

BREXIT BRIEF

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Introduction

The early days and weeks of Rishi Sunak's occupancy of No 10 Downing Street have been marked by some optimism, and better 'mood music' in relations between Dublin and London, as the Prime Minister and Taoiseach Micheál Martin held 'positive' meetings at COP27 and at the British-Irish Council in Blackpool. Progress has been noted on EU-UK engagement and technical talks have taken place.

Meanwhile, Northern Ireland Secretary Chris Heaton-Harris, having visibly struggled with DUP intransigence, NI electoral law and the absence of effective devolved administration in Northern Ireland, ultimately informed the House of Commons that Assembly elections have been delayed into the New Year to provide space for EU-UK talks in pursuit of a deal on the Protocol.

It is also clear that there may be a serious challenge in ratifying any EU-UK deal on the Protocol in the face of the DUP and Jeffrey Donaldson's 'red lines' and the ideological Brexit doctrine of the Tory Party's ERG group.

The Irish Times editor has commented that "[T]here is no reason why agreement cannot be hammered out on these issues. But unless London moderates its previous position, there will be no deal. If he is to make that move, it will require Sunak to face down some of the Brexit ultras within his own party. We have not yet had the opportunity to gauge his stomach for that fight."

Section One: State of Play

Taoiseach and Prime Minister meet in Blackpool

The British Prime Minister, Rishi Sunak and the Taoiseach, Micheál Martin, met in Blackpool on 11 November 2022. Following their discussions both Governments issued statements:

For the UK's part, the following was released:

The Prime Minister welcomed the Taoiseach Micheál Martin to Blackpool as the host venue for the partners of the 38th British-Irish Council. He expressed his commitment to working closely on matters of shared interest, and to deepen

UK-Irish ties, particularly in the face of Russian aggression in Ukraine and the associated energy crisis.

The Prime Minister set out the UK government's decision to introduce legislation to provide a short extension to the period for Executive formation and reiterated his firm commitment to upholding the Belfast (Good Friday) Agreement in all its dimensions. On the Northern Ireland protocol, the Prime Minister stressed that the UK's strong preference is for a negotiated solution with the EU. He reiterated that any deal must solve the full range of issues caused by the protocol but hoped for flexibility and pragmatism.

Taoiseach Martin had the following to say:

I welcome the opportunity to meet with Prime Minister Sunak so soon after his appointment. It clearly demonstrates the importance of the relationship between Ireland and Britain. People and businesses in Northern Ireland have been crystal clear that they want agreed solutions to the Protocol issues and now is the time to do so. I hope this can be achieved and that progress can be made on re-storing the NI Executive and all of the Institutions of the Good Friday Agreement.

The British-Irish Council (BIC) held its 38th Summit on 11 November 2022, hosted by the UK Government in Blackpool. The Prime Minister opened the Council Summit Programme, welcoming delegates to Blackpool. He is the first Prime Minister to attend the Council since Gordon Brown in 2007.

The Council brought together government leaders from the UK, Ireland, Scotland, Wales, Guernsey, Jersey and the Isle of Man. Northern Ireland was represented by the Secretary of State in the absence of First and Deputy First Ministers.

A Communique was issued, including reference to Northern Ireland:

The Council received an update on Northern Ireland and looked forward to the restoration of the devolved institutions. The Council also noted that 2023 would mark the 25th anniversary of the Belfast/Good Friday Agreement, and underlined the importance of supporting the effective functioning of all of the agreement's institutions, including the British-Irish Council.

Northern Ireland Secretary Statement to House of Commons, 9 November 2022.

The Northern Ireland Secretary, Chris Heaton-Harris, addressed the House of Commons on 9 November 2022 on the NI Assembly elections issue:

Since 28 October, I have been engaging widely in Northern Ireland with the parties, with businesses, with community representatives and with members of the public. I have also spoken with other international interlocutors. I think it is fair to say that the vast majority of those to whom I have spoken think that an election at this time would be most unwelcome.

The one thing on which everyone agrees is that we must try to find a way through

the current impasse, in which I have a legal duty to call an election that few people want and that everyone tells me will change nothing. I will therefore introduce legislation to provide a short, straightforward extension to the period for Executive formation. The current period will be extended by six weeks to 8 December, with the potential for a further six-week extension to 19 January if necessary. The aim is to create the time and space necessary for talks between the UK Government and the European Commission to develop, and for the Northern Ireland parties to work together to restore the devolved institutions as soon as possible.

At a time when so many people are concerned about the cost of living in Northern Ireland, I know that the public there will welcome a further measure that I intend, which will address another matter that was addressed by the former Secretary of State whom I quoted earlier. People across Northern Ireland are frustrated that Members of the Legislative Assembly continue to draw a full salary while not performing all the duties that they were elected to do. I will therefore be asking for this House's support to enable me to reduce MLAs' salaries appropriately.

Let me end by repeating that the overriding priority of this Government is to implement, maintain and protect the Belfast/Good Friday agreement, which has been the bedrock of so much of the progress in Northern Ireland over the past quarter-century. In recent days, some people have called for joint

authority in Northern Ireland. Let me say that that will not be considered. The UK Government are absolutely clear that the consent principle governs the constitutional position of Northern Ireland, under which Northern Ireland is an integral part of the United Kingdom. We will not support any arrangements that are inconsistent with that principle. In addition, we remain fully committed to the long-established three-strand approach to Northern Ireland affairs.

Peter Kyle MP, the Shadow NI Secretary, responded:

We have also put forward solutions to the outstanding issues with the Northern Ireland protocol. The politics, as well as the implementation, of the protocol are indivisible from the current impasse. Anyone who thinks differently is on a hiding to nothing. Even though the protocol forms part of a treaty between the UK and the EU, Northern Ireland is, by definition, on the frontline. The Unionist community perceive it as an existential threat, yet party leaders from both communities, and the Alliance party, tell me that they are not meaningfully updated, let alone consulted, on the UK's negotiations.

The Secretary of State is still relatively new in his position. Will he turn a new page and find ways to bring Northern Ireland's parties together; to bring them in from the cold? Given that negotiations with the EU are so opaque, perhaps he could tell us whether they are finally trying for a veterinary agreement. I met all the party leaders in the week

before the 28 October deadline, and I do not think that what they said then has changed since. There is great hope that the nature of negotiations with the EU has changed, and that a deal is close. If that is indeed the case, the Government need to update the House regularly, and to keep us updated henceforth.

Three Secretaries of State in six months was never likely to lead to a sustained effort to restore Stormont. Chaos has consequences. More than any other part of our country, Northern Ireland is reeling from the Tory dysfunction here in Westminster.

Sir Jeffrey Donaldson MP (DUP):

[...] I say to the Secretary of State that words such as "courage", "understanding" and "compromise" are fine and good words, but what the people of Northern Ireland need now, the sooner the better, is a solution that sees the institutions restored on the basis that Northern Ireland is an integral part of the United Kingdom, in line with article 1 of the Belfast agreement and with the Act of Union itself.

Claire Hanna MP (SDLP):

We believe strongly and hope that a fair deal is available between the EU and the UK that will satisfy all people of all identities and all economic sectors, if parties will just lead and compromise, and not spend their time on misinformation and disinformation. I believe that that is what the people of Northern Ireland want. For many years, people of my background faced the jibe

that we did not want to make Northern Ireland work. We desperately do, but, unfortunately, the party in front of me, the Democratic Unionist party, will not allow that at the moment.

Let us consider the following: "it is wrong [...] in a democracy, that one party, representing [...] 25% of the people, is able to veto the establishment of a Government. That is not democracy". Those are not my words but the words of the right hon. Member for Lagan Valley (Sir Jeffrey M. Donaldson), whose party represents 21.3% of the voters. Will the Minister confirm that he will allow the exploration by all parties, in a transparent and inclusive way, of reforms of the Assembly, if necessary, to incentivise compromise and allow those of us who want to serve the people to do so together?

The Minister for Foreign Affairs, Simon Coveney, issued a Statement in response to the announcement by the NI Secretary of State:

I welcome today's announcement by the Secretary of State for Northern Ireland of his intention to extend the period during which the Northern Ireland parties can form an Executive on the basis of last May's Assembly election. My view on this has been clear and consistent. The people of Northern Ireland need functioning institutions, working to improve their daily lives. The Secretary of State's announcement provides further space for early substantive progress in discussions between the EU and UK on the issues of most concern to people and business in NI. I urge the UK

authorities to make use of this renewed opportunity to engage positively, and with real urgency, in the knowledge that the European Commission has listened carefully to the concerns of people across Northern Ireland, including and especially Unionists.

EU-UK Talks Underway

Recent weeks have seen formal talks between EU and UK teams recommence virtually – after several months without engagement – and begin to address an extensive and demanding agenda in the search for a resolution of the NI Protocol issues. Prime Minister Rishi Sunak has signalled his intent to achieve progress by nominating Foreign Secretary James Cleverly to oversee and lead the UK side of the talks, dealing directly with the chief EU negotiator, Commission Vice-President Maroš Šefčovič. They have held positive discussions.

Maroš Šefčovič has commented that the EU and UK positions on the key issues “are not worlds apart” and has expressed confidence that a calendar for in-person discussions can be agreed. The technical talks underway are understood to include work on live database tracking of goods moving from Britain to Northern Ireland. The Prime Minister has agreed with Commission President, Ursula van der Leyen to “work together” to find workable and saleable solutions. The leaders met on the margins of the COP27 Climate Conference in Egypt.

Foreign Affairs Minister Simon Coveney has said that he “detects real intent” from London to reach a deal and that a negotiated settlement is “doable by the end of the year.”

Maroš Šefčovič at EU-UK Parliamentary Partnership Assembly, 7 November 2022

Vice-President Šefčovič, spoke to the EU-UK Parliamentary Partnership Assembly in London on 7 November 2022. He addressed the on-going NI Protocol issue:

From the very beginning, the EU has shown genuine understanding for the practical difficulties on the ground, flagged to us by Northern Irish stakeholders. This has not changed. My team and I remain committed to working constructively and intensively on joint solutions, as only those can create the legal certainty and predictability that people and businesses in Northern Ireland need and deserve.

Here, I want to appreciate the contribution of my counterpart, Foreign Secretary James Cleverly, with whom we restarted EU-UK engagement on the joint way forward at the end of September. This is important, as the UK had not engaged in any meaningful discussions with us since February.

I believe that our respective positions are not worlds apart if we genuinely explore the EU’s robust proposals, aimed at simplifying and facilitating trade between east and west, while ensuring no hard border between north and south on the island of Ireland.

This is surely the moment to abandon recourse to unilateral action, such as the Northern Ireland Protocol Bill, set to disapply core elements of the Protocol. If this Bill were to become law, the UK

government would put Northern Ireland's unique access to the EU market of 450 million consumers at risk. Is the UK government truly prepared to deprive Northern Ireland of this opportunity? On top of it, unilaterally disapplying core parts of the Protocol would also have serious consequences for our trade relationship under the Trade and Cooperation Agreement – due to its fundamental link with the Withdrawal Agreement.

Northern Ireland Protocol Bill in House of Lords

The Northern Ireland Protocol Bill completed its Committee Stage in the House of Lords on 7 November 2022, after four days of discussion on a variety of amendments, all of which were withdrawn as the Bill moves to Report Stage where the Bill is expected to face its biggest test. At Report Stage key amendments are likely to be voted on in a chamber where the Government lacks an overall majority. The Government indicates that it will proceed with the Bill and seek its formal approval. And assurances to that effect have been given to the DUP and to the hard line Brexiteers of the ERG within the Tory Party. The EU continues to insist that formal adoption of the Bill would constitute a breach of the EU-UK Withdrawal Agreement/ Treaty.

Speakers in the Lords Committee Stage debate included Lord Ahmed, Minister of State for the Commonwealth, who said:

I also point out that the Bill is needed because the Good Friday agreement institutions, including the Assembly, are not operating as they should be. Subsequent discussions have taken place, to which the noble Baroness,

Lady Ritchie, alluded. I do not share the view of the noble Lord, Lord Kerr, that they are not going anywhere. If they were not going anywhere, we would not be meeting and talking. I also challenge the premise that they have not engaged the highest level of the British Government. Last time I checked, the Foreign Secretary was among those counted in the highest levels of the British Government. I therefore say to the noble Lord, Lord Kerr, that that is definitely not the case. The lead person dealing with Commissioner Šefčovič is my right honourable friend the Foreign Secretary, who is a senior member of the British Government.

Lord Nigel Dodds for the DUP made the following intervention:

Having listened to the debate, I think that may well be able to be swept aside at any point. However, why is emphasis put on the one thing that is mentioned? I look to the Government Front Bench as to why it is mentioned, given that it really has no effect. Of course, we do not want any extra infrastructure at the border between Northern Ireland and the Irish Republic and it has never been the desire or wish of anyone in the Northern Ireland political parties, or the Irish Government, the British Government or the EU, to have such infrastructure. But it would be quite helpful and an acknowledgement of unionist concerns if there were a similar provision which acknowledged—under strand 2, the north-south approach in the Belfast agreement and the importance of that relationship, but also strand 3, the east-west dimension—that regulations may not create or facilitate border

arrangements between Northern Ireland and the rest of the United Kingdom.

There can be no settlement of this issue which fails to restore power to local politicians to make laws in the areas currently handed over to Brussels. And any outcome must match up, at the very least, to the government's own analysis of the Protocol's defects set out in the Government Command Paper of July 2021 and the contents of the Protocol bill currently going through Parliament. It means change to the Protocol itself not tinkering to make it work better as so far suggested by the EU.

Lord Kerr, the original author of Article 50 TFEU, under which the UK exited the European Union, said:

I think everybody believes that in Brussels. As the noble Earl, Lord Kinnoull, reminded us on our last day of Committee, we committed ourselves in the TCA to carrying out our obligations as in the withdrawal agreement, which include the protocol. So if we were to use the powers in this Bill or, as some say—I am among them—put this Bill on the statute book, we would be in breach of not just the withdrawal agreement but the TCA.

So I think the debate is about contingency planning for that eventuality, rather than for any change or softening of the EU position in the talks. Therefore, it seems to me, we should recognise that what we are doing here, if we were to pass this Bill, is setting ourselves up for a rather serious trade war with the EU and for the return of all the problems in Northern Ireland that will result from Northern Ireland no longer being a

member of the single market. We will go back to a different form of frontier problem, from which the protocol was designed to have us escape.

Liberal Democrat Lord Purvis, delivered a withering commentary:

But, ultimately—the words of the noble Lord, Lord Kerr, always stick in my mind from a previous day in Committee—this is still a pig of a law, with apologies to the Minister. It has lipstick on now, and we have given it a nice frock, but it is still a pig of a law, and that has not changed. It is illegal, it is a power grab, and it will not work. Fundamentally, those three aspects are what we will have to decide on in deciding whether it even goes to Report. Until that point, and with those considerations, I beg leave to withdraw the amendment.

Chris Heaton-Harris Statement, 4 November 2022

Following discussions with NI party leaders, the Secretary of State for Northern Ireland, Chris Heaton-Harris MP, confirmed on 4 November 2022 that an Assembly election would not take place in December.

Mr Heaton-Harris said:

At midnight on 28 October, I came under a duty to call an Assembly election. Since then, my engagement with the political parties has continued. I have had valuable conversations with people across Northern Ireland, including business and community representatives. I have listened to their sincere concerns about the impact and cost of an election at this time.

I can now confirm that no Assembly election will take place in December, or ahead of the festive season. Current legislation requires me to name a date for an election to take place within 12 weeks of 28 October and next week, I will make a statement in Parliament to lay out my next steps. My objective, what the people of Northern Ireland deserve, is the restoration of a strong devolved government. My duty is to create the right environment for the parties in Northern Ireland to work together to restore the devolved institutions and deliver on crucial issues impacting Northern Ireland's people. I do not take this duty lightly, nor do I overlook the very real concerns people have around their cost of living.

Taoiseach at British-Irish Parliamentary Assembly, 24 October 2022

The Taoiseach, Micheál Martin, addressed the BIPA plenary in Farnham, Co. Cavan on 24 October 2022. He spoke of the significance of EU membership, of the Brexit challenge and of British-Irish relations:

This year and next we are marking the milestones of 50 years of membership of the EU. Our EU membership has played a key role in our transformation into an open, globalised and progressive country. Our membership is grounded in shared values and through the EU we can better influence and advance our goals on the world stage. As we celebrate this milestone, we must also reflect on the significant and profound change that Brexit has brought, across these islands.

Managing that change has undoubtedly been challenging, but I believe that it is all our interests to see a close and stable EU-UK relationship into the future - one founded on our shared values, common global interests and our important trade and economic links. In an increasingly troubled and troubling world, close neighbours strengthen our resilience.

There is a real opportunity to find jointly agreed solutions around the implementation of the Protocol. But substance is what is now required to sustain good intentions and catalyse durable solutions, and I urge the new British Prime Minister to move quickly to genuine and substantive engagement with the EU on that basis. Our focus must be on finding solutions that address the real problems that affect people and businesses in Northern Ireland. Partnership, vision and compromise delivered the Good Friday Agreement. We need to see a return to that partnership approach to resolve the genuine concerns of people and businesses in Northern Ireland.

Sinn Féin President on Protocol

The Sinn Féin President, Mary Lou McDonald, has called on the British government to set out a clear plan for "good faith" negotiations with the European Union on the Northern Ireland Protocol. Speaking at the opening session of the party's Ard Fheis in Dublin on 5 November 2022, she said the outcome of last May's elections should be respected and there should be a functioning Executive in Northern Ireland. "In the event that we are plunged back into another period of stalemate of course there will have to be an election [...]"

is that where I want to be? Absolutely not, because we want government.” She argued that the British government needs to make a clear statement as to what happens next and to set out how an agreement can be concluded with the EU on the Northern Ireland Protocol.

Section Two: The Evolving Debate

European Commission Proposals, October 2021

In the context of the reopening of EU-UK talks on the Protocol issue it is important to recall that, in October 2021, the European Commission produced a comprehensive set of proposals in response to difficulties experienced by people in Northern Ireland arising in connection with implementation of the Protocol on Ireland/Northern Ireland. Vice-President Maroš Šefčovič said:

I have listened to and engaged with Northern Irish stakeholders. Today's proposals are our genuine response to their concerns. We have put a lot of hard work into them to make a tangible change on the ground, in response to the concerns raised by the people and businesses of Northern Ireland. We are looking forward to engaging earnestly and intensively with the UK government, in the interest of all communities in Northern Ireland.

Section Three: Background Material and Further Reading

Background Material

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Further Reading

Sonja Tiernan Irish Women's Speeches. UCD Press.

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