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# The UK and the Republic of Ireland Post-Brexit

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## Introduction

The most important area of British politics at the moment is also the most controversial. This policy area is, of course, Brexit. And the most controversial aspect of Brexit, is what it means for Northern Ireland, its borders, its trade and its peace process. Described by the Secretary of State for Northern Ireland, James Brokenshire MP, as “a priority item in the Brexit negotiations”<sup>1</sup>.

On 23<sup>rd</sup> June 2016, the people of the United Kingdom voted to leave the European Union by 52% to 48%, with more people voting to leave the European Union than have ever voted for a single political party in any United Kingdom General Election.

The Government’s mandate to ensure the United Kingdom leaves the European Union is therefore clear. And the will of the people must be respected if there is to be any confidence in the democratic process of this country.

Since the referendum, some have argued for the United Kingdom to remain a member of the EU’s single market, but the Government has – correctly in our view – ruled this option out. The rationale behind leaving the single market is overwhelmingly one of respecting the referendum result.

Remaining a member of the single market would result in the United Kingdom retaining membership of the European Union in all but name, as the free movement of goods, services, people and capital with all 27 other European Union countries would continue. These so called ‘four freedoms’ are precisely what the British public voted against on the 23<sup>rd</sup> June, as they wanted control over the laws, borders and money of this country.

However, the consequence of leaving the single market is that the United Kingdom will have to either negotiate a free trade deal with the European Union, or trade on World Trade Organisation rules post-Brexit. The Government is clear in its objective, it wants to secure a mutually beneficial free trade deal with the European Union.

Whether a free trade deal is reached or not, planning must be conducted for a post-Brexit Britain.

To prepare for a post-Brexit Britain we are producing a series of practical reports to ensure the United Kingdom is ready for a future outside the European Union. The first in the series was ‘Ready on Day One’, and this report – ‘The UK and the Republic of Ireland Post-Brexit’ – is the second.

The United Kingdom and the Republic of Ireland have strong historical links that are equally important to both countries. However, there are political and historic factors that require care to ensure that both the United Kingdom and the Republic of Ireland make a success of Brexit, and that the conflicts of the past are confined to the history books.

We hope that this report goes some way in assisting this endeavour.

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<sup>1</sup>James Brokenshire, Commons Debate, July 3rd 2017 <https://hansard.parliament.uk/Commons/2017-07-03/debates/B0282CE2-F76F-4038-BA83-E313C3A00BF6/NorthernIrelandPoliticalSituation#contribution-4E49837C-A0BD-4B01-8875-BEA8D5CF1EA0>

## Executive Summary

In just over a year and a half we will be leaving the EU. Deal or no deal we can be ready on day one to keep the Irish border as it is. The golden prize will be to secure the free movement of people, free passage of goods and free trade agreement that will work for us and this important neighbour. In practical terms this means the Common Travel Area needs to be maintained. Customs systems should be introduced without checks at the border. A free trade agreement must be made – because tariffs would be economically damaging to the whole of Ireland.

**Free movement of people** The Common Travel Area (CTA) was established in 1923 after the Republic of Ireland became an independent state. It provides for the free movement of people from the Republic of Ireland and the United Kingdom without passport checks.<sup>2</sup> Thanks to the CTA it is possible simply to walk from the Republic to Northern Ireland without any border checks. Indeed 30,000 people live one side of the border and work on the other.<sup>3</sup>

Everyone agrees on the importance of keeping the CTA as it is now. The EU recognises the special nature of the CTA in Protocol 20 relating to Article 26 of the European Treaty<sup>4</sup>. While paragraph 14 of the EU's Brexit negotiating principles<sup>5</sup> says maintaining the CTA is a key aim. The Irish Government, the British Government<sup>6</sup> and Northern Irish political parties all want to maintain the CTA.

Given that all are agreed that the CTA must stay, this should be more a matter of practicality than principle. The question is how can free movement be ended for EU citizens, while keeping the CTA? The pragmatic approach is to maintain free movement within the island of Ireland while passport checks are made on travel for all journeys from ports and airports to and from the United Kingdom.

Which already happens - as airlines<sup>7</sup> and ferry operators<sup>8</sup> already effectively require passports for travel between the island of Ireland and the mainland United Kingdom. This is for security and to ensure accurate passenger manifests are kept. So unlike other parts of the Brexit jigsaw, it's likely the solution lies in not changing the existing system, but to build on it.

That airlines and ferry operators already effectively require passports makes pragmatism possible. Namely to enable an open border with no controls to be maintained within the island of Ireland, the CTA to be kept in place unchanged and the free movement of EU citizens within the United Kingdom

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<sup>2</sup> IIEA, What would happen to the Northern Irish border in the event of Brexit? p3

[http://www.iiea.com/ftp/Publications/IIEA\\_Policy%20Brief%20-%20Northern%20Ireland%20Border%20Brexit\\_2016.pdf](http://www.iiea.com/ftp/Publications/IIEA_Policy%20Brief%20-%20Northern%20Ireland%20Border%20Brexit_2016.pdf)

<sup>3</sup> Citizens' rights must be urgently dealt with in Brexit talks - GUE/NGL President (9 July 2017),

<http://www.guengl.eu/news/article/citizens-rights-must-be-urgently-dealt-with-in-brexit-talks-gue-n-gl-president>

<sup>4</sup> Protocol 20, on the Application of Certain Aspects of Article 26 of the Treaty on the Functioning of the European Union to the United Kingdom and to Ireland (1997)

<sup>5</sup> European Commission, negotiating guidelines [https://ec.europa.eu/info/sites/info/files/annex-recommendation-uk-eu-negotiations\\_3-may-2017\\_en.pdf](https://ec.europa.eu/info/sites/info/files/annex-recommendation-uk-eu-negotiations_3-may-2017_en.pdf)

<sup>6</sup> Prime Minister's letter to Donald Tusk triggering Article 50,

<https://www.gov.uk/government/publications/prime-ministers-letter-to-donald-tusk-triggering-article-50/prime-ministers-letter-to-donald-tusk-triggering-article-50>

<sup>7</sup> Travel Documentation requirements, <https://www.ryanair.com/gb/en/useful-info/help-centre/faq-overview/Travel-documentation#0-3>

<sup>8</sup> Frequently Asked Questions, Irish Ferries <http://www.irishferries.com/uk-en/frequently-asked-questions/top-10-faqs/passports-identification>

(other than Northern Ireland) to be brought to an end. There is no need to create any kind of new border in the Irish Sea<sup>9</sup>.

**Free passage of goods** Maintaining trade in goods without border control posts or a free trade agreement is seen as a greater challenge. The Norway/Sweden model is often pointed to as a solution. Norway is outside the customs union, yet is a member of the EU single market. There is no political aversion to border posts. And while the border is long, the passable routes are few. In the case of Ireland the border is very passable in many places and the aim is to avoid a physical border altogether.

The Norway/Sweden model may not be quite the right model to achieve the aim of no hard border in Ireland. Yet it does highlight that the key to a successful border is the level of co-operation and trust that each party places on the systems and checks of the other.

The key is to treat the border as a tax point, not a search point as detailed in the blueprint<sup>10</sup> to be ready on day one at the Channel Ports. The system can operate as a self-assessment system like VAT. While the Irish border is open, there are already a number of measures in place<sup>11</sup>, such as number plate monitoring technology, and a high degree of co-operation. Any necessary investigations and compliance audits can be made at workplaces on both sides of the border – political will and co-operation can make this achievable.

Building on the existing infrastructure, there need not be long delays at the border as long as systems are properly organised. It should be possible to avoid border checks – other than those linked to criminality – so long as the mutual recognition of foodstuffs continues. This would enable the virtual border<sup>12</sup> suggested by the former Taoiseach, Enda Kenny, to become a reality for customs after Brexit.

**Free trade agreement** Tariffs will have a negative impact on the UK and a terrible impact on the economy of the Republic of Ireland. In 2016, the UK imported £17bn of goods and services<sup>13</sup> from the Republic of Ireland. The Irish Government estimates<sup>14</sup> that tariffs would see trade fall by a third and 40,000 people lose their jobs in the Republic. It is also estimated that the Irish national debt would increase by €20 Billion within five years.

The new Taoiseach Mr Varadkar is right in seeking to avoid tariffs<sup>15</sup>. His calls for the UK to remain inside a customs union with the EU or for there to be a free trade agreement with the UK are deeply

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<sup>9</sup> Press Association, Ireland 'will not design a border for the Brexiteers', says Taoiseach, (28 July 2017) <https://www.theguardian.com/world/2017/jul/28/taoiseach-leo-varadkar-ireland-not-design-border-brexiteers>

<sup>10</sup> Charlie Elphicke, Ready on Day One, 2017.

<sup>11</sup> Northern Ireland Affairs Committee, Northern Ireland and the EU Referendum <https://publications.parliament.uk/pa/cm201617/cmselect/cmniaf/48/48.pdf>

<sup>12</sup> Kenny plans 'virtual border' to preserve path to the North, (27 July 2017), <http://www.independent.ie/business/brexit/kenny-plans-virtual-border-to-preserve-path-to-the-north-34915784.html>

<sup>13</sup> ONS Pink Book, (2016), Table 9.3 <https://www.ons.gov.uk/economy/nationalaccounts/balanceofpayments/datasets/9geographicalbreakdownofthecurrentaccountthepinkbook2016>

<sup>14</sup> House of the Oireachtas debates, Statement of Strategy 2017, Department of Finance, 19 January 2017, <http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/committeetakes/FPJ2017011900002>

in his national interest. If the UK is to be free to make trade deals around the world, it won't be possible to remain in the EU customs union. The EU making a free trade agreement with the UK is therefore not just a test of the UK – it is a test of the EU, whether it can balance the economic interests of its member state of Ireland with its desire to have a robust response to Britain deciding to leave the EU.

As the clock ticks down on our leaving the EU, we can be ready on day one to preserve the free movement of people and the free passage of goods between the UK and Ireland. Yet delivering a free trade agreement is harder as it is not within the sole control of either the UK or Ireland. The focus of Ireland and the EU, as much as the UK, should be on avoiding tariffs by securing a UK-EU free trade agreement.

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<sup>15</sup>Leo Varadkar warns 'clock is ticking' on Brexit talks, (4 August 2017), <http://www.bbc.co.uk/news/uk-northern-ireland-40819687>

## Common Travel Area

The first section of this report will deal with the Common Travel Area and its status post-Brexit, the continuation of which will help ensure peace is preserved and that security and immigration checks are made on the island of Ireland.

Currently, the UK and the Republic of Ireland are outside the Schengen zone – which removes passport checks between participating countries<sup>16</sup> – but have a mirroring bilateral agreement that operates in the same way between the UK and the Republic of Ireland, namely, the Common Travel Area (CTA)<sup>17</sup>.

The CTA was created in 1923 between the UK and the Irish Free State – precursor to the Republic of Ireland – and fully implemented in 1925. It has been suspended and the nature of the agreement has changed at certain periods – such as during the Second World War – but these suspensions and changes were temporary, and the agreement continues to this day.<sup>18</sup>

The CTA provides for the free movement of people between the Republic of Ireland and the UK without passport checks, however, both countries have passport checks on nationals from other EU member states – due to the fact that neither country is a member of the Schengen zone.

As we can see, the CTA predates the UK and the Republic of Ireland's entry into the EU in 1973. However, the UK and the Republic of Ireland have not experienced a situation in which only one country was an EU member state. Therefore, it is important to look at the impact of EU membership on the CTA.

The EU has competence – the ability to create law – over a wide range of policy areas. This includes customs and travel arrangements within the EU. In addition to the EU's competences, there is also the principle of free movement, which prevents different treatment to nationals of different member states.<sup>19</sup>

Therefore, on initial reading, one would imagine that the EU determines the status of free movement, passport and customs checks without reference to other factors. However, there are qualifications to these rights already in place, one of which relates directly to the CTA between the Republic of Ireland and Northern Ireland. This is set out in Protocol 20.

Protocol 20 relating to Article 26 of the Treaty on the Functioning of the European Union (TFEU) states: 'The United Kingdom and Ireland may continue to make arrangements between themselves relating to the movement of persons between their territories.'<sup>20</sup> In other words, Protocol 20 provides for the continuation of the CTA, despite the UK and the Republic of Ireland's membership of the EU. Allowing for a separate legislative regime between two member states, than the rules applicable to the other member states.

From this provision it is clear that the EU is flexible in regard to the rights it has competence over.

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<sup>16</sup> Schengen Area as of 1st July 2013, [https://ec.europa.eu/home-affairs/what-we-do/policies/borders-and-visas/schengen\\_en](https://ec.europa.eu/home-affairs/what-we-do/policies/borders-and-visas/schengen_en)

<sup>17</sup> IIEA, What would happen, p2

<sup>18</sup> Ibid., p3

<sup>19</sup> Article 45, Treaty on the Functioning of the European Union

<sup>20</sup> Article 2, Protocol 20, on the Application of Certain Aspects of Article 26 of the Treaty on the Functioning of the European Union to the United Kingdom and to Ireland (1997)

The CTA developed due to complex historical, economic and political factors, and the EU accepted these factors when it decided to make specific arrangements for the CTA through Protocol 20. Therefore, the continuation of the CTA must also be viewed through the same lens, rather than viewing continuing arrangements through the narrow aperture of the EU status quo.

If the EU was willing to make these specific arrangements for two member states – to ensure peace and economic success on the island of Ireland – it is likely the EU will wish to make similar arrangements when only one party is a member state. Especially as special arrangements have been made for non-EU member states in the past, such as Monaco’s customs arrangements with France, and the exemption on EU VAT and excise duties for the Aland Islands.<sup>21</sup>

The CTA is distinct from the EU, it existed before the creation of the EU, and it operated whilst the UK and the Republic of Ireland were members of the EU. Therefore, it logically follows that the CTA will continue once the UK leaves the EU. This is a view echoed by an IIEA report which said that it is ‘a reasonable assumption that the EU would endeavour to ensure that an agreement could be reached to avoid passport controls’<sup>22</sup>.

However, if continuation cannot occur through the EU’s current legal structures – the CTA is more likely to be compatible with EU law than not<sup>23</sup> – it is important to remember that these legal structures can change. The legal structures were changed for two EU member states, and they can be changed for an EU member state and a contracting party, in the exact same fashion. This is because the CTA and Protocol 20 were not created to solve a legal problem, but created to solve a political one.

The political dimension has not changed, neither has the solution. If the incentive to introduce the CTA and Protocol 20 was great enough in the first place, then there continues to be a great enough incentive to ensure its continuation.

This is assisted by the broad range of political support in favour of the CTA.

The Republic of Ireland’s former Taoiseach, Enda Kenny, summed up the feeling in the Republic by saying “we are not returning to the borders of the past... It is a political challenge to deal with it. It will have to happen because I won’t sign for anything else”<sup>24</sup>.

This has been confirmed since Enda Kenny’s replacement as Taoiseach. Simon Coveney, Republic of Ireland’s Minister for Foreign Affairs and Trade, said “Our preferred solution is that we find a way of maintaining as close to the status quo as possible... Don’t forget that this is very much part of the peace process as well as a functioning economy, and that is something we need to protect”<sup>25</sup>.

The Democratic Unionist Party supports the CTA. As does the Republic’s new Taoiseach, Leo Varadkar, who has already made statements in favour of the CTA, along with a proposal to have

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<sup>21</sup> Lisa O’Carroll, ‘Half in, half out: EU territories ‘show the way for Northern Ireland’, (20 July 2017), <https://www.theguardian.com/uk-news/2017/jul/20/half-in-half-out-eu-territories-show-way-northern-ireland>

<sup>22</sup> IIEA, What would happen, p5

<sup>23</sup> House of Lords, European Union Committee, Brexit: UK-Irish Relations, pp29-30

<sup>24</sup> Dara Doyle and Vonnice Quinn, Irish Will Block Brexit Deal That Involves Hard Border, PM Says, 17 March 2017, <https://www.bloomberg.com/news/articles/2017-03-17/irish-will-block-brexit-deal-that-involves-hard-border-pm-says>

<sup>25</sup> Simon Coveney, Republic of Ireland’s Minister for Foreign Affairs and Trade, Chatham House <https://www.chathamhouse.org/expert/comment/facing-brexit-ireland-northern-ireland-and-eu>

customs and security checks take place at ports, a view shared by Sinn Fein Leader, Gerry Adams.<sup>26</sup> However, Mr Varadkar's proposal for a border in the middle of the Irish Sea is significantly more controversial and seems unlikely to succeed.<sup>27</sup>

In the UK's Article 50 letter to European Council President, Donald Tusk, the UK Government and the Prime Minister put their support for the CTA beyond doubt: 'We want to avoid a return to a hard border between our two countries, to be able to maintain the Common Travel Area between us, and to make sure that the UK's withdrawal from the EU does not harm the Republic of Ireland.'<sup>28</sup>

The Secretary of State for Exiting the European Union, David Davis MP, gave his support in a written statement to the House of Commons, in which he wrote, 'Both parties are committed to... ensuring that nothing is done that jeopardises the peace process, and preserving the common travel area and associated arrangements.'<sup>29</sup>

This policy objective has even been supported by the European Commission, which stated in its negotiating guidelines: 'Negotiations should in particular aim to avoid the creation of a hard border on the island of Ireland, while respecting the integrity of the Union legal order.'<sup>30</sup>

The impact of the continuation of the CTA is to allow free movement and passport checks on the island of Ireland to remain unchanged. However, security checks and checks on free movement need to be made somewhere.

The UK voted to leave the EU on 23<sup>rd</sup> June 2016, and this was in part because the UK wanted control over immigration and security, this cannot be achieved if passport checks are not conducted.

This may seem to contradict the belief in the continuation of the CTA, but it does not. Passport checks do not need to be conducted on the Northern Irish border, but they can be conducted elsewhere. This satisfies the three principal objectives, immigration control, security control and a border free island of Ireland.

This report therefore recommends that passport and security checks should take place at the ports and airports of Northern Ireland and the Republic, when an individual is travelling from the island of Ireland to Great Britain. And passport and security checks should take place at the ports and airports of Great Britain, when an individual is travelling from Great Britain to the island of Ireland.

This would allow the continued free movement of people to travel, live work and study on the island of Ireland without a passport. As well as continued free movement between the Republic of Ireland and the United Kingdom, while ensuring the necessary security checks are made.

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<sup>26</sup> Irish government will not design 'Brexit border', says Varadkar, 28 July 2017, <http://www.bbc.co.uk/news/world-europe-40750999>

<sup>27</sup> PA, Ireland 'will not design a border' <https://www.theguardian.com/world/2017/jul/28/taoiseach-leo-varadkar-ireland-not-design-border-brexiters>

<sup>28</sup> Prime Minister's letter to Donald Tusk triggering Article 50, <https://www.gov.uk/government/publications/prime-ministers-letter-to-donald-tusk-triggering-article-50/prime-ministers-letter-to-donald-tusk-triggering-article-50>

<sup>29</sup> David Davis, written statement to the House of Commons, 13 July 2017 <https://hansard.parliament.uk/Commons/2017-07-13/debates/17071365000013/EUExitJulyNegotiatingRound?highlight=northern%20ireland%20european%20union#contribution-1561DFEE-ACF3-48A6-A4C5-2E953E5F1DC1>

<sup>30</sup> European Commission, negotiating guidelines [https://ec.europa.eu/info/sites/info/files/annex-recommendation-uk-eu-negotiations\\_3-may-2017\\_en.pdf](https://ec.europa.eu/info/sites/info/files/annex-recommendation-uk-eu-negotiations_3-may-2017_en.pdf)

Internal flights and ferries in Great Britain should also conduct these security checks, through the production of a passport, to prevent any gaps in security. This ensures that planes and ferries are secure.

This already happens – as airlines<sup>31</sup> and ferry operators<sup>32</sup> effectively require passports for travel between the island of Ireland and the mainland United Kingdom. This is for security and to ensure accurate passenger manifests are kept. So unlike other parts of the Brexit jigsaw, it's likely the solution lies in not changing the existing system, but in building upon it.

This measure also has the advantage of not treating another constituent part of the UK – in this case Northern Ireland – differently from the Great British mainland. That airlines and ferry operators already effectively require passports makes pragmatism possible. Namely to enable an open border with no controls to be maintained within the island of Ireland, the CTA to be kept in place unchanged and the free movement of EU citizens within the United Kingdom – other than the Republic of Ireland – to be brought to an end. As a result, there is no need to create any kind of new border in the Irish Sea, as suggested by the new Taoiseach<sup>33</sup>.

The implementation of these recommendations would result in a permeable Northern Irish border, avoiding a potential escalation of violence in the surrounding area, while simultaneously delivering on the Brexit referendum by controlling and securing the border. In addition, tourism and the right to study would be unaffected, because it is not in the EU's interests – as well as the UK's – to damage the peace process by encouraging hostility through any form of 'punishment'. Both the UK and the EU can agree to either keep the existing legislation, or give the island of Ireland special status – just as it did with Protocol 20 – to ensure peace, by putting the greater good first and foremost.

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<sup>31</sup> <https://www.ryanair.com/gb/en/useful-info/help-centre/faq-overview/Travel-documentation#0-3>

<sup>32</sup> <http://www.irishferries.com/uk-en/frequently-asked-questions/top-10-faqs/passports-identification>

<sup>33</sup> The Guardian, Ireland 'will not design a border'  
<https://www.theguardian.com/world/2017/jul/28/taoiseach-leo-varadkar-ireland-not-design-border-brexiters>

## Irish Border to be a Tax Point, Not a Search Point

As members of the EU, the UK and the Republic of Ireland are members of the single market – this allows for the free movement of goods and services between members. But Britain is soon to withdraw from the EU, and is likely to leave the single market too – as it is currently the Government’s policy, set out in the Prime Minister’s Lancaster House speech<sup>34</sup>.

If the UK Government decides that Britain is to leave the single market and fails to reach a deal with the EU that eliminates tariff and non-tariff barriers to trade, the UK and the EU would then – assuming one party doesn’t unilaterally remove all tariff and non-tariff barriers – be required to erect tariff and non-tariff barriers between each other. This, on the face of it, is alarming in the Northern Irish context.

Once this is combined with the recommendation in the previous section of this report – to preserve the CTA – a fundamental question is raised. If free movement to travel, live, work and study operates on the island of Ireland, how will the movement of goods and services be monitored?

Despite Protocol 20 and the CTA, it is not entirely accurate to describe the Northern Irish border with the Republic as ‘completely open’, as number plate monitoring technology amongst other minor measures are in place.<sup>35</sup> From this, we can deduce that some restrictions are politically palatable, but the scale, presence of officials and intrusiveness is the balancing act to be conducted.

This brings with it an opportunity to make the Northern Irish border a tax point, but not a search point, operating like the VAT self-assessment system. Therefore, having a permeable border where goods can be monitored from, would not be politically impossible, as long as there is not a physical checkpoint to be targeted.

In this section, we will analyse how the Irish border can be a tax point, but not a security risk.

This is also the UK Government’s position. James Brokenshire MP, Secretary of State for Northern Ireland, said that the Government is “looking at the issue of the movement of goods across the border to ensure that it remains invisible and seamless”.<sup>36</sup>

Such an objective is attainable.

Recently, there was a suggestion put forward by the former Taoiseach, Enda Kenny, of a ‘virtual border’ with Northern Ireland relating to customs after Brexit. He called for most goods to cross the border without checks, but a requirement to notify customs before crossing. Monitoring cameras would ensure compliance, and suspicious vehicles could be investigated at a lorry park a few miles away. This could be achieved through the digitisation of customs systems.<sup>37</sup>

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<sup>34</sup>The government's negotiating objectives for exiting the EU: PM speech (17 January 2017), <https://www.gov.uk/government/speeches/the-governments-negotiating-objectives-for-exiting-the-eu-pm-speech>

<sup>35</sup> Northern Ireland Affairs Committee, Northern Ireland and the EU Referendum, Chapter 4 <https://publications.parliament.uk/pa/cm201617/cmselect/cmniaf/48/48.pdf>

<sup>36</sup> James Brokenshire, Commons Debate, 3 July 2017 <https://hansard.parliament.uk/Commons/2017-07-03/debates/B0282CE2-F76F-4038-BA83-E313C3A00BF6/NorthernIrelandPoliticalSituation#contribution-4E49837C-A0BD-4B01-8875-BEA8D5CF1EA0>

<sup>37</sup> George Parker and Arthur Beesley, ‘Virtual’ Ireland border seen as template for Brexit customs deal, (23 February 2017), <https://www.ft.com/content/1d8b660e-f9ba-11e6-9516-2d969e0d3b65>

We are of the same view, and set out this position clearly in our recent report – ‘Ready on Day One’.<sup>38</sup> This was written with the port of Dover in mind, however, it can also be applied in the context of the Northern Irish border.

In ‘Ready on Day One’,<sup>39</sup> we advocated a series of reforms to the UK’s customs system. These included a Trusted Trader scheme (TTS), which emphasises ease of access for small and medium sized enterprises (SMEs); customs self-assessment; e-manifests and customs preclearance; one government at the border/a ‘single window’ system; FAST lanes and improved infrastructure for approved hauliers; checks to take place away from the frontier – making the border itself just a tax point, not a regular check point.

These principles are as important to the Irish border as they are to the Dover-Calais border.

The most important programme to simplify border controls is the ‘Trusted Trader Scheme’, currently used in countries such as Canada and Australia.<sup>40</sup> Under a TTS, companies register themselves with a government agency and are then fast tracked through the customs process. The benefits of such a scheme are obvious – hauliers spend less time queuing,<sup>41</sup> and government agencies are better able to direct their efforts to tackle higher risks.<sup>42</sup> Businesses can also remove the cost of running a separate system to deal with customs and have a clearer expectation of what those costs might be in practice.

The UK currently operates an Authorised Economic Operators (AEOs) system,<sup>43</sup> which could be adapted to become a TTS. When AEO status is obtained in one EU Member State, it applies across the rest of the EU customs union.<sup>44</sup> These AEOs would therefore continue to be trusted by the Republic even after Britain leaves the EU.

This is especially important in when it is considered that the biggest sector for exports from the Republic of Ireland to the UK is meat production – which was €1.7 billion in 2015.<sup>45</sup> In the UK, meat accounts for 80% of checks on non EU containers, therefore, a TTS is crucial if queues are to be avoided.

There have also been calls for the use of technology – including the Secretary of State for the Department for Exiting the EU, David Davis MP, and others<sup>46</sup> – such as Automatic Number Plate

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<sup>38</sup> Ready on Day One, 2017

<sup>39</sup> Ibid.

<sup>40</sup> Owing to the geographical diversity of these two countries, these systems operate in subtly different ways, with Canada focussing on a land border with the USA, while Australia focuses on ports. The USA also runs a similar system.

<sup>41</sup> Speed is improved by a decrease in the need for physical examinations and interventions (currently 1.5% of containers are stopped), helped by the use of gamma radiation technology to quickly scan the inside of containers. Gamma radiation technology uses levels of radiation that are below safety levels for members of the public. In Canada, the drivers of freight vehicles have the option to leave the vehicle before it is scanned.

<sup>42</sup> Allowing a greater number of traders to pass by unchecked allows the limited resources of the border agencies to be better targeted. Attention can be given to inspecting a reduced pool of containers and border force staff are physically deployed to more important areas of the border.

<sup>43</sup> HMRC, ‘Guidance: Authorised Economic Operator’ (last updated 30 November 2015)

<https://www.gov.uk/guidance/authorised-economic-operator-certification>

<sup>44</sup> European Commission, ‘Authorised Economic Operator’ [http://ec.europa.eu/taxation\\_customs/general-information-customs/customs-security/authorised-economic-operator-aeo/authorised-economic-operator-aeo\\_en#who\\_can\\_become](http://ec.europa.eu/taxation_customs/general-information-customs/customs-security/authorised-economic-operator-aeo/authorised-economic-operator-aeo_en#who_can_become)

<sup>45</sup> Darragh Murphy, Britain is not Ireland's most lucrative EU trading partner - Belgium is, (11 July 2016),

<http://www.thejournal.ie/ireland-britain-belgium-2866202-Jul2016/>

<sup>46</sup> House of Lords, European Union Committee, Brexit: UK-Irish Relations, p26

Recognition cameras (ANPR), self-assessment and tagged containers.<sup>47</sup> This technology is intended to speed up the process, but does not eliminate checks completely, as suspicious vehicles require inspection, but this can be done away from the border.

Using customs self-assessment, where companies are responsible for ensuring their own compliance, with further use of non-intrusive inspection technology (NII), it is possible to ensure that the need for lengthy customs queues is diminished.

If these new technologies are implemented there will be significant efficiencies made, such as in Singapore, where waiting time for a customs application has reduced from two minutes to under ten seconds, and there are plans to go further.<sup>48</sup> Canada's RFID and Nexus systems do the same, and Britain should study these systems closely when crafting its own.<sup>49</sup> A new scheme of self-assessment will allow businesses to pay in arrears and move the administrative burden away from the point of entry.<sup>50</sup>

This saves a vast amount of time, and the creation of an image for inspection removes the potential requirement for multiple physical interventions. It can also be targeted to those vehicles which are designated as high risk. The e-manifest should arrive 24 hours before the cargo. An instant digital scan of vehicles and loads designated high risk would allow for rapid identification of contraband, efficiently targeting potential issues, in conjunction with an RFID/Nexus type scheme.

Any inspections which do need to take place can do so far from the border itself, at designated check points – such as lorry parks. But as we would be building on existing infrastructure, there need not be long delays, as long as systems are properly organised. It should be possible to avoid checks altogether – other than those linked to criminality – so long as the mutual recognition of foodstuffs continues.

Mutual recognition 'guarantees that any product lawfully sold in one EU country can be sold in another. This is possible even if the product does not fully comply with the technical rules of the other country.'<sup>51</sup> The effect of this is that lengthy checks do not need to be conducted for the free passage of these goods, which is particularly important in regards to perishable foodstuffs.

It is possible for mutual recognition of foodstuffs to continue post-Brexit due to the alignment of minimum standards and customs processes that are already in place by virtue of the UK's membership of the EU since 1973.

This is backed up by Peter Chase, a former United States of America diplomat who has held many EU related roles, who said in relation to post-Brexit mutual recognition: "The UK starts off from a

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<sup>47</sup> Hansard Contributions, David Davis, 2 February 2017,

<https://hansard.parliament.uk/search/MemberContributions?house=Commons&memberId=373&page=10>

<sup>48</sup> Open Europe, 'Nothing to Declare, A plan for UK and EU trade outside the Customs Union' (27 March 2017) at page 44 <http://openeurope.org.uk/intelligence/economic-policy-and-trade/nothing-to-declare-a-plan-for-uk-eu-trade-outside-the-customs-union/>

<sup>49</sup> Open Europe, 'Nothing to Declare, A plan for UK and EU trade outside the Customs Union', page 54-55, <http://openeurope.org.uk/intelligence/economic-policy-and-trade/nothing-to-declare-a-plan-for-uk-eu-trade-outside-the-customs-union/>

<sup>50</sup> Open Europe, 'Nothing to Declare, A plan for UK and EU trade outside the Customs Union', page 52, <http://openeurope.org.uk/intelligence/economic-policy-and-trade/nothing-to-declare-a-plan-for-uk-eu-trade-outside-the-customs-union/>

<sup>51</sup> European Commission, Single Market and Standards, Mutual Recognition,

[http://ec.europa.eu/growth/single-market/goods/free-movement-sectors/mutual-recognition\\_en](http://ec.europa.eu/growth/single-market/goods/free-movement-sectors/mutual-recognition_en)

position of unparalleled harmonisation, with both sets of regulators knowing and trusting each other. It should be possible to design a flexible system that builds on this confidence.”<sup>52</sup>

Finally, it is also important that the UK’s post-Brexit customs processes aligns with the EU’s so that the information requirements and processes are consistent for interlocking customs transactions. HMRC’s Customs Declaration Services programme is already aiming to meet the requirements of EU customs law, as a result, this concern is largely negated.<sup>53</sup>

If these measures are adopted, the UK and the Republic of Ireland will be able to continue trading freely long after Britain has left the EU. As the border will be a tax point, not a search point, operating in a similar way to the VAT self-assessment system.

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<sup>52</sup> Alan Beattie, Why the ‘Brussels effect’ will undermine Brexit regulatory push, (12 July 2017), <https://www.ft.com/content/fd5ca278-6654-11e7-8526-7b38dcaef614>

<sup>53</sup> Ready on Day One, 2017.

## Norway/Sweden

There are other possible solutions to ensure that cross border trade on the island of Ireland flourishes. One suggested solution is the Norway/Sweden model. However, this has significant drawbacks, and in our view not appropriate for the UK. But, this model does highlight that the key to successful border trade is the level of co-operation and trust that each party places on the systems and checks of the other.

In this section, we will set out the Norway/Sweden model, and consider whether it is appropriate in a Northern Irish context.

Sweden is in the EU's customs union, Norway is not. This is likely to be the same situation as the Republic of Ireland and Northern Ireland post Brexit. However, both Norway and Sweden are members of the EU's single market, which is unlikely to be replicated when the UK leaves the EU.

The Norway/Sweden model is useful in a Northern Ireland context, as it allows for the passage of goods, and the monitoring of those goods, without a heavy emphasis on checks. As a result, it is a model that has been held up as an example of successful cooperation over an external EU border.<sup>54</sup> At the heart of its success is the trust which each party places on appropriate checks being made at the external border of the other. The effect of this is mutual recognition of each country's border checks.

In practice, the two nations are effectively in a loose customs union with one other. Although this model may seem appropriate in relation to Northern Ireland, issues would arise around its continued membership of the single market.

The Norway/Sweden model is founded upon a bilateral convention, signed in 1959. This allows for the customs officials of one state to cross the border of the other state.<sup>55</sup> This is something which is difficult to imagine being accepted in Northern Ireland or the Republic of Ireland, due to political tensions. There are, however, some customs checks which must still be made, for example on agricultural products, which again the UK would not seek to replicate, and would not be necessary if mutual recognition of foodstuffs is agreed (as explained in section two).

However, there are key similarities between the Norway/Sweden relationship and the relationship on the island of Ireland. To name only a few, the significant 'economic parity' between Norway and Sweden, as well as the lack of 'significant linguistic barriers'.<sup>56</sup> This is obviously also true in the context of the UK and the Republic. In both cases, the two nations also enjoy a similarly close logistical relationship with industry – in Norway/Sweden this industry is mining and ports, in Northern Ireland/Republic of Ireland it is dairy and beef.<sup>57</sup>

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<sup>54</sup> The Swedish-Norwegian cross-border region <http://www.nordregio.se/en/Metameny/Nordregio-News/2015/Cross-border-co-operation/The-Swedish-Norwegian-cross-border-region/> The Nordregio project operated across the EU in order to determine which of the many different types of external border which the EU experiences were useful for co-operation.

<sup>55</sup> House of Lords, European Union Committee, Brexit: UK-Irish Relations, p26

<sup>56</sup> Northern Ireland Affairs Committee, Oral evidence: Future of the land border with the Republic of Ireland, HC 700, (29 March 2017), Q33, <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/northern-ireland-affairs-committee/future-of-the-land-border-with-the-republic-of-ireland/oral/49764.pdf>

<sup>57</sup> Ibid.

But, there are some fairly significant differences, namely that the Norway/Sweden border is, at 1653km, significantly longer than the Irish land border. It also has far fewer negotiable routes for traders to take than in Northern Ireland, both are members of the single market and there is not a political dimension to the status of border posts.

We would therefore conclude, that the Norway/Sweden model is not appropriate for the Northern Irish border, because the political differences would be insurmountable. It would clearly be politically unacceptable, and endanger the peace process, if customs officials could cross the border. Something that all parties want to avoid. However, the model does provide an insight into successful co-operation and how special arrangements are possible and can work.

## Economic Impact of a Hard Border

What is evidently clear from this research is that there is a great deal of political will towards reaching a settlement that secures not only free movement on the island of Ireland, but also, cross-border trade. Why is this? The answer is clearly to avoid a detrimental impact on the peace process and to avoid the negative economic consequences of a disruption to cross-border economic activity.

There is “a 500 kilometre border between Northern Ireland and the Republic of Ireland... [and] about 1.8 million cars cross the border every month... [through] 400 road crossings.<sup>58</sup>” In addition, 177,000 lorries and 208,000 vans cross the border every month. And around 30,000 people cross the border every day by virtue of living and working on different sides of the border.<sup>59</sup>

Demand for Northern Irish goods is high in the Republic, with a quarter of Northern Irish exports going to the Republic. These exports contain large amounts of agricultural produce, as 35% of Northern Irish exports are agricultural, compared with 10% for the remainder of the UK. If no deal is reached by the UK and the EU on Northern Ireland, it would result in large tariffs on the price of Northern Irish agricultural produce (EU average tariff on agricultural produce is 22.5%), driving up the cost of food in the Republic of Ireland.<sup>60</sup>

In relation to tourism, there are 263,000 tourism jobs on the island of Ireland, which is 4% of the Republic’s GDP and 5.3% of Northern Ireland’s GDP. A large proportion of these tourists come from Great Britain, and the lack of a deal facilitating tourism will inevitably lead to job losses.<sup>61</sup>

In relation to energy, Northern Ireland depends heavily on the Republic for its energy, however, the Republic is, in turn, an importer of energy from the UK,<sup>62</sup> importing 90% of its oil and gas from the UK.<sup>63</sup> Therefore, despite claims that Northern Ireland’s energy security would be at risk in the event of Brexit, it is, in reality the Republic that has the most to lose in terms of the energy sector.

In 2016, the UK imported £17bn of goods and services to the Republic of Ireland, and exported £26bn of goods and services to the Republic, giving the UK a trade surplus of around £9bn.<sup>64</sup> In a

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<sup>58</sup> Simon Coverney, Republic of Ireland’s Minister for Foreign Affairs and Trade, Chatham House <https://www.chathamhouse.org/expert/comment/facing-brexit-ireland-northern-ireland-and-eu>

<sup>59</sup> Citizens rights, <http://www.guengl.eu/news/article/citizens-rights-must-be-urgently-dealt-with-in-brexit-talks-gue-ngl-preside>

<sup>60</sup> Coverney, Chatham House, <https://www.chathamhouse.org/system/files/publications/twt/Brexit%27s%20threat%20to%20Northern%20Ireland%20Burke.pdf>

<sup>61</sup> House of the Oireachtas <http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/committeetakes/FPJ2017011900002>

<sup>62</sup> Edward Burke, Brexit’s Threat to Northern Ireland, *The World Today*, (August and September 2017), <https://www.chathamhouse.org/system/files/publications/twt/Brexit%27s%20threat%20to%20Northern%20Ireland%20Burke.pdf>

<sup>63</sup> Chris Blackhurst, Ireland’s economy is heavily reliant on trade with the UK – the consequences of a Brexit could be ruinous, (13 February 2016), <http://www.independent.co.uk/news/business/comment/ireland-s-economy-is-heavily-reliant-on-trade-with-the-uk-the-consequences-of-a-brexit-could-be-a6871426.html>

<sup>64</sup> Pink Book, 2016, 9.3 <https://www.ons.gov.uk/economy/nationalaccounts/balanceofpayments/datasets/9geographicalbreakdownofthecurrentaccountthepinkbook2016>

country which has a GDP of \$294.1bn.<sup>65</sup> The impact of large tariffs would result in the Republic having to pay more for the same goods, damaging their economy.

It has been estimated that in the event of a hard Brexit – including a hard border – there would be approximately 40,000 fewer people in employment in the Republic and an increase in the national debt of €20 billion within five years.<sup>66</sup>

From these statistics it is obvious why there is political consensus in the UK, the Republic of Ireland and the EU in favour of ensuring the free-flow of trade on the island of Ireland. The economic interests of all parties are aligned because of the interdependence of the economies of the Republic and Northern Ireland. These incentives are difficult to ignore, and ought to result in a mutually beneficial arrangement on the island of Ireland being reached.

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<sup>65</sup> <https://tradingeconomics.com/ireland/gdp> figures for 2 August 2017

<sup>66</sup> House of the Oireachtas  
<http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/committeetakes/FPJ2017011900002>

## Conclusion

As you will have seen from this report, we are of the view that the United Kingdom and the Republic of Ireland can – and will – make a success of Brexit, as it is in both countries' economic and political interest.

There is cross-party and cross-country support to resolve any issues, due to the interdependence of Northern Ireland and the Republic's economies, and in the interest of political stability.<sup>67</sup>

We are of the view that the Common Travel Area can be preserved, allowing for the free movement of people between the two countries, without passport checks. This can be achieved through the application of Protocol 20 post-Brexit, or a similar new agreement.

Security and immigration control is also possible. Passport and security checks should take place at the ports and airports of Northern Ireland and the Republic of Ireland, when an individual is travelling from the island of Ireland to Great Britain, and vice versa. These checks should also take place on internal flights and ferries in Great Britain – as is already done in most cases – to ensure security standards are maintained and that no constituent part of the United Kingdom is treated differently from another.

We would also wish to see the Northern Irish border become a tax point, but not a search point. This can be achieved without physical searches. Instead, monitoring cameras on the Northern Irish border would ensure compliance, and suspicious vehicles could be investigated at a site a few miles away. To ensure efficiency, customs systems should also be modernised, as argued for in our 'Ready on Day One' report.

If these recommendations are acted upon, it would ensure the continuation of the peace process and the economic success of both nations.

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<sup>67</sup> House of Lords, European Union Committee, Brexit: UK-Irish Relations, p27