

# BORDER PEOPLE BRIEFING



## #Brexit: Areas of concern for users of the Border People project

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### Brexit and Border People

Given that the aim of the [Border People](#) project is to provide information to citizens who cross the Irish border for a wide range of activities (including to live, work, study and retire) the project team is keenly observing the negotiations between the UK and the remaining 27 EU Member States. We understand that until this is complete the exact implications cannot be confirmed, however, while negotiations continue so do the lives of people already affected by the border.

We know that currently (December 2017) the UK remains an EU Member State and as EU citizens our rights, entitlements and obligations remain unchanged until the UK leaves the EU on 29<sup>th</sup> March 2019 or possibly beyond that date should the UK and EU agree a transition period.

The ongoing negotiations will form the UK’s Withdrawal Agreement (WA) with the EU, but it will not apply to all citizens; so understanding whether or not a person falls within the scope of that agreement is essential.

For example (as at December 2017<sup>1</sup>)

*Falling within the scope of the WA* – Students, retirees and workers who have already exercised their EU rights before the UK's exit

*Outside the scope of the WA* – Individuals, who plan to move, take up employment or education after the UK's exit

It is also important to note that while the impacts of Brexit will be wide ranging, the Withdrawal Agreement will not include them all.

- Brexit affects all citizens
- Withdrawal agreement does not apply to all EU, Irish or UK citizens
- Withdrawal agreement will not address all areas of change

The Border People Project remains committed to informing you of all relevant changes – within or without the scope of the Withdrawal Agreement.

The December assurances are not set in stone, so it is important to remember 'nothing is agreed until everything is agreed'! Until then we consider it important that we track the path of the negotiations and to highlight areas of concern for citizens as they continue to live their border lives. The Border People website is currently being redeveloped and will be populated with areas of concern relevant to each topic and target group. This paper sets out to highlight some of the most important issues.

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## Areas of concern 1: Free movement of people

*Currently the free movement of people across the border is facilitated by both the Common Travel Area (CTA) and the UK's and Ireland's membership of the European Union.*

### Common Travel Area

Established in the 1920s the Common Travel Area ensures free movement of Irish and UK citizens between the UK, Channel Islands, the Isle of Man and Ireland.

Unfortunately a single legislative act securing the Common Travel Area does not exist; instead it may be regarded as an arrangement and any associated rights stem from an attempt to facilitate the continued free flow of citizens between the countries after Irish independence in 1922. Since then ad hoc pieces of national legislation<sup>2</sup> have added weight to the principles of the CTA, i.e. that Irish and UK citizens are not treated as 'aliens' in each other's other jurisdiction.

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<sup>1</sup> [Joint report from the negotiators of the European Union and the United Kingdom Government](#), 8 December 2017

<sup>2</sup> Further reading: [The Common Travel Area: More Than Just Travel](#), A Royal Irish Academy – British Academy Brexit Briefing, October 2017

The following CTA-associated rights are listed on the UK government information and services website – Gov.uk<sup>3</sup>

- the right to enter and reside in each others' state without being subject to a requirement to obtain permission
- the right to work without being subject to a requirement to obtain permission
- the right to access education
- access to social welfare entitlements and benefits
- access to health services
- access to social housing
- the right to vote in local and parliamentary elections.

When Ireland and the UK joined the EC in 1973 the CTA was annexed to the joining treaty. The CTA operating within the scope of EC membership complemented the free movement rights of its citizens. How the CTA will function when the UK is outside the EU and restrictions are placed upon free movement of union citizens is uncertain. Positive remarks by the UK and Irish Governments are not binding and some organisations including the Travellers Movement<sup>4</sup> are seeking legislation to secure the CTA in law and thereby protect the rights of the Irish in the UK and vice versa.

### EU right to free movement of people

While the origins of the EU stem from an economic project which treated workers as economic commodities, the EU has evolved over the years to recognise workers as EU citizens with human rights. As a result EU citizens and their family members can move freely without discrimination, within the EU and EEA, to visit, live, study or work. There are of course certain rules e.g. for stays longer than 3 months a person must be a 'qualified person', for example a worker, a self-sufficient person, or student.

### EU rights or CTA rights?

Over the years rights underpinned by the CTA and the EU have become intermingled and it is often difficult to fully understand exactly which rights we, as mobile citizens, are exercising at any particular time. Brexit introduces the complex dilemma of unravelling and understanding which rights to free movement we are entitled to.

For example: The Common Travel Area applies only to Irish and UK citizens!

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<sup>3</sup> [Citizens' rights: UK and Irish nationals in the Common Travel Area](#), Foreign & Commonwealth Office, Home Office, and Department for Exiting the European Union, 22 December 2018

<sup>4</sup> [Brexit and Irish citizens in the UK: how to safeguard the rights of Irish citizens in an uncertain future](#), The Traveller Movement, December 2017

## Areas of concern 2: Hard border

*A hard border does not simply equate to a 'physical' border.*

The EU, UK and Ireland have all stated that they do not wish to see the return to a hard border between Ireland and Northern Ireland. How this will be achieved is very uncertain, especially as the UK intends to limit the free movement of people and take back control of its borders. Added to that is Ireland's obligation, as a remaining member of the EU, to ensure the integrity of an external EU border. Furthermore, as the UK intends to leave the Customs Union and the Single Market this will inevitably result in checks on goods. It could also lead to checks on the people moving the goods across the border e.g. will a non-Irish/non-UK lorry driver need a permit to cross the EU external border between the UK or Ireland?

The Border People project, and its parent the Centre for Cross Border Studies<sup>5</sup>, believe that even in the absence of a physical border a hard border may still exist. For instance, complex administrative burdens may be placed upon citizens, business and organisations.

Hard border = physical border infrastructure and border checks

Hard border = no physical border but citizenship checks at every point of service

Hard border = no physical border but checks on goods, services and employees

Soft border = no physical border and no additional checks on citizens and organisations

Frequently media headlines can mislead us to believe that a hard border will be avoided and free movement of people will continue thanks to the Common Travel Area. However, as we have already noted, that 'arrangement', should it survive the Brexit negotiations in its current form, will ensure the free movement of Irish and UK citizens only between the two jurisdictions.

*How will all other citizens, non-Irish and non-UK, be monitored?*

In order to eliminate racial profiling it may be necessary for everyone to prove their citizenship in order to prove entitlement to services e.g. at schools, hospitals, dentists, rented accommodation, banking, mortgages, social welfare, right to employment, right to travel etc.. For UK and Irish citizens this would contravene the very essence of the CTA.

Any new procedure that differentiates how communities are treated within Northern Ireland and between Northern Ireland and Ireland, could be considered a hard border and therefore an obstacle to cross-border mobility.

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<sup>5</sup> Brexit and the UK-Ireland Border, Briefing Paper 2: Citizens Rights and the UK-Ireland Border, Centre for Cross Border Studies, January 2018

### Areas of concern 3: Diverging rights of Irish and British citizens

*The majority of individuals who currently interact with the Border People project are Irish or British citizens, and therefore EU citizens.*

The 1998 Good Friday Agreement provides that individuals born in Northern Ireland can choose to be an Irish citizen, British citizen or both. They also have the right to EU citizenship<sup>6</sup>:

- Every person holding the nationality of a Member State shall be a citizen of the Union
- Citizenship of the Union shall be additional to and not replace national citizenship

The UK's decision to leave the EU may result in British citizens losing their EU citizenship. But can EU citizenship be taken away? This is currently being considered by the European Court of Justice<sup>7</sup>.

Since its inception in 2007 the information available to citizens via the Border People project has been tailored to suit the needs of Irish and British citizens. It assumes their EU citizenship and as a result the information is also useful to other EU migrant communities who cross the Irish border regularly. After the UK leaves the EU the Border People project will be required to highlight the diverging rights of British, Irish and EU citizens (see list below). Depending on the outcome of the negotiations their rights may be very different! For example Irish citizens born in Northern Ireland will retain their EU citizenship, while their next-door-neighbours with UK passports may lose theirs!

#### **Currently Border People information is tailored to suit:**

1. Irish citizens (as EU citizens)
2. British citizens (as EU citizens)

#### **Post-Brexit Border People information may be tailored to suit:**

1. British citizens – within the scope of the Withdrawal Agreement
2. British citizens – outside the scope of the Withdrawal Agreement
3. Irish citizens – born in Northern Ireland, within the scope of the Withdrawal Agreement
4. Irish citizens – born in Northern Ireland, outside the scope of the Withdrawal Agreement
5. Dual citizens – British and Irish, within the scope of the Withdrawal Agreement
6. Dual citizens – British and Irish, outside the scope of the Withdrawal Agreement
7. Irish citizens – born in Republic of Ireland, within the scope of the Withdrawal Agreement
8. Irish citizens – born in Republic of Ireland, outside the scope of the Withdrawal Agreement
9. Non-Irish EU citizens –within the scope of the Withdrawal Agreement
10. Non-Irish EU citizens –outside the scope of the Withdrawal Agreement

**It is important to note that any divergence in citizens' rights among the population in Northern Ireland and between Ireland and Northern Ireland may contravene the Good Friday Agreement.** Furthermore, considering the sensitivities of citizenship and identity in Northern Ireland, Border People is concerned that the need to declare citizenship may hinder social cohesion and may be regarded as an obstacle to mobility on the island. [Back to top](#)

<sup>6</sup> Article 20 of the Treaty on the Functioning of the European Union (TFEU)

<sup>7</sup> "[Are you an EU citizen for life or can your citizenship be taken away from you? That is the fundamental question that will be put forward to the European Court.](#)" [Christiaan Alberdingk Thijm](#) BBC, 7 February 2018

## Areas of concern 4: Cross-border students

*Irish and UK students, as EU citizens, currently enjoy the right to equal treatment.*

Free movement of persons also includes the right to study in another EU jurisdiction under the same conditions as nationals. Regardless of other entry requirements, they may not be refused access to training or education in another EU country on grounds of nationality, for example be required to pay higher tuition fees. Exactly how Brexit will impact upon student rights is currently unknown but the potential for diverging rights between the following groups of students needs to be monitored by those considering crossing borders to further their education.

- UK students in Irish education institutions
- UK students in EU education institutions
- Irish students in UK education institutions
- Irish students (born in Northern Ireland) in EU education institutions

Newly diverging rights may impact on:

- Fees
- Right to reside as a student
- Right to work while a student
- Access to healthcare as a student
- Right to reside after completion of studies
- Right to work after completion of studies

The [Universities UK website](#) includes a useful Brexit hub, and as of December 2017 the information includes assurances that EU students who have already started their education courses in the UK will have the right to remain to complete their studies and potentially afterwards (via a Settled Status application). Tuition fees will remain the same as UK citizens and entitlement to grants and loans will also continue until the course ends, even if that is after the UK leaves the EU. Future students, those who move to the UK after 29<sup>th</sup> March 2019, will be subject to UK immigration rules and potentially much higher university fees. Employment restrictions may also be placed upon them.

There may even be implications for those students who decide not to travel, choosing instead to study locally. Each year thousands of Irish students attend universities in the UK, should Brexit act as a deterrent there will be a considerable increase in the demand for higher and further education courses in Ireland. The Irish education system could be faced with the challenge of meeting that increased demand, but in the short term that could mean decreasing opportunities for Irish students.

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## Areas of concern 5: Cross-border workers

*How Brexit will impact on cross-border employment opportunities and workers rights is a real concern.*

The Treaty on the Functioning of the European Union (TFEU) underpins many rights we take for granted every day. Article 45 enshrines workers' rights:

- the right to accept offers of employment in another Member State
- the right to move freely within the territory of Member States for this purpose;
- the right to stay in a Member State for the purpose of employment;
- the right, subject to conditions, to remain after having been employed there;
- the right to equal treatment in respect of access to employment, working conditions and all other advantages which could help to facilitate the worker's integration in the host Member State.

In addition workers are protected by EU regulations and directives that create an environment conducive to citizens' mobility e.g. social security coordination, access to healthcare, right to family life and recognition of qualifications.

Workers' rights have also been advanced by EU legislation and trade unions<sup>8</sup> are concerned about the impact of Brexit on progress made with respect to:

- Maternity rights
- Part-time workers rights
- Equal pay for equal work
- Protection from gender-based discrimination or sexual discrimination
- Social security rights

The current UK government has stated it will transpose all EU legislation directly into UK law. This provides assurances in the short-term, however future governments will be free to change, amend and potentially remove the current EU standards.

It is commonplace for thousands of workers to cross the border between Ireland and Northern Ireland every week. Over the course of a working lifetime it is possible for individuals to have worked for numerous employers on both sides of the border, switching between jobs without regard for the border. **The December 2017 joint report<sup>9</sup> protects the rights of workers already in cross-border employment. But it does not safeguard the rights of future cross-border workers.** Those UK and Irish citizens, left outside of the Withdrawal Agreement, will possibly look towards the Common Travel Area and its loosely bound rights to employment, assuming that the CTA will survive the negotiations!

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<sup>8</sup> [Unison](#) and [ITCU](#)

<sup>9</sup> [Joint report from the negotiators of the European Union and the United Kingdom Government](#), 8 December 2017

## Areas of concern 6: Cross-border social security co-ordination

EU social security co-ordination aims to ensure that people do not lose out when they choose to work or move between EU member states. This means that the thousands of cross-border workers crossing the Irish border each day can be confident that their social insurance contributions (PRSI and National Insurance) are not paid in vain. Their contributions are mobile and they can be combined e.g. to help them qualify for an illness benefit should they be unable to work. Certain benefits are also exportable including maternity benefit, family benefits, illness benefit, unemployment benefit and old age pension.

To date negotiations have ensured social security co-ordination protections for individuals already exercising their EU rights, e.g. cross-border workers, people who have already moved or retired in another EU member state. But it is unclear how co-ordination will work for others; future cross-border workers, British citizens without EU citizenship, Irish citizens retiring in UK and vice versa.

Currently cross-border social security coordination is one of the most challenging areas for the Border People project. Cross-border workers often find they are subject to significant red tape and delayed payments but however complex the question the answer can usually be found within EU regulations. The Border People project is concerned that it will take significant time to agree the finer detail of new coordination rules and for that detail to transfer to front-line staff in social security offices. The project is concerned about the impact on cross-border workers and their families.

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## Areas of concern 7: Cross-border healthcare

Currently as EU citizens we have the right to access healthcare across the border, EU legislation is in place to safeguard entitlement for students, cross-border workers, tourists etc. There are also EU initiatives facilitating the right to choose to travel to another EU member state for treatment.

How Brexit will impact on healthcare rights is a concern. For example,

- British citizens living in Northern Ireland may lose their right to EU healthcare initiatives including the European Health Insurance Card (EHIC) and the European Healthcare Directive
- Complexities may also arise for Irish citizens, born in Northern Ireland, as they attempt to exercise their right to EU citizenship. How will they apply for healthcare initiatives? Which authorities will process their claims?

Currently EU legislation provides that cross-border workers can access healthcare both where they live and where they work e.g. a southern resident working in Northern Ireland, will be entitled to an Irish medical card without a means-test while also accessing healthcare in Northern Ireland. Options for a continuation of care for cross-border workers who have retired due to illness or old age are also available. As already stated the rights of cross-border workers, employed on a cross-border basis on exit day, will be protected. But it is unclear how others will access healthcare e.g. future cross-border workers or British citizens who have lost their EU citizenship.

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## The Border People Project

The [Centre for Cross Border Studies](#), in partnership with the North South Ministerial Council (Joint Secretariat), manages the Border People project which provides *cross-border* citizens' information and advice in Ireland and Northern Ireland.

The key elements of the project include provision of online information and direct (telephone and email) support to the public and advice sector. The project also provides cross-border training for advice sectors in each jurisdiction. Furthermore it fosters collaboration between government departments, agencies and the advice sector who have been committed members of the advisory group since 2007.

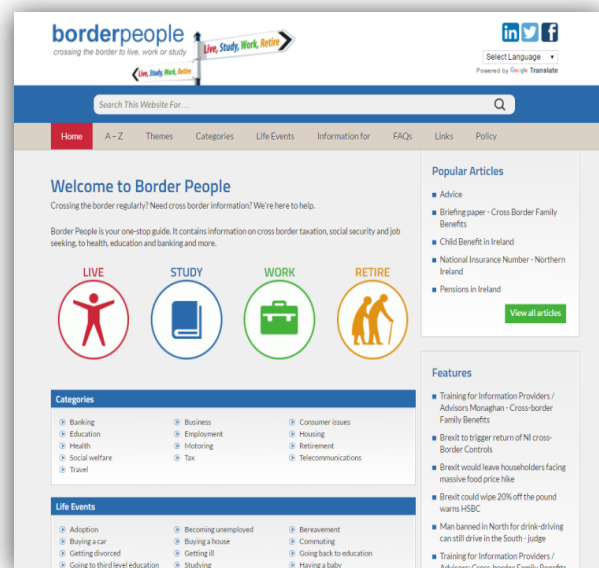
The project received EU funding between 2007 and 2011, it is currently part-financed by the Irish Department of Foreign Affairs and Trade, Reconciliation Fund.

The project's cross-border Advisory Group is made up of representatives from

- Centre for Cross Border Studies
- North South Ministerial Council, Joint Secretariat
- Citizens Information Board (Ireland)
- Citizens Advice (Northern Ireland)
- Department of Employment Affairs and Social Protection (Ireland)
- NI Social Security Agency / Department for Communities (Northern Ireland)
- EURES Cross Border Partnership
- Law Centre NI

### Border People services

- Online Information  
[www.borderpeople.info](http://www.borderpeople.info)
- Advice sector training
- Advice sector support
- Research and analysis
- Co-ordination of stakeholders



An Roinn Gnóthaí Eachtracha agus Trádála  
Department of Foreign Affairs and Trade

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