



EU Referendum Briefing Note:

Informing the Debate

Introduction

The upcoming referendum on the United Kingdom's continued membership of the European Union is, arguably, the single most important decision that UK citizens have been asked to make in a generation. This view is maintained by Prime Minister David Cameron, for whom, the referendum presents "a huge decision for country, perhaps the biggest we will make in our lifetimes."¹

Since the UK's accession to the European Economic Community in 1973, public opinion on the European project has remained varied and divided across the constituent regions of the United Kingdom and across the political spectrum. In recent years, the European project has faced a series of existential crises. From the Eurozone crisis of 2008 to the existing refugee crisis, public opinion has been moulded against a backdrop of unprecedented instability and uncertainty.

The electorate's response to the referendum question is no doubt likely to be influenced, one way or another, by UK citizen's comparatively limited knowledge of the EU. Indeed, a

¹ Speech by Prime Minister on the EU at Chatham House , 10 November 2015:
<https://www.gov.uk/government/speeches/prime-ministers-speech-on-europe>

recent Eurobarometer survey has revealed that UK citizens are, generally speaking, less knowledgeable about the EU than the citizens of any other EU Member State.²

Regardless of one's position, as either as pro-Brexit, pro-remain or undecided, the choice made on the ballot paper on 23 June 2016 will have profound and lasting geo-political, socio-economic and cultural implications. Accordingly, the debate leading up to the referendum must be of a standard proportionate to the significance of the decision. To this end, the accessibility of relevant, reliable and accurate information is imperative to facilitating a well-informed decision from the electorate.

Therefore, the purpose of this paper is not to seek to establish a narrative, nor is it to provide a comprehensive analysis of the referendum or its aftermath, but rather to offer readers with some of the pertinent information required to independently cultivate an informed position. In doing so, this paper will serve as a signpost for locating primary evidence under four broad themes, particularly as they pertain to Northern Ireland. These include: the constitutional issues, citizen mobility issues, EU funding, and the wider economic and trade issues.

Constitutional Issues

To a considerable extent, the question of what the precise constitutional implications would be for Northern Ireland in the event of a Brexit is a challenging one to answer. This is largely due to the, thus far, limited cognisance of the exact status of the UK's post-Brexit domestic and external relations. Nonetheless, through close examination of the existing constitutional foundations one can identify some key areas which may impact directly upon Northern Ireland and which therefore merits careful consideration.

Foremost among the constitutional foundations of Northern Ireland is the Good Friday/Belfast Agreement, which established the province's devolved system of government and created the institutional framework for relations between Northern Ireland, the Republic of Ireland and Great Britain. In particular, when considering the constitutional implications, one must question whether or not one of the Agreement's co-guarantors discontinued membership of the EU is likely or not to affect the status of the 1998 settlement.³

The 1998 Good Friday/Belfast Agreement:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/136652/agreement.pdf

The Good Friday/Belfast Agreement sets out a series of constitutional provisions pertaining

² European Commission, 'Public Opinion':

http://ec.europa.eu/public_opinion/archives/eb/eb83/eb83_public_en.pdf

³ For further information concerning the devolved settlements for Scotland and Wales see The Scotland Act 1998: <http://www.legislation.gov.uk/ukpga/1998/46/contents> and The Government of Wales Act 1998: <http://www.legislation.gov.uk/ukpga/1998/38/contents>

to three main strands. This paper emphasises the significance of Strand 2, which oversees Northern Ireland's institutional relations with the Republic of Ireland, and Strand 3, which governs the Republic of Ireland's institutional relations with the United Kingdom. Namely, the Good Friday/Belfast Agreement set out the roles and responsibilities of the North South Ministerial Council and the British Irish Council. As outlined in the Agreement, each institution was established with the task to consider matters related to the European Union.⁴

The Northern Ireland Act (1998), which repealed the Government of Ireland Act (1920) and enabled the implementation of devolution in Northern Ireland, represents a cornerstone of Northern Ireland's present constitutional settlement.⁵

The Northern Ireland Act (1998):

http://www.legislation.gov.uk/ukpga/1998/47/pdfs/ukpga_19980047_en.pdf

Under Section 6 and Section 24 'Community law, Convention rights etc' of the Northern Ireland Act (1998) the legislation refers specifically to European Community Law in relation to the power of the Northern Ireland Assembly and Executive, respectively, to legislate in ways which are "incompatible with Community law." The statutes contained within the Northern Ireland Act also provide the devolved bodies with concurrent power, shared with the UK government, to observe, transpose and implement Community law.

In this Section of the Northern Ireland Act, the statute refers to the primacy of the European Convention on Human Rights in prohibiting any legislation which is "incompatible with any of the Convention rights." While this may not be directly related to the UK's membership of the European Union, it is the UK Government's proposal to repeal the 1998 Human Rights Act and to withdraw from the European Convention on Human Rights, which one may consider as having indirect constitutional implications.⁶

Human Rights Act (1998):

http://www.legislation.gov.uk/ukpga/1998/42/pdfs/ukpga_19980042_en.pdf

Northern Ireland existing constitutional and inter-governmental arrangements are also linked to further Concordats, the principal one being the "Memorandum of Understanding and Supplementary Agreements." This provides for the Joint Ministerial Committee (JMC) and four overarching concordats, one of which concerns the co-ordination of EU policy issues.

Memorandum of Understanding and Supplementary Agreements (2013):

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/316157/MoU_between_the_UK_and_the_Devolved_Administrations.pdf

⁴ See Agreement Strand 2 Section 17 and Strand 3, Section 5.

⁵ See Northern Ireland Act (1998) Part V, 'NSMC, BIC, BIIC' for Inter-governmental arrangements.

⁶ Centre for Cross Border Studies, *The possible implications of repealing the Human Rights Act 1998*, Available here: http://crossborder.ie/site2015/wp-content/uploads/2016/01/Briefing-Report_Implications-of-HRA-Repeal.pdf

Turning our attention to the broader EU constitutional implications, vis-à-vis a possible UK withdrawal from the EU, no Member State has ever left the EU before and thus there are no direct precedents to draw upon. However, the legal framework for withdrawal is set out in Article 50 of the Treaty on European Union (TEU).

Article 50 stipulates that a Member State which decides to withdraw must notify the European Council of its intention. Subsequently the EU will negotiate and conclude an agreement with the departing State, setting out the arrangements for its withdrawal, including future relationship with the EU. This agreement will be negotiated in accordance with Article 218 (3) of the Treaty of the Functioning of the European Union. It shall be concluded on behalf of the Union by the Council, acting by a qualified majority, after obtaining the consent of the European Parliament.

The Article 50 TEU route is the only legal way to exit the EU under EU and international law. Some have suggested another route in repealing the European Communities Act 1972 to end the UK's obligation to implement EU law. However, one must decide whether or not this would fully remove obligations under EU or international law, and whether it may pose practical, legal and constitutional problems.

If a former Member State wished to re-join the EU in the future, it would have to re-apply under Article 49 TEU.

The Treaty on European Union (2012):

<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012M/TXT&from=EN>

The Treaty on the Functioning of the European Union (2012):

<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012E/TXT&from=EN>

European Communities Act (1972):

http://www.legislation.gov.uk/ukpga/1972/68/pdfs/ukpga_19720068_en.pdf

Citizen Mobility Issues

Freedom of movement for workers is one the founding principles of the EU. It is given a legal footing Article 3 (2) of the Treaty on European Union (TEU) and Articles 4 (2) (a), 20, 26 and 45-48 of the Treaty on the Functioning of the European Union (see links above) and is currently a fundamental right of workers.

The legal basis for free movement for workers is further spelled out within EU directives and regulations, including:

Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:158:0077:0123:en:PDF>

Regulation (EU) No 492/2011 on freedom of movement for workers within the Union:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:141:0001:0012:EN:PDF>

Regulation (EC) No 883/2004 on the coordination of social security systems:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:166:0001:0123:en:PDF>

According to recent Eurostat data more than 14 million EU citizens are resident in another Member State. This figure amounts to 2.8 per cent of the total EU population.

Eurostat (2015) 'Foreign citizens living in the EU Member States':

<http://ec.europa.eu/eurostat/documents/2995521/7113991/3-18122015-BP-EN.pdf/d682df12->

Prior to the UK and Ireland's joint accession to the EEC the principle of free movement had already existed in the Ireland/Northern Ireland region. Established in the 1920s, the Common Travel Area ensured free movement between the UK, Channels Islands, the Isle of Man and Ireland. The CTA was first recognised in the UK Immigration Act in 1971 and was annexed in EU Treaties when the UK and Ireland joined the EEC on 1st January 1973.

In 2010 the Centre for Cross-Border Studies prepared a report⁷, on behalf of EURES Cross-Border Partnership, which estimated that over 23,000 people were crossing the Irish border to work. This compares with a 2001 report⁸ by the North South Ministerial Council which estimated 18,000 crossed the border to work. Given that many cross-border workers are not officially registered, with for example the tax authorities, it is likely that the actual figure is much higher than the above estimates.

In 1985, five Member States of the EEC signed the Schengen Agreement on the gradual abolition of checks at common borders. This was followed by the signing in 1990 of the Convention implementing that Agreement and paved the way for the creation of the "Schengen Area" in 1995, as part of the Amsterdam Treaty, initially involving seven EU States. Today, the Schengen Area encompasses most EU Member States, excluding Bulgaria, Croatia, Cyprus, Romania, Ireland and the United Kingdom.⁹ Also a number of non-EU States are within the Schengen Area, including Iceland, Norway, Switzerland and Liechtenstein.

Immigration Act (1971):

http://www.legislation.gov.uk/ukpga/1971/77/pdfs/ukpga_19710077_en.pdf

Treaty of Amsterdam (1997):

http://europa.eu/eu-law/decision-making/treaties/pdf/treaty_of_amsterdam/treaty_of_amsterdam_en.pdf

⁷ *Measuring Mobility in a Changing Island*, Centre for Cross Border Studies on behalf of EURES Cross Border Partnership, 2010

⁸ *Study of Obstacles to Mobility*, North South Ministerial Council, 2001

⁹ Bulgaria and Romania are currently in the process of joining the Schengen Area.

EU Funding Issues

When making any major decision, such as the one that the UK citizens will be asked to make on 23 June 2016, reaching an informed choice requires a sober assessment of the potential financial costs or benefits. To date, the EU referendum debate has witnessed a series of disputed facts and figures regarding the economic cost and benefit of EU membership. The purpose of this section is to equip the reader with the necessary tools to reach their own conclusions.

As a Member State of the EU, the UK and other Member States, in return for access to the Single Market and other benefits, are required to accept the obligations of membership, which include a contribution to the EU budget. Fortunately, the direct financial cost of the UK's membership of the EU is relatively simple to quantify. The EU's Annual Budget is negotiated beneath the ceilings set within the Multi-Annual Financial Framework (MFF). The current MFF covers the period 2014-2020.

Simplification for the MFF 2014-2020

<http://ec.europa.eu/transparency/regdoc/rep/1/2014/EN/1-2014-114-EN-F1-1.Pdf>

It is a fact that the UK pays more into the EU budget than it gets back and is thus regarded as a net contributor. The UK does however receive a rebate on its net contribution. The UK rebate was introduced during the mid-1980s in order to address the issue of the UK making relatively large net contributions to the EU budget. The 2015 EU Budget was agreed under the Italian Presidency of the EU in the second half of 2014. The UK's contribution to the 2015 EU budget, after the rebate was applied, was estimated at £12.9 billion. The total public sector receipts received by the UK from the EU budget came to £4.4 billion, making the UK's estimated net contribution £8.5 billion for 2015. The House of Commons Library report provided below offers a breakdown of the UK's overall contribution to the EU budget.

House of Commons Library: EU Budget and the UK's Contribution

<http://researchbriefings.files.parliament.uk/documents/SN06455/SN06455.pdf>

In making a contribution to the EU budget the UK also receives access to various forms of European funding streams. There are two forms of EU funding:

- Non-competitive funds; and
- Competitive funds.

Levels of non-competitive funding are determined within the Multi-Annual Framework and include Structural Funds. European Structural Funds are the primary financial instruments of the EU's regional policy. These funds are designed to narrow the disparities in development

among the Member States and the regions. Between 2002 and 2012, Northern Ireland received £1 billion in Structural Funds alone.¹⁰

Within the current Structural Funds framework Northern Ireland will benefit from the following Structural and Investment Programmes:

- **The European Regional Development Fund**

- Is designed to focus on improving Northern Ireland's sustainable economic growth. The Programme will be delivered by the Department for the Economy (DfE) and will focus on priority areas, such as promoting research and innovation; promoting SME competitiveness, and supporting the shift towards a low-carbon economy.

The European Regional Development Fund (ERDF)

https://www.finance-ni.gov.uk/sites/default/files/publications/dfp/operational-programme-erdf_0.pdf

- **The European Social Fund (ESF) Programme**

- Is designed to address employment and social inclusion issues. The Programme will be delivered by the Department for the Economy (DfE) and will focus on priority areas, such as: promoting employment and supporting labour mobility; promoting social inclusion and combating poverty; and investing in education, skills and life-long learning.

The European Social Fund (ESF) Programme

<https://www.finance-ni.gov.uk/sites/default/files/publications/dfp/operational-programme-esf.pdf>

- **Rural Development Programme (RDP)**

- Is aimed at improving competitiveness in the agriculture and forestry sector, safeguarding and enhancing the rural environment and fostering competitive and sustainable rural businesses and thriving rural communities. The RDP will be delivered by the Department of Agriculture, Environment and Rural Affairs (DAERA).

Rural Development Programme (RDP)

https://www.finance-ni.gov.uk/sites/default/files/publications/dfp/RDP%20Programme%202014UK06RDRP002_0.pdf

¹⁰ Scholes, M. (2013) European Union Competitive Funding in Northern Ireland: Northern Ireland Assembly Research and Information Services

European Territorial Cooperation (ETC) Programmes provide a framework for the implementation of joint actions and policy exchanges between national, regional and local actors from different Member States.

For Northern Ireland, the managing authority for these forms of funds, primarily PEACE and INTERREG is the Special European Programme Body (SEUPB). The document below provides a breakdown of the impact of EU funding in the region.

European Territorial Cooperation (ETC) Programmes

http://www.seupb.eu/Libraries/Media_Press_Releases/The_Impact_of_EU_Funding_in_The_Region.sflb.ashx

The present ETC Peace IV Programme is designed to focus on: shared education; children and young people; shared space and services; and building positive relations at the local level.

Peace IV

<https://www.finance-ni.gov.uk/sites/default/files/publications/dfp/PIV%20Programme%202014TC16RFPC001.pdf>

The ETC Interreg VA Programme will focus on: research and innovation; environmental protection and resource efficiency; social inclusion and combating poverty; and sustainable transport

Interreg VA

<https://www.finance-ni.gov.uk/sites/default/files/publications/dfp/operational-programme-interreg.pdf>

Northern Ireland also participates in the UK Fisheries Programme under the Common Fisheries policy.

Common Fisheries Policy

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0163:FIN:EN:PDF>

Northern Ireland participates within The Common Agricultural Policy (CAP), which is aimed at helping European farmers meet the needs of 500 million Europeans. The report below offers a breakdown on recent CAP reforms and their implementation in the UK and Ireland.

Common Agricultural Policy (CAP) Reform

<http://www.niassembly.gov.uk/globalassets/Documents/RaISe/Publications/2014/dard/allen10314.pdf>

Unlike uncompetitive funding, competitive funding is not directly allocated from the EU to the Member State or the regions. The proportion of the budget which is allocated to competitive funding for project areas such as, research, education health and youth actions is awarded by the European Commission via open competition amongst individual organisations.¹¹ Accordingly, any Member State's drawdown of EU competitive funding is determined by the success of individual organisations' applications.

Just some of the major competitive funding streams in which Northern Ireland have participated in are listed below.

Framework Programme 7

<http://www.niassembly.gov.uk/globalassets/Documents/RaISe/Publications/2011/Enterprise-Trade-Investment/14111.pdf>

Horizon 2020

<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52011DC0808&from=EN>

Life 2014 - 2020

<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R1293&from=EN>

Trans European Network - Transport (TEN-T)

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/138382/ten-t-awards-list.pdf

[http://www.assembly.wales/Research%20Documents/RS16-025-Trans-European%20Transport%20Network%20\(TEN-T\)%20%E2%80%93%20a%20quick%20guide/16-025-Web-English.pdf](http://www.assembly.wales/Research%20Documents/RS16-025-Trans-European%20Transport%20Network%20(TEN-T)%20%E2%80%93%20a%20quick%20guide/16-025-Web-English.pdf)

Connecting Europe Facility (CEF)

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ%3AL%3A2013%3A348%3A0129%3A0171>

Trade Issues

By making a contribution to the EU budget the UK is afforded access to, among other things, the Single (or Internal) Market of 500 million people.

Definition: The Single Market

The EU's Single Market, or internal market, refers to the EU as one territory without any internal borders or other regulatory obstacles to the free movement of goods and services. The idea is that a functioning Single Market stimulates competition and trade, improves efficiency and raises quality.

¹¹ file:///server/Folder%20Redirection/MartinMcTaggart/Downloads/beginners_guide_en_0.pdf

The reasoning behind the establishment of the Single Market was to facilitate trade between participating Member States by abolishing legal, technical and bureaucratic barriers to free trade and free movement between the EU Member States and with some non-EU European States (such as Norway and Switzerland).

The report below, produced by the House of Commons Library, includes figures on the UK's trading relations with the EU as well as estimates of the number of UK jobs associated with that trade. It also offers data on foreign direct investment and some estimates of the cost of EU regulation to the economy. Usefully it provides some estimates of the overall cost or benefit to the UK of EU membership.

House of Commons: UK-EU economic relations

<http://www.parliament.uk/briefing-papers/SN06091.pdf>

The following Oxford Economics report provides an overview of research, commissioned the Department of Enterprise, Trade and Investment (DETI), regarding the economic implications for Northern Ireland in the event of a UK withdrawal from the EU. Drawing upon a wider research project which assessed the macroeconomic implications of a UK exit from the EU, this report provides an analysis of nine alternative post-Brexit scenarios.

The overall key finding from Oxford Economics' modelling indicates that Northern Ireland's economy is likely to be relatively more vulnerable to the type of structural changes triggered by a UK exit from the EU in comparison to the rest of the UK.

Oxford Economics: The Economic Implications of a UK Exit from the EU for NI

<https://d1iydh3qrygeij.cloudfront.net/Media/Default/Brexit/Brexit-NI-Report.pdf>