

BREXIT BRIEF

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Tony Brown

The Brief seeks to provide up-to-date information on the progress and content of the UK-EU negotiations, and bring together relevant statements and policy positions from key players in Ireland, the UK and the EU.

The Brief is part of a wider communications programme covering the work of the IIEA's UK Project Group – including commentaries, speeches, texts and event reports – which are highlighted on the Institute's website. (www.iiea.com)

Introduction

The Russian invasion of Ukraine continued to dominate politics and media, Northern Ireland moved into the formal campaign period prior to the May Assembly election. And, a troubling return to violence, with a hoax bomb alert in Belfast, gave rise to much concern about the hardening of attitudes in the Protocol debate and a new loyalist targeting of the Good Friday Agreement.

As the position of the Westminster Government on Article 16 continued to be a subject of speculation and interpretation Prime Minister Johnson made remarks which caused a mixture of disbelief and outrage.

He told a Tory party gathering on 19 September 2022 that the world faced a moment of choice "between freedom and

oppression...And I know that it's the instinct of the people of this country, like the people of Ukraine, to choose freedom, every time. I can give you a couple of famous recent examples. When the British people voted for Brexit, in such large, large numbers [...] It's because they wanted to be free to do things differently and for this country to be able to run itself." The remarks caused astonishment not least because Ukraine applied last month, after the Russian invasion began, to become a member of the EU. Former Ukrainian President, Petro Poroshenko, [posted a video](#) to social media, asking "how many citizens of the United Kingdom died because of Brexit?"

Foreign Affairs Minister Simon Coveney has said that Prime Minister Johnson had clarified his remarks and that No 10 spokespeople had recognised "That's not a good comparison to have in the same sentence."

Section One: State of Play

Election Opinion Poll

As the Assembly election campaign became official the latest *LucidTalk* opinion poll for the *Belfast Telegraph* has pointed to an outcome in which Sinn Fein's Michelle O'Neill would be on course to become First Minister. The DUP is failing so far to narrow the electoral gap with Sinn Fein.

The poll shows the following 'State of the Parties': Sinn Fein 26%; DUP 19%; Alliance 16%; UUP 13%; SDLP 11%; TUV 9%; PBP 2%; Green Party 2%; Others 2%.

More than 60% of unionist and nationalist votes say that it is 'very important' or 'important' to them that a party from their community emerges as the largest and takes the First Minister position. Unionists are evenly split on whether their parties should accept the Deputy First Minister role if Michelle O'Neill becomes First Minister. 44% said they should but 45% said they shouldn't.

The Alliance Party has continued to make headway, gaining two points, and is clearly established as the third party, ahead of the UUP. The SDLP remains static on 11% while the TUV has fallen back, losing three points to 9%. The Alliance leader, Naomi Long, with 40% support, has emerged as Northern Ireland's most popular leader, ahead of the UUP's Doug Beattie and Colum Eastwood of the SDLP. Sir Jeffrey Donaldson remains the most unpopular party leader "by a wide margin with his personal rating down five points since January." The most unpopular politician in Northern Ireland is Secretary of State Brandon Lewis with a positive rating of just 4%.

Liz Truss and Article 16

Great uncertainty exists about the likely direction of the UK Government's approach to the Protocol and Article 16.

On 12 March 2022 it was reported that Foreign Secretary Liz Truss had set out plans to put any triggering of Article 16 on hold because of the Ukraine crisis and to prioritise efforts to assist Northern Ireland business with a stimulus package. She wanted to avoid a confrontation with the European Union at a time when she was involved in coordinating a united response to the Russian invasion.

The on-going protocol negotiations between Foreign Secretary Liz Truss and Commission Vice President Maroš Šefčovič and their expert teams had reached apparent gridlock as the Ukraine crisis dominated political time and attention. "Ukraine has sucked the energy out of everybody" according to a Whitehall source.

Then, on 17 March 2022 the *Times* wrote that the Foreign Secretary had told her officials to be ready to trigger Article 16 within days in an attempt to force a quick deal with the EU over the Northern Ireland Protocol. She had apparently "lost faith" in negotiations with the EU. No such action followed but a noisy internal debate within government and Tory party circles was 'triggered'.

The Telegraph has written of moves by senior Tory party figures, led by the Attorney General Suella Braverman and Brexit Opportunities Minister Jacob Rees-Mogg pushing for the Government to act urgently on Article 16 with particular pressure on the Foreign Secretary. The Attorney General had provided formal legal advice underpinning action on Article 16 while party officials have been briefing that Sinn Fein

were on course to win control in Stormont. Lord Hayward of the ERG described the unionist parties as being “in a complete mess” as the elections approached and predicted that the unionist vote will be split, allowing Sinn Fein to emerge as the largest party.

Brexiters fear that the Government will lose the opportunity to obtain meaningful changes to the protocol if the process drifts beyond the 5 May election date. David Jones MP, deputy chairman of the European Research Group (ERG) commented on the negotiations becoming “bogged down” arguing that Article 16 should be triggered to revive the talks. “We need to find a way of getting it out of the mire and the best way of doing that is by invoking Article 16 which will be the precursor of a new negotiating mandate on behalf of the EU. I think it ought to be done now.”

Boris Johnson in meeting Micheal Martin in London spoke of the need to apply “the same spirit of cooperation that had characterised the UK/EU relationship in respect of Ukraine could also be applied to resolving the issues with the protocol”. This has been interpreted as “a blunt call on the EU to back down on the protocol in the light of the war in Ukraine rather than the olive branch that might have been expected in light of the common threat facing all of Western Europe.”

The Labour Party leader Keir Starmer, speaking to the Labour Party Irish Society, called for a relationship between Britain and Ireland based on equal respect that acknowledges the role of both governments as co-guarantors of the Belfast/Good Friday Agreement. Acknowledging that the relationship has been dominated in recent years by Brexit and its fallout he pointed to a rich and long history which must be seen as bigger than the current dispute over the Northern Ireland protocol.

The EU’s negotiator Maroš Šefčovič commented on the situation with a personal message: “If there’s one thing this war puts into perspective, it’s the danger of constantly trying to spark divisions with European neighbours and allies. It’s time for all of us in the West to be united, so I hope that we will see a tampering down of the anti-EU rhetoric from Britain.”

North of Ireland Court of Appeal rules Protocol is Lawful

The Northern Ireland Court of Appeal has ruled that the Northern Ireland Protocol is lawful. The Lady Chief Justice, Dame Siobhan Keegan, and two other judges concluded that the protocol had not breached the terms of the 1800 Acts of Union – which established the place of Northern Ireland in the United Kingdom – nor elements of the 1998 Northern Ireland Act which underpins the Belfast/Good Friday Agreement.

The Court of Appeal found that, in enacting the Withdrawal Agreement and its protocol the UK Government had acted lawfully. It ruled that international treaties are not a devolved matter and that the decisions of a democratically elected national parliament and government do not bind future governments. It specifically stated that the recent legislation “takes precedence” and “this aligns with the core tenets of parliamentary sovereignty[...] including the principle that parliament cannot bind its successors.” The Chief Justice stated that, in enacting its Brexit legislation “it cannot be seriously suggested that parliament was unaware of the changes that may be wrought” and “There can be no doubt in relation to parliamentary intention in this case.”

The action against the Protocol was launched in the names of a group of unionists and Brexit supporters, notably the former DUP

leader, Arlene Foster; the former UUP leader Steve Aiken; the TUV leader Jim Allister; Lord Trimble, the key figure in creating the Good Friday Agreement; former Brexit Party MEP Ben Habib; Belfast Pastor Clifford Peeples and Baroness Kate Hoey. Lawyers for the promoters of the action indicated that they would consider whether to take a further appeal to the UK Supreme Court as the judgement raised unprecedented matters about the intersection of law and the unwritten constitution.

Baroness Kate Hoey wrote to The Newsletter on the day after the judgement arguing that the Court of Appeal had confirmed that unionists had been deceived since their core belief that the principle of consent set out in the Belfast Agreement does not protect the substance of Northern Ireland's place within the Union "but rather only directs itself to the final formal handover of sovereignty." She concluded that "No self-respecting unionist can ever again operate the institutions of the Belfast Agreement. And nor can any of us pretend we are blind to the fatal deception at its heart. It is finished."

The SDLP Assembly member Matthew O'Toole remarked that the latest defeat of the anti-protocol legal challenge should prompt unionists to move on and focus on "real crises like the cost of living emergency and NHS waiting lists."

The Court Summarised its Findings in the following terms:

The Court of Appeal today dismissed appeals against the decision of Mr Justice Colton delivered on 30 June 2021 wherein he dismissed applications for judicial review challenging the EU Withdrawal Protocol and the Withdrawal Acts and Regulations. Two appeals were

before the court. The first was by Jim Allister and others ("the Allister group") and the second by Clifford Peeples. There was a substantial degree of overlap between the appeals. The target of the appellants' challenges were the Ireland/Northern Ireland Protocol to the Withdrawal Agreement ("the Protocol") and the Protocol on Ireland/Northern Ireland (Democratic Consent Process) (EU Exit) Regulations 2020 ("the 2020 Regulations").

Terrorism Threat Level Lowered – Then a Bomb Hoax

The terrorism threat level in Northern Ireland has been lowered from "severe" to "substantial" for the first time in twelve years. On 22 March 2022, the Northern Ireland Secretary Brandon Lewis announced the conclusion following a MI5 assessment: "This is the first time the threat level in Northern Ireland has changed since 2010 and shows the significant progress that Northern Ireland has made, and continues to make, towards a more peaceful, more prosperous and safer society. (The term "substantial" means that a terrorist attack is likely and may well occur without further warning.)

Secretary Lewis warned that the lowering of the level did not mean all threats had gone away. Dissident groups – such as the New IRA – still exist. The New IRA admitted responsibility for the murder of the journalist Lyra McKee in Derry. "It is not a time for complacency. There is still a minority who wish to cause harm in Northern Ireland."

Then, on 25 March 2022, a hijacking and hoax bomb alert disrupted a speech by the Minister for Foreign Affairs, Simon Coveney, at a peace and reconciliation conference in Belfast organised by the John and Pat Hume

Foundation. The Minister and his audience at the Houben Centre - situated on the once volatile Crumlin interface in north Belfast - were evacuated after the hijacked vehicle which contained a suspect device was found in the centre's car park. A family funeral in the nearby Holy Cross church was disrupted, causing great upset to the mourners. More than 25 homes were evacuated and a nursing home also affected.

Simon Coveney thanked the PSNI for their vigilance and said he was "saddened and frustrated that someone has been attacked and victimised in this way and my thoughts are with him and his family."

The PSNI indicated that they believe loyalist paramilitaries - most likely the Ulster Volunteer Force (UVF) - were responsible for what they condemned as "disgraceful actions" with the van driver confronted by two gunmen and, with threats to his family, forced to drive his van to a street where a device was placed inside which he believed was a live bomb and then to drive to the conference centre.

Graffiti threatening journalists then appeared in the Bradbury Place area in south Belfast. The PSNI confirmed the occurrence condemned by local political representatives. Alliance Party councillor Peter McReynolds commented that "Journalism is essential in a free and democratic society. Those that did this want the people of Northern Ireland living in fear and misinformation. They will not succeed."

Concern has been expressed about these events. A Belfast Telegraph commentary argues that unionist anger about the protocol "could have easily been expressed with a protest at the venue of the peacebuilding conference, but to resort to such serious tactics will be setting alarm bells off in the highest corridors of power. If this is a starting

point for the violence what is the end game?"

Lagan Valley

The DUP has announced that the party will put forward only two candidates in the Lagan Valley constituency in the May Assembly election, ending speculation about the party's strategy. The party leader, Sir Jeffrey Donaldson MP and the former First Minister, Paul Givan, were selected at a meeting of the party's constituency association on 17 March 2022. Eight parties have nominated candidates for the five seat Lagan Valley constituency - DUP, UUP, TUV, Alliance, Sinn Fein, SDLP, Green Party, NI Conservatives.

The DUP had been unclear about its candidate strategy in recent weeks. Jeffrey Donaldson had said that the party leadership was giving consideration to running three candidates in order to maximise unionist representation.

The DUP has nominated its local councillor Paul Rankin to replace Edwin Poots as MLA for Lagan Valley for the remaining two weeks of the present Assembly which will be dissolved at the end of March to allow the election to take place in May.

Northern Ireland Party Conferences

TUV. The TUV conference on 12 March 2022 heard the party leader Jim Allister speak of a choice between direct rule or devolution, saying "To me British rule is better than Sinn Fein rule. That's really what it all reduces down to." All unionist parties must answer a "very simple question.. will you or will you not enthrone and enable Sinn Fein by acting as Deputy First Minister?"

SDLP. SDLP leader Colum Eastwood warned his party conference on 25 March 2022 that the May Assembly election should not be

a replay of “the same old battles and same old arguments.” Voters in Northern Ireland deserved better than a choice between “bad government or no government.

Latest Loyalist Rally

The latest Loyalist anti-protocol rally, in Ballymoney, was addressed by Jeffrey Donaldson (DUP), Jim Allister (TUV), Baroness Kate Hoey, businessman Ben Habib and loyalist activist Jamie Bryson. There was criticism of the UUP leader Doug Beattie for his absence from the event.

Hoey, Habib and Bryson united in a strenuous attack on the Good Friday Agreement. Kate Hoey regretted having ever voted for the agreement. Ben Habib said that people must be ready to throw out the agreement if it does not allow Northern Ireland to affirm its place in the Union, while Jamie Bryson said he wanted the whole agreement “destroyed”. These statements reflected the distinct hardening of attitudes towards the agreement evident in recent loyalist gatherings and in the appearance of graffiti declaring the 1998 deal “broken”

Jamie Bryson described the Good Friday Agreement as “rotten, corrupt and for 24 years has brought nothing but destruction to our place in the Union. It is the father of the Protocol.” Hours after the hoax bomb scare, he spoke of Simon Coveney as a “meddling aggressor”

In an article on the *Unionist Voice* website the PUP leader Billy Hutchinson has written that loyalist paramilitaries would not have supported the 1994 peace process ceasefires had they known that the “principle of consent was merely symbolic.” He argued that the absence of the principle of consent as part of the Brexit withdrawal agreement had

hardened loyalist attitudes towards the Good Friday Agreement. “People within loyalism who took real risks to deliver peace and the agreement now feel betrayed and deceived.”

The DUP leader Jeffrey Donaldson has proposed changing the Good Friday Agreement to deal with his argument that the existing text does not protect the north’s status as part of the United Kingdom. He claimed that the recent Appeal Court judgment strengthened his view. He suggested that an “additional provision” be considered, “For example, ‘Any (post 1998) change to Northern Ireland’s constitutional status within the United Kingdom should require the consent of a majority of the people of Northern Ireland voting in a poll held for that purpose or should be subject to a cross community vote of the Northern Ireland Assembly’.” He argued that “Such a provision is entirely consistent with the implication of the government’s publicly stated position in relation to Northern Ireland and gives primacy to the people of Northern Ireland.”

Taoiseach in Washington

The St Patrick’s Day visit by Taoiseach, Micheal Martin, was upset by his positive COVID test which saw the traditional Shamrock Bowl meeting in the White House replaced by a zoom conversation as he isolated in the US Government Guest House. This was a personal disappointment for Micheal Martin as the 2021 event was cancelled because of the pandemic and his term of office as Taoiseach will be over by the time the 2023 event takes place.

Nonetheless, the important elements of the visit were successfully completed. The key goal of the visit was to gain reassurance of US support for the EU and Irish position on the full implementation of the Brexit agreements. The visit demonstrated continued US insistence that a trade deal between the US and UK will

not happen if the London Government reneges on the NI Protocol.

The Ireland Fund dinner, which the Taoiseach missed after his diagnosis, was addressed by President Biden and the Speaker of the House of Representatives, Nancy Pelosi, who said that there would be no trade deal if the Irish border was “hardened”. Before his positive test the Taoiseach had important meetings with key political and business figures including Congressman Richard Neal, chairman of the House Ways and Means Committee.

Sefcovic in Washington

Commission Vice President Maroš Šefčovič – “whether by accident or design” - visited the United States during St Patrick’s week. While his visit was officially planned for talks with senior US officials about developing strategies to help the EU reduce and end its dependence on Russian gas and critical minerals from China, he also engaged in significant discussions with a range of people about the Northern Ireland protocol.

He met senior figures in the US Congress including Richard Neal, chair of the powerful Ways and Means Committee, and Brendan Boyle, the head of the EU Caucus on Capitol Hill. Since Congress will have to approve any trade deal between the UK and the US, the role and influence of these powerful Irish-American politicians will be crucial in the ongoing protocol debate.

Maroš Šefčovič tweeted: “A pleasure to meet Congressman Boyle during this week’s St Patrick’s Day celebrations. I’m very much looking forward to continuing our meaningful conversation and cooperation” and “No better time to meet Rep. Richard Neal than during this week’s St Patrick’s Day celebrations.

An excellent, friendly and meaningful conversation on topics which concern us both and which will undoubtedly continue into the future.”

Section Two: The Evolving Debate

British-Irish Intergovernmental Conference, 23 March 2022

A meeting of the British-Irish Intergovernmental Conference (BIIGC) took place in Dublin on 23 March 2022. The Irish Government was represented by the Minister for Foreign Affairs, Simon Coveney TD and the UK Government by the Secretary of State for Northern Ireland, Brandon Lewis MP.

The Conference agenda included a discussion of matters concerned with Political Stability. The Governments reaffirmed their commitment to the full functioning of all of the political institutions established by the Good Friday Agreement, including the North South Ministerial Council. The Conference noted the importance of addressing the outstanding issues in the context of the Northern Ireland Protocol which is currently subject to continuing engagement between the EU and the UK.

The BIIGC was established under the Good Friday Agreement “To promote bilateral co-operation at all levels on all matters of mutual interest within the competence of the UK and Irish Governments”.

UK Government to override Northern Ireland on abortion services

The UK government is taking steps to override the Northern Ireland institutions and to give direct instructions to the NI health trusts to provide abortion services. The government

will take the necessary powers to commission services directly if urgent progress is not achieved.

Northern Ireland Secretary Brandon Lewis addressed the issue in a written Ministerial Statement saying that regulations would “remove the need for executive committee approval before services can be commissioned”. “It has become increasingly clear that the Northern Ireland Department of Health will fail to commission abortion services in full by the deadline I set out last year despite being given every opportunity to do so.” He added that he would have the powers to intervene directly following the assembly elections in May, if sufficient progress has still not been made.

Terminations have been legal in Northern Ireland since October 2019 but services have not been commissioned with a limited service provided by some individual clinicians. Anti-abortion activists have succeeded in stalling provision of legal services leading to a High Court action and a judicial review which concluded that the government had failed to uphold its duties following legalisation.

UK Nationality and Borders Bill

The Minister for Foreign Affairs Simon Coveney has criticised UK plans for a US-style visa waiver for non-Irish EU citizens crossing the Irish border. The UK government’s Nationality and Borders Bill which is on its way through the Westminster parliament will require non-UK and non-Irish nationals to obtain online authorisation before travelling from the Republic into the North.

Minister Coveney said that for many years “the creation of normality” on the island of Ireland had been “based on uninterrupted travel opportunities and movement of people

and we think that is worth protecting.” He made it clear that Ireland would continue making representations to the UK authorities on the issue, looking for an exemption for any non-Irish or British nationals who are resident in Ireland to be able to cross without having to get an ETA (Electronic Travel Authorisation).

The Northern Ireland Secretary Brandon Lewis said the proposed changes to the UK immigration system did not envisage checks at the border. “Nobody’s going to be stopped at the border, we’ve been very clear about that, there will not be any border checks, the CTA -Common Travel Area - is going to be protected.” He was speaking after the House of Commons voted to overturn a House of Lords amendment which would have exempted Northern Ireland from the legislation. The SDLP MP Claire Hanna told the Commons that the proposed legislation would be “hugely disruptive” for non-Irish or UK citizens living on the island while damaging the North’s tourism industry. Simon Coveney commented that the Commons’ vote had “ignored” the Irish position.

As the Bill continues its way through Westminster the point has been made that if there is a legal requirement on individual to apply for permission to enter the North some checks that the requirement is being fulfilled are inevitable. Commentators have asked whether the UK, by introducing this power in relation to the Irish border may be seeking to pressurise the EU to make concessions on the operation of the NI Protocol.

US-UK Trade Deal

Congressman Richard Neal, Chairman of the Congress Ways and Means Committee has told *The Guardian* that a bilateral trade deal between the US and UK is “desirable” but will

not go ahead while the Northern Ireland peace process is being used for domestic political purposes. Richard Neal is a key figure in US trade policy and his committee drafts US trade bills and effectively controls the negotiation of trade deals. Without the committee's support a deal will not be approved.

Richard Neal criticised loyalist voices claiming that the Brexit Withdrawal Agreement has killed the Good Friday Agreement on the grounds that unionists/loyalists did not consent to the deal agreed with the European Union. He said that he has personal reassurances from Northern Ireland Secretary Brandon Lewis and Prime Minister Boris Johnson, on a recent visit to Washington, that there was no desire to jeopardise the Good Friday Agreement.

Section Three: Background Material and Further Reading

Background Material

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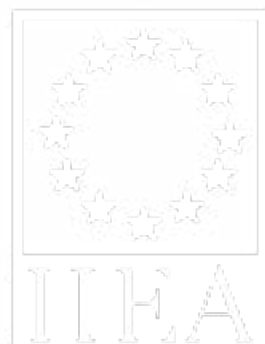
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The Institute of International and European Affairs,

8 North Great Georges Street, Dublin 1, Ireland

T: +353-1-8746756 F: +353-1-8786880

E: reception@iiea.com W: www.iiea.com