



HOUSE OF LORDS

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

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Baroness Williams of Trafford
Minister of State
Home Office
2 Marsham Street
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3 March 2022

Dear Susan,

NATIONALITY AND BORDERS BILL

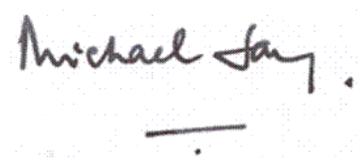
1. Thank you for your letter, dated 17 February 2022, on the Nationality and Borders Bill. The House of Lords Sub-Committee on the Protocol on Ireland/Northern Ireland considered this document at its meeting on 2 March 2022.
2. While we are grateful for your response, we note that there remains uncertainty in a number of areas. We note in particular your statement that “the exact details of the [Electronic Travel Authorisation] scheme, including the criteria an application will be assessed against, will be announced in due course. Once the Nationality and Borders Bill receives Royal Assent, the Home Office will lay new Immigration Rules before Parliament, setting out the detail of the scheme. The Immigration Rules will set out detail regarding but not limited to, the validity of an ETA and powers to refuse and/or cancel an ETA.” You also state that details around cost and processing times for an ETA application “will be announced in due course”.
3. It is clearly unsatisfactory for such significant details to remain unclear prior to completion of parliamentary passage of the Bill. What further clarification can you provide on these matters at this stage?
4. Can you also elaborate on your statement that “the ETA scheme is compatible with the operation of the Common Travel Area”, as “the UK will not operate routine immigration controls on journeys from within the Common Travel Area, with no immigration controls whatsoever on the Ireland-Northern Ireland border”? How can this commitment be reconciled with the requirements of the ETA scheme?
5. In our previous letter, we asked what consideration the Government had given to the particular nature of the Ireland/Northern Ireland border in the application of ETAs, if the Government had made any estimate of the numbers of people crossing the border who will be affected, and whether the Government intended to devote a proportionately higher level of resource to enforcement in future. Your letter did not provide a specific reply to these questions. In view of this, what is your response?

6. Our previous letter also cited concerns about the potential impact of ETA requirements on supply chains and tourism on the island of Ireland, to which you did not respond. What assessment has the Government made of these possible impacts? What will be the practical impact on people crossing the border regularly, for instance for work or leisure purposes, or to access core services such as education or healthcare? You state that those with a Frontier Worker permit will not be required to possess an ETA. Does the Government envisage any other exceptions? In that context, can you elaborate on your statement that “once granted, an ETA will be valid for multiple journeys over an extended period, minimising the burden on those making frequent trips, including those across the Ireland-Northern Ireland border”? How will this work in practice? Can you also explain how the Government will ensure that it does not, in your words, “criminalise those simply living their daily lives”?
7. We note that in their joint briefing on the Bill, the Northern Ireland Human Rights Commission (NIHRC) and the Equality Commission for Northern Ireland (ECNI) have made the following recommendations:
 - The Commissions recommend that the House of Lords amend the Nationality and Borders Bill to remove Northern Ireland from the extent of Clause 67, to avoid potential breach of the “no-diminution” commitment under Article 2 of the Ireland/Northern Ireland Protocol.
 - The Commissions recommend that the ‘extent’ provisions at Clause 82 in the Bill be amended to exclude Northern Ireland from the operation of Clauses 57, 58, 60, 61, 62 and 67, in order to ensure no diminution of the rights of victims of trafficking in Northern Ireland and to avoid potential breach of Protocol Article 2 in this regard.
 - The NIHRC recommends that the House of Lords enquire what consideration was given to the needs of child victims of modern slavery and human trafficking and how the best interests principle will be ensured.
 - The NIHRC recommends that Clause 71 (Electronic Travel Authorisation) is amended to provide a mechanism for timely review and/or appeal.
 - The NIHRC recommends that that all journeys into Northern Ireland, that originate from Ireland, should be exempt from ETA requirements.
 - The Commissions recommend that the House of Lords enquire what consideration was given to Protocol Article 2 in the development of this legislation, and recommend that Article 2 should be considered and complied with throughout its implementation and the development of regulations and guidance.
 - The Commissions recommend that no provision made in or under the Bill, insofar as it extends to Northern Ireland, should be inconsistent with Protocol Article 2.
 - The Commissions recommend that the House of Lords request that Explanatory Notes accompanying the Nationality and Borders Bill indicate what consideration has been given to compliance with Protocol Article 2 and provisions which engage it.
8. What is your specific response to each of these recommendations?

9. We would be grateful for a response to this letter before the Bill completes its parliamentary passage in the House of Lords.

10. I am copying this letter to Baroness Drake, Chair of the Constitution Committee, 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 and Donald Harris, Cabinet Office, Andrew Englefield, Scrutiny Coordinator, Home Office, Mervyn Storey MLA, Chair of the Northern Ireland Assembly Committee for Justice, and Sinead McLaughlin MLA, Chair of the Northern Ireland Assembly Committee for the Executive Office.

Yours sincerely,

A handwritten signature in black ink that reads "Michael Jay". Below the signature is a horizontal line with a small dot underneath it, serving as a separator or underline.

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