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Assembly

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RaISe

EU Referendum Update

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The paper provides an update on developments following the EU referendum, held on 23 June 2016, in which a majority of voters across the UK voted for the UK to leave the EU. The paper focuses on developments in Northern Ireland and includes an overview of the range of policy issues that departments might be expected to consider as they assess the potential impacts of UK withdrawal from the EU.

Key Points

On 23 June 2016 a majority of voters across the UK voted to leave the EU. However, as the referendum was advisory rather than mandatory, and the referendum legislation was silent on what was to follow a leave majority, a hiatus has ensued. The majority remain votes in Scotland and Northern Ireland have further complicated matters.

The lack of certainty regarding the first steps of the withdrawal process has provided space for academic theorising and attempts to use the courts establish clarity. Legal action is underway in a number of jurisdictions, including Northern Ireland. A particular focus of this action is the role of parliament and the devolved legislatures in relation to Article 50 of the Treaty on European Union. Article 50 is the Treaty base for withdrawal of a Member State from the EU and there is general agreement that it will provide the mechanism for UK withdrawal.

Until the courts have adjudicated on the issues put to them, legal uncertainty will remain and theorising on possible future scenarios will continue. Even when the courts do adjudicate, the manner in which withdrawal happens is likely to be determined as much by political reality as legal certainty.

One thing is clear, even at this stage: Brexit will be a massive endeavour. The first task for government, therefore, will be to identify the resources required to: develop an early understanding of the implications of the referendum result; manage other short term demands arising from the result; prepare longer term plans to negotiate withdrawal and develop new trade deals; and handle the impact on the statute book. If the involvement of the devolved administrations in these activities is to be anything other than perfunctory, significant resource pressures will be experienced at this level of government too.

The First Minister and deputy First Minister have asked the Head of the Civil Service to put in place the necessary structures to consider the potential implications of withdrawal from the EU for each department. The First Minister and deputy First Minister themselves have also written to the Prime Minister setting out their initial assessment following the referendum result.

The Assembly and in particular its committees given their scrutiny function will play a key role in ensuring that the Executive is putting in place the necessary resources to assess the initial impacts of the result of the referendum and to develop the necessary structures, plans, resources and expertise to manage the medium and longer-term challenges of Brexit.

Executive Summary

The European Union Referendum Act 2015 provided for the question of whether the United Kingdom should remain a member of the European Union or leave the European Union to be put to a referendum held in the United Kingdom and Gibraltar.

The referendum was held on Thursday 23 June 2016 and the majority (51.9%) voted for the UK to leave the European Union. It has been noted, however, that 'Every single local authority area in Scotland voted Remain. Meanwhile, with the exception of London, every region in England voted Leave, as did Wales. Northern Ireland voted narrowly to remain, but with a large minority, mainly from the unionist community, opting for Leave...'. The remain vote in Scotland was 62.0% and in Northern Ireland it was 55.8%.

Whilst attempts to amend the referendum legislation to include a 'quad lock' (which would require all four constituent jurisdictions of the UK to endorse leaving the EU) were unsuccessful, the geographic characteristics of the referendum result have, nevertheless, added to the political and legal complexity of UK withdrawal from the EU.

The referendum was advisory rather than mandatory but the Prime Minister, Theresa May, has stated that Brexit means Brexit. It is still unclear, however, what Brexit means. There does, though, appear to be general agreement that any withdrawal from the EU will be achieved using Article 50 of the Treaty on European Union. However, as there is no precedent for its use and as, in any case, it must be applied in accordance with the UK's unwritten constitutional requirements, a number of questions arise:

- When must, or will, Article 50 be triggered?
- What, if any, role does the UK Parliament have to play in relation to the Article 50 trigger?
- Under Article 50, does agreement as to withdrawal also include agreement as to future relations?
- Once Article 50 is triggered –can a Member State change its mind and rescind its withdrawal request?
- How does Article 50 work in terms of timescale?

The lack of certainty regarding the application of Article 50 has provided space for academic theorising and the initiation of legal action. At the UK level, this action is focused on establishing what role parliament is entitled or required to play in relation to the operation of Article 50. Legal challenges are also underway in Northern Ireland, as the legal uncertainty around Article 50 extends to the role of the devolved legislatures and, in particular, the need for a legislative consent motion if references to EU law are removed from the devolution legislation.

One thing about Brexit is certain: leaving the EU will be a massive task which will put a significant strain on the resources of government departments. Expertise will be needed to: undertake leave negotiations; undertake negotiations for new trade deals; and handle the impact on the statute book. If the involvement of the devolved administrations in the withdrawal process is to be anything other than perfunctory, these resource pressures will also be experienced at that level of government.

The First Minister and deputy First Minister have asked the Head of the Civil Service to put in place the necessary structures to consider the potential implications of withdrawal from the EU for each department. Any meaningful contribution to the UK Government's Review of the Balance of Competences between the UK and the EU (which was completed in December 2014) should provide the foundation for this activity.

The Irish government has been undertaking contingency planning in preparation for a majority leave vote and has identified a number of bodies which might be used to manage issues arising from the referendum result. These include: the joint UK Permanent Secretaries/Irish Secretaries General Group (and its North-South equivalent); the North-South Ministerial Council; and the British-Irish Council,

The UK Government has stated that negotiation with the EU will need to involve the full engagement of the Scottish, Welsh and Northern Ireland governments to ensure that the interests of all parts of the United Kingdom are 'protected and advanced'.

The First Minister and deputy First Minister have written to the Prime Minister setting out the Executive's initial assessment following the EU referendum result. In the letter, they highlighted the following five broad priority issues: the border; ease of trade and access to labour; energy; EU funding; and implications for the agri-food sector (including fisheries).

Regarding funding, the UK Treasury has stated that all structural and investment fund projects, including agri-environment schemes, signed before the Autumn Statement would be fully funded (even when these projects continue beyond the UK's departure from the EU). However, in spite of this assurance, uncertainty remains regarding a significant amount of future EU funding.

James Brokenshire, Secretary of State for Northern Ireland, has recently completed a series of visits during which he met local businesses, civic groups and political leaders '...as part of the UK Government's effort to ensure Northern Ireland's voice is heard in the forthcoming EU negotiations'.

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1 Introduction

In anticipation of the European Union referendum, RalSe published a reading list which provided Members with a list of information resources addressing the potential impacts on Northern Ireland of a decision by the United Kingdom (UK) to leave the European Union (EU).¹ For political, economic, geographic and social reasons, these impacts might be expected to differ in important ways from the impact of withdrawal on other parts of the UK. Amongst other sources (such as press reports, academic articles and blogs and the work of Think Tanks) the reading list highlighted the inquiries conducted by the Northern Ireland Affairs Committee in the House of Commons and the Joint Committee on European Affairs in the Oireachtas. Together, the reports of these two committee inquiries (along with the evidence which accompanies them) provide a comprehensive overview of the issues relating to the potential impact on Northern Ireland and Ireland of UK withdrawal from the EU.

This paper is designed to set out for the Committee for the Executive Office the current state of play in Northern Ireland following the majority vote to leave the EU. However, as the referendum legislation was silent on how that might be done, much uncertainty remains and legal action is underway in a number of jurisdictions, including Northern Ireland. In this context, the paper sets out the early responses to the referendum result of the UK and Irish governments and the Northern Ireland Executive.

RalSe intends to further update the reading list and a number of research briefings addressing specific issues related to Brexit are in progress. The paper sets out in an appendix an overview of the many issues upon which UK withdrawal from the EU will potentially have an impact in Northern Ireland. The list is extensive and underlines the massive task which the process of leaving the EU will entail.

2 Referendum Result

The European Union Referendum Act 2015 provided for the question of whether the United Kingdom should remain a member of the European Union or leave the European Union to be put to a referendum held in the United Kingdom and Gibraltar. The referendum was held on Thursday 23 June 2016 and the question on the ballot papers was:

‘Should the United Kingdom remain a member of the European Union or leave the European Union’

The answers that appeared on the ballot papers were:

***‘Remain a member of the European Union’ and
‘Leave the European Union’.***

¹ *The EU Referendum and Northern Ireland Information Resources*

RalSe Paper 34/16 - 20 May 2016 (NIAR 683-015)

<http://www.niassembly.gov.uk/globalassets/documents/raise/publications/2016/general/3416.pdf> (accessed 19/08/16)

The overall result of the referendum was:

Remain: 16,141,241 (48.1%)

Leave: 17,410,742 (51.9%)

Total Electorate: 46,500,001

Turnout: 72.2%

Rejected Ballots: 25,359

The results of the referendum in each of the four constituent parts of the UK are shown in Table 1 below.

Table 1. EU Referendum results by constituent part of UK²

	<i>England</i>		<i>Scotland</i>		<i>Wales</i>		<i>N.Ireland</i>	
Remain	13,266,996	46.6%	1,661,191	62.0%	772,347	47.5%	440,707	55.8%
Leave	15,188,406	53.4%	1,018,322	38.0%	854,572	52.5%	349,442	44.2%
Turnout	73.0%		67.2%		71.7%		62.7%	

Addressing the differing results for each constituent part of the UK, it has been noted that 'Every single local authority area in Scotland voted Remain. Meanwhile, with the exception of London, every region in England voted Leave, as did Wales. Northern Ireland voted narrowly to remain, but with a large minority, mainly from the unionist community, opting for Leave...'.³ The percentage leave vote for each of the 18 parliamentary constituencies in Northern Ireland is shown in Figure 1 below.

In an early exploration of referendum results, researchers from Queen's University Belfast concluded:

We have studied the characteristics of each of Northern Ireland's 18 constituencies in order to draw some tentative conclusions about the typical profile of EU supporters – and how this differs from the rest of the UK. We fail to find a single factor that predicts the remain vote share better than the nationalist vote share, and our evidence suggests that education was not as important as it was in Great Britain. However, caution is required when interpreting such geographic data; if there are more degree-holders in remain-voting areas, does it mean it was the graduates who voted to remain?⁴

² The Electoral Commission (2016)

<http://www.electoralcommission.org.uk/find-information-by-subject/elections-and-referendums/upcoming-elections-and-referendums/eu-referendum/electorate-and-count-information> (accessed 19/08/16)

³ *Unless the next PM works with the devolved nations, the United Kingdom risks break-up*

By Akash Puan on London School of Economics and Political Science BrexitVote blog (26 June 2016)

<http://blogs.lse.ac.uk/brexit/2016/06/26/unless-the-next-pm-works-with-the-devolved-nations-the-united-kingdom-risks-break-up/> (accessed 19/08/16)

⁴ *'Why did Northern Ireland vote to remain?'* By Edward Mills and Dr Chris Colvin on QPol (18/07/16)

<http://qppl.qub.ac.uk/northern-ireland-vote-remain/> (accessed 19/08/16)

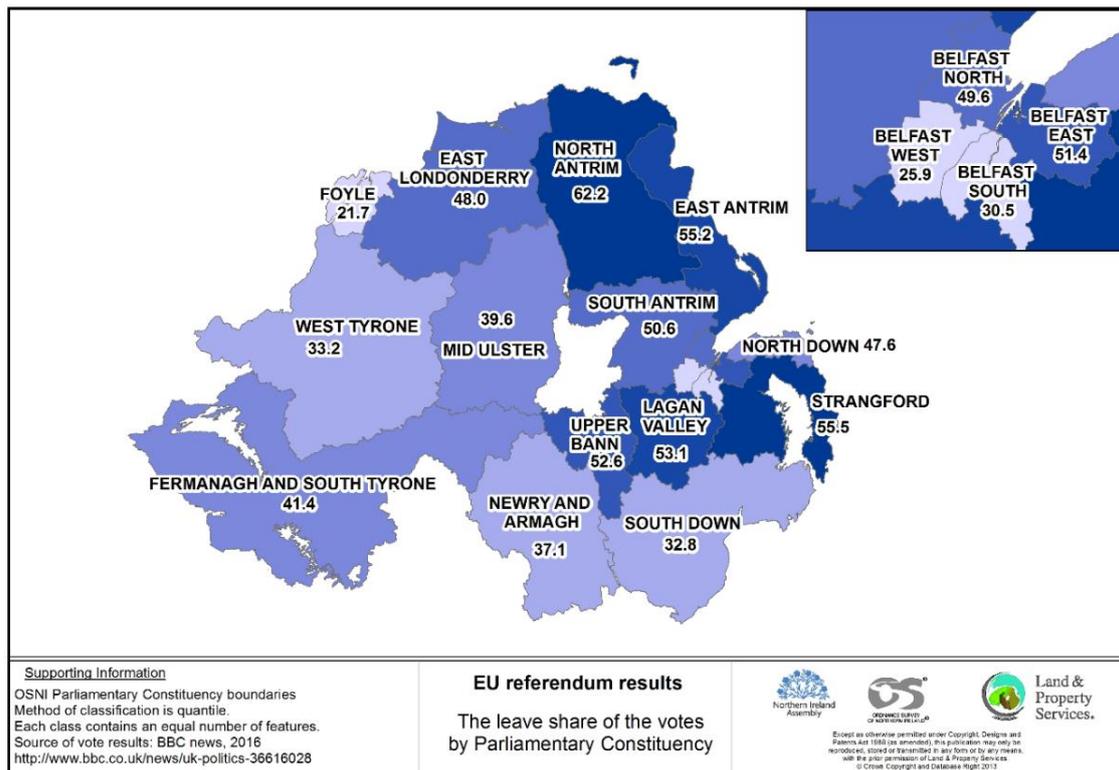


Figure 1. Percentage leave vote by parliamentary constituency

Whilst attempts to amend the referendum legislation to include a ‘quad lock’⁵ (which would require all four constituent jurisdictions of the UK to endorse leaving the EU) were unsuccessful, the geographic characteristics of the referendum result have, nevertheless, added to the political and legal complexity of Brexit. As had been predicted before the referendum, the majority remain vote in Scotland was followed by calls for a second Scottish independence referendum and in Northern Ireland the majority remain vote was accompanied by calls for a ‘border poll’. In the academic sphere, the referendum result was followed by theoretical options which would recognise the remain majorities in Scotland and Northern Ireland.^{6,7} Professor Brendan O’Leary, for example, proposed a solution which, he suggested, could deliver not only a constitutional compromise that would avoid the genuine prospect that a referendum on Scottish independence would lead to the break-up of the union of Great Britain but also ‘...diminish the likelihood of turbulence spilling into Northern Ireland, and destabilising its union with Great Britain’.⁷ The extent to which theory and practice eventually coincide is, however, unknown and will of course be contingent upon legal and political realities.

⁵ <https://hansard.parliament.uk/Commons/2015-06-16/debates/1506165800001/EuropeanUnionReferendumBill> (accessed 19/08/16)

⁶ *Can Scotland avoid Brexit?*

By Akash Paun on Institute for Government Blog (5 July 2016)

<http://www.instituteforgovernment.org.uk/blog/14011/can-scotland-avoid-brexite/> (accessed 23/08/16)

Brexit Reflections - How could Scotland remain in the EU?

By Professor Michael Keating on Centre for Constitutional Change blog (8 July 2016)

<http://www.centreonconstitutionalchange.ac.uk/blog/brexit-reflections-how-could-scotland-remain-eu> (accessed 23/08/16)

⁷ *Exit Plan: how Scotland and Northern Ireland can remain in the EU*

By Professor Brendan O’Leary on London School of Economics and Political Science BrexitVote blog (27/06/2016)

<http://blogs.lse.ac.uk/politicsandpolicy/exit-plan-scotland-northern-ireland/> (accessed 19/08/16)

3 Article 50 of the Treaty on European Union

The path to Brexit (and the eventual outcome of the Brexit process) is one to which the statement made in 2002 by Donald Rumsfeld (the then US Secretary of Defence) is most apt: 'There are known knowns. There are things we know that we know. There are known unknowns. That is to say, there are things that we now know we don't know. But there are also unknown unknowns. There are things we do not know we don't know'.⁸ There is no precedent for a Member State leaving the EU⁹ and even the import of the referendum result itself remains open to debate.

The relevant legislation did not provide for the referendum result to have any formal trigger effect. The referendum is advisory rather than mandatory. The 2011 referendum on electoral reform did have an obligation on the government to legislate in the event of a "yes" vote (the vote was "no" so this did not matter). But no such provision was included in the EU referendum legislation.¹⁰

Prime Minister Theresa May's statement that 'Brexit means Brexit' itself provides no insight into what Brexit means. There does, however, appear to be general agreement that Brexit will be achieved using Article 50 of the Treaty on European Union (the Treaty base for withdrawal of a Member State from the EU). However, whilst Article 50 must by now have become the best known of all EU Treaty provisions, the following questions remain:

- When will it be triggered?
- What, if any, role does the UK Parliament have to play in relation to the Article 50 trigger?
- Under Article 50, does agreement as to withdrawal also include agreement as to future relations?
- Once Article 50 is triggered –can a Member State change its mind and rescind its withdrawal request?
- How does Article 50 work in terms of timescale?

The questions posed above in relation to Article 50 are addressed in a comprehensive and up-to-date paper from the House of Commons Library.¹¹

⁸ Press Conference by US Secretary of Defence, Donald Rumsfeld (6 June 2002) <http://www.nato.int/docu/speech/2002/s020606g.htm> (accessed 19/08/16)

⁹ Or as Phedon Nicolaides has more comprehensively noted 'Apart from the case of Greenland in 1985, the EU has no experience in managing the exit of a Member State. The case of Greenland offers no guidance because of its dependence on Denmark and its almost exclusive reliance on fish. Nothing of substance had to be changed in the Treaties when Greenland left. Moreover, hardly anything had to be put in place to govern the post-exit relations of Greenland with the EU because Greenland's interests are still represented via Denmark and Greenland's major concern was to exercise exclusive rights over fisheries. Nothing else mattered as much'.

Withdrawal from the European Union: A Typology of Effects Edition 20 Maastricht Journal vol 2 (2013) (p212) http://www.maastrichtjournal.eu/pdf_file/ITS/MJ_20_02_0209.pdf (accessed 19/08/16)

¹⁰ *Can the United Kingdom government legally disregard a vote for Brexit?* By David Allen Green on Financial Times blog (14 June 2016) <http://blogs.ft.com/david-allen-green/2016/06/14/can-the-united-kingdom-government-legally-disregard-a-vote-for-brexit/> (accessed 19/08/16)

¹¹ *Brexit: how does the Article 50 process work?* House of Commons Library (30/06/2016) <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-7551> (accessed 19/08/16)

Article 50

1. Any Member State may decide to withdraw from the Union in accordance with its own constitutional requirements.
 2. A Member State which decides to withdraw shall notify the European Council of its intention. In the light of the guidelines provided by the European Council, the Union shall negotiate and conclude an agreement with that State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union. That agreement shall be negotiated in accordance with Article 218(3) of the Treaty on the Functioning of the European Union. It shall be concluded on behalf of the Union by the Council, acting by a qualified majority, after obtaining the consent of the European Parliament.
 3. The Treaties shall cease to apply to the State in question from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification referred to in paragraph 2, unless the European Council, in agreement with the Member State concerned, unanimously decides to extend this period.
 4. For the purposes of paragraphs 2 and 3, the member of the European Council or of the Council representing the withdrawing Member State shall not participate in the discussions of the European Council or Council or in decisions concerning it.
- A qualified majority shall be defined in accordance with Article 238(3)(b) of the Treaty on the Functioning of the European Union.
5. If a State which has withdrawn from the Union asks to rejoin, its request shall be subject to the procedure referred to in [Article 49](#).

The lack of certainty regarding how Article 50 is to be applied in accordance with the UK's unwritten constitutional requirements has provided space for academic theorising and attempts to use legal action to establish clarity. The nature of the debate amongst legal experts can be appreciated from a reading of the following commentary on the debate around Article 50:¹²

The British people have voted to leave the EU, but the vote is not self-executing: Brexit requires action on the part of the political authorities. Art 50 provides for Member States to begin a process of withdrawal from the EU when they convey to the European Council a decision to leave, which is to be taken in accordance with national constitutional requirements. Most lawyers take the view that Her Majesty's Government has authority to initiate this process, exercising the royal prerogative to conduct foreign relations. However, some argue that any such action would be unlawful, and legal challenges are underway.

Professor Philip Allott (Cambridge) has proposed that the courts could simply conclude that Brexit was unlawful, on the grounds that the referendum was not in the public interest and the result was unreasonable. This is nonsense and no court would seriously entertain such an application. Dr Yossi Nehushtan (Keele) argues that it would be unlawful for the Prime Minister to take the referendum vote to be morally authoritative: instead the courts should require her to treat the vote as merely advisory and to consider it alongside factors that weigh against Brexit. Again, this is without legal foundation and there is no chance that this argument would succeed.

Much more serious are the series of challenges that have now begun before the courts. They are to be heard together in mid-October before the Lord Chief Justice, Lord Thomas, and two other judges. The lead claimant will be represented by Lord Pannick QC and law firm Mishcon de Reya. Their argument, in brief, is that initiating Art 50 would (eventually) lead to change in rights and duties in British law, that the Crown is unable to change domestic law by way of the prerogative, and hence that the use of Art 50 to leave the EU

¹² The focus of The Judicial Power Project is on 'the proper scope of the judicial power within the constitution'. <http://judicialpowerproject.org.uk/about/> (accessed 19/08/16)

must be authorised in advance by an Act of Parliament. The argument is wrong and the courts should reject it.¹³

In spite of emphatic assertions such as those above and others, only once the courts have adjudicated on the arguments put before them will there be any degree of legal certainty regarding the role of the UK Parliament in the application of Article 50.

Role of devolved legislatures

The legal uncertainty around Article 50 extends to the role of the devolved legislatures and, in particular, the need for a legislative consent motion¹⁴ if, as part of the Brexit process, references to EU Law are removed from the devolution legislation. Again, views on the need for a legislative consent motion differ amongst legal experts^{15,16} and the distinction between what might be legally possible and what might be politically possible is widely recognised. Adding to the complexity of the issue, *Professor Sionaidh Douglas-Scott* has further posed the question ‘What if the devolution statutes were left unchanged after Brexit?’.¹⁷

Legal Action in Northern Ireland

On 25 July 2016, it was reported¹⁸ that legal action had been threatened in Northern Ireland in relation to Article 50, unless the UK Government committed to urgently adopting ‘...a comprehensive process that complies with UK constitutional requirements, including the requirements of Northern Ireland constitutional law and statute, and the requirements of EU law’. This action, it was further reported, was being threatened by a group of politicians and human-rights activists who had written a letter (unpublished) to the Prime Minister asking her to commit to:

Bringing forward legislation in parliament authorising the giving of a notice under Article 50.

Observing the need for a legislative consent motion to be carried by the Northern Ireland Assembly before such legislation is enacted.

¹³ *Brexit and Judicial Power*

Professor Richard Ekins (21 July 2016)

<http://www.policyexchange.org.uk/images/publications/r%20ekins%20-%20brexit%20and%20judicial%20power%20-%2021%20july%202016.pdf> (accessed 19/08/16)

¹⁴ For an up-to-date resource providing information on the operation of legislative consent in the devolved legislatures see: *Legislative consent and the Sewel convention* By Professor Alan Trench on the blog Devolution Matters (Updated June 2016)

<https://devolutionmatters.wordpress.com/the-sewel-convention/> (accessed 19/08/16)

¹⁵ *Brexit| Can Scotland block Brexit?*

By Professor Mark Elliot on Public Law for Everyone blog (26 June 2016)

<https://publiclawforeveryone.com/2016/06/26/brexit-can-scotland-block-brexit/> (accessed 19/08/16)

¹⁶ *Removing references to EU law from the devolution legislation would require the consent of the devolved assemblies*

By Professor Sionaidh Douglas-Scott (13 June 2016)

<https://constitution-unit.com/2016/06/13/removing-references-to-eu-law-from-the-devolution-legislation-would-require-the-sewel-convention/> (accessed 19/08/16)

¹⁷ *Brexit, devolution and legislative consent: what if the devolution statutes were left unchanged after Brexit?*

By Professor Sionaidh Douglas-Scott (15 June 2016)

<https://constitution-unit.com/2016/06/15/brexit-devolution-and-legislative-consent-what-if-the-devolution-statutes-were-left-unchanged-after-brexit/> (accessed 19/08/16)

¹⁸ *Brexit set to face legal challenge in Northern Ireland*

By Steven McCaffery (The Detail 25 July 2016)

<https://www.thedetail.tv/articles/brexit-set-to-face-legal-challenge-in-northern-ireland> (accessed 19/08/16)

Only trigger Article 50 in a way which gives effect to Northern Ireland's unique place within the UK and to the statutory recognition of the Belfast-Good Friday Agreement; and after properly taking into account all relevant alternatives to exiting the EU and not giving undue weight to the results only of this referendum.

The report also stated that the Northern Ireland Office (NIO) had been requested 'to commit to providing advice to the UK Government on the giving of notice under Article 50 only after full compliance with section 75 of the Northern Ireland Act 1998 and the NIO's Equality Scheme'. On Friday 19 August 2016, it was further reported, however, that legal representatives of the group had stated that:

The various assurances sought by our clients have not been forthcoming and, indeed, the response heightened their concerns about the approach the Government was likely to take...In light of this, papers were lodged in the High Court in Belfast on Friday seeking leave to apply for judicial review.¹⁹

In addition to this legal action, it has also been reported that Raymond McCord, whose son was murdered by loyalist paramilitaries, had also launched a legal challenge to UK withdrawal from the EU.²⁰ The report stated that Mr McCord's legal team had claimed that '...it would be unlawful to begin the formal process of the UK leaving the EU without a parliamentary vote' and that withdrawal '...could undermine the UK's treaty obligations under the 1998 Good Friday Agreement and the peace process'. Mr McCord's lawyers were also reported to have expressed his concern that '...money from the European Union, which goes towards victims of the Troubles might be discontinued'.

On 19 August 2016, it was reported²¹ that Mr McCord's solicitor had confirmed that funding for the challenge had been granted by the Civil Legal Services Appeal Panel, meaning that '...a formal application for leave to seek judicial review can now be mounted once the new High Court term begins in September'.

4 Resources and planning

One thing about Brexit is certain: leaving the EU will be a massive task which will put a significant strain on the resources of government departments. Expertise will be needed to: undertake leave negotiations; undertake negotiations for new trade deals; and handle the impact on the statute book. In this context, it has been reported that limited resources and a lack of the necessary departmental infrastructure mean that Brexit could be delayed until late 2019. It has recently been reported that government ministers had warned '...senior figures in the City of London, London's

¹⁹ *Brexit: Lawyers for cross-community group launch legal challenge (19 August 2016)*
<http://www.bbc.co.uk/news/uk-northern-ireland-37132024> (accessed 22/08/16)

²⁰ *Victims campaigner launches legal challenge to Brexit*
BBC News website (11 August 2016)
<http://www.bbc.co.uk/news/uk-northern-ireland-37051175> (accessed 19/08/16)

²¹ *Raymond McCord granted funding to take Brexit challenge*
By Alan Erwin (Belfast Telegraph 18 Aug 2016)
<http://www.belfasttelegraph.co.uk/news/northern-ireland/raymond-mccord-granted-funding-to-take-brexit-challenge-34979024.html> (accessed 22/08/16)

financial district, that Article 50 was unlikely to be triggered early in 2017 because the situation in government was “chaotic”.²² It has also been noted that:

...if there is an Article 50 notification then there will be immense legal work to be done. Over 40 years of law-making — tens of thousands of legal instruments — will have to be unpicked and either placed on some fresh basis or discarded with thought as to the consequences. ...The task of repeal and replacement will take years to complete, if it is ever completed. Even if the key legislation — especially the European Communities Act 1972 — is repealed there will have to be holding and saving legislation for at least a political generation.²³

If the involvement of the devolved administrations in the withdrawal process is to be anything other than perfunctory, these resource pressures will also be experienced at that level of government. In this context, it is worth drawing attention to the UK Government’s Review of the Balance of Competences between the UK and the EU (‘the Review’). Announcing the Review in the House of Commons on 12 July 2012, William Hague MP, the then Foreign Secretary, stated:

The review will be an audit of what the EU does and how it affects us in the United Kingdom. It will look at where competence lies, how the EU’s competences, whether exclusive, shared or supporting, are used and what that means for our national interest.²⁴

The Review was comprehensive (by the time it was completed in December 2014, 32 reports had been published) and, where EU competence related to a devolved matter, the Review sought the views of the devolved administrations. Addressing resources and what it described as the unprecedented scale of the Review, the House of Lords European Union Committee noted that:

The argument that the cost of staff working on the Review fell within existing budgets, and is therefore unquantifiable, is indefensible. Staff time given to any project comes at a cost, which would normally be factored into any business case. More generally, staff across Whitehall are a precious resource: it seems inconceivable that, in a time of staff reductions, they could simply be assigned to a new project, within existing budgets, without any attempt either to put a cost on their time or to prioritise between core tasks.²⁵

The Executive’s contributions to the Review should provide a foundation for at least some of the work that it will be required to undertake as part of the withdrawal process. Given the comment on the Review cited above, it will be important, however, for departments to clearly address how tasks will be prioritized and how resources will be allocated and accounted for. An indication of the breadth of topics which, to greater or lesser extent, departments might be expected to consider is provided in Appendix 1 of this paper. In addition, a recently published House of

²² *Brexit could be delayed to late-2019*

By Euractiv.com with Reuters (15 Aug 2016)

<http://www.euractiv.com/section/uk-europe/news/brexit-could-be-delayed-to-late-2019/> (accessed 19/08/16)

²³ *Can the United Kingdom government legally disregard a vote for Brexit?*

By David Allen Green on Financial Times blog (14 June 2016)

<http://blogs.ft.com/david-allen-green/2016/06/14/can-the-united-kingdom-government-legally-disregard-a-vote-for-brexit/> (accessed 19/08/16)

²⁴ *Statement on the review of the balance of competences of the EU as it affects the United Kingdom.*

The Secretary of State for Foreign and Commonwealth Affairs (Mr William Hague)

Hansard 12 July 2012 : Column 468

<http://www.publications.parliament.uk/pa/cm201213/cmhansrd/cm120712/debtext/120712-0001.htm> (accessed 19/08/16)

²⁵ *The Review of the Balance of Competences between the UK and EU*

House of Lords - European Union Committee 12th Report of Session 2014–15 (paragraph 42)

<http://www.parliament.uk/business/committees/committees-a-z/lords-select/eu-select-committee-/news/balance-of-competences-report-published/> (accessed 19/08/16)

Commons research paper entitled 'Brexit: impact across policy areas' includes a section on Northern Ireland'.²⁶

In response to an Assembly Question, asking them '...to detail each implication of the European Union referendum result for European Union engagement and representation in the (i) short term; and (ii) medium term', the First Minister and deputy First Minister answered that:

The priority of the Executive will be to ensure that our interests are protected.

We have asked the Head of the Civil Service to establish individual departmental teams at senior level to consider the potential implications for each department. We also asked him to put in place an overarching central administrative and political governance structure that will report directly to us.

These teams will liaise with Whitehall, Irish and EU counterparts to ensure we get the best possible deal we can.²⁷

Responding to an Assembly Question asking them '...to detail any contact they have made with European Union officials to communicate the expressed will of the people in Northern Ireland to remain within the European Union', the First Minister and deputy First Minister answered that:

The Head of the Civil Service participated in a number of meetings with key stakeholders during a visit to Brussels on 30 June and 1 July. Detailed discussions will follow at a suitable point to seek to ensure that our specific circumstances are accounted for in any new arrangements.²⁸

An Assembly Question asking the First Minister and deputy First Minister to outline what plans they have to appoint an expert committee on Brexit, similar to that appointed by the First Minister of Scotland, remained unanswered at the time of writing this paper.²⁹ Updating the Scottish Parliament on 28 June 2016, Nicola Sturgeon (First Minister) stated, amongst other things, that she was:

...establishing a Standing Council of experts to provide advice to me and my government on how best to achieve our EU objectives. This Council will be made up of specialists on finance, economics, European and diplomatic matters and it will encompass a range of political and constitutional opinions.

It will provide the government with access to a wealth of knowledge built up over years of experience.

²⁶ *Brexit: impact across policy areas*

House of Commons Library

<http://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-7213>
(accessed 30/08/16)

²⁷ AQW 2120/16-21 (Mr Robbie Butler, Ulster Unionist Party, Lagan Valley)

Tabled Date: 30/06/2016 Answered On Date: 26/07/2016

<http://aims.niassembly.gov.uk/questions/search.aspx>

²⁸ AQW 2200/16-21 (Ms Sinéad Bradley, Social Democratic and Labour Party, South Down)

Tabled Date: 01/07/2016 Answered On Date: 11/08/2016

<http://aims.niassembly.gov.uk/questions/search.aspx>

²⁹ AQW 2205/16-21 (Ms Paula Bradshaw, APNI - South Belfast)

Tabled 01/07/2016

<http://aims.niassembly.gov.uk/questions/search.aspx>

The Council will consider the impact of proposed changes to the UK's relationship with the EU on Scottish interests and advise Scottish Ministers throughout our negotiations on the best way to secure Scottish interests and objectives.

Membership of the Council will be flexible to ensure that we have access to appropriate advice as it is required.³⁰

5 Government responses and engagement

The day following the referendum, David Cameron, the then Prime Minister, made a statement in which, amongst other things, he said: 'We must now prepare for a negotiation with the European Union. This will need to involve the full engagement of the Scottish, Welsh and Northern Ireland governments to ensure that the interests of all parts of our United Kingdom are protected and advanced'.³¹

In a statement in the Dáil³² on the Monday following the referendum, the Taoiseach, Enda Kenny TD, stated that:

The stakes have always been higher on this issue for Ireland than for any other EU Member State. The reasons for this are well known:

- The economy and the relative importance of each other's markets for trade;
- Northern Ireland, the Peace Process and British-Irish Relations;
- The Common Travel area and our shared land border;
- The role of the UK within the EU and its strategic value to Ireland in that context.

The Irish Government was, therefore, very active throughout this entire process in engaging with the UK Government, and with our EU partners, outlining our concerns and our interests. We advocated for a remain outcome, having regard to the jurisdictional boundaries, because that was in our national interests.

In the statement, the Taoiseach went on to address the contingency planning which the Irish government had undertaken in preparation for a possible majority vote to leave the EU.

In parallel, we also deepened our understanding of the implications of a UK vote to leave the EU. That was also in our national interests. Our primary goal now is to protect and advance those interests. Prior to last year's general election in the UK, I strengthened my own Department's capacity to focus specifically on bilateral relations between Ireland and Britain, including issues that would arise in the context of a change in the EU-UK relationship. Work commenced across Government Departments to identify the key strategic and sectoral issues that could arise for us if the UK were to vote to leave the EU.

³⁰ *First Minister's statement on EU referendum (28/06/16)*

<http://news.scotland.gov.uk/News/First-Minister-s-statement-on-EU-referendum-25c5.aspx> (accessed 19/08/16)

³¹ *EU referendum outcome: PM statement, 24 June 2016*

<https://www.gov.uk/government/speeches/eu-referendum-outcome-pm-statement-24-june-2016> (accessed 19/08/16)

³² *Statement in the Dáil on the UK EU Referendum Result by the Taoiseach, Mr Enda Kenny TD, Monday 27 June 2016*

http://www.taoiseach.gov.ie/eng/News/Taoiseach's_Speeches/Statement_in_the_Dail_on_the_UK_EU_Referendum_Result_by_the_Taoiseach_Mr_Enda_Kenny_TD_Monday_27_June_2016.html (accessed 19/08/16)

We have a whole-of-government contingency framework, within which we will continue to track and develop key policy issues and negotiation positions.

This will be used in key economic areas such as trade, energy interconnection, social welfare arrangements, education and research cooperation. It will, in reality, extend right across every single area of Government activity. Above all, our contingency management arrangements will prioritise the key political and strategic issues arising from the implications for Northern Ireland, the common travel area and the border. We recognise that detailed contingency planning for a Brexit is particularly challenging. This is for two reasons:

- first, we do not know the precise arrangements or the timescale for the UK's withdrawal from the EU;
- second, we do not know what the new relationship between the UK and the EU will be.

Nevertheless, we will be scaling up and intensifying work to mitigate risks across Government Departments and in key Agencies such as Enterprise Ireland and IDA.

Detailed negotiation strategies will be prepared on each of the key points for use in negotiations in Brussels, London, Belfast and other capitals as appropriate. It is important to recall that Ireland will work within the EU context.

At the same time, Ireland has unique bilateral interests with the UK, including with regard to Northern Ireland. The Government will also have to work bilaterally in close contact with the UK Government and the devolved Administration in Northern Ireland.

A summary of key actions to manage contingencies arising from the referendum result was also published³³ and included amongst the bodies which it stated might be used to manage issues arising from the referendum result were:

The Cabinet Committee on EU Affairs and the Senior Officials Group that supports it;

The joint UK Permanent Secretaries/ Irish Secretaries General group and its North-South equivalent;

A senior official in every Government Department has already been identified to oversee this issue. All Departments will now supplement this arrangement with a Top Management sub-committee specifically dealing with the implications of this development for their area of work;

Department of the Taoiseach chairs an Interdepartmental group of senior officials that has been meeting regularly to look specifically at the bilateral and national interests affected by the UK's withdrawal from the EU. The work of this group will be scaled up and intensified;

A wider consultative group of stakeholders chaired by Department of the Taoiseach comprising key business representative groups, ICTU and NGOs has also been meeting for some months now. The work of this group will be scaled up and intensified;

³³ *Summary of key actions to manage contingencies arising*
http://www.merrionstreet.ie/en/News-Room/News/Contingency_Framework_Summary.pdf (accessed 19/08/16)

The Minister for Foreign Affairs and Trade will continue to use the expertise of the Export Trade Council to advise Government on this issue. The expertise of the Council will be focused on the issues arising from the UK's disengagement from the EU.

The work of the North-South Ministerial Council and the British-Irish Council will become more important as mechanisms to develop the detailed outworking of policy issues arising

On 14 July 2016, the Prime Minister, Theresa May, spoke with the First Minister and deputy First Minister and, in a press release issued by Downing Street, a spokesperson said:

The First Minister Arlene Foster congratulated the Prime Minister on her appointment and they spoke about the importance of working together in a strong United Kingdom. They both agreed there should be continued engagement with the Northern Ireland Executive on the negotiating process for the UK leaving the European Union.

The deputy First Minister Martin McGuinness wished the Prime Minister well in her appointment. They discussed the implications of the EU referendum result. The Prime Minister said that officials and ministers would continue discussions on this issue, and ensure ongoing engagement with the Northern Ireland Executive.

Finally, the Prime Minister said she was looking forward to meeting both the First and deputy First Ministers in the near future.³⁴

On 10 August 2016, the First Minister and deputy First Minister wrote to the Prime Minister setting out the Executive's initial assessment following the EU referendum result. In the letter (which is included as Appendix 2 to this paper) they highlighted five broad issues, stating:³⁵

Firstly, and most obviously, this region is unique in that it is the only part of the UK which has a land border with an EU Member State.

Secondly, it is critical to our economy that our businesses, both indigenous and FDI companies, retain their competitiveness and do not incur additional costs. We therefore need to retain as far as possible the ease with which we currently trade with EU Member States and, also importantly retain access to labour.

Thirdly, energy is a key priority, given that there are inherent cost and supply issues in a small isolated market so we will need to ensure that nothing in the negotiation process undermines this vital aspect of our economy.

³⁴ *PM calls with Northern Ireland First and deputy First Ministers: 14 July 2016*

Prime Minister's Office – Press Release (14 July 2016)

<https://www.gov.uk/government/news/pm-calls-with-northern-ireland-first-and-deputy-first-ministers-14-july-2016> (accessed 19/08/16)

³⁵ *Foster and McGuinness united in determination to achieve the best possible outcome for all our people*

Executive Office Press Release (10 August 2016)

<https://www.executiveoffice-ni.gov.uk/news/foster-and-mcguinness-united-determination-achieve-best-possible-outcome-all-our-people> (accessed 19/08/16)

Fourthly, EU funds have been hugely important to our economy and the peace process. Since 1994, for example we have benefited to the tune of €13 billion of funding from Europe and during the period 2014-2020 we would expect to draw down over €3.5 billion. The current uncertainty around the ability to draw down a proportion of these funds, and the absence of EU programmes in the future is of real concern to a range of sectors.

A further key issue for us is the agri-food sector, including fisheries which represent a much more important component of our regional economy than it does for the UK as a whole.

On 13 August 2016, correspondence between David Gauke, Chief Secretary to the Treasury, and David Davis, Secretary of State for Exiting the European Union, regarding EU funding commitments was published.³⁶ This correspondence set out the steps that the Treasury said it was taking to address the uncertainty for recipients of all EU funding streams. Assurances set out by the Treasury included:

- all structural and investment fund projects, including agri-environment schemes, signed before the Autumn Statement would be fully funded, even when these projects continue beyond the UK's departure from the EU
- the Treasury would also put in place arrangements for assessing whether to guarantee funding for specific structural and investment fund projects that might be signed after the Autumn Statement, but while we remain a member of the EU. Further details would be provided ahead of the Autumn Statement
- where UK organisations bid directly to the European Commission on a competitive basis for EU funding projects while we are still a member of the EU, for example universities participating in Horizon 2020, the Treasury would underwrite the payments of such awards, even when specific projects continue beyond the UK's departure from the EU.³⁷

The Treasury also guaranteed that '...in a new boost to the UK's agricultural sector' the current level of agricultural funding under CAP Pillar 1 would be upheld until 2020, as part of the transition to new domestic arrangements.³⁸ The correspondence between the Chief Secretary to the Treasury and the Secretary of State for Exiting the European Union also noted that:

The administration of EU funding is largely devolved. We are offering the devolved administrations the same level of reassurance as we are offering to UK government departments in relation to programmes they administer but for which they expected to rely on EU funding. We will also work with the devolved administrations on subsequent funding arrangements to allow them to prioritise projects within their devolved responsibilities.

³⁶ *European Union funding (13 August 2016)*

From: HM Treasury, The Rt Hon David Gauke MP, The Rt Hon David Davis MP and Department for Exiting the European Union Letter from the Chief Secretary to the Secretary of State for Exiting the European Union regarding EU funding commitments. <https://www.gov.uk/government/publications/european-union-funding> (accessed 19/08/16)

³⁷ *Chancellor Philip Hammond guarantees EU funding beyond date UK leaves the EU (13 August 2016)*

<https://www.gov.uk/government/news/chancellor-philip-hammond-guarantees-eu-funding-beyond-date-uk-leaves-the-eu> (accessed 19/08/16)

³⁸ As above

On 13 August 2016, Finance Minister Máirtín Ó Muilleoir stated that the 'short term assurances provided by the Chancellor around EU funding did not go far enough'. He stated:³⁹

Prior to the referendum, the European Union had agreed to contribute over €1.2 billion to Structural and Investment Fund programmes in the north scheduled to run between 2014 and 2020. This includes contributions to the cross border PEACE IV and INTERREG VA Programmes. The decision today not to underwrite that sum in relation to EU funds from now to 2020 is a setback to the economy and a failure by the British government to match European support for the peace process.

Despite the promise of the British Prime Minister to act in the interests of all, there has been no attempt to consult with myself, the Executive or the Irish Government, about the best way forward in relation to European funds.

While the decision to honour letters of offer issued up to November will help some applicants for EU funds, it will leave a question mark over scores of other vital projects and means potentially up to £300m of future funding is in peril.

I have discussed this issue with the Chancellor and with my counterparts in Scotland and Wales, calling on the British Government to give a commitment that devolved administrations would not lose a penny of EU related funding streams. I have also written to the European Commissioner for Regional Policy with Ireland's Minister for Public Expenditure and Reform, and reiterated the joint support of the Executive and the Irish Government for our cross border PEACE and INTERREG programmes.

On 17 August 2016, Michelle McIlveen, Agriculture, Environment and Rural Affairs Minister, issued a statement which said:⁴⁰

I welcome the fact that Treasury has given a firm commitment to maintain current levels of CAP support to farmers out to 2020. This removes much uncertainty and creates time in which to develop a new approach to domestic agricultural support. I know that some will ask what comes beyond 2020, but that was a question we were facing within the EU anyway. At least we now have an opportunity to shape a support regime that is more suited to our needs and one that is not over-burdened with unnecessary bureaucracy. We can now turn our attention to addressing this particular issue, and this important opportunity.

We will continue to move forward with our plans to deliver our Rural Development Programme, including the forthcoming opening of the Farm Business Investment Scheme and the continued operation of the Business Discussion Groups and Family Farm Key Skills, and the roll out of the Leader programme.

A well-funded and properly targeted agri-environment measure has to be an important component of our domestic agricultural agenda moving forward, and I will be fighting hard to secure that outcome. Again, we now have the opportunity to develop an approach that meets our needs and is not burdened with unnecessary bureaucracy. This must now be our focus moving forward and I am confident we can achieve a good outcome on this."

The Minister concluded: "Overall, the announcement by Treasury is the first tangible step on our journey towards EU exit post the referendum as far as

³⁹ *Treasury announcement on EU funding unacceptable - Ó Muilleoir*

DFP Press Release (13 August 2016)

<https://www.finance-ni.gov.uk/news/treasury-announcement-eu-funding-unacceptable-o-muilleoir> (accessed 19/08/16)

⁴⁰ *McIlveen responds to Treasury statement*

DAERA Press Release (17 August 2016)

<https://www.daera-ni.gov.uk/news/mcilveen-responds-treasury-statement> (accessed 19/08/16)

agriculture is concerned. This is a positive step and we must now turn our attention to the opportunities that lie ahead.”

On 16 August 2016, the Northern Ireland Office announced⁴¹ that James Brokenshire, Secretary of State for Northern Ireland, had initiated a ‘... series of all-day visits set to run throughout the remainder of August, building on his visit to the North West at the end of July, the Secretary of State is set to reach nearly every Parliamentary constituency in Northern Ireland in the next two weeks. It was stated that he would be meeting as many local businesses, civic groups and political leaders as possible as part of the Government’s effort to ensure Northern Ireland’s voice is heard in the forthcoming EU negotiations’.

⁴¹ *Secretary of State embarks on NI August engagement programme*
From: Northern Ireland Office and The Rt Hon James Brokenshire MP (16 August 2016)
<https://www.gov.uk/government/news/secretary-of-state-embarks-on-ni-august-engagement-programme> (accessed 19/08/16)

Appendix 1

Potential impacts across policy areas

Institutions, the Border and Policing

The Peace Process and British-Irish Relations: UK withdrawal from the EU will represent a significantly changed context for the work of the devolved institutions and the cross-border bodies established under the Agreement. These bodies might be subject to any stresses emerging in UK-Ireland relations, as a result of the UK's withdrawal from the EU.

Common Travel Area: While the existence of the Common Travel Area precedes entry of the UK and Republic of Ireland into the EU, current border security concerns in Europe may lead to as yet unspecified arrangements for border control on what will be a land border between an EU and a non-EU state. The special status of Irish citizens in the UK, for example regarding voting rights and access to welfare and services, may need to be renegotiated if the Common Travel Area were affected.

European Arrest Warrant: There are a number of areas within policing in Northern Ireland that could potentially be affected by the UK's decision to leave the European Union. Perhaps the most obvious of these is the European Arrest Warrant (EAW), which allows for faster and simpler surrender procedures for suspects among EU Member States. It replaced the need for separate extradition arrangements between countries and means that extradition cannot be refused on the grounds of nationality.

Human Rights, Equality and Community Relations

Human Rights: UK withdrawal from the EU may not have a direct impact on human rights standards in the UK, as the key instrument, the European Convention on Human Rights (ECHR), is a Council of Europe, not an EU treaty. However, there may be some indirect human rights-related impacts in the absence of the Charter of Fundamental Rights of the European Union (the Charter). Unlike the ECHR, which has been incorporated into UK law by the Human Rights Act, the Charter only applies to matters concerning EU Law. It can though be raised in courts in the United Kingdom on such matters.

Community Relations: Northern Ireland has benefited from EU funding for promoting reconciliation, particularly the PEACE Programme. The current (and most probably last) manifestation of this, PEACE IV, is operational until 2020. However, the EU also contributes to other funds, such as International Fund for Ireland, and the Belfast Agreement refers to the EU as a site of partnership and co-operation between the UK and Irish governments.

Equality Law: Much of Northern Ireland's equality legislation derives from the European Union. A key question following the Brexit vote is whether equality and anti-discrimination safeguards developed in the context of EU membership will be lost or weakened.

Finance and Funding

European Co-funding: the European Union has agreed to contribute over €1 billion to Structural and Investment Fund programmes scheduled to run in Northern Ireland between 2014 and 2020. In spite of the decision by the Treasury to honour letters of offer issued up to November, uncertainty remains regarding a significant amount of this funding.

Barnett Formula: uncertainty in public finances as the UK moves towards withdrawal from the EU may put the future of the Barnett formula as a funding mechanism for the devolved administrations in jeopardy. This is exacerbated by the gathering pace of fiscal devolution across the UK, with the Scottish Rate of Income Tax and the devolution of Corporation Tax to NI in 2018.

European Investment Bank: Although the EIB can invest outside the EU, over 90% of its activities are focussed on Europe. Northern Ireland has been the recipient of over £1bn of investment by the EIB in a range of areas in the last ten years. While the EIB have stated that loan contracts that have already been signed will remain in force it is not clear what relationship the UK will have with the bank after BREXIT.

The NI Investment Fund: The EIB has been appointed as technical adviser to the NI Investment Fund, which is due to become operational in Autumn 2016. It is not clear what impact Brexit will have on the EIB's position as technical director of the Fund and DoF has stated that officials will continue to work as usual with the EIB in respect of the Fund until such times as the outworkings of the EU exit negotiations are known

Barroso Taskforce: the special European Commission Task Force for Northern Ireland set up by the then Commission President, José Manuel Barroso, in 2007 to help Northern Ireland maximise its participation in competitive programmes. The continuation of the Northern Ireland Task Force was announced in January 2016 but it's future must now be uncertain.

Business

Trade: BREXIT may change terms under which NI firms trade with the EU (our largest export market) and could potentially expose NI exporters to tariffs, customs burdens and may require NI firms to ensure they are compliant with EU product standards. In

the short-term, the fall in sterling has lowered the price of NI exports, but has increased input prices of businesses importing raw materials.

FDI: The extent to which BREXIT will impact FDI into NI, will depend on the deal struck between the UK and EU, the importance placed on single market access by investors, the impact on the effectiveness of the NI corporation tax rate, and Invest NI's ability to provide support to investors beyond what is currently permissible.

State Aid: the EU State aid rules still have full effect in the United Kingdom and will do until the United Kingdom ceases to be party to the Treaties. The United Kingdom remains bound not to grant State aid unless it is exempt or notified. And UK courts remain bound to enforce the State aid rules, including granting injunctions and awarding damages; however, it is very likely that compliance with State aid rules will be a condition of any extensive trading arrangement between the United Kingdom and the EU. That is, not least, because successive UK governments have accepted the basic principles of the State aid rules, and the UK government is not likely to want to see subsidy races between different local authorities and devolved governments. If the UK joins the EEA Agreement, that Agreement has the same rules on State aid as the EU Treaties, save that enforcement is carried out by the EFTA Surveillance Authority and EFTA Court rather than the Commission and ECJ.

Public Procurement: Public Procurement throughout the United Kingdom is largely defined by European Union law and the current rules will continue to apply until the UK has left the EU. For now, procurement law is unlikely to change significantly at UK level, although there may be some scope for reforming and 'tidying up' the rules. It is noteworthy that the OECD has made some recommendations on procurement reform, which the Assembly may wish to consider.

Business regulation: A key argument made during the EU Referendum was that a UK outside of the EU could cut business regulation and reduce business costs. The extent to which this is possible is, however, dependent on the deal struck by UK and EU negotiators.

Tourism: The fall in the value of sterling may make NI a more attractive destination to visitors from outside of the UK. In the longer-term, should a hardened border result from BREXIT, this could deter cross-border travel by visitors from the Republic of Ireland or international visitors entering the island through the Republic of Ireland.

Horizon 2020: The ability of NI stakeholders to access Horizon 2020, or successor programme, funding will depend on the deal struck between the UK and EU. Currently, non-EU states can participate in Horizon 2020 as associate members or as third countries. The Chancellor of the Exchequer has guaranteed Horizon research funding granted before the UK leaves the EU. The future status of the UK's access to this programme remains unclear.

Telecommunications: NI has previously made use of EU funding to improve broadband infrastructure. Current investments utilise UK national funds. It is unclear therefore what the impact BREXIT will have in this area. On the other hand, as the Executive's ability to invest in telecommunications is curtailed by State Aid rules, it is arguable that under certain exit scenarios this constraint will be lessened or removed.

Social Enterprises: Historically, social enterprises in NI have availed of EU funding. Any change to the UK relationship with the EU that hampers the ability of Social Enterprises in NI to access EU funding has the potential to negatively impact the sector and the Executive's Programme for Government ambitions in this area.

Agri-food sector

Extensive body of legislation: The EU's legislative impact on agriculture is extensive. There are currently 2,751⁴² pieces of legislation in force for agriculture covering areas such as CAP and its operation; rural development; forestry; and animal health and welfare.

In terms of food and drink processing, EU legislation covers areas such as food traceability and labelling, additives and food standards. It is possible that a UK withdrawal from the EU could see a potential reduction in the types and level of regulation that local food and drink processors face, but whether this happens in practice will depend on the relationship that the UK negotiates with the EU and whether access to the European Single Market is achieved.

Direct payments to farmers: The average Basic Payment Scheme is currently 103% of the average farm's business income in Northern Ireland. The income shock of removal of direct support could see a significant drop in the number of farmers and could also have a wider impact on the rural economy. A drop in the number of farmers could, theoretically, benefit those who managed to continue to operate as prices might rise for certain produce and farms might be able to expand if land became cheaper to obtain. There are uncertainties about whether the UK Government will continue to provide direct support to farmers. For example, could support instead be provided in an indirect way, focused on areas such as risk management (eg farm insurance and export subsidies)?

Agri-environment schemes: Under Pillar II (Rural Development Programmes) of the Common Agricultural Policy 2014-20, EU Member States and regions have options for funding to protect the rural environment. The 2014-20 Northern Ireland Rural Development Programme (NIRDP) has allocated significant sums of money towards a number of agri-environment measures including:

- €194 million allocated to agri-environment climate measures;

⁴² EUR-Lex Directory of European Union legislation: <http://nia1.me/39g> Accessed 24.8.16.

- €79 million allocated to support for areas facing natural constraints (ANC).

Any changes to the budget or priorities within the NIRD 2014-20 have the potential for negative impacts on the local environment. The potential loss of the ANC payment, for example, could have a drastic impact on our upland environment as a result of land dereliction or a reduction in the cross-compliance benefits in areas such as soil protection and erosion prevention. Environmental stakeholder organisations have raised concerns about the impacts that a removal of funding would have on projects that have benefitted various habitats and species. If there is a continuation of rural development funding after a UK withdrawal from the EU, would agri-environment schemes continue to be a priority for the government, and would any such decision be devolved?

Animal and plant disease: A group of EU directives and regulations deal with animal and plant disease, including issues such as prevention, notification, surveillance, diagnostic approaches, control and eradication. Member States can also avail of financial assistance from the EU in order to tackle, or to research, animal and plant diseases. For example, UK Bovine TB Eradication and Control programmes have received £23m in EU co-financing this year. Could loss of this funding make control and eradication of disease more difficult? What impacts could non-compliance with EU requirements on plant and animal disease control have on our ability to access EU or wider world markets in relation to agricultural produce?

Exports and imports: The European Single Market enables goods to move freely within the EU without being subject to tariffs, quotas, duties or customs delays. Agriculture in Northern Ireland benefits from this arrangement in terms of imports and exports, with the movement of goods across the Irish border of particular significance. For example, in 2015, 594 million litres of milk were imported into the Republic of Ireland for processing by creameries and pasteurisers, with nearly all of this coming from Northern Ireland. This imported milk is equivalent to 26% of Northern Ireland's annual milk supply in 2015. Any change to the current single market arrangements could have a significant impact on the movement of agricultural products.

The nature of any such impacts will largely depend on the deal that emerges from the forthcoming negotiations between the UK and EU. While it is difficult at this stage to predict the nature of any deal with the EU, there is information available on the types of tariffs that various products would be subject to if the UK resorted to World Trade Organisation terms for trade with the EU. In such circumstances, agricultural exports from Northern Ireland to EU countries would face such tariffs as:

- Dairy products – 42.1%;
- Fruit, vegetables, plants – 10.9%;
- Live animals – 1.2%; and,
- Meat and edible meat offal – 5.2%.

However, it should be recognised that within these broad categories there is considerable variation in tariff levels, as indicated by the fact that the entire WTO tariff data set shows 6,526 tariff lines. Given the complexity and variation in the tariffs it is difficult at this stage to assess the full impacts on local agriculture.

Protection of local food: The EU has legislation for the protection of food names based upon either their geographical point of origin, particular recipe or other uniquely distinctive features. These protections mean that they cannot be copied throughout the EU. Registered products also benefit from an ability to draw attention to their product and its unique properties across the EU, which can be a major marketing and sales benefit. At present, Northern Ireland has three PGI approved products: Comber early potatoes, Lough Neagh eels and Armagh Bramley apples. Three more local products are also currently seeking protected status.

Rural development funding: Under Pillar II (Rural Development Programmes) of the Common Agricultural Policy 2014-20, EU Member States and regions have options for funding to make farming more efficient. Within Northern Ireland the 2014-20 NIRD has allocated approximately £261m towards a number of schemes designed to support the efficiency and competitiveness of the agri-food sector. The role of the NIRD here can be pivotal, particularly in providing farmers with investment and support at a time when securing private finance may be challenging.

Genetically Modified Organisms: The EU has a legal framework dealing with the risk assessment, licensing, cultivation, labelling and traceability of Genetically Modified Organisms (GMOs)⁴³. Use of GMOs within the EU is strictly limited at present, but following a withdrawal from the EU, would the UK and Northern Ireland take the opportunity to speed up or expand the process for use of GMOs, or alternatively move away from the concept altogether? What is the Northern Ireland Executive's position on the use and cultivation of GMOs within Northern Ireland? Would the cultivation of GMOs be particularly contentious given the land border with the Republic of Ireland?

Agricultural research and development: Agriculture, forestry, fisheries and aquaculture are included as subjects eligible for funding under the Horizon 2020 programme. Loss of access to Horizon 2020 funding could have a detrimental impact on both local agricultural research and the adoption of new approaches or improved processes by local farmers. For example, the Agri-Food Bioscience Institute (AFBI) had an EU-derived income of £2.58m in 2013/14, which equated to 14% of their total income for the year. The loss or reduction of this income stream could present challenges for the institute and the work that it does to contribute to local agriculture.

Access to labour: Any changes to the availability of migrant labour for Northern Ireland's agricultural and food processing sectors could potentially present significant challenges. While it would appear that there has been a reliance on migrant labour to

⁴³ European Commission: Plants. 'GMO legislation: http://ec.europa.eu/food/plant/gmo/legislation/index_en.htm
Accessed 24.8.16.

meet some of the demand for harvesting labour in particular, it should be noted that there is little statistical data to confirm the scale of this contribution. In terms of food processing, Dunbia, one of Northern Ireland's major meat processors, has previously estimated that of the 1,240 people it employs in Northern Ireland around 60% at operative level are migrant workers⁴⁴. A more recent UK-wide report looking at the food manufacturing workforce identified 26.9% as being EU migrants⁴⁵. There could theoretically be a risk that food processing operators will move south of the border, particularly given that there is already significant cross-border movement in agricultural produce, which constitutes the raw material for many of our food and drink processors.

Fisheries

Market access: Northern Ireland fish export sales to the EU were worth £27.7m in 2014. If the UK had to fall back on World Trade Organisation terms for trade with the EU, fish and fish product exports from Northern Ireland to EU countries would face an average tariff of 12% based on 2015 WTO data. It should, however, be recognised that within these broad categories there is considerable variation in tariff levels, as evidenced by the fact that the entire WTO tariff data set shows 6,526 tariff lines, as illustrated by the following examples:

- *Nephrops norvegicus* (prawns) – 16%;
- Frozen cod – 12%; and,
- Frozen cod fillets – 7.5%.

Control of UK fish stocks: The Common Fisheries Policy operates on a Total Allowable Catch (TAC) basis whereby limits are placed on the amount of fish that can be caught within a particular fishery. The TACs for the Irish Sea limit the amount that can be caught of many commercial species, although the TAC is highest for *Nephrops* (prawns), which is probably why this is the main species targeted by the local fleet. Leaving the EU could theoretically mean that the UK would regain exclusive access to the fishing grounds and associated stocks within the 200 miles from the coast that constitutes the Exclusive Economic Zone.

However, as the UK is bound by a number of pieces of international law⁴⁶ that stipulate the requirement for co-operation on the management and conservation of fish stocks that straddle national jurisdictions, these obligations could mean that the UK would have to continue to work with the EU on the management of many stocks. Is there any likelihood that the UK could develop bi-lateral fishing rights and quota arrangements

Northern Ireland Strategic Migration Partnership. 2013. 'Mapping the deployment of migrant labour in Northern Ireland'. Belfast: <http://nia1.me/3a3>

⁴⁵ Lang, T & Schoen, V. 2016. 'Food, the UK and the EU: Brexit or Bremain? Food Research Collaboration': <http://foodresearch.org.uk/wp-content/uploads/2016/03/Food-and-Brexit-briefing-paper-2.pdf>

⁴⁶ Such as: United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks: <http://nia1.me/39v> and Convention on the Law of the Sea: <http://nia1.me/39w>

with an individual EU Member State? Could such a deal be struck with the Republic of Ireland, for example, for the management of prawns within the Irish Sea?

Funding: Under the CFP, the European Maritime and Fisheries Fund provides financial support to fishermen and coastal communities. Previous programme funding has been acquired for the construction of new fish storage facilities and the modernisation or extension of existing premises. Investment has also been made in the three Northern Ireland fishing ports to provide the fishing industry with the infrastructure required for a modern fishing fleet, provision of more selective fishing gear and safety equipment on board Northern Ireland's fishing vessels.

Inland fisheries: Various pieces of European legislation have an influence over inland fisheries policy in Northern Ireland, including the Water Framework Directive⁴⁷ and the Habitats Directive. Management of inland fisheries is complicated by the cross-border nature of key bodies of water used by protected, migratory species such as Atlantic salmon and sea trout. As the UK withdraws from the EU, how will the conservation and capture of such species be balanced, and will the continuing EU obligations of the Republic of Ireland be respected?

The eel industry: The Northern Ireland eel industry is the largest producer of wild eels in Europe, catching around 400 tonnes of eels per year from Lough Neagh. From 2007, an EU 'Eel Regulation' has placed obligations on the Northern Ireland Executive in areas such as re-stocking measures and retention of juvenile stock, and has meant that the commercial eel fishery on Lough Erne has closed due to low stock levels. It is unclear whether these obligations will continue to be adhered to. Could, for example, the Lough Erne fishery be re-opened? Furthermore, as it is not yet clear how UK access to the European Single Market may evolve, it is equally unclear to what extent the export of eels, around 80% of which currently are traded via the Netherlands, may be affected.

Employment and skills

The European Social Fund (ESF): The ESF has played a major role in supporting employment and skills development in NI. Call 1 of the 2014-2020 programme is currently supporting 65 community and voluntary groups.⁴⁷ These projects may be negatively impacted if Brexit occurs before the end of 2020 and without the ESF programme there may be a loss in the value of investment for future skills development.

Employment Law: Brexit could result in some EU employment legislation needing to be formally adopted into law by the UK Parliament (and NI Assembly, as employment law is devolved here). Greater control over employment law could also potentially

⁴⁷ Department for Employment and Learning, Northern Ireland European Social Fund programme 2014-2020, <https://www.economy-ni.gov.uk/publications/ni-european-social-fund-programme-2014-2020>

result in the UK and NI having greater scope to amend employment law, although this may create uncertainty for employers and workers, especially those who work cross-border.

The Free Movement of Labour: Any changes to the Free Movement of Labour could impact on NI in a more significant manner than other UK countries as a result of the land border with the Republic of Ireland (ROI). Changes to the Free Movement of Labour could also potentially impact on employers in recruiting skilled workers from across the EU.

Higher Education Institutions: The potential impacts of Brexit on NI's Higher Education Institutions (HEIs) include:

- Recruitment of EU domiciled workers;
- Access to funding programmes such as Horizon 2020; and,
- Income derived from EU students.

Energy

Energy: A key question arising out of the EU Referendum result is whether the All-island Single Electricity Market, and the current process of redesign will continue to be feasible. In a more general sense should future trade arrangements increase the cost of importing energy into the UK, this could negatively impact domestic and business consumers in NI.

Renewable Energy: Should the UK diverge from EU renewable policy, this, coupled with ongoing changes to renewable electricity support, could dampen growth in NI's renewable energy industry.

Transport

The Common Transport Policy: The EU Common Transport Policy (CTP) is viewed as fundamentally important to the achievement of the basic ideals of the EU: the free movement of goods, services, capital and labour. Broadly speaking, the main areas of EU regulation concerning the UK transport sector include rules on market access, safety, security, state aid, the environment, employment conditions, and passenger rights.

Air Passenger Duty: 'Brexit' negotiations could potentially enable the UK Government to adapt regulations relating to market access and state aid. A relaxation of rules relating to state aid could, in theory, create the circumstances whereby Air Passenger Duty (APD) in Northern Ireland could be reduced or abolished.

Current arrangements between EU and non-EU countries: It is not known at this stage what form of arrangement will exist between the UK and the EU following withdrawal, but the EU has different forms of agreement with non-EU countries dealing with multi-modal transport links. For example, the Agreement on the European Economic Area outlines the EU's relationship with Norway, Iceland and Liechtenstein; while there is a bi-lateral agreement between the EU and Switzerland on land transport (road and rail). Both of these agreements provide for the application of the accumulated legislation, legal acts, and court decisions which constitute the body of EU law in the respective countries.

TEN-T: The Trans-European Networks policy is designed to connect national transport, energy and telecommunication infrastructure networks to ensure their interoperability (principally by setting standards which remove technical barriers). There are two sets of funding instruments from which the Northern Ireland Executive can currently seek financial support for TEN-T projects: the [Connecting Europe Facility](#); and the [European Regional Development Fund \(ERDF\)](#).

In the last 10 years, the former Department for Regional Development sourced £98.57m of EU funding, making a significant contribution to road and rail enhancement schemes. As part of the 'Fresh Start' agreement, the Irish Government committed to contribute £75m towards the 'New Buildings to Strabane section of the A5 Western Transport Corridor'. Will 'Brexit' have an impact on cross-border cooperation along this corridor and on other infrastructure projects? Indeed, there are a number of other capital schemes that may have benefited from EU funding, including the proposed Belfast Transport Hub and the York Street Interchange scheme. The future of these schemes may be in doubt once the UK withdraws from the European Union.

Water infrastructure

Water and sewerage regulation: Northern Ireland Water, like all UK water companies, is regulated with strict standards for drinking water deriving from EU directives. But while UK regulations follow EU directives in terms of drinking water, some aspects of domestic regulation are in fact stricter than, or in addition to, those defined by the EU, reflecting the high standards of water supplies in the UK. It is unclear therefore what impact a UK withdrawal from the EU would have in Northern Ireland other than to eliminate the potential for infraction proceedings should non-compliance arise.

Water charges: Article 9 of the Water Framework Directive (WFD) requires Member States to recover the cost of providing water and sewerage services by imposing tariffs on consumers. The NI Executive has not introduced domestic water charges, potentially risking infraction proceedings. While it would be reasonable to assume that 'Brexit' could remove the potential risk of infraction, there may be circumstances which

arise from UK/EU negotiations that would still require the UK's full compliance with the WFD, as is the case with Norway and Switzerland.

Waste water infrastructure: The increasing standards arising from the WFD and its related directives have driven sustained investment in wastewater treatment works and sewerage networks since 2007. However, the need for a clean and safe water environment will not cease for Northern Ireland following a withdrawal from the EU, regardless of whether the UK continues to be subject to the WFD or not. Indeed, a situation could potentially arise whereby the UK will have to comply with the EU's regulations on water and waste water without having access to the financial support mechanisms it would previously have had as a Member State.

Environment

Waste and recycling: EU legislation has a fundamental and wide-ranging role in this area; relevant EU legislation includes (but is not limited to) the Waste Framework Directive, the Hazardous Waste Directive, the Shipment of Waste Directive, and the Landfill Directive. For example, the Northern Ireland Waste Management Strategy was formed in 2013 in order to comply with the Waste Framework Directive, including the way in which it defines waste, the establishment of a hierarchy for waste management, the introduction of the 'polluter pays' principle, and the setting of recycling targets. Both this strategy and PFG 2011-2015 proposed a target of 45% recycling rate for household waste by 2015 in order to build towards an EU requirement of 50% by 2020.

Water quality: The Water Framework Directive (WFD) requires Member States to have an integrated approach to managing inland and coastal waters. Northern Ireland currently works in co-operation with the Republic of Ireland for the management of the three cross-border River Basin Management Districts under the WFD. What form of dialogue has there been between the Department for Agriculture, Environment and Rural Affairs and the relevant department in the Republic of Ireland about the continued management of shared river basins?

Nature conservation: Key pieces of EU legislation for nature conservation include the Habitats Directive and Birds Directive. These provide for the designation of Special Areas of Conservation (SACs) and Special Protection Areas (SPAs). The requirements associated with these designations can have a major bearing on decisions for development projects that affect such sites. There are currently 57 SACs and 16 SPAs in Northern Ireland. In addition, NI (as part of the UK) contributes to global networks of protected sites created under Ramsar, World Heritage and OSPAR Conventions, and conforms to international agreements such as the Bern Convention and the Convention on Biological Diversity. What consideration has been given to the gaps between EU legislation and international agreements so that a clearer picture can be

formed of the environmental requirements which would still remain even without the obligations imposed by EU legislation?

Air quality: A group of EU air quality directives set limits for ambient concentrations of pollutants, place a duty on Northern Ireland's departments to achieve these values, and require that the public are informed about air quality, particularly when alert thresholds are exceeded. The UK, including some sites in Belfast, failed to meet NO₂ limits for 2010 and 2015. Following a withdrawal from the EU, would there be a relaxation, an increase or a continuation of targets for pollutants such as NO₂?

Climate change: The EU has set targets of a 20% cut in greenhouse gas (GHG) emissions compared with 1990 levels by 2020; a 40% cut by 2030; and cuts of between 80 and 95% by 2050. From these EU-wide targets, Member States then developed their own targets. The UK Government has set a target under the UK Climate Change Act 2008 of reducing emissions by at least 80% in 2050 from 1990 levels, to which Northern Ireland must contribute. In 2013, the UK as a whole had reduced emissions by 30%, but NI had reduced by just 16%. To what extent would current targets remain unchanged due to international commitments such as the UNFCCC, and what could potentially be changed with the UK's withdrawal from the EU?

Marine: The Marine Strategy Framework requires Member States to take action to protect the marine environment and to use marine resources sustainably. Implementation of this is at the UK level through the Marine Strategy Regulations 2010 and Marine Strategy to which Northern Ireland must comply. The Marine Spatial Planning Directive requires marine plans to be completed by 2021. These requirements have been transposed in Northern Ireland through the Marine Act 2013, which provides for marine planning; marine licensing; and further provision in relation to certain electricity works in the inshore region. Will the NI Executive seek to continue these areas of regulation following a withdrawal from the EU? As the Republic of Ireland will continue EU compliance, what form of cross-border cooperation will take place for trans-boundary marine-based industries and activities? What consideration will be given to those sites afforded protection by EU law (such as SACs and SPAs) that are not also protected by international treaties?

Industry: The EU seeks to regulate the industrial use of chemicals and the carrying out of dangerous activities principally through the REACH (Registration, Evaluation, Authorisation and Restrictions of Chemicals) regulations and the Environmental Liability Directive (ELD). The REACH regulations require that substances imported or manufactured in the EU are tested and also registered with the European Chemicals Agency. The ELD seeks to prevent and remedy environmental damage to protected species, habitats, water and soil by holding responsible operators liable. In a report on the effectiveness of the ELD⁴⁸, the UK Government listed a number of strengths to the ELD (for example, increased implementation of the polluter pays principle,

⁴⁸ For more detail see European Commission: Environment. 2014. 'Environmental liability': <http://ec.europa.eu/environment/legal/liability/>

compensatory remediation, damage remediation and increased powers for cost recovery). But what is DAERA's view of the ELD? What aspects would it seek to retain or repeal, and what review process would DAERA undertake in order to reach decisions on Northern Ireland's future approach to the interaction between industrial chemicals and the environment?

SEA and EIA: The environmental considerations involved in the planning and development process are currently driven by EU legislation. For example, the Strategic Environmental Assessment Directive and the Environmental Impact Assessment Directive set out environmental assessment requirements for plans and projects. Following a withdrawal from the EU, what approach will the Northern Ireland Executive take to this issue: will there be a relaxation, a tightening or simply a retention of current requirements?

Funding for environmental projects and research: EU programmes such as Horizon 2020, LIFE+ and INTERREG provide funding to environmental projects and research. For example, Horizon 2020 funds research and new products in areas such as climate change, resource efficiency and raw materials. LIFE+ provides support for nature, conservation and climate action projects. The cross-border cooperation fostered by INTERREG programmes has been used to fund projects for the protection of habitats and species including marine, improving freshwater quality and transitional waters across Northern Ireland, the Border Region of Ireland and Western Scotland.

Social policy

Social security: The freedom of movement of workers in the EU is underpinned by a set of rights⁴⁹, including protection against discrimination on the grounds of nationality in relation to employment, remuneration and other conditions of work. To protect and promote freedom of movement, legislation and other measures have been put in place to secure co-ordination in social security systems so that people do not lose entitlement to benefits when they move between Member States to work, study or retire⁵⁰. The UK's withdrawal from the EU could potentially have implications for both EU/EEA nationals living in the UK, and UK nationals living in another EU/EEA country in terms of access to payments and benefits. There may be a particular significance for cross-border workers working between Northern Ireland and the Republic of Ireland.

State pensions: Rules on social security entitlements for people moving within the EU enables periods of insurance to be aggregated meaning that a pension built up in one Member State can be drawn in another (known as 'exportability'). Under current arrangements, UK State Pensioners resident in EEA countries also receive annual

⁴⁹ For further information on freedom of movement and associated rights see European Parliament factsheet on the Free Movement of Workers: www.europarl.europa.eu/atyourservice/en/displayFtu.html?ftuld=FTU_3.1.3.html

⁵⁰ HM Government (2014) Review of the Balance of Competences between the United Kingdom and the European Union. Single Market: Free Movement of Persons.

increases to their State Pensions (in countries outside the EEA, UK state pensions are only updated if there is a reciprocal social security agreement).

Child Maintenance: Withdrawal from the EU is likely to have implications for EU family law (eg divorce and judicial separation proceedings). This may have a knock-on effect on child maintenance arrangements and enforcement where one parent is resident in another EU Member State. There are specific EU regulations governing maintenance arrangements. For example, Regulation 4/2009, which is commonly referred to as ‘the Maintenance Regulation’, enables a maintenance creditor (ie a person owed money under a maintenance order) to obtain easily and quickly an order which is recognised and can be enforced throughout the European Union.

Housing: If the UK’s withdrawal from the EU has a significant economic impact, this may in turn have an effect on the Northern Ireland housing market and on urban regeneration. The availability of social, affordable and private sector housing (for both owner occupiers and landlords) will depend upon how EU withdrawal impacts upon the construction industry including access to construction materials and skills; the availability of land for new-build housing; housing procurement; and the availability of private finance for Housing Associations and construction companies. Given that a number of local Housing Associations have recently accessed finance via the European Investment Bank, clarification on future access to this source of funding may be required.

Access to Social Housing and Housing Benefit: A further important issue is how EU withdrawal will impact upon access to social housing. Clarification is required as to whether UK withdrawal will restrict the right to access to social housing and housing related social security benefits (ie Housing Benefit) for EU/EEA nationals who have already acquired social housing in the UK and for those who seek to live and work in the UK.

Urban Regeneration: EU funding has contributed to the financing of projects that have added to the regeneration of areas of social deprivation including interface areas (eg [Skainos Project](#) in East Belfast and the [Peace Bridge](#) in Derry/Londonderry⁵¹). It is too early to determine what the UK’s exit from the EU could mean for current EU funding allocations and access to future EU funding opportunities and the degree to which it will impact upon urban regeneration and shared spaces in Northern Ireland.

The voluntary and community sector: The impact on the sector will depend upon a number of factors including current and future access to EU funding and the impact of the economic climate on demand for third sector services. One particular concern to Northern Ireland and the border regions will be the impact of the UK’s withdrawal on EU funding opportunities that promote community relations. An example of such a

⁵¹ For further examples, see the Department for Communities website: www.communities-ni.gov.uk/articles/eu-programmes

Programme is PEACE IV, a cross-border initiative financed through the EU European Regional Development Fund (ERDF).

Fuel poverty and energy efficiency: Whilst the vast majority of measures to tackle fuel poverty are funded by the Executive, European funding has been used to tackle the issue of fuel poverty. For example, the Department for Social Development sourced £6m funding from the EU Sustainable Competitive Programme for NI during 2007-13 to support the Boiler Replacement Scheme. More broadly, it is not clear what impact the UK's withdrawal from the EU would have on the energy market. With 42% of households here in fuel poverty (the highest proportion in the UK), a sustained rise in fuel prices could have a significant impact on households.

Education

The EU's competence in education is limited to a supporting, coordinating or supplementing role, and therefore, withdrawal from the EU is likely to have minimal implications for education.

Funding implications: Shared education is due to receive €35.3m under PEACE IV from 2016-2020. Depending on the timing, a UK withdrawal from the EU could restrict access to this funding. An exit would also mean that the Department could not access funding from Erasmus+, or any other EU funding stream.

Qualification recognition and student mobility: The European Qualifications Framework (EQF) aims to facilitate the comparison of qualifications across countries in order to promote student and worker mobility and lifelong learning. A withdrawal from the EU could have consequences for qualification recognition across EU member states, with implications for students wishing to study, train and work abroad.

Health

Health is not an area of significant EU competence and the role of the EU is largely limited to supporting member states to effectively deliver related policy and services. Article 6 of the TFEU lists 'Public Health' as amongst a range of policy areas where the EU can support Member States in this regard. Article 168 further sets out the types of actions the EU can undertake within the field of public health to complement national policies, including to meet common safety concerns and to provide early warning of and measures to combat serious cross-border threats to health (e.g. pandemics).

However, there are a number of areas of significance to health and social care that will need to be resolved. These include:

Unplanned care in another EU country: The European Health Insurance Card (EHIC) is a free card that gives an individual access to medically necessary, state-

provided healthcare during a temporary stay (including holidays) in any of the EU countries (and Iceland, Lichtenstein, Norway and Switzerland), under the same conditions and at the same cost as people insured in that country. Residents of NI apply to the NHS Business Services Authority to obtain an EHIC. There are currently 660,329 valid EHICs in circulation in NI.

Access to healthcare in another EU country: EU Directive 2011/24/EU came into force in October 2013 and introduced scope for citizens to apply for reimbursement of cross-border healthcare treatment for planned and unplanned care. Unlike the EHIC, it is limited to EU Member States. Under the Directive, once a patient has been assessed as needing treatment and would be eligible to have that treatment in NI they have the right to obtain this treatment in another EU member state, either privately or in the state sector. Patients pay the treatment costs directly to the provider and the Health and Social Care Board will reimburse the patient for the actual cost of the treatment or the equivalent cost of treatment locally, whichever is the lesser. Except where legislation requires the seeking of prior authorisation, for example, where the treatment being sought requires an overnight stay in hospital or involves the use of highly specialised medical equipment or infrastructure, a patient may obtain healthcare in another Member State under the Directive without authorisation from the HSCB.

Employment matters: There are a number of pieces of EU legislation within the field of employment which also impact on the delivery of health care services. This includes legislation concerning mutual recognition of professional qualifications - [Directive 2005/36/EC](#)^[1] (as amended by Directive 2013/55/EU) on the recognition of professional qualifications. This sets out UK obligations for recognising the relevant professional qualifications held by staff, from within the EEA. The relevant UK regulations that transposed the Directive are the [European Union \(Recognition of Professional Qualifications\) Regulations 2015](#). Also the Working Time Directive - if the UK government decides to appeal or amend the WT regulations, this would have implications for HSC employment contracts and require changes to the Agenda for Change pay framework.

Procurement of goods and services: Along with other public bodies and authorities in NI, EU rules on public procurement provide the legal framework for procuring goods, works and services related to the management and delivery of health and social care in NI.

Cross-border services and projects: Since 1992 Co-operation and Working Together: CAWT has created and sustained a variety of EU funded cross-border projects and services and has enhanced health service provision to many rurally isolated and peripheral areas. In the most recent tranche of projects CAWT managed 12 cross-border health and social care programmes funded by £24 million from the EU INTERREG IVA programme until 2014/2015. Due to the outcome of the EU

¹ [Directive 2005/36/EC, http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02005L0036-20140117&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02005L0036-20140117&from=EN)

Referendum and in order to maintain the working relationships between the health services North and South, emphasis has been placed in the CAWT 2014-2019 plan on particular strategic goals. An immediate priority for CAWT is to co-operate with the Special EU Programmes Body (SEUPB) and the respective Departments of Health to ensure a positive outcome to the implementation of the Health & Social Care Measure in INTERREG VA.

Development and licensing of medicines: The marketing authorisation for medicinal products for human use, as well as the rules for the constant supervision of products after they have been authorised, are laid down in Directive 2001/83/EC and in [Regulation \(EC\) No 726/2004](#). Each EU member state has its own medical regulatory body, in the UK's case the Medicines & Healthcare Products Regulatory Agency (MHRA). In the UK, companies wanting to sell new drugs or devices have to get them licensed by the MHRA. An alternative route for major pharmaceutical companies is to get approval from the European Medicines Agency (EMA), which is a decentralised agency of the EU. If the UK negotiates to stay in the EEA there would not, in practice, be much difference to regulation. If not, drug companies would need to go through a separate process with British regulators for new products as the centralised European route would no longer be applicable to the UK.

Medical and life sciences research: Research and innovation is another area where the EU dimension is of particular interest to health and social care. This includes participation by NI universities and research teams, through competitive bidding, in the EU's research programme Horizon 2020. Key areas of research that attract funding from Horizon 2020 are – food and healthy diet, health, social sciences and humanities and biotechnology. The Innovative Medicines Initiative (IMI) is another area where the UK may be impacted. IMI is a partnership between the EU Commission and the European pharmaceutical industry. The IMI 2 programme has a €3.3 billion budget for the period 2014-2024, with half coming from Horizon 2020.

Culture and sport

Access to Creative Europe: Creative Europe is a framework with a total fund €1.46 billion for the period 2014-2020. In recent years, organisations in Northern Ireland have been successful in securing grant funding from Creative Europe, particularly from the MEDIA strand. In addition to grant funding, Creative Europe also provides other means of support, such as the Cultural and Creative Sectors Guarantee Facility, which provides a guarantee through the European Investment Fund so that creative companies (such as film makers) can access loans which banks have tended to be reluctant to provide in the past.

European Capitals of Culture: The UK is currently designated to host the European Capital of Culture in 2023. European Commission guidance states that the formal call for cities to compete to become the designated city within a Member State usually

commences around six years prior to the host year; that is, 2017 for the selection of the UK city. At present, it is unclear whether the UK will be taking up its 2023 designation for Capital of Culture. The ECOC scheme is currently only open to Member States, or to accession states.

Digital Single Market: In 2015, the European Commission published a strategy for the Digital Single Market. Key objectives in this area include negotiations on common EU data protection rules; modifying copyright rules to reflect new technologies; and boosting digital skills and learning. As creative industries such as film and television, video games and the music industry continue to develop in Northern Ireland, companies and practitioners here may increasingly be looking to distribute products on a cross-border basis. While negotiations on a single European copyright have yet to conclude, future developments in this area may be of benefit to those states which are permitted to be included in the scheme.

Cultural heritage: The EU has some, though limited, engagement with cultural heritage legislation and policy. For example, EU Directive 2014/60/EU, on the return of cultural objects unlawfully removed from the territory of a Member State, seeks to prevent the trade in illegally acquired cultural objects across the European Union. The Council of Europe has tended to be more active in the area of cultural heritage; as an entirely separate institution, CoE initiatives such as European Heritage Open Days would not be affected by the UK's withdrawal from the EU.

Sport programme: The EU has a European Workplan for Sport, and a fund of €265 million made available for a 'sport programme' through Erasmus+. The workplan has a number of streams, including the development of measures against corruption, match-fixing, and the illegal use of drugs in sport. Should the UK's participation in such mechanisms be removed, it is not clear whether such collaboration would continue to occur via other means.

First Minister and deputy First Minister letter to Prime Minister

Appendix 2



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The Rt Hon Theresa May MP
Prime Minister
10 Downing Street
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10 August 2016

Dear Theresa

We welcomed your visit to Belfast on 25 July to discuss the implications of the recent EU referendum result with us. It was a constructive engagement following on from the British Irish Council meeting in Cardiff on 22 July.

Since our meeting we have noted your stated intent to trigger Article 50 early in 2017 and we wish to reiterate our full commitment to achieving the best possible outcome for the people of Northern Ireland. In this context we are reassured by your commitment that we will be fully involved and represented in the negotiations on the terms of our future relationships with the EU and other countries. We regard this as a fundamental prerequisite of a meaningful and inclusive negotiation process.

In preparation for the negotiations we have conducted an initial assessment that has highlighted a number of issues which are of particular significance to us.

Firstly, and most obviously, this region is unique in that it is the only part of the UK which has a land border with an EU member state. There have been difficult issues relating to the border throughout our history and the peace process. We therefore appreciate your stated determination that the border will not become an impediment to the movement of people, goods and services. It must not become a catalyst for illegal activity or compromise in any way the arrangements relating to criminal justice and tackling organised crime. It is equally important that the border does not create an incentive for those who would wish to undermine the peace process and / or the political settlement. The border also has particular significance for the agri-food sector and animal health.

Secondly, it is critical to our economy that our businesses, both indigenous and FDI companies, retain their competitiveness and do not incur additional costs. We therefore need to retain as far as possible the ease with which we currently trade with EU member states and, also importantly retain access to labour. Policies need to be sufficiently flexible to allow access to unskilled as well as highly skilled labour. This



applies not only to businesses and the private sector but also to public sector employers who are heavily dependent on EU and other migrant labour. There is also the matter of the many thousands of people who commute each way across the border to work on a daily basis.

Thirdly, energy is a key priority, given that there are inherent cost and supply issues in a small isolated market so we will need to ensure that nothing in the negotiation process undermines this vital aspect of our economy.

Fourthly, EU funds have been hugely important to our economy and the peace process. Since 1994, for example we have benefited to the tune of €13 billion of funding from Europe and during the period 2014-2020 we would expect to draw down over €3.5 billion. The current uncertainty around the ability to draw down a proportion of these funds, and the absence of EU programmes in the future is of real concern to a range of sectors.

A further key issue for us is the agri-food sector, including fisheries which represent a much more important component of our regional economy than it does for the UK as a whole. This is reflected in the fact that approximately 10% of UK receipts from the CAP accrue to Northern Ireland (accounting for the majority of our EU funding) and a large proportion of our food and agricultural output is exported to other EU and non-EU countries. Our agri-food sector, and hence our wider economy, is therefore uniquely vulnerable both to the loss of EU funding, and to potential tariff and non-tariff barriers to trade.

We have had constructive initial discussions with the Irish Government through the NSMC, and wish to play our part in the engagement between the two Governments on the unique aspects of negotiations that arise from the border, recognising the possibility that it cannot be guaranteed that outcomes that suit our common interests are ultimately deliverable. We wish to have full access to that intergovernmental process as the border issues affecting trade, employment, energy and potential criminality are of such high significance for us. These are our initial thoughts and we look forward to further engagement with you on these matters. It will also be important to proactively seek out opportunities in any new arrangements that would be of benefit to the UK and its regions. No doubt each region will have its own priorities.

We are copying this letter to Boris Johnson, Amber Rudd, David Davis, Liam Fox, James Brokenshire, Greg Clark, Andrea Leadsom, Nicola Sturgeon and Carwyn Jones.

Yours sincerely



RT HON ARLENE FOSTER MLA
First Minister



MARTIN MCGUINNESS MLA
deputy First Minister