

BREXIT AND THE BORDER



MANAGING THE UK/IRELAND IMPACT

Policy Forum: Framework and Questions

7 October 2016

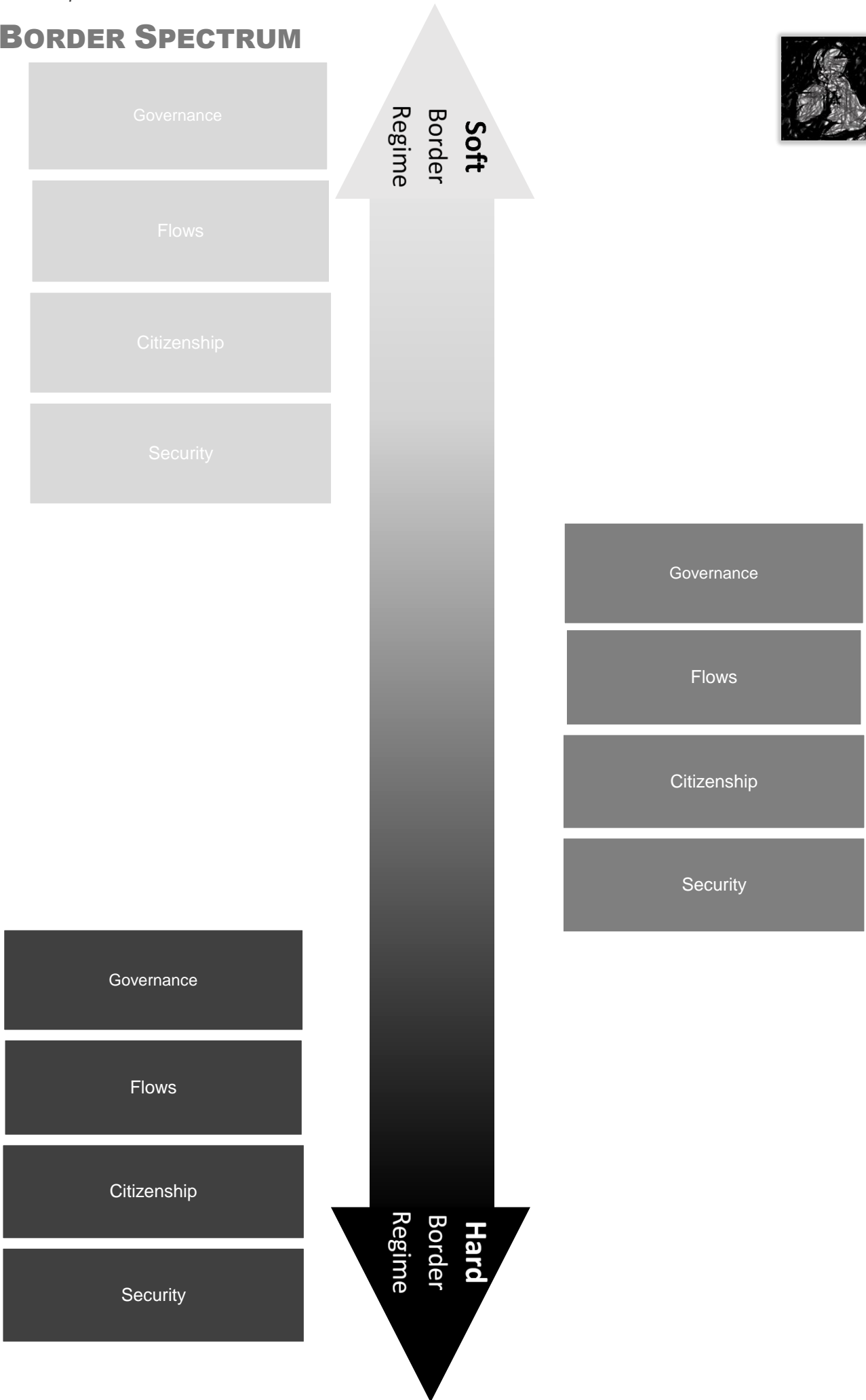
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BORDERS IN
GLOBALIZATION

BORDER SPECTRUM



SOFT BREXIT BORDER REGIME

1. Governance

- Minor revision of the GFA and the NI Act
- Still some purging of devolved legislation from compliance with EU law
- Less internal threat to the status quo of local devolved governance
- Will require additional public administration (as will all options)
- Retention of Strand 2 and Strand 3 institutions which can still help to ensure compliance with EU legislation
- No access to EU decision-making, though adherence to (future) EU policies.

2. Flows

a) SEM

- Retains access to the single market and free movement of goods, services, capital and people
- Ireland and UK could even join Schengen and thus enable freedom of movement, but would still require customs controls
- Some customs control and requirement for proof of goods origin needed at borders
- Minimal impediment to trade (import/export) between NI and ROI
- Keeps the level of migrant worker contribution to NI economy
- Contributions to EU budget (albeit reduced) will continue (to come from devolved or central budget?).

b) EU Funding

- Continued access to EU structural funds (ERDF, ESF), INTERREG, and to subsidies through CAP
- Financial commitment from UK/Irish governments to contribute to EU programmes.

c) Cross-border

- There are mechanisms which could see cross-border co-operation within EU funding Programmes with one partner outside EU (e.g. INTERREG VA Sweden-Finland-Norway (Nord Programme) or the Italy-Switzerland Programme model)¹
- Ease of continuing cross-border co-operation as is because of potentially less legislative and policy divergence between NI and ROI.

3. Citizenship

- Free movement of people retained (if EEA); citizens' rights to live, reside and work retained (possibly some reform in light of Cameron's deal)
- Fewer rights of British citizens in EU
- Equality legislation: retained but what might the effect of a repeal of the 1998 Human Rights Act (and its replacement with a Bill of Rights) entail for UK, EU and non-EU/UK citizens?
- Continued access to funding such as Horizon2020, benefitting research and development
- No immediate impact on social deprivation, particularly on the border region
- No major prompt for change in identity and border poll preferences.

4. Security

- Full integration into EU systems of policing and security intelligence
- Will require minimal border controls/checks on land and sea borders, notwithstanding strengthened capacity of EU to monitor movement etc
- Continued access to PEACE funding and support for border region projects
- No big changes in the status quo of political preferences and voting behavior.

SOFT BREXIT

Pros

- Less (immediate) change to internal political divisions/alliances
- No major party in Northern Ireland wants to see the re-imposition of a hard border on the island
- Implications for trade north/south and east/west

Cons

- For pro-Brexit unionists: Strain on the integrity of the Union due to continued compliance with EU law and the four freedoms?
- Less control over EU policymaking
- More interest in FDI going to Ireland?

¹ This point is raised by the SEUPB.

ELASTIC BREXIT

1. Governance

- Differentiated futures with(in) the EU for devolved regions
- a) *Special status for NI* agreed in negotiation with the EU and the UK (and Ireland?), such as:
- NI remains in EU but others leave
 - Or UK remains (inc NI/Scotland) and England/Wales leave (would require devolved competency)
 - New status for NI as overseas territory
 - New status for NI as member of the customs union.
- b) *Reconfiguration of state of Ireland*
- Possibility of federation
 - But Northern Ireland can only 'choose' Irish unification; other forms of association with Ireland would require British government approval
 - Ireland could join Schengen Area.
- c) *Differentiated treatment of different aspects of the four freedoms*
- Hard borders for people and soft for goods, capital, services
 - Or gradients of 'hardness' for different groups of citizens (exists already to some extent), along lines of work permits and skills rather than nationality
 - Or quotas.

2. Flows

- Decisions around which types of freedoms and border controls and where they should be imposed would reflect priorities of the British government and EU Commission.

3. Citizenship

- Possibility of special status for NI (and other devolved region) residents for freedom of movement within these islands.
- 'With the protections that the CTA has enjoyed under Protocol 20 to the EU treaties no longer operative in the event of Brexit, Ireland will likely face legal and political pressure *not* to extend more favourable movement arrangements to UK citizens than it does to EU citizens.'²

4. Security

- Depending on the makeup, will require adjustments to border controls and possibly delineation of different types of borders within these islands (already exists to some extent).

ELASTIC BREXIT

Pros

- Secures future of the UK for medium term by giving recognition of different needs and interests of devolved regions (undermining momentum for independence)
- Addresses cross-border concerns and particular needs of Irish border regime and border region

Cons

- Highly complex negotiations
- Complex institutional and constitutional redrawing
- Irish government will need to be incorporated as an interested party (mechanism for this?)
- Unionists may fear risk of further differentiation within the Union and present it as a sop to nationalist/Remain interests

HARD BREXIT

1. Governance

- Devolution statutes purged from the requirements to comply with EU legislation;
- Possibly retaining the same degree of freedom of movement across the Irish border for Irish and UK citizens (following a renegotiation of the CTA) but stricter border controls for other EU, and especially non-EU, nationals
- How will Equality legislation be redrawn?
- Barriers emerging to cross-border co-operation, relating to greater legislative and policy diversions between NI and ROI. More pronounced in some areas than in others.

² de Mars et al. (2016).

2. Flows

a) Trade

- If no access to the single market or membership of the customs union is sought/negotiated then a variety of options exist (e.g. achieving the status of a MFN and trading under WTO rules)
- In passing through an external EU border the approximately 35% of Northern Irish exports (55% of manufactured exports) currently destined for southern markets would be exposed to a significant competitive disadvantage relative to EU-produced goods.³ This is particularly true for the agricultural goods produced in the rural borderland areas, which have seen exports of animal products to the south drive recent economic growth.⁴

b) Cross-Border

- Cross-border cooperation is still possible but would require both the political will and provision of financial means.
- It would also entail agreement with EU as negotiation between EU and non-EU member-state across an EU external border.

c) EU funding

- Participation in EU programmes 'would need the consent of the UK Government, which would have to negotiate with the EU on Northern Ireland's behalf and determine whether the necessary financial contributions would come from the central government's budget or from the devolved budget'.⁵

d) Border region

- Negative economic effect on the border region due to loss of EU funding, especially the ERDF;
- Loss of funding through Horizon 2020 and subsequent EU R&D&I funding. Possible negative effect on ability to improve its capacities in this area.

3. Citizenship

- Until a visa-waiver scheme is negotiated following Brexit, UK citizens will have to adopt a "pay as you go" approach to traveling to EU countries, completing the necessary entry requirements to enable them to travel.⁶
- Impact, through loss of funding, on the community and voluntary sector, which in Northern Ireland plays an important role in addressing social and economic deprivation, training and employment, social enterprise, health and well-being, 'peace building' and building cross-community and cross-border relationships
- Rising applications for Irish/EU passports? Gradual identity change?
- Possible reduction of seasonal migrant and cross-border workers
- Although migration and passport controls can still be coordinated bilaterally if Ireland is not in Schengen, thus allowing freedom of movement across UK/Ireland borders the inability to distinguish between business and personal travel may cause problems from EU point of view as now an EU external border.

4. Security

- A 'hard' EU external border would either run through the island or between these islands (depending on renegotiation of CTA). Border controls, delays at points of entry.
- The price distortions created by a northern exit of the SEM present both a financial and security challenge to policy-makers on both sides of the border. Financially, returning to a disintegrated market would revive the same incentive for black market growth that fuelled smuggling operations across the border prior to EEC accession.
- An increase in demand and profitability of black market smuggling would provide ex-prisoners and at-risk youth on both sides with a powerful economic incentive to become increasingly engaged with the paramilitary groups already engaged in these types of operations (Secretary of State, 2015).
- What will the social effects of a hardening of the border be in terms of public acceptance and opinion, and change in political preferences?
- Loss of PEACE IV funding, targeted at groups most vulnerable to conflict legacy (e.g. ex-prisoners, young people, NEETS), would have a detrimental effect on process of reconciliation and stability.

HARD BREXIT

Pros

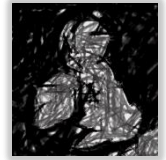
- Addresses primary EU-focused concerns of Leave voters
- Greater control over immigration
- Clean break, rewriting rules

Cons

- Most economic models predict that this will result in greatest trade destruction (the UK's and NI's largest single trade partner) due to reduced integration with EU policies
- Expected reduction in bilateral trade flows between NI and ROI
- Likely to cost the UK economy more than is gained from lower contributions to the EU budget;
- Stresses on the Union because of imposing overall will on the wishes of different constituent parts;
- Although policy differentiation between the UK's devolved regions may not increase, differential impact of Brexit on economic and political conditions is likely
- The growth of price distortions and resulting black market growth would undermine both consumption tax and import revenues collected by both states.

⁶ De Mars et al. (2016).

DISCUSSION POINTS



Priorities

A.

ECONOMIC VULNERABILITIES

Key Points

- Northern Ireland exhibits structural fiscal vulnerability because of elevated fiscal deficit and lack of control over revenue sources.
- Numerous reports suggest that Northern Ireland may suffer greater economic loss as a result of Brexit, relative to the UK as a whole.
- Concern across political spectrum with this question (and in devolved regions, see Cardiff statement).
- It is notable that the economic strategy of the Northern Ireland Executive is to attract FDI, following ROI model, which requires access to EU market.
- Fiscal vulnerability affects sustainability of public services, with amplified effects on the border region.

Questions

- i. Would any changes to existing free trade arrangements affect all trade or only certain sectors?
- ii. How far might trade agreements with alternative trade regimes (e.g. European Free Trade Association, North Atlantic Free Trade Agreement) provide significant opportunities for growth in trade for Northern Ireland?
- iii. EU Funding 2014-2020 3.5bn – what substitutes for this and which budget will they come from?
 - Leadsom's speech indicates government support for CAP up to 2020.
- iv. Is continued access to EU structural funds and peace funding possible, especially if leave the EEA? Under what conditions? How can this be negotiated? Will the Irish and UK governments have the capacity and willingness to commit similar levels of financial support?

B.

CITIZENSHIP

Key Points

- Much anticipated new NI Racial Equality Strategy framed within EU law.
- Immigration, including asylum, free movement of persons within the European Economic Area; issue of travel documents are all excepted matters under Schedule 2 of the Northern Ireland Act 1998. This means that it is for Westminster to decide policy on these matters.
- Duncan Smith report (Sept 2016): wanting work permit system to control who, how many and what work. Want light touch on high skilled and restrictions on low skilled labour. In-migration figures from EU citizens as seasonal workers are often not counted because they stay for less than a year.

Questions

- i. How will repeal of the Human Rights act affect equality legislation in Northern Ireland?
- ii. Specifically, how will the rights of each EU, non-EU and non-UK/EU citizens be affected?
- iii. How will the (technically separate but related) process of replacing the Human Rights Act (1998) with a Bill of Rights resonate with, and affect, existing devolved (rights and equality) legislation?
 - o What political consensus/discord could develop around this issue?
- iv. What are the particular implications and problems for this case given 1/5 of residents in NI are Irish citizens, and all have the potential to be Irish citizens?
- v. Is there a case for Northern Ireland pressing for EU workers currently resident in Northern Ireland to have their current rights recognized and upheld in after Brexit?; Could there be a political agreement on this issue.

C.

FREEDOM OF MOVEMENT

Key Points

- The post-Brexit future of the CTA is not dependent on negotiations between the UK and Ireland but on UK - EU agreement.
- It is understood that according to EU law Ireland (as a EU member) is not competent to negotiate on the future of the CTA by itself as a country.

Discussion Points

- At the same time as the UK decides on whether it wants EU citizens to have freedom of movement, the EU is taking steps to clamp down on entry to its territory and monitoring of its borders.
- The Republic of Ireland's borders with the UK are unlikely to be subject to the same measures as the EU's external borders because those are contingent on protecting the Schengen area. There are no plans as yet for Ireland to join Schengen. There is scope, therefore, for Ireland/UK negotiation on border security as part of CTA.

Questions

- i. Common Travel Area
 - To what extent can a CTA agreement secure a 'free-flowing' border and for whom?
 - How will the necessity to differentiate between the movement of non-Irish EU, Irish EU, UK and other non-EU and non-UK citizens be satisfied, without the appearance of a 'hard border'? Can it?
- ii. Cross-border workers
 - What will be the impact of restrictions on cross-border workers on the island of Ireland?
 - What will the effect of restrictions be on local employment and economic activity in border areas?
 - What does a new more restrictive immigration policy mean for employers, particularly those reliant on seasonal migrant labour?

D.

CROSS-BORDER COOPERATION

Key Points

- North/South policy alignment areas (agriculture/rural development, education, the natural environment, healthcare, tourism, and transportation) reflect EU priority areas.
- All parties and both governments want to see a continuation of freedom of movement of trade, services and people on the island.

Questions

- i. EU Funding:
 - What political and legal mechanisms would be needed to maintain support for cross-border programmes, to replace PEACE/INTERREG?
 - What practical considerations are needed for delivery and governance of the current PEACE IV and INTERREG VA Programmes when the UK leaves the EU i.e. financial flows, accountability arrangements, recouping of Irish ERDF and adherence to EU regulations?
 - Prospects for negotiating continued access to EU funds?
 - Effects of loss of EU funding on the Voluntary and Community sector and in infrastructure and border region. What are the wider implications of losing support for civil society organisations?
- ii. In the absence of a shared EU policy/framework directive, what will be the approach adopted on a cross-border basis (between EU and NI) to meet environmental targets in such fields as water quality, marine management, habitat protection and development of priority species?
 - Leadsom's speech implies writing-in of environmental directives but also scope to make policies that meet particular national needs and environment. Will capacity be devolved for this given that environmental needs may be seen to differ within the UK?

E.

PEACE

Key Points

- Commentators have highlighted the danger implied in a Brexit-related revision of the Good Friday Agreement.
- Break up of stable balance of these isles (UK or Irish fragmentation) has implications for political and popular positions.
- GFA is a legal framework holds together a lack of political consensus. Problem here is not legal as such but political, social and cultural – how much trust is there?
- Risk of worsening cross-border criminal activity linked to paramilitarism.

Questions

- i. By unpicking the thread of the GFA is there a risk of other elements becoming unraveled? Could open up questions that there is no political or social agreement.
- ii. How will Strand II (dealing with North-South relations) and Strand III (dealing with inter-governmental relations) be affected?
- iii. Could reviewing the CTA and the GFA lead to unpicking of political relationship and exacerbation of political divisions in the case of Northern Ireland?

Possibilities

F.

PROSPECTS FOR COMMON NORTHERN IRELAND POSITION IN UK NEGOTIATIONS

Key Points

- PM has reassured that Northern Ireland will be 'fully involved and represented in negotiations' and that border will not become an 'impediment to movement of goods, services and people.'
- Given the standoff about the budget and welfare reform that was only resolved with British and Irish Government intervention, the risks of NI not being able to put forward a strong position are exacerbated.
- There is significant divergence of political discourse and positions on Brexit both (a) between Northern Ireland and British government and (b) within Northern Ireland.
- Within the NI Executive, Sinn Féin and the DUP campaigned in different directions in the referendum, but there are differences within these parties, particularly among their support bases. This raises new prospects of vulnerability for the leadership of the main parties.
- Northern Ireland position needs to be made clear on at least three fronts:
 - (a) exit of EU (and status of external borders of EU on the island of Ireland)
 - (b) renegotiation of Common Travel Area,
 - (c) fiscal draw down from the Exchequer post-Brexit (e.g. compensating for loss of EU funds).

Questions

- i. Is there a *necessity* for agreeing a common position within Northern Ireland with respect to representation of its interests in the exiting negotiations?
- ii. How divisive, in political and social terms, has the Referendum been and how divisive/uniting will the process of attempting to come up with a common negotiating position for exit, and the consequent new legislation, be?
 - Does it have to be founded on positive positions rather than vulnerabilities/ fears (e.g. economic risk)?
 - What issues must the common position cover, and to what extent?
- iii. Does representation have to be in relation to all matters or select ones (e.g. EU funding, CAP)?
- iv. What are the precedents of devolved administrations gaining meaningful representation in such negotiations?

G.

UK/IRELAND RELATIONS

Key Points

- The Irish government estimates reduction in bilateral trade flows between the UK and Ireland of around 20% post-Brexit.
- Reactions to the all-Ireland forum indicate persistent political sensitivities regarding Irish government involvement in 'UK matters'.

Questions

- i. How willing would the ROI be to also renegotiate status with the EU, given that otherwise Strand 2 and Strand 3 relationships would no longer be bilateral but EU/non-EU?
- ii. Might the EU be willing to risk the hit to the ROI if hold hard negotiating line regarding the four freedoms and thus nudge UK government towards hard Brexit?
- iii. Will the Irish and UK governments have the capacity and willingness to commit similar levels of financial support to Northern Ireland post-Brexit?

H.

GOVERNANCE

Key Points

- All devolution statutes include strict requirements to comply with EU legislation. If the Repeal Bill is implemented, who is competent to decide at the devolved level what laws will remain and which will change?
- The Sewell convention ensures that UK government will not normally legislate on a devolved matter without the consent of the devolved legislature.⁷
- NI has benefit of several different institutions to represent its interests:
 - (a) Assembly to ensure effective coordination and input by Ministers to national policy-making, including on EU issues;
 - (b) NSMC to ensure coordination on cross-sectoral issues inc EU;
 - (c) NSMC views to be represented at EU level;
 - (d) BIC to discuss EU affairs. What role is there for these?

⁷ Hazell and Renwick (2016).

Discussion Points

Questions

- i. How can consent be given to Brexit from NI?
 - o Would the devolved assembly have to give legislative consent to the UK-wide withdrawal agreement?
 - o How will the Assembly vote, given the divisive nature of the issue and what political fractures will be exposed and widened?;
- ii. What needs to change in NI in particular?
 - o Will EU exit mean there will have to be a redrawing of the GFA and all associated legal acts?
 - Is there a new role for strand 3 institutions, or the Joint Ministerial Council?
- iii. Could there be a role for local cross-border institutions in overseeing and facilitating cross-border cooperation and policy coordination post-Brexit? What would this require?

I.

ELASTIC BREXIT?

Key Points

- UK needs to 'get own house in order' before triggering Article 50.
- Independence/'devo max' solutions are likely to be problematic. In Scotland 45% voted for independence (with 62% saying Scottish only and 8% British only identity). In NI around 25% consistently say Irish reunification is their preference (a figure which has not risen greatly since the referendum result) and census results indicate 40% British only identity).
- Divergence between a deal with the EU that would be in the best interests of the UK government and that in the interests of Northern Ireland.
- All protagonists want to see a continuation of freedom of movement of trade, services and people on the island
- Differential layers of 'border regime' already exist within these isles and the EU.
- Imagination needed with regards to conceiving arrangements that recognise needs and differences within the regions of the UK vis-à-vis the EU.

Questions

- i. Can the principle of freedom of movement that is shared across these islands be the basis for a joint Executive position on negotiating a special status?
- ii. What unique status of Northern Ireland could politicians agree on that compromises neither unionist nor nationalist political credibility?
- iii. What flexibility will be possible from the UK and the EU vis a vis the status of Northern Ireland as a region?
- iv. What mechanisms are there for representing the range of main players in NI?
 - o Could the NSMC serve as a platform for the Northern Ireland Executive to contribute to UK/EU policy making with respect to a special status for Northern Ireland?
 - o What potential role can GFA Strand 3 institutions have in this respect?
 - o Is there space for formal input from the Irish government?

J.

BORDER MANAGEMENT

Key Points

- The Republic of Ireland's borders with the UK are unlikely to be subject to the same measures as the EU's external borders because those are contingent on protecting the Schengen area. There are no plans as yet for Ireland to join Schengen. There is scope, therefore, for Ireland/UK negotiation on border security as part of Common Travel Area.
- The Le Touquet Agreement would no doubt be revisited.
- There is clear room for further cooperation between policing and customs agencies on the island of Ireland; would UK non-membership of the EU be an impediment here?

Questions

- i. Will the 'hard border' be a land or sea border?
 - o Would the sea border as an external border of the EU make a difference in practice for UK/Ireland relations?
- ii. What are the various options for a 'hard border' in terms of security/management?
 - o What would this look like in practice?
- iii. The national question – how willing would the ROI be to engage in a different relationship with the North?
- iv. What difference would UK non-membership of the EU make to sharing of intelligence and information and cooperation regarding border security?
- v. What lessons to be learnt from the hard customs and security border already experienced on the island?
 - o How different might this look today?