

BREXIT & THE IRISH BORDER

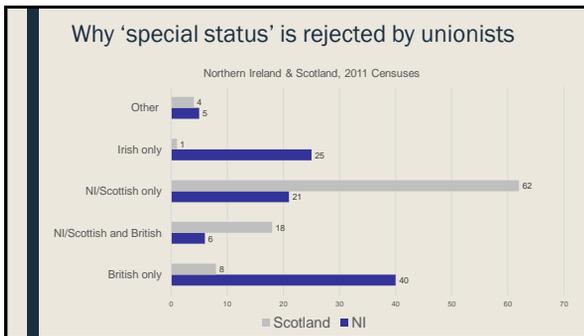
SHIFTING BORDER REGIMES

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Deep division

- **Division in NI Executive**
 - SF and DUP do not agree on the validity of the Referendum results.
 - The only common position publically expressed so far is the letter to May.
 - Different priorities to GB
- **Unionist DUP position**
 - No distinction among parts of the UK
 - The 'proper' engagement should take place with UK ministers
 - No hardening of Irish border
 - No impact on peace process
 - No interference from Irish government; representation through British government
 - No participation on the all-island 'dialogue'
 - Some have called on Ireland to consider leaving the EU itself

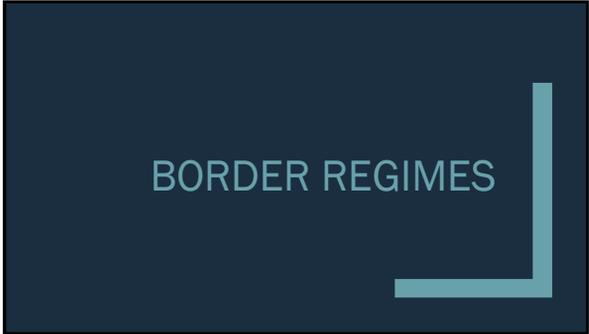


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- **Nationalist Sinn Féin**
 - Membership of the EU is fundamental to the peace process: "One should not go about unilaterally rewriting a peace agreement"
 - Lack of trust in the British government representing the best interests of all in the North
 - Seat for Irish representative at Brexit negotiating table is pre-emptive effort of EU to offer reassurance to nationalists in this regard.
 - (Legacy of 1984 EP Haagerup Report)
- **Opposition**
 - New and somewhat tenuous formation
 - Parties now splitting along orange/green lines
 - Centrist Alliance: gains from having friends in Europe battling in our corner Unionist UUP: tied by electoral split
 - Nationalist SDLP: driver in McCord court case, actively emphasizing 'Remain'
 - Greens: small but vocal

'Constitutional moment' of Brexit
As seen from the Irish border

- [Other than the re-emergence of the constitutional question]
- Where does the 'hard border' lie?
 - *What form will it take?*
- Internal UK relations/cohesion
 - *Undifferentiated goal does not mean an even outcome*
- Peace Process
 - *1998 Agreement in EU context*
- Fundamental division within NI
 - *System unable to adequately represent a cross-community majority*
- Irish citizens in UK
 - *All* born in NI are eligible.*

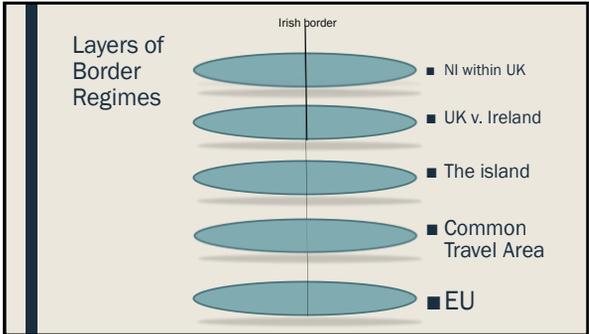


Border regimes

* "a system of control, regulating behaviour at the borders" and within them (Berg and Ehin, 2006: 54)

• Hierarchies

<ul style="list-style-type: none"> • Governance <ul style="list-style-type: none"> • <i>Laws, jurisdiction</i> • <i>Institutions</i> • Flows <ul style="list-style-type: none"> • <i>'Four Freedoms'</i> • <i>Information</i> • <i>Interaction</i> 	<ul style="list-style-type: none"> • Citizenship <ul style="list-style-type: none"> • <i>Rights (duties)</i> • <i>Inclusion/exclusion</i> • Security <ul style="list-style-type: none"> • <i>Maintenance</i> • <i>Threat/challenge</i>
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Border regimes: implications for the Irish border

	Governance	Flows	Citizenship	Security
EU	Aquis Communautaire; EU institutions	Four freedoms of movement	Common citizenship rights outside state territory but based on MS nationality	Information sharing
Common Travel Area	British-Irish institutions	Additional freedom of residence; different visa regimes	Special recognition of each others citizens	Closer pre-travel sharing of information
North/South	N/S institutions, implementation bodies; Border region bodies	Unfettered; different taxes and duties	1/5 residents in NI are Irish citizens	Cooperation not dependent on EU; could be closer, partitionist
UK/Ireland	Separate states	Close ties, inc institutionalised; Currency and tax difference	Different citizenships	Military checkpoints removed by 2002
NI within UK	Devolution	Additional cost of air/sea transport; plans for different tax regime	Special status of NI being able to choose either or both	Border monitored via information sharing; No passports needed

Assuming 'hard' Brexit...
Which points may yield and which may fracture?

<p>Yield</p> <ul style="list-style-type: none"> ■ Crime/ security ■ British/ Irish ■ EU programmes 	<p>Tenuous</p> <ul style="list-style-type: none"> ■ Agri-food sector ■ Fisheries ■ Labour markets 	<p>Fracture</p> <ul style="list-style-type: none"> ■ Energy ■ North/South institutions ■ Local authority cooperation
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Freedom of movement:
Means of maintaining flows even with a hard Brexit

Privileges currently enjoyed – issues for Irish border post-Brexit:

1. Citizenship
2. Visa-free
3. Passport-free
4. Work
5. Hard border but soft monitoring

The EU border regime is characterised by exceptions, often dependent on relations between states and their neighbours

1. Citizenship

Moldovans and EU citizenship

- Many EU member states have granted citizenship to persons residing permanently abroad if descendants of emigrants or persons with close cultural affinity
- E.g. Former citizens and descendants of Romanians living in Moldova and Ukraine are eligible for Romanian citizenship (and thereby EU citizenship)
- Non-resident Romanian citizenship was suspended during negotiations for EU accession but has been reintroduced
- Despite fears of other EU states, no overwhelming tide. A national issue.

Irish border case

- Issue: Retention of EU citizenship rights for (future) Irish citizens in NI
 - Potential obstacles to N/S movement if CTA undermined by Brexit
- Freedom of movement and privileges retained
- Decision is up to the Irish state rather than the EU – and up to individual residents in NI
- BUT introduces new differentiation between citizens in NI/on island

2. Visa-free travel

EEA and Schengen

- Many countries have visa-free access to Schengen
- Permanent residency depends on the state



- Schengen member states
- Other EU members outside Schengen Area but bound by same visa policy and special territories of the EU and Schengen member states
- Members of the EU with an independent visa policy
- Visa-free access to the Schengen states for 90 days in any 180 day period, although some Annex II nationals can enjoy longer visa-free access in some circumstances (EC 539/2001 Annex II)
- Visa required to enter the Schengen states (EC 539/2001 Annex I)
- Visa required for transit via the Schengen states (EC 810/2009 Annex IV)
- Visa status unknown

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Irish border case

- Issue: will visas be necessary for UK/Ireland movement?
- Common Travel Area means independent visa policy is still possible (Ire and UK distinct as is)
- UK needs to make a decision about visa-free travel for EU citizens. If not possible, where will checks take place?
 - Can be automated for those coming in from outside the island (e.g. PNR)
 - On island, depends on status of CTA
- BUT what status of CTA be post-Brexit?
 - Is Ireland going to remain outside Schengen?

3. Passport-free travel

Nordic passport union

- Can have freedom of movement without ID checks between EU and non-EU states
- Pre-dated EU membership
- Members except Faroe Islands signed up to Schengen acquis
- Harder rules apply for movement from Faroe into Schengen than other way around
- Reimposition of some checkpoints and requirements in response to terrorist threats

Irish border case

- Issue: will there need to be ID checks on the Irish border?
- Differential experience at the moment currently depends on airline carriers
- On the ground checks are less important than the pre-screening that happens
 - Much less possible on land border
- Reasonable risk assessment from EU as to likelihood of NI as a backdoor into the EU...
- Again, critical player here is the UK - will it want to harden border with Ireland more generally (not just Irish border) as EU frontier?
- Faroes shows it is possible to have checks on flows in one direction

4. Local regime

Local Border Traffic Regime

- For residents/workers within 30km each side of the border
- Special permits and mobility
- Bilateral arrangement for EU/Non-EU countries
- Must have Commission approval of the terms
- Entry/Exit checks should still be performed
- May have exceptional border crossings, outside hours and crossing points
- E.g. Small Border Traffic zone Poland/Russia

Irish border case

- Issue: what about cross-border workers?
- If border itself is hardened, local border traffic regime is possible
 - Crossing the border would be eased for pre-registered residents on both sides
- Arrangements are bilateral
- Could extend beyond 30km radius
- BUT need agreement with EU
 - Doesn't relieve hard border for most

5. 'Light touch' hard border

Automated Border Controls

- **Two settings:**
 - Closed, e.g. airport, prior information
 - Open, e.g. unpredictable flows
- **Technologies**
 - Biometrics (e.g. facial recognition, fingerprints (Eurodac))
 - RFID (tags)
 - Intelligent Video Analytics
 - Verification of number plates
 - Breach detection
- **E.g. Sweden/Denmark and Denmark/Germany**
 - Use of Photo ID and smartphones by police inc. in train stations

Irish border case

- Issue: how to monitor a 450km land border?
- Much talk of electronic border controls as easy solution for checks
- Q. Is this for monitoring of movement or prevention of entry?
- If these are to work effectively, need pre-registration of persons/vehicles
- BUT Not likely to put off or prevent cross-border crime or illegal migration
- Already problems in cross-border police cooperation and communication
- Willingness of people to divulge more personal information?

Conclusions

- Experience of the EU external border regime shows that there is flexibility and adaptability
 - Depends on negotiating relations between the two states concerned
- Remember that the trend on the external border is towards hardening borders and restricting freedom of movement
 - This is a particularly bad time for the UK to decide it wants to be on the outside of that border
- With every 'solution' to a problem for Northern Ireland there are implications for the Republic of Ireland and for the rest of the UK