



Queen's Policy Engagement Brexit Clinic

06 November 2018



Professor David Phinnemore (@DPhinnemore)



March 2019						
Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
25	26	27	28	1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31
1	2	3	4	5	6	7

587 days since the UK government triggered Article 50 on 29 March 2017:

- terms of withdrawal have still to be agreed
- political declaration on future UK-EU relationship has still to be agreed

November 4, 2018 · Issue no 10,130 · thesundaytimes.co.uk

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LIDL

May's secret Brexit deal
Breakthrough on Irish border as PM woos Tory rebels

EXCLUSIVE
Tim Shipman
Political Editor

Theresa May's secret plan to secure a Brexit deal and win the backing of parliament can be revealed today.

Senior sources say the prime minister has secured private concessions from Brussels that will allow her to keep the whole of Britain in a customs union, avoiding a hard border in Northern Ireland. They expect this to placate remainder Tories and win over some Labour MPs.

And in a move that will appeal to Eurosceptics, May is also said to be on course to secure a political deal on a "future economic partnership" (FEP) with the European Union that will allow Britain to keep open the prospect of a free trade deal resembling that enjoyed by Canada.

The Sunday Times has been told that preparations for a final deal are far more advanced than previously disclosed and will lead to a document of 50 pages or more when it is published – not the vague, five-page plan many expect.

Cabinet sources say parts of it "could have been written by Jacob Rees-Mogg", the leader of the hardline Eurosceptics.

A close aide of Michel Barnier, the EU negotiator, revealed a major concession on the Irish border during a private meeting in London last week. The EU now accepts that regulatory checks on goods can take place "in the market" by British officials, meaning they can be conducted at factories and shops rather than at the border.

Douglas Street officials are desperate to see enough progress on this week for the EU to announce a special summit later in November to discuss the final details. May will discuss the proposals with her cabinet on Tuesday. Under the plan, Britain will disengage from the legally binding withdrawal agreement so an

EU-designed "backstop" treating Northern Ireland differently from the UK mainland is not required.

There will be an "exit clause" to convince Eurosceptics the UK will not be in it for ever.

The FEP will outline how a new trade deal would balance market access and border checks, making clear that a deal along the lines of the EU's arrangement with Canada is still a possible outcome as is alignment.

May will tell the plan by Tuesday. She will also tell the plan by Tuesday.

THE FINAL COUNTDOWN
Tuesday Cabinet discusses May's plan
Friday May hopes to show enough progress for EU to announce a special summit
November 15 or 22 Possible dates for summit
December Commons vote on the deal

unless they support it, they will be personally responsible for causing a no-deal Brexit, which most regard as a potential disaster.

Felling remains that May fought for the closest possible alignment until the last minute, but that she negotiates mean Britain will not be a full member of the customs union for ever.

Not admitting to public that she has ditched her Cheques blueprint, but signalling privately that she will allow a "pivot" towards a final deal.

The Sunday Times has pieced together the plan after speaking to a dozen ministers, advisers, civil servants and EU officials.

The challenge May faces in winning support for the plan is split in two parts today by David Davis, the former Brexit secretary.

Writing in this newspaper, he issues a call for the prime minister to publish legal advice on any deal its implications before they are agreed to vote on it.

Davis warns May that she will get in the same "meat" as Tony Blair did over the Iraq war unless she is transparent about the legal basis for "one of the most fundamental decisions that a government will have taken in modern times".

He writes that Blair's reputation "never recovered" after he refused to publish the legal advice of his attorney general, Lord Goldsmith, on Iraq. When it leaked during the 2005 general election campaign it revealed Goldsmith's doubts about the legality of war.

It's now time to publish the legal advice the cabinet has received – no ifs and no buts," Davis writes. "Blair suffered because he wriggled and prevaricated. I would urge the prime minister to do the right thing and publish the legal advice, if she won't, the authority to compel her to do so."

"We need the cards laid on the table so that we can form a judgment on whether to do more to support the mental health of the party."

The government has a suicide minister but I am not sure if knew how to handle a suicide minister. That needs to change," he said.

ANATOMY OF A DEAL TIM SHIPMAN, PAGES 16-17

Sexting minister: I was having breakdown
EXCLUSIVE
Caroline Wheeler
Deputy Political Editor

A disgraced MP forced to resign as a minister after bombarding two barmaids with more than 2,000 explicit text messages today reveals that he was suffering a "manic episode" – and then had a breakdown and spent 31 days in a mental health hospital.

In an interview with The Sunday Times, Andrew Griffiths, 46, who is married with a baby girl, said that he planned suicide after he was caught sexting barmaid Imogen Trehan, 26, and her friend, the minister for small business, Griffiths called himself "tiddy", and described sex in racy images he has had with other women. Griffiths will discover his political future next week when an internal disciplinary panel is expected to deliver its verdict on whether he can remain in the Tory party.

In his first public words since the scandal broke in July, Griffiths says he is "working on his marriage" with wife Kate, 47, who had their first child, Alice, in April.

He describes a history of mental problems since he was abused as an eight-year-old by a 15-year-old boy. He says he suffered depression as he and his wife struggled with his mental illness, weeks before his mental collapse, learnt that his brother had been diagnosed with cancer.

When Alice was born, Griffiths says he became obsessed with his did not suffer the way he had.

"What I have realised is that mental health is bloody and brutal and completely inexplicable and I can't explain why my coping mechanism was to send those texts," he said. "Just like people can't explain why they cut themselves, it was just something in my mind-set that I needed to do to cope with that time."

He said the party and parliament needed to do more to support the mental health of MPs.

"The government has a suicide minister but I am not sure if knew how to handle a suicide minister. That needs to change," he said.



Is a deal on a Withdrawal Agreement in sight?



'A mess': Irish border issue continues to hamper Brexit progress

Theresa May's chances of striking Irish border deal '50-50', say EU officials

As la
prop

EU and British red lines remain incompatible as negotiations enter final stage



Ingredients of a Solution?

(a) 'all-weather' NI backstop (including EU customs union and regulatory alignment for free movement of goods)

plus

(b) 'time-limited' UK-wide customs union backstop from which UK can unilaterally withdraw

plus

(c) Political declaration on future UK-EU relationship

A deal ... and an orderly withdrawal?



European Union
(Withdrawal) Act 2018

CHAPTER 16

Explanatory Notes have been produced to assist in the understanding of this Act and are available separately

£16.50

Four conditions for UK ratification:

1. the following have been laid before Commons and Lords: a statement that political agreement has been reached; a copy of the negotiated Withdrawal Agreement; a copy of the framework for the future UK-EU relationship
2. the negotiated Withdrawal Agreement and the framework for the future UK-EU relationship have been approved by a resolution of the Commons
3. a subsequent debate has taken place in the Lords
4. Parliament has passed legislation to implement the Withdrawal Agreement.

Process for EU approval

European Parliament:

simple majority of MEPs

Council:

super-qualified majority: 72% of member states (i.e. 20) comprising at least 65 % of the population

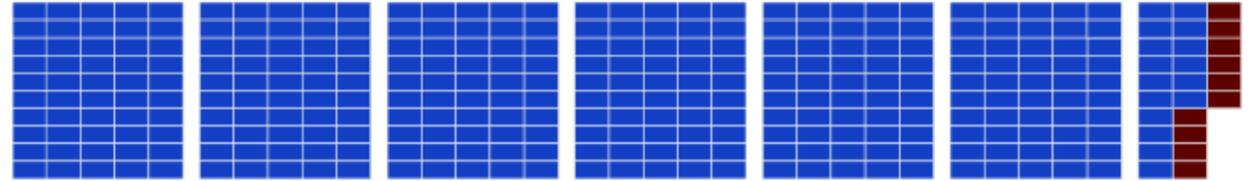
November	Withdrawal Agreement/ Political Declaration
December	Meaningful vote – Commons
January	Lords debate
February	Implementing legislation
March	UK ratification; EP Consent; Council Approval

A deal ... but no deal?



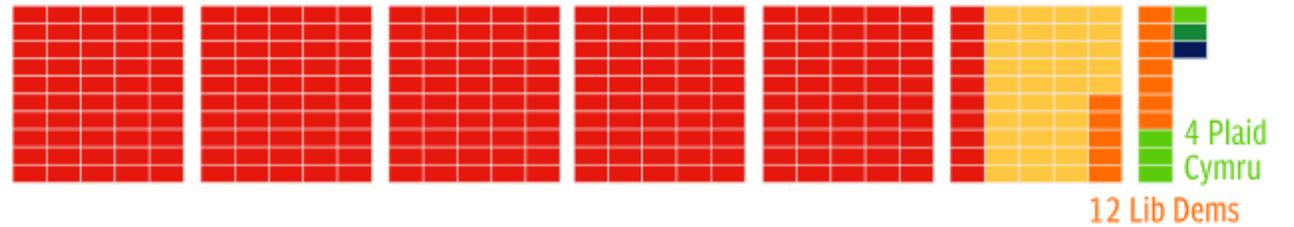
The Government has 326 voting MPs

316 Conservatives have a confidence and supply deal with 10 DUP MPs



Opposition parties have 313 voting MPs

260 Labour MPs



Non-voting members (11 MPs)

7 Sinn Fein MPs

4 Speakers



Daily Telegraph, 16 October 2018

- Conservative Brexiteers (30-80 MPs) to vote against government?
- DUP (10 MPs) to vote against government?
- Opposition to vote against government?
- Labour rebels to vote with the government?
- Opposition MPs to abstain?

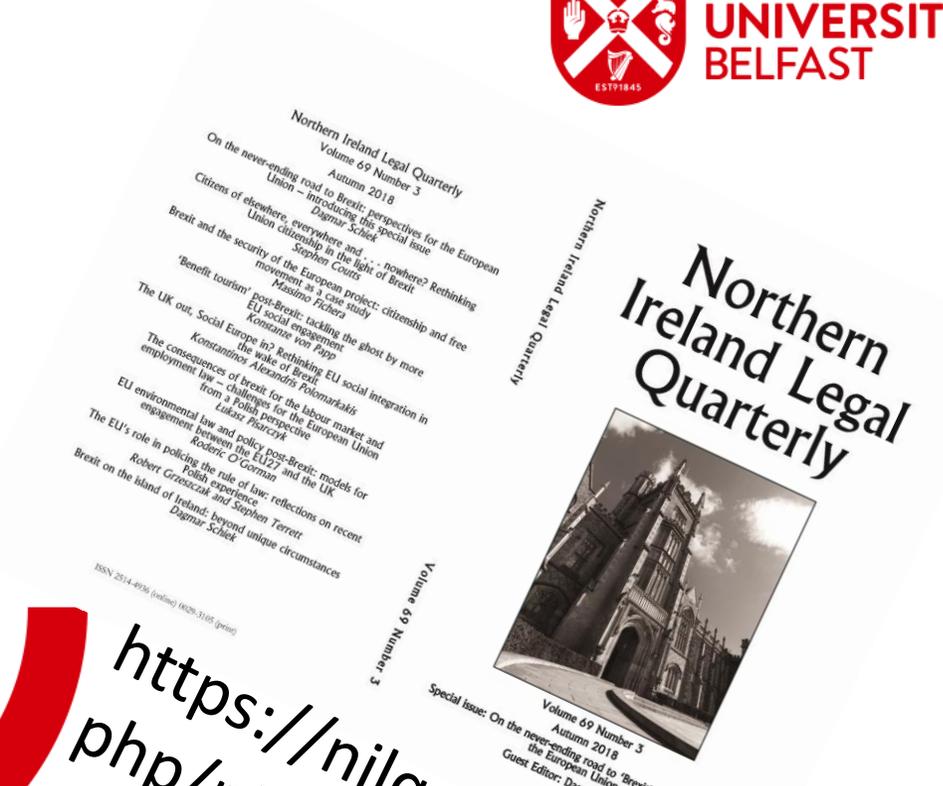
29 March 2019
... an orderly
withdrawal or
not?



Ireland / Northern Ireland & “Brexit” – state of affairs from EU legal perspectives

Dagmar Schiek @dschiek, @treup

Professor of Law, Director of Centre for European and Transnational Studies

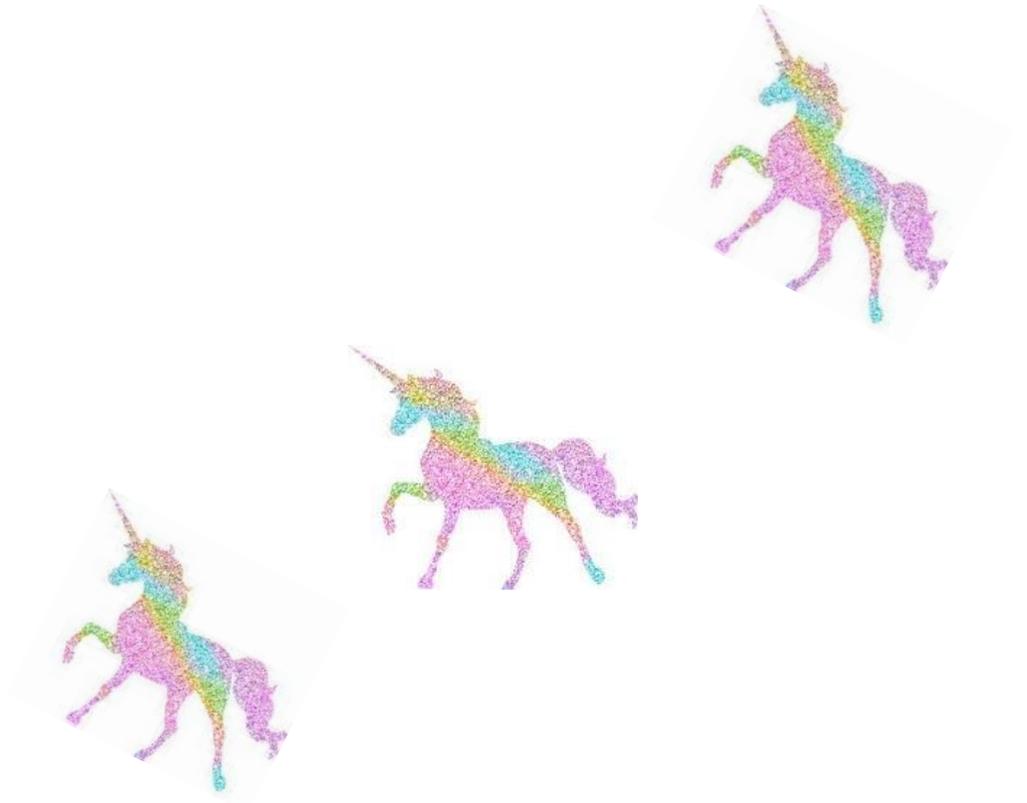


<https://nilq.qub.ac.uk/index.php/nilq/article/view/174>



Overview

- What is the unique position again?
- Can the Good Friday / Belfast / 1998 Agreement be safeguarded by
 - the withdrawal agreement
 - Its extension to include the whole UK
 - Without a withdrawal agreement?



UNIQUE POSITION OF IRELAND / NI FROM EU (LAW) PERSPECTIVE

- Territorial dispute between UK and Ireland over NI plus governance of NI in partial conflict with EHRC did not hinder concurrent accession to EEC
- 1993: 1st edition of Custom's Code and EU Citizenship created preconditions for all island economic and civic integration
- Common EU membership precondition for Good Friday Agreement
 - International Agreement: wishing to develop relationships (...) as partners in the European Union
 - Strand one: paragraph 31 (EU issues to be ensured by devolution)
 - Strand two: NMSC to consider EU dimension of matters, represent views at EU level (paragraph 17)
 - Strand three: discuss approaches to EU issues (paragraph 5)
- Prominence of Ireland / NI in EU Commission's withdrawal negotiation mandate confirms EU's position as co-guarantor



N IRELAND AFTER THE GFA– HYBRID TERRITORY, HYBRID CITIZENSHIP

- Ensured impartial government of Northern Ireland, whether within the UK or Ireland
 - Specific protection for “nationalist” and “unionist” community
- Made NI common responsibility of UK, Ireland and EU (disputed)
- Gave “people of Northern Ireland” specific rights to either or dual citizenship (hybridity)
- “Rights, Safeguards and Equal Opportunity”
 - Includes socio-economic improvement of Northern Ireland



EU LAW UNDERPINNING GFA

Good Friday Agreement

Hybridity

- Territory
- Citizenship

Rights, Equal Opportunity

- No discrimination

Socio-economic improvement

- All-island economy
- Transcending GB dependency

EU law

Hybridity

- Territorial: Internal Market
- Identity: EU citizenship

Rights Equal opportunity

- Direct effect, supremacy, judicial protection
- EU anti-discrimination acquis

Socio-economic

- Economic integration as peace project
- Overcoming national limitations

WILL THE DRAFT PROTOCOL FIX IT?

- It interprets the unique position as a border problem, which is predominantly based on free trade in goods

→ Chapter III as solution?



• Chap III: Common regulatory area

- Alludes to Internal Market, but only partial coverage
- Devious: full coverage by state aid law, but not full advantage of economic freedoms
- These provisions are directly effective, supreme and protected by ECJ, no guarantee for Irish/Northern Irish judge or AG

**Citizenship rights & equality acquis
unprotected: no direct effect, supremacy
nor judicial protection**



WHAT ABOUT THE RECENT EXTENSION PLANS?



- UK in custom's union with EU
 - Will not resolve the necessity of border controls related to
 - VAT territory
 - Phytosanitary standards
 - Creates competitive advantage for UK if not coupled with state aid control and standards
- Betrays indivisibility of the Internal Market
- Northern Ireland's specific position remains
 - Fully integrated into free movement of goods, including electricity, agriculture
 - Plus state aid control
- Betrays indivisibility of Internal Market
- Does not protect citizenship rights



PROBLEMS: CITIZENSHIP RIGHTS IN NI

- “Unionist Community”
 - Expects to retain equal rights even if not opting for Irish citizenship
 - Arguably least protected for the EU dimension, but better protected in relation to UK
- “Nationalist Community”
 - Will experience problems if not opting for dual citizenship in relation to UK
 - Even retaining Irish citizenship will not secure rights to vote in EP elections, nor full economic citizenship rights for those who are not already active in UK
 - Status of “pure” citizenship rights such as educational, leisure and civic engagement?



Pure Article 50 TFEU scenario

(“no deal”)

- Border controls for customs, VAT, phytosanitary standards and all other standards added to Custom’s code (environment) needed
 - No rights to travel, work and leisure across borders
 - CTA does not grant rights, has no legal quality
 - EU citizens other than “people of NI” wholly unprotected
 - Not even protection of those who relied on free movement rights
 - Transborder health care, other care, education, transport, electricity no longer guaranteed
- ➔ NI as the new bargaining chip?
- ➔ UK government proposals?





Queen's Policy Engagement Brexit Clinic

6 November 2018

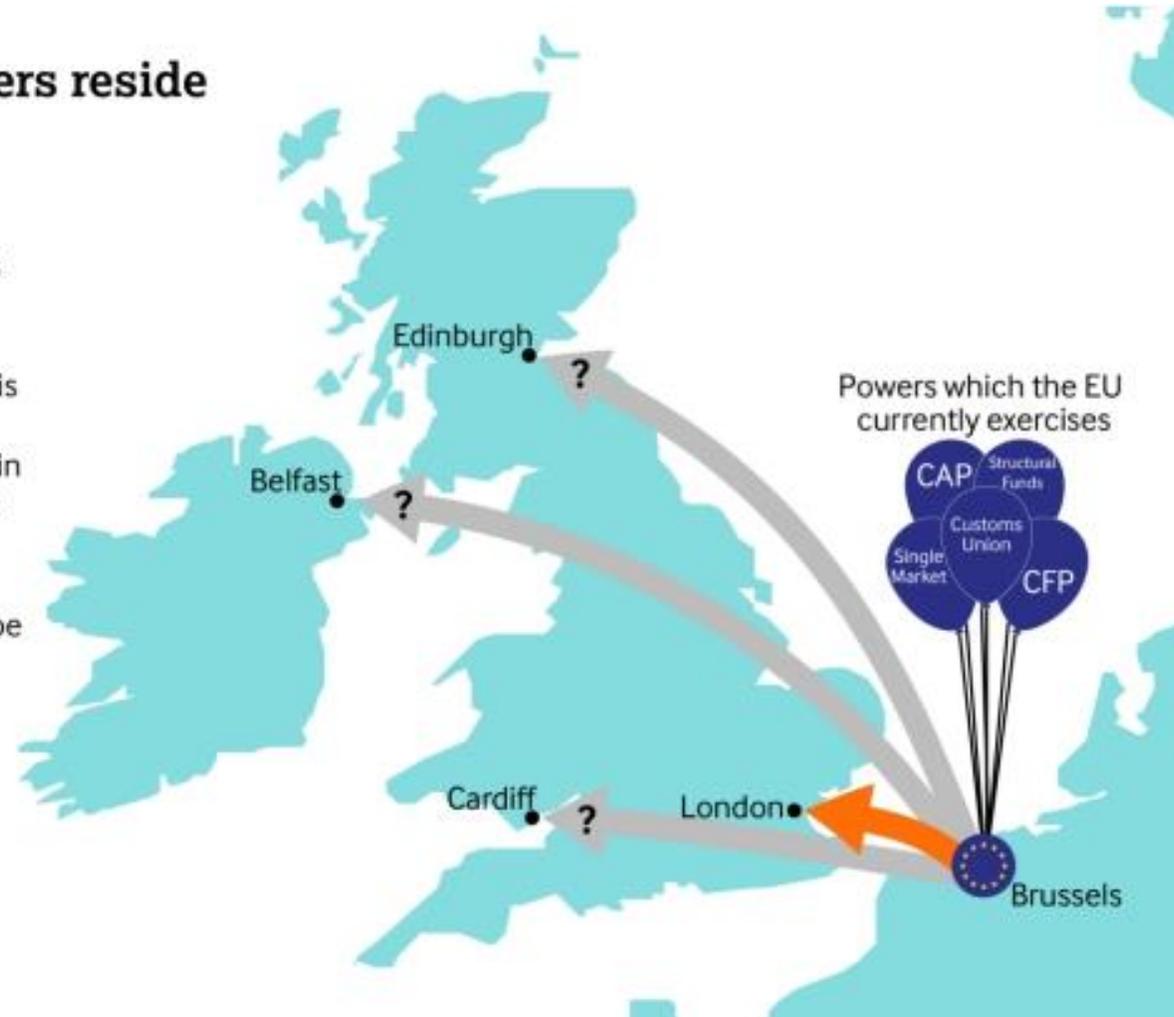


Dr Viviane Gravey (HAPP, @VGravey)

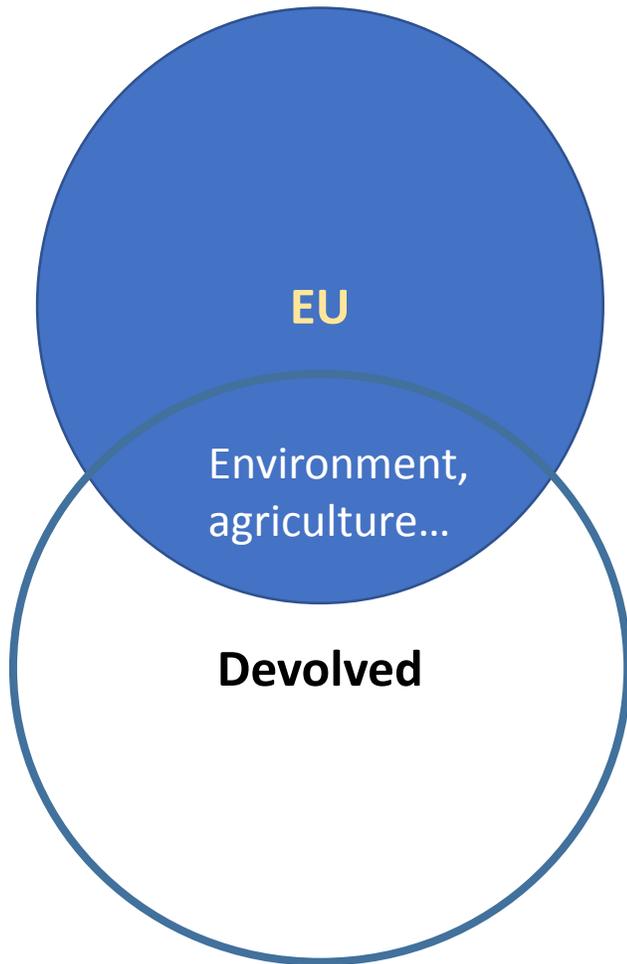
What does taking back control entail in practice?

Where will EU powers reside after Brexit?

One way of looking at powers which the EU currently exercises – such as setting the Common Agricultural Policy or rules on regional development funding - is as self-contained 'balloons', anchored in Brussels. Looked at in this way, these balloons will float back across the English Channel on Brexit Day and there will be a choice as to where they should be brought to land.



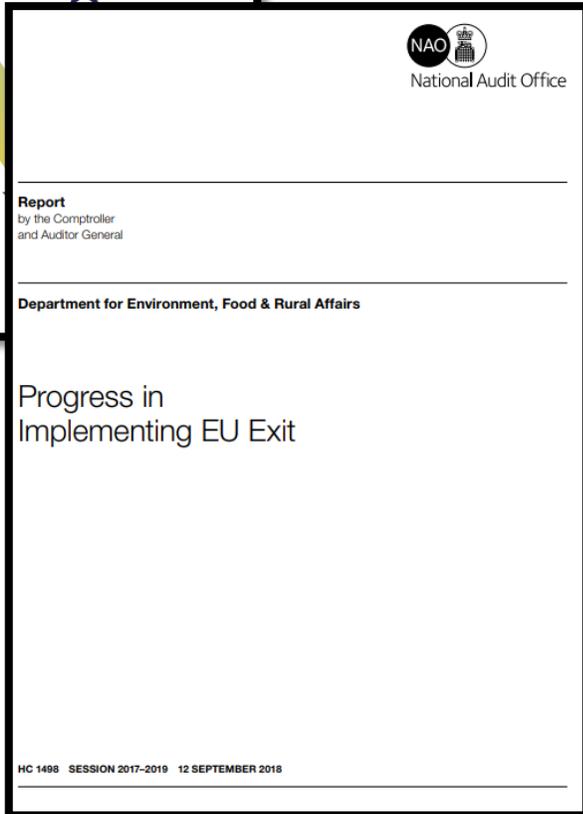
What does taking back control entail in practice?



- ✓ Opportunity for change
- ✓ Capacity
- ✓ Legitimacy
- ✓ Divergence



“Political tensions are encouraging secrecy, where access to key documents is highly restricted. Important information is not being shared between departments, and those outside government with a legitimate reason to be kept informed, such as Parliament and business, are being kept in the dark.”



“The risk of Defra not delivering all its EU Exit portfolio in a no-deal scenario is high and, until recently, not well understood (...) In a no deal scenario, there is a high risk that Defra will be unable to deliver all the Statutory Instruments (SIs) it needs in time and it is identifying those that it needs to prioritise.”



What next for the environment after Brexit?



<https://www.brexitenvironment.co.uk/policy-briefs/>

What does taking back control entail in practice? ... in NI

Northern Ireland
(Executive
Formation and
Exercise of
Functions) Bill

- ✓ Opportunity for change?
- ✓ Capacity?
- ✓ Legitimacy?
- ✓ Divergence?



No Deal:

What would it mean for NI?



Katy Hayward

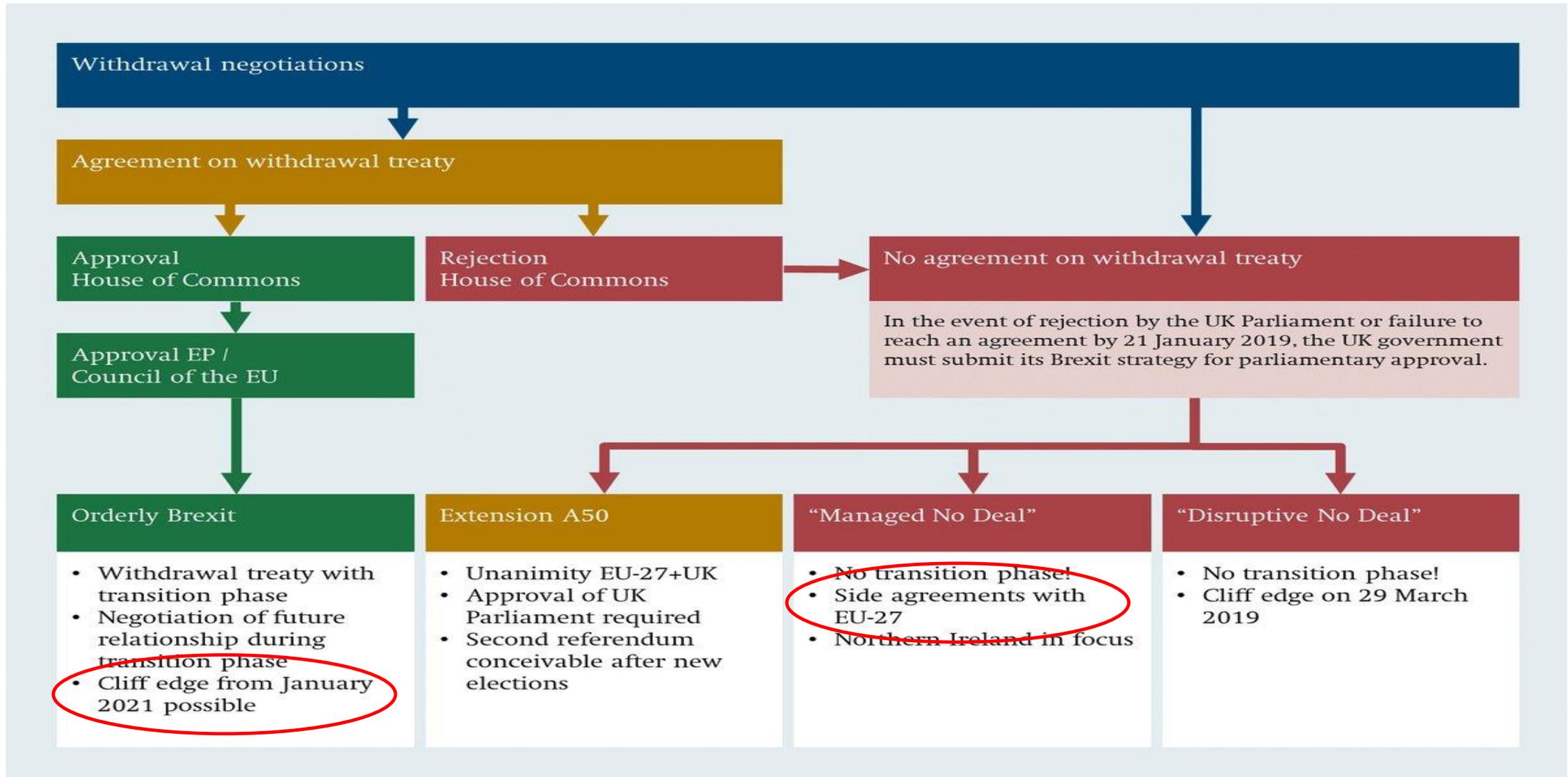
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What has to happen to get a deal through

(credit: Nicolai von Ondarza)



What the UK Government is doing

- **Plans already in place**

- For 2 yrs govt has been implementing a programme of work to prepare for all scenarios, inc. 'no deal'
- 2017 Autumn Budget, HM Treasury made £3 billion of funding available for departments and devolved administrations could prepare effectively for Brexit. [[N.Ireland portion](#): £15.2 million – 0.5% of the total]

- **Legislation**

- The European Union (Withdrawal) Act 2018 ensures there will be a functioning statute book whatever the outcome of negotiations.
- PLUS The Nuclear Safeguards Act 2018; The Sanctions and Anti-Money Laundering Act 2018; The Haulage Permits and Trailer Registration Act 2018
- The Taxation (Cross-border Trade) Bill and the Trade Bill for customs & trade regimes

- **Statutory Instruments**

- The government has started laying statutory instruments (c.800) to prepare the statute book for exit.
- Section 8 of the EU Withdrawal Act conferred powers on Ministers to amend EU regulations and EU-derived laws so they will work post-Brexit.
- This will be done through statutory instruments (SIs), covering a wide range of topics and identifying certain deficiencies in the law that need to be 'fixed' at the point the UK withdraws from the EU.

Technical notices of No Deal



Commission and its priorities Policies, information and services

European Commission English EN

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Preparedness notices

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CNECT

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EU Commission:

https://ec.europa.eu/info/brexit/brexit-preparedness/preparedness-notices_en

UK Government:

<https://www.gov.uk/government/collections/how-to-prepare-if-the-uk-leaves-the-eu-with-no-deal#overview>

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Collection

How to prepare if the UK leaves the EU with no deal

Guidance on how to prepare for Brexit if there's no deal.

Published 23 August 2018
Last updated 12 October 2018 — [see all updates](#)
From: [Department for Exiting the European Union](#)

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- Applying for EU-funded programmes
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- Farming and fishing
- Handling civil legal cases
- Importing and exporting
- Labelling products and making them safe
- Meeting business regulations
- Money and tax
- Personal data and consumer rights
- Protecting the environment
- Regulating energy

What is at risk in a No Deal



if the UK leaves the EU and becomes a third country at 11pm GMT on 29 March 2019 without a Withdrawal Agreement and framework for a future relationship in place...

- Air services
- Animal breeding
- Aviation safety
- Aviation security
- Batch testing of medicine
- Blood safety
- Broadcasting
- Chemicals regulation
- Civil judicial cooperation
- Civil nuclear
- Climate
- Commercial road haulage
- Common Travel Area
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- Ozone depleting substances
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- Health and identification marks for products of animal origin
- Horizon 2020
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- Procurement
- Product regulation
- Registration of veterinary medicines
- Renewable electricity issues
- Rural Development Programme for England
- Seafarer certification
- Services
- State aid
- Telecoms
- Timber trade
- Tobacco Trade agreements continuity
- Trade in endangered species
- Trade remedies
- Trans-European energy infrastructure
- UK citizens in the EU
- UK LIFE projects
- UK trade tariff
- Upholding industrial emissions
- VAT Vehicle standards
- Veterinary medicine products
- Workplace rights.

Ireland/Northern Ireland copy&paste



- **“We are clear that in a ‘no deal’ scenario we must respect our unique relationship with Ireland, with whom we share a land border and who are co-signatories of the Belfast Agreement.**
- ...We recognise the basis it has provided for the deep economic and social cooperation on the island of Ireland. This includes North-South cooperation between Northern Ireland and Ireland, which we are committed to protecting in line with the letter and spirit of Strand two of the Agreement.
- The Irish government have indicated they would need to discuss arrangements in the event of ‘no deal’ with the European Commission and EU Member States. **The UK stands ready in this scenario to engage constructively to meet our commitments and act in the best interests of the people of Northern Ireland, recognising the very significant challenges that the lack of a UK-EU legal agreement would pose in this unique and highly sensitive context.**
- It remains, though, the responsibility of the UK government, as the sovereign government in Northern Ireland, to continue preparations for the full range of potential outcomes, including ‘no deal’. **As we do, and as decisions are made, we will take full account of the unique circumstances of Northern Ireland.”**

Cross-border trade

- A customs border
 - those trading across it border would have to be **registered** to do so
 - they would have to make **customs declarations** on all goods being transported, which must include the correct commodity code and value of the goods.
 - In many instances, **tariffs** would have to be applied to these goods. This can be ad valorem (charged as a percentage of the value of the goods), unit based charges (by quantity or weight), or both.
 - As well as tariffs, **excise duties** and **VAT** will have to be paid on entry to the other jurisdiction – another layer of bureaucracy for traders to manage.
 - Agri-food products should (strictly) go through Border Inspection Posts.
- Ameliorative measures
 - Trusted trader scheme
 - Customs clearance agents

Daily concerns

- Regulation of Energy, Medicines, Medical equipment, labelling etc.
- E.g. Electricity
 - The Single Electricity Market operates within the framework of common EU rules on electricity markets.
 - If there is no deal, the EU rules will cease to apply in Northern Ireland leaving key elements of the Single Electricity Market without any legal basis, with the risk it can no longer continue.
- Other issues:
 - E.g. Mobile Phone Roaming
 - E.g. Cross-border rail services
 - E.g. Consumer protection
- *Theme: much of it is out of the UK's hands. A lot depends on what operators and EU /EU MS decide to do.*

What's all the fuss about?

- Could ignore the border!
 - WTO rules are intended to reduce disparities and unnecessary bureaucracy when it comes to managing customs controls.
 - Smuggling not only means losses to public revenue; it causes harm to legitimate traders, poses risks to consumers, and funds criminal activity.
 - If UK ignored it, would severely damage its reputation as a serious trading partners
- Could use other systems to cover it!
 - These other systems come as part of the EU package. No deal means no deal.
- Could rustle up some bilateral sticking plasters!
 - Can only stretch so far, not least because limits to how far Ireland can act given its responsibilities as an EU member-state. (*Note UK recognised this in the Joint Report*)