Parliamentary lock'

The UK Internal Market Bill:

‘specific and limited ways’ of law breaking

Certain provisions to have effect notwithstanding inconsistency or incompatibility with international or other domestic law

45	Further provision related to sections 42 and 43 etc	25
(1)	The following have effect notwithstanding any relevant international or domestic law with which they may be incompatible or inconsistent –	
(a)	section 42;	
(b)	any regulations made under section 42(1);	
(c)	section 43;	30
(d)	any regulations made under section 43(1);	
(e)	this section;	
(f)	any other provision of this Act so far as relating to the provisions in paragraphs (a) to (e).	
(2)	Accordingly (among other things) –	35
(a)	regulations under section 42(1) or 43(1) are not to be regarded as unlawful on the grounds of any incompatibility or inconsistency with relevant international or domestic law;	
(b)	all rights, powers, liabilities, obligations, restrictions, remedies and procedures which are, in accordance with section 7A of the European Union (Withdrawal) Act 2018, to be recognised and available in domestic law, and enforced, allowed and followed accordingly, cease to be recognised and available in domestic law, or enforced, allowed and followed, so far and for as long as they are incompatible or	40

• Is it a safety net?

Article 16 Safeguards

1. If the application of this Protocol leads to serious economic, societal or environmental difficulties that are liable to persist, or to diversion of trade, the Union or the United Kingdom may unilaterally take appropriate safeguard measures. Such safeguard measures shall be restricted with regard to their scope and duration to what is strictly necessary in order to remedy the situation. Priority shall be given to such measures as will least disturb the functioning of this Protocol.

UK Internal Market Bill – EU Reaction

Extraordinary UK-EU Joint Committee

(10 September)

Commission Statement

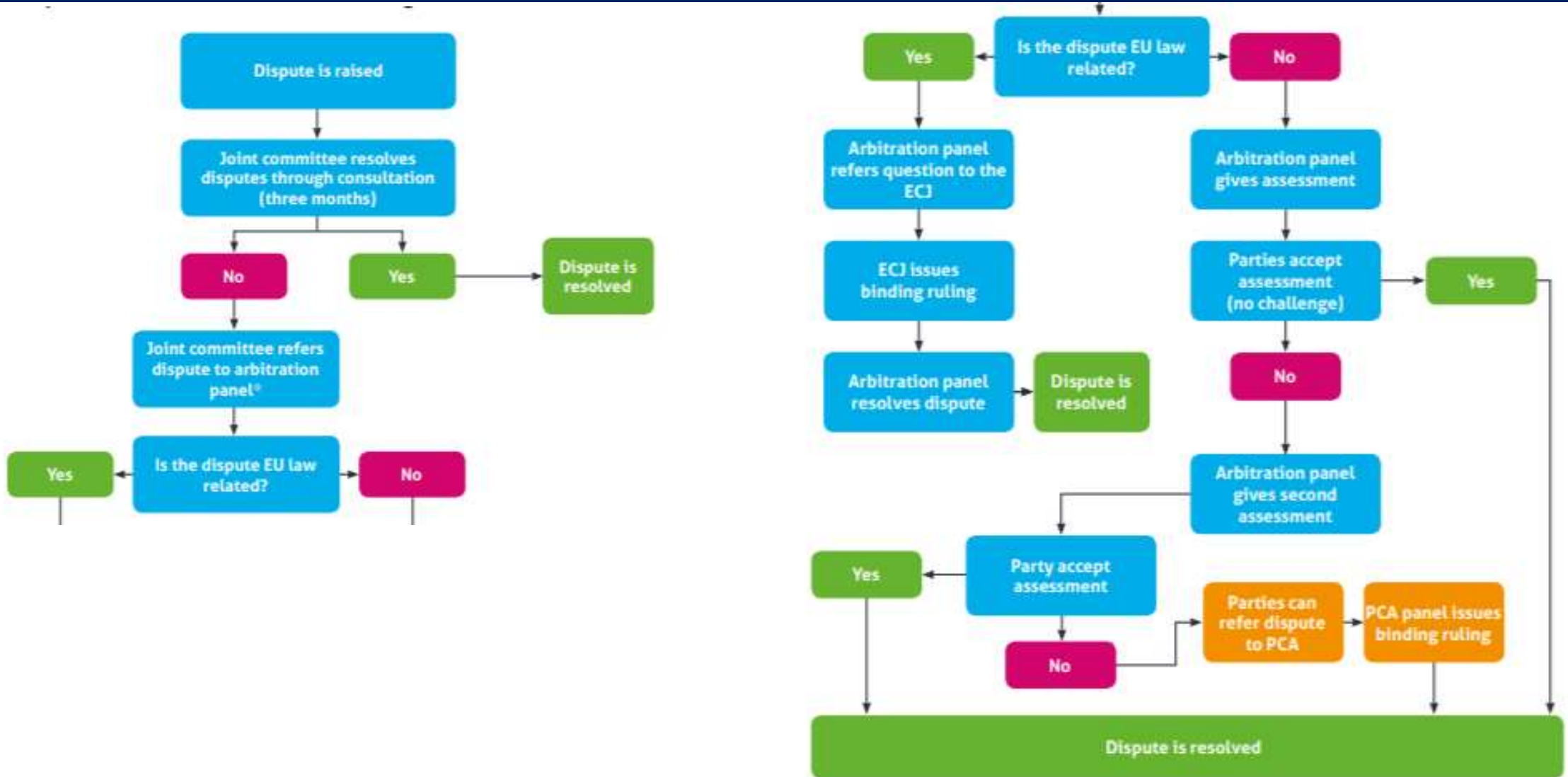
“the timely and full implementation of the Withdrawal Agreement is a legal obligation. The [EU] the letter and spirit... to be fully respected. Violating the terms... would break international law, undermine trust and put at risk the ongoing future relationship negotiations.”

...

“Šefčovič called on the UK government to withdraw these measures from the draft Bill in the shortest time possible and in any case by the end of the month. He stated that by putting forward this Bill, the UK has seriously damaged trust between the EU and the UK. It is now up to the UK government to re-establish that trust.”

“He reminded the UK government that the Withdrawal Agreement contains a number of mechanisms and legal remedies to address violations of the legal obligations contained in the text – which the European Union will not be shy in using.”

Dispute settlement under the Withdrawal Agmt



Source: Institute for Government analysis. PCA = Permanent Court of Arbitration. If, after three months of receiving the formal request to put together an arbitration panel, the UK and EU still have not agreed the five members they should appoint to it, they can ask the PCA to put together a panel.

Moving Goods under the NI Protocol, 7 Aug 2020

What we are waiting for guidance/information on & *Where decisions primarily need to be made before this can be issued*

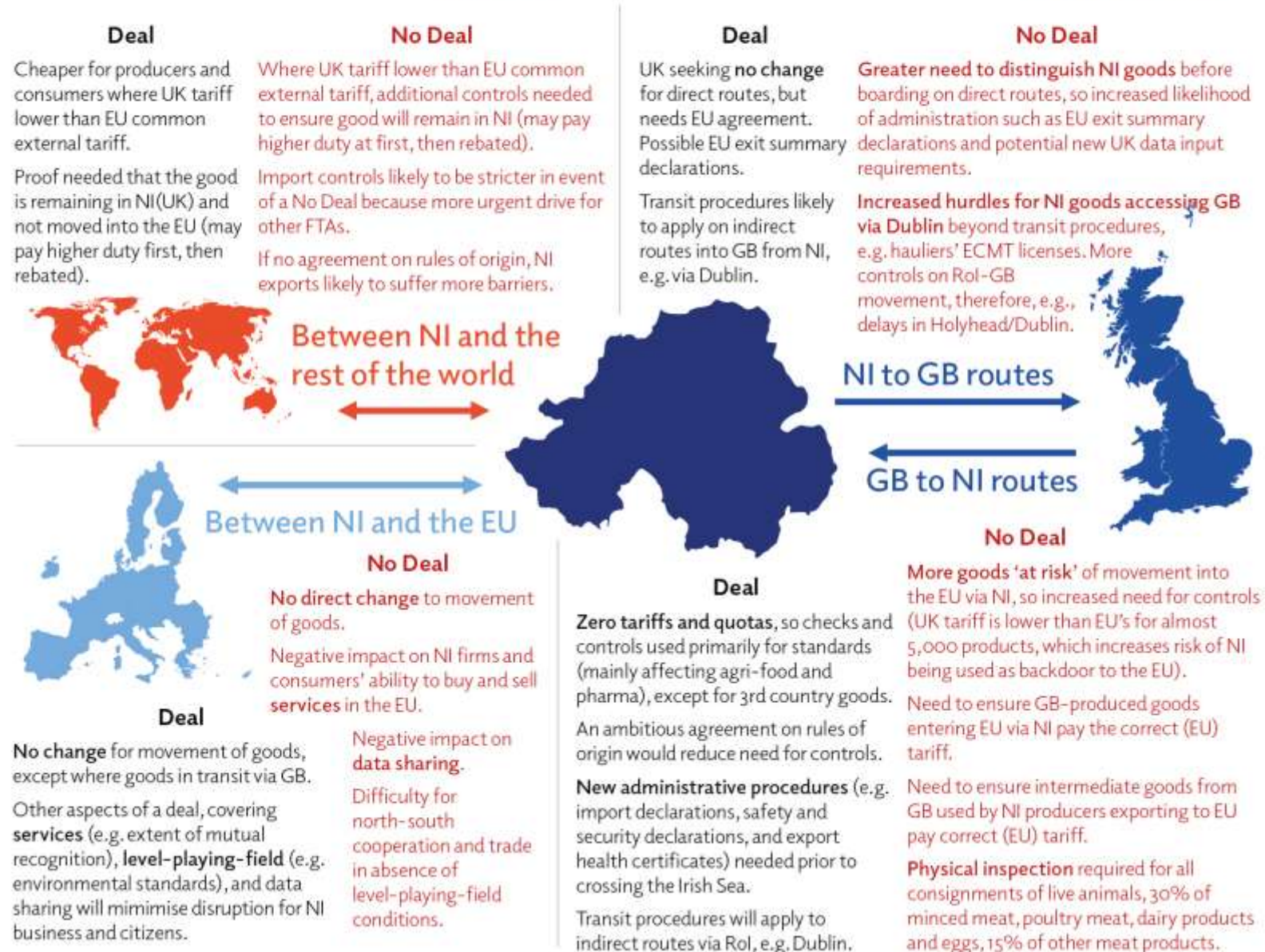
<input type="checkbox"/> What goods will be considered 'at risk' of movement from GB into rest of EU via NI	<i>UK-EU Joint Committee [JC]</i>	<input type="checkbox"/> The process by which SPS controls are conducted and their frequency	<i>UK-EU JC; UKG</i>	<input type="checkbox"/> Legislation on unfettered access for NI businesses to the rest of the UK Internal Market from 31 Dec 2020	<i>UKG</i>
<input type="checkbox"/> The applicable regime for goods considered 'at risk'	<i>UK-EU JC; UK Government [UKG]</i>	<input type="checkbox"/> Specific solutions for traders like supermarkets GB-NI	<i>UK-EU JC; UKG</i>	<input type="checkbox"/> Definition of a qualifying status for goods & businesses in NI benefitting from unfettered access	<i>UKG; Consultation with NIE & NI businesses</i>
<input type="checkbox"/> The system of facilitations to take account of regime for appln. of tariffs to 'at risk' goods	<i>UK-EU JC; UKG</i>	<input type="checkbox"/> Certain aspects of the treatment of NI-registered fishing vessels, esp. their exemptions from duties	<i>UK-EU JC</i>	<input type="checkbox"/> The system of facilitations to make processes smoother for those 'choosing not to use the Trader Support Service ' [TSS]	<i>UKG</i>
<input type="checkbox"/> The application of VAT and excise rules for goods in NI	<i>UK-EU JC</i>	<input type="checkbox"/> The process for organic goods moving from GB into NI	<i>UK-EU JC</i>	<input type="checkbox"/> How duty suspensive procedures for NI to GB will be eligible for support from the TSS	<i>UKG</i>
<input type="checkbox"/> The transit requirements for trade which uses the UK as a landbridge between continental Europe and the island of Ireland	<i>UK-EU future deal; UK-EU JC</i>	<input type="checkbox"/> How a notification will be made on selling tobacco and e cigarette products in NI	<i>UK-EU JC</i>	<input type="checkbox"/> More guidance on pre notification of agri food movements GB-NI via IPAFFS – an online system developed by the Govt	<i>UKG</i>
<input type="checkbox"/> Highly specialised goods GB to NI e.g., cosmetics, fertilisers, medicines (inc. veterinary)	<i>UK-EU JC</i>	<input type="checkbox"/> Specific requirements for traders, hauliers, carriers and port operators about movement of goods GB-NI	<i>UK-EU JC; UKG</i>	<input type="checkbox"/> The rules for the new UK(NI) mark & the guidance for using the EU conformity (including CE), UK(NI) and UKCA markings	<i>UKG</i>
<input type="checkbox"/> Additional detail on the specific processes that apply to movements of agrifood products GB into NI	<i>UK-EU JC; UKG</i>	<input type="checkbox"/> Specific procedures to apply for moving goods GB-NI with bespoke processes (e.g. endangered species)	<i>UK-EU JC</i>	<input type="checkbox"/> How NI traders are to place certain highly regulated goods on the GB market	<i>UKG</i>
<input type="checkbox"/> Non-freight: any requirements for goods in luggage, Royal Mail and parcels	<i>UK-EU JC; UKG</i>	<input type="checkbox"/> Specific port/airports to be used as designated points of entry for SPS/ agrifood products subject to controls	<i>EU (decision on UK's application for NI Border Control Posts)</i>	<input type="checkbox"/> Any UKG support to address the new requirements on SPS goods GB to NI	<i>UKG/ Consultation</i>

If there is No UK-EU Deal

Without a UK-EU Free Trade Agreement Northern Ireland would face huge disruption to trade

The difference between a **Deal** and **No Deal** with the NI/IRL protocol in force.

UK IN A
CHANGING
EUROPE





Queen's Policy Engagement: Brexit Clinic



23 September 2020