

DÁIL ÉIREANN

AN COMHCHOISTE UM SHLÁINTE

JOINT COMMITTEE ON HEALTH

Dé Céadaoin, 6 Samhain 2019

Wednesday, 6 November 2019

The Joint Committee met at 9 a.m.

Comhaltaí a bhí i láthair / Members present:

Bernard J. Durkan,	
Alan Kelly,	
Margaret Murphy O'Mahony.	

I láthair / In attendance: Deputy Lisa Chambers and Senator Colette Kelleher.

Teachta / Deputy Michael Harty sa Chathaoir / in the Chair.

Business of Joint Committee

Chairman: I propose we will now go into public session. Deputy Kelly wishes to raise an issue in public session.

Deputy Alan Kelly: Yes. I thank the Chairman for facilitating me. A report this morning by Cian McCormack regarding St. Joseph's dementia care centre in Shankill is deeply worrying. This committee needs to write to the Minister and the Department regarding this. It is a private not-for-profit organisation but the impact of its potential closure will be catastrophic. St. Joseph's has outlined the position in great detail in letters sent to the families concerned, of which I have copies that I will share with the committee. It has 60 residents who live in individual units and those units will have to close because of a lack of funding, a lack of capacity and debt. It also has 120 day care patients and it will have to stop delivering all services. St. Joseph's has said it will have to close by the end of the year, which is really scary for the families concerned. The letters are dated 4 November. This involves 180 people. It is the largest dementia care centre in Ireland. The letters issued state St. Joseph's gets its funding through the nursing home support scheme. It also gets a day care rate set by the HSE. It has a shortfall of €7 million since 2012 and with another projected subvention of €1.2 million in 2019, which will amount to €8.2 million, it cannot function after this year. Its day care rate, which is set by the HSE, has not increased since 2006, which means it has not increased in 13 years. Having received this information not long ago and read through it, it seems it is impossible for St. Joseph's to sustain its services. Its chief executive, Emma Balmaine, has written to all the families concerned informing them of this. The families have just received these letters and they are devastated by this news.

We need to write to Department, the HSE and the Minister because St. Joseph's also cites the fact that an additional issue, of which we as public representatives are all well aware, is its insurance costs have gone through roof again. That, on top of the current funding issue, the debt, means it will have to close. A number of other similar types of organisations across the country have been in contact. We also have had representatives of a number of sections 38 and 39 organisations appear before us. I believe this is the beginning of a number of these types of announcements because obviously these organisations cannot continue to function. A number of the other organisations are also close to this point. I ask that we write to the chief executive officer of the HSE and the Minister as a matter of urgency to ask what will be done in the case of St. Joseph's because it would be catastrophic if it were to close in two months time.

Chairman: Will the Deputy provide us with the detail of those letters and we will write to the Minister and the HSE?

Deputy Alan Kelly: I will happily provide the Chairman with those letters. I will speak to the person concerned and it is contingent on that person giving me permission. I presume there will not be a problem with that. I will then send those letters to the Chairman. People have been in touch with me about this matter and I dearly ask that we request an urgent response from the Department and HSE because this is a catastrophic situation.

Implication of Brexit for Health Law in Ireland and EU: Discussion

Chairman: This morning we will consider the implications of Brexit for health law in Ireland and the EU with two eminent academics presenting to the committee this morning. On behalf of the committee, I welcome, Professor Imelda Maher, dean of law and professor of European law at the UCD Sutherland School of Law, and Professor Tamara Hervey, Jean Monnet professor of European law at the University of Sheffield in the UK.

I draw the attention of witnesses to the fact that by virtue of section 17(2)(l) of the Defamation Act 2009, they are protected by absolute privilege in respect of their evidence to the committee. However, if they are directed by the committee to cease giving evidence on a particular matter and they continue to so do, they are entitled thereafter only to a qualified privilege in respect of their evidence. They are directed that only evidence connected with the subject matter of these proceedings is to be given and they are asked to respect the parliamentary practice to the effect that, where possible, they should not criticise or make charges against any person, persons or entity by name or in such a way as to make him, her or it identifiable. I also advise witnesses that any opening statements they make may be published on the committee's website after the meeting.

Members are reminded of the long-standing parliamentary practice to the effect that they should not comment on, criticise or make charges against a person outside the House or an official either by name or in such a way as to make him or her identifiable.

I ask Professor Maher to make her opening statement.

Professor Imelda Maher: I thank the Chairman for this opportunity to be here today. It is an honour to appear before the committee.

Whatever form it may eventually take, Brexit has profound implications for human health on the island of Ireland and for Irish citizens in Great Britain. In this opening statement, I will provide an overview of the two most important legal frameworks regarding Brexit. First, I will comment on the revised Northern Ireland-Ireland protocol and the revised political declaration from this October. Second, I will review the 2019 memorandum of understanding on the common travel area between Ireland and the UK. Professor Hervey will then delve into the more specific issues pertaining to health.

The withdrawal agreement is the instrument under which the UK leaves the EU. This, as the members of the committee will know, is phase I and it is governed by Article 50. It does a number of things, including setting up a governance structure in Title II. The joint committee and its specialist committees operationalise the withdrawal agreement and it should roll over into phase II if at all possible in order to ensure a smooth transition.

The revised political declaration sets out a preliminary roadmap for that next phase of negotiation under Article 218 of the Treaty on the Functioning of the European Union. Phase II will be much more involved legally. Trade deals are, to state the obvious, complex. The timeframe for negotiation of phase II – the transition period - is up to the end of 2020 with an extension of another two years possible under the withdrawal agreement. During this phase the UK will be outside the EU but will continue to apply the EU rules. If there is no agreement there will be a fallback to World Trade Organization rules. One particular exception to this is that the parties aim to have a system in place to allow transfer of data and data protection rules in place by the end of 2020, according to the political declaration.

One of the reasons - I am moving on to page 5 - it will take time to develop and bed down the new trade relationship is that, unlike withdrawal, it is likely to be what is known as a mixed agreement. The member states have to agree to it as well as the EU. The member states have to agree to an international agreement according to their own constitutional traditions. This could mean up to 44 parliamentary chambers across the EU having to approve that agreement; obviously, it is complex. If there is no future trade agreement we are not out of the thicket regarding a hard Brexit yet.

With respect to the revised Northern Ireland-Ireland protocol, the main changes of the revised protocol are that: the infamous backstop has now been superseded; the UK is much freer to enter into trade deals as it will not be in the customs union; the Northern Irish land Border will at last remain invisible; and Northern Ireland will be part of the UK customs territory and of the EU customs regime.

Members should note the legal status of the protocol. Protocols have the same status as treaty provisions. They are simply more self-contained and focus on specific issues. That was one of the reasons it was possible to reopen that part of the withdrawal agreement. The EU is not keen on opening it much beyond that.

Regarding the trade rules under the new protocol, Northern Ireland made up between 10% and 12% of total exports from Ireland to the UK and between 7% and 8% of imports between 1996 and 2016. Northern Ireland only has 3% of the population of the UK. That shows the extent to which there is a depth of integration in respect of the two markets, mainly relating to agriculture and food products. This integrated trade pattern will be able to continue under the new protocol.

In essence, the EU and UK customs unions will co-exist in Northern Ireland. I have a vision of a Venn diagram in my mind and the overlap between the two circles is Northern Ireland. When goods go from Great Britain to Northern Ireland and do not enter the EU, a system of rebates will be given to the Northern Ireland trader. The challenge for this new regime is a risk of leakage from Ireland to Great Britain via Northern Ireland or from Northern Ireland to Ireland and the EU of non-EU goods without the payment of relevant tariffs or compliance with relevant EU or British standards. To address this, there is a specialist committee on implementation of the protocol. It will set the criteria for considering that goods brought into Northern Ireland from outside the Union are not at risk of subsequently being moved into the Union. The four criteria the committee will consider are the final destination and use of the good; the nature and value of the good; the nature of the movement; and the incentive for undeclared onward movement into the Union, in particular in respect of payment of duties. This exercise will start immediately once the protocol is signed.

The protocol itself states that the EU rules on the Single Market on VAT and standards will all apply in Northern Ireland. A new kind of origin labelling will be introduced, which will be "UK (Northern Ireland)", to indicate that the good has come from Northern Ireland and has a special status. Inspections to ensure compliance with EU standards will be carried out *vis-à-vis* Northern Ireland by British officials. Safeguards will be able to be introduced where the application of the protocol could lead to serious economic, societal or environmental difficulties. In respect of governance, the terms of the protocol continue after four years if a majority of the MLAs in Stormont are present and vote to continue. If there is cross-community consent, which is a technical term defined within the protocol, the protocol will continue for eight years.

The main changes between this new protocol and the previous protocol is that the UK is no

longer within the customs union. Northern Ireland is where British and EU customs and regulatory standards meet, and the arrangement will continue as long as the Northern Ireland Assembly continues with its periodic voting. There will be no physical border much beyond what we have today, with occasional spot checks, number plate reading, etc. The UK will undertake tax collection for the EU and there will be checks on goods in Great Britain going from there to Northern Ireland and *vice versa*. The myth of technical solutions to a physical land border has been laid to rest.

On the revised political declaration, the declaration addresses the principles that will frame the future relationship. That is all that is required under Article 50, and it has to be read in light of the EU and UK obligations as members of the World Trade Organization, WTO. It is aspirational. I lost track of the number of times the word “ambitious” is used. It gives an indication only of future direction. It is trite to say that it is not clear what an ambitious trading relationship will ultimately look like. We know that each of the two unions will have separate markets and distinct legal orders but envisage comprehensive arrangements to set up a free trade area, with deep regulatory and customs co-operation and a commitment to a fair playing field.

On regulation, the aim is to go beyond WTO rules in respect of technical barriers to trade and what is known as sanitary and phytosanitary measures. The extent to which the UK will co-operate with agencies such as the European Medicines Agency and the European Chemicals Agency is to be explored, but that is as far as it goes. There is no commitment beyond that.

In respect of services, the commitment is to go well beyond WTO commitments. The hope is to draw on recent EU free trade agreements with substantial sectoral coverage in line with Article V of the General Agreement on Trade in Services, GATS. Specific mention is made of professional services but not health services. The problem is that there is very little law on Article V of the GATS so its exact meaning and scope are unclear.

The new regime will address market access and non-discrimination under host state rules for service providers to allow temporary entry. This would allow, for example, physiotherapists, dentists or other self-employed health providers to operate to some degree in both systems.

The intention is to develop intellectual property rights protections that go beyond those found in the WTO regime. Each party, however, will determine its own exhaustion of rights arrangements. This could allow different licensing regimes to emerge in the UK and the EU.

For now, the only certainty we have in respect of the future trade relationship is that there will be change and, inevitably, greater administrative and other costs for the EU, Ireland, Great Britain and Northern Ireland.

On the common travel area, CTA, this is a free movement arrangement between the UK and Ireland, as I am sure the members are aware, with reciprocal and associated rights. The great thing about the common travel area is that it significantly softens the implications of Brexit for Irish and British citizens resident in the other state. The Northern Ireland-Ireland protocol and the political declaration expressly allow for the UK and Ireland to continue with and develop the common travel area, subject to fully respecting the EU law rights of natural persons. The common travel area was not written down until this memorandum of understanding last May and it remains a legally non-binding but flexible arrangement to which both governments have expressed their commitment. Needless to say, if it is not legally binding, goodwill is critical for its ongoing operation.

The rights and privileges that are listed are, for example, the right to work; to be self-employed; social protection; social housing; education; and voting rights in parliamentary and local elections. Specifically, in respect of education and work, the memorandum of understanding notes that recognition of qualifications are essential to facilitate the right to work. The governments commit to ensuring comprehensive measures to be in place for recognition, covering all relevant professions. The CTA also gives citizens the reciprocal rights to access emergency, routine and planned publicly-funded health services. It only applies to Irish and British citizens and does not extend to EU or non-EU citizens resident in Ireland.

Another point to note is that some common travel area rights enjoy legal protection and others are just practice and custom. For example, access to public healthcare is covered by legislation but reciprocal healthcare arrangements such as cross-border treatment are based on an informal service level agreement in the memorandum of understanding. The memorandum of understanding was necessary because rights protected by EU law that previously existed for Irish citizens in the UK will no longer exist as a matter of EU law so we will have to rely on domestic legislation on both sides.

As members know only too well, these are uncertain times. While I focused on the most recent version of the Brexit arrangements, the path to their approval is politically fraught but, I believe, possible. The CTA certainly seems secure and relatively uncontroversial. For the trade relationship, the greater flexibility the UK now has *vis-à-vis* international trade may be sufficient to secure the Brexit agreement. Even if agreed, it is not at all clear what form the final trade relationship will take and the threat of no-deal by default after transition remains, although there seems to be little or no appetite for that given the dire economic warnings that come with it. In other words, Brexit costs but no deal costs more. This realisation should lead to an agreement in phase one and phase two, but uncertainty remains.

Chairman: I thank Professor Maher. I invite Professor Hervey to make her opening statement.

Professor Tamara Hervey: I thank the committee for inviting me to share some of my thoughts and research with the members. It is an honour to be here and I will try to help the members as best I can.

I am a professor of European Union law, and I have been researching and teaching the European Union's health law and policy since the 1990s. I have been asked to focus on the legal implications of Brexit for the Irish health sector, particularly focusing on future EU-UK relationships.

Professor Maher has already outlined the uncertain elements of the current position. It is important to be clear that we will not have legal certainty until the terms of the UK's withdrawal from the EU and the terms of any future EU-UK relationships are legally defined. I am envisaging more than one legal document that expresses the relationships between the EU and the UK going forward. People talk about the trade agreement but it is unlikely to be a single legal document.

Planning for Brexit in the health sector, like other sectors, is a question of contingency planning for unknown possible futures. Unlike other sectors, though, the health sector involves people's bodily safety, dignity, and, ultimately, their lives. One thing that is certain is that the effects of Brexit on health will be significant, negative and will fall unevenly. They will fall most heavily in the UK but the effects of Brexit on health outside the UK will also fall unevenly,

with Ireland one of the places outside the UK in which negative Brexit health effects will be most keenly felt. The other key point from our research so far is that the effects of Brexit on health will differ depending on the type of Brexit. In short, a no-deal Brexit is worse for health than a planned, organised Brexit.

I will not go over the current legal position. British politics is now waiting on the result of the general election. If the Johnson Government gets re-elected on 12 December 2019, the expectation is that the withdrawal agreement will pass through the British constitutional procedures. At that point, the negotiations will start for the next phase. As things stand, the EU and the UK have until the end of 2020 to negotiate one or more future agreements. As Professor Maher has outlined, that amount of time is insufficient to negotiate the relevant agreements, so further extensions will be required or we are facing another kind of no-deal scenario at the end of 2020. So far, no deal has meant no withdrawal agreement, but it may come to mean no, or insufficient, future agreements. There could be a partial no deal with some legal provisions in place but others not. I suggest the committee be mindful of the granular meaning of “no deal”. A trade agreement may cover products or certain service sectors, but others relating to health policy may not be covered in a formal legal agreement between the EU and the UK.

If we have a no deal in December 2020, we are facing all the same kinds of problems for health as have already been flagged by this committee. Even if or when there is a free trade agreement, many aspects of the current arrangements will be on a totally different legal footing. I was thinking about how to conceptualise the committee’s work on contingency planning for the Irish health sector. One way that the committee might wish to conceptualise the contingency planning needed in the Irish health policy sector is as follows. A hypothetical member state of the EU that is not reliant on the UK post Brexit for health products, substances of human origin, health services, health professionals or anything to do with health is a member state that has reduced the risks of Brexit for health to virtually zero. Of course, that is an entirely hypothetical situation, but it could be a useful way to understand Irish governmental planning for health post Brexit. Where can the Irish reliances on the UK, particularly on Great Britain, in the health sector, be reduced and how can steps be taken to reduce risks associated with it? Steps to reduce risks can involve either reducing reliance or securing a robust legal basis for continued reliance, or both these things.

The key issues here are about supply chains implicating the UK. In this area, the difference between supply chains implicating Northern Ireland and those implicating England, Scotland and Wales becomes really important because the withdrawal agreement’s new arrangements mean different treatment between products from Great Britain and products from Northern Ireland. There are, as the committee is already aware, specific issues about products that cannot be stockpiled, like radioisotopes. It is important to remember that the political declaration is only a political statement and can be interpreted in many different ways. Different commentators read it as indicating different directions of travel. I am more inclined to read it as indicating something like the relationship the European Union has with Canada, while others read it as meaning a deeper relationship that is a bit closer to the relationship the EU has with Norway. The political language supports both interpretations so we do not have legal certainty.

I suggest that Ireland consider risks associated with regulatory divergence, such as in the area of health products. The political declaration states that the UK and EU would like to explore the possibility of inter-agency co-operation at the granular level of the European Medicines Agency, but this is very far from the current position where marketing authorisations for medicines are either granted at EU level or are mutually recognised across all EU member

states. In the area of substances of human origin, one of the key things lost when the UK leaves the EU will be the alert system for unexpected adverse effects on patients, and there has been work to move that work from EU institutions to the World Health Organization and the Council of Europe. This might be a sufficient basis for sharing information between the UK and the EU.

The position relating to people was clearly summarised by Professor Maher. There are two groups of people who are important to the health sector, one of which is health professionals. The Commission has confirmed that UK qualifications that were recognised before Brexit will continue to be recognised. I note that the committee has already recommended that Ireland continues to recognise UK medical qualifications post Brexit. The practical position of health professionals and their families with UK qualifications within the Irish health sector will be affected by common travel area arrangements and the rights that UK nationals who are resident in Ireland have. For patients, it is a bit more complex and it is necessary to unpick the legal basis of current arrangements carefully to secure continuity of the current situation. The intention appears to be that the main change in terms of access to healthcare will be in legal form, rather than practice. In the formal legal position, I do not think that is the case. That is because the legal form that the entitlements currently take for cross-border healthcare provisions are rights given to patients whereas the legal form in the future under the combination of service level agreements and common travel area measures will not be a right for patients, but an arrangement between the relevant health institutions in the different jurisdictions.

One group of patients not covered directly by the common travel area is EU 26 nationals who reside in Ireland and fall under the scope of the Irish health system because of their rights in EU law. Where provision is currently made for those people to be looked after in the Northern Irish healthcare institutions because of a memorandum of understanding or informal service level agreements, there is at least arguably an obligation in EU law to continue to treat them the same way as other Irish residents in terms of access to healthcare provided through those informal arrangements. Obviously, that obligation lies on Ireland but it will not be possible to hold the UK to account under an obligation in EU law for that care. This is a matter the committee might want to consider raising. I am not sure how Ireland's continuing obligations in EU law and the co-operation and working together arrangements can be clarified, but that is an area in respect of which some legal crystallisation might help.

The committee is right to identify regulatory alignment as a key legal question for planning going forward. Many of the challenges raised by Brexit for health are easier to meet if the UK and Ireland as an EU member state remain aligned in regulatory standards and approaches across the whole range of areas that affect healthcare and health policy. Many aspects of alignment are an EU competence and are outwith the unilateral control of Ireland as an EU member state. Of course, Ireland will exercise its influence within the EU institutions as a member state. Some aspects of health-related regulation and most aspects of health services provision remain within Irish competence. The committee will be mindful of this factor.

Chairman: I thank Professor Hervey. We will now open the discussion to members. Deputy Durkan will be first.

Deputy Bernard J. Durkan: I welcome our guests and thank them for their submissions, which were interesting.

(Interruptions).

Deputy Bernard J. Durkan: There are interesting sounds as well.

Chairman: The Deputy's time is up.

Deputy Bernard J. Durkan: I was wondering whether that was a gong sounding.

I will draw attention to a couple of issues that arise on foot of Professor Maher's submission. We have all been discussing the backstop and its impact on Ireland in particular. The HSE appeared before the committee and went through the minutiae of the issues that are being discussed at this meeting. The HSE indicated that it has identified every option and pitfall that might arise in the transition period and thereafter. I wish to raise one or two points in that regard. Professor Maher stated that the UK would be freer to enter into trade deals, as it will not be in the customs union. That is true, but any deal or free trade arrangement it enters into with the EU or others must have regard to the extent to which it might undermine the existing arrangements within the EU. Were that not the case, a country could leave the EU and enter into all kinds of arrangement that would undermine the Union and, consequently, fragment it. I am worried about this matter because my understanding is that it cannot happen. Were it possible, the Union would disintegrate in a short space of time. The basis for that disintegration could occur during the transition period. Will our guests comment on this issue?

Professor Imelda Maher: The famous quote: "The reports of my death are greatly exaggerated." The expectation on the part of the UK after the referendum was that it could divide and conquer the EU, metaphorically speaking. That has proved singularly not to be the case.

The Deputy is right. There is an inherent tension as we move into phase 2 - assuming we get through phase 1 - with the desire of the UK Government to enter into international trade agreements, one of which will be with the EU. It has obligations *vis-à-vis* the Northern Irish arrangement, but its obligations in respect of the EU more broadly will be defined by the withdrawal agreement and, in particular, the trade agreement. The question is partly about sequencing. Politically, the committee is better placed to answer that question than I am, given that I am just a lawyer. How quickly will the UK Government start discussions with the US? Technically, it is not meant to have started them yet. Another question is how it will process its engagement with the EU. Professor Hervey is right about there being a tension in that regard. This has to be done in packages. Different packages will emerge at different points. At the same time, the experience of the EU negotiating with the UK in the past two years is that it will not allow the UK to cherry-pick. That would be played out more in the political arena and reflected in the legal framework rather than the law dictating it.

Professor Tamara Hervey: I agree with what has been said. To add to it, there will be some legal discussion within the EU about which matters are solely in control of the EU and germane to, as the Deputy put it, its future integrity - trade in products will 100% be that kind of matter - and what matters will be for both the EU and the member states to decide on. For example, social security collaboration includes shared cross-border health services. As such, providing access to something like the European health insurance card for UK nationals will definitely not be 100% up to the EU. There may even be scope for differences between member states. There will be another group of matters that will just be for member states to decide separately. The EU will hold the narrative at political level that there is no cherry-picking, but at a technical legal level there will be some matters where the EU does not have competence to crowd out different preferences in different states. On the island of Ireland, what we have to lay over that is the constant commitment to all that has been achieved in terms of peace. We know that health policy is a key plank of that. This is not an answer to the Deputy's question, but a reflection on

the issues that he raised.

Deputy Bernard J. Durkan: I thank our guests for their replies. I aim to explore the issue further. I am a little conversant with the views expressed by the various political parties in the UK in anticipation of the general election, which will be a Brexit election whether we like it or not. Words appear time and again to the effect that, when this is over, the UK will be a much better place and it will be able to make free trade agreements and arrangements with various other states at will. That message is being spread about in the UK currently. My worry is that it might create an expectation in the course of the general election that could lead to people concluding that, when Brexit is agreed, part of the deal will be to renegotiate everything. That cannot happen. Were it to happen, each country within the EU would the next morning decide to leave and seek similar arrangements. That would leave us at a serious juncture. I do not believe we are there. The EU has an obligation to stand firm. Otherwise, why not take France, Spain, Italy and various other countries and let them have free trade negotiations with whomever they wish to seek at will? Then the European Union would fall and that cannot be allowed to happen, any more than the Good Friday Agreement can be allowed to falter at this stage. Mind you, it is amazing to listen to some commentators, not necessarily on the island of Ireland, discussing the Good Friday Agreement and stating it was really an issue from which we were moving on. We in this country cannot afford to move on from the Good Friday Agreement and all it entails. If we were to give that type of signal we would find ourselves in a very precarious position, and not only the EU but also the UK would, unfortunately, have to suffer the consequences, and I do not have to enumerate what they might be. We have enough evidence on this already.

To move on to the next part, mention has been made of goods originating in the UK *en route* to Ireland or via the UK from other jurisdictions. The committee has spent considerable time discussing these particular issues. We have been given an assurance to the effect there will be a smooth transition in the transport of goods and that provision has already been made for the smooth transportation on alternative routes to ensure patients in this country are not in any way discommoded, disadvantaged or put at risk. Are the witnesses satisfied this can continue? The duty of the Irish Government and the European Union is to ensure the alternative provision of the services we already enjoy within the European Union and that we do not become at risk of losing some of those services or putting patients at risk as a result of a change by one country leaving the Union. For instance, if Belgium or Holland left the European Union, one would expect the same to apply. We cannot afford to put our patients or people at risk as a result of this and I hope this will not be the case. I am a little concerned there might be a feeling in some political quarters that when the general election is over in the UK and the Brexit reality begins to dawn on the horizon, there will be a situation that can evolve in a way that has not been anticipated. That cannot happen. If that were to happen the European Union would cease to be.

Professor Tamara Hervey: In terms of being satisfied about the smooth transition, the Deputy asked whether I am convinced, and I am not really in a position to comment on that as an outsider or a lawyer. What I can speak about from my research in the UK is with regard to the type of questions asked by the equivalent committee in Westminster, which is also chaired by a GP. It wanted granular information and to see lists of all of the products where an EU country was implicated in the supply chain. It wanted to see what exactly was the plan for each product, whether it could be stockpiled, who was stockpiling it and where the stockpile was to be held because, of course, warehousing is an issue in the English NHS. The way supply chains work here in the health system is rather different. If the committee has this type of granular information about products, then I would say it can be satisfied.

The unknown is the issue of leakage back into the UK market of pharmaceutical products intended for Irish patients in Ireland. An incentive to leak those products back to the UK because, as has been alluded to, of problems in the UK health system would be something for the Irish health system to be attentive to. I have not seen evidence it will happen but, of course, we are in such a situation of uncertainty and flux that one is having to imagine what might happen and how rational actors, profit-maximising actors or perhaps desperate people might react.

I understand the committee has already done quite a lot of work on scrutinising the planning in terms of products. The service provision is a different question because it has to do with people and a legally informal set of arrangements that exists as contracts having European Union law sitting underneath them as a foundation. If the foundation is removed, will the contracts stand? Will they be like an RSJ beam that sits there and so they will fine or will there be a potential problem without the foundation? I cannot answer the question on whether I am satisfied but I can respectfully suggest the type of questions on which the committee might want to be satisfied. The committee probably already is, as the Deputy indicated it has had some quite robust exchanges with the HSE and the Minister.

Professor Imelda Maher: This is the tension between logistics and law and it is really the logistics we are getting into. The list idea is one to pursue. Another thought I have had that the committee should look at is what the ports are doing and the level of co-operation that will be needed between points of entry. The Welsh ports are very exercised about this and there is co-operation there. On the granular side it is not a legal question but a pragmatic question about how the ports are working together to ensure the flow of goods is as we would want it to be.

I commented on governance because we need granular data and we need to be able to deal with governance as soon as possible. This is why the committee established under the protocol will begin as soon as the protocol is ratified. It will answer the question on where these goods will go, when can they go and how much paperwork will be associated with them. That is the body that will answer a lot of these questions for the committee.

Deputy Bernard J. Durkan: We have been given assurances with regard to services, particularly on the island of Ireland, and the degree to which the two jurisdictions co-operate and depend upon each other. This is not easy to untangle. It has been put in place and it is working. We have been assured this will continue unimpeded. It is required on both sides of the Border to ensure each can depend on the other to allow the *status quo* to prevail. With regard to the National Treatment Purchase Fund, whereby we can send patients to Northern Ireland or the UK, as it happens, we are informed this will continue to the same extent and that any issues that are likely to arise have already been identified. Time will tell the extent to which this is effective.

I want to mention again, in case people might get the wrong impression that all of this can restart and we will have a renegotiation of everything that has happened, that this cannot happen. I can understand what the UK is looking for. It is looking to despatch the trappings of the EU and the restrictions, as they see it, of the EU and to form trade arrangements with all countries and any country, including the EU. The EU will be an important trader so far as the UK is concerned after this. I emphasise that a situation might emerge whereby a trade agreement could undermine the existing arrangements within the EU to the detriment of its member states, and that cannot happen. If it were to happen, we could all retire because it would mean a return to the old old days. We know trade agreements have to be observed by two sides or more, as the case may be. I set down this marker. I do not want to get involved in the politics of another country as we have enough problems in our own, but it might happen during the general election in the UK that there might be an understanding or sub-understanding, so to speak, to the

effect that when the election is over, the UK will renegotiate, have free range with everybody and will be able to negotiate with whom it likes regardless of what trade arrangements issue between the member states and third countries.

Chairman: I call Deputy Lisa Chambers who is the Fianna Fáil spokesperson on Brexit. She is not a member of the committee but she is very welcome this morning.

Deputy Lisa Chambers: I thank the Chairman for allowing me to attend and ask questions. I thank both of the witnesses for their presentations.

I will commence by asking Professor Maher a few questions on her statement. I entirely agree with both witnesses that the notion we would have a free trade agreement in 14 months is farcical. It is not impossible but highly unlikely.

I share the concerns of witnesses that we are looking at a hard exit by Great Britain at the end of 2020 unless and until we have an agreement in place to stop that. I do not know if they share my concerns that it appears that both the UK Government and the EU hold quite different views on what the future trading arrangement might look like. I noted that Professor Maher said: “it is not clear what an ambitious trading relationship will look like”. What does that mean? It is great to have ambition, vision and desire but it does appear that both sides are starting from widely different positions as to where they want to get to. Even in terms of level playing field provisions and the closeness of the relationship. The elephant in the room is that the UK want to pursue other trade deals free from the EU customs union. As has been pointed out, cherry-picking is not going to be an option for the UK when it comes to the agreement it has with the EU. As difficult as the last three years have been, we are heading into a mammoth task to get this free trade agreement done. I have serious concerns around transition ending at the end of 2020 and what might happen then, particularly if we have a Johnson-led government. Their stated position is that they do not want to extend the transition period. In fact, they fought an amendment to the recent legislation in the House of Commons to stop that.

We have a position where the incoming UK Government, if we can rely on the outcome of that election, is openly saying that they will not extend transition. I know this as they would not extend Brexit either and here we are. Also, Deputy Durkan, we said that Brexit would never happen yet it is happening. It was also said that the withdrawal agreement could not be reopened and redrafted yet it was. Lots of things can happen that we say cannot happen.

In terms of the end of the transition period, there is very little than we can do to control what the UK is doing. Can the witnesses tell us, from their expertise, what we should do in that context? I am concerned about this matter. At the very first meeting that I had with the Tánaiste, when the deal was brokered at the very last minute a Brexit stakeholder meeting was convened, which is public information. We had these meetings every six weeks or so. The Tánaiste and members of his Department and members of the Department of An Taoiseach meet various stakeholders. They meet various Opposition spokespersons, like myself, from the different political parties. They also meet representatives of the likes of IDA Ireland, Enterprise Ireland, Bord Bia and Dublin Airport Authority. They meet all of the key stakeholders that would be impacted. The message that we got on that day was almost that the extension to transition was a *fait accompli* and almost guaranteed. Okay, it is the end of 2020 but the transition will be extended by at least a year if not two. Last week, the same evidence was given by the Minister for Business, Enterprise and Innovation at a meeting of the Committee on Business, Enterprise and Innovation that this was a box-ticking exercise and we can rely on the extension. However, we have an incoming UK Government saying it does not want this and will not apply for same.

I would like to hear the thoughts of the witnesses on the issue. I see it as the next big cliff edge or deadline for us to deal with, as a country, and 14 months will not be long going.

Professor Tamara Hervey: I 100% agree that there is another cliff edge that we need to pay attention to at the end of 2020. Of course, as the Deputy has said, this all depends on the government that is elected in the UK. If it is a Johnson-led Government we cannot even believe, as she pointed out, that the Government will hold true to its word because it has been unable to. If it is not a Johnson-led government then there might be a little bit more sense in terms of timelines.

Apparently, Jeremy Corbyn has said that he wants to present another referendum, within six months, on a new withdrawal agreement.

Deputy Lisa Chambers: Mr. Corbyn has said he is going to negotiate it himself.

Professor Tamara Hervey: Within three months. So there is a fantasy notion going on there. As the Deputy has pointed out, it has already been proven that at least the protocol could be reopened. It seems unlikely, to me, that the EU would not reopen the protocol with a new UK Government.

Deputy Lisa Chambers: Yes.

Professor Tamara Hervey: As it is not a legal question but a political question it is very difficult to tell whether the EU would reopen the whole withdrawal agreement. There is nothing in Article 50 of the Treaty on the European Union that legally prevents the EU from doing so but the politics of it suggest that the EU will not. The EU has other problems that it needs to deal with and it wants to move forward. The EU wants to have its relationship with the UK put safely into a box called negotiations with third countries so that it can move on to dealing with the other things that the EU needs to deal with.

I am surprised at the notion that an extension of the transition would be almost guaranteed because it must be legally agreed between the EU and the UK. No one side can guarantee an extension, legally speaking, but the politics are extremely difficult.

The one other thing that I will say is that the longer there is no Brexit the easier it is for the EU, as a whole, to prepare for a no-deal Brexit. That does not help the areas of the EU, like Ireland, that are particularly vulnerable to a no-deal Brexit but it does give the EU more time to put law and logistics into place. If we had had a no-deal Brexit in March it would have been significantly worse than a no-deal Brexit in December 2020 would be.

Deputy Lisa Chambers: Yes.

Professor Tamara Hervey: That is a very small crumb of comfort but the EU is definitely making arrangements. Again, it will be a matter for parliaments in every member state to hold their governments to account in terms of how those governments engage with the EU's preparation for a possible no deal because we are not out of the woods yet for a no deal.

Professor Imelda Maher: In terms of governance, with the withdrawal agreement there was a joint committee and, underneath that, a range of specialised committees and, underneath those, working groups, and it is important that they get going.

Maybe I misread the agreement but I said in my statement that all the UK and EU commit to is to appoint a single official.

Deputy Lisa Chambers: Yes.

Professor Imelda Maher: I assume that is to head it. It strikes me that the language was a bit strange but I will double-check. I did not write this down without having checked already. I am not quite sure. What is the joint committee going to look like? Who is going to be on it? What are the specialised committees? How many of them are there? One is on Northern Ireland but which ones shall we prioritise in Ireland? Those like agriculture, presumably, really matter to us. Also, what are the priorities? The only benefit of uncertainty is that one can define for oneself what direction one wants to travel. What would be the priorities for the State in this process? Finally, what traction could be gained from that? Obviously the Northern Irish story is right up there.

Professor Tamara Hervey: One of the things about health policy is that it does not fit very well in the boxes of European Union law. The policy will not fit very well in the boxes of that government's arrangement and will span a number of working groups and technical groups. One of the questions for this committee might be as follows. Where will the health sector be represented in something that is considering agriculture, services, product supply, food, public health issues, and air and water quality? I say that because the health policy will not be a box in that governance structure.

Deputy Lisa Chambers: A good point. I thank the professors for their replies. My next question was going to be on the joint committee and what the sub-committees and working groups should look like but my question has been answered. An interesting point that I will certainly take with me is the lack of detail on that. I agree it is probably not intended that just one person from each state will be working on it. It should have more detail, however, and it was probably brushed over because there were bigger fish to fry, for want of a better phrase.

Moving on to the common travel agreement, one of the debates we had in the run-up to the signing of memorandum of understanding was whether it should be an MOU or something on a stronger legal footing. I would welcome the thoughts of Professor Maher on that question. The Government's response, which is not an unreasonable position, is that a memorandum of understanding is more flexible and can be changed. However, its lack of legal certainty means it can be changed by either side and either side can decide to walk away from part of it without repercussions. There are pros and cons to whatever course is pursued. I would welcome Professor Maher's thoughts on that.

One of the arguments made by the Democratic Unionist Party is that the withdrawal agreement, as it stands, infringes on the Good Friday Agreement. I do not agree with that assessment and I take it Professor Maher probably does not agree with it either. I view the withdrawal agreement and the Good Friday Agreement as stand-alone agreements. Each must respect the other and they must work together. Does Professor Maher have a view on the status of the withdrawal agreement if it becomes an internationally binding treaty and its impact on the Good Friday Agreement?

Professor Imelda Maher: The Deputy asked whether the common travel area should become more formal. Before the MOU, the common travel area was based on an exchange of letters in the 1950s, which were private, although I would hesitate to use the word "secret". That was all it was and it was very informal. To move from that position to a binding agreement would have been a particularly big jump.

Deputy Lisa Chambers: A leap.

Professor Imelda Maher: The memorandum of understanding is the halfway house. The challenge if one writes everything down is that one constrains oneself. That might be useful but history has shown us that the common travel area has worked extremely well by never being written down. I would choose functionality over form and that is what the MOU has done.

Deputy Lisa Chambers: That is great.

Professor Tamara Hervey: I will quickly add to that before Professor Maher goes back to the other point. In British constitutional law, ordinary international law does not have any special constitutional status like EU law. In that sense, from the point of view of individuals holding rights, there is no difference between an MOU and an international agreement. The rights Irish citizens in the UK enjoy are there because of domestic UK law. Apart from membership of the EU, there is no way of holding the UK Government to account for future compliance with those undertakings. In that regard, I agree that an MOU gives clarity. There are all sorts of good political reasons for having a more public joint statement but legally speaking it is the specific bits of UK domestic law that give people rights and not anything else.

Professor Imelda Maher: On Deputy Chambers's second question, it will have to be a case of getting back to the Deputy because I am a bit baffled as to why the withdrawal agreement is seen to be so at odds with the Good Friday Agreement. I am honestly perplexed. It is a clever argument but I do not get it legally.

Deputy Lisa Chambers: The intention is to be perplexing and confusing.

Professor Imelda Maher: That is not for me to say.

Deputy Lisa Chambers: On governance, which Professor Maher referred to in her statement, can she offer a view on the rolling consent mechanism? Every four years a vote must be taken by the assembly. Some safeguards have been inserted into the provisions which mean, effectively, that one side cannot scupper the other. If, for example, the assembly is collapsed and Stormont is not sitting, nothing changes and the *status quo* is maintained. If the assembly is sitting but one side choose not to engage, the *status quo* is maintained by the majority of those who attend and vote. My view is that we are relying on an inherently unreliable political system to maintain a frictionless Border on the island. That gives me cause for concern. We are also relying on the demographics, if I can put it that way, being in our favour and the assembly representing the views we would like it to represent in terms of maintaining the *status quo*. If we accept that the vote every four or potentially every eight years is legitimate, we must also accept that such a vote could go the other way. Does Professor Maher agree with that assessment?

My next question concerns the complexities of politics in Northern Ireland, given how fraught and strained those politics are, particularly in the context of Brexit. I will give a practical example. Let us say the DUP decides not to attend for the vote, which would mean a significant proportion of unionist representation is not engaging. I can foresee a difficulty with the legitimacy of that vote. Technically, it is legal because all of the rules have been followed but I can see such a scenario causing problems because it is Northern Ireland. I would welcome Professor Maher's views on that.

Professor Imelda Maher: I will start with a small comment. The Deputy used the words "frictionless Border". I was intrigued because, as I said in another context, it tends to be the British Government that talks about a "frictionless Border" and the Irish Government that refers to an "invisible Border".

Deputy Lisa Chambers: How interesting.

Professor Imelda Maher: My theory is that they are not necessarily the same thing. In any event, they were not the same when there was talk about technological solutions. “Frictionless” to me suggests a border but one that is managed. “Invisible” means the Border as it is now. That is just an observation.

Deputy Lisa Chambers: I take that point. I mean that there would be no Border and the *status quo* would be maintained.

Professor Imelda Maher: My understanding is that the consent issue became critical to the protocol and that this was the solution. It was better to have cross-party agreement than single party determination of continuation or otherwise. I would not want to be a business trying to operate under this mechanism because there may only be four years, but hopefully eight years, of certainty with which to work. Businesses are used to change but it seems particularly demanding to have change that must be thought about every four years. This issue does go to legitimacy. As Deputy Chambers was speaking, I immediately thought that we would then have all of the other governance structures that apply under the Good Friday Agreement.

Deputy Lisa Chambers: Yes.

Professor Imelda Maher: To me, if a question of legitimacy arises because of a failure to attend by one party representing one community in Northern Ireland, then that is exactly the circumstance where the Good Friday Agreement should be invoked and the various arrangements and committees activated. I know they do not function particularly well and we are in a difficult phase, but that would be my first port of call should such a situation arise. It has been called “consent”. If this is relevant in the Northern Irish context, reframing “consent” as a “review” would be a good idea. It is always a good idea to review new arrangements and ask if and how something is working. If the process is called a review, then it is not an either-or but a tweak. That question of whether it will be possible to tweak this arrangement has not yet been put on the table. That is how I would like to see that debate go.

Deputy Lisa Chambers: It is interesting that Professor Maher suggested that the Good Friday Agreement structures should be invoked in the event that perhaps the DUP did not turn up to vote. Its argument is that the Good Friday Agreement is being ignored because the principle of consent that governs politics in Northern Ireland is not applied in this new agreement. That is the problem down the line.

Professor Imelda Maher: The Deputy is right.

Deputy Lisa Chambers: The DUP genuinely believes that it is correct in its position and it is not for me to tell it how to think.

Professor Imelda Maher: I think some of us academics need to sit down and write what “consent” means in the context of the new protocol and the pre-existing Good Friday Agreement.

Deputy Lisa Chambers: It would be an interesting conversation.

Professor Imelda Maher: Yes, it needs to be teased out.

Professor Tamara Hervey: I will add a small point about legitimacy arising from some of the research we have done in a couple of towns in Northern Ireland. We asked people in the

street what they would like for health governance post Brexit. From those data, the question of legitimacy will depend a great deal on how much investment there is in healthcare and, in particular, health staffing in Northern Ireland after Brexit. People want to see more money and more people in healthcare. They talk about certain kinds of people, especially nursing staff, and they want to see more visible investment. That would do a great deal to secure a notion that what is happening with health, in particular - I am not talking about the broader picture - is actually a legitimate future for what people want in Northern Ireland. That is what our street conversation data tell us.

Deputy Lisa Chambers: On the issue of products that cannot be stockpiled, Professor Hervey outlined two options, namely, that we either reduce our reliance on the UK in respect of products coming from there, or being authorised or travelling through there, or ensure supply through a more legally robust framework or system. Is reducing reliance, first and foremost, the optimal step to take, with the second option the alternative, failing that? Given that it would be impossible to eliminate reliance, a legal framework could be applied to protect supply.

Professor Tamara Hervey: It might not be my place to have an answer to that question and I apologise if the sequencing of the information in my statement suggested that it was. Questions as to the costs, or the relative costs, of each option are ones a parliament should put to its government.

Deputy Lisa Chambers: That is a fair point.

Professor Tamara Hervey: In the short term, the relative costs of reducing reliance on the UK are likely to be significant, but one might want some modelling of what they will be in the longer term. Given that there can be a route between ports in, say, Spain and Ireland, can there in the medium term be a complete bypassing of Great Britain? It is slightly uncomfortable for me to advise that my country should be cut out of global trade but, unfortunately, that is the political position of my country.

Deputy Lisa Chambers: I appreciate Professor Hervey's honesty on the matter. The issue of substances of human origin is interesting because it is not as easily to predict what is needed, and we in the House have much work to do in that regard. Ireland has a significant reliance on the UK in that sphere. Has Professor Hervey any advice as to what we should do domestically to try to protect the connection?

Professor Tamara Hervey: In the first instance, it is a matter of understanding the scale of the issue and where the potential gaps are likely to arise. There is some concern in the UK that Scotland and Wales will have problems with blood or plasma supply because of the way the interactions among the various health services in the UK work in respect of substances of human origin. From memory, I do not believe that the Scottish Parliament had a satisfactory answer to that question. Not many European nations are self-sufficient in plasma, although some are self-sufficient in blood, which may be another aspect to consider.

The organisations that arrange collaboration in respect of sharing human organs within the EU are formally and legally outside of the EU's structures, and therefore they could continue doing so post Brexit. Thus far, as far as I can see, they have been entirely under the radar, which is probably a safe place for them to be, politically speaking. A number of other organisations are outside of the EU's structures, such as Erasmus+, which is not under the radar and is fully within media and political sight. Such aspects must be considered at a much more granular level.

Human tissue is mainly used in research contexts. It is a matter of ensuring that the legal provisions are in place when the UK is a third country in order that tissue and data can be lawfully shared with a third country. The EU is already doing that.

Deputy Lisa Chambers: Yes, there are plans for that.

Professor Tamara Hervey: It is a matter of checking that everything is in place and there will have to be sufficient regulatory alignment to recognise safety standards and so on. Institutions such as the World Health Organization and the Council of Europe can be a useful and safe institutional space for the EU to continue to interact with the UK. Some aspects are apolitical, outside the radar of politics.

Deputy Lisa Chambers: Thankfully.

Professor Tamara Hervey: Thankfully.

Deputy Lisa Chambers: It is good advice for us to understand the scale. It will probably be our starting point and we can decide what we need to do thereafter.

The cross-border treatment directive is used frequently in Ireland. Irish citizens, as well as other, non-Irish EU citizens who reside in the State, often travel to Northern Ireland to avail of treatment such as hip or knee replacements or cataract surgery. Professor Hervey pointed out that one must be resident in the State to access treatment under the common travel area agreement, which applies only to UK and Irish citizens. It will be a problem for us. Given that it is so difficult to access elective procedures in the Republic, busloads of people travel to Northern Ireland for cataract surgery and joint replacements every week. Has Professor Hervey a view on the status of that practice? Is there anything we can do to deal with it? Will domestic legislation be required in both Ireland and the UK?

Professor Tamara Hervey: That would work. Legislation is not currently in place but there is a contractual arrangement underpinned by EU law, through the directive. The directive will be removed but Ireland can then interact with the UK as a third country. While it cannot use the administrative structures of EU law to support the movement, I believe such structures are currently being used to do so. It is a movement under the directive, not under the social security co-ordination provisions. It is more difficult, therefore, to be sure that EU law is being used administratively. I have tried to determine whether it is, albeit without much success. It is clear in the withdrawal agreement that the UK will not be able to use the mechanisms used for social security co-ordination. I may be speaking out of turn but it is a ridiculous waste of resources, although it is just one corner of the ridiculous waste of resources that is Brexit. Legally speaking, the EU cannot allow the cherry-picking of convenient arrangements, and I do not believe that it will.

Deputy Lisa Chambers: The bottom line is a new arrangement will be needed.

Professor Tamara Hervey: There will need to be a bilateral arrangement but such an arrangement will be within Irish competence because it is not an EU-only competence.

Chairman: What is the difference between the new withdrawal agreement, in respect of the Irish protocol, and the Northern Ireland-only backstop? When we started discussing the issue, a joint declaration in December 2017 identified there should be regulatory alignment between Northern Ireland and the Republic if no satisfactory agreement was reached. Discussion then moved to a Northern Ireland-only backstop, where Northern Ireland had the advantage of being

within the Single Market and the customs union, as well as being within the UK single market and customs union. We then moved to a UK-wide backstop and we have now returned to what is more closely aligned to a Northern Ireland-only backstop. Are there essential differences between what was the Northern Ireland-only backstop a year and a half ago, and what has been agreed in recent weeks? What are the major changes? When the committee last met in respect of Brexit, we spoke in the context of an EU-wide backstop, but we have now returned to what is similar to a Northern Ireland-only backstop, which has been described as a “front stop”, given that the backstop was not to come into effect unless and until satisfactory arrangements were reached. The new agreement, however, will kick in on the day after the future relationship has been decided. What differences emerged in recent weeks?

Professor Imelda Maher: The Chairman is correct in stating that we are now much closer to where we were 18 months ago before the February arrangement and the backstop emerged. The original thinking was that Northern Ireland is special. People may remember the letter sent by Arlene Foster and the late Martin McGuinness within days of the referendum result stating that Northern Ireland is special and that people should not forget that. That coloured the way the Northern Ireland issue was initially viewed. As we said, nobody thought about the land border in Northern Ireland. I am always struck by the fact that it is called the Irish land border when it is in fact a British land border. The ownership was slow in coming. As the committee knows, the idea was that everything in the UK had to be kept together and the union had to be protected. We moved into a much more complex arrangement whereby there would be a frictionless border, but a border nonetheless. That is where we talked about the backstop idea. The big shift has been the realisation that there is no such thing as a frictionless border. A border is not just physical, something people have come to appreciate. We have an invisible border now and that has been put back in. On the face of it, that is the biggest difference. The word “border” is not about physicality, it is actually about form-filling. It concerns rent and work agreements. If I examine a PhD in the UK, I have to bring my passport with me. The nature of the Border is much more complicated and that complexity is being exploited in order to preserve the non-physical border North and South. We are much closer to plan A, even though we are on plan C. The effect is that we will keep an invisible border.

Professor Tamara Hervey: The only thing to add is that the other difference is the “but for”. There is consent, and I appreciate it is an unfortunate word even though I understand why it is being used. Before, the “but for” was that we will just continue. That is the other difference. That is why people are using a different word to backstop. The term “frontstop” does not make sense. It is an odd metaphor. The detail of how this will work in terms of governance arrangements is what matters now. I agree 100% with Professor Maher that that is where attention should focus and, it is to be hoped, will focus, and can become a way of managing a situation that is deeply unfortunate.

Chairman: This committee often discusses the social determinants of health. Health is not purely health, it involves many other things such as social welfare, social services, access to travel, housing and quality food and water, as our guests mentioned, employment and general citizens’ rights. How do our guests see issues relating to health extending beyond pure health products, the recognition of qualifications, etc.? It is a much wider issue than health. Perhaps our guests have some comments on that.

Professor Tamara Hervey: Some of the data we have in our research project from the faculty of public health in London suggests a deep concern from the public health community in terms of the way the economic impacts of Brexit will fall unevenly and hit communities that

are already worse off in terms of public health indicators. The economic analysis, from either the UK Government or from independent sources, shows that Northern Ireland is an area where the economic impacts of Brexit are likely to be worse than other parts of the UK. The public health community is concerned about the implications of this for a number of health indicators. Some of our interview data talks about the effect of unemployment on mental health. There will be a need for greater investment in those kinds of health infrastructures as the effects of the economic consequences of Brexit are felt more broadly.

There is also a big discussion in the UK about food safety and allowing American food into the UK. There is a lot of opposition to that. It is highly politically salient. It will become quite difficult for any UK Government to do that, but who knows what will happen. There is a lot of opposition to Brexit, but that will not stop Brexit. It is difficult to know what will happen. The committee is right to identify an issue that is very important for the health community more broadly in terms of the bigger picture.

Professor Imelda Maher: It might be almost a trite comment, but if the UK economy is adversely affected, we know the Irish economy will be too. That will have knock-on effects in terms of employment, education and mental health. We will pay a price in terms of broader wellness within Ireland, which will need to be addressed. I am a former migrant; I lived in the UK. It is one of the traditional safety valves. People go to England when our economy takes a dip. That will still be possible under the common travel area, but if the British economy is not doing well, that safety valve will be undermined and this will have a knock-on effect on Ireland.

Chairman: The date for the transition period was set for December 2020 in anticipation that the UK would leave the EU in March 2018. I am beginning to mix up the years.

Deputy Lisa Chambers: It was 2019. Basically, it was not amended.

Chairman: It allocated 21 months for the transition period. If the withdrawal agreement is ratified, that will not happen until after Christmas. The transition period has been reduced from 21 months to ten or less. Would it not be logical to extend it way beyond 2020 purely for the pragmatic reason that it will take a long time to finalise the future arrangements? Do our guests feel that it may not necessarily be extended? This is a political question but it does not make any sense to have a transition period of nine or ten months, or even less.

Professor Tamara Hervey: It is a political question. I am not an expert, but I can reflect on it in terms of the discussions we have been having with people in the health sector as part of our research. Everybody in the health sector we have talked to behaves rationally and thinks Governments will behave rationally. The evidence that some British Governments are behaving rationally is disputed. What is very interesting is the temporal element. As the crunch moment comes, it appears that the British Government is forced to behave more rationally. One of the extraordinary things about this situation is that in all of the powerful institutions in society, such as the financial services industry, new technology, farming and so on, nobody wants the chaos of an unplanned, no-deal Brexit. Yet, those powerful institutions do not appear to be enough to stop the politics which are feeding into the rhetoric of no deal. We have held interviews with people in the street in England who have said we should just walk away and they have no sense of what that means in reality. The narrative of just walking away has become part of the political discourse in the UK in a way that is quite unimaginable and difficult for people like me whose job it is to discuss things rationally and weigh the evidence. It has become a question of facts and feelings. We are having to think about it in terms of feelings as well as facts. This is not an answer at all to the question. The facts tell us that there must be a further extension

beyond December 2020 but some people feel this is abhorrent or wrong. The question is who will be in power and make decisions and whether they listen to the facts or the feelings.

Professor Imelda Maher: There is a slightly different narrative that we hear in some quarters. This is the overwhelming narrative. There is one that holds - if I can put it facetiously, almost - that it will be easy-peasy. The thinking is that the UK is in the European Union and that those involved already know what all the rules are. They reckon they are not like the Canadians, who did not have anything to go on, so they believe they will be able to sign it off in six months. I do not think that takes account of the damage that has been done in terms of negotiations between the UK and EU partners. International relations and agreements are based on a form of trust. I do not think six months is feasible either but that is another narrative. Some say it cannot be done in that period while others say it can be done because the UK is already very close and part of it all. Some believe that to move outside it would not be that complicated. However, that does not take account of how dramatic a difference some political voices want the relationship with the EU to be.

Deputy Lisa Chambers: They must also apply for the extension by the end of June next year. If we are coming out of a general election and a party has won on a promise that it will not extend the transition, that party is probably not going to apply for it in six months.

Chairman: The opening statements referred to governance. The narrative for the referendum was around taking back control. The narrative for the general election is about getting Brexit done, which is a simplistic approach to winning an election. The opening statement referred to governance and the cascade, as I would term it, of committees that are going to look at all aspects of Brexit. This cannot possibly deliver a result within six months. The UK Parliament has a withdrawal agreement committee. Below that, there are several other sectoral committees looking at each aspect of it. That is a robust system of governance and it could not possibly be rolled into a short period.

I am interested in Professor Hervey's view, based on her experience of the medical profession in the United Kingdom. Surely the authorities there are not looking for divergence in standards and recognition of qualifications. Is that accurate? There is no advantage for those involved to diverge from established criteria relating to levels of experience and qualifications. Is there a movement within the professions, especially the medical profession in the United Kingdom, to refrain from divergence and to continue to have convergence?

Professor Tamara Hervey: Virtually every sector of the health policy community we have talked to would like regulatory alignment. They ask us how can we persuade the UK Government and whether they can offer templates to the Government to achieve regulatory alignment. Basically, they want cherry-picking. They want health to be treated in a special way, but every sector, including transport, aviation and farming, wants that. Part of my job has been to explain to them that the European Union works in a particular way and to explain the European Union non-negotiable parameters, including the point the UK cannot cherry-pick. That is one of them.

There are some tiny areas where the UK health policy committee would like to diverge. One is working time. Some would like to be able to go back to the good old days - they were really not very good - when junior doctors worked long hours that are now unlawful under EU law. At least one of the royal colleges is formally in favour of that, but these are tiny areas. In general, what is desired is regulatory alignment.

We have done some work with a large charity in the UK that does biomedical research.

Those involved absolutely want regulatory alignment in everything, not only in product standards but in terms of data, clinical trial processes and all these things. This is because they are embedded in research projects that go all the way across the EU. UK biomedical scientists are part of that. The desire at that level in British society is for regulatory alignment. Actually, it is even for a remain outcome but no one can actually say that they are for remain now. It has become almost impossible politically, especially if an organisation is a charity. A charity really cannot position itself anywhere; it cannot be for leave or remain.

The question is a legal question. It is about how much collaboration, inter-agency interaction and recognition and sharing of resources the European Union can tolerate within its notion of the integrity of the Internal Market. The hope in the UK is that the EU can tolerate a good deal of what others might call cherry-picking. Much of this will be hidden. Much will be at an agency level and at a highly granular level. There might be different settlements in different specific aspects of health policy. All of that will take a long time to arrange. I do not believe the European Union can tolerate a simple roll-over, legally speaking. For instance, the European Union has already excluded the UK from chairing committees in the European Medicines Agency. They are moving out the UK chairpersons. The UK is being moved out from leading groups investigating rare diseases. All of those positions that were held by UK scientists or experts are being given to experts in other EU member states.

Chairman: My final question is on the future relationship. Will it be an all-or-nothing agreement? Can it be a phased agreement whereby different sectors and areas come to an agreement on how they disentangle from the EU rather than having to have everything agreed under an all-or-nothing withdrawal arrangement?

Professor Tamara Hervey: It is difficult. It is partly a question of international trade law, partly an question of European Union law and it is partly a question of the wild west that is the UK in terms of the negotiations. From the point of view of European Union law, the European Union has a wide range of different types of agreements with different third countries. Some of them relate to one specific topic. Some of them are about a whole range of different things. The narrative is about a trade agreement, which is about products, services and capital. People are left out of it except when they are providing the service. I think that is right.

Professor Imelda Maher: We need an umbrella and then we can work within it. In terms of the narrative around what is going on, once we get phase one out it will be possible because Brexit means Brexit and we have to say that is Brexit. Then we need to take the really boring technical questions around what the trade agreement is about into the technocratic arena and depoliticise it. There will be points of tension, but that will be the way to allow it. It will then unravel over time.

Chairman: How long will the negotiations on a future relationship last?

Professor Imelda Maher: It took seven years to negotiate the Canadian agreement, which seems to be the model they are heading towards. Ratification is another thing I would alert the committee to as well.

Deputy Lisa Chambers: It could take two years for ratification.

Professor Imelda Maher: Arguably, it will take less time. That is not even in a perfect world. Let us assume there is a Government with which one can negotiate in Westminster. The agreement will take less time because of the point made about familiarity with the structures in

the EU and the rules. In that sense, they have a real advantage over other third countries. One might get away with having a period of five years which would not see too many extensions. The pace of ratification is critical. Even if it is agreed to, they then have to ratify the agreement.

Chairman: Negotiating the withdrawal agreement will probably be substantially easier than negotiating on what the future relationship will be.

Professor Imelda Maher: The withdrawal agreement is about agreeing to go out the door. Following that analogy, one then has to plant the garden, which will be a much bigger undertaking.

Chairman: We will be talking about Brexit for several years before there is a final withdrawal agreement or a negotiated future relationship.

Professor Imelda Maher: What I would like to see happen because words like “backstop” or “Brexit” become very difficult to work with-----

Deputy Lisa Chambers: Toxic.

Professor Imelda Maher: I would like to be able to say Brexit is phase one and that it has been done. Allowing that political statement to emerge would remove a lot of the tension and anxiety from that space and allow us to proceed to deal with more technocratic questions.

Chairman: Is Deputy Lisa Chambers happy?

Deputy Lisa Chambers: Yes, I am happy.

Chairman: On behalf of the committee, I thank Professor Maher and Professor Hervey very much for coming to give their expert opinion. We may have them back again in future years.

The joint committee adjourned at 11.05 a.m. until 9 a.m. on Wednesday, 13 November 2019.