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Dr Andrew Murrison MP  
Chair, Northern Ireland Affairs Committee  
House of Commons  
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24 July 2018

Thank you for your letter of 13 June following on from the Government response to your report.

As I said in my previous response, the Government is grateful for the Committee's considered report on the land border between Northern Ireland and Ireland, and have noted the insightful contributions and comments from witnesses and stakeholders during the course of the inquiry. And I can reassure you that there was certainly no intent to underplay the engagement and consideration that the report represented.

With that said, the Committee will appreciate that in my original response many of the areas where detail was requested were subject to ongoing negotiations with the European Union and, in relation to our future relationship, within the Government to agree our negotiating position. We sought to set out the Government's positions in as much detail as possible in the response to the report with that caveat in mind. I am pleased that following the publication of the White Paper on 12 July we are now able to be much clearer on the definition of alignment and the Government's preferred customs arrangements.

First let me restate that the Government's commitments to the people of Northern Ireland are clear. There will be no hard border between Northern Ireland and Ireland, with no physical infrastructure or related checks or controls. We will also maintain the constitutional and economic integrity of the United Kingdom. In addition we are committed to protecting the Belfast Agreement in full, and the rights and obligations that arise from that. Those key considerations are set out in the December Joint Report, and the Prime Minister has reinforced that they will remain at the heart of our negotiating approach. We believe the proposals we have put forward in the White Paper meet our commitments to the people of Northern Ireland, whilst protecting the constitutional integrity of the United Kingdom.

## *Rights for EU citizens*

You asked specifically about the EU rights and benefits available to individuals, resident in Northern Ireland, who hold Irish citizenship (or both Irish and British citizenship). The Treaty on the Functioning of the European Union confers EU citizenship directly on all persons holding the nationality of an EU Member State. Paragraph 52 of the December 2017 UK-EU Joint Report states that the people of Northern Ireland who are Irish citizens will continue to enjoy rights as EU citizens; including where they reside in Northern Ireland. To that end, under the Treaty all EU citizens have the right:

- a) To non-discrimination on the basis of nationality when the Treaty applies;
- b) To move and reside freely within the EU;
- c) To vote for and stand as a candidate in European Parliament and municipal elections in the Member State in which the person resides under the same conditions as nationals of that state;
- d) To be protected in a third country by the diplomatic and consular authorities of any other EU country where their own Member State does not have representation;
- e) To petition the European Parliament and complain to the European Ombudsman;
- f) To contact and receive a response from any EU institution in one of the EU's official languages;
- g) To access European Parliament, European Commission and Council documents under certain conditions;
- h) To have equal access to the EU Civil Service.

Beyond the Treaty rights outlined above, there are also rights linked to residency, which derive from Treaty rights to non-discrimination and free movement, such as access to healthcare and education services and the aggregation of social security contributions, which may normally require a prior period of residence and/or the payment of contributions in an EU Member State.

It is important to emphasise that the Common Travel Area arrangements between the UK and Ireland mean that UK and Irish nationals across the CTA will continue to enjoy the same rights to access health, education and social security services and benefits in the UK or Ireland. Article 2 of the draft Protocol to the Withdrawal Agreement, which has been agreed by negotiators, confirms that the UK and Ireland can continue to make arrangements between themselves relating to the Common Travel Area.

The arrangements relating to residency-linked rights available to people of Northern Ireland who are Irish citizens when they live or work in the rest of the European Union (apart from Ireland), will be addressed in the future negotiations. Accordingly, we cannot provide a definitive response to your question at this point. However, it should be noted that our commitment in paragraph 52 of the Joint Report is reflected in legal text in the recitals to the Commission's draft Protocol, which recognises that Irish citizens in Northern Ireland, by virtue of their Union citizenship, will continue to enjoy, exercise and have access to rights, opportunities and benefits.

### *Impact assessments*

Our steadfast commitment to the Belfast Agreement and to avoiding a hard border will remain central considerations for UK Government decision-making at all levels. As the Prime Minister has set out, it remains our overriding priority to secure a deep and special future partnership with the EU and the UK as a whole. We remain mindful of the need for ongoing consideration of the impact of the implications of the proposals we bring forward for the United Kingdom and all its parts, and of all relevant equality duties, as we look ahead to our withdrawal from the EU. As such we consider that there are already the means to reflect upon the potential impact on the unique circumstances in Northern Ireland of any policies proposed without the introduction of a further and specific impact assessment requirement.

### *Avoiding a hard border*

You asked also about proposals for avoiding a hard border. Our overriding priority remains to meet our commitments through a future deep and special partnership with the EU and, as I have noted above, we believe our proposals in the White Paper achieve that goal. But we also recognise the need to set out a legally operable backstop position that can deliver on those commitments, in the specific and limited circumstances in which it may be required.

We recognise that the draft proposed by the Commission addresses the right scope of issues. We are clear, though, that the Commission's version of that backstop is unacceptable, undermining as it would the economic and constitutional integrity of the UK. Though we do not expect a backstop to be required, we have set out part of our counter-proposal as it concerns customs, in the form of a Temporary Customs Arrangement (TCA) that would apply UK-wide.

The TCA would, of course, not be our preferred option for customs and the White Paper has outlined our approach for a Facilitated Customs Arrangement.

We also recognise that we will need to set out our regulatory approach for the backstop, which we look forward to discussing with the EU in due course. It will be those negotiations which determine how the December Joint Report commitments as they concern alignment are translated to legal text.

### *Customs and regulatory alignment*

On the question of customs and regulatory alignment more broadly, the White Paper sets out that in designing the new trading relationship, the UK and the EU should focus on ensuring continued frictionless access at the border to each other's markets for goods.

That is why we have proposed a UK-EU free trade area underpinned by a common rulebook on industrial goods and agri-food; reciprocal commitments related to open and fair trade; a joint institutional framework to provide for the consistent interpretation and application of the UK-EU agreement; and a new Facilitated Customs Arrangement.

Our proposal is for a free trade area for goods between the UK and the EU. This would be underpinned by a common rulebook that would cover only those rules necessary to provide for frictionless trade at the border. This will protect jobs and livelihoods and ensure that both sides meet their commitments to Northern Ireland and Ireland through the overall future relationship.

The Facilitated Customs Arrangement (FCA) is a business-friendly model that seeks to facilitate the greatest possible trade between the UK and its trading partners, whether in Europe or the rest of the world, while allowing the UK to set its own tariffs. As if in a combined customs territory with the EU, the UK would apply the EU's tariffs and trade policy for goods intended for the EU. The UK would also apply its own tariffs and trade policy for goods intended for consumption in the UK. It would also include a range of facilitations to reduce frictions to trade with the rest of the world.

This would avoid any new routine customs checks and controls for UK-EU trade.

Taken as a whole, we are confident that we will have a final Withdrawal Agreement agreed by October Council, accompanied by and referring to an agreed future partnership framework, with new customs arrangements in place by the end of the Implementation Period. Overall, that is the milestone to which it is right to look forward and our discussions with the Commission will continue to that end.


#### *Fuel smuggling*

Finally, you asked about fuel smuggling. The Government remains committed to tackling tax evasion and avoidance, and the latest tax gap figures show the success HMRC has had in reducing revenue lost to the public. The overall tax gap for 2016-17 has reduced to 5.7% - an all-time low.

HMRC targets fuel smuggling as part of its comprehensive and dynamic anti-fraud oils strategy that has driven down the Northern Ireland diesel illicit market share from an estimated 19% in 2005-06 to 6% in 2016-17.

As part of this strategy, the UK and Ireland collaborated to implement an improved marker for rebated fuel in 2015, which makes it much harder to launder marked fuel obtained from either side of the border and sell it at a profit. We will continue to cooperate with Ireland and others to prevent this illegal activity.

Extensive multi-agency, cross border cooperation is a key element of the operational response to fuel fraud. HMRC chairs a multi-agency cross border fuel fraud group - a sub-group of the NI Organised Crime Task Force - with representatives from HMRC, DAERA, NCA, PSNI, NI Environment Agency and their Republic of Ireland equivalents. The group shares intelligence and information, and coordinates targeted joint operations to tackle criminals who deal in illicit fuel and cheat the exchequers in the UK and Ireland.

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**RT HON KAREN BRADLEY MP  
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