



HOUSE OF LORDS

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

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Nusrat Ghani MP
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Department for Business and Trade and Minister of State
for the Investment Security Unit at the Cabinet Office
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19 October 2023

Dear Minister,

We thank you for your letter, dated 11 September, on the Retained EU Law (Revocation and Reform) Bill (now Act) 2023. The House of Lords Sub-Committee on the Protocol on Ireland/Northern Ireland considered this document at its meeting on 18 October 2023.

We are grateful for your detailed response and the further information it provides. However, we would be grateful for further clarification on the issue of Article 2. We note the statement that “UK Government departments have been working to compile an authoritative account of where retained EU law sits across policy areas and sectors,” which “includes identifying where retained EU law falls within scope of Article 2.” We further note that the “Government does not hold centrally a list of measures which fall within scope of Article 2...” Why does the Government not hold a central list of measures falling within scope of Article 2 and will the Government consider producing such a list? In the absence of a central list of retained EU law falling within the scope of Article 2, what is the format of the Government’s authoritative account of retained EU law by policy area and sector and how else does the Government intend to co-ordinate its monitoring of Article 2 interactions across departments?

We also note the statement that in the “process of reviewing their retained EU law, individual departments will be considering whether there are any Article 2 interactions on a case-by-case basis.” Will the Government publish guidance on the methodology, scope and approach to be taken by Departments in respect of the proposed codification of interpretative effects on a case-by-case basis, specifically in the context of meeting its Article 2 commitments?

On the issue of codification, we note the statement that “codifying interpretive effects on a case-by-case basis...will provide legal certainty and clarity in areas of retained EU law where the policy is not intended to immediately change...” How can you assure the Committee that codification will provide legal certainty when the list of measures within the scope of Windsor Framework Article 2 has not been identified? Does the Government agree that: (i) the codification process is likely to be incomplete unless or until that list is clear; and, (ii) that the identification of measures within scope of the Windsor Framework Article 2 cannot be definitive at this time as it is likely to be the subject of court rulings over coming years?

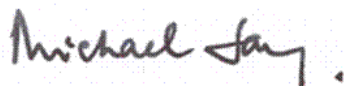
Finally, on the issue of codifying, in order to provide assurance on the UK's compliance with Article 2, will the Government commit to publishing, within a reasonable timeframe, an independent review and evaluation of the process adopted?

We also note that since your reply was received, the Government published the Draft Retained EU Law (Revocation and Reform) Act 2023 (Revocation and Sunset Disapplication) Regulations 2023 on Monday 18 September 2023. We further note that the Explanatory Memorandum to the Regulations states that three of the instruments identified for preservation relating to agricultural products “will be preserved for Northern Ireland only as the Northern Ireland Civil Service has asked the UK Government to do so on their behalf given the current absence of an Executive and sitting Assembly in Northern Ireland” and this is “because their revocation represents a policy change which would require agreement by Ministers in the Northern Ireland Executive which cannot be granted in the ongoing absence of that Executive.” In this context, how will the Government ensure that it takes into account the specific needs of Northern Ireland when exercising its powers in the REUL Act?

We would be grateful for a response to this letter by 2 November 2023 and for regular updates on progress in the area of the Government's compliance with its Article 2 commitments.

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; 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, appearing to read "Michael Jay".

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