

GMS Flash Alert

Immigration Edition

2020-011 | January 16, 2020



Ireland & United Kingdom - Family Immigration Rules and Northern Ireland

The governments of Ireland and the United Kingdom, as well as the political parties in Northern Ireland, have agreed a deal to reinstate devolved power sharing in Northern Ireland.

In this GMS *Flash Alert*, we highlight the potential impact the “New Decade, New Approach” deal may have on family immigration rules in Northern Ireland.

WHY THIS MATTERS

The U.K. has committed to amend its family immigration rules for Northern Ireland, which shows a recognition of the unique nature of Northern Ireland in an immigration context. The proposed changes, if enacted, will allow anyone born in Northern Ireland to bring non-European Economic Area (EEA) family members to the U.K. under the more favourable European Union (EU) immigration rules, rather than satisfying the stricter U.K. immigration rules.

What Does This Development Mean?

Under the “Belfast Agreement” (often referred to as the “Good Friday Agreement”), anyone born in Northern Ireland is entitled to:

...identify themselves and be accepted as Irish or British, or both, as they may so choose....¹.

This created a situation where anyone born in Northern Ireland who asserted that he or she was an Irish citizen, could bring his or her non-EEA family members to the U.K. under the more favourable EU immigration rules, rather than the stricter U.K. immigration rules.

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Since the *McCarthy*² case, the U.K. position is that the Belfast Agreement did not amend British nationality law, and as such anyone born in Northern Ireland is a British citizen until he or she renounces British citizenship. Therefore, a person born in Northern Ireland would be required to renounce British citizenship if he or she wanted to rely on the EU family immigration rules.

This caused several issues which were highlighted in the recent *DeSouza case*,³ and the U.K. has sought to resolve an aspect of that case with the provisions noted below.

The "New Decade, New Approach" deal sets out:

The [UK] Government has reviewed the consistency of its family migration arrangements, taking into account the letter and spirit of the Belfast Agreement and recognising that the policy should not create incentives for renunciation of British citizenship by those citizens who may wish to retain it.

The [UK] Government will change the rules governing how the people of Northern Ireland bring their family members to the UK. This change will mean that eligible family members of the people of Northern Ireland will be able to apply for UK immigration status on broadly the same terms as the family members of Irish citizens in the UK.

This immigration status will be available to the family members of all the people of Northern Ireland, no matter whether they hold British or Irish citizenship or both, no matter how they identify.⁴

Consequently, anyone born in Northern Ireland will be able to avail of the more favourable EU immigration rules, regardless of whether he or she identifies as Irish, British, or both.

A person born in Northern Ireland will be able to bring non-EEA family members to the U.K. under the more favourable EU immigration rules in comparison to those born elsewhere in the United Kingdom. Those born in Northern Ireland will not be required to renounce British citizenship in order to do so.

KPMG NOTE

The unique circumstances of Northern Ireland have been recognised in one immigration context, and there may be more regional specific rules for Northern Ireland in the U.K.'s post-Brexit immigration system. Employers should be aware of this potential change and other potential provisions, which may specifically impact immigration to Northern Ireland in the future.

FOOTNOTES:

1 The Belfast Agreement, 1998. Constitutional Issues, Section 1 (vi).

2 *McCarthy v Secretary of State for the Home Department* C-434/09.

3 De Souza (Good Friday Agreement: nationality) United States of America [2019] UKUT 355 (IAC) (14 October 2019).

4 New Decade, New Approach, page 48, paragraphs 13 – 15.

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