

# THE JOURNAL OF CROSS BORDER STUDIES IN IRELAND



**VOLUME 17**  
**2022**



Centre for  
Cross Border Studies

# **The Journal of Cross Border Studies in Ireland**

**Volume 17  
2022**



**Centre for  
Cross Border Studies**

ISSN: 2054-572X

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# FOREWORD

## Peter Osborne

Chairperson, Centre for Cross Border Studies

Often, we do not fully appreciate what comes dropping slowly, but the peace that Ireland, North and South, has enjoyed for the last decades has transformed this island into something that we would not recognise from the distance of the 1990s.

Growing the peace is a long term process of building bridges not barriers, shifting attitudes, and creating a new vision based on mutual interest and mutual benefit that can be touched by everyone.



When the Good Friday Agreement was concluded in 1998 everyone in the room knew that making real the hopes and aspirations for reconciliation was primarily a responsibility of everyone on the island; and that while challenges lay ahead, they would be overcome with goodwill and determination.

The challenges would be eased by lashings of funding from places like the European Union through a Peace programme that hit the streets three years before the Agreement was concluded. But the near 25 years since has been about more than funding. It has been about concepts and empowerment, and it has been about this region's place in a wider world as we rebuild trust and peace.

There were always going to be backward steps as well as forward ones. Brexit has been the greatest backward step, a significant blow to relationships on these islands, not just North-South but East-West as well.

That is why the work done by organisations such as the Centre for Cross Border Studies has been so important over the years. Civil society over the last two decades has often been the driver of change and protector of the gains of the peace process.

Initiatives like the New Common Charter for Cooperation Within and Between these Islands speaks to civil society making a real positive difference to the lives of people regardless of what they believe or where they live.

The New Common Charter is an initiative with no negative or political agenda, just civil society seeking to sustain and build relationships with mutual interest and a mutual benefit that touches everyone, wherever they live.

Halfway through what will be a 50 year plus peace process, civil society is required to dig deep again.

Community organisations are often the ones on the ground deepening relationships, seeking the acceptance of others and their rights, preventing young people from being radicalised, working with the marginalised to build trust in key services, either side of the border and across it.

Whatever sector you are part of you can also sign up to the New Common Charter here: <https://crossborder.ie/what-we-do/projects/common-charter/>.

Cross border collaboration for mutual benefit needs to be normalised – why would it be otherwise?

The work the Centre does would not be possible, of course, without its supporters and funders.

The Centre was this year made a Strategic Partner of the Department of Foreign Affairs through its Reconciliation Fund, and continues to enjoy significant support from the Department of Further and Higher Education, Research, Innovation and Science.

We want to acknowledge and thank all funders and supporters.

The Centre for Cross Border Studies operates with a small staff team who are tremendously committed to the values and ethos of the organisation. That shows in the demanding work and dedication they demonstrate and the results they achieve month to month, year on year.

The Board of the Centre is drawn equally from the North and South from civil society, academia and other sectors. The Board has been a constant source of strength and support, and its strength also reflects the importance of the job in hand to sustain and build relationships on and across these islands.

The previous chair, Dr Helen Johnston, did so much for the organisation over the last decade, and we want to thank her for that. We all wish her every success as she continues to shape relationships in years to come.

At the heart of relationship lie values such as respect and empathy, and an understanding of the need to take responsibility for one's own role.

We are halfway through a 50 year plus peace process. The Centre for Cross Border Studies in promoting mutual interest and mutual benefit understands its role to build bridges, not barriers.

We hope people from all backgrounds and traditions throughout these islands will be part of that journey.

# Introduction

## Dr Anthony Soares

Director, Centre for Cross Border Studies

There was an underlying theme when thinking about the 2022 edition of *The Journal of Cross Border Studies in Ireland*. That theme was inspired by the responses to the Centre for Cross Border Studies' quarterly surveys on the conditions for North-South and East-West cooperation, and the ongoing conversations the Centre has had with other organisations involved in cooperation. What we have seen is the commitment, resilience and perseverance organisations have continuously demonstrated faced with a deteriorating political context.



While no Executive was formed following the Northern Ireland Assembly elections in May 2022, leaving a local governance vacuum, and as a third Conservative Prime Minister resigned in the wake of the 2016 referendum on the UK's membership of the European Union, civic society organisations, educational institutions, local authorities and businesses have continued to build relations, cooperate, and trade on a cross-border basis – North-South *and* East-West. Therefore, commitment, resilience and perseverance were the characteristics that combined to form the underlying theme when thinking about and inviting contributions to the 2022 edition of *The Journal of Cross Border Studies in Ireland*.

However, we need to be acutely aware of the risk of taking such commitment, resilience and perseverance for granted. Although by no means a widespread phenomenon at this stage, responses to the Centre for Cross Border Studies' quarterly surveys and discussions with other organisations (not least through the Ad-Hoc Group for North-South and East-West Cooperation, which the Centre convenes) have suggested some community organisations in the Republic of Ireland – particularly smaller ones – are pausing or withdrawing from their North-South and/or East-West cooperation activities, and instead focusing on work within their own

jurisdiction and on their European networks. In terms of the latter, organisations have reported that their counterparts from England, Northern Ireland, Scotland and Wales are now absent. Where community organisations in the Republic of Ireland are pausing or withdrawing from North-South and East-West cooperation, it is as a result of what they see as the toxic atmosphere and uncertainty caused by the divisive political arguments over the Protocol on Ireland/Northern Ireland and the deteriorating relations between Belfast, Dublin, London and Brussels. Similarly, responses to the Centre's surveys indicate withdrawal by some unionist community organisations in Northern Ireland from North-South collaboration resulting from their opposition to the Protocol. Even if this trend of withdrawal from cross-border cooperation is only faint, it should provoke concern and cause us to be vigilant and address the reasons behind it. Not to do so not only risks what is a vague trend now becoming a larger wave of withdrawal from cross-border cooperation, but also leaving Northern Ireland increasingly isolated as Cardiff and Edinburgh – as well as devolved regions of England – strengthen their relations with Dublin and Brussels and, perhaps in the longer term, as even London re-establishes its relationship with the Irish government. This risk is all the more imminent as long as there is an absence of a Northern Ireland Executive, and those outside opt for collaboration and working to strengthen relations with other less “problematic” regions possessed of political leadership with a strategic vision for external engagement.

Responses to the Centre's quarterly surveys have also highlighted a number of practical obstacles to North-South cooperation resulting from Brexit. Whereas the Protocol may have given Northern Ireland continued access to the EU's single market for goods, the fact that it has not done so in relation to services has meant, for example, that an increasing number of respondents to our surveys have been encountering difficulties in securing insurance for their cross-border activities, particularly in terms of public and employers' liability, and professional indemnity. Other issues arising in the wake of the UK's withdrawal from the EU include the recognition of professional qualifications, and the complexities of maintaining North-South research networks reliant on funding from certain EU research programmes and on the mobility of researchers from the EU to Northern Ireland.

Indeed, the issue of cross-border mobility is one that has been raised as a matter of concern by respondents to our surveys, as well as by organisations with which the Centre regularly engages with. Those concerns have in large

part come as a result of new UK legislation, namely the Nationality and Borders Act which, among its many provisions, gives the government the power to introduce the requirement for non-visa nationals to acquire an Electronic Travel Authorisation (ETA) prior to their entry into the United Kingdom. In effect, and if no exemptions are provided for, this would mean that non-Irish and non-UK citizens resident in the Republic of Ireland who had previously been able to cross the border freely into Northern Ireland would now need to acquire an ETA in order to do so. As many respondents to our surveys have indicated, this would obviously impact on the ability of a range of citizens resident in the border region to continue their cross-border lives. However, this issue has also shone a renewed light on the fact that there are other people living on this island and its border region, including refugees and asylum seekers, for which this has been the case long before such legislation and Brexit, and for whom the Common Travel Area is an arrangement that excludes them.

But despite this gloom, and even if continual vigilance is required, there are reasons to remain cautiously optimistic as to the levels of cooperation activity, particularly on the North-South axis. As well as the ongoing support offered by the Irish Department of Affairs' Reconciliation Fund, the Irish Government's Shared Island initiative, and the pilot All-Island Fund introduced by Community Foundation Ireland in collaboration with the Community Foundation Northern Ireland have provided new funding opportunities for North-South cooperation projects, allowing existing and new actors to engage in cross-border collaborations. Evidence of this can be seen in responses to the Centre's quarterly surveys, which not only show high levels of engagement in current North-South cooperation activities, but also a healthy proportion indicating plans for future cross-border collaborations. PEACE PLUS, the EU European Territorial Cooperation funding programme replacing the previously separate INTERREG and PEACE programmes, undoubtedly has significant potential to support many of those plans for future cross-border activities. However, what is also made clear through our quarterly surveys is not only that the levels of East-West collaboration are lower than those on a North-South basis, but also that there are fewer funding streams enabling East-West cooperation. In this respect it is disappointing, for example, that the UK Shared Prosperity Fund does not appear to offer any significant opportunities for East-West cooperation.

The contributions to this edition of *The Journal of Cross Border Studies in Ireland* offer an invaluable insight into the challenges facing cross-border

cooperation, mobility and relations, as well as the commitment demonstrated by so many to finding ways to continue to cooperate and trade within and across these islands, and to ensuring citizens can carry on their cross-border lives.

Cooperation is the focus of the first three contributions, with the first article by Lisa Claire Whitten presenting a detailed analysis of the post-Brexit context for North-South cooperation as it was provided for by the 1998 Good Friday/Belfast Agreement. Her contribution goes a significant way to addressing the imbalance that exists in terms of current debates on the Protocol on Ireland/Northern Ireland, which have focused primarily on its potential impacts on the East-West dimension, usually meaning trade and relations between Great Britain and Northern Ireland, with less attention being paid to the North-South axis. Noting how the removal of shared EU legal frameworks means that 'North-South cooperation in the post-Brexit era is more legislatively complex and politically contingent than ever', Whitten's article goes on to set out the origins of North-South cooperation and its presence in the negotiations over the UK's withdrawal from the EU, before then providing a detailed analysis of the Protocol's provisions for North-South cooperation, and the extent to which they are able (or not) to allow for the continuation of cooperation that existed pre-Brexit. It concludes by highlighting the added challenges presented by UK government moves to unilaterally dis-apply significant parts of the Protocol, and how 'In no other time since the 1998 Agreement has the future of North-South cooperation ever been less certain', but that 'this is also why the need for its continuation has never been more urgent'.

In the second article, and from his position as Director of Public Policy at The Wheel (Ireland's national association of charities, community groups and social enterprises), Ivan Cooper attests to how civic society organisations continue to value North-South cooperation. Indeed, based on the view that commitment, resilience and perseverance are characteristics common to the global community, voluntary and social enterprise sector, the author states from the outset that he is 'optimistic about the long-run course for cooperation and positive relationships North-South, and indeed East-West, despite the present difficulties'. Perhaps paramount among those difficulties is how Brexit and recent moves by the UK government to unilaterally suspend large parts of the Protocol on Ireland/Northern Ireland will, according to the author, risk pulling the Republic of Ireland, Northern Ireland and Great Britain further apart.

And yet, Cooper remains confident that the community and voluntary sectors across these islands ‘remain committed to their universal and shared social, community and environmental justice and equality objectives’, and that this shared commitment ‘will continue to bring them together naturally, as it has always done’. Moreover, throughout his article Cooper references specific organisations that operate on an all-island basis, across the UK and Ireland, and those that work internationally; and noting the importance of collaboration between the Irish state and the community and voluntary sector in facing the enormous challenges present by the Covid-19 pandemic, allied to the principles of partnership working ‘hard-wired’ into the sector, he affirms the belief that ‘cooperation with organisations in NI and in GB can be sustained despite Brexit and the threat to the *Protocol*’. However, the author is nevertheless acutely aware of the challenges to cooperation and outlines their nature, before setting out what mitigations are needed and – using the example of the recently initiated collaboration between The Wheel and the Northern Ireland Council for Voluntary Action – how these can be put into practice.

Cooperation across the Irish Sea is the focus of the third article, as Giada Lagana charts the role played by the EU’s Interreg programme in fostering cross-border collaboration and relations between Wales and Ireland. Crucially, the author argues that ‘the top-down institutionalisation of the Ireland-Wales relationship did not ensure a widespread awareness among citizens on both sides of the maritime border about their common cross-border identity’, and that to some extent ‘cross-border cultural identities and shared political purposes between Ireland and Wales have emerged mainly in the aftermath of the 2016 Brexit referendum’. Having noted the publication of a Joint Action Plan by the Irish and Welsh governments in 2021 as a key indicator of high-level commitment to post-Brexit cross-border cooperation, Lagana’s article begins by analysing how the Ireland-Wales Interreg programme, formally established in 1994, served to institutionalise cross-border cooperation and to gradually encourage multi-level participation that included governmental and non-governmental actors and networks from both sides of the Irish Sea. She highlights how this process, which encouraged a place-based approach, was bolstered by the establishment and evolution of devolved government in Wales. The article then considers the potential consequences of Brexit for the future of cross-border cooperation between Wales and Ireland, noting how ‘the UK government has only ensured future commitment for the PEACE programme in Northern Ireland, thus undermining the future of the Interreg Ireland-Wales programme’.

Moreover, Lagana's analysis of the UK government's UK Shared Prosperity Fund (UKSPF), intended as a post-Brexit replacement for EU structural funds, is structured in such a way that means 'devolved governments only play a marginal role in allocation decisions within their territories, even though the fund will spend money on matters that lie primarily within devolved responsibilities'. What Lagana sees as the UKSPF's re-centralisation of the implementation of funding support cannot, she argues 'uphold the achievements of the Interreg Ireland-Wales programme'. Linking her concluding appeal to the East-West dimension of the 1998 Good Friday/Belfast Agreement, the author stresses the vital importance of building on the achievements of the Ireland-Wales Interreg programme, which include the cross-border processes of multi-level governance and implementation, rather than erasing them through the imposition of a top-down structure that rides roughshod over the nature of devolution and place-based partnership.

The next two articles in this edition of *The Journal of Cross Border Studies in Ireland* focus on the cross-border mobility of people, goods and services. In her contribution, Úna Boyd analyses the problematic post-Brexit positioning of the Common Travel Area (CTA), with the UK and Irish governments – she argues – presenting it as a 'concept to plug gaps left by the UK exiting the European Union', and increasingly referring to it as 'the source of *reciprocal rights* for British and Irish citizens in the alternate state', thereby risking the exclusion of its application to many non-Irish and non-British citizens resident on the island of Ireland. Boyd's article begins by offering an overview of the operation of freedom of movement within the CTA, and its legal underpinnings in the UK and Irish systems, highlighting how before Brexit 'the exemptions to passport controls and immigration controls were the main focus of CTA discourse'. Taking the 2019 Memorandum of Understanding between the UK and Ireland on the CTA as a key indicator, the author then sets out how there has been a policy and political shift that denies the importance of freedom of movement within the CTA for non-British and non-UK citizens, and fails to recognise how such citizens on the island of Ireland have availed of cross-border services such as healthcare and education.

While concerns over the use of racial profiling to police the CTA pre-date Brexit, Boyd shows how those concerns have increased in the post-Brexit context, prompted in large part by changes introduced by the UK that require people to present documents when travelling to the UK from Ireland, the Isle of Man, Guernsey and Jersey, as well as by the provisions contained within

the Nationality and Borders Act 2022. In terms of the latter and its provision for a pre-entrance clearance system – the Electronic Travel Authorisation (ETA) – the author views it as having ‘a unique detrimental impact on non-visa nationals in the Republic of Ireland who need to enter Northern Ireland for activities such as visiting family, accessing childcare, permitted work engagements and accessing services and goods’. The effects of these changes and how the CTA is increasingly being limited to British and Irish citizens risks, according to Boyd, making the Ireland-Northern Ireland border a hard(er) border for some who live on this island.

In his article, Sam Lowe sets out what he determines to be the six post-Brexit border regimes facing traders in Northern Ireland, before then proposing measures that could improve those traders’ ability to do engage in cross-border business. He begins from the position that the Protocol on Ireland/Northern Ireland places Northern Ireland traders in a privileged position, which means that ‘these traders can better serve clients in both Great Britain and the EU than those located in, for example, Glasgow, Liverpool, Cork, or Dublin’, although with the risk that some businesses may struggle with the new complexities and rules and therefore miss out on potential opportunities. Crucially, in order for Northern Ireland to thrive, the author is clear that ‘the EU and UK must make further efforts to alleviate the additional costs facing businesses and create a politically stable environment conducive to realising potential opportunities’.

In terms of the movement of goods from Great Britain to Northern Ireland and the post-Brexit changes to the tariff, customs and regulatory regimes governing that trade, Lowe proposes, for example, a Northern Ireland-specific scheme allowing tariff-free movement of steel from Great Britain to Northern Ireland, that the current facilitation for the movement of parcels be made permanent, and that the UK and EU reach a veterinary agreement similar to that between the EU and Switzerland. As for the movement of goods from Northern Ireland to Great Britain, and noting how ‘the UK government wants to phase out the recognition of EU CE marking for most products by the end of 2022’, the author calls on the UK government to avoid the confusion that would result by ‘continually recognising CE marking in areas where the underlying EU and UK standards remain the same’. Further proposals are set in relation to trade between Northern Ireland and the EU (including the Republic of Ireland), as well as in relation to trade between Northern Ireland and the rest of the world, which includes the extent to which Northern Ireland can benefit from EU or UK free trade agreements.

However, Lowe's conclusion stresses how there are measures that could be taken to alleviate problems for traders, which could allow Northern Ireland to fully exploit its unique trading positions, but that these 'require political willingness, trust, and flexibility from the EU and UK', which are presently in short supply.

The remaining contributions to this edition of *The Journal of Cross-Border Studies in Ireland* consider the post-Brexit context for relations within and across these islands and beyond. In their article, Etain Tannam and Conor J. Kelly focus on the impacts of Brexit on strands two and three of the 1998 Good Friday/Belfast Agreement, which provided a framework for North-South and East-West relations and cooperation. Although the authors analyse the Agreement's role in supporting cooperation, its ability to do so is always constrained by the state of political relations, all the more so given the interdependent nature of all of its three strands. This becomes immediately apparent as Tannam and Kelly offer an overview of the institutions established under the 1998 Agreement, noting how the North-South strand cannot function properly in the absence of a properly functioning strand one, which means the proper functioning of a Northern Ireland Assembly and Executive. 'In practice', as the authors point out, 'identity politics and different interpretations of the past continued to plague the operation of the Agreement's institutions', with several periods of political blockages in Northern Ireland leading to the suspension of the institutions under strand one. Among the factors identified by Tannam and Kelly as contributing to the collapse of the Northern Ireland Assembly and Executive in 2017 was the UK's decision to leave the EU, while the authors also note that for long periods there was also an absence of the British Irish Intergovernmental Conference, one of the core institutions under strand three of the Agreement. According to the authors, as a result of Brexit and the implementation of the Protocol on Ireland/Northern Ireland, 'there have been two key economic and political impacts on strands two and three': trade diversion to the Republic of Ireland, and the undermining of stability and the reconciliation process. In terms of the latter and what it means for relations, Tannam and Kelly conclude:

Overall, Brexit unleashed underlying tensions, some brewing for decades, but it also caused new tensions and unsettled the union and unionists. During this period, British-Irish cooperation has been wholly absent. Both sides now perceive the other to be adversarial.

In its final section, the article makes the case for how the institutions under strands two and three of the Good Friday/Belfast Agreement could be used to give Northern Ireland a voice in the EU-UK negotiations, and particularly their potential to ‘empower unionists’. Having suggested that in 2022 the Agreement is ‘in serious jeopardy’, Tannam and Kelly nevertheless conclude by stating: ‘If its institutions are more robustly implemented, Brexit’s challenges — and the challenges faced by unionists — can be managed more effectively to benefit all in Northern Ireland and the two islands’.

Brian Rowan’s article, which draws on his experience on reporting on conflict and peace, is a challenging assessment of where we are and, if not where we may be going, what we need to do in order to prepare for the potential paths that lie ahead. While the efforts and political leadership necessary to achieve the 1998 Good Friday/Belfast Agreement and the transformations it brought about can never be underestimated, Rowan gives us a powerful reminder that it should not be seen as a final destination or a task completed:

The challenge of building peace is in the making of relationships, in how difficult that task was (and is). Over the best part of three decades, since the original ceasefires of 1994, our learning tells us that peace is not the product of some wish and not something delivered by magic. Instead, it is a stop-start, always a work-in-progress — a tug-of-war between momentum and stasis — a seemingly endless political negotiation.

According to the author, ‘Brexit has tested relationships within Britain, the UK and Europe, British-Irish, North-South and at Stormont’, while the ‘negotiated balances and compromises of 1998 have been disturbed’. Particularly for Northern Ireland, what he describes as the ‘tug-of-peace’ is the tension arising from the pull between unity and union – between a ‘New Ireland’ and a ‘New Northern Ireland’. Having argued that fear of seriously engaging with the questions of what a ‘New Ireland’ could actually be, and whether the conversation about Northern Ireland might take place within the New Ireland debate, has drained the momentum out of our politics, Rowan stresses the importance of wider relations in order for Stormont to function:

It does not work on its own. This process needs the relationships that brought us the ceasefires and the political agreement in the 1990s. The critical internal relationships. North-South, British-Irish, Europe

and the United States. If you break the template, you break the process. This place does not work unless the two governments are involved in a joint effort.

Among his conclusions, Rowan suggests that to ‘take us out of the chaos now’ we need a plan that requires ‘trust, relationships, leadership and vision’.

The presence or absence of these elements is also considered by David Sterling’s article, which looks at the challenges and opportunities lying ahead for the next Northern Ireland Executive. Among the immediate challenges he identifies are the cost of living crisis, a slow return of global manufacturing capacity in the wake of the Covid-19 pandemic, a skills shortage, and the state of Northern Ireland’s health and care services. After offering a detailed analysis of these challenges, and a number of more longstanding structural deficits, the author goes on to highlight the missed opportunities arising from reduced engagement in cross-border cooperation within a hostile political context, before suggesting how Northern Ireland must strengthen its external relations in order to exploit its position as the only part of the UK to remain in the EU’s single market for goods. The role of the Northern Ireland Bureau in Brussels will, according to the article, ‘be crucial to ensure NI policy-makers, businesses, educational institutions and civil society organisations keep informed of EU policy development that may affect NI directly or indirectly’, while also acting as a hub ‘that helps maintain and strengthen relations with counterparts in other regions in Europe and with the EU’s institutions’.

Crucially, however, it also notes that ‘That role will be most effective if it is adequately supported and encouraged at the political level’. Securing that encouragement is predicated on political stability and a cohesive strategy, neither of which appear likely in the short-term according to the author in light of the current state of political relations within Northern Ireland, between the UK and the EU, and within the Conservative party, leading the author – drawing on his own experience as a former Head of the Northern Ireland Civil Service – to suggest ‘the prospects for an early formation of the Executive look slim, and the only thing we can be certain of at this time is further uncertainty’. Nevertheless, among the author’s conclusions is the call for improved relations and partnership:

The UK and the EU, together with the political parties in NI and the Irish Government, urgently need to work together to prioritise NI’s

interests, participate together in constructive engagement, rebuild trust, and engage in effective relationship-building. This happened in the run-up to the 1998 Agreement – it needs to happen again.

Bringing this edition of *The Journal of Cross Border Studies in Ireland* to a close is Jack O'Connor's article, which suggests the current moment as a possible turning point requiring the participation of organised civil society to safeguard the potentials of liberal democracy, and to reverse the rise of far-right populism. O'Connor begins by setting out how we have arrived at 'a state of permanent crisis', which has involved a process resulting in 'the large-scale decimation of the industrial working class in the west, as well as the wholesale alienation of individuals, communities and entire cities, towns and regions', as well provoking 'the decline of the multifaceted organic web that constitutes organised civil society in the regions affected'.

However, having traced the path that has taken us to this perilous state of 'deliberately fostered polarisation', which included the abandonment in Ireland of the social partnership that emerged in the late 1980s and the apparent hostility towards an equivalent structure in the UK, O'Connor's article nevertheless identifies a number of civil society structures with the potential 'to simultaneously buttress democratic values and provide a bridge across divides'. These include the Irish Congress of Trade Unions, which throughout the period of 'the Troubles' in Northern Ireland and since has, according to the author 'straddled the divide successfully, maintaining unity among organised workers around the economic and social agenda and largely succeeding in keeping sectarianism out of the workplace'. He also refers to the Ad-Hoc Group for North-South and East-West Cooperation, which the Centre for Cross Border Studies convenes, as 'a worthy and critically important initiative' in this regard.

Alongside these, and as O'Connor discusses collaborative pathways to resolving issues relating to the implementation of the Protocol on Ireland/Northern Ireland, and engagement with the mechanisms established under the EU-UK Trade and Cooperation Agreement, the Civil Society Alliance that has emerged in the UK is also identified as a potential ingredient to address the fact that 'there is no comprehensive, all-embracing forum to facilitate any organised civil society interface between the two jurisdictions on the island of Ireland or between Ireland and the mainland UK or the wider European region'. Additionally, the author highlights how the European Economic and Social Council's EU-UK Follow-up Committee was in part

established because ‘a major lacuna exists in terms of societal relations between the EU and the UK’. What this article suggests as potential ways of ‘developing coherent forums to coordinate and optimise the impact of organised civil society interventions on critical issues’ could, as well as strengthening North-South, East-West and wider relations, ‘serve to deepen and strengthen representative democracy, notably in our region during a period when it is under serious threat globally’.

From their various perspectives, the contributors to the 2022 edition of *The Journal of Cross Border Studies in Ireland* have undoubtedly shone a light on the new challenges to cross-border cooperation, mobility and relations brought about by Brexit, as well as underlying weaknesses that Brexit has brought to the fore. Equally, though, they also bear witness to the commitment, resilience and perseverance demonstrated by a range of actors in rising to those challenges and finding new ways to maintain and strengthen cross-border collaboration and relations. As many of the authors have suggested, we are at a turning point where we can strive to build on existing structures and channels for cross-border cooperation and dialogue. The alternative is to surrender to forces that seek to erase those structures, leaving us evermore polarised, isolated and at the mercy of challenges that can only be properly addressed through collaboration. This is an alternative that the Centre for Cross Border Studies will resist, working with others whose commitment, resilience and perseverance will ensure we continue to cooperate and maintain relations across borders for the mutual benefit of all the communities we serve.

# North-South Cooperation in the Post-Brexit Era: *A Complex and Contingent Future*

**Lisa Claire Whitten**

*Dr Lisa Claire Whitten is a Research Fellow on the ESRC-funded project ‘Governance for ‘a place between’: the Multi-Levelled Dynamics of Implementing the Protocol on Ireland / Northern Ireland’ based at Queen’s University Belfast.*

*She completed her doctoral dissertation last year on the constitutional implications of Brexit for Northern Ireland. Prior to studying for her PhD, Lisa Claire held a variety of posts in the political and public sector including working for the Office of the Northern Ireland Executive in Brussels and for a Member of the UK Parliament in Westminster.*



## Introduction

The withdrawal of the United Kingdom from the European Union – Brexit<sup>1</sup> – catalysed a paradigm shift in arrangements for North-South cooperation on the island of Ireland. Post-Brexit, the two jurisdictions – Ireland and Northern Ireland<sup>2</sup> – no longer share the legal and policy scaffolding that came with joint EU membership. That scaffolding had played a significant role in making possible the cross-border and all-Island “consultation, cooperation and action” in areas of “mutual interest” to those “North and South”<sup>3</sup> on the island of Ireland, envisaged and provided for in the *1998 Belfast/Good Friday Agreement*<sup>4</sup>. As this article explores, in the absence of shared EU law frameworks, North-South cooperation in the post-Brexit era is more legislatively complex and politically contingent than ever. For the same

reasons, it can be argued that efforts to preserve and develop it have never been more critical.

A specific focus of UK-EU negotiations in 2017 through 2019 was ensuring *necessary conditions* were maintained for continuing North-South cooperation. As a result, after much political drama, the UK and EU concluded a Withdrawal Agreement that included a *Protocol on Ireland/Northern Ireland*. The stated purpose of the *Protocol* is to set out arrangements to “address the unique circumstances on the island of Ireland” in the context of UK withdrawal from the EU, and more specifically:

- “to maintain the necessary conditions for continued North-South cooperation”;
- “to avoid a hard [land] border”; and
- to “protect the 1998 Agreement in all its dimensions”.<sup>5</sup>

Whether or not the *Protocol* could, or even should, meet these objectives is a contested issue.

So far, the implementation of the *Protocol* has been deeply politically divisive due to the implications of its arrangements to avoid a hard *land* border on the movement of goods across (what is now called) the Irish Sea border between Great Britain and Northern Ireland (GB-NI). Many in the unionist and loyalist tradition perceive this Irish Sea border as a violation of their British identity and a threat to the position of Northern Ireland in the UK.

Additionally, despite both parties agreeing on its content, the *Protocol* has been the source of considerable controversy between the UK and the EU. Since it came into force on 1 January 2021, the UK has accused the EU of adopting an overly legalistic approach to implementing the *Protocol*, particularly regarding arrangements for moving goods between GB-NI. On the other hand, the EU has accused the UK of reneging on commitments made in a binding international legal text due to an unwillingness to implement the *Protocol* fully and a propensity to take unilateral action.

The debate, and the acrimony, continue.

At present, Northern Ireland is without a fully functioning government due to the resignation of the Democratic Unionist Party (DUP) First Minister in February in protest against the *Protocol* and the refusal of the party to support the election of a Speaker to the Northern Ireland Assembly nor form

a Northern Ireland Executive in the wake of May elections for the same reason. Furthermore, talks that had been ongoing between the UK and EU on the *Protocol* have broken down as the UK government introduced draft legislation that would, if enacted, give powers to UK ministers to disapply large sections of the *Protocol* in domestic law. In response, the EU has launched and relaunched infringement proceedings against the UK for failure to uphold its commitments under the Withdrawal Agreement through non-implementation of the *Protocol*.

With all of this high-drama ongoing, much of the (extensive) political, media and academic debate about the *Protocol* has, so far, focused on its so-called *East-West* impacts, meaning on trade and relations between Great Britain and Northern Ireland. Comparatively, less attention has thus been given to its implications on North-South trade and relations, notwithstanding their prominent role in UK-EU withdrawal negotiations and indeed in the text of the *Protocol* itself; this paper goes some way to redressing the balance. Focusing on existing legal provisions, the paper provides an early assessment of the extent to which the “necessary conditions”<sup>6</sup> for North-South cooperation do, or do not, still exist in the post-Brexit era, including as a direct consequence of the *Protocol*.

In terms of structure, Section One sets out the origins of North-South cooperation and its role in UK-EU negotiations. Section Two considers relevant provisions of the *Protocol* in some detail. Building on this, Section Three assesses the sufficiency or otherwise of those provisions concerning pre-Brexit North-South cooperation and identifies any ‘gaps’ that exist in the post-Brexit context. The Conclusion explores the future of North-South cooperation given the newly contested politics surrounding it and the complex, potentially changing legal provisions for its maintenance and development.

## **Section One: The problem**

### **Strand two of the 1998 Agreement**

North-South cooperation on the island of Ireland is the focus of strand two of the *1998 Agreement*.

Strand two established a North-South Ministerial Council (NSMC) to “bring together those with executive responsibilities” in Ireland and Northern Ireland to:

...develop consultation, co-operation, and action within the island of Ireland – including through implementation on an all-island and cross-border basis – on matters of mutual interest within the competence of the Administrations, North and South.<sup>7</sup>

The *1998 Agreement* provided for the establishment of *implementation bodies* to help facilitate North-South cooperation. It specified twelve areas where cooperation could take place while also allowing for other areas to be considered and agreed upon in future via the NSMC.

Agriculture	Health	Tourism
Aquaculture & marine	Inland fisheries	Transport
Education	Relevant EU programmes	Urban & rural development
Environment	Social security / welfare	Waterways

**Table 1:** Twelve areas for cooperation

### **Brexit’s border problem**

Avoiding a hard border was a shared aim of both the UK and the EU at the outset of negotiations; however, the ‘problem’ of the border was defined differently by the two negotiating parties.

On the UK side, the problem was narrowly understood as mitigating the need for physical checks or controls on goods crossing the 500km borderline demarcating the boundary of the UK nation. A problem that was in keeping with an ideal of national sovereignty and narratives of border control that had underpinned the *Leave Campaign*; its result was a negotiating position that sought “technical solutions” to achieve a “goods border” on the island of Ireland “that is as seamless and frictionless as possible”.<sup>8</sup> However, such a narrow understanding of the problem sits somewhat uncomfortably with the *1998 Agreement*, which envisaged the removal of border infrastructure and a more holistic transformation of “the totality of relationships”<sup>9</sup> North-South and East-West to diminish the significance of physical borderlines. The UK’s proposal to address “the full spectrum of North-South and East-West cooperation” in a “bold and ambitious Free Trade Agreement”<sup>10</sup> in future relationship negotiations relied on splitting the task of protecting the *1998 Agreement* across two sets of negotiations and agreements.

On the EU side, by contrast, avoiding physical checks or controls on the land border was understood as just one aspect presented by the “unique circumstances” on the island of Ireland that would require “flexible and imaginative solutions ... *including* with the aim of avoiding a hard border”,<sup>11</sup> While underlining a need to avoid a physical hardening of the land border, the EU also emphasised:

1. “... the very specific and interwoven political, economic, security, societal and agricultural ... frameworks on the island of Ireland”;<sup>12</sup> and
2. The need to protect North-South cooperation “across all the relevant sectors”<sup>13</sup> in the withdrawal negotiations.

In the first phase of negotiations, the EU position for protecting the *1998 Agreement* ‘in all its parts’ *in the withdrawal agreement* prevailed. However, an apparent change in the UK position can be attributed to the outcomes of a joint exercise to map existing North-South cooperation and determine the extent to which this relied on EU legal or policy frameworks or the *1998 Agreement*.<sup>14</sup> Findings of the ‘mapping exercise’ identified 142 areas of North-South cooperation, 54 of which were classified as ‘directly underpinned by or linked’ to EU legal or policy frameworks, 42 as ‘partially underpinned by or linked’ and 46 as ‘not underpinned or linked to’ EU legal or policy frameworks. Three things were, therefore, clear:

1. North-South cooperation had expanded significantly since 1998;
2. This expansion had been facilitated by joint EU membership of Ireland and the UK; and
3. Existing areas of North-South cooperation were uniquely exposed to the outworking of Brexit.

### **Joint Report | Backstop | Protocol**

Findings from the North-South mapping exercise were reflected in the UK-EU Joint Report that concluded the first phase of withdrawal negotiations.

In the text, the UK, under Theresa May’s premiership, held to its preference to address the “substantial challenges to the maintenance and development of North-South cooperation”<sup>15</sup> ... through the overall EU-UK relationship”<sup>16</sup> but committed in the interim to “maintain full alignment with those rules of the Internal Market and Customs Union which, now or in future, support

North-South cooperation, the all-island economy and the protection of the *1998 Agreement*".<sup>17</sup>

The inclusive language regarding *future cooperation* and the *all-island economy* amounted to a UK commitment in principle to dynamic alignment with the EU of the kind required to facilitate ongoing cooperation on the island of Ireland. If realised, this would have allowed for the continuation of post-1998 all-island integration, as envisaged by the EU, rather than simply mitigating the need for physical checks on goods at the border, as originally envisaged by the UK government.

Fast-forward through some tense months of more UK-EU negotiations and the emergence of the so-called *Backstop* Protocol. The ill-fated first version of the Withdrawal Agreement, concluded by the EU and UK under May in November 2018 but never ratified, upheld the prior UK commitment to dynamic alignment, per paragraph 49 of the Joint Report. Importantly, its provisions were designed as a minimal framework to operate alongside the "bold and ambitious" free trade agreement (FTA) that the May government intended to conclude.<sup>18</sup> In this way, the Backstop Protocol amounted to a compromise between the respective UK and EU starting positions regarding the nature of the border problem. It reflected an EU understanding of a need to protect North-South cooperation broadly understood yet provided for the UK's preferred strategy of doing so *primarily* through the future relationship agreement. Although the Backstop Protocol was designed to "maintain the necessary conditions for continued North-South cooperation",<sup>19</sup> it was only meant to do so "unless and until"<sup>20</sup> the UK and EU concluded an agreement to supersede it "in whole or in part" using "best endeavours".<sup>21</sup>

This context is vital. Those provisions that related directly to maintaining conditions for North-South cooperation in the Backstop Protocol<sup>22</sup> on an insurance policy basis are almost identical to those set out in the *Protocol* (Articles 5-11)<sup>23</sup> despite the latter being agreed on a fundamentally different premise regarding its longevity and comprehensiveness. Rather, the text of the *Protocol* still reflects the logic of a minimal framework insurance policy to avoid a physical hardening of the border on the island of Ireland by facilitating cross-border trade in goods while allowing the full spectrum of current and future North-South cooperation to be more comprehensively addressed through a 'deep and special' UK-EU future relationship agreement of a kind that was not agreed.

This is why, despite being an explicit objective of the text, and as Section Two demonstrates, the *Protocol* does not *alone* provide the necessary conditions for continued North-South cooperation.

## Section Two: The Protocol

### The Protocol and the North-South dynamic

Provisions of the *Protocol* that specifically address strand two of the *1998 Agreement* fall into two categories:

1. Those that facilitate cross-border trade in goods, thereby avoiding any need for physical infrastructure at the land border; and
2. Those, broadly understood, that aim to maintain the necessary conditions for North-South cooperation.

Together they reflect a compromise between the starting positions of the UK and the EU. As this section sets out, provisions in the first category (Articles 5-8; 10) are more comprehensive and legally enforceable than those in the second (Articles 9; 11).

### Cross-border trade in goods: Articles 5-8 and 10

The UK and EU sought to avoid any need for physical infrastructure on the land border between Ireland and Northern Ireland. However, this shared objective had to be balanced with the EU's aim of securing its single market and customs union and the UK's goal of leaving the EU single market and customs union without dividing the UK's internal market. To reconcile these three seemingly incompatible aims, the *Protocol* sets out a 'constructively ambiguous' balance between the:

1. *de jure* position of Northern Ireland remaining within the UK customs territory (Article 4) and internal market (Article 6); and
2. *de facto* position of Northern Ireland, which is treated as part of the EU customs union and single market for trade in goods (Article 5) with related provisions for the:
  - i. Recognition of technical regulations, assessments, certifications and authorisations (Article 7);
  - ii. Payment of VAT and excise with respect to goods (Article 8); and
  - iii. Application of EU state aid rules to any trade subject to the Protocol (Article 10).

This balance met the negotiating objectives of both sides at the time.

It avoided the need for a hard border by ensuring continued cross-border trade in goods. Additionally, it allowed Northern Ireland to remain entirely in the UK internal market while simultaneously securing the EU single market by necessitating new checks and controls on goods moving GB–NI *as if* Northern Ireland was part of the EU single market for goods.

Northern Ireland's *de jure* status as part of the UK customs territory (Article 6(1)) also formally safeguarded the UK customs territory's legal integrity. However, at the same time, the *de facto* requirement for applying the EU customs code and EU-derived regulations on goods entering Northern Ireland from the rest of the UK created, in effect, a GB–NI trade border regarding goods as the default arrangement.

As set out in the introduction, debates are ongoing about the legitimacy and longevity of these *Protocol* aspects designed to avoid the need for a physical hardening of the land border on the island of Ireland. This being so, it is perhaps worth recalling that Articles 5-8 and 10 of the *Protocol* arose from a shared UK-EU negotiating aim and an agreed compromise between aims that were not shared. Any new system or future approach – including one arising from the *Northern Ireland Protocol Bill* legislation – will have to contend with the same objectives and geographic, legal, and economic realities that led to the *Protocol*.

### **Necessary conditions for North-South cooperation: Articles 9 and 11**

Outside of enabling cross-border trade in goods to continue, Article 11 of the *Protocol* addresses 'other areas' of North-South cooperation as follows:

1. Consistent with the arrangements set out in Articles 5 to 10, and in full respect of Union law, this *Protocol* shall be implemented and applied so as to maintain the necessary conditions for continued North-South cooperation, including in the areas of environment, health, agriculture, transport, education, and tourism, as well as in the areas of energy, telecommunications, broadcasting, inland fisheries, justice and security, higher education and sport.

In full respect of union law, the United Kingdom and Ireland may continue to make new arrangements that build on the provisions of the *1998 Agreement* in other areas of North-South cooperation on the island of Ireland.

2. The Joint Committee shall keep under constant review the extent to which the implementation and application of this *Protocol* maintains the necessary conditions for North-South cooperation. The Joint Committee may make appropriate recommendations to the union and the United Kingdom in this respect, including on a recommendation from the specialised committee.<sup>24</sup>

The wording of the first paragraph is important. By requiring the implementation and application of the *Protocol* in a manner conducive to ongoing North-South cooperation, Article 11(1) *appears* to offer a broad and dynamic safeguard for the kind of “consultation, cooperation and action within the island of Ireland” envisaged in the *1998 Agreement*.<sup>25</sup> Looks can be deceiving. An implicit premise of the language used in Article 11(1) is that there are no ‘necessary conditions’ for North-South cooperation that are extraneous to the *Protocol*, but this is not the case. Indeed, as the next section demonstrates, the 2017 mapping exercise identified EU legal and policy frameworks relevant to all of the areas listed in Article 11 and which are not guaranteed elsewhere in the *Protocol*.

Additional to Article 11, North-South cooperation regarding electricity generation, transmission and distribution is granted specific protection under Article 9 of the *Protocol*. Ensuring the preservation of the single electricity market was an objective shared by the UK and EU; it was also one of the few that had cross-party support in Northern Ireland.<sup>26</sup> Under Article 9 and Annex 4, seven EU acts are to apply in Northern Ireland “insofar as they apply to the generation, transmission, distribution, and supply of electricity, trading in wholesale electricity or cross-border exchanges in electricity” (Annex 4 *added*);<sup>27</sup> those provisions relating to retail markets and consumer protection “shall not apply” and any other acts referenced in the EU laws listed do not otherwise apply “unless it is a provision governing wholesale electricity markets which applies in Ireland and is necessary for the joint operation of the single wholesale electricity market” on the island of Ireland.<sup>28</sup> Article 9, therefore, provides a robust legal foundation for North-South cooperation in electricity markets and allows for discretionary and dynamic alignment in the area. As the next section details, the same is not so in other areas of cooperation.

## Section Three: The Gaps

### Protocol vs mapping exercise

Comparing the list of EU laws that the *Protocol* makes applicable to the UK in respect of Northern Ireland and the EU laws listed in the mapping exercise of 2017 allows an initial assessment of the extent to which the *Protocol* meets its stated objective regarding North-South cooperation.

The answer is, in short, ‘*could do better*’. Table 2 summarises that while the *Protocol* fully covers some areas of North-South cooperation identified in the mapping exercise, others are only partially covered, and others are not covered.

COVERED	PARTIALLY COVERED	NOT COVERED
Food Safety Promotion Board	SEUPB; PEACE IV programme; INTERREG funding	Child protection
Cooperation & Working Together	Biodiversity	Commercial vehicle roadworthiness enforcement & concerted checkpoints
Tuberculosis (TB) & Brucellosis (BR) Working Group	Border People Project	Vehicle and driver safety checks
Organs and Tissues	Loughs Agency; Waterways Ireland	Cabotage
Movement of medicines, devices, and healthcare goods	Cross-border Enterprise Rail Service	Motor Insurance
North-South Dairy International Trade Working Group	Operation of cross-border taxis	Driver and Vehicle Licensing
Convention on International Trade in Endangered Species	Major emergencies and A&E planning cooperation	International Authorisations for bus & coach services
Fish health & aquaculture	North-West Cancer Centre; All-Island Congenital Heart Disease Network; Middletown Centre for Autism Ltd	Ferries
Management of eel stocks on the Erne	Mutual Recognition of professional qualifications for doctors & clinicians	Road Haulage
Single Electricity Market	Export Licensing Controls (dual-use goods, military goods)	Water pollution and water catchment work; Water quality; Water regulation
Chemicals Regulation	Teacher qualifications & professional development	Common Agricultural Policy
Invasive Alien Species; Control of Epizootic		All-Island Pollinator Plan
		Air quality issues
		Strategic Environmental Assessment

Diseases	Plant health & regulatory checks for quarantine pests; Transmissible Spongiform Encephalopathies & Animal By-Products	River Basin Management Plans
DAERA/DAFM Equine Liaison Group		Flood Risk Management
Equine Industry Strategy	Animal health & welfare working groups	Habitats and Wild Birds Directive
Veterinary public health and trade meetings	Checks on third country products of animal origin; Checks on products of animal origin	All-Ireland Marsh Fritillary Group
North-South Working Group on Veterinary Medicines	Checks on Live animals	EU LEADER cooperation
Regulation and enforcement of animal health and welfare & public health legislation	Checks on food not of animal origin	EURES Cross Border Partnership
Fuel Fraud; Firearms, Offensive Weapons	Waste Management [ii]	Benefit fraud cross-border cooperation
Checks on Civil Explosives	Natural Gas	Irish Language Broadcasting
National Museums North-South Cooperation; Cultural Goods	Road network	Mobile Roaming
Non-commercial movement of Pets	Intertrade Ireland	Cross-border cooperation on criminal justice matters (including work of Organised Crime Task Force)
Customs (including data-sharing)	Engagement & Information Exchange DAERA & DAFM	All-Island Public Procurement Steering Group
Market surveillance of goods; Excise Fraud	Invest NI & Enterprise Ireland cooperation	Landscape Monitoring
Checks on Intellectual Property Rights	Environmental protection reporting and research	
Import Licensing Controls	Sport; Statistics	
Relief from safety and security declarations	Cross-border academic partnerships (in agriculture)	
Waste Management [i]		
Mutual Recognition of AEOs; Transit of Goods; Road Network; VAT – Information Sharing		

**Table 2:** The Protocol and areas of North-South cooperation identified in the 2017 mapping exercise

Note: Areas identified in the 2017 mapping exercise for which all of the EU law instruments cited are also contained in the *Protocol* and its Annexes are categorised as ‘covered’ (green); those areas for which *some* of the EU law instruments cited are also contained in the *Protocol* and its Annexes are categorised as ‘partially covered’ (yellow); and those areas for which none of the EU law instruments cited are also contained in the *Protocol* and its Annexes are categorised as ‘not covered’ (red).

Those areas fully covered by the *Protocol* include, for example, North-South cooperation concerning:

- Customs.
- Market surveillance of goods.
- Regulation of animal health and welfare.
- The cross-border movement of medicines, medical devices, and organs for transplant.

In these areas, the *Protocol* provides for the continued application in the UK in respect of Northern Ireland of all the EU legal acts cited in the mapping exercise as facilitating cooperation, either directly or indirectly. Those areas that are partially covered, where the *Protocol* includes only some of the EU legal acts cited as directly or indirectly facilitating cooperation, include, for example:

- The operation of cross-border taxis and rail services.
- Cross-border cooperation in education.
- The work of three Implementation bodies: Waterways Ireland, the Loughs Agency and the Special EU Programmes Body (SEUPB).

Those areas not covered by the *Protocol* and for which none of the EU legal acts cited as facilitating cooperation in the mapping exercise are in the scope of the *Protocol*, include, for example:

- Driver and vehicle licensing;
- International authorisations for bus and coach services;
- The mutual recognition of professional qualifications; and
- The management and regulation of water resources.

Overall, a comparison of the mapping exercise and the *Protocol* shows that, notwithstanding its objective, the *Protocol* currently maintains only *some* of the pre-Brexit ‘necessary conditions for continued North-South cooperation’ post-Brexit, not all.

### **The New Normal**

So, where does this leave us?

Following Article 11(2), gaps in the *Protocol*’s scope *could* be addressed through its ‘implementation and application’. For example, the UK-EU Joint Committee could, as part of its ‘constant review’ of the extent to which implementation and application of the *Protocol* does maintain the conditions necessary for North-South cooperation, may make ‘appropriate recommendations’ to the UK and the EU that lead to changes to the *Protocol* for that purpose. The Specialised Committee, established under Article 14 of the *Protocol*, could also play a role here. One of its tasks is to “examine proposals concerning the implementation and application of [the] Protocol from the NSMC and North-South Implementation bodies”.<sup>29</sup> On which basis, the Specialised Committee could make recommendations to the Joint Committee.<sup>30</sup>

These provisions create an avenue – from strand two institutions to the Specialised Committee to the Joint Committee and then to the UK and the EU – for *potential* developments regarding the extent to which the implementation and application of the *Protocol* maintain the necessary conditions for North-South cooperation. For the moment, this analysis concludes that, in defending the conditions for North-South cooperation, the *Protocol* on its own is not currently up to the task. Notwithstanding the possibility of a future change in political weather, it is also the case that ongoing political controversy over the *Protocol* make it very unlikely that the ‘gaps’ it leaves in respect of North-South cooperation will be addressed through its architecture – at least not in the immediate future.

It is perhaps worth stating here that the *Protocol* is not the only, nor even the primary, means by which North-South cooperation on the island of Ireland can develop post-Brexit. Following the second subparagraph of Article 11(1), the UK and Ireland “may continue to make arrangements that build on the provisions of *the 1998 Agreement* in other areas of North-South cooperation” provided that these respect EU law obligations. This returns us to where we started: the *1998 Agreement*. Strand two institutions remain

the primary vehicle by which North-South cooperation exists and can continue to develop post-Brexit, albeit in more challenging, less-than-ideal conditions.

## **Conclusion: A complex and uncertain future**

With the decoupling of the legal and policy trajectories of the UK and Ireland that resulted from Brexit, North-South cooperation entered a new paradigm.

As this article has set out, the *Protocol* only partially fulfils its aspiration regarding North-South cooperation. It provides the necessary conditions for *some* North-South cooperation to continue – namely for cross-border trade in goods (Article 5 and 7, 8 and 10) and energy markets and electricity supplies (Article 9) – but the coverage is not comprehensive. Moreover, a comparison between areas of North-South cooperation identified in the 2017 mapping exercise and the *Protocol* reveals post-Brexit ‘gaps’ in the legal and policy frameworks that, pre-Brexit, relied on EU laws deriving from shared UK and Irish membership of the EU.

North-South cooperation in areas *not* covered by the *Protocol* is, in many cases, still ongoing. In the post-Brexit era, the legal and policy frameworks supporting these areas of cooperation are necessarily more complex. This is because the ‘necessary conditions’ for North-South cooperation in areas not covered by the *Protocol* are now contingent on the degree of complementarity of legal and policy developments across a range of different jurisdictions and in different contexts; including: in the UK (as a whole); in Northern Ireland (as a devolved region); between Ireland and Northern Ireland; between the UK and Ireland; between the UK and the EU; within the EU; and within Ireland (as an EU Member State).

Overall, the post-Brexit environment for North-South cooperation is inherently complex and contingent; therefore, those ‘necessary conditions’ for its continuation are much less certain.

Against the background of a more complex, less certain future for North-South cooperation, the UK government’s recent introduction of draft legislation that would grant UK ministers extensive discretionary powers to disapply aspects of the *Protocol* in domestic law could be seismic. If passed unamended, the *Northern Ireland Protocol Bill* would mean, in effect, that the UK would unilaterally ‘turn off’ large sections of the *Protocol*, including

those designed to facilitate the continued free movement of goods (Article 5; 7, 8-10) and energy and electricity (Article 9) on the island of Ireland. Under the *Northern Ireland Protocol Bill*, Article 11 of the *Protocol* is among three provisions that are ‘protected’ from amendment by the powers otherwise granted to UK ministers to change the domestic legal effect of the *Protocol*.

However, as this analysis has demonstrated, Article 11 offers only an ‘in principle’ requirement for the *Protocol* to be implemented and applied to facilitate ongoing North-South cooperation. If divorced from other provisions that maintain ‘necessary conditions’ for certain areas of North-South cooperation (i.e., Articles 5 and 7-10), Article 11 is denuded of its potential legal effect.

What this means is that, if the *Northern Ireland Protocol Bill* becomes law, those areas of pre-Brexit North-South cooperation that are currently covered or partially covered by the *Protocol* will no longer be guaranteed as the EU legal scaffolding – identified as necessary in UK-EU negotiations and provided for in the *Protocol* – would no longer be guaranteed to exist on both sides of the winding 300km land border. For North-South cooperation, the legal enactment of the *Northern Ireland Protocol Bill* would therefore be extremely damaging. Unfortunately, at the time of writing, it does appear likely that the upcoming parliamentary term in Westminster will see a *Northern Ireland Protocol Act* becoming part of domestic law. In such a scenario, the EU has indicated a willingness to take decisive retaliatory action against the UK up to and including the suspension of the UK-EU Trade and Cooperation Agreement, thereby triggering a *trade war* between the two sides.

For those living inside the recently (in)famous borders of Northern Ireland, this most recent nadir in relations between the UK and the EU suggests storms ahead. However, regardless of what legal provisions do or do not exist for post-Brexit Northern Ireland this time next year, its ‘unique circumstances’ arising from its geography, economy and history will persist and therefore need to be accommodated.

In no other time since the *1998 Agreement* has the future of North-South cooperation ever been less certain; this is also why the need for its continuation has never been more urgent.

Here’s hoping.

## Endnotes

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- <sup>1</sup> Short for '[Great] British + Exit' the neologism 'Brexit' could be said to be a misnomer inasmuch as the term implicitly excludes Northern Ireland. While this linguistic inaccuracy is notable, the term 'Brexit' is used here to refer to the process of the UK's withdrawal from the EU as it has come to be commonly understood.
- <sup>2</sup> Language used to refer to the two polities on the island of Ireland can be varied and contested. For clarity, here and throughout the self-referent titles – Ireland and Northern Ireland – employed by respective executive authorities in both jurisdictions are used.
- <sup>3</sup> 1998 Agreement, Strand Two: para. 1.
- <sup>4</sup> Terminology regarding the 1998 Agreement also varies; use of the title 'Belfast Agreement' tends to be more associated with the Unionist/Loyalist tradition while use of the 'Good Friday Agreement' tends to be more associated with Nationalist/Republican tradition. For clarity, here and throughout, the shorthand '1998 Agreement' is used.
- <sup>5</sup> Official Journal (2020) *Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community*. [L29 31 January 2020 p. 7–187]: Protocol: Article 1(3).
- <sup>6</sup> *Ibid.* Protocol: Article 11(1).
- <sup>7</sup> 1998 Agreement, Strand Two: para. 1.
- <sup>8</sup> HM Government (2017) 'The United Kingdom's exit from, and partnership with, the European Union', 2 February.  
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- <sup>9</sup> 1998 Agreement, Strand Two: para. 1.
- <sup>10</sup> HM Government. 2017b, August 16. 'Northern Ireland and Ireland: position paper'.  
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- <sup>11</sup> European Council. 2017, April 29. 'European Council (Art. 50) guidelines for Brexit negotiations' EUCO XT 20004/17. *europa.ec*: para 11.
- <sup>12</sup> European Commission. 2017, May 22. 'Directives for the negotiation of an agreement with the United Kingdom of Great Britain and Northern Ireland setting out the arrangements for its withdrawal from the European Union' 21009/17 BXT 16 ADD 1. *europa.ec*: 1.
- <sup>13</sup> *Ibid.*: 3.
- <sup>14</sup> Three documents were released that set out the findings of the joint 2017 Mapping Exercise; the most detailed of which is the UK government 'Scoping Document' only published in 2019 following a successful freedom of information request – it is

available here: <https://www.parliament.uk/globalassets/documents/commons-committees/Exiting-the-European-Union/17-19/Correspondence/UK-Government-scoping-document-1.pdf>. (Accessed 31 July 2022).

- <sup>15</sup> Joint Report of Negotiators. 2017, December 8. 'Joint report from the Negotiators of the European Union and the United Kingdom Government on progress during phase 1 of negotiations under Article 50 TEU on the United Kingdom's orderly withdrawal from the European Union' *europa.ec.eu*: p. 47
- <sup>16</sup> *Ibid*: 49.
- <sup>17</sup> *Ibid*: 43; 49, added.
- <sup>18</sup> HM Government. 2017b, August 16. 'Northern Ireland and Ireland: position paper' *assets.publishing.service.gov.uk*: p. 65.
- <sup>19</sup> Official Journal. 2019. *Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community* [C661 19 February 2019 p.1 – 184]: [Backstop] Protocol: Article 1(3).
- <sup>20</sup> *Ibid*: Article 1(4).
- <sup>21</sup> *Ibid*: Article 2(1).
- <sup>22</sup> *Ibid*: Articles 6(2); 7-13.
- <sup>23</sup> OJ 2020. Withdrawal Agreement, Protocol: Article 5-11.
- <sup>24</sup> *Ibid*: Article 11.
- <sup>25</sup> 1998 Agreement, Strand Two: para. 1.
- <sup>26</sup> See: Executive Office 2016, August 10. 'Letter to the Prime Minister' *executiveoffice-ni.gov*; and Hayward, K. and Whitten, L. (2018) 'What is Northern Ireland saying about Brexit – key slides' *qpol.qub.ac.uk*.
- <sup>27</sup> OJ 2020. Withdrawal Agreement, Protocol: Article 9, Annex 4.
- <sup>28</sup> *Ibid*. Annex 4.
- <sup>29</sup> *Ibid*: Article 14(b).
- <sup>30</sup> *Ibid*: Article 14(e).

## Cross-border cooperation from the perspective of the Community, Voluntary and Social Enterprise (CVSE) sector in the Republic of Ireland:

***What is the appetite for cooperation with organisations in Northern Ireland (or even in Great Britain), what might the challenges be, and how can these be addressed?***

### Ivan Cooper

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*Ivan spends a lot of time engaging with the 2,000 members of The Wheel to identify the issues they face and to work with them to agree the changes needed with the relevant authorities and regulators. There is a lot of media interest in the work of charities and Ivan works with the media when required to put forward The Wheel's perspective on issues in the news.*

This article explores cross-border cooperation from the Community, Voluntary and Social Enterprise (CVSE) sector in the Republic of Ireland. It provides insight into the appetite for collaboration with Northern Ireland organisations, potential challenges, and how to address them.

The themes of this edition of *The Journal* are commitment, resilience and perseverance. Similarly, these are the hallmarks of the CVSE sector worldwide, not just in the Republic of Ireland.

The fact that these characteristics are common to the global CVSE sector makes me optimistic about the long-run course for cooperation and positive relationships North-South, and indeed East-West, despite the present difficulties.

Political priorities generally lag where people are at, and where people are at is often better discerned from the direction, thrust, and energy of the communities of people and active citizens, which we know as the CVSE sector. There will be challenges, and we will look at these a little later.

On the face of it, Brexit and recent developments relating to the potential suspension of elements of the *Ireland/Northern Ireland Protocol* will pull the Republic of Ireland (RoI), Northern Ireland (NI), and Great Britain (GB) further apart. But I do believe we can be optimistic.

### **Why optimism in the face of the prevailing mood?**

I believe we can be optimistic because of our CVSE sector. And the role it plays in knowing what is important, never giving up, and behaving civilly and inclusively while doing it. By 'our CVSE sector', I mean humanity's CVSE sector: a small but remarkable portion of which we have in the RoI, NI and GB.

I believe we can be optimistic because the CVSE sector embodies *commitment*, which is all about being clear about what needs to be done and communicating that unambiguously and courageously to stakeholders, be they partners or apparent opponents, along with the seriousness of intent to achieve it. In doing so, trust is built with people and communities and sends important signals to stakeholders that may not share the objectives. Think of The Wheel, Community Work Ireland, the Community Platform, and the Community Foundation for Ireland. Or Irish Rural Link, Pavee Point, Social Justice Ireland, and the Women's Council. Think of the Society of St Vincent de Paul (SVP), which operates on an all-island basis.

The CVSE sector is and stays committed. Despite Brexit, the RoI, NI and GB sectors remain committed to their universal and shared social, community and environmental justice and equality objectives. This will continue to bring them together naturally, as it has always done.

I believe we can be further optimistic because the CVSE sector also embodies *resilience*, which, to use the cliché, is all about ‘bounce-back-ability’; to draw on reserves of energy inspired by commitment and self-belief. The sustenance from community, friendship, and common endeavour enable people to survive the setbacks that come with sustained effort towards significant changes in challenging times. So again, the CVSE sector embodies resilience – it is often the wellspring and font of stability for the communities and people it surrounds. It is very often through the CVSE sector that people and communities who need support and encouragement find their resilience through having available to them the company, the camaraderie, and the community they need to get through incredible challenges.

Finally, I believe we can be optimistic because the CVSE sector also embodies *perseverance*, which is all about keeping going on the mission towards purpose and objective, sustained by resilience and commitment, and not quitting until we’ve achieved the aim. So the people working for change persevere even though, in the case of many social justice and environmental aims, they won’t reach the goal within their career or their lifetime. And this is inherent to the CVSE sector.

Think of the work of the Vincentian Partnership for Social Justice; Friends of the Earth and Friends of the Earth NI; Greenpeace; Amnesty International and Amnesty International NI; Trócaire and SVP organised on an all-island basis; Concern Worldwide organised in NI. Think of the work of Simon and the Simon Community NI; Women’s Aid and Women’s Aid Federation NI; and Oxfam, which operates on a UK and Ireland basis. This trait of perseverance *characterises* the effort of the people who work in both unpaid and paid capacities in the CVSE sector worldwide.

Commitment, resilience and perseverance came to the fore during the COVID-19 crisis when the CVSE sector worked to support vulnerable people and communities and pivoted to delivering services remotely where necessary while continuing one-to-one support for vulnerable people in need. Notable initiatives in RoI, such as *Community Call*, saw the CVSE sector partner with the state to ensure the most vulnerable people were supported in their homes and not left in isolation during the crisis.

It is this tendency towards partnership and willingness to collaboratively and cooperatively work that will be key, I believe, in modelling inclusive approaches to responding to challenges on the island of Ireland. In both

jurisdictions, the ‘official’, as opposed to the ‘political’ states, generally understand this better, and this is a crucial building block that remains despite Brexit. For example, during the COVID-19 pandemic in RoI, over 600 CVSEs existentially threatened by income collapse were assisted through the state’s €45m special COVID-19 Stability Fund, which ensured they could continue their work.

The fact of that scheme demonstrated the extent to which the state recognised the crucial role played by these organisations in the social, community and indeed economic fabric (the CVSE sector in RoI employs 186,000 people) of life in RoI. Moreover, this improved state-CVSE working relationship characterises the collaborative approach to work that predominated during the COVID period and is now being studied (by the NESC and the Health Dialogue Forum in RoI) to identify the principles of partnership-working that emerged at that time. These principles point the way forward for the CVSE sector to lead in North-South and East-West partnership-working in the months, years, decades, and centuries ahead, for these are the timescales that sustainable public policy now needs to be anticipating and shaping.

When working at its best, the CVSE sector embodies and models these freshly identified principles of partnership working in its day-to-day work, including:

- Being focused on engagement and participation.
- Taking a collective leadership approach.
- Focusing on building trust and mutual respect.
- Demonstrating innovation and learning.
- Engaging in problem-solving deliberation.
- Focusing on delivering quality, people-centred services.
- Being transparent and accountable to the people and communities served.

It will be through demonstrating these principles — principles that are hard-wired into the culture of CVSEs — that cooperation with organisations in NI and in GB can be sustained despite Brexit and the threat to the *Protocol*.

So commitment, resilience and perseverance characterise the CVSE sector.

They will not give up on pursuing their objectives: fairness and justice, social inclusion, climate justice, fair transition, and poverty alleviation.

In the RoI, NI and GB jurisdictions, CVSE sectors often work with governmental partners to make practical progress towards their objectives and develop new policies. Sometimes they have to work against the grain of prevailing governmental priorities and values — and the CVSE sector has always successfully done both in its many diverse parts.

In each of the jurisdictions I have mentioned, the relevant ‘domestic’ sectors will rise to the challenges posed by Brexit to the communities they support and the objectives they seek to attain (be it social or environmental justice). The diversity in civil society is very, very much its strength; parts of the sector collaborate with government partners to encourage and shape progressive policy responses, while other parts campaign vigorously, sometimes even adversarially, to increase political pressure for change.

### **Societal and environmental challenges we continue to work on**

We live through a period of profound change as the world reckons with the positive and negative consequences of the 250 years of ‘modern’ economic and social transformation since the Enlightenment in the 18<sup>th</sup> century. But, again, I believe that we can be optimistic about our ability to shape and lead the necessary political and practical responses to these challenges through the efforts of our CVSE sectors.

Never have so many people in the history of the world had so many opportunities to find fulfilment and security, yet at the same time, many people and communities experience poverty in many increasingly unequal, well-off societies.

The world is facing the point of no return concerning the climate crisis. Decarbonisation is now a political imperative that will drive changed behaviours and expectations regarding standards of living and how we live for decades to come.

The world is living through a great extinction event as our agricultural, deforestation, and ecosystem-destroying developmental activities threaten tens of thousands of species.

Information technology has now become *de-facto* artificial intelligence and shapes people, personae and politics in profound, poorly understood ways.

Being profoundly reshaped is the *nature* of human nature; if there is such a thing. However, the culture wars indicate different perspectives on these changes, and progressive civil society is leading the way towards fuller, fairer and more equal lives for everyone.

The world of work has been, for many, utterly transformed since COVID-19 and by the use of remote and virtual technologies to deliver services and support working remotely. As a result, the ‘hybrid workplace’ is rapidly becoming the new normal for a significant section of the workforce, with considerable implications for the adequacy of people’s work environments.

CVSEs work in all of these notable thematic fields and will continue to do so. Hence I am confident that CVSEs will lead the way in maintaining and restoring, if necessary, North-South and East-West cooperation – especially now facilitated by virtual working, to which many workers have become accustomed.

### **What are the challenges now impeding CVSE cooperation?**

Notwithstanding the values driving successful cooperation, we must address the practical issues to facilitate and support this effort.

Brexit has changed things significantly, and we would be foolish not to recognise this. The Irish Government’s *Shared Island Initiative* has provided an essential focus for efforts now needed to counter the Brexit-related centrifugal forces pulling communities North-South, within NI, and East-West apart.

Following our joint membership of the EU, pre-Brexit, and post the *Belfast/Good Friday Agreement*, there had been a long period of improvement and normalisation of relationships on the island North and South and, indeed, between Ireland and GB more generally.

People crossed the RoI/NI border much more frequently. For many living in cross-border areas, the border became more or less an irrelevance in how they lived their day-to-day lives, with upwards of 30,000 people commuting across the border daily. The Queen of England’s visit to RoI in 2011 was a notable and remarkable symbol of this normalisation.

Irish Government and European Union programmes such as the Reconciliation Fund, the PEACE programme and Interreg funded organisations North-South and East-West to collaborate on shared priorities.

Far greater numbers of people in RoI holidayed in NI, and Northern visitors to the RoI increased too. As a result, cultures began to get to know each other better – the first step to understanding, appreciation and respect.

Post-Brexit, we now face much more polarised political circumstances North-South and East-West. We know that relationships at the very top level between the UK and Irish governments are at their frostiest and most fractured in over thirty years. At the time of writing, it is difficult to know whether the change of leadership in the Conservative Party will result in improved relations. We know that similar relationships between the government and political parties North-South and within NI are equally strained. In the absence of a functioning Executive, it is easy to see the mounting challenges ahead if HM Government persists in its apparent disregard of the *Protocol*. I quote Harry McGee in the Irish Times report (June 23): “[the] political intent behind the Bills published by Boris Johnson’s government ... is obvious: it essentially wants to ghost the EU forever” – and by association, the Republic of Ireland.

What are the practical centrifugal forces the sector will have to overcome if it is to counter these trends? How can we embody an alternative way of being on this island if we are to address the new challenges and approaches to cross-border cooperation, mobility and relations?

### **Challenges to cross-border cooperation, mobility, and relations**

The increased frostiness of the political atmosphere means people are more *unsure about reaching out* because of the possibility that they will be misinterpreted in their actions or have their motives misconstrued (perhaps deliberately).

There is a general lack of understanding of the differences in *jurisdictions* at a fundamental level. People were already sensitive about causing unintended offence through *the possible inappropriateness* of their language when meeting people from other cultural backgrounds and political traditions – and this will be even more the case in this new, more polarised setting. It is through working and being together that people get to know one another and sustain relationships – so it is a concern that with Brexit, people will potentially have *fewer* statutory-programme opportunities to fund work they would like to do together.

Time must be made – and resourced – for people to prioritise working across jurisdictions; we need to make it easier.

People and communities were only beginning to learn about the varied cultures and histories on the island. For many, these were unknown and regarded as mysterious, alien, or threatening. Unfortunately, this work of cultural learning and familiarisation through exposure will be set back significantly because of the trajectory we are now apparently following.

The absence of an Executive means no *locus* for cooperation and collaboration. There is no place where formal, statutory dialogue can take place about what is needed.

This is exacerbated very seriously by the apparent disregard and disinterest by HM Government in any real concern for the consequences of its current policy on the *Protocol* for North-South and, indeed, internal NI community relations.

We also forget that in considering the question of cross-border policy, *internal borders* are running across thousands of miles inside NI, where *barriers of mind* also need to be overcome.

Notwithstanding the threats to economic activity posed by inflation and energy, the likely continued growth of the RoI economy is expected to result in potentially decreasing public interest and awareness of the need to counter the centrifugal forces pulling us apart. As a result, and fueled by a growing population and still-increasing levels of educational attainment, there may be complacency in RoI about deepening relationships between North and South post-Brexit.

In the long run, and if the *Protocol* is abandoned, divergent standards and programmes and protocols and simply cultural ‘ways of doing things around here’ in both jurisdictions will reduce the relevance of (and therefore the opportunities for) cooperation.

### **So what needs to happen to counteract these trends?**

We need:

- More opportunities for people and communities to:
  - Work together on significant societal, environmental, and economic challenges. And in doing so, get to know each other through working ‘shoulder to shoulder’ on shared challenges.
  - Learn about each other’s histories, cultures, and backstories (cultural and educational exchange programmes) to develop

appreciation, understanding and respect; and become confident in their use of language about each other and indeed about themselves.

- Come together to debate and propose ways to unblock the stalled and paralysed political processes, politics, and structures so that the CVSE sector may, to the extent that it can, partially fill the vacuum.
- Funding programmes specifically focused on supporting these types of work (practical working together on shared challenges and cultural and educational exchange).
- A functioning Executive in NI.
- Now that we are on potentially divergent paths, leadership effort and initiative internally in RoI, NI, and GB to keep awareness of the importance of maintaining relationships.
- In all jurisdictions, a new political consensus about respecting and not ghosting or exploiting each other.

### **How can we practically proceed towards these objectives?**

Civil society and CVSEs have a crucial role in pointing to and leading the way ahead (in partnership with the public and private sectors) and supporting everyone to play their part and get involved. Our shared challenges have never been more significant, but neither have the opportunities been more plentiful.

In February 2020, the board of directors and senior staff of The Wheel and NI Council for Voluntary Action (NICVA) met in Belfast for a joint meeting. The two organisations resolved to work collaboratively to address these unprecedented challenges for people and society.

Follow-up meetings have since explored:

- what is both possible in the medium and short terms; and
- what we believe is now needed to enable civil society to play to its strengths in the challenging times ahead.

Our two organisations have a shared ambition to create a virtual (and physical) *Collaboration Hub* to bring communities together to address shared challenges and capitalise on shared opportunities on a shared-island basis.

Through doing this, we aim to play our part in increasing understanding and better relations between the communities on the island, creating spaces and places to support better dialogue and improve community understanding and appreciation.

Over the last twelve months, NICVA and The Wheel have been jointly implementing our iCommunity shared-island project, which brings groups and communities together to identify shared ground for collaboration in the context of the shared island and what types of initiatives can inspire and add value across society.

Having hosted ten workshops, we are collating the findings into a final report with a summary of proposals on practical initiatives that would have the support of civil society groups as areas for collaboration in both the north and south.

Additionally, we have identified a cohort of potential participants for future collaborative activities, and an increase in awareness of the possibilities for shared-island working has been created in the public consciousness through the communications work to promote the initiative. The approach has laid the groundwork for implementing the whole *Collaboration Hub* concept.

### **Collaboration Hub: Themes**

The Collaboration Hub has been aimed at identifying possible practical value-adding initiatives that CVSEs could work collaboratively on in two key areas:

1. Supporting greater shared-island economic and social collaboration. Achieved through identifying emergent local, regional, and island-level economic responses/requirements to COVID-19 and Brexit to deliver sustainable prosperity, health, and well-being for current and future generations.
2. Researching and showcasing ‘what works’ on a shared-island basis in new ways of supporting and serving the needs of people and communities.

Within these two broad areas, themes that have been discussed and explored for their potential for collaborative shared-island joint working include:

- Ensuring rural connectivity and sustainability.
- Recovery from the COVID-19 pandemic.

- Developing the island economy and social enterprise in particular.
- Digital connectedness and inclusion.
- Achieving a just transition to a decarbonised and sustainable island.

Our ambition is to establish a community hub to facilitate and drive the formation of ongoing, sustained, collaborative learning-and-working partnerships building on the work of our iCommunity shared island project. We want to support those partnerships in the continuous rollout of all-island work programmes that address these shared challenges.

Ideally, partnerships of organisations and communities north and south would be invited to form and bid into a call for proposals to secure funding packages to develop collaborative work programmes in the thematic areas identified above and potentially many others. Subject to resource availability through special funds being put into place.

This is the kind of action the CVSE sector can and will take. But it will need resourcing by the statutory sector in all jurisdictions and input from the PEACE programme.

Proposed actions at the planning stage include:

- Taking an *action research* approach. Involving direct engagement with voluntary and community organisations north and south to facilitate joint discussion on pre-identified themes (such as the above) around key community challenges.
- Developing a *Collaboration Hub* as a mechanism to provide information and advice to support CVSE sector, private sector and public sector collaboration and to drive and provide support for collaborative partnerships implementing the agreed thematic workstreams.
- Establishing a *flagship challenge* fund to support collaborative partnerships. This fund could be ‘bid into’ by potential partners or ‘brokered by’ promoters to advance the critical emergent themes from the action research. Whichever option best fosters cross-community collaboration in developing local solutions can then be replicated in a shared-island context.

- Supporting collaborative partnership communities in implementing their ‘shared island, shared challenge’ initiative.
- Showcasing and celebrating achievement and our natural community spirit with a high-profile *Festival of Community Ideas* event (imagine BT Young scientist for community initiatives).
- Developing and implementing a strategically positioned communications plan that includes a broad range of local, regional and national media partnerships with strong multi-platform activity animated by inspirational, educational and accessible content.
- Directing community engagement between the networks of The Wheel and NICVA. We hope to work with communities to deliver outreach and community engagement forums, seminars, and coffee mornings across the island to build linkages and awareness of the actions and ideas that can ‘*be the change*’ in local communities. We can introduce them to toolkits and ideas, work with stakeholders and bring collaborations together to share their challenges and solutions.

These are activities that The Wheel and NICVA aim to implement, coordinate and facilitate if the resources are available.

Will our CVSE sectors focus on these areas naturally – as noted in my introduction?

Yes, they will.

Will the sectors be able to do this to the extent that the current crisis necessitates?

I do not believe so.

Targeted resources, currently absent, will make all the difference. They need to be made specifically available to support CVSEs to focus on all-island responses at the scale that will now be required to counterbalance the post-Brexit centrifugal forces pulling polities and people apart. The CVSE sector stands ready to lead and is already moving in the direction needed – but it needs more support to do this crucial work.

## Conclusion

There are grounds for great optimism that the CVSE sector can play a crucial role in laying pathways towards a new way of being together on this island in the post-Brexit context.

It will do this because of:

- The core values of commitment, resilience and perseverance that it brings to its work; and
- The universal and unifying character of the sector's significant societal, environmental and economic challenges.

When taken together with the sector's natural bias towards collaborative and partnership approaches and its inclination towards innovation when responding flexibly to emergent need (the bread and butter activity of the CVSE sector), these characteristics point towards a central role for the sector in the years and decades ahead. As a result, CVSEs will increasingly lead in national policy development across jurisdictions, setting the context within which politicians and political parties respond.

The CVSE sector has the confidence to transcend the limitations imposed by fundamentally 'artificial' national political boundaries and ensure that our politicians and politics address the real issues that are important in the lives of current – and most importantly – future generations. Brexit has been a lamentable development that has reinforced divisions unhelpful to ensuring a sustainable future for humanity on our shared planet. The CVSE sector will, through its work to address the pressing universal, global challenges, make an enormous contribution to bridging the artificial divisions created by Brexit. But governments must resource the sectors to do more of what they do naturally – and it is through the application of these resources to bring people together to address shared challenges that these divisions will be overcome.



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# Has the EU Ireland-Wales Interreg programme empowered sub-national networks?

*Pre- and post-Brexit challenges of cooperation across the Irish Sea*

**Dr Giada Lagana**

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## Introduction

The Ireland-Wales relationship, built around and across maritime geography, has often been neglected. If usually only implicitly, the social sciences start from land territories, defined by urban metropolises and remote peripheries. However, the case of cross-border cooperation across the Irish Sea presents several unique features. First, historically, cooperation has been built on a mixture of practices and cultural discourses, with the Irish Sea maritime border closely linked to hierarchical relationships between different levels of government – the national, the devolved and the regional level – connected by governmental and non-governmental actors. Second, the Ireland-Wales cross-border region, through the Interreg programme, was only formally institutionalised in 1994 by the European Union (EU). This new EU region assumed that shared common features, challenges, and issues would be handled more successfully on a cross-border basis. Third, policy networks and interest groups have shaped cross-border cooperation between the Republic of Ireland and Wales. Having established themselves to ‘make sense’ of the space, they disseminated awareness among local civil society and governmental organisations and mobilised actors to connect spaces and modes of interaction in their daily practices. Fourth, the EU provided both the financial resources for partnerships and collaboration to develop across the Irish Sea and the broader governance framework within which policy networks could develop and participate actively in the life of the cross-border region.

Even with the EU playing such a critical role, the top-down institutionalisation of the Ireland-Wales relationship did not ensure a widespread awareness among citizens on both sides of the maritime border about their common cross-border identity. The Brexit process was a pivotal factor in fostering an understanding of the depth of relationships between Ireland and Wales across the Irish Sea. When the UK transition period ended on 31 December 2020, the Irish and Welsh governments announced the publication of a *Joint Action Plan*<sup>1</sup> — announced on St David’s Day, 1 March 2021, by the Irish Foreign Minister, Simon Coveney, and the Welsh First Minister, Mark Drakeford. Ireland and Wales had never had a *Joint Action Plan* before. In the document, their connection was positioned explicitly in the context of changes “already brought ... [to] the Ireland-Wales relationship [and rooted] in a flourishing collaboration across the Irish Sea ... [promoted by] common EU membership and joint participation in EU programmes.”<sup>2</sup> However, even if it is at the core of the *Joint Action Plan*, the nature and the genesis of the

EU-sponsored Ireland-Wales cross-border cooperation have remained somewhat unexplored.

This article contributes significantly to our understanding of the genesis of Ireland-Wales cross-border cooperation and the role of the EU in shaping it. This investigation matters not only about the *Joint Action Plan* but also reflects on how, to a limited extent, cross-border cultural identities and shared political purposes between Ireland and Wales have emerged mainly in the aftermath of the 2016 Brexit referendum. Furthermore, the history of relationships across the Irish Sea envelops more recent political developments in the field of Welsh devolution and the East-West institutions created by the *1998 Belfast/Good Friday Agreement* – especially the British-Irish Council, which was also invoked by the *Joint Action Plan*.<sup>3</sup> Finally, instrumental responses to EU incentives, including the invention of new territorial units, dominate the history of collaboration between Ireland – dominated by the dynamic Dublin metropole, and the UK's relatively poor western periphery.

First, the article examines the early years of cross-border cooperation between Ireland and Wales and the EU's role in institutionalising it. Second, it considers the broader context of the Brexit debates and its far-reaching consequences on the future of such cooperation. Finally, the conclusion stresses how the creation, the geographical dimension, the thematic priorities and the governance mechanisms appear as key achievements brought by the Interreg programme to the Ireland-Wales cross-border region. Such achievements need to be upheld to ensure the future dynamism and the efficacy of bottom-up representation processes within the cross-border territorial context of the Irish Sea maritime region.

## **The genesis of the Ireland-Wales cross-border region: The EU Interreg Ireland-Wales programme**

Before entering the empirical discussion, a short terminological note is necessary. Scholars who work on cross-border regions tend to emphasise specific spatial dimensions over others. In particular, 'scale' and 'level' are extensively employed terms. Both refer to similar dimensions. 'Scale' usually refers to a hierarchy of bounded spaces,<sup>4</sup> while 'level' mainly describes territorially defined realms, focusing on competencies.<sup>5</sup> Both typically mean

the local, the regional, the cross-border, the national, the European and the global sphere. However, cross-border regions emerge and evolve in and through all four and more described spatial dimensions. Regions do not just involve the ordering of scales or levels but also the organisation of territories, places or networks within. Territory grasps space segmentation; place refers to the local embeddedness of actors, issues or strategies; and networks capture the various cross-cutting connections and partnerships by governmental and non-governmental actors across borders.<sup>6</sup> Understanding the multiple facets of cross-border regions allows for examining how strategic efforts, concrete outcomes and the changing balance of spatial aspects interact.<sup>7</sup>

The overarching EU policy driver for Ireland-Wales cross-border cooperation is the *EU Cohesion Policy* which has its legal basis in Articles 174 to 178 of the *Treaty on the Functioning of the EU* (TFEU). It aims to strengthen economic and social cohesion by reducing disparities in the level of development between regions. EU Commission President, Jacques Delors, introduced the Cohesion Policy, which provides the investment framework required to achieve the goals of the Europe 2020 Strategy for smart, sustainable and inclusive growth in the community. It is delivered through three European structural and investment funds, which together – including national co-financing – amount to €644 billion. One of these funds is the European Regional Development Fund (ERDF).<sup>8</sup> The ERDF aims to strengthen economic and social cohesion in the EU by correcting imbalances between its regions, particularly through thematic concentration. It focuses its investment on four priority areas, and the Interreg programme was initially developed in this context, in 1990, as a community initiative.

Ireland-Wales cross-border cooperation became eligible for Interreg funding in 1994, following the lobbying of organisations whose main objective was fostering linkages among those in Ireland and Wales interested in promoting cross-border cooperation. These were the Irish Sea Maritime Forum and the Central Sea Corridor.<sup>9</sup> The involvement in a transnational framework was seen as linking those working in similar sectors across the Irish Sea, thereby providing ideas and models of best practices in cross-border cooperation. In addition, the programme had to achieve a strategic fit where policies intersected with specific cross-border needs and challenges. Therefore, the geographical organisation of the cross-border region was central to the initial discussions among actors and interest groups.<sup>10</sup>

Existing territorial demarcations influenced who could participate, thus producing effects of inclusion and exclusion, with distinct territorial claims related to ideologically motivated national projects. The defining physical feature of the area involved was the presence of the sea, which reflected centrality in the geographical organisation of the region. This comprised the central corridor of Dublin/Dun Laoghaire and Holyhead; the southern sea corridor of Rosslare/New Ross/Waterford; and Fishguard/Pembroke Dock and Milford Haven, with ports being of strategic importance and forming vital links across the sea border. Other areas involved are the Welsh counties of Carmarthenshire, Pembrokeshire, Ceredigion, Ynys Môn (Isle of Anglesey), Gwynedd, Conwy, Denbighshire and the three NUTS III<sup>11</sup> regions in Ireland: Dublin, the Mid-East and the South-East. The major urban centre was Dublin, with the Irish part of the region having a higher population density (126 vs 70 persons per sq. km) and a considerably higher level of Gross Domestic Product (GDP) per capita than their Welsh counterparts, Ireland as a whole, and the EU.<sup>12</sup>

Specifically, it was the ‘place-based’ approach of Interreg, used by actors within the lobbying organisations above to legitimate the cross-border region’s specific interests and become eligible for EU funds.<sup>13</sup> A ‘place-based’ policy is a long-term strategy to tackle persistent underutilisation of potential common resources and reduce ongoing social exclusion in specific places through external interventions and governance. A ‘place-based’ approach promotes the supply of integrated goods and services tailored to contexts and triggers institutional changes. In a place-based policy, public interventions rely on local knowledge and bottom-up mobilisation and consultations. These must be verifiable and scrutinised while considering linkages and partnerships among places.

Following this direction, authorities in Ireland and Wales presented matters of environmental protection and sustainable growth to the EU Commission as Ireland-Wales specific. They focused on enhancing cooperation through increasing the potential of the natural and cultural assets of the Irish Sea maritime area, by connecting it to a particular EU regional policy discourse. This strategically emphasised economic growth, innovation, and sustainable development to anchor local needs to the EU agenda. On the other hand, it also constituted an outcome of local consultations informed by grassroots interests. Hence, the first Ireland-Wales programme (1994-1999) was established on these foundations and focused on marine and economic development. Each subsequent programme built upon the same strategy,

focusing on, among others, sustainable growth and technical assistance (Interreg II, 2000-2006) or climate change and sustainable regeneration (Interreg III, 2006-2014).<sup>14</sup>

Successes were nonetheless moderate and the challenges highlighted are common to other Interreg programmes implemented in other cross-border regions of Europe.<sup>15</sup> First, participants and policymakers found the low level of genuine cross-border projects funded and implemented through Interreg problematic.<sup>16</sup> This was due mainly to the lack of administrative structures allowing for real joint management of the initiatives. Projects tended to be appraised and agreed within the local councils and according to the policy priorities for that specific Welsh or Irish administration. Subsequently, the working groups would form a third joint team, at which level information was exchanged regarding projects but involved relatively little overall collaborative planning and management. Second, there was generally not enough involvement from wider societal interests, who perhaps would also be interested in and affected by the decisions taken. Even in those areas of policy-making where one would expect much greater participation of local communities, the process was too closed and not cross-border enough.<sup>17</sup> Third, the potential to deliver genuine cross-border projects depended on the relevant organisations' capacity to deliver. At the local level, business interests in Ireland and Wales needed greater access to information about potential opportunities. The local community level was in a similar position. Finally, organisations and networks at the local level experienced particular problems because Interreg initiated a growth surge in the sector but with little visible means of sustainability in the long term. Some networks depended only on EU money, and their survival was subservient to the different funds' rounds and their eligibility criteria. Consequently, political and institutional uncertainty and a shortage of funds during those years hampered efforts of local interest groups and civil society organisations to consolidate partnerships and posed a significant challenge to their future role in cross-border development across the Irish Sea.<sup>18</sup>

## **The changing political context of cross-border cooperation in Ireland and Wales**

The end of the 1990s saw significant institutional changes in Ireland and Wales, which impacted positively on cross-border cooperation across the Irish Sea. Devolution transformed Welsh politics. Before the establishment

of the National Assembly in May 1999, Wales-focused public policy-making had been mainly the preserve of civil servants in the Welsh Office, operating as a department within the UK government's Whitehall system. Consequently, democratic scrutiny came from the forty Members of Parliament (MPs) representing Welsh constituencies.<sup>19</sup>

The introduction of a distinct Welsh devolved political system – the National Assembly for Wales and later the Welsh Government – also changed the management of EU Structural Funds.<sup>20</sup> During this period, a case was made for reclassifying the West Wales and the South Wales valley as an EU NUTS II region qualified as an Objective 1 area.<sup>21</sup> It was argued that the historic north-south division in Wales was no longer empirically valid, as Wales now suffered from a new division based on an east (largely prosperous) and west (largely poor and deprived) split.<sup>22</sup> Accepted by Eurostat, the change brought together the least prosperous parts of Wales, enabling an index of aggregate deprivation to be constructed for the first time. The Wales European Funding Office (WEFO) was consequently created and made responsible for managing all initiatives implemented in Wales, with a bilateral relationship with the EU Commission and the National Assembly.<sup>23</sup>

Creating new territorial units in Wales mirrored what happened in the Republic of Ireland. Before 1999, the whole of Ireland was regarded as an Objective 1 area for EU regional funding. However, in the lead-up to the Agenda 2000 negotiations, it became clear that Ireland would lose its status if the whole state was considered one structural funding unit.<sup>24</sup> Following negotiations, in November 1998, the government applied to Eurostat for a change in Ireland's single region status.<sup>25</sup> As a result, the country was divided into two NUTS II regions: the Border Midland & Western Region and the Southern & Eastern Region.<sup>26</sup> Although prompted by an instrumental desire to maintain a high level of EU structural funding, regionalisation in the ROI particularly responded to 'bottom-up' demands from the west and the east for more devolved management of EU money and a higher level of local representation within the EU institutions.<sup>27</sup>

These transformations in Ireland and Wales worked in parallel with the new 2006 regulations introduced by the EU in governing the structural funds to improve the capacity of the Interreg Ireland-Wales programme to impact positively on the life of the cross-border region.<sup>28</sup> Interreg became part of the new European Territorial Cooperation (ETC) framework. Its overarching objective was (and still is) to promote a harmonious economic, social and

territorial development of the EU as a whole, which has to be achieved through close cooperation between partners across the EU in finding shared solutions to common challenges. In addition, the EU Commission introduced new eligibility criteria, emphasising the need for new Interreg programmes and initiatives to be based on mechanisms such as partnership and policy exchanges between national, regional and local actors. The interlocking of new devolved institutions, regionalisation processes and the new eligibility criteria created new opportunities and novel spatial frames in which policy networks in Ireland and Wales could, directly and indirectly, shape the life and focus of cooperation across the Irish Sea.

The new Interreg Ireland-Wales programme 2014-2020 was to be delivered by WEFO – the managing authority – in partnership with the Southern Regional Assembly and the Government of Ireland’s Department of Public Expenditure and Reform (DPER). The programme’s vision was to provide a framework for organisations in the cross-border area to actively cooperate to address challenges and shared priorities on both sides of the Irish Sea, thereby contributing to Ireland and Wales’s economic and sustainable development. The focus on the Irish Sea included projects that brought together scientific expertise to increase capacity and research into the effects of climate change. Universities and colleges connected with businesses to stimulate collaboration in sectors including hospitality, marine & environmental sciences, and life sciences. The programme also utilised shared culture, resources and heritage to boost tourism and visitor numbers to the cross-border region.<sup>29</sup>

The preparations for the new programme saw many backstage consultations and regular meetings. These played a fundamental role in facilitating interregional lobbying and fostered different actors’ influence within their areas of expertise.

*Discussions focused on the programme guidelines, the views of potential beneficiaries and the preferences of the responsible authorities. Our working routine included actions such as setting the agenda and framing the local needs to make them compatible with the Interreg objectives. Our Irish counterpart did the same. Then, we wrote joint papers and declarations, focusing exclusively on common Ireland and Wales issues to address in the programme. This was followed by the drafting of the partnership agreement, which expanded upon the areas that had been identified and we also*

*suggested ways of improvements, based on the previous experiences of working within Interreg.*<sup>30</sup>

This quotation highlights how policy networks, made by governmental and non-governmental actors, were empowered by the new political contexts and by the new EU guidelines. They were extensively consulted to shape the concretisation of the specific cross-border issues to be addressed by the programme and framed in a way that made them eligible for funding under the new Interreg criteria. The resulting partnership agreement set up an administrative organisation of the cross-border region that represented the needs of all policy networks involved.

Furthermore, to positively address some of the problems highlighted in the past, the new Ireland-Wales Interreg adopted several strategies. First, the development officers became instrumental in implementing and functioning the programme on the ground. They were regularly tasked to assist local communities in delivering the funded initiatives.<sup>31</sup> In addition, they liaised between them and the managing authority. They also became a fundamental resource in terms of information about possible co-funding sources and how to tackle different types of administrative hurdles, often facilitating a common understanding of the other organisational structures and cultures.<sup>32</sup> Second, the new Interreg Ireland-Wales programme was harmonised with the WEFO IT system to enable transparency, bottom-up accessibility, and participation. Finally, the management structure attempted to create a loose, fluid administrative organisation of the cross-border region, representing all levels of society and where networks could build interconnections and gain a vertical communication channel with the EU.

Ireland-Wales governance arrangements represented territorial and socio-political elements to varying degrees and are evidence of how a relatively small group of policy networks could influence the shape of an EU programme in function of their distinct interests. At the same time, none of them could enforce its vision unconditionally. National and devolved governments also influenced the Interreg outcomes. Elements of the governance architecture, discourses, and interpretations constrained, shaped, and informed policy networks' participation in the life of the cross-border region. The experience has been adjudged extremely positive by the EU, which still considers WEFO as "the smartest and most valuable team we have ever worked with."<sup>33</sup>

## Brexit and the future of cooperation

UK recipients, including Wales, have continued to receive EU funding over the projects agreed upon within the 2014-2020 funding cycle. However, after that, the UK government has only ensured future commitment for the PEACE programme in Northern Ireland, thus undermining the future of the Interreg Ireland-Wales programme.

The 2017 conservative manifesto pledged to create a UK Shared Prosperity Fund (UKSPF) to replace European structural funds. This fund aimed to “reduce inequality between communities across the four nations and to deliver sustainable, inclusive growth.”<sup>34</sup> Moreover, the 2019 conservative manifesto promised that “£500 million of the UK Shared Prosperity Fund [will be] used to give disadvantaged people the skills they need to make a success of life.”<sup>35</sup>

The UKSPF was launched in April 2022. The November 2020 spending review described the overall purpose of the UKSPF as “to level up and create opportunity across the UK for people and places.”<sup>36</sup> The spending review also said that UKSPF expenditure will amount to around £1.5 billion annually and “at least match current receipts from EU structural funds.”<sup>37</sup> It will also operate over multiple years to provide certainty and enable long-term planning.

The UK government has planned to operate the UKSPF through a single UK-wide framework, using new powers under the *UK Internal Market Act 2020* to distribute money directly to local partners across the UK.<sup>38</sup> However, in practice, this means that the devolved governments only play a marginal role in allocation decisions within their territories, even though the fund will spend money on matters that lie primarily within devolved responsibilities, such as transport, skills and economic development. In this regard, Wales Minister for Economy, Vaughan Gething, declared on 13 April 2022:

*Despite [the] unfeasible timetable, we attempted to create a partnership approach to this Fund that respects the devolution settlement and aligns with the clearly expressed wishes of people and organisations in Wales ... . ... the funding plans set out by the UK Government today do not reflect the distinct needs of Welsh communities. We are concerned that too little will reach those communities most in need. The Welsh Government proposed an*

*alternative formula which would distribute funding more fairly across Wales according to economic need, but this was rejected by the UK Government. The proposed role of the Welsh Government also falls short of a genuine co-decision-making function essential to maximising investment and respecting devolution in Wales.*<sup>39</sup>

This short statement shows how Wales had intended to preserve the mechanisms originated from the experience of working within the framework of EU structural funds, among which the Interreg Ireland-Wales programme promptly figures. The same was reiterated during the *Irish Sea Symposium* held by the Welsh Government on 8 June 2022 to explore alternative paths of cooperation across the Irish Sea.<sup>40</sup>

It is evident how the re-centralisation of all implementation processes related to the UKSPF provisions cannot uphold the achievements of the Interreg Ireland-Wales programme. The participating cross-border policy networks' role in shaping the essence of the priorities to be addressed grounded the whole system.

Moreover, their presence in the committees, the governance arrangements and their use of the place-based approach to new cross-border policies indicated just how successful the strategy of WEFO had been. From developing cooperation across the Irish Sea to persuading public authorities of their capacity to play an enhanced role in Ireland and Wales's public life.

If EU membership was written through the statutes that established devolution, in the absence of well-developed domestic structures, the EU also provided an external scaffolding<sup>41</sup> for the UK and its intergovernmental linkages (unfortunately still underdeveloped).<sup>42</sup>

The success of policy networks in participating in public policy-making came with challenges and opportunities. Their knowledge of the local level is invaluable and cannot be substituted. Their participation remains highly dependent on funds and governmental support. However, the key question is: why not build on existing and successfully established structures and mechanisms, thus taking advantage of the invaluable institutional learning from the past? Such an approach seems more constructive than attempting to build new strategies and structures that bear no resemblance to past achievements and have no possibility of compromise.

## Conclusion

This article demonstrates that one of the most valuable achievements of the Interreg Ireland-Wales programme, over the years, has been its ability to bring partners across all levels of society together across the Irish Sea to:

- establish the Ireland-Wales cross-border region; and
- work collaboratively and attract EU funding.

Moreover, the Interreg Ireland-Wales programme became an instrument through which the EU empowered policy networks in Ireland and Wales to play a more active role in shaping the opportunities and constraints of cross-border cooperation across the Irish Sea. The Brexit process played a pivotal role in raising awareness among governmental and non-governmental actors of the importance of this cooperation for the life and future of the cross-border maritime region.

The Welsh and Irish governments have recognised the value of these collaborations on several key occasions and in many official documents. As well as the 2021 *Joint Action Plan*, re-establishing the Irish Consulate in Cardiff at the height of the troubled politics of Brexit in 2019 was in itself a sign of change. By digging beneath the general political and economic implications of losing shared EU membership, this article has demonstrated how the flourishing of Ireland-Wales relations may face more significant risks in the future. Focusing exclusively on the governments' high politics or following the implementation guidelines set up by the new UKSPF will re-marginalise policy networks' role and harden the maritime boundaries around which cross-border cooperation across the Irish Sea had been built. The specific contribution of the EU in convening several rounds of the Ireland-Wales Interreg programme was to create space for a wide variety of locally rooted relationships, connections and networks. Yet, for all the high-level political commitment to their relationship, it remains to be seen whether the Irish and Welsh governments can find ways to sustain the social, economic, and cultural cross-border life that Interreg has helped to engender.

It would be more constructive for the UK government to build on the Interreg Ireland-Wales programme achievements. Instead of erasing them, understand that they provide a much more solid foundation for new politics of relations across the Irish Sea, potentially including Northern Ireland and Scotland, after Brexit. Their blueprint could stand in strand three of the 1998 *Belfast/Good Friday Agreement* and the East-West institutions it set up.

## Endnotes

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- <sup>1</sup> Department of Foreign Affairs (2021) *Ireland-Wales Shared Statement and Joint Action Plan 2021-25*. Available at: <https://www.gov.ie/en/news/e0036-ireland-wales-shared-statement-and-joint-action-plan-2021-25/>. (Accessed 11 July 2022).
- <sup>2</sup> Coveney, S. and Drakeford, M. (2021) p. 2.
- <sup>3</sup> Coveney, S. and Drakeford, M. (2021) p. 4.
- <sup>4</sup> Jessop, B. (2008) *State power: A strategic-relational approach*, Cambridge MA: Polity, pp. 104-106.
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- <sup>6</sup> Jessop, B., Brenner, N. and Jones, M. (2008) 'Theorizing sociospatial relations', *Environment and Planning D: Society and Space*, Vol. 26, No. 3, p. 389-401.
- <sup>7</sup> Hay, C. (2014) 'Levels of governance and their interaction' in A. Payne & N. Phillips (Eds.), *Handbook of the international political economy of governance*, Cheltenham: Edward Elgar, pp. 32-47.
- <sup>8</sup> Institute for Government, *What are EU structural funds?*, Available at: <https://www.instituteforgovernment.org.uk/explainers/structural-funds>
- <sup>9</sup> Zimmerbauer, K. (2016) 'Constructing supranational regions and identities through branding: Thick and thin region-building in the Barents and Ireland-Wales', *European Urban and Regional Studies*, Vol. 23, No. 3, p. 3.
- <sup>10</sup> The National Archives: Public Record Office (TNA: PRO) (1992) Kew, Cabinet Office, CJ 4/10419, 'European Union Committee of the Regions: Impact on Northern Ireland', 16 January.
- <sup>11</sup> NUTS (Nomenclature of Territorial Units for Statistics) is a harmonised, hierarchical and nested classification of European territory at six levels (NUTS 0 to NUTS 6). Level 0 corresponds to the territories of the Member States and the EFTA member states associated with this classification. The regional level is divided into three parts, NUTS 1 corresponding to the most extensive regional level.
- <sup>12</sup> For more information, please visit Ireland-Wales Co-operation Programme (2014-2020). Available at: <https://irelandwales.eu/sites/default/files/2016-04/150325citizensummary.pdf> (Accessed 3 January 2020).
- <sup>13</sup> TNA: PRO (1992) Kew, Cabinet Office, CJ 4/10419, 'Policy in confidence: EC regional Body', 16 January.
- <sup>14</sup> Lagana, G. and Wincott, D. (2020) 'The Added-Value of the Ireland-Wales Cooperation Programme', *Wales Governance Centre*, Cardiff University. Available at <https://www.cardiff.ac.uk/news/view/2441536-report-analyses-ireland-wales-cooperation-programme>.
- <sup>15</sup> Laffan, B. and Payne, D. (2001) 'Creating Living Institutions: EU Cross-Border Co-operation after the Good Friday Agreement. A Report for the Centre for Cross Border Studies, Institute for British-Irish Studies', *UCD*. Available at: <http://www.crossborder.ie/pubs/creatingliving.pdf>

- <sup>16</sup> Anonymous (2019) *Interview with Wales European Funding Office – WEFO – Interreg Ireland-Wales project officer*, Cardiff, Wales. November 28; Anonymous (2019) *Interview with Regional Development Officer - Southern Regional Assembly*, Waterford, Ireland. December 4; Anonymous (2022) *Interview with European Commission Officer for cross-border cooperation*, Belgium. July 15.
- <sup>17</sup> Ibidem.
- <sup>18</sup> Lagana, G. and Wincott, D. (2020) 'The Added-Value of the Ireland-Wales Cooperation Programme', *Wales Governance Centre*, Cardiff University, p. 13. Available at: <https://www.cardiff.ac.uk/news/view/2441536-report-analyses-ireland-wales-cooperation-programme>.
- <sup>19</sup> McAllister, L. (2000) 'Devolution and the New Context for Public Policy-making: Lessons from the EU Structural Funds in Wales', *Public Policy and Administration*, Vol. 15, No. 2, p. 39.
- <sup>20</sup> TNA: PRO (1997) Kew, Cabinet Office, CJ 4/10417, 'Future North/South and East/West Institutional Arrangements', 13 May.
- <sup>21</sup> The amount of support that regions receive through the EU's regional policy depends on their level of development and the type of difficulties they are facing. Objective 1 applies to designated NUTS II areas, which have a per capita gross domestic product (GDP) lower than 75% of the community average. Hence, Objective 1 regions are generally eligible for additional funds and extra EU assistance, following the guiding principles of EU Cohesion Policy.
- <sup>22</sup> Boland, P. (2004) 'Wales and Objective 1 Status: Learning the Lessons or emulating the Errors?', *European Planning Studies*, Vol. 12, No. 2, p. 249-270.
- <sup>23</sup> McAllister, L. (2000) 'Devolution and the New Context for Public Policy-making: Lessons from the EU Structural Funds in Wales', *Public Policy and Administration*, Vol. 15, No. 2, p. 41.
- <sup>24</sup> Bachtler, J. and Mendez, C. (2021) 'Cohesion Policy: Doing More with Less' in Wallace, H. *et al. Policy-Making in the European Union (8th edn)*. Oxford: Oxford University Press, p. 233-253.
- <sup>25</sup> Laffan, B. and Payne, D. (2001) 'Creating Living Institutions: EU Cross-Border Cooperation after the Good Friday Agreement. A Report for the Centre for Cross Border Studies, Institute for British-Irish Studies', *UCD*, p. 80-82. Available at: <http://www.crossborder.ie/pubs/creatingliving.pdf>
- <sup>26</sup> Ibidem.
- <sup>27</sup> Anonymous (2019) *Interview with Regional Development Officer - Southern Regional Assembly*, Waterford, Ireland. December 4.
- <sup>28</sup> Bachtler, J. and Mendez, C. (2021) 'Cohesion Policy: Doing More with Less' in Wallace H. *et al, Policy-Making in the European Union (8th edn)*. Oxford: Oxford University Press, p. 245.
- <sup>29</sup> Lagana, G. and Wincott, D. (2020) 'The Added-Value of the Ireland-Wales Cooperation Programme', *Wales Governance Centre*, Cardiff University, p. 6. Available at: <https://www.cardiff.ac.uk/news/view/2441536-report-analyses-ireland-wales-cooperation-programme>.

- <sup>30</sup> Anonymous (2019) *Interview with Wales European Funding Office – WEFO – Interreg Ireland-Wales project officer*, Cardiff, Wales. November 28.
- <sup>31</sup> Anonymous (2019) *Interview with the strategic director of an Interreg Ireland-Wales sub-initiative*, Swansea, Wales. December 8.
- <sup>32</sup> Anonymous (2020) *Interview with European Interreg Programmes Manager*, Pembrokeshire County Council, Haverfordwest, Wales. January 8.
- <sup>33</sup> *Anonymous (2022). Interview with European Commission Officer for cross-border cooperation*, Belgium. July 15.
- <sup>34</sup> Institute for Government, *European structural funds: the UK Shared Prosperity Fund*, Available at: <https://www.instituteforgovernment.org.uk/explainers/structural-funds>.
- <sup>35</sup> *Ibidem*.
- <sup>36</sup> HM Government (2022) *UK Shared Prosperity Fund: prospectus*. Available at: <https://www.gov.uk/government/publications/uk-shared-prosperity-fund-prospectus/uk-shared-prosperity-fund-prospectus> (Accessed: 23/07/2022).
- <sup>37</sup> HM Government (2022) *UK Shared Prosperity Fund: prospectus*. Available at: <https://www.gov.uk/government/publications/uk-shared-prosperity-fund-prospectus/uk-shared-prosperity-fund-prospectus> (Accessed: 23/07/2022).
- <sup>38</sup> *Ibidem*.
- <sup>39</sup> Welsh Government (2022) *Written Statement: The UK Shared Prosperity Fund*, Available at: <https://gov.wales/written-statement-uk-shared-prosperity-fund>
- <sup>40</sup> The event reiterated the willingness and commitment of all Interreg Ireland-Wales partners to keep momentum. Unfortunately, conclusions did not go further than renewing the commitment to develop the ‘Agile Cymru’ approach (<https://gov.wales/7-use-agile-ways-working>), evolving the current International and Cross-Border Group to support that agenda and finding new sources of funds to support cooperation across the Irish Sea in the future.
- <sup>41</sup> Jessop, B., Brenner, N. and Jones, M. (2008) ‘Theorizing sociospatial relations’, *Environment and Planning D: Society and Space*, Vol. 26, No. 3, p. 389–401.
- <sup>42</sup> McEwen, N. (2021) ‘Negotiating Brexit: power dynamics in British intergovernmental relations’, *Regional Studies*, Vol. 55, No. 9, p. 1538-1549.

# Shifting Sands of the Common Travel Area

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Post-Brexit, the Irish and British governments have leaned on the Common Travel Area (CTA) concept to plug gaps left by the UK exiting the European Union. As a result, this area of law and policy has been subject to increased attention, and the CTA has become a buzzword for politicians and policy-makers. Alongside this change, there has been a shift in how the UK and Irish governments frame the CTA. Where the CTA previously focused on freedom of movement and border controls, it is now frequently referred to as the source of *reciprocal rights* for British and Irish citizens in the alternate state. This rhetoric risks limiting the CTA to British and Irish citizens and undermining its importance to many non-British and non-Irish people living on the island of Ireland. A 2018 paper by the Irish Human Rights and Equality Commission and the Northern Ireland Human Rights Commission referred to the CTA as “written in sand”.<sup>1</sup> Post-Brexit, those sands are shifting, negatively affecting migrant and minority ethnic communities across the island of Ireland.

## The CTA and freedom of movement

The CTA is a long-standing administrative arrangement between the UK, the Republic of Ireland and the Crown Dependencies (Isle of Man, Guernsey and Jersey). It has been described as a special travel zone and dates back to the establishment of the Irish Free State in 1922.

The UK and the Republic of Ireland maintain separate immigration policies and have different approaches to conducting controls within the CTA. However, CTA countries have a significant degree of cooperation and alignment on immigration control. UK immigration policy applies in Northern Ireland.

In the UK, the CTA is founded in Section 1(3) of the Immigration Act 1971:

*Arrival in and departure from the United Kingdom on a local journey from or to any of the Islands (that is to say, the Channel Islands and Isle of Man) or the Republic of Ireland shall not be subject to control under this Act, nor shall a person require leave to enter the United Kingdom on so arriving, except in so far as any of those places is for any purpose excluded from this subsection under the powers conferred by this Act; and in this Act the United Kingdom and those places, or such of them as are not so excluded, are collectively referred to as “the common travel area.”<sup>2</sup>*

Effectively, it establishes a presumption that when a person travels from within the CTA to the UK, they are not required to seek leave to enter the UK as would otherwise be necessary. Permission to enter granted by Jersey, Guernsey and the Isle of Man is recognised by the UK and entering the UK from the Republic of Ireland relies on a type of permission known as *deemed leave*. Limited exceptions apply, including some specifically relating to travel to the UK from the Republic of Ireland.<sup>3</sup> For example, a person subject to a deportation order is not free to enter the UK and is not eligible for deemed leave.

The result is that there are no statutory powers for passport or ID checks to be carried out for immigration control within the CTA, including on the land border.

In the Republic of Ireland, under Section 11 of the Immigration Act 2004, gardaí have the power to carry out checks on ‘non-nationals’ entering the

state from within the CTA.<sup>4</sup> Non-nationals are defined as persons who are not Irish or British citizens or persons exercising EU treaty rights. Section 12 of the Immigration Act 2004 also requires non-nationals to produce ID on demand in the state.<sup>5</sup> In summary, the duty to carry and produce passports does not apply to British, Irish or most EU citizens travelling over the land border or other CTA routes but does apply to other non-EEA citizens.

It is important to note that individuals travelling within the CTA must have the required immigration permission for the country they seek to enter, even when there are no checks. *Visa nationals* refer to people needing a visa to enter the UK or the Republic of Ireland, and *non-visa nationals* are people who do not.

Before Brexit, the exemptions to passport controls and immigration controls were the main focus of CTA discourse.

## Reciprocal rights of the CTA

Following Brexit, the CTA is frequently referred to as providing ‘associated reciprocal rights’ for British and Irish citizens. These rights include the right for British and Irish citizens to reside and work, without immigration restrictions, in the alternate state. Before Brexit, EU free movement law underpinned the majority of these rights. However, with the UK exiting the EU, a gap emerged, and the idea of ‘associated reciprocal rights of the CTA’ became the solution.

The post-Brexit Memorandum of Understanding (MoU) between the UK and Ireland on the Common Travel Area states:

*The CTA is a long-standing arrangement involving the United Kingdom (“UK”), the Channel Islands and the Isle of Man, and Ireland that facilitates the ability of our citizens to move freely within the CTA. In addition, associated reciprocal rights and privileges have been enjoyed by British citizens in Ireland, and Irish citizens in the UK, since Ireland’s independence.<sup>6</sup>*

The language used in the MoU reflects the changing rhetoric from the UK and Irish governments, implying that the CTA applies only to British and Irish citizens. Misleading language may undermine CTA policies that apply to non-British and non-Irish citizens and represents a concerning shift which is

unfortunately now reflected in many official sources of guidance, including the Department for Foreign Affairs website and GOV.UK.<sup>7</sup> This shift fails to recognise the importance of free movement in the CTA for many non-British and non-Irish citizens. It also fails to recognise that on the island of Ireland, many non-British and non-Irish citizens utilised cross-border services such as healthcare and education. The focus on the rights of British and Irish citizens risks excluding others from the discourse.

## CTA Free movement on the island of Ireland

Freedom of movement within the CTA applies across the UK and Ireland, but it has unique importance on the island of Ireland. The CTA is intrinsically linked with preventing a hard border and the peace process. The NI/Ireland position paper by the UK government states:

*Although it precedes the Belfast ('Good Friday') Agreement, the principle of free movement between the UK and Ireland carries symbolic significance in implementing the Agreement's commitment to the continued respect of the civil, political, social and cultural rights of the communities in Northern Ireland. It is a tangible example of East-West cooperation between the UK and Ireland ... including its significance in the context of the Agreement.*<sup>8</sup>

The *Protocol on Ireland/NI to the Withdrawal Agreement* (Ireland/NI Protocol) reflects this commitment in its objective to protect North-South cooperation and avoid a hard border. The Protocol also commits to the continued functioning of the CTA. Article 3 of the Ireland/NI Protocol states:

- 1. The United Kingdom and Ireland may continue to make arrangements between themselves relating to the movement of persons between their territories (the 'Common Travel Area'), while fully respecting the rights of natural persons conferred by Union law.*
- 2. The United Kingdom shall ensure that the Common Travel Area and the rights and privileges associated therewith can continue to apply without affecting the obligations of Ireland under Union law, in particular with respect to free movement to, from and within Ireland for Union citizens and their family members, irrespective of their nationality.*<sup>9</sup>

Freedom of movement within the CTA has also been essential in supporting people on the island of Ireland to live cross-border lives. As the UK and Republic of Ireland maintain separate immigration regimes, legal residence in one jurisdiction does not automatically grant the right to enter the other. Freedom of movement within the CTA permits non-visa nationals to enter the UK or Ireland without prior immigration permission. Visitors are usually restricted to entering for limited periods, but it allows them to take part in life across the border: socialising, accessing services, and joining programmes and events. In addition, CTA free movement allows non-visa nationals to cross the border into Northern Ireland based on deemed leave - meaning their permission is automatic, and they are not required to obtain documents or go through checks.

Post-Brexit, an example of a non-visa national for the UK is EU citizens. EU citizens now require a visa to reside in the UK, but they are permitted to enter the UK (including Northern Ireland) for up to six months as visitors without prior permission.<sup>10</sup> With the loss of EU free movement, it is easy to see how essential CTA free movement rights will be for EU nationals living in border regions who are used to freely crossing the border into Northern Ireland.

Freedom of movement in the CTA has also been instrumental in developing all-island tourism, cross border peacebuilding programmes, all island cultural events and sports. These form an essential element of North-South cooperation and the peace process. All-island initiatives, such as tourism, have had significant economic benefits.

The UK and Irish governments have expressed an ongoing commitment to maintaining the CTA. The 2019 MoU reaffirms both countries' commitment to ongoing joint work and cooperation on matters relating to the CTA. In addition, following the UK government's recent challenges to the *Ireland/Ni Protocol* in the *Ni Protocol Bill*, the UK government assured that the CTA elements of the *Protocol* would be protected as they are "working".<sup>11</sup> However, the MoU is not legally binding, and both governments have resisted calls for the CTA to be placed on a stronger footing through a bilateral treaty.

These commitments have also been made in the context of the changing rhetoric on the CTA and the apparent attempt to limit the CTA to British and Irish citizens. For example, the 2019 MoU states: "*This MOU is concerned with the rights of British and Irish citizens*", which excludes any commitment to CTA rights applying to non-British and non-Irish citizens. Unfortunately,

this lack of clear commitments to CTA rights for non-British and non-Irish citizens seems reflected in recent legislative and policy changes.

## Post-Brexit changes to the CTA

### 1. Document checks on Ireland-UK routes

As previously detailed, the Immigration Act 1971 exempts local journeys within the CTA from control under that Act. The UK government has confirmed that there are no checks on the land border and no ‘routine’ checks on all other CTA routes.<sup>12</sup>

Home Office immigration officers do not have all of their normal powers to carry out immigration controls concerning persons travelling within the CTA. The Home Office’s position is that they are permitted to undertake ‘intelligence-led operational activity’ to detect persons who fall under the limited list of exemptions to free movement within the CTA and require permission to enter the UK. This activity is not routine immigration control and must be targeted and supported by evidence of abuse of the CTA. Home Office operational guidance also makes it clear that these checks rely on voluntary cooperation and that individuals are under no obligation to comply with checks.<sup>13</sup> A statement from the Home Office described the checks as: *“Immigration officers speak to members of the travelling public using these routes ... and a consensual request for photographic ID can form part of that conversation.”*<sup>14</sup>

The conduct of these intelligence-led operations on CTA journeys has come under criticism due to accusations of racial profiling, human rights abuses and discriminatory practices.<sup>15</sup> In 2016 the Home Office paid £2,000 in settlement of a claim of alleged racial discrimination at Belfast City Airport.<sup>16</sup> In 2018 a black British lawyer lodged a complaint with the Equality Commission over racial profiling he was subjected to when travelling between Northern Ireland and Scotland by ferry.<sup>17</sup> Despite these criticisms, checks continue to occur. In June 2020, *The Detail* published statistics that show that the rate of immigration checks in Belfast is almost four times higher than in London. The Home Office’s response to queries on this startling statistic stated that they were combatting *“immigration abuse of the Common Travel Area and Ireland-UK border.”*<sup>18</sup>

In September 2021, the Home Office published guidance on travelling to the UK from Ireland, the Isle of Man, Guernsey or Jersey.<sup>19</sup> The new guidance

details the documents people are *required* to produce if encountered by Border Force on that CTA route. The requirements differ depending on the person's nationality:

- For British and Irish citizens, the guidance states: *"You don't need to show your passport to a Border Force officer when travelling from Ireland to Great Britain. However, you may be asked to show a document that confirms your identity and nationality."*
- For EEA/Swiss citizens, it states: *"You may be asked to show your passport (which should be valid for the whole of your stay) or identity card to enter Great Britain when travelling from Ireland."*
- For non-EU citizens, it states: *"You may be asked by Border Force to show your passport, which should be valid for the whole of your stay, to enter Great Britain."*

Framed to make compliance with these checks appear compulsory, the requirements above contradict Home Office guidance and statements stating that compliance with any such checks within the CTA is voluntary. A response to a parliamentary question from Stephen Farry MP confirmed a Home Office view that producing the required documents is now compulsory.<sup>20</sup> This view represents a significant policy change, but no legislative reform has accompanied it, so currently, the guidance appears contradictory, misleading and has no legislative basis. Notably, this change particularly impacts non-British and non-Irish citizens, and the different document requirements are likely to increase incidents of racial profiling and discrimination during checks.

## **2. Electronic Travel Authorisation**

The Nationality and Borders Act 2022 provides a pre-entry clearance system, Electronic Travel Authorisation (ETA).<sup>21</sup> This system requires anyone who does not need a visa, entry clearance or another immigration status to obtain authorisation before travelling to the UK (including on journeys within the CTA). It does not apply to British or Irish citizens or those already granted leave to enter or remain in the UK. The system will mainly impact non-visa nationals, who can presently enter the UK without prior permission and can cross the land border freely based on deemed leave.

Under the ETA system, non-visa nationals must apply in advance and pay for ETA before crossing the border into Northern Ireland — this includes non-visa nationals who are residents in the Republic of Ireland. The Nationality

and Borders Act makes knowingly arriving in the UK without a required ETA a criminal offence.<sup>22</sup>

Clearly, this will have a unique detrimental impact on non-visa nationals in the Republic of Ireland who need to enter Northern Ireland for activities such as visiting family, accessing childcare, permitted work engagements and accessing services and goods. This system will also impact the ability of members of the migrant community to take part freely in cross-border projects and programmes. Concerns have also been raised about the impact of ETA on business and tourism, as it would require non-visa nationals travelling to Northern Ireland to obtain an ETA before their visit.<sup>23</sup>

The enforcement of this requirement is also a serious area of concern. The Home Office has committed to no checks on the land border but has offered no absolute clarity on the policing of ETA. The government response has been to emphasise there are no routine border controls, seemingly implying that you won't get "caught",<sup>24</sup> creating a climate of arbitrariness as to whether there is a requirement or not. Added to this is the complexity of who is required to hold an ETA. British and Irish citizens are exempt, as are people who already have immigration status in the UK. It is unclear how this will be distinguished if checks are carried out, but it is eminently foreseeable that they risk increasing racial profiling and discrimination incidents.

Applying the ETA scheme to the land border also conflicts with commitments in the *Ireland/Ni Protocol* to maintaining the CTA. The NI Human Rights Commission and Equality Commission have recommended that all journeys into Northern Ireland that originate from the Republic of Ireland should be exempt from ETA requirements. In addition, they have raised concerns that the proposed ETA requirement could also lead to a breach of the "no-diminution" commitment under Article 2 of the *Ireland/Northern Ireland Protocol*.<sup>25</sup>

During the passage of the *Nationality and Borders Act*, the ETA provision was amended in the House of Lords by Baroness Margaret Ritchie and others.<sup>26</sup> This amendment exempted local journeys on the land border from ETA requirements. However, when it returned to the House of Commons, the UK government voted down the amendment to the bill. The debate around the ETA system focused on the impact on residents and tourists on the island of Ireland, with Viscount Brookeborough stating: "*What the Government are talking about is simply unworkable and disastrous.*"<sup>27</sup> The Irish government has also spoken out against the ETA system.<sup>28</sup> The wording of the ETA

provisions in the *Nationality and Borders Act* appears to leave room for an exemption, but whether action will be taken to mitigate the impacts on the island of Ireland remains to be seen.

## A hard border for some

These post-Brexit changes to the CTA represent a move towards restricting and limiting its use in a way that mainly affects migrant and minority ethnic people living on the island of Ireland. Moreover, this change is occurring despite existing CTA provisions already excluding and discriminating against large numbers of people residing on the island of Ireland.

North West Migrants Forum (NWMF) campaigns on the impact of the CTA on migrant and minority ethnic people.<sup>29</sup> Their campaign highlights how many people residing legally on the island of Ireland are excluded from freedom of movement within the CTA (because visa nationals must obtain prior immigration permission to cross the border, even for short local journeys). This particularly affects people from countries in Africa, Asia, and South America, as they are the least likely to have non-visa status in the UK and Ireland and is severe in border communities where visa nationals are ‘trapped’ inside a border invisible to most others. For example, visa nationals living in Northern Ireland must apply for a visa to cross the border into the Republic of Ireland to shop, visit friends and family, or even for school trips. NWMF states: “*Effectively there is an invisible – racist – hard border stopping people from moving freely to work, to access healthcare or to visit friends.*”<sup>30</sup>

This also prevents visa nationals from accessing services provided on a cross-border basis. NWMF has highlighted the severe consequences of this through a case study:

*A refugee child born in Belfast with a congenital heart condition requiring urgent treatment. The child was taken to Paediatric Cardiology in Dublin for treatment as part of the all-island congenital heart disease (CHD) Network scheme. Unfortunately, due to her immigration status, the mother was not able to accompany her child for treatment, causing undue stress on the family. A visa was eventually granted after an emergency application. However, the stress and anxiety are ongoing, especially as if they need further treatment, they may find themselves in the same situation again.*<sup>31</sup>

A situation made worse by checks – that appear to be based on racism and discrimination – within the CTA. We have already discussed the concerns raised about conducting checks on UK routes. Similarly criticised are gardaí for carrying out checks in a racist and discriminatory manner.<sup>32</sup> The powers granted by the Immigration Act 2004 only permit checking people who are not British, Irish, or EU citizens, naturally raising the question: how can gardaí tell who is Irish or British or an EU citizen simply by looking at them? Concerns have been raised that this law fuels racism and discrimination and that checks are carried out based on ethnic stereotypes about what an Irish, British or EU citizen ‘should’ look like. Senior gardaí have conceded before the Policing Authority that not engaging in profiling was a “challenge”.<sup>33</sup>

Incidents of racism and discriminatory practices in the conduct of checks within the CTA have led to a situation where people who are not white feel they are required to carry passports and ID documents when travelling within the CTA, even when they are legally exempt from checks. NWMF describes this as “a ‘hard border’ based on skin colour.”

NWMF’s campaign calls for the CTA to be modernised and reformed to end the exclusion of visa nationals.<sup>34</sup> The campaign currently focuses on the Irish government and asks that the Irish government provides a form of deemed leave for visa nationals residing legally in Northern Ireland, allowing them to enter the Republic of Ireland without prior permission. NWMF is also campaigning to amend Section 11 of the Immigration Act 2004 to address racist and discriminatory checks.

Recent changes to the CTA indicate that instead of being reformed to end racism and discrimination, the direction of travel is moving towards further restricting and limiting the CTA. Changes such as introducing Electronic Travel Authorisation will uniquely affect migrant and minority ethnic community members. If not halted, this direction of travel risks seeing the issues raised by NWMF affect even more people living in our communities.

Restricting the use of the CTA demonstrates a failure to acknowledge the importance of freedom of movement within the CTA to non-British and non-Irish people, particularly those residing on the island of Ireland. The direction of change risks excluding and marginalising many people within our communities and increasing incidents of racism, discrimination and human rights abuses. Restricting the CTA hardens the border for some, disrupts North-South, and East-West cooperation and is the antithesis of the rights-based society promised by the *Belfast/Good Friday Agreement*.

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# Six sides to every story:

## *Trade in goods and the Northern Ireland Protocol*

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## Introduction

The *Ireland/Northern Ireland Protocol* places Northern Irish traders in a unique position. With a foot in both the UK and EU internal market, these traders can better serve clients in both Great Britain and the EU than those located in, for example, Glasgow, Liverpool, Cork, or Dublin.

However, while exporters from Northern Ireland to Great Britain, the EU, and the rest of the world benefit from the *Protocol*, importers face new challenges.<sup>1</sup>

In total, the *Protocol* creates six distinct frameworks traders now must navigate. Different rules apply to:

- Imports into Northern Ireland from Great Britain
- Exports from Northern Ireland to Great Britain
- Imports into Northern Ireland from the EU
- Exports from Northern Ireland to the EU
- Imports into Northern Ireland from the rest of the world
- Exports from Northern Ireland to the rest of the world

Where some firms benefit, others struggle. The complexity associated with identifying and complying with these myriad rules is a barrier to trade and could lead to firms missing out on domestic and abroad opportunities.

Assuming the existing arrangements remain in place — which is far from a given — the composition of Northern Irish trade will adjust as companies minimise their exposure to the more challenging elements of the *Protocol* and position themselves to take advantage of the new arrangements. But suppose Northern Ireland is to thrive in the short-to-medium term? In that case, the EU and UK must make further efforts to alleviate the additional costs facing businesses and create a politically stable environment conducive to realising potential opportunities.

In this paper, I provide an overview of the six border regimes facing traders in Northern Ireland and propose additional measures to improve trading conditions.

## **1. Imports into Northern Ireland from Great Britain**

Goods entering Northern Ireland from Great Britain are subject to numerous controls and processes. Under the *Protocol*, the de-facto position for imports, unless they qualify for specific exemptions, is treating them as if they are entering the EU's customs and regulatory territory. As a result, this has created new costs for companies moving goods into Northern Ireland from Great Britain and disrupted internal UK trade.

## Tariffs

Goods for final sale in Northern Ireland can enter tariff-free if the applicable EU duty is zero. However, if the EU duty is *not* zero, they may still enter tariff-free if declared as ‘not at risk’ of onward movement to the EU under the UK Trader Scheme, or qualify for tariff-free treatment under the terms of the EU-UK Trade and Cooperation Agreement.<sup>2</sup> Goods subject to further processing may qualify for tariff-free treatment under the ‘not at risk’ scheme, so long as the annual turnover of the importer is less than £500,000 and the goods are for an ‘approved purpose’ such as construction or production of animal feed for animals in Northern Ireland.

None of the options mentioned is available for goods subject to EU trade remedies which have, in practice, already created problems. For example, in the moving of steel, which is subject to an EU Trump-era 25% safeguard tariff, and tariff rate quota (TRQ) exemptions. Initially, an EU regulation preventing EU TRQs from applying in Northern Ireland meant that, due to the *Protocol*, British steel moving from Great Britain to Northern Ireland was technically subject to the 25% duty.<sup>3</sup> However, the EU and UK agreed to allow steel to move tariff-free, so long as there is still spare capacity in the EU steel safeguard TRQ that otherwise applies to imports from the UK.<sup>4</sup> (However, a recent change in the EU’s steel safeguard methodology has called into question the ongoing viability of this approach.)<sup>5</sup> A more sustainable solution would create a flexible, Northern Ireland-specific scheme, allowing steel to move freely into Northern Ireland from Great Britain, tariff-free.

If tariffs are applied, the UK may waive them for the Northern Irish importer. But only if it does not cause the importer to breach de minimis state aid ceilings that cap the amount of government financial support companies can receive question-free.

## Customs

Companies moving goods into Northern Ireland from Great Britain must make import declarations – Entry Summary Declarations (ENS) – including customs, safety, and security. Traders can either submit these themselves via the Customs Declaration Service<sup>6</sup> or use the Trader Support Service, a UK government-funded service that can complete these declarations.<sup>7</sup>

At the time of writing, the UK is unilaterally refusing to apply customs procedures to parcels shipped by Great British businesses to Northern Irish consumers. However, business-to-business shipments valued over £135 and prohibited or restricted goods require parcel declarations.<sup>8</sup>

Despite the facilitations, the new *Protocol* requirements create additional costs and complications for businesses moving goods from Great Britain into Northern Ireland. As a result, there are reports of companies halting sales to customers in Northern Ireland, and the *Protocol* could take further measures to reduce the burden on traders. The facilitations for parcels should be made permanent. The movements are easily traceable, with the parcel delivery mainly being carried out by large-scale parcel operators with a known point of sale in Northern Ireland and pose little risk to the EU. Further simplifications should be made available to traders with a strong compliance history. This will allow them to rely increasingly on existing commercial data and, for example, prevent the need to produce distinct Combined Nomenclature (CN) codes for each product rather than produce distinct customs declarations.

### **Regulation**

Northern Ireland is within the EU's single market for goods from a regulatory perspective but with some caveats. This means that goods entering Northern Ireland (including from Great Britain) are treated, by default, as if they are entering the EU. Products placed on the market must conform to EU rules and have the necessary authorisations and certification. Manufactured goods on the market in Northern Ireland must be CE marked and, when required, certified by an EU-based certification body (products certified by a UK certification body must have a supplementary UKNI marking).<sup>9</sup>

For highly regulated products such as medicines, the default under the *Protocol* is that Northern Ireland is subject to the EU's authorisations and approvals regime. This creates a scenario where medicine is approved for use in Great Britain but not Northern Ireland, and vice versa. However, the EU has since changed its regulations to allow generic and new innovative medicines authorised by the UK to be placed on the market in Northern Ireland, subject to auditing and labelling requirements.<sup>10</sup>

Under the *Protocol*, agrifood products entering Northern Ireland from Great Britain are subject to EU sanitary and phytosanitary (SPS) hygiene controls and restrictions. For example, a vet-approved export health certificate must accompany products of animal origin, entered via a recognised border control post, and be subject to document checks, identity checks and physical inspection. There are also restrictions on certain products entering Northern Ireland, such as chilled meat preparations (e.g. unfrozen sausages).

At the time of writing, the UK is applying several unilateral measures and grace periods which alleviate the burden on traders bringing food into Northern Ireland from Great Britain. These UK measures include:

- Allowing for Great British chilled meat preparations for sale in supermarkets to continue to enter Northern Ireland;<sup>11</sup>
- Simplified SPS procedures for ‘authorised traders’, such as supermarkets, so long as the products are consumed in Northern Ireland; and
- Low border intervention rates owing to a lack of permanent SPS infrastructure and limited staff.

The EU has instigated infraction proceedings against the UK over the latter two points.<sup>12</sup> The UK is also covering the compliance costs – such as Export Health Certificates – for companies moving agrifood into Northern Ireland via the Movement Assistance Scheme.<sup>13</sup>

More could be done to squeeze frictional costs for traders, such as a permanent footing for grace periods. Trusted traders who submit to stringent audit requirements with clear points-of-sale within Northern Ireland should benefit from an extended not-at-risk scheme, which removes (or significantly reduces) the administrative requirements and checks when bringing food into Northern Ireland from Great Britain. While this could require further changes to EU law – as happened with medicines – the EU has already demonstrated it can accept different requirements for products proven to remain in Northern Ireland regarding tariffs. This is the logical extension of that approach. Some high-risk products, such as citrus fruit, could be entirely exempt from the trusted trader approach.

Better still would be an EU-UK veterinary agreement of similar scope and depth to the EU’s veterinary agreement with Switzerland. This would remove the need for all additional export health certificates and border checks for agrifood products entering Northern Ireland (and the EU) from Great Britain. The UK government has, until now, opposed such a relationship due to its constraints on the UK’s ability to alter its domestic SPS rules and rules as they apply to imports. A small price to pay, putting internal trade with Northern Ireland on a more stable footing, would be welcomed by British food exporters, who generally struggle with the new requirements associated with selling into the EU. Additionally, fears that binding UK SPS rules to the EU

rules will prevent the UK from striking new trade agreements are overstated. Neither the UK's recent trade agreement with Australia nor New Zealand required the UK to change its current, EU-inherited, SPS regime.

## 2. Exports from Northern Ireland to Great Britain

Companies exporting 'qualifying' goods from Northern Ireland to Great Britain can do so *unfettered* as long as they are already in circulation in Northern Ireland. There are no requirements for export declarations, exit summary declarations, or the like. Some exceptions exist; for example, goods originating in an EU member-state and transiting through Northern Ireland (for example, Irish goods) are still subject to customs obligations. However, this 'qualifying' regime, which is mainly trust-based, is temporary and could be tightened over time. Export declarations and additional requirements apply to restricted goods such as endangered animal species, hazardous chemicals, firearms, torture instruments and the like.

The EU has brought an infringement proceeding against the UK over its failure to meet its commitment to provide the 'export' information to the EU via other means.<sup>14</sup> However, it is unclear why lax controls on outward-bound movements pose a risk to the EU single market.

Additionally, goods placed on the Northern Irish market require no further authorisations for marketing to the wider UK. While Northern Irish (EU) product rules remain broadly aligned with UK rules, this poses little challenge. However, if the regimes diverge, it could create difficulties. For example, the UK government wants to phase out the recognition of EU CE marking for most products by the end of 2022. CE marks will still be recognised in Northern Ireland, and goods placed on the market in Northern Ireland do not require further authorisations when moved into Great Britain. However, CE marks will de-facto continue to be recognised UK-wide without further government intervention. The UK government could avoid this confusion by continually recognising CE marking in areas where the underlying EU and UK standards remain the same (most products).

## 3. Imports into Northern Ireland from the EU

Unlike goods moving from the EU into the rest of the UK, EU goods entering Northern Ireland can do so without requiring additional customs

declarations, regulatory obligations, and border inspections. This allows Northern Irish businesses and consumers to continue importing EU goods on similar terms to when the UK was a member of the EU.

However, Northern Irish businesses must comply with some minor new requirements. For example, companies moving goods between the EU and Northern Ireland under the *Protocol* must notify HMRC. They must also add an XI prefix before the UK VAT number on documentation shared with EU customers to record the transaction in line with EU VAT rules on intra-EU movements.<sup>15</sup> In addition, as was the case pre-Brexit, Northern Irish companies that import over £500,000 worth of goods from the EU must complete EU Intrastat declarations.<sup>16</sup>

#### **4. Exports from Northern Ireland to the EU**

As with imports, goods exported from Northern Ireland to the EU are largely able to move friction-free. Unlike companies based in Great Britain, this means Northern Irish firms continue to export to and compete in the EU market on pre-Brexit terms.

However, there are some differences. As with imports, traders must notify HMRC and apply additional information to their VAT declarations. Additionally, Northern Irish companies producing goods for the EU market that require third-party certification must use a certification body within an EU member-state. Although, in some instances, UK providers may be used where the certification must be carried out on location. For example, such as veterinary certificates and certificates of good manufacturing practice for Northern Irish medicine manufacturers.<sup>17</sup>

#### **5. Imports into Northern Ireland from the rest of the world**

The *Protocol* emphasises Northern Ireland's status within the UK's customs territory and ability to partake in UK free trade agreements.<sup>18</sup> However, goods imported into Northern Ireland from the rest of the world (excluding Great Britain and the EU) are treated, by default, as if they are entering the EU's customs and regulatory territory.<sup>19</sup> UK tariffs and free trade agreements can apply under certain circumstances, but navigating the different regimes in practice is complicated – particularly if a trade remedy or TRQ is involved.

## Tariffs

Goods entering Northern Ireland from the rest of the world are subject to the EU tariff-rate unless they are deemed 'not at risk' of onward movement into the EU, where the UK rate may apply. Imports are considered 'at risk' if the applied UK tariff is lower than the applied EU tariff, and the difference is equal to or greater than three percentage points. So, for example, if a Northern Irish firm imported LED lamps, where the UK tariff is 0%, and the EU tariff is 3.7%, the goods would be considered 'at risk', and the higher EU tariff would apply.<sup>20</sup>

If the imported goods are not automatically deemed 'at risk' due to the tariff differential, importers authorised under the UK Trader Scheme can apply the UK tariff. But only subject to specific requirements for further processing and on the basis that the imports are not subject to EU trade remedies. And as with imports from Great Britain, the UK can choose to waive any tariffs due for traders so long as it does not breach state aid limits.

At the time of writing, there is a further complication concerning TRQs. The EU's 2020 tariff rate quota regulation prevents EU TRQs from applying in Northern Ireland.<sup>21</sup> This creates problems in instances where the UK applies a TRQ, either unilaterally or in the context of a free trade agreement. In such instances the applied UK tariff, under the TRQ might be the same or similar to the EU's, if the EU TRQ was accounted for. But due to EU TRQs not applying in Northern Ireland, the out-of-quota tariff must be accounted for instead, which will invariably have a tariff differential vis-à-vis the UK tariff well above three percentage points. For example, New Zealand sheep meat is subject to an EU and UK WTO TRQ, allowing for 114,184 tonnes and 114,205 tonnes respectively of New Zealand sheep meat to enter tariff-free (usually underfilled for both). Despite tariff-free trade technically being on offer in the EU and UK, Northern Ireland importers cannot benefit.

Building on the compromise found for steel moving from Great Britain to Northern Ireland, an obvious solution would be to:

- allow Northern Irish firms to use the EU's TRQs; or
- allow importers to use the UK-in quota tariff rate so long as it was the same, or within three percentage points, of the equivalent EU in-quota rate and the EU TRQ has spare capacity.

This would avoid the current situation, which sees Northern Irish importers being penalised with high tariffs not faced by importers of the same product in either Great Britain or the EU.

### **Free trade agreements**

Northern Irish importers can use either the EU or UK free trade agreements. However, to use a UK free trade agreement, the importer must be registered under the UK Trader Scheme, and the imported goods must meet strict qualifying criteria:

- The difference between the applied EU or most favoured nation tariff and the UK's applied preferential or most favoured nation tariff must not exceed three percentage points.<sup>22</sup>
- The preferential EU tariff can only be taken into account if the EU and UK have a trade agreement with the same partner country and the import meets the rules of origin requirements of both the EU and UK free trade agreements.

In instances where the UK agrees to free trade agreements with countries that do not also have a free trade agreement with the EU, there will be some products that, unlike the rest of the UK, cannot enter Northern Ireland tariff-free. For example, at the time of writing, the UK has agreed (but not yet implemented) a free trade agreement with Australia, whereas the EU has not. Under the terms of the free trade agreement, in year one, the UK will allow Australia to export up to 35,000 tonnes of beef to the UK tariff-free. However, Northern Irish importers will not be able to take advantage of this liberalisation because the 0% in-quota tariff is more than three percentage points lower than the EU's applied most favoured nation tariff, which ranges from 12.8% + €176.8/100kg to 12.8% + €303.4/100kg.<sup>23</sup>

Whether this is positive or negative is a question of perspective. For example, some Northern Irish producers might value the continued protection from foreign competition (especially when you consider, as discussed below, that they can still benefit from UK free trade agreements from an export perspective). At the same time, consumers might feel cheated out of greater choice.

### **Regulatory requirements**

From a regulatory perspective, goods imported into Northern Ireland from the rest of the world are treated as if they are entering the EU. This means

that, for example, were the UK to amend its SPS requirements to allow US products produced using methods banned in the EU entry to the UK market, these changes would not apply in Northern Ireland. Were an extended 'not at risk' trusted trader scheme to be created, it is technically possible this could also apply to imports from the rest of the world. In doing so, allowing for goods produced in Great Britain that do not conform with EU rules to enter Northern Ireland for sale directly to consumers

Here some precedent applies: despite applying EU sanitary and phytosanitary rules, Switzerland can import beef produced using hormones banned in the EU on the condition it is adequately labelled and measures are taken to avoid onward movement into the EU. This is due to the EU ban contravening its WTO obligations. However, this is a largely hypothetical issue at the moment, given there has been no substantial UK divergence from EU approaches. As above, there is a strong argument for the UK re-integrating its sanitary and phytosanitary regime with the EU.

## **6. Exports from Northern Ireland to the rest of the world**

Goods exported from Northern Ireland are British and treated as such. Unlike imports, where Northern Irish firms can choose to use EU free trade agreements, exports can only qualify for UK free trade agreements.

From an exporting perspective, UK free trade agreements offer more advantages for Northern Irish firms than their EU equivalents. Many of the UK rollover free trade agreements – for example, with Japan, Switzerland, Canada and Chile – include extended *cumulation rules of origin* provisions. These allow UK exporters to account for EU-originating inputs as British to meet the free trade agreement's local content requirements and qualify for preferential tariff treatment. So, for example, a cheese producer sourcing milk on an all-island basis may be able to meet the rules of origin provisions of the UK's trade agreement with Japan (which require all of the materials to be 'wholly originating'). This is because EU-sourced milk can be treated as British, but not the EU's, where UK-sourced milk is considered non-originating. (Although, in this instance could potentially rely on accounting segregation methods to differentiate between milk ingredients sourced in Ireland and Northern Ireland).

As above, Northern Irish firms can benefit from access to the new market via the UK's free trade agreements while remaining sheltered from increased

competition from imports in the other direction. This asymmetry is unique in a UK context and not unnoticed by the UK's free trade agreement partners: new UK free trade agreements include clauses explicitly giving precedence to the *Protocol* in the event its obligations conflict with those of the trade deal.<sup>24</sup>

## Conclusion

Whether the impact of the *Protocol* is positive or negative depends on the type of trade a company engages in.

Northern Irish firms exporting to the EU and UK are in an advantageous position relative to those based in the EU or Great Britain. Those exporting to the rest of the world are well-placed with those importing, depending on perspective; either constrained by EU protectionism or sheltered from UK largess. Those sourcing goods from the EU can do so as before Brexit, while those dependent on imports from Great Britain must navigate reams of new costly bureaucracy. For those companies engaging in various cross-border movements at any one time, the experience is decidedly mixed. Having to deal with six different border regimes for goods (and this is before accounting for arrangements regarding trade in services) creates a layer of complexity. It will inevitably disincentivise some firms considering trading with clients outside Northern Ireland.

While long-term adjustments are inevitable, either in response to this arrangement or another, there are measures the EU and UK could agree on to alleviate problems for traders and position them to take advantage of the opportunities provided by Northern Ireland's unique trading status. However, these measures require political willingness, trust, and flexibility from the EU and UK. All of which are in short supply.

## Endnotes

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# Brexit and the Belfast / Good Friday Agreement's Three Strands

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## Introduction

In Northern Ireland, Brexit — with a majority of nationalists voting *remain* and a majority of unionists voting *leave* — has had a transformative and negative effect on many aspects of the *1998 Belfast/Good Friday Agreement*. Along with its generally divisive impact on politics in Northern Ireland, the *Protocol on Ireland/Northern Ireland*, agreed by the EU and UK government during the Brexit negotiations to preserve an open border on the island, has created trade barriers between Northern Ireland and Great Britain, which have further re-ignited deep divisions.

This article examines Brexit's impact on strands two and three of the *Agreement*, which deal with cross-border cooperation and East-West cooperation between the two islands. It also highlights how all three strands are interdependent. The final section explores ways to meet Brexit's challenges to cooperation.

## The 1998 Agreement's institutions

Strand one of the *Agreement* provides for a consociational system including a 90-seat<sup>1</sup> devolved Northern Ireland Assembly and a power-sharing Executive composed of the major parties representing both communities (and later the cross-community Alliance Party). By dealing with power-sharing arrangements, strand one has received the most political and media attention since 1998. However, the *Agreement* stipulates that it is *interdependent and interlocking* with two other strands.<sup>2</sup>

Strand two provides North-South cooperation on the island of Ireland primarily through the North-South Ministerial Council (NSMC).<sup>3</sup> This body brings together politicians with executive functions on either side of the border to consult on and discuss matters of mutual interest, including implementing cross-border policy initiatives. The logic here is functional, hoping to foster all-island reconciliation as well as helping parties cooperate in strand one, just as the EU — by developing practical cooperation after World War 2 — aided Franco-German reconciliation in the latter half of the 20<sup>th</sup> century.<sup>4</sup> The operation of strand two is directly dependent on strand one under the terms of the *Agreement*; the NSMC cannot meet if the Assembly and Executive are not functioning.

Strand three provides for British-Irish (East-West) cooperation between the two governments and across both islands through two intergovernmental institutions — the British Irish Intergovernmental Conference (BIIGC) and the British Irish Council (BIC). The BIIGC, in particular, formalised cooperation between the two governments, ensuring that both can act as custodians of the *Agreement* and protect the different community interests in Northern Ireland. A core purpose of the BIIGC is to ensure that both governments as guardians carve out a neutral approach that is stable, predictable and builds in unionists' and nationalists' interests fairly. The BIC was included as part of the package to satisfy unionist fears of an imbalance in the settlement. It also seeks to facilitate and encourage cooperation across the other devolved regions within the union (Scotland and Wales), the Crown Dependencies (the Channel Islands and the Isle of Man), the two jurisdictions on the island of Ireland, and the UK government. However, it also complied with one of the *Agreement's* key strategists, John Hume's aim to enshrine the totality of relations between the islands.

The BIIGC is the most important part of strand three, aiming to ensure that both governments are guardians of the *Agreement* and oversee its evolution. The British-Irish intergovernmental relationship was central to the peace process. A joined-up British-Irish strategy was intended to incentivise and frame compromise between the parties in strand one.

## The three strands in practice

While the *Agreement* succeeded in achieving peace, it has not achieved reconciliation, its overarching aim,<sup>5 6</sup> and there have been various collapses of the Executive over the last two and a half decades. In practice, identity politics and different interpretations of the past continued to plague the operation of the *Agreement's* institutions. The early collapses, which culminated in a suspension of strand one in 2002, were most often related to the demilitarisation agenda of the *1998 Agreement*. Disagreement over the timeline and depth of paramilitary decommissioning (the arsenal and activities of the Provisional Irish Republican Army in particular), coupled with issues like reform of policing, prevented the institutions from operating uninterrupted in these early years.

The 2002 suspension of Stormont is the longest thus far; the institutions did not meet again until 2007. By then, the Democratic Unionist Party (DUP) and Sinn Féin had become the largest parties in their respective designations, rendering the more moderate Ulster Unionist Party (UUP) and Social Democratic & Labour Party (SDLP) peripheral players. However, the St Andrews Agreement of 2006, brokered by both governments, provided a pathway for the DUP and Sinn Féin to cooperate in the Executive by resolving the lingering issues around demilitarisation and the administration of justice. The 2006 Agreement also reformed the operation of some strand one processes, most notably through changes to the appointment of First and Deputy First Minister, which allowed the two largest parties to enter the Executive without formally voting for the other to take office.

The decade after 2007 was remarkably stable relative to what came before and after it. Notwithstanding frequent disagreements and standoffs, the DUP and Sinn Féin were able to lead the Executive for a sustained period without significant interruption. An achievement widely acknowledged as a remarkable turnaround given the positions of those two parties just a few years before. Unfortunately, this stability ended in 2016 over the cash for ash scandal. The Sinn Féin deputy First Minister Martin McGuinness resigned when the DUP First Minister Arlene Foster refused to stand aside while the scandal was investigated.<sup>7</sup> However, tensions before and after the collapse played a significant role in creating and sustaining it.

A significant political vacuum that prevented the operation of strand one (and therefore strand two) for three years was created in the context of:

- the UK's decision to leave the EU in June 2016;
- the loss of the unionist majority position in the 2017 Assembly election;
- the confidence and supply arrangement between the conservative government and the DUP at Westminster after the 2017 general election; and
- entrenched divisions over cultural issues, such as an Irish Language Act.

Throughout this period, the BIIGC was notably absent.

In January 2020, the *New Decade, New Approach* agreement restored power-sharing by making political commitments to the parties, including on the

implementation of the *Protocol* that resulted from Brexit, and the Irish Language Act.<sup>8</sup> Working in close partnership, both governments brokered the agreement and, unusually in recent years, both issued a joint statement<sup>9</sup> immediately afterwards. In hindsight, the timing was remarkably fortunate, given the fallout from the COVID-19 pandemic began just a few weeks later. Shortly after power-sharing was restored in 2020, disagreements between the parties intensified, and some speculated that the institutions would have collapsed again<sup>10</sup> if it were not for the ongoing pandemic. As a result, the Irish Language Act and the *Ireland/Northern Ireland Protocol* remained prominently on the agenda. Within unionism, there was considerable political turmoil, as 2021 saw the UUP elect its third leader in as many years, while the DUP went through three different leaders in as many months. Throughout the post-2020 Executive, threats of collapse from the DUP grew louder as the *Protocol* situation wore on.

Volatility in strand one has affected the other strands and vice versa. For example, the North-South Ministerial Council's (NSMC) operation depends on the Executive, but the NSMC is meant to foster cooperation gradually so that Executive politics will run smoothly. Since 1998, the frequent collapse of strand one has been matched by political unionism's reluctance to engage in North-South initiatives. One example is tourism. Despite *Tourism Ireland* being an all-island body, there was reluctance to sell signature sights such as the Giants Causeway as 'Irish' rather than 'Northern Irish'.<sup>11</sup> However, the end of the conflict and the open land border precipitated increased travel for leisure purposes and eased local trade cooperation in border regions. North-South trade increased overall but fluctuated depending on currency exchange rates between sterling and the euro and whether there was an economic recession. There were significant examples of cross-border cooperation in healthcare, such as the designation of Our Lady's Hospital Dublin as the centre for paediatric heart surgery on the island, highlighting that collaboration could occur when unionism was presented with a powerful rationale for it.

In strand three, after 2007, the BIIGC rarely met despite its dynamic role in ensuring that cooperation and reconciliation evolved. Unionists never liked the BIIGC, viewing it as allowing unwelcome Irish interference and possibly joint sovereignty. The *Agreement's* success during this period also led to both governments perceiving the BIIGC as unnecessary, especially given this unionist sensitivity. Thus, after 2007, British-Irish involvement in breaking Executive impasses did not involve the BIIGC. Instead, the Irish Minister for

Foreign Affairs and the Northern Ireland Secretary of State met outside the *Agreement's* structures. Joint statements, which had typified meetings from the 1980s, were rarer, as were Prime Ministerial meetings about Northern Ireland.<sup>12</sup>

Unlike the BIIGC, the British Irish Council (BIC) has met regularly (every six months) as mandated by the *1998 Agreement*. Still, among the institutions created by the *Agreement*, it is perhaps most widely seen as a talking shop. It lacks any substantive role in managing relations across these islands, remaining curiously stagnant since 1998 despite the deepening of the devolution settlement in Scotland and Wales.

Clearly, even before Brexit, strands two and three had not fulfilled their potential. Strand one's instability impacted the operation of both strands two and three, but there was also a reciprocal negative influence. In 2022, the Taoiseach Micheál Martin observed: "The harsh reality is that in the past two decades we have done too little to take up the historic opportunity of the [Good Friday] Agreement to build understanding and cooperation on this island".<sup>13</sup>

## **Brexit and strands two and three**

Since 2016 the Irish government and nationalist political parties in Northern Ireland have argued that a hard Brexit would undermine strand two of the *Agreement*. This is because customs infrastructure would have to be implemented to prevent UK goods from seeping into the EU across the land border, thereby undermining the integrity of the single market. The argument was usually not that it contravened the letter of the *Agreement* but rather that it would disrupt the flow of people and trade by creating barriers. Some also said that it would lead to dissident republican violence. There is no doubt that Brexit, especially the UK government's choice of a hard Brexit, potentially undermined the organic flow of goods and services on the island. The UK government's red lines on Brexit have consistently clashed with the EU's defence of implementing single market regulations.

The DUP and UK Parliament's rejection of the 'backstop' arrangement (designed to prevent customs checks on the land border) led to the creation of the *Ireland/Northern Ireland Protocol*. The *Protocol* leaves Northern Ireland within aspects of the EU's single market and customs union as the rest of the UK departs. Like a hard land border, this did not directly

contravene the letter of strand three. Still, it has been deeply opposed by unionism due to its effects on East-West trade and, according to some, an undermining of Northern Ireland's place in the union.

Not surprisingly, amid various implementation problems, opposition to the *Protocol* grew (following some early pronouncements from leading DUP politician's that it could bring economic benefits to Northern Ireland). However, the *Protocol* is supported by a majority of the Northern Ireland electorate, as demonstrated in the recent Assembly elections. Many businesses also support it,<sup>14</sup> though some that traded with Britain have also said they have been negatively affected.

Thus, since the *Protocol's* implementation, there have been two key economic and political impacts on strands two and three. Firstly, there has been trade diversion to the Republic of Ireland. Interestingly, compared to pandemic levels in 2021, there has also been an increase in trade from Northern Ireland to Britain.<sup>15</sup> According to the Central Statistics Office (CSO):

- Imports from Northern Ireland from January to May 2022 increased by €357 million to €1.9 billion when compared with the same period in 2021.
- Exports to Northern Ireland from the Republic from January to May 2022 increased by €586 million to €1.974 billion when compared with the same period in 2021.
- Imports from Britain increased by 71%, from €831 million to €2 billion, compared with May 2021.<sup>16</sup>

It is early days and too soon to interpret long-term underlying patterns, but it is clear that Irish and Northern Irish hauliers have increased their use of Irish ports to access mainland Europe. For example, sailings from Rosslare Port have increased significantly. However, there has also been an apparent decrease in trade between Ireland and Britain as Irish firms further diversify to EU states. Thus, Brexit appears to have positively impacted cross-border economic cooperation. Meanwhile, the *Protocol* has caused trade disruption in some sectors between Northern Ireland and Britain but has also reaped benefits for others. A recent House of Lords sub-committee described the situation as a "feast or famine".<sup>17</sup>

Politically, Brexit and the *Protocol's* impact on stability and reconciliation have been unequivocally negative. The UK government's rhetoric in their dealings

with the EU has exacerbated the DUP's opposition to the *Protocol* and its fear of an electoral threat from the Traditional Unionist Voice (TUV) party. The DUP's decision in 2021 to boycott the NSMC meetings precipitated its decision to collapse the strand one institutions later in 2022. Their actions are intended to pressure the UK government to take firm steps to amend (or abolish) the *Protocol* to its satisfaction. But it is unknown what the effects of UK government action via its *Protocol Bill* would be. Such a move would be against the wishes of the majority of the Assembly and could drive further crisis in strand one.

Overall, Brexit unleashed underlying tensions, some brewing for decades, but it also caused new tensions and unsettled the union and unionists. During this period, British-Irish cooperation has been wholly absent. Both sides now perceive the other to be adversarial.<sup>18</sup> The non-zero-sum approach of the *Agreement's* negotiators, including the governments, has not been carried into the *Protocol* period. The UK government's commitment to its partnership and joint custodian role with the Irish government under strand three seems very much in doubt, given its threats of unilateral action on the *Protocol* and its unilateral announcement of plans to reverse the Troubles legacy agreement reached in 2014.<sup>19</sup>

The megaphone diplomacy between the governments after Brexit and heightened emotion in some media marked a return to the bargaining style of the early 1980s. In the context of hardline rhetoric, it was not likely the DUP would appear 'softer' than its government in Westminster. The Irish government, too, was constrained by the priority that it remains loyal to the EU while seeking to achieve a compromise. The increasing divide between the governments about the *Protocol* also polarised opinion further in Northern Ireland and increased tensions between the DUP and the Irish government. These tensions have contributed to the DUP boycotting NSMC meetings and, more recently, BIC meetings.<sup>20</sup>

These brief examples of the strands' interdependence highlight the centrality of strand three's BIIGC role in embedding sustainable British-Irish intergovernmental cooperation through crises. Without that cooperation, the other strands are not adequately robust. Brexit has severely impacted all three strands of the *Agreement*, despite its positive impact on cross-border trade. Still, weaknesses in implementing strand three and in availing of strand two's potential are also causes of the current crisis. Suggested methods of overcoming current challenges by using strands two and three are in the next section.

## Strand two and three: Meeting Brexit's challenges

The weak implementation of strands two and three have masked their potential to allow Northern Ireland to have a voice in EU-UK negotiations. Particularly their potential to empower unionists, given the demographic and electoral challenges they face. For example, the *Protocol* explicitly allows for a *specialised committee* on implementation to “examine proposals concerning the implementation and application of this Protocol from the North-South Ministerial Council and North-South Implementation bodies”.<sup>21</sup> If this channel was utilised, unionists would have a direct link into implementation, including addressing the practical implications they oppose (or simply a less contentious route to opposing the *Protocol* entirely). This channel would not solve identity objections to the *Protocol* but would help those unionists who are upset, but pragmatic. Indeed, in September 2021, the new UUP leader Doug Beattie called for an additional cross-border body to manage issues caused by the *Protocol*, particularly disruption caused to the movement of trade across the Irish Sea.

Similarly, although disliked by unionists, the BIIGC could be used creatively to empower Northern Irish voices, especially for unionists, who are no longer a majority. Mark Durkan, a former leader of the SDLP and one of the *Agreement's* negotiators, commented there is a potential convergence of interest between unionists and nationalists: “... in agreeing some substantive adjustment in strand two, which the EU might be able to rely on as vouchable assurance and oversight on relevant single market precepts and/or due compliance<sup>22</sup> [and that] this points to a channel of representation for the views of Northern Ireland ministers which can help to answer the charge against the *Protocol* that nobody from here can have any say in future EU decisions that affect us”.<sup>23</sup>

Under strand three of the *Agreement*: “Relevant executive members of the Northern Ireland Administration will be involved in meetings of the Conference, and in the reviews ... to discuss non-devolved Northern Ireland matters”.<sup>24</sup> The *Agreement* stipulates that the BIIGC's remit includes “all-island and cross-border cooperation on non-devolved issues” to keep international treaties, institutions and machinery under review. In this way, Executive members could have direct access to higher-level meetings discussing EU issues that affect them.<sup>25</sup>

Thus, strands two and three have hidden *Agreement* tools that Executive members can use in many ways. The short text of the *Agreement* masks its

complexity and flexibility in dealing with unknown challenges, which are not limited to Brexit. The UK and Irish governmental commitment to establishing a regular schedule of BIIGC meetings as a normal feature of the political calendar would further strengthen its impact. Most importantly, re-setting the British-Irish relationship and rebuilding cooperation should be considered essential for the stability of Northern Ireland and these islands. For that reason, one of the *Agreement's* key negotiators has emphasised that the new British Prime Minister and the Taoiseach must meet in Autumn 2022 but not outside the *Agreement's* framework. In other words, the BIIGC must be convened in any attempt to rebuild relations.<sup>26</sup> The loss of the EU forum where officials met formally and informally for several decades necessitates using the *Agreement's* institutions. The BIC also offers opportunities. For example, it allows members to develop separate bilateral or multilateral arrangements.<sup>27</sup> The BIC could also allow the Northern Ireland Executive to communicate concerns about the *Protocol* to the Irish government. The Irish government could then act as a useful ally as an EU member state. Thus, the BIC could be used to find compromise on key issues caused by the *Protocol's* implementation.<sup>28</sup>

## Conclusion

Brexit has been a considerable challenge to strands two and three of the *Belfast/Good Friday Agreement* in isolation and because of its impact on strand one. The weakness of strands two and three have also weakened strand one, given the interdependence of the strands. However, this article has shown that Brexit alone did not create instability in Northern Ireland – the *Agreement* had not fulfilled its potential by 2016. Nevertheless, Brexit has affected the ability to contain tensions, and in 2022 the *Agreement* is in serious jeopardy. If its institutions are more robustly implemented, Brexit's challenges – and the challenges faced by unionists – can be managed more effectively to benefit all in Northern Ireland and the two islands.

## Endnotes

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- <sup>1</sup> Reduced from 108 seats.
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- <sup>4</sup> Tannam, E. (1999) *Cross-Border Cooperation in Ireland and Northern Ireland*, Basingstoke, Macmillan.
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# North West Ireland's Marine Gateway



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# You Don't Slow Down Peace

## Brian Rowan

**Brian Rowan** is a former BBC correspondent and security editor in Belfast. Since the late 1980s, he has reported on all the major developments on Northern Ireland's journey from war to peace; the ceasefires, political agreements, prisoner releases, police reform, demilitarisation, the ending of the armed campaign and the numerous efforts to build a legacy process.



Four times he has been a category winner in the Northern Ireland Press and Broadcast awards, including twice as Specialist Journalist of the Year. He left the BBC in 2005, the year the IRA ended its armed campaign. He still comments and writes regularly on the issue of legacy, and his analysis is often sought on the troubled politics of peace. Rowan's latest book – *Living with Ghosts* – was published in September 2022.

*My first reaction must be one of sorrow — and shame. It is sorrow not only at the tragic loss of lives of men and women, and even children but also at the much larger crowd of those behind them, those bereaved of loved ones, those bearing in their minds and bodies the wounds and disabilities inflicted by this ongoing violence, of homes shattered and honest businesses destroyed. It is shame that it has gone on so long, how there still seems to be no end in sight — and how for most of us, these casualties become no more than statistics.*

**Former Presbyterian Moderator Dr Jack Weir, August 1992**

The words above were given to me at the moment in the conflict period when we were approaching three thousand deaths. The late Dr Jack Weir had typed some thoughts in preparation for an interview with me for the

BBC. At different points in those ‘Troubles’ years, he engaged directly with the IRA and loyalists to end the killing. In his note that he gave me, he wrote of the “utter failure” of violence, yet how for those engaged in it became “addictive” – “with the delusion that success may come with stepping up the violence, having one more heave”. That period of the early 1990s is remembered for the killing rage of the loyalist organisations — what I have called *the hell before the calm*. And while there was no obvious end in sight, we were closer than we thought to new possibilities. Within two years, the ‘long war’ would give way to a long process of trying to build peace.

The challenge of building peace is in the making of relationships, in how difficult that task was (and is). Over the best part of three decades, since the original ceasefires of 1994, our learning tells us that peace is not the product of some wish and not something delivered by magic. Instead, it is a stop-start, always a work-in-progress — a tug-of-war between momentum and stasis — a seemingly endless political negotiation.

## The broken glass of Brexit

Brexit has tested relationships within Britain, the UK and Europe, British-Irish, North-South and at Stormont. Like shattered glass, smashed pieces scattered everywhere. Every relationship is strained, some broken. We watched as the *Protocol* became a street issue. I suppose it is a phase in this process characterised by a rewind button. A reminder that the *Belfast/Good Friday Agreement* was not and is not our final settlement. The negotiated balances and compromises of 1998 have been disturbed.

In Northern Ireland, we see a post-Brexit trend. Unionists lost their overall Stormont majority in 2017 and their second seat in the 2019 European Election. Following the UK General Election of that year, they no longer hold a majority of the Northern Ireland seats at Westminster. In 2022, Sinn Fein emerged as the largest political party in the Assembly vote. The *New Ireland* conversation is louder. Our politics is turning a bend onto a new road. The tug-of-peace is the pull between ‘union’ versus ‘unity’. As this develops, relationships will be as taut and tense as the rope in that challenge.

Perhaps we expected too much from peace.

Underestimated the work.

Believed that things would develop more quickly.

Forgot that our starting point was in the trenches of enemy relationships.

During the conflict period, all we had to do was condemn and blame each other. Peace asks something more of all of us: that we question and challenge ourselves as much as we question and challenge others.

Can we build peace in the present with the past, and its many unanswered questions, so close to us? Do we have the relationships, the leaders, the trust, and the will to pause for now and to go back? For what purpose? Is it for the right reasons of ‘truth’, healing, reconciliation, to build better foundations, or is it simply to revisit the conflict period in some tragic play of winners & losers and right & wrong? The past is still an argument, the go-to place when relationships are strained or broken, where we find the stones and the bricks to throw — often in glass houses.

As we argue *now*, we forget where we *were* — the hopelessness of the conflict period, how we became dehumanised and numb, and how death became normal, reduced to numbers and news. The comments of Jack Weir serve to remind us of that. Yet, in the dark of those years, relationships developed that allowed us to begin to think differently of hope and peace. It was whispered at first before it found its confidence and its voice.

## **Governments don’t talk to terrorists. Until they do**

We can get lost in the blizzard of actual time. Part of my learning across several decades of reporting conflict and peace is that there are two stages — the one we see and the one hidden from us. Think back to 1993 and the revelation of the contacts between the UK Government and the republican leadership.

What is the learning in this? First, there is no way out of ‘war’ other than through dialogue. Second, governments don’t talk with ‘terrorists’ — until they do.

The revelation of those contacts was an earthquake moment, yet we were closer than we could have imagined to some new beginning. Trenches are dug deeper before people come out of them. An escalation in violence is part of the negotiation of peace, part of not surrendering — that instinct not to lose, even when you know you can’t win.

More than anyone else in this period, the late John Hume — leader of the Social Democratic and Labour Party (SDLP) who would become a recipient of the Nobel Peace Prize — understood the importance of dialogue and

building relationships and roads that opened up new possibilities. So he accepted the invitation to speak with the then Sinn Fein President Gerry Adams, a dialogue that began in the 1980s and continued through to the original ceasefire and beyond. Hume used all of his contacts — the many relationships — in Dublin, Europe and the United States — to bring us to a better place.

I do not hear Hume's voice in our politics today — meaning the learning and experience he left us. From the late 1980s into the 1990s, he looked for higher ground to enable him and others to see a way through. Where are that vision and leadership today? Have we already forgotten those 'Bloody Everyday's' of conflict, and have we taken our peace — however flawed — for granted? Many of the leaders of that period are no longer with us. The ones that shouldered the weight of change; stepped out from the safety of their crowd into places where dialogue, conversation, and compromise are more difficult questions of leadership.

From my experience, I understand the importance of having the broadest possible working relationships, an open mind, and the ability to talk with all sides. Building those relationships took time. Establishing trust is not something that happens in a conversation or two. To understand possibilities in processes, you must try to understand the many different perspectives. I had to build working relationships with the IRA (Irish Republican Army), loyalist organisations, those across the frame of security and intelligence, political leaders, church leaders, those who understood the pulse of the different communities, and, in this work, understanding the importance of a small circle of trusted colleagues as second, third and fourth opinions.

I wrote recently that without that reach and access, it would be impossible to assess potential within negotiations accurately — those numerous talks processes that have stretched from the early ceasefire period to today. At times, those relationships broke down. Most could be repaired. Some could not. None of it was or is cosy. Nor should it be. My role in reporting over several decades was to assess statements, not parrot them. The latter is to be a mouthpiece. I also understand that no matter how good your sources are, you never have the complete picture. There is no such thing as a perfect reporting record of conflict or peace. Reporting the latter is a much more significant challenge. It might seem strange to say or write, but you can become comfortable in 'war'. You get used to it. You form a relationship with the abnormal to the point where it becomes normal. It is an illness, I suppose,

a virus that spread through those decades of the 1970s, 1980s, 1990s and beyond — a virus when there was no vaccine.

## Have we now switched off in the peace?

I have written about this in my latest book — *Living with Ghosts*. How, in the conflict period, we could become detached from the news, the killing, the bombs, and the bullets — and how we separated ourselves from the day-to-day of death. Not that we were uncaring, but that, at times, we were not caring enough. I suppose it is losing yourself in conflict, trying to create distance, our heads and hearts not being able to hold it all. It becomes too much, and we switch off. I watched every news hour in those early days of the Russian invasion of Ukraine. I watched until I could watch no more. Of course, death and destruction are on a much greater scale, but my point is the same. There is only so much of this that you can absorb. As leaders and people, have we now switched off in the peace — become tired and complacent, perhaps, even bored?

Peace needs energy and momentum. You don't slow it down. Not if you want it to work. The conflict generation has developed an ownership relationship with those big moments of the 1990s — the ceasefires, the political/peace agreement of 1998, and the *Patten Report* on police reform the following year. Also, an ownership of the past to the point where we have become stuck. At times, it still seems more important than the present. Yet those big moments of the 1990s were about trying to free the next generations, allowing them the creativity, imagination, and space to make something different — something better. *Their* relationships on this island of Ireland — and between the islands, with Europe, the United States, and others.

This is what we are holding back — attaching heavier weights to the next challenges. Making things more difficult for those next generations; making peace *the daily grind* rather than something to look forward to, to cherish. We are creating obstacles — not paths. We are doing the opposite of Hume, fearing peace and what comes after the *Belfast/Good Friday Agreement*. Fearful of that bend taking us onto a different road, those who can see and read that trend in post-Brexit politics won't acknowledge it because to do so would be to accept the blindness of that decision. The impact on patiently developed relationships. What does it mean long-term for the union? How has it disturbed those compromises and agreements of 1998? And, as we

listen, the loudest voices we now hear quoting the *Belfast/Good Friday Agreement* are those who opposed it at that time.

Might we have to wait for the working out of this next bend, that next big political moment and decision — the question of ‘union’ versus ‘unity’ — before we can adequately assess the longer-term prospects of peace? Is it that next conversation and referendum — however close or far away — that will determine, more than the *Belfast/Good Friday Agreement*, the relationships, politics, and shape of this island? Might the best place to have the Northern Ireland conversation be within that *New Ireland* debate? A dialogue to first define ‘New Ireland’ and answer the questions before we ask them in a border poll. The questions of health and education within some new all-island frame, pensions, the economic credibility and viability of such a project, the transition, and how it is supported by Britain and Ireland, Europe and the United States. Questions also of culture and identity and allegiance. Would there be a distinct northern political entity/assembly/parliament? The lesson of Brexit is to know your answers before you ask the questions. Such is the importance to the present and future; this should be a conversation that begins on a blank sheet of paper. The ‘New Ireland’ cannot (should not) be the two parts of this island being bolted together — the broken relationships being fitted and fixed with some cheap glue. New should mean something better.

## **The lengthy obituary of the union**

It is these unanswered questions that drain the momentum out of our politics. The uncertainty. The fears about what comes next. How many times has Stormont collapsed? It does not work on its own. This process needs the relationships that brought us the ceasefires and the political agreement in the 1990s. The critical internal relationships. North-South, British-Irish, Europe and the United States. If you break the template, you break the process. This place does not work unless the two governments are involved in a joint effort. That is the lesson of the *Belfast/Good Friday Agreement* and the *New Decade, New Approach* agreement of January 2020 — the agreement that rescued Stormont from a three-year purgatory. We need to look to the approaches of Blair-Ahern and Smith-Coveney to find what works. Unilateral runs are usually down blind alleys. The lengthy obituary of the union is written by those most closely linked to it in their heads and hearts. We read it in the lines which are the daily tales of woe, lines which ignore the causes.

Nothing is fixed if you ignore the breaking point. Why is there a *Protocol* and a sea border? Because of Brexit and the negotiated withdrawal agreement. The Johnson Government tried to rewrite that script as if its fingerprints were not on its pages. The truth of Brexit is that it was primarily an England project. Northern Ireland was an afterthought. They told us the lie of the sea border, the denial of its existence until it could *not* be denied. The real story is not just about the additional paperwork of trade, but something stretched across a wider frame. That Northern Ireland became different within the union. Brexit is the heavy machinery that has made those cracks on fragile ground. Now it is everyone else's fault, and Europe represents the bogeyman within the script that sometimes singles out Ireland and France.

Should we be surprised that we have arrived at this point? I think the answer is no. The political agreement of 1998 was driven in Britain by a labour government — by Blair and Mowlam. It is their trophy. The United States was directly involved — at the level of President Clinton, with Senator George Mitchell steering the talks. This trophy is where you find the emotional attachment to that deal. They cleared the obstacles to all-party talks. They better understood the processes of change and that peace is not about surrender. The loyalist representatives of that period — David Ervine, Gusty Spence, William Smith, Billy Hutchinson, Gary McMichael and David Adams — helped the Ulster Unionist leader David Trimble carry the weight of that agreement. The heavyweights of power-sharing, prisoner releases and police reform. More than that, they explained to republicans that any move to further reduce the period of prisoner releases from two years to one would jeopardise the entire agreement and could push Trimble over the edge. Loyalists and republicans talking, negotiating, in a way that, only a few years previously, would have been considered unthinkable. In this period, the Democratic Unionist Party (DUP) was outside the tent. We had to wait until 2019 for a Conservative NI Secretary of State, Julian Smith, who correctly understood the *Belfast/Good Friday Agreement* and, more importantly, the essential ingredient of British-Irish cooperation. Weeks after rescuing Stormont in a political initiative alongside Irish Minister for Foreign Affairs Simon Coveney, Johnson sacked Smith. That decision, alongside the post-Brexit arrangements, spoke loudly of little interest or concern about this place.

Add to this the UK Government's unilateral approach to legacy — its legislation and process to address the past. It is a move shaped by the self-interest of the Conservative Party and one that ignores relationships; it

speaks either of not understanding the complexities of this issue or of not caring about such sensitivities. No side from the conflict period can or should shape such a process. The proposed *Independent Commission for Reconciliation and Information Retrieval* is a house that very few will buy. The design of this process, the approach, is about shutting down the past, not opening it up to the scrutiny and answers needed to move into the present and future. The Johnson legacy in Northern Ireland will be his lack of understanding or caring for this place — encapsulated within his government's decisions on the Brexit withdrawal agreement, the sacking of Julian Smith, that unthinking approach to legacy and the foundations of devolution and Stormont again damaged. In recent years, the internal turmoil within the Conservative Party and the DUP has created both a sense of chaos and crisis — a loss of direction.

How do we fix what is broken? By going back to what worked and what works. Being honest about the past and the future and recreating the conversations and relationships will put things back on track. All of this will take time. Post-Johnson does not necessarily mean that things will improve — certainly not immediately or quickly. The internal machinations of the Conservative Party will take their own time to play out. In all of that, England's politics and interests rank above everything else — certainly above Northern Ireland. Yet, the DUP holds on to that party as its best hope of protecting and saving the union. Both are married to the Brexit project, if not all of its detail.

For the DUP, the price of Brexit has been the end of the unionist majority at Stormont and, in turn, losing the majority of NI seats in Westminster. Today, Sinn Féin is the largest party in the North — and, consistently in the polls, the lead party across the border.

## **Not just a story of orange and green**

Within that post-Brexit electoral trend, another main development is the growth of the designation of 'other' as a significant third pillar within our politics. So, the Northern Ireland story is no longer just about 'orange' and 'green'. Alliance leader Naomi Long won a seat in the 2019 European Elections. Months later, Stephen Farry became an MP when winning North Down in the UK General Election, and, in 2022, Alliance more than doubled its representation at Stormont. Why is this important? Because the future of Northern Ireland cannot now be reduced to this tug-of-war between its

major tribes. Neither orange nor green has the numbers to win a border poll. The mood and mind of those within that frame of 'other' — their voices and votes — will determine the future. They hold the balance of decision, which is part of the fallout of Brexit that is often ignored: How it has changed and *is* changing the politics here. The old certainties are now gone, the future much less predictable. And unionists fear losing something more in the peace — losing the union. The sea border turned the Northern Ireland centenary year into a crisis. Some began to think aloud about an inevitable collision — that of 'union' versus 'unity'.

This is what I meant earlier about having to wait for a border poll — however long it will take to get to that point, wait until then to get a proper assessment of our long-term prospects for peace. That change in the 1990s — the ceasefires and the political agreement — represented a significant achievement but was not a full stop; it was the waiting room before the next challenge. That next challenge will be in the louder debate about a 'New Ireland'. It is now a mainstream conversation; we hear and read about it most days. None of that says a border poll will deliver unity, but it says that a match will have to play out. Firstly, you must create the pitch — meaning that you need your answers on both sides of the argument before being asked the questions — the arguments for the union *and* unity. When we look at the chaos within the politics of now — the post-Brexit turmoil — it is hard to find the leadership needed to shape and manage these subsequent conversations. So, how do you shift the focus from politics to people and the issues, create the stage, and ensure a place for every voice and opinion?

We are sparring with this question in the here and now, raising its possibility. We have no idea of the real support on each side of the argument, and we won't know until there is a timetable, a clear indication of a date for such a poll. That is when the energised and focused electorate will want to hear the thought-through answers on the issues that matter. Properly researched expert analysis and not words on the side of a bus as was the case with Brexit. A border poll is not just about flags and votes. For many, it will be the fine detail on education, health, pensions, economic viability, the transition, those questions about identity and culture and the political framework of any 'New Ireland'. How ready are we for that moment? 1998 was our new beginning — not the end. This more difficult moment has always been there in the background. Northern Ireland is not just about unionist demands and needs but the different aspirations of others.

What if the *Belfast/Good Friday Agreement* had been fully implemented – in spirit and meaning – in all its parts? What if we had seriously engaged with the past issues and tried to address them? Might that have been our ‘New Ireland’? Post-1998, we have watched the endless negotiation of peace. There is much that has not happened. We talk about ‘new policing’, yet young officers joining from the nationalist community still have to live elsewhere – outside the areas where they grew up. There is nothing new about that. Nor does a ‘new’ MI5 Headquarters at Palace Barracks fit the script of a ‘new beginning’. Our ‘new politics’ has never really had time to find its feet. The brokenness we see so often in a dysfunctional Stormont and long periods without government. And can you have a ‘new peace’ with the past so close to us and, as yet, unaddressed? The ‘wars’ are not over if people do not have peace of mind.

What I have just outlined is only part of the story. I have heard those engaged in the conflict years learn a second language — turn a bend into the words of peace. I have listened to people who once fought in opposing trenches speak in the same rooms. I watched those relationships develop. And, in events 15 years ago, I witnessed what I believed was the real beginning of our peace, after the sudden death of the loyalist politician David Ervine when Gerry Adams crossed the Belfast lines from west to east to attend his funeral. Months later, we had the once unthinkable executive of Paisley and McGuinness. Sinn Fein endorsed the policing arrangements in the *Patten Reform* report. But, then, as in 1994 and 1998, we paused. Lost the momentum of peace; slowed it down, watching our politics break again and again. Too many of the organisations that were part of the ‘wars’ are still out there in some structural form — some of them much too obvious and present. It is part of why the past is still so loud. Gerry Adams could not step onto the Newtownards Road today. Circumstances and the mood have changed. Paisley and McGuinness are no longer with us. Nor is Hume. That rewind button I referenced earlier has been pressed, taking us back into old arguments. But, perhaps, the genuine concern is not the fallout of Brexit in the here-and-now but rather the conversation we still have to have and the decision that still has to be made. This issue I describe as ‘union’ versus ‘unity’.

## We need outside help

Can you have working politics and a working peace while in this waiting room — this place of uncertainty, of fear, and at a time when politics in London is in such turmoil and so self-focused? Perhaps the best we can do is steady the ship — do the bits we can while we wait for the bits that still have to be done. That bigger conversation is the next step beyond the *Belfast/Good Friday Agreement*. In all that Northern Ireland has achieved since the 1990s, we have needed international or outside help — with politics, policing, and arms decommissioning. The next challenges are even more difficult — those questions of our past and future. We cannot do this ourselves. I have often said that we are too small to do this alone, too emotionally attached to those conflict years. They are stitched into the fabric of this place, lost in our thinking of what happened and why.

Once more, we need outside help. You cannot build a ‘New Northern Ireland’ or a ‘New Ireland’ on top of the graves of an unanswered past. We first need an internationally chaired and shaped legacy process — the ‘war and peace’ analysis of 50 years written with pens free of emotional ink. The working out of: how we deliver the full information to families; practical help; and how we create some shared place of remembering within which all can tell their stories — the different and many truths. That will have to be imagined from outside of politics. The exhibition *Silent Testimony* by the acclaimed artist Colin Davidson proves his ability to deliver something that might work. Without that process, we are still at war — not in a place to speak of something ‘new’. Can we have policing in which those who join can continue to live in their communities? And politics needs the unanswered question lifted from its shoulders — that choice and decision of ‘union’ or ‘unity’.

All of this requires trust, relationships, leadership and vision. It needs a plan that will take us out of the chaos now.

# Northern Ireland - Challenges and Opportunities

## Sir David Sterling KCB

*David Sterling spent his career in the Northern Ireland Civil Service working in a variety of roles before being promoted Head of the NICS in June 2017.*

*In that role he faced the challenge of delivering public services in the absence of ministers, preparing for Brexit, facilitating the resumption of devolved government in early January 2020 and dealing with the Covid-19 Pandemic.*

*He retired from the NICS in August 2020 and is currently the Chair of the Chief Executives' Forum in Northern Ireland and a board member of a number of charities: Ulster Wildlife, the Cancer Fund for Children, the Centre for Cross Border Studies and Women in Business NI.*



The next Northern Ireland Executive (the Executive) will face many challenges. This paper examines how those challenges might be addressed, the opportunities for Northern Ireland (NI) in its relations with Great Britain, Ireland, and the European regions, and considers how best to exploit those opportunities.

### **The Executive faces a formidable set of challenges - there are immediate pressures**

The immediate challenges facing ministers when they return will be the cost-of-living crisis fuelled by surging energy prices, a slow return of global manufacturing capacity following the COVID-19 pandemic and a skills shortage. Together, these have given rise to recession in the US and near double-digit inflation.

In addition, health and social care services need urgent attention in the aftermath of COVID-19. Pre-COVID, NI had the longest waiting lists in the UK, and the problem has deepened with over 355,000 people now waiting for a first consultant-led appointment. Nearly 187,000 of them have been waiting for more than a year.<sup>1</sup>

There is an urgent need for transformation in the health service. There was welcome political consensus for the Bengoa Report in 2016, but this has not been translated into action to give effect to the necessary reconfiguration and structural reform.<sup>2</sup> Meanwhile, political friction over the *Ireland/Northern Ireland Protocol*, which led to the Assembly's and Executive's collapse in February 2022, has not diminished, and the prospects for an early agreement seem slim.

### **And there are long-standing, persistent structural problems**

There are grounds for gloom, but it should be remembered that on a wide range of measures, NI is in a much better place than it was before the *Belfast/Good Friday Agreement* (the Agreement) of 1998.

Our population may be on the increase – currently just short of 1.9 million – but we are getting older. Today there are around 27 people over 65 for every 100 people of working age. That is projected to rise to 42 people over 65 for every 100 working-age people by 2043. So before the end of this decade, there will be more people over 65 than children under 18.<sup>3</sup> This demographic change, coupled with cost inflation, is creating skills and labour shortages and placing severe strain on public services and all sectors of the economy.

### **Surviving or thriving?**

The good news is that life expectancy is increasing, and the gap between the life expectancy of men and women is decreasing, with women now expected to live until 82.6 and men 78.7 years (the gap has reduced from 6.4 years in 1980 to 3.8 years in 2019).<sup>4</sup> In addition, the personal well-being statistics in the Northern Ireland Statistics & Research Agency (NISRA) Labour Force Survey reveal that, despite many difficulties, people in NI report the highest levels of life satisfaction, worthiness and happiness in the UK.<sup>5</sup>

The bad news, however, is that there are significant inequalities in life expectancy, with people in more deprived areas living much shorter lives than the well-off. Those living in the most deprived areas also have worse outcomes than those in well-off regions with higher rates of emergency

admissions to hospital, higher rates of death due to preventable causes, higher rates of death due to respiratory diseases (for the over 75s), and higher rates of hospital admissions due to alcohol-related causes. In addition, people with disabilities, those with no qualifications, lone parents and older workers are more likely to be economically inactive or unemployed and suffer from deprivation.

We also have more people living in poor health. The gap in healthy life expectancy between those living in more affluent parts compared with the most disadvantaged areas is 13 years for men and 15 years for women.<sup>6</sup> Factors such as poverty, low-quality housing and poor diet and exercise all contribute to this problem. A long-term, cross-cutting focus on addressing these drivers of poor health outcomes is needed. Without this, there will be an ever-increasing demand for health services.

### **Significant inequality is also evident in mental health**

One in five people in NI suffers from a mood and anxiety disorder; consequently, the mood and anxiety prescription rate has increased by over a fifth since 2009. The suicide rate in the most deprived areas is three times higher than in the least deprived. The standardised prescription rate for mood and anxiety in the most deprived areas has been double that in the least deprived, and the prescription rate is 66% higher for females. It's also evident that location is a significant factor, with many disadvantaged areas seeing little change over decades.

### **Northern Ireland's education performance is improving but with mixed results**

The number of people who leave school with no qualifications has reduced from 27.7% in 1996 to 12.1% in 2020. Conversely, the number of children obtaining a degree or higher qualification increased in the same period from 9.7% to 31.6%. However, it is worth noting the contrast between the UK overall, where in 2019, some 13.6% of children in NI had no qualifications, compared with 7.9% in the whole of the UK.<sup>7</sup>

Deprivation and religious background also have an impact. For example, children who receive free school meals are much more likely to leave school without achieving at least five GCSEs at A\*-C level, with Catholic and Protestant boys faring particularly poorly than their well-off counterparts. Similar impacts are evident for higher education, where children from deprived areas are far less likely to get there in the first place and much less likely to stay the course and obtain a degree.<sup>8</sup>

A poor start in life also has long-term consequences. For example, the employment rate for people in NI with no qualifications is the lowest in the UK. By comparison, children from NI who obtain NQF level 6 (degree level) have the highest employment rate of all the UK regions.<sup>9</sup>

### **Northern Ireland is generally law-abiding; crime levels have fallen over the long-term**

The nature of crime is changing with burglary, theft, and criminal damage declining, whilst violence against the person, sexual offences, robbery and crimes involving drugs are increasing. As in many other areas, there are significant inequalities with a disproportionately high number of offenders coming from deprived backgrounds, having poor mental health and a history of drug abuse. Many deprived areas are also still subject to the coercive control of paramilitary organisations.

### **We are not immune from the climate crisis, and we have suffered high levels of biodiversity loss**

Northern Ireland will not be immune to the effects of climate change, and the environment will need to be a higher priority for the next Executive. NI currently ranks as the twelfth worst performing country for biodiversity loss out of 240 countries. According to the *2019 State of Nature Report*, we have lost more wildlife than any other part of the UK, with 11% of species at risk of extinction and 12 species added to the International Union for Conservation of Nature's (IUCN) red list since 2007.<sup>10</sup> With almost half our electricity now produced from renewable sources (mainly wind), good progress has been made in developing renewable energy. Greenhouse gas emissions in NI have decreased by 18% since 1990, compared to a 44% reduction in the UK, with agriculture, transport and the energy sectors responsible for two-thirds of our emissions.<sup>11</sup>

### **The economy is improving but with some significant structural problems**

On a range of indicators, Northern Ireland's economy has shown improvement. In June 2022, employment was 775,400, a historically high level, though not yet as high as the pre-pandemic position. The latest NI seasonally adjusted unemployment rate, March-May 2022, was estimated by the Labour Force Survey to be 2.6%, one of the lowest ever levels.<sup>12</sup> The economic inactivity rate (the proportion of people aged 16 to 64 who were not working and not seeking or available to work) is 28%, around two percentage points higher than the pre-pandemic level and one of the highest rates in the UK.

In Quarter 1 2022, NI economic output reached an almost 15-year high, returning to levels of economic output last exceeded in Quarter 2 2007. A positive contribution and increased activity in the service sector was largely responsible for the increase over the last quarter. The public and production sectors also had positive contributions in contrast with the construction sector, which had a negative contribution.<sup>13</sup>

### **Low productivity has been an enduring and intractable problem**

Northern Ireland has historically suffered from low productivity. Why is this important? As Paul Krugman famously said: *“productivity isn’t everything, but, in the long run, it is almost everything. A country’s ability to improve its standard of living over time depends almost entirely on its ability to raise its output per worker.”*<sup>14</sup>

Low productivity has bedevilled NI’s economic performance, with successive policy interventions scarcely making any real impact over time. Therefore, improving productivity will be vital to improving the prospects for growth and prosperity. The Department for the Economy recently commissioned *The Productivity Institute* to review the productivity issue in NI. Among their findings published in an insight paper in November 2021 were:

*At 82% of the UK wide level of productivity (measured as output per hour), Northern Ireland is one of the poorest performing regions for productivity within the UK. Its productivity level is 75% of the EU-average level, and only around half that of the Republic of Ireland. Even removing the effect of foreign firms still sees the Republic’s domestic sector equal the EU-average and significantly outperform Northern Ireland. Within Northern Ireland, productivity levels and growth rates are also unevenly distributed. Looking at output per job which was on average 86% of the UK (rather than the 82% in terms of output per hour), Belfast clearly stands out at more than 10% above the province’s average.*

And

*... the Northern Irish economy is still characterised by a high concentration of low productivity sectors and the presence of a large foundational economy. As a result, the demand and supply for highly skilled labour is weak. As much as 16.3% of the province’s population has no formal level of educational attainment, which is double the average for the UK. Furthermore, two thirds of Northern Ireland’s*

population has no tertiary (higher or further) education degree, which is again much higher than for the UK as a whole (51%) or the Republic of Ireland (48%). A brain drain from the region may have added to the low presence of highly skilled workers. There is evidence to suggest a managerial skills gap, which may be exacerbated by issues around culture, leadership, and ambition. Finally, both public policy, and institutions and governance, may contribute to the productivity gap. For example, the economic strategy plans have a poor track record for improving Northern Ireland's economic performance and productivity, are often underfunded and lack long-term vision and commitment.<sup>15</sup>

On 11 May 2021, the Department for the Economy launched its economic vision for the next ten years, called *A 10X Economy: Northern Ireland's Decade of Innovation*.<sup>16</sup> The concept embraces innovation to deliver a ten times better economy with benefits for all the people of NI. The stated aim is to improve productivity by focussing on innovation in areas where we have strengths, ensuring the gains from innovation mean something to all businesses, people and places in NI. The aim is to focus on five priority clusters:

1. Digital, ICT, and creative industries (e.g. cyber security).
2. Agri-tech.
3. Fintech/Financial services.
4. Advanced manufacturing and engineering.
5. Life and health sciences.

Overall, the hope is that a *Decade of Innovation* will deliver technological advancements which dramatically change how we live, work and enjoy ourselves. Crucially, it is claimed this will positively impact our economic, societal and environmental well-being while achieving a fairer distribution of opportunities for people to participate in and benefit from economic growth.

This bold ambition will need to be driven hard by ministers from across many Executive departments given the broad reach of the strategy, including, but not limited to, education, communities, infrastructure and agriculture, environment and rural affairs.

## **Missed opportunities for cross-border cooperation**

The Centre for Cross-Border Studies (CCBS) carries out regular quarterly surveys of attitudes to the current state of cross-border cooperation. The responses to the 6<sup>th</sup> Quarterly Survey indicate a deterioration in the political context for North-South and East-West cooperation.<sup>17</sup> It concluded that the current relations between the UK government and the EU do not inspire confidence in their ability to resolve issues related to implementing the *Ireland/Northern Ireland Protocol*. In turn, this further undermines the stability required for civil society organisations and local authorities on the island of Ireland to collaborate effectively.

The central themes emerging from the latest survey are concerns around the *Protocol* and how the UK government is approaching the *Northern Ireland Protocol Bill* and the European Convention of Human Rights. This creates greater uncertainty for cross-border organisations who, while generally supportive of the *Protocol* as currently implemented, are unsure what future changes will bring. Despite the intentions of the UK government, this also appears to encourage an all-island approach to managing issues and mitigating against uncertainty. The clear message from organisations operating either North-South or East-West is that the *Protocol* needs to be resolved to allow them to engage and plan their activities and relationships with more certainty than at present.

## **There are opportunities for Northern Ireland within the European regions**

The Northern Ireland Executive has three overseas offices in Washington DC, Beijing and Brussels. They are relatively small but have an excellent reputation for representing NI's overseas political, economic, cultural and tourism interests. The Brussels bureau has a significant role following the UK's departure from the EU. As the UK's role in Brussels changes and NI is the only part of the UK to remain in the single market for goods, the NI bureau must ensure that NI's interests are accurately represented.

Norway and Switzerland maintain regulatory alignment with the EU in different ways and devote considerable energy and resources through their embassies in Brussels to monitor and influence policy development in the EU institutions. Although not a separate nation-state, NI will face similar challenges as long as it remains in the single market, particularly if GB (as expected) increasingly diverges from EU standards and regulations. This will

be a major issue for the Executive and the NI bureau in Brussels. The legislative complexity and political significance of this have been analysed carefully by Lisa Claire Whitten of Queen's University Belfast.<sup>18</sup>

The Brussels bureau also provides an important link to European regions. Over 300 regions have representation in Brussels, many of which deal with challenges similar to those in NI. It, therefore, provides excellent opportunities for regional engagement on common issues, including:

- **Membership of EU/European networks**

Ongoing or continued membership of EU/European networks will bring opportunities to learn from and exchange best practices with European regions. These networks could be at the local government level, such as Eurocities, Council of European Municipalities and Regions (CEMR), and Association of Border Regions (AER). Many of these organisations are open to third countries and the non-EU Member States. NI can also participate in thematic networks in agriculture, trade and health. There are also several established networks with regional benefits that NI could join to enhance development and outward focus, particularly in research and innovation. These include:

- the European Regions Research and Innovation Network (ERRIN)
- the Conference of Peripheral Maritime Regions (CPMR); and
- the Vanguard initiative (which focuses on building sustainable and robust European partnerships through, for example, smart specialisation).

- **Promotion of the region**

Participation in the annual *European Week of Regions and Cities*, a collaborative event where consortia of regions showcase examples of projects on a similar theme. In 2022 NI is partnering with Friuli Venezia Giulia, Carinthia, Saarland, Val d'Aosta and Pomorskie on a workshop entitled *Youth Beyond Borders: How to Overcome Obstacles*.

- **Bilateral arrangements with specific regions**

Many UK regions are forging relationships with specific cities and regions across Europe; this might be something for NI to pursue.<sup>19</sup> Also, Manchester City Council has signed an MoU with

North Rhine-Westphalia to collaborate on thematic areas, while the Welsh Government has a new exchange programme for young people (Taith) to replace Erasmus.<sup>20</sup>

- **Closer thematic cooperation**

These can be economical or cultural, for example, co-hosting cultural events with a common theme, including a recent fundraising concert with representation from North Rhine-Westphalia to the European Union, or working together to develop closer links in crucial policy areas. For example, the Brussels bureau has been leading engagement with the Flanders region to identify areas that are priorities in both regions, bringing together policy leads.

- **Council of Europe – Congress of Local and Regional Authorities of Europe (CLRAE)**

Continued engagement in CLRAE. Established in 1994 as the voice of Europe's regions and municipalities in the Council of Europe, CLRAE has two chambers: the Chamber of Local Authorities and the Chamber of Regions. The body provides a forum to allow local and regional elected representatives from over 200,000 authorities to participate in the European government effectively. Mr Stewart Dickson MLA is the NI Assembly's current member on CLRAE.

- **Enhanced/Ongoing cross-border cooperation**

The new PEACE PLUS programme for NI/Ireland provides opportunities to build on the cross-border cooperation that has been ongoing for over 20 years. The programme offers funding in various themes – research, innovation, environment, transport and social regeneration.

- **Seeking participation as a third country in EU funding programmes**

There would be many opportunities if NI sought to participate in EU funding programmes, such as Interreg transnational programmes. This would require NI (separately from the rest of the UK) to seek to become a third country partner – for example, in the Northern Periphery and Arctic Programme – which in the past only NI and parts of Scotland (in the UK) were partners. NI could, in theory, 'pay their own way' to be in this programme and seek participation in other INTERREG transnational programmes such as Atlantic Area and North West Europe. Participation in these programmes would allow for funding and collaboration with a range of European regions on

smart, green and digital transitions, as well as tourism and promoting cultural heritage.

- **Show leadership and innovation**

Northern Ireland has a strong tradition of innovation and success. Working with the regions allows NI to build partnerships and shows how a small area or region can punch above its weight. Two good examples are in film and television productions (for example, *Game of Thrones* and *Derry Girls*) and life sciences. Regions that have successfully exploited these opportunities and NI could learn from are Flanders and Hessen.

Hence the NI bureau in Brussels will be crucial to ensure NI policy-makers, businesses, educational institutions and civil society organisations keep informed of EU policy development that may affect NI directly or indirectly. The bureau will also be the hub that helps maintain and strengthen relations with counterparts in other regions in Europe and with the EU's institutions. That role will be most effective if it is adequately supported and encouraged at the political level.

Using the NI bureau, stakeholders in Northern Ireland will not only be able to continue learning what other regions are doing to address similar challenges and share what they are doing in NI but also to identify opportunities for collaboration. Without this, there is a real risk Northern Ireland will not be as effective as Scotland or Wales or, indeed, the devolved regions of England.

The same general principles apply to our relations with GB and Ireland. NI must avoid becoming isolated and insular while GB looks increasingly outwards. Collaboration on a North-South and East-West basis will be essential in facing common challenges such as climate change or exploiting potential opportunities such as advances in digital technology that have enabled, for example, increased adoption of remote or hybrid working. Additionally, and although challenging, NI collaboration with the other devolved administrations will continue to be important as the UK develops its common frameworks. The next Executive must ensure that those frameworks support economic development in NI, particularly given its specific and different context due to the *Protocol*.

### **Addressing the diversity of challenges**

The *10X Economic Strategy* is a good example of an individual minister taking

the initiative to address some pressing problems facing NI. However, it will be interesting to see if the strategy remains intact when the Executive is eventually formed and whether a minister from a different party should take the economy portfolio.

Experience shows that, whatever the strategic intent, real change only occurs when there is a concerted effort by the whole Executive team to develop and deliver policy and strategy designed to address the challenges holistically. Collaborative and cross-departmental cooperation will tackle deep-rooted problems of economic inactivity, educational under-achievement and health inequalities. All those involved in delivering services, as well as arms-length bodies and third-sector partners, must be engaged. For that reason alone, there is an urgent need to re-establish the Northern Ireland Assembly and form an Executive.

Self-evidently this will require a resolution of the impasse between the UK government and the EU over the *Protocol*, and this will take time. As a first step, the Conservative Party will need to complete its process for appointing a new leader and Prime Minister. At the time of writing, the members of the Conservative Party are due to choose from two candidates by 5 September. There appears little substantive difference between the two candidates. However, in her role as Foreign Secretary, Liz Truss was the architect of the *NI Protocol Bill* and is seen as more likely to take a firmer line with the EU than Rishi Sunak. However, what the victor will do when in office and confronted with the full implications of enacting provisions within the Bill remains to be seen.

Sir Jeffrey Donaldson, the leader of the Democratic Unionist Party (DUP), recently said the Bill would need to make ‘clear progress’ in Parliament before he would contemplate a return to Stormont. Meanwhile, the clock is ticking down towards 28 October, when all ministers (currently in post as caretakers) will cease to hold office if, by this date, a First Minister and deputy First Minister are not appointed. This is per Section 16 of the recently amended *Northern Ireland Act (1998)*, after which the Secretary of State for Northern Ireland will be obliged to call another election within 12 weeks. Nevertheless, after the 2017 Assembly election, the UK parliament repeatedly passed legislation delaying a further election whilst multi-party talks on re-establishing the Executive continued.

Meanwhile, the European Commission has launched four new infringement procedures against the UK for not complying with significant rules governing

trading arrangements for NI. The UK has two months to respond to a request sent by the commission to the UK to comply with the *Protocol*, after which the commission may take measures, including taking the UK to the Court of Justice of the European Union.

With the two leadership contenders competing on who will be toughest with the EU, it looks doubtful that the UK government and the EU will have found an accommodation before 28 October. Thus, the prospects for an early formation of the Executive look slim, and the only thing we can be certain of at this time is further uncertainty.

The reality is essentially the same as it has been since 2017 when Prime Minister Theresa May made clear the UK was to leave the customs union and the single market. The consequent Brexit trilemma (where it is possible to fulfil any two but not all three of the following conditions) has been unavoidable and intractable:

- Leave the EU single market and customs union.
- Avoid checks and controls on goods between Ireland and Northern Ireland.
- Avoid checks and controls on goods between Great Britain and Northern Ireland.

As my former NI Civil Service colleague, Dr Andrew McCormick (and others), have pointed out,<sup>21</sup> Brexit created a dilemma which was not foreseen, or perhaps foreseeable, in 1998 and which can only be resolved by a process that respects the principles of negotiation that applied in the 1990s. The EU argued that a similar spirit of compromise applied to the long process from the referendum in 2016 to the Withdrawal Agreement of October 2019. The Withdrawal Agreement entailed significant concessions on both sides: the UK proposing and accepting regulatory alignment for NI with all its consequences, and the EU accepting that part of its external boundary would be enforced by a non-member state.

It is not surprising that the EU emphasises that the UK had exercised its right to choose what form Brexit would take and was in no doubt about the consequences of its choices – hence their argument that the *Protocol* cannot be renegotiated. But a real engagement is needed, founded on the inclusive principles expressed in the *1998 Agreement*.

There is a critical need to put the interests of NI first in a way that reflects the fact that any application of Brexit disturbs the delicate balance of the *1998 Agreement* and seeks out a way to minimise that disturbance. That means respecting all the points of view in NI and the principles governing the UK and EU.

The Northern Ireland Business Brexit Working Group (NIBBWG) was formed in December 2019 in response to the passage of the *Withdrawal Agreement Bill* to highlight the concerns of over 85% of NI businesses it represents.<sup>22</sup> Since then, it has made representations to the UK government, the NI Executive, the EU and the Irish Government. It has also produced research and analysis on the needs and concerns of the business community about leaving the EU.

The NIBBWG submitted written evidence to the House of Lords European Affairs Sub-Committee on the *Protocol* on 7 June 2022.<sup>23</sup> This paper provided evidence of the impact of the *Protocol*. It considered what further effects would occur following the end of the grace periods and set out what NI business requires in practical terms and concludes with five specific asks:

*An SPS landing zone that brings together workable trusted trader arrangements with a bespoke veterinary agreement and a wider mechanism to manage divergence for all goods, to protect access to choice and affordability for the NI consumer in particular*

*A radical reduction in customs bureaucracy for goods not at risk of entering the EU single market, regardless of sector.*

*Meaningful representation with embedded Northern Ireland civic representation, and expert panel support, as a participant in the appropriate governance structures in relation to laws and policies impacting on trade.*

*Formal review mechanisms, including periodic monitoring of the operation of the “at risk” test, economic impact assessments on regulatory challenges, and any mitigations and/or compensations needed to support and protect NI trade.*

*An unlocked competitive advantage that truly delivers on the unique dual market access to both the GB and EU markets.*

It is rather significant that such a broad-based group of businesses have formed a consensus around these proposals. Their message would carry additional weight if all the main political parties in NI could come together and add their support. Such a strong consensus would be difficult for the UK government, the Irish government and the EU to ignore.

Repudiating the constitutional concerns that many unionists and loyalists have genuinely expressed would be extremely difficult. However, based on the current trajectory of UK government/EU relations, the most likely alternative is an indeterminate period of increasing entrenchment with a real risk of some form of a trade war. Again, from my own experience, I see little prospect of the EU making significant concessions in response to the implicit threat of the *Protocol* legislation being enacted (and likewise, with any application of Article 16).

Furthermore, the preoccupation with the negative aspects of the *Protocol* has meant that inadequate attention has been given to exploiting the potential benefits to NI having dual access to the 450 million customers in the EU single market for goods, alongside continued, unfettered access to the UK market. It is worth noting that this considerable benefit would be at grave risk should the *Protocol* be 'ditched' as some have called for – and it wouldn't be available at all in a United Ireland.

There is a feasible landing zone for agreement within the NIBBWG proposals coupled with some form of red and green (or express) lanes proposed by Dr McCormick and others and now reflected in the NI Protocol Bill. However, any solution will require negotiation and compromise. As with the *1998 Agreement*, success will need leaders who show courage and can look beyond the short-term and sectional interests. This point has been summed up expertly in the recent House of Lords review of the operation of the *Protocol*:

*It is a matter of deep regret that, in the intervening twelve months, so little progress has been made towards achieving these aims. If anything, the situation has deteriorated still further. We therefore urge the UK and the EU, together with the political parties in Northern Ireland, Northern Ireland stakeholders and the Irish Government, to make a renewed commitment to work together to prioritise Northern Ireland's interests, participate together in constructive engagement, rebuild trust, and engage in effective relationship-building.*

*In the words of one of our witnesses, those who negotiated the Belfast/Good Friday Agreement “were able to do so because of their ability to appreciate the perspectives of others and willingness to work together and take risks to achieve a common goal despite historic differences. Such a courageous approach is needed now”.*<sup>24</sup>

Political progress will be elusive without this.

### **Northern Ireland badly needs a Programme for Government underpinned by a multi-year budget**

Resolving the *Protocol* impasse will be necessary but may not be a sufficient condition to form an effective Executive. There are other complex political issues to resolve beyond the scope of this paper. However, a quick resolution is essential for the good of public services and the people of NI, especially as the past 20 years have shown no credible alternative exists to the model of government, with all its imperfections, enshrined in the *1998 Agreement*.

The challenges outlined earlier in this paper will be quite an in-tray for the new First and deputy First Ministers when they return. Therefore, an early priority for the next Executive must be developing a Programme for Government (PfG) which addresses these many problems.

Governments need a clear statement of what they plan to do to improve their citizens' lives. In the NI context, however, this is vital as the Executive usually comprises up to five political parties with very separate ideologies and priorities. Conversely, the next Executive may have, at most, four parties as the SDLP no longer qualify for a ministerial portfolio. It remains to be seen whether any other parties will join them in opposition.

Whatever the composition of the next Executive, the process of parties coming together to thrash out a common agenda is, based on experience, a useful and necessary step in finding and agreeing on common ground. The process is further enhanced if there is widespread engagement, co-design and co-production in the development of the PfG involving stakeholders across the community.

The last PfG agreed upon by an Executive was in March 2012. It covered the period from 2011 to 2015 and was published alongside economic and investment strategies. There was a measure of co-production in developing these linked strategies; however, ministers recognised there was scope for enhancement of this process. In 2014, they asked the Organisation for

Economic Cooperation and Development (OECD) to complete an assessment of the Executive's public reform agenda. The OECD published its report in 2016 and made multiple recommendations, including implementing a multi-year, outcomes-based PfG.

Developing an outcomes-based PfG requires the Executive to clearly understand the things that matter most to people and to know their aspirations. There was an intensive engagement period across civil society before and after the Executive's draft PfG was published in May 2016.<sup>25</sup> The draft PfG published in October 2016<sup>26</sup> retained the outcomes-based approach, which at its core, requires policy-makers and delivery organisations to ask three fundamental questions about the interventions they propose to make:

1. How much did we do?
2. How well did we do it?
3. Is anyone better off?

One month after the consultation closed on the draft PfG in January 2017, the Executive fell, and the Assembly no longer fully functioned, during a political hiatus lasting for three years. During this time, the NICS maintained the outcomes-based accountability (OBA) approach by publishing an Outcomes Delivery Plan (ODP) in 2018 and 2019,<sup>27</sup> which reflected the PfG at the point of the Executive's collapse. The NICS also published progress reports against the ODP.

In the *New Decade, New Approach* agreement of January 2020,<sup>28</sup> the parties agreed to a two-stage approach: first, developing a PfG that would continue to use OBA, and second, agreeing on a Priorities Plan of actions for the remainder of the 2019/20 financial year. The draft PfG framework contained nine strategic outcomes which, taken together, will set a clear direction of travel and provide a vision for the future of all citizens. The Executive wants this to focus on the things that matter most to people (health, happiness and life satisfaction) and uses that focus to design, shape and deliver public services that will achieve the best possible societal well-being.

The COVID-19 pandemic and Executive response delayed the development of the PfG, with a draft PfG framework only launched for consultation on 25 January 2021.<sup>29</sup> It seems unlikely that any response to this consultation will be published before the Executive is restored.

The OECD also recognised the importance of the Executive having multi-year budgets which underpin the multi-year PfGs. However, this has not happened for some time - the last multi-year budget agreed upon by an Executive was in 2011, partly because the Treasury has produced several one-year budgets in the run-up to the Chancellor's Autumn 2021 Spending Review (SR21). This has set multi-year spending limits for NI up to 2024-25.

The NI Finance Minister published a draft 2022-2025 budget on 13 December 2021 based on the SR21 outcome.<sup>30</sup> Incredibly, this had not been approved by the full Executive, though it was agreed it could go to consultation. Since the Executive and Assembly's collapse in February 2022, the whole PfG and budget processes have been in abeyance.

We know from the experience of the 2017-2020 period that political instability leads to paralysis in policy making and blunts the effective delivery of public services, especially where cross-cutting and collaborative action is needed. Moreover, the economic and social consequences will make it harder to deliver the fairer, healthier and more sustainable society the people of NI long for.

### **What needs to be done? Some concluding thoughts**

We need political stability in Northern Ireland to tackle our many deep-rooted socio-economic problems. The current impasse over the *Ireland/Northern Ireland Protocol* needs immediate attention at the governmental level. There are high levels of dissatisfaction, frustration and cynicism with politicians and government in NI.<sup>31</sup> While there seems no immediate threat of a return to the dark days of the past, our history shows the dangers that lurk when there is a political vacuum. Politics must be seen to work.

Borrowing the language of the House of Lords Committee: the UK and the EU, together with the political parties in NI and the Irish Government, urgently need to work together to prioritise NI's interests, participate together in constructive engagement, rebuild trust, and engage in effective relationship-building. This happened in the run-up to the *1998 Agreement* – it needs to happen again.

A new Executive must urgently agree on a PfG based on an outcomes-based accountability approach. There must be meaningful engagement with all community sectors in NI on holistic, long-term planning. There must be effective accountability, with policies and plans regularly reviewed through

an inclusive process and adjusted as circumstances change. A multi-year budget must underpin the PfG, allocating resources to priorities and developed in tandem with the PfG as a holistic process.

There are many obstacles to this: the PfG is probably the most critical element of the operation of the institutions agreed upon in 1998, but it is deeply challenging, as it depends on compromise, and hence a willingness on behalf of all parties to explain to their grassroots that some key policies, projects or interests are not proceeding. The initial step needed is to overcome the existential issues that were, or are, the reasons for disengagement, that requires the UK and Irish governments' brokerage as in January 2020 and many before.

In pursuit of the PfG outcomes, the new Executive must avoid the temptation to centralise and adopt the principle of subsidiarity, devolving power and responsibility to where it can be most effectively discharged. That will need a re-set of the relationship between central and local government and between government (central and local) and the business and third sectors with a greater sense of mutual respect, trust and collaboration as an underpinning principle.

The new Executive needs to look outward and learn from best practices elsewhere. We may think we are unique, but others have tackled similar problems to ours, and there are valuable lessons to be learned and adopted. Cooperation North-South, East-West, with the European regions and internationally will be more important than ever. Civil society is keen and willing to help and has ideas and experience that must be recognised and respected. But the most critical requirement now is for political leaders to come forward, show courage and vision and work together in the best interests of all the people of Northern Ireland.

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# The Task Facing Organised Civil Society in Context

## Jack O'Connor

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Since the global economic collapse of 2008, humanity has been living in an age of heightened uncertainty. Indeed, the period bears many characteristics of a historical moment portending imminently impending departure to a different yet uncertain future.

Against the background of the shattered illusion of the Great Moderation, a state of permanent crisis has unfolded. Buffeted first by the painful austerity aftermath, through migration of biblical proportions, to a pandemic unprecedented in modern history and now the tragic primal war in Ukraine, we trudge warily onwards. Imminently ahead, the formidable consequences of the existential challenge of climate change currently hover menacingly in full view in the immediate near horizon, no longer securely out there remotely in the safety of the distant future.

Throughout, the chickens of post-industrial neo-liberal globalisation have been flocking home to roost. The process has been underway since China

began to 'open up' in 1978 and has escalated dramatically since the fall of the Soviet Bloc. Seemingly miraculously, it underpinned a few decades of non-inflationary growth by accessing an endless cheap labour reserve, simultaneously disarming organised labour in the developed world. While brilliantly serving its primary objective of turbocharging profit generation, it has resulted in the beneficial spin-off of elevating millions in the developing world from consistent poverty, albeit if only to the next decile level for many.

The price has been exponentially growing inequality and the large-scale decimation of the industrial working class in the west, as well as the wholesale alienation of individuals, communities and entire cities, towns and regions. Moreover, it precipitated the decline of the multifaceted organic web that constitutes organised civil society in the regions affected, dramatically exacerbating the phenomenon described by Robert D. Putman in his book, *Bowling Alone*.

In this context, the retreat of trade unionism and the contingent erosion of collective bargaining coverage in several countries is particularly noteworthy. The effect of wholesale 'offshoring' of industrial production combined with penal legal restrictions on traditional leveraging activities and often brutal legislatively facilitated 'union-busting' has rendered millions devoid of representation in the workplace or any balancing mechanism in the overwhelmingly unequal employer-worker relationship. The decline of collective bargaining coverage has contributed to the dramatic worsening of social inequality. Apart from this and perhaps more importantly, the effective economic disenfranchisement of working people has diminished their representative economic and social participation undermining their collective confidence and independence.

Of course, it could be different. Sharing the abundance generated by globalisation through progressive taxation could transform society in hollowed-out areas. It still offers the potential for dramatically expanding educational opportunities, fuelling innovation and good employment, and providing a full range of public services, enhancing living standards and quality of life for all. But instead, international tax competition and compliant legislatures pursuing policies which channel wealth upward continue to allow the top 1% to keep virtually all of it for themselves. The problem is not globalisation itself, notwithstanding its many imperfections. Instead, it is the perverseness of the manner of the distribution of the growth it generates.

## The fragility of liberal democracy

The wheels came off the mirage of permanent non-inflationary growth in the collapse of 2008. The ‘establishment’ responded by unleashing an unprecedented and, as is now widely acknowledged, utterly flawed, one-sided austerity assault on working people and the less well-off. Moreover, it provoked a dramatic mobilisation of disaffection among the millions who have lost out or are less well-served by the current free market model of neo-liberal globalisation. This is the constituency to which the ‘free trade’ narrative does not speak.

Emerging, on cue, from the obscurity condemned to them by the tragedy of the great conflagration of WWII, the populist far-right exploited the turmoil. The vacuum created by the decline of the traditional organisations of the working class facilitated their arrival. Replete with simplistic snake oil solutions, customarily scapegoating minorities, condemning ‘the elite’ and equipped with new social media tools, they exploit fertile territory. Essentially at its rigid core, they offer a seductive formula entailing a predominantly ‘white nationalist’ circling of the wagons and a nostalgic return to the security of a reinvented rose-tinted past. Of course, technological capacity has long since overtaken that paradigm. However, it does not matter that it is only a mirage — it connects, offering the alchemy of hope. In periods of dramatic economic and societal upheaval, the advantage in the competition for political allegiance rests with those who can provide protection against real or manufactured threats and capture the franchise on hope.

Suddenly western liberal democracy, which had assumed the assuring aura of ‘permanence,’ appears vulnerable. And weakened by the erosion of the glue of stakeholder interest for so many and the destruction of whole communities and vast sections of the stabilising ballast of organised civil society — vulnerable indeed it is!

For many of us in the west, although less so for older people in Northern Ireland, liberal democracy is taken for granted. However, it is worth reflecting on its fragility. Speaking at the 570<sup>th</sup> Plenary Session of the European Economic Social Committee (EESC) on 16 June this year, the EU Commissioner for Democracy and Demography, Dubravka Šuica, pointed out that no more than 12% of the global population live in liberal democracies. It struck many of us present as a sobering figure; however, it’s actually less. According to the Economist Intelligence Unit’s *Democracy Index*, only 6.4% live in their

definition of 'full democracies', that is, liberal democracies in the truest sense. Moreover, even the broader definition of 'electoral democracy' is a very recent phenomenon. Indeed, as many as ninety-four countries have only embraced it within the past sixty years (*source Herre and Roser – Our World in Data*). Furthermore, according to the Freedom House Report, *Freedom in the World 2022*:

*The present threat to democracy is the product of 16 consecutive years of decline in global freedom. A total of 60 countries suffered declines over the past year, while only 25 improved. As of today, some 38 per cent of the global population live in Not Free countries, the highest proportion since 1997. Only about 20 per cent now live in Free countries.*

There are no grounds for complacency. We would do well to reflect on the far-right's success over the last decade. In their various manifestations, they have emerged to challenge directly for power in the USA and several EU countries. Equally perniciously, they have managed to effect seismic 'backsliding' on the part of some 'centre right' erstwhile liberal democratic parties. Moreover, who would argue that their intervention did not 'make the difference' in the narrow margin in the Brexit referendum itself?

**Within this global context falls the conduct of any discussion on the North-South, East-West and the wider European regional relationship.**

Apart from universal suffrage and the separation of executive and judicial powers, free media (including from corporate editorial control) and the right to freedom of association, the vitality and influence exercised by its civil society, including the social partners, characterises the quality of liberal democracy.

## **Determined constructive intervention**

In an age of continuously increasing and, to some extent, deliberately fostered polarisation, it falls to organised civil society to simultaneously buttress democratic values and provide a bridge across divides. Amidst the maelstrom of this historical moment in which the character of the future is in fermentation, and hard-won freedoms are threatened, determined constructive intervention to influence the direction of things is essential.

In this regard, the Irish Congress of Trade Unions (ICTU) role deserves mention. Throughout the entire duration of ‘the conflict’ and since, it has straddled the divide successfully, maintaining unity among organised workers around the economic and social agenda and largely succeeding in keeping sectarianism out of the workplace. This is not to understate the role of other civil society actors.

‘Influence’ must be earned — it is never conceded gratuitously — in the intensely contested public policy space. In practical terms, the challenge entails vigilant scrutiny of legislative initiatives, promoting social cohesion, offering neutral space for dialogue, and building, reinforcing and rehabilitating relations between local communities across these islands and in a European context. The task, which could ultimately facilitate the development of a tangible image of a viable, sustainable future, represents a significant *raising of the bar*.

The Ad-Hoc Group for North-South and East-West cooperation constitutes a worthy and critically important initiative. It is to be complimented for endeavouring to transcend the polarised interpretation of our shared history’s complex, often tortured matrix. Unfortunately, however, the task of formulating a route to a qualitatively better future remains laden with difficulty. To say the very least, Brexit offers a new layer of dangerously disruptive complexity.

Apart from the immediate direct challenge inherent in the dispute around the *Ireland/Northern Ireland Protocol*, the toxic public narrative which continues to afflict the overall UK-EU relationship severely prejudices the potential for progress. The Trade and Co-operation Agreement (TCA) and the parallel texts are unprecedentedly unique among their contemporaries. All the other EU-country trade agreements are based on building (predominantly, but not entirely exclusively, commercial) relationships. This is about dismantling one which deliberately evolved over almost half a century entailing a high degree of integration. Moreover, it extends over the entire range of the areas of public policy accumulated over the years as distinct from those relating to just trade alone. Unfortunately, no route map exists for this as it is uncharted territory.

The conduct of the Remain Campaign did not help the situation. Their choice in emphasising a fear-reliant negative ‘imminent catastrophe’ narrative was not much more objectively credible than the honeyed forecasting of the

'leave' side. The depiction of a future in which the EU would progress while the stagnant UK would be condemned to irrevocable decline completely missed the point. Neither scenario was likely to materialise in the short-medium term, and the opportunity to articulate the case for *prospering better together* or *declining separately* was squandered. It may not have altered the outcome, but it would have minimised the unnecessarily antagonistic adversarial depiction of the post-withdrawal relationship so loved by the hard-right.

Incidentally, the Brexit Left or *Lexiteer* position deserves mention. Given the narrowness of the margin, it may or may not have been numerically sufficient to represent the difference in the outcome of the referendum. However, the more than partially apt depiction of the EU as a 'capitalist club,' particularly in the aftermath of a sustained period of brutal one-sided austerity, enhanced the credibility of the leave argument. It was a classic example of throwing the proverbial 'baby out with the bathwater' while strengthening the 'right' by multiple degrees.

Surveying the landscape ahead offers a precariously challenging prospect. Even allowing for the hyperbole that necessarily attends such events, the UK Conservative Party leadership contest debate painted a particularly worrying picture. All the 'bonfire of regulation' narrative conveys the image of a radical departure to a buccaneering swashbuckling unbridled free market *winner takes all* model increasingly conflicting with the deliberately calibrated, albeit imperfect, EU social market. Several parallel concerns are also present, such as the potentially far-reaching implications of the repeal of the *Human Rights Act*. Apart from any other consideration, some of these issues run to the core base premise of the *Belfast/Good Friday Agreement*.

All this, together with the brinkmanship around the *Protocol*, runs the gauntlet of descent into an all-out trade war. Yet, from a regional perspective, the consequences are unthinkable against the background of globally spiralling inflation and the vicissitudes of the war in Ukraine.

Focusing domestically, revoking it would represent a seismic rupture with the past. Overnight we would be surrendered from being in the same economic bloc together (which pre-dated the EU for centuries) not only to the brief state of 'separateness' since Brexit but to one of outright commercial conflict. Moreover, the haunting spectre of the return of a land border on the island of Ireland would immediately crash into our lives front

and centre, and none of us requires instruction as to the deadly consequences.

## Absence of social dialogue

The absence of structured social dialogue history in the UK does not assist the challenge facing effective civil society intervention. Indeed, it does not even have a type of Economic and Social Council of the type common in EU countries. The National Economic Development Council, established in 1962 (by a Conservative Government), known as *NEDDY*, was effectively neutered by Margaret Thatcher and abolished by John Major in 1992.

Incidentally, while Ireland does have a functioning National Economic and Social Council, a properly structured social dialogue was abandoned in 2009. Instead, it was scapegoated for the catastrophic economic collapse of 2008 (the worst in any developed country since the Wall Street crash of 1929), although it was not even near the crime scene. (A little-known entity which excludes most civil society organisations is the Labour Employer Economic Forum (LEEF), established in 2016.)

There are lessons to be drawn from the experience of ‘social partnership’, as it was known in the context of the issues discussed here. The process was spawned in 1987 in the depths of an earlier but purely domestically created severe economic crisis. Faced with the danger of mutually destructive class confrontation on the scale of 1980s Britain, which offered no absolute certainty as to the outcome, the leaders of the day opted for constructive dialogue as an alternative. Originally involving only the government, the employers, and the trade unions, ‘social partnership’ gradually expanded to embrace the social and economic spectrum by including the farming organisations, the community and voluntary pillar and the environmental network. As a result, it catalysed recovery and a dramatic economic transformation.

An indication of the scale of its success can be gleaned from a summary analysis of the numbers at work. Prior to separation from the UK in 1922, there were 1.2 million at work. It was 1992 before that figure was ever again recorded. Employment had increased by slightly more than 10% during the five years after the initiative’s launch. (In 1987, the ‘at work’ figure was 1,090,400 (Source: CSO 50<sup>th</sup> Anniversary Publication, *That was then, This is now.*)) Over the subsequent five years, in an admittedly benign international

economic environment, that figure increased by a phenomenal 33% to 1.6 million, unparalleled by any of our contemporaries in Europe, and achieved on an entirely sustainable basis. The numbers in employment continued to grow to 2.2 million in 2002 and 2.4 million by 2008. Those latter figures, however, were partially inflated by government policies that fuelled the credit-led property bubble.

Contrary to the way it was often depicted, particularly by its antagonists on the right (who resented even the image of any scintilla of influence for organised labour), ‘social partnership’ functioned only within the limits correctly imposed by the prerogative of the democratically elected legislature and the Executive on the choice of the direction of public policy. Regrettably, that choice drifted increasingly further in favour of a low tax, ‘leave it to the market’ light touch regulation course with the advent of the 21<sup>st</sup> century. In retrospect, it was at odds with the concept of ‘social partnership’ itself. It led to overheating and the bubble, which could not be deflated gradually towards a somewhat *soft landing* (even if attempting to do so was allowed) due to the ‘perfect storm’ of the global collapse, and the rest is history.

The public policy choice of unbridled free-marketism precluded resolution of ‘big ticket’ social issues, such as housing, health care, childcare, pension provision and, as time went on, even exploitation in the workplace. However, particularly during its first ten to twelve years and against the background of economic perdition, the process was key to resolving a range of seemingly intractable challenges. There was a sense of common objective (which dissipated in the latter years when it came to distributing the benefits of success) and collective ownership of problems. Conflicting interests did not disappear. They remained as acute as ever and were often bitterly contested. However, there was a certain thawing of the walls of sectional interest. Disputes continued to occur, but they were played out within the process and in the context of a larger whole. This facilitated the mediated intervention of collective experience, and innovative ‘win-wins’ were often formulated.

Eager to access the developing European single market, global corporate boardrooms recognised that Ireland’s unique social partnership offered the allure of long-term ‘stability’ – the essential ingredient of ‘confidence’- its key feature. The ‘invest in Ireland’ proposition was festooned with a dazzling array of ancillary *incentives* to seal the deal.

## A possible route ahead?

The relevance of it all for this article is whether that kind of process or elements of it could offer a route ahead in the current context of the problems around the *Protocol* and other issues affecting North-South and East-West relationships as well as those of a broader regional context.

Notwithstanding the limitations of the TCA, it remains an unprecedented ‘no tariffs, no quota’ trade deal, traversing an area constituting the third and sixth largest economies in the world and the biggest consumer market. Moreover, it still offers the best possibility of optimising the prosperity and security of all the ‘peoples of Europe’. Developing its potential offers the best guarantee of keeping pace with the USA and China and enabling us to continue influencing the future direction of human history and preserving our core democratic values and fundamental rights.

It is therefore incumbent on organised civil society in every country across the entire region to assert the primacy of the public interest, insisting on rational common sense and reinforcing inter-societal relations and engagement across communities and between nationalities.

On the face of it, despite its imperfections, the unique ‘best of both worlds’ formula inherent in the *Ireland/Northern Ireland Protocol* presents immense potential for, in particular, Northern Ireland and the whole island thereafter. However, unless uncertainty is removed, the possibility of developing an offering bearing the character of ‘permanence’ (in terms of guaranteed ongoing access to both markets) will not be realised. Meanwhile, every day the ambiguity persists, and opportunities are being irrevocably missed in the context of global corporate decision-making on the deployment of internationally mobile investment.

The sheer complexity of the issue, or the implications for both sides of the equation, should not be underestimated. This is well illustrated in the House of Lords’ *follow-up report* on the *Protocol*, published on 27 July 2022. Incidentally, several of its recommendations are quite useful. For example, recommendation number 90 urges the parties to undertake a full joint impact assessment of the implications on the ground. Number 175 urges swift agreement on reconciling the two versions of the ‘lane’ approach for goods on each side.

Logic suggests that once installed, the new UK Prime Minister — who will be immediately challenged by unpropitious economic circumstances — will pragmatically opt to invest in finding a way of ‘squaring the circle’ and concluding an agreement. The EU should be equally motivated to achieve a workable compromise, given the alternative of recourse to the utterly destructive distraction of slipping into an all-out trade war, especially in the current global circumstances. However, the difficulties should not be underestimated. Moreover, in the absence of an early breakthrough, it will be increasingly difficult for the Prime Minister to resist activating the enabling provisions of the *Northern Ireland Protocol Bill* once it becomes law.

In the circumstances, is there a role for organised civil society other than that of concerned spectators? At the same time, one opportunity after another is bypassed, and things drift inexorably towards the potentially cataclysmic abyss of the reinstatement of the land border by default. Surely, the rich tapestry of business, farmers, the trade union movement and the extensive array of community, voluntary and cultural organisations which are focused on the immediate bread-and-butter realities of business prosperity, living standards and quality of life of their respective constituencies have more to offer in terms of assisting the crafting of a solution for the benefit of all? Could a platform be developed to assist its formulation through sponsoring high-quality, empirically unbiased research and interactive engagement between the various interests locally and with the respective governments and the EU Commission? Could a neutral space for thrashing out the issues be provided based on their intrinsic technical merits, free of the straitjacket of political affiliation? After all, it is the people on the ground and their descendants who will suffer the consequences when the caravan moves on.

Currently, there is no structured forum that transcends the spectrum of organised civil society in Northern Ireland to tackle the task. Moreover, neither has there been a forum in the Republic of Ireland since the social partnership abandonment thirteen years ago.

Presumably, business representatives talk to their contemporaries in other jurisdictions. The trade unions certainly do, as ICTU, which enjoys a close working relationship with the UK Trades Union Congress (TUC), is the coordinating body for the thirty-two counties. The farming organisations and one imagines other groups also engage regularly. However, there is no comprehensive, all-embracing forum to facilitate any organised civil society interface between the two jurisdictions on the island of Ireland or between Ireland and the mainland UK or the wider European region.

## The genesis of an embryo

Interestingly, the genesis of such an embryo has emerged in the UK. In the form of The Civil Society Alliance, it describes itself as:

*... a new project set up to empower civil society organisations from across the UK to scrutinise and influence constitutional, administrative and legal changes in the complex multidimensional regulatory landscape following the UK's withdrawal from the European Union (EU).*

Currently managed by the Human Rights Consortium in Northern Ireland, it operates on limited start-up funding provided by The Legal Education Fund. Its aims are:

- Open and accountable lawmaking.
- A high standards UK.
- A strong civil society voice.

Some trade unions have affiliated with it. However, to embark on the kind of project envisaged here, the participation of the business organisations and ICTU would be essential. It would also require some additional funding.

Alternatively, a separate civil society initiative focused solely on the resolution of the *Protocol* impasse could be launched.

Apart from the absence of any structured civil society interface on the island, a major lacuna exists in terms of societal relations between the EU and the UK. Again, solid and healthy relationships exist through individual sectional affiliations into European umbrella bodies. Despite their critical importance and the unquestionable need to maintain and strengthen them, they are essentially reflections of our domestic sectional interest silos in many respects.

## The EU-UK Follow-up Committee

This was one of the reasons for the establishment early last year of the EU-UK Follow-up Committee by the European Economic and Social Committee (EESC).

This body is comprised of four representatives from each of the three groups on the EESC: employers, workers, and the civil society organisations group.

The Committee's overarching objectives are the following:

- Building and fostering strong relations with key actors of the EU-UK relations, most importantly re-building bridges with UK civil society organisations, using outreach and strong communication.
- Liaising with the main EU institutions (European Commission, European Parliament, European Council) as well as with UK institutional actors (UK Mission in Brussels, Houses of Parliament, devolved administrations).
- Monitoring the implementation of the most relevant EU-UK agreements, notably the EU-UK Withdrawal Agreement and the *Ireland/Northern Ireland Protocol*.
- Monitoring other agreements and potential areas of cooperation.
- Monitoring any element of the new EU-UK relationship with particular importance for civil society.
- Centralising EESC feedback on relevant EU-UK issues.

The TCA, which includes minimal reference to civil society participation, does provide for Domestic Advisory Groups (DAGs) in both entities. The primary purpose of these bodies is to advise the principals on the full implementation of the *Agreement*. They, and a Civil Society Forum (CSF), have now been established. Uniquely, their remit extends over the entire *Agreement* as distinct from being restricted simply to trade and sustainable development, which is the case with all other EU trade agreements. The EESC administers the EU DAG, and the EU-UK Follow-up Committee works in parallel with it and in a complementary fashion.

We have developed a proposal to formulate an information report examining, two years in, the state of implementation of the EU-UK Withdrawal Agreement and *Ireland/Northern Ireland Protocol*. It is envisaged that it will be before the January 2023 Plenary Session of the EESC for consideration. Following adoption, it would be forwarded to the Commission, the Council, the European Parliament, the European External Action Service (EEAS), the member state governments and other stakeholders. It would also feed into the EU-UK dialogue. Later it could form the basis for an EESC 'own initiative' opinion to set policy in the medium term.

The proposition is due to be considered by the EESC Bureau on 20 September. If approved, we plan to embark on a mission to each UK nation's capital in the Autumn to meet directly with representatives of organised civil society and political leaders to gauge opinion and assess experience on the ground. We are heavily invested in conducting a thorough analysis and hope for a comprehensive and extensive engagement.

## Deepening representative democracy

The conflict over the *Ireland/Northern Ireland Protocol* represents a diplomacy failure — of democratic engagement. The fact that it festers between two traditional liberal democratic allies who are 'partners' in a no tariffs, no quota, trade and cooperation agreement traversing the largest consumer market on the planet reflects the broader problem affecting democracy globally.

Given the awful consequences from every perspective of allowing the row to pivot over the edge, organised civil society must strive to influence a constructive outcome. Doing so requires intervention beyond mere silo-oriented individual interest group lobbying. Intervening as a united, collective voice equipped with expertly honed compromise proposals for workable solutions would multiply our impact. The same principle applies to an entire range of issues in the medium term, including accomplishing a just transition in responding to the existential challenge of climate change.

The need for developing coherent forums to coordinate and optimise the impact of organised civil society interventions on critical issues applies equally in all the jurisdictions constituting the North-South and East-West paradigm. All of us share the common characteristic of the absence of a developed structured social dialogue, much less social partnership. The concept advocated here would not overcome the deficit but would enhance the impact of organised civil society. It would also provide a solid platform for North-South and East-West interfaces. These constructs should share a similar orientation to that of the very worthy Shared Island unit, conscious of promoting 'good neighbourliness' for the practical benefit of all and in a manner which would not offend either side of the 'constitutional question' chasm but without precluding debate. The concept would also serve as a vehicle to facilitate engagement with organised civil society parallels in Europe, such as the EESC. In the fullness of time, progressive governments might be convinced to take it further and participate.

Even more importantly, developing a tool to optimise the impact of organised civil society in furtherance of practical issues affecting people's lives would also serve to deepen and strengthen representative democracy, notably in our region during a period when it is under serious threat globally.



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ISSN: 2054-572X