



## Analysis of the Draft Deal

### Introduction

This is a brief first analysis of the 62-page draft deal, released just after 10pm. This analysis is being published at 1am, less than three-hours later. As can be appreciated therefore this is designed to provide an overview of key issues, with clearly a more detailed analysis required going forward.

Evidently a section of the DUP, NIO and Irish Government conspired to choreograph the release of the draft deal in a manner which they believed would prohibit proper scrutiny of the text. Indeed, this approach was indicated in a tweet by respected Newsletter journalist Sam McBride who made clear it was his understanding from sources that there was an effort to get this done before others could 'unpick' it. If so confident in the strength of the deal, one wonders why any of those championing it would seek to impede detailed scrutiny of it.

The swift DUP statement, stating there was "a basis" for a deal was a deliberate effort to bounce those in the party hostile to the draft text. The DUP Executive is not due to meet until Friday evening.

I concur entirely with the analysis of former senior DUP SpAd Timothy Cairns and BBC journalist Edna McClafferty, both of whom remarked that this deal was basically the February 2018 proposals repackaged. That deal was unacceptable to the DUP, we have yet to hear an explanation as to what has changed.

### **Key Sections of the Draft Text**

**4.6.2.13** the program for Government is committed to an Irish Language strategy. There is nothing to prevent this developing and expanding and introducing new elements to what is already contained within this draft deal.

**5.1** Will create a **hybrid British-Irish birth right**, which the courts have already rejected ruling that those born in the United Kingdom are legally British until such times as they renounce citizenship. Under the new commitments those born in the United Kingdom will not automatically be British by virtue of being born within the sovereign territory of the UK, rather you can be born in the UK and automatically be Irish. This doesn't apply anywhere else in the UK, once again setting NI apart as having a hybrid British-Irish status. It is a further escalation of the 'process'.

**5.6** Provides for an **Irish Language commissioner**, a key nationalist **demand**. This commissioner will have a statutory duty to "**protect and enhance**" the Irish Language. This includes introducing best practice language standards for public authorities. This opens the door to a wave of litigation to stretch out the '**standards**' and incrementally increase the obligations on public authorities. Read in conjunction with 5.9 it is clear these standards will be a requirement for public bodies- failure to fulfil such requirements would be amenable to Judicial Review.

**5.7** It is made clear that TEO will appoint an Irish Language commissioner “*as a key element of providing, under statute, official recognition of the status of the Irish Language in Northern Ireland*”. How does this sit with the key test outlined by the DUP that Irish could not be elevated above other minority languages? How many other minority languages has official status in Northern Ireland? This shreds a key DUP red line- not “on balance”- but explicitly drives a coach and horses through it.

**5.8** Outlines the core statutory function of the commissioner, which is not only to protect, but to **enhance** the Irish Language. The definition of enhance is as follows; “**intensify, increase, or further improve the quality, value, or extent of**”. Therefore, the extent of the imposition of the Irish Language, and the obligations on public authorities, will- via a statutory obligation- be incrementally intensified and increased. This is not a settlement in relation to the extent the Irish Language will be imposed within Northern Ireland, rather a process underpinned by a statutory obligation to enhance the imposition of the language.

**5.8.1- 5.8.4** Sets out the commissioner’s main roles under their statutory function. This, among other functions, gives the commissioner power to “*investigate complaints where a public body has failed to have due regard to those standards*”.

**5.9** Outlines that compliance with the standards set by the commissioner will be a “**requirement**”. It states inter-alia; “*The commissioner will engage with each public body to agree how it can fulfil its requirement under the standards...*”. The wide-ranging nature of the standards to be set and monitored are outlined, as aforementioned, at 5.6 and 5.8 of the draft text.

**5.10.3** Once again reiterates that the commissioner will have the power to “*place requirements on public authorities that are reasonable, proportionate and practical*”. How does one measure those tests in conjunction with a statutory obligation to constantly “**enhance**” the Irish Language? It should be remembered that the setting of standards must be measured with the statutory function of the commissioner, which is to enhance the language. The logical first stage of the ‘lawfare’ strategy by nationalist Irish Language activists would be to challenge the standards as not going far enough and therefore not discharging the statutory function to enhance the language.

**5.11** sets out the priority of the commissioner will be translation services. Let us be very clear on this; translation is the first priority- not the only priority. It is entirely inaccurate to claim that the standards will relate only to translation services, this is plainly incorrect.

**5.12** provides unionism with at least some form of defence in that given FM/DFM is a joint office, the standards to be approved must therefore receive joint approval and thus provides a unionist veto- for the time being.

**5.14** sets out the Ulster Scots/Ulster British tradition commissioner. The commissioner is for areas such as education, research, media, cultural activities and tourism initiatives. Let us remember that PUL culture is still neutered by the Parades Commission- so the work of the Ulster British tradition commissioner could not impinge upon the statutory functions of the Parades Commission, whose primary function is the restriction of PUL culture. It should be noted that no-one within unionism asked for an Ulster-Scots commissioner, this is purely a fig-leaf.

**5.23** outlines the process for legislation to be passed to translate the ‘deal’ into domestic law. This would be in the form of three bills brought forward as stand-alone amendments to the NI Act 1998. There are significant efforts to present this as evidence that there is no stand-alone Irish Language Act, however a stand-alone bill amending the NI Act 1998 will have the same practical effect. It is

also a point of note that the three-strand approach- tied together but stand-alone (I know, only the ‘peace process’ could concoct such a fudge)- is to all intents and purposes what was on the table in February 2018. The DUP stated then that the deal was unacceptable, what has changed since then?

**5.24** states that “*no bill should be regarded as independent from the other two*” however when you analyse this in practical terms, how the architects of the ‘deal’ want persons to ‘regard’ the bills is not really relevant, it is the reality that counts. And the reality is that these are three separate bills, even numbered **Amendment 1 Bill, Amendment 2 Bill and Amendment 3 Bill**.

**5.26** sets in motion a ‘Bill of rights’ whilst explicitly stating that such a Bill of Rights must “*reflect the particular circumstances of Northern Ireland*”. Once again Northern Ireland is treated as distinct from the rest of the United Kingdom. Another ‘process’ within the ‘process’ designed to incrementally assist in the de-britification of Northern Ireland.

#### **The Government commitments to Northern Ireland**

At **(10)** of this section there is positive commitment from the UK Government to legislate to ensure unfettered access to the UK internal market by 1 January 2021. This, of course, is a positive step in terms of a first stage of removing an Irish Sea border, however it is hardly a ‘concession’ to unionism. That we would be asked to celebrate that HMG are to legislate to ensure we can have unfettered access to our own internal market is quite frankly an absurdity. This, in a very small way, seeks to begin to remedy the sordid Betrayal Act designed to create an economic United Ireland. This should never have even been an issue and unionism should certainly not be thankful at a very minor step towards correcting this constitutional abomination.

It should be remembered however that this does not fix the consent mechanisms for agreement to the NI Protocol which flagrantly breach Strand (1) (5) (d) of the Belfast Agreement and impede the operation of S (42) of the NI Act 1998.

Para **(10)** of the commitments is positive, but it is only a small token towards righting an awful wrong. Until such times as the sections of the NI Protocol which delivers an economic United Ireland are removed, even **(10)** of the commitments does not go far enough.

Para **(16)** of the commitments outlines the desire to deliver the Stormont House Agreement on legacy. This agreement is disastrous for our armed forces and only further incentivises the re-writing of the past. It does nothing to address that the fact that IRA perpetrators are held in equivalence with the innocent victims they created.

The Government commitments to veterans, and the delivery of the Armed Forces covenant for Northern Ireland is positive. However, much the same as para **(10)** of HMG commitments, we should hardly be thankful that a Government is legislating for the benefit of members of their own armed forces. That unionism has been conditioned to think we should be thankful for such a basic step is testament to how the ‘process’ has lowered expectations to the point unionism must be thankful for even the most basic rights.

At Para **(22)** there is a positive commitment to restore Craigavon House. This is to be welcomed. Similarly, Para **(27)** and the amendment of the Flags Regulations (Northern Ireland) 2000 to bring Northern Ireland into line with the rest of the UK is to be welcomed.

There is also range of positive financial commitments to Northern Ireland, including parity for health care workers. Again, this is not something we should be grateful for, but in the context of the overall package is to be welcomed.

### **Conclusion**

This draft deal published by the British and Irish Governments contains a number of ‘sweeteners’ for unionism. It is an indictment of the ‘process’ that such basic provisions such as the Armed Forces covenant, unfettered access to our own internal UK market and the restoration of historic landmarks such as Craigavon House is to be interpreted by unionism as a ‘win’.

The British tradition in Northern Ireland has been so dehumanised that all this deal does is right some wrongs. We shouldn’t be grateful for that or view it as a ‘concession’. It is also to be noted it does nothing to restrict to halt the cultural war against parades, flags, bonfires and other aspects of PUL culture. It does not, in any shape or form, neuter the Parades Commission.

The reality is that HMG has used the health care and education crisis to effectively seek to blackmail unionism into paying nationalism’s ransom demand on Irish Language legislation, elevating Irish above other cultures and minority languages, along with a commissioner with a statutory duty to “enhance” the imposition of Irish Language standards within public bodies.

When viewed logically the British Government have emboldened nationalism’s ransom demand, by seeking to make unionism caving in a pre-condition to them stumping up the funds to solve the health and education crisis.

There is a fundamental principle at stake; nationalism collapsed the Government, pulling the levers of the ‘process’ to demand that we could not have working Government in Northern Ireland unless they can have their own way. The outworking of this deal is that nationalism is rewarded, even if not in as expansive a manner as they would have liked, for the politics of hostage.

Once again unionism is expected to be grateful for ‘sweeteners’ - which merely resets what should be the default position in relation to those relevant issues anyway- whilst nationalism pockets more concessions as the ‘process’ trundles on towards its designed endpoint; a United Ireland.

There is no ‘punishment’ for Sinn Fein’s politics of hostage, nor any tangible mechanism to prevent them deploying the same strategy again the next time the concession meter needs fed.

This deal breaches all of unionism’s red lines. Irish is elevated above other cultures and the Trojan horse of a commissioner is put in place in order to ensure further incremental expansion of the imposition of the language. It is to pay the ransom by Direct debit rather than up front.

This is not a good deal for unionism, **it should be rejected**, not least on a fundamental point of principle; the political of hostage should not be rewarded with political concessions.

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