

A Hard Brexit is Red Meat

By David Hearne, Researcher, Centre for Brexit Studies

Tuesday's admission in the House of Commons by Brandon Lewis – the secretary of state for Northern Ireland – that the government was actively intending to bring forward legislation that it knew would break international law was remarkable. Lewis, of course, was in an invidious position.

The legal advice appears fairly clear on this issue, so to attempt to claim otherwise would have involved lying to the House which, in spite of widespread perceptions to the contrary, remains a serious act. Yet coming clean presents issues of its own.

In particular, it suggests that the Attorney General and the Justice Secretary are in a rather awkward position, having sworn under oath to uphold the law. Whilst there is some dispute as to whether this includes *international* law, following changes to the guidance by David Cameron in 2015, there is some reason to believe that it does.

In any event, even if they do not resign, both are in an extremely difficult position. The current furore has already seen the resignation of Sir Jonathan Jones, the widely respected permanent secretary who heads of the government's legal department, allegedly over concerns that the government was intending to break the law.

He is the latest in a series of very senior civil servants to leave their posts in recent months. Naturally, this row also threatens to “blow up” trade talks between the UK and the EU, which might or might not be the intention.

Yet from a peculiarly narrow domestic political perspective this might make some sense. The government has come under increasing fire due to its handling of a host of factors related to the ongoing pandemic.

This has seen unfavourable media coverage – even from very pro-Conservative outlets – and its poll lead has narrowed significantly.

Perhaps more importantly for this stage at the electoral cycle, there are clear rumblings of discontent from the Conservative backbenches.

The recent Conservative electoral coalition is built on Brexit. Yet Brexit has lost its salience, as of late. The pandemic has had an enormous impact on all our lives – including, sadly, those who have lost loved ones as a result. It's hard to worry about customs declarations when you're worried whether your parents will end up in hospital, your children be able to go to school or the existence of your job next week.

Moreover, most people want to move on from Brexit. Even before the novel coronavirus hit, there was a clear desire to move beyond Brexit onto new things. After all, we were promised that Brexit would be “done”.

The purpose of deliberately reopening old wounds must therefore be twofold. It shifts the political debate back onto familiar domain – the cultural arena where Johnson's Conservatives are most comfortable. It also acts as a sop to the Brexit “ultras” on his own backbenches (and potentially some on the frontbench).

Never entirely happy with the Withdrawal Agreement and concerned about the public's increasing scepticism over the government's handling of the UK's pandemic response, a hard Brexit is red meat. Much like the illegal prorogation of parliament last year, this appears to be playing to the gallery.

Yet, like last year's prorogation, this is not about Brexit. It is about the rule of law. Ultimately, Brexit is a second-order issue of little consequence in comparison to this.

The UK government has signed an international treaty, which was (very briefly!) scrutinised and ratified by parliament. If the government didn't like the contents of that treaty, why did it sign? Why did MPs ratify the treaty if they object to its contents?

Johnson could quite easily have run an election on the basis of going for a “no deal” Brexit at the end of January 2020 if the Withdrawal Agreement was unacceptable. *That* would have been the democratic way forward. Nobody forced the UK to sign this.

It is hard to believe that this has been fully thought through. Least importantly, it risks jeopardising ongoing trade talks with the EU. More importantly, it undermines years of work to improve Anglo-Irish relations.

More generally, it undermines the UK's standing in the world and acts as an impediment to agreements (not least in the arena of international trade) elsewhere. How can the UK lecture others on the rule of law when we admit to breaking it ourselves when we find it inconvenient?

Why would any other country trust the UK to adhere to an agreement in future? We might just ignore bits we don't like.

Similarly, without any knowledge of what goods are flowing from Ireland into Great Britain (the current legislation is proposing to get rid of any declarations), there might be challenges in coming to trade agreements with other countries.

Specifically, I can see nothing to stop a company transferring a part from Germany to Dublin without any paperwork (both being in the EU's Single Market and Customs Union) and then to Belfast, before moving that same part from Belfast to Great Britain (without any customs declaration). Given this risk, if I were (e.g.) Australia, I'd be deeply reticent about agreeing a Free Trade Agreement with the UK given the lack of safeguards.

In the US context, it is not hard to imagine the backlash against the UK's move to rip up parts of an agreement it dislikes. The US will not take kindly to anything that is perceived to put the Good Friday Agreement at risk.

The irony here is that actually there are a number of areas where the Withdrawal Agreement is problematic^[1]. If agreement is not reached over which goods can be claimed as "at risk" of entering the EU then the current position is that *all* goods would be so-deemed and attract tariffs upon leaving Great Britain and entering Northern Ireland.

That poses genuine and substantial problems for supermarket chains in Northern Ireland, for example, when purchasing produce from

Great Britain. There is also a clear need for sensitivity to the concerns of both communities in Northern Ireland.

If there is to be a border then it is better (and less obvious) if it lies down the Irish Sea than on land. However, let us not kid ourselves: the imposition of substantial barriers to East-West trade (and the measures envisaged by the Withdrawal Agreement *are* such barriers) is not exactly a good thing from the perspective of the Good Friday Agreement. Borders of any description are not conducive to community cohesion and peace.

[\[1\]](#) Most, but not all, of these would have been avoided under the agreement proposed by Theresa May's government.