

The Ireland/Northern Ireland Protocol

Responding to Tensions or Enacting Opportunity?



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1. Executive Summary

Focusing on Opportunities

Northern Ireland faces serious predicaments from Brexit. Those problems and their causes are well documented. Notwithstanding those factors, this paper considers a more nuanced, forward-looking perspective. We argue that the Ireland/Northern Ireland Protocol (hereafter the Protocol) now provides major opportunities to build and develop the economic future of Northern Ireland. In summary:

1. The Protocol creates unique opportunities to sustain peace underpinned by shared prosperity.
2. There are evident political and social tensions to be tackled.
3. Pragmatic political resolve can find solutions to unlock those opportunities and tackle present tensions. The removal of the latter reinforces the former.

The opportunities for Northern Ireland, Great Britain (GB) and Ireland, are contingent upon parallel factors: (i) the outcome of present UK and EU negotiations; and (ii) the role of the Belfast/Good Friday Agreement (GFA) institutions in framing and invigorating the next stage of a sustainable peace dividend.

Delivering on the long-term opportunities depends on choices made by political actors, the business sector and civic society. Despite the disruption caused by Brexit, the Protocol provides conditions for economic and social growth and revival. Peace can and will be bolstered by shared social prosperity and sustainable economic growth. Strategic leadership is now required.

The Totality of Relationships

Northern Ireland's issues need reframed around meaningful and practical realities. Versions of political and media discourse, practice and rhetoric have undermined a wider appreciation of the emerging opportunities. In particular, tensions at diplomatic and intergovernmental levels require resolution by rebuilding trust. The totality of relationships must be at the heart of this dialogue. That applies not just to the dynamic of the Ireland-UK relationship but also requires much greater empathy and understanding by the EU that stretches beyond technical functionalities. All actors involved in achieving outcomes have to return to a problem-solving approach that was apparent and highly influential at earlier stages of the peace process.

This is not to deny the ire presented as mobilisation against a 'hard border'. Nor to deny the recent appearance of interface violence and street protest. However, the University of Liverpool General Election Survey 2019/20 evidenced that the majority of society – across all communities - opposed checks on goods, North-South (N-S) and East-West (E-W). There is also widespread inter-community consensus that improving the economy, access to employment, education, social cohesion and equal opportunities are pressing priorities that are much greater than binary arguments on constitution and/or identity.

The Protocol – 'A process, not an event'

Present negotiations and political actions must be outcome-driven. They must shift from solution-seeking to solution-achieving. Critically, negotiations must get beyond the bipolarity of UK and EU positions. The opportunities that the Protocol presents will not materialise if a shared and inclusive economic future remains undermined by binary identity tensions. The EU and UK must absorb the reality that these tensions can be exacerbated or ameliorated based on their negotiations. Northern Ireland's discourse needs to reframe towards opportunities that are genuinely about protecting all aspects and elements of the totality of relationships that constitutes the GFA.

The starting point is a recognition that the Protocol is a process, not an event. It now needs to be carefully managed by inbuilt mechanisms to ensure appropriate short-term and long-term decision-making. The global relativity of issues around Brexit and the Protocol to the broader canvas of recent decades within Northern Ireland, GB and Ireland, is important. However, even greater challenges, such as the negotiations around the GFA, have been resolved.

Setting the Scene

The fundamental opportunity presented by the Protocol relates to Northern Ireland being placed within three key interdependent relationships - the UK, Ireland, and the EU. Northern Ireland's ability to export goods without the same regulatory checks as GB and EU business into the Great Britain market of c.65 million and the EU market of c.450 million is unique. Uniqueness is an opportunity to re-define the economy of Northern Ireland. That uniqueness should be presented as an incentive for business, investors, and others to think outside traditional boxes. Unfortunately, such opportunities are under-reported or rarely offered within public discourse.

In addition, in recent discussions with investors, it is also clear that businesses and investors (and the possibility of a sustainable peace dividend) require

certainty to build future investments, including feasibility planning and operational outcomes. Despite previous and successful business dealings in Northern Ireland, decisions relating to future investment are postponed for various reasons:

- Uncertainty regarding the stability of the Northern Ireland Assembly.
- Concerns that street protests may escalate into violence and widespread disorder.
- Awaiting the outcome of UK-EU negotiations to determine what additional costs and demands of regulatory compliance and control will be in place for the movement of goods from GB to Northern Ireland.
- Concerns that the Protocol does not cover services is making investment in that sector too high risk for some, at present.
- A general sense of drift due to grace periods, and concerns regarding the delivery of what emerges from the Protocol and the invoking of Article 16;
- The nature of flexibility and grace periods suggests a lack of stability and a slow delivery of practical - and more importantly, sustainable - decision-making outcomes.

Despite these factors and uncertainties affecting investor decision-making, there has been insufficient collective focus by political actors – particularly in Northern Ireland – that the opportunities flowing from the Protocol are significant. This failure needs corrected by political leaderships that articulates the following:

- Northern Ireland is well positioned to benefit from the Protocol by providing the legal opportunity for a firm moving or producing goods to operate in both the UK Internal Market and EU Single Market. This will especially be the case when a business simultaneously ‘trades’ with both GB and Ireland/EU.
- Northern Ireland businesses have an advantage trading with the EU compared to those in GB. Firms operating in Northern Ireland can source and supply goods to Ireland and/or the rest of the EU without having to go through regulatory checks, thereby avoiding additional costs and demands of regulatory compliance and control.
- Although firms operating in both markets simultaneously face the costs of compliance for both jurisdictions, there are circumstances that could be advantageous for high value-add activities such as medical device and pharmaceutical manufacturing.
- Protocol arrangements provide reassurance for customers, consumers, and business partners regarding Single Market standards.
- Previously leveraged economies of scale and proximity achieved by indigenous sectors have been retained. To preserve enhanced access to the GB market, there are the businesses in Ireland already operating or considering

operating in Northern Ireland via integrated operations. This could potentially involve large FDI manufacturers.

- During present trade disruptions domestic business are filling gaps created by Brexit through local sourcing in Northern Ireland and Ireland. The 60% growth in exports to Ireland from Northern Ireland is a prime example of responding to market opportunities and thinking outside traditional boxes.

The Politics of Leadership

Brexit was followed by the threat of dissident republican violence amid fears of N-S political, economic and social disruption that could result in a 'hard border' on the island of Ireland. In recent months, loyalist unrest, and interface violence and protest, prompted by E-W economic disruption and questions of consent about an Irish Sea 'border' have emerged. What may appear as technical trade regulations and market issues are - within the context of Northern Ireland - viewed as identity and constitutional issues. Unsurprisingly, research conducted in 2021 by Queen's University Belfast indicates that Brexit and the Protocol have challenged public faith in the spirit and principles of the GFA, and the stability/ability of related institutions.

Political leadership needs to facilitate strategies and approaches to develop the opportunities inherent in the Protocol. A more consensual space for dialogue in which there are wider appreciations of the economic and trade interdependencies, how new opportunities will be sustained, and how they can help to ameliorate present tensions is paramount. There is a central message that emerges from present tensions – political leadership, from whatever quarter, has to envision, plan and map the next generation of the peace dividend.

New thinking needed

New and advanced thinking is now required within the NI Executive, the EU, and the Ireland and UK governments. Opportunity, will be squandered if the Protocol and its ongoing management are not developed in a way that creates policies to maximise prospects. Each actor should be rigorously mapping the Protocol and its potential effects with greater precision. Options include, inter alia:

- Political actors in Northern Ireland availing of the Protocol's important layers of joint interaction to lobby, produce evidence and present proposals by speaking to those presently negotiating - and also via the Joint Committee, the Specialised Committee and the Joint Consultative Working Group, as well as the strands of the GFA.
- The Northern Ireland Executive mapping out a strategic plan with related policy developments capable of envisioning labour market strategies concerning skills enhancement, better educational training and productivity

growth that are directly linked to the interdependencies that are N-S, E-W and NI-EU.

- A comprehensive strategy, based on the social economy, community businesses and cooperatives, intermediary labour markets, asset-based development and local investment by mining the available expertise located within NI, GB, Ireland, the EU and elsewhere.
- Considering whether the substantial €1bn investment EU PEACE PLUS Programme (strongly supported by the UK and Ireland) would benefit from reviewing concepts of peace, conflict and violence as they relate to Northern Ireland's developing context: its persistence; its distribution; and its long-term effects.
- Further develop N-S and E-W research connectivity to maximise the opportunity for benefits to flow from Protocol centred policies and the investment it attracts.
- The development of protocol-centred policies that understand a post-conflict economy driven by knowledge-intensive labour markets that demand high levels of education, skills and communitive abilities.
- Community wealth-building approaches that are translated into an integrated programme of support with combined planning by the Executive, The Shared Island Unit and PEACE PLUS.
- The new Levelling Up Prospectus (HM Treasury, 2021)¹ for Northern Ireland developing potential to embed regeneration in places harmed by sustained conflict, social marginalisation and endemic inequalities.

Negotiations Ahead

Present negotiations must produce outcomes that develop the interdependencies at the heart of furthering/delivering a peace dividend underpinned by the GFA. Moreover:

- The maximisation of mitigation during present negotiations is critical.
- Negotiators need to evidence that they are continuing to protect the peace process and the GFA.
- Those presently negotiating should also publicly proclaim that the intended outcomes uphold and develop E-W and N-S interdependencies.
- This must also link into statements about the value of trade and political relationship to help ease present tensions.
- Placing confidence within the public domain that negotiating better outcomes is feasible.
- Remember that solutions have already been achieved. The Protocol has protected individual rights in Article 2, that the UK and Ireland maintained

¹ HM Treasury (2021) *Levelling Up Fund: Prospectus*, London, HM Treasury.

the Common Travel Area (CTA (with EU consent). Article 11 enhances N-S co-operation. This evidences positive outcomes achieved through good faith by both the UK and EU.

Part of the problematic at present is political bipolarity. The Northern Ireland Business Brexit Group, for example, has advanced ideas regarding trusted trading to resolve present tensions. Such an approach could be agreed. Doing so would help ease a significant argument in present identity tensions. However, this may cause tensions within the EU. Alternatively, the UK could sign up to an SPS/Veterinary agreement that would also ameliorate present tensions. This may cause tensions within GB. It is noteworthy that each potential solution remains conditioned by political rigidities outside of Northern Ireland. It is a misnomer that the emergent problematics are related only to the politics of Northern Ireland. In seeking solutions:

- The peace process has to sit above such external political bipolarity.
- Solutions require political stretching.
- As with the GFA, outcomes must be bespoke to the situation in Northern Ireland.
- UK and EU negotiations should place the peace process as the reason for stretching away from political bipolarity as a minimum ongoing requirement.
- Northern Ireland could be uniquely placed within the SPS/Veterinary agreement paralleled by a trusted trader type approach. As with the GFA a series of approaches and resolutions can be advanced.

The Protocol has delivered identity, constitutional and political tensions due to a variation, thus far, regarding N-S and E-W trade arrangements. That requires stretching the discourses that concern either rules or risk-based approaches. Negotiation is the point when a tension cannot be resolved by other means. What emerges must be cognisant of the integrating role of the economy, the voice of the business sector and civic society, and the weight of evidence concerning the impact of the Protocol to date. If the opportunities within the Protocol are not realised then the Protocol will be reduced to a set of technocratic laws whose implementation will forever be driven in part by a response to identity politics. We require a politics of economic uplifting that sits above identity domains.

Signposting solutions

There are positives of continuity and stability already evident in the Protocol's application regarding the N-S market. Present tensions relate to the E-W trade dynamic having been altered. Those changes affect the trade relationships under which Northern Ireland operated pre-Brexit and post-GFA. Protecting the GFA has to rebuild or reconstruct, where feasible, the continuity of trade relationships. This will require creativity and commitment from all sides. Successful processes of

negotiation have to develop a funnel-like logic, in which each step aids the next and where opting out only leads to further economic and societal instability. We would also encourage:

- The EU-UK Trade and Cooperation Agreement (TCA) concluded between the EU and the UK sets out preferential arrangements for trade in goods and in services. Matters agreed in the TCA are also dealt with in the Protocol, but to date it is not clear how the interaction of these two separate agreements will be managed when their practical effects are forthcoming such issues being addressed like energy and security of N-S and E-W connectivity. This needs explored.
- The TCA establishes an extensive architecture of institutional consultation between the UK and the EU on its implementation. This will consist of up to 19 separate committees/working groups overseeing different elements of the agreement. For the smooth operation of the Protocol it would seem logical to avoid leaving gaps in the protection of both N-S and E-W aspects, especially regarding Northern Ireland interests. The establishment of a 'Domestic Advisory Group' (DAG) on the TCA by both the European Commission and the UK government is important. It is critically important that Northern Ireland civic society interests are represented on the UK DAG with a possibility of inputting into the EU DAG.
- Oversight mechanisms should be allied to Strand Three of the GFA with the British-Irish Council and the British-Irish Intergovernmental Conference being provided with a significant role in those processes.

The GFA is bespoke, and built around parity of esteem and mutual respect. Overly-engineered approaches can undermine the totality of the relationships – and the arrangements - achieved in the GFA. We argue that the Protocol offers a reset moment regarding the economic future of these islands and beyond. Irrespective of constitutional allegiance, the Protocol places Northern Ireland in unique legal and trade relationships.

Present negotiations have to firm up that potential, and then place a peace dividend at the heart of delivery. That dividend will not materialise if tensions remain and potential investors are discouraged from locating in Northern Ireland due to internal and external political disagreements. The only solution to growing tension is pragmatic and flexible leadership: that needs to come from Belfast, Dublin, London and Brussels. The choices made now are crucial.

The Protocol is law, but more importantly, there must be an appreciation that its implementation is pivotal to whether we can have better outcomes. This paper seeks to assist wider understandings of relevant issues and to signpost some areas of solution. Above all, it calls for engagement and diplomacy, marked by nuance,

commitment, creativity and leadership to seize the opportunities that now exist for Northern Ireland.

2. Introduction

The Protocol should be viewed as long-term process not as a short-term event. This framing is important insofar as it opens up strategic and ongoing opportunities for practical, flexible, creative and positive development in responding to ever-evolving realities. The situational context for the Protocol is part of the historical continuum of political and societal change in Northern Ireland, Ireland, the UK and the EU. The global relativity of issues around Brexit and the Protocol to the broader canvas of recent decades is important - but comes with a reminder that even greater challenges have been resolved.

The focus within this report is upon utilitarian and evidence-based choices that are effective, not least for the people who live and work in Northern Ireland. Reasoned discourse must be cognisant that since the GFA, the capacity to effect significant reductions in violence was paralleled by growths in income, falling unemployment and the emergence of new economic activity within Northern Ireland. There is no doubt that any fragility in economic terms will undermine the peace process.

The Protocol has already had an impact in terms of threats and the appearance of violence, though not on the scale associated with the decades of conflict. Resolution of current issues and problem-solving are important but each has to deliver more than short-term fixes.

Present and future negotiations must be cognisant that trade and economic issues are inextricably coupled with the politics of identity and constitutional preference. However, ongoing negotiations and the implementation of the Protocol must be built upon positive economic and societal outcomes together with the placing of Northern Ireland's future around productivity growth, skills development and the expansion of the export market. Such an approach built upon agreed policy development drives leadership and a move away from inter-community resource competition.

We argue that the Protocol offers a reset moment regarding the economic future of these islands and beyond. Irrespective of constitutional allegiance, the Protocol now places Northern Ireland within unique legal and trade relationships. The Protocol has verified in domestic and international law Northern Ireland's place within the UK but has also re-affirmed the importance of North-South (N-S) relationships. It has also placed Northern Ireland within the EU customs code. Within those 3 relationships that are East-West (E-W), North-South (N-S) and Northern Ireland – EU (NI-EU) there exists a range of opportunities for economic growth and leadership with the potential to resolve existing structural incapacities and economic impediments. Realising these benefits will require a clear

articulation of the unique value Northern Ireland can derive from being allied with:

1. **UK:** The UK economy is the 5th largest and a global leader in financial, IT, services and aerospace.
2. **Ireland:** The economy of Ireland remains one of the fastest growing in the EU and a global leader in RDI (Research, Development and Innovation).
3. **EU:** The Protocol maintains access to its Single Market of close to 450 million people with net worth estimated at \$15 trillion (nominal) in 2020.

Northern Ireland sits within the 5th largest global economy, neighbouring a growth-oriented economy and remains in one of the world's largest trading blocs, which raises the question - *why does its economy remain hampered?* The answer to that question relates to lack of vision, the destructive impact of past violence and the failure to resolve existing impediments. Furthermore, what reaction against the Protocol symbolises is how the constitutional subverts, or could potentially disrupt, economic and thereby societal progress.

The existence of the Protocol, and much of how it has been shaped, was driven by constitutional issues and concerns around protection of the GFA. The evident tensions immediately following the Brexit Referendum resulted in a prioritisation of the N-S relationship, which in turn paved the way for the complexities and tensions now experienced within the E-W relationship. Smoothing the E-W relationship is as critical now as was protecting the N-S dimension.

However, the politics of the Protocol places(d) Northern Ireland within a series of tensions. This does make the intentions behind the Protocol unimportant. However, the overall discourse of fixing and responding to identity issues is not presently contiguous with a wider policy regarding building a peace dividend in Northern Ireland. Building a peace dividend requires the successful working of the 'totality' of interdependent relationships. Ultimately, the future of Northern Ireland is contingent upon maximising the benefits of those relationships – which is a question of choice that leads to effective decision-making.

Versions of political and media discourse, practice and rhetoric have undermined a wider appreciation of these interdependencies as opportunities. Such unique trading relationships are status and prospect giving. The failure to realise that the Protocol could be the gateway to an economic dividend through those interdependencies is immiserating. The friction caused by Brexit and the Protocol requires resolution but these must stretch beyond the identity/constitutional issue and address questions regarding how the Protocol will/or will not sustain a growth oriented Northern Ireland. The central issue concerns whether the Protocol is a protector of variant constitutional positions, a catalyst for sustained economic

prosperity and opportunity setting - or both. The solving of identity tensions undertaken in parallel with the voicing of the evident opportunities within the Protocol, to build the next generation of economic development and social inclusion, is paramount. If the opportunities within the Protocol are not realised then the Protocol will be reduced to a set of technocratic laws whose implementation will forever be driven in part by a response to identity politics. We identify the opportunities the Protocol offers as:

- 1) **NI as a site of investment:** Private sector investment is attracted to conditions and locations where there is high degree of certainty and stability. The Protocol jointly agreed by the UK and EU “*address(es) the unique circumstances on the island of Ireland through a unique solution*”. This can create a ‘best of both worlds’ scenario for Northern Ireland that, by any objective economic criteria, has the potential to drive significant growth and investment. Early evidence from agencies such as InvestNI and Manufacturing NI indicate that this competitive advantage is already attracting the interest of potential investors. The former Northern Ireland Economy Minister, Diane Dodds, in a written answer to the Economy Committee of the Northern Ireland Assembly, confirmed that InvestNI is currently dealing with 30 live enquiries from companies wishing to take advantage of ‘*the unique status of Northern Ireland under the Protocol.*’² Northern Ireland is now positioned to enable trade in goods in both the UK Internal Market and EU Single Market. This will especially advantageous for businesses that wish to trade simultaneously within the UK and the EU.
- 2) **NI business in EU Customs Code:** Northern Ireland businesses have an advantage in trading with EU over those in GB. Firms operating in Northern Ireland can source and supply goods to Ireland and/or the rest of the EU without having to go through regulatory checks, thereby avoiding the additional costs and demands of regulatory compliance and control. This also provides reassurance for customers, consumers, and business partners that goods meet Single Market standards,
- 3) **Access to the GB & EU market**³: Post-Brexit Northern Ireland finds itself in a unique position with access to trade in both the UK and EU markets. According to Invest NI: “*This dual market access position means that Northern Ireland can become a gateway for the sale of goods to two of the world’s largest markets and the only place where businesses can operate free from customs declarations, rules of origin certificates and non-tariff barriers on the sale of goods to*

² See: <http://aims.niassembly.gov.uk/questions/printquestionssummary.aspx?docid=334892>

³ This is illustrated in the seafood sector and a potentially negative effect on E-W for ports and fishing communities but also the market reality of supply and demand elsewhere.

both GB and the EU."⁴ Although firms operating in both markets simultaneously face the costs of compliance for both jurisdictions there are circumstances that could be advantageous for high value-add activities such as medical device and pharmaceutical manufacturing, for those who seek access to both markets.

- 4) **Building the N-S economy:** Previously leveraged economies of scale and proximity achieved by indigenous sectors have been retained. To preserve enhanced access to GB, there are the businesses in Ireland already operating or considering operating in Northern Ireland via integrated operations. This could potentially involve large FDI manufacturers.
- 5) **The Common Travel Area (CTA):** The CTA, a long standing arrangement that pre-dates both the UK and Ireland's membership of the EU, allows citizens of each jurisdiction to live and work in both and continues to operate under the Protocol. It protects rights of residence, right to work and access to employment, health care, education and social benefits for citizens of the two jurisdictions. This continued free movement between peoples on these islands lessens the impact of the Protocol on the 100,000 British nationals living in Ireland and the four times as many Irish nationals living in the UK. However, it is so far largely unrecognised, and therefore underappreciated for the core protections it affords.
- 6) **N-S Infrastructure investment:** Although not directly associated with the Protocol infrastructure remains an issue of importance. The 'hard' infrastructure that provides energy, roads, rail etc. and the 'soft' infrastructure of third level education/skills reskilling/research and development, along with strengthening and expanding health, environment, biodiversity and other community support services, requires significant investment. Reducing this deficit by delivering more ambitious projects through collaborative N-S investment such as the successful Single Electricity Market and simultaneous co-ordinated climate action, as well as developing E-W and NI-EU relationships, would deliver additional benefit.

These opportunities and the interdependencies critical to solving the tensions of the Protocol, require political and civic leadership that is centred on better functioning of the totality of relationships and related institutional structures to facilitate improved economic, trade, and investment outcomes. Potential improvements include:

⁴ See <https://www.investni.com/media-centre/features/northern-ireland-market-access-great-britain-and-european-union>

- 1) The NI Executive recognising and mapping out the opportunities provided by these inter-dependencies and the positive role it can play in their development and progression.
- 2) The Executive, with maximum creativity and common purpose, developing a new relationship with the EU - as permitted under the GFA.
- 3) The Executive mapping how interdependencies will be aligned to RDI, productivity growth, market astuteness and the role of the university sector in skills and technological enhancement.
- 4) The Executive leading deliberative democracy through creating fora for civic initiatives to support building economic prosperity and social justice. The capturing of expertise and ideas from across civic society would do much to better inform policy and practice. Such civic knowledge and capacity should link directly to each interdependency.
- 5) The Executive locating business sector responses that map onto unique trading relationships of E-W, N-S and NI-EU and promote their relevance and future out-working.
- 6) The Executive supporting and better understanding business sector alliances that are E-W, N-S and NI-EU. Northern Ireland within the EU customs code and the UK customs territory provides an opportunity to examine the institutions of Strands 1-3 to not only resolve present difficulties, but also to determine the nature, form and direction of enhanced economic futures. This is critical for government-based leadership to ameliorate the tensions caused by the Protocol.
- 7) The governments of Ireland and UK maximising the potential of the British Irish Council (BIC), the North South Ministerial Council (NSMC), and British Irish Intergovernmental Conference (BIIGC), to frame policy direction post-Protocol.

If the Protocol is an opportunity to re-define the economy of Northern Ireland inside the EU Customs Code and UK Customs Territory, then it must be presented and explained as an incentive for business, investors, and others to think outside of traditional boxes. To assist innovative thinking and move beyond evident tensions will need pragmatic and flexible leadership. The reality that the Protocol is law is evident, but implementation is now pivotal to better outcomes.

3. Framing the Debate

There is no doubt that as the end of the transition period approached public anxiety over potential goods shortages began to grow. Some GB businesses became unwilling to trade with Northern Ireland with SMEs citing additional costs and burdens post-Protocol. In conversations with investors we are told that they are concerned by political insecurity and have postponed investing in Northern Ireland, while others are taking advantage of the unique circumstances of the Protocol to fast track investment decisions. It is likely that as resolution of tensions and issues occurs, investors will shift from postponement to asset delivery.

It is unquestionable that the very late agreement of the UK-EU Trade and Cooperation Agreement (TCA) left insufficient time for preparation prior to it coming into force. The TCA was formalised on 17th December 2020 and as late as New Year's Eve new processes were being issued that would become operational within 12 hours. In practice, the formal transition period that was intended as preparation time for businesses to adjust to the changes, was of limited or no benefit. Seamus Leheny of Freight NI, explained during a House of Lords evidence session that the '*transition period*' had become, in practice '*a negotiating period*' and thereby leaving no time for businesses moving goods E-W to prepare.

Many of the issues experienced during this first period of operation may turn out to be 'teething problems' resulting directly from a lack of preparation and familiarity with new systems and processes. Such practical issues may in time be resolved, if the ongoing UK-EU negotiations can deliver relatively frictionless processes that lead to restoration of GB companies trading with Northern Ireland. This will help reduce evident public and business anxieties. However, the Protocol has also stimulated societal, cultural and political tensions that need further exploration, analysis and reaction.

This research paper frames issues into 4 areas; these are **Movement of Goods, Societal Tensions, Tensions Resolved** and **Mapping the Future**:

- 1) **Movement of Goods**⁵: It is critical that ongoing UK-EU negotiations solve the issues around supply chains, trading E-W and the ability to obtain

⁵**Article 5 (2)**: For the purposes of the first and second subparagraphs of paragraph 1, a good brought into Northern Ireland from outside the Union shall be considered to be at risk of subsequently being moved into the Union. **Article 5 (2)**: Before the end of the transition period, the Joint Committee shall by decision establish the criteria for considering that a good brought into Northern Ireland from outside the Union is not at risk of subsequently being moved into the Union.

a movement of goods that is as frictionless as possible. There are also issues to be resolved regarding how arrangements under the Protocol are to work regarding 'rules of origin', standards and free trade agreements that the EU and UK have already put in place or are negotiating.

- 2) **Societal Tensions:** These tensions relate to the effect upon public confidence from the harmful impact of interruption of the supply of goods and evidenced by some GB businesses no longer trading with Northern Ireland. In an extreme form, they relate to emergent violence and organised street protests. The need to ameliorate emerging identity and constitutional issues is critical, including a conversation regarding the source of these tensions and their validity.
- 3) **Tensions Resolved:** The Brexit period led to claims that the GFA would be undermined, that there would be a 'hard border' on the island of Ireland, that individual rights would be denied, and violence from dissident republicans would escalate. Given none of these threats emerged makes it is important to highlight a reading of the Protocol that pinpoints mechanisms that protect the GFA and individual rights.
- 4) **Mapping the Future:** Relates to achieving evidenced political and institutional decision-making. An opportunity exists to build the next generation of the peace-process, especially through the development of a peace dividend. The relationship between politics and the opportunity within the Protocol is of note. There is an evident risk that solution seeking, compromise and leadership for the next generation of economic activity is being submerged within identity and constitutional politics and insignificant discussion of the opportunities within the Protocol is being placed into public discourse.

3.1 Movement of Goods

In symbolic and practical terms, it is evident that the Protocol has resulted in changes, some of which have produced difficulties while others are proving advantageous. On the one hand, the lack of advance planning and preparedness together with the 'rules based attitude' of the EU currently is causing a bureaucratic and logistical burden on businesses and trade E-W. The scale of this burden may be masked by the current grace periods that provide a delay to full implementation of rules until October 2021. On the other hand, the Protocol has compelled new thinking and innovation. For example, Marks and Spencer having calculated the

increased costs of trade on the island of Ireland post-Brexit at £33 million, is now seeking alternatives, including an increase in local sourcing that is predicted to yield dividends for businesses particularly in Northern Ireland.⁶ Furthermore, food shortages that were anticipated did not materialise. Aodhan Connolly (NI Retail Consortium), told the House of Lords European Affairs Committee, Sub-committee on Ireland/Northern Ireland Protocol: *'In retail, the average supermarket has between 40,000 and 50,000 product lines and only a few hundred were ever missing'*.⁷

In practical terms, for UK business Brexit means a return to compliance with legally binding import and export controls for goods to exit and enter the EU, unless they are based in Northern Ireland where the Protocol's arrangements apply. The UK government has responded practically to emergent difficulties via the Movement Assistance Scheme, Authorised Trader Scheme, Digital Assistance Scheme, Trader Support Service and grant schemes for SMEs.

However, it is what comes next, via ongoing negotiations, which is important. To influence better outcomes the business community, politicians and civic society must constructively, and with evidence, voice its concerns and/or present solutions into the negotiations.

3.2 East-West Trade: Impacts

It is difficult to assess the Protocol so far, in terms of its full impact on E-W trade due to the unusual circumstances created by the Covid pandemic and a lack of rigorous and comprehensive data. We assume that many of the initial issues that impeded the movement of goods were due to a lack of preparedness and the speed with which new regulations appeared. We also assume that solutions have been found through Northern Ireland businesses pivoting their supply chains to source from Ireland and the EU. Evidence suggests that businesses in GB have also diverted their supply chains to the island of Ireland by moving goods via Northern Ireland. This is likely to be a significant factor in the unprecedented and extraordinary increase of 44% in the volume of N-S trade since January 2021⁸.

If negotiations pivot around maintaining the GFA and the peace process and if jobs genuinely underpin peace then it should be considered that around 60% of private

⁶ See <https://www.belfasttelegraph.co.uk/business/northern-ireland/brexit-has-cost-m-and-s-up-to-33m-on-the-island-of-ireland-40472863.html>

⁷ See <https://committees.parliament.uk/oralevidence/2225/html/>

⁸ <https://www.cso.ie/en/releasesandpublications/er/gei/goodsexportsandimportsmarch2021/>

sector jobs, across all sectors, are located in businesses with GB purchasers⁹. This compares to c 40% of jobs related to imports from Ireland. This is not an ideological point but one, in societal terms, of mutual concern around protecting jobs and ensuring the outcome of negotiations are not deleterious to employment.

Present negotiations focus upon Northern Ireland Purchases and Imports from GB. That constitutes £10.4 billion or 0.1% of the £11trillion that constitutes the EU's estimated GDP. If we allow for an estimated 20% of that value as being 'goods at risk' the percentage share falls to 0.02%. This is a miniscule amount in terms of the EU's GDP, but purchases from GB equate to 81.2% of all imports of goods into Northern Ireland from across these islands. Ultimately, the requirement of the Protocol to provide risk mitigation for around 0.02% of GDP is construed by the business community as over-engineering. It is a growing concern that the Protocol protected the lesser market and that a rules-based approach affects the predominate form of the Northern Ireland economy. Therefore, the fear remains that a rules-based approach will undermine the GB market, reduce employment and drive-up costs. In symbolic terms any deleterious impact upon the E-W relationship is viewed by some as a threat to Northern Ireland's place within the UK.

If the problem relates to risk then in seeking solutions the starting point must be to quantify the scale of this risk. Business community representatives argue that the EU must understand the very limited potential for abuse on the movement of goods. Northern Ireland forms a small part of a small island with limited air, road and port facilities. Once Northern Ireland has met its own needs in transporting goods into its home market there is little additional capacity to facilitate illicit trade onwards into Ireland from there the EU. In addition, the Protocol provides for comprehensive checks to monitor the E-W movement of goods so that any significant increase in the movement of goods to transit through to the EU would be quickly noticeable. Given the circuitous route and additional costs involved of transiting into the EU via Northern Ireland it is also likely to prove an unattractive proposition to any potential trafficker.

If the veterinary/SPS agreement is for the EU related to their long-established positions on dynamic alignment and equivalence, then how does that position square with protecting the peace process if it causes economic and societal instability? Similarly, if the UK government's position is to reject the same alignment and this achieves negative impacts then the same question remains relevant.

⁹ Broad Economy Sales and Exports Statistics. www.nisra.gov.uk/statistics/business-statistics/broad-economy-sales-and-exports-statistics

The GFA is bespoke agreement that focuses on parity of esteem and mutual respect. A careful reading of the GFA shows that it was based upon advancing protections from each set of identity politics. Ultimately, any dilution, hindrance or impediment to the GB to Northern Ireland economy, while the N-S relationship remains protected, will undermine the objectives of the GFA. Fundamentally, where rules and regulations are inserted into the machine of trade law what emerges in Northern Ireland is identity politics. Overly engineered approaches undermine the nature of maintaining the bespoke peace agreement. Protecting the GFA cannot be rhetorical, and protections offered under Articles 2 and 11 of the Protocol therefore points to the importance of parallel protections regarding the E-W relationship.

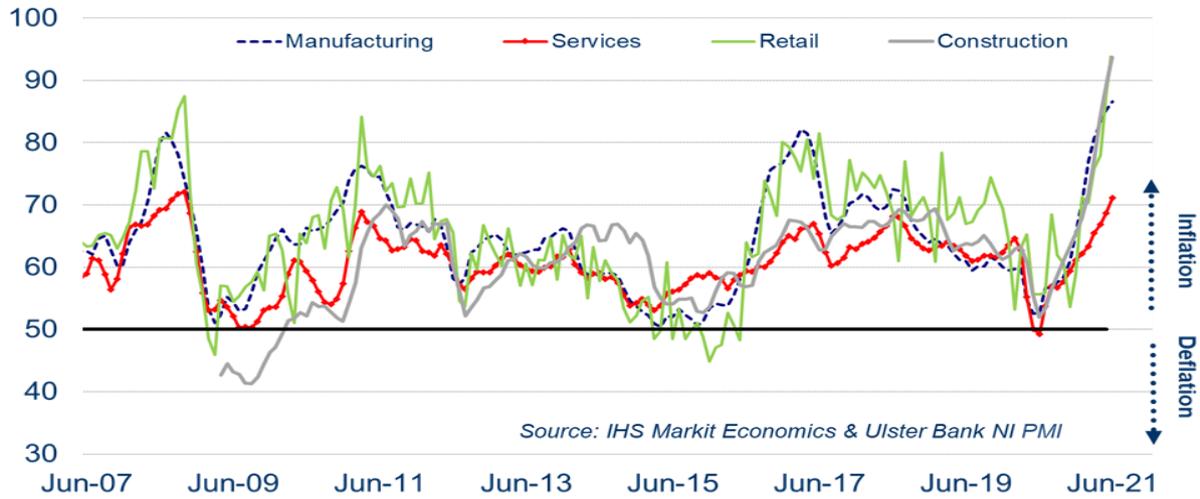
GB companies presently not trading with Northern Ireland may be doing so due to 1) misunderstanding of rules 2) prioritisation of the EU market, or a combination of both. It is imperative that the UK government promotes better understanding of the Protocol among GB businesses. However, E-W movement issues must be understood as presently operating within a grace period, which means that the level of preparation for full implementation (when grace periods end) is varied. A general rule of thumb suggests that larger organisations have the resources to adapt more readily than smaller businesses with limited resources.

For some political actors, barriers to trading with Northern Ireland and evidence that Northern Irish businesses are now sourcing goods through/from Ireland is a sign of economic 'annexation' from GB. This societal and identity tension is important given that any evidenced diminution of E-W trade is presented as 'proof' that the Protocol intends to create an economy that is more N-S oriented with closer economic integration acting as a precursor for constitutional unification. This is a reminder that for those who are pro-union, constitutional fealty is centred on the primacy of the E-W relationship. However, the emerging responses of different sectors and firms are not wholly negative about trade between GB and Northern Ireland. For example, GB companies that work within the Protocol to retain their business will be protecting jobs and business in the UK. The extent to which this benefits Northern Ireland will depend on how much value is captured locally.

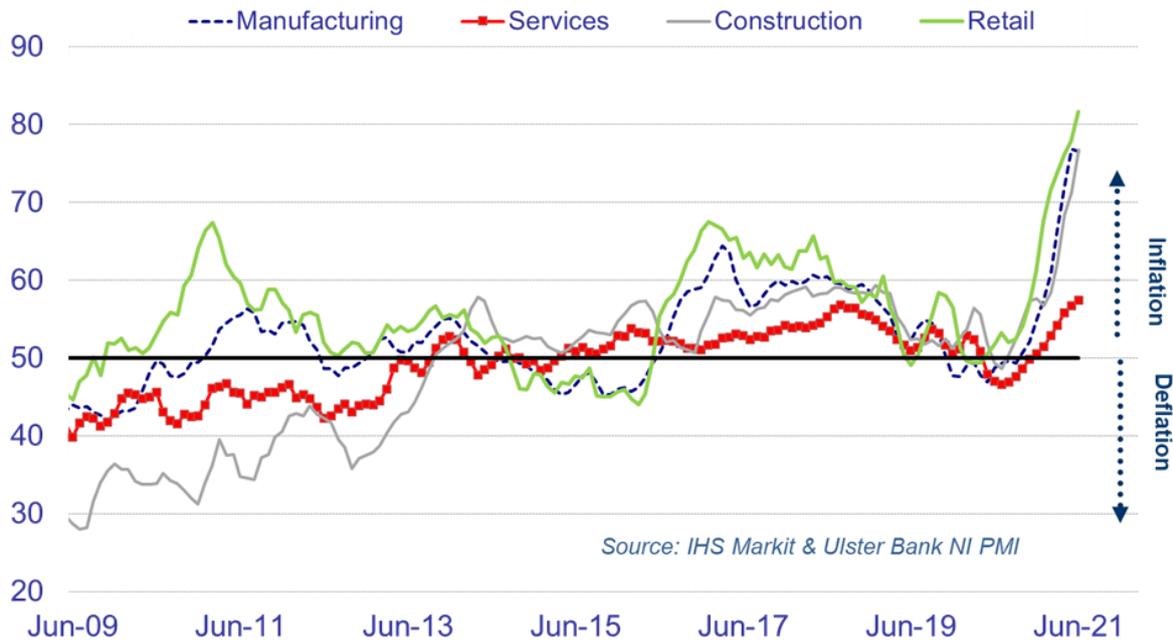
The Ulster Bank Northern Ireland PMI Report - June 2021 signalled that further inflationary pressures are intensifying, with input costs and output prices both rising at the fastest rates on record¹⁰. This is a likely consequence of a combination of global demand post-Covid and the impact of Brexit. It is important to note that for both sets of costs they rose higher in Northern Ireland than any other UK region.

¹⁰ See www.ulstereconomix.com

NI Input Cost Inflation 3 month moving average



NI Firms' Output Price Inflation 3 month moving average



During April 2021, Manufacturing NI¹¹ surveyed 190 companies. Their findings indicate that there have been tangible negative impacts upon E-W trade. However, it

¹¹ Full report at https://www.tughans.com/wp-content/uploads/2021/05/Manufacturing-NI-Report_2021.pdf

is also reported that these negative impacts are less than those between NI and the EU. The survey also indicated that businesses are responding to negative impacts by re-orienting supply chains away from E-W towards sourcing goods and materials via Ireland or Northern Ireland¹². In sum:

- 77% stated that during the first three months following the transition period there has been a negative impact on their business.
- Regarding the question *'how, if at all, have the new processes as a result of the Irish Sea Border impacted your business in the past 3 months?'* 36% stated *'we are currently struggling with new processes, which are likely to persist'* with an additional 19% stating *'we are currently struggling with new processes, which are likely to ease'*. Around a third (31%) agreed that *'after initial disturbances we are now on top of issues'*.
- Regarding *'which of the following best describes how your GB suppliers have reacted to the new requirements of the Irish Sea Border (or NI Protocol)?'* 70% of respondents agreed with the statements *'suppliers are unwilling to engage with the new requirements'* or *'suppliers are unprepared for new requirements'*. 24% stated that there had been *'no significant impact, business as usual'*.
- Regarding *'which of the following best describes how your EU suppliers have reacted to the new requirements of the Irish Sea Border (or NI Protocol)?'* 37% of respondents agreed with the statements *'suppliers are unwilling to engage with the new requirements'* or *'suppliers are unprepared for new requirements'*. 45% stated that there had been *'no significant impact, business as usual'*.
- Businesses were found to be re-orientating supply chains from GB to NI (19%), ROI (18%), the EU (16%) and combined models of re-orientation.
- 39% stated that there had been a negative impact on sales to GB, which was a rise from 25% since the February 2021 survey. In comparison, 29% stated a negative impact on sales to EU which was up from 23% since February.
- 38% stated that *'disruption is likely to persist to the continued detriment of my business'*.
- 24% stated that *'after initial disruption, confident it will be business as usual'*.
- Almost half (46%) want the NI Executive to identify and secure new opportunities for their business¹³.

Business leaders have also called for:

- Development of a Retail Movement Scheme to govern the transportation of agri-food goods, plants and animals between GB and Northern Ireland proportionate to the low risk these items present to health.

¹² See <https://www.bbc.co.uk/news/uk-northern-ireland-56597642>

¹³ See Appendix 1

- The introduction of a Trusted Trader status for parcel operators to reduce expensive administrative burdens placed on business to consumer consignments.
- The grace periods currently in place under the Protocol must be extended sufficiently to enable longer-term simplifications to be agreed and implemented¹⁴.

Businesses are also sensitive to societal tensions and whether arrangements will be agreed by October 2021. As William Bain, policy advisor at the British Retail Consortium noted, retailers are concerned that the current political climate in Northern Ireland undermined confidence regarding the implementation of the Protocol, and the possibility that ongoing talks between the UK and the EU to ease the frictions on E-W movement may not be concluded by October¹⁵. Business in Ireland and the rest of the EU, not already operating but considering operating in Northern Ireland, may also share these concerns. It is evident that there have been impediments to business created by the Protocol matched by some evidence of adaptability.

3.3 North-South Trade and Business

The substantial challenges to the maintenance and future development of North-South trade and business were researched and responded to via the Protocol. What has emerged includes:

- 1) N-S integrated production and supply chains of indigenous agri-food products are not disrupted. The Protocol has sustained substantial business, revenue and employment in Northern Ireland and Ireland.¹⁶ Much of the economic damage to N-S trade and business feared by trade representatives and captured in '*Contagion of Uncertainty*'¹⁷ has been avoided. This is particularly important for the over 7,000 SMEs engaged in N-S business.
- 2) Early evidence suggests the possibility of unpredicted growth in N-S trade and business. Data supplied by the Central Statistics Office (Ireland) shows a 40% increase in N-S trade since January 2021.
- 3) Additional capacity has been put in place almost entirely for freight movements, notably without significant State intervention.

¹⁴ See <https://logistics.org.uk/logistics-magazine-portal/logistics-magazine-news-listing/auto-restrict-folder/25-02-21/logistics-uk-meets-with-uk-eu-governments-concerni>

¹⁵<https://www.thegrocer.co.uk/brexit/58-years-spent-on-post-brexit-paperwork-so-far-this-year/655673.article> and <https://www.rha.uk.net/news/press-releases/2021-03-march/rha-welcomes-news-of-changes-to-border-control-timings>

¹⁶ <https://crossborder.ie/the-future-for-agri-food-in-northern-ireland-and-on-the-island-of-ireland/>

¹⁷ <https://www.liverpool.ac.uk/humanities-and-social-sciences/research/projects/brexit-uncertainty/>

- 4) Business, business models, supply chains, logistics and distribution networks are adapting to the impact of the structural change that Brexit represents (e.g. moving goods off island via reliable, time defined and intra EU Single Market routes post-Brexit)¹⁸.
- 5) Tourism and Leisure, two sectors hardest hit by the Covid pandemic restrictions are receiving a major boost to recovery in tourism hospitality and other local businesses due to 'staycations'. The optimum benefit for both jurisdictions from this reliance on domestic business would include a high level of cross border movement, where - given the population relativities and more relaxed Covid arrangements - Northern Ireland would benefit most proportionally.

Institutional arrangements around Article 11 maintain the necessary conditions for North/South cooperation. It is important to first recall that while both Strand Two of the Good Friday Agreement (N-S) and Strand Three (E-W) address the 'totality' of these relationships, they do so differently. Strand Two addresses inter-jurisdictional interaction on the island of Ireland and so has its own distinct and separate institutional arrangements, cross-border bodies and specified areas for N-S cooperation¹⁹. Within the Protocol there are the three layers of joint interaction of the Joint Committee, the Specialised Committee and the Joint Consultative Working Group²⁰. There are provisions within the TCA that impact on the island of Ireland and therefore, its Partnership Councils are likely to play a role in discussing the conditions for N-S trade and business. Nevertheless, as every step of the Brexit process to date has demonstrated, the manner in which negotiations are conducted has an impact on their outcome, at least in the short term. The evident benefits of the Protocol and Article 11 have or will be to:

- Protect the CTA which reproduces an all-islands labour market that is critical to both Ireland and the UK.
- Enhance the capacity to co-ordinate climate action, protect water supplies and develop green integrated transport systems.

¹⁸ <https://www.thejournal.ie/less-landbridge-mroe-action-how-irish-trade-changes-5356884-Mar2021/>

¹⁹ Strand Three has its own institutional arrangements comprising two institutions. The British-Irish Council (BIC) that encompasses the entirety of the UK and its Crown Dependencies along with Northern Ireland and the Republic whose purpose as set out in Article 1 is to "*promote the harmonious and mutually beneficial development of the totality of relationships among the peoples of these island's*". And the British Irish Intergovernmental Conference (BIIGC) whose roots go back to the 1985 Anglo-Irish Agreement and in Article 2 promotes bilateral co-operation "*at all levels on all matters or mutual interest within the competence of both Governments*".

²⁰ See Appendix 2

- Expand the capacity of companies operating, or with the potential to operate, N-S to establish mutually beneficial business models arising from being in both Single and Internal Market and so potentially creating jobs.
- Increase integrated research & development projects capable of engendering the next generation of industries and services that benefit from N-S and E-W dynamics, especially regarding the university sector.
- Facilitate more conjoined and future oriented tourism and leisure sectors that can develop global reach.
- Return to competitive/comprehensive global access to/from Ireland to rest of the EU, the US and globally, via Dublin Airport, and development around an integrated ports strategy.
- Develop a business model that responds to changes regarding global tax that benefits N-S dynamics.

Evidence suggests that the Protocol has been beneficial in leveraging economies of scale and proximity, and the opportunity for Northern Ireland to benefit from economic recovery in Ireland and GB.

3.4 Societal and Political Tensions

The Protocol was formally agreed in late 2019, first by Prime Minister Boris Johnson in a meeting with then Taoiseach Leo Varadkar, and then by all twenty-eight heads of the EU Member States (the UK had not formally left at that point). The Protocol was ratified in UK law by both Houses of Parliament, and EU law by the European Council and Parliament. Irrespective of perspective, every possible source of democratic legitimacy has endorsed the Protocol. This democratic process, which invested time energy and importance in endorsing a unique post-Brexit position, one not given to the rest of the UK, has received limited public credence amid claims of a democratic deficit.

What has failed to occur is a conversation and consideration of the Protocol's positive aspects, impacts and opportunities. Northern Ireland is now in a situation where its laws governing politics and society are made in Westminster and Stormont, but some of the regulations governing its economy and legal/rights framework are made in Brussels. It has one foot within the unwritten constitution of the UK, and the other within the legal order of the EU. The current framing of this problem is commonly presented as a choice between a border poll or the revocation of the Protocol.

Immediately following the EU Referendum in 2016 calls began for a border poll. The GFA places within international law the principle of consent, whereby Northern Ireland's constitutional position within the UK rests on the continued consent of its people. Should it appear to the Secretary of State for Northern Ireland that a majority wanting Irish unity could win a border poll, then a border poll should be called. Since the signing of the GFA in 1998 there were no concerted calls for a border poll

until the UK voted to leave the EU. Since the referendum, a movement is calling for preparations for a border poll to commence. There is some disagreement within and around timing and sequencing, but each is agreed that the GFA is underpinned by membership of the EU and that whilst the UK voted to leave, a majority of people in Northern Ireland voted remain. This means, they argue, that leaving the EU is undemocratic and the only way to restore the continued will of most in Northern Ireland to remain within the EU is through Irish unity.

Conversely, unionism, led by the DUP, the only major political party in Northern Ireland to support leaving the EU, has framed the Protocol as a 'Betrayal Act' that creates separation within the UK through different customs and other new rules now unique to Northern Ireland, which therefore, undermines the sovereignty of Northern Ireland within the UK. They have argued a position, supported by all unionist parties who now oppose the Protocol, that when the UK voted to leave the EU it would leave as a whole on the same terms and that the Protocol does not represent the Brexit they were promised. Rather, it places an 'Irish Sea Border' within the UK, whilst leaving the Irish land border completely open. When viewed through political unionist and nationalist lenses the divisions appear stark.

Such binary framing of a deeply nuanced political system destabilises the model and processes that have led to political settlements whilst also threatening the potential to realise the economic opportunities the Protocol offers. It diminishes the evidence of potential benefits from the Protocol, and it dismisses the lessons of Northern Ireland's political continuum that the ideation of the peace process can solve the most fundamental of challenges. The GFA remains as the bulwark in the operation of politics and peace-building - a pre-condition for building a successful economy - therefore, processes and structures must be in place for:

- 1) Multi-actor dialogues involving all participants on these islands who are stakeholders in the embedding of peace.
- 2) Determining the role of the US as a broker for the required peace-dividend.
- 3) Encouraging the EU as a provider of significant support for the building of economic prosperity.

It may seem peculiar to those who are not readers of Northern Irish politics why the protection of goods at risk, supply chains issues and logistical logjams would bring forth anger, resentment and rejection of the Protocol. Two moods within the public require deliberation. Firstly, that linked to the movement of goods and impacts upon supply chains, which could fall under the following types and forms:

- 1) Shortages of retail goods.
- 2) GB companies presently not trading with Northern Ireland.
- 3) Disruption of supply chains.

- 4) Loss of markets for goods.
- 5) Disruptions forcing businesses to source goods from EU that are more costly and involve the additional cost of currency conversion.
- 6) Cost of implementing Protocol related rules.
- 7) Low investor or postponed investment decisions.
- 8) Lack of clarity over rules and regulations.
- 9) Fear that the Protocol will harm economic well-being, reduce investment and the loss of EU funding that supported agencies such as InvestNI.

In essence, if these issues are teething problems with practical solutions available and there is no medium to long-term deleterious impact upon the economy, then the sense of imposition and the threat to business and consumer choice will recede and do much to lessen wider concerns. Obviously, any short-term improvements in the flow and movement of goods and a reduction in consumer costs would aid and accelerate an improvement in the public mood.

Secondly, there are problematics that relate to constitutional and identity politics that may recede if the movement of goods issue is resolved. However, identity forms of societal disruption have multiple sources rooted in a series of other problematics within Northern Irish society. The rise in ire within sections of unionism and loyalism is not complete and there are, as noted below, divergent understandings and readings of the Protocol within those communities. For those vociferously opposed to the Protocol their objections speak to isolation, betrayal and threats to Northern Ireland's place within the UK. Some share that anger but do not call for civil or political disobedience. Many others are not motivated in either support or rejection of the Protocol.

3.4.1 Inter-Community Readings

It is important to place Brexit and the Protocol within wider societal readings. In the Liverpool University General Election Survey of 2019/20²¹ we locate a reading that presented a nuanced understanding of society within which there was more inter-community agreement than assumed. At that time, the survey findings challenged simplistic and un-evidenced opinions and analysis that positioned society as composed of two dominant communities, which react and operate in ways that are homogenous, separate and standardised. Evidence from a Queen's University tracker survey conducted exactly 2021 suggests such nuance may no longer be the case²².

²¹ <https://www.liverpool.ac.uk/humanities-and-social-sciences/research/research-themes/transforming-conflict/ni-election-survey-19/>

²² www.qub.ac.uk/News/Allnews/OpinionPanelpollunderlinesconcernsofimpactofNorthernIrelandProtocol.html

The University of Liverpool General Election Survey conducted at the end of 2019 painted a more complex scenario than more recent academic research. For example, 53% of those who are pro-union voted Remain or did not vote. Moreover, there was significant support for leaving the EU among those who wish for Irish unification, around a fifth of whom voted for Brexit. Within the same survey 44.4% opposed checks on goods travelling between Great Britain and Northern Ireland (the East-West border) and 48.9% between Northern Ireland and Ireland (the North-South 'border'). It is critically important to recognise that there is a high level of disapproval across NI's communities regarding checks on goods but also noteworthy approval and significant shares of respondents who did not express an opinion.

As shown in Tables 1 and 2, (with the exception of those who favour Irish unity and the unacceptable nature of checks N-S) there was no significant majorities for any of the propositions offered. Table 1 indicates that close to half of those who were pro-unity and pro-union found checks in either direction unacceptable with smaller but significant shares finding them acceptable. When removing those who stated that they 'do not know' two thirds of all respondents stated that checks N-S or E-W were unacceptable. In Table 2, almost half of those who do not state a constitutional preference stated that they did 'not know'.

Table 1: Constitutional Preference and N-S/E-W Checks

	Pro-Union Checks N-S	Pro-Unity Checks N-S	Pro-Union Checks E-W	Pro-Unity Checks E-W
Acceptable	27.0	18.2	23.2	35.0
Unacceptable	43.6	67.6	46.9	46.9
Do Not Know	29.4	14.0	29.8	18.0

Table 2: Non-Constitutional Preference and N-S/E-W Checks

	Checks N-S	Checks E-W
Acceptable	16.0	16.9
Unacceptable	34.2	31.7
Do Not Know	49.6	51.2

Tables 3 and 4 re-analyse the same questions via those who voted Remain, Brexit and those who did not vote. Regarding checks on goods N-S (Table 3) the majority of both sets of voters opposed checks on goods movement N-S. Among non-voters nearly 60% stated 'do not know'. A significant near-fifth of Remainers and a third of Brexit supporters found checks on goods N-S acceptable.

Voting and Non-Voting N-S

	Remain	Brexit	Did not Vote
Acceptable	18.4	31.8	16.5
Unacceptable	63.9	50.6	25.6
Do Not Know	17.6	25.6	57.7

Table 4 finds that a majority of both voting sets, in 2019, found the checks on the movement of goods E-W unacceptable. With non-voters showing a near majority share who stated 'do not know'. Interestingly, nearly 30% of both Remainers and Brexit supporters found checks on goods E-W acceptable.

Voting and Non-Voting E-W

	Remain	Brexit	Did not Vote
Acceptable	27.2	28.7	19.4
Unacceptable	52.0	54.2	20.4
Do Not Know	20.5	17.3	46.3

The recent data collected in March 2021 via the QUB²³ study suggests that this more inter-community and or nuanced understanding of the Protocol has shifted. As stated within that study conducted by Professors Hayward and Phinnemore:

- Views on the benefits of the Protocol are split but with a substantial majority of respondents currently viewing the Protocol to have a negative impact on a range of matters (Figure 1).
- No more than a third of respondents see the *current* impact of the Protocol to be positive.
- Over two-thirds of respondents were either concerned or very concerned about the effects of Brexit and/or the Protocol on the Northern Ireland economy (71%), on the cost of certain products (71%), and on political stability in Northern Ireland (72%).
- A similar proportion of respondents were concerned or very concerned about Northern Ireland's voice being heard on the implementation of the Protocol (73%), about the public availability of clear and detailed information on the Protocol (69%), and about scrutiny of the UK-EU bodies taking decisions on its implementation (68%).
- As shown in Table 5 the lack of trust in politicians, civic leaders and the institutions of the GFA is low. As noted, *'this is particularly true of UK actors, with overall levels of trust in UK political parties (3%), the UK Government (5%), and Whitehall civil servants (6%) being strikingly low. Northern Ireland political parties, the NI Executive, and the NI Assembly fare marginally better, although even they are distrusted by three-fifths of respondents to manage the interests of Northern Ireland in respect of the Protocol'*.
- The study recorded a 65% negative impact upon politics in Northern Ireland, 56% upon Northern Ireland's constitutional future and negativity around Strand 2 of the GFA and the UK-EU relationships. These findings highlight a fragility in the achievements gained post-GFA.

²³ See 'Opinion Panel poll finds voters are evenly split over the Northern Ireland Protocol' (newswise.com)

Figure 1. Overall assessment of the current impact of the Protocol (positive minus negative)

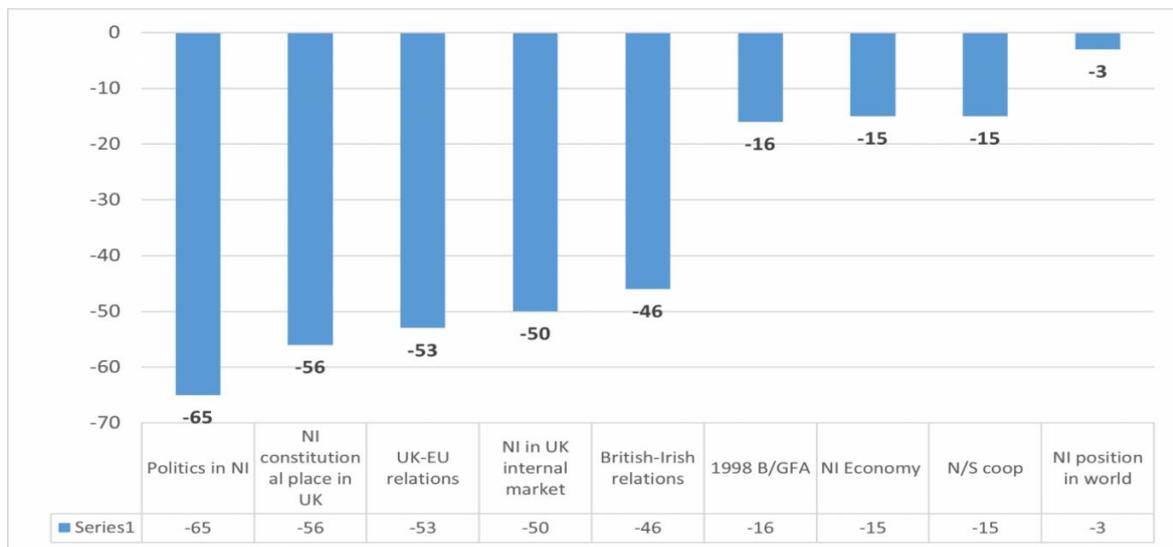
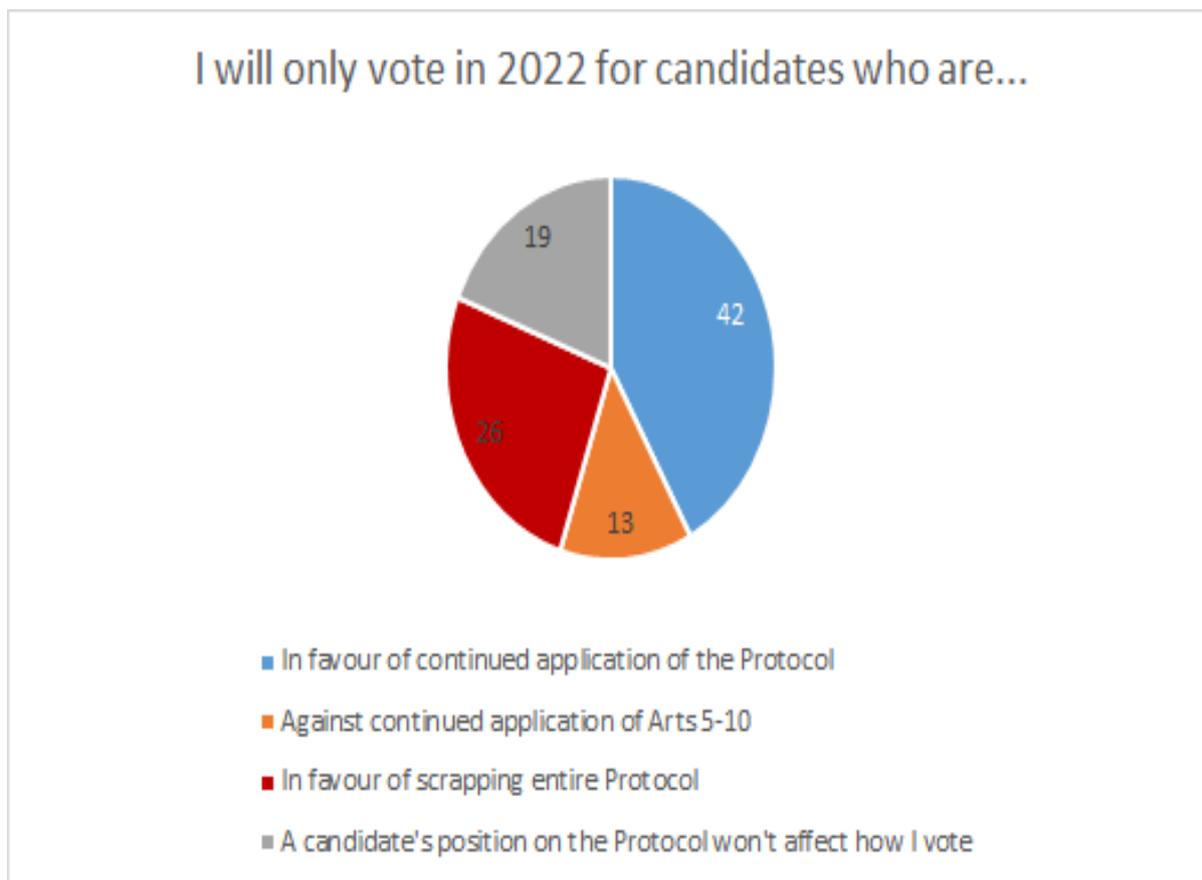


Table 5. Extent of trust in actors when it comes to handling the interests of NI vis-à-vis the Protocol

	Trust A lot	Trust	Neutral	Distrust	Distrust A lot
NI Business representatives	11	41	23	13	10
NI Civic Leaders	3	25	28	21	20
Irish Government	9	25	17	13	35
NI Civil Service	2	25	29	21	20
UK-EU Joint Committee	2	17	26	21	31
NI Assembly	1	15	22	33	27
NI Executive	1	14	20	33	30
Whitehall Civil Servants	0	6	17	28	46
UK Government	1	4	8	32	54

A further finding within the QUB study was that **48.1%** (when removing those who answered an electoral candidates stance on the Protocol ‘would not affect’ how they voted) stated that they would vote for candidates campaigning against Articles 5 to 10 or the removal of the Protocol. This would suggest that, especially within the pro-Union electorate, the Protocol is an emotive political terrain.

Figure 2: Voting intentions and the Protocol



3.4.2 Unionism, Loyalism and the Protocol

As with societal readings, those of unionism and loyalism tend towards group homogenisation with a narrative of significant anger, political alienation and rejection of the peace process. There are of course sections that have emerged who aim to undermine the Protocol and its application.

In heightened form there is a type of loyalism that is usually anti-GFA, which emanates from those who believe that the process of peace-building is counter-intuitive and centred upon a series of 'betrayals' of their constitutional place within the UK. They have been capable of bringing groups of several hundred people into largely peaceful protests. Some with an affinity to anti-GFA politics have orchestrated violence.

Overall, there is an emerging level of co-ordination of activity especially via social media and the articulation of a language of duplicity from government, calls for ministerial disobedience²⁴ and a positioning of further street protests post-

²⁴ Mathers, Matt (6 January 2021). "Brexit: DUP should make NI government 'unworkable' until Irish Sea border removed, says loyalist activist". Independent.

lockdown. Worryingly, what could be classified as dissident loyalists, those who are most vehemently opposed to the peace process notably the Orange Volunteers and Red Hand Defenders, have re-emerged on social media trying to locate opportunities to build anti-GFA agency. Allied to this are the issues of social class, lack of access to well-paid employment, educational disadvantage and the perpetual narrative that resource allocation has been skewed unfairly towards those wishing for a united Ireland²⁵. The funeral of veteran republican Bobby Storey, during the first Covid lockdown and the subsequent non-prosecution of those who attended, has also driven such activity and led to accusations of two-tier policing.

The peace process has also created a section of those within loyalism who are now supportive of conflict transformation, anti-prejudice initiatives and inter-community engagement. Presently, they are challenged by anti-agreement loyalists who view them as being too close to the political class, less fervent in their loyalism and part of the fabric of the GFA. Transformative loyalism, which is contingent to delivering the peace process, is threatened in terms of influence by anti-agreement loyalism and the emerging politics of the Protocol.

However, despite differences over the GFA, the Protocol is totemic. Both sets of loyalists have vocalised opposition, although those who favour transformative loyalism call for dialogue and have used social media and other influences to attempt to stop violence. In the main, this form of societal tension within sections of unionism/loyalism is centred upon;

- a) The threat of violence from dissident republicans that a 'hard border' on the island of Ireland would be unacceptable is viewed by some unionists/loyalists as having framed concessions to that violence;
- b) The integrated N-S production and supply chains, considered in depth and detail within the Protocol, remaining intact is 'evidenced' as part of a concession process when compared to the checks on goods E-W;
- c) The Protocol is a betrayal of sovereignty allied to the belief that protests can remove the Protocol;
- d) A belief that the checks on goods, to protect the single market, has created an 'Irish Sea Border';

Arguments presented by protesters rely heavily on sources that supported and promoted Brexit and presents only objections to the Protocol based, as stated, on it being '*a clear and present danger to the union, and as such has the potential to energise and*

²⁵ See Point 18 of J. Bryson (2020) Surrendering Sovereignty- The Constitutional implications of the Northern Ireland Protocol. '*This illuminates the reality that peace in Northern Ireland is dependent upon concessions to Irish nationalism, no matter how outlandish their perpetual demands. By capitulating to the implied threat of violence, a dangerous precedent has been set which sends a concerning message that political leverage can be gained by threatening peace*'.

*politicise unionist and loyalist communities in a collective effort to frustrate and ultimately thwart its permanent imposition*²⁶. The main points made by this line of argument include:

- 1) *'The Protocol will effectively annex Northern Ireland off from the rest of the United Kingdom, creating trade barriers between NI- GB and vice versa'*.
- 2) *'Northern Ireland will be further subjected to laws made by the EU, with input from the Irish Government, despite having no democratic say in those laws'*.
- 3) *'The weaponisation of the agreement has worked from the fundamental premise that there must be no barriers between Northern Ireland and the Irish Republic because a border- or even a solitary CCTV camera to monitor trade- would be a breach of the Belfast Agreement'*.
- 4) A common theme identifies two routes 'out of' the Protocol which are *'... (1) via a majority vote... in the Northern Ireland Assembly when the consent question is posed in 2024; or (2) via the unilateral exit mechanism set out in Article 16²⁷ of the NI Protocol²⁸'*.
- 5) Unionists must *'...resist efforts to annex Northern Ireland off into what effectively amounts to an economic United Ireland'*.
- 6) There is a demand upon the DUP²⁹ via the ministries they hold to *'... 'protest' against the Protocol ... to frustrate and impede the implementation of checks'. Furthermore, 'the real route to triggering Article 16 is not via protests or civil disobedience, but rather by making the system of Government unworkable from within.'*
- 7) Moreover, *'The Protocol, whilst temporary in its nature, will by its very nature embed a trajectory of Northern Ireland being orientated towards Dublin, and away from GB'*.
- 8) As stated *'the grassroots unionist and loyalist community must never become tolerant of the Protocol, rather the core collective political objective must be to thwart its full imposition'*.

²⁶ See <http://unionistvoice.com/wp-content/uploads/2020/12/The-Constitutional-Implications-of-the-NI-Protocol-2020.pdf>

²⁷ See Appendix 3

²⁸ See Appendix 3

²⁹ Previously, the DUP, stated in January 2021, that *"It would be a foolish idea to collapse devolution. It would remove the party who opposed the NI Protocol and give all power for Northern Ireland back to the UK government, who created and implemented the NI Protocol."*

However, there are less passionate and alternative voices within loyalism. The South Belfast UPRG (aligned to the UDA) has presented statements in which they have advanced³⁰:

- 1) That although the Protocol was '*... foisted upon us (without consent nor appropriate justification)... all of the above issues are political issues that can only be resolved through dialogue and consensus*'.
- 2) '*Rioting, street disturbances and the destruction of property will not change what must be solved by our political representatives*'.
- 3) The UPRG '*implore*' their '*supporters ... and anyone with influence to calm tensions, to refrain from posting provocative material on social media and to ... come together and galvanise support for our (very well intentioned) concerns and relay this level of concern to our political representatives*'.
- 4) They advance '*new initiatives designed to celebrate all cultures, based on mutual respect and an appreciation for 'difference' and '... economic growth within an 'island of Ireland*'.
- 5) A re-iteration of the argument that the threat of republican violence had led to concession making and that this should be recognised in future dialogue with the British government
- 6) Aimed for dialogue with a resultant removal of the Protocol and the 'Irish Sea Border'.

On May 6th 2021 Unionist leaders who negotiated the GFA delivered an open letter calling for the suspension of the Protocol. It contends that negotiation of GFA was based upon the constitutional position of Northern Ireland not being changed without consent. Adding that '*the imposition of the Northern Ireland Protocol has breached all of these core guarantees and safeguards of the agreement*' and that '*the status of Northern Ireland is not what it was prior to the Protocol taking effect, therefore it has changed, and changed without the consent of the people of Northern Ireland*'. The overall tone is one of accusing those who have implemented the Protocol of '*exceptional anti-democratic behaviour*' concerning '*a fundamental principle of international law is respect for the territorial integrity of a country*'. Claims are made of disrespecting the '*territorial integrity of the United Kingdom ... exceptional anti-democratic behaviour*' linked to a call for suspension of the Protocol '*forthwith*'.

We would argue that many of the claims, which feed into public discourse, have no legal argument and are more akin to political claim. In sum:³¹

³⁰ See Appendix 4

- Northern Ireland has not been annexed in any sense that is even vaguely legal. It is a misleading claim. Northern Ireland clearly remains part of the UK state under both international law and domestic law. What is misunderstood is that the UK decided to change the rules that govern internal trade relations between its constituent territories – not just Northern Ireland, but also Scotland, Wales and England. That change is the result of the EU Withdrawal Agreement Act 2020, combined with the UK Internal Market Act 2020.
- The UK government exercised its proper constitutional power to sign, and then ratify, an international agreement with the EU. That became binding on the UK as a matter of international law. The UK Parliament exercised its proper constitutional power to approve and implement that international agreement into domestic law. The UK parliament is the sovereign law-making authority within the UK and its legislation takes priority over all other legal provisions – not only Acts of the devolved administrations but also all previous statutes of previous incarnations of the UK Parliament itself.
- The international agreement ratified by the UK Government, and approved/implemented by the UK Parliament provides that, in certain fields, Northern Ireland will be affected by rules derived from the EU legal order. In some cases, those rules will automatically update in the light of changes to the relevant EU legislation/case law. In other cases, those rules will not update but are subject to a decision adopted by the Joint Committee – either to align NI with the new EU rules, or not. The UK state, under the UK’s conditions of constitutional law and in accordance with the UK’s understanding of democracy, created that entire system. It is impossible to argue that it is unlawful as a matter of UK law.
- Neither Articles 16 nor 18 are routes ‘out of the Protocol’. That is a completely inaccurate description and/or depiction of their legal nature and effects. The Northern Ireland consent mechanism relates only to certain provisions of the Protocol (Articles 5-10); and even if democratic consent is withdrawn in respect of those parts, the EU and the UK are legally obliged, within a fixed period, to find alternative ways of achieving the same result that the relevant parts of the Protocol were previously designed to achieve.
- Article 16 is not a unilateral exit mechanism; it is a specific device to allow each party to deal with definite and temporary problems in the operation of the Protocol, by adopting proportionate and equally specific and temporary solutions. The arrangements contained in the Protocol are permanent – unless the EU and the UK agree to replace them (including after a vote by the Northern Ireland institutions to refuse consent); or the UK unilaterally decides to abrogate the Protocol in breach of its international obligations.

³¹ We thank Professor Michael Dougan for text and clarification on these issues.

Anti-Agreement politicians such as Jim Allister (leader of Traditional Unionist Voice party) and others have called for a form of ministerial disobedience. In particular, they have called on former Minister Poots responsible via DAERA (Department of Agriculture, Environment and Rural Affairs) for administering the Protocol, to refuse to do so. Then, via judicial review and if instructed to implement the Protocol he is encouraged to resign, another DUP minister would then take his place and follow the same process of disruption. Such action would be folly and potentially bring down the Northern Ireland Assembly. Evidence suggests that in the most recent Westminster Election 2019, the decline in votes suffered by both Sinn Fein and the DUP, was directly linked to the collapse of the Northern Ireland Assembly nearly three years earlier.

Unionism must be aware that some 51% of those who identify as pro-union do not vote for the DUP and UUP due in the main to those parties' social conservatism and other actions. As noted previously, a majority of those who are pro-union either voted Remain or did not vote. The majority of these voters and non-voters did not vote in the 2019 Westminster election. Unionist political leaders need to be cognisant that significant shares of the pro-union electorate are pro-EU and do not consider vociferous anti-Protocol politics to be attractive. Moreover, evidence suggests that pro-union parties are losing supporters not to anti-GFA parties but to the non-constitutionally aligned Alliance Party. Unionist political leaders, if they are to drive politics around anti-Protocol sentiments, need to balance such attitudes between majority and more cautious forms of pro-unionism as in, those who seek dialogue and negotiation compared to those who favour the collapse of the Assembly and ministerial disobedience.

We would also stress the high levels of inter-community support for the Northern Ireland Assembly. Table 6 shows that nearly 70% of those who are pro-union support the power-sharing Executive. Unionist politicians need to appreciate a desire for solutions that are not based upon the unachievable removal of the Protocol. Overall, there is a small minority who favour violence, disruption and political mayhem.

Table 6: Unionists and Nationalists must both be in the Executive sharing power

	Pro-Union	Pro-Unity
Strongly Agree/Agree	69.1	73.2
Strongly Disagree/Disagree	9.9	6.4

A reading of what may emerge from within unionism/loyalism can only be imprecise at present. Any improvement in the movement of goods would take some heat out of the politics that are emerging. However, the main problematic is

that of highly rhetorical readings of the Protocol. What is construed as annexation, democratic deficit and the imposition of a roadmap for Irish unification is flawed, despite emotional perception. Currently, there are few public voices within unionism prepared to state the potential positives of the Protocol or challenge erroneous readings of it. The idea that the Protocol will be removed is unmerited but continues as political discourse.

3.4.3 Other Readings

Another feature of political debate that has grown during the Brexit period is that of the 'inevitability' of Irish unification. Brexit is seen as a 'game changing' episode in which those who were benign on constitutional matters have now been awakened and are demanding constitutional change. During the Brexit period, as shown in Fig. 3, there has been no evident shift in the c60% who wish to remain in the UK and the 25-30% who wish for Irish unification.

Figure 3. Surveys and the Constitutional Question

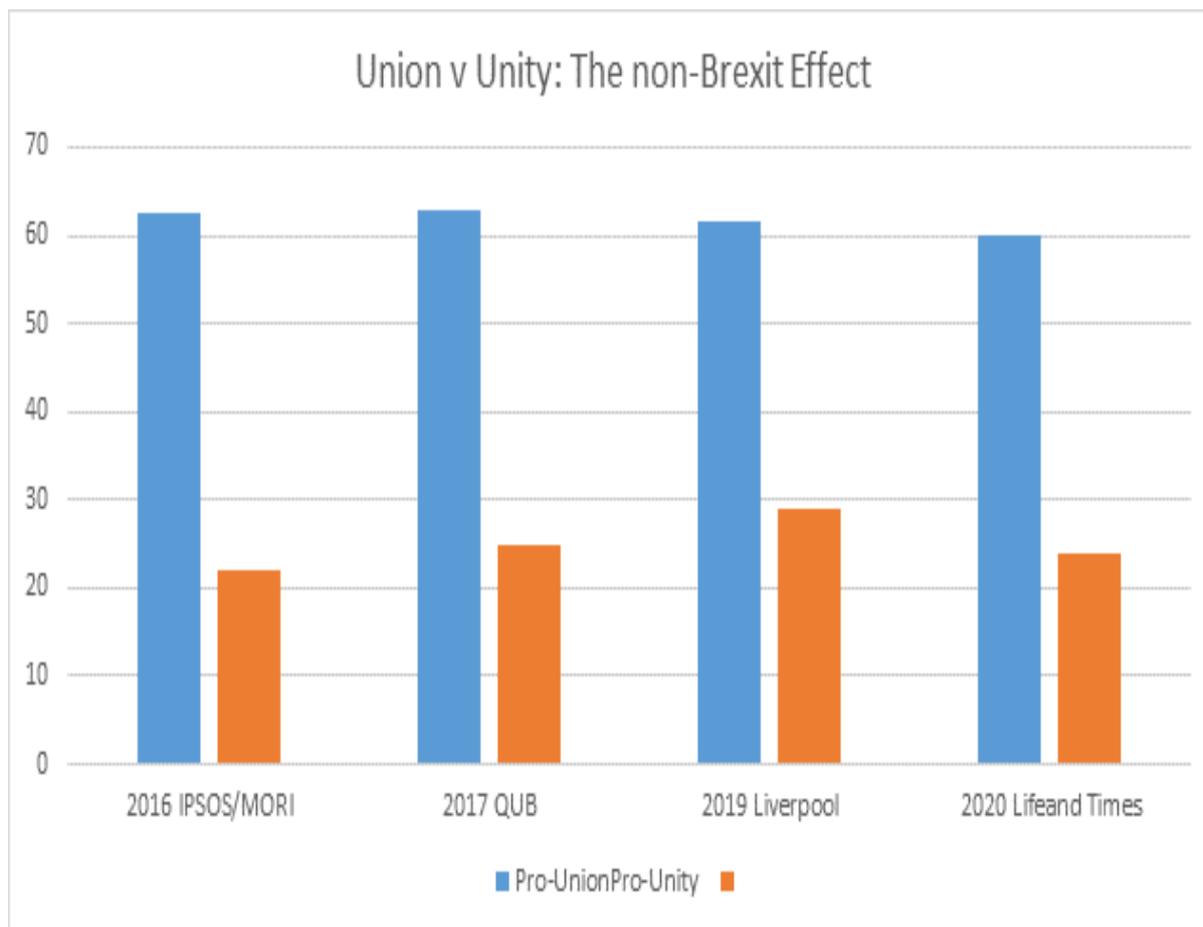


Figure 4 shows that the share of voters for the pro-union DUP and UUP has fallen since 2001 as has the share for the pro-unity SF/SDLP. In that period, the electoral shift, in terms of growth, has been to the non-aligned Alliance Party from 3.6% to 16.9% of the electorate. Such evidence suggests that the demand for a border poll and constitutional conventions to prepare for Irish unification is unallied to Brexit and electoral outcomes in the manner that is assumptively generalised.

The terms of the GFA explicitly state that the decision-making authority over calling a border poll shall rest exclusively with the Secretary of State for Northern Ireland. All of the Agreement’s participants willingly and voluntarily ceded this power. In over two decades of subsequent multi-party negotiations, it is striking that there is no record of any demand for clarity over border poll criteria ever featuring – including, importantly, even in the five turbulent years since the Brexit referendum, up to New Decade, New Approach 2020.

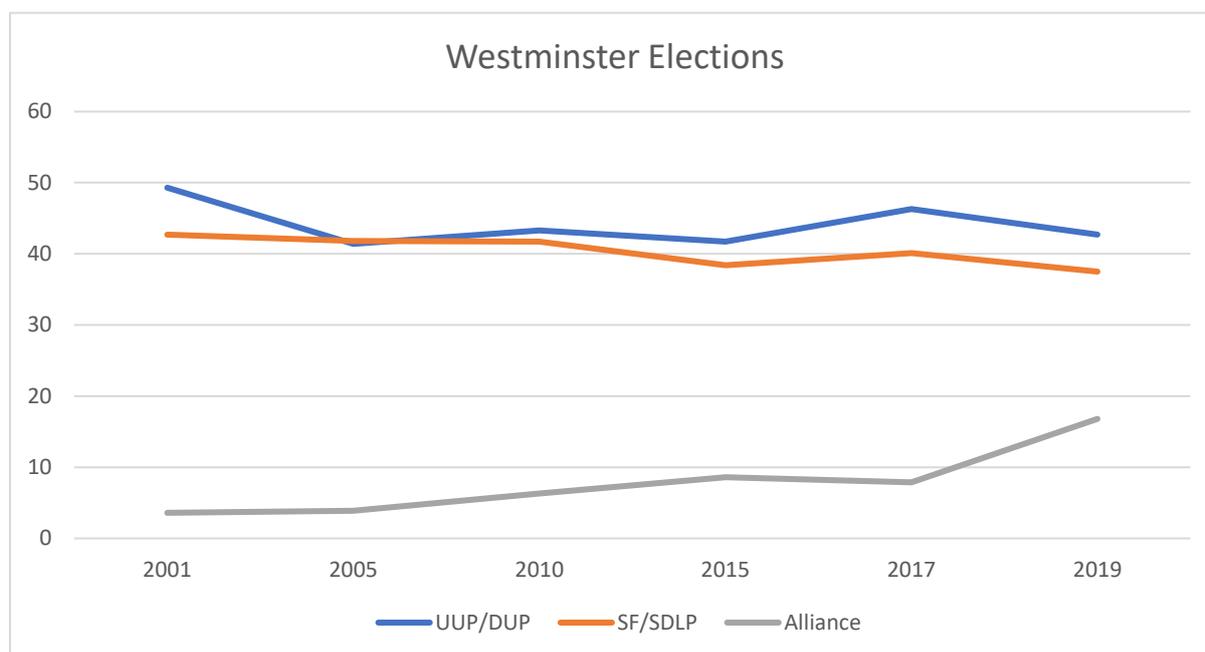
This indicates that the decision-making criteria or timing for a border poll was not deemed a ‘red line’ in any of the political negotiations or talks (bi-lateral or multi-party) that took place in the context of Brexit’s outworking. In addition, the entirely legitimate campaign for a border poll cannot be divorced from the other

interdependent – and glaringly incomplete - elements of the GFA, including the obligations on all actors to build meaningful reconciliation, rights and mutual respect as the basis for evolving political relationships across the two islands and the three strands.

While the need for longitudinal understanding of Northern Ireland's issues is heightened by the debate around Brexit and the Protocol, it is - in fact - rooted in the contested nature of identity politics in the region. In the quarter of a century since the negotiations around the GFA and the formal ceasefires by the mainstream loyalist and republican armed groups, there have been periods and problems in politics that far outweigh the current gravity of the Protocol. These include incidents and events leading to deaths (such as killings due to loyalist feuding, and of soldiers and police officers by dissident republicans, and other high profile murders and events attributed by police to mainstream organisations, up to as recently as 2015.) They also include extreme political difficulties that caused the collapse of institutional arrangements and community trust. It should be remembered that GFA institutions did not function for five years after 2002, but through diligent and pragmatic negotiations and leadership between all parties, the Assembly, Executive, NSMC and BIC were re-established in 2007. This points to the importance of understanding that Brexit and the Protocol are merely the latest pages being turned in the recent chapter of Irish and British relations.

In learning the strategic lessons from overcoming previous episodes, the continuum of challenges and changes faced across the three strands of the GFA can be navigated if political choices are grounded in evidence, leadership, common good, and determination to fix problems rather than apportion blame.

Figure 4. Westminster Election Results 2001-2019



The present situation is complex and has the potential to lead to wider societal, policing and political consequences. The recent formation of the Cabinet Office Union Unit may be important here in terms of explaining and framing the UK government's position. That Unit should place within the public realm its support for the both the benefits of the E-W relationship and the role of the government as a guarantor of the GFA and treaty partner with both the EU and Ireland.

It should articulate the role of the UK, via the internal market, with regard to the economic future of Northern Ireland. Articulation of the value of the new economy around the emerging sectors of Cybersecurity and Fintech, and the role of the E-W relationship in building and sustaining the new economy would also be appropriate. A publicly proclaimed vision regarding the benefits of the Protocol and its capacity to stimulate the E-W relationship would also assist in building a more positive perception. Formal statements that include explanations of the Protocol and which explicitly challenge public disinformation would also aid a more thorough and evidence-based reading of the Protocol.

For a very small minority, protest sits above using dialogue and raising issues with the UK government and EU. The call for ministerial disobedience would have significant ramifications upon democracy and the legitimacy of the Protocol constitutionally and legally. Ultimately, the solutions to these problems have to be located within the democratic process. Outlets such as the House of Lord's Protocol on Ireland/Northern Ireland Sub-Committee, the EU's commitment to engagement with businesses, and the NIO's engagement between civic society and a range of UK government officials and ministers, is also a site for the framing of evidence based

policy making. There are also the, so far unutilised, possibilities provided for in the Protocol for the NSMC and its cross-border bodies. For example, the Protocol's Specialised Committee (in Article 14 (b) is required to *"examine proposals concerning the implementation and application of this Protocol from the North South Ministerial Council and North-South Implementation Bodies set up under the 1998 Agreement"*. It provides an opportunity to stretch beyond trade issues and build upon everyday social, economic and collective interest around *'...the areas of environment, health, agriculture, transport, education and tourism as well as in the areas of energy, telecommunications, broadcasting, inland fisheries, justice and security, higher education and sport"*.

4. Tensions Resolved: Rights and the N/S Dimension

The pre-Protocol rhetoric around the threat to rights, a 'hard border' and undermining of the GFA that emanated from nationalists and republicans has evaporated with only cursory explanation or public acknowledgement that in many aspects of detail the EU and UK government acted with good will. There has been limited recognition that the UK government, via Article 2³² provisions, amended the Northern Ireland Act 1998 in a positive and progressive manner. This has led to important new powers and extra funding for the Equality Commission for Northern Ireland³³ and Northern Ireland Human Rights Commission that effects a commitment to non-diminution and 'keeping pace' on key existing rights and equality provisions. Concurrently, the Protocol reiterates the commitment to retaining the Common Travel Area that enables British and Irish citizens to move freely between the two jurisdictions to work, live and be treated equally – something regarded as so important that agreement on it was prioritised early in the Brexit negotiations.

There has also been a lack of appreciation from the same sources, that the UK government in negotiation with the EU also acted in good faith to scope out and enlarge the remit (via Article 11) of N-S co-operation. These actors undertook and published research showing that following the signing of the GFA the scope of such co-operation exceeded what was envisaged and set out in Strand Two. Subsequently, the UK government engaged in a comprehensive joint 'mapping exercise' with the EU which identified up to 149 areas, representing a substantial uplift on the 12 included in 1998. That was the joint UK/EU approach underpinning Article 11 and its commitment to maintaining the necessary conditions for continued N/S cooperation. There has been no concerted effort from within nationalism and republicanism to champion those protections and extensions. This absence may evidence both the reality of, and the reason for, a wider societal disconnect from the actual detail and content of the Protocol³⁴.

³² See Appendix 1

³³ While one of the co-authors, Jarlath Kearney, is a commissioner of the Equality Commission for NI, his co-authorship of this report has been individually and voluntarily contributed in a strictly personal and private capacity.

³⁴https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/638135/6.3703_DEXEU_Northern_Ireland_and_Ireland_INTERACTIVE.pdf and https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/762820/Technical_note-_North-South_co-operation_mapping_exercise__2_.pdf

4.1 Article 2: Rights of individuals³⁵

As noted one of the significant but under-reported elements of the Protocol is ‘Article 2, Rights of Individuals’. In the December 2017 UK-EU Joint Report, the UK government committed (para. 53) to ensuring that no diminution of rights would be caused by Brexit, including in the area of EU law protections against discrimination, alongside ‘*facilitating the related work*’ of the equality and rights institutions under the GFA.³⁶ In implementing this commitment, Article 2 contains explicit commitments from the UK government given detailed effect by substantive amendments to the Northern Ireland Act 1998 (which enabled the GFA 1998³⁷). The practical modalities have been developed since August 2018 through direct negotiations jointly with Northern Ireland’s Equality Commission and Human Rights Commission. The equality and rights provisions of the NI Act 1998 have not previously been amended in such a fashion. The outcome is that the UK government has provided for new statutory powers, new staff and resources, and a new structure known as the ‘*dedicated mechanism*’ (with an island of Ireland dimension), for the protection and promotion of equality and rights in Northern Ireland following Brexit. The Northern Ireland Assembly and Executive must also adhere to Article 2 in discharging functions. As noted:

“The United Kingdom shall ensure that no diminution of rights, safeguards or equality of opportunity, as set out in that part of the 1998 Agreement entitled Rights, Safeguards and Equality of Opportunity results from its withdrawal from the Union, including in the area of protection against discrimination, as enshrined in the provisions of Union law listed in Annex 1 to this Protocol, and shall implement this paragraph through dedicated mechanisms.”

And:

“The United Kingdom shall continue to facilitate the related work of the institutions and bodies set up pursuant to the 1998 Agreement, including the Northern Ireland Human Rights Commission, the Equality Commission for Northern Ireland and the Joint Committee of representatives of the Human Rights Commissions of Northern Ireland and Ireland, in upholding human rights and equality standards.”

³⁵ Revised_Protocol_to_the_Withdrawal_Agreement.pdf (publishing.service.gov.uk)

³⁶https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/665869/joint_report_on_progress_during_phase_1_of_negotiations_under_Article_50_

³⁷ The relevant part of the GFA entitled ‘Rights, Safeguards and Opportunities’ envelopes the following sub-parts: Human Rights; United Kingdom Legislation; New Institutions in Northern Ireland; Comparable Steps by the Irish Government; A Joint Committee; Reconciliation and Victims of Violence; Economic, Social and Cultural Issues.

In evidence to the House of Commons European Scrutiny Committee, Professor Christopher McCrudden notes that the Article 2 commitments are legally binding upon the UK government under international law, and crucially - in relation to the continued relevance of EU law – that:

“The Withdrawal Agreement now incorporates by reference the part of the GFA entitled Rights, Safeguards and Equality of Opportunity into EU law, as part of an EU Treaty and so may be subject to interpretation by the CJEU (Court of Justice of the European Union) in certain circumstances.”³⁸

Annex 1 of the Protocol lists the relevant EU anti-discrimination Directives that are explicitly affected by the non-diminution commitment. These Directives do not specify other important parts of EU law on equality, such as the Part-time Work Directive or the Pregnancy Directive. However, there is a strong case that this broader canvas is covered under the general framing of the Article and that the non-diminution obligation (encompassing a commitment to ‘keeping pace’ with related EU law and case law) will be sufficient. It remains clear that issues such as adherence to worker rights law will need ongoing scrutiny.

4.2 New Powers, Functions, Resources, and the ‘Dedicated Mechanism’

The implementation of Article 2 has provided new powers, functions and resources to Northern Ireland’s Equality Commission and Human Rights Commission, under the establishment of the ‘dedicated mechanism’. The new powers build on the existing statutory framework. Significantly, they now include ‘own motion’ Judicial Review power so that both Commissions can now initiate legal challenges in the High Court against the actions of public authorities (and potentially others) that may cut across the protections in Article 2. This strengthens the authority and standing of the Commissions. New functions include oversight responsibilities to monitor, advise, supervise and report to Government on the non-diminution commitments, not least about the workings of the NI Executive and Assembly, in relation to the implementation of Article 2 and the compatibility of public policy in NI with its provisions. Extra resources and staff have been delivered to ensure scrutiny, policy and research, education and communication around Article 2.

As a consequence, Northern Ireland’s Equality Commission and Human Rights Commission now sit collectively in a tripartite working group – with the Irish

³⁸ McCrudden C, ‘Evidence to the House of Commons European Scrutiny Committee’ (2020) - https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/665869/Joint_report_on_progress_during_phase_1_of_negotiations_under_Article_50_TEU_on_the_United_Kingdom_s_orderly_withdrawal_from_the_European_Union.pdf

Human Rights and Equality Commission – to manage the implementation of Article 2 insofar as it has an island of Ireland dimension (such as developing best practice approaches) whilst recognising the constitutional realities of both jurisdictions. This working group will also be able to bring “*any matter of relevance*” to the attention of the Protocol’s Specialised Committee for consideration. The tripartite working group sits in addition to the long-standing Joint Committee of the NIHRC and IHREC established on an all-island basis under the 1998 Agreement. Murray and Rice consider that “*for all of its sophistication*” the dedicated mechanism through the committee system “*will struggle to replicate the oversight currently provided by the CJEU where fundamental rights and equality protections are at issue*”³⁹. While this remains to be seen, the evolving scenario therefore places significant onus upon Northern Ireland’s Equality Commission and Human Rights Commission to proactively drive agency into the implementation phase.

The explicit implementation of Article 2 provisions is notably distinct from the mechanism of ‘democratic consent’ that has been created to give the NI Assembly an authority over other trade and business aspects under Articles 5-10 of the Protocol in December 2024. By amending primary legislation, the Article 2 approach thereby gives a long-term, stabilised character to its commitments (subject to appropriately sustainable public resourcing and continued government support) in a way that is not directly conditioned or constrained by the buffeting factors of political or electoral change. In particular, the new powers of Judicial Review flowing from Article 2 provide scope for both the Equality Commission and Human Rights Commission to identify and/or assist the exercise of innovative legal mechanisms by citizens that could potentially have a positive impact and ripple effect into wider Northern Ireland law and policy. In the context of continuing societal concerns over identity and future constitutional debate, this could grow in significance.

The UK government commitments, given effect through Article 2, including the related primary statute amendments and public policy implementation, are ultimately only mitigations for the negative fallout of Brexit. They cannot fully replicate or sustain every brick in the architecture of EU law and ECHR jurisdiction that has applied since the GFA. Nevertheless, aspects of Article 2 are potentially enhancing equality and rights not just within Northern Ireland, but across the island of Ireland. They may also serve as a future point of reference for developments across all of the UK. These positive implications of Article 2 have not yet received the level of prominence given to other more difficult aspects of the Protocol. Importantly, on this highly sensitive issue of equality and rights (which lies at the heart of the Northern Ireland peace settlement), evidence shows that the UK government has demonstrated positive ability and capacity in negotiating

³⁹ Murray C.R.G. and Rice C.A.G, ‘Beyond Trade: Implementing the Ireland/Northern Ireland Protocol’s Human Rights and Equalities Provisions’ (2020) – <https://ssrn.com/abstract=3731649>

amendments to the quasi-constitutional Northern Ireland Act 1998, thereby carefully navigating a potentially hazardous area of Northern Ireland's political ecosystem in conjunction with key stakeholders. This raises a useful question: is it possible that similar policy commitment and legislative creativity could be achieved, in good faith, on less politically sensitive (albeit highly technical and problematic) matters related to the flexible implementation of the Protocol?

Those promoting an equality and rights agenda – across Northern Irish society for all of its citizens, in all circumstances – should now give greater attention to Article 2. While implementation will be the key arbiter of its effectiveness, the early steps of resource commitment by the UK government are encouraging indicators of ongoing commitment. The development of Article 2 provides a range of specific and strategic lessons that have relevance and transferability to other aspects of the Protocol's implementation in seeking to ameliorate Brexit's negative impacts. Conversely, if the Protocol and its resolution mechanisms are lost, this would undoubtedly have a detrimental impact on efforts to protect the rights of all.

5. Mapping the Future

Brexit has delivered a new economic and political landscape that, with regard to Northern Ireland, pivots on the protection of both the UK internal market and the EU single market as guided and/or framed by the GFA and the Protocol. We are now in a period of transition, characterised by the upheavals of a lack of preparedness, against the backdrop of the global pandemic and framed by both economic and societal difficulties.

This unsettling period will not, and cannot last. The UK, EU and Northern Ireland unionist parties are currently engaged in a very public battle of mutually exclusive positions while at the same time leaks and rumours from within all of the camps suggest a more conciliatory environment is being nurtured behind the scenes.

The Ireland/Northern Ireland Protocol, or something that looks very much like it will remain. There is no alternative to that and each of the actors involved knows this. The grace periods, unilaterally extended until October by the UK government, are currently protecting Northern Ireland businesses from the full burden of Protocol regulations. The EU's public insistence on a 'rules based' implementation is not currently achievable without placing a substantial strain on Northern Ireland's structurally weak economy. Therefore, the only way forward is for solutions to be found and agreements reached that are capable of being implemented.

It is important not to be side tracked into believing that the disruption caused by the current difficulties has set the tone for the way forward. Instead, we must look to frame responses that consider the immediate, medium and long-term function of the Protocol, and its potential to protect and strengthen the workings of the GFA to provide stability, improve economic sustainability, develop and broaden the impact of a peace dividend and deepen the relationship between economics and political and societal stability.

5.1 Potential Opportunities and Primary Objectives

The Northern Ireland peace process is hailed as a global success story for its longevity, with the GFA outliving many other agreements. However, whilst relative peace has been maintained it is not sufficiently embedded to deliver true reconciliation. A failure to address the legacy of the past and to tackle the structural inequalities and economic imbalances that were at the very heart of the conflict, has delivered an unsettled, disjointed peace.

There are now parts of Northern Ireland that are unrecognisable in terms of the transformational reconciliation work that has taken place. Conversely, there remain

other places where peace represents little more than an absence of orchestrated violence. At the same time, the middle classes in Northern Ireland enjoy a very high standard of living at relatively low cost that is the envy of other UK regions and Ireland. At the other end of the scale poverty, inadequate housing and lower educational attainment continue to impact upon the mental and physical health of working class communities.

It should be noted that violence on Belfast's streets in April 2021, emanating from a small section of loyalism, was largely centred on the interface between the Shankill Road and the nearby, largely nationalist Springfield Road. In 1998, with the glow of the Good Friday Agreement, the first sod of turf had been cut by President Clinton and Prime Minister Tony Blair on a major, new Ulster University campus on the Springvale site – near to that very interface. In 2002, Ulster University pulled out of the project. In 2008, an Audit Office report found that the university had spent £37 million on other land and property during those four years – not including Springvale. In 2021, young people – feeling disaffected and excluded – were involved in sustained rioting, impacting on their community and their individual futures. The failure to provide economic, social, educational and employment opportunities – such as the Springvale campus could have generated – has impacted significantly in sustaining poverty and inequality in the most deprived sections of society. In turn this has prevented the full delivery of social cohesion, reconciliation and sustainable development. This example highlights the critical importance of strategic thinking that crosses boundaries of public, private and governmental planning to integrate socio-economic growth with the long-term objectives of peace.

The part of the settlement left undone in 1998 that would have resolved these issues was the delivery of a sustainable economic peace dividend. The level of societal destabilisation that has stubbornly endured, together with a disproportionate reliance on welfare benefits, is directly attributable to this failing. The core strength of the peace process and the main reason it has sustained is the firm commitment from the vast majority of people to reject a return to violence. However, without economic delivery, a society free of conflict cannot be achieved. Only a widely prosperous society can hope to be a settled society. As noted in our introduction we reiterate that tangible opportunities for delivering interdependence around the N-S, E-W and NI-EU dynamics remain the sites through which binary identity politics that thrive off the entrenchment of wearied divisions can be counteracted.

The Protocol contains within it the mechanisms to transform Northern Ireland economically. Northern Ireland is now the only region in the world with unfettered access to both the UK and EU markets. Its position, within the UK customs union but following the EU customs code, creates a second opportunity to attract the investment that was missed following the GFA, but can, if the right decisions and leadership is shown, finally deliver an economic peace dividend.

Despite the lack of structured and targeted investment a new economy has begun to emerge. An English speaking, highly skilled workforce with a competitive wage structure is attractive to advanced manufacturing and the technology sectors focused on Cybersecurity and Fintech. High levels of technical data literacy also makes Northern Ireland an attractive proposition for processing operations in finance, banking, insurance and law. Creative industries are also flourishing with multi-series blockbusters such as Game of Thrones and Line of Duty providing the stable long-term income that has built a £1bn local industry.

In May 2021 the Department of the Economy published a strategy to deliver a 10x step change for the economy that will be driven primarily through a focus on innovation. Demonstrably, much has been achieved, but the full realisation of Northern Ireland's economic potential can only be delivered with the active support of the UK government, the Irish government, the EU and ideally, through re-involvement of the US.

Progress has been intermittent and difficult, and at times the new economy has struggled through being largely reactive and unable to provide the right levels of investment in the right place at the right time. A joined up approach that takes a strategic view and is backed up by a structured investment plan, with sustainable socio-economic outcomes, is critical. Such a strategy would take account of the major imbalances within the economy that act as powerful disincentives to investors. This includes, in particular, the very urgent need to invest in both the physical infrastructure required to enable a successful economy and the skilled workforce required to deliver it, as well as building investment models that can help to proactively and effectively target poverty and inequalities.

The new economy cannot be limited to delivering for only the highest skilled performers in society. Post-GFA a new community division has emerged between those who are highly educated and capable of taking advantage of the opportunities offered by these new industries and those whose educational attainment and pathways are so low that their opportunities are limited in any part of the economy. Appeals to younger people involved in the recent rioting to think of their long-term future and the impact of a criminal record on their career prospects were ineffective in circumstances where community narratives do not have sufficient structural opportunities in aspiring to achieve prosperity. This context is not confined to unionist/loyalist communities but spans the societal divide - majority nationalist SOC areas comprise c70% of those ranked highest on the multiple deprivation index. This not only represents an appalling waste of human societal potential. It also ensures that a sizeable section of society, whose basic needs are not met, will remain permanently alienated from the benefits of peace and political progress. Unremarkably, this is also the section within both communities most easily mobilised and most likely to become involved in civil unrest.

The continued rapid development of AI and automation means that the balance between demand for unskilled and highly skilled labour is now permanently skewed in favour of the highest skilled. To deal with this requires action in two areas. 1) Improved educational outcomes become absolutely critical. 2) New approaches are needed to create highly localised meaningful employment for those with a different skillset. A new strategy is urgently required to tackle the needs of the stubbornly economically inactive and NEETS. More localised investment that drives community wealth building has proven to be successful in Preston in Lancashire and North Ayrshire in Scotland. Harnessing local resources for local use, drives community economic development and job creation but can also address local public service problems such as the ability to deliver affordable social care. Such an approach has the ability to move society beyond the financial gains and consequent trickle downs, or lack thereof, of economic investment. It will finally drive the creation of a post-conflict society with new values, a sense of community commitment, better citizen engagement and a stronger functioning local democracy.

A further opportunity is about to be provided by the next round of peace funding, the €1b plus PEACEPLUS that is supported by the EU along with the UK and Irish Governments. Running from 2021 to 2027⁴⁰ it provides an additional opportunity for strategic economic thinking and a route to reconciliation and embedded peace - building a new Northern Ireland that is inclusive and demand-centred.

Working together to address common problems, rather than continually focusing solely on constitutional differences, is the site in which inter-community perspectives are shared.

A combined economic and social strategy for Northern Ireland initiated and led by the UK and EU offers the opportunity to reset their post-Brexit relationship. Working together to deliver a joint priority could help develop greater inter-governmental re-engagement and rebuild confidence and trust. This is also true for relationships within Northern Ireland where society and demographics are rapidly changing far beyond traditional binaries and, as evidenced in the Liverpool General Election Survey, those aged under 30 view politics around economics, jobs and education as 12 times more attractive than the constitutional question. An ambitious project on this scale, bilaterally initiated, led and funded, has the potential to not only re-set the relationship between the UK and EU but to deliver a transformed Northern Ireland, capable of facing the future with more societal stability and economic independence than at any time in its history.

⁴⁰https://www.seupb.eu/sites/default/files/styles/PEACE%20PLUS%20Public%20Consultation/PEACE_PLUS_Infographic_Fv.pdf

To begin such project - and via Strand 1 of the GFA - the Executive should monitor the problematics of the Protocol, measuring logjams, shortages and difficulties trading E-W and determine if, and how, these are resolved or otherwise.

They should determine if business have or will locate to Northern Ireland to uptake the opportunities to be in both the EU customs code and UK customs territory; and examine how businesses are advancing models of reorganisation regarding supply chains and in association⁴¹ mapping out the next generation of economic activity allied to peace-building.

They should uphold the deployment of the institutions of the GFA to build that next generation of activity. Critical, to such initiative is the conceptualisation of choices that are political but which have economic and thereby societal implications.

That begins with an understanding that the Protocol is a process and that the choices made have to be aligned to capturing political stability and reflective of a society seeking leadership and commitment to post-conflict economic recovery and solution-seeking combined with solution-setting during a period of turmoil that is Brexit.

5.2 The Protocol offers the potential for development

Regional development: responses and possibilities

The potential of the Protocol, the barriers and limitations, and what is needed to capitalise on its provisions for the economic territory of Northern Ireland needs to be clarified and prioritised. Northern Ireland will continue to have access to the GB and the EU markets for goods. InvestNI (2021)⁴² shows that GB imported over £436bn and the EU over €1,935bn of goods from the region in 2019. Dual market access *enables* Northern Ireland to develop as a gateway for the sale of goods because businesses can operate free from customs declarations, rules of origin certificates and non-tariff barriers in two large global marketplaces. This offers significant competitive advantage for manufacturers based in Northern Ireland as well as new

⁴¹ **Strand One.** The duties of the First Minister and Deputy First Minister will include, inter alia, dealing with and co-ordinating the work of the Executive Committee and the response of the Northern Ireland administration to external relationships. 19. The Executive Committee will provide a forum for the discussion of, and agreement on, issues which cut across the responsibilities of two or more Ministers, for prioritising executive and legislative proposals and for recommending a common position where necessary (e.g. in dealing with external relationships).

⁴² INVESTNI (2021) *Northern Ireland: Market Access to Great Britain and the European Union*, Belfast, INVESTNI.

entrants aiming to serve both GB and EU markets. As InvestNI points out, such a strategic position can help to recalibrate supply chains; better embed companies in the Northern Ireland economy; stimulate R&D and related intermediary services; and strengthen innovation in the design, development and market testing in high-growth sectors (including life and health sciences, aerospace, electronics and machinery, chemicals, consumer and agri-food). Whilst there are evident administrative problems, the macroeconomic context also needs to be better understood. For example, Young (2021)⁴³ recently reported data from the UK government showed that exports to Northern Ireland from the Republic have increased by 40% on the same period in 2020 and 54% higher than the same period in 2018. Similarly, exports from Northern Ireland to the Republic have increased by 61% since 2020 and 111% since 2018. The data concludes that there is no indication of the impact of the Protocol on trade flows between Northern Ireland and Ireland.

There are, therefore, opportunities to capitalise the skills base of the regional labour market, competitive operating costs and an enabling regulatory environment. Clearly such benefits require investment in hard infrastructure such as external and internal connectivity, broadband speed and capacity and reducing congestion. However, Northern Ireland also has a growing and sophisticated advanced manufacturing and engineering sector that has grown almost three times faster than the rest of the UK in the last few years. Manufacturing accounts for 11% of employment and over 15% GVA making it a key sector in the Northern Ireland economy⁴⁴. Moreover, the Belfast City Deal recognises the potential of manufacturing, fabrication, software engineering, component assembly and digital production as well as the need to address infrastructure deficits to the performance of the metropolitan area⁴⁵. Operating costs for businesses are up to 30% lower than other locations in the UK and Europe. Yet there is relatively little debate about how such assets can become central to the Protocol and its socio-political potential for Northern Ireland as a territorial economy (InvestNI, 2019)⁴⁶.

Brownlow and Birnie (2018)⁴⁷ point out that small open economies in the Nordic countries have achieved a high level of social protection, public investment and state-led economic development at the same time as they have strengthened competitiveness and productivity. What sets Northern Ireland apart is that a large

⁴³ Young, D. (2021) *Brexit Protocol Brings Huge Cross-Border Trade Boost With Northern Ireland Exports Up 61%*, 21st June 2021, <https://www.belfasttelegraph.co.uk/news/brexit/brexit-protocol-brings-hugecross-border-trade-boost-withnorthern-ireland-exports-up-61-40560446.html>, accessed June 2021.

⁴⁴ <https://www.investni.com/invest-in-northern-ireland/advanced-manufacturing-and-engineering>

⁴⁵ Belfast Region City Deal (belfastcity.gov.uk)

⁴⁶ INVESTNI (2019) *Reasons to Invest in Northern Ireland*, Belfast, INVESTNI.

⁴⁷ Brownlow, G. and Birnie, E. (2018) Rebalancing and regional economic performance: Northern Ireland in a Nordic mirror, *Economic Affairs*, 38(1), pp.58-73

public sector share does not correspond with a thriving, diverse export sector and these remain structural challenges (and related opportunities) in the post-Brexit economy. Moreover, Brownlow (2017)⁴⁸ shows that it is not a low tax base that matters most (not least as the G7 recently agreed to harmonise global Corporation Tax rates), but addressing deficiencies in infrastructure, weak skills in high-growth sectors and poor external connectivity. Moreover, the imbalance between E-W and potential effects in the border region are significant drags on the capacity of Northern Ireland to compete on a global stage. The recent *10x Economy* strategy by the Department for the Economy emphasised the centrality of innovation (especially in emerging technologies, the green economy and robotics); but also stressed in a subsequent skills strategy, the significant shortage of core skills in engineering and technology.

The Protocol and making Northern Ireland competitive

Whilst of course, the service sector is critical, advanced manufacturing and engineering is clearly a priority for the regional economy and in particular the ability of Northern Ireland to capitalise on the advantages of the Protocol itself. UUEPC (2020, p.6)⁴⁹ set out the *Competitiveness Scorecard for Northern Ireland*, based on a basket of indicators such as infrastructure, environmental standards, level of skills, salary levels and so on. The most recent analysis shows that the region's relative competitiveness has eroded over time mainly because other countries have improved more quickly than Northern Ireland. For example, in 2000, 51% of competitor economies were ahead of Northern Ireland; but by 2020 this had increased to 59%; and by 2030 it is projected to grow to 61%.

Infrastructure and physical development are important areas to address. The Index shows that Belfast is a more congested city than Madrid, Stockholm, Vienna, Berlin, Lisbon or Copenhagen, affecting supply and distribution costs, pollution and quality of life as a place to invest. UUEPC emphasise the importance of infrastructure; internal and external connectivity; skills, deficits especially among the most disadvantaged young people; but also, the sectoral opportunities in the digital economy and green energy. The potential is there; but the policies, investment programmes and specific projects to unlock such growth are critical; and opportunities for an integrated investment programme to maximise the benefits of the Protocol is a significant ask from EU, UK and Irish authorities.

⁴⁸ Brownlow, G. (2017) Practice running ahead of theory? Political economy and the economic lessons of UK devolution, *Cambridge Journal of Regions, Economy and Society*, 10(3), pp.559-573.

⁴⁹ <https://www.businessfirstonline.co.uk/articles/the-economic-advisory-group-northern-ireland-competitivenessscorecard/#:~:text=The%20group%20commissioned%20UUEPC%20to%20develop%20an%20Northern,such%20as%20quality%20of%20life%20and%20environmental%20>

Spatial alignment and the Protocol economy

The regional planning authorities North and South created a joint policy framework for cross-border cooperation, and showed where and how the respective spatial strategies join in the border region (DRDNI and DECLG, 2013)⁵⁰. *This Framework for Co-operation* highlighted island-wide commitments in the respective plans including the importance of the Belfast-Dublin corridor, the challenges of peripherality in the northwest, the planning implications of the integrated energy market and cooperation in strategic transport.

The Centre for Cross Border Studies also argued for a sub-regional approach to the border as an economic and social space by evaluating a number of scenarios for its development in the context of Brexit. The first scenario rejects the idea of the border as a single coherent entity but also that development should be concentrated exclusively in the two main urban axes (Derry/Londonderry-Letterkenny and Newry-Dundalk). Instead, they favour a three-pronged *Border Development Zone*, that recognises the significance of the urban centres, but which also focus on the vulnerable rural hinterland between these two clusters.

Linked to this, Dundalk and Newry have created the idea of a Twin-City axis (ICLRD, 2009)⁵¹; the Regional Spatial and Economic Strategy for the North West Issues Paper in the Republic has defined Derry/Londonderry-Strabane-Letterkenny as a *city region* (NWRA, 2017)⁵²; and Derry and Donegal Councils had previously advocated a *Cross-Border Free Trade Zone*, which would eliminate the need for customs checks and tariff controls (UUEPC, 2017)⁵³.

The Protocol offers distinct opportunities and presents specific sectoral and area-based challenges that need to be addressed with a more tailored approach, bespoke to the potential, resources and assets of the border region as well as Northern Ireland as a whole. For example, UUEPC (2021)⁵⁴ have recently evaluated the potential of the

⁵⁰ DECLG: Planning and Development (Planning Enforcement): General Policy Directive 2013 - The Office of the Planning Regulator (opr.ie)

⁵¹International Centre for Local and Regional Development (ICLRD) (2009) *The Newry- Dundalk Twin City Region*, Armagh, ICLRd.

⁵² Northern and Western Regional Assembly (NWRA) (2017) *Regional Spatial and Economic Strategy Issues Paper*, Ballaghaderreen, NWRA.

⁵³ Ulster University Economic Policy Centre (UUEPC) (2017) *Initial Analysis of the Challenges and Opportunities of Brexit for the Derry City and Strabane and Donegal County Council Areas: The North West City Region*, Derry/Londonderry and Lifford, Derry City Council and Donegal County Council.

⁵⁴ Ulster University Economic Policy Centre (UUEPC) (2021) *The Dublin-Belfast Economic Corridor: Current Profile, Potential for Recovery and Opportunities for Co-operation*, Belfast, UUEPC.

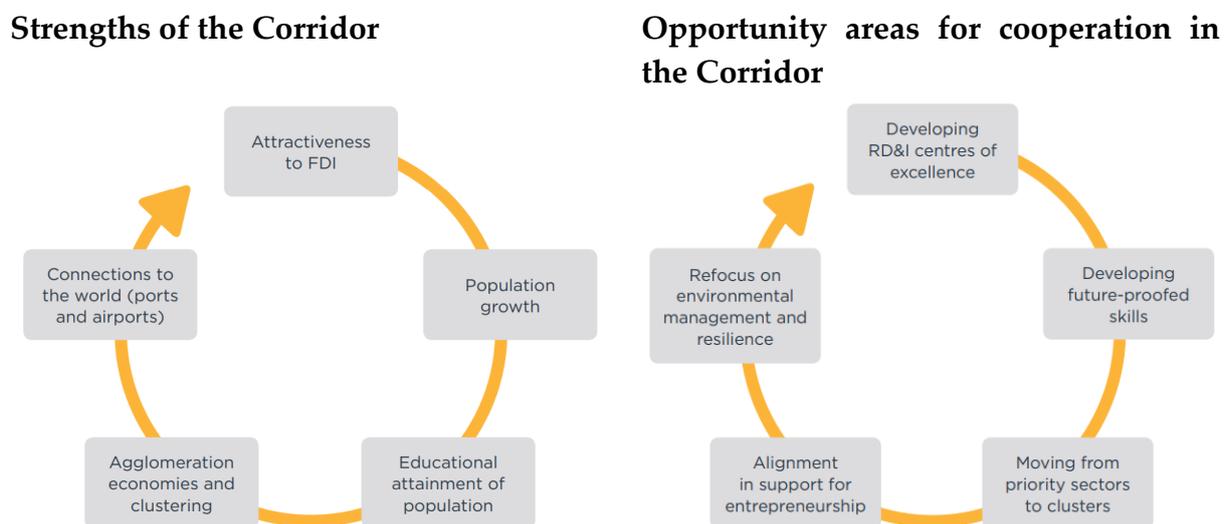
Belfast-Dublin Corridor in the context of Brexit and the Protocol. They show in the diagram (figure 5) below both the considerable strengths of the region, especially in agglomeration economies and interdependencies as well as the potential to build on such integration through R&D *Centres of Excellence*. Here, UUEPC point out that such corridors have the potential for ‘soft’ forms of infrastructure, such as research and innovation centres, smart city initiatives and environmental and energy management projects.

Growth corridors in East Asia, the Basel Tri-national Agglomeration and the Cascadia Seattle/Vancouver Corridor have all based cooperation on networks of research institutes, knowledge transfer and joint R&D programmes and have potential for replication, especially around specific territorial and sectoral clusters.

Linked to this is hard infrastructure and again there are already important projects in place, planning policies and initiatives proposed such as the North-South *Strategic Rail Review* between the Department for Infrastructure in Northern Ireland and the National Transport Authority in the Republic⁵⁵.

How the spatial economy is planned and managed on a sectoral and sub-regional basis speaks to the potential of such polycentric growth strategies opened by the fiscal and market opportunities of the Protocol.

Figure 5. The potential of the Belfast-Dublin Corridor



⁵⁵<https://www.infrastructure-ni.gov.uk/news/ministers-announce-launch-all-island-strategic-rail-review> and Northern Ireland Executive and Rialtas na hÉireann (2021) *European Territorial Co-Operation 2021 – 2027. Preparing the EU PEACE PLUS Programme for the 2021- 2027 period, Consultation Information Document*, Belfast and Dublin.

Source: UUEPC, 2021

A comprehensive approach

Strategic planning and policy development however, cannot be confined exclusively to a growth agenda as the post-conflict economy and the competitive advantage of peace have simply not impacted on large numbers of people and places. The latest EU PEACE PLUS Programme *Consultation Document* is remarkable for its lack of analysis of what peace, conflict and violence are; why it is persistent; how it is distributed; and who benefits or loses from its effects. The Programme is still primarily based on ideas of contact and foregrounds intergroup attitudes and social distance measures. Yet, Northern Ireland has never been more integrated residentially or in employment, and new sites of modernity and progress are rigorously integrated and genuinely shared. They have benefited from the post-conflict economy and knowledge-intensive labour markets that demand high levels of education, skills and communitive abilities. Segregation, interfacing and violence persists in areas and people bypassed by this economy, so why is the economics of conflict not a more central feature of policy making in general and peacebuilding in particular?

Social mobility, in the last 30 years in Northern Ireland, that is those who have moved into the highest Socio-Economic Groups, is characterised by having a third-level degree, a professionally employed parent and being male (Moriarty et al., 2017)⁵⁶. The relevance of religion has considerably lessened with regard to labour and housing market mobility; identities are restructured around class, gender, new communities and environmental politics; and violence is variously constructed around remnant or rehabilitated paramilitarism, criminality and the advantages of territoriality. Community relations and identarian assumptions more broadly need to be rethought, but the sheer lack of attention to the economies of failing areas and communities also needs to be addressed and prioritised.

The recent report of the *Expert Panel on Education (2021)*⁵⁷ examined the links between persistent educational underachievement and socio-economic background and in particular, highlighted the complex barriers facing working-class boys. The lack of basic education, skills in growth sectors, fatalism and social alienation all need to be built into a post-Brexit economic and social development strategy. The

⁵⁶ Moriarty, J., Wright, D., O'Reilly, D., and Thurston, A. (2017) *Economic Opportunities, Occupational Class Status and Social Mobility in Northern Ireland: Linked Census Data from the Northern Ireland Longitudinal Study (NILS)*, Belfast, Queen's University Belfast.

⁵⁷ Expert Panel (2021) *Expert Panel on Educational Underachievement in Northern Ireland: A Fair Start*, Bangor, Department of Education.

type of spatial economy (and related regulatory opportunities, skills investment and infrastructure) that can build on (and take advantage of) the Protocol is not necessarily the same as the one needed to address those people and places that have lost out in both violence and peace. A comprehensive strategy, based on the social economy, community businesses and co-operatives, intermediary labour markets, asset-based development and recycling local investment and multiplier effects have transformed some of the most disadvantaged cities globally.

The Department for Communities (DfC, 2020)⁵⁸ has usefully prioritised inclusive economics and community wealth building, but this needs to be translated into an integrated programme of support. It is vital that the delivery of PEACEPLUS funding is orientated around the economics of peace, and building the type of inclusive economics that can provide more positive pathways out of deprivation, segregation and paramilitarism. The new *Levelling Up Prospectus* (HM Treasury, 2021)⁵⁹ for Northern Ireland is not fully developed but has the potential to embed regeneration in such places and people. *Community Wealth Building* must mean what it says and address the fundamental structural economic, labour market, infrastructure and asset-based potential of areas that have been bypassed by the emerging economy of the region. Northern Ireland has enjoyed an influx of peoples from all over the world in the last 20 years and while no one denies obvious religious and political differences, indigenous identities are constantly reforming in new and more pluralist ways. Using the Protocol to capitalise on these changes and critically, address those left behind by the same processes, opens the potential for a wider debate about the type of *society* we want to live in, regardless of the strengths and limitations of Brexit.

⁵⁸ Department for Communities (DfC) (2020) *Building Inclusive Communities, Strategy 2020 – 2025*, Belfast, DfC.

⁵⁹ Levelling Up Fund: prospectus - GOV.UK (www.gov.uk)

6. The Institutions and The Strands

Brexit has had consequences for the relationships within each Strand of the GFA. An aim of each strand is to build, define and lead interdependence through the totality of E-W and N-S relationships but to do so somewhat differently. Brexit has placed strain on both.

It is important to reiterate that under Article 14 of The Protocol, the Joint Committee shall have regard to the specific circumstances in Northern Ireland and consider recommendations made to it on its functioning from the Specialised Committee. It in turn shall examine proposals concerning its implementation from the N-S Ministerial Council and N-S Implementation bodies. Under Article 2, issues can be raised by the Northern Ireland Human Rights Commission, the Equality Commission for Northern Ireland, and the Joint Committee of representatives of the Human Rights Commissions of Northern Ireland and Ireland. However, Strands 1 and 3 of the GFA are not included in terms of a capacity to submit proposals on the implementation of the Protocol. Finding ways to include the voice of the Northern Ireland Assembly and consideration of the E-W relationship is critical.

6.1 East-West and North-South Functional and Cultural Cooperation

Megaphone diplomacy and public utterances have led to nationalist/republican and unionist reaction that challenges an already fragile trust respectively regarding the British and Irish states. Tensions undermine British-Irish intergovernmental balance and the protection of the GFA when it is assumed that the British government should be a protector of pro-union rights and the Irish de facto protector of nationalist rights. This perception or practice needs to be challenged with clear statements that both governments protect and support the totality of relationships, while naturally retaining their own symbolic constitutional aspirations – this nuanced arrangement being the genius of the GFA. Intergovernmental tensions undermine dynamism in E-W economic and cultural cooperation. E-W interdependence and its value to the economy, and the re-building of that economy in the new post-Brexit context, is an overarching framework to develop cross-cutting linkages with Strands 1 and 2.

The ability to agree bilateral arrangements could lead to co-operative agreements with the Irish government around Protocol and Brexit issues, provided they do not undermine EU preferences and rules, and operate within the terms of the GFA.

The British-Irish Intergovernmental Council (the BIIGC) and the British-Irish Council, (BIC) offer a means for joint British-Irish leadership to enhance E-W co-operation (and cross-border co-operation). Given that the Protocol is an international agreement between the UK and EU these institutions are instrumental in helping to inform and shape the context for the implementation of the Protocol and can drive its evolution. For example, the BIC is an institution that potentially allows the Northern Ireland Executive to communicate concerns about the Protocol to the Irish government - and as an EU member state, the Irish government is a useful ally. The BIC's agenda need not be 'necessary nonsense' as Brian Faulkner once labelled functional co-operation, but could, at least indirectly, comprise key issues caused by the Protocol's implementation. The Irish government's 2020 Programme for Government refers to examining the BIC's agenda, thus providing an opportunity to make it a more salient institution.

In reinvigorating the British-Irish inter-governmental relationship, the BIIGC performs a central role⁶⁰. The rationale for Strand Three's institutionalised cooperation is based on the EU model of reconciliation, with institutional obligations to meet regularly, regardless of crises. BIIGC is a site of potential trust building and could once again provide a strategic facility that offers a more long-term view of the benefits of E-W institutions. The current difficulties and their consequences create a stark common interest in maintaining stability and also provide an opportunity to re-energise the BIIGC. In challenging the sense that Northern Irish citizens have insignificant influence in the implementation of the Protocol, the BIIGC and the BIC provide an institutional route to express preferences and have indirect influence over policy.

Clearly, like the Agreement itself, the BIIGC and the BIC have not been perceived by some unionists to work for them. Instead, even apart from the Protocol, some perceive that their identity and interests are ignored. Whether these perceptions are well-founded or not, and whether only a minority of unionists hold these views, they still matter for stability and democracy. The new post-Brexit context changes the cost-benefit analysis faced by Northern Irish citizens. Those who were less keen to engage with the Agreement's institutions may well relent if those institutions can be seen to provide influence and protection. However, it also matters that a dominant group does not hold a veto over compromise and co-operation. A carrot and stick strategy of providing opportunities to influence the Protocol's implementation and other issues (but only if there is a willingness to compromise and build consensus) is a major potential incentive for Northern Irish political engagement with Strand Three institutions.

⁶⁰ See Appendix 6

Any perception of wavering by either government however, so that one party can behave aggressively to achieve its aims and be supported by their kinship state in a zero sum manner, would lead to a situation where influence actually creates a veto and where there are perceptions that parity does not exist - one community is 'gaining' more than the other. Therefore, strict normative or actual 'rules of the game' are required, and must be jointly upheld by both governments.

The 1998 GFA was a framework in which most of the detail was provided for Strand One institutions. The weakness in omitting a more detailed plan for Strand Three and of not making regular BIIGC meetings mandatory has contributed to these aspects of the Agreement slipping over the past 23 years. Strand One became the key focus and the interdependence of the three strands was not at the forefront. Yet, in the post-Brexit context and in the midst of increased tensions in Northern Ireland and between British and Irish governments, there is a chance to develop its institutions creatively to empower Northern Irish society and re-build trust in the British-Irish relationship.

It is important to understand that the gaps and tensions affecting E-W relationships are – like the GFA, and indeed the Protocol – imbued with complexity. The focus in Westminster on pushing through Brexit had the consequence of diverting the UK government's attention from some of the avoidable ripple effects in Northern Ireland. In terms of the institutional memory of key individual officials, advisers or ministers with an acute interest in Ireland-UK affairs, the UK government has lost significant expertise from senior central government roles in the past five years. Alongside that, the reduction of attendance and involvement by ministers and officials at EU level has affected the ability of Irish and British actors to develop ongoing and sustained diplomatic dialogue and channels, particularly, as was the case in previous decades, through informal interaction around the edges of EU events. The value of this human factor is recognised by both London and Dublin as a key area for improvement. It is also important to understand that the dynamics faced by both sovereign governments are multifarious and often delicate. The UK government is managing the most significant impact on its constitutional formula for many decades, involving detailed and ground-breaking negotiations with its EU treaty partner. The government of Ireland is bound by its duties under the GFA as a treaty partner with the UK, but is also only one voice among 27 in the EU when it comes to negotiations over Brexit. In addition, the process of Brexit and the Protocol – including unilateral actions by both the EU and UK in 2021 – has impacted the bilateral trust that was the foundation of both governments' partnership in the peace process. Rather than apportioning blame, it is critical that each government recognises the delicate factors that can aggravate such tensions and, with sensitivity to each other's context, commit to a diplomatic agenda that once again embeds mutual dialogue, continuous engagement, greater understanding and effective problem-solving.

Significant strategic efforts are now evident in attempting to reinvigorate Ireland-UK bilateral relationships through both the British Irish Inter-governmental Conference, the British Irish Council and more effective joint governmental initiatives and future bilateral agreements. These efforts should, in due course, build up to the level of regularised joint cabinet level meetings between both governments, say annually. This would be an even more significant initiative if it was held in the Northern Ireland Assembly, permitting invitational involvement of the NI Executive, in the context of the implementation of the Protocol in ways that are concurrently effective in practical terms, whilst also formally cognisant of the constitutional realities. Such an approach is not only desirable for the short-term in relation to the Protocol, the objective realities are that Northern Ireland will continue to face substantial local and global challenges over the coming decade.

These will likely involve constitutional matters, but they will definitely include climate challenges, economic challenges and national security challenges. All of this will impact the island of Ireland in the context of 'two states' continuing to co-exist for the foreseeable future, requiring both sovereign governments to co-operate in developing maximum 'one system' approaches, while Northern Ireland will remain constitutionally within the UK but under some EU frameworks. The Ireland and UK governments, and political actors in NI, need to begin assimilating this 'two states, one system' realpolitik for practical and effective coexistence into the foreseeable future.

6.2 Consultation, Negotiation and Multiple Actors

The Withdrawal Agreement and the Protocol contain a number of specialised committees operating under an UK/EU Joint Committee that will oversee their detailed on-going implementation. The Joint Committee is the mechanism through which the detail of future arrangements are negotiated and then monitored. The Specialised Committee regarding the implementation of the Protocol on Ireland/Northern Ireland can draft decisions and recommendations and refer them to the Joint Committee for adoption. **It operates as a "forum for the exchange of information and mutual consultation" and "planned ongoing and final relevant implementation measures"** contained in the Protocol. Again, this is a site of decision-making that affects Northern Ireland and Ireland which requires clarity into the level and nature of influence that will be afforded to the Northern Ireland Assembly. It is noteworthy that in negotiations between Lord Frost and Vice-President Šefčovič that there has already been joint engagement with businesses and other stakeholders, it is expected that this access will continue. Since the EU referendum, the attention and focus on Northern Ireland from the UK Government, EU, and more recently, the incoming Biden administration in the US, has the potential to recreate the positive environment in which the political goodwill that

existed during the GFA negotiations. Northern Ireland cannot afford to miss this opportunity.

The present and future circumstances of NI are multi-actor influenced. From Brussels to Stormont and from London to Dublin and beyond, the economic and societal outcomes of NI are influenced by multiple levels of governance, trade rules, supply chains and integration within the global economy. NI is affected by external and internal political practices and policies. Like all other societies it is influenced by internal and external economic forces but has a series of choices to make regarding governance, the application of law and leadership and for a peace process depending upon post-conflict economic recovery

The outworking of the Protocol is reliant upon trust, regulation and compliance. Its operation and impact is contingent upon the EU and UK government, the Executive, Irish government, and the response and choices made by businesses, communities, organisations and individuals. The Executive is a guarantor of the Protocol in both UK and EU law in the context of the British and Irish Acts passed simultaneously by the Oireachtas and Westminster parliaments, and also the Northern Ireland Act 1998 adopted by Parliament to enable the operation of the Assembly and Executive under the GFA. How it voices issues to the Joint Committee must be considered beyond the provisions regarding consent as outlined in Article 18 and also within the formal processes and possibilities, including those of the GFA, that have not yet been realised⁶¹.

Within the negative views expressed are claims of a democratic deficit and imposition of rules and laws upon Northern Ireland. In factual terms, the legal right to pass legislation by the UK Parliament remains unquestionable. However, this does not mean that questioning legislation and voicing concerns over environmental, societal and economic impacts is either invalid or unrequired. We would argue, especially given that negotiations are ongoing, that alongside the evident benefits that have been delivered, raising issues and concerns is critical and essential to the democratic process, It is also vital to include the capacity of civic society and political actors to ensure fairness of application, stability for peace-building and better understanding of the Protocol its intentions and capacities. Parliamentary committees, outreach by the NIO and EU, and mechanisms within the Protocol to which citizens and politicians can seek influence and present evidence for consideration are all available as routes through which concerns and solutions can be expressed, therefore there is no evident democratic deficit.

⁶¹ See Appendix 7

7. Conclusion

Ultimately, the multiple actors involved must progress the Protocol and work within its structures to facilitate evidence-based policy making, good governance and investment and related economic strategies linked to Northern Ireland's place in both the EU Customs Code and the UK Customs territory. Moving on from the issues noted above is necessary in order to heal societal tensions and therefore must be linked to an agency for and of a peace dividend.

Brexit has shown that timing, preparedness, and capacity to remove uncertainty is framed by key actors, decision-making and choice. We argue here that in the post-Brexit period those actors should engage in evidence-based policymaking. Ultimately, the framing and outcome of Brexit has to provide certainty through extensive investment and the formulation of practices for job creation and growth. Civic leaders and society more generally need to see evidence of, and locate genuine leadership around, the practicalities of present and future arrangements that places NI's economic future within rules, regulations and opportunity.

Negotiation is effectively a focus on practicalities. It has to reduce disruptive consequences to trade in terms of additional cost to GB-NI supply chains. Minimising impact upon the E-W trade and commercial relationship is critical especially regarding the symbolic impact of NI being displaced within the UK.

Precise research is needed to evaluate the impact of Brexit upon Northern Ireland and the island of Ireland given the unique set of emerging trading relationships/structures/governance arrangements regarding business and economic activity. This could be put in place in response to unique conditions. That would include agreement by all parties to protect the peace process in a manner that is publicly asserted⁶².

Essentially, the actors involved in negotiation and implementation, and the political actors who are the guarantors of societal and economic well-being, must each present plans, ideas and concepts that restore the peace-process as the primary driver of economic growth and the meeting of business and trade challenges. This is a moment, give the unknowns of Brexit and its impacts, for a pragmatic politics that maps futures, locates solutions, and forges and defines the missing strategy for a peace dividend.

We call for mature reflection and the use of dialogue, evidence and debate to advance the peace process. Existing institutions must be developed to be more attuned and effective. Recognition of an awareness of societal tensions caused by the Protocol is needed and a commitment from all actors involved in the Protocol to

⁶² gov.ie - Programme for Government: Our Shared Future (www.gov.ie)

make decisions to better support societal development, as opposed to undermining it.

What are, to the EU, legal/technical considerations of market protection mechanisms, are understood by some in Northern Ireland, constitutional and identity issues. The EU, a welcome sponsor of peace and reconciliation, is aware of the link to these societal tensions. Despite knowing this, media and other commentary often presents the opposite. Media rarely considers the Protocol's consultation procedures such as the Specialised Committee (SC) and Joint Consultative Working Group (JCWG). We are aware that the UK and EU negotiators are calling for evidence and opinion to feed into ongoing negotiations, but such opportunity needs greater public assertion. We call upon:

- 1) The UK and EU negotiators, to map out those tensions together with their proposed amelioration and the role civic and political consultation has, and will, play in finding solutions.
- 2) The UK government, to make evident that the Protocol has within it accountability measures such as the *House of Lords European Affairs Sub-Committee on the Protocol on Ireland and Northern Ireland* to which those opposed to the Protocol can voice concerns and misgivings.

We would argue that the public is unaware of the call for evidence or that the Protocol has within it a new mechanism on consent, through which Northern Ireland Assembly has a decisive voice regarding longer-term application. Furthermore, the Joint-Working Committee that oversees the Specialised Committee and Joint Consultative Working Group is a decision-making forum with the sub-committees of Parliament providing for tests of accountability and the impact of application. Ultimately, there is insufficient media and public awareness that the Protocol is fluid, and framed by on-going negotiation, consultation, consent mechanisms and monitoring structures. These structures, as noted, are opportunities to voice evidence regarding the Protocol and present opportunities for both representative and deliberative democracy.

Finally, it is critically important that civic society and business sector groups across these islands use these channels and opportunities to present information to those engaged in present UK-EU negotiations and the structures noted herein.

8. Appendices

Appendix 1

Other readings and reactions across business include: 1) rules of origins and SPS checks are slowing supply chains and increasing costs 2) ACBI surveys conducted February and March 2021 found that over 60% of manufacturers had experienced delays at borders 3) Joe McDonald, Corporate Affairs Manager, NI, ASDA noted that businesses are still waiting on UK border operating model to 'kick in', and due to uncertainty the challenge for retailers and suppliers was how to locate solutions when issues are still being negotiated. 4) EU rules function best with single bulk commodity loads but ASDA operates 200 shipments via lorry per week from GB depots to Northern Ireland carrying 40,000 product lines. Businesses are seeking digital solutions and faith placed in trusted trader schemes especially as UK retail has high levels of traceability 5). It is claimed that the present Trader Support Scheme does not support the volume of goods and the impact upon business 6) EU to GB, carriers use a bulking procedure for GB-Northern Ireland movement was not compatible with regulations 7) Haulage firms estimate that a pallet of goods, which previously would have cost around £100 to ship, now costs an extra £50 to £350 for due to new administration. 8) Businesses were sensing increased pragmatism rather than politicisation of issues.

Appendix 2

Joint consultative working group notes:

1. A joint consultative working group on the implementation of this Protocol ("working group") is hereby established. It shall serve as a forum for the exchange of information and mutual consultation.
2. The working group shall be composed of representatives of the Union and the United Kingdom and shall carry out its functions under the supervision of the Specialised Committee, to which it shall report. The working group shall have no power to take binding decisions other than the power to adopt its own rules of procedure referred to in paragraph 6.
3. Within the working group:
 - (a) the Union and the United Kingdom shall, in a timely manner, exchange information about planned, ongoing and final relevant implementation measures in relation to the Union acts listed in the Annexes to this Protocol;
 - (b) the Union shall inform the United Kingdom about planned Union acts within the scope of this Protocol, including Union acts that amend or replace the Union acts listed in the Annexes to this Protocol;
 - (c) the Union shall provide to the United Kingdom all information the Union considers relevant to allow the United Kingdom to fully comply with its obligations under the Protocol; and
 - (d) the United Kingdom shall provide to the Union all information that Member States are required to provide to one another or to the institutions, bodies, offices or agencies of the Union pursuant to the Union acts listed in the Annexes to this Protocol.
4. The working group shall be co-chaired by the Union and the United Kingdom.
5. The working group shall meet at least once a month, unless otherwise decided by the Union and the United Kingdom by mutual consent. Where necessary, the Union and the United Kingdom may exchange information referred to in points (c) and (d) of paragraph 3 between meetings.
6. The working group shall adopt its own rules of procedure by mutual consent.
7. The Union shall ensure that all views expressed by the United Kingdom in the working group and all information provided by the United Kingdom in the working group, including technical and scientific data, are communicated to the relevant institutions, bodies, offices and agencies of the Union without undue delay.

Appendix 3

Article 16 (1) states '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'. We here argue that the actors involved in negotiating and upholding, the Protocol (politicians and institutions) as well as civic society (business, trade unions and related NGOs) should be linked in order to develop long-term and robust 'safeguard measures'. In effect, the realities of the Protocol are centred upon how it evolves across economy, society and trade, and is greater than UK-EU negotiations on their own.

Article 18: Northern Ireland being in the EU Customs Code and UK Customs territory will, for unionists, generate the opinion that the Protocol undermines Northern Ireland's place within the UK. The consent mechanism comes after the enactment of the Protocol, which creates a sense of political powerlessness. The ability to alter or reject Articles 5-10 of the Protocol requires 40% of agreed nationalist or unionist support. The impact of the Protocol would have to be so deleterious for such a vote to come forth. However, the variant perceptions and readings of the Protocol and the capacity to vote on it will, unless the proposals outlined herein are considered, maintain and reproduce political instability. What is not being considered in a joined-up manner is Article 18's impact on and so interaction with the 'democratic consent' in place and operating in the form of the GFAs institutions along with its spirit principles and purpose. **Article 16 (1):** This Article permits unilateral decisions to, be taken, by the EU or UK if the Protocol leads to serious economic, societal and environmental difficulties. However, such safeguarding measures, are restricted, by scope and duration. The meaning of difficulties is interpretive and therefore open to alternative understandings and meanings of The Protocol's effects.

Appendix 4

UPRG statement: *'The recent public disorder has deflected from the original issues that have caused such dismay and anger from within our community. The Storey funeral and the subsequent withering report together with the decision from the PPS to not act against clear law breakers is as perverse as it is infuriating. The Chief Constable has also failed to inspire confidence and his inability to refute the suggestion that a two-tier policing system is operating here in Northern Ireland reduces his role to one of mere appeaser to republican law breaking. Rioting, street disturbances and the destruction of property will not change what must be solved by our political representatives. We have stated on numerous occasions that the way forward must be through politics alone. We implore our supporters, our friends, family members of our friends and anyone with influence to calm tensions, to refrain from posting provocative material on social media and to all come together and galvanise support for our (very well intentioned) concerns and relay this level of concern to our political representatives. In turn we call upon our political representatives to step forward with clear determination and bring forward proposals that command both support and respect. Once again we reiterate - street disturbances will not solve our issues. Politics must be allowed to. We ask for your support during this difficult time'.*

Appendix 5

Article 2 Rights of individuals. In the UK government Explainer document (August 2020) about Article 2, the UK government states that while direct recourse to the Court of Justice of the European Union (CJEU) will now cease, CJEU case law will continue to inform domestic jurisprudence, including case law, where relevant, that is made after the transition period. Individuals will be able to bring challenges to the Article 2 commitment directly to the domestic courts. This is how Article 2 will work in practice:

‘To make out a case that a diminution of rights, safeguards or equality of opportunity has occurred, it will be necessary to evidence (i) that the right, safeguard or equality of opportunity provisions or protection is covered by the relevant chapter of the Agreement; (ii) that it was enshrined or given effect to in the domestic legal order in Northern Ireland on or before the last day of the transition period; and (iii) that the alleged diminution occurred as a result of the UK’s withdrawal from the EU, or, in other words, that the alleged diminution would not have occurred had the UK remained in the EU’.

The Explainer document outlines that the following provisions are included, but may not be limited to: The right of free political thought; The right to freedom and expression of religion; The right to pursue democratically national and political aspirations; The right to seek constitutional change by peaceful and legitimate means; The right to freely choose one’s place of residence; The right to equal opportunity in all social and economic activity, regardless of class, creed, disability, gender or ethnicity; The right to freedom from sectarian harassment; The right of women to full and equal political participation; The right of victims to remember as well as to contribute to a changed society; Respect, understanding and tolerance in relation to linguistic diversity; The need to ensure that symbols and emblems are used in a manner which promotes mutual respect rather than division.

European Union Charter of Fundamental Rights

While the Charter of Fundamental Rights will no longer formally apply, the essence of the Charter will continue in Northern Ireland with regard to specific requirements around customs and the Single Market covered in other parts of the Protocol.

The UK government position is that those rights and obligations related to the 1998 Agreement which were previously captured under EU law before Brexit, but are instead being implemented or retained in domestic law, will not suffer diminution and will continue to keep pace. In McCrudden’s view:

“So, although the general clause in Article 2(1) of the Protocol does not itself incorporate the Charter into Northern Ireland, other provisions of the Withdrawal Agreement may mean that the Charter does apply in Northern Ireland under the Withdrawal Agreement.”

European Convention on Human Rights

The UK government's commitment to 'no diminution' of rights and the accompanying structure of implementation (the 'dedicated mechanism') is complex and layered in its construction. For example, some observers have argued cogently that Article 2 – if properly interpreted and implemented – also affirms the ongoing maintenance of the European Convention on Human Rights (or equivalence) in Northern Ireland law, a key element of the Belfast (Good Friday) Agreement.

McCrudden urges a degree of caution about this particular reading of the Protocol since the '*no diminution*' commitment reads as *applicable only insofar as a potential issue* results from '(the UK's) withdrawal from the (EU)'.

This means that the longer-term ramifications of Article 2 in relation to the ECHR will likely depend on the interpretive approach that is adopted judicially. Related focus may also therefore be relevant to discussions about a Bill of Rights for NI which were mandated under the New Decade, New Approach agreement 2020 – including considering some of Article 2's limitations. This dynamic means that the exercise of new powers and functions arising from Article 2 contains some agency and opportunities to positively shape Northern Ireland's future-facing socio-legal framework.

Limitations of article 2

One of the obvious limitations with Article 2 is its actual purpose: to try and adequately replace European legal architecture for equality and rights that has been established since the 1998 Agreement (with earlier antecedents). This means that, despite representing a best effort, it is by definition uncertain about a range of possible permutations.

For example, the 'birth-right' provision of the 1998 Agreement – permitting any citizen to identify as British, Irish, or both – is not explicitly identified within the provisions of Article 2, yet may arguably be covered by the EU principle of non-discrimination on grounds of nationality. This issue affects all citizens

The relevant EU Directives stipulated in Annex 1 to Article 2 of the Protocol are: Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services; Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation; Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin; Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation; Directive 2010/41/EU of the European Parliament and of the Council of 7 July 2010 on the application of the principle of equal treatment

between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC; Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security.

Appendix 6

The British-Irish Intergovernmental Conference, for example, could be more innovative in terms of voice and issue capture. Its aim is to: *'bring together the British and Irish Governments to promote bilateral co-operation at all levels on all matters of mutual interest within the competence of both Governments'* and meets at summit level, or at ministerial level. Notably, *'relevant executive members of the Northern Ireland Administration will be involved in meetings of the Conference, and in the reviews...to discuss non-devolved Northern Ireland matters'* In addition, the British-Irish Council (BIC) provides a forum for leadership and co-operation. Under the Agreement it will *'promote the harmonious and mutually beneficial development of the totality of relationships among the peoples of these islands'*. It comprises *'representatives of the British and Irish Governments, devolved institutions in Northern Ireland, Scotland and Wales, when established, and, if appropriate, elsewhere in the United Kingdom, together with representatives of the Isle of Man and the Channel Islands'*. It is obliged to meet twice a year and at sectoral level in between biannual meetings. It is purely consultative. Interestingly, there is also scope for members to develop separate bilateral or multilateral arrangements *'It will be open to two or more members to develop bilateral or multilateral arrangements between them. Such arrangements could include, subject to the agreement of the members concerned, mechanisms to enable consultation, co-operation and joint decision-making on matters of mutual interest; and mechanisms to implement any joint decisions they may reach. These arrangements will not require the prior approval of the BIC as a whole and will operate independently of it'*.

Appendix 7

The Good Friday Agreement hosts a range of institutions and bodies that are delegated to support trade and economic development across the islands. These include the North–South Ministerial Council and the North–South Implementation Bodies, the British–Irish Council, British–Irish Intergovernmental Conference and the British and Irish Parliamentary Assembly. In addition the Department of Foreign Affairs, the Taoiseach’s Office, the Northern Ireland Office, the Cabinet Office, the Executive Office (Northern Ireland) International Relations Team, the Joint Committee of on the Implementation of the Good Friday Agreement, Scottish and Welsh governments, BEIS and EU European Parliamentary Research Service. Sectoral Groups: Tourism Ireland, Professional Bodies and Trade Associations, Trade Northern Ireland, British Irish Trading Alliance, British and Irish Ombudsman Association, CBI, CBI Northern Ireland, IBEC’s Joint Business Council, Irish Congress of Trade Unions, Retail Northern Ireland, Chambers Ireland, Northern Ireland Chambers of Commerce, British-Irish Chamber ADAS, Irish Farmers Association, Ulster Farmers Union, National Farmers Unions (England and Wales), Fish Producers Organisation, Maritime UK, the Freight Transport Association and all islands trade unions. Think Tanks/Policy Research: CTSI Brexit (Trading Standards), Centre for European Reform, UK in a Changing Europe, Adam Smith Institute, Institute of Economic Affairs, Bruges Group, Chatham House, Pivotal, Civitas and UK Trade Policy Project, Economic and Social Research Institute, Centre for Cross Border Studies, Irish Centre for Local and Regional Development, Institute for International and European Affairs, DCU Brexit Institute; British Academy, Royal Irish Academy.