

# Detoxifying the UK's exit from the EU: a multi-national compromise is possible

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*Current public discussions about how the UK is to leave the European Union have been too simplified, and have failed to come up with any solution that recognises that only England and Wales voted to leave.*

**Brendan O'Leary** outlines a way forward that might enable those nations of the UK that want to remain in the EU to do so.



There has as yet been no Brexit, and there will not be – because there is no such entity as ‘Britain,’ except as inaccurate shorthand for the multi-national state of the United Kingdom of Great Britain and Northern Ireland. There could, however, be a UKEXIT. But those who insist that a 52-48 vote is good enough to take the entire UK out of the EU would trigger a serious legitimacy crisis.

England and Wales have voted to leave the European Union, but Scotland, Northern Ireland and Gibraltar have voted to remain. These differing outcomes have to be the central focus of political attention while we wait for the debris of broken expectations to settle in the Westminster parliament, among the UK's allies, and across beached migrants and expatriates. The resolution of leadership crises in the Conservative and Labour parties will proceed amid the shocks reverberating around the world.

There is a constitutional compromise that would avoid the genuine prospect that a referendum on Scottish independence, promoted by the SNP and the Green Party, will lead to the break-up of the union of Great Britain. The Scots have every right to hold such a referendum, because the terms specified in the SNP's election manifesto have been met—namely a major material change in circumstances.

The same constitutional compromise could diminish the likelihood of turbulence spilling into Northern Ireland, and destabilising its union with Great Britain. The same day that Nicola Sturgeon publicly indicated preparations for a second Scottish referendum, the Deputy First Minister of Northern Ireland, Martin McGuinness of Sinn Féin, demanded that a poll be held, as is possible by law, to enable Irish reunification. Sinn Féin has a point. Many in Northern Ireland fear that a UK exit would restore a hard border across Ireland, and strip away core European components of the Good Friday Agreement of 1998. Does the narrow outcome of a UK-wide referendum automatically over-ride the terms of the Ireland-wide referendums of 1998, and a majority within Northern Ireland? Good Friday should not be superseded by Black Friday. It would be perfectly proper to call for a border poll to give people the option of remaining within the EU through Irish reunification—especially if there is no alternative that respects the clear local majority preference to remain within the EU in Northern Ireland. But there is such an alternative.

The very same compromise may also weaken the pressure from the Spanish government for the UK to cede sovereignty over Gibraltar.

This compromise would build on the idea that each mandate in each territory should be respected, but without breaking up the United Kingdom, or Gibraltar's ties to the UK.

## **England and Wales move outside the EU, but Scotland and Northern Ireland stay within it**

The compromise would be that the bulk of the UK would be outside—‘externally associated’ perhaps—and some of it inside the EU. This change would reflect the fact that the UK is composed of two unions, that of Great Britain, and that of Great Britain and Northern Ireland, and that in each of the two unions one partner has clearly expressed the desire to remain within the EU. All four mandates within the UK would be respected in what was an advisory referendum.

Is this feasible? Recall first that many UK dependencies—including three members of the British-Irish Council, Jersey, Guernsey and the Isle of Man—are currently not part of the European Union. So it's already true that sovereign states, including the UK, have parts of their territories subject to their sovereignty within the European Union, and parts of them outside. The terms of the foundational treaty, the Treaty of Rome, also envisioned associate status — they were designed for the UK.

Then consider past precedent. Greenland, part of Denmark, seceded from the EEC, but Denmark remained within the EEC. That, of course, had few consequences for power within the European Union given Greenland's small population, and the components of the UK that remain within the EU would not be entitled to the same rights that currently are held by the UK as a whole.

Now consider politics going forward. Negotiating UKEXIT is not going to be easy for the next Prime Minister and Cabinet—indeed the difficulties may precipitate a re-alignment of party politics and a general election.

The Westminster parliament must give effect to the advisory referendum, and it will have to deliberate over the consequences of imposing an EU departure against the majority will of Scotland and Northern Ireland.

The consensual solution would be to negotiate for the secession of England and Wales from the EU, but to allow Scotland and Northern Ireland to remain—with MEPs, but without representation on the Council of Ministers, though with the right to have a single shared commissioner.

To work this compromise requires part of the UK to remain within the EU and that would require representation for the two components that remain inside the EU's institutions—and the UK's overall consent for the same. Retaining MEPs in Scotland and Northern Ireland would be easy. They would be numbered as currently, proportional to population, and this would have no major implications for the big states.

But London ministers could not retain power in the Council of Ministers if the bulk of the UK is outside the EU. I suggest that the now vacated UK Commissioner's role could be kept, but the appointment could be rotated between Scotland and Northern Ireland, in a 3: 1 ratio over time, reflecting Scotland's greater population. The Commissioner would be nominated by the relevant government and appointed by the UK government. (A judge to serve in the European Court of Justice could be nominated in the same way.) The retention of one Commissioner and their MEPs would give Scotland and Northern Ireland a say in agenda-setting and in law-making. And it would remove any UK ministerial veto over EU decision-making.

The future role of the Westminster parliament would be to process EU law that applies to Northern Ireland and Scotland—strictly as an input-output machine—thereby ensuring that Scotland and Northern Ireland have the same EU law, and that the Union is retained. It would be up to Westminster to decide which components of EU law they applied to England and Wales—a convenience that may be helpful in dealing with the repercussions of what has just occurred.

The currency is a reserved Crown power, and the proposed compromise would not lock Scotland and Northern Ireland into the Eurozone. Rather as part of the UK, Scotland and Northern should inherit the entire UK's position under the Maastricht treaty (namely, they would stay with sterling unless the UK let them go into the Euro). However, Scotland and Northern Ireland would not be able to apply the new terms that Prime Minister recently Cameron negotiated on the supposition that all of the UK would remain in the European Union.



Debating chamber of the Scottish Parliament © User:Colin / Wikimedia Commons

### **The benefits and difficulties of this compromise**

All of Ireland, Scotland, England and Wales would be an internal passport free-zone. However, one negative consequence of this compromise would be a hard customs border in the Irish Sea. But that, I think, would be better than one across the land-mass of Ireland.

Another effect would be a hard customs border between Scotland and England. If all of Ireland and Scotland remain in the EU there cannot be a single market in the UK, as defined by the EU, and therefore a customs barrier will have to exist. But note that a hard customs border will materialise in any case if a Scottish referendum led to independence.

Ireland, North and South, and Scotland could not join the Schengen agreement because that would mean that England and Wales would lose the control over immigration which was emphasised by the leave side in the referendum. But then, they are not part of Schengen at present, and there is no evidence that a majority in any of the three countries wants to be.

Would there be any other benefits to this idea, aside from keeping the UK together, which Unionists of all stripes say they want? Yes, UK enterprises could re-locate to EU zones within the UK, which would soften the negative consequences of an entire UKEXIT. These arrangements would leave England and Wales to experiment with whatever policy freedoms they preferred.

Citizenship and migration-law, would have to be reconsidered, but the ensuing difficulties could be negotiated. These matters will be on the table anyway.

### **Don't forget that other nations and states matter**

Going forward, the collective ingratitude and contradictions of nations and states should never be underestimated. Consider, for instance, the vote in Wales, which has been undeniably a net beneficiary of the EU. Yet Wales like England certainly has the right to be free, though its devolved leadership has already said that it will want to renegotiate the Barnett formula.

Some constitutional reconstruction of the UK is therefore necessary, and the starting question to be posed to Conservative and Labour leaders, and to the UK Parliament, is whether the Welsh and the English believe that the first cost of taking back control of their own affairs should be the imposition of control over Scotland and Northern Ireland?

The interests of states in making bargains and treaties are rarely based on profound generosity. The divorce

agreement that the Leave side will seek to negotiate from the EU has to be acceptable to the existing member-states of the EU—or else there will be a chaotic UK departure without agreement.

Most EU free trade agreements have been what lawyers call ‘mixed agreements’ – that is, they require the consent of the EU institutions and ratification by all of the Member States—because such agreements usually contain rules going outside the scope of trade policy. Therefore, in practice, each member-state has a veto in agreeing a negotiated withdrawal.

The new Westminster cabinet that will negotiate with its European counterparts will soon realize that the Irish and Spanish states have a veto power over the divorce agreement—and any subsequent agreements. Spain and Ireland are not alone. There will be many states with an interest in protecting their stranded ‘diasporas’ (their citizens living and working within the UK), not just the flow of capital, goods and services.

One state that was neglected in the referendum debate was the United States. Anyone who imagines that a UK-US trade agreement will get easily get through the American Senate has limited knowledge of US treaty-making. It will not matter whether President Clinton or President Trump is in the White House. When the new UK cabinet is formed it should recall President Obama’s serious warning that the UK will be in the back of the queue, and that therefore means that the bargaining power of the EU and its member-states will be strong. The constitutional compromise suggested here will calm the UK’s domestic politics, and give the EU a continuing stake in some of the UK.

There is one key lesson from the political science of multi-national states. They are usually not destroyed by secessionists alone. Rather, the key trigger that leads to the break-up of such states is the unilateral adjustment of the terms of the union by the centre, without the consent of its multi-national components.

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

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