



Submission to the House of Lords European Union Select Committee’s Inquiry on Brexit and UK-Irish Relations

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This document has been prepared by the Centre for Cross Border Studies as a contribution to the House of Lords European Union Select Committee’s inquiry on UK-Irish relations and Brexit.

About The Centre for Cross Border Studies

The Centre for Cross Border Studies (CCBS), based in Armagh, Northern Ireland, has a strong reputation as an authoritative advocate for cross-border cooperation and as a valued source of research, information and support for collaboration across borders on the island of Ireland, Europe and beyond.

The Centre empowers citizens and builds capacity and capability for cooperation across sectors and jurisdictional boundaries on the island of Ireland and further afield. This mission is achieved through research, expertise, partnership and experience in a wide range of cross-border practices and concerns.¹

The response that follows, therefore, is closely informed by the Centre’s particular concerns and builds on the series of Briefing Papers it published in the run-up to the referendum on the UK’s membership of the European Union.² It will address the specific issues posed by the Committee, namely: “soft border” arrangements, North-South relations during Brexit, the Common Travel Area,

¹ For further information, please visit www.crossborder.ie

² Published in collaboration with Cooperation Ireland, these were: “The UK Referendum on Membership of the EU: What does it mean for us?” (<http://crossborder.ie/site2015/wp-content/uploads/2016/02/CCBS-and-Cooperation-Ireland-EU-Referendum-Briefing-Paper-1.pdf>), “Potential Constitutional Consequences” (<http://crossborder.ie/site2015/wp-content/uploads/2016/03/EU-Referendum-Briefing-Paper-2.pdf>), “Cross-Border Cooperation, Peace-Building and Regional Development” (<http://crossborder.ie/site2015/wp-content/uploads/2016/06/CCBS-Cooperation-Ireland-EU-Referendum-Briefing-Paper-31.pdf>), “Citizen Mobility” (<http://crossborder.ie/site2015/wp-content/uploads/2016/06/CCBS-and-Cooperation-Ireland-EU-Referendum-Briefing-Paper-4.pdf>), and “Economic Development” (<http://crossborder.ie/site2015/wp-content/uploads/2016/06/EU-Referendum-Briefing-Paper-5.pdf>).

the rights of UK and Irish citizens, and the trading relationship between the UK and Ireland. These issues are explored in more detail in a Briefing Paper published as a supplement to this submission.³

Brexit and present 'soft border' arrangements

1. The 'soft' nature of the Northern Ireland-Ireland border owes much to the cessation of paramilitary violence (which saw an end of the 'hard' securitisation of the border) and the UK and Ireland's membership of the EU and its Internal Market.
2. If the UK Government – in order to control immigration of EU citizens to the UK – opts to relinquish access to the EU's Internal Market or to leave the Customs Union, then the current status of the Ireland-Northern Ireland border cannot remain unaltered.
3. Whereas the continued freedom of movement of UK and Irish citizens is subject to the possibility of retention of the Common Travel Area, the movement of other EU citizens may be curtailed and, crucially, the free movement of goods as currently enjoyed across the Ireland-Northern Ireland border will come to an end, irrespective of the level of securitisation or visibility of the border.
4. In terms of movement of non-Irish EU citizens across the Ireland-Northern Ireland border, there may be no need to establish *permanent* passport control posts. Instead, an approach could be taken that would permit the entry of non-Irish EU citizens into Northern Ireland from the Republic of Ireland in the knowledge that those who do so without the requisite entitlement would not legally be able to reside, seek employment, study or gain access to social welfare and healthcare services or benefits. Moreover, in order to avoid the political instability that would be caused in Northern Ireland if any passport controls were to be imposed that would be discriminatory in nature between UK citizens, this approach could be extended to movement of non-Irish EU citizens from Northern Ireland into other parts of the United Kingdom.
5. In terms of the movement of goods across the Northern Ireland-Ireland border Brexit will undoubtedly have an impact. Although electronic means could be introduced to manage the administrative procedures for the exporting and transportation of goods across the border, the current openness of the border will inevitably be affected by some type of customs controls.
6. For the Northern Ireland-Ireland border, the introduction of customs controls could not only make it a site for increased criminality linked to smuggling activities, but also – if such controls require a physical presence – a target for renewed violence capable of undermining the ongoing peace process.
7. If during the Brexit negotiations the UK Government does not secure continued access to EU cross-border and transnational programmes, then the continued development of cross-border transport and energy infrastructure could be placed in jeopardy, resulting in a Northern Ireland-Ireland border that would inhibit growth of cross-jurisdictional flows.
8. Cross-border cooperation between local councils and regional health authorities may also see a reduction in their intensity if EU funding for such cooperation is not replaced and if policy divergences result in increased administrative or regulatory obstacles.

³ Centre for Cross Border Studies, Briefing Paper: Brexit and UK-Irish Relations (October 2016), <http://crossborder.ie/8933-2/>.

9. The potential negative consequences of Brexit for the Northern Ireland-Ireland border could be mitigated to a significant extent if the UK Government were to actively explore and pursue with the devolved administration in Northern Ireland, the Irish Government and the European Commission the possibility of Northern Ireland retaining some level of access to EU funding programmes and the Internal Market.
10. The Centre for Cross Border Studies and a number of other organisations involved in cross-border cooperation have together considered the challenges for cross-border cooperation in the context of Brexit,⁴ and the primary common concern is that the commitments for cross-border cooperation embedded in the 1998 Belfast/Good Friday Agreement remain a priority for both the UK and Irish Governments. Cross-border cooperation will be increasingly important to address the challenges resulting from economic, social and political uncertainty and instability. It is essential that the “soft infrastructure” that has been established to support cross-border cooperation – the statutory cross-border bodies, links at Departmental and local government level and within civil society networks and projects – be protected and nurtured. We are acutely aware of the centrality of the border to the conflict and the dangers that could materialise as a result of uncertainties about the nature of the border. Also, as migration and citizenship issues emerge in the context of any economic stagnation or decline, social cohesion in the border region and other disadvantaged areas will likewise be threatened.
11. We are concerned, therefore, to ensure that the interests of the border region remain central to the deliberations of both the UK and Irish Governments and the Northern Ireland Executive prior to and following the notification of Article 50. In particular, it is essential that:
 - measures be taken to ensure the sustainability of cross-border and transnational projects that are currently funded under EU 2014-2020 programmes. It is important that project promoters and participants be reassured that projects will continue to be financially supported until 2020;
 - existing EU directives and regulations that have been transposed into UK/Northern Ireland law should remain in place until such time as any proposed changes have been subject to comprehensive territorial, equality and environmental impact assessments;
 - means should be found to ensure the eligibility of continued participation by Northern Ireland (and those parts of Wales and Scotland currently involved in INTERREG programmes with Ireland) in the European Territorial Cooperation Programmes and transnational programmes such as Horizon 2020, Erasmus+, Life and Europe for Citizens (which would require a financial commitment from the UK Government);
 - whether or not the UK is excluded from EU programmes and projects, the Irish and UK Governments must take steps to ensure new and sufficient resources are available for the social and economic development of the border region, including local authority and civic society-led projects. On the UK side, additional funding allocations should be derived from the UK’s current contribution to the EU budget that will revert to HM Treasury post-withdrawal from the EU, and not from the “block grant”;

⁴ The other organisations involved are: Cooperation and Working Together (CAWT), Cooperation Ireland, Derry and Strabane District Council, Donegal County Council, East Border Region, Irish Central Border Area Network, and the North West Regional Working Group.

- additional funding be allocated by the UK and Irish Governments to the PEACE IV programme specifically to address the challenges of inter-community conflict and cross-border relationships in the context of political and economic uncertainty and instability arising in the post-referendum context; and
- a “PEACE V” programme, funded by the UK and Irish Governments should be developed – in consultation with civil society organisations and local authorities – specifically to address the challenges of inter-community conflict and cross-border relationships in the context of uncertainty and instability arising in the post-Brexit context.

North-South relations during Brexit

12. The full potential of the North-South collaboration between the two administrations on the island of Ireland can only be realised if the Northern Ireland Executive adopts a clear and unified policy on Northern Ireland’s post-Brexit future.
13. Determining Northern Ireland’s post-Brexit future must involve a North-South dimension that is not restricted to political representatives and senior officials from both administrations. North-South relations during Brexit must encompass all sectors of civic society in a way that actively involves them in the shaping of policies.
14. North-South relations during Brexit can be affected by decisions made by the UK Government. Therefore, in order to prevent unnecessary obstacles to the maintenance of optimal North-South relations during Brexit, the UK Government should undertake impact assessments of any policy decisions or statements it makes during this period that would have relevance to those relations.

The Common Travel Area

15. Brexit means the continuation of the Common Travel Area in its current form cannot be assumed to be guaranteed. The post-Brexit future of the CTA is not dependent on negotiations solely between the UK and Ireland – retention of at least some of the benefits of the CTA will be dependent on EU agreement.
16. If the UK’s future relationship with the EU included access to the Single Market with the acceptance of the principle of freedom of movement there would be no obvious reasons for the EU to oppose the retention of the CTA. This would offer the greatest possibility of continuing with the current CTA arrangements post-Brexit.
17. In the event the UK does not retain access to the Internal Market with its associated principle of the free movement of EU citizens, the UK could opt to continue with the current arrangements in terms of freedom of entry to Irish citizens as set out in the Immigration Act 1971, as well as the associated rights conferred to them under the British Nationality Act 1981. However, this would not address serious concerns regarding the right to remain of EU citizens and their families already resident in Northern Ireland and the rest of the UK, which the UK Government should clarify as a matter of urgency.
18. The ability of the Irish Government to maintain reciprocity with a post-Brexit UK outside the Internal Market will be dependent on whether it is able to secure from the EU and the other Member States the necessary exemptions. This will mean not simply retaining the Common Travel Area in terms of allowing entry of UK citizens into the Republic of Ireland, but also in terms of continuing to offer them the same rights as EU citizens in areas such as

employment and social welfare. In order to achieve this outcome leadership must come from the Irish Government so that the post-Brexit retention of CTA arrangements is not seen by the EU and its Member States as conferring preferential treatment to a departing Member State, but rather as the EU adopting a flexible approach to accommodate the specific needs of one of its Members.

The rights of UK and Irish citizens who live and work in each other's countries

19. Approximately 23,000 to 30,000 people commute across the Irish border to work, returning home daily or at least once a week. Although a number of these are non-Irish and non-UK EU citizens, the vast majority are Irish and UK citizens travelling across the border to work in each other's jurisdictions.
20. Post-Brexit existing cross-border workers may face daily passport controls and visa or work permit systems. The recognition of professional qualifications is also reliant on EU legislation and could present further obstacles for jobseekers, cross-border workers seeking promotion or alternative employment, or employers seeking specific skills.
21. Post-Brexit uncertainty and complications for cross-border workers and employers could occur should the UK amend or weaken existing legislation or fail to implement new and emerging EU legislation.
22. Brexit will also affect arrangements for UK and Irish citizens working in each other's jurisdictions currently provided for under EU Social Security Coordination. Following Brexit, and in the absence of EU Social Security Co-ordination being replaced, this would no longer occur and cross-border workers may fail to qualify for assistance.
23. If the CTA survives Brexit, permanent residence for Irish citizens may be safeguarded, although an exemption to the health insurance rule would be required for all other EU nationals in order not to deny the same status to those who are economically inactive spouses or dependents of Irish citizens resident in the UK.
24. The ability of the Irish Government to offer similar rights to UK citizens will depend on the outcome of negotiations with the EU. The Government of the Republic of Ireland should lead interactions with the EU on these matters, emphasising its specific geographical context, as well as its role in supporting the peace and reconciliation process in Northern Ireland. Negotiations on these matters should not be presented as offering "special deals" to the UK, but rather as accommodating the needs of a Member State.

UK-Irish Trade

25. A post-Brexit UK outside the Internal Market or the Customs Union would have serious consequences for the economies of both jurisdictions on the island of Ireland.
26. The imposition of tariffs on trade with the UK would have a potential negative effect on the overall flows between the UK and Ireland. However, it would perhaps affect Northern Ireland more deeply given its trading links with the Republic of Ireland.
27. If the UK Government does not secure access to the EU's Internal Market and if barriers in the form of tariffs and customs controls are imposed, then the current trade between the UK and Ireland, and specifically between Northern Ireland and the Republic of Ireland cannot remain unaffected. Any customs controls will mean additional administrative and financial burdens to Irish and UK businesses engaged in trade between their jurisdictions.

28. Restrictions to the movement of EU labour into the UK will also impose further obstacles to UK businesses, including those in Northern Ireland where the agri-food sector, for example, is particularly reliant on non-Irish EU labour.