



Northern Ireland
Assembly

Committee for The Executive Office

OFFICIAL REPORT (Hansard)

UK Command Paper: The Executive Office

14 October 2020

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Colin McGrath (Chairperson)
Mr Doug Beattie (Deputy Chairperson)
Ms Martina Anderson
Mr George Robinson
Mr Pat Sheehan
Ms Emma Sheerin
Mr Christopher Stalford

Witnesses:

Mrs Lorraine Lynas	The Executive Office
Ms Lynsey Moore	The Executive Office
Mr Tom Reid	The Executive Office

The Chairperson (Mr McGrath): This evidence session is on the UK Command Paper. Officials from the Executive Office are going to join us via StarLeaf. We should have with us Lynsey Moore, the director of the European division and head of the Office of the Northern Ireland Executive in Brussels; Lorraine Lynas from the EU future relations division; and Tom Reid, the director of EU future relations. The meeting is being recorded by Hansard, and the transcript will be published on the Committee web page.

I ask you to update us on the Command Paper.

Mr Tom Reid (The Executive Office): Yes, Chair. Can everyone hear me?

Some Members: Yes.

Mr Reid: First, apologies. I have had to join the meeting by phone, as we have had technical issues. Thank you, Chair, for the opportunity to attend the Committee today to provide members with an update on the Command Paper, specifically on those areas on which the Government have said that they will work with the Executive.

By way of introduction, I am Tom Reid, director of EU future relations. I took up that post in September, following 11 years at the Department for Regional Development/Department for Infrastructure working on a range of issues, including Brexit.

As the Committee is aware, the Command Paper was published on 20 May. It sets out the UK Government's approach to implementing the protocol in what it states is:

"a flexible, and proportionate way — protecting the interests of both the whole United Kingdom and the EU."

Underlying that is the intention that any new administrative requirements and processes that are required will be streamlined in such a way as to ensure that they impact as little as possible on NI life and business. That reflects the objectives that were previously set out —.

The Chairperson (Mr McGrath): I am going to interrupt you for a second. Somebody else on the line is not muted and is on their computer. We can hear ferocious mouse-clicking, and it is coming through at the same volume as your contribution, Mr Reid, so it is competing with you. It has stopped now, so you can continue.

Mr Reid: The Command Paper sets out four key commitments: first, that there will be unfettered access for Northern Ireland producers to the whole of the UK market and that that will be delivered through legislation by the end of the year; secondly, that no tariffs will be paid on goods that move and remain within the UK customs territory; thirdly, that the implementation of the protocol will not involve new customs infrastructure; and, finally, that Northern Ireland businesses will benefit from lower tariffs that might be delivered through any new free trade agreements that the UK negotiates with other countries.

The Command Paper touches on all areas covered by the protocol, including human rights, the common travel area (CTA), the regulation of manufactured goods, the single electricity market (SEM), state-aid provisions, and VAT and excise. It is the provisions on customs and trade in the protocol that the Command Paper focuses on in the most detail. Although the proposals set out in the Command Paper were generally welcomed when it was published, particularly the commitment to unfettered access for Northern Ireland producers to the UK internal market, which was, and remains, a key priority for the Executive, the paper was limited in technical detail. Clarity was still required in a number of areas, particularly to enable businesses to plan for the end of the transition period. Recognising that, the Command Paper included commitments to engage with the Executive in a number of areas in which decisions were required on how the protocol would be implemented.

Those are set out in the briefing paper, but, in summary, they include the qualifying status for goods and businesses that would benefit from unfettered access; how the application of low tariffs on trade moving east and west over the Irish Sea, unless *[Inaudible]* would operate; issues around the facilities and arrangements at points of entry for the purpose of agri-food checks and insurance; and the legal basis for the continuation of the single electricity market after the transition period. There are also issues around exploring funding options to support preparedness and to maximise any opportunities associated with EU exit that might exist for Northern Ireland.

Building on that, the Command Paper reiterated the commitment in the New Decade, New Approach agreement that the Executive would be invited to attend any meetings of the Withdrawal Agreement Joint Committee or the Ireland/Northern Ireland Specialised Committee at which Northern Ireland is being discussed and the Irish Government are in attendance.

Finally, it further committed to the establishment of a joint consultative working group to act as a forum for the exchange of information and mutual consultation and of a business engagement forum, to which the Executive would be invited to attend, to allow businesses to put forward proposals and provide feedback on how to maximise the free flow of trade.

The briefing paper sets out an update against those issues and proposals for ministerial/official engagement across those areas, subsequent to the publication of the Command Paper. That engagement has been considerable, and, on occasions, it has gone into considerable detail on a number of issues, but it remains very much ongoing. We are dealing with complex and difficult issues, and many of them are outside the direct control of the Executive. As we are preparing for the end of the transition period and trying to bring about clarity, it is essential that we continue that engagement and utilise the commitments in the Command Paper to do so. The aim is to ensure that the remaining areas of clarity are provided as soon as possible so that businesses and wider society can be prepared for the end of the transition period.

That is an overview of the briefing paper that has been provided. I am now happy to take members' questions. That will provide us with an opportunity to go into more detail. Before I take questions, I wonder whether Lynsey or Lorraine might have anything that they would like to add.

Mrs Lorraine Lynas (The Executive Office): I am quite happy to move to questions, if that is OK.

The Chairperson (Mr McGrath): May I be so bold as to ask whether it might be possible for Lynsey and Lorraine to answer the questions? Was that Lynsey who came in? We can hear you quite clearly. Tom, we are really struggling to hear you. You sound very distant. Perhaps Lynsey or Lorraine could answer the questions. Then, if something is not covered, maybe you, Tom, could come in on the back of that.

It is 3.50 pm, and Martina has indicated that she needs to go at 4.00 pm. So, I will cede the ground to Martina to ask a question or two.

Ms Anderson: Thank you, Chair. I appreciate that. Thank you for the presentation and the information that you have given us. Tom, it was hard to follow because you were very faint at times. Maybe Lynsey or Lorraine will be able to pick up on this. You talked about the Command Paper and unfettered access. Whatever is said about the Command Paper, it is only a British Government paper; it is not an agreed EU-British Government position. Whatever about the indications that it gives to people about unfettered access, we know, as of today, that the British Government's intention is that only goods that are produced here and have a label that shows that they are produced here in the North will have unfettered access. What about any other produce from elsewhere? What is your view of what they have said as opposed to what they have done? The two seem to be different.

The Command Paper states that the entire protocol "might only be temporary". We all know that the withdrawal agreement was based on all of what was agreed, and it certainly was not temporary. Of course, what Theresa May had agreed was "unless and until" it was needed, which may have been temporary, unless it was needed. Boris Johnson negotiated a full stop: it will come into effect regardless. Are you working in the Executive Office in Brussels as opposed to here? If that is the case, are you still in Brussels? What are your views on what the Command Paper says and what the British Government have done?

Ms Lynsey Moore (The Executive Office): I will come in first, Martina. I work between Brussels and Northern Ireland, but primarily in Brussels. The office is still very much active. We are very active with our European counterparts on all of the issues. We are still in contact with them, and we discuss important issues. My team also provides support for the Joint Committee, the Specialised Committee and the joint consultative working group. That is my main reason for being with you today: quite a lot is happening in that regard.

I will let Lorraine comment on your question about unfettered access. We are not the authors of the Command Paper, so we cannot speak authoritatively on it, but I imagine that that refers to the consent mechanism. I think that it is well understood that, from 1 January, the protocol will come into force and that the negotiations about the future relationship will not change that. Of course, as we have discussed with the Committee many times before, there are elements of those negotiations that impact on how some of those things will work, but, in this case, they are, perhaps, referring to the consent mechanism.

Ms Anderson: The consent mechanism? Are you talking about a legislative consent motion? You are not talking about the consent mechanism in the Good Friday Agreement, because that is about only constitutional change.

Ms Moore: No, in the protocol.

Ms Anderson: In the protocol. OK. Thank you.

Mrs Lynas: Thanks, Chair. I will come in on your question on unfettered access and, in particular, the issue of qualifying goods. The Committee may be aware that, on Wednesday 7 October, the Government laid a statutory instrument (SI) that defines the Northern Ireland qualifying goods that will have unfettered access to the GB market at the end of the transition period. The SI, which is quite short, sets out that all goods that are in circulation or are processed in Northern Ireland will be considered as qualifying goods.

We understand that that broad approach represents the first phase of a two-stage approach. The first stage is intended to ensure that goods moving from west to east continue to flow freely at the end of the transition period. That staged approach is in line with the overall border operating model for the whole of the UK. It is a temporary bridge to longer-term measures that will be implemented in 2021.

The rationale, as set out by the UK Government, is to avoid disruption to our businesses on day one and to ensure that there is a level of continuity to allow for those more detailed arrangements to be implemented and set out. We understand that there is further legislation to come. There could also be provisions in other Bills, such as a finance Bill, for anti-avoidance measures to enable action to be taken against businesses that illegitimately try to reroute goods to avoid any import requirements.

Tom mentioned the Northern Ireland Office's business engagement forum, as does the briefing paper. Certainly, at the start, there was a lot of engagement with businesses through that forum to try to gauge their thoughts on what qualifying goods should look like, given the UK Government's commitment to not having any fetters. There can be a difference of opinion between and even within the different sectors. For example, the manufactured goods industry does not see much need for the definition of qualifying goods, whereas the agri-food industry feels strongly that there needs to be a mechanism for determining NI produce, and that relates to the reputation of its industry.

The Chairperson (Mr McGrath): Thank you very much for that. Having read the Command Paper, I think that much of the key language is quite woolly. For example, it refers to tariffs being charged on goods travelling from the UK to Northern Ireland if they pose "a genuine and substantial risk". Who will define what is genuine and substantial? It also refers to people using their "best endeavours" to avoid controls at Northern Ireland ports. Who will put down a yardstick for what are or are not people's best endeavours, and how do you measure that? The Command Paper also refers to people being permitted to apply "discretion" in assessing the goods that arrive. However, what one person might apply as discretion may not be what the next person applies. Language such as "genuine", "substantial", "discretion" and "best endeavours" is not exactly clear.

Mr Stalford: Chair, I think that the phrase "best endeavours" was invented by the EU.

The Chairperson (Mr McGrath): Well, I do not think that it is much use to businesses here at the moment. How are you interpreting those sorts of words on a practical basis when trying to work with businesses and others on the rules?

Mrs Lynas: I will kick off on that, and Lynsey will come in on the specifics of the goods at risk.

The Command Paper dates back to May, and it was somewhat overtaken by the business guidance that the Government brought out on 7 August, which started to look at giving some clarity. It is recognised that it did not give all the clarity that was needed. Much, including the element of goods at risk, is outstanding and still subject to negotiations or discussions with the EU Commission through the Joint Committee. Also, the "best endeavours" phrase is used in the protocol. Lynsey might remember more. I do not have a copy of the protocol to hand. We recognise that the guidance is not complete, but it is being added to as more clarity is received. We encourage businesses to look to that guidance and to register for the trader support service, which was announced on the same day, 7 August. There is no obligation, but it is really important that businesses register for the service to see what help and guidance might be there. Lynsey, do you want to add to that?

Ms Moore: Thanks, Lorraine. If you do not mind, Chair, I will keep my video off because I am having some connection problems, and that makes it a little easier. It is more important that you can hear what I am saying than it is to see me.

Yes, "best endeavours" is agreed language between the UK and the EU in the protocol. It has been discussed quite a lot. Lorraine said a lot of things that I might also have said. Where there are things still to be worked out and decisions still to be made by the Joint Committee, those are for bilateral discussion between the UK and the EU. That is how they are to be taken forward. I will update you on where things are with that. Just today, as the Committee may have seen, it was announced that there will be another meeting of the Joint Committee on Monday at 9.00 am. The Executive have been invited to attend that, as they have been invited to attend previous meetings. This meeting is to take stock of where things are in those decisions. If you recall, the decisions are around at-risk goods, agri-food subsidies, the treatment of fish landed in Northern Ireland by Northern Ireland vessels and the question of EU supervision. Those are very much still live discussions between the UK and the EU, and they have not yet progressed to the point of a joint decision. There is huge impetus, on both sides, to accelerate those discussions. Certainly, that was said at the last Joint Committee meeting, which was on 28 September. There has been an intensification of contact between the two sides at a technical level, we understand, to move those discussions forward and to try to prepare decisions for the Joint Committee, the aim being that decisions will be made later this month or in early November. There might be more information on where progress has been made on Monday.

The Chairperson (Mr McGrath): OK. I am looking for a yes or no response to my next question. Those terms are very much open to interpretation. Are there are forums through which you can explore what they will mean? Is there input from the business community? Are conversations happening to define what some of those looser terms mean? Or is it just that people go off with their own interpretation, which causes friction somewhere down the line? Is it the first option — that it is still up for discussion?

Ms Moore: Yes, that is most likely to be the case. There are still things that are up for discussion. As with all things, there are different interpretations of what they will mean. The term "best endeavours" that you mentioned is the impetus for these discussions. I mentioned the discussions that are linked to the decisions, but other discussions are also going on between the UK and the EU on how the protocol will be implemented. The intention is for the two to find an agreement that is in line with what they intended in the protocol.

The Chairperson (Mr McGrath): Thank you. Doug, have you any questions?

Mr Beattie: Are you hearing me?

The Chairperson (Mr McGrath): Yes, go ahead.

Mr Beattie: The connection has just come back. It has been off most of the time. Has the issue of an EU presence in Northern Ireland been resolved or is that still being discussed?

The Chairperson (Mr McGrath): Can anybody answer that question?

Mrs Lynas: Lynsey, I am not sure. Can you touch on that one?

Ms Moore: I am sorry; I lost the connection for a moment. Will you repeat the question?

Mr Beattie: The paper refers to the EU looking for a permanent presence in Northern Ireland. The UK said that there should not be a permanent presence. I am just trying to get an update on where we are with that discussion.

Ms Moore: As I have said to the Committee before, that is between the UK and the EU, and we are not directly involved in those discussions. From updates given at the Specialised Committee and the Joint Committee, I understand that there is further discussion on what exactly that would mean. There is still a gap between the UK and the EU on how that obligation in the protocol, as the EU sees it, would be met. The UK has been quite firm in its position and refused to have a Commission office in Belfast. That is well known, and the UK has not changed its position on that. They are looking at how they can allow those obligations to have the oversight of procedures by the Commission and practically facilitate that. That is one of the decisions for the Joint Committee, and there still is not a clear line to what answer or decision will be recommended to the Joint Committee.

Mr Beattie: Thank you.

Mr Sheehan: The Specialised Committee met on 9 October. Is there a report of that meeting yet? I understand that Andrew McCormick attends it.

Ms Moore: There are no formal reports of the meetings. They are held confidentially. It is the same for the Joint Committee. The EU and the UK released short statements after the meeting, and, if you have not already seen those, I can certainly send them to the Committee Clerk. They outline the main points from the discussion.

The main point to make is that the Specialised Committee has discussed progress on implementation and the work on the decisions for the Joint Committee to make. It has also requested intensification of the technical discussions between the two sides. I imagine that that will be revisited on Monday at the Joint Committee. As you know, the Specialised Committee is made up of officials, and the Joint Committee is co-chaired by a vice president of the Commission, Maroš Šefčovič, and the Chancellor of the Duchy of Lancaster, Michael Gove. We expect that those points will come back to the Joint Committee and that it will see what progress has been made since its last meeting.

Mr Sheehan: This might be a bit subjective, but has there been any feedback on the atmosphere at the Specialised Committee meeting?

Ms Moore: There is definitely a willingness on both sides to try to move things forward. As I said, there has been agreement on the need to intensify the discussions, to move forward the technical discussions and to start to prepare the decisions for the Joint Committee. There are still questions from the UK and EU sides on implementation issues. The Specialised Committee focuses primarily on the Northern Ireland/Ireland protocol, the Joint Committee focuses on the range of issues in the withdrawal agreement, and, as you know, other specialised committees deal with citizens' rights, Gibraltar and other issues relating to separation. The continued public message from the Commission is about the need for progress on implementation. There have been reassurances from the UK that progress is ongoing and that significant work is ongoing to put in place the things that are needed, particularly for VAT and customs, where new IT systems or amendments to IT systems are needed to put those in place before the start of the year.

Mr Sheehan: Finally, I go back to the Command Paper. Does the Internal Market Bill contradict the Command Paper insofar as the British Government said that state aid and unfettered access with the EU were issues that would go to the Joint Committee to be resolved, yet they have gone on a solo run by making both part of the Internal Market Bill?

Mrs Lynas: The Internal Market Bill looks at two parts of the protocol: the need for exit declarations on goods moving from NI to GB; and state aid, particularly in relation to "reach back". You are right that those were discussions that were to happen at the Joint Committee. The difficulty that the Internal Market Bill is having in that regard has been well publicised. Your previous question was on how that affects the ongoing discussions in the Joint Committee and the discussions about the future relationship itself. It probably has not helped a great deal. However, at the same time, there is evidence that the EU continues to want to seek agreement on the implementation of the protocol and in the negotiations. The EU has kept that matter outside the main format to see what transpires. You are aware of the legal action that the EU has started. However, it has not soured relationships enough for the EU not to want to have those conversations, and work continues in the Joint Committee and on the negotiations.

Mr Sheehan: OK. Thank you.

The Chairperson (Mr McGrath): George, do you have any questions?

Mr Robinson: No.

The Chairperson (Mr McGrath): Thank you very much indeed, Tom, Lorraine and Lynsey. Tom, I apologise that the connection has not been great, but I am sure that you will be at the Committee again to answer questions.