

Institution: University of Leicester		
Unit of Assessment: 18		
Title of case study: Post-Brexit recognition for the British-Irish common travel area and for Irish citizens in UK immigration law		
Period when the underpinning research was undertaken: March 2016–Present		
Details of staff conducting the underpinning research from the submitting unit:		
Name(s): Bernard Ryan	Role(s) (e.g. job title): Professor of Migration Law	Period(s) employed by submitting HEI: 01/09/2013–Present
Period when the claimed impact occurred: December 2016–December 2020		
Is this case study continued from a case study submitted in 2014? N		
1. Summary of the impact <p>Ryan's research shaped post-Brexit policy on the 'common travel area', i.e., the special immigration arrangements between the United Kingdom and Ireland. Ryan's research contributed significantly to the historically unprecedented, formal, public agreement for the special rights of British and Irish citizens concerning work, healthcare, social housing, education and voting. Firstly, his research influenced policy-makers' support for a public agreement relating to the common travel area, and thereby contributed to a formal memorandum of understanding between the two Governments in May 2019. Secondly, his research and advocacy to law-makers led to recognition for Irish citizens in post-Brexit immigration law through Section 2 of the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020. Thirdly, his evidence to the House of Commons public bill committee, which considered that legislation in 2019 and 2020, led directly to ministerial commitments concerning family sponsorship by Irish citizens, and Government policy relating to the deportation of Irish citizens.</p>		
2. Underpinning research <p>Ryan first researched British-Irish immigration arrangements while at the University of Kent, leading to the publication of 'The Common Travel Area between Britain and Ireland' (2001) 64 <i>Modern Law Review</i> 831-854. At the University of Leicester, he analysed equivalent questions that would have arisen in the event of Scottish independence [R1]. Because of his expertise, ahead of the June 2016 referendum on EU membership, he was commissioned by the Immigration Law Practitioners' Association to produce a briefing paper on the implications of a potential Brexit for the common travel area (May 2016) [R2]. After the June 2016 referendum, he continued that research in preparing written evidence on Brexit and the common travel area, which he submitted to a House of Lords inquiry on <i>Brexit: UK-Irish Relations</i> in September 2016 [R3].</p> <p>Ryan's research conducted in 2016 showed that it would be feasible, both legally and as a matter of policy, for British-Irish bilateral arrangements to continue if the free movement of persons regime ceased to apply to the United Kingdom after Brexit [R2, R3]. It also addressed the measures that should be taken to strengthen the common travel area arrangements in this scenario. He called for two steps in particular: a comprehensive agreement concerning the common travel area between the two states, covering immigration control and the rights of individuals [R2, R3]; and legislation "to resolve the position of Irish citizens within UK immigration law and nationality law" [R2, p. 6; R3]. However, these recommendations were at odds with Government policy at that time. The British and Irish Governments had never previously published a comprehensive agreement relating to the common travel area. Regarding the position of Irish citizens, the Government's post-referendum position was that existing legislation was sufficient: HM Government, <i>Northern Ireland and Ireland: Position Paper</i>, 16</p>		

August 2017, para 22, and letter from DExEU minister Lord Callanan, 6 December 2017; reference DEP2017-0771.

Recognition for Irish citizens in immigration law was subsequently included in the Government's two Immigration and Social Security Co-ordination (EU Withdrawal) Bills, published in December 2018 and March 2020, the latter of which led to the 2020 Act. Ryan was invited to give written and oral evidence to the House of Commons Public Bill committee considering each version of the Bill. His February 2019 written evidence addressed the position of Irish citizens and of other EEA residents [R4], and that of June 2020 addressed Irish citizens exclusively and at greater length [R5]. In preparing the 2019 and 2020 written evidence, Ryan developed the legal and historical aspects of his analysis of the inadequate recognition of Irish citizens in immigration law [R6]. Ryan's research in 2019 and 2020 fully elaborated the argument that the policy of allowing Irish citizens to freely enter and reside, separately from EU free movement rights, lacked a satisfactory basis in immigration law. It explained fully why both the legally and historically existing legal provision for Irish citizens lacked comprehensiveness. It also showed that this left uncertainty concerning the acquisition of British citizenship by Irish citizens and their children born in the United Kingdom. The conclusion which followed from his research was that the cessation of the free movement of persons regime in the United Kingdom made it necessary and timely to make comprehensive and transparent provision for Irish citizens in immigration law.

3. References to the research

R1. Bernard Ryan, 'At the Borders of Sovereignty: Nationality and Immigration Policy in an Independent Scotland', (2014) 28 *Journal of Immigration Asylum and Nationality Law* 146-164. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2450833

R2. Bernard Ryan, 'The implications of UK withdrawal from the EU for immigration policy and nationality law: Irish aspects', ILPA briefing paper, May 2016. <https://ilpa.org.uk/wp-content/uploads/resources/32247/16.06.00.pdf>

R3. Bernard Ryan, written evidence to the House of Lords EU Select Committee inquiry on *Brexit: UK-Irish Relations*, September 2016. <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/european-union-committee/brexit-ukirish-relations/written/39488.pdf>

R4. Bernard Ryan, 'Guarantees of rights of entry and residence after Brexit', written evidence to the House of Commons committee on the Immigration and Social Security (Co-ordination) Bill 2019 (January 2019). <https://publications.parliament.uk/pa/cm201719/cmpublic/Immigration/memo/ISSB05.pdf>

R5. Bernard Ryan, 'Recognising Irish citizens in immigration law as free movement rights are withdrawn', written evidence to the House of Commons committee on the Immigration and Social Security (Co-ordination) Bill 2020 (June 2020). <https://publications.parliament.uk/pa/cm5801/cmpublic/Immigration/memo/IB07.pdf>

R6. Bernard Ryan, 'Recognition after All: Irish Citizens in post-Brexit Immigration Law' (2020) 34 *Journal of Immigration, Asylum and Nationality Law* 284-305.

4. Details of the impact

Ryan's research concerning the British-Irish common travel area [R2–R6] substantially influenced the recognition eventually given to those arrangements. In the words of the legal director of the Immigration Law Practitioners' Association, who commissioned the initial research in 2016 [R2], "Professor Ryan's recommendations ... set the agenda for the past nearly four years" (May 2020) [E2]. The agenda-setting impact of Ryan's research can be seen in a memorandum of understanding relating to the common travel area issued in 2019, and in express recognition for Irish citizens in immigration legislation.

Memorandum of Understanding on the common travel area (2019)

Ryan's call for a common travel area agreement [R2, R3] in 2016 influenced policy-makers. Both papers were cited in a House of Lords report on *Brexit: UK-Irish Relations*, which recommended a bilateral agreement concerning the common travel area (December 2016) [E5]. The two papers were then quoted extensively in a House of Commons research paper concerning the common travel area in June 2017 [E6].

Ahead of the United Kingdom's expected departure from the European Union, the two Governments published a 'Memorandum of Understanding' (MoU) concerning the common travel area in May 2019. The MoU reaffirmed the Governments' commitment to the common travel area and to the special rights of British and Irish citizens in the other state. It covered immigration rights concerning entry and residence, and rights of equal treatment concerning work, health care, social housing, education and voting. Such a formal, public agreement relating to the common travel area was historically unprecedented. The significance of Ryan's research was that he was the first contributor to public policy debates to identify the desirability and timeliness of such an agreement in the context of Brexit.

Recognition for Irish citizens in immigration legislation (2020)

Ryan's research, and his related engagement with policy-makers, contributed directly to the achievement of recognition for Irish citizens within immigration legislation. As the former legal director of the Immigration Law Practitioners' Association put it: "Ryan's recommendation that the Immigration Act 1971 be amended ... resulted in" the clause on Irish citizens in the Immigration and Social Security Co-ordination (EU Withdrawal) Bills [E1], which became section two of the 2020 Act.

Ryan's 2016 research had recommended that the Immigration Act 1971 be amended to exempt Irish citizens, while permitting individuals to be excluded and deported on public policy grounds [R2, R3]. That recommendation was summarised in the December 2016 House of Lords report, which called on the Government "to confirm ... the rights of Irish citizens under domestic law" [E5]. The June 2017 House of Commons library briefing paper also referred to his analysis, stating that "Professor Bernard Ryan ... argues that new legislation will be required to protect Irish nationals' status in the UK post-Brexit" [E6]. His call for legislation was reported in three national UK newspapers in 2016- 2017 [E4, E7, E8].

Between September 2017 and February 2018, Ryan was "instrumental" to a Traveller Movement lobbying campaign concerning the post-Brexit status and rights of Irish citizens [E3]. His contribution initially saw him advise on the Traveller Movement report *Brexit and Irish citizens in the UK* (December 2017) [E9], and he spoke at the report's launch to parliamentarians on the 4th December 2017. The publication and launch of the report were followed by parliamentary questions concerning the legal position of Irish citizens by Andrew Slaughter MP (5 December 2017), Lord Alton (5 December 2017) and Lord Hylton (11 December 2017). Finally, on 6 February 2018, Ryan was invited to a meeting between the contributors to the report, Lord Callanan (DExEU minister) and civil servants, to discuss the future immigration position of Irish citizens [E3].

As a result of Ryan's research, and his involvement in Traveller Movement advocacy, the Home Office official responsible for the common travel area discussed Government plans with him in 2019 and 2020 [E1]. In her words, the purpose of this "engagement" was to "test and shape the development of Government policy" concerning Irish citizens [E1]. These discussions with Ryan took place both by email and at meetings at the Home Office on 2 November 2018 and 29 January 2019.

The Government proposals concerning Irish citizens appeared as clause two of the Immigration and Social Security Co-ordination (EU Withdrawal) Bills, published in December 2018 and March 2020. The terms of clause two followed Ryan's 2016 recommendation for an amendment of the Immigration Act 1971 [R2, R3]. The two House of Commons public bill

committees which considered the Bills invited Ryan to give written evidence [R4, R5] and oral evidence [E10, E11], primarily concerning clause two. His support for the clause was treated as authoritative by the Immigration Minister in the 2019 committee debates: “Without the clause, as Professor Ryan explained in evidence ... when freedom of movement ends, Irish citizens will need to seek permission to enter the UK when they arrive from outside the common travel area” (Caroline Nokes MP, committee debate, 26 February 2019). Equally, in 2020, the shadow Immigration Minister cited Ryan’s evidence in support of clause two (Holly Lynch MP, committee debate, 11 June 2020).

The Immigration and Social Security Co-ordination (EU Withdrawal) Act was passed into law in November 2020, and its key provisions, including Section 2 concerning Irish citizens, came into force at 11pm on 31 December 2020. Overall, Ryan’s research and lobbying contributed substantively to the policy-making process that led to Section 2 of the 2020 Act. To quote from the Traveller Movement’s letter of support “We are delighted with the outcome of our lobbying campaign in 2017 and 2018 and are grateful to Professor Ryan for having contributed his expertise and energy to it. The campaign undoubtedly put the immigration status of Irish citizens on the political map, and made legislation to address that unavoidable” [E3].

Ministerial commitments concerning Irish citizens (2019-2020)

In addition to contributing to the recognition for Irish citizens *within* immigration legislation, Ryan’s evidence to the House of Commons public bill committees in 2019-2020 led to further ministerial commitments concerning Irish citizens in Parliament. His written evidence in 2019-2020 [R4, R5] identified three immigration law issues concerning Irish citizens which were not addressed by the planned legislation: (1) equality with British citizens regarding family sponsorship; (2) the continuation of Government policy that the deportation of Irish citizens would only be sought in exceptional cases; and (3) exemption from exclusion and deportation for Irish citizens from Northern Ireland.

In the 2019 House of Commons committee debates, Stuart MacDonald MP raised all three points, citing Ryan’s evidence on (2) and (3). That led the immigration minister, Caroline Nokes MP, to commitments on all three points (committee stage, 26 February 2019). The commitments concerning points (1) and (2) were repeated by the immigration minister in the 2020 committee debates (Keven Foster MP, 11 June 2020).

Reach and significance

Taken together, the Memorandum of Understanding (MoU) and Section 2 of the 2020 Act are of practical relevance at two levels. Firstly, they benefit British or Irish citizens who are *resident* in the other state, including those who become so in the future. In 2016, there were 103,113 persons who are British citizens and not also Irish citizens resident in the Republic of Ireland (2016 census, Tables EY020 and EY024), and in 2020, there were an estimated 320,000 UK residents who relied upon Irish citizenship (Office for National Statistics, *Population of the United Kingdom by Country of Birth and Nationality*, May 2020).

Secondly, the MoU and section two guarantee continued rights of *travel* to the United Kingdom by Irish citizens, and to the Republic of Ireland by British citizens. It is estimated that in 2017 individuals crossed the Irish land border 110 million times, and that there were 15 million journeys between the Republic of Ireland and Great Britain (HM Government, *Additional Data Paper: Common Travel Area Data and Statistics*, August 2017). It is likely that most of these crossings/ journeys were by British or Irish citizens. While data are not available for arrivals from elsewhere - into the United Kingdom by Irish citizens, and into the Republic of Ireland by British citizens - that too is likely to be substantial in volume and is also protected by these recent policy and legal developments.

5. Sources to corroborate the impact

E1. Letter of support from Rebecca Nugent (Northern Ireland Office), previously the Home Office official responsible for the common travel area, 10 April 2020.

E2. Letter of support by Alison Harvey (barrister), previously legal director of Immigration Law Practitioners' Association, 8 May 2020.

E3. Letter of support from the Traveller Movement, 9 December 2020.

E4. 'Law may be needed to preserve the rights of Irish in UK after Brexit' *Guardian*, 19 October 2016: <https://www.theguardian.com/politics/2016/oct/19/law-may-be-needed-preserve-rights-irish-uk-after-brexite>.

E5. Report of the House of Lords EU Select Committee inquiry on *Brexit: UK-Irish Relations*: <https://publications.parliament.uk/pa/ld201617/ldselect/lducom/76/76.pdf>. Ryan's evidence quoted extensively at pp 23-24, 29, 32-33.

E6. House of Commons library, *The Common Travel Area and the special status of Irish nationals in UK law* (June 2017); references to Ryan's research at pp 3, 8, 9, 16, 18, 19: <http://webarchive.parliament.uk/20170613115830/http://researchbriefings.files.parliament.uk/documents/CBP-7661/CBP-7661.pdf>.

E7. 'Irish nationals in UK have no protection', *Times*, 17 August 2017: <https://www.thetimes.co.uk/article/irish-nationals-in-uk-have-no-protection-hlqgfczwc>

E8. 'New efforts to protect rights of Irish living in UK', *Times*, 9 October 2017: <https://www.thetimes.co.uk/article/new-efforts-to-protect-rights-of-irish-living-in-uk-8lvqnghqr>

E9. Traveller Movement, *Brexit and Irish citizens in the UK How to safeguard the rights of Irish citizens in an uncertain future*, December 2017. https://travellermovement.org.uk/phocadownload/userupload/reports/TTM-Brexit_and_Irish_citizens_in_the_UK_web-report.pdf

E10. Oral evidence to House of Commons committee on the Immigration and Social Security Co-ordination (EU Withdrawal) Bill, 12 February 2019. [https://hansard.parliament.uk/commons/2019-02-12/debates/f190bc45-a58b-44S2-879a-eaf3d79604d9/ImmigrationAndSocialSecurityCo-Ordination\(EUWithdrawal\)Bill\(FirstSitting\)](https://hansard.parliament.uk/commons/2019-02-12/debates/f190bc45-a58b-44S2-879a-eaf3d79604d9/ImmigrationAndSocialSecurityCo-Ordination(EUWithdrawal)Bill(FirstSitting))

E11. House of Commons committee debate on clause 2 of the Immigration and Social Security Co-Ordination (EU Withdrawal) Bill, 26 February 2019, columns 170-177: [https://hansard.parliament.uk/commons/2019-02-26/debates/cfeb8af5-237d-4a97-92aa-58a2ef894951/ImmigrationAndSocialSecurityCoordination\(EUWithdrawal\)Bill\(FifthSitting\)](https://hansard.parliament.uk/commons/2019-02-26/debates/cfeb8af5-237d-4a97-92aa-58a2ef894951/ImmigrationAndSocialSecurityCoordination(EUWithdrawal)Bill(FifthSitting))