

One Big Border?

BREXIT: passport and border controls in Northern Ireland

– A CAJ Briefing Note for the House of Lords (HL) Report Stage debate on the EU Withdrawal Bill, April 2018

About CAJ

The Committee on the Administration of Justice (CAJ) is an independent human rights organisation with cross community membership in Northern Ireland and beyond. It was established in 1981 and lobbies and campaigns on a broad range of human rights issues. CAJ is the NGO partner in the BrexitLawNI.org project with the law schools of the Queens University Belfast and Ulster University, and Co-Convenes the NI Equality Coalition with UNISON in Northern Ireland (NI).

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1. Executive Summary

- The HL Report Stage of the EU Withdrawal Bill includes consideration of Amendments 38, 45 and 57 tabled by Baroness Kennedy of the Shaws which would preclude Regulations from amending the provisions in the 1971 Immigration Act that prevent passport control in the CTA; and Amendment 88 tabled by Lord Patten, Lord Murphy, Baroness O’Neil and Baroness Suite which deals with North-South Cooperation and preventing new border arrangements;
- Much of the focus of the debate on the Irish land border (and also on movement between NI and the rest of the UK) has focused on the freedom of movement of goods rather than the freedom of movement of people. In relation to people the UK ‘Northern Ireland and Ireland Position Paper’ is limited to ruling out ‘routine’ passport controls within the CTA;
- Whilst there is general consensus that fixed border controls on persons crossing the land border would be impractical, undesirable and conflict with the provisions of the Belfast/Good Friday Agreement (GFA), equally problematic would be ‘non routine’ controls that target perceived non-CTA (British/Irish) citizens on the basis of racial profiling;
- Concerns over racial profiling, as highlighted by a number of high profile cases, are an existing problem that may be exacerbated by increased controls in the BREXIT Context. The increased role of the UK Border Force (UKBF) also means regression in the arrangements for law enforcement in NI set out in the Patten Commission report. This is not least as UKBF are not accountable to the NI Policing Board and the Home Office have twice launched (and had to withdraw) recruitment exercises that were open to one section of the NI community;
- An amendment tabled by Baroness Kennedy at the Committee Stage led to an on the record commitment from Government that it was its ‘ambition and policy’ that there would be no land border checks and no racial profiling. It is possible government still plans to continue or increase non routine checks on internal NI–GB routes, or could still try and amend the 1971 Immigration Act. In the context of UKBF combining customs and immigration functions, the likelihood of customs controls on the land border leading to immigration checks is also high;
- There is also a stated strategy to use the in country ‘hostile environment’ powers in the 2014 & 2106 immigration acts to police immigration in NI, with law enforcement bodies already vowing ‘intensification campaigns’, and the NI Affairs Committee warning NI in country document checks should not be more onerous than in the rest of the UK;
- On top of the existing experiences of non-EU migrants we have already heard concerning experiences from EU migrants in NI post-referendum experiencing questioning on arriving into NI airports from outside the CTA and problems in accessing services and housing. The querying of entitlements and stigmatisation of migrants takes place in a context where there are already significant concerns about paramilitary involvement in racist attacks;
- There is also a currently unexplained high use of Terrorism Act (TACT) Schedule 7 port and border control powers, without any resultant TACT detentions and hence a concern it is possible that the powers may be being misused for routine immigration purposes;

2. Report Stage Amendment

Amendments 38, 45 and 55, to clauses 7, 8 and 9 of the bill respectively, tabled by Baroness Kennedy of the Shaws would prevent Regulations under these provisions being used to:

“(i) amend or vary the provisions of the Immigration Act 1971 relating to passport control procedures on journeys within the Common Travel Area.”

Passport controls on local journeys in the CTA are currently precluded in UK law by virtue of s1(3) of the Immigration Act 1971 which provides that such journeys are not subject to (passport/border) ‘control’ under this Act.¹ This provision is the statutory basis for freedom of movement within CTA.

Amendment 88 in the Marshalled List of 16 April 2018² tabled by Lord Patten of Barnes, Lord Murphy of Torfaen, Baroness O'Neill of Bengarve and Baroness Suttie would insert a new clause before clause 10 of the bill regarding the continuation of North-South Cooperation and the prevention of new border arrangements.³ In relation to the latter provision, subsection 2(b) would preclude regulations which create or facilitate new post-exit day border arrangements between Northern Ireland and the Republic of Ireland, that are not provided for in a bilateral agreement between the two states and which feature a number of enumerated matters namely:

- (i) physical infrastructure, including border posts,
- (ii) a requirement for customs or regulatory compliance checks,
- (iii) a requirement for security checks,
- (iv) random checks on goods vehicles, or
- (v) any other checks and controls.

This latter provision would include passport or border controls on freedom of movement of people.

¹ Immigration Act 1971 1(3) “Arrival in and departure from the United Kingdom on a local journey from or to any of the Islands (that is to say, the Channel Islands and Isle of Man) or the Republic of Ireland shall not be subject to control under this Act, nor shall a person require leave to enter the United Kingdom on so arriving, except in so far as any of those places is for any purpose excluded from this subsection under the powers conferred by this Act; and in this Act the United Kingdom and those places, or such of them as are not so excluded, are collectively referred to as “the common travel area”.

² <https://publications.parliament.uk/pa/bills/lbill/2017-2019/0079/18079-R-I.pdf>

³ 88 Insert the following new Clause— Before Clause 10 “Continuation of North-South cooperation and the prevention of new border arrangements (1) In exercising any of the powers under this Act, a Minister of the Crown or devolved authority must—(a) act in a way that is compatible with the terms of the Northern Ireland Act 1998, and (b) have due regard to the joint report from the negotiators of the European Union and the United Kingdom Government on progress during phase 1 of negotiations under Article 50 of the Treaty on European Union. (2) Nothing in section 7, 8, 9 or 17 of this Act authorises regulations which—(a) diminish any form of North-South cooperation across the full range of political, economic, security, societal and agricultural contexts and frameworks of cooperation, including the continued operation of the North-South implementation bodies, or (b) create or facilitate border arrangements between Northern Ireland and the Republic of Ireland after exit day which feature— (i) physical infrastructure, including border posts, (ii) a requirement for customs or regulatory compliance checks, (iii) a requirement for security checks, (iv) random checks on goods vehicles, or (v) any other checks and controls, that did not exist before exit day and are not subject to an agreement between Her Majesty’s Government and the Government of Ireland.”

3. Previous attempts to legislate for Passport Control in the CTA

As recently as 2008 the then Borders, Citizenship and Immigration bill sought to remove the provision preventing passport control in the CTA under Section 1(3) of the 1971 Act. The amendment would have permitted full border controls, but this was not the-then policy intention, given their cost and practical complexity. Rather the plan was to introduce ‘ad hoc’ checkpoints targeting non British and Irish citizens on the border. Assurances were simultaneously given that British and Irish citizens would still not have to carry passports. The Home Office set out their policy intention that:

There will be no fixed document requirement for the land border for CTA nationals [British and Irish citizens].... [but] ...individuals who are unable to satisfy the [UK Border Agency] that they are CTA nationals will be subject to investigation in the same manner as in land detections.⁴

The Home Office also envisaged introducing passport checks at Northern Ireland ports and airports for those travelling to Great Britain. This was a cause of serious concern to the Northern Ireland Human Rights Commission who feared the move would lead to widespread racial profiling.⁵ The Commission told Parliament that:

The Commission’s greatest concerns regarding the CTA reforms relate to the land border operations, where there are numerous crossings and a high volume of journeys, many of which are effectively short and local journeys. The Home Office argues that its ad hoc checks will target non-CTA citizens. The clear question, in the context of ethnic diversity, is how are those policing the land border going to be able to tell who is a British or Irish citizen and who is not? Who, on indicating that they are not carrying particular travel documents (and may have no obligation to do so), will be allowed to proceed and who will be subject to further examination and even detention until identity is verified?

Any practice of singling out persons visibly from a minority ethnic background is not acceptable. The Commission would be deeply concerned by measures that lead to any form of racial profiling and, therefore, impact on minority ethnic persons, crossing or even just living or working near the land border. The potential outcomes of these circumstances would mean that minority ethnic persons would have to constantly carry identity papers or face frequent questioning regarding their status and, potentially, detention.⁶

The Commission’s warnings regarding racial profiling were shared in Parliament, along with concerns regarding the introduction of internal UK immigration controls. On the 1 April 2009

⁴ Correspondence to the NI Human Rights Commission from Lyn Homer, Chief Executive, UKBA, 9 October 2008, cited in NIHRC ‘Submission on the Borders, Citizenship, and Immigration Bill for the House of Lords Second Reading, 11 February 2009’ footnote 18.

⁵ Racial Profiling is defined – for example (in relation to criminal activity rather than routine immigration enforcement) – in the statutory Code of Practice to the Terrorism Act 2000 (at paragraph 4.11.2) as “Racial or religious profiling is the use of racial, ethnic, religious or other stereotypes, rather than individual behaviour or specific intelligence, as a basis for making operational or investigative decisions about who may be involved in criminal activity.”

⁶ Submission on the Borders, Citizenship, and Immigration Bill for the House of Lords Second Reading, 11 February 2009, paragraphs 24-26.

the House of Lords voted down the provision, further to an amendment to the bill by Lord Glentoran. Government subsequently retreated from attempts in the Commons to reintroduce the measure.

Since this time the UK Border Force has nevertheless continued to ask some passengers coming to and from Great Britain for identification at Northern Ireland ports and airports, despite having no statutory power to do so. In one recent high profile case, supported by the Equality Commission, the Home Office settled a case (for £2000 without admission of liability) brought by a British woman who was stopped at Belfast City Airport by an immigration officer. The victim, who was not even a passenger but was dropping off a relative in the airport, reports she was told by the immigration officer she had been singled out as she 'looked foreign and not from here'. In her view she was stopped because she is black.⁷ This is not an isolated case. There is a significant risk in a post-Brexit context that such operations, and the serious problems they entail, could be significantly increased.

The most recent official statistics published for 'Operation Gull', an operation in Northern Ireland ports involving immigration and police officers targeting entry over the land border, record the 'interception' of 775 suspected irregular migrants in the 2015/2016 year, an increase of 66% on the previous year. These figures, the majority of which relate to persons suspected of routine immigration offences rather than crimes, were nevertheless included in an organised crime annual threat assessment report.⁸ The media reported figures of around 800 detentions in the subsequent year, with political and academic calls for the discontinuation of Operation Gull due to the concerns over the use of racial profiling.⁹

4. Changes in treatment of EU nationals in NI since the referendum

In our consultation events on the implications of BREXIT it has become evident that there has already been a significant shift in the treatment of EU26 (and perceived EU) nationals since the 2016 referendum. EU migrant workers who have been living in Northern Ireland for some time have told us that they have been subjected to questioning by UKBF staff at Northern Ireland airports when returning from visits to Poland or other countries of origin. This has included questioning about a person's level of fluency in English, current living or working arrangements, family and other matters, and has involved the separation of friends and family members. These unnecessary practices on EU nationals were not experienced before the referendum. We have not been able to date to clarify if they are a result of a policy change or rather just an attitudinal change that it is now 'fair game' to question the entitlement of EU nationals to be in Northern Ireland following the referendum, despite ongoing freedom of movement at present. Similar practices have been experienced in accessing essential public services that are alluded to later in this briefing.

⁷ Belfast City Airport: Black woman 'stopped for looking foreign' BBC NEWS online 20 July 2016.

<http://www.bbc.co.uk/news/uk-northern-ireland-36846314>

⁸ Organised Crime Task Force, Annual Report and Threat Assessment 2016, Department of Justice NI, June 2016, Page 13.

⁹ Calls for suspension of ongoing 'racist' Operation Gull initiative, Derry Journal, 2 June 2017

<https://www.derryjournal.com/news/calls-for-suspension-of-ongoing-racist-operation-gull-initiative-1-7988713>
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5. Current questions over use of Schedule 7 Terrorism Act 2000 powers

The Port & Border Control powers of examination under Schedule 7 of the Terrorism Act 2000 (TACT), are extensive powers of questioning that can be exercised in Northern Ireland by PSNI, Immigration and Customs officers at ports and airports or the ‘border area’ (a mile-wide strip of land around the land border).¹⁰

The purpose of the Act is to “make provision about terrorism” and matters including the “preservation of peace and the maintenance of order.”¹¹ Yet there is currently an unexplained high use of the power in Northern Ireland with not one single resultant detention under TACT in recent years. The jurisdiction accounts for a usage rate of Schedule 7 powers that is many times greater than its proportionate number of passenger journeys compared to Great Britain, where the powers in recent years have resulted in between 1,522 and 1,760 detentions annually.¹² The concern is that this emergency type power may be being misused for routine immigration purposes.

Official PSNI statistics published by the Northern Ireland Office on the use of Schedule 7 and the number of resultant detentions produce the following figures for recent years:¹³

Year	Number of Schedule 7 examinations	Number of resultant TACT detentions
2013/14	4,157	0
2014/15	3,917	0
2015/16	4,405	0

The current Independent Reviewer of TACT powers Max Hill QC refers to his predecessor David Anderson QC’s assessment of this pattern as ‘remarkable’ and worthy of further investigation. The PSNI subsequently highlighted to the Policing Board that whilst none of the persons examined under Schedule 7 were detained under TACT for over an hour, not all were released as they were of interest and referred to other agencies such as immigration and HMRC.¹⁴ There is at present no further breakdown as to the extent the powers in question were exercised by UKBF or the PSNI and the levels of immigration detentions that were resultant from the use of Schedule 7. There is therefore a concern that it is possible the powers are being misused for routine immigration purposes.

6. The UK-EU Positions on border controls in the CTA and BREXIT

The Northern Ireland and Ireland Position Paper issued by Government on the 16 August 2017 is limited to committing to not introducing fixed border controls. The paper states (emphasis added):

¹⁰ Schedule 7 Terrorism Act 2000

¹¹ Terrorism Act 2000

¹² The Terrorism Acts in 2016, Report of the Independent Reviewer Max Hill QC, Paragraph 5.17

¹³ Northern Ireland Office, Northern Ireland Terrorism Legislation: Annual Statistics 2015/16, 1 November 2016, Table 16.

¹⁴ The Terrorism Acts in 2016, Report of the Independent Reviewer Max Hill QC, Paragraph 5.17-5.18.

The development of our future immigration system will not impact on the ability to enter the UK from within the CTA free from routine border controls.¹⁵

The UK-EU Phase 1 Agreement of December 2017 contains a number of paragraphs on avoiding a ‘hard border’ but these relate to the freedom of movement of goods.¹⁶ A latter paragraph deals with the CTA and free movement of persons but is limited to reiterating that the UK and Ireland may continue to make arrangements for the CTA between themselves, and that such arrangements must respect EU law, with the UK accepting that the CTA can continue to operate without affecting Ireland’s EU law obligations to continue to allow freedom of movement for EU citizens.¹⁷

This is consequently reflected in similar terms in the Protocol to the draft Withdrawal Agreement. Chapter III and Articles 3-9 of the Protocol, and their subsections (a total of 18 provisions) deal with the issues of freedom of movement of goods. Chapter II deals with the Freedom of Movement of Persons in a single Article as follows:

Chapter II

Movement of persons

Article 2

Common Travel Area

1. The United Kingdom and Ireland may continue to make arrangements between themselves relating to the movement of persons between their territories (the "Common Travel Area"), while fully respecting the rights of natural persons conferred by Union law.
2. The United Kingdom shall ensure that the Common Travel Area and associated rights and privileges can continue to operate without affecting the obligations of Ireland under Union law, in particular with respect to free movement for Union citizens and their family members, irrespective of their nationality, to, from and within Ireland.¹⁸

This provision on the CTA does require interpretation. It allows the continuance of bilateral arrangements between Ireland and the UK but with conditions. The first is that arrangements must fully respect the “rights of natural persons conferred by Union law.” These are rights of all people, not just citizens, but the question is how might their rights be engaged by a common travel area? The most obvious answer is that, if free movement is guaranteed to British and Irish citizens, other people (or British and Irish citizens who are ‘perceived’ by Border Force officials not to be) might find themselves subject to particular controls and the most obvious of those that might violate human rights is racial profiling. In other words, it seems that the Protocol is saying that the CTA must avoid infringing EU guaranteed human rights and, perhaps in particular, must avoid racial discrimination. There is to date no explicit clarification that this is the UK’s interpretation of these provisions.

¹⁵ HM Government: Northern Ireland and Ireland Position Paper, 16 August 2017, paragraph 32.

¹⁶ Joint EU-UK Phase 1 Report, TF50 (2017) 19, 8 December 2017, paragraphs 49-51

¹⁷ Joint EU-UK Phase 1 Report, TF50 (2017) 19, 8 December 2017, paragraph 54.

¹⁸ Protocol to draft Withdrawal Agreement, 19 March 2018. - text in Green – “agreed at negotiator level”

Subsection 2 then provides that the CTA must operate without prejudice to Ireland's obligations under EU law, particularly freedom of movement for EU citizens and their family members in and out of Ireland. Whilst again open to interpretation this provision can be read as precluding a 21st century resurrection of the idea of UK 'treaty ports' in Ireland whereby, through 'cooperation' arrangements for future UK immigration controls on EU nationals or their family members are outsourced to the Irish authorities.

7. The Committee Stage debate on Baroness Kennedy's amendment

The Committee Stage of the EU Withdrawal Bill in the House of Lords in March debated an amendment tabled by Baroness Kennedy of The Shaws, which resulted in clarification from the Minister as to government's 'ambition and policy' as regards checks on the land border. The amendment was framed to preclude regulations under the act altering the provision in the 1971 Act that prevent passport control on local journeys within the CTA.

In tabling the amendment Baroness Helena Kennedy stated:

I wanted to raise the fact that, at the moment, there really seems very little that is solid around the movement of people. I am talking here not about the movement of trading goods but about the movement of people. As we know, the Government have a policy to create a hostile environment for migrants who end up with irregular status. On current plans, that would in future include migrants from elsewhere in the European Union, with the probable exception of Irish citizens. The question then turns to how the Government will enforce their desire for such significantly increased migration control while maintaining an open border. If the Government are sincere in saying they do not want a hard border, where will the checking of papers take place and how will it be done? It seems to me and to many that this has been largely overlooked in detailed discussions so far. The position paper is limited to setting out that future UK immigration arrangements will maintain the common travel area free from "routine" border controls...¹⁹

Baroness Kennedy raised the legislative proposals in 2008 to introduce controls in the CTA. Recalling in relation to the NI-GB controls that *"of course unionists in Northern Ireland were very concerned about what this would mean for them. Were they going to have to prove their position as they travelled within their own nation?"* In relation to the proposed 'ad hoc' checks on the land border it was recalled that this *"prompted the clear question as to the basis on which examining officers would distinguish between the two groups of citizens—people who were entitled to travel and those who were not"* and that BREXIT added an additional layer of complexity to any such controls, and required a bespoke solution:

In a post-Brexit context, under current plans, there would also be the question of distinguishing between EU citizens who had acquired rights by virtue of residence prior to Brexit, and those EU nationals arriving subsequently who may remain non-visa nationals but will be subject to restrictions. How would this be done?...

¹⁹ Hansard HL, Volume 789 European Union (Withdrawal) Bill 14 March 2018 Column 1675-7.

...As for potential solutions in a post-Brexit context which would avoid the need for a hard border and the risks of widespread profiling—pulling out people who they think look like foreigners—you would have to make some special arrangement. Members of the negotiation team would have to explore models that would somehow create special circumstances to deal with the Northern Ireland situation. It may have to be that we talk about continued EU freedom of movement into Northern Ireland in an agreement with the European Union to ensure that British citizens in Northern Ireland continue to enjoy equivalent rights to Irish citizens in the jurisdiction—a core principle, as we have heard, of the Belfast/Good Friday agreement.²⁰

In response the Parliamentary Under-Secretary of State, Northern Ireland Office and Scotland Office, (Lord Duncan of Springbank) stated that “in certain respects the key thing will be for the two respective Governments to ensure that they create a situation in which there is a disincentive to abuse the border”. The Minister then stated:

On the points raised by the noble Baroness about the physicality of checks and the reality of what they might look like, I wanted to be very clear about what I would say in my response, so I scribbled a note for my officials in the Box in order that I would not in any way stray on to thin ice. To be clear: there will be no impediment at the land border to the movement of people—no checks and no profiling, full stop. That is the ambition and the policy of the United Kingdom Government.²¹

This statement in March 2018 was the first time Government had given an on the record commitment which we are aware of, not to introduce mobile patrols on the land border. At present, government has not clarified its intentions as regards any increased checks in NI ports and airports.

As well as the present amendment there may be opportunities under any forthcoming immigration bill to introduce additional safeguards to prevent any further CTA controls that are likely to lead to racial profiling. The likelihood of ‘mission creep’ into further checks is inextricably linked to the question of customs controls, particularly in the context of the UKBF being a unified agency. There have also been significant concerns in NI as to why in the context of assurances that there will be no further CTA border controls, the Home Office has launched two recruitment exercises to increase the number of UKBF Officers stationed in Northern Ireland in the context of BREXIT.

8. Policing accountability, the UK Border Force and the abandoned recruitment exercise in NI

The Patten Commission report

The arrangements for the accountability for law enforcement agencies in NI flow from the Independent Commission on Policing (the Patten Commission) established further to the GFA.²² As part of the bilateral (UK-Ireland) implementation agreements of the peace

²⁰ Hansard HL, Volume 789 European Union (Withdrawal) Bill 14 March 2018 Column 1675-7.

²¹ Hansard HL, Volume 789 European Union (Withdrawal) Bill 14 March 2018 Column 1703

²² A new beginning: Policing in Northern Ireland, the Report of the Independent Commission on Policing for Northern Ireland, September 1999.

process, the UK committed to the full implementation of the Patten Commission report.²³ The Commission has internationally become a much-examined blueprint for policing reform.

The reforms entailed a new framework for human rights compliance, including new binding codes of ethics and powerful accountability bodies including the NI Policing Board and Police Ombudsman. The model did not envisage ‘tiered’ law enforcement in Northern Ireland and there has been considerable controversy in recent years regarding attempts to introduce new tiers of law enforcement into Northern Ireland that circumvent and were not accountable to the Patten accountability architecture. This was particularly the case with the National Crime Agency (NCA) whose operational policing powers were blocked in Northern Ireland for around a year by the Northern Ireland Assembly, precisely because the Home Secretary had sought to legislate to introduce the NCA into Northern Ireland in a manner which bypassed accountability to the Policing Board. It was only following a U-turn from the Home Office conceding accountability to the Board that the legislation passed at the Assembly, albeit in controversial fashion when the Secretary of State accepted a private members motion, rather than the established Legislative Consent Motion (LCM) as consent for the legislation.²⁴

The UKBF is currently not accountable to the Policing Board and has limited accountability to the Police Ombudsman. An enhanced role for the UKBF in NI and also Home Office Immigration Enforcement and Compliance Teams, who will be responsible for implementing ‘hostile environment’ measures and are also not accountable to the Board, has the potential to further rollback policing accountability in NI. The likely need for UKBF officers to seek security support from the PSNI in controversial and potentially discriminatory operations also may impact on the ability of the PSNI to comply with their ‘core policing principles’ duty to carry out their functions with the aim of securing support and cooperation of the whole community in Northern Ireland.²⁵

A further accountability issue has been that (unlike the Police Service for Northern Ireland – PSNI who have regularly met with us) the UKBF will not engage and discuss with CAJ (and presumably other public watchdogs) their preparations for BREXIT. CAJ had secured a meeting with UKBF that was subsequently cancelled by a senior official on grounds it was not permitted to discuss BREXIT policy. The UKBF even declined to tell us their current staff compliment in Northern Ireland. This information was made available to Parliament by the Public and Commercial Services Union (PCS) who stated there are currently 57 UKBF Officers stationed here.²⁶ We are unaware of how many of the approximately 5000 officers from the

²³ Weston Park (UK-Ireland) Agreement 2001, paragraph 8.

²⁴ For further details see Explanatory Memorandum to the Crime and Courts Act 2013 (National Crime Agency And Proceeds Of Crime) (Northern Ireland) Order 2015, http://www.legislation.gov.uk/ukdsi/2015/9780111128299/pdfs/ukdsiem_9780111128299_en.pdf and regarding the controversy over the LCM see (C. Harvey and D. Holder, ‘The Great Repeal Bill and the Good Friday Agreement – Cementing a Stalemate or Constitutional Collision Course?’, U.K. Const. L. Blog (6th Jun 2017) (available at <https://ukconstitutionallaw.org/>))

²⁵ s31A Police (Northern Ireland) Act 2000

²⁶ Home Affairs Select Committee, Home Office delivery of Brexit: immigration, Feb 2018 Paragraph 94 https://publications.parliament.uk/pa/cm201719/cmselect/cmhaff/421/42105.htm#_idTextAnchor052

Home Office Immigration Enforcement²⁷ are currently based in the Belfast Immigration Compliance and Enforcement Team, and whether there are plans to increase this number.

The Patten Commission report also led to compositional reform of the police service, made possible through the introduction of a Temporary Special Measure to provide for '50:50' recruitment to increase the number of Catholics in the PSNI. This stands in contrast to two recent recruitment exercises by the UKBF that have set criteria that in practice permit recruitment from only one section of the community, and have consequently been abandoned because due to falling foul of anti-discrimination legislation.

The Home Office recruitment exercises for new Border Force Officers in NI

Given the assurances of no new border controls, two recruitment exercises for new UKBF Officers to be stationed in NI have caused considerable controversy. Concerns were raised when the Home Office launched a recruitment exercise for 300 new 'mobile patrol' UKBF Officers in late 2017 for a range of locations including Belfast, and would not disclose to the media how many would be Northern Ireland based.²⁸

We referred this recruitment exercise to the Equality Commission for Northern Ireland. The recruitment in Northern Ireland was for British Citizens only (not a requirement, for example, to join the PSNI) and furthermore, for those candidates without the necessary formal qualifications (2 A levels), the experience criteria was either having "served in the British Armed Forces", having been a police officer or previously a UKBF officer. In the absence of objective justification for such criterion, these provisions clearly conflicted with Fair Employment legislation in Northern Ireland and provisions of the GFA and would have resulted in recruitment from only one section of the community.²⁹

The Equality Commission informed us they had consequently met with UKBF and "*stressed the importance of ensuring that employers in Northern Ireland comply with the requirements placed on them by the equality legislation in Northern Ireland.*" The Commission "*advised Border Force of our concerns in relation to the relevance of the experience criteria, given that it is not essential for applicants to have this experience and that training is provided for all appointees*" and "*discussed the need for objective justification of all criterion, whether internally or externally advertised. This includes the nationality requirement.*"³⁰ We were subsequently informed by the Commission that they understood the first Northern Ireland recruitment had been consequently discontinued.

Into 2018 the Home Office launched a fresh recruitment drive for 1,000 new UKBF Officers, with reportedly 21 being Belfast-based (which would increase staffing by around a third). On

²⁷ <https://www.gov.uk/government/publications/border-and-immigration-cross-cutting-data-august-2017>

²⁸ 'Concern at recruitment of 300 new Border Force Officers' Irish News 19 December 2018
<http://www.irishnews.com/paywall/tsb/irishnews/irishnews/irishnews//news/brexit/2017/12/19/news/concern-at-recruitment-of-300-new-border-force-officers-1214183/content.html>

²⁹ Employers in Northern Ireland are required to monitor the community background of employees under fair employment legislation. The current staffing composition in relation to UKBF officers in Northern Ireland is not available under these Monitoring Returns as it falls under a the broader 'Home Civil Service Departments and agencies in NI figures consisting of over 2700 staff. There is current an imbalance in these figures which consist of 62.4% Protestant and 37.6% Catholic. (Fair Employment Monitoring Report No.27, Annual Summary of Monitoring Returns) cited in correspondence to CAJ from the Equality Commission 21 February 2018.

³⁰ Correspondence from the Equality Commission Director of Advice and Compliance to CAJ, 19 January 2018.

this occasion different criteria were set for Northern Ireland than for Great Britain, with the NI posts dropping the experience criteria relating to past service in the UK armed forces or police, (these criteria were maintained for posts in Great Britain).³¹ Controversially however the restriction on the posts being open to British citizens only was retained. The Equality Commission again raised concerns regarding compliance with anti-discrimination legislation and the Good Friday Agreement.³² Following an outcry the Home Office confirmed UKBF would withdraw the recruitment exercise and re-advertise.³³ The BBC reported that the Home Office claimed the British-citizen requirement, which would now be amended, had been included due to an 'error'.³⁴ Given the previous Equality Commission intervention in 2017 it is difficult to understand how this matter could have been overlooked.

The recruitment of more UKBF and the manner in which it has been conducted has understandably contributed to scepticism that commitments not to increase CTA controls and to comply with the GFA and anti-discrimination legislation will be complied with.

9. The plans to 'intensify' on 'Hostile Environment' measures in NI

In commenting on UK immigration plans, the Home Affairs Select Committee has stated in relation to the future application of the 'hostile environment' measures under the 2014 and 2016 immigration Acts to EEA nationals post-BREXIT:

We are very concerned at the possibility that the hostile environment could be extended to include EEA nationals and apply to an estimated three million more people living legally in the UK without any evidence that the policy is working fairly and effectively. This has the potential to create further errors and injustices, which we have already seen causing unnecessary distress, and to increase the administrative burden on individuals, employers and landlords, without any evidence that the system works. It also cuts across the strong words of the Prime Minister that the UK wants EU citizens living here to stay, if the Government then chooses to subject them to a policy described as the 'hostile environment'.³⁵

CAJ has already heard testimony from EU migrant workers in Northern Ireland regarding (to adopt the terms used by the Home Affairs committee) errors and injustices and unnecessary distress that the existing hostile environment measures have already caused them.³⁶ This includes significant problems and costs in relation to interacting with banks and accessing public services where entitlements are increasingly questioned. In the course of our work we have consistently heard that the situation has deteriorated since the 2016 referendum.

³¹ See https://www5.i-grasp.com/fe/tpl_capita77.asp?newms=info5 (last accessed 23 April 2018).

³² Press Statement: Commission comment on Border Force recruitment advertisement 19/04/2018 <http://www.equalityni.org/Footer-Links/News/Employers-Service-Providers/Equality-Commission-Comment-on-Border-Force-Recrui>

³³ See 'More than 1,000 Border Force jobs withdrawn over 'British passports only' policy Irish News 21 April 2018 <https://www.irishnews.com/news/northernirelandnews/2018/04/21/news/more-than-1-000-border-force-jobs-withdrawn-over-british-passports-only-policy-1310107/>

³⁴ Home Office sorry for Border Force British passport 'error' BBC News 21 April 2018 <http://www.bbc.co.uk/news/uk-northern-ireland-43843345>

³⁵ Home Affairs Select Committee, Home Office delivery of Brexit: immigration, Feb 2018 Paragraph 122.

³⁶ In February 2018 CAJ with academic, NGO and trade union partners and the Stronger Together network held a major conference on the implications of BREXIT for migrant workers in NI a report from which is pending. See <https://brexitlawni.org/implications-brexit-migrant-workers-watch/>

Again it is not always clear as to whether such changes are the result of formal policy changes or attitudinal changes among decision makers.

One policy we are aware did change in 2017 was the process for GP registration. We heard a number of complaints from EU migrants that evidential requirements had in practice changed and it was now much more difficult for them to register with a GP, with patients experiencing extensive delays and increased evidential requirements, when the process had previously been more straightforward. A new Registration Form was introduced for all patients in June 2017. This HSCR1 form according to the health authorities that issued it “presented unforeseen issues for patients, GPs and FPS [Family Practitioner Services] staff”, it was consequently reviewed and the process only applied to ‘new entrants’ rather than internal transfers. In addition, they stated:

The HSCR1 process was further streamlined in February 2018, whereby, new entrants are now only required to provide documentary proof of their lawful status in the UK, for example, a passport and biometric residence permit for an overseas visitor. This ensures that we remove barriers that had resulted in delays to registration. As part of this process, we undertake extensive post registration checks to validate the patient’s entitlement.³⁷

It is not clear what prompted the changes to the process in 2017, what justification there was as to their necessity and proportionality, and as to whether they were BREXIT related. It is undisputed however that the changes have led to significant ‘issues’ and delays, and the questioning of entitlements that previously did not occur.

The UK Northern Ireland and Ireland Position Paper alludes to future plans for immigration control in Northern Ireland and the broader CTA being dependent on in country controls:

When considering the nature of the CTA as a border-free zone, it is important to note that immigration controls are not, and never have been, solely about the ability to prevent and control entry at the UK’s physical border. Along with many other Member States, controlling access to the labour market and social security have long formed an integral part of the UK’s immigration system.³⁸

The Northern Ireland Affairs Committee in its report on the border, welcoming commitments that free movement across the land border would continue, has however called for clarity as to the intentions for in-country controls:

We recommend the Government sets out in detail how it proposes to apply existing, or whether there will be new, internal immigration controls for EU nationals. In the Committee’s view, the residents of Northern Ireland should not be subject to more onerous documentary checks to determine entitlement to stay and to access public services and the labour market than anywhere else in the UK. It must also establish the resource implications of conducting checks on people away from the border.³⁹

³⁷ Correspondence to CAJ from the Assistant Director, FPS HSC Business Services Organisation, 20 April 2018.

³⁸ HM Government: Northern Ireland and Ireland Position Paper, 16 August 2017, paragraph 33.

³⁹ Northern Ireland Affairs Committee ‘The land border between Northern Ireland and Ireland’ HC 329 Published 16 March 2018, Paragraph 31.

Whilst this clarity is awaited, references however to increased ‘intensification’ of the Hostile Environment measures under the 2014 and 2016 Acts are more explicit in other official documents. Take the ‘Forward Look’ section of the Organised Crime Task Force (Northern Ireland) 2017 ‘Annual Report and Threat Assessment’ which proclaims:

Immigration Enforcement will seek to fully exploit all the measures in the Immigration Acts 2014 and 2016 to tackle illegal immigration; **the team in Northern Ireland was the first in the UK to convict an individual (rather than an employer) for the offence of illegal working.**⁴⁰ (emphasis in original)

A case study in the report elaborates that the latter example referred to three persons working without immigration permission in a restaurant in October 2016. There is no information provided that would indicate this incident related to ‘Organised Crime’. There are other examples whereby the Organised Crime Task Force has released statements regarding operations into raids on restaurants which appear to not involve ‘organised crime’ but routine immigration offending.⁴¹ Migrant communities will be increasingly stigmatised if there is a conflation of irregular migration with ‘organised crime’.

The above immigration section of the Organised Crime report also alludes to Immigration Enforcement continuing its work with UKBF and An Garda Síochána “in conducting intensification campaigns to tackle cross border and wider immigration crime.”⁴²

It should be recalled that in Northern Ireland there is a context whereby there has for a long time been serious concerns about violent racist attacks and intimidation against migrants (and perceived migrants) by elements in Loyalist paramilitary groups. For example, the PSNI Chief Constable recently stated that it was ironic that whilst there were loyalist groups who would work with international crime gangs from the same regions: “*Yet these same loyalist groups are the ones behind burning out and intimidating people from places like Lithuania and Romania in areas they perceive as their own.*”⁴³ Any official conflation of migrants in an irregular status with criminality in Northern Ireland as a justification for ‘intensification’ of hostile environment measures therefore carries serious additional risks to our ethnic minority communities.

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⁴⁰ Organised Crime Task Force 2017 ANNUAL REPORT & THREAT ASSESSMENT Department of Justice 6 February 2017, page 18

⁴¹ Take for example the statement of 7 August 2017 ‘Belfast Takeaway faces fine for employing illegal workers’ relating to a raid on 5 August 2017 whereby two persons, who it is stated entered the UK unlawfully, were detained <http://www.octf.gov.uk/News/Belfast-Takeaway-faces-fine-for-employing-illegal>

⁴² Organised Crime Task Force 2017 ANNUAL REPORT & THREAT ASSESSMENT Department of Justice 6 February 2017, page 18.

⁴³ <https://www.theguardian.com/uk-news/2018/feb/07/n-ireland-police-chief-says-hard-brex-it-border-posts-would-be-paramilitary-target>