

## Northern Ireland

### Background

Common membership of the EU has been a background assumption of the peace process in Northern Ireland. While it is correct to note that special arrangements such as the Common Travel Area (CTA) pre-date EU membership, Brexit creates new and distinctive challenges for Northern Ireland/Ireland. For the first time, the relationship between the UK and Ireland will diverge on EU membership. Northern Ireland is the only part of the UK (bar Gibraltar) with a land border with an EU member state, giving rise to a widely recognised set of unique circumstances. The intra-Ireland border will become an external border of the EU.

### What is the current situation?

Brexit has contributed to the current instability in Northern Ireland. To understand this, the political context must be noted. Northern Ireland voted to remain in the EU and the two major political parties are divided on this issue. The Democratic Unionist Party (DUP) supported 'Leave' and Sinn Féin endorsed 'Remain'. Since the Brexit vote, the Northern Ireland Executive has collapsed and negotiations are ongoing to address this. The Westminster election in June 2017 confirmed the DUP and Sinn Féin as the two largest parties. It is notable that the nationalist Social Democratic and Labour Party (SDLP) lost its three seats at this election and thus the position of Irish nationalism/republicanism in Northern Ireland is now one of abstentionism from the Westminster Parliament. The DUP has reached a 'confidence and supply' agreement with the Conservative government. The Northern Ireland Assembly election of March 2017 saw the gap close between the two major Northern Ireland parties to just one seat, and unionist parties lost their overall majority (in terms of seat share) for the first time.

The situation of Northern Ireland and Ireland has attracted considerable attention and a measure of commonality. As is evident from the European Council negotiating guidelines and the European Commission negotiating directives, the situation is regarded as a priority issue for the EU (Ireland is part of the EU27 in these discussions). The Irish and British governments, in their statements on priorities, have also consistently underlined the fundamental significance arising from the special position of Northern Ireland and Ireland. Before the Northern Ireland Executive fell apart, the former first and deputy first ministers did agree a joint letter.

### What has the British government indicated it wants?

The British government has produced a position paper on Northern Ireland and Ireland. In this work, the government makes proposals across four broad areas: the centrality of the Belfast/Good Friday Agreement (GFA); the protection of the CTA; the importance of avoiding a hard border; and the need for continuing North-South and East-West co-operation. Several suggestions are contained in this paper about how to ensure that the unique relationships that exist are respected and addressed.

At a relatively high level of abstraction there appears to be a measure of agreement in the EU, Ireland and the UK about generally desired outcomes. For example, all aim to avoid a hard border, all remain supportive of the GFA and all continue to underline the role of the CTA. However, things are more complicated when it comes to the detail, and particularly how to reconcile the desires of the British government regarding the type of Brexit it wants (see further the paper on Article 50), with the expressed aims around Northern Ireland/Ireland. This is evident in the responses to suggestions made by the British government, for example, on future customs arrangements, which have also raised sequencing problems (in terms of the EU's negotiating timetable).

## What are the possible outcomes?

The possible overall outcomes are well known and much discussed. There might be a failure to reach agreement, with the UK crashing out of the EU on the harshest terms. Alternatively, a 'softer' form of Brexit may emerge that incorporates transitional arrangements, smoothing a pathway towards eventual withdrawal on reasonable terms (including a close ongoing association with the EU).

## What are the potential consequences of these outcomes?

It would be helpful if all existing negotiating parties remain mindful of the principles of the GFA in their own approaches to these discussions. There is a real risk that the Northern Ireland peace process becomes collateral damage in this high-level dialogue. Unless things deteriorate quite dramatically, it is possible that there will be formal recognition of the GFA, even to the point of explicit inclusion in any withdrawal agreement. Taking this step will raise additional questions about the implementation and enforcement of that agreement. One of the points of ongoing contention in Northern Ireland is the suggestion that the GFA is not being respected now. This is particularly evident in, for example, comments from Sinn Féin and the SDLP around issues of equality and respect for Irish identity. In addition, the notion of equality of treatment and parity of esteem between British and Irish citizens will raise difficult questions. For example, the impact that this might have on British citizens in Northern Ireland and their rights.

As in the past, it is also possible and likely that the EU will be willing to accommodate the CTA, in recognition of the special relationship between the UK and Ireland. There are, however, questions over how the CTA functions now and in the future, that will require much more detailed thought, including in relation to human rights and equality. A relatively hard Brexit (that takes the UK out of the single market and the customs union) will pose questions about the expressed commitment to avoid a hard border. This is a point of genuine tension. The British government position at present seems likely to lead eventually to the forming of a border on the island of Ireland, that no one appears to want.

## Further reading

- [Colin Harvey and Daniel Holder, The Great Repeal Bill and the Good Friday Agreement – Cementing a Stalemate or Constitutional Collision Course? UK Const L Blog \(6th Jun 2017\)](#)
- [Colin Harvey, Northern Ireland's Transition and the Constitution of the UK, UK Const L Blog \(12th Dec 2016\)](#)
- [Colin Harvey, Brexit, Borders and Human Rights](#)
- [HM Government, Northern Ireland and Ireland: Position Paper](#)
- [Seanad Committee on the Withdrawal of the UK from the EU, Brexit: Implications and Potential Solutions](#)

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