



**BILLE NAÍSIÚNTACHTA AGUS SAORÁNACHTA
ÉIREANN 2004
IRISH NATIONALITY AND CITIZENSHIP BILL 2004**

EXPLANATORY MEMORANDUM

Introduction

1. The Irish Nationality and Citizenship Bill 2004 provides for amendments to the Irish Nationality and Citizenship Acts 1956 to 2001 consequent on the coming into effect of the Twenty-seventh Amendment of the Constitution Act 2004. The Bill also includes an amendment to those Acts designed to exclude the future possibility of the re-introduction of a scheme of investment-based naturalisation.

2. The Twenty-seventh Amendment of the Constitution Act inserted a new provision into the Constitution at Article 9 which provides as follows:

Notwithstanding any other provision of this Constitution, a person born in the island of Ireland, which includes its islands and seas, who does not have, at the time of his or her birth, at least one parent who is an Irish citizen or entitled to be an Irish citizen is not entitled to Irish citizenship or nationality, unless otherwise provided by law.

The effect of this amendment is to qualify Article 2 of the Constitution, which provides that—

It is the entitlement and birthright of every person born in the island of Ireland, which includes its islands and seas, to be part of the Irish nation.

3. Also relevant is the British-Irish Agreement whereby, at Article 1(vi), the two Governments—

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.

In a declaration annexed to the Agreement (Annex 2), the two Governments declared that—

it is their joint understanding that the term “the people of Northern Ireland” in paragraph (vi) of Article 1 of this Agreement means, for the purposes of giving effect to this provision, all 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.

In April 2004, the two Governments issued a joint interpretative declaration which stated—

that it was not their intention in making the [British-Irish] Agreement that it should impose on either Government any obligation to confer nationality or citizenship on persons born in any part of the island of Ireland whose parents do not have a sufficient connection with the island of Ireland.

4. The Constitutional change enables the bringing forward of legislation to provide a new and prospective framework within which the entitlement to Irish citizenship of persons born in the island of Ireland to non-national parents can be determined. This Bill's provisions provide that framework, and do so by way of amendments to the Irish Nationality and Citizenship Act 1956 (which has previously been amended by successive Irish Nationality and Citizenship Acts in 1986, 1994 and 2001). The Bill also reflects the continuing constitutional entitlement to Irish citizenship of a person born in the island of Ireland to a parent who is, or is entitled to be, an Irish citizen.

5. The Bill provides (at *section 4*; new section 6A of 1956 Act) that a person born, whether north or south, to non-national parents, either of whom has been lawfully resident in the island of Ireland for at least three out of the four years immediately preceding the birth, will have an entitlement to Irish citizenship. The Bill specifically exempts from this residence requirement certain categories of persons as follows:

- a person born whether north or south to parents, one of whom is an Irish citizen or entitled to be an Irish citizen;
- a person born whether north or south to parents, one of whom is a British citizen or has an entitlement to reside in the UK (and thus Northern Ireland) without any restriction on his or her period of residence;
- a person born whether north or south to parents, either of whom has an entitlement to reside in the State without any restriction on his or her period of residence.

These exemptions are designed to ensure that Irish citizenship law remains consistent with the British-Irish Agreement; these and other provisions of the Bill are designed to ensure also that to the greatest extent possible the conditions for acquiring an entitlement to Irish citizenship deriving from place of birth are similar north and south.

6. For the most part, the question whether a person born in Ireland north or south to non-national parents is entitled to Irish citizenship under the Bill will be determined by operation of law, since the facts going to that determination are generally verifiable by readily available or easily obtained documentation (for example, birth certificates, immigration stamps in parents' passports, etc). Where reckonable residence in Ireland is as an EU citizen (such persons have Treaty rights of free movement within the territories of the Member States) or as a citizen of an EEA state or the Swiss Confederation (international agreements provide analogous free movement rights for such persons), the period of such reckonable residence can be vouched by declaration (*section 4* of Bill; new section 6B(2) of 1956 Act). Where a period of reckonable residence is in Northern Ireland as a citizen of a state other than these, the determination of citizenship will be on foot of an application for a certificate of nationality under section 28 of the 1956 Act (*section 11*

of Bill; new section 28A of 1956 Act); regulations will specify the types of documentation that will be acceptable in support of the declaration to verify the period of residence in Northern Ireland.

7. Time spent in the State or Northern Ireland as a student or an asylum-seeker will not be reckonable for the purposes of calculating the period of residence that will determine entitlement to Irish citizenship (*section 4* of Bill; new section 6B(4) and (5) of 1956 Act).

8. The provisions of the Bill are designed to ensure continued consistency of Irish citizenship law with the State's international obligations under the UN Convention on the Reduction of Statelessness, to which Ireland is a party since 1983. These obligations are primarily reflected in Irish law by section 6(3) of the 1956 Act (amended in 2001) which provides that a person born in the island of Ireland is an Irish citizen from birth if he or she is not entitled to citizenship of any other country.

9. The Bill also contains a provision (*section 10*) designed to ensure that the scheme of investment-based naturalisation will not be re-instituted and to rule out any future such scheme.

10. Along with the amendments arising out of the Constitutional change, the Bill includes provisions to:

- remove the entitlement to citizenship in respect of a person born in the island of Ireland to non-national parents one of whom is a diplomat;
- remove any special entitlement to citizenship in respect of persons born in the island of Ireland to a non-national on a foreign ship or aircraft (the new rules will apply as for any person born in Ireland);
- treat time spent abroad by a non-national spouse with his or her Irish citizen spouse who is resident abroad in the public service (e.g. Irish embassies abroad) as time spent residing in the State for naturalisation purposes; and
- facilitate the naturalisation of minors.

Provisions of Bill

11. *Section 1* is a standard definitions section.

12. *Section 2* provides for the insertion of new definitions at section 2 (definitions) of the 1956 Act. It also provides for the insertion of a new subsection (1A) containing standard interpretation text.

13. *Section 3* of the Bill makes a number of amendments to section 6 (citizenship by birth in the island of Ireland) of the 1956 Act (amended by the Irish Nationality and Citizenship Act 2001). The first of these, at *paragraph (a)*, has the effect of qualifying the general entitlement of persons born in the island of Ireland in the present section 6(1) to the extent set out in the new section 6A (entitlement to Irish citizenship of persons born to certain non-nationals) to be inserted in the 1956 Act by *section 4* of the Bill.

14. *Section 3(d)* of the Bill adds a new subsection (6) to the present section 6 of the 1956 Act, defining "person" for the purposes of that section so as to exclude a person born in Ireland to parents neither of whom is Irish or entitled to be Irish and one of whom is a foreign diplomat. *Section 3(c)* of the Bill, as a consequence, deletes the present section 6(4), and *section 3(b)* of the Bill makes a consequential change to the present section 6(2). (As regards children

born to non-nationals on foreign ships or aircraft in Ireland (also covered by the present section 6(4)), the remaining provisions of this Bill regarding entitlement to Irish citizenship will apply in the normal way to them as they will to any other person born in Ireland.)

15. *Section 4* of the Bill provides for the insertion of two new sections into the 1956 Act which deal with the citizenship of children of non-nationals. These are: section 6A, dealing with the entitlement to Irish citizenship of persons born to certain non-nationals; and section 6B, which specifies what periods of residence in Ireland are to be reckoned where that is a factor under the new section 6A.

16. The new section 6A(1) lays down the general rule (modifying the effect of the present section 6(1), as reflected in *section 3(a)* of the Bill) that a person born (whether north or south) to non-national parents, either of whom has been lawfully resident in the State or Northern Ireland for at least three out of the four years preceding the birth, will have an entitlement to Irish citizenship. Subsequent subsections of this new section set out exceptions to and qualifications of this general rule.

17. The first of these exceptions, at section 6A(2)(a), ensures that all persons born before the enactment of the Bill will continue to have the same entitlement to Irish citizenship that they had on the basis of pre-existing law irrespective of their parents' nationality or period of residence in the State or Northern Ireland.

18. Section 6A(2)(b)(i) excepts from the general rule at section 6A(1) a person born in the island of Ireland (north or south) to parents either of whom was at the time of the birth an Irish citizen or entitled to be an Irish citizen. Subparagraph (ii) addresses the situation where one parent pre-deceased the birth and subparagraph (iii) where both parents pre-deceased the birth; in either case, the effect of the subparagraph is to ensure the entitlement to Irish citizenship notwithstanding the pre-decease of a parent through whom that entitlement would have derived.

19. Subparagraph (c)(i) of the new section 6A(2) excepts from the general rule at section 6A(1) a person born in Ireland (north or south) to parents either of whom was at the time of the birth a British citizen or entitled to reside in Northern Ireland without restriction as to the period of residence (with provisions at subparagraphs (ii) and (iii) regarding the pre-decease of parents analogous to those at section 6A(2)(b)). As regards persons born in Northern Ireland, this provision ensures consistency with Article 1(vi) of the British-Irish Agreement having regard to the definition of "the people of Northern Ireland" at Annex 2 of that Agreement; to the extent that this provision will also apply to persons born in the State, it seeks to ensure similarity of treatment north and south.

20. Subparagraph (d)(i) of the new section 6A(2) excepts from the general rule at section 6A(1) a person born in Ireland (north or south) to parents either of whom was at the time of the birth entitled to reside in the State without restriction as to the period of residence (with provisions at subparagraphs (ii) and (iii) regarding the pre-decease of parents analogous to those at section 6A(2)(b)).

21. Section 6A(2)(e) is necessary as a consequence of the amendment to section 6 of the 1956 Act at *section 3(d)* of the Bill. Consistent with that amendment, this paragraph of the new section 6A(2) excepts from the general rule at section 6A(1) a person born in Ireland to non-national parents one of whom is a foreign diplomat. Thus, a child of such a parent will not acquire an entitlement to Irish

citizenship even if the diplomat parent or the other non-national parent has been lawfully resident in the State for more than three years prior to the birth.

22. The new section 6B (also at *section 4* of the Bill) sets out the framework within which the reckonability of periods of residence of parents of persons born in the island of Ireland is to be determined in the case of parents to whom section 6A applies.

23. Section 6B(1) deals with the situation where a parent dies before the birth of a child in the island of Ireland. It provides that, if the parent was residing in Ireland at the time of death and the period immediately prior to the death was reckonable as residence in the island of Ireland for the purposes of section 6A, the period between the death of the parent and the birth of the child is also reckonable.

24. Section 6B(2), (3) and (6) together provide a means whereby the reckonable residence in Ireland (north or south) of parents who are EU nationals can be verified by declaration. EU nationals resident in the State in exercise of their Treaty rights may obtain residence permits from the Minister as evidence of their right to exercise those rights in the State, but the obtaining of such a permit is not a pre-requisite to lawful presence in the State in exercise of those rights, and many such nationals choose not to seek residence permits. Nationals of the EEA States (Norway, Iceland and Liechtenstein) and Swiss nationals have analogous rights of free movement under international agreements and, accordingly, the new section 6B(2) and (3) apply to their reckonable residence as well; the subsections do not however apply to British citizens, since they are amongst the classes of person exempted from the provisions of the new section 6A by subsection (2) thereof.

25. The statutory declaration procedure in the new section 6B(2) will enable the parent of a person born in Ireland (north or south) to make a statutory declaration as evidence of a period of residence in Ireland (north or south) as an EU, EEA or Swiss national; that declaration (accompanied as necessary by whatever documents may be prescribed by regulation under section 6B(6)) will be sufficient for, say, the passport authorities or other bodies concerned with the Irish citizenship status of a person to recognise as evidence of the reckonability of the parent's period of residence in Ireland. This declaration provision covers only reckonable periods when the parent was a national of a relevant state (paragraph (ii) of the new subsection); the reckonability of other periods (e.g. for a national of a new EU member state, a period of residence in Ireland before 1 May 2004) is dealt with under section 6B(4) and (5).

26. Subsection (3) of the new section 6B caters for the situation where the parent who might otherwise make the declaration in subsection (2) is deceased or otherwise not in a position to make the declaration; in such cases the declaration (supported as necessary by prescribed documents) can be made by a parent or guardian or person *in loco parentis* to a minor (paragraph (a)) or by an adult (paragraph (b)) whose entitlement to Irish citizenship is in issue.

27. Section 6B(4) (which relates to periods of residence in the State) and (5) (which relates to periods of residence in Northern

Ireland) set out the periods which are not reckonable for the purposes of section 6A.

28. Section 6B(4) provides that a period of residence in the State is not reckonable for the purposes of section 6A if:

- it is in contravention of section 5(1) of the Immigration Act 2004 (i.e. the person is illegally in the State);
- it is in accordance with a permission given under section 4 of the Immigration Act 2004 for the purpose of enabling the person to engage in a course of education or study in the State; or
- it consists of a period during which the only basis for the presence of the person (other than an EU, EEA or Swiss national) concerned in the State was a temporary residence permission issued under section 9 of the Refugee Act 1996 (i.e. a permission given to an asylum-seeker to remain in the State only until such time as the claim for asylum has been determined).

29. Section 6B(5) provides that a period of residence in Northern Ireland is not reckonable for the purposes of section 6A if:

- the person concerned was not an EU, EEA or Swiss national and the residence consists of unlawful residence under the laws of Northern Ireland; and
- the period of residence in Northern Ireland would, if the residence were in the State, not be reckonable under section 6B(4) (i.e. if the person was allowed to reside only for the purposes of study or for the examination of a claim for asylum).

(See also the comments below on *section 11* of the Bill (new section 28A of the 1956 Act) as regards reckonable residence in Northern Ireland.)

30. Section 6B(7) contains definitions of terms used in the section.

31. *Section 5* of the Bill provides for gender balance at section 9 (citizenship of posthumous children) of the 1956 Act by providing that references in that section to “father” should also be construed as references to “mother”.

32. *Sections 6* and *7* of the Bill bring the terminology in sections 10 (citizenship of foundlings) and 13 (citizenship of persons born on ships and aircraft) of the 1956 Act into line with similar references in the remainder of the Act by replacing the term “Ireland” with the term “the island of Ireland”.

33. *Section 9* of the Bill amends section 15A (naturalisation of spouses of Irish citizens; inserted in 2001) of the 1956 Act by relaxing certain of the conditions for naturalisation concerned in the special scheme for naturalisation of non-national spouses of Irish citizens in certain cases. Those cases are where the non-national spouse is living with his or her Irish citizen spouse who is resident abroad in the public service (e.g. Irish embassies abroad). The amendment will treat time spent abroad by a non-national spouse with his or her Irish citizen spouse who is resident abroad in the public service as if it were time spent residing in the State for the purpose of the conditions at section 15A(1)(f) and (g) of the 1956 Act (new subsection (4) to be inserted in section 15A)); and by relieving the non-national spouse in those circumstances of the need to fulfil the condition at section 15A(1)(h) regarding intention to reside in the State after naturalisation.

34. *Section 10* amends section 16 (power to dispense with conditions of naturalisation in certain cases; replaced in 1986) of the 1956 Act by providing for a narrow interpretation of “Irish associations”. The expression is at present undefined and taken to have its natural meaning; in the past, this has been considered as including an association with the State centred primarily on an investment made in a firm operating in the State. This amendment, by defining “Irish associations” in terms of blood relationship, affinity (i.e. relationship by marriage) or adoption to an Irish citizen, or a person who would if alive have been an Irish citizen, aims to remove the possibility for any person who does not meet all of the conditions for naturalisation set out at section 15 of the 1956 Act (as replaced in 1986) to obtain Irish citizenship solely on the basis of an investment made in the State.

35. The new, narrower meaning to be given to this expression does not specifically encompass the possibility of waiver of conditions for naturalisation in the case of a minor child born in the State but who does not come within the compass of the present specific waiver provisions for minors at section 16(b) (parent or guardian acting on behalf of a minor of Irish descent or Irish associations) or (c) (naturalised parent acting on behalf of a minor child). Subsection (1)(a) of section 15 (conditions for issue of certificates of naturalisation) of the 1956 Act, which at present makes it a condition of naturalisation that the applicant be of full age, would in those circumstances be an insurmountable obstacle. Accordingly, *section 8* of the Bill amends section 15(1)(a) of the 1956 Act to include minors born in the State; a complementary provision is also included (new section 15(3)) to ensure that applications are made on behalf of rather than by minors.

36. *Section 11* provides for the insertion of a new section 28A into the 1956 Act introducing a requirement for persons asserting an entitlement to Irish citizenship, on the basis that there has been a period of reckonable residence in Northern Ireland on the part of one of his or her parents, to apply to the Minister for a certificate of nationality under section 28 of that Act as a precursor to doing any act which only an Irish citizen is entitled to do (such as obtaining an Irish passport). The application for the certificate will have to be accompanied by a statutory declaration, together with supporting evidence (the nature of which can be prescribed by regulations: new section 28A(2)(a) and (3)) to show that the period of residence in Northern Ireland is reckonable for the purposes of the proposed new section 6A of the 1956 Act being inserted by *section 4* of the Bill.

37. The provisions at *section 11* of the Bill will not apply where the parent concerned is an Irish or British citizen or entitled to reside in Northern Ireland without any restriction on his or her period of residence as this class of person is exempted from the provisions of section 6A by subsection (2) of that section. In addition, the section will not apply where the parent concerned is an EU, EEA or Swiss national as a special procedure has been introduced for this class of person by the new section 6B (inserted by *section 4* of the Bill) - see paragraph 24 above.

38. *Sections 12(1)* and (2) of the Bill specify the short title and collective citation. *Section 12(3)* of the Bill is a standard commencement provision.

Financial implications

39. The operation of the proposals in the Bill will give rise to additional staffing and administrative costs in the region of €700,000. There are no other significant budgetary or financial implications in the operation of the proposals in this Bill.

*An Roinn Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí,
Meán Fómhair 2004.*