

ILPA Briefing on Irish Citizens at the Committee Stage of the Immigration and Social Security Co-ordination (EU Withdrawal) Bill

Introduction

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

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

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

The reason for giving the Irish a special position was stated during the second reading of the Ireland Bill on 11 May 1949 by Clement Attlee, who said that the alternative would be impractical and undesirable (HC Deb. 464 col.1855):

As everybody knows, there are in Britain large numbers of people of Irish descent, some born in Eire and some born in this country, and there is a continual passage to and fro of people who come over to work or to study or for pleasure. It would be an extremely difficult thing to decide in every case from day to day as to what the exact status was of a person with an Irish name, and if we had to attempt to make all citizens of Eire aliens, it would have involved a great expenditure of men and money and a great extension of control of aliens. We had in particular also to remember the difficulties caused because of the fact of the land frontier between Northern Ireland, which is part of the United Kingdom and the Commonwealth, and Eire.

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

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

Protections against deportation

Entrenching Government policy position on deportation of Irish nationals in statute

The Government policy in relation to deporting Irish nationals, agreed in 2007 by Liam Byrne MP, is as follows:

“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.”¹

It is unclear to ILPA why the Immigration and Social Security Co-ordination (EU Withdrawal) Bill does not on its face reflect the policy which appears to have been consistently applied on the ground for over ten years.

ILPA therefore is putting forward amendments aimed at ensuring that this particular protection for Irish nationals is put on a statutory footing. Within this amendment ILPA propose that family members of Irish citizens who may be liable to deportation together with the Irish citizen receive these same protections, which again are currently granted as a matter of executive policy.

Providing protection for Northern Irish citizens who identify as Irish in the terms of the Good Friday Agreement

Article 1(vi) of the British-Irish Agreement within the Good Friday Agreement recognises “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.”

A Northern Irish person who identifies as Irish, although legally a British citizen, may simply refuse to assert that. As such, their seeking to exercise that right should not render them liable to deportation in circumstances where the Good Friday Agreement enables them to freely choose how they identify without adverse consequences.

Therefore ILPA proposes an amendment to clarify that an Irish citizen may not be deported or excluded from the UK if they are among the people of Northern Ireland entitled to identify as Irish citizens.

Family reunion rights

The Immigration and Social Security Co-ordination (EU Withdrawal) Bill puts Irish citizens' ability to enter or remain in the UK without requiring leave to do so on statutory footing. In keeping with the ethos of equal treatment behind the Common Travel Area, ILPA proposes an amendment to the Bill which prohibits immigration rules being laid which treat the family members of Irish nationals differently from those of British citizens.

¹ Hansard Written Ministerial Statements, 19 February 2007, Irish Nationals (Deportation)