

North South Parliamentary Forum

Joint Working Group Meeting

**Background briefing prepared by
the Library and Research Service of the Houses of the Oireachtas and
the Northern Ireland Assembly Research and Information Service**

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The costs of 'Gold-plating' and the transposition of EU Directives in the context of the overall regulatory framework

Key Points

- A significant proportion of regulations in both jurisdictions originate at EU level;
- ‘Gold-plating’ which amounts to national bodies exceeding the terms of EU Directives when transposing them into domestic law has been identified as a challenge to better regulation in both jurisdictions;
- In both jurisdictions it is recognised that Regulatory Impact Assessments are a key tool in reducing the costs of regulation;
- The European Commission itself sees ‘gold-plating’ as a risk to its Better Regulation policy and has noted that, whilst not illegal, ‘gold-plating’ is bad practice because it imposes costs that could have been avoided. In its strategy to simplify the regulatory environment, the European Commission proposes greater use of regulations. As regulations are directly applicable (i.e. no need for transposition into domestic legislation) and guarantee that all actors are subject to the same rules at the same time this would reduce potential for ‘gold-plating’.
- Gold-plating is recognised in the latest Programme for Government as an issue in the Irish context, particularly in the context of imposing a competitive disadvantage on Small and Medium Enterprises (SMEs);
- An increasing proportion of national regulations originate at EU level – accurate figures are not available but perhaps 30% of primary and secondary legislation originates from EU Directives;
- The Programme for Government states that the parliamentary treatment accorded to national draft legislation should be extended to draft EU legislation. To this end the Regulatory Impact Assessments (RIAs) prepared for Ministers on EU Directives are to be forwarded to Oireachtas Committees which should advise as to whether the transposition should take place by Statutory Instrument or by primary legislation;
- It is widely recognised that RIAs are a key tool in reducing the costs of regulation but that various factors may affect how well they can be employed;
- The new Programme for Government states that officials responsible for the transposition of EU Directives should prepare a separate RIA on the transposition options and should identify elements which may amount to ‘gold-plating’. The RIA should then state whether any of the proposed options will result in more burdens being imposed than are required by the Directive. Any such additional burdens should be justified by extensive analysis and consultation with the relevant stakeholders.

- Secondary legislation is the legislative vehicle most frequently used to implement EU law in the Assembly;
- The Departments of Enterprise Trade and Investment and Agriculture and Rural Development and their associated Assembly Committees in particular can play a role in addressing the issue of 'gold-plating';
- New rules for the transposition of EU directives were introduced by the Coalition Government in the UK in December 2010. The rules, which are based on the direct 'copy out', principle are that:
 - Work on the implementation of an EU directive should start immediately after agreement is reached in Brussels.
 - Early transposition of EU regulations will be avoided except where there are compelling reasons to do so.
 - European directives will normally be directly copied into UK legislation, except where it would adversely affect UK interests, such as putting UK businesses at a competitive disadvantage.
 - Ministers will conduct a review of European legislation every five years;
- DETI has copied the guidance for Whitehall departments in relation to these rules to Northern Ireland departments to ensure that they are taken into account in relation to transferred matters.

1 Introduction

'Gold-plating' is defined as the practice of national bodies exceeding the terms of EU Directives when implementing them into national law. Where this practice does occur it can have the effect of, for example, putting businesses in the 'gold-plating' Member State at a competitive disadvantage in relation to other EU states where Directives may be implemented more literally.

2 Ireland

Concern that ‘gold-plating’ is a problem in the Irish context, particularly in relation to imposing unnecessary costs on Small and Medium Enterprises (SMEs), was reflected in the Programme for Government (2011):

“We will commission an independent audit into the transposition and implementation of EU legislation, placing priority on laws and regulations that caused concern or [are] deemed burdensome to Irish business. We will put in place a mechanism across Government to accelerate implementation of directives, involving relevant Departments and the Attorney’s Office.”

Origin of regulations

We will address other aspects of the ‘gold-plating’ of EU Directives later in this paper but before doing so it would be worthwhile to first place that practice in the context of the overall Irish and EU regulatory framework.

Regulations are created and implemented by regulatory bodies in accordance with the guidelines set by legislation, either primary or secondary, and either national or European legislation. Secondary legislation – statutory instruments (SIs) - include orders, regulations, rules and by-laws which are made by Ministers and other bodies under a power conferred by primary legislation. European Regulations have direct application in Member States but EU Directives must be transposed via national legislation and/or regulations. They are transposed by either primary or secondary legislation (SIs). The latter is more commonly used.

Proportion of regulation with an EU origin

A significant proportion of national regulations originate at EU level. The exact proportions are not quite clear; one source recently estimated that 30% of our laws come from Europe. However, this figure does not include EU regulations which come directly from Europe without transposition. If these were included, this estimate of 30% would be considerably higher.

Regulatory Reform

Reform of the regulatory framework has been a policy goal since 1999 when *Action for Regulatory Reform, Cutting Red Tape* was published by the then Government. This was followed in 2001 by an OECD review of *Regulatory Reform in Ireland* which found reform of regulatory governance to be slow. This led the then Government to commit to introduce a form of Regulatory Impact Assessment (known as a RIA) on major new pieces of legislation and to conduct a public consultation process in 2002 which fed into a Government White Paper, *Regulating Better* (2004).

The 2007 Programme for Government included a commitment to “ensure that our regulatory framework remains flexible, proportionate and up-to-date and to implement procedures to ensure direct feedback from business on regulatory burdens, and to publish annual reports on how these issues have been addressed.”

The latest Programme for Government (2011) states that Departments should publish RIAs before Government decisions are taken. It is hoped thereby to offer a further channel to obtain the views of civil society on such new rules and regulations.

The 2011 Programme also deals specifically with the transposition of EU legislative measures in the context of enhancing the role of the Oireachtas:

“The situation can no longer be tolerated where Irish Ministers enact EU legislation by statutory instrument. The checks and balances of parliamentary democracy are by-passed. The parliamentary treatment accorded home-produced draft legislation must be extended to draft legislation initiated within the EU institutions. The Regulatory Impact Assessments prepared for Ministers on all EU Directives and significant Regulations will be forwarded automatically to the relevant sectoral Oireachtas Committees. These Committees should advise the Minister and the Joint Committee on European Affairs as to whether the transposition should take place by Statutory Instrument or by primary legislation. Where primary legislation is recommended the full Oireachtas plenary process should be followed.”

Policy Instruments for Reducing the Cost of Regulation

A best-practice approach to reform aimed at reducing the cost of regulation generally requires action at **three levels** in the policy process:

- at the point of devising new legislation;
- at the point of reviewing existing legislation and regulation; and
- at the point of implementation of the legislation / regulations. *i.e.* is the regulation implemented in the most cost-effective way for stakeholders?

At the first level - the point of devising new legislation - the key tools are Regulatory Impact Assessments (RIAs), sometimes with public consultations. The effectiveness of these tools in reducing the cost of regulation for SMEs, for example, will depend on a number of factors including the relative importance attached to RIAs by the Cabinet, the method and personnel used to conduct RIAs and the quality of that assessment, the level of consultation with the SME sector and the extent to which the impact on the SME sector, in particular, is a focus of the RIA.

The new Programme for Government places considerable emphasis on RIAs in the context of the transposition of EU legislation. It states that the officials responsible for the transposition of EU Directives should prepare a separate RIA on the available transposition options (both legislative and non-legislative). This RIA is expected to

distinguish between those elements of each of the proposed options which are mandatory and those which are optional or have been added as a result of specific national concerns (which may amount to 'gold-plating'). The RIA should then state whether any of the proposed options will result in more burdens being imposed than are required by the Directive.

Any such additional burdens which relate to the selected policy option should be justified by extensive analysis and consultation with the relevant stakeholders. If an SI is chosen as the transposition instrument, publication should occur no later than when the SI itself is signed and published. If primary legislation is selected, the RIA must be published once the Bill itself is published.

3 Northern Ireland

As all foreign policy issues are non-devolved, relations with the European Union are the responsibility of the Parliament and Government of the United Kingdom, as Member State. A Memorandum of Understanding and Concordat on the Co-ordination of European Union Policy Issues sets out the mechanisms for handling EU business between the UK Government and Devolved Administrations. The Concordat states under the heading “North/South Arrangements”, however, that:

As required by the Belfast Agreement, the North/South Ministerial Council brings together those with executive responsibilities in Northern Ireland and the Irish Government to develop consultation, co-operation and action within the island of Ireland on matters of mutual interest within the competence of the administrations. This includes consideration of the European Union dimension of relevant matters, including the implementation of EU policies and programmes.¹

The Concordat provides that it is the responsibility of the lead Whitehall Department formally to notify the devolved administrations at official level of any new EU obligation which concerns devolved matters and which it will be the responsibility of the devolved administrations to implement. It is then for the devolved administrations to consider, in consultation with the lead Whitehall Department, how the obligation should be implemented, including whether the devolved administrations should implement separately, or opt for UK legislation. Given the relationship between Whitehall and the devolved administrations it is worth highlighting developments in Whitehall relation to gold-plating.

In 2006, a review by Lord Neil Davidson QC examined whether the ‘gold-plating’ or over-implementation of EU law was adding to the administrative burden for UK businesses. In addition to gold-plating, the review considered over-implementation to include:

- Double-banking, i.e. failing to streamline the overlap between existing legislation in force in the UK and new EU-sourced legislation; and
- Regulatory creep, such as uncertainty created by lack of clarity about the objectives or status of regulations and guidance, or over-zealous enforcement.

The review, which was designed to provide an opportunity for businesses, trade associations, voluntary bodies and other stakeholders to submit evidence to back up

¹ Memorandum of Understanding and Supplementary Agreements Between the United Kingdom Government, the Scottish Ministers, the Welsh Ministers, and the Northern Ireland Executive Committee [B: Concordat on Co-ordination of European Union Policy Issues] March 2010
http://www.ofmdfmi.gov.uk/memorandum_of_understanding_and_concordate_on_co-ordination_of_eu_issues_-_march_2010.pdf

general claims of over-implementation, found that properly assessing whether a particular piece of European legislation has in fact been over-implemented and whether that over-implementation is justified is not straightforward. Recognising this difficulty together with the difficulty of drawing conclusions based upon examination of a limited number of case studies, the review nevertheless concluded that ‘...a number of factors indicate that inappropriate over-implementation may not be as big a problem in the UK – in absolute terms and relative to other EU countries – as is alleged by some commentators’.

The report did, however, note that the stock of existing UK legislation derived from the EU included examples of legislation that had not been brought into effect in the least burdensome way possible. In response, the Government’s guidance on how to implement European directives was revised to incorporate Lord Davidson’s recommendations

The Conservative and Lib-Dem coalition Government was quick to address the issue of ‘gold-plating’ and late last year set out a series of new principles that it intends to use when introducing European measures into UK law. The key elements of the new approach which are based on the direct ‘copy out’ principle are that:

- Work on the implementation of an EU directive should start immediately after agreement is reached in Brussels. By starting implementation work early, businesses will have more chance to influence the approach, ensuring greater certainty and early warning about its impact.
- Early transposition of EU regulations will be avoided except where there are compelling reasons to do so. British businesses will then not be at a disadvantage to their European competitors.
- European directives will normally be directly copied into UK legislation, except where it would adversely affect UK interests, such as putting UK businesses at a competitive disadvantage.
- Ministers will conduct a review of European legislation every five years. The review process would involve a consultation with businesses and provide a unique opportunity to improve how European legislation is implemented, to ensure that it poses as small a burden as possible on business.²

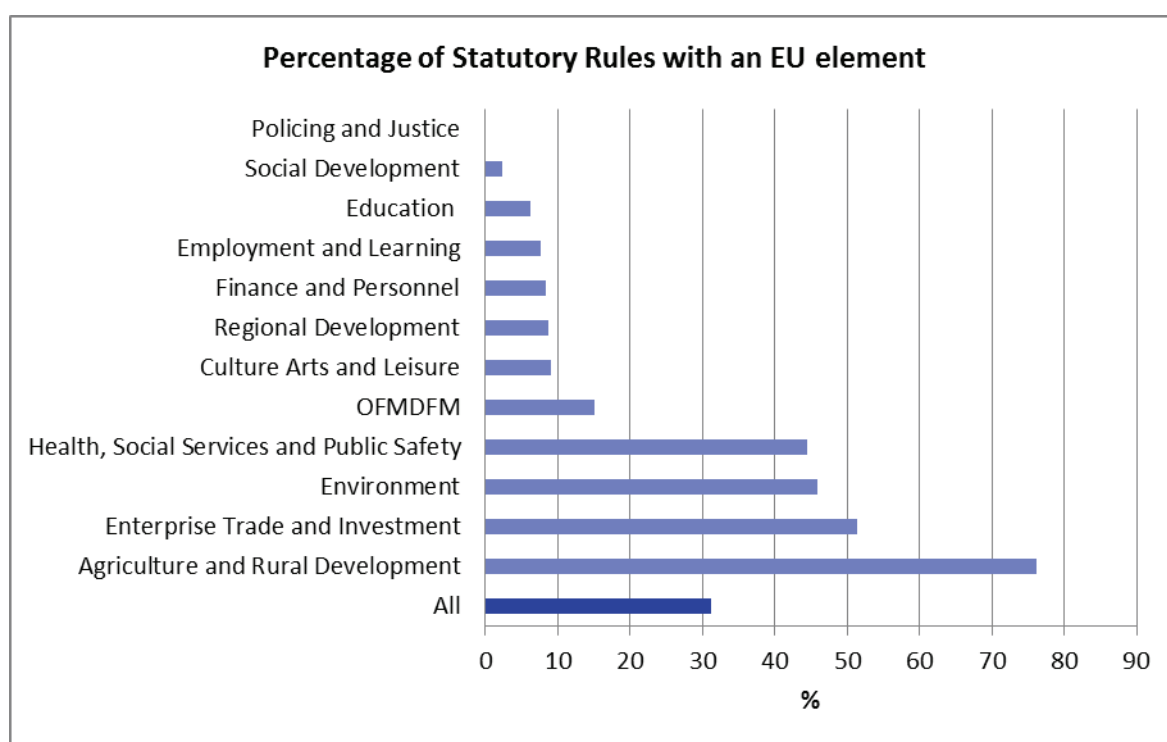
² Department of Business Innovation and Skills Press Release 15 Dec 2010 Government ends gold-plating of European regulations <http://www.bis.gov.uk/news/topstories/2010/Dec/Government-ends-goldplating-of-european-regulations>

The Northern Ireland Executive

Where the decision is taken to transpose EU directives separately in Northern Ireland, the devolved institutions have an opportunity to play a key a role in preventing gold-plating which, in addition to extending the scope of legislation, can be considered to include: not taking full advantage of derogations; providing sanctions, enforcement mechanisms and matters which go beyond minimum needed; and implementation before the date given in the directive.

As Table 1 below shows, secondary legislation is the legislative vehicle most frequently used to implement EU law in the Assembly and scrutiny by Assembly Committees may, therefore, provide an opportunity to identifying any potential over-implementation.

Table 1 Secondary Legislation passed in 2007-2011 Assembly Mandate



The Departments of Enterprise Trade and Investment and Agriculture and Rural Development and their associated Assembly Committees have key roles to play in addressing the issue of ‘gold-plating’.

DETI oversees the Northern Ireland Better Regulation Strategy, which was reviewed and updated in 2007 and 2010. The Strategy commits all departments to carrying out regulatory impact assessments and ensuring that all regulation is necessary and proportionate. It is overseen by an interdepartmental group of senior officials and by a Stakeholders Forum representing businesses, regulators and enforcers.

In response to an Assembly Question asking for her assessment of the practical impact the findings of the Davidson Review on the 'gold -plating' of EU legislation have made on her Department's approach to the implementation of EU legislation; and to provide

examples of any improvements, the Minister of Enterprise, Trade and Investment replied:

Lord Davidson's report recommended specific simplification proposals in ten areas of legislation, none of which fell within my Department's legislative remit. He also made a number of generic recommendations designed to promote best practice in the implementation of EU legislation and these are reflected in the new rules for the transposition of EU law, introduced by the Coalition Government in December 2010.

My Department has copied the guidance for Whitehall departments in relation to these rules to Northern Ireland departments to ensure that they are taken into account in relation to transferred matters. (Most Northern Ireland implementing legislation is closely modelled on GB equivalents in any event.) Northern Ireland businesses will therefore benefit from any improvements flowing from the Davidson report. Like all Northern Ireland departments, DETI is committed to avoiding unnecessary 'gold plating' of EU legislation and this is overseen by the ETI Committee through the scrutiny procedure for Statutory Rules.³

When asked in a recent Assembly Question to outline the progress that has been made in reducing the administrative burden on farmers and agri-food businesses, the Minister of Agriculture and Rural Development stated that:

In 2007 I, along with my Ministerial colleague at the time from the Department of Environment Arlene Foster, asked an independent panel to review the regulations that apply in the agri-food sector in the north of Ireland with a view to simplifying and reducing the administrative burden placed on farmers and the industry generally.

The NI Agri-Food Better Regulations and Simplification Review was published in April 2009 and both Departments took time to consider and respond to each of the 85 recommendations contained in the Review.

My Department issued its response to the Better Regulation Review on 18 May 2010. Since then the department has been actively taking forward an extensive programme of work to give effect to the 61 recommendations put forward by the Independent Panel which have been accepted or accepted in principle. Part of my Department's response was a commitment to develop an action plan to implement, monitor and review the accepted recommendations. Systems have been put in place which will measure these outcomes in due course. The action plan was published on 5 January 2011 following a detailed scrutiny by the ARD Committee... My Department has committed to a PSA Target to reduce the administrative burden on the agri-food sector by 25% by

³ AQW 121/11-15 (Mr Jim Allister – Traditional Unionist Voice) Answered On: 03/06/2011

2013 – with an interim target of 15% by 2011. Progress against the interim target will be assessed at the end of 2011.⁴

⁴ AQW 4370/11 (Mr Peter Weir - Democratic Unionist Party) Answered On Date: 17/02/2011

4 European Commission – Better Regulation

It is not only Member States and regions with legislative power which consider 'gold-plating' to be a problem. The European Commission itself sees 'gold-plating' as a risk to its Better Regulation policy and has noted that, whilst not illegal, 'gold-plating' is bad practice because it imposes costs that could have been avoided. The Commission, therefore, has taken measures to help proper implementation of EU legislation which include: 'preventive action' - paying greater attention to implementation and enforcement in impact assessments when designing new legislation; support to Member States during implementation to anticipate problems and avoid infringement proceedings later on; transposition workshops for new directives; and guidelines to help Member States implement new legislation.⁵

In its strategy to simplify the regulatory environment strategy to simplify the regulatory environment, the Commission uses the following methods:

- repeal: removes from the statute-book those legal acts which are unnecessary, irrelevant or obsolete;
- codification: contributes to the reduction in volume of EU legislation, and at the same time, provides more readable and legally secure texts, thus facilitating transparency and enforcement;
- recasting: is a simplification method as it simultaneously amends and codifies the legal acts in question;
- co-regulation: can be a more cost efficient and flexible method for addressing certain policy objectives than classical legislative tools. Standardisation by independent bodies is an example of a well recognised 'co-regulation' instrument;
- use of regulations: replacing directives with regulations can under certain circumstances be conducive to simplification as regulations are directly applicable (i.e. no need for transposition into national legislation) and guarantee that all actors are subject to the same rules at the same time.⁶

⁵ http://ec.europa.eu/governance/better_regulation/glossary_en.htm

⁶ European Commission – Better Regulation (accessed 19/9/11)
http://ec.europa.eu/governance/better_regulation/simplification_en.htm

Common Consolidated Corporate Tax Base (CCCTB)

Key Points

- Tax harmonisation has long been debated at EU level with plans specifically for the harmonisation of the corporate tax base under construction for the last decade.
- If adopted, CCCTB would replace the EU's current separate-country corporate income tax systems with a tax system that consolidates the taxable profits of a group of companies under common control.
- The CCCTB would harmonise the tax base by consolidating and apportioning tax revenues (based on three equally weighted factors; assets, labour and sales) amongst Member States. It does not seek to harmonise tax rates.
- As the proposals currently stand, the CCCTB is optional with firms permitted to enter and leave each five years.
- Ireland does not favour the CCCTB for reasons of principle and practicality, arguing that the proposal cuts across national sovereignty on matters of taxation.
- Simulations of the effect of the optional CCCTB done as part of the impact assessment suggest that while EU GDP may decline by 0.17%, in Ireland it ranges from a decline of -3.16% to -3.19%.
- It is important to remember that the CCCTB cannot be imposed on Member States as unanimity is required for direct taxation decisions. The commitment to the 12.5% tax rate is protected in the EU context by the principle of unanimity in tax rates. Ireland has a veto on such matters and this principle was further enhanced by the insertion of a legal guarantee in the Lisbon Treaty. Furthermore, Ireland is not the only Member State to have concerns over the CCCTB proposal.
- Debate surrounding the potential devolution to the Assembly of legislative powers in relation to corporate taxation is ongoing.
- One option being considered is devolution not only in relation to setting the rate of taxation but also devolution of decisions on the appropriate tax base.
- It is conceivable that the CCCTB directive will become law at a time when corporation taxation, including determination of the base, falls within the competence of the Assembly.
- The House of Commons submitted a reasoned opinion to the European Commission stating that it considered that the draft Directive did not comply with either the procedural obligations imposed on the Commission or the principle of subsidiarity.
- In the context of the subsidiarity early warning system, the Lisbon Treaty, for the first time in any EU Treaty, makes reference to the regional and local level. The treaty, however, does not oblige national parliaments to consult with regional legislatures, with the relevant provision in the treaty generally being accepted as a 'permissive' provision.
- The Treasury indicated to the European Scrutiny Committee that, as the UK's tax policy is a reserved matter under the UK's devolution settlements, no devolved administration interests arise in relation to the CCCTB directive.

- The Assembly Committee for Finance and Personnel has asked the Department's views on the possible impact of the proposed directive and asked whether the Department believed that full control over corporation tax should be devolved, or whether devolution should be restricted to setting the rate. The Department responded that, whilst the proposals are to be optional, Corporate Tax would be considerably simplified if the EU had a common tax base' and that full corporation tax responsibilities – rate setting, setting tax base, collection and enforcement – would be a major and complex responsibility and the Northern Ireland Civil Service has no experience in these areas.

Introduction

The controversial issue of tax harmonisation, which can relate to the tax rate or the base, has featured regularly at EU level for many years. The Commission has long viewed company taxation as important for its contribution to completion of the Internal Market. In recent years it has increasingly focused on the tax base, or specifically introducing a common consolidated corporate tax base (CCCTB). The Commission believes this is the only systematic way of addressing the underlying tax obstacles which exist for companies operating in more than one Member State. Accordingly, the Commission introduced a proposal for a CCCTB in March of this year.

The CCCTB is an important initiative of the Barroso II Commission in the context of the Europe 2020 Strategy.⁷ It has been referenced in several important EU policy documents over the years, including the Euro Plus Pact of March 2011 which states:

*“Developing a common corporate tax base could be a revenue neutral way forward to ensure consistency among national tax systems while respecting national tax strategies, and to contribute to fiscal sustainability and the competitiveness of European businesses”.*⁸

Under CCCTB, tax revenues will be consolidated and apportioned amongst participating Member States. The allocation of tax revenues amongst participants, which depends on the exact apportionment method⁹ used, has probably been one of the central elements of the CCCTB debate due to its potential to shift profits away from small, low-tax Member States. A key issue here is that consolidation of tax revenues would eliminate the possibility of tracing what proportion of profit was generated in which Member State.

⁷ The Europe 2020 Strategy was described in a joint research service paper for Plenary A of the NSPF in 2010.

⁸ See Conclusions of the European Council, 24/25 March 2011 available at http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/ec/120296.pdf

⁹ The apportionment formula determines how the tax base is shared out among Member States in which the company is active.

Background to the proposal

The history of CCCTB can be traced back to a 2001 Commission Communication¹⁰ that established the proposal, with it later confirmed in a 2003 Communication.¹¹ An extensive consultation process was initiated in 2003 with a public consultation and the commencement of meetings of the CCCTB Working Group the following year. The Commission also published a non-paper on the common tax base in 2004, adopted a further Communication¹² and prepared a working paper on CCCTB both in 2007.

A network of tax experts from all Member States, the CCCTB Working Group, was established to provide technical advice and assistance to the Commission. The Working Group met with stakeholders from business and academia to exchange views on the CCCTB, as well as holding detailed discussions on specific aspects of the CCCTB. The Working Group met between 2004 and 2008. A comprehensive impact assessment was undertaken and in October 2010 a final workshop was attended by experts from Member States, academics, business interests and think tanks. The Commission's work on CCCTB culminated in the presentation of its Proposal for a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB)¹³ in March 2011.

The European Commission's proposal and impact assessment

The CCCTB aims to tackle perceived fiscal impediments to growth in the single market and is consistent with the Europe 2020 strategy for smart, sustainable and inclusive growth. Currently, companies potentially have to deal with 27 different national systems, which can lead to double taxation and over-taxation with a heavy administrative burden and high tax compliance costs. The Commission argues that this system places the EU at a significant disadvantage vis-à-vis major trading partners including the United States and Japan which businesses perceive to be true single markets.

The CCCTB establishes eligibility criteria and a set of common rules to calculate the common tax base of these companies. The system would be optional: tax exemptions and tax deductibility of contributions would be authorised.

The CCCTB would allow companies to offset losses incurred in one country against profits made in another. It would be based on the principle of a 'one stop shop' (the tax return must be filed in the state where the parent company is based). Lastly, it would function according a system of sharing the consolidated common tax base between different countries where members of a group or company are active, and this

¹⁰ COM (2001) 582

¹¹ COM (2003) 726

¹² COM (2007) 223

¹³ COM(2011) 121/4

according to three criteria: assets, labour force and turnover. National tax rates would be applicable.¹⁴

As such, the CCCTB, while harmonising the tax base does not attempt to harmonise tax rates. Member States levy the portion of EU wide profit generated in that Member State subject to national rates for corporation tax. Member States may apply different tax rates for companies operating under the CCCTB than to those that operate under its national system. This would most likely arise where a Member State's existing tax base is different (i.e. broader or narrower) from the tax base for the CCCTB.

The operational objective of the CCCTB is to establish a common set of rules to calculate the taxable base for relevant companies in the EU with the aim of eliminating the tax related obstacles in the single market. While the proposals will have clear implications for the size and distribution of corporate tax bases across the EU, the Commission argues that this is not an objective of the CCCTB, and therefore, no objectives are defined in terms of revenue distribution or revenue neutrality for Member States.

As a major policy initiative, the Commission is required to undertake an impact assessment for the proposals. Under the assessment, four policy scenarios were considered and compared against the status quo scenario: an optional common corporate tax base, a compulsory common corporate tax base, an optional common consolidated corporate tax base and a compulsory common consolidated corporate tax base. The favoured option is the optional common consolidated corporate tax base.

Under this companies may opt for a common set of rules for calculating the tax base that is consolidated on an EU-wide basis replacing the current 27 different company tax codes and separate accounting systems. Table 1 below summarises the impact assessment's findings regarding changes to GDP, welfare, employment and investment under the favoured option.

	GDP %		Welfare		Employment		Investment	
	WG-20*	WG-25**	WG-20	WG-25	WG-20	WG-25	WG-25	WG-20
AT	-0.6	-0.55	-0.19	-0.17	0	0.01	-0.69	-0.53
BE	2.12	2.1	1.18	1.21	-0.15	-0.16	-3.05	-2.89
BG	-0.76	-0.75	0.09	0.1	-0.01	0	-0.53	-0.44
CY	-1.38	-1.38	0.02	0.01	-0.21	-0.2	-1.45	-1.41
CZ	-0.48	-0.42	-0.01	0.01	0.01	0.03	-0.65	-0.46
DE	0.26	0.29	0.08	0.08	0.02	0.04	-0.54	-0.38
DK	-0.73	-0.72	-0.01	0	-0.09	-0.08	-1.78	-1.66
EE	-1.08	-1.06	0.13	0.15	-0.02	-0.02	-1.8	-1.66
ES	-0.03	0	-0.1	-0.11	0.06	0.09	-0.4	-0.25
FI	-0.53	-0.49	-0.1	-0.09	-0.05	-0.04	-1.31	-1.17

¹⁴ Verhoosel, T 'COMMON CONSOLIDATED CORPORATE TAX BASE : MEMBER STATES EXAMINE CCCTB PROPOSAL' in *Europolitics* 6 May 2011

FR	-0.15	-0.15	-0.07	-0.09	-0.04	-0.03	-1.4	-1.34
GR	-0.27	-0.24	-0.08	-0.06	-0.01	0	-0.66	-0.58
HU	-0.92	-0.89	-0.02	0	-0.01	0	-0.68	-0.52
IE	-3.19	-3.16	-0.74	-0.73	-0.15	-0.14	-1.87	-1.78
IT	0.06	0.08	0.05	0.06	-0.02	-0.01	-0.78	-0.65
LT	-0.45	-0.43	-0.04	-0.03	-0.04	-0.04	-0.87	-0.79
LU	0.69	1.17	-1.6	-1.71	2.2	2.55	-0.07	0.94
LV	-0.46	-0.44	-0.03	-0.01	-0.05	-0.05	-0.72	-0.65
MT	0.84	0.86	0.46	0.42	0.14	0.18	1.58	1.7
NL	-1.69	-1.65	-0.82	-0.82	0.05	0.08	-1.97	-1.84
PL	-0.42	-0.37	0.04	0.06	0.01	0.03	-0.33	-0.17
PT	-0.52	-0.5	0.4	0.41	-0.08	-0.08	-1.13	-0.93
RO	-0.58	-0.56	0.08	0.1	-0.03	-0.02	-0.69	-0.57
SE	-0.34	-0.35	0.06	0.06	-0.06	-0.05	-1.33	-1.18
SI	-0.31	-0.27	0.02	0.04	-0.03	-0.01	-0.44	-0.28
SK	-0.76	-0.72	-0.02	0	-0.05	-0.03	-0.97	-0.8
UK	-0.02	-0.05	0.18	0.18	-0.04	-0.03	-0.93	-0.77
EU total	-0.17	-0.15	0.02	0.02	-0.01	0	-0.88	-0.74

* The CCTB-WG20, which assumes 20% depreciation of plant and machinery (depreciation scheme suggested by the CCCTB Working Group)

** The CCTB-WG25, with plant and machinery depreciated at 25 % (thus implying a narrower tax base than the WG20)

Source: European Commission (2011) *Commission Staff Working Document Impact Assessment Accompanying document to the Proposal for a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB)*, SEC(2011) 315 final.

Implications for Ireland

As the consolidated system allows for the cross-border loss sharing, i.e. losses in one Member State can be off-set against the profits in another Member State, the impact assessment results show that the EU tax base would shrink by 3%. Ireland's share of the EU tax base shrinks by 0.4% percentage points.

Examining the tables in the appendices of the impact assessment shows that Ireland, and many other countries would see its share of the tax base reduced with the overall results pointing to an increase in the tax bases mostly in the Member States in Central and Eastern Europe, as well as in Germany, Spain, France, Greece, Italy and the UK. However, the study also finds that as a result of loss consolidation, the taxable base shrinks, therefore requiring increases in the corporate tax rate to balance government budgets.

While the anticipated impacts of the CCCTB are described as negligible at the EU level, they are large for some countries, especially Ireland. According to the impact assessment accompanying the Commission's draft Directive, Ireland would experience some of the largest negative effects in terms of GDP and investment and to a lesser

degree on employment. Simulations of the effect of the optional CCCTB done as part of the impact assessment suggest that while EU GDP may decline by 0.17%, in Ireland it ranges from a decline of -3.16% to -3.19%. To put this in context, growth in the Irish economy is forecast to grow by between 1 to 1.7% of GDP in 2011.¹⁵

In addition to the Commission's impact assessment, a commissioned study also highlights some of the possible effects of the CCCTB. In January 2011, the Department of Finance published an Ernst & Young report on the economic effects of the CCCTB proposal - specifically the expected redistribution of corporate tax revenues, economic effects on gross domestic product (GDP) and employment among EU Member States. This report preceded publication of the proposal and looks at three variants of the CCCTB proposal including an optional CCCTB for companies. It indicated that in the case of Ireland, employment could fall by between -0.5% and -1.6%, GDP by between -0.8% and -1.8% and finally that foreign direct investment (FDI) could fall by between -1.4% and -4.5%.

Ireland's position on the CCCTB

With concrete proposals for the CCCTB now at this stage it has focussed the minds of many European Governments to its reality and what it might mean for their corporate tax environment and enterprise policy. While Ireland supports efforts at EU level to deliver the objectives of the 2020 Agenda, Ireland does not favour the CCCTB for reasons of principle and practicality, arguing that the proposal cuts across national sovereignty on matters of taxation. The Department of Finance argues that it would do nothing to address competitiveness of EU firms and that it would not reduce compliance costs as an optional system would result in an increased administrative burden.¹⁶

More recently, at an Oireachtas Committee meeting which was examining the proposals in the context of the EU's principle of subsidiarity, officials from the Department of Finance outlined the Government's position on the CCCTB as one of scepticism:

"Our message is that we are totally opposed to tax harmonisation and, based on what we know about the CCCTB proposal, we are also highly sceptical of it. Nonetheless, we are willing to engage with the European Commission and other member states on the issue."

The Taoiseach has stated that CCCTB is tax rate harmonisation by the back door. As the impact assessment has shown, the likelihood is that if the government wished to maintain revenues from company taxation at existing levels, it would have to increase

¹⁵ Department of Finance (2011) Monthly Economic Bulletin March 2011.

¹⁶ Department of Finance (2007) *Common Consolidated Corporate Tax Base: Ireland's Position February 2007* available www.finance.gov.ie/viewdoc.asp?DocID=4543 accessed on 23 March 2011.

corporate tax rates as its share of the EU corporate tax base would shrink under the CCCTB.

In recent “door step” interviews, the Taoiseach and other members of the new Government have described its approach to political negotiations on the CCCTB as one of constructive engagement.

It is important, however, to remember that the CCCTB cannot be imposed on Member States. Decisions on direct taxation require unanimity amongst Member States and Ireland has a veto. Consequently, the prospects for CCCTB being realised for the EU-27 seems remote. This has raised the possibility of enhanced cooperation among a group of like minded Member States. Under the Treaty of Nice, the minimum threshold to establish enhanced cooperation is set at nine Member States.

Oireachtas Standing Order 103 Select Committee

An Oireachtas Select Committee met to discuss the CCCTB proposals in the context of the EU’s principle of subsidiarity on the 4th and again on the 11th of May 2011.

Under the Lisbon Treaty, subsidiarity means that – except in the areas where it has exclusive powers – the EU acts only where action will be more effective at EU-level than at national level. Any national parliament may flag a proposal for EU action which it believes does not respect this principle. This triggers a two-stage procedure:

- if one third of national parliaments consider that the proposal is not in line with subsidiarity, the Commission will have to re-examine it and decide whether to maintain, adjust or withdraw it.
- if a majority of national parliaments agrees with the objection but the Commission decides to maintain its proposal anyway, the Commission will have to explain its reasons, and it will be up to the European Parliament and the Council to decide whether or not to continue the legislative procedure.¹⁷

At the meeting on the 4th of May with officials from the Department of Finance and the Revenue Commissioners, the Department outlined its preliminary view on the question of subsidiarity:

“The Department has given the committee its preliminary view on the question of subsidiarity; namely, to the extent that the CCCTB proposal represents a 28th optional system for companies to choose and given the fact that it seeks to address cross-border barriers to the growth of the internal market, it is arguable that it does not infringe the principle of subsidiarity but, of course, this view is open to argument on both sides. I stress that this is just a preliminary view because the requirement for a

¹⁷ http://europa.eu/lisbon_treaty/glance/democracy/index_en.htm

unanimous vote at the Council gives sceptical member states the possibility to discuss all of their concerns as the discussion on the proposal develops.”

The Committee concluded the following in relation to the draft proposal:

- The EU failed to provide sufficient detail which would allow national parliaments to fully assess the impact of CCCTB.
- The Commission has not established that EU legislation was justified as the best way to meet the broader objectives of the proposals and that actions by individual Member States alone could suffice.
- The plan would introduce a second parallel tax system within each Member State. This would not improve the simplicity and efficiency of EU corporate tax systems.
- There is a concern that the proposal may suit larger Members States more and does not adequately address the needs of new start-up SME's.

The Committee recommended that the Dáil send a Reasoned Opinion to the EU institutions that the CCCTB proposal breaches the principle of subsidiarity¹⁸. Ireland, however, is not alone in voicing its concerns about the draft Directive. It has been reported that at least eight Member States rejected the proposal¹⁹, crucially with Germany now opposing the plan.²⁰ As such, the future of the CCCTB remains in doubt. The wider issue of tax harmonisation, however, is likely to remain salient as evidenced by recent reports that Ireland has sought assurances on its 12.5% corporate tax rate.²¹

Northern Ireland

At present, corporation tax (like other taxes) is an ‘excepted matter’ meaning that it is out with the legislative competence of the Assembly. That said, a high profile debate surrounding the potential devolution to the Assembly of legislative powers in relation to corporate taxation is ongoing. Whilst much of this debate has focused on the rate of tax, the issue of control of the tax base is also under consideration. Neither the outcome of the debate on corporation tax nor on the future of the CCCTB Directive are certain. It is conceivable, however, that the directive will become law at a time when corporation taxation, including determination of the base, fall within the competence of the Assembly.

¹⁸ The Committee's report is available at <http://www.oireachtas.ie/documents/committees31stdail/standingorder103/Report12052011.pdf>

¹⁹ See <http://www.pearse-trust.ie/blog/bid/62728/CCCTB-Gets-Yellow-Card-From-8-Member-States>

²⁰ At the press conference following the Franco-German meeting on 16 August 2011, two tax proposals were floated including a proposal for the harmonisation of the French and German corporate tax systems by 2013.

²¹ See for example Irish Times article, *Assurances sought on 12.5% tax rate*, 16 September 2011 available at <http://www.irishtimes.com/newspaper/finance/2011/0916/1224304194739.html>

Devolution of Corporation Taxation

In its June 2010 Budget, the UK Government committed to producing a paper on rebalancing the Northern Ireland economy, including consideration of enterprise zones, possible mechanisms for changing the corporation tax rate and other economic reform options.

On 24th March 2011, the UK Treasury issued for consultation Rebalancing the Northern Ireland economy.²² The consultation document considers the current state of the Northern Ireland economy, sets out the UK Government's strategy for rebalancing the UK economy, asks for views relating to the devolution of corporation tax, and presents other information in relation to strengthening the private sector in Northern Ireland.

A detailed Assembly Research Paper²³ which focused on legal and economic issues relating to the devolution of corporation tax was prepared to support the Committee for Finance and Personnel's consideration of Treasury's consultation document. This paper underlined the important distinction between control over the rate of corporation tax and control over the tax base stating:

The 'tax base' is the 'collective value of taxable assets'.²⁴ If the tax base were devolved, the Northern Ireland Executive would not only decide how much tax is to be paid, but also what constitutes taxable profits – i.e. the levels of allowances, exemptions and so on.

The paper also noted that the current Treasury consultation implies that one option for devolution is not just to allow the rate to be set in Northern Ireland but also decisions on the tax base:

If the whole tax base were devolved, the tax would become like the Northern Ireland regional rate where the [the Northern Ireland Executive] spends the taxes it raises. There would need to be an initial downward reduction in the block grant to reflect the existing level of tax receipts transferred to [the Northern Ireland Executive], which might be subject to subsequent review.²⁵

In response to recent Assembly Questions²⁶ asking for an update on the discussions he has had with the Treasury on the devolution of corporation, the Minister of Finance and Personnel stated that:

²² H M Treasury 'Rebalancing the Northern Ireland economy' Issued: 24 March 2011

http://www.hm-treasury.gov.uk/consult_rebalancing_ni_economy.htm

²³ Devolution of Corporation Taxation (2011) Northern Ireland Assembly Research Paper
<http://www.niassembly.gov.uk/researchandlibrary/2011/5711.pdf>

²⁴ Source: wordnetweb.princeton.edu/perl/webwn (accessed 15 March 2011)

²⁵ HMT (2011) 'Rebalancing the Northern Ireland economy' available online at:

http://www.hm-treasury.gov.uk/consult_rebalancing_ni_economy.htm p. 33 (accessed 29 March 2011)

²⁶ AQO 313/11-15 Mrs Jo-Anne Dobson (UUP) Answered 19/9/11 and AQO 320/11-15 Ms Michaela Boyle (Sinn Fein)
Answered 19/9/11

The Government consultation closed early in July, and there have been over 700 responses to it. I cannot give the Assembly the breakdown of those responses at present. The Chancellor has indicated that the Government will respond some time in the autumn, and we are currently considering the responses that the Treasury has received. Of course, there is a lot of work to be done in determining the amount that this would cost, as well as in determining other factors that might help to mitigate the cost.²⁷

When asked in a follow up question for his opinion of whether full control over corporation tax should be devolved to Northern Ireland or whether involvement should be limited to setting the rate of tax, the Minister responded:

I do not think that there is any point in our replicating the administrative arrangements that are already in place. We had a couple of meetings with Treasury Ministers at which representatives of business and accountancy firms were present. They indicated that that really would not be to their advantage and, indeed, that most firms would probably resist having to deal with a separate administrative arrangement in Northern Ireland as well as with the Treasury, especially those firms that may have outlets here and in the rest of GB. So, it is my view that the administrative arrangements should still be carried out by Her Majesty's Treasury and that we then pay for that. What the cost of that administration should be is an area for negotiation. Currently, we have been given a figure that I think is ridiculously high, and we have to look at that.

As far as the devolution of the rate is concerned, that will be a decision for the Assembly.²⁸

Subsidiarity

As has been highlighted earlier in this paper, the Lisbon Treaty included an early-warning system (EWS) that enables national parliaments to object to certain proposals from the European Commission on the grounds that they breach the principle of subsidiarity. The principle of subsidiarity means that, except in the areas where it has exclusive powers, the EU should only act where action will be more effective at EU rather than national level. Any national parliament may send a reasoned opinion to the Commission stating how it believes that a draft legislative act does not respect this principle. Receipt of a reasoned opinion triggers what are known as the yellow and orange card procedures.

²⁷ Northern Ireland Assembly Official Report 19th September 2011

<http://www.niassembly.gov.uk/record/reports2011/110919.htm#d>

²⁸ As above

In this context, the House of Commons European Scrutiny Committee concluded that the proposal for a CCCTB had significant and possibly unwelcome implications and expressed concern with the basic justification for the proposal, its legal base and its actual legality, the detailed content of the proposal, subsidiarity and proportionality. Following a plenary debate, the House of Commons submitted a reasoned opinion to the European Commission stating that it considered that the draft Directive did not comply with either the procedural obligations imposed on the Commission or the principle of subsidiarity. Extracts from the reasoned opinion are provided in the box below.²⁹

i) Failure to comply with procedural obligations

18. Section 2.4 of the impact assessment (on subsidiarity and proportionality) does not contain a "detailed statement" to make it possible to appraise compliance with the principle of subsidiarity (and proportionality), as required by Article 5 of Protocol No 2. ...

Subsidiarity and proportionality

22. There is an assumption, rather than clear evidence in the form of qualitative and quantitative indicators, in the impact assessment that the issue under consideration has transnational aspects *which cannot be satisfactorily regulated by action by Member States*, for example through informal coordination as suggested by the UK Government.

23. Similarly, there is an assumption, rather than clear evidence in the form of qualitative and quantitative indicators, in the impact assessment that action by Member States alone or lack of EU action would conflict with the requirements of the EU Treaties, in this instance the internal market.

24. There is insufficient evidence in form of qualitative and quantitative indicators in the impact assessment that action at EU level would produce *clear benefits* by reason of its scale or effects compared with action at the level of the Member States. ...

25. For these reasons the House of Commons concludes that this proposal does not respect the principle of subsidiarity.

Northern Ireland Assembly

In the context of the early warning system, the Lisbon Treaty, for the first time in any EU Treaty, makes reference to the regional and local level. The treaty, however, does not oblige national parliaments to consult with regional legislatures, with the relevant provision in the treaty generally being accepted as a 'permissive' provision. Whilst national parliaments in some member states have adopted formal internal legislative provisions for such consultation, this is not currently the arrangement between the UK Parliament and the devolved legislatures. The ESC has indicated that it will not proactively seek opinions from the devolved legislatures but will consider any that are proactively provided to it.

²⁹http://ec.europa.eu/dgs/secretariat_general/relations/relations_other/npo/docs/united_kingdom/2011/com20110121/com20110121_commons_opinion_en.pdf

The Explanatory Memorandum provided to the ESC by the Treasury made clear that no formal consultation with the Executive had taken place on the directive as the 'The UK's tax policy is a reserved matter under the UK's devolution settlements and no devolved administration interests arise. The devolved administrations have therefore not been consulted in the preparation of the EM'.³⁰

The Assembly Committee for Finance and Personnel, when considering the Treasury consultation document, sought the Department's views on the possible impact of the proposed directive and whether it believed that full control over corporation tax should be devolved, or whether devolution should be restricted to setting the rate. The Department responded stating that 'The Common Consolidated Corporate Tax Base proposals are to be optional. Corporate Tax would be considerably simplified if the EU had a common tax base' and that 'Full corporation tax responsibilities – rate setting, setting tax base, collection and enforcement – would be a major and complex responsibility. The NICS has no experience in these areas. It would be considered if necessary to meet the Azores requirements. Current expectations are that the Azores requirement can be met if only the responsibility for setting the rate is devolved. There are a range of implementation options that will need to be considered and explored with Treasury following analysis of consultation responses'.

³⁰ <http://europeanmemorandum.cabinetoffice.gov.uk/files/Numbered%20EMs%2011/7001-8000/7263-11.pdf>

Human Trafficking and Illegal Immigration

Key Points

- Despite legislative measures at international, regional and national level, every year several hundred thousand people are trafficked into the EU or within the EU area.
- Ireland exercised its discretion to opt-in to the Proposal in accordance with the provisions of Protocol No. 21 to the Treaty on the Functioning of the European Union.
- The Common Travel Area operating between Ireland and the UK, and the unmonitored border between Ireland and Northern Ireland gives rise to obvious trafficking concerns for both jurisdictions.
- During 2010, 69 cases of alleged trafficking in human beings involving 78 alleged victims were reported to An Garda Síochána.
- The Criminal Law (Human Trafficking) Act, 2008 enforced by the Garda National Immigration Bureau (GNIB), criminalises for the first time in Ireland the trafficking of adults for the purposes of sexual or labour exploitation or the removal of organs. Children had previously been protected by the Child Trafficking and Pornography Act, 1998.
- Immigration is a reserved matter in Northern Ireland, UK-wide legislation being used for immigration matters, but there are local impacts in devolved areas, such as health provision, social care, education and policing, which have required legislative adjustments to fulfil UK obligations under the Trafficking Convention and there may need to be more for compliance with the EU Trafficking Directive
- Northern Ireland is the only part of the UK with a land border with another EU Member State, across which free movement is guaranteed under the Common Travel Area agreement, but it is also believed to be a significant route for irregular entry to the UK or trafficking
- UK-wide agencies, such as the UK Border Agency and the Gangmasters Licensing Authority, operate in Northern Ireland to tackle trafficking and work co-operatively with local agencies, such as the PSNI, health trusts and support organisations, such as Women's Aid, and trafficking victims in Northern Ireland are referred to the UK Human Trafficking Centre
- Twenty three potential trafficking victims were recovered in Northern Ireland in 2010/11: five for forced labour, 18 for sexual exploitation
- The Northern Ireland Assembly has demonstrated commitment to tackling human trafficking through two motions and there have been several questions raised on the matter
- The Organised Crime Task Force of the PSNI deals with immigration and trafficking issues and there is a cross-border policing strategy
- Local agencies have shown interest in issues related to immigration and trafficking, including the welfare of trafficked persons and the balance between human rights and immigration law enforcement

1 Introduction

Human trafficking, illegal immigration and people smuggling are often perceived as the same issue but this is not the case. Although interlinked there are obvious differences:

Trafficking is a crime which infringes fundamental rights of the persons, while smuggling is a violation against legislation protecting the borders. In the case of illegal migration facilitated by a smuggler there is an agreement between the migrant and the smuggler, and the relationship between the two ends when the person enters the territory of the receiving State. In a case of trafficking illicit means such as coercion, deception or abuse of a position of vulnerability are used...in addition, the transfer of the person is carried out for the purpose of further exploitation, which normally starts in the country of destination.³¹

In order to combat and prevent human trafficking, an extensive legal framework has been put in place at an international, regional and national level. A co-ordinated approach to the detection and prosecution of these offences ensures that criminals and criminal groups that profit from the coercion and exploitation of vulnerable people are more easily exposed and victims protected.

Despite the international measures currently in place, the European Commission has highlighted that several EU Member States continue to be major destinations for trafficking in human beings and estimates that “every year several hundred thousand people are trafficked into the EU or within the EU area.”³² This is of particular concern for Ireland given the common border with Northern Ireland and the operation of the Common Travel Area between Ireland and the UK.

The devolved administration in Northern Ireland does not have competence in immigration matters, but having the only UK land border with another EU Member State creates challenges for the authorities in Northern Ireland with regard to the use of the border by people seeking to enter or bring others into the UK, particularly as the border with Ireland is generally unmarked and unmonitored. In addition, immigration and asylum policy has impacts on devolved matters, such as health, social care and policing.

The Scottish Parliament Equal Opportunities Committee inquiry into migration and trafficking acknowledges the confusion between devolved and non-devolved matters and notes the deputy director of the UK Border Agency has responsibility for devolution issues, which is intended to help de-conflict some of the difficulties faced in relation to reserved matters³³.

³¹ Commission Staff Working Document SEC (2009) 358, 25th March 2009.

³² Explanatory Memorandum, Proposal for a Directive of the European Parliament and Council on preventing and combating trafficking in human beings and protecting victims, repealing Framework Decision 2002/629/JHA.

³³ Scottish Parliament Equal Opportunities Committee (2010), *Inquiry into Migration and Trafficking*, 5th Report 2010, SP Paper 543: <http://www.scottish.parliament.uk/s3/committees/equal/reports-10/eor10-05-00.htm#7>.

The UK has ratified the Council of Europe Convention on Action against Trafficking in Human Beings³⁴ and the Northern Ireland Executive is responsible for fulfilling the UK's commitments to the Convention within its jurisdiction.

'Illegal immigration' is a contested concept, which has been used to refer to irregular migration, undocumented status and people whose status has lapsed. This paper will focus on organised immigration crime and in particular, human trafficking in Ireland and Northern Ireland.

³⁴ Council of Europe Convention on Action against Trafficking in Human Beings and its Explanatory Report 2005: http://www.coe.int/t/dghl/monitoring/trafficking/Source/PDF_Conv_197_Trafficking_Erev.pdf.

2 International and European Frameworks

The International Framework

It is fair to say that an extensive legal framework is in place both internationally and regionally designed to prevent and combat the trafficking of human beings worldwide. Instruments such as the *United Nations Convention on the Rights of the Child* which seeks to protect children from all forms of sexual exploitation and sexual abuse, adopted in 1989 (ratified by Ireland on 28 September 1992), and the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially women and children*³⁵, adopted in 2000 (ratified by Ireland on 17 June 2010) were the first in a series of international measures designed to align the approaches taken to human trafficking worldwide.

The European Framework

Council of Europe

At a regional level, the Council of Europe has addressed the issue of human trafficking through the Convention on Action against Trafficking in Human Beings adopted in 2005. The Convention contains an obligation to criminalise human trafficking, and provides a comprehensive and coherent framework for prevention, cooperation between different actors, and protection of and assistance to victims. Ireland and the UK ratified the Convention on 13 July 2010 and 17 December 2008 respectively.

European Union

The EU aims to assist Member States in fighting organised crime more effectively, by approximating their criminal laws and sanctions while at the same time establishing robust provisions on victims' protection. This is reflected in the new directive on preventing and combating trafficking in human beings and protecting its victims, Directive 2011/36/EU³⁶, adopted on 21 March 2011.

The Directive augments earlier provisions of *Council Framework Decision on combating trafficking in human beings*, adopted in July 2002 and forms part of a package of legislative measures in the area of organised crime. Many of the provisions contained in the Directive are part of the legislative measures already in place in Ireland.

The Treaty of Lisbon incorporated the EU Charter of Fundamental Rights into the EU Treaties, article 5(3) of which provides that “trafficking in human beings is prohibited.”

³⁵ Otherwise known as one of the Palermo Protocols. It supplements the UN Convention against Transnational Organised Crime.

³⁶ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:101:0001:0011:EN:PDF>.

Recent case law indicates that human trafficking amounts to a violation of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), to which Ireland and the UK are contracting parties. Although not expressly provided for in the Convention the European Court of Human Rights (ECtHR) in the landmark case of *Rantsev v. Cyprus and Russia*,³⁷ found trafficking to be a violation of Article 4, which prohibits slavery and forced labour.

A new EU Strategy on human trafficking is due to be adopted in 2012. This will update the 2005 EU Action Plan on best practices, standards and procedures for combating and preventing trafficking in human beings.

Other EU legal instruments in this area include:

- Council Directive 2004/81/EC on assistance and residence status for victims who are third-country nationals;
- Framework Decision 2001/220/JHA on standing of victims in criminal proceedings;
- Council Directive 2004/80/EC on compensation in cross-border situations; and
- Framework Decision 2008/841/JHA on residence permits for third-country nationals.

These instruments are further complemented by a variety of soft law measures (i.e. non-binding instruments) which include the following:

- Council conclusions on trafficking in persons;³⁸
- Council Resolution on the law enforcement response;³⁹
- Commission Decision establishing an expert group of advisors;⁴⁰
- Action Plan against Human Trafficking,⁴¹ and
- Commission Communication on Human Trafficking.⁴²

European Arrest Warrants

Trafficking in human beings is one of a number of offences which gives rise to surrender pursuant to a European arrest warrant (EAW) in accordance with Council Framework Decision 2002/584/JHA. The EAW procedure replaces the traditional extradition procedure between Member States, and requires judicial authorities to recognise with a minimum of formalities a request for surrender of a person made by the judicial authority of another Member State.

³⁷ Application no. 25965/04, 7th January 2010.

³⁸ [2003] OJ C 137/1.

³⁹ [2003] OJ C 260/4.

⁴⁰ [2003] OJ L 79/25.

⁴¹ [2005] OJ C 311/1.

⁴² COM (2005) 514, 18/10/2005.

3 The Position in Ireland

Concerns have been raised internationally that Ireland is 'a destination and, to a lesser extent, transit country for women, men, and children subjected to trafficking in persons, specifically forced prostitution and forced labour.'⁴³

The Irish government has however made significant progress in this area in recent years, both legislatively and otherwise. The Criminal Law (Human Trafficking) Act, 2008 criminalises for the first time in Ireland the trafficking of adults for the purposes of sexual or labour exploitation, or the removal of organs. It provides for severe penalties including a maximum penalty of life imprisonment for traffickers.⁴⁴

Measures designed specifically to tackle trafficking in children are the Child Trafficking and Pornography Act, 1998 which makes it an offence to organise or knowingly facilitate the entry into, transit through, accommodation in or exit from the State of a child for the purpose of sexual exploitation, and the Criminal Law (Human Trafficking) Act, 2008 which prohibits the trafficking of children for labour exploitation and removal of organs. These Acts provide for maximum penalties of life imprisonment in relation to trafficking offences committed against children.

Ireland's record in relation to the protection of victims of trafficking received criticism in the UN US Trafficking in Persons Report 2009. Significantly, it noted that there was evidence that potential trafficking victims were penalised for unlawful acts committed as a direct result of their being trafficked:

Ireland provided limited protection and assistance to trafficking victims during 2008...One suspected victim spent several months in jail for failing to provide proof of identification, though she claimed she had been forced into prostitution in Ireland.

Since then the Irish government has introduced a number of measures designed to protect and assist victims and potential victims of tracking. These include:

- Temporary administrative arrangements put in place in June 2008 to deal with victims or potential victims of human trafficking pending the enactment of the Immigration, Residence and Protection Bill 2010. These arrangements provide that where there are reasonable grounds for believing that a foreign national is a suspected victim of trafficking he or she may be granted a 60 day period of recovery and reflection. Services and non-removal from the State are guaranteed for that period.

⁴³ UN Human Rights Agency and the US Department of State's *Trafficking in Persons Report 2011* available at <http://www.state.gov/g/tip/rls/tiprpt/2011/index.htm>.

⁴⁴ Prior to the enactment of the Criminal Law (Human Trafficking) Act, 2008 the Gardaí were bound by the provisions of the Illegal Immigrants (Trafficking) Act, 2000 which criminalised the illegal immigration and the smuggling of migrants into Ireland when dealing with trafficking cases.

- An Anti-Human Trafficking Unit (AHTU) has been established in the Department of Justice and Equality. The work of the AHTU includes organising the delivery of awareness raising training. According to the AHTU, this course has been delivered to over 100 persons from various organisations, including labour inspectors from the National Employment Rights Authority (NERA); inspectors from the Private Security Authority (PSA); Health Service Executive personnel; staff of the Irish Naturalisation and Immigration Service (INIS), Office of the Refugee Applications Commissioner (ORAC), Victims of Crime Office, the Crime Victim's Helpline; the Department of Enterprise, Trade and Innovation; and the Department of Social Protection.
- The government in June 2009 published a National Action Plan to Prevent and Combat Trafficking of Human Beings in Ireland. The plan is designed to ensure that Ireland's response to human trafficking is appropriate given the nature and scale of the problem, and is in line with international best practice.
- The Blue Blindfold Campaign. Ireland participates in a European initiative known as the G6 Human Trafficking, along with the UK, Poland, Italy, Spain and the Netherlands with the support of Interpol, Europol and Eurojust. These countries agreed to run campaigns to raise awareness of the problem of human trafficking with the public and law-enforcement agencies in their own countries. The key theme of the campaign is 'Don't Close your Eyes to Human Trafficking', and according to the AHTU, the image of the blue blindfold represents the risk of people having their eyes closed and being unaware of the crime that may be going on around them.
- The Department of Defence provides ongoing anti-trafficking training for all deployed Irish peacekeeping missions.

During 2010, the Irish government funded a number of Irish non-governmental organisations (NGOs) which provided specialised assistance to victims of forced labour and forced prostitution.

The Statistics

NGOs report that the majority of trafficking victims in Ireland remain unidentified; only victims who escape, are rescued, or pay off their indentured debts come to the attention of the authorities. Given the clandestine nature of human trafficking and its overlap with illegal activities such as prostitution, exploitation and illegal immigration, estimating its prevalence is highly problematic.

The 2010 Annual Report of Trafficking in Human Beings in Ireland⁴⁵ produced by the Anti-Human Trafficking Unit examines the nature and extent of trafficking in Ireland as reported by Governmental and Non-Governmental Organisations (NGOs).

⁴⁵[http://www.blueblindfold.gov.ie/website/bbf/bbfweb.nsf/da0ca5e97401855180257355006068dd/f94a4d79575e5d02802575d800519794/\\$FILE/2010%20Annual%20Report.pdf](http://www.blueblindfold.gov.ie/website/bbf/bbfweb.nsf/da0ca5e97401855180257355006068dd/f94a4d79575e5d02802575d800519794/$FILE/2010%20Annual%20Report.pdf).

During 2010, 69 cases of alleged trafficking in human beings involving 78 alleged victims were reported to An Garda Síochána.⁴⁶ Of the 78 alleged victims 59 (75.6%) were adults and 19 (24.4%) were minors. Of these 56 were alleged victims of sexual exploitation, 19 were alleged victims of labour exploitation and 3 were alleged victims of an uncategorised exploitation (See Table 1 below for more information).

Table 1: Type of trafficking

Type of trafficking	Number	Percentage	Gender
Sexual exploitation	56	71.8	F 51 (91%) M 5 (9%)
Labour exploitation	19	24.4	F 8 (42%) M 11 (58)
Uncategorised exploitation ⁴⁷	3	3.8	F 2 (67%) M 1 (33%)
Total	78	100	

When divided according to the type of exploitation reported, of the 56 alleged victims of sexual exploitation, 41 (73.2%) were adults and 15 (26.8%) were minors. Of the 19 alleged victims of labour exploitation, 18 (94.7%) were adults and 1 (5.3%) was a minor. All of the 3 alleged victims of uncategorised exploitation were minors.

The majority of those reported to have been trafficked into Ireland were from Africa but a significant number were from other European countries (See Table 2 below).

⁴⁶ In 2009, the figures were 66 cases and 68 alleged victims.

⁴⁷ At the time of reporting there were general suspicions that these persons could be victims of human trafficking there were no indications as to whether either labour or sex trafficking had occurred. Investigations by An Garda Síochána subsequently found that the original suspicions of human trafficking could not be substantiated.

Table 2: Country of origin

Country	Number	Percentage
Africa	42	53.9
Europe (excl. Ireland)	17	21.8
Ireland	6	7.7
Europe non EU	3	3.8
Asia	10	12.8

Of the 69 investigations initiated by An Garda Síochána during this period 35 of these were on-going as of the end of 2010, 7 files had been referred to the Director of Public Prosecutions, and 2 complaints had been withdrawn (See Table 3 below for more information on the status of these investigations).

Table 3: Status of investigations 2010

Status	Number	Percentage
Ongoing investigations	35	50.7
No/insufficient evidence of human trafficking in Ireland	14	20.3
Investigation files sent to the DPP	7	10.1
Other outcome	7	10.1
Conviction ⁴⁸	2	2.9
Complaint withdrawn	2	2.9

⁴⁸ Please note that this refers to convictions obtained in relation to those investigations initiated in 2010 and does not refer to the total number of convictions obtained during the reporting period. See below for details of all convictions obtained during 2010.

Transferred to other jurisdiction	2	2.9
Total	69	100

In 2010, 5 convictions were secured in relation to human trafficking offences (See Table 4 below).

Table 4: Convictions for trafficking 2010

Case	Act	Charges	Accused	Sentence
1	Criminal Law (Human Trafficking) Act, 2008	Recruitment and trafficking of a minor for sexual exploitation.	Adult male	Awaited
2	Criminal Law (Human Trafficking) Act, 2008	Recruitment and trafficking of a minor.	Adult male	3 years suspended sentence and placed on the Sex Offenders Register for 5 years and entered into a bond to be of good behaviour for a period of 3 years.
3	Child Trafficking and Pornography Act, 1998	Recruitment and trafficking of a minor for sexual exploitation and production of child pornography.	Adult male	10 years imprisonment and Sex Offender's Register for life and he will be subjected to fifteen years post release supervision.
	Criminal Law (Rape) (Amendment) Act, 1990			
4	Child Trafficking and Pornography Act, 1998	Sexual exploitation through exposure to the child.	Adult male	Eight month suspended sentence.

5	Child Trafficking and Pornography Act, 1998	Incitement to traffic a minor for sexual exploitation and incitement to the possession of child pornography.	Adult male	6 years imprisonment and Post release Supervision Order' for twenty years.
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Co-operation between Ireland and the UK

Given our proximity and the operation of the Common Travel Area between Ireland and the UK, An Garda Síochána, the Police Service of Northern Ireland (PSNI) and the UK Police cooperate on a continuous basis in the investigation of trafficking cases. Past joint investigations include Operation Abbey, which involved An Garda Síochána, the PSNI, the UK Serious Organised Crime Agency (SOCA), and the Welsh Police forces. This operation led to six victims of human trafficking being identified and rescued in Ireland, and 2 Irish Nationals and 1 South African national being arrested and prosecuted (in Wales) for trafficking offences. In February 2010, these offenders received prison sentences of between 2 and 7 years respectively.

In September 2010, a request for Mutual Legal Assistance was received from the Organised Crime Unit of the Kent Police as part of an investigation 'Operation Mauritius'. This investigation centred around two Czech females that had been trafficked from Prague into the UK through Ireland, for the purposes of sexual exploitation. An Garda Síochána conducted extensive enquiries. As a result of this operation, three Czech men were arrested and prosecuted in respect of six human trafficking offences.

A vital witness in this case was standing by in Ireland to give evidence, via video link, to the trial at Maidstone Crown Court. The accused however pleaded guilty, their sentences ranging from between 3 and 10 years.

4 The Position in Northern Ireland

The UK Framework

The UK Border Agency⁴⁹ has the overall responsibility for control of the UK border, which divides its operations into six regions, one of which covers Scotland and Northern Ireland. Immigration is a reserved matter in relation to the devolved administrations, so UK national legislation and policy applies in relation to immigration issues and trafficking. Progressive legislative changes since 2002 have created the offences of trafficking people for the purposes of prostitution, sexual exploitation or forced labour and to subject a person to 'slavery, servitude or forced labour'⁵⁰.

The current strategy for tackling trafficking in the UK was launched in 2011, focussing on the four key areas of⁵¹:

1. Improved victim care arrangements
2. Enhanced ability to react early, before the harm has reached the UK
3. Smarter multi-agency action at the border
4. Better co-ordination of law enforcement efforts within the UK

Criticisms of the UK policy approach in the past have raised concerns that the focus was on border controls rather than human rights and the protection of victims⁵².

However, there are signs that this is changing, both in terms of the treatment of the victims of trafficking, such as the establishment in 2006 of a dedicated National Referral Mechanism⁵³, and renewed efforts to address forced labour in the UK following the drowning of Chinese agency workers while cockle picking in Morecambe Bay in 2004, for example, through the establishment of the Gangmasters Licensing Authority (GLA)⁵⁴, which has UK-wide responsibility, including Northern Ireland.

⁴⁹ UK Border Agency website: <http://www.ukba.homeoffice.gov.uk/>.

⁵⁰ Nationality, Immigration and Asylum Act 2002: <http://www.legislation.gov.uk/ukpga/2002/41/contents>; Sexual Offences Act 2003: <http://www.legislation.gov.uk/ukpga/2003/42/contents>; Asylum and Immigration (Treatment of Claimants, etc.) Act 2004: <http://www.legislation.gov.uk/ukpga/2004/19/contents>; Coroners and Justice Act 2009: <http://www.legislation.gov.uk/ukpga/2009/25/contents>.

⁵¹ HM Government (2011), *Human Trafficking: The Government's Strategy*. p.7.

⁵² Craig, G., Gaus, A., Wilkinson, M., Skřivánková, K. and McQuade, A. (2007), *Contemporary Slavery in the UK: Overview and Key Issues*, York: Joseph Rowntree Foundation.

⁵³ The 'First Responder' in circumstances of suspected trafficking refers the case to the UK Border Agency and the UK Human Trafficking Centre, which is responsible for the care of victims. UKHTC web page: <http://www.soca.gov.uk/about-soca/about-the-ukhtc>.

⁵⁴ The GLA was established through the Gangmasters Licensing Act 2004 to regulate those who supply labour or use workers to provide services in agriculture, forestry, horticulture, shellfish gathering and food processing and packaging. GLA website: <http://gla.defra.gov.uk/>.

Studies have identified certain draw factors to the UK, for both people-smuggling (where people knowingly purchase a service to enter the country illegally) and trafficking persons (where there is coercion or deception⁵⁵), including the following⁵⁶:

- Demand for entry into the UK from a range of world regions
- Attractiveness of the UK, for example, because of the health of the illegal economy, established minority ethnic communities, universality of the English language, healthcare and benefits systems, etc.
- Prospects of economic improvement
- Vulnerability of people in poverty, especially young women
- Market for sex workers in the UK

It has been suggested that there is reluctance on the part of transit countries to stop irregular migration where the ultimate destination is the UK and would need to be incentivised to do so⁵⁷.

The UK has opted out of the Schengen Agreement⁵⁸, but, as with Ireland, some aspects of the Schengen arrangements apply, such as access to the Schengen Information System for tracking people of interest⁵⁹. However, there is a Common Travel Area between the islands of Britain and Ireland, the Isle of Man and the Channel Islands where there is no requirement for immigration control, although there were attempts to reform this arrangement in 2008-9⁶⁰.

There is an All-Party Parliamentary Group on Human Trafficking⁶¹ and there is an Inter-departmental Ministerial Group on Trafficking. The UK Government position on the EU

⁵⁵ These definitions are general, as the definition and nature of trafficking is disputed: Bogdanyi, A. and Lewis, J. (2008), *EU Frontiers and Human Trafficking*, Tokyo: Centre for New European Research, p.4. Guidance on definitions can be found at the UN Office on Drugs and Crime: <http://www.unodc.org/unodc/en/human-trafficking/index.html?ref=menuaside>.

⁵⁶ Webb, S. and Burrows, J. (2009), *Organised Immigration Crime: A Post-Conviction Study*, London: Home Office.

⁵⁷ Finch, T. and Cherti, M. (2011), *No Easy Options: Irregular Migration in the UK*, London: Institute for Public Policy Research, p.74.

⁵⁸ The Schengen Agreement in 1985 established an arrangement between certain EU states for no border controls between them. Schengen page of the EU website: http://europa.eu/legislation_summaries/justice_freedom_security/free_movement_of_persons_asylum_immigration/l33020_en.htm.

⁵⁹ For further information on the UK and Irish opt-in arrangements for 'freedom, security and justice' matters, see Miller, V. (2010), *Parliamentary scrutiny of opt-in decisions to the EU Area of Freedom, Security and Justice*, House of Commons Standard Note SN/IA/5660.

⁶⁰ The *Borders, Citizenship and Immigration Bill 2009* raised the possibility of border checks between Northern Ireland and Ireland, but the relevant clause was not proceeded with. See Garton Grimwood, G. (2009), *Borders, Citizenship and Immigration Bill [HL] Committee Stage Report*, House of Commons Library Research Report 09/65 pp.8-9 and HC Deb 14 July 2009 Vol. 512 No. 32 Col 177: <http://www.publications.parliament.uk/pa/cm200809/cmhansrd/cm090714/debtext/90714-0007.htm#09071451000002>.

⁶¹ All party group website: <http://allpartygrouphumantrafficking.org/home/>.

Directive on Trafficking⁶² was initially to opt out and review its progress⁶³, but is currently seeking to opt in.

Northern Ireland

Concerns have been raised in the media with reference to a view that Northern Ireland is an easier route for illegal immigration to Britain⁶⁴, particularly after the withdrawal of funding by the UK Border Agency for police officers at the ports of Cairnryan and Stranraer⁶⁵, and the related issue of human trafficking, particularly for the sex industry⁶⁶, both facilitated by the border with Ireland. In 2008/09, the Police Service for Northern Ireland (PSNI) recovered 11 potential victims of trafficking and in 2009/10, 25⁶⁷, of whom five were trafficked for forced labour, 17 for sexual exploitation, one for domestic servitude and the remaining two absconded prior to interview⁶⁸.

Twenty three potential trafficking victims were recovered in 2010/11, of which five were trafficked for forced labour and 18 for sexual exploitation. Eight of the victims have been repatriated and two minors are being supported by Social Services. Four of the victims received support through the Migrant Helpline and eight received support through Women's Aid. The remainder of victims have been integrated into communities and/or are receiving asylum support⁶⁹.

While immigration matters are outside the competence of the Northern Ireland Assembly, the impacts of trafficking have to be dealt with locally. For example, there have been legislative changes to facilitate UK compliance the Council of Europe Convention⁷⁰, such as the Provision of Health Services to Persons not Ordinarily Resident (Amendment) Regulations (Northern Ireland) 2008⁷¹, which provides for health care services to victims of trafficking. The safeguarding of all children in need of protection is already a requirement under the Children (Northern Ireland) Order 1995⁷².

⁶² Directive 2011/36/EU of the European Parliament and of the Council 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims: <http://ec.europa.eu/anti-trafficking/download.action?nodeId=9c9ba3cd-794b-4a57-b534-ad89effac575&fileName=Directive+THB+L+101+15+april+2011.pdf&fileType=pdf>.

⁶³ See HC Deb 15 Feb 2011 Vol. 523 No. 119 Col. 662W: <http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm110215/text/110215w0001.htm>.

⁶⁴ 'Northern Ireland is the UK's back door for illegal immigrants' in *Belfast Telegraph* 01-09-2011.

⁶⁵ 'Illegal immigration fears at Stranraer and Cairnryan', BBC News 25-08-2011.

⁶⁶ 'Seedy underworld of human trafficking', BBC News 18-05-2010.

⁶⁷ Northern Ireland Assembly Question AQW2229/11 answered 2 December 2010.

⁶⁸ Northern Ireland Assembly Question AQW7920/10 answered 29 June 2010.

⁶⁹ Organised Crime Task Force (2011), *2011 Annual Report and Threat Assessment: Organised Crime in Northern Ireland*, p.12: <http://www.octf.gov.uk/getattachment/10e3c2f2-9152-4682-b0a3-25d94ed72387/Annual-Report---Threat-Assessment-2011.aspx>.

⁷⁰ Anti-Trafficking Monitoring Group (2010), *The Wrong Kind of Victim? One Year On: An Analysis of UK Measures to Protect Trafficked Persons*, London: Anti-Slavery International, pp.100-105.

⁷¹ Provision of Health Services to Persons not Ordinarily Resident (Amendment) Regulations (Northern Ireland) 2008: <http://www.legislation.gov.uk/nisr/2008/377/made>.

⁷² Children (Northern Ireland) Order 1995: <http://www.legislation.gov.uk/nisi/1995/755/contents/made>.

There has been interest within the Northern Ireland Assembly to address concerns associated with the trafficking of people into the region. The Assembly passed a motion on 5 February 2008 that stated the following⁷³:

That this Assembly urges the Executive to take all necessary measures to address both the exploitation of migrant labour and human trafficking; and welcomes the commitment by the United Kingdom Government to ratify the 2005 Council of Europe Convention on Action against the Trafficking in Human Beings.

This was followed in September 2010 with the following motion⁷⁴:

That this Assembly condemns human trafficking; notes with grave concern the growing prevalence of human trafficking for the sex trade, domestic servitude and labour exploitation in Northern Ireland; further notes that men, women and children are victims of human trafficking and that human trafficking exists because of local demand; and calls on the Minister of Justice and the Executive to raise awareness of human trafficking among the public in order to assist the authorities in securing prosecutions against those who carry out this modern form of slavery and to ensure that Northern Ireland is a hostile place for traffickers; and further calls on the Minister of Justice to work closely with the Irish Government and the European Union to ensure that Northern Ireland is part of an all-island, European-wide response to this serious issue.

Concern has also been shown by the number of questions on trafficking that have been put to Ministers by Members on the scale of the problem and how this is being addressed by law enforcement agencies⁷⁵, as well as concerns around the related matter of illegal immigration⁷⁶.

The UK Border Agency opened an office in Belfast in July 2009 and in July 2011, a holding centre for people held on immigration charges was opened in Larne, where before, people were initially detained in police cells and removed to detention centres in Great Britain. The PSNI has worked closely with police forces elsewhere in the UK to tackle trafficking and forced labour⁷⁷ and in December 2010, the Cross-Border Policing Strategy⁷⁸ was launched jointly with An Garda Síochána which, although it

⁷³ Northern Ireland Assembly debate 5 February 2008:

<http://www.niassembly.gov.uk/record/reports2007/080205.htm#4>.

⁷⁴ Northern Ireland Assembly debate 21 September 2010:

<http://www.niassembly.gov.uk/record/reports2010/100921.htm#a4>.

⁷⁵ AQO1940/09, AQW6228/10, AQW7854/10, AQW7922/10, AQW7920/10, AQW2229/11, AQW3623/11, AQW1078/15.

⁷⁶ AQO106/11.

⁷⁷ For example, Operation Apsis, which led to the arrest of three suspected traffickers in September 2010 and the recovery of 15 trafficked persons:

http://www.dojni.gov.uk/ford_welcomes_recovery_of_potential_victims_of_human_trafficking.

⁷⁸ PSNI and An Garda Síochána (2010), *Cross Border Policing Strategy*.

<http://www.garda.ie/Documents/User/Cross%20Border%20Policing%20Strategy.pdf>.

does not mention trafficking explicitly, has been referred to as being a key component in addressing it⁷⁹.

The Organised Crime Task Force⁸⁰, established in Northern Ireland in 2000, has an Immigration and Human Trafficking Sub-Group which deals with organised immigration crime, which has been noted as making use of the border for the purposes of moving individuals and evading detection⁸¹. The OCTF brings together police, customs and other law enforcement agencies, along with Government Departments, the Policing Board and the local business community to combat organised crime.

There has been relatively little focus on human trafficking in Northern Ireland until recently. Research into trafficking for the sex industry in 2006 identified concerns around adults being smuggled into the country and being exploited, women and girls being trafficked or smuggled and being exploited, unaccompanied minors entering the country and children and young people being sexually exploited. There was considered to be an established link between crime, paramilitary organisations, illegal immigration and the sex trade in Northern Ireland, but there was reported to be a perception among the police that prostitution is consensual, so there is less concern for those who do not consent⁸².

A study for the Northern Ireland Human Rights Commission and the Equality Commission for Northern Ireland found evidence of the trafficking of women and children for the purposes of sexual exploitation, forced labour or domestic servitude, but while there was some information on the trafficking of men, there was significantly less knowledge about this. The report identified significant gaps in knowledge and a lack of a system of data collection in Northern Ireland⁸³.

The Human Rights Commission's investigation into the activities of the UK Border Agency in Northern Ireland threw some light on the contending issues associated with the detection and detention of people suspected of immigration offences, including the removal of detainees to Great Britain away from their local support base (perhaps to some degree addressed by the opening of the facility in Larne), the conduct of an immigration control operation (Operation Gull) in the context of concerns of racial profiling, the degree of discretion in legislation for the detention of individuals and the lack of understanding of rights and reasons for detention among detainees⁸⁴.

⁷⁹ Northern Ireland Assembly Question AQW3623/11 answered 25 January 2011.

⁸⁰ Organised Crime Task Force website: <http://www.octf.gov.uk/Home.aspx>.

⁸¹ Police Service of Northern Ireland and An Garda Síochána (2010), *Cross-Border Organised Crime Assessment 2010*, pp.16-17: <http://www.octf.gov.uk/getattachment/7029767f-4016-4cee-bf71-3d7b13c4db37/Cross-border-crime-assessment-2010.aspx>.

⁸² Dudley, R. (2006), *Crossing Borders: Preliminary Research on Human Trafficking in Northern Ireland*, Belfast: Women's Aid Federation of Northern Ireland, pp.45-6.

⁸³ Martynowicz, A., Toucas, S. and Caughey, A. (2009), *The Nature and Extent of Human Trafficking in Northern Ireland: A Scoping Study*, Belfast: Northern Ireland Human Rights Commission and Equality Commission for Northern Ireland.

⁸⁴ Latif, N. and Martynowicz, A. (2009), *Our Hidden Borders: The UK Border Agency's Powers of Detention*, Belfast: Northern Ireland Human Rights Commission.

Research into forced labour in Northern Ireland found that there were people working in poor conditions, some of whom had been trafficked or brought into the country illegally. Employers were at least engaging in labour exploitation, in some cases forced labour, and that options were narrow for migrants working in these conditions, as there was a lack of support structures for people to denounce exploitative employers and a lack of access to support in conditions of physical and social isolation⁸⁵.

⁸⁵ Allenby, L., Bell, J., Hamilton, J., Hansson, U., Jarman, J., Potter, M. and Toma, S. (2011), *Forced Labour in Northern Ireland: Exploiting Vulnerability*, York: Joseph Rowntree Foundation.