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# Brexit and public services in Northern Ireland

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## Introduction

In voting to leave the EU, British electors delivered a considerable political shock on 23 June 2016. Both those choosing to leave and those wishing to remain agree that existing constitutional principles, institutional structures and international relationships have been destabilised. It is also apparent that leaving the free trade area and customs union provided by EU membership will create significant challenges for UK manufacturers and service providers. Brexit's economic challenges will occur at a time when UK public finances are still recovering from the 2008 financial crisis. Health and social care services, policing and local government services are not areas of EU competence, and might therefore have been expected to experience only lesser ripple effects from the major constitutional and trade shockwaves that Brexit will create. This is increasingly looking to be a rather optimistic supposition for the UK as a whole, and Northern Ireland in particular.[1]

[1] This article has been informed by the opportunity to interact with the civil servants, diplomatic staff, and leaders in public services and professional bodies who took part in a Brexit seminar series covering the UK and the Republic of Ireland. The seminars were made possible by an Economic and Social Research Council fund held by the University of Glasgow. See Impact Brexit at https://www.gla.ac.uk/research/az/brexit/presentations/

Leaders of key public service – the National Health Service (NHS) and social care, police and local government – are used to dealing with uncertainties, but not on the scale created by Brexit. Different dimensions of uncertainty will be revealed as the process unfolds (Courtney et al., 2001, pp. 1–32). The need to be seen to act appropriately, decisively and authoritatively means leaders are reluctant to acknowledge they don't know what is going to happen (Mowles, 2015, pp. 4–6). An inability to reduce or manage uncertainty also suggests opportunities will be missed during the disruption. Currently, leaders do not know how the multiple factors they are identifying as significant will interrelate (Smithson, 2008, pp. 13–26).

## Types of uncertainty

It is useful to categorise three types of uncertainty emerging around Brexit:

- Type I – identifiable outcomes for which data may already be available and analysis of impacts made.
- Type II – multiple identifiable outcomes are possible. Gathering relevant data and conducting analysis of possible impacts are made more difficult due to a lack of previous knowledge regarding certain possibilities.
- Type III – possible outcomes are not currently identifiable on the basis of a trusted model of how different drivers will interplay.

Leaders are used to dealing with Type I, where the relevant variables pertaining to risk and opportunity drivers are known but not always quantified. Relevant data need to be collected in a timely fashion to aid forecasting and decision-making.

Brexit is producing a different type of uncertainty. For example, is the NHS's future going to be marked by the discontinuation of free movement to the UK, meaning the supply of EU27 ends or alternately recruitment remains open on the basis of a post-Brexit agreement? The eventual future may instead lie somewhere in between these positions – recruitment continuing but constrained by a priority occupation system as used for 'rest of world' recruitment at present. Identifying the range of tasks to be dealt with and estimating the available capacities to respond in any detail are hard in this circumstance of multiple possibilities, whose likelihood of occurrence is difficult to predict. This is Type II uncertainty.

Difficult as they might be, Types I and II refer to 'known unknowns' – where public service leaders can see the possibilities (Delaney, 2008). There are also 'unknown unknowns' to be considered – Type III uncertainties, where the structure of problems are unknown and there is consequently no solid model to employ with respect to identifying and measuring key drivers (Heald et al., 2014).

It is likely that Brexit is generating unknown unknowns, although this will only be confirmed in retrospect. Walking away from negotiations altogether implies major levels of Type III uncertainty. The economic consequences of new trading terms for public spending, abandonment of laws and regulations on which the delivery of services are based, exclusion from key EU institutions, an end to free movement and a restructuring of social citizenship rights for remaining migrant workers may cause events unimaginable in advance of occurrence, because the circumstances of multiple simultaneous change do not correspond to past experiences or investigation. This is particularly evident with respect to Northern Ireland, where, for example, unanticipated public opinion shifts in a country divided on ethno–religious lines may have consequences for the Police Service of Northern Ireland (PSNI), reliant as it is on securing consent. These are not 'business as usual' circumstances, causal pathways are unknown and the lack of 'firm ground' for policies makes the institutionalisation of uncertainty very difficult (Nowotny, 2015, pp. 120–4). The 'nothing is decided until everything is decided' basis of the negotiations means that the usual confirmation/disconfirmation of possibilities, whereby uncertainties are steadily eliminated, is not taking place.

## Northern Ireland's key public services – managing through uncertainty

Without straying too far into speculative territory the sources of numerous potential shocks, challenges and opportunities can usefully be differentiated as follows:

- the financial consequences of Brexit;
- EU legal obligations and institutions;
- EU workforce dependency in key public services;
- the sequencing of the Brexit negotiation process and the settlement of the border issue with the Republic of Ireland (ROI).

A review of the problems and opportunities framed in terms of different types of uncertainty is presented below.

## The financial consequences of Brexit

All tax-reliant public services face the funding supply uncertainty associated with post-Brexit economic conditions (CIPFA, 2017). A Brexit effect on levels of economic activity, employment and tax-generated revenues is inevitable, although accurate causal attribution will be hard to pin down. The UK's actual post-Brexit relationship with the EU will influence the amount of money redeemed out of current membership costs. The amounts available are subject to Type I uncertainty, but to gain a sense of perspective, total EU expenditure was €136 billion in 2016, which is less than the sum spent annually on the NHS across the UK (European Commission, 2018). Although the EU budget has grown considerably since the UK joined, it is still small in comparison with national government expenditures. This is highly significant when claims regarding membership contributions are used in political arguments (Dayan, 2017). The sums involved are not large enough to fund a public services spending spree.

The implications of different levels of funding can be estimated on the basis of recent experience with fluctuating resources during austerity. Table 1 shows spending levels for the NHS, PSNI and local authorities in Northern Ireland.

**Table 1: Northern Ireland during austerity – spending 2011–16 (£m)**

| | *2011–12* | *2012–13* | *2013–14* | *2014–15* | *2015–16* |
|---|---|---|---|---|---|
| NHS | 3,595 | 3,639 | 3,844 | 3,871 | 3,912 (+9%) |
| PSNI | 957 | 917 | 899 | 911 | 820 (–14%) |
| Local authorities | 558 | 557 | 571 | 575 | 586 (+5%) |

*Source:* HM Treasury (2017).

### *Health*

The data indicate that the NHS attracted 9 per cent more funding between 2011 and 2016. This is significantly less than the generally assumed 3 per cent annual increase needed to 'stand still' in terms of volume of care due to pressures associated with demographics, changing patterns of demand, and adoption of new drugs and technologies.

Certain Brexit outcomes may significantly reduce the number of EU citizens in Northern Ireland, implying lower demand for services. The average use of health services by immigrants appears to be lower than that of UK subjects. Immigrants are, on average, younger, or maybe some return to their country of birth for treatment, perhaps explaining the difference in circumstances. This constitutes Type II uncertainty, where a range of outcomes need to be recognised and estimates produced to assess potential pressures and opportunities. The health care of returning UK subjects in the post-Brexit era also needs to be factored into demand forecasts. About 1.2 million British migrants live in other EU countries. UK subjects currently living elsewhere in the EU, mainly Spain and France, may well be older than average, with age-related demand patterns implying greater pressure on services. The net effect of Brexit is again hard to predict.

***Police***

Police services have suffered heavily from cuts to public expenditure, as shown in Table 1. Police service expenditure in Northern Ireland declined by 14 per cent between 2011 and 2016, with the number of officers reducing by 6 per cent (House of Commons Library, 2018). The cuts thus far have had less impact on crime levels than feared but this has been the case when public order incidents have been relatively infrequent. Type II uncertainties exist because the longer-term relationship between spending on policing and levels of crime cannot be taken for granted in the Northern Ireland context, where political violence is a threat. Certain Brexit outcomes imply more work for the PSNI, particularly if the maintenance of a significantly harder border between Northern Ireland and the ROI/EU is required. Type II uncertainty around cost estimates will exist until the range of roles expected of the PSNI are defined. The Northern Ireland share of the cost of developing and operating new data systems to replace those lost if excluded from membership of key EU institutions also needs to be considered. This is another Type II uncertainty.

***Local authorities***

Table 1 indicates that the Northern Irish local authority experience of austerity has been less severe compared with the rest of the UK. They have been, in real terms, at a budget standstill. Brexit may present challenges, particularly since Northern Ireland's local authorities are

significant players in the use of EU funding, including the unique PEACE Programme for NI and INTERREG borders programme (Research and Information Service, 2011). The sums of money involved are not particularly large: a typical local council may receive around £3 million over seven years from PEACE IV. Adjusting to the loss of EU funding or its partial replacement generates Type I uncertainty. However, PEACE funding is also attractive beyond its immediate monetary value, enabling projects that would not otherwise be undertaken and giving local authorities skills in multi-sector, multi-level partnerships (SEUPB, 2016). EU funding is a significant focus for the exercise of local democratic control over infrastructure and community development in a historical context, where the local authority role has been constrained after housing and education services were removed during the 'Troubles'. With 80 per cent of a local authority's budget typically spent on waste management, sport and recreation, the broadening of scope facilitated by the EU has been welcome (NILGA, 2014).

The Northern Ireland Local Government Association (NILGA) has campaigned with its English, Welsh and Scottish partners to extract a commitment from the UK Government to ring-fence sums equivalent or greater than the money allocated from the EU in 2014 to 2020. Encouragingly for Northern Ireland's local authorities, the UK proposed, in a position paper, the continuation of funding for PEACE IV for the duration of the existing programme, with the Northern Ireland Executive and Irish Government exploring the potential for a future programme post 2020 (Northern Ireland Office and Department for Exiting the European Union, 2017). The *Joint Report*, which concluded Stage I negotiations, also indicated a wish to continue with a new version of PEACE (European Commission, 2017).

With disruption can come opportunity, and accordingly CIPFA (2017), the public sector accountancy body, is seeking a commitment from the UK Government to replace what it considers to be overly restrictive rules around EU funding with a system that provides greater local discretion over the use of resources to stimulate regional development. A similar opportunity exists in Northern Ireland, which could potentially enhance the role of local democracy. A possibility exists to make gains from a Type II uncertainty over a range of possible outcomes.

## EU legal obligations and institutions

### *Law*

The implementation of Brexit will involve substantial legislative enactment where EU law no longer applies to the UK. Law is a central definer of the environment in which public services operate and includes not only service-specific UK legislation but also generic laws, many of which have a strong EU element. Such laws cover employment, discrimination, competition and public procurement. The multinational character of the UK state, with devolution of powers to Scotland, Wales and Northern Ireland, adds more complexity to the process of rejecting, replacing or adapting EU law. Changes to the legal basis of operating environments imply new compliance work for key public services. The timing of completion of this work is still unclear. The UK is also leaving or renegotiating ties with important EU institutions, some of which have significance for particular public services. Legal and institutional Type II uncertainties over the range of possible outcomes comprise a significant challenge.

Many politicians and business and public service leaders wish to see specific EU-inspired laws changed. The Leave campaign focused heavily on the 'anti-business' burdens of EU legal obligation. Rejecting EU labour law offers a source of economic gain for both private and public organisations if restrictions and obligations are dropped. For example, local authority or social care organisations might reduce labour costs in the absence of existing requirements on gender equality, working time and the Social Charter, with its guidelines on conditions and rules relating to minorities. Relinquishing obligations to persons employed under part-time, agency and temporary contracts might mean lower wage bills. Opportunities are currently subject to calculations derived around estimates for a range of Type II uncertainties.

Since EU procurement directives have already been incorporated into UK law, changing current rules is unlikely to be a short-term priority. In the future, released from EU procurement obligations, public services could source locally. The possibility of 'local procurement' in Northern Ireland – where, for example, a local authority commits to a tendering process which excludes non-local suppliers – represents an opportunity, but one which carries a degree of uncertainty for the wider economy. The ability of the Northern Irish state to regulate local procurement is also something of an unknown, with possible unforeseen consequences for the guarantee of fairness of opportunity.

In ceasing to be party to the European Working Time Directive (EWTD) a potential source of opportunity arises to fill near-critical gaps in the Northern Irish health and social care labour forces, through paying staff to work longer hours than currently allowed (House of Commons Health Committee, 2017). In the NHS this might be of less significance because of the existing practice of doctors 'opting out', as they have been allowed to under the terms in which the UK recognised the EWTD. Also the new English junior doctors contract was framed around the EWTD, making it unlikely that the Northern Ireland Government will risk deviating from this position.

Brexit releases the UK from obligations under directives that give EU27 citizens free at-point-of-use access to the NHS. This is an important element of social citizenship rights and thought to be of relevance to migrant workers (Greer, 2009, pp. 175–96). The impact that removing migrant social citizenship rights would have on spending in areas such as health care and education is difficult to predict, creating Type II uncertainty. Withdrawal of service rights for Irish people resident in Northern Ireland is a significant issue, since the border historically never presented any such denial of access. (The issue is discussed further in relation to the Common Travel Area below.)

European Economic Area (EEA) citizens are entitled to hold a European Health Insurance Card (EHIC), providing access to medically necessary, state-provided health care during a temporary stay in another EEA country on the same charging basis as residents of the relevant country. The EEA free trade zone includes all EU member states plus Norway, Iceland and Lichtenstein (Swiss citizens are also insured under the agreement). UK membership of the EEA after Brexit seems an increasingly unlikely possibility. The UK Government may try to negotiate new EHIC-type reciprocal agreements with the EU bloc as a whole or on a country-by-country basis. Administration costs associated with more intensive checking, authorisation of access to the services and billing of home countries could be significant (Nuffield Trust, 2017). For the Northern Irish NHS, an agreement with the ROI over access is particularly important. A Type I uncertainty exists where the possibility of starting to calculate costs is held back by lack of endpoints on which to base a formula.

### *Health institutions*

The principle of subsidiarity is extremely important in the EU's historical relationship with health policy. Member states still have

responsibility for the organisation and delivery of health services, but Article 152 in the 1992 Maastricht Treaty signalled the EU's intention to pursue a stronger role in public health policy (Azzopardi-Muscat, 2015; Hunter, 2003, pp. 152–3; McKee & Mackenbach, 2013). A period of institution-building followed, creating the health directorate DG SANCO in 1999. Now known as DG SANTE (Health and Food Safety), its remit includes public health.

The EU also supports a number of agencies which have a role related to public health, most notably the European Centre for Disease Control and Prevention (ECDC) and the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA). Their influence is questionable. During the 'swine flu' pandemic (H1N1) of 2008 the World Health Organization and member state governments were recognised to be more influential than the ECDC in directing policy (Luteijn et al., 2011). While illicit drugs were first mentioned in the Amsterdam Treaty of 1993, policies are still dominated by the preferences of member states (Chatwin, 2013). The extent to which public health efforts in Northern Ireland are reliant on EU institutions is not clear but may become evident after Brexit. There is Type II uncertainty over sustaining, losing or replacing existing institutional ties in the public health field.

The EU harmonised medicines regulation throughout the twenty-eight member states, and in this respect Brexit has significance. The European Medicines Agency (EMA) regulates human and veterinary medicines developed for use in the EU and is currently based in London, but will move to Paris after Brexit (Timothy, 2017). At present a UK pharmaceutical firm submits a single application to the EMA to obtain a marketing authorisation that is valid in EU, EEA and European Free Trade Association (ETFA) countries. The UK has its own national regulatory agency, the Medicines and Healthcare Products Regulatory Agency, which can authorise drugs intended only for the UK. The Life Science Industry Coalition (2017) believes the NHS may face longer waiting times to access new drugs if the UK loses EMA membership.

Another significant problem presents with losing membership of the EU-based European Atomic Energy Community (EURATOM). Nuclear technology is used extensively in the diagnosis and treatment of cancer. Significantly, radioisotopes cannot be produced in the UK at present and NHS access depends on the EURATOM supply agency (Law Society of Scotland, 2017). EMA and EURATOM membership is as significant for Northern Ireland as for the rest of the UK. The

absence of clear proposals that carry support on both sides of the Brexit negotiations creates Type II uncertainty. There is a danger of Type III uncertainty if there is a breakdown in negotiations.

***Policing institutions***

In operational terms Brexit presents a lengthy list of issues for UK policing. UK criminal justice is more closely linked to the EU than generally perceived. In 2014, following debates in Parliament, the UK opted into thirty-five EU police and criminal justice measures (House of Lords European Union Committee, 2016). The UK police now regularly utilise an extensive institutional apparatus with a basis in EU cooperation. The EUROPOL system gathers, analyses and shares information used to coordinate operations. Significantly, the UK uses EUROPOL more than any other member state. Police leaders see diminished membership status as inadequate for both the UK and the EU27. EUROJUST coordinates serious crime investigation and prosecution across EU member states. Associated translation and legal advice are considered significant assets, along with JITs (joint investigation teams). Available to all UK police officers, staff and law enforcement agents, SIS II (Schengen Information System) is a pan-European database, communicating real-time information between participating countries. The European Arrest Warrant system, which the UK joined in 2015, means individuals wanted in relation to significant crimes can be extradited between EU member states to face prosecution or to serve a prison sentence for an existing conviction. ECRIS (European Criminal Records Information System) records convictions in member states, ensuring information can be exchanged in standardised formats to meet short legal deadlines.

The UK Government published a position paper which expressed a desire to retain links with EU institutions rather than replacing police cooperation instruments with bilateral agreements negotiated with individual countries (HM Government, 2017). Type II uncertainties exist over the costs and effectiveness of a range of renegotiated systems of cooperation. There are also a range of unknown outcomes that new arrangements may have on policing capabilities in Northern Ireland, constituting Type II uncertainty.

In addition to membership of EU-based criminal justice institutions, there is of course a long-standing issue over the sharing of policing information between the PSNI and An Garda Síochána, which has political as well as operational significance given the history of the Troubles. Progress could be compromised by a particular type

of Brexit settlement necessitating a hard border with the ROI. This is a significant concern for the PSNI, who will hope a lengthy history of cooperation with the Gardaí minimises exposure to Type III uncertainty.

***Local authorities***

Brexit will mean adjustment of local authorities' existing roles in ensuring compliance with EU regulatory practices in areas including environment, building control and bathing waters. In Northern Ireland the local authorities are not social care providers, a sector employing large numbers of EU citizens in the rest of the UK. Local authorities are networked into the EU in various ways and any loss of benefits needs to be examined and addressed if possible. At present, local authorities face Type I uncertainty over regulations and institutions, which can be expected to diminish as work proceeds.

***Workforce dependency on EU27***

The EU's policy of freedom of movement and mutual recognition of professional qualifications means that many health and social care professionals currently working in the UK are from other EU countries. This is thought to include around 60,000 of the NHS's 1.4 million workforce and 90,000 of the 1.6 million workers in social care (House of Commons Library, 2017a). The changing nature of service provision has resulted in staff being employed by multiple organisations in primary and community care where the presence of agency and bank staff, and independent and voluntary sector providers makes accurate calculations difficult (McKenna, 2017). In attempting to gauge the degree of exposure to a discontinuation of freedom of movement, the House of Commons Health Committee discovered that data relating to individual hospitals or care organisations were largely unobtainable (House of Commons Health Committee, 2017). NHS Digital (2018) has subsequently made available data on nationality, broken down by professional groupings/specialities and hospitals and primary care organisations. Progress has been made in the area of social care too, with data on the numbers of EU nationals working in each English local authority area classified by role now available (Skills for Care, 2018).

The Northern Irish health and social care system is likely to be more exposed to Brexit effects than the rest of the UK as a consequence of having a land border with an EU27 country, whose citizens have a long history of joining the workforce as migrants or

cross-border workers. It is also the case that in Northern Ireland no progress has been evident in respect of collecting relevant data on nationality, meaning Type I uncertainty over the workforce risk remains. The Royal College of General Practitioners (2017) estimated in May 2017 that 11 per cent of general practitioners in Northern Ireland are EU27 citizens, which gives an indication of the possible scale of the problem.

In response to a Freedom of Information request, the Southern Health and Social Care Trust (2017), whose area of operation runs along the ROI border counties of Louth and Monaghan, published data on staff nationalities derived from responses to Equal Opportunities Monitoring requests. Out of a staff count of 12,521 some 2,493 (20 per cent) declared themselves to be Irish. This figure includes 191 doctors (22 per cent of total), 684 nurses (21 per cent of total) and 49 midwives (17 per cent of total). The data need to be treated very cautiously as only 45 per cent of staff responded to the nationality request made in 2017. It is unclear whether staff declaring as Irish are resident in the ROI, are resident in Northern Ireland, were born in the ROI or were born in Northern Ireland, or are in some other category related to self-identification as Irish. The reported numbers of EU member state staff other than those linked to the ROI were very small, only 60 in total, representing 0.4 per cent of the staff count, suggesting they tended disproportionately not to respond. In terms of data quality the figures provided are inadequate for contingency planning purposes, highlighting the need for a mandatory review of staffing characteristics in the NHS and social care sectors. The absence of an Assembly in Northern Ireland has meant there are fewer opportunities for elected representatives to make demands for information, as happened in the House of Commons regarding the English NHS.

Uncertainty around workforce nationality is compounded by the fact that the NHS is already struggling to recruit and retain permanent staff. The Royal College of Nursing in Northern Ireland (2017) estimated there were over 2,000 nursing vacancies in the NHS and community care sector, representing 6.9 per cent of the funded workforce. The NHS in Northern Ireland is in a struggle to sustain services, as is the case in the rest of the UK (House of Lords, 2017). A reluctance by clinicians to make career choices that involve the NHS is likely to be exacerbated by a lengthy ‘transition period’ where the future status of EU27 citizens is not clear. This implies a workforce attrition problem for the NHS.

Local authorities may also experience EU27 staffing problems but in Northern Ireland the local authorities are not major players in social care, as is the case in England, and they are less dependent on recruiting staff with specific qualifications. The PSNI has at present a lengthy waiting list of applicants to join, so EU27 staff dependency is not a major issue for them.

## The border negotiations and time

In addressing Brexit uncertainty the negotiation process is itself significant, since its timing sequence impacts on the viability and continuity of key public services (Gordon & Sutton, 2017, pp. 24–6). This is particularly pertinent to the issue that the border with the ROI may present. 'Negotiating about negotiations' consumed all of 2017, with Stage I of negotiations, beginning in March 2017, being largely confined to the unfunded obligations 'divorce bill', freedom of movement and the UK–Irish border. This resulted in the *Joint Report* of December 2017 (European Commission, 2017). Future partnerships will be addressed in Stage II negotiations, which should begin later in 2018. The recent European Council (2018) meeting of 28–9 June provided little encouragement that negotiations will coalesce around mutually acceptable endpoints before the end of 2018 at the earliest, if at all. This is particularly difficult for public services, who unlike businesses have no relocate option. While business leaders risked taking decisions on contingencies until the beginning of the 2018 financial year, public services needed to be making plans much earlier (House of Commons Treasury Committee, 2017; Institute of Directors, 2017).

The parallels between the decade-long negotiations to join the EEC in 1972 and the current Brexit negotiations are striking (Ludlow, 2017). The original six member states conceded little in the way of recognising the UK's 'special interests' such as trading and social links with the Commonwealth countries. In spite of the obvious mutual economic benefits of recruiting the UK to the EEC, the six held together around the principle that all agreed rules had to be accepted with no exceptions to suit the tastes of new members.

### *The border and health and social care services*

The 300-mile Irish border is a key issue in Brexit negotiations (House of Commons Exiting the European Union Committee, 2017, pp. 21–3; House of Lords European Union Committee, 2018, pp. 23–25).

Historically, no border-related employment rules have applied, and frictionless recruitment of staff from the 'other side' is a significant benefit for existing service providers in the ROI and Northern Ireland. Given services in the ROI also suffer staff shortages, guaranteeing rights to work in the UK will not be enough to avert resignations, unless practical means are found to avoid time-consuming, check-heavy crossing procedures for staff who the EU will classify as 'frontier workers'. Norway and Sweden provide examples of how technology reduces friction, and the border between France and Switzerland, which is not a EU or EEA member, has not prevented the employment of large numbers of frontier workers by Swiss employers, indicating that solutions can be found (Karlsson, 2017). However, as of the European Council of 28–9 June 2018, the EU has signalled no intention to contemplate suggested border schemes brought forward by the UK Government in negotiations. In these circumstances Type II uncertainty over multiple possible outcomes dominates.

There is a degree of reliance by both Northern Ireland and the ROI on a system of sharing access to specialist services across the border (BMA Northern Ireland, 2018; Northern Ireland Confederation for Health and Social Care and NHS Confederation, 2017; Research and Information Service, 2016, pp. 8–9). The network for children's heart disease that links diagnostic services across the island and allows referrals to specialist cardiology surgery in Dublin solves the problem of Northern Ireland's small population numbers, which makes local provision unviable in terms of quality and safety. A number of hospital services in the NHS's Western and Southern Health and Social Care Trusts are available on a cross-border basis, including renal, ENT, GUM and urology. Cancer treatment services located in Derry offer access to Irish patients resident in Donegal and Sligo. Both the Northern Irish and ROI health systems can adapt to new border rules but require some policy-enacting lead time. This is a Type I uncertainty – a problem where the acquisition of known data sets and analysis can aid decisions. The implementation of new systems will carry problems, but past experience of cooperation would suggest they would be manageable.

***Policing***

The police do not face the same workforce problem as the NHS. The likely response to a hard Brexit involving a conventional border with the ROI would be to use existing officers in border-related roles and fill their current roles with new recruits, who can be expected to be operational after about six months' basic training.

However, when the 'bigger picture' is considered the PSNI faces potentially the biggest border-related task. A post-Brexit border with the ROI may require the PSNI to provide major new support to Border Force, UK Visas and Immigration, Immigration Enforcement, and HM Revenue and Customs, enforcing heavier controls and compliance requirements on exporters, frontier workers and visitors. On the other side of the border a similar task faces the Gardaí. A softer Brexit eliminates many problems but there will still need to be a 'Border Police Service', with associated funding, staffing and training issues. The costs are likely to be significant. Unusually close cooperation will be required between the PSNI and the Gardaí in establishing consistent principles and practices in training officers. The PSNI face Type II uncertainty for the rest of the Brexit negotiation period unless the border issue is settled on a specific model. Additionally, there is the history of political violence in Northern Ireland and the symbolic importance of the border with the ROI to be reckoned with. A hard border may provide a target for terrorist activity, creating a source of Type III uncertainty where events could move in ways currently unthinkable.

***The Common Travel Area***

Some commentators on Brexit and Northern Ireland have assumed a solution is already available in the form of the Common Travel Area (CTA). Dayan (2018) writes in respect of the problem of securing the rights of ROI citizens to work in the NHS in Northern Ireland:

> Some security for them to stay, and for more to follow, should be given by the commitment to continue free circulation of people between the UK and the Republic through the Common Travel Area.

The EU has previously set aside the normal regulations and codes set out in EU law in order to recognise the circumstances of certain border areas. A flexible response might therefore involve adaptation of the CTA to post-Brexit relationships with EU27, of which the ROI will be a member. The CTA has its origins in 1922, immediately prior to Irish independence, when the British and Irish Governments wanted a scheme for immigration which would avoid patrolling the long border between what was to become the Free State and Northern Ireland, while also giving Irish workers access to the UK labour market (House of Commons Library, 2017b). The term CTA is

something of a misnomer, its significance extending beyond immigration and travel. In effect, the Irish are not treated as foreigners when present in the UK on either a temporary or settled basis. The CTA is better understood as a reciprocal extension of political and social citizenship.

The Stage I Joint Report (European Commission 2017, para. 54) indicates that the CTA might provide a basis for avoiding hard border consequences, but offers no indications as to how it can be adapted without 'affecting Ireland's obligations under Union law, in particular with respect to free movement for EU citizens'. While the UK will be free to adopt whatever approach it likes to accommodate Irish residents and border workers, the ROI may be prevented by the EU from offering British citizens reciprocal preferential treatment. It is also reasonable to expect other EU member states to seek assurances that entry into the ROI from the UK would not become a back door to the EU. Had the ROI not joined the EEC at the same time as the UK, the border and CTA issues currently evident would have manifested in the 1970s.

### *Time*

While a level of certain goodwill may exist, common political and economic interest over the border does not extend into mainland Europe. A conventional border between the ROI and Northern Ireland may be an outcome that the bloc can live with comfortably. Disturbingly, the negotiation process seems to be engineered to delay resolution of the problem until the end, if indeed there is a conclusion to negotiations. Currently, there is little basis to make contingency plans, let alone resolve anticipated problems. With so little progress made on the border a difficult transition phase must be anticipated, carrying with it the prospect of having to deal with Type III uncertainty, where problems emerge unexpectedly because of a confluence of ill-understood forces.

## Discussion and conclusions

The analysis presented has employed different categories of uncertainty to highlight the multidimensional nature of the problems facing key public services. It is important to learn from the Brexit experience to date and suggest where remedies to continuing uncertainty may lie.

Political leadership is absent in Assembly-suspended Northern Ireland; however, the experiences of the Scottish and Welsh Governments indicate significant problems in coordinating multi-government responses to Brexit, exposing flaws in post-devolution relationships that were lying dormant. The Joint Ministerial Council (JMC) created in 1999 is chaired by the Prime Minister and attended by heads of devolved governments. It also has a set of subcommittees involving ministers from the UK and devolved governments. The JMC is a 'consultative' body that is apparently only used when the UK Government sees fit (Institute for Government, 2017). Its Europe Negotiations Sub-Committee is unlikely to resolve public service uncertainties specific to Northern Ireland. While the committee initially met monthly after the referendum, it failed to meet at all between February and October 2017 and there is little to suggest it can be the political institution that provides for deep coordination of Brexit responses across the UK, to include areas of concern for key public services in Northern Ireland. History suggests public-service-specific work is unlikely to feature specifically in JMC business. The health subcommittee met five times between 2000 and 2002 but has not been reconvened since. The Welsh Government favours a new Council of Ministers with legitimacy and powers fit for Brexit purposes (Welsh Government, 2017). For the foreseeable future practice, the JMC with its evident inadequacies will remain in place.

Brexit is also making it apparent that relationships between Whitehall departments and their counterparts in the devolved countries have never been codified. Departments focused on the health, justice and local authority services in the devolved countries frequently take leads from their Whitehall counterparts but this is a part of intergovernmental relations which has no clearly identified constitutional basis. A reliance on professional networks appears to have provided sufficient coordination until Brexit. Imminent reform cannot be anticipated, further contributing to the atmosphere of uncertainty.

If key public services are to be protected during Brexit negotiations by Whitehall departments then it is pertinent to ask how much specific attention Northern Irish issues will receive? The 2017 UK budget included an announcement of a £3 billion fund to be spent over the following two years on Brexit. The sums committed are not particularly large, it could be argued, given the size of the potential task. The Institute for Government was pessimistic concerning the extent of Whitehall preparation in a recent report (Owen et al., 2018).

The process of preparation, which involves assessing likely consequences on the basis of plausible premises, needs to be seen to move beyond Whitehall at some point and involve public service leaders. This is all the more significant because, in spite of the difficulties identified, Brexit disruptions may create unintended opportunities for public services in Northern Ireland. It can be argued that uncertainty needs to be embraced and exploited, which will require an endorsement of leadership in key public services. For example, in Northern Ireland the NHS recruitment problem may become critical if Irish or other EU27 staff leave the service in high numbers. A dependency on recruitment of overseas clinicians could be abandoned in favour of home-trained workforce sustainability. Northern Ireland also has far too many small hospitals, and a concentration of resources on a limited number of centres of excellence could emerge as a priority after Brexit. With respect to policing, the need to find replacement institutions of cooperation could provide a historic opportunity to establish greater cooperation with the criminal justice system in the ROI, addressing information-sharing, data-handling, terrorism and border crime. The English Local Government Association sees Brexit as a historic opportunity to devise a simpler aid programme for poorer areas than that provided through EU programmes. This could benefit Northern Ireland and also strengthen the role of local authorities (NILGA, 2018).

None of these opportunities can be taken unless public service leaders are given direction from either a UK or Northern Irish Government. At present this is not occurring. Instead public service leaders are in a situation where the options are to try and extend the date before they have to make key resource-committing decisions, or take a bet on one possible outcome and begin developing contingency plans. Neither are attractive options. The longer the negotiations over future partnerships are delayed, the greater the likelihood that post-Brexit decisions are based on short-term expediency rather than strategic analysis of threats and opportunities.

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