

Response to Public Consultation

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# Overcoming obstacles in border regions



The Centre for  
Cross Border Studies

Report compiled by

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December 2015

Transparency Register ID No827761319411-28

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### About The Centre for Cross Border Studies

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

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

### Introduction

The Centre for Cross Border Studies (CCBS) welcomes this opportunity to contribute to the European Commission's Directorate-General for Regional and Urban Policy (DG REGIO) consultation and review of obstacles to cross-border cooperation. The Centre for Cross Border Studies is a member of the Transfrontier Euro Institute Network (TEIN) that has also made a submission to this consultation. The TEIN response addresses obstacles to cross-border cooperation in the EU context, and CCBS will not repeat the points made there. We endorse the points made by TEIN about the main obstacles to cross-border cooperation, the types of obstacles and the need for capacity-building to support cross-border cooperation at different levels of cross-border integration. Likewise, we support the suggestions made by TEIN about the need for specialised training for cross-border cooperation.

We will concentrate our response, therefore, on the Ireland-Northern Ireland border. This border region, while sharing many of the features of other European borders also has its own distinctive features that present particular challenges to cross-border cooperation and integration.

- The Northern Ireland-Ireland border is the only land border between the UK and another member state. This has constrained cross-border cooperation both because the UK remains out of the Eurozone and also because of UK 'opt-outs'. At a local level, there are areas such as Community Transport in which cross-border cooperation is restricted because standards or regulations in Northern Ireland have not been harmonised with those in the rest of the EU, whereas the Republic of Ireland has adopted the EU standards.

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<sup>1</sup> For further information, please see [www.crossborder.ie](http://www.crossborder.ie).

Cross-border cooperation is complicated by the fact that the UK remains outside the Eurozone, while Ireland has opted to be inside. While this is not an obstacle unique to this border region, it does have a significant impact. The UK is the largest trading partner of the Republic of Ireland (ROI) accounting for 17% of its exports. A recent report assessing the impact of a UK exit from the EU notes that cross-border trade and economic cooperation have increased since the 1998 Agreement and that the relationship of Northern Ireland to the rest of the EU has been strengthened. The Republic of Ireland has an increasingly important market for output of the Northern Ireland economy. In the years 1995 to 2013, cross-border trade has increased from €1.645m to €3.048m.<sup>2</sup> Beyond the additional burdens to cross-border trade, the existence of currency differentials has also at times been an additional burden for those administering the ETC programmes and their beneficiaries; particularly for civil society cross-border partnerships on the wrong side of currency fluctuations.

The protocol that governs the UK's participation in EU Justice and Home Affairs measures has constrained cross-border cooperation. Northern Ireland civil society organisations and statutory bodies were therefore excluded from the Daphne Programme and the Fundamental Rights and Citizenship Programme 2007-2013; and therefore participation in cross-border/transnational partnerships and access to grants. While all member states are eligible for the Rights, Equality and Citizenship Programme 2014-2020, the UK is still not participating in the Justice Programme. This means, for example, that the Probation Service in the Republic of Ireland can be part of EU partnerships funded through the Justice Programme, the Probation Board of Northern Ireland can benefit only vicariously through the goodwill of their southern colleagues who share the learning they are gaining from EU partners.

Of course, there remains much uncertainty about whether the UK will still be in the EU when the next round of cross-border programmes are agreed, or whether the negotiations between the UK and other member states will result in new opt-outs and derogations. As John Bruton, former Irish Taoiseach (Prime Minister) and former EU Ambassador to the United States, said recently,

“The UK already has special arrangements on the euro, on passport controls, and on Justice and Home Affairs. The more exemptions it gets, the more exemptions it seems to want. Will this renegotiation/referendum process result in a full and final settlement, or will it just be an instalment?”<sup>3</sup>

Could the UK decide – as was strongly rumoured at the time of the negotiations of the EU Budget in 2014 – to opt-out from other EU programmes such as the ETCs, which are of greater benefit to, and more popular in, the devolved regions of the UK than southern England?

- The Irish Border has divided the island of Ireland since 1921. Since then, there have been recurring episodes of political violence related to the sovereignty of what is now Northern Ireland, a devolved region of the UK. There remains a strong current of opinion among the political classes and sections of the Northern electorate that inherently distrusts cross-border cooperation; fearing that it is the ‘slippery slope’ to a united Ireland.

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<sup>2</sup> The Open University Business School, The Consequences for the Northern Ireland Economy from a United Kingdom Exit from the European Union. Briefing Note: CETI/OU, 2/15, Northern Ireland Assembly, March 2015.

<sup>3</sup> Speech by John Bruton, former Taoiseach and former EU Ambassador to the United States, at a seminar on “Free Movement and Labour Mobility in the European Union” organised by the Institute of European Democrats, in NUI Maynooth, Friday 13 November 2015.

As we enter 2016, it is forty-six years since the start of the Irish “Troubles” – that is, the most recent and protracted episode of armed political conflict on the island – and 18 years from the 1998 Agreement that brought this phase of armed conflict to an end. Over the past two decades, cross-border cooperation, peacebuilding and governance have been intrinsically linked. Cross-border cooperation is an integral element of the 1998 Agreement – an internationally-recognised treaty between the UK and Ireland. Six cross-border implementation bodies were established to operate on an all-island basis under the overall policy direction of the North South Ministerial Council: Waterways Ireland; the Food Safety Promotion Board; InterTradelreland; the Special EU Programmes Body: The Language Body / An Foras Teanga / North-South Body o Leid (consisting of two -- Foras na Gaeilge and Tha Boord o Ulster-Scotch; and the Foyle, Carlingford and Irish Lights Commission (consisting of two Agencies --The Loughs Agency and Lights Agency). (The Centre for Cross Border Studies has for some time been seeking funding to undertake a study of these bodies, comparing them to other examples of institutionalised cross-border governance, such as EGTCs and the Treaty of Valencia.

It is necessary to understand the relevance of the Border to the conflict; and the impact of the conflict on social, economic and cultural life not only in Northern Ireland where most of the conflict-related violence occurred, but on the island as a whole. As an evaluation of the cross-border measures of the Peace II Programme (2000-2006)<sup>4</sup> points out,

[T]he Border can be seen both as a major contributory factor in the conflict and as a manifestation of the conflict itself. The border permeates the conflict and the relationship with Ireland is the ingredient which largely determines how the two communities in Northern Ireland relate to each other.<sup>5</sup>

While the significance of the border has changed over time, it has nevertheless been a core issue in the conflict and will have a central role to play in any sustainable peace process.<sup>6</sup> For most of the conflict, the Irish Border was the most militarised area of the European Union and the most militarised part of Europe west of the Berlin Wall and the Iron Curtain. During the years of conflict the border became the focal point for securitisation between the British and Irish states.<sup>7</sup>

The border has constrained economic activity. It has exacerbated fundamental problems of economic disadvantage and rurality; distorted and disrupted transport networks, adversely affecting the area’s competitiveness as a business location and held back the growth of new firms. The border has made the region peripheral to the national education and training system, leaving it with a lack of high level skills.<sup>8</sup> A socio-economic analysis that is included in the INTERREG IIIA Operational Programme notes that the economic isolationist policies after Partition have had continuing impacts including poor economic performance; planning and infrastructure gaps; distortion of labour markets and lack of mobility.<sup>9</sup> The INTERREG IVA Operational Programme, notes that while “the

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<sup>4</sup> The EU Programme for Peace & Reconciliation in Northern Ireland and the Border Region of Ireland is a unique programme under the Structural Funds aiming at reinforcing progress towards a peaceful and stable society and promoting reconciliation in the region.

<sup>5</sup> Channel Research, *Peacebuilding and Reconciliation Across the Border: Evaluation of the Impact of the Cross Border Measures 5.3 and 5.4 of the European Union Peace and Reconciliation Programme 2000-2006*, p. 62

<sup>6</sup> *Ibid.*, p. 2.

<sup>7</sup> Hayward, “The EU and the transformation of the Irish border”, *op. cit.*, p. 33

<sup>8</sup> INTERREG IIIA Operational Programme for Ireland-Northern Ireland, p 26.

<sup>9</sup> INTERREG IIIA Operational Programme for Ireland-Northern Ireland, p. 2.,

ending of systematic large-scale paramilitary violence has removed most of the perception of danger associated with crossing the border ... much sensitivity to crossing the border still remains, particularly for the Protestant Community in Northern Ireland and the Border Region.”<sup>10</sup>

## Weak institutionalisation of cross-border cooperation

Although cross-border cooperation continues to be fragmented and weakly institutionalised, it has made a very significant contribution to underpinning the peace process and supporting political stability and economic regeneration, particularly in the border region. The EU Peace and INTERREG programmes (both of which are now European Territorial Cooperation Programmes or ETCs) that have made the largest financial contribution to normalising cross-border cooperation networks among local authorities, public agencies and community and voluntary organisations.<sup>11</sup>

Despite the massive investment of EU Structural Funds (€2,945 million from PEACE and INTERREG alone since 1995), the Irish cross-border region continues to be characterised by multiple disadvantages relative to the rest of the island and the UK, and continues to lag behind the EU average on a number of social and economic indicators. This multi-faceted disadvantage has been detailed in the social and economic analysis of the INTERREG Operational Programme and other key policy documents.<sup>12</sup> The economic crisis that devastated the Irish economy further exacerbated the underlying weaknesses of the Irish cross-border region.

The core problems of the cross-border region have been summarised in the Impact Assessment Toolkit for Cross-Border Cooperation published in October 2011 by the Centre for Cross Border Studies.<sup>13</sup> Core economic, social and economic weaknesses<sup>14</sup> include a low-value economic sector; high unemployment levels and a poorly qualified workforce; low business formation rates; lower tourism levels; poor educational performance; under-developed science, technology and innovation; areas of significant poverty and deprivation; health inequalities; the legacy of the conflict in Northern Ireland; environmental problems; and numerous barriers to cross-border cooperation.

EU Cohesion Policy and objectives of Europe 2020 are not well or consistently integrated into public policies and practice in the cross-border region. Furthermore, cross-border cooperation among public bodies, and between public bodies and other sectors, is fragmented and weakly institutionalised.

Although not necessarily unique to this border region, there are numerous barriers to cross-border cooperation that continue to hamper social and economic development and inclusion. These include:

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<sup>10</sup> INTERREG IVA Operational Programme, pp. 33-34.

<sup>11</sup> For a more detailed discussion about the contribution of cross-border cooperation to peacebuilding, please see Ruth Taillon, “Cross-Border Cooperation and Peacebuilding in Ireland,” in the Journal of Cross Border Studies, Vol. 9, 2014.

<sup>12</sup> These include: *The European Sustainable Competitiveness Programme for Northern Ireland 2007-2013; the Peace II and Peace III operational Programmes; and the INTERREGIII and IVA Operational Programmes; the National Development Plan 2007-2013 National Investment Priorities (Ireland); Statistical Yearbook of Ireland, October 2010 – CSO; Regional Competitiveness Agendas - Border 2009 (Ireland); and the Evaluation of the Peace and Reconciliation Impact of the Cross Border Measures 5.3 and 5.4 of the Peace II Programme 2000-2006.*

<sup>13</sup> Ruth Taillon, Joachim Beck and Sebastian Rihm, *Impact Assessment Toolkit for Cross-Border Cooperation*, Centre for Cross Border Studies, 2011.

<sup>14</sup> For an up-to-date review of the region’s economic weaknesses in particular, see *Cross-Border Economic Renewal: Rethinking Regional Policy in Ireland*, by John Bradley and Michael Best (Centre for Cross Border Studies, 2012)

- separate and different policy approaches in key areas such as health, education and the economy;
- under-developed ‘soft infrastructure’ for cross-border ‘people to people’ cooperation and civic networks;
- currency and tax differentials and currency volatility;
- limited cross-border labour mobility and support for cross-border workers and students;
- persistent data gaps, with statistical databases in Ireland and Northern Ireland across a wide range of areas not compatible/comparable.

We would stress, however, that lack of capacity among cross-border actors – and potential cross-border actors – will continue to hamper progress on addressing those barriers related to completion of the single market and cross-border mobility for citizens. This has been the focus of the TEIN submission to the Review cited above. In respect of the Ireland-Northern Ireland border, the Centre for Cross Border Studies has identified the need to address lack of capacity to cooperate between public bodies and community-based agencies delivering services and between local authorities, public officials and elected representatives. Citizens, public officials and elected representatives to varying degrees lack awareness of EU Cohesion Policy, the Europe 2020 Strategy and other key EU regulations, and legislation.

Despite top-level policy imperatives, cross-border cooperation in the Irish cross-border region remains fragmented and weakly institutionalised. The results of this lack of cooperation include:

- Fragmentation of public service provision and unnecessary duplication of public services
- Inefficient use of public resources
- Lack of opportunities for joint economic development
- Learning from good practice not shared
- Limited ‘people to people’ cooperation
- Lack of evidence for effective policy making
- Unrealised potential for more frequent/diverse cross-border mobility.

## **Obstacles to cross-border mobility**

The Centre for Cross Border Studies has extensive experience in delivering a citizens’ information and advice service to support those on the island who cross the border to live, work or study. The Border People project provides practical information for people crossing the border to live, work, study or retire. It acts as a portal to a wide range of (single jurisdiction) information sources, the most popular of which are in the areas of social security, taxation, welfare benefits, healthcare, pensions, and motoring. The Border People project has identified a number of cross-border obstacles in Ireland/Northern Ireland that are comparable to the experiences of other EU border regions. These are discussed in detail in a companion document to this submission (*Centre for Cross Border Studies /Border People project response to the Public Consultation – Overcoming obstacles with border regions – Dec 2015*) and will not, therefore be elaborated here. The main barriers to cross-border mobility identified by the Border People project can be summarised as:

- Lack of awareness
- Lack of locally relevant information
- Cross-border social security
- Cross-border taxation
- Recognition of qualifications
- Limited access to trained advisors
- Lack of cross-border data
- Cultural differences and mistrust
- Language barriers

It is worth reiterating here, however, the importance of advice and information services such as the Border People project and similar projects in other jurisdictions. Accurate advice and information enables citizens to negotiate their way around many of the obstacles that affect them. In turn, policy-makers can be made aware of issues that should be addressed at national or EU level, and if possible act to eliminate these barriers.

***In the following section of our submission, we draw upon the Centre’s practical work in support of cross-border cooperation on the island and research undertaken by the Centre for Cross Border Studies and others. These provide evidence of the wide range of cross-border obstacles that persist and which have limited social and economic development and cohesion on the island. It is beyond the scope of this document, however, to confirm whether some of the obstacles identified have since been resolved. We have also, in some cases, highlighted good practice or innovative approaches to addressing these obstacles.***

## **Incompatible data and gaps in data**

A research study commissioned by the Centre for Cross Border Studies and published in 2011 exploring the current economic performance and future development potential of the economy of the cross-border region comments that, “The specific form of the peripherality of the Irish cross-border region has many causes, some of which are due to geography (‘natural’ barriers), some to economic circumstances (‘policy’ barriers), and some have deep roots in history (psychological or cultural barriers).”<sup>15</sup> In their report, John Bradley and Michael Best discuss in some depth the ‘cross-border research challenge,’ which includes, in the first instance, the geographical definition of the border region, but also issues of analytical methodology. They explain however, that while an objective of the research is to describe the characteristics of the cross-border region, and to examine the ways in which this region may differ from other regions of the island economy,

“we are very heavily constrained by the availability of published data. For example, while it was possible to obtain sectoral data for the Northern economy as a whole at the one-digit SIC level, and for Northern Ireland at the two-digit SIC level, it is not yet possible to obtain these data for any of the Northern Ireland sub-regions. Nor is it

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<sup>15</sup> John Bradley and Michael Best, Cross-Border Economic Renewal: Rethinking Regional Policy in Ireland, The Centre for Cross Border Studies, 2011, p. 55.

possible to obtain associated data of the kind that is freely published by the CSO in the South in, for example, their annual Census of Industrial Production. Indeed, the futile saga of our quest for UK regional, as well as Northern sub-regional data, was the most disappointing aspect of our research project.”<sup>16</sup>

They go on to comment, in respect of the Northern Ireland sub-regional economies that, “the data difficulties are extremely challenging, and are made even more difficult by a confusing institutional situation with respect to responsibilities for preparing Northern regional and sub-regional data and an even more confusing approach by the UK-based Office of National Statistics to the release of such data into the public domain for the purposes of academic research.”<sup>17</sup>

The interest in comparative cross-border data sets at the regional level is similarly illustrated in a 2011 study by the economist Pat McArdle commissioned by Louth County Council, Newry and Mourne District Council and with the two Chambers of Commerce in Newry and Dundalk. Mr McArdle was asked to “frame the clear imperatives and policy recommendations necessary to establish a Cross Border Zone that will ensure the Zone enjoys accelerated growth and engineers economic catch-up in a sustainable manner across the border, all to our mutual advantage”. A particular focus of the report was the level of deprivation in the Newry-Dundalk Twin City sub-region in comparison to other regions. In his recommendations, Mr McArdle emphasized the need to “improve regional and cross-border statistics.”

In its response to a *Consultation on Spatial Strategies on the Island of Ireland - Framework for Collaboration*, the cross-border health and social care services partnership, Cooperation and Working Together, commented that there is a need for more detailed and consistent information at a local level to enable better joint working and a more comprehensive and co-ordinated approach to integrating datasets in a range of areas, particularly population and other key determinants of health including education, employment, housing, environment, access to health services and lifestyle choices. CAWT said it would welcome the development of cross-border datasets to facilitate better monitoring and service planning on a cross-border and all-island basis.

Previous research by the All-Island Research Observatory (AIRO) notes that only one-third of the census data between Northern Ireland and the Republic of Ireland is compatible. Another third can be made comparable through processes of disaggregation and recoding, but it is not an easy or straightforward task. There are many difficulties that prevent an easy ‘marrying’ of datasets such as: data availability, sourcing, question formulation and what is being measured, data units and categories, synchronicity, data continuity, data clarity and context. These issues are not unique to the Irish cross-border region and can be found in other EU cross-border programmes seeking data to plan and measure the impact of their initiatives. The solutions to poor interoperability are complex and technical and require advanced specialist analysis.<sup>18</sup> Whilst Northern Ireland and Ireland have a plethora of available datasets, the compatibility and comparability of such data is still weak. Moreover, it is not only a question of having the data available to government departments, local

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<sup>16</sup> Ibid., p. 95.

<sup>17</sup> Ibid., p. 96.

<sup>18</sup> Ruth Taillon, *Ireland Northern Ireland Cross Border Cooperation Observatory INICCO-2 Post-Project Evaluation*, p. 50. At <http://www.crossborder.ie>.

authorities and businesses: it is also an issue of making the data *accessible* to a broad and increasingly well-informed public, and to those using it to improve service planning and delivery to that public. It is a matter of helping both the providers and users of public services to understand the increasing importance of data in all future decisions.

***Some of these data gaps have been effectively addressed by projects undertaken as part of the Ireland Northern Ireland Cross-Border Cooperation Observatory project (INICCO-1 and INICCO-2) delivered in partnership by Centre for Cross Border Studies and the International Centre for Local and Regional Development with INTERREG IVA funding.***

- The ***All-Island Deprivation Index*** uses census data from both jurisdictions to create a single index to enable to cross-comparison of social deprivation (which has to date has been impossible given the incompatibility of existing indexes in the two jurisdictions). The *All Island Deprivation Index* involved development of datasets related to population, education, households, unemployment, socio-economic group and rooms per household; with the results embedded within the on-line digital atlas. The *All-Island Deprivation Index* has provided an important advancement in the creation and testing of an acceptable methodology for the mapping of social deprivation and structural weakness of local areas on a cross-border basis.

<http://airo.maynoothuniversity.ie/mapping-resources/airo-census-mapping/national-viewers/all-island-deprivation-index>

Because the *All Island Deprivation Index* uses data from the 2011 census, which was carried out concurrently in most EU countries, the methodology used is transferable to other EU member states. Unfortunately, it has not yet received widespread acceptance from public bodies in Northern Ireland, which continue to use the Noble Index, a Northern Ireland-specific deprivation measure.

- The ***Online All-Island Digital Atlas / hard-copy All-Island Atlas***: The AIRO project team first concentrated on the development of a comparative dataset of cross-border census indicators. This work involved the collation and re-classification of a wide variety of census information from both jurisdictions. All data was developed at the Small Area scale across the island – in total there are 23,025 geographical areas with comparable census information now available. On completion of the comparable census database, the AIRO team developed an interactive mapping atlas to provide free and easy access to all collated indicators. <http://airomaps.nuim.ie/allislandatlas>

The hard-copy *All-Island Atlas* complements the *online All-Island Atlas* and provides a critical layer of interpretation of the trends emerging from the census data thanks to the commentary by a range of experts from both jurisdictions on the island and beyond. The Atlas offers compelling insights into the key trends on the island in relation to employment, migration, religion, health and education, amongst other thematic areas, setting these within the historical context of past census data. This attractive and well-illustrated publication appeals to a diverse range of people and organisations, and will further inform policy-makers and civil society through the comprehensive provision of relevant census information applicable to their common interests.

- **Emergency Services Mapping Tool:** The mapping tool provides for the first time a single comprehensive source of information on the various assets available to emergency planners on a cross-border basis. The All-Island Research Observatory (AIRO), in partnership with the Cross Border Emergency Management Working Group (CBEMWG), containing representatives from the emergency services, government departments and public agencies, developed a 'proof of concept' GIS-based mapping tool of emergency planning resources including fire stations, evacuation centres, sand bag locations and local authority offices. In addition, the tool contains information on the facilities and equipment at these locations, identifies a number of Seveso/COMAH sites where detailed risk assessment and associated emergency plans are in operation, and includes an up-to-date emergency contact directory for the cross-border region. The tool provides a solid platform from which the CBEMWG can develop a more powerful GIS-based system, integrating additional datasets and analytic capabilities relevant to their ongoing work. Indeed, much of the most difficult to access data has already been collated thanks to the pilot initiative, especially the information held on a more fragmented basis in the border counties in Ireland, in comparison with the centrally available information in Northern Ireland. The tool is password protected due to the sensitivity of some of the information, and is currently only available to members of the CBEMWG.
- *An Island of Ireland Housing Monitoring Tool* provides an interactive mapping and querying tool for housing market indicators <http://airo.maynoothuniversity.ie/mapping-resources/airo-research-themes/housing/dcc-housing-monitoring-tool>
- *An All-Island Accessibility Mapping Tool* maps levels of access to key services and infrastructure across the island in areas such as education, health, transport and emergency services. <http://airo.maynoothuniversity.ie/mapping-resources/airo-census-mapping/national-viewers/drive-time-accessibility-mapping>

A key finding of a 2009 report for InterTradeIreland on Regulatory Barriers to Cross-Border Trade and Business<sup>19</sup> (see below) also notes the considerable difficulty that the researchers (PWC corporate legal team) had in identifying and mapping the equivalent legislation North and South. It was necessary to use a variety of sources, mirroring the process which businesses would have to undertake in exploring the obligations on them in the other jurisdiction. It is likely that SMEs in particular would have difficulty in distinguishing the comparable legislation

## Differences in health systems: structures and legislation

On the island of Ireland there are two individual health systems with significant differences in health policy, structures, coverage and funding providing service for a combined population of just over 6.5 million people. Each system is led by separate structures and legislation and shaped by different experience and drivers. The Republic of Ireland provides a mix of public and private health care with patients having to pay for some treatments provided free north of the border. For example, there are charges for GP appointments although around a third of the population are entitled to free

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<sup>19</sup> InterTradeIreland, 'Regulatory Barriers to Cross-Border Trade and Business', 2009 available at <http://www.intertradeireland.com/media/intertradeirelandcom/researchandstatistics/publications/tradeandbusinessdevelopment/RegulatoryBarrierstoCross-BorderTradeandBusiness.pdf> (accessed 4 Nov 15)

health care (income-related). Approximately half of the population in the South are privately insured. By contrast, Northern Ireland operates a NHS universal public healthcare coverage system with just over 10% of the population having private health insurance. There are many other differences including the Southern policy of co-locating private and public hospitals, the different funding arrangements, the integration of social services and health in Northern Ireland, and the much larger percentage of nursing staff in the South.<sup>20</sup>

A report on the potential of cross-border hospital planning on the island of Ireland published by the Centre for Cross Border Studies in 2011 with INTERREG IVA funding, identified significant barriers to the development of cross-border acute healthcare services. The researchers concluded that many of these barriers could be 'worked around', but that legislative, administrative and cultural changes are required for long-term solutions to these obstacles.<sup>21</sup> Some of these are specific to the border between Northern Ireland and the Republic of Ireland, such as differences in legislation and healthcare funding between the two jurisdictions, and some apply to any border region's healthcare delivery structures, such as quality assurance and care pathways.

Many if not all of these challenges have been encountered and discussed in previous reports, such as the 2001 CCBS report on cross-border healthcare co-operation<sup>22</sup>, but they are still very relevant, still pose obstacles to the development of cross-border acute services, and still require to be addressed if significant progress on this issue is to be made. If anything, it is testament to the intractability of many of these problems that many years on they remain in place, are still discussed as barriers to co-operation by many stakeholders, and take considerable time and energy to be worked through by those implementing cross-border initiatives.

The report provides a detailed examination of potential inhibitors and barriers and also provide suggestions for how these barriers may be overcome. In many cases, however, solutions to the barriers identified have been developed on a case-by-case basis – working around the barrier, rather than removing it.<sup>23</sup>

- **Consistency regarding professional standards:** there are significant differences between North and South in terms of professional standards and guidelines. These differences can create difficulties if clinicians are expected to operate on both sides of the border, or if services are provided in one jurisdiction to patients from the other. The report notes the success that CAWT (Cooperation and Working Together) has had on an individual project basis, specific to that specialty or procedure. (See below.)
- **Service Definitions, Roles and Grades:** some differences exist between North and South regarding the definition of certain clinical procedures or services, and the allocation of responsibilities for the performance of these procedures. Where roles and service delivery can

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<sup>20</sup> Patricia Clarke, 'Mental Health: The Case for a Cross-Jurisdictional Approach Combining Policy and Research Efforts on the Island of Ireland', *Centre for Cross Border Studies*, 2009 available at <http://www.crossborder.ie/pubs/BI-02099.pdf> (accessed 4 Nov 15)

<sup>21</sup> Shane McQuillan and Vanya Sargent, *Unlocking the Potential of Cross-Border Hospital Planning on the Island of Ireland: A Prototype Modelling Framework*, The Centre for Cross Border Studies, 2011, pp. 25-31 and appendix C, pp. 140-144. <http://www.crossborder.ie/pubs/2011-cross-border-health.pdf>

<sup>22</sup> Cross-border Co-operation in Health Services in Ireland, Jamison et al, CCBS March 2001

<sup>23</sup> McQuillan and Sargent, *op. cit.*, p. 140.

be somewhat correlated, another issue is the grade at which the clinicians are practising. There are differences in how staff progress through grades between the two jurisdictions, making defining equivalent positions difficult. The increment policy in RoI differs from the competency-based structure in NI. This also has an effect on salary scales, which already differ considerably given the differences in cost of living and the benchmarking and other agreements that led to public sector salary increases in RoI in recent years.

- **Accreditation/Regulatory Issues:** different systems for the professional accreditation of medical, nursing and allied health professional staff, and different regulatory regimes, could create significant challenges with regard to clinicians practising outside their 'home' jurisdiction.

There are a number of issues that the European Directive 2005/36/EC on the mutual recognition of professional qualifications does not address:

- It does not provide a framework for healthcare staff to move back and forth across the border while remaining under the registration framework of only one jurisdiction.
- its provisions relate to EU/EEA citizens, not merely to qualifications awarded or recognised by or registrations in EU/EEA countries. Given the high ratio of non-EU-citizen clinicians, doctors especially, working in the RoI health system particularly, there are additional barriers in registering or certifying them to work in the NI system.
- Difficulties may arise in the potential to allow practitioners registered in one jurisdiction to practise without re-registration in the other. For example, the lack of a formal register as yet for allied health professionals in RoI is likely to create problems as it is consequently difficult to ensure equivalence in registration procedures and to inspire confidence in allowing such AHPs to practise in NI.
- **Doctors Undertaking Higher Specialist Training:** The withdrawal of mutual recognition by the UK Royal Colleges of one part of the admission examinations to the Royal College of Physicians of Ireland (RCPI) creates problems in accessing training rotations for certain specialties for RoI doctors within the UK, including Northern Ireland.
- **Legal and Indemnity Issues:** On both sides of the border, healthcare professionals are indemnified by the health authorities on the basis of their registration and/or certification or accreditation in their particular field. If such registration or accreditation is not easily obtainable in the other jurisdiction, this creates significant problems in maintaining professional indemnity for such healthcare professionals. It is impossible to deliver healthcare services in the absence of clear indemnity of the clinicians involved.
- **Data Standards and Data Transfer:** difficulties exist regarding data and information, both at the level of individual patients or cases, and at macro level, e.g. the sharing or holding of patient information between the two jurisdictions, both in terms of data protection legislation and the physical and technical issues associated with sharing data. This is also closely connected with the matter of service definitions, which have a significant bearing upon the ability of the two health systems to gather, analyse and report macro level statistics on such issues as disease prevalence, procedures carried out, treatment outcomes, etc.

- **Costs, Funding and Finance:** Perhaps the most difficult obstacles derive from funding and finance differences between the two systems in terms of eligibility for free treatment, and the existence in RoI of the medical card scheme operating alongside private health insurance arrangements as well as the relatively high cost of medical treatment in RoI.

In addition to these administrative and legal barriers, McQuillan and Sargent note that a key issue is “the perceived lack of support at the top level”. They report that, “The commonly held belief among stakeholders at every level is in the absence of a policy imperative supporting and prioritising cross-border care initiatives, it is and will continue to be extremely difficult to obtain funding approval for the development of hospital or other healthcare services on a cross-border basis.”<sup>24</sup> They refer to the suppression of the feasibility study commissioned by the two Departments of Health (subsequently this study was published) and the postponement of the radiotherapy service centre designed to provide services to patients from both sides of the border. (This service will commence in 2016). The authors comment that,

Overcoming such high-level opposition or simply lack of interest is a difficult prospect. If key authority figures do not see a value in developing a co-ordinated approach at a strategic level, it undermines all attempts to establish cross-border initiatives further down the chain. However, as the various successes at a micro level have demonstrated, a lack of political support or drive does not automatically spell failure for such projects. Indeed, the successful development and implementation of projects at local level and the gradual roll-out of such initiatives across more sites and specialties can inform later political and strategy-making decisions. They are an advertisement for the potential of cross-border services to deliver healthcare in a joined-up way to serve the needs of the population effectively, and can act as a lever to drive a more strategy-based policy of collaboration in the future.<sup>25</sup>

## **Protocols developed to facilitate health professionals working cross-border and the establishment of cross border services<sup>26</sup>**

We understand that Cooperation and Working Together (CAWT) are making their own submission to this consultation. The Centre for Cross Border Studies wishes to highlight here some examples where CAWT has been successful in developing – with support from INTERREG – a number of creative cross-border solutions to obstacles to cross-border health and social care services and initiatives. CAWT explain that,

Frequently health and social care staff, when tasked with establishing a cross border service, have ‘worked around’ the obstacles presented by the existence of the border to deliver effective services to patients and clients. However, there have been a number of significant, seminal projects in recent years that have had to address some significant barriers in order for services to be delivered and which have provided a template for the future development of cross border services. Some of these are described below. In general, it is not possible to have one universal EU approach to cross border health and

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<sup>24</sup> Ibid., p. 25.

<sup>25</sup> Ibid, p. 26.

<sup>26</sup> Information here provided by CAWT in an email to R. Taillon, 21.12.2015.

social care. However, the CAWT experience in Ireland/Northern Ireland demonstrates that for cross border health and social care activities and projects to be effective, a number of general conditions must be present:

- Having access to EU structural funds is a key motivator to engage in cross border activity, particularly when national budgets are restricted.
- Dedicated administrative and project management support.
- Strong engagement and consultation with all the stakeholders as early as possible.
- High level support from Health Departments, Government and stakeholders.
- Projects/services clearly linked to health and social care policies and priorities.
- Willingness by all partners to overcome the barriers, both anticipated and unexpected, so that the service/project can be implemented as planned.
- People involved in cross border work need to be prepared to work 'outside of their comfort zone' and establish how they will engage to implement their project/service as quite often, there is no 'road map' to rely upon.
- A clear vision and plan for the project/service with mutually agreed outcomes and targets at the outset.

**Cross border GP Out of Hours Service:** The GP Out of Hours service, which operates in both Northern Ireland and the Republic of Ireland, enables people to access a doctor for urgent conditions outside of normal GP surgery opening hours. The cross border GP Out of Hours services have continued after the pilot phase (funded under INTERREG IIIA) ended and their longer-term viability now rests with the Departments of Health. Currently a total of 20 to 30 patients per month are accessing cross border GP out of hours services established by this project.

The year prior to the launch of the pilots was spent tackling the barriers and difficulties to enable the pilots to commence. Advance work undertaken by the Project Board included:

- Negotiating with the Departments of Health and the professional and regulatory bodies to make temporary changes to the legislation to enable GPs to participate in this cross border pilot service. This resulted in:
  - Agreement by the Department of Health (NI) to amend the Medical Services Performers List regulations to enable GPs from RoI to consult with NHS patients in Northern Ireland.
  - Agreement by General Medical Council (GMC) to accept legal advice secured by CAWT which stated that there was no requirement for RoI GPs to register with the GMC in order to treat NHS patients in Northern Ireland.
  - Agreement of independent medical indemnity organisations to allow their members to treat patients from the opposite jurisdiction.

Protocols were established for every single aspect of the cross border GP Out of Hours service including:

- issuing of prescriptions;
- processing of payments;

- dealing with patient records;
- which ambulance will respond in respect of cross border transfers;
- triaging of patients; and,
- dealing with other aspects such as mental health and child protection and acute hospital admission.

All of these issues were considered in a painstaking and thorough process of engagement with a range of stakeholders. A guidance manual was developed for participating call centre staff based in GP Out of Hours Services. A communications plan was devised and implemented to ensure a high level of awareness of the establishment of the pilots and to maintain their profile with key audiences.

The cross border GP out of hours pilot project was independently evaluated in 2008 by the Centre for Cross Border Studies. This evaluation report<sup>27</sup> described the pilot project as a model that could be adopted by others, noting that,

preparing and implementing the cross border GP Out of Hours project has taken considerable energy, and openness to embrace new working practices from CAWT health service personnel, service providers, health department officials and professional bodies on both sides of the border.....CAWT has made major progress in overcoming professional, legislative, technical, pharmacy, financial, secondary services and social care issues to enable the pilot project to be established.

**CAWT Workforce Mobility Project:** The overall objective of the project, originally funded under INTERREG IIIA, was to identify obstacles to the development of cross border services and seek to find practical solutions which would enable staff to work on a cross border basis between Northern Ireland and Republic of Ireland.

Specific project objectives were to:

- Encourage the synchronisation of registration arrangements between the professional regulatory bodies in both jurisdictions.
- Examine conditions of employment for health service staff in both jurisdictions.
- Proactively support the linkages between professional registration and regulation bodies with regard to the mutual recognition of health and social care qualifications.

There were a number of positive meetings with professional and regulatory bodies which resulted in agreements that removed or minimised obstacles to cross border workforce mobility. Outputs of these meetings included work within the Cross Border GP Out of Hours Project (as described above). Other key outputs include:

Emergency Planning: Agreement from professional & regulatory bodies\* for their registrants / members to provide services in the opposite jurisdiction in the event of a Major Incident whilst still

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<sup>27</sup> Centre for Cross Border Studies, Independent Evaluation of CAWT Cross-Border GP Out-of-Hours pilot project. Final Report, Centre for Cross Border Studies, 2008.  
<http://www.cawt.com/Site/11/Documents/Publications/PCCC/GPOOH/GPOOHEvaluationReport.pdf>

being accountable to them. The agreement also acknowledges that professionals from the opposite jurisdiction can cross the border to treat patients without prior registration with local regulatory bodies. In the event of a Major Incident occurring, health service staff are now covered by their professional bodies to respond, regardless of the jurisdiction in which they are registered.

*\*GMC, Medical Council of Ireland (IMC), An Bord Altranais, Health Professions Council (UK), Irish Society of Chartered Physiotherapists, Irish Institute of Radiographers and the Academy of Medical Laboratory Scientists*

**Indemnity:** An indemnity reciprocal agreement was developed with involvement of both Departments of Health and the State Claims Agency in RoI which allows health and social care employees to work in both jurisdictions within a range of contexts described within the agreement. The agreement indicates clearly where liability lies.

**GP Registrar Exchange Programme:** This programme provided GP Registrars with first-hand experience of primary health care delivery in another jurisdiction with a view to managing aspects of their own systems more efficiently. Agreement from the GMC and IMC allowed GP Registrars to participate in practical training in the opposite jurisdiction for 1 week per year. Agreement from independent medical indemnity organisations covered GP Registrars to attend 1 week practical training in the opposite jurisdiction.

**Cross Border Working Group in Social Work & Social Care -** A working group comprising senior Social Work and Social Care representatives formalised existing arrangements and provided a structure to progress work on a collaborative basis. The key objective of the work was to reduce obstacles to cross border mobility for social work and social care staff while at the same time ensuring public protection. Some outputs included:

- Development of resource pack for Social Workers which provides information on social work practice in both jurisdictions;
- Mutual recognition of the social work qualification enabling automatic recognition of RoI qualification in the UK;
- Improved communications in the interests of public safety including protection of children and vulnerable adults; and
- Shared learning across a number of areas e.g. setting up systems for registration of social care staff.

The achievements of the overall Workforce Mobility Project have been further developed since the project completed. The current cross border indemnity agreement has been amended and approved by the DHSSPS and DFP in NI and with approval in RoI pending. On-going relations with a range of professional and regulatory bodies have been maintained and discussions are instigated as issues arise. *The significance of this project and its outputs is that these agreements are now in place to support future cross border service developments.* Progressing cross border mobility issues such as professional registration and indemnity is best achieved in the context of developing a specific service e.g. the cross border GP Out of Hours project and the Performers List issue.

**Cross border Ear, Nose and Throat (ENT) service** (part of the CAWT cross border Acute Hospitals Services project): With the support of EU INTERREG IVA funding, a successful cross border cross

border model for planning and managing a cross border hospital service, an ENT service<sup>28</sup> has been established in the border region of Ireland / Northern Ireland. This cross border collaboration has seen ENT waiting lists in the HSE Dublin North East area significantly reduced by facilitating ENT consultants from the Southern Trust in Northern Ireland to provide outpatients and day surgery to patients in the Republic of Ireland's Monaghan Hospital. It is also enabling HSE Dublin North East ENT patients to access inpatient care in the Southern Trust Hospitals (Daisy Hill and Craigavon Area Hospitals). Patients from both sides of the border are benefitting from the service. Northern Ireland based consultants are now providing a sustainable ENT service that goes beyond their 'normal' geographic boundaries, to a combined population from two jurisdictions.

To support the establishment of this cross border ENT service, nurses from Monaghan hospital engaged in observational training in the Southern Trust, with the approval of the Nursing and Midwifery Council (Northern Ireland) and An Bord Altranais (Irish Nursing Board). The two Southern Trust consultants, already registered with the General Medical Council in Northern Ireland, are now registered with the Irish Medical Council, which enables them to treat patients in the Republic of Ireland. Notably, the ENT services provided by this cross border project have been modified to keep pace with changing standards and are supported by a joint protocol developed by the ambulance services in the two jurisdictions for the management of emergencies. There has been sharing of capacity between hospitals during periods of pressure and the learnings arising from the project has been shared through conferences on day surgery.

The establishment of this cross border service has harmonised a range of processes and systems. Most importantly it has brought staff together from both jurisdictions who had not worked together previously. Additionally clinical information is being shared cross border with the desired outcome having been achieved: a sustainable cross border service that has seamlessly and smoothly transitioned from being an EU funded service to a mainstream service that is successfully managed across two jurisdictions.

The cross border ENT project commenced in early 2010 and EU funding concluded in December 2013. Plans for mainstream funding were negotiated at an early stage in the project's development. Both partners were committed to sustaining the cross border service beyond EU funding and have a Service Level Agreement in place. Consequently mainstream funding had been put in place to ensure the smooth, uninterrupted continuation of the service.

CAWT have offered the following comments on continuing legal and administrative obstacles to cross-border co-operation in health and social care:

In Ireland, North and South, there is a growing interest in cross-border/all-island Health and Social Care services co-operation where mutual advantage can be demonstrated. This was not always been the case in the past, reflecting both the complexity of health and social care services and the many barriers encountered in attempting to put cross-jurisdictional arrangements in place in a context where there is little development funding, entirely different systems for assessing eligibility and where each jurisdiction is exchequer-funded only to provide for its own population catchment. There have been several significant cross-border and all-Island initiatives over the past 20 years, with the

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<sup>28</sup> <http://www.cawt.com/default.aspx?CATID=4939&CID=31193>

early experience gained through local and regional pilot projects in the border area, building the confidence to put more permanent collaborative arrangements in place for certain services.

Patients access services for a variety of reasons. For example, patients from Northern Ireland may be referred as part of a formalised arrangement (Extra Contractual Referral) for specialist treatment e.g. paediatric cardiac surgery, or to reduce pressures on hospital waiting lists, or as part of a cross-border arrangement stemming from the work of CAWT. Similarly, patients from the Republic of Ireland may opt for treatment in Northern Ireland and access services via a range of routes such as referral by a GP or hospital consultant or as a private patient.

The cross-border patient mobility directive which came into force in both jurisdictions in 2014 provides a further stimulus for cross-border cooperation in health and social care as the two services are adjoined and thus more accessible to each other's citizens.

The funding support from the European Union's INTERREG IVA programme has accelerated progress in cross border health and social care between Ireland and Northern Ireland. Specifically, the Co-operation and Working Together (CAWT) Partnership provides a framework for health and social care professionals on both sides of the border to collaborate across a wide range of areas to support improved access to health services on a cross-border basis. CAWT has particular expertise in overcoming barriers to planning and establishing cross border health services and is uniquely placed to facilitate the cross border mobility of patients and professionals and to assist with the interoperability / compatibility of health information systems.

In their communication to CCBS, CAWT also offer the following comments on development of new cross border and all-Island services:

If further cross border joint working is to be facilitated, given the general policy direction noted in Transforming Your Care (NI) and Future Health (RoI) of the shift towards more care in the community and home, there is a need to consider aspects such as registration of clinical staff, including nursing, mutual recognition of qualifications and other governance issues.

As the new cross border Radiotherapy service in the Western Health and Social Care Trust (Altnagelvin Hospital) and the new all-Island Paediatric Cardiology service comes on stream, there will be a need to underpin these new services with clear cross-border governance protocols for all aspects of the service operation and patient pathway. This will be required at all levels: from the Acute Hospital care to the continuing community/home-based care and follow-up care. Also it is likely that new Acute Hospital and other cross border services and initiatives will emerge as the new INTERREG VA funding commences in 2016. Such services may require a longer lead in time than desirable due to the necessity of working through the issues / barriers before an actual cross border service commences.

One solution to the challenges in recruiting and retaining specialist staff could be for both services to collaborate on a cross border basis. This may require the joint (cross border) appointment of staff and would require issues to be resolved such as dual registration of staff, mutual recognition of qualifications, terms and conditions of employment, issuing of contract of employment and a range of other practical matters.

Technological and e-health solutions are likely to play an increasingly important role in the delivery of healthcare and can support and underpin the development of cross-border and all-island services. Such technology includes electronic prescribing systems, patient monitoring systems, shared patient care records, robotic surgery, smartphones, telemedicine and even smart homes etc. There are numerous challenges and opportunities for progressing e-health across the Island of Ireland. In particular ensuring patient/client consent and implementing protocols for sharing of patient/client and clinical data will be required.

In summary, some of the best examples of practical public sector cross border co-operation are in the field of health and social care. The current financial climate has and will continue place further constraints on public spending. However, on the plus side, this should encourage more creativity and innovation in order to deliver services more effectively and efficiently. The border should not be a barrier to this.

## **Probation Services<sup>29</sup>**

A critical concern for both services [Probation Board Northern Ireland and Probation Service] has been the fact that it is not legally possible to transfer probation-related Court Orders from one jurisdiction to another. During the final decade of the 20th Century and in the first decade of the 21st Century there were a number of examples where offenders moved from one jurisdiction to another in a bid to escape detection and monitoring by Criminal Justice organisations.

In 2006, a formal joint protocol on the monitoring and supervision of sex offenders was signed by both organisations. This document set out the roles and responsibilities of both organisations in an attempt to minimise the opportunity for dangerous offenders to use or abuse the close proximity of the border to avoid monitoring and supervision. For the first time in Criminal Justice on the island, a joint paper set out agreed definitions in line with legislation operating in the two jurisdictions. The document also acknowledged the recommendation from the Criminal Justice Review as well as a Memorandum of Understanding between the Government of the UK and the Government of Ireland on information sharing relating to sex offenders. The protocols were updated in 2010 and again in 2014 to reflect changes in legislation and to include offenders assessed as posing a risk of serious harm.

Unfortunately the UK decided not to sign up to the forthcoming EU Framework Decision on the transfer of community sanctions between EU states and as a result of this decision it will be possible for offenders to move from the Republic of Ireland to the European mainland and have their Community Order legally enforced but it will not be possible for a person to move to Northern

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<sup>29</sup> All information in this section is based on an article by Paul Doran, 'Effective Partnership: A History of North South Cooperation in Probation Work' in *Journal of Cross Border Studies*, No.10, 2015.

Ireland under the same circumstances. Both Probation Services have highlighted the risks and challenges that arise from this anomaly but this example serves to highlight the dangers of policy makers based in London being unaware of some of the practical consequences of their decision making.

In 2009 the Northern Ireland Affairs Committee at Westminster carried out a review of cross-border cooperation and as part of that review visited Dublin and also received evidence from PBNI representatives at Westminster. The Committee noted that the two organisations maintained a close relationship but also highlighted the further need for cooperation, particularly when offenders leave prison in one jurisdiction to return to a home in the other. The report highlighted the areas of cooperation already identified in this article (domestic violence, drink driving, the provision of reports and voluntary arrangements for supervision as well as the protocol on sharing information on the management of sex offenders) and noted that the two Probation Services had signed protocols in 2006 which was followed by the two Police Services signing a similar protocol in 2008. The report also noted that no formal arrangements existed for the passing of information between the Prison Services upon release and praised the creation of the Public Protection Advisory Group (PPAG) which will be referred to later in the article.

As a result the Committee recommended that the two Governments explore every avenue towards establishing an information sharing regime that acts as an effective register of sex offenders across the island of Ireland. It also urged both Governments to continue to promote the primacy of the protection of children in their discussions and reminded both Governments of the jurisdictional issues that arise from having “two systems of law operating in an area so crisscrossed with roads, streams and other crossing points that officials of the Ordnance Survey are sometimes required to decide on which side of the border a premises lies” (page 31). It praised the contact between the agencies on both sides of the border and stressed the importance of personal contact between staff.

## **Obstacles to undergraduate mobility<sup>30</sup>**

### **Change in the ‘equivalences’ between second-level examination grades**

The change in the ‘equivalences’ between A Level and Leaving Certificate grades, brought about by Southern universities deciding to increase the requirement for high demand courses like medicine and law from three A Levels at the highest A (later A\*) grade to four A levels at the highest grade. This is seen by Northern school students studying for A levels as extremely onerous, and taking four A levels to get into a Republic of Ireland university, when comparable UK universities are seeking only three A levels, is sometimes discouraged by careers and other teachers.

In 2003 an Oxford University-led Expert Group reported to UCAS on these equivalences and concluded that whereas previously UCAS had deemed results in each Leaving Certificate subject to be half the value of an equivalent A-Level subject, this should now be adjusted to two-thirds of the value. On foot of this finding – effectively downgrading the value of A-Levels compared to the Leaving Certificate – Trinity College Dublin started requiring four A-Levels (with A, later A\*, grades) for Northern Ireland applicants to high demand, high points

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<sup>30</sup> This section is based on the report by former CCBS Director, Andy Pollak, ‘Cross-Border Undergraduate Mobility: an obstacle race that the students are losing?’ in *Journal of Cross Border Studies in Ireland*. No.7, 2012.

courses like medicine, dentistry and law. They felt that to do otherwise would give Northern students with top grade A-Level results an unfair advantage over their Southern counterparts with top grade Leaving Certificate results. This practice was eventually adopted by all the Southern universities' Admissions Offices.

### **Differences in University Admissions Systems**

The British UCAS and Irish CAO admission schemes looked for different things, and it might be difficult for Northern students to navigate both of them. The CAO points system is based solely on performance in one exam, the Leaving Certificate. In this way it is utterly transparent – particularly important in a small society – but also excludes evidence of independent learning and personal development. The UCAS system, on the other hand, with its stress on a 'personal statement' from the applicant, also takes into account wider student achievements, including extra-curricular activities.

Whereas students in all Northern Ireland schools – and particularly the high-achieving voluntary grammar schools – are intensively prepared for the UK's UCAS process, there is little or no guidance by teachers in how to complete the Irish CAO application form – school students are usually left on their own to tackle this task. Northern applicants also find it unnerving that there is no CAO phone 'helpline'; they are required to have their schools certify photocopies of missing exam results, often during the school holidays; and they must depend on an often unreliable cross-border postal service in the fraught few days every August when results are being communicated and offers of university places are being made.

In particular, Southern students find the 'personal statement', containing personal and extra-curricular activities, which is so central to the UCAS process, unfamiliar and daunting, especially since the guidance counsellors in Irish schools are often equally unfamiliar with it. The concentration by guidance counsellors on helping their students to successfully navigate the CAO system in the South is as total as the concentration of careers teachers in the North on helping theirs through the UCAS system. There is relatively little time or capacity by either group to think about the university application process in the neighbouring jurisdiction.

### **Undergraduate Fees Differential**

The situation in autumn 2012 will be as follows. The great majority of universities in England and Wales will charge annual tuition fees of up to £9,000. Scottish universities will not charge fees for Scottish-domiciled students (or students from Republic of Ireland and other EU countries), but will be able to charge up to £9,000 for students from elsewhere in the UK. In Northern Ireland the fees will rise only slightly, although students from elsewhere in the UK will be required to pay up to £9,000.

In its otherwise harsh December 2011 budget, the Irish Government decided to limit the increase in the university registration fee to €250 (bringing it to €2,250 per annum from 2012-2013). If the Republic of Ireland continues to have such a low fees system alongside a much higher fees system in Britain, the consequences will be significant. Not only will a growing proportion of the nearly 9,000 undergraduates who currently go to universities in Britain and Northern Ireland probably decide to stay at home, but also a rising number of British undergraduates will choose to study in the low-fees

regime in the Republic of Ireland. Already in 2011 the number of Irish undergraduate applications to UK universities fell by nearly 20% (from 2,352 to 1,899)<sup>16</sup>, while the number of UK applicants to Irish universities rose by 9.5%.

**No financial assistance available in UK.** Apart from having the right to defer tuition fees until they are earning £15,000 p.a., students from Republic of Ireland have no eligibility for any grants, loans or bursaries provided by the NI Department for Employment and Learning and implemented through the two universities in Northern Ireland.

## Waste management<sup>31</sup>

The IWMA said they were not aware of any barriers to cross-border trade caused by regulations specific to waste movement and commented that the regulations are very similar in Ireland and Northern Ireland. The IWMA hopes the Waste Framework Directive 2008 when transposed in Ireland will bring about a harmonisation of the regulations in both jurisdictions.

An alternative view came from CIWM NI member, ARC 21. They stated that there are major barriers to a holistic approach to waste management across the island including, inter alia, the TFS regulations, the UK import and export plan, and the lack of integrated waste management planning...

... CBI suggested it would be useful to set up a forum for the environmental industry similar to the North/South Freight Forum. Similarly the IBEC-CBI Joint Business Council is looking at the all-island energy market and solutions to the energy problem. These North/South forums come together when EU Directives are issued and try to agree and implement standard policy and regulations. This allows for integration and consistency in national legislation.

- Cré have been working with the Department of Environment, Heritage and Local Government (DEHLG) and Department of Environment, Northern Ireland (DOENI) since 2009 in relation to cross-border movements of food waste and garden waste. At the moment garden waste is not listed on the TFS regulations and, as such, it is treated as an amber listed material which causes an issue for composting sites located near the border. Border region-based companies are required to have bonds in place and must notify the relevant Competent Authorities prior to each waste movement. Such mandatory requirements are considered a financial burden in terms of costs and resources. At present, the DEHLG have submitted an application to the EU to have garden waste specifically listed and included within the TFS regulations. *Although there was no meeting scheduled between the Member states in 2010 to discuss this issue, Cré is hopeful that the matter will be addressed shortly and be approved in 2011.*
- Indaver Ireland, a waste management company, has prepared and submitted to DOENI a communication regarding cross-border movement of Municipal Solid Waste (MSW) to their facility in Meath, albeit for an interim period. Indaver understands that DOENI are currently

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<sup>31</sup> This section is based on a 2011 report by InterTradeIreland, 'Environmental Regulation and Cross-Border Trade and Business', available at <http://www.intertradeireland.com/media/intertradeirelandcom/researchandstatistics/publications/EnvironmentalRegulationsandCBTrade&BusinessreportSep2011.pdf> (accessed 4 Nov 15)

preparing a paper for the UK Department of Environment, Food and Rural Affairs (DEFRA) on whether or not MSW could be transported for recovery to Ireland. Indaver are keen to progress this issue as they believe that an interim solution could be provided to Northern Ireland while that jurisdiction's infrastructure is being developed.

- Business operators consider that the financial and administrative burdens associated with the shipments of waste between Ireland and Northern Ireland are not commensurate with the potential risks to the environment from the movement of specific waste materials. Examples of this related to the movement of certain organic type wastes (e.g. tree cuttings, wood wastes) or for the movement of certain WEEE.
- There is a lack of understanding by companies as to the rationale that garden/food waste is considered as notifiable (Amber List) waste and potentially a prohibited waste – just because it's not specifically listed within the TFS regulations. For example, green waste (which is not a hazardous waste) has the same financial and administrative burdens as a typical hazardous waste (e.g. acids, chemicals, etc.). The costs and administrative burdens being placed upon legitimate businesses, who want to operate in compliance with the regulations, could encourage a "black market" economy.
- Companies have encountered experiences where Competent Authorities have not been consistent in the application of notification controls for the movement of waste. An example provided by an operator was of a case where one Competent Authority permitted them to ship waste under the less onerous Annex VII notification process and the counterpart Competent Authority did not concur with this notification controls and insisted that the waste could only be shipped under the more stringent controls, (i.e. as an Amber List waste).
- There are significant disparities between Ireland and Northern Ireland in the costs associated with complying with these regulations. For example, under the Waste Management (Collection Permit) Regulations, 2007 (as amended) in Ireland, an operator is required to be registered in each region where they wish to transport waste. Ireland is divided into ten specific waste management regions with a cost of €1,000 for an application for a single region waste permit and the cost for a multi-region permit being €1,000 per region, up to a maximum of €5,000. It is an offence for a person to transport waste unless they are registered as a carrier under the appropriate regulations for that jurisdiction. Conversely, under the Controlled Waste (Registration of Carriers and Seizure of Vehicles) Regulations (Northern Ireland) 1999, an operator is required to be registered with NIEA and have waste carriers licence if they want to transport waste. The cost for an application to register as a waste carrier is currently £120. In addition an operator's registration is required to be renewed every three years and the cost for renewal of a registration is £60.
- Companies consulted considered that the profit margins associated with the movement of waste materials under the TFS regulations have been significantly reduced as a consequence of the:
  - direct costs levied by the Competent Authorities (i.e. notification fees and shipment charges); and

- Administrative costs associated with completing all the application forms and the ongoing management of the documentation, once approval to ship the waste has been granted until the waste has reached its final destination.
- An operator of an all-island waste management business calculated that the overall additional cost to his business as a consequence of complying with the TFS regulations was in the regions of €5-6 per tonne of waste moved cross-border. As a consequence waste management businesses said they were resigning themselves to employing a business model which is designed to break even financially as opposed to trying to make a profit. Companies consider the total costs associated with the TFS regulations are so excessive that businesses struggle to make a profit – this includes the financial guarantees/ bonds which have to be in place before you can commence, and the fact that all costs are required to be paid in advance before a vehicle is allowed to move.
- Competent Authorities lack of sufficient commercial understanding of how a businesses operate and of the financial stresses being placed on their businesses due to onerous regulations. One operator was quoted as saying “...the stroke of pen from an inexperienced enforcement officer has significant financial repercussions to our business”. There is the need for more a pragmatic decision making approach regarding the shipments of waste.
- Companies considered that the Competent Authorities are not forthcoming with advice and guidance when operators request them to do so. Ultimately companies accept and understand that regulations are in principle designed to protect the environment, consumers and employees. However, when operators have asked for guidance on the best way for their business to comply with the regulations the Competent Authorities are deemed to be “very unhelpful”.
- The regulations implemented to manage and control IPPC were an example of excessive/ over-regulation. For example, the need to have a PPC permit to operate a composting facility in Northern Ireland was excessive considering the fact that similar type facilities were able to operate in other EU member states without a similar type of permit [...].

#### **Case studies and Recommendations from Business on Perceived Barriers to Trade**

- *Clearway Ltd* stated that based on their experience to date it can potentially take up to three months to set up a TFS agreement for a new waste load. They consider this timeframe to be burdensome and on some occasions it has made more difficult the development and growth of their business, particularly when competing with a more locally based company.
- *Re-Gen Waste* estimates that all substantive and administrative costs (as summarised above) contribute to approximately €5-6 in additional costs for every tonne of waste which has to be moved across the border for processing. The company has to build this cost into any contracts they bid for and consequently it puts the company at a competitive disadvantage when bidding for work against a company based in Ireland who does not need to move the waste across the border to process it in their facility.

The commercial reality of winning contracts and setting up the appropriate notifications means that Re-Gen Waste are typically four weeks behind competitive businesses in Ireland bidding for the same contract. In addition the three-day advanced notification prohibits Re-Gen Waste from offering their customers a quality service because of this inherent time delay. Re-Gen considers that the notification process is very rigid with minimal opportunity for flexibility within it, for example waste must only be collected for movement on the pre-notified date and refund applications have to be made within one month of them not being used. Adhering to such stringent timeframes is difficult and is not always practical from a commercial and transport logistics perspective. They also put increased pressure on the administrative and financial resources of the company.

Re-Gen Waste have to absorb non-refundable administration costs paid to the Competent Authority as part of the early bid stage for contracts they are looking to tender for. If bids which the company submits are unsuccessful then this money is lost and cannot be refunded.

- *Natural World Products Ltd* make the point that differences in the classifications (used in Ireland and Northern Ireland) of what is 'Green List' and 'Amber List' waste creates difficulty for them as an operator of a specialised recycling facility in Keady, which is located close to the border. They give the example of importing WEEE (e.g. televisions, computer monitors and fridges) from Ireland to their facility. Much of this type of WEEE is classified as 'Amber List' waste due to hazardous components present within. However, non-hazardous WEEE, such as washing machines and microwaves, is classified as 'Green List' waste in Ireland but 'Amber List' in Northern Ireland which carries the higher notification cost and more onerous administration. Imported WEEE from Ireland constitutes a large portion of the waste processed at the Keady facility, particularly due to its border location and therefore commercially it was necessary to continue to accept this waste. However, the differing classifications of this waste by NIEA TFS Section and Dublin City Council NTO mean that there is an impact on the company's profit margins, increasing the cost per tonne to process the waste and ultimately reducing the bottom line.

Similarly, in the past, NWP moved organic waste (brown bin food waste and green waste) from a number of large food manufacturers and waste companies in Ireland to their in-vessel composting facility in Keady. At that time this waste was classified by the lead authority in Ireland as 'Green list' waste and subsequently managed and tracked using an Annex VII form as opposed to the more stringent requirements for notifiable wastes. NWP, as the exporter paid a shipment charge of €0.60 per tonne for this waste in addition to an annual administration fee of €250. However, following the transfer and centralisation of administrative duties from each local authority to the Dublin City Council NTO these wastes were reclassified as 'Amber List.' This re-classification had a significant cost implication for NWP, with the shipment charges increasing to €2.50 per tonne and the annual notification fee to €600. In addition the administrative burden associated with 'Amber List' wastes increased and required additional internal resources to manage this. NWP ultimately decided that this work was no longer financially viable and the company took the decision to cease the movement of organic waste from Ireland and cancelled all relevant contracts.

## Transport

The HGV Road User Levy Act came into force on 1 April 2014; this introduces a specific time based charge for using or keeping a heavy goods vehicle (HGV) weighing 12 tonnes or more on a public road in the UK. The Levy was introduced because whereas UK registered HGVs pay charges or tolls in most other European countries, non-UK registered HGVs did not have to pay to use the UK road network. This UK-wide levy on HGVs makes it an offence for HGVs to enter UK roads without payment of the levy.

While the levy is generally supported by the freight industry and the transport industry on a broader basis across the UK and Ireland, it has a disproportionate impact on hauliers from the Donegal region. The North South Ministerial Council considered the impact of the act in Northern Ireland at a meeting in 2014 and at that time discussed the possibility of obtaining an exemption for the A5. The A5 is the road used by hauliers travelling from County Donegal to other parts of the Republic of Ireland, who must necessarily travel through Northern Ireland. It has been suggested by others that exemptions should be sought for other border region roads, because hauliers could cross the border several times travelling from one part of Northern Ireland to another.<sup>32</sup>

There is also a significant obstacle that has been identified by community transport operators that wish to provide a cross-border service. Licence requirements for minibus drivers differ considerably between the Republic of Ireland and Northern Ireland. In the UK there is a system of permits (Section 10B in Northern Ireland and Sections 19 and 22 Great Britain) which overrides the restriction of “not for hire or reward” and does in fact allow these drivers to operate for hire and reward, providing no profit is made. These permits have no validity outside the UK. Even though permit operations are by definition for hire or reward there is a specific exemption from the need for a commercial operator’s licence under Section 10B (1) of The Transport Act (Northern Ireland) 1967 as amended by The Transport (Amendment) (Northern Ireland) Order 1990. However Section 10B Permits have no validity outside the UK and therefore do not provide the driver the exemption from holding the required entitlement. Any individual taking a minibus across the border, on a hire or reward basis, is required to have passed a driving test for D or D1. Legislation currently in operation complies with all other European Member States except the UK.<sup>33</sup>

## Regulatory barriers to cross-border trade and business<sup>34</sup>

The key findings of this report, carried out by PwC’s corporate legal team and published by InterTradeIreland, the cross-border implementation body established under the 1998 Agreement, are based on both desk research and fieldwork with business in both jurisdictions. As noted above, this research was made difficult because of difficulties encountered with sources of information to identify and map equivalent legislation on the two sides of the border. Other key findings of the desk research included:

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<sup>32</sup> Enterprise, Trade and Investment Committee, Northern Ireland Assembly, 6 March 2014.

<sup>33</sup> Driving a Minibus in the Republic of Ireland, Community Transport Association 2011. [www.ctauk.org](http://www.ctauk.org).

<sup>34</sup> This section is based on the 2009 InterTradeIreland report, ‘Regulatory Barriers to Cross-Border Trade and Business’, available at

<http://www.intertradeireland.com/media/intertradeirelandcom/researchandstatistics/publications/tradeandbusinessdevelopment/RegulatoryBarrierstoCross-BorderTradeandBusiness.pdf>

***Duplication requirements in relation to compliance matters:*** A business which holds or processes data in Northern Ireland and is also established in Ireland has to register with the data commissioner and maintain that registration appropriately in both jurisdictions.

***Subtle but important differences in regulation essentially aimed at the same mischief:*** Pursuant to the distance selling regulations, in the case of telephone communication in relation to distance sales in Northern Ireland, the identity of the business and the reason for the call must be stated at the beginning of the conversation. There is no requirement to do this at the outset of the call in Ireland so long as the identity of the supplier and the purpose of the commercial call is made explicitly clear at some stage during the call.

***Differences in the timing for the implementation of regulations:*** Although one would expect corresponding nationally derived legislation not to be implemented at the same time, there are also discrepancies between the implementation time for EU derived legislation. This is due to the fact that when adopted, an EU directive gives Member States a timetable for the implementation of the intended outcome. Therefore different Member States will implement the changes at different times with the potential to create confusion.

***A failure to recognise differing yet adequate standards imposed in each jurisdiction:*** Where a construction related contract is performed partly in Northern Ireland and partly in Ireland (for example haulage activities) the Relevant Contracts Tax scheme needs to be applied to the part of the contract that is performed in Ireland. This is the case notwithstanding that the Construction Industry Scheme may not be applicable to the Northern Ireland element of the contract [...].

#### **From the fieldwork exercise:**

Overall, businesses reported that they wanted: more standardisation and simplification; easy access to information; greater recognition of similar certifications and accreditations; more user-friendly regulations; and greater alignment of regulation between the two jurisdictions.

Several employers called for more standardisation and simplification of legislation in the future, for example, stating that simplification of legislation is required to promote cross-border mobility of workers. Some suggested that there should be greater collaboration between the legislative authorities, North and South, and that enforcement should be focused on a risk-based approach. There was a general view that greater harmonisation between the relevant Government agencies, North and South, would be beneficial, for example in the area of vehicle licensing.

Several respondents suggested that legislation should be simplified and the burden of paperwork should be removed as companies (particularly SMEs) do not have the capacity to deal with the intricacies surrounding compliance on many regulations, within two separate legal jurisdictions. Greater use of electronic systems and a reduction in duplication of paperwork were suggested as possible solutions. Emerging or small companies wanted a reduction in cost to enable them to “get up and running”. In their view, greater leniency and flexibility in the early stages of their business would facilitate this.

Many respondents, when asked if they would know where to go to get regulation-based information, were unaware of one main source. Instead, they said that they would seek private consultant or solicitor input. Several participants suggested that an advisory service for employees

and businesses would be beneficial. Others considered that implementation of the regulations could be improved through mutual recognition in public sector contracts of specific accreditations. Some employers suggested greater transparency in the development of regulations and wanted to understand better the rationale for some legislation. Others suggested that Codes of Practice could, in some cases, be produced in a more user-friendly fashion [...].

### **Consideration of the cross-border element in the development of regulations**

The mapping exercise demonstrates that small differences in regulations can potentially have an impact on businesses and that comparing the relevant legislation is an onerous task. Evidence from the employers suggests that this is a greater burden on SMEs, which are not in a position to engage legal teams to assist them. There are a number of ways in which compliance could be facilitated during the drafting and development stage of legislation:

- **Regulatory Impact Assessments:** An analysis of the likely or potential impact of a specific regulation on cross-border trade will help ease the burden on businesses in the future. RIAs could, for example, explore the opportunities for a 'de minimus' approach in relation to, for example, the provision of short-term work permits for non-EU workers to facilitate cross-border mobility;
- **Cross-border collaboration on the presentation of common legislation:** while many regulations derive from European legislation, the structure and presentation of the domestic interpretation of these regulations differs, thus making it more difficult to achieve a ready 'read across'. It is recommended that consideration is given to the presentation of such regulations so that, as far as possible, common features are ordered in the same fashion in both jurisdictions whilst retaining sufficient flexibility to tailor the interpretation of the legislation to the context of each jurisdiction;
- **Relationship with Europe:** given the importance of European law in both jurisdictions noted above, and in light of the British Chambers of Commerce observation that European Impact Assessments are relatively high-level, consideration should be given to encouraging both the UK and Irish Governments to consider the potential impact of any new legislation at an early stage and to make prompt representations to the Commission as appropriate. Any such early assessment should consider the likely impact on the border; and
- **Role of the regulators:** consideration should be given in both jurisdictions to maintaining and enhancing the role of regulators as "information-providers" as well as "enforcers" and to ensuring that any new regulatory bodies have such a dual role. While there was some evidence of co-operation between the regulators, further consideration should be given to developing stronger and more formal linkages between the regulatory authorities North and South [...].

In relation to regulation and cross-border trade, the European dimension is clearly important and provides a framework in which commonly agreed principles can be applied uniformly across Great Britain, Northern Ireland and Ireland. However, there still remains the potential for divergence amongst Member States, thereby creating the potential for differences in regulation affecting cross-border trade. Differences may emerge, for example, from:

- EU Directives set minimum requirements to which Member States must comply. As such, a Member State can go further than this minimum and implement a higher standard. This leaves open the possibility, that in relation to certain EU Directives, only the minimum standard will be the same in Northern Ireland and Ireland, and the practical requirements on businesses will differ cross-border;
- Generally there are timeframes in which Member States can implement enacting legislation. It is therefore possible that one Member State may enact legislation some time ahead of another State;
- As with any legislation, legislation derived from Europe may require a case to be referred to the European Court of Justice before there is certainty as to its scope and/or its meaning; and
- Depending on the circumstances, Member States may have rights to 'opt out' of certain provisions or may take advantage of certain exemptions with the effect that there will be clear differences between Member States. For example, in 1991, the United Kingdom government 'opted out' of the Social Chapter and did not incorporate it until 1999. This chapter, which had been adopted by Ireland, covered areas such as the rights of part-time workers [...].

### **General barriers to cross-border trade**

Participants in this research highlighted a number of barriers to cross-border trade which, while not perhaps strictly related to regulatory burdens, did impact, and in some cases significantly, on their operations. Indeed, several companies described the main barriers as commercial rather than bureaucratic.

Some of the businesses interviewed had only recently begun to operate in the other jurisdiction. These organisations noted that it was difficult to raise their profile in a new market and to develop partnerships with other businesses. Overall, the general barriers experienced by business included:

- Access to information and signposting;
- VAT-related issues;
- Other tax and insurance related issues;
- Exchange rates and pricing;
- Repetition and duplication of data requirements; and
- Recognition of accreditations and qualifications.

In considering these issues, it should be noted that businesses may experience one or more of these at any one time.

### **Example 1: Difficulty in working through tax regulations within a restructuring of the company**

Company A reported that it had an issue with complying with a company re-structuring across both jurisdictions. It was in the process of re-organising its group of companies and had businesses in both the North and South of Ireland.

*“The business has grown and developed in a scattered way over the years, by buying a company, buying another and so on. We ended up with a group with a diverse structure and wanted to organise the group in an administrative way that we would be able to work with easier. We envisaged that this would be through one Holding Company operating in the North with all other companies held directly by it.”*

The company advisors regarded the proposed structure as a straightforward reorganisation and within the UK no issues were encountered as it was seen as a purely structural, administrative measure. However, in regard to the two Southern operations, the company was advised that there could be a potential capital gains dimension to the transaction.

*“Even though the ownership wasn’t changing, it was literally a re-structuring of the company... We wanted the Southern companies to be owned directly by the parent in the North and that potentially could hold an issue for us... If it means that we have to pay capital gains on a company that we already own, we may have to reconsider our approach.”*

Dealing with the complexities of the issue within two different jurisdictions has been a problem for the business, in terms of understanding the different regulations pertaining to capital gains and in finding and employing outside advisers to assist them. The company described the costs in trying to resolve the issue as significant.

### **Example 2: Compensation arrangements**

A large international construction company based in Northern Ireland had a difficulty when trying to seek compensation following the personal injury suffered by one of its employees. The employee was required to assist the company on construction projects just over the border and so spent a considerable amount of his time in Ireland. Unfortunately a site accident resulted in him suffering a personal injury, entitling the employee to a significant compensation payment. The company was subsequently unable to recover this money from its insurers and instead had to rely upon a state based compensation scheme which was designed to pay in circumstances where the insurer was unable to do so. Unfortunately this state scheme only applied where employers were required by law to have in place insurance in Northern Ireland. As this employee worked in Ireland technically under NI law the company was not required to have insurance in place for him (regardless of the Irish requirements). Consequently the compensation fund did not make any payment resulting in a significant cost to the employer. The rules for compensation in this circumstance did not take account of companies based in Northern Ireland who might have employees working a majority of their time across the border in order to meet business needs.

### **Example 3: Debt collection**

A Northern Ireland based client expressed frustration at having to chase a debt from an Ireland registered customer. The difficulty arose because the client did not have to hand an understanding of the process of debt collection in Ireland. In Northern Ireland, where the client undertakes the majority of its business, the client has on-going relationships with advisors whom it can use in such

circumstances and has an understanding of the debt collection process. However, this lack of familiarity with Ireland meant that a relatively routine debt collection exercise required more time, cost and energy than if it were based in Northern Ireland.

#### **Example 4: Incorporation costs**

A Northern Ireland based company had wanted to expand its reach into Ireland and so set up a Dublin subsidiary. While it is true that one of the main drivers for this was commercial (i.e. to have a physical presence in Dublin), the client also considered that by having a subsidiary in Dublin it would help it deal with Irish legal requirements and the Northern Ireland company could deal with Northern Ireland legal requirements. This therefore meant a duplication of incorporation costs for this company.

#### **Example 5: Recognition of accreditations and qualifications**

The Construction Skills Registration Card in Northern Ireland and the FÁS Safe Pass card in Ireland are aimed at ensuring that construction operatives in the North and South have appropriate levels of health and safety and skills training. According to the Construction Employers' Federation, the administrators of the CSR card, these two systems of accreditation are equivalent and that the CSR card is valid in the South. However, there appears to be varying degrees of awareness of this equivalence in the sector. One company reported a significant expense in training its workforce in both systems and obtaining both cards, noting that this had to be repeated every two years. According to this respondent, this dual accreditation was required as both cards are not routinely specified in public sector contracts North and South. It should be noted, however, that the card is officially accepted outside of Northern Ireland through a mutual recognition agreement between CSR and the FAS Safe Pass Safety Awareness Training Programme in Ireland, and through an affiliation with the Construction Skills Certification Scheme (CSCS) in Britain.

#### **Example 6: Terms and conditions**

PwC were engaged to advise an all-Ireland organisation on terms and conditions of employment following employee disharmony arising on what was perceived to be favouritism and unfair treatment on the Irish employees. They had considered it unfair that employees in Northern Ireland got better terms of employment even though the terms in question represented the statutory minimum in Northern Ireland. For example Statutory Sick Pay and Parental Leave provisions are more favourable in Northern Ireland than in Ireland. Although this employer was compliant the differences resulted in poor employee morale, administration costs and costs in relation to consultancy advice as to how best to deal with the issue.

#### **Example 7: Workforce issues**

A cross-border organisation for whom PwC acted had wanted to harmonise working practices and policies within its workforce. In order to accommodate this it decided to harmonise key aspects in line with the highest statutory and best practice standard from whichever jurisdiction in order to remain compliant. This caused a number of difficulties first, it meant that there was an increased cost burden and secondly it meant that both employees from Northern Ireland and Ireland needed to be retrained. It also met with some implementation difficulties as those responsible for the role out of the change did not fully appreciate why they were having to comply with what they perceived

to be irrelevant legislation in terms of how they ran their part of the organisation in their jurisdiction.

#### **Example 8: Enforcement of the Data Protection Act**

Company B is involved in the sale of electrical goods. It had gathered the mobile numbers of customers in order to notify them of delivery dates. Company B then used these numbers to notify 180,000 customers that they were having a sale. This constituted a criminal offence in Ireland but would have represented only a breach of the Data Protection Act in the United Kingdom.

#### **Example 9: Daily regulatory burdens facing a construction industry in Northern Ireland**

Company C, a construction company based in Northern Ireland noted a range of regulatory burdens which face them on a daily basis.

*“Tax issues, VAT and operating with two different currencies are the immediate impacts of the border on our business, but there are plenty of other regulations which make trading and working in the South very difficult.”*

The Construction Industry Scheme (CIS) was one such burden, and the complexities in subcontracting and paying subcontractors through the CIS in the North and the Relevant Contracts Tax in the South was mentioned as problematic.

*“If we just had one set of rules for both the North and South, then things would be much easier for us.”*

The company also explained how they had difficulty in guaranteeing their work in Ireland. It was noted that, whilst in the North they were guaranteed under the National House-Building Council, they had to seek membership with HomeBond in Ireland which had cost implications in terms of staff time in researching how this was achieved and the financial fees in applying to the scheme.

Permitted developments and planning laws were also perceived by the company as difficult to understand and work with, both North and South. It was felt that it has taken time to get information on planning criteria, and it has been very difficult to learn about the different planning issues within both jurisdictions.

*“Over and above these regulations, there is a customer imperative and that’s what ultimately decides how we do what we do. We have to run our business and make money, but somewhere along the line, some government body could come to us and point out what we have been doing wrong, which we don’t necessarily know about. If that happens, we’ll just have to pay what we owe them if it turns out that we aren’t compliant somewhere.”*

#### **Environmental regulations**

Overall, the stakeholders who participated in this research thought that it was likely that differences in environmental regulations would pose a burden to businesses but were unable, in the main, to cite specific examples. Some larger businesses reported additional costs in training staff in both systems to ensure that they were aware of their responsibilities but again were unable to provide specific examples or definite associated costs.

Other respondents did note however that the different enforcement regimes, with the existence of the Environmental Protection Agency in the South and no equivalent body in the North, were likely to create different expectations in terms of enforcement and compliance amongst businesses. Advice on recycling was thought by some respondents to be more readily accessible in the South.

Several respondents suggested that waste disposal requirements are onerous but this tended to be in relation to the actual requirements of the jurisdictions rather than due to regulatory differences between North and South. It was noted, however, that there is more competition in the UK waste disposal market while in Ireland, given the size of its market, there is a single supplier.

Some stakeholders reported growing concerns over the Waste Electrical and Electronic Equipment Directive which came into force in January 2007, which relates to the disposal of computers and other electrical equipment.

While respondents were unclear as to cross-border differences in the regulations, there was a general view that this regulation would prove to be onerous on smaller companies which may not have access to storage, transport and other resources for the safe disposal of such equipment.

Some respondents suggested that, in the South, the main concern is waste management and that recent changes to waste packaging regulations have created significant differences between the legislation in force in the South and that in force in the UK, with compliance required after producing 10 tonnes of packaging in the former compared to 50 tonnes in the latter. Waste collection permits were also described as insufficiently flexible.

There was also a concern in the South that the right balance should be found between promoting environmental concerns and business freedom.

### **Immigration regulations**

The mobility of non-European Union workers across the border was raised as an issue by some stakeholder organisations and businesses. Under the current arrangements, non-EU workers in Northern Ireland, for example, are restricted from working at a client site or another company office across the border. One of the stakeholders who participated in this research suggested that the impact of the visa issue was likely to increase, given skills shortages in areas such as IT and the growing tendency to recruit IT graduates, for example, from countries such as Brazil, China or India.

The complexities surrounding the granting of visas were perceived by several firms to constrain the flexibility of businesses in terms of responding to skills needs and to short-term changes in business circumstances. Furthermore, a lack of clear border controls or indicators was thought to make it difficult for some employees to know where they can or cannot go. Overall, there was a view that there is insufficient flexibility in the current system.

One business respondent, who commissioned a solicitor for human resources advice, estimated that there was a cost to his company of approximately £10,000 per annum in relation to vetting potential employees and applying for work permits for good candidates. The different legal requirements in each jurisdiction compounded the burden on his company.

Another business reported that there was also an element of risk in this regard which has to be managed by his company.

### **Regulatory relationships with other jurisdictions**

Some stakeholder organisations also noted the importance of considering the East-West dimension to trade as well as the North/South while another argued that, in the South at least, there is a “one size fits all approach” which does not distinguish sufficiently between the requirements to be placed on SMEs in relation to larger businesses.

One respondent argued strongly that differences in the implementation of EU legislation in the UK and Ireland was often to the detriment of Northern Ireland. He suggested that the UK approach could be characterised as ‘gold-plated’ where the approach in the South was usually pragmatic, and that, for reserved matters, what could be inconsequential at the UK level could sometimes be highly significant for Northern Ireland. Examples given included responses to the BSE crisis, higher energy prices in the North due to the energy infrastructure, fuel duty, and reduced availability of farm labour from Eastern Europe due to the strength of the Euro. As all these factors were thought to impact on the competitiveness of Northern Ireland businesses in a potential all-island economy, this participant advocated greater representation of Northern Ireland interests at both the UK and the EU levels.

While these particular issues are to some extent beyond the scope of this report, the various North/South and East-West statutory bodies should give due consideration to the impact of the border on the economies of both the North and the South in any deliberations, particularly in the context of informing EU decision-making.

## **Conclusion**

As members of the Transfrontier Euro Institute Network (TEIN), the Centre for Cross Border Studies has been involved in working to support policy-makers and practitioners and to build capacity for cross-border cooperation. We endorse the submission from TEIN about the main obstacles to cross-border cooperation, the types of obstacles and the need for capacity-building to support cross-border cooperation at different levels of cross-border integration and the suggestions made by TEIN about the need for specialised training for cross-border cooperation.

The Centre for Cross Border Studies’ response to the DG Regio consultation on cross-border obstacles has concentrated on legal and administrative barriers to cross-border cooperation on the island of Ireland. In doing so, we have made reference primarily to previous research carried out by the Centre for Cross Border Studies and others; as noted above, it has been beyond the scope of this document to provide information about action that may have been taken to address obstacles identified in the research. Our response has also focused on a limited number of cooperation areas. We are confident that most of these obstacles continue and that similar obstacles would be identified in other areas.

The barriers to cooperation in health and social care discussed above and the solutions developed by CAWT are based on the practical experience of that organisation. CAWT has frequently found ways to ‘work around’ obstacles. The response from CCBS and the Border People project that

accompanies this submission is similarly based on the practical experience of the Border People project. It provides details of the multiplicity of barriers to cross-border mobility encountered by citizens on a daily basis. The Border People project provides advice and information that likewise enables individuals to 'work around' barriers; in many cases, understanding the different legal or administrative systems is sufficient for individuals to overcome an obstacle. In the long run, however, it is important to eliminate, rather than alleviate, barriers.

The challenges faced also include political and attitudinal barriers on the part of policy-makers. The Centre for Cross Border Studies is committed to working to changing policies and practice to create the best possible conditions for increased cooperation and improved cohesion across borders throughout Europe. We recognise, however, that these barriers may prove to be more intractable than those of a technical or practical nature.