



HOUSE OF LORDS

European Affairs Sub-Committee on the Protocol
on Ireland/Northern Ireland

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Lord Sharpe of Epsom,
Parliamentary Under-Secretary
(Home Office)
2 Marsham Street
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11 May 2023

Dear Minister,

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 the context of the Protocol, and to seek to scrutinise Government legislation around the time of Second Reading in the House of Lords. We considered the Illegal Migration Bill at our meeting on 10 May 2023.

The issues dealt with in the Bill fall for the most part outside the remit of the Committee. However, the Northern Ireland Human Rights Commission (NIHRC) and the Equality Commission for Northern Ireland (ECNI) have set out concerns that the Bill may be in breach of the Government’s commitment to uphold Article 2 of the Windsor Framework. We have therefore scrutinised this specific issue in line with our remit.

In their submission to the Committee on the Bill, the NIHRC states that:

“The Commissions are adopting a working assumption that the non-diminution commitment in Windsor Framework Article 2 encompasses the full range of rights set out in the ECHR, to the extent that they are underpinned by EU legal obligations in force on or before 31 December 2020...

“A number of ECHR rights are engaged by the Bill, bringing into scope relevant EU law as outlined below. Relevant ECHR rights include, for example, protections against slavery and forced labour (Article 4 ECHR), the right to liberty and security (Article 5 ECHR) and the right to a private and family life (Article 8 ECHR) as well as freedom from discrimination (Article 14 ECHR).

“The NIHRC, along with the Equality Commission for NI, have identified the Reception Directive, the Procedures Directive, the Qualification Directive and the Dublin III Regulation as relevant to Windsor Framework Article 2. These measures address, for example, free movement, accommodation, detention including conditions designed to meet special needs, family unity, access to healthcare, the best interests of the child and education of minors.

“The Procedures Directive includes specific provisions on access to judicial review where an applicant for asylum is held in detention and a right to an effective remedy

in respect of a decision to consider an application in admissible. EU Directives on Victims and Combating Human Trafficking are also relevant.”

The ECNI raises similar points in its own submission. It also notes that the Bill proposes amendments to the modern slavery legislation so that potential or confirmed victims of trafficking or modern slavery who are subject to the arrangements for removal duty would be disqualified from certain provisions. In relation to the rights of victims protected under the relevant chapter of the Belfast/Good Friday Agreement, the ECNI has identified the Victims Directive and the Human Trafficking Directive as falling within the scope of Windsor Framework Article 2. They state that it is essential that the Bill’s provisions do not reduce the rights under these Directives, including in relation to women (including pregnant women), children and disabled people.

The ECNI further states that “any assessment of the Bill’s compliance with Windsor Framework Article 2 should not be limited to the impact of the proposals on the substantive rights, but should also include the remedial dimensions of those rights. In the Commission’s view, a GFA-protected right, for example, the right relating to ‘non-discrimination’, is underpinned not only by the substantive rules of EU law, but also the remedial rules of EU law; for example, the right to secure damages for breach of a rule by the state.”

The two Commissions conclude that the “failure to address compliance with Windsor Framework Article 2 in the Human Rights memorandum to the Bill is matter of concern” and seek clarity on “what steps the Secretary of State has taken to assure herself that the Bill complies with Article 2 of the Windsor Framework.” The Commissions further recommend that the Human Rights Memorandum to the Bill be amended to set out in detail an assessment of the compliance of the Bill with Article 2 of the Windsor Framework.

What is your response to the specific concerns raised by the Northern Ireland Human Rights Commission and the Equality Commission for Northern Ireland highlighted above? In particular, what clarification can you provide on what steps the Secretary of State has taken to assure herself that the Bill complies with Article 2 of the Windsor Framework, and will you set out a detailed assessment of the Bill’s compliance with Article 2?

In order to inform the House’s scrutiny of the Bill, we request a response before the commencement of Committee Stage on the Bill on 24 May 2023.

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, Simon Hoare MP, Chair of the Commons Northern Ireland Affairs Committee, Les Saunders, EU Document Scrutiny Manager, Foreign Commonwealth & Development Office; Harry Stunell, Departmental Scrutiny Coordinator, Home Office, and the Secretariat of the Northern Ireland Assembly Committee for the Executive Office.

Yours sincerely,



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