

# BREXIT BRIEF

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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](http://www.iiea.com))

## Introduction

The Northern Ireland Assembly election campaign continues, with a succession of party manifestos demonstrating a clear recognition that, in the main, voters' concerns relate to day-to-day issues, notably the cost of living and the future of the NHS in Northern Ireland. The continuing series of rallies against the Protocol on Ireland/Northern Ireland (the Protocol) has become the focus for consideration of constitutional matters and relations with London, Brussels and Dublin.

On 20 April, Jacob Rees-Mogg spoke to the Westminster European Scrutiny Committee and told MPs that "The United Kingdom is much more important than any agreement that we have with any foreign power" and asserted that, in respect of the NI Protocol, "we signed it on the basis that it would be

reformed and there comes a point at which you say, well, the EU haven't reformed it and therefore we are reforming it ourselves."

These remarks came at a moment of connected political circumstances – Boris Johnson's 'partygate' crisis, the upcoming British local elections and the NI Assembly poll. As Tony Connelly commented for RTE, a move by the Prime Minister to 'reform' the Protocol "would win him badly needed backbench and Eurosceptic support at a time when 'partygate' is once again corroding his authority. The EU and the Biden Administration are, meanwhile, both transfixed by the war in Ukraine." Such a move could strengthen the DUP in its fight with Sinn Féin for the top spot in Stormont. Thus, as Connelly concluded: "So, nearly six years after the Brexit referendum, the EU and Northern Ireland remain hostage to Tory Party machinations."

## Section One: State of Play

### UK Plans Legislation

Jacob Rees-Mogg's remarks were given substance by clear indications from UK government sources that lawyers have completed work on draft legislation which would give UK ministers freedom to introduce significant changes, going as far as removing the risk of legal challenge to action to discontinue implementation of specific parts of the Protocol.

If the government decides to proceed, the Bill would be included in the Queen's Speech on 10 May, setting out the legislative programme for the year ahead. The Bill would disapply articles 5-10 of the Protocol, which obliges Britain to apply some EU single market rules in Northern Ireland and impose some checks on goods coming from Britain. Under existing arrangements, the Stormont Assembly is due to vote on whether to retain those articles by the end of 2024. The proposed legislation would have precedence over any such vote, so that Northern Ireland's elected representatives would no longer have a say.

As reported, the legislation is expected to amend the part of the EU Withdrawal Act that gives the Withdrawal Agreement and the Protocol primacy in British law. This was a central part of the treaty the Prime Minister agreed with the EU. Such a move would be seen as a more aggressive step than triggering article 16 of the Protocol, and would be in clear breach of treaty obligations and of international law. The proposed Bill may have a difficult passage through the House of Lords and the timetable for parliamentary approval and implementation is unclear.

The Prime Minister, Boris Johnson, speaking in New Delhi during his trade visit, set out his position: "The Protocol really does not command the confidence of a large, large component of the population in Northern Ireland. We have to address that, we have to fix that. We think we can do it with some very simple and reasonable steps. We have talked repeatedly to our friends and partners in the EU. We will continue to talk to them. But, as I have said many times now, we don't rule out taking steps now if those are necessary."

Responding to the reported UK move, a Commission spokesman remarked: "the Protocol and Withdrawal Agreement are legal obligations to which the UK is bound as much as we are. We are committed to working jointly with the UK government to find long-lasting solutions for Northern Ireland, to bring about long-lasting certainty and predictability for Northern Ireland. Only joint solutions can do that-jointly agreed solutions. This approach is working. Only a few days ago we reached a solution on medicines for Northern Ireland, which was agreed in record time. Our intention is to continue working on these solutions with the UK over the coming weeks."

The Commission further warned that any UK legislation that broke international law at a time when western powers were seeking to present a unified front to Russia's invasion of Ukraine would be "utterly irresponsible. This definitely is not the time for gambling away Britain's reputation as a stalwart of the rules-based international order."

Jeffrey Donaldson said that the DUP's position was well known. "The protocol is not supported by unionists and it needs to be replaced with arrangements that respect Northern Ireland's place in the United Kingdom." The DUP viewed

the development as recognition by the UK government that it needed to find a solution to the Protocol and, in their view Brussels and Dublin should similarly recognise that the Protocol is undermining stability in Northern Ireland.

Sinn Féin's Michelle O'Neill commented, however, that: "[the] Tories are completely out of touch with the majority of people in the North who support the protocol which is a direct consequence of Brexit [...] any unilateral action on the protocol would derail talks with the EU and breach international law which must be respected."

Colum Eastwood, for the SDLP, said that a government "led by ministers who broke COVID-19 laws, admitted to breaching international law in a 'limited way' and are now planning further breaches of an international agreement cannot be trusted." According to him, this was about shoring up the Prime Minister's position in his own party and shoring up the DUP's position ahead of the election.

The Alliance Party MP, Stephen Farry, said that any such action would be "counterproductive and damaging" and accused the government of "pandering to the narrative of extreme unionism or the unicorn thinking of the European Research Group."

The Shadow Northern Ireland secretary, Labour's Peter Kyle, condemned the plan as "absolutely astonishing and incredibly damaging. If we just recklessly pull out of it unilaterally, how will any other country in the world sign a deal with us and think that we will honour it? How will Prime Minister Modi react today when Boris Johnson asks for a trade deal if he is pulling out unilaterally of the last trade deal he signed?"

## Anti-Protocol Rallies Continue

The Anti-Protocol rallies are continuing, with demonstrations organised at Castlederg, East and North Belfast, Newbuildings, Ballymena and Newtownards.

The rallies have brought together a regular trio of key speakers – Sir Jeffrey Donaldson, Jim Allister and the loyalist activist Jamie Bryson. The outrage at the Lurgan rally involving an election poster of the UUP leader Doug Beattie with a noose around his neck, become a major issue in unionist circles with some individuals, connected to one of the loyal orders, attacking Beattie as a "coward" and a "traitor". The SDLP leader, Colum Eastwood, has urged the unionist party leaders to halt the rallies, stressing the need to cool community tensions.

Doug Beattie has said that the party will take no part in any street protests but will attend debates in indoor venues across Northern Ireland. He claimed that open air rallies were being used to destroy the 1998 Good Friday Agreement. "Jamie Bryson wants the protocol rallies to be about getting rid of the Belfast Agreement and we are not going to do that. We support and we intend to use the Agreement in its fullest way." Doug Beattie's opinion is backed by many commentators, with Brian Feeney (*Irish News*) and Alex Kane (*Newsletter*) agreeing that the rally organisers intend to wreck the Agreement which involves both the EU and Dublin.

The former UUP leader, Lord Reg Empey, has criticised those behind the rallies who have not acknowledged that the Protocol was brought about by Brexit. "Self-evidently, if there had not been this particular form of Brexit, there would be no need for any border in the Irish Sea and the Protocol is the legal expression of

that border.”

Speaking at the rally in East Belfast a leading Orangeman, Mervyn Gibson, said that no unionist should re-enter Stormont – nor should an Executive be formed – until the Protocol is “soundly and completely defeated.” Invoking the Ulster Covenant and “UVF gunrunning of old” he argued that “If left in place the Protocol makes you and I subject to the laws and regulations of a foreign power and in time their influence will spread like a cancer.”

## More Assembly Election Manifestos

The continuing election campaign has seen the publication and promotion of the policy manifestos of the parties competing for votes on 5 May.

### SDLP

Party leader Colum Eastwood urged voters to concentrate on day-to-day issues and not the battle between the DUP and Sinn Féin to be the largest party. “I think the real change that people want to see isn’t the change of a title between two political leaders who’ve been running this place for the past 15 years, it’s change in people’s pockets, it’s change on the ground.

### Green Party

The first words of the Green Party manifesto – “We are in Code Red for Humanity”- highlight its concentration on the need for radical action to address the fundamental environmental and climate crisis. The party also argues for change in many key social and economic areas, from gay conversion therapy to action on misogyny and hate crimes. Commentators have argued that the party does not show where the money to pay for their policies is to be found.

### TUV

Party leader, Jim Allister, welcomed an “awakening in Unionism” in launching an extensive policy manifesto, which is essentially based on scrapping the Protocol. Radical pledges on reform of the Stormont system include ending mandatory coalition, even by returning to direct rule from London. There are proposals for significant changes in health provision and tourism promotion.

### People Before Profit

The PBP manifesto has been described as “everything you would expect from the socialist, anti-capitalist party”, proposing a £15 an hour minimum wage (up from £9), free school meals for all, an end to privatisation in healthcare and a £1,000 hardship fund for households in need. The high cost of these policies would be met by “imposing greater taxes on the wealthiest”

### Doug Beattie on Devolved Government

The UUP leader, Doug Beattie, in an interview with the Newsletter, responded in strong terms to rival unionists who are arguing that direct rule from London is preferable to the current devolved system in Belfast.

*If you walk out of government then you don't have the means to provide for your people.*

*This is one of the reasons why these Protocol rallies irk me so much because they have turned them into protests about the Belfast Agreement and about not having a government at Stormont. The silliness of it is that some of those people think just because we don't have an Executive it will mean direct rule from London but it won't be.*

*If you look at the 'New Decade, New Approach' paper it was brought forward by the Westminster Government and the Dublin Government! These people are advocating for much of the same while we are arguing for the Executive to get up and running after the election.*

*Direct rule will have an element of Dublin rule if that is where we are going. It's worth mentioning that whenever 'New Decade, New Approach' was being launched it was Simon Coveney (Irish Foreign Minister) and then Secretary of State Julian Smith announcing it while we in the UUP were still reading the document.*

*We hadn't even finished reading it when the two of them launched it over our heads. This was a deal produced by London and Dublin with buy-in from the DUP and Sinn Féin. Think about it - the return of direct rule will have Dublin input. I just can't understand why people cannot and will not see that. Those who want to wreck devolution are going down a road that will not leave unionism in a stronger position.*

*What I am trying to say is that if you want to have unionism in a stronger place then make Northern Ireland work and to make that happen we need public services controlled locally by a government here.*

## EU Medicines Regulations

The EU Council of Ministers has adopted legislation to ensure the continuation of the unimpeded flow of medicines from Britain to Northern Ireland. A Directive and Regulations have been adopted and will apply retroactively from 1 January 2022. The medicines issues have arisen from the implementation of

the NI Protocol with serious concerns about free movement being impeded when grace periods come to an end. The Council said that the legislative moves would "facilitate the implementation of the NI Protocol on the ground."

Commission Vice-President Maroš Šefčovič, the EU's Chief Brexit Negotiator commented on the decision in a Tweet: "During my visit to Northern Ireland last autumn. I promised to do whatever it takes to ensure the continued supply of medicines to Northern Ireland. We now have a lasting solution which was delivered in record time."

## Section Two: The Evolving Debate

### Sinn Féin on "walking the journey" to unity

The Sinn Féin president, Mary Lou McDonald, has called for "partnership" with unionists in helping to build a "new Ireland". Speaking at the party's Easter Rising commemoration she insisted that the unionist people must have an "equal part" in that enterprise: "To those of a unionist tradition I say sincerely, we seek partnership with you. A future of equality and freedom belongs to you. A future of progress and change belongs to you. A future of prosperity and opportunity belongs to you. It is not for anybody to invite you in: that future is already yours." She argued that successive British governments had disrespected and failed the unionist community, time and again. Instead of a government in London turning its back on you, imagine an Ireland where your place is assured and your rights are enshrined in law."

Mary Lou McDonald described the Assembly

election on 5 May as the “most important in a generation” and said that the “democratic test for the leaders of political unionism will be if they accept the will of the people. The people will decide the election. They will decide who occupies the office of First Minister. There is not an office in this land that is off-limits or the sole preserve of one group.”

The Party president made it clear that the titles of First Minister and Deputy First Minister will not change if Sinn Féin win the assembly poll. There had been speculation that Sinn Féin would seek to change the title to “joint office of First Minister”.

## UK Mayors in Brexit Visit

The Labour mayors of Manchester and Liverpool have visited Dublin and Belfast, seeking a post-Brexit “resetting” of ties with Ireland. The visit was seen to reflect the civic leaders concern about poor relations between Ireland and Britain in the context of the continuing EU-UK dispute over the Northern Ireland Protocol.

The mayors sought to distinguish relations across the Irish Sea involving their cities in the northwest of England, with their longstanding, strong social and economic connections to Ireland (North and South) and those involving the current UK government led by Boris Johnson.

Manchester Mayor Andy Burnham told the Irish Times that “When people in Westminster speak, they don’t always speak for us. I can imagine how in Ireland some people might think that they do, or they might think, ‘What’s happened to the northwest, has it changed?’ Obviously, we’re coming over to say that we haven’t changed. We don’t want to see some of the nonsense in national politics disrupt our relationship with Ireland.” The Liverpool

mayor, Steve Rotherham, said the visit was an opportunity to strengthen links between Ireland and England’s northwest, arguing that “brand Liverpool and brand Manchester are probably more of an attraction in Ireland than perhaps the UK or certainly an English government.”

Andy Burnham said that their trade and cultural mission was “about the northwest of England and Ireland not drifting apart post-Brexit, about pulling us both together and resetting things for a new post-pandemic, post-Brexit future.”

The mayors met President Michael D Higgins and the Taoiseach and Tánaiste. With a group of business representatives they met Irish businesses, highlighting opportunities in the tech sector, offshore wind power and the “green industrial revolution.”

## Trade Developments

Dublin Port has reported an almost 14% increase in freight volumes in the first three months of 2022. However, the Port management does not expect to return to pre-Brexit levels for a year or two.

Freight volume rose by 13.7 % to 8.9 million tonnes in the first quarter, compared with a 15.2% drop to 7.8 million tonnes in the corresponding quarter of 2021. The volume recorded is 8% down on the first quarter of 2019 which was a record year. The Port is continuing to recover volume after the double impact of Brexit and Covid-19.

The Dublin Port CEO, Eamonn O’Reilly, told the Irish Times that he did not expect to see a return to 2019 levels of growth until 2023 or 2024 as traders move their activity from post-Brexit Britain towards continental Europe. “What the future holds is Ireland growing its trade with continental Europe and not growing

Britain in the way that it was in the past.”

Dublin Port deals with four-fifths of all trailers and containers handled in Irish ports and in the first three months these trade volumes grew by 13% to 363,000. Passenger numbers on ferries rose by more than 159% to 209,000 and tourist vehicles more than doubled to 58,000. There was an increase of 1.8% - to 152,000 units - in freight volumes on ferries travelling to and from continental European ports such as Cherbourg and Rotterdam.

Eamonn O'Reilly commented that CLDN, the direct shipping line operating between Ireland and the continent, had experienced extraordinary growth, becoming the port's busiest line.

## Looking to the Future

The Assembly election campaign has inspired - or provoked - discussion of the nature of the Northern Ireland political system as reflected in the terms of the Good Friday Agreement and in the controversial aftermath of Brexit.

In his Irish Times column, Michael McDowell argues that an 'extensive renegotiation' of the Good Friday Agreement may come about in the likely post-election impasse.

*So we have to be realistic. Expecting unionists to commence a unity dialogue with a party that dangles the prospect of a 32-county socialist republic before them is very fanciful in present circumstances. It doesn't appeal to the majority of voters in Northern Ireland and it is simply of no interest to unionist or Alliance voters.*

*Assembly elections next month will, I think, see Sinn Féin emerge as the*

*largest political party, perhaps having the same minority level of support that opinion polls in the South indicate that it has here. But what will happen then? Assuming for a moment that the DUP comes second - a reasonable assumption - the question then arises is whether the DUP will nominate a Deputy First Minister to serve with Michelle O'Neill.*

*My guess is that the DUP will not make such a nomination. I think that the most likely outcome will be a stalemate which will require extensive renegotiation of the Belfast Agreement as amended at St Andrews. A very different form of coalition power-sharing will probably emerge from a very lengthy suspension of the Assembly - possibly lasting years. So, yes, a dialogue is in the offing. But it's not the dialogue that Mary Lou had in mind. It will be about a re-design of power-sharing - not about Irish unity. That's where we are heading now.*

An *Irish Times* editorial highlights the continuing 'drama' of Northern Ireland politics.

*Brexit's outworking, Covid-19, the provision of abortion services and renewed focus on violence against women rival perennial preoccupation with orange versus green in everyday conversations this election season in Northern Ireland. The results in the Assembly election of May 5th will reflect these evolving concerns.*

*And yet the election will inevitably leave many questions unanswered. It will not, for example, further advance debate on re-negotiation of 1998's*

*legislative structures or on a Border poll. The election could see "neithers" confuse the old binary outcome, yet decline to consolidate the cross-community Alliance as a third force. Unionism versus nationalism retains its drama.*

*The outcome holds most risk to Jeffrey Donaldson, whose brief leadership of the DUP has been mixed so far. His increasingly tailored pleas for voters to stymie Sinn Féin topping the poll might possibly enthuse wider unionism. But sharing platforms at pan-loyalist rallies has not shown the MP for Lagan Valley in the best light.*

*The counter-pressure to pleading for every unionist vote has been Sinn Féin hushing its talk of a united Ireland, in favour of emphasis on the cost of living and the desirability of partnership. Some have come close to calling this a sneaky move rather than logical electoral gamesmanship. Those wooed by a "new" Sinn Féin could push northern leader Michelle O'Neill ahead of Donaldson as putative first minister. The DUP has all but committed to collapsing a Sinn Féin-led Stormont a worrying sign for a fragile democracy and its institutions.*

The *Irish News* columnist, Brian Feeney, writes of 'normal politics':

*There's much talk among the commentariat about reform in assembly rules so that an executive could be formed which wouldn't have to include all the main parties. You can see why. The argument arises from frustration and annoyance, even anger, that either*

*the DUP or Sinn Féin can collapse the whole shebang by walking out.*

*There's also the matter of designation – nationalist or unionist – whereby, according to the rules agreed at St Andrews in 2006, even if the Alliance party came second in assembly seats and votes (which it won't) Naomi Long couldn't be deputy first minister. She's an 'other' you see.*

*Lying behind these arguments is the desire, mostly of unionists, to have 'normal politics', to be just like, altogether now, 'the rest of the UK'. Listen folks, there will never be 'normal politics' here because the north is an artificial construct. That's the reason there's a power-sharing executive which some people call a 'mandatory coalition'. It's not a coalition because the people running it never come together voluntarily as a result of a political deal, as for example in the south in 2020 or Britain in 2010 or Germany last November.*

*If the DUP are returned as the largest unionist party and refuse to enter an executive either because SF is entitled to be first minister or because the truth is they really oppose the Good Friday Agreement, then it may be time to look for a new post-Brexit settlement after the next British general election. By then the DUP will have demonstrated that the north won't work/can't work as a UK sub-polity. Paradoxically unionists will have shown it's time for a border poll.*

*Alex Kane wrote in the Irish Times that "This is now the seventh election since*



*1998. Irrespective of the outcome on May 5th, there is no likelihood of a new executive anytime soon. Even if there is one, there won't be a programme for government for which the executive will take collective responsibility. Meanwhile, most of the original mountain of problems which faced the first executive (elected in July 1998) remain unresolved – while the mountain continues to grow.*

*If the centre doesn't make inroads this time, then I don't see when it ever would. If the big two remain the big two, then I presume they will interpret it as a mandate for adding another few degrees to the frost level. All of which raises the obvious question: how long do we continue the collective pretence that it is worth preserving the Assembly? Maybe the 25th anniversary celebration of the agreement, scheduled for Belfast next April, could put that question on the agenda.*

## US Preacher on 'powers of darkness' pushing Protocol

A controversial US pastor who attended an anti-Protocol rally in Lurgan has claimed that "the same powers of darkness that have imposed sodomy, abortion, and tyranny upon Northern Ireland are the same powers pushing the Protocol". Pastor Rusty Thomas said he was invited to Friday's rally after one of its organisers heard him preach during his visit to Northern Ireland to attend an event of the pro-life activist group, Abolish Abortion NI.

"The same powers of darkness that has imposed sodomy, abortion, and tyranny upon Northern Ireland are the same powers pushing the Protocol. The challenge is to connect this with the leaders of Northern Ireland so if or

when they win the battle, they will also free their nation of the abominations the Protocol has sought to impose upon them."

Mr Allister was asked on yesterday's Nolan Show exactly who invited the American pastor to the rally and he said he had no idea. He also said he was not a suitable speaker.

## Section Three: Background Material and Further Reading

### Background Material

**Tony Connelly** Why Boris Johnson may legislate to breach NI Protocol. RTE, 23 April 2022. <https://www.rte.ie/news/analysis-and-comment/2022/0422/1293789-ni-protocol-latest/>

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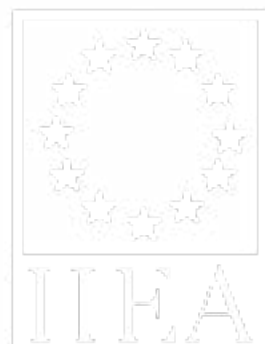
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