



HOUSE OF LORDS

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

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Rt Hon Kemi Badenoch MP
Secretary of State for Business and Trade
Department for Business and Trade
Old Admiralty Building
Whitehall
London SW1A 2DY

12 July 2023

Dear Secretary of State

We note your letter, dated 16 June 2023, on the Retained EU Law (Revocation and Reform) Bill. The House of Lords Sub-Committee on the Protocol on Ireland/Northern Ireland considered this document at its meeting on 11 July 2023.

We acknowledge that the political context has changed considerably since our letter to you on 9 February, including the agreement of the Windsor Framework, the Government's decision not to proceed with the Northern Ireland Protocol Bill, and the Government amendments to the Bill itself. However, we believe that it is unacceptable for you to fail to respond to a set of detailed questions designed to inform the House's scrutiny of a Bill before it completes its parliamentary passage. We requested a reply before the commencement of Committee Stage in the House of Lords, and in the event did not receive a reply until four months later, by which time the Bill had returned to the House of Commons.

That said, we acknowledge your detailed response to our letter, and your explanation of the impact of the changes of the Bill, and its interaction with the Windsor Framework. However, we would be grateful for further clarification of your statement that "domestic law giving effect to Article 2 rights may be affected by the abolition of retained EU interpretive effects. We therefore expect it may be necessary to use Bill powers to restate the relatively small number of instruments within Article 2 to codify any required effects." Can you elaborate on this? Why has the Government chosen not to amend the face of the Act to signpost the distinct approach to interpretations that is required under sections 7A and 7C of the EU Withdrawal Act 2018? Is a case-by-case approach to codification of relevant rules of EU interpretation unnecessarily complex and time-consuming? Is there a risk that it could result in incomplete, inaccurate or out-of-date codification, raising questions over the appropriate interpretation of Relevant Separation Agreement Law? Has the Government sought to identify which pieces of Retained EU Law fall within the scope of Article 2? If so, how were they identified? Is the Government able to share the list of measures with the Committee? If so, how confident are you that the list is definitive? Finally, what consideration has the Government given to the working paper on the scope of Article 2 published by the Northern Ireland Human Rights Commission and the Equality Commission for Northern Ireland?

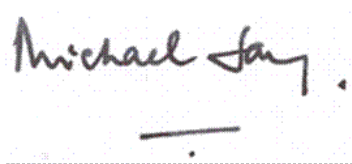
More broadly, we would be grateful for further clarification of the restatement powers under the Act in the context of retained EU law applying in Northern Ireland. Can you explain in more detail the process by which the restatement power available until 23 June

2026 will operate? In particular, what process will be put in place to ensure the exercise of such powers is scrutinised?

We would be grateful for a response to this letter by 26 July 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, James Everett, Departmental Scrutiny Coordinator, Department for Business and Trade; and the Secretariat to the Northern Ireland Assembly Committee for the Executive Office.

Yours sincerely,

A handwritten signature in dark ink, reading "Michael Jay", with a horizontal line underneath it.

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