



Northern Ireland's Place in Europe post-Brexit

5 November 2019





Where are we with Brexit?

Professor David Phinnemore

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Where are we with Brexit?

17 October 2019

- revised *Withdrawal Agreement* with significant revisions to *Protocol on Ireland/Northern Ireland*
- revised *Political Declaration* setting out framework for post-Brexit UK-EU relationship

19 October 2019

- UK seeks third extension to Article 50 process

22 October 2019

- House of Commons approves Withdrawal Agreement Bill at second reading (329 v 299) but timetable motion defeated (308 v 322)

29 October 2019

- European Council adopts decision extending Article 50 process to 31 January 2020

12 December 2019

- UK general election

1 February 2020:

- Default date for Withdrawal Agreement to enter into force

17 October 2019

TF50 (2019) 64 – Commission to EU 27

Revised texts agreed at negotiators' level for:

- The **Protocol on Ireland/Northern Ireland** included in the Withdrawal Agreement and the consequential technical adaptations to **Article 184 "Negotiations on the future relationship"** and **Article 185 "Entry into force and application"** of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community ("Withdrawal Agreement").

These revised texts are:

- Intended to **replace the corresponding provisions included in the last version of the Withdrawal Agreement published in OJ C144 I of 25.4.2019;**



The draft protocol
Ireland/Northern Ireland (Oct
2019) – market access, people
movement, rights and
equalities – indication for the
future relationship UK/EU?



Professor Dagmar Schiek

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Market Access – changes in October 2019

- Common Regulatory Area –No name, extended in substance
 - Single customs territory UK / EU
 - Customs legislation, Customs Code, VAT regulation and free movement of goods only apply to NI
 - State aid rules only apply to UK & NI in so far as goods concerned (improvement)
 - Annexes ensure level playing field for employment rights and environment

- Common Customs territory GB / NI (Article 4)
- No Customs NI / EU, free movement of goods (no QR, discriminatory taxes) NI/EU (Article 5) , NI in EU VAT territory, though UK bags income thereof
- NI remains mixed area (bridge between GB and EU) where the Customs code, VAT regulation and free movement of goods, including agricultural products and electricity, apply
- State aid rules only apply in relation to trade in goods between NI and EU
- EU waives level playing field provisions, privileging the UK (NI) over its Eastern Neighbours: market access while also allowing low-standard employment and environmental laws (→ NI devolved powers apply)

Enforcement of level playing field was weak – except for environment. Limited change for labour rights ?

Enforced by EU COM and ECJ, effects in Northern Ireland as in EU (Article 12 (4))

People Movement and Human Rights

- No changes to these provisions – (as) they are not intrusive on the UK
- The UK commits not to diminish rights, safeguards, equality of opportunity as set out in the GFA under those headings, and to maintain anti-discrimination acquis. Continues to facilitate work of human rights bodies as resultant from GFA. (Art. 2). Specialised Committee to consider concerns of ECNI, NIHRC and JC of Representatives of Human Rights Commissions of Northern Ireland and Ireland
- UK and IRL may continue Common Travel Area
- The enforcement of those provisions is not subjected to EU institutions

Would the revised protocol violate Article 50 TEU?

- Some twitterati were fast in suggesting that the revised protocol constitutes a permanent solution within the withdrawal agreement, which contradicts Member States' competences to co-ratify trade agreements going beyond mere trade
- However: Article 13 paragraph 8 maintains the provisional character, as does Article 184 Draft Withdrawal Agreement
- As most revised parts of the draft protocol, Article 13 is characterised by weak draftmanship, and will need revision

Any subsequent agreement between the Union and the United Kingdom shall indicate the parts of this Protocol which it supersedes. Once a subsequent agreement between the Union and the United Kingdom becomes applicable after the entry into force of the Withdrawal Agreement, this Protocol shall then, from the date of application of such subsequent agreement and in accordance with the provisions of that agreement setting out the effect of that agreement on this Protocol, not apply or shall cease to apply, as the case may be, in whole or in part.



What does the revised protocol mean for the environment in Northern Ireland?



Dr Viviane Gravey

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Northern Ireland as the dirty corner of the dirty man of Europe

- ✓ NI environment in crisis: falling water quality, continued waste crimes etc.
- ✓ Governance gaps, lack of political ambition and reduced administrative capacity
- ✓ Ahead of Brexit? No independent environment agency, no Climate Change Act, RHI scandal

How this was addressed under the 2018 deal & Westminster legislation

A deal putting the emphasis on environmental level playing field

- Dedicated article in protocol on Agriculture and Environment
- Narrow list of 20+ environmental directives that NI would have to continue to apply (e.g. pesticides, chemicals, waste, ecodesign)
- Broad list of areas for non-regression between UK and EU (e.g. water, nature, air quality, industrial emissions...)
- A new governance system to replace the Commission and Court of Justice across whole of UK ('body or bodies...')

Bolstered by (not finalised) UK legislation

- Environment Bill introduces Environmental Principles, binding improvement targets and the new Office for Environment Protection
- Option to extend to NI on decision from Minister and supporting vote from Assembly

Positive changes to environmental governance required by international Treaty, means to get there by UK legislation, but dependent on return of Stormont.

What the new deal means for NI environment

A new deal much quieter on the environment

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Westminster policies disrupted by general election 2019

- Environment bill 'falls'
- Will need to be reintroduced, likely to change

Limited international pressure to change status quo (vague political declaration).

Option to opt-in to Office for Environment Protection once Stormont is back.