



**Briefing Notes for CCBS Evidence Session with House of Lords EU Home Affairs Sub-Committee's  
"Brexit: reciprocal healthcare" Inquiry**

**15 November 2017**

About the Centre for Cross Border Studies

The Centre for Cross Border Studies is a not-for-profit organisation providing research, training, information and management support to groups and organisations working across the Ireland/Northern Ireland border. The Centre researches, develops and promotes co-operation across the Irish border in a wide range of practical areas, notably capacity-building for cooperation, governance, education, health, the economy and citizens' information, and works with a wide range of actors engaged in cross-border issues in other parts of Europe and beyond.<sup>1</sup>

The Centre has a specific and unique role in contributing to increased social, economic and territorial cohesion by:

- Promoting and improving the quality of cross-border cooperation between public bodies, and between public bodies, business and civil society;
- Improving the capacity of people involved in social and economic development of the island to engage in mutually beneficial cross-border cooperation; and
- Addressing information gaps and other barriers that constrain cross-border mobility and cross-border cooperation through research and provision of resources, and other practical support.

Given the potential impacts on cross-border cooperation, the Centre has been devoting considerable energy to the issue of Brexit, and we welcome this opportunity to share some of our thinking in relation to reciprocal healthcare arrangements.

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<sup>1</sup> For more detail see [www.crossborder.ie](http://www.crossborder.ie).

## Current arrangements

1. Since the 1998 Belfast/Good Friday Agreement, and supported to a significant extent by EU funding programmes in terms of creating the necessary collaborative environment, there has been a steady increase in cooperation between the health services of the Republic of Ireland and Northern Ireland, including through the provision of cross-border or all-island healthcare.

Prime examples of such cooperation, based on memoranda of understanding or service level agreements between the statutory health authorities on either side of the border, and which have been championed by the two Governments on the island of Ireland and their progress followed by the North South Ministerial Council, include the Radiotherapy Unit at Altnagelvin Hospital that caters for people living in the Western Trust area and in County Donegal, and the All-Island Congenital Heart Disease Network. Cooperation in this area has led, among other things, to the transfer of urgent paediatric surgical cases from Northern Ireland to Our Lady's Children's Hospital Crumlin in the Republic of Ireland.

However, healthcare cooperation is taking place across a wide range of important areas and through a variety of bodies and initiatives. Among them we have the North-South Alcohol Policy Advisory Group, the All Ireland Institute of Hospice and Palliative Care, the Child Protection Work Programme, and the work being carried out on an all-island basis on issues such as childhood obesity by Safefood, one of the implementation bodies created under Strand II of the 1998 Belfast/Good Friday Agreement.

Healthcare cooperation on a cross-border or all-island basis does not necessarily denote the complete absence of the provision of a particular service in one jurisdiction or the other, but rather the logistical difficulties that may be encountered by people in accessing a service within their own jurisdiction that may be more easily available to them across the border. Cooperation can also come about in order to sustain clinical excellence through the provision of an all-island service, rather than duplicating that service and offering it to a smaller constituency within each jurisdiction that may not be able to achieve similar standards of clinical excellence and outcomes as those provided on an all-island basis.

In terms of the numbers of people accessing healthcare services on a cross-border basis, we can refer to the example of the cross-border cardiology service which allows 50 to 60 patients from County Donegal to access life-saving care in Altnagelvin Hospital, or the 385 places in that hospital's Radiotherapy Unit for patients from across the border.

2. Setting aside other areas where EU policies encourage and support cooperation on health, whether through Regulation 883/2004 on the coordination of social security systems or Directive 2011/24/EU on the application of patients' rights in cross-border healthcare, for example, the EU regulatory framework has come to underpin much of the operation of reciprocal healthcare arrangements between Northern Ireland and the Republic of Ireland. This framework not only sets out the rights of EU citizens in relation to their access to healthcare in EU Member States, but also the underlying mechanisms for Member States to recover the costs of treating citizens from another Member State.

Data on the numbers of people accessing healthcare services on a cross-border basis under the EHIC scheme, S1, S2 or the patient's rights directive are not readily available. According to information provided to the Northern Ireland Assembly Research and Information Service by the NHS Business Services Authority, in 2016 there were 660,329 valid EHICs in circulation in Northern Ireland.<sup>2</sup> The Department of Health (NI) advised the same source that 81 applications had been approved under the S2 scheme from 2011/12 to 2015/16.<sup>3</sup> The Department also advised that from 2013 to 2016 99 applications had been approved for reimbursement of cross-border treatment under the Directive, with 26 applications pending approval.<sup>4</sup>

Furthermore – and as an illustration – data obtained by the Centre for Cross Border Studies shows that of 28 applications for reimbursement under the Directive received by the Health and Social Care Board in Northern Ireland between April and June 2016, 61% of applications were for treatment in the Republic of Ireland.

In evidence to the Oireachtas Joint Committee on Health in March of this year, officials from the Irish Department of Health stated that 237 inpatient treatments were undertaken in 2016 under the Directive, with 213 of those taking place in Northern Ireland. In the same year, a further 1,501 outpatient and day cases were reimbursed under the directive, with 479 going to Northern Ireland.<sup>5</sup>

Of course, one can point to bilateral agreements between the UK and Ireland in relation to social security and healthcare provision dating back to the 1920s and related to the Common Travel Area whose existence predates EU membership. However, as the UK Government's Position Paper on Northern Ireland and Ireland points out, "the operation of the CTA and many of the benefits enjoyed by Irish and UK nationals have also been provided for in instruments setting out EU free movement and associated rights", and that the "intermingling of rights can make it difficult to distinguish what rights accrue under the CTA as opposed to under EU instruments".<sup>6</sup>

It is the view of the Centre for Cross Border Studies that the framework provided for by EU instruments is now the principal channel underpinning the operation of reciprocal healthcare arrangements between Northern Ireland and the Republic of Ireland, and through which redress or resolution can be sought when issues arise.

3. Although without prior knowledge of the precise contents of any future Withdrawal Agreement it is not possible to offer definitive answers, Brexit risks exacerbating the overall peripherality of the border regions and could undermine the current context for North-South and cross-border cooperation, including where such cooperation leads to improvements in the provision

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<sup>2</sup> Northern Ireland Assembly Research and Information Service, Briefing Paper 70/16, "Health and Social Care in NI – Areas of EU Competence, Action and Support – Potential Areas of Impact on Health and Social Care as a result of EU Referendum Decision" (13 October 2016), p.8, <http://www.niassembly.gov.uk/globalassets/documents/raise/publications/2016-2021/2016/health/7016.pdf>.

<sup>3</sup> Ibid, p.11.

<sup>4</sup> Op.cit.

<sup>5</sup> Houses of the Oireachtas, Joint Oireachtas Committee on Health, "Implications for Health Sector of United Kingdom's Withdrawal from the EU: Discussion" (8 March 2017), <http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/DebatesWebPack.nsf/committeetakes/HEJ2017030800002>.

<sup>6</sup> HM Government, "Northern Ireland and Ireland: position paper" (16 August 2017), p.8, <https://www.gov.uk/government/publications/northern-ireland-and-ireland-a-position-paper>.

of healthcare to people living in border areas. Regardless of Brexit, however, cooperation on health between the Governments in Dublin and Belfast should continue as one of the areas under the North South Ministerial Council.

The ease with which it can continue post-Brexit will nevertheless depend on a wide range of issues being resolved in order for healthcare provision in border regions not to be adversely affected. These include, but are not restricted to, the timely movement across the border of ambulances, patients and healthcare professionals, and the avoidance of divergence in terms of relevant policies, regulations and standards, as well as the continued reciprocal recognition of professional qualifications.

Of course, the future nature of the border and the relative degree of “friction” associated with it post-Brexit will largely depend on how (and *if*) a resolution is found that can accommodate the UK Government’s stated intention that the UK will no longer be a member of the Single Market or Customs Union.

4. In terms of the identification of particular groups or categories of people likely to be most affected by changes to reciprocal healthcare arrangements as a result of Brexit, I will leave that to my colleagues from CAWT, although it is important to highlight that any post-Brexit reciprocal arrangements reliant on the CTA will not encompass non-Irish EU citizens.

#### Brexit negotiations

5. Given the Centre for Cross Border Studies’ principal focus on cooperation on the island of Ireland, I would like to consider in the first instance the Government’s position paper on Northern Ireland and Ireland and what it proposes in terms of reciprocal healthcare arrangements. Excluding animal health, health or healthcare are referred to on three occasions in the main body of the document.<sup>7</sup> In two of these instances, reciprocal healthcare arrangements are linked to the Common Travel Area, with the other reference being made in the context of Strand II of the 1998 Belfast/Good Friday Agreement, where health is one of the six areas of cooperation under the North South Ministerial Council.

Moreover, and although with no explicit correlation made to the issue of access to healthcare provision, the Government’s position paper also highlights the question of citizenship in relation to the 1998 Agreement, and specifically the right of those in Northern Ireland to hold Irish citizenship. As the paper makes clear:

“As long as Ireland remains a member of the EU, Irish citizenship also confers EU citizenship, with all the rights that go with this. This is as true for the people of Northern Ireland who are Irish citizens – or who hold both British and Irish citizenship – as it is for Irish citizens in Ireland” (p.5).

However, what it *does not* make clear is the position of such citizens in terms of their post-Brexit rights to access cross-border healthcare, and any limitations that may result in differentiated rights in comparison to other EU citizens, especially where that implies accessing healthcare in an EU Member State other than the Republic of Ireland. The Government’s earlier paper on the position of EU citizens in the UK and UK nationals in the EU *does* state that it “will seek to protect the healthcare

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<sup>7</sup> Annex 1 includes one reference to health reproduced from the Prime Minister’s letter triggering Article 50.

arrangements currently set out in EU regulations”, and “the right of UK nationals and EU citizens to obtain and benefit from the European Health Insurance Card”.<sup>8</sup> These objectives are, however, limited to those UK nationals in the EU and EU citizens in the UK at the specified date, and the issue of the rights of EU citizens in the UK is divorced from the position of Irish citizens and the Common Travel Area.

Indeed, and returning to the UK Government’s proposals regarding Northern Ireland and Ireland, maintenance of the CTA and its associated rights is one of its core negotiating objectives. Securing this objective would certainly go a long way to supporting post-Brexit reciprocal healthcare arrangements between Northern Ireland and the Republic of Ireland, as well as between the Republic of Ireland and the rest of the UK.

However, and bearing in mind the principle that nothing is agreed until everything is agreed in these negotiations, in order to secure the post-Brexit maintenance of the CTA and its associated rights, including in relation to reciprocal healthcare arrangements, the UK Government needs to ensure that its approach in other areas does not militate against this objective. The CTA and the UK’s reciprocal arrangements with the Republic of Ireland may predate EU membership, but Ireland will remain an EU Member State following the UK’s withdrawal. Progress appears to have been made in the negotiations in relation to the CTA, but this could be undermined if progress is not made in other areas, including those not seen as immediately linked to reciprocal healthcare arrangements, such as the ability of health authorities to procure services on a cross-border basis.

6. It is a matter of extreme regret and concern that we have no Executive or Assembly in place in Northern Ireland to offer the potential for a common vision of how reciprocal arrangements may be maintained post-Brexit, and to feed that vision to the UK and Irish Governments. Nevertheless, through the North South Ministerial Council, the previous Executive had agreed a work programme with the Irish Government in relation to health and food safety, which could still be progressed and taken into account in the negotiations over the UK’s withdrawal.<sup>9</sup>

The roles of the UK and Irish Governments in the negotiations on reciprocal healthcare arrangements – as in other areas – must be informed by their role as co-guarantors of the 1998 Belfast/Good Friday Agreement. The provision of healthcare services on a cross-border and all-island basis is one of the clearest indications of the functioning of that Agreement, and ensuring that this continues to be the case post-Brexit has to be a shared objective that is actively pursued.

For its part, the Irish Government set out in May of this year its priorities in terms of cross-border and all-island healthcare provision.<sup>10</sup> Those priorities include the resolution of free movement issues in light of the health sector’s highly mobile workforce, the mutual recognition and assurance of

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<sup>8</sup> HM Government, “The United Kingdom’s Exit from the European Union: Safeguarding the Position of EU Citizens Living in the UK and UK Nationals Living in the EU” (June 2017), p.15, <https://www.gov.uk/government/publications/safeguarding-the-position-of-eu-citizens-in-the-uk-and-uk-nationals-in-the-eu>.

<sup>9</sup> See North South Ministerial Council, “Health and Food Safety Joint Communiqué” (9 November 2016), <https://www.northsouthministerialcouncil.org/publications/health-and-food-safety-joint-communiqué-9-november-2016>.

<sup>10</sup> Irish Government, “Ireland and the negotiations on the UK’s withdrawal from the European Union: The Government’s Approach” (May 2017), [https://merrionstreet.ie/en/EU-UK/Key\\_Irish\\_Documents/Government\\_Approach\\_to\\_Brexit\\_Negotiations.pdf](https://merrionstreet.ie/en/EU-UK/Key_Irish_Documents/Government_Approach_to_Brexit_Negotiations.pdf).

professional qualifications, and the avoidance of divergence from the current harmonised regulatory system in relation to food safety standards, pharmaceuticals, medical devices and cosmetics.

The UK Government's role to the negotiations must be informed by a clear and detailed understanding of the implications of its withdrawal from the EU on current reciprocal healthcare arrangements and cross-border and all-island cooperation in the area of health. Above all, and reiterating what was stated earlier, its role must be as a co-guarantor of the 1998 Belfast/Good Friday Agreement. As such, and as the Member State that has made the decision to leave the EU, it must be frank as to how the options it takes will affect the operation of reciprocal healthcare arrangements and cross-border and all-island cooperation in this area.

7. In any eventual withdrawal agreement, to best guarantee the healthcare needs of the citizens of Northern Ireland and the Republic of Ireland the framework provided by the 1998 Belfast/Good Friday Agreement must be a *minimum* conclusion to the negotiations.

As the Centre for Cross Border Studies has noted on previous occasions, the 1998 Agreement is in itself a guarantee of the flow of people, goods and services between the two jurisdictions on the island of Ireland, and between the island of Ireland and Great Britain. These North-South and East-West flows support the provision of healthcare services to the citizens of Northern Ireland and the Republic of Ireland.

It should not be necessary to remind ourselves that when the UK Government, the EU, as well as the Irish Government, entered these negotiations, they all separately stated that any withdrawal agreement must not undermine the 1998 Belfast/Good Friday Agreement in any of its parts – a principle that they have repeatedly reiterated since the negotiations began. All of the parts of the 1998 Agreement encompass all three of its strands, which include North-South *and* East-West relations.

By securing the framework provided by the 1998 Agreement at the conclusion of these negotiations, it should be possible to safeguard citizens' rights to cross-border healthcare within and between these islands.

Moreover, in order to foster continued cross-border and all-island cooperation in the provision of healthcare, and to promote continued innovation for the benefit of citizens, any withdrawal agreement should enable Northern Ireland's continued eligibility to participate in EU Territorial Cooperation and other funding programmes.

8. Although any diminution of current reciprocal healthcare arrangements would be detrimental, it is of paramount importance to guarantee citizens' continued rights to access cross-border healthcare, to recognise the need and facilitate the provision of cross-border and all-island shared healthcare services, to secure the free movement of healthcare professionals, and to guarantee the continued recognition of professional qualifications.

9. In terms of the question of planning contingency arrangements should reciprocal healthcare arrangements not continue in their current form, I can only answer this in more general terms given the wider role of the Centre for Cross Border Studies in advocating for and supporting cross-border cooperation in all areas, including in terms of the provision of healthcare services on a cross-border and all-island basis.

What I would like to emphasise at this point is that the need for cross-border cooperation, including in relation to healthcare provision, existed before the UK's referendum on EU membership, it continues to exist as the negotiations over the UK's withdrawal take place, and it will continue to exist post-Brexit.

The question is not *whether* cross-border cooperation should continue, but *how* it will be undertaken in the future. That *how* will be determined by the nature of the UK's departure, and this regard the Centre for Cross Border Studies has been actively planning for a range of scenarios.

As part of this process, in its engagements with parliamentary committees in London and Dublin, political representatives across these islands, and policy-makers both across these islands and in Brussels, the Centre has repeatedly stressed the need for funding structures to be put in place to support continued cross-border cooperation going forward. Without the necessary financial resources, and without the clear message to the relevant government departments (whether in central governments or the devolved administration in Northern Ireland) that cross-border and all-island cooperation is part of their jobs, it is unlikely that such cooperation will continue in its current form or intensity post-Brexit.

In this regard it is not reassuring that the last Conservative Party manifesto ignored the fact that EU structural funds are currently an essential element in the operation of cross-border cooperation. There is no indication of this reality in its proposal for a United Kingdom Shared Prosperity Fund, which "will use the structural fund money that comes back to the UK following Brexit [...] to reduce inequalities between communities across our four nations".<sup>11</sup>

Cross-border cooperation is the underlying factor making possible the ongoing participation of reciprocal healthcare provision, as it is in the provision of many other services. We at the Centre for Cross Border Studies will continue to stress this point in all our engagements with political representatives and policy-makers, as well as highlighting cross-border cooperation's fundamental role in supporting the ongoing peace and reconciliation process on the island of Ireland.

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<sup>11</sup> The Conservative and Unionist Party, "Forward Together: Our Plan for a Stronger Britain and a Prosperous Future" (2017), p.35, <https://www.conservatives.com/manifesto>.