The Northern Ireland border

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1. Summary

The Northern Ireland border came into existence on 3 May 1921, enacted as part of the Government of Ireland Act 1920. This established the Parliament of Northern Ireland (1921-72), whose territorial extent was defined by reference to the six counties of Ulster.

Originally intended as an administrative boundary between two devolved parts of the United Kingdom, by the end of 1922 it marked the border between the UK and the new “Irish Free State”. It took economic form on 1 April 1923, when a customs frontier was erected. Later, the recommendations of a Boundary Commission were rejected and the border was confirmed in December 1925.

The Northern Ireland border reflected traditional county boundaries which pre-dated the events of the early 1920s. “Its shape and location” judged the historian Margaret O’Callaghan, “reflected the inheritance of the past and the balance of social and political forces on and between both islands.”

As the only part of the UK with a land frontier, the Northern Ireland border challenged politicians and administrators since its inception, not least in security terms. In 1956 and again in 1970, the boundary was securitised as a result of paramilitary activity.

For the border’s existence was also inseparable from the contested question of Northern Ireland’s political status. As the historian J. C. Beckett observed in 1952, a border between the “two Irelands” resided not only on maps, “but in the minds of men”.

This paper explores the origins of the Northern Ireland border and then charts its development – economically, geographically and politically – over the century which followed its creation.
2. Origins of the border

Sovereignty over the island of Ireland – where most of the population was Catholic – was claimed by England during the 12th century.

According to James Anderson, an academic at the Centre for International Borders Research, the Province of Ulster’s county administrative boundaries were introduced in the 16th and 17th centuries, “based on Gaelic boundaries dating back even further, and in turn based on lines demarcating signifiers of Irish society such as clan loyalties and turf-cutting rights”.¹

During the 17th century, the Province of Ulster in Ireland was settled by Protestants from Scotland and England. This was a policy called “Plantation”, and meant that the religious composition of Ulster changed from predominantly Catholic to predominantly Protestant. Ulster comprised nine of Ireland’s 32 counties.

A campaign for some degree of Home Rule for Ireland, or legislative autonomy within the United Kingdom, grew during the 19th century and won Liberal Party support in 1886. Attempts to legislate for a devolved parliament in Dublin that year and again in 1893, however, failed.²

At the December 1910 general election, 17 Unionists were elected in Ulster, 15 Nationalists and one Liberal. Together with the 1911 census – which included details of religious affiliation – the geographical and political polarisation in this part of Ireland was clear.³

2.1 Third Home Rule Bill

A Third Home Rule Bill (properly titled the Government of Ireland Bill) was introduced to the UK Parliament in 1912. On this occasion, the idea of treating parts of Ireland differently arose for the first time. This reflected the strength of feeling in the Ulster Unionist Party, which had first mobilised in opposition to the First Home Rule Bill of 1886.

Although Ulster Unionists and the Conservative Party opposed Home Rule for all of Ireland, the Liberal majority in Parliament and the removal of the House of Lords’ veto powers in 1911 meant the Third Home Rule Bill was likely to become law. Opponents therefore turned their attention to possible compromises on the basis of “excluding” all (or parts) of Ulster from the scope of such a Bill. This was intended to keep Ireland’s Protestant minority outside any Home Rule settlement. It became known as “partition”.

When the Government of Ireland Bill was considered by the House of Commons in June 1912, the Liberal MP Thomas Agar-Robartes moved an amendment to exclude the counties of Antrim, Armagh, Down and

² The first Home Rule Bill was defeated in the Commons, the second in the Lords.
³ See Kieran J. Rankin, “The search for statutory Ulster”, History Ireland, May/June 2009.
Londonderry (all of which had Protestant majorities) from its provisions. He said it was:

an honest attempt to solve one of the most complex questions in connection with the government of Ireland [...] I think this Bill makes the mistake of treating Ireland not as two nations, but as one nation. I think everyone will admit that Ireland consists of two nations different in sentiment, character, history, and religion. I maintain it is absolutely impossible to fuse these two incongruous elements together.4

**H. H. Asquith**, the then Liberal Prime Minister, disagreed:

You can no more split Ireland into parts than you can split England or Scotland [...] I say that you have in Ireland [...] an essential unity of race and temperament, although I agree that unhappily dissensions have been rank, partially by religion, and partially [...] by the organisation of partisanship. These dissensions have spread [...] but they are dissensions I believe which do not go down to the foundation of the national life.5

Agar-Robartes' amendment was defeated by 61 votes, although the senior Liberal ministers **David Lloyd George** and **Winston Churchill** abstained, both having put a similar proposal to the Cabinet a few months earlier. As the historian Robert Lynch has written: “As derided as the idea [of partition] was in 1912, five years later it had become the centrepiece of British policy and swept all other solutions from the board.”6

This proposal to “exclude” certain counties of Ulster from any system of Home Rule intended that they would remain under direct administration by the UK Parliament and government. At this stage, Ulster Unionists opposed partition, but in 1913 Asquith was informed that they might waive their “objection to Home Rule for the rest of Ireland if Ulster were treated separately”.7 **King George V** also urged the Prime Minister to exclude Ulster from the Bill.

It became clear that the Third Home Rule Bill would only be passed if special provision were made for Ulster. “What was now alone at issue”, observed the historian Ronan Fanning, “was how much of Ulster and for how long.”8

**John Redmond**, the Irish Nationalist leader, also accepted the temporary exclusion of six Ulster counties. This was to be for a limited period (initially three years) and on the basis of “county option” or referendum. On 9 March 1914, Asquith said the government had:

come to the conclusion that the best, and, indeed, the only practical, way [...] is to allow the Ulster counties themselves to

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4 HC Deb 11 June 1912 vol 39 c771
5 HC Deb 11 June 1912 vol 39 c787
Asquith added that this would now be for a period of six years. In response, Andrew Bonar Law, the Leader of the Opposition, said a future Conservative government would make the exclusion permanent.

The Liberal government submitted a Government of Ireland (Amendment) Bill to the House of Lords in June 1914. The Upper House later amended this so that all nine Ulster counties were to be permanently excluded from a Home Rule parliament in Dublin.

With deadlock between the political parties, George V suggested a conference of British and Irish party leaders at Buckingham Palace in July 1914. Sir Edward Carson, the Ulster Unionist leader, opened the discussion by arguing that all nine counties of Ulster ought to be excluded and granted administrative autonomy – i.e. devolution – within the UK. Others argued for four or six excluded counties. Maps were also circulated showing possible boundaries between the excluded area and the rest of Ireland.

Although the conference broke up without agreement, counties (“having acquired currency as a marker of local territorial identity”) became the “established medium through which partition would be conceived and then later executed on an aggregated basis”.10

All this, however, was overtaken by events. Bonar Law and Asquith agreed to pause “the Irish question” as the threat of war in Europe loomed. The Government of Ireland Bill was finally granted Royal Assent on 18 September 1914 (without Lords’ consent), providing for a bicameral Irish Parliament subject to Westminster sovereignty. There was no special provision for Ulster, the government’s amending Bill having been abandoned. A simultaneous Suspensory Act was passed delaying operation of the Government of Ireland Act 1914 for the duration of the First World War.

2.2 Subsequent proposals

Following the Easter Rising of 1916, Irish public opinion hardened in favour of complete independence from the UK rather than devolution within it.11 Unionists in Ulster also became more determined to fight for partition.12

That summer, proposals were presented to both Houses of Parliament, this time providing for six-county exclusion. The “excluded area” was to be administered by “a Secretary of State through such officers and departments as may be directed by Order of His Majesty in Council”. This proposal reappeared during the proceedings of the unsuccessful

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9 HC Debs 9 March 1914 Vol 59 c913
10 Kieran J. Rankin.
1917-18 **Irish Convention**, an initiative by **David Lloyd George**, Asquith’s successor as Prime Minister, to resolve the Irish question.\(^{13}\)

The legal termination of the First World War following the 1919 **Paris Peace Conference** would have ended the suspensory period as applied to the **Government of Ireland Act 1914**. The UK government either had to allow it to come into operation or introduce new legislation. It chose the latter. As Winston Churchill wearily observed, after a delay of five years the “dreary steeples of Fermanagh and Tyrone [were] emerging once again”.\(^{14}\)

Lloyd George established a Cabinet committee chaired by **Walter Long**, a former Chief Secretary for Ireland. Initially, Long worked on a federal scheme encompassing Ireland, Scotland, Wales and England, but by October 1919 he had settled upon two devolved legislatures in Ireland alone, linked by an inter-parliamentary “Council of Ireland” comprising representatives of both.\(^{15}\)

Long’s committee marked the first time a devolved parliament for the nine counties of Ulster – rather than direct administration from Westminster – had been contemplated by the UK government. Long, however, ruled out the idea of local plebiscites or “county option”.\(^{16}\)

The UK Cabinet discussed Long’s proposals during November and December 1919. **Charles Craig**, an Ulster Unionist MP, reluctantly conceded Home Rule for Ulster but argued that a nine-county Ulster would be politically too unstable to function:

> No sane man would undertake to carry on a Parliament with such a small [Protestant] majority. A couple of members sick, or two or three Members absent for some accidental reason, might in one evening hand over the entire Ulster parliament and the entire Ulster position.\(^{17}\)

Craig suggested reducing nine counties to six: Antrim, Down, Londonderry, Armagh, Fermanagh and Tyrone, only the last two of which possessed Catholic majorities.

**Joseph Devlin**, an Irish Parliamentary Party MP, believed this would result in the “worst form of partition and, of course, permanent partition. Once they have their own parliament with all the machinery of government and administration, I am afraid anything like subsequent union will be impossible.”\(^{18}\)


\(^{15}\) Ivan Gibbons, 2020, p51.


\(^{17}\) Quoted in Patrick Buckland, “**Carson, Craig and the Partition of Ireland, 1919-1921**”, in Peter Collins (ed), *Nationalism and Unionism: Conflict in Ireland, 1885-1921*, Liverpool: Institute of Irish Studies, 1994, p85.

2.3 Government of Ireland Act 1920

Gradually, Ulster Unionists coalesced around the six-county option, while the UK Cabinet continued to insist upon nine. Lloyd George set out his proposed solution to what he called an “old family quarrel” on 22 December 1919.19 Echoing but contradicting Asquith’s view as expressed in 1912, the Prime Minister said that:

In the North-East of Ireland we have a population—a fairly solid population, a homogeneous population—alien in race, alien in sympathy, alien in religion, alien in tradition, alien in outlook from the rest of the population of Ireland, and it would be an outrage on the principle of self-government to place them under the rule of the remainder of the population.20

The fourth Government of Ireland Bill was introduced to Parliament on 25 February 1920 in the midst of the War of Independence (1919-21), a guerrilla conflict fought between the Irish Republican Army (IRA) and British Crown forces.21

Only a day before the Bill’s first reading the UK Cabinet had capitulated to Ulster Unionist demands and redefined “Northern Ireland” as comprising six counties rather than nine. Although the Ulster Unionists had accepted the principle of partition in 1916, only on 10 March 1920 did its MPs endorse the Bill, much to the dismay of Southern Unionists.22

The Bill took a year to go through all its stages amidst civil unrest in both parts of Ireland. Royal Assent was granted to the Government of Ireland Act 1920 on 23 December 1920. Clause 1(2) stated that for the purposes of the Act:

Northern Ireland shall consist of the parliamentary counties of Antrim, Armagh, Down, Fermanagh, Londonderry and Tyrone, and the parliamentary boroughs of Belfast and Londonderry, and Southern Ireland shall consist of so much of Ireland as is not comprised within the said parliamentary counties and boroughs.

The Parliament of Northern Ireland was enacted on 3 May 1921. The boundary also became a reality, separating “a Home Rule Northern Ireland from the bulk of the island that was still run directly from Westminster”.23 The Parliament of Southern Ireland met only briefly.

As Northern Ireland was defined by certain parliamentary counties and boroughs, its boundaries were “thus defined by reference to other Acts”, most recently the Redistribution of Seats (Ireland) Act 1918. As the constitutional lawyer Harry Calvert later observed: “It is not at all

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19 HC Deb 22 December 1919 vol 123 c1168
20 HC Deb 22 December 1919 vol 123 c1171
21 This was the original IRA. In 1922 it split into pro- and anti-Treaty factions.
clear that Northern Ireland was not, initially, given elastic boundaries susceptible to variation […] as constituency boundaries were altered.”

Harry Calvert, *Constitutional Law in Northern Ireland. A study in regional government*, Belfast & London: Stevens & Sons, 1968, p211. Calvert believed any “doubt” was later removed by a 1925 agreement (see Section 2.3).
3. Treaty and Boundary Commission

On 22 June 1921, King George V formally opened the Parliament of Northern Ireland at Belfast City Hall and, in a speech from the throne, laid the basis for a Truce between the IRA and Crown forces in the ongoing War of Independence. This eventually led to a negotiated settlement in which most of Ireland became an independent state and Northern Ireland remained part of the UK, while a Boundary Commission was to determine the exact boundary between the two.

3.1 Treaty negotiations

Although Sinn Féin, whose representatives were to negotiate a settlement with members of the UK government, opposed partition, David Lloyd George refused to “coerce” Northern Ireland into a constitutional arrangement it did not want. The main focus of the talks that followed, therefore, was not partition what Ireland’s relationship would be with the Crown and therefore the British Empire.

Lloyd George attempted to pressure Sir James Craig, the first Prime Minister of Northern Ireland, into accepting legislative subordination under an all-Ireland settlement, warning that not to do so would lead to economic dislocation and a damaging customs barrier. Sir James refused, saying he regarded the area defined in the Government of Ireland Act 1920 as a final settlement. Instead, Craig suggested making Northern Ireland a self-governing “Dominion” of the British Empire. Lloyd George rejected this, writing on 14 November that:

Your proposal would stereotype a frontier based neither upon natural features nor broad geographical considerations by giving it the character of an international boundary.

The Articles of Agreement for a Treaty, generally known as the Anglo-Irish Treaty, was signed in London on 6 December 1921 by the UK government and representatives of Sinn Féin.

This accepted that “Ireland” would secede from the UK and become known as the Irish Free State, a Dominion under the British Crown (Article 1), with the exception of three deep-water “Treaty Ports” which were to remain under UK military control (Articles 6 & 7). The Treaty also provided for the Parliament of Northern Ireland to request that the powers of the Free State parliament not be extended to the six counties

25 See Commons Library Briefing Paper CBP8884, Parliament and Northern Ireland, 1921-2021, 21 December 2020, for a comprehensive account of Northern Ireland’s constitutional development over the last century.

26 Before the 1918 general election, the Liberal-Conservative coalition government had issued a manifesto in which it ruled out any “forcible submission of the six counties of Ulster to a Home Rule Parliament against their will” (Michael Laffan, p62).


of Ulster (Articles 11 and 12). If it made such a request, then a Boundary Commission to determine the exact border between Northern Ireland and the Free State was to be constituted.\(^{29}\)

Historians believe that Sinn Féin signatories to the Treaty allowed themselves to be persuaded by Lloyd George that the Boundary Commission would ultimately transfer the Catholic-majority counties of Fermanagh and Tyrone to the Free State, perhaps even making what remained of Northern Ireland economically unviable. But, in reality, Articles 11 and 12 were what the historian Ronan Fanning called “fig leaves to cover the Irish negotiators’ impotence to end partition”, maintaining the “polite fiction” of Ireland’s “essential unity”.\(^{30}\)

Article 12 of the Anglo-Irish Treaty said the Boundary Commission was to “determine in accordance with the wishes of the inhabitants, so far as may be compatible with economic and geographic conditions, the boundaries between Northern Ireland and the rest of Ireland”. Many constitutional lawyers regarded this wording as ambiguous.

The Treaty was debated in the UK House of Commons and the Irish Dáil during December 1921 and encountered opposition in both. In an acrimonious debate in the House of Lords, Sir Edward (now Lord) Carson said the Boundary Commission proposal constituted a betrayal of the area defined as Northern Ireland, while the Dáil split between those who accepted the Treaty as the best possible outcome and those who wanted to hold out for an all-Ireland republic.\(^{31}\)

In the latter camp was Éamon de Valera, who resigned as president of Dáil Éireann. This split, in time, led to the Irish Civil War.

### 3.2 Northern Ireland opts out

The Irish Free State was constituted on 6 December 1922 and, the following day, the Parliament of Northern Ireland resolved to make an Address to the King “opting” out of the new Dominion. This automatically triggered the formation of the Boundary Commission, although it was not established until 1924 due to ongoing instability in Irish and British politics. Sir James Craig also refused to nominate a representative to the Commission, as the Treaty required him to do.

During 1922 the Executive Council of the Irish Free State had established a North East Boundary Bureau, which made the case for a radical revision of the border via plebiscites, something inspired by the 1919 Treaty of Versailles.\(^{32}\) The Free State appointed its representative to the Commission in July 1923, shortly after the Irish Civil War came to an end.

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\(^{29}\) The idea of a boundary commission had once been supported by Sir James Craig (see Michael Laffan, p66).

\(^{30}\) Ronan Fanning, p314 & p316.

\(^{31}\) Ivan Gibbons has observed that Northern Ireland only occupied 9 out of 338 paragraphs of Treaty debates in the Dáil between December 1921 and January 1922 (Ivan Gibbons, 2020, p69).

The refusal of the Government of Northern Ireland to appoint a representative was a *casus improvisus*, an event unforeseen by the Act of Parliament which had given effect to the Treaty. If, therefore, Belfast stood its ground, there was no means by which the Boundary Commission could be constituted under existing statutes. In August 1924 the Free State and UK government agreed an amendment to the 1921 Treaty which enabled the UK to appoint a representative on behalf of the Government of Northern Ireland.

### 3.3 Irish Boundary Commission

The formation of the Irish Boundary Commission was finally announced in the *London Gazette* on 31 October 1924, and met for the first time in London on 6 November. Its chairman was the Welsh-born South African judge Richard Feetham. He later explained his approach in a letter to *The Times*, chiefly that the Commission:

> must start its examination of the whole question on the basis of the division marked by the existing boundary, and must treat that boundary as holding good where no sufficient reason [...] is shown for altering it [...] Northern Ireland must, when the boundaries have been determined, still be recognizable as the same provincial entity; the changes made must not be so drastic as to destroy its identity or make it impossible for it to continue as a separate province of the United Kingdom with its own parliament and government for provincial affairs under the Government of Ireland Act.

Feetham added that the same principle applied to the 26 counties of the Irish Free State, thus he interpreted the Treaty as facilitating two-way transfers of territory. Another Feetham principle was that large administrative units – either parliamentary constituencies or Poor Law Unions – should *not* be used to ascertain the wishes of Northern Ireland’s inhabitants, but rather the much smaller district electoral divisions.

The new Irish boundary was agreed at a series of Commission meetings from 13-17 October 1925. An initial draft was approved on 5 November and two days later it was leaked to the *Morning Post* newspaper, complete with a map of the “rectified border”. In all, the Free State was to gain more than it was to lose, some 180,000 acres as against 50,000, and 51,000 inhabitants to 7,500. The border was to be shortened by 50 miles.

This was considered to be politically unacceptable by both Northern Ireland and the Irish Free State, neither of whom believed they should “lose” any existing territory. Eoin MacNeill, the Free State’s representative, resigned from the Boundary Commission on 20

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33 *The Times*, 18 December 1925.

34 Poor Law Unions had been created in 1838 and comprised a number of electoral divisions. After 1922, eight of these straddled the new border, leading to a series of protracted disputes as to which jurisdiction was responsible for the poor and destitute. Poor Law Unions were abolished in the Free State in 1925 but not until 1946 in Northern Ireland.

November and, on 3 December 1925, the Free State, Government of Northern Ireland and UK government agreed – via the Tripartite Boundary Agreement – to suppress the report.

Instead, the 1921 Treaty was revised once again, confirming the existing boundary and, as a quid pro quo, releasing the Free State from an obligation under Article 5 to service a proportion of the UK’s public debt and war pensions. This new agreement was filed with the League of Nations on 8 February 1926, making it a border not only for intra-UK and Irish purposes, but also under international law.

The Boundary Commission’s Report and “Award” – which was to have taken automatic effect without further legislation – were only declassified by the UK’s Public Records Office on 1 January 1968.36

In October 1969, Ireland’s Department of Foreign Affairs (DFA) considered a claim that the Tripartite Boundary Agreement had been rendered obsolete by the 1932 Free State election (which had produced a change of government), the 1937 Constitution and Ireland’s departure from the British Commonwealth in 1948-49. It observed that:

The basic principal of respect for treaties (pacts sunt sevanda) means they may not be unilaterally terminated. International relations would be very haphazard and unstable if changes of government or unilateral acts by governments were to mean a termination of their international commitments.

The DFA memorandum concluded that Ireland’s dispute with the UK “was a political dispute” and that they had “little basis on which to make it a legal one”.

36 Ibid.
4. Customs frontier

After 6 December 1922, the boundary between the Irish Free State and Northern Ireland marked the border between two parts of the then British Empire.

Most functions had been transferred to Ireland’s Provisional Government on 1 April 1922, but not customs and excise. This was subsequently transferred on 6 December, although uniform assessment, levying and the collection of duties continued until the end of the 1922/23 financial year. During this period, revenue commissioners in London and Dublin co-operated, with HM Customs & Excise Commissioners acting as “agents” for the Irish Free State until 31 March 1923.

Early on 1 April 1923 – Easter Sunday – trade by land and sea between the UK and Free State became foreign rather than domestic. At Dublin’s instigation, a customs “frontier” was erected along the border on that date. Historians have noted the irony that this was the “principal factor in codifying and formalizing the implementation of partition into the actual landscape”:

The customs barrier brought with it a material geography of customs posts and barriers, together with the personnel and paraphernalia of the customs authorities, to cross-border roads and railways.  

Box 1: The Anglo-Scottish “whisky frontier”

There was a precedent for a customs frontier within the UK. Long after the Anglo-Scottish Union of 1707, rates of duty on whisky in England was twice that in Scotland. To prevent smuggling, more than 60 excise officers were stationed along the “border” between Carlisle and Berwick, while a boat tackled smuggling across the Solway Firth. When railways were constructed in the 1840s, similar controls were added at Berwick and Carlisle stations. This “whisky frontier” came to an end in 1855 when the then Chancellor, W. E. Gladstone, harmonised duty on spirits in Scotland and England. It was another three years before whisky duty was also harmonised between Great Britain and Ireland.

Sir James Craig, the Prime Minister of Northern Ireland, denounced the customs frontier. “There was no such thing as partition” he claimed during a speech in Belfast, “if the customs wall was not built.” In an editorial entitled “The Arch Partitionists”, the Northern Whig newspaper claimed that Craig “had shown the Southern barrier to be the spiteful blunder it was”.

Duties were to be payable on items such as tobacco, clothing and other manufactured goods, while farm produce was to be exempt. These

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40 Gilbert Denton and Tony Fahy, pp3-4.
changes had a considerable impact on those who lived in what writers and academics have often described as “borderlands”.42

*The Times* reported on what it called “an Easter exodus” on the first day of the customs frontier:

> The new Customs duties became effective throughout the Free State at midnight on Saturday. Henceforward all goods to or from Great Britain and Northern Ireland must be sent by specified routes and under conditions which will be irksome until Irish traders and travellers can become used to them. Fifteen roads have been “approved” for traffic across the Northern frontier. There are thirty boundary posts on the two sides of the frontier, and twenty Customs stations – thirteen in the Free State and seven in Northern Ireland.43

### 4.1 Approved and unapproved routes

The 15 “approved” roads44 were one of three types of crossings created upon the introduction of customs controls:

- **Approved:** These were the only routes by which dutiable goods, including motor vehicles, could legally move between the Irish Free State and Northern Ireland. As a result, these were equipped with customs facilities.

- **Unapproved:** Most remaining roads were classified as “unapproved”. These could be used by farmers or their workers with farm produce, which was exempt from duties. Individuals not carrying taxable items could also use unapproved routes, provided they travelled by foot, bicycle or horse-drawn vehicle. A small number of local doctors, vets and clergy were issued with permits which enabled them to drive on unapproved routes for their day-to-day work.

- **Concession:** A handful of routes – known as “concession”, “accommodation” or “neutral” roads – linked either two places in Northern Ireland or two in the Free State, but passed through the other jurisdiction *en route*. Through traffic could transit unimpeded. These were initially agreed on an *ad hoc* basis but were later formalised in some instances.45

HM Customs & Excise and the Free State’s Revenue Commissioners agreed “concession passes”. Class A passes were for medics, clerics, vets and nurses, and could only be used in the course of their professional duties. Class B passes were for those who lived within five miles of the boundary.

The Northern Ireland side of the customs frontier was policed by the *Royal Ulster Constabulary* until 1951, when the *Waterguard* (a division of HM Customs and Excise) took over.

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42 See Queen Mary University’s *The Irish Borderlands* website for oral history relating to the “lived experience” of the border.

43 *The Times*, 2 April 1923.

44 The 15 approved roads had increased to 20 by the 1960s.

Customs posts closed at midnight, although for an additional charge it was possible to arrange passage at a later time. To import and export goods legally required the presentation of triplicate forms on both sides of the border (they were different on each). Goods could be refused if not precisely described.\textsuperscript{46}

Twelve cross-border railways were also approved for customs traffic in 1923. As with the “approved” roads, these were equipped with appropriate facilities. There were concessions for trains which had to pass in and out of Northern Ireland or the Free State several times due to the nature of the border: “Wagons were sealed by the customs officials of one polity, passed through ‘foreign’ territory unopened, before once again entering the same jurisdiction in which the journey had commenced.”\textsuperscript{47} Concessions also meant railway companies could run tea cars on cross-border services. All but one (Dublin-Belfast) of the cross-border railways had closed by the 1950s.

\textit{The Times} reported on 2 April 1923 that:

Three immediate results are now occupying the public mind – the increased prices in the Free State of motor-cars, of cinematograph films, and of English-made tobacco. Large quantities of British tobacco and cigarettes were hurried into Southern Ireland during the last fortnight of March, and it is believed that the supply is now sufficient to meet the normal demand for at least six months.

\textit{The Times} also mentioned a music hall performer by the name of “Pattman”, who travelled “with an enormous organ”. He left Dublin for Belfast on a morning train, “but fortunately he had made arrangements in advance, with the result that his bulky instrument passed through the Ulster Customs without any difficulty”.\textsuperscript{48} The brewer Guinness also enjoyed special “trusted trader” arrangements, which meant its goods could pre-clear border checks.\textsuperscript{49}

The first attack on a customs post took place on 4 April 1923, when a temporary shed was set on fire. Internal trade quickly diminished because of the border. Adjacent milk markets ended. More than 1,400 agricultural holdings were cut in two, which led to consolidation of farms on either side of the border.\textsuperscript{50}

Initially, both parts of Ireland continued to use UK notes and coins. In 1928, however, the Free State introduced its own currency, which was pegged 1:1 with sterling. As in the UK, pounds, shillings and pence were used, and Irish notes and coins had the same dimensions as their UK counterparts. But while sterling continued to be accepted in the Free

\textsuperscript{47} Catherine Nash \textit{et al}, p32.
\textsuperscript{48} \textit{The Times}, 2 April 1923.
\textsuperscript{50} Brian Harvey, Kelly Assumpta and Sean Mcgearty, p33-34.
State, Irish currency was not generally accepted in Northern Ireland or on mainland Britain.

4.2 Border anomalies

This “hardening” of the Northern Ireland border by the customs frontier emphasised a number of anomalies.

Irish Free State publications made much of “A Partitioned House” at Gortinreddan between the counties of Fermanagh (in Northern Ireland) and Cavan (in the Free State). Inside the building, the border bisected a “dining-cum-bedroom” at the centre of the house. This made it possible to sit on a chair “in the Six Counties” while eating breakfast “on the table...in the Twenty-six”.

Drumully, meanwhile, was an enclave of the Free State almost completely surrounded by County Fermanagh in Northern Ireland. It was connected to the rest of the Free State by an unbridged 360-feet length of the River Finn.

More accessible was the small village of Pettigo, which straddled the Free State/Northern Ireland border between County Donegal (in the Free State) and County Fermanagh (in Northern Ireland). The Termon River, which bisected the village, formed part of the border. Had the Boundary Commission’s “Award” been implemented in 1925, all of Pettigo would have formed part of Northern Ireland.

4.3 Common Travel Area

When the Irish Free State was constituted on 6 December 1922, the UK could have implemented passport and immigration controls between the Free State and Northern Ireland (and indeed the rest of the United Kingdom).

The Free State proved receptive to maintaining existing controls and an informal agreement was reached in February 1923, under which each country was to enforce the other’s immigration policy. This would become known as the Common Travel Area (CTA). Later, it would also include the Isle of Man and the Channel Islands.

This CTA was provided for in UK law by deeming the Free State to be part of the UK for the purposes of immigration. The Aliens Order 1925 also amended UK law to give effect to any conditions imposed upon “aliens” by the Free State. This meant that a foreigner admitted to one of the two countries could travel to the other with only minimal checks. Similarly, individuals could not avoid conditions imposed upon their movement in one country by relocating to the other.

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52 Peter Leary, p116. Spike Milligan’s comic novel Puckoon featured a village and houses divided by the border.

53 Aliens Order 1923 (SR&O 1923 No 326).

5. Territorial waters

The *Government of Ireland Act 1920* made no mention of territorial waters as it established two devolved parliaments within the United Kingdom.

In November 1922, as the UK Parliament considered the Irish Free State (Consequential Provisions) Bill, Captain Charles Craig, an Ulster Unionist MP, asked William Ormsby-Gore, a minister for Colonial affairs, for clarification:

> I understand there is considerable doubt in the minds of lawyers and others as to whether these Parliamentary counties carry with them the ordinary territorial waters, extending three miles out from the shore. It has been asserted in some quarters that the Parliamentary counties only extend to low water mark. That has been exercising the minds of a good many people in Ulster, and I shall be glad if the Government in due course will inform the House what is their opinion on the subject and what steps they are taking to make it clear.

Ormsby-Gore replied that having consulted with Sir Douglas Hogg, the Attorney General for England and Wales:

> there really is nothing substantial in it. If my hon. Friend will look at Subsection (11) of Section 4 of the Act of 1920, he will see the provision as to lighthouses, buoys and so on, which were made reserved subjects, and the point which he put with regard to territorial waters is pretty clearly defined by the inclusion of that provision in the Act.

Captain Craig asked if he was to:

> understand that the Law Officers have actually considered this question, and that they have given a decision in favour of the theory that the territorial waters go with the counties that were included in the six counties of Northern Ireland?

Sir Douglas Hogg replied that he had "considered the question, and I have given an opinion that that is so".55

5.1 Position of the Irish Free State

The position of the Irish Free State was that as Northern Ireland was defined by reference to parliamentary constituencies (which did not include territorial waters) then all the territorial waters of the island of Ireland were under its jurisdiction.

During 1923, the owners of the steamship *Greyhound* were summoned by a court in Northern Ireland for selling alcohol on a Sunday while *en route* to Bangor. Part of their defence was that the steamship was outwith the Parliament of Northern Ireland’s jurisdiction and therefore its licensing laws.56

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55 [HC Deb 27 November 1922 [Commons Chamber]].
56 Peter Leary, p69.
Particularly contentious was Lough Foyle on the northern coast of Ireland, which lay between County Londonderry in Northern Ireland and County Donegal in the Free State.

The Irish Society, a standing committee of the Common Council of the City of London, issued fishing licences to fishermen in Northern Ireland. The Free State’s Board of Conservators also did so.

The original “plantation” grant included Lough Foyle as an integral part of the County of Londonderry, now part of Northern Ireland, while the Free State argued that the 1825 Ordnance Survey of Ireland supported its territorial claim.

On 26 July 1929, Lord Justice Andrews of the Northern Ireland High Court issued an injunction to restrain fishermen in Donegal from “trespassing” on Lough Foyle. The fishermen ignored the injunction and resisted writs of summons. The matter was left unresolved as neither the UK government nor the Free State wanted the dispute referred to the Judicial Committee of the Privy Council so soon after settlement of the boundary in 1925.57

57 Peter Leary, pp71-73. The Judicial Committee dealt with disputes between different parts of the British Empire.
6. Economic War and constitutional changes

In 1932, Éamon de Valera returned to front-line Irish politics as Taoiseach. His Fianna Fáil government introduced tariffs for a wide range of imported goods, including many from the United Kingdom. De Valera also sought to end repayment of land annuities (totalling £5 million a year), as required under the 1921 Anglo-Irish Treaty. These had been UK government loans to Irish tenant farmers, which allowed them to purchase land from the 1880s.

Although the 1925 Agreement (see Section 2.3) had relieved the Irish Free State of its Treaty obligation to service part of the UK’s public debt, land annuities were not included. By 1932, however, de Valera argued that these were in fact part of the public debt from which the Free State had been exempt.

To recover the annuities, the UK Parliament debated and passed the Irish Free State (Special Duties) Act 1932. This imposed a duty of 40% on imports of Irish cattle and 30% on all other agricultural produce. This meant customs and goods checks on the Free State/Northern Ireland border for agricultural products, which had hitherto been exempt. Cattle smuggling increased as a result. It was estimated that in 1934-35, 100,000 animals were “walked” – or even swum – across the border.58

The UK Finance Act 1934 also created “prescribed area” adjoining and within 40 miles of the Free State/Northern Ireland boundary. In this area, any person in possession of “uncustomed” goods could be required to provide proof that those goods had not been imported from the Free State or that duty had already been paid.59

In response, the Free State imposed similar duties on UK imports, including steel and coal. A “Coal-Cattle pact” in 1935 eased this aspect of what became known as the “Economic War”, with the UK agreeing to increase its importation of Irish cattle by a third as a quid pro quo for the Free State taking more of the UK’s coal.

6.1 Constitutional changes

The 1931 Statute of Westminster enabled each British Dominion, including the Irish Free State, to enact new legislation or to change any extant legislation without reference to the UK Parliament. It also removed Westminster’s authority to legislate for the Dominions, except with the express request and consent of the relevant Dominion’s parliament.

As a result, the Dominions became de jure sovereign nations. The Free State took advantage of this by making certain changes to the 1922

58  Catherine Nash et al, p34.
59  This requirement was later carried into the Customs and Excise Act 1952.
Irish constitution, including removal of the Oath of Allegiance and ending appeals to the Judicial Committee of the Privy Council.

De Valera also removed references to the Crown and Governor-General (although these still existed in law), while in 1937 he devised a new Constitution for what was now to be called Éire (or “Ireland” in English). Articles 2 and 3 of that read as follows:

**Article 2:** The national territory consists of the whole island of Ireland, its islands and the territorial seas.

**Article 3:** Pending the re-integration of the national territory, and without prejudice to the right of the Parliament and Government established by this Constitution to exercise jurisdiction over the whole of that territory, the laws enacted by that Parliament shall have the like area and extent of application as the laws of Saorstát Éireann [the Irish Free State] and the like extra-territorial effect.

This new Constitution thus claimed Northern Ireland as part of Éire. Also in 1937, the IRA destroyed several border posts in Northern Ireland and Éire. When the Éire customs post at Carrickarnon was subsequently rebuilt, it ended up in Northern Ireland “because nobody realised a stream had been diverted and no longer formed [part of] the Border”.60

### 6.2 1938 Agreement

The *Eire (Confirmation of Agreement) Act 1938* gave legal effect to **three agreements between the Irish and UK governments** signed in London on 25 April 1938

- The first rescinded Articles 6 and 7 of the Anglo-Irish Treaty and thus transferred the Treaty Ports to Irish government control;
- The second resolved the land annuity dispute with a one-off payment by Éire to the UK;
- The third ended the “Economic War” between the two countries.

The third of these agreements eased checks on the Ireland/Northern Ireland border. The 1938 Act also gave partial recognition in domestic UK law to the 1937 Constitution. This included reference to “Éire” (without an accent) but not “Ireland”, which avoided causing controversy in Northern Ireland.

Another Anglo-Irish Trade Agreement in June 1948 revised and improved the terms of the 1938 deal.

### 6.3 Second World War

Although Great Britain and Northern Ireland were both parts of the United Kingdom, travel restrictions were imposed between the two upon the outbreak of war in 1939.61 The Common Travel Area between the UK and Éire was also suspended.

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60 Peter Leary, p91.
61 The legal basis for these restrictions were the Aliens Restriction Acts and the *Emergency Laws (Transitional Provisions) Act*, which continued Defence Regulation 18. A Travel Permit Office was set up in premises occupied by RUC staff in Belfast. This acted on an “Agency” for the Home Office.
Sir John Anderson, the then Home Secretary, told the UK House of Commons that “all forms of unnecessary travel shall be reduced as far as possible”, although there were exemptions for those travelling in either direction “on business of national importance”. The restrictions did not apply to members of the Armed Forces, while exit permits were later granted to those travelling “for urgent family reasons such as the serious illness or death of a close relative.”

Those entering Northern Ireland from Ireland were also required to have an identification document and, for longer stays, a residence permit. Even after the War had ended, British subjects normally resident in Great Britain or Northern Ireland were required “to carry either travel identity cards or passports […] to enable them to be distinguished at sight from other passengers and passed through the [border] control without delay”.

The fee for the issue of travel identity cards was abolished in October 1946, but the identity requirement remained in place until 1952. The Common Travel Area was reinstated that same year following an agreement with Ireland, although this was not made public.

During the Second World War, the UK operated on double summer time to maximise daylight hours for production. Éire continued to use ordinary summer time, and so the Ireland/Northern Ireland border straddled two different time zones.

6.4 Anti-Partition League and Ireland Act

Nationalist candidates at the 1945 general election in Northern Ireland had made efforts to unite all Irish nationalists (i.e. those who supported Irish reunification) into one organisation, which became the Irish Anti-Partition League (APL). This was supported at Westminster by the Labour-initiated Friends of Ireland (Fol) group.

The British section of the APL was formed in 1946 and opened an office in Belfast in 1948. An APL candidate contested the 1948 Armagh by-election and won more than 40% of the vote, while a major APL rally in Dublin in early 1948 challenged Taoiseach Éamon de Valera to step up pressure on the UK. On leaving office in February 1948, de Valera embarked upon a world tour to speak in favour of a united Ireland.

During a visit to Canada in 1948, de Valera’s successor, John A. Costello, head of a coalition that included a small but influential radical republican party, revealed that he intended to take the country out of the British Commonwealth. Section 1 of Éire’s Republic of Ireland Act 1948 subsequently repealed the Executive Authority (External Relations) Act 1936 and, in so doing, removed the last remaining functions of...
King George VI in relation to Ireland (which were mainly confined to diplomatic credentials and international agreements). It also declared that “the description of the State shall be the Republic of Ireland”, a confusing provision since the 1937 Constitution defined the name of the state as “Ireland”. This came into force on 18 April 1949.

In response, the UK Parliament debated and passed the **Ireland Act 1949**. Section 1 recognised that the “part of Ireland heretofore known as Eire” was no longer part of “His Majesty’s dominions”, and that “in no event” would Northern Ireland cease to form part of the UK “without the consent of the Parliament of Northern Ireland”.

This meant that the Ireland/Northern Ireland border – which had hitherto separated two parts of the British Commonwealth – became an international boundary.

The 1949 Act also had an impact on the Anti-Partition League. Frustrated at a Labour government’s willingness to preserve the constitutional status quo, the APL’s British section challenged incumbent Labour MPs in four constituencies at the 1950 UK general election, all areas with large Irish populations. Labour held all four and by 1951 the APL was in decline. Its committee resigned in 1956.

### 6.5 Foyle Fisheries Commission

In 1950 the governments of Northern Ireland and the Republic of Ireland agreed to acquire all fishing rights in the tidal portions of Lough Foyle from the Irish Society and establish a joint authority to regulate and conserve fisheries in the Foyle region.

Notably, the **Foyle Fisheries Commission** was “brought about not because of an initiative led by either government, but by a determined campaign by fishermen”. This also required enabling legislation in the UK Parliament, and the **Northern Ireland (Foyle Fisheries) Bill** received its second reading on 3 December 1951.

The UK Home Secretary, Sir David Maxwell Fyfe, set out a Commission “on which each Government shall have the same number of representatives as the other”:

> A common code of Regulations will apply throughout the area, and poachers, who have hitherto been inclined to poach just over the Border, so that they can, if detected, escape into their country of residence with a reasonable prospect of avoiding prosecution, will no longer be able to do this. A resident of one country who offends against the common code in the other country will be guilty of an offence in his country of residence, and, if caught in the act, will be sent back there for trial.

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68 Only with the **Statute Law Revision (Pre-Union Irish Statutes) Act 1962** was the Crown fully removed from the Irish statute book, in that it repealed the **Crown of Ireland Act 1542**.

69 The constituencies were Bootle, Coatbridge & Airdrie, Greenock and Glasgow Gorbals.


71 HC Debs 3 December 1951 Vol 494 cc2072-74
The Parliament of Northern Ireland also passed legislation in 1952. Sovereignty had been pooled between Northern Ireland and Ireland, and part of the border suspended on a pragmatic basis.\footnote{See Peter Leary, pp90-94.}

Writing about the border in 1957, the writer Richard Hayward said:

> The line of demarcation was first called a boundary, and to-day its legal custodians call it a frontier, or are supposed to, but its analogy with the Scottish Border is close, and no one in Ireland ever thinks of it or speaks of it as anything else.\footnote{Richard Hayward, \textit{Border Foray}, London: Arthur Baker, 1957, p10.}
7. A “militarised” border

On 12 December 1956 the Irish Republican Army (IRA) launched Operation Harvest with attacks on public buildings and Royal Ulster Constabulary (RUC) border posts in Northern Ireland. These continued for the next five years.

Sir Anthony Eden, who had succeeded Winston Churchill as Prime Minister in 1955, reminded the UK House of Commons that the Ireland Act 1949 had declared:

Northern Ireland to be an integral part of the United Kingdom. This is a declaration which all parties in this House are pledged to support. The safety of Northern Ireland and of its inhabitants is, therefore, a direct responsibility of Her Majesty’s Government, which they will, of course, discharge.

On 21 December 1956, Northern Ireland’s Minister for Home Affairs, Walter Topping, responded to the violence by authorising the RUC to undertake “the total or partial stopping up or diversion of any road by any means of barricades or road blocks or in such manner as may be considered necessary for that purpose”.

That same day, a battalion of the Royal Northumberland Fusiliers blew craters in a number of roads linking Armagh (in Northern Ireland) and Monaghan (in Ireland) as well as several bridges in County Fermanagh. When local inhabitants (on both sides of the border) filled in these craters or fashioned tracks to get around them, on 20 August 1957 the Northern Ireland authorities initiated more closures. This time roads were “spiked” using lengths of tram or railway lines fixed upright at short intervals across the width of each crossing.

Between 1956-62 more than 200 roads were closed, leaving only 16 points of entry between the two jurisdictions. As the historian Henry Paterson has written: “Farmers, often with fields in both jurisdictions, doctors, traders and shoppers all experienced the disruption and inconvenience of long detours.” While most Unionists welcomed the disruption of IRA activity, there was opposition among nationalists to the problems caused by road closures.

Viscount Brookeborough, Prime Minister of Northern Ireland between 1943 and 1963, responded to these “Troubles” with renewed arguments for partition. Northern Ireland’s union with Great Britain, he wrote in a Government of Northern Ireland pamphlet, was “preserved not by a British garrison but by the declared will of the Northern Ireland people expressed through their elected Parliament – and that will is paramount”.

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74 This was the anti-Treaty IRA which had fought and lost the Irish Civil War.
75 HC Debs 19 December 1956 Vol 562 cc1265-66
76 Peter Leary, pp174-75.
Spikes on many border crossings were only removed in March 1963.

## 7.1 “The Troubles”

During the 1960s, Terence O’Neill, Prime Minister of Northern Ireland between 1963 and 1969, and Sean Lemass, the Irish Taoiseach, agreed to move towards freer trade between Northern Ireland and Ireland, which was intended to reduce customs checks on manufactured goods along the border. In 1965, the Irish and UK governments signed the Anglo-Irish Trade Agreement.

This aimed for a progressive reduction of Irish duties on UK imports over a period of ten years, while the UK was to remove all restrictions on Irish goods by July 1966. Lemass also proposed the abolition of restrictions on private cars crossing the border, although as late as 1967 motorists were required to present a triplicate form for stamping.79

Beginning in 1965, customs checks on the Ireland/Northern Ireland land boundary were extended to water crossings (i.e. canals). A customs caravan dealt with motor cruisers entering Northern Ireland waters (from Ireland) on Lough Erne. Later, water patrols were also added.

The period known as The Troubles, however, came to dominate discussion of the border after 1968. Due to the deteriorating security situation, it was announced on 14 August 1970 that “unapproved” routes were again to be closed. Initially, spikes like those used between 1957 and 1963 were reinstated, although these were soon replaced with large concrete blocks. Although there were periodic re-openings, by October 1971 several crossings had been “cratered” using explosives. Local inhabitants once again filled these in, and by November 1971 52 out of 89 closed roads were open again.80

From the early 1970s, therefore, UK, Northern Ireland and Republic of Ireland security forces “sought to control the movement of paramilitaries by closing most border roads and establishing army and police checkpoints on approved road crossing points”.81 In some areas, army watch towers and barbed wire were added to existing border infrastructure.82

On 12 December 1971, the Ulster Unionist Senator Jack Barnhill was shot dead by the Official IRA at his farmhouse near the Tyrone/Donegal border.83 This was the first political assassination in Northern Ireland since 1922.

James Chichester-Clark, the Prime Minister of Northern Ireland between 1969 and 1971, has been quoted as saying that the border “was never intended, on our part, as a major international frontier, an Emerald

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79 Brian Harvey, Kelly Assumpta and Sean Mcgearty, p40.
80 Peter Leary, pp189-90.
81 Catherine Nash et al, p12.
83 The IRA split in 1969. The Official IRA was Marxist-Leninist and believed that Ireland could not be unified until Northern Ireland’s Protestants and Catholics were at peace with one another. The Provisional IRA, which later became the dominant faction, disagreed.
Curtain. It was others who piled brick upon brick along that wall so that we could scarcely see or comprehend one another.”

For most of the conflict, the Ireland/Northern Ireland border was the most militarised area of Europe west of the Berlin Wall and the Iron Curtain.\textsuperscript{85} It was not until the Anglo-Irish Agreement of 1985 that the border was controlled effectively from both sides.

The Ireland/Northern Ireland border would remain “securitised” or “militarised” until the Belfast/Good Friday Agreement of 1998 (see Section 9).

The Immigration Act 1971, meanwhile, explicitly referred to the long-standing Common Travel Area involving the UK, Ireland and the Crown Dependencies. Section 1(3) exempted those arriving in Northern Ireland or Great Britain (from any of those territories) from being subject to the controls in the Act.

The Northern Ireland (Temporary Provisions) Act 1972 received Royal Assent on 30 March 1972 and the Parliament of Northern Ireland was prorogued the same day. William Whitelaw, until that point Northern Ireland Secretary-designate, also collected his seals of office, therefore assuming the functions hitherto exercised by the Government and Governor of Northern Ireland.

A period of what became known as “Direct Rule” had begun, although this did not involve any change to Northern Ireland’s constitutional status or its border with Ireland.\textsuperscript{86}

\textsuperscript{84} Quoted in Vincent Boland, “Dividing line: Brexit and the threat to the Irish border”, Financial Times, 19 May 2017.

\textsuperscript{85} Brian Harvey, Kelly Assumpta and Sean Mcgearty, p60.

\textsuperscript{86} See Commons Library Briefing Paper CBP8638, Northern Ireland: Direct Rule, 18 December 2019.
8. 1973 Border Poll

In a measure he believed would provide “a greater measure of stability in the political life of Northern Ireland”, Edward Heath, Prime Minister between 1970 and 1974, announced in March 1972:

a system of regular plebiscites in Northern Ireland about the Border, the first to be held as soon as practicable in the near future and others at intervals of a substantial period of years thereafter.

In effect, Heath was proposing to transfer the principle of “consent” from the prorogued Parliament of Northern Ireland (as enshrined in the Ireland Act 1949) to its people.

A Green Paper, *The future of Northern Ireland: A paper for discussion*, published by the new Northern Ireland Office (NIO) followed in October 1972. Paragraph 82 stated that the “wishes of the people of Northern Ireland on their relationship to the United Kingdom and to the Republic will be ascertained by a plebiscite early in the New Year”.

**Debate in Parliament**

The *Northern Ireland (Border Poll) Bill* received its second reading in the Commons on 21 November 1972. This provided that the referendum would be conducted and funded as if it were a UK general election, and on the franchise used for Stormont elections. The Schedule also set out two questions, next to one of which voters would be invited to place a cross:

- Do you want Northern Ireland to remain part of the United Kingdom?
- Do you want Northern Ireland to be joined with the Republic of Ireland outside the United Kingdom?

William Whitelaw, the Secretary of State for Northern Ireland, explained that the UK government’s aim “was to take the border out of the day-to-day political scene”:

There can be no change in the constitutional position of Northern Ireland as part of the United Kingdom unless by the will of the majority. But equally, if the majority of the people in Northern Ireland were to opt for a united Ireland, no British Government would stand in the way.

Debating Irish unity at the Oxford Union, meanwhile, the Irish Taoiseach Jack Lynch said such a plebiscite, “conducted on the basis of questions as stark as those which are proposed, can contribute nothing, is completely predictable, and can only widen the rift between the two communities”.

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87 HC Deb 24 March 1972 [Northern Ireland].
88 The Ulster Unionist MP William Stratton Mills had asked the Prime Minister to consider a referendum in November 1971 in order to “remove this matter from politics for a generation or more”. Heath declined.
90 *The Times*, 24 November 1972.
The House of Lords considered the Northern Ireland (Border Poll) Bill in December 1972. It received Royal Assent on 7 December.

The Order
The Northern Ireland (Border Poll) Act 1972 provided that the referendum date and regulations be fixed by Order, subject to the negative resolution procedure. This was laid before Parliament on 14 December and set the polling date as 8 March 1973, two months later than originally planned.

MPs debated the Order on 23 January 1973. The SDLP leader Gerry Fitt warned that the referendum would cause “mischief and great danger in Northern Ireland”. He added: “I know that many moderate people in Northern Ireland will have to boycott it and advise those whom they represent to do the same, because we already know the result.”

Fitt’s SDLP, the Nationalist Party and the Republican Labour Party had opposed a referendum from the outset, arguing that the whole of Ireland ought to decide. They urged their supporters not to vote.91

The referendum
The Border Poll took place on 8 March 1973. 98.9% of those who voted supported Northern Ireland remaining part of the UK, while 1.1% wanted it “to be joined with” the Republic of Ireland. Turnout was 58.6%, but it was clear that most Nationalists had boycotted the referendum.

The BBC reported that only 1% of Catholics had taken part, while Brian Faulkner, the Ulster Unionist Party leader, claimed that “some 20 to 25 per cent of the Catholic community”, or “in excess of 71,000 Catholics”, had voted “for the British link in spite of the boycott campaign”.92

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91 Sinn Féin was at this point a proscribed organisation.
9. Developments in the 1970s and ‘80s

Sovereignty over Ireland’s territorial waters remained contested in the mid-1970s.

Section 4(2) of the UK *Fishery Limits Act 1964* had stated that:

References in the Government of Ireland Act 1920 to the portion of Ireland within the jurisdiction of the Parliament of Northern Ireland shall be construed as including, in relation to any matter concerning or connected with fishing, so much of the fishery limits of the British Islands as is adjacent to Northern Ireland but is not nearer to any point on the coasts of Scotland than to any point on the coasts of Northern Ireland.

With its powers thus extended, the Parliament of Northern Ireland had passed the *Fisheries Act (Northern Ireland) 1966* (“the 1966 Act”).

In 1974 the Irish case of *DPP v McNeill* arose from a complaint which had been preferred against the respondents for an alleged breach of the 1966 Act. A resident magistrate in the Republic of Ireland had queried the jurisdiction of a Northern Ireland court to deal with sea fisheries. He was asked to state a case for the Northern Ireland Court of Appeal, where he argued that:

1. the UK Parliament did not have the power to legislate in respect of fisheries in the seas around the coasts of Northern Ireland and therefore s4 of the *Fishery Limits Act 1964* was *ultra vires* the Parliament of the UK;

2. 1966 Act was therefore *ultra vires* the Parliament of Northern Ireland on the basis that “the fisheries in the seas around the whole coast of Ireland (had been) transferred to the Irish Government” by the 1921 Anglo-Irish Treaty and there they remained.

The magistrate’s reasoning echoed the Irish Free State’s position in the 1920s, that the area defined as “Northern Ireland” was confined to its landmass and did not include any territorial waters.

The Northern Ireland Court of Appeal rejected both the magistrate’s contentions but addressed his arguments at length, by reference to the 1920 Act and also the 1964 *Fisheries Convention*, which had been incorporated into UK law by the *Fishery Limits Act 1964*.

Both the UK and Republic of Ireland were signatories to the Convention, which under Article 2 gave each coastal state “the exclusive right to fish and exclusive jurisdiction in matters of fisheries” within the six-mile inner belt of their respective coastal waters.

*Lord Chief Justice Lowry* concluded that on this basis jurisdiction had been correctly devolved to the Parliament of Northern Ireland by the 1966 Act. The constitutional scholar Brigid Hadfield, on the other hand, believed that control remained with the UK Parliament, or had already

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93 This was originally *Weaver v McNeill*, until it was taken over by the DPP in December 1974 on the orders of the Irish Attorney General given its constitutional importance.
passed to Stormont given that it was not explicitly reserved under the 1920 Act.\(^{94}\)

Sovereignty over the territorial waters surrounding Northern Ireland remained disputed until the Belfast/Good Friday Agreement of 1998 (see Section 9).

### 9.1 Redrawing the boundary?

In private discussions, senior UK politicians often considered the possibility of redrawing the Ireland/Northern Ireland boundary as confirmed in 1925.

At one meeting on 4 February 1972, Edward Heath asked Brian Faulkner, the last Prime Minister of Northern Ireland, to consider “the transfer to the Irish Republic of any areas adjacent to the Border in which there was a majority in favour of incorporation in that country”.\(^{95}\)

**Margaret Thatcher**, UK Prime Minister between 1979 and 1990, also raised a revision of the border. Robin Butler, who served as her Cabinet Secretary, recalled “an absurd discussion about moving the border”, for the Prime Minister tended to regard the Ireland/Northern Ireland border “purely in terms of what would be best for security”, forgetting, as her authorised biographer Charles Moore observed, “that any reshaping of Northern Ireland’s boundaries would be impossibly controversial”.\(^{96}\)

In 1974, Liam Cosgrave’s Irish government had prepared plans for how it might govern nationalist parts of Northern Ireland in the event of repartition, which Cosgrave believed the UK government to be considering. This comprised four different scenarios, from minimalist to maximalist, with the nationalist enclave in West Belfast under a system of governance akin to that of West Berlin.\(^{97}\)

### 9.2 Cross-border co-operation

The North Western Region Cross Border Group was established in the 1970s. Based in Derry/Londonderry, it comprised local authorities in Derry/Londonderry, Limavady, Strabane and Donegal. These discussed common issues and lobbied for regional investment.\(^{98}\)

By the 1980s there still existed dozens of all-Ireland bodies including businesses, trade unions, banks, professional associations, churches, media and arts organisations, youth and sporting groups.\(^{99}\)

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\(^{97}\) Brian Harvey, Kelly Assumpta and Sean Mcgearty, p16.

\(^{98}\) Ibid., p123.

10. European Single Market

Another development in the 1970s which came to have a major impact on the Ireland/Northern Ireland border was Europe.

Both the UK and Irish governments had first applied to join what was then the European Economic Community (EEC) in 1961, but only on 1 January 1973 did both countries accede. While EEC membership prevented the introduction of new tariffs between the two countries and therefore reduced customs-related work at the border, it also introduced the Common Agricultural Policy (CAP) and its farming subsidies in the UK and Ireland.

In its evidence to the 1969-73 Royal Commission on the Constitution, the Government of Northern Ireland observed that the land boundary caused problems which were not experienced by farmers and food traders in Great Britain. Several food products produced in Northern Ireland could not compete in Ireland because of tariffs, although similar products produced in Ireland could enter Northern Ireland free of duty and were often sold at prices far lower than those in Ireland.

The Government of Northern Ireland also complained that its Pig Marketing Scheme was:

being endangered by the smuggling of fat pigs from Northern Ireland to the Republic to take advantage of the artificially high price of pigs in the Republic. Yet bacon from the Republic is being sold in Northern Ireland at prices of up to 6d. per lb. less than at home.100

Even after both countries’ accession to the EEC in 1973, smuggling of cattle, pigs, grain, meat and butter across the border remained a significant problem. Declarations surrounding the quantity, type or weight of agricultural products were falsified to claim fraudulent CAP “refunds”. This meant that checks on agricultural products were once again increased at the border.101

Section 51 of the UK Customs and Excise Management Act 1979 made special provision “as to proof” in the “prescribed area” established in 1934 (see Section 5):

If goods of any class or description chargeable with duty on their importation from the Republic of Ireland are found in the possession or control of any person within the prescribed area in Northern Ireland, any officer or any person having by law in Northern Ireland the powers of an officer may require that person to furnish proof that the goods have not been imported from the Republic of Ireland or that the duty chargeable on their importation has been paid.


Section 82 of the same Act granted those engaged in the prevention of smuggling powers to patrol coastal waters and “haul up” certain vessels.


Finally, Section 8 of the *Finance Act 1983* amended the 1979 Act to put in place the same “onus of proof” on goods chargeable with agricultural levies exported from the UK and “found in the possession or control of any person within the prescribed area in Northern Ireland”.

In 1979, the Irish “punt” was decoupled from sterling, which meant currency had to be exchanged at the border. When Ireland (but not the UK) joined the eurozone, Ireland withdrew its notes and coins during 2002 and began using the Euro.

In June 1985 the *Schengen Agreement* was signed by five of the ten member states of the EEC. This proposed measures intended to gradually abolish border checks between signatory countries. Ireland had expressed interest in joining the Schengen “area” but did not do so as it would have disrupted its Common Travel Area with the UK (whose then government opposed the Agreement). As the historian Ivan Gibbons has observed: “One country joining without the other would have led to an external EU frontier on the Irish border, with increased security and border checks.”

In 1986, the *Single European Act* set a target of 1992 to create an internal European market free of all restrictions. In 1987, EEC customs deregulation allowed for the easier transfer of goods between Ireland and Northern Ireland. Finally, the Ireland/Northern Ireland customs frontier – in existence since 1 April 1923 – ceased to exist at midnight on 31 December 1992. By then, almost 70 years of customs checks had “almost severed the trade between both parts of the island”.

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102 John Kelly, “*The Irish Pound: From Origins to EMU*”
103 Ivan Gibbons, 2018, p63
104 Brian Harvey, Kelly Assumpta and Sean Mcgearty, p37.
11. Belfast/Good Friday Agreement

Security checks and installations remained on the Ireland/Northern Ireland border following the removal of customs checks on 31 December 1992. Border roads, however, gradually reopened following the 1994 IRA ceasefire.

Multi-party negotiations involving the UK and Irish governments and political parties in Northern Ireland culminated in the Belfast/Good Friday Agreement on 10 April 1998. Its main purpose was to decommission paramilitary organisations and restore democratic institutions in Northern Ireland.\(^\text{105}\)

Although the Agreement did not explicitly refer to the Ireland/Northern Ireland border, the section headed “SECURITY” stated that:

1. The participants note that the development of a peaceful environment on the basis of this agreement can and should mean a normalisation of security arrangements and practices.
2. The British Government will make progress towards the objective of as early a return as possible to normal security arrangements in Northern Ireland, consistent with the level of threat and with a published overall strategy, dealing with:
   
   (i) the reduction of the numbers and role of the Armed Forces deployed in Northern Ireland to levels compatible with a normal peaceful society;
   
   (ii) the removal of security installations;

According to press reports, the last security installations were removed in 2006.

11.1 Border poll provisions

Key to the Belfast/Good Friday Agreement was the “principle of consent”. Article 1(ii) recognised:

that it is for the people of the island of Ireland alone, by agreement between the two parts respectively and without external impediment, to exercise their right of self-determination on the basis of consent, freely and concurrently given, North and South, to bring about a united Ireland, if that is their wish, accepting that this right must be achieved and exercised with and subject to the agreement and consent of a majority of the people of Northern Ireland.

The Northern Ireland Act 1998, which implemented aspects of the Agreement, compels the Secretary of State for Northern Ireland to hold a ballot on Irish unification should it “appear” likely that a majority of its electors would support that proposition. It also grants the Secretary of

\(^{105}\) See Commons Library Briefing Paper CBP8439, Devolution in Northern Ireland, 1998-2020, 3 February 2020, for a comprehensive account of the devolved institutions established by the Belfast/Good Friday Agreement.
State a more general power to hold a referendum on whether Northern Ireland should form part of Ireland at any time.\textsuperscript{106}

If the majority of people voting in Northern Ireland were to endorse Irish unification in such a “border poll”, the Secretary of State for Northern Ireland must then:

lay before Parliament such proposals to give effect to that wish as may be agreed between Her Majesty’s Government in the United Kingdom and the Government of Ireland.\textsuperscript{107}

The Belfast/Good Friday Agreement also committed the Irish government to amend Articles 2 and 3 of the 1937 Irish Constitution (see Section 5.1) in order to remove references to “the national territory” (its de jure claim to Northern Ireland). As amended, Article 3 recognised:

that a united Ireland shall be brought about only by peaceful means with the consent of a majority of the people, democratically expressed, in both jurisdictions in the island.

Although neither this nor the 1998 Agreement explicitly committed Ireland to hold a referendum, some experts believe the “Irish government is required as a matter of Irish constitutional law to hold a unification referendum in the South if a unification referendum in the North is passed”.\textsuperscript{108}

Since 2016, Sinn Féin has regularly called for the Secretary of State for Northern Ireland to hold a referendum on unification, something the UK government has rejected on the basis that the conditions set out in the 1998 Act have not been met. In April 2021, Boris Johnson said he believed there would be no referendum for “a very, very long time to come”.\textsuperscript{109}

11.2 Territorial waters

According to J. M. Kelly’s The Irish Constitution, Ireland’s “abandonment of the de jure claim to Northern Ireland also entailed an abandonment of whatever claim might have been made in the past to ownership of the territorial waters around Northern Ireland”.\textsuperscript{110}

The maritime boundary between Ireland and Northern Ireland, however, remained unsettled. This dispute was specific to the cross-border Loughs Foyle and Carlingford. Loughs are lakes connected to the wider river system that support native fish species such as salmon, trout, eel and mussels. The UK and Irish governments disagree as to ownership of Lough Foyle and, to a lesser extent, Carlingford Lough. The UK government considers that “the whole of Lough Foyle is within the UK”, a claim the Irish government does not accept.

\textsuperscript{106} See s1(2) Northern Ireland Act 1998
\textsuperscript{108} Brian Hutton, “Boris Johnson: No Border poll for ‘very long time to come’”, The Irish Times, 20 April 2021.
Regulation of activities in these bodies of water is the responsibility of the **Loughs Agency**, a North-South Implementation Body constituted under the Belfast/Good Friday Agreement.¹¹¹ This Agency continues the cross-border fisheries management which was previously the responsibility of the Foyle Fisheries Commission (see Section 5.5).

In Lough Foyle, the Agency has been prevented from exercising statutory powers over marine aquaculture licensing because of the boundary dispute. This has been a particular problem with regard to oyster trestles. In Carlingford Lough, the voluntary agreement of a median line has enabled the Agency to designate Marine Protected Areas and implement licensing.¹¹²

In 2011 a **Memorandum of Understanding** between the governments of the UK and Ireland agreed – without “prejudice to the negotiation of territorial sea boundaries” – to co-operate for the promotion of offshore renewable energy development. In 2012, the two governments agreed to “address issues relating to both Lough Foyle and Carlingford Lough in the round”. Talks between the UK and Ireland regarding maritime boundaries and joint management issues have been ongoing ever since.

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¹¹¹ Strand 2 of the Belfast/Good Friday Agreement set up another five north-south bodies dealing with food safety, trade and business development, language, lighthouses and special EU programmes.

12. Brexit and the Irish Sea border

The Ireland/Northern Ireland border was a prominent feature of debates over “Brexit” before, during and after the June 2016 referendum on the UK’s membership of the European Union.

12.1 EU referendum campaign

The UK government’s March 2016 document, *Alternatives to Membership: possible models for the United Kingdom outside the European Union*, stated that:

> It is not clear that the Common Travel Area could continue to operate with the UK outside the EU, and Ireland inside, in the same way that it did before both countries joined the EU in 1973.

On a visit to Northern Ireland during the referendum campaign, the then Chancellor, George Osborne, said he believed that “a hardening of the border” would be unavoidable in the event of a “Leave” vote.\(^{113}\)

Speaking at Ulster University in June 2016, the former Prime Ministers Sir John Major and Tony Blair agreed. Sir John argued that Vote Leave’s pledge to restrict EU immigration would be impossible without abandoning the Common Travel Area (CTA): “What you would actually have to do is end up with having border controls and customs checks.”\(^{114}\)

The then Northern Ireland Secretary, Theresa Villiers, rejected this, saying the CTA would “continue if we vote to leave”. She added that:

> There would be risks to manage but they are not significantly more serious than risks that are already managed effectively today through bilateral cooperation between the UK and Ireland.\(^{115}\)

Both sides in the referendum committed to upholding the Belfast/Good Friday Agreement and avoiding a “hard” border between Northern Ireland and Ireland (that is the return of customs infrastructure). The focus of the Agreement was de-securitisation of the border rather than the avoidance of customs checks (which had ceased at the end of 1992). The Agreement presumed, however, that both the UK and Ireland would remain members of the EU.

At the EU referendum, Northern Ireland voted by 56% to 44% for the whole of the UK to “Remain” part of the European Union.

12.2 Aftermath of Brexit

The operation of the border between Northern Ireland and Ireland once the UK left the European Union proved to be one of the most complex and intractable areas of the withdrawal negotiations that followed the referendum.

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\(^{115}\) Ibid.
John Springford of the Centre for European Reform called this the “Irish Trilemma”, with UK Prime Minister Theresa May having to choose two of three options, “a single market and customs union exit, no hard border in Ireland, and an all-UK Brexit”.  

At a special EU summit in April 2017, it was agreed that Northern Ireland would automatically become part of the EU if it voted for unification under the terms of the Belfast/Good Friday Agreement and Northern Ireland Act 1998. An HM Treasury document promised “no return to the borders of the past”.  

Joint Report  
In the UK and EU’s Joint Report of December 2017, the UK reaffirmed its commitment to “the avoidance of a hard border, including any physical infrastructure or related checks and controls” in Northern Ireland.

The Joint Report set out three proposals for how a border might be prevented after UK withdrawal: for the UK to settle it as part of the overall UK-EU future relationship; for the UK to propose specific solutions; and, in the absence of an agreed solution, for the UK to “maintain full alignment with those rules of the Internal Market and Customs Union which, now or in the future, support North-South cooperation, the all-island economy and the protection of the 1998 Agreement”.  

The third proposal became known as the “backstop”. Under this scenario, Paragraph 50 of the Joint Report said the UK would ensure that no regulatory barriers arose 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 for Northern Ireland”.

Draft withdrawal agreement  
In March 2018 the EU produced a draft withdrawal agreement. This contained a “Protocol on Ireland and Northern Ireland” which gave legal form to how this “backstop” scenario might operate. It envisaged the creation of a common regulatory area (CRA) “comprising the [European] Union and the United Kingdom in respect of Northern Ireland”. The CRA “shall constitute an area without internal borders in which the free movement of goods is ensured and North-South cooperation protected in accordance with this Chapter”. The draft text also said that the territory of Northern Ireland “shall be considered to be part of the customs territory of the Union.”

118 HM Treasury, Customs Bill, Cmnd 9502, October 2017, p4.
119 Gov.uk, Joint Report from the Negotiators of the European Union and the United Kingdom Government, 8 December 2017, para 43.
120 Ibid., para 49.
121 Ibid., para 50.
Theresa May rejected this text, saying that “no Prime Minister [of the UK] could ever agree” to “a customs and regulatory border down the Irish Sea”. Arlene Foster, the then leader of the Democratic Unionist Party (which since 2017 had been in a confidence-and-supply arrangement with the UK Conservative Party), agreed that the European Commission’s draft Protocol was “constitutionally unacceptable”, as it would create a “hard” border in the Irish Sea.

**UK government White Paper**

The UK government’s White Paper on the future relationship between the UK and the EU was published in July 2018. This proposed a “common rulebook” with the EU for goods including agri-food, covering “only those rules necessary to provide for frictionless trade at the [Irish] border”.

In November 2018, Police Service of Northern Ireland Chief Constable George Hamilton warned that “anything that re-emphasises the border” would present policing and security challenges.

Theresa May resigned as Prime Minister in July 2019 following several attempts to win parliamentary support for her Withdrawal Agreement, including the “backstop” proposal. Her successor, Boris Johnson, rejected the backstop and set out alternatives to avoid a hard border in Ireland.

**Revised Protocol**

In October 2019, the UK government agreed a Revised Protocol on Ireland/Northern Ireland. This removed the “backstop“ measure and instead avoided a “hard“ border by providing for an effective trade boundary in the Irish Sea. This became known as the “Irish Sea border”, although such terminology was rejected by the UK government.

This proposal did not alter the Common Travel Area or Northern Ireland’s constitutional status as part of the United Kingdom, but it did possess considerable symbolic and economic significance. As Anton Spisak of the Tony Blair Institute for Global Change observed:

> Proponents of the Protocol say that this is the only alternative to erecting the border on the island of Ireland and, if implemented, it will give Northern Irish firms unique access to both British and European markets, attracting inward investment into a region whose economy has long suffered from underinvestment. Others, especially in the unionist community, see it as an impediment to the territorial integrity of the UK and, even, a threat to their identity.

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122 “Theresa May: No UK PM could ever agree with EU draft”, BBC News online, 28 February 2018.
123 “EU withdrawal text constitutionally unacceptable - DUP leader”, Reuters, 28 February 2018.
125 Chris Page, “PSNI are ‘not overplaying Brexit border threat’”, BBC News online, 16 November 2018.
The UK left the EU on 31 January 2020, at which point the Northern Ireland border became a land frontier between the UK and the EU, what the journalist Vincent Boland called “one union’s defining external limit with another union”.

How the Protocol would work in practice remained controversial, not least because some details were left to the Withdrawal Agreement Joint Committee to decide during the Brexit “Transition Period”. In August 2020, Boris Johnson said there would “be no border down the Irish Sea – over my dead body”.

The Brexit Transition Period came to an end on 31 December 2020 and thus the Northern Ireland Protocol took effect on 1 January 2021. On the first day of its operation, Brandon Lewis, the Secretary of State for Northern Ireland, tweeted that “There is no ‘Irish Sea Border’ :

As we have seen today, the important preparations the Government and businesses have taken to prepare for the end of the Transition Period are keeping goods flowing freely around the country, including between [Great Britain] and [Northern Ireland].

12.3 Protocol in operation

Under the Protocol, Northern Ireland is aligned to a number of European Union rules, as set out in the Protocol’s Annexes. These include the Union Customs Code and the Official Controls Regulation on food and animal products. As a result, traders moving most commercial goods from Great Britain to Northern Ireland (but not from Northern Ireland to Great Britain) are required to meet certain customs requirements and – in the case of products of plant or animal origin – various Sanitary and Phytosanitary (SPS) requirements.

To do this, traders are required to make customs declarations, and in some cases pay tariffs. Traders must also provide Export Health Certificates (EHCs) for agri-food goods. These documents, and the goods themselves, may also be subject to checks. The UK-EU Joint Committee agreed a number of exceptions whereby these requirements could be reduced for certain authorised traders: for example, the so-called “grace periods” during which supermarkets and their suppliers are permitted to move food products into Northern Ireland without an EHC, provided certain other conditions are met.

Many of the new processes needed to move goods from Great Britain to Northern Ireland can be completed electronically. Customs declarations are processed using HMRC’s Customs Declaration Service, while HMRC’s Goods Vehicle Movement Service tracks consignments on their journey and raises automatic alerts if data is missing or incomplete.

This can result in vehicles being refused permission to board their ferry at a UK port, or being delayed at their port of arrival in Northern Ireland. As a result, the UK government notes that no new physical customs infrastructure is needed to administer the Protocol.132

SPS checks do require physical inspection in certain cases, and the UK government has constructed expanded facilities at Northern Ireland ports133 to deal with the increased volume of checks needed (although the UK government’s Command Paper on the Protocol notes that checks of this kind were already carried out at Larne Port in order to preserve the single epidemiological area on the island of Ireland).134

The Protocol is also unusual in that it places the EU’s external border inside the territory of a “third country” (the UK), with customs and regulatory checks in the Irish Sea as a means of controlling what enters the EU single market. This produces a situation in which the EU has the legal right to demand implementation of the Protocol, but not the practical ability to enforce necessary checks – all of which are carried out by UK authorities.135

There remains strong opposition to the Irish Sea border, including from members of the Democratic Unionist Party. Media reports suggested that there were some initial delays as a result of the new arrangements, as well as security concerns.

There are continuing EU-UK negotiations on the operation of the Protocol, including an ongoing dispute regarding grace periods and the possibility of an EU-UK veterinary agreement which might mitigate required checks on animal and plant goods. In an interview with BBC Northern Ireland in April 2021, Boris Johnson said he was trying to remove what he called “ludicrous” border checks:

> What we are doing is […] removing the unnecessary protuberances and barriers that have grown up and we are getting the barnacles off the thing and sandpapering [it] into shape.136

Under the terms of the EU-UK Withdrawal Agreement, the 90 members of the Northern Ireland Assembly have the periodic power (after 31 December 2024) to decide whether to terminate or continue the Protocol arrangements. If the former, then the Joint Committee would be required to make alternative proposals to the UK and EU in order to avoid a hard border.137

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133 Belfast, Larne, Foyle and Warrenpoint seaports were all operationalised as inspection points for goods entering the island of Ireland.
134 Ibid.
135 EU officials do, however, have the right to supervise these checks and to access UK information systems and databases to ensure compliance with the Protocol (see CBP 9102, sections 1.4 and 3.4).
137 See Commons Library Briefing Paper CBP 8713, The October 2019 EU-UK Withdrawal Agreement, 17 October 2019, pp38-42 for a full explanation of the democratic consent mechanism.
13. Timeline of the Northern Ireland border

23 December 1920  Government of Ireland Act 1920 receives Royal Assent, creating the political entity known as “Northern Ireland”

3 May 1921  Parliament of Northern Ireland and border enacted under the 1920 Act

22 June 1921  King George V opens the Parliament of Northern Ireland in Belfast

6 December 1921  Anglo-Irish Treaty signed, enabling Northern Ireland to “opt out” of the Irish Free State

6 December 1922  The Irish Free State is constituted. Partition is confirmed when Northern Ireland opts out the following day

1 April 1923  Customs frontier established along the border

6 November 1924  Irish Boundary Commission meets for the first time

3 December 1925  Tripartite Boundary Agreement confirms the existing border

18 April 1949  Ireland leaves the British Commonwealth

2 June 1949  Ireland Act 1949 states that any change to Northern Ireland’s constitutional status requires the “consent” of its devolved parliament

21 December 1956  The border is “securitised” for first time

14 August 1970  “Unapproved” border roads closed in response to “The Troubles”

8 March 1973  “Border Poll” held; a majority vote for Northern Ireland to remain part of the UK but many Nationalists boycott the referendum

31 December 1992  Customs checks at the border cease following Single European Act of 1986

22 May 1998  Belfast/Good Friday Agreement endorsed in a referendum, as are amendments to the Irish Constitution

31 January 2020  UK leaves the European Union

1 January 2021  Northern Ireland Protocol comes into effect
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