

Brexit and Ireland, north and south

Boris Johnson's Internal Market Bill created a political storm when it was unveiled in early September. Five former UK prime ministers criticised the bill, amid fears it would break international law and do untold damage to the UK's global reputation. The sight of a British government tearing up a treaty it had signed just nine months earlier has appalled many politicians and lawyers. But as this furore continues, what cannot be ignored is how the Johnson government's plans also risk doing fresh damage to British-Irish relations.

Ever since the Belfast/Good Friday agreement of 1998, the UK-Ireland relationship has been based both on a common understanding of the rule of law and on the necessity of ensuring continued peace and reconciliation across Great Britain and the island of Ireland. The relationship has been somewhat taken for granted in recent years. And now, with the [Internal Market Bill](#), we have one more example of how the Brexit process could damage much of what was achieved in the Good Friday accords.

At the 2016 Brexit referendum, the importance of the UK-Ireland relationship and of the peace process was either ignored or forgotten. The Irish question did not feature in the referendum campaign, making just the odd cameo appearance. [John Major and Tony Blair](#) both famously warned that Brexit would threaten the Union and could create a hard border in Ireland – but such interventions were rare and, in any case, went unheeded by voters.

“It wasn't just an afterthought for voters – it was an afterthought for people involved in the campaign. It definitely was not a first-tier issue,” said [Matthew O'Toole](#), now an SDLP MLA in the Northern Ireland Assembly but then a Europe spokesperson in Downing Street during the referendum campaign.

One month before the 2016 vote, the Constitution Unit at UCL ran an event entitled: '[Brexit: Its Consequences for Devolution and the Union](#)' at which

I spoke. Most of the questions in the Q&A were directed towards me as the lone panellist from Northern Ireland. At the time, it felt as if the Irish question was somehow both central and marginal. It was central to those of us who navigated the [200 or so border crossings](#) between north and south as we went about our everyday business; marginal to those who saw Northern Ireland as a place apart.

After Britain voted to leave the EU, all that changed. The Irish question quickly came to prominence as the potential implications of Brexit for the island of Ireland became apparent. The possible consequences were the re-creation of a hard border, a return to violence, the breakup of the United Kingdom and the establishment of a united Ireland. The significance of all this meant that the Irish dimension became the most high-profile part of the negotiations between the UK and the EU in terms of both the Withdrawal Agreement and the future trading relationship. And it has, of course, proved to be the most fraught and intractable issue of all.

Theresa May's government tried to address these concerns through her '[backstop](#)' proposals in November 2018, which effectively guaranteed, in the event of no EU-UK trade agreement, that the UK would remain part of a single EU-UK customs union; and that Northern Ireland would remain aligned to the EU single market to ensure that the border between the north and south of Ireland would remain unchanged. However, objections to these proposals from within the Conservative party ensured Mrs May could not get the Withdrawal Bill through the Commons – and she was forced to resign in June of 2019.

The backstop proposals were replaced by the new Johnson government last autumn with a revised [Northern Ireland protocol](#). This Protocol sets out the various provisions that will apply in Northern Ireland once the UK leaves the EU in December 2020: it says that Northern Ireland will remain part of the UK customs territory but must retain close links with the EU customs union and single market, particularly in terms of EU regulations on manufactured and agricultural goods. This will prevent a hard border on the island of Ireland; but it will also introduce a 'border' of sorts between Northern Ireland and the rest of the UK since goods leaving GB for Northern Ireland will have to be processed in some way for the first time ever.

However, the Johnson government is clearly unhappy with what it had signed up to. Its dramatic decision in September 2020 to revisit the protocol – potentially breaking international law – has thrown fresh doubt on how the next and most critical stage of Brexit will proceed. Will there be an agreed trade deal which allows Brexit to be completed in 2021 in good order? Or are the British on the brink of an acrimonious no-deal departure from the EU which could wreak havoc?

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We cannot yet say. But even if Britain enjoys an orderly end to the transition period in December, Brexit will have implications for the [totality of the relationship](#) covering Britain and Ireland. Here I will review how it will affect no fewer than five strands of that relationship. These are the relationship between the unionist and nationalist parties within Northern Ireland; the relationship between the London government and Stormont; the relationship between Northern Ireland and the Republic; the relationship between London and Dublin; and the relationship between Northern Ireland and Brussels.

The political relationships within Northern Ireland

Brexit threw into question the new balance created by the 1998 Belfast/Good Friday Agreement between Northern Ireland's ideological traditions, provoking anxiety within both unionism and nationalism for different reasons.

Initially, it led to a unionist fear of exclusion from the post-Brexit UK and a nationalist fear of exclusion from the European vocation of the Irish state. That has been amplified most recently for the Democratic Unionist Party in respect of the Northern Ireland Protocol. That is because the Protocol effectively keeps Northern Ireland within the EU single market for goods and treats it differently from the rest of the UK; and it creates a border in the Irish sea as opposed to a hard border on the island of Ireland itself.

For both traditions, there was the anxiety of being detached from affinities of national belonging. Of late, the unionist anxiety has been heightened

significantly as a consequence of the UK's Withdrawal Agreement and their expectation of constitutional security has correspondingly ebbed. The anxiety of nationalists about disadvantage has receded significantly following the shock of the EU referendum vote and their hopes for Irish unity have increased as a result of the Withdrawal Agreement. If ideological conviction involves faith in the direction of political travel, then the Brexit effect has been to boost nationalist self-confidence.

However, the situation will evolve. The Withdrawal Agreement asks the Northern Ireland Assembly periodically to give 'democratic consent' to the continuation or otherwise of the Protocols. This will be challenging and could further destabilise the fragility of the relationship between unionism and nationalism in the governance of Northern Ireland. Indeed, the Assembly will be asked to consent to the customs and single market provisions four years after the transition period ends and every four or eight years after that, depending on what the previous vote had concluded.

In the longer term, Unionist anxieties about exclusion from the UK after Brexit may mean that they will vote against the Protocols every time. But if they do so, they will bring the possibility of a hard border on the island of Ireland back on to the table when the whole point of the Protocol was to take this Brexit 'problem' away. Nationalist anxieties may mean that they will promote the vote as a proxy border poll vote for Irish reunification. It is entirely possible that for both unionists and nationalists, the 'democratic consent' requirement in relation to the Protocols will, as one former Ulster Unionist Party leader suggests, 'condemn us to endless Brexit arguments and further toxify our politics'.

London, Stormont and UK intergovernmental relations

If the relationships within Northern Ireland have been compromised by the consequences of Brexit, the same can also be said in respect of relations between the London government and Scotland, Wales and Northern Ireland.

To be clear, Northern Ireland 'missed' many of the Brexit arguments between the London government and Scotland and Wales in the post-referendum period because of the collapse of the Northern Ireland institutions in January 2017. In January 2020, Sinn Féin and the DUP re-entered devolved

government in Northern Ireland for the first time in three years. But [Brexit has still exposed](#) huge tensions between the London government and all the devolved administrations.

The nub of the problem is that “taking back control” – the Brexiters’ winning slogan in 2016 – has been interpreted in different ways in different parts of the UK, not least when it comes to the specific policy areas that should return from the EU to the devolved administrations rather than to Westminster. This has led to [serious disputes](#) at the Joint Ministerial Committees (JMC), the body that brings together the London government with all three ‘devolveds.’

The whole point of intergovernmental relations is to resolve disputes between the centre and the devolved and to facilitate joint decision making in those areas of joint or overlapping competencies. Yet this has been referred to as ‘[the missing part of devolution](#)’. Academics have long [argued for greater formality](#) and the Public Administration and Constitutional Affairs Committee at Westminster has concluded that ‘[the present machinery for developing inter governmental relations is flimsy](#)’ and in need of reform.

Some draft principles on intergovernmental relations were published in July 2019 and Theresa May then commissioned Lord Dunlop to undertake an [independent review](#) of the structures of the UK intergovernmental functions and relations in July, but little has happened since. A leak of the draft report, which has allegedly been with the PM for more than eight months, has made more than 40 recommendations, and indicates thinking around moving elements of Whitehall functions to the devolved nations and the appointment of a Minister for the Union, among other things.

But regardless of recommendations about structures, systems and processes, what is needed most is the creation of a new relationship between the centre and the devolveds. The Withdrawal Agreement Act might have been passed at Westminster, but it was resoundingly rejected by Scotland, Wales and Northern Ireland – the first time that all three legislatures have refused to give their consent. That consent was important because the [Sewel Convention](#) – drawn up in 1999 – dictates that the UK Parliament will not normally legislate on matters of devolved responsibility without it. And yet they did. Brexit has illustrated that the Sewel Convention is broken and that relationships are fractured.

The UK internal market legislation now adds a further complication. Scotland has rejected the plans and indicated its refusal to cooperate indicating that it sees the Bill as a grab of powers that are not reserved and therefore should come to Scotland. Wales has supported the principle of common rules for the internal market but has argued that the rules should be agreed by all and without a Westminster veto. Northern Ireland's Protocol complicates the internal market rules since Northern Ireland will have to comply with some EU rules and regulations while the rest of the UK will not. Consequently, UK wide legislation on an internal market, if passed, won't be quite 'UK wide', after all.

This is where it gets complicated. If the UK-wide legislation does not maintain equivalent standards with the EU (as will need to be the case in Northern Ireland), then as Katy Hayward says, in a worst-case scenario [‘we face the prospect of certain GB goods not being able to go on the market in NI’](#). Of course, this would only happen **if** the UK legislative framework implemented did not maintain equivalent standards with the EU – something which would be highly unlikely at least initially but not beyond the realms of possibility.

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With no sign of the publication of Lord Dunlop's review and with the internal market legislation now under consideration in Parliament, the desire to create a new relationship between the centre and the devolved is not apparent and we can expect more tension here as a consequence.

Northern Ireland and the Republic

The North-South Ministerial Council between Northern Ireland and Ireland met in July 2020 for the first time since 2016, prior to the collapse of the Northern institutions. It was one of the key institutions established as part of the Belfast/Good Friday Agreement to ensure cross border cooperation on matters of mutual interest and concern.

While this meeting was regarded as warm, it was followed by a cooling of relations only a week later when the Taoiseach, Micheál Martin, suggested that

the Irish government had set up a 'Shared Island Unit' in the Taoiseach's office in preparation for the possibility that [Britain might get 'turned off' Northern Ireland](#). "They may just say 'we're not as committed to it as we were in the past...'" he said. "That may not happen for quite some time, but we have to be prepared for all sorts of eventualities."

Following Britain's full departure from the EU in January 2021, several factors will affect the North-South relationship. First, there are the possible implications of the proposed centenary events next year in celebration – or commemoration – of the creation of the state of Northern Ireland and the partition of the island in 1921. These events, set against the backdrop of a contested political history and narrative, will be challenging to put it mildly. For some, the [anniversaries](#) are a celebration and for others they are an opportunity to reflect on the failures of the state.

Second, there is the possibility that the UK's exit from the EU may not be the success that the Conservative government in London is hoping for – especially if there is a no-deal outcome. In those circumstances, debate within Northern Ireland over whether is right to be tied to the Johnson government's Brexit project will loom large.

Third – and most significantly – there remain the ongoing instability and fragility of the power-sharing arrangements in Northern Ireland. Inevitably, in the period after 2021, there will be further calls for a unification referendum. Such calls have grown considerably since the referendum result and with this has come a greater interest in matters such as how any future referendum on the constitutional status of Northern Ireland should be [best designed and conducted](#). Politicians and academics are drawing on lessons learned from both the Brexit referendum and the Scottish independence referendum. They are reflecting not only on the political, legal and constitutional questions but on the wide range of social, economic, cultural, financial and environmental areas of policy divergence and convergence.

Unionism has begun to articulate some of its [concerns and fears](#). Boris Johnson has said that unionists should have [nothing to fear](#) from the 'Shared Island Unit' and to engage with it in a confident way – a sentiment not widely shared in that community.

London and Dublin

Concerns about North-South relations are mirrored in an East-West context as well. [Cracks began to appear](#) in the London-Dublin relationship immediately after the Brexit referendum and strong rhetoric was heard on both sides. But relations improved over time, evidenced not least by the May 2019 signing of a memorandum of understanding between the UK and Ireland to formalise the 1948 Common Travel Area Arrangement which allows for the free movement of British and Irish citizens across both jurisdictions to live, to study, to work, and to vote unimpeded. British citizens resident in Ireland will be free to vote in the Republic's next general election – a reciprocal privilege afforded to Irish citizens in the UK.

On the day the UK formally left the EU, 31 January 2020, the Tánaiste Simon Coveney wrote that the [special bond](#) between Ireland and the UK would not be undermined by Brexit. A recent visit by Boris Johnson to Northern Ireland included his first meeting with Micheál Martin in their respective capacities as Taoiseach and Prime Minister. They agreed on the need to create a [new framework](#) in British-Irish relationships after Brexit, to intensify partnership arrangements and to put a series of bilateral deals between the UK and Ireland in place.

In practical terms, it is not yet clear how that would look. For [Etain Tannam](#), a specialist in British-Irish relations, firm and formal institutional level cooperation and engagement is critical, especially as it pertains to any discussions about a reunification referendum. Although this lies within the statutory power of the Secretary of State for Northern Ireland alone, it could not be triggered without the involvement of the Irish government given the implications.

More broadly, we may begin to see better use of the institutions originally put in place in [Strand Three of the Belfast/Good Friday Agreement](#). Strand Three was designed explicitly to encourage greater co-operation and the development of good relations between Britain and Ireland. While not used to their fullest effect over the last 20 years, they provide an established infrastructure through the British Irish Council and the British Irish Intergovernmental Conference (BIC).

[Recommendations](#) already made that would give these institutions some real

teeth include that the BIC should also have the Protocol (specifically the preamble priorities) set as a standing item on the agenda of the plenary meetings; that it could have a dedicated task group focused on the implementation of the Protocol (12 dedicated task groups already exist in other areas) and that the Council's reach could be extended to include areas that were previously considered at EU level. In a sense, this would suggest that there is no need for a 'new' framework for British-Irish relations. Rather, putting the existing frameworks to work would be a better solution.

Northern Ireland and the EU

A proposal to set up an EU Office in Belfast after Brexit was raised by the European Commission earlier this year to ensure that the Northern Ireland Protocol would be implemented as agreed. It was supported by four of the five main political parties in Northern Ireland, but the proposal was rejected by the British government on the grounds that it would be '[divisive in political and community terms](#)' despite committing to this in writing to the EU Commission in 2019. By this summer, the EU said that it was no longer seeking such an office but instead '[sufficient and proportional oversight](#)'. How that will manifest itself is still to be determined.

This diplomatic incident reveals much about the nature of the relationships that have developed between Northern Ireland and the EU since the Brexit referendum. In the absence of a functioning assembly and executive in Northern Ireland for much of the last four years, it was left to civil society, to businesses, to community and voluntary organisations to make their voices heard in Brussels directly. As a consequence, it has been suggested that many strong and positive relationships have been forged and that, after Brexit, there will remain the potential for direct influence on the EU by Northern Ireland including through the already established Northern Ireland Executive Office in Brussels.

That said, it will be difficult for the office to operate as a sub state representative if relations between the UK and the EU are poor. One [key recommendation for NI to EU level](#) relations is that 'priority should be given to equipping and preparing the Office of the NI Executive in Brussels for a new and, if anything, more important role post-Brexit'.

This is important not least because relations between Northern Ireland and the EU will also be conditioned by the fact that more than 700,000 people born in Northern Ireland hold Irish passports. It is clear that the rights for Irish citizens (as EU citizens) resident in Northern Ireland will be protected after Brexit, but the Protocol itself on Ireland/Northern Ireland does not articulate exactly [how these specific rights will be protected](#). In a landmark case, the UK Home Office has recently agreed that that people from Northern Ireland will be treated as EU citizens within the UK for immigration purposes.

In the event of a united Ireland, the EU has already provided clarification on the question of EU membership: the whole territory of a united Ireland would be part of the EU. It is fair to say that preventing the opening of an EU office in Belfast cannot undo the intricate and complicated relationship that Northern Ireland will continue to have with the EU.

Conclusion

Brexit will have huge implications for trade between the UK and EU. But it will also have huge implications for political, diplomatic and cultural relationships that have been carefully and skilfully put together over decades. Nowhere is this more apparent than over Ireland. Any potential changes to those relationships will inevitably cause anxieties for both unionists and nationalists in the Northern Ireland – potentially damaging the peace process.

Is that something to fear? Perhaps, in the immediate term we will see the construction of a new ‘constructive ambiguity’, to coin a well-worn phrase used often in the aftermath of the Belfast/Good Friday Agreement. Such constructive ambiguity might develop around the idea of Northern Ireland enjoying ‘the best of both worlds’: a Northern Ireland benefiting economically, politically and culturally from its ‘special status’ within both the EU’s single market and the UK’s customs union.

Even if this is Northern Ireland’s immediate destiny, we cannot ignore how Brexit is triggering deeper political changes. True, unionism and nationalism remain the dominant ideological traditions. But a growing proportion of the Northern Ireland electorate are choosing not to self-identify in this way. It is this group – a new and growing constituency of swing voters – who may well determine the future of Northern Ireland after Brexit.

They must decide whether to maintain the Union with Great Britain and make the most of the constructive ambiguity of special UK/EU status. Or whether Brexit finally heralds the moment to pursue Irish unity.

By **Cathy Gormley-Heenan**, Professor of Politics and Deputy Vice-Chancellor (Research and External Affairs) at Ulster University.

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