

Scotland-Ireland Relations in a European Context

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Introduction

Until the Brexit vote in 2016, Scotland's relations with the island of Ireland (i.e. both Ireland and Northern Ireland) took place in the context of the UK and Ireland being member states of the European Union. Ireland looked to its relations, North-South and East-West, in that EU context; in the East-West case both to the UK as a whole but also to its constituent parts, notably Scotland and Wales.

Scotland's constitutional debate has inevitably played into Scottish-Irish relations, not least with the 2014 independence referendum, but the Irish government has tended to be adept and well-versed in dealing with constitutional sensitivities in its relations with the UK, including with respect to Scotland. Scotland's constitutional debate continues: since the May 2021 elections to the Scottish parliament the Scottish government, has underlined its intention to hold an independence referendum during the new/current term of the Scottish parliament, something the UK government is currently opposed to.

But that constitutional debate now takes place in the context of Brexit having happened, even though 62% of Scottish voters chose 'remain' in 2016. Scottish debates over the desirability and feasibility of independence in the EU frequently look both to Ireland and to its Nordic neighbours to the East, seeing similarly sized countries prospering and having influence within the EU. Equally, despite the pronounced difficulties in EU-UK relations over the Northern Ireland protocol, there has also been some tendency in Scotland to look at that protocol as giving Northern Ireland the access to the EU's single market that the Scottish government would very much liked to have kept (and which it proposed as a compromise to the UK government during the Brexit negotiations).

The UK left the EU on 31st January 2020 and left its single market and customs union on 31st December 2020. Scotland, inevitably, left with the rest of the UK. We now see a patchwork of differentiated relations across these two islands. Ireland remains an EU member state. Northern Ireland is part of the UK but is in the EU's single market for goods and effectively in the EU customs union. England, Wales and Scotland are no longer in the EU's single market or customs union; they face an internal border to Northern Ireland in the context of the protocol and a rather hard post-Brexit border to Ireland and the rest of the EU in the context of the Trade and Cooperation Agreement and the Withdrawal Agreement. Ireland and the UK are also participants in their joint Common Travel Area in terms of movement of people, meaning England, Wales, Scotland and Northern Ireland's relations to Ireland are different from those to the rest of the EU where free movement has ended.

In this article, we explore the implications of this patchwork and differentiated set of relationships that Brexit has super-imposed on pre-existing relations, focusing on Scotland's relationship to Ireland, and their different relationships to the EU. We also consider how different constitutional scenarios could impact in future on these relations.

Section One

Scotland-Ireland-EU Relations: How Clear is the Status Quo Post-Brexit?

In this section, we look at Scotland's relations with Ireland and Northern Ireland. We focus first on Scotland and Northern Ireland both in the context of the Protocol and of post-Brexit devolved relations across the UK. Then we consider Ireland-Scotland relations in the post-Brexit era. It is notable that, while foreign policy is not a devolved power in the UK, the Scottish government is making clear efforts to implement a strategic and positive approach to Scotland-EU relations post-Brexit, despite the current difficult state of EU-UK relations.¹

1.1 Northern Ireland and Scotland

Scotland's relations with both Northern Ireland and Ireland are now conditioned through a complex set of post-Brexit relationships: the Trade and Cooperation Agreement, the Withdrawal Agreement, bilateral UK-Ireland relations and internal UK relations, and not least the evolving structures of devolution.

Despite the many differences in the politics of Scotland and Northern Ireland, they were the two out of the UK's four constituent parts that voted to remain in the EU in 2016 – 62% remain in Scotland and 56% remain in Northern Ireland. In the unstable UK politics that evolved, following the 2016 referendum, Northern Ireland ended up playing a more significant role than Scotland, not least after Theresa May's gambit of calling an early general election in 2017 left her with a minority government dependent on support from the Democratic Unionist Party (DUP).

The irony here was, of course, that the DUP – unlike the majority vote in Northern Ireland – was pro-Brexit. So while DUP MPs played a key role from 2017 on, the remain majorities in Northern Ireland and Scotland were essentially ignored in London (as were the divisions across England and Wales thrown up by the Brexit vote). Both under Theresa May, and subsequently under Boris Johnson, consultation with the devolved administrations and/or their civil services (given the absence of the Northern Ireland executive from 2017 to 2020) was minimal. There was no attempt at compromise or even discussion of compromise with the two remain parts of the UK.

Moreover, under May and Johnson, the tendency was towards re-centralisation of powers that had previously sat with the devolved

¹ Kirsty Hughes (2021), "Scotland's European Relations: Where Next?", June, Policy Paper, Scottish Centre on European Relations, <https://www.scer.scot/wp-content/uploads/Final-pdf-Scotland-Europe-Paper-15-6-21-kh.pdf>.

administrations in the face of EU powers returning to the UK, such as on environment and agriculture.² This tendency became even stronger once Johnson's government passed the Internal Market Act – and in the face of Johnson's apparent policy of so-called muscular unionism, not least due to demands from the Scottish government for another Scottish independence referendum. The Internal Market Act results in far-reaching intrusions into the (devolved) regulatory autonomy of Scotland and Wales as it opens the door for a race to the bottom in terms of regulatory standards, which the devolved legislatures will struggle to prevent. In contrast to the EU single market, mutual recognition in the Internal Market Act is not softened by wide-ranging 'justifications' for higher Scottish or Welsh standards or by flanking UK-wide minimum standards brought about by harmonising legislation, so that the lower standard usually prevails.³

These challenges to the devolution settlement caused concern in Wales too. The Welsh majority vote for Brexit did not mean its Labour government wanted a hard Brexit nor a diminution or undermining of devolved powers. Indeed, there was a fair amount of coordination between the Scottish and Welsh governments (in the absence of the Northern Ireland executive) in challenging and pushing back towards both the May and Johnson governments on devolved powers and on wider consultation (or its absence) during the EU-UK Brexit talks. But this has been substantially unsuccessful so far.

It was the Scottish government that pushed most strongly and clearly for what it called a compromise Brexit of the whole UK staying in the EU's customs union and single market. Scotland's First Minister, Nicola Sturgeon, called for this at the end of 2016 in a key policy paper called 'Scotland's Place in Europe'.⁴ Sturgeon also argued that, if the UK did not adopt this compromise, Scotland should stay in the EU's single market even while the rest of the UK did not, and set out an analysis of how it proposed this could happen. This proposal was dismissed out of hand – and without discussion – by the UK government just as it triggered Article 50 of the EU Treaty in March 2017.

Various Brexit ironies figure here. In the end, despite her 'red lines', in the 2018 Withdrawal Agreement, Theresa May effectively agreed to keep the UK indefinitely in the EU's customs union to avoid a hard border on the island of Ireland. This might have been presented through the previous two years as a compromise across the UK with those who had voted remain. But it was not.

² Kirsty Hughes and Katy Hayward (2018) "Brexit, Northern Ireland and Scotland Comparing Political Dynamics and Prospects in the Two 'Remain' Areas", *Policy Paper*, Scottish Centre on European Relations, April, <https://www.scer.scot/database/ident-6308>.

³ For an overview, see Michael Dougan, Katy Hayward, Jo Hunt, Nicola McEwen, Aileen McHarg and Daniel Wincott (2020), "UK Internal Market Bill, Devolution And The Union", *Centre on Constitutional Change, Wales Governance Centre, UK in a Changing Europe*. https://www.centreonconstitutionalchange.ac.uk/sites/default/files/2020-10/UK%20INTERNAL%20MARKET%20BILL%20DEVOLUTION%20AND%20THE%20UNION%20%282%29_0.pdf.

⁴ Scottish Government (2016), "Scotland's Place in Europe", December, <https://www.gov.scot/publications/scotlands-place-europe/>.

Instead, May was driven towards this Agreement by the challenge of the Irish border and with scant regard given to the views of the Scottish government on Brexit. Even in the case of Northern Ireland, keeping the Irish border open was driven by the needs of the peace process and strong political and diplomatic pressure from the Irish government and the EU. It was not driven by the fact that there was a remain majority too in Northern Ireland. May's Brexit politics, like Johnson's after her – was driven most of all by the internal conflicts within the Conservative party and to some extent by the perceived or imagined wants of leave voters.

Ultimately, Boris Johnson's 2019 Withdrawal Agreement by putting a customs and regulatory border between Great Britain and Northern Ireland effectively kept Northern Ireland in the EU's single market for goods and its customs union. While the EU would have agreed to keep the whole UK in the EU's single market and customs union, its clear rejection of May's convoluted Chequers proposals showed it was not going to allow the whole UK to cherry-pick parts of the EU single market. Johnson himself, of course, resigned over May's Chequers proposals – as not representing a real Brexit.

Nor was the EU likely to have agreed the proposal for Scotland to stay in the EU's single market. There was no imperative of the peace process to drive such a deal. And while there was plenty of sympathy for Scotland in Brussels and Dublin, the core political focus was on the Irish border and the Good Friday/Belfast Agreement, not on remain-voting Scotland. In the event, the UK government did not even contemplate such a deal for Scotland and so it was never presented to the EU. This led to the perception by some in Scotland that while Northern Ireland had got a partial compromise on a softer Brexit (however complex it subsequently became politically), Scotland had got nothing. Meanwhile, Scotland, Northern Ireland and Wales had also got a weakening of their devolved powers: Brexit was the opposite of the gift that keeps giving.

As a consequence of the Withdrawal Agreement and the Protocol, the asymmetry of the UK's devolution settlement has become more pronounced. Because of the Protocol, the Internal Market Act 2020 applies only to a limited extent in Northern Ireland where trade in goods is concerned. While goods originating in Northern Ireland benefit from the principle of mutual recognition, which governs the Act, goods originating in Scotland (or other parts of the UK) can only be imported into Northern Ireland if compliant with the EU single market rules mandated by the Protocol. Hence Northern Ireland is spared from some of the centralising tendencies identified above, whereas Scotland and Wales bear their full brunt.

Northern Ireland is also given a (small) role in shaping the overall EU-UK relationship. Most importantly, the democratic consent vote according to Article 18 of the Protocol gives the Northern Ireland Assembly an opportunity to terminate the trade elements of the Protocol (Articles 5-10). It is thus placed

in the unusual position to autonomously decide on an 'excepted matter', which would normally be a no-go under the UK's devolution settlement.⁵

Additionally, in the New Decade, New Approach deal,⁶ the UK Government made a promise – as yet unfulfilled – that members of the Northern Ireland Executive would be invited to attend Specialised Committee meetings arranged under the Protocol, where these are also attended by the Irish Government as part of the EU's delegation.

Furthermore, since the start of the Brexit negotiations the EU institutions have made an effort to directly engage with Northern Irish politicians and stakeholders. While meetings took place with Scottish and Welsh representatives as well as Westminster opposition politicians during the Brexit negotiations, engagement with Northern Irish representatives was more intense and continues to this day. That level of engagement – including appearances by an EU Commissioner before a Stormont committee – with representatives of a sub-state entity of a third country is unprecedented.

There is some current discussion, as of mid-2021, about how and when devolved administrations are represented or present in the governance structures of the Trade and Cooperation Agreement. However, whatever emerges, there is no expectation that devolved representatives will have any decision-making role and they may, at best, have limited opportunities to actively participate.

Nonetheless, Scotland's strong desire to stay close to the European Union is evidenced in the Scottish Continuity Act, which provides a legal basis for continued alignment with EU law on devolved matters.⁷ The Act empowers the Scottish Government to enact new EU legislation into Scots law. The purpose of the Act is to allow Scotland to 'keep pace' with EU law developments in particular in the field of environmental law.⁸ However, the centralising effects of the Internal Market Act described above, may make the aim of 'keeping pace' with EU law more difficult to achieve.

Despite these centrifugal trends, there are interesting parallels in policy developments of late. Under the New Decade, New Approach deal, the Northern Ireland Assembly was tasked with (finally) bringing about a Northern Ireland Bill of Rights, which is one of the commitments contained in the Good Friday/Belfast Agreement. At the same time Scotland has embarked on an ambitious journey of providing much improved human rights protection and indeed leadership. A National Task Force for Human Rights Leadership produced a report recommending a new statutory human rights framework in

⁵ See Lisa Whitten, "A Northern Ireland Exception and Why It Matters", *EU Law Live Weekend Edition* No 66, 8, 11.

⁶ New Decade, New Approach (January 2020), available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/856998/2020-01-08_a_new_decade_a_new_approach.pdf.

⁷ Section 1, UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021.

⁸ Scottish Government, UK Withdrawal from the European Union (Continuity) (Scotland) Bill Policy Memorandum.

Scotland, which would see improved protection for social, economic, cultural, and environmental rights in devolved areas.⁹ The Scottish experience has sparked much interest in Northern Ireland with several members of the Scottish task force giving evidence to the ad hoc Stormont committee on a Bill of Rights and informing its views.

Overall, Scotland and Northern Ireland face some common and some very different challenges post-Brexit. They share some common issues around devolution. They also face many differences both due to the existing structures of the Good Friday/Belfast Agreement and since the start of 2021 due to the impact of the Protocol. It is also worth noting that while there are a range of views and divisions on the Protocol in Northern Ireland, and between the UK government and EU, in Scotland, Nicola Sturgeon's government would positively want to have that degree of EU alignment but cannot (though how Scottish public opinion would react to a hard Scotland-England border is an open question).

1.2 Ireland-Scotland Relations

Ireland remains an EU member state with a firm commitment to EU integration both at the high political and the grassroots level with 84% of the population agreeing that it should remain an EU member.¹⁰ Ireland's involvement with and influence in the EU recently increased when the Irish minister for finances was elected President of the Eurogroup.

Ireland's EU journey will remain shaped by post-Brexit developments, however, as the Protocol has direct repercussions for the Ireland-EU relationship. In particular, it envisages the continued operation of the Common Travel Area, which is necessary to maintain an open border and is the key aim of the Protocol. This transforms Ireland's policy choice to opt-out from the Schengen arrangements into a legal duty.¹¹ It also means that Ireland is likely to maintain its opt-out from the Area of Freedom, Security and Justice as this guarantees Ireland the freedom to pursue its own policies on border checks and visas and to coordinate these with the UK.

Ireland recognised early on the threats that Brexit posed, in particular with regard to the border with Northern Ireland.¹² It used its preparedness early on in the Brexit talks to make the maintenance of the open border one of the EU's key negotiating objectives. This proved necessary given the UK government's wish for a hard Brexit outside the EU's customs union and single market.

Nonetheless, the Irish government saw from the start that it was going to have to develop a new Ireland-UK relationship and not let it be too deeply damaged

⁹ Report available here: <https://www.gov.scot/publications/national-taskforce-human-rights-leadership-report/>.

¹⁰ Red C opinion poll (March 2021) commissioned by the European Movement Ireland, <https://www.europeanmovement.ie/programmes/ireland-and-the-eu-poll/>.

¹¹ Protocol 20 to the EU Treaties.

¹² See Tony Connelly, *Brexit and Ireland* (2017), pp.5-15.

by Brexit – though badly damaged it clearly was. It was clear, for Ireland’s government, that sensitive though it was, strong relations with the UK in future also meant good relations with Scottish and Welsh governments and not only a concern with Northern Ireland, the Good Friday/Belfast Agreement and Ireland-UK relationships.

Ireland already had a Consul-General in Edinburgh at the time of Brexit – one of the most active and influential diplomatic postings in Scotland. By 2019, a new Consul-General posting was also opened in Cardiff – and, in July 2021, one in Manchester in England. Like elsewhere in the EU, Dublin was only too aware that Brexit had further intensified the Scottish independence debate that had not, anyway, gone away after 2014.¹³ But while many doubtless had strong sympathies for the Scottish National Party’s (SNP) goal of independence in the EU, there was also full awareness in the Irish government and diplomatic service of the sensitivity of the UK’s constitutional debates and the need to be neutral on the Scottish independence question.

While these sensitivities made some in the EU reluctant to engage too much with Scotland, the Irish government and Oireachtas had a strong basis of existing relationships with Scotland, and plenty of experience of maintaining those relationships in the face of constitutional tensions. Indeed, notably soon after the Brexit vote, in November 2016, Nicola Sturgeon gave a high profile address to the Seanad Éireann. Both her Irish hosts and the First Minister herself were at pains to underline the centuries long, warm Ireland-Scotland relationship down to the present day.¹⁴ More low profile, but effective as part of continuing post-Brexit relationship-building, was the joint Irish-Scottish governments’ project on their bilateral relations culminating in a report in January 2021 focusing on a range of cultural, business and educational areas for intensified future cooperation.¹⁵

Meanwhile, the Scottish government had opened a new innovation and investment hub in Dublin in 2016, followed by similar hubs, based in UK embassies, in Berlin and Paris, and a related office in London – alongside the longer-standing Brussels office of the Scottish government. While some in Scotland might see these hubs as proto-embassies or at least as a rather deliberate para-diplomacy, in bilateral relations they are presented as less controversial and lower key. Even so, there are some indicators that the UK government may be starting to scrutinise these hubs more carefully – or even neuralgically¹⁶.

¹³ Kirsty Hughes (2020) “European Union Views of the UK post-Brexit and of the Future EU-UK Relationship”, Policy Paper, Scottish Centre on European Relations, <https://www.scer.scot/database/ident-12883>.

¹⁴ Address to Seanad Éireann by Ms Nicola Sturgeon MSP (2016), <https://www.oireachtas.ie/en/debates/debate/seanad/2016-11-29/2/>.

¹⁵ Government of Ireland and Scottish Government (2021), “Ireland-Scotland Joint Bilateral Review – Report and Recommendations 2021-25”, January, <https://www.dfa.ie/media/dfa/ourrolepolicies/ourwork/Ireland-Scotland-ReviewEnglish.pdf>.

¹⁶ Kirsty Hughes (2021), “Scotland’s European Relations: Where Next?”, June, Policy Paper, Scottish Centre on European Relations, <https://www.scer.scot/wp-content/uploads/Final-pdf-Scotland-Europe-Paper-15-6-21-kh.pdf>.

Overall, as long as the current constitutional status quo stands together with the current EU-UK Trade and Cooperation Agreement, then both Irish and Scottish governments can be expected to continue to foster good relations. How straightforward or difficult this may be or become will depend too on whether current fractious relations both between the UK government and the EU, and between the UK and Scottish governments continue or not.

Section Two: Future Constitutional Change

Scotland and Northern Ireland differ in the constitutional position on their respective future position in the UK. The Good Friday/Belfast Agreement – and its implementing legislation, the Northern Ireland Act 1998 – provides a clear exit route for Northern Ireland if the majority of the people of Northern Ireland voting in a referendum opt for a united Ireland. Scotland does not have such a pre-defined exit route. Moreover, Northern Ireland's power-sharing executive is, by its very design, split on the question of Irish unity, whereas Scotland's government is pro-independence.

Brexit has had a strong impact on constitutional debates both on the island of Ireland and in Scotland. Here we briefly consider how Scottish independence and Irish unification would impact on relationships across these islands.

2.1 Prospects for Scottish Independence

The Scottish National party (SNP) has been in power in Scotland since 2007. In the May 2021 elections, both the SNP and the pro-independence Greens made it clear that they want to hold an independence referendum during the current term of the Scottish parliament. The SNP won 64 seats in the 129 seat Scottish parliament, and the Greens 8 – between them giving a clear mandate to hold another referendum.

Nonetheless, Boris Johnson has insisted that, in the face of the pandemic, it is not the time to hold another referendum and that the question was resolved for a generation in 2014. Yet, cabinet minister Michael Gove also stated, after the Scottish elections, that the UK union is a voluntary one. Apparently Scotland can choose to leave the union but, in the view of the UK government, not yet and not now.

Nicola Sturgeon has said that she would like to hold a referendum during the first half of the parliament's term i.e. by the end of 2023. However, with the UK general election due in 2024, and the possibility that it might be held early in 2023 – and combined with the pandemic – this timing may be awkward, in the face of a continuing London-Edinburgh stand-off on holding a referendum.

For now (in 2021), Scottish opinion on independence is broadly split down the middle at 50:50 – although in the second half of 2020 there were over twenty polls in a row showing a majority for independence. The demographics

around support for independence are also highly significant with majority support in those under 50 or 55 years old (depending on the poll).¹⁷

The SNP's goal is independence in the EU. Nicola Sturgeon, when looking to a referendum in 2023, mentioned 2026 as a likely date for independence. But the Scottish government is well aware that an independent Scotland would have to manage an accession process to rejoin the EU. Conceivably, this could be as fast as four or five years if Scotland has remained closely aligned to EU laws in the meantime.¹⁸

If Scotland were independent in the EU by, say, 2030, then its relationship with Ireland and Northern Ireland would be transformed. Scotland would have an open border to Ireland and to the rest of the EU, and it would then be on the EU side of the Protocol with respect to Northern Ireland, with an open border for goods. The cost of this is the imposition of an EU external border between Scotland and England and Wales – albeit an independent Scotland would doubtless, like Ireland, want to stay part of the UK-Ireland Common Travel Area.

For an independent Scotland, good relations with the rest of the UK would be important – much of those relations set by its EU membership (if it transpired) but with many other issues to discuss with England and Wales on their shared island. In the face of a Scottish independence vote, many in the EU will focus more, in fact, on what the fragmentation of the UK will do to England – and its impact on Irish unification if Scotland's decision comes first.

Ireland and Scotland might, in many ways, have much in common as two small Celtic states in the EU. Some also see an independent Scotland in the EU as almost another Nordic EU state. It is notable here too that Ireland published in 2021 a new Nordic strategy.¹⁹

Yet what sort of EU member state an independent Scotland would be is far from clear. The current Scottish government recognises that it will not regain any of the UK's previous opt-outs, except perhaps on Schengen given the Common Travel Area, and is not looking to emulate that British exceptionalism. Having said that, despite currency being a core issue in the independence debate, there is rather little focus on the Euro, with the assumption of many on the independence side being that joining the Euro would be pushed back indefinitely. The political ramifications of this – not being in the EU's inner core like Ireland – are rarely touched on.

¹⁷ John Curtice (2021), "The Constitutional Question Dominates: How Scotland Voted in 2021", May, *ScotCen*, <https://whatscotlandthinks.org/2021/05/the-constitutional-question-dominates-how-scotland-voted-in-2021/>.

¹⁸ Kirsty Hughes (ed) (2020) "An Independent Scotland in the EU: Issues for Accession", Report, Scottish Centre on European Relations, <https://www.scer.scot/database/ident-12533>.

¹⁹ Kevin O'Sullivan (2021) "Ireland's Nordic strategy to deepen co-operation on climate and energy", June, *Irish Times*, <https://www.irishtimes.com/news/politics/ireland-s-nordic-strategy-to-deepen-co-operation-on-climate-and-energy-1.4582390>.

In the end, Scottish independence in the EU would represent a huge political and constitutional step for Scotland – but a new 5 million population northern EU member state would not be so challenging for the EU. The real challenge – for the EU, and for Ireland too, would be in the impact on the rest of the UK, England, Wales and Northern Ireland of that independence.

2.2 Prospects for Irish Unity

Even though expressly provided for by the Good Friday/Belfast Agreement and the Northern Ireland Act, until Brexit Irish unification did not feature prominently in political debates outside of Irish republican circles in Northern Ireland, Ireland or the UK. This has now changed. While the Irish government pursues a cautious approach with a ‘Shared Island Initiative’, individual members of the governing parties have gone further and started to think (and write) publicly about the process towards and shape of a united Ireland.²⁰ The same is true for academic discourse, which had been largely dormant on the question. Since Brexit numerous individual publications and collaborative projects have begun to appear.²¹

While many questions concerning the procedural and substantive details of the process of Irish unification remain open, the European Council has made it clear that – following the German precedent – a united Ireland would automatically remain a member of the European Union.²² Irish unification would be preceded by negotiations between Ireland and the UK on its precise terms, which would in all likelihood result in a treaty between the two states. That treaty would also need to address the commitments in the Good Friday/Belfast Agreement, which would need to be adapted to reflect the new constitutional reality. Existing safeguards for those in Northern Ireland with a British identity – notably the right to be either citizens of Ireland, the UK or both – would need to be reaffirmed and new ones – e.g. on representation in an all-Ireland parliament or government – may need to be agreed.

Furthermore, the Protocol would most probably become redundant and could be removed from the Withdrawal Agreement. In its place, however, the EU and the UK might want to agree terms to protect the rights of British citizens in Northern Ireland under EU law: a continued participation of Ireland in the Common Travel Area – and its continued permissibility under EU law – might

²⁰ See e.g. Neale Richmond TD’s contribution “Towards a New Ireland”, available at: <https://www.finegael.ie/an-inclusive-new-ireland-can-be-achieved-richmond/>.

²¹ E.g. the Royal Irish Academy’s ARINS project (<https://www.ria.ie/arins>); UCL’s Constitution Unit Working Group on Unification Referendums on the Island of Ireland (<https://www.ucl.ac.uk/constitution-unit/working-group-unification-referendums-island-ireland>); Oran Doyle and David Kenny, Models of Irish Unification Processes, available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3552375; Colin Harvey Popular Sovereignty, Irish Reunification and Change on the Island of Ireland, in: Conor O’Mahony, Maria Cahill, Seán Ó Conaill, Colm O’Cinneide (eds.), Routledge 2021.

²² See Minutes of the Special Meeting of the European Council held on 29 April 2017, EUCO XT 20010/17, available at: <https://data.consilium.europa.eu/doc/document/XT-20010-2017-INIT/en/pdf>.

be one aspect; another might be the facilitation of movement for British nationals from Northern Ireland.

If the people of Northern Ireland voted in favour of Irish unity in a border poll, Scotland would be affected in a profound way. First, Irish unification would remove one of the pillars of the UK's union. It would result in the eventual repeal of the Act of Union 1801, the Northern Ireland Act 1998, and either a repeal or a reform of the Ireland Act 1949. With the UK union weakened in this way, Irish unification would, in all likelihood, make calls for (another) Scottish independence referendum (even) louder and increasingly difficult to resist, calling the entire union of the UK into question.

Second, Irish unity would require a re-adjustment of the Good Friday/Belfast Agreement and the institutions established by it. Scotland plays an active part in the East-West relationship as a member of the British-Irish Council and host to its secretariat. An adjusted Good Friday/Belfast Agreement would probably envisage a continuation of the institutional side of this relationship, but Scotland would no longer be dealing with another devolved entity as its closest neighbour, but with a sovereign state, which is likely to affect the dynamics of this relationship.

Third, in economic terms a united Ireland would solidify the trade border in the Irish sea and extend it beyond goods to services (for Northern Ireland). It would also mean that the current open border for goods when going from Northern Ireland to Britain would become an EU external border in that direction too. However, assuming the Common Travel Area did stay in place, the free movement of people that the CTA allows does facilitate services trade even today between the UK and Ireland compared to services trade with the other EU member states (even while there are clearly substantial barriers to Ireland-UK services trade compared to before Brexit).

Overall, many consider that if one of these major constitutional changes happens – Irish unification or Scottish independence – it will have a substantial impact on the other, quite likely encouraging pressures for constitutional change in the one that has yet to decide.

Conclusions

Scottish-Irish relations overall are positive, but have been put under strain or at least made more complex due to Brexit as a consequence of the damage done to overall Irish-UK relations. Brexit has also set Scotland and Northern Ireland further apart as devolved entities.

Due to its continued participation in the EU customs union and single market for goods under the protocol, Northern Ireland will be spared from some of the centralising effects of the Internal Market Act. Scotland's efforts to effect a softer Brexit for the UK as a whole as well as the alternatively proffered 'special deal' for Scotland came to nothing. Instead, Scotland is focusing its efforts on its light European strategy including maintaining relations with strategic EU partners – notably Ireland, the EU institutions and France and

Germany – and on keeping its statute book in tune with EU law developments, so far as the devolution settlement allows.

The future Irish-Scottish relationship very much depends on whether and when constitutional change within the UK will occur on either side of the North Channel. While the legal avenues towards Scottish independence and Irish unity and their political contexts differ, either constitutional change would have significant repercussions for the other polity as it would call into question the future of the UK as a whole.

An independent Scotland would want to forge strong positive relations with Ireland – which is seen by many as a role model for an independent Scotland – and the same would be true for relations with the Nordic EU member states. Yet, Scottish independence would raise difficult questions concerning Scottish relations with England and in particular the common border, which would become an EU external border. Similarly, the current Irish Sea border for goods between Great Britain and Northern Ireland would become an international border and could potentially harden as a consequence of independence.

Overall, Scotland-Ireland relations are likely to continue to be dominated by the ‘border’ theme. The borders erected by Brexit between Scotland, Ireland, and Northern Ireland have already led to increased differentiation and complicated relations and this trend is likely to continue. That said, both the Irish and Scottish governments value their positive relationship and continue their work to ensure that their relations remain good and are deepening.