

The Impact of withdrawal from the European Union upon Northern Ireland

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As the only region containing a land frontier with a European Union from which the UK has chosen to depart, Northern Ireland will be particularly significantly affected by withdrawal. It is the prospect of the return of a 'hard border' partitioning the island of Ireland, not seen since the Troubles, which is perhaps of greatest concern. However, the status of the border is only one of several issues vexing Northern Ireland. This report concentrates upon the four most important: the lack of consent for withdrawal; the impact upon the Good Friday Agreement; the hardening of the border; and prospects for cross-border trade.

The lack of consent for withdrawal

The withdrawal of Northern Ireland from the EU lacks local democratic legitimacy, in that the region voted by 56 per cent (440,707 votes) to 44 per cent (349,442) to remain. The Northern Ireland vote amounted to 0.2 per cent of the 17,410,742 total UK leave tally and 0.3 per cent of the remain side's support. Nationalist areas voted strongly to remain, Foyle providing the third highest percentage remain vote in the UK, the highest outside London. Majority Unionist areas were much more evenly divided, but mainly voted in favour of withdrawal. However, Fermanagh and South Tyrone, the constituency of the Arlene Foster, the Democratic Unionist Party (DUP) First Minister of Northern Ireland, returned a 59 per cent remain vote on the highest turnout (67 per cent) in the region. Locally, the contest was marked by modest turnout; at 63 per cent, nine per cent lower than the UK figure. Public

opinion appeared largely unchanged in the year preceding the referendum, the 2015 Northern Ireland General Election survey having indicated an 11 per cent lead for Remain twelve months earlier.¹

Withdrawal from the EU will eventually require the parliamentary repeal of the European Communities Act (1972) which allowed the UK to join the (then) European Economic Community and enshrined the supremacy of its law. This repeal will presumably arrive at the end of the Article 50 withdrawal process. Ultimately Westminster determines Northern Ireland's membership of, or withdrawal from, the EU. A recent House of Lords European Union committee report stated in respect of Scottish exit, that 'the Scottish Parliament's consent would be required' before the extinguishing of EU law, based upon a view offered by Sir David Edward, a former Judge of the Court of Justice of the European Union.² The Committee extended this view to suggest that, given how the European Communities Act is entrenched in the devolution settlements in Northern Ireland and Wales, the committee 'has no reason to believe that the requirement for legislative consent for its repeal would not apply to all the devolved nations'.

However, the withholding of consent for EU withdrawal by the Northern Ireland Assembly would be a purely symbolic gesture, given the Westminster sovereign over-ride. Westminster determines EU policy, including membership for Stormont. However futile resistance may be, consent for an EU exit will certainly not be forthcoming from the Northern Ireland Assembly, based upon party stances. It would be supported by only

approximately one-third of the 129 members; the 38 belonging to the DUP, the solitary Traditional Unionist Voice representative and possibly a very small number from the Ulster Unionist Party's 16-strong contingent (against leadership policy) whilst the left-wing People Before Profit's two members might back withdrawal. All other parties are strongly opposed to exit. Key decisions for Northern Ireland are taken in the Assembly on the basis of parallel cross-community consent, which clearly not pertain in this case given that the two nationalist parties of the SDLP and Sinn Fein strongly oppose withdrawal. However, this is a key decision beyond Stormont's scope.

The Social Democratic and Labour Party (SDLP) leader, Colum Eastwood, has urged that 'every parliamentary and diplomatic tool must now be used to maintain the North's membership of the EU ... whether it is through the Danish model of selective territorial membership or via another creative exemption, every legal and logistical avenue must now be explored'.³ Although surely doomed to fail, legal challenges to withdrawal could conceivably delay the process. In contrast, the DUP position is that the UK government will negotiate on Northern Ireland's behalf, with Arlene Foster dismissive of the tentative idea of the Irish government to establish a North-South forum to discuss implications of the UK exit.

Implications for the Good Friday Agreement

Northern Ireland opponents of EU withdrawal can use the Good Friday Agreement to bolster their case. The 1998 deal pledges close cooperation over its contents as 'partners in the European Union'. It pledges the North-South Ministerial Council, established under

Strand Two of the deal, to 'consider the European Union dimension of relevant matters, including the implementation of EU policies and programmes'. The views of the Council must be 'taken into account and represented appropriately at relevant EU meetings'. Withdrawal means the UK cannot do this and is potentially in breach of a binding international treaty.

The Irish Government could legitimately take the matter to the United Nations and the UK government could be obliged to defend a reneging before the International Court of Justice, although that scenario is far-fetched. Alternatively, the Irish government could agree to renegotiate the 1998 Agreement and allow the UK to replace references to the EU with the EEA, or other arrangements as appropriate, but where is the incentive for the Irish Government to allow the dismantling of an aspect of what is widely held as a model peace and political deal? The Irish government is traditionally Europhile, even if the Irish electorate has become less so in recent times, needing a second referendum to uphold the Nice and Lisbon treaties. The EU component of the Agreement was hardly central to its workings, which are most important in respect of power-sharing within Northern Ireland, but international agreements cannot be cherry-picked. There may be demands that any revised Good Friday Agreement be put to the electorates North and South, as it was in 1998. If the Irish government fails to act to uphold the Agreement in its current form, it is likely that other political parties will act. This might be a more fruitful route for Sinn Fein than calls for a border poll on Irish reunification which will not be granted by the UK Secretary of State and would in any case be lost for the republican cause if confined to Northern Ireland.

Strand Three of the Good Friday Agreement has also indirectly fuelled the debate over EU membership. Although the Conservative government will act on the basis of the UK as an entirety, variable geometry of belonging is apparent. Guernsey, Jersey and the Isle of Man are three UK dependencies which form part of the British-Irish Council established under Strand Three of the 1998 deal but do not belong to the European Union. Exponents of flexibility⁴ argue that whilst England and Wales can leave the EU, separate arrangements can pertain to other parts of the UK, pending the resolution of UK status via a border poll (Northern Ireland) or independence referendum (Scotland) following the alteration of the terms of union precipitated by EU withdrawal.

A further awkward aspect of UK withdrawal relates to the European Convention of Human Rights (ECHR). The Convention is not an EU institution, but secession from the EU may embolden those in the Conservative Party seeking to replace adherence to the ECHR with a UK Bill of Rights. Again, this would be at odds with the Good Friday Agreement in which the British government committed to 'complete incorporation into Northern Ireland law of the ECHR, with direct access to the courts, and remedies for breach of the Convention' (p. 20) and retreat from this pledge may be subject to legal challenge.

The response of political parties to the challenges posed to the Good Friday Agreement by Brexit has been predictably variable. Whilst accepting the vast bulk of its content in the 2006 St Andrews Agreement, the anti-EU DUP never supported the Good Friday Agreement and regards its references to the EU as irrelevant. The DUP's government partners in Sinn

Fein take a diametrically opposite view in defending the Agreement. The SDLP has been the most pro-EU party in Northern Ireland, in the 1990s even advocating a role for the EU Commission in directly running the region. Its strong promotion of the Good Friday Agreement has been within the party's ideological outlook of a Europe of the Regions. The UUP response, as co-architects of the Agreement with the SDLP, has been more mixed. The current leadership defend the deal and the EU, but the party leader at the time of the Agreement, David Trimble, now a Conservative peer, advocates Brexit.

Hardening the border

Fears of a return to a hard border between Northern Ireland and the Republic of Ireland may be exaggerated. The security checkpoints of the 1970s-1990s era were a response by the British to the threat from an IRA operating on both sides of the border. The deployment of British military personnel and installations further alienated the republican section of the border population sympathetic to the IRA. The modern-day 'dissident' IRAs, although still a threat, are much smaller, not as active and afforded less traction by republican border communities. There is also no desire for the British government to revive the security focus of the Troubles. It would take an unforeseen upsurge in armed republican activity for this to change.

Beyond the old conflict however, there are obvious tensions between the maintenance of an open border and the aspiration to control immigration. Bereft of border controls, there will be no obvious way of preventing large numbers of EU nationals entering the UK from

the EU by crossing the border between the Republic of Ireland and Northern Ireland. Self-evidently, there is the possibility of large numbers of EU nationals seeking to live and work in the UK entering via this route, across a border currently marked only by an occasional sign and a few currency huts for euro-sterling exchanges.

Whilst the UK would retain the right to deport those arrivals entering illegally (by, for example, failing to satisfy an immigration points system which may be put in place) without knowledge of such arrivals, UK border agencies would find it impossible to act meaningfully within Northern Ireland. The UK could conceivably confine its border control frontier to England, Scotland and Wales as an alternative. This would potentially place Northern Ireland within a more overtly 'Irish context', a feature which would be welcomed by nationalists but might concern unionists. In the absence of a significant paramilitary threat (although, if revived, one that might target British customs posts) the Irish government will be unwilling to undertake border policing on behalf of the British government.

The border has diminished greatly in salience in recent years, albeit not in constitutional terms with unionist versus nationalist differences over its long-term future still dominating Northern Ireland politics. The pragmatic benefits of cross-border trade and ease of movement have become accepted as routine. A majority of unionists now accept the North-South bodies established under the Good Friday Agreement. By far the most significant of those bodies is the Special European Union Programmes Body (SEUPB), which manages cross-border EU structural funds. The SEUPB implements the EU Programme for Peace and

Reconciliation in Northern Ireland, which has amounted to four peace programmes financially underwriting the peace process, providing more than 1.3 billion euros of funding. These projects have diminished the border's salience, vastly improved cross-border transport links and brought the two main communities together in seeking joint funding. The current Peace IV programme is due to expire in 2020, but an earlier Brexit will see the curtailment or abandonment of several projects. The EU's promotion of reconciliation and an all-island infrastructure has not shifted identities. Only four per cent of the population see themselves as European, with the bulk adopting British, Irish or, to a lesser extent, Northern Irish identities. The perception of the EU has tended to be that of a generous cash cow.⁵ That generosity, allied to the all-island commonalities of EU citizenship, has ameliorated the physical border and diminished the political hostilities emanating from its existence, advances which may now be tested.

Cross-border trade

Cross-border trade between Northern Ireland and the Irish Republic has increased significantly during the last two decades of relative peace. The question begged is what happens to such trade in a new era likely to involve tariffs placed upon UK goods heading into the Irish Republic and on UK imports from across the border? Such a scenario may be avoided if the UK buys into a European Economic Area agreement, or a bilateral deal is agreed between the UK and Ireland permitting a special customs arrangement allowing goods and services to travel between the two states (or possibly Northern Ireland and the Irish Republic only) free of charge. Either would have to be approved by all member states

of the EU and the chances of approval of a bespoke deal benefiting only the UK and Ireland and at odds with core EU principles appears remote.

That an 'a la carte' trade arrangement would benefit Northern Ireland, the UK more widely and the Republic of Ireland can hardly be doubted and special treatment possesses historical, geographical, economic and political justifications. The economic case for the avoidance of tariffs is pressing upon the Republic of Ireland. Thirty-four per cent of its exports of goods and services go to the Eurozone, of which almost half go to Britain, the highest single reliance upon British purchases of any EU country.⁶ It is unsurprising therefore that the Taoiseach has been in no rush to endorse those desirous of a punitive response to Brexit.

However, as the EU represents its largest export market, withdrawal matters even more to Northern Ireland than it does to the Irish Republic or the rest of the UK. Exports to EU countries are likely to suffer from the imposition of tariffs. Growth in such exports has considerably outpaced that to non-EU countries in recent years and amounted to £3.63bn in 2014, compared to £2.53bn of non-EU exports⁷, whilst Northern Ireland is also more reliant upon imports from the EU, now likely to be more expensive, than other parts of the UK. The importance of Northern Ireland's currently tariff-free trade relationship with the Irish Republic is apparent, with 37 per cent of the North's EU exports heading there, amounting to 21 per cent of its exports. Northern Ireland's EU trade dependence has been such that a three per cent reduction in the region's GDP has been calculated as the likely outcome of

withdrawal.⁸ Whilst some local measures were already in place to boost the local economy regardless of the referendum outcome, notably the plan to cut corporation tax to 12.5 per cent in April 2018, economic effects upon Northern Ireland may be particularly severe. Sectoral impacts will vary, but given that the region contains the most agricultural economy of any part of the UK, potential impacts upon farmers are especially noteworthy. Common Agricultural Policy (CAP) payments provided 60 per cent of their cash income in 2014-15.⁹

Northern Ireland's farmers receive one of the highest payments-per-hectare annual awards in the EU and 9 per cent of the UK's total allocation of EU pillar payments, with these subsidies and presumably some farms now on borrowed time.¹⁰

Conclusion

A number of uncertainties pertain to Northern Ireland's departure from the UK. The Good Friday Agreement will require alteration, the physical status of the border may change slightly and the improvements in cross-border trade evident in recent years may be reversed. Prior to Brexit, relations between the UK and the Irish government had never been better and the cooperative bilateralism which emerged during the peace process was abetted by shared EU membership. The pragmatic logic of continued cooperation may ensure that difficulties are surmounted and British-Irish exceptionalism, long evident in such matters as voting rights in the UK for Irish citizens, is likely to be seen in terms of permitting free movement across a soft land border between Northern Ireland and the Republic of Ireland. This may of course displease those in the UK desirous of much tighter controls and may meet opposition within the EU from those wanting sanctions against the UK. Given the majority opposition within Northern Ireland to withdrawal from the EU, the process of UK

disengagement will not represent a fulfilment of desires to ‘take back control’, the campaign slogan favoured by those wishing to leave the EU.

¹ Jonathan Tonge, (2015) ‘The 2015 Northern Ireland General Election survey’, UK Data Service. SN 7523, available at <https://discover.ukdataservice.ac.uk/doi?sn=7523#1>, last accessed 6 July 2016.

² House of Lords European Union Committee (2016) *The process of withdrawing from the European Union*, Westminster: House of Lords.

³ Colum Eastwood, ‘North’s Remain vote must be respected’, *Irish Times*, 4 July 2016.

⁴ Brendan O’Leary (2016) ‘Detoxifying the UK’s exit from the EU, a multi-national compromise is possible’, available at <http://blogs.lse.ac.uk/brexitvote/2016/06/27/de-toxifying-the-uks-eu-exit-process-a-multi-national-compromise-is-possible/>, 27 June, last accessed 5 July 2016.

⁵ See e.g. Lee McGowan and Julia O’Connor (2004) ‘Exploring Eurovisions: awareness and knowledge of the European Union in Northern Ireland’, *Irish Political Studies*, 19.2, 21-42.

⁶ See ‘Ireland post-Brexit: Put asunder’, *The Economist*, 2-8 July 2016: 33.

⁷ Aidan Stennett (2016) ‘The EU referendum and potential implications for Northern Ireland’, Northern Ireland Assembly Research and Information Service Research Paper, NIAR 32-16.

⁸ *Ibid.* p.8.

⁹ Department of Agriculture and Rural Development (2016) *Farm Incomes in Northern Ireland 2014-15*, Belfast: DARD, available at <https://www.daera-ni.gov.uk/sites/default/files/publications/dard/farm-incomes-in-northern-ireland-2014-15-final.PDF>, last accessed 8 July 2016.

¹⁰ Mark Allen, Emma Downing, Tom Edwards, Nia Seaton and Maggie Semple (2014) Cap Reform 2014-20: EU Agreement and Implementation in the UK and in Ireland, RaISe paper 702-14, available at <http://www.niassembly.gov.uk/globalassets/Documents/RaISe/Publications/2014/dard/allen10314.pdf>, 30 October, last accessed 5 July 2016.