



## BRIEFING PAPER

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# Northern Ireland, Citizenship and the Belfast/Good Friday Agreement

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## Summary

This briefing addresses the complex interplay between the Belfast/Good Friday Agreement, citizenship, identity, the settled status scheme, and human rights in the context of Northern Ireland.

Changes to the immigration rules for settled status have sparked controversy. Media outlets and campaigners have reported that changes to the immigration rules for settled status may have 'breached' the Belfast/Good Friday Agreement.<sup>1</sup>

The Home Office changed the definition of an 'EEA citizen' for the purposes of Appendix EU of the Immigration Rules. Appendix EU contains the rules for the settled status scheme which grants leave for EEA citizens and their families to remain in the UK after Brexit. The definition of an eligible 'EEA citizen' for settled status was changed to exclude dual British/EU citizens.

Northern Ireland is part of the United Kingdom and the British Nationality Act 1981 generally considers that a person born in the UK will be a British citizen by birth if one of their parents was either a British citizen or settled in the UK at the time of birth.<sup>2</sup> The definition of an 'EEA citizen' for settled status would therefore exclude any dual British/EU citizen, including a dual British/Irish citizen from Northern Ireland.

British citizens have a right of abode in the UK and are not subject to immigration control, whereas settled status is a type of immigration permission with attached conditions. Generally, citizenship of a country affords the citizen with the stronger rights when compared to migrants. However, EU law rights for family reunion of non-EEA spouses are more advantageous than the UK immigration rules which apply to non-EEA spouses of British citizens.

The Belfast Agreement, more often called the Good Friday Agreement, contains within it a commitment by the British and Irish governments to allow the people of Northern Ireland to identify and be accepted as Irish, British, or both, and a right to hold both British and Irish citizenship. This part of the Agreement is often known as the 'birthright protection'.

The Good Friday Agreement is an international treaty, so both the UK and Irish governments are required under international law to uphold the commitments they made in the Agreement.

The birthright provision has not been specifically written, or 'incorporated', into UK domestic law.

In the British constitutional system commitments made in international treaties cannot be relied upon directly. In order for such commitments to result in individuals having rights domestically, such provisions would need to be given effect in UK law (or, in some cases, policy).<sup>3</sup>

A failure by the UK to give domestic legal effect to a provision in a treaty does not absolve the UK of its responsibilities to uphold its obligations under international law.

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<sup>1</sup> See, for example: '[Good Friday Agreement being 'undermined' by Home Office](#)', Irish World, 4 March 2019.

<sup>2</sup> There are exceptions and this is only a basic summary of the legal position.

<sup>3</sup> For more detail see section 5.2.

## 4 Northern Ireland, Citizenship and the Belfast/Good Friday Agreement

That notwithstanding, not all provisions of a treaty necessarily need to be written into domestic law. They may not create obligations, or, where they do, these may already be provided for in law or already be government policy.

UK domestic law does allow for dual British-Irish citizenship, and for those with this status to revoke their British citizenship and hold only Irish citizenship. Some commentators have questioned whether Northern Ireland born people having to take this 'extra step' to hold only Irish citizenship is in the 'spirit of' the Good Friday Agreement.<sup>4</sup>

Northern Irish immigration and citizens' rights campaigner Emma DeSouza has claimed that the changes to the immigration rules for settled status may create 'two tiers' of Irish citizens: those with only Irish citizenship who may apply for settled status, and those with dual British/Irish citizenship who are ineligible to apply. She has been involved in a legal dispute with the Home Office and more information is provided in section 3 of this briefing.

Identity in Northern Ireland is itself a complex interaction of political, religious and national affinities. The 2011 Census records that just under three-quarters (71%) of people born in Northern Ireland and living there in 2011 identified as British or Northern Irish, without also identifying as Irish. Twenty-six per cent identified as Irish only.<sup>5</sup>

Some people living in Northern Ireland who have only Irish passports, and view themselves as Irish, reject the British Government's treatment of them as British citizens. They may want, therefore, to be treated the same as Irish citizens and so be able to apply for settled status, regardless of whether or not that gives them extra legal rights.

In general terms, immigration law and issues concerning citizenship and identity may engage rights protected by the European Convention on Human Rights. Article 8 of the Convention protects the right to private and family life, and Article 14 prohibits discrimination in the enjoyment of Convention rights. Citizenship has been held to be capable of falling within the scope of Article 8, for example in the context of the arbitrary refusal of citizenship or deprivation of nationality.

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<sup>4</sup> See, for example, comments by migration lawyer Simon Cox and Fianna Fáil TD Declan Breathnach, in ['Good Friday Agreement being 'undermined' by Home Office'](#), *Irish World*, 4 March 2019.

<sup>5</sup> See Section 8 for the full breakdown of the survey results.

# 1. British nationality law

Current British nationality law is set out in the [British Nationality Act 1981](#) (as amended; 'the 1981 Act'), which came into force on 1 January 1983. British nationality law is very complex and there are six categories of British nationals including British citizens.<sup>6</sup>

Put simply, since 1 January 1983, people born in the UK or a qualifying territory automatically acquire British citizenship if, at the time of their birth, one of their parents was a British citizen or legally settled in the UK (i.e. living in the UK with no immigration time restriction, such as with Indefinite Leave to Remain status). Children born in the UK to parents who are not British or legally settled here do not become British citizens at birth.

The 1981 Act defines 'the United Kingdom' in s50 as "Great Britain, Northern Ireland and the Islands, taken together". People born in Northern Ireland from 1949 onwards fall under the British nationality provisions in place since this time. Those born on or after 1 January 1949 would have acquired citizenship of the UK and Colonies. Those born on or after 1 January 1983 will have acquired British citizen status.

As per the 1981 Act British citizens of full age and capacity can choose to renounce their citizenship (presuming it does not leave them stateless) by a declaration in the prescribed manner.

Those born in Northern Ireland to a British citizen or settled parent since 1 January 1983 are generally British citizens by birth under the *British Nationality Act 1981*

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<sup>6</sup> The six types of British nationality are British citizen, British overseas territories citizen, British overseas citizen, British subject, British national (overseas) and British protected person. See GOV.UK, '[Types of British nationality](#)', undated.

## 2. Northern Ireland, Brexit and the Immigration Rules for Settled Status

### 2.1 Changes to the Immigration Rules: HC1919

This issue has come to light in relation to the 'settled status' scheme, which will allow eligible EU/EEA citizens to remain lawfully resident in the UK after Brexit.

The Home Office changed the definition of 'EEA citizens' for the scheme to exclude dual EU/British citizens from being eligible to apply. Irish citizens who are not dual British citizens are eligible but not required to apply for settled status.<sup>7</sup>

However, it has consistently been the Government's position that dual British citizens should not apply for settled status. This is reflected in the Statement of Intent for the Settled Status Scheme of June 2018.<sup>8</sup> British citizens have a right of abode in the UK and are not subject to immigration control, whereas settled status is a type of immigration permission with attached conditions. Generally, citizenship of a country affords the citizen with the stronger rights when compared to migrants.

On 7 March 2019 the Home Office laid a Statement of changes to the Immigration Rules [HC1919](#) before Parliament. This Statement of changes altered the definition of an EU/EEA citizen for the purposes of Appendix EU to the Immigration Rules which sets out the rules for the settled status scheme.

As per HC1919, the new definition refers to an 'EEA citizen' for the purposes of Appendix EU as:

a person who is a national of: Austria, Belgium, Bulgaria, Croatia, Republic of Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden or Switzerland, **and who (unless they are a relevant naturalised British citizen) is not also a British citizen.**<sup>9</sup>

In the new definition the Home Office is explicitly excluding dual British/EU citizens from applying for settled status. This would not apply only to dual British/Irish citizens but any dual British/EU citizens.

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<sup>7</sup> ['Common travel area guidance'](#), Department for Exiting the European Union, 22 February 2019

<sup>8</sup> Home Office, ['EU settlement scheme: statement of intent'](#), 21 June 2018

<sup>9</sup> [HC1919](#), 45-6

## 2.2 Previous positions on British citizens applying for settled status

The previous definition (accessible through the archives of the Immigration Rules) referred to an 'EU citizen' for the purposes of Appendix EU as:

a person who is a national of: Austria, Belgium, Bulgaria, Croatia, Republic of Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain or Sweden.<sup>10</sup>

This definition mirrors that of the Statement of Intent for the Settlement Scheme published 21 June 2018.<sup>11</sup>

## 2.3 Comment on the changes to the immigration rules

*Euronews* reported that a Home Office spokesperson stated:

Like all British citizens, people of Northern Ireland who are British or dual citizens cannot be granted status under the EU Settlement Scheme, and their rights and entitlements are not affected by the UK leaving the EU.

How the people of Northern Ireland can be joined in the UK by their family members is being reviewed. Any solution will be fully compliant with the letter and spirit of the Belfast Agreement.<sup>12</sup>

Several commentators including [Sinn Féin](#) have also claimed that the Minister of State for Immigration Caroline Nokes stated that "as a matter of law" the people of Northern Ireland are British by birth. Northern Irish immigration activist Emma DeSouza has also made this claim:

The basis of the Good Friday Agreement is founded on equality of treatment and respect for the two communities of Northern Ireland. A commitment the British Government agreed to, and in the Brexit negotiations, has promised to uphold, however the Immigration Minister Caroline Nokes has raised grave concerns as to the British Government's intentions stating;

Our view is that an international agreement such as the Belfast Agreement cannot supersede domestic legislation... as a matter of law, people in Northern Ireland are British by birth.<sup>13</sup>

In response to a Parliamentary question, the Minister of State for Northern Ireland John Penrose stated:

The Government remains committed to the Belfast Agreement and the rights it protects, including the birthright of people of Northern Ireland to identify themselves and be accepted as Irish or British or both, and the right to hold both British and Irish citizenship.

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<sup>10</sup> [Immigration Rules archive: 21 January 2019 – 31 January 2019](#), 574

<sup>11</sup> Home Office, '[EU settlement scheme: statement of intent](#)', 21 June 2018, 50

<sup>12</sup> '[Are Irish citizens in Northern Ireland really being reclassified as British](#)', *Euronews*, 3 April 2019

<sup>13</sup> Emma DeSouza, '[UK government refuses to recognise Irish citizenship](#)', *Medium*, 4 February 2019

## 8 Northern Ireland, Citizenship and the Belfast/Good Friday Agreement

Ensuring that the rights of all those in Northern Ireland continue to be protected after we leave the EU has been one of the UK's key negotiating priorities. The Protocol to the Withdrawal Agreement delivers on a range of rights-related commitments.

We are also committed to working with our EU partners to put in place arrangements that will allow Irish citizens resident in Northern Ireland to continue to have access to rights, opportunities and benefits that come with EU citizenship.<sup>14</sup>

The issue is gaining political traction in Ireland. According to the *Irish Times*, the Irish Minister of State for European Affairs Helen McEntee stated:

"There is clearly a need for the UK government to provide assurance to everyone in Northern Ireland that the citizenship and the identity – that both of these provisions of the agreement – are being taken fully into account in all policy areas regardless of the UK approach to exiting the European Union".<sup>15</sup>

The article goes on to say:

A UK Home Office spokesman told The Irish Times that Irish citizens living in the UK do not need to apply to the EU settlement scheme because their rights to live and work in the UK are protected under the Common Travel Area, the arrangements that predate the EU protecting the freedoms of citizens in Ireland and the UK.

Irish citizens who are not also British citizens can, however, apply to the settlement scheme if they so wish, while their non-Irish and non-British family members resident in UK will need to apply for settled status.

The spokesman did not have a direct answer on whether the UK government considers Northern Ireland-born citizens to be Irish at birth, though he said the Home Office respects their right to identify as British, Irish or both under the Good Friday Agreement.

Ms McEntee said that Mrs May, in her comments during a visit to Belfast in early February, affirmed the "birthright" to identify as British, Irish or both and noted that her review was aimed at delivering "a long-term solution consistent with the letter and the spirit of the Good Friday Agreement".<sup>16</sup>

The immigration law blog 'Free Movement' commented on the ability of Irish citizens and their non-EU family members to apply for settled status:

Irish citizens from Northern Ireland do not have this option, however. The settled status scheme is not generally open to dual European/British citizens (with an exception that's not relevant here). That affects Irish citizens who were born in Northern Ireland, as they are automatically born British under UK nationality law.<sup>17</sup>

Emma DeSouza has argued that this in effect creates two tiers of Irish citizens – those from Ireland who can apply for settled status in the UK

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<sup>14</sup> [PO 243366 \[on Northern Ireland and nationality\]](#) 15 April 2019

<sup>15</sup> '[UK needs to assure people in NI their Irish and EU rights and protected](#)', *Irish Times*, 4 April 2019

<sup>16</sup> Ibid.

<sup>17</sup> '[How will Brexit affect Irish citizens in the UK](#)', *Free Movement*, 8 April 2019

if they choose to and can continue to exercise associated EU law rights, and those from Northern Ireland who cannot apply for settled status due to their automatic British citizenship.<sup>18</sup> She told *Euronews*:

"I am an Irish national, Irish by birthright and Irish under the Belfast Good Friday Agreement. I do not hold a British passport...

"Irish citizens do not need to apply under the settlement scheme but they can do so if they wish, unless of course you were born in Northern Ireland".

"What we're seeing here is the creation of a two-tier system. Irish citizens that can retain their EU rights and Irish citizens who cannot. The settlement scheme is the only way to access chapter two of the withdrawal agreement and provides a legal underpinning to our EU rights".<sup>19</sup>

Simon Cox, a migration lawyer for the Open Society Justice Initiative, told *Irish World* that:

"The position that people like Emma [DeSouza] have been put into, in which they are given legal advice that if they renounce their British citizenship they might have a legal right to rely on EU law, is harmful to the spirit of the Good Friday Agreement".

[...] He cautioned that, out of context, it can be "misread" that this decision "strips" Irish citizenship away or "takes away" most rights under EU law.

"The change only goes as far as saying that British citizens don't get rights to have non-EU family members living with them in the UK by virtue of also being Irish".<sup>20</sup>

Diane Dodds, Democratic Unionist Party (DUP) MEP for Northern Ireland, warned that Brexit must not be "cynically exploited to seek serious and irreversible changes to UK citizenship laws which would set Northern Ireland adrift from Great Britain".<sup>21</sup> The *News Letter* newspaper reported further comments made by Ms Dodds:

She claimed that the UK leaving the EU "does not impinge on a person's right to identify as British or Irish".

Mrs Dodds highlighted Paragraph 1 (vi) of the section on constitutional issues contained in the 1998 agreement, which confers upon citizens 'their right to hold both British and Irish citizenship'.

"Importantly," she added, "this does not say British or Irish citizenship. Therefore, most people born in Northern Ireland are entitled automatically to Irish citizenship, but this is in addition to, and not instead of, British citizenship.

"These arrangements are consistent with the principle of consent and they should not change".<sup>22</sup>

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<sup>18</sup> ['Are Irish citizens in Northern Ireland really being reclassified as British'](#), *Euronews*, 3 April 2019

<sup>19</sup> *Ibid*

<sup>20</sup> 'Good Friday Agreement being 'undermined' by Home Office', *Irish World*, 4 March 2019

<sup>21</sup> ['DUP: UK citizenship rules cannot erode principle of consent'](#), *News Letter*, 18 April 2019

<sup>22</sup> *Ibid*

Arlene Foster, the leader of the DUP, commented on Emma DeSouza's campaign. Ms Foster said: "in relation to citizenship it [Belfast Agreement] does say British and Irish so you can choose which you would prefer to be and I think that is perfectly right",<sup>23</sup> and:

If people want to choose to have an Irish passport they can do so.

I have a British passport. I am very proud to be British and I will continue to be British, because that is who I am, and I don't think there is any sort of conflict between those two positions.

People are using the Belfast Agreement for all sorts of spurious reasons.<sup>24</sup>

According to the *Irish Times*, human rights campaigner Daniel Holder, deputy director of the Committee on the Administration of Justice, described this interpretation of the agreement as "bizarre"<sup>25</sup>, saying:

"The citizenship provisions are not limited to 'identity', but provide a duty on the UK and Ireland that NI-born persons must be "accepted as Irish or British or both as they may so choose".<sup>26</sup>

## 2.4 Immigration rules for family reunion

The rights of EU/EEA nationals and their family members to come to the UK currently derive from European Union law, whereas non-EEA nationals (including non-EEA national family members of British citizens) are subject to the UK's Immigration Rules.

The Immigration Rules do not have to mirror EU law, and indeed it has long been the case that they have contained more restrictive eligibility criteria for family members than the comparable provisions set out in [Directive 2004/38/EC](#) (also known as the Free Movement Directive) under EU law. The financial (minimum income) requirement that British citizens/people settled in the UK must satisfy to sponsor a partner visa is the latest example of what is sometimes referred to as "reverse discrimination" against British citizens.<sup>27</sup>

Appendix EU to the Immigration Rules sets out the framework for settled status. Regardless of whether a Brexit deal is agreed or a no-deal Brexit occurs, the UK Government has committed to extending settled status to those EU citizens who are eligible and are living in the UK prior to the relevant date.<sup>28</sup> The settled status scheme has been fully open for applications after pilot testing since 30 March 2019.

Settled status affords more favourable family reunion rights when compared to the immigration rules which regulate the entry and stay of non-British family members of British citizens. This is because settled status broadly continues the family reunion rights prescribed under EU law, which are not available to British citizens living in the UK (with

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<sup>23</sup> ['Emma DeSouza and human rights body criticise DUP over citizenship stance'](#), *The Irish Times*, 18 April

<sup>24</sup> *Ibid*

<sup>25</sup> *Ibid*

<sup>26</sup> *Ibid*

<sup>27</sup> Commons Library, ['The financial \(minimum income\) requirement for partner visas'](#), 7 November 2017

<sup>28</sup> See, for example, [PO 206384 \[on immigration: EU nationals\]](#), 16 January 2019.

some exceptions). Under some circumstances those with settled or pre-settled status may be able to bring non-EEA family members to the UK under the scheme after Brexit/the implementation period. However, there are some differences in family reunion rights for those with settled status under the Withdrawal Agreement as opposed to the Government's no-deal Brexit proposals.

Northern Irish people who are British citizens and are therefore ineligible for settled status have to use the UK's more restrictive immigration rules for family reunion. However, this is not a change from the current legal framework, as both British and/or Irish citizens from Northern Ireland who have not exercised EU free movement rights generally cannot bring non-EU family members to join them in Northern Ireland under EU law. They must rely on the regular immigration rules which regulate entry and residence for the non-EU family members. For further information see part 3 of this briefing.

### 3. The Capparelli case

The judgement and documents from the appeal at the First Tier Tribunal are not publicly available. The section below is based on news reporting of the proceedings.

The case of Gemma Capparelli, a dual British/Irish citizen from Northern Ireland, and her US citizen husband Dominic Capparelli addressed the issue of the birthright clause in the context of family reunion.

According to *The Guardian*, the Capparellis had been living in the US when they decided to move their family to Northern Ireland.<sup>29</sup> They reportedly applied for an EU family permit for Dominic on the basis that Gemma was a permanent resident in Northern Ireland.<sup>30</sup>

*The Guardian* also reported that Gemma had renounced her British citizenship (although it is unclear when) to avoid the precedent set in *McCarthy* which prevents dual nationals from availing themselves of free movement rights when they have always resided in the country of which they are a national. *The Guardian* explains that Gemma “was concerned the Home Office would consider her British and force her husband to go through the more onerous and expensive route for non-EU nationals married to Britons”.<sup>31</sup>

*The Guardian* reported:

To the couple’s shock, their application was refused on the grounds that the “sponsor”, Gemma, did not show any evidence that she had permanent residency, even though she had included her birth certificate showing she was born in the UK in 1981.

The Home Office told them their right of permanent residence had expired because they had been out of the country for more than two years. “We were floored by the letter which essentially said you have no right to be in Northern Ireland,” said Dominic.<sup>32</sup>

News reports suggest that the Home Office then contacted the Capparellis:

It is understood the Home Office is contacting the family to assist them in finding the right route for residency papers.

The department denied it was treating Irish citizens in any way differently to British nationals, and said it could only react to application forms presented to case workers.

“The Home Office is absolutely committed to upholding the Belfast [Good Friday] agreement and we respect the right of the people of Northern Ireland to choose how they identify,” a spokesman said.<sup>33</sup>

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<sup>29</sup> [‘Home Office tells Northern Irish woman to prove right to live in Belfast’](#), *The Guardian*, 31 October 2018

<sup>30</sup> *Ibid*

<sup>31</sup> *Ibid*

<sup>32</sup> *Ibid*

<sup>33</sup> *Ibid*

## 4. The DeSouza case

### 4.1 Upper Tribunal: the Home Office appeal

The immigration and asylum chamber of the Upper Tribunal handed down its decision in the Home Office's appeal in the case of Emma and Jake DeSouza on 14 October 2019.<sup>34</sup>

The Home Office was successful in its appeal. Since the decision Emma DeSouza has tweeted that she intends to apply for an appeal of the Upper Tribunal's decision to the Court of Appeal.<sup>35</sup> Permission would need to be granted before an appeal could be heard.

The Upper Tribunal found that Emma DeSouza is a British citizen by automatic operation of law under the British Nationality Act. The Times reported:

Government lawyers argued that the British Nationality Act 1981 was the relevant legislation not law flowing from the Good Friday agreement.

They highlighted that the provisions on citizenship outlined in the agreement, which was struck between Stormont parties and the UK and Irish governments, had not been incorporated into the corresponding piece of domestic legislation linked to the peace treaty, the 1998 Northern Ireland Act.

The government said the British Nationality Act ruled that anyone born in Northern Ireland was automatically British until such time as they renounce that citizenship.<sup>36</sup>

The UT addressed the application of the European Convention on Human Rights to the case. It accepted that if the 1981 Act violated Ms DeSouza's Article 8 rights, then section 3 of the Human Rights Act might have a bearing on the interpretation of section 1(1).<sup>37</sup> However it concluded that the regime provided for by the 1981 Act represents a proportionate way of achieving the legitimate aims of avoiding statelessness and of maintaining a clear and coherent system of nationality law, and thus did not violate Article 8:

Whilst we fully appreciate her strength of feeling on this matter, it is not disproportionate in Article 8 terms for her nevertheless to be required to give notice of revocation, if she wishes only to be a citizen of Ireland.<sup>38</sup>

Concluding their decision, the UT stated:

An important final point needs to be made. Nothing in this decision brings into question the past and continuing importance and constitutional significance of the Belfast Agreement to the people of Ireland and the United Kingdom. On the contrary, our task has been to ascertain what the parties to that Agreement intended by way of Article 1(iv)/(vi).<sup>39</sup>

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<sup>34</sup> [EA/06667/2016](#)

<sup>35</sup> [Tweet by @EmmaandJDeSouza on October 17 2019 at 6:39 PM](#)

<sup>36</sup> 'Woman vows to fight UK for Irish citizenship', *The Times*, 15 October 2019

<sup>37</sup> For further explanation of ECHR issues see below at section 7

<sup>38</sup> *Ibid*

<sup>39</sup> [EA/06667/2016](#) para 58

## 4.2 Background to the case

The judgement and documents from the appeal at the First Tier Tribunal are not publicly available. The section below is based on news reporting of the proceedings.

In 2015 Jake DeSouza, an American national and husband of a Northern-Irish born person, Emma DeSouza, who identifies as Irish and has only an Irish passport, applied to the Home Office for a residence card. News sources report that Mr DeSouza was attempting to claim residence as a family member of an EEA national living in the UK under EU free movement law, who can exercise the EU's freedom of movement rights and the associated right of family reunion.

The Home Office allegedly refused Mr DeSouza's application, arguing that although his wife applied for the permit under EU law as an Irish national, she is a dual British/Irish citizen and as such could not avail herself of EU free movement law within the UK.<sup>40</sup>

The Home Office reportedly argued that as Ms DeSouza was born in Northern Ireland, under the [British Nationality Act 1981](#) she was automatically deemed British and would have to apply through the normal immigration routes for non-EEA citizen family members of British citizens.<sup>41</sup> The Home Office also reportedly told Mr DeSouza the only way they could deal with his case was for his wife to "renounce her status as a British citizen".<sup>42</sup>

Mr DeSouza purportedly challenged that decision on the grounds that his wife had the right to be treated as an Irish citizen alone under the Belfast/Good Friday Agreement and was therefore an EU citizen exercising her freedom of movement rights.<sup>43</sup>

The first-tier tribunal ruled in Mr DeSouza's favour. Judge Gillespie, in his conclusion at the tribunal, is reported to have said: "under the terms of the Good Friday Agreement, people of Northern Ireland are in a unique position within the United Kingdom. The British and Irish governments recognised the birthright of all the people of Northern Ireland to identify themselves as Irish or British, or both".<sup>44</sup>

It is unclear whether Ms De Souza's movements amounted to the exercise of her free movement rights for the purposes of EU law.

Of relevance here is the ruling of the CJEU in C-434/09 *McCarthy*. The CJEU found that Directive 2004/38/EC (the 'Free Movement Directive') cannot be invoked by an EU citizen who "never exercised his right of free movement, who has always resided in a Member State of which he

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<sup>40</sup> ['People born in North told by Home Office they're British'](#), *Irish World*, 12 December 2018

<sup>41</sup> *Ibid*

<sup>42</sup> ['Derry woman's US-born husband free to live in UK, court rules'](#), *The Guardian*, 12 February 2018

<sup>43</sup> *Ibid*

<sup>44</sup> ['People born in North told by Home Office they're British'](#), *Irish World*, 12 December 2018

is a national and who is also a national of another Member State".<sup>45</sup>  
The position in *McCarthy* is reflected in the *Immigration (European Economic Area) Regulations 2016*.<sup>46</sup>

### 4.3 Implications for settled status

As explained in the previous section, the changes the Home Office made to immigration rules in March 2019 exclude dual British/EU citizens from applying for settled status, as they are no longer included in the definition of an EEA citizen. Irish citizens who are not also British citizens are eligible to apply for settled status. This creates a difference in treatment between dual British/Irish citizens from Northern Ireland and Irish citizens.

However, some difference in treatment in rights enjoyed by these two categories of Irish citizen already exists today. Simon Cox argues that since the CJEU's decision in *McCarthy* the Home Office "takes the position that any dual British Irish citizen who has always lived in the UK isn't normally covered by EU law for family reunion rights...".<sup>47</sup>

The Northern Ireland Human Rights Commission maintain that there "could be a diminution of rights", due to changes to immigration rules:

Since, for example, a Northern Ireland born Irish person who had renounced British citizenship, could avail of greater protections under EEA law than the Immigration Act, failure to incorporate the 1998 Agreement birthright protection, could result in a diminution of rights as a result of Brexit, contrary to the promise by the UK Government.<sup>48</sup>

A group of academics, 'de Mars et al', wrote a [paper](#) for the NIHRC on the Common Travel Area that operates between Ireland and the UK that addresses the interaction between DeSouza and Northern Ireland born Irish citizens applying for settled status:

Irish passport holders from Northern Ireland will not be able to avail of this settled status scheme, a restriction justified on the basis that such individuals have not engaged in the cross-border movement necessary to trigger EU free movement law. The ongoing DeSouza litigation, which tests the legal status of the GFA's commitment to the people of Northern Ireland being able to choose whether to identify as a UK or Irish citizen without disadvantage, may impact on this restriction. As for UK citizens resident in Ireland, those from Great Britain will have to rely on the terms of the Withdrawal Agreement, whereas those from Northern Ireland are able to assert their right to Irish citizenship.<sup>49</sup>

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<sup>45</sup> C-434/09 *McCarthy*, 57

<sup>46</sup> The regulations were amended after the decision of the CJEU in the case of C-165/16 *Lounes*, which found that EU citizens who move to the UK under free movement rights then naturalise as British citizens retain their free movement rights.

<sup>47</sup> [Tweet by Simon Cox \(@SimonFRCox\), 16 May 2019](#)

<sup>48</sup> Northern Ireland Human Rights Commission [submission](#) to the *Immigration and Social Security Co-ordination (EU Withdrawal) Bill* Public Bill Committee, February 2019

<sup>49</sup> 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

## 5. The Belfast/Good Friday Agreement

### 5.1 The Agreement and the birthright protection.

The Belfast or Good Friday Agreement (GFA) is made up of two inter-related parts: a Multi-Party Agreement and the British-Irish Agreement. The Multi-Party Agreement was signed by most of the political parties in Northern Ireland (but not the DUP, who did not support the negotiations). The British-Irish Agreement is a treaty between the governments of the UK and Ireland that sets out the actions the two states would take to implement the Multi-Party Agreement and their support for the principles underlying it.

This British-Irish Agreement is an international treaty, which means that the UK Government has obligations under international law to another sovereign state. Much of the text and obligations are replicated in both the Multi-Party and British-Irish Agreement.

Article 1(iv) of the British-Irish Agreement states that both governments:

[R]ecognise the birthright of all the people of Northern Ireland to identify themselves and be accepted as Irish or British, or both, as they may so choose, and accordingly confirm that their right to hold both British and Irish citizenship is accepted by both Governments and would not be affected by any future change in the status of Northern Ireland.

The Agreement required Ireland to make changes to its constitution<sup>50</sup> and stipulated that Ireland would amend Article 2 of its constitution to provide for part of this birthright obligation. The new Article 2 would read:

It is the entitlement and birthright of every person born in the island of Ireland, which includes its islands and seas, to be part of the Irish nation. That is also the entitlement of all persons otherwise qualified in accordance with law to be citizens of Ireland. Furthermore, the Irish nation cherishes its special affinity with people of Irish ancestry living abroad who share its cultural identity and heritage.

The Agreement also states in Annex 2 that the meaning of “the people of Northern Ireland” in Article 1(iv) – the birthright protection, would be understood by both governments as:

[A]ll persons born in Northern Ireland and having, at the time of their birth, at least one parent who is a British citizen, an Irish citizen or is otherwise entitled to reside in Northern Ireland without any restriction on their period of residence.

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<sup>50</sup> For example, Ireland’s Constitution at the time of the peace talks claimed Irish sovereignty over the whole of the island of Ireland, including Northern Ireland (Articles 2 & 3). Ireland agreed to revoke and replace these articles, which required a referendum under the Irish Constitution, and this referendum also served to express the support of the Irish people for the Good Friday Agreement.

This definition is linked to being born in Northern Ireland, so that even if that person moves away and resides outside the region, in either Ireland or the rest of the UK, they would retain this birthright.

In August 2017, the UK Government published a position paper on Northern Ireland and Ireland in relation to the UK's withdrawal from the EU. The position paper references the birthright protection in the Agreement:

Issues of identity go to the heart of the divisions in Northern Ireland, so finding a way to address them was a crucial part of the Belfast ('Good Friday') Agreement. The Agreement confirmed the permanent birthright of the people of Northern Ireland, irrespective of Northern Ireland's constitutional status: to identify themselves and be accepted as British or Irish or both, as they may so choose; **to equal treatment irrespective of their choice**; and to hold both British and Irish citizenship. [Our emphasis].<sup>51</sup>

The paper also goes onto say:

The British-Irish Agreement is binding on the UK Government and Irish Government, and gives the commitments on equality, parity of esteem and citizenship legal force in international law.<sup>52</sup>

## 5.2 Incorporation of treaties into domestic law

The UK enshrined the Belfast/Good Friday Agreement in domestic legislation through the [Northern Ireland Act 1998](#). However, this Act made no provision for the 'birthright' protection, and it is not explicitly referenced or incorporated anywhere else in domestic legislation.<sup>53</sup>

Under the British constitutional system provisions of a treaty can only have direct effect in domestic law if they are written into or 'incorporated' by domestic legislation, and so provisions of treaties that are *not* made part of British law (i.e. have not been incorporated) are not usually recognised by British courts.<sup>54</sup> This is often referred to as a 'dualist system' of incorporating treaties. Ireland also has a dualist system.<sup>55</sup>

However, not all provisions of a treaty necessarily need to be written into domestic law. They may not create obligations, or, where they do, these may already be provided for in legislation or already be government policy.<sup>56</sup>

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<sup>51</sup> Department for Exiting the EU & the Northern Ireland Office, '[Northern Ireland and Ireland - position paper](#)' August 2017, paragraph 12

<sup>52</sup> *Ibid*, paragraph 13

<sup>53</sup> See [written evidence](#) submitted by the Northern Ireland Human Rights Committee, to the Public Bill Committee for the 'Immigration and Social Security Co-ordination (EU Withdrawal) Bill', Para 12, February 2019.

<sup>54</sup> Anthony Aust, 'Modern Treaty Law and Practice, 3<sup>rd</sup> edition, pp 168-171

<sup>55</sup> See, '[Treaties](#)', Department of Foreign Affairs and Trade, accessed 22 May 2019, and Article 29 (6) of the [Irish Constitution](#).

<sup>56</sup> The extent to which government policy can be relied upon rather than enshrining treaty provisions into law would depend upon the specificity and strength of the treaty provisions.

A 2015 judgement of the Northern Ireland High Court<sup>57</sup> summed up how international treaties are applied in UK law:

The judicial position in the UK Courts has been that there is no jurisdiction to interpret or apply the provisions of unincorporated international treaties: see [J H Rayner \(Mincing Lane\) Limited v Department of Trade and Industry \[1990\] 2 AC 418](#), Lord Oliver said:

Treaties, as it is sometimes expressed are not self-executing. Quite simply, a treaty is not part of English law unless and until it has been incorporated into the law by legislation. So far as individuals are concerned, it is *res inter alios acta* from which they cannot derive rights and by which they cannot be deprived of rights or subjected to obligations; and it is outside the purview of the Court not only because it is made in the conduct of foreign relations which are a prerogative of the Crown, but also because as a source of rights and obligations, it is irrelevant.<sup>58</sup>

However, the judgment goes on to say that “this strict dualist approach has been somewhat ameliorated with the passage of time”, and it identifies three ways in which unincorporated international treaties may still be of importance in domestic law:<sup>59</sup>

- Firstly, if possible, UK legislation should be interpreted on the basis that the UK intended to honour its international obligations”.<sup>60</sup>
- Secondly, international treaty obligations may guide the development of the common law, in order to “arrive at a result which is in compliance with the UK's international obligations”.<sup>61</sup>
- Thirdly, multilateral treaties such as UN Convention on the Rights of the Child (UNCRC) may be relevant in English law to the extent that it falls to the Court to apply the European Convention on Human Rights via the Human Rights Act 1998.

When this case reached the Supreme Court, Lady Hale, the Court’s President, agreed with the Northern Ireland High Court’s judgment on its approach to how international law is interpreted by British courts.<sup>62</sup>

However, notwithstanding the treatment of treaties by domestic courts, the UK has obligations under international law to adhere to treaties it has signed, including the British-Irish Agreement treaty that forms part of the Belfast/Good Friday Agreement.

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<sup>57</sup> Courts in Northern Ireland, unlike in the rest of the UK, can disapply Northern Ireland laws that are found incompatible with the *Human Rights Act 1998*, which enshrines the European Convention on Human Rights in UK domestic law. See section 6 for more detail.

<sup>58</sup> [2015] [NIQB 96](#) see [59-60]

<sup>59</sup> The judgment quotes from [Lord Hughes in R \(S G\) v Secretary of State for Work and Pensions \[2015\] UKSC 16](#) at [137].

<sup>60</sup> Lord Hughes in R (S G) v Secretary of State for Work and Pensions [2015] UKSC 16 at [137]

<sup>61</sup> [Lord Reed in Osborn v Parole Board \[2013\] UKSC 61](#), at [62]

<sup>62</sup> [2018] [UKSC 27](#) at [327-328]

## 5.3 Interpretation of the birthright protection and how it could be incorporated into UK law.

People born in Northern Ireland are generally considered under the *British Nationality Act 1981* to be British citizens by birth if one of their parents was either a British citizen or settled in the UK at the time of birth (see Section 1 for more detail). British nationality law also allows British citizens to have dual British-Irish citizenship. The UK would not be able to legislate to give Irish citizenship to people born in Northern Ireland, as that is in the gift of the Irish state. However, people born in Northern Ireland who are dual British-Irish citizens can renounce their British citizenship. It could be argued, therefore, that British nationality law allows people born in Northern Ireland to be British, Irish or both.

However, as the people of Northern Ireland who wish to have only Irish nationality must renounce their British citizenship, some commentators have argued that having to take this extra step breaks the 'spirit' of the Belfast/Good Friday Agreement.<sup>63</sup> There is, therefore, a question as to whether the UK should legislate to allow people born in Northern Ireland to *not* be considered automatically as British citizens under UK law.

The Northern Ireland Human Rights Commission (NIHRC) has recommended that the 1981 Act be amended to reflect the birthright protection of the Belfast/Good Friday Agreement:

The Commission recommends that a new clause be added to amend section 1 of the British Nationality Act 1981 to reflect the Belfast (Good Friday) Agreement 1998 recognition of "the birthright of all the people of Northern Ireland to identify themselves and be accepted as Irish or British, or both, as they may so choose" on a no detriment basis.<sup>64</sup>

This text would unambiguously codify a right of self-identity into British law. The phrase "on a no detriment basis" is the key difference with the text of the Belfast/Good Friday Agreement:

[R]ecognise the birthright of all the people of Northern Ireland to identify themselves and be accepted as Irish or British, or both, as they may so choose, and accordingly confirm that their right to hold both British and Irish citizenship is accepted by both Governments and would not be affected by any future change in the status of Northern Ireland.

There is some ambiguity in the birthright provision of the Belfast/Good Friday Agreement. There is a clear right for the people of Northern Ireland to *identify* themselves as Irish or British, and for this to be accepted by both governments. A question of interpretation then arises, namely: is there an exclusive right to be accepted as Irish by the British

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<sup>63</sup> See, for example, comments by migration lawyer Simon Cox and Fianna Fáil TD Declan Breathnach, in '[Good Friday Agreement being 'undermined' by Home Office](#)', *Irish World*, 4 March 2019.

<sup>64</sup> Northern Ireland Human Rights Committee, [written evidence](#) to the Public Bill Committee for the 'Immigration and Social Security Co-ordination (EU Withdrawal) Bill', Para 18, February 2019

government separate from the clear condition in the second part for the people of Northern Ireland “to hold both British and Irish citizenship”, and for that to be accepted by the Government?

As Simon Cox observes, identifying is not the same as “have the citizenship of”, and the flexibility of identity can be difficult to square with the certainty required by law, as he asks: “how can a right as flexible as identity lead to \*automatic\* changes in citizenship?”.<sup>65</sup>

The First Tier Tribunal judgment in the DeSouza case reportedly argues that the birthright protection in the Belfast/Good Friday Agreement explicitly provides for Northern Ireland-born Irish citizens to not be considered British citizens, and that the birthright protection applies directly to the UK regardless of the fact that it is not incorporated directly into British law.<sup>66</sup>

Practically speaking, legal problems would only arise if individuals are treated differently by the law, depending on whether they are dual-citizens or simply Irish citizens or British citizens. Before Brexit, joint membership of the European Union meant there were few differences in how these different categories of citizens were treated by the law in Northern Ireland.

As noted in Section 4.2, however, it is not clear to what extent the changes in immigration rules will affect the rights of the people of Northern Ireland compared to what they have today. In addition, British citizens, including British dual-nationals, already have less advantageous family reunion rights in the UK as compared to EU nationals, including Irish citizens.

### 5.4 International Law

The United Nations’ [Vienna Convention on the Law of Treaties \(VCLT\)](#), to which both the UK and Ireland are parties, enshrines many of the principles of customary international law, including that of *pacta sunt servanda*, meaning agreements/treaties must be observed. This principle is found in Article 26 of the VCLT which states: “every treaty in force is binding upon the parties to it and must be performed by them in good faith”.

Article 27 also states “a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty”. Therefore, not incorporating provisions of a treaty into British domestic law (if they are not provided for already) does not absolve the UK of those obligations under international law.

### 5.5 Identity

The issue of legal treatment is separate from the issue of identity in Northern Ireland, which is seen by some in Northern Ireland as equally important as the legal considerations.

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<sup>65</sup> [Tweet by Simon Cox \(@SimonFRCox\), 16 May 2019](#)

<sup>66</sup> First-tier tribunal decisions are not made public, so we are relying on press reports of the Judge’s conclusions.

Identity in Northern Ireland is itself a complex interaction of political, religious and national affinities. According to a [research paper](#) by John Garry and Kevin McNicholl of Queen's University Belfast presented in 2014/15, 29% of those surveyed in Northern Ireland described themselves as Northern Irish, around 40% as British, and 25% as Irish (see section 8 for a more detailed analysis of statistics on identity in Northern Ireland).

When the responses are broken down by religious affiliation there is a strong relationship between being Protestant and feeling British, and between being Catholic and regarding oneself as Irish: around 65% of Protestants saw themselves as British (those considering themselves as Irish were around 2%, and Northern Irish just under 30%), while just over 60% of Catholics saw themselves as Irish (just under 10% saw themselves as British and 25% as Northern Irish).

Some people living in Northern Ireland who have only Irish passports, and view themselves as Irish, reject the British Government's treatment of them as British citizens, and so they may want to be treated the same as Irish citizens, e.g. be able to apply for settled status, regardless of whether or not that gives them extra legal rights.

## 5.6 Rights

Beyond the specific birthright clause in the Belfast/Good Friday Agreement, there is a wider question of discrimination, and whether the Agreement provides for equal treatment of those identifying as Irish in Northern Ireland and those identifying as British, and/or equal treatment for Irish citizens.

The Agreement called for the creation of human rights bodies, such as the NIHRC, but also expressed the parties' commitments to human rights, including some general principles:

The parties affirm their commitment to the mutual respect, the civil rights and the religious liberties of everyone in the community. Against the background of the recent history of communal conflict, the parties affirm in particular:

- the right of free political thought;
- the right to freedom and expression of religion;
- the right to pursue democratically national and political aspirations;
- the right to seek constitutional change by peaceful and legitimate means;
- the right to freely choose one's place of residence;
- the right to equal opportunity in all social and economic activity, regardless of class, creed, disability, gender or ethnicity;
- the right to freedom from sectarian harassment; and
- the right of women to full and equal political participation. born in Ireland vs those born in Northern Ireland.

The Belfast/Good Friday Agreement also envisaged that these rights, and others, would be incorporated into a Bill of Rights for Northern Ireland. However, over 20 years later, and despite some sporadic initiatives, this still has not happened.<sup>67</sup>

The Agreement also called for the British Government to:

[C]omplete incorporation into Northern Ireland law of the European Convention on Human Rights (ECHR), with direct access to the courts, and remedies for breach of the Convention, including power for the courts to overrule Assembly legislation on grounds of inconsistency.

The ECHR was incorporated into British domestic law through the *Human Rights Act 1998* (HRA),<sup>68</sup> and the *Northern Ireland Act 1998* provides that no Assembly legislation can be passed that is inconsistent with Convention rights.<sup>69</sup>

Under the HRA, if the courts<sup>70</sup> find that primary legislation passed by Parliament is incompatible with the ECHR they can issue a declaration of incompatibility. They cannot, however, 'strike down' primary legislation, and the operation of the legislation in question remains unaffected by the decision. Following a declaration of incompatibility it would be a matter for the Government to propose a way to resolve the incompatibility, and for Parliament to approve it. This reflects the principle of parliamentary sovereignty.

By contrast, the courts can effectively strike down legislation passed by the NI Assembly if it is incompatible with the ECHR. This reflects section 6 of the *Northern Ireland Act 1998* which provides that a provision of an Act of the Assembly is not law if it is incompatible with a Convention right.

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<sup>67</sup> See the NIHRC '[Bill of Rights](#)' page on their website; and Harvey, C. (2016). [Northern Ireland and a Bill of Rights for the United Kingdom](#) (British Academy Bill of Rights Briefings).

<sup>68</sup> It is worth noting that the Conservative Party has for some time been committed to replacing the HRA with alternative legislation. The 2010 Conservative election manifesto promised to repeal the 1998 Act and introduce a UK Bill of Rights, in order to "protect our freedoms from state encroachment and encourage greater social responsibility". This commitment was repeated in 2015. The 2017 manifesto indicated that the party would not seek to repeal or replace the HRA while the process of Brexit was underway, but would consider "our human rights legal framework" when the process of leaving the EU concludes. It further committed to remaining signatory to the ECHR "for the duration of the next parliament".

<sup>69</sup> Northern Ireland Assembly Research and Information Service, '[Human Rights in Northern Ireland: What if the Human Rights Act were repealed?](#)' Michael Potter, 2 May 2016

<sup>70</sup> Section 4 of the HRA provides that a declaration of incompatibility may be made by the following courts: the Supreme Court; the Judicial Committee of the Privy Council; the Court Martial Appeal Court; in Scotland, the High Court of the Justiciary and the Court of Session; in England, Wales and Northern Ireland, the High Court or Court of Appeal; the Court of Protection.

## 6. Brexit

### 6.1 Categories of citizens post-Brexit

The UK's exit from the EU complicates questions of citizenship, immigration and rights, primarily because it creates the potential for British citizens to be treated differently from Irish citizens, who will retain the benefits associated with being citizens of an EU Member State.

Currently, there are two main categories of rights holders in Northern Ireland:

- UK/Irish/EU citizens
- Non-EU citizens.

As a consequence of Brexit, [according to](#) Ben Warwick of the University of Birmingham, these categories will multiply:

Not only will non-EU nationals receive different treatment in Northern Ireland, but there could be important distinctions between many more kinds of citizens. There will be additional complexities because of individuals' date of birth, residency and family relationships.<sup>71</sup>

Warwick suggests that there could end up being as many as nine different categories of citizen:<sup>72</sup>

1. Irish citizen.
2. UK citizen.
3. Dual Irish–UK citizen (with no Northern Ireland connection).
4. Dual Irish–UK citizen (part of the 'people of Northern Ireland').
5. Non-UK citizen who is entitled to Irish citizenship (e.g. Canadian citizen).
6. Non-Irish EU national (e.g. Polish citizen).
7. Non-EU, non-UK national (e.g. Jamaican citizen).
8. 'Worker' in Ireland with EU/UK citizenship (e.g. working in Dublin and living in Belfast).
9. 'Worker' in the UK with EU/UK citizenship (e.g. working in Armagh and living in Dundalk).<sup>73</sup>

Such complexity has the potential to increase the number of legal challenges over immigration status in Northern Ireland.

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<sup>71</sup> LSE Blog, Ben Warwick, '[A Windrush in waiting: post-Brexit categories of citizen in Northern Ireland](#)', 11 September 2018

<sup>72</sup> Warwick bases his article in the December 2017 UK-EU [Joint Report](#), which has been largely superseded by the EU UK Withdrawal Agreement. However, the Withdrawal Agreement largely draws upon the principles set out in the Joint Report.

<sup>73</sup> LSE Blog, Ben Warwick, '[A Windrush in waiting: post-Brexit categories of citizen in Northern Ireland](#)', 11 September 2018

Warwick also posits that residency will act as a “significant complicating factor over and above the basic categories”.<sup>74</sup> As well as being a factor in how people in Northern Ireland would be treated under the EU-UK Withdrawal Agreement, it can be seen from the Capparelli and DeSouza cases that residency is already a significant complicating factor in immigration cases involving people born in Northern Ireland.

## 6.2 Common Travel Area<sup>75</sup>

The risks from Brexit to individual rights in Northern Ireland are somewhat reduced by the existence of the British-Irish Common Travel Area, which existed before both countries joined the then European Community in 1972.

The Common Travel Area (CTA) is a series of bi-lateral agreements and arrangements between Ireland and the UK which allow for passport and visa-free travel for British and Irish citizens between the two countries. It also includes what are known as ‘associated rights’, for example, access to certain social security schemes for British and Irish citizens resident in each other’s countries.

The full set of CTA rights is set out in UK government guidance:

- the right to enter and reside in each other’s state without being subject to a requirement to obtain permission
- the right to work without being subject to a requirement to obtain permission
- the right to access education
- access to social welfare entitlements and benefits
- access to health services
- access to social housing
- the right to vote in local and parliamentary elections.<sup>76</sup>

Family reunion rights for non-Irish family members of Irish citizens are not included in the CTA.

The rights and access to services that make up the CTA are not set out in full in a single treaty or Act of Parliament.

The CTA and its associated rights have largely been superseded by the EU’s freedom of movement rights, so some elements, for example data-sharing for social security systems, currently rely on elements of EU law.

The NIHRC drew attention to this interaction in their evidence to the Public Bill Committee on the *Immigration and Social Security Co-ordination (EU Withdrawal) Bill*:

The CTA is not the subject of any international treaty and has limited bespoke domestic legislative underpinning. Beyond the

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<sup>74</sup> LSE Blog, Ben Warwick *ibid*

<sup>75</sup> For a detailed exploration of how the UK’s Withdrawal Agreement with EU might affect the Common Travel Area, see Section 8.3 of the Commons Library Briefing Paper: ‘[The UK’s EU Withdrawal Agreement](#)’, April 2019.

<sup>76</sup> Department for Exiting the EU, ‘[Common Travel Area Guidance](#)’, 22 February 2019

right to travel within the CTA without being subject to immigration law, **the legal basis and extent of associated rights under the CTA (e.g. access to healthcare, education, social care) are unclear and can be changed or withdrawn with limited scrutiny.** CTA rights have, in recent decades, been surpassed by a range of protections under EEA free movement legislation, further underpinned by the supremacy of EU law in the UK domestic context. **The Commission is not persuaded that protection of rights contained within the CTA will sufficiently meet the ‘no diminution’ commitment.**<sup>77</sup> [Our emphasis].

### 6.3 New bi-lateral agreement on the CTA

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”.<sup>78</sup>

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.<sup>79</sup>

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.<sup>80</sup> [Our emphasis].

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

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<sup>77</sup> Northern Ireland Human Rights Commission, Immigration and Social Security Co-ordination (EU Withdrawal) Bill: [Submission](#) to Public Bill Committee, February 2019

<sup>78</sup> [‘British-Irish conference: Brexit rights deal signed’](#), BBC News, 8 May 2019

<sup>79</sup> For further information on MoUs, see [FCO Treaties and Memoranda of Understanding \(MOUs\). Guidance on Practice and Procedures](#), updated March 2014.

<sup>80</sup> Cabinet Office, [‘Memorandum of Understanding between the UK and Ireland on the CTA’](#), 8 May 2019

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".<sup>81</sup> A group of academics who wrote a paper on the CTA for the NIHRC 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.<sup>82</sup>

## 6.4 No diminution of rights

The 'no diminution' commitment was first made in the December 2017 [Joint Report](#), an agreement between the EU and the UK that set out the broad principles that the Withdrawal Agreement would build on. Paragraph 53 of the Joint Report states:

The 1998 Agreement also includes important provisions on Rights, Safeguards and Equality of Opportunity for which EU law and practice has provided a supporting framework in Northern Ireland and across the island of Ireland. **The United Kingdom commits to ensuring that no diminution of rights is caused by its departure from the European Union, including in the area of protection against forms of discrimination enshrined in EU law.** The United Kingdom commits to facilitating the related work of the institutions and bodies, established by the 1998 Agreement, in upholding human rights and equality standards. [Our emphasis].

This commitment was narrowed in scope somewhat in the Withdrawal Agreement. Article 4 (1) of the Protocol on Ireland/Northern Ireland (commonly known as 'the backstop') states that:

The United Kingdom shall ensure that no diminution of rights, safeguards and 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 Union, including in the area of protection against discrimination as enshrined in the provisions of Union law listed in Annex 1 to this Protocol, and shall implement this paragraph through dedicated mechanisms.<sup>83</sup>

However, as the 'no diminution of rights' commitment is limited to what is in the Belfast/Good Friday Agreement, it does not introduce any new obligations that might be relevant to the settled status question. If

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<sup>81</sup> House of Lords: EU Committee, [HL 306](#), Scrutiny of international agreements: Treaties considered on 5 March 2019, 6 March 2019

<sup>82</sup> 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

<sup>83</sup> Annex 1 of the Protocol lists six EU directives relating to equality and employment law that will continue to apply to Northern Ireland. If these directives are updated or amended by the EU, they will also be amended in UK law.

the higher courts uphold the earlier judgments in the DeSouza case, and find that the Agreement does give a right for Irish citizens in Northern Ireland to be treated as if they were not dual British-Irish citizens, even without renouncing British citizenship, then the Withdrawal Agreement will reinforce this right when the UK leaves the EU. Of course, for the Withdrawal Agreement to have legal force, it must be approved by Parliament (which Parliament has been unable to do on three occasions so far) and incorporated into UK law by an Act of Parliament.

Until the Government publishes the Withdrawal Agreement Bill that will implement the Withdrawal Agreement, it will not be clear how the UK will give effect to the guarantees made in that Agreement in relation to the Belfast/Good Friday Agreement in UK law.

## 7. European Convention on Human Rights

Immigration law provides for the differential treatment of individuals on the basis of nationality or immigration status. This is justified by the legitimate aim of controlling immigration. However, in some circumstances the way the law operates can engage rights protected by the European Convention on Human Rights.

As explained in section 5 of this paper, under the HRA if the courts find that primary legislation is incompatible with Convention rights they may issue a declaration of incompatibility. It would then be for Parliament to rectify the incompatibility. Failure to rectify an incompatibility would potentially place the UK in breach of its international treaty obligations as a signatory to the ECHR.

The HRA provides for a mechanism whereby primary legislation can be amended to resolve an incompatibility identified by the courts by way of a remedial order, which must be approved by each House of Parliament.<sup>84</sup> Alternatively, primary legislation can be amended by Bill in the usual manner.

### Which rights might be relevant?

#### Article 8

Article 8 of the Convention provides that:

- 1 Everyone has the right to respect for his private and family life, his home and his correspondence.
- 2 There shall be no interference by a public authority with the exercise of this right except such as in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

In determining whether or not there is a breach of Article 8 the courts must consider firstly whether a private or family life has been established, and if so whether there has been an interference with the right to respect for that family or private life. If there has been interference, then it must be prescribed by law, necessary in pursuit of one of the aims listed in Article 8(2), and proportionate to that aim.

The European Court of Human Rights (ECtHR) has established a number of principles in Article 8 claims arising in the context of immigration related issues. These were summarised by the Immigration Law Practitioners Association in evidence to the House of Lords EU Committee, and include the following:<sup>85</sup>

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<sup>84</sup> Section 10 and Schedule 2

<sup>85</sup> [Immigration Law Practitioners' Association – Written evidence \(AOR0004\)](#)

- A state has a right under international law to control the entry of non-nationals into its territory, subject to its treaty obligations.
- Article 8 does not impose on a state any general obligation to respect the choice of residence of a married couple.
- Whether interference with family rights is justified in the interests of controlling immigration will depend on:
  - The facts of the particular case and
  - The circumstances prevailing in the State whose action is impugned

### Article 14

Article 14 of the Convention provides:

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any grounds such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Article 14 is thus described as a 'parasitic right', in that it requires one of the other rights protected by the Convention to be engaged in order to take effect.

For the purposes of Article 14, a difference in treatment is discriminatory if it has no objective and reasonable justification. This means that a policy involving differential treatment must pursue a legitimate aim and the means employed must be proportionate to that aim. States have a margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify different treatment in law. The scope of this margin will vary according to the circumstances, the subject matter and its background.<sup>86</sup>

### Case law

The ECtHR has found that citizenship is capable of being an element of a person's social identity, such as to bring it within the scope of Article 8. The case law has concerned situations in which individuals have been denied or deprived of citizenship arbitrarily.

In *Genovese v Malta*<sup>87</sup> the Court noted that the concept of 'private life' is a broad term that is not susceptible to exhaustive definition. It includes the physical and psychological integrity of a person and can therefore embrace multiple aspects of the person's physical and social identity. The court found in that case that denying citizenship to an illegitimate child constituted a breach of Article 8, when taken together with Article 14, holding:

While the right to citizenship is not as such a Convention right ... the Court considers that its impact on the applicant's social identity was such as to bring it within the general scope and ambit of [Article 8].

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<sup>86</sup> Inze (1988) 10 EHRR 394 [41]

<sup>87</sup> (2014) 58 EHRR 25

This was subsequently followed by the UK Supreme Court in *R (Johnson) v Home Secretary*, another case concerning denial of citizenship to an illegitimate child, in which Baroness Hale held that:

It is well established that a person's social identity is an important component of his private life, which is entitled to respect under Article 8.<sup>88</sup>

In *Genovese* the Court also noted that it was well established in its case law that the prohibition of discrimination extends beyond the enjoyment of the rights and freedoms which the Convention requires each state to guarantee. It also applies to additional rights which fall within the general scope of any Convention Article for which the State has voluntarily decided to provide.<sup>89</sup>

In that case, the Court concluded that Malta had gone beyond its obligations under Article 8 in creating a right to citizenship by descent. Having done so it was required to ensure that the right was secured without discrimination within the meaning of Article 14.

### **Brexit and the Belfast/Good Friday Agreement**

Susie Alegre, an international human rights lawyer and associate tenant at Doughty Street Chambers, argued in evidence to the House of Lords EU Committee that EU citizenship is a core part of the social identity of many British nationals and that its loss could interfere with their rights under the ECHR. She noted in particular that many British citizens will be able to acquire citizenship of other EU Member States as dual citizens, meaning that British citizens will be treated differentially in terms of their access to EU derived rights on the basis of their heritage:

Those who do not have access to another EU nationality will be disproportionately affected by the UK withdrawal from the EU based on grounds prohibited under Article 14 ECHR such as their national or social origin, association with a national minority, property, birth or other status.<sup>90</sup>

The Committee did not feel confident endorsing this argument, on the basis that the ECtHR case law related to national citizenship, and it was questionable whether EU citizenship could be conflated with national citizenship for this purpose. However, the Committee went on to conclude that

There is a risk that the loss of EU citizenship could lead to discrimination between UK nationals, EU nationals and third-country nationals in the UK post-Brexit, where an ECHR right is engaged.<sup>91</sup>

The circumstances of those born in Northern Ireland raise specific issues around citizenship, identity and equality of treatment.

As noted above at section 5.6, the B/GFA was underpinned by human rights principles and called on the British Government to complete the incorporation of the ECHR in Northern Ireland. It also envisaged a Bill of

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<sup>88</sup> *R (Johnson) v Secretary of State for the Home Department* [2016] UKSC 56 [26]

<sup>89</sup> Para 32

<sup>90</sup> [Susie Alegre, Written evidence to House of Lords EU Justice Sub-Committee – Brexit: acquired rights Inquiry](#)

<sup>91</sup> [Brexit: acquired rights](#), chapter 7, para 90

Rights for Northern Ireland providing for supplementary rights to reflect the particular circumstances of Northern Ireland.

In a 2008 paper on the proposed Bill of Rights for Northern Ireland, the Northern Ireland Human Rights Commission (NIHRC) recommended a number of rights supplementary to those contained in the ECHR protecting the right to identity and culture:

Provisions should be drafted to ensure that –

1. The right of the people of Northern Ireland to identify themselves and be accepted as Irish or British or both, as they may so choose, with no detriment or difference of treatment of any kind. This right would not be affected by any future change in the status of Northern Ireland.
2. The right of the people of Northern Ireland to hold British or Irish citizenship or both in accordance with the laws governing the exercise of this right, with no detriment or differential treatment of any kind. This right would not be affected by any future change in the status of Northern Ireland.
3. Public authorities must fully respect, on the basis of equality of treatment, the identity and ethos of both main communities in Northern Ireland. No one relying on this provision may do so in a manner inconsistent with the rights and freedoms of others.

...<sup>92</sup>

However, the proposed Bill of Rights never materialised and these recommendations were not implemented.

Immigration lawyer Simon Cox has highlighted the differential treatment by the Home Office of dual citizens in NI as compared with Irish-only citizens, and questioned whether or not such discrimination is justifiable.<sup>93</sup> In particular, Mr Cox asked whether the B/GFA allows the UK to treat dual citizens in Northern Ireland less favourably than Irish-only citizens, given that the UK is free to give the benefit of EU family reunion rights to dual citizens (notwithstanding the position as a matter of EU law as per *McCarthy*). He suggests that the requirement for dual nationals to renounce British citizenship in order to avoid the deportation of a spouse may be incompatible with the equality provisions in the B/GFA.

Daniel Holder, Director of the Committee on the Administration of Justice (a Northern Ireland-based human rights NGO), gave evidence to the Seanad Special Select Committee on citizenship rights in post-Brexit Northern Ireland, in which he asserted that Brexit was making it difficult to comply with the equality provisions of the B/GFA:

Things are not so rosy either in NI for those who choose under the GFA to be British. Irish citizens in NI of course will retain EU citizenship and the basic freedom of movement in the EU that comes with it; British citizens will not. Brexit has managed to turn everyone into a second class citizen in different ways.

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<sup>92</sup> Northern Ireland Human Rights Commission, [A Bill of Rights for Northern Ireland: Advice for the Secretary of State for Northern Ireland](#), December 2008, page 41

<sup>93</sup> [Tweet by Simon Cox \(@SimonFRCox\), 16 May 2019](#)

...

It is Brexit that is creating real difficulties in complying with the equality of treatment principle of the GFA. Without some form of special status for the North, which allows British citizens to retain EU citizenship, it is difficult to see how any form of Brexit can comply with these provisions of the GFA. Had Westminster discharged its duties under the GFA to legislate for the Bill of Rights for Northern Ireland, it would have been hard to lawfully apply Brexit to NI since this bill was intended to include a legally enforceable birthright to be British or Irish (or both), without differential or detrimental treatment.<sup>94</sup>

Colin Caughey of the NIHRC gave evidence to the House of Lords EU Justice Sub-Committee in March 2019, in which he suggested that there is a need for clarity as to the citizenship rights of those identifying as Irish in Northern Ireland:

There is a need for greater consideration of the requirements in the Belfast/ Good Friday agreement, the right of individuals to identify as Irish, British or both, and how that is realised in law.<sup>95</sup>

As noted above, in evidence to the *Immigration and Social Security Co-ordination (EU Withdrawal) Bill* Committee, the NIHRC recommended that a new clause be added to amend section 1 of the British Nationality Act 1981 to reflect the birthright clause of the Belfast Agreement on a 'no detriment' basis.<sup>96</sup>

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<sup>94</sup> Opening Statement to the Seanad Special Select Committee on the Withdrawal of the UK from the EU, Committee on the Administration of Justice, 9 May 2019, [caj.org.uk](http://caj.org.uk) [accessed 22 May 2019]

<sup>95</sup> EU Justice Sub-Committee, Rights after Brexit, oral evidence session, 26 March 2019, Q22

<sup>96</sup> Northern Ireland Human Rights Commission, Immigration and Social Security Co-ordination (EU Withdrawal) Bill: Submission to Public Bill Committee, February 2019, para 18

## 8. Statistics on nationality and identity in Northern Ireland

Someone who is born in Northern Ireland to a British or settled parent will usually be a British citizen by birth.<sup>97</sup> People born in Northern Ireland also have the right to become a citizen of Ireland under Irish law.

We do not know how many people born in Northern Ireland are automatically British by birth; nor do we have accurate data on nationalities held by people living in the UK. Nationality is hard to capture for many reasons, chief among them the fact that how people respond to being asked about their nationality might not reflect their legal status.

We do have data on the **country of birth** of people living in the UK. This comes from the UK Census and annual Labour Force Surveys.

The Labour Force Survey also asks about **nationality**, trying to capture legal status, and about people's self-declared '**national identity**'.

The 2011 UK Census did not ask about nationality but did ask about national identity and **passports** held. This is a partial indicator of nationalities held. However, not everyone who is a citizen of a country holds that passport.

This section summarises the available data.

### 8.1 People born in Northern Ireland

The 2011 UK Census recorded 1.86 million people living in the UK who were born in Northern Ireland, 1.61 million of whom were living in Northern Ireland at that time.

The Labour Force Survey (LFS) is a quarterly representative survey of the UK population. The 2018 LFS estimated the slightly higher figure of 1.90 million Northern Ireland-born people in the UK, 1.64 million of whom were living in Northern Ireland.

### 8.2 Nationality in the Labour Force Survey

The LFS also includes a question intended to directly capture nationality, namely, "What is your nationality?".

When asked this question, 75% of Northern Ireland-born respondents stated their nationality as 'UK/ British'. Around 1% stated Irish and the remainder said 'Other'.

The content of these 'Other' responses is not publicly available.

Respondents can answer with countries that are not sovereign states, for example 'Northern Ireland', and these would be counted in 'Other'.

The Office for National Statistics (ONS), which runs this survey, makes some adjustments to the data after it is collected and this involves re-coding nationalities of constituent countries into sovereign states.

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<sup>97</sup> This is the general position and there are exceptions.

In cases where respondents gave their nationality as 'Irish', the ONS applies a further re-coding process whereby if the respondent was born in the UK, they are re-coded to 'UK/ British'. According to the ONS, this is done to prioritise people's legal nationality over their national affinity, seemingly on the assumption that these respondents are British citizens, possibly in addition to being citizens of Ireland. The ONS is currently reviewing this practice and is also considering ways to capture dual nationality in the LFS.

The table below summarises the LFS nationality data. Once the re-coding is applied, 99% of Northern Ireland-born people in the UK are classed as British citizens.

**TABLE 1: NATIONALITY BY COUNTRY OF BIRTH, 2018**

Country of birth	Nationality				Total	
	UK, British		Other			
	Number	%	Number	%	Number	%
Northern Ireland						
As originally stated	1,432,521	75%	468,327	25%	1,900,848	100%
As re-coded	1,873,436	99%	27,412	1%	1,900,848	100%
Rest of the UK	52,766,888	96%	1,943,258	4%	54,710,146	100%
Republic of Ireland	41,416	13%	284,070	87%	325,486	100%
Other	3,496,955	40%	5,341,732	60%	8,838,687	100%

**Source:** ONS, Labour Force Survey Q4 2018, variables CRY12, NTNLT12, and NATOX7\_EUL\_Main. Accessed via [UK Data Service](#).

### 8.3 National identity

An alternative approach to capturing 'nationality' is to ask people for the country with which they identify or affiliate themselves.

The LFS and the 2011 UK Census included a question on 'national identity', which in both cases was: "How would you describe your national identity?". Respondents could select more than one national identity from a list and could also write in their own interpretation.

This is different to nationality, primarily because respondents can affiliate themselves with countries that are not sovereign states. For example, 'Northern Irish' is not a nationality but it can be a national identity.

Table 2 shows the responses to this question for people who were born in Northern Ireland and who were living in Northern Ireland or in England and Wales in 2011. Data on Northern Irish national identity was not published for Scotland.

**TABLE 2: SELF-PROCLAIMED NATIONAL IDENTITY OF PEOPLE BORN IN NORTHERN IRELAND**

National identity	Country of residence at time of 2011 Census			
	Northern Ireland		England and Wales	
	Ireland	%	Wales	%
British only	660,911	41%	58,138	27%
Northern Irish only	366,808	23%	99,801	46%
Irish only	415,484	26%	11,359	5%
British and Northern Irish	108,261	7%	16,495	8%
Irish and Northern Irish	18,196	1%	1,841	1%
British, Irish and Northern Irish	17,528	1%	N/A	.
British and Irish	10,741	1%	N/A	.
All others	10,924	1%	27,354	13%
All usual residents	1,608,853	100%	214,988	100%

Source: NINIS, [Census 2011 DC2212NI](#); ONS, [Census 2011 DC2201EW](#)

Notes: N/A indicates that data was not published on these national identity combinations. These national identities are as written in the Census questionnaire.

These figures show that just under three quarters (71%) of people born in Northern Ireland and living there in 2011 identified as British or Northern Irish, without also identifying as Irish.

Twenty-six per cent identified as Irish only and 3% identified as Irish in combination with British or Northern Irish. The proportions were different among those living in England and Wales, although the combined proportion identifying as British or Northern Irish was more or less the same (73%).

The 2018 LFS asked the same question and found similar results:

- 38% of respondents who were born in Northern Ireland and living there identified as British only,
- 23% identified as Northern Irish only,
- 8% identified as British and Northern Irish, and
- 31% identified as Irish.

These numbers are almost identical to those in Table 2, above, which suggests that 'national identity' is understood by people in a consistent way.

According to the LFS, one third of British nationals in Northern Ireland do not identify with any British national identity (Northern Irish, British, English, Scottish, or Welsh) and only with Irish.<sup>98</sup>

## People born in Northern Ireland and living in Ireland

The 2016 Census of the Republic of Ireland included a question on nationality. This is different to national identity because it captures

<sup>98</sup> The estimate from the 2018 LFS is 31% and takes into account the finding that 99% of Northern Ireland-born people are British nationals. Going by the 2011 Census, the figure would be 26%, but this is for all people born in Northern Ireland and living in the UK (excluding Scotland), not just those who are identified as British nationals.

perceived nationality of a sovereign state, so respondents could not identify as 'Northern Irish' or, for example, as 'English'.

The Census results show that 90% of the 57,000 people born in Northern Ireland and living in Ireland in 2016 were Irish nationals, 6% were British nationals, and 2% were dual Irish-British nationals.<sup>99</sup>

It is possible some of these people might be considered British citizens in the eyes of the British Government. This would be the case if they were born to a British or settled parent and had not renounced their British citizenship.

## 8.4 Passports held

Table 3 shows passports held by people who were born in Northern Ireland and still living in the UK (excluding Scotland, where the question was not asked) at the time of the 2011 Census.

Of those people born in Northern Ireland and living there in 2011, 61% had a UK passport and 21% had an Irish one. There is some overlap between these groups. Twenty per cent of the population did not have a passport.

The proportion with a UK passport was higher among those born in Northern Ireland but living in England and Wales.

Passports held	Country of residence at time of 2011 Census			
	Northern Ireland	%	England and Wales	%
United Kingdom	975,852	61%	173,753	81%
Ireland	337,059	21%	17,552	8%
Another nationality	6,239	0%	694	0%
No passport	320,520	20%	23,155	11%
Total population	1,608,853	100%	214,988	100%
Total passports held	1,319,150		191,999	

Sources: NINIS, [Census 2011 DC2224NI](#); ONS, [Census 2011 DC2208EW](#)

Notes: People can hold more than one passport, so the percentages here do not sum to 100.

Although holding a passport can be evidence of nationality, those who do not hold a passport may still be a national of that country under the law.

Also note that these figures are from 2011 and may not reflect the current proportion holding these passports. The number of British passports issued in Northern Ireland has risen in recent years, as has the number of Irish passports issued per year to people living in the UK.<sup>100</sup>

<sup>99</sup> Irish Central Statistics Office, [2016 Census: E7053](#)

<sup>100</sup> [Passports: Northern Ireland - HL2453](#), 1 November 2017; Irish Department of Foreign Affairs and Trade, [Passport statistics 2017](#)

## 8.5 Summary

- When asked in the context of the UK Labour Force Survey to describe their 'national identity', around two thirds of people born in Northern Ireland and living in the UK identified either as Northern Irish and/or British.
- One third of people living in Northern Ireland gave their national identity as Irish only.
- The ONS estimates that 99% of people who were born in Northern Ireland and living in the UK are British citizens.
- The Census shows that in 2011, around 20% of people who were born in Northern Ireland had an Irish passport (350,000 people). This is likely to underestimate the total number that have Irish citizenship.
- The 2016 Irish Census also identified around 51,000 people who were born in Northern Ireland and living in Ireland and who identified themselves as Irish nationals and not as British nationals.<sup>101</sup>

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<sup>101</sup> This could be the case if they were born to a British or settled parent.

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