

North/South Inter-Parliamentary Association



Briefing Paper for the eighth meeting of the North/South Inter-Parliamentary Association

Paper 1: Impact of Brexit on Cross-Border Activity

18 November 2016

Background briefing prepared by the Research and Information Service (RaISE) of the Northern Ireland Assembly and of the Library & Research Service of the Houses of the Oireachtas (*Tithe an Oireachtais*)

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Key Issues

In a referendum held on Thursday 23 June 2016, voters across the UK were asked whether they wished the United Kingdom to remain a member of the European Union or to leave the European Union. The majority (51.9%) voted for the UK to leave the European Union. In Scotland and Northern Ireland, however, the majority voted for the UK to remain in the EU. Whilst there is general agreement the UK's exit from the EU will be achieved using Article 50 of the Treaty on European Union, legal action is ongoing regarding the role of the UK Parliament and the devolved legislatures in relation to Article 50. The UK Government's stated intention remains, however, to trigger Article 50 by March 2017. Unless otherwise agreed by the European Council (voting unanimously) and the UK, once Article 50 is triggered there is a maximum two year period in which to negotiate withdrawal.

The impact of UK exit from the EU will be of particular and obvious importance across the island of Ireland. Most obviously, Northern Ireland is unique in that it is the only part of the UK which has a land border with an EU Member State. And, as the Irish government has highlighted, 'Ireland has unique bilateral interests with the UK, including with regard to Northern Ireland'.

This paper has been prepared to support the eighth meeting of the North/South Inter-Parliamentary Association, which will address 'the impact of Brexit on cross-border activity'. The paper provides an overview of the responses to the majority Leave vote of the government and legislature in each jurisdiction.

The paper also provides background information on a range of issues upon which 'Brexit' may have impact across the island of Ireland. This list is not intended to be exhaustive and it is important to note that the implications of UK's withdrawal from EU can be assessed only once the terms of the withdrawal agreement from the EU are known. In particular, the future trade relationship between the UK and EU will impact significantly on trading relations across the jurisdictions.

1. Introduction

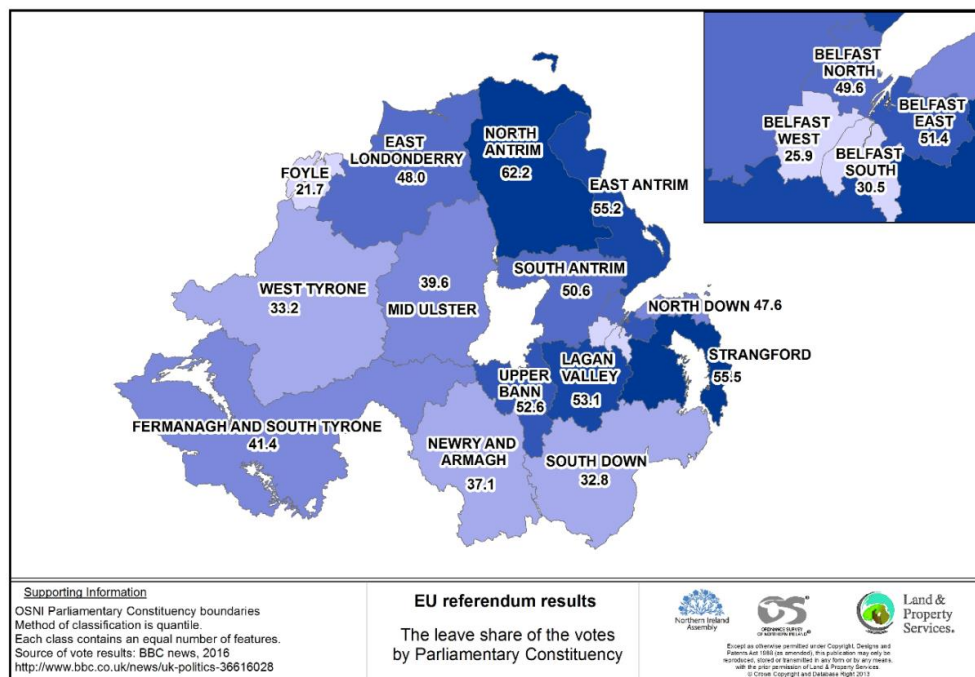
On Thursday 23 June 2016, a referendum was held in the United Kingdom and Gibraltar and the question on the ballot papers was: 'Should the United Kingdom remain a member of the European Union or leave the European Union'. The answers that appeared on the ballot papers were: 'Remain a member of the European Union' and 'Leave the European Union'. The overall result of the referendum was: Remain: 16,141,241 (48.1%) and Leave: 17,410,742 (51.9%). The referendum result in each of the four constituent parts of the UK is shown in Table 1 below.

Table 1. EU Referendum results by constituent part of UK¹

	<i>England</i>		<i>Scotland</i>		<i>Wales</i>		<i>N.Ireland</i>	
Remain	13,266,996	46.6%	1,661,191	62.0%	772,347	47.5%	440,707	55.8%
Leave	15,188,406	53.4%	1,018,322	38.0%	854,572	52.5%	349,442	44.2%
Turnout	73.0%		67.2%		71.7%		62.7%	

The percentage Leave vote for each of the 18 parliamentary constituencies in Northern Ireland is shown in Figure 1 below.

Figure 1. Percentage leave vote by parliamentary constituency



¹ The Electoral Commission (2016)

<http://www.electoralcommission.org.uk/find-information-by-subject/elections-and-referendums/upcoming-elections-and-referendums/eu-referendum/electorate-and-count-information> (accessed 19/08/16)

This paper has been prepared to support the eighth meeting of the North/South Inter-Parliamentary Association, which will address ‘the impact of Brexit on cross-border activity’.

Part 1 of the paper provides an overview of the response to the majority Leave vote of the government and the legislature in each jurisdiction. Part 2 then provides information relating to areas of cross-border activity upon which UK withdrawal from the EU is most likely to have an impact. Given time constraints, the paper does not, however, seek to cover all areas upon which UK withdrawal from the EU may have such an impact. It is also worth noting that a number of the issues covered in Section 2 of this paper are examined in greater depth in papers already published by the L&RS and RaISe.

The paper does not speculate in any detail on the implications for Northern Ireland and the Republic of UK withdrawal from the EU, as these can be assessed only once the terms of the withdrawal agreement from the EU are known. Nor does the paper speculate on the future trade relationship between the UK and EU, as the UK Prime Minister has specifically ruled out existing models of trade relations between the EU and other European non-EU member states such as Norway (membership of EEA) or Switzerland (many bilateral agreements) as the model for future trade relations between the UK and the EU.

2. Post Referendum Update

This section presents the state of play regarding official reaction and responses to the outcome of the UK referendum on leaving the EU.

2.1 Northern Ireland

The day following the referendum, David Cameron, the then Prime Minister, made a statement in which, amongst other things, he said: 'We must now prepare for a negotiation with the European Union. This will need to involve the full engagement of the Scottish, Welsh and Northern Ireland governments to ensure that the interests of all parts of our United Kingdom are protected and advanced'.²

Northern Ireland Executive response and engagement

In response to an Assembly Question, asking them '...to detail each implication of the European Union referendum result for European Union engagement and representation in the (i) short term; and (ii) medium term', the First Minister and deputy First Minister answered that:

The priority of the Executive will be to ensure that our interests are protected.

We have asked the Head of the Civil Service to establish individual departmental teams at senior level to consider the potential implications for each department. We also asked him to put in place an overarching central administrative and political governance structure that will report directly to us.

These teams will liaise with Whitehall, Irish and EU counterparts to ensure we get the best possible deal we can.³

An Assembly Question asking the First Minister and deputy First Minister to outline what plans they had to appoint an expert committee on Brexit, similar to that appointed by the First Minister of Scotland, remained unanswered at the time of writing this paper.⁴ Updating the Scottish Parliament on 28 June 2016, Nicola Sturgeon (First Minister) stated, amongst other things, that she was:

² EU referendum outcome: PM statement, 24 June 2016
<https://www.gov.uk/government/speeches/eu-referendum-outcome-pm-statement-24-june-2016> (accessed 19/08/16)

³ AQW 2120/16-21 (Mr Robbie Butler, Ulster Unionist Party, Lagan Valley)
Tabled Date: 30/06/2016 Answered On Date: 26/07/2016
<http://aims.niassembly.gov.uk/questions/search.aspx>

⁴ AQW 2205/16-21 (Ms Paula Bradshaw, APNI - South Belfast) Tabled 01/07/2016
<http://aims.niassembly.gov.uk/questions/search.aspx>

...establishing a Standing Council of experts to provide advice to me and my government on how best to achieve our EU objectives. This Council will be made up of specialists on finance, economics, European and diplomatic matters and it will encompass a range of political and constitutional opinions.

It will provide the government with access to a wealth of knowledge built up over years of experience.

The Council will consider the impact of proposed changes to the UK's relationship with the EU on Scottish interests and advise Scottish Ministers throughout our negotiations on the best way to secure Scottish interests and objectives.

Membership of the Council will be flexible to ensure that we have access to appropriate advice as it is required.⁵

On 14 July 2016, the Prime Minister, Theresa May, spoke with the First Minister and deputy First Minister and, in a press release issued by Downing Street, a spokesperson said:

The First Minister Arlene Foster congratulated the Prime Minister on her appointment and they spoke about the importance of working together in a strong United Kingdom. They both agreed there should be continued engagement with the Northern Ireland Executive on the negotiating process for the UK leaving the European Union.

The deputy First Minister Martin McGuinness wished the Prime Minister well in her appointment. They discussed the implications of the EU referendum result. The Prime Minister said that officials and ministers would continue discussions on this issue, and ensure ongoing engagement with the Northern Ireland Executive.

Finally, the Prime Minister said she was looking forward to meeting both the First and deputy First Ministers in the near future.⁶

On 10 August 2016, the First Minister and deputy First Minister wrote to the Prime Minister setting out the Executive's initial assessment following the EU referendum result. In the letter they highlighted five broad issues, stating:⁷

⁵ *First Minister's statement on EU referendum (28/06/16)*

<http://news.scotland.gov.uk/News/First-Minister-s-statement-on-EU-referendum-25c5.aspx> (accessed 19/08/16)

⁶ *PM calls with Northern Ireland First and deputy First Ministers: 14 July 2016* Prime Minister's Office – Press Release (14 July 2016) <https://www.gov.uk/government/news/pm-calls-with-northern-ireland-first-and-deputy-first-ministers-14-july-2016> (accessed 19/08/16)

⁷ *Foster and McGuinness united in determination to achieve the best possible outcome for all our people* Executive Office Press Release (10 August 2016) <https://www.executiveoffice-ni.gov.uk/news/foster-and-mcguinness-united-determination-achieve-best-possible-outcome-all-our-people> (accessed 19/08/16)

Firstly, and most obviously, this region is unique in that it is the only part of the UK which has a land border with an EU Member State.

Secondly, it is critical to our economy that our businesses, both indigenous and FDI companies, retain their competitiveness and do not incur additional costs. We therefore need to retain as far as possible the ease with which we currently trade with EU Member States and, also importantly retain access to labour.

Thirdly, energy is a key priority, given that there are inherent cost and supply issues in a small isolated market so we will need to ensure that nothing in the negotiation process undermines this vital aspect of our economy.

Fourthly, EU funds have been hugely important to our economy and the peace process. Since 1994, for example we have benefited to the tune of €13 billion of funding from Europe and during the period 2014-2020 we would expect to draw down over €3.5 billion. The current uncertainty around the ability to draw down a proportion of these funds, and the absence of EU programmes in the future is of real concern to a range of sectors.

A further key issue for us is the agri-food sector, including fisheries which represent a much more important component of our regional economy than it does for the UK as a whole.

On 16 August 2016, the Northern Ireland Office announced⁸ that James Brokenshire, Secretary of State for Northern Ireland, had initiated a ‘... series of all-day visits set to run throughout the remainder of August, building on his visit to the North West at the end of July, the Secretary of State is set to reach nearly every Parliamentary constituency in Northern Ireland in the next two weeks. It was stated that he would be meeting as many local businesses, civic groups and political leaders as possible as part of the Government’s effort to ensure Northern Ireland’s voice is heard in the forthcoming EU negotiations’.

On Monday 24 October 2016, the UK Prime Minister, Theresa May, convened a meeting of the Joint Ministerial Committee, a body set up under the Memorandum of Understanding between the UK Government, Scottish Government, Welsh Government and Northern Ireland Assembly on Devolution. The meeting was attended by the Prime Minister and the Secretaries of State for Scotland, Wales and Northern Ireland for the UK Government and by the First Ministers of Scotland and Wales and the First and Deputy First Ministers of Northern Ireland.

⁸ *Secretary of State embarks on NI August engagement programme* From: Northern Ireland Office and The Rt Hon James Brokenshire MP (16 August 2016) <https://www.gov.uk/government/news/secretary-of-state-embarks-on-ni-august-engagement-programme> (accessed 19/08/16)

At the meeting, Ministers discussed ‘how the constituent parts of the United Kingdom should work together to ensure that the interests of all parts of the United Kingdom are protected and advanced, and to develop a UK approach and objectives for the forthcoming negotiations. They agreed to take forward multilateral engagement through a new Joint Ministerial Committee on EU Negotiations to be known as JMC (EN) which would have the following terms of reference:⁹

Working together in EU Negotiations

Through the JMC(EN) the governments will work collaboratively to:

- discuss each government’s requirements of the future relationship with the EU;
- seek to agree a UK approach to, and objectives for, Article 50 negotiations;
- provide oversight of negotiations with the EU, to ensure, as far as possible, that outcomes agreed by all four governments are secured from these negotiations; and,
- discuss issues stemming from the negotiation process which may impact upon or have consequences for the UK Government, the Scottish Government, the Welsh Government or the Northern Ireland Executive.

Following a subsequent meeting of the JMC (EN) on 9 November 2016, the First Minister and deputy First Minister issued the following statement:

Our attendance today sends out a clear signal that we are determined to work together to champion the interests of the people we represent.

We have received assurances from the Prime Minister down that the Northern Ireland Executive will be fully represented in the negotiating process. We will ensure that those promises are honoured.

We will continue to take every opportunity to re-iterate our agreed priorities and to emphasise the unique nature of our situation.¹⁰

The next meeting of the JMC (EN) is scheduled to be held in December 2016.

Northern Ireland Assembly activity

On Monday 27 June 2016, following a plenary debate, the Assembly resolved ‘That this Assembly notes the result of the referendum on European Union membership; and

⁹ Joint Ministerial Communique Committee, 24 October 2016: <https://www.northernireland.gov.uk/sites/default/files/publications/newnigov/joint-ministerial-committee-communique-24-october-2016.pdf>.

¹⁰ Foster and McGuinness attend JMC meeting, Executive Office press release 9 November 2016: <https://www.executiveoffice-ni.gov.uk/news/foster-and-mcguinness-attend-jmc-meeting>.

calls on the Executive to set out, in the immediate future, their response to the consequences of the withdrawal of the United Kingdom from the European Union'.¹¹

On 19 September 2016, the Assembly held a debate on the motion: 'A Vision for Northern Ireland Outside the European Union'. The motion proposed: That this Assembly, in light of the referendum decision by the United Kingdom to leave the European Union, endorses and adopts the approach contained in A Vision for Northern Ireland Outside the European Union, published by the Ulster Unionist Party. On a vote, the motion was negative (Ayes 15, Noes 70).

On 17 October 2016, the Assembly held a debate on the motion: EU Special Status for Northern Ireland. The motion proposed: That this Assembly notes the current public concern arising from the European Union Referendum vote; endorses the proposal of the Irish Government and others that there should be legal recognition of the unique status of Northern Ireland and the circumstances on the island as part of the arrangements to leave the European Union; believes that this is one mechanism that can safeguard the interests of the people of Northern Ireland, including future access to European Union funding opportunities; and calls on the British Government to fully endorse, and to negotiate for, this outcome in discussions on leaving the European Union. On a vote, the motion was negative (Ayes 46, Noes 47)).

Individual MLAs have also been active and, since the referendum result was known, close to 300 Assembly Questions with a 'Brexit' element have been directed to Ministers and their Departments.¹²

The Committee for the Executive Office will lead the examination of the Executive's approach to the UK's exit from the EU, with other statutory committees scrutinising sectoral issues within their remit. The Committee has heard from senior Northern Ireland Civil Service officials on the work being done by Departments to prepare for the UK negotiations on leaving the EU. Evidence has also been taken from Professor David Phinnemore on the paper "After the EU Referendum: Establishing the best outcome for Northern Ireland" and the Committee has identified a number of other witnesses that it may consider inviting to give evidence at a future date.

The Committee is also giving consideration to: the non-EU binding treaties and obligations that will pertain after UK withdrawal from the EU; how non-EU European states negotiate on international treaties; and how other European countries which are not part of the EU engage with EU treaties and agreements. The Committee hopes to visit Brussels in early 2017 in order, amongst other things, to examine the work of the

¹¹ <http://aims.niassembly.gov.uk/officialreport/report.aspx?&eveDate=2016/06/27&docID=268132>

¹² <http://aims.niassembly.gov.uk/questions/search.aspx>

Office of the Northern Ireland Executive in Brussels relating to the UK's exit from the EU

Across other statutory committees, work is ongoing to consider the particular consequences for Northern Ireland of a UK exit from the EU. Unsurprisingly, this is a significant issue for the Committee for Agriculture, Environment and Rural Affairs (AERA) which took evidence from key stakeholders at the earliest opportunity after the referendum.¹³ A number of written briefings have also been considered. To inform its consideration of a range of issues research has been commissioned by the AERA Committee on the following:

- NI Environment
- NI Agri-food sector
- NI Fisheries sector
- Rural Development funding for the rural community
- Forms of farm support/subsidy as operated in selected countries and associated conditions

The following research has also been commissioned or briefings taken by other Assembly Committees:

- Public Procurement after the EU Referendum (Committee for Finance)
- Areas of EU Competence, Action and Support – Potential Areas of Impact on Health and Social Care as a result of the EU Referendum Decision (Committee for Health)
- Implications of Brexit for transport and water policy (Committee for Infrastructure)

All research papers commissioned or considered by committees will be made available on the Assembly website.

The Committee for the Economy is collating Northern Ireland business responses for the House of Lords EU sub-committees undertaking a Brexit trade inquiry regarding trade flows with the EU and concerns that Brexit raises. A number of business organisations undertaking Brexit based research have agreed to share their findings with the Committee.

The Committee for the Economy has also written to the Secretary of State for Northern Ireland, the Secretary of State for Exiting the European Union and the Secretary of

¹³ The Official Reports from those evidence sessions are available on the Committee's website at <http://aims.niassembly.gov.uk/officialreport/minutesofevidence.aspx>.

State for International Trade for information on the fact finding engagements they have each had with stakeholders in Northern Ireland.

2.2 Ireland

Government response and engagement

The initial response of the government in the Republic was to note the outcome of the UK EU referendum, with the result described as having “very significant implications for Ireland, as well as for Britain and for the European Union”.¹⁴ According to a press release, the Government met later on the morning of 24th June to reflect on the result, after which the Taoiseach was to make a public statement.

The government announced details of its contingency plans for Brexit later on the 24th June.¹⁵ The Contingency Framework adopted by the Government identifies what it sees as the key policy issues to be managed by Government Departments arising from the referendum vote in the UK to leave the EU. The Contingency Framework, which is being coordinated by the Department of the Taoiseach, is:

based on preparations over many months including inputs by Government Departments to identify the key strategic and sectoral issues arising from the UK disengaging with the EU. The framework will ensure that the Government and its constituent Departments are able to focus on key policy areas/issues to be addressed in any exit negotiations with a view to minimising potential operational risks likely to arise.¹⁶

Priority issues identified in the contingency plans include UK-EU Negotiations, British-Irish Relations, Northern Ireland, Trade, Investment, North/South Border Impacts, Competitiveness and Macroeconomic issues, Research/Innovation funding and Energy. The Government also published a summary of key actions to manage contingencies arising.¹⁷

¹⁴ Department of the Taoiseach press release, *Government statement on the outcome of the UK EU referendum*. 24th June 2016. Available at http://www.taoiseach.gov.ie/eng/News/Government_Press_Releases/Government_statement_on_the_outcome_of_the_UK_EU_referendum.html

¹⁵ Department of the Taoiseach press release, *Irish Government Brexit Contingency Plans Announced*. 24th June 2016. Available at http://www.taoiseach.gov.ie/eng/News/Government_Press_Releases/Irish_Government_Brexit_Contingency_Plans_Announced.html

¹⁶ Department of the Taoiseach press release, *Irish Government Brexit Contingency Plans Announced*. 24th June 2016. Available at http://www.taoiseach.gov.ie/eng/News/Government_Press_Releases/Irish_Government_Brexit_Contingency_Plans_Announced.html

¹⁷ Appendix: Summary of key actions to manage contingencies arising, available at http://www.merrionstreet.ie/en/News-Room/News/Contingency_Framework_Summary.pdf.

The Contingency Framework will track and monitor relevant issues and actions in the period immediately following referendum, the pre-negotiation period, and the period of negotiations, although it is noted that some may arise in more than one phase. Using the Contingency Framework, Ministers, Departments and Agencies are to track and adapt the detail of contingencies and risk management strategies arising in each of the key strategic, policy and operational areas identified, with more to be added as the terms and conditions of the new UK/EU relationship evolve.¹⁸

The press release detailing publication of the contingency plans highlights the country's role and relationships with both the EU and the UK, including Northern Ireland:

"It is important to recall that Ireland – as a committed Member State of the EU - will work within the EU context. At the same time, Ireland has unique bilateral interests with the UK, including with regard to Northern Ireland, and the Government will also have to work bilaterally in close contact with the UK Government and the devolved Administration in Northern Ireland."

The same press release also explains that a number of existing structures are in place and will be used to manage the process on a whole-of-government basis. These are reproduced in Text box 1. In response to a question on whether it might be more appropriate to appoint a specific Brexit minister, as has happened in the UK, the Minister for Foreign Affairs and Trade Charlie Flanagan TD put forward the rationale for the Government's approach in the following terms:

Having a dedicated Minister fails to appreciate the width and breadth of this challenge. That is why the Government's response is being co-ordinated and chaired by the Taoiseach, himself, as Head of Government. Already we have had a number of meetings of the specially convened Brexit Cabinet committee, whose membership incorporates more Ministers than other members. Its most recent meeting took place last week and it will meet again in the next couple of weeks. In support of direct ministerial engagement across Government and with the Cabinet committee, work is also proceeding at official level on deepening the analysis across key issues and a range of sectors.¹⁹

Text Box 1: Existing structures to be used in whole of government response to Brexit (extract from press release)

- The Cabinet Committee on EU Affairs and the Senior Officials Group that supports it;
- The joint UK Permanent Secretaries/ Irish Secretaries General group and its

¹⁸ Department of the Taoiseach press release, *Irish Government Brexit Contingency Plans Announced*. 24th June 2016. Available at

http://www.taoiseach.gov.ie/eng/News/Government_Press_Releases/Irish_Government_Brexit_Contingency_Plans_Announced.html

¹⁹ Dáil debate, Priority Questions – Brexit Issues, Minister for Foreign Affairs and Trade Deputy Charles Flanagan. Tuesday, 25th October 2016. Available at

[http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/WebAttachments.nsf/\(\\$vLookupByConstructedKey\)/dail-20161025/\\$File/Daily%20Book%20Unrevised.pdf?openelement](http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/WebAttachments.nsf/($vLookupByConstructedKey)/dail-20161025/$File/Daily%20Book%20Unrevised.pdf?openelement)

North/South equivalent;

- A senior official in every Government Department has already been identified to oversee this issue. All Departments will now supplement this arrangement with a Top Management sub-committee specifically dealing with the implications of this development for their area of work;
- Department of the Taoiseach chairs an Interdepartmental group of senior officials that has been meeting regularly to look specifically at the bilateral and national interests affected by the UK's withdrawal from the EU. The work of this group will be scaled up and intensified;
- A wider consultative group of stakeholders chaired by Department of the Taoiseach comprising key business representative groups, ICTU and NGOs has also been meeting for some months now. The work of this group will be scaled up and intensified;
- The Minister for Foreign Affairs and Trade will continue to use the expertise of the Export Trade Council to advise Government on this issue. The expertise of the Council will be focused on the issues arising from the UK's disengagement from the EU;
- The work of the North/South Ministerial Council and the British-Irish Council will become more important as mechanisms to develop the detailed outworking of policy issues arising.

Source: Department of the Taoiseach press release, *Irish Government Brexit Contingency Plans Announced*. 24th June 2016²⁰

The Government has also established a Cabinet Committee on Brexit. In general, the Government may establish Cabinet Committees to assist it in carrying out its responsibilities. Cabinet Committees are chaired by the Taoiseach and the Department of the Taoiseach is responsible for their management. There are currently nine other such Cabinet Committees.^{21 22}

According to the Taoiseach, the Cabinet Committee on Brexit has met twice to date (on 8 September and 19 October) for “an in-depth discussion of the issues arising from the UK decision to leave the European Union” and will continue to meet on a regular basis to deal

²⁰ Available at:

http://www.taoiseach.gov.ie/eng/News/Government_Press_Releases/Irish_Government_Brexit_Contingency_Plans_Announcement.html

²¹ Department of the Taoiseach webpage, *Cabinet Committees of the 30th Government* available at

http://www.taoiseach.gov.ie/eng/Taoiseach_and_Government/Cabinet_Committees/Cabinet_Committees_of_the_30th_Government.html

²² Details of the composition of the Cabinet Committee on Brexit are available at:

http://www.taoiseach.gov.ie/DOT/eng/Taoiseach_and_Government/Cabinet_Committees/Brexit.html.

with Brexit-related issues.²³ The Cabinet Committee on Brexit “will oversee the overall Government response, including both the economic impact and the negotiations at EU level and with the Administrations in London and Belfast”.

On 4th October, the Government announced it had approved a series of next steps to “ensure continuing effective management of, and engagement on, Brexit issues”. These include the next steps reproduced in Text Box 2.

Shortly after the referendum outcome, the Taoiseach raised the possibility of developing an all island forum with the support of political parties, North and South, to discuss the joint challenges arising from the UK decision.²⁴ Northern Ireland First Minister Arlene Foster was reported as having expressed the view that she considered existing bodies and mechanisms best placed to deal with the implications of the referendum outcome.²⁵

Text Box 2: Governments next steps regarding Brexit (extract from press release)

- An all-island Civic Dialogue on Brexit with the initial meeting to be hosted by the Taoiseach and the Minister for Foreign Affairs and Trade on 2 November in Dublin. Invitations will be extended to a broad range of civic society groups, trade unions, business groups and non-governmental organisations as well as representatives of the main political parties on the island.
- A series of roundtable discussions with interested groups to be held to allow for detailed consideration of Brexit issues arising on a sectoral level.
- Agreement that Budget 2017 will include measures which will support the overall economic response to Brexit.
- Continued engagement with other EU leaders and Governments and the EU institutions, including high-level Government meetings with Michel Barnier, newly appointed as EU Commission's chief Brexit negotiator, who is expected to visit Dublin shortly.
- Continued detailed engagement between senior government officials and their counterparts in the UK, in the context of the meeting of Secretaries General and Permanent Secretaries in London this week, and with Northern Ireland Departments in advance of the next Summit of the North South Ministerial Council.
- The Government also noted that there will be continued engagement with parliamentarians throughout these islands through the work of the:

²³ Dáil debate, *Questions – Brexit Issues*, Taoiseach Enda Kenny TD. Wednesday, 26th October 2016. Available at <http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/takes/dail2016102600022?opendocument#U00450>

²⁴ MerrionStreet.ie press release, Taoiseach to chair plenary meeting of the North South Ministerial Council. 4th July 2016. Available at http://www.merrionstreet.ie/en/News-Room/News/Taoiseach_to_chair_plenary_meeting_of_the_North_South_Ministerial_Council.html

²⁵ [‘No Need for an all-Island Brexit Forum’ says First Minister](#), 4 July 2016, UTV News

- North South Inter-Parliamentary Association;
- the British Irish Parliamentary Assembly and the
- Oireachtas Joint Committee on the Implementation of the Good Friday Agreement.

Source: Department of the Taoiseach press release, *Government Statement on Preparations for Brexit*. 4th October 2016.²⁶

The initial meeting of the all-island Civic Dialogue on Brexit (as referred to in Text Box 2) was hosted by the Taoiseach and the Minister for Foreign Affairs and Trade on 2nd November in Dublin.²⁷ This all-day event was intended “to allow for the widest possible conversation on the implications of the UK referendum result for Ireland, North and South and for North/South relations” according to a government press release.²⁸

In his speech, the Taoiseach, Enda Kenny TD restated the Government’s priorities as being the economy and trade; Northern Ireland and the peace process; the border and the Common Travel Area as well as the future of the EU itself.²⁹ The Taoiseach also explained that this was the first instalment and there will have more plenary engagements in the coming weeks and months and that the all-island Dialogue is part of a series of consultations by the Government and added to this will be a further series of sectoral discussions both north and south.

As detailed in Text Box 2, the Government’s next steps in responding to Brexit included an agreement that Budget 2017 include measures which will support the overall economic response to Brexit. In this context, an infographic³⁰ summarising actions the Government is taking to get the Irish economy ready for Brexit, together with a longer paper³¹ on the economic implications of Brexit and the responses to Brexit have been published. The Department of Finance also published an exposure analysis³² of sectors of the Irish economy in the context of the UK EU exit.

²⁶ Available at

http://www.taoiseach.gov.ie/eng/News/Government_Press_Releases/Government_Statement_on_Preparations_for_Brexit.html

²⁷ Streams from the event are available at http://merriestreet.ie/en/News-Room/News/Taoiseach_Minister_Flanagan_to_host_All-Island_Civic_Dialogue.html

²⁸ Department of the Taoiseach press release, *Government Statement on Preparations for Brexit*. 4th October 2016. Available at

http://www.taoiseach.gov.ie/eng/News/Government_Press_Releases/Government_Statement_on_Preparations_for_Brexit.html

²⁹ Speech by the Taoiseach, Enda Kenny at the First Meeting of the All-Island Civic Dialogue on Brexit Royal Hospital Kilmainham, Wednesday, 2nd November, 2016. Available at

http://www.taoiseach.gov.ie/eng/News/Taoiseach's_Speeches/Speech_by_the_Taoiseach_Enda_Kenny_at_the_First_Meeting_of_the_All-Island_Civic_Dialogue_on_Brexit_Royal_Hospital_Kilmainham_Wednesday_2_November_2016.html

³⁰ Department of Finance (2016), *Getting Ireland Brexit Ready*, Budget #17, Dublin: Department of Finance:

http://budget.gov.ie/Budgets/2017/Documents/Getting_Ireland_Brexit_ready_infographic.pdf.

³¹ Department of Finance (2016), *Getting Ireland Brexit Ready*, Dublin: Department of Finance:

http://budget.gov.ie/Budgets/2017/Documents/Getting%20Ireland%20Brexit%20Ready_final.pdf.

³² Department of Finance (2016), *UK EU Exit – An Exposure Analysis of Sectors of the Irish Economy*, Dublin: Department of Finance:

http://budget.gov.ie/Budgets/2017/Documents/An_Exposure_Analysis_of_Sectors_of_the_Irish_Economy%20_final.pdf.

Oireachtas response and engagement

Dáil Éireann held a special sitting to discuss the outcome of the UK referendum on the 27th June.³³ This discussion took place over several hours and the Taoiseach made a statement³⁴ on the subject.³⁵ The issue of Brexit has been further raised in the Dáil Éireann since the outcome of the UK referendum, as well as in Seanad Éireann.

Work of Oireachtas Committees

A number of Oireachtas Committees have included Brexit on their current agendas. These have included general discussions or more focused debates on a particular aspect of the referendum outcome. For example, the Joint Committee on the Implementation of the Good Friday Agreement met on 27th September 2016³⁶ and 20th October to discuss implications of Brexit on the Good Friday Agreement and will resume its discussions on 17 November.^{37 38} The Joint Committee on Agriculture, Food and the Marine has discussed the specific impact of Brexit on the Irish mushroom industry.³⁹

On 4th October 2016, the Joint Committee on European Union Affairs was updated on the work of the General Affairs Council by the Minister of State at Department of Foreign Affairs and Trade Dara Murphy TD during which Brexit also featured.⁴⁰ Likewise, Brexit was also discussed during a meeting of the Committee with the European Commissioner for Agriculture and Rural Development Phil Hogan on 20th October.⁴¹

The Committee on Jobs, Enterprise and Innovation is holding a series of meetings with stakeholders on the economic impact of Brexit. At the time of writing these included representatives from Enterprise Ireland, IDA Ireland, and InterTrade Ireland⁴² in addition to a

³³ Houses of the Oireachtas press release, Dáil to convene on Monday in light of UK referendum result. 24th June 2016. Available at <http://www.oireachtas.ie/parliament/mediazone/pressreleases/2016/name-38516-en.html>

³⁴ Statement in the Dáil on the UK EU Referendum Result by the Taoiseach, Mr Enda Kenny TD, Monday 27 June 2016: http://www.taoiseach.gov.ie/eng/News/Taoiseach's_Speeches/Statement_in_the_Dail_on_the_UK_EU_Referendum_Result_by_the_Taoiseach_Mr_Enda_Kenny_TD_Monday_27_June_2016.html.

³⁵ The transcript of this debate is available at [http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/WebAttachments.nsf/\(\\$vLookupByConstructedKey\)/dail-20160627/File/Daily%20Book%20Unrevised.pdf?openelement](http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/WebAttachments.nsf/($vLookupByConstructedKey)/dail-20160627/File/Daily%20Book%20Unrevised.pdf?openelement)

³⁶ Relevant press release is available at <http://www.oireachtas.ie/parliament/mediazone/pressreleases/2016/name-39044-en.html> and relevant transcript of the debate is available at [http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/WebAttachments.nsf/\(\\$vLookupByConstructedKey\)/committees-20160927-GFJ/File/Daily%20Book%20Unrevised.pdf?openelement](http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/WebAttachments.nsf/($vLookupByConstructedKey)/committees-20160927-GFJ/File/Daily%20Book%20Unrevised.pdf?openelement)

³⁷ Transcript of the debate is available at [http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/WebAttachments.nsf/\(\\$vLookupByConstructedKey\)/committees-20161020-GFJ/File/Daily%20Book%20Unrevised.pdf?openelement](http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/WebAttachments.nsf/($vLookupByConstructedKey)/committees-20161020-GFJ/File/Daily%20Book%20Unrevised.pdf?openelement)

³⁸ Houses of the Oireachtas press release, *Good Friday Committee to resume discussions on Brexit & the Good Friday Agreement*. 16th November 2016. Available at <http://www.oireachtas.ie/parliament/mediazone/pressreleases/2016/name-39708-en.html>

³⁹ Transcript of the debate is available at [http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/WebAttachments.nsf/\(\\$vLookupByConstructedKey\)/committees-20160927-AGJ/File/Daily%20Book%20Unrevised.pdf?openelement](http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/WebAttachments.nsf/($vLookupByConstructedKey)/committees-20160927-AGJ/File/Daily%20Book%20Unrevised.pdf?openelement)

⁴⁰ Transcript of the debate is available at [http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/WebAttachments.nsf/\(\\$vLookupByConstructedKey\)/committees-20161004-EUJ/File/Daily%20Book%20Unrevised.pdf?openelement](http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/WebAttachments.nsf/($vLookupByConstructedKey)/committees-20161004-EUJ/File/Daily%20Book%20Unrevised.pdf?openelement)

⁴¹ Transcript of the debate is available at [http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/WebAttachments.nsf/\(\\$vLookupByConstructedKey\)/committees-20161020-EUJ/File/Daily%20Book%20Unrevised.pdf?openelement](http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/WebAttachments.nsf/($vLookupByConstructedKey)/committees-20161020-EUJ/File/Daily%20Book%20Unrevised.pdf?openelement)

⁴² Transcript of the debate is available at [http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/WebAttachments.nsf/\(\\$vLookupByConstructedKey\)/committees-20161018-JEJ/File/Daily%20Book%20Unrevised.pdf?openelement](http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/WebAttachments.nsf/($vLookupByConstructedKey)/committees-20161018-JEJ/File/Daily%20Book%20Unrevised.pdf?openelement)

session with representatives from the Centre for Cross Border Studies, the Institute of International and European Affairs, the Economic and Social Research Institute, the Irish Congress of Trade Unions, the Nevin Economic Research Institute, and the Irish National Organisation for the Unemployed.⁴³ In a further session, this Committee met with representatives from Ibec, the British Irish Chamber of Commerce, Chambers Ireland, the Small Firms Association, Irish Small and Medium Enterprises, and the Irish Exporters Association.⁴⁴

The Dáil Business Committee hosted a Symposium on Europe Union Affairs and the economic implications of UK withdrawal from the European Union on 22nd September 2016 in the Mansion House in Dublin.⁴⁵ The aim of the symposium, which was the first between Members of the Dáil, Seanad and European Parliament, was to inform debate in advance of the new Parliamentary Session. The symposium was addressed by economic, diplomatic, business and union representatives.⁴⁶

Resources and planning

There has been some restructuring within the Irish civil service following the referendum result. The Government has appointed Mr John Callinan to the position of Second Secretary General in the Department of the Taoiseach to lead a new integrated division within the Department with responsibility for supporting the Taoiseach in his work on EU, Northern Ireland, British-Irish and International affairs.⁴⁷ Other measures include the strengthening of the EU policy role of the Department of Foreign Affairs and Trade as well as the strengthening of other key Departments, agencies and overseas missions.

As the Taoiseach explained to the Dáil, there will also be an increase in staff in other relevant departments to deal with Brexit:

It is important to say that I want to restructure the Department of the Taoiseach in the sense of forming a new Cabinet committee, which will be chaired by me with principal Ministers to attend and those, if necessary, beyond that; to strengthen the numbers in the different missions we have abroad in Rome, London, Berlin, Paris and so on; and to take in extra staff to the relevant Departments, either by contract or by moving from one Department to the other. We will transfer some staff from the Department of the Taoiseach back to the Department of Foreign Affairs and Trade in order to have a

⁴³ Transcript of the debate is available at [http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/WebAttachments.nsf/\(\\$vLookupByConstructedKey\)/committees~20161025~JEJ/\\$File/Daily%20Book%20Unrevised.pdf?openelement](http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/WebAttachments.nsf/($vLookupByConstructedKey)/committees~20161025~JEJ/$File/Daily%20Book%20Unrevised.pdf?openelement)

⁴⁴ Transcript of the debate is available at [http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/WebAttachments.nsf/\(\\$vLookupByConstructedKey\)/committees~20161108~JEJ/\\$File/Daily%20Book%20Unrevised.pdf?openelement](http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/WebAttachments.nsf/($vLookupByConstructedKey)/committees~20161108~JEJ/$File/Daily%20Book%20Unrevised.pdf?openelement)

⁴⁵ More information is available at http://www.oireachtas.ie/parliament/oireachtasbusiness/committees_list/businesscommittee/eu-sym/

⁴⁶ Streams from the Symposium are available at https://www.oireachtas.ie/parliament/oireachtasbusiness/committees_list/businesscommittee/eu-sym/

⁴⁷ Department of the Taoiseach press release, *Government appoints new Second Secretary General in the Department of the Taoiseach*. 5th August 2016. Available at http://www.taoiseach.gov.ie/eng/News/Government_Press_Releases/Government_appoints_new_Second_Secretary_General_in_the_Department_of_the_Taoiseach.html

more specific focus in the Department of the Taoiseach, assisted by a second Secretary General and staff to focus on Brexit and related issues.⁴⁸

3. The Agreement/Peace Process and Institutions

This section identifies and provides background to a range of issues which feature a specific cross-border dimension,

3.1 The GFA/Peace Process and Institutions

The Agreement, Institutions and Peace Process

Background

The Belfast Agreement (Good Friday Agreement)⁴⁹ ('the Agreement') set out to manage conflict by re-defining three sets of relations central to the conflict: relations between the Northern Irish parties (Strand 1), North/South relations (Strand 2) and East-West or British-Irish relations (Strand 3).

At its core, the Agreement is a compromise on the constitutional status of Northern Ireland which is guided by the principle of consent; this confirms Northern Ireland's position in the UK unless the majority of its population decides otherwise in a constitutionally provided-for referendum, and guarantees the completion of this change if so chosen. Alongside this, the Agreement provides constitutional guarantees for dual nationality, for agreed, power-sharing institutions (consociational with community safeguards)⁵⁰ in Northern Ireland now and in the future,⁵¹ and for over-arching and interdependent British-Irish and North/South institutions.⁵²

Creating the internal power-sharing institutions in particular the North/South institutions,⁵³ was critical to ensuring support for the removal by the Irish Government and people (via a constitutional referendum) of the Republic's territorial claim to Northern Ireland. Under the amended Articles 2 and 3, the Irish Constitution enshrines the principle of consent, the right of all people born on the island to Irish citizenship and the right of the Irish Government to establish shared (North/South) institutions with executive powers and functions which may exercise powers and functions in respect of all or any part of the island.

The Agreement committed different parties to a number of actions on issues central to the conflict. Referred to as 'confidence-building measures', they included actions on the decommissioning of paramilitary weapons and effective demobilisation of paramilitary

⁴⁸ Transcript of Dáil debate. Wednesday, 13th July 2016. Available at [http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/WebAttachments.nsf/\(\\$vLookupByConstructedKey\)/dail-20160713/\\$File/Daily%20Book%20Unrevised.pdf?openelement](http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/WebAttachments.nsf/($vLookupByConstructedKey)/dail-20160713/$File/Daily%20Book%20Unrevised.pdf?openelement)

⁴⁹ The Agreement reached in the multi-party talks: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/136652/agreement.pdf.

⁵⁰ 'Community safeguards' refers to the provision (in both the Agreement and the UK's *Northern Ireland Act 1998*) for weighted voting in the Northern Ireland Assembly on "important or controversial matters" either by parallel consent (overall majority that includes a majority of unionists and a majority of nationalists) or by weighted majority (overall majority of 60% that includes at least 40% of each of nationalists and unionists).

⁵¹ The Agreement, Section 3 (Strand 1)

⁵² The Agreement, Section 2. 1 (Constitutional Issues)

⁵³ The Agreement, Section 4 (Strand 2)

organisations; security and demilitarisation; policing and justice; prisoners issues, and the management of "civil rights, safeguards and equality of opportunity". The latter included a commitment to "equality and mutual respect as the basis of relationships" and "to the protection and vindication of the human rights of all". Further, the parties committed to ensure that the decisions of the Assembly do not infringe the European Convention on Human Rights or any Bill of Rights for Northern Ireland, and provided for the establishment of a Human Rights Commission.⁵⁴

Strand 2 provides for the North/South Ministerial Council, through which ministers from the Irish government and the Assembly Executive work to "develop consultation, co-operation and action within the island of Ireland – including through implementation on an all-island and cross-border basis – on matters of mutual interest within the competence of the Administrations, North and South".⁵⁵ Importantly for nationalist parties, the Agreement provides for the Council to have executive powers. Importantly for unionist parties, the Council's powers are not full executive powers, in that it cannot make decisions without the approval of the power-sharing Assembly and the Oireachtas.⁵⁶

Under Strand 3, the British-Irish architecture established under the Anglo-Irish Agreement (1985) was replaced with a new Standing British-Irish Intergovernmental Conference which exists alongside power sharing in Northern Ireland (Section 5, 1-9). Under the Agreement, the Governments do not have the power to override the democratic arrangements established by the Agreement.⁵⁷

The British-Irish Council was also established as a forum for cooperation and consultation between the Governments of Ireland, the UK, the devolved parliaments of Scotland, Wales and Northern Ireland, the Isle of Man and the Channel Islands.⁵⁸

How might Brexit affect this architecture?

The potential implications of Brexit on the Agreement, its institutions and the formal peace process can be categorised into those having direct and indirect effects.

Possible direct effects

(i) On the status of the Agreement and its institutions

The Agreement is an international agreement between two States and, as such, the UK's exit from the EU does not affect its status in international law. The Irish and UK Governments are co-guarantors of the Agreement. Since the Brexit vote, both Governments

⁵⁴ The Agreement, Section 3, 5 (b) and (c)) (Strand 1, Safeguards)

⁵⁵ The Agreement, Section 3 (Strand 2), 1

⁵⁶ Agreement, Section 4, 1-6

⁵⁷ Agreement, Section 5 (Strand 3), 9. If agreement cannot not be reached on the establishment of the institutions, the British-Irish Conference may contribute to a review of the Agreement. In early 2000, based on its doctrine of parliamentary sovereignty, the UK Government introduced a new power to 'suspend' the institutions. Given the unilateral power that this bestows on the UK Government, it has been argued that this breaches the Agreement and the rules and procedures established for its implementation.

⁵⁸ See British-Irish Council's website for objectives and most recent communiques: <https://www.britishirishcouncil.org/about-council>.

have officially committed to abide by its terms and to use its institutions as the basis for engagement on Northern Ireland (Text Box 3).

Text Box 3: Statements by UK Prime Minister and Irish Taoiseach (extracts), 26 July 2016

Prime Minister May

It is in all our interests to work together to safeguard our national security and the outcome of the referendum will not undermine it.

We are both fully committed to working together in support of the Northern Ireland Executive to build a better, stronger, safer future for the people of Northern Ireland. Indeed, it is vital that that we keep up the momentum on tackling paramilitary groups and building a shared future.

And today we have reaffirmed our commitment to establishing a new Independent Reporting Commission by the end of this year, which will support these efforts.

Taoiseach Enda Kenny

Today's meeting also gave us the opportunity to discuss developments in Northern Ireland to which the Prime Minister has referred. And we did repeat and reiterate the importance of the partnership between our two governments as co-guarantors of the Good Friday Agreement, and in supporting the peace process, and in contributing to stability and continued progress in Northern Ireland. We are both very much committed to the 1998 Good Friday Agreement and the successive agreements of St Andrews⁵⁹ and Fresh Start,⁶⁰ and we will continue to work for a prosperous and peaceful Northern Ireland in the time ahead.

So we have agreed, as the Prime Minister has reiterated, that we would work together to ensure that the benefits of the peace process are preserved in any new arrangements which might emerge regarding the United Kingdom's future relationship with the European Union. In particular, we both recognised that Ireland is the only EU member state that shares a land border with the United Kingdom. We are in full agreement that we do not wish to see any return to the borders of the past on the island of Ireland

The Secretary of State for Northern Ireland has rejected the argument that Brexit will fatally undermine the Agreement, stating that the 'UK Government remains fully committed to the Agreement and to its successors' and that 'this includes the political institutions'. He continued that 'the Assembly, the North/South Ministerial Council and the British-Irish Council will all continue to reflect the unique political relationships throughout these islands'.

⁵⁹ St Andrews Agreement 2006: <https://www.gov.uk/government/publications/the-st-andrews-agreement-october-2006>.

⁶⁰ A Fresh Start for Northern Ireland 2015: <https://www.gov.uk/government/news/a-fresh-start-for-northern-ireland>.

He further committed that "those elements of the Agreements that deal with people's rights and identity will be upheld, as will all the constitutional guarantees – underpinned by the abiding principle of consent".⁶¹

There is a direct reference to the European Union in the Annex to the Agreement. In it the Governments of Ireland and the UK express that the Agreement has been reached "wishing to develop still further the unique relationship between their peoples and the close co-operation between their countries *as friendly neighbours and as partners in the European Union*" (emphasis added). While this is an acknowledgement of the over-arching framework that the European Union provides for the constitutional relationship between Northern Ireland and the Republic,⁶² "the fact that one of the co-guarantors of the Agreement is no longer an EU Member State should not of itself undermine the status of the 1998 settlement".⁶³

Two separate legal challenges to the right of the Prime Minister to trigger Article 50 were taken to the Belfast High Court. One, broadly stated, argued that this would breach the principle of consent. The other, again broadly stated, argued that this would breach the right of the Assembly to 'protect peace process guarantees enshrined in the Good Friday Agreement'.⁶⁴ In both cases the contention was that Article 50 could not be triggered by the use of the Royal Prerogative and that legislation (or other mandate from Parliament) was required for this purpose. The cases were heard together by the High Court over three days in October 2016.

Regarding the issue of consent, it was contended that '...as a matter of law Article 50 cannot be triggered without the consent of the people of Northern Ireland. This, it is asserted, is because the Northern Ireland people are said to have a legitimate expectation that there would be no change in the constitution of Northern Ireland without their consent. Withdrawal from the EU would, the argument contends, be such a change'.⁶⁵

The court's assessment of this argument as set out in the judgment was that⁶⁶:

The court is not aware of any specific provision in the Good Friday Agreement or in the 1998 Act which confirms the existence of the limitation which the applicant

⁶¹ Secretary of State Brokenshire, extracts from speech at Oxford University, 21 September 2016:

<https://www.niconservatives.com/news/secretary-state-northern-ireland-Brexit>.

⁶² See De Mars, Murray et al (June 2016) 'Policy Paper: Brexit, Northern Ireland and Ireland' *Durham University and Newcastle University*

⁶³ Centre for Cross Border Studies and Co-operation Ireland, EU Referendum Briefing Paper 1 p. 5

⁶⁴ <http://www.independent.co.uk/news/uk/politics/Brexit-legal-challenge-dismissed-northern-ireland-article-50-case-eu-withdrawal-not-heard-latest-a7384386.html>

⁶⁵ McCord's (Raymond) Application - In the Matter of an Application by McCord (Raymond) for Leave to Apply for Judicial Review and in the Matter of Article 50 of the Treaty of the European Union And In the Matter of Application to Leave to Apply for Judicial Review by (1) Steven Agnew, (2) Colum Eastwood, (3) David Ford (4) John O'Dowd (5) Dessie Donnelly (6) Dawn Purvis (7) Monica Wilson (8) The Committee on the Administration of Justice, (9) The Human Rights Consortium v (1) Her Majesty's Government, (2) The Secretary of State for Northern Ireland, (3) The Secretary of State for Exiting the European Union

Judgment Delivered by the Court (28/10/2016) [para 147]

http://www.courtsni.gov.uk/en-GB/Judicial%20Decisions/PublishedByYear/Documents/2016/%5b2016%5d%20NIQB%2085/i_MAG10076Final.htm.

⁶⁶ As above [paras 152-155].

contends for and which establishes a norm that any change to the constitutional arrangements for the government of Northern Ireland and, in particular, withdrawal by the United Kingdom from the EU, can only be effected with the consent of the people of Northern Ireland. Nor can the court identify material which would cause it to imply any such limitation. This is not, in the court's estimation, surprising as if such a limitation exists, it would be reasonable to have expected this to have been highlighted in the run up to the referendum held in June of this year. The proposition for which the applicant contends would, it seems, have the most unusual result of requiring a second referendum on the issue of EU membership to be held in Northern Ireland within a short time of the people of Northern Ireland having gone to the polls in respect of the same issue in a national referendum where the national outcome was in favour of withdrawal.

While it is correct that section 1 of the 1998 Act does deal with the question of the constitutional status of Northern Ireland it is of no benefit to the applicant in respect of the question now under consideration as it is clear that this section (and the relevant portion of the Good Friday Agreement) is considering the issue only in the particular context of whether Northern Ireland should remain as part of the United Kingdom or unite with Ireland. The very fact that the issue is dealt with in this way, it seems to the court, makes it unlikely that the applicant's wider view as to the meaning of these provisions can be correct.

It further seems to the court that in this area it is difficult to see how the court can overlook the importance of the terms in which the 1998 Act are cast or to deviate from what to date has been plain, namely that the United Kingdom Parliament has retained to itself the ability to legislate for Northern Ireland (see section 5(6)) without the need to resort to any special procedure, save in so far as that might be required for the purpose of section 1 of the 1998 Act (a matter about which the court need not dilate upon).

In the court's view, any suggestion that a legitimate expectation can overwhelm the structure of the legislative scheme is not viable.

Regarding the contention '...the prerogative power cannot be exercised for the purpose of notification in accordance with Article 50(2) TEU, and the allied contention that this is because it has been displaced by the Northern Ireland Act 1998 read along with the Belfast Agreement and the British-Irish Agreement and other constitutional provisions,' the High Court stated, amongst other things:

It is therefore, in the court's opinion, inapt for the applicants to talk in terms of notification changing the rights of individuals or of the operation of institutions becoming transformed by reason of the invocation of Article 50(2). This simply will not happen by reason of the step of notification per se. The reality is, at this time, it remains to be seen what actual effect the process of change subsequent to notification will produce. In the meantime, sections 6 and 24 of the 1998 Act will continue to apply; the North/South and East/West institutions will continue to operate; and the work of implementation bodies will go

on. While the wind of change may be about to blow the precise direction in which it will blow cannot yet be determined so there is a level of uncertainty, as is evident from discussion about, for example, how Northern Ireland's land boundary with Ireland will be affected by actual withdrawal by the United Kingdom from the EU.

The court is not persuaded, for the purpose with which this judicial review is concerned, prerogative power has been chased from the field or that statutory power (in the form of the 1998 Act) has displaced it in accordance with the test described above. Rather, it is the court's view the prerogative power is still operative and can be used for the purpose of the executive giving notification for the purpose of Article 50. This, however, is said without prejudice to the issues which have been stayed and which are under consideration in the English courts⁶⁷.

The court also rejected the argument that there is an obligation for the UK government to seek and receive the consent of the Northern Ireland Assembly to such legislation by obtaining from it the passage of a Legislative Consent Motion authorising such legislation (although the court had, in any case, already ruled that legislation was not in its view needed).

However, the High Court in London concluded that "the Secretary of State does not have the power under the Crown's prerogative to give notice pursuant to Article 50 of the TEU for the United Kingdom to withdraw from the European Union"⁶⁸. The judgment also questioned some of the processes by which the High Court in Belfast had made its assessment in the case outlined above.⁶⁹ The Attorney General for Northern Ireland subsequently issued a notice that the devolution case (not the consent case) was worthy of further judicial consideration and indicated his intention to request the case leap frog the Court of Appeal and go directly to the High Court in London.⁷⁰

(ii) Impact on protection of human rights in the Agreement

Commentators have considered the effect of Brexit on the commitment to human rights in the Agreement. A recent academic paper points to the Agreement's reference to Ireland and the UK as "partners in the EU", the over-arching enabling framework provided by the EU, and the Agreement's commitment to the European Convention on Human Rights; they argue that the EU, the European Convention on Human Rights and the Agreement are essentially interdependent in their application to Northern Ireland.⁷¹

⁶⁷ As above [paras 107-108].

⁶⁸ R (Miller) v Secretary of State for Exiting the EU [2016] EWHC 2768 3 November 2016: <https://www.judiciary.gov.uk/wp-content/uploads/2016/11/judgment-r-miller-v-secretary-of-state-for-exiting-the-eu-20161103.pdf>.

⁶⁹ As above., Paragraph 104.

⁷⁰ NI AG says further consideration of Brexit challenge warranted' *Irish Times* 8 November 2016.

⁷¹ De Mars, Murray et al (2016) cited above.

The Irish Minister for Foreign Affairs, Charlie Flanagan TD, has stated that while the incorporation of the Convention is one of the key principles underpinning the Good Friday Agreement and ensuring the protection of human rights within Northern Ireland's law, the UK's withdrawal from the EU does not affect its commitment to the European Convention on Human Rights:

"It is important to note that the European Convention on Human Rights is a separate regime from the EU. Leaving the EU does not mean leaving the Convention."⁷²

On the other hand, it is the case that the EU's Charter of Fundamental Rights of the European Union, which applies to matters concerning EU law, is unlikely to continue to apply to Northern Ireland if the UK leaves the EU.⁷³

Indirect impact of Brexit on the institutions

- (iii) **Brexit would mean a change in the relationship between the UK and the Irish Governments, the co-guarantors of the Agreement. To date, the implementation of the Agreement has relied heavily on the strength of this relationship.**

The implementation of the Agreement has been marked by recurring crises (see Text Box 4 below) which have been managed through informal British-Irish diplomacy. Professor Jennifer Todd refers to this as "an informal mode of implementing the Agreement and adjudicating its principles" and notes that this method of implementation makes the agreement vulnerable to changes in British-Irish relations and priorities.⁷⁴

Text Box 4: Obstacles to the implementation of the Agreement

Central to early disputes was the extent to which decommissioning should happen before, after or at the same time as devolution and power-sharing. Disagreement over interpretation and timing extended to other confidence-building measures, in particular those concerning the reform of the police force and endorsement of that reform.

The St. Andrew's Agreement (October 2006), published by the UK and Irish Governments following negotiations with all of the Northern Ireland parties, included a timetable leading towards the restoration of devolution and power-sharing in Northern Ireland. It required full acceptance of the PSNI by all parties as well as the restoration of the Northern Irish Assembly and a commitment by all parties to power sharing in the Executive. It included a plan to devolve policing and justice within two years of the restoration of the Executive. A new devolved administration was established in 2007, in which the Democratic Unionist Party served for the first time since the establishment of the institutions, and policing and

⁷² Minister addressing the Joint Committee on the Good Friday Agreement, 27 September 2016

⁷³ Northern Ireland, Raise, EU Referendum Update, August 2016 p. 24.

⁷⁴ Todd Jennifer (2016) *The vulnerability of the Northern Ireland settlement: British Irish Relations, political crisis and Brexit*. Professor of Politics in University College Dublin.

justice were devolved in 2010.

Further crises stemming in part from the aspects of the 1998 and 2006 Agreements that had yet to be implemented – cultural equality, dealing with the past, and parity of esteem – led to renewed paralysis which was resolved only when the UK and Irish Governments convened talks, which led to the Stormont House Agreement of December 2014 (Todd, 2015).

A further Agreement – A Fresh Start – published by the UK and Irish Governments in November 2015, is designed to implement various aspects of the Stormont House Agreement, to deal with the impact of continued paramilitary activity and includes investment guarantees by the Governments.

While the institutional architecture has become increasingly embedded since 2007, a number of the Agreement's provisions have yet to be implemented, in particular the establishment of institutions to deal with the legacy of the past.

While both the UK and Irish Governments have issued statements committing themselves to upholding the principles of the Agreement, there is no doubt that Brexit brings change and uncertainty to the relationship. Todd argues that the Agreement is vulnerable to any events "which weaken British and Irish commitment to hands-on oversight of Northern Irish affairs".⁷⁵ Research undertaken by Arc (NI Access, Research, Knowledge), funded by the Office of the First and Deputy First Minister (OFMDFM), also found a link between political uncertainty and community relations. Its report found:

'a clear underlying upward trend in the proportion of people in Northern Ireland who think that 'relations between Protestants and Catholics are better than they were five years ago'. Equally clearly, this upward trend is not a steady one and there have been many ups and downs along

And that

'community relations in Northern Ireland remain extremely fragile and vulnerable to events and political changes.'⁷⁶

(iv) **The logic underpinning the Agreement is vulnerable to any weakening of the North/South, cross-border dimension**

The progressive strengthening of cross-border relations is central to the Agreement and to the logic underpinning the peace process.

Firstly, as outlined above, North/South cooperation pursued through the Agreement's institutions is central to the political compromise inherent in the Agreement;

⁷⁵ Todd Jeniffer, 2016 cited above

⁷⁶ Ark Research Report (December 2013) 'The Long View: Community Relations in Northern Ireland 1989-2012' funded by OFMDFM: <https://www.executiveoffice-ni.gov.uk/publications/long-view-community-relations-northern-ireland-1989-2012>.

Secondly, the progressive enhancement of cross-border relations and cooperation at the sectoral, community and individual level are an important component of the peace-building process: Analysts of peace-building processes argue that ‘softer,’ practical cross-border cooperation:

- a) by enabling contact and cooperation for mutual benefit between individuals and sectors (e.g. business, regional health authorities, local councils and/or communities) serves to break down stereotypes and promote good relations between communities both sides of the border and, indeed, within Northern Ireland;⁷⁷
- b) through the promotion of trade, business networks and all-island sectoral strategies, social and economic development for the mutual benefit of the people either side of the border contributes to and reinforces the political peace process by reducing poverty and deprivation;
- c) has substantially reduced the negative effect of the border on daily lives, which has reduced its political significance for Northern Ireland nationalists. Where the border is invisible, British sovereignty is “no longer seen as having implications for internal power (within Northern Ireland) cultural status of freedom on movement”.⁷⁸

Cross-border and wider North/South cooperation at all levels has been hugely facilitated by EU Membership and Brexit may present a number of challenges to it which are discussed in more detail in other sections of this Paper:

One – joint membership of the EU and the free movement of people, goods, capital and services – has enabled the border to become almost invisible, delivering the benefits to peace-building outlined above.⁷⁹ While the UK and Irish Governments have both stated that they are against a return to a hard border, the end of both states having common membership of the EU means that there is no certainty that customs and immigration border checks can be avoided.

While there is a possibility that the Common Travel Area will be maintained (see Section 4 of this Paper) and that the UK will seek continued access to the EU’s Internal Market, the terms on which the UK eventually exits the EU will be the outcome of negotiations between the UK and the other 27 EU Member States.⁸⁰ A report by two UK think tanks – UK in a Changing Europe and the Political Studies Association – states that while “all sides are agreed that closing the Irish border would be a serious mistake and that some accommodation will have to be made...it is difficult envisage Northern Ireland being within the Single Market and the rest of the UK being outside it without controls and trade in goods and services between Northern Ireland and Great Britain”.

⁷⁷ Hayward and Wiener argue that the European Union legitimised cross-border cooperation, providing a de-politicised context in which cross-border cooperation is pursued for mutual economic development rather than as a back-door to unity. (Hayward and Wiener, 2008, ‘The EU and Border Conflicts’ p. 51.

⁷⁸ Todd Jeniffer, 2016 cited above

⁷⁹ Centre for Cross Border Studies, EU Referendum Paper 3, 2016, 7. While reciprocal arrangements between the UK and Ireland predate their entry into the EU, Protocol 20 to the EU Treaty formalised this under EU law and, with accession to the Single Market, customs checks were abolished between them.

⁸⁰ Minister Charlie Flanagan, Joint Oireachtas Committee on the Implementation of the Good Friday Agreement, 27 September 2016

A second issue related to the EU is that it has provided "a democratic context and a direct functional relevance for the institutions of the Agreement."⁸¹ Brexit could gradually weaken this functional relevance or the logic or purpose of North/South cooperation as 'policies and regulations in the different jurisdictions diverging.'⁸² Cross-border cooperation in a variety of sectors, including the six areas of cooperation under the Agreement and for the six implementing bodies, has been greatly facilitated by the fact that both jurisdictions are subject to common EU legislation and regulation.

Thirdly, as detailed in the section on funding in this Paper, the EU has provided billions of Euro in funding to the peace process through four Peace Programmes and 5 territorial cooperation programmes (INTEREG).⁸³ In a recent briefing paper the Centre for Cross Border Studies highlighted the significance of this funding to the continued development of cross-border transport and energy infrastructure, both of which facilitate cross-jurisdictional flows. It said that these have "enabled cross border cooperation to move beyond piecemeal activities lacking a more strategic vision and wider socio-economic impact."⁸⁴

While there are risks to the institutions (discussed above), it is also the case that the existence of the North/South institutions may be a source for stability and consensus over the Brexit period. The Centre for Cross Border Studies notes that, rather than becoming redundant, the institutions may become more important as they provide a mechanism to address emerging impacts of the withdrawal process.⁸⁵ For example, at its plenary meeting on 4 July 2016, the North South Ministerial Council agreed to undertake a number of actions including:

- working together to ensure that Northern Ireland's interests are protected and advanced, and the benefits of North/South cooperation are fully recognised in any new arrangements that emerge as regards the UK's future relationship with the EU;
- that the frequency of the briefings on relevant EU matters provided by the Irish Government for senior Northern Ireland officials should increase;
- that the Irish Permanent Representation in Brussels and the Northern Irish Executive Office in Brussels will continue and intensify their close working relationship.⁸⁶

Under the Agreement, the North/South Ministerial Council has a duty to consider the European Union dimension of relevant matters, including the implementation of EU policies and programmes and proposals under consideration in the EU framework. It commits parties to making arrangements to ensure that the views of the NSM Council are taken into account and represented appropriately at relevant EU meetings. While the context and the issues raised may be different, it is possible that the Council would continue to undertake this duty after Brexit.

⁸¹ Hayward and Wiener 2008 cited above.

⁸² Centre for Cross Border Studies and Cooperation Ireland EU Referendum Briefing 1, 7

⁸³ Centre for Cross Border Studies and Cooperation Ireland EU Referendum Briefing Paper 3 p. 7)

⁸⁴ Centre for Cross Border Studies and Cooperation Ireland EU Referendum Briefing Paper 3 p. 7)

⁸⁵ Centre for Cross Border Studies and Cooperation Ireland (2016) EU Referendum Briefing Paper 2 p.3.

⁸⁶ Joint Communiqué, North South Ministerial Council, 22nd Plenary Meeting, 4 July 2016

While some actors (e.g. Mark Durkan MP) have called for the establishment of a wider North/South Forum involving sectoral interests, such as business, to discuss and feed into the Brexit negotiations process,⁸⁷ others, such as First Minister Arlene Foster MLA, prefers to deal with the implications of Brexit through the existing cross-border institutions.⁸⁸

4. Common Travel Area

The Common Travel Area (CTA) is a set of arrangements under which the UK and Ireland operate an open border between their respective territories, allow free movement and related rights to each other's citizens, and co-ordinate their immigration policies in relation to other countries.⁸⁹ These arrangements have been maintained in varying degrees and forms since the establishment of the Irish Free State in 1922. There is no overarching treaty or agreement that encapsulates the arrangements between the two states, and they have been implemented by means of inter-governmental agreements, legislation and administrative practices that have changed over time and in response to circumstances.

The UK referendum vote to leave the EU has focussed attention on the nature and effect of the CTA, particularly in relation to the border between Northern Ireland and the Republic, which will become the UK's only land border with the EU. The Taoiseach, Enda Kenny TD and the Prime Minister, Theresa May MP have stressed the importance of the CTA to both states and have committed to seeking "creative and imaginative ways" to deal with matters such as customs after the UK exits the EU.⁹⁰

Issues that are relevant to the CTA and how it may be affected by the UK's exit from the EU include:

- Immigration and residence rights
- short-stay visas
- border and passport controls

Immigration and Residence Rights

UK and Irish law

The right of UK and Irish citizens to enter and remain in each other's country is a central feature of the CTA. Apart from suspension during and for a period after the Second World War, this right has been recognised and supported by the UK and the Republic since the 1920s. Citizens of the two states are able to enter and reside in each of the countries without time limits or the need for a visa, residence permit or proof of resources. In 2011 approximately 230,000 persons born in the Great Britain were resident in the Republic.⁹¹ In

⁸⁷ Mark Durkan MP at Joint Oireachtas Committee on Implementation of the Good Friday Agreement, 27 September 2016.

⁸⁸ ['No Need for an all-Island Brexit Forum' says First Minister](#), 4 July 2016, UTV News

⁸⁹ The CTA also includes the Isle of Man, Jersey and Guernsey, but these are not considered in this Note.

⁹⁰ *The Irish Times* (26 July 2016) "Kenny and May agree no return to hard border after Brexit"

⁹¹ Central Statistics Office, Census 2011 data, available [here](#).

the same year, nearly 38,000 persons born in the Republic lived in Northern Ireland,⁹² 23,000 in Scotland,⁹³ and 372,000 in England and Wales.⁹⁴

These rights are conferred by legislation of the two states – in the Republic, under the Aliens Act 1935⁹⁵ ⁹⁶ and in the UK, the Ireland Act 1949⁹⁷.⁹⁸ The UK's exit from the EU will therefore not necessarily affect these rights.

Also relevant in this regard are the terms of the Agreement, section 1(vi) of which recognises the birthright of all the people of Northern Ireland “to identify themselves and be accepted as British or Irish or both as they so choose”. The UK and Irish governments accordingly confirm in the Agreement the right of the people of Northern Ireland to both UK and Irish citizenship. This right will “not be affected by any future change in the status of Northern Ireland”.

EU law

EU law also gives rights to enter and reside in Member States, though these are defined differently from those arising under UK and Irish legislation discussed above.

Both the UK and Ireland have opted out of the Schengen open-border arrangements that were incorporated into EU law the 1998 Amsterdam Treaty. However, Article 21 of the Treaty on the Functioning of the EU (TFEU) provides that the nationals of EU Member States hold EU citizenship in addition to their national citizenship. The Article provides that EU citizenship confers “the right to move and reside freely within the territory of the Member States”, but subject to conditions and limits provided for in EU law. EU Directive 2004/38⁹⁹ is the principal EU legislation on this. It provides that EU citizens and the members of their families¹⁰⁰ may:

- reside in any other Member State for up to three months subject only to holding valid identification such as a passport (Article 6);
- reside for longer periods if they are workers, self-employed or otherwise capable of supporting themselves and their families without relying on the host state's social assistance systems, or are registered students with appropriate financial resources and health insurance (Article 7);
- automatically acquire permanent residence in a host state after residing in it continuously for five years (Article 16).

⁹² Northern Ireland Statistics and Research Agency, Census 2011 data available [here](#)

⁹³ Scotland Census, Census 2011 data available [here](#)

⁹⁴ Office for National Statistics, Census 2011 data available [here](#)

⁹⁵ Aliens Act, 1935: <http://www.irishstatutebook.ie/eli/1935/act/14/enacted/en/html>.

⁹⁶ The current provision is [S.I. 97/1999 Aliens \(Exemption\) Order, 1999](#), which excludes British citizens from the operation of the 1935 Act.

⁹⁷ Ireland Act 1949: <http://www.legislation.gov.uk/ukpga/Geo6/12-13-14/41/contents>.

⁹⁸ Section 2(1) of this Act provides that the Republic is not to be treated as foreign country for the purposes of UK law.

⁹⁹ EU Directive 2004/38: [http://eur-](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:158:0077:0123:en:PDF)

[lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:158:0077:0123:en:PDF](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:158:0077:0123:en:PDF).

¹⁰⁰ Defined in Article 2(2) to include the spouse or partner of the EU citizen, his or her children under the age of 21, and dependent parents, grandparents etc.

These rights apply even where the members of the EU citizen's family are not themselves EU citizens. Under agreements relating to the European Economic Area (EEA), citizens of Iceland, Liechtenstein, Norway and (under a separate arrangement) Switzerland, have similar rights of residence in EU states.

Articles 4 and 5 of the Directive give EU citizens and their families the right to enter and exit Member States subject only to being able to provide appropriate official identification such as a passport. Family member who are not EU citizens may in some circumstances be required to obtain visas.

The UK's exit from the EU will remove this basis of entry and residence in the UK. It will therefore directly affect the position of EU citizens and the members of their families who seek to enter or reside in the UK. EU citizens who are Irish citizens are, as previously outlined, subject to a separate regime under the UK's *Ireland Act 1949* and *Immigration Act 1971*. However, family members of those Irish citizens who are not themselves Irish citizens will not qualify for that status.

Coordination of Immigration Policies

An important feature of the CTA has been the coordination by Ireland and the UK of their immigration policies, particularly as regards nationals of countries outside the EU and the EEA. This has been done so that neither country could be used as a 'back door' into the other. A notable example of this is alteration to Irish immigration policy since the 1920s, which has been kept broadly in line with UK legislation concerning the rights of entry to the UK of citizens of certain British Commonwealth countries. The coordination is also reflected in UK and Irish policies on short-stay visas, discussed below.

Following the UK's exit from the EU, it would appear likely that continued coordination will be required if the CTA is to be preserved while preventing 'back-door' immigration through the Republic.

Short-stay visas

The UK and Ireland have agreed measures to coordinate short-stay visas for non-EEA visitors, allowing for mutual recognition of certain short-stay visas. In 2011 the Republic introduced a Short-stay Visa Waiver Programme, which allows nationals of 18 non-EEA countries who hold UK short-stay visas to enter the Republic and remain for up to 90 days without further visa requirements.¹⁰¹

This was extended by the 2014 British-Irish Visa Scheme.¹⁰² This allows nationals of India and China to apply for a single short-stay visa to cover both the UK and Ireland. This is intended to enhance tourism throughout the UK and the Republic by allowing visitors unrestricted travel for the duration of their visas. In launching the scheme, Ireland's Minister for Justice and Equality, Frances Fitzgerald TD, described it as "an historic development in the relationship between Ireland and the UK and in the operation of the Common Travel

¹⁰¹ [Irish Naturalisation and Immigration Service: Short Stay Visa Waiver Programme](#) (October 2016)

¹⁰² Department of Foreign Affairs Information Note available [here](#)

Area which has existed between the two countries since 1922". This scheme may provide a model for similar schemes relating to other countries.

Control of movement of people

The central and most noticeable feature of the CTA is the minimal border controls between the Republic and the UK. For much of its existence, the CTA allowed travel from one state to the other by all persons, regardless of their nationality and without passport or border checks.¹⁰³ That position changed in 1997 when the Republic introduced legislation the practical effect of which was to introduce identity checks – usually in the form of passport controls – for persons entering the Republic from the UK.¹⁰⁴ In practice, these are carried out mainly at airports and occasionally sea ports. The purpose of this is to establish if the persons being checked are 'aliens' for the purpose of the *Aliens Act 1935*. As previously mentioned, UK citizens are excluded from that category, and a person who can establish that they are a UK citizen enjoys an unrestricted right to enter and reside in the Republic. As mentioned above, the Republic coordinates many of its non-EEA visa policies with those of the UK. The two countries can therefore rely on each other to check on arrivals from those non-EEA states, allowing them to maintain minimal checks on travel between the Republic and the UK.

The UK's exit from the EU raises questions concerning the minimal checks on travellers between the Republic and Great Britain and the virtual absence of such checks on travellers between the Republic and Northern Ireland. The Republic is not a party to the Schengen arrangements removing border restrictions between EU Member States, but it remains subject to Article 21 of the TFEU and Directive 2004/38. These oblige it to admit EU nationals subject only to the conditions outlined earlier in this paper. If, after its exit from the EU, the UK chooses to limit the access it grants to non-Irish EU nationals, such restrictions will very likely require some sort of checks or inspections on arrivals from the Republic at ports, airports and even border crossings with Northern Ireland. This would amount to fundamental change in the nature of the CTA.

However, addressing the Irish aspects of the implications of UK withdrawal for immigration policy and nationality law, Bernard Ryan, Professor of Law, University of Leicester, has argued that:¹⁰⁵

In the event of UK decision to withdraw, it is to be presumed that the underlying reasons for the common travel area would continue to apply. The political consensus in support of the common travel area in Northern Ireland would probably be an especially significant factor.

¹⁰³ In the Republic, this had effect by reason of the *Aliens Act 1935*. In the UK, section 1(3) of the [Immigration Act 1971](#) exempts all travellers from the Republic from border controls, though this is subject to limited exceptions concerning non-Irish persons who require visas to enter the UK.

¹⁰⁴ [S.I. No. 277/1997 - Aliens \(Amendment\) \(No. 3\) Order, 1997](#)

¹⁰⁵ Professor Bernard Ryan (May 2016) ILPA EU Referendum Position Papers 8: The implications of UK withdrawal for immigration policy and nationality law: Irish aspects.

<https://www.freemovement.org.uk/Brexit-briefing-impact-on-common-travel-area-and-the-irish/>

Continuing with common travel area arrangements also appears to be compatible with EU law. There is no obvious legal reason why the Republic of Ireland should not retain the benefit of Protocols 19 and 20 after UK exit, allowing it to maintain special co-operation arrangements with the UK outside the Schengen zone.

Professor Ryan has expressed the view, however, that after a UK decision to withdraw, reform of common travel arrangements might nevertheless be considered.¹⁰⁶

Open Europe, which describes itself as a Think Tank, addressing the suggestion that maintaining the CTA would be incompatible with Ireland remaining part of EU's free movement rules, since EU citizens could simply move to the UK via Ireland (this presumes the UK would no longer accept unrestricted free movement from the EU) has argued that:

This appears to be somewhat of a red herring. It is very likely that the UK will continue to allow visa free travel with the EU. Therefore, EU citizens will be free to visit the UK on holiday or to conduct some cross-border business. In reality, the enforcement of ensuring people do not over stay cannot be at the border but via other mechanisms such as regulating access to social security and the job market. These are the things that would no longer be automatically available to EU citizens if the UK was no longer subject to free movement. But there is no real need for any greater border enforcement (though data collection and tracking of entrants should be improved). Border checks from a purely security perspective are already in place since the UK and Ireland are not in Schengen and it seems likely the UK could continue to trust Ireland to enforce the border of the Common Travel Area from a security perspective. The effectiveness of such checks would depend on bilateral cooperation.¹⁰⁷

Control of movement of goods

Another aspect of border controls that is relevant in this context relates to controls for customs and excise purposes. The UK and the Republic are both part of the European Union Customs Union, but it is not yet clear whether the UK's exit from the EU will entail an exit from the Customs Union. If the UK chooses to leave, resulting in the Republic operating under a different customs regime, it would pose serious questions to the ability of persons and businesses to move freely across the border with the Republic without checks by customs agents.

A similar issue relates to excise duties and charges such as Value Added Tax. Although both states currently operate checks to target smuggling of particular classes of goods (such as tobacco products, alcohol and fuels), the checks are carried in a way that generally does not interfere with the overall operation of the CTA. If, following its exit from the EU, the UK's

¹⁰⁶ As above

¹⁰⁷ Open Europe (March 2016) How might the effect of Brexit on Ireland and Northern Ireland be managed?

<http://openeurope.org.uk/today/blog/how-might-the-impact-of-Brexit-on-ireland-and-northern-ireland-be-managed/>

tax and excise regime diverges widely from that of the Republic, such unobtrusive checks may become impractical, leading to border checks of some or all persons and traffic.

Future Arrangements

The future of the border and the CTA are both issues which are currently under consideration by two Westminster Committees.

On 16 September 2016, the Northern Ireland Affairs Committee of the House of Commons launched an inquiry into the future of the land border between Northern Ireland and the Republic following Brexit. Amongst other issues, the Committee is seeking evidence on:

- What benefits currently derive from the existing open border arrangements?
- What options are there for maintaining the existing Common Travel Area arrangements?
- What are the options for the border if the UK was not part of the EU customs union? What are the advantages and disadvantages of each option?
- What are the options for the border if the UK was not part of the Single European Market? What are the advantages and disadvantages of each option?
- What options are available that would maintain the First and Deputy First Ministers' desire for free movement of people, goods and services?
- What policing and criminal justice arrangements will need to be in place to ensure the border does not result in an increase in illegal activity?
- What would be the implications of Northern Ireland having some form of special status within a post-Brexit UK?
- Does the UK's departure from the EU have implications for the UK and Ireland's common visa system?
- What lessons can be drawn from the other parts of the EU that have an external land border, such as between Norway and Sweden/Finland, or between Switzerland and its neighbours?¹⁰⁸

On 17-18 October 2016, the House of Lords European Committee visited Belfast and Dublin to take evidence for its *Brexit: UK-Irish relations* inquiry¹⁰⁹. This is one of a series of short inquiries on the implications of Brexit being undertaken over the coming months by the EU Committee and its Sub-Committees. In addition to the impact of Brexit on Northern Ireland

Topics are to include:

- Trading relationships between Ireland and the UK

¹⁰⁸ <http://www.parliament.uk/business/committees/committees-a-z/commons-select/northern-ireland-affairs-committee/inquiries/parliament-2015/inquiry3/>.

¹⁰⁹ Committee visits Belfast and Dublin for Brexit: UK-Irish relations inquiry, Lords Select Committee press release 14 October 2016: <https://www.parliament.uk/business/committees/committees-a-z/lords-select/eu-select-committee/news-parliament-2015/ireland-inquiry-visit/>.

- The impact on North/South relations and on the Irish land border
- The impact on the Common Travel Area
- The impact on the peace process and the Good Friday Agreement

5. Policing and Justice

5.1 Police Cooperation

There is extensive cross-border cooperation between An Garda Síochána (the Gardaí) and the Police Service of Northern Ireland (PSNI), as well as between other bodies such as the Republic's Revenue Commissioner and HM Revenue and Customs. The effects on these of the UK's exit from the EU will vary according to the type and basis of the cooperation.

Cross-Border Policing Strategy

Cooperation between the Gardaí and the PSNI is based on the framework of the Cross-Border Policing Strategy¹¹⁰ that was agreed in February 2010. This strategy covers areas such as operations, investigations, security, intelligence and information sharing, as well as Human Resources, planning and training. The success of this strategy was noted in a 2015 report by a committee of the British-Irish Parliamentary Assembly dealing with smuggling. The report described cooperation as taking place both informally and formally, and at all levels. It characterised the cooperation as close and effective.¹¹¹

As the Cross-Border Policing Strategy is a bilateral arrangement between authorities in the Republic and their counterparts in Northern Ireland, its existence or characteristics will not necessarily be affected by the UK's exit from the EU. However, the terms on which the UK exits may make it expedient to review the nature of the authorities' cooperation and the wider issues that it may need to address, potentially including matters such as customs and immigration controls.

5.2 EU Agencies

The Republic and UK participate in a number of EU agencies and groups whose work is intended to enhance policing and security across the EU. These include:

- **Europol**, the EU agency that distributes intelligence and information to law-enforcement agencies in EU Member States,
- **Eurojust**, the EU's agency for coordination of investigative and prosecution authorities,
- **Schengen Information System**, a distributed information system for keeping track of persons of interests to law-enforcement agencies,¹¹²

¹¹⁰ PSNI, Department of Justice, Department of Justice and Law Reform and An Garda Síochána (2010), *Cross Border Policing Strategy*: <http://www.garda.ie/Documents/User/Cross%20Border%20Policing%20Strategy.pdf>.

¹¹¹ British-Irish Parliamentary Association, Committee A – Sovereign Matters (2015), Report on Cross-Border Police Cooperation and Illicit Trade: <http://www.britishirish.org/assets/NewFolder-2/235.-BIPA-report-from-Committee-A-Sovereign-Matters-on-Cross-border-Police-Cooperation-and-Illicit-Trade-2015.pdf>.

¹¹² The Republic is not yet fully integrated into this system.

- **eu-LISA**, an EU agency that supports cooperation and information exchange between Member States on the use of large-scale IT systems for justice and security purposes.

These are central to the coordination and cooperation of law enforcement agencies across the EU. It is likely that the UK, the remaining EU Member States and the EU itself will seek to maintain the cooperation and information provided through these bodies, possibly through associate membership along the lines currently provided by most of these agencies to EEA states such as Norway and Iceland.

A consideration that is relevant to bilateral cooperation arrangements between the Republic as well as to those between the UK and EU agencies and other remaining EU Member States is the UK's post-exit treatment of personal data: agencies in Ireland and elsewhere in the EU may be constrained as to the types of personal information they can share or the purposes for which they do so, depending on the UK's data protection regime after its exit from the EU.

5.3 European Arrest Warrants

Extradition arrangements between the UK and the Republic (as well as other EU Member States) are currently governed by the 2002 Council Framework Decision on the European Arrest Warrant.¹¹³ This greatly simplified the extradition arrangements that it replaced by providing for a system of trust and mutual recognition of arrest warrants and decisions in criminal matters. Unlike other extradition arrangements, a European Arrest Warrant (EAW) is transmitted directly to appropriate authorities who are obliged to carry out the arrest. The EAW also reduces the scope of the 'dual criminality' test in extradition cases, which can require detailed proof of the equivalence of an offence in the requesting country to one in the country from which extradition is sought. The EAW has however been criticised for providing convenience to state authorities at the expense of individuals' civil liberties. These concerns include the issue of proportionality – that is, arising from the use of EAWs in respect of relatively minor matters. Another criticism arises from incompatibilities between the criminal justice systems of EU Member States, which can result in persons surrendered under an EAW being held without trial in the requesting country for unduly long periods, and sometimes being released without charge despite their surrender from another state.¹¹⁴

The EAW has become an important tool for law enforcement agencies in Ireland and the UK. In 2014, the Republic surrendered 21 wanted persons to the UK on foot of EAWs, of whom 6 were surrendered to the PSNI.¹¹⁵ In the same year, the Republic made 48 requests to the UK for surrender of persons under EAWs, leading to a total of 36 surrenders to the Republic

¹¹³ Council Decision 2002/584/JHA: <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32002F0584&from=EN>.

¹¹⁴ See generally House of Commons Library Briefing Paper 07016 (2 June 2015) "The European Arrest Warrant", available [here](#).

¹¹⁵ UK National Crime Agency "Wanted from the UK: European Arrest Warrant statistics 2009 – May 2016": <http://www.nationalcrimeagency.gov.uk/publications/european-arrest-warrant-statistics/wanted-from-the-uk-european-arrest-warrant-statistics/691-wanted-from-the-uk-european-arrest-warrant-statistics-2009-may-2016-calendar-year>.

by UK authorities, of which 32 were by the PSNI.¹¹⁶ A 2011 report by the European Commission on the implementation of EAWs stated that on average, contested surrenders under the EAW framework took 48 days to process, in contrast to an average of one year under previous arrangements.¹¹⁷

Extradition arrangements for the UK and Ireland in relation to countries that are members of the Council of Europe but not the EU are currently based on the Council of Europe's 1957 Convention on Extradition.¹¹⁸ A 2014 paper published by the UK Government in relation to EU police and criminal justice matters¹¹⁹ compared EAWs with extraditions under the 1957 Convention. The paper noted that the 1957 Convention allows countries to choose to refuse extradition of their own nationals. It also noted that, unlike EAWs, the 1957 Convention does not permit extraditions for fraud or taxation offences. Moreover, it pointed out that setting up extradition arrangements with countries currently operating under the EAW system would require legislative changes by the UK as well as some or even all of those other countries. It said that this could take considerable time and poses the risk of inconsistent arrangements.¹²⁰

Upon the UK's exit from the EU it is possible that it might agree with the Republic an equivalent set of arrangements. However, the operation of EAWs in the Republic is governed by the European Arrest Warrant Act 2003¹²¹, which was enacted expressly to give effect to the Council's 2002 Framework Decision. That Act may therefore enjoy the benefit of immunity from challenge on Constitutional grounds that is afforded by Article 29 of the Republic's Constitution to measures "necessitated by the obligations of membership of the European Union". Equivalent measures adopted outside the context of EU membership would have no such immunity and may be open to challenge on constitutional grounds in the Republic's courts.

¹¹⁶ UK National Crime Agency "Wanted by the UK: European Arrest Warrant statistics 2009 – May 2016": <http://www.nationalcrimeagency.gov.uk/publications/european-arrest-warrant-statistics/wanted-by-the-uk-european-arrest-warrant-statistics>.

¹¹⁷ European Commission (2011) Report on the implementation of the EAW Framework Decision, COM (2011) 175: http://ec.europa.eu/justice/criminal/files/eaw_implementation_report_2011_en.pdf.

¹¹⁸ In the Republic, under the [Extradition Act 1965](#); in the UK under the [Extradition Act 2003](#).

¹¹⁹ HM Government (2014) "Decision pursuant to Article 10(5) of Protocol 36 to The Treaty on the Functioning of the European Union", Cm 8897:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/326699/41670_Cm_8897_Print_Ready.pdf.

¹²⁰ As above., pp. 55-60

¹²¹ European Arrest Warrant Act 2003: <http://www.irishstatutebook.ie/eli/2003/act/45/enacted/en/html>.

6. Finance and Funding

Background: European Union Structural and Investment Funds

European Union funding comes in two forms: competitive funds and non-competitive funds.

Competitive funds are made available directly to citizens and organisations of EU Member States by the European Union (e.g. Horizon 2020, Culture etc.);

Non-competitive funds - the EU Structural and Investment Funds (SEI) - are managed at member-state level with the amounts determined within the Multi-Annual Frameworks (7-year periods). Recent reforms designed to enable national governments and responsible bodies to better coordinate actions under the different investment funds have amalgamated the Structural Funds (the first three listed below) with the Investment Funds.

The original rationale for the structural funds was to remove regional disparities and this logic gradually became known as 'cohesion policy.' Over the years they have been linked to the promotion of economic growth, competitiveness, employment, sustainable development and good governance including the participation of civil society. They are now aligned with the goals of the Europe 2020 Strategy for generating smart, sustainable and inclusive growth in the EU.¹²²

The focus in this Paper is on the possible impact of Brexit on non-competitive funding made available for cross-border and transnational cooperation under the EU Structural Funds in Northern Ireland and the border counties: the INTERREG and PEACE Programmes.

Text Box 5: The European Structural and Investment Funds

The **European Structural and Investment (ESI) Funds**, the European Union's only explicitly redistributive policy includes five funds, the first three of which deliver the EU's regional policy (structural funds):

- **European Regional Development Fund (ERDF)**
- **Cohesion Fund (CF)**¹²³
- **European Social Fund (ESF)**
- **European Agricultural Fund for Rural Development (EAFRD)**¹²⁴ and **European Maritime and Fisheries Fund (EMFF)**^{125 126}

¹²² European Commission, November 2015 'European Structural and Investment Fund 2014-2020: Official texts and commentaries'

¹²³ The Cohesion Fund is only available to objective 1 (priority regions) and is not, therefore, relevant to either Ireland or Northern Ireland. Regions are categorised into priority, transitional and developed for the purposes of EU Regional policy. Northern Ireland, a priority region until 2006, is a transitional region, the Republic a developed region.

¹²⁴ European Agricultural Fund for Rural Development (EAFRD) http://ec.europa.eu/agriculture/rural-development-2014-2020/index_en.htm.

¹²⁵ European Maritime and Fisheries Fund (EMFF): https://ec.europa.eu/fisheries/cfp/emff_en.

¹²⁶ European Commission, The EU's Main investment Policy (2016): http://ec.europa.eu/regional_policy/en/policy/what/investment-policy/.

Background and purpose of the EU's Cross-Border Funding Programmes

INTERREG (European Territorial Cooperation)

The EU's Cohesion policy is central to its over-riding goal to promote prosperity and peace between its member states. Cohesion policy aims to 'reduce disparities between the levels of development of the various regions and the backwardness of the least-favoured regions'.¹²⁷ The INTERREG funding programme, its key policy instrument, aims to promote 'a harmonious economic, social and territorial development of the Union as a whole' by funding projects under three strands of cooperation: cross-border (Interreg A), transnational (Interreg B) and interregional (Interreg C).

The INTERREG Programmes for Northern Ireland and the border region of Ireland addresses the economic and social problems related to the existence of borders by funding strategic cross-border co-operation for a more prosperous and sustainable region.

For INTERREG IA, IIA and IIIA, the eligible areas were Northern Ireland and the border counties. Under INTERREG IVA (2007-2013) and VA (2014-2020), the eligible area was extended to Western Scotland. Projects involving Northern Ireland and the border region of Ireland (as per the previous INTERREG Programmes) and tripartite projects involving Northern Ireland, the Border Region of Ireland, and Western Scotland are eligible for funding. All projects have a Northern Ireland - Border Region of Ireland element.

Since 1991, INTERREG has brought approximately €1.13 billion to support cross-border and transnational cooperation in the region (Table 1). INTERREG IVA invested €256 million in cross-border initiatives (€192 million of which was contributed by the EU). More recently, €283 million (€240 million of which has been committed by the EU) has been earmarked for cross-border projects under INTERREG VA.

Table 2: Funding for Northern Ireland and border region INTERREGA Programmes¹²⁸

Programme	Funding Period	EU Contribution (m)	National Contribution (€m)	Total Programme Value (€m)
INTERREG 1A	1991-1993	82.1 ECU	67.9	150
INTERREG IIA	1994-1999	159 ECU	103	262
INTERREG IIIA	2000-2006	137	46	183
INTERREG IVA	2007-2013	192	64	256

¹²⁷ Centre for Cross Border Studies and Cooperation Ireland, Briefing Papers on EU Referendum, Briefing Paper 3 p. 2 quoting Treaty on the Functioning of the European Union. All 6 Briefing Papers (many are cited below) are available [here](#).

¹²⁸ Source: Special EU Programmes Body, Facts and figures on EU Peace and INTERREG Funding [accessed 9 November 2016].

INTERREG VA	2014-2020	240	43	283
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The Special EU Programmes Body has published a paper which overviews the Impact of EU Funding on the Region 1995 to 2020¹²⁹ and gives details about the funding, the measures and the types of projects funded under the Programmes. Under INTERREG IVA a total of 88 projects were funded, 3,552 businesses supported, 954 new jobs created and over 121,700 beneficiaries in health, rural development and tourism initiatives. INTERREG VA which has funds earmarked for the 2014-2020 period targets 4 areas of intervention (priorities) under which all projects are cross-border and comply with two horizontal principles (equality of opportunity and sustainable development) (Table 3).

Table 3: Priorities (target areas) of INTERREG Programmes IIIA, IVA, VA

Programme	Priorities (Target Areas)
INTERREG IIIA (2000-2006)	<ol style="list-style-type: none"> 1. Integrated local development strategies 2. Physical infrastructure and the environment 3. Civic and community networking
INTERREG IVA (2007-2013)	<p>Cooperation for a more prosperous cross-border region by:</p> <ol style="list-style-type: none"> 1. Encouraging innovation and competition in enterprise and business 2. Promoting tourism <p>Cooperation for sustainable cross-border region by:</p> <ol style="list-style-type: none"> 1. Promoting cross-border cooperation in policy development 2. Improving access to services to promote quality of life for individuals.
INTERREG VA (2014-2020)	<ol style="list-style-type: none"> 1. Research and innovation <ol style="list-style-type: none"> 1.1 Enhancing research and innovation 1.2 Business investment in research and innovation 2. Environment <ol style="list-style-type: none"> 2.1 Protect and restore biodiversity 2.2 Invest in the water sector 3. Sustainable transport 4. Health and social care

Peace Programmes

The EU Programmes for Peace and Reconciliation (PEACE I-IV) were developed in 1995 as a way to reinforce the formal progress towards peace. A unique territorial cohesion

¹²⁹ SEUPB (2016), Impact of EU Funding on the Region 1995 to 2020, Belfast: SEUPB: http://www.seupb.eu/newsandevents/latestnews/16-05-27/The_Impact_of_EU_Funding_on_the_Region.aspx.

programme funded under Structural Funds, it aims to 'reinforce progress towards a peaceful and stable society in Northern Ireland and the Border Region of Ireland.'¹³⁰

Between 1995 and 2013, Peace I, II and III invested almost €2 billion (€1.99 billion) in thousands of projects to promote peace and stability in Northern Ireland and the border counties of Ireland. €229 million of EU funding has been earmarked for projects under PEACE IV. The Table below gives details of funding provided under each programme.¹³¹

Table 4: Funding for Northern Ireland and the border region EU PEACE Programme

Programme	Funding Period	EU Contribution € million	National Contribution	Total Programme Value (€ million)
Peace I	1995-1999	500	167	667
Peace II	2000-2004	531	304	835
Peace II extension	2005-6	78	82	160
Peace III	2007-2013	225	108	333
Peace IV	2014-2020	229	41	270

The Peace Programmes are underpinned by a number of theories about the types of interventions that can build good relations and peace such as:

- Initiatives which promote socio-economic development through cross-border or cross-community projects for mutual benefit thereby enhancing prosperity and
- building relations and breaking down stereo types through contact;
- Initiatives which directly or indirectly address the societal impacts and legacies caused by protracted violent conflict – such as fear, distrust, segregation, polarised communities, discrimination, sense of injustice.¹³²

Overviewing its impacts to date, the Special EU Programmes Body highlights the Programme's focus on:

- Improving cross-border public sector cooperation;
- Developing cross-border reconciliation and understanding; and

¹³⁰ Special EU Programmes Body, Peace 2014-2020 Programme Factsheet

¹³¹ Source: Special EU Programmes Body, Facts and figures on EU Peace and INTERREG Funding [accessed 9 November 2016].

¹³² See Bush and Heuston, 2013 'The Story of Peace: learning from the Peace Programme in Northern Ireland and the border counties' and Cooperation Programmes under the European territorial cohesion fund (agreed between the Irish government and the Northern Irish executive which allude the theories of change underpinning peace-building programmes p.8-10.

- Promoting joint approaches to social, education, training and human resource development.¹³³

The priorities agreed for the 2014-2020 Programme (Peace IV) as well as the target outputs under each priority are in the below table.¹³⁴ Cross-border projects are encouraged although the programme allows projects in one jurisdiction if they meet the aspired outputs and results of the Programme.¹³⁵

Table 5: Peace IV Priorities and Outputs

Programme	Priorities and target outputs
Peace IV	<ol style="list-style-type: none"> 1. Shared Education Increase the level of direct, sustained and curriculum-based contact between pupils and teachers from all backgrounds. Target: Under this measure 350 schools and 144,000 school years will be affected. 2. Children and young people Help young people, in particular those not in education, employment and/or training to develop a greater understanding and respect for diversity; access new opportunities and become active citizens Target: to support over 7,000 marginalised young people (14-24 to help form positive relationships. 3. Shared spaces and services Create new shared spaces and services where people from different communities and backgrounds can come together to learn from and respect each other. Target: under this measure, 8 capital build projects will be funded to help create a more cohesive society and provide support to victims and survivors of the conflict. 4. Building positive relations at local level To create a society characterised by good relations and respect, where cultural identity is celebrated and people can live, learn and socialise together free from prejudice, hate and intolerance. Target: under this measure 17 Local peace plans and 20 regional level projects to promote positive cross-community relations, respect and cultural diversity.

¹³⁴ Source: Special EU Programmes Body, Facts and figures on EU Peace and INTERREG Funding [accessed 9 November 2016].

¹³⁵ Special EU Programmes Body (2014-2020) Programme Factsheet p.2.

Joint Design of Programmes

The INTERREG and Peace Programmes come under the EU's Structural and Investment Funds. These are non-competitive funds which are managed at member-state level with the amounts determined within the multi-annual framework (7 year periods). As such, the content and funding priorities for INTERREG and PEACE are agreed by the two member states - Ireland, the UK (via the Northern Ireland Executive), and the European Commission.

Effect of Brexit on EU cross-border funding

UK withdrawal from the EU will affect EU funding for cross-border programmes and projects both in the short and long-term.

In the short-term, there is uncertainty around the ability to draw down a proportion of the funds provided under the 2014-2020 Programmes.¹³⁶

On 13 August 2016¹³⁷ the UK Chancellor of the Exchequer Philip Hammond gave the following assurances from the Treasury regarding EU-funded projects:

- Firstly, all structural and investment fund projects, (which includes funding under the PEACE and INTERREG funding and agri-environment schemes), which are signed before the Autumn Statement (23 November 2016) would be fully funded, even when these projects continue beyond the UK's departure from the EU
- Secondly, arrangements would be put in place by the Treasury for assessing whether to guarantee funding for specific structural and investment fund projects that might be signed after the Autumn Statement, but while the UK remains a member of the EU.

The statement also gave assurances regarding EU competitive funds (for example universities participating in Horizon 2020) and funding under CAP Pillar 1. On the former, it stated that while the UK is still a member of the EU (meaning until it officially leaves or 2 years after it triggers Article 50) the Treasury would underwrite the payments of such awards, even when specific projects continue beyond the UK's departure from the EU. On CAP Pillar 1, the Treasury guaranteed that the current level of funding would be upheld until 2020, as part of the transition to new domestic arrangements.

In evidence to the Joint Oireachtas Committee on the Implementation of the Good Friday Agreement on 27 September 2016, the Minister for Finance in the Northern Ireland Executive, Martin O'Muilleoir MLA, questioned whether these assurances went far enough to protect the €1.6 billion earmarked for programmes in the North and the Border region between now and 2020. He argued that the commitment to under-write project approvals

¹³⁶ NI Assembly Raise, EU Referendum Update, August 2016; NI Executive Minister for Finance, 27 September 2016 at Joint Oireachtas Committee on the Implementation of the Good Friday Agreement.

¹³⁷ A link to the Statement on the [UK.Gov website is here](#)

contracted in advance of the Autumn statement was insufficient and left €1.1 billion due to be issued via letters of offer post November at risk:¹³⁸ According to Minister O'Muilleoir:

“We have €120 million of letters of offer for cross-border, transformative job, environmental and health projects jammed in the system and there are 17 separate INTERREG letters of offer that have been cleared and area ready to issue.”

Minister O'Muilleoir MLA, and Ireland's Minister for Public Expenditure and Reform Paschal Donohue TD, wrote to the European Commissioner for Regional Policy reiterating the joint support of the Executive and the Irish Government for the cross-border PEACE and INTERREG Programmes. The Commissioner was unable to offer any guarantees before the negotiations between the UK and the EU begin.¹³⁹

The Northern Irish Executive was not the only body to highlight the potential loss of funding resulting from Secretary Hammond's November 23 deadline. For example, Greater Manchester pointed out that the November deadline 'would leave projects worth more than £150m facing the axe, because they were not yet under contract - part of 90% of EU funding not yet delivered.'¹⁴⁰ Analysis of the assurances in the *Financial Times* argued that as the UK has already committed to the EU budget up until 2020, and negotiations to undo this would be torturous, the UK is likely to be contributing to the EU budget at least until it formally withdraws (which may be 2 years after article 50 is triggered) or even until 2020 (when the budget period ends). As such, the funding for that period should be available.¹⁴¹

On 3 October 2016, the Chancellor of the Exchequer gave assurances beyond guaranteeing funding to projects which receive letters of offer before 23 November 2016. He stated that the Treasury would 'offer a guarantee to bidders if they secure multi-year EU funding before the UK exits the EU, where the projects meet UK priorities and value for money criteria.' In these cases, the Treasury would guarantee those payments after the UK has left the EU.¹⁴²

However, analysis in the Independent.co.uk questioned whether the caveats – that schemes must “meet UK priorities and value for money” – gave the Treasury plenty of wriggle room not to guarantee all funding.¹⁴³

On 10 October 2016, the Chief Executive of the Special EU Programmes Body discussed the short-term challenges posed by Brexit to the implementation of the Programmes¹⁴⁴:

- The practical implementation issues of the assessment process and the assurances of funding from the UK, Ireland and the EU;
- The uncertainty about the timeframe (when Article 50 is to be triggered);

¹³⁸ Joint Committee on the Implementation of the Good Friday Agreement' Discussion with Minister for Finance Martin O'Muilleoir on 27 September 2016.

¹³⁹ Response to Parliamentary Question in the European Parliament

¹⁴⁰ <http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=P-2016-006399&language=EN>

¹⁴¹ 'Philip Hammond promises to spend billions to make up for lost EU funds as pressure mounts' *Independent.co.uk* 3 October 2016.

¹⁴² 'Questions remain on Hammond's post-Brexit funding pledge' *Financial Times*, 12 August 2016

¹⁴³ 'Further certainty on EU funding for hundreds of British projects' 3 October 2016 (www.gov.uk)

¹⁴⁴ Cited above 3 October 2016.

¹⁴⁴ [Presentation by Gina McIntyre, Chief Executive of SEUPB](#) at Centre for Cross Border Seminar in Northern Irish Office in Brussels

- Managing project length with a view to reducing risk of financial exposure
- Uncertainty pre and post-2018 within Accountable Departments.

Longer term issues – funding for Peace and Cross Border Programmes beyond 2020

In the long-term, the absence of EU programmes is of real concern to a range of sectors and, if funding is not found elsewhere, there is a risk of ‘a return to patchy cross-border cooperation with little strategic impact’¹⁴⁵ which could undermine the work of the last twenty years and a key foundation of the peace process (see Section on the Agreement, Institutions and the Peace Process in this Paper).

There may, however, be ways in which EU funding for the cross-border Programmes could be secured even in the context of Brexit.

For example, cross-border cooperation between local authorities and other actors on either side of the EU border is facilitated and supported within the EU’s framework for territorial cooperation.¹⁴⁶ The instruments which support regional development along external borders in particular involve countries which are candidates or potential candidates for EU Membership (e.g. Serbia, FYR Macedonia). However, instruments also support cooperation with ‘third countries’ which are neither candidates nor potential candidate states (e.g. Iceland, Norway, Switzerland).¹⁴⁷

As there is no precedent for a Member State leaving the EU, whether or not a former EU Member State, or a region of that former-Member State, would be a candidate for cooperation within the EU’s framework for territorial cooperation is unknown and would depend on the EU-UK negotiations for Brexit.

However, it is the case that participation of non-EU countries in EU territorial cooperation programmes requires that the non-member state follow the relevant regulations and the policy direction set by the EU and it requires their financial contribution. The continued participation of Northern Ireland in EU cross-border programmes post-Brexit would, therefore, depend on the UK’s willingness to adhere to EU cohesion policy and its continued financial contribution.¹⁴⁸ Further, it would require the UK government to negotiate with the EU on behalf of the Northern Ireland Executive.

The other option is for cooperation to take place outside of the EU funding programmes under its own legal framework. The Karlsruhe Agreement (1996) between France, Luxembourg, Germany and Switzerland supports cross-border cooperation between local and regional authorities and local public institutions in their common areas of competence.¹⁴⁹ The legal framework could be the substantial partnership which already exists between the Irish and UK government and the Northern Ireland Executive.

¹⁴⁵ Centre for Cross Border Studies and Cooperation Ireland, Briefing Paper 3 Link provided above

¹⁴⁶ Centre for Cross Border Studies, Briefing Paper 3 p. 7. Link provided above

¹⁴⁷ Link to European Commission’s overview of regional cooperation across external borders

http://ec.europa.eu/regional_policy/en/policy/cooperation/european-territorial/outside-the-eu/

¹⁴⁸ Taillon Ruth (October 2016) ‘Future scenarios: Cross border cooperation ‘post Brexit’’ Presented at seminar in Northern Ireland Office, Brussels 10 October 2016.

¹⁴⁹ Centre for Cross Border Studies, Paper 3, p. 8. Link provided above

7. Business and Trade

Trade

In the short-term, the UK remains a member of the EU. As such, firms will continue to trade on the same terms as they did before the EU Referendum. The most immediate impact of the EU Referendum result on trade is that the fall in Sterling has served to make exports from Northern Ireland less expensive in international markets. This is already a notable development. The impact in the Republic, as outlined below, is that Irish businesses are finding it harder to export to the UK due to the fall in the value of Sterling¹⁵⁰. Recent statistics from InterTradeIreland show that flows of cross-border shoppers (measured by occupancy of Irish registered cars in border shopping centres) increased from 43% in Q2 to 56% in Q3 2016.¹⁵¹

The Ulster Bank's first 'Purchase Manager's Index' (PMI) (a cross-sectoral survey of business, which provides a measure of business output and activity) since the Referendum found:¹⁵²

In contrast to the picture for total new business, new export orders increased during the month, as the weakness of sterling helped companies to secure new work from clients in the Republic of Ireland.¹⁵³

However, businesses in Northern Ireland that import raw material for inclusion in their own products may face increased costs, as many of these commodities are traded in dollars, with Sterling weaker than the dollar in the currency market. This was also recognised in the Ulster Bank's PMI:

Input prices increased at a much faster pace in July as the weakness of sterling resulted in higher costs for imported items.¹⁵⁴

The longer-term picture is more uncertain. The deal struck between the UK and EU, following negotiations, will not determine only the barriers (or lack of) NI firms may encounter in accessing the EU Single Market, but may also determine the opportunities available to trade with the rest of the world.

NI sends the majority of its goods exports to the EU. In 2015, the EU was the destination of 55% of NI goods, down from 70% in 1996 (see Figure 2).

¹⁵⁰ 'Sterling fall demands urgent policy response' IBEC, 1 August 2016: <http://www.ibec.ie/IBEC/Press/PressPublicationsdoclib3.nsf/vPages/Newsroom~sterling-fall-demands-urgent-policy-response-01-08-2016?OpenDocument?OpenDocument#.WCswAVQYZaS>.

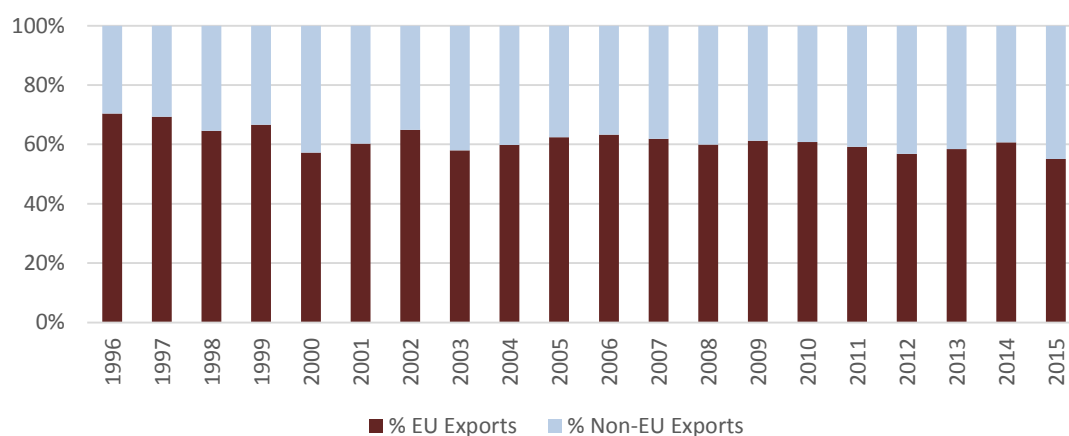
¹⁵¹ InterTradeIreland webpage, Cross-border Shopping available at

<http://www.intertradeireland.com/researchandpublications/trade-statistics/cross-border-shopping/>

¹⁵² The Ulster Bank Northern Ireland PMI (8 August 2016) <https://ulstereconomix.com/2016/08/08/output-declines-for-first-time-in-15-months/#more-2021>

¹⁵³ As above

¹⁵⁴ As above

Figure 2: NI Goods exports EU and Non-EU proportion¹⁵⁵

Source: HMRC Regional Trade Database (October 2016)

The Republic is a significant market for produce from Northern Ireland. In 2015, 33% of all Northern Ireland goods exports went to the Republic, accounting for 61% of Northern Ireland's EU exports in the same year.¹⁵⁶

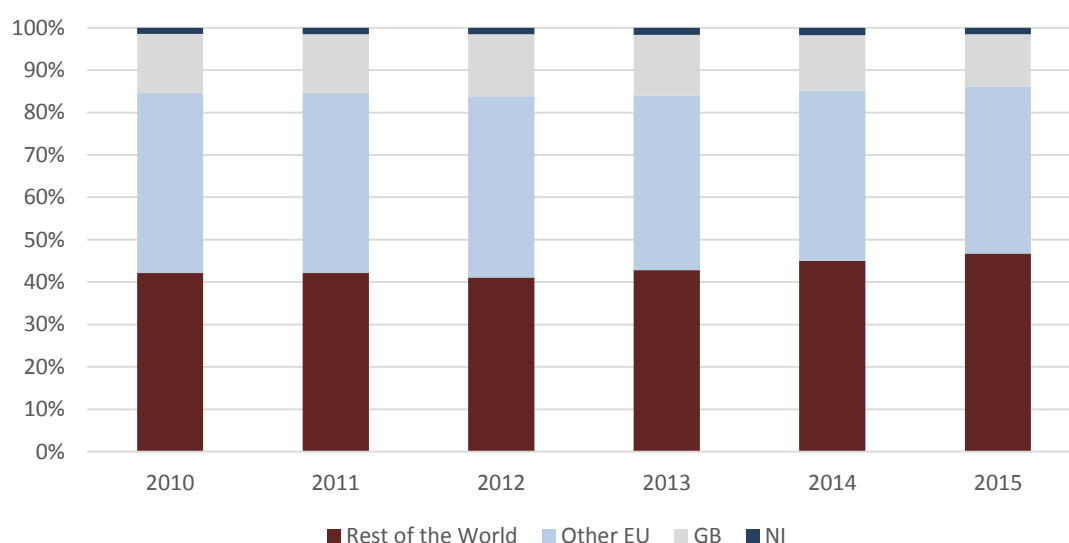
Northern Ireland imports from the EU made up 55% of total imports in 2015, down from 62% in 1996. The Republic was the source of 27% of Northern Ireland's total imports (49% of all imports from the EU).

For Ireland, the longer-term effects of Brexit on trade are uncertain and are also predicated on the outcome of negotiations. In the immediate term, the fall in the value of Sterling has meant that Irish exports are less competitive in the UK market. The UK export market accounted for 13.8% of total Irish exports in 2015 (See Figure 3). Northern Ireland is a relatively small export market for Ireland, accounting for just 1.6% of total exports in 2015.¹⁵⁷ The UK was the source of 25.7% of Irish imports in 2015. From an overall trade perspective, therefore, the Republic is a much more significant trade market for Northern Ireland, than Northern Ireland is for the Republic, both in terms of export and imports.

¹⁵⁵ HMRC UK Trade Info, Regional Trade Database (extracted 18 October 2016)
<https://www.uktradeinfo.com/Statistics/BuildYourOwnTables/Pages/Table.aspx>

¹⁵⁶ As above

¹⁵⁷ Central Statistics Office, Trade Statistics (August 2016) p21
http://www.cso.ie/en/media/csoie/releasespublications/documents/externaltrade/2016/trade_aug2016.pdf

Figure 3: Irish goods exports by destination 2010 – 2015 (% of total good exports)¹⁵⁸

Source: CSO Trade Statistics (August 2016)

The UK is a more significant market for Ireland, making up 13.8% of exports and 25.7% of imports. It should be noted, however, that the UK is a much more significant market for certain sectors. For example, 51% of all agriculture produce exports from Ireland were sold to the UK in 2015, compared to 10% of industrial produce exports.¹⁵⁹

Foreign direct investment

The UK exit from the EU is likely to have impacts – positive and negative - on foreign direct investment (FDI) on both jurisdictions on the island of Ireland, on Northern Ireland as a region of a country no longer in the EU and the Republic as an EU Member State. The extent to which Brexit will impact FDI into Northern Ireland is likely to depend on:

- The deal struck between the UK and EU;
- The importance placed on single market access by investors;
- The impact on the effectiveness of the NI corporation tax rate; and,
- Invest NI's ability in the future to support investors beyond what is currently allowed under EU State Aid rules.

Currently, the Republic is the most common source market for foreign-owned business in Northern Ireland. Irish firms made up 32.8% (290) of all Northern Ireland foreign-owned

¹⁵⁸ As above

¹⁵⁹ As above p17

business in 2015. When measured by associated employment, Irish businesses were responsible for 17.5% of all employment associated with foreign business in Northern Ireland, second to the US.¹⁶⁰

The UK performs strongly in attracting FDI. According to the EY's attractiveness survey 2016, the four largest recipients of FDI projects in Europe over the last ten years have been the UK, Germany, France and Spain, with the UK securing the largest number of projects each between 1997 and 2015. In 2015, the UK's market share of European FDI rose to 20.9%, from 19.9% in 2014.¹⁶¹

UK Trade and Investment data on FDI into Northern Ireland between 2011/12 and 2014/15, summarised in Table 6, suggest that FDI from outside the EU has had a more significant impact on Northern Ireland than FDI from the EU. Between 2011/12 and 2014/15 a Northern Ireland attracted a total 207 FDI projects, of which 86 or 42% were from the EU. These projects resulted in the creation of a total of 13,219 new jobs in Northern Ireland, of which 2,075, or 16% were created by EU FDI projects. The same projects resulted in the safeguarding of 1,037 jobs, of which 84, or 8% were safeguarded by FDI projects from the EU.

Table 6: FDI projects in Northern Ireland 2010/11 to 2014/15¹⁶²

	Northern Ireland
Total Projects	207
EU Projects	86
% EU Projects	42%
Total new Jobs	13,219
EU new jobs	2,075
% EU new jobs	16%
Total safeguarded jobs	1,037
EU safeguarded jobs	84
% EU safeguarded jobs	8%

Source: UK Trade and Investment

FDI Intelligence data (2014), outlined in Figure 4, contrasts motivations cited by firms engaging in FDI globally, with those cited by firms engaging in FDI in Northern Ireland. The figure shows us that by a considerable margin, the availability of a skilled workforce was the most significant motivation of firms locating in Northern Ireland, followed by the existence of an Investment Promotion Agency (IPA) or government support. It further highlights that these factors are less significant globally. The main motivating factors for global FDI where

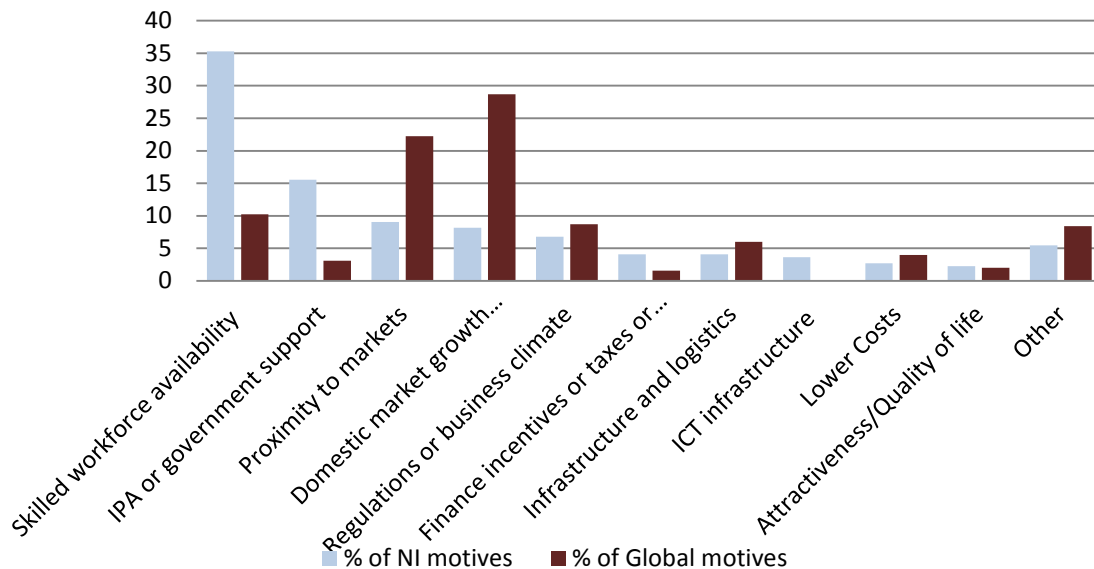
¹⁶⁰ As above

¹⁶¹ EY's attractiveness survey, UK 2016 Positive rebalancing p9 (2016) [http://www.ey.com/Publication/vwLUAssets/2016-UK-Attractiveness-Survey/\\$FILE/EY-UK-Attractiveness-Survey-2016.pdf](http://www.ey.com/Publication/vwLUAssets/2016-UK-Attractiveness-Survey/$FILE/EY-UK-Attractiveness-Survey-2016.pdf)

¹⁶² UK Trade and Investment, Foreign Direct Investment projects by UK Region (2010/11 to 2014/15) (29 February 2016) <https://www.gov.uk/government/publications/foreign-direct-investment-projects-by-ukti-regions-201011-to-201415/foreign-direct-investment-projects-by-uk-region-201011-to-201415>

domestic market growth potential and proximity to markets. This suggests, that factors that are likely to be less affected by Brexit – IPA availability, and skills – are more important to investors locating in Northern Ireland than is the case for investors globally.

Figure 4: Motives of FDI in NI v Motives of FDI Globally¹⁶³



Source: FDI Intelligence (2014)

WAVETEQ Limited (a spin-out company from the Financial Times that specialises in FDI consultancy) published a working paper on the impact of Brexit on FDI in July 2016. This found, that of the UK regions:

FDI in Northern Ireland, Scotland and the South East (including London) would be at the highest risk [from Brexit], with 70% of FDI in Northern Ireland and half of FDI in Scotland at risk due to the high concentration of FDI in knowledge-based sectors.¹⁶⁴

After Brexit, Ireland will be the only English speaking country within the EU. This is likely to create some opportunities for Ireland. As noted in the WaveTeq white paper:

It is therefore not surprising that Ireland and key cities in Europe including Amsterdam, Berlin, Brussels, Frankfurt and Paris are all considering ramping-

¹⁶³ Figure 1. Created with data from Barklie, G (2014). "Why are firms establishing a presence in NI?" fDi Markets

¹⁶⁴ WAVETEQ Limited, The impact of Brexit on foreign direct investment into the UK: Recommendations for investment promotion strategy (July 2016) <http://www.waveteq.com/Brexit/>

*up their FDI promotion activities to win relocation and new FDI projects from the London.*¹⁶⁵

However, a number of commentators have expressed a note of caution. For example, in July 2016 PwC stated:

*The 'leave' result in the Brexit referendum was initially believed to be a good thing for Ireland, as it was thought that the UK would be a less competitive FDI proposition. However, this needs to be reconsidered as the UK would be free to create investment-friendly tax policies that may divert attention from Ireland as an FDI option.*¹⁶⁶

Prior to the EU Referendum in the UK, the Economic and Social Research Institute published a report 'Scoping the possible economic implications of Brexit on Ireland'. On foreign direct investment the report claimed that the '*UK outside the EU would be less attractive to FDI because of uncertainty and reduced access to the EU single market*' and that a reduction in FDI could diminish future UK growth, which would negatively affect Irish growth due to a reduction in trade. The report plays down the possibility of the Republic benefiting from a drop-off in FDI into the UK. It states:

*Ireland may attract additional FDI projects including some from the relocation of FDI from the UK. However, on the basis of patterns of the location choice of new FDI projects in Europe over the past ten years, the expected additional attractiveness of Ireland to new FDI projects is likely to be small.*¹⁶⁷

The report's authors are, however, confident that Ireland will remain an attractive destination for FDI relative to the UK due to '*more competitive corporate taxation*'.

A further potential consequence of Brexit on FDI in Ireland is that foreign investors who established in Ireland, but whose largest market is the UK may consider relocating to the UK if the '*new agreement between the UK and EU restricts the ability to service the UK from Ireland*'.¹⁶⁸

¹⁶⁵ WAVETEQ Limited, The impact of Brexit on foreign direct investment into the UK: Recommendations for investment promotion strategy (July 2016) <http://www.wavteq.com/Brexit/>

¹⁶⁶ PwC, Brexit the implications for Irish Business (July 2016) p3 <http://www.pwc.ie/media-centre/assets/publications/2016-pwc-ireland-Brexit-booklet2.pdf>

¹⁶⁷ ESRI, Scoping the possible economic implications of Brexit on Ireland (November 2015) <https://www.esri.ie/pubs/RS48.pdf>

¹⁶⁸ WAVETEQ Limited, The impact of Brexit on foreign direct investment into the UK: Recommendations for investment promotion strategy (July 2016) <http://www.wavteq.com/Brexit/>

8. Agri-Food

The agri-food sector encompasses primary production (agriculture or farming), food and drinks (excluding tobacco), and wood processing. The discussion below focuses on the primary production and food and drinks elements of agri-food, given their significance to Northern Ireland and the Republic.

There are almost 140,000 farms in the Republic and 25,000 in the North. Compared to the Republic, Northern Ireland's agricultural share is lower for both total gross value added (GVA)¹⁶⁹ (2.5% total GVA compared to 1%) and overall employment (5.5% compared to 3.2%) while farm sizes are bigger (32.5 ha in the Republic versus 40 ha in Northern Ireland).

From the outset, it is important to note that, as with other sectors, the exact impact of Brexit on the agri-food sector across the island of Ireland will only fully emerge when the terms of the UK's withdrawal become clear. Given its significance for both Northern Ireland and the Republic, as illustrated by the figures cited above, the impact of Brexit on agri-food is explored in detail in Paper 2 for the eighth meeting of the North South Inter-Parliamentary Association.

Paper 2 includes a brief background to the current round of the Common Agricultural Policy (CAP) (2014-2020) and the agri-food strategies in place North and South. It gives a short overview of the importance of the sector including statistics on farm sizes, types, farm incomes and also the gross value added (GVA) for the agri-food sector and employment figures. It also includes a comparison to Great Britain. The paper then provides a more detailed description of agriculture and the food and drinks sector for both the Republic and Northern Ireland, highlighting the social and economic importance of the sector and identifying key trends in trading. Finally the paper identifies the key/shared common challenges that the agri-food sectors North and South will need to address in light of 'Brexit' such as access to labour, access to markets – existing and new, and rising costs of materials due to currency fluctuations or potential tariffs. Having identified these issues the section poses a series of questions which may need to be considered if these key challenges are to be addressed.

Some key considerations regarding the agri-food sectors in Northern Ireland and the Republic are presented below. These rely heavily on the contents of *Paper 2 - Agri-food and Brexit*.

Farm incomes and impact of CAP payments

Average farm income was €26,303 (€23,228 in disadvantaged areas in 2014) in the Republic in 2015 with dairy consistently the most profitable farming enterprise. Department of Agriculture and Rural Development (DARD) data for Northern Ireland from 2013-14 reveals that when measured across all farm types the average Farm Business Income with EU direct payments removed equated to £3,780 per farm. Direct payments under CAP are very important across Ireland but are more important to Northern Irish farmers. Worth on

¹⁶⁹ See Eurostat definition at <http://ec.europa.eu/eurostat/statistics-explained/index.php/Glossary:GVA>

average €17,168 (32% in dairy to 109% in sheep) in the Republic, direct payments were 103% of the value of average farm business income in Northern Ireland in 2014-2015. In the Republic, the Border counties have the most disadvantaged land with lowest farm incomes and highest reliance on subsidies.

Characteristics of the food and drink sectors in Ireland and Northern Ireland

The food and drinks industry has a high degree of indigenous ownership and is dispersed across the country making it very significant for rural employment. The food and drinks sector accounts for 2.2% of GVA in Northern Ireland, has a gross turnover of £4,596 billion and employs over 21,000 people. Food and drinks exports were worth £1,289 billion in 2014. In the Republic, the food and drinks sector generated 5.1% of total GVA in 2014, employs 53,000 people and exported €10.83 billion worth of food and drinks in 2015.

Imports and exports / cross-border trade

Great Britain is the largest market for food and drinks in Northern Ireland and the UK is the largest export market for the Republic.

Cross-border trade in food and drinks is high in comparison to other sectors and accounts for approximately one-third of all manufacturing cross-border trade. While cross-border trade from Northern Ireland to the Republic tends to be higher, cross-border trade is strong in both directions for dairy, beef, and sheep meat and drinks.

Challenges facing the long-term sustainability of the sectors

The abolition of milk quotas in 2015 was seen as the most fundamental change to farming this generation and there are many more challenges facing the long-term sustainability of Irish agriculture North and South. These include low farm incomes, price volatility on world markets (especially from the continuing depressed price of milk – no relaxation of Russian sanctions expected in the short-term), increased competition and currency differentials between sterling and the euro. The impact on farm businesses has been significant.

As Great Britain is our largest trading partner, Brexit will have major implications for the sector North and South. Impacts may include higher consumer prices for groceries sourced in the UK, negative effects on cross-border trade and pressure on North/South interdependence of certain sectors in particular dairy and sheep, freedom of movement of people and labour, and potentially diverging regulatory systems.

For further reading, see *Paper 2 - Agri-food and Brexit* on this topic.

9. Labour Market and Skills

This section of the paper will consider, briefly, some of the implications for the labour market and skills development as a result of Brexit.

The areas considered are:

- The Free Movement of Labour;
- The European Qualifications Framework;
- Tuition Fees;
- Higher Education Institutions and Horizon 2020; and,
- Other Issues.

The Free Movement of Labour

The Free Movement of Labour is one of the four freedoms of the European Union, enshrined within Article 3 (2) of the Treaty of the European Union and Article 45 of the Treaty on the Functioning of the European Union.

As stated by the European Parliament:¹⁷⁰

It entails the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment.

It is not clear, at this point in time, how the negotiations on Article 50 will impact on the Free Movement of Labour. However, it is important to note that Northern Ireland and the Republic share a land border, which has a significant movement of people and trade across it on a daily basis.

Indeed, the Centre for Cross Border Studies (CCBS) estimates that between 23,000 to 30,000 people are cross-border workers.¹⁷¹

The links between the Republic and the UK in terms of cross-border working is highlighted by a study PwC carried out which found that in 2014 the Republic issued 15,000 new Personal Public Service Numbers to UK nationals and the UK issued 17,000 new National Insurance Numbers to Irish nationals.¹⁷²

¹⁷⁰ European Parliament, Free Movement of Workers, http://www.europarl.europa.eu/atyourservice/en/displayFtu.html?ftuid=FTU_3.1.3.html

¹⁷¹ Centre for Cross Border Studies, EU Reference Briefing Paper 4, <http://crossborder.ie/site2015/wp-content/uploads/2016/06/CCBS-and-Cooperation-Ireland-EU-Referendum-Briefing-Paper-4.pdf>

¹⁷² PwC, Brexit: The Implications for Irish Businesses <http://www.pwc.ie/media-centre/assets/publications/2016-pwc-ireland-Brexit-booklet2.pdf>

PwC stated that:¹⁷³

Restrictions on movement of labour, may impact the current employment balance between Ireland North and South.

In addition, the CCBS stated that:¹⁷⁴

Amongst these cross-border workers are some who are neither UK nor Irish citizens, and are instead citizens of other EU countries, and their situation in a post-Brexit' context would be uncertain.

It should be noted that in relation to the CTA, which allows freedom of movement between the two jurisdictions (see Section 3), the CCBS notes that:

A Brexit would mean that of the two sovereign states responsible for the CTA only Ireland would remain a signatory to the EU Treaties and, therefore, the CTA's continuation would become a matter for renegotiation involving the UK, Ireland and the EU.

The impact on the free movement of labour will, therefore, be determined by the terms which are negotiated between the UK and Irish governments bilaterally and between the UK and the EU on the terms of the UK's exit.

European Qualifications Framework

The European Qualifications Framework (EQF) is a translation tool that aids communication and comparison between qualifications systems in Europe.¹⁷⁵

As stated by the European Commission:¹⁷⁶

This allows any national qualifications systems, national qualifications frameworks (NQFs) and qualifications in Europe to relate to the EQF levels. Learners, graduates, providers and employers can use these levels to understand and compare qualifications awarded in different countries and by different education and training systems.

The EQF facilitates free movement by allowing employers to easily compare qualifications.

¹⁷³ As above

¹⁷⁴ Centre for Cross Border Studies, EU Reference Briefing Paper 4, <http://crossborder.ie/site2015/wp-content/uploads/2016/06/CCBS-and-Cooperation-Ireland-EU-Referendum-Briefing-Paper-4.pdf>

¹⁷⁵ European Commission, Learning Opportunities and Qualifications in Europe, https://ec.europa.eu/ploteus/search/site?f%5B0%5D=im_field_entity_type%3A97

¹⁷⁶ As above

Given the regular movement across the border of workers, especially those who live in border regions, the loss of the EQF may create problems in having qualifications recognised impacting on both employees and employers.

Tuition Fees

Under the existing arrangements, as EU citizens, students traveling from Northern Ireland to the Republic and from the Republic to Northern Ireland are subject to the same fees as domestic students.¹⁷⁷ As such, a student from the Republic studying in Northern Ireland will pay tuition fees of £3,925 (2016/17). Conversely, a student from Northern Ireland studying in the Republic will pay a Contribution Charge (there are no tuition fees in the Republic but students must pay towards student services and examinations) the maximum rate of which for the academic year 2016-2017 is €3,000.

However, once the UK leaves the EU, and if no other arrangements are in place, a student from the Republic will be declared an international student and as a result could see their tuition fees rise from between £12,495 to £33,170 (depending on their course of study and university).¹⁷⁸ This situation will also exist for students traveling from Northern Ireland to the Republic.

This could create a number of issues, including:

- Student flows North and South may be reduced; and,
- Increased pressure on domestic HEIs in Northern Ireland for places, potentially resulting in grade inflation.

HEIs and Horizon 2020

Horizon 2020 funds a large range of Research, Development and Innovation (RD and I) projects across the EU.

A large portion of this research is carried out through partnerships formed between Higher Education Institutes, and Northern Ireland and the Republic are involved in such partnerships.

As stated by Gerry O' Sullivan of the Higher Education Authority (HEA):¹⁷⁹

Ireland and the UK are the only two English-speaking countries, so we're a natural partner for that country. We also have centuries of historical

¹⁷⁷ Student Finance NI, Frequently Asked Questions,

http://www.studentfinancenirni.co.uk/portal/page?_pageid=54,1267465&_dad=portal&_schema=PORTAL#section7_1

¹⁷⁸ Northern Ireland Assembly, RalSe, Economic Impact of International Students in NI,

<http://www.niassembly.gov.uk/globalassets/documents/employment-and-learning/research-papers/11.-raise---economic-impact-of-international-students-in-ni-final.pdf>

¹⁷⁹ University Times, 22 June 2016, Brexit and the Uncertain Future of Irish Higher Education, <http://www.universitytimes.ie/2016/06/Brexit-and-the-uncertain-future-of-irish-higher-education/>

connectivity, and we of course share a border in this country with them, so they're an obvious partner in this country.

Whilst the available data on Horizon 2020 is limited, between January and September 2014, Northern Ireland made 290 applications for funding of which 109 involved North/South working, with Northern Ireland drawdown for these projects valued at £5.3 million.¹⁸⁰

Whilst no data was found on the breakdown of university involvement in North/South projects, it was found that higher and secondary education in Northern Ireland had 25 successful applications, out of the 37 made by organisations based in Northern Ireland.

It is possible that the UK could become recognised as a third party contributor to Horizon 2020 and, potentially any successor programmes. However, it is still too early to state how likely this may be.

Other Issues

This section considers some wider issues which may be of interest:

- **EURES:** This is the European Job Mobility Portal. EURES provides a cross-EU information, advice and recruitment service.¹⁸¹ It links the various Public Employment Services (PES) in each EU Member State (in Northern Ireland this is the Jobs and Benefits Offices, in the Republic this is provided by Intreo), allowing jobseekers to search for employment across the EU 28. It plays a particular role in cross-border areas, supporting those who work cross-border (or those seeking work) in regards tackling any administrative, legal or fiscal barriers they may face. The border between Northern Ireland and the Republic is one of twelve EURES cross-border partnerships.¹⁸² It is unknown what the impact of Brexit will be on the services provided by EURES; and,
- **Social Security Coordination (SSC):** The EU provides common rules to protect an individual's rights when moving across the EU.¹⁸³ SSC ensures that when an individual is working in a different EU country than the one in which they are a domestic resident they have access to the same rights and obligations as the nationals of the country they are in. In addition, if you make a contribution to the social security institutions in one country, you can receive it (generally) if living in

¹⁸⁰ Department for the Economy, NI Horizon 2020, <https://www.economy-ni.gov.uk/articles/ni-horizon-2020>

¹⁸¹ EURES, What can EURES do for you?, https://ec.europa.eu/eures/public/en/what-can-eures-do-for-you-?lang=en&app=0.9.1-build-3&pageCode=about_eures

¹⁸² EURES, EURES in cross-border regions, https://ec.europa.eu/eures/public/en/eures-in-cross-border-regions?lang=en&app=0.9.1-build-3&pageCode=cross_border#/details/46

¹⁸³ European Union, Employment, Social Affairs and Inclusion, EU Social Security Coordination, <http://ec.europa.eu/social/main.jsp?catId=26&langId=en>

another. Again, it is not known at this stage how Brexit will impact on SSC. However, it should be noted that currently the EU28 + Iceland, Liechtenstein, Norway and Switzerland are all included within SSC.¹⁸⁴

¹⁸⁴ As above

10. Tourism

The Northern Ireland Executive's draft Programme for Government Framework 2016 to 2021 seeks to '*improve Northern Ireland's attractiveness as a destination*'. Progress on this indicator will be measured by '*total spend by external visitors*'.¹⁸⁵ Similarly, the Irish Government's Programme for Government includes tourism policy goals set for 2025 to increase revenue from overseas visitors to €5 billion, growing employment in the tourism sector to 250,000 (from 200,000 currently) and increasing the number of visits to Ireland to 10 million.¹⁸⁶

In 2015, 28% of external overnight trips (total number of trips: 2,284,889) to Northern Ireland were made by visitors from the Republic and mainland Europe.¹⁸⁷ Comparatively, 57% of external overnight trips were made by visitors from Great Britain, whilst 16% were made by visitors from the rest of the world. If visitors from Great Britain are excluded (total number of trips, excluding Great Britain: 989,470), 64% of out-of-state overnight trips were made by visitors from the Republic and mainland Europe, compared to the 36% made by visitors from the rest of the world.¹⁸⁸

By comparison, 40% of overnight visitors (of 7,749,000) in 2015 to the Republic were from Great Britain, 37% from the rest of Europe, 16% from USA and Canada and 6% from all other areas.¹⁸⁹ Taken as a whole island, 14% of visitors to the island of Ireland in 2015 came to Northern Ireland and 76% to the Republic.¹⁹⁰

Expenditure by external visitors totalled £540.75m in 2015. Of this, 51% of total expenditure came from visitors from Great Britain, 28% from visitors from the Republic and mainland Europe, and 22% came from visitors from the rest of the world. If visitors from Great Britain are excluded, total expenditure from visitors outside the UK equalled £266.42m. Of this, 56% came from visitors from the Republic and mainland Europe, and 44% came from visitors from the rest of the world. By comparison, 28% of revenue from visitors to the Republic was from visitors from the USA, 20% from the rest of Europe (excluding Great Britain), 15% from the rest of the world and 10% from Great Britain.

The impact of the EU Referendum result on tourism in Northern Ireland and the Republic is unclear at present. For Northern Ireland, one immediate impact is that the fall in the value of Sterling may serve to make holidaying in Northern Ireland more attractive to visitors from outside the UK. Moreover, in making holidays outside the UK more expensive for tourists

¹⁸⁵ Department for the Economy, Tourism and the Programme for Government 2016 to 2021 <https://www.economy-ni.gov.uk/topics/tourism>

¹⁸⁶ Irish Government (2016), *A Programme for a Partnership Government*, Dublin: Irish Government: http://www.merriestreet.ie/merriestreet/en/imagelibrary/programme_for_partnership_government.pdf.

¹⁸⁷ Note: source data does not disaggregate EU from 'mainland Europe'.

¹⁸⁸ Department for the Economy, External Overnight Trips to Northern Ireland additional tables (26 May 2016) <https://www.economy-ni.gov.uk/sites/default/files/publications/economy/External-Overnight-Trips-2015-Tables-for-Online.xlsx>

¹⁸⁹ Table 2a, *Percentage of overseas trips to Ireland by non-residents with at least one overnight in Ireland, cross-classified by area of residence and reason for journey, years 2014 and 2015*, Central Statistics Office (CSO): <http://www.cso.ie/en/releasesandpublications/er/tt/tourismandtravelquarter22016/>.

¹⁹⁰ Tourism Ireland (2016), *Island of Ireland: Overseas Tourism Performance*, Dublin: Tourism Ireland: <https://www.tourismireland.com/TourismIreland/media/Tourism-Ireland/Research/Facts-and-Figures-2015.pdf?ext=.pdf>.

from Northern Ireland the fall in the value of Sterling may also encourage domestic tourism. These points were raised by Ulster Bank economist Richard Ramsey in a recent Belfast Telegraph article:

As with trade, the immediate impact from a weaker pound makes NI a competitive destination for tourists.

*Not least with our nearest neighbour the Republic of Ireland. The local tourism industry could also be given a boost via the 'staycation' market due to the increased cost for NI people of holidaying in other currency zones, including the Republic of Ireland.*¹⁹¹

The impact of Sterling's devaluation may not be entirely positive for the tourism industry in Northern Ireland however. As noted in the same article.

*Input cost inflation, notably food and energy, will be an unwelcome development.*¹⁹²

In the longer-term, should a hardened border result from the post-EU Referendum settlement, it is possible that this could negatively impact Northern Ireland's tourism industry should such a development serve to deter cross-border travel by visitors from the Republic or international visitors entering the island through the Republic. It should be noted the future of the border is presently unclear. Following a meeting with the First and Deputy First Ministers the Prime Minister, Theresa May, stated that a '*practical solution*' would be sought:

If you look ahead, what is going to happen when the UK leaves the European Union is that of course Northern Ireland will have a border with the Republic of Ireland, which will remain a member of the European Union.

But we've had a common travel area between the UK and the Republic of Ireland many years before either country was a member of the European Union.

*Nobody wants to return to the borders of the past. What we do want to do is to find a way through this that is going to work and deliver a practical solution for everybody - as part of the work that we are doing to ensure that we make a success of the United Kingdom leaving the European Union - and that we come out of this with a deal which is in the best interests of the whole of the United Kingdom.*¹⁹³

The Irish Tourism Industry Confederation has raised a number of concerns regarding the impact of the UK withdrawal on the Irish tourism industry, including¹⁹⁴:

- Reduced spending by British visitors due to the lower value of Sterling to the Euro
- The impact of a hard border on tourism and business

¹⁹¹ The Belfast Telegraph, Economist Richard Ramsey on the 10 ways Brexit will impact us (24 June 2016)

<http://www.irishnews.com/business/2016/06/24/news/economist-richard-ramsey-on-10-ways-Brexit-will-impact-on-us-578502/>

¹⁹² As above

¹⁹³ BBC News, Theresa May on NI post-Brexit: 'No-one wants return to borders of the past' (25 July 2016)

<http://www.bbc.co.uk/news/uk-northern-ireland-36885303>

¹⁹⁴ 'Brexit and Irish Tourism: The Evolving Situation', *Tourism News* 2016, Irish Tourist Industry Confederation, 26 October 2016: <http://www.itic.ie/ezone/Brexit-irish-tourism-evolving-situation/>.

- The future of common visa arrangements between the UK and the Republic, such as those for visitors from China and India
- The degree to which the EU will allow UK-Irish agreements on the border and immigration
- The impact on Irish airlines in the EU Open Skies regime, where airlines have to be at least 50% owned and controlled
- The effects on air traffic should the UK not be part of the European Common Aviation Area

However, the general approach for the time being is 'business as usual' until more is known of the actual repercussions of Brexit, as the CEO of Tourism Ireland has stated¹⁹⁵:

Although it is still too soon to fully understand the long-term implications of Brexit for tourism to the island of Ireland, we had a very useful discussion with tourism industry leaders today. The British market will remain of significant importance for all of us in the short, medium and long-term. We have committed to continued monitoring of developments over the coming months. But, for now, it is very much business as usual. Tourism Ireland's €4 million promotional campaign will roll out in Britain from now until the end of the year, to highlight the island of Ireland to prospective visitors and maintain the strong growth we have seen in recent years.

Tourism may also be impacted by changes to state aid resulting from the UK's exit from the EU. Should the negotiated relationship between the UK and the EU result in a relaxation of state aid rules, this could, in theory, create the circumstances whereby Air Passenger Duty (APD) in Northern Ireland could be reduced or abolished. The removal of state aid restrictions and their ability to constrain connectivity via support for airlines and airports, have been identified as a potential post-Brexit opportunity by the First Minister.¹⁹⁶

¹⁹⁵ 'Tourism Ireland post-Brexit briefing and update on the British market', Tourism Ireland press release 21 July 2016: <https://www.tourismireland.com/Press-Releases/2016/July/Tourism-Ireland-post-Brexit-briefing-and-update-on->

¹⁹⁶ Official Report (Hansard) Monday 27 June 2016. Volume 114, No 10 [online] available from: <http://nia1.me/35m> (Page 31)

11. Energy

There is a long-standing history of co-operation between the Republic and Northern Ireland on energy policy. This has been recognised in the development framework for the All-Island Energy Market:

Co-operation on common energy issues has been long standing, with both Governments having a shared interest in more competitive energy markets, reduced energy costs and improved reliability of supply. This work is set against the background of the European Union's (EU) single market for electricity and natural gas and the growing regionalisation of markets.¹⁹⁷

The outcome of the UK referendum has given rise to many unknowns at this stage. It does appear, however, that energy will be an important consideration in the future, given co-operation achieved to date and security of supply for both the Republic and Northern Ireland. The importance of energy for Northern Ireland specifically was highlighted in the response of the First Minister and deputy First Minister of Northern Ireland to the UK referendum. This is reflected in the August 2016 letter from First Minister and deputy First Minister letter to the Prime Minister, in which they state:

Thirdly, energy is a key priority, given that there are inherent cost and supply issues in a small isolated market so we will need to ensure that nothing in the negotiation process undermines this vital aspect of our economy.¹⁹⁸

Energy dependency shows the extent to which an economy relies upon imports in order to meet its energy needs.¹⁹⁹ It constitutes a significant part of the context within which energy policy operates. Dependency on a particular energy source can also be important, and is illustrated in the fuel mix of a given jurisdiction. These concepts are briefly explored in this section, before turning to an overview of specific policy initiatives, including in the context of Brexit.

Energy dependency in Ireland and Northern Ireland

The Republic was the fourth most energy dependent EU Member State in 2014, importing 85.3% of the energy it consumed.²⁰⁰ The Republic's energy market is particularly heavily reliant on its connection to the UK market. More than 90% of the €6.5bn of energy products that the Republic imported in 2014 (3.6% of real GDP) came from the UK.²⁰¹

¹⁹⁷ *All-Island Energy Market - A Development Framework* available at <http://www.dccae.gov.ie/energy/SiteCollectionDocuments/Electricity/All%20island%20Energy%20Market%20Development%20Framework.pdf>

¹⁹⁸ Quoted in RalSe (2016) *EU Referendum Update*. Available at http://www.niassembly.gov.uk/globalassets/documents/raise/publications/2016-2021/2016/executive_office/4616.pdf

¹⁹⁹ As defined by Eurostat webpage, *Energy dependence*. Available at <http://ec.europa.eu/eurostat/web/products-datasets/-/tsdcc310>

²⁰⁰ Eurostat news release, *Energy dependency in the EU*. 4th February 2016. Available at <http://ec.europa.eu/eurostat/documents/2995521/7150363/8-04022016-AP-EN.pdf/c92466d9-903e-417c-ad76-4c35678113fd>

²⁰¹ National Treasury Management Agency (NTMA) (2015), *Brexit and its Impact on the Irish Economy*. Available at <http://www.ntma.ie/download/BrexitIrish%20Economy.pdf>

The UK energy market is connected to both mainland Europe and Norway. It is less dependent on imports than the Republic given its North Sea reserves²⁰², although its energy imports from Europe are increasing mainly because reserves of natural gas in the North Sea are declining.²⁰³ The UK had an energy dependence rate of 45.5% in 2014, according to Eurostat figures.²⁰⁴ Northern Ireland is dependent on imported gas to meet its generation needs and is therefore susceptible to the volatility of world energy prices.²⁰⁵ As noted in the Strategic Energy Framework (SEF) regarding Northern Ireland:

*Our position on the western periphery of Europe with few fossil fuel sources creates a near 100% dependence on imports to meet our energy needs. This dependency creates uncertainty in terms of security of supply and exposes Northern Ireland to the volatility of world energy prices.*²⁰⁶

Fuel mix and energy trends in Ireland and Northern Ireland

The Sustainable Energy Authority of Ireland (SEAI)²⁰⁷ publishes regular statistical information on energy in the Republic. Its *Energy in Ireland 1990 – 2014* 2015 edition illustrates, *inter alia*, the trend in energy supply over the period 1990 – 2014. This data is reproduced in Table 7 and emphasises changes in the fuel mix over the period. The SEAI explains that the Republic's:

...energy supply is discussed in terms of changes to the total primary energy requirement (TPER). It explains that this is defined as the total amount of energy used within Ireland in any given year and includes the energy requirements for the conversion of primary sources of energy into forms that are useful for the final consumer, for example electricity generation and oil refining.

As Table 7 shows, fossil fuels accounted for 90% of all energy used in the Republic in 2014. Oil continues to be the dominant energy source, having roughly a 47% share in both 1990 and 2014. Use of natural gas fell in 2014 by 3.1% and its share of TPER was 28%. Total renewable energy increased by 13.3% during 2014, with all forms of renewable energy experiencing growth. The overall share of renewables in primary energy stood at 7.7% in 2014.

²⁰² National Treasury Management Agency (NTMA) (2015), *Brexit and its Impact on the Irish Economy*.

²⁰³ energy futures lab, *What leaving the EU means for UK energy policy*. Available at <https://energyfutureslab.wordpress.com/2016/06/22/what-leaving-the-eu-means-for-uk-energy-policy/>

²⁰⁴ Eurostat news release, *Energy dependency in the EU*. 4th February 2016. t

²⁰⁵ RalSE, Electricity tariffs: components and legislative underpinnings (September 2013) p7 <http://niassembly.gov.uk/assembly-business/committees/archive/enterprise-trade-and-investment/archive/research-papers/research-papers-2014/electricity-tariffs-components-and-legislative-underpinnings/>

²⁰⁶ Department for the Economy, Strategic Energy Framework (July 2010) p6 <https://www.economy-ni.gov.uk/publications/energy-strategic-framework-northern-ireland>

²⁰⁷ The Sustainable Energy Authority of Ireland was established as Ireland's national energy authority under the *Sustainable Energy Act, 2002*.

Table 7: Growth rates, quantities and shares of total primary energy requirement (TPER) fuels in Ireland, 1990-2014

	Growth %	Average annual growth rates %					Quantity (ktoe)		Shares %	
	1990 – 2014	'90 – '14	'00 – '05	'05 – '10	'10 – '14	2014	1990	2014	1990	2014
Fossil Fuels (Total)	28.6	1.1	2.5	-1.8	-3.7	-1.5	9,330	12,001	98.2	90.4
Coal	-39.4	-2.1	0.8	-8.0	0.4	-4.6	2,085	1,262	22.0	9.5
Peat	-44.2	-2.4	-0.4	-1.1	0.8	6.2	1,377	768	14.5	5.8
Oil	41.3	1.5	3.0	-4.4	-3.8	-0.8	4,422	6,249	46.6	47.1
Natural Gas	157.3	4.0	2.6	6.2	-5.7	-3.1	1,446	3,721	15.2	28.0
Renewables (Total)	508.8	7.8	9.7	13.0	10.4	13.3	168	1,021	1.8	7.7
Hydro	1.7	0.1	-5.7	-1.0	4.3	18.2	60	61	0.6	0.5
Wind	-	-	35.4	20.4	16.2	13.2	0	442	-	3.3
Biomass	188.2	4.5	9.8	3.1	9.6	13.9	105	304	1.1	2.3
Other Renewables	8971.1	20.7	8.9	33.7	3.9	11.6	2	214	0.0	1.6
Non-Renewable (Wastes)	-	-	-	-	64.8	9.1	-	63	-	0.5
Electricity Imports (net)	-	-	83.6	-25.5	46.2	-4.2	-	185	-	1.4
Total	39.7	1.4	2.8	-1.4	-2.6	-0.5	9,497	13,270		

Source: SEAI (2016) *Energy in Ireland 1990 – 2014*, 2015 Report²⁰⁸.

The Analytical Services Unit of the Northern Ireland Department of Enterprise, Trade & Investment has published information on total energy consumption²⁰⁹ in Northern Ireland using an amalgamation of sources including the DECC total final energy consumption data²¹⁰ (which excludes electricity and gas for Northern Ireland) mentioned above, electricity consumption data (published by DETI and sourced from NIE Networks) and gas consumption data (as published by the Utility Regulator). This is reproduced in Table 6 below.

Table 6 shows that some 46,264 GWh of energy was consumed in Northern Ireland in 2013 (13,784 GWh from electricity and gas and 32,480 GWh from other fuels). This was equivalent to 3.2% of the total energy consumption in Great Britain in that year. The table also shows that gas consumption increased annually between 2009 –and 2013, whilst electricity consumption fluctuated. Total energy consumption in Northern Ireland increased between 2012 and 2013 but was still below the 2009 level.

²⁰⁸ Available at http://www.seai.ie/Publications/Statistics_Publications/Energy_in_Ireland/Energy-in-Ireland-1990-2014.pdf.

²⁰⁹ This excludes any gas or coal consumption by power stations in Northern Ireland. Also, energy consumption by aviation (air transport) and shipping (national navigation) are excluded from the DECC total final energy consumption data.

²¹⁰ Rounded to nearest GWh.

Table 8: Total energy consumption in Northern Ireland (GWh), 2009 - 2013

	2009	2010	2011	2012	2013
Electricity	8,049	8,432	8,235	8,095	8,181
Gas	3,984	4,487	4,834	5,008	5,603
Total Electricity and Gas	12,033	12,919	13,069	13,103	13,784
Plus DECC final energy consumption (excluding electricity and gas)	35,291	36,815	32,976	31,523	32,480
Equals Total Energy Consumption in Northern Ireland	47,324	49,734	46,045	44,626	46,264
Total Energy Consumption in GB ²¹¹	1,506,847	1,510,205	1,447,081	1,435,022	1,426,912
Ni as a % of GB	3.1%	3.3%	3.2%	3.1%	3.2%

Source: Department of Enterprise, Trade & Investment (2016) *Energy in Northern Ireland 2016*.²¹¹

Notes: The GB total includes a small amount of unallocated consumption (i.e. consumption that could not be allocated to any particular UK region).

The Department for Energy and Climate Change (DECC) publish total final energy consumption datasets covering each region of the United Kingdom. There are, however, no gas or electricity data included for Northern Ireland due to "the differences in market structure".²¹² Petroleum products are the largest contributor to these other sources of consumed energy, generally accounting for around 90% of consumption in each year 2005-2013.

Imports, exports and transfers of electricity

Northern Ireland is connected to the Republic's electricity networks via the North/South tie-lines. Table 9 illustrates trends in annual imports, exports and transfers of electricity between the two jurisdictions over the periods 2002 – 2014 and 2015 Q1 to Q3. It shows that Northern Ireland was typically a net exporter of electricity to the Republic between 2002 to 2013 with the exception of 2003. As shown above, total electricity consumption in Northern Ireland was around 8,000 GWh in 2014.

The position was reversed in 2014, when the Republic exported more electricity to Northern Ireland than it received in imports from this source. Data for the first three quarters of 2015 show this new trend continuing with the Republic exporting more electricity to Northern Ireland than it imported.

²¹¹ Available at <https://www.economy-ni.gov.uk/sites/default/files/publications/deti/energy-northern-ireland-2016.pdf>.

²¹² Department of Enterprise, Trade & Investment (2016) *Energy in Northern Ireland 2016*. Available at <https://www.economy-ni.gov.uk/sites/default/files/publications/deti/energy-northern-ireland-2016.pdf>

Table 9: Annual imports, exports and transfers of electricity (GWh), 2002 – 2014 and 2015 Q1 to Q3

Year	Imports	Exports	Transfers	
	Ireland → NI	NI → Ireland	Scotland → NI	NI → Scotland
2002	140.43	147.98	815.51	0.00
2003	119.35	86.28	1011.92	0.00
2004	0.32	1574.21	2793.08	0.00
2005	1.14	2074.16	1687.02	0.17
2006	9.93	1787.94	941.01	35.69
2007	53.27	1381.99	1729.77	2.22
2008	151.56	373.33	700.14	155.25
2009	85.30	452.20	1950.88	14.17
2010	146.31	378.12	2298.14	0.69
2011	119.56	365.86	1769.07	0.00
2012	140.72	293.99	2164.31	1.93
2013	156.49	203.19	1551.37	10.74
2014 ⁶⁶	229.65	118.67	1108.81	64.77
2015 Q1-Q3 ⁶⁷	210.84	65.98	532.43	341.70

Source: Department of Enterprise, Trade & Investment (2016) *Energy in Northern Ireland 2016*.²¹³

Notes: Northern Ireland has connection to the Scottish electricity networks via the Moyle Interconnector.

It is not clear what impact UK withdrawal from the EU would have on the energy market at present. Any increase in energy prices would be a concern for policy makers given the importance of energy prices for households and the wider economy. Should future trade arrangements increase the cost of importing energy into the UK, this could negatively impact domestic and business consumers in Northern Ireland. With 42% of households in Northern Ireland in fuel poverty (the highest proportion in the UK), a sustained rise in fuel prices could have a significant impact on households. Electricity prices in the Republic also currently benefit from access to the cheaper UK market.

All-island Single Electricity Market (SEM)

An All-island Single Electricity Market (SEM) has existed since 2007, operating in the Republic and Northern Ireland. The SEM is a wholesale electricity market that allows energy to be freely tradeable across the island. It serves to reduce the cost of electricity whilst enhancing security of supply and reliability.

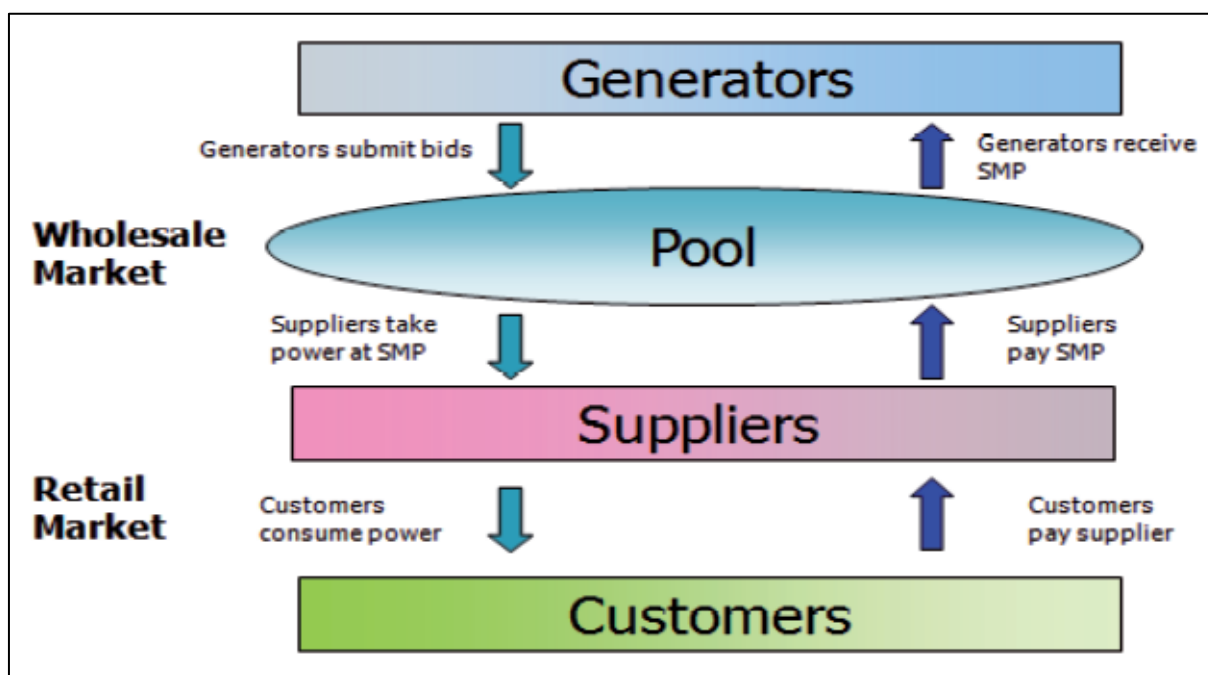
All electricity across the island is bought and sold through a single pool, which has increased competition, efficiency and security of supply.²¹⁴ The operation of the single wholesale

²¹³ Available at <https://www.economy-ni.gov.uk/sites/default/files/publications/deti/energy-northern-ireland-2016.pdf>.

²¹⁴ Utility Regulator webpage, SEM. Available at <https://www.uregni.gov.uk/sem>

market requires the physical connection of the grids in Northern Ireland and the Republic. The design of the SEM includes two main components - energy and capacity. Figure 5 provides a high level overview of how the SEM operates.

Figure 5: Overview of the Single Electricity Market (SEM)



Source: CER (2011), *CER Factsheet on the Single Electricity Market*.²¹⁵

Notes: System Marginal Price (SMP).

The SEM is jointly regulated by the CER (the Republic) and the Utility Regulator (Northern Ireland). The Single Electricity Market Committee (SEMC) is the decision making authority for all Single Electricity Market (SEM) matters.²¹⁶ It consists of three CER and three Utility Regulator representatives along with an independent and a deputy independent member.²¹⁷ The SEM is operated by the Single Electricity Market Operator, a joint venture between EirGrid²¹⁸ and SONI.²¹⁹

It has been noted that the SEM became one of the first of its kind in Europe when it combined what were two separate jurisdictional electricity markets.²²⁰ The 2014 *Green Paper on Energy Policy in Ireland* by the Republic's government also highlighted the achievements of the SEM:

²¹⁵ Available at <https://www.cer.ie/docs/000262/cer11075.pdf>.

²¹⁶ Established in 2007 following the introduction of the SEM, legislation required the establishment of SEM governance in the form of a SEM Committee.

²¹⁷ More information is available on the website of the SEMC at <https://www.semcommittee.com/about-us>

²¹⁸ EirGrid website: <http://www.eirgridgroup.com/about/>.

²¹⁹ SONI website: <http://www.soni.ltd.uk/>.

²²⁰ CER (2011), *CER Factsheet on the Single Electricity Market*. Available at <https://www.cer.ie/docs/000262/cer11075.pdf>

The successful establishment in 2007 and subsequent operation of the all-island Single Electricity Market (SEM) has been hailed as an exemplar of regional co-operation by the EU and has provided cost reflective wholesale electricity, competition, transparency, greater consumer choice, diversity of generation, security of supply and increased renewable penetration. It has exerted downward pressure on electricity prices and has also attracted new market entrants.²²¹

On the operation of the SEM, the CER has stated:

Since its establishment on 1st November 2007, the SEM has delivered transparent and efficient wholesale electricity prices and has provided for the dispatch of the cheapest generators across the island to meet demand. This has helped to attract new investment in modern generation capacity, for example gas-fired plants and wind farms. Overall the SEM has helped to keep electricity prices competitive, ensure security of supply and provide environmental benefits.

In the future the SEM is expected to continue to develop through incremental changes, with the SEM Committee working to address the key challenges such as accommodating increased levels of intermittent renewable generation and further integration of the European electricity market.²²²

It is unclear whether the All-island Single Electricity Market and the current process of redesign will continue to be feasible post-Brexit.²²³ It has been suggested that arrangements on the SEM would be a matter for future negotiation:

As there is a voluntary SEM on the island of Ireland – going beyond any EU requirements – arrangements to preserve the status quo would also have to be negotiated, assuming that the UK and Irish authorities would wish to continue with the SEM in the first place. Vivid Economics has assessed the impact of the UK being excluded from the SEM on the UK economy at £500m per annum in the medium term.²²⁴

Commenting on the future viability of the SEM in evidence to the Northern Ireland Affairs Committee, the Northern Ireland Utility Regulator, however, stated:

Given that the genesis of the SEM was neither an EU nor a UK requirement...any decision by the UK to leave the UK would be unlikely to undermine the economic case for a wholesale electricity market on the island [...] in principle, there is no reason why wholesale electricity flows between ROI and NI, or between either part of the island and the UK mainland should be affected by Brexit.²²⁵

²²¹ Department of Communications, Energy and Natural Resources (2014) *Green Paper on Energy Policy in Ireland*. Available at <http://www.dccae.gov.ie/energy/SiteCollectionDocuments/Energy-Initiatives/DCENRGreenPaperonEnergyPolicyinIreland.pdf>

²²² CER (2011), *CER Factsheet on the Single Electricity Market*. Available at <https://www.cer.ie/docs/000262/cer11075.pdf>

²²³ RaISe (2016) *EU Referendum Update*. Available at http://www.niassembly.gov.uk/globalassets/documents/raise/publications/2016-2021/2016/executive_office/4616.pdf

²²⁴ PPAN (2016), *Brexit – Energy and Carbon Implications*. Available at <http://www.ppan.ie/wp-content/uploads/2016/07/Brexit-Energy-and-Carbon-5-July.pdf>

²²⁵ House of Commons, Northern Ireland Affairs Committee, written evidence to the Committee's inquiry into Northern Ireland and the EU, letter from the Northern Ireland Utility Regulator (24 March 2016). Available at

A similar view was put forward in an Oxford Institute for Energy Studies paper in February 2016:

Since 2007 there has been an all-Ireland electricity market, with the state-owned Eirgrid of the Republic owning the grid north and south and acting as the transmission system operator. Northern Ireland increasingly imports electricity from the Republic which in turn is increasingly dependent on gas imports from the UK. In principle, there is no reason why these flows should be affected by a possible Brexit; by leaving the EU the UK would step outside the EU's common external tariff system, but wholesale energy trade is not subject to tariffs anyway. Moreover, the single Irish electricity market is underpinned by UK and Irish legislation, and not EU legislation.²²⁶

Gas market developments

Since 2008, relevant bodies had been engaged in the development of the Common Arrangements for Gas (CAG) project. The CAG is a cross-border project, lead by the CER and the Utility Regulator, the aims of which are to:

create fair and transparent arrangements across the island of Ireland. Its aim is to deliver a market where stakeholders on the island of Ireland could buy, sell and transport natural gas and that the market could be operated, developed and planned effectively on an all-island basis for the benefit of consumers on the island.²²⁷

The CER and Utility Regulator signed a Memorandum of Understanding (MoU) on 14th February 2008 in relation to CAG under the All-Island Energy Market Development Framework.²²⁸ Under the MOU, the Regulators worked to develop plans to operate the gas transmission systems in Ireland and Northern Ireland on a single, all-island network basis.

The CAG project has since been overtaken by EU internal gas market developments, specifically requirements to implement new European Gas Network Code rules in each respective jurisdiction, i.e. the Republic and Northern Ireland.²²⁹ This requires the implementation, within specified timeframes, of binding EU gas network codes set out in EU legislation and aim to enhance trading in gas between Member States.²³⁰ These EU Network Codes will apply to gas interconnection points throughout Europe and include harmonised principles for tariffs, capacity allocation, congestion management, transparency requirements and balancing.²³¹

<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/northern-ireland-affairs-committee/northern-ireland-and-the-eu-referendum/written/31435.html>

²²⁶ The Oxford Institute for Energy Studies, the UK in the EU - Stay of Leave? The balance sheet on energy and climate policy (February 2016). Available at <https://www.oxfordenergy.org/wpcms/wp-content/uploads/2016/02/The-UK-in-the-EU-%E2%80%93-Stay-or-Leave-The-balance-sheet-on-energy-and-climate-policy-1.pdf>

²²⁷ Department of Communications, Climate Action and Environment webpage, *Common Arrangements for Gas (CAG)*. Available at [http://www.dccae.gov.ie/energy/en-ie/gas/Pages/Common-Arrangements-for-Gas-\(CAG\)-.aspx](http://www.dccae.gov.ie/energy/en-ie/gas/Pages/Common-Arrangements-for-Gas-(CAG)-.aspx)

²²⁸ Available at <http://www.cer.ie/docs/000426/cer08055.pdf>

²²⁹ Department of Communications, Climate Action and Environment webpage, *Common Arrangements for Gas (CAG)*.

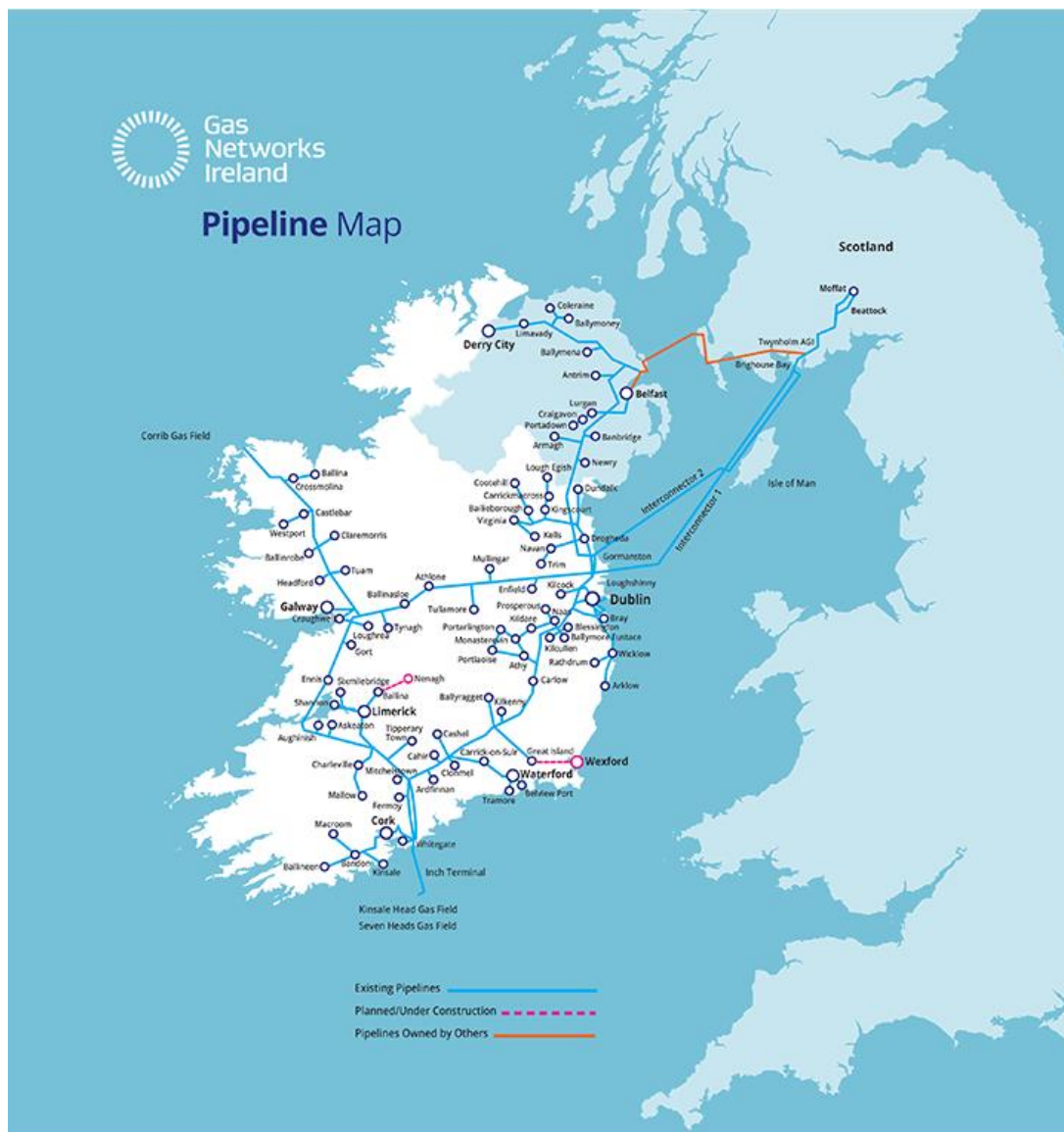
²³⁰ Department of Communications, Climate Action and Environment webpage, *Common Arrangements for Gas (CAG)*.

²³¹ CER webpage, *Overview*. Available at <http://www.cer.ie/electricity-gas/cag>

According to the Department of Communications, Climate Action and Environment:

The Department, the Commission for Energy Regulation (CER) and the system operators for electricity and gas are working with their counterparts both at regional and EU levels towards electricity and gas market integration. The focus is currently on the development of Framework Guidelines and network codes (market rules) relating to both the electricity and gas markets which will apply across the EU.²³²

Map 1: Pipeline map



Source: Gas Networks Ireland webpage, *Pipeline Map*. Available at <http://www.gasnetworks.ie/en-IE/About-Us/Our-network/Pipeline-Map/>

²³² Department of Communications, Climate Action and Environment webpage, *Common Arrangements for Gas (CAG)*. Available at [http://www.dccae.gov.ie/energy/en-ie/gas/Pages/Common-Arrangements-for-Gas-\(CAG\)-.aspx](http://www.dccae.gov.ie/energy/en-ie/gas/Pages/Common-Arrangements-for-Gas-(CAG)-.aspx)

EU Energy Union

An EU Energy Union is one of the current priorities of the European Commission. It maintains that “a European Energy Union will ensure that Europe has secure, affordable and climate-friendly energy. Wiser energy use while fighting climate change is both a spur for new jobs and growth and an investment in Europe's future”. The EU's Energy Union strategy is made up of 5 closely related and mutually reinforcing dimensions, which are reproduced in Text Box 6 below.

Text Box 6: Components of the EU Energy Union

Security, solidarity and trust

Diversifying Europe's sources of energy and ensuring energy security through solidarity and cooperation between Member States.

A fully-integrated internal energy market

Enabling a free flow of energy throughout the EU through adequate infrastructure and without any technical or regulatory barriers – an efficient way to secure supply and give consumers the best energy deal.

Energy efficiency

Energy efficiency first - improved energy efficiency will reduce our dependence on energy imports, reduce emissions and drive jobs and growth.

Climate action - decarbonising the economy

An ambitious climate policy is integral to creating the Energy Union. Actions include the EU Emissions Trading System (EU ETS), strong but fair national targets for sectors outside the ETS to cut greenhouse gas emissions, a roadmap towards low-emission mobility and an energy policy which makes the EU world leader in renewables. The EU is committed to a quick ratification of the Paris Agreement, an ambitious new global climate change agreement approved in Paris in December 2015.

Research, innovation and competitiveness

Supporting breakthroughs in low-carbon and clean energy technologies by prioritising research and innovation to drive the transition of the energy system and improve competitiveness.

Source: European Commission webpage, *Energy Union and Climate*²³³.

Projects of common interest (PCIs) are part of the initiative to create an integrated EU energy market. These are key infrastructure projects, which “will help Member States to physically integrate their energy markets, enable them to diversify their energy sources and

²³³ Available at http://ec.europa.eu/priorities/energy-union-and-climate_en.

help bring an end to the energy isolation some of them are facing”.²³⁴ The PCIs have the possibility of receiving financial assistance under the Connecting Europe Facility (CEF) in the form of grants and innovative financial instruments. A list of the selected projects can be found on the EU Commission’s website,²³⁵ some of which relate to projects between the Republic and Northern Ireland. For projects to become PCIs they must satisfy a number of criteria including have a significant impact on energy markets and market integration of at least two EU Member States. Given this context, the UK’s decision to leave the EU potentially puts in doubt such co-operation with EU support in the future.

In addition, one of the components of the EU Energy Union relates to security of supply. This is an important issue for the Republic and Northern Ireland given the varying levels of energy dependence of each jurisdiction and specific features of each’s energy market. A recent paper by the Public Policy Advisors Network (PPAN), a network of specialists and specialist consultancies across the main areas of public policy in the Republic, described security of supply in the context of Brexit and what it might mean for the Republic and Northern Ireland in the following terms:

That part of Ireland’s strategic oil reserve physically held in the UK might have to be moved if the UK opted out of the Oil Stocks Directive (2009/119). As it does not have an internal market dimension, it could also be assumed that the UK (and NI) will no longer be a party to the EU’s energy security strategy, including the (revised) Security of Gas Supply Regulation. Ireland sources most of its gas from one of the most liquid gas hubs in the world (the North Sea) and transports it through two 100% Irish-owned gas pipelines that happen to be located mainly in the UK but which are covered by an inter-Governmental Treaty. Northern Ireland relies heavily on a gas pipeline that runs through Ireland and which is part of the NI system. The risk to the UK is much less as they have a diversified source of supply and surplus gas storage capacity.²³⁶

Renewables policy

The Renewable Energy Directive establishes an overall policy for the production and promotion of energy from renewable sources in the EU. It requires the EU to fulfil at least 20% of its total energy needs with renewables by 2020, to be achieved through the attainment of individual national targets. All EU countries must also ensure that at least 10% of their transport fuels come from renewable sources by 2020.

The Republic has an overall renewables target of 16% of total final consumption to come from renewable energy in 2020. It is currently more than halfway towards this target, with 8.6% of total final consumption coming from renewable energy.

²³⁴ European Commission - Fact Sheet, Projects of common interest in energy - questions and answers. Available at http://europa.eu/rapid/press-release_MEMO-15-6108_en.htm

²³⁵ Annex to Commission Delegated Regulation amending Regulation (EU) No 347/2013 of the European Parliament and of the Council as regards the Union list of projects of common interest: https://ec.europa.eu/energy/sites/ener/files/documents/5_2%20PCI%20annex.pdf.

²³⁶ PPAN (2016), *Brexit – Energy and Carbon Implications*. Available at <http://www.ppan.ie/wp-content/uploads/2016/07/Brexit-Energy-and-Carbon-5-July.pdf>

In Northern Ireland, the Renewable Energy Directive has been central to the development of renewable energy. The directive requires the UK to generate 15% of its energy from renewable sources by 2020. Northern Ireland contributes to the overall UK target and has set targets of generating 40% of electricity and 10% of heat from renewable sources by 2020.²³⁷

Should the UK chose to diverge from EU renewable policy following its withdrawal from the EU this, coupled with changes to renewable electricity support which could make renewable development in Northern Ireland more difficult²³⁸ and serve to dampen growth in its renewable energy industry.

²³⁷ Department for the Economy, Strategic Energy Framework (2010) p15 <https://www.economy-ni.gov.uk/publications/energy-strategic-framework-northern-ireland>

²³⁸ For details on these changes see RalSe Research Matters, *Is the sun setting on Northern Ireland renewable electricity?* <http://www.assemblyresearchmatters.org/2016/05/27/is-the-sun-setting-on-northern-ireland-renewable-electricity/>

12. Environment

Water Quality

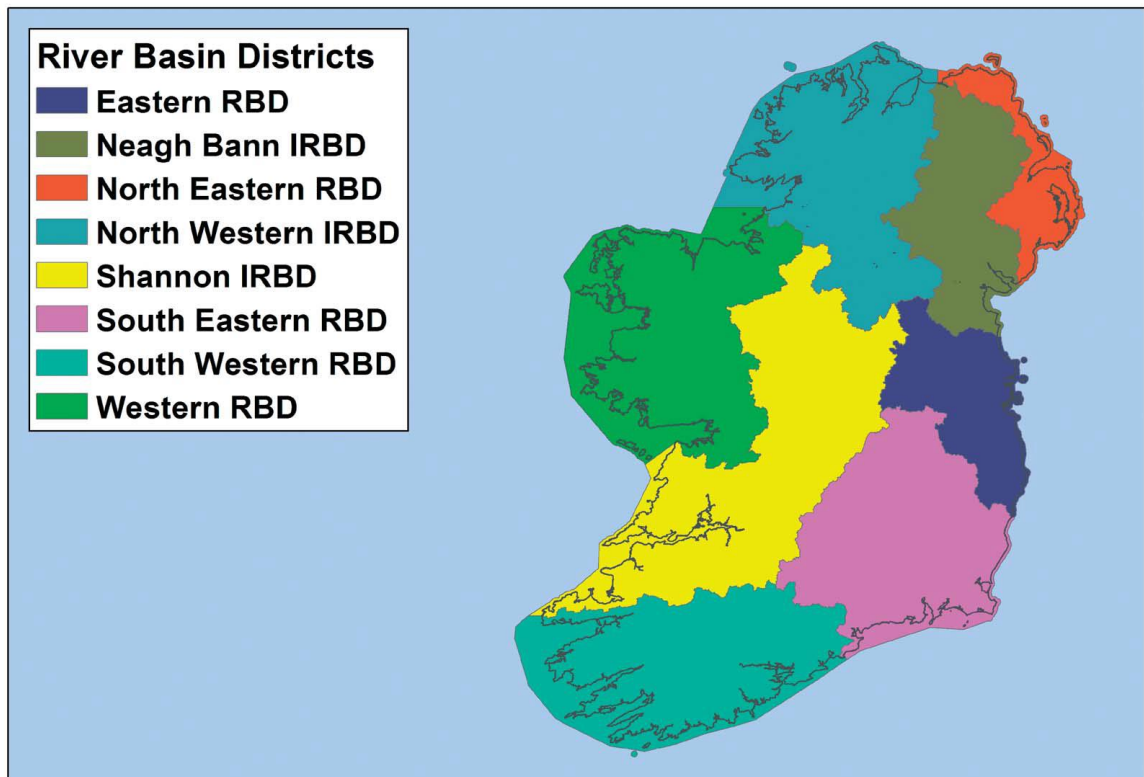
Water quality legislation and policy are largely driven by EU law. The primary piece of water quality legislation is the Water Framework Directive (WFD) (2000/60/EC) which requires that all Member States protect and improve water quality in all waters in order to achieve good ecological status by 2015 or, at the latest, by 2027. It also requires Member States to have an integrated approach to managing inland and coastal waters and applies to surface waters (lakes and rivers), transitional waters (estuaries), coastal waters (up to one nautical mile from land), and to ground waters (water below the surface of the ground).²³⁹

The WFD was transposed into Northern Ireland law through the Water Environment (Water Framework Directive) Regulations (Northern Ireland) 2003 (Statutory Rule 2003 No. 544) and through a variety of primary and secondary legislation in the South, but principally through the European Communities (Water Policy) Regulations, 2003 – 2014.²⁴⁰ The implementation of the WFD includes the preparation River Basin Management Plans (RBMPs) for each River Basin District (RBD). The first RBMPs covered the period of 2010-2015 and the current RBMPs run from 2015-2021. The island of Ireland is split into eight RBDs as outlined in Map 2. Three of these RBDS - the North Western, Shannon and Neagh Bann RBDs cross the border and are managed in close co-operation between North and South.

²³⁹ <http://www.basel.int/TheConvention/Overview/TextoftheConvention/tabid/1275/Default.aspx> (Articles 1&2).

²⁴⁰ <http://www.kildare.ie/CountyCouncil/Environment/WaterFrameworkDirective/>

Map 2: River Basin Districts



Marine conservation

The Marine Strategy Framework Directive (2008/56/EC) (MSFD) requires Member States to take action to protect the marine environment and to use marine resources sustainably. The MSFD aims to achieve Good Environmental Status (GES) of the EU's marine waters by 2020 and to protect the resource base upon which marine-related economic and social activities depend.²⁴¹ The Marine Spatial Planning Directive requires marine plans to be completed by 2021. DAERA is currently preparing a marine plan for Northern Ireland.²⁴² There are currently 7 SAC and 8 SPA sites with marine components in Northern Ireland.²⁴³ A consultation closed March 2016 on the designation of 4 possible MCZs in Northern Ireland: Carlingford, Outer Belfast Lough, Rathlin, and Waterfoot. Further detail on their designation is still awaited.²⁴⁴

²⁴¹ http://ec.europa.eu/environment/marine/eu-coast-and-marine-policy/marine-strategy-framework-directive/index_en.htm

²⁴² <https://www.daera-ni.gov.uk/articles/marine-plan-northern-ireland>

²⁴³ <https://www.daera-ni.gov.uk/articles/marine-protected-areas#toc-0>

²⁴⁴ <https://www.daera-ni.gov.uk/consultations/marine-conservation-zones-consultation>

There is cross-Departmental responsibility for the MSFD in the Republic with input from the Marine Institute.²⁴⁵ An Initial Assessment of the Republics marine waters was completed in 2013.²⁴⁶

The Department of Housing, Planning, Community and Local Government (previously the Department of Environment, Community and Local Government) is the competent authority with responsibility for marine spatial planning in the Republic²⁴⁷ and the Marine Spatial Planning Directive was transposed into law in the Republic through the EU (Framework for Maritime Spatial Planning) Regulations 2016.

With an exit from the EU, the question remains as to whether the UK and Northern Ireland will seek to continue these areas of regulation. Should there be any difference in approaches either side of the border, will cross-border discussions and considerations be made to ensure a holistic approach is used for transboundary marine based industries and activities?

Invasive species

It is clear from the policy and scientific analysis that invasive alien (non-native) species (IAS) can have serious economic and ecological impacts. Both *Ireland's National Biodiversity Plan 2011-2016*²⁴⁸ and the *Biodiversity Strategy for Northern Ireland to 2020*²⁴⁹ formally recognise invasive non-native species as a significant threat to biodiversity on the island of Ireland. In response to the need for cross-border control and cooperation, advice on the management of invasive species is given by a joint venture between the Northern Ireland Environment Agency and the National Parks and Wildlife Agency in the Republic, known as Invasive Species Ireland.²⁵⁰

The new European Invasive Alien Species Regulation (1143/2014) entered into force on 1 January 2015.²⁵¹ Species identified as invasive are banned and Member States must draw up management plans aimed at their eradication, population control or containment.²⁵²

The EU Commission is responsible for drawing up a list of invasive alien species to which the requirements of the Invasive Alien Species Regulation must apply. However,

²⁴⁵ [http://www.housing.gov.ie/water/water-quality/marine-strategy/marine#The%20Marine%20Strategy%20Framework%20Directive%20\(MSFD\)](http://www.housing.gov.ie/water/water-quality/marine-strategy/marine#The%20Marine%20Strategy%20Framework%20Directive%20(MSFD))

²⁴⁶ <http://www.housing.gov.ie/sites/default/files/migrated-files/en/Publications/Environment/Water/FileDownload%2C34365%2Cen.pdf>

²⁴⁷ <http://www.housing.gov.ie/planning/maritime-spatial-planning/maritime-spatial-planning-directive/maritime-spatial-planning>

²⁴⁸ <https://www.npws.ie/sites/default/files/general/national-biodiversity-plan-english.pdf>

²⁴⁹ <https://www.cbd.int/doc/world/gb/gb-nbsap-v3-p3-en.pdf>

²⁵⁰ <http://invasivespeciesireland.com/background/about/>

²⁵¹ EC (November 2014) Brochure on LIFE and Invasive Alien Species p.6. Available from http://ec.europa.eu/environment/nature/invasivealien/index_en.htm

²⁵² Article 19 of the Regulation

Japanese knotweed, identified as a problem across the island of Ireland, has not been included on the list.²⁵³

Due to the cross-border implications of control and spread of invasive species, how will there be harmonisation of approaches between Northern Ireland and the Republic, where requirements may differ post exit?

Waste management

The Waste Framework Directive (2008/98/EC)²⁵⁴ provides the overarching framework for all Member States in relation to waste management and includes definitions of waste, sets a hierarchy for waste management, introduces the “polluter pays” principle and “extended producer responsibility” and sets recycling targets. It requires Member States to have in place a waste strategy and waste management plans reflecting its requirements, both of which must be revised every six years.

While local councils north and south of the border are the statutory waste management authorities and are responsible for waste disposal and collection, they have come together to form sub-regional waste management groups.²⁵⁵ These waste management groups are responsible for drawing up the waste management plans for their constituent councils.

The waste management groups and councils involved in the cross-border area include:

Northern Ireland

- NWRWMG (North West Region Waste Management Group); ARC21; Armagh City, Banbridge and Craigavon; Fermanagh and Omagh; Mid Ulster;

Republic

- Connacht and Ulster Region; and Eastern Midlands Region.

The co-ordinated approach to waste management both sides of the border is essential with controlling the movement and disposal of legal and illegal waste. Given that post-Brexit the Republic will continue to work to EU requirements and regulation, discussion may be needed in relation to the impact, either side of the border, given that Northern Ireland could potentially work to a different framework with fundamental differences in levies, controls and levels of regulation.

²⁵³ The list and further information can be found at http://ec.europa.eu/environment/nature/invasivealien/index_en.htm

²⁵⁴ Waste Framework Directive (2008/98/EC): <http://ec.europa.eu/environment/waste/framework/>.

²⁵⁵ Except for the area formerly covered by the South West Waste Management Group (SWaMP 2008), which was dissolved in 2015. The three new councils previously covered by this area (Armagh City, Banbridge and Craigavon; Fermanagh and Omagh and Mid Ulster) are still to determine whether they will collaborate on waste either formally or informally.

13. Health

Healthcare systems in EU member states are a matter of national responsibility and therefore health is not an area of major EU competence, when compared to areas such as agriculture or the environment. In spite of this, however, it has been argued that ‘Over the last 20 years, it has become clear that EU law has had a considerable impact on health care, despite the limited EU competence to legislate in this field’.²⁵⁶ Whilst EU membership through financial support may facilitate cross-border cooperation, it is not a necessary prerequisite, as examples of other cooperation detailed below show:

Mutual recognition of professional qualifications - This enables health professionals from EU countries to work in the healthcare systems of other EU Member States.

Reciprocal Access to Healthcare - EU citizens who can show that they are either employed or self-employed in the UK, or non-active in terms of employment but are ordinarily resident in the UK, are entitled to free healthcare in the UK. Any changes to the free movement rights could make it more difficult for EU citizens to obtain free healthcare on the basis of residence in the UK. Similarly, the rights of UK nationals living in the EU to access state healthcare will be subject to the terms under which the UK leaves the EU.²⁵⁷

Unplanned Care - European Health Insurance Card (EHIC) - This is a free card that gives an individual access to medically necessary, state-provided healthcare during a temporary stay (including holidays) in any of the EU countries and in addition Iceland, Lichtenstein, Norway and Switzerland, under the same conditions and at the same cost as to people insured in that country. The cards are issued by the national health insurance provider²⁵⁸ in the country of the insured person²⁵⁹.

Planned and Unplanned Care - EU Directive on patients’ rights in cross-border healthcare. In 2011 EU Directive 2011/24/EU introduced scope for citizens to apply for reimbursement of cross-border healthcare treatment for planned and unplanned care. It came into force on 25th October 2013 in the EU and then on 1st August 2015 also in the EEA. It does not apply to Switzerland.

Organ Donation – EU-wide standards exist for organ donation to ensure organs are safe and that data requirements are fulfilled. Brexit could affect the UK’s access to EU organs and for UK organs to go to the EU.

²⁵⁶ Willem van de Gronden et al Eds (2011) Health Care and EU Law. page vii

²⁵⁷ Brexit: impact across policy areas (Edited by Vaughne Miller), House of Commons Library, Briefing Paper, Number 07213, 26 August 2006, <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-7213>

²⁵⁸ Applying for a card, Commission website: <http://ec.europa.eu/social/main.jsp?catId=563&langId=en#nationalinfo>.

²⁵⁹ European Health Insurance Card, European Commission, Employment, Social Affairs and Inclusion, <http://ec.europa.eu/social/main.jsp?catId=559>

UK withdrawal from the EU, therefore, has the potential to impact indirectly on mobility of persons across the border through changes to the provision of cross-border health services and the way in which these services are accessible to users. The EU, for example, has supported the development of cross-border projects and provided a legislative basis for cross-border access to services in specific circumstances.

Under the Directive, once a Northern Ireland patient has been assessed as needing treatment and eligible to have that treatment in Northern Ireland, they have the right to obtain that treatment in another EU member state, either privately or in the state sector. Patients pay the treatment costs directly to the provider and the HSCB will reimburse the patient for the actual cost of the treatment or the equivalent cost of treatment locally, whichever is the lesser. No other costs will be met, including travel.²⁶⁰ Patients are advised to have medical insurance cover in the event of an emergency associated with the planned treatment as well as a valid EHIC card.

UK withdrawal from the EU might also have implications in terms of EU Regulations. For example, under Article 28 of EU Regulation 883/2004²⁶¹, cross-border (frontier) workers who retire in the Republic due to 'old age or invalidity' are entitled to access continuing medical treatment for a condition for which they are already receiving services from Northern Ireland.

EU-Funded Cross-Border Projects

Fears for the future of EU-funded cross-border health projects were expressed in the following Assembly Question to the Minister of Health²⁶²:

Mr Daniel McCrossan (SDLP - West Tyrone) To ask the Minister of Health (i) to detail all projects (a) being completed and (b) scheduled for the future, that have received European Union funding or are scheduled to receive European Union funding; (ii) for his assessment of whether this funding is now at risk following the decision to vote to leave the European Union; and (iii) whether this funding, if at risk, will be provided through the Northern Ireland Executive or her Department.

The question was answered (on 5 July 2016) as follows:

The Interreg VA funding programme runs from 2014 to 2020 and has allocated €53m to support health and social care projects across the north of Ireland, the border area of the south and western Scotland. The north would expect to receive €31.8m from the programme in the period to 2020 and applications for funding are currently undergoing assessment. The implications of the outcome of the EU referendum for this funding programme are as yet unclear. However, it is anticipated that the

²⁶⁰ Cross-border EU Healthcare Directive, webpage updated 01/07/16, BMA, <https://www.bma.org.uk/collectivevoice/influence/uk-governments/northern-ireland-assembly/ni-assembly-latest-evidence-and-briefings/cross-border-euhealthcare-directive>

²⁶¹ [EU Coordination of social security systems - Regulation \(EC\) No 883/2004](#)

²⁶² AQW 1822/16-21, 27 June 2016.

Executive will contribute to the negotiations with the EU on this issue and my aim will be to ensure that the programme is implemented and that we maximise drawdown of the available EU funding.

Co-operation and Working Together (CAWT) is the cross-border health and social care partnership for the Health Service Executive in the Republic and the Southern and Western Health and Social Care Trusts, the Health and Social Care Board and the Public Health Agency in Northern Ireland²⁶³. The CAWT partnership evolved from an initial informal arrangement into an effective cross-border delivery and implementation structure for the partner organisations²⁶⁴. Since its inception in 1992, CAWT has created and sustained a variety of EU funded cross-border projects and services and has enhanced service provision to many rurally isolated and peripheral areas.

Following the referendum, an immediate priority for CAWT is to co-operate with the Special EU Programmes Body (SEUPB) and the respective involved Departments of Health in Belfast, Edinburgh and Dublin in relation to ensuring a positive outcome to the implementation of the Health & Social Care Measure in INTERREG VA.

CAWT advise that the INTERREG VA planning process is continuing as originally prescribed. The CAWT Partnership has made a number of submissions to the new INTERREG cross-border co-operation programme for the Border Region of Ireland, Northern Ireland and Western Scotland (2014-2020). These submissions, if successful, will involve the statutory health and social care services working in partnership with other sectors, in particular with the voluntary and community sector, in order to reach the vulnerable and socially excluded sections of the populations.

The CAWT partner organisations (Health Service Executive, HSCB, PHA, Southern HSC Trust and the Western HSC Trust), along with their Scottish partners, remain committed to the implementation of these submissions.

Both the UK and Irish Governments have indicated that they will continue to subscribe to the European Union up until the date of any exit from current arrangements. Article 50 has not been activated and there is no prerequisite alternative course of action to be initiated. Clearly there are a plethora of administrative and legislative changes to be effected and considered. Meanwhile, from a CAWT perspective, all work will continue as scheduled.

Information was supplied by CAWT on the 12 projects from the EU INTERREG IVA funding regarding the extent to which the service has been mainstreamed/adapted into core services

²⁶³ CAWT (2014) *CAWT Strategic Plan 2014-2020*, <http://www.cawt.com/Site/11/Documents/Publications/Corporate/CAWT%20Strategic%20Plan%2014-19%20PDF.pdf>.

²⁶⁴ Heenan, D. and Birrell, D. (2011) *Social work in Northern Ireland: conflict and change*. Bristol: The Policy Press. p.96.

after the EU funding concluded (and therefore are now funded by the relevant Departments)²⁶⁵:

A substantial proportion of services funded by the EU INTERREG IVA programme have continued after the conclusion of EU funding as planned.

CAWT delivered a 12-project programme called 'Putting Patients, Clients and Families First' which enabled a suite of cross border services and initiatives to be delivered in the border region which benefitted 53,000 service users. CAWT estimates that up to 80% of services/projects have been either fully or partially mainstreamed or adapted into core services. This high level of mainstreaming activity in a difficult economic climate is viewed by the CAWT Partnership as a successful outcome. In addition, 43,587 health and social care staff received training as part of the overall programme.

It is noteworthy that there are other cross-border health projects that do not rely on EU funding and a number of them have been orchestrated through The North South Ministerial Council (NSMC).²⁶⁶ Since 2000, in the area of health, actions have focused on five key areas:

- Emergency planning;
- Accident and Emergency services;
- Cooperation on high technology equipment;
- Cancer research; and
- Health promotion.

Two of the recent examples are now briefly outlined below:

The Radiotherapy unit at Altnagelvin Area Hospital provides an example of crossborder provision in specialist care funded by the relevant Departments in NI and the Republic. Planning permission for the new facility was granted in March 2013, and construction work began in July 2014. The service will be managed by the Western Health and Social Care Trust, working with the Cancer Centre, Belfast, the Northern Health and Social Care Trust, and Letterkenny General Hospital.²⁶⁷ The then Health Minister, Simon Hamilton, announced

²⁶⁵ Email Response to RalSe request from Sadie Bergin, Communications and Corporate Governance Manager Co-operation and Working Together (CAWT) Cross Border Health and Social Care, 5th August 2016.

²⁶⁶ North South Ministerial Council (2006) *Welcome to the North South Ministerial Council* [Online] Available from: <http://www.northsouthministerialcouncil.org/>.

²⁶⁷ Western Health and Social Care Trust (2012) *Radiotherapy Unit Altnagelvin Hospital* [Online] Available from: <http://www.westerntrust.hscni.net/pdf/RadioTexhibit.pdf> [Accessed: 4 March 2015].

in March 2016 that £1.5million would be made available to allow for the recruitment of 35 posts to facilitate the opening of the Altnagelvin Radiotherapy Centre in autumn 2016.²⁶⁸

In a second example, the first formal all-island clinical network has been established to treat congenital heart disease. On 3 March 2015, the then Ministers for Health in Northern Ireland and the Republic, published the framework for the All-island Congenital Heart Disease Network based on proposals by an International Working Group (IWG).²⁶⁹

The new all-island children's heart surgery network is to benefit from £42m worth of investment announced at the opening of a new hybrid cardiac catheterisation laboratory at Our Lady's Children's Hospital, Dublin. In the future, children from Northern Ireland and the Republic will all receive treatment there. Children's heart surgery services at Belfast's Royal Victoria Hospital (RVH) ceased in 2015.²⁷⁰ The £42m investment includes contributions from both Northern Ireland's and the Republic's health departments, £1m of which will enhance existing facilities in Belfast. The phased implementation of the transfer of all urgent surgical cases from Northern Ireland to the new Dublin centre should be complete by the end of 2017, with all elective surgical cases transferred by the end of 2018.²⁷¹

²⁶⁸ Recruitment underway for new radiotherapy centre at Altnagelvin, Department of Health, Press Release, 24th March 2016, <https://www.health-ni.gov.uk/news/recruitment-underway-new-radiotherapy-centre-alt-nagelvin>.

²⁶⁹ Framework for All Island Clinical Network for Congenital Heart Disease, Department of Health, Republic.

²⁷⁰ 'Children's heart surgery: Formal end to NI service', BBC News 3 March 2015: <http://www.bbc.co.uk/news/uk-northern-ireland-31709441>.

²⁷¹ Children's heart surgery: £42m for all-island congenital heart disease service, BBC News, online, 4th July 2016, <http://www.bbc.co.uk/news/uk-northern-ireland-36708448>.

14. Education

Under Article 6 of the Treaty on the Functioning of the European Union (TFEU)²⁷², the EU has competence to support, coordinate or supplement the actions of Member States across a number of areas, including: “*education, vocational training, youth and sport.*”²⁷³

Article 165 states that the Union shall:²⁷⁴

Contribute to the development of quality education by encouraging cooperation between Member States and, if necessary, by supporting and supplementing their action, while fully respecting the responsibility of the Member States for the content of teaching and the organisation of education systems and their cultural and linguistic diversity.

This means that that the EU has limited competence in the areas of education and youth, and cannot adopt legally binding acts requiring member states to harmonise their laws and regulations in these areas.²⁷⁵ The EU’s actions in the area of education and youth work include:²⁷⁶

- **Developing a European dimension in education**, particularly through the teaching and dissemination of languages;
- **Encouraging teacher and student mobility**, including though recognition of qualifications;
- **Developing information exchanges** on education; and
- **Encouraging youth exchanges.**

EU funding

In 2012-13 the Department received almost £2m from the EU Building Sustainable Prosperity programme which includes a focus on skills development. In the past ten years it has also accessed funds from PEACE II.²⁷⁷

Under the PEACE IV programme running from January 2016 to 2020 (with eligibility until December 2023), shared education is due to receive €35.3m covering Northern Ireland and the border region of the Republic. This comprises €30m through the European Regional

²⁷² Eur-Lex Consolidated version of the Treaty on the Functioning of the European Union [online] Available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012E%2FTXT>

²⁷³ The other areas are: protection and improvement of human health; industry; culture; tourism; civil protection; and administrative cooperation

²⁷⁴ Eur-Lex Consolidated version of the Treaty on the Functioning of the European Union [online] Available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012E%2FTXT>

²⁷⁵ European Commission (2016) *FAQ on the EU competences and the European Commission powers* [online] Available at: <http://ec.europa.eu/citizens-initiative/public/competences/faq#q2>

²⁷⁶ Eur-Lex Consolidated version of the Treaty on the Functioning of the European Union [online] Available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012E%2FTXT>

²⁷⁷ Information provided by the Department of Education, December 2014

Development Fund and €5.3m government matched funding.²⁷⁸ Depending on the timing, a UK withdrawal from the EU could restrict access to this funding.

In 2014 the then Minister for Education, John O'Dowd MLA, stated that the Department was *"proactively exploring"* the potential for accessing EU structural funds to support intervention activities in science, technology, engineering and mathematics (STEM) and business education.²⁷⁹ On the 29th June, Minister for Education, Peter Weir MLA, noted that the Department *"has focused on maximising the support available from the EU's Erasmus+ programme."*²⁸⁰

Erasmus+ is the new education, training, youth and sport funding programme for the period 2014-2020. It replaces previous funding programmes including Comenius and Youth in Action programmes, the main sources of EU funding accessed by the Department of Education. The key areas of the programme are:²⁸¹

- Joint working and the sharing of good practice across organisations;
- Support for policy reform (any activity aimed at facilitating the modernisation of education systems);
- Learning mobility for individuals;
- Jean Monnet Activities (supporting excellence in European integration studies);
- Sport (funding is available to support grassroots activities).

EU programmes such as Erasmus+ may be affected by a UK withdrawal from the EU, but this may be dependent on the outcome of negotiations, as there are non-EU states which are involved in Erasmus+.

Qualification recognition and student mobility

The European Commission adopted the European Qualifications Framework (EQF) in 2008. The framework aims to facilitate the comparison of qualifications across countries in order to promote student and worker mobility and lifelong learning.

Its implementation is voluntary, however each member state has chosen to take part, and the Council for the Curriculum, Examinations and Assessment (CCEA) acts as the National Coordination Point for Northern Ireland. Northern Ireland has received EU funding to support

²⁷⁸ Northern Ireland Assembly Hansard *Minister for Education response to an Assembly Question by Mr Robin Swann MLA, 29th June 2016*

²⁷⁹ Northern Ireland Assembly Hansard *Minister for Education response to an Assembly Question by Mr Daithí McKay MLA, 14th January 2014*

²⁸⁰ Northern Ireland Assembly Hansard *Minister for Education response to an Assembly Question by Mr Robin Swann MLA, 29th June 2016*

²⁸¹ Stewart, J. (2014) *European Funding Streams: Education* Belfast: Northern Ireland Assembly

its implementation, including work on qualifications referencing, communication and European liaison.²⁸²

It is possible that a UK withdrawal from the EU could have consequences for qualification recognition across EU member states, with implications for students wishing to study, train and work abroad.

Department of Education actions

The Minister for Education, Peter Weir MLA, noted that the Department of Education had set up a team at a “senior level” to consider the potential implications of a UK withdrawal from the EU for the Department’s functions, and to explore future challenges and opportunities. He noted:²⁸³

Until such times as a withdrawal agreement from the EU is negotiated and takes effect, I will not be in a position to fully assess the implications.

The EU has limited competence in the area of education and youth work. As such, it is likely that a UK withdrawal from the EU would have limited impact on school education and youth services in Northern Ireland.

However, a withdrawal would likely have implications for shared education funding under the PEACE IV programme, as well as in relation to future access to EU funding for educational and youth programmes. Other potential issues could relate to cross-jurisdiction cooperation and the recognition of qualifications, leading to implications for students wishing to study, train and work abroad.

Further Questions Raised by Brexit

The UK withdrawal from the EU raises a number of questions with regard to education that remain unanswered until the outcome of UK-EU negotiations are known. Examples of these are as follows:

- Payment of fees for students studying across the border: Will students have to pay non-EU fees for college registration?²⁸⁴
- Grants for research: will there still be access for university research projects?²⁸⁵
- Recognition of teacher qualifications: This was the subject of a previous N/SIPA paper²⁸⁶ - post-Brexit, will recognition of teacher’s qualifications across the border change?

²⁸² CCEA (2016) *EQF Implementation in the UK* [online] Available at:

http://ccea.org.uk/regulation/european/european_qualifications_framework/eqf_uk

²⁸³ Northern Ireland Assembly Hansard *Minister for Education response to an Assembly Question by Mr Robin Swann MLA, 29th June 2016*

²⁸⁴ ‘Irish students in UK could face hike in fees after Brexit vote’, *Irish Times* 24 June 2016:

<http://www.irishtimes.com/news/education/irish-students-in-uk-could-face-hike-in-fees-after-Brexit-vote-1.2699027>.

²⁸⁵ ‘Brexit fears may see 15% of UK university staff leave, group warns’, *The Guardian* 25 September 2016:

<https://www.theguardian.com/education/2016/sep/25/Brexit-may-force-15-of-staff-at-uk-universities-to-leave-warns-group>.

²⁸⁶ See Recognition of *Teacher Qualifications and Teacher Mobility*, 8 October 2014: (http://www.oireachtas.ie/parliament/media/housesoftheoireachtas/libraryresearch/20141008_ResearchPaperFour_TeacherQualifications_NSIPA_FINAL.pdf).