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**Policy Paper:**

**Brexit, Northern Ireland and Ireland**

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*A 'Constitutional Conundrums' Policy Paper (<http://www.niconstitution.org>)*



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## Introduction: The Key Brexit Questions

The general public in Northern Ireland has not been well served by the Brexit debate. The UK debate has been concerned with the implications of Brexit for the UK as a whole, and not on specific issues affecting Northern Ireland. At the same time, the Northern Ireland Assembly elections in May 2016 truncated the opportunity for the Northern Ireland parties to conduct an effective campaign.

Deeper reasons also exist for this malaise. For decades, Northern Ireland's place within the European Union has been understood through the lens of nationalist and unionist preoccupations. Unionism has never been instinctively pro-European. For a creed based on the defence of the UK's sovereignty over Northern Ireland the pooling of that very sovereignty in European institutions seemed to carry an existential threat. Conversely, nationalism has often been more divided in its approach to the EU. For figures such as John Hume, Europe indeed offered a means to dilute the UK's sovereignty; the nation state, he claimed, was a concept which was 'dead and gone'. Others weren't so sure. As socialist republican Bernadette McAliskey retorted, 'I haven't had mine yet'.

This report is not a campaigning document, but it does attempt to inform some key areas of the Brexit debate. It conveys our concerns, estimations, and opinions as a group made up of legal academics researching in international law, trade law, UK constitutional law, human rights law and EU law on some key aspects of how Brexit would affect Northern Ireland. We do not seek to address all of the implications of Brexit, but only those within our areas of expertise.

## PART ONE: TRADE AND TRAVEL ISSUES

### 1. The Ireland-UK Common Travel Area and the European Union

Since the foundation of the Free State in 1922 the position of Irish citizens in the UK and of the UK citizens in Ireland has been unique: both countries treat each other's nationals as equivalent to citizens in almost all material respects. To date, there has been little for the EU to be concerned with regarding this special relationship – since the Treaty of Amsterdam, a Protocol attached to the EU Treaties permits 'free movement' between Ireland and the United Kingdom to continue. Both states remain outside of the [Schengen](#) passport-free travel zone and this has meant that the particular nature of the UK-Ireland relationship can continue despite changes within and amongst Schengen states.

But, the UK's possible withdrawal from the EU means that a closer look at how the two countries' special relationship fits within EU rules and what Brexit could mean is needed. While much will depend on that nature of post Brexit negotiations between the EU and the UK (rather than with Ireland particularly) there is virtually no possibility the border and the movement of goods, services and individuals will remain as it is currently operating.

#### Campaigning Claim

*"There's a land border between France and Switzerland and you don't have sealing of the border, so why would Northern Ireland and the Republic of Ireland be any different?"*

[Sammy Wilson](#), DUP.

The openness of travel between the two countries dates from 1922 when the Irish Free State decided to enforce the same travel arrangements as the UK. Neither country required passports for travel between each other. Following the Second World War, the UK's [Ireland Act 1949](#) formalised the special relationship by declaring that Ireland, while no longer a dominion of the UK, is not treated in law as a "foreign country".

In 1952 a [Common Travel Area](#) (CTA) was agreed, in place of the existing informal arrangements. This travel area covers the two states. The CTA enables UK and Irish nationals to be treated almost identically within both states. For example, UK citizens in Ireland and Irish citizens in the UK have the right to vote in local, national and European elections. Both sets of citizens enjoy unfettered access to employment, social welfare and healthcare. The few exceptions to this equal treatment are political in nature: though Irish citizens can run for the UK Parliament, UK citizens cannot be elected to the Dáil, nor can they vote in constitutional referenda or Presidential elections.

The threat of Brexit has raised two very particular questions: first, does the special relationship still matter now that both countries are in the EU? And, second, if the UK leaves, what does this mean for Ireland? The welfare rights stemming from the special relationship are virtually identical to those that any EU citizen possesses. However, the UK's welfare setup is based upon the CTA, with several UK welfare rights require prior residency within the CTA. While all EU nationals living within the CTA for a specific period can access these benefits, the rule is clearly there to benefit Irish and UK nationals living in Ireland who subsequently move to the UK.

So, while much of the 'special relationship' is now simply part and parcel of being an EU Member State, the CTA still matters. This is why both Ireland and the UK opted out of the Schengen agreement, which encompasses all other EU members, as well as some non-EU states such as Norway, Switzerland, Iceland and Lichtenstein. The UK did not wish to join, and by all accounts, Ireland subsequently declined joining so as to preserve its 'special relationship' with the UK. Not joining also enables the CTA to cover the Isle of Man and the Channel Islands, neither of which are in the EU.

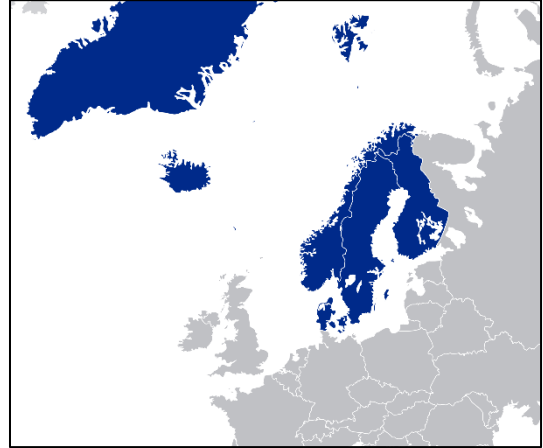
Pre-referendum [negotiations](#) between the UK and Irish Governments covered the possibility that any potential post-Brexit welfare restrictions imposed upon EU citizens would not apply to Irish nationals. EU law, however, requires equal treatment between

all EU nationals and explicitly prohibits discrimination purely on the grounds of nationality. Cameron pointed to an EU Treaty provision, [Protocol 20](#), permitting the UK's grant of 'special treatment' for Irish nationals under the CTA, but all that this provision covers is the arrangements for the 'movement of persons' between the two countries. It does not mention welfare arrangements, and although the special electoral law arrangements for Irish citizens have not been subject to challenge, it is optimistic to think that Brussels would permit this protocol to remain in effect in the event of Brexit.

If the UK fully withdraws from the EU, Ireland faces difficult choices. It would be the only EU member state outside of the Schengen area which is not working towards joining. Should Ireland choose to join Schengen – and there may be pressure on it from Brussels to do so – the EU (and not Ireland) would determine how the Irish side of the Ireland-UK border would operate. As Brexit is likely to rebalance Ireland's trade relationships away from the UK and towards the remainder of the EU, economic imperatives might point towards joining Schengen even if Brussels was not to encourage such a step.

Brexit would also mean that the Ireland-UK border would become a part of the EU's external border. The Vote Leave campaign remains committed to ceasing the UK's implementation of EU regulations and UK contributions to the EU budget. It is therefore unlikely that the UK would opt to remain in the European Economic Area (EEA) in the event of Brexit, as EEA countries like Norway – despite not being EU member states – are bound by a range of EU rules and make high *per capita* contributions to the EU budget. If the UK did not become an EEA state following Brexit, Brussels would have to determine the arrangements by which UK nationals, capital, goods and services gain access to Ireland to enable the internal market to function.

Upon Brexit, the UK-Ireland border would represent an external border to the EU as a whole. There are no other 'external' EU borders that do not come with border controls. An interesting case study in this respect is the Faroe Islands, which declined to join Schengen when all other members of the [Nordic Passport Union](#) did. A customs border consequently always had to be maintained between the Faroe Islands and EU member states, but upon Denmark's accession to Schengen, further controls were mandated by the



*The Countries of the Nordic Passport Union (an arrangement that like the UK-Ireland CTA) pre-dates any of these countries' EU membership.*

EU Member States: Denmark had to agree to apply the Schengen acquis in terms of security to the Faroe Islands in a way that satisfied all other signatories, and only then could the Nordic Passport Union continue to encompass the Faroe Islands. In practice, Denmark consequently polices the Faroe Island's border with the Schengen countries to ensure that the external 'Schengen' border remains protected, even though passport checks remain abolished within the Nordic Passport Union.

Ireland is not in Schengen, so this is not a full analogy – but the Nordic Passport Union represents the closest analogy to the Common Travel Area that we have. In it we can see that the EU required measures in order to protect the EU's external border regardless of the 'special relationship' between the Faroe Islands and the other Nordic countries and the small number of border crossing individuals involved. A second example from the region is the border between Norway and Sweden, which as an EU external border. As part of the Nordic Passport Union and Schengen there are not *immigration* controls between the countries, nonetheless as Norway represents an EU external border Sweden maintains *customs* checks.

Maintaining the CTA in the event of Brexit would also be difficult to square with the immigration arguments advanced by Vote Leave in the referendum campaign. It would enable EU nationals with a right to reside in Ireland to become Irish citizens and thereby gain unrestricted access to the UK. Although this has not historically involved a large number of individuals, unrestricted migration from Ireland does make the Brexit aim of controlling immigration into the UK more difficult. A “Leave-friendly” UK Government could view the CTA as a last EU-migration-related loophole to be closed.



## 2. Post Brexit: Options for the Common Travel Area

Under law in the UK and Ireland the citizens of both countries are, with some minor exceptions, treated identically in law. Passport-free travel and ease of access to

### Campaigning Claim

*“The relationship between the UK and Ireland when it comes to this common travel area is decades older than our EU membership and doesn’t depend on it.”*

[Theresa Villiers](#), Secretary of State for Northern Ireland.

employment has been the norm since Irish independence, albeit for much of the history of the border customs checks existed. The UK leaving the EU would have significant consequences on the continuation of the CTA arrangements. In the aftermath of Brexit, Ireland would be faced with a choice about which relationship to prioritise: the 27-member EU with its Schengen area, or the stand-alone UK. We therefore map out legal options for a post-Brexit reform of the CTA.

### **a. The UK leaves the EU and the ROI joins the Schengen area**

While the UK remains the Irish Republic’s single most important state trading partner, in 2015 combined trade with other EU members was worth more to the Irish economy. As such, it is possible it may opt to join the Schengen area in order to facilitate trade with its EU partners.

Should Ireland enter the Schengen area, it would find itself in an exact parallel to the Nordic Passport Union outlined above. A hard border would come in practice into existence, requiring both EU immigration and customs law to be applied at the Irish border. Ireland’s commitments to the EU, which have been adopted into the Irish Constitution, would take precedent in domestic law over any other treaty-based trade commitment with the UK. With the protections that the CTA has enjoyed under Protocol 20 to the EU treaties no longer operative in the event of Brexit, Ireland will likely face legal

and political pressure not to extend more favourable movement arrangements to UK citizens than it does to EU citizens. Ireland could re-negotiate the CTA, but Brussels would ensure that such renegotiation takes place on the basis of its EU commitments.

**b. The UK leaves the EU and the ROI does not join Schengen**

Even if Ireland did not enter Schengen, the UK's access to Ireland for goods, services and capital would be subject to the same restrictions as for other non-Schengen non-EU states. At a minimum, a customs check would be required at the border. However, if Ireland is not in Schengen, Irish and UK migration policy (and thus passport control) could in theory remain coordinated. In practice, however, it is likely that the checking of *all* traffic across the border would be necessary even with coordinated migration policy. This is because passport-free travel over the border (which might be permissible under a coordinated migration policy) would make it impossible to distinguish between business and personal travel. The inability to make such distinctions would make the enforcement of the EU's customs arrangements nearly impossible.

These issues could be ameliorated by the negotiation of a customs union or a free trade area between the UK and the EU. If the UK is outside Schengen any negotiation regarding the UK's relationship with the EU, for example regarding the creation of a free trade area, would necessarily include consideration of the land border with the Irish Republic. However, leaving aside the "mega-regional" trade agreements that the EU is currently working on concluding with Canada and US, amongst other states, the only "free trade" arrangements that have existed between the EU and non-EU Member States to date have necessitated acceptance of free movement rules. The 'Leave' and 'Remain' campaigns have both made clear at this stage that the so-called Switzerland option does not appeal to them – at which point, there again is no existing precedent for post-Brexit UK-EU trade relations. Until the terms of this re-negotiation are determined, the impact on the border

would remain an open question and would lead to uncertainty and potential disruption for all those who regularly cross the border, including both passport and customs checks.

**c. The UK leaves the EU and both the UK and the ROI join the Schengen area**

It would be possible for the UK to join the Schengen area even if it left the EU. Liechtenstein, Iceland, Norway and Switzerland are all non-EU countries that are part of the Schengen area. If both Ireland and the UK chose to join this would make the land border much less problematic – a direct parallel to the Nordic Passport Union becomes possible. However, given that many of the underlying rationales for leaving the EU are related to migration it is highly unlikely that the UK will adopt this course. It would also not remove the need for customs checks for goods entering the EU market at the Irish border.

**d. Internal Controls on travel between Northern Ireland and the Remainder of the UK**

The difficulty which the Vote Leave campaign has found in suggesting a coherent model for the Irish Border after Brexit has opened up the field to a range of seemingly far-fetched proposals. The [Northern Ireland Affairs Committee](#) first mooted the idea of the Northern Ireland-Republic of Ireland border remaining open, but checks on travellers from Northern Ireland accessing the rest of the UK. This singly unattractive solution, which David Cameron mooted at [Prime Ministers' Questions](#) as a possible post-Brexit scenario, would leave Northern Ireland no longer a member of the EU and simultaneously restrict access from Northern Ireland to the remainder of the UK. Such an option would not remove the need for customs checks at the Republic of Ireland–Northern Ireland border as an EU external border.

### 3. Post Brexit: The Advantages of Dual UK-Irish Nationality

In light of the EU referendum, genealogy has become much more important for many UK citizens. Individuals born in Northern Ireland to parents who are Irish or UK citizens are automatically entitled to claim Irish citizenship. Those born in Great Britain with an Irish parent or grandparent are also entitled to an Irish passport by applying for Irish Citizenship through Ireland's system of Foreign Birth Registration. Doing so enables such a person to claim dual nationality alongside their British citizenship. If the current rules remain in effect in the event of Brexit, applying for an Irish passport could offer some UK citizens a route to retaining their EU citizenship.

While those in favour of Brexit are obviously willing to forego the benefits of EU citizenship in order for the UK to take "control" over migration to the UK there are a series

#### Campaigning Claim

*"You have got the Vienna convention, which guarantees the rights of existing citizens and existing arrangements."*

[Gisela Stuart](#), Vote Leave Chair.

of consequences for individuals travelling or working within Europe. Unless or until a visa-waiver scheme is negotiated following Brexit, UK citizens will have to adopt a "pay as you go" approach to traveling to EU countries, completing the necessary entry requirements to enable them to travel (as is the case now for travel to many non-EU countries).

Moreover, senior figures within the Vote Leave campaign have maintained that travellers to and from Europe will need [visas](#) to enter the UK post-Brexit. If such a policy were pursued, the EU would put reciprocal arrangements in place. The consequences for the Irish-UK border would be similar to those noted above; thorough migration checks at the border.

Even if a visa-waiver scheme is introduced, many of the benefits currently associated with EU citizenship will likely be lost under any post-Brexit arrangements. UK citizens will almost certainly no longer be able to rely on the [European Health Insurance Card](#) scheme

in lieu of travel insurance, because the UK would be highly unlikely to extend reciprocal protections to EU citizens in light of Vote Leave's emphasis upon the pressure such commitments place upon the NHS. Even if a visa waiver scheme is adopted for travel, it will not enable UK citizens to work, study and access support as if they were nationals of the host state.

At present [1.2 million](#) people born in the UK are estimated to live in other EU countries. For host states (some, such as France, Spain and Ireland with large populations of UK citizens) Brexit would need to be followed by a transition period in which the status of resident UK nationals is changed from EU citizens. At issue in the Brexit debate is whether this change in status would entail a [diminution of rights](#) for UK citizens currently resident in other EU countries, or even the deportation of UK citizens no longer resident on the basis of EU citizenship. Brexit supporters have been keen to stress that under the [Vienna Convention on the Law of Treaties](#) rights already accrued under a treaty do not end on the termination of the arrangement. However, the Vienna Convention applies to the rights of state parties to a treaty, not to individuals who gain interests as a result of such an arrangement. After Greenland left the EEC in 1985, the existing individual rights were continued to be respected. However, the numbers involved were small and the country's departure less high-profile.

The UK Government maintains that EU obligations only take effect in UK law as a result of the [European Communities Act 1972](#) (a position affirmed in the [European Union Act 2011](#)). The repeal of this legislation would therefore end the basis in law for the rights enjoyed by EU citizens who wish to remain resident in the UK. The protections afforded by the Vienna Convention are at best of a reciprocal nature. Any efforts on the part of a post-Brexit UK Government to restrict the rights enjoyed by existing EU residents would relieve EU countries of any obligations they may have to maintain the rights of their UK residents. If they are not to fall foul of any upheavals consequent upon Brexit, the hundreds of thousands of UK nationals living in Ireland, and even greater numbers of Irish

citizens living in the UK will be reliant upon the negotiation of on-going reciprocal CTA arrangements.

The upheaval of Brexit means that for those UK citizens who wish to travel to, work in, or study in EU countries, becoming a national of an EU country (and therefore getting EU citizenship) would offer an obvious solution. But changing nationality is often an expensive and complicated decision (to say nothing of the emotional ties of identity that nationality raises). To naturalise in their country of residence, they would have to navigate its immigration and nationality systems and establish their value to its economy before they would be accepted as citizens. If successful, this might mean having dual nationality (for example being a French and UK citizen) or having to surrender UK citizenship altogether (some EU countries, such as the Netherlands, usually require their nationals to renounce other citizenships and the UK itself has dual nationality restrictions).

Naturalisation processes are almost always extensive. France, for example, requires that an individual seeking to naturalise to have lived in France for 5 years and be able to speak French. Irish citizenship (other than the sanguinity route) requires 8 years of residency. This is why the Irish sanguinity connection could be so important to many people if the UK votes for Brexit. It gives as many as six million people living in the UK an easier route to getting EU citizenship.

If Ireland's comparatively relaxed rules enabling those with immediate Irish ancestry to claim citizenship are considered to be become too popular as a backdoor to the EU, Ireland might have to reconsider these arrangements under pressure from Brussels. Waiting times for processing Irish passport applications are already lengthened as an increasing number of people living in Great Britain are making use of the 'granny rule' to secure EU citizenship in the event of Brexit.

## PART II: PEACE AND PROSPERITY ISSUES

### 4. Comparative Advantage after Brexit

One of the primary reasons cited by the Vote Leave campaign in support of a Brexit is that it would enable the UK to conclude its [own trade agreements](#), and consequently, to trade ‘more freely’ than it can currently do. At present, its current trade agreements are negotiated by the EU as a whole, and Vote Leave believes this process to be intolerably slow and contrary to UK interests. They believe, in other words, that trade is absolutely necessary, but that the UK is better off pursuing free trade alone.

A key theory underpinning global desires for trade that is as ‘free’ as possible is eighteenth century political economist David Ricardo’s concept of [comparative advantage](#). It suggests that every country should focus on producing/providing what they are best at producing, and trade that product or service for other products or services. Even where a country is not ‘the absolute best’ at anything, comparative advantage says that countries should specialise in those industries where they have a clear chance at outperforming other countries.

#### Campaigning Claim

*“The argument is that it will take us years to negotiate a new trade deal—it will not, for the simple reason that, if firms want our products, they will continue to buy them.”*

[Sammy Wilson](#), DUP.

Comparative advantage is not an unchallenged theory, but it is the basis for all global and regional customs and free trade areas. At present, Ireland and Northern Ireland have slightly differing comparative advantages. Northern Ireland, as part of the UK, is within a very large market and has ease of access to the City of London, UK government support, and direct access to EU customers and suppliers. Ireland, on the other hand, currently has

a comparatively low corporate tax rate, a concentration of multinational pharma-chem

companies and technology firms, and, again, direct access to the EU. Both operate as English-language entry points to the EU for international firms.

Brexit would change the basis on which the UK, and necessarily Northern Ireland, trades regionally and globally. It would also impact on how Ireland would position itself. First, Ireland would become the sole English-language entry point (besides Malta) for international firms seeking to do business in the EU. This would undoubtedly represent an advantage as English is one of the world's main business languages. Second, on setting up in Ireland or importing/exporting through Ireland, international businesses would only have to comply with a single set of regulations to access all other EU states. A business setting up in Northern Ireland, on the other hand, would guarantee its access to the rest of the UK under a single set of rules – but not necessarily its access to the EU under the same rules.

How easy it would be to access the EU market from a post-Brexit UK would be entirely reliant on the trade model chosen by the EU and the UK. This could be based upon the World Trade Organisation, upon the Norwegian or Swiss model, or some third option (like the EU-Canada trade agreement). However, agreeing upon such a model would take time, and the interim uncertainty will make attracting both foreign and domestic investment difficult. Ireland would not face such uncertainty, amplifying the different positions it and Northern Ireland are in.

Take, for example, the support that the agricultural industry now receives. Farmers in Ireland would continue to have unrestricted access to the EU market as well as continuing to receive substantial subsidies. While, for now, the UK Government has promised to continue agricultural support in Northern Ireland in the event of Brexit, there is no guarantee that this support would continue in the longer run. But perhaps more seriously, Northern Ireland's agricultural industry would, post-Brexit, have to compete with the highly protected industry in Ireland and the rest of Europe. It would be in the same trade



position as countries such as Australia, New Zealand and agriculture-dominated developing countries such as Brazil, Argentina and Kenya.

At the World Trade Organisation non-EU countries have, for many years, been arguing for reduction in agricultural support within Europe and the US, but with very little success. Given that talks at the WTO are at a standstill (in no small part because of a lack of movement on agriculture) it is unlikely that WTO membership will provide the UK with a more 'global' position in agriculture or other industries.

In short, following Brexit, the UK would in theory be free to attempt to establish trade agreements with any country at all. But in practice this is likely to prove difficult. For a decade, the World Trade Organisation has been at a standstill, and the current trend is toward mega-regional arrangements such as the EU-US TTIP trade agreement, not bilateral arrangements. Indeed, the US has clearly stated that it is not interested in a bilateral deal, a position reinforced by President Obama visit where he clearly stated he wished to continue dealing with a UK that is part of the EU.

For all of its faults, comparative advantage remains the mainstay of global trade. For Northern Ireland in particular, industry might stand to lose more than it stands to gain from EU independence. The actual trade 'winners' of a Brexit would in all likelihood be Ireland, whose comparative advantages would be solidified by the changes.

## 5. BrexIt's Import/Export Costs to Northern Ireland Industry

The Remain and BrexIt campaigns do not agree on much, but all sides concede that withdrawal would have consequences on how goods and services move between EU states and the UK. Currently, with both Ireland and the UK in the EU, from a business perspective the Irish border is visible only on maps; but Ireland as the UK's single land border with the EU may become a crunch point at which the EU's tariffs and regulations start to apply.

Clear descriptions of a post-BrexIt business environment are difficult as much depends on the arrangements struck between the UK and the EU. For instance, if the UK remains in

### Campaigning Claim

*"The uncertainty about the financial assistance that may be on offer to our farming communities ... exists equally whether we stay in Europe or leave it."*

[Gregory Campbell](#), DUP.

the European Economic Area (EEA), the free movement of goods and services between Ireland and the UK would be maintained, though the UK could set its own border tariffs. But, as is likely, a more comprehensive withdrawal or a Swiss-style agreement would mean that UK goods and services would become subject to the EU's external tariffs. This option, often accompanied by references to the World Trade Organization (WTO), would

increase import and export costs for a significant number of products as well as a plethora of restrictions to cross-border movement of services. Any of these options would also mean an end to Common Agricultural Policy (CAP) payments to farmers which would naturally have a knock-on effect on the agri-food sector.

It is easy to assume that such changes will only hit business and not the private consumer, however, this is only a partial view. For instance, just as gifts above a certain value from the US are subject to customs, packages sent between relatives in Ireland and Northern Ireland would also have to pay. Personal items are ordinarily exempted from border

charges; but anyone operating a small business, or moving products across the border for work purposes, would need to declare what those products are and pay levies on them according to the EU's WTO tariffs. While a lot of products come with a 0% tariff, not all sectors benefit from 'free' imports and exports. Cigarettes and cigars, for instance, are hit with a 33-58% import duty. A wide variety of consumer products, such as make-up and personal hygiene items, textiles and basic building construction items (such as doors and windows) face import charges of between 4 and 8%. Clothing is generally met with import duties ranging from 8 to 17%, and cars face import duties of 10-20% depending on their size and purpose. In the end, as import tariffs are always pushed onto the consumer within the purchasing price, many products moving across the border could suddenly become anywhere from 5% to 25% more expensive.

The impact upon the agri-food and farming sector is particularly revealing. Most agricultural products and livestock are subject to [EU import tariffs](#) of between 6% and 22%. UK agri-food products would find it difficult to compete with heavily subsidised EU produce on the global market without reducing their basic costs in order to be competitively priced. Even within the UK, it is likely that suppliers will use the cheapest available option which, due to CAP subsidies, may very well still be EU products, even with the imposition of UK tariffs on imports from the EU. Statistics from the UK Department of Environment, Food and Rural Affairs demonstrate that direct EU payments to farmers represent 87% of annual farm income in Northern Ireland. The Department also confirmed that in the last 10 years (2005-2014) CAP Single Farm Payment alone totalled [£2.5 billion](#) in Northern Ireland. While the UK Government has stated that initially it would match CAP support in event of Brexit its previously stated reform proposals indicate that it may be unlikely to match the current levels of subsidy and/or would require more from farmers in return for support, for example in environmental protection.

Real limitations will also come to those who are hoping to establish a business in or send employees to parts of the EU. Under the EU free movement of services rules, both to set

a business abroad and to work (whether for a day, a week, or a year) in many sectors is relatively straightforward. Post Brexit, under the WTO, these will be covered by the General Agreement on Trade in Service (GATS) which is significantly less open to services movement than the EU is. Non-EU nationals temporarily staying and working in the EU, unless they are in senior management, will find far more barriers to travel. Post-Brexit, virtually all UK nationals would need to satisfy national immigration requirements to temporarily stay and work in any of the 28 EU Member States, including Ireland. For instance, Ireland permits access for the provision of computer-related data entry work, but has not opened up any access for those hoping to provide real estate-related services. Such rules vary in each of the 28 states. Establishing a commercial presence in an EU Member State also becomes complicated as the WTO does not contain a single 'rule' on setting up a business.

It is impossible to say with absolutely certainty what a post-Brexit UK business environment will look like but what is clear is that for many areas, and in particular the agricultural and services sectors, it will be more complicated and expensive if you wish to do business outside the UK. Even within the UK competing against certain imported products, especially in the agricultural sector, will almost certainly be harder. While the UK could take a protectionist route and increase tariffs to protect its home produced goods and services, this seems to be the opposite of pro-Brexit plans to make trade deals with the world. In the event of Brexit, all areas of business will have to recalibrate their strategies to meet the new legal and commercial environment.

## 6. Brexit and the Loss of EU Funding to Northern Ireland

Both Ireland and Northern Ireland benefit from several funding streams available through the EU. Under the [EU Cohesion Policy](#) (2014-2020) Northern Ireland is designated as a

### Campaigning Claim

*“The Treasury ... will have more money; money that will not go to Brussels but will come to Belfast, Ballymoney and other parts of the United Kingdom.”*

[Mervyn Storey](#), DUP.

region in transition, whereas Ireland is in the more developed category. Thus the border separates different funding regimes. Under this categorisation Northern Ireland is currently able to access more funding than Ireland.

There are also specific programmes which follow from the peace process which are aimed at increasing cross-border co-operation. The Special EU Programmes Body ([PEACE IV Programme \(2014-2020\)](#)) provides funding to manage cross-border European Union Structural Funds programmes in Northern Ireland, the Border Region of Ireland and parts of Western Scotland. The programme was agreed between the Irish Government and the Northern Ireland Executive and covers the entire border region. Over the course of the programme €229m will be made available, 85% of which comes from the EU with the remainder from Ireland and Northern Ireland budgets.

[INTERREG IVA](#) provides structural funding for border regions. Ireland and Northern Ireland fall within several of the designated regions, North West Europe, Northern Periphery and Arctic and the Atlantic Area. Under the Programme, Ireland/Northern Ireland/Scotland is recognised as a region requiring specific funding. This programme is worth €240 million, with €42 million of matching funding from Ireland and the UK. Should the UK leave the EU there would again be a substantial shortfall in the funds available for this scheme.

Both of these schemes are aimed at providing economic, political and social benefits across the border regions of the island. While it is possible that additional funding may be available as the UK will no longer be required to contribute to the EU budget, this money has not been earmarked and there is no guarantee that equivalent schemes would be funded. It would also require separate negotiation between London and Dublin.

## 7. The Loss of Brussels as a Place of Partnership

Much has been made about whether Brexit would threaten peace in Northern Ireland. When Taoiseach [Enda Kenny](#) spoke of the ‘serious difficulties’ Brexit would create for the

### Campaigning Claim

*“There’s absolutely no connection between the peace process and the European Union.”*

[David Trimble](#), Conservative Party.

Northern Ireland with regard to the peace process (and engaged in repeated trips to the UK in the weeks prior to the Referendum vote) his input was met with scepticism by some UK politicians. The House of Commons’ [Northern Ireland Affairs Committee](#) was, for example, content that the relations between London, Dublin and Belfast would ‘continue to be very strong’ even if the UK

left the EU, moreover, they suggested that the EU has been less important for conflict resolution than the US. Nonetheless, potentially there are arguments to be made regarding a less visible impact upon the peace process from membership of the EU.

Prior to 1974, partition had long overshadowed other aspects of the UK’s relations with Ireland. In 1956, the Northern Ireland Government produced [Why the Border Must Be](#), a staunch defence of partition capped by a grudging recognition that ‘although Ulster and Eire cannot unite, they can be good neighbours’. But in spite of the UK and Ireland’s Free Trade Agreement in 1965, and the meetings that year between Taoiseach [Seán Lemass](#) and Northern Ireland’s [Terence O’Neill](#), official interactions remained limited.

As the UK remained Ireland’s biggest market, it was all but obliged to follow the UK’s efforts to join the then-EEC in the 1960s. With the onset of the Troubles, UK-Ireland relations became entangled within the increasingly bloody conflict. When in 1971 Ireland challenged the UK’s use of “enhanced interrogation” practices to get information out of internees as amounting to torture before the European Court of Human Rights, archival

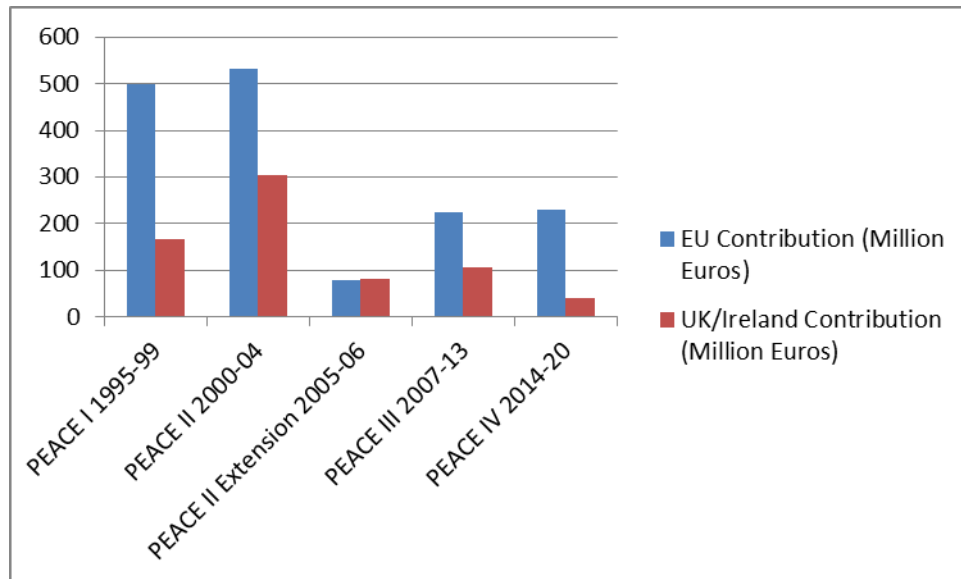
releases show that UK officials regarded this response as tantamount to ‘a diplomatic declaration of war’.

EEC membership, however, brought a new dimension to this fraught relationship. Ireland and the UK, as English-speaking islands on Europe’s North-West periphery, shared many interests in terms of European policy. European Summits obliged ministers from both countries to participate in the communal “family photographs” and enabled them to forge working relationships in a context less burdened with expectation than the intermittent bilateral meetings of the 1970s. In 1980, at a time when Margaret Thatcher and [Charles Haughey](#) remained cagy about dealing with each other, the EEC summit in [Venice](#) offered a forum for both to address pressing concerns regarding the security situation in Northern Ireland and build up good will.

By the mid-1980s, when the [Haughey-Thatcher](#) relationship had soured and the aftermath of the Hunger Strikes made the conflict appear as intractable as ever, [John Hume](#) was instrumental in securing the European Parliament’s [Haagerup Report](#) into the conflict in Northern Ireland. The Report approached the conflict as a clash of national identities and conceived of Europe’s role as supporting the UK and Ireland in their efforts to promote peaceful expression of these identities within Northern Ireland. As such, it provided a starting point for the [Anglo-Irish Agreement](#) negotiations.

The Haagerup Report also emphasised the need for Europe to support these efforts with funding. The House of Commons’ Committee Report makes out that Europe was ‘late to the party’, providing funding through its [PEACE](#) initiative (now in its fourth cycle) only after the peace process was underway. By focussing only on one stream of funding, however, the Committee downplays Europe’s intense regional development funding in Northern Ireland since the 1970s and payments into the International Fund for Ireland in the 1980s.





The UK and Ireland's shared EU membership was emphasised in the [Good Friday/Belfast Agreement](#), building on previous references in the Anglo-Irish Agreement. The implementation of EU law provides one of the Agreement's one of the major conduits for co-operation between Belfast and Dublin. The [North-South Ministerial Council's](#) responsibility for discussing harmonious approaches to the implementation of EU law in both parts of the island of Ireland provides much of its workload.

The peace process will not implode in the event of Brexit, nor will Ireland's close relations with the UK degrade overnight. Nonetheless, the EU's role in building this relationship should not be forgotten. Whereas the European Project drew Ireland and the UK closer together, Brexit would impose new strains on the relationship. Ireland's trade with the rest of Europe has dramatically increased since 1974, making its economy much less dependent upon the UK, but in purely economic terms it will still be the EU country most affected by Brexit. Over time, Ireland's increasing integration with Europe would likely put it at odds with a UK which is no longer playing on the same team. In that event, the mutual working which has provided the bedrock for the peace process will inevitably be under threat.

## 8. The EU Referendum and the UK's Constitutional Arrangements

### a. Divergence between the Northern Ireland Vote and the Overall UK Vote

For some years now, issues relevant to the Northern Ireland peace process have enjoyed multilateral support from the main Westminster political parties. The peace process has benefited from this position largely (though not entirely) outside of the usual 'cut and thrust' party politics. Although it is not the express intention of the current Conservative Government to change this understanding, the EU referendum has sharply divided opinion in terms of its implications for NI. This might put the multilateral approach to Northern Ireland at Westminster at risk in the aftermath of the EU referendum.

#### Campaigning Claim

*"We are part of the UK as a nation state. Whatever it decides, it decides."*

[Arlene Foster](#), DUP.

In addition, as has been more often recognised in the Scottish context, a Brexit which does not enjoy the support of Northern Ireland as one of the UK's four constituent nations would carry symbolic importance. In the 1975 EEC membership referendum all four constituent nations of the UK

backed EU membership (with Northern Ireland having the narrowest majority in favour). If the people of Northern Ireland adopt a position on EU membership at variance with the remainder of the UK such a vote could exacerbate tensions surrounding its constitutional position.

Even if the EU referendum does not lead to Brexit, the UK Government's negotiating platform could undermine relations between the Westminster and the devolved legislatures. As they stand, the proposals for national parliaments to "red card" EU policy [proposals](#) (like the existing "yellow card" and "orange card" mechanisms) could be operated by the UK Government without any need to seek the agreement of the devolved institutions. Given the importance of agriculture within the Northern Ireland economy,

for example, Northern Ireland's interests could diverge from those of the UK as a whole in shared competence areas related to agriculture.

Within the [Good Friday/Belfast Agreement](#), the UK and Ireland's relationship 'as partners in the European Union' and as equal Council of Europe members (with its associated requirement of adherence to the European Convention on Human Rights) provided much of the deal's supranational architecture. There are two brief points to note here. First, there is significant intricacy in the way in which (at least) three sets of international law obligations are intertwined. The EU, the European Convention and the [Good Friday/Belfast Agreement](#) are essentially interdependent in their application to Northern Ireland. Second is the perceived importance of the EU as a peace-sustaining enterprise playing a stabilising role within Northern Ireland. Many within Northern Ireland regard the connection of the UK and Ireland through the EU as underpinning the [Good Friday/Belfast Agreement](#).

#### **b. The EU and Human Rights**

The referendum also poses significant and complex questions for the position of human rights protections in Northern Ireland. There exists an overlap between the Government's human rights plans and EU questions. EU membership is connected to human rights

##### Campaigning Claim

*"The ECHR is institutionally distinct from EU membership and many ECHR signatories are not EU members. Leaving the EU would not, in itself, lead to the UK withdrawing from the ECHR."*

[Northern Ireland Affairs Committee](#).

protections which themselves are [essential for compliance](#) with the [Good Friday/Belfast Agreement](#). As such, to practically 'escape' ECHR standards, the UK would have to part company with both the EU and the ECHR. There is therefore a crucial interaction between EU membership debates and any forthcoming changes to the UK's human rights architecture.

Brexit will not remove the influence of pan-European governance structures within Northern Ireland. Efforts by the EU to sign up to the articles of the European Convention on Human Rights have followed extensive negotiations and an increasing emphasis on human rights within EU law. Although a recent and controversial opinion of the Court of Justice of the European Union raised doubts over whether it was legally possible for the EU to become a party to the European Convention, these international legal orders are likely to continue to intertwine. These interrelationships have been scarcely considered in the context of debates over the UK's place in Europe.

Human rights have been a central plank of the peace process in Northern Ireland. The degree to which shortfalls in enforceable human rights standards within Northern Ireland law exacerbated and sustained the Troubles is marked by the importance of human rights safeguards within the [Good Friday/Belfast Agreement](#). The EU-ECHR interaction should be considered important in light of plans to change the Human Rights Act.

The uncertainty surrounding the impact of Brexit on the 1998 settlement should be managed to the greatest extent possible and not left to ad hoc solutions (or indeed, political crises). This could be achieved through the UK Government seeking a Bilateral Interpretive Agreement with the Irish Government in advance of the EU Referendum. Ireland sought a similar agreement before its 2004 citizenship referendum. Such an Agreement would allow both countries to establish, in advance of Brexit, how UK withdrawal from the EU would impact upon the 1998 arrangements and Northern Ireland's constitutional arrangements more generally. Such an Agreement would be in keeping with Ireland's position as co-guarantor of the peace process. Should Brexit occur in the absence of such an agreement, the UK and Irish Governments should seek to agree a common position on the affected provisions of the [Good Friday/Belfast Agreement](#) as soon as it is possible to do so to mitigate the consequent uncertainty surrounding Northern Ireland's governance.