



House of Commons  
Northern Ireland Affairs  
Committee

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# **The land border between Northern Ireland and Ireland**

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**Second Report of Session 2017–19**





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*Report, together with formal minutes relating  
to the report*

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## Northern Ireland Affairs Committee

The Northern Ireland Affairs Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Northern Ireland Office (but excluding individual cases and advice given by the Crown Solicitor); and other matters within the responsibilities of the Secretary of State for Northern Ireland (but excluding the expenditure, administration and policy of the Office of the Director of Public Prosecutions, Northern Ireland and the drafting of legislation by the Office of the Legislative Counsel).

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[Mr Gregory Campbell MP](#) (*Democratic Unionist Party, East Londonderry*)

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The Committee is one of the departmental select committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No 152. These are available on the internet via [www.parliament.uk](http://www.parliament.uk)

### Publication

Committee reports are published on the Committee's website at [www.parliament.uk/niacom](http://www.parliament.uk/niacom) and in print by Order of the House.

Evidence relating to this report is published on the [inquiry publications](#) page of the Committee's website.

### Committee staff

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## Summary

The UK and Ireland joined the EU in 1973. Northern Ireland is the only part of the UK that will share a land border with an EU member state after Brexit. The land border is 310 miles long with over 200 formal crossing points and probably the same number again of informal crossing points. Today, the border is largely invisible. The border has unique political significance due to the history of Ireland and conflict in Northern Ireland and sensitivities about its appearance remain. Once the UK leaves the EU, the land border in Northern Ireland will change from an internal to an external EU border.

Our predecessor Northern Ireland Affairs Committee launched this inquiry in September 2016. Following the General Election, this Committee then relaunched the inquiry which builds on the work of our predecessors. The constantly evolving nature of the negotiations means that this Report cannot represent an exhaustive statement of the Committee on this subject. Our future programme will reflect the need to scrutinise the impact of the UK's withdrawal from the EU on Northern Ireland on an ongoing basis.

### *The Common Travel Area*

The Common Travel Area (CTA) is a special travel zone which enables British and Irish citizens to travel and reside within each other's jurisdictions without the need for a visa, residence permit or proof of resources. The Government has said that the UK's future immigration system will not impact the ability of individuals to cross the land border free from routine immigration control. The Committee welcomes the Government's commitment that the UK's future immigration system will not affect free movement of people across the land border.

We recommend the Government sets out in detail how it proposes to apply existing, or whether there will be new, internal immigration controls, such as employment checks, for EU nationals. In the Committee's view, the residents of Northern Ireland should not be subject to more onerous documentary checks to determine entitlement to stay and to access public services and the labour market than anywhere else in the UK. It must also establish the resource implications of conducting checks on people away from the border.

### *Movement of goods*

The UK Government's decision to leave the Single Market and the Customs Union means that, in future, different regulatory and tariff regimes could be in force on the island of Ireland. Without an effective border, goods could cross between Ireland and Northern Ireland without paying tariffs or complying with regulations on product standards.

The UK Government and the EU have both expressed their commitment to avoiding a hard border, including physical infrastructure or related checks and controls. The Joint Report of 8 December 2017 sets out three distinct solutions for resolving border arrangements: the overall EU-UK relationship, specific solutions provided by the UK or, in absence of agreed solution, full alignment with those rules of the Customs Union and Single Market which support North-South cooperation, the all-island economy

and protection of the Belfast/Good Friday Agreement. We heard numerous proposals for how regulatory and customs compliance measures could be enacted away from the border using tools such as joint policing, mobile patrols, risk analysis, cameras and digital customs declarations.

We have, however, had no visibility of any technical solutions, anywhere in the world, beyond the aspirational, that would remove the need for physical infrastructure at the border. We recommend the Government bring forward detailed proposals, without further delay, that set out how it will maintain an open and invisible border. These proposals should provide detail about how customs compliance will be enforced if there is regulatory and tariff divergence between the UK and Ireland.

The European Commission has published a Draft Withdrawal Agreement setting out how full alignment could operate in legal terms, as a backstop arrangement. The Committee supports the Prime Minister's clear rejection of these proposals which would result in a customs border down the Irish Sea. The draft does not properly reflect the commitments in the Joint Report and presumes to make distinct arrangements for Northern Ireland in direct contravention of the democratic provisions set out in paragraph 50. The issues of the land border cannot be resolved by creating a costly barrier to trade with Northern Ireland's largest market, neither would such a measure be compatible with the spirit and intent of the Belfast/Good Friday Agreement.

The Prime Minister has proposed an implementation period of approximately two years after the UK leaves on 29 March 2019 to give individuals, businesses and Governments time to plan and initiate changes. We heard that preparing for the UK's new customs arrangements will require change across over 30 government departments and public bodies. The Government's proposals for technical solutions represent blue sky thinking but it will not have the time to implement anything substantial before withdrawal day.

We welcome the Government's intention to agree an implementation period. We have seen no evidence to suggest that, right now, an invisible border is possible. To provide adequate time for new customs processes to be put in place, the UK may need to remain in, or parallel to, the Customs Union and Single Market for the duration of the implementation period. During the implementation period, we recommend that the Government works closely with counterparts in Ireland and the EU to develop an innovative border system capable of delivering customs compliance without traditional physical infrastructure at the border.

### *North-South Cooperation*

The Belfast/Good Friday Agreement created a distinctive cross-border dimension to governance arrangements for Northern Ireland. It states there should be consultation, co-operation and action on matters of mutual interest and created the North-South Ministerial Council to develop policy on an all-island basis. On 24 January 2017, in the Gina Miller case, the Supreme Court ruled that the Agreement covers Northern Ireland's place in the UK, not its place in the EU. The UK's decision to leave the EU does not change Northern Ireland's unique constitutional framework under the Belfast/Good Friday Agreement, however it changes the environment in which it operates. The UK, the EU and Ireland have all made clear and strong commitments to upholding

the Agreement, and all subsequent agreements, and protecting the peace process. The institutions and safeguards created to manage cross-border and cross-community relations will remain the corner stone of peace and stability in Northern Ireland after Brexit.

The Agreement identified six policy areas for the development of cross-border cooperation and created six all-island implementation bodies. UK Government analysis identified 141 policy areas where EU law intersects with the devolution settlement in Northern Ireland.

We recommend that the Government publish the mapping exercise and put forward targeted proposals for how cross-border cooperation in policy areas dominated by EU law will continue after the UK leaves the EU. Where appropriate, and in the event of the restoration of the Northern Ireland Executive, EU competencies could be devolved to Northern Ireland so it can balance maintaining UK wide frameworks with EU alignment for cross-border policy areas. We very much regret the continued absence of a functioning Assembly and Executive in Northern Ireland at this time of significant change for the whole of the UK. In their continued absence, alternative means of taking decisions will have to be devised.

The Committee welcomes commitments from both the Government and the President of the EU on continuation of Peace funding after the UK leaves the EU. The Government should set out in more detail its proposals for a bilateral successor to the Peace programme, the level of contribution it intends to make to the fund and its governance arrangements.

The Government should clarify in its response to this report whether it will seek to continue funding for cross-border projects under the Interreg programme post-2020. If it is the Government's intention to replicate this funding through the UK Shared Prosperity Fund it should specify the amount of funding it will make available, whether this money could support cross-border projects in Northern Ireland and the border regions of Ireland and what its spending priorities will be.

# 1 Introduction

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1. The UK Government and the European Union (EU) both acknowledge the unique circumstances of Northern Ireland in the light of the UK's decision to leave the EU. Northern Ireland is the only part of the UK that will share a land border with the EU after Brexit. In the referendum, Northern Ireland voters voted to remain in the EU by a majority of 56% to 44%. In UK as a whole, voters voted by 52% to 48% to leave the EU. Northern Ireland's constitutional framework, under the Belfast/Good Friday Agreement, has a distinctive cross-border dimension. Once the UK leaves the EU, the land border in Northern Ireland will change from an internal to an external EU border. This report considers the implications of the UK's changing relationship with the EU for the Northern Ireland land border.

## Our inquiry

2. In September 2016, following the EU referendum in June 2016, the former Northern Ireland Affairs Committee launched an inquiry into the land border between Ireland and Northern Ireland. Our predecessor Committee took oral evidence from academics; representatives of local businesses; the Police Service of Northern Ireland; the then Irish Ambassador; industry representatives for manufacturing, agriculture and tourism; international trade and customs lawyers and environmental policy groups. The Committee also travelled to Londonderry and Dublin to gather evidence. In Londonderry, the Committee held informal meetings at Ulster University, the Western Health and Social Care Trust and Londonderry Port. In Dublin, the Committee met with the Department of Justice and Equality, Irish Revenue Commissioners, Irish Farmers' Association and the Deputy Garda Commissioner to discuss the Irish perspective on the negotiations.

3. Following the General Election on 8 June 2017, this Committee relaunched the inquiry, and has heard oral evidence from academics, experts in EU customs controls, Swiss and Norwegian customs officials; the Chief Minister of Gibraltar; Ministers from the Department of Exiting the EU and the Northern Ireland Office and EU Chief Negotiator Michel Barnier. We visited Dublin and Newry to examine existing border arrangements and met with representatives of local business in the border region. We also visited Basel to observe how the Swiss-EU customs border operates. We are grateful to everyone who contributed to this inquiry.

4. In this Report, we seek to make recommendations that will inform the Government's position as we enter the next phase of negotiations on the UK's exit from the EU. The constantly evolving nature of the negotiations means that this Report cannot represent an exhaustive statement by the Committee on this subject. Our future programme will reflect the need to scrutinise the impact of the UK's withdrawal from the EU on Northern Ireland on an ongoing basis.

## The land border

5. The land border is 310 miles long with over 200 formal crossing points and probably the same number again of informal crossing points.<sup>1</sup> Farming land and villages, such as Pettigo-Tullyhummond, straddle the border line with houses on both sides.<sup>2</sup>

6. The current open border arrangements have developed over time. Free movement of people was introduced following the creation of the Irish Free State in 1922.<sup>3</sup> Customs infrastructure was removed with the establishment of the EU Single Market in 1993 and military infrastructure, such as British Army watchtowers, were eventually taken down in the years after the signing of the Belfast/Good Friday Agreement in 1998. Today, the border is largely invisible. Often, the only indication of crossing the border is the subtle difference in road markings, signs and speed limits.

7. The open border enables individuals to travel freely without being subject to passport control. The Government estimates that the total number of person border crossings is around 110 million annually.<sup>4</sup> The closely intertwined nature of the road networks around the border mean that a single point-to-point journey may involve crossing the border multiple times.<sup>5</sup> The Centre for Cross Border Studies estimates that between 23,000 and 30,000 people are cross-border workers.<sup>6</sup> Individuals and businesses on both sides of the border benefit from access to a labour market which encompasses two jurisdictions. For many, crossing the border has become a feature of everyday life. Free movement of people also plays an important role in the peace process—the ability to interact and cooperate with others for work, education and leisure has been described as a “precondition of peaceful relations”.<sup>7</sup> Before the removal of security measures, we heard that “people in Donegal stayed in Donegal and people in the north stayed in the north.”<sup>8</sup> Today, open borders have enabled communities to reconnect after decades of separation.<sup>9</sup>

8. The land border has unique political significance due to the history of Ireland and conflict in Northern Ireland. During the Troubles, military check points on the border were frequently the subject of shooting and bombing attacks. Both the Irish and UK governments acknowledge the disappearance of physical border checkpoints as “the most tangible symbol of the Peace Process.”<sup>10</sup> Given the history of the border, there are sensitivities about its visual appearance and the prospect of new border infrastructure being introduced. In evidence submitted by the Irish Central Border Area Network, survey respondents described the term “border control” as one that recalls “deeply negative experiences and community tensions”.<sup>11</sup> George Hamilton, Chief Constable of the Police Service of Northern Ireland, said that if checkpoints were re-established it is likely they

1 [Q176](#) (George Hamilton), [Brexit negotiations: the Irish border question](#), House of Commons Library, 17 July 2017

2 [The International Centre for Local and Regional Development \(BDR0005\)](#)

3 Unofficial administrative agreements between successive British and Irish Governments. Bernard Ryan, ‘[The Common Travel Area between Ireland and the United Kingdom](#)’ (2001) 64 (6) *Modern Law Review*, page 856

4 HM Government, [Additional data paper: Common Travel Area data and statistics](#), 16 August 2017

5 HM Government, [Additional data paper: Common Travel Area data and statistics](#), 16 August 2017

6 [Centre for Cross Border Studies \(BDR0011\)](#)

7 [Professor Dagmar Schiek \(BDR0015\)](#)

8 [Q345](#) [Gavin Killeen]

9 [Q45](#) [Professor McCall]

10 [Ireland and the negotiations on the UK’s withdrawal from the European Union](#), May 2017, HM Government, [Northern Ireland and Ireland](#), 16 August 2017

11 [Irish Central Border Area Network \(ILB0008\)](#)

would be a target for dissident republican groups.<sup>12</sup> Other contributors also expressed concern that physical infrastructure at the border would attract paramilitary activity and “heighten political tensions and social unrest”.<sup>13</sup>

9. The ease of moving between jurisdictions has become “the norm” for people in the border corridor.<sup>14</sup> In the Londonderry-Strabane area a person could be “earning in sterling”, buy their home in euros, and simultaneously own a car registered in Ireland.<sup>15</sup> School children from one jurisdiction can be educated in the other and some health services, such as Emergency Services, are a shared resource.<sup>16</sup> Investment in the border region is more viable when it is directed at populations on both sides of the border.<sup>17</sup> The Altnagelvin hospital in Londonderry can provide specialist cancer treatment because it services 500,000 patients across both Northern Ireland and part of County Donegal in the Irish Republic.<sup>18</sup> In the border town of Newry, major city stores have the potential to sell to a cross-border consumer pool of 2.5 million people.<sup>19</sup>

10. The current arrangements mean goods can travel freely across the land border without being subject to customs and regulatory compliance checks.<sup>20</sup> This has facilitated cross-border trade and encouraged the development of all-island supply chains.<sup>21</sup> In 2016, export sales to Ireland were worth £3.4 billion,<sup>22</sup> and involved over 5,000 businesses in Northern Ireland.<sup>23</sup> The agri-food sector is particularly dependent on the cross-border movement of goods. Each year, over 400,000 lambs and 750 million litres of milk are exported to Ireland for processing.<sup>24</sup> In the dairy industry, producing milk on a cross-border basis creates economies of scale which helps businesses to compete.<sup>25</sup>

## UK-EU Withdrawal negotiations

11. The EU has taken a sequenced approach to negotiations on the UK’s withdrawal from the EU. Stage one of negotiations focussed on citizenship rights, the financial settlement and arrangements for the island of Ireland. These negotiations culminated in the publication of a Joint Report on 8 December 2017.<sup>26</sup> In stage two, the Joint Report has been translated by the EU into a draft legal document, known as the Draft Withdrawal Agreement, for ratification by both the UK and the EU.<sup>27</sup> The European Commission has said that arrangements for the island of Ireland will be divided between the Withdrawal Agreement and the future relationship.<sup>28</sup>

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12 [Q178](#) [George Hamilton]

13 Irish Central Border Area Network ([ILB0008](#))

14 International Centre for Local and Regional Development ([BDR0005](#))

15 [Q297](#) [Michael Gallagher]

16 International Centre for Local and Regional Development ([BDR0005](#))

17 [Q306](#) [Michael Gallagher]

18 British Medical Association ([BDR0031](#))

19 [Q118](#) [Dr Patterson]

20 Northern Ireland Human Rights Commission ([ILB0010](#))

21 [Q23](#) [Katy Hayward]

22 NISRA, [Broad Economy Sales & Export Statistics](#), 14 December 2017

23 HM Government, [Additional data paper: Northern Ireland trade data and statistics](#), 16 August 2017

24 British Veterinary Association ([ILB0011](#)), Dairy UK ([BDR0021](#))

25 [Q233](#) [Tim Acheson]

26 [Joint Report on progress during the negotiations under Article 50](#), 8 December 2017

27 European Commission, [Recommendation for a Council Decision](#), Annex 1, 20 December 2017

28 European Commission, [Recommendation for a Council Decision](#), Annex 1, 20 December 2017

12. The Joint Report contains high level political commitments from the EU and the UK on upholding the Belfast/Good Friday Agreement, avoiding a hard border and maintaining the Common Travel Area.<sup>29</sup> However, it also reflects tensions about how these shared objectives will be achieved. The UK intends to deliver these commitments through a “new, deep, and special partnership” with the EU.<sup>30</sup> In contrast, the European Commission has said this intention “seems hard to reconcile” with the UK’s decision to leave the EU Single Market and Customs Union.<sup>31</sup> Consequently, the Joint Report presents three distinct solutions for resolving border arrangements:

- The overall EU/UK relationship; or
- If that is not possible, through specific solutions provided by the UK to address the unique circumstances of the island of Ireland; or
- In absence of agreed solutions, the UK will maintain full alignment with those rules of the internal market and the Customs Union which, now or in the future, are necessary to support North/South cooperation, the all-island economy and protection of the Belfast/Good Friday Agreement.<sup>32</sup>

The Prime Minister has subsequently described full alignment as a “fall back option of last resort”<sup>33</sup> and “the default, default option”.<sup>34</sup> The EU views full alignment as “an effective guarantee” for avoiding a hard border.<sup>35</sup>

13. On 28 February 2018, the European Commission published a Draft Withdrawal Agreement intended to translate the political commitments made in the 8 December Joint Report into a legal text.<sup>36</sup> The contents of the draft are still under discussion with the European Council and the European Parliament’s Brexit Steering Group. The contents are not final and must be approved before it can be transmitted to the UK for negotiation. The draft contains a protocol on Ireland/Northern Ireland which sets out in detail how the EU proposes that full alignment could be “operationalised” in legal terms.<sup>37</sup> The Commission has said it views the protocol as a “fall-back solution” and that “all three options remain on the table.”<sup>38</sup> The Prime Minister said that implementing the Commission’s draft would threaten the “constitutional integrity of the UK” by creating a customs border down the Irish sea and concluded that “no UK Prime Minister could ever agree to it”.<sup>39</sup>

**14. The Joint Report of 8 December 2017 sets out three distinct solutions for addressing the unique circumstances of Northern Ireland. In doing so, it acknowledges the central disagreement between the UK and the EU about how their joint objectives for the land border will be achieved. This approach allowed the negotiations to move into**

29 [Joint Report on progress during the negotiations under Article 50](#), 8 December 2017

30 House of Commons Hansard, 11 December 2017, [Volume 633](#), Rt Hon Theresa May

31 [Communication from the Commission to the European Council \(Article 50\)](#), 8 December 2017

32 [Joint Report on progress during the negotiations under Article 50](#), 8 December 2017

33 House of Commons Hansard, 11 December 2017, [Volume 633](#), Rt Hon Theresa May

34 [Q31](#) [Theresa May], Oral Evidence to the Liaison Committee, 20 December 2017

35 Michel Barnier, [Press Conference on the Joint Report](#), 8 December 2017

36 [Draft Withdrawal Agreement](#), European Commission, 28 February 2018

37 [Questions & Answers: Publication of the draft Withdrawal Agreement between the European Union and the United Kingdom](#), European Commission, 28 February 2018

38 [Brexit: European Commission publishes draft Article 50 Withdrawal Agreement](#), European Commission, 28 February 2018

39 Rt Hon Theresa May, [Hansard Volume 636](#), 28 February 2018

**the next stage but deferred, rather than solved, the central disagreement over how the UK's decision to leave the Single Market and Customs Union will be reconciled with avoiding a hard border on the island of Ireland.**

### Defining a hard border

15. The terminology is important because a hard border has been associated with the prospect of new border infrastructure, which could be reminiscent of the security installations erected during the Troubles. Following the referendum result, the Prime Minister gave assurance that there would be no return to “the borders of the past”.<sup>40</sup> This commitment has since evolved into a guarantee that there will be “no physical infrastructure at the border”.<sup>41</sup> Robin Walker, Parliamentary Under Secretary of State at the Department for Exiting the European Union, described a hard border as one “where people are stopped and where there is physical infrastructure that gets in the way of everyday lives.”<sup>42</sup> The EU has also stated the aim of avoiding “physical border infrastructure”.<sup>43</sup> Michel Barnier, the EU's Chief Negotiator, declined to define a hard border when giving evidence to the Committee.<sup>44</sup>

16. Characterisation of the land border as either hard or soft has been criticised because it presents a binary choice, rather than acknowledging the existence of a continuum of different options.<sup>45</sup> Borders mark a physical area of territory and the legal space it encloses. They delineate the jurisdiction to regulate movement of persons, goods, services and capital within that legal space. Different rules apply to each of these aspects and so, in legal terms, there is not just one border, but many.<sup>46</sup> Katy Hayward, Senior Lecturer in Sociology at Queens University Belfast, explained the importance of differentiating between separate aspects of the border;

You can have a soft border for travel, through the Common Travel Area, at the same time as having a hard border for customs. For example, the Common Travel Area continued even when the Anglo-Irish trade war was going on. At the same time of course you can have a hard border, as we had for travel through the military checkpoints at the land border, and a softer border for customs, as came about with the creation of the Single Market in 1993.<sup>47</sup>

17. In this Report, we consider how leaving the EU may affect cross-border cooperation and the movement of people and goods between Northern Ireland and Ireland. In Chapter 2, we consider how the UK's decision to leave may affect the ability of individuals to travel freely across the land border under the Common Travel Area arrangements. In Chapter 3, we consider the implications of leaving the Customs Union and Single Market

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40 [Prime Minister Theresa May and the Irish Taoiseach gave press statements after their meeting at 10 Downing Street on UK–Ireland relations](#), 26 July 2016

41 [Q4 \[Prime Minister\] Oral Evidence to the Liaison Committee](#), 20 December 2017

42 [Q198 \[Robin Walker MP\]](#)

43 [Guiding principles for the Dialogue on Ireland/Northern Ireland](#), EU Commission, 20 September 2017

44 [Q283 \[Michel Barnier\]](#)

45 [Q44 \[Dagmar Schiek\]](#)

46 [Q1 \[Michael Dougan\]](#)

47 [Q45 \[Katy Hayward\]](#)

for the movement of goods across the border. In Chapter 4, we consider the implications for cross-border policy cooperation and citizenship rights under the Belfast/Good Friday Agreement.

## 2 The movement of people

18. In this Chapter, we consider the implications of the UK’s decision to leave the EU for the ability of individuals to travel across the land border free from routine immigration control under the Common Travel Area (CTA) arrangements.

19. The CTA is a special travel zone between the UK, Ireland, the Channel Islands and the Isle of Man. It started as an informal administrative arrangement between the Irish and British governments following the establishment of the Irish Free State in 1922.<sup>48</sup> The CTA concerns the rights of British and Irish citizens to travel and reside within each other’s jurisdictions. The movement of EU citizens and other third country nationals is not covered by the CTA. The right to travel flows from the UK Immigration Act 1971 which states:

Arrival in and departure from the United Kingdom on a local journey from or to any of the Islands (that is to say, the Channel Islands and Isle of Man) or the Republic of Ireland shall not be subject to control under this Act, nor shall a person require leave to enter the United Kingdom on so arriving<sup>49</sup>

20. The Ireland Act 1949 states that “Ireland is not a foreign country for the purposes of any law in force in the UK”<sup>50</sup> and the British Nationality Act 1981 excludes people with a “qualifying CTA entitlement” from UK immigration law.<sup>51</sup> Correspondingly, Irish law exempts British citizens from Irish immigration laws.<sup>52</sup> Exemption from immigration law permits CTA nationals to remain in each other’s country without the need for a visa, residence permit or proof of resources.<sup>53</sup> We heard that the CTA can only function if there is a “common approach to external border management” and a sufficient degree of alignment between UK and Irish immigration policies.<sup>54</sup>

21. Coordination of immigration policy means that neither country can be used as a “back-door” for entry into the other.<sup>55</sup> Ireland and the UK have both opted out of the Schengen Agreement and currently apply the same rules for the movement of EU citizens. They operate a common visa system for Chinese and Indian travellers,<sup>56</sup> and coordinate short stay visas for non-EU countries.<sup>57</sup> Consequently, routine border controls are not required for travel across the land border between Northern Ireland and Ireland.<sup>58</sup> However, many ferries and airlines do, in practice, ask passengers to provide identification when travelling between Ireland and the UK.<sup>59</sup>

22. The Government said that the CTA also confers the following citizenship rights on British and Irish nationals in each other’s countries:

48 Bernard Ryan, ‘[The Common Travel Area between Ireland and the United Kingdom](#)’ (2001) 64 (6) *Modern Law Review*, page 856

49 [S.1\(3\) UK Immigration Act 1971](#)

50 [S.2 Ireland Act 1949](#)

51 [S.50A\(4\) British Nationality Act 1981](#)

52 [S.1 Aliens Order 1999](#) (replaces Aliens Order 1935)

53 Seanad Special Select Committee, [Withdrawal of the UK from the EU](#), June 2017

54 [Q11](#) [Michael Dougan]

55 [Impact of Brexit on Cross-Border Activity](#), North/South Inter-Parliamentary Association, 18 November 2016

56 UK Visas and Immigration, [British-Irish visa scheme](#), 10 December 2015

57 Irish Naturalisation and Immigration Service, [Extension of the Irish Short Stay Visa Waiver Programme](#), 14 October 2016

58 Northern Ireland Office ([BDR0020](#))

59 Colin Murray ([BDR0025](#))

- the right to enter and reside without being subject to a requirement to obtain permission;
- the right to work without being subject to a requirement to obtain permission;
- the right to study;
- access to social welfare entitlements and benefits;
- access to health services; and
- the right to vote in local and parliamentary elections.<sup>60</sup>

23. In 2011, census data shows that approximately 230,000 people born in Great Britain were resident in Ireland.<sup>61</sup> In the same year, nearly 38,000 people born in Ireland lived in Northern Ireland, 23,000 in Scotland, and 372,000 in England and Wales.<sup>62</sup> Under the terms of the Belfast/ Good Friday Agreement the people of Northern Ireland can choose to be Irish or British, or both.<sup>63</sup>

24. The CTA is explicitly referenced in Protocol 20 of the Treaty of the Functioning of the European Union.<sup>64</sup> The Joint Report confirms that continuation of the CTA is compatible with EU law but states that its operation must not affect Ireland's ability to honour its EU obligations (see Figure 1). In the Draft Withdrawal Agreement, it further states that arrangements for the CTA must not affect the movement of "Union citizens and their family members, irrespective of their nationality, to, from and within Ireland."<sup>65</sup>

Figure 1: Paragraph 54 of the Joint Report:

**54. Both Parties recognise that the United Kingdom and Ireland may continue to make arrangements between themselves relating to the movement of persons between their territories (Common Travel Area), while fully respecting the rights of natural persons conferred by Union law. The United Kingdom confirms and accepts that the Common Travel Area and associated rights and privileges can continue to operate without affecting Ireland's obligations under Union law, in particular with respect to free movement for EU citizens.**

Source: [Joint Report on progress during phase 1 of negotiations under Article 50 TEU on the UK's orderly withdrawal from the EU](#), 8 December 2017<sup>66</sup>

## Leaving the EU - controls on the movement of EU nationals

25. The CTA predates Ireland and the UK's membership of the EU and only applies to Irish and British citizens. The UK's decision to leave the EU means the UK will be able to change immigration requirements for EU nationals. Ireland, as a member of the EU, cannot impose restrictions on the entry of EU citizens. Michael Dougan, Professor of European

60 HM Government, [Northern Ireland and Ireland](#), 16 August 2017

61 Central Statistics Office, [Census 2011 data](#)

62 North/South Interparliamentary Association, [Impact of Brexit on Cross-Border Activity](#), 18 November 2016

63 [The Belfast Agreement](#), Northern Ireland Office, 10 April 1998

64 [Protocol 20](#), Eur-Lex, Treaty on the Functioning of the EU

65 [Draft Withdrawal Agreement](#), European Commission, 28 February 2018

66 [Joint Report on progress during the negotiations under Article 50](#), 8 December 2017

Law at Liverpool University, told us “there can be no question of Ireland requiring visas of EU nationals to enter its territory” because it still has its EU obligations.<sup>67</sup> Should the UK limit the entry of EU citizens into its territory this would represent a significant divergence with the Irish immigration system. Similarly, if the UK decides in future not to accept European I.D cards, which do not contain biometric information, as a valid travel document this could also represent a significant divergence with the Irish immigration system. To enforce the restriction would mean either imposing border controls on the Ireland-Northern Ireland border, or between the island of Ireland and Great Britain.<sup>68</sup> Bernard Ryan, Professor of Migration Law at the University of Leicester, said:

The historic UK position has been that, because immigration control is likely to be ineffective at the Irish border, and controls on travel between Northern Ireland and Great Britain are politically objectionable, there is no alternative to a Common Travel Area with the Irish state.<sup>69</sup>

26. The Government’s Ireland and Northern Ireland position paper states that the development of the UK’s future immigration system “will not impact on the ability to enter the UK from within the CTA free from routine border controls”.<sup>70</sup> This commitment means that persons of any nationality—including EU citizens—will also be able to travel across the land border free from routine controls. Michel Barnier said:

The UK’s commitment to continue to implement the Common Travel Area in a way that does not impinge in any way on the freedom of movement of European citizens is an extremely important step.<sup>71</sup>

27. It should be noted that currently nationals of the following countries, in addition to EU nationals, can enter the UK without a visa for a short-term stay: Andorra; Antigua and Barbuda; Argentina; Australia; Bahamas; Barbados; Belize; Botswana; Brazil; Brunei; Canada; Chile; Costa Rica; Dominica; East Timor; El Salvador; Grenada; Guatemala; Honduras; Hong Kong; Iceland; Israel; Japan; Kiribati; Liechtenstein; Macau; Malaysia; Maldives; Marshall Islands; Mauritius; Mexico; Monaco; Micronesia; Namibia; Nauru; New Zealand; Nicaragua; Norway; Palau; Panama; Papua New Guinea; Paraguay; Saint Kitts and Nevis; Saint Lucia; Saint Vincent and the Grenadines; Samoa; San Marino; Seychelles; Singapore; Solomon Islands; South Korea; Switzerland; Taiwan; Tonga; Trinidad and Tobago; Tuvalu; United States of America; Uruguay; Vanuatu; Vatican City.<sup>72</sup>

28. The Gwilym Gibbon Unit for Public Policy, Nuffield College Oxford, told us that continuation of the CTA “appears to be incompatible” with requiring visas for the entry of EU nationals into the UK.<sup>73</sup> Bernard Ryan suggested the “simplest solution” would be to exempt EU nationals from visa requirements for short-term stays.<sup>74</sup> The Government’s proposals do not state whether the UK’s future immigration system will affect the ability

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67 [Q12](#) (Michael Dougan)

68 Centre for Cross Border Studies ([BDR0011](#))

69 Written Evidence submitted to the House of Lords EU Committee, Brexit: UK-Irish relations, Professor Bernard Ryan ([BUI0008](#))

70 HM Government, [Northern Ireland and Ireland](#), 16 August 2017

71 [Q276](#) [Michel Barnier]

72 <https://www.gov.uk/check-uk-visa>

73 Gwilym Gibbon Unit for Public Policy ([BDR0018](#))

74 Written Evidence submitted to the House of Lords EU Committee, Brexit: UK-Irish relations, Professor Bernard Ryan ([BUI0008](#))

of EU nationals to enter the UK from outside of the CTA. If the exemption from routine control only applies for travel of EU nationals within the CTA it raises the possibility of Ireland being used as a “back door” into the UK.<sup>75</sup>

29. However, the Government’s paper also states:

It is important to note that immigration controls are not, and never have been, solely about the ability to prevent and control entry at the UK’s physical border. Along with many other Member States, controlling access to the labour market and social security have long formed an integral part of the UK’s immigration system.<sup>76</sup>

Employers across the UK are already required to check all potential employees’ right to work in the UK,<sup>77</sup> and banks are required under the Immigration Act 2016 to check the immigration status of those opening new accounts.<sup>78</sup> There are already requirements in England for landlords to check the residency entitlement of all new tenants.<sup>79</sup> Sylvia de Mars, Lecturer in Law at Newcastle University, described how these proposals for post-entry controls could work in practice:

Anyone from the European Union can cross the border from the Republic of Ireland to Northern Ireland. It would not be checked there. If they wish to stay for longer than three months, the UK proposal goes, they would then need to prove they are entitled to stay by showing they have a right to work or a right to buy a house, for instance. Immigration controls are being moved away from the border, if you will, towards life.<sup>80</sup>

30. The Human Rights Consortium raised concern that reliance on internal immigration controls for EU citizens could lead to Northern Ireland becoming “the most highly controlled” part of the UK, with residents having to prove their entitlement to work, live and access services on “an unprecedented scale”.<sup>81</sup> The Trades Union Congress said it would be unacceptable for internal controls to rely heavily on reporting in workplaces. They emphasised it would be unreasonable to expect colleagues and trade unions to report individuals who may be irregular migrants.<sup>82</sup> Irish Taoiseach, Leo Varadkar, has also rejected suggestions, contained in a report commissioned by the European Parliament, that people crossing the land border would have to digitally pre-register before travelling.<sup>83</sup> This was in reaction to media speculation that this was an option being considered by the UK Government.<sup>84</sup>

**31. We welcome the Government’s commitment that changes to the UK’s future immigration system will not affect free movement of people across the land border.**

75 Written Evidence submitted to the House of Lords EU Committee, Brexit: UK-Irish relations, Professor Bernard Ryan (BUI0008)

76 HM Government, [Northern Ireland and Ireland](#), 16 August 2017

77 HM Government, [Right to work checks: an employer’s guide](#), 16 May 2014

78 HM Government, [Guidance on immigration status and current accounts](#), 13 March 2018

79 HM Government, [Right to rent document checks: a user guide](#), 15 January 2016

80 Q30 [Sylvia de Mars]

81 [Brexit, Human Rights and Northern Ireland](#), Human Rights Consortium, January 2018

82 Trades Union Congress (ILB0019)

83 The Guardian, [Irish PM rejects idea of border pre-registration](#), 12 March 2018, [Smart Border 2.0, Avoiding a hard border on the island of Ireland for Customs control and the free movement of persons](#), European Parliament’s Policy Department for Citizens’ Rights and Constitutional Affairs, November 2017

84 BBC, [Varadkar rules out post-Brexit border pre-registration](#), 12 March 2018

**Travel across the land border is an integral part of daily life for many individuals living in the border corridor. We recommend the Government sets out in detail how it proposes to apply existing, or whether there will be new, internal immigration controls for EU nationals. In the Committee's view, the residents of Northern Ireland should not be subject to more onerous documentary checks to determine entitlement to stay and to access public services and the labour market than anywhere else in the UK. It must also establish the resource implications of conducting checks on people away from the border.**

### Implications for the CTA's associated citizenship rights

32. The reciprocal citizenship rights of British and Irish citizens derive from the fact they are not treated as 'foreigners' or 'aliens' for the purposes of immigration law.<sup>85</sup> However, the Irish Parliament's Special Committee on the Withdrawal of the UK from the EU raised concerns that "many of these benefits are implicit and not defined by any express agreement or instrument."<sup>86</sup> The Committee also noted that "technically, the CTA does not confer a right to work".<sup>87</sup> These reciprocal rights are of particular importance for the many cross border workers living in the border corridor who commute daily. A report by the Travellers Movement found that Irish citizens will not have "sufficient legally enforceable rights" after the UK leaves the EU.<sup>88</sup> Lord David Alton of Liverpool said:

The British Government has not explained how the Ireland Act 1949 operates to provide rights to Irish citizens in the UK. Nor has it explained how the Common Travel Area provides Irish citizens with rights to work or receive healthcare<sup>89</sup>

33. The Government's position paper on Ireland and Northern Ireland acknowledges that:

Many of the benefits enjoyed by Irish and UK nationals have also been provided for in instruments setting out EU free movement and associated rights. This intermingling of rights can make it difficult to distinguish what rights accrue under the CTA as opposed to under EU instruments<sup>90</sup>

34. We heard concerns that the citizenship rights derived from the CTA have been "left to convention and legislative reference".<sup>91</sup> It has been described as "a lot of bits and pieces" of legislation,<sup>92</sup> and "a tangle of statutes, statutory instruments, practice and one treaty limited to social security provision."<sup>93</sup> Once outside the EU, British and Irish citizens will no longer be able to rely on legislation which grants entitlements on the basis of EU treaty rights.<sup>94</sup> The Joint Report sets out new arrangements for EU citizens, living

85 [Common Travel Area](#), Information Note, Irish Department for Foreign Affairs and Trade

86 Seanad Special Select Committee, [Withdrawal of the UK from the EU](#), June 2017

87 Seanad Special Select Committee, [Withdrawal of the UK from the EU](#), June 2017

88 Travellers Movement, [Brexit and Irish Citizens rights](#), December 2017

89 Travellers Movement, [Brexit and Irish Citizens rights](#), December 2017

90 HM Government, [Northern Ireland and Ireland](#), 16 August 2017

91 Committee on the Administration of Justice ([BDR0002](#))

92 [Q58](#) [Dagmar Schiek]

93 Committee on the Administration of Justice ([BDR0002](#)), North/South Inter-Parliamentary Association, [Impact of Brexit on cross-border activity](#), 18 November 2016

94 Committee on the Administration of Justice ([BDR0002](#))

in the UK before March 2019, to apply for settled status to protect their right to reside.<sup>95</sup> The Government has described the rights of British and Irish citizens under the CTA as operating “separately and alongside those rights afforded to EU nationals”. It further states that “no UK or Irish nationals will be required to apply for settled status to protect their entitlements in Ireland and the UK respectively.”<sup>96</sup>

35. Several contributors expressed the view that the reciprocal rights enjoyed by British and Irish citizens under the CTA should be put on a clear statutory footing for the future.<sup>97</sup> Bernard Ryan said that Brexit presented the opportune moment to consider “a comprehensive Common Travel Area agreement” which would ensure the special status of Irish citizens is “written into immigration law”.<sup>98</sup> Sylvia de Mars told us that:

To ensure its longevity and to provide security for Irish people resident in the UK (including those from Northern Ireland only holding Irish passports and not wishing to claim their UK passport) and UK citizens from Britain in Ireland, the legal obligations contained in the CTA should now be placed into a treaty between the UK and Ireland.<sup>99</sup>

36. **The Government acknowledges that EU citizenship rights have become confusingly intertwined with Common Travel Area rights. Where the law is unclear, there is scope for misinterpretation. We recommend that the Government clarify, in its response to this Report, how the Common Travel Area provides protection for the special status of Irish citizens in the UK and how this will be maintained following the UK’s withdrawal from the EU. If existing law is not sufficient, we recommend the Government set out proposals for placing the Common Travel Area’s associated rights on an unambiguous footing through a draft bill which can then be scrutinised to guarantee in statutory form CTA rights for British and Irish citizens. The Committee further recommends that reciprocal clarification is requested from the Irish Government in respect of UK citizens in Ireland, in the event that it is felt necessary to make CTA rights explicit.**

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95 Home Office, [Factsheet on EU citizen’s rights agreement](#), 8 December 2017

96 HM Government, [Citizens’ rights: UK and Irish nationals in the Common Travel Area](#), 22 December 2017

97 Colin Murray ([BDR0025](#)), [Q58](#) [Dagmar Schiek], Centre for Cross border Studies ([ILB0009](#))

98 Written Evidence submitted to the House of Lords EU Committee, Brexit: UK-Irish relations, Professor Bernard Ryan ([BU10008](#))

99 Sylvia de Mars ([ILB003](#))

### 3 The movement of goods

37. There are two key concerns about a hard border on the island of Ireland for the movement of goods. First, how compliance with tax and regulatory measures—such as customs duties and product technical standards - can be implemented without recourse to physical infrastructure at the border. Secondly, how new administrative requirements for customs compliance will affect the cost and complexity of trade. We address these questions in this chapter.

#### Current arrangements for the movement of goods

38. Customs controls were first introduced to the border following the creation of the Irish Free State in 1922. In 1972, there were 17 Customs and Excise posts located at major road crossings along the land border.<sup>100</sup> The introduction of the EU Single Market in 1993 eventually resulted in the closure of the last customs posts.<sup>101</sup> Today, goods cross the land border without customs controls because they are effectively domestic products of the EU Single Market.<sup>102</sup>

39. The Irish Revenue Commissioners estimate that 177,000 heavy goods vehicles and 208,000 light vans cross the border between Northern Ireland and Ireland every month.<sup>103</sup> In 2016, the total value of export sales from Northern Ireland to Ireland was £3.4 billion.<sup>104</sup> Businesses in Northern Ireland with fewer than 250 employees accounted for 80% of the cross-border sale in goods.<sup>105</sup> The open border has encouraged the creation of all-island supply chains. The Government’s sectoral report on agriculture notes that the food and drink industry between the UK and Ireland is fully integrated and treated as a single trading unit by businesses.<sup>106</sup> Dependency on cross-border trade is most notable in the agri-food sector.<sup>107</sup> The Government acknowledges that North-South cooperation on agriculture means the island of Ireland has become “a single epidemiological unit for the purposes of animal health and welfare”.<sup>108</sup> Agricultural goods in different stages of production cross the land border for processing and sale. For example, annually:

- over 400,000 pigs are exported from Ireland for processing in Northern Ireland;
- almost 400,000 lambs are exported from Northern Ireland to Ireland for processing; and
- over 800 million litres of milk are exported from Northern Ireland to be processed and then exported from the Republic of Ireland.<sup>109</sup>

100 HM Government, [Northern Ireland and Ireland](#), 16 August 2017

101 Colin Murray ([BDR0025](#))

102 [Q9](#) [Katy Hayward]

103 [Q461](#) [Daniel Mulhall]

104 HM Government, [Additional data paper: Northern Ireland trade data and statistics](#), 16 August 2017

105 HM Government, [Additional data paper: Northern Ireland trade data and statistics](#), 16 August 2017

106 [Sectoral Report - Agriculture, animal health and food and drink](#), Exiting the EU Select Committee

107 Northern Ireland Environment Link ([BDR0030](#))

108 HM Government, [Northern Ireland and Ireland](#), 16 August 2017,

109 [Irish Farmers Association Policy Paper](#), March 2017, British Veterinary Association ([ILB0011](#))

## Significance of the Single Market and the Customs Union

40. The Single Market and the Customs Union play different but complementary roles in ensuring the free movement of goods. The Customs Union has two key elements; the elimination of tariffs on trade between member states and the application of a common external tariff on goods entering the EU.<sup>110</sup> The EU also applies rules of origin checks to goods imported from territories outside its Customs Union with a preferential trade agreement to ensure these goods pay the correct EU tariffs.<sup>111</sup> For example, goods imported from China under a UK tariff could be required to pay the EU's common external tariff if they are then traded into Ireland.

41. With regards to goods, the Single Market is a system of common product rules which are applied across the EU. Harmonisation of differing national regulations, such as labelling, health and safety requirements or product standards, mean that goods do not need to undergo checks when travelling across the EU's internal borders. The UK's decision to leave the Customs Union and Single Market means that the land border will change from an internal to an external EU customs border.<sup>112</sup> The EU's external border has two roles: the traditional role of collecting customs duties and taxes and the role of regulatory enforcement of Single Market rules.<sup>113</sup>

### *The imposition of tariffs*

42. As a member of the EU Customs Union and the Single Market, there are no tariffs on trade between the UK and other EU member states. Negotiations on the future UK-EU relationship will determine whether EU tariffs apply to goods crossing the land border. In her Florence speech, the Prime Minister made it clear that she does not expect the EU to “impose tariffs where we have none now”.<sup>114</sup> The European Council has also proposed that trade in goods should be subject to zero tariffs and no quantitative restrictions.<sup>115</sup> Once it has left the Customs Union, the UK will be able to set its own tariffs on imports from third countries. The Government has stated that it intends to negotiate, and where possible, sign new trade deals with non-EU countries which could come into force after the implementation period.<sup>116</sup>

### *Regulatory barriers to trade*

43. To facilitate the free movement of goods, the Single Market operates under the principle of “mutual recognition”.<sup>117</sup> This means that any good lawfully produced in one member state can be sold in any other. To make this work, the EU has adopted harmonised regulatory standards which ensure that all member states observe, at a minimum, the

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110 Article 28, [Treaty on the Functioning of the European Union](#), Euro-Lex

111 [Q23](#) [Sylvia de Mars], [Irish Farmers Association Policy Paper](#), March 2017

112 Trade Union Congress ([ILB0019](#))

113 [Q5](#) [Michael Dougan]

114 Prime Minister, [Florence Speech](#), 22 September 2017

115 [Draft guidelines prepared by the President of the European Council](#), in close cooperation with the member of the European Council representing the Member State holding the six-monthly Presidency of the Council and with the President of the Commission, 7 March 2018

116 House of Commons Hansard, [Hansard Volume 633](#), 18 December 2017, Rt Hon Theresa May

117 [Q16](#) [Michael Dougan]

same product standards. We heard that mutual recognition is “more than just having similar rules”, it relies on judicial enforcement and keeping national legislation in each member state constantly in alignment.<sup>118</sup> When the UK leaves the Single Market, it will no longer be bound by the Single Market’s regulatory standards for goods or accept the powers of the EU institutions, which means UK and EU goods could cease to benefit from mutual recognition in each other’s markets. Regulatory differences can create barriers to trade because the greater the variance in regulations the more checks are required on goods traded between countries.<sup>119</sup> For example, if the UK were to diverge from EU prohibitions on genetically modified food or chlorine-washed chicken it would become necessary to ensure that these goods do not cross the border into the EU via Ireland.<sup>120</sup>

44. Negotiations on the UK’s future relationship with the EU have yet to commence and it is unclear which aspects of EU regulation the Government intends to change in future. In the short term, the Government’s intention is that the EU (Withdrawal) Bill will carry all existing EU rules and regulations into domestic law. The Bill confers significant powers to Government Ministers to amend and repeal retained EU law once it is part of the UK statute book. However, the Prime Minister has said that a “comprehensive system of mutual recognition” will be required and that “UK and EU regulatory standards will remain substantially similar” for trade in goods.<sup>121</sup> The European Council’s draft proposals state that “substantive rules” will align with EU and international standards and that mechanisms to ensure effective implementation, enforcement and dispute settlement will be needed.<sup>122</sup>

## Physical border infrastructure

45. The prospect of physical infrastructure being used to control the movement of goods has been a central feature of debate on the future UK-EU trading relationship. Several stakeholders told us that it is not possible to simultaneously exit both the Customs Union and the Single Market and fully avoid border infrastructure.<sup>123</sup> Dr Temple Lang, adjunct professor at Trinity College Dublin and Senior Visiting Research Fellow at Oxford, explained why the UK’s decision to leave the Single Market and Customs Union has raised the issue of physical infrastructure at the border:

If there were no effective border between the two parts of Ireland, goods could enter the Republic of Ireland from Northern Ireland without paying any tariffs that would otherwise be applicable, and even more important without complying with EU quality standards and technical requirements or with EU certification.<sup>124</sup>

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118 [Q16](#) [Michael Dougan]

119 Sylvia de Mars ([ILB003](#)), Institute for Government, [Implementing Brexit: Customs](#), 11 September 2017

120 [Q384](#) [Eric Pickett], Sylvia de Mars ([ILB003](#))

121 [PM speech on our future economic partnership with the European Union](#), 2 March 2018

122 [Draft guidelines prepared by the President of the European Council](#), in close cooperation with the member of the European Council representing the Member State holding the six-monthly Presidency of the Council and with the President of the Commission, 7 March 2018

123 Sylvia de Mars ([ILB003](#))

124 [Brexit and Ireland Legal, Political and Economic Considerations](#), Study commissioned by the European Parliament’s Committee on Constitutional Affairs, published by the Policy Department for Citizens’ Rights and Constitutional Affairs, November 2017

46. The EU has made clear its concern that the “integrity of the Single Market” may be compromised by the entry of non-compliant goods into the EU customs territory post-Brexit. Michel Barnier said:

We must preserve the integrity of the Single Market and the Customs Union. The rules for this are clear. The UK said it would continue to apply some EU rules on its territory. But not all rules. What is therefore unclear is what rules will apply in Northern Ireland after Brexit<sup>125</sup>

47. The Government has consistently maintained that the future UK-EU relationship will reconcile leaving the Customs Union and Single Market with the absence of border infrastructure. Conversely, the EU Commission finds it “hard to reconcile” those positions.<sup>126</sup> The EU Parliament passed a resolution on 3 October 2017 stating:

The Prime Minister of the United Kingdom excluded any physical infrastructure at the border, which presumes that the United Kingdom stays in the internal market and customs union or that Northern Ireland stays in some form in the internal market and customs union<sup>127</sup>

48. Michael Lux, EU Customs and International Trade lawyer, told the Committee that any alternative to being in the Customs Union, “whether it is a customs union agreement or a free trade agreement”, will require that customs controls take place at the border.<sup>128</sup> Michael Dougan, Professor of European Law at Liverpool University, said:

Even if you reduce tariffs, even if you reduce formalities, even if you have regulatory convergence, there are still customs borders, there are still customs checks.<sup>129</sup>

Similarly, Dr Bartels, Reader in International Law at Cambridge, said:

I think there does [have to be a border], and the border has to do what borders do, which is check for customs, make sure that goods are properly identified in terms of their origin for customs purposes, to make sure that internal taxes are levied at the border, when necessary, and to make sure that the products can be sold. That has to be done and it has to be done both on the EU side and on the UK side. Where it is done, is a question for co-operative agreements.<sup>130</sup>

The UK Government has been very clear that it is committed to avoiding a hard border and therefore it will not create “physical infrastructure or related checks and controls” at the border.<sup>131</sup>

125 [Michel Barnier, Speech at Centre for European Reform, 20 November 2017](#)

126 [Communication from the Commission to the European Council \(Article 50\)](#), 8 December 2017

127 [European Parliament resolution on state of play of the negotiations](#), 3 October 2017

128 [Q367](#) [Michael Lux]

129 [Q9](#) [Michael Dougan]

130 [Q16](#), Dr Bartels, Oral Evidence, International Trade Committee, 13 December 2017

131 [Joint Report on progress during the negotiations under Article 50](#), 8 December 2017, Rt Hon Theresa May, [Hansard Volume 637](#), 5 March 2018

49. **Ireland and the UK’s membership of the EU Single Market and Customs Union resulted in the removal of customs infrastructure along the Northern Ireland border. It is unclear whether the UK’s departure from EU rules and tariffs will necessitate new checks on the movement of goods to or from Ireland at the border. However, the Committee welcomes the Government’s commitment that any checks on the UK side will be implemented without recourse to border infrastructure, even if the nature of the checking and its location is yet to be determined.**

## The cost to business

50. We heard concerns from many stakeholders that leaving the Customs Union and Single Market would lead to an increase in the cost and complexity of doing business. Katy Hayward explained how the UK’s decision to leave may increase administrative requirements on trade;

Where there is regulatory divergence, businesses and stakeholders wishing to operate across a border need to: (i) be aware of the regulatory requirements in both jurisdictions; (ii) comply with two different sets of rules; and (iii) demonstrate compliance with those rules.<sup>132</sup>

51. The Committee also took evidence on the operation of other external EU customs borders. Norway is part of the Single Market but outside of the Customs Union. The Norway-Sweden border is over 1,600km in length, there are 57 crossings and 11 customs offices.<sup>133</sup> Liv Kristen Rundberget, Assistant Director of Norwegian Customs, told us that in Norway everyone declaring goods “has to stop at the border” and must “cross the border where there is a customs office”.<sup>134</sup> Switzerland is also outside the Customs Union and has signed 30 free trade agreements with partners outside the EU.<sup>135</sup> It has over 100 bilateral agreements with the EU which cover many aspects of Single Market rules. Commercial goods entering Switzerland must use designated crossings and complete customs clearance at offices on the border.<sup>136</sup> In Basel, 750 officials at eight customs offices deal with 50% of all Swiss commercial goods traffic.

52. Michael Gallagher, Strategy Manager at Derry City and Strabane District Council, told us that during the Troubles a simple delay of 20 to 30 seconds per car at a major border crossing would result in gridlock in the city centre.<sup>137</sup> Dairy UK told us that delays at the border “to facilitate bureaucracy” would be unworkable for an industry which relies on the time sensitive movement of perishable milk products.<sup>138</sup> Michael Lux told us that businesses trading across the border would be faced with the choice of paying a logistics company or hiring new staff to manage customs formalities. The Trades Union Congress told us any new system will “necessarily be more bureaucratic, more cumbersome for citizens, businesses, and government, than what came before.”<sup>139</sup> Stephen Kelly, Chief Executive of Manufacturing NI, said:

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132 Katy Hayward ([ILB0020](#))

133 [Q89](#) [Liv Kristen Rundberget]

134 [Q99](#), [Q103](#) [Liv Kristen Rundberget]

135 [Swiss Customs: security for the population, the economy and the state](#), 2016

136 [Q65](#) Dr Bock

137 [Q304](#) [Michael Gallagher]

138 Dairy UK ([BDR0021](#))

139 Trades Union Congress ([ILB0019](#))

Any requirement to produce paperwork, any risk in terms of any stops, checks or delays, either at the border or even exiting the EU through Dublin port, that puts in jeopardy that seamless, efficient supply chain that is already in existence<sup>140</sup>

53. The Government has acknowledged that its proposals will result in “an increase in administration compared with being inside the EU Customs Union.”<sup>141</sup> It has proposed that goods traded between the UK and the EU should continue to be exempt from the requirement to submit entry and exit declarations after the UK leaves. HM Treasury claims, in relation to the Customs Bill which sets out the Government’s plans for the UK’s future customs and excise regime, that:

The Government would look to reduce the time and costs of complying with customs administrative requirements through exploring the viability of unilateral measures, primarily in respect of imports [ ... ] for example, simplifications such as self-assessment to allow traders to calculate their own customs duties and aggregate their customs declarations<sup>142</sup>

54. The Legatum Institute told us that the Government will need to provide a programme of education and training for businesses in Northern Ireland to help them adapt to new customs facilitations measures.<sup>143</sup> The Freight Transport Association also emphasised that businesses must be given sufficient lead in time to learn new requirements for customs declarations.<sup>144</sup>

**55. Additional costs associated with completing customs and regulatory formalities could be damaging for businesses in Northern Ireland that rely on the cross-border movement of goods. Cross-border trade is dominated by small and medium sized enterprises who may not have the resource to hire new staff to deal with customs administration. We recommend that the Government undertakes specific research and analysis to determine the impact of UK customs administration costs for cross-border trade on the island of Ireland. We further recommend that the Government expedites plans for mitigating any costs arising on the UK side of the border.**

### **The Joint Report**

56. The Joint Report sets out political commitments for avoiding a hard border and preserving the integrity of both the UK and the EU’s internal markets (see Figure 2).

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140 [Q507](#) [Stephen Kelly]

141 [HM Government, ‘Future customs arrangements: a partnership paper’, August 2017](#)

142 [HM Treasury, Customs Bill: legislation for the UK’s future customs, VAT and excise regimes](#), 9 October 2017

143 [Legatum Institute Special Trade Commission \(ILB0002\)](#)

144 [Freight Transport Association \(ILB0005\)](#)

Figure 2: Paragraphs 43,45,49, 50 and 51 of the Joint Report

43. The United Kingdom also recalls its commitment to the avoidance of a hard border, including any physical infrastructure or related checks and controls.

45. The United Kingdom respects Ireland's ongoing membership of the European Union and all of the corresponding rights and obligations that entails, in particular Ireland's place in the Internal Market and the Customs Union. The United Kingdom also recalls its commitment to preserving the integrity of its internal market and Northern Ireland's place within it, as the United Kingdom leaves the European Union's Internal Market and Customs Union.

49. The United Kingdom remains committed to protecting North-South cooperation and to its guarantee of avoiding a hard border. Any future arrangements must be compatible with these overarching requirements. The United Kingdom's intention is to achieve these objectives through the overall EU-UK relationship. Should this not be possible, the United Kingdom will propose specific solutions to address the unique circumstances of the island of Ireland. In the absence of agreed solutions, the United Kingdom will maintain full alignment with those rules of the Internal Market and the Customs Union which, now or in the future, support North-South cooperation, the all-island economy and the protection of the 1998 Agreement.

50. In the absence of agreed solutions, as set out in the previous paragraph, the United Kingdom will ensure that no new regulatory barriers develop between Northern Ireland and the rest of the United Kingdom, unless, consistent with the 1998 Agreement, the Northern Ireland Executive and Assembly agree that distinct arrangements are appropriate for Northern Ireland. In all circumstances, the United Kingdom will continue to ensure the same unfettered access for Northern Ireland's businesses to the whole of the United Kingdom internal market.

51. Both Parties will establish mechanisms to ensure the implementation and oversight of any specific arrangement to safeguard the integrity of the EU Internal Market and the Customs Union.

Source: [Joint Report on progress during phase 1 of negotiations under Article 50 TEU on the UK orderly withdrawal from the EU](#), 8 December 2017

57. As discussed in paragraph 12, the Joint Report presents three distinct scenarios for the land border. In the next section, we consider the different options put forward to protect cross-border trade and avoid physical infrastructure at the land border.

### The possibility of no deal between the UK and the EU

58. During her Lancaster House speech, the Prime Minister said that “no deal for Britain is better than a bad deal for Britain”.<sup>145</sup> It is not the preferred option, however the Government has said it will remain an option “literally right up to the moment” a deal is

145 Rt Hon Theresa May, [speech on 'The Government's negotiating objectives for exiting the EU'](#), 17 January 2017

signed with the EU.<sup>146</sup> Following publication of the Joint Report, David Davis, Secretary of State for Exiting the EU, said that no deal is now “highly improbable” but that the Government would continue to plan for all contingencies.<sup>147</sup>

59. We heard that no deal would be the “worst outcome” for the land border. The Freight Transport Association told us this would result in the imposition of a hard border such as the EU external border between Finland and Russia.<sup>148</sup> Katy Hayward said that leaving the EU without a deal:

Would automatically mean the hardest form of an economic border between the UK and Ireland as tariffs would have to be applied both ways and there would be no regulatory equivalence between them.<sup>149</sup>

60. The Government’s position paper on Northern Ireland also acknowledged that the UK cannot solve the issues of the border unilaterally:

The UK must reach an agreement with the EU in order to ensure that the Irish side of the land border, which is subject to relevant EU regulations, is also as seamless and frictionless as possible. The nature of the border clearly means that we must aim for an agreed, reciprocal solution.<sup>150</sup>

### *International trade law*

61. Trade in goods across the Irish land border must be considered within the context of international trade rules. In the event of a no deal scenario, World Trade Organisation (WTO) rules would apply to trade across the land border. Under these rules, every WTO member is required to treat all other members equally.<sup>151</sup> For example, if a country cut the tariff on imports of copper from 10% to 5% for exporters from one country, it would have to charge 5% to every other country. This rule of non-discrimination between members is known as the most-favoured nation (MFN) rule. Customs unions and free trade agreements are an exception to the MFN rule and allow their signatories to give each other preferential treatment.

62. Several stakeholders told us that, in a no deal scenario, the UK would be in violation of WTO rules if it declined to enforce a border.<sup>152</sup> We were told that MFN rules mean that if the UK chose not to enforce a border with the EU in Northern Ireland, it would have to not enforce a border with “the entirety of the WTO membership.”<sup>153</sup> Similarly, if an EU member state such as Ireland did not impose tariffs on exports from the UK, it could

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146 [Q829](#) [David Davis], Oral evidence taken before the House of Commons Select Committee on Exiting the European Union, 24 January 2018

147 [Rt Hon David Davis](#), Hansard Volume 633, 14 December 2017

148 Freight Transport Association ([ILB0005](#))

149 [The UK needs to come up with flexible and imaginative solutions](#), Katy Hayward, LSE Blog

150 HM Government, [Northern Ireland and Ireland](#), 16 August 2017

151 [Q2](#), Sylvia de Mars, Oral Evidence to the International Trade Committee, 13 December 2017, Sylvia de Mars ([ILB003](#))

152 Institute of Directors ([BDR0003](#)), Colin Murray ([BDR0025](#)), Sylvia de Mars ([ILB003](#))

153 [Q13](#) [Sylvia de Mars], Oral Evidence to the International Trade Committee, 13 December 2017, Legatum Institute Special Trade Commission ([ILB0002](#))

be in breach of WTO obligations, as well as the rules of the EU customs union.<sup>154</sup> Katy Hayward told us that achieving a deep and comprehensive free trade agreement with the EU was “absolutely critical” for the border.<sup>155</sup>

**63. Leaving the EU without reaching an agreement in relation to avoiding a hard border on the island of Ireland would have very negative consequences. We welcome both the UK and the EU’s commitment to ensuring this does not happen. We note that WTO rules prevent the UK from unilaterally creating an open border with Ireland without offering this to the entire membership of the WTO. We recommend that this reality is specifically addressed in statements made by Ministers.**

## The future UK-EU relationship

64. The Government intends that the future UK-EU relationship will obviate the need for a hard border in Northern Ireland. The Prime Minister has said the UK will not seek to adopt “a model already enjoyed by other countries” such as European Economic Area membership or a traditional free trade agreement. Instead, the Government wants to design an “ambitious economic partnership” with the EU.<sup>156</sup> In her Mansion House speech, she said that with regards to trade in goods “UK and EU regulatory standards will remain substantially similar” in future and “an independent mechanism” would be required to oversee arrangements.<sup>157</sup>

65. In August 2017, the Government set out two broad approaches for the UK’s future customs relationship with the EU. These proposals suggest how the UK’s decision to leave the Customs Union can be implemented without infrastructure at the border. The first option, “a highly-streamlined customs arrangement”, would use technology-based solutions to streamline and simplify customs requirements. The second option, “a new customs partnership with the EU”, would involve the UK, at its external border, applying EU external tariffs and origin rules for imported goods with their final destination in an EU member state, to ensure that the importer has paid the correct EU duties. For goods staying in the UK, companies would seek refunds where the UK’s import tariffs are lower. This latter option is described as an “innovative and untested approach” which would “take time to develop and implement”.<sup>158</sup>

66. The Confederation of British Industry (CBI) said the Government’s approach “relies on solutions which have no precedent” and that much greater detail was required on how the proposals would be “monitored and enforced”.<sup>159</sup> It highlighted that the Government’s suggested facilitations “rely on successful negotiation of an unprecedented comprehensive customs partnership with the EU”.<sup>160</sup> Paul Mac Flynn, Senior Economist at the Nevin Economic Research Institute, told us the Government’s proposals for a new customs partnership would be a “bureaucratic nightmare” for businesses.<sup>161</sup> The British Veterinary Association said the proposals failed to explain how a border without physical

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154 [Sylvia de Mars \(ILB003\)](#)

155 [Q8](#) [Katy Hayward]

156 [PM’s Florence speech: a new era of cooperation and partnership between the UK and the EU](#), 22 September 2017

157 [PM speech on our future economic partnership with the European Union](#), 2 March 2018

158 [HM Government, ‘Future customs arrangements: a partnership paper’, August 2017](#)

159 [CBI briefing on Government’s proposals for Northern Ireland](#), 16 August 2017

160 [Preparing for future customs arrangements](#), CBI, 3 November 2017

161 [Q13](#) [Paul Mac Flynn]

infrastructure can allow for the legal order of the EU to be maintained.<sup>162</sup> The Legatum Institute described the proposals as “bold” and highlighted that implementing them would require the EU to accept derogations from its Customs Union rules.<sup>163</sup> The Prime Minister repeated the Government’s two approaches for future customs arrangements in her Mansion House speech on 2 March 2018. She did not indicate which one, or a combination of the two, was preferred by the Government.<sup>164</sup> The EU’s sequenced approach to negotiations means that discussions on the future relationship will not commence until the end of March, when the European Council agrees its negotiating guidelines.

### Specific solutions for avoiding a hard border

67. In August 2017, the Government set out some specific proposals to address the unique circumstances of cross-border trade in Northern Ireland:

- A cross-border trade exemption enabling around 80% of small businesses to operate with no new requirements in relation to customs processes.
- A trusted traders scheme (known as Authorised Economic Operator) for businesses who do not qualify for the cross-border trade exemption which simplifies customs procedures through reduced declaration requirements and periodic payment of duty.<sup>165</sup>

68. The Trades Union Congress said that the small trader exemption “relies on a substantial amount of trust” and does not address the prevention of smuggling.<sup>166</sup> Paul Mac Flynn highlighted that checks would still be required for the 20% of businesses ineligible for the exemption and that the proposals say nothing about compliance measures.<sup>167</sup> Dr Temple Lang said these arrangements “do nothing to resolve differences in quality standards, technical specifications, or regulatory approvals.”<sup>168</sup>

69. Trusted trader schemes already exist within the EU to streamline documentary requirements and speed up customs clearance at the border. The Government’s position paper acknowledged that current arrangements for trusted traders reduce rather than circumvent checks at the border.<sup>169</sup> The CBI said the current accreditation process for the UK’s trusted trader scheme is costly, time consuming and complex.<sup>170</sup> However, the Legatum Institute said trusted trader schemes could be adapted to “minimise the compliance burden” and allow enforcement to be carried out away from the border.<sup>171</sup>

70. Michel Barnier has repeatedly said that the EU is waiting for solutions from the UK.<sup>172</sup> The Joint Report, published 8 December 2017, also emphasised that it is up to the UK to propose specific solutions. It is clear from these statements that the EU does not view the

162 British Veterinary Associations ([ILB0011](#))

163 Legatum Institute Special Trade Commission ([ILB0002](#))

164 [PM speech on our future economic partnership with the European Union](#), 2 March 2018

165 [HM Government, ‘Northern Ireland and Ireland’, August 2017](#)

166 Trade Union Congress ([ILB0019](#))

167 [Q13](#) [Paul Mac Flynn]

168 [Brexit and Ireland Legal, Political and Economic Considerations](#), Study commissioned by the European Parliament’s Policy Department, November 2017

169 [HM Government, ‘Northern Ireland and Ireland’, August 2017](#)

170 [Preparing for future customs arrangements](#), CBI, 3 November 2017

171 Legatum Institute Special Trade Commission ([ILB0002](#))

172 [Q277](#)[Michel Barnier], [Press Statement by Michel Barnier following Article 50 negotiations](#) (6th-9th February), 9 February 2018, [Speech by Michel Barnier at Business Europe Day 2018](#), 1 March 2018

Government's proposals of August 2017 as a sufficient basis for agreement. In her Mansion House speech, the Prime Minister made clear that proposals for a Trusted Trader Scheme and cross-border trade exemption remain firmly on the negotiating table. However, she also acknowledged that the UK has "responsibility to help find a solution".<sup>173</sup>

### Technology

71. The Government has suggested that the challenges of the border can be resolved using technology. David Davis said he is confident that "the most up-to-date technology" can ensure the border remains non-visible and as light-touch as it is today.<sup>174</sup> We heard that technology can assist in border management but that "it is best seen as an aid to, rather than a substitute for, manual, visible and physical border management".<sup>175</sup> Paul Mac Flynn highlighted the limitations of digital technology in practical terms:

The point that was made on the Sweden-Norway border, where they have a fully electronic system and people are sharing information, was: "Why are you still stopping people and x-raying trucks? They have told you what they have in their customs declaration". They say, "How do we know they are telling the truth?"<sup>176</sup>

72. Both Swiss and Norwegian authorities are currently working on digital transformation projects for their customs procedures. In Switzerland, the DaziT transformation programme is intended to fully digitise processes for the importation, exportation and transit of goods in Switzerland by 2026.<sup>177</sup> The programme is expected to reduce requirements for checks at the border and enable customs declarations to be carried out using mobile devices. The Norwegians are piloting an "express-clearance procedure" which would allow some vehicles to pass the border without stopping through electronic pre-clearance of customs documents. Liv Kristen Rundberget, Assistant Director of Norwegian Customs, described how this system works:

When the truck crosses the border, it depends on whether Customs want to control or not. If they want to control, they get a red light and they have to stop at the border. But if they get a green light, then Norwegian Customs do not want to do a control because they have got all the information beforehand. They are doing the control on the documentation, and then there is no need for the truck to stop.<sup>178</sup>

These digitisation projects are still in their infancy and require commercial goods vehicles to cross the border line at designated customs posts. Both Norway and Switzerland also apply Single Market rules which obviates the need for regulatory compliance checks.

### Cameras

73. Automatic Number Plate Recognition (ANPR) cameras are used at customs borders in Norway, Switzerland and Gibraltar to help prevent smuggling and monitor the movement

173 [PM speech on our future economic partnership with the European Union](#), 2 March 2018

174 Rt Hon David Davis, [Hansard](#), Volume 628, 5 September 2017

175 Dr Katy Hayward and Dr Milena Komarova ([BDR0026](#))

176 [Q26](#) [Paul Mac Flynn]

177 [DaziT Transformation programme](#), 1 January 2018

178 [Q97](#) [Liv Kristen Rundberget]

of vehicles. ANPR cameras are already used in Northern Ireland by the Police Service of Northern Ireland (PSNI) and the Driver and Vehicle Agency to enforce road traffic legislation.<sup>179</sup> David Davis has suggested that ANPR cameras could be set up on “strategic roads back from the border” in Northern Ireland.<sup>180</sup> The Irish Revenue Commissioners published a draft paper discussing the use of cameras on the border:

An e-flow-style number plate recognition system would allow vehicles carrying goods to move from the Republic to the North and vice versa without having to stop in cases where a pre-departure/arrival declaration has been lodged and green-routed. In theory, upon arriving at the frontier, a vehicle could be identified by the ANPR system, associated with a particular pre-declared consignment and signalled as to whether clearance had been provided or engagement with customs was required<sup>181</sup>

74. The use of cameras in this context would require electronic pre-notification of the movement of commercial vehicles across the border. This is currently required for exports outside the EU. ANPR cameras cannot ascertain if the contents of a vehicle match the electronic customs declaration form so customs officials would still be required to monitor compliance.

**75. The Joint Report commits the UK, in the absence of agreed solutions, to a default scenario of full alignment with those rules of the Single Market and Customs Union which, now or in the future, support North-South cooperation, the all-island economy and protection of the Agreement. The specific solutions so far proposed by the Government are not viewed as sufficient by the EU.**

### *Managing customs and regulatory compliance away from the border*

76. We heard a variety of suggestions for implementing compliance measures away from the border. The proposals work on the assumption that different regulatory and tariff regimes will exist on the island of Ireland, and present alternative solutions to traditional border infrastructure.

77. The Institute for Government suggested, in the wider UK context, that the physical border can be separated from where customs clearance takes place. It proposed that investigations and compliance audits could be carried out at the source of production rather than at the border.<sup>182</sup> Sylvia de Mars explained:

Talking about no physical border infrastructure is a bit misleading. We are going to have infrastructure; it just does not necessarily have to be at the border. There will have to be depots, for instance, where things are checked and where spot checks can take place to make sure that all the products crossing the border meet the EU’s internal regulatory standards.<sup>183</sup>

179 Driving Change, [Enforcement of road traffic legislation in Northern Ireland](#), September 2016

180 [Q148](#), [David Davis], Oral Evidence, to the Select Committee on Exiting the EU, 25 October 2017

181 Draft, [Brexit and Consequences for Irish Customs](#), September 2016

182 Institute for Government, [Implementing Brexit: Customs](#), 11 September 2017

183 [Q10](#) [Sylvia de Mars]

78. Dr Christian Bock, Director General of the Swiss Federal Customs Administration, told us it would be possible to design a customs system without visible checkpoints.<sup>184</sup> He said this could be done using the following tools:

- joint cross-border policing patrols;
- control points away from the border itself;
- space around the border for officials to make spot checks based on good risk analysis;
- mobile checks; and
- a system of advance digital customs declarations.<sup>185</sup>

79. However, on the Committee's visit to Basel it was impressed upon us the extent of physical infrastructure at the Swiss-EU border. We sensed that full customs automation, even in this most sophisticated of economies, was still some way off. The Swiss Federal Customs Administration has approximately 5,000 staff and a total budget of roughly 1.5 billion Swiss francs.<sup>186</sup> Dr Bock emphasised the importance of having border officials with local knowledge and experience to make customs checks. Swiss border guards undergo three years of extensive technical and practical training. Fabian Picardo, Chief Minister of Gibraltar, also told us that in his experience border officials were far better than machines at spotting suspicious behaviour.<sup>187</sup>

80. A study commissioned by the European Parliament into technological solutions for avoiding a hard border also concluded that it is possible to implement a customs border that meets the requirements of the EU customs code "using a combination of international standards, global best practice and state-of-the art technology".<sup>188</sup> It proposes that "as much government agency activity as possible" is moved away from the border and customs inspections take place in warehouses or at the importers place of business. Dr Lars Karlsson, author of the report and former Director of the World Customs Organization, sets out the following mechanisms to secure a "low-friction" border for the movement of goods:

- Bilateral EU-UK agreement on advanced customs cooperation which allows UK and Irish Customs to undertake inspections on behalf of each other;
- Mutual recognition of Authorized Economic Operators;
- A customs-to-customs technical agreement on the exchange of risk data;
- An identification system by the border, mobile control and inspection units; technical surveillance of border (CCTV, ANPR etc);

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184 [Q46](#) [Dr Christian Bock]

185 [Q46](#) [Dr Christian Bock]

186 [Q48](#) [Dr Christian Bock]

187 [Q125](#) [Fabian Picardo]

188 [Smart Border 2.0, Avoiding a hard border on the island of Ireland for Customs control and the free movement of persons](#), European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs, November 2017

- A single window which allows businesses to electronically submit all customs documentation for import and export through one portal; and
- A simplified customs declaration system (100% electronic) with re-use of export data for imports.<sup>189</sup>

81. It must be noted that these proposals rely on the use of automatic “gates” on designated border roads, surveillance via ANPR cameras and require commercial vehicles to notify authorities in advance of the time and place they intend to cross the border.<sup>190</sup> The Government’s proposals include Authorised Economic Operators and digital customs declarations but focus on securing waivers and exemptions rather than proposing enforcement measures away from the border. In contrast to the European Parliament’s report, and Dr Bock’s proposals, the Government’s paper make no mention of cameras, mobile patrols or warehouses for monitoring compliance.

**82. The Committee has heard numerous proposals for how the UK and the EU could ensure customs compliance without physical infrastructure at the border. This is currently the case for enforcement in relation to fuel, alcohol and tobacco. These proposals address the question of compliance through mobile patrols, risk analysis, data-sharing and enforcement measures away from the border. However, we have had no visibility of any technical solutions, anywhere in the world, beyond the aspirational, that would remove the need for physical infrastructure at the border. We recommend the Government bring forward detailed proposals, without further delay, that set out how it will maintain an open and invisible border. These proposals should provide detail about how customs compliance will be enforced if there is regulatory and tariff divergence between the UK and Ireland.**

## Full alignment

83. The Prime Minister has made clear that full alignment is the “default, default option” for the UK.<sup>191</sup> Conversely, Michel Barnier described full alignment as a guarantee that “whatever the circumstances” there will be no hard border on the island of Ireland.<sup>192</sup> The EU and the UK have agreed to draft this option into the legal text of the Withdrawal Agreement whilst discussing the UK’s preferred two options in parallel.<sup>193</sup> It must be noted that the Commission has acknowledged that full alignment is the “fall-back solution” which will only apply in the absence of other agreed solutions.<sup>194</sup> The full alignment option is described in the following terms:

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189 [Smart Border 2.0, Avoiding a hard border on the island of Ireland for Customs control and the free movement of persons](#), European Parliament’s Policy Department for Citizens’ Rights and Constitutional Affairs, November 2017

190 [Smart Border 2.0, Avoiding a hard border on the island of Ireland for Customs control and the free movement of persons](#), European Parliament’s Policy Department for Citizens’ Rights and Constitutional Affairs, November 2017

191 [Q31 \[Theresa May\] Oral Evidence to the Liaison Committee](#), 20 December 2017,

192 [Press statement by Michel Barnier following this week’s round of Article 50 negotiations](#) (6th-9th February) 9 February 2018

193 [Press statement by Michel Barnier following this week’s round of Article 50 negotiations](#) (6th-9th February) 9 February 2018, [Draft Withdrawal Agreement](#), European Commission, 28 February 2018

194 [Brexit: European Commission publishes draft Article 50 Withdrawal Agreement](#), European Commission, 28 February 2018

Figure 3: Extract from paragraph 49 and paragraph 50 of the Joint Report:

**49. In the absence of agreed solutions, the United Kingdom will maintain full alignment with those rules of the Internal Market and the Customs Union which, now or in the future, support North-South cooperation, the all-island economy and the protection of the 1998 Agreement.**

**50. In the absence of agreed solutions, as set out in the previous paragraph, the United Kingdom will ensure that no new regulatory barriers develop between Northern Ireland and the rest of the United Kingdom, unless, consistent with the 1998 Agreement, the Northern Ireland Executive and Assembly agree that distinct arrangements are appropriate for Northern Ireland. In all circumstances, the United Kingdom will continue to ensure the same unfettered access for Northern Ireland's businesses to the whole of the United Kingdom internal market.**

Source: [Joint Report on progress during phase 1 of negotiations under Article 50 TEU on the UK's orderly withdrawal from the EU](#), 8 December 2017

84. The Prime Minister's comments following publication of the Draft Withdrawal Agreement, which sets out in detail the EU's proposals for implementing full alignment, suggest the EU and the UK have different interpretations of this joint commitment. The EU has said that its Draft Withdrawal Agreement "translates into legal terms" the progress achieved in the Joint Report.<sup>195</sup> The Commission's proposals for operationalising full alignment rest on two key propositions:

- Establishment of a common regulatory area, comprising the EU and Northern Ireland, in which goods can move freely; and
- The territory of Northern Ireland shall be considered part of the customs territory of the EU, including the common VAT area.<sup>196</sup>

85. The Prime Minister said that, if implemented, these proposals would "undermine the UK common market" and "threaten the constitutional integrity of the UK" by creating "a customs and regulatory border down the Irish sea."<sup>197</sup> It should be noted that the Joint Report states the UK as a whole will maintain full alignment, unless the Northern Ireland Executive and Assembly "agree that distinct arrangements are appropriate for Northern Ireland".<sup>198</sup> It further commits that Northern Ireland will continue to have "unfettered access" to the UK internal market. The Commission's proposals for full alignment presume distinct arrangements for Northern Ireland and appear to conflict with Paragraph 45 which states that the UK is leaving the Single Market and Customs Union.<sup>199</sup>

86. The Government has explicitly rejected the creation of a border in the Irish sea in both its position paper and the Prime Minister's commitments to Northern Ireland.<sup>200</sup> Paul Mac Flynn told the Committee that a deal which prioritised trade with the EU would not make sense in terms of trade volumes for Northern Ireland or Ireland. He said

195 [Brexit: European Commission publishes draft Article 50 Withdrawal Agreement](#), 28 February 2018

196 [Draft Withdrawal Agreement](#), European Commission, 28 February 2018

197 Rt Hon Theresa May, [Hansard Volume 636](#), 28 February 2018

198 [Joint Report on progress during the negotiations under Article 50](#), 8 December 2017

199 [Joint Report on progress during the negotiations under Article 50](#), 8 December 2017

200 [HM Government, 'Northern Ireland and Ireland', August 2017, Prime Minister's commitments to Northern Ireland](#), 8 December 2017

a border in the Irish sea “benefits nobody”.<sup>201</sup> Great Britain is Northern Ireland’s most significant market by value. In 2016, export sales to Great Britain were worth £14 billion, 3.7 times more than the value of exports to Ireland.<sup>202</sup> The UK is also crucial economically for Ireland. In 2015, 13.9% of Irish goods exported went to the UK and 25.7% of goods imported arrived from the UK.<sup>203</sup> Two-thirds of Irish exporters also transport their goods via the UK land bridge to reach EU markets.<sup>204</sup>

87. The Government has said that regulatory alignment means seeking “outcome alignment” rather than “harmonisation” with EU rules.<sup>205</sup> David Davis told the Exiting the EU Select Committee that “whatever happens, we will be able to meet the alignment” requirement because agreeing mutual recognition or equivalent outcomes for EU rules is a UK-national issue.<sup>206</sup> In its position paper on Northern Ireland the Government explained how regulatory alignment for agri-food measures could operate:

The UK and the EU agree to achieve the same outcome and high standards, with scope for flexibility in relation to the method for achieving this. An agreement on regulatory equivalence for agri-food, including regulatory cooperation and dispute resolution mechanisms [ ... ] this approach could ensure that there would be no requirement for any SPS (sanitary and phytosanitary) or related checks for agri-food products at the border.<sup>207</sup>

88. In contrast, the Commission’s draft text simply states that “Union law on sanitary and phytosanitary rules” will apply in Northern Ireland.<sup>208</sup> Following publication of the draft text, Michel Barnier said:

In the absence of EU law that can override national law, in the absence of common supervision and a common court, there can be no mutual recognition of standards<sup>209</sup>

The Government’s proposals on agri-food measures do acknowledge the need for regulatory cooperation and dispute resolutions mechanisms. The Prime Minister has also said that the UK will maintain regulatory standards “as high as the EU’s” and an “independent mechanism” will oversee regulatory arrangements.<sup>210</sup> Negotiations on the Draft Withdrawal Agreement and wider UK-EU relationship will need to determine how these differing interpretations of regulatory alignment can be reconciled.

**89. The EU Commission’s Draft Withdrawal Agreement does not properly represent the commitments made in paragraph 49 of the Joint Report. It presumes to make distinct arrangement for Northern Ireland, which is in direct contravention of the democratic provisions set out in paragraph 50. The Committee supports the Prime Minister’s clear rejection of the current proposals in the Draft Withdrawal Agreement which would result in a customs border in the Irish Sea. The issues of the land border**

201 [Q13](#) [Paul Mac Flynn]

202 NISRA, [EU Exit Analysis: publications](#), 20 December 2017

203 [Ireland and the UK in numbers](#), Irish Central Statistics Office

204 [Ireland & the impacts of Brexit](#), Copenhagen Economics, February 2018

205 [Q719](#) [David Davis] Oral Evidence to the Exiting the EU Committee, 24 January 2018

206 [Q771](#) [David Davis] Oral Evidence to the Exiting the EU Committee, 24 January 2018

207 [HM Government, ‘Northern Ireland and Ireland’, August 2017,](#)

208 [Draft Withdrawal Agreement](#), European Commission, 28 February 2018

209 [Speech by Michel Barnier at Business Europe Day 2018](#), 1 March 2018

210 [PM speech on our future economic partnership with the European Union](#), 2 March 2018

cannot be resolved by creating a costly barrier to trade with Northern Ireland's largest market, neither would such a measure be compatible with the spirit and intent of the Belfast/Good Friday Agreement. This proposal would also have significant detrimental consequences for the substantial exports from Ireland to Great Britain.

90. The description of the full alignment scenario, contained in the Joint Report of 8 December 2017, is highly ambiguous. Negotiations on the Withdrawal Agreement must bridge the gap between differing EU and the UK interpretations of this commitment. We recommend that, as a matter of urgency and in order that citizens and businesses on both side of the border can have clarity, both the UK Government and the EU spell out exactly what full alignment would mean. The Government's stated intention, that Northern Ireland will be outside of the EU Customs Union and Single Market but require no border infrastructure, is unprecedented. *In its response to this Report, the Government should set out in detail how the future EU-UK relationship could make the traditional requirements of border infrastructure unnecessary, citing precedent and the evidence base on which it is relying.*

### The implementation period

91. The EU and UK are due to start preparatory discussions on the future UK-EU relationship at the end of March. The European Council proposed that negotiations between March-October 2018 should result in a "political declaration" on the framework for future relations.<sup>211</sup> The UK cannot finalise its new relationship with the EU until after 29 March 2019, when it has become a third country.<sup>212</sup> The Prime Minister has proposed an implementation period of "up to, or around, two years" after the UK leaves on 29 March 2019<sup>213</sup>. The European Council has suggested this transition period should end on 31 December 2020.<sup>214</sup>

92. The Prime Minister has said the UK will not be in the Single Market or the Customs Union during the implementation period but expects "to operate on the same terms as we currently do."<sup>215</sup> The implementation period is intended "to give individuals, businesses and Governments time to plan and initiate changes" to ensure a "smooth and orderly transition".<sup>216</sup> The Prime Minister said:

How long the period is should be determined simply by how long it will take to prepare and implement the new processes and new systems that will underpin that future partnership.<sup>217</sup>

However, when we took evidence from Michel Barnier he was much more optimistic stating in response to a question on whether a trade deal could be concluded before the end of the implementation period:

To attempt to reply specifically to your question, Mr Mills, my feeling is that from March on, we are going to discuss relations. We will have had this

211 European Council, [Article 50 Guidelines](#), 15 December 2017

212 European Council, [Article 50 Guidelines](#), 15 December 2017

213 Rt Hon Theresa May, [Hansard Volume 633](#), 18 December 2017

214 [Draft Withdrawal Agreement](#), European Commission, 28 February 2018

215 Rt Hon Theresa May, [Hansard Volume 633](#), 18 December 2017,

216 Rt Hon David Davis, [Hansard Volume 635](#), 1 February 2018

217 [PM's Florence speech: a new era of cooperation and partnership between the UK and the EU](#), 22 September 2017, HM Government, [Draft Text for discussion: Implementation Period](#), 21 February 2018

political declaration in October and then we will be able to move forward far more rapidly than we have been used to, together with your country. At the moment we are completely integrated commercially speaking, in terms of trade [ ... ] I can say that within a short period of time we cannot do absolutely everything. We do have to set priorities, but we will be in a position to conclude at least the free trade agreement, if not more. I will work with that in mind, because we want to ensure good trade co-operation. That is a very important condition in the interests of your country as well as the European Union.<sup>218</sup>

93. The EU Commission has said transitional arrangements should cover “the whole of the Union acquis” and apply to the UK as if it were still a member state.<sup>219</sup> The Government expects to sign a substantive trade deal with the EU immediately after the UK leaves in 2019.<sup>220</sup> It has said the subsequent period should be used to implement “agreed solutions” rather than as an extension to the negotiations.<sup>221</sup> The European Council’s guidelines refer only to “preliminary and preparatory discussions” on the future relationship taking place before March 2019. Michel Barnier told the Committee he expects to ratify a political declaration which sets out four pillars for the future UK-EU relationship; trade, specific cooperation, home affairs and defence and security by March 2019.<sup>222</sup> However, he also told the House of Lords European Union Committee that:

scoping of the future relationship [ ... ] will continue after 30 March 2019. We will need a few years, most likely, to continue with that negotiation on the free and fair trade agreement.<sup>223</sup>

94. The Committee heard that the future UK-EU relationship and arrangements for the border are clearly connected.<sup>224</sup> The Legatum Institute told us:

It is difficult to see how the Irish border issues can be addressed separately from the future trading relationship, as the solutions required for the border will be driven by the agreements on tariffs, rules of origin, product standards, sanitary and phytosanitary measures (food safety and animal and plant health), and mutual recognition of conformity assessment and market surveillance.<sup>225</sup>

95. The Institute for Government found that preparing for the UK’s new customs arrangements will require change “across over 30 government departments and public bodies”. In the past, businesses and organisations have been given years to adapt to Government change.<sup>226</sup> The Trades Union Congress said the Governments proposals for technical solutions represent “blue sky thinking” but it will not have the time to implement

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218 [Q285](#) (Michel Barnier)

219 EU Commission, [Annex to recommendation for a European Council decision](#), 20 December 2017

220 [David Davis](#), BBC The Andrew Marr Show, 10 December 2017, [Q24](#) [David Davis] Oral Evidence to the Select Committee on Exiting the EU, 25 October 2017

221 [Q260–262](#) [Robin Walker]

222 [Q285](#) [Michel Barnier]

223 [Q1](#)[Michel Barnier], Oral Evidence to the Lords Select Committee on the European Union, 12 July 2017

224 [Q2](#) [Sylvia de Mars] [Q19](#) [Paul Mac Flynn]

225 Legatum Institute Special Trade Commission ([ILB002](#))

226 [Institute for Government, Implementing Brexit: Customs](#), 11 September 2017

anything concrete before withdrawal day.<sup>227</sup> The Legatum Institute suggested that it will be necessary to have an interim period where the UK maintains “close to the status quo” while new border systems are implemented. It said:

It should be borne in mind in this context that technology and logistical solutions can only implement and facilitate the enforcement and monitoring of rules. A legal architecture needs to be in place in the first instance.<sup>228</sup>

96. The evidence we heard from Swiss, Norwegian and Gibraltar officials emphasised the importance of goodwill and close cooperation in effective border management. We heard that Swiss customs officials at every level meet and collaborate with their French, German and Italian counterparts.<sup>229</sup> This cooperation extends to joint policing by Swiss-German patrols who operate along the border corridor to prevent illicit activity.<sup>230</sup> Norwegian officials also work closely with Swedish counterparts at all levels, facilitated by the regular exchange of control and intelligence data.<sup>231</sup> Joint education programmes mean some customs officials are trained in both EU and Norwegian computer systems allowing them to operate import and export clearance through one window at the border.<sup>232</sup> Norwegian and Swedish officials also have permission to travel up to 50km into each others jurisdiction when making customs controls.<sup>233</sup>

97. The proposals discussed in this report would require the UK, Ireland and the EU to work closely together to design and implement bespoke solutions for the land border.<sup>234</sup> In her Mansion House speech, the Prime Minister acknowledged that finding solutions for the border would require Irish, UK and Commission officials “working together”.<sup>235</sup> The EU has acknowledged that “flexible and imaginative” solutions will be required to avoid a hard border on the island of Ireland.<sup>236</sup> The Treaty of Lisbon, signed at the European Council in 2007, also demonstrates that goodwill and close cooperation are principles enshrined in EU law:

1. The Union shall develop a special relationship with neighbouring countries, aiming to establish an area of prosperity and good neighbourliness, founded on the values of the Union and characterised by close and peaceful relations based on cooperation. 2. For the purposes of paragraph 1, the Union may conclude specific agreements with the countries concerned. These agreements may contain reciprocal rights and obligations as well as the possibility of undertaking activities jointly.<sup>237</sup>

**98. We welcome the Government’s intention to agree an implementation period. The current negotiating timeline means, in our view, it would be challenging to expect full implementation of a new, non-visible, customs regime by March 2019. We have seen no evidence to suggest that, right now, an invisible border is possible. To provide adequate**

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227 Trades Union Congress ([ILB0019](#))

228 Legatum Institute Special Trade Commission ([ILB0002](#))

229 [Q39](#) [Dr Christian Bock]

230 [Q39](#), [Q52](#) [Dr Christian Bock]

231 [Q75](#) [Liv Kristen Rundberget]

232 [Q95](#) [Liv Kristen Rundberget]

233 [Q75](#) [Liv Kristen Rundberget]

234 Legatum Institute Special Trade Commission ([ILB0002](#))

235 [PM speech on our future economic partnership with the European Union](#), 2 March 2018

236 [Dialogue on Ireland/Northern Ireland](#), EU Commission, 21 September 2017

237 [Article 7a](#), Treaty of Lisbon 2007, Eur-Lex

time for new customs processes to be put in place, the UK may need to remain in or parallel to the Customs Union and Single Market throughout the implementation period. *During this implementation period, we call upon the Government to work closely with counterparts in Ireland and the EU to develop an innovative border system capable of delivering customs compliance without traditional physical infrastructure at the border.*

## Beyond the implementation period

99. The Prime Minister has said that, because the UK currently shares the same rules as the EU, the challenge will be managing “what we do when one of us wants to make changes.”<sup>238</sup> Michel Barnier has also identified regulatory divergence of laws and standards between the UK and the EU as a long-term risk.<sup>239</sup> He highlighted that the Single Market allows for “fluid economic exchanges” because “it is a living system that we adapt permanently.”<sup>240</sup> Increased divergence of regulatory and tariff regimes in the UK and the EU could result in the need for greater checks on goods. Similarly, the physical manifestation of a border will depend on the “perceived risk of people not complying with either tariff or non-tariff regulations.”<sup>241</sup>

100. Paragraph 51 of the Joint Report presents a solution for managing divergence. It commits the EU and UK to establish oversight mechanisms which will ensure implementation of any specific arrangements for the island of Ireland do not impact the integrity of the EU’s Single Market and Customs Union.<sup>242</sup> The Commission’s Draft Withdrawal Agreement also proposes a “specialised committee”, comprised of representatives of the EU and the UK, could facilitate implementation of the Withdrawal Agreement and address any difficulties which arise.<sup>243</sup> In both Switzerland and Norway, joint committees, made up of EU and national officials, are employed to resolve disputes and ensure implementation of customs agreements.<sup>244</sup> David Davis has suggested that divergence between the UK and the EU will be managed using mutual recognition agreements and a “robust and independent arbitration mechanism”.<sup>245</sup> He acknowledged that, following the UK’s exit, both sides must be able to trust each other’s regulations and the institutions which enforce them.<sup>246</sup>

101. The Legatum Institute told us that the UK will be able to continue trading in the short term by maintaining EU laws in relevant fields with a view to managing divergence in the long-term.<sup>247</sup> They suggest that in time “the opportunity cost” of maintaining alignment with EU standards may begin to “outweigh the benefits of market access”.<sup>248</sup> Paul Mac

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238 [PM’s Florence speech: a new era of cooperation and partnership between the UK and the EU](#), 22 September 2017

239 [Q8](#) [Michel Barnier], Oral Evidence to Lords Select Committee on the EU, 12 July 2017

240 [Speech by Michel Barnier at Business Europe Day 2018](#), 1 March 2018

241 [Q13](#) [Paul Mac Flynn]

242 [Joint Report on progress during the negotiations under Article 50](#), 8 December 2017

243 Article 158 and Article 10 of the Protocol, [Draft Withdrawal Agreement](#), European Commission, 28 February 2018

244 Legatum Institute Special Trade Commission ([ILB0002](#))

245 [David Davis’ Foundations of the Future Economic Partnership Speech](#), 20 February 2018

246 [David Davis’ Foundations of the Future Economic Partnership Speech](#), 20 February 2018

247 Legatum Institute ([ILB0002](#))

248 Legatum Institute ([ILB0002](#))

Flynn proposed that the decision to diverge from the EU's common external tariff should be based on an economic analysis of the benefits of a new trade deal compared to the impact of leaving the status quo. He told us:

If we are going to make a trade deal with India, why would we do all the damage in terms of removing ourselves from EU trade first? Why do we not let the Indian trade deal be negotiated and then mark it up against what we would lose if we had to have a different common external tariff because we have different rates of tariff on goods from India?<sup>249</sup>

102. Paragraph 50 of the Joint Report leaves open the possibility for Northern Ireland to make “distinct arrangements” whilst maintaining “unfettered access” to the UK market.<sup>250</sup> However, we heard that new regulatory powers would need to be devolved to enable Northern Ireland to implement distinct solutions.<sup>251</sup> This would also require there to be a fully functioning Assembly and Executive in Northern Ireland.

**103. The UK and the EU are starting from a point of full regulatory alignment. The extent of future regulatory and tariff divergence will be determined by the EU-UK relationship and future Government policy. The EU and the UK will need to set up mechanisms, such as Joint Committees, to manage divergence in the long term.**

**104. Northern Ireland, due to its shared land border with the EU, may face complications from regulatory or tariff divergence which are not experienced in other parts of the UK. We call upon the Government to conduct an impact assessment for the border each time it is proposed that there should be regulatory or tariff divergence from the EU. Where appropriate, and in the event of the restoration of the Northern Ireland Executive and Assembly, consent for regulatory derogations to facilitate the operation of the land border may be sought.**

## Smuggling

105. Since the creation of the first customs border in 1922, smuggling has been a persistent problem on the island of Ireland.<sup>252</sup> Today, smuggling is concentrated on the cross-border movement of tobacco, fuel and alcohol.<sup>253</sup> These products are subject to different excise duties and VAT regimes in Northern Ireland and Ireland.<sup>254</sup> We heard that smuggling trends are driven by the cross-border price differential of goods.<sup>255</sup> Dr Conor Patterson, Chief Executive of Newry and Mourne Co-operative and Enterprise Agency, told us that smuggling is “corrosive” because it takes people out of the mainstream economy.<sup>256</sup> Excise evasion also reduces public revenue collection and puts legitimate businesses at a competitive disadvantage.<sup>257</sup> On the island of Ireland, smuggling has been linked to the funding of paramilitary groups.<sup>258</sup> We heard that:

249 [Q17](#) [Paul Mac Flynn]

250 [Joint Report on progress during the negotiations under Article 50](#), 8 December 2017

251 [Q10](#) [Paul Mac Flynn], Katy Hayward and David Phinnemore ([ILB0020](#))

252 [Brexit and the Border: Managing the UK/Ireland Impact](#), Queen's University Belfast, October 2016, Legatum Institute Special Trade Commission ([ILB0002](#))

253 Cross Border Organised Crime, [Threat Assessment](#), 2016,

254 [Cross-border price comparisons](#), Irish Revenue Commissioners, May 2017

255 [Q33](#) [Paul Mac Flynn]

256 [Q112](#) [Dr Patterson]

257 Dr Katy Hayward and David Phinnemore ([ILB0020](#))

258 [Q98](#), [Dr Katy Hayward] UK-Irish relations, House of Lords Select Committee on the EU, 31 January 2018

An increase in the demand and profitability of black market smuggling would provide ex-prisoners and at-risk youth on both sides with a powerful economic incentive to become increasingly engaged with paramilitary groups.<sup>259</sup>

106. The Legatum Institute has said that if the Government is successful in negotiating a zero-for-zero tariff deal it would remove the incentive for tariff evasion smuggling in the short term. In the longer term, the UK's decision to pursue an independent trade policy means it is likely that the UK's tariffs for certain goods will diverge materially from that of the EU.<sup>260</sup> This view was echoed by Paul Mac Flynn who told us;

If the UK left the EU in the morning, it has said it wants its common external tariff to be what it is for EU countries trading. In that sense, there is no tariff differential but if it wants to make new trade deals, it then disrupts what its common external tariff is. That, from that first trade deal, is where it [smuggling] starts.<sup>261</sup>

It is unclear which goods may represent a risk of smuggling in the event of future trade deals. However, it is likely that the smuggling incentive to evade excise duty on cigarettes, alcohol and fuel will remain.

### *A porous border*

107. The geography of the land border has always presented a unique challenge for border management. There are twice as many crossings between Northern Ireland and Ireland as exist on the entirety of the EU's eastern border.<sup>262</sup> Daniel Mulhall, former Irish Ambassador to the UK, highlighted the difficulty presented by the location of the frontier line;

It is not like there is a mountain range between north and south in Ireland, or a big river that happens to mysteriously and magically go along the border, where you imagine you could have a small number of control points across that border. This is a border that is invisible.<sup>263</sup>

108. During the Troubles, security installations were erected along the border and a system of approved roads was put in place for travel between jurisdictions. Dr Patterson told us it would now be accepted that all the infrastructure used to create the "hardest of hard borders" was ineffective.<sup>264</sup> Professor John Doyle, Director of the Institute for International Conflict Resolution and Reconstruction at Dublin City University, said:

33,000 members of the Armed Forces were deployed in Northern Ireland. If you talk to veterans, I do not think you will find a single officer who thought the border was sealed for one hour during that period. All the evidence is that it was not.<sup>265</sup>

259 [Brexit and the Border: Managing the UK/Ireland Impact](#), Queen's University Belfast, October 2016

260 Legatum Institute Special Trade Commission ([ILB0002](#))

261 [Q35](#) [Paul Mac Flynn]

262 BBC, [Reality Check: Ireland's border and Brexit](#), 16 August 2017

263 [Q463](#) [Dan Mullhall]

264 [Q116](#) [Dr Patterson]

265 [Q46](#) [Professor John Doyle], Oral Evidence to the House of Lords EU Select Committee, 30 January 2018

109. Today, the Police Service of Northern Ireland (PSNI) has around 7,000 officers for 310 miles of border.<sup>266</sup> George Hamilton agreed that hard physical infrastructure had not been successful for policing the border.<sup>267</sup> In his assessment, physical infrastructure at the border would also become the subject of “unhelpful attention” from dissident republicans who view the police or representatives of the state as legitimate targets. He emphasised that officers should not be made into “sitting ducks” due to the predictability of deployment on the border.<sup>268</sup> Rebekka Strassle, Lt Col of the Swiss Federal Customs Administration, also said that static border controls are not as successful as unpredictable controls based on good risk analysis.<sup>269</sup>

**110. The border in Northern Ireland has always been porous. Additional infrastructure is not only politically objectionable but, on its own, would be a highly ineffective means of preventing the movement of illicit goods. The most effective way to mitigate the risks of the border would be to devise a customs system which incentivises compliance through simple, low cost administrative procedures and unpredictable intelligence-led enforcement. We call upon the Government to now explain in detail how such arrangements would operate and how the current approach to tackling illicit supply of alcohol, fuel and tobacco could be improved upon.**

## The use of EU legal frameworks in cross-border policing

111. PSNI Chief Constable George Hamilton told us that there is an excellent relationship between the PSNI and An Garda Síochána with cooperation occurring at every level. However, successful policing cooperation requires “a clear legal policy framework” within which to operate.”<sup>270</sup> The PSNI makes use of an “extensive number” of EU justice and home affairs measures in crime prevention.<sup>271</sup> William Kerr, Assistant Chief Constable, told us that losing access to European databases such as Prum and the Schengen Information System was “immensely concerning because it will make it harder for us to do our job”.<sup>272</sup> The ability to share data is important because 43% of organised crime has an all-island or international basis.<sup>273</sup> We heard that offenders routinely cross the land border in an attempt to evade prosecution and exploit differential legislation.<sup>274</sup> George Hamilton asked that action be taken through legislation or bilateral agreements with other EU member states to replace the information sharing arrangements that currently exist.<sup>275</sup>

112. The European Arrest Warrant (EAW) has been described by the PSNI as “essential for tackling terrorism and organised crime” on the island of Ireland.<sup>276</sup> The EAW replaced problematic domestic legislation which was characterised by “protracted extradition battles” to move people from one jurisdiction to another.<sup>277</sup> George Hamilton said that if the UK’s continued participation in the programme was not possible then he would seek

266 [Q65](#) [George Hamilton] Oral Evidence to the House of Lords EU Select Committee, 31 January 2018

267 [Q65](#), [George Hamilton] Oral Evidence to the House of Lords EU Select Committee, 31 January 2018

268 [Q65](#), [George Hamilton] Oral Evidence to the House of Lords EU Select Committee, 31 January 2018

269 [Q118](#), [Q119](#) [Rebekka Strassle] Oral Evidence to the House of Lords Select Committee on the EU, 6 February 2018

270 [Q162](#) [George Hamilton]

271 [Q168](#) [William Kerr]

272 [Q162](#) [George Hamilton]

273 [Q162](#) [George Hamilton]

274 [Q162](#) (George Hamilton)

275 [Q163](#), [Q176](#) [George Hamilton]

276 [Q162](#) [George Hamilton]

277 [Q61](#) [Tim Mairs] Oral Evidence to the House of Lords Select Committee on the EU, 31 January 2018

“something that mirrors as closely as possible European Arrest Warrant arrangements.”<sup>278</sup> He emphasised that the EAW and access to European databases allows the PSNI to mitigate the risks presented by a porous border.<sup>279</sup>

113. The Government has put forward proposals setting out how the UK could continue to participate in EU security frameworks whilst leaving the jurisdiction of the Court of Justice of the European Union.<sup>280</sup> The Prime Minister has said that a new Treaty will underpin internal security arrangements and acknowledged that when participating in EU agencies “the UK will respect the remit of the European Court of Justice.”<sup>281</sup> The Government is also seeking a bespoke arrangement on data protection.<sup>282</sup> The European Council’s draft guidelines state that the future relationship should cover:

effective exchanges of information, support for operational cooperation between law enforcement authorities and judicial cooperation in criminal matters<sup>283</sup>

Negotiations on the future UK-EU relationship will determine future access to these policing tools.

**114. Policing cooperation on the island of Ireland has benefitted from shared EU legal frameworks for data sharing and extradition. Without access to these resources it would inevitably become harder for the Northern Ireland police service to prevent criminals crossing the land border to evade arrest, with particular implications for security related criminality. We recommend that the Government works with the Irish authorities to prepare contingencies for a bilateral successor to the European Arrest Warrant on the island of Ireland and in the EU, citing article 8 of the Lisbon Treaty.**

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278 [Q69](#) [George Hamilton] Oral Evidence to the House of Lords Select Committee on the EU, 31 January 2018

279 [Q163,Q176](#) [George Hamilton]

280 HM Government, [Security, law enforcement and criminal justice](#), 18 September 2017

281 [PM speech at Munich Security Conference](#): 17 February 2018

282 [PM speech at Munich Security Conference](#): 17 February 2018

283 [Draft guidelines prepared by the President of the European Council](#), in close cooperation with the member of the European Council representing the Member State holding the six-monthly Presidency of the Council and with the President of the Commission, 7 March 2018

## 4 The Belfast/Good Friday Agreement

115. The Belfast/Good Friday Agreement created a unique constitutional framework for Northern Ireland. It sets out governance arrangements for Northern Ireland in two interrelated documents; one is the Belfast/Good Friday Agreement, which is an international agreement between the British and Irish governments and which was subsequently incorporated into UK domestic law by the Northern Ireland Act 1998. The Agreement answered the constitutional question about whether Northern Ireland should remain in the UK, or become part of a united Ireland, with agreement there would be no change without majority consent.<sup>284</sup> It was approved by concurrent referenda in Northern Ireland and Ireland on the 22 May 1998. The Agreement has been described as the “bedrock”<sup>285</sup> or “corner stone” of the peace process.<sup>286</sup> In practice, it established three strands of institutional governance in Northern Ireland:

- Strand one: a devolved nationalist and unionist power sharing government within Northern Ireland;
- Strand two: creation of the North/South Ministerial Council to facilitate cooperation between Northern Ireland and Ireland (North/South cooperation); and
- Strand three: creation of the British Irish Council and the British-Irish Intergovernmental Conference to encourage cooperation between the UK and Ireland (East/West cooperation).

116. In this chapter, we consider the implications of the UK’s decision to leave the EU for all-island cooperation under the Belfast/Good Friday Agreement and citizenship rights.

### The EU and the Belfast/Good Friday Agreement

117. The Belfast/Good Friday Agreement contains three references to the EU. A reference in the introduction to Ireland and the UK as “partners in the European Union”, an instruction for the North-South Ministerial Council to consider “the European Union dimension of relevant matters” and EU issues as a proposed topic for discussion in the British-Irish Council.<sup>287</sup> The UK and Ireland’s joint accession to the EU in 1973 also provided an additional forum in which British and Irish officials could meet informally to discuss matters of mutual interest and build trust.

118. A number of stakeholders emphasised the importance of the EU context for the functioning of the Belfast/Good Friday Agreement, claiming that implementation of various aspects of the Agreement could be compromised by the absence of an overarching EU legal framework.<sup>288</sup> Katy Hayward told us that EU integration had an “enabling influence” on the peace process because it facilitated the development of normal cross-

284 The Secretary of State for Northern Ireland must hold a border poll if at any time it appears likely to him/ her that a majority of those voting would express a wish that Northern Ireland should cease to be part of the UK and form part of a united Ireland.

285 HM Government, [Northern Ireland and Ireland](#), 16 August 2017

286 Sinn Fein ([BDR0024](#))

287 [The Belfast Agreement](#), Northern Ireland Office, 10 April 1998

288 [Northern Ireland and Brexit: Limits and Opportunities for a New Relationship with the EU](#), Professor David Pinnemore, Queen’s University Belfast, Dagmar Schiek ([BDR0015](#))

border relations.<sup>289</sup> In January 2017, the Supreme Court rejected a legal challenge which argued that Brexit represented a constitutional change to the Belfast/Good Friday Agreement. The judges found that the Agreement covers Northern Ireland's place in the UK, not its place in the EU.<sup>290</sup>

119. A survey carried out by the Irish Central Border Area Network found that most respondents credit the Belfast/Good Friday Agreement, rather than EU membership, with “fundamentally changing their experience of crossing the border” and “facilitating cross-border cooperation”.<sup>291</sup> We also heard that success in building positive community relations in Northern Ireland is grounded on the “constructive attitudes” of people in Northern Ireland and the UK and Irish governments.<sup>292</sup> In the Joint Report, the EU and the UK commit to uphold the Agreement “in all its parts” and affirm that the achievements and commitments of the peace process will remain of “paramount importance”.<sup>293</sup> However, the Joint Report also identifies that citizenship rights and North-South cooperation will require special consideration in the next stage of the negotiations.

**120. The UK's decision to leave the EU does not change Northern Ireland's unique constitutional framework under the Belfast/Good Friday Agreement, however it changes the environment in which it operates. The UK, the EU and Ireland have all made clear and strong commitments to upholding the Agreement, and all subsequent agreements, and protecting the peace process. The institutions and safeguards created to manage cross-border and cross-community relations will remain the corner stone of peace and stability in Northern Ireland after Brexit. However, the EU has a duty under article 8 of the Lisbon Treaty to promote close and peaceful cooperation with its neighbours. The EU's proposals for what this means in practice should be encouraged by the Government.**

## The Belfast/Good Friday Agreement and citizenship rights

121. The Belfast/Good Friday Agreement recognises the birth right of the people of Northern Ireland to identify themselves as Irish, British, or both, irrespective of any future change in the status of Northern Ireland, and to equal treatment irrespective of their choice.<sup>294</sup> Census data from 2011 shows that approximately 59% of people habitually resident in Northern Ireland hold a British passport, 21% hold an Irish passport and 19% hold no passport.<sup>295</sup>

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289 [Q83](#) Dr Katy Hayward

290 BBC, [Reaction to Supreme Court Northern Ireland Brexit ruling, 24 January 2017](#), [R \(on the application of Miller and another\) \(Respondents\) v Secretary of State for Exiting the European Union \(Appellant\)](#), Supreme Court Judgement, 24 January 2017

291 Irish Central Border Area Network ([ILB0008](#))

292 Sandelford ([ILB0006](#))

293 [Joint Report on progress during the negotiations under Article 50](#), 8 December 2017

294 [The Belfast Agreement](#), Northern Ireland Office, 10 April 1998

295 Northern Ireland Statistical Research Agency, [2011 Census - Key Statistics](#), 11 December 2012, Since the referendum result, there has been a 15% increase in applications for Irish passports with over 20% of applications coming from Irish citizens in Great Britain and Northern Ireland, (see [Record number of Irish passports issued in 2017](#), Irish Department of Foreign Affairs and Trade, 29 December 2017). There has also been an increase in the number of Irish nationals applying for British citizenship (see [National Statistics: Citizenship](#), February 2017) Those born in the Ireland after 1949 and living in NI, irrespective of their length of residence there, do not enjoy the same UK Passport Rights as those who live in NI and choose to hold an Irish Passport (see [Types of British nationality](#) on Gov.uk)

122. On leaving the EU, British citizens will no longer be EU citizens. The Joint Report states, however, that people in Northern Ireland who can also choose Irish citizenship will “continue to enjoy rights as EU citizens, including where they reside in Northern Ireland”.<sup>296</sup> However, we heard that nearly all rights stemming from the EU’s four freedoms are conditional upon an individual living within an EU member state.<sup>297</sup> Sylvia de Mars told us that once the UK leaves, the rights of EU citizens in Northern Ireland will become dormant in the same way that an EU citizen living in the United States today has dormant EU rights.<sup>298</sup>

123. The Joint Report also states that the EU and UK intend to discuss arrangements to give effect to the “ongoing exercise of, and access to, EU rights, opportunities and benefits” for people in Northern Ireland who choose Irish citizenship.<sup>299</sup> Following publication of the Joint Report, Leo Varadkar, Ireland’s Taoiseach, said:

A child born in Belfast or Derry today will have the right to study in Paris, buy property in Spain, work in Berlin or any other part of the European Union. All they have to do is exercise the right to Irish and therefore EU citizenship<sup>300</sup>

124. This statement highlights the benefits that may be open to people in Northern Ireland who choose Irish citizenship. How such rights will be funded and implemented after the UK leaves the EU remains unclear. For example, the Erasmus Programme is currently managed at a central European level with funding allocated directly from the EU budget through open competition.<sup>301</sup> In the period 2014–2016, 7,837 Erasmus participants contributed to 180 projects in Northern Ireland at a total cost of 20 million euros.<sup>302</sup> There are also 660,329 beneficiaries of the European Health Insurance Card (EHIC) card in Northern Ireland.<sup>303</sup> When we questioned Robin Walker about what ongoing access to EU rights meant he told us:

The constitutional position for Irish citizens who are EU citizens and how they exercise their rights, is a question for the EU because they have to make the appropriate arrangements.<sup>304</sup>

During a Liaison Committee session, the Prime Minister was questioned by the Chair about who would pay for access to these EU rights. The Prime Minister referred to the Joint Report and the examination of such arrangements in the next phase of negotiations.<sup>305</sup>

125. It is also unclear how any new EU rights and benefits, created after the UK leaves the EU, may apply to those who choose Irish citizenship in Northern Ireland. For example,

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296 [Joint Report on progress during the negotiations under Article 50](#), 8 December 2017

297 Sylvia de Mars ([ILB0003](#))

298 Colin Murray ([BDR0025](#))

299 [Joint Report on progress during the negotiations under Article 50](#), 8 December 2017

300 Government Press Centre, [Statement by Taoiseach Leo Varadkar T.D.](#), Friday 8 December 2017

301 [European Funding Stream: Education](#), Research and Information Services, Northern Ireland Assembly, 14 January 2014

302 [Erasmus Country Factsheets](#), Northern Ireland, 2014–2016

303 [Health and Social Care in NI - areas of EU Competence, Action and Support](#), NI Assembly, 13 October 2016

304 [Q270](#) [Robin Walker]

305 [Q28–30](#), Oral Evidence from Rt Hon Theresa May to the Liaison Committee, 20 December 2017

the European Parliament recently commissioned a report assessing the feasibility of a European unemployment benefits scheme.<sup>306</sup> When questioned on this point, the Prime Minister said the commitment in the Joint Report refers:

Specifically to the current arrangements that residents have within the European Union. The citizens' rights element of this is about ensuring the choices people have already made will continue to be respected in the future.<sup>307</sup>

**126. *The Government should specify in its response to this report which existing EU rights and benefits will be available to individuals, resident in Northern Ireland, who choose to hold Irish citizenship, or both Irish and British citizenship. The Government should also set out how the rights, opportunities and benefits open to those who choose Irish citizenship, and therefore EU citizenship, will be funded after the UK leaves the EU.***

## North/South Cooperation

127. Strand two of the Belfast/Good Friday Agreement established the North/South Ministerial Council which brings together ministers from both governments “to develop consultation, co-operation and action” on an all-island and cross-border basis.<sup>308</sup> The Council agreed six areas of cooperation under the Agreement; agriculture, education, environment, health, tourism and transport. It is also responsible for six all-island implementation bodies which manage inland waterways, sea loughs and lighthouses, language, trade, food safety and the distribution of EU funds.

128. The Government acknowledged that other fora of collaboration have since developed, such as the Single Electricity Market, policing exchanges and the all-island hosting of sporting events.<sup>309</sup> We heard that cross-border cooperation has been important for building trust and improving infrastructure in the border regions.<sup>310</sup> In these areas, cross-border connections have become a means of overcoming the dual challenges of underdevelopment and geographical peripherality from Dublin and Belfast.<sup>311</sup> The Northern Ireland Local Government Association told us that border councils rely on the free-flowing movement of “goods, workers, shoppers and visitors” from an economic hinterland which extends into Ireland.<sup>312</sup> Paragraphs 128 to 133 set out two case studies on cross-border cooperation.

### *Case study: cross-border cooperation in healthcare*

129. There has been significant development in the provision of all-island healthcare through the Cooperation and Working Together partnership (CAWT).<sup>313</sup> The partnership is founded upon bilateral arrangements between health boards in Northern Ireland

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306 [Feasibility and Added Value of a European Unemployment Benefits Scheme](#), 10 February 2017

307 [Q30 Oral Evidence from Rt Hon Theresa May to the Liaison Committee](#), 20 December 2017

308 [The Belfast Agreement](#), Northern Ireland Office, 10 April 1998

309 HM Government, [Northern Ireland and Ireland](#), 16 August 2017

310 Irish Central Border Area Network ([ILB008](#))

311 [Bordering on Brexit, Views from local communities in the Central Border Region of Ireland/Northern Ireland](#), November 2017

312 Northern Ireland Local Government Association ([ILB0013](#))

313 British Medical Association ([BDR0031](#))

and Ireland, originating with the Ballyconnell Agreement of 1992.<sup>314</sup> It provides an implementation structure for cooperation between health and social care systems in both jurisdictions. Access to a large cross-border catchment of patients is advantageous because it makes provision of specialist medical services financially viable.<sup>315</sup> Sharing facilities also enables people from both jurisdictions to access care locally, thereby avoiding lengthy journeys to specialist centres in Dublin or London.<sup>316</sup>

130. The EU contributed 40 million euros in funding to CAWT projects between 2003–2015.<sup>317</sup> It sponsored projects such as; acute ophthalmology and ENT services, sexual health clinics, specialist care for eating disorders and diabetes education facilities. CAWT estimates that around 80% of these EU funded projects have since been either fully or partially mainstreamed into core services.<sup>318</sup> The North-South Ministerial Council has also initiated cross-border health projects independently of EU funding. These include joint accident and emergency planning,<sup>319</sup> the radiotherapy unit at Altnagelvin Hospital,<sup>320</sup> and an all-island heart surgery centre in Dublin.<sup>321</sup>

131. The British Medical Association highlighted that securing mutual recognition of medical qualifications is of the “utmost importance” as there is a large number of EU workers.<sup>322</sup> Michel Barnier told us that continuation of cross-border ambulance services would require specific solutions for the regulation of medicines, blood products and hospital expenses reimbursement.<sup>323</sup> Damien McCallion, Director-General of CAWT, said regulatory divergence between North and South could pose an obstacle because:

If a patient travels for cancer treatment in Northern Ireland and there is some divergence in the standards in some way, shape or form, and then they are travelling back for ongoing treatment in the south of Ireland, it is an integrated pathway.<sup>324</sup>

### *Case study: cross-border cooperation in environmental policy*

132. We heard that the island of Ireland comprises a “single bio-geographic entity” with common geology, water catchments and flora and fauna which need to be managed in a consistent and coordinated way.<sup>325</sup> Although environmental policy is devolved, the vast majority of environmental policy in Northern Ireland is governed by EU legal frameworks.<sup>326</sup> There are over 650 pieces of EU environmental legislation in force.<sup>327</sup> There are three cross-border water catchments, shared designated protection sites and two freshwater loughs which operate under joint management through the Loughs Agency.<sup>328</sup>

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314 [The Ballyconnell Agreement](#), 10 July 1992

315 [Q306](#) [Michael Gallagher]

316 British Medical Association ([BDR0031](#))

317 [CAWT Annual Progress Report 2016](#)

318 [Q87](#) [Damian McCallion] Oral Evidence to the House of Lords EU Select Commit, 15 November 2017

319 [Health](#), North South Ministerial Council website

320 [Cancer Patients will receive new therapy in Northern Ireland](#), Department of Health, 25 March 2016

321 [Children’s heart surgery to move from Belfast to Dublin](#), BBC, 14 October 2014

322 British Medical Association ([BDR0031](#))

323 [Q287](#) [Michel Barnier]

324 [Q90](#) [Damian McCallion] Oral Evidence to the House of Lords EU Select Commit, 15 November 2017

325 Northern Ireland Environment Link ([BDR0030](#))

326 [Northern Ireland’s environment background and potential ‘Brexit’ considerations](#), Research and Information Service, NI Assembly

327 Northern Ireland Environment Link ([BDR0030](#))

328 Northern Ireland Environment Link ([BDR0030](#))

133. Northern Ireland Environment Link told us that the UK’s departure from the EU’s common standards could lead to inconsistencies in the management of shared resources.<sup>329</sup> In future, different regulatory regimes may apply to cross-border environmental sites. Northern Ireland does not have an independent environmental regulator which means:

It is not clear what governance arrangements will be put in place to replace the loss of the necessary oversight, accountability, and enforcement functions currently carried out by the EU institutions.<sup>330</sup>

134. Northern Ireland Environment Link argued that Northern Ireland will need to balance alignment with EU environmental regulation over its shared land and sea borders whilst also maintaining alignment with UK-wide regulatory practice.<sup>331</sup> They recommended that all-island forums, such as the North-South Ministerial Council, are required to “maximise the opportunities and minimise the threats to our natural environment.”<sup>332</sup>

### Protecting North-South cooperation

135. The continuation of North-South and cross-community cooperation under the Belfast/Good Friday Agreement is one of six commitments made by the Prime Minister to Northern Ireland.<sup>333</sup> In the Joint Report, the UK and the EU commit to support North-South cooperation “across the full range of political, security, societal and agricultural contexts” including continued operation of the North-South Ministerial Council and all-island implementation bodies.<sup>334</sup> However, it also states that the UK’s decision to leave the EU “presents substantial challenges” to this cooperation. The three distinct scenarios, set out in paragraph 49 of the Joint Report, reflect how the UK and the EU intend to ensure continuation of North-South cooperation.

136. Following publication of the Joint Report, debate has centred on the extent to which North-South cooperation is dependent on Ireland and the UK sharing EU regulatory frameworks and governance structures. The Government’s position is that the future UK-EU relationship will be sufficient to protect North-South cooperation. The full alignment scenario will, however, be drafted into the text of the Withdrawal Agreement. As discussed in paragraphs 83–90 in the previous chapter, the UK and the EU appear to have different interpretations of what full alignment means.

137. David Davis has said that in this context full alignment relates to the six areas of North-South cooperation and the implementation bodies identified in the Belfast/Good Friday Agreement.<sup>335</sup> In contrast, the Commission’s Draft Withdrawal Agreement proposes a common regulatory area which extends to “telecommunications, broadcasting, inland fisheries, justice and security, higher education and sport”.<sup>336</sup> The text states that EU legal and policy frameworks are necessary to maintain the “conditions for continued

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329 [Q579](#) [Patrick Casement]

330 Northern Ireland Environment Link ([BDR0030](#))

331 Northern Ireland Environment Link ([BDR0030](#))

332 Northern Ireland Environment Link ([BDR0030](#))

333 [Prime Minister’s commitments to Northern Ireland](#), 8 December 2017

334 [Joint Report on progress during the negotiations under Article 50](#), 8 December 2017

335 [Q719](#) [David Davis] Oral Evidence to the Exiting the EU Committee, 24 January 2018

336 [Draft Withdrawal Agreement](#), European Commission, 28 February 2018

North-South cooperation”.<sup>337</sup> Both the Joint Report and the Draft Withdrawal Agreement make reference to a “mapping exercise” carried out by the UK and the EU to determine where North-South cooperation relies on common EU policy frameworks.<sup>338</sup>

138. The Government intends for the EU (Withdrawal Bill) to carry all existing EU law onto the domestic statute book. The Bill confers significant powers to Government Ministers to amend and repeal retained EU law once it is part of the UK statute book. The UK has also agreed to apply existing and new EU laws during the implementation period following March 2019.<sup>339</sup> In the longer term, the Government will be able to leave EU regulatory and governance structures. Northern Ireland, due to its constitutional arrangements and shared sea and land borders, will have a particular interest in the extent to which UK rules align with EU rules in future. The Centre for Cross-Border studies told us:

EU directives and regulations which will be transposed into UK/Northern Ireland law should remain in place until such time as any proposed changes have been subject to comprehensive territorial, equality and environmental impact assessments.<sup>340</sup>

### *A devolution solution*

139. Paragraph 50 of the Joint Report states that the Northern Ireland Executive and Assembly may agree “distinct arrangements” for Northern Ireland. It must be noted that these solutions are dependent on the existence of a functioning Northern Ireland Executive and Assembly. The opportunity for differentiation is tempered by clear commitments from the Government that Northern Ireland will have unfettered access to the UK internal market, in all circumstances.<sup>341</sup> Government analysis identified 141 policy areas where EU law intersects with the devolution settlement in Northern Ireland.<sup>342</sup> When the UK leaves the EU, if the statutory requirement to comply with EU law is removed, these policy areas could fall under devolved control. Devolution of EU regulatory powers would allow differentiation within the UK in areas where EU law has previously provided a common legal framework.<sup>343</sup>

140. The Government and the devolved administrations, meeting in the Joint Ministerial Committee (European Negotiations), have agreed to work together to establish common approaches in some areas that are currently governed by EU law. It must be noted that, due to the collapse of the Northern Ireland Executive in January 2017, Northern Ireland has not been represented by Ministers but, instead, by senior Northern Ireland civil servants at these meetings. This may take the form of “common goals, minimum or maximum standards, harmonisation, limits on action, or mutual recognition” for UK wide standards.<sup>344</sup> The Institute for Government described how common frameworks could operate:

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337 [Draft Withdrawal Agreement](#), European Commission, 28 February 2018

338 [Q278 \[Michel Barnier\]](#), [Draft Withdrawal Agreement](#), European Commission, 28 February 2018, [Joint Report on progress during the negotiations under Article 50](#), 8 December 2017

339 [Draft Text for Discussion: Implementation Period](#), 21 February 2018

340 Centre for Cross-Border Studies (ILB009)

341 [Joint Report on progress during the negotiations under Article 50](#), 8 December 2017

342 NI Assembly, [Policy Areas/Powers returning from the EU which intersect with the devolution settlement in Northern Ireland](#)

343 [Brexit, devolution and common frameworks](#), Institute for Government, 22 November 2017

344 [Joint Ministerial Committee \(EU Negotiations\)](#), 16 October 2017

there may be areas where coordination is required, but a binding legal framework is seen as unnecessary. In this case, powers might be devolved in full but with agreement about how the different governments will work together, perhaps to share best practice and data or to agree upon minimum standards, for instance in areas such as air or water pollution.<sup>345</sup>

141. The institutions set up by the Belfast/Good Friday Agreement are designed to facilitate cross-border and Anglo-Irish cooperation, and some commentators have suggested that the existing North-South and East-West institutions could provide a “mechanism to address any emerging impacts of the withdrawal process”.<sup>346</sup> It has been suggested that Brexit provides an opportunity to “breathe new life” into the institutions of the Agreement by repurposing them to manage regulatory change between the EU and the UK.<sup>347</sup> The Centre for Cross Border Studies said the Agreement provides a framework through which flexible and imaginative solutions can be delivered.<sup>348</sup> The Irish Parliament’s Joint Committee on the Implementation of the Good Friday Agreement said that “while the context and the issues raised may be different” the views of the North-South Ministerial Council could continue to be represented at EU meetings.<sup>349</sup> A report commissioned by the European Parliament also noted that the Agreement contains a number of unimplemented institutional arrangements, such as the North-South Consultative Forum and Northern Ireland Civic Forum, which could play a useful role in giving civic society a voice in designing new arrangements.<sup>350</sup>

**142. The Committee welcomes the Government’s commitment to protect North-South cooperation under the Belfast/Good Friday Agreement. Cross-border initiatives have been particularly important in improving the infrastructure and public services available to individuals living in the border corridor.**

**143. North-South cooperation is facilitated by shared regulatory frameworks and governance bodies. The Belfast/Good Friday Agreement states that there should be “consultation, co-operation and action” on matters of mutual interest. *We recommend that the Government publish the mapping exercise and put forward targeted proposals for how cross-border cooperation in policy areas dominated by EU law will continue after the UK leaves the EU. Where appropriate, and in the event of the restoration of the Northern Ireland Executive, EU competencies could be devolved to Northern Ireland so it can balance maintaining UK wide frameworks with EU alignment for cross-border policy areas. In their continued absence, alternative means of taking decisions will have to be devised.***

## EU funding for cross-border projects

144. Northern Ireland is a beneficiary of two European Structural Funds; the Interreg and Peace programmes. The Peace programme is aimed at promoting peace and stability in Northern Ireland and the border regions of Ireland. Funding has often been targeted at

345 [Brexit, devolution and common frameworks](#), Institute for Government, 22 November 2017

346 [Joint Committee on the Implementation of the Good Friday Agreement](#), August 2017

347 [UK Withdrawal \(Brexit\) and the Good Friday Agreement](#), November 2017

348 [Flexible and imaginative solutions: the 1998 Belfast/Good Friday Agreement as a framework for post-Brexit relations within and between these islands](#), Centre for Cross Border Studies, June 2017

349 [Joint Committee on the Implementation of the Good Friday Agreement](#), August 2017

350 [UK Withdrawal \(Brexit\) and the Good Friday Agreement](#), November 2017

cross-border projects designed to build good relations between communities. The Interreg programme provides EU wide funding for projects designed to overcome issues which arise from the existence of borders.<sup>351</sup>

145. A Special EU Programmes Boards (SEUPB) was set up under the Agreement to implement EU funding programmes across the island of Ireland. EU funding has supported projects such as the Londonderry Peace Bridge, internet connectivity under Project Kelvin and the development of the Northern Ireland Science Park.<sup>352</sup> Interreg funding currently contributes to the development of all-island environmental policies<sup>353</sup> and health provision under CAWT.<sup>354</sup> We heard that these funds have brought important benefits to the socially and economically vulnerable border region.<sup>355</sup> The Irish Central Border Area Network expressed concern that reduced funding for cross-border projects will diminish strategic regional development.<sup>356</sup>

146. In a letter following the referendum result, the former First and deputy First Minister of Northern Ireland highlighted that since 1994 Northern Ireland has benefitted from 13 billion euros in EU funding. The letter expressed “real concern” about how the absence of future EU funding programmes might affect a range of sectors in Northern Ireland.<sup>357</sup> The Chancellor of the Exchequer has committed to full funding of all Peace and Interreg projects which were signed before November 2016 or meet the UK’s value for money criteria, even when they continue beyond the UK’s departure.<sup>358</sup> The Joint Report also states the EU and the UK will honour their commitment to the Interreg and Peace programmes under the current multi-annual financial framework (which runs until December 2020). It further states that “possibilities for future support will be examined favourably”.<sup>359</sup>

147. It should be noted that between 1991–2020, the EU contributed 810 million Euros to the Interreg programmes and the UK contributed 323.9 million Euros.<sup>360</sup> Between 1995–2020, the EU contributed 1.563 billion Euros to Peace Programmes and the UK contributed 702 million Euros.<sup>361</sup> However, part of the EU’s contribution to these programmes could include the UK’s contributions to the EU budget. As such, some people have consequently seen EU funding as reliant on UK money that has been rebadged.

### *Cross-border funding after the UK leaves the EU*

148. The Government’s position paper states the UK wants to work with the EU on how to continue implementation of the Peace programme via the SEUPB and the North/South Ministerial Council post-2020.<sup>362</sup> Robin Walker, Parliamentary Under Secretary of State at the Department for Exiting the EU, told us that the Government has proposed a

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351 [Special EU Programmes Body](#)

352 [Derry City and Strabane District Council \(BDR0016\)](#)

353 [Northern Ireland Environment Link \(BDR0030\)](#)

354 INTERREG Press Release, [EU invests 47.5 million to improve health and social care on cross-border basis](#), 25 January 2017

355 [Irish Central Border Area Network \(BDR0008\)](#)

356 [Irish Central Border Area Network \(BDR0008\)](#)

357 The Executive Office, [Letter to the Prime Minister](#), 10 August 2016

358 HM Treasury, [Further certainty on EU funding for hundreds of British projects](#), 3 October 2016

359 [Joint Report on progress during the negotiations under Article 50](#), 8 December 2017

360 North/South Inter-Parliamentary Association, [Impact of Brexit on Cross-Border Activity](#), 18 November 2016

361 North/South Inter-Parliamentary Association, [Impact of Brexit on Cross-Border Activity](#), 18 November 2016

362 HM Government, [Northern Ireland and Ireland](#), 16 August 2017

bilateral successor to the Peace programme which will be subject to negotiation with the EU.<sup>363</sup> Previously, the participation of non-EU countries in EU funding programmes has meant that country accepting policy direction set by the EU.<sup>364</sup>

149. The Government's position paper makes no mention of continued funding for the Interreg programme. However, it does state that:

Notwithstanding the outcome of the negotiations on this specific issue, the UK government would remain committed to peace and reconciliation programmes and to sustaining cross-border cooperation<sup>365</sup>

150. In a response to a written question on the continuation of Interreg funding, the Government said:

Decisions on the replacement of EU funding will be taken in light of wider UK strategic priorities and other domestic spending decisions.<sup>366</sup>

However, Robin Walker told the Committee that the Government's proposals for a UK Shared Prosperity Fund could provide a successor to some existing EU funding programmes. The Conservative Party Manifesto states that the UK Shared Prosperity Fund would be used to "reduce inequalities between communities across the four nations".<sup>367</sup> The Department for Communities and Local Government will be consulting on proposals for the fund in 2018.<sup>368</sup> Anthony Soares, Deputy Director of the Centre for Cross Border Studies, questioned whether this funding could be used to support cross-border projects in the border regions of Ireland.<sup>369</sup> The Northern Ireland Local Government Association has said that Northern Ireland needs a distinct fund for the continuation of community cohesion and cross-border projects.<sup>370</sup>

151. The EU Commission has said that it believes both Peace and Interreg should continue beyond the current programming period and has stated its intention to propose their continuation, based on existing management structures, during the next Multi-Annual Financial Framework meeting.<sup>371</sup> Jean-Claude Juncker, President of the European Commission, stated:

I see no more important use of our budget than guaranteeing and financing the peace process in Ireland, this is an unconditional European commitment. This is what the commission will deliver with our proposal for the next multiannual financial framework in May.<sup>372</sup>

**152. The Committee welcomes commitments from both the Government and the President of the EU on continuation of Peace funding. The Government should set out in more detail its proposals for a bilateral successor to the Peace programme, the level of contribution it intends to make to the fund, and its governance arrangements.**

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363 [Q268](#) [Robin Walker]

364 North/South Inter-Parliamentary Association, [Impact of Brexit on Cross-Border Activity](#), 18 November 2016

365 HM Government, [Northern Ireland and Ireland](#), 16 August 2017

366 [Written Question 7155](#), Department for Exiting the EU, Hywel Williams, 29 September 2017

367 [Conservative Party Manifesto 2017](#)

368 [Written Questions, 119950](#), 18 December 2017

369 [Q93](#) Anthony Soares, Brexit: Reciprocal Healthcare, House of Lords, EU Home Affairs Sub-Committee

370 Northern Ireland local Government Association ([ILB0013](#))

371 [Communication from the Commission to the European Council](#), 8 December 2017

372 [EU pledge on post-Brexit cross-border peace funds](#), BBC, 17 January 2018

***153. The Government should clarify in its response to this report whether it will seek to continue funding for cross-border projects under the Interreg programme post-2020. If it is the Government's intention to replicate this funding through the UK Shared Prosperity Fund it should specify the amount of funding it will make available, whether this money could support cross-border projects in Northern Ireland and the border regions of Ireland and what its spending priorities will be.***

# Conclusions and recommendations

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## Introduction

1. The Joint Report of 8 December 2017 sets out three distinct solutions for addressing the unique circumstances of Northern Ireland. In doing so, it acknowledges the central disagreement between the UK and the EU about how their joint objectives for the land border will be achieved. This approach allowed the negotiations to move into the next stage but deferred, rather than solved, the central disagreement over how the UK's decision to leave the Single Market and Customs Union will be reconciled with avoiding a hard border on the island of Ireland. (Paragraph 14)

## The movement of people

2. We welcome the Government's commitment that changes to the UK's future immigration system will not affect free movement of people across the land border. Travel across the land border is an integral part of daily life for many individuals living in the border corridor. *We recommend the Government sets out in detail how it proposes to apply existing, or whether there will be new, internal immigration controls for EU nationals. In the Committee's view, the residents of Northern Ireland should not be subject to more onerous documentary checks to determine entitlement to stay and to access public services and the labour market than anywhere else in the UK. It must also establish the resource implications of conducting checks on people away from the border.* (Paragraph 31)
3. The Government acknowledges that EU citizenship rights have become confusingly intertwined with Common Travel Area rights. Where the law is unclear, there is scope for misinterpretation. *We recommend that the Government clarify, in its response to this Report, how the Common Travel Area provides protection for the special status of Irish citizens in the UK and how this will be maintained following the UK's withdrawal from the EU. If existing law is not sufficient, we recommend the Government set out proposals for placing the Common Travel Area's associated rights on an unambiguous footing through a draft bill which can then be scrutinised to guarantee in statutory form CTA rights for British and Irish citizens. The Committee further recommends that reciprocal clarification is requested from the Irish Government in respect of UK citizens in Ireland, in the event that it is felt necessary to make CTA rights explicit.* (Paragraph 36)

## The movement of goods

4. Ireland and the UK's membership of the EU Single Market and Customs Union resulted in the removal of customs infrastructure along the Northern Ireland border. It is unclear whether the UK's departure from EU rules and tariffs will necessitate new checks on the movement of goods to or from Ireland at the border. However, the Committee welcomes the Government's commitment that any checks on the UK side will be implemented without recourse to border infrastructure, even if the nature of the checking and its location is yet to be determined. (Paragraph 49)

5. Additional costs associated with completing customs and regulatory formalities could be damaging for businesses in Northern Ireland that rely on the cross-border movement of goods. Cross-border trade is dominated by small and medium sized enterprises who may not have the resource to hire new staff to deal with customs administration. *We recommend that the Government undertakes specific research and analysis to determine the impact of UK customs administration costs for cross-border trade on the island of Ireland. We further recommend that the Government expedites plans for mitigating any costs arising on the UK side of the border.* (Paragraph 55)
6. Leaving the EU without reaching an agreement in relation to avoiding a hard border on the island of Ireland would have very negative consequences. We welcome both the UK and the EU's commitment to ensuring this does not happen. We note that WTO rules prevent the UK from unilaterally creating an open border with Ireland without offering this to the entire membership of the WTO. *We recommend that this reality is specifically addressed in statements made by Ministers.* (Paragraph 63)
7. The Joint Report commits the UK, in the absence of agreed solutions, to a default scenario of full alignment with those rules of the Single Market and Customs Union which, now or in the future, support North-South cooperation, the all-island economy and protection of the Agreement. The specific solutions so far proposed by the Government are not viewed as sufficient by the EU. (Paragraph 75)
8. The Committee has heard numerous proposals for how the UK and the EU could ensure customs compliance without physical infrastructure at the border. This is currently the case for enforcement in relation to fuel, alcohol and tobacco. These proposals address the question of compliance through mobile patrols, risk analysis, data-sharing and enforcement measures away from the border. However, we have had no visibility of any technical solutions, anywhere in the world, beyond the aspirational, that would remove the need for physical infrastructure at the border. *We recommend the Government bring forward detailed proposals, without further delay, that set out how it will maintain an open and invisible border. These proposals should provide detail about how customs compliance will be enforced if there is regulatory and tariff divergence between the UK and Ireland.* (Paragraph 82)
9. The EU Commission's Draft Withdrawal Agreement does not properly represent the commitments made in paragraph 49 of the Joint Report. It presumes to make distinct arrangement for Northern Ireland, which is in direct contravention of the democratic provisions set out in paragraph 50. The Committee supports the Prime Minister's clear rejection of the current proposals in the Draft Withdrawal Agreement which would result in a customs border in the Irish Sea. The issues of the land border cannot be resolved by creating a costly barrier to trade with Northern Ireland's largest market, neither would such a measure be compatible with the spirit and intent of the Belfast/Good Friday Agreement. This proposal would also have significant detrimental consequences for the substantial exports from Ireland to Great Britain. (Paragraph 89)
10. The description of the full alignment scenario, contained in the Joint Report of 8 December 2017, is highly ambiguous. Negotiations on the Withdrawal Agreement must bridge the gap between differing EU and the UK interpretations of this commitment. We recommend that, as a matter of urgency and in order that citizens

and businesses on both side of the border can have clarity, both the UK Government and the EU spell out exactly what full alignment would mean. The Government's stated intention, that Northern Ireland will be outside of the EU Customs Union and Single Market but require no border infrastructure, is unprecedented. *In its response to this Report, the Government should set out in detail how the future EU-UK relationship could make the traditional requirements of border infrastructure unnecessary, citing precedent and the evidence base on which it is relying.* (Paragraph 90)

11. We welcome the Government's intention to agree an implementation period. The current negotiating timeline means, in our view, it would be challenging to expect full implementation of a new, non-visible, customs regime by March 2019. We have seen no evidence to suggest that, right now, an invisible border is possible. To provide adequate time for new customs processes to be put in place, the UK may need to remain in or parallel to the Customs Union and Single Market throughout the implementation period. *During this implementation period, we call upon the Government to work closely with counterparts in Ireland and the EU to develop an innovative border system capable of delivering customs compliance without traditional physical infrastructure at the border.* (Paragraph 98)
12. The UK and the EU are starting from a point of full regulatory alignment. The extent of future regulatory and tariff divergence will be determined by the EU-UK relationship and future Government policy. The EU and the UK will need to set up mechanisms, such as Joint Committees, to manage divergence in the long term. (Paragraph 103)
13. Northern Ireland, due to its shared land border with the EU, may face complications from regulatory or tariff divergence which are not experienced in other parts of the UK. *We call upon the Government to conduct an impact assessment for the border each time it is proposed that there should be regulatory or tariff divergence from the EU. Where appropriate, and in the event of the restoration of the Northern Ireland Executive and Assembly, consent for regulatory derogations to facilitate the operation of the land border may be sought.* (Paragraph 104)
14. The border in Northern Ireland has always been porous. Additional infrastructure is not only politically objectionable but, on its own, would be a highly ineffective means of preventing the movement of illicit goods. The most effective way to mitigate the risks of the border would be to devise a customs system which incentivises compliance through simple, low cost administrative procedures and unpredictable intelligence-led enforcement. *We call upon the Government to now explain in detail how such arrangements would operate and how the current approach to tackling illicit supply of alcohol, fuel and tobacco could be improved upon.* (Paragraph 110)
15. Policing cooperation on the island of Ireland has benefitted from shared EU legal frameworks for data sharing and extradition. Without access to these resources it would inevitably become harder for the Northern Ireland police service to prevent criminals crossing the land border to evade arrest, with particular implications for security related criminality. *We recommend that the Government works with the*

*Irish authorities to prepare contingencies for a bilateral successor to the European Arrest Warrant on the island of Ireland and in the EU, citing article 8 of the Lisbon Treaty. (Paragraph 114)*

### The Belfast/Good Friday Agreement

16. The UK's decision to leave the EU does not change Northern Ireland's unique constitutional framework under the Belfast/Good Friday Agreement, however it changes the environment in which it operates. The UK, the EU and Ireland have all made clear and strong commitments to upholding the Agreement, and all subsequent agreements, and protecting the peace process. The institutions and safeguards created to manage cross-border and cross-community relations will remain the corner stone of peace and stability in Northern Ireland after Brexit. However, the EU has a duty under article 8 of the Lisbon Treaty to promote close and peaceful cooperation with its neighbours. The EU's proposals for what this means in practice should be encouraged by the Government. (Paragraph 120)
17. *The Government should specify in its response to this report which existing EU rights and benefits will be available to individuals, resident in Northern Ireland, who choose to hold Irish citizenship, or both Irish and British citizenship. The Government should also set out how the rights, opportunities and benefits open to those who choose Irish citizenship, and therefore EU citizenship, will be funded after the UK leaves the EU. (Paragraph 126)*
18. The Committee welcomes the Government's commitment to protect North-South cooperation under the Belfast/Good Friday Agreement. Cross-border initiatives have been particularly important in improving the infrastructure and public services available to individuals living in the border corridor. (Paragraph 142)
19. North-South cooperation is facilitated by shared regulatory frameworks and governance bodies. The Belfast/Good Friday Agreement states that there should be "consultation, co-operation and action" on matters of mutual interest. *We recommend that the Government publish the mapping exercise and put forward targeted proposals for how cross-border cooperation in policy areas dominated by EU law will continue after the UK leaves the EU. Where appropriate, and in the event of the restoration of the Northern Ireland Executive, EU competencies could be devolved to Northern Ireland so it can balance maintaining UK wide frameworks with EU alignment for cross-border policy areas. In their continued absence, alternative means of taking decisions will have to be devised. (Paragraph 143)*
20. The Committee welcomes commitments from both the Government and the President of the EU on continuation of Peace funding. *The Government should set out in more detail its proposals for a bilateral successor to the Peace programme, the level of contribution it intends to make to the fund, and its governance arrangements. (Paragraph 152)*
21. *The Government should clarify in its response to this report whether it will seek to continue funding for cross-border projects under the Interreg programme post-2020. If it is the Government's intention to replicate this funding through the UK Shared*

*Prosperity Fund it should specify the amount of funding it will make available, whether this money could support cross-border projects in Northern Ireland and the border regions of Ireland and what its spending priorities will be. (Paragraph 153)*

## Formal minutes

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**Tuesday 13 March 2018**

Members present:

Dr Andrew Murrison, in the Chair

Mr Gregory Campbell	Kate Hoey
Mr Robert Goodwill	Nigel Mills
John Grogan	Ian Paisley
Lady Hermon	Jim Shannon

Draft Report (*The land border between Northern Ireland and Ireland*), proposed by the Chair, brought up and read.

*Ordered*, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 97 read and agreed to.

Paragraph 98 read, as follows:

“We welcome the Government’s intention to agree an implementation period. The current negotiating timeline means, in our view, it would be challenging to expect full implementation of a new, non-visible, customs regime by March 2019. We have seen no evidence to suggest that, right now, an invisible border is possible. To provide adequate time for new customs processes to be put in place, the UK may need to remain in or parallel to the Customs Union and Single Market for a finite period. During this implementation period, we call upon the Government to work closely with counterparts in Ireland and the EU to develop an innovative border system capable of delivering customs compliance without traditional physical infrastructure at the border.”

Amendment proposed, to leave out “for a finite” and insert “throughout the implementation”.—(Nigel Mills.)

Question put, That the Amendment be made.

The Committee divided.

Ayes, 5

Noes, 2

Mr Gregory Campbell	John Grogan
Mr Robert Goodwill	Lady Hermon
Kate Hoey	
Nigel Mills	
Ian Paisley	

Question accordingly agreed to.

Another Amendment proposed, after 'period' to insert "or indeed indefinitely".—(John Grogan.)

Question put, That the Amendment be made.

The Committee divided.

Ayes, 1

Noes, 6

John Grogan

Lady Hermon

Mr Gregory Campbell

Mr Robert Goodwill

Kate Hoey

Nigel Mills

Ian Paisley

Question accordingly negatived.

Paragraph 98, as amended, agreed to.

Paragraphs 99 to 153 read and agreed to.

*Resolved*, That the Report be the Second Report of the Committee to the House.

*Ordered*, That the Chair make the Report to the House.

*Ordered*, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

[Adjourned till Wednesday 14 March at 9.15am

## Witnesses

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The following witnesses gave evidence. Transcripts can be viewed on the [inquiry publications page](#) of the Committee's website.

### Wednesday 11 October 2017

**Dr Katy Hayward**, Lecturer in Sociology, Queen's University Belfast, **Paul Mac Flynn**, Senior Economist, Nevin Economic Research Institute, **Dr Sylvia de Mars**, Lecturer in Law, Newcastle Law School

[Q1–37](#)

### Wednesday 1 November 2017

**Dr Christian Bock**, Director General, Federal Customs Administration (Switzerland), and **Lieutenant Colonel Rebekka Straessle**, Chief of Staff, Swiss Border Guard

[Q38–74](#)

**Kristin Breiland**, Directorate of Norwegian Customs, and **Liv Kristin Rundberget**, Assistant Director, Directorate of Norwegian Customs

[Q75–119](#)

### Wednesday 15 November 2017

**The Hon Fabian Picardo MP**, Chief Minister of Gibraltar, **The Hon Joseph John Garcia MP**, Deputy Chief Minister of Gibraltar, and **Michael Llamas QC**, Attorney General of Gibraltar

[Q120–176](#)

### Wednesday 29 November 2017

**Chloe Smith MP**, Parliamentary Under-Secretary of State, Northern Ireland Office, and **Mr Robin Walker MP**, Parliamentary Under-Secretary of State, Department for Exiting the European Union.

[Q177–275](#)

### Monday 22 January 2018

**Michel Barnier**, European Chief Negotiator for the United Kingdom Exiting the European Union

[Q276–290](#)

The following witnesses gave evidence on Future of the land border with the Republic of Ireland to the previous Northern Ireland Affairs Committee before the general election in 2017. Transcripts can be viewed on the [inquiry publications page](#) of the Committee's website.

### Wednesday 16 November 2016

**Professor Michael Dougan**, Professor of European Law and Jean Monnet Chair in EU Law, University of Liverpool, **Professor Peter Shirlow**, Director of the Institute of Irish Studies, University of Liverpool, and **Dr Stephanie Reynolds**, Lecturer in Law, University of Liverpool

[Q1–43](#)

**Wednesday 23 November 2016**

**Professor Dagmar Schiek**, Professor of EU Law, Queen's University Belfast, **Dr Katy Hayward**, Senior Lecturer in Sociology, Queen's University Belfast, and **Professor Cathal McCall**, Professor in European Politics, Queen's University Belfast

[Q44–90](#)**Wednesday 30 November 2016**

**Dr Conor Patterson**, Chief Executive, Newry and Mourne Co-operative and Enterprise Agency, **Peter Conway**, CEO, Warrenpoint Harbour, **Michael Blaney**, Managing Director, Autoline Insurance Group

[Q91–161](#)**Tuesday 13 December 2016**

**George Hamilton QPM**, Chief Constable, and **Will Kerr OBE**, Assistant Chief Constable, Police Service of Northern Ireland

[Q162–225](#)**Wednesday 11 January 2017**

**Wesley Aston**, CEO, Ulster Farmers' Union, **Barclay Bell**, President, Ulster Farmers' Union, **Dr Mike Johnston**, Northern Ireland Director, Dairy UK, **Tim Acheson**, General Manager, Food Service Operations, Lakeland Dairies

[Q226–296](#)**Monday 16 January 2017**

**Michael Gallagher**, Strategy Manager, and **Richard Osterhus**, Funding Manager, Derry City and Strabane District Council, and **Michael Tunney**, Head of Enterprise and Economic Development, Donegal County Council

[Q296–328](#)

**Toni Forrester**, Chief Executive, Letterkenny Chamber of Commerce, and **Sinead McLaughlin**, Chief Executive, and **Gavin Killeen**, Member, Londonderry Chamber of Commerce

[Q329–365](#)**Wednesday 1 February 2017**

**Michael Lux**, EU customs and international trade lawyer; **Eric Pickett**, EU customs and international trade lawyer

[Q366–428](#)**Wednesday 8 February 2017**

**Daniel Mulhall**, Ambassador of Ireland to the UK

[Q429–465](#)

### Wednesday 22 February 2017

**Stephen Kelly**, Chief Executive, Manufacturing NI, **Colin Hayburn**, Executive Director, Almac Group, **Graeme McBurney**, President and Managing Director, Almac Pharma Services

[Q466–528](#)

### Wednesday 15 March 2017

**Shane Clarke**, Director of Corporate Services and Policy, Tourism Ireland, **Paul Cullen**, Head of IT and Business Systems, CIE Tours International, **Janice Gault**, Chief Executive, Northern Ireland Hotels Federation, **Colin Neill**, Chief Executive, Hospitality Ulster

[Q529–577](#)

### Wednesday 29 March 2017

**Patrick Casement**, Chair, Northern Ireland Environment Link, **Rebecca Hunter**, Living Seas Manager, Ulster Wildlife, **Victoria Magreehan**, External Affairs Consultant, National Trust, **John Martin**, Conservation Team Leader for Land Use and Marine Policy, RSPBNI

[Q578–622](#)

## Published written evidence

The following written evidence was received and can be viewed on the [inquiry publications page](#) of the Committee's website.

ILB numbers are generated by the evidence processing system and so may not be complete.

- 1 Alliance Party of Northern Ireland ([ILB0012](#))
- 2 Association of British Insurers ([ILB0014](#))
- 3 BrexitLawNI ([ILB0007](#))
- 4 British Veterinary Association Northern Ireland Branch ([ILB0011](#))
- 5 Centre for Cross Border Studies ([ILB0009](#))
- 6 Dr Katy Hayward ([ILB0020](#))
- 7 Dr Richard Lang ([ILB0016](#))
- 8 Dr Sylvia de Mars ([ILB0003](#))
- 9 Foyle Port ([ILB0015](#))
- 10 Freight Transport Association ([ILB0005](#))
- 11 Irish Central Border Area Network Ltd. (ICBAN) ([ILB0008](#))
- 12 Legatum Institute Special Trade Commission ([ILB0002](#))
- 13 Mr Andrew Murphy ([ILB0001](#))
- 14 NILGA ([ILB0013](#))
- 15 Northern Ireland Human Rights Commission ([ILB0010](#))
- 16 Sandelford ([ILB0006](#))
- 17 The Consumer Council ([ILB0017](#))
- 18 The National Platform EU Research and Information Centre, Ireland ([ILB0004](#))
- 19 Trades Union Congress ([ILB0019](#))

The following evidence on Future of the land border with the Republic of Ireland was received by the previous Northern Ireland Affairs Committee before the general election in 2017. It can be viewed on the [inquiry publications page](#) of the Committee's website.

BDR numbers are generated by the evidence processing system and so may not be complete.

- 20 AES UK & Ireland ([BDR0019](#))
- 21 Alliance Party of Northern Ireland ([BDR0009](#))
- 22 Border Communities Against Brexit ([BDR0027](#))
- 23 British Medical Association ([BDR0031](#))
- 24 Campaigner, Artist and Inventor Bob Goodall ([BDR0010](#))
- 25 Carl Swann ([BDR0004](#))
- 26 Centre for Cross Border Studies ([BDR0011](#))
- 27 Committee on the Administration of Justice (CAJ) ([BDR0002](#))
- 28 Dairy UK ([BDR0021](#))
- 29 Dairy UK ([BDR0028](#))
- 30 Derry City and Strabane District Council ([BDR0016](#))

- 31 Dr John Tracey ([BDR0001](#))
- 32 Dr Katy Hayward ([BDR0026](#))
- 33 Dr Nikos Skoutaris ([BDR0006](#))
- 34 Federation of Small Businesses ([BDR0013](#))
- 35 Gwilym Gibbon Unit for Public Policy, Nuffield College, Oxford ([BDR0018](#))
- 36 Heads of University Centres of Biomedical Sciences (HUCBMS) ([BDR0014](#))
- 37 Institute of Directors ([BDR0003](#))
- 38 International Centre for Local and Regional Development ([BDR0005](#))
- 39 Irish Central Border Area Network Ltd. ([BDR0008](#))
- 40 Jane Morrice ([BDR0023](#))
- 41 Mr Barry Fitzpatrick ([BDR0017](#))
- 42 Mr Colin Murray ([BDR0025](#))
- 43 Northern Ireland Environment Link ([BDR0030](#))
- 44 Northern Ireland Office ([BDR0020](#))
- 45 People's Movement, Ireland ([BDR0007](#))
- 46 Professor Dagmar Schiek ([BDR0015](#))
- 47 Public and Commerical Services Union ([BDR0012](#))
- 48 Sinn Féin ([BDR0024](#))

## List of Reports from the Committee during the current Parliament

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All publications from the Committee are available on the [publications page](#) of the Committee's website. The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

### Session 2017–19

First Report	Bombardier	HC 533
First Special Report	HM Government support for UK victims of IRA attacks that used Gaddafi-supplied Semtex and weapons: Government Response to the Committee's Fourth Report of Session 2016–17	HC 331
Second Special Report	Electricity sector in Northern Ireland: Government Response to the Committee's Third Report of Session 2016–17	HC 51