

Demystifying the backstop

The fourth book in our Bite-Size book series ‘Brexit and Northern Ireland: Bordering on Confusion?’ has now been published and is available for you to enjoy! We’re celebrating the book’s release by giving you a sneak peek at Centre for Brexit Studies Senior Fellow Dr Steven McCabe’s contribution to the book.

Solving the issue of the border between Northern Ireland and the Republic of Ireland has proved intractable in the Brexit process. The issue of the Irish border and backstop could potentially derail an agreed Brexit creating significant economic damage to both parts of the island as well as undermining the peace achieved by the 1998 Good Friday Agreement.

Edited by ex-BBC journalist John Mair and Dr Steven McCabe from the Centre for Brexit Studies at Birmingham City University, as well as Leslie Budd from the Open University and Neil Fowler, the book includes a foreword from long-standing Northern Ireland commentator Malachi O’Doherty and an afterword by Daily Mail journalist Peter Osborne.

The book examines the range of questions about Brexit and Northern Ireland from a wide variety of perspectives and is a major contribution to the debate about the issues.

Enjoy your sneak peek below...

Prior to and during the June 2016 referendum on continued European Union membership by the United Kingdom, there was a marked paucity of detailed consideration of what would happen in the event of the result being a decision to leave. This was particularly so with respect to the one part of the union that, were there indeed to be a decision to leave, there would be a land border between it and another EU state – the North of Ireland.

Once the outcome of the 2016 EU referendum was known, attention immediately focused on the challenge that would be faced in achieving an effective withdrawal by the UK while maintaining the integrity of the terms that were part of 1998’s Good Friday Agreement

(GFA). During negotiations between the UK government under then Prime Minister Theresa May and the other 27 EU heads, the backstop was proposed as a way to assuage concerns being expressed by many that the GFA would be compromised because of the UK withdrawal.

This chapter provides a simplified explanation of the purpose of the backstop and how it is intended to be implemented if required. As will be indicated, the ability of the UK to leave the EU under the terms of a negotiated deal seems impossible unless the backstop is abandoned.

Background

The conflict that occurred in the North of Ireland between 1969 and 1998, claiming the lives of 3,532 people, injuring more than 47,500 and causing billions of pounds of damage is complex.

Essentially, what came to be referred to as the Troubles were the consequence of deeply-held mistrust and historical sectarianism between the two main traditions in Northern Ireland – Nationalists/Republicans and Unionists/Loyalists. For historical reasons each group defined themselves by their religion of being Catholic or Protestant and their allegiance to being aligned to the South of Ireland or the rest of the UK.

The Government of Ireland Act 1920 enabled the creation of the state of Northern Ireland in 1921. Partition of the 32 counties of the island of Ireland had been a long-held goal of Irish Nationalists but given impetus by the 1916 Easter Rising.

For the minority of Catholics north of the 310-mile border separating the new state of Northern Ireland from their counterparts living in the 26 counties governed from Dublin, there was a lingering sense of resentment borne of discrimination in jobs and housing.

Northern-based Catholics yearned for parity and respect and, among many, a desire that the six counties of Northern Ireland be reunified with the south.

The civil rights movement of the late 1960s in Northern Ireland was a manifestation of palpable inequity. Those engaged in such protests

were frequently attacked by Loyalists, often abetted by a partisan police force, the 'B Specials', which appeared to relish their brutality and, significantly, were defended by many Unionist politicians who expressed outright intransigence to change despite exhortations by the government in London.

During the Troubles the intensification of security measures to thwart attacks by Irish Republican terrorist groups created deeper resentment and fear by both communities who lived in close proximity to each other.

Removal of the security apparatus that was part of monitoring activity on the border and deterring terrorist attacks, as well as unblocking the many unauthorised roads was an integral component of the GFA. The removal of the physical border with its hundreds of blocked and cratered roads and blown bridges, channelling traffic through a few heavily guarded military checkpoints, was an essential part of the GFA.

[REPORT THIS AD](#)

Though Northern Ireland and the Republic of Ireland were separate states the GFA facilitated by US Senator George Mitchell provided an environment allowing the sharing of power.

The objective of devolved power-sharing was based on an elaborate structure of institutions and laws negotiated by, with the exception of the Democratic Unionist Party (DUP), nationalist and unionist parties, representatives of Irish Republican and Loyalist terrorist groups, and the British and Irish governments, acting in cooperation with the EU.

Critically, all 1.9m citizens of Northern Ireland, roughly divided equally between those who profess to be Catholics or Protestants, were able to choose whether they were British or Irish and without fear of domination by the other.

What is the backstop?

One of the very definite benefits of being in the EU for the North of Ireland and its neighbour south of the border has been membership of the Single market, which allows harmonisation of regulations on goods as well as freedom of movement of people.

In the aftermath of the GFA the significance of this membership was that trade and individuals could cross the Irish border without restriction. In practical terms, this has made the border insignificant to people who cross it, some many times a day. For such people crossing the Irish border from one country to another became straightforward in a way that would have seemed inconceivable during the conflict.

The outcome of the 2016 EU referendum has created a dilemma. The decision by voters that the UK should leave the EU has posed a fundamental question.

How is it possible to maintain the principles established under the GFA of an insignificant border between Northern Ireland and the Republic of Ireland compatible with the fact that an international frontier will be needed?

Such a frontier would be essential to ensure the monitoring of movement of goods and people; particularly in view of the fact that different tariffs would apply, as well as oversight of any divergence of rules and regulations that may occur once the UK is no longer legally bound to the objective of harmonisation.

In discussions between the 27 other members of the EU and the government of Theresa May it was recognised that it was essential that any negotiated withdrawal agreement (WA), including a transition period to develop detailed plans for arrangements for trade, should ensure that there is no return to a hard border between Northern Ireland and the Republic.

In the transition period nothing would change. However, after any transition period ended, there was no guarantee that an international frontier would not be created.

As such negotiators addressed such a concern by the inclusion of what is called the backstop.

The backstop is intended as an insurance in the event that EU and UK negotiators were unable to develop mutually acceptable alternative arrangements to avoid the need for a border.

In particular, the backstop then comes in to existence to ensure that the UK stays within the EU customs area so that no checks are needed and freedom of movement of goods and people across the Irish border continues.

It is worth noting that such arrangement was proposed by EU negotiators to apply only to Northern Ireland.

Though logical, given the issue of the border only applies in Ireland, this proposal was rejected by the UK as being unacceptable as, it was argued, it would effectively create the international frontier in the Irish Sea.

As such it would be anathema to unionists in Northern Ireland. Instead the backstop applied to the whole of the UK.

The controversy

Inclusion of the backstop within the WA negotiated by Theresa May's government is regarded as one of the primary reasons the deal was rejected by Parliament on three occasions.

As a consequence May resigned as PM without having achieved her stated intention of completing Brexit to be replaced by Boris Johnson and those who support him in his assertion that the backstop is undemocratic and that, unless the EU removes it, no negotiated deal is possible and the UK will leave without any arrangements in place.

The potential for the UK to leave the EU without a deal creates a crisis as there would be no provision for arrangements to regulate movement of goods on the Irish border which would, immediately become an *de facto* international border.

For there to be no security or checking of goods on such a border would be considered highly irregular. There is a question of how the EU would ensure that goods, particularly food, that does not meet its regulatory standards is prevented from entering?

The Irish government, led by current Taoiseach Leo Varadkar, is insistent that the backstop is fundamentally important to maintaining the integrity of the GFA in order to ensure confidence by nationalists

in Northern Ireland is maintained. This view is backed by all other members of the EU who are equally vociferous in the position that the backstop is non-negotiable.

Many within the Conservative Party claim that the border in Ireland is being used by the EU as a proxy to making any departure more difficult than it might otherwise be. There are claims that the controversy concerning the importance of the backstop has been concocted and their intransigence is false and, as current PM Boris Johnson, believes, with sufficient pressure will disappear.

Author and commentator Brian Feeney, formerly head of history at St Mary's University College in Belfast, is among many who states his belief that Brexit has been 'absolutely disastrous' for maintenance of the principles of the GFA. Further, Feeney makes plain his view on the viability of technological solutions that are proposed by those who support Brexit:

"All this stuff about bar codes and cameras [monitoring the border] is nonsense. They would not last a weekend because people [farmers and locals people affected] would pull down any cameras or similar arrangements."

Commentators and local politicians who argue that the backstop is vital, point out that an extremely large proportion of the 310-mile border is populated, on both sides, by a majority of Catholics and nationalists. As they explain, any apparatus that is associated with recreating a new frontier would, in order to be protected, require the deployment of military force. This, as a direct consequence would once again make the Irish border as contentious as it was during the Troubles.

Conclusion

Unless there is a negotiated WA by October 31, or there is a law passed by Parliament to preclude leaving the EU without a deal, it is distinctly possible that on November 1 the UK will have departed without any arrangements in place to deal with the Irish border. This creates great fear among many in Ireland and beyond that a hard border will indeed return, with all the attendant consequences for

destabilising the fragile peace in Northern Ireland that has existed since the signing of the GFA in April 1998.

Brexit and Northern Ireland: Bordering on Confusion? Is available NOW in paperback and in Kindle. Find out more [here](#).

Join us at one of the launches we are hosting to celebrate the release of this book!

Brexit and Northern Ireland: London Book Launch

Hosted by Dr Steve McCabe, with Peter Osborne & Dr Graham Gudgin
5pm-7pm

Thursday 17 October 2019

University Women's Club 2 Audley Square London W1K 1DB

Free tickets via Eventbrite [here](#).

Brexit and Northern Ireland: Belfast Book Launch

Hosted by Róisín McAuley, alongside Katy Hayward, Dr Leslie Budd, Neil Johnston, Aodhan Connolly and Brian Feeney

5pm-7pm

Thursday 24 October 2019

The Open University 110 Victoria Street Belfast BT1 3GN

Free booking via Eventbrite [here](#).