

Recognising Irish citizens in immigration law as free movement rights are withdrawn

Written evidence to the Immigration and Social Security Co-ordination (EU Withdrawal) Public Bill Committee

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Introduction

Clause 2 of the Immigration and Social Security Co-ordination (EU Withdrawal) Bill proposes amendments to the Immigration Act 1971 to exempt Irish citizens as a class from a requirement to have leave to enter or remain. It is identical to clause 2 of the Bill before the House of Commons in 2018-2019.

This clause would remedy a gap in immigration legislation.¹ With the exception of the wartime period (1940-1947), Irish citizens have never in practice been subject to restrictions on entry and residence in the United Kingdom. That position has hitherto been clearly reflected in United Kingdom law only for Irish citizens who most recently arrived from another part of the common travel area (including the Republic of Ireland). No specific provision has been made for Irish citizens who most recently arrived from any other location. In practice, the effect of this omission has been limited by the possibility for Irish citizens to rely upon EU free movement rights. The coming to an end of those rights under the Bill makes it necessary to remedy the legal gap relating to Irish citizens.²

This written evidence is structured as follows:

1. Irish citizens' historic position in immigration law
2. The current position of Irish citizens in immigration law
3. Related issues in nationality law
4. Outline of clause 2
5. Proposals for amendments.

This evidence draws upon research on the legal status of Irish citizens in the United Kingdom which I hope to publish later in 2020.

1. Irish citizens' historic position in immigration law

The policy and practice of the United Kingdom throughout the period since the Irish state was founded in 1922 has been to avoid restrictions upon the *entry and residence* of Irish citizens. The only time when such restrictions applied was during and after the second world war (1940-1947): in that period, all British subjects – including Irish citizens - travelling from the Irish state to Great Britain were required to obtain a visa, and to obtain permission to disembark upon arrival, which was generally granted with conditions. *Powers of deportation* of Irish citizens were first created by the Commonwealth Immigrants Act 1962, and have

been applied to them since that time. The current threshold for deportation is higher for Irish citizens than for other persons (see below).

Explanations

Three broad factors explain the favoured treatment of Irish citizens in relation to entry, residence and deportation.

Firstly, because of geographical proximity, there is a history of **personal movement** (pre-dating 1922) between Great Britain and the island of Ireland. There has long been migration for economic reasons from the Irish state area to Great Britain, and this became especially significant in scale during the wartime period, through the 1960s. Since the 1990s, migration has been in both directions, for a mixture of economic activity, family reasons, study and tourism. The most recent data shows an estimated 360,000 persons born in the Republic of Ireland resident in the United Kingdom, and 277,000 persons born in the United Kingdom resident in the Republic of Ireland.³

Secondly, the special treatment of Irish citizens is connected to the conundrum for United Kingdom immigration control presented by the **Irish land border**. The predominant position of the United Kingdom Government since the 1920s has been that it is impractical to operate immigration controls at that border, but equally that controls on travel between Great Britain and Northern Ireland are politically problematic. Accordingly, between 1922 and 1939, and again since 1952, the United Kingdom authorities have relied upon the co-operation of the Irish state in immigration control matters.⁴ Those arrangements have permitted relatively open borders for travel by land, sea and air between the two states. They have also encouraged special treatment for Irish citizens, because of the risk that restrictions upon them would lead the Irish state to limit its co-operation in immigration control.

Thirdly, there have been ongoing **political links** between the two states. A constitutional link continued from 1922 until the Irish state's definitive break with the Commonwealth in 1949. Since then, there has been a practice of arrangements and understandings between the two states concerning immigration and citizenship matters.

In that regard, the *Memorandum of Understanding concerning the Common Travel Area and associated reciprocal rights and privileges* between the two Governments, published on 8 May 2019, was a significant development. This was the first occasion on which the two Governments formally and publicly agreed the range of rights which British and Irish citizens may be expected to have in the other state.⁵ Two statements guaranteeing rights of entry and residence are of relevance here:

“Movement of British and Irish citizens

6. The common travel area allows British and Irish citizens to move freely between the UK and Ireland. The Participants are to continue to ensure that their national laws facilitate such movement.

The right to reside

7. The common travel area permits British citizens to take up residence in Ireland and Irish citizens to take up residence in the UK. The Participants are to continue to ensure that their national laws provide for such a right to reside.”

The position in Irish law

In Irish law, since the adoption of that state’s first nationality and aliens legislation in 1935, persons ‘belonging to’ the United Kingdom have been treated as distinct from Irish citizens, but have been exempt from restrictions upon entry and residence, and from the possibility of deportation.⁶ Between 1962 and 1999, that exemption was limited to persons *born* in the United Kingdom, and was therefore narrower than the equivalent provisions in British immigration law.⁷ That was addressed in 1999, through the current provisions, which recognise *British citizens* as the exempt group.⁸

The evolution of British law

British law in relation to Irish citizens has taken a far more complicated route. Until the late 1940s, Irish citizens continued to be considered as British subjects, because of the Irish state’s continuing links to the Commonwealth. Irish citizens therefore benefitted from British subjects’ freedom to enter and reside in the United Kingdom, and their immunity from deportation. In the British Nationality Act 1948, the United Kingdom accepted that Irish citizens would not be classed as British subjects, but maintained an interim equivalent status for them, through a provision – which remains in force - that the rights and obligations of British subjects under the law *as it then stood* continued to apply to Irish citizens.⁹ As regards immigration law, that meant that Irish citizens continued to benefit from British subjects’ freedom of entry and residence, and immunity from deportation, which were common law principles.

The following year saw the United Kingdom respond to the Irish state’s final break with the Commonwealth. Section 2 of the Ireland Act 1949 – which also remains in force - provided that the Irish state would not be considered ‘foreign’ for the purposes of any law. As regards individuals, section 2 went on to state that “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 ... shall be construed accordingly.” In immigration law, this passage had the effect of ensuring that Irish citizens were not covered by the Aliens Restriction Acts 1914 of 1919, and the Aliens Orders then in force.

The legal position of Irish citizens changed fundamentally from 1 July 1962 with the coming into force of the Commonwealth Immigrants Act 1962. That Act permitted immigration officers to refuse, or to place conditions upon, entry and residence by colonial and Commonwealth citizens arriving in the United Kingdom. These new powers were expressly extended to Irish citizens.¹⁰ The legislation also introduced a new power of deportation of

colonial and Commonwealth citizens, upon a court's recommendation, which was also expressly extended to Irish citizens.¹¹

Despite the terms of the 1962 Act, the policy of the United Kingdom Government of the day was that it would not apply any new restrictions upon entry and residence to Irish citizens. In Parliament, ministers argued that it was necessary to exempt *arrivals from the Republic of Ireland*, because of the difficulty of immigration control at the Irish land border. It was however understood - at least in Government circles - that, in order to secure the Irish state's participation in the control of Commonwealth migration, restrictions would not be applied to *Irish citizens arriving from anywhere*. The explanation for the creation in the 1962 Act of powers of control which were not to be used lies in the extremely controversial nature of that legislation. In essence, the 1962 Act curtailed the historic rights of British subjects, in order to reduce non-white migration to the United Kingdom. In a context where the Government was (justly) being criticised for racial discrimination, it would have been damaging to the prospects of the legislation if it had excluded Irish citizens, as they were a predominantly white population from a state outside the Commonwealth.

On 1 January 1973, the Immigration Act 1971 brought aliens and Commonwealth citizens within a single legislative scheme. Under the 1971 Act, the restriction of admission to the United Kingdom was no longer expressed as a power conferred upon an immigration officer, as it had been in the 1962 Act. Instead, possession of leave was mandatory, unless a person was in an exempted category. Irish citizens as a class were not exempt, however, even though there was no intention to apply restrictions to them in practice. That may have reflected the legacy of the controversy of 1962. There appears also to have been an expectation that the legal provisions relating to the common travel area would suffice.

Irish citizens were and are covered by the provisions concerning deportation in the 1971 Act.¹²

2. The current position of Irish citizens in immigration law

The current position under the Immigration Act 1971 remains that Irish citizens are covered by obligations relating to entry and residence. Only persons with the right of abode are exempt, and the only nationality leading to the right of abode is British citizenship.¹³ It may be added that the statement in section 2 of the Ireland Act 1949 concerning Irish citizens did not affect their position under the 1971 Act, as it places obligations upon all persons lacking the right of abode, including colonial and Commonwealth citizens, and does not use the language of "aliens" or "foreigners".

Since 1 January 1973, Irish citizens have benefitted from the provisions of the 1971 Act, and of secondary legislation adopted under it, concerning the 'common travel area'. As defined, that area comprises the United Kingdom, the Channel Islands, the Isle of Man, and the Republic of Ireland. Section 1(3) of the 1971 Act provides that immigration control is not to apply to arrivals to the United Kingdom from other parts of the common travel area. Crucially, it also provides that persons who arrive from those places do not require leave to enter the United Kingdom, unless such arrivals are excluded by or under the Act.

By virtue of Article 4 of the Immigration (Control of Entry through Republic of Ireland) Order 1972, as amended, persons who lawfully enter the United Kingdom from the Republic of Ireland, having previously come from somewhere else, are generally covered by a form of 'deemed leave' for a period of three months.¹⁴ In the original version of Article 4, Irish citizens were stated to be exempt. When read together with section 1(3), that indirectly recognised an *unlimited* right of entry for *Irish citizens arriving from the Republic of Ireland*. The specific reference to Irish citizens was removed in 2014, when the benefit of the Article 4 exemption was extended to all those possessing an EEA nationality – including Irish citizens - or else a right of entry flowing from EU law.¹⁵ That position is set to continue after the current transition period comes to an end.¹⁶

These provisions do not however cater for the legal position of Irish citizens who most recently arrived in the United Kingdom from *outside the common travel area*. From 1973, the Home Office continued to be permit entry and residence by Irish citizens, irrespective of the place they arrived from. Irish citizens were therefore excluded from the scope of new Immigration Rules for EEC nationals adopted in 1973, which included the statement that “because the Republic forms part of the Common Travel Area ... [they] are admitted freely to the United Kingdom, whether coming from within or outside that Area, except in cases where the Secretary of State decides that the exclusion of a particular person is conducive to the public good.”¹⁷ The implication is that, at that time, Irish citizens arriving from elsewhere were granted leave to enter as a matter of course, without any time limits or conditions being attached.

EU free movement rights would prove a complicating factor in the arrangements for Irish citizens. The position in EU law was that those with free movement rights should be admitted to the United Kingdom as of right, without a grant of leave to enter. That would be reflected in the Immigration Rules from 1982 onwards, and in section 7 of the Immigration Act 1988 from 20 July 1994. The latter continued to provide that a person entitled to enter or remain because of directly effective free movement rights, or because of rights under a statutory instrument adopted under the European Communities Act 1972, does not require leave to enter or remain under the 1971 Act.

These arrangements to implement free movement rights protected most Irish citizens, who acquired rights of entry of residence under EU law irrespective of the position under the Immigration Act 1971. For nationals of other member states, the entitlement to be in the United Kingdom would generally expire when they ceased to meet the requirements of EU law. There was however a potential gap in the case of Irish citizens, who were *not* treated as lacking status in the United Kingdom if they ceased to meet EU free movement requirements.

The current Bill makes provision for the repeal of section 7 of the 1988 Act, and of the Immigration (European Economic Area) Regulations 2016, which is the current statutory instrument giving effect to EU free movement rights.¹⁸ ***It is the coming to an end of free movement rights that makes clause 2 indispensable, in respect of Irish citizens whose most recent arrival in the United Kingdom was from outside the common travel area.***

If legislation along the lines of clause 2 were not adopted, the question which would emerge is how Irish citizens who arrived from outside the common travel area would obtain leave to enter and remain. It would technically be possible to issue leave to them individually, based on a policy decision reflected in the Immigration Rules or elsewhere. One reason not to pursue that course of action is the desirability of giving certainty to Irish citizens as to their status. Another is the administrative inefficiency of individual grants to a category who will be permitted to enter and remain in all, or almost all, cases. Thirdly, if we assume that Irish citizens will not require leave when arriving from the Republic of Ireland, there would be great difficulties in deciding the *type and duration* of leave to be granted to Irish citizens arrivals from elsewhere. Whether to grant indefinite leave to enter, or an equivalent of extension of leave, or an initial period of leave, would depend on the length of the person's previous stay in the United Kingdom, and it would be inherently problematic to have to establish that within the immigration control process.

3. Related issues in nationality law

The lack of a comprehensive exemption for Irish citizens in the field of immigration law leads on to legal difficulties in the field of nationality law, which would be magnified if clause 2 were not included in the Bill. Those difficulties concern two sets of provisions in the British Nationality Act 1981 which make entitlement to British citizenship depend on a person who is not a British citizen meeting requirements to be in the United Kingdom (a) without time limits on the duration of their stay, and (b) without breaching immigration law.

The first set of provisions concerns children born in the United Kingdom. A British-born child acquires British citizenship automatically if, on the date of their birth, either of their parents is a British citizen, or is "settled" in the United Kingdom.¹⁹ Alternatively, a British-born child may be registered as a British citizen while a minor, if either parent becomes a British citizen or "settled".²⁰ To be classed as "settled", the parent in question must be "ordinarily resident in the United Kingdom ... without being subject under the immigration laws to any restriction on the period for which [they] may remain."²¹ In order to be "ordinarily resident", the parent must not be present in the United Kingdom "in breach of the immigration laws" at that time.²²

The second set of provisions concerns naturalisation as a British citizen. For the spouse or civil partner of a British citizen to naturalise, on the date of the application, they must not be "subject under the immigration laws to any restriction on the period for which [they] might remain" and, in the previous three years they must not have been in the United Kingdom in breach of the immigration laws.²³ For other persons to naturalise it is required that, at no point in the period of twelve months prior to the application were they "subject under the immigration laws to any restriction on the period for which [they] might remain" and that, at no point in the previous five years were they in the United Kingdom in breach of the immigration laws.²⁴

Home Office practice is to treat all Irish citizens as meeting the requirement of being without time limits once they take up residence in the United Kingdom, and as being

present without breach of the immigration laws, irrespective of where they last arrived from.

Each of the two requirements is presumably met by an Irish citizen who last arrived in the United Kingdom from the Republic of Ireland, who may rely upon section 1(3) of the 1971 Act (see above). In addition, when the requirement not to be in breach of the immigration laws was introduced, express provision was made that Irish citizens who last arrived from the Republic of Ireland would meet it. That was done through the concept of a “qualifying common travel area entitlement”, introduced by the Borders, Citizenship and Immigration Act 2009, with effect from 13 January 2010:

“a person has a qualifying common travel area entitlement if the person— (a) is a citizen of the Republic of Ireland, (b) last arrived in the United Kingdom on a local journey ... from the Republic of Ireland, and (c) on that arrival, was a citizen of the Republic of Ireland and was entitled to enter without leave by virtue of section 1(3) of the Immigration Act 1971 (entry from the common travel area).”²⁵

The fact that this ‘entitlement’ only covers arrivals from the Republic of Ireland is consistent with the legal position set out above.

What is uncertain is how Irish citizens who last arrived from elsewhere may be comply with these two requirements. Hitherto, depending on their circumstances, such persons may have been able to rely upon EU law-based rights in order to do so. ***Once EU-based rights cease under the Bill, clause 2 will become necessary, to ensure that the British-born children of Irish citizens, and Irish citizens who wish to naturalise, have full access to British citizenship.***

4. Outline of Clause 2 provisions

The exemption for Irish citizens, and exceptions

The core provision in clause 2 contains a general exemption for Irish citizens from the requirement to possess leave to enter or remain while in the United Kingdom. That is to be achieved by adding a new section 3ZA to the Immigration Act 1971.

There would be three exceptions, where the general exemption for Irish citizens would not apply:

- **A deportation order** is in force in relation to the person under section 5(1) of the 1971 Act (proposed section 3ZA(2)). That section permits deportation where a person is “liable” to deportation under section 3 of the 1971 Act. A person may be liable to deportation in three ways
 - The Secretary of State deems deportation “conducive to the public good”. This test is deemed met if a person is covered by the automatic deportation provisions of the

UK Borders Act 2007, after a sentence of imprisonment of at least 12 months, or any sentence of imprisonment after conviction for a serious offence.

- A court recommends deportation at the time of conviction for a criminal offence punishable by imprisonment
- A family member of the person has been ordered to be deported.
- **An exclusion order** is in force in relation to the person (proposed section 3ZA(3)). The amendment would permit directions to be issued by the Secretary of State that the person is not to be permitted to enter the United Kingdom on the ground that their exclusion is conducive to the public good. This amendment is consistent with existing powers under the Immigration Rules to refuse leave to enter to a person seeking to come to the United Kingdom.²⁶ It goes further than the existing provision in the 1971 Act to exclude a person coming from elsewhere in the common travel area, which is limited to national security grounds.²⁷ That however must be read with Article 3 of the 1972 Order, which prevents any person whom the Secretary of State has excluded on 'conducive' grounds from entering lawfully via the Republic of Ireland.²⁸
- The person in question is an "**excluded person**" by virtue of the United Kingdom's international obligations, under section 8B of the Immigration Act 1971 (proposed section 3ZA(4)). Section 8B concerns United Nations and European Union sanctions measures, and regulations adopted under the Sanctions and Anti-Money Laundering Act 2018.

It should be added that Irish citizens resident in the United Kingdom before the end of the transition period, and family members who join them, will benefit from the EU/ EEA withdrawal agreements in the United Kingdom. If so, they will be able to rely upon the standards set out in EU free movement law in relation to deportation or exclusion in respect of conduct prior to the end of the transition period.

Amendments to the common travel area provisions

The introduction of section 3ZA necessitates a series of further amendments relating to the common travel area.

- Irish citizens covered by the exceptions in section 3ZA are to be denied the benefit of section 1(3) of the 1971 Act. That will mean that they cannot lawfully enter the United Kingdom from the Republic of Ireland.
- Under section 9(2) of the 1971 Act, the Secretary of State may by order place restrictions or conditions upon certain persons *other than British citizens* entering the United Kingdom from other parts of the common travel area. In the case of the Republic of Ireland, that power has been exercised by Article 4 of the 1972 (see above). In line with the proposed section 3ZA, clause 2 would modify section 9(2) so that restrictions may only be imposed upon persons other than British *or Irish* citizens (clause 2(3)(a)).

- Under section 9(4) of the 1971 Act, the benefit of section 1(3) is denied to the following:
 - Any person subject to a deportation order
 - A person *who is not a British citizen* if, on arrival in the United Kingdom, they are given written notice by an immigration officer that the Secretary of State has issued directions for their exclusion on national security grounds
 - A person *other than a British citizen* who has previously been refused leave to enter the United Kingdom, and who has not subsequently been granted leave to enter or remain.

Because of the proposed section 3ZA, the Bill would modify section 9(4) of the Act, so that the second and third of these exclusions would apply only to persons other than British *or Irish* citizens (clause 2(3)(b)).

- Schedule 4 of the 1971 Act provides for the extension to the United Kingdom of any leave to enter or remain granted by the Channel Islands or by the Isle of Man, and of any conditions applied to such leave (para 1). In addition, it provides that a person who is unlawfully present in any of those jurisdictions may not enter the United Kingdom without obtaining leave (para 2). At present, these provisions apply to persons *other than British citizens*. In line with the proposed section 3ZA, the Bill would modify the paragraph to apply to persons other than British *or Irish* citizens (clause 2(4)(a)).

5. Possible amendments to Clause 2

Equality in family migration

There is a case for an amendment to clause 2 to ensure equality of treatment for Irish citizens, relative to British citizens, in the family migration provisions of the Immigration Rules.

Under Part 8 and Appendix FM of the current Rules, provision is made for sponsorship of family members in two situations. The first case concerns persons who are currently resident in the United Kingdom and who are either British citizens or “settled”. If clause 2 became law, resident Irish citizens would undoubtedly be considered ‘settled’ for the purposes of the Immigration Rules. In this case, the benefit of an amendment to confer equality of treatment would be to provide a guarantee that *in future* Irish citizens would have the same entitlement to sponsor as British citizens.

The second case of sponsorship concerns British citizens *moving to the United Kingdom* to take up residence there. There is in essence no equivalent for persons of other nationalities. Even after clause 2 became law, Irish citizens wishing to *move to* the United Kingdom would not be free to do so with family members who were neither British nor Irish citizens. In this case, the benefit of an amendment would be to permit them to do so.

A further question is whether Irish citizens would count equally with British citizens in the detail of family migration rules. A key example is the provision that children who are British citizens or settled in the United Kingdom do not count in minimum income calculations. Equality for Irish citizens would imply that the same provision be made for Irish citizen children.

The threshold for deportation and exclusion

As we have seen, a combination of current law and clause 2 will permit Irish citizens to be deported and excluded from the United Kingdom, where the Secretary of State considers that to be “conducive to the public good”.

As regards deportation, the Bill does not reflect the existing threshold applied to Irish citizens. The stated policy of the Government in 2007 was 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.”²⁹ That approach was re-iterated by the Immigration Minister during the Committee stage of the first iteration of the present Bill.³⁰

As regards exclusion on ‘conducive’ grounds, it is not known what the current policy is in relation to Irish citizens. Arguably there should be limits on exclusion at least in the case of existing residents, to bring the policy into line with that for deportation.

It may be added that Irish law does not permit either the deportation or exclusion of British citizens. This subject is not covered by the 2019 Memorandum of Understanding.

In order to provide certainty to Irish citizens, ***it should be set out in legislation that the deportation and exclusion of Irish citizens should be possible only where “exceptional circumstances” mean that the public interest requires deportation.***

Protecting the “people of Northern Ireland” in line with the Agreements of 1998

As part of the Belfast/ Good Friday Agreement of April 1998, Article 1(vi) of the British-Irish Agreement of that year states that:

“the two 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 ...”

The term “the people of Northern Ireland” was defined in a declaration made by the two governments, as follows:

“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.”

The question here whether arrangements ought to be made within immigration law for persons from Northern Ireland who wish to “identify” as Irish citizens, in order to fully respect their right so to do.

There have been two recent developments which give recognition to that right in respect of family sponsorship. On 8 January 2020, as part of the *New Decade, New Approach* document, aimed at restoring the Northern Irish institutions, the United Kingdom Government made the following promise:

“14. The Government will change the rules governing how the people of Northern Ireland bring their family members to the UK. This change will mean that eligible family members of the people of Northern Ireland will be able to apply for UK immigration status on broadly the same terms as the family members of Irish citizens in the UK.”³¹

Then, on 14 May 2020, a statement of changes to the Immigration Rules was laid before Parliament which will enable the family members of a “person of Northern Ireland” to apply under Appendix EU, with effect from 24 August 2020.³² For this purpose, “person of Northern Ireland” is defined in line with the declaration of the two Governments made at the time of the British-Irish Agreement of 1998. This change will enable applications by those family members, notwithstanding the general rule that the family members of British citizens - including dual British/ Irish citizens - cannot rely upon Appendix EU. Its effect will be to ensure that all persons of Northern Ireland will be in the same position as Irish citizens who are not British citizens, as regard sponsorship under Appendix EU.

The change made to Appendix EU may be the only change strictly required by paragraph 14 of *New Decade, New Approach*, to ensure that Irish citizens as a class are not in a more advantageous position than persons of Northern Ireland as a class. It ensures that persons of Northern Ireland do not need to *renounce* British citizenship in order to benefit from the fullest family sponsorship entitlements available. The opposite case should also be addressed however: given the terms of the 1998 Agreements, why should persons of Northern Ireland need to *retain and to assert* British citizenship in order to obtain the fullest family sponsorship entitlements? To avoid that, ***an amendment should be adopted to guarantee to all persons of Northern Ireland equality of treatment with British citizens in respect of family sponsorship.***³³

A further change which could be made concerns immunity from deportation and exclusion. Here too, the logic of the Belfast Agreement provisions cited above is that ‘persons of Northern Ireland’ should not need to retain and to assert British citizenship in order to gain immunity from deportation and exclusion. To achieve that outcome, ***an amendment should be adopted ensure that persons of Northern Ireland may not be deported or excluded from the United Kingdom.***³⁴

¹ The term ‘immigration law’ is used here to cover legal rules relating to entry, residence and deportation.

² For an earlier account of the immigration law issues, see Simon Cox and Traveller Movement, *Brexit and Irish citizens in the UK: How to safeguard the rights of Irish citizens in an uncertain future* (December 2017), to which the present author contributed.

³ Annual Population Survey estimates for 2019 show that, of the resident population of the United Kingdom, 360,000 were persons born in the Republic of Ireland, and 320,000 were Irish citizens (and not also British citizens): *Population of the UK by country of birth and nationality and resident in the United Kingdom* (May 2020), Tables 1.3 and 2.3. The Irish census for 2016 showed 277,206 persons born in the United Kingdom and resident in the Republic of Ireland, and 103,113 persons who were British citizens (and not also Irish citizens): Information from <https://statbank.cso.ie>, Tables EY020 and EY024.

⁴ On the history of the common travel area, see Bernard Ryan, ‘The Common Travel Area between Britain and Ireland’ (2001) 64 *Modern Law Review* 855-874.

⁵ This is to be found at <https://www.gov.uk/government/publications/memorandum-of-understanding-between-the-uk-and-ireland-on-the-cta>.

⁶ Aliens (Exemption) Order 1935.

⁷ Aliens (Amendment) Order 1962. This excluded *other* citizens of the United Kingdom and Colonies - later British citizens - who were exempt from immigration control in the United Kingdom.

⁸ Aliens (Amendment) (No. 2) Order, 1999 and Aliens (Exemption) Order 1999.

⁹ British Nationality Act 1948, section 3(2). The cut-off date was therefore 1 January 1949.

¹⁰ Commonwealth Immigrants Act 1962, section 1(4).

¹¹ Commonwealth Immigrants Act 1962, section 6(3).

¹² This is confirmed by section 7 of the 1971 Act, which exempts colonial, Commonwealth and Irish citizens from deportation, if they were resident in the United Kingdom before 1 January 1973, and have been ordinarily resident in the United Kingdom and islands for the previous five years

¹³ Immigration Act 1971, section 2. The right of abode is also held by certain categories of Commonwealth citizen who had that right prior to 1 January 1983.

¹⁴ Immigration (Control of Entry through Republic of Ireland) Order 1972.

¹⁵ This amendment was made by the Immigration (Control of Entry through Republic of Ireland) (Amendment) Order 2014.

¹⁶ See the amendments to the 1972 Order in the Immigration (European Economic Area Nationals (EU Exit) Regulations 2019.

¹⁷ *Immigration Rules for Control on Entry: EEC and other Non-Commonwealth Nationals* (HC 81, 25 January 1973), p. 5. A statement of that kind would continue to appear in the Immigration Rules until HC 395 of 23 May 1994. That came into force on 20 July 1994, together with section 7 of the Immigration Act 1988 and the Immigration (European Economic Area) Order 1994.

¹⁸ Immigration and Social Security Co-ordination (EU Withdrawal) Bill, section 1 and Schedule 1.

¹⁹ British Nationality Act 1981, section 1(1).

²⁰ British Nationality Act 1981, section 1(3).

²¹ British Nationality Act 1981, section 50(2).

²² British Nationality Act 1981, section 50(5).

²³ British Nationality Act 1981, Schedule 1, para 3.

²⁴ British Nationality Act 1981, Schedule 1, para 1(2).

²⁵ British Nationality Act 1981, section 50A(5).

²⁶ See Immigration Rules, paras 320 and V.3.

²⁷ Immigration Act 1971, section 9(4)(a).

²⁸ Immigration (Control of Entry through Republic of Ireland) Order 1972, Article 3(1)(b)(iv).

²⁹ Immigration Minister, Liam Byrne, *House of Commons Written Ministerial Statement*, 19 February 2007.

³⁰ Immigration Minister, Caroline Nokes, *Immigration and Social Security Coordination (EU Withdrawal) Bill: Fifth sitting*, 26 February 2019, cols. 174-175.

³¹ Northern Ireland Office, *New Decade, New Approach* (January 2020), Annex A.

³² *Statement of changes in Immigration Rules* (CP 232, May 2020). For the background, see the case of *De Souza* [2019] UKUT 355.

³³ This result could also be achieved by adopting the proposal to confer a right of abode upon persons of Northern Ireland made by Alison Harvey in *A Legal Analysis of Incorporating Into UK Law the Birthright Commitment under the Belfast (Good Friday) Agreement 1998* (Irish Human Rights and Equality Commission/ Northern Ireland Human Rights Commission, March 2020).

³⁴ Immunity from deportation and exclusion for persons of Northern Ireland could also be obtained through the right of abode, as proposed in Alison Harvey's recent report.