

Rights of Irish Citizens in the UK after Brexit

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Current arrangements

- Irish citizens in the UK not 'foreigners'
- Full right to equal treatment in respect of almost all matters
- Common Travel Area
- Neither Ireland nor UK part of Schengen
→ determine their own visa policy

Irish Citizens in the UK

- All citizens in NI entitled to dual citizenship, 2011 census → 25% identify as Irish only (400k plus)
- NB those citizens might not want to take up British Nationality
- + Irish citizens in mainland UK

Comparing Irish/UK and EU regimes

Irish in UK

- Right to vote in all elections
- Right to move (proof of identity might be required)
- No need for leave to reside
- Full equal treatment (including welfare benefits)



EU-26 nat. in UK pre-Brexit

- Right to vote in local and EP elections
- Right to move subject to id card/passport
- No need for leave to stay (although economic activity/self suff. required)
- Limited equal treatment (not for ec. inactive)

EU-26 nationals in UK post Brexit

- Rights depend upon length of stay pre-Brexit
- **All** EU-26 nationals in UK will be transitioned to British immigration status (including indefinite leave to remain) and **all** will have to apply for their status; family reunification immediately affected; limit to absences (?)
- After transition new EU-26 nationals become TCNs → subject to need of UK + sector by sector approach + minimum income + equal treatment etc



And what about Irish citizens?

- Unthinkable for Irish citizens in NI to have to apply for leave to stay
- Could current agreements be continued?
Yes if NOT reciprocal (UK can do whatever it wants in its territory) but issue more complicated if arrangements to be reciprocal
- In any event UK should continue special treatment in NI

Special treatment of Irish citizens

- Voting rights
- Right to enter without visa / id card (NB protocol 20)
- Not a problem (Ireland can also allow UK citizen to vote for EP)
- No legal problem
 - Data protection
 - Backdoor to entry?
 - Prevents Ireland from entering Schengen

Right to reside and Equal Treatment

- Right to reside and equal treatment for ec. active
- **Right to reside and Equal Treatment for not ec. active**
- Conferred also to EU nationals – not a problem
- Conferred only to those who meet conditions → Can Ireland treat non EU citiz. **better** than EU citiz?

The problem of equal treatment

- *Gottardo* → Italy had to extend benefits of bilateral agreement with Switzerland to EU citiz → budgetary considerations cannot be used as justification for not extending benefits (also Saint Gobain)
- Non-ec active EU citizens → if they fall outside scope of EU law (*Dano*) then no problem, otherwise *Gottardo* applies
- Students and work-seekers → problem

Conclusions

- Most rights can be preserved as they are
- Borders/CTA can continue to operate as long as Ireland is not in Schengen
- Issue of equal treatment of Irish citizen in UK:
 - Treaty level /Withdrawal agr; or
 - UK unilaterally accords pref. treat.