



The Centre for
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Observations on the Government of Ireland's Draft National Risk Assessment – Overview of Strategic Risks 2018

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The Draft National Risk Assessment consultation document rightly identifies Brexit as both a chief geopolitical and an economic risk for Ireland. In truth, however, throughout the document Brexit's geopolitical significance is disproportionately discussed from an economic perspective while its political (governance) and social aspects are largely left underdeveloped. To an extent, there are good grounds for this skewing of the discussion, particularly if we keep in mind Ireland's unique exposure 'due to a very high trade intensity with the UK'. However, we feel that more focus was needed on the specific risks to the future of the Good Friday (Belfast) Agreement and to cross-border cooperation within and between these islands. While these risks are important in and of themselves (since they concern the future of the multi-level governance arrangements on these islands and the health of a wide range of political and social institutions and relationships across them), they will also affect economic development and wellbeing on the island.

We agree that '[e]nsuring that the Good Friday Agreement and the benefits of the peace process are not disturbed by a UK exit from the EU' should indeed be 'a priority for the Government' and we welcome this statement.¹ We also agree, however, with the widespread public discussion and academic commentary and analyses which suggest that, despite rhetorical commitment to its upholding on all sides, there is a real risk to the quiet undermining of the Agreement.² There are several aspects to this question:

- First, the very real possibility of eroding the protections for citizens' and human rights embedded in the Agreement.
 - Leaving the European Union means shedding off its legal regime, including the legal base for some citizens' rights: the continued application in the UK of both the Charter of European Rights and the European Convention on Human Rights after Brexit is under question with the UK government's plans to withdraw from the Charter, the Conservative party's plans to remain signatory to the Convention only 'for the duration

¹ DNRA consultation document, p. 18.

² See our Response to HM Government Position Paper on Northern Ireland and Ireland.

<http://crossborder.ie/?s=northern+ireland+and+ireland+position+paper> and Citizens' Rights and the UK-Ireland Border. Briefing Paper 2. Brexit and the Border Series. <http://crossborder.ie/centre-cross-border-studies-publishes-new-briefing-paper-citizens-rights-uk-ireland-border/>

of the next parliament',³ and their promises to reconsider the role of the Human Rights Act 1998 after Brexit.⁴ The Convention is embedded in Strand One of the Belfast/Good Friday Agreement and safeguards the protection and successful participation 'of all sections of the community'⁵ in the operation of the democratic institutions in the region. Withdrawal from it would contravene the Good Friday Agreement. At the same time, in the absence of the Charter many of the socio-economic rights protected on the basis of European Law face the risk of erosion and this will affect Irish citizens living and/or working in the UK. The CTA will not automatically protect such rights (see more on this below).

- The rights most likely to be affected are those based in EU law and directly associated with EU membership, including some labour and employment rights, and the right to an effective legal remedy. Changing regulations for access to the labour market and associated entitlements to social security and health care can be expected to widen the gap between different categories of citizens (Irish, EU, British).
- Second, risks to the equivalence of a rights regime north and south of the border, as provided for by the GFA.
 - Plans to withdraw from or repeal any or all of the protections for citizens' and human rights and for safeguarding the work of the democratic institutions in Northern Ireland undermine the equivalence of a rights regime north and south of the UK-Ireland border and the ability for structured North-South co-operation. This is worrying by itself but it would also potentially facilitate a greater regulatory divergence and hardening of the border, particularly should no agreement be reached on this matter through the withdrawal process.
- Third, the potential divergence of rights arising from Brexit between British, Irish and other EU citizens in both the UK and Ireland can have negative effects on social cohesion/peace and can also impede economic growth.
 - Particularly damaging for peace is the potential for creating a differentiation of citizens' rights and entitlements between Irish and British citizens within Northern Ireland.
- Fourth, there are risks to the GFA associated with the EU (Withdrawal) Bill: the popularly referred to Henry VIII powers (including clauses 7, 8, 9 and 17) introduced by HM Government in the EU (Withdrawal) Bill have attracted much criticism for allowing the Government to make "such regulations as the Minister considers appropriate".⁶ Last week the Secretary of State David Davis's changes to Lords' Amendment 25 of the EU

³ The Conservative and Unionist Party 2017 Manifesto 'Forward, Together. Our Plan for a Stronger Britain and a Prosperous Future', p. 39, <https://www.conservatives.com/manifesto>

⁴ 'We will not repeal or replace the Human Rights Act while the process of Brexit is underway but we will consider our human rights legal framework when the process of leaving the EU concludes' (Conservative and Unionist Party Manifesto, 2017), p. 39. See previous footnote for a full reference.

⁵ 'The Agreement'. Strand One: Democratic Institutions in Northern Ireland, p. 7, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/136652/agreement.pdf

⁶ HoC Library Briefing Paper, Number 8170 11 (2017) 'The European Union (Withdrawal) Bill: Clauses 9, 8 and 17', p. 37, <https://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-8170#fullreport>

(Withdrawal) Bill was passed in Parliament. This concerns, among other issues, Clause 8 of the Bill that gives UK Government ministers the powers, for up to 2 years after exit day, to make secondary legislation preventing or remedying any breach of the UK's international obligations that may arise from leaving the EU. In theory Clause 8 could be used to copper fasten the British-Irish Agreement (which is a part of the GFA) against any breaches resulting from Brexit. However, the amendments passed by Parliament mean that the ability of Clause 8 to protect the Agreement as well as to prevent the diminution of 'any form of North-South cooperation' and avoid the creation of additional border checks and infrastructure is substantially weakened.⁷

- Fifth, the DNRA consultation document rightly describes the Common Travel Area (CTA) between Ireland and the UK as 'vital in facilitating the extensive trading relationship between Ireland and the UK and the operation of an all-island economy... particularly important in the context of the Northern Ireland peace process' (p. 16). We would add that:
 - The CTA is not simply a legal travel regime or one that concerns trade relations between the two countries but a regime of citizens' rights which include access to public services, to healthcare and social benefits, and some voting rights.
 - There is a risk to the continuation of a special status for Irish citizens in the UK after Brexit through the CTA. This will need to be *ensured* by revising current CTA legislation so as to base such a status unequivocally on national law, amending the UK's Immigration Act of 1971, and introducing further legislation to protect the social and economic rights of Irish citizens.⁸
- Finally, under 'Infrastructure constraints' the DNRA document expresses a concern with the potential of failing to renew and enhance Ireland's infrastructural capabilities through a strategic plan which may impact on competitiveness, quality of life and the ability to meet new environmental challenges. It is suggested that careful preparation and planning for all regions is necessary. We agree and further suggest that it is also necessary to comment on the risks to successful *cross-border* strategic planning that are associated with Brexit. This is the light in which any cross-border element embedded in the National Planning Framework and the National Development Plan (under Project Ireland 2040) should be read. The question is, to what extent are the cross-border aspects of these planning frameworks threatened by Brexit?

⁷ See our discussion of this question in Briefing Note: The Secretary of State's Changes to Amendment 25 to the EU (Withdrawal) Bill, <http://crossborder.ie/site2015/wp-content/uploads/2018/06/Briefing-Note-Proposed-Amendments-to-the-EUWB.pdf>

⁸ See Ryan, B. 2016. Written evidence. Submission to House of Lords European Union Committee inquiry on Brexit: UK-Irish relations. <https://www.parliament.uk/documents/lords-committees/eu-select/Brexit-UK-Irish-Evidence-Volume.pdf>; Furthermore, some changes to how the CTA regulates the status of British and Irish citizens in each others' territories, or to the rights associated with this status, appear necessary. de Mars et al (2017: 3) point out that because at present the CTA treats British and Irish citizens as 'nationals' in each other's countries in most respects', without changes to the CTA after Brexit, 'UK citizens in Ireland will need to be granted rights equal to those of EU citizens'. Yet, no such precedent exists in the EU. Consequently, the UK might not wish to offer preferential treatment to Irish nationals without reciprocity on the part of the Republic of Ireland.