



A study into the current conditions of the island of Ireland labour market, and challenges and opportunities for effective operation for workers and businesses across the island

Commissioned by

Labour Employer Economic Forum (LEEF)

Shared Island Working Group

Authors

Maureen O'Reilly – Independent Economist

Annmarie O'Kane – Centre for Cross Border Cooperation

Rose Tierney – Tierney Tax Consultancy Limited

Anne Devlin - ESRI

August 2024



Commissioned by

Labour Employer Economic Forum (LEEF)

Shared Island Working Group

The views expressed in this report are those of the authors, and do not necessarily reflect the views or policy of Government Departments or of LEEF members.

CONTENTS

Executive Summary	5
Chapter 1 - Introduction.....	19
Background and aims of the study.....	19
Research areas	19
Approach.....	20
Structure of the report	20
Chapter 2 - Evidence of the all-island labour market and mobility on the island of Ireland	21
Summary.....	21
Context	22
Evidence of the All-Island Labour Market and Mobility	24
Concluding Reflections.....	34
Chapter 3 - Taxation	35
Summary.....	35
Introduction.....	36
Context	37
Issues and Challenges	38
Concluding Reflections.....	49
Chapter 4 - Pension entitlements and portability	52
Summary.....	52
Context	53
Issues & Challenges.....	53
Concluding Reflections.....	60
Chapter 5 – Social Security	61
Summary.....	61
Introduction.....	62
Context	62
Issues and challenges.....	63
Concluding Reflections.....	73
Chapter 6 - Qualifications	74
Summary.....	74
Context	75

Issues and challenges.....	79
Concluding Reflections.....	86
Chapter 7 - Skills	87
Summary.....	87
Context	88
Issues and Challenges	89
Concluding Reflections.....	92
Chapter 8 - Cross-border worker mobility.....	94
Summary.....	94
Introduction.....	94
Context	95
Issues and challenges.....	99
Concluding Reflections.....	101
Chapter 9 - The changing world of work (i.e., remote / hybrid working).....	102
Summary.....	102
Introduction.....	103
Context	103
Issues and challenges.....	108
Concluding Reflections.....	113
Chapter 10 - Collective bargaining and Trade Union coverage	115
Summary.....	115
Introduction.....	117
Context	117
Issues and challenges.....	120
Concluding Reflections.....	123
Appendix I – Cross-Border Data Analysis	124
Appendix II – Further Detail on Tax	131
Appendix III – Tax Examples	146
Appendix IV – Further Detail on Pensions	151
Appendix V – Cross-border Worker Survey.....	165
Appendix VI – Advice services.....	176
Appendix VII – Authors	180

Executive Summary

The purpose of the report is to provide an evidence base on the current condition of the labour market and contribute to public and political discussion on addressing challenges and taking up opportunities for workers, businesses and the economy generally in the time ahead, aligning with the objective of the Good Friday Agreement to enhance cooperation, connection and mutual understanding on the island.

The research has focused on the following eight factors in both jurisdictions, and their impacts on the operation of the labour market across the island:

1. Personal taxation,
2. Pension entitlements and portability,
3. Social welfare systems,
4. Qualifications,
5. Skills,
6. Cross-border worker mobility,
7. The changing world of work
8. Collective bargaining and trade union coverage.

The approach of the research team to this project has involved an extensive programme of engagement with cross-border workers, cross-border employers, the professional Advice sector, government agencies and trade unions. We have gathered a significant amount of evidence that has focused very much on the practical aspects of being a cross-border worker or employer and have presented tangible examples throughout the report on the opportunities and challenges they face. There is a significant amount of detail included, particularly in the Chapters focused on taxation, pensions and social security which have been informed by financial experts who are practitioners in advising businesses and people who are or are considering working or employing people across the border.

The importance of integrated labour markets is well noted, and their importance becomes particularly clear in the context of a small island such as Ireland, not only for economic reasons but social and political ones as well. The concept has been a consistent feature of various agreements: the Belfast Agreement, Common Travel Area, and UK EU Exit agreements such as the Protocol¹ to ensure that freedom of movement exists between the two jurisdictions on this island.

The evidence suggests there are very active mobility links between the two jurisdictions, with almost 50 million traffic border crossings in 2023² and 1 million enterprise train journeys between Belfast and Dublin in 2023/24, up 25% on pre-COVID numbers³. Within these are the commuting journeys of 18,000 cross-border workers, 4,000 cross-border third level students⁴, 2,400 pre-third level⁵ students crossing

¹Protocol on Ireland/Northern Ireland available online from https://assets.publishing.service.gov.uk/media/5da863ab40f0b659847e0184/Revised_Protocol_to_the_Withdrawal_Agreement.pdf

² NISRA (2024), Traffic Counts of Vehicles at the Fifteen Main Northern Ireland-Ireland Border Crossing Locations, available online from <https://www.nisra.gov.uk/publications/traffic-counts-vehicles-fifteen-main-northern-ireland-ireland-border-crossing-locations>

³ Data provided directly to report authors by Translink (2024)

⁴ See NI Census 2021 and Irish Census 2022

⁵ Primary, secondary, further education

the border from NI, and a currently unknown number of pre-third level students travelling in the opposite direction. The number therefore working and studying across the border totals a minimum of 25,000 people. They include a highly skilled, mobile talent pool of private and public sector workers. Public sector workers are an important part of border labour mobility piece. Our research suggests that in terms of the Top 10 sectors (making up 85% or 6,627 or cross-border workers) for IE residents working in NI, around 40% work in the public sector (combining Human health and social work, Education and Public administration and defence sectors). Health professionals make up 9% of NI residents commuting to IE for work and teachers/educational professionals a further 6%. Health (17%) and Education (12%) are the top-ranking occupations for female cross-border workers resident in NI working in IE.

There is also a strong geographical perspective to this group in terms of their value to border regions. Our estimates suggest that around 80% plus of cross-border workers live/work in the border region. For example, IE Census (CSO 2022) suggests that 97% of IE commuters working in NI work in border Council areas i.e. Armagh, Banbridge & Craigavon, Newry, Mourne & Down, Mid Ulster, Derry City & Strabane and Fermanagh & Omagh. The border region is one of the most economically challenged across the island and that access to skills and talent is important in helping to address some of its key challenges around access to jobs.

It is important to stress that the extent of cross-border working is an incomplete picture and is likely to be a significant underestimate. For example, complex employment situations for construction workers, trades, sales personnel and others who are not based in a single location may mean they go unaccounted for. For example, UK employment figures suggest there are up to 3% more construction workers living in NI than working there⁶ which could amount to almost 2,000 NI Construction workers working in IE not accounted for in Census figures. Furthermore, the likelihood that not all cross-border work is declared is high, especially as the prevalence of home working has created ‘blurred lines’ as to what constitutes cross-border working. What is evident from our research is that cross-border commuting patterns have changed with cross-border workers making fewer physical journeys across the border to work.

In 2001, PWC/Indecon produced a report to ‘*improve awareness of, and stimulate debate on, obstacles to mobility of persons, in either direction, between North and South on the island of Ireland*’⁷. It was commissioned by the North South Ministerial Council (NSMC) following agreement by the NI Executive and IE government that a greater understanding was needed of barriers to living/working North and South. The research considered and recommended ways in which these barriers might be eliminated or overcome by the public and private sectors, as appropriate, in both jurisdictions. It noted barriers including social and cultural factors, economic factors such as different tax and social security systems, pensions rights, recognition of skills and qualifications, accessibility and transparency of information, and different levels of service provision and the quality of transport links. It had several conclusions; that a wide range of obstacles to mobility existed, that individuals and companies faced several obstacles concurrently and lower income groups were disproportionately affected. The research did note that these problems were not unique to IE/NI. There were 50 recommendations in the report, ranging from awareness/information provision through to legislation.

In 2024, many of the findings of the NSMC research still apply and arguably have become more complicated, with UK EU Exit and changing work practices post COVID playing a part. Our extensive

⁶ CIOB Policy & Research (2023), *Building Up Ireland* available online from <https://www.ciob.org/search-results?keyword=building+up+ireland>

⁷ North South Ministerial Council (2001), *Study of Obstacles to Mobility*, prepared by PWC and INDECON available online from <https://borderpeople.info/site/wp-content/uploads/2014/10/obstacles.pdf>

engagement with cross-border workers and employers, and services that support them demonstrates that it remains challenging for many workers and businesses to continue to engage with the cross-border labour market for a wide variety of reasons as detailed in this report. The research team heard from some employers that they were starting to find this so challenging that they had made the decision not to employ cross-border workers going forward and noted that this reduced their labour and skills pool. Several international companies highlighted that the impact of such decisions and the resulting smaller labour pool made it more difficult to compete with other sites within their parent company for investment/expansion. One large indigenous NI company had expanded into IE but was regretting the decision because of the challenges it faced in terms of the mobility of workers who were needed to work on both sides of the border. The research team also heard from employees who, having worked cross-border for several years, and experienced the difficulties (as outlined in this report) of doing so, decided to change job and not to work cross-border in future. This in turn has limited the individual's job opportunities and career progression.

While this research considers the labour market on an all-island basis, data suggests that most of the mobility occurs, unsurprisingly, in the border region. Therefore, the challenge of retaining existing businesses and skills pool, alongside aspirations to attract new businesses, jobs and talent weighs heaviest on border counties.

In considering the range of factors outlined above and their impacts on the ability to work and employ cross-border, two overarching issues have emerged that have and will increasingly influence the effective functioning of an all-island labour market. They are:

1) Information Failure

Cross-border employment is not straightforward and therefore if employers and employees are to comply with the rules and regulations they require access to relevant information, whether that be on issues around taxation, pensions, social security, working arrangements and qualification/skills. However, a pervasive issue raised throughout this research is that, whether the information is available or not, workers and employers and indeed those providing advice and support to them do not always know where to access advice and/or then understand/interpret and apply the advice being provided. One of the most striking comments made by a professional within the Advice sector was that at times the situations are so complex they did not know what question to ask, let alone the answer they were seeking. Engagement with workers and employers show that this information failure can be confusing and stressful and can have significant repercussions – involving costs for workers and employers, non-compliance penalties because the rules aren't understood and/or they become too difficult to comply with. Ultimately this makes living in one jurisdiction and working in the other unsustainable for some workers and employers as noted above.

2) Changing/Diverging Legislation & Policy

Another significant issue that straddles several areas of focus in this research has been the potential ramifications of changing laws and increasing divergences between the EU, IE, the UK on reserved matters, and NI for devolved matters. The potential for divergence has been sharply brought into focus with UK EU Exit and has created uncertainty for cross-border businesses and workers.

Post UK EU Exit, due to the introduction of the Retained EU Law Act (2023)⁸, the supremacy and general principles of EU law, including employment law, ended in the UK on 31st December 2023. The Act raises issues both around how NI feeds into any changes to current law and how these changes affect NI, including how they affect cross-border workers. On-going and increasing divergence between employment laws could have implications for workplace rights of cross-border workers such as holiday pay, rest breaks, health and safety rules and protections from discrimination. There are complexities around which laws take precedent in terms of workers' rights and the potential diminution of rights as a result.

Taking the eight factors set out above, the following key observations are made:

Taxation

Our research has found that the tax rules for cross-border workers are much more complex than for their peers who reside on the same side of the border as their employment. These complexities existed for border-based employers and employees prior to UK EU Exit but have largely remained hidden until relaxation of rules during the pandemic shone a spotlight on them.

The legacy of non-compliance by cross-border employers and employees which has consistently been raised by stakeholders in our research is as a direct result of these issues not being addressed at the legislative level and of an information failure, where clear concise guidance with relevant examples of IE land border scenarios has not been made available by government departments in either jurisdiction.

The employers and employees affected are calling out for simplification and clarity. In particular:

- The Global Mobility tax rules do not suit the land border where individuals move across it frequently in the course of their employment duties or live on the opposite side of the border from where their employment is based. Where the employee is posted across the border by the employer, and they live on the side of the border to which they have been posted there is an immediate requirement for a payroll to be operated in their jurisdiction of residency. This is also the case where the employee works from home on the opposite side of the border from where the employer is based. This results in a dual payroll obligation.
- Dual payroll is complicated and costly for the size of businesses involved. It also has other knock-on effects for employees as explained in this report. Dual payroll is also the cause of all other complications arising e.g. access to social security, mortgage applications, income protection, health insurance etc. Employers and employees alike would like the rules to be changed to allow them to be taxed on one side of the border only.
- The existing Double Taxation Agreement (DTA) relief under Article 15 does give relief from operating dual payroll for some employers and workers. However, it only applies to those who live in the same jurisdiction as the employer and are posted to the other jurisdiction. It does not apply to those employees who live in the opposite jurisdiction from where the employment is based and are posted to carry out duties in the jurisdiction of residency or to work from home.

⁸ Retained EU Law (Revocation and Reform) Act 2023. (2023) Available at: <https://www.legislation.gov.uk/ukpga/2023/28>.

- In terms of published guidance on this topic of dual payroll, there is a lack of available clear, concise, guidance with relevant examples of employees crossing the land border to work written in lay-persons language.
- The employers fear of creating a corporation tax exposure for the business in the other jurisdiction by having employees working there is the second biggest worry, particularly for IE based businesses with NI resident employees as the NI corporation tax rates of 19% and 25% far exceed IE rate of 12.5%. The employers are asking for a simplification or a minimum threshold below which cross-border hybrid workers do not create a Permanent Establishment (PE) result in extra corporate taxes.
- In the guidance there remains a lack of clarity as to whether remote working and hybrid working is causing PE issues for employers/companies of all sizes creating a corporation tax exposure. While the OECD is working on providing more clarity, this is not expected until late 2025. There is no restriction on States moving ahead and entering bilateral arrangements. Some States such as Belgium and the Netherlands have already introduced a PE threshold.
- Transborder Workers Relief (TBWR) is a very valuable relief to IE resident cross-border workers, and it is important that this is retained, as explained in the report.
- Low earning NI resident cross-border workers earning between £15,000 and £36,000 are being brought into the self-assessment system to pay a top up tax to the UK with all the associated costs involved. Employees are asking for the NI equivalent of IE TBWR to ensure they are not subject to more tax in NI on their salaries.
- Article 18 of the Double Taxation Agreement (DTA) applies specifically to the remuneration (and pensions) of certain government service workers. Certain cross-border government service workers are only taxed on one side of the border even when they carry out duties in their home jurisdiction where they are also a national. This is a much more straightforward way of dealing with cross-border workers versus private sector cross-border workers who are subject to dual payroll where they carry out duties in jurisdiction of residency.
- Throughout engagement with employers and employees this research has identified a significant apprehension around legacy tax and pension issues.
- It can be challenging to access and understand government advice and support for cross-border workers and employers. There is no “one stop shop” in Government advice to deal with the myriad of issues that arise with cross-border working.
- There is a lack of dual qualified tax, social security and pension experts in both jurisdictions which makes it much more difficult.
- Some of these issues/challenges are being reviewed at a global level by, for example, the OECD and EU. However, it is not clear if/when any solutions will be found and in the meantime these challenges will persist. Some countries (e.g. Spain, France and Switzerland) are therefore pursuing local solutions including bilateral agreements. For example, cross-border workers who are resident in Spain are only taxable in Spain and those who are resident in France are only taxable in France. Switzerland and France have agreed bilaterally where cross-border workers are taxed, and this can be different depending on cantons (Member States of the Swiss Confederation).

Pension Entitlement and Portability

Our research has found that the tax rules for pensions for cross-border workers only allows tax relief on contributions in very limited circumstances. The relief only applies where:

- the employee changes residency across the border or
 - is posted across the border to work for the same or a connected employer
- and
- continues to contribute to the same pension scheme that they contributed to before the change of residence or posting.

We also found from the research that there is a lack of clarity on NI taxation of IE pension pots such as non index linked Approved Retirement Funds (ARFs) and there appears to be double taxation on transfer of Personal Retirement Savings Accounts (PRSAs) for cross-border workers. Employees and pension advisors are struggling to find the information and advice with clarity on such pension arrangements for cross-border workers.

In addition, we found that employees are finding it concerning that there appears to be no guidance as to how auto enrolment pensions for cross-border workers should be treated from a tax perspective. There is nothing to prevent an Irish resident worker joining their NI auto enrolment pension scheme. However, based on current rules they would not be entitled to tax relief on their contributions in IE and could be taxed on the employer contributions as additional salary or benefit in kind.

Likewise, in the information published to date on the new auto enrolment to be introduced in IE, there is no indication that the situation for the NI resident employee of an IE business has been considered. Since both the State and the employer will make contributions to the autoenrolment scheme, whether the employee will be taxed in NI on these additional contributions as additional salary or benefit in kind requires urgent clarification.

As evidenced in our research through stakeholder engagement, the apparent legacy of non-compliance around tax also applies to tax on pensions for cross-border employers and employees as a direct result of these issues not being addressed at the legislative level and of an information failure, where clear concise guidance with relevant examples of IE land border scenarios has not been made available by government departments in either jurisdiction.

The employers and employees affected are calling for a reciprocal recognition of equivalency in relation to pensions. In particular:

- That tax relief should be available on employee pension contributions in the home jurisdiction for those who live on the opposite side of the border from the employment.
- There should be clearly laid down guidance as to how IE pension pots such as Approved Retirement Funds (ARFs) and Personal Retirement Savings Accounts (PRSAs) for cross-border workers will be taxed in NI. Likewise, all pension rule changes in IE should be border proofed to ensure that NI resident workers' position is considered.
- There should be clear guidance that tax relief is available in IE on contributions to NI auto enrolment schemes and that employers' contributions to such schemes are not taxed in IE on IE resident employees.

- Clear guidance should be made available on the new IE auto enrolment scheme for NI resident employees. They should not be taxed on the employer or State contributions in NI.
- In IE there is certainty since 1 January 2023 that lump sums from NI pensions are treated exactly the same as lumps sums from IE pensions. The first €200,000 is tax free. The next €300,000 is taxed at 20% and the remainder at marginal PAYE rates. In NI lump sums from IE pensions are mostly taxable. If part of the pension fund was accumulated prior to 6 April 2017 then the proportion of the lump sum can be treated as not taxable. For the benefits accumulated from 6 April 2017 there are differing tax treatments depending on the type of foreign pension scheme. Therefore, if it is an overseas pension meeting certain conditions then it may benefit from the 25% tax free rule. However, if it does not meet the conditions then it would not benefit from this 25% tax free rule. Employers and employees are asking for a simpler regime where it is clear from the outset whether a tax-free lump sum can be obtained from the fund.

The research shows that there is not a level playing field between cross-border workers and non cross-border workers when it comes to pension provision and portability. As it currently stands, evidence from the advice sector suggests that pensions can be a very difficult and arguably poor investment for existing and potential cross-border workers.

Social security

Due to UK EU Exit, social security coordination for cross-border workers in this region has become more complex in recent years. Depending on their individual circumstances, workers may fall within the scope of the EU / UK Trade and Cooperation Agreement, the EU / UK Withdrawal Agreement and / or the Common Travel Area Social Security Convention.

Whichever rules apply, the rights of workers as they move between the jurisdictions for work should be protected. The rules identify which jurisdiction is responsible, workers will then contribute to the relevant system (by paying UK National Insurance or IE Pay Related Social Insurance) and are supported by it whenever necessary.

Broadly speaking, a worker who commutes across the border everyday will pay social insurance contributions in their jurisdiction of employment (deemed the competent State due to their work duties being carried out there). For example, if a cross-border worker resident in IE is too ill to go to work they will claim illness benefit from NI (provided they meet all the criteria). However, if they work from home for more than 25% of their time competency can switch back to their jurisdiction of residence. This switch is not limited to those working from home but for any worker who carries out duties across the border e.g., a cross-border delivery driver could find themselves in a similar situation.

For individuals with part-time jobs in both jurisdictions, or working from home on a part-time basis, understanding which jurisdiction is competent is not straightforward for either the employee or employer. This research has identified a significant lack of knowledge and compliance, for example some workers are incorrectly contributing to both jurisdictions.

On a global scale the normalisation of working from home and flexible working patterns has resulted in some neighbouring countries adjusting their domestic rules and bilateral agreements to accommodate the needs of their local labour force. For example, the Czech Republic has agreed frameworks with Germany and Austria which increases the work-from-home threshold to 40%. Furthermore, flexibility within the EU rules has resulted in a new opt-in initiative whereby countries can opt-in to increase the time spent working from home to 49.9%. The UK Ireland bilateral Convention on Social Security currently follows the EU regulations and the 25% rule. However, the Convention may prove a useful tool

for the introduction of a bespoke solution that meets the needs of the labour market in this region. Identifying a combined solution for both taxation and social insurance would ease the burden for employer and employees and create an environment that makes compliance more straightforward.

Having numerous, albeit similar, coordination rules in play simultaneously has created uncertainty for workers and the Advice sector organisations that support them. Stakeholder engagement suggests that the introduction of relevant cross-border information, adapted applications forms, online systems and helplines that recognise the frequency of cross-border employment in this region, would go a long way to ease the experience of workers who often first encounter social welfare when they find themselves in need of support. The research uncovered many examples of complex cross-border claims for family benefits, illness benefit, maternity and paternity payments, invalidity and disability payments, and State pensions.

The need for personalised support from an independent advice provider came across very clearly in the stakeholder engagement. However, the independent networks require access to cross-border guidance notes and training on cross-border topics to enhance the support currently provided to workers.

Encouraging collaboration between government departments, the advice and professional sectors, and between the jurisdictions adds another dimension to understanding the lived experience of cross-border workers. Ensuring that non-devolved departments and services based in Great Britain (GB) are part of that collaboration is necessary to enhance the support provided to workers and their families.

Qualifications

Post UK EU Exit there has been significant change in the qualification's recognition process. The EU Mutual Recognition of Professional Qualifications (MRPQ), whereby professionals qualified in one (home) Member State can seek professional recognition of their qualifications in another (host) Member State for the purpose of practicing their profession, no longer applies in the UK. UK nationals are now treated as third country nationals in the EU. An Agreement between the Irish and UK Governments is not possible. The EU must move in unison on this matter. Irish citizens who got their professional qualification in the UK must get that qualification recognised in IE or in any other EU Member State where they intend to work. UK nationals must also do this. The MRPQ system had provided a route to recognition for professionals with equivalent IE qualifications, helping the UK to meet its commitments under the Common Travel Area. The Common Travel Area MOU, signed in 2019, states the intention to provide for mutual recognition between the two jurisdictions. The MOU provides the platform for progress to be made on a bilateral basis.

The MRPQ has been replaced by the Professional Qualifications Act (2022) in the UK as a new system for how professional qualifications gained abroad are recognised in the UK and allowing regulators in the UK and overseas to mutually recognise qualifications (where they cannot do that now). With UK EU Exit, what has emerged is a 'patchwork' approach to mutual recognition which is complex and difficult to navigate. What is set out in legislation and policy does not always appear to work in practice. Issues include, for example, the fact that add-on courses or modules required to achieve equivalency for some public service roles are provided by private educational facilities and as such are not suitable for public funding. The Advice sector suggests the recognition systems are not straightforward to use and there are wider issues such as costs and accessibility among others. Some challenges are not insurmountable, although they do reflect a bottom up and ad hoc approach considering the changes post UK EU Exit.

Another critical part of the qualifications system relates to students and how that is supported from an all-island perspective. Student mobility across the island tends to be low, with students in both

jurisdictions more likely to travel to Great Britain (GB) to study. ESRI research⁹ has highlighted that application and acceptance rates are lower in both jurisdictions. Issues raised include the language requirement of some courses in IE, timing of offers in that IE's offers are later than those for the UK/NI, grant finance issues and cost of living pressures depending on where a student chooses to study.

The ESRI research suggests significant opportunities for increased cross-border student mobility, given that relatively low base and greater propensity in both jurisdictions to study outside the island of Ireland. It stands to reason that if more students stay on the island to study, they are more likely to take up jobs here. That talent would be retained to support the all-island labour market and wider economy develop and grow and address one of the potentially most significant structural weaknesses in both economies going forward, the challenges of accessing a sufficient supply of labour¹⁰ (migration effects aside)¹¹¹².

Skills

This research has engaged extensively with businesses and cross-border workers to understand the benefits and challenges in engaging with the cross-border labour market. The positivity around the opportunities is countered by the fact that there are some significant challenges that are negatively impacting on the mobility of skills. From an employer perspective, there are a range of issues noted throughout this report including the treatment of tax and pensions and ability to provide equivalent benefits, that is making it increasingly less attractive to recruit cross-border. This means, particularly for border regions, that their talent pool is being restricted. This has implications for the stability and growth of these businesses and for international companies, regarding how they compete with other locations across their group to secure further investment if they cannot demonstrate that an adequate labour pool exists.

There is a general sense from this research that there is little understanding of the scope of cross-border collaboration in the skills space or the extent to which people are mobile across the border to improve their skills or access job opportunities relevant to their skills profile. The questions this research gives rise to include:

- What impact will any changes in employment law in GB have and what will NI follow? For example, the planned employment law reforms to working time, holiday pay and TUPE in GB do not currently extend to NI. In the longer-term, given NI remains aligned to certain EU laws post UK EU Exit (under Article 2 of the Protocol) then equality and anti-discrimination legislative change in NI may not follow the same course as in GB.
- What legislation/policy takes precedence as the UK moves to change various aspect of EU law, particularly in the context of what is devolved to NI?
- Where legislation changes working practices on either side of the border, how will those changing terms of conditions affect existing cross-border workers and the ability to attract new ones? This is already affecting businesses. Engagement through the two business workshops undertaken as part of this research highlighted that businesses were already finding it difficult

⁹ Smyth, E. & Darmody, M. (2023), *Student Mobility in Ireland and Northern Ireland*, available online from <https://doi.org/10.26504/rs166>

¹⁰ The Pensions Commission (2021), *Population and Labour Force Projections Technical Sub-Committee – Working Paper 1 July 2021* available from <https://www.gov.ie/en/publication/6cb6d-report-of-the-commission-on-pensions/>

¹¹ National Competitiveness and Productivity Council (2023), *Ireland's Competitiveness Challenge 2023* available at <https://enterprise.gov.ie/en/publications/publication-files/irelands-competitiveness-challenge-2023.pdf>

¹² Goddard, J (2024), House of Lords Economic Affairs Committee, *Where have all the workers gone?*, available at <https://lordslibrary.parliament.uk/where-have-all-the-workers-gone-economic-affairs-committee-report/>

to employ cross-border workers because of increasing complexities around benefits including health care and taxes/pensions as noted above. Some businesses suggested that fewer cross-border workers were applying for jobs while others were making the decision not to employ cross-border workers, closing off an important source of labour and skills.

- How will NI feed into any changes in legislation and policy on skills (and immigration) in the context of implications for the cross-border labour market and hybrid working?
- How the equivalency of skills across jurisdictions is assessed? This research has provided practical examples of the challenges of ensuring consistency and fairness in this approach.
- How Immigration policy affects the movement of non-Irish and non-British citizens across the border for work? The Common Travel Area affords Irish citizens in the UK and British citizens in IE the right to live and work in each other's countries without having to apply for permission. If someone is not a British or Irish citizen, then there are different rules that can be complex. This is important in terms of the changing context of citizenship outlined above and in understanding what this means for those non-Irish and non-British citizens crossing the border for work.
- Linked to this, given the increased importance of non-nationals in local labour markets, how ease of movement between the two jurisdictions can be accommodated for these workers? One large employer with sites on both sides of the border noted that they attend Recruitment Fairs in IE that attract significant numbers of international students, but they cannot recruit them to their site in NI, only IE.

Worker mobility

Due to Common Travel Area permissions, Irish and British citizens continue to have the right to work across the border. However, the loss of EU free movement on the island has created uncertainty for employers as they struggle to recruit skilled workers echoing the points made above.

During stakeholder engagement, businesses in both jurisdictions raised concerns about difficulties accessing skilled workers in what they suggest is a shrinking all-island labour market (not only due to legal movement, but also the taxation burdens that reduce cross-border activity).

Both jurisdictions are experiencing high employment rates, so there is a common challenge to attract skilled workers from other places, but the current immigration procedures and work permit schemes do not lend themselves to the all-island labour market. Businesses with an entity in both jurisdictions share concerns about travel restrictions placed on existing staff due to their visa conditions, which in turn limits business expansion and the transfer of skills and expertise within their all-island company.

Employers have expressed concerns about complex, costly work permit schemes that delay access to skills and address skills shortages, whilst skilled workers who have been recruited from other places to the island cannot (easily) contribute to, and reap the benefits of, the all-island labour market. Their opportunities to remain and pursue a career on an all-island basis are curtailed to a single jurisdiction.

Finally, there is a clear and urgent need to raise awareness of the limitations of the Common Travel Area i.e., it's free movement permissions and entitlement to work applies only to Irish and British citizens.

Changing world of work

Remote and flexible working patterns offer new potential for social and economic growth, especially in rural areas and border regions, while helping countries address Green Agenda targets and obligations. Matching global taxation rules and national legislation with their practical application is however creating

international challenges. While countries wait on international solutions from for example, the OECD and the EU, many have also been quick to tailor solutions that meet their local need. The EU *b-solutions* initiative, aiming to solve legal and administrative obstacles to cross-border cooperation, lists many such examples.

With regards to flexible opportunities for workers between IE and NI, this research finds a disconnect between local policy and the needs of employers and workers in this region as current tax and social security rules lend themselves to workers working and living in the same jurisdiction. During stakeholder engagement businesses shared their concerns at being unable to meet the flexible working expectations of current cross-border staff and potential new candidates. As a result, they are concerned about the shrinking labour pool and their ability to remain competitive, particularly in the border region.

Overall, companies large and small appear to be struggling to comply with the requirements. The burden weighs especially heavy on small businesses that do not have the financial resources or expertise to implement rules that were created for international business activity.

During our engagement, cross-border workers have voiced their frustration about being unable to enjoy the benefits of flexible and remote working opportunities offered to their colleagues (non cross-border workers). Their disillusionment of cross-border employment does not bode well for employers reliant on their skills.

Employers and workers have stated that new policies are required to ensure the viability of businesses reliant on cross-border workers. As new strategies and legislation are put in place to exploit the full potential of the changing world of work it is important that the needs of the mobile portion of the labour force across borders are included from the outset.

In the meantime, there is a call for clear information and guidance from government regarding exactly how to apply current rules and regulations in cross-border scenarios. There also appears to be a clear need for access to independent advice so that workers and employers can challenge government decisions regarding their compliance with current rules.

Collective Bargaining and Trade Union Coverage

There is low representation generally of workers, largely private sector workers, in trade union coverage and collective bargaining across both jurisdictions. Discussions as part of this research with the Advice sector suggest that many cross-border workers are even less likely to be represented by trade unions, which is a further challenge given the complexities that they can face as a cross-border worker as demonstrated through this research and the need for greater advice and support. The extent to which the gap in trade union coverage between government and other cross-border workers compared to government and non-government workers who live and work within a single jurisdiction is different (larger or smaller) is an unknown.

The low trade union engagement in IE could change under the new EU Directive on the Minimum Wage, given the greater role advocated for collective bargaining. This may mean that workers in IE have greater access to trade unions than in NI in the future and potentially cross-border workers in IE relative to NI which could lead to an imbalance in guidance, support, and resolution.

The role for strong, explicit representation of these workers is evident and the trade unions have and continue to play their part in discussions and negotiations. Trade unions do appear to have significant involvement in UK EU Exit mechanisms given their involvement in different engagement platforms. However, it is not clear to what extent trade unions are involved in these different platforms and

specifically in how a cross-border focus on the interests of those employees impacted is brought into play.

Closing Reflections

The CTA should provide the basis for a successful all-island labour market.

*Under the Common Travel Area (CTA), Irish and British citizens move freely and reside in either jurisdiction and enjoy associated rights and entitlements including access to employment, healthcare, education, social benefits, and the right to vote in certain elections.*¹³

However, even with special status in each other's jurisdiction, this research has found that in practice it can be exceptionally complex to live, work, and hire people on a cross-border basis. Our research would also suggest that there are specific groups of workers and employers who find this even more challenging and are potentially disadvantaged. This includes cross-border workers on lower incomes, some couples, those making pension contributions, the self-employed, cross-border workers seeking promotion, people approaching pension age as well as those not in government service. It also includes small/medium sized businesses who bear a significant burden in terms of understanding and compliance. This is set to become even more complex due to potential divergence between the UK, NI and IE (post UK EU Exit).

If the CTA is to work, in the spirit that it was intended, then the current rules and regulations, and their practical application, need to be assessed to ensure that they do in fact support that commitment. Furthermore, the need for, and ability of non-Irish and non-UK residents (and attracting a wider skills base) to work on a cross-border basis will also be a critical consideration in what constitutes the all-island labour market going forward. Any divergence in legislation and/or policy, regardless of jurisdiction, should be tested to ensure that the CTA commitment around freedom of movement in its various forms is upheld.

The fundamental issue of information failure highlights that there is a lack of available clear, concise, guidance with relevant examples of the land border written in lay-persons language. There is no "one stop shop" in Government advice to deal with all the issues that arise with cross-border working and the ad hoc and under-resourced system currently in place does not work effectively for cross-border workers and employers.

From a **tax and pensions** perspective, the rules as they stand are creating barriers to labour mobility on the island of Ireland. Furthermore, the present system may be contributing to cases of non-compliance, due to information failure and a difficulty in implementing the complex rules across both public and private sectors. There is a tangible concern among employers and employees of the legacy tax and pension issues. Stakeholder engagement with this research shows a willingness to regularise the position and suggests that, for those willing to engage, a line should be drawn (i.e. an amnesty for non-compliance to date) and a new regime implemented that provides a clear and accessible pathway to compliance going forward. Bilateral agreements have put in place in other States with border issues to deal with the tax treatment of cross-border workers.

While **social security** coordination rules are in place and in theory should meet the needs of an all-island labour market, the social security obligations, rights and entitlements of cross-border workers and their employers has not been successfully communicated by the relevant departments and agencies in IE, NI and GB. Access to regionally relevant information, systems, and support is needed to assist compliance

¹³ The Common Travel Area (2022), 2022 Department of Foreign Affairs, available online from <https://www.gov.ie/en/publication/a3498-the-common-travel-area/>

and ease the burden placed on employers, employers and the Advice sector that supports them. Furthermore, ensuring that the current coordination rules keep pace and are future proofed to meet modern demands for flexible and remote working will assist both jurisdictions protect the work life balance of existing workers and assist employers to support workers from both jurisdictions to work across them without negative social security implications.

In terms of **qualifications**, our research suggests that the changes happening because of UK EU Exit on qualifications recognition has made what was a relatively straightforward process through the MRPQ to support worker mobility more complicated. The process is now considered a 'patchwork', taking a more bottom-up approach meaning that the way in which different qualifications are recognised and treated in terms of mobility is not consistent or uniform. There are wider issues such as costs, complexity and accessibility among others that workers and employers must contend with.

On **skills**, the importance of what constitutes a local 'labour pool' takes on a different meaning for border located businesses and the ability to access that talent pool on both sides of the border is crucial, not only in terms of providing the range of skills needed to support business growth and stability but in the case of international companies in competing internally with other international locations to retain and expand investment here. The businesses consulted noted significant disappointment in the increasing challenges in recruiting/retaining skills across the border and the negative consequences for their businesses on investment and growth. There is a further challenge for employers and employees in terms of a lack of awareness and understanding of the rules around foreign workers and cross-border mobility, particularly following UK EU Exit, and changing immigration law and policy.

With regards to future proofing the all-island skills pool, this research has found growing collaboration on education and skills development across both jurisdictions. However, this has been for the most part ad hoc and focused on specific regions such as the North West. There is little understanding of the scope of cross-border collaboration in the skills space or the extent to which people are mobile across the border to improve their skills or access job opportunities relevant to their skills profile and this is a significant information gap that needs to be filled.

The legal movement and **mobility** of workers has become more complex in recent years. In the aftermath of the UK EU Exit, the Common Travel Area (CTA) secures the free movement of Irish and British workers between the jurisdictions. However, nationals from other places are outside the scope of the CTA which limits opportunities for employers to recruit workers from across the border and inhibits long-term skills development on an all-island basis. During consultations concerned businesses suggested that all-island solutions are needed. Their suggestions ranged from the need to simplify current worker permit processes to the introduction of all-island visa schemes and work permits. Understanding the composition of visa nationals on an all-island basis could help identify which nationals and skilled sets are currently prevented from contributing to the all-island labour market.

Advancements in technology has facilitated a significant **change in the ways people work** and where they carry out their tasks. Homeworking is a much more prevalent option now. Within the context of changing trends, this research has explored the lived experiences of workers and employers as they attempt to implement and adhere to current rules and regulations. As already highlighted throughout the report, there appears to be a disconnect with the needs of all-island workers and businesses and how the rules apply. Currently advantages of flexible and remote working appear limited to workers who live and work in the same jurisdiction, which conflicts with needs of businesses that require access to an all-island labour market approach.

Each of the factors explored in this report highlight an extremely complex legal and policy environment which will become increasingly unclear and confusing for cross-border workers and employers. Workers' rights were already a complex area before UK EU Exit. However, the ability to protect cross-border workers is now more challenging. There are considerable challenges around the understanding of and consistency around the definition of a frontier or cross-border worker which has implications on the application of laws and protections for this specific set of workers. Post UK EU Exit there is a significant risk of divergence between the regions and a diminution of workers' rights. However, there is low representation in Trade **Union coverage and collective bargaining** across both jurisdictions which indicates a challenging support environment for cross-border workers. Trade unions do appear to have significant involvement in UK EU Exit mechanisms, but it is not clear however to what extent they are involved in different groupings and specifically how cross-border issues are considered.

Chapter 1 - Introduction

Background and aims of the study

This initiation of this research arises from discussions of the Labour Employer Economic Forum (LEEF) Shared Island Working Group. The LEEF Shared Island Working Group is chaired by the Department of the Taoiseach, and comprises of membership from ICTU, IBEC and Chambers Ireland.

The aim of this research is to:

‘Provide an evidence base on the current condition of the labour market and contribute to public and political discussion on addressing challenges and taking up opportunities for workers, businesses and the economy generally in the time ahead aligning with the government’s objective of Shared Island initiative to enhance cooperation, connection and mutual understanding on the island, underpinned by the Good Friday Agreement’.

The purpose of the proposed research is to provide an updated evidence base and analysis, including select case studies, of the current all-island labour market conditions with a specific focus on a range of factors in both jurisdictions and their impacts on the operation of the labour market across the island.

LEEF asked that the research set out and provide:

- ▶ Labour market conditions in each jurisdiction focusing on the supply of and demand for labour and skills both currently and forecast, identifying workforce skills opportunities and gaps within and across each jurisdiction. This has evolved into a greater focus on the cross-border labour market and conditions
- ▶ An understanding of working in each jurisdiction
- ▶ An understanding of employing people/working practices in each jurisdiction
- ▶ How workers can seek out and work across jurisdictions
- ▶ How employers can employ people across jurisdictions
- ▶ Identifying challenges and opportunities for effective cooperation for workers and businesses across the island

Research areas

The research has focused on 8 key factors that are instrumental in a well-functioning all-island labour market.

Factors	Themes
1. Personal taxation, 2. Pension entitlements and portability, 3. Social welfare systems, 4. Qualifications, 5. Skills, 6. Cross-border worker mobility, 7. The changing world of work (i.e., remote / hybrid working), and 8. Collective bargaining and trade union coverage.	A. Competitiveness, B. Sustainable job creation, C. Labour market standards, D. Equality and gender issues in the workplace

Approach

Our approach involved an extensive desk-based and consultation/engagement exercise across government, businesses, cross-border workers and the Advice and Support sectors.

The desk-based exercise involved a review of existing evidence from sources including Border People/CCBC, NESC, ESRI and LEEF along with a review of statistics from sources including the CSO and NISRA. All sources have been noted throughout the report.

The stakeholder engagement included a combination of in-person and online workshops and roundtable discussions and individual meetings with government officials (Department of Finance, Revenue, HMRC) and others. In total, our engagement approach included:

- 5 Workshops/Round Table events of which:
 - In-person roundtables in Derry & Dundalk involving 27 businesses/organisations and 33 representatives
 - A round table online event with 7 Advice sector organisations and 9 representatives
 - A round table online event with 10 Professional Services organisations/representatives
 - A round table online event with 9 trade union organisations/representatives
- Consultation involving businesses, business representatives, banks, policy makers
- Survey of cross-border workers (over 400 responses)

In addition, several case studies are included throughout the areas of focus of the report to demonstrate some of the issues and challenges that have emerged as part of the research.

Structure of the report

The 8 factors outlined in the Terms of Reference for this research have formed the basis of the reporting structure in the Chapters outlined below. In each Chapter, some context to each factor is provided and then a discussion of the research findings which are based on the various approaches outlined above.

These are a complicated set of factors that can involve detailed legislative and policy guidance. Every effort has been made to present the findings in as accurate a manner as possible. The evidence does in many instances represent the views and direct experiences of cross-border workers and employers.

Chapter 2 - Evidence of the all-island labour market and mobility on the island of Ireland

Summary

The importance of integrated labour markets is well noted, and their importance becomes particularly clear in the context of a small island such as Ireland, not only for economic reasons but social and political ones as well. The concept has been a consistent feature of various agreements: the Belfast Agreement, Common Travel Area, and UK EU Exit agreements such as the Protocol to ensure that freedom of movement exists between the two jurisdictions on this island. Therefore, it is important to understand to what extent does this notion of an ‘all-island labour market’ exist. There is some evidence outlined below which tells part of the story, but this should be qualified by the fact that this is an incomplete picture and likely to be an arguably significant underestimate. This is because of complex employment situations such as those who do not work in a single location like an office (construction workers being a good case in point) and some evidence that not all cross-border working is declared. The increase in home working post COVID has also created ‘blurred lines’ as to what constitutes cross-border working. What is evident from our research also is the fact that cross-border commuting patterns have changed with fewer people making that physical journey across the border to work.

The evidence suggests there is very active mobility links between the two jurisdictions. There were 48 million traffic border crossings recorded in 2023 and arguably this could have been as high as 53 million had the pre-COVID path not been disrupted (see Figure 2.1). Enterprise train journeys between Belfast and Dublin totalled just over 1million passengers in 2023/24, up 25% on pre-COVID numbers¹⁴. Translink monitoring suggests that 25% of passengers are travelling for business, commuting or education, although this is down from around 40% pre-COVID (2016).

Recent evidence from the Census in both jurisdictions suggests that there are just over 18,000 people crossing the border to work. In addition, there are 4,000 higher education students crossing the border to study. Further, this research has identified 2,400 NI students from Primary to Further Education level who study in IE. The number therefore working and studying across the border totals almost 25,000 with information outstanding on NI FE students studying in IE and IE school aged children studying in NI.

Table 2.1: Working & Studying Cross-border

	IE	NI	Total
Working cross-border	7,777	10,540	18,317
Studying cross-border: Higher Education	2,305	1,735	4,040
Studying cross-border: Further Education	1,685	TBC	1,685
Studying cross-border: Primary & Over	TBC	713	713
Total	11,767	12,988	24,755

Source: CSO, NISRA, DfE

¹⁴ Data provided directly to report authors by Translink (2024)

Professionals including business, public sector, health, and science/technology make up the highest share of cross-border workers along with skilled trades and corporate managers/directors. The findings reflect a highly skilled talent pool of private and public sector workers.

The research has reaffirmed the particular importance of a cross-border talent pool to the border region. There are now more than 300 border crossings in what is a very accessible open border. Almost one fifth of the Island's population lives in the NI- IE border region and almost one fifth of all registered businesses on the Island are located in the region. There is a greater propensity to work cross-border along the border region with the North West a prime example of its extent, with more than half of IE cross-border workers coming from Donegal and working in Derry. This cross-border labour pool is important along the Border region where there is a lower share of the population of working age (63% vs. 66% All Island) and parts of the Border region with a greater share of the population aged 15+ who are unemployed or unable to work because of disability or sickness. This would suggest that there is potentially capacity within the border labour markets should additional labour market opportunities arise and/or barriers to existing opportunities be eliminated.

Context

'Labour market integration is one of the most impactful efforts that can be undertaken in cross-border cooperation for the daily lives of citizens. Differences in legislative, labour, social security, pension and other systems between the countries involved, usually dismay workers and employers to look for solutions across the border'.¹⁵

The importance of integrated labour markets is well noted, and their importance becomes particularly clear in the context of a small island such as Ireland, not only for economic reasons but social and political ones as well.

The border region itself can benefit from a pool of labour that straddles both sides of the border and indeed that concept has been made clear in this research in how businesses in border regions of IE and NI interpret where their talent pool lies.

Business Views on benefits of employing cross-border workers

'Access to talent from across the border helps sustain our talent pipeline. Education and expertise from Ireland are of great benefit to our organisation'. NI Business

'Easy access, less traffic, qualifications in the South that are not available in the North!' NI Business

'Access to skilled labour in a very tight labour market', Irish Business

Source: Research Business Engagement

¹⁵ Cross border labour market cooperation: The case of EURADRIA, Border Focal Point Network (2023) available online from <https://futurium.ec.europa.eu/en/border-focal-point-network/good-practices/cross-border-labour-market-cooperation-case-euradria>

This research highlights challenges in terms of labour market participation along parts of the border and a sense of disengagement from the labour market. Border areas tend to be some distance from the main hubs of economic activity and recent work has found this peripherality adds additional problems for workers, not only in that it limits access to employment opportunities but also access to services which support labour force participation e.g., childcare¹⁶. This is also borne out by existing research which found that in IE there are towns which are far from the main cities that may be considered ‘left behind’ as they have an increased prevalence of jobless households¹⁷. The duration of a commute, the cost of commuting, how that would affect caring responsibilities and other roles, and the availability of transport are all factors which may make travelling to economic opportunities impossible for some and thus accessing the available economic opportunities in closer proximity regardless of jurisdiction should be made as easy as possible to encourage labour force participation. This is even more important as it is generally women and people with disabilities who tend to be unable to undertake job opportunities which are further away or harder to reach. It stands to reason that minimising friction for cross-border workers has a role in improving labour force participation and widening job opportunities for all.

Cross-border labour markets can also act as a buffer in times of economic fluctuations. During periods of high economic growth, an all-island labour market can reduce the likelihood of skills shortages and unemployment at times of recession or low levels of economic growth¹⁸. This is particularly useful in the case of IE which has a volatile economy given its open nature and which therefore can have varying unemployment rates¹⁹.

At present, unemployment in NI and IE are both at very low levels which suggests a tight labour market. Simultaneously both jurisdictions face ageing populations (Institute of Public Health, 2020) and falling birth rates (CSO, 2022 for IE and NISRA, 2024 for NI). Thus, ensuring as many people as possible who can work, are in work is critical for the economy moving forward. Both trends have been persistent over time and are unlikely to change. Therefore, ensuring a smooth operation of the all-island labour market is important to allow for better matching of people to jobs and to allow flows from areas with less economic opportunities to areas with more opportunities. This is particularly important for NI which does not have the working-age migrant flows which IE does, and which are critical in improving the age dependency ratio²⁰.

As well as easing barriers to labour force participation ensuring a seamless cross-border labour market could also alleviate skills/educational mismatches particularly as the education profile of NI and IE differs²¹. While NI and IE have similar proportions of graduates, NI has much higher levels of low educational attainment and early school leaving both known to have negative ramifications for the

¹⁶ Hingre, G. et. al. (2024) *Gender and Labour Market Inclusion on the Island of Ireland*, ESRI Research Series Number 176. Available online from [GENDER AND LABOUR MARKET INCLUSION ON THE ISLAND OF IRELAND \(esri.ie\)](https://www.esri.ie/publications/gender-and-labour-market-inclusion-on-the-island-of-ireland). Last Accessed: 03/04/2024

¹⁷ Whelan, A., Devlin, A., & McGuinness, S.(2023), *Barriers to social inclusion and levels of urbanisation: Does it matter where you live?* available online at <https://www.esri.ie/publications/barriers-to-social-inclusion-and-levels-of-urbanisation-does-it-matter-where-you-live>

¹⁸ McGuinness, S., Bergin, A., & Devlin, A. (2024), *A Study of Cross-Border Working on the Island of Ireland*, available online at <https://www.esri.ie/publications/a-study-of-cross-border-working-on-the-island-of-ireland>

¹⁹ McVicar, D., Park, A., & McGuinness, S. (2017), *Employment and Hours Impacts of the National Minimum Wage and National Living Wage in NI*, UK Low Pay Commission Report available online from [McVicarParkMcGuinness_FINAL_Report.pdf \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/644441/McVicarParkMcGuinness_FINAL_Report.pdf)

²⁰ McGinnity, F., Laurence, J., & Cunneiffe, E. (2023), *Comparing migrant integration in Ireland and Northern Ireland* available online at <https://www.esri.ie/publications/comparing-migrant-integration-in-ireland-and-northern-ireland>

²¹ Smyth, E. et. al. (2022), *A North-South Comparison of Education and Training Systems: Lessons for Policy*, available online from <https://www.esri.ie/publications/a-north-south-comparison-of-education-and-training-systems-lessons-for-policy>

individual and the economy²². NI also has low levels of individuals with post-secondary, non-tertiary qualifications. In the most recent PIAAC data (2014), 10.6% of those in NI had this level of qualification compared to 29.9% in IE²³. The gap is even wider amongst younger cohorts. The ESRI research found a high wage return for these qualifications in NI which would suggest there is a demand for individuals with these types of qualifications in the NI labour market that isn't being met. This gap could be met to the advantage of businesses and the economy by cross-border workers from IE. There is no research to date on North-South skills gaps but given the different education profiles and different makeup of the labour markets it is likely there are skills differences between the jurisdictions.

Ideally, we would be able to estimate what a well-functioning all-island labour market would like for the island of Ireland but with the available data and the diverging paths the economies have taken since partition there is no clear counterfactual. However, we can look to the literature in this area which gives some idea of the economic impact the border between NI and IE has had. Fernihough²⁴ (2024) examines the economic cost of partition using a market access approach and finds that partition of the island into NI and IE in 1920 significantly reduced market access and thus economic opportunities which led to population decline in border areas with places closest to the border imposed being the worst affected. Fernihough (2024) argues that this explains the current lagging economic performance in border regions in NI and IE. This is in line with existing research on borders in other contexts^{25,26}. As borders play an important role in determining economic activity and spatial inequalities, ensuring borders are as seamless as possible is important for economic development and for the living standards of the border population.

This section sets out to capture the most available evidence that exists on the extent of labour market mobility on the island of Ireland. An important context is that despite the challenges of Brexit for the island of Ireland, where one jurisdiction is an EU State and the other now a non-EU State, there have been no changes to freedom of movement for Irish and UK citizens due to the legal provisions in each jurisdiction which create the Common Travel Area (CTA). Although it must be noted there are challenges in how this operates in practice. There are also mobility issues for those who are not citizens which are discussed in several Chapters throughout this report.

Evidence of the All-Island Labour Market and Mobility

This section sets out to establish an evidence base around the extent of cross-border labour market activity and mobility using various data sources from both jurisdictions. This may not present a full picture of the extent of cross-border labour activity and mobility because of complex employment situations such as those who do not work in a single location like an office (construction workers being a good case in point) and some suggestion that not all cross-border working is declared. The increase in

²² Devlin, A., Hastings, T., & Shuttleworth, I. (2023), *Economic Inactivity Report 1: Literature, Context and Quantitative Analysis on Economic Inactivity in Northern Ireland; And A Review of the Welfare System in relation to Economic Inactivity in Northern Ireland*, Department for the Economy (NI) available online from <https://niopa.qub.ac.uk/bitstream/NIOPA/17471/1/Economic-Inactivity-Report-1.pdf>

²³ Smyth, E. et al. (2022) available online from https://www.esri.ie/system/files/publications/RS138_1.pdf

²⁴ Fernihough, A. (2024), *Economic Geography and the Irish Border: A Market Access Approach*, QBS Research Paper, No. 2024/02, Queen's University Belfast, Queen's Business School, Belfast available online from [Economic Geography and the Irish Border: A Market Access Approach \(econstor.eu\)](https://economics.qub.ac.uk/economics/wp-content/uploads/2024/02/Economic-Geography-and-the-Irish-Border-A-Market-Access-Approach.pdf)

²⁵ Redding, S.J. & Sturm, D.M.(2008) *The Costs of Remoteness: Evidence from German Division and Reunification*, American Economic Review, 98 (5), p. 1766-97 available online from [The Costs of Remoteness: Evidence from German Division and Reunification - American Economic Association \(aeaweb.org\)](https://www.aeaweb.org/articles?id=10.1257/aer.98.5.1766)

²⁶ Yang, B. et al. (2022) *Do border effects alter regional development: evidence from a quasi-natural experiment in China*, Journal of Economic Geography, 22(1), p.103–127 available online from <https://doi.org/10.1016/j.jregl.2022.103304>

home working post COVID has also created ‘blurred lines’ as to what constitutes cross-border working. However, the evidence provides a baseline of the scale and features of the cross-border labour market.

There are more than 300 border crossings traversing the 310 miles/500-kilometre frontier between IE and NI, a significant change from the conflict period (1968-1998) in which there were 20 official border crossings in operation. The counties that lie along the border in NI are Derry, Fermanagh, Tyrone, and Armagh. The counties that lie along the border in IE are Donegal, Sligo, Leitrim, Cavan, Monaghan, and Louth. Almost one fifth of the Island’s population lives in the NI-IE border region and almost one fifth of all registered businesses on the Island are located in the region. Not surprisingly, given the strong cross-border links, particularly near the border, most businesses located in this region employ staff from the other jurisdiction²⁷ (CBPES, 2023). There is movement from NI to IE in all areas within the border region while for workers going from IE to NI the majority are from Donegal, Monaghan, Louth, and Cavan (i.e., the counties furthest from Dublin) with the mobility between Donegal and Derry & Strabane particularly strong (Table 2.2).

Table 2.2: Share of Cross-border Workers living and working in the Border Region

	Cross-Border Workers	Live in Border Region	Work in Border Region
Live in IE (2022)	7,777	80%	97.1%
Live in NI (2021)	10,541	85%	pending
All Cross-Border Workers	18,318	83%	TBC

Source: CSO, NISRA

Cross-Border Mobility and Activity

IE border is very porous and there is considerable cross-border movement for work, study, and leisure. There is no single data source that records the definitive number of people crossing the border between IE and NI, and as such no complete data on purpose of crossing the border (e.g., education, work, family responsibilities etc.) exists either. Previous evidence²⁸ suggests an estimated 25,000 trips (including daily and less regular commuters) across the border every day for work or study. This is in line with our evidence which suggests that at least 23,000 people can be accounted for as working and studying across the border.

Travel Patterns

One way to measure the extent of mobility across the jurisdictions is through travel patterns and this is presented below in terms of evidence around traffic flows and train passenger numbers.

Traffic

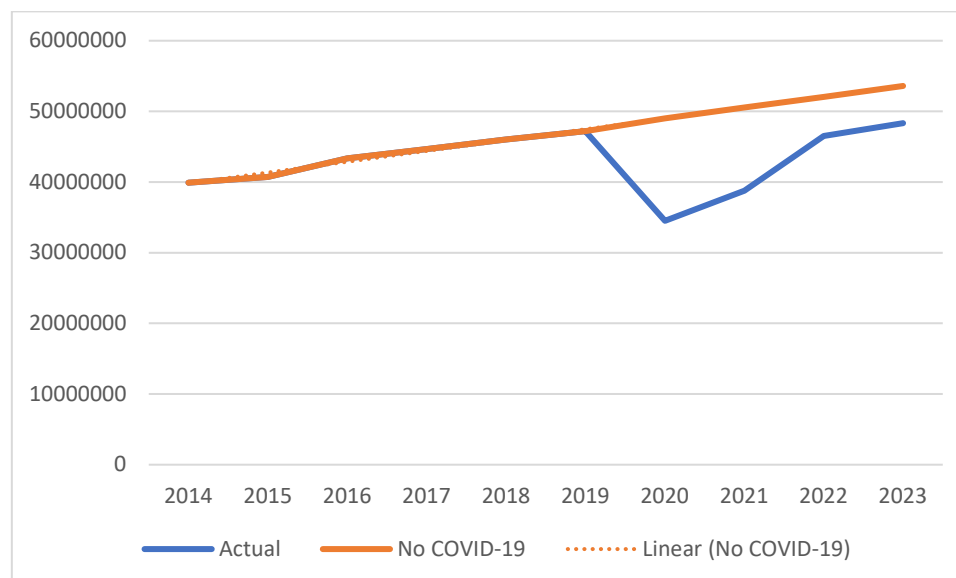
The 2018 Department for Economy report on cross-border mobility utilised traffic counters to get an idea of cross-border traffic. This cross-border traffic is made up of people crossing the border for education, commuting for work, for recreational purposes, and a large proportion is made up of commercial vehicles transporting goods across the border. This has increased steadily over time but particularly since Brexit which has resulted in NI remaining in the single market unlike the rest of the

²⁷ CBPES (2023), *Labour Market Mobility in the Border Region of Ireland: Annual Report 2022*, available online from: [https://www.cbpes.com/media/uploads/cbpes_labour_market_report_2022\(4\).pdf](https://www.cbpes.com/media/uploads/cbpes_labour_market_report_2022(4).pdf)

²⁸ Department for the Economy (NI) (2018), *Background Evidence on the Movement of People across the Northern Ireland – Ireland Border*, available online from <https://www.economy-ni.gov.uk/sites/default/files/publications/economy/movement-people-northern-ireland-ireland-border.pdf>

UK²⁹. These figures are available from March 2013 onwards. We consider COVID-19 when examining these trends and in Figure 2.1 display the actual data for annual vehicular crossings 2013 – 2023 as well as the actual data pre-COVID alongside a linear forecast from 2020 onwards to provide an idea of what cross-border traffic flows might look like had the previous trend continued without the COVID-19 shock.

Figure 2.1: Annual Vehicular Crossings, 2013-2023³⁰



Source: NISRA, Authors' Estimates

Overall, vehicular crossings of the border have increased steadily over time. In 2014 (the first full year of data available) there were 40 million border crossings, rising to 47 million in 2019 and 48 million in 2023. COVID-19 saw significant reductions in crossings as evidenced in Figure 2.1, particularly in those periods of strictest lockdown. Had the pre-COVID-19 trend continued in 2023 we estimate there would have been more than 50 million vehicular border crossings based on previous trends. To be more precise using this linear forecast we estimate that without the COVID-19 shock there would have been more than 53 million vehicular crossings in 2023, 5 million more than there was. The fact that actual number of crossings is lower post COVID-19 than would have been anticipated is likely to be reflective of reduced crossings due to cross-border workers no longer commuting for work (which we have some evidence of from CSO statistics), this assumption is based on two factors: 1) while the cross-border goods trade will have changed in the same period due to Brexit this is likely to have worked in the opposite direction, and 2) retail and leisure crossings are likely to have returned to their pre-pandemic trend by the end of 2023 leaving any gap down to a difference in commuting.

Train

Enterprise is the cross-border inter-city train service which operates between Dublin and Belfast. The Department for Economy (2018) found there to be 868,532 rail journeys provided by Translink in 2016/17. Recent figures obtained directly from Translink are displayed below in Table 2.3. The latest figures total just over 1million passengers in 2023/24. Translink monitoring suggests that 25% of

²⁹ Kren, J. & Lawless, M. (2023), *Structure of international goods trade for Ireland and NI*, ESRI Survey & Statistical Report Series Number 117. Available online from <https://doi.org/10.26504/sustat117>

³⁰ NISRA (2024), *Traffic Counts of Vehicles at the Fifteen Main Northern Ireland-Ireland Border Crossing Locations*, available online from <https://www.nisra.gov.uk/publications/traffic-counts-vehicles-fifteen-main-northern-ireland-ireland-border-crossing-locations>

passengers are travelling for business, commuting or education which is a fall from the 40% of rail passengers in 2016 travelling for business cited in DfE, 2018. This suggests that there is growth in the numbers of people travelling between the jurisdictions for leisure and a fall in the numbers travelling for work purposes but given what we know about the trend in cross-border working this likely reflects the growth in remote working. Furthermore, it is worth noting that despite the large number of cross-border rail passengers, a recent survey of cross-border workers³¹ found that the majority drive to work.

Table 2.3: Enterprise Rail Passenger Figures

Year	Number
2017/18	941,000
2018/19	991,000
2019/20	849,000
2020/21	127,000
2021/22	592,000
2022/23	1,130,000
2023/24*	1,060,000

Source: Translink

Note: * the 2023/24 data is incomplete and is for 11 months rather than a full year.

Crossing the Border to Work or Study

There is varying evidence over the extent to which an all-island labour market exists and mobility across the island of Ireland. There is no single definitive source on the number of cross-border workers on the island of Ireland. In previous work, the Department for Economy NI (2018) estimated that there were 25,000 cross-border trips daily for work or study. While other estimates have been as high as 30,000³².

However, it has been widely recognised that these statistics are unlikely to fully capture the extent to which an all-island labour market exists³³. The Construction sector, discussed below, is often cited as a prime example of a very active cross-border labour market that is difficult to capture through 'official' statistics even though the '*construction trade in Ireland is highly mobile*'³⁴ trading extensively North–South and East–West. There are wider challenges to understanding the extent of the all-island labour market which will be drawn out throughout this report, in particular the extent to which income from cross-border work is declared and captured.

Our research shows that recent Census evidence for both jurisdictions, 2021 in NI and 2022 in IE, suggests there are just over 18,000 people recorded as commuting cross-border for work. This is made

³¹ McGuinness, S., Bergin, A. & Devlin, A. (2024), *A Study of Cross-Border Working on the Island of Ireland*, available online at <https://www.esri.ie/publications/a-study-of-cross-border-working-on-the-island-of-ireland>

³² Cross-border labour market integration efforts between Northern Ireland and the Republic of Ireland (2023), Border Focal Point Network available online from <https://futurium.ec.europa.eu/en/border-focal-point-network/good-practices/cross-border-labour-market-integration-efforts-between-northern-ireland-and-republic-ireland?language=da&file=2023-01/avatar-2-el-camino-del-agua-2022-pelicula-gratis.pdf>

³³ North South Ministerial Council (2021), available online from <https://borderpeople.info/site/wp-content/uploads/2014/10/obstacles.pdf>

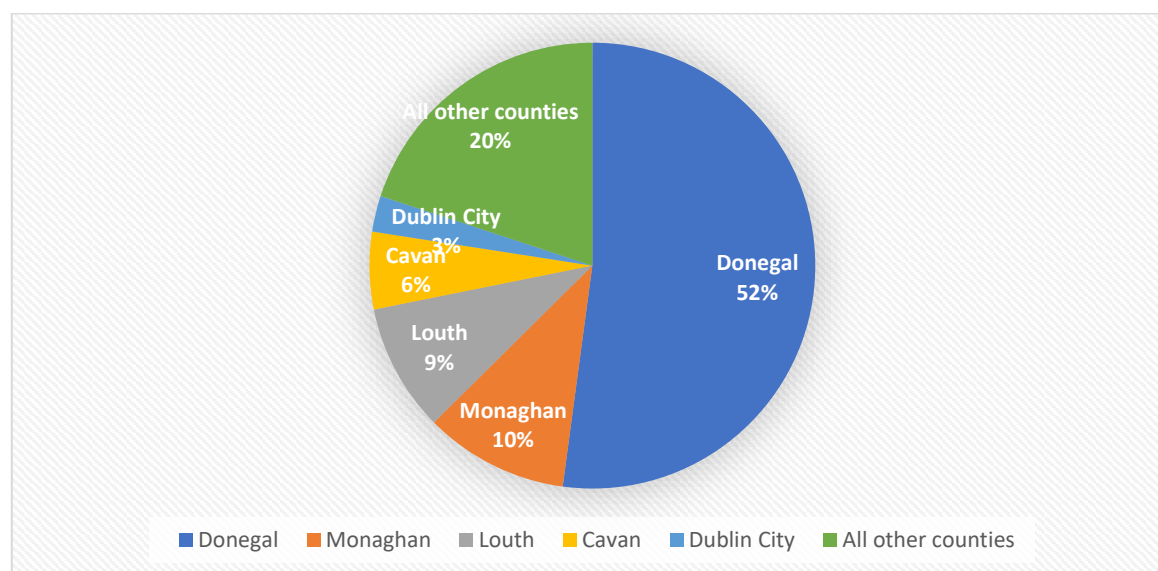
³⁴ Brooks, T. et. al. (2019), "Irish construction cross-border trade and Brexit: Practitioner perceptions on the periphery of Europe", In *Construction Management and Economics* 2020, Vol. 38, NO. 1, pp71-90 available online from <https://www.tandfonline.com/doi/epdf/10.1080/01446193.2019.1679382?needAccess=true>

up of 7,777 (42%) IE residents crossing to NI for work and 10,540 (58%) NI residents crossing to IE for work.

IE - Commuting to Work in NI

IE Census 2022 shows there were 7,777 people commuting across the border from IE to NI for work in 2022, an increase of 11% from 2016. One half (52%) of all cross-border workers from IE to NI come from Donegal (Figure 5.2). Most of these work in Derry. (Table 2.4). In fact, more than a third of all cross-border workers coming from IE are employed in Derry (38%).

Figure 2.2: Origin of IE Commuters to NI



Source: CSO Census, 2022

Table 2.4: Place of Work for IE Commuters Working in NI

County of Residence	Donegal	Monaghan	Louth	Cavan	Dublin City	All other counties	Total %	Total	% of Cross-border Commuters
County of place of work									
Antrim	27%	7%	9%	3%	7%	48%	100%	1,134	15%
Armagh	8%	36%	29%	4%	3%	20%	100%	1,052	14%
Down	10%	10%	32%	3%	7%	38%	100%	867	11%
Derry	95%	1%	0%	0%	1%	4%	100%	2,979	38%
Fermanagh	14%	14%	1%	41%	0%	29%	100%	762	10%
Tyrone	66%	14%	2%	2%	1%	14%	100%	983	13%
Total	52%	10%	9%	6%	3%	20%	100%	7,777	100%

Source: CSO Census, 2022

Most IE commuters working in NI, 97%, work in border Council areas i.e. Armagh, Banbridge & Craigavon, Newry, Mourne & Down, Mid Ulster, Derry City & Strabane along with Fermanagh & Omagh.

The cross-border workers travelling to NI for work are employed in various sectors but primarily in Human health and social work (1,269 cross-border workers) followed by Wholesale and Retail (1,002), Manufacturing (888) and Education (847).

Our research suggests that around 40% of IE residents working in NI in the Top 10 cross-border commuting sectors (making up 85% or 6,627 IE cross-border workers) work in the public sector if Human health and social work, Education and Public administration and defence sectors are combined.

NI – Commuting to Work in IE

The NI Census 2021 data suggests there are 10,540 NI residents commuting across the border to work in IE (Table 2.5). This equates to 1.3% of those aged 16 or over in NI who are in work. Living in NI and working in IE is most common in the areas in closest proximity to the Border. Some 28% of all cross-border workers live in Armagh (N=2,982) followed by 19% in Down (N=1,975). More specifically, the highest share of cross-border workers in terms of Council area come from Newry, Mourne & Down Council (30% of cross-border workers). This equates to 4.1% of all workers living in the Council area. This is followed by Derry City and Strabane (19% of cross-border workers) and Fermanagh and Omagh (18%). 85% of cross-border workers who commute to IE come from the 5 ‘border’ Council areas – Armagh, Banbridge & Craigavon, Newry, Mourne & Down, Mid Ulster, Derry City & Strabane along with Fermanagh & Omagh.

Furthermore, in IE Census (CSO) there are 1,224 people who work and live part of the week in IE or are ‘remunerated and present in Ireland whose usual residence is NI’. This figure was 5,599 in 2016 so a large drop off which is likely to reflect the increased prevalence of hybrid/remote working. Approximately two-thirds (63%) of these working commuters are living in private housing while the rest are living in hotel and other accommodation while in IE for work.

Table 2.5: Number and Share of NI residents who work in IE (aged 16+ excluding full-time students) by County, 2021

County	Work in IE	% of Cross-border Workers
Antrim	869	8.2%
Armagh	2,982	28.3%
Derry/Londonderry	1,704	16.2%
Down	1,975	18.7%
Fermanagh	1,550	14.7%
Tyrone	1,461	13.9%
	10,541	100.0%

Source: NISRA, Census 2021

Professionals including business, public sector, health, and science/technology make up the highest share of cross-border workers along with skilled trades and corporate managers/directors. The main occupations for males crossing the border to work are Skilled trades and Corporate Managers/Directors and for females Health Professionals, Teaching/Education and Business/Public Service Professionals. The fact that Professionals are more likely to be cross-border workers is in line with findings by

McGuinness et al.³⁵ and reflects the wage differential between NI and IE for these roles, the jobs available in IE compared to NI, and the increased earnings which can absorb increased commuting costs.

‘Certainly, for our professionally qualified staff the higher wages on offer in ROI are a big draw’, Ireland business

‘Different pay rates - ROI scales are much higher - inequality across staff performing same roles. All Island Business

As highlighted, it is likely that these figures are underestimates. The Censuses are likely to miss many workers, especially those with complex employment situations or who do not work in a single location like an office.

Both Census ask employed respondents the name and address of their place of work³⁶. However, that does not account for people whose place of employment may differ from where the work activities are conducted e.g., delivery drivers, salespeople who travel to customers, people who work on site e.g., construction workers as noted above. This is important as tax legislation considers place of work to be where work activities are carried out and we examine this specifically in Chapter 4 of this report.

Construction Industry

Out of all the industries and sectors within the two economies North and South we believe there to be significant cross-border mobility unaccounted for in official statistics (Census, Revenue/HMRC data, Labour Force Surveys etc.) in the construction industry. This is likely to be predominantly North to South workers given the higher wages and the current strength of the industry in IE which has seen a strong bounce back from the COVID-19 pandemic. Although it is thought that the UK leaving the EU may make the construction labour market particularly tight in NI while IE can attract workers from EU countries³⁷. 2023 has witnessed a sustained increase in housing completions and commencements despite a slowdown in other areas of the economy³⁸.

The Chartered Institute of Building (CIOB) note that *‘the existence of the Common Travel Area and the geography of the island of Ireland would suggest that significant numbers of workers operate across the border. However, providing reliable numbers for this cross-border mixing of workers is difficult. Nevertheless, UK employment figures suggest there are up to 3% more construction workers living in NI than working there (ONS, 2022). This points to a net movement to IE for work’*³⁹. If this were the case, this would amount to almost 2,000 NI construction workers working in IE. If an individual lives in Newry and works for a Newry (NI) based construction company and records that address in the Census, it will

³⁵ McGuinness, S., Bergin, A. & Devlin, A. (2024), *A Study of Cross-Border Working on the Island of Ireland*, available online at <https://www.esri.ie/publications/a-study-of-cross-border-working-on-the-island-of-ireland>

³⁶ For the Irish 2022 Census form questions see:

https://www.cso.ie/en/media/csoie/census/census2021/Sample_Census_2022_Household_Form_English.pdf. For the NI 2021 Census form questions see <https://www.nisra.gov.uk/sites/nisra.gov.uk/files/publications/2021-census-household-questionnaire.pdf>.

³⁷ Disch, W. et. al. (2024), *Contrasting Housing Supply in Ireland, NI and the rest of the United Kingdom*, ESRI Research Series No 175. Available online from <https://doi.org/10.26504/rs175>

³⁸ Disch, W. et. al..(2024) *Contrasting Housing Supply in Ireland, Northern Ireland and the rest of the United Kingdom*, ESRI Research Series No 175. Available online from: <https://www.esri.ie/system/files/publications/RS175.pdf>

³⁹ CIOB Policy & Research (2023), *Building Up Ireland*. Available online from <https://www.ciob.org/search-results?keyword=building+up+ireland>

not be recognised that they are a cross-border worker even if they travel to a site in Louth every day for work.

While this begins to quantify the unaccounted for cross-border workers, in this sector it is still a lower bound as it is counting those from NI who are not working there but will not count those who work in the North and South within the same employment or self-employment. It is likely that construction workers, particularly those who live or are employed near the border, may move back and forth across the border on a day-to-day basis.

Students

In addition to the cohort commuting for work there are also residents in both jurisdictions crossing the border for study. There were 2,305 IE students enrolled in NI HEIs (2021/22) and 1,735 NI students enrolled in IE HEIs meaning around 4,000 cross-border students overall (Table 2.6), which equates to about 3.3% of the NI student population being from IE and 0.6% of students in IE HEIs coming from NI. IE student numbers enrolling in NI institutions were historically higher but have dropped considerably in the aftermath of the 2008 recession while the number of NI students enrolling in IE institutions has increased steadily over the last decade⁴⁰. Queen's University, Ulster University and St Mary's have all noted the increase in first year enrolments by IE students in recent years and have attributed this to the cost and availability of accommodation in the main university cities in IE⁴¹. Smyth & Darmody (2023) find an ensuite room in on-campus accommodation to be £5,600 at Queen's University Belfast compared to £7,085 at Trinity College Dublin. Both NI and IE HEI's have seen significant expansion in undergraduate enrolments from non-EU countries over the same period⁴².

There are almost as many GB students enrolled with IE Universities as NI students, 1,465 compared to 1,660 in 2022/23.

Table 2.6: Student Movements between IE and NI

	IE Students in NI	NI Students in IE	Total
2012/13	2,830		
2013/14	2,415		
2014/15	2,345		
2015/16	2,195		
2016/17	2,095	1,205	3,300
2017/18	2,120	1,370	3,490
2018/19	2,245	1,465	3,710
2019/20	2,085	1,670	3,755
2020/21	2,170	1,750	3,920
2021/22	2,305	1,735	4,040

⁴⁰ Smyth, E. & Darmody, M. (2023), *Student mobility in Ireland and Northern Ireland*, available online from <https://doi.org/10.26504/rs166>

⁴¹ Mellet, K. (2023), Number of students from Republic studying in North 'triples', with many citing cheaper accommodation, *The Irish Times*, Available online from <https://www.irishtimes.com/ireland/education/2023/06/25/number-of-students-from-republic-studying-in-north-triples-with-many-citing-cheaper-accommodation/>

⁴² Smyth, E. & Darmody, M. (2023), *Student mobility in Ireland and Northern Ireland*, available online from <https://doi.org/10.26504/rs166>

2022/23		1,660	
---------	--	-------	--

Source: DFE & HEI

NISRA Census data suggested there were 713 NI students at primary school and over age in full-time education in IE, the largest number of which were from Newry, Mourne & Down, Fermanagh & Omagh and Derry City & Strabane (Table 2.7). Again, proximity to the border being the key driver here.

Table 2.7: NI Students Studying in IE 2021

	NI students studying in IE	% of NI Students Studying in IE	% of Students from Council
NI	713	100%	0.2%
Antrim and Newtownabbey	13	2%	0.04%
Armagh City, Banbridge and Craigavon	82	12%	0.2%
Belfast	61	9%	0.1%
Causeway Coast and Glens	17	2%	0.1%
Derry City and Strabane	110	15%	0.3%
Fermanagh and Omagh	179	25%	0.7%
Lisburn and Castlereagh	16	2%	0.1%
Mid and East Antrim	7	1%	0.03%
Mid Ulster	34	5%	0.1%
Newry, Mourne and Down	180	25%	0.5%
Ards and North Down	14	2%	0.05%

Source: NISRA Census 2021

There are also Further Education (FE) colleges in NI and Institutes of Technology in IE which are accessible by students from the other jurisdiction. In 2022/23 there were 1,685 students domiciled in IE enrolled in FE colleges in NI and as per trends in the labour market the majority attend the North West Regional FE college in Derry. This number has been trending down over time (at least from 2018/19) but this is in line with overall enrolments in FE (DfE, 2024).

Observations on the Border Region

There are 419,473 people living in IE border region, 254,581 of which are of working age according to the most recent Census data. Approximately 72,948 of these people of working age are either unemployed or not in the labour market (that is neither employed nor unemployed). This compares to the NI border area (in this case we consider the border area to be made up of the Newry, Mourne and Down; Armagh City, Banbridge and Craigavon; Mid Ulster, Fermanagh and Omagh; and Derry and Strabane council areas) which has a population of 818,594; 513,955 of which are of working age. 351,653 are in employment with an additional 145,582 not in the labour force. The proportions of the population who are of working age, who are in employment and who not in the labour force are similar in both jurisdictions. Levels of unemployment and the make-up of inactivity however do differ. Unemployment in the border region south of the border is higher than is the case in the NI border area (7% vs 3%). Also, the makeup of inactivity differs considerably with IE border region having considerably more (less)

students (people unable to work due to sickness/disability) proportionally. This is in line with previous findings which compared inactivity in NI and IE⁴³ (Devlin et al., 2023).

These levels of inactivity would suggest that there is potentially capacity within the border labour markets should additional labour market opportunities arise or barriers to existing opportunities be eliminated.

The 2022 IE Census suggests that the share of people aged 15+ who are either unemployed or unable to work due to sickness/disability is +1.2% points higher than the State average and the difference is as high as +2.1% points in Louth and +1.8% point in Donegal.

Table 2.8: Border Area Labour Market

	NI Border Area	NI		IE Border Area	IE		Border Area	All Island
Population	818.5k	1,903k		556k	5,123.5k		1.4million	7million
Working age population (15-64)	63%	64%		63%	66%		63%	65%
<i>of which:</i>								
In employment (15-64)	68%	68%		65%	67%		67%	67%
Unemployed	3%	3%		7%	6%		5%	5%
Economically inactive	28%	29%		28%	27%		28%	28%
	100%	100%		100%	100%		100%	100%

Source: CSO/NISRA

Table 2.9: IE Border Area - % Unemployed/Unable to Work (Population Aged 15+)

	Unemploy ed looking for first regular job	Unemployed having lost or given up previous job	Unable to work due to permanent sickness or disability		Unemployed/U nable to Work	% Pt. Difference from State Average
State	0.8%	4.3%	4.6%		9.7%	
Louth	1.1%	5.4%	5.2%		11.7%	2.1%
Leitrim	0.9%	4.5%	4.9%		10.3%	0.7%
Sligo	0.7%	4.3%	4.9%		9.8%	0.2%
Cavan	1.0%	4.7%	4.7%		10.3%	0.6%
Donegal	0.9%	5.2%	5.4%		11.5%	1.8%
Monaghan	0.8%	4.2%	4.4%		9.4%	-0.3%
IE Border Area	0.9%	4.9%	5.0%		10.8%	1.2%

Source: CSO Census 2022

⁴³ Devlin, A., Hastings, T. & Shuttleworth, I. (2023) *Literature, Context and Quantitative Analysis on Economic Inactivity in NI; And A Review of the Welfare System in relation to Economic Inactivity in NI*. Available online from: <https://niopa.qub.ac.uk/bitstream/NIOPA/17471/1/Economic-Inactivity-Report-1.pdf>

Concluding Reflections

The availability of the latest Census figures for both jurisdictions provides a more up to date picture of what is arguably a baseline of the extent to which an all-island labour market exists and how, along with students, at least 25,000 people cross the border between IE and NI to work or study. It is an incomplete picture as we know that this is likely to be more significant for certain types of jobs such as construction and others where crossing the border goes largely unrecorded.

What is evident is that the border region, taking in each side of the border, is a critical labour pool for employers and employees regardless. This is where the largest number of cross-border workers are concentrated. Our estimates suggest that around 80% plus of cross-border workers live/work in the border region. The border region is one of the most economically challenged across the island and that access to skills and talent is important in helping to address some of its key challenges around access to jobs.

It would be worthwhile in taking this research further to get a fuller picture of what the actual size of the cross-border labour market might amount to. This is important because in understanding its extent, then any changes which might influence its role and importance can be more clearly understood.

Chapter 3 - Taxation

Summary

Taxation can be, and from our research is, a barrier to some employees deciding to move to a role on the opposite side of the border and a barrier to some employers recruiting from the opposite side of the border. Our research has found that the tax rules for cross-border workers are much more complex than for their peers who reside on the same side of the border as their employment. These complexities have existed for cross-border workers and employers for a long time. However, since the pandemic and changes in Government policy on both sides of the border which has shifted towards encouraging flexible and hybrid working, a spotlight has been shone on the extra complexities involved with implementing these policies for cross-border workers.

This is a very complex area, which we set out to summarise below but have retained the detail in the rest of the Chapter and in appendices to reflect the fact that it is challenging for employers, employees and indeed government to understand and apply the rules.

The challenges include:

1. The current global mobility tax rules, which largely cater for large business who fly employees in and out of the jurisdiction for days or weeks, are not suitable for the land border where (a) individuals move across it frequently in the course of their employment duties or (b) live on the opposite side of the border from where their employment is based and carry out duties in their home jurisdiction.
2. Dual payroll, which is often required to implement the global mobility rules, is costly, complex and cumbersome. Dual payroll is also the cause of other complications arising e.g. access to social security, mortgage applications, income protection insurance, health insurance etc. dealt with in Chapter 9 on the Changing World of Work.
3. No treaty relief under Article 15 of the DTA from dual payroll is available to cross-border workers who reside in the jurisdiction they are being posted⁴⁴ to.
4. It is more straightforward for Article 18 DTA government service workers who can be taxed on one side of the border only versus private sector workers.
5. There is no equivalent of Transborder Workers Relief in NI to alleviate additional tax burden on low earners.
6. Lack of available tax relief on pension contributions and lack of clarity on taxation of pension pots such as Approved Retirement Funds (ARFs) and potential double tax on Pension Retirement Savings Accounts (PRSA) transfers for cross-border workers (See also Chapter 5 on Pensions)
7. Lack of clarity as to whether remote working and hybrid working is causing PE issues for employers/companies of all sizes.
8. Throughout engagement with employers and employees this research has identified a significant fear factor of legacy tax and pension issues.
9. Lack of available clear, concise, guidance with relevant examples of the land border written in lay-persons language.
10. Lack of a “one stop shop” in Government advice to deal with all the issues that arise with cross-border working.
11. Lack of dual qualified tax, social security and pension experts in both jurisdictions.

⁴⁴ Department for Business, Energy & Industrial Strategy (2016). *Temporary work in the UK: guidance for workers posted from the European Economic Area*. [online] GOV.UK. Available at: <https://www.gov.uk/guidance/temporary-work-in-the-uk-guidance-for-workers-posted-from-the-european-economic-area>

From our research and extensive engagement with business owners and employees who are affected by these issues, several opportunities have been suggested to us which should give some sense that these barriers to labour mobility across the island could be addressed:

1. The business owners, especially the larger ones, recognise the value of the global mobility rules as they apply to overseas workers. Yet those self-same businesses are trying to apply the same rules in the land border context on this island. They see a need for an adapted set of rules that apply to the land border only without changing anything for the globally mobile. This could reduce the number of instances where dual payroll is required and remove whole cohorts of workers from that complexity.
2. The removal of employees from dual payroll could have additional knock-on effects of decreasing the downside to cross-border work as outlined in other Chapters e.g, access to benefits, mortgage applications, health insurance, income protection.
3. Some employers also commented that reducing the incidences of dual payroll could have a knock-on effect of reducing the risk of creating a PE and corporation tax exposure in the opposite jurisdiction.
4. NI resident low earning workers, from our research, would welcome an equivalent of Transborder Workers relief in NI so that they do not have to pay a top up of tax to HMRC and bear the associated costs of filing a tax return.
5. Those workers and employers with pension concerns do not understand why a State approved pension scheme in one jurisdiction cannot be recognised as an equivalent in the other jurisdiction to allow tax reliefs to apply. The recognition of the equivalency of pensions schemes on either side of the border could go a long way to addressing the pension issues. This is reiterated in Chapter 5 on pensions.
6. The provision of clear concise guidance with relevant examples based on the land border scenarios, and manuals written in plain language along with training of both government and private sectors advisers could provide the clarity that cross-border workers and employers are looking for.
7. From our engagement with employers and employees alike, there is a fear of the legacy tax and pension compliance issues. Those stakeholders we engaged with were quite willing to regularise the position if a clear set of rules and guidance could be devised for the future with no lookback.
8. Some employers and employees also requested that a cross-border one stop shop for advice should be available to avoid the need to contact several different departments giving several different, and sometimes conflicting, advice. It would also support cross-border workers and employers who otherwise pay for advice.

These issues are set in the context of the operation of IE/NI border. However, it should be noted that some issues reflect global challenges which are being studied by the OECD, EU and others to understand how they might be addressed. The timescale of when they might be addressed is unknown. But in the interim, there is no prohibition on States entering into local bilateral arrangements to ease the burden.

Introduction

This Chapter focuses on the taxation of cross-border workers in the context of the land border on the island of Ireland. The findings are taken from our research through several sources. Links are provided to available documentary evidence. Quotes have been included throughout from employer and employees engaged through our stakeholder engagement. Cross-border workers are a cohort of workers, who live in one jurisdiction but work in the other, that is not specifically provided for in legislation in either jurisdiction.

Context

From our research the cross-border workers on this island amounts to at least 18,000 although could potentially be significantly higher (see Chapter 2). Revenue reported 2,946,163⁴⁵ taxpayer units in IE in 2021 and in NI an estimated 79,000 pay income tax⁴⁶. The number of cross-border workers appears small relative to the overall taxpayer units, but their importance in meeting the labour market needs of both jurisdictions should not be underestimated, most particularly in the border counties where border worker representation is higher. The border region itself is a labyrinth of minor roads. Quite often the nearest commercial hub to an individual's home and where employment may be available is on the opposite side of the border. Donegal as a county is almost cut off from the rest of IE, so relies more on cross-border employment in NI. Monaghan as a county is like a peninsula, jutting into NI and surrounded by it on three sides. There is, therefore, larger numbers of cross-border workers in that region.

The two tax systems in NI and IE have several similarities but also several differences. There is a tax treaty in place between IE and the UK which offers relief for double taxation and allocates taxing rights between the jurisdictions. The original UK Ireland Tax Treaty or "DTA" as it is known was signed on June 2, 1976, and has been amended by protocols signed October 28, 1976, November 7, 1994, and November 4, 1998, and by the by the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting signed by the United Kingdom and Ireland on 7 June 2017 (the "MLI")⁴⁷.

Both jurisdictions tax employment through payroll by deduction at source, with a few exceptions. The tax rates and tax bands and personal allowances (UK) /tax credits (IE) are different and vary year to year in each jurisdiction. The fluctuations in currency exchange between the £Stg and €Euro contributes to the uncertainty in the level of take-home pay for employees.

Where the employment income source is on the opposite side of the border, the employee has a self-assessment income tax filing obligation to return their worldwide income in their country of residency.

There is an obligation on both HMRC and the Revenue Commissioners to ensure that they deduct the right amount of taxes, in the right proportions under the legislation in force and in a manner which avoids double taxation and non-taxation. The Double Taxation Treaty between the two jurisdictions is designed to alleviate the potential for double taxation in the form of an exemption or a credit in the home State for the taxes suffered in the other State.

For cross-border workers who live on the opposite side of the border from that of their employment it is reasonable to expect that there will be differences in application of the rules - tax rates, bands and currency. Our research has found however that the tax rules for cross-border workers are much more complex than for their peers who reside on the same side of the border as their employment. This is not unique to IE and the UK and is recognised as a world-wide challenge to worker mobility.

These complexities have existed for border-based employers for a long time. However, since the pandemic and the shift in Government policy on both sides of the border towards

⁴⁵ Irish Tax and Customs, *Income Tax Distributions*, www.revenue.ie. Available at: <https://www.revenue.ie/en/corporate/information-about-revenue/statistics/income-distributions/stats/Income-Tax-Distributions.aspx>.

⁴⁷ HM Revenue & Customs (2024). *Synthesised text of the Multilateral Instrument and the 1976 Ireland-UK Double Taxation Convention – in force*. [online] GOV.UK. Available at: <https://www.gov.uk/government/publications/ireland-tax-treaties/synthesised-text-of-the-multilateral-instrument-and-the-1976-ireland-uk-double-taxation-convention-in-force>

encouraging/supporting flexible and hybrid working, a spotlight has been shone on the extra complexities involved with implementing these policies for cross-border workers.

Issues and Challenges

Both the UK and IE have well established Global Mobility tax rules for employees who are posted to work in other jurisdictions. These existing rules work well for those employees who fly into or out of the country on business where workdays in each jurisdiction can be easily tracked from travel documentation. It is also more likely to suit larger businesses who operate on a global basis. Border businesses and cross-border workers on the island of Ireland are expected to fit into the Global Mobility tax rules, as there is not a separate set of rules that deals with the nuances of labour movements across the land border.

Specific articles under the DTA are referenced in this discussion:

- Article 15 covers income from employment
- Article 18 covers government functions (employment)
- Article 21 deals with the elimination of double taxation and allows a credit against Irish and UK paid

The following reflects key areas for consideration.

Posted Workers

The UK Government website clearly states what being a ‘posted worker’ means:

“You are a ‘posted worker’ if your employer temporarily sends you from the country, you normally work in to another country to work.”⁴⁸

The law allows HMRC and the Revenue Commissioners to each tax the duties carried out in their respective jurisdictions. The employer must follow the pattern of duties carried out by the employee to decide what proportion is taxed in each jurisdiction. For those employers and employees who fulfil the criteria set out in Article 15 of the DTA, reliefs afforded from operating payroll and deducting taxes from posted employees whose workdays in the other jurisdiction do not exceed 183 days. This avoids the necessity for a dual payroll.

An extract from Revenue Commissioners Manual Part 42-04-65 shows a traffic light representation of how these PAYE exclusion rules apply.

⁴⁸ Department for Business, Energy & Industrial Strategy (2016). *Temporary work in the UK: guidance for workers posted from the European Economic Area*. [online] GOV.UK. Available at: <https://www.gov.uk/guidance/temporary-work-in-the-uk-guidance-for-workers-posted-from-the-european-economic-area>

Figure 3.1: Extract from Revenue Commissioners Manual Part 42-04-65

4.6 Summary of Position with effect from 1 January 2020

Category	DTA countries	Non-DTA countries
Less than 30 workdays in the tax year	No PAYE obligation	No PAYE obligation
Between 30 and 60 workdays in the tax year	No PAYE obligation where Article 15(2) is satisfied	PAYE obligation
More than 60 workdays but less than 183 days present in the tax year	PAYE obligation in the absence of a PAYE Dispensation	PAYE obligation
More than 183 days present in the tax year	PAYE obligation	PAYE obligation

***Where PAYE applies – the obligation to deduct arises from day one.**

The equivalent UK rules for Short Term Business Visitors (STBVA) are similar with an additional two categories of 61-90 days and 91-150 days where individual information is required on the specific employees at each stage albeit that no PAYE deduction is due until they cross the 183-day threshold. An STBV agreement or a s690 application needs to be applied for by the employer to avail of the exemption from deducting taxes or notifying the number of workdays to which payroll applies.

It is critical to note that the above posting rules do not apply to workers who live in the jurisdiction to which they are being posted. This is because Article 15 (2)(a) of the DTA sets out conditions that need to be complied with for the employment income to only be taxed in the employer State. The first of those conditions is that the employee spend no more than 183 days in the other State to which they are posted. **Where the individual is a resident of the other State, they can never satisfy that condition. Therefore, no treaty relief is available.**

Example 3.1: Posted Workers

IE Resident working in NI

Marie lives in Co. Cavan but works fulltime for a company in Co, Fermanagh. She has a fully flexible schedule which allows her to flex her hours around her childcare and school drop offs and to work from home for a few hours every day.

There is no relief under Article 15 from dual payroll and her NI employer will be required to operate a dual payroll both in NI and IE because she both carries out duties in NI and IE and is resident in IE.

It would have been more straightforward if Marie had been a government worker. She would have been covered by Article 18 of the DTA as she is resident and a national of IE and would only be taxed in country of residency. No dual payroll would be required.

NI Resident working in IE

Danny works for a hardware shop in Monaghan. He lives in Armagh. He delivers goods to customers both sides of the border. On Monday he has three deliveries in the morning, one to Glaslough in Monaghan, one to Lisnaskea in Fermanagh and from there he goes on to deliver a third in Aughnacloy in Tyrone. After his lunch break, he has a delivery to Madden in Armagh and two deliveries to Castleblayney and Carrickmacross in Monaghan.

As he is resident in NI his employer will have to run a payroll in NI as well as IE since he has carried out duties on both jurisdictions and is a resident of NI so no treaty relief under Article 15 is available from dual payroll.

Workdays

To implement the Global Mobility rules for a cross-border worker, it must first be determined where they are resident and then work out how many workdays they have in each jurisdiction. There is no lead-in time for Article 15 posted workers where they reside in the opposite side of the border to their employer. There is an immediate need for payroll in the other jurisdiction from Day1 once duties are carried out there. This is not unique to IE/NI land border and arises in many border regions throughout the world.

In IE, for employment tax rules under Revenue Commissioners Manual Part 42-04-65 a 'workday' is defined as a day during any part of which an individual performs work in the State. In NI, the Statutory Resident's Test defines a 'workday' as 3 hours or more. The detail of how tax residency and workdays is determined in both jurisdictions is set out in Appendix II.

The different approaches to determining workday can result in the situation that an employee could have a workday in NI as well as a workday in IE on the same day. This would mean that payroll taxes must be deducted in both jurisdictions on the same day's pay.

Example 3.2: NI Residents with IE Employment Income

In the example above for an NI resident Danny, he has a workday in Ireland as he has carried out some of his duties that day in Ireland and he has a workday in NI as he has spent more than 3 hours carrying out core duties, not merely incidental duties, in NI.

As Article 15 DTA relief from dual payroll is not available to the employer due to Danny being resident in NI, payroll will have to be run and **tax deducted in both jurisdictions on the same pay. This means Danny is doubly taxed on those days.**

He is unable to avail of real time tax relief (see below) and will need to apply for a refund at year end instead under Article 21 of the DTA which allows a credit for the Ireland tax and USC against the equivalent UK tax on the same income.

It's worth noting that real time tax relief is available for posted workers, provided they do not reside in the jurisdiction they have been posted to. However, in this example, the employer and the employment contract are both based in Ireland, but Danny is being posted to NI where he is resident. He is therefore not entitled to Revenue's payroll "real time tax credit". He is also not entitled to HMRC's payroll 'real time tax credit' as the employer is not based in the UK.

These procedures for payroll real time tax credit are set out in Revenue Guidance 42-04-62 and HMRC manuals PAYE81610 and PAYE82001.

To assist the employee who has a much-reduced net take home pay (due to the real time double taxation), often employers will fund the overseas (in Danny's case NI) tax liability during the tax year. At the end of the tax year when the employee files a tax return and claims a tax refund (due to the double taxation) they must reimburse the employer for the amount that the employer funded during the year. This funding of the tax is treated as a preferential loan to the employee (as noted in a Revenue ebrief No. 039/23) and, as it is an interest free loan, it is taxed as a benefit in kind (BIK) on the employee. **So, in this example of Danny will have to pay tax on the BIK. Therefore, as a cross-border worker Danny pays more tax than their peers who do the exact same job but are not cross-border workers.**

The complexity of dual payroll, the non-availability of real time tax credit and the benefit in kind charge to the employee where the employer assists them with foreign taxes makes a common situation of taking a job across a border extremely complicated. This is before we consider the knock-on effects of dual payroll (as set out in Chapter 9).

Income Tax Self-Assessment in Country of Residency

Where an individual resident in NI or IE has foreign source income they become a chargeable person for income tax self-assessment, so they have an obligation to file a tax return in their country of residency.

IE employment income must be apportioned to the UK tax year 6th April to 5th April and converted to sterling. The UK tax rates, bands and personal allowance are applied to the income. A DTA foreign tax credit is available for the payroll tax and the Universal Social Charge (USC) borne in Ireland against the equivalent UK tax on the same income.

Since the introduction of USC in IE in 2011, the combined tax and USC borne in IE is usually higher than the equivalent tax on the same income in NI. This means that there should be no further tax liability to pay to HMRC if the employment income is the only income of the individual.

However, there is a level of income where a top up tax is required in NI and surprisingly that has a bigger impact for low earners which may discourage them from taking up an opportunity to work across the border. On current tax rates, band and an exchange rate of 0.853 on a salary above €36,000 no top up is required. However, a cross-border worker earning between €15,000 and €36,000 per annum (2024/25) in IE does have a top up tax bill to pay in NI. For example, an earner of £18,750 could expect a tax bill in NI of approximately £518 which in a low-income household could lead to significant cash flow problems.

Income Joint assessment can be availed of in IE for married couples and civil partners. This allows them to share their single person tax credit and up to €9,000 of their lower rate tax band. In comparison, there is no joint assessment in NI. Any unused personal allowance up to £1,260 but not above can be transferred. This again has a greater impact on employees on lower rate tax bands.

Due to the difference in the two tax systems anomalies can arise. Where both spouses or civil partners work in IE and their PPS numbers are linked by the Revenue Commissioners the tax credits and tax bands allocated to each of them are often changed automatically. The change is usually a reallocation of €9,000 of the lower rate band and the single persons tax credit to the higher earning spouse. This will result in less tax being paid in IE than would have been had they been taxed independently. In NI they are taxed independently so the knock-on effect of that is that the higher earning spouse has a reduced DTA foreign tax credit to credit against the equivalent UK tax on their income. This can result in a tax liability in NI.

Aggregation Relief is an IE relief available to non-residents who are married. Usually, they are taxed as single persons in IE. The relief allows their IE income to be recalculated on a joint assessment basis. If the tax amount arising is lower than the original tax assessment on a single person basis, they can claim a refund of the difference. Again, this reduces the overall tax paid in IE and available as a DTA credit gain the equivalent UK tax which can have the knock-on result of creating a tax liability in NI.

The claiming of pension contribution tax relief (See Chapter 4 on Pensions), Aggregation Relief or additional tax credits such as Health Expenses, Tuition fees etc in IE can also have the same impact of reducing the overall tax paid and therefore the DTA foreign tax credit. The effect is that it could result in a tax liability being owed to HMRC where the equivalent reliefs are not available in NI.

Example 3.3: Joint Assessment

For example, Barry and Julie live in NI. Barry earns €36,000 in an IE job and is paying tax and USC in IE through the payroll and doesn't have a top up of tax to pay to HMRC. His wife Julie also works in IE. She earns €12,000 in a part-time job. She pays no tax as her tax credits cover it. She has spare tax credit of €1,350 which have not been used.

They can claim aggregation relief so that Julie's unused tax credit of €1,350 can be utilised by Barry. This reduces his tax by €270 which he can claim as a refund from IE.

However, when he calculates his tax for the UK self-assessment return, he now has a reduced DTA credit. As he has paid less tax and USC in IE than the equivalent UK tax, he now has a liability payable to HMRC of £230.

Transborder Worker Relief

In the reverse scenario, where Barry and Julie live in IE and work in NI, they can avail of Transborder Workers Relief (TBWR) which, provided all their income is earned in NI, means they have no further

tax to pay to Revenue. TWBR is a relief that can be claimed by cross-border workers resident in IE instead of the DTA credit.

Transborder Workers Relief (TBWR) is a tax relief available to employees who satisfy the following conditions:

- Remain an IE tax resident.
- Have an overseas employment in a DTA country.
- Has tax deducted on the foreign employment and not refunded.
- The employment lasts for more than 13 weeks.
- The employment cannot be in a company in which the individual or their spouse is a proprietary director.
- Be present in IE one day every week.

When filing an IE tax return NI employment income must be apportioned to the calendar year 1 Jan to 31 Dec and converted to Euro. IE tax rates, bands and tax credits (equivalent of UK personal allowances) are applied to the income. A DTA foreign tax credit is available for the payroll tax borne in NI against the equivalent IE tax and USC on the same income.

TWBR shelters the foreign employment income from further taxes in IE. It is based on a formula:

$$\text{Total IE tax due} \times (\text{Income other than Foreign Employment Income} / \text{Total Income})$$

This means that 100% relief is available if the NI employment is the only income, and the individual is not jointly assessed with a spouse.

This is a very valuable relief for IE resident cross-border workers. It not only reduces the tax burden for IE workers down to levels equivalent to their NI resident colleagues on the same income, but it also reduces the tax cost due in IE to the lack of pension contribution tax relief (See Chapter on Pensions).

The number claiming TBWR appears low, 1,655 in 2020 (see answers to Dáil question later in this Chapter). There could still be more who are not claiming it due to the apparent low compliance levels in tax return filing among cross-border workers. The Tax Strategy Group (TSG) 2021 in their paper on Transborder Workers Relief highlights that “*There is no available means to establish the quantum of non-filers*”⁴⁹. However, as noted in our research, the latest IE Census (2022) highlights that there are 7,777 IE residents working in NI who could be eligible.

The TSG reports on TWBR have been discussed with various stakeholders during our research. Concern has been raised by the stakeholders that, given its uniqueness of the relief (as pointed out in the TSG report) and the low number of those claiming it, it might be at risk of withdrawal. Any loss of TBWR to a cohort of IE resident workers who work for NI companies is a real concern to them. Any removal of the TWBR relief (which might happen if low numbers negate its apparent need) would increase the tax cost to this cohort of cross-border workers to not just the level of other resident workers but higher still due to the lack of pension contribution tax relief (see Chapter 7).

There is no equivalent of TWBR in NI. So quite often a NI resident cross-border worker will have a top up of tax to pay to HMRC after considering the double tax credit for income tax and USC borne in IE. However, as explained above the top up is generally only required at lower income levels. This is due to

⁴⁹ GOV.IE (2021). *Budget 2022 Tax Strategy Group papers*, TSG 21 - 04 Trans-Border Workers' Relief, [www.gov.ie](https://www.gov.ie/en/collection/d6bc7-budget-2022-tax-strategy-group-papers/). Available at: <https://www.gov.ie/en/collection/d6bc7-budget-2022-tax-strategy-group-papers/>

the rise⁵⁰ in the tax burden that the USC contributed when introduced. The USC is recognised as a tax for Double Taxation Treaty purposes and forms part of the DTA credit.

TBWR only applies to employees who commute to work in the other jurisdiction. Any proportion of duties carried out in IE will not attract relief. Therefore, if an IE worker works from home 3 days a week and travels to work in NI for 2 days, they will get proportionate TBWR for those 2 days. See Example Figures in Appendix III.

Compliance with Self-Assessment Obligations

The Minister for Finance commented in a Dail question session on the numbers of cross-border workers that in 2021 there were 10,623 taxpayers with a NI address who were registered as an employee for PAYE purposes in the State⁵¹. This is set in the context of the 10,541 NI residents reported as working in IE according to the NISRA Census (2021).

In the same session the Minister for Finance confirmed that for 2020 there were 1,655 taxpayers with a residential address in the border counties of Louth, Cavan, Monaghan, Donegal, Sligo and Leitrim who disclosed foreign employment income in their Form 11 income tax returns and/or who claimed Transborder Workers' Relief for the year. This is set against 7,777 IE residents reported as working in NI according to IE Census (2022). This would suggest that only a small percentage of IE cross-border workers is filing self-assessment returns with the Revenue Commissioners.⁵²

HMRC did not when asked, have publicly available data, which they could share with the research team on the numbers of income tax returns filed showing foreign income from employment in IE, indicating a cross-border employment.

During our engagement with stakeholders, some of the reasons for non-filing included, but are not limited to:

- Being unaware of the obligation
- Assumption that all taxes are dealt with through the payroll
- Assumed no difference in tax liabilities between the two jurisdictions
- No benefit (i.e., refund) to be gained by filing
- Worry that there would be a liability if they filed
- Cost of employing an accountant to prepare the tax return

To facilitate the filing of return, an IE resident employee can file a Form 12 (rather than the Form 11 self-assessment form) through their MyAccount with Revenue. This online facility is available to all IE PAYE workers. However, from our stakeholder engagement cross-border workers have pointed out that the Form 12 is not as user friendly as it could be. For example, it does not produce a calculation of taxes (like the Form 11 does). Therefore, it cannot be checked for accuracy before submission.

Employer Tax Compliance

If duties are only carried out on one side of the border there is a need for one payroll. If duties are carried out on both sides of the border, then both jurisdictions (UK and IE) can each tax their proportionate

⁵⁰ McQuade, P., Riscado, S. & Santacore, S. (2017), *Personal income tax in Ireland: the future of the Universal Social Charge*, Available at: https://economy-finance.ec.europa.eu/document/download/94a1634e-ed9b-4f26-bd8a-226f1f42c715_en?filename=eb028_en.pdf

⁵¹ McGrath, M. (2023). *Tax Data*. [online] Oireachtas.ie. Available at: https://www.oireachtas.ie/en/debates/question/2023-06-22/122/#pq_12

amounts. From our research we have identified several different ways that employers are currently dealing with cross-border payroll obligations:

1. Dual payroll in one company
2. Direct Payment Scheme
3. Split the employees between different entities on opposite sides of the border
4. Ignore the Problem

Each are described in detail in Appendix II. A short summary of each is provided below.

1. Dual payroll in the one company

This means that the employer must establish a payroll in each jurisdiction and tax the employment duties carried out proportionately. Alternatively, the employer can run a full payroll in the employer jurisdiction, a shadow payroll in the other jurisdiction (to ensure compliance with its tax and reporting requirements) and fund the shadow payroll taxes throughout the year for the employee. This requires year end self-assessment, complex tax rebates which can be further complicated by irregular and unpredictable work patterns e.g, delivery drivers, client visits, sales visits, healthcare visits etc. The downside of dual payroll is the complexity of administering it and the cost involved. Our findings show that it is most often the larger employers, who have the resources to do so, are attempting to operate dual payroll. Even some of these have started it and then stopped it, no longer allowing remote or hybrid working cross-border from that point onwards. It is so complex that some businesses have to outsource which is an additional cost burden.

“Having put considerable time and resources into exploring a dual payroll to facilitate remote working for cross-border workers it was deemed too costly and complicated from an employers’ perspective, in part due to duplication and complexity of HR policy and employee benefits such as pensions, private health and dental benefits. It was also deemed very restrictive for the employee who opted to go on IE payroll, who would then be fully remote working within IE. The option to pursue a dual payroll was deemed not feasible.”

Quote from Director of US Multi national based in NI employing cross-border workers.

2. Direct Payment Scheme

A Direct Payment Scheme is appropriate where normal PAYE procedures are unsuitable. They are connected to social insurance contributions. Direct Payment and Special Collections schemes have been a long-established way of a having a non-resident employer with no establishment in the UK or IE deal with the employment taxes and social security of an employee based in the jurisdiction.

An employee working from home will not normally constitute a tax presence for this purpose, unless the employee is holding their home out as a place of business for the employer, which would be unusual. They are dealt with differently in the two jurisdictions (see Appendix III)

The pros of the direct payment scheme all lean toward the employer in that it shifts responsibility to the employee. It has limited application though due to the requirement that the employer has no presence in the jurisdiction.

These Direct Payment and Special Collections schemes predate the changes to Article 5 of the DTA on the definition of Permanent Establishment (PE). If a PE exists in the jurisdiction a Direct Payment or Special Collection scheme cannot be used. Due to MLI changes to the DTA in 2017 the circumstances under which a PE could arise have broadened. This would reduce the number of

occasions that the above direct payment schemes could be used. Detail is provided in the comments on PE below which detail the changes to the DTA.

3. Split the employees between different entities on opposite sides of the border

If you have, for example, one company with a presence on both sides of border registered for payroll taxes in both, then you can move the employees onto contracts of employment with the other entity established in their jurisdiction of residency. Then, as they are resident in the same jurisdiction as their new employer, they can avail of the Article 15 DTA relief. They can still carry out duties on the other side of the border for up to 183 days before a dual payroll deduction would be required.

There are pros and cons to this include the following (although this list is not exhaustive)

- a) It is not feasible for every business to have two bases. Some businesses are just too small to justify it.
- b) A change of contract is a change of terms of employment. From our research we found that, If the employee hasn't been fully informed of all the ramifications of the change and been afforded the opportunity to seek advice on whether it is beneficial to them or not, it opens the avenue for potential lawsuits against the employer.
- c) The change in contract to the opposite side of the border can have implications such as:
 - change in take home pay due to tax rates and band,
 - change in social security contributions and
 - access to benefits e.g., child benefit,
 - access to cross-border healthcare,
 - difficulty with mortgage applications, and
 - difficulty accessing health insurance and income protection insurance.

4. Ignore the Problem

It would appear from our stakeholder engagement that there could be a relatively high level of non-compliance with the tax rules, both from an employer payroll and an employee tax return filing perspective. However, there appears to be no publicly available government led data that sets this out. Any evidence of non-compliance that we have encountered is based on lack of awareness of the rules but also that a large proportion find the rules too intricate to operate. There is a large concern around the legacy of this and providing a clear path to regularise it.

Small business generally does not have the inhouse resources. There is a dearth of suitably qualified and experienced people who can assist small businesses with dual payroll for example. The people who carry out this function tend to deal only with the large global companies whose employees travel extensively with work. This usually means big fees often out of the reach of a small business.

In a recent example, a large UK business with one employee based in IE was quoted €1,000 per month, by one of the larger advice firms, to administer the dual payroll to cover the obligations in IE for the posted employee.

From our qualitative research, there appears to be an increasing number of employees who are hiding the real location of their residence from their employers by using a relatives address in the employer jurisdiction as their home address for employment purposes. This concealment, in most cases, is due to the fear of job loss should the employer realise they live across the border and the complications arising from working from home in those circumstances.

Based on our research there appears to be very low numbers of dual qualified tax advisers in the border region of IE who practice daily. All other cross-border advisers are made up of bigger firms who have advisers who are qualified on one jurisdiction and work with a colleague in another office qualified in the other jurisdiction in separate offices working together to advise.

During engagement, a comment was made by a professional adviser that it sometimes took six people to solve a cross-border problem - an accountant, a tax adviser and a legal adviser from each jurisdiction. The associated costs involved are arguably not sustainable for most SME businesses.

From our stakeholder engagement and collective experience over the last 20 years, a lot of this non-compliance is reflective of the poor fit of the rules to the profile of the cross-border employers and cross-border workers on this island.

“Ironically, the non-compliance is the very reason the numbers of cross-border workers have in the past been grossly underestimated.”

Pat McCormick – President Dundalk Chamber of Commerce speaking at the Dundalk chamber of Commerce in conjunction with CBPES Seminar for Cross-border Employers and Workers 12/06/2024

The Impact of Permanent Establishment (PE)

PE is important because it establishes whether a business has sufficient activity in another territory to create a taxable presence in it from a corporate tax perspective.

Our research suggests that this is a key concern for employers when recruiting cross-border on the island i.e. creating a corporation tax exposure on the other side of the border from having a PE. The PE issue is inextricably linked to the cross-border worker tax issue and is in fact the priority issue being dealt with at OECD level ⁵³.

Traditionally a PE was only to considered to exist in two broad ways – if the enterprise had:

- A fixed place of business through which the core activities of the enterprise were wholly or partly carried on, or
- A dependent agent who has the authority to conclude contracts on behalf of the enterprise and exercises that authority

Certain activities were considered preparatory or auxiliary and didn't form part of the core activities e.g., storing a stock of goods, advertising etc.

The changes to the DTA on 7 June 2017 came about due to the Base Erosion Profit Shifting (BEP) programme and the adoption of the *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting* ("Multilateral Instrument" or "BEPS MLI"). The effect of these changes is that it broadened the scope of circumstances where a PE could arise. A more holistic view of all activities of the foreign entity in the jurisdiction must now be taken to see if the combined activities form a cohesive business operation.

What this means that the existence of one or more employees carrying out duties in or working from home in IE or NI could contribute to the PE risk of the NI or IE employer:

1. If the employees home office is at the disposal of the employer, or
2. If the activities and decision making of the individual employee, or two or more employees collectively working in the other jurisdiction, could constitute a cohesive business operation.

Where previously someone carrying out a back-office role from home would have largely been ignored, they can no longer be. More detail on the PE issue is found in Appendix III.

⁵³SPF Finances - FOD Financiën (2024). *Cross-border workers colloquium*. YouTube. Available at: <https://www.youtube.com/watch?v=ySoFx8vU81Y>

Government Service Workers

Workers in government funded jobs are, generally, taxed under payroll in the employer jurisdiction. If they are a cross-border worker, then the individual may also have a self-assessment tax obligation in the jurisdiction of residency. Article 18 of the DTA deals specifically with government service workers. It allocates the taxing rights between IE and the UK in relation to certain government service workers. The sole taxing rights remain with the country of payment (employer jurisdiction) unless the individual is a resident of and a national of the other State (jurisdiction of residence). Appendix III presents examples from HMRC on UK and IE scenarios.

Which government employees are included in Article 18?

From our engagement with stakeholders, it was found that there can be confusion as to which roles within government funded jobs are covered by Article 18 and which are not. Certain government jobs are clearly covered by Article 18 i.e., local authority posts and those in government funded education institutions which were included by virtue of the 1998 Protocol amendment to the treaty. However, there are a lot of grey areas with regards to the wider public sector as to who is included and who is excluded.

Not having a definitive list of roles that are considered covered by Article 18 is not helpful in determining the tax position for employer or employee. While the DPERS's Blended Working Policy Framework for Civil Service Organisations⁵⁴ refers to the fact that workers "*can seek advice from the Office of the Revenue Commissioners as to specific tax treatments, where required,*"⁵⁵ it does not refer to specific government roles, other than "consulate/embassy". A list of roles would negate the need for taxpayers and advisors to contact Revenue to determine if the role meets the requirements of Article 18.

The HMRC manuals at INTM343040 provide a list of government funded pensions and categorise the list as government or non-government. This can be helpful in determining UK employments that fall under Article 18. There is no equivalent IE list that we have found in our research.

What that means for cross-border government workers is that they are not protected by Article 18 in all instances and can be taxed in country of residency particularly if they carry out duties of employment from home in the other jurisdiction. See more detail in Appendix III.

What happens in the case of hybrid working?

In short, our research indicates that dual payroll is not required for certain government service workers who work on a hybrid basis. In addition, if the employee is only taxed in country of residency through the payroll there should be no income tax self-assessment filing obligation if that is their only source of income. This makes it more straightforward for certain government service workers and their employers than it does for private business and non-government service workers.

The importance of 'nationality'

The residence and nationality of the government service worker play a big part in determining how they are taxed. There is more detail on this in the Taxation Appendix.

⁵⁴ GOV.IE (2022). *Blended Working Policy Framework for Civil Service Organisations*. [online] [www.gov.ie](https://www.gov.ie/en/publication/da010-blended-working-policy-framework-for-civil-service-organisations/). Available at: <https://www.gov.ie/en/publication/da010-blended-working-policy-framework-for-civil-service-organisations/>.

⁵⁵ GOV.IE (2022). *Blended Working Policy Framework for Civil Service Organisations*. [online] [www.gov.ie](https://www.gov.ie/en/publication/da010-blended-working-policy-framework-for-civil-service-organisations/). Available at: <https://www.gov.ie/en/publication/da010-blended-working-policy-framework-for-civil-service-organisations/>.

In summary this means that, depending on the facts and circumstances the employment income of an IE resident worker employed in an NI Government Service job should be taxed under PAYE deduction in IE in respect of Irish duties. The worker may also have a self-assessment income tax filing obligation in IE if they have other sources of income. However, neither Revenue Commissioners nor HMRC have data on how many workers this affects.

Approaches by Other Jurisdictions

Other jurisdictions face the same issues where they have land borders.⁵⁶ Some of them have moved ahead and agreed bilateral arrangements. The following are some examples:

- **Belgium and Netherlands have agreed bilaterally** regarding the (non-)recognition of a home office PE where the employee spends less than 50% of their time carrying out duties in the Mof Residence.
- **Spain and France have agreed bilaterally** - cross-border workers who are resident in Spain are only taxable in Spain and those who are resident in France are only taxable in France
- **Switzerland and France have agreed bilaterally** where cross-border workers are taxed, and this can be different depending on cantons (Member States of the Swiss Confederation)
- **Belgium and France have agreed bilaterally** the tax treatment of cross-border workers living with a 20km distance from the border
- **Germany and France have agreed bilaterally** the tax treatment of cross-border workers
- **Italy and France have agreed bilaterally** the tax treatment of cross-border workers

More detail on these arrangements is included in the Taxation Appendix.

Concluding Reflections

A report from the Office of Tax Simplification UK (“OTS”) published 20 Dec 2022, before it was disbanded, stated the following:

“It remains common for people who live in certain areas of either NI or Ireland to be employed in the other territory. Where previously they would work entirely in that other territory, hybrid working may now mean some time working in their territory of residence. Businesses affected hoped that the UK government could discuss the issues of permanent establishment and payroll withholding for Income Tax and social security with Ireland to see if there are opportunities to simplify processes for companies and individuals in these circumstances.”

⁵⁶ Loyens & Loeff (2023). *Agreement between Belgium and the Netherlands on cross-border home office*. [online] [www.loyensloeff.com](https://www.loyensloeff.com/insights/news--events/news/agreement-between-belgium-and-the-netherlands-on-cross-border-home-office/). Available at: <https://www.loyensloeff.com/insights/news--events/news/agreement-between-belgium-and-the-netherlands-on-cross-border-home-office/>.

Extract from the Opinion of European Economic and Social Committee on Taxation of cross-border teleworkers and their employers, 13 July 2022

3.5 The EESC underlines however how important it is that the taxation systems are updated further to answer the needs of today's work environment. **It is important that employers, when installing teleworking arrangements, are not disincentivised to hire employees from outside the employer's jurisdiction because of taxation obstacles. Similarly, taxation rules should not be an obstacle for employees when applying for jobs in a cross-border situation.**

3.6 The EESC considers it essential that taxation rules regarding cross-border teleworking ensure that there is no double taxation or unintended non-taxation for both employees and employers. **In ensuring that companies of all sizes can offer teleworking opportunities, it is important that any administrative obligations related to the taxation of cross-border teleworkers are eliminated or at least minimised.**

There is a recognition from our research that most of the cross-border workers being referred to in this report are not 'posted' across the border by their employer to work nor do they change residency to take up employment (see definition of a posted worker above). Yet most, if not all, of the legislation and guidance in this area refers to exactly those two scenarios. There is a legislative gap for those not posted across the border by their employers and those who do not change residency to take up their job.

The concept of an individual residing in a jurisdiction and not having moved there specifically to take up the employment is not unusual and arguably common place in a border region. This has been accommodated in the development of Article 18 for certain government service workers, so the legislators have dealt with that exact concept. In Article 18 (1b) the wording states that '*However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:(i) is a national of that State; or (ii) did not become a resident of that State solely for the purpose of rendering the services*'.

To wait on the OECD to come up with solutions may take many years. For example, it has already stated that they will deal with the PE issue first and their recommendation on changes to commentary will not be available until 2025.⁵⁷ It is only after that PE issue has been dealt with, that they will deal with the Article 15 dual payroll. In the meantime, there is no prohibition on bilateral cooperation between States to agree local solutions in fact it has been encouraged by the EU taskforce^{58,59}. Any opportunities in this area in bilateral cooperation between the UK and IE would therefore be encouraged.

The requirements for dual payroll and self-assessment obligation for certain government service workers appear less onerous than other cross-border workers since 100% of payroll can be operated in one jurisdiction or the other. As a result, government cross-border workers currently have an advantage over private sector cross-border workers with regards to taxation.

⁵⁷ SPF Finances - FOD Financiën (2024). *Cross-border workers colloquium*. YouTube. Available at: <https://www.youtube.com/watch?v=ySoFx8vU81Y>

⁵⁸ KPMG (2024). *GMS Flash Alert European Union -EU Task Force Considers Tax Implications of Remote Work*. Available at: <https://assets.kpmg.com/content/dam/kpmg/xx/pdf/2024/04/fa24-085.pdf>

⁵⁹ SPF Finances - FOD Financiën (2024). *Cross-border workers colloquium*. YouTube. Available at: <https://www.youtube.com/watch?v=ySoFx8vU81Y>

Qualitative findings from this research also show legacy non-compliance covering both private employment and government service roles. This is not unusual in the context of the practical implementation of cross-border employment taxation rules.

Better, clearer and more concise guidance is needed. The basic canons of taxation need to be followed - Equity, Certainty, Convenience and Economy. Given the lack of available, user-friendly information being made available to the lay person to ensure that they understand their obligations, then compliance is not a given. The potential level of non-compliance is a serious indicator that the rules are not understood or are too complex and therefore too costly to implement. During our engagement with stakeholders there was a request by employers and quasi-government bodies that a simplified regime to regularise the current compliance situation needs to be introduced that does not penalise those who sign up to it.

In line with the recommendation of the EU taskforce and OECD priorities, real terms simplification of the rules needs to take place to avoid taxation being a barrier to labour mobility across this island.

Chapter 4 - Pension entitlements and portability

Summary

The predicted State pension funding struggles that governments are facing, due to aging populations, have been highlighted many times. People are living longer *‘meaning fewer people to pay into pension systems, while still needing to ensure that people have decent living standards in retirement’*⁶⁰.

Only around two-thirds, 62% to 65%, of private sector workers on the island of Ireland, have a workplace pension. Pension coverage for public sector workers appears to be significantly higher at around 92% to 97% across the island.

As a result, government policy aims to ensure that individuals have adequate pension provision for the latter years of their lives. The move to Auto Enrolment pension in the UK in 2012 and the expected implementation of IE Auto Enrolment pension saving scheme in 2025 show the commitment by both jurisdictions to narrow the pension gap by increasing pension coverage across the population. While these initiatives are helpful, they appear to be best suited to individuals who live and work in the same jurisdiction.

Our research has found the pension considerations around cross-border workers very challenging. The main issues for cross-border workers and employers appear to centre around accessing and understanding the guidance and application of rules, the ability to claim tax relief, the different pensions treatment of government and non-government service workers, clarity around and application of rules around drawdown of pensions, the ability to transfer pensions and the impact of autoenrolment. We have tried to articulate these issues below in a way that will support understanding, but by their very nature this has proven difficult which in itself draws attention to the challenges for workers and employers.

There is guidance published by Revenue and HMRC that covers taxations issues for individuals who are resident in the State and who have foreign income, including from foreign employments. However, as mentioned in the Taxation Chapter, cross-border workers often need expert financial advice to ensure their pension plans comply with complex cross-border tax rules. Financial services providers who engaged with the research have helped to outline exactly how challenging that task is, especially without specific guidance and examples on pensions relevant to the category of worker who resides on the opposite side of the border from where the employment is based.

From our findings this is currently having a direct impact on the mobility of workers between the jurisdictions. It is also impacting on employers. For employers in IE and NI, who rely on attracting workers from across the border, providing a workplace pension that offers similar benefits to their workers regardless of their residence can prove very difficult and expensive as discussed during stakeholder engagement during this research.

⁶⁰ Amaglobeli, D., Dabla-Norris, E. and Gaspar, V. (2020). *The Impact of Aging Worldwide on Pensions and Public Policy – IMF F&D*. [online] IMF. Available at: <https://www.imf.org/en/Publications/fandd/issues/2020/03/impact-of-aging-on-pensions-and-public-policy-gaspar>.

“For cross-border workers the lack of tax relief on pension contributions, the complexity of holding several pension policies in both jurisdictions, and the uncertainty of taxation at point of drawing down the pension upon retirement, are not conducive to enabling cross-border workers to efficiently build a retirement fund⁶¹.

Source: John Lucas, QFA FLIA (DIP), Lucas Financial Consulting Ltd

Existing and potential cross-border workers do need to seriously consider the financial and tax implications before investing in a pension.

Context

Pensions are viewed as an attractive and tax efficient long-term saving plan for retirement due to the potential for investment growth and the tax reliefs available. Recent figures from the CSO suggest that 65% of private sector workers in IE and 62% of NI private sector workers have pensions⁶². Public sector pension coverage is much higher in both jurisdictions. In IE, almost all (97%) of Public Administration and Defence; Compulsory Social Security workers have pensions⁶³ while in NI 9 in 10 public sector workers have pensions.

This Chapter considers the challenges encountered by cross-border workers as they attempt to save for retirement, and for cross-border employers as they aim to provide their employees with equivalent pension packages, regardless of their place of residence.

It sets out the current private pension arrangements available to cross-border workers, and the issues and challenges they are facing due to the different treatment of cross-border workers for:

1. Tax reliefs for employee pension contributions,
2. Taxation of employer contributions on the employee
3. Taxation of drawdown and lump sums
4. Portability and transfer of pensions cross-border
5. Workplace Auto Enrolment Pensions

Issues & Challenges

This research showcases several significant issues that have and will increasingly challenge the availability and equity of pension provision for cross-border workers. For cross-border workers resident in one jurisdiction and working in the other the cross-border tax reliefs for pensions do not apply in some instances.

The main challenge encountered by individuals and employers is finding published material, which explains in simple terms the rules around cross-border pensions. While the HMRC and Revenue

⁶¹ Tax relief for pension contributions in Ireland is set in primary legislation. Private pension drawdowns are also set in primary legislation.

⁶² NISRA (2024). *ASHE Pensions Results*. [online] Northern Ireland Statistics and Research Agency. Available at: <https://www.nisra.gov.uk/statistics/labour-market-and-social-welfare/ashe-pensions-results>

⁶³ CSO (2024). *Key Findings Pension Coverage 2023 - Central Statistics Office*. [www.cso.ie](https://www.cso.ie/en/releasesandpublications/ep/p-pens/pensioncoverage2023/keyfindings/#:~:text=In%20Quarter%203%202023%2C%20pension,some%20form%20of%20pension%20coverage). Available at: <https://www.cso.ie/en/releasesandpublications/ep/p-pens/pensioncoverage2023/keyfindings/#:~:text=In%20Quarter%203%202023%2C%20pension,some%20form%20of%20pension%20coverage>.

manuals have guidance notes on the issues, they are not easy to understand for the lay person nor do they give specific examples of commuters across the NI/ IE land border.

In the absence of such easily accessible public information they turn to the Advice sector - Citizen's advice, Professional advice etc. There are a limited number of suitably qualified and trained people in cross-border matters in the country who can codify such intricate material and break it down into simple instructions, explanations and examples.

From our engagement with stakeholders, we have found that even the pension providers do, in a lot of instances, not even ask the simplest question on their application forms i.e., where is the applicant tax resident?⁶⁴ ⁶⁵ This shows a lack of awareness within the industry that pension provision for a non-resident is much more difficult than for a resident. If the tax residence question is not asked it can result in pension schemes being set up and contributions accepted into them where the applicants and the employers have not been properly advised of the ramifications of the employee's tax residence on the other side of the border.

Further detail on key issues is as follows:

Tax Relief on Employee Pension Contributions

Typically, employees get tax relief on their pension contribution through the payroll. Where they are a cross-border worker they also have a self-assessment tax return filing obligation in their country of residency (see Taxation Chapter). However, for cross-border workers there are only limited circumstances where an individual can get tax relief on their pension contributions. These include:

- An employee is posted to work cross-border with the same or a connected employer and they continue to contribute to the same scheme they contributed before the posting (Article 17A DTA Relief) or
- The employee changes residency to the other side of the border and continues to contribute to the same scheme that they contributed to before the change of residency (Migrant Member Relief)

However, many cross-border workers with whom we engaged through our research did not fall into the two categories above so were not entitled to claim tax relief on their pension contributions. The reason for this is that **there is no specific piece of legislation that allows an individual to claim the tax relief on their contributions where they live in one jurisdiction and the employment and pension are in the other jurisdiction**. This lack of specific legislation applies in both directions, NI to IE and IE to NI.

Impact of TBWR on take home where pension tax relief is not available

An IE resident cross-border who works from home is not entitled to TBWR, therefore their take home pay will be less than their NI resident colleague who also works from home and contributes the same amount into the same (NI) pension fund.

As TBWR is not available, IE resident cross-border worker is also worse off than a worker resident and employed in IE, on the same salary and making the same pension contribution.

⁶⁴ Bline (2024). *Complete Solutions ARF application form* | Bline. [online] Bline.ie. Available at: <https://my.bline.ie/media/93>

⁶⁵ The Pensions Authority (2023). *PRSA Providers – pensions authority*. Available at: https://pensionsauthority.ie/prsa_providers/

In the example below an IE resident worker with NI employment is €179.30 worse off a month.

Example 4.1 – Impact on take home pay with and without TBWR

See comparison net take home pay for a salary of €70,344 (£60,000):

NI resident on a salary of £60,000 (€70,344) with NI workplace pension

Take home = £3,825.85

Irish resident cross-border worker opted into NI workplace pension €70,344

Take home =

€4,485.17 (stg£ 3,825.85) with TBWR

€3,422.05 (stg£ 2,919.01) without TBWR (for example if they work from home)

Irish resident worker with Irish occupational pension at same contribution levels

Take home €3,601.35 (stg£ 3071.96)

Without TBWR the Irish resident cross-border worker is taking home €179.30 less a month (€2,151 per annum) than an Irish resident worker with the same salary and pension contributions.

Taxation of Employer Pension Contributions on the Employee as a Benefit in Kind

The contributions that an employer makes to a pension scheme on behalf of an employee could be treated as a Benefit on Kind (BIK) and taxed on the employee, except that in most instances they fall under specific legislative exclusions from that charge to tax. However, for cross-border workers those exclusions from the tax charge do not always apply.

a. IE Residents with NI employment

In IE the tax charge applicable is under S777 TCA 1997. The only exceptions to this tax charge on the employer contributions are where the salary is either:

- not chargeable to tax in IE, which would be highly unusual, or
- the worker is not domiciled in IE and does not remit the salary income to IE.

In the author's experience, most cross-border workers need to remit their salary to their home jurisdiction to live on. For example, the recent ESRI survey on Cross-border Working on the Island of Ireland bears this out as it found that 55% of cross-border workers travelling from IE to NI earned less than €50,000.

Therefore, many cross-border workers who are IE residents with NI employment can be taxed on the employer contributions to the scheme.

By contrast, the pensions of Government Service cross-border workers covered by Article 18 of the DTA are being treated more favourably. **This means that the NI employer contributions for an IE resident Government Service worker are not taxed by virtue of S778 (1) (c) TCA 1997.**

b. NI Residents with employment

NI resident employees who are members of an IE occupational pension for the most part are not taxed in NI on the Employer contributions by virtue of S307 ITEPA 2003 (UK). Some cross-border

workers can still be liable to UK tax charges where the employee contributions have exceeded the annual allowance (2024/25 £60,000) or where the member has received a distribution/payment from the scheme.

However, there is no clarity yet whether S307 ITEPA 2003 will apply to exempt the NI resident cross-border from UK tax on the employer and State contributions to the proposed IE auto enrolment scheme to be introduced in IE in 2025.

By contrast, certain government service workers have clarity on their tax relief position. **NI Resident Employees who are members of an IE government pension and whose salaries are covered by Article 18 of the DTA as being government service employments are not taxed in NI on the Employer contributions by virtue of S307 ITEPA 2003 (UK).**

The above shows a clear advantage for certain cross-border government service workers as the legislation in place for them is specific and clear and it shows that they get tax relief on contributions and are not taxed on the employer contributions.

Drawdown of Pensions and Lump Sums

On drawdown of Pensions there is usually two parts a) a lump sum and b) an income stream.

(a) Lump Sums

The lump sum is usually taxed fully or partly in country of residency.

(i) Taxation for IE Residents with NI Pension Lump Sums

There is certainty in the Revenue guidance since 1 January 2023 in IE that lump sums from NI pensions are treated the same as lumps sums from IE pensions. The first €200,000 is tax free. The next €300,000 is taxed at 20% and the remainder at marginal PAYE rates.

(ii) Taxation for NI Residents with IE Lump Sums

In NI lump sums from IE pensions are mostly taxable. If part of the pension fund was accumulated prior to 6 April 2017 then the proportion of the lump sum can be treated as not taxable.

For the benefits accumulated from 6 April 2017 there are differing tax treatments depending on the type of foreign pension scheme. Therefore, if it is an overseas pension meeting certain conditions then it may benefit from the 25% tax free rule. However, it is does not meet the conditions then it would not benefit from this 25% tax free rule.⁶⁶

This means IE residents have clarity on how their lump sums are treated for tax purposes, but NI residents do not have the same clarity.

⁶⁶ HM Revenue & Customs (2016). *Pension Tax for overseas pensions*. [online] GOV.UK. Available at: <https://www.gov.uk/government/publications/pension-tax-for-overseas-pensions/pension-tax-for-overseas-pensions#chapter-3---taxation-of-non-uk-registered-schemes>.

“In our experience, most Irish pensions are not HMRC approved.”

“The rules here are so complex. A recognition that if the pension fund is regulated in the other State (EEA or DTA) could be an adequate yardstick to apply similar status to a UK regulated fund regarding the 25% tax free lump sum, etc.”

“Under present rules, there is a clear distinction showing that the legislation favours NI residents with NI pensions and public service pensions over NI residents with Irish private sector pensions. ”

Source: Elaine Farrell, Cross-border Dual Qualified Tax Adviser UK & Ireland. Farrell & Farrell Newry Co Down

(b) Income Stream from Pensions

In terms of an income stream from a pension, the treatment for each jurisdiction is as follows:

(i) Pension income paid to an IE Resident

Income from Pensions is generally taxed in country of residency

(ii) Pension income paid to an NI Resident

Income from Pensions is generally taxed in country of residency.

A specific issue in relation to the drawdown of pensions relates to **government service workers**. Article 18 (2) of the UK Ireland DTA limits the taxation of a government service pension to the country of payment only unless the individual receiving the pension is a resident of and a national of their State of Residence. In the latter case it is taxable only in the State of Residence.

The same issues arise with determination of residency and nationality with Government Service Pensions as does with the taxation of cross-border worker income as described in the Taxation Chapter.

(iii) Distributions from Approved Retirement Funds (ARFs) which are based in IE

ARFs distribution to a NI resident:

1) Tax in IE

The distributions from Approved Retirement Funds (ARFs) are subject to full PAYE withholding in IE.

2) Tax in NI

The underlying income, gains and capital (other than for unit linked funds) needs to be broken down to sources of income, gains and capital and allocated to the various Articles in the DTA in order to be taxed in NI. Only then can a refund of tax be sought from IE.

A return of capital on an investment is not usually taxed in IE or NI only the income or gains that the investment has made is taxed.

Index linked funds make up the bulk of ARFs although some funds are non-index linked. While there has been recent clarity in Revenue guidance that ARF distributions from an index linked fund are treated as 100% income and not capital, it is unclear whether the Revenue Commissioner will refund tax on any part of the distribution that relates to capital on a non-unit linked fund. There is no Capital Article in the

UK Ireland DTA so no ability for an individual to claim DTA tax relief on any capital element of a distribution.

Portability of Pensions Cross-border

At times, cross-border workers may wish to transfer or amalgamate their pensions in their country of residency when they retire. This is subject to specific rules depending on jurisdiction as follows:

a) *Transfer of Pension from NI to IE*

The transfer should be to a 'qualifying recognised overseas pension scheme (QORPS). If it's not a QORP, the NI pension scheme may refuse to make the transfer. If it is refused, the worker may have to pay tax at their marginal rate on the transfer, usually 40%. Since UK EU Exit it is not apparent that UK law eases this transfer cost under any retained EU directives.

b) *Transfer of Pension from IE to NI*

Occupational Pension Schemes and Buyout Bonds can be transferred without a tax charge to other jurisdictions including the UK⁶⁷. However, for PRSAs are subject to tax on transfer under Section 787G (1) Taxes Consolidation Act (TCA) 1997⁶⁸ in IE. This means a net fund will be transferring to a gross pension arrangement in the UK. **Having already suffered tax at, say, 52% tax in IE, it will therefore be taxed again in NI on drawdown. That is double taxation.** Hence PRSAs are not for the most part not being transferred due to the tax charge. ***This is clearly very challenging for cross-border workers holding PRSAs.***

Autoenrolment Pensions Cross-border

To bridge the pension gap, the UK introduced auto enrolment workplace pensions in 2012 and in IE draft legislation has been published to introduce an autoenrolment scheme in 2025.

While auto enrolment pension policies are a positive move towards narrowing the pension gap, the taxation position of these for cross-border workers can cause issues.

a) **NI Auto Enrolment Pension for IE resident workers**

- The Auto Enrolment Pension in NI was introduced in 2012.
- The employee makes contributions of 5%.
- They get tax relief in NI on their contributions at their marginal rate.
- The employer makes contributions of 3%.
- The employer also gets tax relief on their contributions.
- The States contribution is the tax relief. The State does not add any cash to the pension pot.

Only "relevant UK individuals"⁶⁹ as defined in UK legislation s189 Finance Act 2004 can avail of tax relief on their pension contributions made to a NI autoenrolment pension scheme. It does appear that a lot of the payroll software automatically gives tax relief in NI on the AE pension contributions.

The NI AE has the same issue as occupational and private pensions regarding tax deduction for contributions for IE residents who work across the border in NI. Pension Contribution Tax Relief is not available in IE under self-assessment. This means there is tax to pay in IE on the gross salary before

⁶⁷ Irish Tax and Customs (2023). *Tax and Duty Manual Pensions Manual -Chapter 13 Transfer Payments Pensions Manual - Chapter 13*. [online] Available at: <https://www.revenue.ie/en/tax-professionals/tdm/pensions/chapter-13.pdf>

⁶⁸ Chartered Accountants Ireland (2016). *No 39 of 1997, Section 787G, Taxation of payments from a PRSA*. [online] Charteredaccountants.ie. Available at:

<https://www.charteredaccountants.ie/taxsourcetotal/1997/en/act/pub/0039/sec0787G.html>

⁶⁹ GOV.UK (2014). *Finance Act 2004*. [online] Legislation.gov.uk. Available at: <https://www.legislation.gov.uk/ukpga/2004/12/section/189>

contributions and, subject to the availability of any relief, the tax credit on the reduced salary after pension contributions in the NI is usually insufficient to shelter IE tax.

Transborder Workers Relief (TBWR) under S825 TCA 1997(see Taxation Chapter), can solve this tax problem for some IE residents. If available to the employee, the TBWR may mask the impact of the lack of tax relief on contributions to some extent as it reduces or eliminates IE tax liability on the foreign employment income.

Those individual cross-border workers who do not satisfy the conditions for the TBWR relief have a tax & USC top up to pay to the Revenue Commissioners. This obviously arises in situations of hybrid or remote working from home in IE as TWBR is not available for the portion of duties carried out in IE.

b) IE Auto Enrolment Pension for NI resident workers

The New Auto enrolment pension due to be implemented in 2025 in IE is different in its structure to the NI one. The legislation, as passed by the Oireachtas on 4 July 2024⁷⁰, sets out the proposed structure:

- Employees will make contributions to the pension scheme which start at 1.5% but will rise to 6%.
- There is no tax relief for the employee on their contributions.
- The employer also makes contributions starting at 1.5% and rising to 6%.
- There is tax relief for business employers on their employer contribution if they are paying corporation tax.
- The State makes a top up of 2% to the pension.

An NI resident employed by an IE employer will be automatically opted into IE Auto enrolment pension but can opt out after 6 months. However, they will be re-enrolled (added back to the plan) after 2 years if they are still eligible for the scheme.

When a NI resident worker files a tax return with HMRC they must return their worldwide income. The gross pay for the employee before any contributions to the auto enrolment pension will be taxable in NI.

It remains to be seen whether HMRC will also tax the employer contribution and State contribution made to the scheme on the employee. When asked as part of this research, HMRC did not have any information available on this as it is relatively new, and the legislation has only just been enacted.

On drawdown the current IE auto-enrolment plan aims to replicate typical defined-contribution pension plans, where on retirement, the retiring employee would take a tax-free lump sum and have the option of buying an annuity from a pensions firm that guarantees a fixed monthly amount or putting the money into an approved retirement fund (ARF). This is noted in the Design Principles⁷¹.

For many, depending on the size of the pension pot, the ARF is preferred over the annuity as the annuity dies with the pensioner while an ARF forms part of their estate on death and is passed on to their family. This has implications for cross-border workers as they would have more limited options on how their pension is drawn down. There is no clarity on this issue in the current AE legislation.

⁷⁰ Tithe an Oireachtas (2024). *Automatic Enrolment Retirement Savings System Act 2024*. [online] Available at: <https://data.oireachtas.ie/ie/oireachtas/act/2024/20/eng/enacted/a2024.pdf>

⁷¹ Department of Social Protection (2022). *Launch of the Final Design Principles of an Automatic Enrolment (AE) Retirement Savings System for Ireland*. [online] [www.gov.ie](https://www.gov.ie/en/publication/27bab-launch-of-the-final-design-of-an-automatic-enrolment-ae-retirement-savings-system-for-ireland). Available at: <https://www.gov.ie/en/publication/27bab-launch-of-the-final-design-of-an-automatic-enrolment-ae-retirement-savings-system-for-ireland>.

For a NI resident worker drawing down an ARF there are double taxation risks with no ability to claim a refund or a credit on any capital element of a distribution from an ARF (See above).

Since ARFs don't exist in the UK and Revenue Commissioners do not consider an ARF or a vested PRSA to be a pension – there is a lack of clarity of treatment on drawdown of the proposed IE AE pension for an NI resident worker.

There is still time before implementation to consider the tax implications for both resident and cross-border workers in the options to be made available on drawdown. This could prevent potential double taxation issues arising for cross-border workers.

Concluding Reflections

Pension rules have evolved over the years and have become very complex for cross-border workers. Cross-border working between NI and IE has grown substantially between 40% and 51% between 2011 and 2021⁷² and many of that cross-border workers generation are either building a pension or now at now at the stage/age of retiring⁷³ and retrieving benefits from these cross-border pension funds. The key issue is to have equity. From our research, stakeholders are asking for:

- Equity in tax reliefs. There should be employee and employer tax relief in the home State for contributions to any approved pension scheme in the employer's State (PRSA, occupational, etc) and the employer or State contributions to scheme should not be taxed on the employee. This is to encourage saving now for the future to take pressure off the growing pension gap.
- Clear concise guidance is needed with relevant examples that relate to the cross-border worker on this island.
- Fairness and equality are needed on the lumpsum drawdowns. A recognition of equivalency could be reinstated. Once the pension is approved in the employer State that should be adequate evidence of a regulated fund to allow the beneficiary to benefit in all cases (whether registered or not) on a par with local home State pension 25% tax free lumpsum rules. Revenue have now introduced a parity across the board on the tax-free status of lump sums pensions. NI needs to look at the same approach. Reciprocal arrangements worked in the past – perhaps they should be considered again.
- The Approved Retirement Fund (ARF) situation for cross-border workers needs to be addressed. As noted above, since ARFs don't exist in the UK and Revenue Commissioners do not consider an ARF or a vested PRSA to be a pension – there is a lack of clarity of treatment on drawdown and potential double taxation issues arising for cross-border workers.
- The treatment of government cross-border workers is more straightforward than private sector cross-border workers.
- More work needs to be undertaken in this area exploring how other countries with borders also who have similar issues deal with it on a bilateral basis around pensions.

The goal overall with pensions must be simplicity on the contributions on the way in and simplicity on the retrieving the benefits when retiring on the way out of the pension funds. The status of pension rules for cross-border workers would appear to be hindering the mobility of employment on the island as evidenced by our stakeholder engagement.

⁷² McGuinness, S., Bergin, A. & Devlin, A. (2024), *A Study of Cross-Border Working on the Island of Ireland*, available online at <https://www.esri.ie/publications/a-study-of-cross-border-working-on-the-island-of-ireland>

⁷³ See age data in ESRI Survey ESRI: McGuinness, S., Bergin, A. & Devlin, A. (2024), *A Study of Cross-Border Working on the Island of Ireland*, available online at <https://www.esri.ie/publications/a-study-of-cross-border-working-on-the-island-of-ireland>

Chapter 5 – Social Security

Summary

Social security coordination rules protect the rights of workers as they move between the jurisdictions for work. However, without common EU membership, coordination for cross-border workers in this region has become more complex in recent years. The normalisation of working from home and flexible working patterns has further complicated coordination, a challenge also encountered in other border regions which has resulted in some jurisdictions adjusting their domestic rules and bilateral agreements to accommodate the needs of their local labour force. The Common Travel Area (CTA), especially the Social Security Convention may prove a useful tool for the introduction of a bespoke solution that meets the needs of the labour market in this region.

Depending on their individual circumstance's workers may fall within scope of the EU / UK Trade and Cooperation Agreement, the EU / UK Withdrawal Agreement and / or the Common Travel Area Social Security Convention. However, it can be a challenge for workers and citizens advisors to understand which coordination rules apply, how they have been transposed into national legislation and whether cross-border workers have been specifically referenced (they are often not mentioned in legislation or policy guidance documents).

The relevant coordination rules set out which jurisdiction is responsible (competent) for the worker, however, understanding the social welfare systems in their jurisdiction of employment and of residence is beyond the scope of most workers and employers. As a result, they often require the support of a citizens information provider or community advisor as they deal with the implications of their cross-border social security obligations and entitlements.

During stakeholder engagement the following issues became apparent:

- A widespread lack of awareness among workers regarding their entitlements and obligations.
- Workers experience difficulties accessing expert cross-border advisors.
- Workers require tailored information specific to IE / NI border region.
- A lack of understanding among advice providers and government frontline staff regarding cross-border worker eligibility, and competent State issues post-EU exit.
- Processing cross-border claims, appeals and obtaining social insurance records from the other jurisdiction can result in delayed decisions and payments made to workers e.g., illness benefit.
- Many coordination issues also involve UK DWP and HMRC therefore cross-border information should also be widely available throughout relevant UK government sources.
- Access to specialist government-led helplines relevant to IE / NI border region would greatly improve service delivery.

Ensuring that workers can access trained cross-border advisors and information providers, independent from government is also important as they navigate through preparing and submitting applications, and if necessary challenging department decisions via the appeals process. To provide accurate support, the Advice sector representatives requested (during stakeholder engagement) access to clear information, with cross-border scenarios added to advisor guidance, and ideally on-going, in-depth cross-border training.

Encouraging collaboration between sectors, and between the jurisdictions brings another dimension to understanding the lived experiences of cross-border workers. Ensuring that non-devolved departments and services based in GB are part of that collaboration can only help to enhance the service to citizens.

Introduction

This Chapter focuses on social security coordination rules relevant to cross-border workers in IE / NI border region. It captures how workers cross-border employment impacts the jurisdiction responsible (competent) for them, which in turn impacts their obligation to pay social insurance contributions and their entitlement to social welfare support.

The Chapter notes how complications can arise when for example a person works in both jurisdictions, works from home or switches between the jurisdictions for employment. The Chapter highlights how complex cross-border social security can become and the lack of awareness among workers which not helped by the lack of social security information and tailored advice relevant to their cross-border situations.

The Chapter notes evidence gathered during stakeholder engagement with Advice sector workers and Professional Services sectors (via the Border People Cross-border Practitioners Groups) and cross-border workers (via the online survey).

Context

Until 31st December 2020 the bulk of cross-border workers in this region relied on the coordination rules of EU Social Security regulation No 883/2004⁷⁴. However, due to the UK's EU Exit, and depending on the worker's individual circumstances, social security obligations and entitlements may now be found within 3 sets of coordination rules:

1. EU / UK Trade and Cooperation Agreement⁷⁵

Which links post-Brexit cross-border workers to the new EU/UK trade deal, and which largely follows EU Regulation 883, but with a few deficits i.e., family benefits, unemployment benefit and invalidity benefits can no longer be exported.

2. EU / UK Withdrawal Agreement⁷⁶

This continues to link pre-Brexit workers (where cross-border work or self-employment predates 1 January 2021 and remains unchanged since) to EU Regulation 883.

3. Common Travel Area Social Security Convention⁷⁷

Which more closely follows EU Regulation 883 but omits healthcare provisions for cross-border workers and is only applicable on a bilateral basis to Irish and British (post-EU exit) cross-border workers and extended by IE on a unilateral basis to include EU cross-border workers living in NI but working in IE⁷⁸.

⁷⁴ EUR-LEX (2019). *EUR-Lex - 32004R0883 - EN - EUR-Lex*. [online] Europa.eu. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32004R0883>.

⁷⁵ EUR-LEX (2023). *The EU-UK Trade and Cooperation Agreement*. [online] European Commission. Available at: https://commission.europa.eu/strategy-and-policy/relations-united-kingdom/eu-uk-trade-and-cooperation-agreement_en.

⁷⁶ DWP, DHSC & HMRC, (2021) Guidance relating to the UK's operational implementation of the social security coordination provisions of Part 2 of the EU Withdrawal Agreement: Citizens' Rights 2021. Available online from <https://www.gov.uk/government/publications/social-security-arrangements-between-the-uk-and-the-eu-from-1-january-2021-staff-guide/guidance-relating-to-the-uks-operational-implementation-of-the-social-security-coordination-provisions-of-part-2-of-the-eu-withdrawal-agreement-citi#chapter-2-eu-withdrawal-agreement-explainer-citizens-rights-in-respect-of-social-security-coordination>

⁷⁷ Commonwealth Office (2019). *UK/Ireland: Convention on Social Security [CS Ireland No. 1/2019]*. [online] GOV.UK. Available at: <https://www.gov.uk/government/publications/cs-ireland-no12019-ukireland-convention-on-social-security>

⁷⁸ The Gottardo judgment: the advantages enjoyed by a State's own nationals under a bilateral convention on social security with a non-member country must also be granted to workers who are nationals of other Member States. <https://www.legislation.gov.uk/eut/withdrawal-agreement/adopted/data.pdf> (see page 163)

“The relevant rules within the legislation confirm the State in which social insurance should be paid by both employees and the self-employed, with that State becoming competent for the payment of benefits.” Department for Social Protection (DSP), January 2024

Issues and challenges

Understanding which rules apply is a challenging task for cross-border workers and the Advice sector that supports them with complex cross-border claims and appeals for social welfare payments.

Engagement with HMRC representatives suggested that a person doesn't need to understand which set of rules apply to them as new processes have been put in place. For example, the Child Benefit section of HMRC has incorporated some new questions at the application stage that establish which rules apply, the WA, TCA and /or CTA. All options are explored before a decision is made. However, engagement with Advice sector representatives highlighted the need for transparency given that mistakes can happen at application stage and/or during processing. Understanding which rules have been applied is required by advisors as they provide guidance to applicants, this is especially relevant whenever a decision needs to be reviewed or appealed.

Social insurance

Broadly speaking, a worker who commutes across the border everyday will pay social insurance contributions⁷⁹ in their jurisdiction of employment (deemed the competent State due to their work duties being carried out there). However, if they work from home for more than 25% of their time competency can switch back to their jurisdiction of residence⁸⁰. This switch is not limited to those working from home but for any worker who carries out duties across the border e.g., a cross-border delivery driver could find themselves in a similar situation.

The UK Ireland bilateral Convention on Social Security currently follows the EU regulations and the 25% rule.

ARTICLE 11 - Pursuit of Employed or Self-Employed Activity in both Parties⁸¹

(1) A person who normally pursues an activity as an employed person in both Parties shall be subject to the legislation of the Party in which they reside if they pursue a substantial part of their activity there.

In response to the normalisation of Working from Home (WFH) patterns some neighbouring countries have amended existing bilateral agreements, or introduced entirely new agreements, that attempt to catch up with labour market trends. For example, the Czech Republic⁸² agreed frameworks with Germany and Austria which increases the WFH threshold to 40%.

The EU also responded relatively quickly by introducing an opt-in Framework which came into force in July 2023 that can further extend the time spent working in the home jurisdiction to almost 50%. So far

⁷⁹ Social insurance contributions are referred to as Pay Related Social Insurance (PRSI) in Ireland and National Insurance Contributions in NI.

⁸⁰ Other factors may also be taken into consideration. See [Article 14 of Regulation \(EC\) No 987/2009](#) laying down the procedure for implementing [Regulation \(EC\) No 883/2004](#) on the coordination of social security systems (see Articles 12 and 13)

⁸¹ Irish Statute Book (2020). *S.I. No. 746/2020 - Social Welfare (Convention on Social Security between the Government of Ireland and the Government of the United Kingdom of Great Britain and Northern Ireland) Order 2020*. [online] Irishstatutebook.ie. Available at: <https://www.irishstatutebook.ie/eli/2020/si/746/made/en/print>

⁸² Toráč, V. and Toráč, M. (2023). *Cross-border telework – new framework agreements with Germany and Austria*. [online] Grant Thornton - we support your growth. Available at: <https://www.grantthornton.cz/en/news/cross-border-telework-new-framework-agreements-with-germany-and-austria/>

22 countries have signed up to the Framework, most recently IE in May 2024 where the agreement took effect on 1 June 2024⁸³. The UK has stated it does not intend to opt-in⁸⁴.

Competent State implications when hybrid working

Example 5.12 Implications of hybrid working on Child Benefit payment.

Mary lives in Monaghan, she is a single parent and works in Armagh.

As cross-border worker the UK is responsible for her family benefits, and she also receives a small top-up payment of Irish family benefits.

Mary is offered the opportunity to work from home 2 days per week, which she does for ten months then HMRC reviewed her UK Child Benefit Claim. (Review letters are often sent every 6 to 12 months.)

The review revealed that the UK had stopped being competent for her family benefits as the responsibility switched to IE when she began working from home (for more than 25% of her time).

Further detail on this example as provided by DSP:

While living in Monaghan and working in Armagh, the UK would be competent to pay Child Benefit and Ireland would consider the payment of a supplement. Under EU Social Coordination rules and the Trade and Co-operation Agreement, a cross-border worker is usually linked to the social security system where they work, and that system is then responsible for their social security payments (if they meet the criteria).

When offered the opportunity to work remotely from home the customer has had a change in circumstances which means she is now pursuing an activity as an employed person in two jurisdictions.

Upon commencement of the new working arrangements, the customer must apply for a formal decision on their applicable legislation to the Competent Authorities of their Member State of residence. Given the individual in question lives in Monaghan, she must apply to the International Postings Area within the Department of Social Protection, and they will consider the overall circumstances and issue formal decision on the Member State towards whom social insurance is due. The formal decision (and the duration of same) is captured on an A1 Certificate, which can be used to evidence social insurance attachment (as required)

Once confirmation of Social Insurance attachment is established, a revised decision will issue to the customer advising that Ireland is primarily competent to pay Family benefits. The claim is backdated to the date of commencement and reimbursement is offered to the UK prior to any arrear's payment issuing to the customer.

If the other parent is financially supporting the child(ren) then their employment status would also have to be considered prior to a decision being made in a case such as this.

⁸³ Department of Social Protection (2023). *Framework Agreement on the application of Article 16 (1) of Regulation (EC) No. 883/2004 in cases of habitual cross-border telework*. [online] Federal Public Service - Social Security. Available at: <https://socialsecurity.belgium.be/sites/default/files/content/docs/en/international/framework-agreement-ireland-en.pdf>

⁸⁴ Federal Public Service (2023). *Cross-border telework in the EU, the EEA and Switzerland*. [online] Federal Public Service - Social Security. Available at: <https://socialsecurity.belgium.be/en/internationally-active/cross-border-telework-eu-eea-and-switzerland>

Working in both jurisdictions

Working in both jurisdictions, for different employers can also impact on a worker's social security coordination. Fortunately, the coordination rules oblige workers to contribute to only one social insurance scheme at a time and the worker can request an A1 Certificate which confirms their competent State. In practice this means an employer could find that a direct payment (or special collection) of social insurance is required in the other jurisdiction due to their employee's other part-time job across the border.

Example 5.23 Social insurance when working in both jurisdictions

Anne lives in Strabane, she works two days a week in a school in Derry and works three days a week in a community centre in Lifford, just across the border.

As she is resident in NI, she applies to HMRC for an A1 certificate which assesses and provides confirmation of the competent State.

As Anne works more than 25% of her time in her jurisdiction of residence, the UK is deemed to be her competent State, so she will only pay National Insurance Contributions.

As a result, her other employer in Lifford will be required to set-up a direct payment of National Insurance payments to HMRC.

The above example assumes that the worker and both employers know and understand competent State issues. During stakeholder engagement the cross-border practitioners' group highlighted that employers and workers are often unaware of this requirement resulting in the employee generating two overlapping records, one of which will have no value when claiming social welfare support or a future State Pension.

During the stakeholder interviews a HMRC representative confirmed that information on A1 certification is available, processes are there to follow and that there would be an expectation that employers have a checklist relevant to their cross-border employees. The responsibility does not have to solely lie with the employee, employers should take on the responsibility of ensuring their employees are correctly insured. This is especially relevant for employers who knowingly employ cross-border employees. Given the lack of knowledge of the A1 route and the small nature of businesses in the border region HMRC suggested that raising awareness of the A1 process would be beneficial.

The HMRC representative confirmed that by the end of April 2024, the UK aimed to resume its 15-day target to process an A1 request. Making the application easier to complete and the introduction of additional automation later in 2024 will further streamline the process.

In IE, DSP provides an on-line service on its Welfare Partners website⁸⁵ through which employers and self-employed individuals may apply for an A1 Certificate. Decisions on applications are typically made within four weeks and are returned electronically to applicants. The route for workers (not self-employed) to apply on their own behalf may be available but was not identified during this research period.

⁸⁵ Welfare Partners (2020). *About Welfare Partners - Welfare for Partners*. [online] Welfarepartners.ie. Available at: <https://www.welfarepartners.ie/Pages/AboutWelfarePartners>

Voluntary social insurance contributions

Periods of unemployment or moving between the jurisdictions for employment can result in gaps in insurance records that may not come to light until a person requires social welfare support or as they approach State Pension age. As a result, cross-border workers can avail of the option to purchase voluntary contributions to complete their record.

Understanding exactly how gaps in insurance records will impact the cross-border scenario is not straightforward to the untrained person or citizens advisor. Therefore, access to reliable information can significantly help the worker to plan for their retirement.

In January 2024 the HMRC published a new webpage⁸⁶ that explains the process involved in purchasing voluntary contributions, tailored for those who live or work abroad, it also provides helplines that offer advice on whether paying voluntary National Insurance contributions would be beneficial.

In IE, DSP administers a voluntary contributions scheme,⁸⁷ which subject to prescribed entry criteria, provides a worker with an opportunity to maintain the continuity of their social insurance record, over periods where they are not subject to compulsory social insurance as an employed or a self-employed contributor, or where they are not in receipt of credited contributions on a DSP scheme.

The voluntary contributions scheme in IE does not feature an historic 'buy back' of contributions at pension age, rather the scheme must be applied for within 60 months of a worker incurring a gap in their social insurance. Given the individual nature of every worker's social insurance, including the possibility of receipt of credited contributions, DSP advocate that workers contact the department for individual advice upon how the voluntary contributions scheme may apply in their particular case.

Social welfare payments

When the competent State has been determined, the worker will be entitled to claim the full range of relevant contribution-based benefits in that jurisdiction, provided they meet the criteria. Knowing exactly what to apply for can be daunting for those unfamiliar with the system across the border. However, coordination rules require each jurisdiction to categorise the relevant benefits under the following headings⁸⁸

1. Sickness benefits
2. Maternity and paternity benefits
3. Invalidity benefits
4. Long term care benefits
5. Old age benefits
6. Survivors' benefits
7. Accidents at work and occupational diseases
8. Death Grant
9. Unemployment benefits
10. Family benefit

⁸⁶ HM Revenue & Customs (2024). *Apply to pay voluntary National Insurance contributions when abroad (CF83)*. [online] GOV.UK. Available at: <https://www.gov.uk/guidance/apply-to-pay-voluntary-national-insurance-contributions-when-abroad-cf83>

⁸⁷ Department of Social Protection (2017). *Operational Guidelines: PRSI - PRSI Voluntary Contributions*. [online] Wwww.gov.ie. Available at: <https://www.gov.ie/en/publication/47cee2-operational-guidelines-prsi-prsi-voluntary-contributions/>

⁸⁸ O'Kane, A. (2023). *Comparable UK and Irish benefits in cash*. [online] Available at: <https://borderpeople.info/site/wp-content/uploads/Border-People-Briefing-Irish-UK-comparable-benefits-March-2023.pdf>

Aggregation

While the coordination rules prevent overlapping payments i.e., workers cannot claim equivalent benefits within the same category from both jurisdictions at the same time, the rules do allow for the aggregation of social insurance contributions. This means that if a worker is declined a benefit due to insufficient social insurance contributions paid in their competent State, their insurance record from across the border can be considered.

Example 5.34 Aggregation of social insurance contributions

Example provided by an NI Advice sector worker:

If a worker starts a new job across the border and soon after becomes ill, they will most likely rely on their previous contributions paid at home to help them qualify for a sickness payment in their new jurisdiction of employment. This works well provided the person or their citizens advisor is well informed as the main Illness Benefit page on the gov.ie website does not provide any suggestion that social insurance paid in NI can help a person qualify, while the equivalent page* on NI Direct does vaguely mention contributions paid 'abroad' it would be difficult for an untrained person or citizens' advisor to decipher the information correctly.*

While useful, aggregation is not a quick process and often leads to delayed decisions and payments.

“Obtaining a person’s social insurance record from HMRC can take months and significantly delays in illness benefit payments and a pro rata calculations for the State Pension.” IE citizens information officer.

HMRC response times to requests for National Insurance records varies, with certain DSP sections stating it can take between 7-14 days and another stating it can take between 6 – 8 weeks. Disability Allowance and Invalidity Pensions stated they have a more rapid response time from DWP than they do from HMRC mainly in relation to the UK Contribution record but also in respect of follow up queries. As they have minimal direct contact with HMRC it’s difficult to give a timeframe of an expected response from HMRC.

It is worth noting that delays may also be due to the information provided at time of application, for example important information may have been omitted, or due to the passage of time the applicant may no longer have access to the information (pre-1975 records usually take longer to process).

A contributions statement or insurance record provides a summary of social insurance contributions paid to date (due to different types of employment, self-employment, or through credits because of being in receipt of certain social welfare payments). The record can for example help a citizens’ advisor or financial advisor to calculate their client’s future State Pension entitlement and assess if voluntary contributions are needed to fill a gap.

Comment noted during engagement with the Professional Services sector

“Improvements in the breakdown of insurance records would help assess their value. For example, on the HMRC My Account (Gateway) system it would be helpful if NICs are noted as being paid due to employment or credited from a social security payment. Accurate identification of the source of the contributions would allow adjustments and transfers to be made, for example transferring Home Responsibilities Protection ¹ to a spouse to help with their shortfall.” NI Financial Advisor

A change of circumstances can switch the Competent State

Testimony from independent Advice sector representatives indicates that cross-border cases frequently become complex, with decisions, appeals and payments taking considerable time. As a result, many workers, particularly those reliant social welfare payments to top-up low incomes, are very wary of any change of circumstances that might trigger a reassessment or switch in competency which would require submitting new social welfare claims across the border.

Example timeframe:

- It can take 8 to 16 weeks for a typical cross-border social welfare application to reach decision stage (possibly longer if aggregation is required and the social insurance record is requested from the UK or if competency needs assessed).
- If the decision needs to be appealed, it can take a further 4 weeks for the appeal lodging the appeal to be acknowledged and referred to the Registration Section.
- It is unclear how long it takes for the appeal be registered but, once registered the average waiting time for a summary decision in 2023⁸⁹ was 17.6 weeks, and 29.2 weeks if an oral hearing was required.

Example 5.45 Impact of cross-border employment on existing social welfare claims

Example provided by an IE Citizens Information Officer

Jane works lives and works in Donegal, she is a single parent with three children and is in receipt of the following IE family benefits: Child Benefit, One Parent Family Payment and Working Family Payment. She also receives additional support with school transport, school meals and housing.

She is offered a job in Derry and seeks out clarification on the implications from a citizens' information provider. Jane learns that (if she accepts the job in NI) all IE family benefits would stop as the UK would become the competent State and IE would become responsible for a quarterly top-up or supplement payment.

She took note of the timeframe involved with assessing competency and making new (equivalent) claims across the border and switching to less regular (quarterly) top-payments from IE. As a result, she decided against the new job due to cashflow concerns.

⁸⁹ Ó Snodaigh, A. (2024). *Social Welfare Appeals*. [online] Oireachtas.ie. Available at: <https://www.oireachtas.ie/en/debates/question/2024-01-24/142/>

Had Jane taken the job, her situation is likely to have become very complex, requiring ongoing support from an independent citizens' advisor with significant cross-border knowledge. Gaining access to a cross-border advisor that can support a person in the long-term is difficult.

It's hard to know where to go to get advice. Even citizen's advice says the thing they request training for and struggle most with is cross-border issues.

Cross-border worker living in Derry and working in Donegal for 3 years.

Competency for dependents

Cross-border employment can also impact the State responsible for the worker's dependents. For example, an economically inactive partner in receipt of a sickness benefit (e.g. UK ESA) may find their entitlement at home ends when their partner starts a job across the border. As a result, members of the Advice sector strongly recommend that potential cross-border workers seek independent advice that examines the whole family context⁹⁰ when considering, and before accepting an opportunity across the border. A case study published on the Border People website captures this issue in further detail⁹¹.

Online government services

Various government services are now available online, however setting up a cross-border account can be difficult at the outset.

NI / UK online government systems

- A cross-border worker living in IE and working in NI cannot apply for a National Insurance number online. They are directed to a helpline number for assistance⁹².
- Setting up UK Government Gateway account is the first step in accessing other online accounts, the process can involve additional ID verification steps for workers without British ID⁹³. Once the Government Gateway account is in place a range of other online services can then be accessed for example Universal Credit Claims, Student Finance, immigration status, and, very relevant to the cross-border worker is, a HMRC account which provides access to a range of personal data including National Insurance details, PAYE details, a UK State Pension summary or details of a current Child Benefit claim.

Engagement with the Advice sector suggests that the new online application process for UK Child Benefit is working very well, and the outcome made quickly available, usually within a few weeks.

IE online systems

An online PPS Number application service via mywelfare.ie is only available to people living in IE. Cross-border workers resident in NI will instead email or deliver in person their completed application form

⁹⁰ O'Kane, A. (2024). *Cross-border enquiries -questions to consider Border People project Briefing Paper*. [online] Available at: <https://borderpeople.info/site/wp-content/uploads/Border-People-Briefing-Checklist-for-cross-border-enquiries-Jan-2024.pdf>

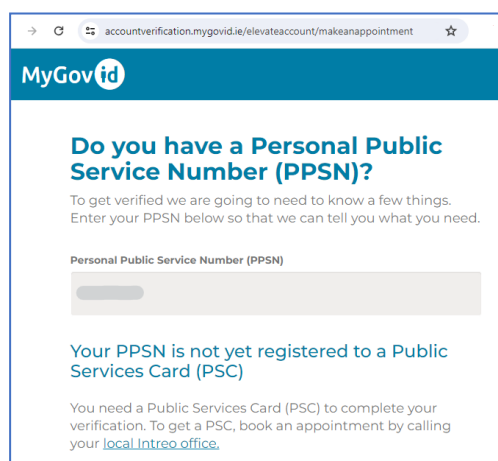
⁹¹ O'Kane, A. (2023). *Sickness Benefits – Competent State issues for dependents of frontier workers - Border People*. [online] Border People. Available at: <https://borderpeople.info/a-z/sickness-benefits-competent-state-issues-for-dependents-of-frontier-workers.html>

⁹² NI Direct (2015). *National Insurance numbers*. [online] nidirect. Available at: <https://www.nidirect.gov.uk/articles/national-insurance-numbers#toc-4>

⁹³ GOV.UK *Personal tax account: sign in or set up*. [online] GOV.UK. Available at: <https://www.gov.uk/personal-tax-account>.

along with proof of address and identity, evidence of why they need a PPS number, an Exceptional Registration Application Form and a completed questionnaire that explains why the PPSN is needed.

If you are applying for a PPS Number to work in IE, you must have a signed offer of employment from your employer confirming when your job is due to start or when it started. This letter should be on company headed paper with the employer's contact details and employer/company registered number. You do not need a PPS Number to look for work or for an employer to make an offer of employment⁹⁴. Gov.ie

The screenshot shows the MyGovID website interface. At the top is a blue header with the MyGovID logo. Below the header, the main content area has a white background. It features a heading "Do you have a Personal Public Service Number (PPSN)?" in blue. Underneath, it says "To get verified we are going to need to know a few things. Enter your PPSN below so that we can tell you what you need." There is a text input field labeled "Personal Public Service Number (PPSN)". Below the input field, a message states: "Your PPSN is not yet registered to a Public Services Card (PSC)". Further down, it explains: "You need a Public Services Card (PSC) to complete your verification. To get a PSC, book an appointment by calling your local Intreo office." The browser's address bar at the top shows the URL "accountverification.mygovid.ie/elevateaccount/makeanappointment".

MyGovID provides a single login for government services in IE and MyWelfare⁹⁵ provides detailed access to social welfare services. To register for both the cross-border worker will need a PPS number and a Public Services Card.

The Public Services Card primarily authenticates identity, however at time of writing the main Gov.ie webpage How to get a Public Services Card (PSC)⁹⁶ states that “You must be living in Ireland to receive a PSC” which would suggest that cross-border workers, resident in NI, cannot access the online government systems.

However, the webpage may be incorrect as engagement from a citizens information provider indicates that the PSC application process does in fact work for British and Irish cross-border workers living in NI, they follow the normal step of making an appointment to prove their identity and residence (in NI). Once the PSC is in place, they can access the full range of online services that IE residents can access. The Information Provider did add that the process is a little more complex for other nationals living in NI and working in IE.

Engagement with stakeholders

Responses to the cross-border worker survey (see Appendix V) captures confusion and a widespread lack of awareness regarding the impact of cross-border employment on social insurance and social welfare payments. Only 15% of respondents declared any knowledge, prior to taking their cross-border job, of the impacts on social security payments. Furthermore, an overwhelming majority of respondents (98%) did not believe they had access to clear and concise advice from government sources.

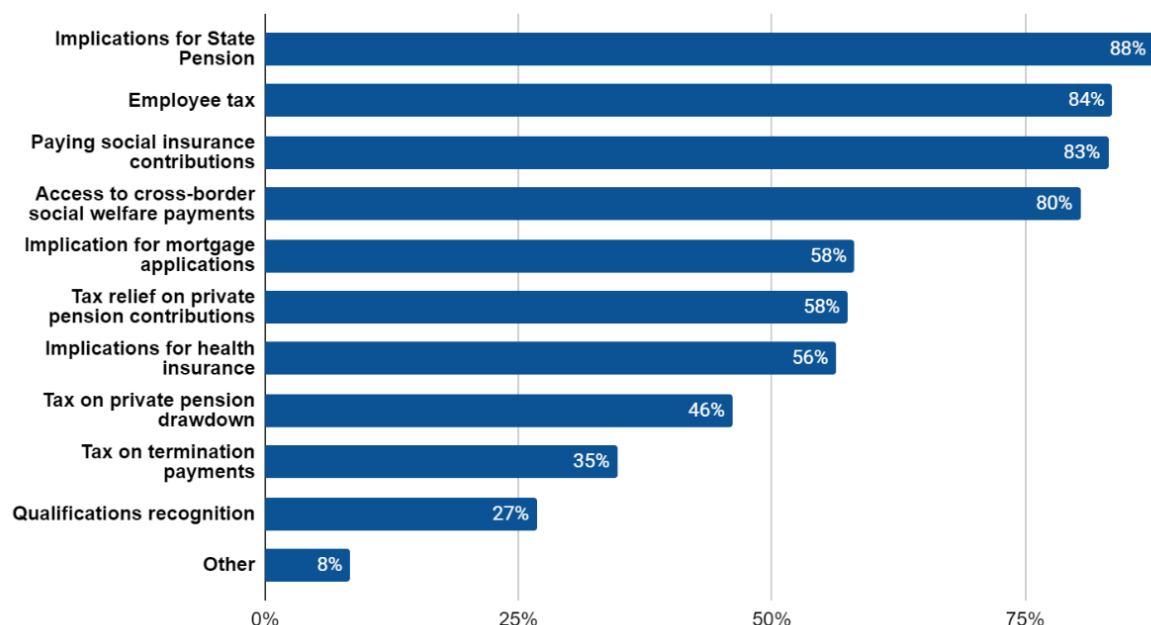
When asked which areas they would like to see explained in a clear and concise manner, they identified a wide range of information needs, with State Pensions, social insurance and social welfare payments among the most popular topics requiring clarification.

⁹⁴ Department of Social Protection . *Get a Personal Public Service (PPS) Number*. [online] www.gov.ie. Available at: <https://www.gov.ie/en/service/12e6de-get-a-personal-public-service-pps-number/>.

⁹⁵ Department of Social Protection (2018). *MyWelfare, Department of Employment Affairs and Social Protection - Online Services*. [online] Mywelfare.ie. Available at: <https://services.mywelfare.ie/en/>.

⁹⁶ Department of Social Protection (2018). *How to get a Public Services Card (PSC)*. [online] www.gov.ie. Available at: <https://www.gov.ie/en/service/make-a-public-service-card-psc-personal-public-service-number-pps-application-appointment/>.

Figure 5.1: Survey question - What areas would you like to see explained in a clear and concise manner? (tick all that apply)



It's only word of mouth from other workers that I found out about all the above...

If you don't know you have to do something, you won't go looking for information. How are you supposed to be aware of the need for action, who is supposed to be telling us?

Cross-border worker living in Louth and working in Armagh for 15 years

A lot of the information needed by cross-border workers is difficult to find. Government websites on both sides of the border give information specifically for that jurisdiction. Cross-border workers fall between two stools and when you contact government departments their personnel do not know how the issue/s should be treated either. There is little practical advice, support, advocacy and guidance for workers to access their rights and entitlements who may not have accessed any services in the jurisdiction they now work in, at any time in their lives.

Cross-border worker living in Derry, working in Donegal for 2 years.

Engagement with the Advice Sector

Understanding the social welfare system in one jurisdiction is complex, but having an in depth understanding of the systems in both jurisdictions is beyond the scope of most workers and employers. Often, they require the support of a citizens information provider or community advisor as they deal with the implications of cross-border social security obligations and entitlements.

During stakeholder engagement Advice sector representatives shared many examples of complex cross-border claims for family benefits, illness benefit, maternity and paternity payments, invalidity and disability payments, and State pensions. They identified the following key issues:

- A widespread lack of awareness of cross-border worker entitlements and obligations
- Difficulties accessing expert cross-border advisors

- Cross-border workers require tailored information specific to IE / NI border region. (It was acknowledged that some application forms are already relevant to cross-border claims, e.g. State Pension Contributory and Illness Benefit.)
- Inaccurate or incomplete information submitted by applicants can create delays in processing
- Cross-border workers and their families require ongoing support to manage cross-border claims, renewals and appeals
- Collaboration between the organisations, and jurisdictions is often the only way an advisor can assist with a cross-border claim
- There is a lack of understanding among advice providers and government frontline staff regarding cross-border worker eligibility, and competent State issues
- Processing cross-border claims, appeals and obtaining social insurance records from the other jurisdiction can result in delayed decisions and payments made to workers
- Access to specialist government-led helplines and resources relevant to IE / NI border region would greatly improve service delivery. For example, *“The HMRC Child Benefit intermediary helpline has been closed down and that it’s very difficult to get case information via the standard helpline.”* NI community advisor
- Given that many coordination issues also involve UK DWP and HMRC the dissemination of cross-border information is also relevant to UK government sources.

The interview with HMRC representatives revealed that pre-covid pandemic the HMRC operational teams and their IE counterparts met every two years to discuss policy issues and their practical operation. HMRC representatives considered the in-person meetings helpful in strengthening bilateral engagement and would be interested in reinstating them. In the meantime, named counterparts in each jurisdiction are in place so direct contact happens as needed.

Supporting the Advice Sector, as it supports workers

Unfortunately, cross-border training is not provided to the mainstream networks⁹⁷, North or South. As a result, advisors often need to collaborate to best support workers and their families.

In February 2020 the Centre for Cross Border Cooperation established the **Border People Cross-border Practitioners Group**⁹⁸ to facilitate cross-border collaboration, training and knowledge sharing between the **mainstream advice networks** e.g. the citizens Information services, **government-led initiatives** e.g. Cross-border Partnership for Employment Services, and **independent services** e.g. Community Advice organisations in NI. Members of the group collaborate regularly on complex cross-border cases and proactively seek out solutions for workers.

Even before Brexit it was difficult to understand cross-border entitlement under the EU rules, now with new arrangements it’s hard to confidently support workers as official guidelines rarely, if ever, mention cross-border scenarios.

IE citizens information provider

Further detail on the range of support organisations and initiatives is provided in Appendix VI.

⁹⁷ Citizens Information network and Advice NI network

⁹⁸ See Appendix VI for further details on the Border People Cross Border Practitioners Group.

What would make it easier for you to consider taking up a cross-border job in the future?

“Being able to access one professional to talk me through what is required of me, to advise me on how to make the most of my individual situation, and to take care of any paperwork that needs completed and submitted. This would give peace of mind that I'm maximising any opportunities the present themselves during this time.”

Cross-border worker living in Armagh and working in Dublin for 4.5 years.

Concluding Reflections

Social security coordination rules protect the rights of workers as they move between the jurisdictions for work. However, without common EU membership, coordination for cross-border workers in this region has become more complex in recent years. The normalisation of working from home and flexible working patterns has further complicated coordination, a challenge also encountered in other border regions which has resulted in some jurisdictions adjusting their domestic rules and bilateral agreements to accommodate the needs of their local labour force. The CTA Convention may prove a useful tool for the introduction of a bespoke solution that meets the needs of the labour market in this region.

Having numerous, albeit similar, coordination rules in play simultaneously has created uncertainty for workers and the Advice sector organisations that support them. Stakeholder engagement suggests that the introduction of practical cross-border information, tweaked applications forms and online systems and helplines that recognise the frequency of cross-border employment in this region, would go a long way to ease the experience of workers who often first encounter social welfare when they find themselves in need of support e.g., when too ill to go to work.

Given that the mainstream Advice sectors are most often the first point of contact for workers with social security challenges it is important that the sector is supported and trained in cross-border issues.

Encouraging collaboration between sectors, and between the jurisdictions adds another dimension to understanding the lived experiences of cross-border workers. Ensuring that non-devolved departments and services based in GB are part of that collaboration can only help to enhance the service to citizens.

Chapter 6 - Qualifications

Summary

International mobility, and by default cross-border mobility, is a positive way for countries and regions to acquire *‘new knowledge and being exposed to new ideas and ways of thinking’*⁹⁹. Recognition of professional qualifications (RPQ) is a system which allows professionals qualified in one country to practice in another with limited administrative requirements. Both jurisdictions have their own bodies who have this role, UK ENIC for the UK/NI and QQI for IE. The mutual recognition of professional qualifications (MRPQ) is an EU Directive whereby professionals qualified in one (home) Member State can seek professional recognition of their qualifications in another (host) Member State for the purpose of practicing their profession in that host Member State. Prior to UK EU Exit, this Directive applied to the UK and IE. Also, the Common Travel Area recognises the right for UK and Irish citizens to work in either jurisdiction without any requirement to obtain permission. Recognition of qualifications is recognised as an essential facilitator and the MOU between the two governments notes that *‘comprehensive measures’* should be in place to allow for qualifications recognition. The MRPQ system provided a route to recognition for professionals with equivalent IE qualifications, helping the UK to meet its commitments under the Common Travel Area.

There has been significant change in this process since UK EU Exit. After a period of transition in 2020 where qualifications from the UK were automatically recognised, the MRPQ no longer applies. UK nationals are now treated as third country nationals in the EU. IE citizens who achieved their professional qualification in the UK must get that qualification recognised in IE or in any other EU Member State where they intend to work. UK nationals must also do this. The Trade and Cooperation Agreement (TCA) introduced a mechanism whereby the EU and UK could agree on recognition of certain professional qualifications, but only on a case-by-case basis or for specific professions. An Agreement between the Irish and UK Governments is not possible as the EU must move in unison. The UK introduced its Professional Qualifications Act¹⁰⁰ (2022), replacing the MRPQ as a new system for how professional qualifications gained abroad are recognised in the UK and allowing regulators in the UK and overseas to mutually recognise qualifications (where they cannot do that now). The Bill specifically notes that regulators and chartered bodies should *‘consider having recognition routes in place for Irish professionals to ensure the UK is upholding its Common Travel Area (CTA) commitments’*¹⁰¹.

With UK EU Exit, what has emerged is a ‘patchwork’ approach to mutual recognition which is complex and difficult to navigate. One recent example provided was that of IE’s Department of Health. It bought 200 training places in NI but the training module in IE is different and attempting to share this is challenging. The process is formal as it involves the regulator on either side of the border. There are other individual examples of challenges with qualifications recognition and transferability provided below, including medical professionals, professional services and transport managers. What is set out in legislation and policy does not always appear to work in practice. Issues include, for example, the fact

⁹⁹ University of Oxford, Department of Education (2024). *International Mobility and World Development – Department of Education*. [online] Ox.ac.uk. Available at: <https://www.education.ox.ac.uk/research/international-student-mobility-and-world-development/>

¹⁰⁰ GOV.UK (2022). *Professional Qualifications Act 2022*. [online] Legislation.gov.uk. Available at: <https://www.legislation.gov.uk/ukpga/2022/20/enacted>.

¹⁰¹ Department for Business & Trade (2024). *Revocation of general EU system of recognition of overseas qualifications guidance*. [online] GOV.UK. Available at: <https://www.gov.uk/government/publications/professional-qualifications-act-2022-guidance-for-regulators/revocation-of-general-eu-system-of-recognition-of-overseas-qualifications-guidance>

that add-on courses or modules required to achieve equivalency for some public service roles are provided by private educational facilities and as such are not suitable for public funding. The Advice sector suggests the recognition systems are not straightforward to use. Of particular concern is the outworking of the new Professional Qualifications Act (2022) and what that means for cross-border workers (and indeed NI generally). For example, the UK government proceeded without the agreement of the devolved administrations (Scotland and Wales opposed the UK government exercising concurrent powers of UKG without their consent) as all regulators across UK must be covered. Some challenges are not insurmountable, although they do reflect a bottom up and ad hoc approach considering the changes post UK EU Exit.

The evidence presented in this research suggests that the changes happening because of UK EU Exit on qualifications recognition has made what was a relatively straightforward process through the MRPQ to support worker mobility more complicated. The process is now considered a 'patchwork', taking a more bottom-up approach given that it is not possible for IE and the UK to have bi-lateral agreements in place as this would be counter to EU policy. This has meant that the way in which different qualifications are recognised and treated in terms of mobility is not consistent or uniform. There are wider issues such as costs and accessibility among others. This does appear to be another contributing factor in making cross-border mobility less attractive and a cause for concern, particularly given the commitment under the CTA of the right of British and Irish citizens to work in either jurisdiction without any requirement to obtain permission.

Student mobility across the island of Ireland tends to be low, with students in both jurisdictions more likely to travel outside the island of Ireland to study. ESRI research has highlighted that application and acceptance rates are lower for IE students applying to UK universities and similarly for NI students applying to IE universities. Issues raised include the language requirement of some courses in IE, timing of offers in that IE's offers are later than the UK/NI, grant finance issues and cost of living pressures depending on where a student chooses to study.

The ESRI research suggests there is significant opportunities for increased cross-border student mobility, given the relatively low level of student mobility across the island and a greater propensity in both jurisdictions to study outside the island of Ireland. It stands to reason that if more students remain on the island to study, they are more likely to remain on the island to work. This talent pool is then retained to support the all-Island labour market and wider economy to develop and grow. It would also address one of most significant structural weaknesses in both economies, the prospect of a smaller working age population going forward (migration effects aside).

Context

International mobility, and by default cross-border mobility, is a positive way for countries and regions to acquire '*new knowledge and being exposed to new ideas and ways of thinking*'¹⁰². This includes both students and professionals and can support upskilling for the individuals and bring skills into an economy that support and boost growth. This section looks at the qualification recognitions and higher education systems across the two jurisdictions and their role in supporting mobility in cross-border movement of workers and students.

¹⁰² University of Oxford, Department of Education (2024). *International Mobility and World Development – Department of Education*. [online] Ox.ac.uk. Available at: <https://www.education.ox.ac.uk/research/international-student-mobility-and-world-development/>

Qualifications Recognition

Recognition of professional qualifications (RPQ) is a system which allows professionals qualified in one country to practice in another with limited administrative requirements. Professional bodies on both sides of the border provide advice on qualifications recognition – in NI/UK ENIC is the UK National Information Centre and in IE the Quality & Qualifications Ireland (QQI)¹⁰³ is the recognized body. Both are part of the National Academic Recognition Information Centre (NARIC), which is a Network that shares information on qualifications and education systems around the world.

- UK ENIC (formerly UK NARIC) is the UK National Information Centre for global qualifications and skills. It is a designated United Kingdom national agency for the recognition and comparison of international qualifications and skills. It performs this official function on behalf of government as part of the Lisbon Recognition Convention. It is part of the European Network of Information Centres (ENICs and the wider ENIC-NARIC network).
- QQI (Quality and Qualifications Ireland) is the national agency responsible for qualifications in IE. NARIC Ireland is there to support the implementation of the Lisbon Convention and the National Contact Point for the Europass European Qualifications Framework. QQI has responsibility for promoting, developing and maintaining the National Framework of Qualifications (NFQ) which is a 10-level framework for the development, recognition and awarding of qualifications in the country. Another key function of QQI is their role in approving programmes offered across a diverse range of educational providers which lead to an award on the NFQ.

There are more than 160 professions regulated by law in the UK, overseen by over 50 regulators, plus a range of other professions regulated voluntarily. According to the European Commission's regulated professions database, IE currently has 182.

The Common Travel Area, EU Withdrawal, and the Right to Work

Much of the focus of the Withdrawal Agreement was on the free movement of goods on the island of Ireland¹⁰⁴. No similar arrangements were put in place for trade in services, although Article 3 of the Protocol does say that the UK would ensure the application of the CTA. The CTA is clear on the provision of the right of British and Irish citizens to work across jurisdictions and that measures should be in place to allow recognition of qualifications¹⁰⁵.

¹⁰³ Border People (2014). *Qualifications in Ireland and Northern Ireland - comparisons* - Border People. [online] Border People. Available at: <https://borderpeople.info/a-z/qualifications-in-ireland-and-northern-ireland-comparisons.html>

¹⁰⁴ Mcstravick, J. (2021). *The recognition of professional qualifications post-Brexit and the Professional Qualifications Bill* Briefing paper: *The recognition of professional qualifications post-Brexit and the Professional Qualifications Bill*. [online] Available at: <https://crossborder.ie/newsite/wp-content/uploads/2021/08/Recognition-of-Professional-Qualifications.pdf>

¹⁰⁵ GOV.UK (2019). *Memorandum of Understanding between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland concerning the Common Travel Area and associated reciprocal rights and privileges*. [online] Available at: <https://assets.publishing.service.gov.uk/media/5cd29d56ed915d50b5a206d1/CTA-MoU-UK.pdf>.

The right to work

8. The CTA affords British citizens in Ireland and Irish citizens in the UK the right to work, including on a self-employed basis, without any requirement to obtain permission. The Participants are to continue to ensure that their national laws provide for such a right to work. It is acknowledged that the recognition of qualifications, including professional qualifications, is an essential facilitator of the right to work associated with the CTA. The Participants are committed to ensuring that within their respective jurisdictions, comprehensive measures continue to be in place to allow for the recognition of such qualifications, covering all relevant professions, in accordance with their national laws. (CTA MOU)

In May 2019, a CTA MOU was signed between the UK and Irish Government to afford British citizens in IE and Irish citizens in the UK the right to work, including on a self-employed basis, without any requirement to obtain permission. Recognition of qualifications is recognised as an essential facilitator and the MOU notes that ‘*comprehensive measures*’ should be in place to allow for qualifications recognition. UK regulatory authorities were to approach IE counterparts to put in place a bilateral arrangement (MRA/MOU) or unilateral arrangements. The Department of Foreign Affairs (DFA) set up an Interdepartmental Working Group to support bodies in recognizing UK qualifications.

The End of Mutual Recognition of Qualifications between IE (EU) and the UK (2021)

The UK’s system for the recognition of professional qualifications was derived from EU law, allowing UK professionals to have their qualifications recognised in the EEA and Switzerland with minimal barriers and sometimes automatically (automatic mutual recognition). Under the EU Directives for the mutual recognition of professional qualifications (MRPQ) provisions are made whereby professionals qualified in one (home) Member State can seek professional recognition of their qualifications in another (host) Member State for the purpose of practicing their profession in that host Member State.

Since 1 January 2021, the MRPQ between the EU (including IE) and the UK no longer applies. UK nationals are now treated as third country nationals in the EU. Irish citizens who got their professional qualification in the UK must get that qualification recognised in IE or in any other EU Member State where they intend to work. UK nationals must also do this. Qualifications from the UK were automatically recognised in IE during the transition period (from 1 February to 31 December 2020) as EU law applied to the UK during that time, which meant that professionals could continue to practice in IE or the EU. This was done to help ‘*meet workforce demand, as well as provide clarity and certainty to businesses and professionals working in the EU*’¹⁰⁶. UK regulatory bodies are obligated to consider applications for recognition from holders of EEA and Swiss professional qualifications, but ‘*are only obligated to grant recognition to qualifications that are comparable to UK qualification requirements and standards in scope, level and content*’¹⁰⁷. The system provided a route to recognition for professionals with equivalent IE qualifications, helping the UK to meet its commitments under the Common Travel Area.

¹⁰⁶ Joseph, I. (2021). *UK-EU Trade and Cooperation Agreement: professional qualifications*. [online] Available at: <https://researchbriefings.files.parliament.uk/documents/CBP-9172/CBP-9172.pdf>.

¹⁰⁷ Joseph, I. (2021). *UK-EU Trade and Cooperation Agreement: professional qualifications*. [online] Available at: <https://researchbriefings.files.parliament.uk/documents/CBP-9172/CBP-9172.pdf>

Impact of The Trade & Cooperation Agreement (2020)

The TCA introduced a mechanism whereby the EU and UK could agree on recognition of certain professional qualifications, on a case-by-case basis or for specific professions. This set up a Framework for the mutual recognition of professional qualifications through the Partnership Council, which is a joint UK-EU body that supervises the operation of the TCA at a political level. UK and EU sectoral bodies can submit a Joint Recommendation for a Mutual Recognition Agreement (MRA) to the Partnership Council. Any recommendation should demonstrate the economic value of the arrangements and compatibility of the respective regimes.

The UK government has said it is possible to have bilateral agreements between the UK and individual Member States outside the TCA.¹⁰⁸ with a footnote to Article 158 (1) of the TCA stating that the Parties may conclude one or more agreements on the RPQ outside the provisions of the Article:

For greater certainty, this Article shall not be construed to prevent the negotiation and conclusion of one or more agreements between the Parties on the recognition of professional qualifications on conditions and requirements different from those provided for in this Article.

However, the House of Commons briefing also notes evidence from Professor Catherine Bernard of Cambridge University suggests that it is not evident that a bilateral agreement or arrangement would bypass the EU as a party to the TCA. The UK Trade Policy Observatory (Sussex University) concludes that:

The TCA leaves open the possibility of future agreements on the mutual recognition of qualifications with individual member states; however, this process is optional and, on a profession, -by-profession basis, and is therefore resource-intensive, uncertain and piece-meal. The lack of mutual recognition of professional qualification may have a significant impact on the ability of both manufacturing and services firms to offer their services in the EU market. It may also affect the ability of UK firms to source professional services from the EU or EU residents.

The House of Commons Briefing Paper highlights that witnesses of the House of Lords EU Committee inquiry on trade in services have pointed out that the timescales for reaching mutual recognition agreements under the TCA are unclear and have urged professional bodies to start discussions as soon as possible. It is noted that the TCA leaves open the possibility of a new agreement on mutual recognition in the future which would be superior to the current patchwork approach in place.

The New UK Professional Qualifications Act (2022)

The MRPQ in the UK has been replaced by the Professional Qualifications Act¹⁰⁹ which came into play on the 1st of December 2023. This is a new system for how professional qualifications gained abroad are recognised in the UK and allow regulators in the UK and overseas to mutually recognise qualifications (where they cannot do that now). The UK government sought legislative consent for aspects of the Bill that fell within devolved areas. The NI Assembly decision was pending in the absence of an Executive

¹⁰⁸ Chalk, A. (2021). *Written questions and answers - Written questions, answers and statements - UK Parliament*. [online] Parliament.uk. Available at: <https://questions-statements.parliament.uk/written-questions/detail/2021-01-06/133897>

¹⁰⁹ UK Parliament (2022). *Professional Qualifications Act 2022 - Parliamentary Bills - UK Parliament*. [online] Parliament.uk. Available at: <https://bills.parliament.uk/bills/2865>

(e.g., Teaching, Healthcare professions regulation is devolved). All regulators across the UK must be covered. The Bill specifically notes that regulators and chartered bodies should ‘consider having recognition routes in place for IE professionals to ensure the UK is upholding its Common Travel Area (CTA) commitments’¹¹⁰.

Issues and challenges

Worker Qualifications and Mobility

With UK EU Exit, what has emerged is a ‘patchwork’ approach to mutual recognition which is complex and difficult to navigate. That patchwork and complexity of new arrangements is noted in the example below, specifically on cross-border working. A Review by the UK Secretary of State (September 2023) notes that with the introduction of specific UK EU Exit Regulations for Health and Social Care Professionals following UK EU Exit, there are provisions for the unilateral automatic recognition of European Economic Area (EEA) and Swiss professional qualifications (referred to as ‘standstill provisions’) so there is no need for existing medical staff working in the NHS to sit additional exams or undergo further assessment by their regulator. However, for cross-border healthcare professionals the rules have changed. The new regulators’ legislation does not support healthcare professionals from IE needing to work in NI on an occasional or ad hoc basis to provide emergency care for example. IE medical practitioners can no longer use temporary or occasional licences to cross the border to work in NI but need full General Medical Council registration.

Cross-Border Working – An extract from the ‘Professional qualifications – EU standstill provisions: review by the Secretary of State, (September 2023)

Some healthcare services in IE operate on an all-island basis, which may involve cross-border practice. This means that there are times when medical practitioners based in IE will want or need to practise across the border in NI.

Before the UK left the EU on 31 December 2020, Section 18 and Schedule 2A of the (then current) Medical Act 1983 provided a pathway to temporary and occasional full registration for visiting medical practitioners from EEA member states. This pathway was a requirement of the Recognition of Professional Qualifications Directive (2005/36/EC) and gave medical practitioners who were lawfully established in another member state an entitlement to provide temporary and occasional services in the UK.

Medical practitioners who gained temporary and occasional registration under Section 18 were exempt from registration fees and revalidation and could renew their registration every 12 months. Temporary and occasional registration allowed medical practitioners to practise across the whole of the UK, but this registration type was also occasionally used by medical practitioners based and practising primarily in IE to work on a temporary and occasional basis in NI.

Post UK EU Exit, medical practitioners based in IE who want to work in NI need full General Medical Council registration, as they will be working in the UK. If their practise in NI is permanent or regular, they are therefore required to apply for full permanent UK registration. Following UK EU Exit and the removal of temporary and occasional arrangements, regulators’ legislation does not support

¹¹⁰ Department for Business & Trade (2024b). *Revocation of general EU system of recognition of overseas qualifications guidance*. [online] GOV.UK. Available at: <https://www.gov.uk/government/publications/professional-qualifications-act-2022-guidance-for-regulators/revocation-of-general-eu-system-of-recognition-of-overseas-qualifications-guidance>.

healthcare professionals needing to work in NI on an occasional or ad hoc basis, to provide emergency care.

If the UK EU Exit regulations were to be reformed or revoked, further legal analysis would be required on the impact of the Windsor Framework, but it is also expected that separate policy and operational guidance would be required for healthcare professionals based in IE who want or need to practise in NI without the need to be dual registered in both jurisdictions.

Consideration may also need to be given to whether to establish a new route to registration for EEA and Swiss professionals by amendment to the Medical Act 1983, and the Nursing and Midwifery Order 2001, which are reserved.

<https://www.gov.uk/government/publications/professional-qualifications-eu-exit-standstill-provisions-review-by-the-secretary-of-state/professional-qualifications-eu-exit-standstill-provisions-review-by-the-secretary-of-state>

The evidence from our research suggests that there are issues around the recognition of professional qualifications including:

- There are challenges with the new system and where qualification recognition does not appear to work such as Professional Services, and Architects. (further examples provided below).
- There are also issues with EU specific regulations which is reflected in the example of the Transport Manager Certificate. To become "professionally competent" applicants must pass examinations developed to meet specific requirements of regulations.
- There are likely to be growing divergences between UK and EU qualifications and skills requirements. For example, the UK government is currently reviewing the National Occupational Standards (NOS)¹¹¹ for Health and Social Care and Childcare learning and development. NOS form the basis of qualification and training programmes required to work in social services. This is expected to have implications for qualification recognition.
- Where existing nursing, pharmacy and some teaching qualifications are concerned, the add-on courses or modules required to achieve equivalency are provided by private educational facilities and as such are not suitable for public funding.
- The Advice sector suggests the recognition systems are not straightforward to use. For example, there are challenges using the UK system, noting a specific issue raised on the inability to note qualifications below GCSE level.
- On the UK Professional Qualifications Act (2022), the UK government proceeded without agreement of the devolved administrations (Scotland and Wales opposed the UK government exercising concurrent powers of UKG without their consent) as all regulators across UK must be covered. NI does also not appear to have fed into amendments as there was no Executive in place (Scotland and Wales did).

¹¹¹ Scottish Social Services Council (2024). *National Occupational Standards (NOS) Review 2024/25*. [online] Scottish Social Services News. Available at: <https://news.sssc.uk.com/news/national-occupational-standards-nos-review-202425>

- One recent example provided was that of the IE Department of Health. It bought 200 training places in NI but the training module in IE is different and attempting to share this is challenging. The process is formal as it involves independent statutory authorities and the regulator on both sides of the border.
- Another involves an accountancy practice with offices in both jurisdictions. To support an NI resident staff member who worked cross-border to complete an accounting technician apprenticeship in IE, the practice had to switch the person from their NI to IE payroll. This meant the staff member had to take on an office only role in IE with no working from home. Further, Accounting Technicians Ireland (ATI) has announced that it is now an all-island programme, but the application form does not allow a person living on the opposite side of the border to apply¹¹².
- The example below focuses on a specific regulator, CORU which regulates health and social care professionals, as an example of the challenges of qualifications recognition between Degree courses in both jurisdictions. It is worth noting that this is only one step to practice in certain professions as, for example, references and garda clearance are also needed.

Advice sector Representative Engagement on Health Qualification's Recognition

CORU is Ireland's multi-profession health regulator. Applying for jobs in Ireland which depend on CORU registration can lead to months of frustration as NI Degree courses contents are scrutinised to make sure course content aligns with Ireland requirements e.g. the Social Work degree from Queens University Belfast will need all the elements of the degree scrutinised to determine if it will be a suitable qualification for Ireland. This is completed for each candidate rather than accepting the Degree in its complete form. So, for example, this could be 50 different candidates all requesting the same information. The over complicated and complex nature of the CORU process has led to several good candidates not taking up posts cross-border.

A streamlining of the CORU system to automatically accept Degree qualifications from the NI/UK Universities once due diligence is completed on that degree is key. Why scrutinise the same degree for several candidates? CORU will have a full understanding of QUB's Social Work Degree so why would a candidate with a 2:1 degree needs to prove every element and score achieved within it.

¹¹² Team CRM (2024). *Source CRM (ATI)*. [online] Accountingtechniciansireland.ie. Available at: <https://sourcecrm.accountingtechniciansireland.ie/#/onlinereg>

Transport Manager Certificate

Following Brexit, a Transport Manager Certificate of Professional Competence (TM CPC) issued by a competent authority in the UK, including NI, is no longer valid in the EU. The EU-UK Trade and Cooperation Agreement does not include provision for mutual recognition of TM CPC. This qualification affords access to the wider single market.

People wishing to act as Transport Manager for a road transport operator established in an EU Member State, including in IE, must be resident in the EU in line with Regulation EC No 1071/2009. Residence in the United Kingdom, including NI, does not satisfy this requirement. Ireland does not have discretion to derogate from such legislative provisions.

In 2020, the Department of Transport stated that holders of a UK issued Transport Manager CPC qualification working for an Irish undertaking WOULD NOT now have to re-sit the exam following the end of the transition. The Department looked as a matter of urgency to contact all affected Transport Managers to aid the substitution of their UK issued CPC qualification to that of an Irish (EU) issued qualification before the end of the transition period (31 of December 2020).

This arrangement has since expired which has left some hauliers still needing to convert their qualifications.

In addition, those who did convert their qualifications are being told they also need a proof of residency in the south. This means that Managers can no longer live in NI and work as a transport manager in IE. The issue remains unresolved.

In accordance with Article 4 of Regulation (EC) 1071/2009, the Transport Manager for a road transport operator based in the EU must themselves be resident in the EU. Any Transport Manager designated for an Irish licensed operator who is resident in the UK no longer meets this requirement. This situation can be rectified either by the Transport Manager becoming resident in the EU or by the operator designating a new Transport Manager who meets the requirements.

Insurance Company with Locations in Both Jurisdictions

Company A is an insurance company with locations in NI and IE. The NI business employs 440 people while the IE office is much smaller. The Insurance Professionals working for the company are subject to two different Insurance qualifications in each jurisdiction, the Chartered Institute of Insurers in NI and the Insurance Institute in Ireland. There is no mutual recognition of qualifications across each jurisdiction even though the exams/principles are largely the same. This means that this resource cannot be shared across the border, the business must 'double up' on staff which is particularly onerous with the smaller office which ultimately with financial implications for the business. It is a particular issue where there are cross-border considerations and customers end up dealing with two different sets of advisors on both sides of the border.

Architect Qualifications

The UK and EU failed to reach a deal on the mutual recognition of architects' qualifications in the TCA. The UK has put in place an interim solution to a system of recognition for architects with EEA qualifications, but this does not assist UK architects working in the EU, who will no longer benefit from automatic mutual recognition. The European Commission has assessed the Joint Recommendation submitted by the Architects' Council of Europe and the Architects Registration Board in the UK (2022), as well as a draft mutual recognition agreement. In the Commission's view *'the proposal is unbalanced and prejudicial to EU architects, as it would give architects who qualified in the United Kingdom a level of recognition similar to that which they enjoyed when the United Kingdom was a Member State, whereas architects who qualified in an EU Member State would be required to sit specific professional examinations in the United Kingdom'*.

https://commission.europa.eu/document/download/def518e5-144b-4e73-a54a-5b078544da48_en?filename=COM-2024-127_0_en.pdf

Some challenges are not insurmountable, although they reflect a bottom up and by necessity ad hoc approach. A case in point is that of the Accounting Technicians and Technologists qualifications, one existing and one new qualification developed on an all-island basis.

Accounting Technicians Ireland

The Accounting Technicians professional qualification is an all-island qualification delivered by Accounting Technicians Ireland which has more than 1,000 members and students across the island. Accounting Technicians Ireland do not distinguish between NI and IE in its approach in that the qualification has a common syllabus, with specific modules on taxation and law that are unique to each jurisdiction. Some 70 colleges in NI and IE deliver the programme and it takes a one brand, one community approach. An all-island approach is also taken to the governance and oversight of the qualification.

Accounting Technicians Ireland are launching a new professional qualification in 2024 called Accounting Technologies which is an enhanced level of Accounting Technician qualification. It has been approved as a higher-level apprenticeship and will take a similar approach to the Technician qualification, a common syllabus with jurisdiction specific modules. The qualification/course has been developed in conjunction with Technology University Shannon representing IE and the Open University representing NI. It has involved separate but direct engagement with two Government Departments in IE and NI in the development of the qualification and has dual validation from them.

This raises several considerations in terms of the process and implementation of qualifications recognition across the island. They include:

- There are now different contexts and legislation in play to recognize qualifications across the island and it is not clear on consistency of approach and precedence - EU MRPQ, the new UK Professional Qualification Act and CTA MOU.
- There is no comprehensive framework for the post-Brexit mutual recognition of professional qualifications on the island of Ireland (and different systems within UK). The CTA MOU (and new

Professional Qualifications Act UK) provides the basis for routes recognition, but this is only noted as a ‘possibility’ and the extent of cooperation, operation and resources dedicated to this is unclear.

- The decision to recognise qualifications is a matter for independent regulators, which are distinct from their parent Departments, North and South. The CTA could not presume decisions, particularly as it would be possible for the UK to change standards.
- Therefore, a lot has been left at the discretion of different Professional Regulators and with that comes the risk of divergence in approaches and timing, for example in how cases are assessed, both within and between professions.
- It is unclear what the impact of new UK legislation is for NI as a devolved administration. The NI Executive has not fed into the Act while Scotland and Wales have. Scotland and Wales have opposed the UK government exercising concurrent powers without their consent.
- The extent to which the two governments, IE and UK, are working to uphold the CTA MOU and to allow for the continued recognition of professional qualifications.

‘Ensure qualifications in IE are recognised in NI and that we can allocate trainees into IE. We helped sponsor and design a new college qualification which shockingly we were then prevented from enrolling our own trainees onto it – shameful’. NI Business

Centre for Cross Border Cooperation Briefing Paper: The recognition of professional qualifications post-Brexit and the Professional Qualifications Bill, John McStravick, 2021

‘All the necessary players appear willing and able to mitigate the effects of Brexit for professionals wishing to have their qualifications recognised abroad, at least over the medium term. Nevertheless, even in a best-reasonable-case scenario, the resultant patchwork of pathways to that recognition could be an administrative thorn in the sides of those carrying out their work for a long time to come’.

Student Qualifications & Mobility

As noted earlier, there are around 4,000 higher education students who cross the border to study: 2,170 IE students enrolled in NI HEIs (2021/22) and 1,660 NI students enrolled in IE HEIs. The ESRI¹¹³ undertook a detailed study of undergraduate student mobility and made the following key points:

- There are relatively low levels of cross-border student (higher education) mobility, with 2.4% NI students in IE and 0.6% of IE students in NI.
- Students in both jurisdictions are more likely to leave to study outside the island of Ireland, largely to GB.
- The language requirement for many courses in IE could limit NI student access to courses given that fewer NI students take languages. This does not apply to UK courses.
- Application approval rates appear to be lower for NI and students applying to IE higher education institutions compared to IE students in applying to HEIs in UK/NI.

¹¹³ Smyth, M. and Smyth, E. (2023). *Institutional barriers limit cross-border student mobility*. [online] ESRI. Available at: <https://www.esri.ie/news/institutional-barriers-limit-cross-border-student-mobility>

- Acceptance rates for students from both jurisdictions applying to the other jurisdiction are lower on average. ESRI note two potential reasons for NI students' lower uptake 1) the use of the application to IE universities as a safety net and 2) the IE offer is received later than for UK universities.

The ESRI report did raise the issue of the need for NI students to have four A-levels. However, following a report by Universities Ireland¹¹⁴ a recommendation has been made to abolish the requirement for four A-levels. The recommendation is that A-Level candidates should be allowed to use their best three A Levels, in combination with a fourth A Level or an AS Level or an extended project, or with two A-Levels and two AS Levels.

There is funding available for cross-border student mobility. For example, Universities Ireland offers postgraduate scholarships worth €25,000¹¹⁵ to students who have been accepted to undertake a recognized master's degree or are entering the first year of a PhD programme at a university in the island of Ireland that is not in the same jurisdiction where they have previously studied.

However, concern has been raised over student finance and the grant systems. The CTA gives Irish and UK citizens the right to access education and associated student support, in each other's State, on terms no less favourable than those for the citizens of that State. This includes rights to home fee status, tuition fee loans and maintenance support subject to meeting the eligibility criteria¹¹⁶. However, it is not straightforward on what grants and loans can be obtained as noted in the table below.

Table 6.1: Student Grants and Loans

Study	Live	Potential support available, providing criteria is met.
IE	IE	May qualify for grant to cover full fees and a maintenance grant from SUSI, but subject to household income and distance from institution
IE	NI	May qualify for fee grant from SUSI and a maintenance loan from Student Finance NI
NI	IE	May qualify for maintenance grant from SUSI and Student loan for Tuition fees (only) from Student Finance NI
NI	NI	Student Finance loans and grants through Student Finance NI

Source: <https://borderpeople.info/a-z/third-level-education-financial-assistance.html>

- The ESRI research also raises an important point about living costs and accommodation availability and their impact on student decision making as to where to study across IE.

¹¹⁴ Department of Higher Education Innovation and Science (2023). *Minister Harris receives Universities Ireland report recommending changes for students from Northern Ireland to access education*. [online] Wwww.gov.ie. Available at: <https://www.gov.ie/en/press-release/1c6d8-minister-harris-receives-university-ireland-report-recommending-changes-for-students-from-northern-ireland-to-access-education/>

¹¹⁵ Universities Ireland (2015). *North/South Postgraduate Scholarships - Universities Ireland*. [online] Universities Ireland. Available at: <https://universitiesireland.ie/northsouth-postgraduate-scholarships/>

¹¹⁶ Cabinet Office & Home Office (2019). *Common travel area: Rights of UK and Irish citizens*. [online] GOV.UK. Available at: <https://www.gov.uk/government/publications/common-travel-area-guidance>.

There is a North/South Student Teacher Exchange project which brings student teachers from IE to undertake a key part of their assessed teaching practice in Belfast schools, and student teachers from NI to do the same in Dublin. Its membership is open to all Higher Education Institutions (HEIs) that offer programmes of Initial Teacher Education (ITE). It is part of the Standing Conference on Teacher Education, North and South (SCoTENS)¹¹⁷ which is a network of 38 colleges of education, university education departments, teaching councils, curriculum councils, education trade unions and education centres on the island of Ireland with a responsibility for and interest in teacher education.

Concluding Reflections

- The evidence presented in this research suggests that the changes happening because of UK EU Exit on qualifications recognition has made what was considered a relatively straightforward process through the MRPQ to support worker mobility more complicated.
- The process is now considered a 'patchwork', taking a more bottom-up approach meaning that the way in which different qualifications are recognised and treated in terms of mobility is not consistent or uniform. There are wider issues such as costs, complexity and accessibility among others.
- This does appear to be another contributing factor in making cross-border mobility less attractive and a cause for concern, particularly given the commitment under the CTA of the right of Irish and British citizens to work in either jurisdiction without any requirement to obtain permission.
- A co-ordination and engagement mechanism is needed to develop a single source of information and actions on where qualification challenges now exist post UK EU Exit. This would support Paragraph 8 of the IE/UK MOU (2019) on the right to work which notes the importance of the recognition of qualifications as an essential facilitator of the right to work associated with the CTA and the need to ensure comprehensive measures are in place to allow for the recognition of such qualifications (in accordance with national laws).
- The ESRI research suggests significant opportunities for increased cross-border student mobility, coming from a relatively low base and a greater propensity in both jurisdictions to study outside the island of Ireland. It stands to reason that the more students that stay on the island to study, the more likely it is that they will take up jobs here meaning that talent is retained to support the All-Island labour market and wider economic develop and grow and address one of the most significant structural weaknesses in both economies, the prospect of a smaller working age population going forward (migration effects aside).

¹¹⁷ SCoTENS. *Standing Conference on Teacher Education, North and South*. [online] SCoTENS. Available at: <https://scotens.org>.

Chapter 7 - Skills

Summary

This section, as with qualifications, highlights the benefits and challenges in ensuring that the skills (and education) system works to support the cross-border labour market. Skills is an explicit focus of major strategies in both jurisdictions, although notably there is limited focus on skills from a cross-border perspective. There are areas of collaboration on skills development, although these appear ad-hoc and bottom up. The Shared Island initiative has played a recent role in supporting collaboration.

This research has engaged extensively with businesses and cross-border workers to understand the benefits and challenges in engaging with the cross-border labour market. The positivity around the opportunities is countered by the fact that there are some significant challenges that are negatively impacting on the mobility of skills. From an employer perspective, there are a range of issues noted throughout this report including the treatment of tax and pensions and ability to provide equivalent benefits that is making it increasingly to recruit cross-border and this means, particularly for border regions, that their talent pool is being restricted. This has implications for the stability and growth of these businesses and for international companies, how they compete with other locations across their group to secure further investment if they cannot demonstrate that that labour pool exists.

There is a general sense from this research that there is little understanding of the scope of cross-border collaboration in the skills space or the extent to which people are mobile across the border to improve their skills or access job opportunities relevant to their skills profile. Areas for further consideration include:

- What impact changes in employment law will have and what will NI follow. For example, the GB employment law reforms to working time, holiday pay and TUPE do not currently extend to NI¹¹⁸. Employment law is a devolved matter in Northern Ireland. In the longer-term, given NI remains aligned to certain EU laws post Brexit (under Article 2 of the Protocol) then equality and anti-discrimination legislative change in NI may not follow the same course as in GB.
- What legislation/policy takes precedence as the UK moves to change various aspect of EU law, particularly in the context of what is devolved to NI.
- Where legislation changes working practices on either side of the border, how those changing terms of conditions affect existing cross-border workers and the ability to attract new ones. This is already affecting businesses.
- How NI feeds into any changes in legislation (UK & EU) and policy on skills (and immigration) in the context of implications for the cross-border labour market and hybrid working.
- How the equivalency of skills across jurisdictions is assessed. This research has provided practical examples of the challenges of ensuring consistency and fairness in this approach.
- Immigration policy also plays a critical part in the skills agenda. The CTA affords Irish citizens in the UK and British citizens in IE the right to live and work in each other's countries without having to apply for permission. If someone is not a British or Irish citizen, then there are different rules that can be complex. Given the increased importance of non-nationals in local labour markets, how ease of movement between the two jurisdictions can be accommodated for these workers is key.

¹¹⁸ Lewis Silkin. (2024). *What's happening in UK employment law in 2024?* [online] Available at: <https://www.lewissilkin.com/en/insights/whats-happening-in-uk-employment-law-in-2024>.

- How the large earnings gap between the two jurisdictions, with NI median earnings around two-thirds that of IE, influences cross-border workers mobility.

It is noteworthy that it has proven challenging to fully assess the skills issue as part of this research and this is a gap in understanding that it would be useful to explore in further detail given its importance to the all-island labour market.

Context

‘Skills have become the global currency of the 21st century. Without proper investment in skills, people languish on the margins of society, technological progress does not translate into economic growth, and countries can no longer compete in an increasingly knowledge-based global society’.

(General Angel Gurría, OECD)

If you consider the main ways to grow and level up any economy, then skills will always come to the fore. Both jurisdictions have either explicitly or implicitly included skills in their main economic visions. Skills forms part of core objectives of the NI Department for the Economy’s Economic Mission to raise levels of productivity in NI and IE’s Department of Enterprise, Trade and Employment’s (DETE) Strategy (2023-25). IE has a dedicated National Skills Strategy (2025)¹¹⁹ with a vision that IE will be *‘renowned at home and abroad as a place where the talent of our people thrives’*.

However, increasingly tight labour markets have become a feature of both jurisdictions with challenges in growing the labour force and those available for work within each. Furthermore, unemployment rates are at historic lows in both: 2.6% in NI (NISRA, 2024) and 4.2% in IE (CSO, 2024). Business surveys on both sides of the border and InterTradelreland’s All Island Business Monitor (AIBM)¹²⁰ suggest that access to labour and skills are one of the biggest business concerns along with business costs. There is an argument however that greater collaboration on skills development and the upskilling of the working age population across the island along with strong, collaborative education systems will provide benefits for people, businesses and both economies that will outweigh any competitive concerns.

Cross-border mobility of qualifications and skills can be a useful way for jurisdictions acquiring knowledge, filling skills gaps, and addressing skills mismatch¹²¹. The ability to gain qualifications and skills in whichever jurisdiction is closest to them rather than the closest location in their own jurisdiction will be an important way of increasing human capital in peripheral areas (e.g., border regions). Furthermore, the qualifications and skills on offer in both jurisdictions can differ and thus ease of cross-border mobility would allow students and workers to gain qualifications and skills which are not available to them in their own jurisdiction. The ability to work from home has increased the opportunity for skills transfer across the border as remote working affords people the ability to take up jobs that are now further away from their place of residence.

However, there is no explicit ‘cross-border’ perspective on skills across the two jurisdictions (although Goal 5 of DETE’s Strategy commits to fostering opportunities for cross-border collaboration). It is a more

¹¹⁹ Department of Further and Higher Education, Research, Innovation and Science (2021). *Ireland’s National Skills Strategy*. [online] [www.gov.ie](https://www.gov.ie/en/publication/69fd2-irelands-national-skills-strategy-2025-irelands-future/). Available at: <https://www.gov.ie/en/publication/69fd2-irelands-national-skills-strategy-2025-irelands-future/>.

¹²⁰ InterTradelreland (2024). *All-Island Business Monitor*. [online] InterTradelreland. Available at: <https://intertradeireland.com/insights/business-monitor>

¹²¹ Heinz F & Ward-Warmedinger (2006), Cross-Border Labour Mobility within an Enlarged EU available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=923371

challenging area for governments to cooperate on given that investing in skills is undertaken to keep and develop skills in that jurisdiction/region.

Nevertheless, there are areas of collaboration on skills development, although they are not necessarily indicative of a comprehensive approach. For example, in relation to Medical Training on the island of Ireland, Atlantic Technology University (ATU) links with the University of Ulster campus in Derry and All-island research centres through the Shared Island Fund with a €40m North South Research Programme. Projects noted include UCD and Queen's research on precision cancer medicine and UCC work with Queens on the impacts of prison-university partnerships north and south.

There are also increasing examples of cross-border collaboration on education. For example, ATU and North West Regional College (NWRC) have collaborated to create a cross-border pathway for learners to advance their studies in Electric Vehicle (EV) Technology. This stems from collaboration through the North West Tertiary Education Cluster made up of Atlantic Technological University, Ulster University, North West Regional College and Donegal ETB.

Issues and Challenges

There are a wide range of issues and challenges, many relatively recent, that affect the availability of and ability to attract skills on a cross-border basis. These in large part reflect the implications of UK EU Exit but also the changing world of work which is discussed in more detail in Chapter 9. These are discussed in more detail below.

Changing Laws

The new Retained EU Law (Revocation and Reform) Act¹²² aims to dramatically speed up the process of the UK removing and replacing laws derived from the EU. UK Government ministers have new powers to reform EU-based laws. The Act ends the supremacy of EU law and removes all directly effective EU rights also. It gives EU laws a new label, 'assimilated laws', which is law that was retained from the UK's period of membership with the EU (previously Retained EU law or REUL). The new Act applies to the whole of the UK, but employment law is devolved to the NI Assembly to legislate on. The planned employment law reforms to working time, holiday pay and TUPE do not currently extend to NI, and this raises issues around what employment law NI will follow. In the longer-term, given arrangements relating to individual rights set out in Article 2 of the Protocol on IE/NI, meaning that NI remains aligned to certain EU laws post Brexit (specifically the Directives underpinning the Good Friday Agreement rights) then equality and anti-discrimination legislative change in NI may not follow the same course as that in GB. This is noted as a '*new and rapidly developing area*'¹²³. Whitten and Phinnemore (2022) note that this brings a complexity in terms of what laws will and will not apply in NI¹²⁴.

Earnings Disparities

It is noteworthy the extent of earnings disparities between the two jurisdictions for the same skills. Median annual earnings in IE were €41,222 in 2021 against a figure of £24,099 for NI for the same year (€28,176 1GBP=1.692EUR April 2024), so NI median annual earnings are around two-thirds of IE

¹²² GOV.UK (2023). *Retained EU Law (Revocation and Reform) Act 2023*. [online] Legislation.gov.uk. Available at: <https://www.legislation.gov.uk/ukpga/2023/28/enacted>.

¹²³ Lewis Silkin (2022). *What the Protocol means for employment and equality law in Northern Ireland* | Lewis Silkin Insight. [online] Lewis Silkin. Available at: <https://www.lewissilkin.com/en/insights/what-the-protocol-means-for-employment-and-equality-law-in-northern-ireland>

¹²⁴ Whitten, L.C. and Phinnemore, D. (2022). *On the Legislative Complexity to Come | Participation for Protection (P4P)* | Queen's University Belfast. [online] Qub.ac.uk. Available at: <https://www.qub.ac.uk/sites/post-brexit-governance-ni/ProjectPublications/Explainers/OntheLegislativeComplexitytoCome/>

earnings. These gaps are well documented in the literature and are consistent across education levels (Smyth et al., 2022; Devlin et al., 2023).

The Role of Migration

A critical context in terms of where skills are drawn from across both jurisdictions, particularly IE, is the role of migration. The 2022 Census for IE highlights that 18% of those in work in IE, almost 1 in 5 citizens, are from countries outside IE and the UK. In NI, 8% of people in work were born outside of the UK and IE.

Immigration policy also plays a critical part in the skills agenda. Given the increased importance of non-nationals in local labour markets, how ease of movement between the two jurisdictions can be accommodated for non-Irish and non-British workers is a key issue. This has been raised during our research through engagement with the business community. For example, one large employer with sites on both sides of the border noted that they attend Recruitment Fairs in IE which attract significant numbers of international students, but they cannot recruit them to their site in NI, only IE. Recent NI Chamber findings from its quarterly economic survey (Q2 24) highlighted that 15% of members had been negatively affected by immigration restrictions on cross-border movements of workers (on the island of Ireland) of non-Irish and non-British citizenship¹²⁵.

The CTA affords Irish citizens in the UK and British citizens in IE the right to live and work in each other's countries without having to apply for permission. If someone is not a British or Irish citizen, then there are different rules, and this can be complex to navigate. This is important in terms of the changing context of citizenship outlined above and in understanding what this means for those non-Irish and non-British citizens crossing the border for work. The 2019 MOU on the CTA focuses on British and Irish citizens. House of Commons's research¹²⁶ points to concerns by the human rights charity, Committee on the Administration of Justice, that the MoU represented a 'concerning shift' undermining policies that apply to non-Irish and non-British citizens.

Both jurisdictions are subject to immigration law. In terms of UK immigration law, it is not entirely straightforward as to when entry from IE is legal or illegal. The House of Commons research quotes Barrister Colin Yeo commenting that *"this all falls notably short of the hollow promise at section 1(3) of the Immigration Act 1971 that travellers from within the common travel area will be free from control"*. This research also notes that IE Immigration law (Immigration Act 2004) is aimed at 'non-nationals' and that British citizens are not considered 'non-national'. However, non-nationals do have to present themselves if entering by air or sea and if they arrive over land from NI, they must have a visa if required. There are no permanent immigration controls at the IE/NI border. Immigration officers have legal authority for checks on land routes. Mobile operations/spot checks can take place.

Other Issues and Challenges

Other issues and challenges regarding access to skills that have been raised through this research include:

- What legislation/policy takes precedence as the UK moves to change various aspects of EU law, particularly in the context of what is devolved to NI.

¹²⁵ Northern Ireland Chamber (2024). *QES Report Q2 2024*. [online] NI Chamber. Available at: <https://www.northernirelandchamber.com/wp-content/uploads/2024/08/QES-Report-Q2-2024-FINAL.pdf>

¹²⁶ Wilkins, H., Curtis, J., Gower, M. and McGuinness, T. (2023). The Common Travel Area and the special status of Irish nationals in UK law. *commonslibrary.parliament.uk*, [online] (CBP-07661). Available at: <https://commonslibrary.parliament.uk/research-briefings/cbp-7661/>.

- Where legislation changes working practices on either side of the border, how those changing terms of conditions affect existing cross-border workers and the ability to attract new ones. This is already affecting businesses. Engagement with the two business workshops undertaken as part of this research highlighted that businesses were already finding it difficult to employ cross-border workers because of increasing complexities with tax, pensions and benefits including health care. Some noted that fewer cross-border workers were applying for jobs while others were making the decision not to employ cross-border workers, closing off an important source of labour and skills.

‘ROI Cross-Border workers cannot avail of same working policies as our NI staff, just as remote working. It is getting harder and harder to retain and attract staff from IE’. NI Business

- How NI feeds into any changes in legislation and policy on skills (and immigration) in the context of implications for the cross-border labour market and hybrid working.
- How the equivalency of skills across jurisdictions is assessed. This example for government service workers highlights that challenges exist.

Advice Sector Representative Engagement on Skills Recognition

“Many of my clients have applied for posts in the same banding in the other jurisdiction only to be told after the job has been offered to them that they will be on a lower banding. Several have been told they will be on the lowest banding as their experience will not be recognised, for example, level 6 being told they will be paid at a level 3 rate. This often leads to many months of dispute with the management to have their correct level accepted. In my experience this occurs most often in Healthcare, Council, Education and Social Work.”

A Focus on Apprenticeships

There are many areas around skills that could provide a focus for further research. We have focused in this research on the development of Apprenticeship skills and the cross-border dimension to them. Apprenticeships play a key role in the education and skills development systems of both jurisdictions. Ireland has an Apprenticeship Action Plan which aims to expand the types of programmes available and increase the number of apprenticeships to 10,000 per year by 2025. It has a specific action to ‘*assess the potential for cross-border apprenticeship programmes to enhance Ireland’s ability to respond to skills needs as an all-island economy*’ under Key Deliverable 3: An agile system, responsive to work-place change, and evolving skills needs. The Minister for Further and Higher Education, Research, Innovation and Science announced in 2022 that PEACEPLUS would include a funding call for collaborative cross-border apprenticeships. The Minister specifically identified the Construction sector where apprenticeship collaboration would take place. The Skills Strategy for NI (2022) advocated the expansion of apprenticeships in NI including higher level apprenticeships.

In terms of the concept of cross-border apprenticeships, while it is possible to provide a cross-border apprenticeship programme, it is not possible for students from one jurisdiction to work with an employer from another jurisdiction unless working across sites on a temporary basis (it is also our understanding that this the case for internships). DfE communication provided to this research highlights that under the Common Travel Area arrangements, cross-border participants are eligible to undertake a Level 2 or Level 3 or Higher-Level Apprenticeship at Levels 4 -7, subject to satisfying all other programme eligibility criteria.

An apprentice, beginning employment with a company that has a base in NI and is registered as an employer with HMRC, who will be temporarily working for that company outside NI is eligible to undertake a Higher-Level, Level 2 or Level 3 Apprenticeship provided they are able to engage fully in directed training, including where in person attendance in NI is required. Examples of this in practice is where a company has a base in Belfast and Dublin whereby the apprentice can work between the two offices when required, provided they are able to attend the directed training element in their respective NI training location. Within the Construction Industry apprentices can also work on site under these rules within the UK and cross-border.

Concluding Reflections

Cross-border mobility of skills can be a way of protecting economies from the negative ramifications of skills mismatches. Despite the lack of available information on skills from a cross-border perspective, it remains a significant area of concern for businesses North and South. This has been found by various business surveys/monitors and came through strongly as an issue when we spoke with employers, advisors and other stakeholders located in border areas during our research. Issues include but were not limited to, skills availability, legalities (migration related issues for migrants was a problem) around sending employees with skills to sites/offices in the other jurisdiction as the business required, and the recognition of skills and experience gained in the other jurisdiction.

There has been growing collaboration on education and skills development across both jurisdictions, but this has been for the most part ad hoc and focused on specific regions such as the North West. This is an important starting point but without any strategic focus by the two jurisdictions, the overall impact

is likely to be limited. It is worth exploring what DETE's commitment to '*fostering opportunities for cross-border collaboration*' means in practice.

There is little understanding of the scope of cross-border collaboration in the skills space or the extent to which people are mobile across the border to improve their skills or access job opportunities relevant to their skills profile. This contrasts with the growing evidence on education systems and educational attainment across the island (Smyth et al., 2022; Devlin et al., 2023; Smyth & Darmody, 2023). Yet, despite the lack of evidence in this area there have been recent advancements in cross-border collaboration on skills mainly driven by Shared Island Funding from the IE government.

Given that a significant number of workers in IE are non-nationals, the lack of awareness and understanding of the rules can cause issues for employers, particularly those in border areas, who have work commitments on both sides of the border. Following Brexit, employers have concerns around sending non-national employees across the border to work as this may be in contravention of immigration laws. Often such mobility was driven by skills need. Employers are then in a position whereby they hire staff with relevant skills who may not be fully mobile to meet the needs of the business, or they don't hire non-national staff but then they may face difficulties in hiring the relevant skills in the IE/NI population.

A very striking point made by businesses in the North West noted that their 'labour pool' is the North West, taking in both sides of the border. Some international companies noted that they must demonstrate to their Head Office that they have the skills to expand and grow but without that cross-border labour pool to draw from, this puts the existing operation and any potential expansion in jeopardy. That cross-border labour pool and access to that extent and range of skills is a critical support to these companies in competing internally with other international locations.

'We had US investors coming over to Ireland and before UK EU Exit and were able to sell their access to a wider talent pool and universities etc. from Northern Ireland. We do not have that ability now'

IE Business

Chapter 8 - Cross-border worker mobility

Summary

Since the introduction of the Common Travel Area (CTA) in the 1920s Irish and British citizens have enjoyed the automatic right to live and work in each other's jurisdictions without needing to seek permission. Following the UK and IE's membership of the EU (in 1972) EU citizens also benefited from the right to free movement across the border, which further enhanced the skills pool available to employers on the island, especially those based in border counties.

In more recent times, the UK's exit from the EU has changed the free flow of workers across the island. Irish and British workers rely once again on their CTA permissions, and some EU citizens have been able to retain their EU right to continue working in NI under the UK's EU Settlement Scheme, or Frontier Worker Permit Scheme. However, all other EU citizens who wish to move or take up a new cross-border job in NI (from 1st January 2021 onwards) must now obtain a UK visa or work permit, which is expensive, time bound, has strict eligibility criteria and from our research is complex. As a result, their access to employment opportunities on an all-island basis has been significantly curtailed.

During stakeholder engagement, businesses in both jurisdictions raised concerns about difficulties accessing skilled workers in what they suggest is a shrinking all-island labour market (not only due to legal movement, but also the taxation burdens that reduce cross-border activity). Businesses with an entity in both jurisdictions also shared concerns about travel restrictions placed on existing staff due to their visa conditions, which in turn limits business expansion and the transfer of skills and expertise within their all-island company.

With both jurisdictions showing evidence of low unemployment levels, employers have indicated a reliance on enticing highly skilled workers from other places, however the challenges they encounter with work permit requirements and the fact that they are not issued on an all-island basis is hindering their success and impacting business activities.

Engagement with workers and the Advice sector has identified a lack of awareness of UK work permit requirements for (non-Irish) EU citizens living in IE, and an overall misperception that Common Travel Area permissions extend beyond Irish and British nationals, which leads visa-nationals into precarious legal status as they travel between the jurisdictions.

The UK approach to work permits / residency rights means we will most likely hire skilled researchers into the Dublin office. Also, we will not hire non-UK workers into Belfast to ensure they can travel easily, and we do not have to seek work permits under UK system. It also impacts on our Dublin hires as we cannot have staff needing to apply for travel visas to NI/ UK as this would limit their work opportunities.
Ireland Public Health Organisation

Introduction

The mobility of workers can be influenced by every topic mentioned within this report. However, this Chapter will focus on the legal movement of workers in an all-island context. The Chapter will set out permissions granted under the Common Travel Area, and the implications on labour market mobility due to the UK's exit from the EU.

The Chapter is also shaped by the experiences of stakeholders who engaged with the research, i.e. businesses reliant on an all-island labour pool and that sometimes struggle to access to skilled workers, and Advice sector representatives who have witnessed low levels of awareness among visa nationals regarding the limitations of Common Travel Area permissions to free movement and employment.

Context

The Common Travel Area (CTA)¹²⁷

The free movement of workers on the island and between IE and the UK is long embedded. The 1920s saw the introduction of the CTA, a special travel zone between the jurisdictions that provided the legal basis for Irish and British citizens to enter each other's jurisdiction, while also providing reciprocal rights to work and self-employment, access to social security, education and healthcare, and some voting rights.

EU free movement of workers

The CTA was annexed to the EU Treaties when the UK and IE joined the EC on 1st January 1973, following that the CTA 'rights' found legal footing within EU legislation that emerged during their joint membership.

For example, Article 45¹²⁸ of the Treaty on the Functioning of the European Union enshrines:

- the right to accept offers of employment in another Member State
- the right to move freely, and the right to stay in the territory of a Member States for the purpose of employment
- the right, subject to conditions, to remain in a Member State after having been employed there

The Treaty also confers the right to enjoy equal treatment with nationals as regards access to employment, remuneration and other conditions of work and employment, and implies the abolition of any discrimination (direct or indirect) based on nationality.

During joint membership the two jurisdictions witnessed EU social security coordination develop, the introduction of rights for workers' family members to also move freely, and the introduction of a wealth of legislation and directives that aimed at creating an environment conducive to the free flow of workers.

UK EU Exit

As a result of the UK's EU exit, the rules facilitating the movement of workers on the island has become more complex. EU citizens now considering a cross-border job in NI must apply for a work permit via the UK Points Based Immigration System.

Work permits vary, they can be time bound or for a specific skill set or industry, some link a worker to a specific sponsor, while others are unrestricted meaning the worker can carry out any type of work

¹²⁷ Wilkins, H., Curtis, J., Gower, M. and McGuinness, T. (2023). The Common Travel Area and the special status of Irish nationals in UK law. *commonslibrary.parliament.uk*, [online] (CBP-07661). Available at: <https://commonslibrary.parliament.uk/research-briefings/cbp-7661/>.

¹²⁸ EUR-LEX (2014). EUR-Lex - 52013PC0236 - EN. *Europa.eu*. [online] doi: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52013PC0236>

provided the visa remains valid. The UK Government website provides an online visa check¹²⁹ tool that is a helpful starting point to a very complex and expensive system.

There were 337,240 work visas granted in the UK in 2023, 26% higher than in 2022, and almost two and half times more than prior to the pandemic in 2019¹³⁰.

Example 8.1 UK Skilled Worker visa

To be eligible for a Skilled Worker visa¹³¹ the person must have a job offer at a specific skill level from an approved Home Office licenced sponsor, with a minimum salary of £26,500. English language skills are also required at an approved level.

It costs between £791 to £1,639 for a Skilled Worker visa, plus an additional £1,035 per year for the healthcare surcharge. The applicant may also need to prove they can financially support themselves when they first arrive in the UK and may need evidence of access to savings of at least £1,270.

This type of visa can last for up to five years before needing extending or amended due to a change of employer. Alternatively, after five years the person can apply for Indefinite Leave to Remain which provides the right to live and work in the UK indefinitely.

Citizens who do not need a UK work permit include:

- Irish and British citizens can continue to engage CTA rights to live and work across the border without needing permission
- EU citizens who have EU Settled Status¹³² (i.e., they were resident in the UK prior to 1st January 2021) continue to have the right to live and work in the UK.
- EU citizens who held cross-border (frontier) worker status prior to 1st January 2021, and continue to meet the status, can apply for a Frontier Worker Permit¹³³ which protects their rights under the EU UK Withdrawal Agreement and avoids the need for a UK work permit.
- Irish citizens do not need to apply for a Frontier Worker Permit, although they may choose to apply as it provides evidence of being within scope of the Withdrawal Agreement which includes EU rights for family members, who may not be covered by the CTA.
- Citizens who hold Indefinite Leave to Remain¹³⁴ are entitled to work or become self-employed in the UK.

The UK EU Exit also had implications across the border, British citizens living in IE prior to 1st January

¹²⁹ GOV.UK. (2016). *Check if you need a UK visa*. [online] Available at: <https://www.gov.uk/check-uk-visa>.

¹³⁰ Home Office (2024). *Summary of latest statistics*. [online] GOV.UK. Available at: <https://www.gov.uk/government/statistics/immigration-system-statistics-year-ending-december-2023/summary-of-latest-statistics#why-do-people-come-to-the-uk-to-work>

¹³¹ GOV.UK (2022). *Skilled Worker Visa*. [online] GOV.UK. Available at: <https://www.gov.uk/skilled-worker-visa>.

¹³² GOV.UK (2018). *Apply to the EU Settlement Scheme (settled and pre-settled status)*. [online] GOV.UK. Available at: <https://www.gov.uk/settled-status-eu-citizens-families>.

¹³³ GOV.UK. (2024). *Frontier Worker permit*. [online] Available at: <https://www.gov.uk/frontier-worker-permit>.

¹³⁴ GOV.UK. (2024). *Indefinite leave to remain in the UK: your rights and status*. [online] Available at: <https://www.gov.uk/guidance/indefinite-leave-to-remain-in-the-uk>.

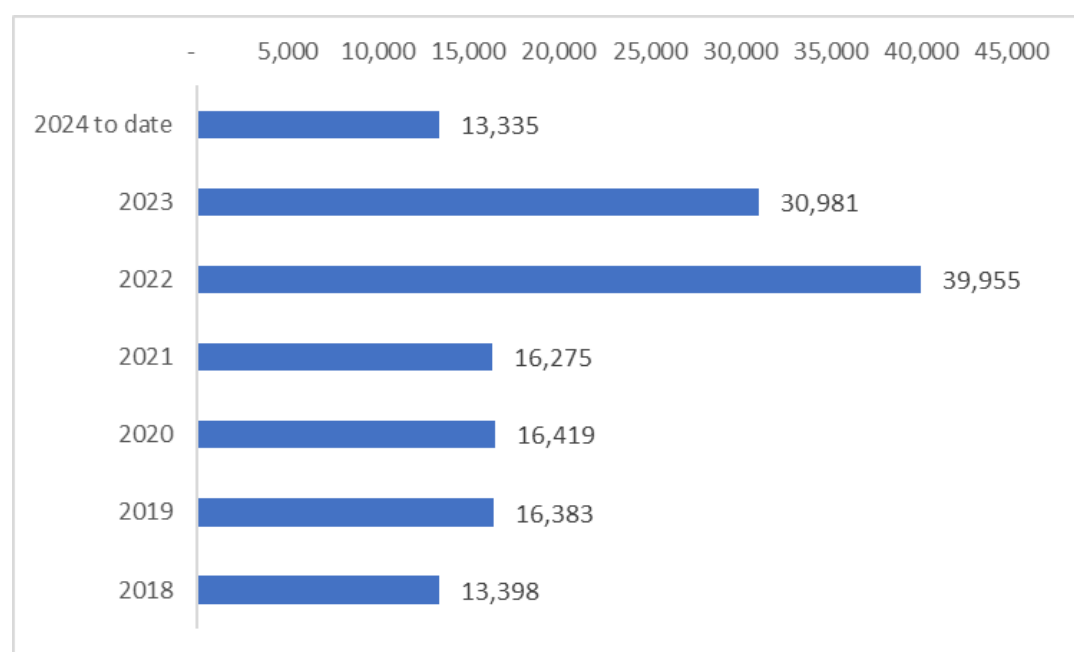
2021 could apply for a Withdrawal Agreement Beneficiary Card¹³⁵ which provided EU rights for family members¹³⁶ who may not be covered by the CTA.

IE employment permits

To work in IE all non-EEA nationals require a valid employment permit, or relevant immigration permission from the Minister for Justice which allows them to reside and work in the State without the requirement for an employment permit¹³⁷.

In 2023 there were almost 31,000 employment permits issued in IE and as of 17th June 2024 16,280 employment permits¹³⁸ had been issued in 2024. Demand remains high.

Figure 8.1: Employment Permits Issues in IE Non-British, Non-Irish, Non-EEA workers – 2018 to 2024



Source: DETE Employment Permits

¹³⁵ Irish Immigration Service (2019). *UK WITHDRAWAL FROM THE EU -Information for UK Nationals and their Non-EEA family members living in Ireland*. [online] Available at: <https://www.irishimmigration.ie/wp-content/uploads/2022/03/Non-EEA-family-members-of-British-citizens-residing-in-Ireland.pdf>

¹³⁶ Irish Immigration Services (2024). *Preclearance and entry visas fees*. [online] Immigration Service Delivery. Available at: <https://www.irishimmigration.ie/preclearance-and-entry-visas-fees/>.

¹³⁷ The employment of all non-EEA nationals in the State is governed by the Employment Permits Acts 2003 – 2014

¹³⁸ Department of Enterprise, Trade & Employment (2024). *Employment Permit Statistics 2024*. [online] Enterprise.gov.ie. Available at: <https://enterprise.gov.ie/en/publications/employment-permit-statistics-2024.html>.

As with the UK system, workers require an eligible job offer prior to applying for the relevant permission to work in IE. There are a range of employment permits listed on the Department of Justice and the Department of Enterprise, Trade and Employment websites¹³⁹. They currently include:

1. Critical skills Employment Permit
2. Dependant/Partner/Spouse Employment Permit
3. Intra Company Transfer Employment Permit
4. General Employment Permit
5. Contract for Services Employment Permit
6. Reactivation Employment Permit
7. Internship Employment Permit
8. Sport and Cultural Employment Permit
9. Exchange Agreement Employment Permit
10. Scientific researcher on a hosing agreement
11. Working holiday
12. Atypical working scheme
13. Other options

IE's employment permit system is managed using occupation lists which determine which employments are highly demanded and which are ineligible for consideration for employment permits at a particular point. The Critical Skills Occupations List¹⁴⁰ classifies highly skilled occupations. These roles are deemed to be critically important to growing IE's economy, are highly demanded and highly skilled, and in significant shortage of supply in the labour market. For example, the list includes engineering roles, site managers, ICT professionals, doctors, nurses, health and social services managers and directors. This type of permit provides for immediate family reunification that includes permission to access the labour market for partners/spouses¹⁴¹. A critical skills employment permit application costs €1,000 and is valid for 2 years. It is recommended that applications are made at least 12 weeks prior to the proposed employment start date.

The IE government announced a significant expansion of IE's employment permit system in December 2023, including an additional 43 eligible occupations becoming eligible for employment permits highlighting the importance of these additional workers and skills in supporting specific sectors and occupations of the economy.¹⁴²

Once an employment permit has been granted the person must then apply for the relevant visa (if required); short stay or long stay visa, which may take eight weeks for a decision. An online visa check tool is available on the Department of Justice's Irish Immigration Service website.

¹³⁹ Brohan, D. (2024). *Coming to work for more than 90 days*. [online] Immigration Service Delivery. Available at: <https://www.irishimmigration.ie/coming-to-work-in-ireland/what-are-my-options-for-working-in-ireland/coming-to-work-for-more-than-90-days/>.

¹⁴⁰ DE TE (2024). *Critical Skills Occupations List*. [online] enterprise.gov.ie. Available at: <https://enterprise.gov.ie/en/What-We-Do/Workplace-and-Skills/Employment-Permits/Employment-Permit-Eligibility/Highly-Skilled-Eligible-Occupations-List/>.

¹⁴¹ DE TE (2024). *Critical Skills Employment Permits*. [online] enterprise.gov.ie. Available at: <https://enterprise.gov.ie/en/What-We-Do/Workplace-and-Skills/Employment-Permits/Permit-Types/Critical-Skills-Employment-Permit/>.

¹⁴² DE TE (2023). *Outcome of the Review of the Employment Permits Occupations Lists December 2023*. [online] Enterprise.gov.ie. Available at: <https://enterprise.gov.ie/en/publications/outcome-of-review-of-employment-permits-occupations-lists-december-2023.html>

Labour Market Tightness

Both economies are experiencing labour market tightness, unemployment is at record lows and employment rates are at record highs heightening the need to attract skills from other places.

The Central Bank has recently noted that the IE labour market is operating at full capacity¹⁴³, while NI has also been noted as having the ‘*tightest labour market of the 12 UK Government Office regions*’.¹⁴⁴ There is limited slack in both labour markets to expand and this has and continues to be a red flag for expansion of the economies, although not a unique feature of either.

Electronic Travel Authorisation

The UK’s visa-waver scheme (ETA) for non-visa nationals (including EEA / EU nationals) is scheduled to be rolled out in late 2024. The ETA will not be required for British or Irish nationals, people with permission to live, work or study in the UK, or those with a visa. People legally resident in IE¹⁴⁵ who do not need a visa to enter the UK are also exempt.

While the ETA is not relevant for work purposes, migrant workers coming to the island for work purposes with their family members may find it necessary for any cross-border social travel between the jurisdictions.

The UK Government stresses its intention to not carry out routine checks at the border, and that any checks will be ad hoc, or intelligence based. Those with exemptions will need to prove why they are exempt, e.g., presentation of a Frontier Worker Permit, a work visa, a British or Irish passport.

Issues and challenges

The legal flow of workers on the island was raised several times during stakeholder engagement. While it did not feature heavily in the cross-border worker survey, it was more prominent during engagement with businesses, professional services sector and the Advice sectors.

Responses to the cross-border worker survey reveal:

- Out of 440 respondents only 3 were EU citizens (non-Irish), and only 1 mentioned the Frontier Worker Permit Scheme.
- Concerns for rights of EU family members to remain in the UK were mentioned.
- One respondent mentioned added pressure at work due to their employer’s inability to attract skilled foreign workers.
- Uncertainty about workers with visas in one jurisdiction being able to attend meetings or carry out work duties across the border.

¹⁴³ Central Bank of Ireland (2024). *Quarterly Bulletin 2024:1 – Global headwinds and domestic capacity constraints impacting the Irish economy*. [online] Centralbank.ie. Available at: <https://www.centralbank.ie/news/article/quarterly-bulletin-2024-1-global-headwinds-and-domestic-capacity-constraints-impacting-the-irish-economy>

¹⁴⁴ Magill, M., Shannon, M. and Perry, S. (2024). *Spare capacity in the Northern Ireland labour market -Paper 3 An hours-based assessment of labour market slack*. [online] Available at: https://www.ulster.ac.uk/epc/pdf/2024/spare-capacity-in-the-northern-ireland-labour-market/NI-spare-capacity_Hours-based_2024.pdf

¹⁴⁵ GOV.UK (2023). *Electronic travel authorisation (ETA): residents of Ireland*. [online] GOV.UK. Available at: <https://www.gov.uk/guidance/electronic-travel-authorisation-eta-residents-of-ireland>

Engagement with the advice sector indicates:

- An increase in the number of queries from EU citizens regarding employment in NI.
- A widespread misunderstanding that the right to work in one jurisdiction provides the right to work in the other.
- That the Frontier Worker Permit scheme has generated no enquiries to the Advice sector, or to the Border People project. This could suggest EU workers, who held worker status in NI prior to 1st January 2021, could be at risk of becoming undocumented in NI.

Engagement with the business sector reveals that:

- The cost of visas, complex application processes and subsequent delayed access to the skilled worker (while the application is processed) is considered a considerable obstacle for employers.
- Staff (skills) are unable to relocate to other sites and offices across the border, therefore the cost of induction and on-the-job training is being duplicated, and the most experienced staff (skills) are often omitted from tenders due to the worker being restricted to one jurisdiction.
- During recruitment campaigns, especially in border regions, employers are finding it necessary to clearly emphasise that eligibility to work in NI is needed for the post.
- Concern regarding mobility restrictions for migrant workers and their families relocating to either jurisdiction (Visa, CTA and ETA).

Business sector quotes that provide examples of specific challenges encountered include:

Our annual internship which pre-Brexit worked seamlessly for EU students is proving challenging for us to continue due to the complex and costly UK work permit system. We've been unable to get any direction from the Home Office that helps us identify exactly which permit we should apply for, apparently, we don't fit neatly into any of the visa categories.

Small charity based in NI, with all-island links.

Our employees with a UK passport cannot work for us in Europe as a permit is required for each job.
IE Business

The UK approach to work permits / residency rights means we will most likely hire skilled researchers into the Dublin office. Also, we will not hire non-UK workers into Belfast to ensure they can travel easily, and we do not have to seek work permits under UK system. It also impacts on our Dublin hires as we cannot have staff needing to apply for travel visas to NI / UK as this would limit their work opportunities. IE Public Health Organisation

We must ensure we have relevant staff in Dublin to allow for EU grant funding. This impacts and restricts plans for the Belfast office team in the long term. All-island Business

We send some workers to sites in Europe to install our products. We have to get work permits for workers who don't have Irish Passports which is so slow, difficult and costly that we now are reluctant to hire someone without an Irish/EU passport which not all workers from NI have.

IE Business

Visa issue e.g., Italian citizen working in South wanted to work in North but couldn't. NI Business

An ideal student placement offered by a tourism business in NI is currently at risk due to UK visa requirements for the EU student, and sponsorship requirements for the business.

Third level education institution in IE

Concluding Reflections

Due to CTA permissions, Irish and British citizens continue to have the right to work across the border. However, the loss of EU free movement on the island has created uncertainty for employers as they struggle to recruit skilled workers.

Both jurisdictions are currently experiencing high employment rates, so there is a common challenge to attract skilled workers from other places. However, the current immigration procedures and employment permit schemes do not lend themselves to the concept of an all-island labour force.

Employers have expressed concerns about complex, costly work permit schemes that delay access to skills shortages. This is especially relevant in NI due to UK EU Exit.

Skilled workers who have been enticed from other places to the island cannot (easily) contribute to, and reap the benefits of, the all-island labour market. Their opportunities to remain and pursue a career on an all-island basis are curtailed.

Ideally an all-Island permit / visa would allow us to continue to hire researchers into Belfast office from across the EU and wider. We have had to restrict cross-border working to minimise complications and now require staff to live in jurisdiction of their designated office.

Public Sector Health Organisation

Chapter 9 - The changing world of work (i.e., remote / hybrid working)

Summary

Global working trends have changed, partly driven by the need to advance gender balance within the labour force and to boost economic development in rural areas and border regions. Largely facilitated by technological advancements, and expediated on an international scale by the COVID-19 pandemic, the introduction of flexible and remote working patterns has significantly changed the typical working model.

In response to EU Directive 2019/1158 on Work Life Balance for Parents and Carers, IE's implementing legislation, the Work Life Balance and Miscellaneous Provisions Act 2023, came into effect on 3rd July 2023 and has triggered a range of Government-led strategies and initiatives aimed at embedding flexible and remote working arrangements into the Irish labour force. Due to the UK's EU exit no such legislation has been introduced in NI. As a result, the Equality Commission for NI and the NI Human Rights Commission have highlighted the significant risk of workers' rights diverging between the jurisdictions.

It should be noted that even in the absence of overarching legislation, NI has made progress in its aim to support regionally balanced economic development. Investment in rural technology infrastructure and the introduction of remote working hubs are examples that NI is on a similar path to IE. Ensuring those pathways are complementary is key for border community development. The EU *b-solutions* initiative¹⁴⁶, aimed at tackling legal and administrative border obstacles along EU internal borders, provides numerous examples of how neighbouring countries have found joint solutions to meet these new, worldwide challenges.

The current and future risk of divergence, North-South and East-West has also been raised numerous times by the Centre for Cross Border Cooperation and it continues to stress the importance of 'border-proofing' proposals and policies (as per the Department of the Taoiseach's Cabinet Handbook), ideally at design stage so that they can take best effect and avoid unintended consequences.

With border-proofing these new working trends offer opportunities for border communities to flourish:

- Creating good employment opportunities
- Providing access to careers in professions usually based in city and urban areas
- Helping citizens and businesses reduce their carbon footprint
- Enabling workers with families and caring responsibilities to remain in the workforce, with flexibility that protects their well-being

Engagement with businesses has highlighted that flexible and remoting working options also have the potential to create opportunities for business growth, to enhance competitiveness, and provide access to skills beyond their locality. However, theory and practice may not be aligned. This research has explored the lived experiences of workers and employers as they attempt to implement and adhere to current rules and regulations. As already highlighted in other Chapters, there appears to be a disconnect with the needs of all-island workers and businesses.

¹⁴⁶ b-solutions (2017). *About | b-solutionsproject*. [online] b-solutionsproject. Available at: <https://www.b-solutionsproject.com/about>

For example, the emergence of work from home (WFH) trends has (re)generated awareness of longstanding taxation obligations placed upon employers and cross-border workers. The issues are explained in detail in Chapter 4, but in brief they indicate that international taxation rules, aimed at facilitating global business activities and working practices are also applied to local (often very small) employers that operate on a cross-border basis.

During stakeholder engagement businesses revealed their concerns of a shrinking labour pool and their shared hopes of tailored domestic and cross-border policies that enable growth. In the meantime, to address concerns of non-compliance, they expressed an urgent need for government direction on how current rules should be applied to their cross-border scenarios.

Stakeholder engagement with workers, professional services sector, and Advice sector representatives also reveal a widespread need for information and advice that guides employees through the implications of working from home, across the border. Currently advantages of flexible and remote working appear limited to workers who live and work in the same jurisdiction, which conflicts with the need for a growing all-island labour market.

Introduction

This Chapter sets out the implications of newly embedded working patterns on the all-island labour market. It briefly sets out recent EU legislation, and relevant policies in IE and NI, that aim to advance participation in the labour force, in a flexible way that also protects workers well-being. To link policy with practice, the Chapter presents evidence from engagement with businesses, the professional services sector, the Advice sector, and will consider the lived experience of 440 cross-border workers who shared their stories via the research survey.

Context

In 2015 the European Commission began a consultation process¹⁴⁷ which focused on the need to improve EU measures to enhance women's participation in the labour force. Its consultations with EU social partners identified potential benefits of introducing flexible working arrangements, childcare, part-time work, and leave for workers with caring responsibilities.

Insufficient availability of flexible working arrangements can lead to people with caring responsibilities, particularly women, to drop out of the labour market altogether, or to change their job to one that is perceived as offering more flexibility.

*This may lead to or foster gender wage gaps, with impacts on wage growth, career progression and gender pension gaps, as well as skills shortages and mismatches for employers and the wider economy.*¹⁴⁸

¹⁴⁷European Commission (2021). *Publications and documents - Employment, Social Affairs & Inclusion - European Commission*. [online] Europa.eu. Available at: https://ec.europa.eu/social/main.jsp?advSearchKey=consultationsocialpartnersWLB&mode=advancedSubmit&catId=22&doc_submit=&policyArea=0&policyAreaSub=0&country=0&year=0#navItem-1

¹⁴⁸European Commission (2016). *Second-stage consultation of the social partners at European level under Article 154 TFEU on possible action addressing the challenges of work-life balance faced by working parents and caregivers*. [online] Available at: <https://ec.europa.eu/social/BlobServlet?docId=15862&langId=en>.

A few years later EU Directive 2019/1158¹⁴⁹ on Work Life Balance for Parents and Carers was introduced. As above, it aims to ensure gender equality for workers with caring responsibilities. The directive sets out minimum requirements for parental, paternity and carers' leave, and provides the legal pathways for workers to request, from their employer, flexible working arrangements due to caring responsibilities. The directive entered into force on 1st August 2019, and EU Member States had until 2 August 2022 to address its implementation.

However, within that three-year timeframe the COVID-19 pandemic took hold and flexible working arrangements became immediately necessary for many in the labour force, furthermore the UK's EU membership ended so implementation of the directive did not automatically apply to the UK. As a result, it has not taken effect in NI, while IE's Work Life Balance and Miscellaneous Provisions Act 2023¹⁵⁰ came into effect on 3rd July 2023.

Cross-border worker comments

Hybrid working has been a massively positive change in my working patterns for a variety of reasons including, having more time for family commitments, better work life balance and the resulting health and well-being benefits, and my ability to be connected to my local community and support businesses in my local area. Cross-border worker living in Donegal, working in Down for 3 years.

ROI needs to promote this even further. Great for work life balance.

Cross-border worker living in Fermanagh, working in Monaghan for 6 years

There is an absolute need for remote working and flexible working, especially for working parents. If I did not have flexibility, I would have to consider whether it was financially beneficial for me to work.

Cross-border worker living in Donegal, working in Derry

I have two small kids. Before taking my cross-border job I was a remote worker. Between added fuel costs having to travel every day and additional childcare costs with added commute I'm barely making a profit on my salary. Everything is going to childcare and fuel.

Cross-border worker living Donegal, working in Derry for almost 2 years

If I did not have flexibility, I would have to consider whether it was financially beneficial for me to work. Childcare in ROI is extremely expensive, salaries in NI do not match the salaries in ROI and the cost of living is higher in ROI.

Cross-border worker living Donegal, working in Derry for 13 years.

It is worth noting that the risk of "disparity and divergence" of rights emerging on the island of Ireland was quickly pointed out by the Equality Commission for NI and the NI Commission for Human Rights in a joint policy document¹⁵¹ which recommended that similar provisions are implemented in NI.

¹⁴⁹ EUR-LEX (2019). *Directive (EU) 2019/1158 of the European Parliament and of t...* [online] Europa.eu. Available at: <https://eur-lex.europa.eu/legal-content/EN/LSU/?uri=CELEX:32019L1158>

¹⁵⁰ Irish Statute Book (2023). *Work Life Balance and Miscellaneous Provisions Act 2023*. [online] Available at: <https://www.irishstatutebook.ie/eli/2023/act/8/enacted/en/pdf>.

¹⁵¹ Equality Commission NI (2023). *POLICY RECOMMENDATIONS European Union developments in Equality and Human Rights: The Impact of Brexit on the Divergence of Rights and Best Practice on the Island of Ireland i POLICY RECOMMENDATIONS* [online] Available at: <https://www.equalityni.org/ECNI/media/ECNI/Publications/Delivering%20Equality/DMU/Brexit-DivergenceRecommendations.pdf>

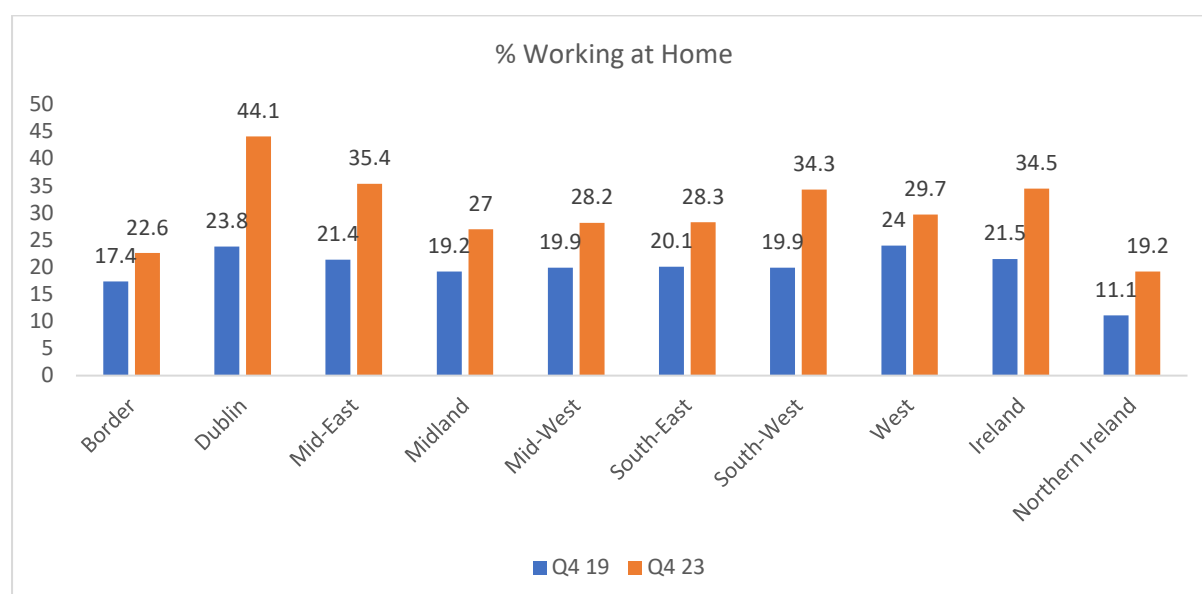
The current and future risk of divergence, North-South and East-West has also been raised numerous times by the Centre for Cross Border Cooperation. In a recent briefing¹⁵² it called for:

UK Government and officials to adopt the practice of assessing the cross-border impact of potential policies and legislation – “border-proofing”. That requirement already exists in IE, where the Department of the Taoiseach’s Cabinet Handbook¹⁵³ states that proposals should be assessed in terms of their impacts on North-South and East-West relations, noting moreover that ‘often policy proposals not directly related to North/South relations do have implications for people in NI or for all-island co-operation’ (paragraph 3.4).

Changed patterns

In the EU the share of people working from home has more than trebled since the COVID-19 pandemic, from 5.4% in 2019 to 18.1% in 2022. This was higher in IE at 25.3%, the highest across the EU countries¹⁵⁴. The following table indicates that the trend continued to grow in 2023.

Figure 9.1: % Working at Home in IE and NI (2019 & 2023)



Source: CSO, NISRA/ONS (NI Q4 19=November 2019)

The pandemic also changed many businesses practices, with opportunities opening to conduct meetings with colleagues and others remotely¹⁵⁵. In 2022, in the EU, 50% of enterprises with 10 or more employees or self-employed persons conducted remote meetings via the internet. Among the EU members, there was a large variation in the percentage of enterprises that used this feature. The largest shares were registered in Sweden (79.4%) and Finland (78.5%), followed by Denmark (78.0%), Malta

¹⁵² The Centre for Cross Border Cooperation. (2024). *The Windsor Framework: What could it mean for North-South and East-West cooperation and relations? - The Centre for Cross Border Cooperation*. [online] Available at: <https://crossborder.ie/reports/briefing-paper-the-windsor-framework-what-could-it-mean-for-north-south-and-east-west-cooperation-and-relations/>

¹⁵³ Department of the Taoiseach (2006). *DEPARTMENT OF THE TAOISEACH CABINET HANDBOOK*. [online] Available at: <https://assets.gov.ie/6813/2a580791a7b24dec97a550539a0faff.pdf>.

¹⁵⁴ Eurostat (2024). *Employed persons working from home as a percentage of the total employment, by sex, age and professional status (%)*. [online] Europa.eu. Available at: https://ec.europa.eu/eurostat/databrowser/view/lfsa_ehomp.

¹⁵⁵ Eurostat (2023). *50% of EU enterprises used remote meetings in 2022*. [online] @EU_Eurostat. Available at: <https://ec.europa.eu/eurostat/en/web/products-eurostat-news/w/ddn-20230612-1>

(68.3%) and IE (63.6%). At the opposite side of the scale, the lowest shares were recorded in Bulgaria (28.2%), Hungary (29.4%), Romania (31.2%), Greece (32.9%) and Slovakia (35.2%).

Alongside impacting working trends and business practices, remote working has also been viewed as a way of contributing significantly to balanced regional development for IE (Kelly et al., 2024), reducing housing pressures in cities, particularly Dublin (Department of Enterprise, Trade and Employment, 2022), reducing carbon emissions and traffic congestion, and improving employee's wellbeing.

The WFH option and flexible working pattern means it's possible for me to work and live cross-border. It benefits border workers and provides opportunities for border villages to maintain their youth workers and defer emigration to other countries.

Cross-border worker living in Armagh, working in Dublin for 2 months.

In 2022 Rural Community Network (RCN) published a comparative study¹⁵⁶ that focussed on the policy landscape relevant to remote working and its potential to influence rural development. The study, which considered government policies in both jurisdictions, highlighted that with strategic policies in place alongside investment in digital infrastructure and skills, this new way of working has the potential to create significant opportunities for regionally balanced development, that supports rural economies and communities in border areas. The study's international analysis includes OECD consideration given to the impact of evolved working methods, distance learning and telework to trigger the relocation of skilled people to rural areas, and the enhancement of women's participation in the workforce.

Hybrid working has been a massively positive change in my working patterns for a variety of reasons including, having more time for family commitments, better work life balance and the resulting health and well-being benefits, and my ability to be connected to my local community and support businesses in my local area.

Cross-border worker, living in Donegal and working in Down for 3 years

IE

In response to the changing world of work, IE has introduced a flurry of legislation, strategies and actions aimed at strategically seizing the potential of these new working trends. They include:

IE's Programme for Government (PfG), Our Shared Future, 2020¹⁵⁷ which commits to “developing ‘a national remote working policy to facilitate employees in working from home, or from co-working spaces in rural areas, and to support the retention of skilled young people in rural communities”.

¹⁵⁶ The Centre for Cross Border Cooperation. (2024). *The policy landscape for remote working and rural development in Northern Ireland: A comparative study - The Centre Cross Border Cooperation*. [online] Available at: <https://crossborder.ie/reports/the-policy-landscape-for-remote-working-and-rural-development-in-northern-ireland-a-comparative-study/>

¹⁵⁷ Department of the Taoiseach (2020). *Programme for Government: Our Shared Future*. [online] [www.gov.ie](https://www.gov.ie/en/publication/7e05d-programme-for-government-our-shared-future/). Available at: <https://www.gov.ie/en/publication/7e05d-programme-for-government-our-shared-future/>.

Making Remote Work, the National Remote Working Strategy, 2021¹⁵⁸ sets out a wide range of actions including:

- *Mandating that home and remote work should be the norm for 20 percent of public sector employment.*
- *Reviewing the treatment of remote working for the purposes of tax and expenditure in the next Budget.*
- *Mapping and investing in a network of remote working hubs across IE.*
- *Legislating for the right to request remote working.*¹⁵⁹
- *Developing a code of practice for the right to disconnect.*¹⁶⁰
- *Doing what we can to accelerate the provision of high-speed broadband to all parts of IE.*

Our Rural Future, Rural Development Policy 2021-2025¹⁶¹ lists many actions, and pledges to:

“Invest significantly in remote working infrastructure to enable more people to live and work in rural communities, with good career prospects, regardless of where their employer is headquartered.”

“Through IDA Ireland, Enterprise Ireland and Údarás na Gaeltachta promote and enable the uptake of remote working across their client base to support regional job creation.”

The full list of deliverables and policy measures, many of which overlap with the PfG and Remote Working Strategy, can be found in appendix 1 of Our Rural Future. They include *Connectedhubs.ie*, which was launched in May 2021 as IE’s first digital hub network. It aimed to see over 100 hubs connected by the end of 2021 and recorded over 330 hubs onboard by November 2023¹⁶².

NI

In NI, there is no such government strategy in place to promote remote working. There has however been research¹⁶³ conducted by the Ulster University Economic Policy Centre (UUEPC) on the future of remote working in NI. UUEPC argue that while workplace-based working remains the norm, COVID-19 proves

¹⁵⁸ DETE (2021). *Making Remote Work National Remote Work Strategy Prepared by the Department of Enterprise, Trade and Employment*. [online] Available at: <https://enterprise.gov.ie/en/Publications/Publication-files/Making-Remote-Work.pdf>.

¹⁵⁹ Workplace Relations Commission (2024). *Code of Practice for Employers and Employees Right to Request Flexible Working and Right to Request Remote Working* [online] Available at: https://www.workplacerelations.ie/en/what_you_should_know/codes_practice/code-of-practice-for-employers-and-employees-right-to-request-flexible-working-and-right-to-request-remote-working/code-of-practice-for-employers-and-employees.pdf.

¹⁶⁰ Workplace Relations Commissions (2021). *Workplace Relations Commission CODE OF PRACTICE FOR EMPLOYERS AND EMPLOYEES ON THE RIGHT TO DISCONNECT*. [online] Available at: https://www.workplacerelations.ie/en/what_you_should_know/codes_practice/code-of-practice-for-employers-and-employees-on-the-right-to-disconnect.pdf.

¹⁶¹ Department of Rural and Community Development (2023). *Our Rural Future*. [online] [www.gov.ie](https://www.gov.ie/en/campaigns/c6f5d-our-rural-future/). Available at: <https://www.gov.ie/en/campaigns/c6f5d-our-rural-future/>.

¹⁶² Sweeney, K. (2023). *Our Rural Future: Minister Humphreys and Minister Coveney address the 2nd annual National Hub Summit*. [online] Connectedhubs.ie. Available at: <https://connectedhubs.ie/blog/posts/2nd-hubs-summit-tullamore>

¹⁶³ Magennis, E. and Desmond, A. (2023). *Is Remote Working, Working?* [online] Available at: <https://www.ulster.ac.uk/epc/pdf/2023/remote-working-in-northern-ireland/Remote-working-full-report.pdf>.

that remote working is possible and that between 40% and 60% of current jobs in NI could be at least done in some part remotely. UUEPC also find considerable support amongst employees for remote working particularly in those roles most conducive to working from home – managerial, professional, and administrative roles. Most support is for working in the office between 2 and 4 days per week. There is a gap therefore in policy, or at least guidelines, in NI in terms of changes in remote working approaches introduced in IE and other countries.

RCN's study also acknowledges that NI lags recent IE legislation, although captures recurring themes within several key NI Department strategy documents (examples below).

- *A 10X Economy: NI's Decade of Innovation*, Department for the Economy, May 2021
- *Rural Policy Framework for NI*, Department of Agriculture, Environment and Rural Affairs, 2021
- *Infrastructure 2050: The Investment Strategy for NI Draft Consultation Document*, NI Executive, 2022
- *Skills Strategy for NI: Skills for a 10X economy*, Department for the Economy, March 2022

These documents mention the need for a regionally balanced economy and embracing growth of the regions, recognising the role that changing working trends can bring to new jobs and rural places, while contributing to the green agenda.

Even in the absence of an overarching government-led strategy (aimed at exploiting remote working opportunities), the RCN study highlights that progress has been and continues to be made; including significant investment in improving broadband connectivity in rural NI, local programmes aimed at enhancing digital skills, the development of (ad hoc) community remote working hubs, and the launch of Connect2 Regional Hubs¹⁶⁴ for civil service workers.

Issues and challenges

Cross-border scenarios

As in other border regions, the practical implications of government policies often ripple across borders. When policies have not been 'border proofed'¹⁶⁵ cross-border obstacles can inadvertently be created.

In January 2023 the European Commission held a two-day conference, *Vibrant Cross-border Labour Markets*¹⁶⁶, in Brussels that explored emerging opportunities and challenges linked to increased remote and flexible working trends across EU border regions. Invited speakers, from numerous border regions, set out challenges encountered in their region and shared solutions they had tailored to suit local need. The conference explored many interlinked taxation, social insurance, and employment law challenges. The conference's closing statements suggest that a holistic, cross-border approach is required to meet the fast pace of change within labour markets to ensure border region economies can flourish.

¹⁶⁴ Department of Finance (2022). *Murphy launches transformational Civil Service regional hubs*. [online] Department of Finance. Available at: <https://www.finance-ni.gov.uk/news/murphy-launches-transformational-civil-service-regional-hubs>

¹⁶⁵ The Centre for Cross Border Cooperation (2019). *The need for regulatory cross-border territorial impact assessment: Challenges at the Ireland-Northern Ireland border*. [online] Available at: <https://crossborder.ie/newsite/wp-content/uploads/2021/09/CCBS-Briefing-Paper-The-need-for-regulatory-cross-border-territorial-impact-assessment.pdf>

¹⁶⁶ <https://crossborderlabour.regio-events.eu/en/presentations>

A wide range of EU examples and solutions gathered via the aptly named *b-solutions* initiative were shared at the conference, and a library¹⁶⁷ of case studies can be found online. For example:

One case study from the German-Austrian border¹⁶⁸ explores the implications of a cross-border employee working from home (teleworking). It considers the applicable law concerning social insurance competency, including a bilateral agreement that extended the time permitted at home to 40%, which was then increased to almost 50% due to both countries signing up the new EU Framework Agreement. It also considers the taxation implications, exploring current bilateral agreements that are relevant to workers living within 30km of the border, who usually cross the border each day but now work from home. This case study also introduces employment law issues relevant to working from home.

While tax and social insurance challenges hold the spotlight in discussion on the IE / NI all-island labour market, stakeholder engagement has revealed a wide range of other lesser-known challenges that are also having significant negative impact on the workforce. The engagement responses tally with examples raised at a seminar hosted by the Border People project¹⁶⁹ in May 2023.

The following examples are far from an exhaustive list:

- Risk of employment law implications due to WFH amendments to employment contracts with minimal or no consultation.
- Financial impacts on loans from credit unions and banks that are linked to employment payroll, and mortgage options being severely restricted (or completely withdrawn by some banks) due to hybrid working and dual payrolls.
- Redundancy entitlement being reduced for workers moved to a payroll or new branch across the border.
- Income protection policies found to be unsuitable for incomes earned via two payrolls in different jurisdictions.
- Misunderstanding that government service workers (and the public sector as an employer) are shielded from the challenges.

Stakeholder engagement with the business sector

As already mentioned in Chapter 3 on tax, the relevant financial rules were created for global, international business operations. During stakeholder engagement business representatives shared their frustrations at the lack of cross-border information and guidance on how the global rulebook must be applied to their cross-border business scenarios.

¹⁶⁷ b-solutions (2024). *Library*. [online] b-solutionsproject. Available at: <https://www.b-solutionsproject.com/library>.

¹⁶⁸ b-solutions (2024). *b-solutions: Solving Border Obstacles. A Compendium 2022-2023*. [online] Available at: https://www.b-solutionsproject.com/files/ugd/8f68c1_9b33acbfa2f94e41b7b62a204a477b73.pdf.

¹⁶⁹ O’Kane, A. (2023). *Seminar - Cross border implications of Working from Home - Border People*. [online] Border People. Available at: <https://borderpeople.info/a-z/online-seminar-cross-border-implications-of-working-from-home.html>

As Revenue and HMRC do not provide 'advice', the businesses explained that they were required to first act, and the authorities would then decide if the correct action has been taken, *after* investment was committed, strategies implemented, talent sought, and job opportunities secured.

During the stakeholder engagement researchers learned that many businesses have invested significantly for expert 'advice', only to receive an expert 'opinion', so often the business will invest again for a second 'opinion'. They explained that the remote working rules are such a grey area, and their application can vary significantly based on specific operational factors of the business e.g., if only 5 employees out of 100 works from home that *may* have limited corporate taxation risk, however a smaller business with 5 out of 8 employees working from home could be regarded as a significant operational pattern across the border.

Due to a lack of clarity of the rules, and their practical implementation in cross-border scenarios, the business representatives outlined some of their challenges including:

- Many do not have the resources to pay for 'experts' and have given up trying to understand the rules. They are simply carrying on business activities regardless of the border e.g., permitting workers to work from home or providing delivery services across the border.
- Many are attempting to comply but are very concerned about accuracy.
- Many have decided that the financial risk (e.g., corporate tax exposure across the border) and reputational risk (e.g., created by taxation errors) is too great and have decided not to hire cross-border workers.
- Many only offer WFH for local employees. They do not offer it to their cross-border employees and are concerned about creating inequalities within their organisation.
- Others invested significant resources to set up a separate entity across the border so that employees can live and work (flexibly) in the same jurisdiction. Some indicated that in the absence of clear WFH advice, this was their only option to retain skilled staff.
- Across the sectors, business stakeholders shared significant concerns about the ability to attract candidates with the required skills and were very concerned about a fast-shrinking labour pool due to the growing expectation that remote and flexible options are permitted.

Engagement with the Advice Sector indicates:

- Widespread lack of awareness among cross-border workers of WFH complications beyond taxation e.g., that being on a dual payroll can negatively impact mortgage and loan offers.
- That some workers have needed legal advice regarding amendments to existing employment contracts to include references to jurisdiction, location of work, or remote / flexible working arrangements.
- That some workers have been told they must work from home, sometimes without consultation or without adequate information regarding changes to payroll, pensions, and social insurance.
- A lack of information about where to obtain cross-border information, independent advice, or signposting options for people needing support related to flexible working across the border. For example, the advisors mentioned that while recent guidance documents from the Workplace Relations Commission¹⁷⁰ on the Right to Request Flexible Working, and Flexible Working mentions jurisdictional scope, the guides do not explicitly mention cross-border scenarios.

13. Jurisdiction

WRC guidelines

The policy should set out the geographical/jurisdictional scope of the flexible and remote working arrangements so as to manage employee expectations and in light of the employment rights and tax implications.

Engagement with the Professional Services sector

Engagement with the professional services sector indicates:

- Widespread lack of (employer) awareness of the implications of (business) duties being carried out across the border.
- Organisations, large and small, require significant inhouse or outsourced expertise to comply with taxation, payroll and social insurance obligation.
- Growing need for employment law advice due to concerns about diverging company rules for employees based on their place of residence.
- Lack of government / agency guides and helplines to provide clarification on cross-border cases.
- Limited cross-border knowledge within the sector. While some organisations have expertise it tends to be only in very specific areas e.g., knowledge of income tax but no knowledge of cross-border social insurance.
- Lack of training options available for professional services on how to best support their cross-border clients meet government requirements.

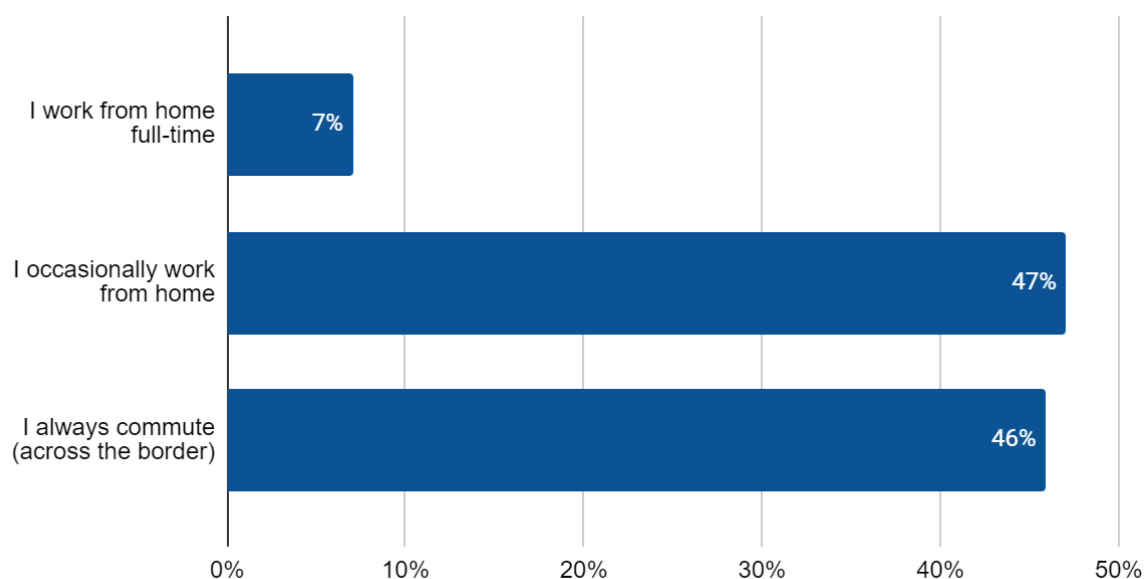
¹⁷⁰ Workplace Relations Commission (2024). *Code of Practice for Employers and Employees Right to Request Flexible Working and Right to Request Remote Working*. [online] Workplace Relations Commission. Available at: https://www.workplacerelations.ie/en/what_you_should_know/codes_practice/code-of-practice-for-employers-and-employees-right-to-request-flexible-working-and-right-to-request-remote-working/.

Cross-border worker survey responses

The recent global surge in flexible and remote working is evident in the survey responses provided through our research (more detail in Appendix V).

The expectation of flexible working opportunities was clearly reflected in respondents' comments. They acknowledged improvements to work life balance, family life and rural community life, and savings on time, fuel, carbon footprint and childcare costs. However, many expressed frustration that cross-border workers were not provided with the same opportunities to work from home as their colleagues.

Figure 9.2: Remote working or working from home has increased in recent times.
Which option best describes your situation?



The survey noted that 54% of cross-border workers worked from home; 47% on an occasional basis, and 7% on a full-time basis. However, a small number (5) also mentioned the need to be in the office from time to time so the hybrid pattern may be hidden among responses. As mentioned in previous chapters, hybrid working is the most complex scenario with regards to payroll, income tax and social insurance implications, not to mention the other challenges listed above.

- *I mostly work from home - go into office once every 2-3 weeks*
Cross-border worker living Antrim, working in Dublin for 4 years
- *I'm lucky I work from home as well as run a side business. My cross-border work is better paid and more flexible providing a stable base income for me to build on as I build my business.*
Cross-border worker living Fermanagh, working in Monaghan for 16 months

A significant number of respondents, **46%, commute to work across the border.** Some respondents stated that their role requires their actual presence at work (e.g., nurses and teachers). Others were frustrated at being required to commute each day when their duties were clearly suitable for remote working. Some prefer being in the office, and one person stated they had declined the opportunity for home working due to confusion of the consequences on taxation.

- *Not allowed to work from home as my company would have to run an ROI payroll.*
Cross-border worker living Donegal, working in Derry for 22 years

- *Wish I understood the legalities. Gave an option to WFH 2 days a week but scared to take it up in case there are tax implications.*
Cross-border worker living Monaghan, working in Armagh for 10 years
- *It would require investment in IT equipment that just is not resourced in the army.*
Cross-border worker living Down, working in Louth for 21 years

Five per cent of workers of respondents were not permitted to work from home due to their cross-border worker status. This issue is mentioned regularly within the free text answers and could potentially be interpreted as inequality of opportunity among colleagues based on residence. A selection of responses is listed below.

- *My workplace has implemented a return to office for cross-border workers only.*
Cross-border worker living Donegal, working in Derry for 8 years
- *The current situation feels highly unfair as my colleague still have the flexibility to work from home while I am forced to commute to an empty office to sit and work in the same fashion as I would at home over Zoom, Teams etc.*
Cross-border worker living Donegal, working in Derry for 3 years
- *I'm genuinely considering leaving my current job as remote working is becoming a deal breaker for me.* Cross-border worker living in Donegal, working in Derry for almost 2 years
- *Not offering the same flexible working options is discriminatory to cross-border workers and discourages employers from employing cross-border workers.*
Cross-border worker living Donegal, working in Derry for 4 years
- *Losing the ability to WFH creates inequality among staff members. It can impact morale and team cohesion if someone is having to physically go to work much more often than others because of simply being a cross-border worker.*
Cross-border worker living Down, working in Dublin for a few months.

Concluding Reflections

Remote and flexible working patterns offer new potential for social and economic growth, especially in rural areas and border regions, while helping countries address Green Agenda targets and obligations.

Aligning global taxation rules, social security coordination rules and national legislation with their practical application at local level is however creating challenges for cross-border businesses. While countries wait on international solutions from for example, the OECD and the EU, many have also been quick to tailor solutions that meet their local need. The EU b-solutions initiative lists many such examples.

With regards to the flow of workers between IE and NI, this research finds a disconnect between local policy and the needs of employers and workers in this region. Current rules lend themselves to workers working and living in the same jurisdiction and not those living in one jurisdiction and working in the other which reduces the skills pool available to employers, especially those based in border region locations that need to draw skills from both jurisdictions.

During stakeholder engagement the organisations shared concerns about a shrinking labour pool and their ability to remain competitive. Some specifically mentioned their competitiveness in the border region was at risk when compared to accessing skills in larger urban areas.

Overall companies that engaged with this research, large and small, appear to be struggling to comply with requirements. The burden weighs especially heavy on small businesses that may not have the financial resources or expertise to understand and/or implement rules that were created for large scale international business activity.

Workers have voiced their frustration about being unable to enjoy the benefits of flexible and remote working opportunities offered to their colleagues (non cross-border workers). Their disillusionment of cross-border employment does not bode well for employers reliant on their skills.

Employers and workers have stated that new policies are required to ensure the viability of businesses reliant on cross-border workers. As new strategies and legislation are put in place to exploit the full potential of the changing world of work it is important that the needs of the mobile portion of the labour force are included from the outset.

In the meantime, there is a call for clear information and guidance from government regarding exactly how to apply current rules and regulations in cross-border scenarios. Our research suggests that there also appears to be a clear need for access to independent advice so that workers and employers can challenge government decisions regarding their compliance with current rules.

*Some compromise must be found between governments in order that
cross-border regions can thrive and prosper.*

Cross-border worker living Donegal, working in Derry for 4 years

Chapter 10 - Collective bargaining and Trade Union coverage

Summary

Collective bargaining can have a role in understanding and supporting employees and employers to deal with the changing world of work across a wide range of issues on workers' rights, including many of the key considerations for cross-border workers which have been raised earlier in this report. Both jurisdictions have laws to protect employees including minimum wages (€12.70 per hour IE, €11.44 per hour NI) as well as laws around the working week, public holidays and remote working. Both jurisdictions provide the right for employees to trade union participation and in IE for the employee to engage in collective bargaining with the employer. It would appear the in NI collective bargaining must take place through a recognised trade union.

Our research suggests that collective bargaining and trade union coverage appears limited in both jurisdictions. Neither jurisdiction has binding collective bargaining legislation. Trade union coverage is low in both IE and NI, particularly for the private sector where less than 30% of workers are represented.

Going forward, the position in IE on collective bargaining is set to change with the EU Directive on the Adequate Minimum Wage¹⁷¹. As well as developing a framework on the adequacy of statutory minimum wages, it is focused on promoting collective bargaining in wage-setting and building and strengthening social partners' capacity to engage in collective bargaining, especially at sector and cross-industry level. The new legislation notes that *'where the collective bargaining coverage rate is below a threshold of 80%, provide for enabling conditions, either by law or after consulting social partners, and establish an action plan to increase that coverage'*. The action plan should also *'set out a clear timeline and concrete measures to progressively increase the rate of collective bargaining coverage, in full respect for the autonomy of the social partners'*. Government advice through this research suggests that no one can be compelled to negotiate or enter into agreement.

Trade union density (membership levels) among all workers in IE is about 26 to 28 per cent. In NI only 20% of workers in the private sector in 2016/18 were covered by trade union negotiated pay compared to 80% of public sector employees. There is no UK collective bargaining law in NI. Despite this relatively low coverage, trade union representation appears high across the island across several EU and non-EU platforms. This has filtered through in various guises including the Good Friday Agreement, the Trade and Cooperation Agreement and the Windsor Framework with the trade unions proactive in various specialized committees.

However, there are changes in play that are likely to affect and influence the role of collective bargaining and trade union coverage in both jurisdictions and draws attention to the importance of communication and representation for cross-border workers. IE will be under increased scrutiny under the new EU legislation requiring EU Member States with collective bargaining coverage rates of less than 80 per cent to provide a framework of enabling conditions and establish an action plan to promote collective bargaining by the end of 2024. Ultimately, this may mean a higher level of worker engagement in collective bargaining (and potentially trade union engagement and representation) in IE relative to NI. Diverging employment law is also a concern. Post-Brexit the supremacy and general principles of EU

¹⁷¹ Eur-Lex (2023). *EUR-Lex - 4623532 - EN - EUR-Lex*. [online] eur-lex.europa.eu. Available at: <https://eur-lex.europa.eu/EN/legal-content/summary/minimum-wages-in-the-eu.html>.

law, including employment law, in the UK ended on 31st December 2023 with implications for employment rights from the Retained EU Law Act (2023)¹⁷² which has been introduced by the UK government to revoke certain retained EU law. The Act raises issues both around how NI feeds into any changes to current law and how these changes affect NI, both in isolation and in how it affects cross-border workers. To date, changes have been impacted by the lack of a functioning Executive, but even with its restoration it is not clear how the Executive can influence any changes being made at the UK level. The expectation is that there may be on-going and increasing divergence between employment laws in GB and NI. How that impacts further on cross-border/frontier workers' rights is an unknown, but it could have implications for workplace rights such as holiday pay, rest breaks, health and safety rules and protections from discrimination and how they apply if working in one jurisdiction and living in the other. There are complexities around what laws take precedent in terms of workers' rights and potential diminution of rights as a result.

These examples (and many more) point to an extremely complex legal and policy environment where frontier/cross-border rights have and will become increasingly unclear and confusing for employee and employer. It was already a complex area before UK EU Exit. There are several points for consideration:

- There is low representation generally of workers, largely private sector workers, in trade union coverage and collective bargaining across both jurisdictions, which suggests a challenging support environment for cross-border workers. Discussions as part of this research with the Advice sector suggest that many cross-border workers are less likely to be represented by trade unions, although it would be expected that cross-border workers employed by government organisations in either jurisdiction are as likely as their colleagues working and living in one jurisdiction to be represented by a trade union.
- The low trade union engagement in IE could change under the new EU Directive encouraging greater engagement and collective bargaining. This may mean a higher level of worker engagement in collective bargaining (and potentially trade union engagement and representation) in IE relative to NI. and potentially of frontier workers in IE relative to NI leading to an imbalance in guidance, support, and resolution.
- The ability to protect cross-border/frontier workers is severely challenged by UK EU Exit. It is already clear that there are considerable challenges around the understanding of and consistency around the definition of a frontier worker which has implications on the application of laws and their rights for this specific set of workers. The suggestion is there has been a diminution of their rights post UK EU Exit.
- There are some significant unknowns going forward. A case in point is the extent to which any divergence in laws including employment law between the EU and UK, between GB and NI, will affect employees and employers working and doing business across both jurisdictions.
- The role for strong, explicit representation of these workers is evident and the trade unions have and continue to play their part in discussions and negotiations. Trade unions do appear to have significant involvement in UK EU Exit mechanisms, but it is not clear however to what extent trade unions are involved in different groupings and specifically how a cross-border focus is brought into focus.

¹⁷² Legislation.gov.uk. (2023). *Retained EU Law (Revocation and Reform) Act 2023*. [online] Available at: <https://www.legislation.gov.uk/ukpga/2023/28>.

- This research brings into focus the importance of a dedicated set of resources involving the trade unions and wider support ecosystem to represent the growing divergence in frontier workers' rights and support those workers and their employers to understand their rights, particularly in the context of diverging legislation and policy.

Introduction

Collective bargaining can have a role in understanding and supporting employees and employers to deal with the changing world of work across a wide range of issues on workers' rights, including many of the key considerations for cross-border workers which have been raised earlier in this report.

This section sets out to establish the extent of collective bargaining and trade union coverage in the two jurisdictions to understand the way in which workers' rights and concerns, specifically cross-border workers, are represented. It looks at the role of the trade unions in each jurisdiction separately and then specifically in terms of Unions' involvement in areas of cooperation and agreement between the UK, IE, and the EU from the Good Friday Agreement to the Windsor Framework. Issues and challenges observed through the research are set out and observations made around the implications for cross-border workers and how their views are represented and articulated.

Context

There is legislation in both jurisdictions that seek to protect employee rights, and this has increased over time. In IE there is the Organisation of Working Time Act 1997, the National Minimum Wage Act 2000 and the Employment Equality Acts 1998-2015 to name a few. There are also laws around unfair dismissal, protection of part-time employees and maternity protection, parental leave and health and safety. Employment law is a devolved matter in NI. The Employment Rights (NI) Order 1996 sets out the rights of employees in situations such as dismissal, unfair dismissal, parental leave, and redundancy. Minimum legal employment rights include statutory sick pay, maternity, adoption and paternity leave and pay, the right not to be unfairly dismissed, and legal redundancy pay. The Labour Relations Agency note that '*employment law is a complicated field and there are now significant differences between NI and GB*'¹⁷³. The laws on health and safety at work are also devolved and, therefore, these differ from those in GB.

In terms of trade union coverage and agreements, the OECD suggests that the number of workers who are members of trade unions and covered by collective agreements have declined in many OECD countries¹⁷⁴. They also note the rise of different forms of non-standard employment such as self-employment and temporary/casual/on call workers as these tend to be under-represented by trade unions. Our research suggests that collective bargaining and trade union coverage appears limited in both jurisdictions.

IE

- At present, IE does not have binding collective-bargaining legislation. Research by Eustace and Kenny (2023) on behalf of the Irish Human Rights and Equality Commission (IHREC) note that '*the Irish Constitution, as heretofore interpreted, does not protect a right to collective*

¹⁷³ Labour Relations Agency (2019). *Legislation*. [online] Labour Relations Agency. Available at: <https://www.lra.org.uk/legislation>.

¹⁷⁴ OECD iLibrary (2019). *Negotiating Our Way Up : Collective Bargaining in a Changing World of Work*. Available at: <https://www.oecd-ilibrary.org/sites/1fd2da34-en/1/2/5/index.html?itemId=/content/publication/1fd2da34-en&csp=fc50d8427000f71bfa234b11ca5f7ccd&itemIGO=oecd&itemContentType=book>

*bargaining*¹⁷⁵. The process is noted as ‘voluntary’, relying on the will of the parties involved¹⁷⁶. The Workplace Relations Committee (WRC) suggests that “the terms and conditions of employment of workers is best determined by the process of voluntary collective bargaining between an employer or employers’ association and one or more trade unions, without the intervention of the State”. NESC highlights the difficulty in ‘*forging consensus and agreement*’ on issues around collective bargaining and trade union recognition in IE. The government note that there are no obstacles preventing parties from negotiating better terms and conditions in a voluntary capacity and the Constitution guarantees an individual’s right to form associations and trade unions (Article 40.6, 1. iii). Uni-Europa¹⁷⁷ note that in IE ‘*some of the larger unions pursued a coordinated pay strategy as a variant of pattern bargaining*’.

- There is low coverage of collective bargaining. The OECD estimate this at 34% in IE, including public service, ranking it as the second lowest among the 14 countries in EU membership since 2004¹⁷⁸. Smurfit School research¹⁷⁹ estimates that the coverage of collective bargaining is higher at 43% (down from 53% in 2003).
- Union density (membership levels) among all workers is about 26% to 28% (Smurfit, 2021).
- Smurfit School research suggests that coverage is highest in state-owned companies and the public sector and lower in not-for-profit organisations and the private sector¹⁸⁰.

NI

- There is no UK collective bargaining law in NI. Most collective bargaining arrangements are voluntary, where collective bargaining is only possible where an employer recognises a trade union and agrees that its members can be represented collectively.
- In 2016/18, 53% of employees in NI had a trade union that bargains for pay in their workplace (Nevin 2020¹⁸¹). However, only 20% of workers in the private sector were covered by trade union negotiated pay compared to 80% of public sector employees.
- Nevin (2020, Evans et al, 1992) suggest that industrial relations legislation over the last number of decades has sought to restrict the activities of trade unions and such restrictions may have limited both the ability of a trade union to bargain on behalf of workers and the ability of workers to join a trade union.
- There is UK legislation around trade unions. The Trade Union and Labour Relations (Consolidation) Act 1992 covers workers’ rights to associate and negotiate collectively. The act applies in full in England and Wales and in Scotland, and partially in NI. The Industrial Relations (NI) Order 1992 details definitions, status and general regulation of trade unions and employers.

¹⁷⁵ Eustace, A. and Kenny, D. (2023). *Collective Bargaining and The Irish Constitution-Barrier or Facilitator?* [online] Available at: <https://www.ihrec.ie/app/uploads/2023/12/Collective-Bargaining-and-The-Irish-Constitution-1.pdf>

¹⁷⁶ NESDO (2022). *An Opportunity to Review and Reframe Collective Bargaining and the Industrial Relations Regime*. [online] Available at: http://files.nesc.ie/nesc_secretariat_papers/Sec_31_LEEF-1.pdf

¹⁷⁷ UNI Europa (2021). *SOME STYLISED FACTS COLLECTIVE BARGAINING SYSTEMS IN EUROPE*. [online] Available at: <https://www.uni-europa.org/old-uploads/2021/04/CB-Systems-in-Europe-EN.pdf>.

¹⁷⁸ stats.oecd.org. (2023). *Collective bargaining coverage*. [online] Available at: <https://stats.oecd.org/Index.aspx?DataSetCode=CBC>.

¹⁷⁹ Geary, J. and Belizon, M. (2021). *First findings from the UCD Working in Ireland Survey*. [online] Available at: [https://www.smurfitschool.ie/t4media/Geary,%20J.%20and%20Belizon,%20M.%20\(2022\)%20Union%20Voice%20in%20Ireland%20.pdf](https://www.smurfitschool.ie/t4media/Geary,%20J.%20and%20Belizon,%20M.%20(2022)%20Union%20Voice%20in%20Ireland%20.pdf).

¹⁸⁰ Geary, J. and Belizon, M. (2021). *First findings from the UCD Working in Ireland Survey*. [online] Available at: [https://www.smurfitschool.ie/t4media/Geary,%20J.%20and%20Belizon,%20M.%20\(2022\)%20Union%20Voice%20in%20Ireland%20.pdf](https://www.smurfitschool.ie/t4media/Geary,%20J.%20and%20Belizon,%20M.%20(2022)%20Union%20Voice%20in%20Ireland%20.pdf).

¹⁸¹ Mac Flynn, P. (2020). *The Impact of Collective Bargaining on pay in Northern Ireland*. [online] The Nevin Economic Research Institute. Available at: <https://www.nerininstitute.net/research/impact-collective-bargaining-pay-northern-ireland>.

Trade Union Connections across the Island

However, there are mechanisms through which the trade unions are actively engaged in representing members/workers which are both EU and non-EU focused that include:

- The EU–UK Trade and Cooperation Agreement (TCA), a free trade agreement between the EU and the UK (along with the European Atomic Energy Community), provides for the involvement of civil society through the creation of Domestic Advisory Groups (DAGs) in advising on the implementation of the Agreement. These exist for both the UK and EU. Unite is on the UK DAG Executive Council. The TUC Congress and 4 other trade unions are members. ICTU are on the Worker's Group of the EU Domestic Advisory Group linked to the UK.
 - The TCA also provides for a Civic Society Forum that should meet at least once a year made up of representatives of civic society from the EU and UK including trade unions and areas associated with Part II of the TCA. The scope covers areas in Part II of the TCA: Trade, aviation, road transport, social security coordination and visas for short-term visits, fisheries and other provisions. A second meeting took place on the 7th of November 2023. The agenda included trade in goods, level playing fields and regulatory cooperation, energy and climate change and trade in services.
- There are bilateral arrangements between the UK/NI, NI, IE, EU of which there will be trade union representatives or where trade union views can be made. They include:
 - The North South Ministerial Council – which reports to the Specialised Committee on the Windsor Framework (Protocol).
 - The European Economic and Social Committee (advisory) is the voice of organised civic society in Europe and has a significant trade union representation. IE has 9 members. There is a structure/Committee within this to ensure there are post-Brexit structures of engagement with NI and UK
- As set out in the January 2024 Command Paper, “Safeguarding the Union”¹⁸², the UK government is working to establish an east-west business council for key representatives across the United Kingdom from government, business and the education sector to identify opportunities for deepening connections between NI and the rest of the UK in important areas such as trade, transport, education and culture. It is not clear yet as to Unions’ role in this Council.
- The Windsor Framework makes a commitment to establish new mechanisms for stakeholder engagement including business and civic society. Groups which the trade union movement are represented on include the NI Business Brexit Working Group, NI CWGP and the Ad-Hoc Group on North-South and East-West Cooperation.
- Several Specialised Committees between the UK and EU have been established to address specific aspects of UK EU Exit. The Specialised Committee on the implementation of the Windsor Framework makes recommendations regarding the functioning of the Windsor Framework. It was formerly the Specialised Committee on the Protocol. It includes representation of business and civic society, and this includes trade union representation in the form of ICTU. There is also a Specialised Committee on Citizen's Rights.

¹⁸²HM Government (2024). *Safeguarding the Union*. [online] Available at: https://assets.publishing.service.gov.uk/media/65ba3b7bee7d490013984a59/Command_Paper_1_.pdf.

Issues and challenges

There have and continue to be some notable challenges and changes taking place in IE and the UK/NI on the role of collective bargaining and trade union coverage that impact on employee rights and how they are represented.

IE

The research by Eustace and Kenny suggests that it is essential to have a statutory framework for collective bargaining, whether it is a constitutional right or not. Also, the IE Human Rights Commission believe that an IE government priority should be to address the lack of statutory provision for the right to collective bargaining and what they refer to as *‘the imbalance of power in the labour market’*.

IE will be subject to new EU legislation placing a requirement on EU Member States to expand worker coverage through collective bargaining. There is a new EU Directive on Adequate Minimum Wages Directive requiring each Member State to act to widely expand their workers covered by collective bargaining on wage setting¹⁸³. The Directive requires that EU Member States with collective bargaining coverage rates of less than 80 per cent, in consultation with the social partners, provide a framework of enabling conditions. They should also establish an action plan (reviewed at least every five years) for promoting collective bargaining.

LEEF’s High-Level Group on Collective Bargaining published 4 recommendations in 2022 to form the basis for the transposition of the new EU directive. They included:

- A recommendation that existing legislation relating to Joint Labour Committees be strengthened to enable an Employment Regulation Order to be implemented on foot of employers being afforded all reasonable opportunities to engage.
- A recommendation that technical assessors be appointed by the Labour Court to advise the Court in pay comparison claims with the purpose of improving on current mechanisms.
- A recommendation that legislation requires an employer to engage with a trade union that seeks good faith engagement where they represent at least 10% of workers in a grade group or category within the employment.
- Where an employer refuses such an engagement and ignores the Labour Court decisions on the matter, the trade union can seek a Circuit Court order for implementation against the employer.

NI/UK

Post-Brexit the supremacy and general principles of EU law, including employment law, ended on 31st December 2023. This means that there may be implications for employment rights from the Retained EU Law (Revocation and Reform) Act (2023) which has been introduced by the UK government to revoke certain retained EU law. The Act has significant implications for NI, particularly that retained EU legislation is an important mechanism by which the UK’s obligations under the NI Protocol and the Windsor Framework are given effect. The Act raises issues both around how NI feeds into any changes to current law and how these changes affect NI, both in isolation and in how it affects cross-border workers. NI’s representation has been a particular issue in that in the absence of a power sharing

¹⁸³ European Parliament (2022). *Committee on Employment and Social Affairs PROVISIONAL AGREEMENT RESULTING FROM INTERINSTITUTIONAL NEGOTIATIONS*. [online] Available at: [https://www.europarl.europa.eu/RegData/commissions/empl/inag/2022/06-20/EMPL_AG\(2022\)734121_EN.pdf](https://www.europarl.europa.eu/RegData/commissions/empl/inag/2022/06-20/EMPL_AG(2022)734121_EN.pdf).

Executive in NI, no devolved assessment could be made of the Act in NI and consent could not be given, which was not the case for Scotland and Wales.

There is wider concern over the Act's overall impact at the devolved level as there is no requirement placed on UK ministers to seek devolved consent when exercising the wide-ranging regulatory powers in the Act. It is noted that *'As these are concurrent, this gives the UK Government unchecked law-making powers in areas of devolved competence'*¹⁸⁴. This is a 'watching brief' to understand the extent and strength of input from the NI Executive and Assembly now that power sharing has been resolved.

There is potential therefore for employment law divergences which had been covered by NI and IE through EU Law. This has implications for workplace rights such as holiday pay, rest breaks, health and safety rules and protections from discrimination. For example, there was uncertainty recently over post-Brexit employment law on holidays and how changes in GB would affect NI in that the law was different in NI compared to GB. The UK government took steps to keep EU law by writing this into new regulations or otherwise they would have disappeared. In NI, this has been written into the Working Time (Amendment) Regulations (NI) 2023 which came into force on 1st January 2024¹⁸⁵. However, an important difference in NI is that the holiday pay reference period has been maintained as 12 weeks, as opposed to the 52 weeks applicable in GB¹⁸⁶. Another example of divergence is on rolled up holiday pay where the UK government made changes that do not apply in NI¹⁸⁷. Further divergence between NI and IE and indeed NI and GB is likely. For example, the Northern Ireland Economy Minister has recently consulted on the proposed 'Good Jobs' Employment Rights Bill¹⁸⁸ which sets out a range of changes to employment rights and the enhancement of Employment Law in Northern Ireland. The draft Bill contains specific proposals on the removal of zero hours contracts as well as a wider range of employment law changes which aim to improve terms of employment, pay and benefits, voice and representation and promote a healthy work-life balance in Northern Ireland.

The key takeaway for 2024 is the on-going and increasing divergence between employment laws in GB and NI. While it remains more or less status quo for NI employers, UK employers with operations in NI, should be increasingly mindful of the differences. (Lewis Silken 2024)

The discussion above highlights issues of divergence between NI and the rest of the UK. A further complexity is that of cross-border or frontier workers. Research by the NI Human Rights Commission on *'Frontier Workers and their Families: Rights after Brexit'* (Mars & O'Brien, 2023) looks at the potentially 'destabilising' role that Brexit has played to date on frontier workers and their families with a particular

¹⁸⁴ Stevens, R. (2024). *Written evidence submitted by the Civil Society Alliance (REUL20003)*. [online] Available at: <https://committees.parliament.uk/writtenevidence/128167/pdf/>.

¹⁸⁵ Gallagher, K. and Gillen, P. (2024). *Working time changes in Northern Ireland: here's what it means for employers*. [online] Lewis Silkin. Available at: <https://www.lewissilkin.com/en/insights/working-time-changes-in-northern-ireland-heres-what-it-means-for-employers>.

¹⁸⁶ (but not NI) from 6 April 2020, the GB law was changed increasing the reference period from 12 weeks to 52 weeks - Employers Federation (2023). *Holiday Pay following the Supreme Court Judgment of Chief Constable of PSNI v Agnew - Employers Federation Northern Ireland*. [online] Employers Federation Northern Ireland. Available at: <https://employersfederation.org/holiday-pay-following-the-supreme-court-judgment-of-chief-constable-of-psni-v-agnew/>

¹⁸⁷ Fulton, C. (2024). *What's Happening in Northern Irish Employment Law in 2024?* [online] Legal-island.com. Available at: <https://www.legal-island.com/articles/uk/features/supplementary/2024/whats-happening-in-northern-irish-employment-law-in-2024/>

¹⁸⁸ Department for the Economy (2024). *The 'Good Jobs' Employment Rights Bill*. Available at: <https://www.economy-ni.gov.uk/consultations/good-jobs-employment-rights-bill>

focus on those frontier workers who hold rights within the United Kingdom (by either working or residing there) that should be protected by the Windsor Framework and its Article 2 non-diminution of rights commitment¹⁸⁹. The research highlights the complexity of how domestic, EU and international law has regulated the rights of these frontier workers since both jurisdictions joined the EU. Key findings include:

- A lack of definition of what a frontier worker is with implications on understanding rights and being protected by those rights:
 - The absence of clear definitions of frontier work in EU law means that certain types of frontier work may not be treated as such, which may have consequences on the ability of frontier workers to exercise their EU law rights.
 - UK compliance with the EU law that affects frontier workers was broadly faithful, but there were shortcomings in the UK approach to addressing EU-originating social security entitlements that may make these less clear or accessible to relevant beneficiaries.
 - The UK-EU Withdrawal Agreement and its UK implementation shows shortcomings in defining frontier work in Part 2 of the Withdrawal Agreement, much as they were in EU law more generally.
 - The UK implementation of Part 2 of the Withdrawal Agreement in places supplements what EU law clearly sets out but comes with its own shortcomings in defining what frontier work is and how, specifically, frontier workers and their families are protected in UK law after Brexit.
- Understanding what takes precedent in terms of rights, particularly those outside the Withdrawal Agreement:
 - There is limited protection with the CTA, frequently referred to as ensuring that British and Irish nationals would not be negatively affected by UK EU Exit. Its Social Security Convention offers what looks to be less protection, particularly for family members of frontier workers, than the Withdrawal Agreement does.
 - The UK and EU's 'Trade and Cooperation Agreement' (TCA) has its own Protocol on Social Security, which by and large copies over existing EU rules on social security coordination – and so provides similar levels of protection to the Withdrawal Agreement. However, it has an expiration date attached and is also not a 'full' replacement for what the Withdrawal Agreement achieves. Frontier work is also not specifically considered by the European Convention on Human Rights, and claims made under its Article 14 prohibition of discrimination by frontier workers who cannot access certain benefits or residency rights would face an uphill battle.
 - A final potential source of rights for frontier workers who commenced their work before Brexit is Article 2 of the Windsor Framework, which prohibits a diminution of rights for those in NI because of Brexit.
- The Brexit settlement, as well as international law alternatives, do not offer the same level of rights to frontier workers and their families that EU membership did, suggesting a 'diminution' in contravention of Article 2 of the Windsor Framework has taken place.

They recommend from their findings:

- Further codification and specification of rights held under the Withdrawal Agreement as a matter of UK implementing law, and a bolstering of the CTA's rights contents as a matter of law as 'best practice'.

¹⁸⁹ to ensure that "no diminution of rights, safeguards or equality of opportunity, as set out in that part of the 1998 Agreement entitled Rights, Safeguards and Equality of Opportunity, results from its withdrawal from the [European] Union"¹, and provided a baseline of 6 EU equality and non-discrimination directives with which NI must keep pace.

- Amendments of the Withdrawal Agreement and/or the TCA's Protocol on Social Security as further means of ensuring frontier workers and their families do not fall between legislation (although note that less achievable).
- If a fortification of UK domestic law proves impossible, a second-best alternative is to set out clearer and heavily advertised user guidance (as opposed to caseworker guidance) to frontier workers and their families on what their rights are and how they can access them.

Concluding Reflections

What these examples (and many more) point to is an extremely complex legal and policy environment where frontier/cross-border rights have and will become increasingly unclear and confusing for employee and employer. It was already a complex area before UK EU Exit. There are several points for consideration:

- The low representation of workers, largely private sector workers, in trade union coverage and collective bargaining across both jurisdictions suggests a challenging support environment for cross-border workers. Discussions as part of this research with the Advice sector suggests that many cross-border workers are less likely to be represented by trade unions, although one would expect that cross-border workers employed by government organisations in either jurisdiction are more likely to be represented by trade unions.
- The generally low engagement could change significantly for IE under the new EU Directive on minimum wages which advocates a greater role for and right to engagement in collective bargaining. This may mean that workers in IE have greater access to trade unions than in NI in the future and potentially cross-border workers in IE relative to NI which could lead to an imbalance in guidance, support, and resolution.
- The ability to protect cross-border/frontier workers is severely challenged by UK EU Exit. It is already clear that there are considerable challenges around the understanding of and consistency around the definition of a frontier worker which has implications on the application of laws and their rights for this specific set of workers. The suggestion is there has been a diminution of their rights post UK EU Exit.
- There are some significant unknowns going forward. A case in point is the extent to which any divergence in laws including employment law between the EU and UK, between GB and NI, will affect employees and employers working and doing business across both jurisdictions.
- The role for strong, explicit representation of these workers is evident and the trade unions have and continue to play their part in discussions and negotiations. Trade unions do appear to have significant involvement in UK EU Exit mechanisms, but it is not clear however to what extent trade unions are involved in different groupings and specifically how a cross-border focus is considered.
- This research brings into focus the importance of a dedicated set of resources involving trade unions and wider support ecosystem to represent the growing divergence in frontier workers' rights and support those workers and their employers to understand their rights, particularly in the context of diverging legislation and policy.

Appendix I – Cross-Border Data Analysis

Top 10 industrial groups of IE's population commuting to NI to work

Industrial group	Number of workers
Human health and social work activities	1,269
Wholesale and retail trade; repair of motor vehicles and motorcycles	1,002
Manufacturing	888
Education	847
Construction	636
Public administration and defence; compulsory social security	542
Professional, scientific and technical activities	502
Information and communication activities	413
Transportation and storage	274
Accommodation and food service activities	254

Source: CSO Census 2022

Number and Share of Those in Work in NI (aged 16+ excluding full-time students) by Council, 2021

	Number	% of NI Workers in IE	% of District Council Population Working in IE
Newry, Mourne and Down	3,159	30.0%	4.1%
Derry City and Strabane	1,966	18.7%	3.4%
Fermanagh and Omagh	1,883	17.9%	3.8%
Armagh City, Banbridge and Craigavon	1,323	12.6%	1.4%
Mid Ulster	673	6.4%	1.0%
Belfast	574	5.4%	0.4%
Lisburn and Castlereagh	275	2.6%	0.4%
Causeway Coast and Glens	255	2.4%	0.4%
Ards and North Down	169	1.6%	0.2%
Antrim and Newtownabbey	142	1.3%	0.2%
Mid and East Antrim	122	1.2%	0.2%
NI	10,541	100%	1.3%

Source: NISRA Census 2021

Top Occupations of NI Workers in IE

	Number	% of NI Workers in IE
24 Business, media and public service professionals	963	9.1%
22 Health professionals	962	9.1%
52 Skilled metal, electrical and electronic trades	936	8.9%
11 Corporate managers and directors	904	8.6%
21 Science, research, engineering and technology professionals	694	6.6%
23 Teaching and other educational professionals	653	6.2%
53 Skilled construction and building trades	578	5.5%
41 Administrative occupations	561	5.3%
35 Business and public service associate professionals	534	5.1%
81 Process, plant and machine operatives	501	4.8%

Source: NISRA Census 2021

Top Occupations of NI Workers in IE: Male & Female

Gender	Share
Male	% of Male IE workers
52 Skilled metal, electrical and electronic trades	13.7%
11 Corporate managers and directors	10.4%
53 Skilled construction and building trades	8.5%
21 Science, research, engineering and technology professionals	8.1%
24 Business, media and public service professionals	7.8%
Female	% of Female IE workers
22 Health professionals	16.9%
23 Teaching and other educational professionals	11.9%
24 Business, media and public service professionals	11.5%
41 Administrative occupations	9.9%
61 Caring personal service occupations	8.4%

Source: NISRA

Travel to Work Destination of NI Workers (aged 16+ excluding full-time students)

	Work mainly at or from home	Work in NI	Work in	Work in IE	Work outside UK & IE	No fixed place of work	
NI	19%	67%	1%	1%	0%	12%	100%
Antrim and Newtownabbey	19%	69%	1%	0%	0%	10%	100%
Armagh City, Banbridge and Craigavon	16%	70%	1%	1%	0%	12%	100%
Belfast	22%	67%	1%	0%	0%	9%	100%
Causeway Coast and Glens	17%	67%	1%	0%	0%	14%	100%
Derry City and Strabane	17%	67%	1%	3%	0%	12%	100%
Fermanagh and Omagh	16%	65%	1%	4%	0%	13%	100%
Lisburn and Castlereagh	23%	66%	1%	0%	0%	10%	100%
Mid and East Antrim	18%	70%	1%	0%	0%	11%	100%
Mid Ulster	16%	68%	1%	1%	0%	14%	100%
Newry, Mourne and Down	18%	62%	1%	4%	0%	16%	100%
Ards and North Down	23%	65%	1%	0%	0%	12%	100%

Source: NISRA Census 2021

Country of Birth

	NI	England, Scotland and Wales	Outside UK	IE	Europe: Other	Other countries	All
Antrim	87%	5%	8%	1%	3%	4%	100%
Armagh	83%	4%	13%	3%	7%	2%	100%
Derry/L'derry	89%	5%	6%	2%	2%	2%	100%
Down	87%	6%	8%	2%	3%	3%	100%
Fermanagh	82%	6%	12%	7%	3%	2%	100%
Tyrone	86%	3%	11%	3%	6%	2%	100%

Source: NISRA Census 2021

Top NI Wards - IE Residents Working and Commuting to NI

NI Wards	Number
Central, Belfast	330
Duncairn, Belfast	163
City Walls, Derry City and Strabane	369
Enagh, Derry City and Strabane	237
Kilfennan, Derry City and Strabane	375
Northland, Derry City and Strabane	385
Springtown, Derry City and Strabane	412
Strabane North, Derry City and Strabane	140
Derrylin, Fermanagh and Omagh	233
Ballybot, Newry, Mourne and Down	126

Source: CSO 2022

Citizenship in IE, 2022

	IE	United Kingdom of GB and NI (the)	Outside IE & UK	Multiple/Dual citizenship	No citizenship	Citizenship not stated	All citizen- ships
IE	81%	2%	14%	0%	0%	3%	100%
Carlow	82%	1%	13%	0%	0%	3%	100%
Cavan	83%	2%	13%	0%	0%	2%	100%
Clare	85%	2%	10%	0%	0%	3%	100%
Cork	82%	2%	13%	0%	0%	2%	100%
Donegal	89%	3%	5%	0%	0%	2%	100%
Dublin	73%	2%	21%	1%	0%	3%	100%

	IE	United Kingdom of GB and NI (the)	Outside IE & UK	Multiple/Dual citizenship	No citizenship	Citizenship not stated	All citizen- ships
Galway	82%	2%	12%	0%	0%	3%	100%
Kerry	85%	2%	10%	0%	0%	2%	100%
Kildare	83%	2%	13%	0%	0%	2%	100%
Kilkenny	87%	2%	9%	0%	0%	2%	100%
Laois	85%	2%	11%	0%	0%	3%	100%
Leitrim	86%	4%	8%	0%	0%	2%	100%
Limerick	82%	1%	13%	0%	0%	4%	100%
Longford	74%	2%	15%	0%	0%	8%	100%
Louth	83%	2%	13%	0%	0%	3%	100%
Mayo	86%	3%	9%	0%	0%	2%	100%
Meath	83%	2%	13%	0%	0%	2%	100%
Monaghan	84%	1%	13%	0%	0%	2%	100%
Offaly	86%	2%	10%	0%	0%	2%	100%
Roscommon	85%	3%	9%	0%	0%	2%	100%
Sligo	86%	2%	9%	0%	0%	3%	100%
Tipperary	86%	2%	9%	0%	0%	2%	100%
Waterford	84%	2%	11%	0%	0%	3%	100%
Westmeath	83%	2%	13%	0%	0%	3%	100%
Wexford	86%	2%	9%	0%	0%	2%	100%
Wicklow	85%	2%	10%	0%	0%	2%	100%

Source: CSO Census 2022

NI Students Studying in IE

	Academic Year						
Domicile Group	16/17	17/18	18/19	19/20	20/21	21/22	22/23
IE	200,905	205,240	208,630	216,775	233,115	22,9290	221,645
NI	1,205	1,370	1,465	1,670	1,750	1,735	1,660
	1,245	1,305	1,630	1,365	1,745	1,520	1,465
(Other) EU	3,545	3,725	4,410	4,150	4,685	5,845	6,765
Non-EU	17,240	18,980	20,835	22,300	18,330	22,545	25,245
Unknown	1,485	1,090	740	370	280	75	5
Grand Total	225,630	231,710	237,710	246,630	259,900	261,010	256,785
NI % Share	0.5%	0.6%	0.6%	0.7%	0.7%	0.7%	0.6%

Source: NISRA

Appendix II – Further Detail on Tax

1) Dual Payroll Further Detail

a) Definition of a Workday

IE: Income Tax Residence

The income tax residence rules are:

- 183 days in one calendar year make an individual resident in that year or
- 280 days over two calendar years with a minimum of 30 days in each year makes an individual resident in the second of those two years.
- Both the 183- and 280-day rules - define “a day” for residency purposes as a day during any part of which an individual is present in the State.

IE Workday

For employment tax rules under Revenue Commissioners Manual Part 42-04-65 a ***“workday” is defined as a day during any part of which an individual performs work in the State.***

b) Definition of a Workday

NI: Income Tax Residence

The income tax residence rules are contained in the Statutory Residence Test (SRT) RDR3.

- An individual is automatically resident in NI if they spend 183 days there in a tax year 6 April to 5 April. A day for UK residency purposes is counted if the individual is present at midnight. Fewer days plus ties to NI can also make the individual resident. e.g Work Tie, Family Tie, 90 Day Tie.
- For the SRT in the UK in calculating a work tie to the UK a day where more than 3 hours are worked overseas is disregarded. The examples of specific jobs and how the workday rule is applied for the SRT in the UK in HMRC Manuals RDRM11800 don't cover the Irish border as an example of an employee crossing the border in the course of their duties.
- Workday
The SRT above defines workday as 3 hours or more.

NI/UK Workday

For UK payroll taxes Regulation 141 of the Income Tax (Pay As You Earn) Regulations 2003, in respect of STBV Appendix 8: Short Term Business Visitors a “UK Workday” is defined as:

“UK Workday” means a day (or part day) where duties are carried out in the United Kingdom for the Employer, excluding any day on which the duties performed are merely incidental to the performance of duties outside the United Kingdom,

- Examples of activities considered incidental or not merely incidental are provided by HMRC Manuals at EIM40204. There are no specific examples of cross-border workers splitting their duties across the Irish border. Even from the examples provided it is clear that any normal duties, aside from the reading of an email or the taking of a phone with no further action

following it, would be considered not merely incidental. HMRC also outline specific rules around days of arrival and days of departure. These are really for international travel and not appropriate in the context of the land border.

2. Employer Tax Compliance

1. Dual payroll in the one company

This means that the employer must establish a payroll in each jurisdiction and tax the employment duties carried out proportionately. Alternatively, the employer can run a full payroll in the employer jurisdiction, a shadow payroll in the other jurisdiction (to ensure compliance with its tax and reporting requirements) and fund the shadow payroll taxes throughout the year for the employee.

At year end the employee will have to file a self-assessment tax return and claim a refund of overpaid taxes which must be handed to the employer. The taxes funded by the employer are treated as an interest free loan to the employee and the benefit is taxed as benefit in kind (BIK) on the employee.

The tax return of the employee must be unpicked to see what proportion of the tax refund is due to the employer. This process can be quite intrusive on the employee. This is particularly so in IE where married spouses and civil partners are often jointly assessed and may have other sources of income or tax reliefs e.g., medical expenses that have nothing to do with the employer.

If there is a regular pattern of duties and HMRC or the Revenue Commissioners, as appropriate, are informed then a real time tax credit can be availed of so that the taxes being paid in the other jurisdiction are recognised as a credit on the payslip so to reduce the tax burden on the employee during the year.

However, in NI this real time tax credit is only available to NI employers who operate payroll in the UK and send workers to IE and are also required to deduct tax in IE ¹⁹⁰.

In IE, the real time double tax credit it is only available to IE resident employees employed by an IE employer under an IE employment contract¹⁹¹. So, a cross-border worker can often not avail of this credit in real time.

Where the pattern of duties in each jurisdiction are irregular and unpredictable from week- to-week e.g., delivery drivers, client visits, sales visits, healthcare visits etc. then it gets more difficult. The employer can either calculate the accurate split of duties for each payday or seek a direction from HMRC or the Revenue Commissioners, as appropriate, as to what proportionate split to use. If a direction is taken and the accurate split of duties turns out to be different an adjustment to reflect the accurate position needs to be made on a later payslip.

Where payroll is being operated by the employer then the social insurance contribution, NIC or PRSI, should be dealt with through the payroll. Depending on the percentage of duties carried

¹⁹⁰ EP appendix 5: net of foreign tax credit relief - HMRC (2016). *PAYE82001 - PAYE operation: international employments: EP appendix 5: net of foreign tax credit relief - HMRC internal manual* - GOV.UK. [online] [Www.gov.uk](https://www.gov.uk). Available at: <https://www.gov.uk/hmrc-internal-manuals/payee-manual/payee82001>

¹⁹¹ Tax and Duty Manual Part 42-04-62 - Double deduction of tax at source: credit through PAYE system for non-refundable foreign tax - Irish Tax and Customs (2023). *Tax and Duty Manual Double deduction of tax at source: credit through PAYE system for non-refundable foreign tax*. [online] Available at: <https://www.revenue.ie/en/tax-professionals/tdm/income-tax-capital-gains-tax-corporation-tax/part-42/42-04-62.pdf>

out in the jurisdiction of residency of the employee the full social security deduction may shift to that jurisdiction. *Please refer to the Social Security Chapter of this report.*

The downside of dual payroll is the complexity of administering it and the cost involved.

Payroll should be a basic function of a business that can be carried out by an administrator in a business. If it is too complex and must be outsourced, then that is an additional burden on the business.

The employee must file a tax return. That is a cost to the employee. If the employer pays for it the cost incurred is taxed as a Benefit in Kind on the employee.

Our engagement with stakeholders suggests that it is most often the larger employers, who have the resources to do so, are attempting to operate dual payroll. Even some of these have started it and then stopped it, no longer allowing remote or hybrid working cross-border from that point onwards.

“Having put considerable time and resources into exploring a dual payroll to facilitate remote working for cross-border workers it was deemed too costly and complicated from an employer’s perspective, in part due to duplication and complexity of HR policy and employee benefits such as pensions, private health and dental benefits. It was also deemed very restrictive for the employee who opted to go on payroll, who would then be fully remote working within IE. The option to pursue a dual payroll was deemed not feasible.”

Quote from Director of US Multi national based in NI employing cross-border workers.

2. Direct Payment Scheme

A Direct Payment Scheme is appropriate where normal PAYE procedures are unsuitable. Direct Payment and Specials Collections schemes have been a long-established way of a having a non-resident employer with no establishment in the UK or IE deal with the employment taxes and social security of an employee based in the jurisdiction.

An employee working from home will not normally constitute a tax presence for this purpose, unless the employee is holding their home out as a place of business for the employer, which would be unusual.

They are dealt with as follows in the two jurisdictions:

NI

An employer without a tax presence in the UK is not obliged to operate a PAYE scheme for income taxes although they may still be liable to operate NICs.

‘Tax presence’ has never been defined, but essentially the employer must have a UK address through which HMRC can, if necessary, take enforcement action.

HMRC can instead ask the **employee** to operate PAYE on their own earnings but cannot force the employee to do so if the employee objects within 30 days of the request (PAYE regulations (SI 2003/2682). Alternatively, the employee can choose to report their income on a self-assessment tax return.

For NICs, if the employer has a place of business anywhere within the EU or Switzerland, it must still operate both employee's and employer's NICS for its UK employees, even if it does not have a 'place of business' in the UK. A DPNI scheme can be set up for this purpose.

IE

The Special Collections section of the Department of Employment Affairs and Social Protection (*DEASP*) also operate a direct payments scheme. They can collect the PRSI contributions from the employee based in IE where the foreign employer has no establishment in IE and is not obliged to register with Revenue. The Special Collection system caters for a very narrow and specific employee group that fall outside of the normal employee group that have their PRSI collected by the Revenue Commissioners.

Employers whose registration for Special Collections has been accepted must remit PRSI payments monthly to the Department of Employment Affairs and Social Protection, as instructed by the Special Collections Section. The employee would then have to file a self-assessment tax return to return the taxes on their employment income.

The pros of the direct payment scheme all lean toward the employer in that it shifts responsibility to the employee. It has limited application though due to the requirement that the employer has no presence in the jurisdiction. This is a small island so when a business expands the nearest external market is NI or IE as appropriate.

These Direct Payment and Special Collections schemes predate the changes to Article 5 of the DTA on the definition of PE. If a PE exists in the jurisdiction a Direct Payment or Special Collection scheme cannot be used. Due to MLI changes to the DTA in 2017 the circumstances under which a PE could arise have broadened. This would reduce the number of occasions that the above direct payment schemes could be used. Detail is provided in the comments on PE below which detail the changes to the DTA.

3. Split the employees between different entities on opposite sides of the border

The idea behind this is that if you have, for example, two different companies on opposite sides of the border with both registered for payroll taxes then you can move the employees onto contracts of employment in their jurisdiction of residency. Then, as they are resident in the same jurisdiction as their employer, they can avail of the Article 15 DTA relief. They can still carry out duties on the other side of the border for up to 183 days before a dual payroll deduction would be required.

There are pros and cons to this as follows:

- c) It is not feasible for every business to have two bases. Some businesses are just too small to justify it.
- d) A change of contract is a change of terms of employment. From our research we found that, If the employee hasn't been fully informed of all the ramifications of the change and been afforded the opportunity to seek advice on whether it is beneficial to them or not, it opens the avenue for potential lawsuits against the employer.
- e) The change in contract to the opposite side of the border can have implications such as:
 - change in take home pay due to tax rates and band,
 - change in social security contributions and

- access to benefits e.g., child benefit,
- access to cross-border healthcare,
- difficulty with mortgage applications, and
- difficulty accessing health insurance and income protection insurance.

This list is not exhaustive! Please refer to other Chapters in this report for more detail.

4. Ignore the Problem

It would appear from our qualitative research that there could be a high level of non-compliance with the tax rules, both from an employer payroll and an employee tax return filing perspective. However, there appears to be no publicly available government led data that sets this out. Any evidence of non-compliance that we have encountered is based on lack of awareness of the rules but also that a large proportion find the rules too intricate to operate. There is a large concern around the legacy of this and providing a clear path to regularise it.

Small business generally does not have the inhouse resources. There is a dearth of suitably qualified and experienced people who can assist small businesses with dual payroll for example. The people who carry out this function tend to deal only with the large global companies whose employees travel extensively with work. This usually means big fees often out of the reach of a small business.

In a recent example of a large UK business with one employee based in IE they were quoted €1,000 per month, by one of the larger advice firms, to administer the dual payroll to cover the obligations in IE for the posted employee.

From our qualitative research we have found a rapidly increasing number of employees who are hiding the real location of their residence from their employers by using a relatives address in the employer jurisdiction their home address for employment purposes. This concealment, in most cases, is due to the fear of job loss should the employer realise they live across the border and the complications arising from working from home in those circumstances.

Based on our research there appears to be very low numbers of dual qualified tax advisers in the border region of IE who practice it daily. All other cross-border advisers are made up of bigger firms who have advisers who are qualified on one jurisdiction and work with a colleague in another office qualified in the other jurisdiction in separate offices working together to advise.

In one of our workshops a comment was made by a professional adviser that it sometimes took six people to solve a cross-border problem - an accountant, a tax adviser and a legal adviser from each jurisdiction. The associated costs involved are not sustainable for most SME businesses.

From this report authors' collective experience over the last 20 years, a lot of this non-compliance is reflective of the poor fit of the rules to the profile of the cross-border employers and cross-border workers on this island.

“Ironically, the non-compliance is the very reason the numbers of cross-border workers have in the past been grossly underestimated.”

Pat McCormick – President Dundalk Chamber of Commerce speaking at the Dundalk chamber of Commerce in conjunction with CBPES Seminar for Cross-border Employers and Workers 12/06/2024

Revenue and Department of Finance have referred to the small number of Transborder Worker Relief claims made on Form 11's in recent years in their Tax Strategy publications on the matter

of Transborder Workers Relief¹⁹² which is relevant to most of these cross-border workers travelling from IE to NI.

3. Permanent Establishment

Further detail on Permanent Establishment.

The terms “preparatory” or “auxiliary activities” are defined in the OECD commentary as:

- ‘preparatory’ (emphasizing the short-term duration of the relevant activity) and
- ‘auxiliary’ (being an activity “to support, without being part of, the essential and significant part of the activity of the enterprise as a whole”)

The MLI introduces an anti-fragmentation amendment to the DTA. All the activities of the same or closely related entities in the same jurisdiction must be considered. Now a company should look at the overall activity and ascertain whether the entire combination of the activities carried out in the jurisdiction is not of a preparatory/auxiliary character. If the overall picture constitutes complementary functions that are part of a cohesive business operation, then there is a PE.

When is the employee's home a fixed place of business of the employer has been considered at OECD level. To establish an employer's power of disposal, it is necessary that the home office is essential to carrying out work duties. If an employee can sell their home or terminate the lease without reference to the employer, the employer lacks control over the location. However, if the employer specifies a particular address for the home office, and the employee agrees, this could imply the necessary power of disposal.

In a recent case involving a managing director working partly from a home office in Denmark for personal reasons, the Danish tax authorities ruled that a PE was not triggered. Their decision was based on the absence of a fixed place of business at the employer's disposal in Denmark and the lack of control over the director's home office.

Aside from the home office issue, employees may trigger a PE through an “agency permanent establishment” (agency PE). This occurs when employees regularly engage in decision-making and negotiating and concluding sales contracts in another country. If the employee has authority to negotiate and conclude binding contracts, it may trigger an agency PE. In the Danish case, mentioned above the tax authorities justified their ruling that there was no PE since the managing director was not involved in sales activities in Denmark, and work in Denmark was occasional not continuous.

“Under Article 5(4) of the IE-UK DTA (similar to Article 5(5) of the OECD Model), the activities of a dependent agent such as an employee will create a PE for an enterprise if the employee habitually concludes contracts on behalf of the enterprise. Thus, to apply Article 5(4) in these circumstances, it will be important to evaluate whether the employee performs these activities in a “habitual” way. In such a scenario, this provision makes it possible to consider whether a dependent agent constitutes in

¹⁹² TSG 21 - 04 Trans-Border Workers' Relief - Department of Finance and Department of Social Protection (2021).

Budget 2022 Tax Strategy Group papers. [online] [www.gov.ie](https://www.gov.ie/en/collection/d6bc7-budget-2022-tax-strategy-group-papers/). Available at: <https://www.gov.ie/en/collection/d6bc7-budget-2022-tax-strategy-group-papers/>.

itself a PE (even in the absence of a fixed place of business). What would be of importance in this context is the authority of the employee to contractually commit their employer and the recurrence of this specific activity. While the issue of “dependent agent” PE has not changed fundamentally and is normally a separate question, less affected by the development of teleworking, there may be considerations that arise that may pose questions in relation to the taxation of those activities and the profits that flow from them.” *Source: Revenue Commissioners*

4. Government Service Workers - who is covered by Article 18?

Further Detail on Article 18 Government Service Workers.

The Security forces, or the Army would appear to fall within the remit of the Article. However other departments are not clear. For example, there has been caselaw (John Travers Vs Sean O’ Siochain (Inspector of Taxes) High Court Ireland 24 June 1994) in the past that held that a nurse providing services through the HSE was providing services to the public and not to government, albeit that her entire salary came from government funds. In that case Judge Carroll said of the term “*functions of a governmental nature*”: “*In my opinion it means “related to governing the country”, which would include the functions of the ordinary civil service and of local government administrators. It may go even further than that but would not include everyone paid out of the public purse. A dentist employed to pull a tooth is not there by discharging “functions of a governmental nature”. Likewise, a nurse providing nursing care is not, in my opinion, contemplated by the Article.*”

So, while teachers, who educate children (who are members of the public), are included within Article 18, nurses and dentists who provide their services to the public are not. Both teachers and nurses were lobbying to be included before the 1998 DTA amendments.

In a 1990 parliamentary debate in the UK as recorded in Hansard, the Financial Secretary of the UK Treasury said of the Government Services Article that services rendered to a State Agency, Board or Statutory Body are not rendered to the Government or Local Authority. Bodies such as the IDA and Enterprise Ireland in IE would not be included as they are State Agencies.

Up until the change in wording of Article 18 in the UK Ireland DTA in 1998, the sole taxing rights of an individual’s salary rested with the Contracting State for whom the services were rendered (Employer State). This was irrespective of where the duties were carried out. Even if the total duties were carried out in the State of residency of the individual, the taxing rights remained with the employer State. The changed wording brought in a residency and nationality question to the equation. So, the individual’s residency and nationality now must be determined before the taxing rights can be determined.

The Employer State retains the sole taxing rights subject to an exception. The exception is if the individual is a resident of the other State, then the Employer State will still retain sole taxing rights. If the individual became a resident of the other State solely for the purpose of exercising the governmental functions but is not a national of the other State. If he/she is a national of the other State, then the other State (the State of Residence of the Employee) has taxing rights.

How do you determine if someone is a national is set out in the DTA Article 3 (1) (c)?

(c) the term "nationals" means:

(i) in relation to Ireland, all citizens of Ireland and all legal persons, associations or other entities deriving their status as such from the laws in force in Ireland;

(ii) in relation to the United Kingdom, citizens of the United Kingdom and Colonies, British subjects under Section 2 of the British Nationality Act 1948 whose notices given under that Section have been acknowledged before the date of signature of this Convention, British subjects by virtue of Section 13 (1) or Section 16 of the British Nationality Act 1948 or Section 1 of the British Nationality Act 1965, and British protected persons within the meaning of the British Nationality Act 1948; and all legal persons, associations or other entities deriving their status as such from the law in force in the United Kingdom;

There are rights, known as the [‘birth right’ provisions, for the people of NI as established by the Belfast Agreement \(also known as the Good Friday Agreement \(“GFA”\)\)](#) in 1998. These include the birth right of the people of NI **to identify and be accepted as British or Irish, or both, and to hold both British and Irish citizenship.**

This adds an extra layer of complexity in unravelling the tax position of a NI resident who holds an IE government job. Notably, the latest version of the DTA has not referenced the NI GFA position on birth right in defining nationality.

The HMRC Manuals at DT9890 - provide two useful charts in determining whether government service income is chargeable in the UK or IE.

They set out the treatment of remuneration and pensions paid by or out of funds created by the UK or IE or a local authority in respect of services rendered to one or other of the two countries in the discharge of functions of a governmental nature (Article 18). It illustrates the differing treatment depending on the nationality of the individual receiving the remuneration or pension. The chart does not apply to remuneration or pensions paid in respect of services rendered in connection with any trade or business; the provisions of Article 15 (Remuneration) or Article 17 (Pensions) apply in these circumstances.

INCOME PAID FROM THE UNITED KINGDOM				
-	PAID TO A RESIDENT OF IRELAND WHO IS NOT AN IRISH NATIONAL	PAID TO A RESIDENT OF IRELAND WHO IS NOT AN IRISH NATIONAL	PAID TO A RESIDENT OF IRELAND WHO IS AN IRISH NATIONAL	PAID TO A RESIDENT OF IRELAND WHO IS AN IRISH NATIONAL
-	Chargeable in the UK	Chargeable in Ireland	Chargeable in the UK	Chargeable in Ireland
Government remuneration – services rendered in Ireland	On the full amount	Not chargeable	Not chargeable	On the full amount
Government remuneration – services rendered elsewhere	On the full amount	Not chargeable	On the full amount	Not chargeable
Government pension	On the full amount	Not chargeable	Not chargeable	On the full amount

<https://www.gov.uk/hmrc-internalmanuals/double-taxation-relief/dt9890>

So, for example a civil servant, a teacher or local authority worker covered by Article 18 of the DTA and working in NI are only taxed in NI on their salary if the duties are carried out in NI.

However, if the duties are rendered in (carried out in) IE e.g working from home and the individual **is a resident of IE and a national of IE** then they are chargeable in IE on the full amount and not chargeable in the UK.

INCOME PAID FROM IRELAND				
-	PAID TO A RESIDENT OF THE UK WHO IS NOT A UK NATIONAL	PAID TO A RESIDENT OF THE UK WHO IS NOT A UK NATIONAL	PAID TO A RESIDENT OF THE UK WHO IS A UK NATIONAL	PAID TO A RESIDENT OF THE UK WHO IS A UK NATIONAL
-	Chargeable in the UK	Chargeable in Ireland	Chargeable in the UK	Chargeable in Ireland
Government remuneration – services rendered in United Kingdom	Not chargeable	On the full amount	On the full amount	Not chargeable
Government remuneration – services rendered elsewhere	Not chargeable	On the full amount	Not chargeable	On the full amount
Government pension	Not chargeable	On the full amount	On the full amount	Not chargeable

<https://www.gov.uk/hmrc-internalmanuals/double-taxation-relief/dt9890>

So, for example a civil servant, a teacher or local authority worker covered by Article 18 of the DTA and working in IE are only taxed in IE on their salary if the duties are carried out in IE.

However, if the duties are rendered in (carried out in) NI (UK) e.g working from home and the individual **is a resident of NI (UK) and a national of NI (UK)** then they are chargeable in NI (UK) on the full amount and not chargeable in IE. That would indicate that dual payroll is not required for government service workers who work on a hybrid basis and are a resident and a national of NI.

In addition, if the employee is only taxed in country of residency through the payroll there should be no income tax self-assessment filing obligation if that is their only source of income. This makes it simpler for certain government service workers than it does for other cross-border workers.

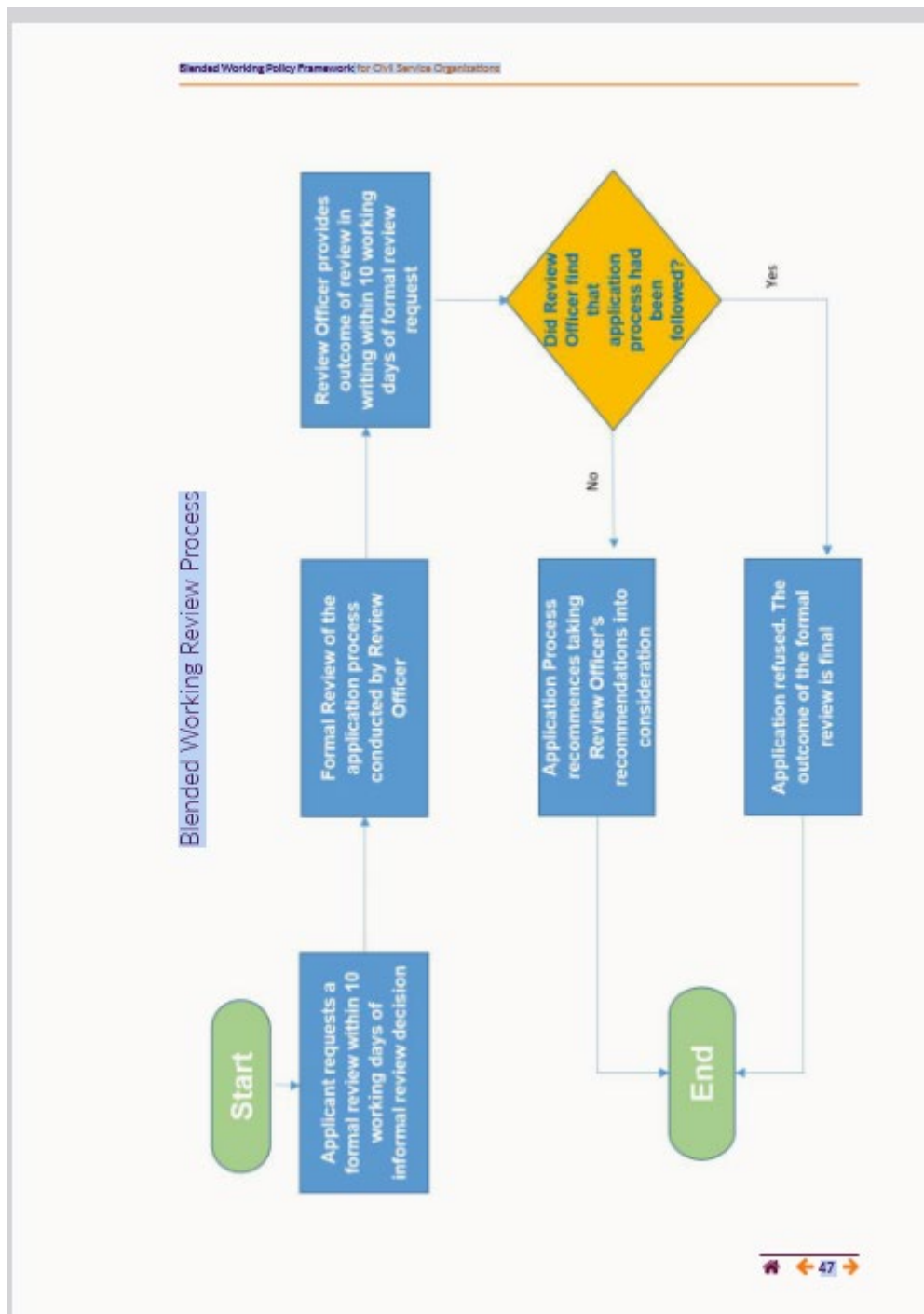
The move towards flexible working and Work from Home (WFH) in the Civil Service both sides of the border over the last few years means there are more and more instances where the duties of employment are being carried out on the opposite side of the border from the employer jurisdiction. This increase follows a trend identified in recent ESRI research¹⁹³. As discussed above, depending on the residency and nationality of the individual, this creates either an employer payroll requirement or a personal self-assessment obligation for the employee or both.

¹⁹³ McGuinness, S., Bergin, A. and Devlin, A. (2024). *A Study of Cross-Border Working on the Island of Ireland*. [online] Available at: <https://www.esri.ie/system/files/publications/WP781.pdf>

The Department of Public Expenditure and Reform in IE issued guidance for the Blended Working Policy¹⁹⁴ in March 2022. The sole reference to working in NI was as follows:

“With the exception of employees who reside in NI and those posted to specific roles or assignments such as a consulate/embassy, remote working outside of the State will not be facilitated. It should be noted that in respect of employees residing in NI, in some situations taxing rights on their employment income may arise in NI. In this scenario, such employees may be exposed to double taxation where employment duties are also performed in the State. Relief for any double taxation may be available under Ireland/ UK Double Tax Treaty. This area can be complex, with the individual facts and circumstances of each case having different implications so each Department or Office, or any employee affected, can seek advice from the Office of the Revenue Commissioners as to specific tax treatments, where required.”

¹⁹⁴ Department of Public Expenditure, NDP Delivery and Reform (2022). *Blended Working Policy Framework for Civil Service Organisations*. [online] [www.gov.ie](https://www.gov.ie/en/publication/da010-blended-working-policy-framework-for-civil-service-organisations/). Available at: <https://www.gov.ie/en/publication/da010-blended-working-policy-framework-for-civil-service-organisations/>.



There is a review procedure for requests for remote working included in the blended working document.
Source DPER

From our stakeholder engagement we know that there are government service workers, those working in civil service, in educational establishments and local authorities in both jurisdictions who normally fall within Article 18 but either work fully remotely or a hybrid basis from their home in opposite jurisdiction. None of those with whom we engaged were on a dual payroll, or on a payroll in country of residency and were unaware that there are tax implications arising from working from home. This indicates that even within government departments the rules have been difficult to follow, albeit that are less onerous to apply than those rules for non-government service jobs.

Our research suggests that around 40% of IE residents working in NI in the Top 10 sectors (making up 85% or 6,627 workers) working in the public sector if Human health and social work, Education and Public administration and defence sectors are combined.

When HMRC were asked how IE government service workers who are resident in NI and work from home in NI should be taxed they did not have any information available on the subject to share but did suggest that there would be both payroll tax and income tax filing obligations for employers and employee respectively. As we have noted above that depends on the nationality and residency of the employee, but perhaps only NI payroll is required.

HMRC when asked did not have disclosable data on how many NI government service workers who either work fully remotely or a hybrid basis from their home in IE, have been set upon a payroll in IE due to working from home in IE,

As part of our research, we asked the Revenue Commissioners how many Ireland government service workers have been set up on a payroll in NI due to working from home in NI? Their response indicated that they do not hold any statistics on the subject and each case is facts and circumstances driven. However, under general rules, the income of a non- IE sourced office or employment which attributable to the performance in the State of the duties of that employment is chargeable to income tax under Schedule E and is within the scope of the PAYE system of deduction at source, unless the income is relieved from IE tax under a DTA.

5. Bilateral Arrangements entered by other jurisdictions

Belgium

Belgium and Netherlands have agreed bilaterally in an agreement published in the Netherlands on 8 December 2023 and in the Belgian Official Gazette on 12 December 2023 regarding the (non-)recognition of a “home office PE” within the meaning of article 5, §1 of the current double tax treaty (between Netherlands and Belgium) in case of cross-border teleworking. The agreement includes reference to a 50% threshold i.e. where the employee spends less than 50% of their time carrying out duties in the State of Residence.

Spain

“Cross-border workers who are **resident in Spain** and travel daily to work in the border area in France: Under the terms of the double taxation agreement signed between Spain and France, wages paid to cross-border workers who are resident in Spain are only taxable in Spain.

Cross-border workers who are **resident in France** and travel daily to work in the border area in Spain: Under the terms of the double taxation agreement signed between Spain and France, wages paid to cross-border workers who are resident in France are only taxable in France and are therefore exempt from tax in Spain.”¹⁹⁵

¹⁹⁵ Administracion.gob.es. (2024). *Cross-border workers: Taxation - Taxation - Work and retirement - Citizens - Your rights and obligations in the EU - Tu espacio europeo - Punto de Acceso General*. [online] Available at: https://administracion.gob.es/pag_Home/en/Tu-espacio-europeo/derechos-obligaciones/ciudadanos/trabajo-jubilacion/fiscalidad/trabajadores-transfronterizos.html

France

“If you cross a border to work in another country, both your home country and your work country may claim the right to tax your income under their respective laws. That means there is the potential for double taxation.

However, the tax regime for cross-border workers stipulates that your wages are only taxable in your country of residence.

Other types of income you may earn are taxed pursuant to the applicable tax treaty.

Under labour legislation, cross-border workers have access to the same social and tax benefits as nationals, as well as access to healthcare. They are subject to the laws of the place of performance of the employment contract. For example, if you live in France and work in Belgium, you are subject to Belgian labour laws (as opposed to an expatriate working for their employer abroad but whose employment contract is established in France).

As a cross-border worker, you can keep your French social security coverage while also having basic coverage in your country of work.

Every country has a different definition of what constitutes a “border region”.

The countries covered by France’s cross-border tax regime are Germany, Switzerland (except for the canton of Geneva), Italy and Spain. There is no longer a cross-border regime between France and Belgium (see below).

For more information, see the [international tax treaties](https://impots.gouv.fr) available on impots.gouv.fr.

Switzerland

Switzerland is a confederation in which each canton sets its own tax rules. Whether you owe taxes in Switzerland or France depends on the canton in which you work.

Border region in France: no distance limit

Border region in Switzerland: cantons of Berne, Soleure, Bâle-Ville, Bâle-Campagne, Vaud, Valais, Neuchâtel and Jura

If you work in the canton of Vaud, Valais, Neuchâtel, Jura, Berne, Bâle-Ville, Bâle-Campagne or Soleure, you will be taxed in your country of residence (France for French residents), unless: you are a Swiss national and you are employed in the public sector; or you reside in the canton during the week or you make more than 45 overnight stays in Switzerland per year. In such cases, your income will be taxed at source in Switzerland.

If you work in Geneva or in any other Swiss canton, you will be taxed in your country of work (Switzerland).

As from 1 January 2008, a certificate of residence for tax purposes (form 2041-AS) has been required by the French and Swiss tax authorities. Once duly completed by you and your local tax office, it is to be provided to your employer at the time of hiring. Without this certificate, your employer will withhold tax at source from your pay.

Belgium

On 12 December 2008, an amendment to the tax treaty between France and Belgium was signed in Brussels, changing the tax regime applicable to wages and salaries earned by cross-border workers. If you became a cross-border worker on or after 1 January 2012, the cross-border tax regime does not apply to you, and you must pay taxes in Belgium.

If you became a cross-border worker before 1 January 2012, the cross-border regime will continue to apply and you can continue paying your taxes in France until 2033, provided:

- Your permanent residence remains in the French border region until 2033, without interruption
- You work in the Belgium border region
- You do not work outside the Belgian border region more than 30 days per year

You are considered a cross-border worker if you work in the Belgian border region and live in the French border region. The border region includes all towns/cities either fully within 20 km of the French-Belgian border (as measured by a straight line) or intersected by this 20-km limit on either side.

For the cross-border tax regime to apply, your permanent residence must be in France, and you must not have had your permanent residence in Belgium on 31 December 2008.

Germany

In principle, cross-border workers are subject to tax in only one country: their country of residence, provided they are recognised as a cross-border worker.

To be considered a cross-border worker:

- c) You must reside in Alsace (*département* 67 or 68) or Moselle (*département* 57)
- d) You must work for a German private-sector company
- e) The company must be located in the border region (within a straight 30-km line from the French-German border)
- f) You must return home at the end of each workday (with an allowance of up to 45 workdays/year)

If you are considered a cross-border worker, your income is taxable in France (i.e. you are considered a tax resident of France). However, since your German employer will make payroll deductions (tax withholding at source), you will need to apply for a waiver using form 5011, to be completed by yourself and your employer in triplicate:

- One copy to be filed with the local tax office in France
- One copy to be filed with the German tax authorities, which will validate it and issue your waiver
- One copy for your records

Italy

If you are considered a cross-border worker, you are liable for tax in your country of residence and not the country of the source of your income, as an exception to the general principle for the taxation of wages and salaries.

Appendix III – Tax Examples

Example: Extra Tax to pay in NI due to different tax bands, rates and currency exchange

Impact of Different Rates and Bands at Different Levels of Income (Exchange rate £0.853/€1)

IE Payroll Taxes						NI Resident						
Gross Income	IE Tax	IE USC,	PRSI	PR SI	Net	Gross Income		UK Tax	DTA Tax	Top up tax	Annual Cost	
Euro	Payable	Payable	Payable	Credit	Pay	Stg£		Payable	USC credit	Payable	£stg	
Monthly					IE	Monthly				NI		
1000	0	0.00	0		1000.00	853		0.00	0	0.00	0.00	
1050	0	5.99	0		1044.02	896		0.00	-5.11	0.00	0.00	
1200	0	8.99	0		1191.02	1024		0.00	-7.66	0.00	0.00	
1300	0	10.99	0		1289.02	1109		12.28	-9.37	2.91	34.92	
1350	0	11.99	0		1338.02	1152		20.81	-10.22	10.59	127.04	
1400	0	12.99	0		1387.02	1194		29.34	-11.08	18.26	219.17	
1500	0	14.99	0		1485.02	1280		46.40	-12.78	33.62	403.41	
1526	0	15.51	60.93	*	1449.57	1302		50.84	-13.23	37.61	451.32	
1563	0	16.24	56.31	*	1489.96	1333		57.06	-13.85	43.21	518.57	
1600	7.50	16.99	51.56	*	1523.96	1365		63.46	-20.89	42.57	510.89	
1700	27.50	18.99	38.89	*	1614.63	1450		80.52	-39.65	40.87	490.42	
1750	37.50	19.99	32.56	*	1659.96	1493		89.05	-49.03	40.02	480.18	
1800	47.50	20.99	26.22	*	1705.29	1535		97.58	-58.42	39.16	469.95	
1808	49.05	21.14	25.24	*	1712.31	1542		98.90	-59.87	39.03	468.36	
2000	87.50	24.99	80.00		1807.52	1706		131.70	-95.95	35.75	429.00	
2800	247.50	57.32	112.00		2383.18	2388		268.18	-260.01	8.17	98.04	
3000	287.50	66.32	120.00		2526.18	2559		302.30	-301.81	0.49	5.91	
3100	307.50	70.82	124.00		2597.68	2644		319.36	-322.71	-3.35	no top up required	
3150	317.50	73.07	126.00		2633.43	2687		327.89	-333.15	-5.26	no top up required	
3200	327.50	75.32	128.00		2669.18	2730		336.42	-343.60	-7.18	no top up required	

3500	387.50	88.82	140.00		2883.68	2986		387.60	-406.30	-18.70	no top up required
3501	387.90	88.86	140.04		2884.20	2986		387.77	-406.68	-18.91	no top up required
3600	427.50	93.32	144.00		2935.18	3071		404.66	-444.26	-39.60	no top up required
3800	507.50	102.32	152.00		3038.18	3241		438.78	-520.18	-81.40	no top up required
4000	587.50	111.32	160.00		3141.18	3412		472.90	-596.09	-123.19	no top up required
4200	667.50	120.32	168.00		3244.18	3583		507.02	-672.01	-164.99	no top up required
4400	747.50	129.32	176.00		3347.18	3753		541.14	-747.93	-206.79	no top up required
4600	827.50	138.32	184.00		3450.18	3924		575.26	-823.84	-248.58	no top up required
4800	907.50	147.32	192.00		3553.18	4094		609.38	-899.76	-290.38	no top up required
4912	952.33	152.36	196.48		3610.90	4190		628.67	-942.30	-313.63	no top up required
4924	957.02	152.89	196.95		3616.94	4200		632.67	-946.75	-314.08	no top up required
5862	1332.17	195.96	234.47		4099.08	5000		952.67	-1303.49	-350.82	no top up required
8792	2504.50	430.42	351.70		5505.88	7500		1952.67	-2503.49	-550.82	no top up required
11723	3676.83	664.89	468.93		6912.67	10000	* * * * *	3286.00	-3703.49	-417.49	no top up required
14654	4849.16	899.36	586.17		8319.47	12500		4371.66	-4903.49	-531.82	no top up required
16413	5552.56	1040.04	656.51		9163.55	14000	* * * * *	5046.67	-5623.49	-576.82	no top up required

* After PRSI credit of up to €12

** move into higher rate band 40% IE

*** move into higher rate band 40% NI

**** Full TBWR assuming all conditions met and separate treatment from spouse

*****For income over £100,000 UK Personal Allowance is reduced by goes down by £1 for every £2 that your income is above £100,000.

***** move into additional rate band 45% NI at £150,000

Example: Extra Tax to pay in IE due to different tax bands, rates and currency exchange if TBWR not available

Impact of Different Rates and Bands at Different Levels of Income (Exchange Rate £0.853/€1)

NI Payroll Taxes					IE Resident								Hybrid Worker
Gross Income		NI Tax	NIC	Net	Gross Income		IE Tax & USC	DTA Tax	Tax after	Top up tax	Annual Cost	Annual Cost	3 days in IE
Stg£		Payable	Payable	Pay	Euro		Payable	credit	DTA credit	payable	Euro	Euro	2 days in NI
Monthly				NI	Monthly					in IE	without TWBR	with TWBR	Loss of TBWR

853		0.00	0	853.00	1000		0.00	0.00	0.00	0.00	0.00	0	0
896		0.00	0	895.65	1050		5.99	0.00	5.99	5.99	71.82	0	43.09
1024		0.00	0	1023.60	1200		8.99	0.00	8.99	8.99	107.82	0	64.69
1109		12.28	4.87	1091.75	1300		10.99	- 10.99	0.00	0.00	0.00	0	0
1152		20.81	8.28	1122.46	1350		11.99	- 11.99	0.00	0.00	0.00	0	0
1194		29.34	11.70	1153.16	1400		12.99	- 12.99	0.00	0.00	0.00	0	0
1280		46.40	18.52	1214.58	1500		14.99	- 14.99	0.00	0.00	0.00	0	0
1302		50.84	20.29	1230.55	1526		15.51	- 15.51	0.00	0.00	0.00	0	0
1333		57.06	22.79	1252.97	1562.5		16.24	- 16.24	0.00	0.00	0.00	0	0
1365		63.46	25.34	1276.00	1600		24.49	- 24.49	0.00	0.00	0.00	0	0
1450		80.52	32.17	1337.41	1700		46.49	- 46.49	0.00	0.00	0.00	0	0
1493		89.05	35.58	1368.12	1750		37.50	- 37.50	0.00	0.00	0.00	0	0
1535		97.58	38.99	1398.83	1800		47.50	- 47.50	0.00	0.00	0.00	0	0
1542		98.90	39.52	1403.58					0.00	0.00	0.00	0	0
1706		131.70	52.64	1521.66	2000		87.50	- 87.50	0.00	0.00	0.00	0	0

2388		268.1 8	107. 23	2012. 99	2800		247.50	- 247.5 0	0.00	0.00	0.00	0	0
2559		302.3 0	120. 88	2135. 82	3000		287.50	- 287.5 0	0.00	0.00	0.00	0	0
2644		319.3 6	127. 70	2197. 24	3100		307.50	- 307.5 0	0.00	0.00	0.00	0	0
2687		327.8 9	131. 12	2227. 94	3150		317.50	- 317.5 0	0.00	0.00	0.00	0	0
2730		336.4 2	134. 53	2258. 65	3200		327.50	- 327.5 0	0.00	0.00	0.00	0	0
2986		387.6 0	155. 00	2442. 90	3500		387.50	- 387.5 0	0.00	0.00	0.00	0	0
2986		387.7 7	155. 07	2443. 51	3501	* *	387.90	- 387.7 7	0.13	0.00	1.55	0	0
3071		404.6 6	161. 82	2504. 32	3600		427.50	- 404.6 6	22.84	22.84	274.08	0	164.45
3241		438.7 8	175. 47	2627. 15	3800		507.50	- 438.7 8	68.72	68.72	824.64	0	494.78
3412		472.9 0	189. 12	2749. 98	4000		587.50	- 472.9 0	114.60	114.6 0	1375.20	0	825.12
3583		507.0 2	202. 77	2872. 81	4200		667.50	- 507.0 2	160.48	160.4 8	1925.76	0	1155.46
3753		541.1 4	216. 42	2995. 64	4400		747.50	- 541.1 4	206.36	206.3 6	2476.32	0	1485.79
3924		575.2 6	230. 06	3118. 48	4600		827.50	- 575.2 6	252.24	252.2 4	3026.88	0	1816.13
4094		609.3 8	243. 71	3241. 31	4800		907.50	- 609.3 8	298.12	298.1 2	3577.44	0	2146.46
4190	***	628.6 7	335. 14	3226. 192	4912		952.33	- 628.6 7	323.66	323.6 6	3883.94	0	2330.37
4200		632.6 7	335. 34	3231. 992	4924		957.02	- 632.6 7	324.35	324.3 5	3892.22	0	2335.33
5000		952.6 7	351. 34	3695. 992	5862		1332.17	- 952.6 7	379.50	379.5 0	4553.97	0	2732.38

7500		1952.67	401.34	5145.992	8792		2504.50	- 1952.67	551.83	551.83	6621.97	0	3973.18
10000	**** *	3286.00	451.34	6262.66	11723		3676.83	- 3286.00	390.83	390.83	4689.98	0	2813.99
12500		4371.66	501.34	7627.00	14654		4849.16	- 4371.66	477.50	477.50	5730.01	0	3438.01
14000	**** **	5046.67	531.34	8421.992	16413		5552.56	- 5046.67	505.90	505.90	6070.75	0	3642.45

* After PRSI credit of up to €12

** move into higher rate band 40% IE

*** move into higher rate band 40% NI

**** Full TBWR assuming all conditions met and separate treatment from spouse

*****For income over £100,000 UK Personal Allowance is reduced by goes down by £1 for every £2 that your income is above £100,000.

***** move into additional rate band 45% NI at £150,000

Appendix IV – Further Detail on Pensions

1. Tax Relief on Employee Pension Contributions

NI Resident Cross-border Worker

An NI resident worker who works in IE and who is a member of an occupational pension scheme or will become a member of the proposed auto enrolment scheme, to be introduced in IE in 2025, should return their worldwide income to HMRC. They cannot claim tax relief in NI on their employee contributions unless they fall into one of the limited reliefs.

IE Resident Cross-border Worker

An IE resident worker who works in NI and who is a member of an occupational or workplace auto enrolment scheme should return their worldwide income to the Revenue Commissioners. They cannot claim tax relief in Ireland on their employee contributions unless they fall into one of the limited reliefs.

The limited reliefs only apply to a posted worker or someone who has changed residence and continues to contribute to the former retirement plan.

In the cases of those who commute to work across the border these reliefs do not apply.

2. Taxation of Employer Contributions on the Employee

Private Sector

IE Resident Cross-border Worker

The contribution that a private NI employer makes to an auto enrolment pension or occupational pension set up in NI on behalf of an IE resident employee can be taxed as extra salary on the employee in IE. The employer contribution is in most cases, with only a couple of exceptions, taxable under S777 TCA 1997 as additional salary, as it doesn't fall within the exclusions set out in legislation.

There are exclusions from this charge under S778 TCA 1997¹⁹⁶, but these only apply to

- a) an approved scheme, (approved by the Revenue Commissioners)
- b) a statutory scheme, (a retirement benefits scheme established by or under any enactment (IE legislation))
- or
- c) a scheme set up by a Government outside the State for the benefit, or primarily for the benefit, of its employees.

The only exceptions to this are where the salary is either not chargeable to tax in IE, which would be highly unusual, or the worker is not domiciled in IE and does not remit the salary income to IE. In the authors experience most cross-border workers need to remit their salary to their home jurisdiction. The recent ESRI survey on Cross-border Working on the Island of Ireland bears this out as it found that 55%

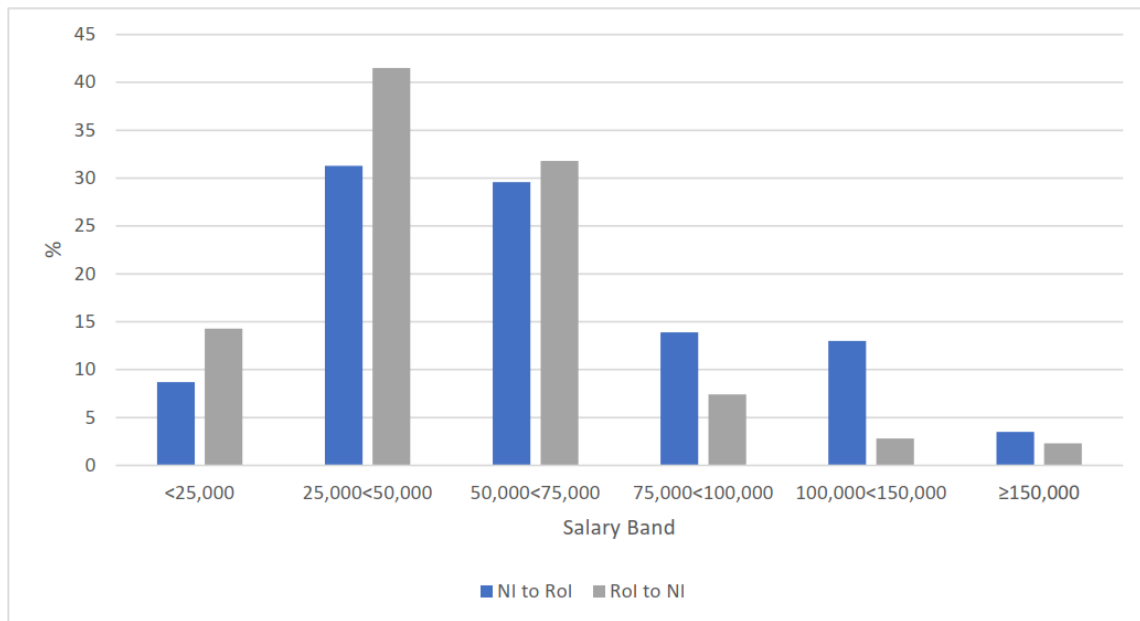
¹⁹⁶ Chartered Accountants Ireland (2024). No 39 of 1997, Section 778, Exceptions to charge to tax under section 777.

[online] Charteredaccountants.ie. Available at:

<https://www.charteredaccountants.ie/taxsourcetotal/1997/en/act/pub/0039/sec0778.html>

of cross-border workers travelling from IE to NI earned less than €50,000. Therefore, unless independently wealthy, they might need to remit their salary to live on.

Figure 3: Salary (Euros), % of Survey Respondents



Notes: Figures were given in the survey in euros and sterling for these figures using the exchange rate on the day the survey went live.

Source ESRI Working Paper No. 781 June 2024

Private Sector

NI Resident Cross-border Worker

NI Resident employees who are members of an IE occupational pension are not taxed in NI on the Employer contributions by virtue of S307 ITEPA 2003 (UK).

An individual can still be liable to UK tax charges where the employee contributions have exceeded the annual allowance or where the member has received a payment from the scheme.

There is no clarity yet whether S307 ITEPA 2003 will apply to exempt from UK tax on the employer and State contributions to the proposed IE auto enrolment scheme to be introduced in IE in 2025.

Government Service Article 18 Cross-border Workers

IE Resident

Government service workers pensions are being treated more favourably by being recognised on an equivalency basis under subsection (c) of S778 TCA 1997. Therefore, the NI employer contributions to them for an IE resident worker are not taxed in IE by virtue of S778 (1) (c) TCA 1997.

NI Resident

NI Resident Employees who are member of an IE government pension are not taxed in NI on the Employer contributions by virtue of S307 ITEPA 2003 (UK).

This shows a clear advantage which treats government service workers more favourably than private sector workers.

Pensions savings schemes are available in both jurisdictions.

3. The Current Position on Pensions and Reliefs

1. IE Current Position

IE along with many other OECD countries offers tax relief at certain points of the savings cycle (at deduction, at point of investment) and taxes at drawdown. This is referred to as 'EET' referring to the 'Exempt (Contributions), Exempt (Return on Investment), Taxed (Pension Income)'. According to the OECD, 'EET' is the most commonly used system for taxation of pension savings, in use in 20 of the 42 countries included in their 2018 study (including IE). IE's form of EET is not 'pure'. For example.

1. While pension contributions by individuals or employees are relieved for the purpose of income tax (within limits) (S774(7) TCA 1997 IE), employee PRSI and USC liabilities remain.
2. Pension income drawn down in retirement is subject to the USC and income tax, but not employee or employer PRSI.
3. Investment growth of pension funds is not taxed (no stamp duty, CGT, VAT, exit tax). There was a one-off stamp duty levied on the total value of investments (assets) over the period 2011-2015 to fund the Jobs Initiative.
4. A significant proportion of the benefits taken at retirement are allowed as a tax-free capital payment¹⁹⁷.

For workers resident and working in IE a pension can be a very good investment due not only to the growth of the fund, but the tax reliefs associated with pensions¹⁹⁸. There is an age-related earnings percentage limit for tax relief on pension contributions¹⁹⁹.

IE does provide for a PRSA which is a flexible, personally owned pension that allows a person to save for retirement and is based on the amount of payments or 'contributions' paid in and the investment returns earned on those contributions. It can be taken out regardless of employment status. As PRSAs are flexible you can increase, decrease or stop your contributions at any time without any charge or penalty. PRSAs are portable; you can carry your PRSA from job to job or transfer it to another PRSA provider without any charge or penalty.

¹⁹⁷ Department of Finance (2020). *Report of the Interdepartmental Pensions Reform and Taxation Group*. [online] [Www.gov.ie](https://www.gov.ie/en/publication/98d7f-report-of-the-interdepartmental-pensions-reform-and-taxation-group/). Available at: <https://www.gov.ie/en/publication/98d7f-report-of-the-interdepartmental-pensions-reform-and-taxation-group/>

¹⁹⁸ The Pensions Authority (2024). *What are my pension options? A guide on pension provision and the types of pension plans you can use to save for your retirement*. [online] Available at: <https://pensionsauthority.ie/wp-content/uploads/2024/03/What-are-my-pension-options-1.pdf>.

¹⁹⁹ Irish Tax and Customs (2023). *Tax relief limits on pension contributions*. [online] www.revenue.ie. Available at: <https://www.revenue.ie/en/jobs-and-pensions/pension/relief/tax-relief-limits.aspx>.

If an employer does not provide access to an occupational pension scheme or if certain restrictions apply to their scheme, then it must provide access to a standard PRSA.²⁰⁰ The Finance Act 2022²⁰¹ introduced more flexibility to the rules for PRSAs.

‘The recent changes in the 2022 Finance Act have been the most extreme developments since the inception of the ARF in 1999. With the benefits and future amendments noted above, the current PRSA landscape is only going to become more popular and inevitably result in the PRSA becoming the contract of choice for both individual and business.’

Source: <https://thefmrreport.ie/prsa-changes/> Author: Hugh Maloney, FCA, CFP®, QFA, SIA, Managing Director of Quinlan Financial.

Contributions by the employer to a PRSA are generally eligible for tax relief if they are incurred wholly and exclusively for the purposes of the trade. The Employer contributions are usually not taxed on the employee as a benefit in kind if they are made to an approved scheme.

On Drawdown

Generally, up to 25% of the fund can be taken as a lump sum and the first €200,000 is tax free, the next €300,000 is taxed at 20% and the excess over €500,000 is taxed at 40%²⁰²²⁰³.

2. NI Current Position

There are two main types of pensions in NI/UK: Defined Contribution pension schemes and Defined Benefit Schemes (Final Salary). These are usually either personal or stakeholder pensions which are (workplace) arranged by the employer or private pensions arranged by the worker. Money paid in by both worker and employer is put into investments (such as shares) by the pension provider.

The worker gets tax relief on their contributions. Chapter 4 of the Finance Act 2004 sets out the tax relief and exemptions for registered pension schemes²⁰⁴. The maximum amount of contributions²⁰⁵ on which a member can have relief in any tax year is potentially the greater of:

- the ‘basic amount’ - currently £3,600, or
- the amount of the individual’s relevant UK earnings that are chargeable to income tax for the tax year.

²⁰⁰ The Pensions Authority (2024a). *Personal retirement savings accounts (PRSAs) - pensionsauthority*. [online] pensionsauthority. Available at: https://pensionsauthority.ie/prsa_providers/prsas/

²⁰¹ Irish Tax and Customs (2024). *Tax and Duty Manual Pensions Manual -Chapter 24 Personal Retirement Savings Accounts Pensions Manual -Chapter 24*. [online] Available at: <https://www.revenue.ie/en/tax-professionals/tm/pensions/chapter-24.pdf>

²⁰² The Pensions Authority (2023). *Lump sums - pensionsauthority*. [online] pensionsauthority. Available at: https://pensionsauthority.ie/lifecycle/benefits_payable_on_retirement/lump_sums/

²⁰³ Irish Tax and Customs (2021). *Taxation of retirement lump-sums*. [online] Revenue.ie. Available at: <https://www.revenue.ie/en/jobs-and-pensions/pension/private/retirement-lump-sums.aspx>

²⁰⁴ Legislation.gov.uk. (2011). *Finance Act 2004*. [online] Available at: <https://www.legislation.gov.uk/ukpga/2004/12/contents>.

²⁰⁵ HMRC (2015). *PTM044100 - Pensions Tax Manual - HMRC internal manual - GOV.UK*. [online] www.gov.uk. Available at: <https://www.gov.uk/hmrc-internal-manuals/pensions-tax-manual/ptm044100>.

Other considerations around pension reliefs include:

- The relevant earnings are subject to an annual limit (annual allowance 2024/25 £60,000) ²⁰⁶.
- How the worker claims the relief depends on the structure of the pension and the amount they are contributing²⁰⁷.
- The employer also gets tax relief for contributions that they make to the employees' pension if they are wholly and exclusively incurred for the purposes of the trade.
- The worker is not usually taxed on the employer contribution as a benefit in kind.
- The Act highlights that contributions paid by a member's employer do not qualify for tax relief for the member.
- No liability to income tax arises to an individual member in respect of earnings where the individual's employer makes contributions into a registered pension scheme.

HMRC provides a list of pension schemes which have met conditions to be recognised as overseas pension scheme (QROPS)²⁰⁸. These pension schemes can receive the transfer of UK pension benefits.

On Drawdown

Usually up to 25% of pension pot can be taken as a tax-free lump sum on retirement but the most that be taken tax free is £268,275²⁰⁹.

4. Tax Reliefs for Employee Pension Contributions

NI

Domestic UK tax rules allow relevant UK individuals and active members, as defined in Section 189 Finance Act 2004, to avail of tax relief on their pension contributions. This covers the treatment of resident and non-resident members as set out in the HMRC pension tax manual²¹⁰.

These rules means that an IE resident cross-border worker who has not been resident in the UK in the previous 5 years is not able to avail of the tax relief on pension contributions under domestic UK legislation since they are not classed as 'a relevant UK individual'.

²⁰⁶ GOV.UK. (2024). *Tax on your private pension contributions*. [online] Available at: <https://www.gov.uk/tax-on-your-private-pension/annual-allowance>.

²⁰⁷ GOV.UK. (2024). *Tax on your private pension contributions*. [online] Available at: <https://www.gov.uk/tax-on-your-private-pension/pension-tax-relief>.

²⁰⁸ GOV.UK. (2023). *Check the recognised overseas pension schemes notification list*. [online] Available at: <https://www.gov.uk/guidance/check-the-recognised-overseas-pension-schemes-notification-list>.

²⁰⁹ GOV.UK. (2014). *Tax on your private pension contributions*. [online] Available at: <https://www.gov.uk/tax-on-your-private-pension/lump-sum-allowance>.

²¹⁰ GOV.UK (2015). *PTM044100 - Contributions: tax relief for members: conditions - HMRC internal manual - GOV.UK*. [online] Wwww.gov.uk. Available at: <https://www.gov.uk/hmrc-internal-manuals/pensions-tax-manual/ptm044100#ruki>

When it comes to autoenrolment, an IE resident can be auto enrolled into the UK AE pension as they are not prohibited from doing so²¹¹. It is unclear how many NI employers have included IE residents in NI occupational and workplace pension schemes and allowed tax relief through the payroll. The research has found several cases where relief has been given through the payroll since the introduction of the UK AE pension in 2012.

Specific Cross-border Tax Reliefs which Apply in Each Jurisdiction

There are some specific tax reliefs for pension contributions in a cross-border scenario. However, these do not generally apply to a cross-border worker who lives in one jurisdiction and works in the other.

a) Double Taxation Relief (NI & IE)

Article 17A of the Double Taxation Treaty (“DTA”) between IE the UK which applies to workers posted by the employer across the border who were not resident in the posting jurisdiction before the posting and continue to contribute to the pre-existing scheme. The current Article 17A was only added to the treaty in 1994.²¹² It has its limitations. The reciprocal arrangement as described in the Protocol linked above worked smoothly for a time as it recognised the equivalency of the pension scheme structures on both sides of the border. Article 17A was added to the DTA but it only deals with posted (seconded) workers who continue to contribute to the existing pension scheme that they previously contributed to before they were posted.

This relief does not apply where an employee who is resident on the opposite side of the border from where the employment is based.

b) Migrant Member Relief (NI & IE)

Tax relief is contained in sections 787M – 787N of TCA 1997 (Ireland) and Section 188 and Schedule 33 Finance Act 2004 (NI) which applies to individuals who change residency across the border and continue to contribute to the pre-existing scheme.

An individual could get migrant member relief on contributions to an overseas pension scheme if they moved to NI or IE and:

- they were paying into the scheme in the other jurisdiction before they moved
- they were receiving tax relief on those contributions
- the pension scheme is a qualifying overseas pension scheme (QOPS) in the UK, or is approved by the Revenue Commissioners in IE

²¹¹ Royal London (2024). *Contributions to registered schemes for overseas individuals*. [online] Royal London for advisers. Available at: <https://adviser.royallondon.com/technical-central/pensions/contributions-and-tax-relief/contributions-to-registered-schemes-for-overseas-individuals/>

²¹² PROTOCOL BETWEEN THE GOVERNMENT OF IRELAND AND THE GOVERNMENT OF THE UNITED KINGDOM AMENDING THE CONVENTION FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND CAPITAL GAINS SIGNED AT DUBLIN ON 2 JUNE 1976, AS AMENDED BY THE PROTOCOL SIGNED AT DUBLIN ON 28 OCTOBER 1976. (1995). Available at: <https://www.revenue.ie/en/tax-professionals/documents/double-taxation-treaties/u/uk-protocol-1995.pdf>

To get approved as a QOPS, the scheme must report certain information to HMRC and likewise in IE to be approved as a relevant overseas pension scheme in IE for the purposes of Migrant Member relief the scheme must report certain information to the Revenue Commissioners.

In IE the Revenue Commissioners will approve occupational pension schemes provided to IE employers and employees by pension providers based in the EU or UK provided they are operated or managed by an Institute for Occupational Retirement Provision within the meaning of EU Directive 2016/2341 or in relation to the UK equivalent supervisory and regulatory provisions.

Therefore, an equivalency of pensions is recognised for the purposes of this migrant member relief.

This relief is irrelevant to an employee who is resident on the opposite side of the border from where the employment is based.

c) Transitional Corresponding Relief (NI only)

An individual can get tax relief on their pension contribution under Paragraph 51 schedule 36 Finance Act 2004 (UK). Where contributions to overseas schemes were paid by the individual and relieved in the tax year 2005 to 2006, both individuals and employers may continue to claim tax relief on contributions made to the same, or in some cases replacement, overseas pension scheme if certain conditions are met. This arises where there has been a block transfer from the overseas pension scheme which the individual contributed in the 2005 to 2006 tax year because of a company takeover or reorganisation.

This relief only applies in very limited circumstances and is generally not relevant to the cross-border worker who is resident on the opposite side of the border to where the employment is based.

The above three tax reliefs only operate in very specific circumstances. For those individuals, who are resident on one side of the border and are employed on the other side, there is no specific tax relief for pension contributions which applies to them.

5. Tax Treatment of Employer Contributions

The Employer in NI²¹³ or IE²¹⁴ should get tax relief on their contributions to the employees' pension scheme provided the expense is incurred wholly and exclusively for the purposes of their trade. Key issues on this from the perspective of cross-border workers and employers are as follows

²¹³ HMRC (2024). *PTM043200 - Contributions: tax relief for employers: conditions - HMRC internal manual - GOV.UK*. [online] www.gov.uk. Available at: <https://www.gov.uk/hmrc-internal-manuals/pensions-tax-manual/ptm043200>.

²¹⁴ Chartered Accountants Ireland (2020). *No 39 of 1997, Section 774, Certain approved schemes: exemptions and reliefs*. [online] Charteredaccountants.ie. Available at: <https://www.charteredaccountants.ie/taxsourcetotal/1997/en/act/pub/0039/sec0774.html>

6. Portability of Pensions Cross-border

Cross-border workers can end up with several small pension pots in both jurisdictions where they have changed jobs and crisscrossed across the border from one job to another. At some stage individuals might review their pension provision and may want to move a pension pot if, for example:

- They are changing job
- Their pension scheme is being closed or wound up
- They want to transfer to a better pension scheme
- They have pensions from more than one employer and want to bring them together
- They are moving across the border
- They are moving across the border and want to move your pension to a scheme in that country.

Transfer of Pension from NI to IE

Before a NI pension is moved to IE there are a few things to consider. The overseas scheme that the worker wants to transfer their pension savings to must be a 'qualifying recognised overseas pension scheme (QORPS)'.²¹⁵ There is a list on HMRC's website of schemes that satisfy the QORPS conditions.²¹⁶ If it is not, their NI or IE pension scheme may refuse to make the transfer. If it is refused, they may have to pay tax at their marginal rate on the transfer usually 40%.

Two recent rulings of the European Courts of Justice (ECJ) (C-360/22 and C-459/22), the Court of Justice of the European Union (CJEU) has decided that the Dutch requirements for a tax neutral transfer of pension entitlements are in breach of EU law. Under Dutch tax rules, a tax-free transfer of an accrued pension to a foreign pension fund is only permitted if the foreign pension fund meets several criteria. These criteria are derived from Dutch regulatory conditions that apply to Dutch pension funds and qualifying pension schemes. Only where the foreign pension fund to which the pension is transferred meets all criteria, a tax-free transfer is possible.

The CJEU ruled that the Netherlands failed to comply with its obligations under the free movement of workers (Article 45 TFEU). According to the CJEU, the Dutch rules limit Dutch workers to move to another Member State and contribute their Dutch pension rights to a foreign pension scheme. This makes Dutch workers also unattractive for foreign employers. The CJEU rejected the Netherlands' justification for the restrictions and concluded that the legislation goes beyond what is necessary and therefore the restriction is not a proportional measure.

It is not yet clear how ECJ rules will apply going forward. However, the UK has legislated to keep some EU directives on pensions²¹⁷.

²¹⁵ GOV.UK. (2024). *Transferring your pension*. [online] Available at: <https://www.gov.uk/transferring-your-pension/transferring-to-an-overseas-pension-scheme>.

²¹⁶ GOV.UK. (2023). *Check the recognised overseas pension schemes notification list*. [online] Available at: <https://www.gov.uk/guidance/check-the-recognised-overseas-pension-schemes-notification-list>.

²¹⁷ Travers Smith (2024). *Retained EU law: 10 key questions*. [online] Travers Smith. Available at: <https://www.traverssmith.com/knowledge/knowledge-container/retained-eu-law-10-key-questions/>.

Since the more recent changes in 2024²¹⁸ it is not entirely clear whether a transfer of a UK pension to IE will be exempted from tax under the retained EU provisions. In that case it may be preferable to register the overseas pensions as a QORPS with HMRC before application for the transfer²¹⁹ is made.

Transfer of Pension from IE to NI

Occupational Pension Schemes and Buyout Bonds can be transferred without a tax charge to other jurisdictions including the UK²²⁰. However, for PRSAs (the preferred pension vehicle to increase pension coverage for most tax payers²²¹) cannot be transferred without significant tax consequences.

The PRSA provider must apply PAYE Section 787G (1) Taxes Consolidation Act (TCA) 1997²²² in IE. This means a net fund will be transferring to a gross pension arrangement in the UK. Having already suffered at, say, 52% tax in IE it will therefore be taxed again in NI on drawdown. That is double taxation. Hence PRSAs are not being transferred.

This would appear to present a challenge to cross-border workers holding PRSAs.

7. Drawdown of Pensions Cross-border

a. IE Pensions

The options for defined contribution pension income after retirement are that the pension fund (after withdrawal of lump sum) is invested in an annuity or an Approved Retirement Fund (ARF), or they can take full drawdown and be taxed on it or more recently they can have a whole of life PRSA. As the annuity dies with the holder and does not form part of their estate when they pass away, ARFs have been quite a popular option instead of an annuity. The whole of life PRSA changes are more recent and their uptake will be important to monitor.

²¹⁸ Burrell, S. and Muddimer, K. (2023). *The Retained EU Law (Revocation and Reform) Bill - What could it mean for pensions?* [online] www.shoosmiths.com. Available at: <https://www.shoosmiths.com/insights/articles/the-retained-eu-law-revocation-and-reform-bill-what-could-it-mean-for-pensions>.

²¹⁹ HMRC (2014). *Pension schemes: member information (APSS263)*. [online] GOV.UK. Available at: <https://www.gov.uk/government/publications/pension-schemes-member-information-apss-263>

²²⁰ Irish Tax and Customs (2023). *Tax and Duty Manual Pensions Manual -Chapter 13 Transfer Payments Pensions Manual -Chapter 13*. [online] Available at: <https://www.revenue.ie/en/tax-professionals/tdm/pensions/chapter-13.pdf>.

²²¹ The Pensions Authority (2024). *Personal retirement savings accounts (PRSAs) - pensionsauthority*. [online] pensionsauthority. Available at: https://pensionsauthority.ie/prsa_providers/prsas/.

²²² Chartered Accountants Ireland (2016). *No 39 of 1997, Section 787G, Taxation of payments from a PRSA*. [online] Charteredaccountants.ie. Available at: <https://www.charteredaccountants.ie/taxsourcetotal/1997/en/act/pub/0039/sec0787G.html>.

ARFs

ARFs were introduced in IE in 1999 and were historically treated as pensions for the purposes of the DTA.²²³ Post tax treaties based on the OECD model direct that pensions are taxable in the country where the individual is resident. This meant that for a NI resident with an IE pension invested in an ARF after retirement that no PAYE deductions took place in IE. It was fully taxed in NI instead.

Not all countries followed this model, and some individuals were able to move their ARFs and not be taxed in IE or country of residency. To avoid this non taxation, for those individuals who became temporarily non-resident for this purpose, the Revenue Commissioners in IE did not introduce anti avoidance legislation but did update the guidance and procedures under the Revenue Pensions manual. This change imposed a withholding tax obligation on the Qualifying Fund Managers to deduct tax under PAYE regulations where the individual was resident in a tax treaty country. Revenue explains the changes in their Pensions Manual that there was no legislative basis for the previous practice previous. Rather than legislate for the practice in place they introduced a PAYE withholding obligation.

Only four of IE's tax treaties - Germany, Pakistan, Kosovo, and the Netherlands - have a specific article dealing with ARFs which give sole taxing rights to IE²²⁴.

The update to the Revenue Pensions Manual in 2020 caused a lot of concern²²⁵. It required the distributions from an ARF to be broken down between the underlying income, capital gains or capital which it represents.

First, all sources of income (where an individual has changed residence) must be split by periods depending on the residency of the individual into resident and non-resident periods. Therefore, this needs to be tracked over time. Then income, Capital Gains and Capital need to be separated. Then the various income streams must be broken down between dividend, rental, interest and other. Mixed fund rules apply. With any mixed fund, the distribution of income and gains is deemed to happen first; then capital is distributed if the income and gains are fully exhausted.

Then the DTA articles are applied to see where the taxing rights lie. The capital gains Article of the DTA can tax gains in both States but allows a DTA credit for the borne in the other State. The income Article of the DTA also can tax income in both States and provide for a tax credit for the tax borne on the other State. Since the tax rates (including USC) on both income and gains are higher in IE than in NI there will be no credit or refund available for any higher element

²²³ PricewaterhouseCoopers (2020). *Changes to Approved Retirement Funds (ARFs) for non-Irish residents | People and organisation | PwC*. [online] PwC. Available at: <https://www.pwc.ie/services/workforce/insights/non-irish-residents-approved-retirement-funds.html>.

Irish Tax and Customs (2024). *Tax and Duty Manual Pensions Manual -Chapter 23 Approved Retirement Funds Pensions Manual -Chapter 23*. [online] Available at: <https://www.revenue.ie/en/tax-professionals/tdm/pensions/chapter-23.pdf> [Accessed 15 Oct. 2024].

²²⁵ Irish Tax Institute (2020). *ITI Submission to Revenue Seeking Further Clarification on Revenue's Pensions Manual: Chapter 23 -Approved Retirement Funds*. [online] Available at: https://taxinstitute.ie/wp-content/uploads/2021/05/ITI-Submission-to-Revenue-on-Distributions-from-ARFs-to-non-residents_05.08.2020-002.pdf

Extract from Refund of Taxes paid on ARF Distributions Claim form to be completed by non-resident claimant

Who can make a claim:

Owners of ARFs, vested PRSAs, vested PEPPs and AMRFs¹ who are not resident in Ireland may be subject to taxation on this income both in Ireland and their country of residence and subsequently tax relief may be available under the terms of a Double Taxation Agreement (DTA). To ascertain the amount of relief due, information must be provided by the taxpayer indicating how the income arose within the ARF, including the date when the income arose. Once the distribution is broken down into its constituent parts (for example, interest income, dividend income, return of capital, etc.) each part should then be examined to see if DTA relief is available under the different articles of the treaty with the country of residence. Accordingly, full or partial refunds of Irish tax deducted under PAYE may be due to these taxpayers. Case law has established that, where a payment is made from a mixed fund, income and gains of the year are treated as being paid out first, and any amount paid out in excess of that year's income and gains is treated as a return of capital.

Notes on further documentation for claim:

An Approved Retirement Fund (ARF) means a fund which is managed by a Qualified Fund Manager (QFM). Where a distribution is paid from an ARF in the year, the QFM must provide a detailed breakdown of the underlying transactions constituting that distribution. Distributions either arise from "income and / or gains" or from a return of the original capital. This must be provided in a statement prepared by the QFM in order to process a claim for repayment of Irish taxes paid on an ARF by a non-resident individual.

Unit linked funds:

Some ARF products sold by life assurance companies are structured as unit linked funds, where the individual invests their pension pot into a pooled fund and owns units in that fund. The ARF owner, in these cases, simply owns a share of that fund, the units; they are not the beneficial owner of the underlying assets in the fund. Revenue accepts that it is not appropriate for the underlying accumulation of income within the unit linked fund to be broken down and provided in support of the refund claim. Accordingly, it is the income and/or gains which arise from the units or disposal of the units that constitute the distribution that arises, much as it does to an individual holder of units.

Source : <https://www.revenue.ie/en/jobs-and-pensions/pension/private/non-residents-receiving-a-pension.aspx>

The capital part of the distribution is the last part after all available income and gains have been distributed.

Not all countries tax capital. IE and the UK as a rule do not tax capital, albeit there is commercial rates and Local Property Tax (LPT) Charges in IE and Commercial Rates and Annual Tax on Enveloped Dwellings (ATED) in the UK.

If there is no capital article in the DTA, then any IE tax charge that relates to the withdrawal of capital is not restricted by the DTA. No PAYE exclusion order can be applied for.

Usually, a Capital Article in a treaty will allocate taxing rights on capital to the country of residency. For example, the IE Switzerland DTA Article 21 gives the sole taxing rights to capital to country of residency.

In such a case a non- IE resident taxpayer may be in position to claim a refund of the PAYE deducted in IE if there is a "capital" article in the relevant DTA. Only approximately 10% of IE's tax treaties have a Capital Article.

Where there is no Capital Article in the DTA, any IE tax charge that relates to a withdrawal of capital is not limited by the DTA meaning no refund may be available.

There is no Capital Article in the UK/Ireland DTA.

This means that there is no ability for a NI resident who receives a capital distribution from an ARF to reclaim the payroll taxes deducted at source in IE

“The record keeping effort that is required to operate an ARF correctly for a non-resident is very onerous when compared to an ARF for an IE resident. Most qualifying fund managers of ARFs will not readily be able to provide the splits required and to track this through time.”

Source : PWC <https://www.pwc.ie/services/workforce/insights/non-irish-residents-approved-retirement-funds.html>

This disadvantages cross-border workers in comparison with their peers who are not cross-border workers.

A very recent change to the Pensions Manual published in e Brief 109/24 on 4/4/2024 in relation to ARFs invested in unit funds rather than directly in the assets. The changes made seek to clarify that the distribution is comprised of income arising from the units in the fund or proceeds of disposal of the units and not from underlying assets of the fund. This make the treatment of all index linked funds clearer as all distributions will be treated as income and a refund should be available under the relevant income article of the DTA. All the non-index linked funds will still have to carry out the analysis described above.

As this change was only made in early April 2024 it remains to be seen how HMRC will tax the ARF distributions from this point.

Lump Sums

Prior to FA 2022 there was two schools of thought as to whether the lump sum from a foreign pension was taxable in IE.²²⁶ FA 2022 provided for s200A TCA 1997 introduced from 1 January 2023 clarified the position that foreign pensions lump sums will be taxed the same as IE pension lump sums. The first €200k tax free and the next €300k taxed at 20%, excess is taxable at the marginal rates with USC also applying.

The Professional Advice sector on both sides of the border need training in cross-border implications. They are providing advice and pension services in a vacuum with ever increasing professional risks of litigation. From our research and workshops several employers and advisers talked about the lack of clarity in the rules and the risks of “operating in the grey”.

“It has got to the stage that we don’t even know what questions to ask let alone what the answers should be.”

Source: John Lucas, QFA FLIA (DIP), Lucas Financial Consulting Ltd

We understand that most government departments carry out consultation with stakeholders in advance of making changes to policies and legislation. From our research It is not clear that consultation on these specific cross-border matters has taken place with the Advice sector who deal day to day with the cross-border workers and employers on this island.

²²⁶ITI Submission to Revenue on the tax treatment of foreign pension lump sums received prior to 1 January 2023 dated 28 February 2023
Irish Tax Institute (2023). *ITI submission to Revenue on the tax treatment of foreign pension lump sums received prior to 1 January 2023*. [online] Available at: <https://taxinstitute.ie/wp-content/uploads/2023/05/2023-02-28-ITI-Submission-to-Revenue-on-tax-treatment-of-foreign-pension-lump-sums-Revenue-Response-8-May-2023.pdf>.

“Every piece of legislation and procedural guidance in this country should be considered in light of its impact on those on the whole of this island before enactment”

Source: Elaine Farrell, Cross-border Dual Qualified Tax Adviser UK & Ireland. Farrell & Farrell Newry Co Down

Even for the technical adviser, wading through the dense, intricate volume of information, legislation and guidance is no easy task and not easy task.

b. NI Pensions

Small pot pension less than £10,000 and defined benefit pensions of up to £30,000 can be drawn down in full, 25% of which is tax free.

From a defined contribution scheme, after taking, usually a 25% tax free lump sum, NI pensions can remain pensions from which NI residents can draw an income during retirement or can be used to purchase an annuity to give a guaranteed income.²²⁷

If it is an IE pension the starting point is that an individual who is tax resident in NI would be liable to pay income tax in NI on the lump sum on retirement from a non-UK pension scheme. Generally, this is fully taxable to income tax in the UK.

If benefits were accumulated while the individual was non-resident, then FA 2017 saw restrictions introduced re: foreign service. Lump sums from a non-UK pension on or after 6 April 2017 may be able to take relief on the element of lump sum that was earned overseas prior to 6 April 2017 therefore taxable only to the extent that it has accrued or increased in value since 6 April 2017.

Section 574A ITEPA 2003

From 6 April 2017, certain lump sums are now taxable. These lump sums are paid to, or in respect of, a member of a foreign pension scheme which is not one of the following:

- a registered pension scheme
- a relevant non-UK scheme (RNUKS)
- an employer-financed retirement benefits scheme (EFRBS) established in the UK

These lump sums are called ‘relevant lump sums’. A lump sum will be taxable under section 574A only if the member is UK resident or, if the member has died, they were UK resident immediately before their death. This includes cases where the beneficiary is not themselves resident in the UK

Source HMRC <https://www.gov.uk/hmrc-internal-manuals/employment-income-manual/eim75550>

There are differing tax treatments depending on the type of foreign pension scheme. Therefore, if it is an overseas pension meeting certain conditions then it may benefit from the 25% tax free rule, however if it does not meet the conditions then it would not benefit from this 25% tax free rule.²²⁸

²²⁷ nidirect (2015). *How your personal pension is paid* | nidirect. [online] www.nidirect.gov.uk. Available at: <https://www.nidirect.gov.uk/articles/how-your-personal-pension-paid>.

²²⁸ HMRC (2016). *Pension Tax for overseas pensions*. [online] GOV.UK. Available at: <https://www.gov.uk/government/publications/pension-tax-for-overseas-pensions/pension-tax-for-overseas-pensions#chapter-3---taxation-of-non-uk-registered-schemes>.

The conditions required: (i) regulatory requirements test and (ii) tax recognition test. The (i) regulatory requirements test - pension age and benefits tax relief tests – does not have to be met if the scheme is a public service scheme set up or approved by the Government.

Appendix V – Cross-border Worker Survey

To provide an opportunity for cross-border workers to contribute to the research the following questions were presented in an online survey which was published in October 2023. It was shared with the Border People project's Facebook Discussion Group of cross-border workers, with 600+ members, and circulated via LinkedIn and X.

440 workers responded and shared their lived experiences of cross-border employment. While the survey responses provide valuable insight and has captured a wealth of qualitative data, it does not claim to be fully representative²²⁹.

Summary:

Location

- 73% of respondents were resident in NI, while 27% were resident in IE
- The top locations to live were Armagh, Down, and Donegal
- The top locations for work were Dublin, Louth, Derry and Monaghan

Nationality

- 99% categorised themselves as either British or Irish citizens
- 3 responses were received from (non-Irish) EU citizens and 1 person originally from outside the UK and EU also shared their experience

Experience

- 22% had 5 to 10 years' experience as a cross-border worker
- 47% had over 10 years' experience as a cross-border worker

Rationale

- Higher salaries were mentioned as a pull factor by 37% of respondents
- 34% mentioned better opportunities and career advancement
- Employer being close to home was mentioned by 10% of respondents
- Lack opportunities in Donegal, and lack of teaching positions in NI were also noted

Key takeaways

- 98% did not believe they had access to clear and concise advice from government sources
- 32% reported that the UK's EU Exit had made cross-border working more difficult
- 54% of workers worked remotely (7% on a full-time basis and 47% on a hybrid basis)
- Inequity of treatment of cross-border workers compared with colleagues was noted throughout
- Taxation and social security complications was raised as a barriers
- Requests for simplifying the taxation rules could be found throughout the responses
- 65% of workers had no awareness of common challenges prior to cross-border employment
- Many challenges, including significant issues with cross-border mortgages, were shared
- 81% of workers would consider another cross-border job in the future
- Having access to clear information and advice was a common theme throughout the responses

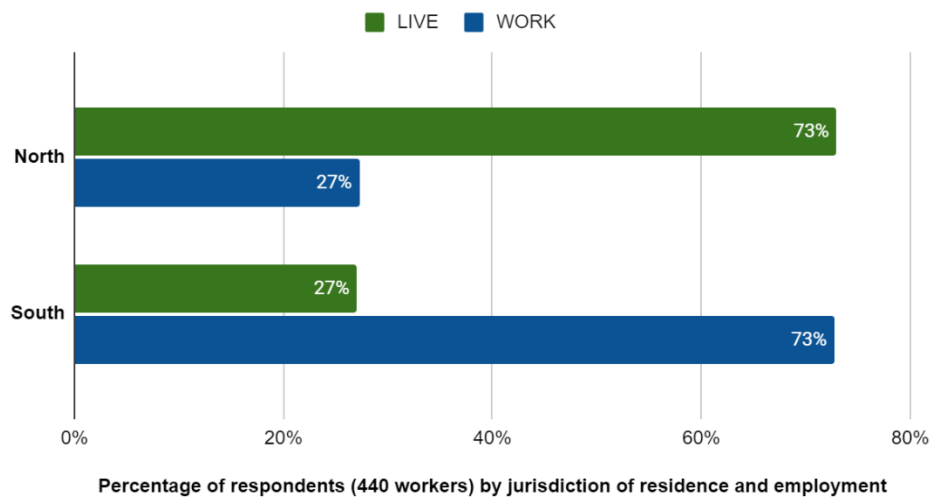
²²⁹ The ESRI Study on Cross-border Working on the Island of Ireland, June 2024, explores a wide range of other demographics including gender, age, sector of employment, employment status and distance from the border. McGuinness, S., Bergin, A. and Devlin, A. (2024). *A Study of Cross-Border Working on the Island of Ireland*. [online] Available at: <https://www.esri.ie/system/files/publications/WP781.pdf>.

Jurisdiction

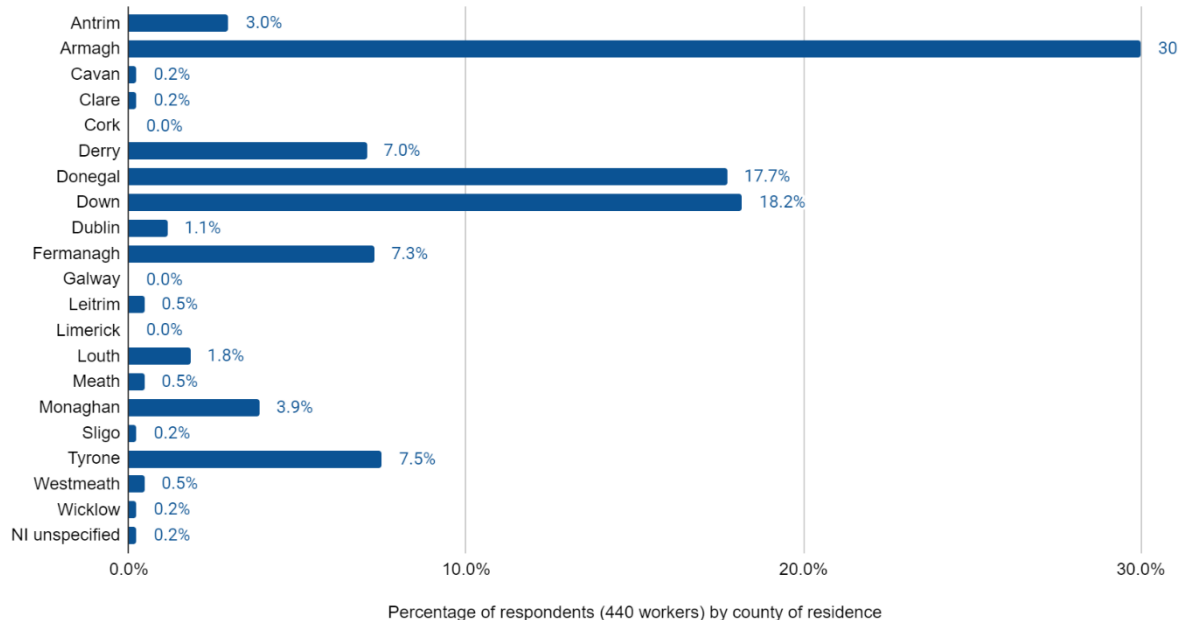
In order to capture the direction of flow workers were asked to identify their county of residence and of employment.

73% of respondents were resident in NI. The top locations to live were Armagh, Down, and Donegal. While the top locations for work were Dublin, Louth, Derry and Monaghan.

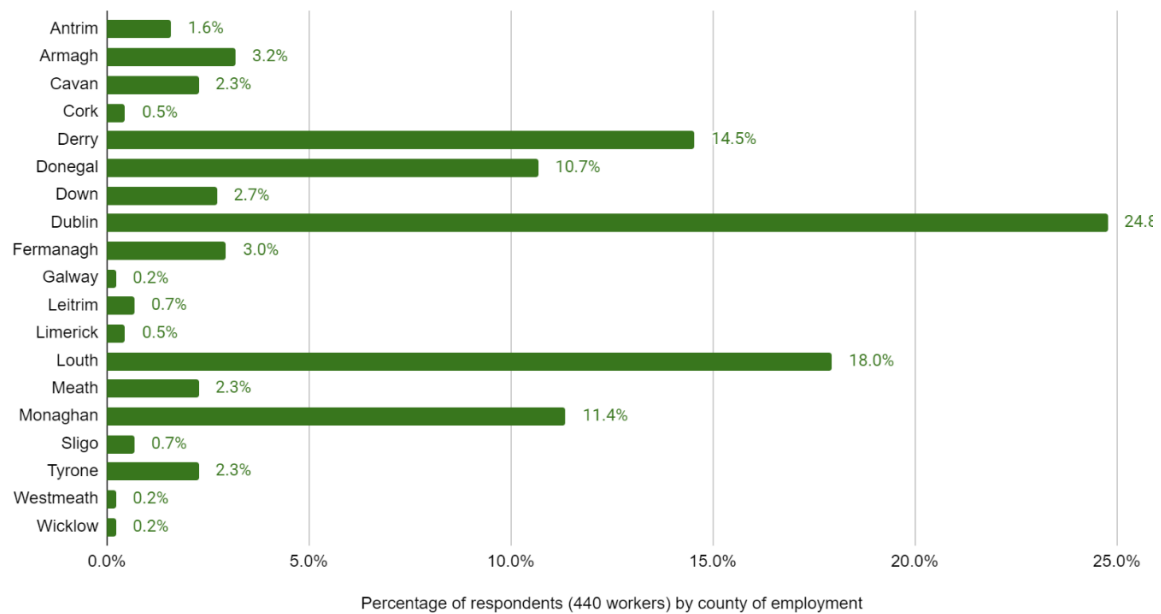
Survey figure 1: Jurisdiction of residence and of employment



Survey figure 2: County of residence



Survey figure 3: County of employment



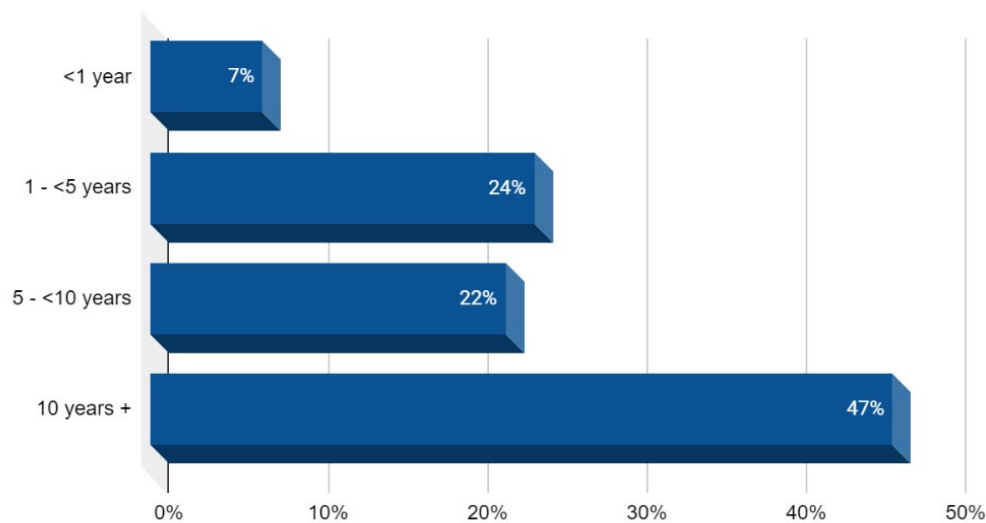
I live in Inishowen, where so many people are employed in Derry, so it is normal here to be a cross-border worker.

Cross-border worker living in Donegal and working in Derry for 16 years

Cross-border experience

When asked how long they had been a cross-border worker, the survey responses revealed a wealth of cross-border experience, 22% had between five and ten-years' experience, while an additional 47% respondents had over ten years' experience.

Survey figure 4: Time spent working across the border



Rationale

When asked why they took up job across the border 37% of respondents mentioned financial incentives drawing them across the border e.g. higher salaries for similar roles.

Currently two employees doing the same job for the same organisation but based in two different offices can have a difference in pay of up to £10,000.

Cross-border worker living in Derry and working in IE for 10 years.

34% mentioned better opportunities, career advancement, and better working conditions.



I didn't think of it as a job "across the border". It was just a good job offer that suited my career goals.

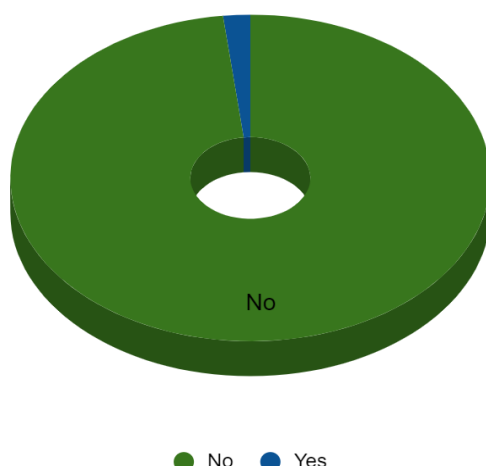
Cross-border worker living in Derry, working in Donegal for 3 years.

A lack of local jobs and career opportunities in Donegal, and lack of permanent teaching positions in NI were specifically listed as reasons for taking up cross-border employment. Proximity to family and home was noted by 10% of respondents.

Some respondents originally lived and worked in the same jurisdiction, only becoming cross-border workers due to moving residence. Dublin property prices were also noted, alongside cheaper housing options in Donegal and in Northern Ireland.

Access to official information

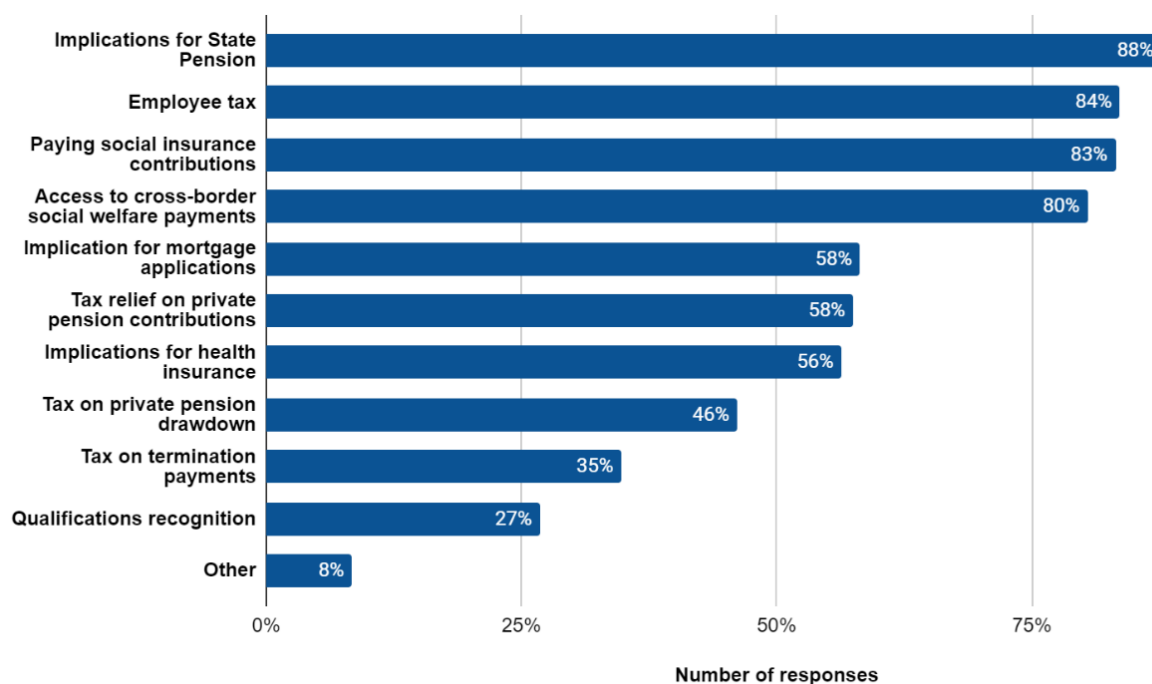
Survey figure 5: Do you think there is sufficiently clear and concise advice made available from government to highlight and explain the implications of working across the border?



An overwhelming majority of respondents (98%) did not believe they had access to clear and concise advice from government sources.

When asked which areas they would like to see explained in a clear and concise manner, they identified a wide range of information needs. See list below, note that multiple choices could be selected.

Survey figure 6 - What areas would you like to see explained in a clear and concise manner?
(tick all that apply)



Basic summary/checklist of the implications of working cross-border with resources and businesses that can help with financial planning, social security. There is a lot to figure out on your own when working in another jurisdiction and no one stop shop for accounting, tax, financial, employee/legal rights - a lot to navigate and worry that there'll be repercussions down the line that you didn't anticipate.

Cross-border worker living in Armagh, working in Dublin for 4.5 years

A lot of the information needed by cross-border workers is difficult to find. Government websites on both sides of the border give information specifically for that jurisdiction. Cross-border workers fall between two stools and when you contact government departments their personnel do not know how the issue/s should be treated either. There is little practical advice, support, advocacy and guidance for workers to access their rights and entitlements who may not have accessed any services in the jurisdiction they now work in, at any time in their lives.

Cross-border worker living in Derry, working in Donegal for 2 years.

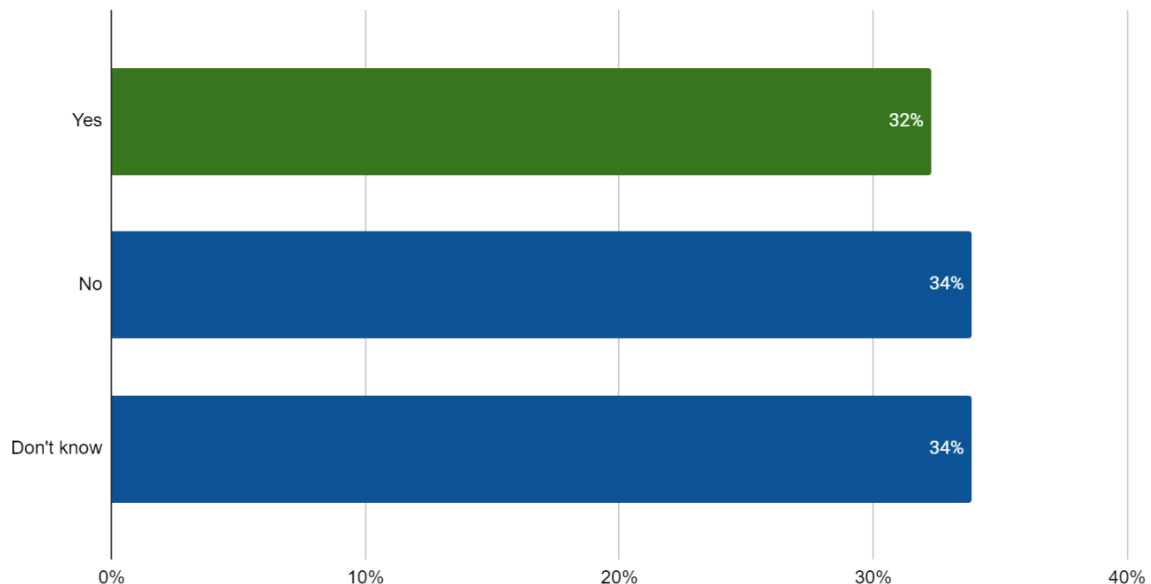
When asked if there are other areas that need clarified a wide range of issues were listed. They ranged from banking, managing currencies, accessing mortgages and loans. Access to childcare, subsidies and schemes. Access to healthcare, transferring medical records, and entitlement to medical cards. As expected, there were numerous requests for information on the implications of working remotely and employee rights.

banking
salary scale
home
healthcare
mortgage
childcare
right
disability right
remote work

UK EU Exit

When asked if the UK's EU Exit had made cross-border working more difficult more difficult responses were almost equally split between available options - 34% said no, 34% did not know, and 32% said yes.

Survey figure 7: Do you think the UK's EU Exit has made it more difficult for you to work across the border?



It's worth restating that 99% of respondents were either Irish or British, therefore their right to work in both jurisdictions is protected.

When asked for further details the responses revealed many issues that are not at all relevant to the UK's EU Exit, e.g. taxation, access to healthcare, working from home, visas for non-EU citizens, wage differentials, banking and currency fluctuations. Delivery of items to NI was also mentioned, however not always in a work-related context.

Concerns raised, relevant to the topic, included uncertainty surrounding rule changes, concerns about restricted data sharing, recognition of qualifications, workers' rights, free movement and access to EU skills. There were also numerous references to cross-border insurance problems (e.g. car, company vehicles, health, income protection) and a Common Travel Area for insurance was suggested as a solution by one respondent.

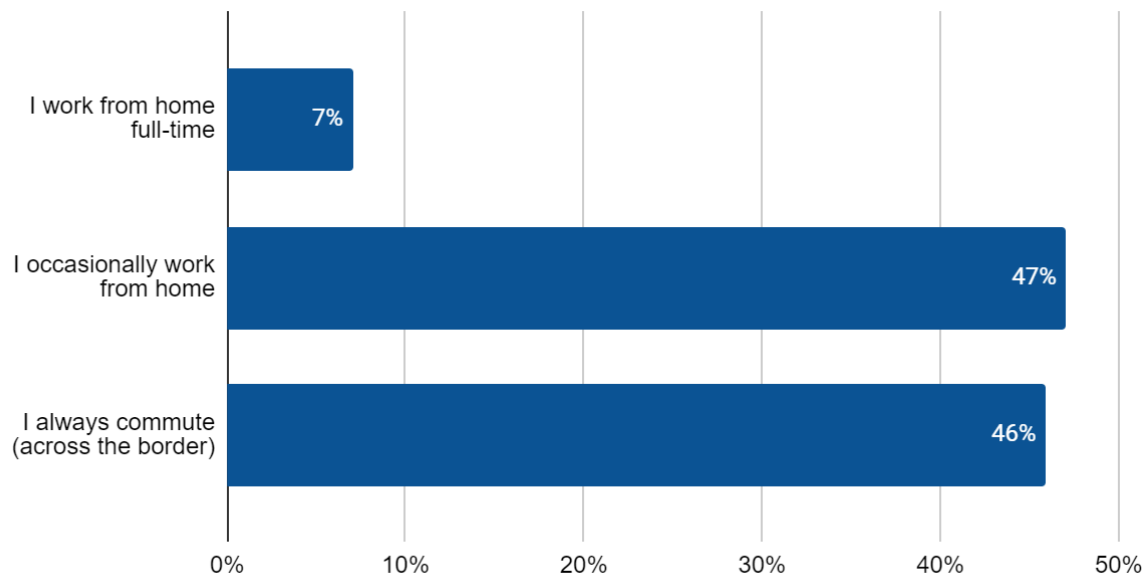


I think things are more unclear. Rules may have changed. It's hard to know where to go to get advice. Cross-border worker living in Derry, working in Donegal for 3 years.

Remote working

The recent global surge in flexible and remote working is evident in the survey responses with a total **54% of workers working from home**; 47% on an occasional basis, and 7% on a full-time basis however a small number (5) also mentioned the need to be in the office from time to time so, the hybrid pattern may be hidden among responses. Hybrid working is the most complex scenario with regards to payroll, income tax and social insurance implications, not to mention the other challenges previously noted.

Survey figure 8: Remote working or working from home has increased in recent times. Which option best describes your situation?



A significant number, **46% commute to work across the border** with 5% stating they were not permitted to work from home due to their cross-border worker status. Many expressed frustration that they were not provided with the same opportunities to work from home as their colleagues.

Some respondents stated that their role requires their actual presence at work (e.g., nurses and teachers), others were frustrated at being required to commute each day when their duties were clearly suitable for remote working, others prefer being in the office, and one person stated they had declined the opportunity due to confusion of the consequences on taxation.

I'm genuinely considering leaving my current job as remote working is becoming a deal breaker for me. Cross-border worker living in Donegal, working in Derry for almost 2 years.

The expectation of flexible working opportunities was clearly reflected in respondents' comments. They acknowledged improvements to work life balance, family life and rural community life, and savings on time, fuel, carbon footprint and childcare costs.

Confusion around tax implications and frustration about complex tax requirements (regarded as off-putting to employers) were also shared. Feelings of disadvantage were expressed throughout the comments.



I'm aware some employers do not offer working from home options to cross-border employees as they feel it complicates their business. This has an impact on the family life of a cross-border worker and causes a detriment in comparison to colleagues who are in similar jobs. Cross-border worker living in Derry, working in Donegal for 2 years.

The current situation feels highly unfair as my colleague still have the flexibility to work from home while I am forced to commute to an empty office to sit and work in the same fashion as I would at home over Zoom, Teams etc.

Cross-border worker living in Donegal, working in Derry for 3 years.

If I did not have flexibility, I would have to consider whether it was financially beneficial for me to work. Childcare in ROI is extremely expensive, salaries in NI do not match the salaries in ROI and the cost of living is higher in ROI.

Cross-border worker living Donegal, working in Derry for 13 years.

The WFH option and flexible working pattern means it's possible for me to work and live cross-border. It benefits border workers and provides opportunities for border villages to maintain their youth workers and defer emigration to other countries.

Cross-border worker living in Armagh, working in Dublin for 2 months.

Hybrid working has been a massively positive change in my working patterns for a variety of reasons including, having more time for family commitments, better work life balance and the resulting health and well-being benefits, and my ability to be connected to my local community and support businesses in my local area.

Cross-border worker living in Donegal, working in Down for 3 years.

The flexible working pattern is better in the organisation I have joined. They appear to have realised the traditional in office working environment has changed and employees are happier, less tired, less stressed and more productive with having flexibility to suit their home lives. Cross-border worker living in Down, working in Dublin for 3 weeks.

I WFH in the North 4 days a week and travel to Dublin about once a week. I know this may not be fully compliant with legislation. I travel to remote working hubs on occasion if I need to be in the south physically (data access restrictions).

Cross-border worker living in Tyrone, working in Dublin for 3 years.

Different tax rules each side of the border, same with employment law, makes it complex and makes employers react more strictly as they don't understand fully, which is understandable.

Worker living in Derry, with over 10 years' experience as a cross-border worker.

Complications around home working/hybrid working led to confusions around tax payments. Each year I have owed significant money to HMRC despite paying tax throughout the year. This brings financial stress and worry.

Cross-border worker living in Down, working in Dublin for 3 years.

I work remotely but I can no longer 'officially' avail of remote working as I do not reside in the Irish jurisdiction. HR department had no understanding of the implications of this and had to consult Revenue and Tax consultants in Belfast for advice.

Cross-border worker living in Armagh, working in Dublin for 5 years.

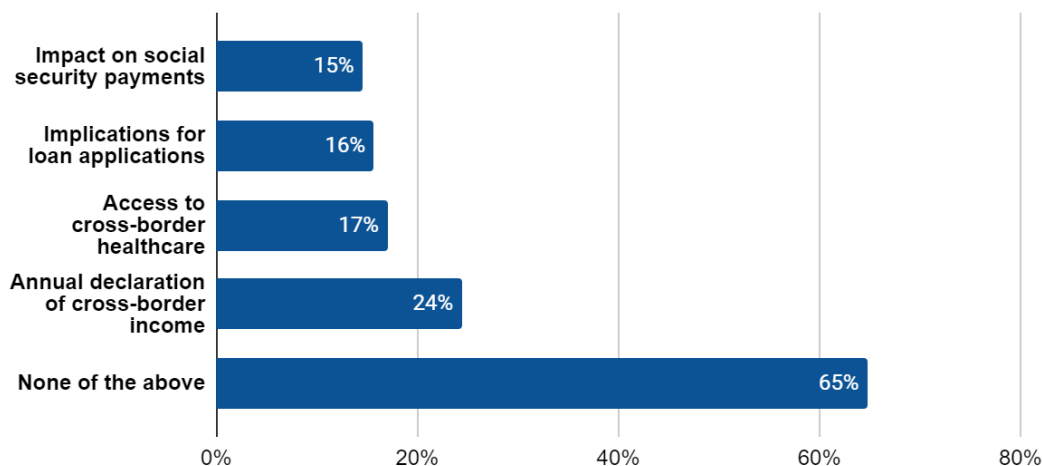
Need a concept of an all-island worker and clearly defined tax status. and also, an exception that this doesn't constitute setting up a branch of a company!

Cross-border worker living in Antrim, working in Dublin for 10 years.

Awareness

The survey attempted to capture if workers, prior to starting a job across the border, were aware of common challenges (social security, loans, healthcare, tax). 65% of respondents stated they had no awareness and only small percentages declared some knowledge. (Multiple choices could be selected.)

Survey figure 9: Before taking up the cross-border job were you aware of any of the following?



Without prior knowledge it could be assumed that some significant challenges may emerge, and respondents shared challenges in the following areas:

- Taxation complications and self-assessment difficulties as a PAYE worker
- Needing to source and pay a third party to complete self-assessment
- Accessing cross-border loans and mortgages
- Repayment of student loans
- Daily banking and managing fluctuating currencies
- Sourcing car insurance and health insurance
- Saving for retirement, accessing suitable pensions
- Understanding worker rights on a cross-border basis
- Accessing social welfare payments, dealing with complications, and sourcing advice
- Accessing healthcare services
- Cross-border public transport
- Accessing cross-border information
- Overly complicated information and misinformation causing stress

Confusion around the tax implications of hybrid working and where to go for advice - it would be helpful if there was a publicly available list of reputed financial advisors/accountants who specialise in this area. Even if you are aware of the issues, hard to know where to go for personal guidance and advice.

Cross-border worker living in Down, working in Dublin for less than a year.

I cannot get a mortgage, either north or south. We are becoming part of the hidden homeless despite being highly educated and employed.

Cross-border worker living in Louth, working in Armagh for 14 years.

Applying for self-build mortgage my salary was only weighted as worth half its value because it was euro. Cross-border worker living in Armagh, working in Dublin for 4 years.

I am currently someone who is affected by mica. Because of this we need to apply for a mortgage to support a rebuild. The bank advised us they would take 20% OFF my salary to calculate income - even though sterling is currently at 15% MORE Than the Euro.

Cross-border worker living in Donegal, working in Derry for over 20 years.

Car insurance can be a bit tricky for the full year, some UK companies don't appear to understand the nature of the border on this island.

Cross-border worker living in Down, working in Dublin for 1 year.

Benefits through work are not available to me due to living in Donegal, e.g., private healthcare scheme. Cross-border worker living in Donegal, working in Derry for 18 years.

Due to concerns regarding pension, I am considering moving job and ceasing to be a cross-border worker. Cross-border worker living in Donegal, working in Derry for 13 years.

Trying to get a pension set up has been exhausting, 8 months in and still not resolved. My employer can't pay into a UK private pension as they don't have a UK bank account. Getting a UK bank account set up without a UK address is possibly the most complicated thing in the world! Cross-border worker living in Fermanagh, working in Dublin for less than 1 year.

Currently struggling to get Income Protection Insurance as I want to become self-employed. UK companies saying I need to live and work in the UK to access it, Southern companies saying I need to live and work in the Republic to access it!

Cross-border worker living in Armagh, working in Monaghan for 9 years.

I am struggling to manage my income in euro as I spend most of my money in sterling. I also feel like I'm completely in the dark about what my tax situation will be when I fill in my self-assessment. I'm worried I will owe a lot of money in the UK.

Cross-border worker living in Down, working in Dublin for less than 1 year.

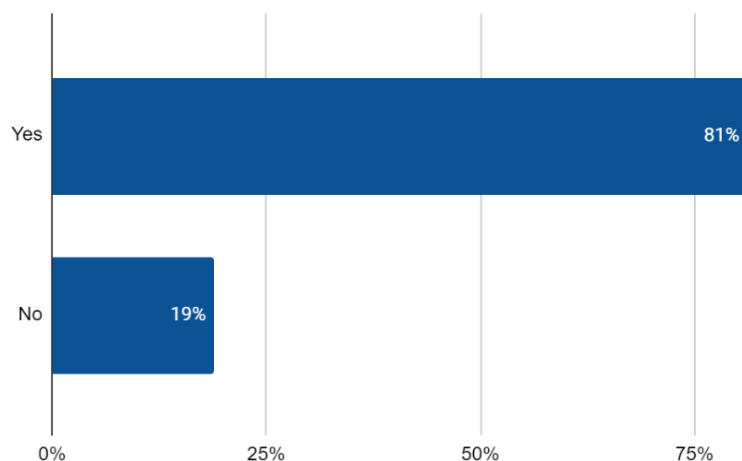
Tax returns are a nightmare. They say that self-employed work is fine under the CTA, but I worry all the time. There is no guidance available, information on ROS and HMRC is a nightmare to work through and no one is available to talk to you, you are told pay an accountant to get guidance and that is incredibly expensive if you are a small sole trader.

Cross-border worker living in Derry, working in Dublin for 4 years.

Future employment

The survey aimed to capture whether workers were encouraged or discouraged from considering a cross-border opportunities in the future.

Survey figure 10: Would you consider taking up another cross-border job in the future?



Over 80% responded positively.

Those that answered negatively were invited to explain what would make it easier for them to consider taking up a cross-border job in the future.

Their requests included:

- Clarity on obligations and entitlements
- An independent body to provide information and advice
- Awareness and understanding from both governments
- Mortgage solutions for cross-border salaries
- Public transport options suitable for cross-border commuters
- Streamlining of social welfare
- Simplification of taxation for cross-border workers and employers
- Remote working solutions
- Cross-border workers' right to equal treatment
- All-island worker status

Equal access and recognition that we are working on the same island.

Cross-border worker living in Louth, working in Armagh for 14 years.

Employers are put off when the cross-border "situation" is brought up, it takes far less energy for an employer to select a local candidate.

Cross-border worker living in Antrim and working in Dublin for 16 years.

I recently submitted a job application with a sizeable company in Belfast who have said they are not considering applicants who reside outside of the State i.e. only considering applicants who reside within the 6 counties. If this rule was applied by all companies, this would significantly reduce employment opportunities for those living in the border.

Cross-border worker living in Donegal and working in Derry for over 20 years.

Better clarity and communication from the governments on the complexities of cross-border working. If things could be done to make the complex issues less complicated, then I would definitely consider cross-border working again. I think there are better opportunities in ROI but coming from Northern Ireland I have now seen how hard working as a cross-border worker can be.

Cross-border worker living in Tyrone, working in Dublin for 3 years.

Appendix VI – Advice services

Mainstream support services

The mainstream Advice Sector is usually the first point of contact for cross-border workers and their families when they require support, especially with social welfare related issues. These local services are also the prime signposting route for other organisations and initiatives aiming to provide information and guidance to citizens.

Advice NI

Information sourced from <https://www.adviceni.net/about>

Advice NI, a registered charity founded in 1995, exists to provide leadership and services to 69 independent member organisations and to ensure accessible advice services across Northern Ireland, and in the year 2021/22, they dealt with 241,088 enquiries.

Citizens' information network

Information sourced from www.citizensinformationboard.ie

The Citizens Information Board is the national agency responsible for supporting the provision of information, advice and advocacy on social services, and for the provision of the Money Advice and Budgeting Service.

Citizens Information Services (CISs) provide the face-to-face service to the public. They are supported and funded by the Citizens Information Board. Through trained staff, the Citizens Information Services provide free, impartial and confidential information, advice and advocacy services to the public.

Each Citizens Information Service covers a geographical area within their region. The regional CIS companies (8 in total) cover the following areas: North Dublin, Dublin South, North Connacht & Ulster, North Leinster, North Munster, South Connacht, South Leinster and South Munster facilitating both rural and urban areas, delivering a service through a network of Citizen Information Centres (CICs).

During 2023 the network supported almost 400,000 callers with a wide range of issues.
<https://www.citizensinformationboard.ie/en/data-hub/cis-data-hub/2023-statistical-summary/>

Additional supports – Border People

Border People Cross Border Practitioners' Group (Advice sector)

First convened by the Border People project - www.borderpeople.info - in Spring 2020, the Cross-Border Practitioners' Group provides a platform for local advice and citizens information services to discuss topics and share information relevant to people living and or working across the border.

Unfortunately, cross-border queries can quickly become complicated, so members meet monthly and collaborate on complex cases. A significant amount of cross-border knowledge sharing takes place, with referrals between the organisations, and between the jurisdictions, commonplace. It is a unique group and a great example of cross-border cooperation in action, all based upon the real-lived experience of people living in and between the jurisdictions.

Current collaboration includes analysing the cross-border impact of new case law that sets out which jurisdiction is competent for frontier workers and their dependents. Example cases:

- Sickness Benefits – [Competent State for frontier workers \(Irish Invalidity Pension and UK Personal Independence Payment\)](#)
- Sickness Benefits – [Competent State issues for dependents of frontier workers \(Child Disability Living Allowance\)](#)
- Case study - [IE Illness Benefit and NI Carer's Allowance](#)

The Group is going from strength to strength and membership, which is largely from within the community and voluntary sectors, north and south. Membership includes:

- Advice NI (Belfast, regional network)
- Border People project (Armagh)
- Community Advice, Fermanagh
- Community Advice, Newry, Mourne and Down
- Cross Border Solutions (Newry)
- Cross Border Partnership Employment Services – especially Dundalk, Belfast and Derry
- Family Benefits Advice Service of Employers for Childcare (Belfast)
- North Connacht & Ulster Citizens Information Service (NCUCIS) – especially Co. Monaghan and Co. Donegal Citizens Information Services

*In 2001 the North South Ministerial Council published a Study of Obstacles to Mobility, which explored the wide range of obstacles which hindered people moving across the Irish border to live and work. The report presented 50 recommendations / solutions and of relevance is the second recommendation which was:

A one-stop cross-border mobility information website should be established which would provide comprehensive and easily accessible information on key aspects of jobs, learning opportunities and living conditions on both sides of the border.

In response the NSMC Joint Secretariat, on behalf of the Office of the First Minister and the Deputy First Minister OFMDFM and Department of Foreign Affairs awarded a contract, to the Centre for Cross Border Cooperation (CCBC) to develop a Cross-border Mobility website (www.borderpeople.info) as a central access point for cross-border mobility information on the island of Ireland.

The project was initially funded in 2007 by the EU PEACE Programme and further developed with EU INTERREG funding and is currently part-funded by the Department of Foreign Affairs Reconciliation Fund. It continues to be managed by CCBC, but behind the scenes are longstanding members of the project's cross-border Advisory Group, they include the North South Ministerial Council Joint Secretariat, Citizens Information Board, the Department of Social Protection, Cross-border Partnership for Employment Services, the Department of Communities, and the Law Centre NI.

In 2023 the Border People website received over 420,000 page views, and in collaboration with NCUCIS, the project supported citizens with over 1000 cross-border issues during 2023. Its online discussion group currently has over 800 cross-border members.

Example information relevant to this research:

- Remote working [briefing paper](#) and [webinar](#), May 2023
- [Hybrid working online briefing](#), July 2024

Additional supports – CBPES

Cross Border Partnership for Employment Services (CBPES)

Information provided by: Department of Social Protection, February 2024

- The Cross Border Partnership for Employment Services (CBPES) came into effect on 1st January 2022 and replaces the EURES cross-border partnership post Brexit to support work mobility between the border counties in Ireland and Northern Ireland.
- Funding for the partnership rotates between Department of Social Protection and Department for Communities, N.I. with responsibility being with DSP from 1st January 2022 – 31Dec 2024.
- The membership of the CBPES is representative of employment related stakeholders:
 - Government Departments: Dept of Social Protection & Dept for Communities, NI
 - Trade Unions: Irish Congress of Trade Unions, Ireland and Unite the Union
 - Employer Groups: Londonderry Chamber of Commerce, Dundalk Chamber, The Confederation of British Industry (CBI) & Irish Business and Employers' Confederation
- The Partnership provides pathways to the information required by people moving across the border, to include information on employment and training opportunities on both sides of the border, on taxation and the social security systems.
- The Partnership also provides recruitment assistance and employment advice to employers on both sides of the Border. A reciprocal agreement is in place between the employment services in both jurisdictions when placing job adverts on www.jobapplyni.com and www.jobsireland.ie
- CBPES run a series of events to help cross-border employers, workers and jobseekers including, Cross Border Job fairs, both on-site and virtually using our platform www.crossborderjobfair.com as well as employer incentives & tax briefing seminars.
- The main focus of the work of the partnership is to support cross-border work opportunities between Ireland and Northern Ireland for jobseekers and other welfare clients.
- Staff Training and upskilling: The Cross Border Partnership host annual Employment Services Seminars where Intreo Centre and Public Employment Service Senior Managers, Middle Managers, and front-line staff from both the Department of Social Protection and Department for Communities NI are invited to attend to ensure that they understand the role of the Cross Border Partnership, promote awareness of cross-border issues and to signpost where to find relevant information.
- These meetings serve to develop closer productive working relationships between Employment Services Managers and front facing staff particularly those with offices along the border and those working in the border regions.

- In 2023 over 100 staff from both Departments attended the seminars and received updates relating to the challenges in relation to taxation, the importance of providing accurate information to jobseekers and employers considering cross-border employment, and the complexities involved if working from home as a cross-border worker.
- In Q1, 2024 the CBPES advisors from both DSP and DfC plan to expand on these numbers and present this information to all front facing staff across the Border regions.

Appendix VII – Authors

Maureen O'Reilly

Maureen is an independent economist, experienced in undertaking economic impact assessment, policy evaluation, economic appraisal, strategy, briefing, research and statistical analysis. Since 2011, she has headed up her own economic research and consultancy company working closely with the public, private and third sectors. She regularly presents views on the economy, including trade, skills and tourism, and is a Senior Research Associate at the Centre for Cross Border Cooperation. Maureen is a Member of the Northern Ireland Fiscal Council, created to bring greater transparency and scrutiny to NI's public finances, and a Board Member of Enterprise Northern Ireland which represents local enterprise agencies' interests and lobbies on behalf of small business. Maureen has held several senior roles including as Head of the Policy Evaluation Unit at the Northern Ireland Economic Research Centre. She was also a member of the Panel appointed by the Economy Minister to carry out the Invest NI Review in 2023.

Maureen holds a first class honours degree in Economics and a master's with distinction in Applied Economics.

Annmarie O'Kane

Annmarie joined the Centre for Cross Border Cooperation (an independent cross-border think tank, based in Armagh) almost 16 years ago. As Information Manager she manages the Centre's flagship project, the Border People project – www.borderpeople.info – which provides cross-border information and support for people living and working in Ireland and Northern Ireland. Through the project she fosters cross-border cooperation, capacity building, and knowledge sharing between advice sectors, government departments, and policymakers in both jurisdictions.

Prior to working with the Centre, Annmarie enjoyed roles in business support organisations in both jurisdictions; Chambers of Commerce of Ireland, Wicklow and Navan Chambers of Commerce, Meath Leader, and Newry and Mourne Enterprise Agency. She holds a BA HONS in Business Enterprise Development from Ulster University, a Higher Diploma in Accounting, and accreditations in community development and welfare rights.

Rose Tierney

Rose Tierney, BA BFP FCA CIOT CTA AITI CTA, is a Business and Finance Professional, a Fellow (FCA) of both Chartered Accountants Ireland and Chartered Accountants England and Wales, an Associate (CTA) of both the Chartered Institute of Taxation in the UK and the Irish Taxation Institute in the Republic of Ireland and is a qualified Customs Clearance and Trade Facilitator.

Rose spent several years working in practice in the UK and Ireland, in small, medium, and large firms. She finished the employment part of her career as a Director in EY before venturing out as sole practitioner and establishing TTax - Tierney Tax Consultancy in 2004 - www.tierneytax.com.

The practice is based on the border with offices in Monaghan and Fermanagh and is a true cross border tax practice. The dual qualifications put the practice in a unique position to advise clients on both sides of the border across the island of Ireland and Great Britain. It is a boutique tax practice providing tax services across all heads – Income Tax, Corporate Tax, Capital Taxes, VAT, Employer, Customs, and Stamp taxes. They provide advisory and compliance services to private clients, companies and individuals in the Republic of Ireland and the UK and act as a consultant to professional accountancy and legal practices on both sides of the border for tax and VAT queries arising within their client bases.

Rose served as a Member of the Council of the Irish Taxation Institute between 2004 and 2007, provides CPD training to accountants and tax advisers through various bodies and sits on the examining team of one of the professional institutes.

Anne Devlin

Dr Anne Devlin is a Research Officer in ESRI's Economic Analysis Division. Her research interests are primarily in the areas of labour economics, economics of disability, economics of education, and social inclusion. Anne has also been involved in research projects examining various aspects of the all-island economy. She recently co-authored a study of cross-border working on the island of Ireland with ESRI colleagues.

Anne obtained her PhD in Economics from Queen's University Belfast in 2021. Anne holds a BSc in Economics and an MSc in Management from Ulster University. Prior to joining the Institute in December 2020 Anne held a post at Ulster University. Anne is a Visiting Researcher at Queen's Business School, Queen's University Belfast and a Steering Group member of the All-Island Social Security Network.