

Negotiating Brexit for a [dis-]united Kingdom: constitutional challenges

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Outline



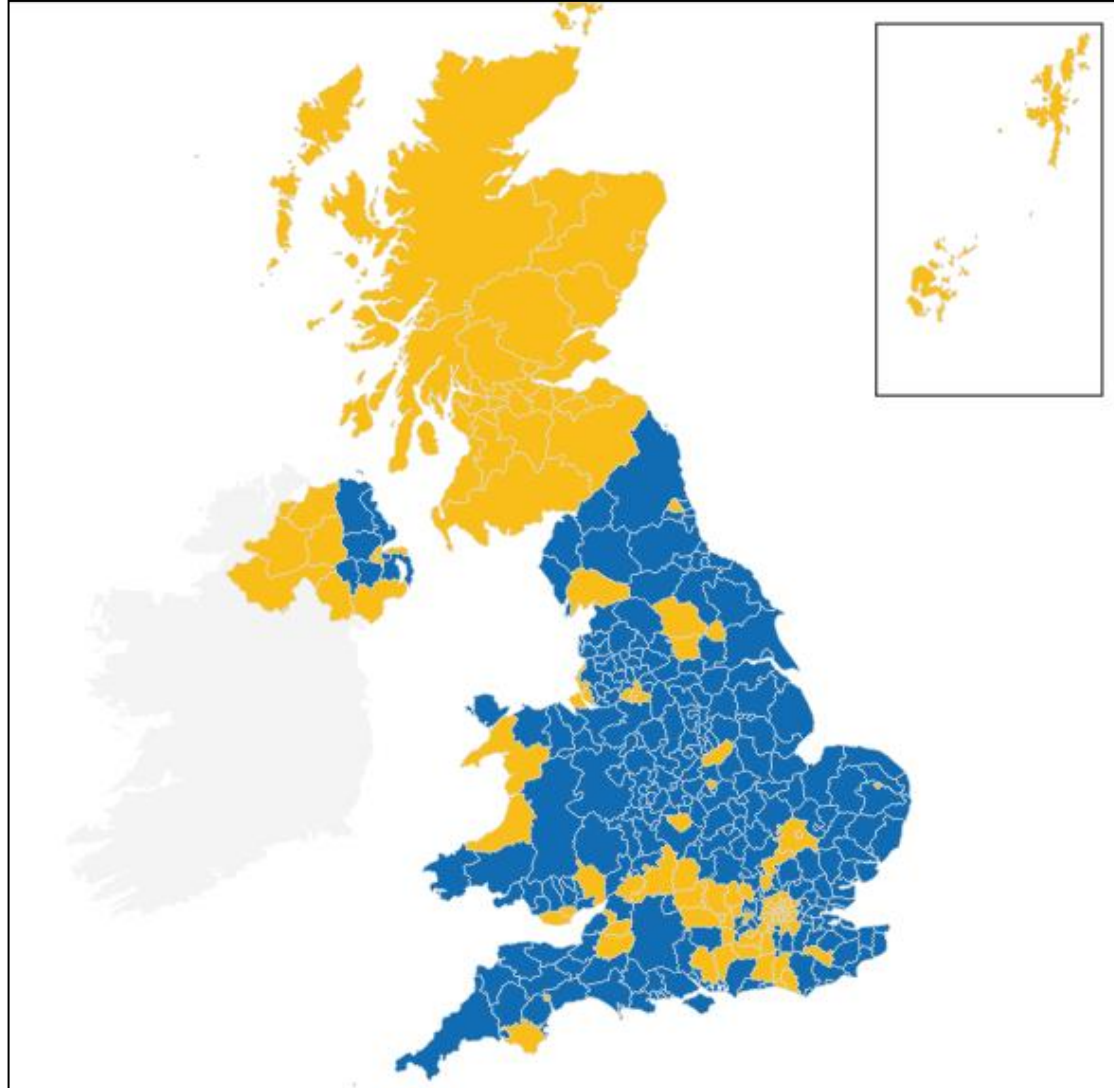
- EU Referendum – raising more questions than it answers
- Negotiating withdrawal ... negotiating the future
- Northern Ireland in the Brexit process
- Devolution post-Brexit
- Tensions and challenges

The EU Referendum Result

| | Remain | | Leave | | Turnout |
|------------------|------------|------|------------|------|---------|
| | Total | % | Total | % | % |
| England | 13,247,674 | 46.6 | 15,187,583 | 53.4 | 73 |
| Northern Ireland | 440,707 | 55.8 | 349,442 | 44.2 | 62.7 |
| Scotland | 1,661,191 | 62.0 | 1,018,322 | 38.0 | 67.2 |
| Wales | 772,347 | 47.5 | 854,572 | 52.5 | 71.7 |
| Gibraltar | 19,322 | 95.9 | 823 | 4.1 | 83.5 |
| Total | 16,141,241 | 48.1 | 17,410,742 | 51.9 | 72.2 |

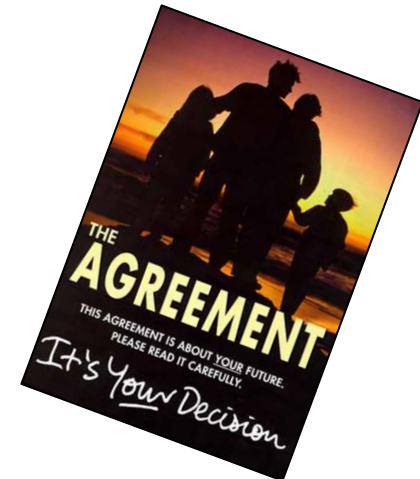


EU Referendum Result





Tensions and Questions



Engaging and Consulting ...

“I'm willing to listen to options and I've been very clear with the first minister today that I want the Scottish government to be fully engaged in our discussion... I have already said that I won't be triggering Article 50 until I think that we have a UK approach and objectives for negotiations - I think it is important that we establish that before we trigger Article 50.”

May, Edinburgh, 15 July 2016

The UK government ‘will consult and work with the devolved administrations for Wales, Scotland and Northern Ireland, because we want Brexit to work in the interests of the whole country’

May, Birmingham, 5 October 2016

Negotiating Withdrawal ...

We have ensured since the referendum that the devolved administrations are fully engaged in our preparations to leave the EU and we are working with the administrations in Scotland, Wales and Northern Ireland to deliver an outcome that works for the whole of the UK. In seeking such a deal we will look to secure the specific interests of Scotland, Wales and Northern Ireland, as well as those of all parts of England. A good deal will be one that works for all parts of the UK.

UK Government, White Paper, February 2017

... no Differentiated Withdrawal

“we voted in the referendum as one United Kingdom, we will negotiate as one United Kingdom, and we will leave the European Union as one United Kingdom.”

May, Birmingham, 2 October 2016

... but a ‘Stronger Union’

Ignoring the Devolved Administrations?



Ignoring the Devolved Administrations?

- Joint Ministerial Committee – ‘an inadequate machinery for intergovernmental negotiations within the UK’ (Whitman)
- Brexit Cabinet Committee – attending ‘as required’
- Triggering Article 50 – legal challenges
- White Papers submitted ... no response
- Information providers not preference shapers

Negotiating the Future

What role for the devolved administrations in negotiating:

- The terms of the withdrawal agreement
- The scope and content of the future UK-EU relationship
- The scope and content of the transitional arrangements
- The scope and content of new and replace trade agreements with non-EU countries?

Negotiating Withdrawal – Where are the Devolved Administrations?



Northern Ireland – of greater concern to the EU-27?



“The protection of the Good Friday agreement and the maintenance of the Common Travel Area are the most urgent issues to discuss.”

« Nous devons trouver des solutions pour préserver tous les engagements du Good Friday Agreement. »

Barnier, 19 June 2017

Northern Ireland – of greater concern to the EU-27?

The Union has consistently supported the goal of peace and reconciliation enshrined in the Good Friday Agreement *in all its parts*, and continuing to support and protect the achievements, benefits and commitments of the Peace Process will remain of paramount importance. In view of the unique circumstances on the island of Ireland, *flexible and imaginative solutions will be required, including with the aim of avoiding a hard border, while respecting the integrity of the Union legal order*. In this context, the Union should also recognise existing bilateral agreements and arrangements between the United Kingdom and Ireland which are compatible with EU law.

“flexible and imaginative solutions”

NI agricultural goods to be designated ‘Irish’?

NI to have access to the European Investment Bank?

Northern Ireland in the European Economic Area?

All-island regulatory frameworks/bodies?

NI/all-island participation in EU programmes?

“flexible and imaginative solutions” prospects

- EU-27 support
- The absence of ideas
- The shadow of Scotland ... and Wales
- A UK veto?
- A DUP veto?

Repatriated powers ... Devolution

- Repatriated powers to Westminster ... and on to devolved administrations/ legislatures?
- Which powers ... when ... who decides?
- What resources ... administrative, political, financial?
- All in the context of a 'UK single market'

The ~~Great~~ Repeal Bill

What role for the devolved administrations?

“In order to achieve a stable and smooth transition, the Government’s overall approach is to convert the body of existing EU law into domestic law, after which Parliament (and, where appropriate, the devolved legislatures) will be able to decide which elements of that law to keep, amend or repeal once we have left the EU”

Negotiating Brexit for a [dis-]united Kingdom: constitutional tensions and challenges



- Giving voice to the Devolved Administrations in the multi-faceted 'Brexit' and 'post-Brexit' process
- Respecting votes and preferences ... thinking creatively
- Upholding obligations and commitments
- Managing repatriation of power