**Whither Irish Citizens’ Social Rights in (post) Brexit Europe: An Analysis of East/West and North/South challenges**

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## Department of Social Policy and Intervention, University of Oxford, UK

## By Michelle Norris (michelle.norris@ucd.ie) and Micheál Collins (ml.collins@ucd.ie)

## School of Social Policy, Social Work and Social Justice

## University College Dublin

## Ireland

## Introduction

On the 23rd June 2016 the United Kingdom voted in the ‘Brexit’ referendum to leave the European Union. The nature of the final agreement between the UK and the EU regarding their relationship after Brexit is as yet uncertain. However, irrespective of the details of the agreement reached, there is no doubt that Brexit will have enormous implications for businesses, trade and the economy, governments and policy makers and also for citizens of Ireland. Geography and history have forged close economic and social ties between the Republic of Ireland, Northern Ireland and Great Britain, which have been strengthened and extended by the open borders, trade and travel enabled by these jurisdictions’ EU membership since 1973. The process of UK withdrawal from the EU will disrupt these ties and will require the introduction of alternative legal and policy arrangements and services to facilitate continued co-operation and economic and social links between Ireland and the UK. Policy and legal adjustments will also be needed to manage relations between the two jurisdictions on the island of Ireland.

The decision to leave or remain in the EU and the implications these choices have been vociferously debated in the media and among the general public, academics and policy makers in the UK. However, Brexit’s implications for Ireland and its relationship with Northern Ireland and Britain received only minimal attention during in the debates which preceded the referendum. Since then, somewhat ironically, this issue has received much more attention because it proved to be the main barrier to finalising an agreement for UK withdrawal from the European Union. These post-referendum discussions on the implications of Brexit for Ireland and Northern Ireland have focussed mainly on the peace process and for business, trade and the economy and its potential impact on individual social rights has been largely neglected (IHREC, 2018; Doughty Chambers, 2018).

This paper is intended to address this omission by examining the questions which Brexit raises for Irish citizens’ social rights. Here we aim to identify the number, characteristics and location of the Irish citizens whose social rights and access to social security benefits and public services are likely to be most seriously affected by Brexit and to clarify the nature of these impacts. On the basis of this analysis we elucidate Brexit’s North/South and East/West implications for Ireland – i.e. for links between Ireland and the UK and between Ireland and Northern Ireland – and identifies priorities for policy action by the Irish, Northern Irish and UK governments and at European Union level to address the impact of Brexit for Irish citizens’ social rights and entitlements.

The paper draws on research commissioned by the Citizens Information Board (CIB) – the statutory body which supports the provision of information, advice and advocacy on a broad range of public and social services in Ireland. This research encompassed:

* a review of the relevant policies, treaties and legislation, literature and research
* an analysis of census, survey and administrative data, including data on visitors to the citizensinformation.ie website, which is run by the Citizens Information Board, and on queries submitted to the nationwide network of Citizens Information Services (CISs) which are supported by the CIB.

The main body of the paper is organised into four further sections which reflect the phases through which we argue that the relationship between Ireland and the United Kingdom has evolved historically in terms of social rights. These phases are integration, disintegration, reciprocity and uncertainty. The discussion of these phases is organised chronologically although, as we explain in the paper, the different phases did not unfold entirely sequentially. The integration phase refers to the period prior to Ireland’s cessation from the UK in 1921 and the establishment of the Irish Free State (now the Republic of Ireland) in 1922. The uncertainty phase refers to the period since the UK Brexit referendum in 2016. However, there is a good deal of overlap between the disintegration and reciprocity phases which occurred between these dates. The discussion of the uncertainty phase is organised differently to the analyses of the three other phases. The discussion of the latter is mainly policy focussed. Whereas the uncertainty part of the discussion assesses the potential scale and nature of Brexit’s impact on Irish citizens’ social rights.

## Integration

The foundations of the modern welfare states in both Ireland and Britain were laid during the late 1800s and early 1900s when both countries were part of the UK. During this period, a series of new laws and associated funding arrangements were introduced which gradually replaced the Poor Law and workhouse system of support for low-income households with a modern welfare state. These include state old age pensions and social security benefits for the unemployed and people with a disability, public health care and social rented housing.

Not all early British social policies were applied to Ireland and *vice versa.* Furthermore, several important British welfare innovations were not extended immediately to Ireland – the Old (Elizabethan) Poor Law was not applied to Ireland for instance, nor was most of the early urban social housing provisions (Burke, 1987; Fraser, 1996). However, many early British social policies were applied to the whole of the UK and most others (such as the Poor Law) were extended to Ireland in the end.

Thus, the period prior to 1922 was characterised by high levels of integration between UK and Irish social policy and this has conferred both countries with the legacy of similar social policies in many fields, particularly in relation to social security provision. Most elements of the modern social security benefits system were established during the first two decades of the 20th Century and identical arrangements for providing old age pensions and unemployment and sickness benefits via a mix of means tested and social insurance funded benefits were introduced in Ireland and the UK (McCashin, 2004). Very similar arrangements for providing primary schooling and social housing were also introduced in both Britain and Ireland at this time (Fraser, 1996). Although there has been some policy divergence since then, arrangements for social security benefits, social housing and primary schooling provision in Ireland and Britain have remained alike over the long term (Powell, 1992). These similarities are reflected in the fact that Ireland and the UK are categorised together, as liberal or Anglo-Saxon welfare states, in almost every typology of welfare state.

Some early disparities between British and Irish social policy did emerged prior to 1922 however which precipitated a distinctive long-term trajectory for some elements of the Irish welfare state. Ireland was excluded from the health insurance provisions of the National Insurance Act 1911, for instance. In the UK these arrangements developed over time into a comprehensive, free at the point of use National Health Service. In Ireland, a less comprehensive free public health care system was growing over a much longer period (Barrington, 1987). Norris (2016) also highlights the significance of very high public spending on the redistribution of land ownership from aristocratic landlords to tenant farmers which commenced in Ireland, but not Britain, in the late 19th Century. High public spending on this activity continued for almost a century and inspired high investment in other forms of capital redistribution, notably home ownership housing which she areas amounted to a property-based welfare state model.

## Disintegration

Following the establishment of the independent Irish state in 1922 the structure of the Irish and UK welfare states remained similar, but the two systems diverged in terms of generosity of provision, scale of coverage and level of public investment. This happened because the mainstream Irish system did not expand at the same rate as its UK counterpart. Between Irish independence and World War II the Irish social security system expanded only marginally (the establishment of children’s allowances being the only significant new provision introduced), although spending on the property-based welfare state (social housing and homeowner subsidies) did grow substantially (Norris, 2016). This divergence became more pronounced after the War because the dramatic period of welfare state expansion which occurred in the UK during the second half of the 1940s did not occur in Ireland (Cousins, 2003).

It was not until the late 1960s and 1970s that the Irish welfare state experienced a growth spurt which was very late by Western European norms but did effect greater, but not full, convergence with its UK counterpart in terms of its generosity. During this period universal access to government funded second level education and hospital care was introduced and new social security benefits introduced which radically increased coverage (McCashin, 2004).

The cuts to UK public spending introduced after the global financial crisis have probably more than eliminated any gap between the generosity of the UK and Irish social security systems. However, free at the point of access healthcare has Ireland does still not have fully free at the point of primary healthcare system and public spending as a proportion of GDP remains lower than in the UK.

## Reciprocity

Despite this process of divergence of the Irish and UK welfare states and also of their systems of government and monetary systems, social and economic links between Ireland and the UK remained very strong. The UK was Ireland’s primary export market for most of the 20th Century and the UK relied heavily on Ireland for food imports and also for labour at various periods (Bielenberg and Ryan, 2016). To manage the practical implications of these developments, over the decades following Irish independence, the UK and Irish government negotiated and assembled a package of reciprocal rights for the Irish citizens in the UK and *vice versa*. These arrangements which are known as the Common Travel Area (CTA) have been augmented by additional reciprocal rights provided as part of Ireland and the UK’s joint membership of the EU and the Good Friday peace agreement signed by both governments in 1998 (Oireachtas Library, 2017).

### The Common Travel Area

Contrary to what its name implies the Common Travel Area arrangement covers much more than just travel (Maher, 2017). In addition to conferring Irish and British citizens with the right to move freely (without passports) between and live in each other’s state, the CTA affords them:

* the right to work without needing to get a work permit;
* access to social welfare entitlements benefits,
* social housing and health services;
* and the ability to vote in and stand in local and parliamentary elections in the neighbouring country on the same basis as citizens.

‘In essence’ Maher (2017: 3) argues the CTA means that "British and Irish citizens’ rights in the two countries are almost indistinguishable". She cites the inability of UK citizens to vote in referenda and presidential elections in Ireland as "being one of the very few differences" between the rights of UK and Irish citizens in Ireland (ibid).

The emergence of the CTA reflects the failure to institute passport controls between Ireland and the UK after Irish independence and the fact that, until the establishment of the Republic of Ireland in 1949, Irish citizens were also considered British subjects by the British authorities and consequently had the right to live and work in the UK. Although British citizens did not enjoy the equivalent formal legal right to live and work in Ireland at this time, in practice they were treated the same as Irish citizens if living in Ireland with effect from the establishment of the Irish State. These effectively open borders were formalised into law from the 1930s, beginning with the exemption of UK citizens from the Irish Aliens Act, 1935. In 1948 Ireland declared itself a republic and left the Commonwealth the British Parliament enacted the Ireland Act 1949 to maintain the Common Travel Area arrangements. Section 2 (1) of this Act provides that ‘the Republic of Ireland is not a foreign country for the purposes of any law in force in any part of the United Kingdom’. This approach was maintained by the Immigration Act 1971 (which exempts those arriving from Ireland from immigration controls) and the British Nationality Act 1981 (which specifies that Irish citizens are not considered ‘aliens’) (Council of the European Union, 2017; Maher, 2017).

Although the open borders and residency rights element of CTA are underpinned by legislation in both the UK and Ireland notably, from the perspective of the discussion at hand, most of the social rights elements of the CTA are not. Access to some welfare services and social security benefits is governed by bi-lateral agreements, but other CTA social rights have historically been underpinned merely by custom and practice (Murray, O’Donoghue and Warwick, 2018). They are however enabled by the strong similarities between the Irish and British welfare states as highlighted above. For instance, the heavy reliance on means tested social assistance payments, supported by mainly flat rate social insurance benefits on both countries facilitates easy transferability of contributions or claimants between the two.

It is also important to note that until recent decades the CTA operated much more freely in an East/West direction than in a North/South direction (Daly, 2017). The CTA was suspended during World War II, and although it was immediately reinstituted after the war ended in Britain, the Northern Ireland Parliament introduced legislation which required Irish citizens to secure work permits in order to work in Northern Ireland. These restrictions were only lifted when Ireland and the UK joined the EU in 1973 and EU freedom of movement provisions applied to both jurisdictions.

### EU Social Rights

When the UK and Ireland both joined the European Union in 1973 some of the social rights associated with the CTA were superseded by additional rights provided by European Union law and policy, however the majority were not. This reflects three factors primarily:

1. the narrow focus of EU social policy,
2. the UK’s opt out from several key EU social policy provisions (e.g. from the Charter of Fundamental Rights of the European Union section of the 2007 Lisbon Treaty) and,
3. the broad focus of CTA which covers a large number of social rights.

The European Union was initiated as an economic project primarily and the 1957 Treaty of Rome which founded the EU envisaged that social policy would remain within the control of Member States (Anderson, 2015). The founding treaty provided for freedom of movement of labour for instance, equal pay for men and women and also for EU grant aid to regions experiencing high unemployment. Although most EU policies and laws remain focused on the economic sphere, Anderson (2015) explains that, six decades after its foundations, the EU’s social policy remit has grown to encompass the following areas primarily:

* Equal treatment in access to employment and statutory and occupational social security schemes and coordination of national social security schemes,
* Coordination and regulation of national social service programmes for instance in relation to health care and also education.
* Supporting social inclusion by employment promotion and encouraging the reform of national pension systems.

This increased remit reflects the provisions of EU treaties and legislative developments but also the rulings of the European Court of Justice (ECJ) which is the court responsible for interpreting EU law.

The Common Travel Area provides UK and Irish citizens who are living in each other’s countries with *greater rights* than those available under EU law in three very important respects. First and foremost, the CTA affords them enjoy an entirely unrestricted right to live and work in the neighbouring jurisdiction. Whereas the right to live and work in other EU member states provided by EU law are restricted because intra-EU migrants are required to be able to support themselves and their families, be employed or self-employed in the receiving country or have been employed there in the past and be actively seeking work. Second due to this unrestricted right of residence Irish and UK citizens living in each other’s countries are not subject to the right of residency requirements which form a key part of the ‘habitual residency’ test which restrict other intra-EU migrants’ access to social security benefits and also social housing, housing allowances and homelessness supports in the receiving country. Third the CTA enables UK citizens living in Ireland and Irish citizens living in the UK to claim these benefits and housing supports immediately on arrival in each other’s countries. Whereas other intra-EU migrants can only do so in the case of family benefits (such family allowances and supports for lone parents) - they cannot claim most other benefits for the first three months after their arrival unless they have a record of contributions (Jorens and Van Overmeiren, 2009).

The Common Travel Area also provides Irish and UK citizens with full rights of access to healthcare and education (including third level education) when residing in these other countries and provided for the ‘exportability’ of social insurance benefits (meaning that Irish citizens could draw on an Irish social insurance retirement pension when living in the UK and *vice versa*) (Giubboni *et al*. 2017). EU law has extended these rights to intra-EU migrants in recent decades so in these respects CTA social rights have been *matched* by EU social rights.

Among the social rights conferred by EU membership which are *additional* to those provided by the CTA those relating to occupational (i.e. private) pension schemes are particularly important because of the strong interconnectedness of the UK and Irish labour forces. After almost a decade of discussion and negotiation the EU began to regulate pension funds from 2005 (under the terms of Directive 2003/41/EC). This legislation enables pension funds to operate across borders and also regulates the mix of investments employed in these funds. A further EU directive adopted in 2014 provided for the portability of occupation pensions between EU Member States (Anderson, 2015). New rights to access planned healthcare treatment in another EU member state when this service is not available in one’s country of residence (under the terms of Directive 2011/24/EU) are also additional to those provided under the CTA (Strban et al. 2016). The CTA provides UK and Irish citizens with full rights of access to all levels of education in each other’s countries, but the European Social Fund (ESF) investment in education and research funds for universities and businesses provided by the EU is additional to this, as are EU wide arrangements for the recognition of some professional qualifications. Finally, although most EU social policy is operationalised via regulation and not public spending as in the norm in nation states, the EU does have a budget for social spending via its Structural and Investment Funds (ESI Funds) programme (which includes the European Social Fund and several other funds) (Mabbett, 2009). This spending is obviously additional to the social policy provisions of the CTA, although half of the total budget it is targeted at least economically developed EU regions and all of Ireland and most of Britain (parts of Wales and the South West are the exception) are included in the low priority ‘most developed regions’ category. Currently Northern Ireland is classified as a moderately economically developed ‘transition region’ and thereby afforded mid-level priority in the allocation of these funds (Wishlade and Michie 2016).

### The Good Friday Agreement and Recent North/South Co-operation on Social Policy

The Good Friday Agreement (GFA), which underpinned the Northern Ireland peace process, is concerned primarily with facilitating power sharing between the nationalist and unionist communities in the government of Northern Ireland but it also provides for greater cooperation between Ireland and Northern Ireland, and some elements of the cooperation provided for are relevant to social rights. Therefore, the GFA expands the UK/Ireland reciprocal social rights arrangements but primarily on a North/South rather than an East/West basis.

McCrudden (2017) explains that the relationship between the Good Friday Agreement and the UK’s EU membership is a complex and indirect one. The GFA makes no direct reference to EU treaties or legislation, but several rights enshrined in the GFA are underpinned directly and indirectly by the rights associated with EU citizenship and also by the Common Travel Area (CTA). Thus, McCrudden, (2017: 4) argues that, “When it was concluded, the GFA clearly presupposed that both Ireland and the United Kingdom would both be members of the European Union’. For instance, the GFA enshrines equality rights and also enables Northern Irish born people to hold Irish or British citizenship or both - a right which is underpinned by EU freedom of movement provisions and the CTA. In addition, because they are underpinned by EU law, the rights enshrined in the GFA can be enforced in the European Court of Justice - a provision which provides a source of independent oversight which is very valuable in view of the deep-seated community divisions in Northern Ireland.

Since 1995 the EU has also funded the Peace Programme of grants which targets Northern Ireland and the border regions of Ireland. Three rounds of Peace Programme funding have been provided to date and the current round of this funding is due to end in 1995. The Peace Programme aims to promote economic and social stability, and cohesion between communities involved in the conflict in Northern Ireland and the border counties of Ireland (Department for the Economy, 2018).

Since the signing of the Good Friday Agreement a series of agreements have been negotiated between the Irish and Northern Irish health authorities to facilitate cross border access to health services on the Island of Ireland (Department for the Economy, 2018). Details of these arrangements, which have been facilitated by the aforementioned EU provisions to enable citizens access healthcare in other Member States, are outlined in Table 1. There is also extensive cooperation between the local authorities responsible for areas on both sides of the Irish border. For instance, the North West Region Cross Border Group was established in 1975 to bring together Derry City and Strabane District Council and Donegal County Council to work in collaboration for the good of the region. A Strategic Alliance between Newry, Mourne and Down District Council and the Louth Local Authorities was established in 2011 to support the economic and social development of this border region.

## Uncertainty

Transitions in any area of life are characterised by uncertainty. The protracted process of transition created by the UK decision to leave the EU and agreeing the terms of its departure, together with the currently unclear nature of this agreement, has compounded this uncertainty (Dhingra and Sampson, 2016). This section assesses the implications of this uncertainty for Irish citizens’ social rights. Reflecting the analysis of the reciprocal social rights arrangements between the UK and Ireland presented in the preceding discussion, this section identifies the number, characteristics and location of the individuals most likely to be affected by the removal of the EU tier of these social rights.

*Table 1. Cross-Border Health Co-operation Between Ireland and Northern Ireland.*

|  |  |
| --- | --- |
| Initiative | Details |
| All Island Congenital Heart Disease Network | In 2015 a framework for this Network was agreed by the Northern Irish and Irish governments in response to proposals by an expert international working group. The Network involves a single surgical centre at Our Lady’s Children’s Hospital, Dublin, supported by a specialist Children’s Heart Centre in Belfast. These facilities are co-funded by the Irish and Northern Irish governments. |
| Cooperation and Working Together (CAWT) | This is a cross-border partnership between the Health Service Executive in Ireland and the Northern Irish Southern and Western Health and Social Care Trusts, the Health and Social Care Board and the Public Health Agency. It emerged from informal co-operation in 1992 and has developed into a formal cross-border structure for delivering and implementing health and social care services. CAWT has created and sustained several EU funded cross-border projects and services and has enhanced service provision to many rurally isolated and peripheral areas. |
| Daisy Hill Hospital, Newry | Treats patients in Monaghan, Louth and Cavan |
| North West Cancer Centre and the Cross-Border Cardiology Service, Altnagelvin Hospital in Derry/Londonderry. | Provides radiotherapy services in Altnagelvin Hospital to patients living in Donegal. Funding for the provision of this facility was justified on the basis that it would serve a population in Ireland as well as Northern Ireland. In addition, the primary Percutaneous Coronary Intervention (pPCI) service in Altnagelvin Hospital is also available to patients in Donegal. |

Source: Department for the Economy (2018).

### Rights More Freely, Live and Work.

Underpinning the scale of the challenge for Irish citizens’ social rights associated with Brexit is the very strong integration of the populations of Ireland, Northern Ireland and Great Britain. The scale of this integration is demonstrated by Figure 1 which reveals that in 2016 2.1 per cent of Northern Ireland’s population (approximately 38,000 individuals) were born in Ireland while 1.2 per cent of Ireland’s population (approximately 57,000 individuals) were born in Northern Ireland. As a proportion of total population, these figures are not enormous, but they do account for a large proportion of migrants in each jurisdiction. Among the 117,000 EU27-born individuals who lived in Northern Ireland in 2016, 33 per cent were born in Ireland (Office for National Statistics, 2017). Figure 1 also reveals that, in 2016, 6 per cent of the population of Ireland (277,200 individuals) were born in the UK. In the same year there was an estimated 389,000 people who were born in Ireland and resident in the UK. This constituted 5.9 per cent of the UK population in 2016 and was the fourth largest overseas born population resident in the UK in that year (behind Poland, India and Pakistan) (Office for National Statistics, 2016).

The Irish, Northern Irish and UK populations are not integrated in a spatially even pattern across these jurisdictions, however. It is estimated that one out of every three Irish born people who lived in the UK in 2016 lived in London (98,100 people). 83 per cent of Irish born residents of the UK in that year lived in England (Office for National Statistics, 2016). This reflects the distribution of the migrant population in the UK more broadly. In contrast the spatial distribution of UK born residents of Ireland broadly reflects the distribution of the overall Irish population. For instance 8 per cent of the UK born population of Ireland lived in the Dublin City Council operational area in 2016 and 8 cent lived in County Cork which is similar to the proportion of the total Irish population who lived in those areas (Central Statistics Office, April 2017). The latest available data on this issue for Northern Ireland are set out in Figure 2. They reveal that in 2011 61 per cent of Irish born residents of Northern Ireland lived in the five district councils which abut the border.

*Figure 1 Integration of the Irish, Northern Irish and UK Populations*



Source: Office for National Statistics (2017).

*Figure2 Spatial Distribution of Residents of Northern Ireland Who Were Born in Ireland, 2011.*



Source: Office for National Statistics (2017).

The remaining population of Irish born residents of Northern Ireland were concentrated in the following Belfast, its commuter belt and other large towns. Data from the 2016 census for Ireland reveals a similar pattern. 47 per cent of Northern Irish born residents of Ireland lived in counties along the border – most commonly Donegal and Louth. A majority of the remainder live in Dublin (Office for National Statistics, 2017).

The integration of the populations along both sides of the Irish border is reinforced by the large numbers of commuters who cross the border in both directions on a daily or weekly basis. The 2016 Irish census identified 9,336 people who crossed the border into Northern Ireland on a daily basis for school or work (Central Statistics Office, April 2017). Table 2 reveals that three-quarters of these were workers, the remainder were school children and those in third level education. As might be expected, data on the origin/destination of these commuters reveals that cross-border commuting is conducted primarily between the counties which immediately abut the border – 88.7 per cent of cross border commuters from the Ireland into Northern Ireland lived in border counties. The most recent data on cross border commuting from Northern Ireland into Ireland is from the 2011 Northern Irish census. These data indicate that 6,456 usual residents of Northern Ireland travelled to Ireland for work or education. Again, most had destinations in adjacent border counties, trends which indicate that such commuting is most likely very frequent (NISRA, 2017).[[1]](#footnote-1)

Beyond commuters, data from a 2017 UK Government report on the Common Travel Area between Ireland and the UK estimated that the total number of people crossing the border each year, for any reason, at around 110 million people. Of these, 43 million pass through the 15 principal border crossing points while the remainder pass through one of the other 193 border crossing points or travel by train (870,000) or coach (900,000). The paper reported that: ‘Cross-border travel and movements between Northern Ireland and Ireland are extensive and, for many people, a regular feature of everyday life’ (HM Government, 2017: 1).

*Table 2 Cross-Border Commuters from Ireland to Northern Ireland, 2016.*

|  |  |  |
| --- | --- | --- |
| Commuters | Number | % |
| Children at school aged between 5 and 12 years | 693 | 7 |
| Students at school or college ages between 13 and 18 years | 707 | 8 |
| Students at school or college ages 19 years and over | 899 | 10 |
| Population aged 15 years and over at work | 7,037 | 75 |
| Total | 9,336 | 100 |

**Source:** Central Statistics Office, (April 2017).

### Right to Access Education Services

There is a strong tradition of cross border commuting for education purposes on the island of Ireland by school children, those enrolled in higher education institutions, and also longer-term movement to avail of education services on the other side of the border (Department for the Economy, 2017). However, there are some discrepancies between UK estimates of North-South school child commuting and those derived from the *Census of Population of Ireland*. The former source estimates that approximately 270 pupils domiciled in Ireland attended secondary schools in Northern Ireland and 100 pupils domiciled in Ireland attended Northern Ireland primary schools. However, as detailed in Table 2 above, the Irish census identifies higher rates of cross border commuting for schooling purposes (HM Government, 2017; Central Statistics Office, April 2017). It is nonetheless clear that cross-border commuting is a feature of daily life for many of the youngest residents of border regions.

Data from the UK Higher Education Statistics Agency (HESA) indicates that in 2015/16 there were around 2,200 students domiciled in Ireland enrolled in Higher Education Institutions in Northern Ireland, representing 4% of total enrolments in these institutions (HM Government, 2017). Data from Ireland’s Higher Education Authority (HEA) estimated that in 2016/17 there were 893 enrolments by Northern Ireland domiciled students in third level colleges south of the border. These data indicate that cross border enrolments in higher education institutions on the Island of Ireland rose steadily until 2010/2011 but have declined since then.

There are substantially greater numbers of students from Ireland studying in higher education institutions in Great Britain than there are students travelling in the opposite direction. According to the Higher Education Authority (2016) Ireland is the seventh largest source country for UK third level students. Between 8,000 and 10,000 students from Ireland were registered in HEIs in England, Scotland and Wales in 2016 and the numbers of Irish students registered in Northern Irish HEIs bring the total UK figure to between 10,000 and 12,000. The equivalent number of students from England, Scotland and Wales studying Ireland stood at 1,548 in 2016 (Higher Education Authority, 2016).

### Social Security Benefits and Pensions Rights

Pension income flows provide further evidence of the strength and also the long duration of migration flows between Ireland, Northern Ireland and the UK. This evidence is summarised in Figure 3 which reveals that in February 2017, 134,840 recipients of the UK state pension were resident in Ireland. This means that Irish residents were the largest group of overseas UK pension recipients in the EU in that year and they equated to 21% of the population aged 65 years and above in Ireland (Office for National Statistics, 2017). In November 2015 there were an estimated 35,000 UK residents in receipt of an Irish government pension; most of these (85%) were in receipt of the contributory state pension while the other recipients were in receipt of the widow(er)’s and surviving partner’s contributory pension (Dáil Éireann, 2015, Vol. 916 No. 2: 1913).

Data on the proportion of recipients of the main categories of social security benefits in Ireland who are UK nationals are set out in Figure 4. This graph reveals that in 2016 3.2 per cent of social security benefit claimants in Ireland were UK nationals. However, the proportion of recipients varied according to the category of benefit. UK nationals accounted for only 2.5 per cent of recipients of the state old age pension but they constituted 4.2 per cent of recipients of employment supports for individuals of working age and 6.1% of recipients of supplementary payments (such as rent supplement). The only comparable

*Figure3 Recipients of the UK State Pension living in Other EU Member States, 2003-2017.*



Source: Office for National Statistics (2017).

*Figure4 UK Nationals in Receipt of Social Security Benefits in Ireland, % of Total Recipients by Category of Benefit, 2016.*



Source: Department of Social Protection (various years).

data for the Irish in the UK in 2016 covers Great Britain only. It indicates that Irish nationals in Great Britain made up 2.8 per cent of all claimants of benefits for individuals of working age in that year. Irish nationals in the UK were more likely to claim benefits for bereaved people (they made up 0.75 per cent of claimants of this category of benefits) and job seekers (0.33 per cent of claimants were Irish) and less likely to claim benefits for carers and lone parents (they accounted for just 0.18 per cent of claimants of these benefits) (Department for Work and Pensions, various years).

### Right to Access Health Services

Comprehensive data on cross-border usage of healthcare and other social services are not available. However, the data which are available points to high take-up particularly by residents of border countries. For instance:

* Daisy Hill Hospital, Newry treats patients from both sides of the border. It treated 885 patients from counties Monaghan, Louth and Cavan in 2016/17.
* Patients living in Donegal can access radiotherapy services in Altnagelvin Hospital in Derry/Londonderry. Currently there are arrangements in place to treat 385 cancer patients from Ireland at this facility.
* Between 2011 and 2015 there were on average 280 children per annum born in Northern Irish hospitals to mothers resident in Ireland (Department for the Economy, 2018).
* Government health spending data for Ireland indicate that in the 18 months to the end of June 2016 it reimbursed over €650,000 for the care of 277 patients in Northern Ireland.

##  Conclusions

This paper has examined the evolution of the relationship between Ireland and the United Kingdom over the last century focusing in particular on social policy and citizens’ rights. It has revealed that this relationship has evolved through several distinct phases which were characterised by integration, disintegration, reciprocity and uncertainty. Prior to Irish independence and the establishment of Northern Ireland in 1921, both jurisdictions were part of the UK and their social policies and embryonic welfare states were largely (but not entirely) integrated with Great Britain. Irish independence resulted in the disintegration of this arrangement (although strong similarities remain between the UK and Irish welfare states) but the period since then has seen a slow process of introducing and extending a comprehensive package of reciprocal rights for Irish and UK citizens to travel to, live and work and avail of welfare state services and benefits in each other’s countries. This process started with the Common Travel Area agreement between the Irish and UK governments and was extended when the UK and Ireland both joined the EU in 1973 and again when the Good Friday Agreement was signed by both governments in 1998.

If the UK’s decision to leave the European Union is followed through, this will remove a layer of the framework of reciprocal social rights which UK and Irish citizens enjoy in each other’s countries. The paper has examined the number, characteristics and location of Irish citizens most likely to be affected by the removal of these social rights and demonstrated that that, in terms of the numbers of people affected, the scale of the East/West (or British/Irish) challenge for citizens’ social rights is much greater, because the UK born population living in Ireland is substantial, as is the size of the Irish population living in England and in London in particular. By contrast, in absolute terms, the size of the Irish-born population living in Northern Ireland and *vice versa* is smaller. However, the intensity of the relationship between these two populations is stronger particularly along the border. For border communities, Brexit does not just raise concerns about the transferability of pension or social security entitlements which individuals might have accrued in one jurisdiction prior to moving to the other jurisdiction. Individuals in border communities often travel to the neighbouring jurisdiction on a daily basis for work, education or healthcare purposes. Therefore, the possibility of a ‘hard border’ being imposed between Northern Ireland and Ireland after Brexit would be enormously disruptive, socially as well as economically for these ‘border people’.

However, the paper has demonstrated that Britain’s departure from the EU will not undermine the majority of the reciprocal social rights. This is because most elements of this framework predate and are not dependent on the UK’s membership of the European Union – they were put in place as part of the extensive Common Travel Area suite of arrangements for direct cooperation between the UK and Irish governments and all the available evidence indicates that they will remain in force after Brexit. When the first phase of the Brexit negotiations between the UK government and the EU concluded in December 2017 and a joint report on the outcome was agreed by both sides. This report acknowledges the UK government’s commitment to the GFA and the Common Travel Area and the UK and Irish government’s ability to make bilateral agreements regarding the CTA ((Negotiators of the European Union and the United Kingdom Government, 2017:8). This has been re-confirmed in statements by both governments on several occasions (Murray, O’Donoghue and Warwick, 2018). Not all elements of the CTA are underpinned by legislation or treaties – some reflect custom and practice only. Therefore Murray, O’Donoghue and Warwick (2018: vii) recommend that ‘it will be essential to place the CTA on a treaty footing to ensure family, resident, welfare, social, political and civil rights continue’. The process commenced in May 2019 when the Irish and UK governments signed a memorandum of understanding concerning the Common Travel Area and associated rights and privileges. This MOU reaffirms both government’s commitment to maintaining the CTA but also significantly it also commits them to providing ‘further certainty and clarity… about those associated rights and privileges’ by underpinning them by legislation where appropriate’ (Government of Ireland, 2019). Unless the reciprocal social rights provided by Ireland and the UK’s joint EU membership are underpinned by extensions to the Common Travel Area arrangement these rights will be lost. However, EU membership provides Irish and UK citizens with very few social rights which are additional to those which are additional to those provided under the CTA.

Thus, the analysis presented here indicates that the legally underpinning the custom and practice elements of the CTA would be adequate to address the majority of East/West challenges for Irish citizens’ social rights created by Brexit. However, the North/South challenges will be much more challenging to resolve. Many commentators have highlighted the potential for Brexit to undermine the Good Friday Agreement and raised concerns about the implications of this for the peace process. However, this paper has highlighted its potential for undermining Irish citizens’ social rights. This is because central to the political accommodation between the unionist and national communities achieved by the GFA is its explicitly recognition of the existence of multiple identities and allegiances in Northern Ireland and therefore of the entitlement of people born in Northern Ireland to hold UK or Irish citizenship or both. While the UK remains an EU member there is almost no differentiation between the rights and entitlements of Irish and UK citizens living in Northern Ireland, but this will change after Brexit. Most notably, unless the provisions of the CTA are strengthened and extended, Irish and UK citizens living in Northern Ireland may have different rights and entitlements after Brexit. Inevitably, Brexit will create new divisions between people in Northern on the basis of their political identity and the variations in rights that accompany this. Given past experiences of societal divisions in Northern Ireland, the potential for these new realities to undermine social cohesion within NI society must be minimised. The paper has also highlighted the key role of the open Northern Irish border which is facilitated by Ireland and the UK’s joint EU membership in supporting the living standards of communities in the border region and also in enabling their access to access health and educational services.

Finally, it is important to acknowledge that because the analysis presented here focusses only on the rights of Irish citizens who visit, live or work in the UK, it has not discussed the very significant loss of social rights which citizens of other EU member states who are resident in the UK and UK citizens resident in other EU members will most likely suffer after Brexit. Unless a withdrawal agreement can be reached between the UK and the EU these fellow European citizens are likely to suffer a very significant diminution of their social rights.

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1. Assumptions are occasionally made that most of these commuters travel over and back each day (9936 + 6456) and that cross border daily commuters exceed more than 30,000 individuals. [↑](#footnote-ref-1)