

Institution: Newcastle University		
Unit of Assessment: 18 Law		
Title of case study: Mitigating Brexit's Impacts on Northern Ireland		
Period when the underpinning research was undertaken: 2015-2020		
Details of staff conducting the underpinning research from the submitting unit:		
Name(s): Colin Murray, Sylvia de Mars	Role(s) (e.g. job title): Murray (Reader in Public Law), de Mars (Senior Lecturer)	Period(s) employed by submitting HEI: Murray (2006-present), de Mars (2010-present)
Period when the claimed impact occurred: April 2016-December 2020		
Is this case study continued from a case study submitted in 2014? N		
1. Summary of the impact		
<p>The work of the <i>Performing Identities</i> project team addresses how to mitigate the effects of UK-wide constitutional change on Northern Ireland. Ahead of the Brexit referendum, this team were amongst the first academics to highlight the problems that the UK's withdrawal from the EU would pose to Northern Ireland, with a particular focus on the dimension of the rights consequences to Brexit. The team's research has shaped the outcomes of parliamentary committee reports on cross-border trade and Brexit and provided the basis on which Ireland and Northern Ireland's statutory human rights bodies have responded to the challenges of Brexit for human rights protections and the Common Travel Area, informing major developments in these areas of policy.</p>		
2. Underpinning research		
<p><i>Performing Identities</i> is a collaboration between legal academics at Newcastle, Durham and Birmingham Universities. Since 2015 Dr Sylvia de Mars and Mr Colin Murray of Newcastle Law School have worked alongside Professor Aoife O'Donoghue and Dr Ben Warwick to chart how the UK's changing relationship with the European Union and Council of Europe is impacting upon identity and governance in Northern Ireland. The team were able to draw on their expertise in UK constitutional law (Murray), Irish constitutional law, civil and political rights (Murray), economic and social rights, and EU law (de Mars) to provide rapid analysis, focusing upon open-access outlets.</p> <p>The team's first major contribution highlighted how the Conservative Party's Human Rights Act reform proposals gave inadequate attention to the Good Friday/Belfast Agreement's (GFA) human rights requirements. It also emphasised the degree to which the Agreement had taken on constitutional significance within Northern Ireland, even those parts which were not embodied in statute [PUB1]. This issue became closely intertwined with questions over the UK's EU membership, because the UK Government lacked the capacity to simultaneously advance both human rights reform and withdrawal from the EU.</p> <p>The team's expertise led to the Joint Committee of the Irish Human Rights and Equality Commission and the Northern Ireland Human Rights Commission (the GFA mechanism by which Ireland and Northern Ireland's statutory human rights bodies collaborate) commissioning a 40,000-word research paper [PUB2]. This research, presented to the Committee within six weeks of the December 2017 UK-EU Joint Report, addressed how the GFA was a fundamental factor shaping the Joint Report's terms on North-South co-operation, citizenship, equality, human rights and security. It identified fundamental problems with translating the UK-EU Report's commitments into</p>		

legal form (in what would become the Ireland/Northern Ireland Protocol); particularly the creation of multiple classes of rights holder.

The *Discussion Paper* formed the basis for parts of the team's gold open-access monograph unpacking the significance of Northern Ireland for Brexit [PUB3]. This work incorporated the team's research into trade dimensions of Brexit, and particularly the inadequacies of technological solutions to maintaining an all-island economy and existing North-South co-operation, and contextualises Brexit against the political backdrop of Northern Ireland. This work illustrated how the focus on trade had inhibited reflection on how EU law would work in Northern Ireland after Brexit, and explained how some form of special status for Northern Ireland was necessary to prevent the peace process from being undermined.

The project team were amongst the first academics to warn that the Common Travel Area (CTA) did not provide a firm legal basis for personal rights for Irish citizens within the UK after Brexit. In November 2018, they produced another 40,000-word report [PUB4] for the Joint Committee. This combination of archival, documentary research and interviews debunks myths which had hitherto surrounded the CTA (highlighting, in particular its lack of binding international legal protections) and establishes the steps which would need to be taken to transform the CTA into a genuine basis for securing the rights and entitlements of people moving between the UK and Ireland. This work provided the basis for an article by Murray and de Mars [PUB5]. Building upon its relationship with the Joint Committee, the project team produced a further 40,000-word research report tackling the maintenance of EU citizenship in Northern Ireland after Brexit [PUB6].

3. References to the research

The project team have established themselves as world-leading researchers engaging with some of the most complex aspects of Brexit, as evidenced by peer-reviewed funding (an ESRC *Governance After Brexit* Grant worth GBP252,215.26, running from February 2019 to December 2020). Their publications have been through rigorous peer review processes or are tendered pieces of research produced for the Joint Committee of the Irish Human Rights and Equality Commission and the Northern Ireland Human Rights Commission. These publications are supported by seven detailed open-access briefings and policy papers, dozens of blog posts, 14 written evidence submissions to UK Parliament Committees, and a Twitter feed (@performidentity) with over 1,100 followers and 2,500,000 Twitter impressions.

[PUB1] C Murray, A O'Donoghue, B Warwick, 'The Implications of the Good Friday Agreement for UK Human-Rights Reform' (2017) 11-12 *Irish Yearbook of International Law* 71-96. Publication available on request.

[PUB2] C Murray, A O'Donoghue, B Warwick, *Discussion Paper on Brexit* (Joint Committee of the Irish Human Rights and Equality Commission and the Northern Ireland Human Rights Commission, 2018). Publication available on request.

[PUB3] S de Mars, C Murray, A O'Donoghue, B Warwick, *Bordering Two Unions: Northern Ireland and Brexit* (Bristol: Policy Press, 2018). doi.org/10.2307/j.ctv56fh0b

[PUB4] S de Mars, C Murray, A O'Donoghue, B Warwick, *Discussion Paper on the Common Travel Area* (Joint Committee of the Irish Human Rights and Equality Commission and the Northern Ireland Human Rights Commission, 2018). Publication available on request.

[PUB5] S de Mars and C Murray, 'With or Without EU? The Common Travel Area after Brexit' (2020) 21 *German Law Journal* 815-837. doi:10.1017/glj.2020.46

[PUB6] S de Mars, C Murray, A O'Donoghue, B Warwick, *Continuing EU Citizenship "Rights, Opportunities and Benefits" in Northern Ireland after Brexit* (Joint Committee of the Irish Human Rights and Equality Commission and the Northern Ireland Human Rights Commission, 2020). Publication available on request.

4. Details of the impact

The team's research has tackled the challenges human rights reform and Brexit pose for Northern Ireland, both before and after the 2016 referendum, and engaged with all phases of the UK's withdrawal negotiations. The project has made major contributions to public policy, particularly through empowering the work of the Joint Committee:

- UK decision makers have responded to the team's critique of proposals for maintaining frictionless trade between Northern Ireland and Ireland.
- UK and EU decision makers have assimilated the team's findings that the Ireland/Northern Ireland Protocol must address rights and equality issues.
- UK/Ireland Governments have concluded new CTA arrangements under the impetus of the team's research (more than 300,000 Irish citizens live in the UK, 100,000 UK citizens live in Ireland and an estimated 30,000 are cross-border workers on the island of Ireland).

Shaping Brexit trade policy

The team's work has shaped a variety of select committee reports on Brexit and trade. Throughout 2017 and 2018, the project team's research into the impacts of Brexit upon cross-border trade [PUB3] gained considerable attention, with Newcastle researchers making oral submissions to the UK Parliament's International Trade Committee (13 December 2017), EU Committee (7 February 2020) and twice before the Northern Ireland Affairs Committee (13 October 2017 and 13 February 2019).

The 13 October 2017 evidence session (together with a detailed written submission drawn from the team's research) was crucial in shaping the Northern Ireland Affairs Committee's 2018 conclusions that the UK Government had not produced any workable technical solution to administration of customs checks at the Northern Ireland border [IMP1]. The Committee relied on Dr de Mars' evidence to highlight that the impact of EU rules and WTO law would require infrastructure at the Northern Ireland border in the absence of some special legal arrangements for Northern Ireland [IMP1]. Once these realities gained attention in political debate, the backstop became an increasingly prominent (and contested) part of negotiations.

Once the special arrangements covering Northern Ireland were reworked in the October 2019 deal, de Mars and Murray's oral evidence to the EU Committee underpinned much of the Committee report's recommendations; highlighting that the UK Government had undertaken broader international obligations regarding customs processes, "at risk" goods and state aids than had been widely understood [IMP2]. Some twenty paragraphs of the Committee's report drew on this evidence, providing a basis for the Committee's conclusions that there would be trade friction between Northern Ireland and Great Britain as a result of the Protocol, on the potential impact of state aid rules and on the enforcement options available to the EU. This evidence was recognised by RTE's influential Europe Editor Tony Connelly as 'some of the brightest minds in the business' awakening political discourse over the Ireland/Northern Ireland Protocol's implementation [IMP3]. In December 2020 the UK Government moved to agree a redefinition of the scope of state aid rules in response to the issues identified through this evidence [IMP2].

Shaping Brexit human rights policy

In December 2016, the House of Lords' EU Committee relied on the team's research [PUB1] to establish how Brexit would impact UK/Ireland relations [IMP4], as did the Oireachtas Joint Committee on the Implementation of the Good Friday Agreement in August 2017 [IMP5]. In January 2017 the team briefed the SDLP's MPs [IMP6], including drafting parliamentary questions that resulted in the UK Government acknowledging that it would not pursue human rights reform during the Brexit process and that might be obliged to accept human rights obligations under a deal establishing the future UK/EU relationship [IMP6].

The team's work has also shaped Northern Ireland and Ireland's statutory human rights bodies' dealings with the UK and Irish governments (and the EU) on Brexit. The Joint Committee commissioned the project team to produce two Reports to provide the basis of their efforts to

sustain cross-border human rights protections in Ireland after Brexit [PUB2; PUB6]. These Reports have been described by Northern Ireland's Chief Commissioner as 'vital ... for balancing a public narrative that all too often focuses on trade' [IMP7]. The first of these reports provided the 'first significant scholarly exposure of the ambiguities inherent within paragraphs 48 to 52 of that UK/EU Joint Report and their implications for Belfast/Good Friday Agreement and concepts such as parity of esteem and non-diminution of rights', and the statutory rights bodies relied upon it to oblige the UK Government and EU 'to spell out the choices that were being made in terms of rights protections' [IMP7].

This research ensured that the statutory human rights bodies 'had a case that would receive a hearing in the Brexit negotiations', providing the 'forensic detail' necessary to influence these negotiations [IMP7]. Members of the Joint Committee presented the first of these Reports to Michel Barnier, the EU's chief negotiator on Brexit, in April 2018 with the result that a provision was added to the Withdrawal Agreement making the Northern Ireland Human Rights Commission and Equality Commission the 'dedicated mechanisms' for protecting its human rights and equality commitments (Protocol on Ireland/Northern Ireland, Article 2). The Chair of European Network of National Human Rights Institutions has called this provision the 'fruits and proof of the success of this engagement' [IMP8].

Shaping CTA policy

The team's work on the current shortcomings and future stability of the CTA [PUB4, PUB5] has been instrumental in shaping the policy of Northern Ireland and Ireland's statutory human rights bodies, and has shaped parliamentary debate. The team's Report [PUB4] was presented to the Joint Committee in November 2018 and immediately adopted as a basis for a major policy campaign pushing the UK and Irish Governments to clarify and further protect the reciprocal rights extended to each other's citizens under the CTA [IMP7]. Northern Ireland's Chief Commissioner confirms the influence of this research upon the UK and Irish Governments' decision to conclude 'a new Memorandum of Understanding redefining the scope of the CTA and introducing specific legislation covering social security arrangements between the two governments' [IMP7]. This research provided an impetus for formalising CTA relationships which had existed without a published agreement for almost a century. This research was also the primary basis for the CTA section of the Alternative Arrangements Commission Report on Brexit and Ireland/Northern Ireland [IMP9].

The team's research [PUB4] was repeatedly cited in parliamentary debates relating to the Immigration and Social Security Co-ordination (EU Withdrawal) Bill (between February 2019 and September 2020), by both the UK Government as support for the core aims of clause 2 and by opposition MPs seeking to extend the legal protections for Irish citizens in the UK after Brexit [IMP10]. Testimonial evidence confirms that 'peers drew extensively upon the [team's] report [...] to push the Government to confirm that their changes would be in line with its recommendations' [IMP6]. These debates demonstrate a direct link between warnings in the team's CTA research [PUB4] and UK Government policy shifting from a position of discouraging Irish citizens from registering under the EU settlement scheme to a recognition that these 300,000 people 'may wish to apply to the scheme to make it easier to prove their status in the UK in the event that they wish to bring eligible family members to the UK in the future' (HL Deb, Vol. 805, Col. 629 (7 September 2020)) [IMP10].

In summary, public debate 'owes a debt' to the project's 'lucid' research (Tony Barber in the *Financial Times*), which has shaped policy and the role of public bodies with regard to some of the most intractable aspects of Brexit for Northern Ireland [IMP3].

5. Sources to corroborate the impact

[IMP1] Northern Ireland Affairs Committee, *Future of the Land Border with the Republic of Ireland* (2018) HC 329 para. 21, 35, 38, 43, 45, 61, 62, 77, 122, pp. 28-29.

[IMP2] UK Parliament and Government response on the Northern Ireland Protocol (2.a: EU Committee, *The Protocol on Ireland/Northern Ireland* (2020) HL 66 para. 42, 63, 102, 132, 133, 166, 190, 191, 201, 224, 229, 238, 239, 240, 249, 257, 296, 299, 310, 318; 2.b: Statement by Michael Gove to Parliament on the outcome of the Joint Committee on the implementation of the Northern Ireland Protocol as part of the Withdrawal Agreement with the European Union).

[IMP3] Media Report (3.a: Tony Connelly, 'EU and UK are poles apart on the Irish Protocol' RTE (15 February 2020); 3.b: Tony Barber, 'Northern Ireland tensions threaten to derail long-term EU-UK deal' *The Financial Times* (5 May 2020).

[IMP4] European Union Committee, *Brexit: UK-Irish Relations* (2016) HL 76 p.12.

[IMP5] Joint Committee on the Implementation of the Good Friday Agreement, *Brexit and the Future of Ireland* (August 2017, 32/JCIGFA/02) pp. 112-117.

[IMP6] Testimonial from Member of Parliament for South Down, 2010-2017, Life Peer of House of Lords, 2019-Present.

[IMP7] Testimonial from Chief Commissioner of Northern Ireland Human Rights Commission regarding commissioned/tendered research (6 Apr 2020).

[IMP8] Testimonial account from the Chair of European Network of National Human Rights Institutions regarding commissioned/tendered research (22 Apr 2020).

[IMP9] Prosperity UK, *Alternative Arrangements Commission Report* (2019) pp. 61-65.

[IMP10] Collection of UK Parliament Debates on the Common Travel Area relating to **[PUB4]** (10.a: House of Commons Debate (26 February 2019); 10.b: House of Commons Debate (11 June 2020); 10.c: House of Commons Debate (30 June 2020); 10.d: House of Lords Debate (7 September 2020)).