

Queen's Policy Engagement: Post-Brexit Clinic

14 December 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*.



Where are we and what's to come?

Prof Katy Hayward



What's happened (Nov-Dec)?

1 Nov	'Protestant Action Force' lack claim to the hijacking of a bus in Newtownards, citing anger at the Protocol
5 Nov	University of Liverpool/Cooperation Ireland survey finds evidence of "inter-community consensus" in NI for practical resolution of issues related to implementation of the Protocol
5 Nov	EU Co-Chair Maroš Šefčovič releases a statement after meeting UK Co-Chair Lord Frost amid ongoing talks
12 Nov	In a statement following another week of EU-UK talks on the Protocol, Maroš Šefčovič, "acknowledge[d] and welcome[d] the change in tone of discussion with [Lord] David Frost"
15 Nov	Speaking to Seanad Committee, Šefčovič warns of “ serious consequences ” for EU-UK relations if Article 16 is triggered
19 Nov	After another week of EU-UK talks, Lord Frost says "significant gaps remain across most issues" and reiterates the UKG preparedness to use Article 16 if no agreements are reached
23 Nov	First joint board meeting of Equality Commission for NI, NI Human Rights Commission and Irish Human Rights and Equality Commission; shared mandate for monitoring citizens rights under Article 2(1) of the Protocol
26 Nov	Following another week of EU-UK talks on the Protocol, Co-Chairs of the Joint Committee tweet respective remarks on progress from the EU and UK perspective
29 Nov	Court of Appeal in Belfast hears a challenge to the lawfulness of the Protocol. The appeal was brought after the High Court in Belfast dismissed the case on all grounds earlier in the year.
2 Dec	The British-Irish Intergovernmental Conference meets. Communique makes no mention of the Protocol
3 Dec	Co-Chairs of the Joint Committee tweet respective statements on progress in talks from the UK and EU perspective

After the 10 December talks...



Maroš Šefčovič @MarosSefcovic · Dec 10

Met @DavidGHFrost to discuss package of solutions for NI. It's crunch time for medicines, with the @EU_Commission ready to amend EU legislation. We continue to work hard to turn our proposals into real benefits for all communities in NI. Next week, we'll speak on 15 + 17 Dec.



EU Delegation UK and 9 others



David Frost
 @DavidGHFrost

1. @MarosSefcovic and I met by video today to wrap up this week's talks process about the Northern Ireland Protocol. We have made further limited progress on medicines but we have not reached agreement.

6:37 PM · Dec 10, 2021 · Twitter for Android

146 Retweets 58 Quote Tweets 377 Likes



Tweet your reply

Reply



David Frost @DavidGHFrost · Dec 10
Replying to @DavidGHFrost

2. I underlined the need for movement on all the difficult issues created by the Protocol, including customs, agrifood rules, subsidy policy, VAT / excise, & governance including the Court of Justice. We will not find a durable solution that does not deal with all these problems.

59

102

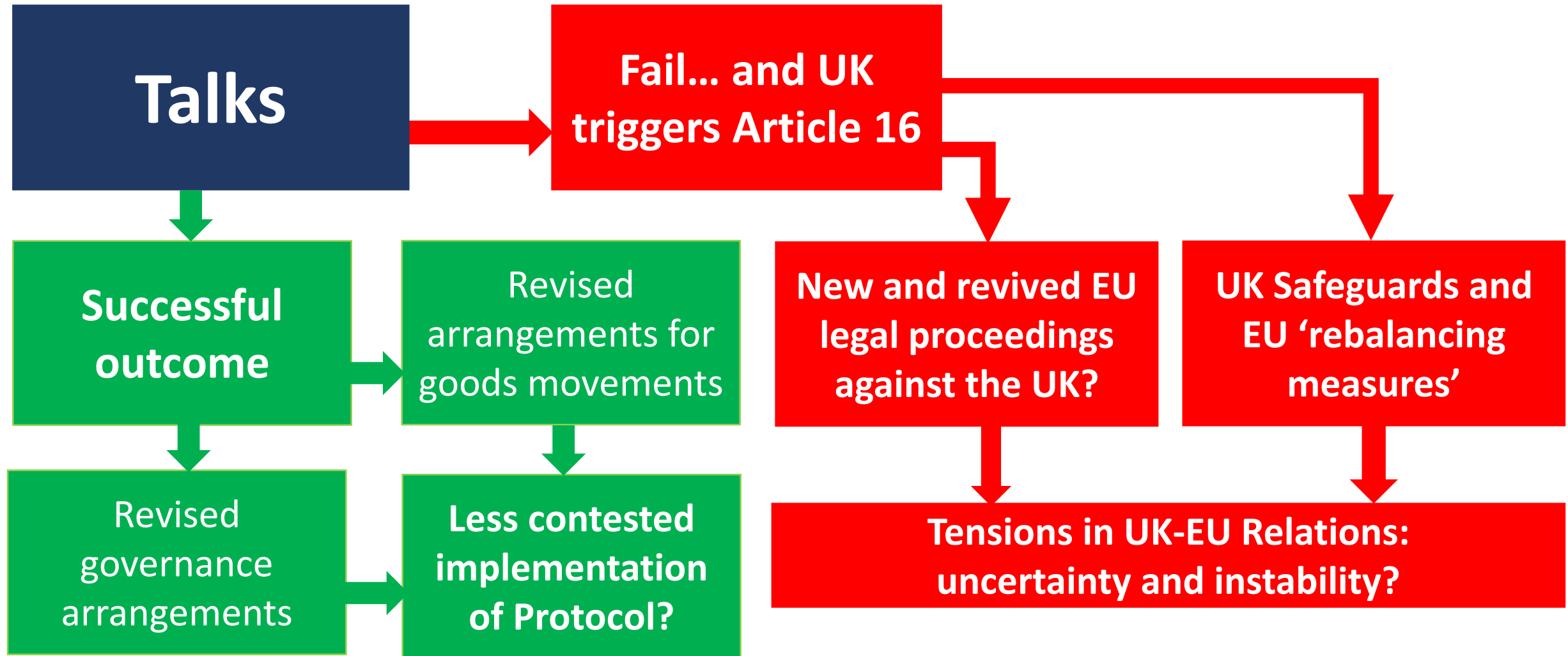
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David Frost @DavidGHFrost · Dec 10

3. Intensive talks will continue this coming week. @MarosSefcovic and I will talk twice to steer the process, in the hope of making worthwhile progress towards agreed solutions before Christmas.

What's Next?



Regulatory divergence: changes in and to applicable acquis and UK divergence from EU


Political Contestation: Assembly Elections (2022) Democratic Consent (2024)

In case you missed it...

Appearance of Vice-President Maroš Šefčovič before the NI Assembly Committee for the Executive Office



- On representation from Northern Ireland
 - The EU is suggesting a **special consultative process for NI** on current or future legislative proposals “where we would pay particular attention to your comments in our public consultations”
 - Šefčovič added that currently the focus of negotiations is on other topics.
- Lord Frost is due to appear before the Committee in January



What's happening on trade?

Dr Billy Melo Araujo



Trade: Negotiations recap

EU Proposals



Customs

- Reduce scope of concept of “goods at risk”
- Reduce associated customs formalities
- Full implementation of EU customs rules



SPS

- Simplify paperwork + reduce checks
- Product subject to import prohibition/restrictions => compliance with basic EU production requirements
- Increased labelling requirements and monitoring



Medicines

- Product compliance checks occur in GB
- Compliance with EU law
- Labelling requirements
- Increased EU oversight

Progress?

Brexit: Progress made on Northern Ireland Protocol medicines issue

By John Campbell
BBC News NI Economics & Business Editor

12 days ago · Comments



There have been warnings the full implementation of the NI protocol could lead to some medicines being withdrawn in NI

Further progress has been made in talks about guaranteeing the supply of medicines from Britain to Northern Ireland, UK's Brexit minister has said.



Bloomberg @business · 13h

The **U.K and EU** are **set to** extend their negotiations over Northern Ireland into next year



bloomberg.com

U.K. and EU Set to Push Talks on Northern Ireland into 2022

Article 16 Protocol: potential responses

Rebalancing measures

- 1-month consultation period
- Limited in scope and duration

Retaliatory measures

- Arbitration (following initial consultation)
- Financial sanctions
- Suspension of parts of Withdrawal Agreement or Trade and Cooperation Agreement (tariffs)

Termination of TCA

- Termination of TCA - 12 months notice
- Termination based on essential elements clause (30-day consultation period)



Full customs checks on EU-UK trade

Key dates

- January 2022
 - Pre-notification of SPS goods (initially planned for 1 Oct 2021)
- July 2022
 - Export health certificates (initially due on 1 Oct 2021)
 - Phytosanitary certificates and physical checks on SPS goods at Border Control Posts (initially due on 1 Jan 2022)
 - Safety and security declaration on imports initially due for 1 Jan 2022)
- September 2022
 - Full certification and examination of dairy produce subjects to SPS controls

UK-EU trade is about to get a lot more complicated

From January 1 2022 the rules change for consignments travelling from the EU into GB.



EU hauliers transporting goods into Great Britain will have to pre-declare their consignments and they will no longer be able to defer customs declarations © Bloomberg.

Peter Foster DECEMBER 9 2021



Implications for NI?!

- Protocol shields NI firms from adverse affect
 - Potential competitive advantage?
- Potential circumvention of TCA?
 - UK Internal Market Act allows unfettered access for NI “qualifying” goods into GB
 - Definition of “qualifying goods” very broad

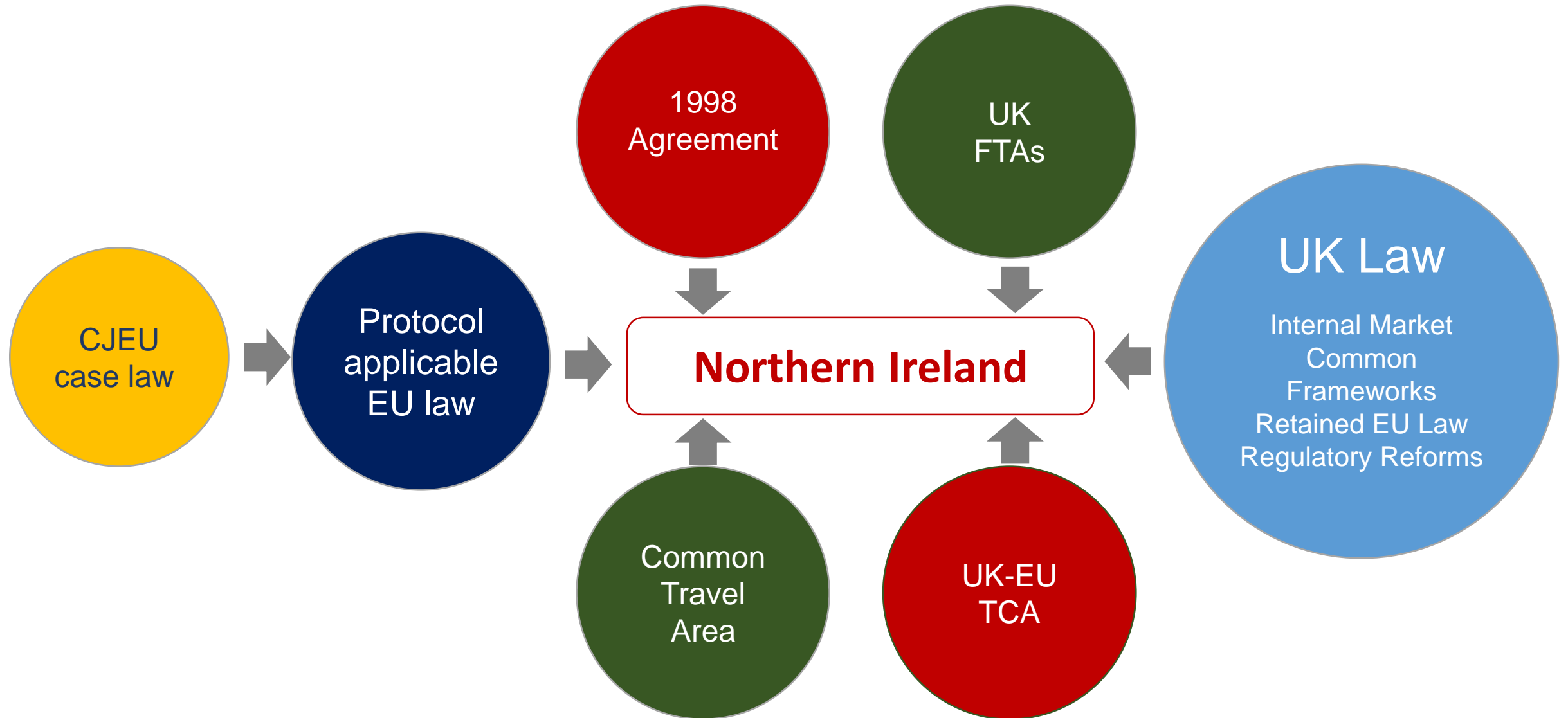


Multiple Sources of the Law for Post- Brexit Northern Ireland

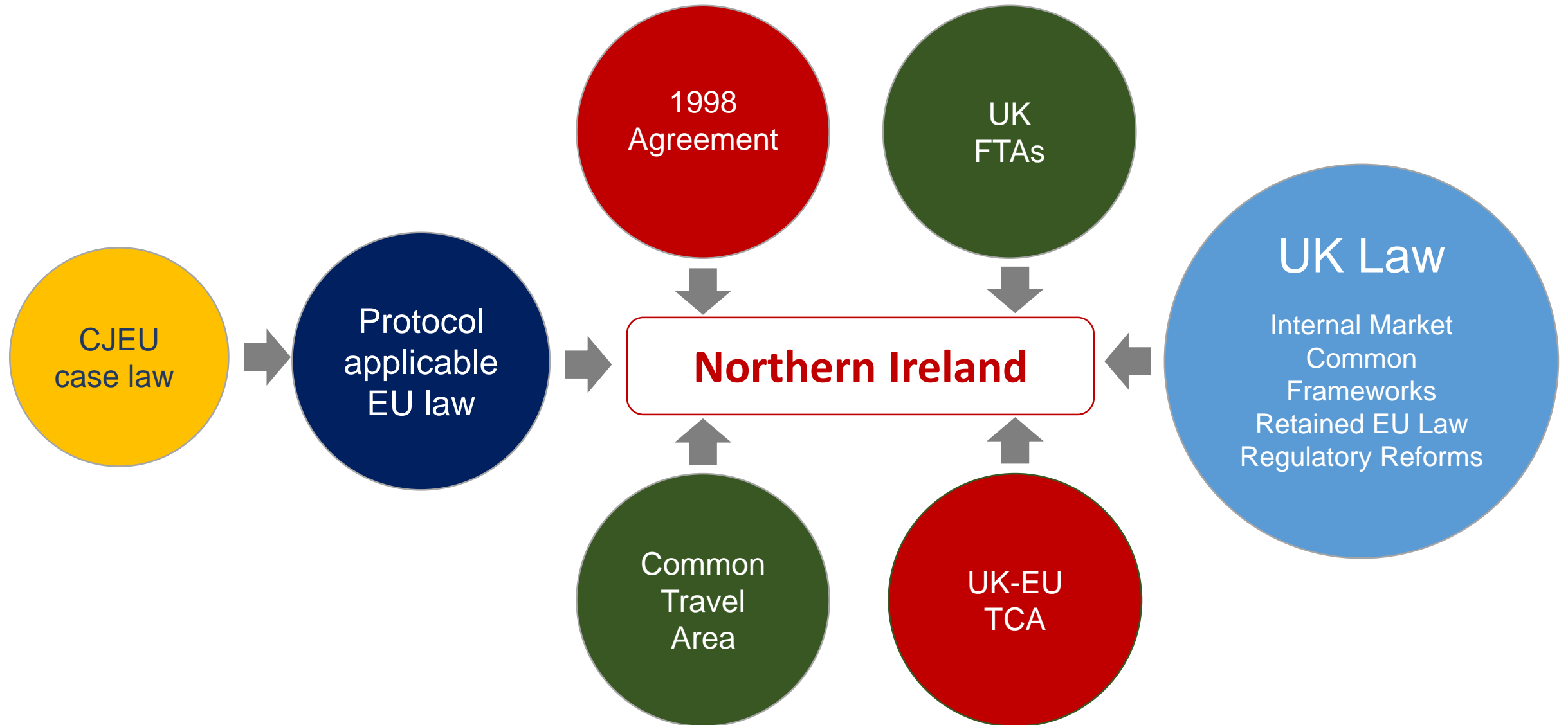
Lisa Claire Whitten



Legislative Spheres Applicable in or Relevant to Post-Brexit Northern Ireland*



Example: Mutual Recognition of Professional Qualifications





Governance under the Protocol

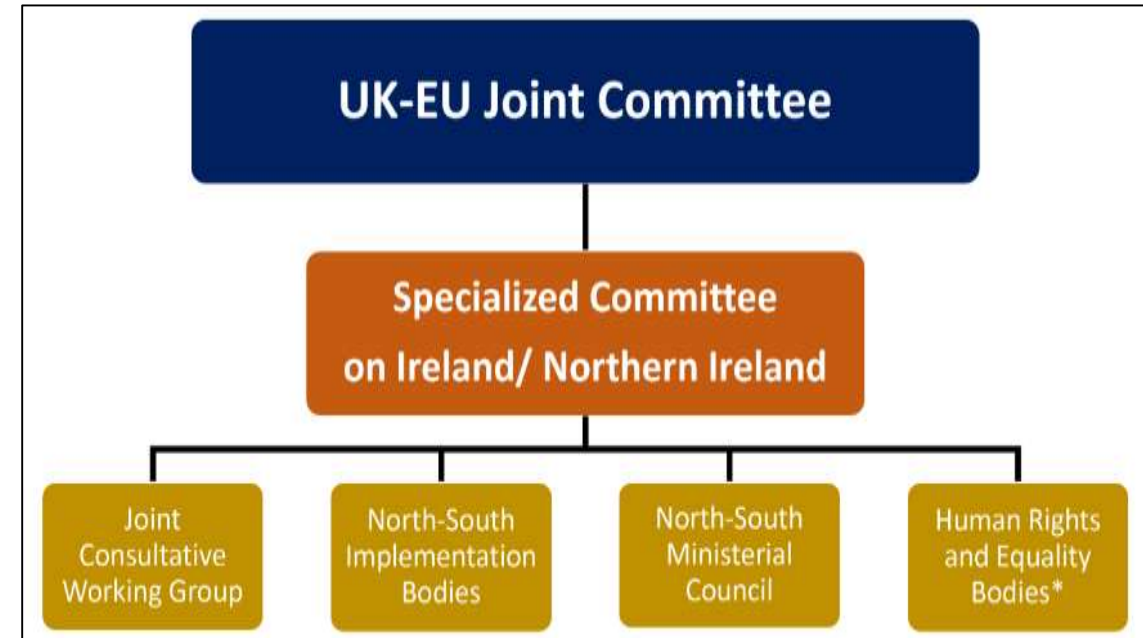
Prof David Phinnemore



Governance under the Protocol

Dedicated arrangements in place drawing on provisions in the Withdrawal Agreement and the Protocol

- Manage implementation
- Adopt decisions adding relevant new EU law to the Protocol
- Provide decision-shaping role for UK ‘in respect of Northern Ireland’ into amendments and replacement to applicable EU law*
- *Plus*: dispute settlement mechanisms: interpretation of EU law – EU institutions; application of the Withdrawal Agreement/Protocol – TCA arrangements

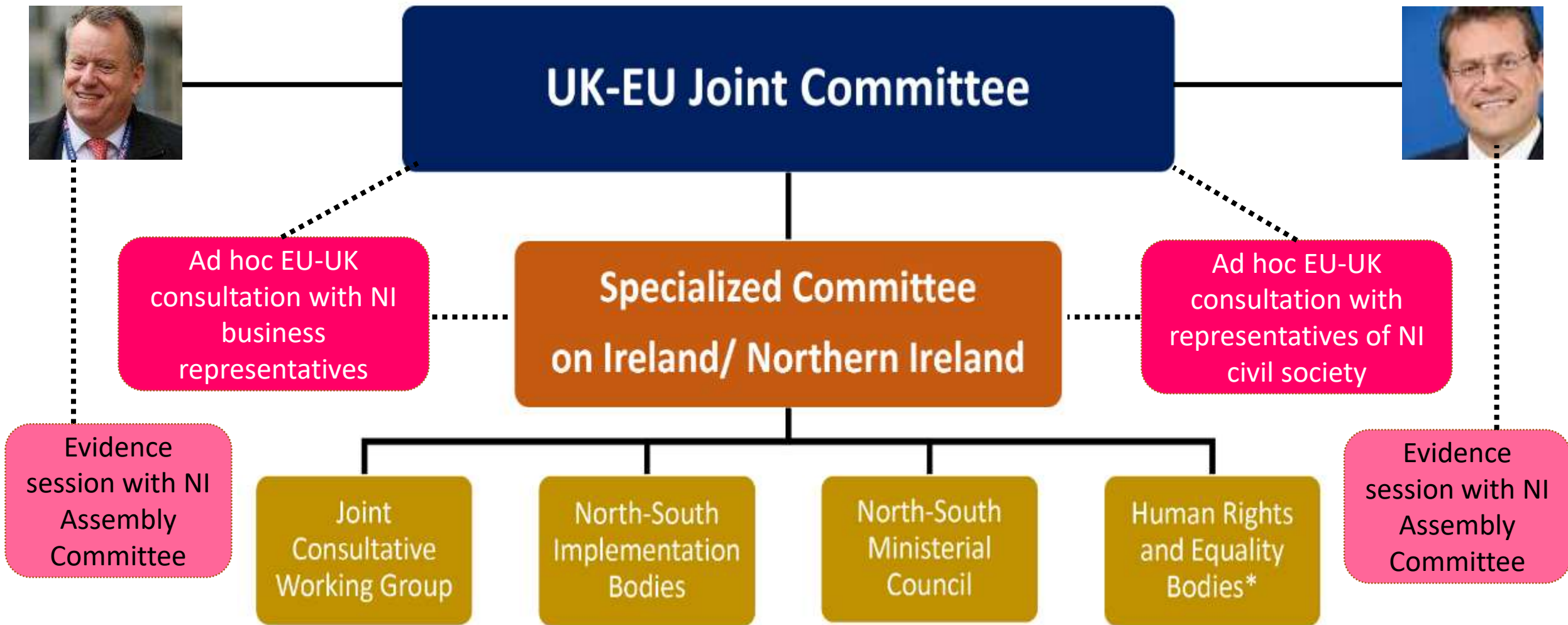


Informal supplementary arrangements have emerged

- *ad hoc* EU-UK / EU / UK consultation with NI business representatives and NI stakeholders
- Evidence sessions before the Northern Ireland Assembly’s Committee for the Executive Office

* European Commission is obliged to “ensure that all views expressed by the United Kingdom in the [JCWG] and all information provided by the UK in the working [...] are communicated to the relevant institutions, bodies, offices and agencies of the Union without undue delay” (Article 15(6) Protocol)

Governance Arrangements... evolving



* Northern Ireland Human Rights Commission; Equality Commission for Northern Ireland; Joint Committee of representatives of the Human Rights Commissions of Northern Ireland and Ireland

Governance under the Protocol

continued application of aspects of EU law in the UK ‘in respect of Northern Ireland’, including automatic application of amendments and replacements... and continued jurisdiction of Court of Justice of the EU

UK Government

- ‘we should look to **normalise the governance** basis of the Protocol **so that the relationship between the UK and the EU is not ultimately policed by the EU institutions** including the **Court of Justice**. The existing arrangements are highly unusual and have not proven conducive to solving the issues that have arisen’
- ‘we also need to find ways of **ensuring that institutions representing Northern Ireland can be more deeply involved in shaping and bringing into force legislation** which binds Northern Ireland’.

Northern Ireland Protocol: the way forward, July 2021

Commission Proposal for Governance under the Protocol

