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Northern Ireland Report | July 2022



Ireland: all-island
strategy

Irish law firms slam ‘shameful, cynical’ UK government:

‘Not one client thinks the Protocol should be scrapped’

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Reports Legal is managed by Dominic Carman and James Air, both of whom have considerable experience in these markets. In recognising that most legal publishers now operate behind a paywall, they decided that everything published by Reports Legal will be free for lawyers to access online. There is no paywall.

Dominic has managed legal publishing businesses in London, New York and Hong Kong. A regular media contributor, he undertakes diverse projects for international law firms, speaks at events, and judges the British Legal Awards and the Legal Week Innovation Awards.

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Northern Ireland Protocol:

‘Shameful, cynical’ UK government slammed by Irish lawyers

Dominic Carman discovers that some of Ireland’s top law firms are enraged, with ‘not one client thinking the Protocol should be scrapped’

The six counties of Northern Ireland (NI) are home to around 1.9 million UK citizens. Six years on from the Brexit vote, and two and half years after the conclusion of the Withdrawal Agreement Act by the EU Council, their political relationship with the 26 counties of the Republic of Ireland (ROI) and the rest of the European Union (EU) remains problematic – and to a degree, unresolved.

Beyond the myriad challenges arising from a dysfunctional Stormont Assembly – no functioning government, resignations and standoffs – the heart of the problem is an impasse concerning the Northern Ireland Protocol (Protocol). During Brexit negotiations in 2019 between the UK and Irish governments and the European Commission (Commission), the Protocol emerged as an attempt to address a range of complex, sometimes competing issues relating to customs and immigration at the Irish border between the UK and the EU, and assorted trade issues between NI and the rest of the UK.

Protocol Bill – driven by Truss

Integral to the Brexit process, withdrawal from the EU Single Market and the Customs Union brought free trade between Britain and EU member states to an end. To comply with EU regulations, border checks had to be introduced between the

ROI and NI for certain food and agricultural products, such as milk and eggs.

To avoid the return of a hard border between North and South – involving cameras, border posts and checkpoints that would recall NI’s troubled history – the Protocol was introduced as part of the Withdrawal Agreement. Its primary intention was to preserve a soft border that complies with a new trade relationship between NI and the ROI and allows the free flow of goods between them, as was the case pre-Brexit.

But the Protocol, now part of international law but not yet fully

▲ **The Foreign Secretary Liz Truss has been primarily responsible for pushing the Northern Ireland Protocol Bill forward**

implemented, has been a source of continued political tension since it first came into force in January 2021. According to the UK government’s latest published statement (July 14th 2022), “Our preference is to negotiate solutions to the problems being faced by businesses, citizens and communities. Unfortunately, after eighteen months of talks we have not so far been able to agree on an outcome that provides a sustainable basis for operating the Protocol.”

This came a month after the Northern Ireland Protocol Bill, which was presented to the



House of Commons on 13 June 2022 by the Foreign Secretary, Liz Truss, who has been primarily responsible for pushing the Bill forward. When asked why she was introducing it, Truss replied: "Because I'm a patriot and a democrat."

In essence, the draft Bill aims, unilaterally, to 'scrap the post-Brexit Irish Sea trade agreements' agreed with the EU, to 'fix' parts of the Protocol, and 'to restore stability and protect the Good Friday Agreement.'

According to the UK government, the Bill is needed to restore Northern Ireland's power-sharing government – and so protect the Good Friday Agreement – enabling it to address the practical problems that the Protocol has created in Northern Ireland: burdensome customs processes; inflexible regulation; tax and spend discrepancies; and governance issues such as the Democratic Unionist Party's (DUP) decision to leave the executive.

In a recent interview with the *Belfast Telegraph*, Truss revealed she did not regret originally voting for the Protocol and was surprised to see problems with the arrangement emerge.

"What we've seen from the EU so far are solutions that are worse than the current standstill, that would actually mean more bureaucracy... what we need is a solution to those four issues that are fundamentally undermining the Belfast/Good Friday Agreement," she said.

The draft Bill therefore goes further than oft-repeated British threats to trigger Article 16 of the Protocol, bypassing the Article's limited provisions and effectively promising to jettison much of the deal.

EU Commission legal action

The Commission swiftly responded by launching infringement proceedings in



“ I regard the Johnson government’s position as shameful

Declan Black, managing partner, Mason Hayes & Curran

relation to the Protocol, where it states that the UK is ignoring its obligations. On July 22nd, the Commission launched further legal action against the UK for failing to comply with the Protocol.

Specifically, the four new complaints were made involving the UK's failure to comply with: 1) customs requirements, supervision requirements and risk controls on the movement of goods from Northern Ireland to Great Britain; 2) the transposition of EU legislation laying down general EU rules on excise duties; 3) the transposition of EU rules on excise duties on alcohol and alcoholic beverages; and 4) EU rules on VAT for e-commerce, namely the Import One-Stop Shop (IOSS).

The timing of the Commission's additional legal action is notable: during a hotly-contested

Conservative leadership election between Truss and former chancellor, Rishi Sunak.

A change of prime minister presents an opportunity to resolve the issues around the Protocol "in a different way", according to the Irish foreign minister, Simon Coveney, who has expressed hope that Johnson's successor would step away from the move to override parts of the Protocol by passing fresh legislation at Westminster. But as part of Truss' leadership pitch, the current favourite to succeed Johnson recently said that she developed the Protocol Bill "in the face of EU intransigence". To date, the EU shows no desire either to concede or to negotiate.

Client frustration

So how do the largest law firms on the island of Ireland see the current state of play and how important is the Protocol to their clients?

Stephen Holst, who became the new managing partner of McCann FitzGerald in May, offers the following critique. "As we did during Brexit and when the Northern Ireland Protocol was being negotiated, we will work

with our clients to ensure they are best placed to expand, develop, prosper, or meet whatever challenges arise," he says.

"There are too many factors, political and otherwise, to speculate on precisely where that will go. But it's for every business, including ourselves, to be nimble, to try and anticipate changes and to meet them head on where we can. That's something we've done with our clients who operate cross-border, and will continue to do in future."

Others are less cautious. "I can't think of a client who thinks that the Protocol should be scrapped, including clients who operate cross-border," says Michael Jackson, managing partner of Matheson. "The vast majority of them believe that the issues that exist with the Protocol could be resolved within the existing frameworks, and with some flexibility on both sides.

"There's a frustration among the clients and business leaders I speak to that more is not being done to try and address the issues through that mechanism, rather than what we're seeing with the publication of the recent Bill. Worryingly, we have to assume that there is going to be a crossover effect into other sectors as the standoff between the EU and the UK on this issue results in a slowdown in progress on other initiatives and a lack of willingness to grant concessions."

'Shameful, cynical' UK government

Declan Black, managing partner of Mason Hayes & Curran, does not pull his punches. "I regard the Johnson government's position as shameful. I was heartened by, of all things, a Country Life editorial I read by chance in a waiting room. I nearly fell off my chair that it was on Northern Ireland, but it called on the Johnson government to get serious and honour



"I can't think of a client who thinks that the Protocol should be scrapped"

Michael Jackson, managing partner, Matheson

its commitments. Maybe it's appealing to the old high-Tory instincts: your word is your bond.

"The Johnson government approach is cynical. The DUP was happy to work with the Protocol which was signed up to by Johnson. If a different narrative had been consistently put on it – namely that Northern Ireland has the ability to benefit from the best of both worlds – we probably wouldn't even be where we are. I hope it's resolved politically: the chances are very high that it will be, because you can't imagine that the political calculus will reward a dramatic escalation."

Alan Connell, head of Ireland at Eversheds Sutherland, offers another perspective. "While there are issues with the Protocol, they are not insurmountable and could be dealt with through more committed dialogue, negotiation

and compromise – both from the EU as well as the UK," he says.

"But unilateral action and threats from either side in that regard are deeply unhelpful and damage economic confidence across the island."

He also points to "serious potential benefits" stemming from the Protocol for the island of Ireland. "We have seen that already borne out in some of the trade figures. Looking at the Central Statistics Office (CSO) figures for last year, the trade from the Republic of Ireland to Northern Ireland increased by over £1.1bn – up 54%. While trade from Northern Ireland to the Republic rose by £1.3bn – up 65%.

"For many businesses, it is important to recognise that the Protocol is working, and working well. It is vital that we grasp the opportunity while it remains, and position the island of Ireland as that leading location for investment, particularly post-Brexit."

Connell acknowledges that considerable uncertainty exists in relation to the Protocol and what is happening at Stormont, but he suggests, "It is certain that there are elements now colliding

that are likely to prompt a more focused debate about Irish reunification."

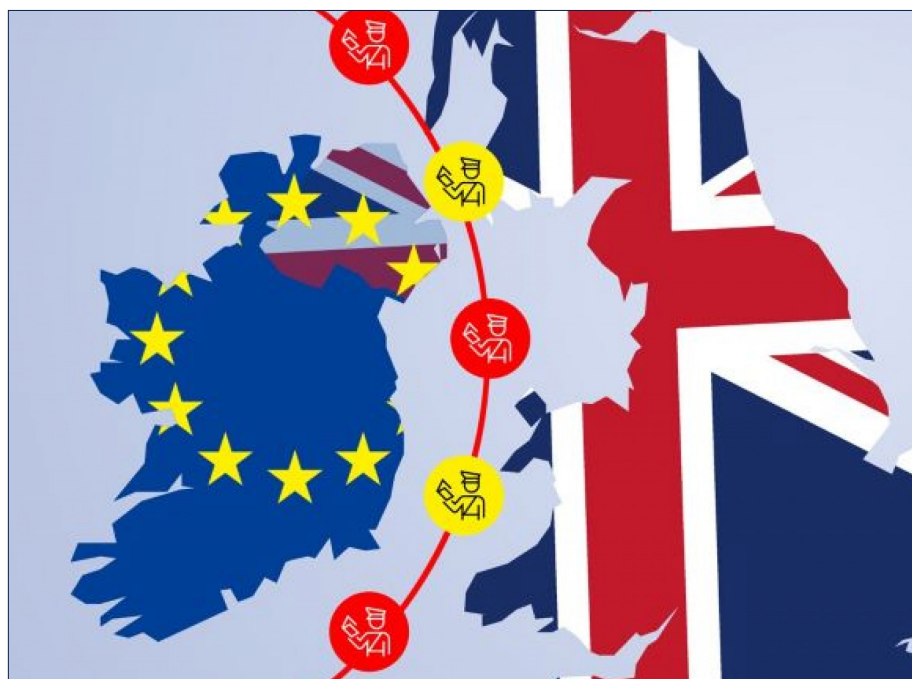
Sinn Fein asks the reunification question

Unification has been a political issue since 1921 when the UK Government created two self-governing political entities under the Government of Ireland Act: Northern Ireland and Southern Ireland, which became the Republic of Ireland in 1949. The Stormont Assembly election in May saw unification – the proposition that all of Ireland should be a single sovereign state – take centre stage when Sinn Fein became the largest party winning 27 seats.

"Sinn Fein has been very strong electorally and they're disciplined in terms of message," says Black. "While you can attack their policies arguing that they lack consistency and substance, and of course their history of equivocation on violence, those arguments are not necessarily cutting through to the electorate. They may well be in power in Ireland in two and a half years. Will they be in sole power? More likely, they'll have to go into coalition."

Owen O'Sullivan, managing partner of Willian Fry, adds: "Reunification is some time off I suspect. Even though Sinn Féin is a strong and growing presence, which has set out a political agenda, they're also politically astute, and are unlikely to push that agenda too hard or too fast if it's going to result in massive social and economic upheaval."

Although no referendum on Northern Ireland's constitutional status is imminent, the Brexit vote shows how quickly things can change. A key starting point for any potential process would be the Good Friday Agreement 1998 which states that unification cannot happen without consent both north and south:



"It is for the people of the island of Ireland alone, by agreement between the two parts respectively and without external impediment, to exercise their right of self-determination on the basis of consent, freely and concurrently given, North and South, to bring about a united Ireland, if that is their wish, accepting that this right must be achieved and exercised with and subject to the agreement and consent of a majority of the people of Northern Ireland."

An evolving issue

In practice, a simultaneous referendum would therefore be required on either side of the border. No referendum seems likely anytime soon, but are law firm clients alert to the potential consequences should it happen one day?

"We're seeing a small increase in questions about reunification," says Holst. "For many clients who are used to operating in Ireland, it's been an evolving issue – something to keep an eye on, rather than a sea change."

Geoff Moore, managing partner at Arthur Cox, adds: "I genuinely don't believe it's having

▲ The Protocol was introduced to preserve a soft border

an enormous effect – good, bad or indifferent – on clients or their activities. The issue of a united Ireland is, from Sinn Fein's perspective, very important at the ballot box. It's much less important for the Irish business community. One question needs to be answered, fiscally, as to how the Republic would afford a united Ireland – that's not been articulated by Sinn Fein. In some communities, it's an emotive issue. In the business community, it's business as usual on that point for now."

Jackson concurs: "I don't see it rising up clients' agendas," he says. "It's a question I'm asked more frequently by lawyers in London than I used to be, however. One irony of the current discussions around the Protocol is that they seem to have triggered more of an assessment of how likely a united Ireland is. While that isn't something that clients are particularly talking about, the issues with the Protocol and the difficulties it's causing in the Irish / UK relationship are concerning to them. Within the business community, there's widely held puzzlement about the approach being adopted."

Support hubs grow, mergers continue

International law firms continue to expand their legal services hubs in Belfast

Belfast has become widely recognised as a major legal support hub over the past decade as a host of prominent law firms have taken advantage of what the city has to offer: a competitive business environment, a high-quality, experienced pool of legal talent, and progressive universities. Some of those who have set up shop there have also gone on to launch local training contract programmes.

Herbert Smith Freehills (HSF) opened a Belfast office in April 2011 – the first near-shore operation to be launched by an international law firm. The office has grown from 19 fee-earners when it opened to more than 200 today.

The HSF team now comprises qualified lawyers, legal analysts and eDiscovery specialists who work closely with their counterparts across the firm's 25-office global network. Belfast is one of ten hubs in HSF's Alternative Legal Services, a fully-integrated part of its international network. Inspired by HSF and by Citi, which has had an in-house team in Belfast for more than a decade, the Financial Times did something similar in 2012, later hiring Bronagh Rafferty as legal counsel in Belfast from Citi.

Last November, Allen & Overy celebrated the tenth anniversary of its Belfast office which comprises a Legal Services Centre and a Support Services Centre. Across its global network, Belfast is the



second largest of A&O's 44 offices employing over 600 people – up from the initial 100 staff when it first opened. Regional business development agency Invest NI backed A&O's investment with £2.5m in assistance.

Various law firms have followed in their footsteps and established a Northern Ireland presence – driven partly by Brexit, but more often by cost factors. For example, Baker McKenzie opened a Belfast office in late 2014 and currently employs 300 people there with plans to grow to up to 450 staff using its new City Quays 2 office.

Since the Fieldfisher Belfast Solutions Hub opened in August 2018, it has grown to 100+ staff – 70% of whom provide business services to the firm's 25 global offices. "Our plans are to grow the Belfast Hub substantially over the coming years," according to Fieldfisher's website. Other firms that have developed in Northern Ireland include TLT and Shoosmiths

▲ Belfast is the second largest of A&O's 44 offices, employing over 600 people

which continues to expand its Belfast office, appointing corporate lawyer Andrew Jennings as partner.

Belfast mergers

The merger route has also become an attractive option for some UK law firms. In 2019, Belfast-based insurance specialist practice Caldwell Warner became part of Keoghs while DAC Beachcroft joined forces with Belfast firm McKinty and Wright.

The trend continued last year when Gateley acquired Belfast-based media law boutique Paul Tweed and Lewis Silkin combined with Belfast-based employment law specialists, Jones Cassidy Brett. Most recently, Clyde & Co completed its merger with BLM which has offices in Belfast and Londonderry, primarily focussed on insurance work.

The attraction of Belfast extends beyond UK law firms. Last September, US employment firm Ogletree, Deakins also chose Belfast for its global back-office operations, partnering with Invest NI to create nearly 80 mainly paralegal jobs by 2024.

Meanwhile in December 2020, BT became the first non-law firm to open a legal hub in Northern Ireland, investing over £2.7 million in a new first-of-its-kind legal hub in Belfast, creating 30 commercial lawyer jobs. Invest NI provided BT with "strategic business advice" plus a grant of £240,000 towards the creation of the jobs.



Deborah Archer and Alan Connell (Managing Partner).

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Ireland: all-island strategy

The potential to develop a complete all-island strategy may seem limited by circumstance, but some law firms think otherwise



It is nearly 25 years since the late Lord (David) Trimble and his nationalist counterpart John Hume were awarded the 1998 Nobel Prize for Peace. Their combined efforts helped to secure the Good Friday Agreement, which aimed to bring lasting peace to Northern Ireland and to transform relationships across the island of Ireland.

Following the British Irish Intergovernmental Conference of 2006, an important study was published on the future of the all-island economy – a project that was firmly in the ascendant in the years following the Good Friday Agreement. In a joint foreword, Dermot Ahern, then Ireland's Minister for Foreign Affairs and

Peter Hain, then Secretary of State for Northern Ireland, concluded: "This study makes clear the strong economic imperative driving north/south co-operation. To be globally competitive we must exploit the opportunities of all-island collaboration."

Although things haven't turned out quite as they might have anticipated, the concept of an all-island strategy still has many champions. In Belfast, the legal market has historically been dominated by a leading trio of local firms: Carson McDowell, Tughans and Cleaver Fulton Rankin. But in their pursuit of an all-island offering, Belfast firms have generally not chosen to open in Dublin.

▲ **The concept of an all-island strategy still has many champions**

Carson McDowell is the exception. As Northern Ireland's largest independent law firm with 120 lawyers, the firm has been developing its Dublin practice following Sinéad Keavey's appointment as head of the office in November 2020 – "part of an ongoing expansion of its specialist legal healthcare team in the city," according to the firm's statement. In May 2022, Carson McDowell confirmed further expansion plans with an imminent move to larger Dublin premises.

The other two big Belfast firms have instead developed close relationships with their leading Dublin counterparts. Cleaver Fulton Rankin has what

it labels “a close association with Dublin commercial law practice Matheson to provide an all-island service for our clients undertaking business throughout Ireland.” Meanwhile Tughans offers what it describes as “an all-Ireland service in partnership with leading Dublin firm, William Fry.”

Good relations

Owen O’Sullivan, managing partner of William Fry, offers a Dublin viewpoint. “From a client and legal service perspective, all the southern firms have good relations if they don’t already have their own presence in the north,” he says.

“We can service all client needs, north and south. It works both ways. Clients with a presence/base in the north can be very easily serviced by lawyers from Southern Ireland through established networks. It will likely remain that way for some time. Once a political solution and timeframe become clearer, there might be more opportunities for firms to merge or establish independent operations, north or south.”

Alan Murphy, Head of Law at EY Law Ireland is more sanguine. “There’s considerable debate around whether or not there is an all-Ireland economy – it’s become quite politicised,” he says. “There’s a lot of business done between Northern Ireland and the Republic of Ireland (RoI).”

“For clients, the ability to provide an all-Ireland offering, and then replicate that in GB, is important. Few law firms are there yet. They’ve increased, but it’s still a small number of firms who can provide a two Ireland offering. EY operates on an all-Ireland basis. We’re looking to build out the law team in Belfast, both in terms of the need for GB to have a Northern Irish offering, but also in terms



“ I don’t see Irish firms expanding their offerings in Belfast as a strategic move

Ann Lalor, head of Pinsent Masons’ Dublin office

of RoI, to have a Northern Ireland offering.”

Joining up – not taken off

Some years ago, McCann FitzGerald formed an alliance with L’Estrange & Brett, which has since become the Pinsent Masons office in Belfast. Ann Lalor, head of the firm’s Dublin office, explains the relationship between the two. “On a day-to-day basis, we interact with the Belfast office,” she says. “It’s not just a statement on a piece of paper, we work together closely. It’s not just financing, it’s across corporate entities in different industries. There is a particularly strong all-island offering in the energy and project spaces.

“But joining up has never really meaningfully taken off. It really works for firms like ours with a multijurisdictional practice and makes sense to have Belfast and

Dublin offices. The Belfast office doesn’t only do Northern Irish work, they also do UK work. Our Belfast office is a significant player in the NI market offering. Goodbody and Arthur Cox have had a Belfast office for a long time, but I don’t see Irish firms expanding their offerings in Belfast as a strategic move.”

David Widger, managing partner of A&L Goodbody, says of the firm’s Belfast office: “Most firms had relationships with Belfast law firms, but we’ve invested heavily there. It’s been a huge success – a full-service law firm and its engines are similar. Growth potential in the energy sector – electricity and power generation – is particularly strong in the north, and we have a strong practice. Construction is another area of high potential, also public procurement, judicial review, and employment.”

How does Alan Connell, Head of Ireland at Eversheds Sutherland, see Goodbody and Arthur Cox as well-established competition in Belfast? “In some of the indigenous work that we service on the island of Ireland they are competition, but their offering is somewhat different

given our global reach. What differentiates us is our ability to advise on wider legal and tax issues. This does not stop on the island of Ireland; it expands into Europe and beyond.

"Our Belfast office (established in 2015) has not been open for very long but has grown very quickly and built a very substantial domestic Northern Ireland base. Similar to Dublin, it's also very much plugged in to the international platform. Trading over the past year has been exceptionally strong. As a firm, we have differentiated ourselves through our international capability (and all-island capabilities) and this continues to be a strong platform for developing our business. We have experienced recent accelerated growth in our corporate and commercial divisions, including employment, data protection, intellectual property, cyber security, litigation and investigations, as well as tax and financial services.

"The difference with our Belfast office, compared to some of the other international firms in Northern Ireland, is we are very much front office, looking at our clients' needs from a real estate, litigation, banking and financial services, and employment perspective. Whereas some other international entrants that have set up in Belfast are using it as more of a back-office type function."

Gateway to the UK

Among Dublin's managing partners, Connell is perhaps the keenest advocate of an all-island strategy across Ireland. "As the most established and largest full-service law firm with an all-Ireland offering, we are very confident in our position," he says. "While we welcome new entrants, it will take them significant time and investment to build up anywhere near to the level of our



"US multinationals look at Ireland as their gateway to Europe, Northern Ireland is the gateway to the UK. That's where I see the dual role possibility for an all-Ireland offering"

**Alan Connell, managing partner
Eversheds Sutherland Ireland**

multidisciplinary offering on the island of Ireland."

He puts this offering in context. "Many of our clients, particularly US multinationals, never mind looking at Ireland as a single legal proposition, tend to look at Europe as almost a United States of Europe," he says. "We help to navigate clients through those differentials that are unclear at first blush when they are looking at their overseas expansion projects.

"Whether it is in Belfast or Dublin, we see that as a significant part of our role in advising clients in relation to their overseas investment projects in

Europe and beyond. That dynamic is similar to working with our colleagues in Munich, Paris, or Madrid. We work very closely with our Belfast team, because in terms of our all-Ireland offering and the full service offering in an all-Ireland context, it is a real market differentiator. It means we are a one stop shop for internationally-focused clients that look at the island of Ireland as a platform for their overseas expansion projects.

Northern Ireland has a very strong offering, notes Connell. "Invest NI is doing great work, particularly in the US," he says. "It's coming up in conversation with our US clients looking at Ireland and the UK in a post-Brexit world, and seeing Northern Ireland as the solution to that, in turn, because the UK is a very significant market.

"While US multinationals look at Ireland as their gateway to Europe, Northern Ireland is the gateway to the UK. That's where I see the dual role possibility for an all-Ireland offering. But we do need to create a degree of certainty around that in terms of the offering. We need political cooperation and certainty there, particularly around the Protocol."





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