

Britannia Waives the Rules?

By Dr Steven McCabe, Associate Professor, Institute of Design and Economic Acceleration (IDEA) and Senior Fellow, Centre for Brexit Studies, Birmingham City University

The title of this blog is derived from a line used by then Northern Irish MEP Martina Anderson in the European Parliament last January. Whether it's fair is open to question. Nonetheless, for many, it sums up the apparent contradiction, [first reported on Sunday evening by the FT](#) that the government intends to finesse parts of its Brexit obligations contained within the withdrawal agreement.

In the report, respected ex-*Telegraph* Brexit commentator Peter Foster together with Sebastian Payne and Jim Brunnsden, explain that the Internal Market Bill, due to be published today (Wednesday), “are expected to “eliminate the legal force of parts of the withdrawal agreement” in areas including state aid and Northern Ireland customs, according to three people familiar with the plans.”

Some, notably, Minister of State for Agriculture, Fisheries and Food, George Eustice, stress that what's intended is nothing particularly significant and simply a tidying up exercise. 10 Downing Street emphasise that any changes to the Northern Ireland protocol will be “limited and reasonable” clarifications in order to “remove any ambiguity” should they not be resolved by the end of the year if there is no-deal.

That this country's obligations on subsidies from next January onwards should become a significant point of contention might initially seem surprising. That is, until one realises, as the government appear to have done recently, that any ability to apply subsidies will be constrained by the terms of the Withdrawal Agreement if they benefit firms either trading in or having subsidiaries in Northern Ireland.

For those not entirely familiar with the intricacies of Northern Ireland, I'd thoroughly recommend the book co-edited this time last year by myself, *Bordering On Confusion* (details below). It sets out the background and context that existed then. Crucially, the 'Good Friday Agreement' or Belfast Agreement, signed on 10th April 1998 by all

political parties – apart from the Democratic Unionists (DUP) then led by Ian Paisley – is the definitive step to ending the violence that had blighted life in the six counties of Ulster (and occasionally beyond), since the late 1960s.

Within the GFA was an explicit recognition that there could be no return to a hard border' between NI and the Republic of Ireland.

Since the EU referendum on 23rd June 2016, Northern Ireland, and how it would be possible for the UK to leave but ensure that the integrity of the GFA, has dominated discussion.

Theresa May, who replaced Cameron who, came to recognise that dealing with this thorny issue needed deft thinking and some carefully crafted language in any subsequent agreement. It was precisely in trying to encompass Northern Ireland that an incredibly complex document emerged back in late 2018 as well as, notably, the inclusion of the notorious 'backstop' to cover arrangements in the event of no-deal.

In effect, the backstop would have achieved a state of affairs not entirely different to that which exists under the terms of the Withdrawal Act that became law in January after Johnson won the December general election promising to "Get Brexit Done" by implementing the "fantastic oven-ready deal".

Unsurprisingly, given the DUP's long held dislike of the EU, anything keeping NI closely aligned to Europe because of proximity to the Republic was bound to be resented. To say the backstop was detested by the DUP risks understatement. Equally, those who supported leave, most especially Conservative members of the ERG (European Research Group), were equally adamant that the backstop represented a form of surrender and capitulation by May.

Ultimately, her inability to garner support amongst her own MPs cost May her premiership. Having resigned last summer, May was replaced by Boris Johnson, a central figure in the leave campaign.

Johnson, someone who previous PM David Cameron distrusted, became Foreign Secretary under May, but resigned as a result of the 'Chequers Agreement' he'd helped to draft.

Sensing his opportunity to achieve the job he'd always coveted Johnson shamelessly campaigned to become Conservative leader and made no secret of his willingness to countenance no-deal as an outcome. However, his ability to achieve resolution of Brexit was stymied by an 'awkward squad' of MPs who believed that, in order to protect the long-term prosperity of this country, a 'soft Brexit' including continuance of membership of customs union was essential.

Expelling MPs recalcitrant in supporting Brexit, proroguing Parliament, illegally as turned out, promising that there would be no checks on goods going from Great Britain to Northern Ireland as well as a range of other acts have been carried out by a PM who, it seems, will say anything that gets him through the latest crisis.

Indeed, having undermined Theresa May and repudiated the withdrawal document so painstakingly achieved by negotiating teams from this country and the EU, Johnson used it with minimal alteration as the basis of the agreement he touted last autumn. Pointedly, and following one-to-one discussions with then Irish *Taoiseach* Leo Varadkar in Cheshire in early October, in order to side-step the border issue, Johnson agreed that Northern Ireland would continue to be aligned to EU rules for goods.

Doing this was something Johnson promised members of the DUP he'd never do whilst attending a meeting with them in Northern Ireland after becoming leader of the Tories.

Which brings us to the here and now.

As former civil servant who now works at the Tony Blair Institute on trade, Anton Spisak, points with admirable precision, that under the current terms of the withdrawal agreement, even in the event of 'no-deal', there'd be problems with applying subsidies in the way that Johnson and his chief political advisor, Dominic Cummings, believe is required to invest in 'winning' industries of the future.

This is what is at the heart of the desire of government to unilaterally amend what is, it should be stressed, an international treaty. They wish to ensure they can use subsidies as they see fit without any reference to the EU if goods produced end up in the Republic of

Ireland. To do otherwise risks being held as acting contrary to international law.

Headlines in Brexit-supporting newspapers claim the Withdrawal Act so fulsomely supported by the PM and given unquestioning support by Conservative MPs required to sign up to supporting it before being allowed to stand in December's general election, is unfair to the UK.

As events on Tuesday demonstrate with alarming clarity, the intention to avoid legal responsibilities contained in the Withdrawal Act, a piece of legislation passed with indecent haste, indicate a government perfectly willing to engage in actions previously considered unthinkable.

Sir Jonathan Jones, permanent secretary to the Government Legal Department, it's widely believed, resigned because of his concerns that some ministers wish to rewrite elements of the Brexit Withdrawal Agreement in the Internal Market Bill.

Many veteran MPs, including Theresa May, question the wisdom of actions that represent a breach of international obligations. Following a question from Sir Bob Neill inviting Northern Ireland secretary Brandon Lewis to assure Parliament that nothing in the Internal Market Bill would breach international legal obligations was given a reply that must rank as one of the most shocking statements made by a minister:

"I would say to my honourable friend that, yes, this does break international law in a very specific and limited way. We're taking the power to disapply the EU law concept of direct effect required by article 4 in certain very tightly defined circumstances."

The opprobrium that's been heaped on Lewis and, by implication, the person to whom he reports, the PM, has been intense. Condemnation has come from within Parliament and by many commentators. Notable among the former are Conservative MPs including Sir Roger Gale and former minister George Freeman.

Sky's Political Editor, Beth Rigby, in a tweet on Tuesday evening was informed by an "One unhappy MP" that rebellion is building up and there are 25-30 MPs in a group opposed to Boris Johnson. Ah he told

her, “This is the Conservative party & Conservatives don’t break the rule of law.”

Sir Bob Neil, who is Chair of the Commons Justice Committee, whose question provoked Lewis’ response, tweeted his view that it was “unacceptable” and that “Adherence to the rule of law is not negotiable.”. Additionally, he added, though “a straight answer to a straight question” and “very troubling”:

“Even as a “contingency”, a willingness to break international law sits ill for a county that has always prided itself on upholding the rule of law.”

It’s a sad state of affairs, though, based on Johnson’s previous roles in journalism and politics, come as no surprise. [Robert Peston writing in The Spectator](#) believes that Johnson’s antics may backfire on him.

What’s most disappointing is that this country’s reputation, one largely still held in high esteem, will inevitably be tarnished. When [former PM Theresa May](#) asks whether this government can be trusted to abide by the legal obligations of agreements it signs in the future, we have just cause to be concerned.

The editorial board of the [Financial Times](#) in ‘The perils of Britain’s Brexit brinkmanship’ makes the very same assertion and argue that it will be much harder hold transgressors of international law such as “Vladimir Putin’s Russia to Xi Jinping’s China” in the future. Describing Johnson’s rhetoric on as “airily Panglossian” the editorial board warn that his intended outcome, “far from being the best of all possible worlds, risks being the worst.”

When subsequent generations come to study the UK’s departure from the EU it’s interesting to speculate on how the central players will be portrayed.

Johnson has long believed he wishes to be judged as similar to Winston Churchill who provided leadership during its ‘darkest hours’ during the second world war.

However, the way Boris Johnson behaves increasingly resembles the actions of Churchill’s nemesis Adolf Hitler who employed vile and

theatrical rhetoric to whip up nationalist fervour against perceived injustices visited upon Germany by signing the Versailles Agreement following its defeat in the first world war.

Boris Johnson should acquaint himself with what uber-Conservative, and former PM, Margaret Thatcher, stated unequivocally in a speech to the Conservative Group for Europe in April 1975:

“Britain does not break treaties. It would be bad for Britain, bad for our relations with the rest of the world and bad for any future treaty on trade we may need to make.”

Dr. Steven McCabe is co-editor of *Brexit and Northern Ireland, Bordering on Confusion* (published by Bite-Sized Books, ISBN-13:978-1694447807), contributor to *Boris, Brexit and the Media* edited by Mair, Clark, Fowler, Snoddy and Tait (published by Abramis Academic Publishing, ISBN-13: 978-1845497644), *The Virus and the Media: How British Journalists Covered the Pandemic*, edited by Mair (published by Bite-Sized Books, ISBN-13: 979-8643725824), *The Wolves in the Forest: Tackling Inequality in the 21st Century* edited by Paul Hindley and Paul Hishman (published by Social Liberal Forum), *The Pandemic, Where Did We Go Wrong?* edited by John Mair (forthcoming to be published by Bite-Sized Books, ISBN-13: 979-8665858326) and *English Regions After Brexit: Examining Potential Change through Devolved Power*, jointly edited with Beverley Nielsen (published by Bite-Sized Books, ISBN-13: 979-8666953099).