

Northern Ireland Affairs Committee

Oral evidence: [UK immigration policy and the Common Travel Area](#), HC 795

Wednesday 8 December 2021

Ordered by the House of Commons to be published on 8 December 2021.

[Watch the meeting](#)

Members present: Simon Hoare (Chair); Scott Benton; Mr Gregory Campbell; Stephen Farry; Mr Robert Goodwill; Claire Hanna; Ian Paisley; Bob Stewart.

Questions 1 - 58

Witnesses

I: Kevin Foster MP, Parliamentary Under-Secretary of State for Immigration and Future Borders, Home Office; Nigel Farminer, Head of Border Security and Identity Policy Unit, Migration and Borders Group, Home Office.



Examination of Witnesses

Witnesses: Kevin Foster MP and Nigel Farminer.

Q1 Chair: Good morning, colleagues, and welcome to this meeting. Minister Foster, can I welcome you? May I apologise for the delay in the start of proceedings? It is a pleasant surprise; I have to say that I was expecting an email or some sort of communication from your office to say, “The Minister is on the Front Bench with a very important Bill. Can we rearrange?” It is a testimony to your stamina, if you will, and commitment to the role that you have found time to come to us this morning, so the Committee is really grateful. Thank you. May we also welcome your official?

Let me kick off the questioning, if I may. In summary, could you set out to the Committee what, if any, the main changes are to the common travel area policy and how it is likely to impact individuals from differing groups—for example, CTA nationals and EU nationals? Is there anything in the Bill before the House at the moment that may, upon granting of Royal Assent, alter what the current position is?

Kevin Foster: In terms of what we have done recently, perhaps to focus on the changes made on 1 October, we have clarified the documents that individuals are required to present on arrival in Great Britain from the Republic of Ireland when encountered by a Border Force officer during an intelligence-led control.

The biggest change that will be noticed is that, in line with our posture at the external border of the CTA, we no longer accept EEA national identity cards at the border, apart from those who have protected statuses under the withdrawal agreement. Most of those will have status under the EUSS, so we would be able to identify them from that particular record. That is probably the biggest change that people would notice.

I will not rehearse the full arguments about why we ended the use of EEA national identity cards as a general document for travel to the UK, linked to, for example, how they dominate document abuse stats at the border. That is probably the biggest difference that an EEA national would notice. To be very clear, we still accept Irish passports and the Irish passport card. We do not define that as an EEA national identity card, so it is still accepted. That is not just in terms of intra-CTA travel, but also for people arriving in London from, for example, Paris.

Q2 Chair: Has that been widely publicised?

Kevin Foster: We have certainly publicised it as much as we can and as much as we did with the EEA national identity card. I have to say that, so far, in the unverified management figures, the position at the border has been very good with compliance rates, partly because an EEA national using their passport can go through the e-gates, which is an advantage particularly over the last year, with Covid health checks having to be done as well at the border in terms of coming into the CTA. People have



HOUSE OF COMMONS

switched over quite strongly to using their national passport, well before we required it. That is probably the biggest of the changes that we made on 1 October: that we no longer accept EEA national identity cards.

Does that mean, for example, that people now need a passport to travel between Northern Ireland and Great Britain? No. There is no specific list of things that we expect people to be carrying in the CTA. To clarify why that is, Border Force, the police and Immigration Enforcement always have a discretion to look at individuals as a whole person, and to assess the credibility of what they are saying to them and what other documents they may have, rather than having a tick-box list of things that they have to have on them. We do make sure that, in all the circumstances, Border Force, the police and Immigration Enforcement have the opportunity to make a considered decision, based on the person presenting to them.

Q3 Chair: Thank you for that. That is very helpful. Have you had any representations from your Irish counterpart on how this is working?

Kevin Foster: Not that I am aware of so far. So far, the border seems to function very well. Within the CTA—certainly not in England, and I do not think in the devolved Administrations either under their health regulations—we do not require, for example, a passenger locator form to be filled in for travel from the Republic to the UK. That is probably the biggest difference that people would notice in intra-CTA travel versus, say, travel abroad and returning to the UK.

Similarly, the recently announced testing requirements do not apply to travel from the Republic to England. Again, my understanding is that that is reflected in the devolved Administrations' rules. Of course, that is quite prescient, with the Northern Irish Covid travel regulations that would apply in terms of the land border for those coming into the UK via that particular route.

It seems to be working fairly well and, as I say, this is not about us putting in a routine control. It is more clarifying the position in relation to how people prove that they have an appropriate immigration status to be in the UK and, clearly, Irish nationals do not need to have one.

Q4 Chair: Anecdotally or formally, do you have any initial assessment in terms of the smoothness of the operability from the airport authorities, Border Force or the police?

Kevin Foster: It is probably difficult to separate at the border the Covid impact versus any other changes. The Covid impact is the biggest. For example, we have to run operations to ensure that people are not using the CTA to avoid things like managed quarantine rules by seeking to conceal their travel from a red list country. I hope the Committee will understand why it will not go into the exact details about how we do that.

Generally, the border has been working reasonably well and within expectations. I would say that, where we have problems at the border, it is more likely to do with bunching of red list arrivals or where there has



been non-compliance with Covid regulations, rather than impacts on routine controls. We have not seen, for example, particular issues at the ports that would mostly be receiving, from an immigration perspective. A lot of the issues that cause delays, say, at Heathrow are probably more likely to be related to Covid travel regulations that do not apply in relation to travel from the Republic of Ireland.

Q5 Chair: Is there anything in the Bill before the House at the moment that, in any way, changes things, in your view, or provides a platform for change in the near future?

Kevin Foster: The Immigration and Social Security Co-ordination (EU Withdrawal) Act last year contained a specific clause around the rights of Irish nationals, in that there is no need to have or to seek immigration permission to be in the UK. Probably the change that would be there in terms of crossing borders more generally is the ETA provision. To be very clear, Irish nationals will not need to apply for an ETA. However, the ETA system will apply in future to all non-UK and Irish nationals and those who do not have immigration permission separately to be in the UK. For example, for anyone holding an ILR or a visa, that would, effectively, be their ETA, so they would not need one.

In terms of whether it would operate on intra-CTA journeys, it would be very similar to the current position. For example, if you are a visa national, you must have immigration permission to come into the UK. There were examples last year, when Ireland closed to its visitor routes due to Covid, I have to say, not due to any other reasons.

Chair: Covid provides the great distorter.

Kevin Foster: It does, and I would just say that we were quite content that Ireland had done that, for obvious reasons, around its own public health protection, but that meant that, for example, for someone with UK ILR who was a visa national for southern Ireland, the border was not able to be crossed. In those circumstances, we would accept that that was not linked to any particular desire to implement more immigration controls. It was more about a position that Ireland was taking around visitor travel during the Covid outbreak.

Probably the biggest change there would be that non-visa nationals would need to have an ETA while they are present in the UK. To be very clear on the point rightly picked up in the House yesterday, does that mean we would be checking them at the Irish land border? Absolutely not. We also would not be checking them normally, because we do not operate routine immigration controls through the CTA. However, it would be a similar position in Northern Ireland to if someone was in the rest of the UK, and we may look to see if they have that permission to be in the UK.

Q6 Chair: I want to come to that in a moment, but, before I do, can I just ask you an umbrella principle question? As policies are being formulated by you and officials, by the Home Secretary and by the Department as a



HOUSE OF COMMONS

whole, what philosophical weight, which is a slightly grand way of phrasing it, do you, as a Department, see the island of Ireland as having, and not part of the rest of the world?

Kevin Foster: First, in terms of the island of Ireland, Northern Ireland is a sovereign part of the United Kingdom, and we are, therefore, very clear that our policies must not do things in terms of immigration permissions that would undermine that position. There is no immigration border between Great Britain and Northern Ireland. We are the same country. That is why there is no requirement to show a passport for travel between Belfast and London. There are needs to identify yourself, but those relate mostly to airline security.

Chair: We will come to that in a moment.

Kevin Foster: In philosophical terms, how do we look at it? We have operated the CTA between us as friendly nations very well for decades. We also have to look at our own policies to make sure that we are not providing opportunities for immigration abuse in southern Ireland, and vice versa. We have close engagement with them about ensuring that the openness of the Irish land border does not become an opportunity for undue abuse.

When we are considering policies, we always sense-check them: "How does this work in relation to the CTA?" For example, ETAs will not apply to Irish nationals. That would clearly undermine the CTA quite dramatically. We look at the appropriate balance to have in terms of intelligence-led immigration controls on arrivals from the Republic, but not having routine controls, and also at how we can make sure that, generally on these islands, people can travel freely around them, provided they have the appropriate permission to do so and do not present a threat to us.

Q7 **Chair:** Thank you for that. That is encouraging. That last comment and the helpful comment that you made of reaffirming the status of Northern Ireland as a key part of the sovereign nation of the United Kingdom is welcome, as is your reassertion that there is no need to produce evidence or documentation to facilitate travel from Belfast to London, Manchester or wherever.

As a Committee, we are conducting an inquiry into the experience of ethnic minority communities living in Northern Ireland. On a recent trip to Belfast, we heard from a member of the Muslim community that, on the last three occasions that they have flown from Belfast to England, they have been the only person on that flight pulled over and asked to produce documentation with regard to their legitimacy to travel, and to answer questions. Where does ethnic profiling of travel from Northern Ireland to the mainland fit into your suite of policies?

Kevin Foster: We would not look at protected characteristics. People should not be being pulled over purely on the basis of their ethnicity. If



HOUSE OF COMMONS

they are, we would be keen to engage and investigate what has happened on those occasions.

Q8 Chair: I agree with you that they should not be. I agree with you on that, but this is an individual who has been on the last three occasions. He happens to have a brown face. He was possibly the only person with a brown face on that flight and, on three occasions, of all the passengers on that plane coming from Belfast to GB, he is pulled and stopped. It is a bit of a coincidence, is it not?

Kevin Foster: Put that way, yes. This is the first time that that particular incident has been raised with me. I am very happy to pick up and investigate. We are very clear that we should not just assume. There are quite a number of visa national countries that could not, in the way you described, be profiled ethnically at the border, including some people who are of great threat to us and who would look very similar to those of us sat around this table now. That is why I would not want to see that happening, because it would not be an effective control anyway. To make sure that we are ensuring that those who could be a genuine danger to our country are kept out, we should not be just ethnic profiling, because that would not work.

Q9 Chair: But this is a United Kingdom citizen travelling within their own country, not somebody coming from the Middle East or other flashpoints. It is a bit strange, is it not?

Kevin Foster: I agree it sounds strange. This is the first time the incident has been raised with me. I would be very happy to investigate.

Q10 Chair: In general terms, what advice, guidance or policy is given to Border Force and others with regard to ethnic profiling of UK citizens flying around their own country?

Kevin Foster: We are very clear that Border Force should not use ethnic profiling. That is not an effective way of identifying those who may be a threat to this country. I can think of people who we have deprived of citizenship, who would not be able to be identified by any form of visual ethnic profiling and who remain a threat and danger to this country.

In terms of the guidance that is given, we are very clear that there is a range of factors that Border Force should consider—for example, passenger demeanour and what they are doing. We can all think of them. Are the reasons for travel credible? Have they flown on an unusual journey that might indicate that they are seeking to avoid immigration or other customs controls? Those are the sorts of things that are legitimate. Of course, we may be aware that someone on a flight has a previous history of criminal offending or poor immigration history in another country. But, in terms of ethnic profiling, what is the guidance we have given? You should not be doing it.

Q11 Chair: Nobody can quibble with the caveats that you carve out. Those are all perfectly sensible, but this is a professional individual in business



attire, travelling within their own country. I go back to the point. I would start to take it personally if I was stopped in the same airport on three consecutive occasions, having the embarrassment of being pulled out of line to prove one's bona fides. The question is this: on an internal flight within the jurisdiction of the United Kingdom, why should a member of the public who is the bearer of a United Kingdom passport have to run that gauntlet? They should be free, surely, to travel within their own country.

Kevin Foster: Absolutely, for UK nationals—and Irish nationals, for that matter—there is no restriction on their travel around the UK. The caveats that I would have to add for Irish nationals in relation to international travel bans and certain notices are not relevant, because there are none in place at the moment.

In terms of the position, everyone is free to travel around their country. On occasions, for example at Heathrow airport, there may be CT policing operations or other reasons, but that should not be for just one passenger from the plane. Potentially, we would be checking a number of passengers from the plane, or we might have reason to believe there may have been a fraudulent document used by someone on that plane.

Again, I would not expect it to be just one person we were pulling aside almost at random. I would expect that we had clear intelligence that backed up why we were operating that particular check on an arrival, but that would be similar to, for example, what we may do in other parts of the UK, where we have reason to confirm someone's identity or to look to confirm whether people had appropriate migration permissions. Normally, that would not be Border Force, but the police or Immigration Enforcement, which work internally within the UK.

Q12 **Chair:** There will be a report on this when we come to it as a committee, but could we just press upon you, Minister, to point out to Border Force and others the blindingly obvious? We are well aware of the prejudices that exist in some people's minds against people from the Middle East, India and Pakistan, principally because of some belief of terrorism and the like. It is a very tiny population within Northern Ireland who come from that community and, therefore, this really does need to be bespoke and intelligence-led, rather than a "three times unlucky" approach to a British citizen travelling within their own country.

Kevin Foster: Absolutely. As I say, it is the first time I have had this particular situation raised with me. It is concerning. I would be happy to look at what we can do to monitor this type of activity, because I know that Border Force takes great pride in the way that, on many occasions, it deals compassionately at the border with people who have needed to travel. It just does not work. As your evidence suggests, it does not identify the person you need to be talking to.

Q13 **Chair:** Minister, surely somebody travelling within their own country does not have to be treated with compassion, because they are a citizen of the



country.

Kevin Foster: I agree. The example I was using is that, every day, our teams present to people from all different backgrounds who potentially have issues. They need to use compassion, discretion and everything else. Many of them would be as concerned as you or I would be to hear that a citizen of this country, travelling within this country, has been pulled aside, potentially only for the reason of how they look. That is not a good use of our resource and is not what we should be doing. I would not want to get into public speculation about an individual. There may be a specific reason why an individual is on intelligence control, but if they are a UK citizen, that would not be relevant from an immigration perspective, only from a law enforcement perspective.

Q14 **Chair:** I agree with you. Not only is it not a good use of public resources, but it is not a very good way of building community cohesion.

Kevin Foster: As I say, Chair, the first time this has been raised with me is by you now, so there is a limit to how much I can comment.

Q15 **Ian Paisley:** Because the conversation has gone in this direction, let me say that I take that route sometimes four times a week, depending on House business, and regularly twice a week. I must say that I am frequently stopped and asked for my identity. I am even stopped at Belfast and asked for my identity. I do not feel picked on. It is not unusual. I take the view that it is someone doing their job. Indeed, I came into the House yesterday and did not have my pass on, and one of the guards asked for my pass. I had to go and find it, and got it. I congratulated him for doing his job. Sometimes it can go for weeks and I am never stopped and asked for ID at Heathrow or London City. Other times, it can happen two or three times in a week. The person we spoke to had travelled maybe only three times that year and was particularly unlucky.

Kevin Foster: It is interesting to hear the Member for North Antrim's experience. The times I have travelled to and from Northern Ireland, as colleagues will be aware, on a point of principle I travel on my driving licence.

Ian Paisley: That is why I never use my passport.

Kevin Foster: I am not crossing an international border and I do not need to present my passport. Of course, people may wish to use their passport to meet the aviation security requirements in terms of proving their identity, but to be clear those checks are the same as flying between London and Edinburgh. People have to identify themselves to get on a plane for reasons that I am sure we do not really need to go into.

As I say, this is the first time I have had the incident picked up. Absolutely, we will, at times, ask people to prove who they are in particular locations. The team would normally be Immigration



Enforcement at Belfast airport, rather than Border Force, particularly in the departures area, because we are in the UK and it is not an external border. That may be, for example, to identify those who may have sneaked in or may be of interest to law enforcement more generally. There may be no immigration issue, but we may wish to catch up with someone generally, so to speak. We run operations like that in locations in the UK, where our intelligence suggests we might encounter people who are here without appropriate immigration permission or who law enforcement would wish to catch up with.

Bob Stewart: And you look dodgy.

- Q16 **Claire Hanna:** Just for the record, I travel that route weekly and cannot remember the last time I was asked for identification. If my memory serves me from the conversation, the gentleman in question was not just asked to flash his identification. He was pulled out and subjected to more substantial questions about his purpose for travel.

I just wanted to pick up on the detail of the basis on which Border Force officers have previously conducted immigration checks on the UK-Ireland border. Under the new rules, how will Border Force determine the circumstances when it will ask for some form of identification from somebody at the border?

Kevin Foster: In terms of travel from the Republic, it is exactly the same basis now as it was before. We do not operate routine immigration controls but we may operate intelligence-led immigration controls. They can be based on data suggesting that some people on the flight may, for example, be travelling without the relevant permission. I do not want to get into the exact details of how we select a particular location. By the way, this is not just at airports. It would, for example, be at ports of entry as well, such as Holyhead. It is exactly the same basis now as it would have been a year or so ago, the only difference being around EEA national identity cards no longer being accepted at the UK border.

- Q17 **Claire Hanna:** I know that colleagues will pick up on the new ETA and the implications of that but, if it is case by case, is there not a risk of a climate of uncertainty and that, essentially, we are saying to people, "You will not get caught"? It leaves it a bit arbitrary as to whether you will be asked for documentation where you, for some other reason, come into contact with Border Force or law enforcement, if you are involved in a car accident or witness to a crime. Are we not leaving it a little unclear?

Kevin Foster: One of the reasons why we have published the clarification that we have is to be clear on the point around EEA identity cards and their position inside. I would not say that it is arbitrary. It would be genuinely intelligence-led.

Generally, we want to see a free flow between us and the Republic of Ireland, not just between Northern Ireland and the Republic but in terms of the whole of the United Kingdom. This is subject to the usual caveats that the Irish Government would apply, as we do, about where we believe



HOUSE OF COMMONS

those arrangements are being abused, including by people who may have broken Irish immigration rules and are trying to enter from the United Kingdom, and similarly for those who may be, for example, engaged in particular criminal offending or other patterns.

Perhaps the most common thing we had to deal with over the last 18 months has been those seeking to use the CTA to avoid their responsibilities to enter managed quarantine on both sides of the Irish Sea, both here and in the Republic. It is not arbitrary but intelligence-led. We have clarified the documents that we would look at and the process that we would go through, but it is a non-exhaustive list.

There is always the ability for a Border Force officer, in terms of journeys into the UK, if we are operating an intelligence-led control, or Immigration Enforcement within the UK, for that matter, to use their judgment on the whole person, how they are presenting and what evidence they have about them in order to determine whether they are in the UK lawfully and in compliance. That is more to ensure that it does not become a "computer says no" exercise, rather than it being an arbitrary matter.

Q18 Claire Hanna: I am a little unclear on what times you are expected to have documentation but, on the issue of the land border, can you just clarify that section 1(3) of the Immigration Act 1971 prevents passport controls on the land border, and that to introduce such checks would require primary legislation?

Kevin Foster: To put checks on the land border may require more than primary legislation. It would certainly require primary legislation, because it may be not just a breach of our own legislation but there would be an impact on the Belfast agreement, which is an international treaty between us and the Republic of Ireland, not just an informal agreement or an operational practice.

To be honest, I would question exactly how we would put passport controls on the border, because there are some roads, as people here will know, that weave across the border. There are numerous locations where you could jump a fence. It would probably be a pretty spurious exercise if we tried to, but our view is that we do not see circumstances in which we need to put controls in. The best example is the Covid-19 pandemic, where we have not sought to introduce checks on the Irish land border, even in the midst of a pandemic.

Q19 Claire Hanna: I am not suggesting that you would, although I agree that you could, but I just wanted to clarify that it would require actual legislation.

Kevin Foster: My gut feel is that it would almost certainly require primary legislation to have routine controls. To put a fence up and have a barrier there, I am struggling to see how that would be consistent with our commitments under the Belfast agreement. As it is an international



treaty, for us to make changes to it, the only sovereign body in the UK that can override an international treaty is the sovereign Parliament, which means that it is primary legislation. I would have to split out things like whether there are enforcement checks or things that the PSNI might be doing along with the Garda. They might be, but those would be law enforcement matters, not checking passports. Last year's Immigration and Social Security Co-ordination (EU Withdrawal) Act included a clear provision that Irish nationals do not need immigration permission. That is in primary legislation and can be changed only by primary legislation.

Q20 Stephen Farry: Welcome, Minister. First of all, on the point already made about Border Force stops, I too have not been stopped for many years when travelling to Great Britain, but virtually everyone I speak to from a black or minority ethnic background in Northern Ireland relays that they have been pulled aside much more frequently than others. Indeed, there have been a number of witnesses to this inquiry who have also relayed that. I appreciate that you have given a commitment to investigate it and come back to us in that regard.

Just moving on to the land border issue, you are very clear in saying that there will be no routine immigration controls on the land border, but what type of non-routine checks do you envisage and where would they happen?

Kevin Foster: It would probably be very similar to how we enforce visa requirements now, because there are a number of nations around the world where their nationals are visa nationals for us and for the Republic. While our list is not tied together, there are only about five countries in the whole world where there is a difference between whether you are a visa national for the Republic or a visa national for the United Kingdom, so the rules are similar.

In terms of ETA, that enforcement is done away from the border. It works relatively effectively. We know that, inevitably, there will be some who abuse the free flow, which is why we work quite closely with the Irish authorities in terms of those who are there. We altered our entry through Ireland rule, specifically because it created a loophole for those who had broken Irish legislation and who were non-visa nationals for the UK to cross the border, get deemed leave and, therefore, avoid Irish enforcement action.

How would I envisage it working? In terms of ETA, it would be very similar to what we do with visa nationals. It would be, if we have a reason to believe someone is in the UK without appropriate permission, to seek to encounter them. That is done as part of general targeted intelligence enforcement work. It would not be done by, for example, setting up a hut and trying to check people's ETAs as they came across the border.

Q21 Stephen Farry: Just to be very clear, for someone who is non-British or non-Irish living in the Republic of Ireland, and particularly bearing in



mind we now have a cohort of people who have free movement across the European Union into Ireland but no longer into the United Kingdom, that cohort of people will require an ETA to travel into the United Kingdom, including to travel into Northern Ireland.

Kevin Foster: Yes.

Q22 **Stephen Farry:** But your basic point is that that is not going to be checked at the border.

Kevin Foster: In the same way as we do not look to check visa nationals who may have a visa for the Republic or, by the way, vice versa. Of course, the Republic has the same issue with those who have visas for the UK. We do not check that at the border.

Q23 **Stephen Farry:** Nonetheless, if those people are making any journey into Northern Ireland, they will require to go through the process of applying for an ETA.

Kevin Foster: Yes, if they are not a UK or Irish national, they would be required to go through the process of applying for an ETA. However, an ETA is a multi-year document that covers multiple trips, so it is not like, for example, a six-month visitor visa, where that is the period it operates in. We have not yet set the period, but it will be in the years, not in the months. It will be very similar to the ESTA-style situation that the United States has, where it is a simple online fill-in form. Once you have done it, you can renew it fairly easily as well.

Q24 **Stephen Farry:** In terms of issues around the costs and waiting time for an application, what is the current thinking?

Kevin Foster: In terms of an ETA, I would look at the US ESTA, for example. Theirs is something like 72 hours. We hope we can be quicker than that. We have not yet set it down finally. In terms of the cost, we will need to look at the exact term at the time, but we do not expect it to be a significant cost, if I can put it that way. It will not be, for example, anywhere near the cost of a visitor visa application, because that involves considering people's wider backgrounds. An ETA is more focused on, for example, whether there is a warning list against you or evidence of previous immigration breaches. It is a much simpler process than going through a visa application.

Q25 **Stephen Farry:** The reason I am raising this is that, every day, there are tens of thousands of people who cross the border into Northern Ireland, including people who are not British or Irish, whether to visit family or for work, healthcare or education. Sometimes, these journeys are not planned three days in advance of having to make them, so I am concerned about the practicality of this for populations who live either side of the border and often quite close to the border.

For example, look at the awareness of something like the EU settlement scheme, which the Government pushed for over many years. Even at the deadline there was not universal take-up; there is always a lack of



knowledge. For people who are not part of the UK jurisdiction, perhaps you are going to have an even bigger challenge in terms of people's awareness of legal requirements to travel into Northern Ireland.

Kevin Foster: We had a similar challenge, but slightly less so last year around Covid, where particular journeys were banned even across the land border. Again, there were Irish police one side and PSNI the other, enforcing Covid rules in terms of travel across that particular border. There was a legal position where some UK status holders could not get a visa to travel to the south, and vice versa, but that is, I accept, the pandemic.

In terms of how we expect this to operate, Irish nationals not having to have one mitigates a very large number of people who cross that border regularly, but we are conscious that we need to promote the requirement. We need to be very clear. Anyone who flies into the UK will come in contact with this. We are working with authorities so that people are clear what the position is for them. We anticipate that this will be a fairly simple process. When the US ESTA originally launched, you could fill it in at the airport and fly an hour or two later.

I do not want to give that type of guarantee yet, but we are certainly looking at how we make it a quick and simple process. We have already moved to fully online visa applications for EEA nationals. Many who might be long-term, non-EEA residents in the south of Ireland would have visa-style permission, so will probably get used to the idea that they need to apply for something in terms of the UK. Enforcement of it will be proportionate, as with the issues we deal with in enforcing our own visa requirements.

Q26 **Stephen Farry:** To pick up on Claire's point, if someone travelled into Northern Ireland without the appropriate documentation and had an interaction with the state—a traffic accident, being witness to a crime or having to access emergency healthcare—what legal jeopardy would they be in?

Kevin Foster: If they are accessing emergency healthcare, my understanding is that it is a devolved matter and they certainly would not be charged for that. They would be able to access emergency healthcare in all parts of the UK.

In terms of the action that would be taken, it would depend. For example, if someone had entered the UK in breach of a deportation order, that would have a serious consequence, but that would be linked more to the previous issues of offending. Similarly, if someone had previously been removed from the United Kingdom and it was obvious that their presence in Northern Ireland was seeking to abuse the free flow in the CTA, again that might have a different position. If it was simply a matter of not having an ETA, that would be a different position to someone who has very wilfully broken immigration rules.



Q27 **Stephen Farry:** Under the Nationality and Borders Bill, this is a criminal offence. This is not a light matter. On the surface, this is a serious issue for someone if they do not have the documentation. This may well be a deterrent to people making that journey. Even if they were given a pass first time around, going, "I appreciate you did not understand", this could come back to haunt them whenever they want to make a future journey into Great Britain by air. They could be flagged on a computer for the rest of their lives as having made an illegal journey.

Kevin Foster: Again, we are proportionate in how we apply immigration controls. We could be here for quite a long time going through all the individual circumstances, where people who have been refused visas in the past may find themselves in the future able to get a visa, including in cases where people may have overstayed in the past and we are now satisfied that circumstances have changed.

We believe that ETA gives a lot of opportunities. We can talk about it in a negative way, but we can also talk about it in quite a positive way, in that it opens the door to ending the rather clunky situation where, if you get to the UK border and you have particular types of passports based on nationality, you can go through e-gates, whereas everyone else, including people who have lived in the UK for decades, has to go to the right in order to talk to an immigration officer, when they are of no interest to us from an immigration point of view at all. It allows virtually everyone to have an e-gate arrival.

It potentially even lays the ground for biometric-based borders, which means that you do not even have to show a document to cross the border. We will just park that, because it is probably a bit on the edge of technology and we will have to have debates about how that would work in practical reality.

The ETA can provide a lot of opportunities. I would not wish to be drawn on which particular nations, as I do not think that would be appropriate, but it may also open the door to some nations that are currently visa nationals, who, if they are in the south, would have to apply for a visa to come into the UK, to become non-visa nationals by allowing the security check that the visa regime is based on to be done via the ETA system instead.

Q28 **Ian Paisley:** This is slightly broader in terms of the individuals Mr Farry was talking about. A citizen from outside of the EU arrives at Dublin airport. They are entitled to do that; they have a visa; they have applied and have come in lawfully. They take a trip to Northern Ireland, so they can enjoy the CTA. The likelihood of them ever being stopped is probably minimal, for some of the reasons that Mr Farry identified. They would then be coming across. If that individual takes it upon themselves to get the Larne to Stranraer ferry and head across to Scotland, or to get on a flight out of Belfast, more than likely they could. Would they be illegal when they arrive in GB?



Kevin Foster: They would not be illegal when they arrive in GB if they were legal when they were in Northern Ireland, because they had already entered the UK. If they were already breaking immigration rules in Northern Ireland, that would apply when they reach GB.

Q29 **Ian Paisley:** Those individuals should not leave the Republic of Ireland. They should not enjoy the common travel area within Northern Ireland and the Republic.

Kevin Foster: Having Irish or UK immigration permission does not mean that the advantages of the CTA apply to you, but that is the position that a visa national would know today. I can think of an example from my own constituency of a priest who was due to do a wedding in the Republic. The Republic closed all its visitor routes. He is a visa national for the Republic—he has ILR here in UK—and would have been perfectly able to travel to Northern Ireland, but would not have been able, under Irish immigration rules, to then cross the border, because the visitor routes were closed, unless he had a visa. With the route closed, it effectively meant that he could not do so.

In terms of your question of what happens, we apply intelligence-led immigration controls on arrivals from the Republic, not on arrivals from other parts of the United Kingdom. There may be police and Immigration Enforcement rather than Border Force, if they have information to lead them to believe that someone who is in breach of immigration rules is present somewhere in the UK. That happens, for example, at a local takeaway: if we have evidence that there are people working there other than in accordance with their permission or with no permission to be in the UK, they may be stopped. The position moving from Northern Ireland to Great Britain would not affect their immigration status here in the UK.

Q30 **Ian Paisley:** By and large, if a person arrived in the Republic of Ireland and was not entitled to be in the UK, but happened to wander into Northern Ireland, or take a bus trip or a train journey, and then decided to take a further journey to GB, most of that would be harmless, unless you were given specific intelligence. Are you content that the intelligence and the border activity that your guards are applying are sufficiently co-operating and have enough ability to stop something that was not harmless, but was more sinister, coming across and using that as a point of entry into mainland GB?

Kevin Foster: In a public forum, I would not want to get into the exact details of how we identify those who may be a threat travelling around the United Kingdom, be that from London to Edinburgh or, in the example given, from Northern Ireland to GB. We are satisfied that we have strong measures in place. Sadly, on these issues, we can never be at 100%. Similarly, we are clear that it is not just at a port arriving from Northern Ireland that we might have an issue or that we might encounter someone who is a threat to us and who has entered the UK through an irregular means. We have strong work there.



HOUSE OF COMMONS

ETA gives us some opportunities to stop people who may pose a threat flying into the United Kingdom. It also gives an opportunity to pre-clear people from an immigration point of view. We see that it could be quite a customer service improvement as well, in that, if everyone is pre-cleared, we would need to do fewer checks on arrival, particularly in some of our main hub airports. If everyone arriving on a particular flight has a UK immigration permission or is a UK or Irish citizen, why would we want to talk to them? Let us just get them all through an e-gate and on their way as quickly as we can.

I am satisfied that we have strong measures in place but I would say that that falls more into the area of security and counterterrorism work than into the issue of my brief of immigration and ensuring that people have the appropriate permission to be in the UK.

Q31 **Ian Paisley:** I do not want to take you down a road when you do not want to go. You are convinced that the Republic of Ireland is not some sort of soft underbelly in terms of immigration diversion. You are convinced that that is not the case.

Kevin Foster: Inevitably with having a completely open border, there is a potential for forms of immigration abuse. As I have touched on, we have seen patterns of people trying to use the CTA and to travel via the Republic to avoid managed quarantine requirements. In a number of instances, we have later intercepted people and the police have issued them the appropriate fines for that type of behaviour.

We work well with the Irish authorities. In the vast majority of cases, those who are a threat to us are a threat to the Republic, which does not want them there either, and ditto, of course, the other way round. For the Irish state, having a completely open border with the United Kingdom means that they have to rely on us to ensure that those who may be a threat to the Republic are kept out of the UK and are not able to travel on to the Republic. We have good, strong working relationships.

ETA enhances our ability to do that at the external border. One of the examples I can give is that it was highlighted to us that there was a lacuna in our entry via Ireland rules that could potentially advantage someone who had overstayed in the Republic, which we were only too happy to deal with.

Q32 **Ian Paisley:** I have a brief follow-up on that. Minister, you have mentioned Covid twice, so there is this complicated overlayer. Are you convinced at the present time that there is a proper and full understanding by Border Force or whoever of how compliance with those regulations for entry affects citizens who might be travelling from the rest of the world, outside of the EU, to Heathrow? Are they entitled to travel on to Northern Ireland before they do their quarantine and oblige the Northern Ireland set of quarantine rules, or must they be stopped at Heathrow? There seems to be some confusion on that.



Kevin Foster: In terms of travel on to Northern Ireland, a lot of it will depend on devolved regulations and whether they are prepared to allow that to happen. In most cases, it has made eminent sense for people to quarantine at the first port of arrival in the UK, for very obvious reasons. We really do not want people travelling on through the rest of the UK, and it makes sense for someone to start their managed quarantine as quickly as possible after they arrive in the UK.

Normally, where you have arrived in the UK in London, which is where people predominantly have, the obvious point would be for you to be met literally the other side of passport control, having arrived from outside the CTA, and to be escorted to managed quarantine. That would usually be seen as the most logical outcome for it. Whether someone would be permitted to travel on to Northern Ireland in certain circumstances, we would interact with the devolved Administration's legislation.

I can repeat, as I said earlier, that, from the UK point of view, with all four Administrations in the UK setting the rules on travel, these rules do not apply to intra-CTA travel, i.e. travel from the Republic of Ireland, where you have been—and I have to be very clear on this—within the CTA wholly for the previous 10 days. For example, if you fly from Paris to Dublin, spend two days in Dublin and then seek to enter the United Kingdom, you will have to comply with things like PLF and the testing regime. If you have been living in Dublin and have not been anywhere outside of the Republic of Ireland since the start of the pandemic, this is not an issue for you.

Ian Paisley: But there is confusion over how it operates, and I will raise this separately with you.

Kevin Foster: Certainly, we can go into more detail.

Q33 **Scott Benton:** Minister, in the last exchange with Ian, you stated that our border and security apparatus is able to identify potential threats in terms of people travelling to the Republic of Ireland, crossing the border with Northern Ireland and then coming over to Great Britain. The whole of that answer seemed to be predicated on security and potential threats to the UK rather than, for example, mundane economic migration.

Can you assure the Committee that we have the processes in place to stop people travelling to the Republic and then coming into GB via NI, and using that as a route for general, everyday economic migration and wishing to stay in the UK? Are you able to elaborate upon any internal estimates of how many people have used that route as a back door to come and work in the UK over the last five or 10 years, for example?

Kevin Foster: First, the Republic of Ireland is a sovereign country and we do not have the ability to tell the Republic of Ireland not to allow someone to enter. That said, the type of people we would absolutely not want to see on the island of Ireland are probably the sort of people the Irish Government do not want to see on the island of Ireland—i.e. people who have committed serious criminal offences here in the UK. We work



HOUSE OF COMMONS

closely with the Irish authorities to ensure that, from our perspective as well as theirs, we do not facilitate the entry to each other's territory of people who would be a threat.

In terms of wider economic migration, most of those you see Frontex trying to deal with on the Belarus-Poland border or in the Aegean Sea are visa nationals for both nations, so they cannot come into the Republic of Ireland without a visa. Their tests are not dissimilar to ours in terms of people claiming that they are coming for a holiday. Without going into it too much, those very interesting grants of tourist visas to Belarus would be very unlikely to be made by us or by the Republic of Ireland.

In terms of how we then stop people coming into the UK to work, which includes Northern Ireland, being a sovereign part of our territory, this is where things like the compliant environment start to kick in. For example, employers must check work identities. That is for everyone, touching on the first point we exchanged about how all of us as Members of Parliament have been asked to show certain documentation at particular times to prove our right to work in the UK. UK nationals have to do it, not just those who are holders of visas or immigration permission.

We can apply intelligence-led controls if we have identified an unusual travel pattern or if we think that people are making odd journeys. Covid has perhaps prompted people to make odd journeys. It is a slightly different challenge, because a lot of them will be UK or Irish nationals, where we are having to look for odd journey patterns in order to identify those seeking to break the law around Covid quarantine.

We have very good working relationships. We will apply intelligence to encounter people who are seeking to use routes to get into the UK more widely. As I have touched on, every so often we have an Immigration Enforcement—not Border Force—operation at Belfast airport, looking at people who are in the UK seeing to depart on flights to the rest of the United Kingdom and who may be seeking to circumvent border controls. That is the same as we would have in any other part of the UK. That is not us stopping everyone and asking for passports or proof like that.

Q34 **Scott Benton:** The Nationality and Borders Bill contains a new offence of arriving in the UK illegally, with a prison term of up to four years. In a hypothetical situation of somebody travelling to the Republic of Ireland on a visa and then crossing the border in a car to go sightseeing in Belfast, they have technically entered the UK illegally. Would that person then be subject to legal processes under that potential four-year offence?

Kevin Foster: It depends. There are quite a few caveats I would have to put in. Let us put aside ETA, which is not yet in place and will not be for a couple of years yet. If they are a non-visa national for the United Kingdom and come across the border, and say, because it is a longer-term stay, they are an American who is going to be working in Ireland, they would be covered by the entry via Ireland regulations.



HOUSE OF COMMONS

Putting aside ETA for a moment, which will change the position somewhat, if someone has permission to be in southern Ireland, they would not be entering illegally because they would be guaranteed deemed leave as they came across the border. If they are a visa national for the United Kingdom, and they know they are, the rules are very similar for the Republic as they are for the UK in terms of who is a visa national.

If their intention was to do that in order to stay or abuse, they would be committing an offence. It would be looked at proportionately. If someone had strayed across the border while driving from one place to another, and had immediately left and not stopped the car, the enforcement position may be very different to where someone had clearly come across the border and broken the rules. They may have lodged asylum claims or abused the openness of the border. This is controlled in many ways by the fact that Ireland is not part of Schengen and has very similar rules on travel around those who are visa nationals to what we do.

Chair: Now comes the howitzer that is a former Immigration Minister. We have saved the big guns until last, Minister.

Q35 **Mr Goodwill:** I was going to be kind to the Minister. Following on from Mr Benton's point, it is great news that we no longer accept the ID cards, which did not have all the biometric data on and could be forged or come about illegally. Let us say we have a person in the Republic of Ireland who has arrived on an ID card from Italy or somewhere like that. They go to Northern Ireland, unaware of the issues, and do not commit an offence or cause any problems. Maybe they are admitted to hospital for some reason or they are in a minor motor accident. You have reassured Mr Benton that you would not be seeking to imprison them for four years, but would you advise them to leave the country or deport them? What would happen in that situation?

Kevin Foster: Again, let us put aside the introduction of ETA and talk about today. While we would not accept the EEA national identity card as a status of identity and nationality to be in Northern Ireland, other evidence could be adduced or taken. At the moment, EEA nationals are non-visa nationals for the UK, so if they cross the border they will have been granted deemed leave by the entry via Ireland order, which we have revised and made some changes to over the last year. For example, you can now get permitted engagement leave because of some rather bizarre examples of people flying via Paris to go from Dublin to Belfast in order to do a band gig. I think that was an example of a US national.

At the moment, they would not be committing, if they had immigration permission in the south and were a non-visa national for the north—i.e. an EEA national.

Mr Goodwill: What would happen if that person then decided they would like to visit Yorkshire, just to pick somewhere at random?

Chair: Who wouldn't?



Kevin Foster: On their way to North Dorset and Torbay.

Q36 **Mr Goodwill:** You have made it clear that Border Force is not actively scrutinising people going across, but what role would the carrier—the airline or the ferry company—play? They present with a valid ticket that they have bought and then present their EEA ID card as identification. Would they be denied boarding? If they were allowed to board, would the airline be fined the £2,000 or whatever for bringing them into the country illegally?

Kevin Foster: If someone presents an EEA ID card, we would expect the carrier to check whether they had EUSS status. As part of the withdrawal agreement, they are a protected cohort. If they do, they are entitled to use that document to travel alongside. If they are travelling from the Republic, we would expect them to be refused boarding. We do not accept those as a document. If they are travelling within the United Kingdom itself, the carrier may wish to satisfy itself that this is a valid document, because, as you touched on, the reason why we have stopped them being used is that some can be very easily abused and quite regularly were.

Where the rules apply around carriage, I would be happy to confirm the detail in writing. I am conscious that carriers listening to this would want to see, in black and white, the exact position for them. They are not crossing international borders, so they have not brought someone into the UK, but it would be an issue for them if someone was presenting a form of ID that we say is widely abused. Nigel is nodding and may be able to add a little more on the operational side of this.

Nigel Farminer: That is broadly correct. If they were travelling on a domestic journey, such as from Belfast to London, whether the carrier accepted an EU identity card as proof of identity for their purposes is up to the carrier. There are no immigration requirements imposed on that carrier, because it is a domestic journey.

If it was a journey from Dublin to London by air, while we do not recognise identity cards for the purposes of crossing the border, unless you are one of the protected cohorts, we do not currently operate a carriers liability regime on these journeys. If a carrier accepted an identity card for the purposes of travel to GB from the Republic, there would be no penalty on the carrier.

Q37 **Mr Goodwill:** So, in effect, there is a back door into GB through Northern Ireland for people travelling on these ID documents that we have told everybody are now not a valid travel document.

Nigel Farminer: I would not describe it as a back door and it is not unique to travel from the north. As I say, we do not impose carriers liability, for a whole range of reasons, on journeys from the Republic to the United Kingdom.

Q38 **Mr Goodwill:** But they still might refuse boarding with only the ID card,



at their discretion.

Nigel Farminer: At their discretion.

Q39 **Mr Goodwill:** Minister, could I ask you about exit checks? I know there was an issue where lots of Americans would come to London and go to visit their roots in the Republic of Ireland—the current President might wish to make that journey—and leave via Shannon. In that situation, we did not spot them leaving the country, so the exit check system was not robust. Has any progress been made in terms of sharing information with the Republic, so that we can know who is a visa overstayer and has not gone back to their home in Washington DC?

Kevin Foster: We exchange quite a range of data with the Republic. Of course, there is a slight difference because of EEA nationals and free movement rights in terms of the Republic. Nigel, perhaps you can give your thoughts on the operational exchange of data that we have with the Republic.

Nigel Farminer: We exchange a considerable range of data with the Republic around immigration and security. I am not sure that we would want to go into the detail in this particular forum of exactly what that data is, but what I would say is that we operate exit checks on all journeys leaving the United Kingdom to destinations outside of the common travel area.

Q40 **Mr Campbell:** Minister, I listened very intently to your earlier response to a question that was put about customs posts or physical checks on the border possibly coming about. You were very direct and robust about that being unlikely to happen, given the number of crossing points, and that it probably would need primary legislation. You elaborated on the numerous crossing points—a point that I have made on numerous occasions. I just wish Downing Street had appreciated and realised that three years ago. It may have saved us all an awful lot of trouble. There is no question in that; it is just really a commentary.

On the issue that has just been raised about someone coming into the Republic initially, if a person arrives in the Republic illegally, that is a matter for the Republic's authorities. But if they arrived there illegally and then were diagnosed with or felt that they had a very serious illness, and they decided, because of the different health regimes between Northern Ireland and the Republic, to travel across the border to relatives who they were aware of and avail of the free health service that exists in Northern Ireland—but they are there illegally, just as they were in the Republic—and we discovered their illegality, even if the Republic did not, what would happen in the context of a circumstance like that?

Kevin Foster: Deemed leave via the entry via Ireland order does not apply if you are in the Republic illegally. If you have broken Irish immigration rules, it does not grant you deemed leave as you come across, so you would be in breach of UK immigration law. If it is in circumstances of serious illness, the first part would depend on the rules



HOUSE OF COMMONS

set by the Northern Ireland Executive around the level of treatment that would be offered, unfunded in most cases across the UK. Emergency treatment where people are involved in accidents and suchlike is provided immediately. However, certain secondary healthcare services are not, partly for the reason you have touched on. Someone arriving in the country purely to take advantage of the NHS is not a position we want to be in.

In terms of what would then happen, a decision would then have to be taken around what their status is. Usually, if someone is in the country illegally, the default would be to seek to remove them to their own country of nationality. I do not want to speculate on what particular country your example might involve, but our normal position would be to look to remove them.

Q41 **Mr Campbell:** That is their country of origin rather than the Republic.

Kevin Foster: It would normally be the country of origin that we would look to remove someone to, for a number of reasons. Let us be upfront: if someone has been busy breaking immigration rules on the island of Ireland, it would not make a great deal of sense for us to seek to deport them from, say, your constituency to County Donegal. That would probably not be the most effective piece of immigration control work we had ever done, given the numerous opportunities to come straight back again.

We would normally look to remove someone, by default, to the country of origin. If an airport were to decline entry, someone may be taken back to their point of departure, but usually the removal point would be to their country of origin, because that is where they have right of abode and, if they are being removed, that is where they can be taken to.

Q42 **Mr Campbell:** So the emergency care would be provided, presumably.

Kevin Foster: Yes. I have to caveat all this with the raft of welfare rules. If, for the sake of argument, someone is heavily pregnant and about to give birth, we are not going to seek to remove them until that has happened.

Q43 **Mr Campbell:** I am more thinking more of the long-term consequences of that person's arrival in the UK—i.e. in Northern Ireland. They have moved to Northern Ireland, and been diagnosed and given emergency healthcare. Subsequent to that, the Government would seek to establish what their country of origin was and seek their departure to that country of origin.

Kevin Foster: Yes, with all the usual caveats you would expect me to put on about certain international obligations around individuals who are in the UK. Our normal position is that, if someone is breaking immigration rules—and, in your example, they had already been breaking immigration rules in the Republic, which indicates that the Republic would not be



interested in having them back—the default position would be that we would look to remove them to their country of origin.

Q44 **Mr Campbell:** But that would be our responsibility rather than the Republic's.

Kevin Foster: If they were on our territory, unless the Republic wanted, for some reason, to take them back. For the sake of argument, they might be planning to prosecute them for a criminal offence and would wish us to extradite, but normally we would look to remove someone to the country of origin, if they were found here illegally for immigration purposes. It would be somewhat strange to spend a lot of time removing someone from east Londonderry to County Donegal as a way of stopping them entering the UK illegally.

Mr Campbell: That is understood. Chair, I would like to raise a related matter under nationality.

Chair: The floor is yours, Mr Campbell. Feel free.

Q45 **Mr Campbell:** You will be aware of the Committee's interest, as well as mine and a whole series of other people's, in terms of the nationality of thousands of people in Northern Ireland, many of whom were born in the Irish Republic after 1949 and would describe themselves and would be regarded as UK citizens, UK taxpayers and UK residents, but are denied the right, on the same basis as others are, to get a UK passport. You will be aware that this issue has been raised on a number of occasions, and the Committee has taken an interest in this in the past few months. I am just wondering whether you have any up-to-date information to give us, say, from about the middle of October.

Kevin Foster: We received the Chair's letter in response to the Government's response. We will be responding very shortly to this. I would make the point that the rules we have been discussing today do not really matter, whether you are British or Irish, because of the CTA rules and the rights that those connote, but we will be responding shortly to the comments that the Committee made about the Government's reply.

Q46 **Mr Campbell:** Would you normally take six weeks or more to reply to a letter from a Select Committee Chair?

Kevin Foster: It depends on the detail of the issue concerned, and this is one where the Committee has made certain points.

Q47 **Mr Campbell:** This issue has been raised with the Department for weeks and months, and has been raised in the Chamber, in the Committee and in public for years. This is not an issue that comes as a surprise to the Department.

Kevin Foster: No, it does not, and I was pleased to attend a previous session of this Committee to outline what the Government's thoughts are around the issue of those born outside the UK territory in terms of the



HOUSE OF COMMONS

acquisition of citizenship, in the same way as I was happy to confirm the UK Government's very clear position around the application of our acquisition of citizenship laws in our sovereign territory in terms of Northern Ireland, where people are born to those who have permanent settlement in the UK or who hold British citizenship and, therefore, are automatically born British. That is where we are, but we have a response due to come. The Government are quite clear in their views on those subjects that I have articulated before and that I have been responding to here before this Committee.

Q48 Mr Campbell: On this occasion, are you going to forensically analyse the comments that have been made by the Committee through the Chair's letter and take on board the issues that have been raised on behalf of those many thousands of people?

Kevin Foster: We appreciate the strong views that some have, particularly in the three counties traditionally of Ulster that did not become part of Northern Ireland after partition. This is one that we had a full session on. I appreciate that the Committee has a strong view on this, as do some others. The UK Government and the Home Office have a system that processes tens of thousands of citizenship applications every year, and there is a very longstanding position around a difference, in terms of citizenship laws, between being born in the UK and being born anywhere else, including what were some of our overseas territories pre-independence.

Q49 Mr Campbell: That applied to people who were born outside the UK before 1949 and who can avail of this, but those born after cannot.

Kevin Foster: We would all say that, since 1949, there has been a very dramatic change in the amount of the world coloured pink in terms of what is or is not considered British territory. Of course, there has been a radical change in citizenship laws since then as well, in terms of people in the past being citizens of the UK and colonies, which clearly is now a concept that no longer exists.

In terms of the Government's position around nationality, I have outlined in some depth in a previous session the position that the Government have as to the processes we go through. I appreciate that there are some people who believe that birth in the Republic should count towards British citizenship in a way that birth in Northern Ireland or the United Kingdom does. That would be quite a novel concept, it is safe to say, in UK nationality law to apply in the south of Ireland a provision similar to that if you were born in the UK.

Q50 Mr Campbell: Minister, not to delay matters, do you accept that there has also been a dramatic change in the past 25 to 30 years in Northern Ireland, where there is a generally accepted thesis now, by successive Governments, that, if people in Northern Ireland wish to describe themselves as British or as Irish, they are free to do so? Here is a cadre of people who are not free to choose to do so. They are charged £1,300



to do so.

Kevin Foster: This is where we get into a separate issue, which goes to the challenge about why we apply our citizenship laws to Northern Ireland and why, for example, we do not have a caveat that birth in Northern Ireland is not automatically a grant of British citizenship. We certainly have a position on identity, which people are perfectly entitled to do. We would make the point that a British or Irish citizen can do pretty much everything in each other's country, including, of course, that Irish citizens can stand for this Parliament. There are no restrictions on that.

The identity side, which our colleagues in the NIO lead on, given they take the lead on the Belfast agreement and its commitments and implementation, is maybe different to the legal status of someone's citizenship. That has been debated on both sides of the argument at quite some length—i.e. those who wish to identify as Irish who automatically become British citizens at birth, due to citizenship law, and those born in the Republic of Ireland who now live in Northern Ireland and would wish to identify as solely British.

Q51 **Mr Campbell:** But you are going to reply to the Committee within the next couple of weeks.

Kevin Foster: Certainly before the House rises for Christmas, yes.

Chair: Minister, I have enormous sympathy with the points that Mr Campbell was making, for what, of itself, that is worth. Again, thank you for the evidence you have given. It really has been appreciated, as a Home Office Minister, how you have made yourself available to this Committee. When you gave evidence to us on the citizenship issue, I was seized by the fact that you were seized—and forget the geo-legal world—of the carve-out, the difference and the history of the island of Ireland as they relate to the British Isles.

The initial response to the Committee's report coming from your Department looked to me as if it had not crossed a Minister's desk and certainly had no sensitivity to or awareness of that shared, difficult, contested, problematic but nonetheless existing history. "Annoyance" is a word that is often used, but there was a very real sense of annoyance/disappointment that, when this new circumstance post membership of the EU allowed for a whole new way to look at these things, the Government or the Home Office seemed to be hellbent on putting the island of Ireland, as an entirety, notwithstanding the two jurisdictions, in that category of "the rest of the world".

That seemed to be a fundamental negation of the romantic, philosophical points that you had been talking about, which was an understanding of the shared history. In your reply, which we look forward to, to that letter of 28 October, can I urge you, with colleagues, to reflect on that? The initial response was a bit of a red rag to a bull, if I can put it that way.

Q52 **Claire Hanna:** Minister, I do appreciate your time. I know it is a busy



HOUSE OF COMMONS

day. I just want to clarify a point—and I am genuinely not muckraking here; I just want to understand—with regard to clause 9 that was adopted last night, the ability of the Home Office to deprive a dual national of their British citizenship. While it is rare, it is not vanishingly rare. I understand that this process was done over 100 times in 2017. I heard in the Chamber last night concerns that it is a specific risk to black and minority ethnic Britons, and I agree with that.

I know the Minister said that it was a very niche procedure, but also that the Home Office had said that citizenship is a privilege, not a right. Does this apply to dual citizens in Northern Ireland? Are people who hold both British and Irish citizenship at risk of this? Has there been any assessment done of the implication of this policy for people's right to be British or Irish, or both, under the Good Friday Agreement, which is a right, and not a privilege as the Home Office said?

Kevin Foster: I am struggling to think of an example where deprivation action has been considered on an Irish national.

Q53 **Claire Hanna:** But it is, like I say, a theory.

Kevin Foster: In terms of any use of the deprivation power, we would have to consider our commitments under the Belfast agreement in relation to the people of Northern Ireland. Again, it is an international treaty, not just a fundamental part of our constitution. Again, I am struggling to think of examples. In theory, you could potentially apply it to an Irish national living in GB. Let us be honest: given the type of incidents that we have had over the last 20 or 30 years involving individuals who were dual nationals who happened to live in Northern Ireland, it is not something that I have ever been conscious of.

Q54 **Claire Hanna:** I just wanted to understand the theory. Could you write to me or should I write to you, just to clarify?

Kevin Foster: I can write to you. If you are using deprivation action, it has to be in line with our other international obligations. The common one is statelessness, so you cannot make someone—

Q55 **Claire Hanna:** But they are dual nationals.

Kevin Foster: I am trying to think how you would apply that in the context of the Belfast agreement. That is what overrides here. Anything you do has to be in line with the Belfast agreement.

Chair: I am grateful to you for agreeing to write. It might be useful, if you are both happy, if that goes through the Committee, so we all have sight of it, rather than it breaking out into Member-to-Minister correspondence.

Kevin Foster: Certainly, I would assume that we write to the Chair.

Q56 **Stephen Farry:** I want to take you back to the common travel area, where we started. The CTA has largely grown up as a series of conventions and different pieces of legislation, most recently through the



immigration legislation. We now have the memorandum of understanding between the UK and Irish Governments. I am conscious that a lot of recent developments in the CTA have been underpinned by EU legislation, where there is a slightly uncertain situation as that is stripped away. I am just wondering what the Government's position is on the merits in the near future of putting the CTA on a formal treaty basis with the Irish Government as opposed to a series of mutual recognition of each other's domestic legislation.

Kevin Foster: We have to be aware of the fact that the Belfast agreement is a treaty and has very strong impacts, in terms of the CTA, as I touched on, on the land border, which is the most visible example of it but probably one of the most invisible borders in the world. You would have to know where it is to identify it. It has operated fairly well. It works on it being flexible and on good co-operation. Treaties are good, a bit like the Belfast agreement, at saying, "This is where we are. This is a permanent thing", and it requires a lot of effort to change and negotiate it. Effectively, it is a form of constitutional law and goes beyond the sort of legislation that I or even Parliament can decide to change on a weekday, without going through a particular process.

We have found that it has worked very well for decades. We have good co-operation. It works because it is flexible and because we can talk with Ireland. We have gone through Brexit. Both countries have gone through joining the then EEC. It survived 1949 and Ireland becoming a Republic. In very difficult times during the Troubles, it has operated and survived.

I would say that it works, so we need some persuasion as to why, given, of course, that the rights of Irish citizens in the UK are now in primary UK legislation.

Q57 **Stephen Farry:** It is a bigger debate for today, but just to say that the Northern Ireland Human Rights Commission and the Irish rights commission have flagged up that they are considering putting it on a more solid foundation than at present.

Kevin Foster: One of the reasons why we did section 2 of the Immigration and Social Security Co-operation (EU Withdrawal) Act was to put very clearly in UK primary legislation the status of Irish nationals, which goes beyond just people of Northern Ireland covered by the Belfast agreement. We wanted to put it in primary legislation in order to be absolutely clear where we stood on the matter of Irish citizens—not just people of Northern Ireland but anyone who holds an Irish passport and their position here in the UK.

Chair: I am told that we have an "and finally" from Mr Goodwill.

Q58 **Mr Goodwill:** On a more seasonal note, there has been a lot of discussion about the problems with the movement of goods, people and particular animals. Could I ask the Minister if he has any concerns about deliveries being made, for example, from Lapland, which might involve at-risk goods such as toys or, indeed, the use of animals such as



HOUSE OF COMMONS

reindeer? Could he reassure the children of Northern Ireland that there will be no restrictions placed on those deliveries, that they will go ahead as normal, and that no immigration delays will be placed upon the gentleman making them?

Chair: This is Mr Goodwill proving that he has some goodwill.

Kevin Foster: If you can remember, last year the JCVI took a particular decision around Father Christmas to apply for an immediate and very quick vaccination process. My understanding from talking with Border Force is that we have already been in touch. He has had his booster jab. We have compliance. I understand that the Republic is also looking forward to welcoming him.

Chair: I am sorry, but have we entered into a parallel universe?

Kevin Foster: Chair, I do not want to spoil Mr Goodwill's Christmas by implying in any way that what he is looking forward to receiving might not be coming.

Chair: He is on the naughty step.

Kevin Foster: I do not know what you are talking about, but we are satisfied that everything has been complied with. He has a magic key-style pass with all customs authorities around the world, which means that he has already notified us of everything that he is planning to bring. Helpfully, he has had your letter, so he has already let us know what he is going to be dropping off for you.

Mr Goodwill: And people can track those deliveries courtesy of RAF Fylingdales, which has an up-to-date tracking of those being made.

Kevin Foster: Yes. That is done to save any unwarranted scramble of QRA as he approaches the UK mainland.

Chair: Usually, Minister, I conclude these meetings by saying "order, order", but on this occasion I might just have to say "nurse".

Stephen Farry: Or "ho, ho, ho".

Chair: I think somebody needs some help, quite quickly—both of you. A Minister of the Crown and a Privy Councillor has now resorted to having a conversation about the legitimate movements of Father Christmas.

Mr Goodwill: Very important.

Claire Hanna: You have ruined what was potentially a very nice little—

Chair: Robert Goodwill has been on the naughty step since he was six, so this is a purely academic interest that he has. Minister, can I thank you very much indeed on behalf of the Committee for your time and, indeed, that of your office? Can we wish you compliments of the season, a very happy Christmas and a peaceful new year?

Thank you very much for your attendance this morning as always. Whether we always agree with what you tell us remains to be seen but,



HOUSE OF COMMONS

without being in any way—I do not know—whatever, the fact that you are very clearly all over the brief should give us all huge confidence that the issues are being dealt with sensibly. Thank you very much indeed. Without asking the nurse to come in and supervise Goodwill, I will say order, order.