

Seanad Special Select Committee on the Withdrawal of the United Kingdom from the European Union

Thursday, 23 March 2017

Opening Remarks by Mr. Noel Waters, Secretary General, Department of Justice and Equality

Thank you Chairman.

I am very pleased to have the opportunity to attend today's meeting of the Committee and to address the subject of the Common Travel Area in the context of the UK's exit from the EU.

I am accompanied by Mr. Jimmy Martin, Assistant Secretary, whose responsibilities include the Department's Brexit Unit, and Mr. Willie O'Dwyer, Principal Officer in the Irish Naturalisation and Immigration Service of the Department.

The decision of the UK to leave the EU presents unprecedented challenges for Irish society. I think we can all agree that how we respond will shape our future for decades to come.

Preparations are being strongly lead from the centre through the Cabinet Committee on Brexit, which is chaired by the Taoiseach. An Interdepartmental Group of senior officials, on which the Department of Justice and Equality is represented, reports to the Cabinet Committee, and takes forward the detailed co-ordination of analysis and preparations for UK exit. In turn, all Government Departments have structures in place to deal with issues of relevance to their policy areas and we are all active in consulting, engaging and preparing for the forthcoming negotiations, and for managing the impact of UK exit. This work has been greatly aided by the All-Island Civic Dialogue process and through public and stakeholder engagement.

As you of course know, the Common Travel Area has been identified by the Government as one of the four priority issues for Ireland, along with the economy, Northern Ireland, and the future of the EU. Given the Department of Justice and Equality's responsibilities in relation to immigration and border control matters, naturally we have been centrally involved in analysis and management of this aspect of Ireland's preparations. We are working closely with other relevant Departments on this, including our colleagues in the Department of An Taoiseach, and the Department of Foreign Affairs and Trade in the context of the overall strategic approach to the forthcoming negotiations.

The Irish Government is committed to maintaining the Common Travel Area between Ireland and the UK. These arrangements have been in existence since the State's foundation and are an important feature of the close

relationship between the two jurisdictions. Our entitlement to stay outside the Schengen arrangements and maintain the Common Travel Area is recognised in Protocols 19 and 20 to the EU Treaties. These arrangements exist alongside and complement the special position of Northern Ireland and the provisions of the Good Friday Agreement as to the citizenship rights of the people of Northern Ireland.

The daily reality of the operation of the Commons Travel Area is of deep and extensive interaction between the two jurisdictions.

To demonstrate the importance of the Common Travel Area to the social ties and economic life-blood of our respective jurisdictions:

- Out of the 27.9 million passenger journeys through Dublin Airport in 2016, 9.9 million were UK-Ireland. That is 36% of the total, or averaged out per day over the year it would mean 27,000 passengers having their journey facilitated by the Common Travel Area.
- In 2015, 1.2 million residents of Northern Ireland used Dublin Airport – per week, this averaged almost 25,000 crossing the border to catch flights. 1 million visitors to Northern Ireland came into the State via Dublin Airport.
- All of these journeys and the economic activity generated is made possible by the Common Travel Area arrangements – so much so that it is taken for granted in facilitating movement of people North South and East West.
- The picture at other entry points to the State is the same; for example, Cork Airport has over a dozen routes to the UK with almost 1 million passengers (or 50% of the total) in 2016 taking a journey in either direction.
- The number of passenger journeys by sea through our ferry ports is also significant – 2.8 million approximately per year.
- It is estimated that there is an average of 2.2 million vehicular crossings monthly on the north south land border.

I think it would be fair to say, however, that prior to the UK vote on Brexit, the operation of the Common Travel Area had continued in the background of most people's lives without a great deal of active consideration. Moreover, many of the entitlements it confers had become intermingled with rights derived from EU law in relation to free movement. Should, or to the extent that, this body of law ceases to apply insofar as the UK is concerned, the pre-existing relationship between Ireland and the UK will come to the fore.

In order to outline the scope and nature of the CTA arrangements, it might be helpful for me to mirror the approach we took in the Department to studying this issue, which is to go back through its history.

In a sense, we can trace the origin of the CTA to the history of the two countries as being a common jurisdiction and having a shared citizenship following the Act of Union. After Irish independence, and up until 1948, as far as the UK was concerned, Ireland remained part of the Commonwealth, and

therefore Irish citizens remained subjects of the British monarch, with the same entitlements as British subjects. In that context it made little sense to impose passport controls. While the attitude of the Irish authorities was of course different in political terms, from the earliest days of the State, the Irish Government wished to maintain the Common Travel Area. British nationals were not treated as aliens in Irish law, and for most matters were treated the same as Irish nationals.

Even after Ireland left the Commonwealth, special provision was made in the Ireland Act 1949, which effectively provided that Irish nationals were treated as 'non-foreign' in UK law. On the Irish side, an Order (S.I. No. 1 of 1949) was made to the effect that UK nationals would enjoy similar rights and privileges as Irish nationals had in the UK. These fundamental characteristics of the relationship have remained applicable to this date, through various reforms of UK Immigration law in the 1970s and 80s, and also through both countries becoming members of the European Community in 1973.

In practice, the most immediately concrete expression of the Common Travel Area relates to the operation of border controls and the freedom of Irish and UK nationals to travel 'passport free' between the two jurisdictions. These arrangements have been in place since Irish independence, with the only period of interruption arising during and immediately after the Second World War. The Common Travel Area operates to some degree like a mini Schengen zone, with the immigration authorities in both jurisdictions co-operating to protect the borders of the CTA and to prevent its abuse. Central to the operation of the Common Travel Area is that each State enforces the other's conditions of landing for non EU nationals.

This cooperation has deepened in recent years, under the aegis of Common Travel Area Forum, which meets on a regular basis. The information sharing systems we have put in place have made it possible to introduce the British Irish Visa scheme, and the Irish Short Stay Visa waiver programme, both of which make it easier for visa required nationals to visit both jurisdictions, with considerable benefits in terms of tourism and business travel. For example, Tourism Ireland is projecting 50,000 Chinese visitors to Ireland this year. The BIVS Scheme will enable all of these to move effortlessly between countries. In 2012 before this was introduced the number was 17,000.

Our objective is to continue to operate these arrangements, and to continue to cooperate closely with the UK. But it is also important to emphasise the Ireland remains a committed member of the European Union and will operate these arrangements in a way that is compatible with EU law. In particular, we will continue to uphold the right of free movement of all citizens after the UK leaves the union.

The Common Travel Area border control arrangements are complemented by a range of broadly reciprocal entitlements in terms of rights to reside, work and access services. These entitlements are closely associated with the freedom of movement between the two jurisdiction and have their roots in the historic associations and the legal provisions I have outlined. While the policy

responsibility for many of these areas rests with other Departments, we have been working closely with them in the analysis of this issue, and all of this work is inputting into Ireland's preparation for the forthcoming negotiations.

The Government's objective is to ensure that the current CTA arrangements continue following the expected withdrawal of the UK from the EU. Pending the Article 50 process commencing, an extensive programme of engagement has been put in place to support this strategic objective. The importance of the Common Travel Area has been highlighted through political and diplomatic engagement with other Member States, and with the EU institutions. Considerable efforts are being made to build awareness and understanding as to its significance, including in the context of North South relations and the peace process. You will also have seen the very clear commitments from the Taoiseach and Prime Minister May to maintaining its benefits into the future.

You will appreciate that there are many aspects of the forthcoming negotiations on which it would not be helpful for me to speculate. I can, however, assure you that our preparations have been extensive and that we will play our part, alongside other Government Departments in ensuring the best possible outcome for the Irish people. I will conclude on this point and look forward to our discussion.