

ILPA Submission to the Home Office Consultation on Strengthening the Common Travel Area

INTRODUCTION

1. ILPA is a professional association with some 1,000 members, who are barristers, solicitors and advocates practising in all aspects of immigration, asylum and nationality law. Academics, non-government organisations and others working in this field are also members. ILPA exists to promote and improve the giving of advice on immigration and asylum, through training, disseminating information and providing evidence-based research and opinion. ILPA is represented on numerous government and other stakeholder and advisory groups. ILPA regularly gives written and oral evidence to parliamentary committees. ILPA's work on the response to this consultation has drawn on the expertise of members practising on both sides of the border on the island of Ireland and the input of members from all over the UK to this response has been coordinated by ILPA member, the Law Centre Northern Ireland.

2. A selection of ILPA's broader work on this topic is found in the previously submitted material annexed to this report. The annexed material is all in the public domain and ILPA consents to this submission being made public.

STRENGTHENING THE COMMON TRAVEL AREA CONSULTATION

Sea and Air Routes from the UK to the Republic of Ireland

1. Do you agree that new powers to enable border controls on all air and sea routes from the Republic of Ireland to the UK for non-CTA nationals should be introduced?

NO.

ILPA does not think the government has made its case for any change. It is our understanding that the main reasons for these proposals are the 'e-borders' initiative which will require proof of identity for all passengers travelling between the Republic of Ireland and the UK and the need to bring the UK system into line with the developments in the Republic of Ireland. If so, the Home Office should openly explain this. The UK Border Agency has also made much of the changed security concerns and intimated that these are in part behind these proposals. For two reasons we find this unconvincing.

- Firstly the proposals do not provide for policing of the land border.
- Secondly, the measures sought now were not deemed necessary between Northern Ireland and the Republic of Ireland during the 1970's & 1980's, when the 'troubles' in Northern Ireland were at their height.¹ The document mentions the risk of abuse of the Common Travel Area but gives no evidence of such abuse.

The Common Travel Area recognises the close social, economic and cultural ties, the special relationship and shared history between the Republic of Ireland and the UK. The fundamental reason for its establishment was the difficulty in policing the land border between Northern Ireland and the Republic of Ireland. Rather than strengthen an agreement that has made travel across the island of Ireland and between the Republic of Ireland and the UK easier for nearly a century, the proposals effectively abolish the Common Travel Area, particularly with respect to air and sea travel.

We are also aware that UKBA has made the argument that the proposals will simply mirror practice in the Republic of Ireland (immigration lawyers in Northern Ireland have experience of these practices at the border in the Republic of Ireland). The publication of the UKBA consultation is a good opportunity to look at the Common Travel Area arrangements. The Common Travel Area arrangements would benefit from being clarified and formally established. It is our belief though that the Common Travel Area would be best strengthened by making travel between the two easier and clarifying the details of that freedom of travel, in the form of the mutually recognised visa

¹ See the Guardian <http://www.guardian.co.uk/uk/2008/jul/28/northernireland.uksecurity>

system or the jointly issued common visa. It is our understanding that the Provisions in the Republics Immigration, Residences and Protection Bill are already being challenged in the Republic of Ireland by NGO's working in this area including the Immigrant Council of Ireland. One of the main concerns about the Republic's proposed measures are the difficulties that are anticipated for cross border travel. Measures such as these will ultimately prove harmful to key industries including tourism.²

While we recognise that the UK and the Republic of Ireland opted out of the Schengen Area agreement in 1999 we would argue that future developments of the Common Travel Area should be based upon the Schengen model principles of transparency of arrangements and freedom of movement within the area.

2. Do you agree that identity controls should be introduced on all air and sea routes from the Republic of Ireland to the UK for CTA nationals?

As we set out in response to question 1 we think that such moves would have a series of negative impacts. Unlike the relationships of other EU countries with common land borders, the history of the North and South of the island of Ireland is shared in terms of language, culture, economics and close family relationships, as do, to a lesser degree the Republic of Ireland and the UK as a whole. Economically such measures would damage tourism³ and other key industries such as haulage and agriculture. The casual traveller, the business traveller concerned about delays and extra charges and the traveller concerned with having to carry a passport would all be less likely to travel to the UK and particularly Northern Ireland if these extra measures are imposed.

3. Please indicate which of the following documents should be included in the list of documents permitted for travel by CTA nationals on air or

² We are aware that the Immigrant Council of Ireland is already calling for immigration officials' actions to come under further scrutiny following two recent cases. Immigrant Council of Ireland Press Release September 22, 2008.

³ UKBA Partial Impact Assessment of Common Travel Area (CTA) Reform page 21 for cost of implementing measures

sea routes from the Republic of Ireland to the UK. Please select all that apply.

We would prefer that documents should not be required to establish identity for Common Travel Area nationals travelling between the UK and the Republic of Ireland. Notwithstanding this, we would argue that if a list is to be imposed it should not be exhaustive.

The composition of this list of documents which British and Irish citizens will be able to rely upon as evidence of their identity is a significant matter that needs addressing in some detail. As well as being able to use a passport or ID card we would suggest that consideration be given to reliance (either alone or in combination) upon birth certificates, driving licences or documents bearing national insurance number or indeed utility bills, financial statements or legal correspondence. These documents or a combination of them should be sufficient to evidence identity by way of picture building. A list that did not include such options would effectively require Common Travel Area nationals to carry their passport whenever they travel by sea or air between the UK and Republic of Ireland. As many individuals have family and personal relationships as well as job commitments across the two states a broad approach would be preferable to facilitate travel. Failure to provide a particular document should not be a reason for refusal of permission to travel or a potential criminal offence.

Travel between the Republic of Ireland and Northern Ireland

4. Please indicate which of the following documents should be included in the list of documents permitted for travel by air or sea from the Republic of Ireland to Northern Ireland. Please select all that apply

We believe that the principle of freedom of movement between Northern Ireland and the Republic of Ireland should be maintained. Northern Ireland is unique in the UK due the land and waterways border with the Republic of Ireland. There is a joined culture, history, language and close interwoven social and economic relationships separated by a national border across which there are deeply entrenched, complex and numerous links. Similarly

affected would be those journeys starting in either the Republic of Ireland or Northern Ireland, travelling through the other en route to a destination in England, Scotland or Wales. We would also note that those communities along the border, especially near the sea crossings and areas where tourism is a cross-border pursuit by virtue of the proximity between the north and south of Ireland (for example the lakes of Fermanagh which straddle the two jurisdictions and which are a major tourism destination in both the Republic of Ireland and Northern Ireland) would be severely inconvenienced having to carry ID. The impact of these measures will be significantly, disproportionately felt in Northern Ireland. It is our belief that they will impact upon levels of trade and tourism. These measures will also mean that UK citizens in Northern Ireland are subject to travel controls that are not imposed on UK citizens travelling from one region of Britain to another region of Britain. There could also be a particularly significant impact on the ethnic minority communities in these locales. For these reasons we believe that documents for travel should not be required.

If documentation is required we would argue for a broad, non-exhaustive list. Along with a passport or ID card we would suggest that a common visa be adopted (preferably with the option for it to be long term) for the purpose of travel from Northern Ireland to the Republic of Ireland, or that a mutually recognised visa arrangement is implemented⁴. Such a list should include the documents set out in response to question three; the failure to provide a particular document should not be a reason for refusal of leave to enter or remain or a potential criminal offence.

ILPA has concerns at the reference to increased intelligence led operations by immigration officers in Northern Ireland. Experience of these actions, in the form of Operation Gull, has been that immigration officers have carried out investigations on a discriminatory basis. The High Court has criticised, on a number of occasions, the practices of immigration officers in cases involving Operation Gull, which have come before them. We understand that the Northern Ireland Human Rights Commission is currently finalising a report into immigration enforcement activity in Northern Ireland that it conducted due to

⁴ This would allow those in either the Republic of Ireland or Northern Ireland on student visas, for example, to travel across the whole of the CTA.

the concerns it was receiving about these practices. The report, due to be published before the end of the year, will provide important insight into these operations. The report should be taken into account along with responses to this consultation and new policies on the future development of the Common Travel Area should not be drawn up until it has been considered.

Operation Gull is a joint operation between Garda Síochána, PSNI and the UK Border Agency (UKBA) which has been running since approximately 2005. Its stated remit, as much as we are aware of it, is to stop those entering Northern Ireland from Britain proceeding illegally on to the Republic of Ireland. UKBA's Operation Gull targets migrants entering Northern Ireland, on domestic flights and boats from Britain. Those suspected of entering Northern Ireland with a view to entering the Republic of Ireland illegally are detained and removed from Northern Ireland. Much of the detail about Operation Gull is shrouded in secrecy. The UK Border Agency has never fully disclosed the exact figures for those removed to their country of origin under Operation Gull, although it is believed to run into many hundreds. Equally the UK Border Agency has not given a full justification for Operation Gull and in the experience of lawyers in Northern Ireland such justification can vary dependent upon the details of the individual case.

Operation Gull runs on an irregular basis. When it is in operation upwards of 50 individuals have been believed to be detained in one weekend. Operational Gull is carried out at both Belfast City and Belfast International Airports and at Belfast and Larne Sea Ports.

The speed and secrecy under which Operation Gull is carried out results in individuals being unable to access independent legal advice that would be able to determine whether they have been detained lawfully. There is no independent, transparent, oversight of Operation Gull. One of the chief concerns is that individuals could be questioned under Operation Gull on grounds of ethnicity/nationality irrespective of the legality of their intentions.

The proposed powers in the Common Travel Area consultation will only increase the likelihood of Operation Gull type operations. It is essential that the circumstances in which such checks may be made are carefully defined, to avoid establishing a broad power of internal immigration control. We would welcome the Northern Ireland Human Rights Commission's report into

Operation Gull before being able to properly consider any proposals to extend such practices on all sea and air routes between the Republic of Ireland and the UK.

There are particular problems for those people who reside on one side of the border or work (or indeed undertake other regular activities) on the other. As nationals of the European Economic Area they should enjoy full rights of free movement. As busy people they need to be able to get to work without delays. If they are to have to carry a passport at all times, against the possibility of a random check, and produce it, this is going to impede free movement and their day to day lives.

5. What do you think the impact of introducing Carriers' Liability on routes from the Republic of Ireland to the UK would be?

While this is beyond ILPA's primary area of expertise we are aware that carriers are not in favour of this measure due to the burden it places upon them and more broadly for fear of the economic impact of such a measure.

We are also concerned that the introduction of Carriers Liability would make it more difficult for discretion to be operated on documents required for proof of identification. As such we would argue that such an imposition be delayed at least until the eventual measures of policing travel within the CTA are operating effectively.

6. What should the timetable for the introduction of Carriers' Liability be?

The introduction should be delayed, if introduced at all, until after the finalised measures have been shown to operate effectively.

Travel from the Rest of the World into the Common Travel Area

Common (short stay visit) visa system

7. Which options should we explore in developing our approach to a common (short stay visit) visa with the Republic of Ireland? Please select from the following Legal recognition of Irish (short stay visit) visas for use in the UK

Jointly issued common (short stay visit) visa valid for travel to the Republic of Ireland and the UK

Other (please specify)

Our preference subject to the comments made in response to questions one to four, is for mutually recognised visa arrangements, which would actually strengthen the ideal of the Common Travel Area.

Such a system should include not only short-term visas, but also the right to rely upon a residence permit issued in one state in order to travel to the other. This will be of use to many including those on long-term study visas or who work in the border regions.

Immigration leave and permissions

8. Do you think that ‘leave’ should be endorsed in the passports of non-Common Travel Area nationals arriving in the UK from the Republic of Ireland?

Owing to the fact that that under present legislation a visa issued by a UK embassy or High Commission abroad operates as leave to enter⁵ there should be no further requirement for a mutually recognised visa to be endorsed in order for it to be ‘activated’. If a system of mutually recognised visa or a common visa was in place there would be no need for leave to be endorsed. Indeed, we feel that a further step to activate the leave would arguably hinder those wishing to enter the UK for purposes such as tourism etc.

⁵ Immigration (Leave to Enter and Remain) Order 2000 SI 200/1161.

9. If 'leave' should be endorsed in the passports of non-Common Travel Area nationals arriving in the UK from the Republic of Ireland, what do you think would be the most effective way to do this?

As stated in question seven if a system of a mutually recognised visa or a common visa were to be adopted then there should be no requirement for any further endorsement on a person's passport.

Impacts on industry

10. How do you think the introduction of border controls would impact on the tourism industry?

Negatively – The UKBA's own figures suggest a benefit of £3-4 million per annum from the introduction of short term visas but also set out that implementing these measures would lead to an economic cost from loss in tourism revenue of up to £12million in the first year⁶. Our belief is that measures that make it more difficult to travel between the Republic of Ireland and the UK (and particularly Northern Ireland) than it currently is will damage the tourism industry which is one of the most important sectors of the Northern Irish economy.

11. What benefits are there for the tourism industry from a common (short stay visit) visa?

We would welcome a common visa or mutual recognition of visas but believe the best way to benefit the tourism industries in both jurisdictions is to mount an information campaign targeted at those visiting either the UK or Republic of Ireland explaining that by visiting one they are entitled to visit the other.

12. What do you think the costs to port authorities would be if border controls were introduced on sea and air routes from the Republic of Ireland to the UK?

⁶ Taken from the UKBA Partial Impact Assessment of Common Travel Area (CTA) Reform pages 18 for benefit of implementing short term visas and page 21 for cost of implementing measures.

This is beyond ILPA's area of expertise.

13. What do you think the costs to carriers would be of introducing border controls on sea and air routes from the Republic of Ireland to the UK?

This is beyond ILPA's area of expertise.

14. What other impact might the introduction of border controls on sea and air routes from the Republic of Ireland to the UK have?

The move towards isolating Northern Ireland within the British Isles is a regrettable backwards step that should be avoided. Making travel between the Republic of Ireland and the UK more difficult effectively ends the principles behind the establishment of the CTA and would have a disproportionately negative impact on those living in NI. It will have significant impact upon the economy and society of Northern Ireland making it both more difficult to travel from the Republic to Northern Ireland and from Northern Ireland to the rest of the UK through the authorisation of Operation Gull style measures. In the experience of immigration lawyers in Northern Ireland there is little faith that in activities like Operation Gull identity checks will not be carried out in a non-discriminatory manner.⁷ The increased measures will deter some cross border travel.

15. How might the introduction of border controls on these routes be phased to ensure that border security is strengthened with minimal impact on legitimate trade and business?

The Government would need to ensure that those with visas issued before any transition takes place can benefit from any mutual recognition or can move to the joint visa without incurring costs. To prevent people falling foul of

⁷ The case of the Zimbabwean Engineer Frank Kakopa reported in Decisions and Settlements Review 2006-2007, Equality Commission for Northern Ireland, was one where a man legally resident in the UK travelled into Northern Ireland, was questioned, photographed, detained and strip searched. Immigration Service agreed later to pay the plaintiff £7500 for falsely and unlawfully imprisoning the Plaintiff and apologised unreservedly for their actions.

immigration law there needs to be a widespread information campaign about any proposed changes. To ensure that as many people as possible apply for the appropriate visa, fees must be kept to a minimum so as not to be prohibitively expensive.

General remarks

16. Do you have any further comments or suggestions about how movement within the CTA can be made more secure and efficient?

Many of the proposals in this consultation appear to have been developed with limited understanding of the needs of the particular circumstances of Northern Ireland. Measures that appear populist in parts of Britain can have significant undesired effects in other parts of the UK. There are significant concerns that these measures will not achieve their intended goals. The rationale for the proposals, namely the threat of militant Islamic terrorism, seems unconnected to the reality of the situation on the border between the Republic of Ireland and the UK.

ILPA does welcome the proposal to introduce either mutual recognition of visas or a common visa, but in both cases would argue for such a scheme to apply to long term visas and to not be prohibitively expensive.

There are concerns that the level of training proposed for immigration officers is insufficient. ILPA would argue that four hours extra training per member of staff on the expansion of these measures is insufficient to prevent mistakes occurring.

ILPA also believe the proposals would have social costs for those who have close family members residing on each side of the border. This would be most significant among Irish and British residents and migrants working or studying in the Republic or the UK and residing in the other country or who have family members in the other state.

These proposals on tightening the regulation of cross border travel are, on the island of Ireland and particularly in Northern Ireland very sensitive. ILPA sees no reason for many of these proposals and urges that the long tradition of free movement between the UK and the Republic of Ireland should be continued

rather than ended. To this end, ILPA supports the proposals for common visas or mutually recognised visas but little else in this paper.

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