

EXPLANATORY MEMORANDUM TO
THE IMMIGRATION (CONTROL OF ENTRY THROUGH REPUBLIC OF
IRELAND) (AMENDMENT) ORDER 2021

2021 No. 600

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This instrument adds an additional cohort of people, those who previously left the UK having been here without immigration permission and had not been granted any subsequent such permission following their departure, to the list of exemptions that prevent a person from being eligible for automatic statutory permission, referred to as ‘deemed leave’, when entering via Ireland .

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As this instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the whole of the United Kingdom.
4.2 The territorial application of this instrument is the whole of the United Kingdom.

5. European Convention on Human Rights

- 5.1 As this instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 The Common Travel Area (CTA) is an administrative arrangement which facilitates the free movement of people between the UK, Ireland and the Crown Dependencies (Isle of Man, the Bailiwick of Guernsey and the Bailiwick of Jersey). Section 1(3) of the Immigration Act 1971 provides that there shall be no controls (subject to limited exemptions as set out in paragraph 6.2) on local journeys within the CTA. The Immigration (Control of entry through Republic of Ireland) Order 1972 (“the 1972 Order”) creates a system of statutory permission to enter, known as “deemed leave”, for eligible individuals arriving in the UK from Ireland. This ensures that, in the absence of routine immigration controls on journeys between Ireland and the UK, and

none whatsoever on the land border, individuals are not inadvertently in the UK without immigration leave.

- 6.2 An individual is not eligible for deemed leave under the 1972 Order if they are subject to certain exemptions as provided in section 9(4) of the Immigration Act 1971 and Article 3 of the 1972 Order. They will instead need to make an application to the immigration authorities either before they travel or on arrival. These exemptions are largely based on an individual's previous immigration history and conduct. Examples include where an individual may have been subject to a deportation order or exclusion decision; where they have been refused leave to enter and have not subsequently been granted any further immigration status; or where they have not been granted permission to be in Ireland by the Irish immigration authorities. These authorities are able to refuse entry to Ireland if they suspect an individual is seeking to travel via Ireland in order to abuse the absence of routine immigration controls on intra-CTA journeys.

7. Policy background

What is being done and why?

- 7.1 This instrument amends the 1972 Order to broaden the exemptions from deemed leave in Article 3. The effect is to include persons who require leave to enter or remain in the United Kingdom, who have left the United Kingdom when they did not have leave (for example they have overstayed their leave or are an illegal entrant) and have not subsequently been granted any form of immigration permission for the United Kingdom, from receiving deemed leave automatically when arriving via Ireland.
- 7.2 This amendment to the exemptions from deemed leave is required because the existing restrictions in the 1972 Order do not include all of this cohort of people. At present, only those who do not have immigration permission in the UK, who travel directly from the UK to Ireland, and then travel back to the UK, are not eligible for deemed leave. These restrictions do not cover scenarios where an individual who departs the UK without leave to all other destinations comes back to the UK via Ireland.
- 7.3 This amendment will therefore ensure that an individual who departs the UK without leave will not be eligible for deemed leave regardless of where they have travelled to before coming back to the UK via Ireland. This will enable consideration of the circumstances of each case, including an individual's previous conduct, because they will be required to apply for leave to enter, rather than receive deemed leave automatically upon entry. The above exemption from deemed leave falls away if the individual is subsequently granted admission or leave to enter or remain in the UK.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

- 9.1 There are no plans to consolidate but this will be kept under review.

10. Consultation outcome

- 10.1 There is no legal requirement for the Home Office to undertake a full public consultation, but this amendment has been discussed with internal partners and the information gathered from these discussions has been used to formulate the policy. External partners have been notified of the changes being made on an informal basis, as per previous changes.

11. Guidance

- 11.1 Operational guidance on the change will be issued to Home Office staff at the point the change comes into force. This will then be consolidated into the full published guidance along with other changes required for 30 June 2021 – the guidance will be published at: <https://www.gov.uk/government/publications/common-travel-area>

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 The potential impact on the public sector includes a requirement to understand the details of the change being made; a potential increase in processing costs from applicants who will now need to obtain permission to enter the UK because they are exempt from deemed leave; and increased enforcement requirements in the event that someone in the effected cohort is encountered. These impacts are unlikely to have a substantial impact due to the small numbers of people it is estimated will fall into the new exemption for deemed leave. As there are no routine immigration controls on arrivals to the UK from Ireland, it is not possible to estimate the number of people who may become exempt through this policy change. However, the scope of the exemption is such that volumes are expected to be low. Published migration statistics show that in the period 2010-2019, there were around 8,100 non-EEA non-visa nationals subject to enforced returns from the UK. Only a very small proportion of these individuals could be expected to seek entry via the CTA.
- 12.3 Neither an Impact Assessment nor an economic note have been prepared for this instrument because the impact on business is expected to be negligible or not significant. The changes made by this instrument affect individuals and do not generate any foreseeable costs to business.

13. Regulating small business

- 13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

- 14.1 The approach to the monitoring of this legislation is that this will be conducted internally by the Home Office, through ongoing monitoring of feedback from operational staff to ensure the legislation continues to support the policy objective.

15. Contact

- 15.1 Sophie Cosstick at the Home Office (Telephone: 0300 1041170 or email: Sophie.Cosstick@homeoffice.gov.uk) can be contacted with any queries regarding the instrument.

- 15.2 Nigel Farminer, Deputy Director for Border Security, Visa and Identity Policy, at the Home Office can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Kevin Foster MP, Parliamentary Under-Secretary of State for the Home Department, can confirm that this explanatory memorandum meets the required standard.