



the Traveller  
Movement

# **Brexit and Irish citizens in the UK**

How to safeguard the  
rights of Irish citizens in  
an uncertain future

December 2017

# Foreword



As someone whose Irish-speaking mother emigrated to Britain from the West of Ireland and as someone who, along with his children, proudly holds British and Irish passports, the uncertainty surrounding the rights of Irish citizens in a post-Brexit UK troubles me.

Throughout history, the Irish community have been a fundamental part of British society and continue to shape Britain for the better.

Take the city of Liverpool where, for nearly two decades, I was a Member of Parliament. It is often described as “the other capital of Ireland” – with three quarters of its population having some Irish antecedents.

That community has roots in the Irish Rebellion of 1798 and in the great hunger produced by the Irish Famine of the 1840s. Liverpool elected the only Irish Nationalist MP to sit for an English constituency.

Many of its most notable citizens – from the social reformer, Kitty Wilkinson, to the sculptor, Arthur Dooley, from founders of institutions like Dr. John Bligh, to Sir John Brown, and Cork’s Richard Sadleir, Liverpool’s first mayor, countless contributions have been made to the civic life of the city from people in whose veins Irish blood has flowed.

Irish people are rooted in so many of our communities, in our churches and in our work places – they have built lives and families here and should continue to be free to do so. The contribution of the Irish is something of which we should be immensely proud and we must ensure their status here is unaffected by Brexit.

*“The rights of Irish citizens – future generations and those already living here – are at risk and need to be secured with urgency.”*

Unfortunately, as this paper clearly demonstrates, the rights of Irish citizens – future generations and those already living here – are at risk and need to be secured with urgency.

British Ministers and officials have neither shown how current law will continue after Brexit nor set out a road-map to delivering its promises to Irish citizens.

Instead, all we have heard is a series of vague and unclear statements which gives the impression that the Government knows what it wants the law to achieve but does not want to admit that this law is not currently in place.

This is simply not good enough.

Laws that are complex and unclear are most likely to be misunderstood or misapplied by officials, employers and landlords. And when protections are not clear, families and individuals can suffer disastrous consequences from policies not initially designed with them in mind.

Take the reforms that arose out the plans to create ‘hostile environment’ for illegal migrants. These now require employers, banks, landlords and others to carry-out immigration checks. Various reports have found that landlords – as part of the “Right to Rent” scheme – are less likely to rent to potential tenants who have the right to live in the UK, simply because they do not hold a British passport.

It is not hard to imagine how, as a consequence of uncertainty and unclear laws, such measures could negatively impact upon Irish citizens who could be wrongly denied employment, bank accounts, the ability to rent and access to healthcare.

Some parts of the Irish community will be at greatest risk should protections not be secured and guaranteed in law.

The Irish Traveller community have long faced significant prejudice in Britain. The Traveller Movement's research – *'Last acceptable form of racism?'* – recently found that service providers and healthcare providers routinely refuse access to Irish Travellers. A lack of legal and policy clarity in a post-Brexit UK would lead to those officials and private sector staff with prejudice to discriminate – consciously or unconsciously – against Irish Travellers who hold Irish citizenship.

With great clarity, this paper reveals the risks that Irish citizens will face.

Despite repeated questions, the British Government has not explained how the Ireland Act 1949 operates to provide the rights to Irish citizens in the UK. Nor has it explained how the Common Travel Area provides Irish citizens with rights to work or receive healthcare. The UK Government has not even addressed its powers to deport Irish citizens.

Until Brexit, Irish citizens are protected as EU citizens. After Brexit there will be heightened public expectations about measures directed at people who are not British citizens. Can we safely say that the British Government has ensured that Irish citizens would be protected from such measures?

I am afraid that we cannot. In these most uncertain of times, we cannot rely on warm words or sentiments of shared values and trust and we most certainly cannot rely on the good nature and good will of Ministers and future Ministers. History has repeatedly demonstrated that times and public attitudes change, and that benign political leaders can be replaced by others less so. Relying on goodwill is not enough.

Regulations that can be changed by the executive, and powers to take actions against individuals may be used in ways that run against current expectations. Without guaranteed legal rights, Irish citizens are at risk of executive action.

The British government should set out a road-map to establishing strong legal guarantees of its promises to Irish citizens. We need clear legal measures in an Act of Parliament.

This paper spells out the problems and gaps in law and importantly it also provides the solutions. I commend it to you and hope it serves as the wakeup call that both the British and Irish Governments need.

**Lord David Alton of Liverpool**

Crossbench member of the House of Lords



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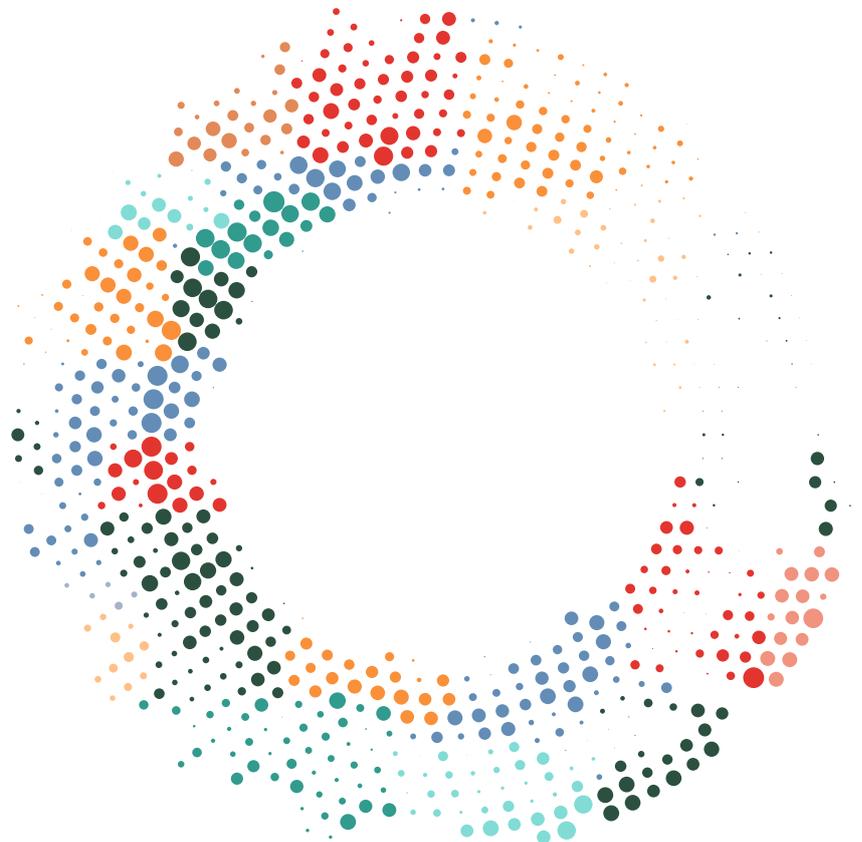
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# Acknowledgments

This paper was prepared, on behalf of the Traveller Movement by Simon Cox. Simon Cox is a barrister of 25 years standing at the Bar of England and Wales. He specializes in law relating to the rights of migrants and in European Union law. He is employed as the Migration Lawyer of the Open Society Justice Initiative. He is an Associate Tenant of Doughty Street Chambers, where he formerly practiced for 10 years. Simon is also a member of the Traveller Movement's Equality and Social Justice Unit's Pro-Bono panel and worked with the Traveller Movement policy team on this paper.

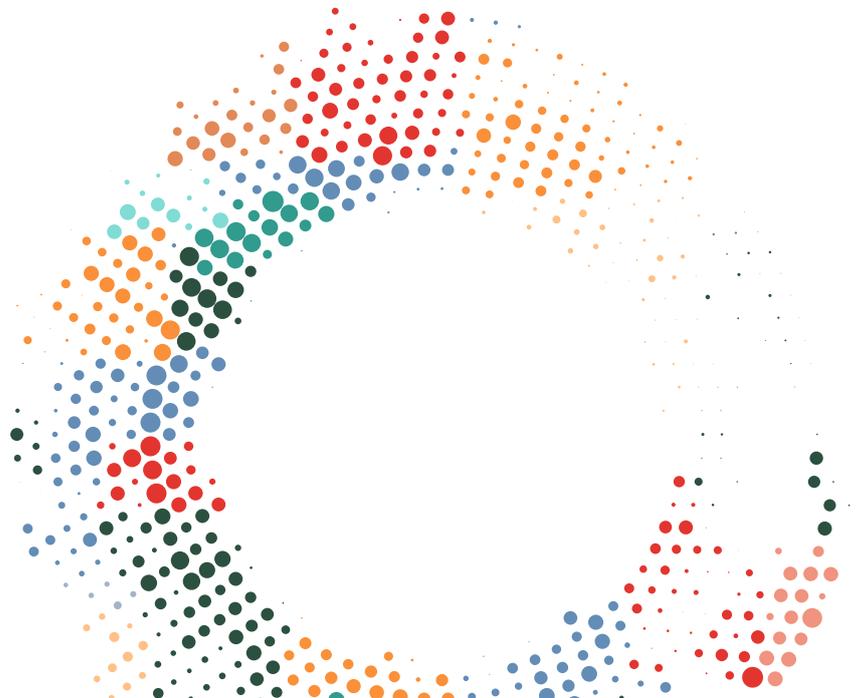
Professor Bernard Ryan, a professor of Migration Law, also contributed to this paper.

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# Executive summary

- Current British law does not ensure the rights for Irish citizens living in a post-Brexit UK. Despite increasing concern, British Ministers and officials have neither shown how current law will continue after Brexit nor set out a road-map to delivering its promises to Irish citizens. The Irish Government has failed to give the priority required for citizens' rights. Both Governments should now consult widely on the contents of reciprocal legal guarantees they must put in place to prepare for Brexit.
- The British Government and local authorities do not in practice recognise the Ireland Act 1949 as conferring any rights on Irish citizens. All the rights Irish citizens have depend on their status as EU citizens or specific British legal provisions which make no reference to the 1949 Act.
- Without EU law, key rights of Irish citizens would currently depend on whether they last entered the UK from Ireland or from outside the Common Travel Area.
- UK law allows for deportation and exclusion of Irish citizens who are not also British citizens. The UK uses this power to deport Irish citizens. There is no exception in law for people of Northern Ireland. Where EU law does not apply, the UK law appears to give the British authorities wide powers to deport Irish citizens. This therefore means Irish citizens **can be deported** from the UK were a court convicting the person of an offence recommends deportation or the Minister considers deportation "conducive to the public good".
- Many of the protections and rights currently enjoyed by Irish citizens in the UK, such as the exemptions from prohibitions on employment of foreigners, exist only because they are EU citizens and not because they are Irish citizens. Irish citizens therefore may, deliberately or not, be caught by old and new laws and practices implementing the Government's "hostile environment" policy at migrants.
- The 1949 Ireland Act does not afford Irish citizens the same rights afforded by British citizens in Ireland. Therefore, rights are not as reciprocal as presented.



# Recommendations

- The simplest, and therefore most effective, means of guaranteeing the rights of Irish citizens after Brexit would be a general law providing that Irish citizens shall be treated equally with British citizens. This would give effect to the original purpose of the Ireland Act 1949. It would remove the need to consider the effect on Irish citizens of individual laws which aim to treat foreigners differently from British citizens.
- Such an Act **would not** make Irish citizens into British citizens and such an Act **would not** give Irish citizens better rights than British citizens.
- An alternative approach would be to put the current immigration control exemption for Irish citizens arriving from Ireland in primary legislation and extend it to include all Irish citizens. This would mean that laws directed at foreigners who have limited, or no, leave to stay in the UK could not apply to Irish citizens.
- Any new laws should apply retroactively to the rules on children born in the UK to Irish citizens. Such a move would close the current gap that leads to children reaching adulthood without British citizenship and having no right to acquire it as adults.
- Irish citizens do not enjoy the same rights in the UK as British citizens enjoy in Ireland. The British Government should reciprocate the Irish Government's decision to renounce the power to deport British citizens.

## Background

1. Irish citizens are the largest group of UK residents with nationality of a state other than the UK. More than a million UK residents hold Irish citizenship and at least 6 million may be entitled to it.<sup>1</sup> Most of these people also hold British citizenship by birth in the UK, or by descent from a British citizen parent.
2. Many Irish citizens resident in the UK do not hold British citizenship. 389,000 UK residents are Irish citizens by birth in the Republic of Ireland.<sup>2</sup> Only a minority are likely to also be British citizens by descent (i.e. through a British born parent or grand-parent), and very small numbers hold British citizenship by naturalization.<sup>3</sup> Significant numbers of Irish citizens who are also British citizens by birth do not identify as British or wish to rely upon any British citizenship, though only small numbers have yet renounced British citizenship.<sup>4</sup>
3. This paper sets out the law and issues relating to Irish citizens in the UK. The Traveller Movement has prepared this paper because of particular concerns with the impact that Brexit could have on Irish Travellers. Irish Travellers are a distinct ethnic minority and while there is no accurate data as to the actual number, the Traveller Movement estimates around 100,000 are resident in the UK. A significant number of these will not be British citizens by descent.

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1 "How many Britons are entitled to an Irish passport?", BBC, 2 September 2016 <http://www.bbc.co.uk/news/magazine-37246769>

2 ONS estimates 389,000 Irish born people were resident in UK in 2016 "Population of the UK by country of birth and nationality", 24 August 2017. Given Irish citizenship law, all or almost all of those people were Irish citizens by birth. <https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/internationalmigration/datasets/populationoftheunitedkingdombycountryofbirthandnationality>

3 Between 1990 and 2017 Q1, only 8,178 Irish citizens acquired British citizenship by naturalization <https://www.gov.uk/government/statistics/immigration-statistics-january-to-march-2017-data-tables>

4 Between 2002 and 2016, 9,590 British citizens renounced citizenship: National Statistics "Immigration statistics, January to March 2017", 25 May 2017, [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/615149/citizenship-jan-mar-2017-tables.ods](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/615149/citizenship-jan-mar-2017-tables.ods). There does not seem to be data on the number of these who held Irish citizenship, but we believe it to be significant.

4. In cases where Irish Travellers do hold British citizenship there are still significant risks. Irish Travellers frequently have difficulty sourcing official documentation such as birth certificates, so even in cases where they are British citizens they may have difficulty proving so. In addition, research has shown that Travellers do not tend to seek legal help when they encounter problems.<sup>5</sup> In many cases where an Irish Traveller is told they are not a British citizen – even if they in fact are – they will not be able to sufficiently challenge the assertion.
5. UK law makes special provision for people arriving in the UK from another part of the Common Travel Area (CTA), which is made up of Ireland, UK, Isle of Man and Channel Islands.<sup>6</sup>
6. The UK Government's stated aim has been that the UK's exit from the EU will remove EU law as basis for legal rights in the British legal order.
7. A key risk of the UK's exit from the EU is that it will leave Irish citizens without sufficient legally enforceable rights within the UK's legal order.
8. This paper addresses how to ensure a seamless legal basis for ensuring Irish citizens' rights continue, unaffected, after the UK's exit from the EU.

## Legal rights of Irish citizens

9. Under European Union law, Irish citizens have (as EU citizens) rights to enter and reside in the UK, with their family members, and to enjoy access to social and other rights which is equal to those of British citizens.
10. The UK Government Position paper does not state that it intends to maintain the rights of Irish citizens as currently enjoyed under EU law. However, a draft paper prepared by the Home Office and leaked on 6 September 2017, states "we will support the preservation of the rights of UK and Irish citizens as enjoyed today, including the right of Irish citizens to enter the UK from outside of Ireland, not just from within the UK (sic, presumably for 'CTA')." <sup>7</sup>

## British Government position

11. On 16 August 2017, the UK published its Position Paper "Northern Ireland and Ireland" ("Position Paper"). This does not state that the UK Government intends to maintain the rights Irish citizens enjoy under EU law. Instead, it refers to rights which the Government claims exist independently of EU law (para. 23)

*"the reciprocal rights for UK and Irish nationals include:*

- *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 study;*
- *access to social welfare entitlements and benefits;*
- *access to health services; and*
- *the right to vote in local and parliamentary elections."*

<sup>5</sup> The Traveller Movement, 'The last acceptable form of racism?', September 2017

<sup>6</sup> This paper does not address the situation in Channel Islands or Isle of Man, or that of Irish citizens arriving in the UK from those places.

<sup>7</sup> "The Border Immigration and Citizenship System after the UK leaves the European Union", para 6.5 [https://www.scribd.com/document/358064862/THE-BORDER-IMMIGRATION-AND-CITIZENSHIP-SYSTEM-AFTER-THE-UK-LEAVES-THE-EUROPEAN-UNION#fullscreen&from\\_embed](https://www.scribd.com/document/358064862/THE-BORDER-IMMIGRATION-AND-CITIZENSHIP-SYSTEM-AFTER-THE-UK-LEAVES-THE-EUROPEAN-UNION#fullscreen&from_embed)

12. The UK position on the future is that:
 

*“the UK wants to continue to protect the CTA [Common Travel Area] and associated reciprocal bilateral arrangements. This means protecting the ability to move freely within the UK and between the UK and Ireland **with no practical change from now**, recognising the special importance of this to people in their daily lives, and the underpinning it provides for the Northern Ireland political process. As the Irish Government has stated: “the CTA ... has a vital role for the peace process in facilitating mobility of people across the island”. The UK recognises, and is committed to protecting on a reciprocal basis, the ability for British and Irish nationals to work without hindrance across the border between Northern Ireland and Ireland.”* (emphasis added)
13. Despite press and public attention, the UK Government has not offered any explanation of how the Ireland Act 1949 operates to provide rights to Irish citizens in the UK. Nor has the UK Government explained how the CTA provides Irish citizens with rights to work, study, or rights to receive social welfare and health care. The UK Government has not addressed its powers to deport Irish citizens.
14. Instead, the UK Government has made a series of vague and confusing statements, giving the strong impression that the Government knows what it wants the law to achieve, but does not want to admit that this law is not presently in place.
15. In the House of Commons debate on the European Union (Notification of Withdrawal) Bill on 6 February 2017, the Minister, Mark Harper MP said *“In previous legislation, such as the Ireland Act 1949, it is clear that citizens of the Republic of Ireland and citizens of the United Kingdom have reciprocal—the word “reciprocal” is important—arrangements to live in each other’s countries and to vote in each other’s countries.”*<sup>8</sup> The Minister did not explain how the 1949 Act provides this: as shown below, the British authorities do not in practice recognise the 1949 Act as conferring any rights.
16. In his 15 March 2017 evidence to the House of Commons Committee on Exiting the EU, David Davis MP said *“On the other issue of not just goods but people, the Common Travel Area will apply. What we will aim to do is pretty much identical to the 1949 Act, which effectively gives citizenship rights to the citizens of each country in the other country.”*<sup>9</sup> As shown below, the 1949 Act does not do this, and **Irish citizens are not protected from UK deportation**, even though British citizens are in Ireland.
17. The only mention of the Ireland Act 1949 on the UK Government’s website is the statement that *“As the rights of British and Irish citizens in each other’s countries are rooted in the Ireland Act 1949, Irish nationals won’t need to apply for the new status.”*<sup>10</sup> The notion of rights “rooted in” the Act is not explained.
18. The British Government has yet to identify a single law where the 1949 Act operates to confer rights on Irish citizens.
19. The **Irish Government’s position** is similarly weak. The Irish Embassy in London website states *“Irish citizens living in the UK are legally resident in the UK. Current rules governing the residence rights of Irish citizens in the UK remain in place.”*<sup>11</sup> It concludes *“Any Irish citizens encountering difficulties in dealing with public authorities should draw their attention to this clear statement of UK government policy, and may wish to draw such authorities’ attention to the official UK publications here and here.”*, with links to the vague statements above.

8 <https://goo.gl/9Mlf95>

9 <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/exiting-the-european-union-committee/the-uks-negotiating-objectives-for-its-withdrawal-from-the-eu/oral/48859.html>

10 <https://www.gov.uk/guidance/status-of-eu-nationals-in-the-uk-what-you-need-to-know>

11 <https://www.dfa.ie/irelanduk-citizenshipandpassports/>

# Current rights of Irish citizens under UK law

20. The Position Paper does not identify a clear basis for most of the legal rights it claims exist. We examine each of these in turn, but first we address the Government's references to the Ireland Act 1949 and the Common Travel Area (CTA).

## Ireland Act 1949

21. **The Ireland Act 1949 has not been recognized as having any effect on interpretation or operation of modern British law.**
22. Section 1 of the Ireland Act 1949<sup>12</sup> states:
- “the Republic of Ireland is not a foreign country for the purposes of any law in force in any part of the United Kingdom or in any colony, protectorate or United Kingdom trust territory, whether by virtue of a rule of law or of an Act of Parliament or any other enactment or instrument whatsoever, whether passed or made before or after the passing of this Act, and references in any Act of Parliament, other enactment or instrument whatsoever, whether passed or made before or after the passing of this Act, to foreigners, aliens, foreign countries, and foreign or foreign-built ships or aircraft shall be construed accordingly.”*** (emphasis added)
23. The 1949 Act's effect is limited by the language of modern legislation. This does not generally refer to “foreigners”, “aliens” or “foreign countries”. Instead of stating exclusions directed at foreigners, British legislation states a condition as requiring a person to be a British citizen.
24. The 1949 Act appears to have been considered only once by the British courts. In 2005, an Irish citizen living in Belfast had been denied employment as a UK civil servant because she was not a British citizen. She was refused judicial review by the Northern Ireland High Court. The judge stated “Irish nationals for the purposes of the domestic law are not aliens as such (see section 2 of the Ireland Act 1949 and section 51(4) of the British Nationality Act 1981). But neither are they British citizens.”<sup>13</sup>
25. This result may be contrary to the apparent policy of the 1949 Act that Irish citizens should not be treated as “foreign”. But it is the UK Government's long-standing position and has not apparently been contested in the British courts.<sup>14</sup>
26. There is no evidence that the British authorities treat section 1 of the Ireland Act 1949 as having any effect on the statutes and statutory instruments operating today which give rise to rights to reside, study, work, receive social welfare and health care or be joined by family members; and the Position Paper does not identify any.

## Elections

27. **Irish citizens have legal guarantees of the same rights as British citizens to vote and stand and public elections. These rights are stated in primary legislation, which can only be changed by Parliament.**

<sup>12</sup> <http://www.legislation.gov.uk/ukpga/Geo6/12-13-14/41>

<sup>13</sup> O'Connor, Re An Application For Judicial Review [2005] NIQB 11, para 9. <http://www.bailii.org/nie/cases/NIHC/QB/2005/11.html>

<sup>14</sup> The 1949 Act can be seen as equating Irish citizens with British subjects – UK, colonial and independent Commonwealth citizens – which otherwise disrupted by Ireland's departure from the Commonwealth. But when British law began immigration control of non-UK citizens, in 1962, Irish citizens were not equated to British citizens.

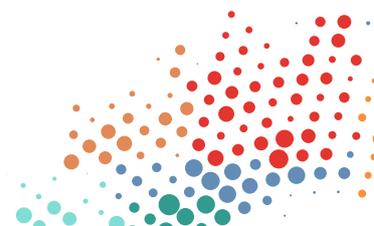
28. Under Representation of the People Act 1983, section 1(1)(c), the citizenship requirement to vote in a UK Parliamentary election is that the voter “is either a Commonwealth citizen or a citizen of the Republic of Ireland”. Under section 2(1)(c) the citizenship requirement to vote in a local election is that the voter “is a Commonwealth citizen, a citizen of the Republic of Ireland or a relevant citizen of the Union”. Similar provision is made in statutes governing elections for mayors and Police and Crime Commissioners. Just as Irish citizens have the right to vote, so too they have the same rights to stand for election.

## Entry and stay in the UK

29. **Irish citizens entering the UK from outside the Common Travel Area (CTA), for example, France or USA, have a right to enter under EU law. UK law does not exempt them from immigration control and they may have no right to reside.**
30. **Irish citizens entering the UK from Ireland are not subject to immigration control and so do not need leave to enter or remain. This law can be changed by Ministerial order and already has exceptions allowing the UK to exclude Irish citizens on national security grounds.**
31. British citizens have the right of abode in the UK.<sup>15</sup> Except for rare cases, other persons do not. The basic rule of UK immigration law is that persons without the “right of abode” require permission to enter the UK: section 1(2) of the Immigration Act 1971.<sup>16</sup>
32. There are two important exceptions. First, persons with an EU law right to enter do not require permission: section 7 of the Immigration Act 1988. **Irish citizens have this right only as EU citizens.**
- Second, persons entering the UK from another part of the CTA do not, as a rule, require leave to enter. Section 1(3) of the Immigration Act 1971 defines the CTA as the UK, Ireland, Channel Islands and Isle of Man and provides that a person travelling **within** the CTA (“a local journey”) is usually exempt from UK immigration control: *“Arrival in and departure from the United Kingdom on a local journey from or to any of the Islands (that is to say, the Channel Islands and Isle of Man) or the Republic of Ireland shall not be subject to control under this Act, nor shall a person require leave to enter the United Kingdom on so arriving, except in so far as any of those places is for any purpose excluded from this subsection under the powers conferred by this Act; and in this Act the United Kingdom and those places, or such of them as are not so excluded, are collectively referred to as “the Common Travel Area”.*
33. Not every Irish citizen has this right: under section 9(4) of the Immigration Act 1971 a person subject to a deportation order is prohibited from entering the UK, even within the CTA; a person who has been excluded from the UK on national security grounds, or was refused leave to enter the UK may only do so with leave of a UK immigration officer. Except in that unusual case, an Irish citizen entering the UK **from another part of the CTA** is not subject to control under the Act. That person may remain, legally, within the UK indefinitely. However, she has no right under UK law alone to re-enter the UK from outside the CTA (see below) and the UK authorities have the power to deport her (see below).
34. **An Irish citizen entering the UK from outside the CTA only has a right to do so under EU law.** An Irish citizen does not have the right of abode and the exception for the CTA does not apply.

<sup>15</sup> Section 2, Immigration Act 1971

<sup>16</sup> The power to refuse leave to enter the UK to an Irish citizen was first conferred by section 1(4) of the Commonwealth Immigrants Act 1962.



35. An Irish citizen who last entered the UK from outside the CTA has no rights under UK law to remain in the UK. Her only a right to reside could be under EU law, for example, if she is economically active or self-sufficient or has acquired a right of permanent residence under EU law. Under UK law it seems that an Irish citizen in this situation in is in the UK unlawfully and there is power to remove her as a person with no right to reside.<sup>17</sup> However, it is Home Office practice not to use this power (see below). Nevertheless, it is not clear that Home Office treats such persons as settled for the purpose of British citizenship of their children (see below), nor that other departments of British central and local government would disregard the lack of right to reside in the UK if this is required for benefits or health purposes (see below).

## Deportation of Irish citizens from the UK

36. **Irish citizens can be deported from the UK where a court convicting the person of an offence recommends deportation or the Minister considers deportation conducive to the public good. Current Ministerial policy, which can be changed without any order or regulation, is to use this power only where a court has recommended deportation or the case is exceptional.**
37. **Irish citizens resident in Northern Ireland without British citizenship can be deported and excluded from Northern Ireland.**
38. **Irish citizens who entered the UK from outside the Common Travel Area and who do not have an EU law right to reside may, in theory, be removed from the UK, but could re-enter from Ireland without being subject to UK immigration control.**

## Powers to deport Irish citizens from the UK

39. Section 3 of the Immigration Act 1971 gives the UK Government power to deport “A person who is not a British citizen” if the Minister considers that deportation is “conducive to the public good” or a court has convicted the person and recommended deportation.<sup>18</sup> A deportation order prohibits the person from re-entering the United Kingdom until it is revoked.<sup>19</sup>
40. The UK Government’s policy is that section 3 applies to Irish citizens, who can therefore be deported.<sup>20</sup> Presumably this is because an Irish citizen is “not a British citizen”.
41. EU law puts close limits on the exercise of this power to deport. Under Directive 2004/38, Article 28, an Irish citizen may only be deported from the UK if she represents a present danger to public policy, public security or public health. An Irish citizen with the right of permanent residence under EU law may only be deported if there are also serious grounds of public policy or public security. An Irish citizen who is aged under 18 or has resided in the UK for 10 years may only be deported if these grounds are imperative grounds of public security. EU law prohibits the use of these powers for economic ends.
42. **Where EU law does not apply**, UK law appears to give the British authorities wide powers to deport Irish citizens.

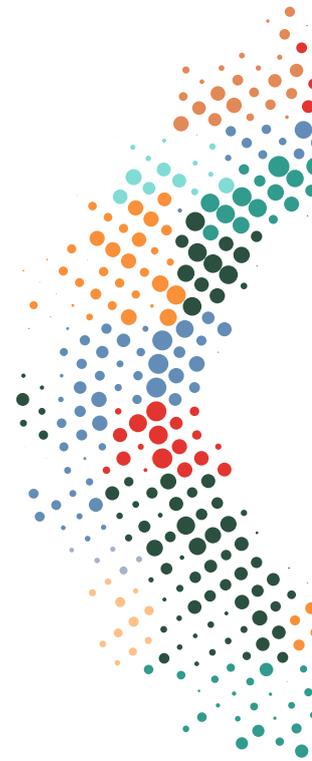
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17 See Home Office guidance on situations making presence of EU citizens unlawful: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/588551/Removals-and-revocations-of-EEA-nationalsv2\\_0EXT.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/588551/Removals-and-revocations-of-EEA-nationalsv2_0EXT.pdf)

18 This power was first conferred by Commonwealth Immigrants Act 1962, which explicitly refers to Irish citizens: section 6(3). Until then, the power was national security based: the Prevention of Violence (Temporary Provisions) Act, 1939 allowed the Minister to deport to Southern Ireland persons engaged in the IRA campaign.

19 Immigration Act 1971, section 5(1)

20 Certain Irish citizens who were ordinarily resident in the UK on 1 January 1973 are exempt from deportation: Immigration Act 1971, section 7. if



43. Section 32 of UK Borders Act 2007 provides for automatic deportation by order of the Secretary of State of a “foreign criminal” (defined as any person who is not a British citizen)<sup>21</sup> who has been convicted of a specified criminal offence anywhere in the UK and as a result of that conviction has been sentenced to imprisonment for at least 12 months.<sup>22</sup> The specified offences include many common offences under Sexual Offences Act 2003, Theft Acts and the Misuse of Drugs Act 1971 as well as more serious offences such as manslaughter.<sup>23</sup> The exception is where deportation would breach human rights or EU law.
44. In addition to automatic deportation, a court which convicts a person over the age of 17 who is not a British citizen of an offence which is punishable by imprisonment (if he were an adult) may recommend his or her deportation: section 3(6) Immigration Act 1971. In deciding whether to recommend deportation, *‘the court must consider whether the accused’s continued presence in the United Kingdom is to its detriment, on the basis that the country has no use for criminals of other nationalities, particularly if they have committed serious crimes or have long criminal records; and the more serious the crime and the longer the record, the more obvious it is that there should be a recommendation for deportation’*: *R v Nazari* 71 Cr. App. R. 87 CA. In considering whether to make a recommendation, the sentencing court need not consider the rights of the offender under Articles 2, 3 and 8 of the European Convention on Human Rights such matters are for the Secretary of State to consider when deciding whether to act on the recommendation: *R v Carmona* [2006] 1 WLR 2264, CA.
45. During the passage of the 2007 Act, British Government adopted the policy that: *“Irish citizens will only be considered for deportation where a court has recommended deportation in sentencing or where the Secretary of State concludes, due to the exceptional circumstances of the case, the public interest requires deportation.”*  
*Written Statement of Minister for Immigration, Liam Byrne MP, 19 February 2007*<sup>24</sup>
46. The 2007 policy was adopted by the British Government after discussion with the Irish Government. It is not required by legislation. We could not find statistics on the numbers of deportations of Irish citizens using immigration powers.

### Scenario box 1: Deportations after Brexit. Criminal convictions

In late 2019, Paula, an Irish citizen who has lived between Ireland and the UK for all of her 50 years, is convicted by a British court of supplying cannabis for the third time and sentenced to 12 months in prison. Under UK law, automatic deportation applies: the exception for EU rights went with Brexit. The Home Office Minister decides that her case is exceptional and orders her deportation. An immigration judge decides that her ties to UK are outweighed by the importance the Minister gives to suppressing cannabis use and upholds her deportation. The order excludes Paula from the UK indefinitely: she is told she can apply for it to be lifted after 10 years.

<sup>21</sup> The effect of the Ireland Act 1949 on the interpretation of “foreign criminal” does not seem to have been considered by the British courts.  
<sup>22</sup> This does not apply to a person who has been sentenced to a period of at least 12 months only by reason of having been sentenced to a number of consecutive shorter periods having an aggregate length of over 12 months: s. 38(1)(b).  
<sup>23</sup> Nationality, Immigration and Asylum Act 2002 (Specification of Particularly Serious Crimes) Order 2004/1910  
<sup>24</sup> <https://publications.parliament.uk/pa/cm200607/cmhansrd/cm070219/wmstext/70219m0001.htm#0702198000010>

### Scenario box 2: Deportations after Brexit. Reliance on social support

In 2020, John, an Irish citizen with settled status in the UK is street homeless in Liverpool, due to mental health issues. After Brexit, the Home Secretary had announced that dependency on homelessness assistance is not conducive to the public good and that non-British citizens who “persistently” need assistance would be deported. John appeals the deportation relying on his settled status in the UK. The courts decide that the Minister is entitled to interpret ‘not conducive to the public good’ in this way and dismisses his appeal. John is deported and excluded from the UK indefinitely.

### Scenario box 3: Deportations after Brexit. Travellers

Anne & Michael are Irish Travellers who live in a caravan with their three children. All are Irish citizens but spend much of the year in the UK. Limits on stopping places often leave them with no choice but to stay in places that are unauthorised. Local authorities and police penalise them with prosecutions for criminal trespass and ASBOs. In 2022, the Government announces ‘more effective enforcement of the law’ against Travellers and local authorities are asked to identify “serial law-breakers”. The Home Office Minister decides that Anne & Michael’s behavior is ‘not conducive to the public good’ and orders deportation of the family. They appeal, arguing that their human rights are breached. The judge decides that, as Travellers with no fixed abode, their ties to the UK are weak. They are deported and barred from re-entering the UK.

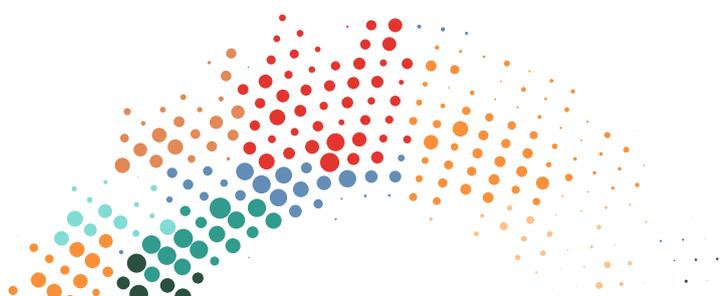
## Powers to deport Irish citizens from Northern Ireland

47. The power to deport Irish citizens from the UK exists even in the case of people of Northern Ireland who do not hold British citizenship.<sup>25</sup>
48. A person who acquired British citizenship by birth in Northern Ireland who does not renounce British citizenship cannot be deported from Northern Ireland. But a person is not protected from deportation from Northern Ireland even if born in Northern Ireland, if she acquires only Irish, and not British, citizenship at birth.<sup>26</sup> This could be the case if her parents reside in the Republic of Ireland, or are Irish-only citizens who last entered Northern Ireland from outside the Common Travel Area – see below) or she has renounced British citizenship.
49. The existence of this power appears to contravene the Belfast Agreement provision that “[the UK and Irish Governments] recognise 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”.<sup>27</sup>

25 In Doherty’s (Edmund) Application [2016] NIQB 62, a dual British-Irish citizen living in Northern Ireland had renounced his British citizenship so he could ask to be deported to Ireland to serve his sentence there. The Home Secretary refused, but only on the ground that the offence did not fit the policy of deporting only in exceptional cases.

26 For example, because her parents are Irish-only citizens who last entered Northern Ireland from outside the Common Travel Area and did not have a permanent right of residence in UK under EU law.

27 For commentary on this provision in context of British citizens of Northern Ireland without Irish citizenship, see <http://rightsni.org/2017/07/equality-of-citizenship-after-brexit/>



50. The existence of the power to deport people of Northern Ireland from Northern Ireland places people on the horns of dilemma: to choose to remain / become a British citizen or face the possibility that the UK could deport that person.

#### **Scenario box 4: Exclusion from Northern Ireland**

Gerard, born and lived his whole life in Derry in Northern Ireland, is serving a life sentence for murder. As a young man he had renounced his British citizenship. In 2021, he is due to be released on license. The Home Secretary decides to deport him to Ireland. He appeals, arguing that this would breach the Belfast Agreement. The British courts agree but dismiss his appeal on the ground that the British Parliament has not incorporated the Belfast Agreement in British immigration law. Gerard is deported and excluded from returning to Northern Ireland.

51. Under regulation 23(6) of the Immigration (European Economic Area) Regulations 2016, a citizen of an EEA state (which includes Ireland)<sup>28</sup> can presently be removed from the UK if she does not have a right to reside in the UK under EU law. Removal does not prevent return to the UK.
52. This power appears to be available for Irish citizens who entered the UK from outside the CTA and do not have a right to reside. However, it appears to be Home Office policy not to use it. Its use would not bar the person from re-entering the UK from Ireland, unless it was accompanied by a refusal of leave to enter. So it is very unlikely to be used.

### **Powers to strip dual British-Irish citizens of British citizenship**

53. Current law allows the British Government to deprive dual British-Irish citizens of their British citizenship and deport them from the UK, even if they are people of Northern Ireland. The purpose of this power is to allow for deportation.
54. Under British Nationality Act 1981, section 40(2), the British Government can deprive a person of British citizenship "if satisfied that deprivation is conducive to the public good". This power can be used against people who acquired British citizenship by birth, so long as they hold citizenship of another country.<sup>29</sup>
55. This law has no exception for dual Irish-British citizens or for the people of Northern Ireland. The law appears to breach the Belfast Agreement on the birthright of people of Northern Ireland to hold dual citizenship and to live in Northern Ireland.

### **Family unity**

56. Family members of Irish citizens who are not themselves Irish or British citizens currently have rights under EU law to reside in the UK, where the Irish citizen has a right to reside under EU law. These rights are more extensive than those recognized by British law for British citizens.
57. Irish citizens who have indefinite leave to remain in the UK have the same rights as British citizens to be joined by family members.

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<sup>28</sup> See regulation 2(1) of the Immigration (European Economic Area) Regulations 2016

<sup>29</sup> British Nationality Act, section 40(4A) permits deprivation leading to statelessness only if the person acquired their British citizenship by naturalisation, i.e. as an adult.

## Acquiring British citizenship

58. **British citizenship law does not treat children born to an Irish citizen resident in the UK in the same way as those born to a British citizen and such children may not acquire British citizenship at birth.**
59. It is widely believed that children of Irish citizens in UK acquire British citizenship in the same circumstances as children of British citizens. However, this is not the position in law, nor is it even published Home Office policy.

## Children of Irish citizen residents in UK – acquiring British citizenship

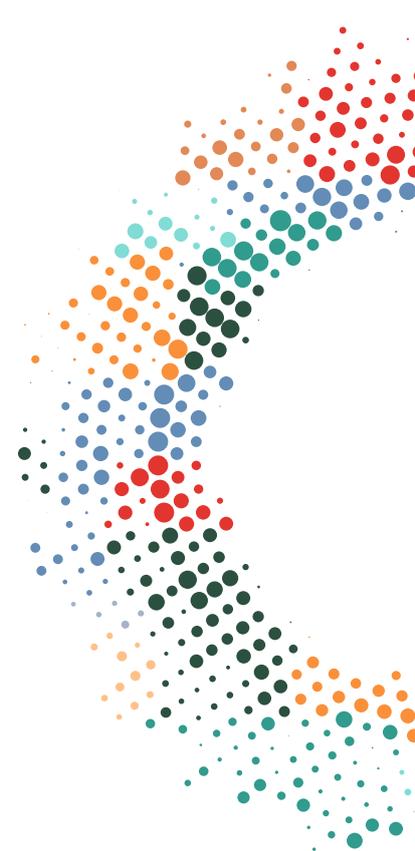
60. Since 1983, a child born in the UK is a British citizen by birth only if one or both parents is, on the day of the birth, a British citizen or is settled in the UK: section 1 of the British Nationality Act 1981.<sup>30</sup> Settled means “ordinarily resident in the UK . . . without being subject under the immigration laws to any restriction on the period for which he may remain”: section 50(2), British Nationality Act 1981.
61. This law treats children of Irish citizens differently from children of British citizens. A child born in the UK to a British citizen parent is a British citizen by birth whether or not a parent is ordinarily resident in the UK.
62. A child born in the UK to Irish parents, neither of whom is British, is only British by birth if at least one parent meets two conditions: she is ordinarily resident in the UK and she is not subject under UK immigration laws to any restriction on the period for remaining.
63. A visitor to the UK is not ‘ordinarily resident’. This means that where an Irish resident gives birth in a UK hospital, the child is not a British citizen unless the father is ordinarily resident and not subject to any immigration restriction.
64. The second condition – no restriction on the period for which he may remain in the UK – is met where the Irish citizen parent’s last entry to the UK before the birth was from Ireland. This is because the CTA applies to make that person resident without limit on their stay (see above).<sup>31</sup> It is also met where on the day of birth, the Irish citizen parent has applied and been formally granted indefinite leave to remain or has the EU law right of permanent residence. It would also be met for Irish citizens who have been continuously resident in the UK since 1 January 1973, when the Immigration Act 1971 came into force.<sup>32</sup>

But where none of these apply, this condition is not met by an Irish citizen whose last entry to the UK before their child’s birth was from outside the CTA. Irish citizens long resident in the UK, whose last trip abroad was to Spain or USA, may not confer British citizenship on children born in the UK.

30 Special provision is also made for stateless children and foundlings

31 See also s50A of the British Nationality Act 1981.

32 Immigration Act 1971, section 34(3)(a).



65. This concern is not addressed by Home Office statements, which refer to the Common Travel Area, not to Irish citizenship alone. In a 2016 reply to a Freedom of Information request the Home Office stated:

*“An Irish citizen living in the United Kingdom is generally not subject to immigration control **as they come within the Common Travel Area**. An Irish citizen ordinarily resident in the UK and not subject to immigration control would be considered Settled and the child would be a British citizen under section 1(1)(b) of the BNA81.”* (emphasis added).

66. Home Office guidance dated 1 February 2017 on the application of EU law states:<sup>33</sup>

*“The 2000 and 2006 regulations do not affect the position of EEA nationals entitled to remain indefinitely on some other basis, for example because they.*

*... **benefit under the Common Travel Area provisions** as Irish nationals.*

*Persons in this category should continue to be regarded as free from any restriction under the immigration laws on the period for which they may remain.”* (emphasis added).

67. A child born in the UK who acquires British citizenship at birth does so automatically: there is no need to make an application or pay a fee. The issue of a British passport to such a person is evidence of their citizenship. But it is not conclusive. Citizenship by birth depends on the facts and law: not on the decisions or policy of the British Government.

68. The lack of clarity for children born in UK to Irish parents who entered from outside the Common Travel Area may leave them depending upon the possibility of applying for citizenship after birth – see below.

69. If a child is born in UK to an Irish mother who is visiting the UK, then that child does not acquire British citizenship (unless the father is settled in UK with no restriction on their stay). Similarly, a child born to a non-EU citizen mother living in the UK with a restriction on her stay, and an Irish father living outside the UK, her child will not acquire British citizenship. In the case of children born in Northern Ireland, this appears to violate the Belfast Agreement – see below.

## Applying for British citizenship

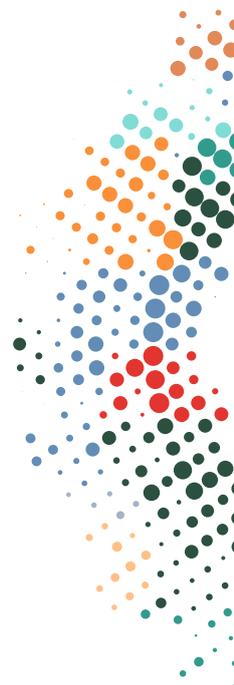
70. Where a child born in the UK does not acquire British citizenship at birth, because neither parent is “settled” in the UK, they can apply for citizenship. They have the right to be granted citizenship if a parent becomes a British citizen or settled in the UK, or if the child has lived continuously in the UK to age 10.<sup>34</sup> The British authorities also have a general power to grant British citizenship to a child.<sup>35</sup> However, the child only acquires citizenship if the formal application is made to the Home Office, before the child reaches 18 and with the fee required: currently around £1000 per child.<sup>36</sup> If no application is made before age 18, the child has no right to be naturalized and could only become a British citizen by meeting the requirements for discretionary naturalization, which include being of good character.

33 [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/617755/EEA-Free-movement-rights-guidance.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/617755/EEA-Free-movement-rights-guidance.pdf)

34 British Nationality Act 1981, section 1(3), (4).

35 British Nationality Act 1981, section 3(1).

36 2017-2018 fee is £973, plus £80 if the child reaches 18 before a decision is taken.



71. These rules mean that some people born in the UK to Irish citizen parents may find their entitlement to British citizenship contested after they become an adult, and only then discover that they do not hold it. This is important if UK law continues to allow for Irish citizens to be treated less favourably than British citizens, for example on deportation. There is no automatic process for notifying a child born in the UK whether she acquired British citizenship by birth. Because children of Irish citizens will usually also be Irish citizens and so entitled to an Irish passport, even children who regularly travel will have no practical need to establish British citizenship. However, when this question arises, it may be too late to become British.
72. This situation seems to violate the Belfast Agreement. Under the citizenship provision of the Agreement, the “people of Northern Ireland” means “all 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.”<sup>37</sup>
73. The British Nationality Act 1981 fails to ensure that all children born in Northern Ireland to an Irish citizen parent acquire British citizenship by birth. The exercise of any right to acquire British citizenship as a child depends on the parents, and there is no right to British citizenship once an adult. For a Belfast-born woman to find, aged 19, she is not and cannot become a British citizen denies her ‘birthright to be accepted as British’.

#### **Scenario box 5: Child born in the UK without acquiring British citizenship**

It is 2021. Darren is 21 and has just been convicted of affray after a fight in a pub. Darren was born in Wales where he has lived his whole life there and has a full-time job. His parents are Irish citizens, who moved from Ireland to Wales in 1997, three years before Darren was born, living and working continuously in the UK for 24 years. Darren is an Irish citizen and as a child he travelled on an Irish passport and spent long periods in Ireland. The Home Office advised the criminal court that Darren is not a British citizen by birth, because at the time of his birth his parents were not “settled”: they had last entered the UK from a holiday in Spain and had not been exercising EU law rights for 5 years. From when Darren was two years old they were settled (after five years permanent residence) and had the right to apply for Darren to be registered as a British citizen. But because they did not do this before he became 18, he has lost this chance. Darren’s lawyers accept that his conviction means the Home Office would refuse an application for Darren to be naturalized as an adult. The court recommends Darren’s deportation to Ireland. After serving his sentence, the Home Secretary orders his deportation: he is excluded from the UK indefinitely.

## Employment

74. **Irish citizens are exempt from UK legal prohibitions on employment of foreigners only because of the exception for EU citizens.**
75. Under current UK law, there is a general prohibition on employment of a person who is subject to immigration control unless that person has leave with no prohibition on employment: section 15 and 25(c) Immigration, Asylum and Nationality Act 2006. Under section 24B of the Immigration Act 1971,<sup>38</sup> a person who reasonably suspects they are in this situation commits a criminal offence by working.

<sup>37</sup> Annex 2 to the British-Irish Agreement 1998 (my bold): Declaration on the Provisions of Paragraph (vi) of Article 1 In Relationship to Citizenship

<sup>38</sup> Inserted by section 34 of the Immigration Act 2016

76. An Irish citizen is not subject to immigration control if she last entered the UK from Ireland (see above) or if she has a limited or permanent right to reside in the UK under EU law.<sup>39</sup> This means that, in practice, an Irish citizen would *presently* only count as ‘subject to immigration control’ under UK law if she entered in breach of a UK deportation order. An employer is exempt from paying any penalty for illegal employment for an employee who has shown an Irish passport, or an Irish birth certificate and UK national insurance number.<sup>40</sup>
77. If Brexit leads to the removal of EU law rights to reside in the UK, then Irish citizens entering the UK from outside the CTA may count as “subject to immigration control” and the current law may operate to prohibit them from taking employment, unless they hold leave to enter or remain with permission to work.

## Renting accommodation

78. **Irish citizens are exempt from UK legal prohibitions on renting accommodation to foreigners only because of the exception for EU citizens.**
79. Under current UK law, there is a prohibition on renting accommodation to a person who is not an EEA national and who requires, but does not have, leave to remain: sections 21 and 22 Immigration Act 2014. This has only been applied in five English metropolitan areas.<sup>41</sup>
80. If Brexit leads to the removal of EEA nationals from this exception, then Irish citizens entering the UK from outside the CTA may count as “subject to immigration control” and the current law may operate to prohibit them from renting accommodation, unless they hold leave to enter or remain.

## Benefits

81. **Irish citizens are exempt from UK general prohibition on cash benefits only because of the exception for EU citizens. There is an Irish-specific exception from the right to reside test.**
82. Under current UK law, there is a general exclusion from entitlement to cash benefits of people who are not EU citizens, require leave to remain and either do not have leave or have leave subject to a condition on no recourse to public funds.<sup>42</sup>
83. This exclusion only applies to Irish citizens because they are EU citizens. Unless this exclusion is continued after Brexit (for EU citizens or Irish citizens), some Irish citizens may lose entitlement to benefits because they are not British.

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39 Immigration Act 1988, section 7.

40 <http://www.legislation.gov.uk/ukxi/2007/3290/schedule/made>

41 Immigration Act 2014 (Commencement No. 3, Transitional and Saving Provisions) Order 2014, art.6. <http://www.legislation.gov.uk/ukxi/2014/2771/contents/made>

42 Immigration & Asylum Act 1999, section 115.



84. UK law also restricts entitlement to many means tested benefits to persons who are habitually resident in the Common Travel Area and have a right to reside in the Common Travel Area. For example, the Universal Credit Regulations state:<sup>43</sup>

*9.—(1) For the purposes of determining whether a person meets the basic condition to be in Great Britain, except where a person falls within paragraph (4), a person is to be treated as not being in Great Britain if the person is not habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland.*

*(2) A person must not be treated as habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland unless the person has a right to reside in one of those places.*

85. The Universal Credit Regulations (Northern Ireland) 2016 make the same provision for the basic condition to be in Northern Ireland.

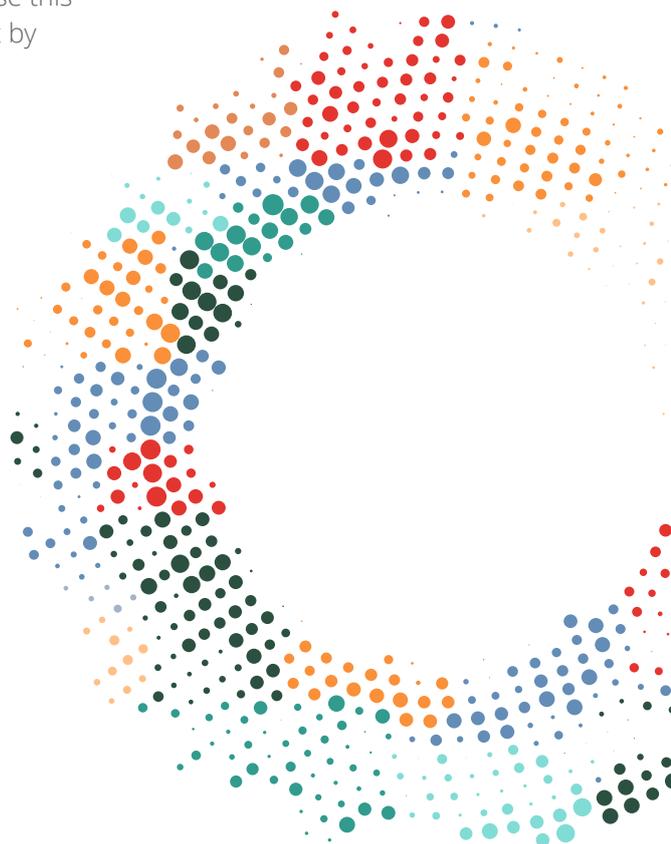
86. Identical or similar regulations apply to:

- a. Income Support
- b. Jobseeker's Allowance
- c. State Pension Credit
- d. Housing Benefit
- e. Employment and Support Allowance
- f. Homelessness assistance and
- g. Housing allocation.

87. The requirement of this benefit rule to have a right to reside in a part of the CTA is met by holding Irish citizenship, because this gives a right to reside in Ireland – in the same way it is met by British citizenship which gives a right to reside in the UK.

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43 <http://www.legislation.gov.uk/uksi/2013/376/regulation/9/made>



88. European Union citizens are excluded from non-cash based social welfare schemes, unless the exclusion would breach that person's rights under EU or human rights law.<sup>44</sup> Support for British citizens is exempt.<sup>45</sup> Under Nationality, Immigration and Asylum Act 2002, Schedule 3 this exclusion applies to the following assistance:
- Residential accommodation for the elderly and disabled, under section 21 or 29 of the National Assistance Act 1948
  - Assistance for the welfare of the elderly, under section 45 of the Health Services and Public Health Act 1968
  - Social services under section 254 of, and Schedule 20 to, the National Health Service Act 2006, or section 192 of, and Schedule 15 to, the National Health Service (Wales) Act 2006
  - Social welfare under section 12 or 13A of the Social Work (Scotland) Act 1968
  - Social welfare and prevention of illness under Article 7 or 15 of the Health and Personal Social Services (Northern Ireland) Order 1972
  - Interim duty to accommodate pending review or appeal, under section 188(3) or 204(4) of the Housing Act 1996; section 29(1)(b) of the Housing (Scotland) Act 1987
  - Welfare for families of children in need and for adults who were children in care, under sections 17, 23C, 24A or 24B of the Children Act 1989; sections 22, 29 and 30 of the Children (Scotland) Act 1995; Article 18, 35 or 36 of the Children (Northern Ireland) Order 1995
  - Promotion of well-being under section 2 of the Local Government Act 2000.
89. There is no exception for Irish citizens: it is their EU law rights that can defeat the application of this exclusion to them.

## Reciprocal provisions in secondary legislation

90. The UK and Ireland have made specific social security agreements which have been incorporated into the UK legal order by secondary legislation. The most recent of these is the 2004 Convention<sup>46</sup>, implemented in the UK by the Social Security (Ireland) Order 2007.<sup>47</sup>

## Health care

91. Under section 175 of the National Health Service Act 2006, charges may be made for hospital treatment of people who are not ordinarily resident in the Great Britain. Article 42 of the Health and Personal Social Services (Northern Ireland) Order 1972 makes similar provision for Northern Ireland.
92. Irish citizens visiting the UK are exempt from charges if they are insured for health care in another EU state, eg they hold an Ireland-issued EHIC card.<sup>48</sup>
93. Unless this rule is continued after Brexit, Irish visitors may be liable for charges for NHS care.

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44 Nationality and Immigration Act 2002, Schedule 3, paras 1 & 5. <http://www.legislation.gov.uk/ukpga/2002/41/schedule/3>

45 Nationality and Immigration Act 2002, Schedule 3, para 2(1)(a) <http://www.legislation.gov.uk/ukpga/2002/41/schedule/3>

46 Convention on Social Security between The Government Of The United Kingdom Of Great Britain And Northern Ireland And The Government Of Ireland

47 <http://www.legislation.gov.uk/uksi/2007/2122>

48 Relevant EU law provisions implemented in UK by regulation 12 of the National Health Service (Charges to Overseas Visitors) Regulations 2015; regulation 7 of the Provision of Health Services to Persons Not Ordinarily Resident Regulations (Northern Ireland) 2015.

# Rights of British citizens in Ireland

94. British citizens have more extensive rights in Ireland than those of Irish citizens in the UK:
- Secondary legislation exempts British citizens from all Irish immigration laws, regardless of whether entry from was another part of the CTA: Aliens (Exemption) Order, 1999.<sup>49</sup> This makes British citizens exempt from deportation from Ireland.<sup>50</sup>
  - British citizens resident in Ireland have the same rights to social welfare and health care as Irish citizens.<sup>51</sup>
  - British citizens have the right to vote in elections to the Dáil.<sup>52</sup> Under the constitution, only citizens may vote in elections for the Taoisach or in referendums.<sup>53</sup>

## Guaranteeing Irish citizens' rights in a post-Brexit UK

95. Current rights of Irish citizens depend upon their status as EU citizens. The right to enter and remain in the UK (when coming from outside Ireland), and rights of employment and entitlement to social welfare depend upon EU law and UK special treatment of EU citizens.
96. The UK Government intends that Brexit will end the effect of EU law in the UK. The UK Government's Position Paper shows support for continuing existing favourable treatment of on Irish citizens.
97. We have considered what would happen to the rights of Irish citizens under UK law, if the UK Government ends rights under EU law rights & special UK law rights of EU citizens, without making new legal provision for Irish citizens:
- The immigration status of Irish citizens arriving from outside the Common Travel Area would be unclear. There would be no explicit legal right for these people to enter, to stay, to work, and to rent private accommodation, nor any explicit legal bar on removal or deportation.
  - The lack of clarity on the status of Irish citizens would make the British citizenship of their children unclear.
  - There would be no explicit bar on exclusion of Irish citizens from Northern Ireland, regardless of their ties to Northern Ireland.
  - Irish citizens would be excluded from cash benefits.
  - Irish citizens would be excluded from non-cash social welfare, unless this would violate their human rights.
  - Irish citizens may be excluded from free National Health Service treatment.
98. UK Government policies towards non-British citizens are not legal guarantees. Government policies may easily be changed, especially in an unpredictable post-Brexit future with heightened public expectations about new state measures directed to people who are not British citizens. Irish citizens may, deliberately or not, be caught by old and new laws and practices implementing the Government's "hostile environment" policy at migrants.

49 [http://www.baillii.org/ie/legis/num\\_reg/1999/0097.html](http://www.baillii.org/ie/legis/num_reg/1999/0097.html) . This replaced the Aliens (Exemption Order), 1935.

50 The Order refers to "a citizen of the United Kingdom". This term is not used in UK law. It must include a British citizen. There is power to extradite British citizens from Ireland, just as there is for Irish citizens.

51 [http://www.citizensinformation.ie/en/moving\\_country/moving\\_to\\_ireland/rights\\_of\\_residence\\_in\\_ireland/residence\\_rules\\_UK\\_citizens.html](http://www.citizensinformation.ie/en/moving_country/moving_to_ireland/rights_of_residence_in_ireland/residence_rules_UK_citizens.html)

52 Under the 9th Amendment to the Irish Constitution

53 Article 12(2)2, Art. 47(3).

### Scenario box 6: Homeless assistance denial

It is 2023. Caoilfhionn has been evicted and asks her English local authority for homelessness assistance. She uses her Irish passport as proof of identity. Under new post-Brexit laws, local authorities are barred from assisting people who cannot prove they are British or have a permanent right to live in the UK. Caoilfhionn has lived in UK for 4 years, after entering across the Irish/UK land border. She has no stamps in her passport and no papers to show a right of permanent residence. The local authority official looks at her passport and sends her away. She approaches an advice bureau which tells her the decision was correct. Caoilfhionn has heard about crack-downs on non-British homeless people, so she assumes the authority and bureau are right. She is then street homeless for 2 years. (The correct position is that, because she entered from the CTA, she is exempt from immigration control and qualifies under UK homelessness laws.)

### Scenario box 7: Landlord refusals to let

It is 2024. Siobhan & John are recently arrived Irish citizens working minimum wage, moving around the UK, living in short-term lets. They are Travellers. They know that UK guidance says Irish citizens who can prove they entered UK legally have the right to rent in the UK and they have proof of their most recent Ryanair flight. But landlords often turn them away saying that their blank passports don't meet the legal instructions landlords have from the Home Office. Sometimes the landlords do this because they don't want Traveller tenants or because they don't like Irish people. Sometimes they do it because it's easier to take other tenants with clear papers. Siobhan and John often have to stay in overcrowded accommodation, or even on the streets.

99. We therefore explore which rights should be guaranteed to Irish citizens and how this might be done. We do this on the basis that EU law will cease to apply in the UK.

## Overarching special status of Irish citizens

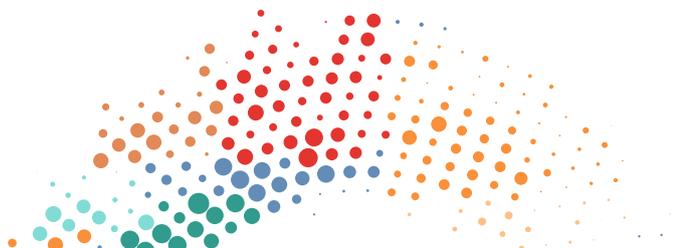
100. **The Ireland Act 1949 should be updated by amendment:**

***An Irish citizen shall be treated equally with a British citizen for the purpose of any law in force in any part of the United Kingdom whenever made.***

101. **This Act could include specific exceptions, in particular, for deportation and exclusion, and for laws relating to public functions and obligations, such as conscription to the armed forces.**

102. As this paper shows, the rights of Irish citizens in the UK depend upon a wide range of complicated, and differently expressed laws. The simple approach of the Ireland Act 1949 has not been followed in modern legislation. This is a mistake. Laws that are complex are not accessible to ordinary citizens and are most likely to be misunderstood or misapplied by officials, employers, and landlords.

103. The simplest, and therefore most effective, means of guaranteeing the rights of Irish citizens after Brexit would be a general law providing that Irish citizens shall be treated as if they were British citizens for all purposes. This would give effect to the original purpose of the Ireland Act 1949.



## Alternative approach – no immigration limitations

104. There is no reliable information on any **alternative solution** the UK Government may be considering. The leaked paper points to the idea that immigration status of Irish citizens who entered from outside the CTA would be the same as those who enter from Ireland.
105. The terms of such a law could be **“An Irish citizen is exempt from any requirement to obtain leave to enter or remain under the immigration laws.”**
106. Such a change would make every Irish citizen who has entered the UK from abroad exempt from immigration control, as well as those Irish citizens born in the UK who do not hold British citizenship.
107. This change would exempt Irish citizens from current laws like those on employment, benefits, health, that exclude non-British citizens who require leave to remain. It would also ensure that children of Irish citizens born in the UK acquire British citizenship at birth.
108. However, this depends on British policy continuing to treat all settled migrants in the same way as British citizens. Exempting Irish citizens from immigration control does not “future-proof” Irish citizens from a change in this policy. The last 20 years have seen an ‘immigrationizing’ of British laws on work, welfare and study. Any law which treats settled migrants worse than British citizens would affect Irish citizens. We have seen that the apparent intention of the Ireland Act 1949 was undermined because it only applies to law referring to foreigners. To base protection of Irish citizens on their immigration status is as vulnerable to change.

## Effect of special status of Irish citizens

109. An Act that Irish citizens be treated equally with British citizens would remove the need to consider the effect on Irish citizens of laws directed at foreigners. It would guarantee all Irish citizens will continue to have the:
  - right to enter the UK at any port and to remain in the UK indefinitely (subject to exercise of the power to exclude or deport)
  - right to work and rent accommodation on same basis as a British citizen
  - right to receive social and health benefits on the same basis as a British citizen
  - right to confer British citizenship on children born in the UK
  - right to family union under the same immigration conditions as British citizens.
110. Such an Act would end the distinction between Irish citizens who enter the UK from Ireland and those who enter from outside Ireland. It would effectively extend the benefit of the CTA to all Irish citizens.
111. Such an Act would **not** make Irish citizens into British citizens and its exceptions would ensure that they are not subject to obligations that should be limited to British citizens.
112. Such an Act would **not** give Irish citizens better rights than British citizens. Irish citizens would have to meet the same conditions as British citizens, such as residence or contributions, to complete the same forms and pay the same charges.
113. Such an Act would give British citizenship to any child born in the UK to an Irish citizen parent, removing the uncertainty of citizenship for children of Irish citizens who may not have been ordinarily resident or who last entered the UK from outside the Common Travel Area. The Act could amend the British Nationality Act 1981 to make this clear.

## Law retroactive to guarantee right to British citizenship

114. These new laws should **apply retroactively to Irish citizen parents of children born in the UK**. This will close the current gap that leads to children reaching adulthood without British citizenship and having no right to acquire it as adults.
115. These changes will not affect the legal right of Irish citizens who acquired British citizenship by birth to renounce it by a voluntary adult decision.<sup>54</sup> This respects the birthright of the people of Northern Ireland to identify only as Irish.

## Powers to exclude and deport Irish citizens

116. The Irish Government has renounced the power to deport British citizens (see above). The British Government should reciprocate and exempt Irish citizens from deportation.
117. If the United Kingdom government insists on retaining the power to deport and exclude Irish citizens, this power is currently too wide, in two respects.
118. First, UK law offers significantly less protection from deportation than EU law does. Any law on deportation of Irish citizens should be limited to cases where the demanding conditions of EU law are met.
119. Second, a new law should respect the Belfast Agreement by barring the deportation or exclusion from Northern Ireland of Irish citizens with appropriate ties to Northern Ireland, such as birth, parentage or residence. The law could make provision for a deportation or exclusion order to operate without prejudice to such a person's right to enter and stay in Northern Ireland.

## Powers to deprive dual British-Irish citizens of British citizenship

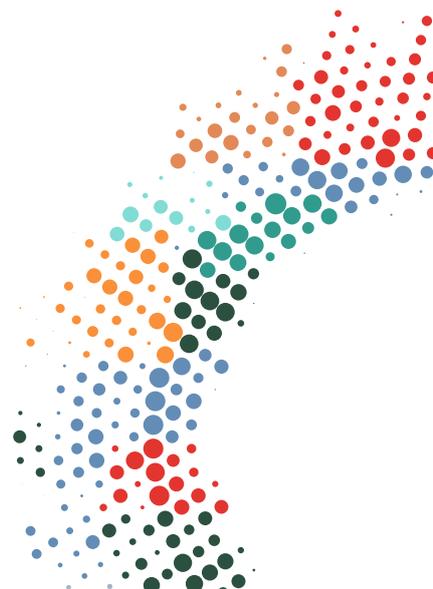
120. This power should be removed from the British Nationality Act 1981 for people of Northern Ireland, to respect the Belfast Agreement.

## Family unity

121. **UK law should be amended to guarantee Irish citizens the rights of family unity and equal treatment of family members currently enjoyed by EU citizens in the UK.**
122. Treating Irish citizens in the same way as British citizens will not secure their existing rights to family unity. British immigration law restricts the right to family life of British citizens to a greater extent than EU law allows for EU citizens who have moved between states.
123. If this approach is taken to Irish citizens, it will reduce their rights and force some to choose between maintaining family unity and living in the UK. In the case of Irish citizens from Northern Ireland, this may violate the Belfast Agreement.

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<sup>54</sup> British Nationality Act 1981, section 12. The fee of £321 for exercising this right may not be compatible with the birthright clause of the Belfast Agreement.



124. UK law should maintain existing rights to family reunion, by guaranteeing Irish citizens in the UK that:

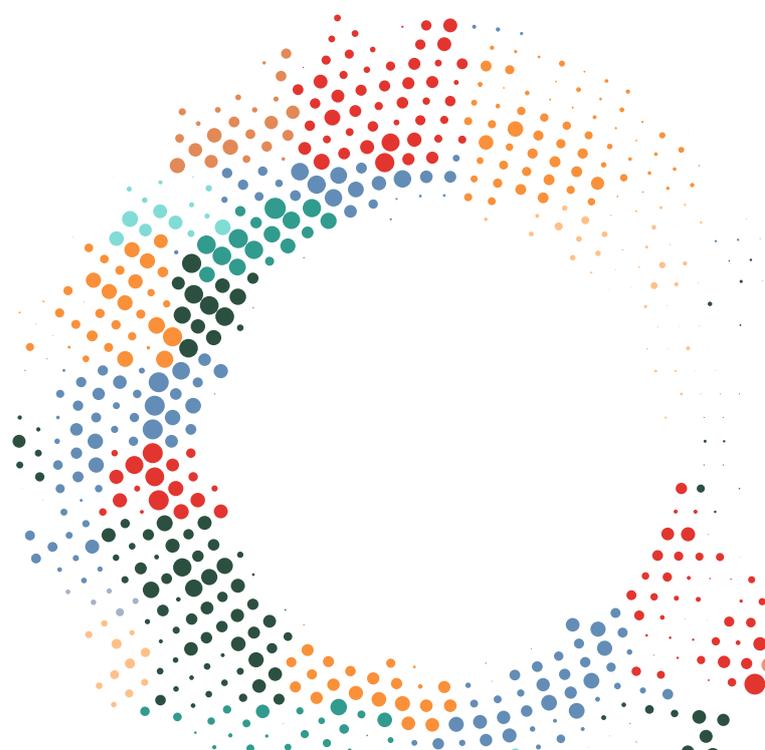
- Irish citizens will have the same rights under UK law that they have now under EU law to have their family members living with them.
- Family members of Irish citizens with a right to reside in Ireland as a family member shall have the same right of residence with that Irish citizen under UK law. This will ensure free movement for Irish citizens between UK and Ireland.
- Family members with these rights to be free to cross the Ireland-UK border without the need for a visa or for leave to enter at the border.
- Family members of Irish citizens in the UK to have the right to work and to equal treatment, as EU law currently provides.

This law will ensure continuity of rights for Irish citizens and free movement of family members between UK and Ireland.

## Reducing burdens on Irish and British citizens who move between the two countries

125. People will continue to move between Ireland and UK, with employment, residence and engagement with public services in both states. The UK and Irish Government should continue to strengthen reciprocal laws and administrative arrangements to reduce “red-tape” for people moving between the two countries. Where EU law provided for common or reciprocal arrangements, these should be addressed in bilateral arrangements.

- Conditions of residence in the United Kingdom or in Ireland should be met by residence in any part of the CTA.
- EU arrangements for social security and health care should be replicated by bilateral arrangements, to ensure that health care is free to all CTA residents at point of service and that periods of residence, employment and insurance within the CTA are aggregated and recognised in both states.



## Underpinning rights of Irish citizens with international law

126. To reduce the risks of attempts to take away rights of Irish citizens in the UK these key rights should be underpinned by international law in two respects.
127. First, the rights should be guaranteed in the UK-EU27 Exit Agreement. As citizens of the European Union, with acknowledged special status in the UK, the Exit Agreement should include a binding commitment by the UK to the EU27 to maintain these rights for all Irish citizens and their families, in perpetuity.
128. Second, the rights should be guaranteed by a bilateral agreement between the UK and Irish Government, which should also guarantee that Irish law will give British citizens and their families the same rights as those being guaranteed for Irish citizens in the UK.
129. Recognition of rights under EU law and/or UK-Ireland reciprocity will protect these laws from challenges that they are illegal discrimination favouring Irish citizens over other non-British citizens. Such a challenge was made under EU nationality discrimination law in *Patmalniece* against the treatment of residence in Ireland as equivalent of residence in the UK under the UK benefits requirement for a right to reside.<sup>55</sup> The Supreme Court rejected the argument because the benefits rule was held to be part of the Common Travel Area arrangements allowed by EU law.<sup>56</sup> A challenge was also made to favourable treatment of EU citizens over non-EU citizens in *Moustaquim v Belgium*.<sup>57</sup> The European Court of Human Rights ruled that “for the preferential treatment given to nationals of the other member States of the Communities, there is objective and reasonable justification for it as Belgium belongs, together with those States, to a special legal order.” Without a justification *in international law* for treating Irish citizens more favourably, these protections might not be upheld.

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55 *Patmalniece v Secretary of State for Work and Pensions* [2011] UKSC 11, [2011] 1 WLR 783

56 *Patmalniece* para. ##

57 *Moustaquim v Belgium* (1991) 13 EHRR 802, 49.



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