

BORDER PEOPLE BRIEFING



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The Referendum on UK Membership of the EU: **Freedom of Movement of People**

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The UK referendum on continued membership of the EU will take place on 23rd June 2016. One of the key issues imbedded in the referendum is the UK's intention to limit the free movement of people, one of the EU's four principal freedoms, together with the free movement of goods, services and capital.

With the island divided by the UK's only land border, the issue of cross-border mobility is crucial to this region. For cross-border families, workers, students and pensioners currently living with an open internal EU border, the border often presents administrative challenges, most of which can be overcome through reference to EU legislation. The possibility of a UK exit from the EU, however, raises many questions:

- ◆ Would free movement of people, goods and services continue?
- ◆ Would the Common Travel Area remain?
- ◆ Would checkpoints and customs be set up?
- ◆ How would mobility be monitored?
- ◆ Would travel visas and work permits be required?
- ◆ Would limits be placed on the number of migrant / cross-border workers into NI?
- ◆ Would equality, safety and anti-discrimination safeguards remain?
- ◆ Would cross-border access to healthcare continue?
- ◆ Would employment law be affected?
- ◆ How would social security co-ordination be replaced?

These questions and many others cannot be answered until after the Referendum. In the event of a decision to Leave, the UK must negotiate new agreements that must be approved by all EU Member States. The UK and Ireland will not be able to negotiate a separate arrangement.

Border People

The Border People project is managed by the Centre for Cross Border Studies in partnership with the North South Ministerial Council. Launched in 2007 as an online information portal to provide citizens with cross-border mobility information, the project has developed in response to an ever growing demand for information from citizens and from the Advice Sectors in both jurisdictions.

The key elements of the project include:

- ◆ Online citizens Information www.borderpeople.info
- ◆ Email and telephone support to the Advice sectors
- ◆ Research and analysis
- ◆ Advice sector training
- ◆ Co-ordination of stakeholders

Border People fosters collaboration between government departments, agencies and the advice sectors who comprise the project advisory group. These include:

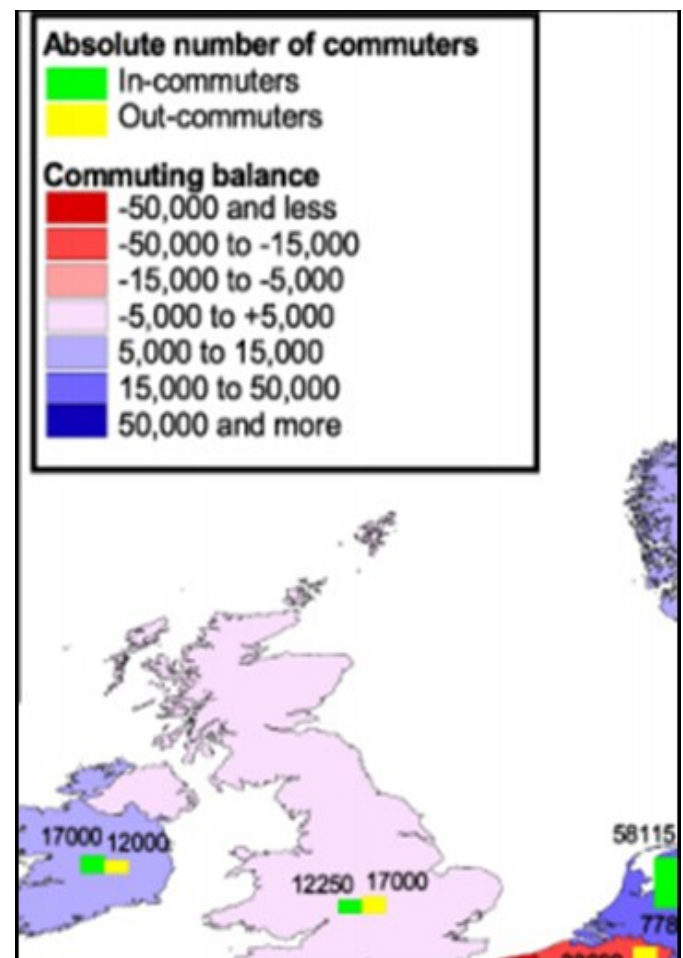
- ◆ North South Ministerial Council, Joint Secretariat
- ◆ Citizens Information Board (Ireland)
- ◆ Citizens Advice (Northern Ireland)
- ◆ EU International Section of the Department of Social Protection (Ireland)
- ◆ NI Social Security Agency / Department of Social Development (Northern Ireland)
- ◆ EURES Cross Border Partnership
- ◆ Law Centre NI

Cross-border Commuters

The exact number of people that cross the border is difficult to quantify. Cross-border statistics are not gathered in a strategic way and the information that is gathered is not necessarily comparable with that from other jurisdictions. The lack of statistical data and analysis on cross-border mobility is a common problem in many EU border regions and is frequently identified as an obstacle to cross-border mobility.¹

- ◆ A 2001 study of obstacles to mobility commissioned by the North South Ministerial Council² estimated 18,000 commuters crossed the border between Ireland and Northern Ireland to work.
- ◆ A study in 2009 by the European Commission⁴ provides statistics on commuter flows throughout the EU. Their results identify 17,000 commuters leaving the UK for work and 12,250 entering for work. Given that the UK's only land border is between Ireland and Northern Ireland, it may be assumed that these most of these numbers reflect flows across this border. (Fig 1)
- ◆ This assumption is supported by the very similar numbers of Irish commuters identified in the EU Commission report: 12,000 commuters entering Ireland and 17,000 commuting out of Ireland.
- ◆ A 2010 report for the EURES Cross-Border Partnership³ by the Centre for Cross Border Studies estimated that more than 23,000 people were crossing the border to work.
- ◆ **Based on these reports, it can be estimated that approximately 23,000 to 30,000 people commute across the Irish border to work.**
- ◆ An Impact Assessment carried out by the Department of Work and Pensions⁵ assesses the statistics from the EU Commission report referenced above and a 2010 UK Labour Force Survey estimated that **the number of UK residents who regularly work outside the UK is between 33,000 and 57,000.**
- ◆ The number of people who regularly cross the border for other reasons is not known. However, it is clear that many people exercise their right to freedom of movement. For example, the cross-border Enterprise rail service between Belfast and Dublin reported that in the year 2013-2014, almost 840,000 people “chose to travel to Dublin on the Enterprise.”⁶

Mobility of Cross-Border Workers: Balance by countries 2006/2007 (fig1)



1. [Information services for cross-border workers in European border regions](#), Association of European Border Regions, 2012
2. [Study of Obstacles to Mobility](#), North South Ministerial Council, 2001
3. [Measuring Mobility in a Changing Island](#), EURES Cross Border Partnership, 2010
4. [Scientific Report on the Mobility of Cross-Border Workers within the EU-27/EEA/EFTA Countries](#), European Commission, 2009
5. [Workplace Pension Reforms: Cross-border Workers](#), Department of Work and Pensions, 2010
6. <http://www.translink.co.uk/enterpriseupgrade/>

The Common Travel Area

It has been suggested that the existence of the Common Travel Area and a special status for Irish citizens in the UK ensure that there would be little difference in arrangements for cross-border mobility in the event of a Brexit. As Irish Foreign Affairs Minister Charlie Flanagan points out in a recent statement however, “no-one can say with certainty that nothing will change with the border if the UK votes to leave.”¹

Established in the 1920s, the Common Travel Area (CTA) ensured free movement for Irish and UK citizens between the UK, Channel Islands, the Isle of Man and Ireland. The CTA was annexed in the EU Treaties when the UK and Ireland joined the EC on 1st January 1973.²

In December 2011 the Irish Minister for Justice, Equality and Defence and the UK’s Immigration Minister launched a joint programme of work³ which aims to reinforce existing cooperation between the UK and Ireland in relation to the protection of the Common Travel Area and to provide a framework for a more strategic approach for this co-operation. The governments agreed to continue to seek ways to improve cooperation in the field of visas, data sharing and the development of an electronic border management system.

A 2015 report⁴ by the Oireachtas Joint Committee on EU Affairs highlights the special status conferred on Irish citizens by the UK. They are regarded as ‘non-foreign aliens’ under UK law, a status offered to no other nationality or member state of the EU. Currently Irish citizens are treated as being habitually resident for some social welfare benefits, as they have spent the required period

within the CTA.

It’s worth noting that while the Isle of Man and the Channel Islands are part of the CTA they remain outside the EU.⁵ In practical terms they have access to the EU single market but must accept the EU terms of free movement of people, although a work permit system does restrict access to employment.

The CTA was established at a time when both the UK and Ireland were outside of the EC and it has been continued since both countries became members in 1973. However, as Minister Flanagan pointed out, “We should be aware that the CTA has only ever operated where both Ireland and the UK were either outside of the EU, or within it.”⁶

In the event of a the UK exit from the European Union, frontier controls would not be decided by London and Dublin alone, but would be the outcome of a wider negotiation involving all EU Member States.

Another important factor that has changed since the introduction of the CTA is the major change in the composition of the resident population in both jurisdictions. The 2011 Irish Census⁷ reported that there were 112,259 UK citizens and **275,505 non-UK EU citizens living**

Birthplace where born outside country of usual residence

(Source: 2011 Census)



in Ireland. The 2011 Northern Ireland Census⁸ reported that and **2.5% of citizens living in Northern Ireland** were born in another EU Member States other than the Republic of Ireland.

As the CTA ensures the free movement of Irish and UK citizens other EU citizens would be adversely affected by any restrictions in their current right to free movement.

1. Irish News, 22 April, 2016
2. [Treaty of Amsterdam](#); Protocol on the application of certain aspects of Article 7a of the Treaty establishing the European Community to the United Kingdom and to Ireland
3. [Ireland-UK Accord to further secure the Common Travel Area](#), Irish Naturalisation and Immigration Service, 2011
4. [UK/EU Future Relationship: Implications for Ireland](#), Houses of the Oireachtas, Joint Committee on EU Affairs, June 2105
5. The formal relationship between the Channel Islands and the EU is enshrined in Protocol 3 of the UK’s 1972 Accession Treaty, and confirmed in what is now Article 355 (5) (c) of the EU Treaties. Under Protocol 3, the Islands are part of the Customs Union and are essentially within the Single Market for the purposes of trade in goods, but are third countries (ie outside the EU) in all other respects
6. Irish News, op. cit.
7. [2011 Census of Ireland](#), Central Statistics Office
8. [Northern Ireland Statistics and Research Agency](#).

“The CTA came into being in the 1920s and is based on the principle of free movement for nationals of the UK and Ireland. The CTA reflects ties of history and kinship and also labour market and business needs. It continues to be of immense importance to the economic, social and cultural wellbeing of both jurisdictions.”

Irish Naturalisation and Immigration Service

Free Movement Rights

“Maintaining the benefits of free access to Europe for UK citizens will almost certainly involve accepting inward movement from the entire EU on terms which are similar to those existing today but accompanied by the loss of influence that an exit implies.”¹

More than one third of EU citizens live in cross-border regions.² For many individuals crossing the border for work, to visit family, to shop, for leisure, to study or to retire is taken for granted.

Article 45 of the Treaty on the Functioning of the European Union enshrines:

- ◆ **the right to accept offers of employment in another Member State**
- ◆ **the right to move freely and the right to stay in the territory of a Member States for the purpose of employment ;**
- ◆ **the right, subject to conditions, to remain in a Member State 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.**

Alongside these rights the EU also protects workers by providing legislation on social security co-ordination ([Regulation 883/2004](#)), rights for family members to also move freely ([Directive 2004/38/EC](#)), and [safeguards](#) for the rights of posted workers (Directives 96/71/EC

and 2014/67/EU). The EU has also introduced measures³ to create an environment conducive to citizens' mobility e.g. the European Health Insurance Card, the directive on cross-border healthcare and the recognition of professional qualifications. Citizens who may have been discriminated against are protected by Directive 2014/54/EU which requires member states to provide means of redress.

If you work in one EU country but live in another and return there daily, or at least once a week, you count as a cross-border commuter under EU law (sometimes called cross-border or frontier worker).

Your Europe⁴

Free Movement in Ireland/ Northern Ireland

A long history of free movement in this region, supported by EU legislation and initiatives has protected and enhanced mobility for workers, shoppers, tourists, students.

Cross-border workers know they have a **right to work**, and **to be treated equally** to residents of the other jurisdiction. Confident that their social insurance contributions can be aggregated to help qualify for illness benefits, unemployment benefits and pensions. They know that they can access healthcare in the jurisdiction where they work and that certain benefits can be exported when necessary.

Cross-border students know they have the **right to study** across the border and will be treated equally to residents of that jurisdiction.

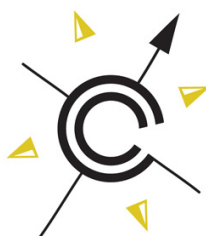
Tourists are **free to travel** without passport controls throughout the region and can avail of emergency healthcare if necessary (European Health Insurance Card).

Cross-border shopping is common and the strength of Sterling versus Euro frequently dictates the flow of trade. EU **harmonisation of safety standards** provides reassurance that goods are safe and fit for purpose, and when issues arise consumers know they can avail of advice and support through their national European Consumer Centre.⁵

The Cross Border Healthcare Directive allows for citizens to avail of medical care in another EEA Member State and individuals can seek information and prior-approval from their National Contact Point.

1. Helena Wray, Reader in Law at Middlesex University and editor of *Journal of Immigration Asylum and Nationality Law*
2. Opinion of the Committee of the Regions *Frontier workers: assessment of the situation after twenty years of the internal market: problems and perspectives*, July 2013 .
3. http://www.europarl.europa.eu/atyourservice/en/displayFtu.html?ftuid=FTU_3.1.3.html
4. http://europa.eu/youreurope/citizens/work/work-abroad/cross-border-commuters/index_en.htm
5. http://ec.europa.eu/consumers/solving_consumer_disputes/non-judicial_redress/ecc-net/index_en.htm

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