The consequences of Brexit on the devolved territories of the UK could be just as difficult to resolve as Britain’s EU exit reports.

Brexit has thrown up all sorts of seemingly-intractable problems, be it citizens’ rights after the UK exits the European Union or Britain’s financial settlement. These issues have taken up acres (or hectares? Ed) of newspaper print and been the subject of endless debate by the broadcast media.

One area that has received rather less attention, perhaps because it may be seen as being ‘less sexy’, is that of the constitutional impact of Britain’s decision to leave the Union on the other devolved parts of the UK - Wales, Scotland and Northern Ireland.
A policy document drafted by the European Parliament’s constitutional affairs committee points out that the different parts of the UK voted in different ways in the EU referendum with England, for example, voting by 47 per cent in favour of staying in the EU with 53 per cent against. By comparison, people in Scotland voted very differently: 62 per cent to remain and 38 to leave.

Northern Ireland, for its part, is divided on EU membership. The nationalist parties - Sinn Fein and the Social Democratic and Labour Party - and the Ulster Unionist Party supported Remain, while the Democratic Unionist Party, which has currently struck an informal deal with the ruling Conservative government, supported the Leave camp.

Indeed, the Irish border issue is one of the three issues (along with the financial settlement and citizens’ rights) that need to be resolved before the UK can expect to discuss a future trading relationship with the EU.

According to Jonathan Tonge, of Liverpool University, most difficult of all, however, is the preservation of a frictionless border, given the possibility of two different customs duties and regulatory bodies on either side.

He believes the options include a UK-wide bespoke tariff-free, rules of origin and regulation deal with the EU - if the UK pays, if the EU allows and if the UK still has trade sovereignty - “three very big ‘ifs’.”

Tonge says another possibility is that “special” EU customs union status is awarded for Northern Ireland only, with tariff-free, common trade regulation and rules of origin, in an island-wide trade zone (in effect a new customs union within an existing customs union). But he warns Unionists object to this, fearing it pushes Northern Ireland to the edge of the UK.

Another option is that sectoral deals are struck with the EU, covering the main Northern Ireland-Ireland trade areas.

The academic says, “The odds on no deal remain short, but, to end slightly more optimistically, there is political commitment to a soft border and a two-year transition period allows a little longer for a deal to be worked out.”

He adds, “One of the few areas of consensus between supporters and opponents of Brexit is that Northern Ireland will be the part of the United Kingdom most affected.”

Another constitutional expert, Michael Keating, of the Centre on Constitutional Change, says Brexit was presented by the Leave campaign as an opportunity to ‘take back control’, restoring the sovereignty of the British Parliament. There has since been some confusion over whether it is the Parliament that is sovereign or the people acting through the referendum, with the Parliament having to defer to their decision.
He says, “The UK resembles the European Union which, rather than clashing with British (non-English) conceptions of sovereignty, reflects them rather well.”

He outlines three scenarios for the future of the devolution arrangement after Brexit; “The first is recentralisation, as the UK reconstitutes itself as a unitary nation state. The Withdrawal Bill is a move in this direction, as it proposes take back to the Westminster Parliament all powers currently shared between the EU and the devolved legislatures. Only later might some of these be ‘released’ back.

“The Scottish and Welsh governments have declared this to be unacceptable and they are refusing to recommend consent on the part of their legislatures. Legally, the UK government could go ahead without their agreement, but this would put the existing conventions in peril.”

A second possibility is fragmentation as Scotland opts to become independent within the EU and Ireland reunites.

“This, however, would create hard, EU borders between Northern Ireland and Scotland and England, which nobody wants. Polls show that there is not currently a majority for secession in either Scotland or Northern Ireland,” says Prof Keating, who is based in Aberdeen.

A third possibility is reconfiguration, as Scotland and Northern Ireland find their own place within Europe. He says, “There is broad support in Northern Ireland for keeping the border open, but no viable proposals have been presented.

The Scottish government has published proposals for Scotland to remain in the single market even as the rest of the UK comes out but these were rejected by the UK government and are not part of the negotiations.”

The conclusion? Well, according to Keating, Brexit promises to “deepen” the constitutional divisions within the UK itself. Unsexy as the topic may be, the consequences of Brexit on the devolved territories of the UK could be just as difficult to resolve as everything else.

About the author

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