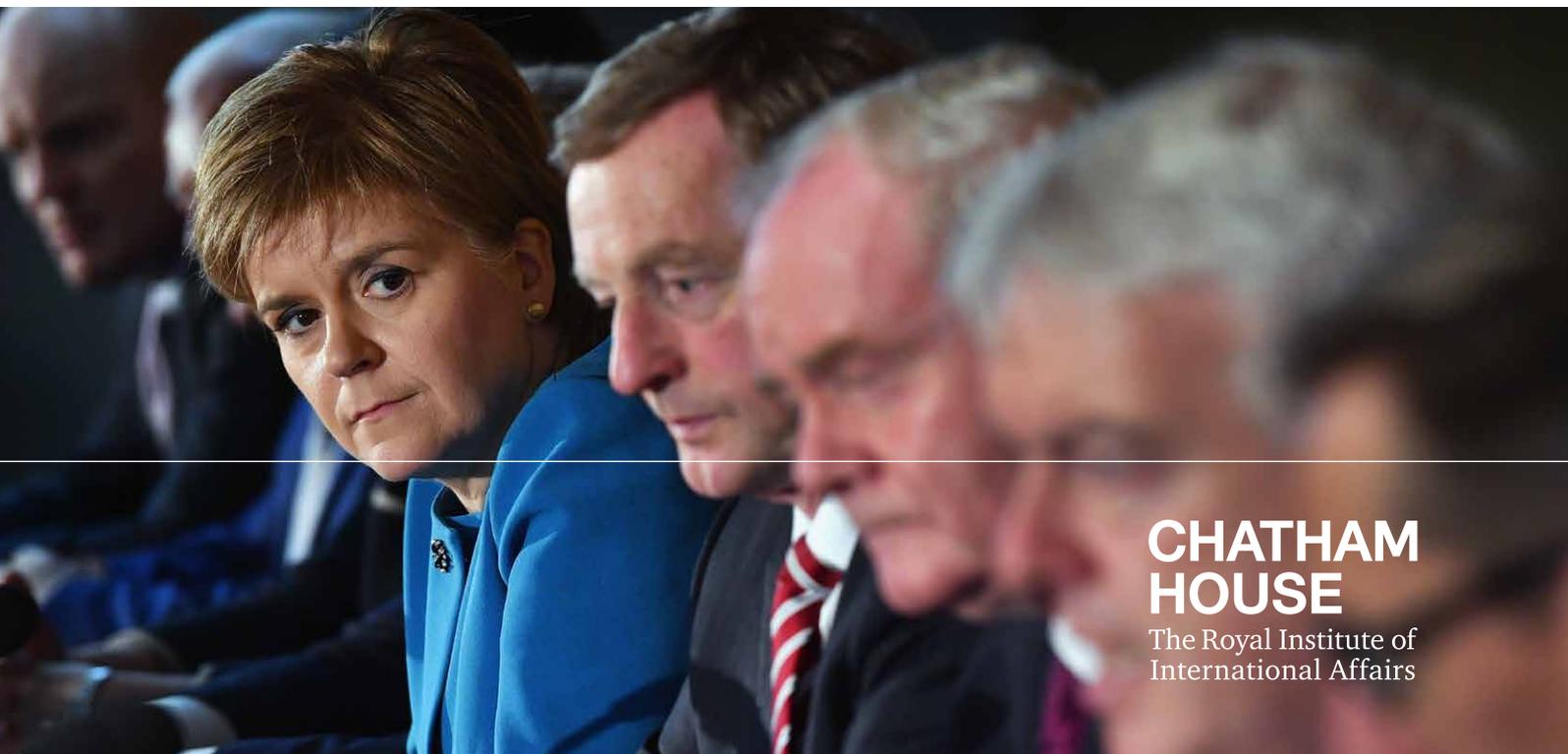


Research Paper

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Devolved External Affairs: The Impact of Brexit



**CHATHAM
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The Royal Institute of
International Affairs

Summary

- Brexit will have significant political and institutional implications for the external affairs of the devolved administrations of Scotland, Wales and Northern Ireland. This is a consequence of the devolution of power that has taken place within the UK since it joined the EU.

Devolution and repatriation

- The division between domestic and foreign policy has become increasingly blurred, for both the UK and the devolved administrations. Policy areas with both domestic and external elements include agriculture, fisheries, the environment and trade.
- While foreign policy remains reserved for the UK government, some policy areas with external dimensions have been devolved to Scotland, Wales and Northern Ireland. These include agriculture, fisheries and the environment.
- Under current legislative arrangements, after the UK leaves the EU some of these powers are expected to return directly to the devolved administrations, which will then have more autonomy in these policy areas.

Arrangements for joint decision-making

- The institutional arrangement for decision-making between the UK and devolved governments – the Joint Ministerial Committee (JMC) – is not suited to developing a joint position on leaving the EU.
- The devolved governments do not feel that they are being included as partners around the decision-making table, due to the weak agenda-setting powers, frequency and duration of the JMC meetings.
- The devolved administrations have different priorities for the Brexit negotiations, and have different resources available to address these concerns. Therefore, creating a forum for developing a joint position between the devolved administrations and the UK government will be of critical importance for a successful Brexit settlement.

Scotland, Wales and Northern Ireland as European actors

- To varying degrees, the devolved administrations are seeking to develop an international profile distinct from that of the UK.
- Scotland has developed a para-diplomatic presence in Brussels and European capitals. Since the EU referendum, it has built on its pre-existing strategy to represent its interests and preferences to actors outside of the UK on matters such as the single market, free movement of people and fisheries.

- Wales has an established presence in Brussels. Since the referendum, it has made institutional changes within its government and National Assembly for such para-diplomatic activity, including the creation of an External Affairs Committee.
- Northern Ireland has two major obstacles to direct interaction with the EU. It has limited resources to approach the major task of creating a para-diplomatic presence, and the divided nature of its consociational government poses particular challenges to developing a coherent external image.

Recommendations

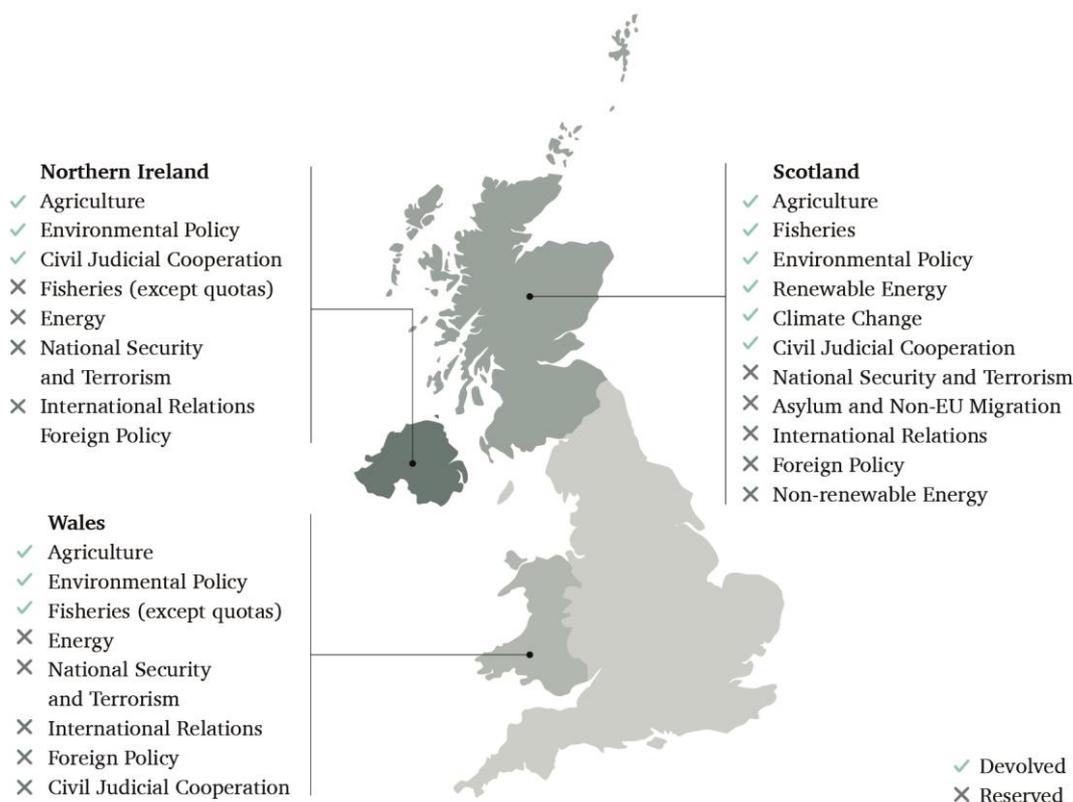
- Alongside invoking Article 50 of the Treaty of the European Union, the UK government should undertake a review of which EU competences are to be returned to the devolved administrations under current constitutional arrangements.
- The JMC mechanism for inter-governmental decision-making should be revised for the challenge of negotiating Brexit as well as for representing UK-wide interests afterwards. The revised forum should have an agreed timetable of meetings, enough time to address complex issues, and opportunities for ‘parity of esteem’ between the UK government and devolved administrations.
- The devolved administrations should further develop their positions and infrastructure for representing their interests directly to the EU and member states after Brexit.

Introduction

The June 2016 referendum result in favour of ending the UK’s membership of the EU will have direct consequences for each of its four nations, which voted differently on whether to leave or remain. In particular, Brexit will challenge the existing arrangements for the devolution of political power to Scotland, Wales and Northern Ireland. The UK government faces a challenge of two unions. As it seeks to extricate itself from its union with 27 other European states, it also faces an inter-governmental challenge within the union of the constituent parts of the UK.

In the years since it joined the European Economic Community in 1973, the UK has embarked on a project to devolve political power to Scotland, Wales and Northern Ireland (see Box 1). This has reordered legislative and policy competences away from the UK’s parliament and government, and granted powers and responsibilities to the devolved governments and legislatures. In this process, many competences were devolved in part because they are predominantly legislated and enforced at the EU level. It is not clear what will happen when these competences are repatriated from the EU and to what extent they will be given directly to the devolved administrations (see Figure 1).

Figure 1: Devolved or reserved? External affairs policy areas to be repatriated post-Brexit



Source: Author’s analysis.

In the negotiations over its exit from the EU, the UK government will have to contend with the demands for a role from the governments of Scotland, Wales and Northern Ireland. Each

administration has different interests and concerns that they wish to be accommodated within the UK's negotiating position. And, most notably in the case of Scotland, the future relationship between the UK and the EU that they seek is difficult to reconcile with the current position of the UK government.

Furthermore, as devolution has progressed the line between domestic and foreign policy has become blurred in a wide range of areas including energy, the environment, agriculture and trade. This expanded agenda for the UK's overall external relations has been pursued with and through the EU. As it embarks on 'renationalizing' these issues, the UK government will have to reconcile the fact that devolution has granted many policy powers to Scotland, Wales and Northern Ireland.

Reconciling the process of Brexit with devolution will also create a spillover challenge for the UK's foreign policy. Prior to the referendum, the devolved administrations had already sought to establish, to differing degrees, their own profiles in external affairs. The outcome of the referendum has given these efforts renewed impetus. This could mean that the UK will show a more multi-faceted profile to the EU, its member states and third countries after Brexit.

Box 1: Devolution key dates

Scotland

1998: The Scotland Act 1998 outlines devolution to Scotland, including policy areas such as policing, housing and education, and establishes the Scottish Parliament.

2007: The Scottish executive is rebranded Scottish government.

2012: The Scotland Act 2012 grants further powers to Scotland, including in some areas of tax policy.

2014: After the Scottish referendum rejecting independence, the Smith Commission is established to evaluate options for further devolution.

2016: The Scotland Act 2016 devolves further powers, including in electoral reform, some welfare and housing benefits, and setting income tax rates and bands.

Wales

1998: The Government of Wales Act 1998 establishes the National Assembly for Wales, but limits it to making secondary legislation in areas including agriculture, economic development and culture, and only when authorized by the UK parliament.

2006: The Government of Wales Act 2006 enables the National Assembly to pass 'measures' for Wales on some policy areas, and officially separates it from the executive.

2011: After a referendum, more powers are devolved to allow the passing of 'acts of the assembly' without the UK parliament's agreement.

2014: The Wales Act 2014 devolves powers including in some areas of tax policy.

2016: The Wales Bill undergoes parliamentary scrutiny, and proposes to devolve further powers, including regarding onshore oil and gas extraction, harbours and rail franchising.

Northern Ireland

1998: The Good Friday Agreement and Northern Ireland Act 1998 create the Northern Ireland Assembly and the executive, and set out devolved areas including education, health and agriculture.

2002: The assembly is suspended, with all powers reverting to the UK's Northern Ireland Office.

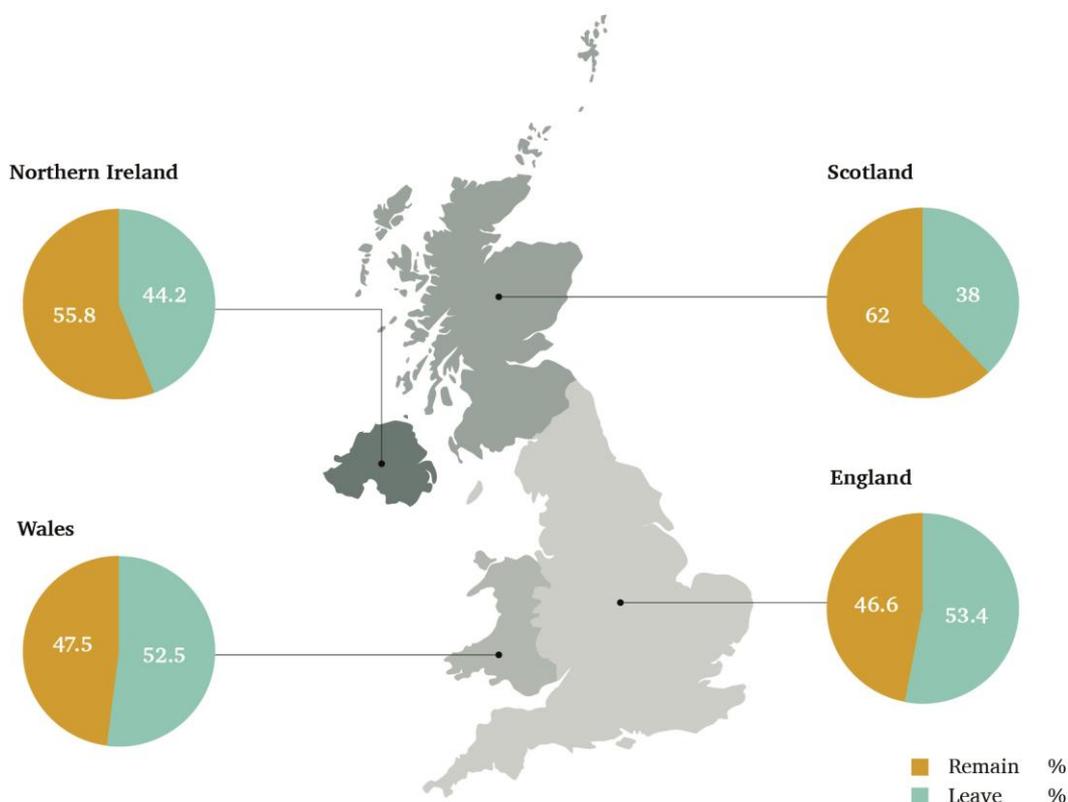
2006: The St Andrews Agreement is reached to restore the assembly and form a new executive.

2010: Policing and criminal justice are devolved.

Brexit and the devolution dilemma

In the referendum, a majority of votes cast in Scotland (62 per cent) and Northern Ireland (55.8 per cent) were to remain in the EU, while a majority voted to leave the EU in England (53.4 per cent) and Wales (52.5 per cent) (see Figure 2).

Figure 2: In or out? Electoral breakdown



Source: Turnout data: BBC Elections results, http://www.bbc.co.uk/news/politics/eu_referendum/results.

Politically and constitutionally, this places the government of Scotland in a particularly complex position. The situation in Northern Ireland is complicated by the fact that the parties of the first

minister and deputy first minister supported the remain and leave campaigns respectively. In Wales, the vote to leave the EU stood in contrast to the pro-EU position of the Welsh government and the vast majority of the political elite. The vote in England has also thrown up differences between London, which voted to remain, and the other English regions, where there was a majority vote to leave.

Since the referendum, there has been little clarity from the UK government over what role, if any, the devolved governments will play in the negotiations with the rest of the EU, as well as over what Brexit will mean for Scotland, Wales and Northern Ireland. A new Joint Ministerial Committee on EU negotiations met for the first time in October 2016.¹

The ruling of the Supreme Court on 24 January 2017 that declared the UK government cannot lawfully invoke Article 50, to trigger the process for the UK to exit the EU, without prior authorization by an Act of Parliament also determined that there was no required role for the Scottish Parliament or Welsh and Northern Ireland assemblies. The Supreme Court unanimously ruled that UK ministers are not legally compelled to consult the devolved legislatures before triggering Article 50. The court made clear that the devolution statutes were enacted on the assumption that the UK would be a member of the EU, but they do not require it, and so relations with the EU are a matter for the UK government.²

Brexit presents unprecedented constitutional challenges for the UK, which will affect many areas of policymaking in ways that have not yet become clear. It is unclear which powers will be repatriated directly to the devolved governments, and there is substantial ambiguity regarding who will have policymaking authority in some areas after the enactment of the planned 'Great Repeal Bill', which annuls the 1972 European Communities Act.

The Culture, Tourism, Europe and External Relations Committee of the Scottish Parliament has conducted research into which powers may be repatriated from the EU directly to Scotland based on Schedule Five of the Scotland Act 1998.³ Its findings suggest some significant policy areas, such as fisheries and agriculture policy, will be repatriated to Scotland, and that there are grey areas over where Scotland's competencies stop and the Westminster government's begin.

Perhaps the only certainty at this stage is that any new settlement between the UK and the EU will have an impact on the intergovernmental affairs within the UK and the relationships between England, Scotland, Wales and Northern Ireland.

Particularly within the Welsh and Scottish governments, there is a feeling that the UK's government and parliament are not aware of the vast implications that Brexit will have on the devolution

¹ UK Prime Minister's Office (2016), 'Joint Ministerial Committee Communiqué', 24 October 2016, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/562364/joint-ministerial-committee-communication-24-october-2016.pdf (accessed 6 Jan. 2017).

² The Supreme Court (2017), 'Article 50 "Brexit" appeal', <https://www.supremecourt.uk/news/article-50-brexit-appeal.html> (accessed 27 Jan. 2017).

³ Page, A. (2016), *The implications of EU withdrawal for the devolution settlement*, Edinburgh: Scottish Parliament Culture, Tourism, Europe and External Relations Committee, http://www.parliament.scot/S5_European/General%20Documents/The_implications_of_EU_withdrawal_for_the_devolution_settlement.pdf (accessed 6 Jan. 2017).

settlements, and that this may be due to a lack of understanding of the devolution statutes and the nature of the devolved legislatures.

In terms of external affairs, the policy areas most impacted by Brexit will likely include trade relations (which will impact on areas such as agricultural policy), fisheries, environmental policy, and immigration and border management. The international relationships of the devolved governments will also be affected more broadly.

Repatriation to the devolved governments?

During its attempts to renegotiate the terms of its membership in advance of the referendum, the UK government made it clear that relations with the EU are a ‘reserved’ matter and as such under its exclusive jurisdiction. However, there is substantial overlap between areas that have a high level of EU competence and those that come under the remit of devolved policy. So one critical question will be: where this overlap exists, to which authority should EU powers be repatriated after Brexit?

Some of the powers that will be returned from the EU encompass matters covered under Schedule 6 of the Scotland Act (1998), Schedule 7 of the Government of Wales Act (2006) and Schedule 10 of the Northern Ireland Act (1998). Brexit could therefore provide an opportunity for the devolved administrations to seek stronger powers over policy areas that are currently within the EU’s competences, or for the UK government to decide that powers should be recentralized. In her 17 January Brexit speech, the prime minister addressed this concern by stating her commitment to work with the devolved administrations to ensure that ‘the right powers are returned to Westminster, and the right powers are passed to the devolved administrations’.⁴ However, what this means in practice, and the process through which this repatriation of powers will be agreed is yet to be announced.

Outside an EU framework, there is greater scope for policy differentiation between the four nations of the UK. One example is in agricultural support, an area that may have implications for a post-Brexit UK trade policy. The UK leaving the EU also raises important and contentious issues that directly impinge on the devolved governments, such as the status of Northern Ireland’s border and migration from or through the Republic of Ireland.

Brexit will also result in changes to the legal framework within which Scotland’s and Wales’s law-making powers are exercised.⁵ In each of the devolution statutes, there is explicit reference to EU legislation. The devolved legislatures are prohibited from passing laws that are incompatible with EU law. Removing this clause will be complex, and could theoretically mean a huge transfer of powers to the devolved administrations in areas – such as farming – in which their policy choices were previously highly constrained (see Figure 1). Further, such amendments to the devolution statutes may re-open the debate surrounding devolution itself, and therefore become another threat to the UK government’s schedule for leaving the EU.

⁴ May, T. (2017), ‘Speech to Lancaster House’, London, 17 January 2017, <http://www.telegraph.co.uk/news/2017/01/17/theresa-mays-brexit-speech-full/> (accessed 18 Jan. 2017).

⁵ BBC News (2016), ‘Academic fears Brexit could cause Scots ‘constitutional crisis’’, 22 September 2016, <http://www.bbc.co.uk/news/uk-scotland-scotland-politics-37438818> (accessed 6 Jan. 2017).

There are other important components of the devolution settlements that will be tested by the Brexit process. For example, the Legislative Consent Convention (also known as the Sewel Convention) determines that the UK parliament will ‘not normally’ legislate with regard to devolved matters without the consent of the Scottish, Welsh and Northern Irish legislatures.⁶ However, the UK House of Lords Select Committee on the Constitution stated, in September 2016, that ‘circumstances are not “normal” within the meaning of the convention’ with respect to starting the Brexit process by triggering Article 50 of the Treaty on European Union.⁷

An inadequate machinery for intergovernmental negotiations within the UK

Already before the referendum, the devolved administrations were vocal about feeling marginalized during David Cameron’s renegotiation with the rest of the EU. It would be prudent for Prime Minister Theresa May to ensure appropriate consultation with them. This is also complicated, though, by the absence of unity of purpose (beyond seeking to be consulted) and the different preferences for the Brexit negotiations among the devolved administrations.

Prime Minister May initially gave signals about the importance of the devolved administrations’ interests in the process of leaving the EU, such as visiting Scotland’s first minister in Edinburgh in her first week in office. But she has since made it clear that there will be little room for any of them to diverge from a settlement negotiated by the UK government. In September 2016, she declared: ‘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’.⁸

Although the UK government could simply impose a Brexit deal over the objections of the Scottish, Welsh or Northern Irish governments, such a unilateral action would create significant political division within the UK. If it ignores the Legislative Consent Convention, the UK government could trigger long legal battles with each of the devolved administrations.⁹ This could place the union between England, Northern Ireland, Scotland and Wales under considerable pressure.

Since Prime Minister May has repeatedly stated her commitment to maintaining this union, the devolved governments will expect to be treated with a ‘parity of esteem’ with the UK government in the Brexit negotiations. But, given the latter’s reluctance to share the negotiation process even with the UK’s parliament, attaining any such parity will be hard-fought. The UK’s Supreme Court has already ruled that the Welsh and Scottish governments’ senior law officers should be able to take part in the legal battle over whether consent from the UK parliament is required for triggering Article 50.¹⁰ Despite this, Prime Minister May is very unlikely to concede veto power over the terms

⁶ Scottish Government (2008), *The Sewel Convention: Key Features*, <http://www.gov.scot/About/Government/Sewel/KeyFacts> (accessed 6 Jan. 2017).

⁷ UK House of Lords Select Committee on the Constitution (2016), *The Invoking of Article 50*, <http://www.publications.parliament.uk/pa/ld201617/ldselect/ldconst/44/44.pdf> (accessed 6 Jan. 2017).

⁸ May, T. (2016), ‘Speech to the Conservative Party Conference’, Birmingham, 2 October 2016, <http://www.independent.co.uk/news/uk/politics/theresa-may-conference-speech-article-50-brexit-eu-a7341926.html> (accessed 6 Jan. 2017).

⁹ Paun, A. (2016), ‘Brexit and the Union: can a shared UK approach be found?’, London: Institute for Government, 22 July 2016, <https://www.instituteforgovernment.org.uk/blog/brexit-and-union-can-shared-uk-approach-be-found> (accessed 6 Jan. 2017).

¹⁰ Merrick, R. (2016), ‘Brexit: Fresh blow for Theresa May as Supreme Court rules Scotland and Wales can intervene in Article 50 triggering’, *Independent*, 18 November 2016, <http://www.independent.co.uk/news/uk/politics/brexit-fresh-blow-for-theresa-may-as-supreme-court-rules-scotland-and-wales-can-intervene-in-article-a7424796.html> (accessed 6 Jan. 2017).

of Brexit to any of the devolved governments, since this would weaken her government's hand in the negotiations at the UK and EU levels.¹¹ Further, there are concerns about the level of information-sharing with the devolved governments that can be expected.

Respective secretaries of state and their offices represent Scotland, Wales and Northern Ireland within the UK cabinet. However, unlike the governments of the devolved administrations, they are not mandated by elections in each nation. Therefore, it is important that the views and interests of the devolved governments are considered in forums other than the UK cabinet.

In October 2016, the new Joint Ministerial Committee on EU Negotiations (JMC (EN)), headed by the UK secretary of state for exiting the European Union, David Davis, was announced as a forum dedicated to the UK government communicating with and consulting the devolved governments over Brexit. However, the Joint Ministerial Committee (JMC) machinery, which was established for joint decision-making between the four nations, is unlikely to provide an adequate forum for communicating with and consulting Scotland, Wales and Northern Ireland on the UK government's aims and negotiation position. The JMC structures have never been tasked with such a detailed and politically sensitive process as that required for the Brexit negotiations.

The capacity and suitability of the JMC machinery for the post-referendum environment of UK government and politics should be questioned. The previous infrequency and duration of plenary meetings bringing together the heads of the UK and devolved governments will need to be corrected. Other formations of the JMC will need re-tasking to provide a forum for reconciling views on external relations after the UK leaves the EU. For example, UK trade objectives will have to be reconciled to the differing approaches to agriculture, fisheries and external relations more broadly, which may be adopted by the devolved administrations.

Although there has been some effective day-to-day communication between civil servants in London, Edinburgh, Cardiff and Belfast, this is often restricted by the limited development of detailed policy positions with regards to Brexit in the UK government. Therefore, administrative coordination will need to be supported by high-level political coordination. To reach a settlement on Brexit that is suitable for the devolved administrations, they will need to be genuine participants in intergovernmental decision-making in the UK rather than 'consultees' on the same level as business groups.

In search of a common UK position

Prime Minister May has said that 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'.¹² However, she also maintains that 'the negotiations between the United Kingdom and the European Union are the responsibility of the Government and nobody

¹¹ Paun, A. (2016), 'What happens if the UK and devolved governments can't agree on Brexit?', London: Institute for Government, 23 September 2016, <http://www.instituteforgovernment.org.uk/blog/14657/what-happens-if-the-uk-and-devolved-governments-cant-agree-on-brex-it/> (accessed 6 Jan. 2017).

¹² May, T. (2016), 'Speech to the Conservative Party Conference'.

else'.¹³ Throughout the process of leaving the EU, her government will have to balance the competing interests and jurisdictions of the EU, the UK and the devolved administrations.

Each of the devolved governments has reacted to the referendum result differently and they are already adopting different positions in advance of the start of the negotiations with the EU.

Scotland

Scotland voted to remain in the EU and its government is a strong advocate of maintaining access to the single market and to freedom of movement within the EU. First Minister Nicola Sturgeon has stressed her commitment to protect Scotland's relationship with, and place, in the European Union.¹⁴

There had long been speculation that a UK vote to leave the EU could trigger a second independence referendum in Scotland. This view was initially strengthened by the different results in Scotland and the UK as a whole. In October, Sturgeon took the first step in this direction by announcing a consultation on an Independence Referendum Bill.¹⁵ In the prime minister's Brexit speech on 17 January 2017, she emphasized that the UK as a whole would be undertaking negotiations, and there was no mention of a special deal for Scotland. As such, the first minister announced that the prospect of a second referendum was 'undoubtedly' closer.¹⁶

In December 2016, the Scottish government published its proposals for a differentiated exit from the EU for each of the nations within the UK.¹⁷ As expected, this demonstrated a preference for as soft a Brexit as possible for Scotland. The proposals included a strong commitment to continuing membership of the single market, preserving freedom of movement and retaining EU research funding as well as a guarantee that the rights of EU residents in Scotland will be preserved.¹⁸ The first minister has also appointed a minister for UK negotiations on Scotland's place in Europe.¹⁹

The Scottish Minister for UK Negotiations on Scotland's Place in Europe has argued that 'differentiation is vital to protect [its] sovereign interests'.²⁰ He has said that the notification letter that the UK's prime minister sends to the EU to trigger Article 50 should include commitments to negotiating special terms for Scotland and address the Northern Ireland border issue.

The Scottish government has also directed its resources towards meeting with EU leaders in Brussels and member-state representatives to build support for its aim to remain close to the EU

¹³ Ibid.

¹⁴ Sturgeon, N. (2016), 'Speech: First Minister - EU Referendum result', 24 June 2016, <http://news.gov.scot/speeches-and-briefings/first-minister-eu-referendum-result> (accessed 6 Jan. 2017).

¹⁵ Kettle, M. (2016), 'Nicola Sturgeon's manoeuvres offer a chance to shape Brexit', *Guardian*, 13 October 2016, <https://www.theguardian.com/commentisfree/2016/oct/13/nicola-sturgeon-brexit-theresa-may-snp-scotland> (accessed 6 Jan. 2017).

¹⁶ BBC (2017), 'May's Brexit speech: Sturgeon says second referendum 'undoubtedly' closer', 17 January 2017, <http://www.bbc.co.uk/news/uk-scotland-scotland-politics-38642213> (accessed 20 Jan. 2017).

¹⁷ Scottish Government (2016), *Scotland's Place in Europe*, <http://www.gov.scot/Publications/2016/12/9234> (accessed 6 Jan. 2017).

¹⁸ See also Paun, A. and Miller, G. (2016), 'Four-nation Brexit: How the UK and devolved governments should work together on leaving the EU', London: Institute for Government, http://www.instituteforgovernment.org.uk/sites/default/files/publications/IfG_four%20nation_Brexit_briefing_v6.pdf (accessed 6 Jan. 2017).

¹⁹ Carrell, S. (2016), 'SNP veteran Michael Russell appointed Scottish Brexit minister', *Guardian*, 25 August 2016, <https://www.theguardian.com/uk-news/2016/aug/25/snp-veteran-michael-russell-appointed-scottish-brexit-minister> (accessed 6 Jan. 2017).

²⁰ Zalan, E. and Maurice, E. (2016), 'Scotland wants to retain special terms with the EU', *Euobserver*, 22 November 2016, <https://euobserver.com/political/135985> (accessed 6 Jan. 2017).

after Brexit.²¹ However, wary of creating a precedent for secessionists in other member states, EU leaders were keen to emphasize during the 2014 Scottish referendum that there would be no preferential treatment in the EU accession process for an independent Scotland. The extent to which Scotland's recent charm offensive has changed this attitude will only become clear when Brexit negotiations with the EU open.

Policy differentiation between the governments of the UK and the devolved administrations could include the question of Scotland's external relations. Ideas already mooted have included 'regional' work visas that would allow for different labour-market arrangements in different parts of the UK.²²

Although the first minister has committed to 'exploring all options' for Scotland's future relationship with the EU, it appears increasingly unlikely that the prime minister will allow such an arrangement. Furthermore, proposals such as the 'reverse Greenland' scenario, whereby Scotland has a closer relationship with the EU than the rest of the UK, may also meet challenges from within the EU.²³ Notably, this may prove to be highly problematic for the Spanish government, which is concerned about inspiring domestic secessionist movements by granting a distinctive status to Scotland.

Wales

Following the referendum, First Minister Carwyn Jones outlined six priorities for Wales. These were job protection, ensuring Wales's participation in decision-making regarding the timing and terms of withdrawal from the EU, continued access to the single market, continued receipt of funding from the EU's Common Agricultural Policy and Structural Funds, a major revision of the UK Treasury's 'Barnett formula' (which determines the level of the block grant received by Wales from the UK government), and a reformed relationship between the devolved administrations and the UK government.²⁴

The first minister has argued that the devolved administrations must not be sidelined in the process of withdrawing from the EU. Despite a majority of its population voting to leave the EU, Wales has distinct interests to protect.²⁵

Fiscal issues are of particular concern. Wales is a net beneficiary of EU membership through the Common Agricultural Policy and Structural Funds. The value of this was estimated to be £245 million in 2014.²⁶ Securing funding for agriculture and regional development policy after Brexit is a crucial priority for the Welsh government. Given the differential public funding in per capita terms

²¹ Macdonald, A. (2016), 'Scots push case for special Brexit deal in Brussels', Reuters, 22 November 2016, <http://uk.reuters.com/article/uk-britain-eu-scotland-idUKKBN13G281> (accessed 6 Jan. 2017).

²² Warren, H. (2016), 'Regional visas proposed for post-Brexit skills gap', *Financial Times*, 20 October 2016, <https://www.ft.com/content/7d42826e-960d-11e6-a1dc-bdf38d484582> (accessed 6 Jan. 2017).

²³ Macdonald, A. and O'Leary, E. (2016), "'Reverse Greenland', anyone? Scots eye post-Brexit EU options', Reuters, 3 July 2016, <http://uk.reuters.com/article/uk-britain-eu-scotland-greenland-idUKKCN0ZJoA1> (accessed 6 Jan. 2017).

²⁴ Welsh Government (2016), 'Statement by the First Minister: EU Referendum result', 24 June 2016, <http://gov.wales/newsroom/firstminister/2016/160624-eu-referendum/?lang=en> (accessed 6 Jan. 2017).

²⁵ BBC News (2016), 'Carwyn Jones: Critical devolved nations agree on Brexit deal', 23 October 2016, <http://www.bbc.co.uk/news/uk-wales-politics-37744584> (accessed 6 Jan. 2017).

²⁶ Wales Governance Centre (2016), *Wales and the EU Referendum: Estimating Wales' Net Contribution to the European Union*, Cardiff: Cardiff University Wales Governance Centre, <http://sites.cardiff.ac.uk/wgc/files/2016/05/Estimating-Wales%E2%80%99-Net-Contribution-to-the-European-Union.pdf> (accessed 6 Jan. 2017).

between England and Wales, allocation of future UK funding for agriculture through the Barnett formula would leave Wales significantly out of pocket.²⁷

In January, First Minister of Wales Carwyn Jones and Plaid Cymru's leader Leanne Wood published a white paper demanding full single market access for Wales and calling for freedom of movement rules to be linked to whether migrants have a job.²⁸ Furthermore, the Welsh government is also determined to ensure that the UK's trade relations after Brexit represent the interests of the whole of the country. Any reduction in food standards regulation or any incentives to bypass Welsh ports will have a substantial impact on Wales's economy. Therefore, the Welsh government will seek to have a say in negotiating these matters.

Northern Ireland

The Northern Ireland Executive was divided over the referendum and it remains so. While the Democratic Unionist Party of First Minister Arlene Foster campaigned for Brexit, Sinn Féin and then deputy first minister Martin McGuinness campaigned to remain. After the referendum, the first minister and deputy first minister wrote a joint letter to Theresa May to outline their key concerns about how Brexit may negatively impact Northern Ireland.²⁹

The most important concern is over the status of the border with the Republic of Ireland. Many commentators have drawn attention to the importance of the UK and the Republic of Ireland both being EU members for the peace process. The implementation of the Good Friday Agreement relies heavily on the 'soft' border that is facilitated by the single market and customs union. Yet, the prime minister has made clear that the United Kingdom will not remain in the single market, and will need to strike a new deal regarding the customs union. The then deputy first minister Martin McGuinness had previously suggested to the UK secretary of state for exiting the European Union that Northern Ireland would likely be 'collateral damage' if the UK were to leave these institutions. Avoiding the hardening of the border is of critical importance and will be dependent to some extent on the UK's settlement with the EU on the Common Travel Area between itself and the Republic of Ireland.

Other priorities for Northern Ireland's executive include 'retain[ing] as far as possible the ease with which we currently trade with EU member states and, also importantly retain[ing] access to labour,'³⁰ securing energy supply, protecting the agri-foods sector and maintaining EU funding for farming and infrastructure.

However, the unstable political situation in Northern Ireland has already posed problems for its prospects in the Brexit negotiations due to a lack of agreement over what the priorities should be in

²⁷ Springford, J., Tilford, S. and Whyte, P. (2014), *The economic consequences of leaving the EU*, London: Centre for European Reform, https://www.cer.org.uk/sites/default/files/smc_final_report_june2014.pdf (accessed 6 Jan 2016).

²⁸ Welsh Government (2017), 'Securing Wales' Future: Transition from the European Union to a new relationship with Europe', https://beta.gov.wales/sites/default/files/2017-01/30683%20Securing%20Wales%C2%B9%20Future_ENGLISH_WEB.pdf (accessed 6 Jan 2017).

²⁹ Northern Ireland Executive Office (2016), 'Letter to the Prime Minister, The Rt Hon Theresa May MP', 10 August 2016, <https://www.executiveoffice-ni.gov.uk/publications/letter-prime-minister-rt-hon-theresa-may-mp> (accessed 6 Jan. 2017).

³⁰ Ibid.

addressing the concerns set out in the letter.³¹ With an upcoming election in March 2017, it is unlikely that any agreement between the Northern Irish political parties over the terms of Brexit will be reached in the coming months.

The UK's external affairs after Brexit

The configuration of the UK–EU relationship after Brexit is still to be determined. Whatever form it takes, there will be significant implications for the UK's external relations. For the devolved governments, these will be most profound in international economic policy, and conditional on whether there is a departure from the EU customs union and/or the single market. Since the prime minister said in her 17 January speech that the UK will not be seeking to maintain single market membership, the UK government has a significant challenge ahead to ensure that the demands of the devolved administrations are met.

The Scottish government has identified key economic sectors whose interests it will seek to protect in negotiations, especially over the UK's trade relationship with the EU and beyond. These include financial services, agriculture and fisheries, food and drink production, and higher education.³²

Under current arrangements, the UK's departure from the Common Agricultural Policy and the Common Fisheries Policy will see powers over these matters go to the devolved administrations. But both have an external-relations component, which is a UK responsibility. Coordination issues will arise over how the actions of the devolved governments on agriculture and fisheries relate to the UK's post-Brexit trade policy and its obligations under the World Trade Organization.

The provisions in the 2013 memorandum of understanding between the UK government and the devolved administrations covering international and European policymaking in devolved areas will operate in a new environment in the run-up to and after Brexit.³³ They need to be revised to allow for the new post-Brexit circumstances.

Although it is highly unlikely that Brexit will change the fact that foreign-affairs powers are reserved for the UK government, it will have implications for the external affairs of each devolved government.

The primary implications for the UK's external affairs derive from the reordering of its relationship with the EU and its member states as well as from any resultant changes in relationships with third countries and international organizations.³⁴ A distinction can be drawn between the consequences that derive directly from Brexit and those that might be its unanticipated and perhaps unintended impacts.

³¹ Walsh, J. and Lyons, N. (2016), 'Crucial Brexit talks delayed by infighting', *The Times*, 27 October 2016, <http://www.thetimes.co.uk/article/crucial-brexit-talks-delayed-by-infighting-jwbf2xnv1> (accessed 6 Jan. 2017).

³² Paun, A. and Miller, G. (2016), 'Four-nation Brexit'.

³³ UK Cabinet Office (2013), 'Devolution: Memorandum of Understanding and Supplementary Agreement', para 18, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/316157/MoU_between_the_UK_and_the_Devolved_Administrations.pdf, (accessed 6 Jan. 2017).

³⁴ Potter, M. (2016), *Non-EU UK Treaty Obligations: An Overview*, Belfast: Northern Ireland Assembly Research and Information Service, 30 September 2016, http://www.niassembly.gov.uk/globalassets/documents/raise/publications/2016-2021/2016/executive_office/6216.pdf (accessed 6 Jan. 2017).

The three devolved administrations have sought to build an international profile distinctive from that of the UK.³⁵ There is already a Scottish Office, a Welsh Government EU Office, a National Assembly for Wales EU Office and an Office of the Northern Ireland Executive in Brussels.

Beginning with the Scottish National Party's Alex Salmond's tenure as first minister, Scotland's government has actively attempted to build a distinctive international profile. It has even taken some steps towards developing its own profile in international development through the Scottish Malawi Development Programme.³⁶

First Minister Nicola Sturgeon has been particularly active since the referendum in visiting European capitals to stress Scotland's commitment to remaining in the EU, and to draw a distinction between its position and the policy pursued by the UK government. As noted earlier, the Scottish government has also appointed a Brexit minister, a move that has not been replicated by the other devolved governments.

Wales has several officials representing the government and assembly in Brussels. Its National Assembly also created an External Affairs and Additional Legislation Committee in June 2016 to examine the implications for Wales of Brexit, the UK's future relationship with the EU, and the intra-UK post-Brexit arrangements for policy, finances and legislation.

Northern Ireland's external relations are enmeshed with the peace process and a predominant concern is the relationship with the Republic of Ireland. Although the executive and assembly have representatives in Brussels, a distinctive profile in external affairs is also complicated by the profound differences between Northern Ireland's political parties, which provide the ministers in the executive and hold opposing views on the future relationship to be sought with the UK.

The devolved governments will certainly seek to maintain their existing network of representative offices in Brussels and beyond Brexit. Scotland already has an established network of offices in third countries, which it began building after the creation of the first Scottish government. The likes of Germany's Länder, Flanders and Catalonia also provide models for the representation of European subnational interests in third countries that could be emulated by the devolved administrations. There is also a high degree of variation in the relationships of the UK's overseas territories with the EU, which could serve as examples.³⁷

Representation to the EU is where the most immediate changes will take place. The importance of representation in Brussels may increase because of Scotland, Wales and Northern Ireland losing a voice in EU institutions. With Brexit, they will no longer be represented on the EU's Committee of the Regions and the European Economic and Social Committee as well as in the European Parliament.

³⁵ Minto, R., Hunt, J., Keating, M. and McGowan, L. (2016), 'A Changing UK in a Changing Europe: The UK State between European Union and Devolution', *Political Quarterly*, 87(2), doi: 10.1111/1467-923X.12260 (accessed 6 Jan. 2017).

³⁶ Anyimadu, A. (2011), *Scotland and Wales in Africa: Opportunities for a Coordinated UK Approach to Development*, Research Paper, London: Royal Institute of International Affairs, <https://www.chathamhouse.org/sites/files/chathamhouse/public/Research/Africa/0311anyimadu.pdf> (accessed 6 Jan. 2017).

³⁷ UK Foreign and Commonwealth Office (2012), *The Overseas Territories: Security, Success and Sustainability*, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/14929/ot-wp-0612.pdf (accessed 6 Jan. 2017).

The devolved administrations will want to consider how to keep seeking influence within these and other EU bodies such as the European Commission. The expansion of their representative offices in Brussels will become more attractive as a way of ensuring that their interests are adequately conveyed to the EU after Brexit.

From the EU's perspective, its own representation in Scotland, Wales and Northern Ireland (alongside that in London) through European Commission Offices will need to be revised. Following Brexit, these offices will give way to an EU delegation (embassy) to the UK run by the European External Action Service, which will need to make a determination as to whether it will seek offices in Belfast, Cardiff and Edinburgh as well as in London.

How the devolved governments will seek to develop a more extensive 'para-diplomatic'³⁸ strategy to pursue their distinctive interests and enhance their external affairs remains to be seen.

New external affairs for the UK after Brexit

The UK is being challenged in many respects by the result of the referendum on leaving the EU. The devolution of political power that has taken place within the UK since it joined the European Economic Community in 1973 introduces an intergovernmental component within the UK to negotiating its departure. The challenge of incorporating the devolved governments into the negotiations with the EU, in which the UK government does not wish to give them a formal role or veto, is formidable. The role of Scotland is particularly challenging, with the Scottish government threatening to call another independence referendum if it disagrees with the settlement reached with the EU.

The situation faced by Northern Ireland raises an additional set of challenges. The border regime and economic interdependence with the Republic of Ireland are tangible products of the peace process that are facilitated by EU membership. An agreement between the UK and EU that hurts the terms of trade, investment or mobility on the island of Ireland would be unsettling for Northern Ireland and for Anglo-Irish relations.

Even without a second Scottish referendum challenging the integrity of the UK or an alteration to the situation in Northern Ireland, Brexit will impact the devolution settlement. There will be a revision of devolution as areas of policy that are currently EU competences but also fall within areas that have been granted to the devolved administrations and are due to be repatriated to the UK. Although the UK government is aware of this issue, deciding what the 'right' competencies are will be a complex and contentious process. As such, Brexit may thus have the unintended consequence of accelerating devolution by giving further powers and responsibilities to the devolved governments and legislatures.

This extra shot of devolution will have implications for the external affairs of the UK. Developing external relations between the UK and third countries after Brexit will have to involve the devolved

³⁸ Keating, M. (2000), *Paradiplomacy and Regional Networking*, Ottawa: Forum of Federations, <http://www.forumfed.org/libdocs/ForRelCU01/924-FRCU0105-eu-keating.pdf> (accessed 6 Jan. 2017).

governments in areas for which they will have expanded competences. This presents as much of a challenge for Scotland, Wales and Northern Ireland as it does for the UK.

One characteristic of the post-Brexit devolved UK will be that its constituent governments may seek to enhance their respective capacity to pursue issues and distinctive interests in Brussels and beyond. Consequently the landscape of the UK's external affairs looks set to be more variegated and complicated after it exits the EU.

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