

Queen's Policy Engagement: Post-Brexit Clinic

21 April 2021

Organized in cooperation with the ESRC-funded project on *Governance for 'a place between': the multilevel dynamics of implementing the Protocol on Ireland/Northern Ireland*.



POST-BREXIT GOVERNANCE NI


Welcome to the website for the ESRC-funded project on

***Governance for 'a place between':
the Multilevel Dynamics of Implementing the Protocol on Ireland/Northern Ireland***


This three-year project is focused on the implementation of the Protocol on Ireland/Northern Ireland annexed to the UK-EU Withdrawal Agreement. Its core aim is to identify and explain the consequences of the new governance arrangements established by the Protocol since its full entry into force on 1 January 2021. The project explores the governance challenges that the Protocol raises in and for Northern Ireland and seeks to identify how these challenges can be managed in such a way that can promote effective implementation of the Protocol's arrangements as well as enhance their legitimacy.

<https://www.qub.ac.uk/sites/post-brexit-governance-ni/>

[@PostBrexitGovNI](#)



Brexit, Northern Ireland and the Protocol: where are we?



Prof David Phinnemore (@DPhinnemore)

Brexit, Northern Ireland and the Protocol: where are we?

2021	
1 January	UK-EU Trade and Cooperation Agreement provisionally enters into force; Protocol on Ireland/Northern Ireland enters fully into force
29 January	European Commission temporarily moves to invoke Article 16 (Safeguards)
2 February	UK Government announces ' next steps ' on implementation of the Protocol DUP launches 5-point ' Free us from the Protocol ' campaign
11 February	Informal Gove-Šefčovič meeting
17 February	David Frost replaces Michael Gove as UK co-chair of Joint Committee
24 February	UK-EU Joint Committee meets
3-4 March	UK announces unilateral action on implementation of Protocol
15 March	European Commission launches legal action against UK
25 March	Specialised Committee for Protocol on Ireland/Northern Ireland meets
7 April	Violent protests in Belfast start
15 April	Informal Frost-Šefčovič meeting

Brexit, Northern Ireland and the Protocol: what's ahead?

2021	
26-29 April	EP consent vote on UK-EU Trade and Cooperation Agreement
May (?)	UK-EU ' Road Map ' for implementation of Protocol?
13-18 May	Judicial review hearing
30 June	' Grace period ' for introduction of prohibitions and restrictions on GB-NI movement of meat products ends
31 October	' Grace period ' for customs declaration requirements for parcels – unilaterally extended by UK – ends ' Grace period ' for export health and other certificates being required for GB-NI movement of goods– unilaterally extended by UK – ends
31 December	' Grace period ' for application of EU medicines acquis in Northern Ireland ends
2022	
May	NI Assembly elections
2024	
December	MLA's ' democratic consent ' vote

Brexit, Northern Ireland and the Protocol: legal actions

Dr. Billy Melo Araujo ([@BillyMeloAraujo](https://twitter.com/BillyMeloAraujo))

Protocol and Judicial Review

Judicial review under
WA/Protocol

‘Domestic’ Judicial review

State-to-State
Dispute
Settlement

CJEU
Jurisdiction

EU Judicial
review

UK Judicial
Review

Enforcement Action

Pre-litigation stage

- Letter of formal notice
- Reasoned opinion (reasonable period to respond)
- Discretionary power

Judicial stage

- Declaratory judgment
- Financial sanctions
- New procedure
- Daily penalties and/or lump sum amount
- UK minimum lump sum: EUR 8,215,000

UK Judicial review

- Section 7A EU WA Act: rights arising under the WA to flow into UK law
- Liberal approach to standing
- UK acts (and omissions) can be challenged
- Grounds: illegality, procedural impropriety, and irrationality
- Remedies + damages

DUP leadership starts legal challenge against Northern Ireland protocol

Arlene Foster and senior MPs want new post-Brexit trade arrangements to stop disruption at Irish Sea ports



▲ Northern Ireland's first minister, Arlene Foster, is insisting there should be unfettered trade throughout the UK. Photograph: Kelvin Boyes/Press Eye/PA

The leader of the Democratic Unionist party, Arlene Foster, and senior DUP MPs are launching a legal action challenging the Brexit deal's **Northern Ireland** protocol.

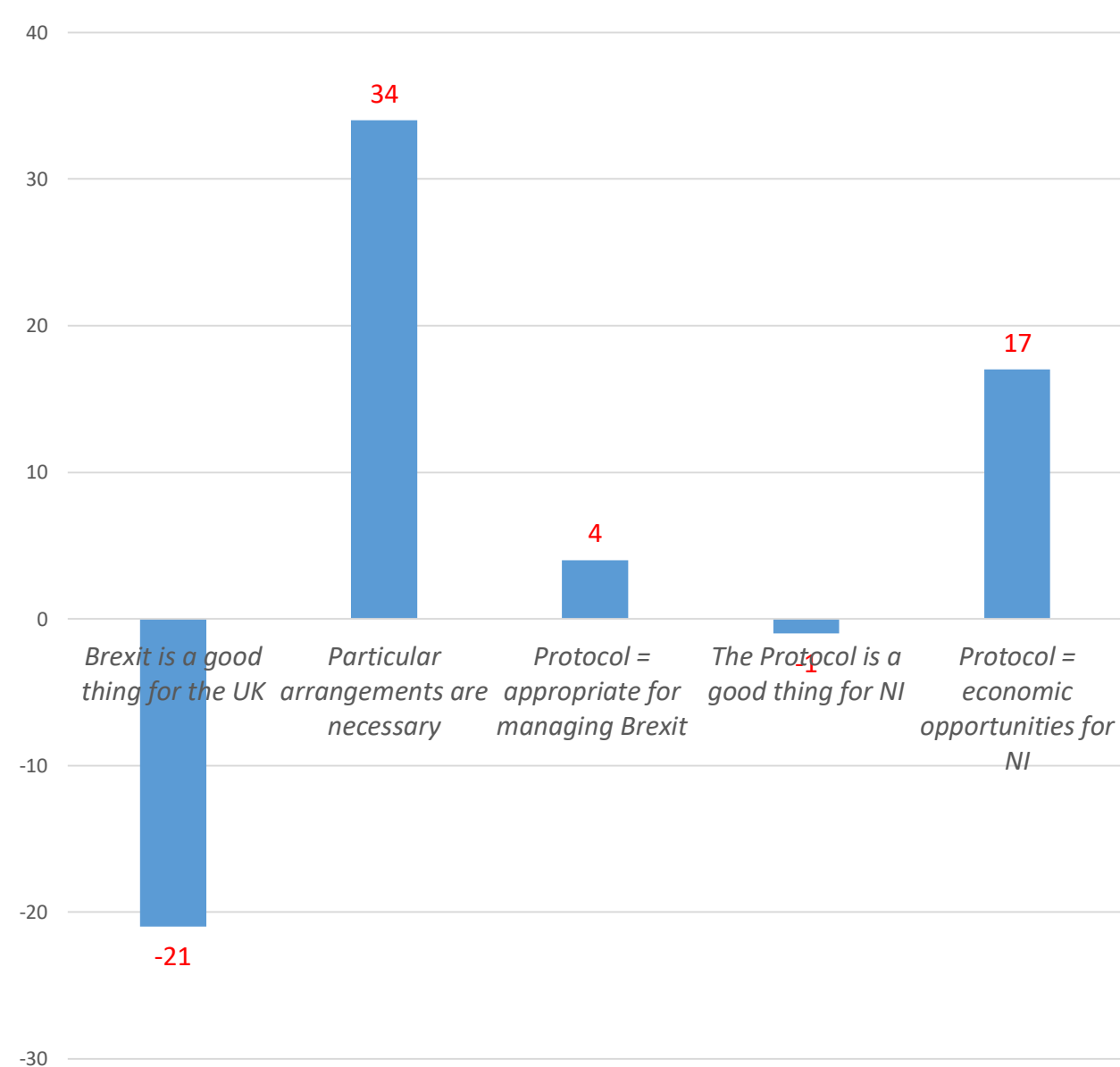
What do voters in Northern Ireland think about the Protocol?

Prof. Katy Hayward ([@hayward_katy](#))

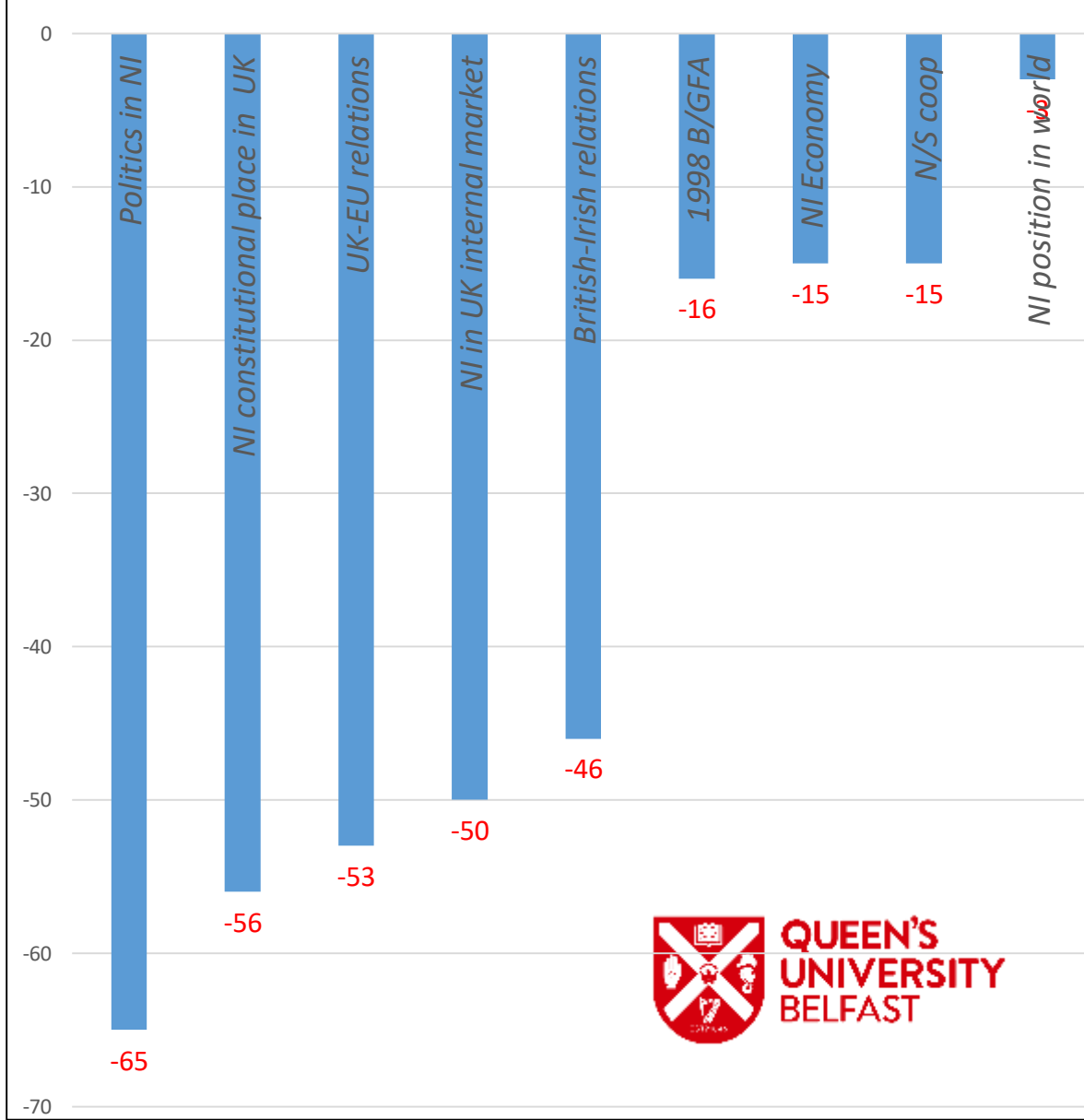
Lisa Claire Whitten ([@LisaClaireWhit1](#))

What do voters think? *Protocol need & impact*

All Agree minus All Disagree

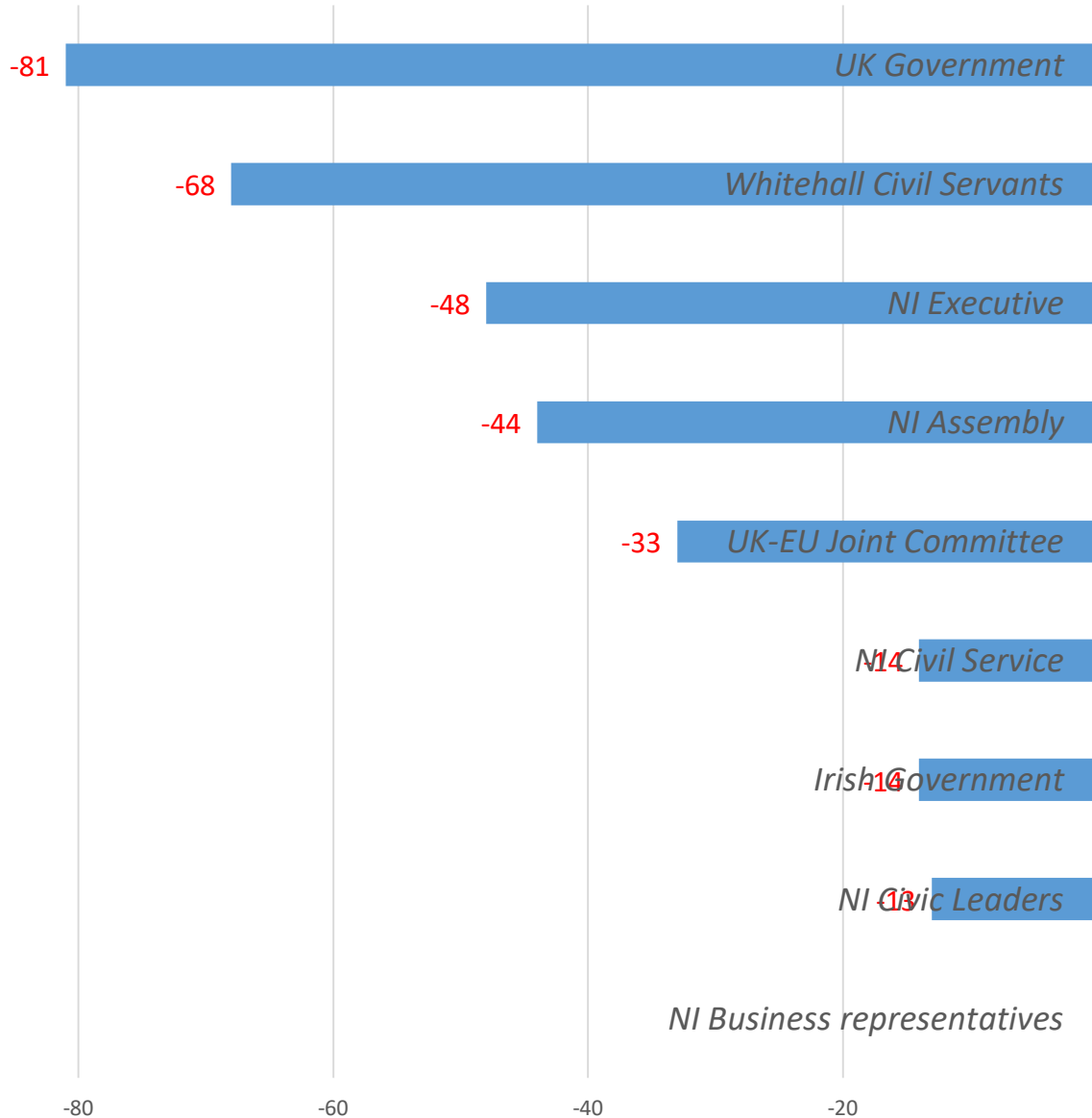


Current Impact of Protocol on NI – overall assessment

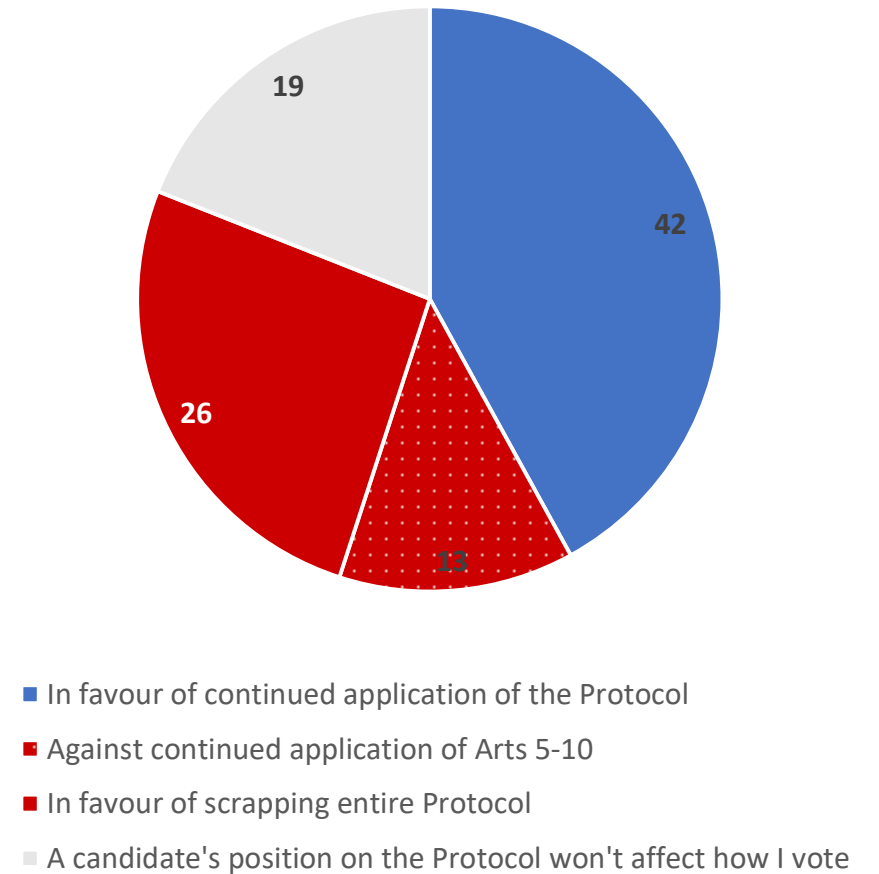


What do voters think? *Protocol management*

All Trust minus All Distrust re: handling the Protocol



I will only vote in 2022 for candidates who are:



What do voters think?

Theme/Code	Occurrences
Protocol viewed as necessary / potentially beneficial	124
Critical of DUP and/or Unionist politicians	111
Brexit as 'mess' / 'folly' / viewed negatively	89
Critical of UKG/PM of Great Britain	75
Scrap the Protocol/Irish Sea Border	59
Protocol viewed negatively	53
View (referendum on) United Ireland as more likely due to Protocol/Brexit	40
Protocol contrary to B/GFA and/or threat to peace	36
Critical of EU and/or EU approach to implementation of the Protocol	33
Lack of NI representation / consent	29
UK to Leave EU as a whole	29
Critical of EU/IRE for 'using' NI	24
Lack of information / misinformation	19
Critical of NI politicians in general	19
Brexit as threat to Belfast/Good Friday Agreement	3

What do voters think?

Critical of UK Government

“The UK government should not have negotiated such a bad deal as it sent the signal that people in Northern Ireland don’t matter and are not being treated like the British citizens that they are...”

type of Brexit

disregard for NI

Protocol as Necessary or Beneficial

“[The] Protocol is a good thing if implemented correctly”

opportunity

“Brexit is a disaster and the Protocol, while not perfect, is a necessary mitigation to this.”

“least-worst”

Remove or Replace the Protocol

“The Protocol is morally reprehensible, an administrative nightmare, and strongly divisive, thus prejudicing political cooperation within Northern Ireland.”

multifaceted damage

“The Protocol is destroying the economy of Northern Ireland, its place in the UK and the fabric of the UK in general.”



Managing the Protocol: agri-food



Dr. Viviane Gravey (@VGravey)

Why SPS matters

5 'Ps' – underpinned by SPS issues

- Pets
- Plants
- (seed) Potatoes
- Plant products
- Parcels

Box 1: Sanitary and phytosanitary measures

Sanitary and phytosanitary (SPS) measures are all regulatory measures adopted:

- to protect animal or plant life or health from risks arising from the entry, establishment or spread of pests, diseases, disease-carrying organisms or disease-causing organisms
- to protect human or animal life or health from risks arising from additives, contaminants, toxins or disease-causing organisms in foods, beverages or feedstuffs
- to protect human life or health from risks arising from diseases carried by animals, plants or products thereof, or from the entry, establishment or spread of pests
- to prevent or limit other damage from the entry, establishment or spread of pests.

SPS measures therefore relate principally to food and agricultural products – for example, limits on the amount of pesticide residue that can be left on a fruit or vegetable. But a requirement for wooden crates used to transport other types of goods to be heat-treated or fumigated to prevent insects hitching a ride on them is also an SPS measure.

[Institute for Government, 2018](#)

What are the options?

Equivalence

- Example of countries EU has equivalence with: USA, Canada, New Zealand...
- Rule by rule agreement – equivalence agreements will differ in scope and ambition.
- In practice: narrow understanding of equivalence
- Reciprocal – cover trade in both directions (with exceptions).
- This does not mean absence of checks, but lighter touch
 - Each party can do spot checks
 - Agreement between parties on frequency of checks
 - Checks are against domestic rules, not export market rules

Alignment

- Example: Swiss/EU Veterinary Agreement
- Switzerland keeps pace with EU regulatory developments on SPS – not reciprocal.
- Common EU-Swiss veterinary area, no veterinary controls for trade in animals and animals products between Switzerland and EU since 2009
- EU Border Control Posts check shipments from non-EU countries going to Switzerland and vice-versa
- Swiss presence in Brussels to influence EU regulatory process
- Some divergence remains possible: eg Swiss import of hormone treated US beef