


Brexit – any way forward? Some input into “cross cutting issues”

#Charting Brexit – 14 June 2017
NICVA, Human Rights Consortium



Queen's University
Belfast

School of Law

Professor Dagmar Schiek

Some points

- Leaving the EU - a human rights issue?
- Leaving the EU – not happening now?
- Any future?





Queen's University
Belfast

School of Law

2

Professor Dagmar Schiek

Leaving the EU – a human rights issue?

- EU not a human rights organisation
- However
 - In contrast to Europe's Human Rights Treaty (ECHR), EU law has direct effect in UK
 - This comes with an effective Court, offering opportunities for civil society advocacy
 - Also: under Article 6 EU, MS to adhere to ECHR
- Fields with human rights relevance (UK discourse)
 - Equality law
 - Employment law
 - Environmental law
 - Citizens' rights



Leaving the EU – not happening now?

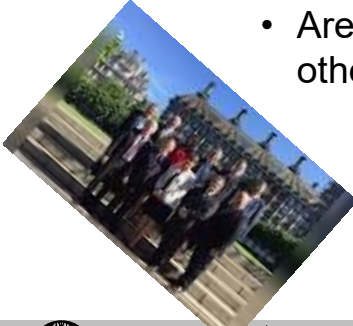


Does the general election
change everything?



Northern Ireland's new power?

- Do the demands of the DUP promise a future?
- ... I am not answering this
- Are they compatible with each other from a legal perspective?



Queen's University
Belfast

School of Law

5

Professor Dagmar Schiek

DUP's election manifesto on EU

- 2. Ease of trade with the Irish Republic and throughout the European Union
- 3. Maintenance of the Common Travel Area
- 4. Strengthened relationships across the four components parts of the United Kingdom with no internal borders
- 6. Particular circumstances of Northern Ireland with a land border with the EU fully reflected
- 7. Frictionless border with Irish Republic assisting those working or travelling in the other jurisdiction
- 8. Progress on new free trade deals with the rest of the world
- 9. Comprehensive free trade and customs agreement with the European Union
- 10. Northern Ireland established as a hub for trade from Irish Republic into the broader UK market
- 11. Customs arrangements which facilitate trade with new and existing markets



Queen's University
Belfast

School of Law

6

Professor Dagmar Schiek

DUP's election manifesto on EU

- 14. Arrangements to facilitate ease of movement of people, goods and services
- 15. Proportionate regulatory regime which can promote competitiveness, with legislation to suit our local needs
- 20. Effective immigration policy which meets the skills, labour and security needs of the UK
- 21. Rights of British citizens in the EU and those from EU member states living here safeguarded
- 23. Effective, time bound transitional arrangements where necessary
- 25. Ability to opt-in to EU funds where proven to be cost-effective and add value
- 29. Jurisdiction of European Court of Justice ended and greater control over our laws restored
- 30. Positive ongoing relationship with European Union in keeping with Article 8 of Lisbon Treaty



This circle cannot be squared

- “frictionless border”
 - Within Ireland: can be achieved by specific status (remaining in Single Market AND customs' union, PLUS citizens' rights)
 - For Northern Ireland: maintaining equality aquis in full (not part of EEA)
 - With UK: can be achieved if UK does same
- Escaping the jurisdiction of the CJEU
 - Not compatible with the above
 - Nor with safeguarding rights of EU citizens here and UK citizens in EU
 - Or the participation in EU funding schemes
 - Even “neighbourhood agreements” (Article 8 TEU) may provide for a role of the CJEU
 - E.g. EU-Ukraine DCFTA



Any future?

- Specific arrangements
 - For the UK as a whole to remain in Single Market PLUS customs' union PLUS citizens' rights
 - Very difficult to achieve
 - For Northern Ireland
 - Any of the solutions creates frictions within UK (However, DUP does not state anything about frictionless border in UK, but rejects internal borders...)



References (abbreviated titles)

- Doherty, McCrudden, McGowan, Phinnemore, Schiek, Temple Lang: Northern Ireland – EEA option
 - http://www.epc.eu/documents/uploads/pub_7576_northernirelandandbrexit.pdf
- DUP Westminster election manifesto, BREXIT (p. 10)
 - http://dev.mydup.com/images/uploads/publications/DUP_Wminster_Manifesto_2017_v5.pdf
- Schiek: Hard Brexit and Ireland
 - https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2949264
- Schiek: Escaping CJEU through EUXIT?
 - <https://blogs.qub.ac.uk/tensionatthefringes/files/2017/03/Schiek-escaping-ECJ-through-EUXIT-TREUP-occasional-paper.pdf>





Thank you for
your attention

d.schiek@qub.ac.uk

11  Queen's University
Belfast

School of Law

Professor Dagmar Schiek