

Evidence to the Public Bill Committee on the *Immigration and Social Security Co-ordination (EU Withdrawal) Bill 2019*

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This evidence was prepared as part of the [Performing Identities](#) research project, supported by ESRC grant reference [ES/S006214/1](#). Sylvia de Mars is a Senior Lecturer at Newcastle Law School, Newcastle University; Colin Murray is a Reader at Newcastle Law School, Newcastle University; Aoife O'Donoghue is a Professor at Durham Law School, Durham University; and Ben Warwick is a Lecturer at Birmingham Law School, University of Birmingham. This evidence updates our previous work done for the Irish Human Rights and Equality Commission and the Northern Ireland Human Rights Commission on the [Common Travel Area](#), and draws upon our book, [Bordering Two Unions: Northern Ireland and Brexit](#), published in August 2018.

GENERAL APPRAISAL

- [1] This evidence relates only to the situation of Irish citizens and to the Common Travel Area, and should not be taken as endorsing or commenting upon other aspects of the Bill.
- [2] The changes made by Clause 2 of the Bill are as a direct result of the decision to end freedom of movement for EU citizens as a whole under Clause 1. In this context it is important to differentiate the longstanding special treatment that has been afforded by the UK to Irish citizens (since an informal UK-Ireland agreement in 1952).
- [3] The clarification of the immigration position of Irish citizens in the UK (as a component of the shared Common Travel Area) is welcome. The point-of-departure related provisions of the Immigration Act 1971 were out of keeping with the nature of 21st-century international travel and their proposed removal in this Bill will help to clarify and simplify travel rights under the Common Travel Area.
- [4] While the exclusion of Irish citizens from immigration restrictions facilitates their equal treatment and their access to work and other public goods, these rights are unclear in the Immigration Act 1971, and can be found in a confusing range of legal sources and policy guidance. These entitlements must be stated positively and clearly, if not in this Bill as a matter of legislative priority ahead of Brexit.
- [5] Irish citizens, according to the Ireland Act 1949 s2(1), are 'not to be treated as foreign for domestic law purposes'. The Immigration Bill Commentary notes this statutory provision, but does not indicate whether the Bill is intended to repeal or alter the interpretation this part of the 1949 Act. The Ireland Act is an important and longstanding statement of principle and of the relationship between the two states and, as such, an express note that it is to be retained would be welcome. Alternatively, given the structure of the Bill and the outmoded 'not foreigners' construction of the Ireland Act, an updated provision noting that Irish citizens are to be treated as equivalent to UK citizens, would be appropriate.

SECTION 2

- [6] The continuation of s5(1) of the Immigration Act 1971 without amendment (at 3ZA(2)), which allows for the deportation of foreign nationals including Irish citizens, is inconsistent with one of the 'main measures' of this Bill in 'protecting the status of Irish citizens in UK immigration law once their EU free movement

rights end'.¹ There is an incoherence between the Ireland Act 1949, which designates Irish citizens as 'not foreign', and the power to deport such individuals under the Immigration Act 1971 s5(1) combined with s3(5). Irish citizens risk falling into a third category; not subject to all of the powers applicable to foreign nationals in UK law, but also not fully equivalent to UK citizens. This power is furthermore of little practical value in light of the lack of restrictions on travel associated with the Common Travel Area. Deported individuals can return to the UK with ease. Given the limited value of this power consideration should be given to whether it should not be retained.

- [7] Further, the Immigration Act 1971 s5(2) causes a deportation order to cease to apply upon an individual subject to them becoming a UK citizen. The Bill should amend the Act to make the consequence of obtaining Irish citizenship the same as for UK citizenship, for three reasons. First; consistency with the broader treatment of Irish citizens in the Bill (e.g. at 3ZA(3)-(4)) and in the Ireland Act 1949. Second; that individuals born in Northern Ireland or enjoying a specified connection to that part of the UK are entitled to both/either Irish and UK citizenship. The Good Friday/Belfast Agreement (agreed after the Immigration Act 1971 was passed) guaranteed that choice between nationalities was to be the individual's own free one.² Retaining s5(2) without adding accommodation for Irish citizenship is at odds with such a choice and could oblige an Irish citizen from Northern Ireland to assert UK citizenship simply to avoid deportation.³ Third; retaining s5(2) in its current form is particularly illogical when a large group of people living in the UK (especially in Northern Ireland) are entitled to both UK and Irish citizenship.
- [8] The provisions for refusing Irish citizens entry to the UK at 3ZA(3) are similarly inconsistent with the purposes of the Bill, with the Ireland Act 1949, and with the spirit of a reciprocal Common Travel Area. This provision should be deleted. The retention of these unamended powers potentially conflicts with the amendment made to the ability to refuse entry to the UK from the Common Travel Area by the Bill at Clause 2(3)b. To resolve this 3ZA(3) should be deleted.
- [9] If the courses of action in paras [6] and [8] above are not followed, further statutory definition should be given to the meaning of 'public good' as it relates to Irish citizens in s3(5) of the Immigration Act 1971, and 3ZA(3)a of the Bill. Specifically, greater clarity on the relationship between the narrower definition of public good ('conducive to the public good as being in the interests of national security') in s9(4)a of the Immigration Act 1971 and the definition retained in s3(5) and in 3ZA(3)a of the Bill is needed.

OTHER PROVISIONS

- [10] In keeping with the Immigration Act 1971, the Bill should include a savings clause to protect against unintended consequences for Irish citizens who have been settled and resident in the UK. Section 7 of the Immigration Act protected those who had been resident in the UK for 5 years prior to the entry into force of that Act. A similar provision in the Bill would be appropriate, and avoiding unintended punitive effects for Irish citizens in the UK is especially important in light of the Settled Status scheme, which is applicable to other EU citizens, but which Irish citizens have been advised is not applicable to them.⁴

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¹ Immigration And Social Security Co-ordination (EU Withdrawal) Bill: Explanatory Notes, para 2.

² Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland (with annexes) 1998 (2114 UNTS 473), Constitutional Issues, 1(vi).

³ The Explanatory notes, despite recognising the importance of protecting the Good Friday/Belfast Agreement, do not address this point; Immigration and Social Security Co-ordination (EU Withdrawal) Bill: Explanatory Notes, para 27.

⁴ <https://www.gov.uk/settled-status-eu-citizens-families/eligibility>