

## **Written Evidence to the Northern Ireland Affairs Committee on its inquiry into ‘The experience of minority ethnic and migrant people in Northern Ireland’**

**June 2021**

1. 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 seeks to secure the highest standards in the administration of justice in Northern Ireland by ensuring that the Government complies with its obligations in international human rights law.
2. CAJ welcomes the opportunity to provide Written Evidence to the Committee on its inquiry into the ‘The experience of minority ethnic and migrant people in Northern Ireland’.<sup>1</sup> The Committee seeks written evidence on the following areas;
  - the experiences of minority ethnic and migrant people living in Northern Ireland;
  - the challenges that minority ethnic and migrant people face in Northern Ireland;
  - the steps the UK Government can take to help ensure effective racial equality legislation in Northern Ireland;
  - the health and economic outcomes of minority ethnic and migrant people in Northern Ireland, and the steps the UK Government can take to help improve them;
  - successful initiatives and programmes to encourage cultural exchange and diversity among people in Northern Ireland;
  - people’s experiences of applying for the EU Settlement Scheme.
3. Following the referendum CAJ was the NGO partner in the ‘BrexitLawNI’, a collaborative research project with the law schools of Queen’s University Belfast and Ulster University. In 2019 CAJ established an Immigration Project to promote a humane, fair and rights compliant immigration regime in Northern Ireland that is fit for purpose. The project is led by an experienced immigration solicitor. The project acts as an expert legal resource on immigration in Northern Ireland, combining policy and research work with strategic interventions and litigation. The project is informed by collaborative work with frontline organisations and people with lived experience of immigration.
4. The Immigration Project at CAJ has developed a significant body of work on a wide range of issues impacting minority ethnic and migrant people in Northern Ireland. Our evidence to this inquiry seeks to focus in on unique challenges that minority ethnic and migrant people face in Northern Ireland, which are often overlooked in the broader, GB focused discourse on immigration and migrant rights.

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<sup>1</sup> [Call for evidence - Committees - UK Parliament](#)

## Executive Summary

5. This submission raises the following main issues:

- Considering the unique position of Northern Ireland when discussing immigration and migrant rights.
- The impact of the opening of an EU Settlement Scheme route for family members of people of Northern Ireland and concerns about rights implications of the deadline of the 30<sup>th</sup> June 2021.
- The Frontier Workers scheme and the failure to consider its unique impact in Northern Ireland. Concerns about specific issues including the lack of funding for advice organisations assisting with the scheme, the lack of provision for family members and the approaching deadline by which workers must hold a permit.
- The impact of the Common Travel Area on migrant and minority ethnic communities in Northern Ireland. The need to expand CTA access, concern over increasing unlawful immigration checks within the CTA and impacts of immigration reform on the functioning of the CTA.
- Racist hate crimes in Northern Ireland and links to paramilitary activity. The impact of this issue on the policing of hate crimes.
- Concerns over the expansion of the Hostile environment in Northern Ireland.

## The Unique impact of the immigration regime on Northern Ireland

6. Under the devolution settlement provided for by the Northern Ireland Act 'Immigration' *per se* is an 'excepted matter', yet many of the key areas of public policy provision for migrants are transferred matters. This includes areas such as health and housing provision but uniquely in NI competency employment rights and social security, as these were areas devolved to the old 1921-73 Stormont Parliament. Through such provisions the former Stormont administration sought to regulate residence and employment and operated a relatively autonomous system. During the suspension of the Common Travel Area from 1939-1952 passport controls were also introduced between NI and Great Britain, rather than on the land border.
7. Northern Ireland can be adversely affected by UK-wide 'one size fits all' immigration approaches. Like other peripheral regions this can manifest itself in issues such as salary thresholds in the new points based system.<sup>2</sup> It can also however manifest itself in unique ways relating to the land border and NI context.
8. Post Brexit, Northern Ireland faces unique impacts and challenges as it remains the only part of the UK with a land border with the EU. Commitments have been made that the land border will remain open, but at the same time the UK government is moving towards a more restrictive immigration regime. CAJ has raised concerns that the UK government will seek to significantly expand hostile environment measures in Northern Ireland, moving immigration checks away from the border, into everyday life. We have raised concerns that this risks turning Northern Ireland into 'one big border' and increasing the types of racial discrimination that are prevalent in

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<sup>2</sup> [Lower threshold for post-Brexit migrant salaries 'too high' for Northern Ireland - BelfastTelegraph.co.uk](https://www.belfasttelegraph.co.uk/news/uk-lower-threshold-for-post-brexit-migrant-salaries-too-high-for-northern-ireland-1.4611111)

‘informal’ ad hoc immigration controls.<sup>3</sup>

## **The EU Settlement Scheme**

9. There have been unique issues impacting the EU Settlement Scheme in Northern Ireland in addition to issues that have impacted the scheme UK wide. These have included issues such as lack of access to consular assistance, problems with criminal records transferred from NI to the national system and limitations on access to biometric appointments.
10. A unique positive impact of the EU Settlement Scheme in Northern Ireland has been the expansion of the scheme to allow family members of ‘Relevant persons of Northern Ireland’ (RPNI) to apply for Settled or Pre-Settled status.<sup>4</sup> This provision came out of the New Decade, New Approach agreement and aimed to address the discrepancy in EU family reunion rights for Irish citizens born in NI, raised in the DeSouza case.<sup>5</sup> This has had a significant positive impact in Northern Ireland, allowing non-EU migrant family members of both British, Irish and dual British and Irish people of NI, to gain EUSS status. The EUSS route is significantly fairer and more accessible than UK family immigration routes. This has allowed families to live together in NI, who would otherwise have been separated or forced to live elsewhere.<sup>6</sup>
11. While the RPNI route has had a positive impact for many members of the migrant community and their family members, it represents a temporary fix, with the scheme ending in June 2021. After that date the majority of families will be forced to rely again on complex, costly and inaccessible UK immigration routes. The provision of a fair and humane route for family migration should be maintained to ensure there is not a drop off in rights for non-EU family members of people of NI.
12. The EUSS has led to increased complexity concerning the rights and benefits of EU nationals. CAJ has received increasing reports of EU nationals being wrongly refused access to services or required to provide evidence of EUSS status in order to continue in employment and education, this situation is likely to deteriorate further after the 30<sup>th</sup> June 2021.
13. CAJ also wishes to raise concern about the impact on EU nationals who fail to apply to the EU Settlement scheme by the 30<sup>th</sup> June 2021. While the Home Office has updated its guidance permitting some late applications, the intention appears to be that those who fail to apply on time will be left without status in the UK until a late application is made. This gap could lead to a loss of rights protections and increased discrimination against EU nationals.

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<sup>3</sup> [One big border \(caj.org.uk\)](https://www.caj.org.uk)

<sup>4</sup> [EU settlement scheme \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

<sup>5</sup> [People born in Northern Ireland get improved family reunion rights | Free Movement](#)

<sup>6</sup> [There's One Place in the UK You Can Still Be an EU Citizen \(vice.com\)](https://www.vice.com)

## **The Frontier Workers Scheme**

14. The frontier worker scheme is of unique importance in NI, where it is estimated between 23,000 to 30,000 people are cross border workers and many businesses rely heavily on this cohort of workers.<sup>7</sup> Despite this, information was not provided on the scheme until three months before the end of the transition period. There was no public consultation or impact assessment conducted and the UK government did not assess how many people were likely to apply to the scheme. A coalition of NI organisations wrote to the Home Secretary expressing their concerns about the scheme being rolled out without consideration of the unique challenges in NI.<sup>8</sup>
15. Frontline advice organisations will bear the brunt of assisting people applying to this scheme, at a much larger scale than elsewhere in the UK, but unlike the EUSS, no funding has been provided to ensure they have the capacity to do this.
16. One clear issue which has already arisen with the scheme is that family members of frontier workers have no rights through the frontier worker scheme and must apply to the EU Settlement Scheme for status or for a permit to enter the UK.<sup>9</sup> However, status requires residence in the UK, making it impossible for families who reside in the Republic of Ireland. Applying for a permit every time they need to enter the UK is also not practical in border regions where people cross the border multiple times a day. This leaves serious question marks over family member's rights to enter Northern Ireland and to access services in Northern Ireland.
17. By the 1<sup>st</sup> July 2021 EU26 frontier workers must hold a frontier worker permit through the scheme to continue working in Northern Ireland. Feedback indicates that awareness of the scheme is very poor. It seems likely that without urgent engagement and promotion of the scheme, many migrant workers risk losing their right to work, and are at increased risk of exploitation.

## **The Common Travel Area (CTA)**

18. At present UK law expressly provides that local journeys in the CTA, including over the land border, are not to be subject to (passport) 'control'.<sup>10</sup> Persons who require visas to enter the UK who do so through the land border are still required to obtain them. In the context of Brexit the UK has also recently legislated to increase the categories of persons crossing the land border who are required to first obtain immigration permission to do so.<sup>11</sup>
19. The Home Office is now taking forward proposals to require pre-Electronic Travel Authorisation for most non-British or Irish citizens entering the UK, including many

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<sup>7</sup> [BACKGROUND EVIDENCE ON THE MOVEMENT OF PEOPLE ACROSS THE NORTHERN IRELAND – IRELAND BORDER \(economy-ni.gov.uk\)](https://www.economy-ni.gov.uk/Background-Evidence-on-the-Movement-of-People-across-the-Northern-Ireland-Ireland-Border)

<sup>8</sup> [Letter-to-Secretary-of-State-for-the-Home-Department-26-10-20-2020-.pdf \(caj.org.uk\)](https://www.caj.org.uk/letter-to-secretary-of-state-for-the-home-department-26-10-20-2020/)

<sup>9</sup> [Frontier workers casework guidance \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/97422/frontier-workers-casework-guidance.pdf)

<sup>10</sup> Immigration Act 1971, section 1(3)

<sup>11</sup> [The Immigration \(Control of Entry through Republic of Ireland\) \(Amendment\) Order 2021 \(legislation.gov.uk\)](https://www.legislation.gov.uk/uk/2021/0000/immigration-control-of-entry-through-republic-of-ireland-amendment-order-2021)

EU citizens, (although it would not apply to those with retained EU rights). No exemption has been proposed for local journeys in the CTA.<sup>12</sup> In 2019 CAJ raised this issue and asked for clarification about the application of this scheme in Northern Ireland, where it would disproportionately impact migrants living in border regions.<sup>13</sup> The scheme was committed to again in the 2021 'New Plan for Immigration' policy document and in the 'New Plan for Immigration: Legal Migration and Border Control Statement' without any reference to how it would apply on local journeys over the land border.<sup>14</sup>

20. In relation to post-Brexit policy the UK has stated as a matter of policy there will be "no immigration controls whatsoever" on the land border as part of future border arrangements.<sup>15</sup> Even should this transpire to be the case in practice, no similar commitment has been made in relation to passport checks on NI-GB routes. Home Office immigration officers do conduct irregular checks on some passengers on such air and sea routes despite them being domestic journeys. There have been long standing concerns regarding both the lack of legal basis for such checks and racial discrimination in the manner persons are targeted.<sup>16</sup>
21. Since the Brexit referendum the hitherto unknown concept of 'reciprocal rights' of the CTA has been regularly talked up. For both States this concept admittedly provides a solution for continued entry and residence of Irish citizens into Britain and British Citizens into the Republic of Ireland in the absence of EU free movement law (the legal basis for such free movement for almost the past half century). However, this has been accompanied by a tendency to frame the CTA as something that only applies to British and Irish citizens. It does not consider even other residents such as (non-Irish) EU nationals resident in the Republic of Ireland, who have lived lives fluidly on both sides of the border in the context of EU rights. These residents will now lose both entitlements within NI and also may need to apply for 'electronic pre-clearance' to travel a mile up the road. The same scenario arises for (non-EEA) non-visa nationals living in border areas who with requirements for electronic pre-clearance will also find a border they have hitherto been able to cross freely, significantly hardened.
22. Organisations such as North West Migrants Forum have raised that the CTA is already too restrictive, requiring some members of the migrant community to obtain visas in order to simply cross a border which is invisible to others, on what are undisputedly local journeys.<sup>17</sup> This has a disproportionate impact on migrants living in border regions. These restrictions impact their ability to live cross border lives and negatively impacts integration and inclusion.

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<sup>12</sup> [The UK's future skills-based immigration system \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

<sup>13</sup> [Electronic-Travel-Authorisation-and-the-CTA.pdf \(caj.org.uk\)](https://caj.org.uk)

<sup>14</sup> [New Plan for Immigration: policy statement \(accessible\) - GOV.UK \(www.gov.uk\)](https://www.gov.uk) [New plan for immigration: legal migration and border control strategy statement \(accessible web version\) - GOV.UK \(www.gov.uk\)](https://www.gov.uk)

<sup>15</sup> HM Government "[The UK's Points-Based Immigration System Further Details](https://www.gov.uk)" July 2020 CP258, para 4.

<sup>16</sup> For further detail see [Brexit-Border-Controls-and-Free-Movement.pdf \(brexitlawni.org\)](https://brexitlawni.org) and [Verso \(versobooks.com\)](https://versobooks.com)

<sup>17</sup> [Common Travel Area \(CTA\); Brief background and its origins – North West Migrants Forum \(nwmf.org.uk\)](https://nwmf.org.uk)

23. In 2018 the Northern Ireland Affairs committee report on the Land Border between Ireland and Northern Ireland recommended that “*the residents of Northern Ireland should not be subject to more onerous documentary checks*”<sup>18</sup> However, recent data revealed that Belfast has a proportionality higher rate of immigration checks when compared to 11 other UK cities, including London. In response to questions about these figures, the Home Office referred to the need to police the CTA.<sup>19</sup> The slow creep of increasing immigration enforcement and the use of racial profiling within the CTA has a direct and negative impact on migrant and minority ethnic communities.

### **Racist Hate Crimes and Paramilitary Activity**

24. PSNI statistics show that since 2016/17 racist hate incidents have overtaken sectarian incidents in Northern Ireland.<sup>20</sup> CAJ welcomed the report of the Independent Review into Hate Crimes Legislation in Northern Ireland.<sup>21</sup>

25. One of the challenges in addressing racist hate crimes in Northern Ireland is the involvement of paramilitary organisations in supporting or carrying out these incidents. In the context of the UK this is an issue unique to Northern Ireland, and the impacts of same on challenging hate crimes and on the effective policing of hate crimes have not been fully examined. In 2017 a Thematic Review of Policing Race hate crime by the Northern Ireland Policing Board stated: “*hate crime will not be addressed unless and until all agencies are able and willing to acknowledge and discuss the issues, including the reported threat from paramilitary groups targeting minority ethnic communities.*”<sup>22</sup>

26. Amnesty International has pointed to the involvement of paramilitary organisations as impacting the conviction rate and policing of hate crimes in Northern Ireland.<sup>23</sup> Reports have long show that paramilitary organisations remain linked to racist hate crimes, often linked to housing intimidation in areas of paramilitary control.<sup>24</sup> Whilst the PSNI and Housing Executive do conduct assessments on paramilitary intimidation (including the numerous cases when the Housing Executive is “*obliged to seek new accommodation for individuals deemed to be at risk of death or serious injury if they returned to their homes.*”) limited statistical information is disclosed. It is concerning that statistical information concerning the alleged source of threat – i.e. which paramilitary organisations are deemed likely to be responsible is not made available.<sup>25</sup>

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<sup>18</sup> [The land border between Northern Ireland and Ireland \(parliament.uk\)](https://www.parliament.uk/business/committees/committees-a-z/northern-ireland-affairs-committee/committees-reports-and-evidence/2018-land-border-between-northern-ireland-and-ireland/)

<sup>19</sup> [Belfast: Pattern of immigration checks raises profiling concerns | United Kingdom News | Al Jazeera](https://www.bbc.com/news/uk-northern-ireland-55888888)

<sup>20</sup> [Recorded Crime in Northern Ireland : 2002/2003 \(psni.police.uk\)](https://www.psnipolice.uk/recorded-crime-in-northern-ireland-2002-2003)

<sup>21</sup> [CAJ welcomes publication of independent hate crime review – CAJ](https://www.caj.org.uk/news/2018/01/caj-welcomes-publication-of-independent-hate-crime-review)

<sup>22</sup> [race-hate-crime-thematic-review.PDF \(nipolicingboard.org.uk\)](https://www.nipolicingboard.org.uk/wp-content/uploads/2017/06/race-hate-crime-thematic-review.PDF)

<sup>23</sup> [Racially motivated crimes now exceed sectarian ones in Northern Ireland | Northern Ireland | The Guardian](https://www.theguardian.com/northern-ireland/2018/01/11/racially-motivated-crimes-now-exceed-sectarian-ones-in-northern-ireland)

<sup>24</sup> For example see: [Racist intimidation in the Village in south Belfast “going on for years” - Investigations & Analysis - Northern Ireland from The Detail](https://www.thedetail.com/northern-ireland/2018/01/11/racist-intimidation-in-the-village-in-south-belfast-going-on-for-years-investigation)

<sup>25</sup> In 2016 freedom of [information requests to Housing Executive published by The Detail investigative journalist website](https://www.thedetail.com/northern-ireland/2018/01/11/racist-intimidation-in-the-village-in-south-belfast-going-on-for-years-investigation) documented 1,842 cases of persons made homeless through intimidation over a three year period between 2012-2015, with over 70% paramilitary intimidation. There was an unclear separation in these figures of paramilitary

27. The Independent Monitoring Authority (IMA) reported in 2019<sup>26</sup> and 2020<sup>27</sup> that they had heard evidence from groups and individuals who perceived racist hate crimes against them to have had a paramilitary dimension. These reports included people who had been intimidated out of housing. The IMA found that the PSNI could not provide ‘hard data’ on links to paramilitaries. This lack of data is concerning and does not support on the ground reports from victims and their representatives.
28. An outworking of statistical information on paramilitary involvement in housing intimidation being withheld (and, where released, separating hate incidents)– is that tackling paramilitary-linked housing intimidation is not then featured in strategic policy to tackle paramilitary activity. The Executive programme for tackling paramilitary activity or its associated Action Plan does not mention paramilitary involvement in racist activity at all, and the word intimidation is only mentioned once, in a reference to organised crime.

### **Hostile Environment Policies**

29. CAJ wishes to raise significant concern that despite successful court challenges and widespread criticism, the Hostile Environment is not being abolished or reformed.<sup>28</sup> Instead it is being expanded and rolled out to a broader cohort of people: EU nationals and their family members. Notwithstanding the general concerns about this there are additional impacts in Northern Ireland. These include the likelihood of increased hostile environment measures being used to manage movement across the land border. The complexity of an array of entitlement differentials between different groups of citizens, with the added dimension in NI of Irish citizens and frontier workers. There is also the context whereby hostile environment measures such as data sharing on healthcare also encroach on devolved powers in NI. Hostile environment measures could also undermine work by NI departments toward integration and anti-racism.

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incidents from racist, sectarian and homophobic incidents, that may involve paramilitaries. Figures were also released [under FOI following a request from the Belfast Telegraph for the period of 2015-2018](#) – recording over 2000 cases of intimidation from housing in the time period. Again these figures artificially separate paramilitary cases (1,488) from those deemed racist (80) or sectarian (135). Another example is the [Criminal Justice Inspection NI \(CJINI\) report into the work of BASE2](#). This is in the public domain general statistics from 2012-2018 regarding threat verification assessments by BASE2, the vast majority of which are conducted at the request of the Housing Executive. This includes a table on the ‘alleged sources of threats’ covering ‘loyalist’, ‘republican’ and ‘community’.

<sup>26</sup> [IRC - Second Report October 2019 - HC 131 \(ircommission.org\)](#)

<sup>27</sup> [Independent Reporting Commission Third Report - November 2020 \(ircommission.org\)](#)

<sup>28</sup> [Court of Appeal: Right to Rent scheme causes racial discrimination | Joint Council for the Welfare of Immigrants \(jcwi.org.uk\)](#)

**CAJ, June 2021**

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