

# What works for boats and planes may not be so good for trucks and trains

The fourth book in our Bite-Size book series ‘Brexit and Northern Ireland: Bordering on Confusion?’ has now been published and is available for you to enjoy! We’re celebrating the book’s release by giving you a sneak peek at Dr Katy Hayward’s chapter...

Solving the issue of the border between Northern Ireland and the Republic of Ireland has proved intractable in the Brexit process. The issue of the Irish border and backstop could potentially derail an agreed Brexit creating significant economic damage to both parts of the island as well as undermining the peace achieved by the 1998 Good Friday Agreement.

Edited by ex-BBC journalist John Mair and Dr Steven McCabe from the Centre for Brexit Studies at Birmingham City University, as well as Leslie Budd from the Open University and Neil Fowler, the book includes a foreword from long-standing Northern Ireland commentator Malachi O’Doherty and an afterword by Daily Mail journalist Peter Osborne.

The book examines the range of questions about Brexit and Northern Ireland from a wide variety of perspectives and is a major contribution to the debate about the issues.

Enjoy your sneak peek below...

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Alternative arrangements are so named because they are intended to offer an alternative to the backstop – that part of the protocol on Ireland/Northern Ireland in the withdrawal agreement intended to act as a unique insurance policy in case of a hard Brexit.

To even get across the starting line, therefore, they have to meet the same objectives as the backstop itself. And these have been clear since the guidelines for the Brexit negotiations were first drawn up: to

avoid a hard Irish border, to protect north-south cooperation on the island of Ireland and to uphold the Good Friday Agreement.

So if the backstop is to be removed, then it isn't only the softness of the border that will be at risk – it is the 1998 Agreement itself. This is why the backstop is more than a technical or economic matter.

The EU and UK have seen what happens in Northern Ireland as being closely related to the stability of the peace process itself. If the border becomes more significant in practical terms, it also becomes more significant in symbolic ones too. And key to the success of the 1998 Agreement was defusing the 'Irish border' as a point of political contestation.

In the context of Brexit, Unionist sensitivities regarding the symbolic importance of the 'Irish Sea' border between Northern Ireland and Great Britain have also risen. This is why the socio-political environment in which the backstop or alternative arrangements are operationalised is as important as the technical environment.

But the overwhelming focus of the quest for alternative arrangements has centred on the hardness of the border.

### **Different definitions**

It has been clear for a long time that the UK government and European Commission have very different definitions of what constitutes a 'hard' border. While the UK has focused on its visibility (on the assumption that if you can't see it, it's not hard), the EU has pushed a much broader understanding of border friction.

The EU's understanding of border friction comes from the logic of European integration, which is that the more closely matched rules and laws are on either side of a border, the easier it is to move across it. This difference has meant that the two have 'talked past' each other on the issue. But it need not necessarily mean that the two cannot come to an agreement on alternatives to the backstop (or versions of the backstop) at some point down the line.

And what might such alternatives be? The best way of understanding these is to conceptualise the fundamental challenge of border management – for this is really core to the whole problem.

In managing any state border, there are three principles in play:

1. We know what is crossing the border;
2. We know that it meets the criteria for doing so;
3. We can prevent entry/exit if needs be. In order to understand (and, perhaps, to resolve) the post-Brexit Irish border conundrum, it is helpful to conceive the challenge in these terms.

The backstop addresses the challenge by concentrating on the most substantial of the ‘cornerstones’ of border management, i.e. by ensuring that goods crossing the border meet the criteria for doing so. This relates to the logic of European integration noted above.

First, the backstop makes it unnecessary to have customs procedures apply at the Irish border because these have been applied already and because the UK will be in the customs territory of the EU.

Second, it makes it possible to assume that goods within and produced in Northern Ireland meet EU single market standards.

Finally, Northern Ireland remains in the VAT regime of the EU, which means that Northern Ireland will have to stay aligned to EU VAT rules regarding goods in order that exports crossing the border will not be liable for VAT at the point of entry. Thus, if the backstop was fully in place, the working assumption for the EU and UK can be that goods crossing the Irish border meet the criteria for doing so, thus no need for checks and controls.

It is possible to have alternative arrangements that may also seek to lever this cornerstone, albeit from a different direction, i.e. by ensuring that the criteria for crossing the border need not apply.

## **Exemptions and their challenges**

Exemptions from the application of the rules have been proposed in various forms, e.g. a general exemption for small/micro enterprises, the drawing up of 'free-trade zones' or special economic zones across the border, or the invocation of the 'security clause' of GATT which allows temporary lifting of the rules.

These are problematic in their own way, but the first and biggest challenge is that of retaining the confidence (a) of consumers/customers and (b) external trading partners if it becomes known that Northern Ireland is the place where a blessing is given to breaches of the rules.

Secondly, it is a fundamental cornerstone of border management to know what is crossing the border. However, this cannot stand entirely alone; it must work in conjunction with the other two cornerstones.

In knowing what is crossing the border, it must be possible to be sure that it is allowed to cross and it must also be possible to prevent entry if required. This is where we have particular problems when it comes to the post-Brexit Irish border.

It is true that advance cargo information is absolutely key for risk analysis. However, opportunities for submission and analysis of advance information in respect of land border movements are at best limited and at worst non-existent. This is why such a high inspection rate applies to the land border crossing points at the EU borders.

Comparisons with maritime or air freight in terms of risk analysis based on advance information are meaningless. It needs to be acknowledged that any alternative arrangements relying primarily on advance cargo information will require a level of data sharing and analysis that is currently not known anywhere in the world when it comes to crossing a land border. The more distant the relationship between the UK and the EU, the more difficult such data sharing will be.

Finally, the prevention of entry of goods across a border is the crudest cornerstone of border management.

It is worth noting that this form of border management works very well in air and (to a lesser extent) maritime ports. In such cases, the border

tends to naturally be a 'hard' border (i.e. difficult to cross) and border management takes the form of literally facilitating easier and more efficient movement across the border.

**Enjoy the rest of the chapter, as well as a whole host of contributions, by purchasing *Brexit and Northern Ireland: Bordering on Confusion?*. The book is available NOW in paperback and in Kindle. Find out more [here](#).**