

East-West and North-South: Northern Ireland's relationship with the UK and Ireland

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1 The basic question

- How will Northern Ireland's relationship with the UK and Ireland affect Brexit and the impact of Brexit on Northern Ireland?

2 The changing context: the UK Government's aims

The UK Govt's pre-election aims

- UK outside the single market;
- UK outside the customs union;
- Reach early agreement about rights of UK citizens in Member States and EU citizens in UK;
- Fair settlement of UK rights and obligations;
- A bold and ambitious free trade agreement with the EU covering goods and services
- Talks on the 'divorce settlement and future trade agreement proceed in parallel;
- Avoid a hard border between Northern Ireland and Ireland, make sure Brexit does not harm Ireland, not to jeopardise the peace process and continue to uphold the Belfast Agreement.

The changing context: agreement on negotiations

Speech by Michel Barnier, 19 June 2017:

http://europa.eu/rapid/press-release_SPEECH-17-1704_en.htm

First phase will make sure that the withdrawal of the UK happens in an orderly manner.

Second phase will scope the future relationship.

In first phase, negotiation rounds broken down into three groups: (i) citizens' rights, (ii) the single financial settlement, and (iii) other separation issues.

The changing context: agreement on negotiations

“We agreed that our closest collaborators will start a dialogue on Ireland. The protection of the Good Friday agreement and the maintenance of the Common Travel Area are the most urgent issues to discuss.

...

Our objective is to agree on the main principles of the key challenges for the UK's withdrawal as soon as possible. This includes citizens' rights, the single financial settlement, and the question of the borders, in particular in Ireland.”

The changing context: the UK Government's aims

Post election changes in UK Government aims

- Conservative government now a minority government and seeking votes of DUP;
- Acceptance of EU's insistence of phased approach to negotiations;
- Shift towards a softer Brexit?
- See the UK Chancellor's Mansion House speech

<https://www.gov.uk/government/speeches/mansion-house-2017-speech-by-the-chancellor-of-the-exchequer>

The changing context: the UK Government's aims

“And we will leave the EU. But it must be done in a way that works for Britain. In a way that prioritises British jobs, and underpins Britain’s prosperity. ... So, how do we achieve this “Brexit for Britain”?

Firstly, by securing a comprehensive agreement for trade in goods and services.

Secondly, by negotiating mutually beneficial transitional arrangements to avoid unnecessary disruption and dangerous cliff edges.

Thirdly, by agreeing frictionless customs arrangements to facilitate trade across our borders – and crucially – to keep the land border on the island of Ireland open and free-flowing.

The changing context: the UK Government's aims

The future of our economy is inexorably linked to the kind of Brexit deal that we reach with the EU.

And I am confident we can do a Brexit deal that puts jobs and prosperity first, that reassures employers that they will still be able to access the talent they need, that keeps our markets for goods and services and capital open, that achieves early agreement on transitional arrangements, so that trade can carry on flowing smoothly, and businesses up and down the country can move on with investment decisions that they want to make, but that have been on hold since the Referendum.

The collective sigh of relief will be audible.”

3 Areas of possible disagreement

The UK-EU relationship

- the financial settlement
- extent of access to EU markets – free trade in goods, services and free movement of persons
- rights of EU and UK citizens after Brexit
- dispute resolution
- transitional arrangements

Areas of possible disagreement

The East-West relationship

- Whether there should be a differential Brexit e.g. the EEA option
- Control of movement of persons between GB and NI
- How to apply tariffs on trade in goods
- Extent of powers 'repatriated' to NI on Brexit

Areas of possible disagreement

The North-South relationship

- How best to ensure a soft border
- Extent of all-Ireland cooperation post-Brexit

Position of Northern Ireland parties on specific policy areas

4 Key features of Governance of Northern Ireland

- The consociational structure of devolved institutions;
- Devolution arrangements are part of a wider agreement designed to bring peace and reconciliation to NI;
- Devolution arrangements are underpinned by a treaty between UK and Ireland.
- These arrangements presupposed UK and Ireland's continuing membership of EU

Key features of Governance of Northern Ireland

Strand One

- Democratic Institutions in Northern Ireland

Strand Two

- North/South Ministerial Council

Strand Three

- British - Irish Council
- British - Irish Intergovernmental Conference

- Structures of devolved government are designed to emphasise the political equality of two communities in Northern.
- The mechanisms of devolved government are intended to ensure that neither community can dominate the other and, in particular, neither can impose on the other measures which would affect the other's core interests.
- Northern Ireland Act 1998, s. 42 allows presentation of petition of concern.

Issues for strand one

- Brexit may enhance effective policy autonomy of Northern Ireland as EU law constraints are removed.
- Could this lead to more use of petitions of concern? Will more power mean more vetos? Could misuse of the veto block policy developments which do not engage core community interests?

6 Issues for strand three (East-West)

- Extent of powers ‘repatriated’ to NI on Brexit – will UK Govt. take powers back to the centre?
- The White paper, Legislating for the United Kingdom’s withdrawal from the European Union (Cm 9446) states:

“4.3 As powers are repatriated from the EU, it will be important to ensure that stability and certainty is not compromised, and that the effective functioning of the UK single market is maintained. Examples of where common UK frameworks may be required include where they are necessary to protect the freedom of businesses to operate across the UK single market and to enable the UK to strike free trade deals with third countries. Our guiding principle will be to ensure that no new barriers to living and doing business within our own Union are created as we leave the EU.”

Issues for strand three (East-West)

...

4.5 This will be an opportunity to determine the level best placed to take decisions on these issues, ensuring power sits closer to the people of the UK than ever before. It is the expectation of the Government that the outcome of this process will be a significant increase in the decision making power of each devolved administration.”

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/604516/Great_repeal_bill_white_paper_accessible.pdf

Issues for strand three (East-West)

- Brexit will require amendment of the devolution legislation
 - references to EU in devolution statutes will no longer make sense
 - Competences transferred to UK level?
- Sewel convention originally required devolved consent for legislation by UK Parliament within devolved areas.
- Subsequently extended to cover UK legislation changing the competence of the devolved assemblies.
- What if devolved assemblies refuse to grant consent?

Issues for strand three (East-West)

- Attitude of Irish Government

“Ireland will not sign off on a Brexit deal unless we protect the Good Friday Agreement fully, unless we protect the peace process fully, and unless we protect the normalisation that has been created over a number of decades on the island of Ireland in terms of the relationship between north and south.”

Simon Coveney, Irish Minister for Foreign Affairs,
19/06/17

7 Issues for strand two (North-South)

- North–South Ministerial Council and the North–South Implementation Bodies.
- Six areas of Co-operation: Agriculture, Education, Environment, Health, Tourism and Transport.
- Leaving EU would complicate the work of these bodies because in several areas EU law would apply South of the border but not North of the Border (detail depends on the post-Brexit relationship between EU and UK)
- This will make it more difficult to achieve common approaches.
- There may be differences of view between nationalist and unionist politicians in NI on how much all-Ireland co-operation there should be.

8 Process issues

- The PM has emphasised that the interests of all parts of the UK will be taken into account and that the devolved administrations will be full involved.
- Before the EU referendum, the input of the devolved governments to EU matters was governed by non-statutory MoUs and concordats e.g. the *Devolution: memorandum of understanding and supplementary agreement* (September 2012) and the *Concordat on Co-ordination of EU Policy Issues*:

<https://www.gov.uk/government/publications/devolution-memorandum-of-understanding-and-supplementary-agreement>

- There was a Joint Ministerial Committee (JMC) which sometimes met in European format.

- There is now a Joint Ministerial Committee on EU Negotiations (JMC(EN)) chaired by the Secretary of State for Exiting the EU
- members include ministers from each of the UK devolved administrations.
- JMC(EN) seeks to agree a UK approach to, and objectives for, negotiations, and to consider proposals put forward by the devolved administrations.

Further Reading

HM Govt., *The United Kingdom's exit from and new partnership with the European Union* Cm 9417 (2017)

DExEU, *Legislating for the United Kingdom's withdrawal from the European Union* Cm 9446 (2017)

Europa Website: https://europa.eu/european-union/index_en

House of Commons Library Brexit pages:

<http://www.parliament.uk/business/publications/research/eu-referendum/>

House of Lords Brexit round-up:

<http://www.parliament.uk/business/lords/work-of-the-house-of-lords/lords-brexite-round-up/>

Gordon Anthony, "Britain alone! :A view from Northern Ireland" in P J Birkinshaw & A Biondi (eds), *Britain alone! : the implications and consequences of United Kingdom exit from the EU* (2016)

Further Reading

Colin Harvey and Daniel Holder, 'The Great Repeal Bill and the Good Friday Agreement – Cementing a Stalemate or Constitutional Collision Course?' UKCLA blog:

<https://ukconstitutionallaw.org/2017/06/06/colin-harvey-and-daniel-holder-the-great-repeal-bill-and-the-good-friday-agreement-cementing-a-stalemate-or-constitutional-collision-course/>