

THE WINDSOR FRAMEWORK AND ITS IMPLICATIONS

FOR BRITAIN, NORTHERN IRELAND
AND THE EUROPEAN UNION (EU)

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**The
Windsor
Framework**
Major changes to the Northern Ireland Protocol



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TABLE OF CONTENTS

EXECUTIVE SUMMARY.....	3
1. INTRODUCTION	5
2. THE CONTEXT: DECADES OF CONFLICT AND RECONCILIATION	9
3. BACKGROUND TO THE WINDSOR FRAMEWORK: NEGOTIATING THE NI PROTOCOL	13
4. THE WINDSOR FRAMEWORK, CORE PROVISIONS AND THE 2024 COMMAND PAPER	19
5. IMPLICATIONS OF BREXIT AND THE WINDSOR FRAMEWORK	25
5.1. IMPLICATIONS FOR NI	25
5.2. IMPLICATIONS FOR ROI	27
5.3. IMPLICATIONS FOR THE EU	29
5.4. IMPLICATIONS FOR THE UK GOVERNMENT'S NI POLICY	30
6. FUTURE SCENARIOS POST-WINDSOR	33
6.1. SCENARIO 1: IRISH UNIFICATION	33
6.2. SCENARIO 2: DETERIORATING RELATIONS BETWEEN LONDON AND DUBLIN WITHIN A FRAGMENTING UK POLITY	40
6.3. SCENARIO 3: "MUDDLING THROUGH" WITH POLITICAL INSTABILITY	42
7. CONCLUSION	45
HISTORICAL OVERVIEW OF NI HISTORY AND POLITICS	51
BIBLIOGRAPHY	53
ABOUT THE AUTHOR	57
ABOUT THE FEPS	59
ENDNOTES	60

EXECUTIVE SUMMARY

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Since the 2016 referendum, a model of Brexit that implied active dismantling of ties to the European Union (EU) has made the political context in Northern Ireland (NI) significantly more precarious. Crucially, unilateral action by the UK Government in denial of the EU's ongoing role in NI has risked undermining support for the peace settlement among Republicans and Nationalists. Within Unionism, the imposition of an Irish Sea border, as a consequence of the NI Protocol, constituted an existential threat to the territorial identity of that political community. The Windsor Framework agreed in the spring of 2023 was an effort to assuage Unionist concerns. Yet, the agreement did not succeed in restoring power-sharing institutions, while the political environment has become more volatile and unstable. The UK's departure from the EU does not directly alter the power-sharing arrangements elaborated in the Belfast/Good Friday Agreement (B/GFA). Yet, Brexit poses innumerable difficulties: leaving the EU disrupted the delicate institutional balance in NI. The negotiation of the B/GFA presumed dual UK and Republic of Ireland membership of the EU. In fact, the EU provided an influential political framework emphasising power sharing and the reimagining of sovereignty. As such, EU engagement helped to redefine the long-standing "Irish question". The UK Government, in due course, adopted "post-sovereign EU norms", acknowledging the British could only achieve the objective of ending the NI conflict by working with other governments in a European context.

As such, co-operation between the UK and Irish governments has remained vitally important in sustaining the peace process. Yet, with the UK outside the EU and adopting increasingly unilateralist policy positions after opting for a "hard" Brexit in the Withdrawal Agreement, the risk is that norms and "habits of co-operation" are likely to be eroded further. While the institutions of devolved governance were temporarily restored in early 2024, as the result of amendments to the Windsor Framework, the risk of political instability remains considerable. This policy study argues that, in light of such pressures, the EU must continue to play an active and constructive role in NI, where possible, using its resources, legislative remit and diplomatic influence to forge cross-community contact, social cohesion and effective governance.

INTRODUCTION

1. INTRODUCTION

The political status and future of Northern Ireland (NI) cast a long shadow over recent efforts by the UK Government to successfully negotiate its departure from the European Union (EU), following the decision of voters to leave in the 2016 referendum.¹ The post-Brexit political context in NI raises issues of inordinate complexity due to the nature of the governing institutions originating in the 1998 Belfast/Good Friday Agreement (B/GFA), which enabled the achievement of peace after decades of bloody conflict. There can be little doubt that the UK's withdrawal from the EU poses major challenges for maintaining peace, stability and social cohesion in the communities of NI. Indeed, the UK's withdrawal from the EU "destroyed a fragile political equilibrium".² Brexit is a geo-political shock which has exposed contradictions and ambiguities in UK governance, politics and public policy, nowhere more visibly than in NI.

Much of the debate since Brexit has focused on the issue of boundaries and borders. As the EU withdrawal negotiations got underway following the 2016 referendum result, the immediate priority for policymakers was to avoid returning to a hard border on the island of Ireland. However, not everyone in the UK Government negotiating team acknowledged the importance of avoiding this outcome. For example, it was said that Boris Johnson's chief negotiator, David Frost, did not necessarily regard a border on the island as politically unacceptable.³ Other pro-Brexit figures, such as Dominic Cummings, formerly chief strategist on the Leave campaign and principal adviser to Boris Johnson, opposed Theresa May's proposed withdrawal agreement (WA). They refused to accept the basic premise of the UK Government's strategy that it was essential to avoid a land border between NI and the Republic of Ireland (ROI), even if it was widely recognised among British Conservatives that the imposition of a land border would have led almost inevitably to a breakdown of the peace settlement and a return to extremism and sectarian violence.

Nonetheless, the problems created by the UK's withdrawal from the EU go beyond conflict over the Irish border. In truth, Brexit was an existential threat to the structures and norms that contributed to greater political stability and UK/Irish co-operation over the last 40 years. It has been argued that the form of "hard" Brexit championed by the Johnson administration (2019-22) in recent years is barely compatible with the main provisions and governing norms of the B/GFA. At the same time, a model of Brexit that separated NI from the rest of the UK economy and polity, actively encouraging regulatory divergence, represented a fundamental threat to the political aspirations of the Unionist community.

The negotiation of the NI Protocol as an adjunct to the WA was the first systematic attempt by the British and Irish governments, together with EU negotiators, to broker a solution to the deeply contentious political issues raised by Brexit. Nonetheless, the Protocol itself has proved to be a source of ongoing tension and instability, imposing a border down the Irish Sea, which has separated NI from the rest of the UK. Many Unionists, together with their allies in the British Conservative Party, strongly objected to the provisions in the Protocol. Moreover, implementation of the Protocol since 2021 has created a host of additional problems, not least excessive bureaucracy, customs checks and the proliferation of red tape, which have been particularly harmful to small businesses in NI. Consumers in NI have had less choice in the shops and faced rising prices as a consequence. Those communities living on the border between NI and ROI have experienced major adversities in the wake of Brexit.

The Windsor Framework, negotiated in the early spring of 2023, was an attempt to pragmatically resolve difficulties that arose as a consequence of the original Protocol. The Framework attempts to make trade between Britain and NI more frictionless, removing unnecessary barriers to the movement of goods and services, while ensuring NI remains an

integral part of the UK single market. The UK Government views the Windsor Framework as essential for “getting Brexit done”, since it apparently strengthens British national sovereignty, removing the jurisdiction of the European Court of Justice (ECJ) from NI in instances where disputes over trade in goods and services arise, while providing a more stable political environment.

Nonetheless, the Windsor Framework has not resolved the political stalemate prevailing in NI, even if the suspension of the NI executive, which contributed to the deterioration of governance and underfunding of public services such as the National Health Service (NHS), has ended. The Democratic Unionist Party (DUP) maintained its opposition to the Windsor Framework, just as it opposed the NI Protocol. The DUP insisted the Windsor Framework did not deliver what the party leadership believed it was promised by British ministers: legislation that explicitly safeguards NI’s ability to trade within the UK internal market.⁴ While the UK Government was able to guarantee “unfettered access” for goods moving from NI to Great Britain (GB), it could not do the same for goods moving from GB to NI. According to DUP Member of the Legislative Assembly (MLA) Sammy Wilson: “The real damage that the protocol does is in undermining Northern Ireland’s position within the United Kingdom and in removing democratic accountability for laws in Northern Ireland”.⁵ Some Unionists argued that the Protocol undermined the B/GFA because it jettisoned the principle of cross-community consent.

Moreover, while the Sunak administration made efforts to foster constructive ties with the Dublin Government from autumn 2022, the Windsor Framework is a further manifestation of the Conservative Party’s “hard” Brexit approach. This strategy, as far as possible, sought to eradicate European influence from the policy and politics of GB and NI. The argument of this policy study is that pursuing such an approach in NI is untenable and likely to prove counter-productive. Most obviously, NI remained in the EU single market for goods and is still part of the EU’s customs territory. More fundamentally, the UK Government’s approach refuses to acknowledge

the EU’s integral role to the achievement of political stability in NI over the last 40 years, alongside the desire of a significant proportion of its citizens to continue to identify as European, rather than merely Irish or British. At present, 44% of NI’s citizenry carry an Irish/EU passport, while electoral support for pro-EU parties has been steadily rising in NI. In the 2016 referendum, 56% of NI citizens actually voted for the UK to remain in the EU.

It is too often forgotten that the EU played a vital role in the early days of the peace process, working across both sides of the ethno-nationalist divide in NI to resolve the underlying causes of the conflict. Of course, EU institutions did not secure the peace which resulted in the 1998 B/GFA, nor did European actors directly participate in the negotiations themselves. That said, the EU consistently supported initiatives that advanced the normalisation of politics in NI society. EU funding encouraged cross-community working, alongside programmes that addressed the underlying causes of conflict by alleviating economic hardship and deprivation. Moreover, it was the shared experience of EU membership that fostered crucial “habits of co-operation” between the British and Irish governments, leading to the Anglo-Irish Agreement (1985) and, subsequently, the B/GFA.

Furthermore, the EU was the inspiration for a new conception of nationhood, identity and belonging on the island of Ireland. The EU was the exemplar of a political space in which it was possible to transcend long-standing religious, ethnic, national and territorial differences. As Campbell noted,⁶ the post-sovereignty norms of the EU were an inspiration for the B/GFA in “transcending traditional concepts of borders, nations, states and sovereignty”. The EU sought to contain and, where possible, reconcile long-standing national, ethnic and religious tensions across the European continent. Moreover, the emphasis in EU governance on sovereignty pooling was affirmed in the B/GFA given the importance of power-sharing institutions.⁷ Post-nationalist politics and power sharing in NI were bolstered by the EU’s ongoing financial and political support. The Europeanisation of NI was affirmed by the growing influence of the European

Court of Human Rights (ECHR) and incorporation into the EU single market.⁸

The UK Government and Conservative Party politicians must acknowledge that, while both the British and Irish governments have a legitimate role to play in NI’s governance, the EU must be enabled to continue making a vital contribution to NI’s political development. The EU is still willing to support programmes that safeguard stability and social cohesion in NI, affirmed by the decision to continue peace programme funding until 2027. Any model of Brexit predicated on deliberately undermining the EU’s legitimate role will have unintended consequences detrimental to the stability of NI society and the maintenance of peace.

In addressing such arguments, the study is structured in the following way. Section 2 analyses the historical context and backdrop to the political instability and violence that engulfed NI from the late 1960s. Section 3 then considers the negotiation of the NI Protocol in the aftermath of the referendum vote for the UK to leave the EU. It addresses the practical and political difficulties that have arisen around the implementation of the Protocol. Section 4 provides an overview of the Windsor Framework as a diplomatic initiative led by the UK Government to remedy problems identified in the original Protocol, supplemented by further changes agreed in January 2024. Section 5 considers the implications of Brexit and the Windsor Framework for the policy of the UK Government, the ROI Government, the EU and the politics of NI. Then, section 6 draws the key themes and threads of the argument together. The study concludes by setting out practical recommendations for future EU policymaking and addresses the prospective contribution of the Party of European Socialists (PES) to the maintenance of peace and stability in NI.

The analysis throughout this policy study draws on the evaluation of a variety of documentary sources, including official UK and Irish Government papers and the text of the original B/GFA. There is an evaluation of data on levels of electoral support alongside political and social attitudes in NI in the light

of Brexit. This material is augmented by interviews from the *UK in a Changing Europe* Witness Archive, alongside additional interviews with leading political actors and experts in the UK, ROI and NI. The aim of the interviews is to corroborate the initial findings gleaned from documentary and archival sources.

THE CONTEXT: DECADES OF CONFLICT AND RECONCILIATION

2. THE CONTEXT: DECADES OF CONFLICT AND RECONCILIATION

The most recent phase of the conflict in NI can be traced back to the late 1960s, when the Catholic Nationalist minority began the struggle for civil rights, particularly by championing the cause of “One Man, One Vote” in the name of electoral democracy. Many Catholics (as well as some “liberal Protestants”) in NI believed that Catholics were systematically discriminated against by the government of NI, which had been dominated since the inter-war years by the Protestant Unionist majority. As a result, Catholic communities suffered significantly higher levels of unemployment and economic disadvantage. These communities invariably struggled to access decent housing, living in overcrowded, slum conditions. The insidious growth of sectarianism then descended into intra-community violence in the late 1960s, fuelled by the increased presence of paramilitary groups on both sides of the ethno-nationalist divide in urban areas, notably in Belfast and Derry. The Royal Ulster Constabulary (RUC) was widely believed to be sectarian and anti-Catholic, especially in its approach to the policing of civil rights marches. In 1969, the British army was deployed on the streets of NI by Harold Wilson’s Labour government – in the first instance, ostensibly to protect the Catholic minority from violent looting and burning of homes perpetrated by Protestant loyalist vigilantes. However, conflict soon escalated between the Nationalist community and the British army, most notably following a civil rights march on “Bloody Sunday” in January 1972, leading to decades of bloodshed and violence. More than 3,500 lives were lost in the violence that ensued.

It has nonetheless been argued that viewing the conflict in NI as the product of division between two warring ethno-nationalist “tribes” is reductive, ignoring the point that the causes of conflict ranged from structural inequalities in NI society to the changing

geopolitical and international context.⁹ The 1998 B/GFA proved effective because it sought to address the structural forces that maintained conflict in NI, while acknowledging the plurality of ethno-nationalist and political identities. The B/GFA – building on the earlier Anglo-Irish Agreement (1985) – largely brought the long period of murder and mayhem to an end. The main purpose of the B/GFA was to create power-sharing arrangements to promote peaceful co-existence between the Nationalist/Catholic and Loyalist/Protestant communities. Both the aspiration for NI to remain part of the UK and the goal of Irish unification, with NI becoming an integral part of the ROI, were acknowledged as legitimate political aspirations within the terms of the agreement, but only where they achieved the assent of a majority of citizens in NI.

The power-sharing logic of the B/GFA is encompassed in the three strands of institutions created by the agreement. *Strand one* relates to devolved institutions within NI itself, namely, the NI Assembly and Executive. *Strand two* concerns cross-border co-operation and relations on the island of Ireland between the governments of ROI and NI (“North-South relationships”). Finally, *strand three* focuses on relations between the UK and Irish governments, establishing arrangements that provide scope for political dialogue through an inter-ministerial council (“East-West relationships”).

In relation to strand one, the B/GFA created devolved institutions in Belfast that would help to ensure self-rule for the people of NI. The NI Assembly has 90 members elected through a system of proportional representation to ensure balanced cross-community representation. Key policy decisions have to be ratified by both Unionist and Nationalist members of the Assembly to achieve cross-community consent.

Day-to-day government is undertaken by the NI Executive, chaired by the first minister and deputy first minister, now Michelle O'Neill of Sinn Fein and Emma Little-Pengelly of the DUP, respectively.¹⁰

There is general agreement that the governing performance of the devolved institutions has been patchy and inconsistent since the B/GFA was ratified. During the 2002-2022 period, there were phases in which the rival parties managed to co-operate, contributing towards stretches of relative political stability in NI. Nonetheless, while there was a genuine commitment to power sharing, serious disagreements often erupted over issues such as policing and the decommissioning of paramilitary activities. Moreover, the institutions were repeatedly suspended by the UK Secretary of State for NI. The most serious difficulties arose in 2017 when Deputy First Minister Martin McGuinness, of Sinn Fein, resigned over a scandal relating to energy companies involving a Unionist minister. As a result, the Executive collapsed, leading to fresh elections, which nonetheless did little to resolve the political stalemate.

Moreover, recent elections have witnessed the inexorable rise of Sinn Fein as the dominant voice of Irish Nationalism in NI. Sinn Fein's ascendancy has undoubtedly contributed to the mood of political volatility, reflecting demographic shifts in the population of NI, which is becoming more Catholic/Nationalist, according to the most recent UK national census. The growing strength of Nationalism and Republicanism fuelled tensions among Unionists, who were increasingly concerned that their historical dominance in NI was dwindling. Meanwhile, many Unionists felt betrayed by the UK Government in London, even before Brexit. The rise in support for Sinn Fein has stoked tensions, while underlining the erosion of historic Unionist hegemony.

The fragility of the B/GFA is reinforced by the difficulty of overcoming historic sectarian divisions in NI. Intra-community contact remains relatively weak, epitomised by the challenges of promoting inter-faith education.¹¹ Marches, parades, flags and the display of contentious national emblems are ongoing sources of daily tension and conflict. It has been

claimed that, while the B/GFA was broadly effective at bringing a long period of sectarian violence in NI to an end, the consociational governance framework maintained rather than eroded persistent ethnic, religious and political cleavages between Nationalist and Unionist communities. There has been an uphill struggle to encourage political, religious and ethnic integration.

Moreover, NI's economic situation remains fragile in the aftermath of Covid-19 and Brexit, epitomising the problems afflicting the entire UK economy. Economic weakness, in turn, leads to pressures on public services as the public finances are increasingly fragile. The NHS in NI is under severe strain, while the entire public sector has been paralysed by funding cuts and industrial action in recent years. NI has the highest net public sector deficit in the UK, and continues to rely heavily on fiscal transfers from the UK Government. These economic and public spending pressures create an inauspicious context for NI's governing institutions.

Although the B/GFA was widely supported by the citizens of NI in a subsequent referendum, there were constituencies that predominantly identified with the Unionist tradition (particularly within the DUP) who remained hostile to the agreement, since it explicitly acknowledged that a united Ireland was a potential outcome of the democratic process. The NI Protocol and the Windsor Framework did little to allay such an existential threat, posing the renewed danger of dividing NI from the rest of the UK internal market by creating a customs border in the Irish Sea and restricting the flow of goods from NI into GB. Former DUP leader Arlene Foster's remark that the sea border was a "blood red line" no UK Government should ever cross underlined just how much was at stake in the wake of Brexit. In this febrile environment, the search for a political solution has been protracted and, thus far, largely elusive.



BACKGROUND TO THE WINDSOR FRAMEWORK: NEGOTIATING THE NI PROTOCOL

3. BACKGROUND TO THE WINDSOR FRAMEWORK: NEGOTIATING THE NI PROTOCOL

The negotiation of the NI Protocol by the UK Government in 2020 was an attempt to acknowledge the special status of NI, while retaining the political confidence of both Nationalist and Unionist communities.¹² According to the UK-EU Trade and Co-operation Agreement (TCA), NI would be a unique political territory, since it resided within the UK yet retained diplomatic, economic and constitutional ties to the ROI and, by extension, the EU. It is, of course, unusual for a region of a non-EU member state to remain in the single market for goods while that non-member state is allowed to enforce the rules.¹³ The fundamental principle of Europe's single market is that, "Each national customs authority must play by collective EU rules [to] enable the clearance of goods and their free circulation in the EU".¹⁴ The Protocol was positioned as affording a huge economic opportunity to NI, since it would remain in the EU single market for goods, unlike the rest of the UK, while being part of UK customs territory.¹⁵

Nevertheless, while there was pragmatic support for the Protocol, particularly among Nationalists (and indeed among many Unionists) given the arrangement averted a hard border on the island of Ireland, the Protocol failed to resolve ambiguities and uncertainties in NI's political situation. Moreover, the Protocol could not prevent the emergence of serious difficulties relating to trade in goods and services across the UK and the ROI. As the legal scholar Catherine Barnard noted, there was a "Brexit trilemma" because of three overarching goals, only two could be achieved at the same time: (1) no hard border between ROI and NI; (2) no customs border in the Irish Sea; and (3) the UK leaving the EU single market and customs union. The UK government chose no hard border alongside leaving the

single market and customs union, making a customs border in the Irish Sea all but inevitable. The border has a particular impact on goods moving from GB to the ROI.

The backdrop to the NI Protocol is that the Protocol was deemed necessary due to the objective of the Johnson administration to enact a "hard" Brexit, following the collapse of Theresa May's government in 2019. May's proposed "Chequers Deal", which kept the UK in a "combined customs territory" with the EU and avoided a border anywhere within the British Isles, was rejected four times by the Westminster parliament. As prime minister, May sought to broker an agreement that satisfied Brexit purists, while inflicting least damage on the British economy and jobs, an almost impossible balancing act.¹⁶ In contrast, Boris Johnson's explicit aim was to take European influence out of UK policy and politics, while diverging from the EU over regulation and policymaking. For this goal of de-Europeanisation to be achieved, wrenching the rest of the UK out of the EU single market, the prime minister was compelled to accept a border in the Irish Sea. According to Murphy,¹⁷ the process of overt "de-Europeanisation" entails "the reversal from EU rules, norms and values and a process of de-aligning from the EU". The UK left EU decision-making institutions; exited the single market; signalled its intention to move away from EU law; and withdrew from European initiatives, notably the *Erasmus* programme and *Horizon 2020* (although the UK has since negotiated to re-join the Horizon programme). Yet, it is much more difficult for the UK Government to remove the EU's influence entirely from the governance of NI. As recent events have demonstrated, doing so unilaterally runs the risk of destabilising the entire peace process. It opens up the prospect of a hard border

emerging on the island of Ireland. To avoid that situation, the UK Government negotiated a deal in which NI would remain in the European single market for goods, was still subject to EU commercial and competition policy, and (until Windsor) was subject to the jurisdiction of the ECJ.

The immediate strategic issue created by Brexit was how best to ensure the invisible border bisecting the island of Ireland remained invisible. Border communities in NI in particular were alarmed at the prospect of a return to a militarised hard border that might become the focal point for renewed political violence.¹⁸ The eventual solution was to allow a sea border between NI and the rest of the UK, following negotiation of the NI Protocol annexed to the TCA. As prime minister, Theresa May described the Protocol as “a flexible and imaginative solution” to the border question. May eventually accepted the need for the “backstop”, following a visit to NI in 2018. On that visit, according to one of her senior advisers, she acknowledged:

“Northern Ireland has unique circumstances which we need to accommodate, and in order to do that we’re willing to be more flexible. She did explore things like remaining in the customs union, potentially. There was a bit of push and pull about that. It wasn’t the pure Brexit that the Brexiteer fanatics wanted, so it ended up not actually travelling. I think she tried but, potentially, too late.”¹⁹”

The aim of the original formulation of the Protocol was to provide “a framework within which goods could move tariff-free”, rather than being treated as if they were moving “across an international border”.²⁰ However, it was still necessary for those moving goods to comply with EU customs checks and rules of origin requirements. Checks under those arrangements were particularly intrusive for agrifoods, which meant delays and rising prices for consumers in the shops. Food supplies could only be guaranteed through grace-period arrangements with the EU, which would expire at some point in the future. While the Protocol succeeded in its objective of preventing the imposition of a hard border on the island of Ireland, it did lead to a significant rise in customs checks, red tape and paperwork for businesses.

Moreover, the Protocol and TCA had a number of consequences for NI. Firstly, while NI was part of UK customs territory, NI now constituted an entry point to the EU customs union. NI would adopt EU regulations for goods to prevent the imposition of a hard border on the island of Ireland, and must comply with any future regulatory changes. The consequence of the Protocol was a de facto customs border in the Irish Sea, a reality that greatly troubled Unionists, since it was perceived to undermine NI’s legal and economic ties to the UK. Moreover, compliance with the provisions of the Protocol would be overseen by the ECJ and the European Commission, apparently imperilling British national sovereignty.



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Secondly, NI businesses would not be subject to non-tariff trade barriers since NI remained in the EU single market for goods. This conferred special status on the NI economy raising the question of whether, by remaining in the single market, NI would perform better than other parts of the UK. That would have a destabilising effect on the rest of the UK polity and the future cohesion of the Union, not least because Scotland (which also voted to remain in the EU in 2016) was not able to seize the advantage open to NI of remaining in the EU single market for goods, thereby fuelling the argument for Scottish independence.

Thirdly, those born in NI could continue to claim Irish or British citizenship: citizens from NI travelling with an Irish passport could use EU/EEA lanes and were subject to EU freedom of movement rules. According to the EU’s chief negotiator, Michel Barnier: “While Northern Ireland will no longer be part of the EU, people born and raised here that choose to be Irish citizens will still be EU citizens. This means they can continue to move and reside freely within the EU”.²¹ Moreover, students in NI universities still participate in the Erasmus programme, while the Dublin Government is providing funding to improve cross-community contact between the North and South of Ireland.

Not surprisingly, the Protocol quickly became a focal point of disagreement and risked a return to political instability. David Frost, Boris Johnson’s chief negotiator with the EU, subsequently admitted: “We underestimated the effect of the Protocol on goods movement to Northern Ireland”.²² Johnson repeatedly insisted that the deal he had negotiated would mean no bureaucratic checks or paperwork for businesses moving goods into NI, a claim that flew in the face of reality. Indeed, subsequently, checks on the movement of food and animal products into Irish ports were suspended following threats of violence and disorder, underlining the opposition to the imposition of a border in the Irish Sea.²³ A major diplomatic row then erupted when the European Commission requested physical border checks to oversee the movement of Covid-19 vaccines across the Irish border, even though Ireland was not a producer of vaccines.²⁴ The Commission subsequently reversed its decision, but Unionists were emboldened in their opposition to the Protocol, which they believed disrupted the UK’s internal market. The Johnson government used the dispute over the movement of Covid-19 vaccines as an excuse to unilaterally extend limited grace periods and reinterpret the Protocol, publishing a command paper with new proposals in May 2022.

The fundamental difficulty with the Protocol was that it was a solution that had to be developed only after the UK Government had imposed its “red lines” on the withdrawal negotiations. According to the

former permanent secretary at the Department for Exiting the European Union (DEXU), Philip Rycroft, as Prime Minister Theresa May only acknowledged the problem of the Irish border after making her infamous Lancaster House speech in January 2017, but kept repeating a stock phrase: “No going back to the borders of the past”.²⁵ Rycroft notes that, “it took the Prime Minister a long time [...] to work out just how fundamental this was for the Union”.²⁶

As prime minister (2019-22), Boris Johnson reportedly took the view that a border in the Irish Sea was a “price worth paying” to reclaim national sovereignty. Yet, political tensions in NI were rising as a consequence. The debate about Irish unity acquired renewed momentum, while successive elections saw a perceptible rise in support for Sinn Féin. Disagreements about the Protocol then led the DUP to remove their leader, Arlene Foster. Foster’s successor, Edwin Poots, lasted just 21 days before he was replaced by Jeffrey Donaldson. Although the Protocol enabled the UK Government to eventually conclude the withdrawal negotiations, it was obviously a source of ongoing political instability. The DUP believed that Michel Barnier, the EU’s chief Brexit negotiator, was using NI as a device to keep the UK aligned as closely as possible to the EU: “The EU plan, quite clearly, was that Northern Ireland will be the means by which we keep the United Kingdom tied as closely as possible to the EU”.²⁷

There was also considerable evidence that Brexit inflicted a major supply-and-demand shock on both the NI and ROI economies. It was much harder for Irish hauliers to move goods across the Irish Sea, underlining the threat to the integrity of the UK internal market. Economic problems then added fuel to political tensions, further weakening the co-operative relations that previously existed between the British and Irish governments, as well as cross-community engagement in NI.

Although hailed at the time as a diplomatic triumph, according to the UK Government itself, the NI Protocol has been “a source of acute political, economic and societal difficulties” since it began to operate in 2021, undermining the “identity and

economic rights” of Unionists.²⁸ While the Protocol avoided a hard border and protected the integrity of the EU single market, it had other damaging effects, contributing to the continuing suspension of power-sharing institutions. The Protocol disrupted the availability of key food products and imposed additional costs on producers. Boris Johnson subsequently condemned the very Protocol his own government had negotiated as a “drag anchor on divergence”. Because NI was required to follow EU single-market regulations for goods, any UK Government decision to disapply EU rules meant further divergence between the UK and NI.²⁹ That the EU had taken considerable risks in agreeing the Protocol was largely ignored: after all, European institutions had effectively “outsourced the core task of border control to a non-EU member”.³⁰

The dilemma for the UK Government was that to demonstrate Brexit was worthwhile in enhancing the competitiveness and dynamism of the UK economy, it had to set out plans to diverge from EU “red tape” in key sectors. However, in so doing, ministers threatened to erect further trade barriers between the UK and NI and harden the border in the Irish Sea, further antagonising Unionists. There was evidence that prior to the Windsor Framework being negotiated, the Irish Sea border was becoming more prohibitive. For instance, cakes containing food colouring could no longer be imported from the UK to NI because of an EU ban on such additives.³¹

The Retained EU Law Bill was originally designed to unilaterally remove swathes of EU related legislation. Yet, it now appears that the UK Government is adopting a more pragmatic and flexible stance. The sheer volume of legislation ensures that government departments have to be more cautious in removing EU rules and regulations. A quarter of all EU legislation affects the Department for the Environment, Food and Rural Affairs (DEFRA), for example, which does not have the policy capacity to review every relevant piece of legislation.

There is little doubt that implementation of the Protocol was made considerably more difficult by the political context within NI. As Kelly and Tannam

have argued,³² neglect of the institutions established under strands two and three of the B/GFA made it harder to constructively address problems that arose in UK-NI-ROI trade. Important institutions, notably the North-South Ministerial Council, the British-Irish Council and the British-Irish Inter-governmental Conference, have barely met during the eight years since the Brexit referendum. There has been little inter-governmental dialogue, particularly between the Dublin and London governments, at a moment when there is less informal diplomatic contact since the UK ceased to be an EU member state. In February 2022, the NI power-sharing executive once again collapsed after the resignation of the first minister, Paul Givan, citing disagreements with the UK Government over implementation of the NI Protocol.

For all of these reasons, the UK Government considered the renegotiation of the NI Protocol to be an important item of unfinished business. The less confrontational and more pragmatic tone of the Sunak government enabled serious talks to begin, leading to the eventual negotiation of the Windsor Framework in early Spring 2023. However, the Windsor Framework itself struggled to assuage Unionist concerns, and NI’s power-sharing institutions remained suspended, for many months.



THE WINDSOR FRAMEWORK, CORE PROVISIONS AND THE 2024 COMMAND PAPER

4. THE WINDSOR FRAMEWORK, CORE PROVISIONS AND THE 2024 COMMAND PAPER

The Windsor Framework was formally agreed by the UK Government and the EU in February 2023. As Catherine Barnard has noted, while the aim of the Windsor Framework was to reduce the impact of the highly contested border in the Irish Sea created by the NI Protocol, the border could not be removed entirely. Sabine Weyland, Michel Barnier's deputy, reiterated on a number of occasions that "there's simply no way you can do away with checks and controls".³³ The Framework was the culmination of several years of fraught discussions and attempted negotiations between London and the European Commission. In July 2021, the UK Government published its proposals to amend the NI Protocol; this was followed by further proposals from the EU, although talks soon broke down.³⁴ In July 2022, the UK Government attempted to unilaterally override key provisions in the Protocol and published a new NI Protocol Bill. However, the Sunak administration entered more willingly into talks during the autumn of 2022, culminating in the negotiation of the Windsor Framework. Defining himself as a managerial and technocratic problem solver, Sunak was widely regarded by EU negotiators as more flexible and pragmatic than his erstwhile predecessor, Boris Johnson.

From the UK Government's perspective, the main purpose of the Windsor Framework was three-fold:

- Firstly, to ensure the "smooth flow" of internal UK trade, which would now be overseen by joint arbitration arrangements, rather than the jurisdiction of the ECJ. Goods that originate in GB, which are not at risk of entering the EU, could now enter NI tariff free through a "Green Lane". The definition of goods not "at risk" was significantly expanded. However, manufactured goods sold in NI must still comply with EU regulations

and would have to pass through the "Red Lane", even if fewer customs checks were required.³⁵

- Secondly, to secure common UK-wide value-added tax (VAT) and excise arrangements so that NI can benefit from tax changes introduced by the UK Government. Under the terms of the Protocol, NI businesses may have been required to pay more VAT on second-hand goods, which has a detrimental effect on sectors such as second-hand motor vehicles; the new framework exempts those businesses from key VAT provisions.³⁶
- Thirdly, to introduce the so-called "Stormont Brake", which provides "a firm guarantee of democratic oversight, and a sovereign veto for the UK on damaging new goods rules". The Stormont Brake enables the UK Government to veto EU changes to regulations affecting goods without undermining east-west trade or NI business access to the EU single market.³⁷ This arrangement is intended to deal with the fact that NI is no longer part of an EU member state; without the Stormont Brake, it would have no formal say over EU policymaking. The NI Assembly has the opportunity, under the Windsor Framework, to object to changes in EU law.³⁸ However, there is no formal change in the role of the ECJ.

The UK Government insists the effect of the Windsor Framework is "to remove more than 1,700 pages of EU rules and restore UK rules in their place". Ministers' objective was "to restore NI's place in the UK internal market". The arrangements sought to make the movement of pre-packaged agrifoods consumed in NI considerably easier, with fewer checks and bureaucratic requirements. The UK Government was particularly proud to have removed a

ban on British sausages entering NI, providing there was adequate certification.³⁹ They claimed it would be far easier and less bureaucratic to move food products into NI. Food would be subject to common UK-wide public health and safety standards: more than 75% of the items in NI's supermarkets actually come from GB.

As such, the Windsor Framework sought to create a cohesive UK internal market, in which the movement of goods is overseen by data sharing, rather than bureaucracy and customs checks. Technology would be used to monitor trade flows in goods. The scope of the UK trading scheme has been expanded such that businesses based anywhere in the UK can benefit, not only those with premises in NI, while the turnover threshold was increased to £2 million, ensuring most businesses were eligible.⁴⁰ In so doing, the UK Government was able to claim: "We have removed the border in the Irish Sea for internal UK trade, protecting NI's integral place in the UK internal market".

The Windsor Framework was negotiated to remedy difficulties identified in the original NI Protocol. It may certainly have helped to create the conditions for improvements in relations between Brussels and London.⁴¹ The UK Government emphasises the need for "dual regulation", which acknowledges NI's economy is fundamentally dependent on the UK single market. As such, the Windsor Framework disappplied a significant body of EU law, alongside the jurisdiction of the ECJ. The Framework sought to rectify the problem of NI's status as a rule taker, where it has to apply rules and regulations relating to the single market for goods, despite not being part of an EU member state.⁴² The NI Assembly was given a role in vetoing regulatory proposals, although it was expected to do so only under exceptional circumstances.

Nevertheless, it is striking that the original Windsor Framework did not secure the support of the DUP. As a result, NI's political institutions remained in limbo until early 2024, when the UK Government published its most recent command paper, "Safeguarding the Union", which sought to explicitly ad-

dress Unionist concerns about the Windsor Framework. Yet initially, the DUP did not agree to re-join the NI Executive. The DUP's leadership averred that the UK Government had not delivered what it promised, namely, legislation that safeguarded NI's ability to trade within the UK internal market.⁴³ While the Windsor Framework was an attempt to minimise customs checks at the border, it did not eliminate them. As such, there was not "unfettered access" for goods moving from GB to NI.⁴⁴ It has been pointed out the Framework is beneficial for the retail sector given the reduction in customs documentation for goods passing through the so-called "Green Lane". Yet, most businesses in the NI manufacturing sector do not have "trusted trader" status, and as such, goods must go through more onerous checks in the "Red Lane".⁴⁵ Eliminating such checks entirely requires the UK Government to renegotiate the WA with the EU, and in all probability, opt for an alternative model of Brexit.

Moreover, the UK Government's White Paper on the Windsor Framework is reluctant, at best, to acknowledge the legitimate and ongoing role of the EU in NI, despite the fact that 44% of NI citizens now hold an EU passport, while the NI economy is closely interconnected with the ROI's economy (which is, of course, an EU member state). Although the White Paper recognises the importance of an ongoing "partnership" between the UK and the EU, it does not acknowledge that a significant proportion of NI citizens identify as "European" as well as Irish, rather than primarily as British. Moreover, as the former Social Democratic and Labour Party (SDLP) Deputy First Minister Mark Durkan has observed: "The Good Friday Agreement doesn't say Northern Ireland is an integral part of the UK. That isn't in the Good Friday Agreement precisely because the whole thing is conditional".⁴⁶

While the "special deal" negotiated for NI was repeatedly sold as a great economic opportunity, since it enabled NI to remain in the EU single market for goods, unlike the rest of the UK, it still created barriers to NI's participation in the ROI and UK economies.⁴⁷ If NI is compelled to follow regulatory changes stipulated by the EU, it may be significantly

harder to sell products into the UK market. Businesses will have to navigate situations where UK and EU rules differ a long time into the future.

There is little doubt the Windsor Framework was a significant political achievement for the Sunak administration. It was feared the Framework would further divide the Conservative Party given ongoing DUP opposition. Yet only 22 Conservative MPs, alongside the DUP, voted against the government's proposals in the House of Commons. The Framework rectified practical problems created by the NI Protocol and made trade between NI and GB less burdensome.

Nonetheless, the Windsor Framework did not resolve objections initially raised by the DUP, thus preventing the restoration of power-sharing arrangements. The Windsor Framework may have made trade relations between GB and NI less difficult, but that was not the case between NI and GB where the UK Government had less jurisdiction. Government ministers had promised legislation to guarantee frictionless trade that they were not in a position to deliver – unless they were prepared to renegotiate the UK's entire approach to EU withdrawal.

Finally, in January 2024, the UK Government succeeded in re-establishing power sharing in NI, striking a legislative accord necessitating various amendments and adaptations to the initial Windsor Framework. Key features of the 'Safeguarding the Union' command paper negotiated to "copper-fasten NI's integral place in the UK" while re-establishing power-sharing institutions in NI were as follows:

- Reduced checks on the movement of goods at the Irish Sea border.
- The establishment of new bodies to strengthen links between NI and the rest of the UK that "affirm NI's place in the Union". The *UK East-West Council* will aim to boost cultural, economic and educational ties. *Inter-trade UK* will focus on maintaining frictionless trade across the UK internal market system.

- A provision that no UK Government can sign a future international treaty that excludes NI. The aim is to prevent governments from reaching a future agreement with the EU such as the Protocol that would threaten NI's position within the UK, thereby offering new legal and constitutional protections that fulfil the original purpose of the Acts of Union.



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- A commitment that 80% of goods going from Britain to NI will require "minimal paperwork" ensuring "unfettered access". Over 7,000 companies have signed up to the UK "trusted trader" scheme, which has "virtually eliminated" the Irish Sea border.
- The Green Lane is replaced by the UK internal market system. Only the UK authorities will conduct checks within the UK's internal market.
- The new arrangements to affirm UK parliamentary sovereignty over NI will be overseen by an Independent Monitoring Panel.
- Finally, the UK Government committed to publishing operational arrangements for the so-called "Stormont Break" negotiated in the original Windsor Framework.⁴⁸

In addition, a financial package of £3.3 billion was agreed for the NI Executive. Even so, opinion was divided on the long-term significance of the deal between London and the DUP. British officials briefed

the press in the days after the negotiation that the arrangements were merely a rhetorical confirmation of existing provisions and commitments in the Windsor Framework.⁴⁹ Yet other experts concluded that the constitutional implications of the negotiations were more far-reaching. The NI expert, Katy Hayward, avers that the UK government's approach, "runs roughshod over principles that have formed the bedrock of the peace process for over thirty years". Safeguarding the Union was negotiated with a single party, namely the DUP. The pro-union language adopted in the command paper and British ministers' apparent enthusiasm for post-Brexit divergence between the North and South of Ireland violates core principles of the B/GFA. The Agreement requires the UK government to act impartially at all times, while according "parity of esteem" both to Unionism and Nationalism.⁵⁰

As such, while the improvement in relations between London and Dublin from a historic low has yielded some progress, the political context was still a long way from the period in which the ROI and the UK were EU partners negotiating the Anglo-Irish Agreement in 1985 and the B/GFA in 1998. Sunak is not surprisingly regarded as a more trustworthy interlocuter than Boris Johnson. Yet many in the Irish Government question how much attention the current prime minister is prepared to devote to NI.⁵¹ He is not a regular attendee at meetings of the British-Irish Council, while there is reported to be little personal warmth between the British prime minister and Irish Taoiseach Leo Varadkar. As such, long-term problems in NI's politics and policymaking appear likely to remain.



THE WINDSOR FRAMEWORK, CORE PROVISIONS AND THE 2024 COMMAND PAPER

5. IMPLICATIONS OF BREXIT AND THE WINDSOR FRAMEWORK

While the Windsor Framework enabled the UK Government to address alleged deficiencies in the NI Protocol, the Framework does not in itself untangle the contradictions created by the original WA. Unionists continued to refuse to re-join the NI Executive, insisting that pledges to safeguard NI's access to the UK internal market have not been fulfilled, only reversing course in the New Year of 2024.⁵²

This section of the study considers the potential implications of Brexit and the Windsor Framework for NI, the ROI and the EU and the NI policy of the UK Government. The main argument is that, while the Windsor Framework can be viewed as a pragmatic and practical set of solutions to problems created by the WA and the original NI Protocol, it has not dispelled the instability and uncertainty provoked by the UK's decision to leave the EU under the terms of the WA. The Windsor Framework and the subsequent Command Paper could provide a lasting solution, but it will require political will and determination on all sides to make the new arrangements work effectively.

5.1. IMPLICATIONS FOR NI

The ongoing stalemate and suspension of the Executive had serious consequences for NI's governance, especially for the state of public services and the NHS, while the public finances have deteriorated markedly in recent years. At the same time, without an Executive and Assembly for much of the period since the Brexit referendum, it has proved much harder for NI civil servants to influence the Brexit discussions, since they did not have a political mandate from which to enter into discussions.⁵³

Moreover, while UK ministers championed the virtues of the Windsor Framework in reducing the EU's influence in NI policy and politics, their approach ignored the fact that a significant proportion of NI citizens identify with the ROI, and by extension, the EU. The 1998 B/GFA acknowledges:

"The birthright of all of the people of NI to identify themselves and to be accepted as Irish, or British, or both, as they may so choose, and accordingly confirm that their right to hold both British and Irish citizenship is accepted by both Governments and would not be affected by any future change in the status of NI.⁵⁴"

“

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”

The B/GFA enables NI citizens to enjoy the rights of EU membership, an important guarantee of citizenship for the Nationalist community. The main purpose of the agreement was to reconcile border and identity conflicts in NI through sovereignty pooling in the context of shared EU membership. Outside the EU, it has proved much harder to sustain such arrangements.

The Protocol and the subsequent Windsor Framework recreated NI as a “hybrid state”, which formally remains part of the UK, yet falls within EU arrangements, notably the single market. Indeed, a case has been made for NI to have “special status” within the EU. In reality, the “hard” Brexit pursued by the UK Government has undermined the delicate political balance that was achieved in NI since the late 1990s. The B/GFA presumed the UK and ROI would remain member states within the EU. It was the EU that helped to provide political context for the agreement focused in particular on power sharing and the reimagining of sovereignty necessary to ameliorate ethno-Nationalist conflict.

In the run up to the 2016 Brexit referendum, relatively little attention was paid to the implications of leaving the EU for NI. The decline in political violence meant that media coverage of NI was far less prominent in the British press, while the continuation of the peace process was largely taken for granted. As Naomi Long, leader of the Alliance Party, recounts:



There was no proposition that was an alternative to the EU. We were essentially embarking on a journey without having a destination in mind. Aside from a few trite slogans, there was very little to offer the public by way of explanation of how we would achieve what was intended and, indeed, what the impact of that would be.



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Yet conditions had altered since the original B/GFA was negotiated in 1998. Social, demographic and political change meant that Nationalism in NI was becoming more politically powerful relative to Unionism. Unionism was increasingly pervaded by a culture of loss in the face of demographic and political alterations in wider society. As a result, there were communities, “especially sections of loyalism that feel left behind by the peace process economically and socially”.⁵⁶

The more pragmatic stance of the UK Government in recent years has done little to dispel growing speculation about Irish unity. The negotiation of the Windsor Framework and the publication of the subsequent command paper in early 2024 was unlikely to end the debate about unification, which gained momentum following the 2016 referendum. In 2017, the Irish *Oireachtas* published a report entitled “Brexit and the future of Ireland: Uniting Ireland and its people in peace and prosperity”.⁵⁷ The report’s purpose was to examine options for how a unity poll would be conducted. In 2020, the Irish Government launched the “Shared Ireland Initiative”, which committed €500 million to support the implementation of cross-border projects.⁵⁸ Moreover, the ROI was increasingly viewed as more successful economically, at least relative to the UK. In the past, concerns about Ireland’s anaemic economic performance made reunification appear, at best, implausible.

Even so, the decision to hold a referendum on Irish unity remains at the discretion of the UK Secretary of State. There must be substantive evidence of majority support for unification before any border poll can be held. The same question would be put in a referendum to citizens in the ROI. Both polls require a simple majority to pass under the terms of the B/GFA. At present, the outcome of any border poll remains uncertain. There is some evidence that support for unification may be gaining ground, fuelled not least by the outcome of the Brexit referendum. Support for Nationalist parties in NI has been growing, while support has been rising for Sinn Fein in particular, both in the North and the South. Demographically, NI is becoming more Catholic/Na-

tionalist over time, while the majority of Catholics continue to identify with the political aspiration of a united Ireland. In the ROI, there are consistent majorities in favour.

On the other hand, the outcome of a border poll remains far from predetermined. The demographic composition of NI is becoming more heterogenous, as a growing section of the population no longer see the world through the identity lens of Catholic/Protestant, Nationalist/Unionist. Some voters, even those who identify as Nationalist, discern advantages in remaining within the UK, not least the more generous welfare state and “free at the point of use” healthcare system. There are some NI citizens who would prefer to see greater powers for devolved government while remaining within the UK. The introduction of devolution in the late 1990s made it possible to domesticate NI’s policy agenda in key areas, notably education, health, welfare and industrial policy. Moreover, while voters in the ROI are at least hypothetically in favour of unification, they may be less willing to support the compromises necessary to bring about a united Ireland, for instance, accepting the need to change the national flag to accommodate Unionism.

Uncertainty about the result of a border poll is underlined by the fact there is as yet no clear proposition voters would be asked to endorse. There are a number of different options for how a new Irish state might be constituted. The first is an “integrated united Ireland”, where NI is assimilated within the institutions of a unified Irish state. A second model brings NI within sovereign Irish territory but maintains the power-sharing institutions of the B/GFA, ensuring that Unionists continue to have a role in the governance of NI.⁵⁹

A further reason why the outcome of a unity poll is uncertain is that it is likely Brexit will lead to long-term alterations in the electoral landscape of NI.⁶⁰ A particularly striking development is the rise of middle-ground, “centrist” parties such as the Alliance which has performed well in recent elections, with consequences for NI’s politics, institutions, policies, and North-South and East-West relations.

In contrast to other Unionist parties, the Alliance is willing to enter into shared dialogue with the ROI Government on a host of issues beyond narrowly constitutional questions.⁶¹ Another important trend is the relative rise in support for Irish Nationalism in NI relative to Unionist parties.

What is not yet clear in NI is which dynamic is developing fastest: the rise of non-aligned voters or the strengthening of support for Nationalism? The B/GFA institutions were suspended for several years, and a period of deadlock appeared unavoidable. The DUP eventually re-entered the NI Executive in February 2024, under pressure to address daily concerns, notably the dire state of public services in NI. Yet normal politics may not resume for long, and there is an ongoing risk of parties constantly threatening to leave the Executive to gain political leverage.⁶² The dilemma for the DUP is that, if NI continues to be viewed as ungovernable due to the repeated suspension of political institutions, that may force the question of a border poll and further encourage speculation about a united Ireland.⁶³

5.2. IMPLICATIONS FOR ROI

In contrast to the UK, it is clear the ROI has remained an enthusiastic EU member state during its 40 years of membership. If anything, Brexit cemented the commitment of the Irish political class to Europe. From the outset, membership of the European Community (EC) enjoyed widespread support in Ireland. In the 1972 referendum, 83.1% voted to join on a turnout of more than 70%. Unlike the UK, which remained a “reluctant European” member state, the Irish Government enthusiastically embraced the terms of membership. Elite opinion in the ROI strongly endorsed the view that EC membership would provide a significant boost to the Irish economy. The economic policy consensus in Ireland from the 1950s was strongly in tune with the EC, emphasising economic liberalisation and modernisation through increased trade and inward investment. By the 1990s, Ireland was rapidly catching up with average EU living standards.⁶⁴

Moreover, EC membership proved attractive to the ROI, since it allowed Ireland to escape its historical dependence on the UK.⁶⁵ Not only did accession afford new opportunities in commerce and trade. As a small state, European integration enabled the ROI to affirm its national sovereignty and identity, giving Ireland greater autonomy within the European context.⁶⁶ Moreover, EU membership turned the focus of ROI politics and southern nationalism away from historical resentment of the British towards focusing on the opportunities afforded by being part of Europe.⁶⁷

Consequently, EC membership served to normalise relations between Dublin and London. In the 1960s and early 1970s, relations between the two governments became noticeably more strained. After the killing of 13 unarmed civilians on a civil rights march on “Bloody Sunday” in 1972, the Irish Government insisted that a UN peacekeeping mission should be deployed to NI; meanwhile, the British embassy in Dublin was set ablaze.⁶⁸ Yet joining the EU prevented further deterioration of inter-governmental relationships while signalling “a more pragmatic, less ideological approach on the part of the Irish state”.⁶⁹ In both becoming EC members, the British and Irish Governments were now effectively “partners”, helping “to build inter-state trust and mutuality”.⁷⁰ Membership encouraged “habits of co-operation” to flourish. The first fruits of greater collaboration was the 1985 Anglo-Irish Agreement. This process of building trust between the two governments laid the foundations of the Agreement and subsequently the B/GFA in 1998.

Following the 2016 referendum, the Irish Government had to reconcile two sets of obligations: its national obligations as a member state of the EU; and its status as a signatory to the B/GFA.⁷¹ Yet the period since the UK referendum could be depicted as a diplomatic and political triumph for the Irish governing elite. When the WA was negotiated, the ROI (despite its status as one of the less economically and politically powerful members) enjoyed the support of EU institutions and fellow member states. The head of the European Commission taskforce for relations with the UK, Michel Barnier, constantly reiterated Irish demands in his negotiations with

the UK Government. Barnier sought to prevent Irish ministers from negotiating bilaterally with the UK Government yet pledged “to defend Irish interests”.⁷² The Irish Government in Dublin viewed such developments as a significant diplomatic accomplishment. Barnier told a meeting of the Irish *Oireachtas* on 11 May 2023: “I want to reassure the Irish people: in this negotiation Ireland’s interest will be in the Union’s interest. We are in this negotiation together and a united EU will be here for you”.⁷³

In the wake of Brexit, the Irish state was being drawn closer to the EU, prompting talk of further Europeanisation.⁷⁴ Ireland’s ties to the USA have also endured and grown becoming stronger under President Biden. Yet the ROI is likely to align itself primarily with the EU, not least because the Biden Administration has advised the Irish Government to remain at the heart of EU affairs. The difficulty for Irish politicians, nonetheless, is that their country is located geographically on Europe’s periphery, while it remains economically linked to the UK, a non-member state.

On the question of unification, the Irish Government has proceeded pragmatically and cautiously. The ROI Government launched a “Shared Ireland” strategy, which largely focused on practical questions that would have to be addressed prior to any border poll. Dublin was at pains to stress that it wished to engage in shared dialogue about future constitutional arrangements based on the fundamental principles of co-operation and power sharing at the heart of the B/GFA.

There has been much speculation that Sinn Fein may end up as the largest party at the next election in ROI, with repercussions for the debate about Irish unity. Yet it is important to remember that Sinn Fein’s electoral coalition is diverse, while many of its voters are not primarily motivated by constitutional or national identity issues. Young people and many public sector workers perceive Sinn Fein to be a mainstream social democratic party, a defender of their core economic interests.⁷⁵ As such, a future Dublin government involving Sinn Fein should not necessarily be viewed as the endorsement of a united Ireland by ROI voters.

5.3. IMPLICATIONS FOR THE EU

The EU’s role in NI over the last 40 years has been understated but unquestionably influential. While accounts of the NI peace process tend to focus on the influential role played by the USA, particularly the Clinton Administration after 1992, the EU’s contribution was decisive. As Lagana has demonstrated,⁷⁶ the EU historically played its hand cautiously in NI because of the need to maintain trust among both the UK and Irish governments, as well as across all communities in NI. The EU was never involved in direct negotiations with paramilitary organisations, and it was not formally present around the table when the B/GFA was negotiated. What was distinctive about the EU’s approach was that its aim was not to alter the perspective of different actors on either the Unionist or Nationalist side, but to foster mutual understanding consistent with the EU’s historic peacekeeping and conflict-prevention responsibilities.⁷⁷ As Richard English has argued:⁷⁸ “The European Union had provided a different setting within which the UK and the ROI could harmoniously work together and build the axis which stabilised the peace process”.

As key players such as the former leader of the SDLP, John Hume, acknowledged, the ideas that drove the peace process were deeply influenced by European experience. In 1993, Hume reiterated: “The British Irish quarrel of old, the quarrel of sovereignty, has changed fundamentally in the evolution of the new, interdependent and post-nationalist Europe of which we are members”.⁷⁹ Hume saw Europe as the pre-eminent driver of the peace process, not least because the EU was comprised of political institutions that were designed to contain and accommodate national, religious and ethnic differences. He particularly admired the EC’s role in ending centuries of Franco-German conflict in the aftermath of the Second World War. The B/GFA similarly envisaged a consociational framework centred on fundamental principles of power sharing, democratic consent regarding the future status of NI, alongside respect for human rights and equality. Such principles were strongly supported by international actors. The Alliance Party leader, Naomi Long, remarked that:

“The culture of interdependency that was promoted with Europe, the idea that barriers and borders were less and less important, was really in our interests as a society here where barriers and borders are contentious. The Republic of Ireland and Northern Ireland feeling like a continuum into the UK, Scotland, England, and Wales – with the Common Travel Area, it felt pretty much like it was a contiguous block – helped with stability in Northern Ireland.⁸⁰”



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Among the landmark contributions of the EU was the Haagerup report. The report was published at the instigation of the European Parliament in 1984, setting out a detailed analysis that “placed the potential solution [to NI] within an identity paradigm [...] and argued for power-sharing and inter-governmental co-operation as the institutional mechanisms that could provide a way forward”.⁸¹ Hayward and Murphy remarked that the EU’s influence was “constructive but indirect, affecting the structures, context, and language of conflict resolution among regional level actors”.⁸² More directly, since 1995, the three EU PEACE programmes provided over €1.3 billion to revitalise NI’s economy and strengthen community cohesion. To receive EU funding, civil society organisations had

to demonstrate that they were promoting cross-community dialogue in NI and tackling the root causes of sectarianism.⁸³

While many Unionists were initially suspicious of EU involvement – since Europe was ultimately viewed as a project to weaken national sovereignty and statehood – Unionists started to work with Brussels in the 1980s as trust in the London Government dwindled.⁸⁴ The 1980s and early 1990s witnessed the birth of a “New Unionism” which acknowledged the explicit benefits of North/South co-operation. Prominent Unionist politicians, notably Ian Paisley and John Taylor, were elected to the European Parliament as NI representatives alongside John Hume, recognising they could secure significant economic support for their constituencies. The shifting context and the opportunities afforded by EU engagement encouraged Unionists to adapt their strategy towards Europe. Similarly, having initially expressed hostility to the EC, Sinn Fein became more supportive, recognising that the EU was an alternative powerbroker to the UK Government.

There is little doubt that the B/GFA embodies EU values of post-conflict reconciliation, cross-border co-operation and the rule of law. An expert report to the European Parliament states: “EU membership for the UK and Ireland has provided an essential context for the model and implementation of the GFA”.⁸⁵ As Lagana noted,⁸⁶ the EU affords “a neutral arena to foster dialogue and positive co-operation”. Moreover, the B/GFA mirrors EU institutional arrangements, notably the D’Hondt system, intended to ensure fair electoral representation for minority communities.⁸⁷ The European Convention on Human Rights (ECHR) overseen by the NI Human Rights Commission provided “safeguards”, “to ensure that all sides of the community can participate and work together”.⁸⁸

Recent events have certainly made it harder for the EU to play the role of neutral arbiter, since problems created by Brexit and the Protocol meant the EU has been brought into disagreement with both the UK Government and NI Unionism. Even so, Unionists have learned the hard way that they can scarcely take London’s support for granted. The former prime

minister, Boris Johnson, was willing to countenance a border in the Irish Sea to safeguard British national sovereignty. The rise of a virulent strain of English nationalism and increasing unwillingness to take the necessary steps to protect the UK union has become noticeably more widespread within the British Conservative Party.⁸⁹ The current government struggled to deliver on its promises to successive DUP politicians. As such, turning away from Europe may prove to be a questionable strategy for NI Unionism.

5.4. IMPLICATIONS FOR THE UK GOVERNMENT’S NI POLICY

In recent years, UK governments have been criticised for their handling of policy in relation to NI. It was Theresa May’s decision in 2017 to rule out UK membership of the EU single market and a customs union that initially created the “problem” of the NI border. Her lead official on constitutional affairs, Philip Rycroft, subsequently admitted that May had simply failed to understand or acknowledge NI’s delicate political situation.⁹⁰ May’s Brexit adviser, Denzil Davidson, similarly noted “the collective failure in Government properly to understand the implications [of Brexit] for Northern Ireland”.⁹¹

The commitment to leave the EU single market and customs union was designed to appease supporters of a “hard” Brexit within the British Conservative Party. It was actually a harder form of Brexit than many supporters of Leave had advocated during the 2016 referendum campaign. For instance, cabinet minister Michael Gove had insisted Brexit was compatible with continuing membership of the EU single market. Yet successive Conservative prime ministers advocated a Brexit strategy intended to maximise regulatory divergence between the EU and the UK. Doing so made managing the problems posed by the governance of NI more acute.

The compromises and contradictions created by Brexit, alongside the strains on the UK union, meant recent UK governments had little choice but to improvise and “muddle through”. Devolution throughout the UK, including NI, was weakened during the

Brexit process due to the absence of formal conflict-resolution mechanisms between London and the devolved governments, alongside the desire of the centre to “take back control” fuelled by the growing influence of “muscular unionism”. Tensions with the devolved governments continued over issues such as the replacement of lost EU funding, as well as what EU laws and regulations to retain.

If they acted strategically, UK ministers would seek to strengthen strand three of the B/GFA by encouraging political dialogue with the Dublin Government. Outside shared EU membership, more should be done to encourage political and diplomatic contacts between the two governments through institutions such as the Joint Ministerial Council. There is some evidence that such contacts are beginning to take place again with reasonable regularity. Kelly points to the formal ministerial meetings held between London and Dublin over the last 18 months that appear to have borne fruit, not least in negotiating the Windsor Framework.⁹² Kelly highlights the subsequent importance of reviving strands two and three of the B/GFA. Indeed, London and Dublin have moved a long way from the co-operative atmosphere that predominated in the era of joint EU membership.

UK Government policy on NI may also evolve in the foreseeable future, not least because of a change of government at Westminster. A general election is anticipated in the next nine months. The British Labour Party’s policy on NI is currently a development of its approach during the Blair-Brown years. The leader of the opposition, Keir Starmer, told an audience at Queen’s University Belfast in January 2023 that the priority of the UK Government should be “to normalise and strengthen relationships with Dublin”. He added: “Nothing has been more self-defeating than the determination of some Conservative ministers to see our friends in Dublin as adversaries on Brexit”. Labour’s priority is to make the NI Protocol and the Windsor Framework function as effectively as possible. No radical departure in NI policy is currently envisaged by Starmer’s team. Yet a Labour government’s desire to improve co-operation on trade and security with the EU may have significant implications for NI policy in due course.

FUTURE SCENARIOS POST-WINDSOR

6. FUTURE SCENARIOS POST-WINDSOR

With the UK outside the EU, the future of community stability and peace in NI appears more precarious than at any juncture since the signing of the B/GFA 25 years ago. As we have seen, it was EU membership that set the context for the normalisation of NI society. The EU was the backdrop to the development of a multi-level governance framework, enabling NI to remain connected to both the ROI and GB, encouraging constructive ambiguity that made a sustainable peace conceivable. As such, EU withdrawal has added to the political instability pervading politics on the island of Ireland. Whether the revised Windsor Framework can rebuild support for the Union and harmonise the governance of NI remains an open question. After Brexit, and in the light of the negotiation of the Windsor Framework and subsequent agreements, several distinctive scenarios for NI's future appear plausible. This section of the policy study outlines potential outcomes – all of which depend on events and contingencies. A consistent theme throughout is the continuing uncertainty of politics in Brexit's wake.

6.1. SCENARIO 1: IRISH UNIFICATION

The first scenario is the unification of the ROI and NI, culminating in a united Ireland. The Protocol was widely supported in NI, especially among those who identify with the cause of Irish Nationalism, while the aim of the Windsor Framework was to provide a viable economic future for NI within the UK union. Yet a united Ireland remains a plausible outcome of Brexit in the long term, regardless of the tactical compromises made by the UK Government in the Windsor Framework. The Framework seeks to practically resolve difficulties that arose in the implementation of the original NI Protocol. However, as we have seen in this study, fundamental issues remain while the Framework may not be sufficient to stem the long-term tide

towards unification. As Naomi Long has suggested, Brexit “has placed Irish unity, and the constitutional question, back front and centre of politics”.⁹³

All that being said, a united Ireland is by no means the inevitable result. While unification implies NI and the ROI should be brought together into a unified constitutional entity, there is much debate about what form the new Irish state should take. It is widely assumed that the long-term effect of the “hard” Brexit path chosen by the UK Government would be to solidify pro-Irish unity opinion. It is not inconceivable that the perceived incompetence of the British governing class and the determination of many Conservative MPs to reject formal ties to the EU, reinforced by deteriorating Irish-UK relations, will lead to further fracturing of the union. Some English nationalist politicians appear willing to countenance NI's departure from the UK as the price of a “genuine” Brexit.

There is no question that discussion of Irish unity gained momentum and urgency in the light of the 2016 referendum. In 2017, the Irish *Oireachtas* commissioned a paper entitled “*Brexit and the future of Ireland: Uniting Ireland and its people in peace and prosperity*”.⁹⁴ The report reviewed options for conducting a unity poll, including the wording of the question posed on the ballot paper. Then in 2020, the ROI Government launched its “*Shared Island Initiative*”, pledging €500 million for cross-border projects to build bridges between communities North and South.⁹⁵ These actions signalled that the Dublin Government was not willing to remain a passive bystander as the unification debate unfolded.

Nonetheless, the road to Irish unity is unquestionably fraught with complexity and uncertainty. Indeed, Brexit may not prove to be the catalyst for unification that some have imagined. It is striking that, at the outset, the Brexit referendum had relatively low salience in NI.

Turnout was 62.7%, lower than on the UK mainland. While 55.8% support for Remain in NI was decisive, it was lower than other Remain-supporting parts of the UK, notably Scotland and London.⁹⁶ It is striking that fewer than 50% of the electorate turned out to vote in West Belfast, a strongly Nationalist and Republican locality. Naomi Long concluded that the Remain campaign did not generate much enthusiasm in NI, since Remain was exclusively focused on the advantages of staying in the UK, a contested issue in NI, especially among pro-European Nationalists.⁹⁷

Garry concludes that voter choice in 2016 was heavily determined by the ethno-nationalist divide: 85% of Catholics voted to remain in the EU, while 60% of Protestants supported leave.⁹⁸ Sinn Féin and the DUP adopted opposing positions, the latter favouring Brexit, the only party with Westminster representation to do so, other than the UK Independence Party (UKIP). Many prominent figures in the DUP insisted that 40 years of EU membership had disproportionately benefited Nationalists in NI. Naomi Long reflected: "I think that there were some in Unionism who wanted to leave the EU to differentiate themselves from the Irish Republic. They felt we were becoming too much the same, we were too closely aligned".⁹⁹

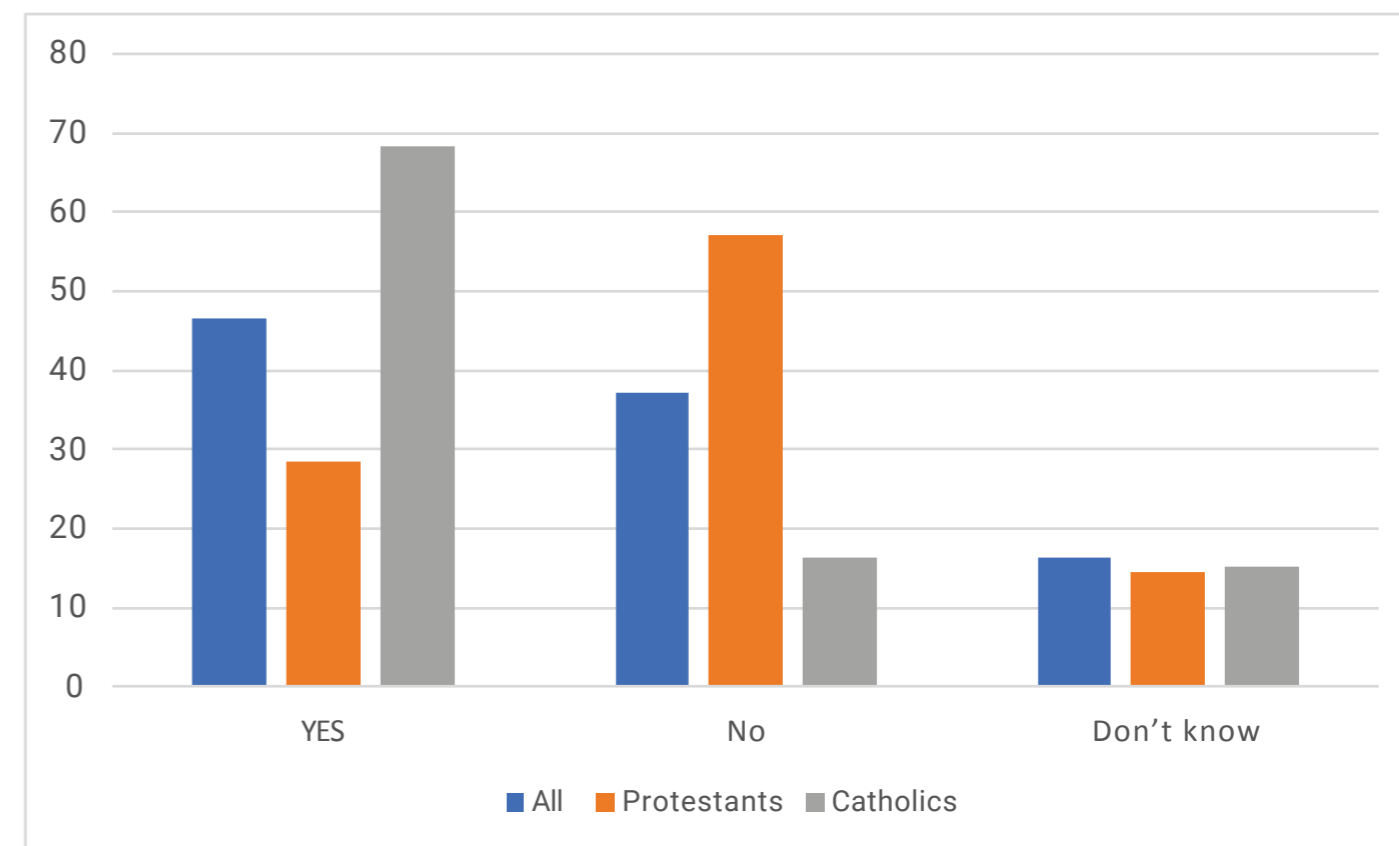
Under the terms of the B/GFA, the decision to hold a referendum on Irish unity remains at the discretion of the UK Secretary of State. For a referendum to take place, there must be robust evidence of majority support for unification among the citizens of NI. The same question would then be put to a referendum in ROI. Both polls would be required to pass by a simple majority, as stipulated by the B/GFA.¹⁰⁰

Without question, changing demography will play a critical role in any future border poll.¹⁰¹ According to the latest census, the size of the Catholic community – a crude shorthand for the population that identifies with Nationalism and the ROI – has already exceeded the Protestant community (the population that invariably identifies with the Union).¹⁰² The uncertainty as to the outcome of a referendum reflects the unknown consequences of demographic change in NI. According to the 2021 referendum, Catholics are

in a majority in NI for the first time. The school-age population is becoming more Catholic, indicating the demographic transition is irreversible.¹⁰³ Nevertheless, it is important to consider that Catholics and Protestants do not necessarily vote for Nationalist or Unionist parties. The fastest growing political identity in NI is those who identify as "neither Nationalist nor Unionist", rising to 50% by 2018 (while growing most rapidly among 18 to 30 year olds).¹⁰⁴ The rise in support for the non-sectarian Alliance and Green Parties in recent elections is particularly striking.

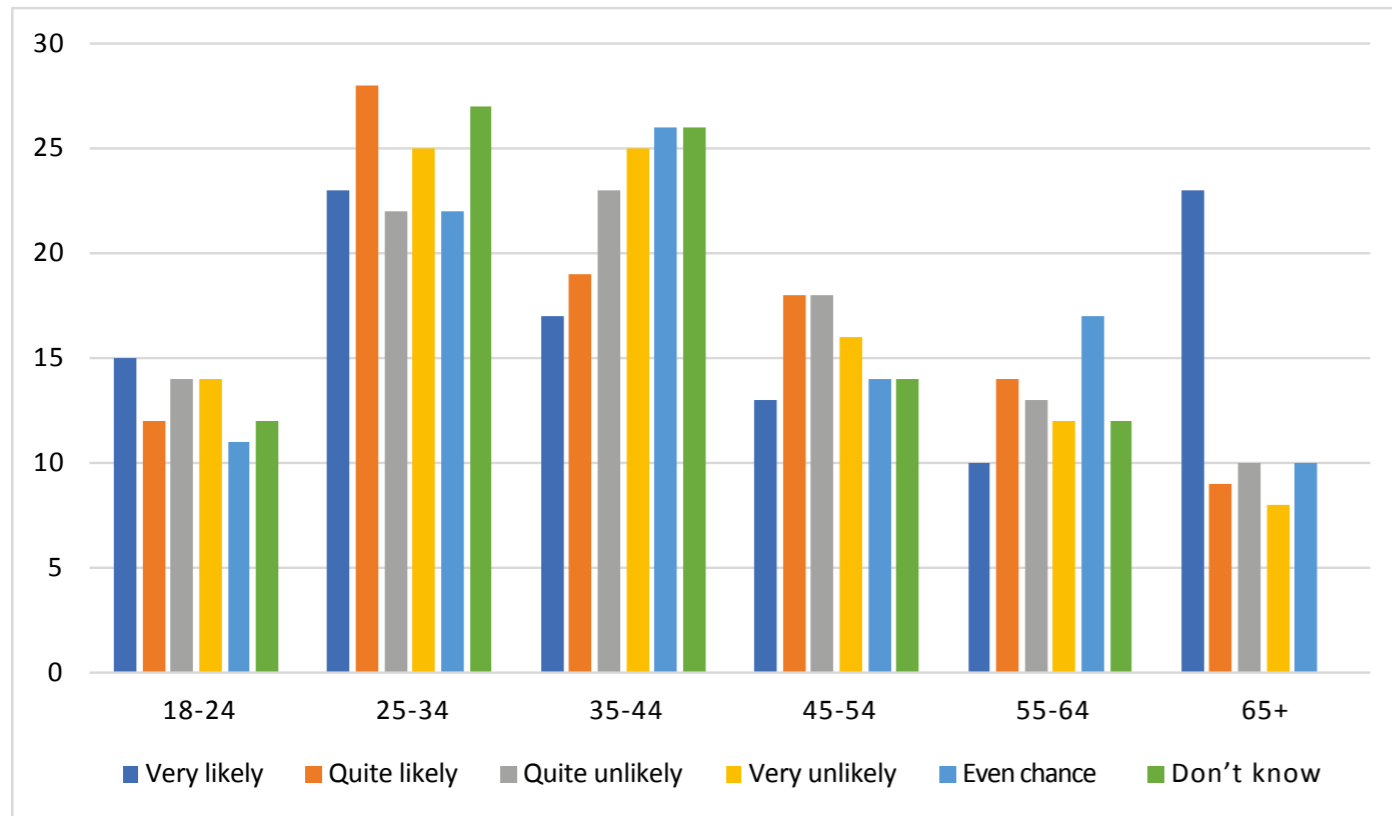
Moreover, Nationalist parties have rarely achieved more than 40% of the vote in any NI election. Polls confirm that, while there is growing support for a border poll (see Figure 1), a majority still favour the constitutional status quo. For example, a poll by Liverpool University/ESRC found that 29% would vote for a united Ireland "tomorrow", while 52% would vote against it. Excluding the "don't knows", 65% favoured the union, while 35% supported Irish unity.

FIGURE 1.
"When the UK leaves the EU, should there be a referendum in NI asking people whether they want NI to remain in the UK or to re-unify with the rest of Ireland?"



Source: Data from <https://www.qub.ac.uk/sites/brexitni/BrexitandtheBorder/Report/Fileupload%2C820734%2Cen.pdf> Accessed May 2021.

FIGURE 2.
Generational differences in “Do you think the United Kingdom will exist in twenty years?”

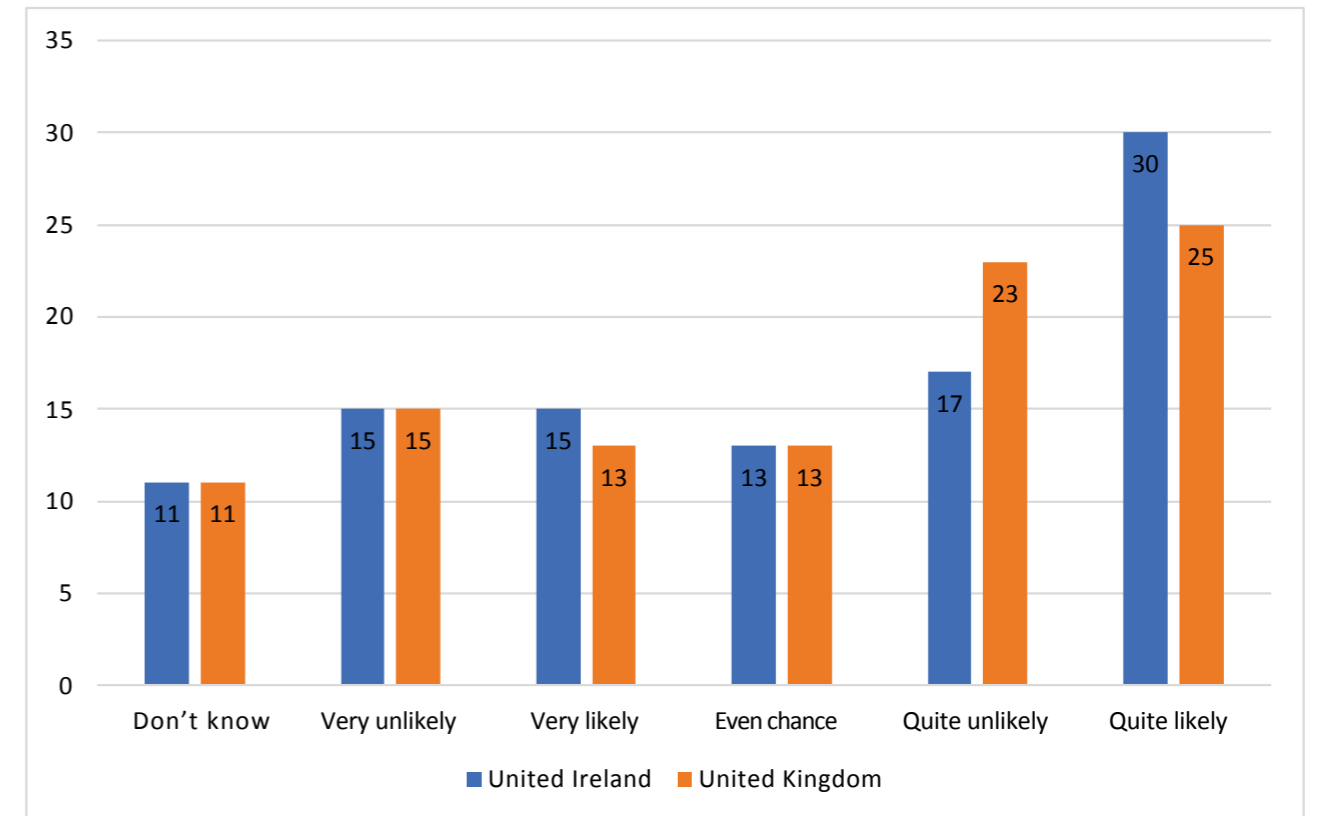


Source: Data from the Northern Ireland Life & Times Survey March 2023: K. Hayward and B. Rosher (2023) "Political attitudes in Northern Ireland 25 years after the Agreement". Research update, 151. ARK.

<https://www.ark.ac.uk/ARK/sites/default/files/2023-04/update151.pdf>

Accessed January 2024.

FIGURE 3.
“Do you think a united Ireland/United Kingdom will exist in 20 years?”



Source: Data from the Northern Ireland Life & Times Survey March 2023: K. Hayward and B. Rosher (2023) "Political attitudes in Northern Ireland 25 years after the Agreement". Research update, 151. ARK.

<https://www.ark.ac.uk/ARK/sites/default/files/2023-04/update151.pdf>

Accessed May 2023.

Nonetheless, it is apparent that the terms of debate about unification across the island of Ireland are shifting. Figure 2 shows that younger generational cohorts are more likely to believe that the UK will not exist in its present form within the next 20 years. The reality is that the ROI is now more economically prosperous, and this may serve to strengthen the credibility of Irish unity as a political proposition. Over time, EC membership has made Ireland less economically dependent on the UK, as the ROI extended its reach into alternative EU-focused markets. There has been a major increase in international trade and investment, employment growth, and the standard of living. Meanwhile, the country's trade balance grew from -340 to 34,651 between 1973 and 2003.¹⁰⁵ EU membership led to the transformation of the Irish economy from agricultural dependence to focus on hi-tech industries and global exports powered by foreign direct investment (FDI) from the USA. The European Commission estimates the Irish economy will grow by 4.9% in 2023-24. The concern that the ROI could simply not "afford" Irish unification may be dissipating.

Other polls found the perceived likelihood of a united Ireland is growing. The most recent NI Life and Times (NILT) survey found that more people in NI expect there to be a united Ireland within 20 years than an intact UK (see Figure 3). Despite that, the outcome of a vote on unification in both the ROI and NI is still difficult to accurately predict. In a recent poll in the ROI, there was support for a referendum on unification: a majority of voters would like to see a referendum take place in the next five years.¹⁰⁶ In ROI, 66% support reunification, while 16% back the status quo. In another poll, 54% of voters polled in ROI supported the "long-term goal of Irish unity", compared to only 25% in NI. Moreover, since the early 2000s, support for unification in ROI has fallen from 70%. A poll conducted for *The Irish Times* found that 62% of people in ROI would vote in favour of a united Ireland, while 16% would vote against.¹⁰⁷ Yet such figures do not reflect the willingness of the ROI's citizenry to accept the compromises a united Ireland would inevitably entail: for example, 79% are opposed to cuts in public spending in the South that would be required to accommodate NI.

The appetite to negotiate over totemic issues such as the national flag, symbols and emblems, and to re-consider the ROI's relations with the British monarchy, remains limited. There has been a continuing reluctance to consider how those on the island of Ireland who wish to continue to identify predominantly as "British" would be accommodated within the new constitutional dispensation.

Indeed, the status of the British monarchy, the currency, the national flag and the foreign policy of the unified state – the Irish state has been steadfastly neutral since its foundation – would feature prominently in any debate about unification, while these issues are not easily resolved. Many voters in the ROI are unwilling to countenance the pragmatic compromises the unification of the island of Ireland would require. For example, 47% are less likely to support a united Ireland if the national flag had to be altered. If Ireland had to agree to re-join the Commonwealth, 54% of ROI voters would be less likely to support unification. The areas where ROI voters are more willing to accept compromise concern guarantees that Unionist politicians would be accorded a formal role in the Dublin Government, while giving Ulster Scots the same status as the Irish language.¹⁰⁸

In NI, a majority would like a plebiscite on Irish unity to take place in the next decade. Yet in recent polls, 50% of voters in NI expressed a desire to remain in the UK, while only 27% supported unification. The 2022 NILT survey found that 47% of respondents would vote to remain in the UK if there was a vote "tomorrow", while 35% would favour Irish unity. That said, 63% of respondents believe that Brexit has made unification more likely, while recent surveys indicate a strengthening of Nationalist identity.¹⁰⁹ Although it is apparent that the community of belonging that identifies with the UK union is in long-term decline in NI, this does not necessarily translate into support for Irish unity. Crucially, of those in NI who identify as neither Catholic nor Protestant, 35% would vote to remain in the UK; only one fifth (20%) currently support Irish unification. While a majority of Catholics in NI support Irish unification, 21% are opposed, while 22% say they "don't know".

Voters in NI appear much less likely to support unification if it means adopting the healthcare system of the South.

Moreover, in NI, support for the union has been stronger historically than Nationalist support for Irish unity. According to recent polling, even a fifth of Sinn Féin voters in NI do not currently support unification. Garry et al. found that, of NI voters, 21% favoured Irish unity, yet 50% wished to remain in the UK.¹¹⁰ For Brexit to lead to substantive change, there would need to be a major catalyst or shock, such as the imposition of a hard border or a severe economic downturn. In reality, factors such as the absence of universal healthcare in Ireland and the size and cost of the NI public sector are likely to be decisive factors in any referendum debate. That many NI Catholics demonstrably benefited from the post-1945 UK welfare state is a complicating factor. Focus groups carried out in the ROI and NI by Professor Brendan O'Leary and Professor John Garry found that, among undecided voters, there was a fear that Irish unification represented an unpredictable step into the unknown, while there was a prevailing mood of "better the devil you know". There were concerns on all sides of the community that unification would lead to a deterioration in the security climate. Moreover, one Unionist reported feeling in a state of a "limbo": he believed the British no longer wished to take responsibility for NI, but that unification risked bankrupting the ROI. That said, some respondents acknowledged the economic benefits of unification, notably building cross-Ireland infrastructure with EU structural funds, while integrating NI into the EU single market and single currency.¹¹¹

Undeniably, the 2016 referendum outcome occurred despite fundamental uncertainty and ambiguity as to the consequences of Brexit for NI. Yet the same problem could be said to apply in any border poll. What options should actually appear on the ballot paper? What precisely does the unification of Ireland entail? What would be the consequences for the economy, identity and security across the island of Ireland? In October 2020, Taoiseach Micheál Martin advocated a "shared island" formula

for promoting North/South co-operation, where he appeared to openly question the viability of a single unified Irish polity given the importance of cross-community consent.¹¹²

Garry et al. have specified two potential unification models.¹¹³ The first is an "integrated united Ireland". Here, NI is assimilated into a unitary ROI state. The second option brings NI within sovereign Irish territory but preserves the power-sharing institutions of the B/GFA, giving Unionists a continuing stake in the governance of NI. A third alternative is for NI to be reconstituted as an independent state, maintaining links to the UK (through membership of the Commonwealth) and to Ireland (through EU membership).

However, it must be said that the recurrent breakdown of devolved government in NI has inevitably depleted confidence in the NI Executive and the institutions of the B/GFA. Hayward and Rosher demonstrate that, while devolution remains the "preferred form of governance" for NI, 42% would like the devolved institutions to have greater powers over tax, welfare benefits and immigration.¹¹⁴ Catholics are especially supportive of NI's post-GFA institutions. They want the Assembly to gain further competencies and responsibilities. While just 16% support the current devolution settlement, only 10% prefer direct rule. Two thirds of citizens believe the GFA is still the "best basis" for governing NI.

If either of the options outlined by Garry et al came to fruition, NI could choose to re-join or re-engage with the EU on its own terms. While the first option of unification reflects the historical aspiration of Nationalists and Republicans, it is likely that only a version of option two would stand much chance of securing the support of some Unionists in NI, and even here there are ongoing doubts. In short, the road to Irish unity appears fraught with uncertainty, while political developments in the next decade will have a critical bearing on how events unfold.

6.2. SCENARIO 2: DETERIORATING RELATIONS BETWEEN LONDON AND DUBLIN WITHIN A FRAGMENTING UK POLITY

The second outcome for NI in the wake of Brexit and the Windsor Framework is further deterioration in relations between the UK and Irish governments amidst growing constitutional turbulence and the prospective breakup of the UK. It is possible that a UK Government in the future might effectively withdraw support for the B/GFA to fulfil the original promise of Brexit by reclaiming national sovereignty, while preventing further regulatory divergence between GB and NI. In recent years, UK politicians have perceived the sovereignty-pooling arrangements at the core of the B/GFA to constrain their ability to separate the UK from the EU, while threatening the territorial integrity of GB. Ministers in the Johnson administration repeatedly asserted that Great Britain continued to have a direct strategic interest in NI, insisting the UK ought to be recentralised, scaling back devolution and reclaiming Westminster sovereignty. Johnson's chief Brexit negotiator, David Frost, publicly stated that he did not see any problem, in principle, with an Irish land border.

As we have seen, in the 1970s and 1980s, EU membership served to normalise Irish-UK relationships. By the late 1990s, the UK polity had been transformed by devolution not only to NI but Scotland, Wales and London, creating a system of multi-level governance. Yet EU withdrawal imposed myriad strains on the UK's devolution settlement, which threatened to further undermine Irish-UK relations. Curtis and Montagu note that support for Scottish independence has grown among those in Scotland who voted to remain in the 2016 EU referendum.¹¹⁵ As such, Brexit not only threatens political stability in NI, but the entire UK devolution settlement.

The rise of English nationalism within the British Conservative Party and the growth of support for Scottish independence have threatened to further destabilise politics on the island of Ireland. If Scotland votes to unilaterally leave the UK in the foreseeable future, NI could be left as an "orphan

state" within a fragmenting British polity increasingly disowned by Conservative ministers who calculate that it may now be preferable for England to "go it alone" as an independent nation, bringing the 1707 Union to an end. The ROI would then be confronted by political turbulence on its border, yet without consent from the Unionist community for Irish unification, with major implications for security and economic policy.

Of course, NI is unique in the UK devolution context, having had a parliamentary assembly intermittently since 1921. The nature of the peace process makes NI distinct from other UK nations, notably Scotland and Wales. Devolution after 1998 transformed NI's position within the UK, conferring unprecedented powers on the NI Assembly based on principles of political pluralism, power sharing and mutual consent. A proportional electoral system was adopted to ensure all sections of the community were represented in the institutions. The creation of the Assembly encouraged the domestication and normalisation of NI's agenda: education; health; welfare; and economic development became devolved issues. The UK was emerging as a "quasi-federal state" characterised by growing decentralisation of power within the context of EU membership.

The most significant constitutional issue is that the B/GFA enables NI citizens to enjoy the rights of EU membership, an important guarantee of citizenship for the Nationalist community. The Agreement's achievement was that, for Unionists, it took the border out of politics and normalised NI's position within the UK; for Nationalists, the GFA took the border out of the island of Ireland.¹¹⁶ Yet the tension created by the B/GFA in the context of Brexit is that "Its citizens have Irish citizenship by birth, should they choose to exercise it. It has a permanent right to secede, established in treaty, which is much more explicit than Scotland's".¹¹⁷ Brexit disrupts the precarious political balance in NI. It is far from clear that the Windsor Framework can maintain the "constructive ambiguity" the Agreement has thus far encouraged.

Moreover, the deterioration of relations between London and Dublin is more likely to continue if, in

the wake of Brexit, the Irish state deepens its commitment to European integration. Some scholars argue Brexit will inevitably draw Ireland closer to the EU, leading to further Europeanisation.¹¹⁸ Brexit poses a fundamental question for the ROI about whether to align itself more closely with the EU. Of course, Ireland's ties to the USA have endured historically, reflecting the importance of US economic support and FDI, underlined by the sympathetic presence of President Biden in the White House. Yet Biden has encouraged the Irish Government to remain close to the EU. Irish policymakers are fully aware of the diplomatic and political advantages of EU membership in the aftermath of the withdrawal negotiations. There is no evidence to support the assertion of the leading Brexit supporter and former Conservative minister Jacob Rees-Mogg that the ROI would follow the lead of the UK by itself withdrawing from the EU.

Worsening relationships between London and Dublin are further exacerbated by economic strains. The country most affected economically by Brexit after the UK is Ireland. Total trade in goods and services between the UK and Ireland in 2020 was £53.6 billion, 16.1% (£10.3 billion) down from the previous year, although trade has recently recovered.¹¹⁹ Ireland is the UK's fifth largest export market and the seventh largest source of imports.¹²⁰ The demand-and-supply shock of the UK's EU withdrawal has been significant for the ROI, with the impact felt most acutely in sectors such as agriculture. Irish agriculture is a particularly exposed sector. Although agriculture now contributes only 1% of Irish GDP, 40% of all agri-food products enter the UK market, while the sector makes up nearly 9% of Irish employment; those jobs are concentrated in rural areas, where alternative sources of employment are scarce.¹²¹

Moreover, Brexit is reconfiguring Ireland's supply chains. In 2019, Irish exports valued at more than €18 billion travelled across the UK "landbridge".¹²² Hauliers experienced significant delays alongside new checks and costs since Brexit and the Protocol; traffic on the route in the first months of 2021 fell almost 50%.¹²³ Not surprisingly, new sea routes bypassing the UK have been established,¹²⁴ epitomising ROI's pivot away from dependence on the UK towards trade in the EU single market.

Meanwhile, Flynn et al. demonstrated that "Irish imports from and exports to Great Britain declined sharply following Brexit".¹²⁵ Other studies show Brexit's impact on Ireland's trade has so far been limited, as the service sector continues to perform strongly. The Irish economy has performed well in the last three years: the European Commission estimate Ireland's economy will grow by 5% in 2024-25 with inflation falling rapidly, although cost-of-living pressures have remained acute. The ROI has a growth model focused on attracting FDI and international capital flows maintaining low rates of personal and corporate taxation, alongside flexible regulation in financial services. Ireland is positioning itself as the gateway to European markets for US firms. In the last year, Ireland had the fastest growing economy in Europe.

Nonetheless, EU withdrawal will continue to impose unprecedented strains on the political economy of both the UK and Ireland that may provoke tensions. If Brexit's impact leads to a breakdown in co-operation between the UK and Irish governments, London is even more prone to act unilaterally in NI, as it has done increasingly in recent years. The risk is that, as a consequence, borders (both on land and at sea) will once again become the focal point for polarisation, precipitating a worsening security situation. Episodes of public disorder in the spring and summer of 2021 across the province, and the murder of journalist Lyra McKee during rioting in 2019, underlined the potential for violence to re-emerge.¹²⁶ NI society may not be in immediate danger of returning to the pre-B/GFA situation, but vigilance is certainly needed.

The B/GFA's defining achievement was delivering a prolonged cessation of violence, establishing political institutions that helped to sustain the peace process. Yet the UK's withdrawal from the EU threatens to undermine the precarious balance underpinning the coexistence of communities, imperilling the hard-won peace. The remark of then NI First Minister Arlene Foster that the integrity of the Union affirmed by the absence of a border in the Irish sea was a "*blood red line*" emphasised how much was at stake.¹²⁷

Given Brexit's impact on the political economy and constitutional status of Irish-UK relations, there is concern that EU withdrawal will threaten community cohesion.¹²⁸ Brexit has reignited political conflict and polarisation. A fresh security crisis, particularly if either border becomes a focal point for sectarian conflict, will inevitably follow.

The B/GFA was unique in allowing NI citizens to choose to identify as British, Irish, neither or both. While sectarian identities remained an inherent part of NI society, EU engagement afforded a "neutral space" for politicians and civil servants across Ireland and the UK, enabling "habits of cooperation". Moreover, EU funding created obvious advantages. Deliberate dismantling of such ties in the wake of Brexit – not least through maximising regulatory divergence between the UK and EU – contradicts the terms of the B/GFA and has had a detrimental impact on politics in NI. The UK Government has been unwilling to acknowledge that a significant proportion of NI citizens carry Irish passports and are, therefore, EU citizens. The Windsor agreement did reflect efforts by the UK Government to re-engage with Dublin. Yet the Framework does not actually address any of the fundamental issues about how to create a post-Brexit dispensation in NI that acknowledges the legitimate role not only of the UK and Irish Governments, but international actors that have a genuine stake in the peace process, including the EU itself.

6.3. SCENARIO 3: "MUDDLING THROUGH" WITH POLITICAL INSTABILITY

The final scenario is "muddling through" accompanied by ongoing political instability. Under this state of affairs, it is envisaged that the UK and Irish Governments will continue to abide by the principles of the B/GFA, while the strains imposed by Brexit mean that ministers will act pragmatically, protecting the integrity of NI's institutions. The Irish Government is determined to maintain stability given there is not yet agreement about how quickly to pursue Irish unity, alongside continuing uncertainty as to what the unification settlement should look like. The UK Govern-

ment, distracted by the troubled performance of the economy and the ongoing threat of the fragmentation of the Union, should have little desire to destabilise the B/GFA. As such, we might expect that ministers in London will seek to manage the precarious politics of devolution and the UK union, doing their best to "muddle through".

This is the policy followed so far by Rishi Sunak's government, exemplified by the negotiation of the Windsor Framework and the subsequent 2024 command paper. There is no attempt to directly undermine previous arrangements and an acceptance that the UK Government has to maintain constructive relations with Dublin and Brussels. British politicians claim "business as usual" should prevail. It is acknowledged there is support for the devolved institutions across communities. All sides of the political community have a shared interest in re-establishing the Executive and the NI Assembly at the very core of devolved governance. Nationalists wish to uphold the spirit of the B/GFA, which they support, while Unionists regard workable devolution arrangements as a bulwark against Irish unification.

As such, the UK and Irish governments will seek to continue the strategy of "constructive ambiguity", forging workable post-Brexit governing arrangements. This tactic is encouraged by the fact there are striking similarities between the Irish and UK economies given significant interdependence and shared interests. Both Ireland and GB have relatively high levels of FDI. Both economies became increasingly dependent on the financial services sector. Like Ireland, the UK gained comparative advantage, as its growth regime relied on a high rate of technology diffusion and ICT-intensive production. Since the 1990s, both countries followed similar supply-side strategies focused on labour-market flexibility, liberalisation of product and capital markets, and increasing human capital investment.¹²⁹

Drawing on neo-functional theories of EU integration, Tannam infers that, during this period, shared economic interests spilled over into political cross-border co-operation between the UK and the ROI.¹³⁰ The two states shared longstanding ties of ge-

ography and trade, while their economies were structurally interlinked. In 2018, UK exports to Ireland were worth £34 billion (5.5% of all UK exports) and imports were £21.8 billion (3.4%).¹³¹ In that context, it might be argued that London and Dublin have little choice but to co-operate, whatever the messy compromises that might entail.

The Nationalist SDLP have advocated various measures, including "Securing all island representation in the European Parliament, Committee of the Regions and other European structures to ensure direct dialogue between the European institutions and Northern Ireland". In the months immediately after the 2016 referendum, leading SDLP politicians pushed for NI to be given "special status" within the EU. More recently, the party sought to strengthen political support for the NI Protocol, given its importance in preventing the restoration of a hard border on the island of Ireland. Moreover, while Unionists opposed Sinn Féin and the SDLP's advocacy of "special status" for NI in the EU, many Unionists acknowledged the necessity of pragmatic co-operation with the ROI over the border, security, public health, the common travel area, electricity supply and agriculture. As such, all sides

would make a determined effort to apply the resulting WA and Protocol flexibly. The Windsor Framework and subsequent negotiation is the result of ongoing political co-operation.

Yet it is important to acknowledge that the TCA, NI Protocol and Windsor Framework are likely to remain transitional arrangements. The Windsor Framework relies on the EU's goodwill, while the European Commission may in future decide to reimpose more detailed customs checks to protect the integrity of the EU single market. The long-term future of NI is still not resolved, while UK governments will have to recognise the difficult position for NI in danger of being stranded in "no man's land" between the UK and EU economies. These factors are likely to perpetuate instability, confusion and uncertainty in NI politics. The UK Government must be willing to adopt a considered strategy in conjunction with its Irish and EU partners. Yet recent experience indicates British ministers are unlikely to discard the time-honoured approach of improvisation and "muddling through". In this context, the EU must consider what constructive role it can continue to play in sustaining peace on the island of Ireland.

CONCLUSION

7. CONCLUSION

The EU has historically played an important role in securing peace across the continent of Europe.¹³² Since the Brexit referendum, it has played its hand carefully. EU institutions have sought to work with both the Irish and UK Governments, while the EU's aim remains to foster mutual understanding between communities, rather than persuading either side to accept a political settlement that it perceived to be against its interests. Financial support through the PEACE programme has been an extremely important instrument wielded by the EU to encourage more harmonious relationships. It is striking that the EU is still among the most trusted political institutions in NI. Only 17% in NI trust the NI Executive, while just 21% trust the UK Government; yet 37% trust the EU (although levels of trust in the EU among Unionists are lower).¹³³

Even so, in the aftermath of Brexit and the process of EU withdrawal, it has become significantly harder for European institutions to play the role of “honest broker” in NI. During the withdrawal negotiations, the European Commission inevitably took the side of the Irish Government. Indeed, for the government of ROI, the WA was a diplomatic triumph. Meanwhile, Unionists in the intervening period became more hostile towards Europe. They blamed the EU for the NI Protocol, which led to the imposition of a border in the Irish Sea, apparently cutting NI off economically from the rest of the UK. Yet it was the UK Government that made the Protocol necessary by rejecting membership of the single market and a customs union.

Nevertheless, while it is tempting for the EU to disengage from the current political situation in NI in a world where there are multiple threats and challenges, not least the war in Ukraine, doing so would be detrimental to the historical role of the EU as a European-wide peace project. Moreover, a large num-

ber of citizens in NI hold ROI passports and are, by extension, citizens of the EU. NI remains within the EU single market for goods, in which EU rules and regulations continue to apply. The EU is unlikely to ignore its strategic interest and role in NI.

The formal space the EU affords to develop diplomatic relationships between the Irish and UK Governments no longer exists, although joint working can continue through the institutions under strands two and three of the B/GFA. Meanwhile, the weakness of NI's political institutions is exacerbated by ongoing constitutional upheaval. The British Conservatives remain a Unionist party, yet their commitment to safeguarding NI's status has come under growing scrutiny. Meanwhile, the reassertion of the UK's strategic claim over NI in the name of “muscular unionism” is likely to prompt continuing disagreement with Dublin. Even if London adopts a more pragmatic approach – as was the case in negotiating the Windsor Framework – it is likely that “muddling through” will not be enough to calm growing tensions, especially given the WA and NI Protocol are the focus of conflict and contestation.

The UK's departure from the EU does not fundamentally alter the B/GFA's power-sharing arrangements. Yet Brexit raised new concerns: it disrupted the delicate institutional balance in NI. The negotiation of the Agreement presumed joint UK and ROI membership of the EU. Meehan argues that the EU provided a discursive framework, emphasising power sharing and the reimagining of sovereignty, conducive to the amelioration of ethno-nationalist conflict in NI.¹³⁴ As such, EU engagement helped redefine the long-standing Irish sovereignty question. The UK Government in due course adopted “post-sovereign EU norms”, acknowledging the British could only achieve the aim of ending the NI conflict by working with other governments.¹³⁵ Co-operation was vital in

sustaining the peace process, even if London was, at times, less willing to acknowledge the EU's decisive role. Yet with the UK outside the EU adopting increasingly unilateralist positions, after opting for a "hard" Brexit, there is a danger that norms and "habits of co-operation" will be eroded further. Meanwhile, Brexit compels Ireland to align itself more closely with the EU. The challenge for EU institutions is that, having historically played the role of neutral arbiter, they could be drawn into conflict with the UK Government, and perhaps even Unionism. All sides should work to avoid that outcome.

Even if there are intermittent and successful efforts to restore the institutions of devolved governance, the threat of political instability is likely to continue. Since 2016, a vision of Brexit that implies active dismantling of ties to the EU has made NI's future more politically turbulent. Crucially, unilateral action by the UK Government will threaten support for the peace settlement among Nationalists, undermining NI's ties to Europe. Among Unionists, the imposition of an Irish Sea border through the NI Protocol constituted an existential threat to the territorial identity of their political community. The Windsor Framework was an attempt to assuage Unionist concerns, but it did not prove effective and further commitments had to be made in the recent command paper to safeguard NI's position within the UK union.

Moreover, Nationalism and Unionism in NI are ethno-political identities undergoing a process of rapid evolution. Nationalists in NI have to confront their relationship with the ROI, which has been transformed over the last 50 years into a prosperous, increasingly liberal, multicultural society that may nonetheless be unwilling to broker the compromises necessary to achieve an inclusive vision of a unified Ireland that can accommodate Unionism.¹³⁶ Evolving conceptions of Britishness, meanwhile, compel Unionists to revisit their historic attachment to the UK against the backdrop of the rise of English nationalism, which imposes unprecedented strains on the Union. All in all, revitalising the original peace settlement becomes harder, as Brexit has reawakened various sectarian and identity conflicts. Further instability in NI politics and society appears all but inevitable.

In this context, the EU should seek to play a constructive role in forging cross-community contact and effective governance in NI.

Firstly, EU institutions need to consider how to engage with different actors in NI, particularly the NI Unionists. While the EU is not a signatory to the B/GFA that "does not downplay the need for Brussels to understand Unionist concerns".¹³⁷ The EU has announced that it will continue to provide funding to NI for the 2021-27 programme period. The EU's contribution amounts to €235 million alongside co-funding from the UK and Irish Governments, totalling an investment in NI of €1.1 billion. Funding approved by the European Parliament has also been directed at NI itself, alongside the border counties of the ROI. Managed by the Special EU Programmes Body (SEUPB), PEACE-PLUS targets investment in key areas, notably:

- building peaceful and thriving communities;
- delivering socio-economic regeneration and transformation;
- empowering and investing in young people;
- healthy and inclusive communities;
- supporting a sustainable and better-connected future; and
- building and embedding partnership and collaboration.

This financial and political commitment from the EU is welcome and must be sustained to foster cross-border co-operation and mutual understanding between communities in NI. Despite the continuation of PEACE funding, NI will no longer be able to access European Social Funding after 2024, while there are concerns that the UK Government will not be in a position to replace lost financial support from the EU. The European Parliament should consider how it can continue support programmes targeted at the most disadvantaged communities in NI, alongside the civil society organisations that have helped to strengthen social cohesion in recent decades.

Secondly, the question of "special status" for NI within the EU needs to be re-examined. The Irish Government and Sinn Fein have argued that NI should be given that status so that both NI and the ROI can remain in the EU. It has been claimed that this position is untenable given that, constitutionally, NI is part of the UK and the UK voted to leave the EU in 2016. Nonetheless, for the last 50 years or so, special constitutional arrangements have been applied to NI by UK governments as a necessity. Over a third of NI's population (660,460 citizens) currently hold an Irish passport and, as such, remain citizens of the EU. It is striking that David Davis MP (then Secretary of State at DEXU) said during a hearing of the UK Parliament Brexit Sub-Committee that, "the UK Government acknowledges that Northern Ireland has the right to re-join the EU", a pronouncement subsequently backed up in a government letter.¹³⁸

Nationalists would no doubt welcome the granting of special status, which would affirm that citizens in NI are EU citizens if they hold an Irish passport, but Unionists may also perceive benefits to such arrangements. For the Windsor Framework to endure, the UK Government has to recognise the legitimate role of the EU in NI. Indeed, pragmatically acknowledging the ongoing role of the EU in NI's affairs may curb the seemingly inexorable drift toward Irish unification, preserving the delicate balance enshrined in the B/GFA. The future status of NI in relation to the EU should be included within the citizen-led "Future of Europe" debates initiated by the European Commission, currently being organised under the Belgian presidency, as well as discussions concerning the European Political Community.

Thirdly, social democratic parties in Europe should play an active role, working with sister parties in NI and other democratic parties committed to peace. The history of NI demonstrates that intra-party contact helps to build trust and diplomacy while furthering peacekeeping efforts. The SDLP continues to be an influential and constructive member of PES. Yet social democrats in Europe must also sustain contact with political parties that identify with the Unionist tradition in NI, while continuing to lobby for funding and supportive policies to en-

trench community cohesion and the peace process in the aftermath of Brexit through the European Parliament. Moreover, PES can play a critical role in normalising the political and policy agenda in NI, focusing on core economic and social issues from jobs to childcare provision. Many of NI's citizens want to move beyond "orange and green politics".¹³⁹ All communities benefit from initiatives that promote employment, a strong welfare state, social protection, human rights and dignity, all measures that the PES has long championed.



an enormous success. Violence has been dramatically reduced, and most people in NI feel safer, more prosperous and better able to live easily. Relationships between the communities, as well as political relations across these islands, are also unrecognisably better than they were during the Troubles.



The negotiation of the B/GFA in 1998 brought a decades-long period of political violence and bloodshed to an end, an outstanding achievement of diplomacy and statecraft by the UK and ROI Governments, alongside the myriad parties in NI. There is little doubt that the EU as a historical peace project served as an important inspiration. The founding principle of the EU is "to ensure peace within its borders and in the neighbouring countries". The B/GFA Agreement is rightly viewed as:

"an enormous success. Violence has been dramatically reduced, and most people in NI feel safer, more prosperous and better able to live easily. Relationships between the communities, as well as political relations across these islands, are also unrecognisably better than they were during the Troubles."¹⁴⁰

The lesson of the B/GFA is that making politics work requires patience, pragmatism and tenacity on all sides, as the NI Protocol, Windsor Framework and subsequent negotiations exemplify. There is little alternative in achieving a more stable and harmonious future for all communities across the island of Ireland.



HISTORICAL OVERVIEW OF NI HISTORY AND POLITICS

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- 1920:** Ireland is partitioned, with Dublin as the capital of 26 counties, while six Northern counties remain part of the UK.
- 1921:** Establishment of the Irish Free State.
- 1948:** Republic of Ireland is created.
- 1968:** First civil rights marches take place in NI.
- 1969:** Wilson Government orders British troops into NI ostensibly to protect the Catholic minority from sectarian violence.
- 1972:** Bloody Sunday, when 13 civilians are killed by the British army. Imposition of direct rule from London.
- 1985:** Anglo-Irish Agreement is signed following extensive negotiations between London and Dublin.
- 1993:** Downing Street Declaration is negotiated, in which the UK Government commits to enabling the people of NI to determine their own future. Sinn Fein is to be allowed to enter talks, providing it renounces violence.
- 1998:** Good Friday Agreement is signed, establishing NI's devolved power-sharing institutions.
- 2002-24:** NI institutions are created but settle into a recurrent pattern of collapse and restoration.
- 2016:** The UK electorate votes to leave the EU.
- 2020:** The EU Withdrawal Agreement and the NI Protocol are finally agreed between the UK Government and EU negotiators. The UK departs the EU.
- 2023:** The Windsor Framework is signed to rectify initial problems in the NI Protocol.
- 2024:** The UK Government publishes the command paper "Safeguarding the Union" to address objections to the Windsor Framework and re-establish power sharing in NI.

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ABOUT THE FEPS & PARTNERS

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ABOUT THE FOUNDATION FOR EUROPEAN PROGRESSIVE STUDIES (FEPS)

TFEPS is the European progressive political foundation and think tank of the progressive political family at the EU level. Our mission is to develop innovative research, policy advice, training and debates to inspire and inform progressive politics and policies across Europe.



ABOUT THE THINK-TANK FOR ACTION ON SOCIAL CHANGE (TASC)

TASC is an independent progressive think-tank whose core focus is addressing inequality and sustaining democracy.



ENDNOTES

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This policy study argues that the EU must continue to play an active and constructive role in Northern Ireland, using its resources, legislative remit and diplomatic influence to forge cross-community contact, social cohesion and effective governance. Since the 2016 referendum on EU membership, a model of Brexit that implied active dismantling of ties to the European Union (EU) has made the political context in Northern Ireland significantly more precarious. Crucially, unilateral action by the UK Government in denial of the EU's ongoing role in Northern Ireland risked undermining support for the peace settlement among Republicans and Nationalists. Within Unionism, the imposition of an Irish Sea border, as a consequence of the Northern Ireland Protocol, constituted an existential threat to the territorial identity of that political community. The Windsor Framework agreed in the spring of 2023 was an effort to assuage Unionist concerns. Yet, the agreement did not succeed in restoring power-sharing institutions, while the political environment has become more volatile and unstable.

The UK's departure from the EU does not directly alter the power-sharing arrangements elaborated in the Belfast/ Good Friday Agreement (B/GFA). Even so, Brexit poses innumerable difficulties: leaving the EU disrupted the delicate institutional balance in Northern Ireland. The negotiation of the B/GFA presumed dual UK and Republic of Ireland membership of the EU. In fact, the EU provided an influential political framework emphasising power sharing and the reimagining of sovereignty. As such, EU engagement helped to redefine the long-standing "Irish question". The UK Government, in due course, adopted "post-sovereign EU norms", acknowledging the British could only achieve the objective of ending the NI conflict by working with other governments in a European context. As such, co-operation between the UK and Irish governments has remained vitally important in sustaining the peace process.

Yet, with the UK outside the EU and adopting increasingly unilateralist policy positions after opting for a "hard" Brexit, the risk is that norms and "habits of co-operation" are likely to be eroded. While the institutions of devolved governance were temporarily restored in early 2024 as the result of amendments to the Windsor Framework, the risk of political instability remains considerable. The study considers how to map out a constructive way forward for all of Northern Ireland's citizens and communities.

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