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An comhchoiste um Fhorfheidhmiú Chomhaontú Aoine an Chéasta

**Na hImpleachtaí atá ag Brexit do Chomhaontú Aoine an Chéasta:
Príomhchinntí**

Lúnasa 2017

Joint Committee on the Implementation of the Good Friday Agreement

**Brexit and the Future of Ireland
Uniting Ireland & Its People in Peace & Prosperity**

August 2017

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CHAIR'S FOREWORD



Kathleen Funchion TD
Committee Chair
(SF)

On 23 June 2016, the United Kingdom voted to leave the European Union. The results have brought sharp focus to the implications for the Good Friday Agreement.

In 2016, as part of the work programme for the Joint Committee on the Implementation of the Good Friday Agreement, Senator Mark Daly put forward a proposal to compile a report to examine the position that Ireland should adopt as part of the EU and UK Brexit negotiations that would ensure that in the event of the peoples of the island voting in favour of the proposal under Annex A (2) of the Good Friday Agreement; in the final Brexit agreement that such a vote would allow the people of Northern Ireland to be admitted automatically to the EU inheriting all the benefits that EU Membership permits for its citizens and without the necessity of an application process.

The report would also examine what would need to be done to ensure a positive outcome should reunification be agreed under Annex (2) of the Good Friday Agreement.

The Committee agreed that Senator Mark Daly should act as Rapporteur on this issue and prepare a report on this subject for the Committee's consideration. At its meeting on 13 July 2017 the Joint Committee adopted Senator Daly's Report.

The Committee recognises that the matters examined were complex and sensitive. The rationale behind the report was to examine challenges and to seek to identify concerns and explore how they could be addressed.

In order to gain a complete understanding of these issues, Senator Daly undertook an extensive review of applicable reports, and engaged comprehensively with a wide range of politicians, academics and other stakeholders.

On behalf of the Committee, I wish to acknowledge the work done by Senator Daly in bringing this matter before the Committee and undertaking this study with such commitment.

Kathleen Funchion

Chair

3 August 2017

Introduction

“The EU needs to prepare for a united Ireland.”

Taoiseach Enda Kenny July 2016

Niall O’Connor the political journalist for the Irish

Independent

Reporting from the McGill

Summer School in July 2016

As a result of this statement by the Taoiseach it is also clear that Ireland needs to prepare for a united Ireland. The Joint Committee on the Implementation of the Good Friday Agreement in its work programme approved by Dáil Éireann appointed Senator Mark Daly as rapporteur to compile a report on the effect of Brexit on Ireland, what Ireland should seek to have in the final agreement between the EU and the UK, particularly in the event of the people of Northern Ireland voting for a united Ireland and what Ireland needs to do in order to peacefully achieve its constitutional obligation, as described by Attorney General Brady (2002-07), of a united Ireland, as outlined in Article 2 and 3 of the Irish Constitution

The report for the Joint Committee on the Implementation of the Good Friday Agreement has seven sections;

Section 1: Brexit and its Impact on Ireland

Section 2: Precedent of German Unification for Ireland

Section 3: Economic Modelling of Unification

Section 4: Brexit and the Future of Ireland; Uniting & its People in Peace & Prosperity

Section 5: The Good Friday Agreement

Section 6: Referendum as Provided for in the Good Friday Agreement

Section 7: Constitutional & Legal Changes Before & After a Referendum

All the recommendations for each of the seven sections are at the end of this introduction, as are all the seven summaries that relate to them. The report to the Joint Committee also serves as a reference document

and includes online copies of Acts and Agreements relating to Ireland and Britain from the Act of Union to the Good Friday Agreement

High Court Justice Richard Humphreys book 'Countdown to Unity' is quoted from extensively in Senators Daly's Report. Justice Humphrey's publication lays out the road map to the peaceful unity of Ireland and its people. It outlines the various options for the future of this island and the opportunities and the obstacles that are ahead to achieve the aim of a peaceful united Ireland which was approved by 94% of the citizens of this state in a referendum. Other than the New Ireland Forum of 1984, 33 years ago, the Library and Research Service of Leinster House were unable to find any report by any previous Government, Department or Oireachtas Committee on how the state would achieve its core belief of a united Ireland, an objective supported by 79 per cent of people in an opinion poll in 2016.

Professor Emeritus of Humboldt University in Berlin, Christain Tomuschat's submission to the report outlines the precedent in German unification for Northern Ireland's automatic inclusion in the EU without the need for an application or accession process in the event of a vote for reunification.

White House, National Security Council, Senior Policy Advisor on counter terrorism in President Obamas administration, Michael R. Ortiz has also written a paper for Senator Daly's report on the threat of future paramilitary violence attempting to subvert a referendum and reunification as provided for in the Good Friday Agreement. Michael Ortiz was the first U.S. diplomat focused on countering violent extremism and was appointed by Secretary of State John Kerry.

Congressman Brendan Boyle a member of the US House of Representatives Foreign Relations Committee has submitted a specially commissioned research paper from the United States Congressional Research Office which is included in this report. This analyses the true nature of the income and expenditure of Northern Ireland. A report by Dr. Kurt Hubner of the University of British Columbia shows a reunification scenario with a boost of 35.6billion euro over eight years to an all island economy. The report for the Joint Committee also includes elements of the UK House of Lords report on Brexit; UK- Irish Relations with a particular focus on the common travel area, including proposals to ensure the continued free movement of people across the border with

Northern Ireland. The economic challenges of Brexit and unification are outlined in various reports including some from the House of the Oireachtas Library and Research Service, a key one of these is the analysis of the United Nations Human Development Index, which measures health, education, and income. The UN report ranks Ireland as 8th in the world alongside Germany, Canada and the United States. In Northern Ireland's case the analysis places it 44th in the world alongside the likes of Hungary and Montenegro. As a result of Brexit, Northern Ireland is likely to drop below 50th joining the likes of Kazakhstan and Belarus.

This report includes submissions by various politicians, academics and experts from Ireland, England, Germany and the United States who have given generously of their time and their experience to assist Senator Daly in compiling it, the first by any committee of the Irish parliament on how to achieve a united Ireland.

To conclude we include an extract from 'Irish man of the 20th century' T K Whittaker's 'Note on North-South Border Policy' written on the 11 November 1968 the eve of 'The Troubles'. In it he foresaw the Good Friday Agreement, the long term nature of achieving a united Ireland, that it required the best of ourselves and a collective understanding.

“We were, therefore, left with only one choice, a policy of seeking unity in Ireland between Irishmen. Of its nature this is a long-term policy, requiring patience, understanding and forbearance and resolute resistance to emotionalism and opportunism. It is not the less patriotic for that”

Thanks to all those who made submissions and worked to assist in the production of this report including;

Congressman Brendan Boyle; Bertie Ahern – Taoiseach; Ray Bassett - Former Irish Ambassador to Canada 2010-2016; John Teahan, M.A. Economic and Politics Trinity College Dublin 2000; Brian Crowley MEP; Prof Dr. Markus Kotzur, LL.M.

(Univ.) Hamburg University; Anne Cadwallader and the Pat Finucane Centre; Michael Ortiz, Senior Policy Adviser on Counter Terrorism to the National Security Council under President Obama and First US Diplomat Focused on Countering Violent Extremism at the State Department; Kevin Meagher, Adviser to Secretary of State for Northern Ireland Shaun Woodward 2007-09; Professor Christian Tomuschat, Humboldt University Berlin, and Faculty of Law; Marcus Noland of the Peterson Institute for International Economics and Author of 'Avoiding the Apocalypse: the Future of the Two Koreas'; Prof Fr Sean D. McGraw - Notre Dame University; M. J. Jackson; Dr. Martin Mansergh; National Archives; Oireachtas Library and Research Service; Carly Frame; Billy Tranghese; Joe Cullen; Mark Nally; Shane Dempsey; Noel Dempsey; and for her long hours of work and tireless commitment to the project I wish to especially thank Grace Coyle.



Senator Mark Daly- Rapporteur of the Report

Summary of Recommendations

Section 1 Recommendations

- The Irish government must negotiate for Northern Ireland to be designated with special status within the EU and for the whole island of Ireland to have a unique solution as part of the Brexit negotiation.
- If current EU funding programmes cannot be protected then the eligibility of Northern Ireland for receipt of EU Structural funds and other funding schemes and mechanisms must be clarified as a matter of urgency, to help underpin the peace process.
- The Report on the All-Ireland Economy: compiled in 2016 by Peadar Tóibín TD for the Joint Oireachtas Committee on Jobs, Enterprise and Innovation in the light of Brexit should be updated.
- Any passport controls between Ireland and the UK should be along the same basis as for people traveling between these islands from 1939 to 1952. There should not be a return to passport controls on the borders between the North and South of Ireland.
- Given the likely impact on certain categories, including women, in border counties and employment in these areas there is a need for impact analysis on these sectors of society
- Further research into the income and expenditure for Northern Ireland should be carried out

Section 2 Recommendations

- Welcome the declaration agreed to by the European Council on 29 April 2017 which provides for Northern Ireland automatically becoming part of the EU in the event of a future united Ireland.
- This declaration known in Brussels as 'The Kenny Text' is similar to that of Commission President Jacques Delors in January 1990 on the issue of German Unification 'East Germany is a special case'.

Section 3 Recommendations

- It is recognised that World Trade Organisation rules and a hard border would have a detrimental impact on Ireland North and South & Further impact assessment is required on the economic impact of reunification.
- The Committee urges that the matter of EU funding for Northern Ireland and the border region remains high on the agenda and an expeditious solution is found for successor programmes after 2020.

Section 4 Recommendations

- The establishment of a New Ireland Forum 2 is recommended to set a pathway to achieve the peaceful reunification of Ireland.
- Establish an international task force with experts in security so that plans to meet any risks may be devised and implemented.
- Fears and concerns of the Unionist community need to be examined, understood and addressed comprehensively by all stakeholders in advance of any referendum.
- The legacy issues in society outlined by Senator Frances Black and the inter- generational impact of the troubles in terms of mental health consequences and substance abuse needs to be addressed

Section 5 Recommendation

- Explore potential solutions to resolve disputes that may arise from the implementation of the Good Friday Agreement, as recommended by High Court Justice Kevin Humphreys.

Section 6 Recommendation

- Lessons from referendums need to be learned to ensure that the Irish government fulfils its constitutional obligations.

Section 7 Recommendation

- The Government needs to carry out an audit in relation to the legal and constitutional changes pre and post-unification.

Section 1 Summary

The terms of reference for the Report for the Joint Committee on the Implementation of the Good Friday Agreement included an analysis of the impact of Brexit on Northern Ireland and what Ireland should seek to have in the final agreement between the EU and the UK regarding Northern Ireland. It is clear from all the reports written on the issue of Brexit that its effect on Northern Ireland will be significant. In February 2016 research commissioned by the UK Department of Enterprise, Trade and Investment on the economic implications of a UK exit from the EU showed that Northern Ireland is more vulnerable to Brexit than Britain. The loss to Northern Ireland of EU membership and funding will be significant, and the subsequent effect on the economy and the potential to destabilise the Peace Process is a central concern.

That is why the key recommendation of the report is if current EU funding programmes cannot be protected then the eligibility of Northern Ireland for receipt of EU Structural funds and other funding schemes and mechanisms must be clarified as a matter of urgency, to help underpin the peace process. Ireland believes that in relation to Brexit Northern Ireland is a special case and its Peace Process is worthy of on-going support from the EU and Britain.

For this research paper we have included information on some of the EU programmes that HM Treasury would have to continue funding. Member of the European Parliament Brian Crowley provided information in relation to the EU Funding programmes 2014 - 2020.

This report looks at the difficulties of predicting the impact of Brexit. To highlight this challenge, we reproduce the divergence of estimates by various organisations who tried to predict the impact of the World Trade Organisation rules being imposed on the UK. The difficulty of predicting the impact of Brexit on Northern Ireland is further compounded by the lack of reliable data and accurate statistics for Northern Ireland. Such a 'data deficit' needs to be addressed in order for the Irish Government to produce a coherent long-term policy in relation to Northern Ireland.

Congressman Brendan Boyle commissioned research from the United States House of Representatives Congressional Research Service specifically for this report for the Committee on the Implementation of the Good Friday Agreement. Congressman

Boyle's report outlines the data deficit for Northern Ireland, in particular the difficulty in accurately determining the actual income and the fiscal deficit in Northern Ireland. This report also commissioned research on the rationalisation of the large public sector in Northern Ireland and the findings of the Oireachtas Library and Research are included in the online appendix of this section. The Report on the All-Ireland Economy (Joint Oireachtas Committee on Jobs, Enterprise and Innovation compiled by Deputy Peadar Toibin TD) is reproduced in the online appendix of this section. We recommend that in light of Brexit a second report should be commissioned on the All Island Economy. We are conscious of the recent hearings and report by the Committee on Jobs, Enterprise and Innovation on Brexit. We have reproduced some sections of reports from the Nevin Economic Research Institute (NERI) and Oxford Economics which, despite the data deficit, have attempted to analyse and highlight the potential impact of Brexit on Northern Ireland.

One key concern of the Irish Government and the Irish people is the return of the border. It is feared that a 'Hard Brexit' will mean a 'Hard Border'. Again, the lack of accurate data is highlighted by the difficulty of determining how many people cross the border every day for work and study. Former Taoiseach Bertie Ahern has made a submission to the Committee on the return of the border between the North and the South.

Former Irish Ambassador to Canada Ray Bassett's submission on 'Irexit' is included. The solution to the problem of creating a border on the old partition lines between North and South is for the border to be in the Irish Sea between the island of Ireland and Britain as was the case from 1939 to 1952. This was highlighted in the House of Lords: European Union Committee report entitled 'Brexit: UK-Irish relations' which we quote and analyse. This report is available in full in the online appendix to this section. The issue around the common travel area is also examined.

The report looks at a neglected topic in the Brexit discussion, that being the effects on women. For this report we commissioned a research paper from the Library and Research Service of the House of the Oireachtas to give an overview of the responses to Brexit of the British and Irish Governments and the legislature in each jurisdiction. The Library and Research Service of the Oireachtas were also commissioned to provide an updated report on The Good Friday Agreement, the Peace Process and the Institutions; the report provides a background on a range of issues which feature a specific cross-border dimension. The theme of the paper was 'the Impact of Brexit on Cross border activities'.

In compiling this section of the report we reproduced the findings of the Library & Research Service of the Houses of the Oireachtas.

The briefing paper provided information on a range of topics;

Policing and Justice
Business and Trade
Labour Market and Skills Tourism
Health
Finance and Funding
Agriculture
Energy and Environment
Education

The paper looked at the impact which Brexit may have on these and other issues across Ireland. The range of impact on Ireland, both North and South, cannot properly be assessed until such time as the terms of the withdrawal agreement from the EU are known.

Therefore it should be noted that the list of issues discussed here is not exhaustive.

Section 2 Summary

Taoiseach Enda Kenny, speaking in Brussels on 2 March 2017 said:

“the Good Friday Agreement contains the opportunity to put in these negotiations language that has already been agreed in internationally binding agreement, that at some future time were that position to arise, that if the people by consent were to form a united Ireland that that could be a seamless transfer as happened in the case of East Germany and West Germany when the Berlin Wall came down.”

At the McGill Summer School in July 2016 the Taoiseach stated in relation to the upcoming Brexit negotiations that “the EU needs to prepare for a united Ireland”.

The Taoiseach also said at that time "The discussion and negotiations that take place over the next period should take into account the possibility, however far out it might be, that the clause in the Good Friday Agreement might be triggered."

Therefore the precedent set out in the reunification of West and East Germany will need to be included as part of the final Brexit agreement between the European Union and the United Kingdom. In the event of the people of Ireland voting in favour of a reunified Ireland as provided for in the Good Friday Agreement the Government needs to ensure that Northern Ireland will be entitled to automatically become part of the EU without the necessity for an application or accession process. This declaration by the EU now will be important to avoid any doubt of EU status for the people of Northern Ireland. Such doubt on EU membership was one of the factors that led to the loss of the Scottish Independence Referendum.

Some of the other elements that should be included in the final agreement between the EU and UK are included in this report. These include the treatment of trade, where the example of the trading relationship between East and West Germany up until reunification where the European Economic Community trade rules were not applied needs to be followed. Such equal treatment of trade between the North and the South of Ireland on a similar basis would assist the people of Northern Ireland and ensure the stability of the economy of the whole island and thus the stability of the Peace Process. Professor Markus Kotzur of Hamburg University's submission to the Joint Committee on the Implementation of the Good Friday Agreement is included in full in this section. The Oireachtas Library and Research Service have provided information on EU Agreements with their overseas territories and countries which has been included in the online appendix of this section.

Section 3 Summary

The research paper entitled 'Brexit- a view from the Chambers in December 2016' by the German-Irish Chamber of Industry and Commerce looked at the various analysis done on the impact of Brexit on Ireland. This paper had a specific overview of the impact on Northern Ireland and is available in full in the online appendix to this section.

The German-Irish Chamber of Industry and Commerce has a unique view on the impact of Brexit on Ireland in light of the German reunification experience and view that "The Irish peace process is lauded internationally as an exemplar to other regions where there is conflict, however, Brexit could undermine the work of reconciliation and destabilise the region."¹

The German-Irish Chamber of Industry and Commerce also commented that

"Brexit and the challenges it poses cannot be allowed to undermine cross-border cooperation, economic reconstruction and growing rapprochement after centuries of division on the island of Ireland. In 1990, Ireland's European presidency was central to agreeing a common EU approach to the issue of German unification after the historic divisions caused by the Cold War. In 2010, on the twentieth anniversary of the landmark Dublin Summit, Germany's then foreign minister Guido Westerwelle said that his country would "never forget" how Irish diplomacy helped fast-track the way for the territory of then East Germany to join the European Union as part of a unified Germany. A key question for decision-makers in the EU today is can agreement be reached in a similar spirit of diplomatic pragmatism to ensure that the unique circumstances of the island of Ireland."²

It is widely recognised that the effect of Brexit on the island of Ireland will be profound and will require 'diplomatic pragmatism' by key EU decision makers as outlined by the German-Irish Chamber of Industry and Commerce. The effect of Brexit will also be long term, and one of the potential long term solutions would be the fulfilment of the Constitutional obligation of a reunified Ireland.

¹ Ralf Lissek, Dr. Brian Murphy & Dr. Volker Treier, 'Brexit-a view from the Chambers in December 2016' (2016) German- Irish Chamber of Industry and Commerce, <http://www.german-irish.ie/uploads/media/German_Irish_Brexit_Report_01.pdf> accessed 8 February 2017,

² Ralf Lissek, Dr. Brian Murphy & Dr. Volker Treier, 'Brexit-a view from the Chambers in December 2016' (2016) German- Irish Chamber of Industry and Commerce, <http://www.german-irish.ie/uploads/media/German_Irish_Brexit_Report_01.pdf> accessed 8 February 2017, p.24.

The economic analyses of a unified Ireland as an option are few on the ground. There was economic analysis of a united Ireland based on the economic modelling of German unification carried out in 2015 entitled 'Modelling Irish Unification'. This report is available in full in the online appendix to this section. However, it could now be considered to be out of date due to Brexit. In the analysis, one of the modelling scenarios in the report estimates a boost in the all island GDP of €35.6 billion over eight years with the North benefitting significantly.

Section 4 Summary

In light of Brexit and the challenges it poses for all sides in Ireland, the words of Attorney General Rory Brady (2002-2007) in the foreword to now High Court Justice Richard Humphreys' book 'Countdown to Unity' have never been more relevant.

"It is now for the political world to address when and how it will embrace those challenges and induce that change"³

"Unity may have been redefined by the new Articles 2 & 3 of the Constitution but it has remained as a constitutional imperative (obligation). The guarantee that violence will not be used to effect constitutional change is merely one commitment. In parallel to that and of equal importance is the duty to give effect to the firm will of the Irish Nation 'to unite all the people who share the territory of the Island of Ireland'"⁴

'Countdown to Unity' identifies how the objective of Unity might be put in place through legal and constitutional measures. This report will highlight briefly those legal, legislative and constitutional measures that can be taken to strengthen the case for unity as outlined by Humphreys.

Up until the Brexit vote on 23 June 2016 the concept of a United Ireland as outlined in Articles 2 and 3 of the Constitution for many would seem a distant aspiration. Brexit means that the best future for the citizens of Northern Ireland could well be remaining in the European Union in a reunified Ireland. This option must be explored and examined.

The challenge now is to lay out how to achieve the constitutional obligation of a united Ireland.

As John Bradley in his paper 'Toward an All Island Economy' presented at Queens University Belfast in 2014 pointed out, "the extreme importance of strategic economic planningpolicy errors or policy neglect seldom goes unpunished"⁵. As this is a truism of economic planning it is also critically important when it comes to the issue of planning for unification. The UN human development index ranks the Republic of Ireland as 8th in the world and ranks Northern Ireland at 44th.

³ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.Xiii.

⁴ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.X

⁵ John Bradley, 'Towards an All-Island Economy', (2016) < http://www.irish-association.org/papers/john_bradley.asp> accessed 2 February 2017.

However, aside from the New Ireland Forum, the Oireachtas Library and Research service in Leinster House could not find any current or historic reports produced by a parliamentary committee on how the state should achieve its main aim of a united Ireland.

As is pointed out in 'Countdown to Unity' published in 2009, seven years prior to the Brexit vote, Justice Humphreys stated there were a number of reasons why a debate and a policy are appropriate at this time.

In this section we look at High Court Justice Humphreys' reasons why, other than Brexit, the issue of unification should be looked at.

Firstly, the radically different context for the discussion on unity which exists now compared to any time over the last nine decades since partition. Secondly, the case for unity is now actively being made, with support for a United Ireland by 79 per cent in the South, along with, as Humphreys, states "increasing over all vote for the two nationalist parties in Northern Ireland",⁶ demonstrated by the Assembly results of 3 March 2017. Finally, as Justice Humphreys states himself:

"but in the end perhaps most compelling, reason for an examination of the implications of unity is the fact that the constitution itself, in article 3, inserted pursuant to the Good Friday Agreement, refers to unity as the 'firm will of the Irish Nation'".⁷

Specially commissioned research carried out by the Oireachtas Library and Research Service for this report outlines the positions of all the main political parties on the Island, North and South, on the issue of unification. It is republished within this section in full. Professor Sean D. McGraw of Notre Dame University in his submission for the Joint Committees Report outlines his research of Irish Parliamentarians attitudes towards a united Ireland.

Attorney General Brady states in the Foreword to High Court Justice Humphreys' book 'Countdown to Unity' that "While consent is a fundamental characteristic of change, Dr Humphreys makes it plain that it cannot be an excuse for political inertia"⁸. High Court Justice Humphreys discusses the issue of political status-quoism due to the concern that loyalist paramilitaries could be provoked and attempt to subvert the pursuit of the aim of the Irish people to peacefully achieve a united Ireland as provided for in

⁶ Richard Humphreys, Countdown to Unity: Debating Irish Reunification (Irish Academic Press, Dublin 2009) p.2.

⁷ Richard Humphreys, Countdown to Unity: Debating Irish Reunification (Irish Academic Press, Dublin 2009) p.X.

⁸ Richard Humphreys, Countdown to Unity: Debating Irish Reunification (Irish Academic Press, Dublin 2009) p.X.

the Good Friday Agreement. Senator Daly as rapporteur of this report requested White House, National Security Council, Senior Policy Advisor on counter terrorism in President Obama's administration, and the first US diplomat focused on countering violent extremism policy at the State Department Michael R. Ortiz to give a submission on how the threat of future loyalist paramilitary violence attempting to subvert a referendum and unification could be addressed. Anne Cadwallader of the Pat Finucane Center and author of 'Lethal Allies: British Collusion in Ireland' outlines the collusion of the past between the British Security forces and loyalist paramilitaries, and she makes recommendations on how such collusion could be prevented in the future as Ireland pursues unification.

Kevin Meagher, an advisor to the Secretary of State for Northern Ireland Shaun Woodward 2007-09, outlines in a submission to the Committee his view on the position that the British Government should adopt towards the future of Northern Ireland.

Expert in German unification, Professor Christian Tomuschat from Berlin University, made a submission to the Committee report. The United Nations report on the on-going progress in Cyprus reunification is also published in full. Professor Marcus Noland, former Senior Economist at the Council of Economic Advisers in the Executive Office of the President of the United States, is also a specialist on the issue of Korean unification and outlines some of the lessons for Ireland.

High Court Justice Humphreys in his book 'Countdown to Unity' states that "there is no one single pathway to unity – rather there are alternative, but perhaps related roadmaps to reunification"⁹

In this section the options by Justice Humphreys are outlined. These include Unitary State, Federal/Confederal, United Ireland with continuation of Northern Assembly under the Good Friday Agreement, Joint Authority, Joint Sovereignty, Independent Northern Ireland, Repartition, and Repatriation.

'Irish Man of the 20th Century' T K Whittaker stated in November 1968 in a 'Note on North-South Border Policy' the long-term nature of achieving a United Ireland:

⁹ Richard Humphreys, Countdown to Unity: Debating Irish Reunification (Irish Academic Press, Dublin 2009) p.205.

‘We were, therefore, left with only one choice, a policy of seeking unity in Ireland between Irishmen. Of its nature this is a long-term policy, requiring patience, understanding and forbearance and resolute resistance to emotionalism and opportunism. It is not the less patriotic for that’

T K Whittaker

‘Note on North-South Border Policy’

T. K. Whittaker ‘s transcript memorandum titled “A note on North South Border Policy” November 1968 is in the online appendix in full

5.0 Summary

In this section of the Report for the Joint Committee on the Implementation of the Good Friday Agreement we outline the infrastructure of the Good Friday Agreement. The agreement is included in full in the online appendix of this section.

Strand I: The Assembly and Executive with in Northern Ireland

Strand II: The North South Ministerial Council

Strand III: The British Irish Council

The report looks at some of the provisions of the Agreement that have still to be implemented, such as the Bill of Rights, Civic Forum, North South Consultative Forum and the Irish Language Act. We highlight that even with Ireland's membership since 2011 of the International Court of Justice, as Northern Ireland is not covered by the ICJ there are limited avenues to address breaches of the Good Friday Agreement by the British Government or any signatory. This flaw in the Agreement needs to be addressed.

High Court Justice Humphrey's book 'Countdown to Unity' looked at developing and expanding the architecture and infrastructure of the Good Friday Agreement and his analysis is included here. Justice Humphreys looks at the idea of an East-West Parliamentary Body and the Constitutionality or otherwise of it. The concept and again the constitutionality of a judicial branch of government resolving disputes of North-South and East-West Parliamentary Bodies is explored. Justice Humphreys also analyses the opportunity of a North-South Implementation Body, and the possible gains from East-West Administrative Bodies. An All Island Civic Forum to assist the North South structure is also explored. Finally, in this section High Court Justice Humphreys looks at the continuation of the infrastructure of the Good Friday Agreement "into the long term" and after a referendum for a united Ireland.

Section 6 Summary

High Court Justice Humphreys in his book 'Countdown to Unity' explains how the 'constitutional imperative', as outlined by Attorney General Brady (2002-2007), of Articles 2 and 3 of the Constitution can be achieved by the referendum provided for in Annex A Schedule 1 of the constitutional issues of the Good Friday Agreement.

Attorney General Brady (2002-07) goes on to explain the elements of the Good Friday Agreement and of accepting the Realpolitik of a divided island.

"A fundamental principal of the Good Friday Agreement is that it is a settlement based on the exercise of the right to self-determination by the people of the island of Ireland. The requirement that the right was to be exercised, concurrently, on both parts of the island by way of a separate referendum in each jurisdiction was recognition of the realpolitik of a divided island. The reconciliation of the tension between the right to self-determination and the reality of political life on the island of Ireland is to be found in the policy of consent."

10

In this section we look at Justice Humphreys' detailed analysis of the issue of consent, of 'dual consent', and the important difference between 'a' majority and 'the' majority as referred to over the decades by various British Governments. The challenges of a referendum being concurrent in the North and South, and how that could and should be interpreted, is considered in great detail by Justice Humphreys. The options open to the Irish Government in the event that the Secretary of State for Northern Ireland refuses to hold a referendum or hold a 'testing the water' referendum are explored by Justice Humphreys. The triggering of a referendum and its likelihood of being subject to a challenge by way of a referendum petition by unionists is also discussed. The issues surrounding voter fraud in a referendum are outlined. In the

¹⁰ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.xi.

event of the referendum being passed the necessity of its ratification by the Irish and British Governments is explained.

Finally, the research of the Library and Research Service of Leinster House and British House of Commons on the referendums in Quebec and Scotland, where support for separation from a larger political state could not be attained, and possible lessons for a referendum here are outlined briefly and the papers are available in full in the online appendix at the end of this section.

Section 7 Summary

High Court Justice Humphreys states:

“It is a matter of political judgement as to whether and to what extent to hold off all legal or constitutional change until after the achievement of the reunification of the island of Ireland.”¹¹

In this section of the report we highlight the analysis of High Court Justice Humphreys work in ‘Countdown to Unity’ on the constitutional, legal and other changes that could or should take place before or after unification. The ratification and the implementation process of the referendum result is outlined. The issue of the continuation of the Northern Assembly after a referendum under the Good Friday Agreement is analysed, as are some of the flaws of the Good Friday Agreement as seen by Justice Humphreys. Development of the institutional architecture of the Good Friday Agreement after a referendum is examined, as is North-South and East-West infrastructure. Three different options are outlined by Justice Humphreys as to how to deal with the issue of pre-existing Northern Ireland legislation in a post- referendum Ireland.

The replacement of pre-existing legislation with Britain, including the Act of Union, by a new comprehensive treaty is outlined by Justice Humphreys. Also outlined are the legal changes with the EU and the consequences for international treaties signed by Ireland and the UK.

The challenge of uniting people as explained by John Hume is chartered by Justice Humphreys with the necessity of confidence measure by the Irish side. These include broadening the constitutional definition of citizenship to include the British identity on the island, giving rights to vote and to run for elected office to citizens who choose a British identity as provided for in the Good Friday Agreement, and the need to remove the legal sectarianism of the British state, among which would be the Coronation Oath Act. Justice Humphreys’ findings of unionists’ views of representation for Northern Ireland politicians in the current Dáil Éireann are outlined. The merits of ‘Gesture Politics’ on issues such as the Irish Language, the National Flag and Anthem is considered not necessarily to be a bad thing, Humphreys argues, if the gesture can be shown to have achieved something. Dr Martin Manseragh has described an

¹¹ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.180.

approach whereby the traditions of both communities are accommodated as such: “we need not lessen our loyalties as we broaden our sympathies”.

In the online appendix to this section, we have included:

Union of Ireland Act 1800

Government of Ireland Act, 1920

Treaty of 1921

The Republic of Ireland Act, 1948

The Sunningdale Agreement 1973

New Ireland Forum Report 1984

Anglo-Irish Agreement 1985

Downing Street Declaration 1993

The Good Friday Agreement 1998



SECTION 1

1.0 Summary

The terms of reference for the Report for the Joint Committee on the Implementation of the Good Friday Agreement included an analysis of the impact of Brexit on Northern Ireland and what Ireland should seek to have in the final agreement between the EU and the UK regarding Northern Ireland. It is clear from all the reports written on the issue of Brexit that its effect on Northern Ireland will be significant. In February 2016 research commissioned by the UK Department of Enterprise, Trade and Investment on the economic implications of a UK exit from the EU showed that Northern Ireland is more vulnerable to Brexit than Britain. The loss to Northern Ireland of EU membership and funding will be significant, and the subsequent effect on the economy and the potential to destabilise the Peace Process is a central concern.

That is why the key recommendation of the report is if current EU funding programmes cannot be protected then the eligibility of Northern Ireland for receipt of EU Structural funds and other funding schemes and mechanisms must be clarified as a matter of urgency, to help underpin the peace process. Ireland believes that in relation to Brexit Northern Ireland is a special case and its Peace Process is worthy of on-going support from the EU and Britain.

For this research paper we have included information on some of the EU programmes that HM Treasury would have to continue funding. Member of the European Parliament Brian Crowley provided information in relation to the EU Funding programmes 2014 - 2020.

This report looks at the difficulties of predicting the impact of Brexit. To highlight this challenge, we reproduce the divergence of estimates by various organisations who tried to predict the impact of the World Trade Organisation rules being imposed on the UK. The difficulty of predicting the impact of Brexit on Northern Ireland is further compounded by the lack of reliable data and accurate statistics for Northern Ireland. Such a 'data deficit' needs to be addressed in order for the Irish Government to produce a coherent long-term policy in relation to Northern Ireland.

Congressman Brendan Boyle commissioned research from the United States House of Representatives Congressional Research Service specifically for this report for the Committee on the Implementation of the Good Friday Agreement. Congressman

Boyle's report outlines the data deficit for Northern Ireland, in particular the difficulty in accurately determining the actual income and the fiscal deficit in Northern Ireland. This report also commissioned research on the rationalisation of the large public sector in Northern Ireland and the findings of the Oireachtas Library and Research are included in the online appendix of this section. The Report on the All-Ireland Economy (Joint Oireachtas Committee on Jobs, Enterprise and Innovation compiled by Deputy Peadar Toibin TD) is reproduced in the online appendix of this section. We recommend that in light of Brexit a second report should be commissioned on the All Island Economy. We are conscious of the recent hearings and report by the Committee on Jobs, Enterprise and Innovation on Brexit. We have reproduced some sections of reports from the Nevin Economic Research Institute (NERI) and Oxford Economics which, despite the data deficit, have attempted to analyse and highlight the potential impact of Brexit on Northern Ireland.

One key concern of the Irish Government and the Irish people is the return of the border. It is feared that a 'Hard Brexit' will mean a 'Hard Border'. Again, the lack of accurate data is highlighted by the difficulty of determining how many people cross the border every day for work and study. Former Taoiseach Bertie Ahern has made a submission to the Committee on the return of the border between the North and the South.

Former Irish Ambassador to Canada Ray Bassett's submission on 'Irexit' is included. The solution to the problem of creating a border on the old partition lines between North and South is for the border to be in the Irish Sea between the island of Ireland and Britain as was the case from 1939 to 1952. This was highlighted in the House of Lords: European Union Committee report entitled 'Brexit: UK-Irish relations' which we quote and analyse. This report is available in full in the online appendix to this section. The issue around the common travel area is also examined.

The report looks at a neglected topic in the Brexit discussion, that being the effects on women. For this report we commissioned a research paper from the Library and Research Service of the House of the Oireachtas to give an overview of the responses to Brexit of the British and Irish Governments and the legislature in each jurisdiction. The Library and Research Service of the Oireachtas were also commissioned to provide an updated report on The Good Friday Agreement, the Peace Process and the Institutions; the report provides a background on a range of issues which feature a specific cross-border dimension. The theme of the paper was 'the Impact of Brexit on Cross border activities'.

In compiling this section of the report we reproduced the findings of the Library & Research Service of the Houses of the Oireachtas.

The briefing paper provided information on a range of topics;

Policing and Justice
Business and Trade
Labour Market and Skills Tourism
Health
Finance and Funding
Agriculture
Energy and Environment
Education

The paper looked at the impact which Brexit may have on these and other issues across Ireland. The range of impact on Ireland, both North and South, cannot properly be assessed until such time as the terms of the withdrawal agreement from the EU are known. Therefore it should be noted that the list of issues discussed here is not exhaustive.

1.1 RECOMMENDATIONS

The Irish government must negotiate for Northern Ireland to be designated with special status within the EU and for the whole island of Ireland to have a unique solution as part of the Brexit negotiation.

If current EU funding programmes cannot be protected then the eligibility of Northern Ireland for receipt of EU Structural funds and other funding schemes and mechanisms must be clarified as a matter of urgency, to help underpin the peace process.

The Report on the All-Ireland Economy: compiled in 2016 by Peadar Tóibín TD for the Joint Oireachtas Committee on Jobs, Enterprise and Innovation in the light of Brexit should be updated.

Any passport controls between Ireland and the UK should be along the same basis as for people traveling between these islands from 1939 to 1952. There should not be a return to passport controls on the borders between the North and South of Ireland.

Given the likely impact on certain categories, including women, in border counties and employment in these areas there is a need for impact analysis on these sectors of society

Further research into the income and expenditure for Northern Ireland should be carried out.

1.2 Calculating what the HM Treasury would need to contribute to continue EU programmes and funding to Northern Ireland

To calculate what HM Treasury would need to contribute to continue EU programmes and Funds to Northern Ireland we republished a section from the Nevin Economic Research Institute (NERI) paper on 'The Economic Implication of Brexit for Northern Ireland'. The report looks at a number of issues including Northern Ireland's 'notional EU contribution', that is, as a stand-alone state how much would Northern Ireland contribute to the EU budget. This figure is clearly hypothetical. What Northern Ireland receives is difficult to determine due to the multi annual, regional and transnational nature of funding. Brian Crowley MEP provided information in relation to the EU Funding elements of this report.

1.3 Brexit and EU funding in Northern Ireland

"Much of the debate on BREXIT at the national level in the UK has focused on how much the country would lose or gain financially from either decision. Once again it is not possible to be definitive on this matter. The ambiguity arises in attempting to calculate what Northern Ireland's notional 'EU contribution' is and matching that against what it actually receives. A further ambiguity arrives in deciding how much the UK Treasury will benefit from no longer being a member of the EU because most post- BREXIT scenarios posit some form of close relationship with the single market, and that relationship is not without cost. It is possible to ascertain how much the UK government pays to the EU each year and to work out a notional 'Northern Ireland Contribution' from that. In 2015 the UK paid £17.6bn to the EU, however this was automatically reduced by £4.9bn which is the rebate which the UK has negotiated since 1985, bringing its total contribution down to £12.9bn. This is up from the £8.7bn paid in 2009 and it is forecast to rise to £15.2bn by 2020. Using Northern Ireland's share of UK population it is possible to calculate a hypothetical Northern Ireland total contribution of £366m (2.9 per cent of the total figure.)"¹

¹ Paul MacFlynn, 'The Economic Implications of BREXIT for Northern Ireland' (2016) Nevin Economic Research Institute, <https://www.nerinstitute.net/download/pdf/brexit_wp_250416.pdf> accessed 9 February 2017, p.26.

“However Northern Ireland’s hypothetical contribution could also be more accurately calculated. There is no particular reason to use a population based percentage to account for Northern Ireland’s share. Given that the contributions to the EU are funded through revenue raised by the UK exchequer it may be more accurate to calculate Northern Ireland’s contribution on the basis of its share of UK tax revenues. The Net Fiscal Balance report produced by the Department of 27 Finance and Personnel estimates that Northern Ireland produces 2.5 per cent of the UK’s tax revenue meaning that NI’s hypothetical contribution could be as low as £322.5m. It could be even lower if the HMRC Disaggregated Receipts figure of 2.1 per cent is used which would bring Northern Ireland’s contribution to as low as £270.9m. Treasury figures estimate that UK public sector institution received approximately £4.4bn back from the EU which was then disbursed to the private sector. This leaves the UK’s net contribution at £8.5bn in 2015. This does not count EU money paid directly to the private sector which was thought to be in the region of £1.3bn in 2013. If we take a simple population based Northern Ireland estimate for public sector receipts from the EU then Northern Ireland technically received only £124.9m in EU funds in 2015. However, this introduces another problem with using population based estimates, because it is also possible to examine the individual EU funds that are paid into Northern Ireland each year. Looking only at the Common Agriculture Fund, the Common Fisheries Fund and the Investment for Growth and Jobs Initiative, Northern Ireland received £320m in 2015 (DFP, 2016), £200m more than the population based estimate. Special EU funds such as the PEACE IV initiative and the INTERREG fund could add another £50m annually, but these funds are set to be phased out after 2020. In the next five years Northern Ireland would on conservative estimates only ‘break even’ in the event of a BREXIT.

“All of the above discussion is clearly hypothetical. The information on what Northern Ireland receives is more complete, but even if there were an agreed figure on what Northern Ireland contributes, this sum of money may not return to Northern Ireland in its entirety in the event of a BREXIT. This money is in the gift of the Treasury and part of it may need to be spent on establishing a trade relationship with the EU. Norway is currently a member of European Economic Area which keeps

it outside the EU but which grants it access to the Single Market. Norway has agreed to pay on average €866m or roughly £680m annually for the period 2014- 20212. Norway has a GDP per capita roughly 1.6 times that of the UK so adjusting for the size of the economy as a whole (rather than on population measures), the UK would pay roughly £4.97bn for the same arrangement. This would amount to nearly one third of the UK's existing total EU contribution and would significantly reduce any net gain for Northern Ireland. However if the UK decides only to apply for entry to the European Free Trade Area, this payment would significantly reduce, but this would leave Northern Ireland with no access to the Single Market.

“Depending on exactly how Northern Ireland's contribution is calculated it would fair to suggest that the best Northern Ireland could hope for would be to break even in the event of a BREXIT. It would also be fair to say that there are a range of more negative outcomes for Northern Ireland which are not beyond the bounds of reasonable expectation.”²

² Paul MacFlynn, 'The Economic Implications of BREXIT for Northern Ireland' (2016) Nevin Economic Research Institute, <https://www.nerinstitute.net/download/pdf/brexit_wp_250416.pdf> accessed 9 February 2017, p.26,27,28.

“The theoretical question of the Northern Ireland contribution to the EU through the UK annual contribution and a subsequent financial benefit from ending those contributions is a moot one. The deficit in Northern Ireland is such that any theoretical contribution is in fact made with money borrowed from central government. The Northern Ireland deficit (confining the spending definition rather generously as identifiable spending under the block DEL grants plus Annual Managed Expenditure) is 15% of GVA versus a UK budget deficit of 3.4% (in 2016). Given the UK Treasury intends to have a surplus in the next parliament, along with the potential for a large final exit bill and the threat to tax revenues, should Brexit cause an economic slowdown any benefit from ending the UK contributions to the EU is likely to be small if at all and for Northern Ireland will be irrelevant. Therefore, for Northern Ireland to be net neutral after Brexit the UK government will have to sponsor all current EU programmes. Furthermore, it will need to have financial support ready to cushion the blow from the loss of major export markets if Brexit results in the UK leaving the Customs Union thereby subjecting sectors such as agriculture and fisheries to the standard EU external tariffs.”

³ John Teahan, ‘Northern Ireland and EU Funding versus EU Contribution’ (2017) Submission for this report.

1.4 EU funded programmes within Northern Ireland 2014-2020

MEP Brian Crowley provided the following information for the Report by the Joint Committee on the Implementation of the Good Friday Agreement which outlines some of the EU funding programmes within Northern Ireland 2014-2020.

EU funding programmes within Northern Ireland 2014-2020:

The main EU funding programmes for NI for 2014-2020 are:	Budget for each programme	
2014 - 2020 ERDF Investment for Growth & Jobs Programme for Northern Ireland	€308 million	This programme aims to promote investment in the development of a knowledge-based, innovative and business-friendly region with a highly skilled workforce supporting a high quality of life
2014 - 2020 ESF Investment for Growth & Jobs Programme for Northern Ireland	€206 million	The European Social Fund Programme will contribute to reducing the productivity gap in Northern Ireland by helping to reduce the level of economic inactivity and increasing workforce skills
PEACE IV Programme	€229 million	The PEACE IV Programme's goal is to reinforce progress towards a peaceful and stable society and to promote reconciliation in Northern Ireland and the border regions, by supporting projects that bring communities together
INTERREG VA Programme	€204 million	Northern Ireland including Belfast, the border counties of Ireland and parts of western Scotland and Western Scottish Island will benefit from a seven-year cross-border INTERREG programme. The programme will focus on developing a dynamic economy, supporting infrastructure and promoting innovative ways of addressing specific cross-border problems
Northern Ireland Rural Development Programme 2014-20	€623 million	This programme aims to boost the competitiveness of agriculture and forestry, improve the environment and countryside and improve the quality of life in rural areas. European Fisheries Fund The European Fisheries Fund (EFF) will continue to provide support for the fisheries sector, including adaptation of the fleet, processing and marketing of fishery products and the development of sustainable fisheries; however, the priorities of the programmes have not as yet been agreed

Table 1

Continued ..

The North West Europe Programme 2014-20 (Competitive)	€396 million	INTERREG North-West Europe (NWE) is a European Territorial Cooperation Programme funded by the European Commission with the ambition to make the North-West Europe area a key economic player and an attractive place to work and live, with high levels of innovation, sustainability and cohesion
The Northern Periphery and Arctic Programme 2014-20 (Competitive)	€56 million	The programme aims to help peripheral and remote communities on the northern margins of Europe to develop their economic, social and environmental potential. The success of the programme will be built on joint projects creating innovative products and services for the benefit of the programme partner countries and Europe as a whole
The Atlantic Area Programme 2014-20 (Competitive)	€140 million	The current aim of the Atlantic Area Programme is to achieve significant and tangible progress in transnational cooperation geared towards cohesive, sustainable and balanced territorial development of the Atlantic Area and its maritime heritage
Horizon 2020 (Competitive)	€80 billion	Horizon 2020 is the main EU research and innovation programme with €80 billion of funding is available over seven years (2014 to 2020) – in addition to the private and national public investment that this money will attract. The goal is to ensure Europe produces world-class science and technology, removes barriers to innovation and makes it easier for the public and private sectors to work together in delivering solutions to big challenges facing our society
Competitiveness and Innovation Framework Programme (Competitive)	€2.5 billion	The Competitiveness and Innovation Framework Programme (CIP) aims to encourage the competitiveness of European enterprises. With small and medium-sized enterprises as its main target, the programme will support innovation activities, provide better access to finance and deliver business support services in the regions. It will encourage a better take-up and use of information and communications technologies and help to develop the information society.

Table 2

EU funds broken down by UK region

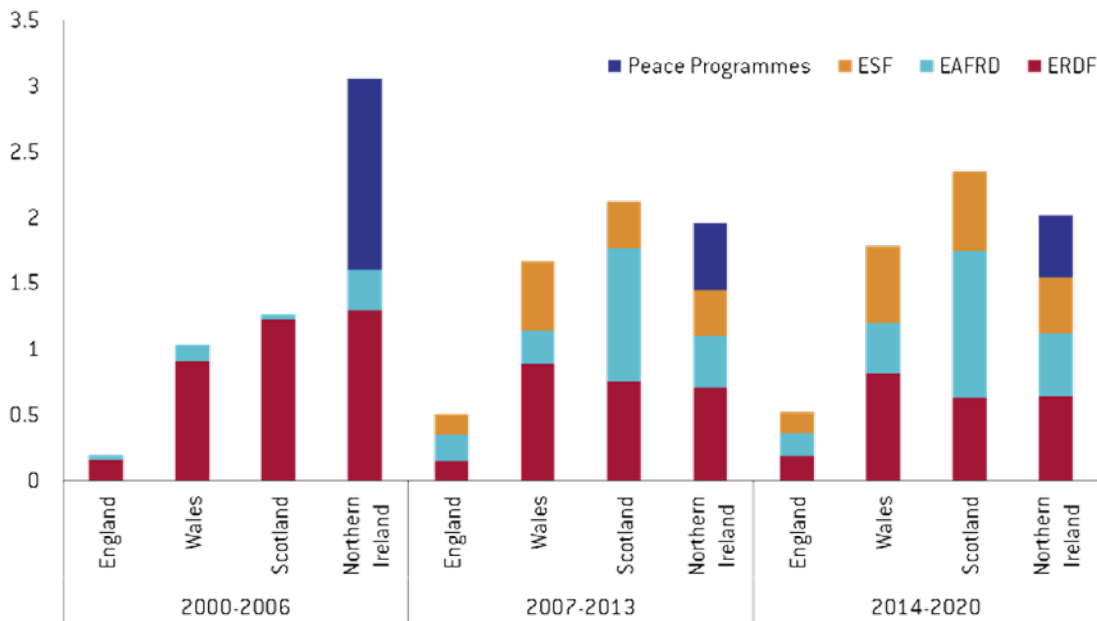


Table 3

1.5 Difficulty in predicting the impact of Brexit

The difficulty with predicting the economic impact on Northern Ireland of Brexit can be seen in the example shown in a research paper in November 2016 by the Economic and Social Research Institute, 'Modelling the Medium to Long Term Potential Macroeconomic Impact of Brexit on Ireland'.

This research paper tabulated the various results by International Institutions for the UK's GDP as a result of Brexit and showed wide divergences of predicted outcomes in the event of the World Trade Organisation rules being imposed. The inability of such institutions to predict the impact of Brexit on the UK is even more pronounced for Northern Ireland, given the low volume of information and quality of data available for Northern Ireland. Hence any kind of rigorous analysis and/or prediction is especially challenging. The case of the impact of Brexit on Northern Ireland by the incomplete data is set out in the next section.

Prior to the referendum, a number of UK and International agencies attempted to model scenarios on the economic consequences of the UK voting to leave the EU. These include the UK Treasury, the UK National Institute of Economic and Social Research (NIESR), the European Commission (EC), the Organisation for Economic Cooperation and Development (OECD), the International Monetary Fund (IMF), the Centre for Economic Performance at the London School of Economics (LSE-CEP), Oxford Economics, PWC, and the Bertelsmann Foundation."⁴

⁴ Adele Bergin, Abian Garcia-Rodriguez, Niall McInerney, Edgar Morgenroth and Donal Smith, 'Modelling the Medium to Long Term Potential Macroeconomic Impact of Brexit on Ireland' (2016) Economic and Social Research Institute, <<https://www.esri.ie/pubs/WP548.pdf>> accessed 9 February 2017, p.4.

Table 1: UK and International Institutions Scenario impacts of a vote to leave the EU on the UK

Study	Scenario	GDP % change relative to base
NIESR	WTO (short-term)	-2.3%
HM Treasury	(short-term)	-3.6%
OECD	(short-term)	-3.3%
IMF	Downside (short-term)	-0.9%
European Commission	Mild (short-term)	-1.0%
	Severe (short-term)	-2.7%
NIESR	EEA	-1.8%
	FTA	-2.1%
	WTO	-3.2%
	WTO+	-7.8%
HM Treasury	EEA	-3.8%
	FTA	-6.2%
	WTO	-7.5%
OECD	WTO/FTA	-2.7%
		-5.1%
		-7.7%
LSE/CEP	EEA/FTA	-7.9%
PWC	FTA	-3.0%
	WTO	-5.5%
Oxford Economics	Liberal Customs Union	-0.1%
	FTA	-2.8%
	WTO	-3.9%
Bertelsmann Foundation	EEA	-0.6%
	WTO	-3.0%

Table 4

1.6 Lack of reliable economic data; a challenge and concern

“The contributions of the 5 political representatives illustrated how very difficult it is for them to agree any economic facts or strategies in Northern Ireland. Where everything is disputed or contested, no progress can be made.”

John Bradley speaking on the theme of ‘Towards an All-Ireland Economy: the business opportunities and political obstacles’ at the Irish Association conference at Queens University Belfast in 2014.

5

With this quote Bradley pointed out that in the constantly contested politics of Northern Ireland where even the economic facts are disputed, this lack of reliable economic data helps to fuel dispute and, in the case of Brexit, gives a poor basis on which to plan a response. As Bradley also points out “policy errors or policy neglect seldom goes unpunished”.⁶ In his opinion, policy decisions are based on the data and the facts available. To that end if the economic facts are unreliable or disputed then the likelihood of policy errors increase. This is a very concerning backdrop to the prospect of Brexit as it provides a very poor basis on which to plan a response.

United States Congressman Brendan Boyle commissioned research from the Congressional Research Office to assist in the compilation of this Report for the Joint Committee for the Implementation of the Good Friday Agreement. It demonstrated the very different figures being portrayed for Northern Ireland’s deficit and the unreliable way its income and tax take is calculated.

Even data such as the numbers who cross the border every day to work and study is disputed. The last census results in 2011 stated it was 14,751. However, the joint research paper by the Research and Information Service of the Northern Ireland Assembly and the Library and Research Service of the Houses of the Oireachtas for the North/South Inter-Parliamentary Association quoted that “23,000 to 30,000 people are cross-border workers”, an estimate which came from the Centre for Cross Border Studies. The British Irish Chamber of Commerce has also quoted a figure of 30,000 a day commuting across the border. The research by the Oireachtas Library and Research Service showed that 5,722 people a day travel between Ireland and the UK every day.

⁵ John Bradley, ‘Towards an All-Island Economy’, (2016) < http://www.irish-association.org/papers/john_bradley.asp> accessed 9 February 2017.

⁶ John Bradley, ‘Towards an All-Island Economy’, (2016) < http://www.irish-association.org/papers/john_bradley.asp> accessed 9 February 2017.

The Nevin Economic Research Institute (NERI) produced a working paper prior to Brexit in April 2016 entitled 'The Economic Implications of Brexit for Northern Ireland'. Time and again the report refers to the lack of accurate figures and incomplete data sets. This is of concern to any policy maker trying to make policy decisions and economic plans. Without a full set of the current economic facts it is very problematic to arrive at correct decisions, especially when incorrect decisions can come at such a high political price.

1.6.1 Northern Ireland incomplete data

In April 2016 The Nevin Economic Research Institute (NERI) produced a working paper entitled 'The Economic Implications of Brexit for Northern Ireland'. The reference to "lack of figures", "patchy figure", and "in-complete data sets" are of concern as stated earlier.

Brexit and Northern Ireland Trade - Northern Ireland incomplete data

The existing dataset for Northern Ireland's trade is somewhat incomplete. For tradeable goods there are reliable statistics from Her Majesty's Revenue and Customs. The figures on service exports are less conclusive. The new Broad Economy Sales and Exports Survey (NISRA, 2015) estimates that total exports (goods and services) from Northern Ireland in 2014 were £9.7 billion. Of this, 60 per cent is accounted for by goods and services in the Manufacturing sector. Overall 56 per cent of goods and services exports go to the EU and two thirds of all EU exports are bound for the Republic of Ireland. Table 1.1 shows the broad outline of industries by exports and their destination; however figures for the EU and the rest of the world are patchy in areas.⁷

Northern Ireland incomplete data: services

"Looking at Service sector exports, the statistics are still quite primitive in Northern Ireland. The latest estimates for Northern Ireland indicate that total exports of goods and services were in the region of £9.7bn in 2014. HMRC figures for goods exports in 2014 account for £6bn of this figure. This leaves a gap of £3.7bn from the BESES data."⁸

⁷ Paul MacFlynn, 'The Economic Implications of BREXIT for Northern Ireland' (2016) Nevin Economic Research Institute, <https://www.nerinstitute.net/download/pdf/brexit_wp_250416.pdf> accessed 9 February 2017, p.5,6.

⁸ Paul MacFlynn, 'The Economic Implications of BREXIT for Northern Ireland' (2016) Nevin Economic Research Institute, <https://www.nerinstitute.net/download/pdf/brexit_wp_250416.pdf> accessed 9 February 2017, p.12.

Northern Ireland incomplete data: services

“Previous research has identified that EU membership enhances the trade volumes across many sectors but in particular the areas of agriculture, textiles, trade services and transport equipment (Nahuis, 2004). The dearth of data on services exports exposes a key challenge in estimating the impact of a BREXIT on the Northern Ireland economy”⁹

Northern Ireland incomplete data: manufacturing

“Unfortunately the data at present don’t provide a breakdown of manufacturing subsector exports by destination.”¹⁰

Northern Ireland incomplete data: retail

“Retail jobs are spread across Northern Ireland, with South Belfast containing the largest proportion of Northern Ireland Retail sector employment. Unfortunately the data at present do not show where Retail businesses with large external sales are located within Northern Ireland, but Figure 18 gives some idea as to where the impacts of any possible disruption to jobs may be felt. Newry & Armagh and Fermanagh & South Tyrone Could face a disproportionate hit as they are border constituencies.”¹¹

Northern Ireland incomplete data: tourism

“Statistics indicate that 9 per cent of overnight visitors were from the Republic of Ireland but there are no indications of where the remaining 13 per cent of tourists originated from.”¹²

⁹ Paul MacFlynn, ‘The Economic Implications of BREXIT for Northern Ireland’ (2016) Nevin Economic Research Institute, <https://www.nerinstitute.net/download/pdf/brexit_wp_250416.pdf> accessed 9 February 2017, p.14.

¹⁰ Paul MacFlynn, ‘The Economic Implications of BREXIT for Northern Ireland’ (2016) Nevin Economic Research Institute, <https://www.nerinstitute.net/download/pdf/brexit_wp_250416.pdf> accessed 9 February 2017, p.20.

¹¹ Paul MacFlynn, ‘The Economic Implications of BREXIT for Northern Ireland’ (2016) Nevin Economic Research Institute, <https://www.nerinstitute.net/download/pdf/brexit_wp_250416.pdf> accessed 9 February 2017, p.23.

¹² Paul MacFlynn, ‘The Economic Implications of BREXIT for Northern Ireland’ (2016) Nevin Economic Research Institute, <https://www.nerinstitute.net/download/pdf/brexit_wp_250416.pdf> accessed 9 February 2017, p.24.

Northern Ireland incomplete data: Brexit and EU Funding in Northern Ireland

“Much of the debate on BREXIT at the national level in the UK has focused on how much the country would lose or gain financially from either decision. Once again it is not possible to be definitive on this matter. The ambiguity arises in attempting to calculate what Northern Ireland’s notional ‘EU contribution’ is and matching that against what it actually receives. A further ambiguity arrives in deciding how much the UK Treasury will benefit from no longer being a member of the EU because most post- BREXIT scenarios posit some form of close relationship with the single market, and that relationship is not without cost.”¹³

¹³ Paul MacFlynn, ‘The Economic Implications of BREXIT for Northern Ireland’ (2016) Nevin Economic Research Institute, <https://www.nerinstitute.net/download/pdf/brexit_wp_250416.pdf> accessed 9 February 2017, p.26.

1.7 United States of America, Congressional Research Office report commissioned by Congressman Brendan Boyle's office

Northern Ireland's Deficit

United States Congressman Brendan Boyle specifically commissioned a report for the Committee on the Implementation of the Good Friday Agreement from the United States House of Representatives Congressional Research Office regarding the deficit in Northern Ireland. The finding of the United States Congressional Research Office highlights the difficulty in getting the accurate figure in relation to the often quoted subvention for the British Treasurer to make up the difference in the Northern Ireland economy income and expenditure.

The British Treasury has stated the deficit for the Northern Ireland economy is £9.1 billion. This is compared to the deficit of £5.1 billion as highlighted by Congressman Boyle's report which removes the allocation of billions of pounds sterling of global British military spending, UK debt repayment, and other Non-Identifiable Expenditure allocated to Northern Ireland's expenditure.

Congressman Boyle's office also highlighted that as well as no accurate figure for expenditure in Northern Ireland, there is also no accurate figure for income raised in Northern Ireland. There is no entirely accurate figure for a wide range of taxes collected in Northern Ireland including Corporations Tax. There are figures apportioned to Northern Ireland based on formulas of HM Revenue. Northern Ireland's share of Corporations Tax is taken to be its share of profits of all public and private corporations in the UK. The Capital Gains tax figure is apportioned to Northern Ireland according to Northern Ireland's share of UK GAV (NI Net Fiscal Balance Report 2015).

The need for accurate and reliable data on which to base a response to Brexit becomes obvious.

1.7.1 Congressional Report on Northern Ireland's Income & Expenditure



MEMORANDUM

December 20, 2016

To: Rep. Brendan Boyle
Attention: Carly Frame

From: Kristin Archick, Specialist in European Affairs (x7-2668, karchick@crs.loc.gov)
Foreign Affairs, Defense, and Trade Division

Subject: Northern Ireland Budgetary Issues

This memorandum responds to your request for information on Northern Ireland budgetary issues. Material in this memorandum may be used in other CRS products. For additional background, see CRS Report RS21333, *Northern Ireland: The Peace Process*.

Background: Northern Ireland's Political and Economic Situation

Northern Ireland (along with England, Scotland, and Wales) is one of the four component “nations” that make up the United Kingdom (UK). Between 1969 and 1999, almost 3,500 people died as a result of political violence in Northern Ireland. The conflict, which has its origins in the 1921 division of Ireland and is often referred to as “the Troubles,” has reflected a struggle between different national, cultural, and religious identities. Protestants in Northern Ireland (48%) largely define themselves as British and support remaining part of the UK (*unionists*). Catholics in Northern Ireland (45%) consider themselves Irish, and many Catholics desire a united Ireland (*nationalists*).

Despite many ups and downs, Northern Ireland has made considerable political and economic progress since the 1998 peace agreement (the so-called Good Friday Agreement) providing for a devolved government in which unionist and nationalist parties share power. Nevertheless, challenges remain in Northern Ireland's search for peace and reconciliation. These include ongoing tensions and sectarian strife between the unionist and nationalist communities, lingering concerns about paramilitary and dissident activity, fully grappling with Northern Ireland's legacy of violence (often termed “dealing with the past”), and promoting further economic development.

Improving Northern Ireland's economic situation has long been viewed as crucial to underpinning the peace process. Northern Ireland's economy has made significant advances since the 1990s. Between 1997 and 2007, Northern Ireland's economy grew an average of 5.6% annually (marginally above the UK average of 5.4%). Unemployment decreased from over 17% in the late 1980s to 4.3% by 2007. Like elsewhere in the UK and Europe, however, Northern Ireland was negatively affected by the 2008-2009 global recession. Northern Ireland's economic recovery has been slow and growth has largely lagged behind that of the UK as a whole. In the four quarters ending June 2016, Northern Ireland's Gross Domestic Product (GDP) grew by approximately 1.3%, as compared to 1.9% for the UK as a whole.¹

¹ Northern Ireland Statistics and Research Agency, *Northern Ireland Composite Economic Index Quarter 2 2016*, October 2016, (continued...)

Unemployment in Northern Ireland is currently 5.7%, higher than in the UK (4.8%) but considerably lower than in the Republic of Ireland (7.9%) and the European Union (8.5%).²

Northern Ireland has also made strides in promoting equality in its workforce. The gap in economic activity rates between Protestants and Catholics has shrunk considerably since 1992 (when there was an 11 percentage point difference) and has largely converged in recent years (in 2014, the economic activity rates of Protestants and Catholics were 72% and 71% respectively). In addition, the percentage point gap in unemployment rates between the two communities has decreased from 9% in 1992 to 2% in 2014.³

At the same time, income levels and living standards in Northern Ireland remain below the UK average. Of the UK's 12 economic regions, Northern Ireland had the second-lowest Gross Value Added (GVA) per capita in 2015 (£18,584), considerably below the UK's average (£25,351).⁴ Northern Ireland also has both a high rate of economic inactivity (27%) and a high proportion of working-age individuals with no qualifications. Studies indicate that the historically poorest areas in Northern Ireland (many of which bore the brunt of "the Troubles") remain so, and that many of the areas considered to be the most deprived are predominantly Catholic.⁵

To improve Northern Ireland's economic recovery and strengthen its long-term performance, Northern Ireland leaders are seeking to promote export-led growth, decrease Northern Ireland's economic dependency on the public sector by growing the private sector, and attract more foreign direct investment. Reducing Northern Ireland's economic dependency on the public sector (which accounts for about 70% of the region's gross domestic product and employs roughly 30% of its workforce) and devolving powers over corporation tax from London to Belfast to help increase foreign investment were key issues addressed in wide-ranging cross-party negotiations in 2014 and 2015. The November 2015 Fresh Start Agreement sets April 2018 as the target date for introducing a devolved corporate tax rate of 12.5% in Northern Ireland (the same rate as in the Republic of Ireland).

Many analysts are concerned that the UK's June 2016 vote in favor of leaving the European Union (dubbed "Brexit") could have significant economic repercussions for Northern Ireland, given that it shares a land border with the Republic of Ireland and an interdependent economic relationship, with extensive cross-border trade, integrated labor markets, and many industries that operate on an all-island basis. According to a recent UK parliamentary report, Northern Ireland depends more on the EU market (and especially that of the Republic of Ireland) for its exports than the rest of the UK. Approximately 52% of Northern Ireland exports go to the EU, including 38% to the Republic of Ireland.⁶ Some experts also note that access to the EU single market has been one reason for Northern Ireland's success in attracting foreign direct investment, and they express concern that Brexit could deter future investment.

Prior to the UK referendum, projections estimated Northern Ireland's economy would grow by 1.7% in 2017; following the UK's decision to leave the EU, forecasts predict a slowdown in Northern Ireland's

(...continued)

p. 7, https://www.economy-ni.gov.uk/sites/default/files/publications/economy/Ni-Composite-Economic-Index-Statistical-Bulletin-Q2-2016_0.pdf.

² Northern Ireland Statistics and Research Agency, *Northern Ireland Labour Market Report*, December 2016, <https://www.economy-ni.gov.uk/sites/default/files/publications/economy/labour-market-report-december-2016.PDF>.

³ Office of the First Minister and Deputy First Minister, *Labour Force Survey Religion Report 2014*, February 2016.

⁴ GVA is similar, albeit not exactly equivalent, to Gross Domestic Product (GDP); the UK government uses GVA as the measure to compare regional economic performance. House of Commons Library Briefing Paper, *Regional and Local Economic Growth Statistics*, December 16, 2016, p. 7, <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN05795>.

⁵ Northern Ireland Statistics and Research Agency, *Northern Ireland Multiple Deprivation Measure 2010 Report*, May 2010.

⁶ Report of the UK House of Lords European Union Committee, *Brexit: UK-Irish Relations*, December 2016, <http://www.parliament.uk/brexit-uk-irish-relations>.

economy, with one study suggesting that it could grow by only 0.2% in 2017 (primarily because of economic uncertainty and a decline in business investment).⁷ An Oxford Economics model of Brexit's potential impact predicts a net loss in economic output for Northern Ireland by 2030 in the range of 0.1% to 5.6% (depending on different scenarios for future UK-EU relations). Post-Brexit, Northern Ireland also stands to lose EU regional funding (roughly \$1.3 billion between 2014 and 2020) and agricultural aid (direct EU farm subsidies to Northern Ireland are nearly \$375 million annually).⁸

UK Secretary of State for Northern Ireland James Brokenshire asserts that the government is determined to safeguard the whole UK economy, including Northern Ireland, following the Brexit decision. UK officials hope to ensure that Brexit does not adversely affect the investment climate in Northern Ireland and note that the government has sought to engage with the business community there “to make a success of Brexit.”⁹ Some UK and Northern Ireland officials, including Northern Ireland First Minister Arlene Foster, maintain that despite Brexit, Northern Ireland will continue to trade with the EU (including Ireland). They also contend that Brexit offers new economic opportunities for Northern Ireland outside the EU. First Minister Foster recently asserted that “the economic and social benefits for us in Northern Ireland from the UK are far more important than our relationship with the EU,” and “we will work with whomever we need to for the best deal for Northern Ireland at home and abroad.”¹⁰

Northern Ireland Public Finances

Responsibility for fiscal policy, macroeconomic policy, and funding allocation across the United Kingdom remains with the UK Treasury. Spending by the UK's devolved governments (Scotland, Wales, and Northern Ireland) falls within a UK-wide system of public expenditure control and budgeting guidance. The devolved administration's budgets are normally determined within UK comprehensive spending reviews alongside the budgets for UK government departments. Each devolved administration has fiscal responsibilities and freedoms to match its executive and legislative powers within the terms of its individual devolution agreement.

Northern Ireland's Budget¹¹

The vast majority of funding available to Northern Ireland's devolved government comes from the UK government (from general taxation across the UK); a small portion of Northern Ireland funding comes from regional tax rates and borrowing. UK government funding falls into two broad categories:

- Block grant funding, also known as Departmental Expenditure Limits (DEL). The DELs are the amounts that government departments have been allocated to spend, usually in spending reviews, and are firm spending limits set for up to four years. DELs are spent on

⁷ Northern Ireland Department of Enterprise, Trade, and Investment, *Economic Commentary*, March 2016; John Campbell, “PwC Forecasts Slowdown in Northern Ireland Economy After Brexit Result,” BBC News, July 19, 2016.

⁸ House of Commons Library Briefing Paper, *Brexit: Impact Across Policy Areas*, August 26, 2016, <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-7213#fullreport>.

⁹ UK Government Press Release, “Brokenshire Holds Inaugural Meeting of Northern Ireland Business Advisory Group,” September 1, 2016.

¹⁰ Arlene Foster, “The UK Joined Europe as One Nation, and That's How We'll Leave,” *The Guardian*, October 28, 2016.

¹¹ Information in this section is drawn from: HM Treasury, *Statement of Funding Policy: Funding the Scottish Parliament, National Assembly for Wales and Northern Ireland Assembly*, November 2015, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/479717/statement_of_funding_2015_print.pdf; House of Commons Library Briefing Paper, *The Barnett Formula*, April 13, 2016, <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-7386>; and Northern Ireland Executive, *Budget 2016-2017*, January 2016, <https://www.northernireland.gov.uk/sites/default/files/publications/nigov/2016-17-budget-document.pdf>.

the running of services and the everyday costs of resources such as staff. In 2016-2017, Northern Ireland's DEL funding is £10.9 billion (\$13.6 billion).

- Annually Managed Expenditure (AME) funding. AME is spending on demand-led areas (such as welfare, tax credit, or public sector pensions) that is difficult to control and cannot be constrained within firm multi-year limits. In 2016-2017, Northern Ireland's AME funding is £8.8 billion (\$11 billion).

Changes in block grant DEL funding to the devolved administrations are generally calculated by applying the Barnett Formula, which seeks to ensure that when there is a change in funding levels for services in England, then there is the same pounds-per-person change in funding in Northern Ireland, Scotland, and Wales. For example, if the funding for education in England increases by the equivalent of £100 per person, the devolved administrations' block grants will increase by £100 per person.

Under the Barnett Formula, Northern Ireland receives a population-based proportion of changes in planned UK government spending on comparable services provided by the devolved administration:

$$\text{Change in a UK government department's budget} \quad \times \quad \text{Comparability percentage} \quad \times \quad \text{Appropriate population proportion}$$

For Northern Ireland, changes determined by the Barnett Formula are then reduced by 2.5% because Northern Ireland's devolved government does not require provision to meet value-added tax (VAT) expenditure; unlike in the rest of the UK, any VAT paid is refunded by HM Revenue and Customs.

Northern Ireland and the other devolved administrations can spend the Barnett Formula-determined DEL block grant as they wish. For example, if block grants increase because education spending has increased in England, the devolved governments do not necessarily have to spend the additional money on education. AME spending is largely outside of the control of the devolved governments.

Northern Ireland's Fiscal Balance

In October 2015, Northern Ireland's Department of Finance released its *Net Fiscal Balance Report 2012-2013 and 2013-2014*, with estimates of Northern Ireland's public expenditure, revenue, and deficit.¹²

Category	2012-2013 (£ billions)	2013-2014 (£ billions)
Total Managed Expenditure	24.3	24.1
Identifiable	19.8	20.1
Non-identifiable	2.9	2.9
Accounting Adjustments	1.6	1.1
Revenue	14.8	14.9
Deficit	9.5	9.2

In 2012-2013, Total Managed Expenditure (TME)—or total public sector expenditure in Northern Ireland—was estimated to be 3.4% of the equivalent UK total; in 2013-2014, TME was roughly equivalent to 3.3% of the UK total. For both time periods, Northern Ireland's fiscal deficit per head and as a percentage of GVA was considerably higher than UK figures. In 2012-2013, Northern Ireland's fiscal deficit was equivalent to £5,187 per head, compared to the UK figure of £1,999; as a percentage of GVA, the fiscal deficit was 29.1%, higher than the UK equivalent of 8.7%. In 2013-2014, Northern Ireland's

¹² Available at: <https://www.finance-ni.gov.uk/publications/northern-ireland-net-fiscal-balance-report-2012-13-and-2013-14>.

deficit was equivalent to £5,006 per head, compared to the UK per head figure of £1,763, and was 27.1% of GVA, higher than the UK equivalent of 7.5%.

In accordance with UK budget guidance, public expenditure data for Northern Ireland is disaggregated into three components:

- Identifiable expenditure, which can be recognized as benefitting individuals, enterprises, or communities within particular regions. Examples include welfare payments and most health and education expenditures.
- Non-identifiable expenditure, which is incurred on behalf of the UK as a whole and cannot be attributed to an individual region. For the purposes of analysis, a share of UK expenditure is apportioned to Northern Ireland (either as a share of population or as a share of GVA). Defense expenditures and debt interest are the largest elements of non-identifiable expenditure, which also includes international services and EU transactions.
- An accounting adjustment allows for depreciation of public sector capital.

The Department of Finance's fiscal balance report also provides a hypothetical scenario that estimates Northern Ireland's fiscal deficit when non-identifiable spending and the accounting adjustment are excluded. Although hypothetical, this model suggests that if these categories were excluded, Northern Ireland's fiscal deficit would decrease significantly; for 2013-2014, Northern Ireland's fiscal deficit would shrink to £5.1 billion and be equivalent to 15.6% of GVA.

Ongoing Challenges

Experts note that Northern Ireland has run a fiscal deficit for decades, and many contend that much of Northern Ireland's economic and budgetary situation is a legacy of "the Troubles." Since the 1970s, the UK government has poured money into Northern Ireland in an effort to reduce the violence. Others point out that regional within-state transfers are not unusual in international terms and that Northern Ireland has limited discretion to raise additional revenue as the bulk of fiscal and tax powers remain with London. Some analysts suggest that Northern Ireland has a lower population density than the UK, which may partly explain the relative higher cost of providing a given level of public services, particularly in areas such as health and education.

Over the last few years, Northern Ireland has been challenged further by UK-wide austerity measures, with Northern Ireland's block grant reduced by 7% in real terms since 2010. In 2014 and 2015, intertwined issues of identity, history, and welfare reform imperiled budget negotiations in Northern Ireland and raised questions about the stability of the devolved government. In the years ahead, many experts contend that Northern Ireland will continue to face tough budgetary constraints, which could be compounded by Brexit. Although many in Northern Ireland pin great economic hopes on the promised reduction in the corporate tax rate, analysts contend that lowering it will result in some loss of revenue in the short term. Rebalancing the economy away from reliance on the public sector remains a key goal of Northern Ireland's devolved government.¹³

¹³ Tom Healy, "Things You Always Wanted to Know About Public Finances in Northern Ireland But Were Afraid to Ask," Nevin Economic Research Institute, November 15, 2014; "A New Kind of Trouble," *The Economist*, January 24, 2015; Dan O'Brien, "Northern Ireland May Be Normalizing, But Big Risks Remain," *Irish Independent*, May 8, 2016.

1.8 Predicting the impact of Brexit on Northern Ireland

Oxford Economic’s research paper “The Economic Implications of a UK Exit From the EU for Northern Ireland” from February 2016, an overview of research commissioned by the UK Department of Enterprise, Trade and Investment on the economic implications of a UK exit from the EU, showed that Northern Ireland is more vulnerable to Brexit than Britain.

“Overall our modelling indicates that Northern Ireland’s economy is likely to be relatively more vulnerable to the type of structural changes triggered by a UK exit from the EU in comparison to the rest of the UK. The impact on Northern Ireland’s Gross Value Added in 2030 is displayed in the graphs below across the nine scenarios in comparison to the overall effect on UK GVA.”¹⁴

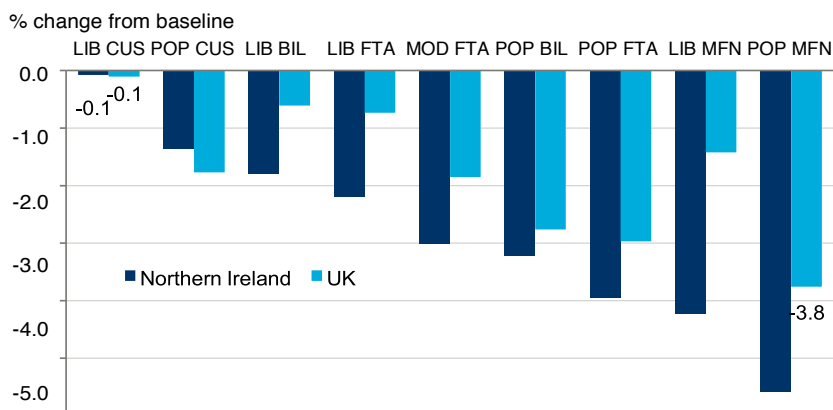


Table 5

¹⁴ Oxford Economics, ‘The Economic Implications of a UK exit from the EU from Northern Ireland’ (2016) <<https://d1iydh3qrygeij.cloudfront.net/Media/Default/Brexit/Brexit-NI-Report.pdf>> access 9 February 2017, p.6.

“On average, the impact on Northern Ireland’s GVA in 2030 is 0.7 percentage points worse than on UK GVA in the four populist scenarios but 1.4 percentage points worse in the four liberal scenarios.”¹⁵

“(1) The fact that Northern Ireland shares a direct land border with another EU member state. On average across the nine scenarios Irish imports fall by a disproportionate amount (relative to other EU member states). The impact of the land border is simulated based on data collected by DETI which shows that Northern Ireland’s trade links with Ireland are much stronger compared to the rest of the UK;

(2) The fact that the composition of manufacturing activity in Northern Ireland is skewed towards subs-sectors which according to our trade modelling are likely to be more negatively affected in the event of a UK withdrawal from the EU. In particular, Northern Ireland’s manufacturing industry currently has a relatively high dependence on both the food, beverage and tobacco and transport equipment sub-sectors which were found to be relatively more “at-risk” in our scenario analysis;

and

(3) The fact that Northern Ireland receives a relatively high level of inward FDI (compared to the rest of the UK). In our model this results in a stronger fall in TFP and therefore long-run GDP.”¹⁶

“The more interesting aspect of the Oxford Economic report was the difference between possible outcomes for Northern Ireland and the UK under each of the different scenarios. This highlights the central question, how and why will the impact of BREXIT differ in Northern Ireland?”¹⁷

“The long-term impact of BREXIT would be determined by the shape of the resulting relationship between the UK and the EU. Research to

¹⁵ Oxford Economics, ‘The Economic Implications of a UK exit from the EU from Northern Ireland’ (2016) <https://d1iydh3qrygeij.cloudfront.net/Media/Default/Brexit/Brexit-NI-Report.pdf> access 9 February 2017, p.6.

¹⁶ Oxford Economics, ‘The Economic Implications of a UK exit from the EU from Northern Ireland’ (2016) <https://d1iydh3qrygeij.cloudfront.net/Media/Default/Brexit/Brexit-NI-Report.pdf> access 9 February 2017, p. 7.

¹⁷ Paul MacFlynn, ‘The Economic Implications of BREXIT for Northern Ireland’ (2016) Nevin Economic Research Institute, https://www.nerininstitute.net/download/pdf/brexit_wp_250416.pdf accessed 9 February 2017, p.5.

date has forecast that GDP in the UK could be disrupted by as little as 1 per cent or as much as 9 per cent in a worst case scenario. In reality the nature of the UK's trading relationship will be decided by political factors and there is no economic modelling that can predict such outcomes. It is harder to avoid the conclusion that there will be disruption to trading links with the EU in the short-term due to uncertainty if nothing else. Northern Ireland is vulnerable to this disruption particularly across the agriculture and food sector and many areas of manufacturing. That Northern Ireland could replace this trade by seeking greater links outside the EU is speculation confined to the longer term. BREXIT would introduce disruption to the development of an All-Island economy which has undeniably failed to live up to the expectations set out in the Good Friday Agreement. BREXIT therefore represents a disproportionate risk for Northern Ireland in the short to medium term, and any evaluation of long-term impacts requires individual judgement about the future prospects for a post-BREXIT UK economy.”¹⁸

“When comparing Northern Ireland's goods trade to the rest of the United Kingdom some interesting differences arise. Looking at EU exports, while Food, Beverages and Agricultural products make 35 per cent of NI's total, the equivalent for the rest of the UK is only 10 per cent. Exports of pharmaceuticals account for almost 20 per cent of EU trade in Great Britain, double the equivalent figure for Northern Ireland. As the UK is the largest producer of oil and gas within the EU (ONS, 2015) mineral fuels account for 9 per cent of Great Britain's exports to the EU while Machinery and Transport accounted for over one third. Given such large disparities in the make-up of trade, it follows that disruption to EU trade will affect Northern Ireland and Great Britain in different ways.”¹⁹

¹⁸ Paul MacFlynn, 'The Economic Implications of BREXIT for Northern Ireland' (2016) Nevin Economic Research Institute, https://www.nerininstitute.net/download/pdf/brexit_wp_250416.pdf accessed 9 February 2017, p.29.

¹⁹ Paul MacFlynn, 'The Economic Implications of BREXIT for Northern Ireland' (2016) Nevin Economic Research Institute, https://www.nerininstitute.net/download/pdf/brexit_wp_250416.pdf accessed 9 February 2017, p.10,11.

“In summary, the EU is a more important export market for Northern Ireland than it is for the rest of the UK. Within EU trade Northern Ireland’s exports could be more vulnerable to trade barriers while the rest of the UK may be able to expand non-EU trade to make-up for EU losses.”²⁰

²⁰ Paul MacFlynn, ‘The Economic Implications of BREXIT for Northern Ireland’ (2016) Nevin Economic Research Institute, https://www.nerininstitute.net/download/pdf/brexit_wp_250416.pdf accessed 9 February 2017, p.11.

1.9 Women workers to be disproportionately affected by Brexit

The Nevin Economic Research Institute (NERI) working paper entitled ‘The Economic Implications of Brexit for Northern Ireland’ showed the importance of the retail and manufacturing sectors for Northern Ireland’s economy, and for the employment in Northern Ireland of women. Both of these sectors are predicted to be impacted disproportionately by Brexit.

“Manufacturing jobs are spread across Northern Ireland. While it is not possible to present a regional breakdown of manufacturing jobs by subsector, the data do point to a significant manufacturing employment in rural constituencies. While there are significant manufacturing bases within Belfast, female manufacturing employment is higher in rural areas particularly in food which accounts for a third of all female manufacturing employment, suggesting a possible gender differential arising from the impact of BREXIT.

“Fermanagh and South Tyrone, Upper Bann and Mid-Ulster have the highest proportion of manufacturing jobs in Northern Ireland and while no direct relationship exists, these constituencies could be expected to see disproportionate losses to a disruption in EU trade. In particular the higher rate of female manufacturing employment in these areas is largely confined to food manufacturing and that could be disproportionately hit by a reduction food exports arising from a fall in EU trade.”²¹

“The value of exports to the Retail sector, the largest sector of employment in Northern Ireland. shows the EU and the Republic of Ireland in particular accounts for the vast majority of foreign sales. In 2014 sales from Northern Ireland to the EU were almost equal to the value of sales to Great Britain. While the Northern Ireland market would naturally accounted for the majority of overall sales (£4.3bn) the importance of the EU/ ROI market highlights a possible vulnerability for

²¹ Paul MacFlynn, ‘The Economic Implications of BREXIT for Northern Ireland’ (2016) Nevin Economic Research Institute, https://www.nerinstitute.net/download/pdf/brexit_wp_250416.pdf accessed 9 February 2017, p.21.

the Retail sector in the event of a BREXIT.

“The Retail sector in 2015 accounted for 17.6 per cent of all jobs in Northern Ireland and this is up from 12.5 per cent recorded in 1973 when the UK joined the EU. For the UK as a whole, the Retail sector accounted for 14.7 per cent of all jobs in 1978, almost exactly the same percentage as in 2015. The retail section in Northern Ireland contains the largest number of low paid workers (McFlynn, 2014) and a comparatively large Retail sector may have contributed to low levels of productivity in Northern Ireland (McFlynn 2015). However at present the retail sector provides employment to a large section of the population and it is likely that a disruption to EU trade, particularly with the Republic of Ireland, may cause significant uncertainty and possible job losses in the sector.”²²

²² Paul MacFlynn, ‘The Economic Implications of BREXIT for Northern Ireland’ (2016) Nevin Economic Research Institute, https://www.nerininstitute.net/download/pdf/brexit_wp_250416.pdf accessed 9 February 2017, p.22.

1.10 Irexit

German-Irish Chamber of industry and Commerce

The German Irish Chamber of Industry and Commerce in its report 'Brexit- a View from the Chambers in December 2016' raised the issue of Ireland being forced to leave the EU, or 'Irexit'. This is quoted here, as is a submission from the former Irish Ambassador to Canada and senior Good Friday Agreement Negotiator Ray Bassett.

"A 'hard' Brexit, compounding Ireland's ability to engage in free trade with the UK, may put severe pressure on Ireland's EU membership in the medium-term. In order to underline the value of EU membership, the European Union may attempt to enforce costs on the UK after it leaves the EU. This has the potential to inflict serious collateral damage on Ireland and may give rise to anti-EU sentiment. By imposing very harsh terms on Britain to discourage other member states from exiting the EU, the EU need to actively consider whether this will build momentum towards an 'Irexit', further undermining European cohesion."²³

²³ Ralf Lissek, Dr. Brian Murphy & Dr. Volker Treier, 'Brexit-a view from the Chambers in December 2016' (2016) German- Irish Chamber of Industry and Commerce, <http://www.german-irish.ie/uploads/media/German_Irish_Brexit_Report_01.pdf> accessed 9 February 2017, p.3.

1.10.1 Brexit, is Irexit an option

Irish society is beginning to wake up to the severe implications of Brexit for Ireland, and especially a hard Brexit. Important questions are being raised, including for the first time the possibility that Ireland may have to follow the United Kingdom out of the EU. Such thoughts would not have been credible even a year ago.

While EU membership has greatly assisted the modernisation of the Irish economy, especially the country's ability to attract American FDI; the food and agriculture sector, tourism, as well as Irish SMEs, are still heavily dependent on the British market. These are employment rich areas and are deeply embedded in the local economy. They are also very dispersed regionally in Ireland. The Department of Finance has made some pessimistic economic projections about the effect of Brexit, including 40,000 job losses, a 30 per cent drop in Irish exports to the UK, and a possible diminution of four per cent in Ireland's GDP. Most Irish exports to mainland Europe travel overland through Britain which will mean that the previous customs free transit route will have to be altered.

Huge delays at the ports can be expected. Bilateral Irish/British trade is worth €1.2 billion per week and will be seriously hampered. Add in Irish trade with the rest of Europe, and it is a recipe for chaos in the short and medium term. In addition, there are reports that some Irish ports do not have the facilities to cater for both EU and non-EU trade, something that will become much more important post Brexit.

The whole area of globalisation and aggressive tax avoidance by large multinational firms is coming under the spotlight and the previous formula of attracting US companies to Ireland as their EU base, with special tax inducements, looks in peril. Such arrangements have become toxic to the international community. In addition, without the presence of the UK, Ireland and some small like-minded countries will find it hard to resist EU Commission moves to introduce a common tax regime. Even if Ireland is successful in vetoing EU wide reforms, there is a likelihood that individual countries such as France, Germany etc., will introduce domestic changes which will make a tax efficient location in Ireland less attractive. This should be factored into Ireland's planning for its future economic development.

Ireland and Britain operate a common travel area, allowing their citizens to travel to each other's country without passports. They can vote and access social supports freely in each other's jurisdictions. Both the British and Irish Governments will work to hold onto this system in the negotiations but it is by no means certain that the other EU countries will permit such cosy arrangements. With some European States calling for punishment of the Brits, the atmosphere is not conducive to sensible solutions.

There is also the strong possibility of a reinstatement of a physical border between the Republic in the South and Northern Ireland. That border had been effectively removed by the Good Friday (Belfast) Agreement in 1998. The re-imposition of controls here could effectively torpedo that Agreement, which was based heavily on both countries being full members of the European Union. While there have been a number of contradictory statements emanating from the Government on the issue of a physical border, the Taoiseach Enda Kenny has already conceded that avoiding this will be difficult to achieve. A new border in Ireland would be a very heavy price to pay for remaining inside the EU. While there have been calls for reunification of the country or a special status for Northern Ireland with the EU, neither option is likely in the short term. Therefore, Ireland again has to factor this pertinent fact into its calculations.

Ireland, in many respects, has its special interests in the Brexit negotiations.

It needs to stand on its own and push Ireland's national interest rather than merely going to our EU partners pleading a special case and asking that the EU negotiators take this on board in the Brexit negotiations.

With so much at stake, the Irish Government has kept its head down and rebuffed numerous pleas within Ireland to appoint a special Minister for Brexit who would enter into separate negotiations with both the EU authorities and the UK, namely becoming a third element in the discussions. This proposal has overwhelming support in opinion polls, (73%). There is widespread scepticism within the country that the same EU authorities, which inflicted the notorious Bailout on Ireland; are pursuing the Apple case, etc.; are now going to place Ireland at the forefront of its

considerations. The approach of being the best boy in the class has been a failure for Ireland inside the EU in recent times.

As the implications of the forthcoming rupture between the UK and the EU becomes clearer, Irish public opinion has started to shift. In a recent poll in Ireland's leading business paper, the Sunday Business Post, 56% of those polled believed that links with the UK are more important than with the rest of the EU. Support for an Irexit in the event of a hard Brexit was 28% but this would have barely registered any support a year ago; there is clearly a momentum building against the present passive stance by the authorities.

Questions are being asked as to whether is not more disruptive to break with Britain and Northern Ireland than with the remaining 26 EU member States. Certainly, from a cultural, historical and family ties point of view, Ireland and the UK are the closest of any two EU countries. Ireland, unlike most other EU countries, does not belong to other groupings, such as the Nordic Council, Visegárd, Benelux, Commonwealth, Francophonie etc., Hence Ireland will be left with no natural allies. It will be an island off the west coast of Europe, behind another larger island which is not part of the EU. Our peripherality in the EU will be greatly increased. I cannot think of many peripheral regions that have prospered in similar circumstances.

Given that is so overwhelmingly in Ireland's interest to negotiate officially and separately with Britain on Brexit, the obvious question must be asked as to why the Irish authorities are pursuing the current course which seems at variance with its national interest. The answer lies in the way the European Union has worked with the political and bureaucratic elites over the years. Constant meetings in Brussels involving Ministers and officials has left them much more Eurocentric than the population at large. The lack of alternative international fora, and active Irish participation in them, means that Irish leaders often think in very narrow EU terms.

Ireland needs to be much more aware of the wider international environment. The UK is energetically seeking new trade agreements and the prospect of an Anglophone North Atlantic free trade area, encompassing the USA, Canada and

Britain is emerging as a strong possibility. Given Ireland's geographic position; its trade links; and its ethnic connections with these three countries, it would be very foolish of any Irish Government not to have a plan B in its sights, should the Brexit discussions end in acrimony. However, this would require a much more independent line than the present course.

There is a foolish assumption in Dublin that any trade deal between the UK and the USA would take years. This is based on the experiences of EU trade deals. However, trying to cater for the needs of 28 countries with a myriad of concerns is not the same as direct bilateral discussions between two countries. The timescale of a new USA/UK deal may be much shorter and could be ready by the time Brexit takes effect. Any new USA trade deal which advantaged Britain over Ireland would have serious implications for our ability to attract US FDI.

Given the whole basis of our entry into the European Union's predecessor in 1973 was our links with Britain, there is an onus on the Irish Government to put the results of the Brexit negotiations to a referendum. Hopefully, the outcome of Brexit negotiations will be benign. However, if this does not turn out to be the case, it would be a brave Government in Dublin who would ask the electorate to re-instate a border in Ireland and erect barriers with our nearest neighbour Britain where most Irish people have family links. The prospects of an Irish 'Irexit' have certainly grown in recent days.

In the discussions it is important to fully examine all alternatives. Brexit is bad for Ireland no matter which course of action we decide to take. There has been no serious look at the possibility of retaining a customs union with the United Kingdom and seeking liberal access to the Single (internal) Market of the European Union. If fully explored, it might turn out to be less bad than staying as a full member of the EU and taking the consequences of Brexit.

Ray Bassett, Former Irish Ambassador to Canada and Department of Foreign Affairs Good Friday Agreement Negotiator.²⁴

²⁴ Ray Bassett, 'Brexit, is Irexit an Option' (2017), Submission for this report.

1.11 Prevention of a return to a hard border on the island of Ireland

In this section of the report the findings of the Research Service of the House of the Oireachtas in relation to the Common Travel area and other related issues are reproduced. A key concern is the cross border movement of people; we reproduce the maps from the Central Statistics Office report ‘BREXIT Ireland and the UK in Numbers’, which shows the location of cross border commuters North and South.

The issue of the Hard Border is addressed, drawing extensively on the House of Lords European Union Committee report ‘Brexit: UK-Irish Relations’. It is proposed that the Hard Border in relation to the movement of people on these islands should be in the Irish Sea between Ireland and Britain. This is a practical solution to the alternative of a border on the old partition lines between North and South. The reinstatement of the border in the Irish Sea between Ireland and Britain was the case from 1939 to 1952. Former British Prime Minister David Cameron outlined the choices in a House of Commons debate in June 2016: “Therefore, you can only have new border controls between the Republic and Northern Ireland or, which I would regret hugely, you would have to have some sort of checks on people as they left Belfast or other parts of Northern Ireland to come to the rest of the United Kingdom”. Former Taoiseach Bertie Ahern also made a submission for this report and this is reproduced in full here.

1.11.1 The Border and Brexit

The Good Friday Agreement in 1998 ushered in a new era of reconciliation in Northern Ireland, which quickly brought about a peace dividend for communities across the island of Ireland sparked, in part, by a surge in overseas investment and enhanced tourism figures. The Irish peace process is lauded

internationally as an exemplar to other regions where there is conflict, however, Brexit could undermine the work of reconciliation and destabilise the region.

EU funding has helped underpin peace by financing cross-border and cross-community initiatives, which have led to positive social and political outcomes. Brexit puts this significant funding at risk. It is estimated that the region has received close to €1 billion in PEACE/ERDF funding since 1995, with hundreds of millions also directed to the border regions under the INTERREG Programme. As the Irish Congress of Trade Unions has pointed out, the immediate loss of this funding would likely devastate the community sector, resulting in thousands of job losses. For a society still emerging from a bitter conflict, this clearly represents a substantial and serious risk.

Ireland is the only EU member state to share a land border with the UK. There is free movement of people and goods across this border. 30,000 people cross the border between Ireland and Northern Ireland every day to work or visit family and friends. The elimination of a hard border in modern times has been critical in the context of the Northern Ireland peace process and in building co-operation between both jurisdictions on the island. After a meeting in July 2016 between the Irish Taoiseach Enda Kenny and British Prime Minister Theresa May, the Taoiseach said that they had both agreed that there would be no return of a hard border. The Irish Foreign Minister Charles Flanagan has stressed that, irrespective of Brexit, the border between Ireland and Northern Ireland must remain “invisible” and that the Irish Government would be emphasising the importance of this approach in negotiations with EU colleagues. The logistics of how, in practical terms, the border

will remain “invisible” is the big question and the big challenge to be addressed over the next two years, as the UK begins exit talks.

The British Government now appear to be switching their language. They are now saying not that there’ll be no border, but that the border won’t be as difficult as to create problems. However, it is of concern that the return of a border will take away the calming effects of an open border. Undoubtedly, any attempt to reintroduce border posts, or to man it in a physical sense as used to be the case, would be very hard to maintain, and would create a lot of bad feeling.

In its Brexit White Paper, the UK government stated its aim to have “as seamless and frictionless a border as possible between Northern Ireland and Ireland.”

The secretary of state for exiting the EU, David Davis, has suggested that the arrangements between Norway and Sweden could be a model to copy, where CCTV cameras equipped for automatic number-plate recognition are in place. However, in an interview with the Guardian, the European parliament’s Brexit negotiator Guy Verhofstadt appeared to scorn such a model, given that there would need to be customs checks and restrictions on the free movement of people.

There are real doubts that current technology could do the job, given the nature of the Irish border. There are 300 crossing points on the border between the Republic and Northern Ireland, with 177,000 crossings by lorries a month, 208,000 by vans and 1.85m by cars.

The re-introduction of a border could be politically destabilising. It has been said that he feared the furious reaction of the unionist communities in the mid-1980s when the Republic was given an advisory role in the government of Northern Ireland could be repeated on the nationalist side if controls were reinstated. My view is that any kind of physical border, in any shape, is bad for the peace process, as it will psychologically feed badly into the nationalist communities.

The return of a border runs contrary to the spirit of the Good Friday Agreement. For the nationalist community in Northern Ireland, the Good Friday agreement was about removing barriers, integrating across the island, working democratically in the

absence of violence and intimidation – and if you take that away, as the Brexit vote does, that has a destabilising effect.

The British prime minister has repeatedly suggested that the 1923 Common Travel Area deal can be the basis for the future, although it was signed before either state joined the EU. However, a memo from the European parliament’s legal affairs committee, which is helping shape the negotiating position of the European commission and the red lines of the European parliament, rebuffs that suggestion: “The [Good Friday] agreement makes it abundantly clear that the fact that both parts of Ireland and the UK are within the EU is a basis for the agreement. Moreover, the fact that Brexit could result in the reintroduction of border controls and controls on the free movement of persons between Ireland and Northern Ireland means this is a question for the EU, and not only Ireland and the UK.”

Historically, customs controls have operated on both sides of the border from 1923 until their abolition on 1 January 1993, when the EU Single Market came into effect. In addition, security checkpoints operated on both sides of the border during the Troubles, from 1970 to the late 1990s—although the border security regime operated only partially, even at the height of the Troubles, because the Government in London recognised that a ‘hard’ border would inflame tensions in the Nationalist community. Other controls have been instituted on an ad hoc basis. For instance, in 2001 the Republic of Ireland operated systematic controls at the Irish border to curtail the spread of foot and mouth disease.

Customs posts were targets for attack when the Troubles erupted. However, the launch of the European Single Market, together with the onset of the peace process from 1994, had removed the need for customs posts and military checkpoints, meaning that, today, “the physical manifestation of the Irish border itself is hardly discernible.” Today, there are up to 300 major and minor crossings along a 310 mile (499 kilometre) border.

It is still an evolving situation as to what the precise impact of Brexit on the land border will be, both in terms of the movement of goods (whether UK withdrawal

from the customs union would inevitably lead to border checks) or the movement of people (whether the current Common Travel Area arrangements can be maintained). The principal impediment to maintenance of the current soft border arrangements was that, if the UK withdrew from the customs union, customs tariffs would need to be applied, inevitably resulting in some form of physical manifestation of the border. The UK leaving the customs union would make a hard border almost inevitable, whatever that might look like. There would need to be some controls, although this did not necessarily mean the re imposition of the old border checkpoints. The Irish Government's preference would be for the UK to remain in the customs union.

SUBMISSION BY FORMER TAOISEACH BERTIE AHERN

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²⁵ Bertie Ahern, 'The Border and Brexit' (2017), Submission for this report.

1.12 Reinstatement of 1939-1952 controls between island of Ireland and UK with full implementation of operations gull on non-racial basis will prevent reintroduction of hard border.

Between 1939 and 1952 the UK government had immigration controls between the island of Ireland and Britain. Currently illegal movement of non-EU citizens between Northern Ireland and Britain is addressed by means of Operation Gull. Immigration Lawyers noted criticism of Operation Gull by human rights groups, in particular accusations of racial profiling. At the height of the ‘Troubles’ the border was permeable even though, as former Taoiseach Bertie Ahern (1999-2008) has pointed out, 40,000 people were on the security pay bill.

Ulster Unionist Party leader Mike Nesbitt told House of Lords that the ‘Troubles’ had demonstrated that it was not possible to secure the land border, and that therefore “the border will inevitably be at the ports and airports of Great Britain, from Cairnryan to Heathrow”

The House of Lords in its report states that the current soft border should remain but dismisses the 1939-1952 controls which would prevent the unacceptable current racial profiling of those traveling between Northern Ireland and Britain. Yet the House of Lords failed to identify an alternative acceptable solution.

We call on the British Government to accept the realist solution of the immigration controls of 1939-1952 and thereby keep the status quo between the North and South of the Island.

The following paragraphs are extracted from the House of Lords: European Union Committee 6th Report of Session 2016-17 Brexit: UK-Irish relations.

Common Travel Area arrangements between the United Kingdom and Ireland date from the foundation of the Irish state.

From 1923 to 1939 there was full mutual recognition of immigration permission granted by each state to aliens travelling to the other. Between 1939 and 1952 immigration control applied to travel between the island of Ireland and Great Britain. In 1952 those immigration controls were removed, after an administrative agreement between the two states concerning co-operation in control over entry by aliens.²⁶

²⁶ House of Lords, European Union Committee, ‘Brexit: UK-Irish Relations’ (2016) <<https://publications.parliament.uk/pa/ld201617/ldselect/ldeucom/76/76.pdf>> accessed 9 February 2017, p.23.

Operation Gull

At present, illegal movement of non-EU citizens between Northern Ireland and Britain is addressed by means of operation Gull, which targets domestic UK flights and ferries to and from Northern Ireland in order to identify and arrest illegal immigrants going to and from Ireland by way of the border

“Professor Wyatt stated that it was not clear if Operation Gull could be expanded to deal with cross-border illegal movement by EU citizens in the future. He and the Immigrant Law Practitioners Association noted criticism of Operation Gull by human rights groups, in particular accusations of racial profiling in its identification of individuals selected for interview in the UK ports and airports. Professor Wyatt agreed that the techniques used on the UK side to identify and interview suspect travellers lacked the transparency of border passport checks, although they did act as a surrogate for this.”²⁷

Securing the border

“Professor Cathal McCall, Professor of European Politics, Queen’s University Belfast, noted that it had been a preamble border, even at the height of the Troubles.”²⁸

“Mr Ahern recalled that at one stage there were over 40,000 people on the security pay bill, and hoped no-one wished to return to a ‘hard border’ of that kind.”²⁹

Enhanced UK-Irish immigration cooperation

One of the reported proposals being explored by the British Government was to move UK immigration control to Irish ports and airports. This is an unacceptable concept.

²⁷ House of Lords, European Union Committee, ‘Brexit: UK-Irish Relations’ (2016) <<https://publications.parliament.uk/pa/ld201617/ldselect/lducom/76/76.pdf>> accessed 9 February 2017, p.23.

²⁸ House of Lords, European Union Committee, ‘Brexit: UK-Irish Relations’ (2016) <<https://publications.parliament.uk/pa/ld201617/ldselect/lducom/76/76.pdf>> accessed 9 February 2017, p.24.

²⁹ House of Lords, European Union Committee, ‘Brexit: UK-Irish Relations’ (2016) <<https://publications.parliament.uk/pa/ld201617/ldselect/lducom/76/76.pdf>> accessed 9 February 2017, p.24.

“During the course of our inquiry, reports emerged in The Guardian that the UK Government was seeking to shift the front-line immigration control to Ireland’s ports and airports to avoid introducing a hard border between North and South.

Many of our witnesses reacted to these reports with a mix of scepticism and incredulity. Bertie Ahern found the suggestion to be “frankly unbelievable”, as it showed a “total lack of understanding of how people think north and south in either tradition. It just would not happen”.

Neither could David Ford see how the Irish authorities could be expected to police their ports and airports to stop EU citizens coming to Britain. The leader of the SDLP, Colum Eastwood MLA, agreed that there was no support for “the Irish Government taking on the immigration job of the UK Government”, both for practical and symbolic reasons.”

³⁰ House of Lords, European Union Committee, ‘Brexit: UK-Irish Relations’ (2016) <<https://publications.parliament.uk/pa/ld201617/ldselect/ldcom/76/76.pdf>> accessed 9 February 2017, p.34.

Common Travel Area in EU law

Bernard Ryan, Professor of Migration Law, University of Leicester, stated that:

“The continuation of common travel area arrangements appears compatible with EU law ... There is no apparent legal reason why the Republic of Ireland should not retain the benefit of Protocols 19 and 20 after Brexit, so as to permit bilateral co-operation with the United Kingdom outside the Schengen zone.”

He suggested that Brexit presented an opportunity for a comprehensive Common Travel Area agreement, in particular given that adjustments to the CTA arrangements were in any case required to cater for EU, EEA and Swiss nationals. He suggested that the two governments could publicise their co-operation over immigration control.

“Dr Etain Tannam, Assistant Professor, Irish School of Ecumenics, Trinity College Dublin, agreed that the fact that Ireland was not part of the Schengen area would make it possible to continue with the CTA. Ambassador Mulhall told us that there was no pressure from other Member States for Ireland to join Schengen, because of their recognition of the unique circumstances in Northern Ireland.”³⁰

“It is not a given that the EU will tolerate uncontrolled movement from the UK into the EU, via the UK-Irish border. Both the UK and Irish Governments must seek to convince EU partners of the necessity of maintaining the reciprocal rights enjoyed by UK and Irish citizens, both because of the unique nature of UK-Irish relations, and in view of the specific circumstances in Northern Ireland.”³¹

Controls between Britain and Northern Ireland

“We heard evidence that the only viable alternative to a harder land border was to introduce greater control of the sea boundary between Northern Ireland and Great Britain. Mike Nesbitt told us that the Troubles had demonstrated that it was not possible to secure the land border, and that therefore “the border will inevitably be at the ports and airports of Great Britain, from Cairnryan to Heathrow”. This, he said, “would disadvantage everybody travelling either way, but particularly the citizens of Northern Ireland making their way to the rest of the United Kingdom”. Colum Eastwood agreed that maintaining a border on the island of Ireland was practically impossible, and that the border would end up in ports and airports in Britain.

“Dr O’Connor, though, noted that full border checks would be unacceptable to many Unionists, as they would mean needing to show ID to move within the UK. Katy Hayward agreed, citing the then Labour Government’s unsuccessful attempts in the 2008 Borders, Citizenship and Immigration Bill to strengthen checks within the Common Travel Area, in particular at points of entry to and from Northern Ireland and Great Britain. The Bill was amended in the House of Lords to remove this provision because of concerns about internal UK checks.

“Political stability in Northern Ireland depends on the confidence of both communities that their interests are being respected. Just as any undermining of the current soft land border would be economically, politically and socially unacceptable, so strengthened checks for UK and Irish citizens at the sea boundary between Northern Ireland and Great Britain would be politically divisive and inherently undesirable. Other solutions must be identified, to ensure that the positive progress of recent years in developing UK-Irish relations and promoting stability in Northern Ireland is not undermined by Brexit.”³¹

³¹ House of Lords, European Union Committee, ‘Brexit: UK-Irish Relations’ (2016) <<https://publications.parliament.uk/pa/ld201617/ldselect/ldeucom/76/76.pdf>> accessed 9 February 2017, p.29.

Conclusion

The return to the 1939-1952 controls would prevent the unacceptable current racial profiling of those travelling between Northern Ireland and Britain. The House of Lords European Union Committee 6th Report of Session 2016-17 Brexit: UK-Irish relation failed to identify an alternative acceptable solution. We call on the Irish Government to seek the realist solution of the reinstatement of the controls of 1939- 1952 and thereby keep the status quo between the North and South of the Island.

1.13 Cross- border commuters versus travelers between Ireland & Britain

8,295 residents from Ireland in 2011 commuted across the border with Northern Ireland to work or study. 6,456 residents from Northern Ireland commuted across the border to work or study in Ireland. 79,300 immigrants who arrived in Ireland in 2016, 13,800 (17%) arrived from the UK. The figures of the 14,751 who cross the border everyday can be compared to the 5,722 who travel between Ireland and Britain daily according to information found by the Oireachtas Library and Research Service. Origin and destination of cross-border commuters from Ireland to work or study in Northern Ireland (CSO Report Brexit and Ireland in the UK)

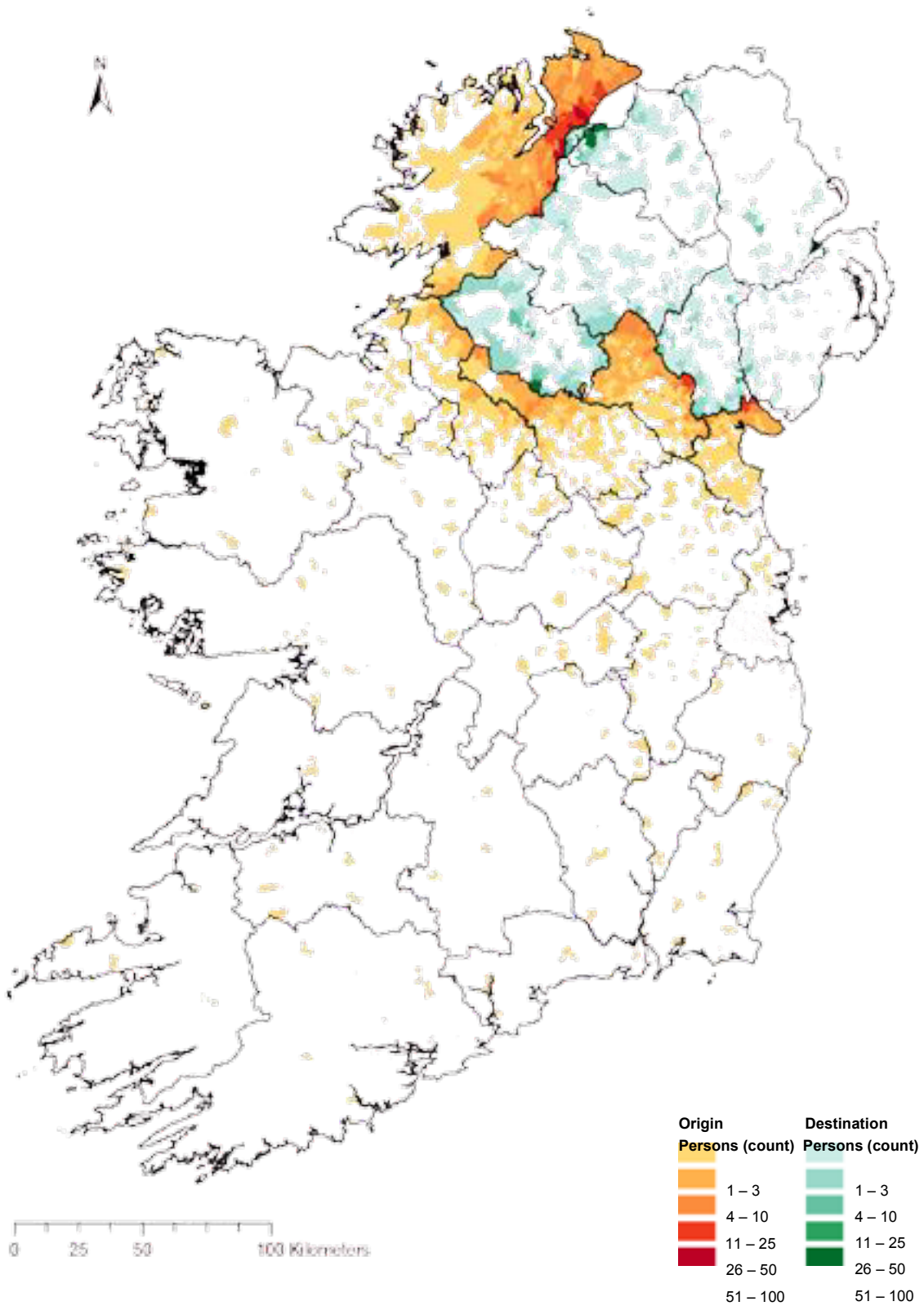
Demographics NI citizens work/study in IRL/ IRL citizens work/study in NI-Origin and destination of cross-border commuters from Ireland to work or study in Northern Ireland (CSO Report Brexit and Ireland in the UK)

“I will demonstrate the importance of the common travel area to the social ties and economic lifeblood of our respective jurisdictions. Of the 27.9 million passenger journeys through Dublin Airport in 2016, 9.9 million were from the UK to Ireland or from Ireland to the UK, which is 36% of the total. Averaged out over the year, it means 27,000 passengers have their journey facilitated by the common travel area every day. In 2015, 1.2 million residents of Northern Ireland used Dublin Airport, which averaged almost 25,000 people per week crossing the Border to catch flights, and 1 million visitors to Northern Ireland came into this State via Dublin Airport. All of these journeys, and the economic activity generated, are made possible by the common travel area arrangements so much so that it is taken for granted in facilitating movement of people North-South and east-west. The picture at other entry points to the State is the same. Cork Airport has over a dozen routes to the UK, with almost 1 million passengers, or 50% of the total, in 2016 taking a journey in either direction. The number of passenger journeys by sea through our ferry ports is also significant at approximately 2.8 million per year. It is estimated there are an average of 2.2 million monthly vehicular crossings on the North-South land Border. These vital statistics relate to the movement of people. We should not forget that in addition to people moving freely from jurisdiction to jurisdiction, the common travel area is also about allowing people to remain, work, access services and to be educated and so forth in either jurisdiction. Preserving those provisions in addition to travel rights is at the heart of maintaining the common travel area.”

Noel Waters, Secretary General, Department of Justice and
Equality. Seanad Éireann 23.3.17

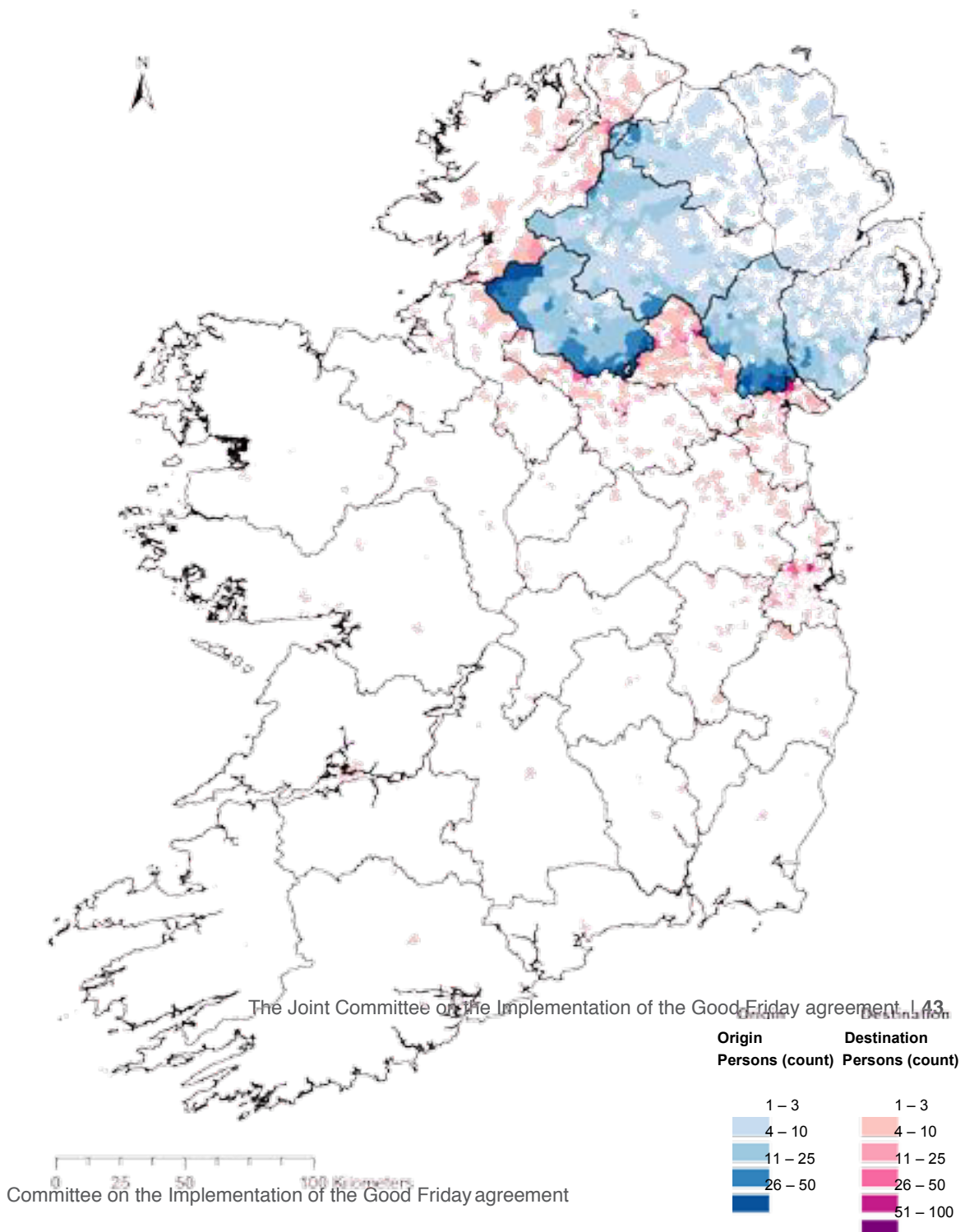
Origin and destination of cross-border commuters from Ireland to work or study in Northern Ireland

Map 1



Map 2

**Origin and destination of cross-border commuters from Northern Ireland
to work or study in Ireland**



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1.14 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.³² 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 focused attention on the nature and effect of the CTA, particularly in relation to the border between Northern Ireland and the Republic of Ireland, 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.³³

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 of Ireland 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 of Ireland.³⁴ In the same year, nearly 38,000 persons born in the Republic lived in Northern Ireland, 1 23,000 in Scotland,² and 372,000 in England and Wales.

³² The CTA also includes the Isle of Man, Jersey and Guernsey, but these are not considered in this Note.

³³ 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.

³⁴ Central Statistics Office, Census 2011 data, available here.

These rights are conferred by legislation of the two states – in the Republic, under the Aliens Act 1935^{35 36} and in the UK, under the Ireland Act 1949^{37 38}. The UK's exit from the EU will therefore not necessarily affect these rights.

Also relevant in this regard are the terms of the Good Friday 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 2004/38³⁹ is the principal EU legislation on this. It provides that EU citizens and the members of their families⁴⁰ 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);

³⁵ Aliens Act, 1935: <http://www.irishstatutebook.ie/eli/1935/act/14/enacted/en/html>.

³⁶ The current provision is S.I. 97/1999 Aliens (Exemption) Order, 1999, which excludes British citizens from the operation of the 1935 Act.

³⁷ Ireland Act 1949: <http://www.legislation.gov.uk/ukpga/Geo6/12-13-14/41/contents>.

³⁸ Section 2(1) of this Act provides that the Republic is not to be treated as foreign country for the purposes of UK law.

³⁹ EU Directive 2004/38: <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:158:0077:0123:en:PDF>.

⁴⁰ 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.

- automatically acquire permanent residence in a host state after residing in it continuously for five years (Article 16).

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 to 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.⁴¹

This was extended by the 2014 British-Irish Visa Scheme.⁴² 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

⁴¹ Irish Naturalisation and Immigration Service: Short Stay Visa Waiver Programme (October 2016)

⁴² Department of Foreign Affairs Information Note

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 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 of Ireland 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.⁴³ That position changed in 1997 when the Republic of Ireland 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.⁴⁴ 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 of Ireland 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 of Ireland and the UK.

The UK's exit from the EU raises questions concerning the minimal checks on travelers between the Republic and Great Britain and the virtual absence of such checks on travelers between the Republic of Ireland and Northern Ireland. The Republic of Ireland 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 a 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:⁴⁵

⁴³ 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.

⁴⁴ S.I. No. 277/1997 - Aliens (Amendment) (No. 3) Order, 1997

⁴⁵ 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/>

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.

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.⁴⁶

Open Europe, which describes itself as a Think Tank, in 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.⁴⁷

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 of Ireland 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

⁴⁶ 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/>

⁴⁷ 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/>

regime, it would pose serious questions as 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 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 of Ireland following Brexit. Amongst other issues, the Committee is seeking evidence on:

- What benefits currently derive from the existing openborder 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?⁴⁸

On 17-18 October 2016, the House of Lords European Committee visited Belfast and Dublin to take evidence for its Brexit: UK-Irish Relations inquiry⁴⁹. 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
- 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

⁴⁸ <http://www.parliament.uk/business/committees/committees-a-z/commons-select/northern-ireland-affairscommittee/inquiries/parliament2015/inquiry3/>.

⁴⁹ 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/>.

1.15 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.

On 17 January 2017, Prime Minister Theresa May gave a speech detailing her twelve point plan for Brexit negotiations with the EU. Although this plan does indicate a preference to form a customs agreement with the EU, and to maintain a common travel area with the Republic of Ireland, the plan does imply that the UK will withdraw from the Customs Union, also implying a hard Brexit.

Text Box 1 provides excerpts from the speech, covering points 4 and 9 of the 12 point plan, relating to the Common Travel Area and trade agreements with other countries.

Text Box 1: UK Prime Minister Speech, The UK government's negotiating objectives for exiting the EU (extracts), 17 January 2017 Prime Minister May: 12 point plan

Point 4. Maintain the Common Travel Area with Ireland

We cannot forget that, as we leave, the United Kingdom will share a land border with the EU, and maintaining that Common Travel Area with the Republic of Ireland will be an important priority for the UK in the talks ahead. There has been a Common Travel Area between the UK and the Republic of Ireland for many years.

Indeed, it was formed before either of our 2 countries were members of the European Union. And the family ties and bonds of affection that unite our 2 countries mean that there will always be a special relationship between us.

So we will work to deliver a practical solution that allows the maintenance of the Common Travel Area with the Republic, while protecting the integrity of the United Kingdom's immigration system.

Nobody wants to return to the borders of the past, so we will make it a priority to deliver a practical solution as soon as we can

Point 9. New trade agreements with other countries

I know my emphasis on striking trade agreements with countries outside Europe has led to questions about whether Britain seeks to remain a member of the EU's Customs Union. And it is true that full Customs Union membership prevents us from negotiating our own comprehensive trade deals. Now, I want Britain to be able to negotiate its own trade agreements. But I also want tariff-free trade with Europe and cross-border trade there to be as frictionless as possible. That means I do not want Britain to be part of the Common Commercial Policy and I do not want us to be bound by the Common External Tariff. These are the elements of the Customs Union that prevent us from striking our own comprehensive trade agreements with other countries. But I do want us to have a customs agreement with the EU.

On 2 February 2017, Prime Minister Theresa May presented the white paper to Parliament on the UK's exit from and new partnership with the EU.

The proposals contained within include protecting the strong and historic ties with Ireland and maintaining the Common Travel Area. The importance of cross border trade and the ability for people to move freely across the border is also recognised.

The right of the people of Northern Ireland to self-identify as either British or Irish, in accordance with the Good Friday Agreement "will continue".

The UK will commit to working with the Irish government to find practical solutions given the unique economic, social and political context of Northern Ireland.

1.15.1 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”.⁵⁰

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.”⁵¹

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.⁵² Updating the Scottish Parliament on 28 June 2016, Nicola Sturgeon (First Minister) stated, amongst other things, that she was:

⁵⁰ EU referendum outcome: PM statement, 24 June 2016 <https://www.gov.uk/government/speeches/eu-referendum-outcome-pm-statement24-june-2016> (accessed 19/08/16)

⁵¹ 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>

⁵² 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.”⁵³

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.”⁵⁴

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:⁵⁵

“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.

⁵³ 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>

⁵⁴ PM calls with Northern Ireland First and deputy First Ministers: 14 July 2016 Prime Minister’s Office – Press Release (14 July) <https://www.gov.uk/government/news/pm-calls-with-northern-ireland-first-and-deputy-first-ministers-14-july-2016>

⁵⁵ 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-determinationachievebest-possible-outcome-all-our-people>

“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 announced⁵⁶ 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; by the First Ministers of Scotland and Wales; and the First and deputy First Ministers of Northern Ireland. 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

⁵⁶ 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-augustengagementprogramme>

(EN) which would have the following terms of reference:⁵⁷

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.”⁵⁸

⁵⁷ Joint Ministerial Communique Committee, 24 October 2016:

<https://www.northernireland.gov.uk/sites/default/files/publications/newnigov/joint-ministerial-committee-communique-24october-2016.pdf>.

⁵⁸ 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>.

On 8 December 2016, Sinn Fein published a policy paper entitled 'The Case for the North to Achieve Special Designated Status within the EU'. The paper makes the case for Northern Ireland to remain within the European Union after Brexit, noting the centrality of the EU to the Good Friday Agreement, and to the continuing political and economic development of the region.

On 9 January 2016, a continuing row over the spiraling costs of a subsidised green energy initiative reached a crisis point. The scheme was introduced by First Minister Arlene Foster in her role as Minister for Enterprise, Trade and Investment. A request was made by Sinn Fein deputy First Minister Martin McGuinness for the First Minister Arlene Foster to step aside temporarily pending the outcome of investigations. The First Minister Arlene Foster subsequently refused to accede to this request, thus prompting the resignation of the deputy First Minister which in turn precipitated a general election. The Northern Executive was suspended on the 16 January 2017 and fresh elections were held on 3 March 2017. Therefore there has been little further work from committees on Brexit matters subsequent to these developments.

On 24 January 2017, the UK Supreme Court delivered its judgment in relation to the triggering of Article 50. One of the areas covered in this judgement was the issue surrounding the Northern Ireland Executive's potential to veto this process. The Court unanimously decided that there was no requirement to consult the devolved administrations on the issue, stating, "The devolved legislatures do not have a veto on the UK's decision to withdraw from the EU".

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 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"⁵⁹

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).

⁵⁹ <http://aims.niassembly.gov.uk/officialreport/report.aspx?&eveDate=2016/06/27&docID=268132>

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 Departments⁶⁰. 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.

⁶⁰ <http://aims.niassembly.gov.uk/questions/search.aspx>

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 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.⁶¹ 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:

- Northern Ireland Environment
- Northern Ireland Agri-food sector
- Northern Ireland 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)

⁶¹ The Official Reports from those evidence sessions are available on the Committee's website at <http://aims.niassembly.gov.uk/officialreport/minutesofevidence.aspx> .

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 State for International Trade for information on the fact finding engagements they have each had with stakeholders in Northern Ireland. On 3 March 2017, the Northern Ireland Assembly Election was held, after being called on 16 January 2017.

1.15.2 Ireland

Government response and engagement

The initial response of the government in the Republic of Ireland 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”⁶². According to a press release, the Government met later on the morning 24 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 24 June.⁶³ 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.”⁶⁴

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.⁶⁵ 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

⁶² Department of the Taoiseach press release, Government statement on the outcome of the UK EU referendum. 24th June Available at http://www.taoiseach.gov.ie/eng/News/Government_Press_Releases/Government_statement_on_the_outcome_of_the_UK_E_U_referendum.html

⁶³ Department of the Taoiseach press release, Irish Government Brexit Contingency Plans Announced. 24th June 2016. Available at

⁶⁴ Department of the Taoiseach press release, Irish Government Brexit Contingency Plans Announced. 24th June 2016. Available at

⁶⁵ Appendix: Summary of key actions to manage contingencies arising, available at http://www.merrionstreet.ie/en/NewsRoom/News/Contingency_Framework_Summary.pdf.

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.⁶⁶

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 2. 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.”⁶⁷

⁶⁶ Department of the Taoiseach press release, Irish Government Brexit Contingency Plans Announced. 24th June 2016. Available at

⁶⁷ Dáil Debate Priority Questions/ Brexit Issues, Minister for Foreign Affairs and Trade Deputy Charles Flanagan, October 2016.

Text Box 2: 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 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 2016

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 Committees⁶⁸ .⁶⁹

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 with Brexit-related issues.⁷⁰ 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 4 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 3.

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.⁷¹ 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.⁷²

⁶⁸ 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

⁶⁹ 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.

⁷⁰ Dáil debate, Questions – Brexit Issues, Taoiseach Énda Kenny TD. Wednesday, 26th October 2016.

Available at

http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/takes/dail2016102600022?opendocument#U_00450

⁷¹ 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-](http://www.merrionstreet.ie/en/News-Room/News/Taoiseach_to_chair_plenary_meeting_of_the_North_South_Ministerial_Council.html)

[Room/News/Taoiseach_to_chair_plenary_meeting_of_the_North_South_Ministerial_Council.html](http://www.merrionstreet.ie/en/News-Room/News/Taoiseach_to_chair_plenary_meeting_of_the_North_South_Ministerial_Council.html)

⁷² No Need for an all-Island Brexit Forum’ says First Minister, 4 July 2016, UTV News

Text Box3: 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:
 - o North South Inter-Parliamentary Association; o the British Irish Parliamentary Assembly and the
 - o 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.

The initial meeting of the all-island Civic Dialogue on Brexit (as referred to in Text Box 3) was hosted by the Taoiseach and the Minister for Foreign Affairs and Trade on 2 November in Dublin.⁷³ 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.⁷⁴

⁷³ Streams from the event are available at http://merrionstreet.ie/en/News-Room/News/Taoiseach_Minister_Flanagan_to_host_All-Island_Civic_Dialogue.html

⁷⁴ Department of the Taoiseach press release, *Government Statement on Preparations for Brexit*. 4th October 2016. Available at <http://www.taoiseach.gov.ie>

In his speech, the Taoiseach Enda Kenny 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.⁷⁵ The Taoiseach also explained that this was the first instalment and there would be 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 that added to this will be a further series of sectoral discussions both North and South.

⁷⁵ 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_AllIsland_Civic_Dialogue_on_Brexit_Royal_Hospital_Kilmainham_Wednesday_2_November_2016.html

As detailed in Text Box 3, the Government's next steps in responding to Brexit included agreement that Budget 2017 include measures which will support the overall economic response to Brexit. In this context, an infographic⁷⁶ summarising actions the Government is taking to get the Irish economy ready for Brexit, together with a longer paper⁷⁷ on the economic implications of Brexit and the responses to Brexit have been published. The Department of Finance also published an exposure analysis⁷⁸ of sectors of the Irish economy in the context of the UK EU exit.

On 17 January 2017 the Irish Government news service published a statement with regards to Teresa May's 12 point plan for exiting the EU. The release stated: “

The Government has noted the contents of Prime Minister May's speech today and welcomes the fact that it provides greater clarity on the proposed approach of the British Government to the Brexit negotiation process. Prime Minister May has made clear that she wishes to secure the closest possible future economic relationship for Britain with the EU, a goal that Ireland shares.

On 15 February 2017 the leader of Fianna Fáil Deputy Michael Martin sought information from the Taoiseach with regard to the organisational structure of his Department, in light of the increasing workload it would face coordinating the Irish response to Brexit. In particular, the Deputy sought clarity with regard to staffing levels, and whether there was provision made to hire external expertise in key areas of trade and legal if the need arose.

In response to this question the Taoiseach Enda Kenny in a parliamentary reply on 15 February 2017, provided an update in relation to the Governments preparations for Brexit stating that: “

“Brexit is being treated as a crucial cross-cutting whole of Government issue. In my own Department, I have implemented significant restructuring by creating an amalgamated international, EU and Northern Ireland division under a second Secretary General. This restructuring brings responsibility within my Department for relevant international issues together in a single integrated division. This division supports the Cabinet Committee on Brexit and EU Affairs and manages the overall

⁷⁶ 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.

⁷⁷ 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.

⁷⁸ 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_f inal.pdf.

co-ordination of Brexit issues across Government.

Work on Brexit is also supported by the Minister for Foreign Affairs and Trade, Deputy Flanagan, and his Department, which now has a greater role in EU matters overall, with a newly created EU division and the existing division dealing with Anglo-Irish affairs both having important roles to play. Across Government, relevant Departments, agencies and overseas missions are being strengthened to deal with Brexit.....

“The Brexit stakeholder group, which was set up pre-referendum as an information sharing forum, last met in October 2016. Since then we have broadened our stakeholder consultation and engagement through the all-island Civic Dialogue process, which began with a plenary session on 2 November. The second plenary session takes place this Friday, 17 February”.

Fianna Fáil Sinn Fein motion on special status for Northern Ireland.

In order to give effect to the provisions contained in its publication ‘The Case for the North to Achieve Special Designated Status within the EU’, on 15 February Sinn Fein put forward a motion in the Dáil calling for the Government “to negotiate for Northern Ireland to be designated with a special status within the EU” and for the whole Island to remain within the EU as a single entity. Subsequent to this Fianna Fáil tabled a similar motion which was later adopted by Sinn Fein and put forward as a single text.

The Minister for Foreign Affairs Deputy Charlie Flannigan articulated the Government’s response to this motion in a parliamentary reply on 21 February 2017. The Minister noted that that whilst he agreed with the broad thrust of the motion, he proposed deleting the reference to special status.

“‘Special status’ for Northern Ireland is taken to mean a specific request for Northern Ireland to remain within the EU with a special status post Brexit....

“...Special status gives rise to serious concerns for other EU partners about precedents that might be set elsewhere. This would risk undermining the Government’s efforts to specifically address and mitigate the very real impacts facing our island – and the people of Northern Ireland in particular - due to Brexit.”

The Dáil rejected the Government text by 84 votes to 59 and adopted the Sinn Fein/ Fianna Fáil Motion by 77 votes to 65.

Oireachtas response and engagement

Dáil Éireann held a special sitting to discuss the outcome of the UK referendum on 27 June.⁷⁹ This discussion took place over several hours and the Taoiseach made a statement⁸⁰ on the subject.⁸¹ 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 27 September 2016, 20 October and 17 November to discuss implications of Brexit on the Good Friday Agreement. The Joint Committee on Agriculture, Food and the Marine has discussed the specific impact of Brexit on the Irish mushroom industry. On 4 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. Likewise, Brexit was also discussed during a meeting of the Committee with the European Commissioner for Agriculture and Rural Development Phil Hogan on 20 October.

The Committee on Jobs, Enterprise and Innovation held 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 Ireland in addition to a 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. 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.

⁷⁹ 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>

⁸⁰ 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.

⁸¹ 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)

A number of Oireachtas Committees have now completed their hearings and have produced their reports. The Dáil Business Committee hosted a Symposium on European Union Affairs and the economic implications of UK withdrawal from the European Union on 22 September 2016 in the Mansion House in Dublin. 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.

On the 17 January the Joint Committee on Jobs, Enterprise and Innovation met to discuss the Economic and Trade Agreement.

On 9 February the Committee on the Implementation of the Good Friday Agreement met. The meeting was addressed by the Minister for Public Expenditure and Reform, Deputy Paschal Donohoe, who spoke about the implications of Brexit on the allocation of EU funding, including under the PEACE and INTERREG programmes.

On 1 March the Committee on European Affairs met. The guest attendee at this meeting was Mr James Temple-Smithson, Head of the European Parliament Information Office in Ireland. Mr Templeton was invited speak about the work and role of the European Parliament Information Office in Ireland.

1.15.3 The British Negotiating Strategy

On 17 January 2017 the British Prime Minister Teresa May set out the UK's negotiating strategy at Lancaster House. These priorities are laid out in a 12 point plan as illustrated in Text box no 4. During this speech the Prime Minister stated that the UK would not publish a white paper covering its withdrawal plans.

Some of the main points to emerge from the Prime Minister's speech were a reiteration of pledges made during her election campaign. In summary, that the UK would no longer be part of the single market and, as part of the negotiations with the EU on trade, she would seek to conclude a unique customs agreement with the EU.

Text Box4. Teresa May's 12 Point Plan

1. Provide certainty about the process of leaving the EU.
2. Control of our own laws. Leaving the European Union will mean that our laws will be made in Westminster, Edinburgh, Cardiff and Belfast.
3. Strengthen the Union between the four nations of the United Kingdom.
4. Deliver a practical solution that allows the maintenance of the Common Travel Area with the Republic of Ireland.
5. Brexit must mean control of the number of people who come to Britain from Europe.
6. Protect rights for EU nationals in Britain and British nationals in the EU. We want to guarantee rights of EU citizens living in Britain and the rights of British nationals in other member states, as early as we can.
7. Protect workers' rights. Not only will the government protect the rights of workers set out in European legislation, we will build on them.
8. Free trade with European markets through a bold and ambitious free trade agreement with the European Union.
9. New trade agreements with other countries. It is time for Britain to get out into the world and rediscover its role as a great, global, trading nation.
10. The best place for science and innovation. We will welcome agreement to continue to collaborate with our European partners on major science, research and technology initiatives.
11. Co-operation in the fight against crime and terrorism. We will continue to work closely with our European allies in foreign and defence policy even as we leave the EU itself.
12. A smooth, orderly Brexit. We believe a phased process of implementation will be in the interests of Britain, the EU institutions and member states.

Source: UK Government press office

On 24 January 2017, the UK Supreme Court delivered its judgment on the issue of triggering Article 50. An 8-3 majority of the Court upheld the decision of the High Court which stated that an Act of Parliament is required to authorise ministers to notify the Council of the UK's decision to withdraw from the European Union.

On 26 January, the UK Government published the European Union (Notification of Withdrawal) Bill. Secretary of State for Exiting the European Union David Davis said that the purpose of the bill would be "simply to give the government the power to invoke Article 50". The first reading took place on Tuesday 31 January and from there it goes to the House of Lords for debate after the 8th February, when the House of Commons committee stage ends.

On 1 February 2017 the Irish Times reported that following on from the Supreme Court decision Prime Minister Theresa May must obtain parliamentary approval prior to initiating the withdrawal process. The same article notes that on the 31 January MPs voted by a majority of 384 on a motion authorising Theresa May to trigger article 50 of the Lisbon Treaty with respect to withdrawal from the EU. The final vote was 498 in favor with 114 against.

On the 2 February 2017 the Telegraph newspaper noted the UK Secretary of State for Exiting the EU David Davis announced the release of a white paper which gives effect to Theresa May's vision of "an independent and truly global United Kingdom".

The Secretary expands on some of the provisions contained in the 77 page document by noting:

"The White Paper confirmed that the principle of free movement will end and new immigration rules will be "phased out...

.. Britain's strategy would be guided by the 12 principles set out by Mrs May last month...

..The UK would seek to secure the rights of around 2.8 million EU nationals who live in the UK as soon as possible in negotiations...

..The paper confirmed Britain will leave the single market and the Government will try to strike a new customs agreement.

It confirmed Britain will leave the jurisdiction of the European Court of Justice (ECJ) and the British taxpayers will no longer pay contributions into the Brussels budget"

On the 8 March 2017 the UK Parliament announced that the House of Lords supported a Labour led motion seeking amendments to the bill that would guarantee the rights of EU nationals already living in the UK. The motion was passed by a majority of 102, with the final vote (358 in favor to 256 against).

As the Bill passed through the House of Commons unchanged, this amendment by the House of Lords could have the effect of passing the Bill back and forth to the House of Commons for further scrutiny before the March 13 cut off point, by which time the Lords are expected to halt their demands for further changes and allow for the legislation reach the statute book.

1.16 The Agreement/Peace Process and Institutions

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

The Good Friday Agreement/Peace Process and Institutions

The Agreement, Institutions and Peace Process

Background

The Belfast Agreement (Good Friday Agreement) ('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) in Northern Ireland now and in the future, and for over-arching and interdependent British-Irish and North-South institutions. Creating the internal power-sharing institutions, in particular the North-South institutions, 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 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.

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”. 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.

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.

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.⁸²

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 have officially committed to abide by its terms and to use its institutions as the basis for engagement on Northern Ireland (Text Box 5).

⁸² See British-Irish Council’s website for objectives and most recent communiqués: <https://www.britishirishcouncil.org/aboutcouncil>.

Text Box 5: 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 Andrews and Fresh Start, 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".

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".⁸³

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

⁸³ Secretary of State Brokenshire, extracts from speech at Oxford University, 21 September 2016: <https://www.niconservatives.com/news/secretary-state-northern-ireland-Brexit>.

to develop still further the unique relationship between their peoples and the close cooperation 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 of Ireland,⁸⁴ “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”.⁸⁵

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”.⁸⁶ 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”⁸⁷

The court’s assessment of this argument as set out in the judgment was that⁸⁸:

⁸⁴ See De Mars, Murray et al (June 2016) ‘Policy Paper: Brexit, Northern Ireland and Ireland’ Durham University and Newcastle University

⁸⁵ Centre for Cross Border Studies and Co-operation Ireland, EU Referendum Briefing Paper 1 p. 5

⁸⁶ <http://www.independent.co.uk/news/uk/politics/Brexit-legal-challenge-dismissed-northern-ireland-article-50-case-eu-withdrawal-not-heard-latest-a7384386.html>

⁸⁷ 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/j_j_MAG10076Final.htm.

⁸⁸ 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-](http://www.courtsni.gov.uk/en-GB/Judicial%20Decisions/PublishedByYear/Documents/2016/%5b2016%5d%20NIQB%2085/j_j_MAG10076Final.htm)

“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 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 to the issues which have been stayed and which are under consideration in the English courts."⁸⁹

⁸⁹ Agreement, Section 4, 1-6

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”⁹⁰. The judgment also questioned some of the processes by which the High Court in Belfast had made its assessment in the case outlined above.⁹¹ 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.⁹²

On 24 January 2017, the UK Supreme Court ruled that the UK government cannot trigger Article 50 of the Lisbon Treaty without authorisation from an Act of parliament. However, the decision ruled that a vote by the Scottish Parliament, Northern Ireland Assembly and Welsh Assembly is not required. A summary of the judgement can be found on the Supreme Court’s website.

“The decision to withdraw from the EU is not a function carried out by the Secretary of State for Northern Ireland in relation to Northern Ireland... Moreover, section 1 NIA, which gave the people of Northern Ireland the right to determine whether to remain part of the UK or to become part of a united Ireland, does not regulate any other change in the constitutional status of Northern Ireland.”

A statement was later released from the Prime Minister’s Office following the ruling stating that the intention remains to trigger Article 50 by the end of March 2017 as planned. 1 February 2017, the House of Parliament voted 498 to 114 to advance the bill allowing Prime Minister Theresa May the authority to invoke Article 50.

⁹⁰ R (Miller) v Secretary of State for Exiting the EU [2016] EWHC 2768 3 November 2016: <https://www.judiciary.gov.uk/wpcontent/uploads/2016/11/judgment-r-miller-v-secretary-of-state-for-exiting-the-eu20161103.pdf>.

⁹¹ R (Miller) v Secretary of State for Exiting the EU [2016] EWHC 2768 3 November 2016: <https://www.judiciary.gov.uk/wpcontent/uploads/2016/11/judgment-r-miller-v-secretary-of-state-for-exiting-the-eu20161103.pdf>

⁹² NI AG says further consideration of Brexit challenge warranted’ Irish Times 8 November 2016. 71

Impact of Brexit on the Good Friday Agreement

The following media articles highlight the threat that Brexit may have on the Good Friday Agreement and the Peace Process in Ireland.

The following Independent article claims that the Good Friday agreement is “under threat” due to the Brexit strategy of Prime Minister Theresa May. Deputy Gerry Adams claimed in a BBC article that Brexit will destroy the Good Friday Agreement. He also claimed that fundamental human rights enshrined in the Agreement could be undermined. A Telegraph article also questioned if Brexit could disturb the peace in Northern Ireland, emphasising the view of the Irish Government and Taoiseach Enda Kenny that Brexit could endanger the stability of the Peace Process.

The latest Institute for International and European Affairs (IIEA) Brexit Brief, released in January 2017, highlights the House of Commons Exiting the European Union Committee report, which underlines the need to ensure “UK-Irish relations and stability in Northern Ireland and the Good Friday Agreement are not jeopardised by the UK’s exit from the EU.”

The IIEA report also highlights comments from Hillary Benn MP, made at the Labour Party conference on Brexit on 13 December 2016 that any agreement should uphold and respect the Good Friday Agreement.

The Joint Oireachtas Committee on the Implementation of the Good Friday Agreement met on 26 January 2017 to discuss the Implications for the Good Friday Agreement of the UK Referendum Result.

Among the implications discussed were the impact of Brexit on the Good Friday Agreement, the relationship between the Republic of Ireland and Northern Ireland, and issues regarding the border, and the likelihood of the replacement of the customs union which could see a restriction on the movement of people and goods across the border. Mr Tom Arnold and Mr Dáithí O’Ceallaigh of the IIEA emphasised the good work that was achieved with Northern Ireland and the border over the past twenty years, through the support of the Commission and the European institutions, and the potential to further build on the Good Friday Agreement into the future. This however, will require the UK and Ireland to work hard to ensure that their relationship is maintained, to compensate for the loss of the UK leaving the EU.

Text Box 6: Address by Taoiseach Enda Kenny to the Institute of European Affairs on 'Ireland at the heart of a changing European Union' (extracts), 15 February 2017

Taoiseach Enda Kenny

The Brexit process will not wait for another round of lengthy talks in Stormont.

When Article 50 is triggered, the world will move on, and it will move on quickly.

Of course I will do my best to put forward the interests of the North in the Brexit negotiations.

I will defend the Good Friday Agreement, in its spirit as well as its letter.

The Irish Government will oppose a hard border, argue for free movement on this island, seek EU funding for cross-border projects and protect the rights of EU citizens, whether from North or South...

The European Union has always been about removing barriers, about bringing people together in peace and prosperity. The Treaty of Rome, which we will celebrate on its 60th anniversary next month, is one of the greatest peace agreements in history.

Without it, there could have been no Good Friday Agreement.

So, I am in absolutely no doubt that the European Union, which has done so much to support reconciliation on this island, will defend the peace process and the Good Friday Agreement.

I am confident that the European Union will not bring us back to a border of division.

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.⁹³

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."⁹⁴

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.

⁹³ De Mars, Murray et al (June 2016) 'Policy Paper: Brexit, Northern Ireland and Ireland' Durham University and Newcastle University

⁹⁴ Minister addressing the Joint Committee on the Good Friday Agreement, 27 September 2016

Indirect impact of Brexit on the institutions

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 7 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.

Text Box7: 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 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.

Text Box Seven

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"⁹⁵. 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"

⁹⁵ Todd Jennifer (2016) *The vulnerability of the Northern Ireland settlement: British Irish Relations, political crisis and Brexit*. Professor of Politics in University College Dublin.

And that

“community relations in Northern Ireland remain extremely fragile and vulnerable to events and political changes.”⁹⁶

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. 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;⁹⁷
- (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”.⁹⁸

⁹⁶ 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>.

⁹⁷ 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.

⁹⁸ 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.

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.⁹⁹ 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.¹⁰⁰ 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".

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."¹⁰¹ 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."¹⁰² 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 territorial cooperation programmes (INTEREG).¹⁰³ 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

⁹⁹ 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.

¹⁰⁰ Minister Charlie Flanagan, Joint Oireachtas Committee on the Implementation of the Good Friday Agreement, 27 September 2016

¹⁰¹ 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.

¹⁰² Centre for Cross Border Studies and Cooperation Ireland EU Referendum Briefing 1, 7

¹⁰³ Centre for Cross Border Studies and Cooperation Ireland EU Referendum Briefing Paper 3 p. 7)

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."¹⁰⁴

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. 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.¹⁰⁵

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. 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, others, such as First Minister Arlene Foster, prefer to deal with the implications of Brexit through the existing cross-border institutions.

¹⁰⁴ Centre for Cross Border Studies and Cooperation Ireland EU Referendum Briefing Paper 3 p. 7)

¹⁰⁵ Joint Communiqué, North South Ministerial Council, 22nd Plenary Meeting, 4 July 2016

1.17 Policing and Justice

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 Strategy 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.

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.

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,

- **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.

European Arrest Warrants

Extradition arrangements between the UK and the Republic of Ireland (as well as other EU Member States) are currently governed by the 2002 Council Framework Decision on the European Arrest Warrant.¹⁰⁶ 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.

¹⁰⁶ 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",

The EAW has become an important tool for law enforcement agencies in Ireland and the UK. In 2014, the Republic of Ireland surrendered 21 wanted persons to the UK on foot of EAWs, of whom 6 were surrendered to the PSNI.¹⁰⁷ In the same year, the Republic of Ireland made 48 requests to the UK for surrender of persons under EAWs, leading to a total of 36 surrenders to the Republic of Ireland by UK authorities, of which 32 were by the PSNI.¹⁰⁸ 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.

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. A 2014 paper published by the UK Government in relation to EU police and criminal justice matters¹⁰⁹ 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.

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 2003, 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 of Ireland's courts.

¹⁰⁷ 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-arrestwarrantstatistics/691-wanted-from-the-uk-european-arrest-warrant-statistics-2009-may-2016-calendar-year>

¹⁰⁸ 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-arrestwarrant-statistics>.

¹⁰⁹ HM Government (2014) "Decision pursuant to Article 10(5) of Protocol 36 to The Treaty on the Functioning of the European Union", Cm8897:

1.18 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 (seven 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.¹¹⁰ 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 8: 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)**
- **European Social Fund (ESF)**
- **European Agricultural Fund for Rural Development (EAFRD) and European Maritime and Fisheries Fund (EMFF)**

¹¹⁰ European Commission, November 2015 'European Structural and Investment Fund 2014-2020: Official texts and commentaries'

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.”¹¹¹

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.

¹¹¹ 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.

Table 6: Funding for Northern Ireland and border region INTERREGA Programmes

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
INTERREG VA	2014-2020	240	43	283

The Special EU Programmes Body has published a paper which overviews the Impact of EU Funding on the Region 1995 to 2020 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 four areas of intervention (priorities) under which all projects are cross-border and comply with two horizontal principles (equality of opportunity and sustainable development) (Table 7).

Table7: 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 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.'¹¹²

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.

Table8: 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

¹¹² Special EU Programmes Body, Peace 2014-2020 Programme Factsheet

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.¹¹³

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
- Promoting joint approaches to social, education, training and human resource development.¹¹⁴

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

¹¹³ 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.

¹¹⁴ 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.

Table 9: Peace IV Priorities and Outputs

Programme	Priorities and target outputs
Peace IV	<p>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.</p> <p>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).</p> <p>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.</p> <p>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.</p>

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 (seven 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.

On 13 August 2016 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 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: 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.

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."¹¹⁵ 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.¹¹⁶

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.¹¹⁷

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.

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 Programmes¹¹⁸:

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

¹¹⁵ Philip Hammond promises to spend billions to make up for lost EU funds as pressure mounts' *Independent.co.uk* 3 October 2016

¹¹⁶ 'Questions remain on Hammond's post-Brexit funding pledge' *Financial Times*, 12 August 2016

¹¹⁷ Further certainty on EU funding for hundreds of British projects' 3 October 2016 (www.gov.uk) 143 Cited above 3 October 2016.

¹¹⁸ Presentation by Gina McIntyre, Chief Executive of SEUPB at Centre for Cross Border Seminar in Northern Irish Office in Brussels

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’¹¹⁹ 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. 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).¹²⁰

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.¹²¹ 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,

¹¹⁹ Centre for Cross Border Studies and Cooperation Ireland, Briefing Paper 3

¹²⁰ 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/

¹²¹ Taillon Ruth (October 2016) ‘Future scenarios: Cross border cooperation ‘post Brexit’ Presented at seminar in Northern Ireland Office, Brussels 10 October 2016.

Luxembourg, Germany and Switzerland supports cross-border cooperation between local and regional authorities and local public institutions in their common areas of competence. The legal framework could be the substantial partnership which already exists between the Irish and UK government and the Northern Ireland Executive.

1.19 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 Sterling¹²². 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 per cent in Q2 to 56 per cent in Q3 2016.¹²³

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

"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."¹²⁴

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.

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.

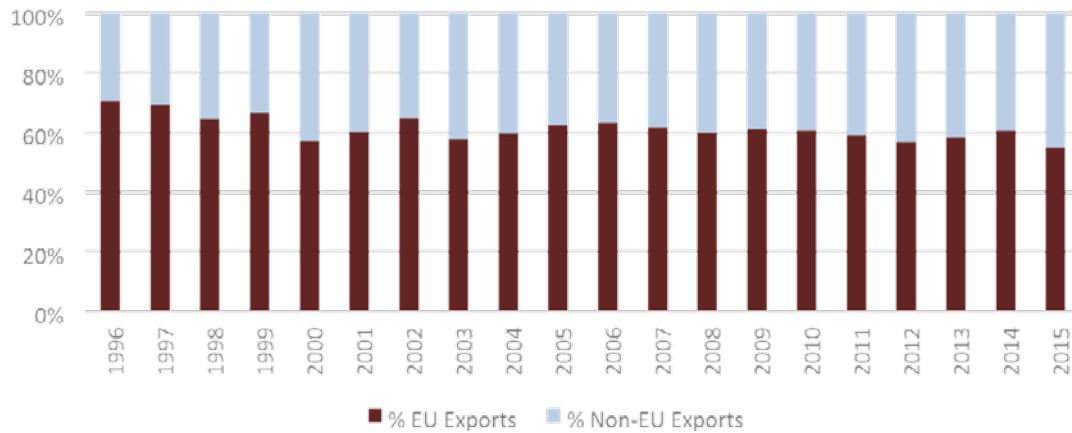
¹²² 'Sterling fall demands urgent policy response' IBEC, 1 August 2016: <http://www.ibec.ie/IBEC/Press/PressPublicationsdoclib3.nsf/vPages/Newsroom~sterling-fall-demands-urgent-policy-response01-08->

¹²³ InterTradeIreland webpage, Crossborder Shopping available at

¹²⁴ The Ulster Bank Northern Ireland PMI (8 August 2016) <https://ulstereconomix.com/2016/08/08/output-declines-for-first-timein-15months/#more-2021>

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 1).”

Figure 1: NI Goods exports EU and Non-EU proportion



Source: HMRC Regional Trade Database (October 2016)

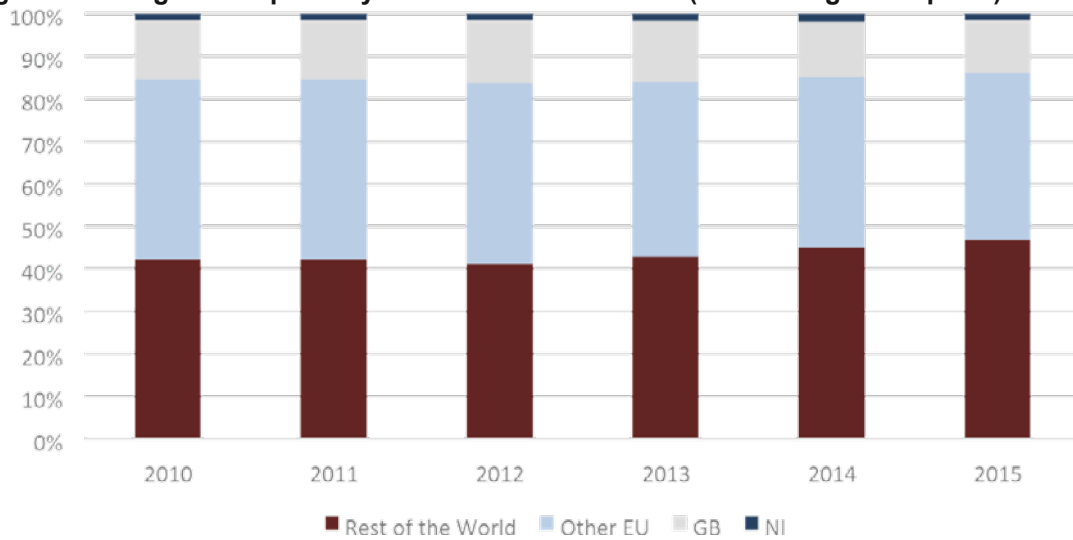
The Republic is a significant market for produce from Northern Ireland. In 2015, 33 per cent of all Northern Ireland goods exports went to the Republic, accounting for 61 per cent of Northern Ireland’s EU exports in the same year.¹²⁵

Northern Ireland imports from the EU made up 55 per cent of total imports in 2015, down from 62 per cent in 1996. The Republic was the source of 27 per cent of Northern Ireland’s total imports (49 per cent 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 per cent of total Irish exports in 2015 (See Figure2). Northern Ireland is a relatively small export market for Ireland, accounting for just 1.6 per cent of total exports in 2015. The UK was the source of 25.7 per cent 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.

¹²⁵ HMRC Regional Trade Database (October 2016)

Figure 2: Irish goods exports by destination 2010 – 2015 (% of total good exports)



Source: CSO Trade Statistics (August 2016)

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

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 of Ireland 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 per cent (290) of all Northern Ireland foreign-owned business in 2015. When measured by associated employment, Irish businesses were responsible for 17.5 per cent of all employment associated with foreign business in Northern Ireland, second to the US.¹²⁶

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 per cent, from 19.9 per cent in 2014.

UK Trade and Investment data on FDI into Northern Ireland between 2011/12 and 2014/15, summarised in Table 13, 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 per cent 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 per cent were created by EU FDI projects. The same projects resulted in the safeguarding of 1,037 jobs, of which 84, or 8 per cent were safeguarded by FDI projects from the EU.

Table10: FDI projects in Northern Ireland 2010/11 to 2014/15

	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%

¹²⁶ CSO Trade Statistics (August 2016)

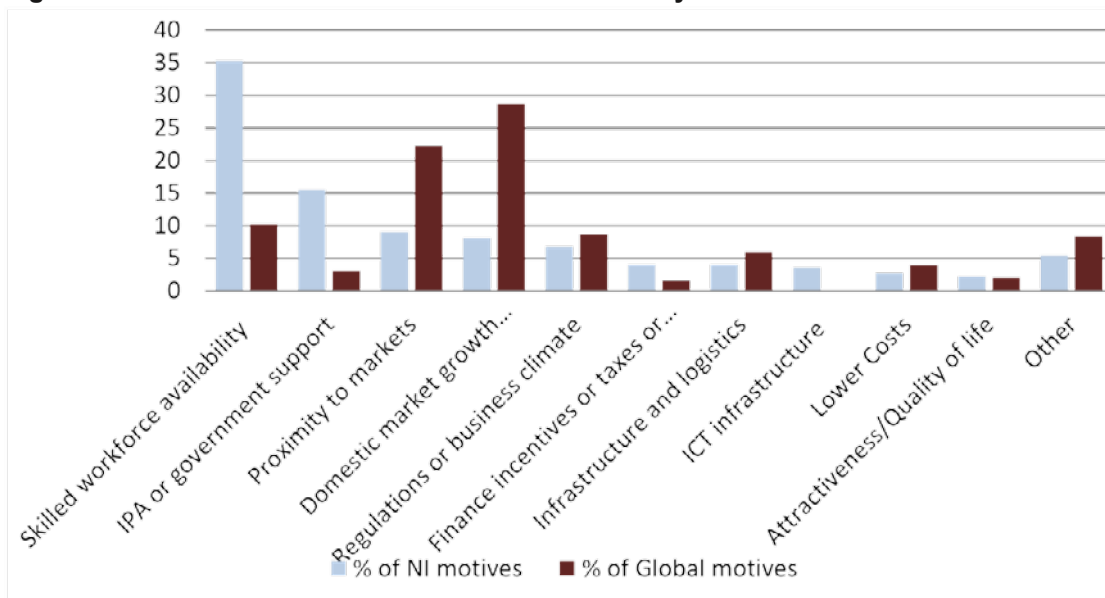
Total safeguarded jobs	1,037
EU safeguarded jobs	84

% EU safeguarded jobs	8%
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Source: UK Trade and Investment

FDI Intelligence data (2014), outlined in Figure 3, 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 domestic market growth potential and proximity to markets. This suggests that factors that are likely to less affected by Brexit – IPA availability, and skills – are more important to investors locating in Northern Ireland than is the case for investors globally.

Figure3: Motives of FDI in NI v Motives of FDI Globally



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.”¹²⁷

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 up their FDI promotion activities to win relocation and new FDI projects from the London.”¹²⁸

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.”¹²⁹

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

¹²⁷ 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/>

¹²⁸ 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/>

¹²⁹ PwC, Brexit the implications for Irish Business (July 2016) p3 <http://www.pwc.ie/media-centre/assets/publications/2016-pwcirelandBrexit-booklet2.pdf>

projects in Europe over the past ten years, the expected additional attractiveness of Ireland to new FDI projects is likely to be small.”¹³⁰

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”.¹³¹

¹³⁰ 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/>

¹³¹ 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/>

1.20 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 of Ireland.

There are almost 140,000 farms in the Republic of Ireland and 25,000 in Northern Ireland. Compared to the Republic of Ireland, Northern Ireland's agricultural share is lower for both total gross value added (GVA) (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 of Ireland 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 average €17,168 (32 per cent in dairy to 109 per cent in sheep) in the Republic, direct payments were 103 per cent 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 per cent 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 per cent 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 of Ireland.

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 is 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.

1.21 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:

“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 of Ireland 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.

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.

PwC stated that: “Restrictions on movement of labour, may impact the current employment balance between Ireland North and South.”

In addition, the CCBS stated that:¹³²

“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.

As stated by the European Commission:

“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. 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.

¹³² Centre for Cross Border Studies, EU Reference Briefing Paper 4, <http://crossborder.ie/site2015/wpcontent/uploads/2016/06/CCBS-andCooperation-Ireland-EU-Referendum-Briefing-Paper-4.pdf>

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 fees as domestic students.¹³³ 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).¹³⁴ This situation will also exist for students traveling from Northern Ireland to the Republic of Ireland.

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 of Ireland are involved in such partnerships.

As stated by Gerry O' Sullivan of the Higher Education Authority (HEA):¹³⁵

¹³³ Student Finance NI, Frequently Asked Questions, http://www.studentfinancenl.co.uk/portal/page?_pageid=54,1267465&_dad=portal&_schema=PORTAL#section7_1

¹³⁴ Northern Ireland Assembly, RaISe, Economic Impact of International Students in NI, <http://www.niassembly.gov.uk/globalassets/documents/employment-and-learning/research-papers/11.-raise---economicimpact-ofinternational-students-in-ni-final.pdf>

¹³⁵ University Times June 2016, Brexit and the uncertain future education

“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 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.¹³⁶

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. 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. 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. SSC ensures that when an individual is working in a different EU country than the one in which they are a domestic resident

¹³⁶ Department for the Economy, NI Horizon 2020, <https://www.economy-ni.gov.uk/articles/ni-horizon-2020>

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 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.

1.22 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".¹³⁷ 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.¹³⁸

In 2015, 28 per cent of external overnight trips (total number of trips: 2,284,889) to Northern Ireland were made by visitors from the Republic and mainland Europe. Comparatively, 57 per cent of external overnight trips were made by visitors from Great Britain, whilst 16 per cent 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 per cent of out-of-state overnight trips were made by visitors from the Republic and mainland Europe, compared to the 36 per cent made by visitors from the rest of the world.¹³⁹

By comparison, 40 per cent of overnight visitors (of 7,749,000) in 2015 to the Republic of Ireland were from Great Britain, 37 per cent from the rest of Europe, 16 per cent from USA and Canada and 6 per cent from all other areas.¹⁴⁰ Taken as a whole island, 14 per cent of visitors to the island of Ireland in 2015 came to Northern Ireland and 76 per cent to the Republic of Ireland.¹⁴¹ Expenditure by external visitors totaled £540.75 million in 2015. Of this, 51 per cent of total expenditure came from visitors from Great Britain, 28 per cent from visitors from the Republic and mainland Europe, and 22 per cent came from visitors from the rest of the world. If visitors from Great Britain are excluded, total expenditure from visitors outside the UK equaled £266.42 million. Of this, 56 per cent came from visitors from the Republic of Ireland and mainland Europe, and 44 per cent

¹³⁷ Department for the Economy, Tourism and the Programme for Government 2016 to 2021
<https://www.economy-ni.gov.uk/topics/tourism>

¹³⁸ Irish Government (2016), A Programme for a Partnership Government, Dublin: Irish Government:
http://www.merrionstreet.ie/merrionstreet/en/imagelibrary/programme_for_partnership_government.pdf.

¹³⁹ 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>

¹⁴⁰ 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/>.

¹⁴¹ 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/>.

came from visitors from the rest of the world. By comparison, 28 per cent of revenue from visitors to the Republic was from visitors from the USA, 20 per cent from the rest of Europe (excluding Great Britain), 15 per cent from the rest of the world and 10 per cent 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 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.”¹⁴²

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.”¹⁴³

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.

¹⁴² 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

¹⁴³ 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

“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.”¹⁴⁴

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

- 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

- 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 stated:

“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.”

¹⁴⁴ BBC News, Theresa May on NI post-Brexit: 'No-one wants return to borders of the past' (25 July 2016)

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.¹⁴⁵

¹⁴⁵ Official Report (Hansard) Monday 27 June 2016. Volume 114, No 10 [online] available from: <http://nia1.me/35m> (Page 31)

1.23 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.”¹⁴⁶

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 cooperation 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.”¹⁴⁷

Energy dependency shows the extent to which an economy relies upon imports in order to meet its energy needs. 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.

¹⁴⁶ All-Island Energy Market - A Development Framework available at <http://www.dccae.gov.ie/energy/SiteCollectionDocuments/Electricity/All%20island%20Energy%20Market%20Development%20Framework.pdf>

¹⁴⁷ 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

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.¹⁴⁸ The Republic's energy market is particularly heavily reliant on its connection to the UK market. More than 90 per cent of the €6.5 billion of energy products that the Republic imported in 2014 (3.6 per cent of real GDP) came from the UK.¹⁴⁹ 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 reserves, although its energy imports from Europe are increasing mainly because reserves of natural gas in the North Sea are declining. The UK had an energy dependence rate of 45.5 per cent in 2014, according to Eurostat figures. Northern Ireland is dependent on imported gas to meet its generation needs and is therefore susceptible to the volatility of world energy prices. 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. Fuel mix and energy trends in Ireland and Northern Ireland The Sustainable Energy Authority of Ireland (SEAI) 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.”

¹⁴⁸ 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>

¹⁴⁹ National Treasury Management Agency (NTMA) (2015), *Brexit and its Impact on the Irish Economy*. Available at <http://www.ntma.ie/download/BrexitIrish%20Economy.pdf>

As Table 11 shows, fossil fuels accounted for 90 per cent of all energy used in the Republic in 2014. Oil continues to be the dominant energy source, having roughly a 47 per cent share in both 1990 and 2014. Use of natural gas fell in 2014 by 3.1 per cent and its share of TPER was 28 per cent. Total renewable energy increased by 13.3 per cent during 2014, with all forms of renewable energy experiencing growth. The overall share of renewables in primary energy stood at 7.7 per cent in 2014.

Table 11: Growth rates, quantities and shares of total primary energy requirement

	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		

(TPER) fuels in Ireland, 1990-2014

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

The Analytical Services Unit of the Northern Ireland Department of Enterprise, Trade and Investment has published information on total energy consumption in Northern Ireland using an amalgamation of sources including the DECC total final energy consumption data (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 12 below. Table 12 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 per cent 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.

Table12: 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 ¹¹¹	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*.

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”. 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 tielines. Table13 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.

Table 3: 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*.

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

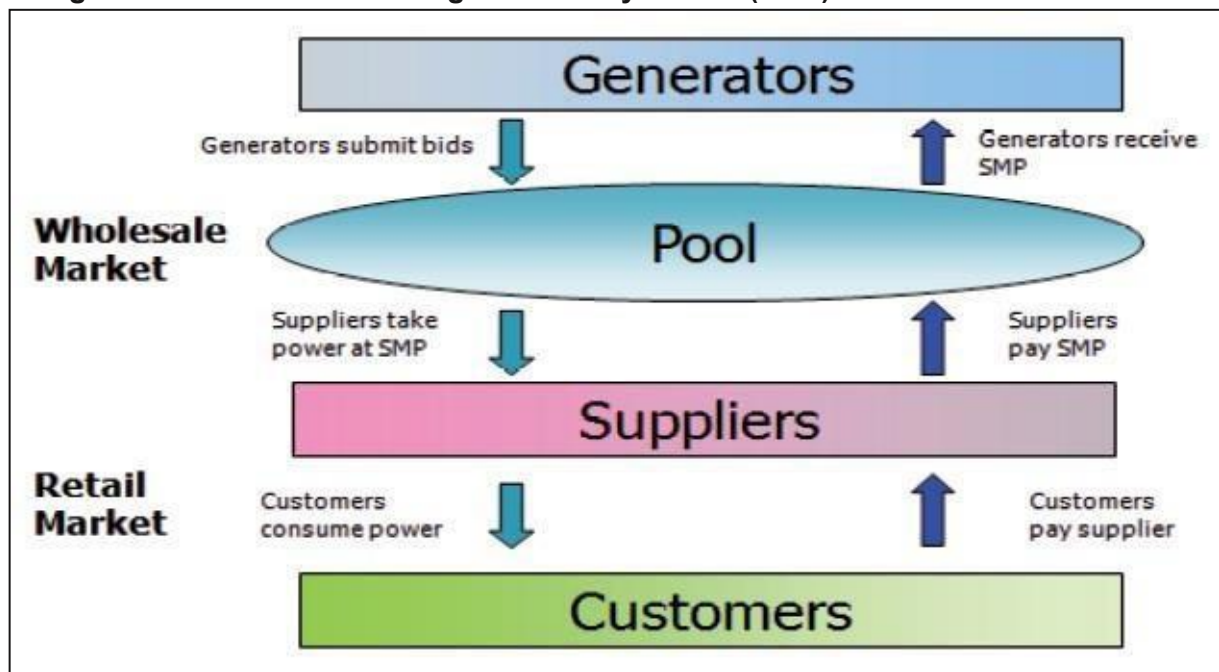
It is not clear what impact UK withdrawal from the EU would have on the energy market at present. Any increase in energy prices would be a concern for policy makers given the importance of energy prices for households and the wider economy. Should future trade arrangements increase the cost of importing energy into the UK, this could negatively impact domestic and business consumers in Northern Ireland. With 42 per cent 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 of Ireland 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. The operation of the single wholesale market requires the physical connection of the grids in Northern Ireland and the Republic of Ireland. The design of the SEM includes two main components - energy and capacity. Figure 4 provides a high level overview of how the SEM operates.

Figure 4: Overview of the Single Electricity Market (SEM)



Source: CER (2011), *CER Factsheet on the Single Electricity Market*. **Notes:** System Marginal Price (SMP).

The SEM is jointly regulated by the CER (the Republic of Ireland) and the Utility Regulator (Northern Ireland). The Single Electricity Market Committee (SEMC) is the decision making authority for all Single Electricity Market (SEM) matters.¹⁵⁰ It consists of three CER and three Utility Regulator representatives along with an independent and a deputy independent member.¹⁵¹

The SEM is operated by the Single Electricity Market Operator, a joint venture between EirGrid and SONI. 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

¹⁵⁰ Established in 2007 following the introduction of the SEM, legislation required the establishment of SEM governance in the form of a SEM Committee.

¹⁵¹ More information is available on the website of the SEMC at <https://www.semcommittee.com/about->

electricity markets.¹⁵² The 2014 Green Paper on Energy Policy in Ireland by the Republic's government also highlighted the achievements of the SEM: The successful establishment in 2007 and subsequent operation of the all-island Single Electricity Market (SEM) has been hailed as an exemplar of regional cooperation 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.¹⁵³ 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. It is unclear whether the All-island Single Electricity Market and the current process of redesign will continue to be feasible post-Brexit.¹⁵⁴ 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 £500 million per annum in the medium term.¹⁵⁵ 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

¹⁵² CER (2011), CER Factsheet on the Single Electricity Market. Available at <https://www.cer.ie/docs/000262/cer11075.pdf>

¹⁵³ 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->

¹⁵⁴ RaISe (2016) EU Referendum Update. Available at http://www.niassembly.gov.uk/globalassets/documents/raise/publications/2016-2021/2016/executive_office/4616.pdf

¹⁵⁵ PPAN (2016), Brexit – Energy and Carbon Implications. Available at <http://www.ppan.ie/wpcontent/uploads/2016/07/Brexit-Energyand-Carbon-5-July.pdf>

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.”

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.”¹⁵⁶

¹⁵⁶ 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>

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.”¹⁵⁷

The CER and Utility Regulator signed a Memorandum of Understanding (MoU) on 14 February 2008 in relation to CAG under the All-Island Energy Market Development Framework.¹⁵⁸ 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 of Ireland and Northern Ireland.¹⁵⁹ This requires the implementation, within specified timeframes, of binding EU gas network codes set out in EU legislation and aims to enhance trading in gas between Member States.¹⁶⁰ 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.¹⁶¹ 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.

¹⁵⁷ 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)

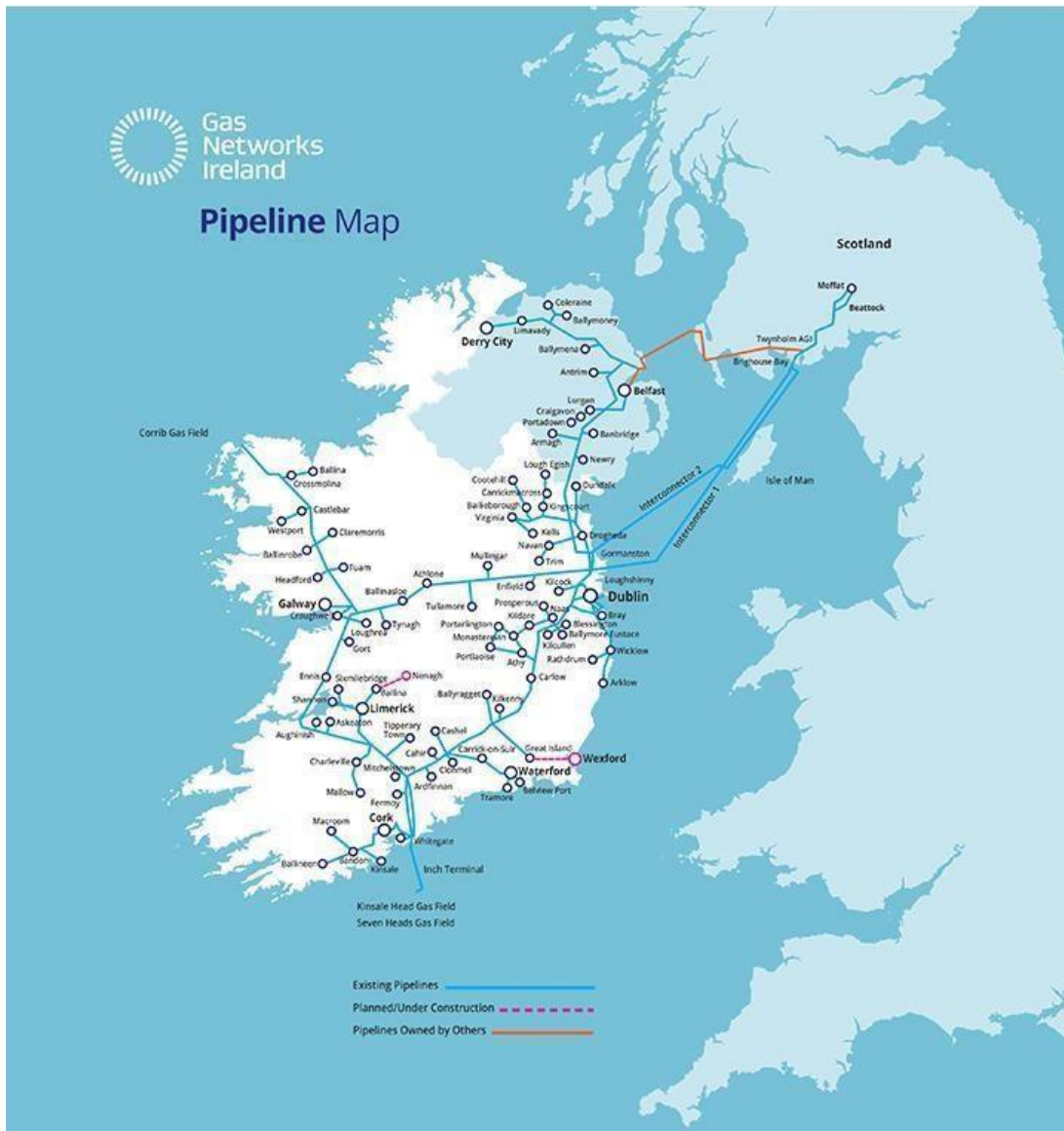
¹⁵⁸ Available at <http://www.cer.ie/docs/000426/cer08055.pdf>

¹⁵⁹ Department of Communications, Climate Action and Environment webpage, Common Arrangements for Gas (CAG).

¹⁶⁰ Department of Communications, Climate Action and Environment webpage, *Common Arrangements for Gas (CAG)*.

¹⁶¹ CER webpage, Overview. Available at <http://www.cer.ie/electricity-gas/cag>

Map 3: Pipeline



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 9 below.

Text Box 9: 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*

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 help bring an end to the energy isolation some of them are facing”.¹⁶² 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,¹⁶³ some of which relate to projects between the Republic of Ireland 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

¹⁶² 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

¹⁶³ 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

components of the EU Energy Union relates to security of supply. This is an important issue for the Republic of Ireland 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 of Ireland, described security of supply in the context of Brexit and what it might mean for the Republic of Ireland 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.”¹⁶⁴

¹⁶⁴ PPAN (2016), Brexit – Energy and Carbon Implications. Available at <http://www.ppan.ie/wpcontent/uploads/2016/07/Brexit- Energyand-Carbon-5-July.pdf>

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

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

Should the UK choose 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 difficult and serve to dampen growth in its renewable energy industry.

1.24 Environment

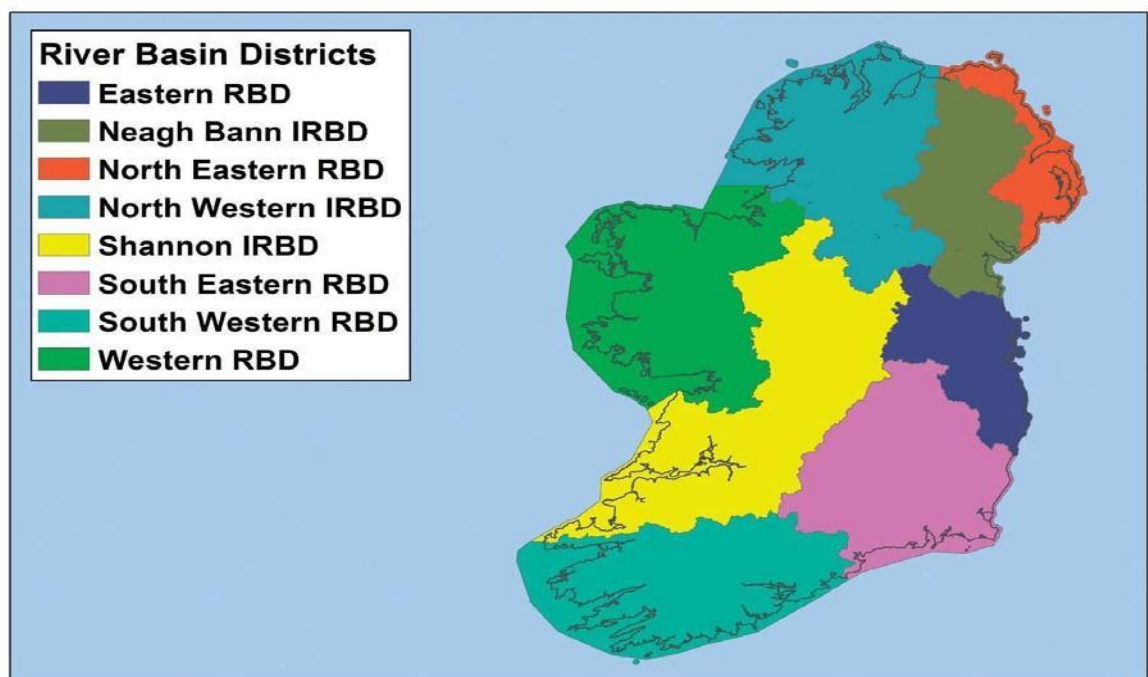
Water Quality

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).¹⁶⁵

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. 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.

Map4: River Basin Districts



¹⁶⁵ <http://1&2>).

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.¹⁶⁶ The Marine Spatial Planning Directive requires marine plans to be completed by 2021. DAERA is currently preparing a marine plan for Northern Ireland.¹⁶⁷ There are currently seven SAC and eight SPA sites with marine components in Northern Ireland.¹⁶⁸ A consultation closed March 2016 on the designation of four possible MCZs in Northern Ireland: Carlingford, Outer Belfast Lough, Rathlin, and Waterfoot. Further detail on their designation is still awaited.¹⁶⁹ There is cross-Departmental responsibility for the MSFD in the Republic of Ireland with input from the Marine Institute. An Initial Assessment of the Republic of Ireland's marine waters was completed in 2013.¹⁷⁰ 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 Republic 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?

¹⁶⁶ http://ec.europa.eu/environment/marine/eu-coast-and-marine-policy/marine-strategy-framework-directive/index_en.htm

¹⁶⁷ <https://www.daera-ni.gov.uk/articles/marine-plan-northern-ireland>

¹⁶⁸ <https://www.daera-ni.gov.uk/articles/marine-plan-northern-ireland>

¹⁶⁹ <https://www.daera-ni.gov.uk/articles/marine-plan-northern-ireland>

¹⁷⁰ <http://www.housing.gov.ie/sites/default/files/migrated->

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 2011-2016¹⁷¹ and the Biodiversity Strategy for Northern Ireland to 2020¹⁷² 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 of Ireland, known as Invasive Species Ireland.¹⁷³

The new European Invasive Alien Species Regulation (1143/2014) entered into force on 1 January 2015.¹⁷⁴ Species identified as invasive are banned and Member States must draw up management plans aimed at their eradication, population control or containment.¹⁷⁵

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, Japanese knotweed, identified as a problem across the island of Ireland, has not been included on the list.¹⁷⁶

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) 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

¹⁷¹ <https://www.npws.ie/sites/default/files/general/national-biodiversity-plan-english.pdf>

¹⁷² <https://www.cbd.int/doc/world/gb/gb-nbsap-v3-p3-en.pdf>

¹⁷³ <http://invasivespeciesireland.com/background/about/>

¹⁷⁴ 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

¹⁷⁵ Article 19 of the Regulation

¹⁷⁶ The list and further information can be found at http://ec.europa.eu/environment/nature/invasivealien/index_en.htm 254

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.¹⁷⁷

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 of Ireland

- Connacht and Ulster Region; and Eastern Midlands Region.

The co-ordinated approach to waste management on both sides of the border is essential with controlling the movement and disposal of legal and illegal waste. Given that post-Brexit the Republic of Ireland 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.

¹⁷⁷ 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.

1.25 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”.¹⁷⁸ 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.¹⁷⁹

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 provider in the country of the insured person.

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.

¹⁷⁸ Willem van de Gronden et al Eds (2011) Health Care and EU Law. page vii

¹⁷⁹ Brexit: impact across policy areas (Edited by Vaughne Miller), House of Commons Library, Briefing Paper, Number 07213,

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.

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.¹⁸⁰ 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 883/2004, 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 Health¹⁸¹

“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

¹⁸⁰ 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-evidenceandbriefings/cross-border-euhealthcare-directive>

¹⁸¹ AQW 1822/16-21, 27 June 2016.

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 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 Ireland¹⁸². The CAWT partnership evolved from an initial informal arrangement into an effective cross-border delivery and implementation structure for the partner organisations¹⁸³. 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

¹⁸² CAWT (2014) CAWT Strategic Plan 2014-2020, <http://www.cawt.com/Site/11/Documents/Publications/Corporate/CAWT%20Strategic%20Plan%2014-19%20PDF.pdf>.

¹⁸³ Heenan, D. and Birrell, D. (2011) Social work in Northern Ireland: conflict and change. Bristol: The Policy Press. p.96

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 after the EU funding concluded (and therefore are now funded by the relevant Departments):¹⁸⁴

“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.”.

¹⁸⁴ Email Response to RaISe request from Sadie Bergin, Communications and Corporate Governance Manager Co-operation and Working Together (CAWT) Cross Border Health and Social Care, 5th August 2016

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).¹⁸⁵ 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.¹⁸⁶ The then Health Minister, Simon Hamilton, announced in March 2016 that £1.5 million would be made available to allow for the recruitment of 35 posts to facilitate the opening of the Altnagelvin Radiotherapy Centre in autumn 2016.¹⁸⁷

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 of Ireland, published the framework for the All-island Congenital Heart Disease Network based on proposals by an International Working Group (IWG).¹⁸⁸ The new all-island children's heart surgery network is to benefit from £42 million worth of investment announced at the opening of a new hybrid cardiac catheterisation laboratory at Our Lady's

¹⁸⁵ North South Ministerial Council (2006) Welcome to the North South Ministerial Council [Online] Available from: <http://www.northsouthministerialcouncil.org/>.

¹⁸⁶ Western Health and Social Care Trust (2012) Radiotherapy Unit Altnagelvin Hospital [Online] Available from: <http://www.westeritrust.hscni.net/pdf/RadioTexhibit.pdf> [Accessed: 4 March 2015].

¹⁸⁷ 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>.

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

Children's Hospital, Dublin. In the future, children from Northern Ireland and the Republic of Ireland will all receive treatment there. Children's heart surgery services at Belfast's Royal Victoria Hospital (RVH) ceased in 2015. The £42 million investment includes contributions from both Northern Ireland's and the Republic of Ireland's Health Departments, £1 million 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 2018.¹⁸⁹

¹⁸⁹ 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> .

1.26 Education

Under Article 6 of the Treaty on the Functioning of the European Union (TFEU) 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.”

Article 165 states that the Union shall:¹⁹⁰

“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.¹⁹¹ The EU’s actions in the area of education and youth work include:¹⁹²

- **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.**

¹⁹⁰ Eur-Lex *Consolidated version of the Treaty on the Functioning of the European Union* [online] Available at: <http://eurlex.europa.eu/legalcontent/EN/TXT/?uri=celex%3A12012E%2FTXT>

¹⁹¹ 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>

¹⁹² Eur-Lex *Consolidated version of the Treaty on the Functioning of the European Union* [online] Available at: <http://eurlex.europa.eu/legalcontent/EN/TXT/?uri=celex%3A12012E%2FTXT>

EU funding

In 2012-13 the Department received almost £2 million 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.¹⁹³

Under the PEACE IV programme running from January 2016 to 2020 (with eligibility until December 2023), shared education is due to receive €35.3 million covering Northern Ireland and the border region of the Republic of Ireland. This comprises €30 million through the European Regional Development Fund and €5.3 million government matched funding.¹⁹⁴ 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.¹⁹⁵ 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.”

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 Northern Ireland Department of Education. The key areas of the programme are:¹⁹⁶

- Joint working and the sharing of good practice across organisations;
- Support for policy reform (any activity aimed at facilitating the modernisation of education systems);

¹⁹³ Information provided by the Department of Education, December 2014

¹⁹⁴ Northern Ireland Assembly Hansard Minister for Education response to an Assembly Question by Mr Robin Swann MLA, 29th June 2016

¹⁹⁵ Northern Ireland Assembly Hansard *Minister for Education response to an Assembly Question by Mr Daithí McKay MLA, 14th January 2014*

¹⁹⁶ Stewart, J. (2014) *European Funding Streams: Education* Belfast: Northern Ireland Assembly

- 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 received EU funding to support its implementation, including work on qualifications referencing, communication and European liaison.¹⁹⁷

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:¹⁹⁸

“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

¹⁹⁷ CCEA (2016) EQF Implementation in the UK [online] Available at:

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

¹⁹⁸ Northern Ireland Assembly Hansard Minister for Education response to an Assembly Question by Mr Robin Swann MLA, 29th June 2016

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?¹⁹⁹
- Grants for research: will there still be access for university research projects?²⁰⁰ Recognition of teacher qualifications: This was the subject of a previous N/SIPA paper²⁰¹ - post-Brexit, will recognition of teacher's qualifications across the border change?

¹⁹⁹ '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>.

²⁰⁰ '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>.

²⁰¹ 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).

NORTHERN IRELAND EU FUNDING VERSUS EU CONTRIBUTION

What fiscal flexibility does the Northern Ireland executive have to deal with Brexit and what impact will Brexit have on the most vulnerable sectors?

The NERI paper on 'The Economic Implication of Brexit for Northern Ireland' and the Congressional Memorandum for Congressman Boyle illustrate the complexity of the Northern Ireland budget. They show the near impossible task of untangling joint liabilities and the lack of granular publicly available detail on revenue collection.

Take one philosophical question; what part of the national debt accrued due to UK overseas military campaigns should Northern Ireland be liable for? The Financial Times reported in 2013 (How much as Britain spent on military interventions in two decades?) that the government estimated it had spent £33 billion on overseas military campaigns in the previous 20 years. These were unfunded (by taxpayers) wars in so far as the government ran a fiscal deficit for most of the period and no specific war taxes were levied. While the UUP and DUP voted for the war in Iraq in 2003, there was no vote taken for the Afghan war in 2001. Therefore, how should the resulting costs be apportioned?

Does one assume the UK government was acting in the name of all subjects equally or can one argue for some alternative redistribution based on GVA, or one based on government representation or MPs' voting record when allocating interest payments on the government debt or liability towards the total government debt? Were one to follow the latter two lines of argument then regional solidarity within the UK may disintegrate and a region may be held liable for a share of debt commensurate with their historic budget deficit record. These are theoretical questions at this point. In the context of the Scottish independence referendum being successful such issues were to be negotiated with the new Scottish state. The UK Treasury pledged to honour all debts regardless of the outcome of that negotiation.

With Brexit in mind we have to focus on the reality of the finances of Northern Ireland. A discussion around the right approach to attribute certain costs or ho

exactly to attribute revenue is an abstract exercise to a large degree. The budget is clear on the majority of the spending; under the block grants (DEL) departmental spending amounts to £10.9 billion and under the Annually Managed Expenditure (AME) there is an additional spending of £8.8 billion. If we estimate revenue at £15 billion and excluding the Non-identifiable and Accounting Adjustments there is a £5 billion deficit, funded by the UK government. This illustrates what little fiscal room for manoeuvre there is available to the Northern Ireland executive. There will also be added pressure from the planned cut in corporate tax from 2018 (to match the lower 12.5% rate in Ireland) and the offsetting reduction in the block grant to compensate the UK Treasury for this revenue loss. Any benefits through the lower corporate tax attracting foreign investment will be long-term. The immediate result is departmental spending cuts to make up for the decrease in the block grant.

When financial support from the European Union for various sectors in Northern Ireland is stopped there are few reliable automatic stabilisers to neutralise the impact. Theoretically, the end of the UK financial contribution to the EU should increase the annual block grant as the UK Treasury has more financial flexibility. In addition the AME should increase if job losses ensue as such job losses will result in an increase in social welfare spending. However, the block grant increase may be limited as the UK government is currently running a large general government deficit of 3.4% and intends to generate a surplus in the next parliament. It may also transpire that any savings arising from the ending of UK contributions to the EU are offset by the final divorce bill along with the potential for tax revenue losses should Brexit result in a slowing of economic growth. The increase in AME spending is also not the type of financial support that helps the long-term health of the Northern Ireland economy, paying unemployment benefit while allowing the destruction of important economic sectors will decrease future living standards.

With limited fiscal flexibility and unreliable automatic stabilisers and wishing to avoid the impact of these first order losses from Brexit the Northern Ireland executive will require the UK Treasury to replace the terminated EU programmes with the UK's

own programmes and thus directly compensate sectors affected or alternatively increase the block grant (potentially requiring a rewrite of the Barnett Formula) recognising the disproportionate impact and allowing the Northern Ireland executive to administer such support. The second order financial impact is a greater unknown arising from the loss of primary export markets. Agriculture is a prime example with such a loss a major concern for Northern Ireland's farmers, geographic proximity being of particular importance (55 per cent of exports going to Ireland, 24 per cent of milk and milk products go to the EU ex UK and ex Ireland). Such a demand shock through a sudden loss in consumer markets (economically if not legally as the EU external agricultural tariffs of 30 per cent to 45 per cent would make Northern Ireland farmers wholly uncompetitive with farmers in Ireland and the rest of the EU) will cause a decline in prices and ultimately production capacity. Prices are likely to decline severely in certain produce (such as milk due to large supply and limited processing capabilities in Northern Ireland) and capacity will need to come out of those areas in particular to rebalance the market as new markets and processing capability will take time to come on line. It should also be noted that EU farmers have been insulated from global agricultural prices through tariffs for many decades, thus making them ill prepared to face those that have operated in such a competitive environment and difficult to envisage an easy entry to new markets for Northern Ireland farmers. Even prior to joining the EEC in 1973 the UK subsidised farmers with direct payments as UK farmers were unable to compete with cheap agricultural produce from other Common Wealth countries, such as cheap New Zealand butter and cheap Common Wealth sugar. Were the UK government to follow their stated policy of free trade with countries outside of the EU after Brexit then it is likely that farmers in Northern Ireland and the rest of the UK would really struggle to thrive in this competitive environment.

This second order loss for the agricultural sector will require much additional support from the UK government if it is to remain viable and ultimately recover and grow in the long term as will a host of other sectors impacted by Brexit require similar support. While it is relatively easy to estimate the lost monetary amount of EU funding (for instance the loss of £320 million as mentioned in the NERI report for just three areas; the Common Agriculture Fund, the Common Fisheries Fund and the Investment for Growth and Jobs Initiative) it is much more difficult to estimate these second order losses the Northern Ireland economy will face when its primary and its most proximate markets are lost and while external tariffs may be lifted allowing global competitors access to the domestic market. The Northern Ireland executive does not have the fiscal flexibility itself to deal with the fallout but needs to be proactive in lobbying the UK government for the additional resources. John Teahan, M.A. Economics and Politics Trinity College, Dublin, Global Equity Portfolio Manager.



SECTION 2

2.0 Summary

Taoiseach Enda Kenny, speaking in Brussels on 2 March 2017 said:

“the Good Friday Agreement contains the opportunity to put in these negotiations language that has already been agreed in internationally binding agreement, that at some future time were that position to arise, that if the people by consent were to form a united Ireland that that could be a seamless transfer as happened in the case of East Germany and West Germany when the Berlin Wall came down.”

At the McGill Summer School in July 2016 the Taoiseach stated in relation to the upcoming Brexit negotiations that “the EU needs to prepare for a united Ireland”.

The Taoiseach also said at that time "The discussion and negotiations that take place over the next period should take into account the possibility, however far out it might be, that the clause in the Good Friday Agreement might be triggered."

Therefore the precedent set out in the reunification of West and East Germany will need to be included as part of the final Brexit agreement between the European Union and the United Kingdom. In the event of the people of Ireland voting in favour of a reunified Ireland as provided for in the Good Friday Agreement the Government needs to ensure that Northern Ireland will be entitled to automatically become part of the EU without the necessity for an application or accession process. This declaration by the EU now will be important to avoid any doubt of EU status for the people of Northern Ireland. Such doubt on EU membership was one of the factors that led to the loss of the Scottish Independence Referendum.

Some of the other elements that should be included in the final agreement between the EU and UK are included in this report. These include the treatment of trade, where the example of the trading relationship between East and West Germany up until reunification where the European Economic Community trade rules were not applied needs to be followed. Such equal treatment of trade between the North and the South of Ireland on a similar basis would assist the people of Northern Ireland and ensure the stability of the economy of the whole island and thus the stability of the Peace Process. Professor Markus Kotzur of Hamburg University's submission to the Joint Committee on the Implementation of the Good Friday Agreement is included in full in this section.

The Oireachtas Library and Research Service have provided information on EU Agreements with their overseas territories and countries which has been included in the online appendix of this section.

2.1 Recommendations

Welcome the declaration agreed to by the European Council on 29 April 2017 which provides for Northern Ireland automatically becoming part of the EU in the event of a future united Ireland.

This declaration known in Brussels as ‘The Kenny Text’ is similar to that of Commission President Jacques Delors in January 1990 on the issue of German Unification ‘East Germany is a special case’.

2.2 German unification, Europe & precedent

The following section outlines the process by which East Germany was allowed to become part of the European Community without the necessity of going through an application or accession process. The key phrase was that East Germany was a 'special case'. It is very clear that Northern Ireland is also a 'special case' which was outlined by a motion passed by Dáil Éireann on 15 February 2017. This motion is available in full in the online appendix of this section.

German Unification, and thus the inclusion of the GDR (East Germany) into the EC, posed many unprecedented problems and questions. This was why European Commission President Jacques Delors described GDR as a 'special case' at a speech addressing the European Parliament on the 17 January 1990. As such, the process merits in depth analysis.

'The European Parliament and German Unification' is a report commissioned by the Directorate-General for the Presidency of the European Parliament. It outlines the situation facing East and West Germany. The entire chapter from the 'The European Parliament and German Unification' report is in the online appendix at the end of this section. However we highlight some of the key issues here and the parallels to the Irish situation below;

It is apparent that the various bodies of the EC were taken completely unawares by this question: although at the inception of the EC, West Germany had insisted on including the possibility of a revision in a treaty statement the EC had no plan or project to prepare for this eventuality.²⁰²

The European Commission did not explicitly comment on the German Question until its President Jacques Delors, addressed the EP in a speech on 17 January 1990, which can be seen as the turning point in the European Community's position on German Unification. Delors stated that "East Germany [is] a special case there is a place for East Germany in the Community should it so wish". The GDR was now seen as an exceptional case for which accession to the EC was now a genuine possibility. The European institutions began to take initial measures to prepare for

²⁰² Directorate General for the Presidency of the European Union, 'The European Parliament and German Unification' (2009), Cardoc Journal, <http://www.europarl.europa.eu/pdf/cardoc/23369_CARDOC_Reunification_EN_WEB.pdf> accessed 10 February 2017, p.7.

it.²⁰³

The victory of the Christian-conservative coalition ‘Allianz fur Deutschland’ at the GDR’s (East Germany) elections which had been brought forward to 18th March 1990, paved the way for unification”.²⁰⁴ The victory of the Allianz fur Deutschland who were a pro unification party would be the equivalent of the people of Northern Ireland voting under the provision of the Good Friday Agreement for a reunified Ireland.

“Paved the way for German unification under Article 23 of West Germany’s Basic Law.”²⁰⁵ Articles 2 and 3 of the Irish Constitution which outlines the constitutional obligation of achieving a united Ireland is the equivalent of West Germany’s Basic Law Article 23.

At a special European Council meeting in Dublin on 28-29 April 1990, the Council approved a proposal from the European Commission whereby EU law would be introduced in the GDR by means of a three stage procedure consisting of an interim, transitional and final phase. The European Commission was officially instructed to present “as part of an overall report, proposals in view of the adoption of any transitional measures deemed necessary”.²⁰⁶

The part played by Ireland in German Unification was outlined in 2010 by Foreign Minister Guido Westerwelle when he met his Irish counterpart Micheál Martin in Berlin to commemorate the Dublin Castle Summit 20th anniversary. The extraordinary summit in 1990 cleared the way for the territory of then East Germany to join the European Community as part of a unified Germany later that year.

A statement from the East German People’s Assembly on the 23 August 1990 in favour of joining the Federal Republic of Germany under Article 23 of the Basic Law. Discussion then took place between the two Germanys to decide on how to proceed with unification. The unification date was set as 3 October 1990.

²⁰³ Directorate General for the Presidency of the European Union, ‘The European Parliament and German Unification’ (2009), Cardoc Journal, <http://www.europarl.europa.eu/pdf/cardoc/23369_CARDOC_Reunification_EN_WEB.pdf> accessed 10 February 2017, p.9.

²⁰⁴ Directorate General for the Presidency of the European Union, ‘The European Parliament and German Unification’ (2009), Cardoc Journal, <http://www.europarl.europa.eu/pdf/cardoc/23369_CARDOC_Reunification_EN_WEB.pdf> accessed 10 February 2017, p.12.

²⁰⁵ Directorate General for the Presidency of the European Union, ‘The European Parliament and German Unification’ (2009), Cardoc Journal, <http://www.europarl.europa.eu/pdf/cardoc/23369_CARDOC_Reunification_EN_WEB.pdf> accessed 10 February 2017, p.7.

²⁰⁶ Directorate General for the Presidency of the European Union, ‘The European Parliament and German Unification’ (2009), Cardoc Journal, <http://www.europarl.europa.eu/pdf/cardoc/23369_CARDOC_Reunification_EN_WEB.pdf> accessed 10 February 2017, p.13.

Confronted with this fait accompli, the European Commission had no choice.²⁰⁷

The agreement by East and West Germany was the same as a vote in the North and South of Ireland under the Good Friday Agreement for a reunified Ireland.

It has been argued that while EC support for a reunified Germany was obviously welcome, it had already been allowed for and envisaged in the declaration made by the German delegation at the Treaty of Rome.

There were 3 key foundations to East Germany becoming part of the European Community:

1. The Treaty of Rome

2. Article 23 of the German Basic Law

3. Article 227(1) of the EEC Treaty: Community law implicit in Article 79 of the ECSC Treaty

These are dealt with in the publication 'The European Dimension of German Reunification: East Germany's Integration into the European Communities'²⁰⁸ which is available in full in the online appendix at the end of this section.

2.3 Constitutional provisions on reunification and European integration

The Preamble of the Basic Law ended with the reunification clause, calling upon the entire German people "to perfect in free self-determination the unity and freedom of Germany". This clause, which was deleted by Article 4 (10) of the Treaty between the Federal Republic of Germany and the German Democratic Republic on the

²⁰⁷ Directorate General for the Presidency of the European Union, 'The European Parliament and German Unification' (2009), Cardoc Journal, <http://www.europarl.europa.eu/pdf/cardoc/23369_CARDOC_Reunification_EN_WEB.pdf> accessed 10 February 2017, p.14.

²⁰⁸ Directorate General for the Presidency of the European Union, 'The European Parliament and German Unification' (2009), Cardoc Journal, <http://www.europarl.europa.eu/pdf/cardoc/23369_CARDOC_Reunification_EN_WEB.pdf> accessed 10 February 2017, p.7.

Establishment of the Unity of Germany (Unification Treaty), had imposed a binding constitutional obligation (Attorney General Brady 2002-2007 outlined the same provision in an Irish context) on the political organs of the Federal Republic to work for reunification. They were left with a broad political discretion concerning the means by which to achieve the goal.²⁰⁹

Declaration concerning reunification of 28 February 1957:

The German delegation chief at the negotiations resulting, in the Treaties of Rome made the following declaration on 28 February 1957, which he had entered in the record:

“The Federal Government proceeds from the possibility that in case of a reunification of Germany a review of the Treaties on the Common Market and on EURATOM will take place.”²¹⁰

The declaration was not made part of the Treaties, even though it did not meet with any protests, but was acknowledged as self-evident by all state parties.²¹¹

In any event, the formal status of the declaration was a matter of dispute.²¹²

In Ireland’s case it would be prudent, to avoid doubt on EU membership (as was the case in the Scottish independence referendum in 2014), for the North of Ireland in the event for a vote for reunification as provided for under the Good Friday Agreement. Therefore, the future Brexit treaty between the EU and the UK should include a clause that would allow Northern Ireland to be automatically part of the EU as happened in the case of East Germany on Germany reunification.

²⁰⁹ Thomas Giergerich, ‘The European Dimension of German Reunification: East Germany’s Integration into European Communities’(1990)
<http://www.zaoerv.de/51_1991/51_1991_2_a_384_450.pdf> accessed 10 February 2017, p.393,394.

²¹⁰ Thomas Giergerich, ‘The European Dimension of German Reunification: East Germany’s Integration into European Communities’(1990)
<http://www.zaoerv.de/51_1991/51_1991_2_a_384_450.pdf> accessed 10 February 2017, p.398.

²¹¹ Thomas Giergerich, ‘The European Dimension of German Reunification: East Germany’s Integration into European Communities’(1990)
<http://www.zaoerv.de/51_1991/51_1991_2_a_384_450.pdf> accessed 10 February 2017, p. 398.

²¹² Thomas Giergerich, ‘The European Dimension of German Reunification: East Germany’s Integration into European Communities’(1990)
<http://www.zaoerv.de/51_1991/51_1991_2_a_384_450.pdf> accessed 10 February 2017, p.399.

2.4 Declaration concerning citizenship of the Federal Republic of Germany

The reunification clause in the preamble of the Basic Law obligated the West German organs to preserve the common German citizenship of East and West Germans²¹³

“All Germans in the sense of the Basic Law of the Federal Republic of Germany are to be considered as citizens of the Federal Republic of Germany.”

Despite the fact that this was merely a unilateral declaration, it produced legal effects because the Treaties leave it to the member states to define their own citizenship within the bounds of international law. The declaration’s legal effects consisted in the GDR citizens opportunity to avail themselves of all the freedoms of Common Market citizens.²¹⁴

This provision has a particular relevance to Ireland due to the right under the Good Friday Agreement for the people of Northern Ireland to be citizens of Ireland and therefore the EU. The precedent set by this in the German case should be examined further to ensure similar practical provision for those in Northern Ireland as part of the final Brexit Agreement between the EU and the UK. The following is information supplied from Brian Crowley MEP in relation to the manner in which the EU treats the members of the Turkish Cypriot Community as EU Citizens even though they live in Northern Cyprus which is not under the control of the Cypriot Government. There could be parallels to the Irish situation found in the precedent in the Cypriot case.

²¹³ Thomas Giergerich, ‘The European Dimension of German Reunification: East Germany’s Integration into European Communities’(1990)
<http://www.zaoerv.de/51_1991/51_1991_2_a_384_450.pdf> accessed 10 February 2017, p. 400.

²¹⁴ Thomas Giergerich, ‘The European Dimension of German Reunification: East Germany’s Integration into European Communities’(1990)
<http://www.zaoerv.de/51_1991/51_1991_2_a_384_450.pdf> accessed 10 February 2017, p.400.

2.4.1 The Cyprus Case

Turkish Cypriot Community, European Commission Representation in Cyprus.

“The whole of Cyprus is EU territory. However, in the northern part of the island, where the Government of Cyprus does not exercise effective control, EU legislation is suspended in line with protocol 10 of the 2003 accession treaty.

“Since 1974 the "Green Line" separates the two parts of the terms under which persons and goods can cross this line, which is not an external border of the EU.

“The main practical effect is that the northern areas are outside the EU's customs and fiscal territory – but this does not affect the personal rights of Turkish Cypriots as EU citizens. They are citizens of an EU country even if they live in a part of Cyprus not under government control.

“The situation will change once a Cyprus settlement enters into force and EU rules apply over the whole of the island.”

Protocol No 10 on Cyprus, Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded, Official Journal L 236 , 23/09/2003 P. 0955 - 0955.

Answer given by Mr Rehn on behalf of the Commission, Parliamentary Question E-5223/2008, 3 November 2008.

“On 1 May 2004, Cyprus joined the European Union. However, in the areas of the Republic of Cyprus which are not under the effective control of the Government of the Republic of Cyprus, the application of the *acquis communautaire* is suspended, in accordance with Protocol 10 to the 2003 Act of Accession.

“This suspension does not affect the personal rights of Turkish Cypriots as EU citizens. They are citizens of the Republic of Cyprus, even though they may live in the northern part of Cyprus, and are therefore entitled to EU passports issued by the Republic of Cyprus according to its legislation.

The issues raised by the Honourable Member underline the urgent need for a rapid solution of the Cyprus problem. The Commission is fully committed to supporting the efforts of the leaders of the Greek Cypriot and the Turkish Cypriot Community under United Nations auspices to this end.”

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2.5 Conclusion: buried hope and beginnings

Forty Years after the enactment of the Basic Law the reunification goal, though still counted among the fundamentals of West Germany policy, was not given priority on the political agenda, nor was it actively pursued because the general political climate did seem favourable. The German question was simply kept open.²¹⁶

²¹⁵ Brian Crowley MEP, ‘The Cyprus Case’ (2017) Submission to this report.

²¹⁶ Thomas Giergerich, ‘The European Dimension of German Reunification: East Germany’s Integration into European Communities’ (1990)

<http://www.zaoerv.de/51_1991/51_1991_2_a_384_450.pdf> accessed 10 February 2017, p.403.

2.6 Protocol on German internal trade and connected problems

Trade

Trade between West and East Germany was transacted as internal trade when the EEC was founded. The Community set up a customs union with a Common Customs Tariff levied at its external frontiers and introduced a system of refunds on exports and price adjustment levies on imports regarding products subject to a common organization of the market. If the pertinent provisions of the EEC Treaty had been strictly applied, the border between the Federal Republic and the GDR would have become a customs frontier, and intra-German trade could no longer have been treated as domestic trade. Pursuant to Article 227 (1) of the EEC Treaty, the Treaty covered the territory of the Federal Republic but not the territory of the GDR which was neither a part of the Federal Republic nor a European territory for the external relations of which the Federal Republic was responsible (Article 227 [4] of the EEC Treaty).

It would, however, have been unacceptable to the Federal Republic, and moreover constitutionally impossible in view of the reunification mandate of the Basic Law to subject intra-German trade to EEC norms and competences regarding external trade. The problem had already come up when the ECSC Treaty was concluded in 1951. At that time it was solved by Article 22 of the Convention on the Transitional Provisions of 18 April 1951, which accorded to the Federal Republic the power to regulate intra-German trade in agreement with the Commission. But the Commission, apparently with the tacit consent of the other member states, never participated in the decision-making so that the West German Government could in fact act autonomously. With regard to the EEC, the member states took a different course when they agreed on the Protocol on German Internal Trade and Connected Problems of 25 March 1957, and made it an integral part of the Treaty (Article 239 of the EEC Treaty). The Protocol determined chiefly (1) that the application of the EEC Treaty in Germany did not require any change in the existing system of intra-German trade, which was conceived as a German domestic matter;

(2) that, however, all other member states could take appropriate measures to prevent difficulties which might arise for them from the organization of that trade. The Protocol had the effect of releasing the Federal Republic from its obligation to apply EEC law

to intra-German trade, but did not transform the latter into intra-Community trade.

Its purpose was to guarantee that the implementation of the EEC Treaty would not aggravate the partition of Germany. The fate of the Protocol was put up for discussion in view of the completion of the internal market projected for the end of 1992.

Discussion intensified when, after the revolution in the GDR, a closer cooperation or even confederation between the two German states with the accompanying expansion of intra-German trade was expected. With reunification on 3 October 1990, the Protocol became obsolete.²¹⁷

This section seems to offer a precedent for Northern Ireland to have a special status as was provided to East German when trading with West Germany.

2.7 The community law obligation of consultation, coordination and adaptation in the reunification process

“It [West Germany] insisted that the integration of the GDR [East Germany] in the European Communities would not formally be treated as an accession of a new member state, which would have caused delay and uncertainty in view of the cumbersome admission procedure but handled according to the principle of moving treaty boundaries.”²¹⁸

“The solution seems to lie in a rule of Community law implicit in Art.79 of the ECSC Treaty, Art. 227(1) of the EEC Treaty and Art.198 of the EURATOM Treaty leaving acquisition of territory, and consequently all steps leading to it, within the domain reserve of the member states.”²¹⁹

During the intra-German negotiations on the establishment of an economic and monetary union, the Commission insisted that it had to be fully involved from the outset in the process of German unification and that there was a need to move from information and consultation on the part of the German authorities to real concerted action. Irrespective of the legal substance of that claim the Commission actively participated in the subsequent negotiations resulting in the Unification Treaty. On the other hand, the Commission

²¹⁷ Thomas Giergerich, ‘The European Dimension of German Reunification: East Germany’s Integration into European Communities’(1990)
<http://www.zaoerv.de/51_1991/51_1991_2_a_384_450.pdf> accessed 10 February 2017, p.401, 402.

²¹⁸ Thomas Giergerich, ‘The European Dimension of German Reunification: East Germany’s Integration into European Communities’(1990)
<http://www.zaoerv.de/51_1991/51_1991_2_a_384_450.pdf> accessed 10 February 2017, p.406.

²¹⁹ Thomas Giergerich, ‘The European Dimension of German Reunification: East Germany’s Integration into European Communities’(1990)
<http://www.zaoerv.de/51_1991/51_1991_2_a_384_450.pdf> accessed 10 February 2017, p.411, 412.

never expressly claimed that the conclusion of the State Treaty, or the Unification Treaty, was subject to the prior consent of the EC even though both Treaties strongly affected community jurisdiction, nor was such consent ever given in a formal legal instrument although it in fact existed. As the treaties went clearly beyond German internal trade separated out of the EEC framework by the pertinent Protocol, one cannot base the argument that they constituted a German domestic affair on that Protocol. Nor did the West German declaration concerning reunification by itself work a change in the competences between the Federal Republic of Germany and the EC but at best gave West Germany a right to demand corresponding Treaty amendments.²²⁰

The Commission's position

2.8 The basic assumption: automatic community enlargement and automatic extension of community law to GDR territory [East Germany] after German Reunification

The Commission proceeded from the basic assumption that the integration of the territory of the GDR into the Community by way of German reunification constituted a 'special case' so that Article 237 of the EEC Treaty relating to the accession of third states did not apply. On the other hand, this integration would involve practical problems on a par with those posed by the most recent enlargements of the community. It would quite similarly have to proceed by stages, requiring transitional measures to facilitate the gradual application of the 'acquis communautaire'.

The Commission expected the integration to be possible without the need to amend the Treaties, which would with reunification extend to the eastern part of Germany automatically i.e. without the consent of the other member states being required.²²¹

Moving treaty boundary rule in community law

The automatic extension of the Treaties could be considered as an application of the international legal principle of moving treaty boundaries. The Commission, however, assumed that the automatic extension would be effected by a norm of Community law not further specified. Thus it was not compelled to deal with the question as to

²²⁰ Thomas Giergerich, 'The European Dimension of German Reunification: East Germany's Integration into European Communities'(1990)
<http://www.zaoerv.de/51_1991/51_1991_2_a_384_450.pdf> accessed 10 February 2017, p.411.

²²¹ Thomas Giergerich, 'The European Dimension of German Reunification: East Germany's Integration into European Communities'(1990)
<http://www.zaoerv.de/51_1991/51_1991_2_a_384_450.pdf> accessed 10 February 2017, p.418,419.

whether and how far the present international law of succession recognizes the above mentioned principle. Since all the member states as well as the GDR were agreed on the mode of integration, the international law problem did simply not arise. According to Article 79 of the ECSC Treaty, Article 227 (1) of the EEC Treaty and Article 198 of the EURATOM Treaty, the treaties apply to the whole of a member state's (European) territory, notwithstanding a limited number of exceptions.²²²

2.9 Automatic community enlargement and extension of the European treaties

Precedents: Saarland and St. Pierre-et-Miquelon

Two earlier cases of territorial expansion of a member state were handled as if there was a moving treaty boundary norm in EC law. It is uncertain, however, if the member states then had an *opinio juris* to this effect, or rather acted according to a political rationale. Apart from this, neither of the two cases reached an order of magnitude comparable to German reunification. The first case occurred in 1957 when the Saarland was incorporated into the Federal Republic of Germany under a treaty with France. At that time, the member states of the ECSC were apparently agreed that the ECSC Treaty would subsequently cover the Saarland as a part of the Federal Republic, while it had earlier been included as part of the French economic territory.²²³

The second case concerned the French islands of St. Pierre-et-Miquelon off Canada that had originally been treated as overseas territories not covered by the EEC Treaty (Article 227 (3) of the EEC Treaty and Annex IV). On 19 July 1976, the islands' status was changed by a French law into one of an overseas department which would bring them within the area of application of the Treaty if Article 227 (1) of the EEC Treaty was interpreted dynamically. The EEC Treaty was not amended and, though there was no express confirmation as to its automatic extension, St. Pierre-et-Miquelon was later omitted from the list of French overseas territories.²²⁴

²²² Thomas Giergerich, 'The European Dimension of German Reunification: East Germany's Integration into European Communities'(1990)
<http://www.zaoerv.de/51_1991/51_1991_2_a_384_450.pdf> accessed 10 February 2017, p.419.

²²³ Thomas Giergerich, 'The European Dimension of German Reunification: East Germany's Integration into European Communities'(1990)
<http://www.zaoerv.de/51_1991/51_1991_2_a_384_450.pdf> accessed 10 February 2017, p.420.

²²⁴ Thomas Giergerich, 'The European Dimension of German Reunification: East Germany's Integration into European Communities'(1990)
<http://www.zaoerv.de/51_1991/51_1991_2_a_384_450.pdf> accessed 10 February 2017, p.421.

Result: legal uncertainty removed

Before German reunification, neither the text of the relevant Treaty provision, nor legal literature, nor the Communities practice offered a compelling argument for or against the extension of a moving treaty boundary rule in EC law. The reunification case has now settled the matter. The EC Commission expressed a legal opinion as to the extension of a moving treaty boundary rule of community law, and the Council did not object but proceeded accordingly, nor was there any objections from individual members states.²²⁵

²²⁵ Thomas Giergerich, 'The European Dimension of German Reunification: East Germany's Integration into European Communities'(1990)
<http://www.zaoerv.de/51_1991/51_1991_2_a_384_450.pdf> accessed 10 February 2017, p.421.

2.10 Motion passed in Dáil Éireann 15 February 2017

“That Dáil Éireann: notes that:

— on 22 May 1998, voters in Northern Ireland voted to accept the Good Friday Agreement, GFA, by 71.1% to 28.9%, and in Ireland by 94.39% to 5.61%;

— since the GFA was ratified and the restoration of power-sharing in 2007, the European Union, EU, has been a critical partner for peace, providing substantial political and financial aid, which has led to greater economic and social progress on an all-island basis;

— on 23 June 2016, a referendum on the UK’s continued membership of the EU took place;

— a majority of voting citizens in Northern Ireland, namely 55.8%, voted to remain in the EU;

— the British Government has now made clear that they will trigger Article 50 of the Lisbon Treaty by the end of March 2017, and begin the exit process, and will also be seeking to leave the single market in a so-called ‘hard Brexit’; and

— this situation is unprecedented, as no member state has left the EU and single market before now;

recognises that:

— under the terms of the GFA there is an inherent right for those born on this island to Irish citizenship, and by virtue of that right, citizenship of the EU as well;

— Northern Ireland is being forced to leave the EU against the expressed wishes of its people;

— this represents a major set-back for the political process in Northern Ireland and directly challenges the integrity of the GFA, and will have huge consequences for the protections contained within it, especially the principle of consent;

the pursuit of a ‘hard Brexit’ may well impose the amendment of the Northern Ireland Act 1998, which gives legislative competence and authority to the GFA;

— the Oireachtas Joint Committee on European Union Affairs, in its June 2015 report, UK-EU Future Relationship: Implications for Ireland, recommended that ‘the Irish and UK Governments negotiate bilaterally to have Northern Ireland recognised (in an EU context) as having “a special position” in the UK, in view of the Good Friday Agreement. Recommends further that special arrangements be negotiated at EU level in that context, to maintain North-South relations and Northern Irish EU citizenship rights and protections attached to such rights.’;

— the EU has shown itself to be flexible in coming forward with pragmatic arrangements for dealing with complex territorial situations; and

— a special status relationship for Northern Ireland outside of the EU would do little to deal with the massive political, social and economic challenges thrown up by Brexit; concludes that:

— a ‘hard Brexit’ would undermine the institutional, constitutional, and legal integrity and status of the GFA; and

— the GFA political institutions, human rights guarantees, all-Ireland bodies, and the constitutional and legal right of the people to exercise their right to self-determination and a united Ireland through consent, by referendum north and south, must all be protected; and calls on the Government to:

— enter any forthcoming negotiations to defend the democratic mandate of the people to remain within the EU and act in Ireland’s national interest;

— report to the Houses of the Oireachtas, on a quarterly basis, regarding developments in the Brexit negotiations; and

— negotiate for Northern Ireland to be designated with a special status within the EU and for the whole island of Ireland to remain within the EU together.”

2.11 Report for the Irish Parliamentary Committee on the Implementation of the Good Friday Agreement

Submission by Markus Kotzur on the German reunification process

I. The Public International Law Framework: German Reunification and State Succession

- The German Reunification process brought about the essential question of the position of the former German Democratic Republic (GDR) and of unified Germany vis-à-vis the then European Communities (today the European Union). In particular, the method of fully extending the Community Treaties to the ex-GDR had to be clarified. From a public international law perspective, the theory of geographical extension of the area of territorial application of treaties could have paved the way of automatically applying the Community Law to the whole of the territory of the two Germanies immediately after Reunification and without the need for the ex-GDR to formally apply for EC Membership of its own. Whether or not that theory was applicable depended on
 - the way the unification came about according to German Constitutional Law;
 - the relevant provisions of public international law;
 - the provisions of then EC law.
- If the merger of the former GDR and FRG would have resulted in the creation of a new State, that New State would have had to newly apply for EC-Membership, to meet all criteria of accession (as today enshrined in Art. 49 TEU) and to undergo the complete accession process. If the reunified Germany would have been identical (State continuity) with the former Federal Republic of Germany, that would not have been necessary.
- In political terms, soon an agreement had been reached between Germany and the other EC-Member States to avoid any amendment of the Treaties

let alone new accession. The political perspective was supported by State practice in the cases of a merger of States. E.g., in case of the merger between Tanganyika and Zanzibar, the new State automatically replaced the old one in international organizations. However, attempts undertaken by the ILC to codify the major parts of the laws of state succession have failed and thus no clear codification exists until today. What nevertheless can be applied following customary international law is the principle of “moving treaty boundaries” combined with the concept of extinction of the former GDR as a subject of international law. The united (reunified) German State is held to be identical with the former Federal Republic since unification represents all Germany and is bound as a member of multilateral conventions and of international organizations such as the then EEC/today EU in respect to its entire territory, including both the former territory of the Federal Republic and the territory of the former GDR (principle of state continuity).

II. The Constitutional Law Framework: Art. 23 Basic Law (old version) and Art. 146 Basic Law (old version)

- German constitutional law valid at the time of reunification was very responsive to the principle of state continuity in the case of reunification. Art. 23 Basic Law (old version) provided other than the Western Länder but still de jure German states, initially not included in the field of application of the Basic Law (namely Thuringia, Brandenburg, Saxony, Saxony-Anhalt, Mecklenburg-Vorpommern), with the right to declare their accession (Beitritt) at a later date. Art. 23 expressly held: “ For the time being, this Basic Law shall apply in the territory of the Länder of Baden, Bavaria, Bremen, Greater Berlin, Hamburg, Hesse, Lower Saxony, North Rhine-Westphalia, Rhineland-Palatinate, Schleswig-Holstein, Württemberg-Baden, and Württemberg-Hohenzollern. In other parts of Germany it shall be put into force on their accession.
- When the Eastern German Communist regime fell in 19989/1990, use was made of Art. 23 (and not Art. 146) Basic Law. Following the first free elections, the Parliament of the former GDR declared the accession of the GDR to

the FRG. That declaration of accession not only included the East German territories into the field of application of the Basic Law but also activated the public international law principle of “moving treaty boundaries”.

III. The Union Law Framework

- Since – even before Reunification – East German Citizens, according to Art. 116 Basic Law, were seen as German Nationals, they enjoyed the freedoms within what today is the EU’s internal market (at the time being the common market). To some but limited extent, the former GDR could be seen as a “quasi-EC” Member. In a declaration to the “Treaty Establishing the European Economic Community as Amended by Subsequent Treaties, Rome, March 25, 1957”, the Government of the Federal Republic of Germany had provided the following definition of the expression “German national”: “All Germans as defined in the Basic Law for the Federal Republic of Germany shall be considered nationals of the Federal Republic of Germany”. Also during the complete negotiation process of the EEC Treaty, the Federal Republic had been concerned to make sure that none of its commitments would put a barrier for a potential later Reunification.
- Nevertheless, the old EEC-Treaty had not expressly foreseen the Reunification option. On the contrary, its scope of application was expressly limited to the territory of the FRG as it existed at the time when the EEC-Treaty was concluded. The ECJ in Case 14/74 stated that no treaty protocol provision had “the result of making the former German Democratic Republic part of the Community, but only that a special system applies to it as a territory which is not part of the Community.” All in all, Community law had been relatively silent on the Reunification issue and the problem had to be appropriately dealt with by public international law.
- Not surprisingly, there had been some debate in doctrine whether the accession of the former GDR to the Federal Republic would lead automatically to the application of the EEC Treaty to all of Germany or whether the significant change in territory and population would require the

unified German State newly accede to European Communities. However, consensus was soon reached that the principle of “moving treaty boundaries” (see I.) applies without any difficulties also to the German membership in the European Communities.

- To avoid any such uncertainties respectively controversies in the Irish case, it would be suitable to insist in the course of the Brexit negotiations on an additional protocol expressly stating that in case of an Irish Reunification Reunified Ireland will be considered the same state as Ireland (state continuity) and that the EU Treaties will be without any further amendment be applicable to the whole territory of the reunified country.

Literature:

Friedrich, German reunification: historical and legal roots of Germany's rapid progress towards unity, 22 New York University Journal of International Law and Politics 253-317, 1990

Jacqué, Forum: International and European Aspects of German Reunification, EJIL 2(1991), pp. 1

Johnson, International Law Aspects of the German Reunification: Alternative Answers to the German Question, Adelpia Law Journal 12 (1997), pp. 93

Oeter, Stefan, German Unification and State Succession, in: ZaöRV 1991, pp. 349



SECTION 3

3.0 Summary

The research paper entitled 'Brexit- a view from the Chambers in December 2016' by the German-Irish Chamber of Industry and Commerce looked at the various analysis done on the impact of Brexit on Ireland. This paper had a specific overview of the impact on Northern Ireland and is available in full in the online appendix to this section.

The German-Irish Chamber of Industry and Commerce has a unique view on the impact of Brexit on Ireland in light of the German reunification experience and view that "The Irish peace process is lauded internationally as an exemplar to other regions where there is conflict, however, Brexit could undermine the work of reconciliation and destabilise the region."²²⁶

The German-Irish Chamber of Industry and Commerce also commented that

"Brexit and the challenges it poses cannot be allowed to undermine cross-border cooperation, economic reconstruction and growing rapprochement after centuries of division on the island of Ireland. In 1990, Ireland's European presidency was central to agreeing a common EU approach to the issue of German unification after the historic divisions caused by the Cold War. In 2010, on the twentieth anniversary of the landmark Dublin Summit, Germany's then foreign minister Guido Westerwelle said that his country would "never forget" how Irish diplomacy helped fast-track the way for the territory of then East Germany to join the European Union as part of a unified Germany. A key question for decision-makers in the EU today is can agreement be reached in a similar spirit of diplomatic pragmatism to ensure that the unique circumstances of the island of Ireland."²²⁷

It is widely recognised that the effect of Brexit on the island of Ireland will be profound and will require 'diplomatic pragmatism' by key EU decision makers as outlined by the German-Irish Chamber of Industry and Commerce. The effect of

²²⁶ Ralf Lissek, Dr. Brian Murphy & Dr. Volker Treier, 'Brexit-a view from the Chambers in December 2016' (2016) German- Irish Chamber of Industry and Commerce, <http://www.german-irish.ie/uploads/media/German_Irish_Brexit_Report_01.pdf> accessed 8 February 2017,

²²⁷ Ralf Lissek, Dr. Brian Murphy & Dr. Volker Treier, 'Brexit-a view from the Chambers in December 2016' (2016) German- Irish Chamber of Industry and Commerce, <http://www.german-irish.ie/uploads/media/German_Irish_Brexit_Report_01.pdf> accessed 8 February 2017, p.24.

Brexit will also be long term, and one of the potential long term solutions would be the fulfilment of the Constitutional obligation of a reunified Ireland.

The economic analyses of a unified Ireland as an option are few on the ground. There was economic analysis of a united Ireland based on the economic modelling of German unification carried out in 2015 entitled 'Modelling Irish Unification'. This report is available in full in the online appendix to this section. However, it could now be considered to be out of date due to Brexit. In the analysis, one of the modelling scenarios in the report estimates a boost in the all island GDP of €35.6 billion over eight years with the North benefitting significantly.

3.1 Recommendations

It is recognised that World Trade Organisation rules and a hard border would have a detrimental impact on Ireland North and South & Further impact assessment is required on the economic impact of reunification.

The Committee urges that the matter of EU funding for Northern Ireland and the border region remains high on the agenda and an expeditious solution is found for successor programmes after 2020.

3.2 Economic modelling of unification

In this section we look at the economic analysis done in the 2015 publication 'Modelling Irish Unification'.

One key finding of the report is that borders matter. "Numerous studies done in a variety of settings (the US and Canada, among Canadian provinces) demonstrate that 'borders matter' to a much greater degree than most observers would expect."²²⁸ The return of a hard border on the island will obviously be detrimental. However, the most aggressive unification scenario in the report estimates a boost in all-island GDP of €35.6 billion over 8 years with the North benefiting significantly more. As the authors of the report point out, in the case of German unification the smaller partner (East Germany) benefited more than the larger one.

In the report Irish Unification is modelled as impacting the economics of Northern Ireland and the Republic of Ireland through five channels and these are outlined in this section. These building blocks of the analysis are then combined into three unification scenarios which are also outlined. One of the central concerns of a reunification project is the issue of Northern Ireland's deficit, possible ways of dealing with this are discussed in the 'Modeling Irish Unification' report and are outlined here. It is also dealt with in another section by Congressman Boyle.

This Oireachtas report has previously dealt with the lack of data available for Northern Ireland and the impact on the policy making response to Brexit. Clearly the Irish Government needs to invest in securing accurate data so that it can formulate an appropriate response to Brexit and possible unification. In the conclusion of the report 'Modelling Irish Unification' it states "The German Unification case is the most prominent example of the importance accompanying policy plays in economic and political unification."²²⁹ The conclusion is reproduced in full as part of this report.

In the Executive Summary of 'Modeling Irish Unification' prepared by Professor Steven Raphael Professor of Public Policy, UC Berkeley, California, there are a number of statements made that in a post Brexit situation need to be re-examined. The economic modelling used by the research team is similar to the one used to study German

²²⁸ Kurt Hübner, 'Modelling Irish Unification', (2015) KLC Consulting, <<http://prcg.com/modeling-irish-unification/report.pdf>> accessed 8 February 2017, p.Xi.

²²⁹ Kurt Hübner, 'Modelling Irish Unification', (2015) KLC Consulting, <<http://prcg.com/modeling-irish-unification/report.pdf>> accessed 8 February 2017, p.60.

Unification. As such this report gives an insight into the possible benefits of unification. This Oireachtas report recommends the Irish Government needs to carry out its own cost and benefits examination of the achievement of the constitutional obligation as defined by Attorney General Brady (2002 -2007) of Article 2 and 3 of the constitution.

“Political and economic unification of the North and South would likely result in a sizable boost in economic output and incomes in the North and a smaller boost in the ROI. The key factors driving this conclusion are the following.”²³⁰

“In the long run, unification would involve the adoption of the Irish tax system, greater openness in the North to Foreign Direct Investment, and diminished trade barriers between Northern Ireland, the ROI, and other countries in the Eurozone. A period of economic catch-up is likely to ensue whereby the Northern Irish economy would shift structurally from low value-added industries to high value-added industries. Additional benefits would derive from lower trade costs across the north-south border. These changes are projected to increase GDP per capita in the long run by 4 to 7.5 percent in Northern Ireland and by 0.7 to 1.2 percent in the Republic of Ireland.”²³¹

This next paragraph from the report was made prior to Brexit, but a scenario of a currency devaluation was partially allowed for in the study by Professor Nolan in the subsequent paragraph.

“In the short run, unification would result in the North’s adoption of the euro. At current exchange rates, this would effectively devalue the currency for the North, causing a shift in international terms of trade that would favor Northern Ireland relative to the U.K. and relative to other countries in the Eurozone. The consequent increase in exports is projected to initially increase per-capita gross domestic product in the North by 5 percent, and then fade back to the long-run growth path within seven years”²³²

Professor Nolan stated on the issue of currency:

²³⁰ Kurt Hübner, ‘Modelling Irish Unification’, (2015) KLC Consulting, <<http://prcg.com/modeling-irish-unification/report.pdf>> accessed 8 February 2017, p. Executive Summary Vii.

²³¹ Kurt Hübner, ‘Modelling Irish Unification’, (2015) KLC Consulting, <<http://prcg.com/modeling-irish-unification/report.pdf>> accessed 8 February 2017, p. Executive Summary Vii.

²³² Kurt Hübner, ‘Modelling Irish Unification’, (2015) KLC Consulting, <<http://prcg.com/modeling-irish-unification/report.pdf>> accessed 8 February 2017, p. Executive Summary Vii.

“However, it should be noted that the effective devaluation that the adoption of the euro might represent today may not be a permanent state of affairs. For example if the Bank of England mismanaged UK monetary policy, it could lead to a large depreciation of the pound, and the adoption of the euro would amount to an effective revaluation of the currency for NI. In this case, there might be offsetting benefits to the adoption of a better managed currency, however. Trade creation exceeds trade diversion confirming that the net impact is a boost to the efficiency of the two partners. This latter effect is driven by fundamental complementarities and should not be contingent on the level of the exchange rate.”²³³

“Computable general equilibrium” or “CGE models have been used to study the economic consequences of German Unification as well as to simulate the potential economic gains from the unification of North and South Korea.”²³⁴

“CGE models employ economic theory and statistical analysis to model the economic relationships driving production, consumption, wages, price, exports and imports, and ultimately, the output of an economy.”²³⁵

3.3 Executive summary from ‘modelling Irish unification’

In the report “Irish Unification is modelled as impacting the economics of Northern standardization Ireland and the ROI through the following channels”:²³⁶

1. **Harmonization of the tax systems across the Island, with the North adopting the tax rates and regulations of the south.** This harmonization of taxes would involve both changes in adoption of activity taxes as well as taxes on imports, commodities, and institutional taxes. These changes would likely foster greater FDI in the North and contribute to economic growth.

²³³ Kurt Hübner, ‘Modelling Irish Unification’, (2015) KLC Consulting, <<http://prcg.com/modeling-irish-unification/report.pdf>> accessed 8 February 2017, p.Marcus Noland Xi.

²³⁴ Kurt Hübner, ‘Modelling Irish Unification’, (2015) KLC Consulting, <<http://prcg.com/modeling-irish-unification/report.pdf>> accessed 8 February 2017, p.Executive Summary vii.

²³⁵ Kurt Hübner, ‘Modelling Irish Unification’, (2015) KLC Consulting, <<http://prcg.com/modeling-irish-unification/report.pdf>> accessed 8 February 2017, p.Ibid

²³⁶ Kurt Hübner, ‘Modelling Irish Unification’, (2015) KLC Consulting, <<http://prcg.com/modeling-irish-unification/report.pdf>> accessed 8 February 2017, p.Executive Summary vii.

2. **Diminished trade barriers and greater access of Northern Irish firms to the common market.** The modeling in the KLC report assumes that unification would lower trade costs associated with transport and currency transaction between Northern Ireland, the Republic of Ireland, and other Eurozone countries. This reduction in transactions costs is projected to increase per-capita income.
3. **Adoption of the Euro in the North.** Given the current strength of the pound against the euro, adoption of the Euro in the North would provide a short run boost to economic output associated with an improvement in Northern Ireland's terms of trade.
4. **Productivity Improvements.** Currently there is a sizable productivity differential between Northern Ireland and the Republic of Ireland. This differential is driven in part by differences in the industrial structure of the two economies, which in turn, is partly caused by the different political and economic institutions. Convergence of productivity levels in the North to those of the Republic of Ireland would directly the impact of the output in the North and indirectly impact output and incomes in the Republic of Ireland through higher trade volume.
5. **Fiscal Transfers.** Northern Ireland currently and historically runs a fiscal deficit that is financed by inter-governmental transfers from the UK. Unification would require that this deficit be financed and assumed by the Republic of Ireland. However, unification would also eliminate the need for two parallel governmental structures in many domains and likely result in public spending in the North that diminishes over time. In the short run, reductions in public spending may reduce output and per-capita output to the extent that labor and capital once employed in the public sector are not reallocated towards other uses. In the longer running, public sector savings may be reinvested in the private economy or in public projects that enhance the long-term productivity of the country.²³⁷

"Modeling Irish Unification"

Marcus Noland Executive Vice President and Director of Studies

Peterson Institute for International Economics August 2015

²³⁷ Kurt Hübner, 'Modelling Irish Unification', (2015) KLC Consulting, <<http://prcg.com/modeling-irish-unification/report.pdf>> accessed 8 February 2017, p.Executive Summary Viii.

Unique among American economists in having devoted serious scholarly effort to the problems of North Korea and the prospects for Korean unification. He was previously a senior economist at the Council of Economic Advisers in the Executive Office of the President of the United States.

Why the question matters

“Northern Ireland (NI) is falling ever further behind the Republic of Ireland (ROI) in terms of economic development.”²³⁸

“Yet in the medium-term future the relationship between these two parts of Ireland potentially could become more problematic due to the possibility of the United Kingdom’s withdrawal from the EU (the so-called “Brexit”). Hence it is an opportune moment to examine the possibility of the two parts of Ireland not envisioning separate development trajectories, but rather in the words of Bradley (2006) planning “a coming together in order to build on natural island economic strengths and remove barriers and weaknesses so that genuine synergies can be realized for the mutual benefit of both economies.”

‘Modeling Irish Unification’ is a path-breaking analysis of the economics of Irish unification, demonstrating the benefits to both Irelands of closer economic and political relations.”²³⁹

²³⁸ Kurt Hübner, ‘Modelling Irish Unification’, (2015) KLC Consulting, <<http://prcg.com/modeling-irish-unification/report.pdf>> accessed 8 February 2017, p.X.

²³⁹ Kurt Hübner, ‘Modelling Irish Unification’, (2015) KLC Consulting, <<http://prcg.com/modeling-irish-unification/report.pdf>> accessed 8 February 2017, p.X.

3.4 Basic modeling challenge

“Analysts attempting to address the issue of Irish unification immediately confront the problem that as a subnational jurisdiction, much economic data necessary to conduct the analysis may not be collected for Northern Ireland as an independent reporting entity”²⁴⁰

“One drawback of the CGE approach and it is not a drawback of the approach but rather how we interpret the results, is a possible tendency toward spurious precision. The models are an abstraction of reality, embodying many assumptions. In the case at hand, some of the underlying data has been estimated or constructed and may not be precisely accurate.”²⁴¹

“In other cases, the authors use informed adjustments to the UK data to construct admittedly more speculative estimates of the Northern Ireland figures.”²⁴²

3.4.1 Incomplete data : modelling unification

As with the lack of data available for the analysis of the impact of Brexit on Northern Ireland, the same lack of data poses a challenge for the economic modelling of Irish unification.

The researchers for the publication on ‘Modeling Irish Unification’ stated they had a problem with accurate data.

“The problem is that little information is available on the potential economic effects of a unification policy, and there are therefore little means to numerically gauge its effectiveness. This is further complicated by the data deficit in the North.”²⁴³

“This makes CGE highly sensitive to the quality of data that is entered into it. Data quality therefore impacts on the results.”²⁴⁴

²⁴⁰ Kurt Hübner, ‘Modelling Irish Unification’, (2015) KLC Consulting, <<http://prcg.com/modeling-irish-unification/report.pdf>> accessed 8 February 2017, p.X.

²⁴¹ Kurt Hübner, ‘Modelling Irish Unification’, (2015) KLC Consulting, <<http://prcg.com/modeling-irish-unification/report.pdf>> accessed 8 February 2017, p.X.

²⁴² Kurt Hübner, ‘Modelling Irish Unification’, (2015) KLC Consulting, <<http://prcg.com/modeling-irish-unification/report.pdf>> accessed 8 February 2017, p.Ix.

²⁴³ Kurt Hübner, ‘Modelling Irish Unification’, (2015) KLC Consulting, <<http://prcg.com/modeling-irish-unification/report.pdf>> accessed 8 February 2017, p.3.

²⁴⁴ Kurt Hübner, ‘Modelling Irish Unification’, (2015) KLC Consulting, <<http://prcg.com/modeling-irish-unification/report.pdf>> accessed 8 February 2017, p.3.

3.5 Fiscal transfer

“Fiscal transfer into NI, which covers the short-fall between government revenue and Expenditure is modeled as a revenue source and doesn’t impact government gross- fixed capital expenditure.”²⁴⁵

“NIROI is coded with alternative incidences in fiscal transfer. These include:

- 1) a scenario that assumes a 50% split between GB and Brussels (REUZ) in the incidence of fiscal transfer, followed by a 5% annual increase in the funds paid from Brussels and a commensurate decrease in funds paid by GB;
- 2) a 50% split of the transfer, in the policy year, between ROI and Brussels, with annual increase of 5% in funds by the ROI and a commensurate decrease in funds paid by Brussels.”²⁴⁶

3.6 German unification

“As has been found in past analyses of mergers of partners where one partner is significantly smaller, poorer, and more distorted initially than the larger partner (e.g. Germany, the prospective case of Korea), the results are uniformly more profound for the smaller partner.

“This is less likely to be important in the Irish case because cross-border flows of labor and capital are already significantly open, so the impact from increased cross- border factor flows which was quite important in the German case, and would also be significant in a prospective Korean case, is less salient in the case at hand.”²⁴⁷

[irish-unification/report.pdf](#)> accessed 8 February 2017, p.6.

²⁴⁵ Kurt Hübner, ‘Modelling Irish Unification’, (2015) KLC Consulting, <<http://prcg.com/modeling-irish-unification/report.pdf>> accessed 8 February 2017, p.31.

²⁴⁶ Kurt Hübner, ‘Modelling Irish Unification’, (2015) KLC Consulting, <<http://prcg.com/modeling-irish-unification/report.pdf>> accessed 8 February 2017, p.32.

²⁴⁷ Kurt Hübner, ‘Modelling Irish Unification’, (2015) KLC Consulting, <<http://prcg.com/modeling-irish-unification/report.pdf>> accessed 8 February 2017, p.X.

3.7 Border matters

“Numerous studies done in a variety of settings (the US and Canada, among Canadian provinces) demonstrate that “borders matter” to a much greater degree than most observers would expect. As a consequence, increased integration created by the adoption of a common tax code, a common currency, and a centralization of government functions is likely to deliver a much bigger boost to intra-island exchange than occurs in these model simulations.”²⁴⁸

3.8 Unification scenarios

“These building blocks are then combined to into three unification scenarios.”²⁴⁹ These three are reproduced in full here from the report.

“After presenting the modeling outcomes of the various policy components we now turn to our unification scenarios that look more in-depth into the combination of several policy components. We distinguish overall three scenarios that differ in the way unification efficiencies are being used as well as in the way effects of a common FDI- regime and thus a common tax regime are modeled. Scenario 3 is the most advanced scenario in that it contains the most comprehensive modeling assumptions.”

²⁴⁸ Kurt Hübner, ‘Modelling Irish Unification’, (2015) KLC Consulting, <<http://prcg.com/modeling-irish-unification/report.pdf>> accessed 8 February 2017, p.Xi.

²⁴⁹ Kurt Hübner, ‘Modelling Irish Unification’, (2015) KLC Consulting, <<http://prcg.com/modeling-irish-unification/report.pdf>> accessed 8 February 2017, p.Xii.

3.8.1 Unification scenario 1

Unification in combined scenario 1 means that the unified Ireland pays 100% NI government deficit, harmonization of functions of government reduces NI government expenditure by 2% annually from 2018-2025, and adoption of ROI's tax regime and foreign investment policy platform in NI has no effect on returns to productivity in NI.

Figure 1. Northern Ireland Combined: Simulation Relative Benchmark, Scenario I

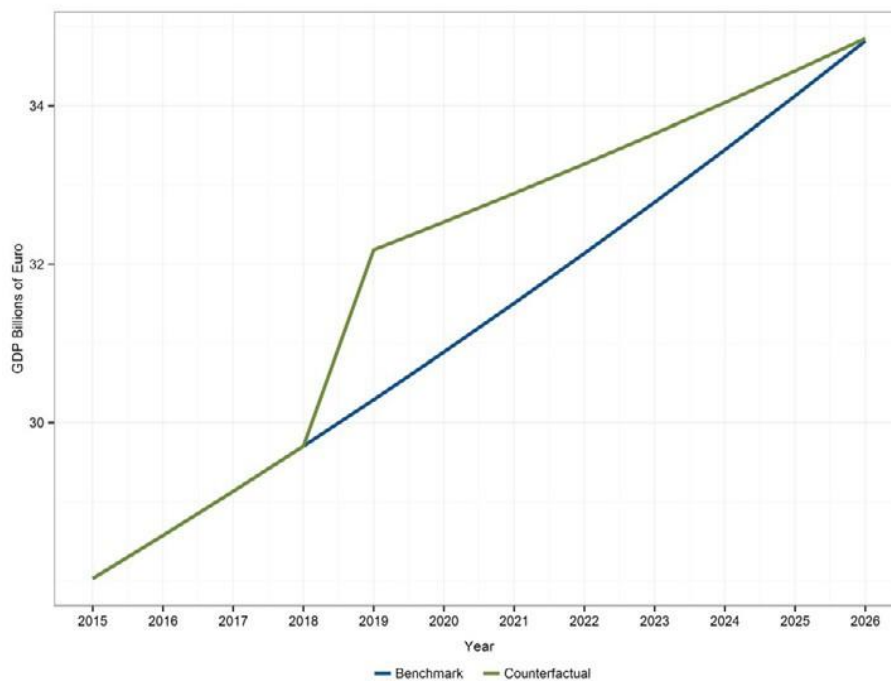
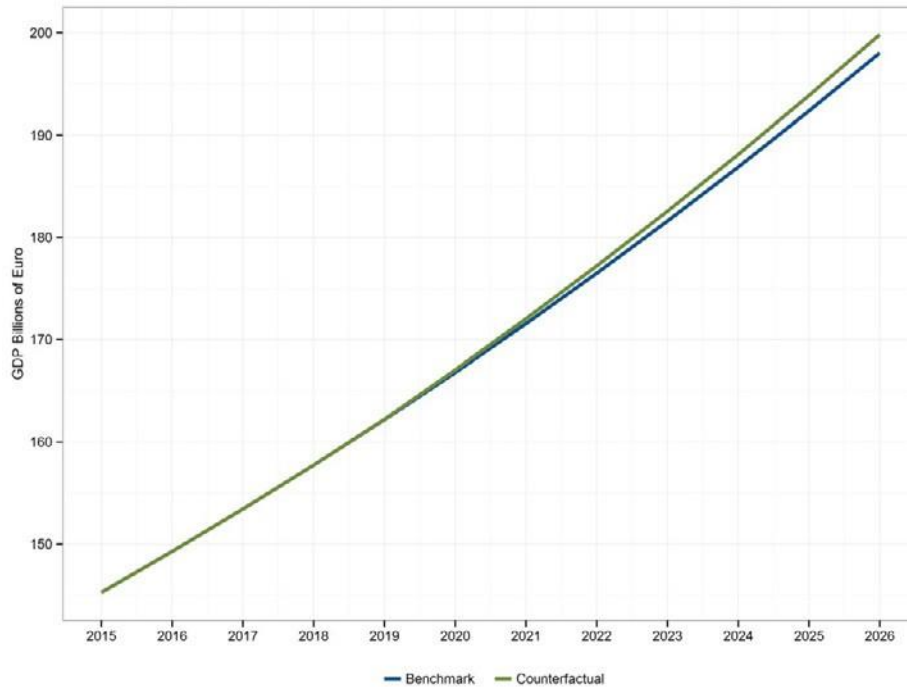


Figure 2. Republic of Ireland Combined: Simulation Relative Benchmark, Scenario I



“The combined scenario 1, with a reduction to government expenditure in NI as a result of harmonization of functions of government, boosts NI GDP in the policy implementation year, yet the percentage gain declines until the counterfactual trend returns to the benchmark output path. As discussed earlier, the decline is a result of reductions in government expenditure, which not only demand higher private sector savings but also have a negative multiplier effect. The gain in 2018 of 2.2 billion Euro in NI GDP accumulates to 8.8 billion Euro by 2025, while the 2018 ROI GDP gain of only 30 million Euro accumulates to 1.8 billion Euro by 2025. Total island change in GDP across the 8 year counterfactual climbs to 15.8 billion Euro.”

Table 1. Change in GDP/Capita and GNP/Capita, Scenario I

CHANGE IN GDP/CAPITA (EURO)									
REGION	2018	2019	2020	2021	2022	2023	2024	2025	TOTAL
NI	1,199	1,037	873	707	539	369	196	21	4,942
ROI	3	44	87	131	176	223	272	322	1,259
All-Island	1,202	1,081	960	838	716	592	468	343	6,201
CHANGE IN GNP/CAPITA (EURO)									
REGION	2018	2019	2020	2021	2022	2023	2024	2025	TOTAL
NI	1,238	1,076	911	744	576	405	231	55	5,235
ROI	3	44	87	131	176	223	272	322	1,259
All-Island	1,241	1,120	998	875	752	628	503	377	6,495

Table 2. Percent Change in GDP/Capita and GNP/Capita, Scenario I

PERCENT CHANGE IN GDP/CAPITA									
REGION	2018	2019	2020	2021	2022	2023	2024	2025	AVERAGE
NI	5.1	4.4	3.6	2.9	2.2	1.5	0.8	0.1	2.6
ROI	0.0	0.1	0.3	0.4	0.5	0.7	0.8	0.9	0.5
PERCENT CHANGE IN GNP/CAPITA									
REGION	2018	2019	2020	2021	2022	2023	2024	2025	AVERAGE
NI	5.1	4.4	3.7	3.0	2.3	1.6	0.9	0.2	2.6
ROI	0.0	0.1	0.3	0.4	0.5	0.7	0.8	0.9	0.5

3.8.2 Unification scenario 2

“Unification in scenario 2 means ROI pays 100% NI government deficit, harmonization of functions of government reduces NI government expenditure by 2% annually from 2018-2025, and adoption of the ROI’s tax regime and foreign investment policy platform in NI attract a higher presence of multinational firms, which catalyzes returns to productivity in NI. Over a 15 year period NI’s productivity structure converges with that found in the ROI.”

Figure 3. Northern Ireland Combined: Simulation Relative Benchmark, Scenario II

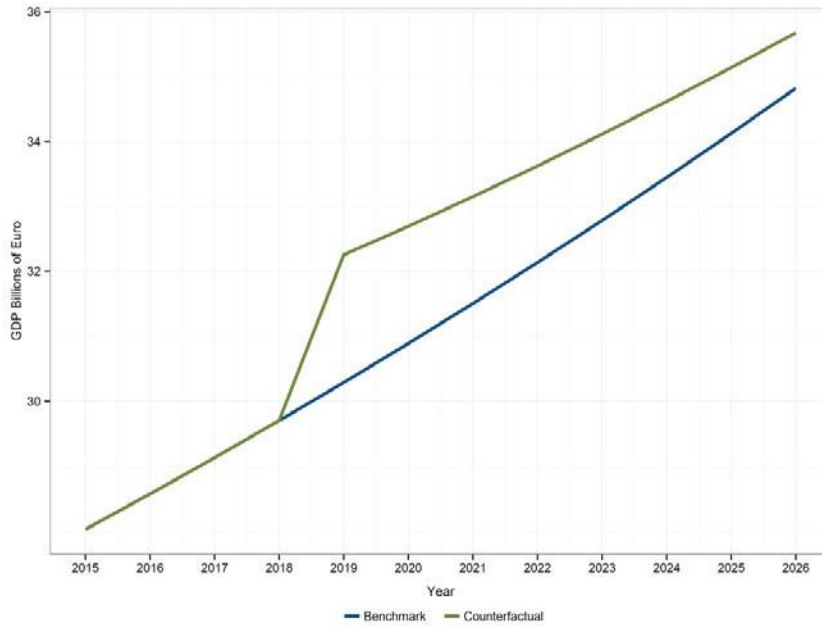
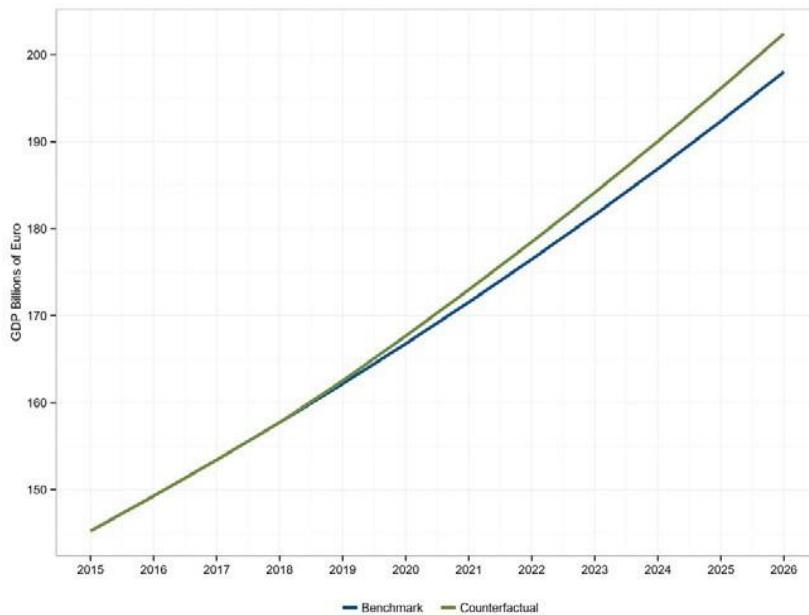


Figure 4. Republic of Ireland Combined: Simulation Relative Benchmark, Scenario II



“Improvements to productivity in NI have a strong positive effect on GDP. While the reduction in government expenditure in NI still negatively affects NI’s GDP, the productivity gain somewhat offsets the negatively sloped percentage change trend-line for the policy implementation years. As a result, the NI GDP counterfactual rises above the bench by 2.2 billion Euro in 2018 and accumulates to 11.27 billion by 2025. The ROI’s GDP gain is only 349 million Euro in 2018 but accumulates to 18.5 billion Euro by 2025. The all-island effect on GDP accumulates to 31.2 billion Euro by 2025.”

Table 3. Change in GDP/Capita and GNP/Capita, Scenario II

CHANGE IN GDP/CAPITA (EURO)									
REGION	2018	2019	2020	2021	2022	2023	2024	2025	TOTAL
NI	1,273	1,192	1,113	1,036	960	884	808	732	7,997
ROI	74	188	302	416	531	647	764	882	3,804
All-Island	1,347	1,380	1,415	1,452	1,491	1,531	1,572	1,614	11,801
CHANGE IN GNP/CAPITA (EURO)									
REGION	2018	2019	2020	2021	2022	2023	2024	2025	TOTAL
NI	1,309	1,224	1,142	1,062	984	907	829	752	8,210
ROI	64	165	266	368	470	574	679	785	3,370
All-Island	1,373	1,389	1,408	1,430	1,454	1,481	1,508	1,537	11,581

Table 4. Percent Change in GDP/Capita and GNP/Capita, Scenario II

PERCENT CHANGE IN GDP/CAPITA									
REGION	2018	2019	2020	2021	2022	2023	2024	2025	AVERAGE
NI	5.4	5.0	4.6	4.2	3.9	3.5	3.2	2.8	4.1
ROI	0.2	0.5	0.8	1.1	1.4	1.7	2.0	2.2	1.2
PERCENT CHANGE IN GNP/CAPITA									
REGION	2018	2019	2020	2021	2022	2023	2024	2025	AVERAGE
NI	5.4	5.0	4.6	4.2	3.8	3.5	3.2	2.8	4.1
ROI	0.2	0.5	0.8	1.1	1.4	1.7	2.0	2.3	1.3

3.8.3 Unification scenario 3

“Unification in combined scenario 3 means the ROI pays 100% of NI’s government deficit, harmonization of functions of government reduces NI’s government expenditure by 2% annually from 2018-2025, and adoption of the ROI’s tax regime and foreign investment policy platform attract a higher presence of multinational firms, which catalyzes returns to productivity in NI. Government savings are not applied to deficit reduction, but are spent to expand and improve functions of government. Over a 15 year period NI’s productivity structure converges with that found in the ROI.”

Figure 5. Northern Ireland Combined: Simulation Relative Benchmark, Scenario III

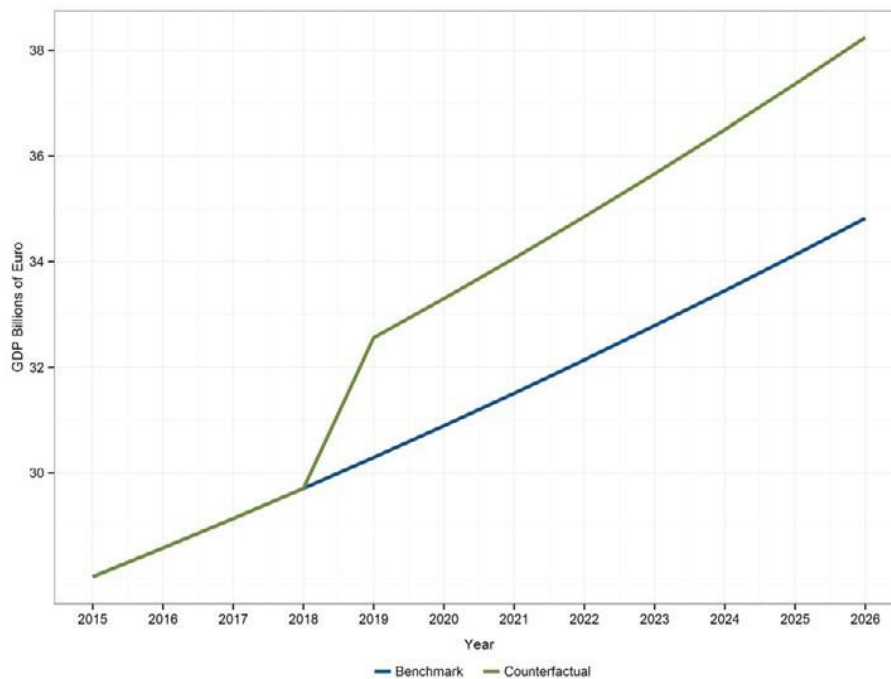
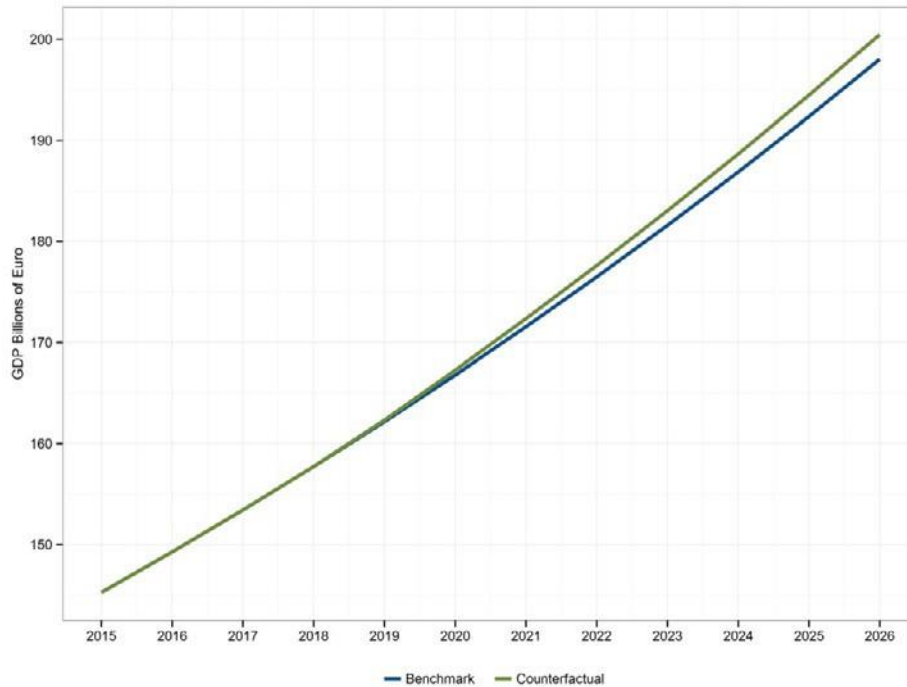


Figure 6. Republic of Ireland Combined: Simulation Relative Benchmark, Scenario III



“Redirecting NI government savings into expenditure boosts NI’s GDP but negatively effects the ROI’s GDP, relative the scenario where NI’s government expenditure cuts are applied to deficit reduction. While GDP gains from unification in NI grow from 2.6 billion Euro in 2018 to 25.3 billion Euro in 2025, the ROI’s growth, beginning in 2018 at 152 million Euros, accumulates to only 10.33 billion Euros. The net effect on all-island GDP is a gain of 2.7 billion Euros of GDP in 2018, 6.3 billion Euros of GDP in 2025, and an accumulated gain of 35.6 billion Euros of GDP across the policy timeline of 8 years.”

3.9 Conclusion of Modeling Irish Unification

To generate the results displayed in this paper, we customized an existing CGE model to fit the multi-regional case with 54 industrial sectors, 4 ROW regions, and representative public and private institutional sectors. In the paper, we detailed our methods for extracting a regional level SUT from the national level, and for compiling SAMs for both the ROI and NI, then outlined the circumstance surrounding our scenarios and scenario components and explained how they fit to the model. Finally, we demonstrated and analyzed critical parts of our numerical findings.

NIROI shows positive net effects on output for NI as well as for the ROI. The bulk of positive net effects are centered in NI, and this was to be expected given the gap in economic development between the ROI and NI. Exports from NI to GB increase by as much as 43.8 billion Euro by 2025, while total NI exports increase by as much as 49.4 billion Euro. Imports into NI from GB increase by 22.2 billion Euro, between 2018 and 2025, while imports from the ROI into NI increase by as much as 560 million Euro. Total imports into NI increase by as much as 49.4 billion Euro, by 2025.

While total exports from the ROI are predicted to decrease by 1.8 billion Euro and total imports into the ROI to decrease by 1.7 billion Euro, total trade creation is still expected to be positive, accumulating to 81.1 billion Euro by 2025. The model also suggests unification will raise GDP in NI by 2.1 to 2.6 billion Euro in the year the policy is implemented, depending on the extent to which NI government expenditure is cut and the amount of FDI attracted by the new tax regime. These gains could accumulate to as much as 25.3 billion Euro in the first eight years following unification.

GDP in the ROI could rise by 30 million to 152 million Euro in the year of policy implementation, again subject to the same assumptions. Across the first 8 years of unification, GDP gains in the ROI could rise from 10.3 billion Euro to 18.5 billion Euro. In total, Irish unification could boost all-island GDP in the first eight years by as much as 35.6 billion Euro.

The positive effects of our economic simulation exercise are strongly driven in the short-run by NI's change-over from the British Pound to the Euro. However, in the long-run they are the result of a common FDI regime that prompts NI's industrial activities to mirror the ROI's industrial structure. In theory, the common FDI regime attracts capital into NI and forces movements along the production possibilities frontier from low value-added industrial output to high value-added industrial output. But what works automatically in the model is in the real world a combination of economic and political policy that is neither easily defined nor implemented. Krugman (1997) and Bradley (2006), for example, explain the dynamics that turn an inward oriented FDI regime into output. We relay some of those aspects here.

Attracting FDI is not only about implementing globally competitive tax rates but also, and in many ways more importantly, about restructuring an entire policy framework to attract and feed high value-added enterprises. This process catalyzes an initial clustering of similar industries, which generate a skilled and knowledgeable workforce. Skilled and knowledgeable human capital attracts more cluster growth through FDI, leading to information spillovers and, with the help of improvements in physical infrastructure, further investment. This process is fostered and supported with political action. High-value economic activities ask for high-end professional training, and thus for a forward-looking education system, an open labor market that makes efficient use of labor mobility in the EU, and active state based provisions that ensure excellent infrastructure, to name only the most prominent policy actions. In other words, successful economic unification, in terms of output, can't be expected from a solely market-driven process. The process needs to be closely monitored and guided with economic policies. In other words, magnifying already positive unification effects is part of an accommodating state policy.

The German Unification case is the most prominent example of the importance accompanying policy plays in economic and political unification. Across the life cycle of German Unification, currency valuation, wage setting, fiscal transfer, and industrial policy, among a myriad of other significant policies, each strongly influenced the accounting and opportunity costs paid by taxpayers.

In the case of German Unification, given that both entities had their own currencies and the currency of the former German Democratic Republic was not convertible, a decision had to be made about an adequate exchange rate. Rather than following underlying economic fundamentals, the decision was guided by political considerations. The conversion rate of roughly 1:1 implied a 400 % appreciation of the former currency of the Democratic Republic, and this enormous cost-push drove substantial parts of the economic sectors of the East into insolvency. Moreover, in the German case, the also politically motivated initial move to adapt the system of industrial relations of the West, and to put East Germany on a wage path that was close to the one of the West, contributed further to undermining gravely the price competitiveness of the Eastern industrial sector. Unlike the first mistake, however, the second one could be reversed, but this revision was time-intensive. Finally, in a positive way, German unification can be seen as a case where ongoing accommodating policies for the relatively weaker region in the economic union paid off over time. Only substantial fiscal transfers from West to East made it possible for Eastern Germany not to lose out in the unification process. Our modeling of Irish unification underplays potential positive effects of a political union as our key modeling assumption in regards to the public sector only considered the reduction in expenditures due to synergies but did not further assume that labor and capital employed in the public sector would be channeled to more effective use outside the public sector. Such a 'peace dividend' (Noland) seems plausible but also requires efficient reallocation processes that we excluded in our modeling. Rather, we opted for a conservative modeling that focuses on structural drivers. It seems fair to assume, though, that the positive effects of our modeling may even be a bit stronger than shown. Two lessons for an Irish unification can be drawn. First, uniting two separated economies requires careful and reflective public policies that deal with fall-outs on the one side and foster adjustments on the other. Second, securing and strongly improving the skill levels of the workforce and providing a complementary industrial policy will not only reduce the fiscal cost of unification but also will also potentially attract genuine FDI and reduce the opportunity cost

Our modeling exercise points to strong positive unification effects driven by successful currency devaluation and a policy dependent industrial turn-around. While these effects occur in a static global economic environment, under ideal political conditions, they underline the potential of political and economic unification when it is supported by smart economic policy.



SECTION 4

4.0 Summary

In light of Brexit and the challenges it poses for all sides in Ireland, the words of Attorney General Rory Brady (2002-2007) in the foreword to now High Court Justice Richard Humphreys' book 'Countdown to Unity' have never been more relevant.

"It is now for the political world to address when and how it will embrace those challenges and induce that change"²⁵⁰

"Unity may have been redefined by the new Articles 2 & 3 of the Constitution but it has remained as a constitutional imperative (obligation). The guarantee that violence will not be used to effect constitutional change is merely one commitment. In parallel to that and of equal importance is the duty to give effect to the firm will of the Irish Nation 'to unite all the people who share the territory of the Island of Ireland'²⁵¹

'Countdown to Unity' identifies how the objective of Unity might be put in place through legal and constitutional measures. This report will highlight briefly those legal, legislative and constitutional measures that can be taken to strengthen the case for unity as outlined by Humphreys.

Up until the Brexit vote on 23 June 2016 the concept of a United Ireland as outlined in Articles 2 and 3 of the Constitution for many would seem a distant aspiration. Brexit means that the best future for the citizens of Northern Ireland could well be remaining in the European Union in a reunified Ireland. This option must be explored and examined.

The challenge now is to lay out how to achieve the constitutional obligation of a united Ireland.

As John Bradley in his paper 'Toward an All Island Economy' presented at Queens University Belfast in 2014 pointed out, "the extreme importance of strategic economic planningpolicy errors or policy neglect seldom goes unpunished".²⁵² As this is a truism of economic planning it is also critically important when it comes to the issue of planning for unification. The UN human development

²⁵⁰ Richard Humphreys, Countdown to Unity: Debating Irish Reunification (Irish Academic Press, Dublin 2009) p.Xiii.

²⁵¹ Richard Humphreys, Countdown to Unity: Debating Irish Reunification (Irish Academic Press, Dublin 2009) p.X

²⁵² John Bradley, 'Towards an All-Island Economy', (2016) < http://www.irish-association.org/papers/john_bradley.asp> accessed 2 February 2017.

index ranks the Republic of Ireland as 8th in the world and ranks Northern Ireland at 44th.

However, aside from the New Ireland Forum, the Oireachtas Library and Research service in Leinster House could not find any current or historic reports produced by a parliamentary committee on how the state should achieve its main aim of a united Ireland.

As is pointed out in ‘Countdown to Unity’ published in 2009, seven years prior to the Brexit vote, Justice Humphreys stated there were a number of reasons why a debate and a policy are appropriate at this time.

In this section we look at High Court Justice Humphreys’ reasons why, other than Brexit, the issue of unification should be looked at.

Firstly, the radically different context for the discussion on unity which exists now compared to any time over the last nine decades since partition. Secondly, the case for unity is now actively being made, with support for a United Ireland by 79 per cent in the South, along with, as Humphreys, states “increasing over all vote for the two nationalist parties in Northern Ireland”,²⁵³ demonstrated by the Assembly results of 3 March 2017. Finally, as Justice Humphreys states himself:

“but in the end perhaps most compelling, reason for an examination of the implications of unity is the fact that the constitution itself, in article 3, inserted pursuant to the Good Friday Agreement, refers to unity as the ‘firm will of the Irish Nation’”.²⁵⁴

Specially commissioned research carried out by the Oireachtas Library and Research Service for this report outlines the positions of all the main political parties on the Island, North and South, on the issue of unification. It is republished within this section in full. Professor Sean D. McGraw of Notre Dame University in his submission for the Joint Committees Report outlines his research of Irish Parliamentarians attitudes towards a united Ireland.

Attorney General Brady states in the Foreword to High Court Justice Humphreys’ book ‘Countdown to Unity’ that “While consent is a fundamental characteristic of change, Dr Humphreys makes it plain that it cannot be an excuse for political inertia”²⁵⁵. High Court Justice Humphreys discusses the issue of political status-quoism due to the concern

²⁵³ Richard Humphreys, Countdown to Unity: Debating Irish Reunification (Irish Academic Press, Dublin 2009) p.2.

²⁵⁴ Richard Humphreys, Countdown to Unity: Debating Irish Reunification (Irish Academic Press, Dublin 2009) p.X.

²⁵⁵ Richard Humphreys, Countdown to Unity: Debating Irish Reunification (Irish Academic Press, Dublin 2009) p.X.

that loyalist paramilitaries could be provoked and attempt to subvert the pursuit of the aim of the Irish people to peacefully achieve a united Ireland as provided for in the Good Friday Agreement. Senator Daly as rapporteur of this report requested White House, National Security Council, Senior Policy Advisor on counter terrorism in President Obama's administration, and the first US diplomat focused on countering violent extremism policy at the State Department Michael R. Ortiz to give a submission on how the threat of future loyalist paramilitary violence attempting to subvert a referendum and unification could be addressed. Anne Cadwallader of the Pat Finucane Center and author of 'Lethal Allies: British Collusion in Ireland' outlines the collusion of the past between the British Security forces and loyalist paramilitaries, and she makes recommendations on how such collusion could be prevented in the future as Ireland pursues unification.

Kevin Meagher, an advisor to the Secretary of State for Northern Ireland Shaun Woodward 2007-09, outlines in a submission to the Committee his view on the position that the British Government should adopt towards the future of Northern Ireland.

Expert in German unification, Professor Christian Tomuschat from Berlin University, made a submission to the Committee report. The United Nations report on the on-going progress in Cyprus reunification is also published in full. Professor Marcus Noland, former Senior Economist at the Council of Economic Advisers in the Executive Office of the President of the United States, is also a specialist on the issue of Korean unification and outlines some of the lessons for Ireland.

High Court Justice Humphreys in his book 'Countdown to Unity' states that "there is no one single pathway to unity – rather there are alternative, but perhaps related roadmaps to reunification"²⁵⁶

In this section the options by Justice Humphreys are outlined. These include Unitary State, Federal/Confederal, United Ireland with continuation of Northern Assembly under the Good Friday Agreement, Joint Authority, Joint Sovereignty, Independent Northern Ireland, Repartition, and Repatriation.

'Irish Man of the 20th Century' T K Whittaker stated in November 1968 in a 'Note on North-South Border Policy' the long-term nature of achieving a United Ireland:

²⁵⁶ Richard Humphreys, Countdown to Unity: Debating Irish Reunification (Irish Academic Press, Dublin 2009) p.205.

‘We were, therefore, left with only one choice, a policy of seeking unity in Ireland between Irishmen. Of its nature this is a long-term policy, requiring patience, understanding and forbearance and resolute resistance to emotionalism and opportunism. It is not the less patriotic for that’

T K Whittaker

‘Note on North-South Border Policy’

T. K. Whittaker ‘s transcript memorandum titled “A note on North South Border Policy” November 1968 is in the online appendix in full

4.1 Recommendations:

The establishment of a New Ireland Forum 2 is recommended to set a pathway to achieve the peaceful reunification of Ireland.

Establish an international task force with experts in security so that plans to meet any risks may be devised and implemented.

Fears and concerns of the Unionist community need to be examined, understood and addressed comprehensively by all stakeholders in advance of any referendum.

The legacy issues in society outlined by Senator Frances Black and the inter-generational impact of the troubles in terms of mental health consequences and substance abuse needs to be addressed.

4.2 Uniting Ireland

At the time of publishing, High Court Justice Humphreys outlined a number of reasons as to why his book 'Countdown to Unity' was appropriate.

“The first such ground is the radically different context for the discussion on unity which exists now as compared to much of the period since 1921. Nationalist self- confidence and self-image are difficult concepts to define, let alone measure. What appears to be significant social and cultural momentum for nationalism/ republicanism is driven by a number of factors and sign posted by a number of significant landmark anniversaries”²⁵⁷

At the time of writing Humphreys was referring to the 90th anniversary of the 1916 Rising. However the recent 100th anniversary of the Rising, and more importantly the 100th Anniversary of partition in 2020, and the establishment of the Northern Ireland parliament are more significant anniversaries for the nationalist community.

“Other social and economic developments feed into a growing nationalist self-assurance. Chief among these is the economic growth of the past ten years. Relevant also is Ireland’s increased prestige on the international stage”²⁵⁸ The UN Human Development Index analysis by the Oireachtas Library and Research service ranks the Republic of Ireland as 8th in the world alongside Germany, Canada and the United States. In Northern Ireland’s case, the analysis places it 44th in the world. The full report is in the online appendix of this section.

The next quote by Humphreys was written 7 years prior to the Brexit vote, a referendum in the UK dominated by issues of immigration and at times racism. This quote was written 6 years before the vote in Ireland on the marriage equality referendum.

“Prior to the 1990s discussion about possible Irish Unity was dominated by the economic implications of uniting a part of a prosperous and liberal United Kingdom with an economically and, it was said, socially backward South. Neither of these objections, if they can be so

²⁵⁷ Richard Humphreys, Countdown to Unity: Debating Irish Reunification (Irish Academic Press, Dublin 2009) p.2.

²⁵⁸ Richard Humphreys, Countdown to Unity: Debating Irish Reunification (Irish Academic Press, Dublin 2009) p.2.

described, have the same automatic force as they may have had prior to the recent years, to put it mildly.”²⁵⁹

Justice Humphreys states “The second major development which justifies a study such as the present one is the fact that the case for Unity is now actively being made”.²⁶⁰

This is also dealt with later in this section regarding political parties’ positions on a united Ireland. Taoiseach Enda Kenny at the McGill Summer School in July 2016 said “The EU needs to prepare for a United Ireland”. Green Party leader, Eamon Ryan TD, on 22 November 2016 in a Dáil debate on the issue of Brexit and Northern Ireland stated that:

“It behoves us to treat that possibility seriously and to be open, honest and clear with each other on the costs and opportunities in moving towards a united Ireland”²⁶¹

Eamon Ryan TD’s comments in relation to the possibility of a united Ireland are just some of many raised in recent debate particularly around Brexit.

Fianna Fáil, Sinn Féin and the SDLP have all issued position papers on the issue of Irish Unity.

In his introduction to his book High Court Justice Humphreys quoted a number of prominent figures including Sir Kenneth Bloomfield to the effect that unity is not unthinkable in principal, which produced a number of interesting responses, including David Adams in the Irish Times:

“The previously unimaginable may not end there.”²⁶²

Justice Humphreys also quoted one of the architects of the Peace Process Dr Martin Mansergh:

“since debate about a united Ireland will continue, it may be useful to set out the principals that would require to be satisfied for any serious negotiations”²⁶³

²⁵⁹ Richard Humphreys, Countdown to Unity: Debating Irish Reunification (Irish Academic Press, Dublin 2009) p.2,3.

²⁶⁰ Richard Humphreys, Countdown to Unity: Debating Irish Reunification (Irish Academic Press, Dublin 2009) p.3

²⁶¹ Deputy Eamon Ryan, Dáil Éireann (November 22 2016) < <http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/takes/Dáil2016112200018?opendocument>> accessed 2 February 2017.

²⁶² David Adams, ‘Irish Unity Cannot Be Ruled Out’ The Irish Times (Dublin, 16 September 2007) Available at. [http:// www.irishtimes.com/opinion/irish-unity-cannot-be-ruled-out-1.961685](http://www.irishtimes.com/opinion/irish-unity-cannot-be-ruled-out-1.961685)

²⁶³ Richard Humphreys, Countdown to Unity: Debating Irish Reunification (Irish Academic Press,

Mansergh went on to say:

“What are the advantages of a united Ireland? Essentially, to give the people of northern Ireland, a far more direct and influential say in their destiny, visible representation at international level, the benefits of social partnership and full participation in what could be the most dynamic, knowledge based economy in Western Europe. They would have ownership of a richly varied and internationally recognized Irish cultural heritage.”²⁶⁴

Mansergh’s note on “Ireland, and the UK from 1916 to Brexit, the problem of consent” is published in full in the online appendix.

Justice Humphreys outlined the polling results at the time of publication in favour of a united Ireland.

“An opinion poll conducted on behalf of the British Council demonstrated overwhelming support for a united Ireland among the respondents in the South. The survey showed that 68% were in favour with 10% opposed and 22% described as ‘do not know’.”²⁶⁵

RTE/ BBC Northern Ireland commissioned a survey by Behaviour and Attitudes on both sides of the border in October 2015 showing a large majority in the Republic, 79 percent saying yes when asked if they “would like to see a United Ireland in my life time”.²⁶⁶ Only 14 per cent said “No” to the same question. The full RTE/BBC poll section ‘Attitudes to and future status of Northern Ireland’ is included in the online appendix of this section

A Red C Opinion Poll in July 2016 showed similar support for a united Ireland with 69 per cent in favour.²⁶⁷ The full ‘Support for a United Ireland’ section of the poll has been included in the online appendix of this section. In relation to polling in Northern Ireland Mary Holland, writing in the Irish Times in 2001, stated that “It has been pointed out that opinion polls in Northern Ireland have a notoriously poor record”.²⁶⁸

Dublin 2009) p.3.

²⁶⁴ Richard Humphreys, Countdown to Unity: Debating Irish Reunification (Irish Academic Press, Dublin 2009) p.3.

²⁶⁵ Richard Humphreys, Countdown to Unity: Debating Irish Reunification (Irish Academic Press, Dublin 2009) p.3.

²⁶⁶ Red C Opinion Poll, (Juy 2016) <http://www.redcresearch.ie/wp-content/uploads/2016/07/Paddy-Power-29th-July-2016-Poll-Report.pdf>.

²⁶⁷ RTE/ BBC Poll, Attitudes to and future status of Northern Ireland, October 2015

²⁶⁸ Mary Holland, Irish Times, 2001.

The Northern Ireland Census has shown that less than 50 per cent of the population have described themselves as British. A new and growing third identification worthy of further exploration is for a people in Northern Ireland to identify themselves as ‘Northern Irish’. ‘Northern Ireland Assembly: Understanding the Northern Irish Identity’ is included in the online appendix of this section. Humphreys continues by pointing out:

“The political context is a gradually but steadily increasing over all vote for the two nationalist parties in Northern Ireland. The fact that Sinn Féin has overtaken the SDLP in terms of the share of the vote perhaps illustrates an increasing radicalisation of the Northern Irish nationalist electorate.”²⁶⁹

The Northern Ireland Assembly elections results of 3 March 2017, where after 100 years since the establishment of the Northern State the amount of declared Nationalist members of the Assembly elected nearly equaled the number of Unionist members, demonstrates the trend outlined by High Court Justice Humphreys.

While Brexit is now one of the most compelling economic reasons for the Government to look a fresh at the issue of unification, High Court Justice Humphreys at his time of writing made the compelling constitutional case.

“The Final, but in the end perhaps most compelling, reason for an examination of the implication of unity is the fact that the constitution itself, in article 3, inserted pursuant to the Good Friday Agreement, refers to unity as the ‘firm will of the Irish Nation’.”

In the light of such a declaration, it is reasonable Humphreys states

“to ask what measures Ireland is or could be taking to progress that firm will. Insofar as the article (Article 3 of the Constitution) refers to the spirit of harmony and friendship and to the diversity of identities and traditions, it is reasonable to ask what legal measures might be envisaged now as to make those objectives into living realities as opposed to ceremonial aspirations.”²⁷⁰

“It is as well to bear in mind this major limitation of the value of any individual legal or constitutional measure in terms of the politics of Northern Ireland. While individual, legal and constitutional changes can seek to accommodate the rights, interests and concerns of different

²⁶⁹ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.3.

²⁷⁰ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.4,5.

sections of the community, the fundamental constitutional objectives of each tradition can only be realised in an absolute sense within one state or the other.”²⁷¹ (i.e a United Ireland or a United Kingdom.)

‘Countdown to Unity’ identifies how the objective of unity might be put in place through legal and constitutional measures. This report will highlight briefly those legal, legislative and constitutional measures that can be taken to strengthen the case for unity as outlined by Humphreys

“Dr Humphreys has wisely recognised the need to engage in a timely audit of the change necessary to bring about a unification that achieves an island united in all the diversity of its identities and traditions.”²⁷²

High Court Justice Humphreys also in his book ‘Countdown to Unity’ examines if “the Good Friday Agreement can be contended to be a permanent feature of the Institutional landscape, and to represent a clear road map towards the implementation of a united Ireland, and in particular to set out the conditions under which that scenario might be achieved.”²⁷³

With protections for the equality of respect for both communities, we can look to arguments for unity that have the capacity to persuade as well as to protect the people of Northern Ireland” .²⁷⁴

4.3 Unionist view of United Ireland same as nationalist view of United Kingdom

It might further be said that this state can make all the amendments to its law and constitution that it wishes but at the end of the day the unionist objection will still be there. That is undeniably the case for some if not most unionists, but that is an irremovable feature of the nature of the conflict in Northern Ireland. It is a precise mirror image of the situation under the current dispensation, whereby the United Kingdom can make all of the changes to its own law and that of Northern Ireland that it sees fit, including human rights for all and sundry, as well as further changes to the policing service and any other items on the nationalist/republican wish list, but at the end of the day the nationalist and republican objection to the United Kingdom will still be there.²⁷⁵

²⁷¹ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.5.

²⁷² Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.Xii,Xiii.

²⁷³ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.6.

²⁷⁴ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.205.

²⁷⁵ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press,

4.4 Political parties positions on the island of Ireland on unification

This section deals with the political parties' positions on the issue of unification, including those of parties in the South - Fianna Fáil, Fine Gael and Labour - and those in the North - SDPL, Democratic Unionist Party, Ulster Unionist Party, Traditional Unionist Party and Alliance Party- and those in both - Sinn Fein, Greens and PBP - as is stated in their parties' aims and objectives.

Fianna Fail- "We reaffirm our traditional commitment to...seeking the unification of Ireland and her people through consent."

Fine Gael- Proposed as a principle 'unity by consent' in North-South relations – something now standard across parties but condemned at the time by all other parties.

Sinn Féin- Continue to campaign for an island-wide referendum on Irish unity - allow the people to have their say.

Ulster Unionist Party- With five years to go, we can confidently plan to celebrate Northern Ireland's centenary and do so within the context of its continuing membership of the United Kingdom.

Democratic Unionist Party- Our vision is to maintain and enhance Northern Ireland's constitutional position within the United Kingdom, achieving long-term political stability to deliver a peaceful and prosperous future for our people.

Traditional Unionist Party- Northern Ireland is and must remain an integral part of the United Kingdom, which needs to salvage its independence by exiting the EU:that is the TUV view.

Social Democratic and Labour Party- Ireland's political re-unification remains the biggest and the best idea around. It needs huge preparation. Big ideas deserve better than being reduced to a numbers game.

Alliance- Favour further devolution with a move towards a Federal UK.

Labour- “Yet I remain of the view that the long-term future of the people of this island would be better faced together.”

Greens- “The British-Irish Agreement, and the joint referenda which gave it effect, provided for the balanced constitutional change which the Greens have campaigned for since its foundation. We remain wholeheartedly in support of it. Human rights are for all.”

People Before Profit- “PBP is neither Orange nor Green. We are socialist.”

The principal of consent in relation to a united Ireland is a well established principal of the Good Friday Agreement to which the main political parties in the Republic subscribe, as do the main parties in Northern Ireland.

“The EU needs to prepare for a United Ireland” Taoiseach Enda
Kenny July 2016

Niall O’Connor, the political correspondent of the Irish Independent, reporting from the McGill Summer school in July 2016 stated that:

“In a significant move, Mr Kenny called on the European Union to prepare for the prospect of Northern Ireland Seeking to join the Republic. The Fine Gael leader said a future border poll was now possible in light of the decision by Britain to leave the EU. And Mr Kenny even likened it to West Germany and East Germany after the fall of the Berlin Wall.

"The discussion and negotiations that take place over the next period should take into account the possibility, however far out it might be, that the clause in the Good Friday Agreement might be triggered," he said, "in that if there is a clear evidence of a majority of people wishing to leave the UK and join the Republic, that should be catered for in the discussions.

"Because if that possibility were to happen, you would have Northern Ireland wishing to leave the United Kingdom, not being a member of the European Union and joining the Republic, which will be a member of the EU."

The Taoiseach made the remarks to reporters following his speech at the McGill Summer School in Glenties, Donegal.

"The discussion and negotiations that take place over the next period should take into account the possibility, however far out it might be, that the clause in the Good Friday Agreement might be triggered," he said, "in that if there is a clear evidence of a majority of people wishing to leave the UK and join the Republic, that should be catered for in the discussions.

"Because if that possibility were to happen, you would have Northern Ireland wishing to leave the United Kingdom, not being a member of the European Union and joining the Republic, which will be a member of the EU."

Taoiseach insists on united Ireland clause in any Brexit deal with UK.

Irish Times 23 February 2017 **THE IRISH TIMES**

Enda Kenny calls for Brexit deal to include united Ireland provision

Enda Kenny has insisted Ireland's Brexit negotiating position will not be undermined by his looming departure as leader in the coming weeks.

And the Taoiseach said any Brexit deal should include language that would allow Northern Ireland to easily return to the EU in the event of an united Ireland.

Mr Kenny said the provisions that allowed East Germany to join West Germany and the EU "in a seamless fashion" after the fall of the Berlin wall offered a precedent.

He said that "in such future time, whenever that might be, were it (reunification) to occur, that the north of Ireland would have ease of access to join as a member of the European Union again . . . we want that language inserted into the negotiated treaty, the negotiated outcome, whenever that might occur."

Irish Independent 23 February 2017 **Irish Independent** 

The Taoiseach has insisted on a clause in the Brexit deal to allow Northern Ireland rejoin the European Union as part of a united Ireland.

After a summit with European Commission President Jean Claude Juncker, the Taoiseach said the Good Friday Agreement must be stitched into the outcome of talks on Britain leaving the bloc.

Referring to the fall of the Berlin Wall, he said the EU divorce deal must allow for Northern Ireland to "seamlessly" reunite with the Republic of Ireland if a majority votes for it.

"We want that to remain in such a position that the language of what is contained in the Good Friday Agreement will also be contained in the negotiations outcome," he said at a press conference in Brussels.

Taoiseach Enda Kenny, speaking in Brussels on the 2nd of March 2017 said,

“the Good Friday Agreement contains the opportunity to put in these negotiations language that has already been agreed in internationally binding agreement, that at some future time were that position to arise, that if the people by consent were to form a united Ireland that that could be a seamless transfer as happened in the case of East Germany and West Germany when the Berlin Wall came down.”

Green Party leader, Eamon Ryan TD on the 22 November 2016 in a Dáil debate on the issue of Brexit and Northern Ireland stated that:

“We need to look forward by a year and consider various different scenarios in terms of how things will unfold. However, when I do that, I see nothing but the worst possible news for the North, in particular. In terms of the effect of Brexit and the process, the North will be worst affected because its percentage of trade across the Border is far higher than anywhere else. It will be affected if any border is imposed. It will lose out if, as the UK Prime Minister said yesterday, the corporation tax is reduced to 15%. Any comparative advantage it thought it might have in a low-tax system to try to attract investment will be gone.” I see nothing in the negotiating process other than a very long five to ten year mess in terms of talk around trade agreements. One of our concerns is how a Northern economy will find it very difficult in that environment. “We need the Department of the Taoiseach and the Government to start doing scenario planning around what Brexit might mean and considering the possibility that it would lead to a change in constitutional arrangements. We might have to consider very seriously an all-island constitutional approach and a more united Ireland.” In order for us to have an informed debate on that issue, I ask the Department of the Taoiseach to start working out the cost implications and opportunities that will be available for the State. I know we are at the end of the constitutional process. It would first of all require a series of opinion polls to show that the people of the North are interested in such a process. The Secretary of State would have to sign up to the holding of a Northern referendum before we could have any referendum. It behoves us to treat that possibility seriously and to be open, honest and clear with each other on the costs and opportunities in moving towards a united Ireland. The alternative for the North under Brexit is looking increasingly grave.”²⁷⁶

²⁷⁶ Deputy Eamon Ryan, Dáil Éireann (November 22 2016) < <http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/takes/Dáil2016112200018?opendocument>> accessed 2 February 2017.

FIANNA FÁIL

Fianna Fáil was the party in Government that introduced the 1937 Constitution with the original Article 2 and 3, and Fianna Fáil was the party in Government that introduced the referendum that amended these two articles which was endorsed by 94 per cent in a referendum. Fianna Fáil's Policy Paper on Foreign Affairs published in 2014 as part of the submission to the Governments review on Foreign Policy and External Relations states that the party "believe in the stable, peaceful and prosperous reunification of Ireland and its people".²⁷⁷

The submission also went on to state that

"Fianna Fáil supports the comprehensive engagement between all Parties and people in the north regarding the economic, social and political conditions necessary to create the correct circumstances under which the reunification of Ireland can be obtained."

Working through the Good Friday Agreement and the St Andrews Agreement with Britain as the co-guarantor of those agreements, Fianna Fáil believes it is imperative that there is active engagement with Britain as well as with our EU partners and the United States on working towards achieving the reunification of Ireland.²⁷⁸

The Issue of Constitutional Imperative as described by former Attorney General Rory Brady has also being raised by Fianna Fáil as a "duty to give effect to the firm will of the Irish nation"²⁷⁹ as stated in Article 2 and 3 of the Constitution. Fianna Fáil has stated that "the Unity of the people of this Island in one state remains the aspiration of the majority of the Irish People and its is the duty of our government to work for it with real commitment".²⁸⁰

A research paper by the Oireachtas Library and Research Service in Leinster House November 2015 was commissioned with the Title of 'Political Parties position on

²⁷⁷ Fianna Fáil, Foreign Affairs Policy Paper (2015)
<<https://www.scribd.com/document/262347124/Fianna-Fail-Foreign-Affairs-Policy-Paper#?>
accessed 2 February 2017.

²⁷⁸ Fianna Fáil, Foreign Affairs Policy Paper (2015)
<<https://www.scribd.com/document/262347124/Fianna-Fail-Foreign-Affairs-Policy-Paper#?>
accessed 2 February 2017.

²⁷⁹ Richard Humphreys, Countdown to Unity: Debating Irish Reunification (Irish Academic Press, Dublin 2009) p.Xii.

²⁸⁰ Fianna Fáil, Foreign Affairs Policy Paper (2015)
<<https://www.scribd.com/document/262347124/Fianna-Fail-Foreign-Affairs-Policy-Paper#?>
accessed 2 February 2017.

unification with Northern Ireland'. An updated version of this research paper which included an analysis of the positions of all the political parties on the island was published in February 2017 after the launch of all the political parties' manifestoes in the Assembly Elections in Northern Ireland. This paper is reproduced here in full.



4.4.1 Political parties' position on unification with Northern Ireland

Research Paper for Senator Mark Daly

This paper outlines the position of seven Republic of Ireland political parties regarding the constitutional status of Northern Ireland, as described in a previous paper (enquiry number 2015/2017 of November 2015) and updates developments in an Addendum.

This paper also addresses the position of eight Northern Ireland parties' position on this subject, in a new section.

Date: Friday, 17 February 2017

Enquiry Number: 2017/45

Library & Research Service central enquiry desks: Tel – 618 4701

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1. Introduction

This paper looks at the policies of seven Republic of Ireland registered political parties—those of Fianna Fáil, Fine Gael, Labour, Sinn Féin, Green Party, Anti-Austerity Alliance-People before Profit and Renua Ireland.

It also looks at the policies of eight Northern Ireland parties represented in the Northern Ireland Assembly before its dissolution in January 2017—those of Alliance Party, Democratic Unionist Party, Green Party NI, People Before Profit Alliance, Sinn Féin, Social Democratic and Labour Party, Traditional Unionist Voice and Ulster Unionist Party.

The policies of the established Republic of Ireland parties (FF, FG, Labour, SF, Green) regarding unification with Northern Ireland could be summarised as variations on a theme of “unity by consent”.

The positions of new party Renua Ireland and new political grouping Anti-Austerity Alliance-People before Profit (AAA-PBP) are harder to ascertain. As Renua Ireland is recently formed it seems not to have yet decided on the position on the constitutional status of Northern Ireland.

AAA-PBP does not have a joint website and no clear statement could be identified, although some of the constituent groups have been critical of the operation of the current peace process.

The positions of some of the eight parties represented in the Northern Ireland Assembly until its dissolution in January 2017 are more polarised.

Three parties state in their published documents that they favour union with Great Britain (DUP, TUV, UUP). Two parties state that they favour a united Ireland (Sinn Féin, SDLP).

The remaining three parties occupy different places on the spectrum. The Green Party in Northern Ireland subscribes to unity by consent and to the Belfast/Good Friday Agreement. Alliance states that it favours devolution, with a move to a federal UK, and the development of the North-South Ministerial Council. The People Before Profit Alliance states that it is “neither Orange nor Green”.

Unity by consent

Unity by consent is a central concept of the Northern Ireland Peace Agreement, also known as the Belfast or Good Friday Agreement, to which the parties subscribe. However, there are nuances in how each party approaches this policy, which are elaborated here.

Box 1. Extract from The Northern Ireland Peace Agreement

The Agreement reached in the multi-party negotiations 10 April 1998

1. The participants endorse the commitment made by the British and Irish Governments that, in a new British-Irish Agreement replacing the Anglo-Irish Agreement, they will:

(i) recognise the legitimacy of whatever choice is freely exercised by a majority of the people of Northern Ireland with regard to its status, whether they prefer to continue to support the Union with Great Britain or a sovereign united Ireland;

(ii) recognise that it is for the people of the island of Ireland alone, by agreement between the two parts respectively and without external impediment, to exercise their right of self-determination on the basis of consent, freely and concurrently given, North and South, to bring about a united Ireland, if that is their wish, accepting that this right must be achieved and exercised with and subject to the agreement and consent of a majority of the people of Northern Ireland;

(iii) acknowledge that while a substantial section of the people in Northern Ireland share the legitimate wish of a majority of the people of the island of Ireland for a united Ireland, the present wish of a majority of the people of Northern Ireland, freely exercised and legitimate, is to maintain the Union and, accordingly, that Northern Ireland's status as part of the United Kingdom reflects and relies upon that wish; and that it would be wrong to make any change in the status of Northern Ireland save with the consent of a majority of its people;

(iv) affirm that if, in the future, the people of the island of Ireland exercise their right of self-determination on the basis set out in sections (i) and (ii) above to bring about a

united Ireland, it will be a binding obligation on both Governments to introduce and support in their respective Parliaments legislation to give effect to that wish;.....

.....

Accessed

at:http://www.taoiseach.gov.ie/attached_files/Pdf%20files/NIPeaceAgreement.pdf

2. Republic of Ireland parties

Fine Gael

Among the party's achievements listed on the FG website is that of proposing the principle of "unity by consent".¹

"The party's achievements

Proposed as a principle 'unity by consent' in North-South relations – something now standard across parties but condemned at the time by all other parties.

1969-Fine Gael adopts a policy of Irish "unity by consent". The first party to do so, and highly controversial, it would later become the policy of all parties."

Fianna Fáil

In April 2015, Fianna Fáil published a foreign affairs policy paper outlining their key positions in the area of international affairs. This paper summarised the party's position on unification:

"We reaffirm our traditional commitment to...seeking the unification of Ireland and her people through consent."²

¹ Accessed at <http://www.finegael.ie/history-of-fg/>

² Fianna Fáil Foreign Affairs Policy Paper, 19 April 2015. (authored by Brendan Smith TD, Spokesperson on Foreign Affairs and Border Region Development).

The policy is described thus:

“North/South and British-Irish Relations

Our Position:

Fianna Fáil continues to seek to secure in peace and agreement the unity of Ireland and its people.

The Good Friday Agreement, which was overwhelmingly endorsed by the people on the island of Ireland, allows for the unity of Ireland with the consent of a majority of the people in both parts of this island. This is a goal Fianna Fáil will continue to pursue.

- Direct Involvement by Governments:

We believe that both the British and Irish Governments must continue their direct involvement in consolidating and building on the peace secured in Northern Ireland. The need to implement meaningful proposals to deal with the past and the outstanding elements of the Good Friday Agreement and subsequent agreements, the continuous threat from dissidents, and the challenges of inequality and poverty necessitate direct involvement from the national governments of both states.

- All-Ireland Economy:

The potential of the Good Friday Agreement can be enhanced further to maximise the opportunities presented through the development of the all-Ireland economy which would increase prosperity for citizens on both sides of the border. Cross-border infrastructure projects such as the N2/A5, the Narrow Water Bridge Project, the restoration of the Ulster Canal and Dublin-Belfast Railway upgrade are vital in this regard and should be pursued.

- Implement Fully the Good Friday Agreement:

All elements of the Good Friday Agreement must be implemented in full. As an internationally binding agreement both Governments and the Northern Executive must commit to passing a Bill of Rights for Northern Ireland and introducing Acht na Gaeilge.

- North/South Bodies:

Fianna Fáil supports increasing the number of North-South competencies in areas where it is mutually beneficial to do so. Further co-operation in areas such as job creation, trade, educational services in Further and Higher Education, health service provision and policing should be examined.

- Fianna Fáil believes it is time to establish a Border Development Zone as a North-South body which would work to integrate infrastructure and public services in certain spheres such as health, broadband and other utilities.

- North-South Institute

Fianna Fáil calls for further co-operation in the area of education and research through a formal North/South research institute. Our Party will examine the idea of establishing a specific Institute/Department in a third level institution to deal exclusively with North/South developments. This 'Institute' would deal solely with driving the North/South agenda and produce research on the potential for further development in North-South cooperation.”

Labour Party

“Protecting & enhancing peace in Northern Ireland” was identified in July 2014 as one of seven key priorities of the Labour Party in its Statement of Government Priorities 2014 – 2016³.

This document stated:

"We remain fully committed to the full implementation of all aspects of the Good Friday Agreement. We will work closely with the British Government to support the efforts of the political parties in Northern Ireland to reach agreement on the issues of parades, flags and dealing with the issues of the past.....

We will continue to develop the North-South institutions, with a particular emphasis on infrastructural development in the border region. We will also develop further proposals on North-South co-operation in health, tourism, and economic development."

The Labour leader set out Labour Party thinking on this issue in a speech by Joan Burton TD on 3 November 2015 in which she stated⁴:

“It is over 30 years since the New Ireland Forum met. We have come a long way since then.

The principle of consent remains paramount.

Yet I remain of the view that the long-term future of the people of this island would be better faced together.

And were that possible, it would not be on the basis of the domination of the one tradition over the other.

It would involve us nationalists recognising the essential British identity of unionists, and unionists perhaps embracing a greater sense of their own Irishness.

So, in the context of the 1916 commemorations, we should set ourselves the challenge of convening a new forum or body.

One that is separate to, but supportive of, the institutions of the Good Friday Agreement, specifically to discuss the island’s future⁵.

³ Labour Statement of Government Priorities 2014 – 2016, 11 July 2014. Accessed at <http://www.labour.ie/policy/listing/14050994781694430.html>.

⁴ Time for a discussion about building a new, agreed Ireland, 3 November 2015 at <http://www.labour.ie/press/2015/11/03/time-for-a-discussion-about-building-a-new-agreed/>

⁵ This speech was delivered in the Dáil. Accessed at: <http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/takes/dail2015110300033?opendocument>

Sinn Féin

According to its website, Sinn Féin is dedicated to the reunification of Ireland and an end to British jurisdiction in the north of Ireland. Sinn Féin states that it is seeking a new, agreed and united Ireland⁶.

Sinn Féin states that they would:

- “•Continue to campaign for an island-wide referendum on Irish unity - allow the people to have their say.

- Build upon the work of the all-Ireland Ministerial Council.

- Campaign for Northern representation in the Dáil – northern MPs should be automatically accorded membership of the Dáil with consultative and speaking rights.

- Extend voting rights for Presidential elections to people in the North and the Irish Diaspora.

- Develop the all-Ireland economy, including having a planned approach to economic development across the island of Ireland, one tax system and currency, integrating infrastructural development and creating a Border Economic Development Zone to harmonise trade and maximise returns for border businesses.

- Campaign for a Bill of Rights for all Citizens and an all-Ireland charter of fundamental rights.

- Promote the Irish language and culture.

- Equality proof legislation before it is produced.

⁶ <http://www.sinnfein.ie/a-republic-for-all-policy>

- Continue to advance a process of reconciliation.”

Green Party

The Green Party has two Dáil deputies and a senator in the Oireachtas at present. It has councillors on the island of Ireland at local government level and one MLA (Member of the Legislative Assembly) in Northern Ireland, Steven Agnew MLA, leader of the Greens in Northern Ireland.

A reference to Northern Ireland could not be found in the list of policies of the Green Party in the Republic.⁷

However, the **Green Party in Northern Ireland** subscribes to unity by consent and to the Belfast/Good Friday Agreement⁸.

“The British-Irish Agreement, and the joint referenda which gave it effect, provided for the balanced constitutional change which the Greens have campaigned for since its foundation.

We remain wholeheartedly in support of it. Human rights are for all.”

In May 2011 Steven Agnew MLA, the leader of the Green Party in Northern Ireland, was reported as having affirmed support for the principle of unity by consent and for the Belfast/Good Friday Agreement⁹.

‘Mr Agnew said that the constitutional question was not one which divided the party.

"We have people in the Green Party who are unionists, we have people who are nationalists, we see no contradiction there," he said.

"It shouldn't divide our politics because it is a single issue and it certainly shouldn't decide our society.

"We need to move forward into a shared future, the issue of the constitutional question is enshrined in the Good Friday Agreement. The status of Northern Ireland will remain until the people of Northern Ireland decide otherwise." ‘

⁷ Green Party Political Reform Policy, October 2015. Accessed at <https://greenparty.ie/wp-content/uploads/2015/11/Green-Party-Political-Reform-Policy-20151.pdf>

⁸ Green Party of Northern Ireland manifesto for the Westminster elections 2010. Accessed at: <http://www.greenpartyni.org/www/wp-content/uploads/2014/02/Westminster2010.pdf>

⁹ 4 May 2011 BBC News section [Northern Ireland](http://www.bbc.com/news/uk-northern-ireland-13277156). Green Party leader Steven Agnew reacts to leader debate. Accessed at: <http://www.bbc.com/news/uk-northern-ireland-13277156>

Anti-Austerity Alliance-People before Profit

This new political grouping was launched in October 2015. The AAA and the PbP each have their own website.

In advance of the General Election of 2016 Anti-Austerity Alliance – People Before Profit published a joint document *COMMON PRINCIPLES: Radical Alternatives & Real Equality, General Election 2016*¹⁰. However, no reference could be found therein to a policy on the constitutional status of Northern Ireland.

A joint website or a joint published policy on Northern Ireland could not be found. However, it may be the case that these joint policies have not yet been formulated.

In terms of the two constituent organisations making up the AAA-PbP, as noted each has its website, and each is composed of a number of constituent groups.

There are references to Northern Ireland, and/or the Good Friday agreement, on the websites of these various constituent groups (e.g. AAA, Socialist Party). Some of these references indicate opposition to the Good Friday agreement in the past, or are critical of the operation of the current peace process.¹¹

However, as these reflect the position of the constituent organisations, and it is not known whether they reflect the current AAA-PbP position, these have not been outlined here.

¹⁰ Anti-Austerity Alliance – People Before Profit. *COMMON PRINCIPLES: Radical Alternatives & Real Equality, General Election 2016*. Accessed at http://www.peoplebeforeprofit.ie/mwg-internal/de5fs23hu73ds/progress?id=QHHnddx713ZwNL8XV4zOrTZKxTWaaQ7wHN11_EKQqto,

¹¹ See for example: references to the Good Friday agreement on the AAA website in the context of its views on the Right2change.: Does the AAA support the Right2Change policy principles? Accessed at: <http://antiausterityalliance.ie/2015/10/aaa-response-to-sinn-fein-and-right2change/>. See also Socialist Party policy on Northern Ireland, accessed at <http://socialistparty.ie/about-us/> and <http://socialistpartyni.net/about-us/#.VktP0k8nx88>

No direct reference could be found on the People Before Profit Alliance website in Northern Ireland relating to the constitutional status of Northern Ireland. However, indirect references included:

“PBP is neither Orange nor Green. We are socialist.”¹²

Renua Ireland

This new political party was launched in March 2015. Currently it has no members represented in the Oireachtas.

While a number of policies have been published on its website, a policy on Northern Ireland could not be found.

The party on its website has stated that policy formation will take time¹³:

“Those expecting to see fully fleshed-out policies will have to wait for six months or a year. The party has published 16 policies but says that it’s a dynamic process.

“We are not going to make a policy on the back of the envelope,” McCarthy says. “We are not setting out to get salacious headlines. Far too often we have settled for a position where the short road is taken when we have known only the long road can do.”

3. Northern Ireland parties

Eight parties were represented in the Northern Ireland Assembly before its dissolution on 26 January 2017-- Alliance Party, Democratic Unionist Party (DUP), Green Party,

¹² PBP. People Before Profit To Stand In East Derry, February 9th, 2017. Accessed at <http://www.peoplebeforeprofit.ie/2017/02/people-before-profit-to-stand-in-east-derry/>

¹³ <http://www.renuaireland.com/category/news/>

People Before Profit Alliance, Sinn Féin, Social Democratic and Labour Party (SDLP), Traditional Unionist Voice (TUV) and Ulster Unionist Party (UUP)¹⁴.

Of these, three parties state in their published documents that they favour union with Great Britain (DUP, TUV, UUP). Two parties state that they favour a united Ireland (Sinn Féin, SDLP). The Green Party in Northern Ireland subscribes to unity by consent and to the Belfast/Good Friday Agreement¹⁵.

The remaining two parties adopt different approaches to the question of the constitutional status of Northern Ireland. Broadly, Alliance states that it favours devolution, with a move to a federal UK, and the development of the North-South Ministerial Council. The People Before Profit Alliance states that it is “neither Orange nor Green”.

Alliance	Devolution and federal UK Develop North-South Ministerial Council
DUP	Union with UK
Green Party in NI	Unity by consent. Campaigning for NI to remain within EU
People before Profit Alliance	“neither Orange nor Green”
Sinn Féin	United Ireland

¹⁴ NIA. Accessed at <http://www.niassembly.gov.uk/about-the-assembly/corporate-information/publications/party-political-contacts/>

¹⁵ Green Party of Northern Ireland manifesto for the Westminster elections 2010. Accessed at: <http://www.greenpartyni.org/www/wp-content/uploads/2014/02/Westminster2010.pdf>

SDLP	United Ireland
TUV	Union with UK
UUP	Union with UK

Alliance Party

Alliance favours further devolution with a move towards a federal UK.

.....As part of the process of [UK] constitutional change, Alliance believes there is the opportunity to move to a more durable constitutional settlement which supports devolution.¹⁶

We support a move towards a federal UK, retaining strong links with our European neighbours.

In order to achieve this change across the UK we would:

- Support additional powers being conferred on the devolved administrations. There must be an assumption that the devolved administrations should take on these powers when they are capable and willing to do so¹⁷.

Also:

- Support the UK remaining part of the European Union(EU)¹⁸.

¹⁶ Alliance Manifesto for 2015 Westminster Election

¹⁷ Alliance Manifesto for the Westminster election 2015. Accessed at: <https://www.allianceparty.org/document/manifesto/alliance-2015-westminster-manifesto#document>

¹⁸ Manifesto 2016: An agenda to increase the speed of change in Northern Ireland. Op.cit.

While no specific reference could be found in the Alliance's recent manifestos to relations with the Republic of Ireland, indirect references included:

- Further develop the North-South Ministerial Council, including creating a work plan that is informed by a Programme for Government in each jurisdiction¹⁹.

Democratic Unionist Party

The DUP favours retaining the union with Great Britain, as stated on their website.

Our vision is to maintain and enhance Northern Ireland's constitutional position within the United Kingdom, achieving long-term political stability to deliver a peaceful and prosperous future for our people²⁰.

This is re-stated in their DUP Manifesto for the 2016 Northern Ireland Assembly Election.

Arlene's Vision for Northern Ireland

I want to see a strong, safe and stable Northern Ireland..... where we play a full part in the United Kingdom...²¹

This position had been asserted as one of their five priorities in the DUP Westminster Manifesto 2015²².

Our priorities

5 Strengthen the United Kingdom and protect and enhance our British identity

¹⁹ Manifesto 2016: An agenda to increase the speed of change in Northern Ireland. Accessed at: <https://www.allianceparty.org/document/manifesto#document>

²⁰ <http://www.mydup.com/about-us/our-vision>

²¹ Accessed at http://dev.mydup.com/images/uploads/publications/DUP_Manifesto_2016_v8_LR.pdf

²² Accessed at http://dev.mydup.com/images/uploads/publications/DUP_Manifesto_2015_LR.pdf

Support for Northern Ireland's constitutional position within the United Kingdom has never been higher. The number of people who want to see a united Ireland in either the short or the medium term is at an all time low. The constitutional future of Northern Ireland has been settled for generations to come.

This has been achieved by agreeing political structures in Northern Ireland that can command cross-community support and by ensuring everyone can play a full part in our society and community.

While we should never be complacent about what has been achieved, the focus must now move to strengthen the United Kingdom as a whole and to enhance our British identity in Northern Ireland.....

From Westminster we want:

- A fair deal for all four parts of the United Kingdom to strengthen the Union;
- Protection in law for the official display of the Union Flag and the symbols of our nation;
- No partisan political deals which would weaken the United Kingdom;

Green Party in Northern Ireland

The Green Party in Northern Ireland stated in its manifesto for the Westminster elections 2010 that it subscribes to unity by consent and to the Belfast/Good Friday Agreement²³. (This page is no longer available on the website).

Additionally, in the context of the Brexit referendum, the Green Party manifesto for the Northern Ireland Assembly Election 2016 stated that the Green Party would:

Oppose withdrawal from the European Convention on Human Rights, and will campaign for the UK to remain within the European Union²⁴.

²³ Green Party of Northern Ireland manifesto for the Westminster elections 2010. Accessed at: <http://www.greenpartyni.org/www/wp-content/uploads/2014/02/Westminster2010.pdf>

²⁴ Green Party manifesto for the Northern Ireland Assembly Election 2016. Accessed at: http://www.greenpartyni.org/wp-content/uploads/2016/04/GreenParty_Manifesto_2016-for-email.pdf

According to a statement on the website dated 27 January 2017²⁵:

Steven Agnew is one of a number of plaintiffs named yesterday in the “Dublin case” which seeks clarity on the irrevocability of Article 50.

The Green Party leader is joined by [3 other plaintiffs] as litigants in the case. The proceedings seek a referral to the Court of Justice of the European Union on the question of whether Article 50, once triggered, can be unilaterally revoked by the UK government without requiring consent from all other 27 EU Member States.

The Green Party campaigned for Remain in the EU referendum and Agnew is clear that his involvement in the case is about getting the best deal possible for the people of Northern Ireland.

The Green Party leader said:

.....”Any deal on the Irish border will have massive implications across the island and it is vital that the people of Northern Ireland have a say on the final proposal.

“For that to be meaningful the option to Remain must still be on the table...”

People Before Profit Alliance

No reference could be found on the People Before Profit Alliance website relating to the constitutional status of Northern Ireland.

However, indirect references included:

“PBP is neither Orange nor Green. We are socialist.”²⁶

²⁵ Accessed at: <http://www.greenparty.org/green-party-leader-steven-agnew-in-fresh-brexite-legal-case/>

Also:

It is the ambition of the Alliance to operate on a 32-county basis and to offer a radical vision for our country.²⁷

This position was reiterated on 26 January 2017 during the NIA election campaign.

People Before Profit offers a different vision... We want to unite Catholic and Protestant workers in a fight against austerity. ..We do not want to create a northern tax haven to partner with the one in south. We want a socialist Ireland which arises out a radical challenge to both states in Ireland.²⁸

Sinn Féin

On the home page of the Sinn Féin website under the heading Latest Assembly election [2017] news, it is stated²⁹:

United Ireland

Sinn Féin is working for a new, agreed and united Ireland where the rights of all citizens are respected and which delivers prosperity. We want to see:

- An island wide referendum on Irish unity.
- A new Ireland, an agreed Ireland.
- Presidential voting rights for citizens in the North.

²⁶ People Before Profit To Stand In East Derry, February 9th, 2017.

<http://www.peoplebeforeprofit.ie/2017/02/people-before-profit-to-stand-in-east-derry/>

²⁷ About People Before Profit. Accessed at:<http://www.peoplebeforeprofit.ie/2015/08/about-pbpa/>

²⁸ People Before Profit Mount Big Challenge In North Elections, January 26th, 2017. Accessed at: <http://www.peoplebeforeprofit.ie/2017/01/people-before-profit-mount-big-challenge-in-north-elections/>

²⁹ Latest Assembly election [2017] news. Accessed at: <http://www.sinnfein.ie>

- Greater development of the all Ireland economy.

Social Democratic and Labour Party

The SDLP asserts that their vision is a reconciled people living in a united, just and prosperous new Ireland³⁰.

They outline a concept which they term “progressive nationalism”³¹.

It is time for a new type of nationalism. The SDLP’s new vision of Progressive Nationalism will move the ground upon which the constitutional debate on this island rests....

Ireland’s political re-unification remains the biggest and the best idea around. It needs huge preparation. Big ideas deserve better than being reduced to a numbers game.

We believe that it is now time to set out a political roadmap to unity. That’s why we’re establishing a Commission for a New Ireland. It will have two main tasks.

The first task is to conduct a political audit on the current state of North-South affairs, the workings of the North-South institutions, an all Ireland consultation, as well as civic and business co-operation.

The second task will put flesh on the bones of what a reunified Ireland will look like, providing an analysis and recommendations on what kind of institutional structure, what kind of public service and private sector structure and what kind of civic structure a new, united Ireland will comprise.

³⁰ <http://www.sdlp.ie/about/our-vision/>

³¹ Accessed at: <http://www.sdlp.ie/issues/progressive-nationalism/>

Scotland's plan for independence contained 670 pages of work. It scoped out and modelled what a new Scotland would look like. Irish nationalism must match that level of practicality. We must do the same.

The Commission for a New Ireland will attempt to escape from merely talking about unity by actually putting in the hard yards of research which will see it delivered.

Irish Unity is not an idea that we in the SDLP simply commemorate, instead it is something that we continue to aspire to. This Commission will form the basis of our plan to deliver it.

These ideas are further discussed in a document, titled Colum Eastwood's Crossmaglen speech on Progressive Nationalism³².

Traditional Unionist Voice

The TUV is unequivocal in its support for the union with the United Kingdom, as outlined in their TUV Assembly Election Manifesto 2016³³:

Northern Ireland in its national and international setting

Northern Ireland is and must remain an integral part of the United Kingdom, which needs to salvage its independence by exiting the EU:that is the TUV view.

Maintaining the union between Northern Ireland and Great Britain is the only union which matters.

³² Accessed

at:http://www.sdlp.ie/site/assets/files/43036/colum_eastwood_outlines_progressive_nationalism.pdf

³³ Accessed at <http://tuv.org.uk/>

Ulster Unionist Party

The UUP expressed support for the union with Great Britain in their Northern Ireland Assembly Manifesto 2016³⁴:

With five years to go, we can confidently plan to celebrate Northern Ireland's centenary and do so within the context of its continuing membership of the United Kingdom.... but also recognising that we wish to continue to build better political, economic, social and cultural relations with our friends and neighbours in the Republic of Ireland.

Also they outline Our Vision for you--the Voter:

The 1998 Agreement stated two distinct facts: first, it is your right to describe your identity as you see fit..... The second fact relates to sovereignty; Northern Ireland is part of the United Kingdom.

The 1998 Agreement enshrined the principle of consent. It was accepted there could be no constitutional change in the status of Northern Ireland as a part of the United Kingdom without the consent of the majority of the electorate in Northern Ireland.....

The Ulster Unionist Party wants to move politics on....but to do so in an environment where we all respect both Northern Ireland's constitutional status and the individual identity of our citizens.....

Constitutional Change

There is absolutely no evidence that a significant proportion of voters support change, never mind the majority required to make it happen. This is important,

³⁴ Accessed at <https://uup.org/assets/policies/ulster%20unionist%20vision%20document.pdf>

because we ensured the law demands proof that there is an appetite for change.....

While ever-vigilant to the shifting nature of the threats to the Union, the Ulster Unionist Party's vision of good government sees a clear focus on the problems that affect us all on a daily basis.

Addendum

Republic of Ireland parties: developments since November 2015.

AAA-PBP

In advance of the General Election of 2016, Anti-Austerity Alliance – People Before Profit published a joint document *COMMON PRINCIPLES: Radical Alternatives & Real Equality, General Election 2016*³⁵. No reference could be found therein to a policy on the constitutional status of Northern Ireland. No direct reference could be found on the People Before Profit Alliance website in Northern Ireland relating to the constitutional status of Northern Ireland. However, indirect references included:

“PBP is neither Orange nor Green. We are socialist.”³⁶

³⁵ Anti-Austerity Alliance – People Before Profit. *COMMON PRINCIPLES: Radical Alternatives & Real Equality, General Election 2016*. Accessed at http://www.peoplebeforeprofit.ie/mwg-internal/de5fs23hu73ds/progress?id=QHHnddx7I3ZwNL8XV4zOrTZKxTWaaQ7wHN1l_EKQqto,

³⁶ PBP. People Before Profit To Stand In East Derry, February 9th, 2017. Accessed at <http://www.peoplebeforeprofit.ie/2017/02/people-before-profit-to-stand-in-east-derry/>

Labour Party

The position of the Labour Party was further elaborated in the Labour Party Manifesto 2016:

Labour is committed to a strong all island economy and society. As we enter into a decade of commemoration in 2016, Labour wants to commence a national conversation about the future of our island and within it our many diverse communities.

This new national conversation must explore the potential for greater co-operation in developing our common languages, our many sporting and artistic organisations, increased interaction at local authority level and between state agencies.

Labour continue to support the Good Friday Agreement and the institutions created under it and we will press for the full implementation of the Stormont House Agreement to deal with outstanding issues and for securing agreement on key issues among the parties in Northern Ireland.³⁷

³⁷ Labour Manifesto 2016. Accessed at: https://www.labour.ie/download/pdf/labour_manifesto_2016.pdf

4.5 Political status quo-ism

“While Consent is a fundamental characteristic of change, Dr Humphreys makes it plain that it cannot be an excuse for political inertia.”

Attorney General Brady (2002-2007)

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In this respect the political establishment in the Dáil and Seanad have a key role to play. The advice of John Bradley when speaking in Queens University Belfast in 2014

“policy neglect seldom goes unpunished”²⁸²

should be listened to. Strategies developed and implemented now could mitigate the potential for those who would wish to prevent the fulfilment of Articles 2 and 3 of the Constitution and the constitutional obligation as outlined by Attorney General Brady.

High Court Justice Humphreys stated “faced with such a prospect, {of illegal activity} it may be that sections of opinion within the island may be dissuaded from voting for unity and indeed the response of at least some sections of the political classes” particularly in the 26 counties will undoubtedly be that progressing towards the objective of Irish unity is not worth kicking the sleeping dog of unionist / loyalist paramilitary violence.²⁸³

Such an approach by Southern politicians would be contrary to the constitutional obligation of Article 3 of the Constitution as outlined previously by former Attorney General Brady.

High Court Justice Humphreys stated:

“The lassie faire approach which might commend itself to some elements of the political establishment might, however be accused of ignoring the regrettable but scarcely avoidable fact that it would be hard to contain the prospects for inter-community hostilities in the event that the historic rights of self- determination of the Irish people was to be

²⁸¹ Richard Humphreys, Countdown to Unity: Debating Irish Reunification (Irish Academic Press, Dublin 2009) p.X.

²⁸² John Bradley, ‘Towards an All-Island Economy’, (2016) < http://www.irish-association.org/papers/john_bradley.asp> accessed 2 February 2017.

²⁸³ Richard Humphreys, Countdown to Unity: Debating Irish Reunification (Irish Academic Press, Dublin 2009) p.153.

thwarted at the instance of what would be in this hypothesis a unionist / loyalist minority.”²⁸⁴

Justice Humphreys goes on to explain “It would be a short-sighted view indeed to maintain that the status quo must be continued at all costs in order to avoid any outbreak of violence” .²⁸⁵

Professor Sean McGraw and Meadow J. Jackson of Notre Dame University in his research of the members of Dáil Éireann after the 2007, 2011 and 2016 elections used the term ‘status quo’:

Support for unity ‘in principle’, though, is quite different from taking the concrete steps necessary to alter constitutional and legal arrangements in Ireland, Northern Ireland and the United Kingdom to fulfil such aspirations. The need for citizens to approve unification via referendum in both the North and South ensures that actual unity will only occur once popular will demands it. However, the complexity and long-term nature of the solution, the need for widespread support North and South, and the fact that little separates parties on this issue suggests that little will happen to alter the status quo.

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Professor Sean McGraw and MJ Jackson’s entire submission to the Joint Committee for the Implementation of the Good Friday Agreement is included in the online appendix of this section.

High Court Justice Humphreys argues that the greatest threat to Irish unity is a loss of nerve by politicians in the Republic.²⁸⁷

“A massive loss of nerve by the political leadership of the twenty-six counties is probably the greatest threat to the achievement of Irish Unity.”

²⁸⁴ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.153.

²⁸⁵ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.153.

²⁸⁶ Fr Sean McGraw, ‘Political Status Quoism ‘ (2017) Submission for this report.

²⁸⁷ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.153.

The only guarantee that the Good Friday Agreement will be complied with is for the two Governments to retain firm joint stewardship of the process throughout. Contemplating this scenario does highlight one perhaps melancholy feature of the Good Friday Agreement, or any other possible agreement that might be envisaged relating to Northern Ireland – namely that the constitutional aspirations of all simply cannot fully be reconciled with in any given institutional structure. While one cannot aim for absolute accommodation of all positions, one can legitimately aim for reasonable coexistence, an objective towards which the Good Friday Agreement provides the best practical means. At the same time, one must keep to the forefront the fact that if any constitutional or institutional framework is to survive, it must be defended against the efforts of those who would seek to undermine it, whether by lawful or unlawful means.²⁸⁸

It is an axiomatic in the agreement that political violence is to be consigned to history, that weapons of war are to be decommissioned and the democratic dialogue and the will of the majority combined with safeguards for the majority is to be the way forward.²⁸⁹

The Good Friday Agreement again provides a clear road map towards overcoming the challenges that would be posed by unconstitutional unionist violence.²⁹⁰

²⁸⁸ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.152,153

²⁸⁹ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.154.

²⁹⁰ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.155.

4.6 Countering the threat of illegal activity

According to Justice Humphreys:

“The real challenge of unity will be to affect it in a way that minimises unconstitutional opposition from those who may perceive themselves to be at the losing end of the bargain. The measures that suggest themselves in this respect are a firm commitment to maintain the Good Friday structures following unity, continued east-west links, and a rethink of the law on both sides of the Irish Sea to recognize both identities and to build confidence.”²⁹¹

*“History says don’t hope
On this side of the grave.
But then, once in a lifetime
The longed for tidal wave
Of Justice can rise up
And hope and history Rhyme”
Seamus Heaney ‘Cure for Troy’*

“On the other hand Karl Marx’s dictum that history repeats itself as tragedy first then as farce, might suggest that the armed section of unionism/loyalism will not go quietly into a united Ireland, but rather will seek to thwart the democratic will by means of unlawful terrorist violence, possibly coupled with a political dimension seeking repartition. The will and resolve of the two governments to crush such terrorist violence is in many respects the key question on which the future of unity depends. The track record of appeasement of previous unlawful violence by a unionism/loyalism may have created an expectation in elements of that section of the community that the same technique may work again. It will take a firm stance by the two governments to dispel the particular proposition, and to some extent such a stance is prefigured by the language of the agreement, which confirms that the giving effect to the majority position is a solemn international obligation.

²⁹¹ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.155,156.

Any weakening by the two governments could only prove to be enormously destabilising in itself.”²⁹²

“Given that such techniques found ready success in the past’. ‘One can readily but regrettably predict that the instincts to engage in civil disobedience, disorder, and strikes, if not full scale sectarian murder, bombing campaigns, and other forms of violence’”“One must keep to the forefront the fact that if any constitutional or institutional framework is to survive, it must be defended against the efforts of those who would seek to undermine it, whether by lawful or unlawful means.”²⁹³

The threat of unconstitutional unionist violence directed against a democratically mandated All-Ireland political unit was underlined by the Forum:

“During the Home Rule for Ireland debates in the British Parliament in 1912, many arguments were advanced by British political leaders in favour of maintaining the unity of Ireland. The British Government had introduced a Bill that proposed to give Ireland a separate parliament with jurisdiction over her internal affairs while reserving power over key issue. However, faced with the Unionist threat to resist this Bill by unlawful force the British Government and Parliament backed down and when the Government of Ireland Act of 1914 was placed on the statute book in Westminster, there was a provision that it would not come into operation until after Parliament had an opportunity of making provision for Ulster by special amending legislation. The message- which was not lost on Unionist- was that a threat by them to use violence would succeed. To the nationalists, the conclusion was that the democratic constitutional process was not to be allowed to be effective. This legacy continued to plague British-Irish relations today. The warning sounding in this passage is by no means of historical interest only, and would continue to be to the forefront in the event that a democratic majority in Northern Ireland in favour of a United Ireland were to begin to materialize.”

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²⁹² Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.204.

²⁹³ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.153

²⁹⁴ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.153

“Particularly on the part of the two Governments to the principals contained in the Good Friday Agreement that a wish for a united Ireland will be implemented, combined with a brisk pace for such implementation to avoid the creation of any dangerous vacuum.”²⁹⁵
It is the fear of all that the dark days of the ‘Troubles’ would return with extreme unionist and loyalist elements engaging in the full range of tactic from lawful to illegal.

However prior to looking at the issue of violence, the submission from Dr James Wilson outlines the fears of the Unionist Community after a referendum for unification and these concerns need to be addressed.

²⁹⁵ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.48,49.

4.6.1(A) Submission to Joint Committee on the Implementation of Good Friday Agreement. Brexit & the future of Ireland: uniting Ireland & its people in peace and prosperity. (2017). Dr James Wilson

Economic arguments aside, much of northern Protestant resistance to Irish unity has been based on fear. Fear cannot be ‘perceived’ – it is a real and powerful emotion. This fear can be broken down into three discreet but related roots: Fear of dispossession, fear of retribution, and fear of assimilation into an alien Gaelic culture that eliminates their ethno cultural diversity as British/Ulster Scots.

First the fear of dispossession. In the original Plantation of Ulster, it was first assumed that the Gaelic lords would assume responsibility of raising tax for the Crown. After the flight of the Earls, new undertakers had to be found. Many were second rank Ulster Gaelic nobility. The incoming “Planters” became tenant farmers – not owning the land, but paying rents. Most Catholic gentry lost their lands after the 1641 Rebellion and Williamite wars. There was a sectarian competition for tenure which fostered the rise of agrarian solidarity groups:- Defenders, Oakboys, Hearts of Steel, Peep of Day Boys, Orange Boys, Ribbonmen, Fenians. It is a matter of record that – particularly in the nineteenth century -many Catholics lost their tenancy to Protestants, as landlords perceived Protestants as loyal to the Crown. In 1870, Gladstone’s Liberal government passed the Land Act gave tenants the right to purchase, and many Catholics saw their ancient rich tribal lands now “legally owned” by Protestants, whilst they had to settle for ‘less favoured areas’. This resentment has festered for over 100 years and resurfaced during the Troubles. There is an expectation amongst some Catholics west of the Bann, that Irish unity- the mythical Aisling aspiration - will bring with it a restoration of land to them and eviction of the Protestants.

Fear of retribution. In the 30 years of the Troubles, it was common for neighbours to threaten, abuse and kill each other on a sectarian basis. One reason why the former members of the Security Forces are a ‘hard to reach group’ in terms of peace and reconciliation is that they fear revenge and retribution for

Having served in the Crown forces. The IRA did not take any Protestants prisoner. Thus Tíocfaidh ar la was to backfire on the Republican movement as it stiffened Protestant resolve never to surrender. The belief of post Unity retribution still lingers amongst former soldiers, policemen and prison officers, even though the vast majority never went to bed plotting to kill anyone.

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4.6.1 (B) Submission by Pat Finucane Centre on collusion by british security forces - Anne Cadwallade

The Pat Finucane Centre compiled a submission for the Joint Committee on the Implementation of the Good Friday Agreement, part of which is here in the main body of the Committee report, with the full submission, including supporting original documents, located in the online appendix of this section.

Their submission addresses the collusion between the loyalist paramilitary organisations and the British Security forces. The Irish State needs to learn lessons from this past and ensure the democratic will of the Irish people is not denied by those who would use violence against them and their aims for peaceful unification by consent as provided for in the Good Friday Agreement.

Among the the Pat Finucane Centre's main conclusions are:

With modern methods of surveillance, any group intent on violence, relative to the 1970s and 1980s, would find it far harder to pursue a sustained campaign, especially within the small population and geographical boundaries of Northern Ireland.

If politicians in Dublin and elsewhere are to begin planning for a unitary state, then they need to consider London's past record on failing to focus on the potential for loyalist violence and persuade the authorities that an entirely different focus is needed. – Submission compiled for this Oireachtas report

²⁹⁶ Dr James Wilson, *Submission to Joint Committee on the Implementation of Good Friday Agreement. Brexit & the future of Ireland: uniting Ireland & its people in peace and prosperity* (2017) Submission for this report.

INTRODUCTION:

The PFC is confident that the loyalist capacity for violence was enhanced by the encouragement or direct support afforded by various branches of British of military intelligence and RUC Special Branch throughout the conflict from its start to its conclusion.

Aside from the obviously needless and tragic deaths of individuals north (and south) of the border, London's focus on republican violence and its encouragement of loyalist violence (including attacks across the border) led to a primary, political imperative in Dublin to prevent loyalist violence spreading south.

Loyalist attacks, and fear of more, led to a virtual panic in the south that any moves towards a unitary state, however tentative, would inevitably result in a fierce loyalist backlash in the Republic.

In Britain, fear of loyalist violence led to a belief in the "bloodbath theory", ie the inevitability that loyalists would wage outright civil war against the Catholic minority in the event of Britain declaring an intention to withdraw, however worthy that strategic aim might appear.

We claim these policy outcomes were intentional on the part of elements within the British political and security establishment - but we do not say it lightly. These conclusions are the result of 15 years work and are based in hard factual evidence which we invite you and your colleagues to assess.

MAIN POINTS:

- + The Ulster Defence Regiment, the largest regiment at the time in the British Army, was established with prior knowledge it would be infiltrated by loyalist paramilitaries
- + This resulted in the training and arming of one section of the community in NI
- + London also knew that intelligence would pass, and did pass, from the UDR to loyalist paramilitaries
- + London took no effective action to vet UDR recruits to prevent known or suspected loyalists from joining the regiment and thus gaining access to training, arms and intelligence
- + London knew there was widespread and systemic collusion between members of the UDR and RUC with loyalist paramilitaries
- + Despite this, London expanded the numerical strength of the UDR, its geographical deployment into particularly sensitive areas and its role into intelligence-gathering
- + London tolerated the existence of the Ulster Defence Association throughout the conflict, until 1992, when it was banned, knowing it was directly involved in violent actions against the nationalist community and that the organisation styling itself the “Ulster Freedom Fighters” did not exist
- + London covertly held talks with both the UDA and Ulster Volunteer Force throughout the conflict, even in the teeth of the Dublin/Monaghan bombings, the single largest loss of life during the conflict
- + Had the same focus and resources been directed at loyalist violence as was directed against the IRA, the capacity of the UDA, UVF etc would have been greatly reduced.

FURTHER ISSUES:

(1) Legally-held weapons:

The PFC would also be concerned at the relatively high level of legal gun ownership in NI (taking into account personal protection weapons, the outstanding Ulster Resistance arsenal from the South African arms importation of 1986, other loyalist weapons which were never decommissioned, weapons held by the RUC and others in the hands of farmers, gun club members etc).

(2) London's continuing denial of collusion:

The British government has not begun to engage with the realities of collusion or its implications for the future.

Our evidence for this comes, firstly, in a letter from the then Minister of State at the Ministry of Defence, Anna Soubry to Mark Durkan, SDLP MP, in November 2013 when she refused to contemplate the possibility that the authorities had not tackled collusion within the UDR (we will attach a copy with our presentation).

Evidence that London has not begun to consider the future security implications for loyalist violence comes in a letter from Andrew Murrison, MP, then parliamentary under-secretary of state for NI dated 24 March 2015 where he says he does not "see any evidence that such subversive or collusive behaviour was led or permitted by the [British] Government. Indeed ... I believe that the evidence suggests the contrary."

We will also attach a copy of this letter with our presentation.

CONCLUSION:

With modern methods of surveillance, any group intent on violence, relative to the 1970s and 1980s, would find it far harder to pursue a sustained campaign, especially within the small population and geographical boundaries of Northern Ireland.

Loyalists have always attacked a soft target – the Catholic civilian population. They do not need huge amounts of high-quality modern weaponry to do so. The potential remains, unless tackled, for major loss of life should loyalists be “spooked” without prior long-term political and security preparations.

If politicians in Dublin and elsewhere are to begin planning for a unitary state, then they need to consider London’s past record on failing to focus on the potential for loyalist violence and persuade the authorities that an entirely different focus is needed.

The PFC is firmly of the view, however, that whatever steps may be considered to counter the potential capacity for future loyalist violence, they must fall within international human rights laws and principles.

This would rule out “shoot to kill”, the illegal use of lethal force such as plastic bullets, torture, internment without trial, impunity for informers and agents, collusion and other failed British undercover counter-insurgency tactics that proved so counter-productive in the war against republican violence from 1969 to 1996.

4.6.2 Preventing violent extremism and terrorism in Northern Ireland and around the world

Michael R. Ortiz was appointed by Secretary of State John Kerry to serve as the first US diplomat focused on countering violent extremism (CVE) policy at the Department of State. As Deputy Counterterrorism Coordinator, Ortiz led diplomatic efforts to persuade foreign governments and the UN to implement CVE policies and programmes. Previously, he served as Senior Advisor to the National Security Advisor at the White House, was the Director for Legislative Affairs at the National Security Council, and worked in the White House Office of Legislative Affairs. Earlier in his career, he worked in the offices of Senators Obama and Reid.

Preventing violent extremism and terrorism in Northern Ireland and around the world

For 8 years, I served in the Obama Administration at the White House, National Security Council and Department of State. For most of my tenure, I worked on some of the most critical foreign policy and national security challenges facing the United States, including the battle against ISIL, the opening to Cuba, the Iran nuclear deal and counterterrorism. Most recently, I served as the first senior U.S. counterterrorism diplomat focused on a relatively new component of counterterrorism policy: countering violent extremism (CVE). During my time as a diplomat, I was charged with developing and executing our CVE policy, and learning as much as I could about what triggers and spreads violent extremism. This was no easy task: the radicalization process is complex, and experts around the world are working to better understand it. International research cites many potential factors that lead to radicalization, including segregation, a lack of career and educational opportunities, discrimination, government decisions, among others — all of which are exploited by recruiters from terrorist organizations. As we know all too well, recruiters also exploit the Internet and social media platforms to convince young people to join terrorist organizations in order to leave behind perceived wrongs in their home societies or to fight these wrongs at home. I saw these same scenarios play out across Europe, Africa and

the Middle East, and I think some of the lessons I learned from my experience could be useful in the context of a united Ireland.

U.S. Approach to CVE

Since 2015, the United States has made it a priority to figuring out what it takes to prevent individuals around the world from becoming terrorists in the first place. In fact, when I was at the National Security Council, President Obama launched this policy effort by hosting a White House Summit on CVE. We needed to better understand the factors leading people to violent extremism – no two neighborhoods or individuals are the same — through enhanced research efforts.

After identifying these unique local factors, we needed to develop programs that could help communities, including parents, teachers, local leaders, law enforcement and civil society groups, prevent radicalization in the first instance or intervene if an individual was already going down that terrible path.

Of course, these programs were different in each location. In Kenya, I visited a program run by a civil society organization that helped young men and women who had begun the radicalization process, but wanted to reintegrate into society before it was too late. This organization provided counseling services for jobs and education. In exchange for this assistance, the individuals were required to renounce violence and be accountable to officials.

In Germany, a country with a long history of right-wing violent extremism, a civil society organization established a counseling hotline for families to contact if they suspected a loved one was being radicalized and needed help. This gave families an alternative to immediately notifying law enforcement, which they were often reluctant to contact since it could result in arrest even if a crime had not been committed.

In a number of European cities, local police improved their relationships with the communities they served by better understanding cultural norms and building trust with the citizens. In a German city, which had a particularly high number of individuals traveling to Iraq and Syria, one young man formed a partnership with

police, so his community could better understand the police and the police could better understand them. The entire purpose of this young man's effort was to build trust. In each case, collaboration between government, civil society and citizens was critical – a whole-of-community approach to rooting out radicalization to violence. Violent extremism is a unique foreign policy challenge because it often begins as a community-level problem and cannot be addressed easily through traditional diplomatic channels. As a result, a significant component of the U.S. CVE diplomatic strategy has been to convince other national governments and the UN to prioritize this threat internally. In 2016, UN Secretary General Ban Ki-moon presented his Plan of Action to Prevent Violent Extremism. Later that year, the General Assembly blessed the plan and, with U.S. leadership, countries are now focused on developing national action plans for preventing violent extremism.

Additionally, the U.S. has helped establish and support initiatives that foster partnerships between state and local governments and civil society organizations in order to share best practices and better understand violent extremism. Some of these initiatives include: the Strong Cities Network, the Global Community Engagement and Resilience Fund, and the Global Counterterrorism Forum's (GCTF) Initiative to Address the Life Cycle of Radicalization to Violence. The GCTF's initiative also includes a unique toolkit, which provides communities with the resources they might need to tackle these challenges. The United States has also supported the Hedayah Center of Excellence for CVE in Abu Dhabi and the Intergovernmental Authority on Development (IGAD) CVE Center of Excellence and Counter-Messaging Hub in Djibouti. Given the local nature of CVE, we need diverse international partners more than ever.

Way Forward

Ireland and Northern Ireland have long struggled with terrorism, but have made tremendous progress in security in recent years. As leaders across the island grapple with the concept of a united Ireland, it is important to consider the ways in which future violence could be prevented, including by strengthening counterterrorism and law enforcement efforts, supporting civil society organizations, and religious and educational institutions, and providing citizens with the tools they need to intervene during the radicalization process.

I would recommend the following steps:

First, the government should launch a national-level task force or coordinating mechanism with national and local officials, law enforcement, civil society and other local leaders to examine potential threats, better understand the drivers of violent extremism (even if politically sensitive) and evaluate current resources. This would help everyone have a baseline understanding of what the challenge is and what needs to be done.

Second, this task force or coordinating mechanism should develop a national strategy for CVE. I would recommend following the guidance on the development of national action plans in the UN's Plan of Action. It is absolutely critical that a wide range of voices, including government officials, law enforcement, civil society and educators, among others, be involved in the creation of this strategy.

Third, identify an individual or body to execute the strategy. Some countries designate a CVE coordinator and others create or designate a government agency with a CVE mandate. There must also be clear metrics for progress in strategy execution and communications mechanisms to regularly engage with local communities. In most cases, these are very local issues that must be resolved at the local level.

Unfortunately, there is not an easy fix to violent extremism. However, given U.S. leadership and international efforts on this issue for a number of years, there is now a global support architecture, which can help countries think through their approaches to this challenge. If Ireland is able to launch a transparent, open and inclusive process with strong communications mechanisms, sufficient programmatic resources and creative proposals for strengthening community resilience, I believe this will go a long way in working to prevent terrorism before it starts.

4.6.3 Mental health & substance misuse post conflict Northern Ireland

While Anne Cadwallader addresses issues surrounding historical violence in Northern Ireland and Michael Ortiz outlines what needs to be done to prevent future outbreaks of violence, Senator Frances Black outlines some of the challenges that face society and policy makers regarding the legacy of violence on the generation who lived through the trouble and those born after.

Mental Health & Substance Misuse post conflict North of Ireland

Senator Frances Black – 30 May 2017

While the North of Ireland is emerging from a protracted period of political violence, research suggests that ongoing social, political and economic issues are impacting on the lives of its children and young people. A recent survey found that 28% of 16 year old respondents had serious mental health, emotional or personal problems in the past year, yet only a third received professional help. Young people still appear to be reluctant to access mental health services due to stigma.

Potentially 60% of the population (up to 127,800 adults) with mental health problems directly related to the Conflict have not received treatment. There are serious risks of these cycles contributing to new episodes of organised violence when, for example, there is a critical mass of people within the community who have unresolved loss and trauma related psychological difficulties.

Many of those who have been adversely affected by traumatic events in the north use alcohol and other drugs, leading to high rates of comorbid mental and substance use disorders. A disproportionate number of people who were exposed to the violence also experience economic deprivation.

The children of those affected by the years of violence in the North of Ireland are at increased risk of experiencing co-occurring early childhood adversities which may result in the accumulation of toxic stress. Children who experience toxic stress are, therefore, at increased risk of adverse general health outcomes in adulthood. These include cardiovascular disorders, cancers, asthma and autoimmune diseases as well as mental disorders. Conflict-related mental ill-health and substance disorders increase the risk of suicidal thoughts and behaviour.

Alcohol and drug misuse is evident within the toxicology profiles of individuals who have died by suicide. In many cases these substances will have been used as a means of coping with conflict-related psychological distress;

The consequences of the Troubles impact daily upon the lives of many people, their children and their children's children. Those at highest risk of having mental health difficulties and suicidal behaviour related to the conflict also endure multiple stressors, particularly economic deprivation.

In addition, it is recognised that policies in relation to alcohol, drugs and other legislation will impact upon the mental well-being on those affected by the conflict so these merit particular scrutiny. Research into ways of supporting families in communicating about the Troubles to future generations is required. In particular we need to examine ways of communicating about conflict-related bereavement, mental illness and physical injury.

Any public expenditure cuts will impact existing high levels of debt unemployment, poor mental health and suicide. It is essential that the work of supporting and empowering victims and survivors of the conflict continues to grow as individuals begin to address unresolved trauma.

Despite the formal end of the conflict in the north a substantial proportion of the adult population continue to suffer the adverse mental health effects of chronic trauma exposure. It is likely that the legacy of mental ill health associated with the conflict, if not adequately addressed , will endure for many years.

Policy makers should adopt a strategic, two-generation approach to interventions addressing the conflict's trans-generational legacy on mental health and well-being. There needs to be investment in parents in order to promote the well-being of children and young people; and

- Governmental policies should be examined to determine their relevance to addressing mental health priorities and amending where necessary. Further research on treatments for mental disorders and service evaluations are central to inform the evidence base and ensure the effective use of resources;
- Further research should also be undertaken into the trans-generational effects of social policies, the pathways of trauma transmission and the impact of policies aimed to halt trans-generational transmission;
- As policies and services develop to address the traumatic and trans-generational impact of the years of violence, health and social care and other governmental targets should promote and reflect the shift in focus in commissioning and service delivery towards the aims of addressing the long term trans-generational risks to individuals, families and communities.

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²⁹⁷ Senator Frances Black, '*Mental Health & Substance Misuse post conflict North of Ireland*' (2017) Submission for this report.

4.7 British approach to unity

This contribution is from Kevin Meagher, an advisor to the Secretary of State for Northern Ireland Shaun Woodward 2007-09, and author of 'A United Ireland: Why Unification is Inevitable and How it Will Come About' published by Biteback (2016). In it he outlines his view on the position that the British Government should adopt towards the future of Northern Ireland.

4.7.1 'The end of the beginning': Reflections on Brexit, devolution and the prospects of Irish reunification

This short paper offers a personal account of British policy towards Northern Ireland and a series of reflections on some of the key current policy issues and drivers, including Brexit and the prospects of Irish reunification.

The British dilemma

This can be summarised thus: Shape the future or simply wait for it to become the present. In other words, the British state needs to come to a view about the long-term future of Northern Ireland. Does it accelerate the trends towards Irish unity or roll-back developments of the past two decades and copper-fasten its place in the Union? The logic of the Good Friday Agreement is that it eventually leads to Irish reunification. The imposition of a hard border arrangement would pull things in the opposite direction, potentially eroding the carefully constructed architecture of the Agreement and destabilising the peace process it is built upon. British ministers know this and have given repeated assurances that a hard border is not in prospect. Time will tell. (It is hard to overestimate the amount of confusion in British politics post-Brexit). British policy has long been to keep Northern Ireland in a holding pattern. The assumed public backlash of making the case for Irish unity overtly prohibits making the rational next move. The impacts of Brexit, however, are now forcing the pace.

As noted above, creating a single Irish state now represents an evidence-based choice. Northern Ireland is an economic basket-case, with a budget deficit of £10 billion per annum and an under-developed private sector. Already, plans are in place (pushed by former Democratic Unionist First Minister, Peter Robinson), to harmonise corporate tax rates with the Irish Republic in 2018 to make Northern Ireland more competitive in attracting foreign direct investment (FDI). This approach should be encouraged. Economic convergence and reducing the productivity gap between the two jurisdictions should be an explicit cornerstone of the Executive's economic and financial policy. This would serve two purposes. First, by 'shadowing' the southern economy, Northern Ireland would become more dynamic, creating more jobs and a stronger private sector. It would help to reduce the dependency on Westminster (welcome in and of itself). Secondly, it would start the necessary process of integrating the economies of both jurisdictions. This is an essential precondition for any a successful change in constitutional position.

Bluntly, Northern Ireland, with a population of just 1.8 million people, is of no strategic economic importance to Britain, representing just two per cent of the UK's GDP. Northern Ireland's best bet, economically, is to join with the South and align its economy to benefit from the Republic's strong record of attracting foreign direct investment. Theoretically, the benefits are clear: the Border is an artificial division and the respective populations are small enough and complementary enough to make uniting their economic efforts a common-sense solution. At present, Northern Ireland and the Republic are the only dinner guests positioned at opposite ends of a banqueting table.

We are clearly in a period of 'post-Union, pre-unity.' There is no intellectual defence of Northern Ireland's place in the UK, except for the current consent of a majority of its inhabitants to remain British. All the rational arguments now belong to those favouring Irish reunification. It makes no sense for two small states to exist on the island of Ireland, with a combined population of just 6.4 million. However, there is a deep reticence among British and Irish political

elites to fully engage with this issue and its long-term resolution. Yet as co-guarantors of the Good Friday Agreement, Britain and Ireland are signatories to a treaty that contains an explicit commitment to a referendum on a change of constitutional status. In the interests of their own political and financial risk management, it should be incumbent on both governments to plan for the eventual likelihood of that happening. More generally, there is a need for a more intensive public discussion on Irish reunification and to hear from a broader range of voices - across politics, business and civic life. Is this the beginning of the end for Northern Ireland? Not quite. But, to paraphrase Churchill, we are certainly at the end of the beginning, as the debate about Irish unity proceeds at an ever-faster rate.

4.8 British politicians approach to Brexit and Good Friday Agreement

The House of Commons on 8 February 2017 voted on an amendment to the European Union (Notification of Withdrawal) Bill. Amendment 86 was designed to protect the free movement of people, goods and services on the island of Ireland; Citizens rights; Strand 2 and 3 of the Good Friday Agreement; Human Rights and Equality; principal of consent; and the status of the Irish Language. The Members of Parliament voted against inserting amendment 86 into the European Union (Notification of Withdrawal) Bill by a margin of 340 to 33.

“Amendment 86, page 1, line 5, at end insert

with the exception of the Northern Ireland Act 1998 and section 2 of the Ireland Act 1949, and subject to—

- (a) the United Kingdom’s obligations under the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland of 10 April 1998, and
- (b) preserving acquired rights in Northern Ireland under European Union law.”

This amendment requires the power to notify withdrawal to be exercised with regard to the constitutional, institutional and rights provisions of the Belfast Agreement.

New clause 109—Provisions of the Good Friday Agreement—

“Before exercising the power under section 1, the Prime Minister shall commit to maintaining the provisions of the Good Friday Agreement and subsequent Agreements agreed between the United Kingdom and Ireland since 1998, including—

- (a) the free movement of people, goods and services on the island of Ireland;
- (b) citizenship rights;
- (c) the preservation of institutions set up relating to strands 2 and 3 of the Good Friday Agreement;
- (d) human rights and equality;
- (e) the principle of consent; and
- (f) the status of the Irish language.”

“Division 156, 8 February 2017 6.44 pm The Committee divided:

Ayes: 33 Noes: 340

Question accordingly negative.”²⁹⁸

²⁹⁸ House of Commons Debate

4.9 German reunification: lesson learned

Professor Emeritus of the Humboldt University in Berlin Christian Tomuschat has written this submission for the Joint Committee for the Implementation of the Good Friday Agreement in relation to the issues of German reunification 1989-1990.

4.9.1 German reunification in 1989/90

Summary Overview of the Key Elements

I. Basic Data

- 1) In the Federal Republic of Germany (FRG) (“West Germany”), the German Democratic Republic (GDR) (“East Germany”) had consistently been considered a part of Germany under the roof of the still continuing “German Reich”. Under international law there were two States, the FRG and the GDR: both had been admitted separately to the United Nations in 1973. Internally, however, the situation was different: the GDR was not deemed to be a foreign State. In this regard, the Government of the FRG and the Federal Constitutional Court were in full agreement. Accordingly, it was assumed that a common German nationality still existed although the citizens of the GDR had a special status.
- 2) After the fall of the communist regime in the GDR as a consequence of the peaceful revolution in November 1989, it became clear very soon that the citizens in both parts of Germany were eager to attain reunification. In order to attain unchallengeable democratic support for that process, the first free elections ever were held in the GDR on 18 March 1990. Democratic parties (Christian Democratic Union and Social Democratic party) reached an overwhelming majority of more than 62%. That was a clear endorsement of German reunification.

II. Procedure

- 1) The Basic Law of the FRG (BL) provided in Article 23 that “other parts of Germany” could unilaterally accede to the FRG, not requiring therefor any authorization or approval. The Peoples’s Chamber of the GDR decided in fact on 23 August 1990 to accede to the FRG (294 from 363 deputies voting “Yes”, 62 voting “No”). The accession was completed on 3 October 1990 after the Four Allied Powers had given their consent.
- 2) Obviously, many details remained to be settled in a specific manner. Two treaties were concluded between the two Germanys: First the Treaty on Monetary, Economic and Social Union (of 18 May 1990), which laid the concrete foundations for the unification process (entered into force on 1 July 1990). The great adventure for East Germans was the introduction of the German Mark West on 1 July 1990.
- 3) The second treaty contained comprehensive regulations primarily on domestic matters that required clarification (of 31 August 1990, entry into force 3 October 1990). The Länder (States) of the GDR became Länder of the United Germany within their existing boundaries.
- 4) In preparation for the finalization of the reunification process, the two Germanies concluded with the four Allied Powers, victors of World War II, the Treaty on the Final Settlement with Respect to Germany (12 September 1990). This treaty put an end to all the open issues (in particular: reparations for war damages).
- 5) As far as the European Economic Community (EEC) EEC Treaty was concerned, the Government of the United Germany took the view that no special treaty of accession was required. The identity of Germany had not changed. Changes in territorial size did not matter (principle of moving treaty frontiers). According to Article 227 of the EEC Treaty, that Treaty applied to the whole of the larger Germany. This viewpoint was shared by the European Commission against the opposition of some member States who held that the addition of the GDR to the FRG was such a dramatic event that some renegotiation of the EEC Treaty was

required. Such renegotiation could have been fatal for German unity, in particular because of Soviet reticence.

- 6) Obviously, some details had to be modified. In the long run at least, the number of seats in the European Parliament allocated to Germany could not remain the same since Germany as from 3 October 1990 was the most populous member State of the EEC.
- 7) In order to legitimize once again reunification, All-German elections were held in the united Germany on 2 December 1990. Again, the democratic parties (originally from the West) obtained an overwhelming majority (CDU: 38.3 %; Social Democratic Party: 35.2 %). This was the final democratic seal for the reunification process.

III. No problems

- 1) The fact that the citizens from the former GDR could all of a sudden assert their rights as full-fledged German citizens caused no problems.
- 2) For those “new” citizens reunifications meant a tremendous gain of freedom. All of a sudden they had the right to travel to almost any country in the world while for decades they had been kept imprisoned in the GDR.
- 3) What would the legal system of the united Germany look like? The fact that the reunification process had been triggered by recourse to Article 23 BL meant that the constitution of the FRG was to be the constitution of the united country, with only minor modifications to take account of the changed circumstances. No review process took place. That perspective, provided for in Article 146 BL, was deliberately rejected, essentially out of fear that any delay might jeopardize the process. In particular, no additional “socialist” human rights were added to the catalogue established under the Basic Law, composed solely of traditional civil rights.
- 4) As far as ordinary laws were concerned, the decision was taken to extend the FRG legislation to the territories of the former GDR. This decision has been lamented many times. On the whole, however, it has proven useful to unify the

legal order of the united Germany according to the standards set in the west of the country.

IV. Problems

- 1) The major economic problem was the exchange rate between the German Mark West and the German Mark East. On the international markets, the German Mark East had almost no value. The exchange rate was set at 1 to 1 – certainly much too high, which put the East German industries into huge difficulties. This rate was also set for wages, salaries and pensions.
- 2) The fact that relations with the neighbouring socialist countries had to be re-ordered led to a loss of markets since the prices of produce of the GDR, invoiced in West German marks, became generally too high for the former eastern markets. Many manufacturing undertakings collapsed. Joblessness rose steeply.
- 3) The second large problem was the transformation of the East German industries. They were mainly State-owned. A process of privatization had to be launched. It lasted for many years and has not yet been totally completed. Many errors were committed. A great deal of the industrial assets were sold at excessively low prices to speculators who had no interest in continuing the production processes, closing down instead the factories as soon as possible and selling the attendant real estate values.
- 4) In this connection the question arose as to whether the confiscations effected in the former GDR should be reversed by restitution to the former owners. In this regard, the Government of the united Germany took an extremely cautious position, supported by the jurisprudence of the Federal Constitutional Court.
- 5) Another one of the major problems was the scope of NATO membership. Would the NATO Treaty also extend to the new territories in the former GDR? The Treaty on the Final Settlement with Respect to Germany of 12 September 1990 established that the whole of Germany will fall under the protection of the NATO Treaty but that no nuclear weapons would be deployed there and that no foreign troops would be stationed there (Article 5).

V. Planning for Reunification

1) For many decades, the FRG ran an All-German Ministry that undertook research work on the situation of the GDR. However, when in 1989 the GDR collapsed, a plan for how to proceed was lacking. The major determinations had to be made ad hoc, without the assistance of available blueprints. Very few pundits had predicted the end of the GDR. The opinion had prevailed in Western European circles that communism in Eastern Europe was there to stay.

Berlin, 2 March 2017

Christian Tomuschat

Professor Em., Humboldt University Berlin, Faculty of Law

President of the OSCE Court of Conciliation and Arbitration

4.10 Report of the Secretary-General on the United Nations operation in Cyprus



United Nations

S/2017/20

Security Council

Distr.: General
9 January 2017

Original: English

I. Introduction

1. The present report on the United Nations Peacekeeping Force in Cyprus (UNFICYP) covers developments from 25 June 2016 to 15 December 2016 and brings up to date, since the issuance of my report dated 8 July 2016 ([S/2016/598](#)), the record of activities carried out by UNFICYP pursuant to Security Council resolution [186 \(1964\)](#) and subsequent Council resolutions, most recently resolution [2300 \(2016\)](#).
2. As at 15 December 2016, the strength of the military component stood at 883 (56 women) for all ranks, and the strength of the police component stood at 67 (17 women) (see annex).

II. Significant political developments

3. During the reporting period, negotiations between the Greek Cypriot leader, Nicos Anastasiades, and the Turkish Cypriot leader, Mustafa Akıncı, continued in a sustained and results-oriented manner. The leaders maintained a regular and often intense schedule of meetings, while negotiators and experts also continued to meet regularly.
4. Through their intensive work in this leader-led process, Mr. Akıncı and Mr. Anastasiades succeeded in taking the talks further than they have ever been since 2008, achieving major progress in four of the six negotiation chapters: governance and power-sharing; property; the economy; and matters relating to the European Union. They also, for the first time, conducted negotiations on the issue of territory, held in Mont Pèlerin, Switzerland, which I opened on 7 November 2016.
5. Following two rounds of meetings in those negotiations, the leaders announced in a statement issued by the United Nations on 1 December that they would meet in Geneva from 9 to 11 January 2017. They also announced that a conference on Cyprus would be convened on 12 January in Geneva with the added participation of the guarantor Powers — Greece, Turkey and the United Kingdom of Great Britain and Northern Ireland. They further stated that other relevant parties would be invited as needed.

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the period up to 30 September 2016, in accordance with the quarterly payment schedule.

VIII. Observations

39. Unprecedented progress has been made in the leader-led negotiation process over the past 19 months. I commend Mr. Akıncı and Mr. Anastasiades for their efforts. Through their vision, courage and leadership, they have advanced the talks in a definitive manner. At the same time, a number of delicate and important issues remain. The process has now reached a critical juncture, and I encourage the leaders to build on the momentum as they embark on the most crucial and perhaps most demanding part of their common journey. I also encourage all Cypriots to support the leaders as they move into the decisive weeks ahead, in pursuit of the common goal of reaching a comprehensive settlement as soon as possible. As the talks enter a pivotal stage, it is more important than ever that the guarantor Powers, Greece, Turkey and the United Kingdom of Great Britain and Northern Ireland, and other relevant actors remain committed to supporting the ongoing and determined efforts of the leaders.

40. The growing efforts demonstrated by citizens' groups in Cyprus to build support for the settlement talks and reunification are also to be commended. As the leaders progress in their negotiations, I encourage them to fully engage civil society throughout Cyprus with a view to fostering broad grass-roots support for a solution. Women's groups have been an important part of civil society's efforts to support the talks, including their call for incorporating a gender dimension into the peace process in accordance with Security Council resolution 1325 (2000). I encourage the leaders to redouble their efforts to fully reflect the principles and aims of resolution 1325 on women and peace and security in their continuing deliberations.

41. The United Nations remains committed to supporting the vital humanitarian work being carried out on behalf of the families of victims through the Committee on Missing Persons. In the light of the advanced age of both relatives and witnesses, it is critical that the Committee be given the means and the information required to accelerate its work. In that respect, I am heartened to see that the resources of the Committee have been enhanced during this reporting period. This additional capacity is a particularly important effort in the light of the advanced age of many of the witnesses and relatives. The Committee's efforts to heal the wounds of the past not only are critical for those families directly affected by the tragedy of the missing, but also support the broader process of reconciliation between communities.

42. Progress relating to confidence-building measures will remain important in the period ahead. The opening of the two crossing points, in particular, will lead to major improvements in the lives of affected communities. While the progress made towards the safety of Cypriots via the clearance of five minefields in the north is welcome, much more remains to be done. The lack of action on the clearance of the minefield adjacent to the ceasefire line near Mammari, for example, continues to pose unnecessary risks. Minefields on the island have little military value, but pose a serious threat to life. I urge both sides to take advantage of the dedicated UNMAS demining capacity within UNFICYP in the coming months to rid Cyprus of

minefields across the island. Such clearance would greatly reduce the risk to civilians and allow increased freedom of movement in and around the buffer zone.

43. No serious incidents of violence between Greek Cypriots and Turkish Cypriots were reported during the November 2016 demonstrations. At the same time, I note the continued lack of information regarding the judicial processes pertaining to the events of November 2015. A clear resolution of those cases will serve to build confidence between the communities and signal that such acts will not be tolerated in Cyprus.

44. As a fundamental human right, there can be no doubt that freedom of worship across the island is important in and of itself. At the same time, it can also provide a context for enhanced interaction between the communities. I call for all restrictions on freedom of worship, including restrictions on access to religious sites, to be lifted.

45. I note joint efforts by the religious leaders continue to lend much-needed and broad-based support for freedom of worship and the peace. Sustained open dialogue combined with a commitment to freedom of worship by both sides can only serve to open doors for greater understanding and trust.

46. I continue to call upon both communities to exert efforts to create a climate conducive to achieving greater economic and social parity between the two sides and to widen and deepen economic, social, cultural, sporting or similar ties and contacts, including with a view to encouraging trade. Such contacts promote trust between the communities and help to address the Turkish Cypriots' concerns regarding isolation. I urge both leaders to persist in addressing those issues.

47. UNFICYP continues to play an important role in maintaining a calm and secure environment and helping to rebuild trust between the communities. Its ability to do so rests in large part on the commitment of the two sides to refrain from challenging the Force's authority. I urge the sides to formally accept the aide-memoire of 1989, without which there is repeated contestation of the United Nations delineation of the ceasefire lines. In the same vein, I call on both sides to support the Force's role in pre-empting and responding to civilian, law and order and military-related issues and in encouraging intercommunal activities to rebuild trust and cooperation.

48. UNFICYP is devoting increasing resources to deterring unauthorized civilian incursions into the buffer zone. Continued reports of aggression by hunters in the buffer zone against UNFICYP personnel are also of concern. The news that charges have been filed against those involved in the recent firing of weapons in the direction of UNFICYP personnel is welcome. I urge the authorities to ensure legal redress against the perpetrators.

49. As argued in previous reports, closed-circuit television cameras can confer a military advantage and constitute a violation of the status quo if unaccompanied by a reduction in military personnel. At the same time, closed-circuit television can help to monitor illegal activity in the buffer zone and thus contribute to improved security in the area. I therefore encourage steps towards a permanent reduction in the military presence and posture along the ceasefire line, starting in those positions

that have been enhanced with closed-circuit television cameras, particularly in the militarized area, within the Venetian walls of the old town of Nicosia.

50. I welcome the initial steps taken by the sides to engage with UNFICYP and my good offices mission on transition planning, pursuant to Security Council resolution [2300 \(2016\)](#). The establishment of a dedicated working group under the auspices of UNFICYP to enhance this work, together with inputs from the sides, is timely. Such planning will depend on further progress in the negotiations and on the deliberations of the sides regarding a United Nations support role in a reunified Cyprus. I underline the importance of UNFICYP, and any follow-on mission, being ready to respond to challenges both in the lead-up to and following the referendums. I hope to report back to the Council in due course on further developments on this matter.

51. I recommend that the mandate of the mission be extended for a period of six months, until 31 July 2017. I once again express my gratitude to the 36 countries that have contributed, since 1964, either troops, police or both to the mission. I pay tribute to the 186 peacekeepers who lost their lives over that period in support of peace in Cyprus. It is incumbent upon all parties to work in a determined manner towards a comprehensive settlement, to which all Cypriots aspire and which would obviate, in due course, the continuing need for a United Nations presence.

52. I would like to express my appreciation to Elizabeth Spehar, who began her assignment with UNFICYP on 10 June, for her service as my Special Representative in Cyprus and Head of Mission. As Deputy Special Adviser, Ms. Spehar has been directly supporting the talks in addition to leading the Force's support to my good offices mission during this crucial period.

53. I welcome UNFICYP Force Commander, Major General Mohammad Humayun Kabir of Bangladesh, who succeeded Major General Kristin Lund in November.

54. I would also like to express my deep appreciation to my Special Adviser, Espen Barth Eide, for his determined efforts to facilitate the talks between the sides.

55. Finally, I extend my thanks to all the men and women serving in UNFICYP for the efficiency and commitment with which they are discharging the responsibilities entrusted to them by the Security Council.

This full UN Report is included in the online appendix of the section.

4.11 German reunification: lesson learned

The Washington Post newspaper in 2014 published an article on the four simple lessons learned from German Unification. They were:

1.A divided country needs a joint mission

2.It only takes one generation to change attitudes and prejudices

3. Integrating foreigners is important (and eastern Germany would be better off if it had)

4.11.1 4 simple lessons the world could learn from German reunification

The Washington Post

One day after the fall of the Berlin Wall, on Nov. 9, 1989, former West German chancellor Willy Brandt said: "Now what belongs together will grow together." With the opening of the border, communism in East Germany was doomed. But has Germany grown together, as Brandt predicted? Last week, WorldViews explained how eastern and western Germany are still divided in some ways. But there are also lessons to be learned from Germany unification. Here are four -- proposed by Germans from both sides of the now-destroyed Berlin Wall.

A divided country needs a joint mission

The environment has always been a crucial issue in German politics. When the Ukrainian nuclear power plant Chernobyl caused fear and panic throughout Europe after its meltdown in 1986, the Berlin Wall was still standing. Soon after, a united Germany evolved as a world leader both in climate politics as well as in the development of technological solutions.

After the 2011 nuclear disaster in Fukushima, Japan, German Chancellor Angela Merkel -- who grew up in the east -- reversed her previous stance and announced a surprising and possibly groundbreaking goal: Germany would strive to become the first industrialized country to abolish both coal and nuclear power as energy sources. Renewable energy sources are to fill the void. Succeeding would likely be impossible if reunification had not happened. The east -- highly dependent on coal in communist times -- now produces 30 percent of its electricity using renewable energy, one-third more than western Germany does.

Wolfgang Gründinger, born in Germany's southern state of Bavaria, is the spokesperson for the Foundation for the Rights of Future Generations. This year, Germany for the first time generated more energy from renewables than any other source, including coal and nuclear power plants. The project is expensive, which has increased electricity prices, particularly in the east. Despite that, Gründinger considers the rise of renewable energy projects the country's first successful joint east-west project:

No matter whether one is east or west German, the overwhelming majority of us share the opinion that we need to transform our energy supplies from fossil and nuclear to renewable and sustainable sources to stop climate change and prevent a nuclear catastrophe.

In East Germany, renewable energies not only created jobs and economic perspectives in otherwise underdeveloped regions, but – and probably more important – restored the tarnished self-confidence of the east Germans.

It only takes one generation to change attitudes and prejudices

Some argue that Germany's success in renewable energy is tightly connected to a new generation that does not care about the east-west prejudices of their parents anymore. Mike Goller was 16 years old when the Berlin Wall came down -- and before, he had never really thought about East Germany. The neighboring country seemed too distant. One month after the wall fell, he crossed the border to the GDR (the official abbreviation for East Germany) for the first time.

I do not ask myself whether German reunification was a success. It had to happen, and opening the borders of an imprisoned society is a success in itself.

Furthermore, we should not always ask the question: What went wrong? German reunification could have gone so much worse. Traditional and economic changes are slow, but if you look at the new generation you will see much less of a divide. Some differences prevail, but they matter much less to those who grew up in a united Germany.

Goller recently worked on a multimedia project called "Germany 25" that features 25 young Germans and what they think about their country. The majority of them consider the country's north and south to be further apart than east and west, according to another, more representative study. Their parents, however, are much less progressive: Many of them would not agree with their children, according to sociologist Andreas Zick, who has studied the different attitudes for years.

Integrating foreigners is important (and eastern Germany would be better off if it had)

Karamba Diaby is worried about another aspect: the conversation around the 25th anniversary of the fall of the Berlin Wall. He arrived in then-East Germany in 1985 as an immigrant from Senegal. Back then, he knew little about the communist country that would cease to exist only four years later.

Today, he represents his home state, Saxony Anhalt, as a member of Germany's national parliament. When he was elected last year, his success made national headlines: Diaby is the country's first black member of parliament ever.

One aspect has been largely ignored in Germany: the lives of immigrants in the east. Many people came here from other communist countries such as Angola, Algeria, Cuba -- but their fate has largely been forgotten. Some of them returned; others stayed here. Their immigration, however, still needs to be facilitated. Many rural eastern German areas would hugely benefit economically if more foreigners lived there.

To Diaby, there can only be one solution: "Bring people in touch with each other," he says. This might seem an obvious idea, but it's not to many eastern Germans. Only 36 percent of eastern Germans said in a recent survey that they were interacting with foreigners in their daily lives, compared to 75 percent in western Germany.

Unification can lead to prosperity

Manouchehr Shamsrizi, a 26-year-old Yale Global Justice Fellow, is among the most publicly prominent voices of Germany's younger generation as an adviser to the World Economic Forum's Global Shapers Community. According to him, German reunification bears many similarities with the emergence of the European Union.

Those of my friends who traveled a lot and visited other parts of the world really believe that a united Germany must logically aim for becoming part of the "United States of Europe" -- something one can be proud of as a progressive and value-based democratic union, rather than an estranged technocratic government somewhere in Brussels. Europe and other parts of the world could learn a lot from Germany.

East Germany is still lagging behind, but there has been lots of progress -- not only economically -- if you consider that in some German cities, about 96 percent of industrial jobs disappeared within only half a year after Germany unified. The cost of unification was high in the short run, but even if you solely look at it economically, the benefits will largely outweigh the disadvantages in the future. Already today, many cities in east Germany, like Leipzig or Berlin, are seen as international hotspots for entrepreneurship.

Could the reunification of Germany be a role model for Europe, economically as well as politically? Yes, I think so.

4.12 South Korea: unification process

Dr Marcus Noland is considered the expert on the issue of Korean Unification, he has written the authoritative book on the topic entitled 'Avoiding the Apocalypse: The Future of the Two Koreas' (2000). The future of the peninsula is explored in his book under three alternative scenarios: successful reform in North Korea, collapse and absorption (as happened in Germany), and "muddling through", in which North Korea, supported by foreign powers, makes ad hoc, regime-preserving reforms that fall short of fundamental transformation. Dr Noland was previously a Senior Economist at the Council of Economic Advisers in the Executive Office of the President of the United States.

Dr Noland's contribution to the Committee's report is available in full in the online appendix of this section, the entire conclusion of his submission is reprinted here. In it he outlines what the South Korean government has done to attempt to achieve its aim of unification. Professor Nolan noted:

4.12.1 Marcus Noland of the Peterson Institute for International Economics, Author of the Future of the 2 Koreas Korean Preparation for National Unification

'From the standpoint of Ireland, the two cases appear radically different, and it is questionable how much from the Korean experience is applicable. Nevertheless, some Korean approaches may be worth examining'

The last ten years have seen an increase in inter-Korean military tensions and a marked decrease in cooperation. There are also no clear signs that the North Korean government is on the brink of collapse despite regular speculation along these lines. Formal unification activities in South Korea have clearly shifted from engagement to preparation for more abrupt unification scenarios.

More changes could be on the horizon. The South Korean president, Park Geun-hye, is in the process of being impeached and may not serve her full term in

office. Regardless, the country will hold elections within a year, and the leading declared candidates all lean towards less conditional, less reciprocal engagement policies toward the North. The pendulum could well swing back toward the more pro-engagement policies of the Kim Dae-jung/Roh Moo-hyun era. But a simple turning back of the clock is unlikely: North Korea has pursued nuclear weapons and long-range missile programs at an accelerating rate, is subject to tighter and more pervasive international economic sanctions under the auspices of the United Nations; and the issue of human rights has risen in prominence—all in distinction to the Sunshine years.

From the standpoint of Ireland, the two cases appear radically different, and it is questionable how much from the Korean experience is applicable. Nevertheless, some Korean approaches may be worth examining. They mainly involve actions that a country's political leadership can undertake autonomously to promote national reconciliation having regard to the eventual possibility that a majority of the population in Northern Ireland might someday favor unification.

First, with the creation of the Ministry of Unification, the South Koreans established a cabinet-level department tasked with a multiplicity of unification-related responsibilities. The ministry acts as a diplomatic interlocutor; administers a variety of programs relating to unification, including the Inter-Korean Cooperation Fund and refugee intake; and maintains a think tank that focuses on unification-related research. The latter function could be relevant to the Irish case insofar as the prospect of Brexit may significantly change economic conditions in Northern Ireland, as well as the Republic of Ireland's economic relations with the United Kingdom as a whole. In South Korea, the sorts of economic modeling that one would want to conduct in anticipation of these developments, as well as public discussion and dissemination, are supported by government-affiliated think tanks as well as bodies such as PCUP. The specifics obviously differ enormously—North Korea lacks the basic institutions of a market economy, and the cross-border flow of goods, capital, and people is highly restricted—all in contrast to the Irish case. Nevertheless, cross-border exchange across Northern Ireland and the Republic is subject to currency

risk, and with Brexit, EU transfers to Northern Ireland will disappear, and additional distortions are likely to be introduced. It is not hard to see the desirability of doing analysis similar or parallel to what the South Koreans conduct today.

Second, under the governments of Lee Myung-bak and Park Geun-hye, there has been a renewed emphasis on educating the South Korean public, which is frankly unprepared for what could transpire in the medium to long run. These efforts have involved not only Lee and Park using the “bully pulpit” of the presidency to shine light on the unification issue but also a revitalization of the NUAC and the formation of the PCUP. Again, contemplating Brexit, one can grasp the desirability of public bodies in Ireland convening similar groups of experts and politically active citizens to enhance both the analytical quality and public awareness of contingency planning.

In sum, the Korean and Irish cases differ enormously. But that is not to say that there is nothing to be learned from South Korean preparations for eventual national unification. Some of the approaches, suitably altered and adapted, could make a positive contribution as Ireland contemplates its future.

4.13 Future for Northern Ireland: where to from here

In this section the report looks at the various road maps for the future of Northern Ireland outlined by High Court Justice Humphreys which would be compatible with the mechanism of the Good Friday Agreement. Others which Humphreys outlines would be clearly a breach of this international agreement.

High Court Justice Humphrey in his book 'Countdown to Unity' states that

“There is no one single pathway to unity – rather there are alternative, but perhaps related roadmaps to reunification. Examination and analysis of these roadmaps is in the view of this author, a timely exercise in determining future actions towards achieving the majority aspiration to reunification.”²⁹⁹

“The project of unity will pose a considerable challenge to the partitionist mentality that pervades much of the southern political landscape. The examination of possible roadmaps to reunification presents a striking opportunity not simply to vindicate the right of self determination of the Irish people but also a unique opportunity to address the causes of conflict on the island and to promote lasting reconciliation between the different strands that constitute the national identities of the peoples that share these islands.”³⁰⁰

The roadmap outlined by Humphreys in his analysis of the future of this island are compiled in the remainder of this section.

Unitary State

Federal/ Confederal State

United Ireland with continuation of Northern Assembly under the Good Friday Agreement

Joint Authority

Joint Sovereignty

Independent Northern Ireland

Repartition

Repatriation

²⁹⁹ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.205.

³⁰⁰ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.206

4.13.1 Unitary state- united Ireland

“A unitary state would embrace the island of Ireland governed as a single unit under one government and one parliament elected by all the people of the island. It would seek to unite in agreement the two major identities and traditions in Ireland.”

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“The particular form of unity which the Forum [New Ireland Forum] would wish to see established was a unitary state, a perhaps surprisingly hard-line preference and one which was to fade in the intervening decades, to the extent that the SDLP at least is now committed to a policy of two jurisdictions within a united Ireland”³⁰² Sinn Féin in its discussion document ‘Towards a United Ireland’ has also state ‘all of us who wish to see a united Ireland need to be open to considering transitional arrangements’. Included among these Continued devolution to Stormont and a power-sharing executive in the north within an all-Ireland structure, A federal or confederal arrangement, A Unitary State, Other Arrangements.³⁰³

“The Forum [New Ireland Forum] stated that a unitary state would require a new, non-denominational constitution, to be formulated at an all-round constitutional conference convened not only by the Irish Government but also, perhaps surprisingly, by the British Government

“The European Convention on Human Rights and fundamental freedoms would be incorporated in the constitution and there would be built in protections for the unionist minority, for example the need for a weighted majority in parliament on certain issues, or a blocking power for the Seanad.

“As regards citizenship, the Forum envisaged that unionists would automatically acquire Irish Citizenship, but without prejudice to that, those who at present held British citizenship would continue to enjoy it

³⁰¹ New Ireland Forum, Reports and Studies and Reports on Specific Matters, Vol 1. P.31

³⁰² Richard Humphreys, Countdown to Unity: Debating Irish Reunification (Irish Academic Press, Dublin 2009) p.52.

³⁰³ Sinn Fein Discussion Document “Towards a United Ireland, 2016. P.8

and could pass it on to their children.

“Further recognition of the unionist identity would come through an Irish-British council with both intergovernmental and inter-parliamentary structure, which would acknowledge the unique relationship between Ireland and Britain and provide expression of the long established connection which unionist have with Britain.”³⁰⁴

³⁰⁴ Richard Humphreys, Countdown to Unity: Debating Irish Reunification (Irish Academic Press, Dublin 2009) p.52

4.13.2 Federal/ confederal state

The concept of a Federal or Confederal State was outlined by the New Ireland Forum in its final report, as High Court Justice Humphreys outlines in 'Countdown to Unity':

"The Forum also discussed a second option of a federal or confederal state. This option would have involved an elaborate institutional structure; separate parliaments and executives north and south, a federal parliament (possibly bicameral), a federal government and head of state and a federal or confederal supreme court to interpret the constitution and adjudicate on any conflicts of jurisdiction between the federal and state governments.

"The advantages of this system were extra protections for unionist and 'the retention within the North and South of many laws and practices reflecting the developments of both areas over the past 60 years'.

"The particular arrangements discussed by the Forum might be thought to be extremely elaborate, involving not one but three parliaments and governments in a united Ireland.

"The 'two parliament' solution does not seem to have been considered and in a way that is somewhat surprising given that it is the approach signalled by the 1937 constitution provision for devolved parliaments, as well as the fact that the two parliament approach is that which is currently in existence in Northern Ireland, albeit that the second parliament is in Westminster rather than Dublin."³⁰⁵

"Since the union with Scotland in 1707 there has been not parliament of England nor is there any need or demand for one and on the same basis there would be little demand for a 26 county parliament following a united Ireland. The new Ireland Forum as well as outlining the make-up of the structure of federal or confederal state set out many innovative proposals included the election of head of state. The functions of Head of State could be carried out by a President, the office alternating between persons representative of the Northern and Southern states."

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³⁰⁵ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.35.

³⁰⁶ New Ireland Forum, <http://cain.ulst.ac.uk/issues/politics/nifr.htm>

4.13.3 United Ireland with continuation of the Northern Assembly under the Good Friday Agreement

The SDLP has published a set of proposals in relation to unity which pin their colours firmly to the mast of the Good Friday Agreement. This document, 'A United Ireland and the Agreement', was published on 21 March 2005, although an earlier version had appeared in November 2003. The key message of the document is that:

“In the United Ireland to which we are committed all the agreements principals and protections would endure.”

The SDLP have proposed that the Stormont Assembly would continue

“as a regional parliament of a united Ireland”.³⁰⁷

The Executive would also continue, as would the Agreement's equality and Human Rights guarantees, and the right to identify oneself as British or Irish or both, and to hold passports accordingly. Going somewhat beyond the letter of the Agreement, however, the SDLP proposed corresponding protections for unionism to those currently in existence for nationalism.

East-West Cooperation would continue. In particular, just as the Irish Government has a say in the North, now the British Government would have a say in the North in a United Ireland.

Just as there is Northern representation in the Seanad at present, those in the North who want it should have representation in the House of Lords in a united Ireland.

The arguments in favour of such protections were trenchantly made: “unity must not be about the entrapment of a new minority ...in a united Ireland we will still need to find a way of sharing our society as equals every bit as much as we do today”.³⁰⁸

There was a pragmatic argument for maintaining the Good Friday Agreement institutions – it would provide certainty and stability and thereby assist in making the case for a united Ireland.

³⁰⁷ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.117.

³⁰⁸ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.117.

4.13.4 Joint authority

The third option considered by the New Ireland Forum was joint authority between the London and Dublin governments, subject to the devolution of major powers to a locally elected assembly and executive. Such an approach would also involve joint citizenship to be imposed automatically on all persons in Northern Ireland as well as a comprehensive Bill of Rights³⁰⁹

The report of The New Ireland Forum did not touch on all the nuances of the joint authority approach, in particular the question of whether a role for the Irish Government might be akin to joint authority without compromising the ultimate sovereignty of the United Kingdom parliament over Northern Ireland ie joint authority predicated on a continuation of Northern Ireland's formal position as part of the United Kingdom.³¹⁰

Chapter 8 of the New Ireland Forum outlines what Joint Authority would be its opening paragraph states:

“Under joint authority, the London and Dublin governments would have equal responsibility for all aspects of the government of Northern Ireland. This arrangement would accord equal validity to the two traditions in Northern Ireland and would reflect the current reality that the people of the North are divided in their allegiances. The two governments, building on existing links and in consultation with nationalist and unionist opinion, would establish joint authority designed to ensure a stable and secure system of government.”

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³⁰⁹ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.53.

³¹⁰ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.54

³¹¹ New Ireland Forum, <http://cain.ulst.ac.uk/issues/politics/nifr.htm>

On the Anglo Irish Agreement of 1985, former Taoiseach Garrett Fitzgerald comments that:

“From a nationalist point of view a balanced solution to this medium-term problem would have been joint government by Britain and Ireland within the context of continuing British sovereignty, until such time as a majority in Northern Ireland sought a transfer of sovereignty over Northern Ireland to a new all-Ireland State. But the concept of a forum of joint authority that would leave British sovereignty unaffected was an exercise in subtlety which the British Government was not prepared to contemplate and such a system, it was also argued, would have a propensity for deadlock which could be highly dangerous.”³¹²

New Ireland Forum was credited as being the first of many steps on the road to the Anglo Irish Agreement and eventually the Good Friday Agreement.

The issue of Joint Authority was raised a recently as January 2017 when SDLP Leader Colum Eastwood said:

“If post election an executive cannot be formed, the only acceptable position for the nationalist community is joint authority between the Irish and British governments. We cannot allow a DUP-run government to be solely replaced by British direct rule ministers.”

4.13.5 British government response to joint authority

British Prime Minister Thatcher in her ‘Out. Out, Out’ speech made after a British-Irish summit dismissed the proposal of the Irish Government of ‘Joint Authority’ saying it would be a “derogation from sovereignty”.

At the press conference in Downing Street after the British-Irish summit, Prime Minister Margaret Thatcher also dismissed all of the New Ireland Fourm’s proposals:

“I have made it quite clear ... that a unified Ireland was one solution that is out. A second solution was confederation of two states. That is out. A

³¹² Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.55,56.

third solution was joint authority. That is out. That is a derogation from sovereignty. We made that quite clear when the Report was published. Northern Ireland is part of the United Kingdom. She is part of the United Kingdom because that is the wish of the majority of her citizens. The majority wish to stay part of the United Kingdom.”

The Unionist response to the New Ireland Forum was ‘The Way Forward’. Lord Kilbrandon produced an unofficial report attempting to reconcile elements of the New Ireland Forum report and ‘The Way Forward’. This report informed the British government's view leading up to the Anglo-Irish Agreement of 1985.

4.13.6 Joint sovereignty

Examples of current arrangements of Joint Sovereignty internationally are rare.

Justice Humphreys points out the distinction between Joint Sovereignty and Joint Authority as proposed by the New Ireland Forum.

“Joint Sovereignty should be distinguished from joint authority in the sense that joint authority could involve both governments taking responsibility for non-devolved issues, without infringing the status of Northern Ireland as part of the UK. Joint Sovereignty would only exist if Northern Ireland were part of both states, or administered by both but part of neither. Bearing such a distinction in mind, while joint authority could form a transitional stage between the current position and ultimate unity, the main and possibly fatal disadvantage of joint sovereignty, by contrast, considered in terms of a transitional mechanism to unity, is that there is no natural exit point from it where upon sovereignty would shift exclusively to the Irish side. If sovereignty does not shift on the basis of 50 per cent + 1 support for unity, why should it shift on the basis of 52.5 per cent or 55 per cent support? In the final analysis the 50 percent + 1 rule is the only mechanism for determining sovereignty which is based on a logical principal, and in any event is legally enshrined in the agreement, but rather than provided for 100 per cent transfer of control of Northern Ireland to the Irish side on the basis of a 50 per cent + 1 vote, a lengthy transitional period of joint authority – initially within the UK and subsequently with in Irish jurisdiction – might provide a simpler and , in the end, more flexible

transitional mechanism to avoid the abrupt discontinuities of the 50 per cent + 1 approach of the Good Friday Agreement.”³¹³

In terms of joint sovereignty, an interesting feature of proposals for such a form of government internationally, is that they are awfully thin on the ground. Joint Sovereignty has been suggested in relation to highly contentious areas such as Gibraltar, Jerusalem and Kashmir. But actual examples of joint sovereignty working satisfactorily or at all are hard to find.³¹⁴ An Oireachtas Library and Research paper on Joint Sovereignty has been included in full in the online appendix of this section.

³¹³ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.109.

³¹⁴ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.113

4.13.7 Independent Northern Ireland, repatriation & repartition would be a breach of Good Friday Agreement

High Court Justice Humphreys discusses how it would be a breach of the Good Friday Agreement if there was any move for an Independent Northern Ireland or any attempt to repartition the island:

The Good Friday Agreement at its most fundamental level rule out exotic alternative 'solutions' to the problem of the constitutional status of Northern Ireland such as joint sovereignty, independence, repartition or any other alternative including in particular the idea of joint consent ie that a majority of both communities would have to consent before a united Ireland could come into existence. That notion is wholly without legal or logical basis. The clear and unambiguous language of the Good Friday Agreement firmly rejects all of these alternative proposals which would have the effect of undermining the will of the majority of the people of Northern Ireland as expressed in a referendum. The only legally permissible way in which any such alternative solution could be advanced would be by way of further international agreement between the two sovereign governments, a project which holds little attraction.

Repartition would be wholly unjust and unequal outcome given that nationalist have been asked to live with in the six counties entity on the basis of a particular test – the majority wish of the entity- so it would be historically absurd and inherently unjust to change the test just as the answer is moving in a direction that does not suit the unionist position. In any event repartition would be a breach of international law, in the absence of any agreement by the Irish government to such a course. Such agreement seems to be extremely unlikely in present circumstances.

The importance of the status of the Good Friday Agreement as an indefinite feature of the institutional landscape, premised on the principal that a majority will decide on a united Ireland versus a United Kingdom, combined with a protection for the minority of participation in a power sharing executive, rest in the likelihood that as a majority for a united Ireland draws closer, efforts will be made to unravel the guarantees contained in the Good Friday Agreement that a united Ireland will be given effect to should a majority wish. It seems likely that all of the exotic alternatives to the simple right of self-determination referred to

in the agreement will be trotted out in the years to come as the prospect of a nationalist majority in Northern Ireland becomes more likely. For the present purposes, it is sufficient to note that not only have the Northern Ireland parties solemnly committed themselves to give effect to the wish of a majority for a united Ireland, should that be the case, but the two governments have solemnly committed themselves to the same principal as a matter of binding international law.

4.13.8 Independent Northern Ireland

It is stated by Justice Humphreys that:

“One could envisage that in the dying days of a Unionist majority, if all unionist parties threw their weight behind a campaign for independence, a bare majority might be forthcoming for such a proposition within the six counties as a last means of staving off unification.

“In this scenario from a unionist point of view an independent Northern Ireland with a continuing, albeit diminishing, Unionist majority would be free in practice to abolish the Good Friday Institutions and restore old fashioned Stormont majority rule, with all of the prospects and possibility for oppression of the nationalists/republican section of the community that would be left behind by the British Government within an independent Northern Ireland, whether of six counties or of some smaller number. Under this system, mechanism would be devised to put off the evil day of a nationalist/ republican majority. Such mechanisms could include creating Nationalists Bantustans within the six counties, being notionally self-governing but in fact under Stormont rule or expelling overwhelming nationalist areas from the six counties altogether, leaving them no practical alternative but to be governed from Dublin, while a dismembered Northern Ireland thereby would bolster its Unionist majority- through “Unionism” in the context of an Independent Northern Ireland would take on a somewhat theological character. No doubt such an old style Stormont could devise ways in which unionist identity and affinity with Britain could be maintained not with standing the formal separation in terms of sovereignty. For instance, assuming that her majesty was

prepared to agree, there would be nothing stopping an independent Northern Ireland from retaining the queen as head of state, thereby providing a basis for contending that the union was still a reality at some level. The likely economic instability if not outright bankruptcy ('at current level of spending') of an independent Northern Ireland might not be sufficient to dissuade a bare unionist majority from trying such a last throw of the dice. The Good Friday Agreement firmly rules out the possibility of an Independent Northern Ireland quite deliberately, the only two constitutional options proffered in the agreement are a continued United Kingdom of Great Britain and Northern Ireland and a united Ireland."³¹⁵

"Even if a majority in the six counties expressed a desire for independence, the British government would be obliged as a matter of international law by the Good Friday Agreement to decline to give effect to such a wish – even though formally a request so expressed would be a wish by a majority in Northern Ireland for a change in the constitutional status of Northern Ireland."³¹⁶

4.13.9 Repartition

Humphreys argues that "the most logical strategy of constitutional opposition to an emerging majority in Northern Ireland in favour of a united Ireland would be to seek repartition."³¹⁷ It is here again that the ill-fated boundary commission of 1924-25, which at the time was considered a success for unionism in that it formulated the border and the status quo, now comes back on the horizon.

One of the ironies of the failure of the Boundary commission is that, had it 'succeeded' in transferring the predominantly nationalist part of Northern Ireland into the new dominion south of the border, the effect might really have been to rule out Irish unification by consent in perpetuity.³¹⁸

Logically Humphreys states that it was only because the 6 county 'statelet' remained at that size that there is a possibility of a majority emerging in favour of Irish unity

³¹⁵ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.151,152.

³¹⁶ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.151,152.

³¹⁷ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.148.

³¹⁸ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.148.

exists.

It would be surprising indeed if some attempt were not made to propose such a scheme as the two sections of the community draw closer in numerical strength

For unionists the prospect of an impending majority in favour of unity would certainly conjure up a scenario where repartition was seen as the last throw of the dice to preserve the union, at least for that part of Northern Ireland east of the Bann.³¹⁹

As Humphreys states, it is however a central and fundamental feature of the Good Friday Agreement that the two governments and all of the subscribing parties, including the unionist parties participating in the Stormont talks, as well as majorities North and South, accepted the principal that the right to self-determination of the Irish Nation is to be exercised by reference to the political jurisdictions of the island of Ireland as they currently exist and not as they might artificially be gerrymandered at some future point.

The Good Friday Agreement is clearly and unambiguously predicated on the premise that any decision on a possible united Ireland is to be taken by the people of the twenty six counties and the people of the six counties acting jointly and that majorities in favour of unity are to be assessed on a twenty-six-county and a six-county-basis only, and not on the basis of any other calculation or division of the Irish people.

In simple terms Humphreys argues the option of repartition would simple not be lawful in terms of the Good Friday Agreement as a matter of international law.³²⁰

4.13.10 Repatriation

In his book 'A United Ireland: Why Unification is Inevitable and How it Will Come About' Kevin Meagher, an advisor to the Secretary of State for Northern Ireland Shaun Woodward 2007-09, quoted a story from the Belfast Telegraph of 2013.

“During a late night conversation in 1995 at Chequers the British Prime Minister suggested to Sir David Goodall who was a senior diplomat negotiating the land mark Anglo Irish Agreement that Catholics living in Northern Ireland could be moved to live in Southern Ireland instead. She said ‘If the northern [Catholic] population want to be in the south,

³¹⁹ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.148.

³²⁰ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.148.

well why don't they move there? After all, there was a big movement of population in Ireland, wasn't there?'

Nobody could think what it was. So finally I said, 'Are you talking about Cromwell, Prime Minister?' She said, 'That's right, Cromwell.'³²¹

The evidence of Sir David Goodall regarding the Repatriation concept espoused by former Prime Minister Margaret Thatcher is needless to state disturbing.

4.14 Road map: New Ireland Forum 2

In his book 'Countdown to Unity' High Court Justice Humphreys states:

"over all what emerges from this study is that there is no one single pathway to unity – rather there are alternative, but perhaps related roadmaps to reunification. Examination and analysis of these roadmaps is, in the view of this author, a timely exercise in determining future actions towards achieving the majority aspiration to reunification."³²²

It does no favours to those of a unionist persuasion to pretend that the nationalist aspiration does not exist, and it seems better and more open to acknowledge its existence clearly in a spirit of fraternity.³²³ The Good Friday Agreement again provides a clear road map towards overcoming the challenge that would be posed by unconstitutional unionist violence.³²⁴ The project of unity will pose a considerable challenge to the partitionist mentality that pervades much of the southern political landscape. The examination of possible roadmaps to reunification presents a striking opportunity not simply to vindicate the right of self determination of the Irish people but also a unique opportunity to address the causes of conflict on the island and to promote lasting reconciliation between the different strands that constitute the national identities of the peoples that share these islands.³²⁵ The

³²¹ Kevin Meagher, 'The end of the beginning': Reflections on Brexit, devolution and the prospects of Irish reunification, (2016)

³²² Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p. 205.

³²³ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.206.205.

³²⁴ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.155..

³²⁵ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.206.

New Ireland Forum of 1984 was seen as a way forward.

As Justice Humphreys in his book 'Countdown to Unity' says Garrett Fitzgerald suggested, a united nationalist analysis is the only real mechanism for political progress, as unionism is frozen by its own 'historical dilemma'.³²⁶

Justice Humphreys in his final analysis gives rise to the idea of a body like the New Ireland Forum

“Developing a broad consensus on the way forward and proposing measures to promote both inclusion of the British Identity and nationalist goals in parallel could be a task to be teased out by the Forum for Peace and Reconciliation or some other appropriate body.”³²⁷

The Anglo-Irish Agreement signed in November 1985 by the Taoiseach Garrett Fitzgerald and the British Prime Minister Margaret Thatcher, in the words of Justice Humphreys:

“drew heavily on the analysis contained in the (New Ireland) forum report and to that extent the report’s urging on the British Government to drastically change its approach and to address the fundamentals of the causes of the conflict was outstandingly successful”.³²⁸

Humphreys goes on to point out that:

“Overall, however, the Forum report was vital in breaking the political log jam in Northern Ireland and set the scene for the negotiation and conclusion of the Anglo- Irish Agreement”³²⁹ There would be a great deal of merit in nationalist Ireland negotiating and agreeing, so far as possible, the kind of unity that would be put to the people in such a referendum. Even if unionism did not take up an invitation to participate in such a negotiation, an agreed or consensus position, or even a majority position from the nationalist side, would add a great deal of clarity and reassurance to what would otherwise be a fraught and

³²⁶ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.206.

³²⁷ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.206.

³²⁸ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.54.

³²⁹ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009), p.54.

The road map to achieve the constitutional aspiration of the peaceful reunification of Ireland and its peoples under the Good Friday Agreement could begin in the same way as the original New Ireland Forum. We recommend the establishment of A New Ireland Forum 2 which would be the mechanism whereby the status quo logjam and long term consequence of Brexit for the people of this Island could be addressed.

³³⁰ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.112.



SECTION 5

5.0 Summary

In this section of the Report for the Joint Committee on the Implementation of the Good Friday Agreement we outline the infrastructure of the Good Friday Agreement. The agreement is included in full in the online appendix of this section.

Strand I: The Assembly and Executive with in Northern Ireland

Strand II: The North South Ministerial Council

Strand III: The British Irish Council

The report looks at some of the provisions of the Agreement that have still to be implemented, such as the Bill of Rights, Civic Forum, North South Consultative Forum and the Irish Language Act. We highlight that even with Ireland's membership since 2011 of the International Court of Justice, as Northern Ireland is not covered by the ICJ there are limited avenues to address breaches of the Good Friday Agreement by the British Government or any signatory. This flaw in the Agreement needs to be addressed.

High Court Justice Humphrey's book 'Countdown to Unity' looked at developing and expanding the architecture and infrastructure of the Good Friday Agreement and his analysis is included here. Justice Humphreys looks at the idea of an East-West Parliamentary Body and the Constitutionality or otherwise of it. The concept and again the constitutionality of a judicial branch of government resolving disputes of North-South and East-West Parliamentary Bodies is explored. Justice Humphreys also analyses the opportunity of a North-South Implementation Body, and the possible gains from East-West Administrative Bodies. An All Island Civic Forum to assist the North South structure is also explored. Finally, in this section High Court Justice Humphreys looks at the continuation of the infrastructure of the Good Friday Agreement "into the long term" and after a referendum for a united Ireland.

5.1 Recommendation

Explore potential solutions to resolve disputes that may arise from the implementation of the Good Friday Agreement, as recommended by High Court Justice Kevin Humphreys.

5.2 The Northern Ireland Executive

STRAND I

DEMOCRATIC INSTITUTIONS IN NORTHERN IRELAND

1. This agreement provides for a democratically elected Assembly in Northern Ireland which is inclusive in its membership, capable of exercising executive and legislative authority, and subject to safeguards to protect the rights and interests of all sides of the community.

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 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.”³³¹

³³¹ North/South Inter-Parliamentary Association, ‘Impact of Brexit on Cross-Broder Activity’ (2016) <<http://www.niassembly.gov.uk/globalassets/documents/raise/publications/2016-2021/2016/northsouth/8816.pdf>> assessed on 6 February 2017, p.19,20.

5.3 The North South Ministerial Council

STRAND II

NORTH/SOUTH MINISTERIAL COUNCIL

1. Under a new British/Irish Agreement dealing with the totality of relationships, and related legislation at Westminster and in the Oireachtas, a North/South Ministerial Council to be established to bring together those with executive responsibilities in Northern Ireland and the Irish Government, 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.

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.³³²

ANNEX

Areas for North-South co-operation and implementation may include the following:

1. Agriculture - animal and plant health.
2. Education - teacher qualifications and exchanges.
3. Transport - strategic transport planning.
4. Environment - environmental protection, pollution, water quality, and waste management.
5. Waterways - inland waterways.
6. Social Security/Social Welfare - entitlements of cross-border workers and fraud control.
7. Tourism - promotion, marketing, research, and product development.
8. Relevant EU Programmes such as SPFR, INTERREG, Leader II and their successors.

³³² North/South Inter-Parliamentary Association, 'Impact of Brexit on Cross-Border Activity' (2016) <<http://www.niassembly.gov.uk/globalassets/documents/raise/publications/2016-2021/2016/northsouth/8816.pdf>> assessed on 6 February 2017, p.20.

9. Inland Fisheries

10. Aquaculture and marine matters

11. Health: accident and emergency services and other related cross-border issues.

12. Urban and rural development.

Others to be considered by the shadow North/South Council.

5.4 The British Irish Council

STRAND III

BRITISH-IRISH COUNCIL

1. A British-Irish Council (BIC) will be established under a new British-Irish Agreement to promote the harmonious and mutually beneficial development of the totality of relationships among the peoples of these islands.
2. Membership of the BIC will comprise representatives of the British and Irish Governments, devolved institutions in Northern Ireland, Scotland and Wales, when established, and, if appropriate, elsewhere in the United Kingdom, together with representatives of the Isle of Man and the Channel Islands.
3. The BIC will meet in different formats: at summit level, twice per year; in specific sectoral formats on a regular basis, with each side represented by the appropriate Minister; in an appropriate format to consider cross-sectoral matters.

“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.”³³³

³³³ North/South Inter-Parliamentary Association, ‘Impact of Brexit on Cross-Broder Activity’ (2016) <<http://www.niassembly.gov.uk/globalassets/documents/raise/publications/2016-2021/2016/northsouth/8816.pdf>> assessed on 6 February 2017, p.20.

5.5 Good Friday Agreement provisions still to be implemented

There are a number of elements of the Good Friday Agreement which have not been fully implemented.

The position of the Irish Government is that the Good Friday Agreement, and all subsequent agreements, must be implemented in full. All the agreements, including the principals and values which underpin them, are at the centre of the Government's approach to peace, reconciliation and prosperity on the island of Ireland.

5.5.1 Bill of Rights for Northern Ireland

The Good Friday Agreement sets out that a Bill of Rights for Northern Ireland is a central provision. The Bill is to be based on the European Convention on Human Rights inclusive of additional rights to “reflect the principal of mutual respect for the identity and ethos of both communities and parity of esteem”.³³⁴ A Forum on a Bill of Rights was provided for in the St Andrews Agreement to produce agreed recommendations. The Forum was established in late 2006 and consisted of representatives from across the voluntary and community sector as well as each of the political parties. The Forum's recommendations were presented to the NIHRC in March 2008. These recommendations were to inform Northern Ireland's Human Rights Commission's (NIHRC) advice to the Secretary of State. The Northern Ireland Office issued its consultation paper on a Bill of Rights which was narrower in scope than the NIHRC document and was not welcomed by nationalist parties or by civil society groups.

The Irish Government remains committed to the full implementation of all aspects of the Good Friday Agreement, and all subsequent agreements, including the provision for a Bill of Rights for Northern Ireland. At Stormont in 2014 the Irish Government advanced the view that a Bill of Rights could set out formally the rights upon which a shared society for Northern Ireland could be based. There was not sufficient consensus to take this forward, however the final document did provide for the parties to serve the people of Northern Ireland equally, and to act in accordance with the obligations on government to promote equality and respect and to prevent discrimination; to

³³⁴ 'The Northern Ireland Peace Agreement' (1998)

http://www.taoiseach.gov.ie/attached_files/Pdf%20files/NIPeaceAgreement.pdf
assessed on 6 February 2017, p.18.

promote a culture of tolerance, mutual respect and mutual understanding at every level of society, including initiatives to facilitate and encourage share and integrated education and housing, social inclusion, and in particular community development and the advancement of women in public life; and to promote the interest of the whole community towards the goal of reconciliation and economic renewal.

5.5.2 Irish Language Act for Northern Ireland

The Good Friday Agreement recognised the importance of respect, understanding and tolerance in relation to linguistic diversity, which in Northern Ireland includes the Ulster Scot languages, the Irish Language, and other ethnic languages.

The issue of language is a devolved matter and is therefore the responsibility of the Northern Ireland Executive. Following on from the launch of a 20-year strategy for both the Irish and Ulster Scot languages in 2015 a public consultation process on an Irish Language Bill was held.

With the collapse of the executive in 2016 the Irish Government continued to encourage those who support an Act to continue to build the necessary consensus.

At the 2014 Stormont House Agreement, the Irish Government and the British Government endorsed the need for respect and recognition for the Irish Language in Northern Ireland, in line with the Council of Europe Charter on Regional or Minority Languages.

Through its reconciliation fund the Department of Foreign Affairs and Trade gives support to a number of projects promoting the use of the Irish language on a cross community basis within Northern Ireland. The Government also continues to support the work of Foras na Gaeilge who promote the Irish Language on an all-island basis.

The comments by DUP leader Arlene Foster in 2017 were a contradiction to the aims and spirit of the Good Friday Agreement and subsequent agreements in relation to the Irish language.

5.5.3 North South Consultative Forum

STRAND II SECTION 19

“Consideration to be given to the establishment of an independent consultative forum appointed by the two Administrations, representative of civil society, comprising the social partners and other members with expertise in social, cultural, economic and other issues”

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The Good Friday Agreement provided for consideration to be given to the appointment by the two Administrations of a North-South Consultative Forum comprised of representatives of civil society and other social partners as well as experts in social, cultural, economic and other areas.

The Irish Government continues to support the establishment of the consultative Forum and the Taoiseach has raised the Forum at successive plenary meetings of the North South Ministerial Council.

³³⁵ ‘The Northern Ireland Peace Agreement’ (1998)
<http://www.taoiseach.gov.ie/attached_files/Pdf%20files/NIPeaceAgreement.pdf> assessed on 6 February 2017, p.15.

5.5.4 Civic forum

STRAND I of the Good Friday Agreement provides for the establishment of a Civic Forum in Northern Ireland as a consultative mechanism with representatives from the business, trade union and voluntary sectors.

“A consultative Civic Forum will be established. It will comprise representatives of the business, trade union and voluntary sectors, and such other sectors as agreed by the First Minister and the Deputy First Minister. It will act as a consultative mechanism on social, economic and cultural issues. The First Minister and the Deputy First Minister will by agreement provide administrative support for the Civic Forum and establish guidelines for the selection of representatives to the Civic Forum.”

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Under the Good Friday Agreement, the responsibility for establishing the Civic Forum lies with the Northern Ireland Executive. The Stormont House Agreement provided for the establishment of a civic advisory panel. The panel is to ensure that civic voices are heard, and civic views are considered in relation to the key social, cultural and economic issues.

Work on the Civic Forum is being advanced through the regular Northern Ireland Executive Party Leaders meetings on implementation of the Stormont House and Fresh Start Agreement. At one of the recent meetings of the last quarterly implementation and review of the Stormont House and Fresh Start Agreement held in Belfast, there was a statement to the effect that the Executive advised that membership of the panel is currently under consideration and that a decision is expected shortly.

The Government will continue to support the early establishment by the Executive of the advisory panel, which will allow for stronger representation of civil society voices in policy formation in Northern Ireland.

³³⁶ ‘The Northern Ireland Peace Agreement’ (1998)
<http://www.taoiseach.gov.ie/attached_files/Pdf%20files/NIPeaceAgreement.pdf> assessed on 6 February 2017, p.10.

5.6 Mechanism to ensure compliance with the agreement

High Court Justice Humphreys states:

“The British- Irish Agreement of 10 April 1998, while a binding international legal instrument does not in and of itself contain a mechanism to force the British or indeed the Irish government to comply with the obligations contained therein in the event of a breach. Talk of a breach of the obligations in the agreement might seem far-fetched save for the fact that the official position of the Irish government appears to be that the introduction, by the former secretary of state for Northern Ireland, Peter Mandelson, of the Northern Ireland Act 2000.”³³⁷

“As regards the question of judicial remedies for breach of the agreement, in the wake of issues surrounding failure by former First Minister Trimble to accord full facilities to the Sinn Fein ministers in late 2000, the Sinn Fein president, Gerry Adams, called on the Irish government to make a declaration recognizing the jurisdiction of the International Court of Justice as a means of providing a judicial forum within which this question might be resolved, and this approach appears to provide the simplest and most convenient way forward. Even in the event of establishment of a North South or East West judicial body or both, it might still be appropriate to permit fundamental constitutional disputes regarding the good faith operation of the agreement to be submitted for adjudication of the International Court of Justice, by making a declaration under Article 36(2) of the Statue of the Court annexed to the UN Charter.”³³⁸

“The alternative to a judicial mechanism to resolve a major future difference between the two governments as to the principle of good faith in the implementation of the agreement would be the use of international political mechanisms. The prospects in this regards may not be terribly good. Donncha O’Connell points out that during the 1950’s, the approach of raising the partition issue in the Council of Europe and other supranational fora had proved unsuccessful.”³³⁹

³³⁷ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.164,165.

³³⁸ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.165,166.

³³⁹ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.166.

5.7 International Court for Justice

Since the publication of Justice Humphreys' book in 2009, Ireland has joined the International Court of Justice, however as Northern Ireland is not covered by the ICJ there are limited avenues to address breaches of the Good Friday Agreement by the British government or any signatory.

5.8 The international court of justice jurisdiction to include Northern Ireland and the Good Friday Agreement

The Irish Government has become a member of the International Court of Justice since the 15th of December 2011. However there is an exception of any legal dispute with the United Kingdom of Great Britain and Northern Ireland in regard to Northern Ireland Department of Foreign Affairs and Trade.

Northern Ireland is not covered by Ireland's membership of the International Court of Justice and this needs to be addressed. "In the absence of such a declaration," explains Justice Humphreys regarding the Good Friday Agreement, "there may simply not be any international judicial venue to which such a complaint could be brought."³⁴⁰

"The International Court of Justice (ICJ) in The Hague, also known as the World Court, is the principal judicial organ of the United Nations. Although the Court's judgments are binding only on the parties to any particular case, given the caliber of Court's judges and its status as the principal judicial organ of the UN, decisions of the ICJ are themselves often cited as evidence of international law. The Court has given important decisions and opinions on such topics as the law of the sea, boundary disputes, the use of force and the legality of the threat or use of nuclear weapons. It operates under a Statute annexed to the UN Charter. UN Charter and Statute of the ICJ, as published in the Irish Treaty Series."

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³⁴⁰ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.122.

³⁴¹ Department of Foreign Affairs and Trade, 'International Court of Justice', <<https://www.dfa.ie/our-role-policies/international-priorities/international-law/courts-tribunals-dispute-mechanisms/international-court-of-justice>>

Ireland must fully sign up to the International Court of Justice to protect the Good Friday Agreement.

Of particular concern for the issue of unity is in the event of the Secretary of State for Northern Ireland not allowing a referendum on a united Ireland when it is believed that a majority would be in favour, there is no current recourse for the Irish Government.

Full membership of the International Court of Justice could be a new avenue open to protect the Good Friday Agreement.

5.9 Developing & expanding the architecture of the Good Friday Agreement

In his book 'Countdown to Unity' High Court Justice Humphries outlines how the architecture of the Good Friday Agreement can be built upon, some of which is in place.

“Another critical aspect to be considered is the widening and development of the six-county North-South and East-West institutional architecture to strengthen all of the relevant relationships. One might consider all of the sets of possible institutions in the form of a matrix with two axes, one being the different set of relationships and the other consisting of the forms of institutions required, legislative, executive, judicial, administrative and related to civic society. The matrix of relationships can be considered in tabular form as set out below. On this basis it can readily be seen that there is very considerable scope for further institutional architecture to underpin and develop the total of relationship recognised by the Good Friday Agreement.”³⁴²

³⁴² Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.160,161.

Table 1

Matrix of Institutional Architecture by Strand

Type of Institution	Strand 1 NI	Strand 2 N-5	Strand 3 E-W
Legislative	Assembly	None. N-S parliamentary structure envisaged by Joint Framework Document and April 2003 and December 2004 proposals	Pre-existing British-Irish Interparliamentary Body continues – agreement envisages development of this
Executive	Northern Ireland Executive	North-South Ministerial Council – Joint Secretariat.	British-Irish Council (involves devolved institutions and other administrations in the islands). Secretariat to British-Irish council provided by two governments British-Irish Intergovernmental Conference (two governments).
Judicial	No new institutions. Pre-existing courts continue.	None.	None.
Administrative	Some new institutions under Good Friday Agreement: Northern Ireland Human Rights Commission, Equality Commission.	North-South implementation bodies in specified areas Joint Committee bringing together North and South Human Rights Commissions.	None.
Civic Society	Civic Forum	None.	None.

5.10 East –West Parliamentary Body

As far as East-West legislative structures are concerned, there may be a case for putting the British-Irish Inter Parliamentary Body on a treaty basis, and in any event for developing its role as the Good Friday Agreement envisaged.³⁴³

5.11 Constitutionality of North-South East-West Parliamentary Bodies

“One might pose the question as to whether investing the North-South or even east- west bodies with actual legislative power would be constitutionally permissible. Article 29.7.2 of the Constitution would provide a protection for such bodies not otherwise available under Articles 3 or 15 if they were held to be established 'under' the Agreement. While there might be logic in allowing the North-South parliamentary structure to legislate within its area of competence (and indeed a form of all-island subordinate legislation exists in the shape of statutory instruments made by the North-South aquaculture and marine implementation body with the consent of the governments).”³⁴⁴

“There would be resistance to giving an east-west body any legislative power, as to do so would be redolent of turning the clock back to 5 December 1921, even if 'assent' to its bills could be withheld by a sovereign Irish government. As against that, some dimension of east-west legislation might provide the necessary balance to a North-South parliamentary system with actual legislative power. Whether to put in place even an enabling measure for such a power would be a matter for political consideration.”³⁴⁵

³⁴³ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.162.

³⁴⁴ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.162.

³⁴⁵ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.162.

5.12 Judicial Branch of Government

“As far as the judicial branch of government is concerned, no additional structures were proposed by the Good Friday Agreement. An all-island court to deal with security matters had been a feature of previous proposals to deal with issues such as extradition, but in the light of the changed security situation the pressure for such a mechanism has reduced.”³⁴⁶

“However, the absence of North-South and East-West judicial bodies does have certain unfortunate consequences. Such absence means that instruments adopted by, or agreements between, administrations North and South, or east and west as the case may be will fall to be interpreted or assessed for validity, or both, by the courts of two separate jurisdictions, with the possibility of different results. One can see an advantage in having a judicial mechanism to avoid this problem, and as a visible expression of the broader sets of relationships that transcend state sovereignty in this area; and in terms of international law, there may be some arguments in favour of the approach of specialized judicial bodies to deal with this sort of local or regional problem. The establishment of such judicial bodies could therefore reasonably be a matter for consideration, with east-west structures balancing for unionists the North-South structures that would express the all-island perspective for nationalists. Perversely however, much as the old Article 3 copper-fastened partition in its own way, it would appear that the new Article 3 likewise could render such cross-border judicial bodies unconstitutional unless held to be established 'under' the Agreement for the purposes of Article 29.7.2°. Again one view would be that Article 3 is drafted in excessively narrow and limited way, particularly as regards the North-South dimension, and that amendment to cater for shared judicial bodies would create a desirable flexibility.”³⁴⁷

³⁴⁶ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.162.

³⁴⁷ P.163 Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.163.

5.13 North South Implementation Body

“The North-South implementation bodies represent an element of lost opportunity for a much more ambitious programme of cross-border cooperation to mutual advantage. There is a huge economic and social case for much more significant cooperation in a range of areas. Under the Good Friday Agreement this would be a matter for agreement between the two executives.”³⁴⁸

5.14 East West Administrative Bodies

“To balance this exercise politically there can be no absolute argument in principle against putting in place east-west administrative bodies where this would provide joint gains. Again, such bodies could appear to be constitutionally dubious in the absence of amendment of Article 3. Indeed the All-Party Oireachtas Committee on the Constitution rejected a more general enabling clause for inter-state executive cooperation in 2003.”³⁴⁹ “The case for an ongoing role with consultation with the British government can be made for a number of reasons, principally to provide reassurance and protection for the unionist minority.”³⁵⁰

³⁴⁸ P.163 Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.163.

³⁴⁹ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.163.

³⁵⁰ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.131.

5.15 Civic Society

“Development of the North-South structure to consult civic society would not require any legal or constitutional change. Such a step might be a valuable addition to the mechanism for cross-border cooperation. The establishment of such a body might, if appropriate be balanced by the simultaneous establishment of an east-west structure for bringing together representatives of civil society.”³⁵¹

The recent All-Ireland Civic Dialogue on Brexit is an example of such an engagement by civic society groups, trade unions, business groups and non-governmental organisations, as well as representatives of all the main political parties on the island.

³⁵¹ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.164.

Below are the details of the layout of the recent Civic Dialogue on Brexit

Appendix 1

All-island civic dialogue on Brexit

The Government has agreed that there will be 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. This is 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. The all-day Conference will take place in Dublin on Wednesday, 2 November.

This event will provide an opportunity to hear the voices of the people affected by the vote, both directly and through their representative groups. It will also provide an opportunity to map the challenges presented by Brexit and how they might impact on different elements of society and the economy on an all-island basis.

The main output will be a report and recommendations which will be used to help inform the Government's position on issues related to the UK's exit negotiations.

Participation

Attendance at the Conference will be at the invitation of the Taoiseach and the Minister for Foreign Affairs and Trade. Organisations which will be invited to nominate a maximum of two representatives include:

- Business, employer and trade union organisations, farming organisations, community and voluntary NGOs, North and South
- Organisations who participate in the current EU/UK stakeholder group, such as the British Irish Chamber, IIEA, European Movement Ireland
- Local Authorities in border regions
- Key Government agencies, particularly those with a North/South dimension
- Academic institutions North and South such as Centre for Cross Border Studies

and the Royal Irish Academy as well as universities and Higher Education Institutions.

Representatives of the main political parties, North and South, will also be invited.

Format

The conference programme would broadly cover potential Brexit implications across the main areas of concern for Ireland:

- the economy and trade
- the Peace Process
- the common travel area and the border
- the future of the EU

The format would be highly interactive with each area being initially framed in terms of the key challenges, after which a discussion will take place to tease out the issue further.

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- the economy and trade
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5.16 Good Friday Agreement after Unification

According to High Court Justice Humphreys:

“One of the key features to emerge from this discussion of the Good Friday Agreement is that the agreement expressly imposes obligations on both governments into the long term. In the sense it is intended to apply both to the current United Kingdom and to a possible future United Ireland. In the absence of any amending agreement, it would therefore be a legal obligation on Ireland to continue to give effect to the agreement after Irish Unity. This simple conclusion has profound consequences for the way in which the whole question of reunification is to be approached. In particular it means that the strong protections for which ever community does not command a majority within Northern Ireland would endure in the absence of any further agreement so as to benefit unionism following a united Ireland.”³⁵²

“There was also a pragmatic argument for maintaining the Good Friday Agreement institutions – it would provide certainty and stability and there by assist in making the case for a united Ireland. The SDLP also proposed that a referendum on unity should be held once the agreement intuitions have bedded down and are operating stably a call which has been made at various times by Sinn Fein, the UUP and the DUP the document stated. However in the context of a referendum, the SDLP committed themselves to seeking the agreement of all the island parties that the agreement endures regardless of whether one is in a United Kingdom or a united Ireland.”³⁵³

“The document also envisages that unity would bring changes to the Good Friday Agreement itself but these should be made in the way

³⁵² Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.104.

³⁵³ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.118.

envisaged by the agreement, namely through a review.”³⁵⁴

“Launching the document the SDLP chairperson, Patricia Lewsley put the SDLP proposal in the context of the ‘true republican ideal of uniting Catholic, protestant and dissenter’. The thesis that there would be practical advantages to preserving the Good Friday Agreement post a united Ireland was also advanced by the Unionist Commentator Rory Garland. Reacting to the November 2003 version of the SDLP proposal, he described them as ‘welcome and innovative’ It would fulfil a unionist proposal to insist on Northern Ireland remaining an administrative unit, even if Irish Unity were achieved and therefore “has some potential to appeal to unionists””. Finally describing the agreement as a covenant of honour (surprisingly rather than a law) the SDLP made the point that the best protection for unionists in a united Ireland would be through the mechanism of the agreement.

“For unionists to ‘smash the agreement’ would be to forgo not only their say in Northern Ireland of today but their guaranteed position in a future united Ireland.”³⁵⁵

³⁵⁴ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.119.

³⁵⁵ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.119.



SECTION 6

6.0 Summary

High Court Justice Humphreys in his book 'Countdown to Unity' explains how the 'constitutional imperative', as outlined by Attorney General Brady (2002-2007), of Articles 2 and 3 of the Constitution can be achieved by the referendum provided for in Annex A Schedule 1 of the constitutional issues of the Good Friday Agreement.

Attorney General Brady (2002-07) goes on to explain the elements of the Good Friday Agreement and of accepting the Realpolitik of a divided island.

"A fundamental principal of the Good Friday Agreement is that it is a settlement based on the exercise of the right to self-determination by the people of the island of Ireland. The requirement that the right was to be exercised, concurrently, on both parts of the island by way of a separate referendum in each jurisdiction was recognition of the realpolitik of a divided island. The reconciliation of the tension between the right to self-determination and the reality of political life on the island of Ireland is to be found in the policy of consent."

Attorney General Brady

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In this section we look at Justice Humphreys' detailed analysis of the issue of consent, of 'dual consent', and the important difference between 'a' majority and 'the' majority as referred to over the decades by various British Governments. The challenges of a referendum being concurrent in the North and South, and how that could and should be interpreted, is considered in great detail by Justice Humphreys. The options open to the Irish Government in the event that the Secretary of State for Northern Ireland refuses to hold a referendum or hold a 'testing the water' referendum are explored by Justice Humphreys. The triggering of a referendum and its likelihood of being subject to a challenge by way of a referendum petition by unionists is also discussed. The issues surrounding voter fraud in a referendum are outlined. In the

³⁵⁶ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.xi.

event of the referendum being passed the necessity of its ratification by the Irish and British Governments is explained.

Finally, the research of the Library and Research Service of Leinster House and British House of Commons on the referendums in Quebec and Scotland, where support for separation from a larger political state could not be attained, and possible lessons for a referendum here are outlined briefly and the papers are available in full in the online appendix at the end of this section.

6.1 Recommendation

Lessons from referendums need to be learned to ensure that the Irish government fulfils its constitutional obligations.

6.2 Referendum

“The Good Friday Agreement can be contended to be a permanent feature of the Institutional landscape and to represent a clear road map towards the implementation of a united Ireland,”³⁵⁷ explains Justice Humphries.

“The Agreement may be viewed by some as a stable endpoint for political life in Northern Ireland, parking all issues of future unification. However, on another view, the agreement itself expressly recognizes the legitimacy of the drive towards reunification., as a valid political objective to be pursued by peaceful means in accordance with the policy of consent. On that basis, the agreement provides a clear road map towards an act of self-determination by the Irish People (which for this purpose includes British Citizens living in Northern Ireland) that would bring about unity, through the mechanism of an Anglo- Irish Treaty following a referendum vote.”³⁵⁸

6.2.1 Referendum South

The Agreement builds on the historic formulation used in the 1994 Joint Declaration by recognizing formally that the constitutional status of Northern Ireland is a matter for the self-determination of the people of the island of Ireland as a whole. This is reflected in paragraph 1(ii) of the constitutional issues section of the Good Friday Agreement, which provides that.³⁵⁹

³⁵⁷ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p. 6 Introduction.

³⁵⁸ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.135.

³⁵⁹ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.124.

Constitutional issues

The participants endorse the commitment made by the British and Irish Governments that, in a new British-Irish Agreement replacing the Anglo-Irish Agreement, they will:

- (i) recognise the legitimacy of whatever choice is freely exercised by a majority of the people of Northern Ireland with regard to its status, whether they prefer to continue to support the Union with Great Britain or a sovereign united Ireland;
- (ii) recognise that it is for the people of the island of Ireland alone, by agreement between the two parts respectively and without external impediment, to exercise their right of self-determination on the basis of consent, freely and concurrently given, North and South, to bring about a united Ireland, if that is their wish, accepting that this right must be achieved and exercised with and subject to the agreement and consent of a majority of the people of Northern Ireland.

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6.2.2 Referendum IN Northern Ireland

The constitutional issues section of the agreement provides that Northern Ireland may cease to be part of the UK if a majority so decide in a poll.³⁶¹

³⁶⁰ 'The Northern Ireland Peace Agreement' (1998)
<http://www.taoiseach.gov.ie/attached_files/Pdf%20files/NIPeaceAgreement.pdf> assessed on 6 February 2017, p.10.

³⁶¹ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.122.

Annex a

Draft clauses/schedules for incorporation in British legislation

1. (1) It is hereby declared that Northern Ireland in its entirety remains part of the United Kingdom and shall not cease to be so without the consent of a majority of the people of Northern Ireland voting in a poll held for the purposes of this section in accordance with Schedule 1.

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The agreement makes clear that the legal mechanics for the holding of a referendum are to be the same as those provided in the Northern Ireland Constitution Act 1973 Schedule 1 (as has been seen, the one previous poll, held under special legislation in 1972, resulted in an overwhelming majority in favour of maintaining of the status quo by reason of the fact that the nationalist community boycotted the poll).³⁶³

³⁶² 'The Northern Ireland Peace Agreement' (1998)
<http://www.taoiseach.gov.ie/attached_files/Pdf%20files/NIPeaceAgreement.pdf
> assessed on 6 February 2017, p.10.

³⁶³ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.123.

6.3 'The' Majority & 'A' majority

Justice Humphries discusses the concept of dual consent and goes to some lengths to explain the difference between the requirement for 'the' majority and 'a' majority to vote in favour of a proposal in a future referendum.

Sunningdale Agreement Communique

5. The Irish Government fully accepted and solemnly declared that there could be no change in the status of Northern Ireland until a majority of the people of Northern Ireland desired a change in that status.

The British Government solemnly declared that it was, and would remain, their policy to support the wishes of the majority of the people of Northern Ireland. The present status of Northern Ireland is that it is part of the United Kingdom. If in the future the majority of the people of Northern Ireland should indicate a wish to become part of a united Ireland, the British Government would support that wish.

6. The conference agreed that a formal agreement incorporating the declarations of the British and Irish Governments would be signed at the formal stage of the Conference and registered at the United Nations.

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As Humphries explains:

“The wording of the commitment of the British government to support unity is also somewhat different to that of the Irish government in the sense that while the Irish government concedes that there can be no change in the status of Northern Ireland until 'a' majority of the people of Northern Ireland desire such a change, the wording proposed on behalf of the British government is that a united Ireland would require an

³⁶⁴ The Sunningdale Agreement Communique' (1973) Available at <<http://cain.ulst.ac.uk/events/sunningdale/agreement.htm>> assessed on 6 February 2017.

expression of wish by ‘the’ majority of the people of Northern Ireland. This is more than a semantic difference in the sense that while ‘a’ majority is a simple test referring to 50 per cent plus one of those participating in a referendum, a requirement for the consent of ‘the’ majority might be construed as a requirement for consent on behalf of the unionist community as such, a consent which by definition could never be forthcoming as it contradicts the *raison d’être* of unionism. The logic of requiring consent of ‘a’ majority is irresistible.”³⁶⁵

Humphreys goes on to explain logically that:

“...the really fundamental reason, apart from legal considerations, why a minority or a dual consent could never act to prevent the reunification of the island of Ireland if a majority so wished, is that there is no corresponding provision at present permitting the nationalist and republican ‘minority’ to prevent Northern Ireland from remaining part of the United Kingdom. The test for a United Ireland could not in logic be different from the test for a United Kingdom.”³⁶⁶

Oliver Wendell Homes noted:

“It is hard to contend that the tests for a United Kingdom or a united Ireland are different in legal or constitutional terms. In tandem with the concept of ‘dual consent’ (which by and large has emanated from the unionist side of the equation).”³⁶⁷

Dual Consent

It is important to emphasize that both the 1973 Act and crucially the 1998 formula relate to a majority of the electorate who actually turn out to vote in any particular poll. Neither formula requires the consent of an absolute majority of the electorate, or requires consent of the electorate, but subject to a proviso that a certain percentage turns out to vote (similar to a so-called ‘ordinary’ [i.e. non-constitutional] referendum under the

³⁶⁵ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.42.

³⁶⁶ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009)
Ibid. P. 7 of Introduction

³⁶⁷ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009)
p.131.

Constitution of Ireland). Nor does either test include a requirement that consent be forthcoming from both communities. There is no legal or political justification for the concept of ‘dual consent’ for a united Ireland as there is no such requirement for a United Kingdom.³⁶⁸

Humphreys then states:

“Neither the 1921 Treaty nor the 1998 Good Friday Agreement contains any provision for a minority to veto the basic question of which state the Northern Ireland entity will belong to. There are no vetoes, no requirements for dual consent, and no possibility for individual opt-out by particular counties or areas. The genius of the Good Friday Agreement, it might be contended, is that it permits the ‘majority’ within Northern Ireland effectively to determine which state the Northern Ireland entity will belong to, but permits the ‘minority’ within that entity a very significant share in the public administration of the six counties and a major stake in the orderly government and administration of the entity overall.”³⁶⁹

The 1985 Agreement did, however, take the UK Government to a legally binding commitment to give effect to the wish of a majority as expressed in a vote for unification, a commitment now reflected in the Good Friday Agreement.³⁷⁰

³⁶⁸ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.41.

³⁶⁹ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.8.

³⁷⁰ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.66.

Good Friday Agreement

Constitutional issues

Section 1 (ii)

recognise that it is for the people of the island of Ireland alone, by agreement between the two parts respectively and without external impediment, to exercise their right of self-determination on the basis of consent, freely and concurrently given, North and South, to bring about a united Ireland, if that is their wish, accepting that this right must be achieved and exercised with and subject to the agreement and consent of a majority of the people of Northern Ireland

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³⁷¹ [The Northern Ireland Peace Agreement](http://www.taoiseach.gov.ie/attached_files/Pdf%20files/NIPeaceAgreement.pdf) (1998)
<http://www.taoiseach.gov.ie/attached_files/Pdf%20files/NIPeaceAgreement.pdf> assessed on 6 February 2017,

6.4 Freely and concurrently given

Turning now to the second problematic issue of the formula used in paragraph 1(ii) of the constitutional issues section, which relates to the precise meaning of the requirement that the exercise of the right of self-determination North and South be “freely and concurrently given”. While the requirement that the consent be freely given is relatively unproblematic, the question of concurrent consent does give rise to a difficulty in the matter of timing and form.³⁷²

There are a number of difficulties with this analysis having regard to the requirement that the consent of the people of the island of Ireland be given ‘concurrently’ in both parts of the island. The difficulty from the point of view of amendment of the constitution is that such an amendment could only have effect in the event of a positive vote in Northern Ireland, a fact that could not be known with certainty in advance. There would seem to be three possible solutions to the question of timing.³⁷³

³⁷² Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.125.

³⁷³ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.126.

6.5 A question of timing: interpretation of concurrently

In 'Countdown to Unity' there are three possible solutions outlined in relation to the question of timing. The first would be not to hold a referendum in Ireland on the same date as a referendum in Northern Ireland, but rather to await the result of the Northern Irish referendum and, in the event that the result was positive, to then formulate and submit for approval a bill to amend the Constitution to give effect to this decision as necessary.

There would seem to be two difficulties with this solution.

Firstly, it could be argued that if the referenda were not held on the same day, the consent would not be concurrent for the purpose of the Agreement. Some support for this reading of the Agreement can be gathered from the fact that the referenda to approve the Agreement itself were envisaged by the Agreement as being required to be held on the same day- indeed the date was specified in the Agreement itself.

Secondly, there is the potential for some delay between the result of a poll in Northern Ireland and a constitutional referendum in the Republic of Ireland if this was to be postponed until after the holding of such a referendum in Northern Ireland.

Even if the requirement of concurrent consent did not necessarily mean that such consent had to be given on the same day, there might nonetheless be difficulties if the consent was to be given after a very prolonged lapse of time.

A further possible solution to the question of timing would be to hold two referenda in the Republic of Ireland, the first being a plebiscite on the question of unity to be held simultaneously with the Northern Ireland poll, and the second being a subsequent amendment of the Constitution to give effect to any constitutional change required on the completion of whatever processes follow from the referendum results North and South. This approach has some attractions from the point of view of logic. However, during the process of the formulating the 1998 constitutional amendment, there was a very strong desire that there would be only a single question put to the people in referendum.

Arrangements could have been made in 1998 for the submission to the people of two questions, one of which would have been an approval of the agreement in an identical form of words to that employed in Northern Ireland, and the second would have been the constitutional amendment bill.

However so great was the desire that only a single question be put that the tidy solution of the same question in precisely the same wording being employed both North and South was rejected. It could be contended that the putting of multiple questions does allow a certain amount of what might be termed 'each-way betting' by voters who might be dissatisfied with some aspect or another of the proposal. Certainly the methodology used in 1998, which is likely to be of similar relevance in any future referendum, avoids this problem by requiring voters to vote simple yes or no to the totality of the proposal.

A third possibility would be to make whatever amendments to the Constitution are required to give effect to possible future reunification well in advance, in an atmosphere of relative calm, and thus to clear the way for a single simple question to be put to referendum in Ireland on the same date as any poll in Northern Ireland, or at least on the same day as a poll likely to result in a 'yes' vote. This approach would seem to have advantages on balance, particularly where there may be other constitutional amendments required in advance to facilitate the process of reconciliation and to make the case for a united Ireland.³⁷⁴

It is certainly true that if the Secretary of State for Northern Ireland decided to hold a poll in Northern Ireland and if it was decided by the Government to hold a poll simultaneously in this part of the island, legislation to facilitate such a poll could be rushed through the Oireachtas on an urgent basis. However, there would seem to be little objective justification for the approach of leaving the matter to the last minute. The preferable approach would seem to be to introduce a bill well in advance of any proposed poll setting out the procedures that would be applied.³⁷⁵

Any legislation designed to regulate a poll for the purposes of an agreement in Ireland could be closely modelled on the referendum act 1994 with any necessary modifications.³⁷⁶

³⁷⁴ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.126,127.

³⁷⁵ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.128.

³⁷⁶ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.129.

6.6 Testing the water referendum

“It should be noted that just as the Secretary of State is not under an obligation to make an order for the taking of a poll save where he is of opinion that majority will vote for a united Ireland and no previous poll has been held within the preceding seven years, the Irish Government is not under any express obligation to conduct a simultaneous poll in Ireland. However, given that the purpose of the provision of the agreement relating to the matter is to vindicate the inherent right of self-determination of the Irish People, it would seem to be an implicit obligation on the Irish Government to hold a simultaneous poll where it was of opinion that the result of the poll in Northern Ireland would be likely to be supportive of a united Ireland.

“It could be contended that there would be no such obligation where the Northern Ireland poll was of the ‘testing the water’ variety and not considered on objective evidence likely to result in a change to the ‘status quo’.”³⁷⁷

³⁷⁷ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.129.

6.7 Refusal to hold a referendum

Having outlined the mechanism within the Good Friday Agreement by which the referendum to determine the future constitutional status of Northern Ireland would be triggered, Justice Humphreys outlines the issues in the event that the Secretary of State for Northern Ireland refuses to hold such a referendum.

The Secretary of State is free to refuse to make an order for the holding of a poll unless the conditions laid down in paragraphs 2 and 3 apply, i.e. the Secretary of State is of the opinion that a majority would support a united Ireland; and no previous poll had been held during the preceding seven years.³⁷⁸

Of course at present the result of such a poll would be to retain Northern Ireland with in the United Kingdom.³⁷⁹

Clearly the decision to hold or not to hold a poll at a time when it is apparent that the result will be a maintenance of the status quo is a matter for political consideration rather than legal obligation, and arguments can be advanced for or against this contention.³⁸⁰

However, it is clear that if it can be demonstrated to the Secretary of State that it is likely that a majority would vote to change the constitutional position of Northern Ireland, then the holding of the poll becomes a mandatory obligation on the Secretary of State for Northern Ireland and he/she is required by the agreement to make an order for the purposes of paragraph 1 of schedule 1 to annex A to the constitutional issues section of the agreement. A perverse subjective refusal to recognise the manifest existence of such a majority would quite possibly have to yield to judicial review on the ground of unreasonableness. Such a refusal would also amount to a breach of the duty in international law to operate the agreement in good faith (a duty referred to expressly in the 2004 'interpretative declaration' agreed by the two Governments) and to that extent would be liable to be met with international legal proceedings by Ireland.³⁸¹

³⁷⁸ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.121.

³⁷⁹ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.121.

³⁸⁰ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.122.

³⁸¹ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.122.

6.8 The International Court of Justice jurisdiction to include Northern Ireland and the Good Friday Agreement

The Irish Government has become a member of the International Court of Justice since the 15th of December 2011. However there is an exception of any legal dispute with the United Kingdom of Great Britain and Northern Ireland in regard to Northern Ireland.

Department of Foreign Affairs and Trade

Northern Ireland is not covered by Ireland's membership of the International Court of Justice and this needs to be addressed. "In the absence of such a declaration' explains Justice Humphreys regarding the Good Friday Agreement are 'there may simply not be any international judicial venue to which such a complaint could be brought."³⁸²

"The International Court of Justice (ICJ) in The Hague, also known as the World Court, is the principal judicial organ of the United Nations. Although the Court's judgments are binding only on the parties to any particular case, given the calibre of Court's judges and its status as the principal judicial organ of the UN, decisions of the ICJ are themselves often cited as evidence of international law. The Court has given important decisions and opinions on such topics as the law of the sea, boundary disputes, the use of force and the legality of the threat or use of nuclear weapons. It operates under a Statute annexed to the UN Charter. UN Charter and Statute of the ICJ, as published in the Irish Treaty Series."³⁸³

Ireland must fully sign up to the International Court of Justice to protect the Good Friday Agreement.

³⁸² Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.122.

³⁸³ Department of Foreign Affairs and Trade.
<https://www.dfa.ie/our-role-policies/international-priorities/international-law/courts-tribunals-dispute-mechanisms/international-court-of-justice/>

Of particular concern for the issue of unity is that, in the event of the Secretary of State for Northern Ireland not allowing a referendum on a United Ireland when it is believed that a majority would be in favour, there is no current recourse for the Irish Government.

Full membership of the International Court of Justice could be a new avenue open to protect the Good Friday Agreement.

6.9 Triggering of a referendum

Humphreys argues that:

“Whether or not there are negotiations to determine the possible shape of a proposal for a united Ireland which might be presented to the people of Northern Ireland in a referendum the trigger for the holding of a referendum is identified in the agreement as being an order made by the secretary of state for Northern Ireland.”³⁸⁴

While the making of an order is a discretionary matter for the secretary of state he or she is required to make the order in the circumstances set out in paragraph 2 and 3 of schedule 1, as we have seen in the earlier discussion of the 1998 Act.³⁸⁵

Schedule 1

Polls for the purpose of section 1

1. The Secretary of State may by order direct the holding of a poll for the purposes of section 1 on a date specified in the order.
2. Subject to paragraph 3, the Secretary of State shall exercise the power under paragraph 1 if at any time it appears likely to him that a majority of those voting would express a wish that Northern Ireland should cease to be part of the United Kingdom and form part of a united Ireland.
3. The Secretary of State shall not make an order under paragraph 1 earlier than seven years after the holding of a previous poll under this Schedule.

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³⁸⁴ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.120.

³⁸⁵ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.121.

³⁸⁶ Good Friday Agreement, 1997. Available at http://www.taoiseach.gov.ie/attached_files/Pdf%20files/NIPeaceAgreement.pdf

6.10 Referendum petition:

Those legal mechanics for the holding of such a referendum are now well established. Among the features of a referendum in most jurisdictions is the provision for a referendum petition. It can be readily envisaged that the result of a successful referendum to support the proposal for a united Ireland would be likely to be the subject of a referendum petition by some representatives of the unionist minority. Accordingly, it would be of importance to ensure that the referendum itself was carried out entirely in accordance with the governing Northern Ireland legislation and that the grounds on which a referendum petition could be brought were limited to situations where the result was not a fair reflection of the will of the people of Northern Ireland voting in such a poll.³⁸⁷

6.11 Voter fraud

In this context one issue is that of voter fraud, but in that regard very significant and stringent legislation on voter identity has been introduced at Westminster.³⁸⁸

The Electoral Fraud (Northern Ireland act 2002) appears to have brought this problem under control. Indeed, there have been numerous complaints that the problem is now the other way i.e. that the legislation has inhibited genuine voters from being able to exercise their franchise. None the less the issue of entitlement to vote, electoral registration and electoral fraud will be a key one in the context of polls for the purpose of testing the current strength of public opinion on the constitutional issue. The effect of the electoral legislation, particularly any effect that might discourage qualified voters from exercising their franchise, is in that context a significant question for consideration by the Irish Government and the nationalist political parties in Northern Ireland.³⁸⁹

³⁸⁷ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.123.

³⁸⁸ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.123.

³⁸⁹ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.123.

6.12 Ratification of the decision for a united Ireland

The standard procedure adopted to implement an international agreement involving legislative change in two dualist jurisdictions tends to be along lines involving:

Firstly signature of a bilateral agreement,

Secondly the introduction and enactment in both jurisdictions of such legislation as may be necessary to implement it,

Thirdly the execution and delivery of instruments of ratification, and

Fourthly the commencement of the agreement either by way of the delivery of the second instrument of ratification or the expiry of a certain period of time from that date, or the happening of some other specified event.

It is likely that the same sequence will apply in the event of an agreement for the handover of Northern Ireland. Indeed, the Good Friday Agreement itself envisages firstly an agreement between the two states and secondly the introduction of legislation to give effect to that agreement, with both governments committed to introduce and support in their respective parliaments legislation to give effect to that wish.

Accordingly, following the new British-Irish handover agreement envisaged by the Good Friday Agreement. and the introduction and enactment of appropriate legislation in both the British and Irish parliaments to give effect to that agreement, including if necessary a bill to amend the Constitution which would need to be submitted to referendum if that had not already been provided for by anticipatory amendments to the Constitution, both Governments would then execute instruments of ratification and deliver these instruments in a specified manner. The agreement would then commence in accordance with its terms on a specified date, which would also be the date on which the relevant British and Irish legislation would come into effect. The happening of the legal event to trigger such commencement, normally the mechanism specified in the agreement being operated possibly combined with the making of a commencement order for the legislation, would constitute the act bringing into effect the reintegration of the national territory.

‘Ratification’ of the agreement to transfer Northern Ireland to Irish Sovereignty will take place, in accordance with international law, in the ordinary way by execution of instruments of ratification on each side. The coming into force of the agreement and the formal transfer of Northern Irish will then require revision of political structures on each side but particularly on the Irish side. In crude terms, the British structures will be ‘slimmed down’ by the removal of the Northern Ireland dimension, while the Irish structures will be expanded so that a new thirty-two-county Dáil and Seanad will be put in place, the local assembly and executive recognized, local government structures recognised or created for Northern Ireland, and provision made for statutory agencies. At its most basic level two new states and parliaments will be constituted or perhaps more accurately, reconstituted, for Ireland and Britain.³⁹⁰

³⁹⁰ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.145,146.

6.13 Quebec referendum 1980 & 1995 lessons for future referendum in Ireland on unification.

There have been two referenda in Quebec in relation to the issues of economic sovereignty and separation from Canada.

The first on 20 May 1980 and the second on 30 October 1995, the table below sets out the results of both referenda.

Table 1: Results of Referendums, 1980 and 1995

Referendum	20 May 1980	30 October 1995
Registered Voters	4,367,584	5,087,009
Participation Rate	85.61	93.48
Yes (% of Valid Votes)	40.44	49.42
No (% of Valid Votes)	59.56	50.58
Spoiled Ballots (% of Valid Votes)	1.74	1.82

Source: Gagnon and LaChapelle ,1996 ³⁶

The key findings of the Leinster House Library and Research Service for the defeat of the referenda are set out in full in the research paper in the online appendix of this section but the main reasons for defeat of the proposals are outlined here. There are some lessons that could be learned from this analysis that can be applied to a campaign to achieve the constitutional imperative of a united Ireland.

Conclusion by Leinster House Library and Research service on 1980 and 1995 Quebec referendum

The 1980 referendum was defeated primarily for the following reasons:

- A lack of understanding among voters of the issues relating to sovereignty as well as promises by the federal Canadian government that it would extend greater powers to Quebec after the referendum if Quebec voted No.

By 1995 the Quebec electorate was much more attuned to the issues around sovereignty due firstly to the growing popularity of pro-sovereignty parties such as the PQ and the Bloc Quebecois and the perceived lack of progression with regard to several Canadian governments' promises to delegate more powers to Quebec. Therefore the margin of defeat in the 1995 referendum was much narrower than that of 1980.

- Nevertheless the referendum was still defeated for a number of reasons, in particular the No campaigns suggestions that, by voting Yes, the Quebec people might lose access to a range of services including their Canadian passports, social welfare and other public service programmes, the right to vote in Canadian federal elections and the loss of some parts of Quebec to native aboriginal peoples as well as the threat of being seen as foreigners by Canada.
- In addition a large rally in Montreal the weekend before the referendum swayed many undecided voters to the Yes camp, in its focus on the continuation of Quebec as a distinct state but within Canada.

6.14 Scotland referendum 2014

The referendum on the proposal of Scotland leaving the 307 year union with England and Wales was held on 18 September 2014.

The result out of over 3.5 million votes cast was a margin for the ‘No’ side against the proposal of “Should Scotland be an independent country?” was 10.6 per cent.

2,001,926 electors (55.3 per cent) voted ‘No’

1,617,989 electors (44.7 per cent) Voted ‘Yes’³⁹¹

One of the key findings of the House of Commons Library research paper entitled ‘Scottish Independence Referendum 2014’ was that surveys indicated a clear majority of ‘No’ among women and a very large ‘No’ majority among older voters. Around a fifth of respondents who reported having voted for the SNP at the 2011 Scottish Parliament election voted ‘No’, whereas between a quarter and a third of Labour voters voted ‘Yes’.

51 per cent of Scottish born respondents voted ‘No’ where as 74 per cent of those born elsewhere in the UK voted ‘No’, as did 59 per cent of those born outside the UK.

The full research paper is available in the online appendix to this section. There are some lessons that could be learned from this analysis that can be applied to a campaign to achieve the constitutional imperative of a United Ireland.

³⁹¹ House of Commons Library, Scottish Independence Referendum 2014, 2014. Available at <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/RP14-50>



SECTION 7

7.0 Summary

High Court Justice Humphreys states:

“It is a matter of political judgement as to whether and to what extent to hold off all legal or constitutional change until after the achievement of the reunification of the island of Ireland.”⁶⁹²

In this section of the report we highlight the analysis of High Court Justice Humphreys work in ‘Countdown to Unity’ on the constitutional, legal and other changes that could or should take place before or after unification. The ratification and the implementation process of the referendum result is outlined. The issue of the continuation of the Northern Assembly after a referendum under the Good Friday Agreement is analysed, as are some of the flaws of the Good Friday Agreement as seen by Justice Humphreys. Development of the institutional architecture of the Good Friday Agreement after a referendum is examined, as is North-South and East-West infrastructure. Three different options are outlined by Justice Humphreys as to how to deal with the issue of pre-existing Northern Ireland legislation in a post- referendum Ireland.

The replacement of pre-existing legislation with Britain, including the Act of Union, by a new comprehensive treaty is outlined by Justice Humphreys. Also outlined are the legal changes with the EU and the consequences for international treaties signed by Ireland and the UK.

The challenge of uniting people as explained by John Hume is chartered by Justice Humphreys with the necessity of confidence measure by the Irish side. These include broadening the constitutional definition of citizenship to include the British identity on the island, giving rights to vote and to run for elected office to citizens who choose a British identity as provided for in the Good Friday Agreement, and the need to remove the legal sectarianism of the British state, among which would be the Coronation Oath Act. Justice Humphreys’ findings of unionists’ views of representation for Northern Ireland politicians in the current Dáil Éireann are outlined. The merits of ‘Gesture Politics’ on issues such as the Irish Language, the National Flag and Anthem is considered not necessarily to be a bad thing, Humphreys argues, if the gesture can be shown to have achieved something. Dr Martin Manseragh has described an

⁶⁹² Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.180.

approach whereby the traditions of both communities are accommodated as such: “we need not lessen our loyalties as we broaden our sympathies”.

In the online appendix to this section, we have included:

Union of Ireland Act 1800

Government of Ireland Act, 1920

Treaty of 1921

The Republic of Ireland Act, 1948

The Sunningdale Agreement 1973

New Ireland Forum Report 1984

Anglo-Irish Agreement 1985

Downing Street Declaration 1993

The Good Friday Agreement 1998

7.1 Recommendation

The Government needs to carry out an audit in relation to the legal and constitutional changes pre- and post-unification.

7.2 Legal and Constitutional changes before and after a referendum

High Court Justice Humphreys states:

“By and large, however most of the legal changes dealt with in this study are ones which can be put in place at the present time, well in advance of any concrete proposals for unity. However, there are some changes of a fundamental character which could only be contemplated in the post-reunification context or at the very least in the context of comprehensive all-party negotiations dealing with the reunification scenario, if such negotiations were to take place prior to reunification itself.”⁶⁹³

“Changes which are appropriate to the post-unification situation are discussed in the following sections, broadly they relate to two areas which involve negotiation with unionism and those areas fundamental to the Irish Constitution. It does not seem feasible or appropriate to deal with either of these in terms of legal or constitutional change in advance of unification, given that the unionist population will be unlikely to engage in negotiations thereon. But what can be done is that the willingness to engage in relation to these aspects can be signaled in advance. It is on that basis that the areas that follow are raised for discussion. Hogan has pointed out that in considering change to, for example, Article 7 or Article 8 on the flag and language, ‘we are probably close to the very limits of what southern Irish society will yield up in order to reach reconciliation with its Northern neighbours.’⁶⁹⁴

“Fundamental changes in relation to matters such as flags, language, or the overall social and political culture of the state will meet a degree of resistance that will surprise many.”⁶⁹⁵

⁶⁹³ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.180.

⁶⁹⁴ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.180,181.

⁶⁹⁵ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.181.

However, Humphreys also states that:

“There would in consequence seem to be a strong case for a revision of the Constitution- if not a new text altogether- on an agreed and cross-community basis in the context of a united Ireland.”⁶⁹⁶ “Subject to Irelands international obligations, the negotiations on a new constitution would effectively start on a blank piece of paper and with full openness to the view and proposals to be put forward from the unionist side. It is difficult to see how more than that could be proposed in advance of any concrete proposal of unification.”⁶⁹⁷

“Given that any likely constitution to emerge for a new united Ireland would involve the establishment of executive, legislative and judicial branches of government and a catalogue of human rights, one might well indeed conclude that such a hypothetical constitution would be similar to the existing one.”⁶⁹⁸

“However, it is hard to envisage that the negotiations on such a new constitutional text could realistically take place until such time as reunification was actually achieved as there would be not particular incentive from the unionist minority to engage with the issue prior to that point.”⁶⁹⁹

“Bertie Ahern ‘saw no great public demand for change’ ‘while ready to discuss different symbols for a new Ireland, he saw no need to launch a major debate until unionist came to negotiate’”⁷⁰⁰

“The forum for Peace and reconciliation which established a subcommittee on obstacles to reconciliation but never produced a final report. A draft report was, however, prepared but never formally published. The draft forum report dealt with a number of topics including;

⁶⁹⁶ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.181.

⁶⁹⁷ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.194.

⁶⁹⁸ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.195.

⁶⁹⁹ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.195.

⁷⁰⁰ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.194.

Constitutional change

Symbolism

Education

Health

Anti-discrimination

And the acknowledgement of the British-Irish dimension”⁷⁰¹

Importantly, High Court Justice Humphreys states the decision as to whether changes should be made now or later to the constitution were part of previous debates.

“When Taoiseach Garret FitzGerald proposed his 'constitutional crusade' in September 1981, a major factor in Fianna Fail's response rejecting this idea was the concept that changes such as those proposed by FitzGerald should not be considered until the unionists were 'around the negotiating table'. Clearly this is a matter of political judgment in each individual case in respect of any particular proposed legal or constitutional change. One recalls the long debate about the form of Articles 2 and 3 of the Constitution where, notwithstanding the case that was made for unilateral change, the strategy of awaiting change until such time as there was a prospect of comprehensive political and constitutional agreement between the two governments and the Northern Irish parties was arguably vindicated. That 'wait and see' approach permitted the regularization and amendment of Articles 2 and 3 to be balanced by appropriate measures from the British government and the parties. As against that, it is arguable that in order to marshal a majority in favour of unity there must be clarity about what unity would involve - and therefore a case for legislating for inclusion in advance to make clear that only the most inclusive form of unity will be proposed.”⁷⁰² “However, there would appear to be a tangible value in making clear that the constitution in its entirety would be on the table for renegotiation in the event of a united Ireland.”⁷⁰³

⁷⁰¹ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.180.

⁷⁰² Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.180.

⁷⁰³ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.158.

7.3 Ratification of the decision for a united Ireland

As Humphreys points out:

“The standard procedure adopted to implement an international agreement involving legislative change in two dualist jurisdictions tends to be along lines involving

Firstly signature of a bilateral agreement,

Secondly the introduction and enactment in both jurisdictions of such legislation as may be necessary to implement it,

Thirdly the execution and delivery of instruments of ratification,

Fourthly the commencement of the agreement either by way of the delivery of the second instrument of ratification or the expiry of a certain period of time from that date, or the happening of some other specified event.

“It is likely that the same sequence will apply in the event of an agreement for the handover of Northern Ireland. Indeed, the Good Friday Agreement itself envisages firstly an agreement between the two states and secondly the introduction of legislation to give effect to that agreement, with both governments committed to introduce and support in their respective parliaments legislation to give effect to that wish.”⁷⁰⁴

“Accordingly, following the new British-Irish handover agreement envisaged by The Good Friday Agreement. and the introduction and enactment of appropriate legislation in both the British and Irish parliaments to give effect to that agreement, including if necessary a bill to amend the Constitution which would need to be submitted to referendum if that had not already been provided for by anticipatory amendments to the Constitution, both governments would then execute instruments of ratification and deliver these instruments in a specified manner. The agreement would then commence in accordance with its terms on a specified date, which would also be the date on which the

⁷⁰⁴ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.194.

relevant British and Irish legislation would come into effect. The happening of the legal event to trigger such commencement, normally the mechanism specified in the agreement being operated possibly combined with the making of a commencement order for the legislation, would constitute the act bringing into effect the reintegration of the national territory.”⁷⁰⁵

“‘Ratification’ of the agreement to transfer Northern Ireland to Irish Sovereignty will take place, in accordance with international law, in the ordinary way by execution of instruments of ratification on each side. The coming into force of the agreement and the formal transfer of Northern Ireland will then require revision of political structures on each side but particularly on the Irish Side. In crude terms the British structure will be ‘slimmed down’ by the removal of the Northern Ireland dimension, while the Irish structures will be expanded so that a new thirty-two-county Dáil and Seanad will be put in place, the local assembly and executive recognized, local government structures recognised or created for Northern Ireland and provision made for statutory agencies. At its most basic level two new states and parliaments will be constituted, or perhaps more accurately reconstituted for Ireland and Britain.”⁷⁰⁶

⁷⁰⁵ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.145.

⁷⁰⁶ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.156.

7.4 Continuing the Good Friday Agreement after unification

As Humphreys points out:

“The agreement expressly imposes obligations on both governments into the long term. In the sense it is intended to apply both to the current United Kingdom and to a possible future United Ireland. In the absence of any amending agreement, it would therefore be a legal obligation on Ireland to continue to give effect to the agreement after Irish Unity. This simple conclusion has profound consequences for the way in which the whole question of reunification is to be approached. In particular, it means that the strong protections for which ever community does not command a majority within Northern Ireland would endure in the absence of any further agreement so as to benefit unionism following a united Ireland.”⁷⁰⁷

“There was also a pragmatic argument for maintaining the Good Friday Agreement institutions – it would provide certainty and stability and there by assist in making the case for a united Ireland. The SDLP also proposed that a referendum on unity should be held once the agreement institutions have bedded down and are operating stably, a call which has been made at various times by Sinn Fein, the UUP and the DUP the document stated. However, in the context of a referendum, the SDPL committed themselves to seeking the agreement of all the island’s parties that the agreement endures regardless of whether one is in a United Kingdom or a united Ireland.”⁷⁰⁸

“The SDLP has published a set of proposals in relation to unity which pin their colours firmly to the mast of the Good Friday Agreement. This document, A United Ireland and the Agreement, was published on 21st March 2005, although an earlier version had appeared in November 2003. The key message of the document is that in the united Ireland to which we are committed, all the Agreements’s principals and protections would endure”.⁷⁰⁹

⁷⁰⁷ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.104.

⁷⁰⁸ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.118.

⁷⁰⁹ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.117.

“The SDLP proposed that the Assembly would continue ‘as a regional Parliament of a united Ireland’. The executive would also continue as would the agreement’s equality and human rights guarantees and the rights to identify oneself as British or Irish or both and to hold passports accordingly. Going somewhat beyond the letter of the agreement, however, the SDLP proposed corresponding protections for unionism to those currently in existence for nationalism:

“East-West Co-operation would continue. In particular, just as the Irish Government has a say in the North now, the British Government would have a say in the North in a United Ireland.

“Just as there is a northern representation in the Seanad at present, those in the North who want it should have representation in the House of Lords in a United Ireland.

“The arguments in favour of such protections were trenchantly made:

‘unity must not be about entrapment of a new minority in a united Ireland we will still need to find a way of sharing our society as equals every bit as much as we do today’⁷¹⁰

The document also envisages that unity would bring changes to the Good Friday Agreement itself in the way envisaged by the agreement, namely through a review.

“Finally describing the agreement as a covenant of honour (surprisingly rather than a law) the SDLP made the point that the best protection for unionists in a united Ireland would be through the mechanism of the agreement.

“For unionist to ‘smash the agreement’ would be to forgo not only their say in Northern Ireland of today but their guarantee position in a future united Ireland

“Launching the document the SDLP chairperson, Patricia Lewsley put the SDLP proposal in the context of the ‘true republican ideal of uniting Catholic, protestant and dissenter’.

“The thesis that there would be practical advantages to preserving the Good Friday Agreement post a united Ireland was also advanced by the Unionist Commentator Roy Garland. Reacting to the November 2003

⁷¹⁰ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.118.

version of the SDLP proposal, he described them as ‘welcome and innovative’ It would fulfil a unionist proposal to ‘insist on Northern Ireland remaining an administrative unit, even if Irish Unity were achieved and therefore ‘has some potential to appeal to unionists.’”⁷¹¹

⁷¹¹ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.119,120.

7.5 The constitutional & legal changes in Ireland

In his book Humphreys argues that;

“It is clear that the form of united Ireland envisaged by the Good Friday Agreement is one which would involve the continued existence of the Northern Ireland Executive. The absence of any provision for a devolved executive in the constitution would need to be rectified in anticipation of such an eventuality, and the extension of the existing terms of Article 15 which provides for devolved legislatures to also cover devolved executive authority would seem to be a worthwhile and permissible amendment even at this stage, well in advance of any proposal for a united Ireland. It is noteworthy that the 1937 Constitution as drafted had no difficulty in envisaging the future reunification of the island, making appropriate provision for that eventuality – in particular by allowing the recognition of subordinate parliaments and by allowing membership of the Commonwealth. Given the change in circumstances brought about by the Good Friday Agreement, it seems appropriate that this provision now be updated so as to be capable of operating in the event of the Good Friday Agreement provision for reunification being put into effect.”⁷¹²

⁷¹² Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.139,140.

7.6 Downing Street Declaration

Consequently, both Governments commit themselves to the principle that institutions and arrangements in Northern Ireland and North-South institutions should afford both communities secure and satisfactory political, administrative and symbolic expression and protection. In particular, they commit themselves to entrenched provisions guaranteeing equitable and effective political participations for whichever community finds itself in a minority position by reference to the Northern Ireland framework, or the wider Irish framework, as the case may be, consequence upon the operation of the principle of consent.

Downing Street Declaration

“Logically it seems to follow from this commitment that it was intended that the structure to ensure cross party participation in Government, now set out in the Good Friday Agreement, would endure after the advent of a united Ireland. To some extent the commitment in the Joint Framework document were provisional in nature in that they were subject to subsequent negotiations, and the Joint Framework Document was not as such a legally binding instrument. Nonetheless, this commitment is an important element of the travaux préparatoires in indicating the intention of the government in negotiating the Good Friday Agreement as to whether the agreement was intended to be simply a transitional one pending a united Ireland or rather as the Joint Framework Documents would suggest, an ‘entrenched’ agreement which would endure regardless of the shifting numerical composition of the Northern Ireland electorate.”⁷¹³

⁷¹³ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.64.

7.7 Developing the institutional infrastructural architecture of the Good Friday Agreement

“It is obvious that one of the critical ways to bed down the Good Friday Agreement itself is to ensure that the agreement is fully implemented in all of its aspects. This is a process which requires action on the part of the two governments as well as all of the parties. Certainly insofar as making more real the roadmap set out in the agreement towards a united Ireland is concerned, the full implementation of the agreement by the Irish and British governments and the parties is a major desideratum. While large sections of the agreement have already been implemented, there are a number of areas where there is considerable progress to be made, including areas within the competence of the governments. It is noteworthy that on the first suspension of the institutions on early 2000, the Taoiseach stated that ‘there is no reasonable alternative to the full implementation of the Good Friday Agreement and, pending the re-establishment of the institutions, we will continue to implement resolutely all the outstanding elements of it within our responsibility.’”⁷¹⁴

“Indeed, the putting in place of strong rights protection including a Bill of Rights for Northern Ireland has been a feature of the political agenda long before even the Good Friday Agreement. Overall it is clear that there is still a substantial political agenda to be achieved in terms of implementing the agreement in areas such as equality, human rights, examining past collusion between the security forces and loyalist paramilitaries, promoting the Irish language, winding down the British security presence, and working towards better justice and policing.”⁷¹⁵

⁷¹⁴ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.159.

⁷¹⁵ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.159.

7.8 Developing North-South & East –West infrastructure

“Another critical aspect to be considered is the widening and development of the six county, North-South and East-West institutional architecture to strengthen all of the relevant relationships. One might consider all of these sets of possible institutions in the form of a matrix with two axes, one being different sets of relationships and the other consisting of the forms of institution required, legislative, executive, judicial, administrative and related to civic society. The matrix of relationships can be considered in tabular form as set out in Table 1.”⁷¹⁶

Matrix of Institutional Architecture by Strand

Type of Institution	Strand 1 NI	Strand 2 N-5	Strand 3 E-W
Legislative	Assembly	None. N-S parliamentary structure envisaged by Joint Framework Document and April 2003 and December 2004 proposals	Pre-existing British-Irish Interparliamentary Body continues – agreement envisages development of this
Executive	Northern Ireland Executive	North-South Ministerial Council – Joint Secretariat.	British-Irish Council (involves devolved institutions and other administrations in the islands). Secretariat to British-Irish council provided by two governments British-Irish Intergovernmental Conference (two governments).
Judicial	No new institutions. Pre-existing courts continue.	None.	None.
Administrative	Some new institutions under Good Friday Agreement: Northern Ireland Human Rights Commission, Equality Commission.	North-South implementation bodies in specified areas Joint Committee bringing together North and South Human Rights Commissions.	None.
Civic Society	Civic Forum	None.	None.

Table 1

⁷¹⁶ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p. 160.

7.9 Flaws in the Good Friday Agreement

“The Good Friday Agreement is flawed and incomplete at a very basic level in that it fails to make express provision for a whole range of contingencies, the central one being the unwillingness or inability of parties representing a majority on either side of the community to operate the agreement. By failing to provide a fall back mechanism, the agreement certainly leaves the door open to direct intervention by the Westminster parliament of the kind made by the Northern Ireland Act 2000. By the same logic, however the agreement, being a partial agreement only, could equally leave the door open to other forms of agreement or agreement designed to cater for an absence of working institutions. This aspect of the agreement may hold out some possibilities in terms of ensuring that there is political progress in Northern Ireland if, in future, unionist politicians decline to work the agreement. Given the partial nature of the agreement, it would be no breach of the Good Friday Agreement for the parties who are prepared to operate it and the governments to work out alternative fall back mechanism, other than simply that of direct rule from London.”⁷¹⁷

⁷¹⁷ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p. 97.

7.10 Pre-existing Northern Ireland Law in a United Ireland

“There would seem to be the following three basic options for dealing with the question of the status of pre-existing Northern Irish law:

Option 1

“The first option would be to disapply such law in its entirety and to apply the law of Ireland to the entire 32 county entity. Such an arrangement would have the advantage of simplicity and uniformity, but there is one very powerful argument against it. The uniform application of the law of the 26 counties would set aside years of effort by the devolved legislative assembly in enacting legislation on a cross community basis. It would seem that a legislative solution which undermined these efforts would be unacceptable politically and would hinder efforts to promote reconciliation and mutual understanding. In addition, a significant legal vacuum would be created insofar as law exists in Northern Ireland to deal with local, personal and private matters not catered for by the law of the 26 counties.

Option 2

“A second option would be to apply the law of Ireland insofar as it related to non-devolved matters, while continuing the law in force in Northern Ireland relating to devolved matters. Obviously the law on non-devolved matters would change in any event in the context of a united Ireland; for example, the law relating to succession to the crown would not have a corresponding body of legislation in this state. This solution would preserve the legislation enacted in relation to devolved matters while allowing for the application of general law of the 26 counties to Northern Ireland in relation to other matters. However, there are some difficulties with this also. The major complication is that Westminster remains, under the Good Friday Agreement a body which has legislative competence for Northern Ireland on all matters, notwithstanding devolution. Accordingly, some devolved matters will have been affected by legislation enacted at Westminster even after the Good Friday Agreement as well as Westminster legislation before devolved. As a result, the law of Northern Ireland relating to even

devolution matters is a complex patchwork of native and Westminster legislation

Option 3

“A third option would be to carry over the law of Northern Ireland in its entirety insofar as it stood on the day immediately preceding the reintegration of the national territory, with such modifications as may be necessary and insofar as it was consistent with the law and Constitution of Ireland. This option would allow maximum continuity and would minimize any delay that might be occasioned by, for example, the specific identification of devolved and non-devolved matters, as a process which could take a considerable period of time and cause some degree of uncertainty. Obviously, as far as future measures are concerned, following reunification the Oireachtas would be a 32 county entity and would have the power to legislate for the whole island on any matter, much as Westminster enjoys that power in relation to Northern Ireland at the present time. Such a power would be exercised sparingly in relation to devolved matters where a functioning devolved legislature existed. As regards the second and the third solutions, which would continue in force at least some if not most of the pre-existing Northern Irish law, such scenarios would need to be accompanied by extensive modification of enactments, changing references to UK matters so as to apply to the corresponding institutions in the new state.”⁷¹⁸

⁷¹⁸ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.144, 145.

7.11 New treaty with Britain

Replacing the Act of Union 1801, Treaty of 1921 and others

Humphreys states:

“The opportunity could be taken in the context of any such new international agreement – if not before then- to review and perhaps rationalize and update the overall status of bilateral agreement between the two government. There are a considerable number of bilateral Anglo Irish agreements having constitutional implications which might be appropriate for review in the context of the international agreements between the two states giving effect to a future referendum on a united Ireland, or indeed possible review even in advance of that.”⁷¹⁹

“One item for examination in this regard is the 1921 Treaty itself and the various agreements amending it. The Treaty, while still in force in international law between the two states, has ceased to be a definitive statement of the relationship constitutionally between these islands and between North and South. In consequence, it appears that there is a case for a new international agreement to be entered into between the two governments at this stage formally abrogating the 1921 Treaty and replacing it with provisions that do reflect the current relationship between the two states.”⁷²⁰

“While discussions of an exploratory nature could take place between the governments well in advance, it would seem unlikely that fully fledged negotiations on a new treaty could commence until such time as the prospect of a majority in Northern Ireland in favour of a united Ireland became more imminent, Nonetheless, it would seem desirable that such negotiations could commence as soon as that prospect appeared on the horizon, as to leave the commencement of such negotiations until after a poll would run the risk of significant delay.”⁷²¹

⁷¹⁹ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p. 17.

⁷²⁰ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p. 17

⁷²¹ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.132.

“If a devolved administration within a united Ireland did collapse for a period of time and satisfactory alternative proposals could not be put in place, it might be argued that it would be important to retain a formal structure for consultation with the British government, particularly on non-devolved matters, if for no other reason than to provide a disincentive to continued stagnation.”⁷²²

⁷²² Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.131.

7.12 Legal Changes with EU

“As with the reunification of Germany, it is clear that any change to the extent of the national boundary of Ireland will require changes in European Union law across a range of issues.

“Judging by the volume of European Union Law affected by any change in the boundaries in the union by enlargement, it is likely that the technical exercise of adjusting European Union law to accommodate Irish reunification will be an extensive one and may take a considerable period of time.

“However, it is to be noted that in the context of German reunification, the European Union facilitated the re-integration of the German national territory by promptly adopting the necessary legal instruments.”⁷²³

7.13 Consequences for international treaties signed by Ireland and the UK

“Of some significance the question of any necessary or appropriate ramification for international legal instruments to which Ireland or the United Kingdom, or both, were parties. It is likely that at least some of the international treaties to which the two states or either of them are parties will require some form of adjustment in the event of Irish reunification. However, it is likely that this matter can be dealt with on a case by case basis.”⁷²⁴

⁷²³ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.144, 145.

⁷²⁴ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.139.

7.14 Confidence building measure on the Irish side

The Downing Street Declaration included:

“In recognition of the fears of the unionist community ... the Taoiseach will examine with his colleagues any elements in the democratic life and organisation of the Irish state that can be represented to the Irish government in the course of political dialogue as a real and substantial threat to their way of life and ethos, or that can be represented as not being fully consistent with a modern democratic and pluralist society, and undertakes to examine any possible ways of removing such obstacles. Such an examination would of course have due regard to the desire to preserve those inherited values that are largely shared throughout the island or that belong to the cultural and historical roots of the people of the island in all their diversity.”

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Justice Humphreys notes:

“One can see in this declaration considerable scope to retain in place, whether in modified or unmodified form, legal or constitutional provisions which might not be acceptable to unionism, but which nonetheless reflect majoritarian values - either for that reason alone or because unionism fails to engage in the 'course of political dialogue' that is a precondition for change. Indeed even in the event of political dialogue taking place, it would be unwise and inappropriate to give any absolute commitment to reshape any and all legal and constitutional provisions that might find their way on to the negotiating table pursuant to unionist complaint. However, when one poses the question as to what precisely has been done to implement this commitment in the Downing Street Declaration; it is difficult to identify much in the way of tangible progress. This may be perhaps justify on the very basis that the deceleration is phrased in terms of matters brought to the attention of the Irish

⁷²⁵ Downing Street Declaration

government ‘in the course of political dialogue’ a dialogue which has not been engaged in by unionism in any organised way perhaps for the understandable reasons from their particular point of view.”⁷²⁶

⁷²⁶ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.179, 180.

7.15 Uniting people as well as territory

“John Hume frequently commented that the task of the peace process was to unite people rather than territory. And it is true that the new Article 3.1 of the Irish Constitution speaks literally of seeking ‘to unite all the people who share the territory of the island of Ireland’. However, it must be said that the people are in turn defined by reference to the territory, and the reference to the application of law in Article 3.1 by reference to ‘area and extent’ makes it clear the unity involves a territorial extension of the state as well as uniting hearts and minds. It might therefore be more precise to say that the new Articles 2 and 3 seek to unite both the peoples of these island and ultimately, the territory of the island of Ireland itself.

“The study will examine legal aspects of the efforts to build confidence between the two communities and unite the peoples who share these islands, as well as preparing for unity in way compatible with, albeit not strictly required by, the Good Friday Agreement.”⁷²⁷ “The breakdown as between changes which suggest themselves prior to unity, possibly even at this juncture and changes which arise closer to or after the process of reunification.”⁷²⁸

“While it is a matter for political debate and judgement to a considerable extent as to whether appropriate confidence building measures or similar measures should be put in place well in advance of reunification, or alternatively only at the time of reunification, certain suggestions can legitimately be advanced in this regard.”⁷²⁹

“The agreement envisaged the creation of new institutional architecture, as well as other institutions which are sketched out as possible developments but have never been summoned into existence.”⁷³⁰

“Over all a significant programme of institutional construction could be

⁷²⁷ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.157.

⁷²⁸ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.157.

⁷²⁹ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.157

⁷³⁰ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.175.

grounded upon the opportunity presented by the agreement. Such a programme, combined with vigorous confidence building measures on the British side and measures to promote an all-island identity, could play a major role in recognizing the complex identities of those who share the island of Ireland and in seeking to unite the peoples of the island and not just the territory.⁷³¹

⁷³¹ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.175.

7.16 Citizenship

“A fundamental difficulty with the existing text of the Constitution, however, arises in relation to the application of its provisions to citizens of Ireland in the first instance, with only limited rights being conferred on non-citizens. The Good Friday Agreement envisages that the right of all of the people of Northern Ireland to Irish or British citizenship or both would be preserved in a united Ireland. In essence there is a central contradiction in the Constitution as it now stands.”⁷³²

“The contradictory concepts continue to sit uneasily side by side in the current text, awaiting resolution by expressed amendment or possibly creative judicial reasoning.”⁷³³

“In many respects, measures to give effect to a future bilateral treaty on unity, and to ratify it, are of a technical character. The greatest legal challenge will be posed for the Irish constitutional order, which will need to readjust a number of concept, particularly, that of limiting political participation to citizens. There is of course nothing stopping the Irish States from contemplating these questions well in advance of reunification, and making the necessary accommodation in a less fevered atmosphere.”⁷³⁴

recognise the birth right of all the people of Northern Ireland to identify themselves and be accepted as Irish or British, or both, as they may so choose, and accordingly confirm that their right to hold both British and Irish citizenship is accepted by both Governments and would not be affected by any future change in the status of Northern Ireland.

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“One can then envisage a situation in which a very substantial number of people who reside within the new state (i.e. the 32 county united Ireland)

⁷³² Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.140.

⁷³³ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.157

⁷³⁴ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.

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⁷³⁵ GFA

would not in fact be citizens of that state but would rather be British citizens maintaining their right to assert their British identity as guaranteed by the Good Friday Agreement itself. One can see in that context that it would be wholly unacceptable to maintain the current constitutional position where by the right to engage in important aspects of state activity would be confined only to Irish citizens for example the right to vote in referenda or presidential elections it would be unacceptable to maintain the position that human rights guaranteed by the constitution itself are expressly stated to be conferred only on Irish Citizens, as almost all of the rights set out in article 40,44 and 45 are.”⁷³⁶

“The existing text of the Constitution, insofar as it by and large confines constitutional rights to citizens, is not only inherently objectionable but would become wholly untenable in the context of a united Ireland – and certainly in the context of a united Ireland which permitted and recognized the rights of its inhabitants, who would otherwise in ordinary course be citizens, to hold affinity with the United Kingdom.”⁷³⁷

⁷³⁶ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.140.

⁷³⁷ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p. 141.

7.16.1 Recognising Irish identity on the island

It is unclear if there is the readiness in the South to address and to come to terms with the demands that will be made on it to accommodate the unionist identity. The state has been accused of being partitionist in its mentality, a point articulated by Humphreys below. Unity and progress towards it will be a major challenge for the nationalist and republicans, perhaps especially in the south.

The 26 county state, Humphreys argues:

“Has become, if not parochial, then at least partitionist in mentality and perhaps naturally has become attached to its own identity as an Irish 26 county state in a manner that would not be sustainable were the Irish state to be extended to the remaining 6 counties. This process has the potential to pose a major challenge to nationalism and perhaps even more so to republicanism. There seems to be a lack of evidence that the south or even the nationalist and republican North, has psychologically come to terms with the demands that may be placed on its mind set in the context of the negotiations on accommodation for the unionist minority that will accompany (or more likely follow on from) national reunification. In that transcending, historic context it is hard to avoid the prospect that all of the partitionist aspect of the 26 county identity must be put on the table for negotiation, review and replacement when necessary. While article 2 and 3 of the Constitution were put on the table during the 1996 to 1998 talks, the momentous process of national reunification might involve the entire 1937 constitution including national symbols such as the flag and non-constitutional symbols such as the national anthem and other public badges of cultural identity.”⁷³⁸

Humphreys is “not necessarily suggesting that there is anything inherently wrong with the 1937 constitution, its institutional provisions or its protection for human rights.” However Justice Humphreys goes on to suggest that:

“The unionist minority have little or no sense of ownership of the constitution and unless the possibility of such a sense of ownership is

⁷³⁸ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.xxiii.

developed there is every prospect that they will feel as isolated in the 32 county republic as the members of the nationalist majority of the island of Ireland who live in Northern Ireland have felt during the worst years of the Stormont government.”⁷³⁹

“Republicans will also be challenged to accommodate the British identity in ways that may initially appear unpalatable and to accept that unity will not of itself usher in Utopia but rather will be an opportunity for the exercise of self-determination in whatever way commends itself to the all island majority.”⁷⁴⁰

⁷³⁹ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.10.

⁷⁴⁰ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.10.

7.16.2 Measures to promote Irish identity

“‘Irish Identity’ can be a difficult thing to define. Christopher McGimpsey referred to the task of such a definition as being ‘as simple as nailing jelly to a wall’. In tandem with recognising the British Identity in Ireland, it is equally important to recognise the Irish identity of those in Northern Ireland who assert such an identity. This is not entirely a matter for the British government, as it has ramifications for the law and the practice of Ireland also, and can be considered under a number of headings.”⁷⁴¹

“Other means of recognising the Irish Identity of the nationalist community in northern Ireland have also arisen for discussion in the past, centering on the question such as availability of Irish Television in Northern Ireland and so on. Clearly this is an agenda that will require ongoing attention and is not something which can be neglected until there is a firm proposal for a united Ireland. The Irish identity of nationalist in Northern Ireland is something which is put centre stage by the Good Friday Agreement itself and, subsequently, it seems appropriate and proper to provide due recognition and protection for this identity at this stage such measures include anything tending to promote the nationalist sense of purpose and identity, including promotion of culture and language. Clearly such measures need to be balanced by measures acknowledging the British or Ulster Scot identity, where appropriate.”⁷⁴²

“However, cross-border relationships between, for example local authorities could be one area where some measures of legal facilitation may be appropriate.”⁷⁴³

⁷⁴¹ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p. 170.

⁷⁴² Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p. 174.

⁷⁴³ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.175.

7.16.3 Recognising the British identity on the island

The issue of accommodating and recognising the British identity is a key area raised by Humphreys and need to be addressed.

Recognition must also be given to the British identity, to which a very large number of inhabitants of the island subscribe as being their primary cultural signifier. However, above and beyond the self-categorisation of unionists (principally), as a related question is the extent to which there is also a need to recognise the inherent British identity on the island of Ireland as a whole. The British dimension reflects itself in many areas and facets of life, often without express recognition. One view that warrants examination is that by acknowledging openly the British dimension to the Irish cultural identity it may be possible to enhance and bolster the case for reunification, and making clear that the British identity will be respected within the context of a new 32 county entity.

“A significant aspect of the problem lies in the question of national identity which is at the core of the clash between the two versions of the constitutional future for Northern Ireland. The unionist case is one of attachment to the British identity, an identity which it is perceived cannot be celebrated and achieved with in a united Ireland. The challenge for nationalism therefore is to identify legal measures which would recognise the legitimacy of the British Identity and the British dimension to Irish Life.

“It may seem an unusual or possibly surprising concept to some, but it is clear that there is a significant British dimension to the Irish experience:

The primary language

The broad outline of our public institutions Common law experience
British Culture permeates Irish society

The British experience is very much part of life for significant numbers of people in the state, whether through family relationship, travel, work, emigration or media.

“Indeed it should plausibly be contended that the average person in the 26 counties is significantly close culturally to London than to Belfast.”⁷⁴⁴

However in making the case for Irish unity, Humphreys argues that it is essential to be

⁷⁴⁴ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p. 190.

in a position to contend that the British identity of unionists would be protected, recognised and cherished in a hypothetical 32 county republic. It would seem to follow that the best way of ensuring that this would be the case, and would be seen to be likely to be the case, would be to see ways, including legal measures if appropriate, to recognize and cherish the British identity within the 26 county state. To date there are few tangible legal instruments and measures to which one can point which can be regarded as acknowledging the British dimension.”⁷⁴⁵

7.17 Elections & Referendum

Voting in a Presidential election

“The question of voting rights in presidential elections or referenda where the franchise is confined constitutionally to citizens is a more complex one. On the one hand, a coherent argument could be maintained that the extension of voting rights to British citizens in connection with Presidential elections and referenda could be postponed until a united Ireland appeared on the horizon, as there is not the same pressing case of natural right to vote for non-citizens in the state as presently constituted. A strong case can be made in the interests of promoting reconciliation and allowing recognition for the British dimension of the Irish Community and cultural experience for making provision, by way of an enabling provision, for the extension of the franchise. Any constitutional amendment to extend the franchise for presidential elections and referenda would be likely to be modelled, at least at this stage, on the terms of Article 16.1.2.ii inserted by the Ninth Amendment of the Constitution Act 1984, which enables British citizens to vote in Dáil i.e. that the constitutional right would be conferred on Irish citizens with provisions being made for such other persons in the state as may be prescribed by law to exercise the franchise in due course, if so provided for by law.”⁷⁴⁶

⁷⁴⁵ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p. 191.

⁷⁴⁶ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p. 141,142.

The new Ireland Forum as well as outlining the makeup of the structure of federal or confederal state set out many innovative proposals included the election of head of state.

“The functions of Head of State could be carried out by a President, the office alternating between persons representative of the Northern and Southern states.” New Ireland Forum Chapter 7.4

7.17.1 Voting right for British Citizens in Ireland

“One attempt in this regard was the bill to confer voting rights on British citizens which was introduced by Garrett Fitzgerald’s government in the mid-1980’s and subsequently held to be unconstitutional. That was followed by the Ninth Amendment of the constitution act of 1984, signed by the President on 2 August 1984. The amendment provided for a new Article 16.1.2 of the Constitution which permitted not only all citizens but in addition ‘such other persons in the State as may be determined by law’ to have the right to vote at an election for members of the Dáil Éireann. Pursuant to this provision, legislation was enacted permitting British citizens to vote in Dáil elections, a provision now contained in the Electoral Act 1992. Under the constitutional amendment, this measure is confined to Dáil elections and does not apply to referenda or presidential elections, notwithstanding the more ambitious initial proposal in the original bill, certainly, following a united Ireland, a provision preventing a million British citizens on the island of Ireland of Ireland from voting in referenda or presidential elections would be untenable.”⁷⁴⁷

7.17.2 Run for Presidency & Dáil

“There is also the question of extending entitlement to run for the office of President or member of Dáil Éireann to non-citizens, and again similar considerations might apply. The current constitutional arrangement whereby these offices are confined to citizens would be untenable in a united Ireland and arguably on democratic grounds some case could be made for an extension even in advance of that eventuality.”⁷⁴⁸

“In many respects, measures to give effect to a future bilateral treaty on unity, and to ratify it, are of a technical character. The greatest legal challenge will be posed for the Irish constitutional order, which will need

⁷⁴⁷ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.142.

⁷⁴⁸ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.142.

to readjust a number of concepts, particularly, that of limiting political participation to citizens. There is of course nothing stopping the Irish State from contemplating these questions well in advance of reunification, and making the necessary accommodation in a less fevered atmosphere.”⁷⁴⁹

⁷⁴⁹ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.155.

Seanad Éireann

The Seanad was designed to ensure that all facets of our community be reflected in the House.

Deeply aware of the special relationship that has always existed between the Seanad and Northern Ireland the Working Group gave much consideration as to how this might be strengthened and deepened in a reformed Seanad.

The ties between the Seanad and Northern Ireland are very much cross community. Various Taoisigh have included among their nominees people from Northern Ireland. Arising from that the Seanad has been greatly enriched over the years by the contributions of extraordinary caliber of Senators from the North. The list including, among others, Sam Mc Aughtry, Brid Rodgers, Gordon Wilson, Maurice Hayes, John Robb, Seamus Mallon is long and impressive. The contributions of those from a Unionist background have helped broaden understanding in the Republic of their culture.

The special relationship between the Seanad and Northern Ireland is reflected in a number of developments over the years. The Working Group found it significant and informative that thousands of Trinity College and National University of Ireland graduates from Northern Ireland continue to vote in Seanad General elections for seventy plus years now. This is a politically unique cross community engagement.

Indeed the very first Chair of Seanad Éireann was Lord Glenavy, a Trinity graduate whose family roots were in Glenavy Co Antrim.

It is often forgotten that a number of the Nominating Bodies are all Island institutions. Given the range of issues such as energy, environmental protection, animal health and emergency planning which have an all-island dimension, it would be open to nominating bodies to nominate suitable candidates from Northern Ireland.

Arising from that the Working Party recommends that Northern Ireland vocational bodies be encouraged to apply for registration as nominating bodies.

Encouraged also by the spirit of the Good Friday Agreement especially in the confirmation of the Principle of consent and the commitment "... to partnership, equality and mutual respect as the basis of relationships between North and South,..” the Working Group considered the extension of voting rights to those citizens of Northern Ireland who wished to engage and participate. The constitutional status of Northern Ireland having been confirmed, the Good Friday Agreement goes on to vindicate the right of residents there to identify themselves as Irish, British, or both, and to express freely their chosen identity. Some years ago Mr Drew Nelson, Grand Secretary of the Orange Order surprised many by accepting an invitation to address Seanad Éireann it was a significant milestone in the relationship with the Unionist community. Even more significant was Mr Nelson’s statement that he saw his engagement with the Seanad as a “springboard for the future rather than as a shackle to the past”. Speaking to the media that day Mr Nelson, in words that resonate with the proposal in the Good Friday agreement to establish a Civic Forum, said “I am thankful .. that there is coming into play in mainstream civic society in the Republic a recognition of a value of the minority Protestant community..”

That statement, the historical experience, the special relationship, the positive outcome of NI graduate voting and the principle of consent articulated in the Good Friday Agreement greatly encouraged the Working Group to take an inclusive and generous approach in the matter of extending the voting franchise for Seanad elections to those normally resident in Northern Ireland who would wish to participate.

The fact that the Seanad does not have authority over taxation and finance matters ensures that this recommendation does not threaten or undermine our democracy but gives a freedom which could never be exercised or contemplated in a lower house. Allowing citizens of Northern Ireland to vote in Seanad General Elections provides for another clear distinct feature of the Seanad.⁷⁵⁰

⁷⁵⁰ Report of the working group on Seanad Reform 2015

“It is interesting that, in October 1922, the leader of the Labour party, Tom Johnson, proposed that when the Senate was being established, steps be taken to provide that organisations representing ‘the northern parts of Ireland’ would be included. He suggested, for example, the Trades Councils of Belfast or Derry”⁷⁵¹ “It might be argued that the Seanad is politically a more convenient venue for representation of this type. There certainly is a risk that an arrangement whereby the parliamentary institutions of the state are extended to Northern Ireland could be seen as cutting across the architecture of the Good Friday Agreement.”⁷⁵²

7.17.3 Representation in the current Dáil Eireann

“It was suggested in the report of the All-Party Oireachtas Committee on the Constitution that there may be constitutional difficulties in providing an unlimited right of audience to individuals who are not members of the Oireachtas”⁷⁵³

“Northern MP’s are permitted to attend meetings of the Joint Committee on the Implementation of the Good Friday Agreement. The argument in favour of some kind of alternative arrangements such as representation in the Seanad, is that Northern nationalists are not only members of the nation but citizens of the state as a matter of Irish law and therefore have a legitimate case for participation in the political life of the nation.”⁷⁵⁴

“One option which has not as yet been considered is the question of extending the speaking arrangements to also include the east-west dimension, to include an organized audience in a special committee by parliamentarians in Westminster above and beyond those in Northern

⁷⁵¹ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.155.

⁷⁵² Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.172.

⁷⁵³ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.172.

⁷⁵⁴ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.171,172

Ireland. Even the Northern Irish representation in a committee is limited to MPs and not members of the upper house, so there is perhaps room for a more inclusive form of arrangement.”⁷⁵⁵

“On balance it is hard to conclude that a standing right of audience in a special committee of the Dáil for a class of individuals who are not members of the Dáil would be unconstitutional. Standing orders of each house at present give a standing right of audience to ministers of state who are members of the other house and, perhaps more significantly the government by executive decision has made arrangements for ministers of state, including the chief whip and the Minister for Children, to have a right of audience at cabinet meetings despite not being members of the government. Even the attorney general’s right to attend cabinet is not of constitutional origin. Unless such arrangements are also unconstitutional it is hard to see how the ‘thicker end of the wedge’ that would be represented by a right of audience for six county parliamentarians would be unconstitutional.”⁷⁵⁶

7.17.4 Unionist reaction to representation in Dáil Eireann for Northern Ireland MP’s

“The Ulster Unionist Party strongly rejected the proposal for speaking rights in the Dáil, describing it as a ‘an embryonic All-Ireland Parliament’ and said that ‘if it is pursued by Dublin we will no longer be obligated to our support for North-South institutions. The British Conservative Party was also warned against the creation of a ‘32 county Dáil in shadow form’ which would ‘undermine the principle of consent’. Such a move is very unhelpful in terms of fostering genuinely good relations with Northern Ireland.”⁷⁵⁷

⁷⁵⁵ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.172.

⁷⁵⁶ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.173,174

⁷⁵⁷ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.172.

7.18 Gesture politics

“There is something of a balance to be struck between on the one hand removing the more egregious sources of unionist complaint which cannot be logically defended and on the other hand avoiding any more general kind of review of the law and constitution of the state which, at the present time, would be unlikely to engage the interest of unionists. ‘Gesture Politics’ is not necessarily a bad thing if the gesture can be shown to have achieved something.”⁷⁵⁸

The unionist attitude to change in the 26 county state has been described as follows:

“While unionists might applaud the emergence of a more pluralist society in the Republic, they do not see any necessary connection between such developments and better relationships on the island of Ireland. Certainly, they see no connection at all between such changes and the claims of Irish political unity. Unionist politicians have made and continue to make unfavourable comments about the Catholics and Gaelic ethos of the south and it is possible to examine the nature of their criticisms. However, this does not mean that they or those who they represent are prepared to discuss the conditions for the removal of these elements in the life of the southern state. To do so, as they see it, would implicate themselves in negotiating their place in a united Ireland.”⁷⁵⁹

“On the basis of such views, it might be argued that the constitutional and legal changes, such as for example the amendment of Article 44 of the Constitution, amount to little more than ‘Gesture Politics’ or a fruitless attempt to appease or mollify sections of the unionist community who do not wish to be appeased. It might be further contended that such changes have in the past achieved little or nothing in terms of changing unionist attitudes towards the state or towards the

⁷⁵⁸ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.185, 186.

⁷⁵⁹ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.185.

prospect of a united Ireland.”⁷⁶⁰

“Irish Nationalism may be viewed as in tension between two competing objectives. On the one hand is the desire to cherish all that is distinctively national, such as the flag, the anthem, the constitution, the Irish language, the national symbols. On the other hand is the imperative to accommodate the over one million people of a British identity on the island. Perhaps the most significant provision of the Good Friday Agreement in terms of accommodating identity is the express recognition that individuals in Northern Ireland can go on to the future seeing themselves as Irish or British or both. The provision is fundamentally incompatible with a traditional view of unification where by citizenship of the Irish State is to be thrust upon those of another tradition. However, a strong case can be made that the implications of this cultural gear shift have yet to be worked through. Much of the Constitution remains stranded in the previous, paradigm, and to that extent the original hope that the Constitution could accommodate a united Ireland without express amendment seems forlorn. Reviewing these provisions can of course be postponed sine die, until unification is imminent. However, there might be advantage in seeking to initiate such progress of review in calmer times.”⁷⁶¹

⁷⁶⁰ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.185.

⁷⁶¹ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.199,200

7.18.1 The National flag

The National Flag is a tricolor of green, white, and orange.

Article 7 of the Constitution

Justice Humphreys states that:

“One approach in the unity context might be to leave over any reforms that would require to be revisited following unity, such as a new national flag.”⁷⁶²

“One strong reason from a government point of view why there might be no question of changing the flag or other such national symbols in advance of unity is that to do so would make a gift of the existing flag or other symbols to [dissident] republicanism, which would in all likelihood be happy to take possession of the vacuum created by the withdrawal of the state recognition. The current Irish National Flag has the noble republican aspiration of uniting orange and green with the white of peace, its provenance is such that the original message has not made itself entirely clear to the unionist community”⁷⁶³

Reverend Michael Cavanagh (Church of Ireland) is the chair of the Thomas F Meagher Foundation which partnered with the Government in the 1916 Rising Centenary commemorations. The Foundation promotes pride in and respect for the Irish flag and its meaning for peace between all communities on this island.

The Foundation has done much to foster an understanding of the origins of the flag as described by Thomas F Meagher, who flew a tricolour flag for the first time from 33 the Mall in Waterford on 7 March 1848.

⁷⁶² Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.158.

⁷⁶³ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.197.

The White in the centre signifies a lasting truce between Orange and Green and I trust that beneath its folds the hands of Irish Catholics and Irish Protestants may be clasped in generous and heroic brotherhood.

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“An alternative might be the ‘two flags’ approach, where symbols of both communities would be adopted for various public purposes.”⁷⁶⁵

Dr Martin Mansergh has described such an approach as follows:

“We need not lessen our loyalties as we broaden our sympathies.”

⁷⁶⁴ Department of an Taoiseach

⁷⁶⁵ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.170.

7.18.2 National Anthem

“If the anthem were to be changed it would not of itself change unionist attitudes towards Irish Unity but it would be an interesting symbolic statement about how the republic seeks to represent itself today. It might contribute to a more positive ‘mood music’ which might in turn contribute to more relaxed political atmosphere throughout the island.”

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“A new set of national languages was adopted on an inclusive basis covering the languages of the different South African communities, and a new multilingual anthem was adopted.”⁷⁶⁷

“Fundamental change in relation to matters such as flags, language, or the overall social and political culture of the state will meet a degree of resistance that will surprise many”⁷⁶⁸

But what can be done is that the willingness to engage in relation to these aspects can be signaled in advance.⁷⁶⁹

Dr Martin Mansergh’s approach can again be cited in that:

“We need not lessen our loyalties as we broaden our sympathies.”

⁷⁶⁶ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.196.

⁷⁶⁷ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.197.

⁷⁶⁸ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.181.

⁷⁶⁹ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.181.

7.18.3 Irish language

“The constitutional priority for the Irish Language might also fall for reconsideration in the context of a new political dispensation. Apart from the question of recognising Ulster Scots as a further official language, and apart from the question of whether priority for one of the official languages over the other or others would be a sustainable proposition, the need to protect individuals in the state against discrimination on the grounds of lack of facility in Irish would also arise. In that context the question of compulsory Irish for students, lawyers and others would be a matter of consideration. In so far as language is concerned, given that Ulster-Scots has acquired a semiofficial status under the agreement, and in view of the fact that this is recognised to some extent through statutory basis from the cross-border language body, the question arises as to whether Ulster Scots should be recognised by statute in Ireland as a further official language in addition to Irish and English. On the one hand this could be done in a purely formal way without making the extensive provision for the rights of the user of that language which is provided for in the case of Irish under the Official Languages Act 2003 but it would at least provide a measure of official recognition for the language which would make clear an intention to create an inclusive state on a 26 counties basis initially, as part of making the case for an inclusive thirty-two county state.”⁷⁷⁰

Dr Martin Mansergh’s approach is appropriate

“We need not lessen our loyalties as we broaden our sympathies.”

As High Court Justice Humphreys states:

“It is therefore suggested that as with the concept of a new constitution, all that can be done is to make clear that in the context of a united Ireland, these national symbols will also be on the negotiation table for review and amendment in the context of making a fresh start in a state which recognises the parity of esteem of the Irish and British identities.”⁷⁷¹

⁷⁷⁰ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.197.

⁷⁷¹ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.198.

7.19 Commonwealth

Another issue which has been put on the agenda in recent years is the question of re-joining the Commonwealth.⁷⁷²

“Eamon O’Cuiv has recently floated the concept of re-joining the commonwealth at this stage.”⁷⁷³ But Humphreys’ book recounts that:

“Costellos Government never in fact withdrew from the Commonwealth – they merely took certain steps which ... led the British and the rest of the commonwealth to conclude that Ireland was not a member, so perhaps it may be contend that the state has been in law a member all long.”⁷⁷⁴

“For some, the move would be too radical to contemplate in advance of reunification itself and ultimately, this is a matter of political judgement.”

⁷⁷² Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.192.

⁷⁷³ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.192.

⁷⁷⁴ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.193..

7.20 Legal changes in the United Kingdom

“A vote on the island of Ireland for unity, and a subsequent bilateral treaty to give effect to that vote, is the trigger for the process of reunification, but further key steps are required. Both governments will be required to engage in a process not just of ratification but of legislative and constitutional implementation of the treaty, before or in tandem with the treaty coming into effect.”⁷⁷⁵

“A small indicator of the scale of legislative change required for major constitutional adjustments can be gleaned from the provision of the Constitutional Reform Act 2005. This measure, which originated in what was thought initially to be a straight forward reshuffle announcement by the Prime Minister, Tony Blair, on 12 June 2003, took nearly two years further to proceed through parliament and has involved the examination of dozens of statutes to identify and adjust references. It is likely that a similar exercise will be required in the UK to identify and amend all statutory references to Ireland/Northern Ireland.”⁷⁷⁶

Brian Crowley MEP recently stated that over 8,000 EU Directives and regulations have been incorporated to UK legislation, many will require amendment or repeal as a result of Brexit. “Again, however, there is a strong case to be made for rationalising many of the statutory references to Ireland/Northern Ireland in any event. Much of the governing legislation (including many provisions of the Act of Union 1800) is largely obsolete and would benefit from significant amendment and statute law revision in any event. A proper programme of statute law revision regarding the legislation relating to Ireland and Northern Ireland on the Westminster Statute Book would to some extent lay the ground for preparation of the future Bill to give effect to the referendum decision in favour of a united Ireland, but in any event would be a desirable process to be engaged in at this stage.

⁷⁷⁵ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.137.

⁷⁷⁶ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.137.

“Such a process might remove some of the more offensive pieces of sectarian anti- Catholicism that still have the force of English law. It would be for Nationalist and Republicans in the first instance to confront the British side with it own sectarianism and to urge the sort of radical legal changes that is required and that would contribute to an atmosphere of equal respect between the two traditions.”⁷⁷⁷

⁷⁷⁷ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.137,138.

7.21 Implementing the bilateral treaty completed by the agreement

Legal changes in the United Kingdom

“Apart from the merely technical changes to a wide body of UK legislation, the cessation of Northern Ireland status as part of the United Kingdom would have major constitutional ramifications for the United Kingdom itself. For Example the name of the state would inevitably revert back to the 1707 name of ‘United Kingdom of Great Britain’.”⁷⁷⁸

7.22 Legal and Constitutional change by Westminster

“The need for legal or constitutional changes in advance of Irish Unity primarily in terms of bilateral action or action by the British government will be considered under a number of headings

Firstly: The need for full implementation of the Good Friday Agreement as it stands

Secondly : The question of legal measures which could have the effect of ensuring that other parties, particularly the British Government are required to live up to the commitments in the agreement

Thirdly: The Need for confidence building measures by the United Kingdom government.”⁷⁷⁹

7.23 Confidence building measure on the British side

“Apart from measures to promote the objectives of the agreement and fully implement it, a number of legal steps are open to the British side to promote confidence in the process and build on the gains of the agreement. These include the question of removing legal sectarianism and other legal changes. Among the issues for negotiation and discussion in this regard might include:

⁷⁷⁸ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.138.

⁷⁷⁹ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.158,159.

Firstly: the repeal of inappropriate UK legislation incompatible with the letter and spirit of the agreement.

Secondly: possible consolidation of remaining UK legislation dealing with constitutional structures of Northern Ireland into a Northern Ireland Constitution Act.”⁷⁸⁰

7.24 Removing legal sectarianism

“There is much that can be done by the British Government towards putting in place a legal regime which is truly faithful to the objectives of the agreement namely parity of esteem and equality of treatment for all members of the community. In particular there are a number of blatantly anti-Catholic pieces of legislation still on the Westminster statute book and it is surprising that to date the British system has not been confronted with its own inherent sectarianism.”⁷⁸¹

“The repeal of discriminatory legislation would also put down a marker that equality of treatment is of benefit to all and likewise the unionist minority would not be discriminated against in the event of a united Ireland. “While the compilation of a comprehensive list of United Kingdom legislation which is incompatible with the broad thrust of the agreement presents some question of judgement, the following elements can be noted:

“Discriminatory Acts:

Coronation Oath Act 1688- embodies oath to uphold Protestantism

The Bill of Rights 1688- ‘suppression of papists’, certain rights are ‘protestant only’

Act of Settlement 1700- crown can only be held by Protestant

Union with Scotland Act 1706- ‘papists’ and people married to ‘papists’ are excluded for the crown.”⁷⁸²

⁷⁸⁰ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.158,159.

⁷⁸¹ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.168.

⁷⁸² Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.168.

7.25 Elected Authorities (Northern Ireland) Act 1989

The act requires candidates for local elections to make a declaration, set out in the Act, which would confirm that the councillor, if elected 'will not by word or deed, express support for or approval of.... a proscribed organisations....or ...Act of terrorism (that is to say violence for political ends) connected with the affairs of Northern Ireland'. No such provision exists for members of local authorities elsewhere in the UK or Ireland.

“As for as the Northern Ireland Act 1998 is concerned, it provides for a restricted level of legislative competence for Northern Ireland institutions which could be significantly expanded in keeping with the spirit of the agreement. As long as the mechanisms to promote cross community decision-making remain in place there is sufficient protection for the two sides of the community. It may be that review of the Northern Ireland (monitoring commission etc) Act 2003 is warranted in that the compatibility of the provisions regarding the exclusion from ministerial office with the agreement is a matter of debate.”⁷⁸³

⁷⁸³ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.169,170.

Annex 1

Terms of Reference:

(1) That a Select Committee consisting of seven members of Dáil Éireann be appointed to be joined with a Select Committee to be appointed by Seanad Éireann to form the Joint Committee on the Implementation of the Good Friday Agreement to consider—

(a) issues arising from Ireland's role as a signatory to the Good Friday Agreement,

(b) ongoing developments in the implementation of the Good Friday Agreement, and

(c) any proposals relating to the implementation of the Good Friday Agreement and such related matters as shall be referred to it by the Dáil and/or the Seanad from time to time, and to report back to both Houses of the Oireachtas at least once a year.

(2) The Joint Committee shall have the powers defined in Standing Order 85, other than paragraph (2A), (4A), (4B), (6A), (6B) and (6C) thereof.

(3) The Minister for Foreign Affairs and Trade (or a member of the Government or Minister of State nominated in his or her stead) shall be an *ex officio* member of the Committee and shall be entitled to vote in proceedings.

(4) Members of the Westminster Parliament elected from constituencies in Northern Ireland may attend meetings of the Joint Committee and of its sub-Committees and may take part in proceedings without having a right to vote or to move motions and amendments.

(5) The Chairman of the Dáil Select Committee shall also be the Chairman of the Joint Committee.”

Annex 2

Joint Committee on the Implementation of the Good Friday Agreement

Deputies: Declan Breathnach (FF)

Fergus O'Dowd (FG)

Kathleen Funchion (SF) [Chair]

Tony McLoughlin (FG)

Maureen O'Sullivan (IND)

Sean Sherlock (LAB)

Brendan Smith (FF)

Senators: Frances Black (IND)

Frank Feighan (FG)

Mark Daly (FF)

Denis Landy (LAB)

Gerard Craughwell (IND)

Niall Ó Donnghaile (SF)

Notes:

1. Deputies nominated by the Dáil Committee of Selection and appointed by Order of the Dáil of 29 June 2016.
2. Senators nominated by the Seanad Committee of Selection and appointed by Order of the Seanad of 21 July 2016.
3. Senator Frank Feighan replaced Senator Jerry Buttimer and Senator Gerard Craughwell replaced Senator Marie-Louise O'Donnell by Order of the Seanad on 27 October 2016.
4. Deputy Fergus O'Dowd replaced Deputy Joe Carey Order of the Dáil on November 15 2016.

Northern Ireland MPs with speaking rights on the committee

Sammy Wilson (DUP)

Ian Paisley (DUP)

Paul Girvan (DUP)

Gavin Robinson (DUP)

Nigel Dodds (DUP)

Emma Pengelly (DUP)

Gregory Campbell (DUP)

Jeffrey Donaldson (DUP)

Jim Shannon (DUP)

David Simpson (DUP)

Paul Maskey (SF)

Chris Hazzard (SF)

Michelle Gildernew (SF)

Elisha McCallion (SF)

Mickey Brady (SF)

Barry McElduff (SF)

Francie Molloy (SF)

Sylvia Hermon (IND)

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