



# Northern Ireland Affairs Committee

## Oral evidence: Citizenship and passport processes in Northern Ireland, HC 1111

Wednesday 12 May 2021

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Members present: Simon Hoare (Chair); Mr Gregory Campbell; Stephen Farry; Mary Kelly Foy; Mr Robert Goodwill; Claire Hanna; Fay Jones; Ian Paisley.

Questions 116 - 171

### Witnesses

**I:** Kevin Foster MP, Parliamentary Under Secretary of State (Minister for Future Borders and Immigration), Home Office; Robin Walker MP, Minister of State, Northern Ireland Office; Kristian Armstrong, Head of Passport and Nationality Policy, Home Office.

Written evidence from witnesses:

- UK Government ([CPP0009](#))



## Examination of Witnesses

Witnesses: Kevin Foster MP, Robin Walker MP and Kristian Armstrong.

Q116 **Chair:** Good afternoon, colleagues. Welcome to the first meeting of this new session of Parliament. We take up the reins where we left off on our inquiry into citizenship and passport processes in Northern Ireland. Thank you, Minister Foster from the Home Office, for joining us with your official, Mr Armstrong. You are both very welcome. Welcome also to a very old friend of the Committee, the Minister of State, Robin Walker. Good afternoon to you all. You are all very welcome.

I would like to start by quoting, Mr Foster, from a letter that we have received from our former Prime Minister, Theresa May, referencing her speech in Belfast in February 2019: "Central to the Belfast/Good Friday agreement is the birthright to identify and be accepted as British, Irish or both and to hold both British and Irish citizenship. However, it was brought to my attention, including through the Emma DeSouza case, that in practice people were encountering difficulties in securing their rights as Irish citizens to bring family members to live in Northern Ireland. It was primarily because of those identified problem that I asked the Home Secretary and the Secretary of State for Northern Ireland to review the issue".

She goes on to say, "I have always been clear that leaving the European Union should not impact on the citizenship rights of those in Northern Ireland, which is why I made a 'no diminution of rights' commitment with the EU during the first phase of the Brexit negotiations in December 2017". You, Minister, will be more than familiar with the issues surrounding the Emma DeSouza case, and you may have seen the transcript of the evidence that she gave to this Committee a week or so ago.

Could you just give us a flavour of the issue as you see it? Does the Home Office recognise the issue as set out by former Prime Minister May? How do you assess the current position, and do you have any plans to address it?

**Kevin Foster:** How we see it and how we understand it is that it was the position that these were people who identified solely as Irish, who were living in Northern Ireland and wished to exercise family rights under EEA free movement regulations to have family members join them who were not UK or Irish nationals, to be clear, or, for that matter, EEA nationals at the time.

Therefore, if they are British as well, if you are a citizen within your own country, you are not exercising free movement rights. If you are British and you live in the United Kingdom, you are not exercising free movement rights and were not entitled to them in the same way as any other national living in their own nation within the EEA. Although you could, for example, sponsor under our family rules, you would find it



probably more generous to do so, if I can put it that way, under the EEA free movement rights.

That was the combination of Irish identity and UK citizenship. They are arguing that they would be able to exercise free movement rights within the UK if they were not also deemed to be British citizens, and that was where the fundamental debate came.

Q117 **Chair:** How do you liaise with the Northern Ireland Office on this issue?

**Kevin Foster:** The core to this is what was agreed in the New Decade, New Approach agreement and the subsequent changes made to the eligibility for the EU settlement scheme, effectively allowing for the family members of people from Northern Ireland, who also happen to be British citizens, to apply to the EUSS on the same basis as if they purely held Irish citizenship or, for that matter, any other EEA nationality and were living in Northern Ireland.

Q118 **Chair:** Let us take the case of Emma DeSouza. I suppose one always rests on that case, because it is the most high profile of recent times. If I were Emma DeSouza, and I was born in Northern Ireland but I have asserted my Irish citizenship—effectively, for want of a better phrase, I have revoked my British citizenship—and married an American, what hoops does my new spouse have to go through to come to live with me in Belfast?

**Kevin Foster:** It will partly depend on the time the relationship started and whether you are covered by the withdrawal agreement provisions and you have retained free movement rights for family members to join. If that is the case and you have free movement, you still have the provision we made for the people of Northern Ireland in New Decade, New Approach. If the relationship is not covered by the withdrawal agreement and those protections, then you would sponsor, like a UK national, through the UK's family migration rules.

Q119 **Chair:** Whether I was living in London or Londonderry, the process would be the same.

**Kevin Foster:** Effectively, yes. The only difference for people in Northern Ireland is that we would also allow eligibility for family members of those who have British citizenship as well. That is the difference agreed in New Decade, New Approach. In the future, if, for example, the withdrawal agreement rights are not the issue, you would go through exactly the same process to sponsor family members to Belfast as you would in north Dorset.

**Robin Walker:** From an NIO standpoint, our crucial interest in this is around non-discrimination. What Kevin has demonstrated there is that you have two different categories: people who are covered by the withdrawal agreement and people who are not covered by the withdrawal agreement. In both cases, there is non-discrimination. The key thing there is that the people of Northern Ireland, whether they identify as



British or Northern Irish, have access to the same treatment if they are eligible for EU settled status, and after that time they will be treated just the same whether they are British or Irish. That is where our key interest in the process is. In that respect, we are very comfortable that the outcomes are in line with the agreement.

Q120 **Chair:** Thank you for that, Mr Walker. Mr Foster, would we be right to take from your opening remarks that, in essence, you see everything operating well, fairly and without discrimination? You do not see that there is a need for any changes to the British Nationality Act or indeed any other piece of legislation.

**Kevin Foster:** If we are talking about the British Nationality Act, that is a slightly different concept to those who are either British nationals from birth or others. The family reunion rights that we are talking about are based on EU treaties and the impact of British citizenship there. Of course, we have now left the European Union. It is worth noting that an Irish national living in the Irish Republic would not be deemed to be exercising free movement rights either. Even if, in theory, the constitutional position of Northern Ireland changed, that position itself would not change inherently.

As far as we are concerned, we think that what we have put in place is appropriate. We think there is an element of fairness, and that there should be a similar approach across the United Kingdom. It also has to be said that an Irish national living in Great Britain would also be able to sponsor, given the unique position they have under our immigration law.

Q121 **Mr Campbell:** Welcome to the Ministers and the civil servant. I suppose this is to Mr Foster. On the issue of fairness that you have just alluded to, we heard from Lord Hay. I know there are thousands of others like him, who were born in the Republic since 1949 but have lived virtually all their lives in Northern Ireland. Two things apply to them that they feel are inherently unfair. One is that, if they wish to avail of a British passport—they are British residents, British taxpayers, British voters and have been so for decades—they have to pay £1,330 and go through a naturalisation process, because their Government, i.e. you, deem that they are not British citizens in the way the Irish Government would deem someone similarly to be an Irish citizen.

In other words, a person who regards themselves as Irish simply gets an application form, gets the fee, supplies the necessary information and gets a passport, but people like Lord Hay and others cannot do the same for a British passport, despite successive Governments saying, "It has to be fair. If you want to be regarded as British, Irish, both or neither, you can be so". One thing is the cost; the other is the principle of this. How do the Government intend to address the inherent unfairness of that?

**Kevin Foster:** First, we have to make clear what the difference is. I was also interested to read Lord Hay and Emma DeSouza's evidence around this. They both made comments on the Irish citizenship system, with Ms



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DeSouza's comments very much contrasting to Lord Hay's, in terms of its simplicity.

A passport application is for a document that confirms the status you already have. If you are a British citizen—the most common route to that is automatic at birth—you can apply straight for a British passport. There are other things if you are born to someone who is settled in the UK as well, but, again, you can apply straight for a passport. It is basically a document that confirms a status that you already hold.

This is where the difference comes in on Lord Hay's point. This is about people who, under the provisions of the BNA, are not British citizens automatically at birth. It is not the case that birth outside the United Kingdom gives you the status in the same way as birth within it. To be clear, an Irish national moving to the rest of Great Britain—it does not matter which part of the United Kingdom they are living in—in this sense does not count. They have to go through a naturalisation process to achieve citizenship.

Again, our citizenship provisions are similar to the scope of the Belfast Agreement, which does not include those born in the Republic of Ireland. We think the fundamental fairness comes from having the same process for all who wish to naturalise as British citizens who do not qualify under another route, i.e. automatically at birth, being British by descent or through some of the other provisions that there are to register as a British citizen.

Q122 **Mr Campbell:** Surely, then, this is a distinction between the British Government's assessment of what someone's already assessed position is—i.e. are they a British citizen?—and the Irish Government's assessment of what they determine is an Irish citizen. You can have the position, and many have, that people who have never been to the Irish Republic can avail of an Irish passport. They do not have to reside in the state; they do not have to pay taxes to the state; they do not have to vote in the state's elections. They are entitled to an Irish passport, because the Government that they would say they owe allegiance to offer them that facility. Our Government do not do that for citizens who hold exactly the same position in relation to their Government.

In other words, some people say that that should be one of the benefits of UK citizenship. We regard people as British or Irish. You have that flexibility, whichever it is, but at the moment people are being put in a position where they are facing inordinate difficulties to establish a process that they think they should be automatically entitled to, i.e. a British passport and British citizenship.

**Kevin Foster:** It is possible to be born as a British citizen or become a British citizen by descent, having not been in the United Kingdom. It is not purely birth in the United Kingdom that is determinate, although it is a very strong part. I must say that it is not uncommon in nationality law around the world for birth within the sovereign territory of the country



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concerned to have a strong part in whether you are automatically a citizen when you are born. Up until 1 January 1983, being born here was the only category you needed to have to become a British citizen. That is now one of the categories with the changes that were made in 1983.

It is for the Irish Government to set its own law around who its citizens ultimately should be, in the same way as it is the United Kingdom's prerogative to do so, subject to respecting the international treaty that is the Belfast Agreement and the provisions that are there that cover the people of Northern Ireland. Certainly for ourselves, it would be quite a departure from the principles set out 40 years ago in the BNA if we started to count birth outside of the United Kingdom in the way we count birth within the United Kingdom, other than the provisions for citizenship by descent. That is where one of your parents is a British national; you can be registered as a British citizen by descent, even if you were born overseas. If you are born within the United Kingdom to a British citizen as a parent, then you are automatically British at birth, alongside if you are permanently settled in the United Kingdom.

We believe that there is fairness here, in that the same process applies to everyone. Many people have been here from across the Commonwealth for many years who have not taken up British citizenship but who have contributed to this society. We are very grateful for that, but we believe there is an inherent fairness in, as it stands, having the same process of naturalisation applying if you are not automatically a British citizen through birth here in the United Kingdom or citizenship via descent.

**Q123 Mr Campbell:** Let me put it more bluntly. Is someone who was born in the Irish Republic 60 years ago and who has lived here in the UK, in Northern Ireland, for 55 of those years, i.e. since they were at school, any less a British citizen than I, who was born in Northern Ireland and has lived all his life in Northern Ireland?

**Kevin Foster:** Who is a British citizen is set out in our law. Your identity is British. It is very strong, and it would not change or differ. However, this is all in terms of the law. I appreciate that up until 1948 there was a very different position, but I would gently point out that the position of immigration law itself 60 years ago was radically different to what it is today in terms of modern nationality and immigration law.

Of course, there are no restrictions. People can identify as fully British or as fully Irish anywhere in the United Kingdom and still access a range of services and job opportunities and can still vote and stand for Parliament as well. We believe that there is fairness. If we start to depart from that, we need to be aware that there would then be a range of other issues. For the sake of argument, what is the position of those who hold different categories of British nationality, some of which are imperial legacies? That is why 40 years ago, when Parliament looked at this, it decided to attach the element of birth in the UK as being a key factor rather than the UK and other territories being factored in as well in that category.



**Mr Campbell:** If the Government wanted to, if there was a will, they could either remove the excessive cost or introduce legislation that allows people who have resided in Northern Ireland as UK citizens and taxpayers for many years the same rights as people who have never lived in the Irish Republic and want to avail of Irish citizenship and an Irish passport. I will leave it at that.

Q124 **Chair:** Mr Campbell, you put it very clearly and very simply. Mr Foster, why not? At the moment, there is an asymmetry here.

**Kevin Foster:** At the moment, our nationality law works regardless of where you are in the United Kingdom. Let us be clear on that front.

Q125 **Chair:** We accept that, but, taking Mr Campbell's point, somebody who has never lived in the Irish Republic can assert their Irish citizenship because the agreement says that they can. That is one side of the coin. That very simplistic—I do not use that pejoratively—or straightforward approach, in which you do not have to sit a test or write a big cheque, et cetera, is not available to people like Lord Hay, who, peculiarly, we allowed to stand for election in the UK Parliament and we allowed to serve in the UK House of Lords. It does not quite make sense, does it? When you put it as boldly as Mr Campbell has, it does not quite make sense.

**Kevin Foster:** You start looking at whether it would be sensible, first, to extend the BNA to have an extraterritorial effect, i.e. people becoming automatically British citizens having not been born in the United Kingdom. Certainly, that would have some interesting historical precedents if we applied it to the entirety of the south of Ireland. The second part of it is that we would start to move away from the idea of having the same process for naturalisation regardless of which nationality you hold and have. Would there really be a logic in applying it differently in Northern Ireland to applying it in mainland UK in terms of this particular area?

As I say, whether you were born within a particular country's sovereign territory or not is not exactly an uncommon factor in whether or not you are a national of that particular country. That is what the BNA reflects in its provisions. Ireland has a different view, of course, based on a view that is not uncommon, which is the 32-county or all-Ireland principle, but that is a very different position from the UK Government, given the treaty back in the 1920s.

Q126 **Chair:** Nobody on this Committee would be advocating for a carte blanche tearing-up of the rules. There was obviously an issue here, because it has been looked at by the courts. A former Prime Minister set up a review with both the NIO and your Department. A very erudite and knowledgeable person in the form of Lord Hay gives us very compelling evidence. We are not suggesting that we should tear up everything, but there does not seem to be an acceptance, a realisation or a sensitivity—that might be the right word—within the Home Office that things are



usually very different when it comes to Northern Ireland. The same sledgehammer seems to be being used to crack a nut that does not require a sledgehammer.

**Kevin Foster:** I would probably disagree there. It is one thing to say that Northern Ireland has differences. Clearly, we have the Belfast Agreement and the position there. Ultimately, in terms of our approach to looking at citizenship, it is part of the sovereign territory of the United Kingdom. Certainly, if we start to depart from that principle, it brings us into some other interesting debates, which may not necessarily be ones that we would see as being productive.

I would also gently say that the DeSouza case was slightly more related to EEA free movement rights and access to them rather than the specific point about whether someone can become a British citizen or not. Of course, being a British citizen automatically meant that they would not be classed as exercising free movement rights in their own country.

Again, it might sound very simple as we sit here now. Let us take the example of someone born in the Republic of Ireland to someone who is settled or a British national; they might be automatically British. Again, if they are a British national, they can already go through the process. If their parent is a British national, they can go through the process of a citizenship-by-descent application. Are grandparents where we draw the line? Again, there are some processes to go through to apply for citizenship by descent if your grandparent was a British national, although it is not as automatic as if your parent was a UK national. We then start looking at other places or locations. Should we extend it to most of the Commonwealth as well? What is the position?

Again, similarly, I appreciate that there are differences. We clearly see that the Belfast Agreement defines who is a person from Northern Ireland. That is a piece of international law that does not apply in terms of someone born in the Republic of Ireland. I appreciate that we can debate the cost and what the process should be. However, it would be quite a radical departure to start counting births in another jurisdiction or another country.

Q127 **Chair:** Have you commissioned any legal advice or opinion that might say, were one to have sympathy with the Lord Hay case, taking that as the *cause célèbre*, it would open the floodgates to actions in the courts from others saying, "This is not fair. Why are you not treating country X, country Y and country Z in the same way"?

**Kevin Foster:** Certainly, the Home Office is regularly litigated in the immigration space, particularly around how we treat one national versus another. It is an area that can be quite strongly litigated, although it is probably worth pointing out that citizenship law is in primary legislation in the BNA, so I do not have a discretion to alter it in the way we may have to grant other statuses under the immigration rules. Primary legislation does slightly curtail the ability to take a judicial review in the courts.



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Are we looking to see what we can do around reviewing our settlement rules? Yes. We have already said that we will look later this year—this is not directly relevant to Irish nationals, who do not need to apply for ILR—at how we can simplify that process. As a follow-on from that, we will also look at our nationality processes. Following on from settlement, a year later many will then apply for citizenship status.

Generically, we believe there is a fairness principle in arguing that the same rules apply to everyone, although there are some exemptions that are common in the system. For example, those who are nationals of majority-English-language-speaking countries, including the Republic of Ireland, do not need to prove that they have an English-language ability to the Home Office.

Q128 **Chair:** Mr Walker, what do you think happened to the NIO and Home Office review that was instigated by Theresa May?

**Robin Walker:** The work was done. The key output from that were the changes we saw to the EU settled status scheme to make sure there was that fairness of treatment.

I have every sympathy for where Lord Hay is coming from personally, but I understand the point that the rules have to apply equally. This is a hard case within the existing rules. The crucial thing is that people need to be treated equally and fairly under the law. To pick up on one of the points that Kevin just made, it is important that, quite separately from all of the legal elements, there is the Common Travel Area and some of the protections that offers. Irish citizens living in the UK are automatically treated as settled; they do not have to go through that one-year period. Of course, they also do not face the language test.

Q129 **Chair:** Was there anything that the review threw up that has not been addressed?

**Robin Walker:** No, not that I am aware of.

**Kevin Foster:** No, our understanding is that it is dealt with by the New Decade, New Approach deal.

Q130 **Chair:** There was nothing that was thrown up in the course of the review that Ministers had an interest in but said, “We are not going there”, or, “We do not want to do that”, et cetera. Everything that the review threw up as an issue has been dealt with, as far as you are aware.

**Kevin Foster:** That is certainly our understanding. The core focus was around the differences for people in Northern Ireland who were solely Irish versus those who were British or British and Irish in terms of citizenship in relation to free movement rights and family reunion rights. That was the core focus of the review, and they have been covered now by the changes to the EUSS.

Q131 **Chair:** Was the review published in its entirety? We saw the response to



it, but was the actual review report put into the public domain?

**Kevin Foster:** As I said, my understanding is that the review was picked up as part of New Decade, New Approach and delivered in that context.

**Robin Walker:** I do not think it was a public review; it was an internal review.

Q132 **Chair:** It was not an internal scoping report, Mr Walker, was it?

**Robin Walker:** I am not sure of that reference, I am afraid, Chair, but my understanding is that this was always intended to be—

**Chair:** You might ask your colleagues in the Foreign, Commonwealth and Development Office.

Q133 **Claire Hanna:** Thank you to the witnesses. I just wanted to pick up on one issue, perhaps for you, Minister Foster, on the previous questions. I am not overly convinced of the purpose in general. You have referred to the many people who are neither Irish nor British but who have lived their lives, contributed here and have difficulty accessing Irish citizenship as well, which is something that needs resolving. What is the purpose of requiring an Irish citizen seeking British citizenship to take the Life in the UK test?

**Kevin Foster:** It is on the basis that we do not discriminate on the basis of nationality for those coming through to be naturalised. We have the same rules that apply to all nationalities. The difference is that we do have a longstanding principle in our immigration rules that those who are nationals of majority-English-speaking countries or who have particular qualifications taught in English do not have to prove their English-language ability. The rationale is that everyone does it, and therefore we believe that it is fairer to have a rule for everyone rather than starting to create particular exemptions on the way through.

Q134 **Claire Hanna:** Of course, there are going to be people who have English as a first language, so it provides some differentiation on nationality, but that is the rationale for completing it. At any point when the English-language requirement was not applied, had it occurred to you that perhaps the Life in the UK test, in the course of the review, could have been dropped as being inappropriate for Irish citizens?

**Kevin Foster:** By the way, the Life in the UK test can also be taken in Welsh and Scots Gaelic as well, just to cover that point off, although we have only had one person do it in Welsh in recent times and no one in Scots Gaelic.

The position taken was that it was felt appropriate, given that it was about understanding life in the UK. Let us be upfront: there are some nationals, for example of Canada, Australia and New Zealand, who share the same crown, who might find some of the questions slightly easier, such as those around who the head of state is, for example. We felt it



was appropriate to have a similar test for all those looking for naturalisation.

What was brought over was the principle that we have in all other immigration routes: that you do not need to prove your English-language status if you are a national of a majority-English-speaking country. We have recently added Ireland, because of the end of free movement. That is not specifically Irish nationals but for someone who studied a degree in Dublin, for example.

**Q135 Claire Hanna:** I just wanted to pick up on some issues arising from the DeSouza case. They are probably more appropriately directed at you, Minister Walker. You are familiar with Article 1 of the Good Friday Agreement, which 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 ... their right to hold both British and Irish citizenship”. Could you briefly summarise the Government’s position on that provision?

**Robin Walker:** The brief summary would be that we are wholly supportive. The Government are deeply committed to the Belfast/Good Friday Agreement and all the rights it protects. This includes the essential birthright provisions that give the people of Northern Ireland the right to identify or be accepted as having British or Irish or both citizenships.

The courts have ruled that UK nationality legislation, including the British Nationality Act 1981, is compliant with the letter and the spirit of the agreement. The BNA covers nationality matters and allows a person in Northern Ireland to be British and does not prevent any such person being a dual British and Irish citizen, if they so choose. We feel that this is fully compliant.

There is an important distinction to be made between the right to self-identify and the process of achieving citizenship. That is where some of the controversy and debate in this space is. It is really important, first, that we all respect that element of the agreement, and, secondly, that we respect the principle of non-discrimination, which is also a core part of the agreement, as you will recognise.

**Q136 Claire Hanna:** Did the challenge that was brought in the DeSouza case come as a surprise to the Government? Was it a surprise that your interpretation differed from that of many people in Northern Ireland and many involved in the Belfast/Good Friday Agreement? Was that tension foreseen or did it come as a surprise when it was challenged?

**Robin Walker:** That would really be before my time in this Department. I could not necessarily give you the NIO internal view. Certainly from the perspective of where I was sat at the time in DExEU, we made the case that it was important that there was equal treatment in this respect, so we were very pleased with the way in which the review turned out. The



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agreement in NDNA to make sure that all people of Northern Ireland were treated equally was one that I was personally very happy to see, because it fits with the overall picture.

It is recognised, of course, that many aspects of the agreement are debated and there are a range of different views on them. We have always felt that our position was within the letter and the spirit of it. That decision and that commitment in NDNA helped to ensure that that continued to be the case.

**Q137 Claire Hanna:** I am not sure, Minister Foster or Mr Armstrong, how long you have been working in this particular area. Was the tension between the UK Government's interpretation of that provision of the agreement and the interpretation of many here, including the Irish Government and some of the negotiators, something that was foreseen?

**Kevin Foster:** Let us be upfront: the BNA predates the Belfast Agreement by nearly 20 years. Certainly, the negotiation was done in the context of the British Nationality Act being there, and it has not been significantly amended in this regard. There have been changes around removing historically sexist provisions around fathers versus mothers passing on citizenship. In terms of that particular provision, certainly it should not have come as a surprise to anyone, because it had been in place for nearly 20 years before the Belfast Agreement was signed.

In terms of my own role, the agreements around what was to be discussed in the New Decade, New Approach deal was in fact one of the first things that I was briefed on as I came in the door after the general election as the Immigration Minister. We were pleased to be able to support the negotiations and help deliver something that was clearly of meaning to the parties involved in making this agreement and removing that particular nuance around the confluence of Irish identity and UK sovereignty, which would give rise to free movement rights. As we touched on earlier, as we move away from being in the European Union, that sort of provision no longer applies.

**Q138 Claire Hanna:** You are right: that is where the tension is. When Emma DeSouza was with us a couple of weeks ago, she said that Article 1(vi) provides a duty on both states to accept a person of Northern Ireland as Irish or British or both and that that was intended to encompass citizenship accordingly rather than some abstract concept of identity. What do you say to that, Minister Walker? That is where there is a difference of opinion. It is, "You might think you are that, but you are actually this".

**Robin Walker:** I understand the difference of opinion. As I have said, we are firmly committed to the agreement and the birthright provisions under Article 1(vi), and we take our duties under that provision incredibly seriously. That is why we fully support the right for people of Northern Ireland, such as Emma DeSouza, to identify and hold Irish or British citizenship or both, as they wish.



The agreement makes no statement that how someone chooses to self-identify has to align with their legal nationality. It would be inappropriate if the Government were to equate identity and the acceptance of identity with citizenship. This is where I draw the distinction between the processes regarding citizenship and the choice of identity. I recognise that this is something that the courts considered carefully when they looked at the DeSouza case.

The crucial point is that, with the resolution that the NDNA arrangements made, we removed the genuine concern that there was across communities that there could be in some way some inequality of treatment. I am very glad to see that, because it does speak to the parity of esteem elements of the agreement as well as to the importance of recognising those rights to be British or Irish or both.

**Q139 Stephen Farry:** Good afternoon to our Ministers. Just leaping off from Minister Walker's last point, of course the New Decade, New Approach arrangement was only a temporary fix and it has now expired. We are still left with the fundamental problem, but, picking up where Claire Hanna left off on these issues, I speak as someone who is perfectly comfortable calling himself both British and Irish simultaneously. Do the Ministers recognise that there will be some people in Northern Ireland who wish to be accepted as exclusively British or exclusively Irish?

**Robin Walker:** Yes.

**Kevin Foster:** Yes. People can identify exclusively as Irish or British, yes. We have no restrictions on second citizenships.

**Q140 Stephen Farry:** Following on from that, what does that actually mean in practice? How can that be manifested? If someone has the right to see themselves as exclusively Irish, if they are also, under the 1981 Act, deemed to be British, how can their choice of identity be respected in practical terms?

**Kevin Foster:** First, it is respected by the fact that there is no penalisation in law in the UK for having an Irish passport and solely travelling in and out of the UK on an Irish passport. Even in our recent public health regulations on, for example, red-listing, UK and Republic of Ireland citizens can come in even though we have very severely restricted entry from elsewhere. That is perhaps a very visible example of where that applies.

In your day-to-day life, you can identify exclusively as Irish. Of course, there are other identities in the UK as well, where people may possess a UK passport but want to identify exclusively in another way. We do not penalise anyone for holding an Irish passport and doing what they want to do here in the UK.

**Kristian Armstrong:** It might be worth saying that you can also formally renounce your British citizenship, if that is your choice.



Q141 **Stephen Farry:** Short of the renunciation route, as Mr Armstrong has set out, it is difficult to say to someone that they have the right to identify as Irish and have an Irish passport if, at the same time, the UK state still recognises them as being British. How is that consistent with recognising and respecting their right to be exclusively Irish?

**Robin Walker:** It is difficult to base a legal and administrative process on a state of mind. People have the right to identify as they choose, and that identification could indeed change over time. The distinction I draw is that, when it comes to the legal process, if someone wishes to renounce their British status and become solely Irish legally and administratively, clearly there is a process that they can go through in order to do that. We will not stop anyone from doing that, and there is a proper process available from the Home Office to do that.

Part of the responsibility on us at the NIO is to ensure that, even in those cases, those people are treated properly, given full parity of esteem and looked after, as we would expect with dual citizens and people who are British or Irish already. That is the crux of it, as far as I can see. I recognise there are some people who might like to say, "I do not want to have to go through any process in order to renounce it", but we have to bear in mind there that both the UK and Ireland have responsibilities to avoid statelessness. We cannot simply leave people in a position where they are stateless up until the point when they make a decision.

Q142 **Stephen Farry:** I just have two follow-up questions. The first one is in relation to there being no detriment to someone who identifies as being Irish and only has an Irish passport, bearing in mind that we are talking about people from Northern Ireland who identify as Irish and therefore they are part of the United Kingdom. Are the Ministers conscious that there are some areas where the British state continues to discriminate against such people? For example, this could be in terms of access to some public sector jobs; there is a restricted list in some areas of the UK civil service, for example.

Similarly, there are situations where people apply to work in the private sector and security clearance is required. People who have solely Irish passports are effectively excluded from that. We have also seen, for example, advertisements issued by the UK Government for positions in relation to things like Border Force, where a requirement to be a British citizen has been put down on the job advert.

Are Ministers aware of those situations? Could an audit be done across Government to make sure that the birthright provisions are fully respected in terms of how the Government interact with people?

**Kevin Foster:** The general principle in terms of the workplace, as solidified in the Immigration and Social Security Co-ordination (EU Withdrawal) Act last year, is that Irish nationals do not need immigration leave to seek work or in other areas. There are some very limited areas, for example around nuclear technology-sharing agreements with the United States—those are UK-US eyes only, so to speak. It is safe to say



that they are relatively niche areas. Again, if someone identifies purely as Irish, how likely are they to apply? Certainly, our general principle is that Irish nationals should have exactly the same position in the UK as others.

Of course, as Mr Walker has picked up, they can assert their identity as solely Irish, but if, for example, they wished to take up their British citizenship or legal status to take advantage of, for example, some of our youth mobility schemes or other areas like that where we have reciprocal agreements with other countries, they would be able to do so.

**Stephen Farry:** That does suggest that there is still a latent problem. While they may be fairly niche, they are nonetheless areas where someone who identifies solely as Irish and has an Irish passport but is otherwise loyal to the United Kingdom and wishes to serve the UK Government in whatever role could potentially be excluded from some potential roles.

Q143 **Chair:** Mr Foster, I was going to pick up on that point. This might be something that is, to use your phrase, niche, but you can still have discrimination in something that is niche.

**Kevin Foster:** The example I gave is one that is based on a reciprocal treaty, in the same way as our youth mobility schemes in immigration are applied to nationalities but are based on equal treatment. When we were in the European Union, we did have different rules on the position of some nationals in the UK versus others. That was based on a reciprocal treaty on free movement.

Certainly, we went to great lengths, recognising the end of free movement and the concern that might bring, to put in section 2, as it is now, of the Immigration and Social Security Co-ordination Act last year a very definitive definition of Irish nationals' rights here in the UK in primary legislation on top of our treaty obligations under the Belfast Agreement.

Q144 **Chair:** I know that was welcomed. Mr Foster, would you be able to give this Committee a list of those jobs that are solely reserved to UK citizens?

**Kevin Foster:** I suspect that we can certainly ask officials for advice on whether there are any that we are aware of. Certainly in the general employment market, we would not expect any employer to differentiate between a UK passport and an Irish passport.

Q145 **Chair:** One has to presume that the vast majority of those are going to be jobs within the state. They would need to have the confidence to advertise such so that they did not then face a claim for employment discrimination.

**Kevin Foster:** Yes, that is right.

Q146 **Chair:** One would hope that there would be a definitive list. I am not saying that you should have it to hand now, but there must be a



definitive list to hand somewhere.

**Kevin Foster:** We can revert to you in writing on that.

**Chair:** That would be very helpful.

**Kevin Foster:** The general principle is that an Irish citizen, throughout our immigration system, should have the same position—for example, the same sponsorship of family rights, the same right to seek work and everything else—as a British citizen would have in the same circumstances.

**Stephen Farry:** I am happy to be corrected on this, but I also understand that there currently are or previously were situations where companies that are working on defence contracts were also operating in a situation where it could only be people who were British passport holders accessing those jobs. Perhaps the Ministers could clarify that in due course too.

**Chair:** This will be covered off in Minister Foster's note.

Q147 **Stephen Farry:** The final question was just to pick up where Minister Walker left off, on the very valid point about avoiding statelessness. On the back of that, could I ask whether either the Home Office or the Northern Ireland Office has given consideration to the reports from the Northern Ireland Human Rights Commission? It was trying to formulate some proposals as to how the 1981 Act could be modified in order to take better account of the birthright provisions and the identity and citizenship provisions of the Good Friday Agreement. People who were automatically British at birth did not need to do anything, but we could potentially better recognise the concept of a person from Northern Ireland and give people a much easier route to classify themselves as being solely Irish without having to go through the current renunciation route, which is the only option available. Has any consideration been given to those proposals from the Northern Ireland Human Rights Commission?

**Robin Walker:** The short answer is yes. We always give consideration to the proposals from the Northern Ireland Human Rights Commission, but we do not necessarily agree with the point about the junction, if you like, of identity and how people choose to identify and automatic transition to citizenship. The point that I would make is there is still a difference between process and identity in this respect.

Yes, we will absolutely continue to look at the proposals that they put forward, but we have a responsibility to make sure that fits into a larger framework. That is where it cuts over to Kevin's work. We have already given you the answer about our position on these issues.

Q148 **Chair:** On that, can we just take a moment to check on the position? Am I right to take from what you have both said, Mr Foster and Mr Walker—you have said it very elegantly and politely—that, in essence, your message to Lord Hay and Emma DeSouza, to take the two examples, is,



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“You may think that there is a problem; we, as the Government, do not. We are not going to make any changes to anything. The system is the system is the system”? Is that a fair assessment of the position of HMG as we sit here this afternoon?

**Kevin Foster:** No. As you know, we are going through a major process of simplification reform of our immigration system. We have already seen the changes in terms of new student routes and other things coming in. We are going to move on later this year to settlement and potentially some of our processes around how we deal with naturalisation, which is one of the main points that Lord Hay picked up.

Do we believe there is a problem with the idea that you are automatically born British if you are born within part of the United Kingdom and your parent is either a British citizen or one of your parents is permanently settled here? No, we believe that an integral part of being a sovereign state is that birth within it counts quite strongly towards citizenship. Of course, up until 1983, you only had to be born as a UK national. We think that brings clarity in a legal sense, allowing the ability for renunciation.

Q149 **Chair:** Is that almost, “Watch this space”?

**Kevin Foster:** What I would say is that we are looking at our processes. People will see that we are starting to make changes in immigration, for example not requiring everyone to re-lodge biometrics every time they make an application. You could see changes to the process that people go through, but the fundamental tenets of nationality law will remain as they have been since 1981.

Of course, it would be quite an extraordinary move to start counting birth elsewhere, outside the context of birth—*[Interruption.]* To bring that into the BNA—again, there would then be all the debates about whether you apply citizenship. It would be quite radical, as we touched on, to reapply automatic British citizenship to the 26 southern counties.

Q150 **Chair:** If we were to invite you, during this process of work, to give strenuous consideration—that is probably a very good Home Office phrase, is it not?—to the £1,330 fee that somebody like Lord Hay would have to pay, would that be within the scope of your work programme?

**Kevin Foster:** Looking ahead to the future, we set our immigration and nationality fees based on the provisions agreed by Parliament in the 2014 Immigration Act.

Certainly, as we go through our whole process, we are looking at opportunities that may reduce the overall cost, for example, of applying for an immigration application. For the sake of argument, travelling to a VAC costs money. I would not want to give a pledge here and now. Out of interest, I noticed the cost of applying for Irish citizenship. They apply a fee if you are successful, whereas we apply a fee for consideration and we do not then charge a further fee if you are successful.



Q151 **Mr Goodwill:** Minister Foster, when I was in the Home Office myself, I asked quite a few questions about the level of fees we charge for various applications, and indeed the Home Affairs Select Committee had some fairly blunt questions to put to Ministers at the time. I was told that the principle of recovery of cost was the basic principle whereby fees would be set. Is that still the principle whereby you determine what the fee should be for various types of application?

**Kevin Foster:** It has to be said that Mr Goodwill's time as Immigration Minister in the Home Office is very fondly remembered in terms of the strength he brought to that role. To be clear, the actual position is exactly the same as it was when Mr Goodwill was in office. It is about the costs of processing the application, the wider costs of the border and immigration system as well, and reducing the cost of that system as a whole to the wider UK taxpayer, who still has to contribute towards its funding. Those are the core elements of it. The benefit goes to those who acquire the status that it grants.

Q152 **Mr Goodwill:** What is the fee that we are charging currently for the EU settlement scheme for the 3 million or so EU citizens who are here in the UK and are applying to have settled status?

**Kevin Foster:** Given the unique position of the ending of free movement rights and the need for people, therefore, to regularise their status here within the UK under UK immigration law, that is being done free of charge in terms of the application, although it has to be said that the vast majority of applications in that context have been done using an app-based system, which has helped reduce the costs of dealing with it. We have also applied very simple and very generous criteria to ensure that our friends, neighbours and colleagues who have come here in the time of free movement can secure the status that they deserve very easily.

Q153 **Mr Goodwill:** In that case, can you understand the frustration of people like Lord Hay, who have lived in the UK for many, many years and who pay tax and national insurance and participate in elections—he has been Speaker of the Northern Ireland Assembly, et cetera—but find that they are facing a fee of £1,330, which is £1,330 more than a Romanian who has worked here for a couple of years has to pay?

**Kevin Foster:** First of all, Lord Hay, to get the entitlements that some would get under the EUSS, does not have to pay anything as an Irish citizen or national living here in the UK. In fact, it is even more generous, because the right to stand and vote for the UK Parliament does not apply beyond the Commonwealth or Irish citizens. They get more than an EUSS settled status grants for free.

Similarly, if the Romanian with settled status, which is the example just given, wishes to naturalise as a UK national, they would pay exactly the same fee. We have seen quite a number of people doing that, and we very much welcome it. Some have decided to do that as an alternative to



applying for status under the EUSS, but—I have to be very clear—there is no requirement for anyone who is an EEA national who is here in the time of free movement to become a British citizen.

**Q154 Mr Goodwill:** Would you agree that, if somebody has been in the UK for very many years, it is unlikely that you would need to spend over £1,000 to process their application? Indeed, they could have a long track record of national insurance payments or being on the register of voters, et cetera. For people who have been living in the UK, in Northern Ireland or on the mainland for a number of years, it could be argued first that a lower fee could be justified, and secondly that the Life in the UK test might be a little superfluous for somebody who has lived in the UK for quite so long.

**Kevin Foster:** What we would say is that we think there is a fairness in having a similar approach for all. Of course, we do not mandate that by a particular point you should apply for British citizenship. Once you have been a year free of time limits on immigration, you can choose when you are ready to apply. There is no penalty or requirement for not switching over in terms of the vast majority of people's day-to-day lives.

We have been focused on that fairness. If we can, over future years, with a better use of technology and other areas, start to reduce the cost and reduce the cost of the overall borders and immigration system, which is one of the factors agreed in 2014 around immigration fees and charges, then in real terms you might well see a change in immigration fees. Certainly, one of the things that we have indicated we may potentially look to is around consideration of immigration history as part of naturalisation applications, having potentially already been considered for ILR shortly before.

To be clear, these are not matters in my discretion. These are matters that are contained within primary legislation. It would not be for the Government to lay immigration rule changes; it would have to be primary legislation that Parliament would have to consider and decide on.

**Q155 Mr Goodwill:** Although you do have discretion in individual cases to waive fees, do you?

**Kevin Foster:** Not on citizenship, no. We do on a range of other things in the immigration system, but for citizenship mostly we do not have the type of discretion that we have on, for example, leave to remain, if someone is unable to afford the fees. There are some provisions around things like Windrush and other areas, but that is in a different area of the fee. That is mostly around confirming a status that already existed.

Generally, we do not have fee waivers in nationality, given that ILR gives you access to public services, the right to study here, the right to live here permanently and the right to sponsor your family members to come in, regardless of what your basic nationality is that the ILR sits on top of.

**Q156 Mr Goodwill:** I say that because I had a constituent whose parents



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emigrated to Australia and then returned with him as a small baby. He found, 50 years later, that he no longer had any citizenship of any country. The Home Office not only waived the fee but also paid his costs to go and get that status reaffirmed.

**Kevin Foster:** If there is a potential for statelessness, there are international treaties and provisions there. If a child, for example, is stateless in the UK, there is a separate process to go through. It is partly why we have the provisions we do for automatic acquisition of British citizenship in certain circumstances; it is for clarity in those circumstances. If there is the possibility of statelessness, we do have arrangements there. Again, that is quite a small category of people, because most people will be a citizen of at least one country, normally the one they were born in.

Q157 **Mr Goodwill:** Turning to the EU settlement scheme and its application for the people of Northern Ireland, which our Chair touched on earlier, do you believe the changes will deliver the long-term solution that was promised by our previous Prime Minister in response to concerns about family and migration arrangements, or will there be further fine-tuning or reform needed?

**Kevin Foster:** We believe it delivers a long-term solution in relation to those who would have had family reunion rights under free movement rules. In the longer term, with free movement having now ended between the UK and the European Union, the difference is that differential, with that interesting juxtaposition of those of who strongly identify themselves as Irish but who, because of the fact that they are now under UK sovereignty, can argue they are exercising their free movement right. That will come to an end, ultimately, and we will have the same family rules. As I say, those still covered by the withdrawal agreement and the people in Northern Ireland provisions under EUSS will continue to have certain reunion rights, but those are more akin to the rest of the EUSS cohort, rather than general immigration rules in the UK.

Q158 **Mr Goodwill:** Finally, would an Irish citizen exercising their rights under the Common Travel Area be in a better position than a person who has applied under the EU settlement scheme? We have a situation where, already, people from the Republic of Ireland are in a better situation than those from any other EU country.

**Kevin Foster:** Irish nationals, going forward, are in a unique position under UK immigration law. We specifically set out in statute that they do not require leave to enter or remain in the United Kingdom; there are some very limited exceptions around international travel bans and deportation. To be honest, when we did the Bill, none of us could actually think of an example of an Irish citizen having been deported in recent history.

That is where we would say that we believe that there would be a fairness; they would be able to sponsor on the same basis as a British



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national. Now free movement rights have come to an end, if you did not move to the UK during the time of our membership of the EU or in the time of the transition period, you cannot now create new free movement rights for yourself.

**Q159 Mary Kelly Foy:** Good afternoon to our witnesses. Minister, I have a question for you. Can you tell us what conversations you have had with the Irish Government on the issue of identity and citizenship, following the outcome of the DeSouza case? Will it be raised at the upcoming British-Irish Intergovernmental Conference in June?

**Robin Walker:** We updated the Irish Government after the changes to family migration rules, and we have ongoing constructive engagement with the Irish Government, both at ministerial and official level, where a range of matters are discussed. The Secretary of State for Northern Ireland and the Irish Foreign Minister, Simon Coveney, have agreed to convene a meeting of the BIIGC in June to discuss matters of mutual interest within the competence of both Governments, as the Belfast/Good Friday Agreement intended. I am afraid I do not have the details in terms of exactly what will be on the agenda.

**Q160 Chair:** I am going to ask a cheeky question of Mr Walker, on the back of what Mary has just asked. Have the Irish Government given any suggestions to you to feed into the Home Office on these issues?

**Robin Walker:** No, not in recent months—certainly not to me. I could not speak for the detail of every conversation that my Secretary of State has with the Irish Government. As I say, we did communicate the changes that have been made to them. That was something that broadly has been welcomed, and we continue to meet with them and discuss with them regularly. Those meetings tend to be above my pay grade, so I cannot give you a word-by-word report of all of them.

**Chair:** Thank you. We will take that as a full answer.

**Stephen Farry:** Minister Walker is being far too modest with that last remark. In that respect, he does not serve himself well.

**Chair:** Modesty is a hallmark of Robin Walker. He often tells me it is his best quality.

**Q161 Stephen Farry:** Absolutely. I will be slightly briefer this time round, just to pick up on a few more questions. It is arguable that the situation prior to the New Decade, New Approach situation around family reunification created an incentive for someone to renounce their British citizenship. Is either Minister aware of any other possible situations that could see that type of incentive built in for someone to renounce their British citizenship in order to gain a potential right or entitlement?

**Robin Walker:** The short answer to that is no. The Government would never seek actively to take forward a policy that would encourage a British citizen to renounce their citizenship. It clearly was a concern, with the situation, as you say, prior to NDNA, that that could have been



perceived as an opportunity for some people, and therefore I was glad that that was able to be resolved and dealt with.

Q162 **Stephen Farry:** Perhaps then as a converse, could we see a replication of a situation where, in effect, someone who wishes to be accepted as an Irish citizen and seeks to exercise a right that is tied to Irish or EU citizenship is refused on the basis that they are currently a British citizen? Could we see a repeat of the DeSouza case in a different context?

**Kevin Foster:** Again, let us caveat this with what we have already just said, around the fact that free movement rights no longer apply in the UK. If they are an EEA or EU national, the treaties are pretty clear that it would apply to them regardless of whether they are a dual national or a single national, provided they hold a passport of a member state of the European Union or the EEA, where appropriate. That is our understanding.

Q163 **Stephen Farry:** This essentially goes back to the McCarthy judgment, if I am referencing that correctly, in the sense that there may be situations, particularly for people who are Irish and have not gone through the EU settlement scheme, where they are treated primarily as being British, which then withholds them from something else. We will have to wait and see what happens in practice.

**Kevin Foster:** To reassure, there are provisions around late applications for people of Northern Ireland, in the same way as there are for various other categories, for the EUSS generally for EEA nationals. With the EUSS, we are clear that an Irish national can apply, if they wish to. We do not take applications from Irish nationals for the points-based system because, effectively, they are applying for rights they already have, so it would be rather strange to accept an application for them for a skilled worker visa that they do not need. That is the only thing we have done in that context.

Again, the McCarthy judgment was based on the idea that there had not been the element of recognition that UK nationals in their own country are not exercising free movement rights, in the same way, by the way, as Irish nationals in Ireland are not exercising free movement rights. There is that interesting dichotomy, where there are those who would wish Irish sovereignty on the whole island, but the only reason free movement rights exist is because Northern Ireland is part of the United Kingdom during the time of the free movement existing in the UK.

Q164 **Stephen Farry:** Minister Foster, that leads neatly into a couple of questions in relation to the Common Travel Area. I appreciate that there was, for a time, some debate as to whether it was more advantageous or not for someone who was Irish to apply to the EU settlement scheme and have their rights placed on a firmer statutory basis, or to leave it, in terms of the Common Travel Area. In that regard, I fully recognise that it is the position of the Government that they are fully committed to the Common Travel Area, but do Ministers recognise that, nonetheless, the



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Common Travel Area is still essentially a series of conventions and a few statutory instruments? It is not a comprehensive legal position.

The Committee has heard evidence that it is, shall we say, not entirely legally robust in terms of future-proofing. Is there a recognition that it could be desirable to try to place the Common Travel Area and its reciprocal rights and entitlements in both jurisdictions on a firmer legal basis, through some form of bilateral treaty perhaps?

**Kevin Foster:** We have the Belfast Agreement as a bilateral treaty. I will remind people it is not just an agreement between parties in Northern Ireland. It is a treaty between two sovereign states. I would really go back to the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020. This is primary UK legislation. Let us read exactly what it says: "An Irish citizen does not require leave to enter or remain in the United Kingdom, unless..." The caveats relate to deportation. There is a statement around deportation, which is a very high threshold. The UK Borders Act 2007 principles do not apply to Irish nationals. There are also some elements around being conducive to the public good. Again, we are rather struggling to think of Irish citizens who have international travel bans applying to them. They normally apply to other types of regimes.

In terms of the CTA position, first of all, a lot of it is how you arrive. It is the fact that there are no routine immigration controls between the Republic and us, and between the crown dependencies, and in addition to that there are no controls at all on the border of Ireland. We have recently amended the entry for Ireland rules to make them slightly more generous as well. They do not affect Irish nationals, but, for example, someone who is a non-visa national of the UK living in the Republic. If you want to go and perform a gig in Belfast, as an American, you no longer have to fly via Paris to get yourself PPE leave to be able to do that. We have made some changes to make it freer and easier.

The position has existed for many decades, and it has worked well. We have clear elements in our statutory law that cannot be changed via immigration rules changes. What I read out is in primary UK law. You cannot change that in an immigration rules change, and neither do we have any intention to so. We think it is on a fairly firm basis. We did put it explicitly to cover off this point, with free movement rights coming to an end more generally, and it is a unique provision that reflects the unique history between the two nations on these islands.

**Robin Walker:** Can I just add to that? In terms of the international dimension and bilateral elements, we have been very clear, alongside the Irish Government, that it is a shared commitment to maintain the CTA. We have been working closely with them to ensure that rights are preserved under it. In May 2019, the two Governments entered into a memorandum of understanding, affirming joint commitment to the CTA and maintaining associated rights and privileges of Irish and British citizens. We also signed a reciprocal agreement on social security with the Irish Government in February 2019. They help to underpin the



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structures that are important to the CTA continuing to function. As Kevin has demonstrated, it is underpinned in statute as well, from the UK end.

All the conversations that I have had certainly indicate that it is a shared objective to keep that working, and it is something that, certainly in my previous role, the EU was also prepared to recognise the benefits of.

**Q165 Stephen Farry:** Just for balance and objectivity, Ministers, do you feel that there are any potential weaknesses in the Common Travel Area arrangements that could be exploited in any respect, in terms of immigration rules or citizenship? Is there anything else you can think of?

**Kevin Foster:** I am not probably going to sit here and give people a rundown of things that they might want to try out in terms of the immigration system. Are there vulnerabilities because we have absolutely no controls whatsoever on the Irish land board? Yes, potentially there are. I hope colleagues appreciate why I will not go into the details of them, but we do run intelligence-led operations around Northern Irish and Irish-facing ports relating to potential abuse of the CTA.

We also tightened our own rules so that, if someone who was a non-visa national for the UK had breached immigration control in Ireland, they could no longer cross the border and get deemed leave to try to avoid enforcement action against them.

There are some vulnerabilities. Like with any border, there are going to be issues, and we need to adopt an intelligence and information-based approach. I would genuinely say there is some very good co-operation between Border Force and the Irish border authorities. We both have a shared goal of maintaining the safety and security on this island. The type of people who pose a threat to us in many cases also pose a threat to the Irish people as well, in terms of people-smuggling, trafficking gangs and all the other things we can think of that might come through the border. We try to work together.

Just to reassure, when we make immigration rules changes that affect the entry through Ireland, and generally around those who may be in Northern Ireland, we notify the Irish Government and give them an opportunity to comment as well.

**Q166 Stephen Farry:** I am certainly not making any accusations against either of our Ministers in this respect, but I will just take this opportunity to flag that, due to the two different immigration regimes within the Common Travel Area, whenever we see movement, there can be a perception that there is sometimes racial profiling in terms of where people are checked. This is not solely an issue in terms of the UK Government; it is also an issue for the Irish Government.

For example, you often see the stories about the bus between Belfast and Dublin Airport being stopped and people being checked in a differential way, based upon, for example, their skin colour. It has caused some concerns in the past. I appreciate that people are trying to manage two



different jurisdictions here, but the way it is done can create some degree of concern.

**Kevin Foster:** My view is that we should not be doing things based on skin colour profiling. There are many people who make a huge contribution to UK society, have every right to be in this country and have been here for generations, with some of their grandparents having fought for this country during World War II. We would certainly take any behaviour like that seriously, and we would look to engage with the Irish authorities if it was being done on the land border on the southern side, if I can put it that way.

Generally, we find the system works reasonably well, even with some of the pressure we have had. For example, for a period of time during the pandemic, Ireland closed its visitor visa routes, which made it quite difficult for those who were visa nationals for the Republic of Ireland but who had UK immigration status. Whilst they could be in Northern Ireland, unless they had an extant permission to be in the south, they could not cross the border. There are some times where the rules may rub up against each other. I actually had a constituency case that this affected, involving a priest, of all things, who has ILR for the UK but is a visa national for the Republic.

Generally, I would like to reassure the Committee that the working relationships with Border Force and the Irish authorities are good and positive. We try to make sure that they are delivered in the spirit of the CTA, because most of the people who are looking to abuse it are those who are looking to abuse and exploit people. Therefore, we want to safeguard both ourselves and the Irish people by doing so.

**Robin Walker:** I have a slightly peripheral point. You were asking about some challenges with the CTA. In general, I would absolutely agree with everything Kevin said in terms of it working well. It would be remiss of me not to mention the concern that I know that colleagues in the Executive have had around data-sharing when it comes to Covid and that side of things. We are very keen that that data-sharing, which works well in most spaces, should also work well in the Covid space. I know all parties in the Executive have supported that position. I know the Irish Government are keen to get to a position where we can have the greatest sharing of data in that space. I know it has been a concern from some colleagues in the Executive that that has not happened as quickly as they might like.

Q167 **Fay Jones:** Good afternoon, Ministers. Thank you for joining us. I wanted to go back quickly to the discussion that we spent a bit of time on earlier on, about renunciation of British citizenship. Do you think that the current position is reasonable, where you have to give up your British citizenship if you want to align with an Irish-only identity? Do you think that is reasonable?



**Robin Walker:** It is, because the agreement clearly allows people to be British, Irish or both. We are very happy for people to have British citizenship and to identify as Irish and to have Irish citizenship. We have no qualms about that. Clearly, if someone chooses not to have British citizenship, that is their choice. Many people of Northern Ireland view their identity and citizenship in different ways. That is exactly why I would highlight to the Committee that nationality should not be based on an undisclosed state of mind.

The Good Friday Agreement makes no statement that someone who chooses to self-identify has to align that identification with their nationality. It would be inappropriate for the Government to equate both identity and acceptance of identity with citizenship. As long as that choice is available to people and as long as people are treated fairly and given parity of esteem, whether they are British, Irish or both, we are meeting our commitments.

**Kevin Foster:** I very much agree with Minister Walker. There is a process there for renunciation. We do not have restrictions on people having a second nationality. There is no requirement to give up a British nationality if you wish to acquire another one. I accept there are some countries around the world that have that principle, but the Republic of Ireland is not one of them. We think it is appropriate and it creates a clarity. The BNA applies across the United Kingdom, and we believe that it is right that it does.

Q168 **Fay Jones:** In terms of renouncing your British citizenship, is that a permanent decision? Can you choose to get it back?

**Kevin Foster:** Yes. You can go through a process of resumption; there is a charge to it. It is not a permanent status, but people should think very carefully before they do so.

Q169 **Fay Jones:** Do the Government know of any cases of individuals of Northern Ireland who have renounced their British citizenship in order to be able to access the EU's family migration rights before the changes to the EU settlement scheme came into force?

**Kevin Foster:** We do not gather figures explicitly on why people have renounced citizenship, because that is not a criteria we take into account as such. Some people may have done, but our figures would not necessarily show the exact reasons why people have renounced, in terms of whether it was because of this context or whether it was, for example, them wanting to become a citizen of a nation that does insist you give up your birth citizenship to become a citizen of that country.

Q170 **Chair:** Mr Foster, what is the resumption fee?

**Kevin Foster:** The resumption fee is similar to the registration fee. It is £1,206, including the £80 ceremony fee.

Q171 **Chair:** Again, it is not an insubstantial sum of money. Mr Foster, we have



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heard from Mr Goodwill, who is obviously a former Minister of State at the Home Office, and I was a PPS at the Department with two Ministers, as you may remember. It is a huge Department, as we know, and you are dealing with all sorts of things. So often the poor folk who have to process all these applications and look at these forms become very cynical, because they automatically presume, in a lot of cases, that somebody is up to no good, it is not quite right, or things have to be checked, et cetera.

That is not an overarching assessment and I do not say it as a criticism, but could you just assure us of something? You have clearly indicated that rules and regulations are being looked at, and there is always the potential for change, et cetera. Whilst there is a global view to immigration from the Home Office, does the Home Office get the unique status and issues of Northern Ireland and the Republic? You kept saying earlier that you thought that things were fair. Mr Goodwill set out a different way of doing things, which I do not think anybody would charitably describe as being either fairer or unfair, but just different and maybe a bit more sensitive.

**Kevin Foster:** First of all, the very fact that we have unique arrangements across the whole of the United Kingdom—we do not just restrict those provisions to residents in Northern Ireland—shows that we respect the very unique history there is between our two nations. We have just talked about the CTA; we do not share that type of arrangement with others. The most open border in the world, in terms of land border, is the one between the United Kingdom and the Republic of Ireland. There are literally no immigration controls whatsoever on it. It is quite a remarkable achievement, given so much of the history of Ireland, that we have managed to maintain that.

We very much respect the uniqueness. That is why we work with those arrangements. It brings some challenges, it has to be said, as was touched on in an earlier answer, around security and immigration enforcement, but that is very much our sole goal and why we have the provisions we have, also including for entry through Ireland as well, which is similarly very different and very unique in terms of making sure that no one has to be stopped at the land border for a conversation about their immigration status.

**Chair:** Minister, thank you. That is a very comforting way to end today; I am sure that will give comfort to all of us on the Committee. We may not agree with everything, but the fact that that dimension is taken into account by the Home Office and will continue to be so is helpful and encouraging.

On behalf of the Committee, can I thank both of our Ministers? I know how busy your diaries are. You have been very generous with your time. Minister Foster, we look forward to receiving that little bit of written information that you have agreed to provide. Thank you very much indeed for joining us, and of course to you, Mr Armstrong, as well.