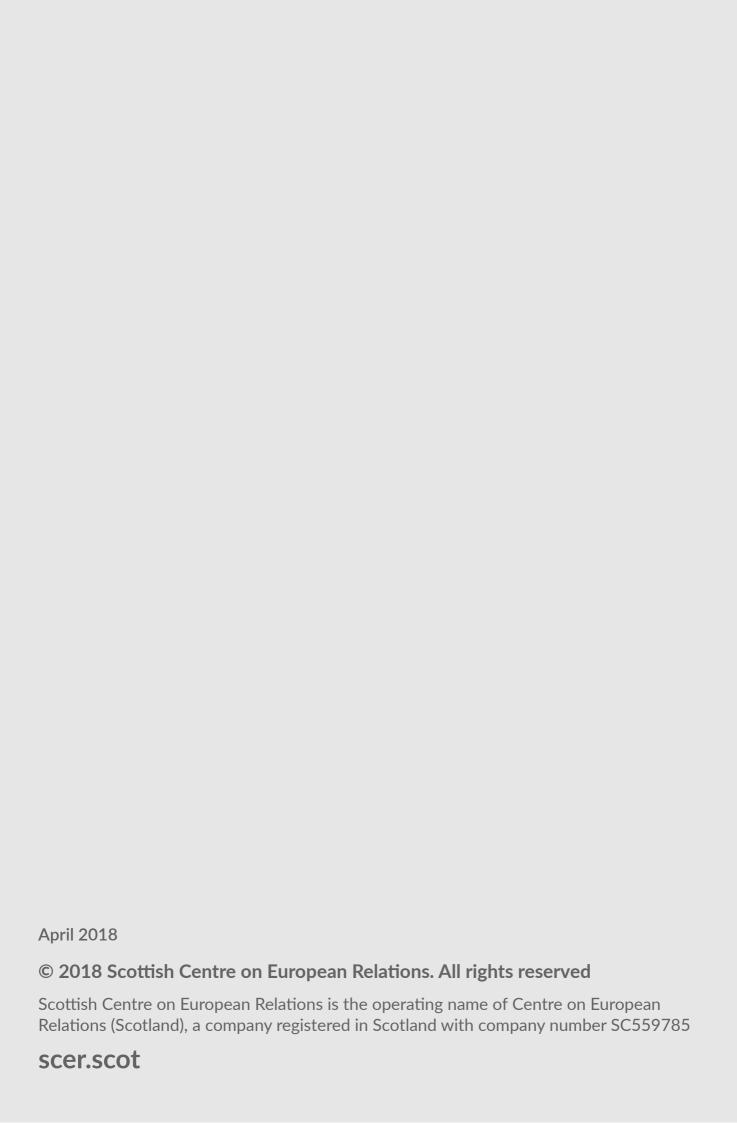# Brexit, Scotland and Northern Ireland

Comparing Political Dynamics and Prospects in the Two 'Remain' Areas

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(1) Introduction

The two 'Remain' areas of the UK – Northern Ireland and Scotland – are mostly analysed separately in Brexit debates. Northern Ireland faces a unique complex of problems given the challenge of managing the Irish border as an external frontier of the EU alongside protecting the operation of the Good Friday (Belfast) Agreement. In Scotland, attention has focused mainly on the argument over devolved powers and on pushing for a 'soft' Brexit – after an abortive attempt at a new independence referendum in 2017 on the back of the Brexit vote.

But there are important similarities as well as differences – and both Northern Ireland and Scotland will be deeply affected by the nature of the final withdrawal agreement and any future trade deal. The EU context has underpinned the current constitutional settlements in both Scotland and Northern Ireland. Changing that context is in principle and practice a deeply unsettling prospect. Unsurprisingly, Brexit has led to intensified debate around independence in Scotland and calls for a border poll in Northern Ireland on Irish unification – debates which, in many ways, distract from effective representation of their Remain-voting majorities as the Brexit process unfolds.

In the absence of an executive, and with only the Leave-supporting DUP (plus one independent MP) taking seats in Westminster, Northern Ireland's interests in Brexit are not proportionately represented at UK level. Nevertheless, given the Irish government's insistence, with the EU's backing, on protecting the Good Friday (Belfast) Agreement and avoiding a hard border (ambitions now explicitly shared by the UK government), Northern Ireland has been centre stage of the Brexit debate in a way that Scotland has not.

The Scottish government did ask early on for differentiation to keep Scotland at least in the EU's single market. And differentiation is most likely to be part of the answer for Northern Ireland. Ironically, it is the inseparability of the fortunes of the devolved areas that has hardened the UK government's reluctance to agree to differentiation for Northern Ireland. Even aside from its current dependence on support from the unionist DUP, the government does not want to set any precedent on differentiation for Northern Ireland that the Scottish government might then also demand (as it is likely to do).

The tension here is an interesting one. The Scottish government has had little input into the UK's overarching Brexit strategy, while the DUP has had substantial chances for influence (mainly behind closed doors rather than through published reports or policy papers). In contrast, in the formal consultation mechanisms of the Joint Ministerial Committee (JMC) – and the JMC (EN) [EU negotiations], Scotland has been represented at political level, with Scottish government ministers criticising but also engaging with this mechanism. For Northern Ireland, however, the absence of a sitting executive due to the collapse of power-sharing arrangements between the DUP and Sinn Féin in January 2017, has meant representation has been at civil service not political level, which constrains the scope for influence.

Furthermore, the fact that the Scottish parliament and Welsh assembly passed their own EU 'continuity' bills as part of their opposition to the perceived 'power grab' of the EU Withdrawal bill and the related argument over the development of new common UK

frameworks only serves to accentuate the major deficiencies in Northern Ireland's current participation in UK Brexit policy making and political debates.

Here we consider political and policy dynamics in Northern Ireland and Scotland and what they tell us about the state of Brexit politics in the UK today.

(2) Impact of Brexit

Both Northern Ireland and Scotland look set to be badly hit by a 'hard' Brexit, if that is what transpires.

Scotland

The Scottish government's estimates of the potential damage from Brexit (in January 2018) turned out to be very similar to the UK government's own estimates when they were finally released. The Scottish government estimated that a European Economic Area-style Brexit would reduce future growth, in 2030, by 2.7%; a Canada-style free trade deal would reduce it by 6.1%; and a WTO outcome would cut future growth by 8.5%.[1] There are serious concerns too in Scotland about the impact of ending free movement of people, which has been a crucial contributor to a range of sectors including tourism, agriculture, the health service, universities and more, as well as ensuring Scotland has a growing, rather than declining, population.[2] And despite the support for Brexit from a significant part of the fishing sector, who hope they will see larger quotas in future, the prospects of tariffs and border delays seriously concern other parts of the sector.

Northern Ireland

For Northern Ireland, the UK government figures from the Brexit economic impact assessments estimated that a 'no deal' outcome would mean a drop in GDP by 12%; even a free trade agreement would result in an impact of –8% in the region's GDP.[3] Impact reports conducted by the Northern Ireland civil service estimated that this economic contraction would be particularly felt in cross-border trade into the Republic of Ireland, which is Northern Ireland's largest export market by some distance (in terms of sales, the southern Irish market is 5/6 of the value of the rest of the world sales combined).[4] One impact report from the Department of the Economy estimated that cross-border trade could be reduced by 11% to 19%, depending on the level of tariffs, non-tariff barriers and exchange rate fluctuations.[5]

The importance of cross-border trade was recognised in the letter from the then First Minister (Arlene Foster) and deputy First Minister (Martin McGuinness) to Prime Minister May in August 2016. The letter welcomed May's stated determination that the land border 'will not become an impediment to the movement of people, goods and services'.[6] Foster and McGuinness noted the risk that the border issue could 'create an incentive for those who would wish to undermine the peace process'. With the border in mind, the letter urged the Prime Minister to 'retain as far as possible the ease with which we currently trade with EU member states'.

Related to this, and echoing Scottish concerns, the First Minister and deputy First Minister noted the 'heavy dependence' of Northern Ireland's economy on 'access to unskilled as well as highly-skilled labour'. This is particularly evident in the agri-food sector, which was given strong emphasis in the letter. Concerns to protect energy supplies, fisheries, EU funding and north/south cooperation were also mentioned. The letter concluded by requesting that the NI executive had access to intergovernmental British-Irish discussions regarding Brexit, given the importance of 'border issues affecting trade, employment, energy and potential criminality'.

This two-page letter remains the most substantive outline of Northern Ireland's priorities for the Brexit negotiations. Unfortunately, it would seem that even this would be something that the DUP might be unwilling to stand by now, such have been the polarising effects of the Brexit debate in Northern Ireland.

(3) Political Dynamics since the Brexit Vote

Northern Ireland

Although it was far less detailed than the positions put forward by their Scottish counterparts, the joint letter to the Prime Minister was quite an achievement for the DUP's Foster and Sinn Féin's McGuinness. This is partly because relations between the two parties dominating the power-sharing executive in Northern Ireland were already strained at the time, and partly because the two parties are firmly on opposite sides of the Brexit debate. As noted above, the power-sharing executive collapsed in January 2017. The political vacuum in Stormont has come largely as a result of a home-grown crisis in sub-national governance and accountability.

The situation drastically worsened over the course of 2017. In both the assembly election on 2 March and the snap general election of 8 June, turnout increased to 65% (i.e. about 10% more than usual). The results of both elections affirmed the clear north-east and south-west divide of the region between DUP-dominance and Sinn Féin-dominance, respectively. It also reflected the east/west division in the Leave/Remain constituencies in the EU referendum. Sinn Féin are strong in all the constituencies that run along the Irish border, where Brexit is – more than an ideological token – a pressing, material concern for many. The elections also saw the end of a unionist majority in the NI assembly and the shock eradication of the moderate NI parties from Westminster.

As a result, the stop-start talks to restore power-sharing became increasingly focused on the DUP and Sinn Féin. The fact that each party was on opposite sides of the Brexit referendum exacerbated the gulf between them. At the same time, the costs and responsibilities of power-sharing seemed to be increasingly high. Brexit meant that Northern Ireland was facing enormous change across a wide range of policy areas, and yet the response from NI civil servants was constrained by the knowledge that the two largest parties held very different views as to how this should be met. The DUP's priority of the union with the UK and Sinn Féin's priority of cross-border connections with Ireland meant that each was focused on players at opposite ends of the negotiating table in Brussels.

In the initial stages of the talks to restore power-sharing there had been a broad position established on Brexit that built on the August 2016 OFMDFM (Office of the First

Minister and Deputy First Minister) letter. However, the triggering of Article 50 and the subsequent drawing of the UK government's red lines appeared to undermine the potential for the kind of 'soft Brexit' that OFMDFM had hoped for. Furthermore, the elections and the confidence-and-supply arrangement between the DUP and the Conservative government weakened trust and common ground on Brexit between parties in Northern Ireland.

The context of the Brexit negotiations also introduced a new degree of caution and distraction in bilateral intergovernmental relations. This served to weaken the effects of a joint top-down pressure that has traditionally been vital for finding inter-party agreement in Northern Ireland. Within a short space of time, the means, motivation and momentum for restoring power-sharing in Northern Ireland had been deeply compromised.

Scotland

Scotland voted a clear 62% 'Remain' in 2016, with a Remain majority across all 32 council areas. In a striking moment of cross-party consensus, a week after the vote, the Scottish parliament voted 92-0 to explore ways to keep Scotland in the EU or its single market – with just the Conservatives abstaining.

First Minister Nicola Sturgeon embarked on some rapid political and diplomatic activity – heading to Brussels to meet Commission President Jean-Claude Juncker, establishing a Standing Council on Europe and setting out five red lines for any Brexit deal (that were hard to meet other than by staying in the EU). In a speech, that contained these red lines, on 25 July 2016, Nicola Sturgeon emphasised: 'democracy, economic prosperity, social protection, solidarity and influence – these are the vital interests that are at stake and we must now seek to safeguard.' And she already raised the possibility of Scotland having a different relationship to the EU than the rest of the UK, so allowing 'different parts of this multi-national UK to pursue different outcomes'.[7]

But this high-profile response soon shifted gear into a more technocratic pitch to keep Scotland in the EU's single market and the UK.[8] While Scottish Labour mostly supported this in the Scottish parliament, the Lib Dems soon declared it to be a back route to independence – and that it was a political as well as substantive tactic is plausible. Meanwhile, at Westminster, in February 2017, the 56 SNP MPs, one Labour and one Lib Dem all voted against triggering Article 50 with the then sole Conservative MP and Scottish Secretary, David Mundell, voting with his party to trigger it. It was a stark reminder of Scotland's opposition to the Brexit process.

Then, in March 2017, Sturgeon called for a new independence referendum in the face of Brexit. But Theresa May's 'No, not now' response, followed by the early general election wrong-footed the Scottish National Party (SNP). Having lost 21 seats at the election, going from 56 to 35 seats, the Scottish government stepped back from an early independence referendum and put its focus onto devolved powers and the push for a soft Brexit, arguing for the UK to stay in the EU's single market and customs union.

While Scottish government figures insist they still regret that the UK is leaving the EU, their main political and policy focus now, as the third party at Westminster, is on this soft Brexit push. Meanwhile, at Holyrood, the emphasis has been on the battle over

devolved powers. There has not been any serious push to ask England and Wales to think again on Brexit nor any support, so far, for a further EU referendum.

Opinion polls suggest that, if anything, Scottish support for Remain has gone up – some polls give figures of 66-68% support.[9] But the SNP has a chunk of voters and independence-supporters who chose 'Leave', and ensuring it doesn't lose the support of these 'Yes Leavers' is one key plank of government policy – not least having lost key seats in the North East to the Conservatives, who jumped from 1 to 13 MPs at the 2017 election. Consequently, Scotland's majority Remain supporters do not have a strong political voice opposing Brexit – given Labour and Conservative support for the Brexit process, and with the Liberal Democrats having only 4 MPs. Yet, given that roughly half of Scotland's Leave voters support independence, only one-sixth of Scottish voters actually support what they are on track to get: the UK as a united whole leaving the EU.

There is a certain sense of a passive, waiting-to-see on Brexit in Scotland. Nicola Sturgeon has said that she will consider her future stance on an independence referendum in autumn 2018, once the shape of the future Brexit deal is clear. But without any big 'Brexit bounce' towards independence in the polls, few are anticipating an early independence referendum at this stage (as discussed more below).

(4) Policies on Brexit

Scotland

The Scottish government has a range of policy positions on Brexit. Ministers frequently state that their preferred outcome would be to stay in the EU, but they stop short of calling for the rest of the UK to think again. Long-term SNP policy is for Scotland to be an independent member of the European Union. There is, however, recurring debate on this within the SNP and amongst independence supporters – with many supporting instead a Norway-option of joining the EEA, allowing Scotland more freedom in its agriculture and fisheries policy and meaning there would be no pressure to join the euro. This is also seen as a potential way to bring the 'Yes [on independence]-Remainers [on Brexit]' and 'Yes-Leavers' together. Others though recognise the advantages of voice and vote that being an EU member state brings – not least as they watch Ireland's diplomacy as it navigates Brexit.

Scottish government policy documents, however, do recognise that the future trade policy of an independent Scotland would want to aim at keeping an open border with England and that this could push it in the direction of a customs union with the rest of the UK (depending on the final UK-EU deal).

For now, SNP MPs at Westminster are putting their main focus on a soft Brexit keeping the UK in the EU's single market and customs union and working cross-party with other MPs that support this aim. There is awareness – if not admitted publicly – that a hard Brexit creating a hard UK-EU border will also make independence trickier, since it would be likely to imply a hard England-Scotland border. And a future choice between EU or EEA membership for an independent Scotland – and debates over this – would, because of Brexit, have to take into account the impact of such policy choices on the border with the rest of the UK. If the UK did shift tack to stay in a custom's union with the EU, that would impact on any future independent Scotland's EU versus EEA choice.

Finally, as discussed below, the Scottish government has also argued for a differentiated Brexit, whereby Scotland should stay in the EU's single market even if the rest of the UK does not. The Scottish Green party – whose votes are needed for the SNP to have a majority at Holyrood – in general support these policy positions on Brexit.

Sturgeon has not so far backed a further EU referendum. This is surprising to some – if the SNP backs a second independence referendum, why not back a second EU referendum? Since last autumn, Sturgeon has on more than one occasion called another EU referendum 'more and more difficult to resist'[10] but has yet to support such a move. This leaves the Lib Dems the only party – along with the English and Welsh Greens – backing a further referendum on the deal.

The reasons for this are varied: not alienating the Yes-Leavers, not setting a precedent for any future independence referendum to be followed by a vote on that divorce deal, and not telling the English how to vote, being ones that are often heard. A shift in position is still possible, but time is getting short for this to have much impact.

Ruth Davidson, leader of the Scottish Conservative party, has not provided much voice or support for a softer Brexit, preferring to stay close to Theresa May – although with Michael Gove she spoke out on leaving the Common Fisheries Policy, only to find that the agreed Brexit transition deal keeps the UK in the CFP for now. The new Scottish Labour leader, Richard Leonard, is closer to Corbyn than his predecessor, Kezia Dugdale (who, with some other Scottish Labour politicians, is now campaigning for the UK to stay in the EU's single market).

Northern Ireland

In Northern Ireland, the DUP's position on Brexit appears to have closely followed the lead of the hardliners in May's Conservative party. Whereas leaving the EU's single market was not generally anticipated by the DUP prior to the triggering of Article 50 (as seen in the OFMDFM letter), it became an ambition for the party afterwards. The Ulster Unionist Party (UUP) also steadily moved towards more hard-line Brexit ambitions as time progressed, partly in response to the recognition that – although it campaigned (in a somewhat lacklustre way) for Remain – the majority of its supporters voted to leave.[11] That the unionist parties were firmly for Leave is another point of contention with the nationalist parties, as both Sinn Féin and the SDLP sought 'special status' for Northern Ireland in the EU after Brexit (i.e. a *de facto* 'Remain' for the region). Positioned in the centre ground, the Alliance Party urged the softest of Brexits, with the UK (or, if needs be, NI alone) remaining in the single market and in a customs union.

Given these differences – and the concentration on the DUP and Sinn Féin in the talks rather than on the centre ground parties – there is a concern that there will be little progress made on Brexit policy even if a power-sharing executive is restored. The suggestion from the SDLP that any such executive appoints a Minister for Brexit is the only idea put forward so far as to how a common NI position on the topic might be found. In the meantime, the prospect of any such executive being formed is diminishing, as it seems one hurdle too many for the British and Irish governments to navigate. Although it cannot be officially admitted (given the implications for the 1998 Agreement, at the time when that agreement is so crucial to the talks in Brussels), direct

rule from Westminster is already *de facto* in existence (hence its announcement of the NI budget in March 2018).[12]

Beneath the politics, public opinion in Northern Ireland reflects the tempering of ideological absolutism with pragmatism. There is a clear unionist/nationalist division on Leave/Remain lines. At the same time, survey data suggests that unionists are willing to see some increase in controls on routes with Great Britain, if it is a means by which the Irish border can be kept as open as it is.[13]

This reflects the ability of non-politicians to separate the big constitutional questions from practical means of negotiating some of the material challenges. Although both moderate unionists and nationalists talk openly about a united Ireland being made more likely in the longer term as a consequence of Brexit, there has not been a dramatic increase in the wish for a united Ireland. The surge in applications for Irish passports is not a sign of a swell of Irish identification after the referendum.[14]

The UK and EU have agreed in principle that Irish citizens in Northern Ireland should retain their EU citizenship rights after Brexit. Given that people born in Northern Ireland are automatically entitled to Irish citizenship, this puts them in quite a different position to those in Scotland. Anecdotal evidence would suggest that new applications for Irish passports have come from staunch unionists (included among whom is one Ian Paisley Jr) as well as nationalists. This is a demonstration of pragmatism rather than identity change.

(5) Independence and Border Polls – Not Yet

Northern Ireland

With the failure to restore the executive and assembly, the trend of 2017 into 2018 was for unionist and nationalist parties in NI to look to the British and Irish governments respectively to represent their interests in the Brexit negotiations. In practice, this has meant that Sinn Féin has pulled back from pushing for a border poll (Michelle O'Neill, the party's leader in NI, has said she would like to see one within five years, for example).[15] It could be said that the party is more confident in playing the long game of Irish unity than in taking on the responsibility of handling the immediate fallout of Brexit in a NI executive. For its part, the DUP has made the most of its unique position of influence with the British government to ensure a singular, undifferentiated approach to Brexit. In a context of uncertainty, the thing the DUP fear the most is that unique treatment of Northern Ireland would be a slippery slope to weakening its position in the UK.

The importance of the Irish border in the Brexit negotiations – and the subsequent possibility of 'specific solutions' to meet the needs of Northern Ireland (as set out in the OFMDFM letter) – has been a source of anxiety to unionism. The safest position for unionism in the Brexit storm is to be firmly on board whatever raft Great Britain is on; that this is but a short-term solution to deep long-term challenges for NI is not something that (in the absence of the executive and assembly) NI parties have had to address.

Whereas the movement for independence in Scotland comes from within, the fear for unionists in Northern Ireland is that the momentum for Irish unification would be propelled by forces outside their control. The survey showing that 86% of Leave voters in England would consider Northern Ireland leaving the UK as a price worth paying for Brexit gives some indication that NI unionists' concerns are valid.[16] In a way that differs from Scotland, the union between Northern Ireland and Great Britain risks being threatened by English voters as much as by Irish nationalists. Thus, anchoring Northern Ireland to the UK government position seems the safest option – even if it is in some respects at odds with the unique interests and needs of the region (as outlined in the OFMDFM letter).

Scotland

In Scotland, after the outcome of the 2014 independence referendum, with 55% voting 'No' to independence, 45% 'Yes', many on the pro-independence side started to consider when and how they could hold and win a second vote. The new First Minister, Nicola Sturgeon, said that either there would need to be a strong shift in public opinion towards independence or a material change in circumstances, such as a vote for Brexit, to hold a second referendum.

But after the Brexit vote in 2016, there was no 'Brexit bounce' in support for independence (apart from brief signs of a shift in the first week or two). Polls have varied, but on the whole they continue to show similar levels of support for independence as in 2014. The 2017 election result, with the loss of 21 seats for the SNP, also reinforced arguments for delay in holding another independence referendum. Though always present, even in the background, in Scottish political debates, there has been little strong lead given, since the failed March 2017 call, on having another independence referendum. The report of the Growth Commission, intended to set out the new economic case for independence, has been repeatedly deferred for the last year – although its publication is now reported to be imminent and expected to focus on comparisons with other successful small economies in Europe and beyond.

There is a strong age dimension to support for independence, with younger voters strongly in favour and older against. But polls also suggest that pro-independence parties are not guaranteed to be in the majority at Holyrood after the 2021 elections, leading some to argue for another referendum to be held before then. Others fear that if a second referendum is lost, the independence cause will be lost with it for decades at least to come. This split in the independence movement between those who favour an early referendum and those who want a longer time horizon has become increasingly visible in recent weeks. For now, seasoned commentators argue an early referendum is highly unlikely.[17]

Whether public opinion will shift on independence as the UK continues down the Brexit path remains to be seen, but tough choices do lie ahead for Nicola Sturgeon. The transition period might allow these choices to be put off for a while before any real regulatory divergence from the EU kicks in, but the economic impacts of Brexit are already starting to be felt. And the electoral timetable is kicking in, in the debates on timing that have begun.

(6) Differentiation and Devolution

Scotland

The Scottish government in its December 2016 paper *Scotland's Place in Europe* argued for Scotland to stay in the EU's single market and the UK, and set out a set of policy steps that could enable Scotland to achieve this, even while the rest of the UK left the single market. This was rejected by the UK government in March last year just as it was triggering Article 50. Since then, the Scottish government and SNP MPs have put their emphasis much more on the whole UK staying in the EU's single market and customs union (although their January 2018 paper continues to reference differentiation too).

The differentiation option for Scotland did not set public debate alight, seeming perhaps both unlikely and highly technocratic – and also quite likely to mean a hard border between Scotland and England (despite efforts in the government's paper to set out how there could be no border through copying the system between Switzerland and Liechtenstein). But when, in December 2017, the UK-EU joint agreement on the first phase of Brexit talks implied that Northern Ireland might stay in the EU's single market and customs union as a backstop, Nicola Sturgeon stepped up rapidly to say in that case Scotland would want that too.

The EU-UK Joint Report in December 2017 suggested that there would be no border on the island of Ireland nor in the Irish Sea, leading Sturgeon to say that the UK government should not threaten an independent Scotland with a hard border with England ever again. But, of course, rhetoric aside, the big, insoluble challenge with Brexit is how to keep both the Irish border and the Irish Sea border as open as they are now if the UK leaves the customs union and single market.

And while Nicola Sturgeon has been welcomed in Dublin, and addressed the Upper House of the Irish parliament in 2016, Irish politicians and diplomats were less keen on seeing Scotland pushing for differentiation too (knowing it would make finding a solution for Northern Ireland harder). EU politicians and diplomats were also keen to stress the unique nature of any deal over Northern Ireland. The operation of the 1998 Agreement and the correlated stability of the peace in Northern Ireland are the specific factors for consideration here.

The Scottish pro-independence debate also tends to skate over the fact that if Scotland were to be independent and/or in the EU's single market, the equivalent border to the one between Scotland and England is the Irish Sea border. Unionists in Scotland are well aware of this and repeatedly emphasise, in the Brexit and independence context, that Scotland's trade with the rest of the UK is four times that of Scottish exports to the EU. Such claims take little account of the negative impacts of Brexit on Scotland's growth – and whether an independent Scotland could avoid some of these negative impacts. But both sides are very alert to the border issue with a view to any future independence debate and look to the post-Brexit proposals for Northern Ireland with this in mind.

In fact, despite these soft Brexit policies which drive positioning of SNP MPs at Westminster, the main focus of Nicola Sturgeon's government since mid-2017 has been, as in Wales, the 'power grab' of the EU Withdrawal bill. The bill states that EU powers in

devolved areas will come back in the first instance to the UK, not to the devolved administrations. Both Welsh and Scottish administrations have seen this as a major attack on the devolution settlement – leaving it for the UK to decide how powers in devolved areas should be split up. In the absence of a compromise agreement, both the Scottish parliament and the Welsh assembly passed their own EU withdrawal bills – 'continuity' bills – at the end of March.

The heart of this debate now focuses on which parts of devolved policy areas need common UK frameworks to replace EU ones, and the decision-making procedure for those – do the Welsh assembly and Scottish parliament only get consulted or do they have to consent to these frameworks? Some predict a deal is in the offing, but it is not there yet.

In the middle of April, the UK attorney general and the advocate general for Scotland requested a Supreme Court ruling on whether the Scottish parliament and Welsh assembly have the power to legislate as they have on Brexit in their continuity bills.[18] This sets up a new stand-off but it is not one that the UK government are necessarily destined to win at the Supreme Court. But if the Court found in the favour of Wales and Scotland, and there were no compromise deal, Westminster could then simply overrule the parliament and assembly – re-emphasising the ultimately discretionary nature of devolution if this did happen.

And if, instead, the Supreme Court found in favour of the UK government, that in itself would not mean the Welsh assembly or Scottish parliament would pass legislative consent motions on the EU Withdrawal bill – but if they did not, Westminster could face taking the step of overruling both. In the absence of a compromise, these outcomes are highly unsettling for the existing devolution settlements.[19]

A coherent solution on how to manage common UK frameworks that will replace EU ones might be found in a new, proper federal framework for the UK. Yet not only is there not time in the Brexit timetable for this – nor political support for it – but also creating a fully federal UK would need to see substantial devolution within England too, to create an effective framework. So a pragmatic compromise or Westminster overruling the devolved assemblies and parliament are the two likely outcomes, with very different political impacts.

Northern Ireland

Northern Ireland has been effectively absent from these debates, due to its lack of an executive and assembly. Perhaps the most notable contribution from Northern Ireland in this regard in 2017 was the note from the Joint Ministerial Council (EU Negotiations)[20] of 16 October 2017 attended by the head of the NI civil service, which referenced the option of a 'GB' approach, thus implying the potential for differentiated arrangements for Northern Ireland. This came in advance of the joint report between the UK and EU agreed in Brussels on 8 December 2017.[21] The report asserted their shared commitments to avoiding a hard border on the island of Ireland, protecting north/south cooperation and supporting the all-island economy and the operation of the 1998 Agreement.

It suggested that there are three scenarios in which this is managed. First, through a UK-EU trade agreement; second, through 'specific' solutions for Northern Ireland; the final option is through full alignment of the UK to the rules of the internal market and customs union. Whereas the second option is the least favoured by both sides (each claims to wish to find a solution that applies to the UK as a whole), it is almost inevitable that some conditions will apply to Northern Ireland alone after Brexit.

To make progress at the European Council summit in March 2018, there had to be something on Northern Ireland/Ireland (as one of the three top priorities for the phase 1 talks) in order for the European Council to be able to approve the draft withdrawal agreement as a significant enough basis for moving into phase 2 of the negotiations. Although the expectation had been to have some concrete proposals from the UK government arising from the joint report early in the new year, nothing was forthcoming.

The EU's approach was to draw up a protocol for the draft withdrawal agreement that outlined the bare minimum needed for the commitments made in the joint report to be upheld. This effectively meant Northern Ireland being considered as part of the customs territory of the EU and also part of the EU single market for the purposes of goods. The preservation of cross-border trade was set alongside the protection of north/south cooperation in key areas, such as environment and transport.

Although lacking detail on those areas in which NI regulation would be aligned with the EU's, the principle was that NI would be treated with flexibility by the EU. The rules would be extended (rather than bent) to include this region on the grounds of its unique circumstances: the peace process, the land border with the EU and the cross-border institutional cooperation and service provision.

The so-called 'backstop' option outlined in the draft protocol recognised this unique situation. Understandably, it leaned heavily towards representing the interests of Ireland as a resolute member state of the EU. Without the context of very close UK-EU alignment, it would mean barriers to trade between Northern Ireland and Great Britain. The task of rebalancing this backstop option back towards GB was pushed back into the hands of the UK government. Theresa May's reaction of offence and anger at this backstop option which she said produced an outcome that 'no UK Prime Minister could ever agree to' reassured unionists, but means little unless supported by serious proposals as to how a hard Brexit might mean anything other than a hard Irish border.[22]

(7) Drawing the Two Together

Overall, there are both similarities and differences in the challenges that Northern Ireland and Scotland face as the Brexit process unfolds. Some of the challenges relate to the fact that both voted Remain, some to their status as devolved areas of the UK. Some of the differences relate to the different politics both internally in Northern Ireland and Scotland and in their interaction with the UK government. And some of the political dynamics here cut across and impact on both, such as the reluctance of the UK government to contemplate differentiation as part of the Brexit deal for Northern Ireland in part so as not to encourage Scotland to become more distinct from the rest of the UK.

Devolution under pressure

The inability of the UK government to come up with substantive solutions to the Irish border issue is hampered by the failure to face the consequences of its decision on two fronts – first, the implications of leaving the single market and customs union; second, the implications of insisting on an all-UK approach to Brexit. The working assumption of the current UK government appears to be that the best way to manage any centrifugal forces within the UK is to offer a countervailing momentum in the other direction (i.e. back to the centre).

Emphasising the 'constitutional and territorial integrity of the UK' has become an increasingly common feature of the government's approach to devolved concerns. This is seen not just in terms of discourse but also in practice. The Prime Minister's very occasional presence in JMC(EN) meetings and in the devolved nations and regions themselves is telling.

In many indirect and unanticipated ways, Brexit appears to pose a direct threat to devolution and the constitutional settlement in both Scotland and Northern Ireland. The centralised nature of the UK political system is, sometimes intentionally and sometimes not, being re-emphasised. It is notable that the recommendations of the Public Administration and Constitutional Affairs committee report on ensuring better democratic representation of the devolved parts of the UK were set aside.[23] Rather than Brexit being seen as the necessary spur to bring these forward and improve communication across devolved administrations, it was seen as being so demanding of time, resources and energy in Westminster as to make any such big decisions inconceivable.

Overall, the UK government's approach to Brexit has emphasised the unitary and centralised nature of UK politics, working against rather than with the grain of devolved politics. The fact that Westminster (after the Supreme Court case at the end of 2016) had a vote on Article 50, but the devolved administrations did not, reinforces the clear image that devolution remains in the gift of Westminster rather than being a firmly entrenched part of a constitutionally devolved UK. The push for a unitary Brexit reinforces this, as does the stand-off over the EU Withdrawal bill – the essentially centralised nature of the UK political system has been firmly underlined.

Intensifying political divisions

Some of the political impacts of the Brexit process have differed strongly across Northern Ireland and Scotland, but there are also striking similarities.

In Northern Ireland, the process so far, combined with the result of the 2017 election and the collapse of the executive, has weakened the middle ground. The *de facto* direct rule and the disproportionate influence of the DUP on UK government thinking on Northern Ireland impact both on the region's politics and on the dynamics of the Brexit talks. In Scotland, the SNP's ruling majority with the support of the Scottish Green party has not changed and, despite the loss of seats at the general election, the SNP remains the third largest party at Westminster. But Scottish government and SNP preference for a soft Brexit have been ignored, and Scotland has little influence or voice in the Brexit talks. And Ruth Davidson, leader of the Scottish Conservatives, has – rather like the DUP

– emphasised the importance of the union rather than speak up for any type of differentiation. Scottish Labour's leader Richard Leonard has recently called for rapid moves to a federal UK, but without linking this in any way to differentiation within Brexit.[24]

Yet despite the different drivers of the political dynamics in both, the addition of Brexit to these dynamics has produced a striking similarity. In both NI and Scotland, political parties' stances on Brexit have deepened existing divisions. So Sinn Féin supports unification and opposes Brexit, while the DUP support the union with the UK and Brexit. In Scotland, the Conservatives and Labour (even if not all Labour's individual politicians) support Brexit and staying in the UK, while the SNP opposes Brexit and seeks independence.

Exacerbated peripherality

Overall, while Northern Ireland has been (perhaps belatedly) centre stage in much of the Brexit talks and Scotland's interests have not, both have in many ways faced increased marginalisation due to the Brexit process. This has had the effect of exacerbating existing peripherality. The absence of an NI executive and the increased influence of the DUP, on the one hand, and the UK government's desire to ensure no 'Brexit bounce' for Scottish independence, and its clumsy handling of the return of EU powers in devolved areas, on the other, have contributed to this marginalisation. This marginalisation has not been tempered by the UK government's unwillingness to contemplate a soft Brexit, despite it being explicitly requested by the executives of all the devolved nations and regions.

The shambolic treatment of returning devolved powers from Brussels has exacerbated tension in London-Scotland (and London-Wales) relations – while the absence of an NI executive in the talks on common UK frameworks underlines the current gap in democratic representation from Northern Ireland. While the UK government challenges the Scottish and Welsh 'continuity' bills at the Supreme Court, the completely separate talks about Northern Ireland's Brexit options serve to underline the muddled and incoherent approach to handling the impact of Brexit both on the devolution settlement and on Northern Ireland, Scotland and Wales.

Differentiation and independence

Independence remains the central debate in Scottish politics, but whether there might be a further independence referendum in the next 18 months (and whether Theresa May would countenance that) is currently hotly contested on the pro-independence side. The prospect of Brexit has also given new energy to speculation about a border poll in Northern Ireland and Ireland, although even Sinn Féin are not predicting this to be within the next five years. The most direct effect of these nationalist trends is seen in the tenor of the countervailing unionist arguments. The DUP prioritises keeping Northern Ireland part of the union, even at the price of greater economic dependence on the UK exchequer. This should not lead us to ignore the fact that, within Northern Ireland more broadly, there is considerable pragmatism on accepting some differentiation from Great Britain. Even the unionist parties are quite comfortable with

the prospect of certain 'bespoke' arrangements for Northern Ireland, such as the Single Electricity Market and an all-island sanitary-phytosanitary (SPS) regime.

In Scotland, some differentiation, for instance in migration policy, could both suit some of Scotland's needs and would be welcomed by the pro-independence Scottish government, as it would imply a further devolution of powers – and it is opposed by May and the Scottish Tories for the same reason. But the bolder proposal of keeping Scotland in the EU's single market and in the UK raises as many questions as it does answers. And the hope of some in Scotland that more differentiation for NI could eventually mean more for Scotland are not well-founded.

The peace process, the 1998 Agreement and the land border with the EU are reasons for the EU's willingness to see a 'flexible and imaginative' approach to post-Brexit arrangements for Northern Ireland.[25] None of these conditions apply in Scotland and the EU is notably cautious when it comes to intra-state affairs. It is with such considerations that Ireland/Northern Ireland has been the subject of a separate strand of talks on the UK's withdrawal from the EU. As a consequence, any withdrawal agreement looks set to include a distinct protocol on Ireland/Northern Ireland.

This means that Northern Ireland is likely to get a differentiated deal that keeps it closer to the EU than any other part of the UK (unless, that is, the UK heads towards a 'no deal' Brexit). Even if the UK moves towards having a policy that sees it in a customs union with the EU, this would not be sufficient for 'avoiding a hard Irish border' and there would still be a need for some further specific arrangements for Northern Ireland regarding the status of its goods.

Scotland, in contrast, will not get a differentiated deal of any kind – and will remain an integrated part of a Brexit UK, despite the fact only one-sixth of Scottish voters support such a route (the other one-sixth of Scottish Leave voters supporting independence outside the EU). Indeed, it could be said that the UK government has paid most attention to Scotland in terms of inhibiting or reversing support for independence – and in the absence of a 'Brexit bounce' for independence, the UK government has shown little concern or interest in how to reconcile Scotland's 62% Remain vote with the UK's current path to a hard Brexit.

No 'soft' options

A 'soft' Brexit of staying in the EU's single market and customs union would solve many of the challenges Brexit poses to Northern Ireland – yet UK government interpretation of the referendum result makes this most unlikely. And it would create a major democratic deficit with the UK as a rule-taker not a rule-maker. Northern Ireland itself has, in the absence of an executive and in the face of stark internal political differences, no clear Brexit policy. Meanwhile, the Scottish government supports a soft Brexit but has little or no influence. For their part, SNP MPs at Westminster will vote for soft Brexit amendments – but so far there does not appear to be a majority for this (though the upcoming vote on a customs union amendment will be a crucial test case).

While the current ambition for post-Brexit relations is a comprehensive UK-EU free trade agreement, Northern Ireland will then need a solution that may combine the backstop option with some other forms of differential arrangements. A hard Brexit free

trade deal will also certainly alienate Scottish public opinion even more from the UK's direction of travel – but whether it will translate into more support for independence (which it hasn't so far) remains to be seen. It would also mean a hard border between an independent Scotland and the rest of the UK – which will not help persuade No voters on independence to shift their views.

The Risks of a no deal outcome

There are two points at which a deal needs to be negotiated: withdrawal (which includes transition arrangements and a 'backstop' for Northern Ireland) and the future relationship (to kick in at the end of transition). In the event of a 'no deal' at either stage, the ensuing political crisis would cause sharp divisions across the UK. In Scotland, it's hard to imagine that this would not lead to a potential shift in the polls on independence and calls for an early referendum. In Northern Ireland, the question of whether there is a withdrawal agreement or not is very pressing. If there is no withdrawal agreement, there is no protocol for Ireland/Northern Ireland. This would mean no protection of rights, north/south cooperation and the Common Travel Area, and it would automatically mean a hard Irish border, as both the UK and EU are obliged to enforce the customs and regulatory divide. Such a brutal deepening of partition on Ireland would have economic, political and social effects that would be extraordinarily hard to mitigate and contain.

Alternatively, looking ahead, if the withdrawal agreement is in place but there is no deal on the future relationship, this would lead to whatever scenario is put in place by the protocol on Ireland/Northern Ireland. As currently conceived (though still subject to negotiation), this so-called 'backstop' option would entail both a harder Irish land border (for the movement of services, for example) and a harder Irish sea border (as a customs border). This scenario would have negative economic effects and would raise internal tensions in Northern Ireland, particularly if it is seen as a political threat to the union. A harsh economic climate would exacerbate the potential for unrest, including in Irish republican communities.

More broadly, any no deal scenario would be likely to lead to a general election in the UK. If the SNP or DUP held leverage in a weak or coalition British government in such circumstances, the tensions within Scotland or Northern Ireland would be further exacerbated.

(8) Conclusion

Overall, the two Remain-voting areas of the UK have already experienced strong impacts from Brexit. The process has upset existing political dynamics both within Northern Ireland and Scotland and between them and London – and it has deepened political divisions in both. The centralising tendencies in evidence from Westminster seem unlikely to be the best way of managing the political dynamics and tensions exacerbated by Brexit in both NI and Scotland. Less than a year from the UK's withdrawal from the EU, the fallout of Brexit for these Remain-voting areas seems to be even more profound and unpredictable than first imagined. Brexit, it is clear, means far more than just Brexit for both Scotland and Northern Ireland.

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