



Rt Hon Conor Burns MP
Minister of State
Northern Ireland Office
1 Horse Guards Road
London
SW1 2HQ

16 December 2021

Dear Minister

Article 2 of the Protocol on Ireland/Northern Ireland (rights of individuals)

1. Thank you for your letter, dated 24 November 2021, on Article 2 of the Protocol on Ireland/Northern Ireland, on rights of individuals. The House of Lords Sub-Committee on the Protocol on Ireland/Northern Ireland considered this document at its meeting on 15 December 2021.
2. Since we last wrote to you, we have also received supplementary information from the Northern Ireland Human Rights Commission (NIHRC) and the Equality Commission for Northern Ireland (ECNI) (which we refer to collectively as the Commissions) on Article 2, including their analysis of the Government's July Command Paper and the European Commission's four 'non-papers'. Our response reflects this updated information.

Responsibilities of the UK Government and the Northern Ireland Executive in upholding Article 2

3. In our initial letter of 25 October we asked for clarification of the responsibilities of the UK Government and the Northern Ireland Executive, in the context of transferred, reserved and excepted powers under the devolution settlement, in upholding Article 2, and how the Government is liaising with Executive Ministers and officials in order to meet its respective obligations. While we are reassured by the knowledge that Article 2 cannot be undermined by legislation passed by the Assembly and the Executive and that secondary legislation can be revoked if any of its provisions are incompatible with Article 2, we reiterate our question as to how Article 2 interacts with the devolution settlement and how it maps onto the balance of responsibilities between the Assembly and the Executive on the one hand, and the UK Government on the other, in terms of transferred, reserved and excepted powers.

Resources for the Dedicated Mechanism

4. We welcome your assertion that the Government is "firmly committed to providing the resources to the Dedicated Mechanism that are required to allow it to fulfil its functions." In written evidence from the commissions, they underscored the need for "adequate and *sustained* resourcing of the two Commissions to fulfil their responsibilities" (our emphasis) because their work had only just begun. What measures

have you put in place to ensure that resourcing is sustained, particularly if the Commissions' workload increases as time goes on?

Definitions

5. We note your statement that questions of definitions will ultimately be a matter for the domestic courts to make decisions on, but would reiterate the Commissions' concerns that without clarification their work in communicating to stakeholders what rights they have under Article 2 will be undermined. We urge you to work with the Commissions in providing this clarification. As we asked in our original letter, can you define what a "right, safeguard or equality of opportunity" is in the context of Article 2?

Issues raised with ECNI and NIHRC in relation to Article 2

6. In our previous letter, we raised concerns expressed by the Commissions related to access to Kosher and halal products, the EU Pay Transparency Directive, and voting rights. We welcome your statement that the Government is working with the Jewish community and Kosher suppliers to tackle issues over access to these products. However, you do not mention what work the Government is undertaking to work with the Muslim community in terms of their access to halal products. Could you inform us of what work is being carried out in this regard?
7. We understand that the Government is monitoring issues raised by the Pay Transparency Directive and in relation to the voting rights of EU citizens arriving after the end of the transition period, but you did not respond to our question of how the above issues interact with Article 2. Can you provide clarity on this point?

Engagement with the public and key stakeholders

8. The Commissions highlighted the need for improvements in public awareness-raising exercises so that individual members of the public could exercise their rights under Article 2 of the Protocol. We welcome the Government's indication of its intention to provide a stronger role for Northern Ireland civic society in finding agreement on outstanding areas. We note your comment that the Government has published an explainer on Article 2 on its website and that you "will continue to consider further engagement with Northern Ireland on Article 2." However, we are concerned that this does not go far enough, in particular given that the Commissions were already aware of the published explainer when they called for more public engagement. What other avenues exist for the Government to intensify its engagement with the public in relation to rights under Article 2?
9. We were pleased to learn of the extensive engagement with stakeholders in the community sector, which has helped to deliver key messages around the Protocol, and to understand community sentiment and the difficulties experienced in normal day-to-day life following the UK's withdrawal from the UK. We would be interested to understand what lessons you have learned about community sentiment and the difficulties experienced by people on the ground. We would also echo the Commissions' concerns over a lack of credence given to engagement with equality and human rights stakeholders in the Government's July Command Paper. Can you also lay out the processes for the structure and regularity of engagement with equality and human rights stakeholders?

Engagement with the Ireland/Northern Ireland Specialised Committee and the Joint Consultative Working Group

10. While we welcome the news that an initial meeting between the Commissions and the UK's JCWG representatives has taken place, we would be grateful for an outline of what measures the Government is taking, working with the EU, to ensure regular, structured and formal engagement with the JCWG itself. In that context, we note that the Commissions recommend that any agreement between the UK Government and the EU on the development of "structured groups" within the JCWG includes consideration being given to establishing a group that focuses on issues relating to Article 2 of the Protocol. What consideration has been given to this recommendation by the Commissions?
11. In written evidence, the Commissions have emphasised the need for clarification of how the Ireland/Northern Ireland Specialised Committee would engage with the Commissions, and with the Northern Ireland Executive, the North South Ministerial Council, and the North-South Implementation bodies, as well as how the Specialised Committee will engage with the Commissions in their role within the dedicated mechanism framework. Can you provide clarification of how this engagement will work? Can you also clarify processes to ensure there is transparency in terms of recommendations of the Specialised Committee as regards matters raised with it by the Commissions and/or the Joint Committee of the NIHRC and the Irish Human Rights and Equality Commission (IHREC)?

Scrutiny of legislation related to the Protocol

12. We note that there are ongoing discussions about establishing future arrangements for legislative scrutiny related to the Protocol and understand that further discussions about the scope and framework for these arrangements are expected in the coming weeks. We reiterate our request that the Government should submit Explanatory Memoranda for draft UK legislative proposals that are likely to engage Article 2(1) of the Protocol, and for draft EU proposals which amend or replace the Directives listed in Annex 1 to the Protocol, as well as other relevant EU legislation that the Commissions judge are relevant to the provisions of Article 2. We look forward to further dialogue with Lord Frost on this matter.

Divergence in rights between Northern Ireland and Great Britain, and between Northern Ireland and Ireland

13. In supplementary evidence to the Committee, the Commissions reiterated their concern about divergence between Great Britain and Northern Ireland on the rights of individuals. They write: "Any reduction in rights could also result in a further divergence in equality and/or human rights for people in Northern Ireland compared to the rights and protections enjoyed by those in Great Britain." What steps will you take, working with the Northern Ireland Executive, to address gaps or inconsistencies in equality law between Great Britain and Northern Ireland? What is your response to the Commissions' call for equality law in Northern Ireland to be harmonised in a way that strengthens and simplifies equality rights and protection?
14. The Commissions also expressed concern about inconsistencies in equality law between Northern Ireland and Ireland, whereby laws that strengthen equality protections in the

EU will be transposed into domestic law in Ireland, and “will lead to a divergence in the rights of individuals in Northern Ireland and the Republic of Ireland.” What assessment has the Government made of the potential implications of such divergence on Northern Ireland and for the Belfast/Good Friday Agreement?

15. We also note the Commissions’ concerns that there are limits to the scope of Article 2 in the sense that it relates only to EU changes to the Directives listed in Annex I to the Protocol and does not apply to any changes made to other EU laws that may “directly or indirectly strengthen equality and human rights.” Does the Government intend to keep pace with the EU on laws affecting equality and human rights outside of those listed in Annex I to the Protocol? If so, how might the Government do this? If not, what implications will this have for Northern Ireland, in particular in terms of divergence in rights and equality law between Northern Ireland and Ireland?

The Government’s Command Paper and the European Commission’s four ‘non-papers’

16. In written evidence submitted by the Commissions on the Government’s July Command Paper and the Commission’s October ‘non-papers’, they expressed concern over the “significant differences” between the proposed approaches by the UK and the EU on the following areas: medicines, pet passport arrangements and assistance dogs, and faith communities in NI. The availability of medicines is vital, especially for disabled people who are reliant on medication to improve or maintain their health, and diminished availability of their medicines would have implications on their human rights. We have written separately to Lord Frost on this matter, and await a response.
17. We are also concerned about the potential adverse impacts of issues relating to assistance dogs travelling from Great Britain to Northern Ireland which, without an urgent solution, could also impact the rights of disabled people. We welcome continued engagement with the EU on SPS issues, but, as stated above, we are concerned that issues relating to access to Kosher and halal food have not been resolved. The Commissions told us that representatives from the Jewish community had raised concerns that the new arrangements have meant that the Jewish community has been struggling to get some types of Kosher food and if this is not addressed soon, this will “impact the viability of their historic community in Belfast.” They also told us that concerns had been raised about the “potential impact on the Muslim community in Northern Ireland on accessing halal food and ritual items should further checks on goods be introduced when the grace period ends.” What progress have the Government and the EU made towards reaching agreement on a long-term, sustainable solution to these issues?

Consultation on the Independent Human Rights Act Review

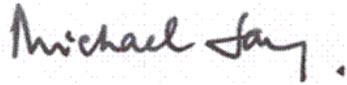
18. Finally, following the launch of the Government’s consultation on proposals to reform the Human Rights Act, what assessment has the Government made of the interaction between the proposed changes to the Human Rights Act and the provisions of Article 2 of the Protocol and the Belfast/Good Friday Agreement?

Conclusion

19. We would be grateful for a response to these questions by 17 January 2022.

20. I am copying this letter to Rt Hon Lord Frost CMG, Minister of State, Cabinet Office; Sir William Cash MP, Chair of the House of Commons European Scrutiny Committee; Simon Hoare MP, Chair of the House of Commons Northern Ireland Affairs Committee; Sinéad McLaughlin MLA, Chair of the Northern Ireland Assembly Committee for the Executive Office; Stephen Torney, Northern Ireland Office; Les Saunders and Donald Harris, Cabinet Office.

Yours sincerely,

A handwritten signature in black ink that reads "Michael Jay". The signature is written in a cursive style with a small flourish at the end.

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