

# The Internal Market Bill may further erode trust and security in Ireland/Northern Ireland

*The most dangerous impact of the Brexit process and of the Internal Market Bill on the Good Friday Agreement is that it may erode trust and security in Ireland/Northern Ireland and between both governments, write **Etain Tannam** and **Mary C. Murphy**. Responses to the Bill highlight that British and Irish governments, as well as unionists and nationalists, seem to have markedly different perceptions of what's needed to sustain peace.*

The [Internal Market Bill](#) and [statement](#) by the Northern Ireland Secretary of State that the UK was willing to break international law was met with shock across Europe. No EU state is more affected by the terms of this proposed legislation than Ireland and no region of the UK more than Northern Ireland. Contrary to the terms of the Protocol, the Internal Market Bill challenges the legal force of agreed rules on state aid and Northern Ireland customs arrangements. The government justifies this violation of international law by claiming that the measures protect the Good Friday Agreement by protecting Strand Three East-West cooperation.



Responses to the Bill

The [SDLP, Sinn Féin and the Alliance Party](#) parties argued that if the Withdrawal Agreement is not implemented the Good Friday Agreement and stability are seriously undermined and that trust and confidence are undermined if the UK government breaks international law. Like the Irish government, their view is that if the agreement is not reached and there are no 'sea border' customs checks, customs posts will be necessary on the Irish border to protect the EU's Single Market. The argument, supported by the then head of the [PSNI](#) in 2018, is that customs posts would be a target for dissident republicans leading eventually to the securitisation of the border and increased violence. The underlying argument is that the border represents the core of the identity conflict. Its securitisation in the past was repeatedly targeted and cultural and economic connections between both parts of the island were weak. The unionist and UK government's response is that their preference against a sea border relates to Strand Three of the Agreement and should not be taken more lightly than nationalists' preference for a soft Irish border (Strand Two). They argue that a sea border undermines Northern Ireland's status in the UK and its significance is equal to, if not greater than the significance of the Irish border for nationalists.

The UK government and [unionists](#) perceive the Irish assessment to be an over-reaction. The DUP, harking back to earlier unionist rhetoric during the conflict, refers to Ireland as a '[predatory neighbour](#)' that is using the border issue as a ploy to achieve a united Ireland, despite the fact that unification has never been an election issue in Ireland, even in the last election in February 2020 and the majority are delighted by the status quo- the soft border and peace. Fundamentally there is a perception that either customs posts should be erected at the Irish border and will not be destabilising, or that the EU should create a bespoke arrangement, relaxing its Single Market rules, so that customs posts will not be necessary. For Irish observers and the EU, the UK is either playing brinkmanship, using Northern Ireland as a pawn to achieve a better trade deal, or alternatively it is an excuse to renege on the Withdrawal Agreement.

Although unfettered trade and a soft border were the preferable outcomes for the Irish government in protecting the Agreement and the Irish economy, the [DUP](#) and the UK parliament's opposition to the backstop and the EU's emphasis on the sanctity of the Single Market ruled out that outcome. The Irish government had no option but to prioritise one over the other. Given the history of the conflict and the perceived threat of a recurrence of violence and given that the Irish border is on its territory, it is not surprising that it prioritised an open Irish border, calculating that it was essential in protecting the Agreement. For the Irish government, Brexit and its management by the UK government has created this problem. Aside from contrasting assessments of the risks caused by a hard border the announcement of the Internal Market Bill has a negative impact on *all* three strands of the Agreement, whatever the damage limitation exercise.

As regards *Strand One*, although the Executive [collapsed](#) many times since 2001, Brexit aggravated tensions, heightened by the Internal Market Bill. The [2019 UK election](#) saw an increase in support for the SDLP and Alliance parties that can help mediate tensions between the DUP and Sinn Féin, but even so, the DUP and Sinn Féin are a dominant influence. Underlying the sense of injustice and blame game that has characterised responses is increased mutual distrust. Although, the DUP and Sinn Féin have managed their relationship relatively well during the COVID pandemic, albeit with some [incidents](#), the divisive atmosphere where every issue becomes partisan-linked to ideology is not conducive to the power-sharing *modus operandi* of the Strand One institutions. It complicates policymaking in the Executive, potentially undermines the substantive value of the Executive and Assembly, and at worst, poses serious challenges to the stability of those same institutions.

The Internal Market Bill has also been criticised for engineering a [recentralisation of power](#) and for diluting some of the existing competences and spending powers available to the UK's devolved areas, further fuelling Scottish nationalism. Tampering with Northern Ireland's devolution arrangements represents a further threat to a fragile political equilibrium, by playing (inadvertently or not) to the DUP's historic opposition to the Agreement and its institutions.

The Internal Market Bill obviously potentially impacts on *Strand Two* of the Agreement. Strand Two reflects the EU's concept of mutual respect for identities and the post-sovereign concept of uniting of people not territory. Strand Two also provides for cross-border cooperation and explicitly mentions the common EU framework. The Protocol was grounded in a commitment '[to maintain the necessary conditions for continued North-South cooperation](#)' (Article 1.2). Central to this objective was the maintenance of an open border between Northern Ireland and Ireland. Apart from the potential risk to peace if UK customs posts were erected on the border, barriers would hinder economic and cultural cross-border cooperation.

The Bill also negatively affects cross-border political relations. It reveals a very different conception of the Irish border between unionists and the Irish government and highlights the significance of that border for unionist and nationalist identity in mirror image ways, the DUP claiming that the Irish government seeks to preserve the open border so as to achieve a united Ireland. Different perceptions of the Agreement are also revealed. Unionists argue that the Protocol was not agreed by consent and therefore undermines the Agreement and also that it constitutes a change to Northern Ireland's constitutional status. The spirit of the Agreement is consensual, however, the formal consociational consensual rules apply only to Strand 1- devolved policy areas. UK foreign policy and therefore the Brexit negotiations are the UK government's legislative responsibility. Brexit itself occurred without the consent of a majority in Northern Ireland for the same reason, once the referendum delivered a Leave majority in the UK. A similar misunderstanding is that the constitutional status of Northern Ireland is unaffected by the sea border. Northern Ireland's constitutional status is enshrined in the Agreement and can only change if a majority support unification in a referendum vote in Northern Ireland and Ireland.

The acrimony around these issues also reveals the negative impact of Brexit and the Internal Market Bill on *Strand Three* of the Agreement. Strand Three provides for East-West cooperation between the constituent parts of the UK and Ireland (the British-Irish Council, (BIC) and East-West cooperation between British and Irish governments (the British-Irish Intergovernmental Conference (BIIGC)). The Protocol by creating customs barriers between the island and Britain affects economic relations, but the statement that the UK would be prepared to break international law has created a far larger threat by damaging trust between British and Irish governments in an already [strained](#) relationship. For both British and Irish governments, their relationship was central to the peace process, but there are different perceptions of its centrality now. [British-Irish intergovernmental cooperation](#) was the core condition for the peace process and the fundamental key to the success of the Agreement and future peace and stability. Both kinships states strategically created and framed the incentives for party cooperation in a complex package deal which sought to break the zero-sum nature of sectarian politics. For Irish governments that process is still necessary in the current period and in the post-Brexit years.

However, Brexit has highlighted that intergovernmental cooperation was not as embedded as previously thought and perceptions of the Agreement's role differed. In particular, the BIIGC did not meet in advance of the Brexit referendum, or in advance of Article 50 being triggered, [despite Irish preferences](#) and despite a [House of Lords](#) recommendation for close cooperation. Nor was there informal cooperation until it became clear to the UK government that the EU was firm in prioritising the border issue.

Overall, responses to the Internal Market Bill and the Bill itself highlight that British and Irish governments, as well as unionists and nationalists, seem to have markedly different perceptions of the Agreement. Unionists are suspicious of intergovernmental cooperation and particularly of the BIIGC, viewing it as a means of Irish influence leading to unification. Nor has the British government emphasised it, or the BIC. Although opposing interpretations of the Agreement could be accommodated until the Brexit process, increasingly Brexit illuminates how key foundational principles of the Agreement can be vulnerable when a profound challenge arises. Intergovernmental management of these tensions is essential, but intergovernmental tension has increased significantly and has increased conflict between the parties in Northern Ireland, where the knee-jerk reaction is for unionists to defend the UK government and blame the Irish government, mirrored by nationalist responses. In short, the damage to the British-Irish relationship spills over to the other strands of the Agreement. As the preface to the Agreement states, the three strands are interdependent and the functioning of the Agreement relies on all three.

The most dangerous impact of the Brexit process and of the Internal Market Bill on the Good Friday Agreement is its impact on trust and security in Northern Ireland and between the two governments. The origin of the conflict was based very much on insecure identities. Unionists from the foundation of the state in 1921 feared an irrendentist Irish state that would achieve unification. Clearly, since Brexit those fears have been re-ignited.

However the success of the moderate Alliance and SDLP parties in 2019, the increase in the numbers who say they are neither nationalist nor unionist and the fact that a majority of the Northern Irish population supports the Agreement gives cause for some optimism. In addition, Irish officials will seek to restore stability to the British-Irish relationship. They will try to de-dramatise tensions, lobby [US politicians](#) intensively to seek leverage, continue close engagement with the EU and simultaneously seek to engage diplomatically with the UK.

Dealing with Brexit was never going to be easy. The past 4 years have in fact been far harder than many envisaged for British and Irish diplomats alike. Weary diplomats will launch a concerted attempt to minimise damage, but in a cold climate, with the increased knowledge that even if the Internal Market Bill was a case of brinkmanship, the rule book of international and bilateral relations was torn up on September eighth and that will be difficult to forget.

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