



Lord Caine
Parliamentary Under Secretary of State
Northern Ireland Office
1 Horse Guards Road
London
SW1A 2HQ

1 December 2022

Dear Jonathan,

Northern Ireland Troubles (Legacy and Reconciliation) Bill

In its December 2020 *Review of investigative and scrutiny Committees*, which first proposed the establishment of the Sub-Committee on the Protocol on Ireland/Northern Ireland, the Liaison Committee identified the six core tasks of the Protocol Committee, one of which was “Scrutiny of the implications of relevant domestic UK legislation and policy for Northern Ireland”. In our *Introductory report* of July 2021, we set out our intention to consider the implications of relevant domestic legislation for Northern Ireland in this context, and to seek to scrutinise Government legislation around the time of Second Reading in the House of Lords. We considered the Northern Ireland Troubles (Legacy and Reconciliation) Bill at our meeting on 29 November 2022.

The issues dealt with in the Bill fall for the most part outside the Committee’s remit to scrutinise the impact of the Protocol, and Brexit more generally, for Northern Ireland, and not wider Northern Ireland-related matters.

However, the Northern Ireland Human Rights Commission, which has a statutory responsibility to monitor, supervise, advise and report on and enforce the ‘no diminution’ commitment under Article 2 of the Protocol, has contacted us to set out their view that the Bill is in breach of the Government’s obligations under Article 2 of the Protocol.

The Commission argues that the Bill’s provisions depart from minimum standards required under the EU Victims’ Directive, which the Government has recognised as falling within the scope of the ‘no diminution of rights’ commitment under Article 2.

The Commission states that:

“Recitals to the Directive refer to the State’s obligation to ensure ‘sufficient access to justice’, for victims and their next-of-kin. This general obligation is supplemented by more specific requirements. Article 6 obliges the State to provide the victim with information including ‘any decision not to proceed with or to end an investigation or not to prosecute’ an alleged offender. Article 11 provides that victims ‘have the right to a review of a decision not to prosecute’ and places an onus on the Government to advise the victim of their right to receive, and to ensure that they do receive if requested, sufficient information to decide whether to request such a review.

“Within the present Bill, immunity decisions rely solely on information provided by the person requesting immunity. This does not include an express requirement that victims or family members are informed of an application for immunity or the outcome of that request. There is also no express requirement for the [Independent Commission for Reconciliation and Information Recovery] to provide reasons on immunity decisions. The mandatory and irrevocable outcome of the immunity decision in preventing prosecutions, leaves no avenue for a victim to be heard, or request a review of a decision not to prosecute, as required under the Directive and general principles.

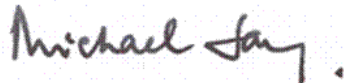
“The NIHRC advises that provisions on immunity and restrictions on criminal enforcement action may diminish the rights of victims, in breach of Protocol Article 2.”

What is your response to the Northern Ireland Human Rights Commission’s specific arguments, and their conclusion that the Northern Ireland Troubles (Legacy and Reconciliation) Bill may be in breach of Article 2 of the Protocol?

We would be grateful for a reply ahead of the commencement of Committee Stage proceedings on the Bill. We request a response by 12 December 2022.

I am copying this letter to Sir William Cash MP, Chair of the Commons European Scrutiny Committee, George Wilson, Clerk of the Commons European Scrutiny Committee, and Simon Hoare MP, Chair of the Commons Northern Ireland Affairs Committee.

Yours sincerely,

A handwritten signature in black ink that reads "Michael Jay". The signature is written in a cursive style and is positioned above a short horizontal line.

Lord Jay of Ewelme
Chair of the Protocol on Ireland/Northern Ireland Sub-Committee