

Article by Alan Shatter

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CHANGE IN POST-NUPTIAL CITIZENSHIP LAWS WILL DRAMATICALLY AFFECT RIGHTS OF FOREIGN SPOUSES OF IRISH CITIZENS

Over the past two years, the acquisition of Irish citizenship by children born in this State to foreign parents has received substantial public attention. There has however been little public discussion or debate about the dramatic changes made to our citizenship laws which affect foreign spouses of Irish citizens and their entitlement to claim post-nuptial Irish citizenship, i.e. Irish citizenship as a result of marriage.

Under the Irish Nationality and Citizenship Act 1986, a foreign national who marries an Irish citizen can acquire Irish citizenship three years after the date of marriage by lodging a Declaration with the Minister for Justice or with any Irish Diplomatic Mission or Consular Office “accepting” Irish citizenship as post-nuptial citizenship. Such acquisition of Irish citizenship is dependant on the marriage still subsisting at the date of the declaration and the spouse who is an Irish citizen confirming by affidavit that the couple “are living together as husband and wife”. In the four year period between 2000 and 2003, 6,259 spouses so acquired Irish citizenship and a further 1,622 acquired citizenship in this way during the first eight months of this year.

Fundamental changes were made to the law relating to post-nuptial citizenship by the Irish Nationality and Citizenship Act 2001 which came into effect on the 30th November 2002. However, the new rules applicable to all foreign nationals who married Irish citizens on or after the 30th November 2002 do not apply to couples who married prior to that date until the 30th November 2005. As a consequence, any foreign national who married an Irish citizen prior to the 30th November 2002 who has not yet acquired Irish citizenship has just under 12 months to do so under the simple procedures prescribed by the 1986 Act.

The law applicable to couples who marry on or after the 30th November 2002 no longer allows a foreign national married to an Irish citizenship to automatically acquire Irish citizenship in the manner earlier described. The 2001 Act confers on the Minister for Justice an entitlement to determine post-nuptial citizenship applications in his “absolute discretion” and gives no automatic right to such citizenship. Moreover, the Act requires that the couple must not only be married for at least three

years and be still living together as husband and wife but also requires that the person seeking citizenship:-

- (i) Had immediately before the date of the application a period of one years continuous residence in the island of Ireland and
- (ii) Had, during the four years immediately preceding that period, a total residence in the island of Ireland amounting to two years.

In addition, the Minister must be satisfied that the Applicant spouse “*intends in good faith to reside in the island of Ireland after naturalisation*”. Under the 1986 Act, no requirement was imposed on a foreign national seeking post nuptial citizenship to reside in this island for any specific period of time prior to seeking such citizenship or after “accepting” Irish citizenship.

As a consequence of these changes, it is likely that there will in future years be fewer foreign spouses married to Irish citizens able to obtain post-nuptial Irish citizenship. Some of the difficulties that are likely to occur as a result of the coming into operation of the 2001 Act have already been anticipated in a new Nationality and Citizenship Bill presently before the Houses of the Oireachtas (Irish Parliament). It prescribes that any period of residence outside the island of Ireland by a foreign national married to an Irish citizen where the latter is “in the public service” and “the couple are residing together” shall be reckoned as a period of residence in the island of Ireland. This provision is designed to ensure that non Irish spouses of Irish civil servants working abroad are not delayed in seeking Irish citizenship as a result of their Irish spouse’s public service foreign posting.

It is inevitable that the unnecessarily complex and poorly thought out provisions contained in the 2001 Act will require further amendment in the coming years. Presently, Irish multi-national companies are doing business not only within European Union States but also on a global scale and it is in the economic interests of this State that our economy continues to grow and prosper and that we maximise our exports. It is difficult to understand why we should require that foreign spouses of non public service Irish citizens working abroad not only reside in this State for a period of time prior to acquiring Irish citizenship but also require that they satisfy the Minister for Justice that they have an intention to “continue to reside in the island of Ireland after Irish citizenship has been granted to them.” As the 2004 Bill proposes to allow the Minister for Justice to revoke a Certificate of Nationality if satisfied that the issue of the Certificate was obtained by “fraud, misrepresentation (including innocent misrepresentation) or failure to disclose material information”, it seems that if such spouse acquires post-nuptial citizenship under the 2001 Act and then, within a short

period of time, resides abroad for business or other reasons, the post-nuptial citizenship granted may be revoked.

The complex residential requirements applied to post-nuptial citizenship by the 2001 Act as now being amended and which will become effective on the 30th November 2005 will be open to challenge as being discriminatory as between foreign spouses of public servants and foreign spouses of others in violation of both the Constitution and the European Convention on Human Rights. The law will also be open to challenge pursuant to European Union laws and rules which envisage the free movement of persons within EU member states and which do not countenance any penalties being imposed by any member state on an EU national who obtains employment or establishes a business in another member State. In this context, the validity of a law which denies to the foreign spouse of such Irish citizen an entitlement to seek post-nuptial citizenship or which poses a threat of revocation of post-nuptial citizenship after it has been obtained is clearly questionable.

Those who qualify for post-nuptial Irish citizenship as a result of marrying prior to the 30th November 2002 and who wish to obtain an Irish passport are best advised to “accept” such citizenship in accordance with the procedures prescribed under the 1986 Act without unnecessary delay and to avoid becoming embroiled in the unnecessary complexities created by the new legislation.

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