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NOTE

From: General Secretariat of the Council

To: Delegations

Subject: Common Travel Area
Information Note from Ireland to the Article 50 Working Party

Delegations will find in the ANNEX the Irish information note on "Common Travel Area".

Common Travel Area

Information Note from Ireland to the Article 50 Working Party

Introduction

- 1.1 The Common Travel Area (CTA) is a long-standing arrangement between Ireland and the United Kingdom which enables Irish and UK citizens to travel and reside in either jurisdiction without restriction and provides for associated rights and entitlements in both jurisdictions. The Common Travel Area predates membership of the EU by both Ireland and the UK and is not dependent on it.
- 1.2 In part reflecting Ireland's and the UK's common law system, many of the arrangements and rights relating to the CTA are implicit, deriving from the status of Irish citizens in the UK and UK citizens in Ireland, and therefore have not been the subject of specific legislation or of an international agreement.
- 1.3 The CTA is recognised in EU law by Protocol No. 20 to the Treaty on European Union and Treaty on the Functioning of the EU. This Protocol 20 to the TEU and TFEU provides that "*The United Kingdom and Ireland may continue to make arrangements between themselves relating to the movement of persons between their territories ('the Common Travel Area')...*"

1.4 These arrangements exist alongside and complement the position of Northern Ireland. The Good Friday Agreement¹ recognises “*the birthright of all the people of Northern Ireland to identify themselves and be accepted as Irish or British, or both, as they may so choose, 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*”. CTA arrangements have therefore been essential in enabling people of Irish identity not to have to assert British citizenship rights in Northern Ireland in order, for instance, to establish the right to permanent residency in the place they were born or, following Brexit, the right to live and work there at all.

Origins of the Common Travel Area

- 2.1 Between 1801 and 1922, Ireland was part of the United Kingdom of Great Britain and Ireland. Notwithstanding the establishment of the Irish State in 1922, from a UK perspective, Irish citizens continued to be regarded as British subjects. As such, they had the same rights in the UK as UK citizens. Historically, therefore, following Irish independence Irish citizens continued to have a particular status in the UK, and it is this which has led to many of the CTA arrangements/rights being implicit, deriving from this status rather than from specific legislation or agreement.
- 2.2 At the time of independence, the Irish legal perspective on citizenship was different to that of the UK, with Irish born citizens no longer regarded as being British subjects. As a result, while Ireland shared the wish to maintain the Common Travel Area arrangements, the treatment of UK citizens in Ireland did not automatically mirror the UK arrangements for Irish citizens in the UK.

¹ Please see also Information Note on the Good Friday Agreement and the Peace Process from Ireland to the Article 50 Working Group.

- 2.3 Although the 1922 definition of an Irish citizen did not encompass most UK citizens, UK citizens in Ireland were not treated as ‘aliens’ under Irish law. In practice they had a special status and for most matters were treated the same as Irish citizens with effect from the establishment of the Irish State. It was only with the introduction of the Irish Nationality and Citizenship Act 1935 that provision was made to allow for the granting of statutory reciprocity. This was eventually provided for by the Citizens of the United Kingdom and Colonies (Irish Citizenship Rights) Order 1949, which provided that UK citizens would enjoy in Ireland similar rights and privileges to those enjoyed by Irish citizens in the UK.
- 2.4 This general approach of reciprocity was facilitated by both states having the same common law legal tradition. All UK legislation in force in Ireland in 1922 continued in force post-independence and remains in force (to the extent that it is not inconsistent with the Constitution) unless it has been specifically repealed at some stage by the Irish parliament.
- 2.5 In 1948 Ireland declared itself a republic and revoked any role for the British monarch. Ireland was then regarded under British law as having left the Commonwealth. However, wishing to maintain the Common Travel Area arrangements, the British Parliament enacted the Ireland Act 1949. Section 2 (1) of that Act provides

“It is hereby declared that, notwithstanding that the Republic of Ireland is not part of His Majesty’s dominions, the Republic of Ireland is not a foreign country for the purposes of any law in force in any part of the United Kingdom ...”

The status of Irish nationals was maintained under the Immigration Act 1971 and the British Nationality Act 1981.

Common Travel Area Arrangements

- 3.1 The basic principle guiding the operation of the CTA is that the Irish and UK Governments treat each other's citizens in a similar manner to enable them to freely move between the two jurisdictions, and thereby reside and work in either jurisdiction, without the need for special permission. Associated rights, as well as ongoing cooperation between Irish and UK authorities, facilitate and support these arrangements. These arrangements have been in place since Irish independence, with the only period of interruption arising during and immediately after the Second World War.
- 3.2 The CTA includes arrangements for Irish and UK nationals to travel 'passport free' between the two jurisdictions. As part of this, the CTA operates, to some degree, similar to the Schengen zone, where immigration authorities in both jurisdictions cooperate to protect the borders of the CTA and prevent its abuse. Information is also shared on visa applicants, asylum seekers, citizenship applications and police watch lists. There is also a joint British Irish Visa scheme for certain countries and joint operations to target abuses of the CTA.
- 3.3 The arrangement, in line with the status of Irish and UK nationals in each other's jurisdictions, also provides, broadly reciprocal rights on the freedom to reside, work and access services, including social security, health and education. Both countries generally provide for recognition of the other's professional and academic qualifications.
- 3.4 Various reciprocal bilateral arrangements governing access to social welfare benefits have been in place between Ireland and the UK. These arrangements are based on the premise of equal treatment of nationals of both States. The rules in place have been designed to protect people moving between both States and to minimise any disadvantage.

- 3.5 The right to access the health systems in both the UK and Ireland depends on residence. There are no restrictions on residence of UK and Irish nationals in the other jurisdiction. A UK citizen resident in Ireland has access to public health services on a similar basis to an Irish citizen resident in Ireland. Reciprocal arrangements in respect of Irish citizens apply in the UK. There is extensive co-operation on a number of all-island and cross-border health care services due to the mobility of people on the island, the size of populations and the unique geography. This encompasses both emergency and non-emergency care, including planned treatment and emergency transfers on the island of Ireland and between Ireland and Great Britain. This may involve health professionals working in the other jurisdiction. There are also other arrangements for health co-operation.
- 3.6 Neither Ireland nor the UK is in the Schengen area. After the UK's withdrawal from the EU, Ireland intends to remain outside of the Schengen area and will continue to fully uphold its obligations as an EU Member State. Protocols 19, 20 and 21 of the EU Treaties will continue to apply.
- 3.7 Analysis by the Irish authorities has not identified any legal barrier to the arrangements as outlined above being maintained in a manner fully consistent with Ireland's EU obligations.
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