

# Northern Ireland and the Withdrawal Agreement

*Boris Johnson's proposed withdrawal agreement with the EU, which Parliament is due to vote on today, establishes different customs arrangements for Northern Ireland than for Great Britain, to avoid a hard border with the Republic of Ireland. Sean Swan explains how having differential arrangements for Northern Ireland and Great Britain is not novel, and is a reflection of long-existing realities in Northern Ireland's governance. For them to have democratic legitimacy, though, the Northern Ireland Assembly needs to be reconvened.*



Harland & Wolff cranes, Belfast (May 2019). Picture: [Albert Bridge, via geograph.ie/\(CC BY-SA 2.0\)](https://www.geograph.ie/) licence

Certain realities have now forced their logic on to the Brexit negotiations. And Boris Johnson has seen the light. Perhaps he was struck by divine revelation; perhaps he was convinced by the realities of the situation. Whatever the cause, Johnson has become reconciled to Northern Ireland having a different customs regime from Great Britain as the only way to avoid a 'hard' Irish border. And avoiding a hard border is the only way to get a Brexit deal.

The DUP, despite their strong pro-Brexit stance, are not happy with the proposed 'customs border in the Irish Sea', but it appears that most Conservative Brexiteer members of the ERG will be able to live with it. Nobody should be surprised that when it came down to a hard choice, the ERG would prioritise Brexit over Belfast. Brexit is an English thing. But voices are now being raised asserting that this constitutes some sort of unforgivable and unprecedented infringement of the integrity of the UK.

Robin Swann, the leader of the Ulster Unionist Party (UUP), has [attacked](#) the proposed resolution of the backstop issue as

an absolute disgrace...this deal is worse than the one Theresa May brought forward at Chequers. It's awful. It would put a customs and regulatory border down the Irish Sea and annexes Northern Ireland from the rest of the United Kingdom.

This is hard to take seriously. Northern Ireland remains part of the UK with or without the new customs regime. And Northern Ireland has never been just another part of the UK.

From 1947 to 1981, anybody from outside Northern Ireland, including people from England, Wales, Scotland or the Republic of Ireland, wishing to work in Northern Ireland had to obtain a work permit from the Northern Ireland Ministry of Labour and National Insurance. It is not recorded that unionists ever objected to this 'labour border' in the Irish Sea or saw it as an infringement of the territorial integrity of the UK or a threat to the union. But this is hardly surprising as it was the result of the Safeguarding of Employment Act (Northern Ireland) (1947) – an act introduced by an Ulster Unionist controlled Northern Ireland government.

The fact that up to 1972 there existed such a thing as a 'government of Northern Ireland', with its own parliament and prime minister, meant that Northern Ireland occupied a separate and distinct constitutional position in the UK from that obtaining in Great Britain. Following the hiatus that was the Troubles – another uniquely Northern Ireland experience – the Good Friday/Belfast Agreement put Northern Ireland in a new separate and distinct constitutional position. And the term 'constitutional' is used advisedly. The Lords [ruled](#) in 2002 that the 1998 Northern Ireland Act 'was passed to implement the Belfast Agreement' and while the '1998 Act does not set out all the constitutional provisions applicable to Northern Ireland, ... it is in effect a constitution'.

Northern Ireland is historically, socially, geographically and politically distinct from Great Britain. This is a fact that it would be absurd for either the DUP or the UUP to dispute as, were such not the case, the DUP and UUP would not exist and their Westminster seats would, presumably, be held by Labour or the Conservatives. But the DUP and UUP do exist and neither Labour nor the Conservative party hold a single seat in Northern Ireland. The only Northern Ireland party elected to Westminster to also hold seats outside Northern Ireland is Sinn Féin – but the seats they hold external to Northern Ireland are in Dáil Éireann, the parliament of the Republic of Ireland.

Thus to see in the creation of a separate customs regime for Northern Ireland some novel and unprecedented attack on the union, rather than a necessary differential treatment of different parts, is disingenuous. Lady Sylvia Hermon, an independent MP from a unionist background, has repeatedly [warned](#) of the dangers to the union of allowing the creation of a 'hard' land border between North and South which would 'incentivise Sinn Féin to agitate for a border poll to take Northern Ireland out of the United Kingdom and into the Republic of Ireland'. And the only workable alternative to a hard border is divergence in customs regimes between Northern Ireland and Great Britain.

There was a time – a long time – during which unionism enjoyed a comfortable majority in Northern Ireland. This is no longer the case. [Recent polls](#) indicate a potential majority for a united Ireland, were that to be put to the people. Unionism retains many of the instincts of a majority but needs to adapt to the new reality of a Northern Ireland in which there is no majority, whether unionist, nationalist or other. The future of Northern Ireland – if it is to have one – must be one of pluralist rather than exclusive identities. And that means compromise and accommodation. Sticking to exclusive zero-sum binary British/Irish identities and associated zero-sum concepts of territorial integrity and sovereignty invites a united Ireland far more readily than does differential customs regimes.

Lord Trimble, who was UUP leader during the Good Friday negotiations and was Northern Ireland's first First Minister, [considers](#) the deal to be acceptable and fully compatible with the Good Friday Agreement

Whilst, previously, the people of Northern Ireland were to have an agreement imposed on them, now we have a mechanism for the consent of the people of Northern Ireland.

This is fully in accordance with the spirit of the Good Friday Agreement.

What we now want to see is for the DUP and Sinn Féin to act together to bring the Good Friday Agreement back to life. This is not the time to be looking for excuses not to implement either the Good Friday Agreement or the new deal.

This is correct. The operation of the new customs regime will in future require the consent of the Northern Ireland Assembly. The proper task now is the restoration of that Assembly.

*This article gives the views of the author, not the position of Democratic Audit.*

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## About the author

[Sean Swan](#) is a Lecturer in Political Science at Whitworth University, Washington State. He is the author of [Official Irish Republicanism, 1962 to 1972](#).

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