



House of Commons
Northern Ireland Affairs
Committee

**The land border
between Northern
Ireland and Ireland:
Government Response
to the Committee's
Second Report**

**Fourth Special Report of Session
2017–19**

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Northern Ireland Affairs Committee

The Northern Ireland Affairs Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Northern Ireland Office (but excluding individual cases and advice given by the Crown Solicitor); and other matters within the responsibilities of the Secretary of State for Northern Ireland (but excluding the expenditure, administration and policy of the Office of the Director of Public Prosecutions, Northern Ireland and the drafting of legislation by the Office of the Legislative Counsel).

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The committee is one of the departmental select committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No 152. These are available on the internet via www.parliament.uk.

Publication

Committee reports are published on the Committee's website at www.parliament.uk/niacom and in print by Order of the House.

Evidence relating to this report is published on the [inquiry publications page](#) of the Committee's website.

Committee staff

Margaret McKinnon (Clerk), Edward Faulkner (Second Clerk), Elektra Garvie-Adams and George James (Committee Specialists), John Hitchcock (Senior Committee Assistant), Kelly Tunnicliffe (Committee Assistant) and George Perry (Media Officer).

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Fourth Special Report

The Northern Ireland Affairs Committee published its Second Report of Session 2017–19, [The land border between Northern Ireland and Ireland](#) (HC 329), on 16 March 2018. The Government's response was received on 5 June 2018 and is appended below.

In the Government response the Committee's recommendations are shown in **bold** type; the Government's response is shown in plain type.

Letter from the Secretary of State for Northern Ireland, 5 June 2018

I wish to thank you and your Committee for your considered report on the land border between Northern Ireland and Ireland (published on 16 March 2018). Please accept my apologies for the slight delay in issuing this response.

The Prime Minister has been very clear that the Government is committed to upholding the Belfast Agreement and avoiding a hard border between Northern Ireland and Ireland. She has also set out that it would be unacceptable to break up the United Kingdom's own common market by creating a customs border down the Irish Sea. The Joint Report between the UK and the EU sets out our plan to address Northern Ireland's unique circumstances and the border in the context of a wider UK-EU deep and special partnership. That is the right approach – we want a deal that works for all parts of the UK, whilst recognising Northern Ireland's unique circumstances.

The Joint Report also outlines our commitments in a range of areas addressed in your report. It confirms our shared commitment to avoid a hard border between Ireland and Northern Ireland and to ensure the same unfettered access for Northern Ireland's businesses to the whole of the United Kingdom internal market. It outlines our commitment to avoid any physical infrastructure or related checks and controls on the border between Northern Ireland and Ireland. It sets out a shared understanding that the Common Travel Area, to which the UK and Irish Governments are fully committed, will be protected as the UK leaves the EU. And it acknowledges the importance of recognising the birth right of all the people of Northern Ireland to choose to be Irish or British, or both, to be accepted as such, and for people of Northern Ireland who are Irish citizens to continue to enjoy rights as EU citizens, including where they reside in Northern Ireland.

The response attached attends to each of your recommendations in more detail.

Rt Hon Karen Bradley MP

Appendix: Government Response

The movement of people

We recommend the Government sets out in detail how it proposes to apply existing, or whether there will be new, internal immigration controls for EU nationals. In the Committee's view, the residents of Northern Ireland should not be subject to more onerous documentary checks to determine entitlement to stay and to access public services and the labour market than anywhere else in the UK. It must also establish the resource implications of conducting checks on people away from the border. (Paragraph 31)

The Government is carefully considering a range of options for the future immigration system for the UK as a whole and will set out initial plans in the coming months. We will ensure any future immigration system works for all parts of the United Kingdom. We will want to ensure that any decisions on the long-term arrangements are based on evidence and engagement. That is why we have asked the independent Migration Advisory Committee to advise on the economic and social impact of the UK's exit from the EU and also how the UK's immigration system should align with a modern industrial strategy.

The UK's future approach to immigration controls for EU citizens will be fully compatible with the existing Common Travel Area (CTA) arrangements. These arrangements mean that there are no routine immigration controls on journeys from Ireland to any part of the UK, nor within the UK: this will not change. The UK is fully committed to maintaining the CTA, and preserving full reciprocal rights for UK and Irish nationals, including in Northern Ireland. The Joint Report between the UK and the European Commission published in December confirmed the shared understanding that the CTA will be protected as the UK leaves the EU. This means preservation of the status quo for all journeys between the UK and Ireland, including travel across the land border. Rights to work, study, access social security and public services will be preserved on a reciprocal basis for UK and Irish nationals.

Most recently, UK and EU negotiators have agreed draft legal text in a Protocol to the Withdrawal Agreement that ensures we preserve the Common Travel Area and associated rights.

We recommend that the Government clarify, in its response to this Report, how the Common Travel Area provides protection for the special status of Irish citizens in the UK and how this will be maintained following the UK's withdrawal from the EU. If existing law is not sufficient, we recommend the Government set out proposals for placing the Common Travel Area's associated rights on an unambiguous footing through a draft bill which can then be scrutinised to guarantee in statutory form CTA rights for British and Irish citizens. The Committee further recommends that reciprocal clarification is requested from the Irish Government in respect of UK citizens in Ireland, in the event that it is felt necessary to make CTA rights explicit. (Paragraph 36)

The CTA arrangements between the UK and Ireland arose to protect the principle of free movement and to facilitate the enjoyment of rights and entitlements to public services for British and Irish citizens when in each other's state. The CTA was formed before

either the UK or Ireland were members of the EU. These reciprocal rights for Irish and UK citizens operate separately and alongside those rights afforded to EU nationals. The UK is committed to protecting these rights and the Irish Government has outlined its commitment to the same end.

The rights of Irish nationals are set out in domestic legislation. These are rooted in the Ireland Act 1949 and further provided for by subsequent legislation and bilateral agreements.

The December Joint Report confirmed that these arrangements between the UK and Ireland are to be preserved and that the UK and Ireland can continue to cooperate in these matters. In practice this means that no Irish nationals will be required to apply for settled status to protect their entitlements. The rights of Irish citizens to work, study, access social security and public services in the UK will be preserved on a reciprocal basis for Irish nationals in the UK and British nationals in Ireland.

The draft Withdrawal Agreement text agreed between negotiators will underpin the continuation of reciprocal rights. The UK has committed to ensuring that the Withdrawal Agreement will be transposed in to domestic law as appropriate, and will set out our proposals in due course across all elements of the Withdrawal Agreement.

The movement of goods

We recommend that the Government undertakes specific research and analysis to determine the impact of UK customs administration costs for cross-border trade on the island of Ireland. We further recommend that the Government expedites plans for mitigating any costs arising on the UK side of the border. (Paragraph 55)

Leaving the EU without reaching an agreement in relation to avoiding a hard border on the island of Ireland would have very negative consequences. We welcome both the UK and the EU's commitment to ensuring this does not happen. We note that WTO rules prevent the UK from unilaterally creating an open border with Ireland without offering this to the entire membership of the WTO. We recommend that this reality is specifically addressed in statements made by Ministers. (Paragraph 63)

The UK wants a new and ambitious customs arrangement with the EU that maintains as frictionless trade as possible in goods, and which, crucially, avoids any physical infrastructure or related checks and controls on the border between Northern Ireland and Ireland.

December's Joint Report between the UK and EU confirms our shared commitment to avoid a hard border between Ireland and Northern Ireland and to ensure the same unfettered access for Northern Ireland's businesses to the whole of the United Kingdom internal market. As the Prime Minister has said, we chose to leave, we have a responsibility to help find a solution.

We recommend that, as a matter of urgency and in order that citizens and businesses on both side of the border can have clarity, both the UK Government and the EU spell out exactly what full alignment would mean. The Government's stated intention, that Northern Ireland will be outside of the EU Customs Union and Single Market but require no border infrastructure, is unprecedented.

The Joint Report between the UK and the EU sets out our plan to address Northern Ireland's unique circumstances and the border in the context of the wider UK-EU deep and special partnership. That is the right approach – we want a deal that works for all parts of the UK, whilst recognising Northern Ireland's unique circumstances.

The principles also address the question of a fall-back option to avoid a hard border and disruption to businesses and supply chains both sides of the border if we cannot reach the deep overall agreement that we want, as the Joint Report makes clear.

This is consistent with the asks made by the previous Northern Ireland Executive and its objectives to avoid any cross-border “*impediment to the movement of people, goods and services*”, and to retain as far as possible the ease with which Northern Ireland currently trades with Ireland and other EU Member States.

The Prime Minister has committed to ensuring that a legally operative version of the ‘backstop’ full alignment commitment is included in the Withdrawal Agreement. We have said clearly that the Protocol published by the European Commission is unacceptable and that we will protect Northern Ireland's position in the UK internal market. The nature of the legal text remains a matter under negotiation between the UK and EU.

We recommend the Government bring forward detailed proposals, without further delay, that set out how it will maintain an open and invisible border. These proposals should provide detail about how customs compliance will be enforced if there is regulatory and tariff divergence between the UK and Ireland. (Paragraph 82)

In its response to this Report, the Government should set out in detail how the future EU-UK relationship could make the traditional requirements of border infrastructure unnecessary, citing precedent and the evidence base on which it is relying. (Paragraph 90)

During this implementation period, we call upon the Government to work closely with counterparts in Ireland and the EU to develop an innovative border system capable of delivering customs compliance without traditional physical infrastructure at the border. (Paragraph 98)

We call upon the Government to conduct an impact assessment for the border each time it is proposed that there should be regulatory or tariff divergence from the EU. Where appropriate, and in the event of the restoration of the Northern Ireland Executive and Assembly, consent for regulatory derogations to facilitate the operation of the land border may be sought. (Paragraph 104)

As we set out in the future partnership paper, the Government has identified the two options, although the precise nature of our future customs relationship with the EU will of course be a matter for the negotiations. One of the three objectives against which we are assessing these options is ensuring there is no hard border between Northern Ireland and Ireland, as well as maintaining the constitutional and economic integrity of the United Kingdom. The Prime Minister has asked for intensive work to be conducted on assessing the two options and this is currently underway.

We have been clear that it is our intention to address Northern Ireland's unique circumstances and the border in the context of the wider UK-EU deep and special partnership.

We call upon the Government to now explain in detail how such arrangements would operate and how the current approach to tackling illicit supply of alcohol, fuel and tobacco could be improved upon. (Paragraph 110)

HMRC has a strong track record in tackling all kinds of avoidance, evasion and non-compliance. Since 2010, it has generated over £175 billion to support our vital public services. Although the UK's future economic partnership with the EU is subject to negotiation, HMRC is committed to tackling tax avoidance, evasion and fraud at all levels.

The government deploys a wide range of intervention measures to ensure that we effectively detect, deter and disrupt the most serious attacks on the tax system, wherever they take place. This includes HMRC officers operating in Northern Ireland to detect and interdict illegal movements of fuel, tobacco and alcohol between Ireland and Northern Ireland. We also work closely with our Irish counterparts to tackle smuggling together. For example, HMRC targets fuel smuggling as part of its comprehensive anti-fraud oils strategy that has driven down the estimated illicit share of the market for diesel in Northern Ireland from 26% to 8% since its launch in 2002. We expect to continue to cooperate with Ireland and others to prevent illegal activity.

We recommend that the Government works with the Irish authorities to prepare contingencies for a bilateral successor to the European Arrest Warrant on the island of Ireland and in the EU, citing article 8 of the Lisbon Treaty. (Paragraph 114)

The European Arrest Warrant plays a crucial role in supporting police co-operation between Northern Ireland and Ireland. We value cooperation through the EAW as it provides for a faster and cost-effective way of handling extradition, helping us tackle serious cross-border criminality. We believe the best way to maintain this cooperation is through a UK-EU security treaty, which will maintain effective arrangements for the UK and all EU Member States – including current extradition arrangements that underpin wider justice and security cooperation on the island of Ireland. As outlined in the EU-UK Joint Report on progress during phase 1 of negotiations in relation to UK's withdrawal from the EU, published in December, we are committed to protecting North-South and East-West cooperation across the full range of frameworks of cooperation, including justice and security.

The Belfast/Good Friday Agreement

The Government should specify in its response to this report which existing EU rights and benefits will be available to individuals, resident in Northern Ireland, who choose to hold Irish citizenship, or both Irish and British citizenship. The Government should also set out how the rights, opportunities and benefits open to those who choose Irish citizenship, and therefore EU citizenship, will be funded after the UK leaves the EU. (Paragraph 126)

As the Joint UK-EU Report sets out, the UK and the EU acknowledge that the Belfast ('Good Friday') Agreement recognises the birth right of all the people of Northern Ireland to choose to be Irish or British or both and be accepted as such. They also recognise that the people of Northern Ireland who are Irish citizens will continue to enjoy rights as EU citizens, including where they reside in Northern Ireland. The UK and the EU therefore

agree that the Withdrawal Agreement should respect and be without prejudice to the rights, opportunities and identity that come with European Union citizenship for such people.

The UK has been clear that we are committed to turning all of the commitments made under the Joint Report into legally binding text – that includes those on citizenship rights for the people of Northern Ireland under the terms of the Belfast Agreement.

We recommend that the Government publish the mapping exercise and put forward targeted proposals for how cross-border cooperation in policy areas dominated by EU law will continue after the UK leaves the EU. Where appropriate, and in the event of the restoration of the Northern Ireland Executive, EU competencies could be devolved to Northern Ireland so it can balance maintaining UK wide frameworks with EU alignment for cross-border policy areas. In their continued absence, alternative means of taking decisions will have to be devised. (Paragraph 143)

As the published letter from the Secretary of State for Exiting the EU, David Davis, to Hilary Benn, Chair of the Exiting the EU Committee, confirms, the Government is committed to publishing the results of the North-South cooperation mapping exercise as soon as they are available. Currently this exercise remains part of ongoing negotiations with the European Commission and further work has been agreed to finalise it. The Government is hopeful that this will be concluded soon. Following that, as the work is a joint UK-EU exercise, including the Irish Government, we would of course seek to coordinate any release of information with the European Commission and the Irish Government.

On the issue of the EU laws returning to the UK post-Exit, the Government has been clear throughout the passage of the EU (Withdrawal) Bill that it envisages that the majority of powers will return to the devolved legislatures. We have also been clear in our principles for establishing any common frameworks that Frameworks will ensure recognition of the economic and social linkages between Northern Ireland and Ireland and that Northern Ireland will be the only part of the UK that shares a land frontier with the EU. They will also adhere to the Belfast Agreement.

The Government retains as its overriding priority the restoration of devolved government in Northern Ireland as soon as possible. The agreement that has been reached on clause 11 is without prejudice to the re-establishment of a Northern Ireland Executive and the intergovernmental agreement remains open to incoming Ministers in a future Northern Ireland Executive.

The Government should set out in more detail its proposals for a bilateral successor to the Peace programme, the level of contribution it intends to make to the fund, and its governance arrangements. (Paragraph 152)

The Government should clarify in its response to this report whether it will seek to continue funding for cross-border projects under the Interreg programme post-2020. If it is the Government's intention to replicate this funding through the UK Shared Prosperity Fund it should specify the amount of funding it will make available, whether this money could support cross-border projects in Northern Ireland and the border regions of Ireland and what its spending priorities will be. (Paragraph 153)

As set out in the joint report issued by the UK and EU negotiating teams on 8 December, both the UK and EU will honour their commitments to the PEACE and Interreg VA funding programmes under the current multi-annual financial framework (MFF). We have already set out our commitment to develop and agree future programmes with the EU beyond the end of the MFF.

Programmes under the next MFF, including future European Territorial Cooperation programmes such as PEACE and Interreg, have not yet been designed. Priorities for the PEACE programme are agreed by the Northern Ireland Executive and Irish Government – not the UK Government. Interreg priorities are agreed by the Northern Ireland Executive, Scottish Government and Irish Government.

We need to negotiate the exact funding mechanisms with the EU, but the Government is clear that we want the Special EU Programmes Body (SEUPB) – established by the UK and Irish Governments under Strand 2 of the Good Friday Agreement – to continue its very valuable work.

The UK Shared Prosperity Fund will be a programme of investment to boost productivity and reduce economic inequality across the country following our departure from the European Union. The new Fund affords a fresh opportunity to spend money according to our own priorities rather than those set by the EU. We will consult widely on the design of the UK Shared Prosperity Fund in 2018, as announced in the Industrial Strategy white paper.

It would be better if there were a Northern Ireland Executive in place, with whom we could engage directly on this and other matters. That is why we are working to ensure the resumption of stable devolved government in Northern Ireland. Until that happens, the Secretary of State for Northern Ireland will continue to advocate for Northern Ireland's interests and needs at the heart of Government.