

House of Lords Briefing: Report Stage Day 5 by the Repeal Bill Alliance

[The Repeal Bill Alliance](#) is a coalition of a wide range of civil society organisations working collaboratively to strengthen the EU (Withdrawal) Bill.

The Alliance is guided by a set of broad principles, which are:

- Parliamentary scrutiny and democratic accountability in the transposition process
- The preservation of existing rights and standards
- Protection and respect for the devolution settlements and the Good Friday Agreement

Passport and border controls in Northern Ireland

Against the backdrop of "Windrush" the Customs Union debate that took place last Thursday raised some important issues for Northern Ireland that resonate with the wider debate around the "hostile environment" powers.

Much of the debate on the Irish land border so far (and also on the movement between Northern Ireland and the rest of the UK) has focused on the freedom of movement of goods, rather than freedom of movement of people. However, as the recent [CAJ briefing](#) (Committee of the Administration of Justice) has shown there are genuine concerns about the policing of border controls in Northern Ireland and some very specific concerns about racial profiling.

At the heart of this lies two conundrums. The first is the Common Travel Area (an open borders area comprising the United Kingdom of Great Britain and Northern Ireland, Ireland, the Isle of Man, and the Channel Islands) that has minimum controls and can be crossed by British and Irish citizens with minimum documentation. The question post March 2019 is how to reconcile the free movement when Ireland and the UK are no longer party to the same rules governing free movement. The current arrangements that form part of the CTA will change post Brexit.

Aligned to this is the Belfast/Good Friday Agreement that protects the Irish citizenship rights for people in Northern Ireland which could be undermined as a result Brexit. More generally, implementation of various aspects of the Agreement could be compromised by the absence of an overarching EU legal framework. With Brexit, key EU laws could be repealed and not replaced, thus undermining the functioning of the Agreement.

Passport controls on local journeys in the CTA are precluded in UK law by virtue of Section 1(3) of the 1971 Immigration Act. This provision is the statutory basis for freedom of movement within CTA and what this means in practice is that such journeys are not subject to (passport/border) 'control' under this Act.

Just as fixed border controls on persons crossing the land border would be impractical and conflict with the provisions of 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.

Whilst there's 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, the current climate has led to fears that the Government will amend 1971 Immigration Act with law enforcement bodies already vowing 'intensification campaigns'.

Recent and documented cases to the CAJ and other bodies have exposed disproportionate checks for EU migrants including querying of entitlements alongside unexplained high use of Schedule 7 of the Terrorism Act (TACT) which contain port and border control powers, without any resultant TACT detentions.

Last week in the House of Lords Baroness Kennedy of the Shaws tabled amendments to preclude any changes to provisions in the 1971 Immigration Act which currently prevent passport control in the CTA.

This Wednesday in the House of Lords, Lord Patten, Conservative peer, has tabled a new clause which explicitly preserves North-South co-operation after Brexit and prevents the establishment of new border arrangements which did not exist before exit day, unless agreed between the UK Government and the Government of Ireland (amendment 88). For the reasons set out above, we encourage peers to vote for this amendment.

Government amendments to Clause 11: concerns about the definition of 'consent'

While we recognise the efforts made by the UK Government to reach a deal with the devolved administrations, the new Government amendments to Clause 11 still does not adequately respect the devolution settlements. That is, the Government sets out that a Minister of the Crown must not make regulations in devolved areas unless the devolved administrations have made a consent decision. We take particular issue with how 'consent' is defined in these amendments, which is as follows:

- (a)** a decision to agree a motion consenting to the laying of the draft,
- (b)** a decision not to agree a motion consenting to the laying of the draft, or
- (c)** a decision to agree a motion refusing to consent to the laying of the draft

This definition is vague, distorts the meaning of consent and allows for the interpretation that whatever the devolved administrations say, consent is somehow obtained. We encourage peers to raise these concerns on Wednesday, day 5 of Report Stage. The Repeal Bill Alliance recognises the importance of establishing common frameworks, however, these frameworks

must be mutually agreed and respect the devolution settlements.