

Secretary of State for the Home Department

2 Marsham Street

London

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London

26 October 2020

Re. The Citizens' Rights (Frontier Workers) (EU Exit) Regulations 2020

Dear Secretary of State and Ministers of State,

The Citizens' Rights (Frontier Workers) (EU Exit) Regulations 2020 have now been published, providing the first clear insight into the UK government's permit scheme for frontier workers.¹ The signatories of this letter represent a diverse grouping of organisations based in Northern Ireland and Ireland, working on the front line of advice, advocacy, and support for cross border workers, their families, and those who employ them. We write to express our concern about the development and implementation of this scheme, and the failure by the UK government to engage with the significant impacts of this scheme in Northern Ireland.

The Centre for Cross Border Studies' Border People project estimates that between 23,000 and 30,000 people in Northern Ireland and Ireland are cross-border workers, and that thousands of people cross the land border every day for work.² Due to the land border, the number of frontier workers in Northern Ireland is thought to be significantly higher than in any other part of the UK, and many industries heavily rely on these workers; particularly in border regions.³

The loss of EU protections for frontier workers will therefore have a unique and significant impact in Northern Ireland. We welcomed the provisions of the Withdrawal Agreement which set out to protect the rights of frontier workers.⁴ However, despite these commitments, the UK government has been slow to provide

¹ <https://www.legislation.gov.uk/ukdsi/2020/9780348212228/contents>

² <https://borderpeople.info/site/wp-content/uploads/Briefing-5-revision15June2016.pdf>

³ <https://www.economy-ni.gov.uk/sites/default/files/publications/economy/movement-people-northern-ireland-ireland-border.pdf>

⁴ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/840655/Agreement_on_the_withdrawal_of_the_United_Kingdom_of_Great_Britain_and_Northern_Ireland_from_the_European_Union_and_the_European_Atomic_Energy_Community.pdf

information on the implementation of the frontier workers scheme. In response to parliamentary questions in July 2019 and June 2020, the Home Office confirmed that a frontier workers scheme would be launched and details of the scheme published “*in due course*”.⁵ The draft legislation published in October 2020 provides our first insight into the details of this scheme, less than three months before the end of the transition period.

The Explanatory Memorandum published alongside the regulations openly states that no public consultation has been undertaken on these measures.⁶ This failure to consult is contrary to both common law and statutory duties to do so. We are challenged as to why no consultation on such a vitally important scheme has taken place, given the very clear issues we collectively can identify in relation to how this scheme will operate in Northern Ireland. Proper consultation with frontier workers and organisations representing their interests would have allowed such issues to be addressed before these regulations were prepared.

We wish to raise the following urgent concerns about the draft Citizens’ Rights (Frontier Workers) (EU Exit) Regulations 2020:

- The intention of the legislation is to permit those exercising their rights as frontier workers before the end of the transition period, who continue to do so after that date, to apply for a frontier workers permit confirming their status. **Workers will be required to obtain this permit before the 1st July 2021.** From this, it appears that frontier workers will have approximately six months to apply to the scheme. Anyone who wishes to be able to access the scheme must ensure they are exercising their rights as frontier worker by the end of December 2020. These time frames are extremely short and restrictive, particularly when we note that no information campaign or awareness raising on the scheme has been conducted by the UK government. There has also been no date provided for the launch of the scheme and policy documents and guidance have not yet been published. These arbitrarily narrow time frames will prevent many eligible applicants from applying on time, leaving them unable to access their rights.
- The UK government has not assessed the number of people who will need to apply to the scheme, instead stating that they have a “*working assumption*” of around 10,000 – 20,000 people. Without a clear idea of the number, location and nationality of people who will need to apply to the scheme, the government will be unable to accurately identify the necessary messaging and information

⁵ <https://questions-statements.parliament.uk/written-questions/detail/2019-07-03/272855>
<https://questions-statements.parliament.uk/written-questions/detail/2020-01-27/8337>

⁶ https://www.legislation.gov.uk/ukdsi/2020/9780348212228/pdfs/ukdsiem_9780348212228_en.pdf

campaigns needed or to direct resources and support appropriately. There will be no data on which to measure the uptake and success of the scheme. An urgent assessment must be made.

- No public consultation or impact assessment took place before the drafting of this legislation, with the draft explanatory memorandum stating: *“An Impact Assessment has not been prepared for this instrument because no significant impact on businesses has been identified.”* We are challenged as to how the Home Office can have been assured that this scheme will have no impacts given no consultation occurred and no impact assessment has been prepared. The voices of stakeholders in Northern Ireland have been overlooked and ignored and there has been no significant engagement on the potential impacts in Northern Ireland. Due to the legislation passing as a statutory instrument, the opportunities for stakeholder engagement with the legislation are also drastically reduced.
- Frontline advice services in Northern Ireland will be disproportionately impacted by the launch of this scheme due to the number of frontier workers living and working around the land border. These services have not received any additional funding or resources to assist them with providing advice and assistance to frontier workers. The EU Settlement Scheme has shown that free and accessible advice and assistance is essential in ensuring people can make the required applications and protect their rights. Without access to advice services, many frontier workers will be prevented from applying and accessing their rights under this scheme.
- The UK government has not conducted any outreach or awareness raising on the scheme. We believe there is a very low level of awareness of the scheme, among businesses and public service providers as employers, and among frontier workers themselves. A concentrated outreach campaign is urgently needed to ensure that impacted businesses, services, advice providers, and the general public are aware of the scheme, the application process and the restrictive timescales.
- The information provided on Irish citizens states that they enjoy a right of residence in the UK that is not reliant on the UK’s membership of the EU and that they may in addition have rights as a protected frontier worker. They will be able to apply for a frontier worker permit certifying those rights, but cannot be required to hold one in order to enter the UK. This is a similar position to that found in the EU Settlement Scheme where Irish citizens are advised that they can apply if they so wish, but that they aren’t required to do so. It is not satisfactory to require Irish citizens to make this choice when no information is provided to

allow them to compare and contrast their rights and entitlements under the scheme, and outside of it. Clear guidance is required to allow an Irish citizen frontier worker to make an informed choice about applying to the scheme and to ensure there is no loss of rights caused by failing to do so.

- British citizens are not covered by the scheme, even when they meet the definition of a frontier worker. No clarity has been provided on how they can ensure their rights and entitlements will be protected at the same level as through the frontier workers scheme. People of NI will also presumably be excluded from the scheme even when they are an Irish citizen, due to the Home Office policy of treating all persons of NI as British as notably highlighted in the DeSouza case.
- We also wish to raise general concerns about the design of the frontier workers scheme including the extremely broad grounds for refusal, the lack of a physical document, the need for renewal, the lack of provisions for non-EU family members of frontier workers, and the language found in the schedule to the legislation, which contains extremely restrictive definitions of integration and extremely broad definitions of 'the fundamental interests of society'. Frontier workers and organisations representing their interests have had no platform to raise these issues and it is essential that there is engagement on the design of the scheme prior to its coming into force.

We request urgent engagement with you directly to discuss our concerns and to ensure that the frontier workers scheme is accessible, fair and that the impacts on Northern Ireland are reflected in the future development and implementation of the scheme.

Yours faithfully,

Committee on the Administration of Justice
UNISON
Border People
Centre for Cross Border Studies
Migrant Centre NI
Irish Congress of Trade Unions
Migrant Rights Centre Ireland
Stronger Together
South Tyrone Empowerment Project
Inter Ethnic Forum
Chinese Welfare Association

Promoting Justice /
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Omagh Ethnic Community Support Group
Belfast Metropolitan College, College of Sanctuary
North West Migrant Forum
Advice NI
Granite Legal Services NI

C.C Diane Dodds MLA Minister for the Economy
Simon Coveney TD Minister for Foreign Affairs & Trade
NI Executive & NI Assembly Committees
Northern Ireland Human Rights Commission
Equality Commission for Northern Ireland

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