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# Northern Ireland after Brexit: Still Connected to the European Union

Lee McGowan

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## I. Introduction

Some four and half years after the British electorate had voted to leave the European Union (EU), all former ties between the United Kingdom (UK) and the EU were finally severed on 31<sup>st</sup> December 2020. At a press conference in Downing Street The Prime Minister Boris Johnson proudly hailed the achievement as a “jumbo, Canada style” Brexit deal, adding that it was a time to celebrate as Great Britain had left the single market and the customs union but had retained tariff free access to the EU market. This had laid the basis for a “giant free trade zone”.<sup>1</sup> This date marks a defining moment in modern British history. It is interesting that Johnson referred here to Great Britain and not the United Kingdom. The terms are not synonymous as the former excludes Northern Ireland. Indeed, Northern Ireland remains tied to certain EU rules and to the EU customs territory. How, why, and for how long this will remain the case forms the subject of this chapter.

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<sup>1</sup> The Guardian, <<https://www.theguardian.com/politics/2020/dec/24/boris-johnson-says-brexit-deal-has-settled-uk-europe-question>>.

Much has been written and has still to be written about the turbulent years from the referendum on 23<sup>rd</sup> June 2016 to the final EU/UK deal of 24<sup>th</sup> December 2020. The Brexit issue consumed British politics and these years were marked by lengthy and fractious parliamentary debates over May's three unsuccessful efforts at guiding her withdrawal agreement through parliament and a range of judicial challenges testing parliamentary authority. Brexit sealed the fate of the United Kingdom during the terms in office of two British prime ministers (David Cameron in 2016 and Theresa May in 2019).

However Brexit remains very much a work in progress and its out-workings will not just continue to cast long shadows over British policy making for years to come but will also threaten to undermine the very structures of the United Kingdom as a political entity. With England accounting for 85% of the UK's population, there were always long held concerns over how far English discourses dictated policies in Northern Ireland, Scotland and Wales. Brexit is now testing the politics of devolution within the UK like never before, and most particularly in Scotland where its government is demanding a new referendum on independence. Writing in January 2021 Gordon Brown, a former British Prime Minister (2007-10) argued that the UK was at risk of being a "failed state and breaking up" unless the government in London addressed the concerns of the regions.<sup>2</sup> He was thinking particularly of Scotland, but the argument also extends to Northern Ireland. Whilst academics and politics often centres on the impact of Brexit on Scotland<sup>3</sup>, fewer voices have been heard in relation to both Northern Ireland<sup>4</sup> and Wales<sup>5</sup>.

This chapter addresses the gap and focuses its attention on Northern Ireland. This region provided for a unique case for the EU/UK Brexit negotiations from the outset as it: was the only part of the UK (leaving aside Gibraltar) with a three-hundred-mile-long land border with an EU member state, was a region slowly emerging from thirty years of conflict and required careful handling to maintain the peace process. Such sensitivities also explain the interest in this region by the European Commission, the Republic of Ireland and the United States of America. Post Brexit Northern Ireland very much remains an integral part of the United Kingdom, but the particular form that Brexit takes in Northern Ireland through an agreed EU/UK Protocol has not just loosened those links but arguably strengthened the case for Irish unification.

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<sup>2</sup> The Telegraph, <<https://www.telegraph.co.uk/politics/2021/01/24/united-kingdom-must-urgently-rediscover-holds-together/>>.

<sup>3</sup> Gallagher; McEwen.

<sup>4</sup> Murphy.

<sup>5</sup> Hunt/Minto; Trumm.

## II. Context and Setting

The UK's departure from the European Union (Brexit) was neither planned nor wanted by the British government and the mainstream parties. Brexit could be portrayed as either an accident or a severe miscalculation by David Cameron's government when it pledged to hold a referendum on the UK's membership of the EU.<sup>6</sup> The European question had long been a contentious issue in the UK, but a popular brand of Euroscepticism only truly emerged in the period after 2000. Cameron's decision was a strategic choice that was designed to outmanoeuvre the eurosceptic United Kingdom Independence Party (UKIP) and quell critics on his own backbenches. It was generally assumed that the UK electorate would vote for economic reasons for the UK to remain in the EU.

There is not sufficient space here to outline the debates, examine the campaign strategies and analyse the voting patterns that ultimately culminated in a narrow margin of victory for those advocating leave (securing some 51.9% of the vote as opposed to the 48.1% for "remain"). A 72.2% turnout was impressive but with some 28% of the population not casting a vote, Brexit was supported by just 37% of the entire voting electorate. This was never a convincing result and did not merit the harder form of Brexit that materialised. The vote divided opinion across the UK's four nations with England and Wales narrowly opting for Brexit while both Scotland and Northern Ireland voted against it.

For many the vote reflected the resurgence of English nationalism,<sup>7</sup> but there was a wider mix that included concerns about continued immigration, fears over employment and future job prospects as well as staunch Eurosceptics. Brexit also found support among a section of the population who can be labelled as reckless voters and were ready to reject anything endorsed by the economic and political elites even if it led them to being materially worse off. The EU referendum took place against a perfect storm of public anger and grievance where emotionally charged demands to "take back control" and re-establish sovereignty trumped economic arguments.

Not only was there never any agreed model of what leaving the EU actually meant à la Swiss, Norwegian, Turkish or World Trade Organisation models but little attention was paid by the national (predominantly London based) press to the regional dimension of Brexit, and specifically to Northern Ireland. Post referendum the course trajectory was swiftly set by Theresa May's "Brexit means

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<sup>6</sup> McGowan/Phinnemore.

<sup>7</sup> Black; Wellings (2019); Wellings (2020).

Brexit” mantra.<sup>8</sup> Northern Ireland rapidly emerged as one of the three core issues during the first phase of the EU/UK negotiations in the second half of 2017 (alongside citizens’ rights and the final financial divorce settlement) and was to feature as a central theme throughout the entire negotiations.

### III. Northern Ireland: A short political history

Northern Ireland was created as a new political entity through the 1920 Government of Ireland Act as part of the larger United Kingdom of Great Britain and Northern Ireland. The Act cast shadows over Irish and Anglo-Irish relations for decades and had envisaged two new devolved parliaments in Ireland, one in Dublin for 26 Irish counties in the South (and which never sat as the terms of the Act were rejected) and one for the remaining 6 counties in the North of Ireland in Belfast. This partition of Ireland was divisive from the outset but was held as an immediate way of preventing any further major unrest if the Protestant majority. Some two thirds of the inhabitants in the north of the island were handed power to determine their own future, and one that was very closely aligned with Great Britain. It had been assumed by leading unionist politicians in 1921 that this majority would never alter and as such Northern Ireland’s constitutional status had been permanently enshrined in law and as a matter of fact.

The creation of Northern Ireland, however, was never fully accepted by the minority Catholic population as it ran contrary to their belief in national self-determination and placed them under the dominant rule of the Ulster Unionist Party (UUP). Resentment towards the regime was fueled by well-documented cases of discrimination against the Catholic minority, especially in relation to employment and housing, and ultimately this dissatisfaction led to a campaign for civil rights in the 1960s which in turn splintered and developed a more violent and sectarian strain. Sporadic and inter-communal violence had been present from Northern Ireland’s inception, but it intensified greatly after 1969 and the onset of the “Troubles” as a new provisional Irish Republican Army (IRA) that had never recognized Northern Ireland opted for an armed struggle

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<sup>8</sup> Independent, <<https://www.independent.co.uk/news/uk/politics/theresa-may-brexit-means-brexit-conservative-leadership-no-attempt-remain-inside-eu-leave-europe-second-referendum-a7130596.html>>; her then chief political advisor, Nick Timothy, later accepted that this phrase was a mistake; see Seldon/Newell.

campaign to end the UK's "occupation" of the "six counties".<sup>9</sup> The security situation rapidly deteriorated and the British government felt compelled to intervene and to dissolve the Northern Irish parliament in 1972, replacing Northern Ireland under direct rule from London. Political attitudes hardened thereafter and the emergence of the Democratic Unionist Party (DUP)<sup>10</sup> under Ian Paisley thwarted attempts from the UUP to reach any accommodation with the nationalist SDLP and prevented a new power sharing arrangement in 1974.

All subsequent initiatives at returning control to elected representatives in Northern Ireland failed, until the mid 1990s when the IRA, realizing that the armed struggle could not deliver national unity and a British government worn down by the economic, security and personal costs of protecting Northern Ireland, finally and together with most political parties negotiated a new political settlement under the 1998 Belfast/Good Friday Agreement. The DUP opposed it vociferously.<sup>11</sup> This agreement repealed the 1920 Act of Ireland and created a new devolved parliament for Northern Ireland but one built on consensus and requiring a mandatory coalition between the two communities in Northern Ireland. It was cleverly crafted and ensured that the constitutional question of Northern Ireland remaining with the UK or uniting with the Irish Republic would be settled in two referenda, both north and south of the Irish border. No date was ever set. The agreement simply stated that a border poll would occur when public demand wanted one. How this demand was to be expressed was left unanswered.

The road to peace had been facilitated by Irish and British membership of the European Union, and indeed European Council summits had afforded regular and unseen opportunities for the prime ministers of both states from the early 1990s to consider and discuss Northern Ireland. The European Commission emerged as another pivotal actor in the peace process when its president, Jacques Delors, initiated the EU's first Peace Funding programme for Northern Ireland in 1995 following the 1994 IRA ceasefire. The EU dimension is a constant thread through recent Northern Ireland history and the 1998 peace settlement was conceived within the wider EU arena and was recognized by the Commission not just as a positive sign of European integration but one of its greatest achievements. Few then could have imagined a referendum on the UK's membership in the EU.

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<sup>9</sup> Republicans, including Sinn Féin, in media communications regularly refuse to recognise Northern Ireland as a legal entity. Its members always refer to the North of Ireland or the six counties. The other main nationalist party, the Social Democratic and Labour Party refers to either Northern Ireland and the North of Ireland and normally uses both terms.

<sup>10</sup> Tonge (2014).

<sup>11</sup> Tonge (2014); Tonge (2019).

The agreement needs to be understood as a political compromise. Its new arrangements were always going to encounter difficulties. The fortunes of the two largest political parties in 1998, namely the Ulster Unionist Party and the predominantly nationalist Social Democratic and Labour Party (SDLP), waned under the pressures as the electorate turned to the more dogmatic and hard-line forces of the Democratic Unionist Party and Sinn Fein, respectively. The fragility of the political system has been continually tested over party disagreements and the absence of trust especially between the DUP and Sinn Fein led to the suspension of the devolution arrangements in January 2017. It was increasing resentment from the public with Brexit looming and crises in the education and health systems that pressurized these two adversaries back into government (alongside the three smaller parties, the UUP, the SDLP and the Alliance Party) in January 2020. Relations remain tense.

In 2021 Northern Ireland is set to mark its centenary. However, suggestions and plans for commemorations are revealing the core political differences over identity and nationhood that were present 100 years ago. The assumption that the unionists would always be in the majority was hopelessly misguided and the demographics have shifted considerably over this period. Northern Ireland has a population of some 1.893 million people.<sup>12</sup> The identity divide has narrowed over time and while some 48% (or 864,000 people) identify as Protestant/Unionist, there are now some 46% (or 810,000 people) who describe themselves as nationalist/Catholic. In many ways the people of Northern Ireland and the Republic of Ireland are facing the same questions and issues they confronted a century ago.

Brexit has changed the dynamics and unsettled the fragile political consensus that had been achieved in 1998. In the 2016 referendum some 58% of Northern Ireland's voters opted for the UK to remain in the EU. Closer analysis of the vote reveals that there were significant discrepancies between the nationalist and unionist communities. While some 93% of the Catholic/nationalist population rejected Brexit in case it damaged the UK's now cordial relations with the Republic of Ireland only some 30% of unionist voters opposed Brexit. The DUP had always been avowedly Eurosceptic and regarded Brexit as an opportunity to bolster relations with Great Britain and confirm their British identity. The DUP ignored the vote against Brexit in Northern Ireland and its 10 MPs in the House of Commons were to play a pivotal role in parliamentary debates and very unintentionally not only weakened the links between Northern Ireland and the UK but initiated renewed debate for a border poll.

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<sup>12</sup> NISRA.

#### IV. Northern Ireland and the UK/EU negotiations

Given the relative paucity of interest or recognition of Brexit for Northern Ireland prior to the referendum, this region of the UK moved centre stage from the commencement to the very end of the EU/UK negotiations. Northern Ireland was always going to require some form of “special” approach or treatment given its recent history and a need to consolidate the peace process. A once militarised border between North and South had become increasingly frictionless through the introduction of the single market on 1 January 1993 and the 1998 peace settlement. The future openness of this border was brought into question following the Brexit vote and for some it manifested another illustration of the island’s partition and even repartition. How serious any suggestions of a return to violence were are questionable, but there is little doubt that any manifestation of any form of border controls and checks played out badly in purely political terms. Theresa May spoke of the need to continue the frictionless trade and that nobody wanted “to return to the borders of the past.” Such aspirations were only achievable with a softer version of Brexit or creating a set of distinct arrangements for Northern Ireland, such as becoming part of the European Economic Area A.<sup>13</sup>

The harder the form of Brexit pushed in Westminster, the more necessary it became to find some form of “special” arrangement for Northern Ireland. May’s original Withdrawal Agreement had provided one solution to the problem – the so-called backstop arrangement that envisaged the entire UK remaining in the EU customs arena if agreement on a deal could not be reached. This option was unacceptable to hard Brexiteers, including the DUP, as it kept the UK aligned with EU tariffs, prevented the UK from regaining its sovereignty and ability to carve out its own trade policy and tied the UK to rulings from the Court of Justice. May introduced three unsuccessful attempts at securing approval of her deal in parliament before pending her resignation. All three were opposed by the 10 DUP MPs.

Her successor, Boris Johnson, buoyed by a majority for Brexit following a surprise December 2019 election, secured an agreement on Northern Ireland with the European Commission through a Protocol and a trade deal with the EU. The deal met the conditions of his English colleagues, but the protocol instantly alienated his DUP supporters in the process. In retrospect, the DUP had severely miscalculated their power and influence and with a very changed arithmetic and Johnson’s new 80 seat majority within the House of Commons

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<sup>13</sup> McCrudden et. al; The Guardian, <<https://www.theguardian.com/politics/video/2016/jul/25/theresa-may-no-hard-border-between-ni-republic-ireland-brexit-video>>.



Northern Ireland's DUP MPs simply became superfluous to the Prime Minister's immediate Brexit needs. Johnson delivered Brexit, confined the previous so-called "backstop" arrangements to history and solved the intricacies of the Irish border question by keeping Northern Ireland within the EU's single market for goods and key aspects of the EU acquis through the creation of a new Irish Sea Border between Northern Ireland and Great Britain.

None of the political parties in Northern Ireland were content with the final outcome of the UK's government's Brexit deal with the European Union. For the parties that had opposed the very idea of Brexit from the outset this is not surprising, but for the parties that had advocated withdrawal, the outcome was not the one they had envisaged or campaigned for and their anger centred not on their own miscalculation but on the terms of the Northern Ireland Protocol (formally, the Protocol on Ireland/Northern Ireland). Before addressing such concerns and the repercussions of the deal, we first turn our attention to the terms of this Protocol.

## V. The Ireland/Northern Ireland Protocol

The Ireland/Northern Ireland Protocol entered into force on 1 January 2021 following the end of the UK transition period.<sup>14</sup> The Protocol contained three primary objectives; to prevent the emergence of a hard border on the island of Ireland; to ensure the integrity of the EU's single market, and to allow unfettered access of goods between Great Britain and Northern Ireland as well as bringing Northern Irish goods into discussions in other trade talks. The protocol was confirmed between the UK government and the European Commission several weeks ahead of the eventual EU/UK trade and Cooperation Agreement on 23<sup>rd</sup> December 2020 and would have entered into force even in the absence of an EU/UK arrangement.<sup>15</sup> It should be noted that the Brexit deal does mitigate a number of major issues relating to the Irish Sea border such as tariffs. The protocol is primarily concerned with trade between Great Britain and Northern Ireland and the movement of goods. The movement of UK and Irish nationals between both islands was already a long-established reality through the Common Travel Area (since 1923) and has since been reaffirmed by the UK government.<sup>16</sup> The protocol is a major landmark event, as for the first time in Northern Ireland's history the nature of the economic ties between Great Britain and Northern Ireland is altered. True, the Proto-

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<sup>14</sup> HMG (2020), The Northern Ireland Protocol: Policy Paper.

<sup>15</sup> European Commission, UK-EU Trade and Cooperation Agreement: Protecting European Interests.

<sup>16</sup> HMG (2019), Common Travel Area: Right for UK and Irish Citizens.

col may not have changed Northern Ireland's constitutional position, but it has certainly generated a new distinctiveness that tests the political connections between Great Britain and Northern Ireland and is already arousing unease and anger among working class unionists.<sup>17</sup>

The opening sentences of the Protocol recognise the significant challenges that Brexit brings to the island of Ireland, reinforcing the need to reaffirm commitments to the peace process and to find a “unique solution” to ensure the UK's orderly withdrawal from the EU. An open border between Northern Ireland and Ireland is the core issue. The UK was not immune from external pressures. Downing Street was increasingly aware of the concerns from the Democratic Party in the United States over any hard border on the island of Ireland and strongly hinted that anything that jeopardised the peace process would have implications for imminent UK/UK trade deal negotiations. The only viable solution for Boris Johnson to avoid border controls on the island became an Irish Sea border.

Under the Protocol Northern Ireland remains part of the EU's single market for goods and falls within the EU's customs territory. Alignment with EU rules (Articles 5-10) is also to be respected in relation to VAT and the Single Electricity Market (Art.9). The first paragraph of Article 5 states that all goods traveling from Great Britain to Northern Ireland are tariff free unless the goods are at “risk of moving into the EU” to the Republic of Ireland and the other EU26. European Commission officials will be in situ at crossing points in Northern Ireland to monitor trade coming from Great Britain. The protocol (article 5, paragraph 4) effectively establishes a regulatory zone on the island of Ireland where alignment on a range of EU goods must be followed, mostly in relation to agriculture- related and manufactured goods. In addition, and to ensure a level playing field, always a key aspect of the European Commission's concerns, the Protocol (Art.10) limits the application of state aid when such subsidies effect trade between Northern Ireland and the EU. The final point to make in this short overview is that the European Courts retain oversight of EU law as it applies in Northern Ireland.

In practice, goods between Northern Ireland and the Republic of Ireland may cross freely over the Irish border as they had done prior to the agreement. In contrast, with Great Britain no longer in any regulatory or customs arrangement with the EU and free to establish its own rules, and with Northern Ireland remaining in the EU single market for goods while the rest of the UK was

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<sup>17</sup> Sunday Life, <<https://www.belfasttelegraph.co.uk/sunday-life/news/loyalist-leaders-facing-community-backlash-with-brex-it-stance-blamed-for-food-shortages-and-irish-border-poll-momentum-40002710.html>>.

outside of it, it became necessary to introduce new and additional formalities in relation to goods moving from Great Britain to Northern Ireland. In short, Northern Ireland remains linked to the European Union and as such commentators should recognise that only Great Britain has truly departed the EU.

The protocol states that all goods entering Northern Ireland from Great Britain should comply with the EU's single market and specifically with regard to product requirements and agricultural standards (Institute of Government, 2020). In practice this means that firms will have to adhere to and complete any necessary paperwork, even if these goods are not bound for the EU (in or via Ireland). Following the UK/EU Agreement goods are not subject to tariffs and customs duties, but declarations are still necessary and traders will need to take account with the new "rules of origin". It is true that many British companies are currently working their way through the complexity of "rules of origin", new non-tariff barriers and customs formalities in relation to trade with the EU 27 (including Ireland), all making trade more costly. Many seem to have been unprepared for the changes in relation to goods being shipped to Northern Ireland.

Responsibility for ensuring the protocol's implementation falls to a newly created Joint Committee, as agreed as part of the Withdrawal Agreement. This Committee is tasked with monitoring developments, reviewing customs duties and addressing any emerging issues of concern.<sup>18</sup> Teething problems were to be expected as were adjustments to the terms of trading. Changes were noticed almost immediately as disruptions occurred with the flow of goods and food (with some empty shelves in major supermarkets) from Great Britain to Northern Ireland and even the decision of some firms in Great Britain opting to no longer trade with or to substantially reduce trade with Northern Ireland.<sup>19</sup>

Initial concerns arose almost immediately over the increased costs of importing second hand cars from Great Britain to Northern Ireland as it involved changes to the way that VAT was calculated with the tax being paid on the price of the car rather than on the profit margin.<sup>20</sup> This was resolved, but the list of issues is growing. Questions arose over the intricacies of *groupage* and exactly how many pallets of consignments could be placed on one lorry if separate forms were needed for each purchaser. These questions initially caused problems but were quickly settled. Others questions are much less clear cut.

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<sup>18</sup> House of Commons Library, Joint Commission Decisions on the Northern Ireland Protocol.

<sup>19</sup> The Guardian, <<https://www.theguardian.com/politics/2020/dec/03/four-in-10-uk-food-firms-to-cut-supplies-to-northern-ireland-poll-brexit>>.

<sup>20</sup> BBC News, <<https://www.bbc.co.uk/news/uk-northern-ireland-54967496>>.

There is growing discontent among the eel fishing industry in Northern Ireland as it can no longer deliver to Great Britain on account of EU environmental regulations and frustrations that travelling with pets between Northern Ireland and Great Britain is now subject to new checks (on vaccinations and rabies shots).<sup>21</sup>

Trade will certainly take longer to move and to process. At the core of concerns from hauliers, importers and exporters are the new arrangements and form filling requirements. A grace period of three months (until 1. April 2021) has been provided to iron out difficulties on most goods and to allow for issues to be resolved. Whether this timetable can be met remains open to question and it is expected that we will see more companies no longer delivering certain items, such as alcohol, to Northern Ireland or even not delivering at all. In hindsight, it seems that the government failed to grasp and appreciate the full extent and impact of the protocol and the ensuing political fallout, but criticism can also be extended to many companies in Great Britain who were not cognizant of the changes the Protocol required. There are positives for Northern Ireland. Its new status provides local companies with both opportunities and advantages over their counterparts in Great Britain as they have unfettered access to the Great Britain and EU markets without any checks or additional paperwork. These same firms will be able to avail of the major expansion of ports in the Republic of Ireland, such as Rosslare, as a route directly into the EU26.

## VI. Political Reaction

The Protocol has its critics and when all is said and done it should be recognised as a political compromise. Acutely aware of the political sensitivities and especially among the wider unionist community in Northern Ireland the UK government has pledged to allow the Northern Ireland Assembly to vote on the continuation of the Protocol, specifically Articles 5 to 10, after 4 years in operation (due in December 2024). A specific timetable and process to achieve this has been established by the UK government.<sup>22</sup> Essentially, the “consent mechanism” (Article 18 of the protocol) envisages several scenarios. If the Assembly opts to give its approval by a simple majority (of its 108 members) alignment with the EU will continue for another four years (following an independent review of the Protocol initiated by the UK government) and another vote. However, if consent is given under the cross- community provisions laid out

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<sup>21</sup> Politico, <<https://www.politico.eu/article/wild-eels-driven-from-uk-market-brexite/>>.

<sup>22</sup> House of Commons Library, Joint Commission Decisions on the Northern Ireland Protocol.

in the 1998 Belfast Agreement that translates into either a majority of MLAs in both nationalist and unionist MLAs in attendance or 60 per cent of MLAs with 40% in attendance from both the unionist and nationalist communities, alignment continues and another vote will not occur for 8 years.

Under the current composition and given the arithmetic within the Assembly the first option is the most likely outcome of any vote. The DUP has opposed the consent mechanism on these grounds, arguing that a majority vote ran contrary to the terms of the Belfast Agreement, as it did not require support from both communities. The UK government has rejected such views as have most other prominent party voices in Northern Ireland such as Sinn Fein, the SDLP and the Alliance Party. All are wary of giving the DUP any veto in the process and the rolling nature of the provisions if a vote were required every four years. If a majority wishes to reject the protocol it is the Joint Committee that would be tasked with providing the UK government and the European Commission alternative options but these would need to protect against the return of a hard border and any dangers to the peace process. Given such an outcome, however, the Protocol envisages a two-year time-frame to prepare an alternative scenario in which period alignment would continue. Some authors such as Hayward<sup>23</sup> correctly argue that the consent mechanism should be approached with caution as the idea of democratic accountability for the Northern Ireland Assembly is in practice heavily curtailed because even if it were to vote to de-align from the EU, it would be passing responsibility for any new arrangements into the hands of the unelected Joint Committee. Moreover, any of the areas that are covered in the Protocol such as the Common Travel Area and citizens' rights will continue regardless of any vote in the Assembly.

At the start of 2021 the DUP finds itself very much on the defensive. This party had not just campaigned for Brexit but dismissed all suggestions that Brexit entailed negative repercussions. With the chances of further alignment being agreed in the future, DUP party members have taken to attacking the Protocol as the problem and an “unmitigated disaster” and have demanded its suspension.<sup>24</sup> Ian Paisley Junior's comments to the Northern Ireland Affairs Committee in Westminster illustrated the party's inner frustrations and in presenting the Protocol as something they have always opposed the party is seeking

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<sup>23</sup> Hayward (2020).

<sup>24</sup> Irish Times, <<https://www.irishtimes.com/news/politics/paisley-calls-for-britain-to-disapply-northern-protocol-due-to-trade-disruption-1.4451671>>; Belfast Telegraph, <<https://www.belfasttelegraph.co.uk/news/brexit/ian-paisley-and-claire-hanna-in-name-calling-row-over-ditching-ni-protocol-39942103.html>>.

to deflect attention away from its role in advocating Brexit. The DUP's arguments that the Protocol can be disapplied may look possible, but they are simply ill-informed. Article 16 of the Protocol can be invoked unilaterally by either the UK government or the European Commission to resolve any serious "economic, societal or environmental difficulties".

Ultimately, such articles are last resort clauses, are rarely activated and in this case potentially run the risk of damaging trust and relations between the government in London and EU official if triggered by the UK government.<sup>25</sup> For these reasons Boris Johnson, who is more concerned about the wider UK picture and any damage to UK/US relations, will be extremely reluctant to deploy Article 16. It is ironic that those unionist parties who had campaigned vociferously for Brexit as a means to deepening their relations with the UK whilst simultaneously regarding this outcome as a way of distancing themselves from the Republic of Ireland have actually brought about a degree of separateness between the UK and Northern Ireland by undermining the ties between both. Accordingly, the DUP will persist in their attacks on the Protocol. The blame from the DUP's perspective rests squarely with "Brussels' intransigence" (as stated by Diane Dodds, the DUP Minister for the Economy in the Northern Ireland Assembly) to refuse to allow the entire UK to leave the EU.<sup>26</sup> It is misguided and fails to acknowledge that this could never have been the case. Brexit may turn out to be interpreted by future historians as a poison chalice for unionism in Northern Ireland, but it may also be regarded as one as well for Boris Johnson's Conservative and Unionist party as its Brexit agenda has unsettled the wider constitutional fabric of the British Union.

## VII. Northern Ireland and a second 100 Years: Future Trajectories

The result of the 2016 EU referendum has arguably thrown the structures of the United Kingdom into question. Much focus falls on the ambitions of the Scottish National Party led government in Edinburgh to hold another referendum on independence within the next two years. Opponents of this strategy within the Conservative Party argue that the earlier 2014 referendum on Scottish independence was a once in a generation event and that the SNP's calls are premature. However, these same critics fail to appreciate the point that the 2016 EU referendum, where the Scottish people had voted for the UK to remain in the EU and whose views were set aside in London, transformed the

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<sup>25</sup> Hayward/Phinnemore.

<sup>26</sup> Northern Ireland Assembly, <<http://data.niassembly.gov.uk/HansardXml/plenary-18-01-2021.pdf>>, 44.

political landscape in Scotland and beyond. If the SNP score a decisive win in the Scottish Parliament May 2021 elections, as is widely expected, there will be demands for a new referendum on independence. Opinion polls currently show that support for independence has increased since 2014 with some 58% now advocating Scotland's break from the UK.<sup>27</sup>

Such an outcome would almost certainly buoy the supporters of a similar poll on Northern Ireland's constitutional position within the UK. The situation is very different as the two main communities (or large sections of each one) express different political and cultural identities. There are two competing historical narratives at play; one that celebrates British culture, language and traditions and another that lauds Irish culture, language and identity. Both are reflected and reinforced through many schools which largely remain almost exclusively Protestant (state controlled) or Catholic (Catholic maintained). Integrated schools still only make up some 7% of the entire school system.

Different anniversaries, emblems and images form mutually exclusive parts of both co-existing narratives. The unionist community defines its identity within a British context. It honours the thousands of sacrifices that its citizens made in defending the UK during the World Wars (and heavy reference is made to the Battle of the Somme in 2016) which is commemorated through the wearing of the red poppy on Armistice Day. It regards itself as a nation under siege and was forced to defend its way of life from the terrorist forces that tried to destroy Northern Ireland during the Troubles. In contrast, a competing narrative from the nationalist and republican community embraces an Irish identity, lauds the 1916 Easter Rising (during the First World War) with the wearing of an Easter Lilley, tells a story of partition and discrimination in Northern Ireland and shares a view of themselves as the "victims" of British armed occupation. The Irish language provides another example of division and distrust. Whereas the nationalist community can see the widening use of Irish in Catholic maintained schools as an expression of culture, the unionist community views such developments as nothing less than a political strategy that only creates further tensions, and potential future discrimination against them if the knowledge of Irish becomes a requirement for the public sector jobs market.

Creating an agreed narrative that somehow encompasses both views of history is necessary for the future but it is far from being straightforward. The orange (unionist) and green (nationalist) narratives will play out and be on show as

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<sup>27</sup> The Scotsman, <<https://www.scotsman.com/news/politics/poll-shows-scottish-independence-support-surgin-joint-record-levels-snp-set-majority-3070791>>.

Northern Ireland marks its centenary in 2021. If coming to some agreed understanding about the past is difficult, finding agreement on the future is even more problematic as tensions between the two main communities never lie far beneath the surface. They can flare up at over interpretations of past events as the current legacy debate demonstrates in relation to agreeing who were the perpetrators and who were the victims of the conflict. They are equally susceptible to policy choices and events.

Brexit is a very apt example and has the capacity to represent a decisive game-changer in shaping Northern Ireland's future political trajectory. Irrespective of whether Brexit is regarded as a positive or negative point in British politics, the process, the referendum vote and the outcome generated further (and unhelpful from a consolidating peace perspective) divisions among the two communities in Northern Ireland. This relationship needs careful managing and nurturing because whatever the end goal of the peace process is, i.e. Northern Ireland remaining within the UK or joining the Republic of Ireland, a section of the population will find itself aggrieved and potentially ready to engage in violence. Discussions about a poll now were always going to prove politically divisive and likely to exacerbate tensions. Just two days after the Brexit vote Martin McGuinness, the then Deputy First Minister, argued that a border poll was now a "legitimate right".<sup>28</sup> The call was immediately denounced by the DUP. Sinn Fein's confidence rests in changing demographics and especially among the young where just over some 50% of those in primary and secondary education identify as Catholic and from Sinn Fein's perspective will lean towards Irish unification.<sup>29</sup> There is no such guarantee.

Brexit certainly energised the supporters of Irish unification and has brought the issue of Irish unification into greater political focus than at any time over the last 100 years. The mechanism for holding a border poll on Northern Ireland's constitutional future is provided for under the Belfast Agreement, but the key is public demand for one. Until this point successive Secretaries of State for Northern Ireland, together with both main unionist parties, have argued that no such clamour exists, and as such Northern Ireland remains an integral part of the UK. This position was supported by opinion polls. In one commissioned for the BBC and RTE (Irish State Broadcaster) conducted in 2015, only some 13 per cent of respondents supported Irish unification in the short to term (10 years) whereas some 30% supported it as an aim over their

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<sup>28</sup> Daily Express, <<https://www.express.co.uk/news/uk/683490/EU-referendum-Martin-McGuinness-calls-border-poll-unification-Brexit-vote>>.

<sup>29</sup> Irish Times, <<https://www.irishtimes.com/news/ireland/irish-news/northern-ireland-polls-can-provide-more-confusion-than-clarity-1.4344768>>.



lifetime.<sup>30</sup> This option found support among just 3% of the unionist community. Interestingly some 52% of the nationalist community supported continuing links with the United Kingdom (either by “direct rule” from London or by devolved government).

Some six years later and after Brexit there has been a shift in attitudes with more of the nationalist community supporting a border poll. According to a widely publicised poll commissioned for the Sunday Times, the state of play in January 2021 suggested that some 51 (50.7)% of the Northern Ireland public wanted to see a poll on Irish unification by the end of 2025.<sup>31</sup> 44.4 per cent rejected such a poll. Removing the “don’t knows” increases support for unification to 53.3 per cent, much to Sinn Fein’s delight and unionist fears. Such snapshots of public opinion always require some degree of caution as context is all important. Indeed, wanting a poll does not in itself translate into voting for Irish unification. This particular poll revealed this reality as only 42 per cent would intend to vote for Irish unification while 47 per cent prefer Northern Ireland to remain in the UK. 11 per cent did not know and this group may hold the key to either outcome.

Arlene Foster, the leader of the DUP, and expressing the views of almost all unionists, described any such poll as “absolutely reckless” given the political sensitivities it will generate and will be certain to make a case for the union with the UK.<sup>32</sup> There are still many questions to be asked about the nature and constitutional fabric of a “united” Ireland and moreover, how that reshapes many areas of public policy, particularly health and taxation. The voters in the Republic of Ireland will also be required to give their consent to a united Ireland and will have as many similar economic questions to raise about the cost of the process and who bears it. More importantly, assuaging concerns from the unionist community will need to be paramount. Colm Eastwood, the leader of the SDLP, has spoken about the need to engage with “every community, sector and generation” and argued that with the United Kingdom “coming to an end” it was time to build a new future together.<sup>33</sup> It is now conceived wisdom that a referendum on Irish unity is coming, whether some people in Northern Ireland remain hostile and whether some people even in the Irish Republic like it or not.<sup>34</sup> The timing may well be influenced by events in Scotland.

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<sup>30</sup> BBC News, <<https://www.bbc.co.uk/news/uk-northern-ireland-34725746>>.

<sup>31</sup> Sunday Times, <<https://www.thetimes.co.uk/article/northern-irish-back-border-poll-within-five-years-6ndbkz80s>>.

<sup>32</sup> BBC News, <<https://www.bbc.co.uk/news/uk-northern-ireland-55783805>>.

<sup>33</sup> Ibid.

<sup>34</sup> Irish Times, <<https://www.irishtimes.com/opinion/a-referendum-on-irish-unity-is-coming-whether-we-like-it-or-not-1.4454681>>.

This paper does not seek to second guess the outcome of a border poll but suggests that even if the current constitutional status quo for Northern Ireland were not changed, it is the duty of all politicians, both North and South of the border, to set out to explain their preferences for Irish unity and to secure popular support. Unlike the Brexit referendum, it is argued here that a simple majority will not suffice and that there will have to be a winning threshold that should arguably centre around the 60% mark in both referenda on either side of the Irish border. The Belfast Agreement only refers to a majority of public support and there remain questions over what materials might be deployed as evidence of such a view (e.g. through election or opinion polls). Central to the discussions will be the nature of the new Irish state and the role of the minority unionist position within it who would comprise one sixth of the population of the new state. There are three potential models.<sup>35</sup> The first envisages the full absorption of Northern Ireland into the current structures and political system of the Irish Republic but this form will not prove politically acceptable to unionism. A second sees the creation of a new federal system based around the four historic Irish provinces (Connaught, Leinster, Munster and Ulster). This option will be unlikely as the provinces are unequal in terms of population and economic power and Northern Ireland only comprises 6 counties with the other three being in the Republic. A newly constituted Ulster province would not garner the support of the unionists.

A model that realises unification but hands some form of devolved authority to what had constituted the territory of Northern Ireland is the only viable option in political management terms. Unionists might be more open to this option but will still need to be convinced. That said, there are still a vast array of challenges and not least of these is just how well prepared officials, ministers and politicians in the Irish Republic are to enter into such discussions or to think about how best to accommodate the North. Would the National Health Service be retained in Northern Ireland; would elected officials in a devolved Northern Ireland be allowed to vote in all of Ireland's parliamentary debates; would Ireland opt to join the UK Commonwealth? It is to be expected that such an asymmetric model could be worked out without too much awkwardness, but the discussions will be complex. Preparations are needed and have already begun in some circles in the Republic of Ireland.

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<sup>35</sup> Doyle/O'Leary.

## VIII. Conclusions: Northern Ireland after Brexit

Post Brexit Northern Ireland finds itself in a rather unique position to the rest of the UK when it comes to its relationship with the EU. The Protocol effectively places Northern Ireland in the form of half-way house, being still part of the UK but also closely connected in an economic zone with the Republic of Ireland and the wider EU in relation to the free movement of goods. This new arrangement was a compromise that sought to minimise disruptions to trade across the island of Ireland and to prevent any threat to the ongoing peace process in Northern Ireland. The Protocol will prove much more problematic both politically and operationally than its creators had ever envisaged. The difficulties surfaced in the first month of its existence and in a very unhelpful manner when the European Commission without warning and any consultation invoked Article 16 to stop the movement of the Covid vaccine across the Irish border. This decision was a major “fiasco” and was quickly rescinded as it caused political uproar across the UK and Ireland.<sup>36</sup> The Commission’s move was even described by the First Minister of Northern Ireland as a “hostile and aggressive” act.<sup>37</sup> The entire episode proved damaging to the EU itself as after years of stressing its belief in the peace process it was ready to abandon its commitment in an act of Covid nationalism. The Commission’s miscalculation has resulted in intensifying demands from many sections of the unionist community to abandon many aspects of the Protocol. Any such move would draw resistance from primarily nationalist voices in Northern Ireland. Once again, Brexit is having an unsettling effect on Northern Irish politics.

As Northern Ireland turns one hundred it is time not only to reflect on the past but also the future. The people of Northern Ireland should be starting a dialogue over the region’s next 100 years over whether Northern Ireland should remain an integral part of the UK or accede to the Irish Republic. Such a discussion was always necessary but Brexit has accelerated the timetable and makes this exercise more difficult as sections of the two communities are ever more entrenched in their distinctive identities. A border poll may be moving closer but the outcome still remains open. A united Ireland will see the full reintegration of Northern Ireland into the European Union. Yet, there is another alternative scenario where the UK government makes the case for the UK union ahead of any referendum. Ultimately, Northern Ireland’s future will

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<sup>36</sup> BBC News, <<https://www.bbc.co.uk/news/world-europe-55872763>>.

<sup>37</sup> The Guardian, <<https://www.theguardian.com/world/video/2021/jan/29/arlene-foster-ue-limit-on-vaccines-into-northern-ireland-is-hostile-and-aggressive-video>>.

be determined by its people. The options may seem relatively clear but the tasks and challenges should not be underestimated. Building consensus on an agreed future is a necessity but it makes for a difficult road ahead.

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