
Opinion Paper- The NI Protocol must be completely removed

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Introduction

There has been a worrying narrative developing in relation to the NI Protocol ('NIP'), namely that it would be acceptable for it to be 'amended' or 'changed'. This is to either completely misunderstand or deliberately ignore the fundamental core of the NIP. This brief paper sets out briefly why no unionist or loyalist should open the door to the language of 'amending' or 'changing' the NIP.

The NIP has two distinct issues. There is the practical day to day outworking of its provisions in terms of red tape, increased prices, and disruption to business. That practical issue could undoubtedly be solved via mitigations, derogations, or amendments. However, the fundamental issue is the constitutional reality that the NIP treats Northern Ireland differently than the rest of the United Kingdom. It further provides the right for a foreign power to make laws for NI, to be interpreted by a foreign Court.

The NI Protocol is incompatible with the Act of Union and integrity of Northern Ireland

The Act of Union 1800 created the union of Great Britain and Ireland. When Northern Ireland was created in 1921, the Act of Union Articles continued to apply as before, with specific importance placed upon ensuring Northern Ireland and Great Britain remained as part of one internal market. In short, the Act of Union is the Union in law. Anything that therefore undermines that core constitutional statute by extension undermines the Union.

Article IV of the Act of Union declares:

Subjects of Great Britain and Ireland to be on same footing from 1 Jan. 1801.

"That it be the sixth article of union, that his Majesty's subjects of Great Britain and Ireland shall, from and after the first day of January, one thousand eight hundred and one, be entitled to the same privileges, and be on the same footing as to encouragements and bounties on the like articles, being the growth, produce, or manufacture of either country respectively, and generally in respect of trade and navigation in all ports and places in the united kingdom and its dependencies; and that in all treaties made by his Majesty, his heirs, and successors, with any foreign power, his Majesty's subjects of Ireland shall have same the privileges, and be on the same footing as his Majesty's subjects of Great Britain."

No duty or bounty on exportation of produce of one country to the other.

"That from the first day of January, one thousand eight hundred and one, all prohibitions and bounties on the export of articles the growth, produce, or manufacture of either country to the other, shall cease and determine; and that the said articles shall thenceforth be exported from one country to the other, without duty or bounty on such export."

All articles the produce of either country shall be imported free from duty.

“That all articles the growth, produce, or manufacture of either country, (not herein-after enumerated as subject to specific duties) shall from thenceforth be imported into each country from the other free from duty, other than such countervailing duties as shall hereafter be imposed by the parliament of the united kingdom in the manner herein-after provided; “

It is clear that the NI Protocol, by virtue of creating trade barriers between Northern Ireland and the rest of the United Kingdom, and vice versa, offends the Act of Union in so far as subjects of Great Britain and Northern Ireland are not left on the same footing.

In assessing whether the Brexit arrangements, taken in all their parts, preserves the sovereignty of the whole United Kingdom, it is logical to assess whether any, or all, of the arrangements offend the basic constitutional provisions set out within the Act of Union.

The barriers to trade and differential treatment of the citizens of Northern Ireland vis-à-vis citizens in GB fundamentally offends the Act of Union, and as such this alone undermines the constitutional foundations of the United Kingdom.

Notwithstanding the matters of Trade, Northern Ireland has been left in the absurd situation whereby a foreign power has authority over a sovereign part of the United Kingdom, fundamentally undermining the constitutional integrity of Northern Ireland.

Moreover, whilst remaining faithful to my long-held view that the NIP follows the template set by the Belfast Agreement which is designed to incrementally ease Northern Ireland out of the United Kingdom, if we nevertheless take that Agreement at its height, it has plainly been shredded. The fundamental plank of the Belfast Agreement is found at Strand 1 5 (d), namely that key decisions are to be made on a cross community basis. The consent mechanism within the NIP shreds the principle of cross community consent, to the detriment of the Unionist community.

Conclusion

There is no form of amendment, change or sandpapering that can alter the fundamental incompatibility of the NIP with the Act of Union. It naturally follows as a matter of both law and constitutional reality therefore that only the removal of the NIP will remedy the constitutional undermining of Northern Ireland's place within the United Kingdom.

If we view Northern Ireland as a car. The engine (*the NIP in this analogy*) is incompatible with this model (*the constitutional integrity of the UK for present purposes*). It is absurd to suggest that the way forward is to book the car in to have the wheels aligned and a nice new paint job. Such an approach may significantly change the optics of the car, but it will still be fundamentally unworkable.

Just as you can not 'fix' the NIP, nor can you credibly claim to be resisting it whilst simultaneously allowing it to embed by allowing it to exist in the context of political and societal stability. In short, if you credibly wish to resist the NIP, then the logical end point of that position is that if it is not removed then the institutions must be collapsed.

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