

The UK Border: how prepared is Northern Ireland for exiting the EU?



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Introduction

Background

1. A referendum on the United Kingdom's (UK's) membership of the European Union (EU) was held in June 2016. Voters decided by a margin of 51.9 per cent to 48.1 per cent to leave the EU. The referendum turnout was 71.8 per cent, with over 30 million people voting. In Northern Ireland, a majority of 55.8 per cent voted to remain in the EU.
2. The process for leaving the EU, as set out in Article 50 of the Lisbon Treaty, was triggered by the UK Prime Minister on 29 March 2017, initiating a two-year period in which the UK and EU are aiming to reach a "divorce" settlement by a process of negotiation. The UK is scheduled to leave the EU at 11pm UK time on 29 March 2019.

The border

3. Northern Ireland is the region of the UK which is likely to be most affected by the decision to leave the EU. Following the UK's exit (known as Brexit), Northern Ireland will be in the unique position of being the only part of the UK having a land border with an EU member state (310 miles long and with 208 border crossings¹). This raises a number of risks around the impact of the border on key areas of the Northern Ireland economy and way of life.

The political context in Northern Ireland

4. At a time of key negotiations in preparation for the UK departure from the EU, NI has been left with a political vacuum following the collapse of the Northern Ireland Executive in January 2017. Without an Executive and in the absence of ministers to make key decisions, senior civil servants have been left in the position of trying to ensure that NI interests and issues are understood and reflected in the negotiation process by providing factual and technical input to the UK government negotiating team.
5. In August 2016 the then First Minister and Deputy First Minister wrote to the Prime Minister setting out some key issues for Northern Ireland². This short letter is the only ministerial direction available to guide senior civil servants in dealing with the range of issues resulting from the decision to leave the EU.
6. In a speech to the European Policy Centre in September 2018, David Sterling, Head of the Northern Ireland Civil Service, said "*civil servants are not, and never will be, an adequate substitute for democratically elected and accountable politicians..... It is in this difficult political context that we have been dealing with Brexit*".

The economic context in Northern Ireland

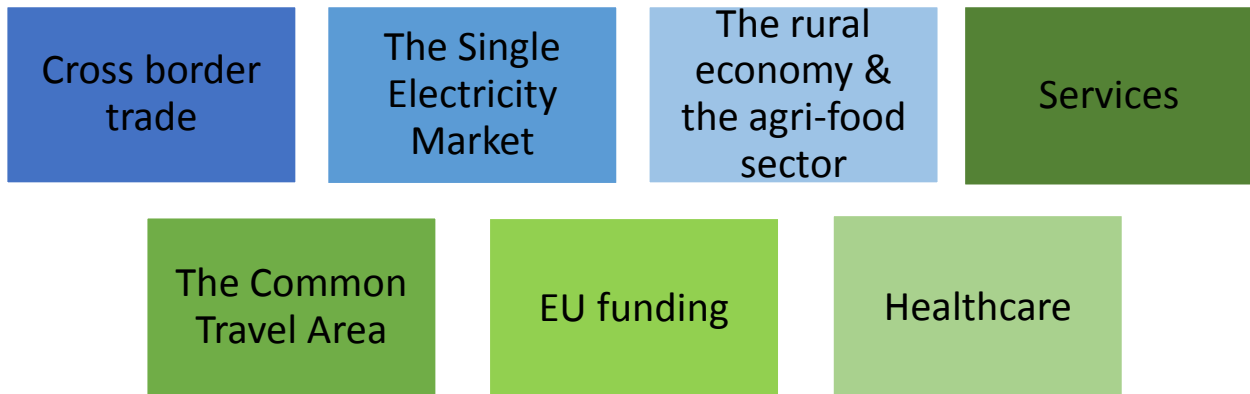
7. Growth in the Northern Ireland economy has stalled over the last year. The economy is still around 6 per cent smaller than it was before the recession struck 10 years ago. In contrast, the UK economy has grown by over 10 per cent since 2008. This leaves the Northern Ireland economy particularly vulnerable to any economic shock arising from the UK's departure from the EU.

¹ *Public Road Border Crossings between the Republic of Ireland and Northern Ireland*, Department for Infrastructure and Department of Transport, Tourism and Sport, June 2018

² <https://www.executiveoffice-ni.gov.uk/publications/letter-prime-minister-rt-hon-theresa-may-mp>

Purpose of this report

8. This report provides a high level overview of some of the key risk areas for Northern Ireland following Brexit, and comments briefly on how the Northern Ireland Civil Service is preparing for the UK's exit. The key areas discussed here are:



Cross border trade

9. Northern Ireland's unique status as the only part of the UK sharing a land border with another EU member state presents some significant and different economic challenges. The Republic of Ireland is Northern Ireland's largest external trading partner. Since the introduction of the Single European Market in 1992 there has been free movement of goods across the border between Northern Ireland and the Republic without tariffs or customs controls. The majority of North-South trade is carried out by micro, small and medium sized businesses. The agri-food sector is particularly significant, accounting for 49 per cent of cross-border trade.
10. Although outweighed by the volume of trade between Northern Ireland and Great Britain, worth £10.5 billion in sales, cross border trade is high volume. Provisional estimates are that Northern Ireland VAT and PAYE registered businesses (in the non-financial and non-farm sectors) made some 758,000 cross border export deliveries to the Republic of Ireland in 2016, estimated to be worth some £3.4 billion to the local economy. In addition there were approximately 410,000 import deliveries in 2015 from the Republic to Northern Ireland businesses, worth nearly £2.0 billion, in the sectors covered by the survey³.
11. The need to avoid a hard border is recognised by all. In their letter of 10 August 2016 the then Northern Ireland First Minister and Deputy First Minister acknowledged the Prime Minister's determination that *"the border will not become an impediment to the movement of people, goods and services"*.

Government objectives following the UK's departure from the EU

12. The UK government's objectives in relation to cross-border trade post-Brexit⁴ are to:
 - avoid a return to a hard border;
 - prevent the creation of new barriers;

³ <https://www.nisra.gov.uk/statistics/eu-exit-analysis/eu-exit-trade-analysis>

⁴ *Northern Ireland and Ireland: Position Paper*, HM Government, August 2017

- agree a time-limited interim period allowing for a smooth transition; and
- avoid economic harm to the Republic of Ireland as an EU member state.

Border arrangements

13. An open border between Northern Ireland and the Republic of Ireland has become an essential feature of life in Ireland. At present, thousands of people cross the border every day for social and economic reasons and goods and services pass between Northern Ireland and the Republic without restriction. As the UK and Ireland are currently part of the EU single market and customs union products do not need to be inspected for customs and standards, but that could change if an exit deal cannot be negotiated.
14. The then First Minister and Deputy First Minister told the Prime Minister that the border '*must not become a catalyst for illegal activity, or compromise in any way the arrangements.....for tackling organised crime.*' Cooperation between the criminal justice systems in Northern Ireland and the Republic of Ireland is well established and seen as essential to security. It is unclear how this will be affected by a hard border. A hard border coupled with any differential in tariffs between Northern Ireland and the Republic would be likely to lead to an increase in smuggling between jurisdictions.
15. In August 2017, the Government set out two broad approaches for a future customs relationship with the EU⁵:
 - a highly streamlined customs arrangement between the UK and the EU, with as few additional requirements on UK-EU trade as possible; and
 - a new customs partnership with the EU that removes the need for a UK-EU customs border.
16. A joint report on 8 December 2017 by the negotiators of the EU and the UK government⁶ recognised the unique challenge posed to the island of Ireland by the UK's withdrawal from the EU, and the importance of protecting commitments given as part of the peace process. The parties agreed that a distinct strand of negotiations was required on this issue. The joint report stated (paragraph 49):

'In the absence of agreed solutions, the UK will maintain full alignment with those rules of the Internal Market and the Customs Union which, now or in the future, support North-South cooperation, the all-island economy and the protection of the 1998 [Good Friday] Agreement...

In the absence of agreed solutions, as set out in the previous paragraph, the UK will ensure that no new regulatory barriers develop between Northern Ireland and the rest of the UK, unless, consistent with the 1998 Agreement, the Northern Ireland Executive and Assembly agree that distinct arrangements are appropriate... In all circumstances, the UK will continue to ensure the

⁵ *Future Customs Arrangements: A Future Partnership Paper*, HM Government, August 2017

⁶ *Joint Report from the Negotiators of the European Union and the United Kingdom on Negotiations During Phase 1 of Negotiations Under Article 50 TEU on the United Kingdom's Orderly Withdrawal from the European Union*, European Commission, 2017
https://ec.europa.eu/commission/publications/joint-report-negotiators-european-union-and-unitedkingdom-government-progress-during-phase-1-negotiations-under-article-50-teu-united-kingdomsorderly-withdrawal-european-union_en

same unfettered access for Northern Ireland's businesses to the whole of the UK internal market.'

17. On 28 February 2018 the European Commission proposed a draft withdrawal agreement. It provided for a common regulatory area comprising the EU and the UK in respect of Northern Ireland and that Northern Ireland be considered part of the customs territory of the EU in the absence of any deal on the future relationship between the EU and the UK. This was emphatically rejected by the UK government.
18. Negotiations remain on-going and, as yet, there is no clear indication in relation to the details of the post-Brexit customs arrangement between the UK and the EU. Neither the UK nor the EU wants a hard border, but finding an agreed solution to the problem is proving difficult:

*'there is principled agreement on a 'backstop' to ensure there is no hard border between the Republic of Ireland and Northern Ireland... disagreement persists, however, over how to convert ambiguous language agreed in December 2017 into mutually acceptable legal text.'*⁷

Key risks

- The imposition of tariffs, such as World Trade Organisation tariffs, would significantly affect trade and the viability of businesses operating in the cross-border environment.
- The return of a physical border with customs checks would have a significant practical effect on day-to-day life in the border area, given the scale of cross-border activity.
- The return of a customs border will increase the risk of illegal activities, such as smuggling.

The Single Electricity Market

19. The Single Electricity Market is a joint wholesale electricity market for the island of Ireland, created in 2007. It operates within the framework of common EU rules on electricity markets and is worth €2 billion. It has helped to reduce prices, improve the security of Ireland's energy supply and facilitated integration of renewable energy, thereby promoting sustainability.
20. The Single Electricity Market is connected to the electricity market in GB through two interconnectors. An upgrade in October 2018 will integrate the Single Electricity Market with European internal electricity markets and introduce new markets which will allow cross-border trading. There is cross-party support in Northern Ireland and the Republic of Ireland to maintain the Single Electricity Market.
21. In their letter, the then First Minister and Deputy First Minister highlighted⁸ that energy is a key priority and spoke of the need to ensure that *'nothing in the negotiation process undermines this vital aspect of our economy.'*

⁷ *Brexit: six months to go*, Institute for Government, September 2018

⁸ <https://www.executiveoffice-ni.gov.uk/publications/letter-prime-minister-rt-hon-theresa-may-mp>

Government objectives following the UK's departure from the EU

22. The Government has spoken of a strong shared desire between the UK and Irish governments and the EU to support the stability of the energy supply on the island of Ireland, central to which is maintaining affordable, sustainable and secure energy supplies.⁹

Options for energy market arrangements

23. The UK government's proposals (see footnote 10) for a new framework relevant to the energy market in Northern Ireland and Ireland include to:
- facilitate the continuation of a single electricity market for Northern Ireland and the Republic of Ireland;
 - facilitate the continuity of interconnections between Ireland and GB;
 - provide certainty on energy arrangements as soon as possible, for citizens, investors and businesses; and
 - agree an appropriate interim period for implementing any changes to current arrangements.
24. The Government published a Technical Notice, *Trading electricity if there's no Brexit deal*, on 12 October 2018.

Key risks

- Failure to maintain the Single Electricity Market would have implications for the security of supply, requiring the construction of new power generating capacity in Northern Ireland which would be inefficient, expensive and only deliverable in the medium to long term.
- If different market conditions were to apply in Northern Ireland and the Republic of Ireland, the Single Electricity Market would become unworkable. Separate markets will be less efficient, with potential effects for producers and consumers on both sides of the border.

The rural economy and the agri-food sector

25. The rural economy is a key part of life in Northern Ireland. As part of the EU Northern Ireland receives £350 million a year in agricultural and rural development payments, around 10 per cent of the UK receipts from the Common Agricultural Policy. Some farms straddle the border and goods being processed may cross the border several times, so common membership of the EU has meant ease of movement and trade in rural border areas. The EU Rural Development Programme has brought communities together and provided a secure basis for economic development.
26. The then First Minister and Deputy First Minister highlighted the significance of the agri-food sector (including fisheries) to the NI economy: *'Our agri-food sector, and hence our wider economy, is uniquely vulnerable both to the loss of EU funding and to potential tariff and non-tariff barriers to trade.'*
27. The agri-food sector spans a wide range of products. The UK government has noted the integrated nature of the agri-food sector across Northern Ireland and the Republic of Ireland

⁹ *Northern Ireland and Ireland: Position Paper*, HM Government, August 2017

and its strategic importance to the economy, with food, beverages and tobacco worth £4.4 billion a year and accounting for 49 per cent of cross-border manufacturing trade.¹⁰ For example, more than ten thousand pigs are exported from the Republic to Northern Ireland every week and a quarter of all milk produced on Northern Ireland farms is exported to the Republic for processing. In the era of 'just in time' processing and manufacturing, disruption to firms that trade across the border is highly likely.

28. Common membership of the EU also means that regulatory measures for agri-food, in particular sanitary and phytosanitary measures to protect humans, animals, and plants from diseases, pests, or contaminants, are the same in both Northern Ireland and the Republic of Ireland. North-South co-operation on agriculture has enabled the island of Ireland to be treated as a single epidemiological unit in operational terms.
29. The sector relies heavily on exports and on migrant labour. For example, the products of 42 per cent of dairy processing and 39 per cent of fish processing leave Northern Ireland. As a net importer of food, the UK industry does not have the same reliance on international markets for its profitability.
30. Around 22 per cent of the workforce in food production comes from EU countries. The work is seasonal and mostly low-skilled. In the absence of any agreement on freedom of movement, there is a significant risk to the sector's access to labour.

Government objectives following the UK's departure from the EU

31. The UK government has stated that the current UK agricultural support budget will be maintained in cash terms until the end of the present Parliament (currently scheduled to be 2022).¹¹ The Government's commitment to avoid a hard border means that an agreed reciprocal solution will be required in relation to sanitary and phytosanitary measures.

The way forward for agriculture and rural development

32. The Department for Agriculture, Environment and Rural Affairs has issued a consultation document seeking stakeholder views on what it sees as the way forward (see footnote 11):
 - It anticipates that direct payments under the Common Agricultural Policy will continue to apply in 2019.
 - Direct support for 2020 and 2021 would operate under domestic legislation, with support funded by the UK Government in line with its stated objective.
 - After 2021, a new policy agenda will need to be implemented over a number of years in order to deliver a managed transition. Ideally this progression would be well sign-posted in advance to provide greater certainty and clarity to farm businesses.

¹⁰ *Northern Ireland and Ireland: Position Paper*, HM Government, August 2017

¹¹ *NI Future Agriculture Policy Framework: Stakeholder Engagement*, DAERA, August 2018

Key risks¹²

- Loss of Common Agricultural Policy funding and significant changes to levels and sources of support.
- Disruption to supply chains and businesses if there is a return to border controls.
- Distortion of markets and possible disruption of supply chains if different standards of regulation apply on either side of a hard border.
- The unavailability of labour if freedom of movement is impeded.

Services

33. Much attention has been focused on the trading arrangements for goods after 29 March 2019. However, Northern Ireland's economy, like that of the UK as a whole, is dominated by the service sector which accounts for around 80 per cent of GDP. Sales of services were estimated to be worth £19.5 billion in 2016: £5.3 billion of this outside Northern Ireland.¹³ The free movement of goods and services is a fundamental element of the EU construct, but there is little clarity on how services will be treated after the UK leaves:

*'The UK Government has committed to unilateral actions to minimise disruption in a no deal scenario, e.g. temporary permissions regimes allowing EU financial services firms to continue operating in the UK for a limited period while seeking UK authorisation... But there are many areas that require EU action, and no guarantee it will reciprocate. This will affect the ability of UK business to operate on the continent. Many will likely need to establish an entity in an EU country to continue trading in the EU... Preparedness notice published on banking, insurance and other financial services as well as telecoms and broadcasting, but little public information for businesses in other sectors.'*¹⁴

The Common Travel Area

34. The Common Travel Area is a special border-free zone comprising the UK, Ireland, the Channel Islands and the Isle of Man. It was formed before either the UK or Ireland were members of the EU and its status is not necessarily reliant on membership of the EU.
35. The Common Travel Area secures reciprocal rights for UK and Irish nationals in relation to freedom of movement, right to work, right to study, access to health and welfare benefits and right to vote. The legal basis for its existence is via UK and Irish domestic provisions, recognised in EU law.
36. Cross-border travel and movements between Northern Ireland and the Republic of Ireland are, for many people, a regular feature of everyday life, to work, study, shop or visit family and friends. Modelled estimates suggest the total number of person border crossings is around 110

¹² *After Brexit: 10 Key Questions for Rural Policy in NI*, Newcastle University, 2017

¹³ <https://www.nisra.gov.uk/sites/nisra.gov.uk/files/publications/BESES-Goods-Services-Publication-2016.PDF>

¹⁴ *Brexit: six months to go*, Institute for Government, September 2018

million annually. In addition, there were around 15.4 million crossings between the Republic and Great Britain by air or ferry transport in 2016.¹⁵

Government objective following the UK's departure from the EU

37. The Government has made clear its intention to protect and maintain the Common Travel Area and associated rights and believes that alignment of the UK and Irish governments and the EU on the matter will allow agreement to be reached.

The future of the Common Travel Area

38. The Government is committed to:
- agreement with the EU that recognises and maintains the ongoing status of the Common Travel Area; and
 - developing a future immigration system that supports preservation of the rights of British and Irish citizens.

However, there is the potential for the Common Travel Area and border arrangements to be abused by people seeking to evade the usual controls on entry to the Republic of Ireland or the UK post-Brexit.¹⁶

Key risks

- If both Northern Ireland and the Republic of Ireland are subject to different rules governing free movement, it may be difficult to retain the Common Travel Area arrangements in their current form.
- Any changes to freedom of movement would impede mobility of workers, with a potential impact on, for example, the agri-food and tourism industries.

EU funding

39. In their letter to the Prime Minister the then First Minister and Deputy First Minister highlighted the importance of EU funding to the Northern Ireland economy: *'Since 1994, NI has benefitted to the tune of €13 billion of funding from Europe and during the period 2014-2020 we would expect to draw down over €3.5 billion.....the absence of EU programmes in the future is of real concern to a range of sectors.'*
40. The Special EU Programmes Body was established in 1999 to administer EU funding programmes for the benefit of Northern Ireland, the border region of Ireland and Western Scotland. Key EU funding streams are¹⁷:
- Northern Ireland PEACE Programme, for reinforcing peace and stability by fostering reconciliation in Northern Ireland and the border regions. Between 1995 and 2013, PEACE programmes allocated €2 billion of funding. The current programme (PEACE IV - 2014-2020) has a value of €270 million; and

¹⁵https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/638137/Additional_Data_Paper_-_Northern_Ireland_Common_Travel_Area.pdf

¹⁶<https://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-7661>

¹⁷<http://www.europarl.europa.eu/news/en/press-room/20180620IPR06242/brexit-northern-ireland-should-go-on-getting-eu-funding-after-2020-say-meps>

- Interreg programmes, for cross-border job creation and transport projects.
41. Further EU funding streams are administered by Northern Ireland departments such as The Department for Agriculture, Environment and Rural Affairs and the Department for the Economy, in particular:
- the European Regional Development Fund, for making small and medium enterprises more competitive;
 - the European Social Fund, for improving skills to reduce unemployment;
 - the European Agricultural Fund for Rural Development, for modernising farms and agri-food businesses. Northern Ireland’s agri-food sector is heavily reliant on EU funding and receives around £350 million each year in agricultural and rural development payments; and
 - the European Maritime and Fisheries Fund, for improving fishing vessels and fish farming.

Government objectives on funding

42. The UK government has proposed that the UK and EU should agree the continuation of funding for PEACE IV for the duration of the existing programme and explore a potential future programme post-2020.¹⁸ The Government has also stated that the current UK agricultural support budget will be maintained in cash terms until the end of the present Parliament (currently scheduled to be 2022).¹⁹
43. In September 2018, the European Parliament approved a resolution that EU PEACE and Interreg funding for Northern Ireland should be maintained at an “adequate” level post-2020.

Key risk

- Loss of some strands of EU funding would have a significant impact, requiring new sources of financial support or abandonment of planned programmes.

Healthcare

44. Health care systems are a matter of national responsibility. In Northern Ireland the Department of Health has a statutory responsibility to promote an integrated system of health and social care. It has identified the following overarching EU exit priorities.

Workforce

45. Workforce issues relate to the mobility, recruitment, retention and professional regulation of health and social care staff. Around 10 per cent of health professionals, associate professionals and caring personal service staff working in Northern Ireland are from outside the UK. Any kind of hard border would obstruct movement of staff, and the end of free movement between the UK and EU would impact on, for example, recruitment and retention of doctors. EU rules currently allow for mutual recognition of professional qualifications, but this may be impacted by Brexit.

¹⁸ *Northern Ireland and Ireland: Position Paper*, HM Government, August 2017

¹⁹ *NI Future Agriculture Policy Framework: Stakeholder Engagement*, DAERA, August 2018

Cross-border healthcare and access to healthcare

46. North-South collaboration in healthcare has evolved in response to patient need, both in border areas and on an all-island basis. Many services are not underpinned by European Regulations, for example, the All-island Congenital Heart Disease Network and the North West Cancer Centre at Altnagelvin are based on inter-governmental agreements between the respective health departments north and south, underpinned by Service Level Agreements. Some cross-border services are funded through EU programmes. Northern Ireland on its own would not be able to maintain such specialised services.
47. EU schemes allow access for EU citizens to healthcare across the countries of the European Economic Area. For example, the European Health Insurance Card is a free card that entitles an individual access to medically necessary, state provided healthcare during a temporary stay (usually holidays) in countries of the EU. It is not yet clear whether such arrangements would continue after the UK's departure from the EU.

Funding issues

48. Health and social care has access to EU structural funds, such as the health priority within the Interreg programme, and European Competitive funds. A priority will be to find replacement funding if these are lost.

Financial risks in relation to non-pay expenditure

49. The Department of Health is actively engaged with health and social care colleagues to understand the implications for non-pay financial costs across the sector.

Conclusion: how prepared is Northern Ireland for leaving the EU?

50. The Head of the Northern Ireland Civil Service has highlighted the role of civil servants in the Brexit process, in the absence of the NI Executive. He emphasised that they are not negotiators, but are providing input to the negotiation process in a number of ways. Key actions are:
 - appointment of a Director General of International Relations to lead on all aspects of Brexit;
 - providing factual and technical input to the UK government negotiating team;
 - conducting research and analysis (published by the Northern Ireland Statistics and Research Agency); and
 - engaging in consultation with key sectors that will be affected by Brexit, including the business community and agri-food and fisheries sectors.
51. Each of the nine civil service departments has established a team to work on Brexit issues, including making amendments to legislation, considering operational implications and working closely with counterparts in London, Edinburgh and Cardiff. Staff have been redeployed across the civil service to work on key areas such as migration, EU market access, future trade policy and energy. A good deal of focus has been on the domestic consequences of leaving the EU in areas such as state aid and competition policy, rural and environmental policy.
52. Much of the engagement with key stakeholders is at departmental level, for example:
 - A Department for Economy stakeholder group for EU Exit was established in June 2017 with representatives from key trade and business bodies. Meetings serve to keep stakeholders

informed of developments, facilitate their engagement with decision makers regarding EU exit, and help businesses prepare for exit.

- The Department of Agriculture, Environment and Rural Affairs established four stakeholder groups (environment, trade and agriculture, fisheries and rural society) to ensure an effective exchange of information and provide a valuable source of industry opinion and expertise. Stakeholders' views have helped shape a high level framework on future agricultural policy.
53. In the absence of certainty around the policy positions of the UK government in respect of the border, trade, customs, migration and the repatriation of powers from Brussels – all matters reserved to Westminster – Northern Ireland's capacity for comprehensive operational planning is severely constrained. Planning to manage the risks in respect of those areas where powers are devolved to the NI Assembly is ongoing. However, in respect of those areas where policy is reserved, Northern Ireland is not well prepared for leaving the EU without a deal. The civil service remains engaged with the UK government to ensure that Northern Ireland's interests are recognised in the negotiations, although without a functioning Executive its influence has undoubtedly been limited.
 54. Negotiations between the EU and the UK are on-going and in the absence of an agreed exit deal, the way ahead on the key issues is far from clear. The UK government's position remains that it will achieve a deal that will mitigate these risks as far as is possible. However, time is running short.
 55. The lack of clarity so far on the shape of an exit deal and a clear way forward inevitably means that Northern Ireland is limited in terms of the practical preparations it can make. It is not fully ready, in operational terms, for a no deal exit. There are also concerns that whatever the outcome, Northern Ireland's capacity to implement any changes necessary may be constrained given the short time available.