



Northern Ireland
Assembly

Committee for The Executive Office

OFFICIAL REPORT (Hansard)

Brexit Issues: Executive Office

21 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 Trevor Lunn
Mr George Robinson
Mr Pat Sheehan
Ms Emma Sheerin
Mr Christopher Stalford

Witnesses:

Dr Andrew McCormick	The Executive Office
Mr Tom Reid	The Executive Office

The Chairperson (Mr McGrath): I welcome Tom and Andrew. Will we hand over to you to give us a brief introduction, or are you happy enough with the paper that you tabled?

Dr Andrew McCormick (The Executive Office): I will say a few brief words, but I am happy to go quickly into a conversation, Chair. Thanks for the opportunity to cover this.

There is, of course, quite a lot happening at present. There have been daily phone calls between the chief negotiators over the last few days since the European Council meeting last week that seemed to land negatively on Friday, yesterday and the day before. The possible difference today is that Michel Barnier has been speaking to the European Parliament and has said a bit more about a willingness to talk. Whether that measures up to what the Prime Minister said last Friday about the need for a fundamental change in the EU's position before talks could proceed remains to be seen. We will see what happens next. According to what we have seen on the news reports, there is to be a further phone call between David Frost and Michel Barnier this afternoon. That is very important and, if they were to get back into intensive negotiations based on legal texts, potentially significant. That is what the UK asked for in the discussions last week, and it seems to be on offer.

The more important thing is whether there is a landing zone for the negotiations, and we have talked about that before. The main issues outstanding remain: the so-called level playing field, open and fair competition and state aid subsidies. Even the terms are not necessarily agreed. That may not be unfamiliar to those used to negotiations in this part of the world, in which how people describe things is never quite the same. The same applies to these talks, and that is one of the most difficult areas of the discussions.

There have been clear signals that neither the UK nor the EU, with particular reference to some of the coastal member states, sees any sign of an easy compromise on fisheries. Governance, as in how an agreement would be overseen, remains an issue. That links, I think, to the issue of trust, which is undoubtedly in the background following the UK Bill. Those are the big picture negotiations.

Early on Monday morning, there was a meeting of the Withdrawal Agreement Joint Committee (WAJC), which was co-chaired by the Chancellor of the Duchy of Lancaster, Michael Gove, and Vice President Šefčovič. That went pretty well in terms of mood and style, and some positive comments were made. There are still significant issues to be resolved and quite a long way to go in that process. However, a further meeting of the Joint Committee around mid November is being talked about in the hope that, by then, the technical discussions will have advanced and further progress will have been made on issues in the protocol that remain to be resolved.

A lot of intense work is going on, mainly at a technical level, involving the UK Government and the Commission. We have a little line of sight into some aspects of that to make sure that we push as hard as possible for a good and acceptable outcome. The First Minister and the deputy First Minister made contributions to Monday morning's meeting, emphasising the importance of securing an agreement that respects all the political perspectives here. Those were articulated clearly in that discussion, and the meeting covered the full range of withdrawal agreement issues. It covered citizens' rights, the Northern Ireland protocol and the parallel protocols, which are much less difficult, in relation to Gibraltar and the sovereign bases in Cyprus. It also covered the financial settlement, on which discussions are ongoing. The full panoply of issues around the implementation of the withdrawal agreement was covered in Monday's meeting and is progressing pretty well. The most important things for us now are, of course, securing a fully acceptable approach to the sanitary and phytosanitary (SPS) checks at the points of entry, securing progress on the delivery of those points of entry controls by DAERA — major progress is happening on that — and the four specified decisions for the Joint Committee, which we talked about before.

Those are the main events that post-date the paper that you have and which I thought worth touching on before we open up for questions. An awful lot of work is going on, gearing up on planning assumptions and operational readiness with Ministers and working across Departments to fulfil those obligations.

Those are the main things that I wanted to cover, unless Tom wants to add anything at this point. I hope that it is helpful.

Mr Tom Reid (The Executive Office): No, I am happy enough, thank you. You have covered everything, so I am happy to move on to questions.

The Chairperson (Mr McGrath): Thank you very much for the update, Andrew. I appreciate that things are very fast-moving and changing day by day. We appreciate getting the paper from you. Are you dealing with COVID matters as well as Brexit?

Dr McCormick: Only a little bit. None of us can escape it completely, but colleagues elsewhere are taking the lead on that.

The Chairperson (Mr McGrath): OK. It was mentioned in a presentation last week, and I did not know the run of it.

I want to ask you about intergovernmental relations, which will be pretty key in ironing out a few of the final issues towards 31 December and will become fairly important as we move forward from 1 January. Have the Executive ever endorsed the agreement on joint working and the draft principles that came out of the initial review? We were not there when many of those intergovernmental principles and guidelines were established. We picked up the mantle from January. Have we had an official input into those?

Dr McCormick: There has been a lot of work on that, but it is not directly on my side. Neill Jackson is the expert on that work in the Executive Office. He is a full member of the working group involving the other devolved Administrations working with London on all of that work. It is not, by any means, solely about EU exit; it is about the full range of intergovernmental relations.

The point that proved difficult in the period when we did not have Ministers was on dispute resolution. That bubbled up — well, maybe, more than bubbled — in relation to disputes about the common

frameworks issue and the repatriation of powers. The initial withdrawal legislation led to the Scottish and Welsh Governments taking exception to what was being proposed and challenging it on the grounds of the Sewel convention. The reality of intergovernmental relations is that they have not been that great since that time, and the Internal Market Bill exacerbated that very strongly, especially the issues around the Bill's financial provisions, which allow the Westminster Administration to spend money on anything within the devolved space across Scotland, Wales and Northern Ireland.

Dispute resolution is the difficult bit. It is not resolved. There is a proposal, and it is making progress. There was some discussion at one of the recent Joint Ministerial Committee (European negotiations) (JMC (EN)) meetings. There is further work to be done. Tom and I are not specialists on this topic. I understand that there will be an evidence session with Neill and other colleagues who take the lead on this and have handled the detail. Progress was made on resolving the issues. There is an emerging proposal on the handling of dispute resolution and so on, but that would be subject to ratification at a full meeting of the JMC. The last plenary of the Joint Ministerial Committee was two years ago, if not more. All of the work among the Departments has been focusing on the European negotiation issues.

The Chairperson (Mr McGrath): Thank you for that. Intergovernmental relations, in their broad sense, will become increasingly important. Let us move on to look at the role of the joint consultative working group (JCWG). An analogy that has been used occasionally is that what is happening between the UK and the EU is like a divorce. Extrapolating from that, I sometimes feel that Northern Ireland is the child who will be left having to listen to what London is saying while being bound by rules from Brussels under the protocol. Moving forward, we, as the representatives of the people of Northern Ireland, would like to have input into any change or divergence that there might be. Have any formal mechanisms been laid for that. Is there something like the joint consultative working group working between the EU and the UK? This will affect businesses, communities and structures in the North. How does that work under this joint consultative working group?

Dr McCormick: The rules for engagement and the working methods of the joint consultative working group were published recently and have gone forward as a proposal from the European side. Ultimately, they will go for ratification. They confirm the undertaking that the Northern Ireland Executive would be represented. That is a good development in that it formalises something that we were expecting, but it needs to be worked out in detail. As you say, Chair, there will be a lot of ongoing work on the way in which, looking forward, these things will have to work. There are provisions for dispute resolution in the protocol. The first port of call on issues that relate to the interface between the UK and the EU, or the things that will affect the way that the protocol is operating, is that mechanisms are provided for within the protocol itself.

I am not sure what more might need to be done between the four jurisdictions under the terms of the intergovernmental review to move it forward. Sorry, I will correct myself: on the JCWG, the undertaking that we would be involved came from the UK side; that is not part of the formal European documentation. It is a fulfilled promise, and it will be activated as that comes into being.

The important thing is that ways and means of resolving disputes are provided for. The first thing that we need to do is to resolve the issues that are outstanding. We need to allow that to be established so that, when we move into the post-transition period, we are in the best possible place.

The Chairperson (Mr McGrath): You talk about processes and agreements: are they at discussion stage or agreement stage? Like you, everybody will be keen to get sight of those mechanisms and agreements. We are almost in November, and they have to take precedence from 1 January, so we need to find ways to progress. Where are the documents that you described? Have they been agreed? Can we see them?

Dr McCormick: Yes, we can send you a link to the published proposals in relation to the JCWG. Those emerged in the last week to 10 days and still, formally, have the status of proposals, but they are heading for endorsement. There are specific provisions in the protocol that we can highlight to you. Those provisions already exist, either in the protocol itself or in the withdrawal agreement. Of course, any dispute resolution provisions in the main withdrawal agreement will apply to the protocol.

The Chairperson (Mr McGrath): That is agreed between the UK and the EU. Do the Northern Ireland Executive get representation in that discussion? Is that guaranteed? Is it an excepted matter, or is it just interpreted that the UK will take the lead on our behalf?

Dr McCormick: These are, formally, matters of international relations, so they are excepted. Therefore, the formal standing in all of those processes is with the UK Government. However, the UK Government have provided for our membership of the JCWG — that was a UK decision. The JCWG rules of engagement should be in the briefing paper. Hopefully, that is available to you. If questions arise once you have considered them, we can come back and provide further information.

As I said, because it is international, the formal standing is with London. If an issue concerned us, there would be a strong opportunity for us to make representations and fulfil our part. The UK has also given the undertaking, in the context of a Specialised Committee meeting, that we will have our place in those aspects of ongoing work. If the material that you have leaves you with further questions, I am happy to get further details.

The Chairperson (Mr McGrath): We will come back to you for that. There is a healthy fear in the Assembly and in the North that, when we leave our future in the hands of those in London, we do not seem to do so well. We might come back and work out how our interventions can work best on that.

Mr Beattie: Andrew, thank you. I am sure that we will see a lot more of you over the next number of months. We have gone from negative reporting over the past few days to slightly more positive reporting today, although we could be back to negative reporting tomorrow. On the big strategic issues being played with, such as state aid, we do not have much skin in the game. Will you comment on where we stand in regard to the border posts, point-of-entry posts or whatever you want to call them? Tomorrow, in Belfast, Larne and Warrenpoint, the ground will be broken for those. The EU wants them up and running and the VAT system in place by 1 January. Are we likely to meet that date? Are we tracking progress to see where we are?

Dr McCormick: Yes, the situation is being watched very carefully by London, Brussels and us. This all matters immensely, and hard work is being undertaken by colleagues in DAERA. The sooner these things are established, the better to give assurance and confidence to all concerned, not least the business community so that people know exactly where they stand and what they have to do.

The fact of the matter is that there will still be some work to be done post new year, but the key thing is to ensure that we have something that is operationally effective. Sanitary and phytosanitary checks are needed to protect health: animal health, plant health and human health. What matters most is having the staff and systems to facilitate that work and ensure that, if buildings are not complete, that does not stand in the way of there being effective checks. DAERA is gearing up to be able to fulfil the obligations and undertake what needs to be done. That is really good work, and it is being done very rapidly. The time pressure is immense, but it is progressing. I have confidence that a result can be delivered.

Work is ongoing at negotiating level on the precise interpretation and application of the protocol. DAERA colleagues will give evidence about that to their respective Assembly Committee. A lot of work is being done on that key objective. As we represent in our discussions with London and Brussels, and as all DAERA officials and Ministers are saying, there needs to be an effective supply that makes this work effectively and minimises the obligations and disruption that could result. That is written into the protocol in a couple of places. In particular, article 6, paragraph 2 of the protocol places an obligation on both sides to use their best endeavours to minimise the effect of checks on the flow of goods between NI and GB, and especially, in this particular regard, to ensure that the flow of essential goods is maintained. That is an agreed part of the text. It says that the EU and UK:

"shall use their best endeavours to facilitate the trade between Northern Ireland and other parts of the United Kingdom, in accordance with applicable legislation and taking into account their respective regulatory regimes as well as the implementation thereof."

That is a very important commitment. Exactly how best to meet it is being explored at technical level. The paragraph goes on:

"The Joint Committee shall keep the application of this paragraph under constant review and shall adopt appropriate recommendations with a view to avoiding controls at the ports and airports of Northern Ireland to the extent possible."

We know — it is implicit in that sentence — that controls are needed. However, they should be as unobtrusive as possible. They should facilitate flow. A very active set of discussions is ongoing on that. It is very important that that is secured and that there is understanding both of what is technically

required and the presentational sensitivities — those are very important, of course, and I think that they are well understood by all concerned — so that it can be made effective and as well facilitated as possible. Major work is going on, and good progress is being made.

Mr Beattie: Andrew, thank you. That was really interesting. The AERA Minister and Department are delivering the border posts at speed to the best of their abilities. I take it that the issue of no EU office has been resolved and that the issue of the 15 EU staff who will work in Northern Ireland has also been resolved roughly. Will you let us know?

We had said that 15 October would be the cut-off date for the 27 member states to react to the deal. Clearly, that has slipped. What, do you think, is now the hard stop date for those 27 to react to anything that we come up with?

Dr McCormick: Union presence is not formally resolved. The proposal that you mention was raised at the meeting on Monday. There has to be a balance between delivering the commitment that is made in article 12 of the protocol, which allows for a Commission presence, and keeping it unobtrusive. As you say, they are not asking for a diplomatic office; that was withdrawn some time ago. I do not think that there is yet full agreement on that point. It will have to come to the Specialised Committee and the Joint Committee in due course. However, progress is being made, because there is a recognition on all sides of the balance of what article 12 says and intends.

I would not dare put a precise date on the cut-off date of the main talks. The underlying reasons for a deadline around this time are because legal text has to be agreed in detail, and that has not made that much progress. Some bits of text have been exchanged, but that is quite a time-consuming process. It then has to go for ratification, and the ratification procedures include the European Parliament, and each member state has its own provisions for doing that.

We do not yet know the nature of the agreement and exactly what ratification procedures will be required. That is why 15 October was a good day to aim for, as well as being a European Council date. It certainly cannot be too late or too near 1 January. That becomes totally unrealistic. It is close to being a challenging timetable; where it turns from being a challenging timetable to an impossible one, I cannot give you that judgement. However, the next week or two are really critical. There must be substantive progress. Even if they resume intense talks today or tomorrow, as has been speculated, that does not leave a lot of time. Time is genuinely tight, but it is never over until it is over. It has to come to a head within the next few weeks.

Similarly, on the protocol, those things need to be resolved, partly because they are absolutely essential for businesses planning.

Mr Beattie: Andrew, thank you. I had another one, but, for brevity, I will not ask it.

Dr McCormick: I am sorry.

Ms Anderson: Thank you, Andrew and Tom, for being with us this afternoon. As you know, there are only 71 days left until we are dragged out of the EU. To pick up on what Doug said, there are 27 member states and the European Parliament. We were told that, "By October, it will be over." The clock is ticking. It is in that context that I will ask you about at-risk goods. I am hearing about a finance Bill that could be brought forward by the British Government that is similar to the Internal Market Bill, which would mean that the British Government might intend to override that aspect of the withdrawal agreement. Have you been furnished with any information, or have you heard anything, even in the rumour mill, about at-risk goods and what the EU and the British Government were to agree was at risk, but the British Government, we believe — we are told this — now intend to bring forward a finance Bill that might destroy another aspect of the withdrawal agreement, just as the Internal Market Bill did?

Dr McCormick: I have no fresh intelligence on that. Your point was made openly and publicly by the UK Government at the time that they announced the UK Internal Market Bill. They said that they would bring forward proposals in a finance Bill that would provide for that. The reason for doing so, as presented, was that the default in the protocol is that, if there is no agreement, everything is treated as at risk. That is so problematic for London that, in parallel with introducing notwithstanding clauses — that is the shorthand for the clauses that have the effect of overriding the withdrawal agreement — to the Internal Market Bill, they would introduce a notwithstanding clause to the finance Bill to say that

they, as the UK Government, will determine what is or is not at risk. That is an announced intention. It does not need to happen if there is an agreement in the Joint Committee and —.

Ms Anderson: Sorry, Andrew. My thoughts, like those of many others here in the North, are turning to the fact that we could crash out without a deal. It is about what kind of contingencies are put in place and how we prepare for that potential eventuality. If that is the case, the British Government have already signalled their intention to, once again, unilaterally break the withdrawal agreement. It is clear from reading the papers and from what we saw from the meetings of the Joint Committee and the Specialised Committee that took place last week that they reiterated their commitment to the full implementation of the protocol. If they follow through on what they intend to do, is that the full implementation of the protocol?

Dr McCormick: There are several levels to the decision. Even if the main negotiations on a free trade agreement do not come to fruition, the withdrawal agreement still stands and the process of negotiating and determining the outcome of that work on the protocol would still be an obligation. Everyone who we talk to reminds us that the intention is that the withdrawal agreement is all-weather and all-purpose; it stands, whatever the circumstances, and it needs to be implemented whether there is a future relationship agreement of any sort, either a fully fledged, comprehensive agreement or just a narrow so-called bare bones FTA. The contingency that could give rise to the intervention in the finance Bill and further overriding clauses would be if there were not an agreement in the Joint Committee. That should be happening anyway. The process is ongoing. There are technical discussions that seek to determine at-risk goods. That is being taken forward by both sides. We are not privy to the detail of that, but the process is ongoing. The UK said in the Command Paper that it would accept that goods are at risk only if they are genuinely and demonstrably likely to enter the single market. That goes beyond the wording of the protocol, which is very precise, as most legal documents are.

There are a range of different approaches to looking at that. Our Ministers made representations on that and set out views on what should or should not be treated as at risk, all with a view to making sure that the functioning of our economy is as sensible and realistic as possible. The key thing is that we have not yet, by any means, exhausted the process of seeking agreement at a technical level and then through the Specialised Committee and the Joint Committee. There is every reason that that should still happen. Even if the main talks were to break down, the Joint Committee process need not and should not. Only if it did would the issue in the finance Bill be invoked.

Ms Anderson: Yes, but that is at variance with what was agreed and with the British Government's obligation in the protocol to at-risk goods.

Dr McCormick: *[Inaudible]* seek agreement. Yes.

Ms Anderson: Sometimes people go on Twitter to get information when they are in meetings. I see that the seed gardening market has advocated that producers in the North should go to an all-Ireland supply chain on the basis of what the British Government have introduced on seed law when that comes into play next year because of withdrawal from the EU. I am looking, for instance, at Tesco. It has an all-Ireland supply chain, but Sainsbury's does not as yet. Is it your understanding that we could end up losing some big names that are present and operating in the North and that it could end up that either they have to leave or we have to recommend that suppliers get produce on an all-Ireland basis and use the island of Ireland to seek their produce, just like the seed gardening market is recommending today?

Dr McCormick: Yes, I saw those tweets earlier. I do not have a detailed or precise answer, unless Tom wants to come in and add to this, but the principles remain that there is still a process under way and an obligation on the UK and the EU to sort out all the issues on the movement of goods of all sorts, including everything that would be needed for phytosanitary checks. That is intended to include plants as well as products of animal origin and live animals. That work is still progressing. The urgency is to get to a place where there is resolution and clarification of all these issues as quickly as possible.

Ms Anderson: I could ask one more question, Chair? I know that I could probably ask you many questions when it comes to Brexit. Can you give us information about the shared prosperity fund that is going to replace the EU structural funds? How much will that be, given that we are set to lose £3.5 billion from the EU when we are dragged out? Can tell us what share of the shared prosperity fund, which we have been hearing about

for a long time, is coming to the North so that organisations and groups can at least be furnished with the information about it?

Dr McCormick: I am not sure. Tom, do you have any more detail on that?

Mr Reid: I do not, Andrew, unfortunately.

Ms Anderson: Could we try to get some information on that, Chair?

Dr McCormick: I think that the undertaking was to replace lost funding, but I would defer to colleagues in the Department of Finance who have been working very closely with the Treasury and the Ministry of Housing, Communities and Local Government (MHCLG) in London. Picking that up with Department of Finance officials would probably be the next step for us, so let us look at that and come back to you.

Ms Anderson: There are lots of TEO programmes that come out of EU programmes, whether they are Peace funding or other funding streams that impact on TEO. Chair, could we come back to get that information about the shared prosperity fund?

Dr McCormick: Sure.

The Chairperson (Mr McGrath): We also have briefing in three weeks from the Department of Finance and the EU funding body. I know that we are looking —.

Ms Anderson: OK, can we put that on the agenda?

Ms Sheerin: Thank you both for joining us again this afternoon. Last week the Ad Hoc Committee had presentations from the Human Rights Commission and the Human Rights and Equality Commission in the Twenty-six Counties. Together with the Equality Commission they issued a statement last week on their worries about the Internal Market Bill and some of the amendments to the clauses that they have concerns about.

You mentioned in your briefing paper that they have written to the British Secretary of State about this. They issued a statement a few weeks before that about particular amendments and the implications that this could have. Has there been a further update on that? I know that they asked for a response from the British Secretary of State for the end of last week, but I have not heard whether we got any assurances about some of the rights protections that they are asking for.

Dr McCormick: We have discussed this with NIO officials and I can only say that they gave us a firm reassurance that the issues are manageable. I do not have detail on that. That is the way that, as you say, the correspondence has gone in, and we are waiting for a more detailed response. I got a first-order assurance that the ECHR's concerns should not be seen as a cause for concern. We are pressing for detail on that, and, if we can add to that, it may be best that there is a direct response from NIO to the commission.

Ms Sheerin: Yes, of course; thank you. I note also that, in your briefing paper, you mention that TEO officials are having discussions to formalise funding beyond the 2023 deadline. The worry is that, given that those groups are expressing concerns at this stage and have not had any clear response from NIO or British Ministers, we are talking about funding for two years' time but we do not have answers at this point to some of the questions those groups asked.

The Chairperson (Mr McGrath): Do you want to come in, Christopher?

Mr Stalford: No.

The Chairperson (Mr McGrath): Are you happy enough?

We are having a small technical problem here. I cannot see the other members of the Committee, but I know that you are there. *[Laughter.]* That is a bit scary. I will call you in the order that I saw you joining the StarLeaf conversation. You are up on the main screens now.

Trevor, do you have any questions?

Mr Lunn: Not at the moment, Chair. I am listening with interest, but I am having technical problems too so I have not heard it all. I have no questions at the moment.

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

Mr Robinson: I am fine, Chair. I am just observing and listening.

The Chairperson (Mr McGrath): Do you have any questions, Pat?

Mr Sheehan: Thanks, Chair. Like Trevor, my line was dropping in and out, so I may have missed bits and pieces. I apologise if my question has been asked. I want to ask about the PEACE PLUS funding from the EU and the British Government. Have any legal guarantees been set down for that?

Dr McCormick: Discussions are ongoing on the precise levels of that funding. Commitments were made by the UK Government and the EU to PEACE PLUS, but the detailed discussions are still going on. Again, I will look to Tom to add to that.

Mr Reid: That is a key point, Andrew. There are very strong commitments, but the detail is still being worked out.

Mr Sheehan: When would you expect some greater detail on that?

Dr McCormick: Again, that is something that will need to be resolved in the next few weeks, because all these things need to be sorted out and resolved in the transition period. I am hopeful and confident that that will come through in the next month or so.

Mr Sheehan: OK. Thanks for that.

The Chairperson (Mr McGrath): Andrew, we could probably press you for a lot more commitment than that in your answers. However, given that you are going to be an almost ex officio member of the Committee for the next few weeks in the run-up to 1 January, I am sure that we will have ample opportunity to cross-examine you again. On a more serious note, if you get updates on any of the requests that we made today, I ask you to forward them to us, because we would like to explore them with you when you are back in here again or in other forums before we reach the end of the year.

Can you confirm that the Northern Ireland Executive will be represented on the joint consultative working group? It would be useful to have the details of that forwarded to us in writing. No doubt, we will have you back in a few weeks for some more questions. On the back of that, I thank you both very much for coming along today. We will let you go.

Dr McCormick: Thank you, Chair. We look forward to seeing you again.