

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)

Introduction

Johnson Government in Crisis

Boris Johnson has resigned as Prime Minister of the United Kingdom. After weeks of rumbling discontent – both from the public and from within his own party – matters appear to have reached a head with the Prime Minister's handling of the resignation of Deputy Chief Whip Chris Pincher, who stepped down from his post last Thursday, 30 June 2022, amid allegations of misconduct. Subsequently, serious questions emerged regarding Mr Johnson's prior knowledge of Mr Pincher's past behaviour.

Two high-profile resignations resulted on Tuesday, 6 July 2022, with Chancellor Rishi Sunak and Health Secretary Sajid Javid

resigning within minutes of each other. Dozens of other governmental resignations followed, including: Brandon Lewis, Northern Ireland Secretary; Will Quince, Minister for Children and Families; Alex Chalk, Solicitor General for England and Wales; Robin Walker, Minister of State for School Standards; John Glen, Minister for the Treasury; Victoria Atkins, Minister of State for Prisons and Probation; Jo Churchill, Parliamentary Under-Secretary of State for Agri-Innovation and Climate Adaptation; and Stuart Andrew, Minister of State for Housing. There was also, on Wednesday 6 July, the high-profile sacking of Michael Gove, who had called openly for Mr Johnson to resign.

Faced with this dramatic – and growing – wave of resignations, Mr Johnson, who had initially indicated his intention to battle on as

Prime Minister, relented on the morning of Thursday 7 July. His departure date remains to be determined.

Developments in London will, no doubt, be watched keenly in Ireland. In recent times, Irish Ministers and officials have expressed the view that relations with their UK counterparts were at their lowest ebb in a generation. In respect of this growing lack of trust between London and Dublin, the Tánaiste, Leo Varadkar, was recently quoted as saying: "We will do the best we can to come to an agreement with this Government. If we can't with this Government, then a future government".

In light of developments, the Irish side will not have long to wait for a changed line-up of interlocutors in London. Whether Mr Johnson's successor will take a different approach to the Protocol on Ireland/Northern Ireland, as well as relations with Ireland and the European Union, however, remains to be seen.

Northern Ireland Protocol Bill

On 23 June 2022 the sixth anniversary of the 2016 Brexit Referendum was marked. Days later, on 27 June 2022 the House of Commons gave a Second Reading to the Northern Ireland Protocol Bill, by 295 votes to 221. The Bill, if finally approved by both Houses of Parliament will empower the UK Government to 'disapply' key sections of the Protocol on Ireland/Northern Ireland, which is part of the UK-EU Withdrawal Agreement. The UK Foreign Secretary, Liz Truss, has argued that the Bill "will fix problems the Protocol has created in Northern Ireland...undermining the Belfast (Good Friday) Agreement. Our preference remains a negotiated outcome but the EU are unwilling to change the Protocol therefore we must act."

The lengthy Second Reading debate saw the Bill widely criticised as unilaterally and illegally breaching an international treaty – the Withdrawal Agreement. In a heated exchange the Foreign Secretary insisted that the Bill is legal – and stated that "the reason why I am putting the Bill forward is that I am a patriot and a democrat." The former Prime Minister, Theresa May, responded "As a patriot, I would not want to do anything to diminish this country in the eyes of the world."

The EU Commission responded to the Commons vote by insisting that "thanks to the Protocol, we prevented a hard border on the island of Ireland, and ensured that Northern Ireland can continue to benefit from the peace process in full. For these very reasons, the EU cannot – and will not – accept this delicate balance being unilaterally and illegally disappplied because of an outright U-turn by the UK government." The Commission reopened a number of paused legal proceedings against the UK and made it clear that it will be "watching developments closely" as the Bill moves through Parliament.

The Commons vote gives rise to serious concerns in Dublin. Stephen Collins, in The Irish Times wrote that the decision "has put the Government in Dublin on notice that it needs to develop a clear strategy to deal with a complete breakdown of relations between the EU and the UK. If that happens the Government will have to make a choice about whether its priority is the avoidance of a "hard border" on the island of Ireland or continued membership of the EU single market." This consideration raises again arguments about the likelihood of paramilitary violence should customs posts reappear along the border. The American commentator, James Waller, in his book on Northern Ireland - 'A Troubled Sleep'- writes "Many people I spoke with,

however, said that ordinary folk on both sides of the border would tear the infrastructure down even before paramilitaries had a chance to attack it.”

Meanwhile, the UK Government is proceeding with two more pieces of legislation with direct relevance to the Good Friday Agreement and the troubled post-Brexit situation in Northern Ireland – the UK Bill of Rights, which would change the UK’s relationship to the European Charter and Court of Human Rights - and the Northern Ireland Troubles (Legacy and Reconciliation) Bill’ which is opposed across communities in Ireland as it appears to offer an amnesty to perpetrators of violent atrocities during the Troubles.

Section One: State of Play

UK Legislation Introduced

Northern Ireland Protocol Bill in House of Commons, 27 June 2022

The House of Commons, on 27 June 2022, voted by 295 to 221 to give a Second Reading to the Northern Ireland Protocol Bill. There were significant abstentions among Conservative MPs unhappy with the legality of the legislation but none voted against the measure at this stage. The Bill will proceed to the Committee Stage in the House of Commons and onwards to the House of Lords where it expected to face strong opposition. Prime Minister, Boris Johnson, has expressed confidence that the Bill can be enacted before the end of the year, saying “Yes, I think we could do it very fast, Parliament willing.”

The long Second Reading debate was opened by the Foreign Secretary, Liz Truss:

We are taking this action to uphold the Belfast/Good Friday agreement, which

has brought peace and political stability to Northern Ireland. The Northern Ireland protocol is undermining the function of the agreement and of power sharing. It has created fractures between east and west, diverted trade and meant that people in Northern Ireland are treated differently from people in Great Britain. It has weakened their economic rights. That has created a sense that parity of esteem between different parts of the community, an essential part of the agreement, has been damaged.

The Bill will address those political challenges and fix the practical problems the protocol has created. It avoids a hard border and protects the integrity of the UK and the European Union single market. It is necessary because the growing issues in Northern Ireland, including on tax and customs, are baked into the protocol itself. Our preference remains a negotiated solution, and the Bill contains a provision that allows for negotiated agreement, but the EU has ruled out up-front making changes to the text of the protocol.

Those who advocate further negotiation with the EU need to persuade the EU to change its negotiating mandate so the text of the protocol can change, because we know that those specific issues, including on the customs bureaucracy and VAT, can only be addressed by addressing the text of the protocol itself.

Of course we have looked at triggering article 16 to deal with this issue; however, we came to the conclusion that it would not resolve the fundamental issues in the protocol. It is only a temporary measure and it would only treat some

of the symptoms without fixing the root cause of the problems, which are baked into the protocol text itself. It could also lead to attrition and litigation with the EU while not delivering sufficient change. I want to be clear: we do not rule out using article 16 further down the line if the circumstances demand it, but in order to fix the very real problems in Northern Ireland and get the political institutions back up and running, the only solution that is effective and provides a comprehensive and durable solution is this Bill.

The Labour Party's Shadow Foreign Secretary, David Lammy, argued:

This Bill is not the way forward. It will exacerbate the problems it hopes to solve. It will gift Ministers unaccountable powers. It will divide us from our friends and allies in Europe when we should be united. It damages our country's reputation. It will break international law. The rule of law is not a Labour or a Conservative value; it is our common inheritance. Since Magna Carta in 1215, it is no exaggeration to say that it is one of the greatest contributions that our country has made to the world. No party owns it. No Government should squander it. Britain should be a country that keeps its word. Let us stand for that principle and vote against this Bill tonight.

The former Prime Minister, Theresa May, spoke at length in opposition to the Bill:

I welcome the opportunity to speak in this debate, although I have to say to the lone Minister sitting on the Front Bench

that I do not welcome this Bill. I fully understand and share the Government's desire to uphold the Belfast/Good Friday agreement. I understand and share the desire to keep the Union of the United Kingdom. I recognise the frustration and difficulty when the Northern Ireland Assembly and Executive are not in place and operating. I also share the Government's desire to get that Assembly and Executive back operating for the good of the people of Northern Ireland. I do not believe, however, that this Bill is the way to achieve those aims.

In thinking about the Bill, I started by asking myself three questions. First, do I consider it to be legal under international law? Secondly, will it achieve its aims? Thirdly, does it at least maintain the standing of the United Kingdom in the eyes of the world? My answer to all three questions is no. That is even before we look at the extraordinarily sweeping powers that the Bill would give to Ministers.

My answer to all those who question whether the Bill is legal under international law is that for all the above reasons, no, it is not. My answer to the second question as to whether the Bill will achieve its aims is no, it will not.

My final question was about the UK's standing in the world. The UK's standing in the world, and our ability to convene and encourage others in the defence of our shared values, depends on the respect that others have for us as a country—a country that keeps its word and displays those shared values in its actions. As a patriot, I would not want

to do anything to diminish this country in the eyes of the world. I have to say to the Government that this Bill is not in my view legal in international law, it will not achieve its aims and it will diminish the standing of the United Kingdom in the eyes of the world. I cannot support it.

For the DUP. Sir Jeffrey Donaldson, argued:

I believe that this Bill is essential to the restoration of political stability in Northern Ireland. It will provide a framework for the free movement of goods within the UK internal market in line with the Government's commitment in New Decade, New Approach. It gives reasonable protection to the EU single market; it does not have an impact on the EU and the integrity of that market. In fact, it protects the integrity of that market as well as the integrity of the United Kingdom's internal market. I see no reason why this House should not bring forward measures to do that, when it is clear and evident that the protocol has disrupted the integrity of the UK internal market.

In conclusion, much harm has been inflicted on the Belfast agreement and its successor agreements. Time is now short to ensure that we arrest this situation, and the only way to do that, finally and fully, is to deal with the protocol and to see Northern Ireland once again focus on moving forward together. We want to see the Northern Ireland Assembly and Executive restored, and that can be achieved when there is a sustainable basis for doing so. We will continue to be condition and not calendar-led as we look forward to this Bill now making rapid progress. I commend the Bill, and we will be supporting it in the interests

of Northern Ireland and the integrity of the entire United Kingdom."

The former Northern Ireland Secretary, Julian Smith, spoke of relations with the Irish government: "We also need to work out how to encourage Dublin. We need its help to get the EU to shift. Ireland should have done more to help when we needed an exit mechanism on the backstop, but we now need to get Dublin, and also the parties in Northern Ireland, to focus on a resolution. We need a new, intensive UK, Northern Ireland, Irish and EU process. That is how we will get the east-west checks resolved so there is no border down the Irish sea. That is how we will fudge issues on regulation. That is even how we might get to fix legal oversight. But we need a sustainable solution.

The task in Northern Ireland is, as ever, to secure broad consensus and that means that Government, as well as addressing the concerns of Unionism, also have to reflect on the concerns of all communities and the growing centre ground. A new intensive Northern Ireland focus in the negotiation process is the only way to ensure that this fragile but high-performing part of our country is handled with the utmost care, balance and respect.

Alliance Party MP, Stephen Farry, made the following intervention:

This is an extremely bad Bill. It is unwanted, unnecessary and, indeed, dangerous. A number of Members have referred to Orwellian double-speak; we should add that there is also some Alice in Wonderland thinking to what is happening here.

The Foreign Secretary's approach to opening this debate was deplorable and did not take the issues entirely seriously. As well as the process by which she has reached this point being extremely disappointing, her engagement in Northern Ireland has been incredibly selective. She has chosen an echo chamber to reinforce her own prejudicial views on the way forward rather than to engage with the entire community in Northern Ireland.

Speaking for the SDLP, Claire Hanna offered the following remarks:

The Bill recycles the same distortions and half-truths that the people of Northern Ireland have been listening to for the last six or seven years of the Brexit debate, and there is still a failure to reconcile the dilemmas that Brexit forces and the choices that the UK Government have made with the reality of our geography.

I hope that the DUP will understand—I mean this in the best possible way—that hundreds of thousands of us in Northern Ireland who do not identify as Unionists constitutionally compromise every single day; we live in a reality where the governance lines do not directly match up with our identity. We do that because it suits the majority of people, and because Northern Ireland is not a place where hard, sharp lines of sovereignty work, or where the winner can take all. It is a place where governance survives in the shades of grey, as the right hon. Member for Skipton and Ripon (Julian Smith) said.

Simon Coveney Statement, 27 June 2022

The Minister for Foreign Affairs issued a Statement on the Northern Ireland Protocol Bill on 27 June 2022, noting his disappointment at the path the UK Government had chosen, and urging a reconsideration of their approach:

I am hugely disappointed that the British government is continuing to pursue its unlawful unilateral approach on the Protocol on Northern Ireland. This is not the way to find sustainable solutions to the genuine concerns of people and business in NI and only adds to uncertainty. I continue to urge the British government to return to constructive dialogue with the EU in pursuit of jointly agreed, long-lasting solutions.

Maros Sefcovic at Bloomberg, 29 June 2022

European Commission Vice-President Maroš Šefčovič addressed a Bloomberg network event on 'EU-UK Relations' on 29 June 2022. In his remarks, he addressed the question of the protocol on Ireland/Northern Ireland, noting the benefits of the agreement:

[...] thanks to the Protocol, we prevented a hard border on the island of Ireland, and ensured that Northern Ireland can continue to benefit from the peace process in full.

For these very reasons, the EU cannot – and will not – accept this delicate balance being unilaterally and illegally disappplied because of an outright U-turn by the UK government.

So, in short – the Protocol embodies trust. Trust in the political process. Trust between the EU and the UK. Trust in international agreements. Trust is the essence of any true partnership. Therefore, rather than eroding it or breaking it, there must be a genuine determination to build the kind of cooperation we need in today's world. I am convinced that this is what people in both the UK and the EU deserve. And this is my main message today.

Vice President Šefčovič also discussed the EU's attempts to compromise with the UK and put forward workable solutions to the issues that have been raised:

That is why my team and I had been engaging extensively with all stakeholders, resulting in a set of solutions put forward last October and further fleshed out two weeks ago.

By showing genuine and unprecedented flexibility within the Protocol, we have gone the extra mile. For instance, our proposals would: Reduce sanitary and phytosanitary checks and controls by more than 80 percent; Cut customs paperwork in half; Create an express lane – or green lane, if you prefer – for goods moving from Great Britain to Northern Ireland; Simplify certification, with a single three-page document for a whole lorry full of different goods filled in once a month; And allow the movement of certain goods that would otherwise be restricted, such as chilled meat, including sausages.

This robust offer can work, and it can work fast. I am sure of it, because we have already proposed and delivered,

in record time, on the promise of an uninterrupted supply of medicines to Northern Ireland.

Therefore, while dealing with all three counterparts appointed by the UK government, my approach has been clear and consistent all along: Engage with stakeholders in Northern Ireland; Facilitate the implementation of the Protocol to the maximum extent possible, in the face of challenges brought about by Brexit; And move on from Brexit to a truly strategic EU-UK partnership.

This is in stark contrast with the "my way or the highway" approach, reflected in the UK's latest unilateral move.

Germany and Ireland on Protocol, 3 July 2022

Writing in *The Observer* on 3 July 2022, Annalena Baerbock, Germany's Minister for Foreign Affairs and Simon Coveney, Ireland's Minister for Foreign Affairs UK address the UK Government's introduction of the Northern Ireland Protocol Bill.

There is no legal or political justification for unilaterally breaking an international agreement entered into only two years ago. The tabling of legislation will not fix the challenges around the protocol. Instead, it will create a new set of uncertainties and make it more challenging to find durable solutions.

We know and understand that the people of Northern Ireland want certainty, stability and predictability, for their future and the future of their children. We saw this in the recent assembly elections, where 52 of the

90 MLAs elected are supportive of the protocol. That is why the EU stands by the protocol and why its proposals remain on the table. We are open to being flexible and creative because we believe the protocol can work to the benefit of all in Northern Ireland.

In these difficult times, as Russia is leading a ruthless war in Ukraine, breaking with our European peace order, the EU and UK must stand together as partners with shared values and a commitment to uphold and strengthen the rules-based international order.

We urge the British government to step back from their unilateral approach and show the same pragmatism and readiness to compromise the EU has shown. By working together – in partnership and with mutual respect – common ground can be found and challenges, no matter how difficult, overcome.

Introduction of UK Bill of Rights Bill

The UK Justice Secretary, Dominic Raab, introduced the Bill of Rights Bill in the House of Commons, arguing that the Bill “is the next chapter in the evolution and strengthening of our human rights framework.” He stated that the UK intends to remain a state party to the European Convention on Human Rights but that it is intended to reinforce quintessential UK rights and to strengthen the separation of powers in this country, affirming the supremacy of the Supreme Court and making it explicit that UK courts are under no obligation to follow Strasbourg case law and, indeed, are free to diverge from it:

We have consulted and engaged widely across the whole United Kingdom, and will continue to do so. This is a UK-wide reform, but we want to work with all the devolved Administrations on these essential reforms, so we will be seeking legislative consent motions—noting that reform, replacement or revision can take place only from Westminster.

Our Bill of Rights will strengthen our proud tradition of freedom, demarcate a clearer separation of powers, ensure greater respect for our democratic institutions, better protect the public, and restore a healthy dose of common sense to the justice system, which is essential for commanding greater public confidence. Ultimately, it will make us freer and help to keep our streets safer.

The Alliance Party MP, Stephen Farry, said:

I do not think the Justice Secretary has fully thought through the implications for mutual extradition arrangements across Europe, including those under the trade and co-operation agreement. It is important to stress that the Good Friday agreement applies the full effect of the convention, not the convention in name only. Does he understand that confidence in the new policing and criminal justice arrangements in Northern Ireland, including on legacy cases, is very heavily predicated on full adherence to the European convention?

Secretary Raab replied to offer the ‘reassurance’ that the UK would be not only remaining a state party to the convention but that the convention would be “properly enshrined in the Bill of Rights.”

Section Two: The Evolving Debate

Taoiseach / Shared Island Dialogue, 29 June 2022

On 29 June 2022 the Taoiseach, Micheal Martin, addressed the 11th Shared Island Dialogue held in Derry. The Taoiseach noted the present difficulties in relations, and in the power-sharing arrangements in Northern Ireland, and urged all parties to work together in the interests of the people of Northern Ireland.

It is by living up to these principles of the Agreement since 1998 that we have achieved an enduring peace and a priceless opportunity for a truer reconciliation on this island.

But, clearly today there is no room for complacency. There is a way to go if we really are to not just acknowledge, but fully accommodate and celebrate our different identities on this island:

The power-sharing and North South institutions of the Good Friday Agreement are, once-again, not fully functioning, which is a critical absence that must be resolved;

People in Northern Ireland - unionists, nationalist and others - do have genuine concerns about the outworkings of Brexit, and its impacts in practical terms;

These need to be worked on sincerely by all with responsibilities, on the basis of real partnership under the Good Friday Agreement and the interests of all of the people of Northern Ireland. That will remain the Irish Government's approach.

Leo Varadkar on BBC Northern Ireland, 1 July 2022

The Tanaiste, Leo Varadkar, gave a lengthy interview to the BBC Northern Ireland programme 'The View' on 1 July 2022. He argued that the UK Government's explicit backing of one Northern Ireland political faction versus the pro-protocol parties was undermining the careful balance of interests contained in the 1998 Agreement. He spoke of the current UK policy posing a threat to the union itself by imposing "things that a clear majority of people don't want" and of the lack of trust between London and Dublin. He said that "in my political lifetime I've never seen relation this bad" but insisted that "we will do the best we can to come to an agreement with this government. If we can't with this government, then a future government."

Section Three: Background Material and Further Reading

Background Material

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