

02 March 2021

Northern Ireland Affairs Committee Inquiry into Citizenship and Passport Processes in Northern Ireland

Dear Chair,

Thank you for the opportunity to provide evidence to the Northern Ireland Affairs Committee in relation to the Committee's inquiry into Citizenship and Passport Processes in Northern Ireland. The work of the Committee, including the critical role it plays in Parliamentary scrutiny, is of the utmost importance to the Government.

The Government is fully committed to the Belfast Agreement, the constitutional principles it upholds, and the rights it protects. This includes the birthright provision, which protects the rights 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 the right to hold both British and Irish citizenship.

To support the Committee's inquiry, the Secretary of State for Northern Ireland has asked that I write to you, with the support of the Minister for Future Borders and Immigration, Kevin Foster MP, to provide detailed evidence in response to the inquiry's terms of reference.

UKG response to the terms of reference

1. The interaction between UK nationality law and the Belfast (Good Friday) Agreement, and any engagement with the European Convention on Human Rights (ECHR).

The introductory remarks to the Committee's inquiry¹ state that the Belfast (Good Friday) Agreement:

“guarantees the right of the people of Northern Ireland to identify as British, Irish or both and to hold passports accordingly. However, a recent decision by the UK Upper Immigration Tribunal on a case in October 2019 confirmed that most people in Northern Ireland are automatically British citizens by birth under UK law, unless they renounce that status legally.”

The Government would respectfully submit that this misrepresents the terms of the Belfast Agreement, Article 1(vi) of which provides that the UK and Irish Governments:

1

committees.parliament.uk/committee/120/northern-ireland-affairs-committee/news/138003/barriers-to-citizenship-for-ni-residents-scrutinised

“recognise the birthright of all the people of Northern Ireland to identify themselves and be accepted as Irish or British, or both, as they may so choose, and accordingly confirm that their right to hold both British and Irish citizenship is accepted by both Governments and would not be affected by any future change in the status of Northern Ireland.”

The Committee will be aware of the parity between the definitions of a British citizen in the British Nationality Act 1981 and of “the people of Northern Ireland” in Annex 2 to the Belfast Agreement:

| Section 1(1) of the British Nationality Act 1981 | Definition of “the people of Northern Ireland” in Annex 2 to the Belfast Agreement |
|--|---|
| <p>Where a person is born in the UK, British citizenship will be acquired when, at the time of the person’s birth, at least one parent is either a British citizen or settled in the UK.</p> <p>“Settled” is defined at section 50(2) as a person who is ordinarily resident in the UK without being subject under immigration laws to any restriction on the period for which they may remain.</p> <p>By virtue of the longstanding Common Travel Area (CTA) arrangements which are now formalised in section 2 of the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020, Irish citizens (with a few limited exceptions) do not require leave to enter or remain in the UK and thereby have no restrictions on the time for which they may remain.</p> | <p>“persons born in Northern Ireland and having, at the time of their birth, at least one parent who is a British citizen, an Irish citizen or is otherwise entitled to reside in Northern Ireland without any restriction on their period of residence.”</p> |

The Belfast Agreement does not make any statement as to whether the citizenship of a person of Northern Ireland, as defined in Annex 2, either must or should align with their choice of identity, although the UK’s nationality legislation allows for the renunciation of British citizenship in certain circumstances², which – although the Government would not encourage them to do so – a person of Northern Ireland who holds Irish citizenship could avail themselves of should they want to align their citizenship with their choice of identity.

The Government’s position, therefore, is that UK nationality legislation – primarily the British Nationality Act 1981, which came into force on 1 January 1983, determines the statutory conditions which are to be met regarding the acquisition of British citizenship and does not prevent any person from holding a second nationality:

- is consistent with the Belfast Agreement right held by the people of Northern Ireland, as defined, to hold both British and Irish citizenship; and

² Section 12 of the British Nationality Act 1981 allows any British citizen of full age and capacity to make a declaration of renunciation. The only reasons for not registering such a renunciation are restricted to circumstances where the individual does not hold (or will not attain) another nationality or citizenship – so as to avoid statelessness – and during war-time.

- does not infringe on their birthright to identify themselves and be accepted as British or Irish, or both, as they may so choose.

As the Committee has noted, the Upper Tribunal (Immigration and Asylum Chamber) endorsed this position in October 2019³.

With respect to the potential engagement of the ECHR, the Government does not set out a view at this time as to whether the birthright provision is an element of private life and therefore protected by Article 8 of the ECHR. However, even if it is, the Government does not accept that a person of Northern Ireland's acquisition of British citizenship at birth interferes with their birthright to identify solely as Irish if they so choose or that it breaches the human rights of any person of Northern Ireland. In addition, the Upper Tribunal, in its October 2019 determination, stated (*obiter*):

- “the present system enshrined in the [British Nationality Act 1981] represents a proportionate way of achieving the legitimate public end, not only of avoiding statelessness but also of maintaining a clear and coherent system of nationality law” (paragraph 54);
- “it is not disproportionate in Article 8 terms for [a person of Northern Ireland] nevertheless to be required to give notice of revocation, if she wishes only to be a citizen of Ireland” (paragraph 55);
- “There is, we are informed, a fee of £200 to be paid. We have not, however, been told that that represents a material barrier to her use of section 12 or that it is otherwise disproportionate in Article 8 terms, for the Secretary of State to levy this sum” (paragraph 56);
- “Accordingly, since section 1(1) of the [British Nationality Act 1981] does not disproportionately interfere with Mrs De Souza's Article 8 rights, it is not possible to invoke the interpretative principles contained in section 3 of the Human Rights Act 1998, in construing section 1(1) of the [British Nationality Act 1981]” (paragraph 57).

Therefore, the Government is of the firm view that UK nationality law is consistent with its obligations under the Belfast Agreement obligations and the ECHR.

2. Whether the Government should consider implementing changes to citizenship rules and requirements to better incorporate the birthright commitments of the Agreement into UK law.

The Government considers that no changes to the British Nationality Act 1981 are required. UK law does not prevent a person of Northern Ireland, who as a matter of law may be a British citizen, an Irish citizen, or a dual British and Irish citizen, from identifying as British, Irish or both, as they may so choose.

In enacting the Northern Ireland Act 1998 (“NIA”), Parliament gave close consideration to which elements of the British-Irish Agreement required statutory force and gave effect in domestic law, for example, to the scheme of devolved governance and commitments to there being no change to the constitutional position without the consent of the people of Northern Ireland. Parliament did not consider it necessary to make any provision for the identity birthright (or the citizenship right) in Article 1(vi) and the NIA does not contain any provision amending or repealing the terms of the British Nationality Act 1981. There have been no material changes to UK nationality law since the Belfast Agreement was signed in 1998 which might warrant reconsideration.

³ De Souza (Good Friday Agreement: nationality) United States of America [2019] UKUT 355 (IAC) (14 October 2019), www.bailii.org/uk/cases/UKUT/IAC/2019/355.html

The Belfast Agreement does not mandate, or even posit the possibility of, any changes to UK nationality law so that the acquisition of British citizenship for the people of Northern Ireland is based on choice of identity. Any desire to read the British-Irish Agreement in such a way is contrary to the agreed text and any alternative approach – which would see the people of Northern Ireland treated differently for nationality purposes from people born in Great Britain – would conflict with the core element of the British-Irish Agreement which recognises the constitutional status of Northern Ireland as part of the UK.

In addition, the Upper Tribunal made a number of important observations which it is helpful to set out here:

- “To make citizenship by birth in the United Kingdom (or any part of it) dependent on consent raises a host of difficult issues” (paragraph 36);
- “Amongst these is the point in time at which consent would be required. It cannot rationally be contended that an infant, for example, would be expected to give consent. But, even if it were assumed that consent becomes a prerequisite only once a person had achieved the age of majority, there remain questions as to whether, and, if so, how, such a person would be expected to signify consent. A person's nationality cannot depend in law on an undisclosed state of mind, which could change from time to time, depending on how he or she felt” (paragraph 37);
- “If the parties to the multi-party agreement and the governments of Ireland and the United Kingdom had intended the concept of self-identification necessarily to include a person's ability to reject his or her Irish or British citizenship, it is inconceivable that the provisions would not have dealt with this expressly. By the same token, it is equally inconceivable that the far-reaching consequences for British nationality law would not have been addressed by the [Northern Ireland Act 1998]” (paragraph 39);
- “if Article 1(iv)/(vi) [of the Belfast Agreement] needs to be construed as preventing the United Kingdom from conferring British citizenship on a person born in Northern Ireland, at the point of birth, the inescapable logic is that Ireland cannot confer Irish citizenship on such a person at that point either. The result is that a person born in Northern Ireland is born stateless. That would be a breach of both countries' international obligations to prevent statelessness. It is not conceivable that the two governments intended such a result” (paragraph 40).

Instead, the existing statutory mechanisms and related administrative processes allow a person of Northern Ireland to align their citizenship with their choice to identify solely as Irish if they wish to do so. The birthright provision allows for choice of identity, but this does not amount to a right to choose one's citizenship in law without any requirement to take administrative steps. The need for legal certainty and administrative formality on matters of such significance would, without more, confound such a proposition.

The Government would also draw the Committee's attention to the long-standing Common Travel Area (CTA) arrangements between Ireland and the UK⁴ and the interaction with the Belfast Agreement. They enable British and Irish citizens to move freely and reside in either jurisdiction without restriction (i.e. no requirement for special permission to do so) and provide for associated rights and entitlements in both jurisdictions. These include access to employment, healthcare, education, social benefits, as well as the right to vote in certain elections. The Government's commitment to protecting these rights was reaffirmed by the May 2019 CTA Memorandum of Understanding, signed by the UK Government and the Government of Ireland. Section 2 of the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 has since formalised the long-standing position that Irish citizens (with a few limited exceptions) do not require leave to enter or remain in the UK and thereby have no restrictions on the time for which they may remain. The preservation of these reciprocal

⁴ Also the Crown Dependencies, but this is not relevant to the Committee's inquiry.

CTA rights facilitates the unique birthright provision in the Belfast Agreement by ensuring that the people of Northern Ireland are not required to assert and choose a specific identity in order to access public services and other entitlements.

This position was strengthened on 24 August 2020, when the Home Office changed the Immigration Rules to enable family members of the people of Northern Ireland to apply for immigration status, under the EU Settlement Scheme, on broadly the same terms as family members of Irish citizens (delivering the commitment set out in the 'New Decade, New Approach' agreement which restored the Northern Ireland Executive in January 2020). This policy applies regardless of whether the person of Northern Ireland identifies as British, Irish, or both, and regardless of whether they hold British, Irish or dual British and Irish citizenship.

Therefore, the Government's view is that UK nationality law, as it stands, already fully respects the important identity and citizenship rights which are recognised in the Belfast Agreement and as such considers that legislative changes are neither required nor appropriate.

3. Whether the Government should allow Northern Ireland residents born in the Republic of Ireland to apply for a British passport given that Northern Ireland residents can currently apply for an Irish passport.

The Government notes both of the following statements made by the Committee on this matter:

1. the inquiry's introductory remarks: "People born in the Republic of Ireland, who have lived most of their lives in Northern Ireland, have to undertake a naturalisation process to become a British citizen, even if they identify as British. This is both complex and, at £1,330, costly. Meanwhile, most people born in Northern Ireland are entitled to claim Irish citizenship and can apply for an Irish passport relatively easily. The Committee will consider whether the UK Government should ease barriers to Republic of Ireland-born applicants in Northern Ireland for British citizenship"; and
2. the chair's comment that: "Our inquiry will also examine whether the process for Northern Ireland residents born in the Republic of Ireland to gain British citizenship should be simplified, given the ease with which people of Northern Ireland can apply for Irish citizenship. Given the island's invisible border, it would be a shame if, through the chance of birthplace, people are denied the British citizenship with which they identify."

Under the terms of the Belfast Agreement, the people of Northern Ireland have the right to hold both British and Irish citizenship which means that the Government of Ireland is obliged to offer them citizenship and passports, should they wish to take up their Irish citizenship.

As people born in Ireland are excluded from the Belfast Agreement's definition of "the people of Northern Ireland", the UK is not obliged to offer British citizenship to this cohort of people on preferential terms.

Notwithstanding this, it may be helpful to note that Irish citizens living in the UK have two main routes by which they may become a British citizen if they wish to do so which, reflecting the close and historic ties between the UK and Ireland, are advantageous over the routes available to other foreign nationals.

- Irish citizens who hold status as a British subject (which some people may have chosen to retain after the British Nationality Act 1948 came into force) can register as

- a British citizen after they have resided in the UK for five years and they are exempt from the requirements relating to knowledge of language and life in the UK;
- Irish citizens can naturalise as a British citizen once they have resided in the UK for the requisite period. This is usually five years, but this is reduced to three years if they are married to, or the civil partner of, a British citizen.
 - As set out earlier in this letter, Irish citizens are considered settled in the UK, which means their residential qualifying period is 12 months shorter than for other foreign nationals.
 - While Irish citizens are required to pass the Life in the UK test, they are automatically accepted as meeting language requirements.

Once a person has completed the requisite process to become a British citizen, they are able to apply for a UK passport.

The Government considers that the current provisions of the British Nationality Act 1981 relating to citizenship by descent (for people born outside the UK and Overseas Territories) and through registration and naturalisation remain appropriate.

Thank you to the Committee for its work on this important issue. We are happy to discuss further if that would be helpful.

Yours sincerely



**ROBIN WALKER MP
MINISTER OF STATE FOR
NORTHERN IRELAND**



**KEVIN FOSTER MP
MINISTER FOR FUTURE BORDERS
AND IMMIGRATION
HOME OFFICE**

March 2021