



Brexit & the Irish Border

Key info in 11 slides

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The challenge

1998 Good Friday (Belfast) Agreement

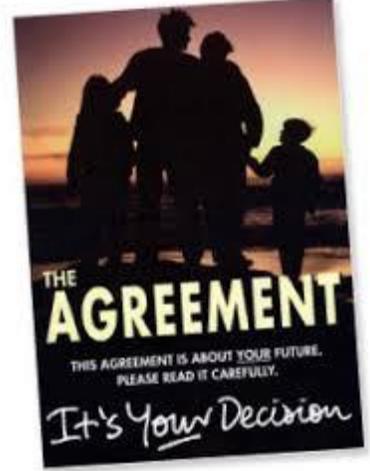
- Border poll
 - Principle of consent: no change to status of NI unless a majority in NI agree
 - Allows for a united Ireland if a majority in NI (and ROI) vote in referendum for it

Multilevel institutions

- Strand 1: power-sharing within Northern Ireland,
- Strand 2: north/south cooperation the island of Ireland,
- Plus the North/South Ministerial Council and its Joint Secretariat:
 - “to develop consultation, co-operation and action within the island of Ireland”*
 - Plus 142 areas of cooperation on the island of Ireland today, from health to transport
- Strand 3: British-Irish Council & intergovernmental conference

• Birthright in NI to be British, Irish or both

• **Human Rights:** Incorporation of ECHR, and remedies for breach of the Convention, including power for the courts to overrule Assembly legislation. (see BrexitLawNI)



Risks to the Peace Process



- Losing mechanisms & context for UK & Ireland harmonisation/cooperation
 - **Cooperation across the Irish border was 'normalised'** and depoliticised in EU context
 - Brexit puts the 'border' back to the centre of disagreement between British and Irish governments
- Fears among ordinary citizens
 - **'The 'them and us' complex could be very quickly re-established** if there is difficulty and restrictions on movement. ([Bordering on Brexit](#) focus group, 3.27.12)
 - **'I believe any form of a hard border will have an adverse effect on relations here between Unionists and Nationalists, particular in the border regions.'** ([Bordering on Brexit](#), survey respondent #211)
- Impact of Brexit on paramilitaries
 - **Brexit viewed as 'manna from heaven'** - 'the harder the better' (Saoradh interviewee, for [BrexitLawNI](#))
 - 'this will drive home to the Irish people the partition of our country... and, as history teaches us, it will **inevitably stoke the fires of resistance against British rule in Ireland'** (dissident republican speech, Milltown, Easter '18)
 - 'The one thing that would **provoke loyalist paramilitaries** is the present Irish government saying silly things about the border and the constitutional issue.' ([David Trimble](#), *The Guardian*, 6 April 2018)
- Police concerns
 - 'There's a feeling that as regards the Troubles and the conflict, NI is sorted and we don't need to worry about it, when actually **we're working flat out 24/7 to keep a lid on it.'** (PSNI Chief Constable, [George Hamilton](#), 10 Sept 2018)

Movement of goods post-Brexit*

| | | |
|------------------------|-------------------|--------|
| EU to UK | [Blue arrow] | |
| Non-EU to UK | [Purple arrow] | |
| Internal EU | [Dark Blue arrow] | Via UK |
| Internal UK | [Grey arrow] | Via EU |
| UK to EU | [Yellow arrow] | |
| Non-EU (exc. UK) to EU | [Red arrow] | |

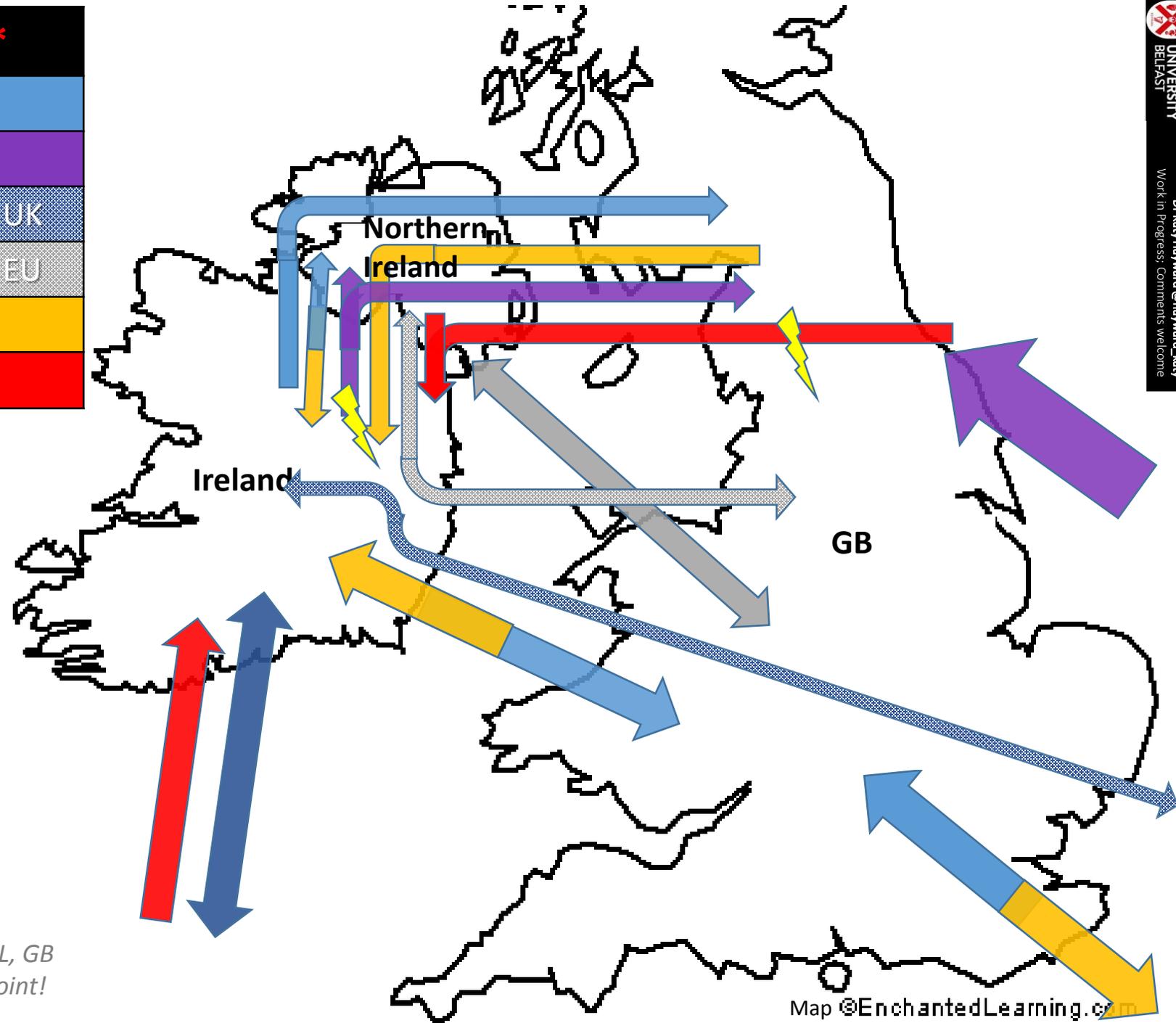
These and **These** must meet EU standards/terms of trade

These and **These** must meet UK standards/terms of trade

⚡ Biggest risks from early on:
For EU: Non-UK goods entering EU via NI;
For UK: Non-EU goods entering UK via IRL.

Future risks will grow in **these** and **these** movements as UK and EU diverge.

**Very rough indications of directions of movement into IRL, GB and NI. No scale. No precision in terms of where arrows point!*



Between EU member states

A

- Restricted goods [e.g. hazardous waste]
- Prohibited goods [e.g. Class A drugs]
- Excise goods [e.g. alcohol; these transit in duty-suspension under EU EMCS]
- Goods identified through the shared Customs Risk Management Framework [e.g. counterfeit medicine]

In the Single Market but outside EU

B

A+

- Agricultural produce [subject to tariffs]
- All 3rd party country goods [quotas, tariffs]
- Rules of Origin [for how much EEA, how much 3rd country]
- Restricted goods [expands outside EU membership]
- Excise goods [outside Excise Movement and Control system]

Example: Norway-Sweden

In a Customs Union with EU

C

A+

- All goods not covered by the CU [e.g. specific goods; those from other 3rd party countries]
- Agricultural produce [unless negotiated]
- Regulatory compliance [exc., for example, areas addressed by MRAs]
- Transport services [unless negotiated]

Example: Turkey-Bulgaria

In a Free Trade Agreement with EU

D

A+

- All goods not covered by FTA
- All 3rd country goods
- Agricultural produce [unless negotiated]
- Transport services [unless negotiated, so permits required for vehicle to cross each EU MS border]
- Rules of Origin
- VAT paid on import [unless negotiated]
- Regulatory compliance checks

Example: Canada-EU

No Deal

E

A+

- Conformity Assessment Procedure on all products prior to access to EU market
- Potential for customs controls (tariffs & quotas) for all goods crossing the border
- Permits required for transport services
- VAT paid on import
- Certain agricultural goods must enter through designated, specialised Border Inspection Posts
- Regulatory compliance checks

Customs controls on goods at EU external borders

'Smart' border technology

What it can do

- Reduce time and paperwork required for customs declarations.
- Reduce time taken to receive clearance for entry into different customs zone.
- Make risk management more efficient and comprehensive.
- Keeps data on when a registered vehicle passes a Border Crossing Point.
- In some limited cases in specific conditions, reduce time taken to scan a consignment.
- Enable link up with other systems and sources of data.

What it requires

- Pre-registration of operators and commercial travellers.
- Full customs declarations to be made; full data disclosed by all relevant parties.
- Efficient operating software for submitting and receiving declarations.
- Physical hardware at the border crossing to match the vehicle to the declaration/permit. Ideally more than one means of verification [e.g. ANPR, e-tag, mobile phone ID].
- Built infrastructure at Border Crossing Points OR Inland Clearance Depots with capacity for inspecting freight [e.g. offices, HGV parking, refrigerated warehouses].
- The capacity to follow-up on alerts about high-risk goods or false declarations and catch non-declarations.
- Sufficient time for development and roll-out.
- Full training of officers, support staff, operators.
- Border surveillance at 'approved' and 'unapproved' crossings.
- 'Single window' facilities for multiple agencies [e.g. police, veterinary] & Border Inspection Posts for certain agricultural goods.
- Technical agreement between customs forces.

What's on the table

| UK/EU BORDER SCENARIOS | NI/GB border | NI/ROI border | GB/EU borders |
|--|---|--|--|
| UK in a Customs Union with the EU | No change. | Regulatory divergence a barrier to trade. Movement of services, workers subject to negotiation. Barriers to continuing shared provision, cooperation in certain areas (<i>e.g. energy, agriculture, transport</i>). | Regulatory divergence a barrier to trade. Movement of services, workers subject to negotiation. Difficulty for cooperation in certain areas. |
| UK/EU Free Trade Agreement (FTA) | Minimal change. | All the above PLUS customs controls (<i>i.e. Rules of Origin checks; tariffs, quotas on 3rd country goods; VAT due at point of import</i>). | All the above PLUS Customs controls [see column to left]. |
| UK/EU FTA with specific arrangements for NI | Some divergence in regulatory areas essential to North/South [N/S] cooperation but this need not mean new regulatory barriers, nor affect movement of goods, services. | Depends on scope of the FTA. [<i>Any stretch to minimise need for customs controls & maintain FOM here would have implications for GB/NI border</i>]. Space for flexibility for sectors key to N/S cooperation, need not affect east/west. | As above. |
| Full alignment of all-UK with rules of Single Market and Customs Union | Minimal change | Minimal change (no customs border, effective continuation of SM). | Minimal change (<i>although would have to negotiate agricultural produce & agree application of Common External Tariff</i>). |
| NI/IRL protocol of draft Withdrawal Agreement ('Backstop' as currently conceived) | No new regulatory barriers. Detail depends on UK/EU FTA (the more ambitious the FTA, the less friction in this border). A customs border would mean Rules of Origin checks needed on goods entering NI from GB. | No customs barrier to movement. Free movement of NI- and EU-origin goods. Continued cross-border service provision and cooperation in specific areas. No automatic free movement of services, workers. | Depends on the scope of UK/EU FTA but there will be customs controls for 3 rd country goods. |

Preamble

Positions derived from Joint Report and other statements

Rights of Individuals

No diminution of rights, safeguards and equality of opportunity as set out 1998 Agreement; UK to facilitate work of human rights and equality bodies (Article 1)

Movement of People

Common Travel Area and associated rights to continue (Article 2)

Common Regulatory Area

Establish an area without internal borders in which free movement of goods is ensured and North-South cooperation is protected (Article 3)

Free Movement of Goods

Northern Ireland... shall be considered to be part of the customs territory of the EU; EU law on VAT and excise duties to apply (Article 4)

Agriculture and Fisheries

EU law on (a) sanitary and phytosanitary rules and (b) production and marketing of agricultural and fisheries products to apply to NI (Article 5)

The EU's Protocol on IRL/NI in the draft Withdrawal Agmt

Single Electricity Market

EU law governing wholesale electricity markets to apply to Northern Ireland (Article 6)

Environment

EU law on environmental protection concerning movement of goods to apply to NI (Article 7)

Other Areas of North-South Cooperation

Maintain conditions for continued cooperation, *including* in the areas of environment, health, agriculture, transport, education and tourism, as well as energy, telecommunications, broadcasting, inland fisheries, justice and security, higher education and sport (Article 8)

State Aid

EU law governing state aid to apply in respect of trade between NI and the EU (Article 9)

Specialised Committee

Establish a Specialised Committee to facilitate and implementation and application of Protocol including discussion of proposals from North-South Ministerial Council (Article 10)

Agreed

Agreed in principle

Under discussion

★ = What UK White Paper attempts to address

★ = Most contested articles re: 'backstop'

Supervision and Enforcement

EU institutions and bodies – including Court of Justice – to have jurisdiction over Common Regulatory Area (Article 11)

Common Provisions

Application and implementation of Protocol; application of new EU law; representation in EU decision-shaping; risk assessments; personal data protection (Article 12)

Safeguards

Safeguards in cases of serious economic, societal or environmental difficulties (Article 13)

Protection of Financial Interests

Counter fraud and any other illegal activities relating to EU and UK interests in Northern Ireland (Article 14)

Subsequent Agreement

Replacement in part or in full of Protocol by future UK-EU agreement (Article 15)

Annexes Lists of relevant EU law in three annexes to be integral part of the Protocol (Article 16)

Proposals from UK side re: Northern Ireland/Ireland

UK July '18 White Paper – Proposals

- + Hopes to ensure 'that **the operational legal text the UK will agree with the EU on the 'backstop' solution** as part of the Withdrawal Agreement will not have to be used'.
- + Recognition of where NI has **specific needs** within UK/EU arrangements, incl. mutual recognition of qualifications; security, justice and police cooperation (e.g. EAW), broadcasting (Irish language)
- + **All-island regimes** to be maintained: single epidemiological unit, single electricity market
- + **North-South cooperation** protected or envisaged in specified areas: transport (incl. rail), agriculture, security, policing
- + Future **PEACE** programme to be supported + 'consider participation in ... EU programmes'
- + Proposals relating to political, technical and administrative **representation** of UK to EU (e.g. Governing Body)

Progress still to be made

- Protection and upholding of **rights**, equality standards and non-discrimination in NI (incl. domestic legislation to protect Common Travel Area and Irish citizens' rights)
- Protection of full range of **North-South** and **East-West** cooperation
- Extent of **regulatory alignment** necessary for the free movement of goods to be maintained
- **Customs regime** for Ireland/Northern Ireland – based on UK Technical Note, NI-specific backstop, Management of cross-border **VAT** and excise payments
- **Governance arrangements**, including judicial oversight, representation of NI-specific needs, involvement of North-South bodies

Where we are on the 'backstop'

EU(27)



There has to be a backstop in the Withdrawal Agreement. No agreed backstop means no Withdrawal Agreement.

Irish border is the major sticking point and could cause a no deal Brexit.

UK needs to come forward with text for the backstop

Ready to 'improve' the text of the Protocol, including being specific about 'which controls are needed, where, and how they should be done.' (Barnier)

UK Government



Hopes 'the operational legal text the UK will agree with the EU on the 'backstop' solution as part of the Withdrawal Agreement will not have to be used' (White Paper)

Committed to avoiding a hard border between NI and ROI, and no new borders within the UK. (Bradley)

'We haven't ruled anything out in terms of the model'. (Raab)

Seeks to make customs checks and controls unnecessary via UK/EU arrangements. Recognises NI has specific needs within UK/EU arrangements + All-island regimes (e.g. SPS) should be maintained. (White Paper)

Common UK-EU ground

There will be a backstop

It will be a backstop that no one wants to use.

[Still waiting – expected Oct 2018?]

There will be NI-specific arrangements post-Brexit. Scope in Declaration on future relationship to envisage an all-UK arrangement to avoid triggering NI backstop.

N.Ireland Political Party Positions re: NI & Brexit

according to 2016 & 2017 manifestos

KEY AREAS OF CONVERGENCE

Specific arrangements for Northern Ireland

No hard Irish border

Ongoing access to EU Single Market

Customs arrangements that facilitate frictionless N-S travel & trade

+

Maintain Common Travel Area

Free movement on the island of Ireland of goods, people & services

Ongoing Access to EU Funding

Safeguard Rights of EU Citizens

Specific Protections for NI Agri-Food Sector

Arrangements to Protect Single Electricity Market

Specific Arrangements

DUP “specific solutions” for “particular circumstances”

SF “special status” *within* the EU

APNI “special deal” that includes EEA membership

UUP NI to become “Enterprise Zone”

SDLP “bespoke status” including EEA membership

No hard Irish border

DUP Frictionless border with Irish Republic; no internal UK borders

SF No change to the Irish border

APNI Hard border disastrous for NI; border as a bridge

UUP No hard border, and no new internal UK borders

SDLP A hard border in Ireland is not an option

Nature of Single Market Access

DUP “comprehensive free trade agreement”

SF “access” to EU Single Market

APNI “participation” in EU Single Market

UUP “unfettered access” to EU Single Market

SDLP “participation” in Single Market

Customs

DUP “customs agreement” with the EU

SF NI to “remain” in Customs Union

APNI “participation” in Customs Union & CET

UUP NI not to be in a CU if UK as a whole is not

SDLP UK in a Customs Union with the EU

What do people in N.Ireland think?

- Preferred outcome from Brexit
 - UK to remain in Single Market and Customs Union (61% agree, inc 58% DUP supporters, [QUB/ESRC](#) report for UK in a Changing Europe, May 2018)
 - 60% in favour of 'special status' for Northern Ireland ([Belfast Telegraph](#) telepoll, Sept18)
- A hard border must be avoided
 - A hard border risks stability (2/3 in NI agree, according to [Lord Ashcroft](#) poll, June 2018)
- Although polls differ in terms of proportion of support for Irish unity, **all polls show that the 'harder' the Brexit, the greater the support for Irish unification.**
- $\frac{3}{4}$ of respondents in the Irish border region ([ICBAN/QUB study](#), Mar-May 2018) report **already seeing an impact from Brexit on their lives and plans.**

"My family is split across both sides of the border. I have 50 first cousins with approximately half on each side of the border. I am a member of some literature groups and they regularly meet on both sides of the border. I use the libraries in both Derry and Letterkenny. My house is literally 250 metres from the border across the fields. Everything I do crosses the border. My bus to Letterkenny crosses the border to go to Derry first, then back across the border to complete its journey to Letterkenny. The border going back up will affect every single aspect of my life in a negative manner." (#279, *Bordering on Brexit* study)

I rescinded VAT registration; closed [my] business. (R525, Armagh, 46-65yrs, M)

As a self-employed person I *plan to permanently move my business* from Northern Ireland within the year. No matter what the outcome of Brexit is myself my family and my business will be better off moving to Southern Ireland now. (R235, Donegal, 18-30yrs, F)



Sources on Northern Ireland/Ireland and Brexit

- BrexitLawNI project
 - <https://Brexitlawni.org>
- Brexit and the Irish Border Region
 - *Bordering on Brexit* <http://go.qub.ac.uk/bordering>
 - *Brexit at the Border* <http://go.qub.ac.uk/BrexitBorder>
- Centre for Cross Border Studies
 - <http://crossborder.ie/research-policy/research/uk-eu-referendum/>
- *NI Assembly on Brexit: links to hubs, reading lists, blogs etc.*
 - <http://www.niassembly.gov.uk/assembly-business/research-and-information-service-raise/brexit-and-ni/>
- Polls/Surveys
 - Brexit and the Border www.qub.ac.uk/sites/brexitni/BrexitandtheBorder/Report/
 - Northern Ireland Life and Times Survey <http://www.ark.ac.uk/nilt/2017/quest17.html>
 - Lord Ashcroft <https://lordashcroftpolls.com/2018/06/brexit-the-border-and-the-union/>
- Queen's University Resources on Brexit
 - <https://www.qub.ac.uk/brexit/>