

# Johnson government legislates to rip up Northern Ireland protocol

**Steve James****14 June 2022**

On Monday, the UK government published legislation to drastically and unilaterally alter the Northern Ireland protocol component of the Withdrawal Agreement with the European Union (EU), setting Britain on course for legal battles and trade war.

Under the protocol's terms, a trade border has been established in the Irish Sea as Northern Ireland effectively remains within the European single market, despite, juridically, being part of the UK. Although some businesses based in Northern Ireland have benefitted from ready access to both the EU and the UK's markets, the protocol has enraged Northern Ireland's far right and pro-British unionist parties, close allies of the Conservative government in Westminster, who insist the protocol has compromised Northern Ireland's status in the UK.

The Johnson government has seized on the unionists' calibrated outrage as a pretext to rip up as much as they can of the Brexit agreement.

The Northern Ireland Protocol Bill, penned in consultation with hard line Brexiteer Tories, addresses four main areas.

\* It seeks to remove all trade restrictions on goods travelling from the Britain to Northern Ireland save on those intended for the Republic of Ireland (RoI). A "green" lane would be set up to allow unrestricted movement through ports on the Irish Sea in Britain and Northern Ireland, while a "red" lane would carry out documentation checks on truckloads directed towards the RoI.

\* The bill gives the British government authority to apply state aid and VAT sales tax rules in Northern Ireland, without reference to the EU. It also removes the need for goods directed to the North to comply with EU standards. Companies can choose to follow either UK or EU standards.

\* In line with this, the bill legislates to end the direct role of the European Court of Justice (ECJ) in overseeing and enforcing the operation of the protocol and in resolving disputes between the EU and the UK.

\* A further, sweeping, provision in the bill, Clause 15, gives the government authority to ignore the rest of the protocol under the pretext of safeguarding "social or economic stability", "the territorial or constitutional integrity of the United Kingdom", and "the Belfast [Good Friday] Agreement" among other items. Only the UK and Irish Common Travel Area, North-South co-operation between Northern Ireland and the RoI and "human rights" provisions in Northern Ireland are excluded.

The final version of the bill, published just over a week after a narrowly defeated no confidence vote against Prime Minister Boris Johnson by Tory MPs, represents a sharp tack to the right by a weakened and unstable government. Sir Jonathan Jones, former head of the UK government legal service who resigned over the Northern Ireland issue, told the *Financial Times* the bill was "at the extreme end of anything we might have expected".

Primarily, the bill is aimed at winning endorsement from the far right and powerful European Research Group (ERG) of Brexiteer Tories. According to the FT, ERG membership is not published but is estimated to be large enough to erase Johnson's 80 strong parliamentary majority.

ERG members view ditching the protocol, in the words of one of its unnamed members, as "the last part of Brexit and we have to make sure we have fully taken back control." A so-called "Star Chamber" of Brexiteer lawyers is assembling to pronounce on whether the bill goes far enough.

The government also published its legal justification

for trampling over its international agreement with the EU, claiming that the “doctrine of necessity provides a clear basis in international law to justify the non-performance of international obligations”. That necessity was the “maintenance of stable social and political conditions in Northern Ireland”. The protocol had created a “genuinely exceptional situation, and it is only in the challenging, complex and unique circumstances of Northern Ireland, that the Government has, reluctantly, decided to introduce legislative measures which, on entry into force, envisage the non-performance of certain obligations.”

This is the unalloyed hypocrisy. Brexit was, from the first, an attempt by sections of the British financial oligarchy to undercut and steal a march on its major competitors within the EU single market by ripping up in the UK regulatory restrictions on profitability that were bound up with EU membership. The partition of Ireland by British imperialism in 1921 means that the Republic in the south remains in the EU, while, post Brexit, Northern Ireland is not. The “doctrine of necessity” cited by the British government amounts to pursuing its own predatory interests under the combined weight of contradictions, including the carefully nurtured threat of loyalist violence, that its own policies have created.

The bill produced a sharp response from the European Commission. Maroš Šef?ovi?, commissioner for Brexit, warned that legal action begun March 2021 against the British government for breaching the protocol and the “good faith” obligation of the Withdrawal Agreement would be restarted, along with further legal moves. Šef?ovi? insisted the EU would not renegotiate the protocol, while EU officials expressed the view the UK had already failed to implement large parts of the Withdrawal Agreement.

Should a legal case against the UK for breaching any part of the Withdrawal Agreement be upheld by the ECJ, the likely outcome would be fines for non-compliance, followed by the imposition of trade tariffs on British goods. The EU has already barred British scientists from a €95 billion Horizon research project.

The US government was more muted, following last month's disastrous tour to Ireland by leading Democrat and Chair of the Ways and Means Committee, Richard Neal, which was seized upon by the unionists for insensitivity and a pretext for tub thumping.

Nevertheless, Secretary of State Anthony Blinken told the British Foreign Secretary, Liz Truss—a rival for Johnson's party leadership—to “continue good faith negotiations with the EU to reach a solution that preserves the gains of the Belfast/Good Friday Agreement”.

The US has huge investments in Ireland, which are dependent on the relative stability created by the 1998 Good Friday Agreement bringing the Irish nationalists of Sinn Fein into power-sharing arrangements with the Democratic Unionist Party in the North. The US views a falling out between its major allies with alarm. A State Department spokesperson added, “Transatlantic peace, security, and prosperity are best served by a strong UK, a strong EU, and the closest possible relationship between the two.”

Responses in Ireland were more frantic. Responding to Johnson's preposterous lie, on a visit to Cornwall, that the legislation was “not a big deal”, Irish Foreign Minister Simon Coveney described the British moves as “a breach of international law.” Coveney, recently the target of a loyalist paramilitary bomb attack hoax, told the *Irish Times* that the EU would be “forced to respond in a way we don't want”. He continued, “The risk is by unilaterally acting the way they are now, they potentially risk collapsing the protocol because I don't believe the EU can accept the approach [of] the British government.”

*Irish Times* political editor, Pat Leahy, warned of the dangers facing Ireland if the EU responds in kind to the UK's actions. Leahy wrote “if the trade agreements between the two sides crumble, then the Irish Government will be faced with the prospect its predecessor dreaded: choosing between a Border in Ireland or a border between Ireland and the rest of the EU.”



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