

The Case for Special Status

How to Mitigate the Impact
of Brexit on Northern Ireland



February 2017

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This is an initial paper on Brexit from the Alliance Party which sets out our high level analysis of the main impacts of Brexit on Northern Ireland, and sets out what we believe should be the basis of the best means to protect the interests of this region and secure a fair and prosperous future.

A more detailed document will follow in the Spring 2017. This will build on the content of this paper with deeper analysis and the further development of what a 'special status' for Northern Ireland could look like.

Introduction

Alliance supported the 'Remain' choice in the 2016 Referendum on the United Kingdom's continued participation in the European Union.

We maintain that any departure from the EU will have major economic, financial, social and environment consequences for the UK, and diminish its global standing and influence. It will also create significant challenges for, and diminish, the European Union itself and the wider international system.

The impact on the Republic of Ireland, the island of Ireland and in particular Northern Ireland are set to be particularly difficult, and, indeed, catastrophic in some respects.

Alliance's position is that the UK as a whole should reconsider leaving the European Union. If that is not on the agenda, our preference is for the softest Brexit possible, including continued membership of the EU Single Market and adherence to the Four Fundamental Freedoms (around the freedom of movement of workers, goods, services and capital) and membership of the EU Customs Union and Common External Tariff.

Independent of these considerations, but nevertheless shaped by them, Alliance will continue to argue for special arrangements to be negotiated and put in place for Northern Ireland, and for this region to be accorded a Special Status in terms of either continued associate membership of the European Union or a bespoke relationship with it.

This outcome is not only necessarily to protect the Good Friday Agreement, but also must be consistent with the principles and terms of that Agreement, including the Principle of Consent.



Impacts on Northern Ireland

Borders

There is a major concern in relation to a new physical border emerging either across the island of Ireland or along the Irish Sea. Unless we see the softest of soft Brexits, with the UK continuing to more or less fully participate in the EU Customs Union and Common External Tariff and to preserve freedom of movement of people, there will be a difference between the trade and immigration regimes applying to the UK and to the Republic of Ireland. This will therefore need to be policed in some way. While there is a rhetorical commitment across all stakeholders about the avoidance of a hard-border on the island of Ireland, most experts believe that it is unavoidable. At present, the UK Government seems committed to taking control of immigration and freedom of movement issues, and leaving both the Single Market and Custom Union.

It has been claimed that as the Common Travel Area predates the accession of the United Kingdom and Republic of Ireland to the European Union, it can therefore survive the departure of those states from the EU. However, this argument neglects two key considerations.

Firstly, until now the UK and Ireland have moved in union around the key immigration and freedom of movement issues. Both states joined the EEC at the same time, and both opted out of the Schengen zone to rely instead on the Common Travel Area.

Secondly, opting out of Schengen was different from opting out of the core EU principle of the freedom of movement. The Common Travel Area should more readily be understood in terms of how freedom of movement within Europe and non-EU immigration is policed rather than the principle of freedom of movement itself.

With neither the Republic of Ireland nor the United Kingdom being part of the Schengen Zone, there are suggestions that immigration could be jointly managed by both states. In this regard, the approach of the UK Government has not fully appreciated and respected Irish autonomy and the perspective of the EU itself.

There have been some suggestions that the policing of the inevitable people and customs interface could be handled through electronic-based alternatives, or random checks on papers and paperwork.

If the UK Government in turn did try to police immigration through requiring employers, landlords, doctors, and others to undertake checks on paperwork, this additional bureaucracy would run contrary to the stated aim of the Leave campaign to reduce bureaucratic red-tape. This could also involve criminal sanctions for a range of people, and would not be a desirable development.

However avoidance of a people border, even if this approach to enforcement were desirable and/or feasible, would still leave the issue of a customs interface, if there is any meaningful difference between the UK and RoI in terms of the Single Market and Customs Union.

In terms of trade, it is worth noting that even between Norway and Sweden, with both being members of the Schengen zone, there is still a physical border to address the minimal differences between Norway's participation in the European Economic Area and the EU Single Market in which Sweden obviously participates.

Today, the border on the island of Ireland is largely a constitutional line to separate different jurisdictions but with little practical effect due to common regimes on trade and the freedom of movement for EU citizens.

The very real danger now is that the interface between different customs and immigration regimes will be either policed across the island of Ireland or along the Irish Sea; hard-nosed practical considerations may determine which approach is preferred.

Whichever option emerges will carry financial and economic implications in terms of limitations of choices, dislocation of activity and additional transactional costs.

But even more critically, a barrier in either respect will run contrary to the fundamental and balanced arrangements that underpin the Good Friday Agreement.

Whilst it is true that modern technology has very significantly aided customs administrations in facilitating legitimate trade, it cannot eliminate the need for physical examination of some freight. Import duties vary by the classification of goods and are often based on the value of goods. Even closely related types of goods can be subject to significantly different tariffs. Examination of selected consignments of goods, checking precisely what they are, and the quantity, is central to effective control. Periodic examination of accompanying paperwork such as invoices, bills of lading, and Certificates of Origin is also central to combatting customs fraud. After a hard Brexit, even with maximum goodwill, it is difficult to see how physical control can be avoided, unless a Special Status for Northern Ireland is negotiated. That too may raise significant challenges for the control of goods moving between Northern Ireland and Great Britain.

Political Implications

Brexit could undermine the Northern Ireland peace process and political stability.

Northern Ireland remains a divided society. While significant progress has been made over the past 20 years in the peace process with the support of UK, Irish Governments and US Administration, fragilities continue which have been highlighted by the current political crisis.

While strictly speaking and in a most literal sense, the Good Friday Agreement and its institutions may not be dependent upon the UK's or Republic of Ireland's continued membership of the European Union, the rights and privileges granted to people and companies under the EU facilities the opportunities for freedom of movement and reformulation of individual identities.

Albeit imperfectly, they have facilitated the political evolution in Northern Ireland over the past two decades and facilitated the option for people to operate relatively freely in a range of different frames of reference across these islands. Importantly, they have allowed the development of political pluralism and open, mixed and multiples identities.

Brexit, to a greater or lesser extent, will see the erection or return of some form of barriers, for people and goods.

The Good Friday Agreement can be seen as a balance between different spheres and dimensions: Strand I – internal Northern Ireland; Strand II – North-South; and Strand III – East – West.

Nationalists and others have bought into the current constitutional position of Northern Ireland on a pragmatic basis on the assumption of equality and the ability to live, work, trade freely on a North-South and East-West basis.

There are many aspects of the Good Friday Agreement that can be criticised, not least, the cumbersome approach to Executive formation and the institutionalised sectarianism around community designation. Yet at its heart, the Agreement has proven durable and been successful in that it creates the potential for Northern Ireland to be a shared space in which open, mixed and multiple identities can not only co-exist but flourish.

Notwithstanding the continued deep divisions in society and entrenched segregation in many aspects of public life, we have seen a gradual movement away from rigid and reinforcing approaches to identity where “Protestant=Unionist=British” and “Catholic=Nationalist=Irish”, to a situation where more and more people, especially young people will see themselves as both a little bit British and a little bit Irish, increasingly identify as Northern Irish, and also reference themselves as European.

Policing and Security

Northern Ireland is exposed to a broader terrorist risk than other parts of the UK, and has major problems with organised crime. The presence of the border on the island of Ireland, and the physical nature of that border with its many minor road and private crossing points, provides an opportunity that can be readily exploited by those involved in serious crime. Dissident Republican terrorists use the land border to frustrate counter-terrorism operations, while they and other organised crime gangs breach bail and cross the land border to avoid prosecution. The Chief Constable has voiced concern outlined the potential for organised abuse of the Common Travel Area as the immigration policy between the United Kingdom and Europe diverges.

A significant range of steps have taken in recent years to build up policing, security and criminal justice co-operation on the island of Ireland and across the European Union that has been significantly assisted by the mutual membership of the EU by the UK and Republic of Ireland. The PSNI has made clear that such arrangements enable them to provide a quicker, efficient and dynamic response to crime and criminality. The relevant measures include membership of Europol, access to the European Arrest Warrant, biometric exchange programme, the Schengen Information System, joint investigative teams and European Investigation Orders. These arrangements have allowed the PSNI to deliver significant operations against international organised crime gangs in relation to child sexual exploitation, firearms and cyber-crime.

While alternative mechanisms could be put in place, there is a danger that these could be less efficient and effective than the current arrangements, and unlike current arrangements may incur a substantial cost for the PSNI.

There is also the risk that the creation of a hard border provides new policing and related functions and indirectly creates a fresh security threat which endangers those involved which in turn creates a further requirement for policing and creates a further and associated danger for the personnel involved.

This spiraling security requirement would itself bring political consequences.

Finance

In terms of finance, Northern Ireland is more dependent upon financial transfers from the EU than most other EU regions and it is unlikely that this resource can or will be replaced direct from the UK Treasury. This is particularly the case with Agricultural support. Northern Ireland receives 10% of EU farm support into the UK, with just 3% of the population. Impacts could also be acute for the community and voluntary sector; universities; apprenticeships and other forms of training; and employment initiatives.

Economics

Economically, Northern Ireland has been lagging behind the performance levels of most of the rest of the UK and in some respects the Republic of Ireland due to a range of structural factors. While there has been an improvement in economic performance in recent years, the process of addressing these structural challenges is still at an early stage. Northern Ireland needs to have a greater level of economic transformation due to the legacy of violence and division.

For example, the rate of economic growth is lower than in the UK as a whole. The UK overall has a productivity issue, but the challenge in Northern Ireland is more acute. The employment rate and level of economic inactivity, while at their best levels for decades in the context of Northern Ireland, are nevertheless significantly poorer than the UK average.

In terms of the European Union, Northern Ireland is proportionately more dependent on exporting to the Single Market than Great Britain, reflecting in large part the level of existing economic integration on the island of Ireland.

Just as our economy was about to take off with a step-change around Corporation Tax and associated investments in key economic drivers such as skills, Brexit brings the potential to haul it back down.

Recent successes in inward investment have been around the attraction of cost centres. This attraction is based on strong skills base provided on a more competitive basis than other regions. This model can continue, if Northern Ireland wants to make a step-change in our inward investment profile to attract profit-centres. This would bring us into line with the type of investments that our colleagues in the Republic of Ireland have been able to attract and retain. However, we need certainty in terms of our relationship to Europe. Investment needs to be pitched on Tax, Talent, and Trade.

Furthermore, a mere economic dip in the rest of the UK can become a full recession in Northern Ireland. The UK overall is at risk of a shrinking economy, a fall in value of pound and slowdown in GDP growth. Brexit entails a resetting of the UK's GDP baseline for medium to long term.

The economic stakes for Northern Ireland are therefore very high. There is a real danger of Brexit contributing to economic stagnation, combined with the perception of this region being a social backwater as it falls further and further behind in terms of progressive reforms that are happening in other states and regions. Furthermore, the perception of the 'brain-drain' may return, and become a feature not just at age 18, but also after people qualify through colleges and universities but find diminished opportunities to utilise those qualifications.

Wider political uncertainty and a compromised relationship with the EU Single Market will have a particular impact. Northern Ireland has been placing a strong focus on attracting inward investment from the United States on the basis of offering an English speaking region with strong skills and competitive costs with ready access to the EU.

It is wrong for Brexit advocates to be so dismissive of the level of trade with our nearest neighbours. While that level may be falling in relative terms compared to growth in some other markets, and it is always possible point to examples of companies whose main markets are outside of the EU, the European market remains critically important to Northern Ireland.

Case for Special Status

A 'One-Size-Fits-All' Brexit will not work for the UK as a whole, nor for Northern Ireland in particular. However, the choice is not between advocating some form of Special Status and accepting a one-size-fits-all Brexit. Rather the choice is between negotiating some form of Special Status or set of arrangements, or simply seeing Northern Ireland becoming some form of anomaly.

While the effects of Brexit would be more severe upon Northern Ireland than any other region of the UK, there are a number of particular features that make this region a special case:

- Northern Ireland voted to Remain in the European Union in the referendum.
- People in Northern Ireland have an automatic right to be Irish citizens, and therefore continue to be EU Citizens.
- Northern Ireland is a distinct political entity, with the right to determine its own constitutional status. Legally Northern Ireland would, post Brexit, have the capacity to opt back into the European Union through joining a united Ireland.
- Large aspects of our economy, for instance agri-food, are organised on a North-South basis.
- Agriculture and agri-food is much more important to Northern Ireland's economy than to the English economy, and our interests in this regard would not be accounted for in an overall UK approach to Brexit.
- The implications of where a physical border could be drawn and policed,.
- The threat to our political process and the corresponding need to protect the values and framework of the Good Friday Agreement.

The deep political divisions in Northern Ireland have been widened due to Brexit. It is likely that any restored Executive is not going to be politically sustainable without a shared approach to mitigating the effects of Brexit which is facilitated by the UK Government, the Irish Government and the European Union.

What Special Status Could Look Like

What is meant by Special Status needs to be developed further over the coming weeks and months by governments, political parties, the business community, academia and civil society.

The Northern Ireland Assembly, through an Alliance amendment, has already stated its support for continued participation in the Single Market.

Special Status could see Northern Ireland as a region remaining inside the European Union or outside with some form of special recognition. A full spectrum of detailed options and scenarios should be considered.

Some of the key issues to be resolved include:

- Management of the interface with the European Union on the island of Ireland, and the freedom of movement of people and goods.
- The potential emergence of a hard border, particularly in terms of customs, including the key issue of where border between EU and UK/GB is policed, i.e. across the island of Ireland or along the Irish Sea, and knock-on implications for Northern Ireland.
- Rights of EU Nationals.
- Movement of EU & non-EU Nationals, and their access to employment etc.
- Ability of Northern Ireland companies to access skilled labour.
- Future of mutual recognition of qualifications.
- Commitment to/position on the Four Freedoms (Workers, Goods, Services, Capital).
- Participation in/relationship to the EU Single Market.
- Participation in/relationship to the EU Customs Union/trading arrangement with the EU and rest of the world.
- Maintenance of full economic access to markets in Great Britain.
- The all-island Energy market.
- Continued access to EU Structural Funds.
- Continued access to competitive Funds, including ability to access funds in terms of eligibility and the ability to compete in terms of context, including Horizon 2020, Erasmus +.
- Future of/replacement of Common Agricultural Policy.
- Future of/replacement of Common Fisheries Policy.
- Policing and Justice challenges, including policing any hard border, participation and access to Europol, the European Arrest Warrant and other mechanisms of cooperation.
- Future of EU Regulation/Directives, and options for the Northern Ireland Assembly to determine future direction of travel distinct from Westminster.

For Alliance, a potential model for Special Status for Northern Ireland would include

- Participation within Single Market.
- Participation within the Custom Union.
- Adherence to the Four Freedoms.
- Access to Structural and Competitive Funds.
- Rights to EU Citizenship for all born in Northern Ireland.
- Northern Ireland covered by EU regulations and Assembly control over EU Directives.
- The devolution model and balance of competencies otherwise continuing, with local taxes being paid to the UK Government; a UK Treasury financial subvention continuing; the UK Government handling non-EU Foreign Policy and Defence.





allianceparty.org

Party Headquarters

88 University Street, Belfast, BT7 1HE

☎ 028 9032 4274

✉ alliance@allianceparty.org

🐦 [@allianceparty](https://twitter.com/allianceparty)

📘 [/alliancepartyni](https://www.facebook.com/alliancepartyni)

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