

## Briefing Note - The Illegal Migration Bill Impacts on the land border

**March 2023**

The Committee on the Administration of Justice (CAJ) is an independent human rights organisation with cross community membership in Northern Ireland and beyond. 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.

The Content of this briefing note refers to the Illegal Migration Bill as introduced in the House of Commons.<sup>1</sup> The clauses and content detailed below are subject to change as the bill progresses.

- Clause 2 provides that the Secretary of State must make arrangements for the removal of a person from the United Kingdom (UK) if all of ‘four conditions’ are met.
- The **first** of the four conditions concerns how the person entered or arrived in the UK. A person meets condition 1 if any of the following apply:
  - They require leave to enter the UK, but entered the country without this (this includes non-visa nationals);
  - They obtained leave to enter by means which include deception by any person;
  - They entered in breach of a deportation order;
  - They require entry clearance, but have arrived at the UK without entry clearance (a visa national);
  - They require Electronic Travel Authorisation (ETA) for travelling to the UK, but have arrived in the UK without ETA.
- The **second** condition is that the person entered or arrived in the UK on or after 7 March 2023.
- The **third** condition is that the person did not come directly to the UK from a country in which the person’s life and liberty were threatened.
- The **fourth** condition is that the person requires leave to enter or remain but does not have it.
- On the face of it, these conditions would seem to capture any visa national resident in the Republic of Ireland, who enters Northern Ireland (NI) without the correct leave to remain. This includes people with legal residence in the Republic of Ireland (ROI), but who require a visa to enter the UK (and therefore NI).

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<sup>1</sup> <https://publications.parliament.uk/pa/bills/cbill/58-03/0262/220262.pdf>

- The conditions also seem to capture non visa-nationals who enter the UK without Leave to Enter. Clarification is needed on how this will be applied within the Common Travel Area and on the land border, where non-visa nationals enter NI from the ROI on the basis of 'deemed leave' and will not have physical evidence of Leave to Enter.<sup>2</sup>
- This provision also appears to apply to people who enter the UK without Electronic Travel Authorisation (ETA) from ROI. ETA has been exempted for British and Irish citizens, people who already hold a UK visa and for non-visa nationals with legal residence in ROI. However this would mean that non-visa nationals who are not legally resident in Ireland, e.g tourists, who fail to obtain an ETA and enter NI could potentially fall under the 'four conditions'.
- Visa nationals entering NI have always been required to comply with UK immigration requirements and therefore always risked the penalties for entering unlawfully if they failed to obtain the correct visa. However, the reason that the application of this legislation is particularly concerning is the extremity of the penalties associated with it.
- A person liable for removal due to meeting the conditions under Clause 2 cannot challenge the decision to detain them by judicial review (Clause 13(4)). This severely limits their recourse to justice and appears to be a breach of the Good Friday Agreement<sup>3</sup> and European Convention of Human Rights.<sup>4</sup>
- There is no permission to apply for bail until 28 days in detention have passed (Clause 13(3)(b)). The immigration detention facility in NI is a short term holding facility. This means that a person can only be detained in NI for a maximum of seven days. Due to the 28-day delay, this means that it will not be possible for a person to apply for bail before being moved from Northern Ireland to long term detention facilities in Great Britain. Once removed, they could potentially lose access to their legal advice and legal aid provision, and will be separated from any community and family supports.
- Clause 12 states that detention can be on the basis that an immigration officer 'suspects' they meet the four conditions, and can be detained until a decision is made on whether or not Clause 2 and the 'four conditions' applies to them. There is no time limit on detention with a person liable to be detained 'for as long as the Secretary of State deems necessary'. There is no clarity on how immigration officers will make these decisions based on suspicion and there is a very high risk of racial profiling and discriminatory practices occurring.

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<sup>2</sup> Persons eligible for deemed leave arriving from the Republic of Ireland have leave to enter automatically, subject to the provisions of the Immigration (Control of Entry through Republic of Ireland) Order 1972.

<sup>3</sup> Good Friday Agreement, section titled 'Rights, Safeguards and Equality of Opportunity'. Under 'United Kingdom Legislation' states, ' 2. The British Government will complete incorporation into Northern Ireland law of the European Convention on Human Rights (ECHR), with direct access to the courts, and remedies for breach of the Convention, including power for the courts to overrule Assembly legislation on grounds of inconsistency

<sup>4</sup> Article 6 of the ECHR-Right to a Fair Trial

- A person subject to Clause 2 may be removed from the UK to their home country (where it is deemed safe) or a safe third country. This includes for example, Rwanda. Legal residence in the Republic of Ireland, does not guarantee that a person will be returned to the Republic of Ireland.
- It appears that that this new legislation could result in, for example, a Kenyan national residing legally in Donegal, who travels to Derry to go shopping without obtaining the correct visa, being detained indefinitely in Great Britain without proper recourse to the courts, and potentially removed to a third country that is not the Republic of Ireland.
- It also appears that this legislation could result in, for example, a Brazilian or American (non-visa) national visiting Ireland, who travels to Northern Ireland for a day trip, without obtaining Electronic Travel Authorisation, being detained indefinitely in Great Britain, without proper recourse to the courts and potentially removed to a third country.
- Clause 2 (11) (b) appears to allow for exemptions for certain persons under Clause 3 (5) *“The Secretary of State may by regulations make provision for other exceptions from the duty in section 2(1).”* However, it is not clear if there is any intention to exempt journeys within the Common Travel Area and local journeys between ROI and NI.
- This bill has the potential to cause severe impacts on the land border and on the island of Ireland. It is not clear if the UK government considered these unique impacts before pressing ahead with the legislation. The Common Travel Area and the land border are not mentioned in the bill or the explanatory memorandum. The application of this legislation on the land border needs urgently clarified.

**CAJ, March 2023**

Committee on the Administration of Justice (CAJ)  
1st Floor, Community House, Citylink Business Park  
6A Albert Street, Belfast, BT12 4HQ

Tel: (028) 9031 6000  
Email: [info@caj.org.uk](mailto:info@caj.org.uk)  
Website: [www.caj.org.uk](http://www.caj.org.uk)