

# Brexit: EU poised to take legal action against UK over Northern Ireland protocol bill

Tuesday 14 June 2022, by [BOFFEY Daniel](#), [MASON Rowena](#) (Date first published: 13 June 2022).

## **Bloc says it will not renegotiate agreement and threatens to take ministers to court for ‘damaging’ unilateral action**

The EU is poised to launch legal action against the UK after ministers controversially claimed an emergency loophole allowed them to scrap post-Brexit checks and standards in Northern Ireland.

In a surprising admission, the UK government accepted that its new Northern Ireland protocol bill would mean it did not meet its obligations under international law.

It justified the move under a principle called the “doctrine of necessity”, claiming the protocol was causing “peril” to society and politics in Northern Ireland because of the threat to the Good Friday agreement.

Boris Johnson insisted the changes in the legislation were “relatively trivial” measures designed to ease trade disruption between Northern Ireland and the rest of the UK, as the bill was published on Monday.

But the EU said it would launch legal action for infringing the protocol and a majority of members of the Northern Ireland assembly accused Johnson of being the reckless one by destabilising the Good Friday agreement.

Under the new legislation, which is likely to face considerable opposition in parliament, the government would scrap checks for firms selling goods from Great Britain destined for Northern Ireland rather than the EU. Instead, the government envisages the creation of a “green lane” of fewer checks for those selling goods heading for Northern Ireland and a “red lane” with existing checks for goods destined for EU countries.

It would also allow firms in Great Britain exporting to Northern Ireland to choose between meeting EU or UK standards on regulation, which are expected to increasingly diverge.

Further measures include bringing Northern Ireland’s tax break and spending policies into line with the rest of the UK, and changing oversight of trade disputes so that they are resolved by independent arbitration rather than the European court of justice – a clause pushed by Conservative Eurosceptics.

Maroš Šefčovič, the EU’s Brexit commissioner, hit out at the “damaging” move and threatened to take ministers to court.

He said: “As the first step, the commission will consider continuing the infringement procedure launched against the UK government in March 2021. We had put this legal action on hold in

September 2021 in the spirit of constructive cooperation to create the space to look for joint solutions. The UK's unilateral action goes directly against the spirit."

The EU will on Wednesday restart legal action against the UK for the government's failure to carry out checks on agrifoods and launch two new "infringement proceedings" for not establishing border posts and sharing data with the European Commission.

Speaking after the bill was published, Thomas Byrne, Ireland's minister for European affairs, told LBC that there "undoubtedly will be consequences".

"If you run through a traffic light, you'll be punished, if you commit some other breach of the law, you'll be punished," he said. "There will be consequences for Britain but we don't want to get into that space. We want this to be worked out between the two sides for the betterment of Northern Ireland."

Annalena Baerbock, Germany's foreign minister, accused Johnson of playing politics with peace in Northern Ireland.

She tweeted: "We as EU have put concrete proposals for solutions on the table. With a firm view to: citizens & businesses who benefit from the EU single market every day. And the preservation of the Good Friday Agreement. Peace & prosperity on the island of Ireland are not a pawn."

Legal experts quickly cast doubt on the government's justification for flouting international law. David Anderson, a crossbench peer, barrister and visiting professor at the King's College school of law, said it "sounds thin to me, not to say threadbare", while Emily Thornberry, the shadow attorney general, said the argument was "complete and utter nonsense".

In its legal summary, the government said: "This is a genuinely exceptional situation and it is only in the challenging, complex and unique circumstances of Northern Ireland that the government has, reluctantly, decided to introduce legislative measures which, on entry into force, envisage the non-performance of certain obligations.

"It is the government's position that in light of the state of necessity, any such non-performance of its obligations contained in the withdrawal agreement and/or the protocol as a result of the planned legislative measures would be justified as a matter of international law."

It argued the "peril" in Northern Ireland was "not inherent in the protocol's provisions".

The legislation is likely to encounter serious opposition in the House of Commons and in the Lords, with doubts over whether Boris Johnson has support for it to pass. Ministers are also likely to come under some pressure for publication of the full legal advice on the move, as well as the impact assessment which was not published alongside the bill.

The legislation has some critics on the Eurosceptic right as well as some on the one nation centrist wing of the Tories.

Government sources said they hoped a vote on the bill would take place before parliament breaks up for summer recess, but ministers would want to see some progress towards power-sharing returning in Northern Ireland first, which the Democratic Unionist party (DUP) has so far been blocking. Sir Jeffrey Donaldson, the DUP leader, did not signal whether his party would return to the assembly or give full support for the bill, but said: "The UK government is right to act and we look forward to giving full consideration to this legislation."

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A majority of members of the Northern Ireland assembly – from Sinn Féin, the SDLP and the Alliance party – wrote to Johnson on Monday saying they could not support the move because it “flies in the face of the expressed wishes of not just most businesses but most people in Northern Ireland”.

The assembly is due to vote on whether it gives its consent for the operation of the protocol in 2024, four years after it came into force.

With opposition mounting, there are some doubts among MPs that the legislation will get anywhere. The government has insisted it would still rather find a negotiated solution to fix problems with the protocol. But Ireland said on Monday that the foreign secretary, Liz Truss, had not engaged in negotiations with the protocol in a meaningful way since February.

A phone call on Monday morning between Truss and Simon Coveney, Dublin’s foreign affairs minister, lasted just 12 minutes. A spokesperson for Ireland’s foreign affairs department said: “Mr Coveney said publishing legislation that would breach the UK’s commitments under international law, the Brexit withdrawal agreement and Northern Ireland protocol is deeply damaging to relationships on these islands and between the UK and EU.”

**Rowena Mason and Daniel Boffey**

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## **P.S.**

- The Guardian. Mon 13 Jun 2022 17.57 BST:  
<https://www.theguardian.com/uk-news/2022/jun/13/uk-risks-brexiteu-trade-war-as-northern-ireland-protocol-bill-is-published>

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