

Safeguarding the Union – Another Fudge?

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This June, it will be eight years since the referendum held to allow all registered voters to decide on whether this country should continue its membership of the European Union (EU).

Though discussion during in the lead-up to the referendum included what potential change might consist of, commentators criticised the lack of clarity of how arrangements governing trade and movement of citizens into and out of this country would alter.

The UK having voted to leave the EU (51.9%), there was intense focus on what would mean.

Most particularly, what would leaving the EU mean for the only part of the UK to share a land border with the EU, Northern Ireland, in which a majority (55.8%) had shown they did not wish to leave the EU?

Those with even cursory knowledge of the politics of Northern Ireland were fully aware that any alteration in the delicate mechanisms of devolved power operating in this part of the UK, implemented as part of the Good Friday/Belfast Agreement, had potential to undermine peace.

Pointedly, peace through this agreement, signed by all parties except one in 1998, had been achieved through a mixture of optimistic – some suggested overly vague – language and an acceptance that the border between Northern Ireland and the Republic of Ireland, created by partition on 3rd May 1921 under the Government of Ireland Act 1920, should have vastly reduced significance.

Imposing borders anywhere have consequences in terms of restrictions.

The border in Ireland had been deeply resented by nationalists, predominantly Catholics, living on either side whose ability to move freely was severely curtailed during what was known as ‘the Troubles’ (1969-1998).

That over 3,500 people were killed and in excess of 50,000 severely injured during what was an ethno-cultural conflict meant that any talk of a need to reimpose a hard border in Ireland was met with sustained argument as to why this should not happen.

However, the intention to fulfil the will of the people in voting to leave the EU, 'Brexit' would require precisely that.

Carefully negotiated arrangements by the EU covering goods and people across the single market only apply to memberstates.

The EU places absolute importance on maintaining integrity in excluding goods that originate outside of its jurisdiction.

Equally, those not possessing passports of an EU state, may only be allowed to enter through border control.

How, it was asked, would it be possible to maintain control between Northern Ireland and the Republic of Ireland once the former no longer adhered to the rules of the EU?

In the autumn of 2019 *Brexit and Northern Ireland: Bordering on Confusion?*, of which I was co-editor, exhaustively explored this dilemma.

The vast majority of contributors argued that peace secured in 1998 would be at risk if a 'hard border' between Northern Ireland and the Republic of Ireland was imposed.

Various compromises to deal with such a situation were developed, including the now notorious 'backstop' proposed by negotiators with the EU when Theresa May was PM as part of a withdrawal agreement (WA).

The backstop would, following a transition period when nothing would change, act 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" (McCabe, 2019:80).

Thus, if no way could be found to avoid a border, Northern Ireland would remain within the aegis of the EU in order to allow freedom of goods and people.

This resulted, predictably, in howls of derision from within Northern Ireland's Unionist and Loyalist community and their political representatives, as well as from those within the Conservative Party who'd been utterly passionate in supporting leaving the EU.

Significantly, the moderate Ulster Unionist Party, which had negotiated and backed the Good Friday/Belfast Agreement, lost support to the Democratic Unionist Party (DUP) who had campaigned against it.

That the DUP supplanted the UUP in the 2017 general election, called by May to bolster her position to achieve a withdrawal agreement, but which resulted in a hung Parliament and required her to rely on this party's MPs, made it impossible for her to achieve a parliamentary support for the withdrawal deal including the backstop.

May was forced to resign in the summer of 2019 and was replaced by Boris Johnson who claimed he'd get Brexit 'done'.

Johnson refused to rule out leaving with no arrangements in place – 'no deal' – which would potentially necessitate a hard border between Northern Ireland and the Republic of Ireland.

Significantly, Johnson promised there would be no border in the Irish Sea as many speculated would be necessary.

Johnson eventually unveiled what he described as an 'oven ready' deal, pretty much what his predecessor May had suggested as a way to withdraw from the EU.

Notably, his deal included the Northern Ireland Protocol which became operational three years ago 1st January 2021.

This protocol required new checks on goods from Great Britain arriving in Northern Ireland at Northern Ireland's ports.

Such checks applied even if goods stayed in Northern Ireland and did not progress into southern Ireland.

Loyalists believed this represented a border in the Irish Sea and meant that Northern Ireland's position within the union was further eroded and intensified pressure on the DUP members of the Stormont Assembly, the devolved parliament for the province.

Just over a year after the protocol came into force, on 3rd February 2022, the Assembly's First Minister, DUP Member Paul Givan resigned which, under power-sharing arrangements meant the deputy First Minister, Sinn Fein's Michelle O'Neil, also lost her position.

This resulted in the collapse of Northern Ireland's power-sharing administration.

Despite exhortations to resume participation in Stormont, the DUP's position was further complicated by elections held for Stormont in May 2022 when Sinn Fein became the largest party and therefore entitled to hold the role of First Minister.

An attempt by new PM Rishi Sunak to deal with criticisms of the Northern Ireland Protocol, what's referred to as The Windsor Framework (HM Government, 2023), and agreed with the EU, was proposed in February last year.

By allowing two 'lanes' for goods arriving in Northern Ireland from Great Britain, requiring a green lane for goods remaining in Northern Ireland, and red lane for goods which may be sent on to the EU (primarily Southern Ireland), as well as a 'Stormont brake', to enable elected members in province to object to new EU rules affecting its trade arrangements, it was hoped this would be sufficient to entice the DUP to resume power-sharing with Sinn Fein.

Such hopes were dashed, and the DUP continued their boycott resulting in widespread strikes recently by the province's 100,000 public sector workers who, because of the absence of Stormont, have not received the pay rises received by their counterparts in Great Britain.

Repeated attempts at persuasion by Northern Ireland secretary Chris Heaton-Harris, have failed to convince the DUP to drop their objections to any deal.

That is, until now, though cynics claim the offer by Heaton-Harris of £3.3 billion in a financial package, including funds to settle public sector pay claims, may have been the sweetener that's finally convinced the DUP under leader Sir Jeffrey Donaldson to end its boycott of Stormont (Webber et al, 2024).

So, what does the latest deal to square the circle that is trade between Great Britain and Northern Ireland consist of?

As the BBC reports, the new deal agreed between the UK government and the DUP, titled Safeguarding the Union (HM Government, 2024), is intended to "further reduce checks and paperwork on goods going from Great Britain (England, Scotland and Wales) to Northern Ireland" and will mean there are no routine checks on British items which are staying in Northern Ireland (2024).

Crucially DUP leader Sir Jeffrey Donaldson told the BBC that, because of the fact that customs declarations are no longer needed for goods sold in Northern Ireland, he agreed to the deal and will restore power-sharing arrangements with the opposition party Sinn Fein.

Safeguarding the Union, a 76 page document, reads in a very similar way to the document it supersedes, The Windsor Framework: a new way forward, in providing an abundance of statements obviously intended to provide commitments that there will not be any radical change to the arrangements already in place to ensure compliance with the agreement with the EU as well as adhering the Good Friday/Belfast Agreement but in a way that protects the 'internal market'.

Examples include the guarantee that "no checks when goods move within the UK internal market system save those conducted by UK authorities as part of a risk-based or intelligence-led approach to tackle criminality, abuse of the scheme, smuggling and disease risks".

"This will ensure the smooth flow of goods that are moving within the UK internal market."

Interestingly, the current requirement that certain goods sold in Northern Ireland needed to display a label "not for sale in the EU", will now cover all parts of the UK.

It's envisaged that reducing checks on trade between Great Britain and Northern Ireland will be an alteration to the existing Windsor Framework and require Brussels approval and be considered within the existing EU/UK joint committee.

Most significantly, Safeguarding the Union heavily emphasises the desire to introduce measures intended to assure those loyal to the union of Northern Ireland's constitutional position which, it accepts, have been negatively impacted by Brexit.

Indeed, it's promised, legislation will be proposed with the objective of "affirming Northern Ireland's constitutional status underpinned by, among other provisions, the Acts of Union."

In building on the 'Stormont Brake', Safeguarding the Union is the promise to revise section 7A of the European Union (Withdrawal) Act, meaning new EU laws do not automatically apply in Northern Ireland and must be subject to democratic oversight by the Stormont assembly.

Significantly, should there be a desire to diverge from EU standards, it's intended that new legislation will be scrutinised to assess "impacts on trade between Northern Ireland and Great Britain".

Should this be the case, there will be a statutory duty for the relevant minister to make a statement “considering any impacts on the operation of Northern Ireland’s place in the UK’s internal market”.

Two new bodies will be created; A UK east-west council will bring together representatives from government, business and the education sector from Northern Ireland and Great Britain whose objective will be to “identify opportunities for deepening connections between Northern Ireland and the rest of the UK in areas such as trade, transport, education and culture”.

The other, Intertrade UK, is intended to promote trade within the UK and assist businesses not currently selling goods and services in Northern Ireland in identifying ways to enable them to expand into the region.

The big question is will this mean an end to turmoil that’s characterised politics in Northern Ireland in recent years.

Certainly, within Parliament there appears little desire to engage in scuppering the legislation needed to ensure the new arrangements become law.

That only a handful of Conservative Brexiters, including Bill Cash and Theresa Villiers, have questioned whether the UK will be able to diverge from EU laws, suggests that any opposition will be limited (Carroll and Courea, 2024).

Nonetheless, this is an election year and those, particularly on the right of the Conservative Party who believe Brexit has not gone far enough, can be assumed to make their position clear, especially as, if predictions prove correct and the Tories lose there will be a leadership contest to replace current PM Rishi Sunak.

Under a likely Labour government led by Sir Keir Starmer we can expect that there will, certainly in the short-term, no radical alteration to any of the existing arrangements.

However, a review of the UK-EU Trade and Cooperation Agreement will commence in May 2026 and, as Simon Usherwood, Professor of Politics and International Studies and Dr David Moloney, Post-doctoral Research Fellow, both based at The Open University and writing for UK in a Changing Europe believe, the future would appear to be that “it’s only by working together that the [EU and UK] are going to be able to make mutually-acceptable and durable decisions” (2023).

It’s highly likely that a Starmer government, attempting to create economic growth and a better future for all citizens, would welcome improved cooperation between this country and the EU.

It's to be sincerely hoped, the changes proposed in Safeguarding the Union, is probably as good as it gets post-Brexit, and provides the basis of long-term growth and prosperity the vast overwhelming members of both cultural traditions in Northern Ireland so desperately want for themselves and their families.

Sadly, as politics in Northern Ireland in the recent years has demonstrated with unnerving regularity, expediency and short-term advantage is seductive and emotion overrides what's good for all UK citizens and, more especially the very citizens they represent.

Steven's latest chapter, 'Boris Johnson, the green shopping trolley', was recently published in Toxic News? Covering Climate Change, edited by Mair, Ryley and Beck and published by Bite-Sized Books, London

References

Carroll, R. and Courea, E. (2024), 'Northern Ireland to get new Brexit trade rules in deal to restore power sharing', Guardian, 31st January, <https://www.theguardian.com/uk-news/2024/jan/31/northern-ireland-to-get-new-brexit-trade-rules-in-deal-to-restore-power-sharing>, accessed 31st January

Edgington, T. and Kovacevic, T. (2024), 'Brexit: What is the new Northern Ireland trade deal?' BBC Politics, 31st January, <https://www.bbc.co.uk/news/explainers-53724381>, accessed 31st January

HM Government (2023), The Windsor Framework, February, HM Government, London

HM Government (2024), Safeguarding the Union, January, HM Government, London

McCabe, S. (2019), 'Demystifying the backstop', in Brexit and Northern Ireland: Bordering on Confusion?, edited by Mair, J., McCabe, S., Fowler, N. and Budd, L., Bite-Sized Books, London

Usherwood, S. and Malony, D. (2023), 'What might the review of the Trade and Cooperation Agreement actually be like?', UK in a Changing Europe, 4th July, <https://ukandeu.ac.uk/what-might-the-review-of-the-trade-and-cooperation-agreement-actually-be-like/>, accessed 31st January

Webber, J., Bounds, A., Pickard, J. and Foster, P. (2024), 'N Ireland executive could return this weekend after DUP agrees landmark deal', Financial Times, 30th January, <https://www.ft.com/content/ba63d7b1-057b-4046-8138-e31a99684409#comments-anchor>, accessed 31st January