

BREXIT BRIEF

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Introduction

A great deal of talking on the NI Protocol

As the negotiations on the Protocol on Ireland/Northern Ireland (the Protocol) continue, tweets from James Cleverly, Secretary of State for Foreign, Commonwealth and Development Affairs, Maroš Šefčovič, Vice-President of the European Commission, and Chris Heaton-Harris, Secretary of State for Northern Ireland, indicated that the talks and video calls are progressing in a constructive manner. Tánaiste and Minister for Foreign Affairs Micheál Martin has said that he is in touch with all three. The official negotiating teams continue to work hard seeking 'saleable' solutions.

The Protocol talks appear to be in their end stages, according to well-placed sources, one speaking of a legal text being prepared, in which the final, binding details would be nailed down. The same source also cautioned there are still things to square off to ensure an agreement will be acceptable to the DUP, hardline Tory MPs as well as EU Member States.

The Observer has revealed that "an extraordinary cross-party summit bringing together leading leavers and remainers – including Michael Gove and senior members of Keir Starmer's shadow cabinet – has been held in high secrecy to address the failings of Brexit and how to remedy them in the national interest." Documents from the meeting, obtained by the Observer, describe it as a "private discussion" under the title: 'How can we make Brexit work better with our neighbours in Europe?'

The two-day gathering brought together senior Labour and Tory politicians from both sides of the Brexit debate, together with diplomats, defence experts and the heads of some of the biggest businesses and banks. Those participating included the former Conservative party leader Michael Howard and former chancellor Norman Lamont from the Leave side. From the Remain side were Labour's shadow foreign secretary David Lammy and long-serving minister for Europe, David Lidington. The former European Commissioner and Labour minister Peter Mandelson, acted as chairman.

Section One: State of Play

Supreme Court Decision on Protocol

The Northern Ireland Protocol is lawful, the UK Supreme Court has unanimously ruled. The Court reaffirmed the findings of two lower courts which had dismissed a legal challenge by a group of unionists. The Court ruled that “the most fundamental rule of UK constitutional law is that parliament is sovereign and that legislation enacted by parliament is supreme.”

The unionist appellants, including the TUV leader Jim Allister, had argued that the Protocol was incompatible with the 1800 Act of Union between Britain and Ireland and with the 1998 legislation which enacted the Good Friday Agreement. The Supreme Court ruled that more recent legislation, enacting the EU-UK Withdrawal Agreement, meant that previous acts had been lawfully modified.

Unionists reacted to the decision by claiming that their basic arguments were vindicated insofar as it had been made clear that the Act of Union “has been subjugated by the Protocol” This argument was rejected by legal experts who argued: “So if you’ve got a problem here – and there clearly is a political problem – the problem is with the legislation that introduced the Protocol into Northern Ireland law.”

The Belfast Telegraph commentator Sam McBride wrote that the case provided “a legal route for unionist anger” at a time when there was a danger of it spilling over into civil disorder. “Regardless of the outcome,” Mr McBride writes, “that bought time to resolve the issue politically — but after two years,

it remains unresolved even if a new deal between the UK and EU appears imminent.”

Mr McBride goes on to write:

In this most political of court cases, unionism has come together in a way which almost never happens. This is what unionists who yearn for unionist unity want to see. Yet in this instance, where unionism is almost entirely united on an issue which it sees as being of profound constitutional significance, they still lost. Unionist unity, were it to happen through a single unionist party, would not alter the realities of modern Northern Ireland: Unionism as an ideology (as opposed to those who are pro-Union) does not come close to having a majority.

NI Secretary extends government formation period

The Northern Ireland Secretary, Chris Heaton-Harris, has extended the deadline for re-forming Northern Ireland’s power-sharing government with a potential Assembly election delayed for a further year. The NI Secretary issued a Press Statement on 9 February 2023:

The UK Government will today (Thursday 9 February) introduce legislation to extend the period for Executive formation, to allow time and space for the NI Parties to work together to return to government.

The Secretary of State for Northern Ireland has concluded that another election at this time is not the best course of action to facilitate the restoration of

the Executive having spoken to political representatives, businesses and communities in Northern Ireland.

The Northern Ireland (Executive Formation) Bill, to be introduced to Parliament today, will therefore extend the period by a year to 18 January 2024, while retaining the power to name an election date any time during the period, if necessary. At midnight on 19 January 2023, the period for Executive formation under the terms of the Northern Ireland (Executive Formation Act) 2022 came to an end. This placed the Secretary of State for Northern Ireland the Rt Hon Chris Heaton-Harris under a legal duty to hold an Assembly election within 12 weeks.

The Secretary of State will host NI party leaders at a roundtable in Belfast today to urge them to restore the Executive as soon as possible and note that an election may be called at any point during the extension period. Following his meeting with Vice-President of the European Commission Maroš Šefčovič in Brussels yesterday, he will reiterate that the UK Government is working hard to resolve the problems caused by the Protocol, and the desire to see an agreed solution with the EU. He will be clear that the extension does not influence Protocol discussions and that the UK Government wants to see a deal between the UK and EU as soon as possible.

Mr Heaton-Harris commented that, after considering his options and engaging with stakeholders in Northern Ireland, he had

arrived at the conclusion that another election at this time would not be helpful, adding:

So, I am introducing a Bill to create more time for the Parties to work together and return to government, as Protocol discussions continue between the UK and EU. The restoration of the Executive, in line with the Belfast (Good Friday) Agreement, remains my top priority. I will continue to do everything I can to help the Parties work together to make that happen.

Chris Heaton-Harris meets NI parties

NI Secretary of State Chris Heaton-Harris MP met the NI parties on 9 February 2023 to discuss the issues caused by the ongoing governance gap in Northern Ireland, the negotiations on the Protocol and NI's challenging budgetary situation. In attendance were the DUP, Sinn Féin (including Mary Lou McDonald TD) Alliance, UUP, and the SDLP.

The Secretary of State set out the next steps concerning Executive formation, following the introduction of legislation in Parliament extending the period for formation by one year to 18 January 2024. The legislation will also enable the Government to bring this new period to an early end and move to elections sooner, if it becomes necessary.

Discussions also reflected upon the recent passing of the 2022/2023 Northern Ireland Budget Bill as well as the priorities and challenges for 2023/2024 NI Budget. The meeting ended with the Secretary of State stressing the importance of restoring the

Executive in the interests of people in Northern Ireland.

Commenting after the meeting, Mr Heaton-Harris said:

I've been encouraged by my discussions with the parties today but there is no doubt that the absence of a devolved government is having an impact on Northern Ireland with important legislation and public services impacted by the lack of an Executive. My priority remains the restoration of fully-functioning power-sharing institutions and I will continue to work with the NI parties to ensure this happens as soon as possible."

Following the meeting, the Sinn Fein leader, Mary Lou McDonald, commented that pushing back the election deadline was "legislating for further drift.

Šef ovi , Heaton-Harris, Cleverly in talks - 10 February 2023

The on-going contact and discussion between key players is reflected in their recent tweets, which are reproduced below:

Maroš Šefčovič:

Held a productive video call with Foreign Secretary James Cleverly with Northern Ireland Secretary Chris Heaton-Harris. We took stock of our ongoing work on the Protocol on Ireland/Northern Ireland. Our objective is clear – joint solutions to practical concerns in Northern Ireland. Hard work but time well invested.

Good to talk to Northern Ireland

Secretary Chris Heaton-Harris. EU and GB continue to work with a clear focus on real-life concerns of all communities in Northern Ireland. Joint solutions = clarity and predictability. Foreign Secretary James Cleverly, Chris Heaton-Harris and I stay in touch.

James Cleverly:

Just spoke to Maroš Šefčovič again with Chris Heaton-Harris. I reiterated our determination to find solutions to the full range of challenges on the Northern Ireland Protocol working together with the EU. We will speak again soon. Teams continue to work hard on finding a way forward.

Maroš Šef ovi at General Affairs Council 6 February 2023

Commission Vice-President Šefčovič spoke to a press conference following a meeting of the EU General Affairs Council on 6 February. He made reference to the Protocol issue:

Turning to our discussion on EU-UK relations, I informed Ministers about the ongoing intensive scoping for potential joint solutions related to the implementation of the Protocol on Ireland/Northern Ireland. The Commission and the UK Government are working closely and constructively. Progress is being made but difficulties remain.

President von der Leyen has a trusting relationship with UK Prime Minister Sunak. The same goes for my relationship with Foreign Secretary James Cleverly as well as Northern Ireland Secretary

Chris Heaton-Harris. We agree that joint solutions are needed to respond to the real-life concerns of all communities in Northern Ireland. So, all in all, it is not an easy exercise but it is certainly a necessary one. And the Commission will spare no effort to agree a joint way forward.

Prime Minister on Brexit Anniversary, 31 January 2023

On the third anniversary of Brexit, Prime Minister Rishi Sunak gave his view on what he considered the the successes of the UK in recent years, and in the first 100 days of his tenure as Prime Minister:

In the three years since leaving the EU, we've made huge strides in harnessing the freedoms unlocked by Brexit to tackle generational challenges. Whether leading Europe's fastest vaccine rollout, striking trade deals with over 70 countries or taking back control of our borders, we've forged a path as an independent nation with confidence.

And in my first 100 days as Prime Minister, that momentum hasn't slowed – we're cutting red tape for businesses, levelling up through our freeports, and designing our own, fairer farming system to protect the British countryside. This is just the beginning of our plans to deliver on our five priorities, including growing the economy so we can create better paid jobs, and I'm determined to ensure the benefits of Brexit continue to empower communities and businesses right across the country.

These comments were made as opinion polls indicate that voters have become more negative about the economic effects of Brexit, with around one in five Leave voters changing their minds. Research by the Centre for European Reform shows that the UK economy was 5.5% smaller than it would have been had it remained inside the EU. The UK Office for Budget Responsibility predicts that Brexit will cause a long term hit to GDP per capita of 4%. The Observer headline on 5 February 2023 asked: "Trade down, economy sinking, support falling: is the tide finally turning on Brexit?" A major debate is underway.

Tánaiste in Belfast, 3 February 2023

The Tánaiste, Micheál Martin, visited Belfast on 3 February 2023 for meetings with the five main Stormont parties.

The DUP leader, Jeffrey Donaldson, said that their meeting had been "a useful and constructive conversation" and restated his position that his party will not re-enter the Assembly until the Northern Ireland Protocol is replaced:

Over 18 months ago we outlined the parameters for the way forward. We set our tests and these continue to be our yardstick for measuring any deal between the EU and UK. There will be no restoration of the NI Executive until the Protocol is replaced with arrangements that unionists, as well as nationalists, can support. Northern Ireland's place in the UK internal market must be restored and our constitutional arrangements must be respected. We are seeking the restoration of democratic decision making to the Assembly, replacing

the democratic deficit created by the Protocol. Why should anyone want to deny the people of Northern Ireland, through their democratically-elected representative, a say or a vote on vast swathes of the laws governing our economy and which affect the people of Northern Ireland so directly?

The Sinn Féin leader, Michelle O'Neill, commented:

I am very much encouraged by what we're hearing, I think the Tanaiste shares that same assessment and we want both sides to continue in earnest to get a deal, to close this out, to close it out as quickly as possible. People seem to have gone quiet. I hope that means that they're working really hard, that they're going to get to a point where there is a deal on the Protocol. I hope that happens speedily, I would encourage both sides to continue doing what they're doing. Then we need to get back into the Executive, because one year on it is not good enough that we're not sitting around the executive table, and one year on is not good enough that the DUP have continued to punish the public.

The Alliance Party MLA, Paula Bradshaw, emphasised the urgent need to reform the Stormont institutions in the light of the latest period of collapse, arguing that "we should allow the negotiations with the EU to complete, get the institutions back up and then talk about how we reform the institutions."

The UUP Leader, Doug Beattie, warned that unionists must not be "bounced" into a deal

on the Protocol:

We talked about the Protocol, it is becoming incredibly frustrating, we are not being kept in the loop as to what is happening in regard to the negotiations between the EU and the UK, and if we're not involved, if they try to bounce unionism, it's simply not going to work.

The SDLP leader, Colum Eastwood, said that, despite positivity around the EU-UK talks on the Protocol it is still "in the DUP's hands" whether the Executive would return if a deal is struck:

We know all the problems in the health service and the economy and everything else. And we're desperately in need of local politicians to take responsibility. I would also say, we won't have a government unless the DUP make a decision. For me, if the DUP do get significant movement on some of their asks, as long as we can protect market access for businesses and our economy here, then Jeffrey Donaldson should be able to take yes for an answer.

Following the meetings the Tanaiste spoke to the media, noting the challenging nature of the discussions, but also the need to provide the teams with the space to accomplish their goals:

I made the point to the parties this morning there is a significant degree of confidentiality surrounding those negotiations and discussions, and I am in agreement with the need to provide space to both the negotiating teams to see if they can bring about a resolution of the issues around trade. There are a

lot of challenges, I would not understate the difficulties that both sides will face in trying to resolve the issues, but I think the sensible thing to do is allow the EU and the UK to continue with the negotiations. Meanwhile the parties here will have to focus on the imperative of getting the Executive and the Assembly restored.

Tánaiste in Dáil Eireann, 31 January 2023

The Tánaiste and Minister for Foreign Affairs, Micheál Martin, replied in great detail to a Question by Fergus O'Dowd TD in Dáil Eireann on 31 January 2023. Deputy O'Dowd had asked: "To ask the Minister for Foreign Affairs and Trade if he will report on his recent discussions with leaders of the political parties in Northern Ireland; and if he will make a statement on the matter." Some key sections of the Tánaiste's response are reproduced below:

The Government continues to engage with all key stakeholders in this process. I had a meeting with the Prime Minister, Rishi Sunak at the British-Irish Council in November and spoke to the Foreign Secretary, James Cleverly in December. I have also met the Secretary of State for Northern Ireland, Chris Heaton-Harris, twice in recent weeks. The Taoiseach spoke to the Prime Minister by telephone last week. I remain in close contact with the Northern Irish political parties and other key stakeholders in the North, including businesspeople. I have made clear the Government's commitment to resolving the difficulties around the Protocol and helping to ensure the institutions of the Good Friday

Agreement can operate effectively. That involves concerns raised by unionists in respect of the operation of the Protocol.

[...] I am acutely aware of the concerns unionism has on the operation of the Protocol. I believe the EU is aware of that too [...] We have also been very anxious to allow space to the EU negotiating team and the UK Government negotiating team. There are issues. We have acknowledged and accepted there are issues, through our meetings with unionist parties and all parties, including on the nationalist side and businesspeople who have raised issues around practicalities in the Protocol's operation. I have always believed these issues are resolvable. We should just allow the teams to continue their discussions. There are challenges and there are difficulties, and while we should not underestimate the difficulties, we should wish them well.

It is important to reiterate and reassert the constitutional position of the Good Friday Agreement, that is, that the principle of consent remains intact. That is the bona fide position of the Irish Government and of all parties to the agreement. Second, in all my meetings with all parties in Northern Ireland, no one has suggested that access to the European Union or the Single Market should cease because it is of huge benefit to exporters in Northern Ireland. Having access to both the UK market and the EU market creates opportunities.

LucidTalk Poll

The latest LucidTalk poll for the Belfast Telegraph shows that the DUP is again under

pressure from the TUV, as support for Jim Allister's party is on the rise.

The LucidTalk poll shows the DUP on 25% – down two points from our November poll – while the TUV on 7% is up by the same amount. On 31%, Sinn Fein remains the largest party, while SDLP support is static on 7%. Alliance support remains unchanged on 15%, maintaining its position as Northern Ireland's third largest party. The UUP is up one point to 10%. The Green Party is down one point to just 1% with People Before Profit unchanged on 1%. The anti-abortion party Aontú is up one point to 2%.

Michelle O'Neill is the most popular local party leader with 41% of voters saying she is doing a good or great job, with Naomi Long in second place (37%) and Colum Eastwood (33%) in third. On 28%, Doug Beattie comes in just one point ahead of Jim Allister (27%) - a nine point drop for the UUP leader since November. Sir Jeffrey Donaldson remains the most unpopular local party leader with just 25% of people viewing him positively.

ERG hard line on Protocol continues

As speculation continues that a deal on the Protocol is imminent, the European Research Group (ERG) of hard line Tory Brexiteers is showing no sign of softening its stance on the issue. Sources quoted in the Belfast Telegraph say that the DUP and their close allies in the ERG have vowed to "blow up" any proposed Protocol deal that does not meet the DUP's seven key tests. This includes plans to force a parliamentary debate on plans for new border control posts at Northern Ireland's ports. The DUP and ERG have put down a motion on the issue in Parliament, in the name of Sir Jeffrey Donaldson and backed by the most

prominent ERG members, including Jacob Rees Mogg, Mark Francois and David Jones.

An 'open letter' asserting "the sovereignty of the United Kingdom" was also sent to NIO minister Steve Baker and published by the right wing Brexit lobby group Centre for the Union. The letter was signed by the DUP's Ian Paisley MP, loyalist Jamie Bryson, and 'vote leave' campaigners from England, Wales and Scotland.

Section Two: The Evolving Debate

North and South Project

The Irish Times has published several instalments of "North and South" – a collaboration between The Irish Times and ARINS [Analysing and Researching Ireland North and South], which is a joint research project of the Royal Irish Academy and the Keough-Naughton Centre for Irish Studies at the University of Notre Dame.

The project consists of two major in-depth opinion polls conducted simultaneously in Northern Ireland and the Republic and also a series of focus groups which aimed to tease out the issues in moderated discussions. It is jointly funded by The Irish Times and ARINS. Previous results were published in December. The aim of the project is to provide independent and unbiased information on the state of public opinion in both jurisdictions on the constitutional future of the island, on what influences the views of people, how they might change in the future and what a united Ireland – if it were ever to happen – might look like. The survey and focus groups also examine the state of relations between people in the two parts of the island.

The questionnaire for the surveys and focus groups were drawn up after extensive

discussions between The Irish Times and Prof Brendan O'Leary of the University of Pennsylvania and Prof John Garry of Queen's University Belfast, as well as other academics associated with the ARINS project. The research was conducted by Ipsos Northern Ireland in the North and separately by Ipsos in Dublin in the Republic. The quantitative survey was conducted among more than 1,000 voters each in both jurisdictions. The results of the surveys and focus groups have been analysed by The Irish Times and by Prof O'Leary and Prof Garry. When that process is complete the data will be made publicly available. It is intended that the series will be repeated in future years.

Hansard, House of Commons, 31 January 2023

On 31 January, an exchange took place between Foreign Secretary Cleverly and a number of Scottish and Northern Ireland MPs on the topic of the protracted debate over the Protocol:

Richard Thompson (SNP) noted that it was "remarkable" that three years after the exit from the European Union, the UK Government remained in negotiations "about the terms on which we are finally going to get Brexit done":

With today's publication of a report by the International Monetary Fund showing not only that the size of the UK economy will shrink over the coming 12 months, but that it will perform more poorly than major competitor economies, can the Secretary of State tell us whether there is a single aspect of prosperity or standing in the world he can think of that

has been enhanced in any way by the terms on which we have left?

Foreign Secretary Cleverly responded:

I can assure the hon. Gentleman that if he is suggesting our exit from the European Union has been tricky, I think that is probably a fair assessment. I would just mildly make the point that if he thinks that is tough, imagine what extricating Scotland from one of the longest and most successful Unions in human history would be like. I have absolutely no doubt that our good, professional and strong working relationship with Maroš Šefčovič and his officials and other members of the European Commission will ultimately be successfully. However, I would strongly urge him to learn lessons when it comes to the ease with which one can extricate oneself from Unions.

Stephen Farry (Alliance, Northern Ireland) emphasised his view that most people and businesses in Northern Ireland "accept the need" for the Protocol, but they want to see pragmatic solutions to the challenges involved:

I am therefore encouraged by the progress that is being made in negotiations with the European Union. However, while I am conscious of the sensitivities, may I ask the Foreign Secretary to deepen his engagement with the Northern Ireland business community, particularly the Northern Ireland Business Brexit Working Group, in order to better road-test emerging solutions to ensure that whatever comes out of the talks will work on the ground?

Mr Cleverly responded:

I feel vindicated in my belief that professional but discreet negotiations are the route to success. As for Northern Ireland businesses, I met a group of them during my trip to Northern Ireland at the beginning of the year, when they raised a series of specific concerns that they wanted to be addressed. We took careful note of those concerns, and I assure the hon. Gentleman, the House and those businesses that we have them at the forefront of our minds during our negotiations with European Commission.

John Major at House of Commons Northern Ireland Committee, 7 February 2023.

Speaking before the Northern Ireland Committee of the House of Commons, the former Prime Minister, John Major, criticised the Johnson administration for agreeing the Protocol with the EU apparently on the basis that it would be later reformed. "That must be the first agreement in history that was signed by people who decided it was useless in the first place."

He called for compromise over the Protocol issues. "A statesmanlike response would be to recognise that nobody is going to get everything they wish, but to accept compromise in the interest of returning democratic government to Northern Ireland. That will not be easy for anyone."

Speaking of the negotiation of the Good Friday Agreement John Major lauded the contribution of his successor Tony Blair, his Irish counterparts, Albert Reynolds and John Bruton, Northern Ireland party leaders, civil servants and US President Bill Clinton. "This is a settlement that has many parents. No one

can claim full paternity."

European Parliament President in Dublin, 2 February 2023.

European Parliament President, Roberta Metsola, on a visit to Dublin which included an address to a Joint Sitting of the Oireachtas, expressed cautious optimism about the outcome of talks on the Protocol, saying that there was a need for predictability and legal certainty for the people of Northern Ireland. "The EU wants to protect Northern Ireland's place in the UK internal market and also protect the integrity of the single market. The focus needs to be on finding joint solutions."

Section Three: Background Material and Further Reading

Background Material

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