



BRIEFING PAPER

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The Common Travel Area, and the special status of Irish nationals in UK law

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Summary

The Common Travel Area

The Common Travel Area (CTA) is a special travel zone between the Republic of Ireland and the UK, Isle of Man and Channel Islands. It dates back to the establishment of the Irish Free State in 1922.

This briefing focuses on how the CTA operates between the UK and the Republic of Ireland.

Nationals of CTA countries can travel freely within the CTA without being subject to passport controls. The arrangements for non-CTA nationals are more complex. Although there are minimal immigration checks for journeys started within the CTA, non-CTA nationals must have the relevant immigration permission for the country they are seeking to enter. Until the UK exits the EU, citizens of EEA member states have prevailing rights of entry and residence in the UK and Ireland under EU 'free movement' law.

Although both the Republic of Ireland and the UK maintain their own visa and immigration policies, there is a significant degree of practical cooperation and policy coordination in order to ensure the security of the CTA. Controls on the Irish border are also generally regarded as impractical and undesirable.

Irish nationals' special status in UK law

Irish nationals have a special status in UK law which is separate to and pre-dates the rights they have as EU citizens.

In short, the Republic of Ireland is not considered to be a 'foreign country' for the purpose of UK laws, and Irish citizens are not considered to be 'aliens'. Furthermore, Irish citizens are treated as if they have permanent immigration permission to remain in the UK from the date they take up 'ordinary residence' here.

This special status affects Irish nationals' rights across a number of areas, including eligibility for British citizenship, eligibility to vote and stand for election, and eligibility for certain welfare benefits. It is thought that, as a result, Irish nationals have more rights than other EU/ EEA nationals resident in the UK.

The implications of Brexit

The UK and Irish Governments have confirmed that the Common Travel area will continue after Brexit, regardless of the type of UK exit. In May 2019 the two Governments signed a new Memorandum of Understanding on the CTA which guarantees there will be no changes to the rights of British citizens in Ireland/Irish citizens in the UK as a result of Brexit.

Irish citizens have been advised by the Home Office that they do not need to apply for settled or pre-settled status to secure their residence rights in the UK. However, non-Irish and non-British family members of Irish citizens residing in the UK under EU free movement law will need to apply for status under the EU settlement scheme. Both the UK and Irish governments have maintained they wish to avoid a "hard border" in Northern Ireland.

Professor Bernard Ryan of Leicester University questioned the extent to which the rights of Irish nationals in the UK are secured by existing law. He argued that new legislation will be

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required to protect Irish nationals' status in the UK post-Brexit.¹ The Johnson Government announced a new Immigration Bill in the Queen's Speech on 14 October 2019. The background briefing notes for the Queen's Speech suggest that the Bill will contain provisions to "clarify the immigration status of Irish citizens...this means that Irish citizens will generally not require leave to enter or remain in the UK".²

¹ Professor Bernard Ryan, '[Law may be needed to preserve the rights of Irish in UK after Brexit](#)', the Guardian, 19 October 2016

² [The Queen's Speech and associated background briefing, on the occasion of the opening of parliament on Monday 14 October 2019](#) p 25

1. The Common Travel Area

1.1 Overview

The Common Travel Area (CTA) is a special travel zone between the Republic of Ireland and the UK, the Isle of Man and the Channel Islands. British and Irish citizens can travel freely within the CTA without being subject to passport controls.

The arrangements for non-CTA nationals are more complex. Although there are minimal immigration checks for journeys started within the CTA, travellers must have the relevant immigration permission for the country they are seeking to enter. EU and EEA³ nationals still have rights of entry and residence in the UK and Ireland under EU 'free movement' law, although the situation in the UK will change due to Brexit

The remainder of this briefing focuses on how the CTA is applied for travel between the UK and Republic of Ireland.

CTA arrangements have existed (in various forms) since the establishment of the Irish Free State in 1922. Both the UK and the Republic of Ireland maintain separate immigration policies but there is a significant degree of practical cooperation and policy coordination in order to ensure the security of the CTA.

Cooperation and policy coordination between the UK and Republic of Ireland helps maintain the operation of the CTA

1.2 How do the arrangements work in practice?

The UK and Republic of Ireland maintain their own visa and immigration policies and have different approaches to conducting controls within the context of the CTA.⁴

Immigration status requirements

UK

As per section 1(3) of the *Immigration Act 1971*, people seeking entry to the UK from the Republic of Ireland are not subject to immigration control. [Paragraph 15](#) of the Immigration Rules and [section 9](#) of the 1971 Act contain further provisions related to the CTA.

In short, people who have already been granted leave to enter elsewhere in the CTA do not normally require leave to enter the UK. However, there are some exceptions, as specified in the *Immigration (Control of Entry through Republic of Ireland) Order 1972*, (as amended).

Article 3 of the 1972 Order specifies which categories of traveller require leave to enter the UK when travelling from the Republic of Ireland. Typically, this applies to:

³ EEA – European Economic Area (EU Member States plus Norway, Iceland and Liechtenstein). Swiss nationals have similar rights under bilateral agreements with the EU.

⁴ Home Office, '[Guidance: Common travel area](#)', updated 5 September 2019 and GOV.UK, '[Common travel area guidance](#)' published 22 February 2019

- people who merely passed through the Republic of Ireland;
- people requiring visas for the UK;
- people who entered the Republic of Ireland unlawfully;
- people who are subject to directions given by the Secretary of State for their exclusion from the United Kingdom on “conducive to the public good” grounds; and
- people who entered the Republic from the United Kingdom and Islands after entering there unlawfully or overstaying their leave.

Certain categories of people still require leave to enter the UK from the Republic of Ireland

As per Article 4 of the Order, certain other categories of people who do not have the right of abode in the UK are automatically deemed to have three months’ leave to enter the UK without permission to work if they enter the UK from the Republic of Ireland. Notably this applies to ‘non-visa nationals’ (ie nationalities that are not required to apply in advance for permission to enter the UK as a general visitor).

EEA and Swiss nationals, and other people who have rights of entry and residence in the UK under EU law, are exempt from Article 4.

Republic of Ireland

All who are not Irish or British citizens are classed as ‘non-nationals’. Similar to the UK, certain nationalities require a visa in advance of travelling to the Republic of Ireland.

A citizen of a country whose nationals need a visa to enter the Republic may still require a valid visa even if in possession of a valid UK visa or residence permit.⁵ Land arrivals are expected to obtain immigration permission with one month of arrival.⁶

Again, EEA and Swiss nationals and their family members have prevailing rights of entry under EU free movement law.

The CTA and border checks

As indicated above, there are differences between the UK and Irish authorities’ approaches to conducting immigration checks on travellers arriving by land, air or sea.

In Ireland, immigration controls automatically apply to all non-national arrivals from the UK by air or sea, and may be imposed on those who cross the land border.

The UK’s approach is less systematic. A 2011 inspection report by the then Independent Chief Inspector of the UK Border Agency gave some details:

Operation of the CTA

⁵ Citizensinformation.ie, ‘Common Travel Area between Ireland and the United Kingdom’, 6 May 2015

⁶ Professor Bernard Ryan, *ILPA EU Referendum Position Papers 8: The implications of UK withdrawal for immigration policy and nationality law: Irish aspects*, 18 May 2016

4.17 The control of movements within the CTA is managed in two ways as mentioned earlier: international journeys from the Republic of Ireland to Great Britain and 'in-country' journeys that provide onward transit routes to other parts of the CTA. Examples of these are as follows:

- international journey – a flight from Dublin to London, or a ferry from Dun Laoghaire to Holyhead;
- in-country journey – a flight from Belfast City Airport to Manchester or a ferry from Belfast to Stranraer in Scotland.⁷

The report noted that not all international journeys are subject to border control checks. Decisions on whether to apply formal checks are typically informed by risk assessments of the route and passengers.

The Irish border is often described as a 'soft' border, in light of the absence of routine border controls. A report by the Northern Ireland Affairs Committee explains:

71. (...). Whilst it is not true to say that the border is completely open—there is number plate-monitoring technology in place—it is the case that individuals can travel across the border by land unimpeded. And commerce can take place across the border without duties being levied, customs checks, or other bureaucracy, even though different currencies are already used.⁸

The lack of routine immigration controls and customs checks means the Irish border is often described as a 'soft' border

The potential for deliberate and unconscious breaches of controls

It is recognised that there is potential for the CTA and border arrangements to be abused by people seeking to evade the usual controls on entry to Ireland or the UK.

The 2011 inspection report by the independent Chief inspector of the UK Border Agency gave an illustration of how this could happen:

In-country journeys can be used to connect passengers to road and rail networks for onward travel to other parts of the CTA. For example, flights from Great Britain into Belfast or the City of Derry airport can also be used to connect to the road and rail networks for onward travel to the Republic of Ireland. The reverse of these routes (from Republic of Ireland to Northern Ireland across the Irish land border then using a ferry or flight from Northern Ireland to return to Great Britain), would also constitute an in-country journey between Northern Ireland and Great Britain.⁹

'Operation Gull' is a longstanding joint scheme involving officials from the Garda National Immigration Bureau, Home Office, Police Scotland

⁷ Independent Chief Inspector of the UK Border Agency, [Inspection of the UK Border Agency in Scotland and Northern Ireland: Countering abuse of the Common Travel Area](#), 20 May 2011

⁸ Northern Ireland Affairs Committee, [Northern Ireland and the EU referendum](#), 26 May 2016, HC 48 2016-17

⁹ Independent Chief Inspector of the UK Border Agency, [Inspection of the UK Border Agency in Scotland and Northern Ireland: Countering abuse of the Common Travel Area](#), 20 May 2011, para 4.17

and the Police Service of Northern Ireland, which seeks to intercept irregular immigrants travelling to/from Northern Ireland by air and sea.

The Home Office has said that it does not 'publish statistics on request for Operation Gull'.¹⁰ In 2017 the Derry Journal reported that:

Nearly 800 people were stopped or arrested by immigration officers and police in Derry, Belfast and Larne in just a single year of Operation Gull - a continuing clampdown designed to stop abuse of the Common Travel Area (CTA) between Ireland and the United Kingdom (UK).¹¹

Operation Gull seeks to intercept migrants illegally attempting to use NI ports as a means of transit across the UK

According to a BBC report of July 2015, in 2014/15 468 irregular migrants were intercepted at ports in Northern Ireland trying to reach other parts of the UK, compared to 274 in 2012/13. The Home Office attributed the rise to increases in migration movement patterns and increased enforcement activity.¹²

The British-Irish Parliamentary Assembly reported on concerns that some ports in Ireland might be soft entry points for onward travel to the UK:

20. (...) The co-rapporteurs had heard some anecdotal evidence that the CTA was seen as vulnerable to exploitation by those wishing to enter the UK illegally by travelling via Ireland, for example via the Cherbourg-Rosslare crossing, and then on to either Fishguard or Pembroke Dock, or by travelling by land across the border with Northern Ireland. However, the officials we met at Rosslare were very clear that there was no evidence of the Rosslare crossing to the UK being used in such a way.¹³

The absence of immigration checks at the land border means that there is also potential for non-EEA nationals to unwittingly breach UK or Irish immigration requirements when crossing the border. The Law Centre (NI) highlighted this issue in evidence to the British-Irish Parliamentary Assembly:

Callers to our advice line are often surprised to hear that, while the CTA is a "free movement zone" for CTA and EEA nationals, it is not so for other nationals. This lack of awareness can result in people committing an offence by crossing the land border. In some cases, this can lead to detention and removal. Clearly, this brings with it a high human cost as well as the economic cost of immigration enforcement.

Information about the CTA and immigration requirements is not readily available for passengers purchasing train or coach tickets between both jurisdictions. Therefore, a person could easily board a day-return train at Belfast Central Station or Dublin Connolly without knowing that they need to have their paperwork in place.¹⁴

¹⁰ [PO 275698 \[on immigration controls: Northern Ireland\] 15 July 2019](#)

¹¹ ['792 stopped or arrested by border officers under Operation Gull'](#), *Derry Guardian*, 7 April 2017

¹² BBC News [online], ['Northern Ireland ports: Rise in illegal immigrants intercepted trying to reach other parts of the UK'](#), 13 July 2015

¹³ British-Irish Parliamentary Assembly, Committee B (European Affairs), [Report on Visas](#), 5 July 2016

¹⁴ British-Irish Parliamentary Assembly, Committee B (European Affairs), [Report on Visas](#), 5 July 2016, para 13

The Assembly's inquiry noted that UK and Irish government officials have recognised that there is scope to simplify the rules and enhance the travelling public's awareness and understanding of the CTA.

Why might UK and Irish citizens still need a passport to travel?

Although the CTA arrangements mean that Irish and UK citizens are not subject to passport checks when travelling between the two countries, in practice they may still require a passport in order to travel. This is explained on the Irish Government's Citizensinformation.ie website:

The Common Travel Area means that there are no passport controls in operation for Irish and UK citizens travelling between the 2 countries. You do not need to have a passport in order to enter the other country. However, all air and sea carriers require some form of identification and some regard a passport as the only valid identification. Immigration authorities may also require you to have valid official photo-identification which shows your nationality. As you are being asked to prove that you are an Irish or UK citizen who is entitled to avail of the Common Travel Area arrangements, it is advisable to travel with your passport.¹⁵

Passports are still used to establish British or Irish citizenship

1.3 Why was the CTA established?

The adoption of a CTA is linked to the establishment of the Irish Free State in 1922. A commentary on the history of the CTA by Bernard Ryan, professor of law at the University of Leicester, explains:

When the Home Office was faced with the imminent establishment of the Free State, its view was that it 'would not propose to require under the Aliens Order a passport system between this country and Ireland, and could not make any use of such a requirement if they were asked to impose it'. The status quo depended however upon Free State agreement to continue to participate in the British system of immigration control, (...). The Irish officials appear to have accepted the proposal with enthusiasm (...).¹⁶

This CTA remained in place until controls were reinstated at the outbreak of the Second World War.

Although some restrictions were relaxed after the end of the war, British immigration controls (including checks on people travelling between Northern Ireland and Britain) remained in place until the Irish Government once again agreed to follow immigration policies and systems of immigration control similar to the UK's, in 1952. As previously, the 1952 CTA arrangements were based on administrative agreement between the two states, and details were not made public.

A 2016 briefing by Professor Ryan points to some reasons for successive UK and Irish governments' continued support for the arrangements:

The primary explanation for the durability of these arrangements has been the assumption of the UK authorities that it is

¹⁵ Citizensinformation.ie, '[Common Travel Area between Ireland and the United Kingdom](#)', 6 May 2015 (accessed 30 June 2016)

¹⁶ Bernard Ryan, '[The Common Travel Area between Britain and Ireland](#)' (2001) 64 (6) *Modern Law Review*, page 856

impractical for the Irish border to be an immigration frontier. One result has been support by Northern Irish unionists for the common travel area, in order to avoid immigration control on journeys between Northern Ireland and Great Britain.

The many social and economic connections between the Republic of Ireland and all parts of the UK are a second factor pointing towards relative freedom of movement between the two states. This aspect of the common travel area is generally favoured by the Irish Government. It also appeals to nationalist opinion in Northern Ireland, which supports any lessening of the de facto consequences of the partition of the island of Ireland.

A third factor underlying common travel area arrangements is that these favour the free movement of labour. For most of the period since 1922, that meant movement of Irish workers to Great Britain. With greater economic development in the Republic of Ireland since the mid- 1990s, the pattern has been more varied, with movement in both directions.¹⁷

1.4 Anglo-Irish cooperation on immigration and border issues

The CTA is underpinned by close and active cooperation between the UK and Irish border and immigration authorities.

Cooperation to ensure the security of the CTA's external borders

The British-Irish Parliamentary Assembly received evidence about the nature of cooperation on border security issues from UK and Irish government officials:

17. On security, the UK Government's evidence noted that while it was committed to maintaining the CTA, this should not be at the "expense of a secure border". It was important that the UK had confidence that other CTA partners' borders were secure and to this end the UK Government was actively working with other CTA partners to ensure their borders were secure, and offering assistance to improve that security where appropriate. For its part, the Irish Government said that it was in ongoing discussions with the UK on the security of borders and the CTA which it was committed to enhancing. In particular officials from the immigration services of both countries met on a fortnightly basis to share information on CTA issues and abuses identified. There was also other regular contact through the UK Home Office's liaison officers at the Garda National Immigration Bureau (GNIB) in Dublin and between immigration officers at Dublin Airport, Dublin Sea Port and the Immigration Unit based in Dundalk.

(...)

19. During the co-rapporteurs' visit to the ports of Rosslare and Fishguard on 2 July 2016, they heard how the British and Irish governments were looking to cooperate on improving border security, in particular to minimise illegal migration to the UK via Ireland and vice versa. (...) There was also good evidence of steps to harmonise the systems underpinning checks and for the sharing of information, with Irish officials noting that they would

British and Irish immigration enforcement officials meet regularly to discuss issues arising from the CTA

¹⁷ Professor Bernard Ryan, [*ILPA EU Referendum Position Papers 8: The implications of UK withdrawal for immigration policy and nationality law: Irish aspects*](#), 18 May 2016

be introducing improvements related to the collection of biometric data over the next 12 months.¹⁸

Information sharing

In December 2011 the UK and Irish governments agreed a legally non-binding joint statement - [Regarding Co-operation on Measures to Secure the External Common Travel Area](#) - and an accompanying Memorandum of Understanding on visa data exchange. An accompanying press release gave an indication of the anticipated benefits:

Close co-operation in the run-up to the agreement has already brought significant benefits. A pilot exchange to check data provided in 1,700 Irish visa applications lodged in Nigeria against UK immigration records has identified over 200 persons applying to come to Ireland who have an adverse UK immigration history. A considerable number of these were either deported from the UK or refused entry into the UK.

Additionally, so far this year data swaps have shown that of 1,500 failed asylum claims made in Ireland nearly 500 have been identified as being known to the UK Border Agency - either as asylum shoppers with previous asylum applications to the UK or as visa applicants, and usually in a different name and nationality to that declared in Ireland.

And thanks to joint working an immigration fraudster was caught with a bundle of fake identities after his 'zig zag' route across four countries flagged him to UK Border Agency officers in Belfast. Another Nigerian applicant was refused entry into Ireland after comparison with documents which shown [sic] he had previously been removed from the UK in 2008 and that the passport had been tampered with.¹⁹

The agreement identified some policy priorities and areas for further cooperation. These included data sharing to identify and prevent abuses, plans for electronic border management systems, and seeking to develop a joint Common Travel Area visit visa.

Towards mutual recognition of visas

For some time, the UK and Irish governments have been discussing the potential to introduce mutual visa recognition, and to eventually introduce some joint visa arrangements for non-EEA nationals wishing to travel between CTA states.²⁰

¹⁸ British-Irish Parliamentary Assembly, Committee B (European Affairs), [Report on Visas](#), 5 July 2016

¹⁹ Irish Naturalisation and Immigration Service, [Ireland-UK accord to further secure the Common Travel Area](#), 20 December 2011

²⁰ UKBA news release, [The UK and Ireland to improve the Common Travel Area](#), 20 December 2011; PA Consulting Group, [Evaluating the value of the economic relationship between the United Kingdom and Ireland volume 1](#), 18 July 2013, page 57; INIS, [Immigration in Ireland – 2013 in Review](#), 6 January 2014

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The only example so far is the [British-Irish visa scheme for Chinese and Indian nationals](#), which was formally launched in October 2014.²¹ It enables Chinese and Indian nationals to visit the UK and Ireland using a single visitor visa (ie either issued by the UK or Ireland).

Chinese and Indian visitors require only one visa to visit Ireland and Britain

Ireland launched its own visa recognition initiative in July 2011, in a bid to boost tourism.²² The [Irish Short Stay Visa Waiver programme](#) allows short-term visitors from certain non-EEA countries who already have permission to visit or live in the UK to visit Ireland from the UK without needing a separate visa.

²¹ GOV.UK, *News*, '[British-Irish visa scheme launches in India](#)', 10 February 2015

²² Irish Naturalisation and Immigration Service, *press release*, '[Alan Shatter TD, Minister for Justice, Equality and Defence announces Ireland's first formal Visa Waiver Programme as an integral part of the Government's Job Initiative](#)' (undated; accessed on 23 December 2013). The scheme was initially launched as a pilot, which was later extended until the end of October 2016: Irish Naturalisation and Immigration Service, *press release*, '[Tourist and other short-stay visitor numbers set to rise](#)', 14 November 2013

2. Irish nationals' special status in UK law

Irish nationals have a special status in the UK, which predates and is separate to the rights they have as EU citizens. In short, Ireland is not considered to be a "foreign country" for the purpose of UK laws, and Irish citizens are not considered to be "aliens".

Furthermore, Irish citizens are treated as if they are 'settled' (ie have permanent immigration permission to remain in the UK) from the date they take up "ordinary residence" in the UK.

In spite of the above, and the existence of the CTA arrangements, Irish nationals are not wholly exempt from immigration controls. They are still subject to powers to deport, remove or exclude them from the UK.

The special status of Irish nationals dates back to the establishment of the Republic of Ireland in 1949.

2.1 Legislative background

Before 1949 the Irish Free State was within the Crown's Dominions and people born there were British subjects.

The Republic of Ireland Act 1948 (implemented in the UK by the *Ireland Act 1949*) established the Republic of Ireland and broke its last link with the Commonwealth and Crown's dominions.²³

Section 2 of the *Ireland Act 1949* provides that Ireland is "not a foreign country" for the purpose of "any law in force in any part of the United Kingdom..." and references to "foreigners, aliens, foreign countries ..." shall be construed accordingly".

Section 50(1) of the *British Nationality Act 1981* (which reflected similar provisions in the *British Nationality Act 1948*) similarly provides:

"Alien" means a person who is neither a Commonwealth citizen nor a British protected person nor a citizen of the Republic of Ireland.

2.2 Why do Irish citizens have a special status?

The reason for giving the Irish a special position was stated during the second reading of the *Ireland Bill* on 11 May 1949 by Clement Attlee, who said that the alternative would be impractical and undesirable:

As everybody knows, there are in Britain large numbers of people of Irish descent, some born in Eire and some born in this country, and there is a continual passage to and fro of people who come

²³ In line with the *British Nationality Act 1948* (which came into force in 1949), citizens of the Irish Free State were deemed to have ceased to be British subjects on 1 January 1949 (but were able retain British subject status after this time subject to certain criteria). People born in the Republic of Ireland on or after 1 January 1949 did not acquire British subject status or any other form of British nationality by birth.

over to work or to study or for pleasure. It would be an extremely difficult thing to decide in every case from day to day as to what the exact status was of a person with an Irish name, and if we had to attempt to make all citizens of Eire aliens, it would have involved a great expenditure of men and money and a great extension of control of aliens. We had in particular also to remember the difficulties caused because of the fact of the land frontier between Northern Ireland, which is part of the United Kingdom and the Commonwealth, and Eire. (...).²⁴

Attlee noted the practical difficulties and costs of viewing the Irish as aliens

During the committee stage of the *British Nationality Bill*, in 1981, Enoch Powell moved an amendment to remove the Irish exception to the definition of an alien. The Home Office minister, Tim Raison, opposed the amendment and explained the Government's position in similar terms to Mr Attlee's 1949 statement:

On the argument that we have heard this morning, I say first that the Government consider that it would be inappropriate to regard Irish citizens as aliens and the Republic of Ireland as a foreign country for the purpose of this legislation. The relationship between this country and the Republic of Ireland reflects the long historical connection between the United Kingdom and what is now the Republic of Ireland and the close personal ties that exist between the people of the one country and the people of the other. The relationship was expressed in the provisions of the Ireland Act 1949 on which these definitions are based. Whilst much has changed since 1949, the Government are not persuaded that this relationship has altered to such a degree that the arrangements in that Act in this respect should be amended.²⁵

The Conservative Government of the 1980s stressed the long-standing ties between the UK and Ireland

2.3 Practical implications

The special status of Irish nationals in UK law provides rights across a number of areas, including eligibility for British citizenship, eligibility to vote and stand for election, and eligibility for certain welfare benefits. As a result it is thought that the Irish have more rights than other EU citizens resident in Britain.

²⁴ HC Deb. 464, c.1855

²⁵ 13 May 1981, SC Deb. (F) c.2002

3. The implications of Brexit

3.1 The future of the CTA, and the nature of border controls

Will the CTA continue after Brexit?

The UK and Irish Government have pledged to continue the CTA after Brexit. The UK Government has said:

The UK and Irish governments have made firm commitments to protecting existing Common Travel Area (CTA) arrangements, including the associated rights of British and Irish citizens in the other state.

This means that Irish citizens will continue to have the right to enter, live and work in the UK without requiring permission. The government will appropriately reflect this position in legislation ahead of the introduction of the new points-based immigration system.²⁶

The UK/Ireland Memorandum of Understanding

On 8 May 2019, at a meeting of the British-Irish Intergovernmental Conference, the British and Irish governments announced they had signed a new Memorandum of Understanding (MoU) on the Common Travel Area. David Lidington, who signed the MoU on behalf of the UK Government, said “it guarantees that whatever the terms of the UK’s exit from the EU, there will be no change to the rights of British and Irish citizens”.²⁷

The MoU largely sets out the rights that currently exist under the CTA (these mirror those set out above), and commits both governments to upholding them.

An MoU can be a binding legal document just like a treaty but can also be an informal arrangement between states. The content of any MoU and the intentions of the parties determine whether an MoU is legally binding or not.²⁸

The content of the Common Travel Area MoU makes clear that it is not legally binding; the final provisions state:

The foregoing record represents the common understanding of the Participants upon the matters referred to therein. **It is not of itself intended to create legally binding obligations.** The longstanding durability of the CTA has benefited from a degree of flexibility and the detail of the foregoing arrangements may continue to evolve.²⁹ [Our emphasis].

²⁶ GOV.UK, ‘[Policy paper: no deal immigration arrangements for EU citizens arriving after Brexit](#)’, updated 5 September 2019 [accessed 1 October 2019]

²⁷ ‘British-Irish conference: Brexit rights deal signed’, BBC News, 8 May 2019

²⁸ For further information on MoUs, see FCO Treaties and Memoranda of Understanding (MOUs). Guidance on Practice and Procedures, updated March 2014

²⁹ Cabinet Office, ‘Memorandum of Understanding between the UK and Ireland on the CTA’, 8 May 2019

However, the two parties also commit in the MoU to ensure that:

[A]ny necessary steps are taken to give effect to the associated reciprocal rights and privileges outlined above [...] This includes any necessary legislative steps and further, more detailed, bilateral agreements that may be entered into now or in the future to give effect to specific aspects of the CTA arrangements.

In March 2019, Ireland and the UK did sign a Convention on Social Security that seeks to preserve the social security rights of UK and Irish nationals which support the right of UK and Irish citizens to move between and reside in each other's countries.

The House of Lords European Union Committee, which scrutinised the Convention, raised the question as to "whether an overarching framework agreement on the CTA might not be more suitable and provide greater certainty to citizens".³⁰ A group of academics who wrote a paper on the CTA for the NIHR answer the question in the positive, saying they believe the "most effective way" to address the issues of "uncertainty" that Brexit brings to how the CTA will function in the future:

[W]ould be for a bilateral agreement between Ireland and the UK incorporating the full extent of CTA arrangements and explaining the relationship between these commitments and the terms of any UK-EU Withdrawal Agreement.³¹

Will there be immigration checks?

The Home Office has confirmed that there will be no change to the rights of Irish and British citizens to travel within the CTA after Brexit:

If you are an Irish citizen living in the UK or a British citizen living in Ireland the Common Travel Area (CTA) arrangements allow you to travel freely within the CTA without seeking permission from the authorities.³²

The Home Office also confirmed that those of other nationalities travelling within the CTA will continue to be "subject to national immigration requirements. Individuals arriving in the UK from Ireland should ensure they meet UK immigration requirements."³³

³⁰ House of Lords: EU Committee, HL 306, Scrutiny of international agreements: Treaties considered on 5 March 2019, 6 March 2019

³¹ Sylvia de Mars, Colin Murray, Aoife O'Donoghue and Ben Warwick (de Mars et al), 'Discussion paper on the Common Travel Area', for the Northern Ireland Human Rights Commission, p 29, October 2018

³² GOV.UK, '[Guidance: Common travel area guidance](#)', published 22 February 2019 [accessed 25 September 2019]

³³ GOV.UK, '[Guidance: Common travel area guidance](#)', published 22 February 2019 [accessed 25 September 2019]

3.2 Impact on Irish nationals' status and rights in the UK

Deportation, exclusion and removal of Irish citizens from the UK

The current position

Irish citizens are currently subject to the same deportation and exclusion powers from the UK that apply to all EEA citizens. The relevant rules are set out in the Citizens Rights Directive 2004/38/EC and transposed into UK law by the Immigration (European Economic Area) Regulations 2016 (the "EEA regulations").

Under the Citizens Rights Directive the free movement rights of EEA nationals and their family members can only be restricted 'on grounds of public policy, public security or public health'.³⁴ The law is more favourable for EEA citizens and their family members when compared to existing UK law on deportations, exclusion and removal for non-EEA citizens.³⁵

Since 2007 the British Government has taken the position that it will not deport Irish citizens except in exceptional circumstances in 'the public interest'.³⁶ The Home Office have said:

Irish citizens have been liable to deportation since the Commonwealth Immigrants Act 1962 and these powers, along with the powers to exclude or impose a travel ban on Irish citizens, exist in current legislation. It is worth noting that the Government's approach to the deportation of Irish citizens since 2007 is to only deport Irish citizens where that deportation is in the public interest.³⁷

According to the Home Office's immigration statistics there have been 180 Irish citizens enforcedly removed from the UK in the period of 2004-2018.³⁸

The position after Brexit

The Government has committed to maintaining its approach against deporting Irish citizens after Brexit.³⁹

After the UK leaves the EU it intends to modify EU laws on deportation, exclusion and removal of EEA citizens from the UK.

³⁴ [Council Directive 2004/38/EC](#) article 27

³⁵ For more information see the Library briefing '[Deportation of foreign national offenders](#)', 1 August 2017

³⁶ [PO HL14521 \[on Immigration: Islamic State\]](#) 27 March 2019

³⁷ [Immigration and Social Security Co-ordination \(EU Withdrawal\) Bill](#) explanatory notes, Bill 309-EN 57/1, 26

³⁸ [Returns table volume 1 rt 02](#). The [immigration statistics user guide](#) explains that "the published statistics refer to enforced returns which include deportations, as well as cases where a person has breached UK immigration laws and those removed under other administrative and illegal entry powers who have declined to leave voluntarily. Most illegal immigrants are removed under administrative or illegal entry powers from the UK and not deported."

³⁹ [PO HL14521 \[on Immigration: Islamic State\]](#) 27 March 2019

In the event of a no-deal Brexit the Government has stated it will “keep out and deport more EU citizens who commit crimes by applying tougher UK criminality thresholds at the border and also when crimes are committed in the UK”.⁴⁰

Alternatively, during the transition period under May’s deal, the UK would remain bound by EU laws including the current deportation, exclusion and removal thresholds for EEA citizens and their family. A similar position could be expected under another deal with a transition period.

From a no-deal exit day, or at the end of a transition period, EEA citizens would then be subject to stricter rules on deportation, exclusion and removal from the UK. This will be achieved by the Immigration, Nationality and Asylum (EU Exit) Regulations 2019/745 (the “immigration (EU Exit) regulations”), secondary legislation which will come into force on exit day, or at the end of a transition period on 31 December 2020.⁴¹ The regulations would make changes to existing UK law to make it arguably ‘easier’ to deport EEA citizens, including Irish citizens, by making them ‘subject to UK rules on criminality’.⁴²

Existing UK law requires the Home Secretary to make a deportation order against non-EEA citizens under some circumstances.⁴³ This would be extended to relevant conduct by EEA citizens after Brexit (and after a transition period under a deal). However, the Immigration (EU Exit) regulations would amend the UK Borders Act 2007 to exclude Irish citizens from existing automatic deportation provisions.⁴⁴

EU Settlement Scheme

The Government has implemented the EU Settlement Scheme (the “EUSS”) to give EEA citizens residing in the UK a new immigration status in the UK after Brexit. The EUSS has been open for applications since March this year and will operate regardless of the type of Brexit.

Irish citizens are eligible to apply for status under the EUSS. However, the Government has advised that they are not required to apply for status and can continue to rely on their rights under the CTA to reside in the UK after Brexit. Non-Irish and non-British family members of Irish citizens living in the UK will generally need to apply to the EUSS. The Home Office guidance on the EU Settlement Scheme states:

Irish citizens enjoy a right of residence in the UK that is not reliant on the UK’s membership of the EU. This means that Irish citizens do not need to apply for status under the scheme. Nonetheless, Irish citizens can make an application under the scheme, should

⁴⁰ GOV.UK, ‘[Policy paper: no deal immigration arrangements for EU citizens arriving after Brexit](#)’, updated 5 September 2019 [accessed 1 October 2019]

⁴¹ [Explanatory memorandum to Immigration, Nationality and Asylum \(EU Exit\) Regulations 2019/745](#), 7.2. These regulations have been made under s8 of the European Union (Withdrawal) Act 2018.

⁴² [Explanatory memorandum to Immigration, Nationality and Asylum \(EU Exit\) Regulations 2019/745](#), 7.10

⁴³ For more information see the Library briefing ‘[Deportation of foreign national offenders](#)’, 1 August 2017

⁴⁴ [Immigration, Nationality and Asylum \(EU Exit\) Regulations 2019/745 s17](#)

they wish to do so. Their family members (who are not Irish citizens or British citizens and who do not have leave to enter or remain in the UK) will need to make an application for status under the EU Settlement Scheme.⁴⁵

In relation to non-Irish/non-UK family members of Irish citizens, the Home Office further explains:

If you are an Irish citizen and want to support an application from existing non-Irish and non-UK family members who want to remain in the UK with you, or who wish to join you in the future, you will need to be able to prove that you were resident in the UK prior to 31 December 2020. There will be many ways to do this without you applying to the Settlement Scheme, but a grant of status under the Scheme would constitute such evidence.⁴⁶

Dual British/EEA citizens, including dual British/Irish citizens, are not eligible to apply for EUSS.⁴⁷

The EUSS and Northern Ireland

There has been controversy over the settled status scheme and its potential impact on the rights of those from Northern Ireland and the Good Friday/Belfast Agreement. In March and April 2019, campaigners and media outlets claimed that the Government has 're-classified' Northern Irish people as being automatically British by birth.

The Commons Library briefing paper '[Northern Ireland, Citizenship and the Belfast/Good Friday Agreement](#)' provides further information.

Irish citizens entering the UK from outside the CTA

Irish citizens who enter the UK on a journey originating from outside the CTA currently do so under their free movement rights as EU citizens, not their CTA rights. The Home Office explained:

Irish citizens do not require permission to enter or reside in the UK. Currently this right of entry and residence stems from the Immigration Act 1971 (when entering from Ireland) and the EEA Regulations (when entering from outside the CTA).⁴⁸

The Government intends to repeal free movement of EEA citizens in the UK. This means that Irish citizens would no longer be able to enter the UK from outside the CTA under their free movement rights.⁴⁹ If a withdrawal agreement with a transition period is ratified, free movement would likely continue during the transition, as is the case with May's Withdrawal Agreement. In the event of a no-deal Brexit, the current Government policy is that free movement will continue within the UK after exit day, until the Government legislates to repeal the implementing UK domestic law.

⁴⁵ Home Office, '[EU settlement scheme: EU, other EEA and Swiss citizens and their family members](#)', 29 March 2019, p 11

⁴⁶ GOV.UK, '[Guidance: Common travel area guidance](#)', published 22 February 2019 [accessed 25 September 2019]

⁴⁷ [Immigration rules appendix EU: annex 1 – definitions: EEA citizen](#) [accessed 24 July 2019].

⁴⁸ Home Office, '[Immigration and social security co-ordination \(EU withdrawal\) Bill 2017-19: factsheet 3: status of Irish citizens](#)', updated 21 December 2018, [accessed 24 September 2019]

⁴⁹ See the [explanatory notes](#) for the Immigration and Social Security Co-ordination (EU Withdrawal) Bill 2017-19 for more information

The May Government tabled the Immigration and Social Security Co-ordination (EU Withdrawal) Bill 2017-19 (the “Immigration Bill”) to confirm the rights of Irish citizens under the CTA when entering from outside the CTA. This Bill fell when Parliament was prorogued on 8 October 2019.

The Johnson Government then announced a new Immigration Bill to repeal free movement in the UK in the Queen’s Speech on 14 October 2019. At time of writing it is not clear whether the Johnson Immigration Bill will replicate provisions in the May Immigration Bill confirming the rights of Irish citizens under the CTA when entering from outside the CTA.

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