

Now Brexit cannot mean UKEXIT – because the DUP won't tolerate a hard border

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2017-6-13

*The UK general election has done Ireland and its northern neighbour one immense favour. A hard UKEXIT, defined as the entire UK leaving the customs union and the single market, is off the agenda for now. **Brendan O'Leary** argues that Theresa May's difficulties in enforcing such a uniform mode of leaving the EU will prove an opportunity for Ireland's new Taoiseach, Leo Varadkar.*



Theresa May's cabinet is likely to be short-lived and has no mandate, so any proposed controversial legislation, such as the so-called Great Repeal Bill, and contingency bills for no deal with the EU, can – and likely would – be blocked in the House of Lords, even if they got through the Commons.

The desperate expedient of seeking support from the DUP inescapably requires the Conservatives to make a special deal for Northern Ireland – in other words, agree that there will be no hard border. The DUP opposes such a border, which is proof of economic sanity within its ranks. But the party will want pay-offs for farmers and other interest groups, which others in Britain could then hardly be denied.

A uniformly hard UKEXIT for each part of the UK is equally ruled out by the clearly expressed preferences of the revived Scottish Tories, led by Ruth Davidson—who want immigrants to come to Scotland—and anything conceded to Northern Ireland cannot easily be denied to Scotland.

While the exact moment of May's political demise is planned by diverse assassins, Remain-supporting Conservatives MPs have recovered their voices. They know, however, that a soft UKEXIT, while better than no deal, is irrational. Staying within the customs union and the single market, while paying an exit bill from the EU, and then an enormous new membership fee without voting rights is an unstable equilibrium. And it was not for this that UKIP was born and died.



Leo Varadkar. Image by William Murphy, (Flickr), licenced under (CC BY-SA 2.0).

There is strong and stable leadership in the world ahead – but it is in the EU-27, and the EU institutions, in which Ireland is embedded. There will be no bespoke deal for May, or for her successor. Guy Verhofstadt, the European Parliament’s chief coordinator on UKEXIT, said of the British position that he had previously thought that ‘surrealism was a Belgian invention.’ The joke is yet to be understood in London.

The surreal position the Tories have created for themselves means that they will have little choice but to beat a retreat from the positions that May staked out, and lost on, despite increasing her party’s vote share. They face a profound legislative and legal quagmire: legally the clock ticks automatically toward a hard UKEXIT, negotiations have not begun, and they now have neither an agreed position nor a credible leadership. Will the first negotiating move be to beg the EU for more time?

The Tories will have to change strategy amid deeply unpropitious conditions. A further economic downturn may be underway, providing another dose of aversion therapy for UKEXIT. Many voters apparently preferred Corbyn’s high taxes on the top five percent, and greater public expenditure, to May’s pain for the many, grammar schools, and taxes on demented grandparents.

But has the outcome of the general election also damaged Ireland, by destroying the Good Friday Agreement? The Tories new albeit informal coalition—supply and confidence arrangements—with the DUP has yet to be formalised, or tested in the Commons. It certainly threatens to put a coach and horses through David Cameron’s hitherto successful rebranding of the Conservatives as socially tolerant. Admiring Ulster Protestants because they are British Unionists is one thing, embracing the DUP’s brand is quite another—and it won’t go down well in Scotland and other places the Conservatives will want to win.

Given that May made so much of Corbyn’s alleged ties to the IRA, it is risible that she immediately advanced an arrangement with the DUP, the party that loyalist militias openly endorsed for the Westminster elections. She thereby, without consulting Dublin, jeopardised London’s arbitration role in the efforts to restore a functioning assembly and executive in Northern Ireland – stalled since Assembly elections triggered by the DUP first minister’s refusal to step aside while a financial scandal (‘ash for cash’) is investigated.

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Ireland’s new Taoiseach, Leo Varadkar, will shortly have to manage the consequences of British surrealism as calmly as possible. He and his colleagues, who may not be in office for long before they too face a general election, will have to balance firmly against the Conservatives’ inability to carry out the promise of ‘rigorous impartiality’ pledged by John Major in the Joint Declaration for Peace of 1993 and by Tony Blair in the Good Friday Agreement. That implies a possible role for Ireland — or a third-party mediator — in the talks to restore the institutions that are scheduled to start on Monday. It would be perfectly legitimate to suggest such changes because the institutions are interdependent—the Assembly is linked to the North-South Ministerial Council.

Ireland is also likely to refuse to support any quick move by the London government to suspend the Northern institutions by reintroducing direct rule. This move would require legislation in Westminster which would break the Good Friday Agreement and the Saint Andrews Agreement, in which concessions were made to the DUP in return for which the UK government agreed to repeal its suspension powers. The EU-27 are pledged to protect the Good Friday Agreement.

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The emergent understanding between the Tories and the DUP has potential difficulties for DUP: Arlene Foster would not be wise to embrace May as a full marital partner. An arrogant leader in difficulty, famous for having a tin ear, would not be wise to over-invest in one who is in even greater trouble. Foster and her colleagues jointly have to decide whether it is worth risking the loss of what the DUP has wanted since 1976, namely, a devolved government, for the short-term payoffs from a possibly short-lived government at Westminster.

The DUP is suddenly receiving greater exposure in Great Britain than that to which it has been accustomed. It has been almost comic to observe the mass media explaining the party to a largely ignorant electorate in Great Britain. Its corruption questions and its past dalliances with loyalist militias will become daily news and social media items in Great Britain.

The Conservatives too have difficulties with their new misalliance. The DUP's support does not mean that the Conservatives can call a fresh general election at a moment of their choosing. Because of the fixed term parliament act, another snap election would require Labour's consent—a two-thirds majority of the Commons is required. So both the Tories and Labour need to believe their prospects are good before fresh elections are called.

May's successor cannot be assured of being able to win a mandate of his or her own from the electorate because Corbyn's Labour has done astonishingly well and because Conservative MPs' risk-aversion will be high, whatever new polls might one day suggest.

The Tories, therefore, have little choice but to go into public negotiations with Brussels— negotiating all the details with the DUP while they do so — but these are unlikely to deliver anything other than the conclusion that it would be wiser to remain in the EU, or for the Tories to hand over power to Corbyn, and hope that a Labour government will be foolish enough to try to go through with a soft UKEXIT.

One further novel fact has emerged from the surreality. A referendum cannot easily be held to endorse any deal that the UK might make with the EU-27 because we can confidently predict that the young will now turn out in greater numbers. The young may well be invited to reverse the 52-48 result of June 2016, depending on how Corbyn plays his cards. Differently put, the Westminster political class may feel increasingly free to walk away from the vote to leave of June 2016, while playing the game of blaming the other for betraying the people.

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Ireland's interest is to restore the power-sharing institutions in the North and the North-South Council. The new Taoiseach's arduous task may, therefore, be defined as crafting the world in which the DUP is in two informal coalitions, one with Sinn Féin in Belfast, the other with the Conservatives in London. To work simultaneously these two coalitions require the termination of hard and uniform UKEXIT as an option, and that's certainly in Ireland's and Northern Ireland's interests.

Northern Ireland voted to remain in the EU in 2016, and the June 8 election did not reverse that fact, and the DUP knows it will bear the local costs of adverse consequences from a hard and uniform UKEXIT.

The DUP did well in the Westminster elections, at the expense of the Ulster Unionists, the UUP. But so did Sinn Féin, winning nearly 30 percent of the vote in Northern Ireland, and eliminating the softer nationalist party's three MPs from Westminster. Three of the SDLP's recent leaders lost their seats, the most distinguished being Mark Durkan. The Irish Government knows that both the SDLP and the UUP may be ceasing to be contenders in the North and that their demise will be accelerated if the Northern Assembly is not restored.

The new Taoiseach, therefore, has strong incentives to use Ireland's EU-27 leverage to stabilise the Good

Friday Agreement, one of Michel Barnier's top priorities to be resolved before post-UKEXIT negotiations begin. Varadkar will be knocking at an unexpectedly open door if he encourages the UK to consider a differentiated UKEXIT for the North. He can thereby put the kibosh on a hard and uniform UKEXIT.

The DUP has said it does not want special status for the North—after all, that's what Sinn Féin wants— but it does want the North's special position to be recognised. Bigger divisions have been bridged before. And if Arlene Foster steps aside, while the ash for cash scandal is fully investigated, as requested by all the other parties in the North, then she may have a political future as a first minister, unlike Theresa May, and the Northern institutions will go back on-line.

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Dublin's hand has therefore been strengthened by what has just happened. It will have to keep a laser-like focus on ensuring no restoration of a hard border as the first item of business, and then all of its other interests may fall into place. The conjunction of May's folly and Corbyn's successful campaign may be much better for Irish nationalists of all stripes than the grinning faces of the DUP's 10 MPs currently suggest.

This post represents the views of the author and not those of the Brexit blog, nor the LSE.

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