



Foreign, Commonwealth
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Lord Jay of Ewelme
Chair of the Protocol on Ireland/Northern
Ireland Sub Committee
House of Lords
London
SW1A 0AA

25 March 2022

Dear Lord Jay,

THE COURT OF JUSTICE OF THE EUROPEAN UNION UNDER THE NORTHERN IRELAND PROTOCOL

Thank you for your letter of 11 February, summarising the findings of the House of Lords Sub-Committee on the Protocol on Ireland/Northern Ireland's inquiry into the role of the Court of Justice of the European Union (CJEU) in relation to the Protocol. Please accept my apologies for the delay in responding.

As the Government has made clear, the existing governance arrangements under the Protocol are not working. If these arrangements are to be durable, they must have the support of both communities in Northern Ireland. Unbalanced dispute resolution procedures will only exacerbate the sense that the Protocol fails to give 'parity of esteem' (as referred to in the Belfast (Good Friday) Agreement), to both communities.

We are therefore clear that the CJEU should not be the final arbiter of disputes between the two parties to the Protocol, and that disputes should instead be managed collectively through independent arbitration. Such an arrangement would be in line with international norms for such agreements, including the Trade and Cooperation Agreement. This is particularly important given that the EU has so far shown a readiness to use CJEU-adjudicated infraction proceedings swiftly, such as in March 2021, in response to the temporary operational steps the Government took to help NI stakeholders avoid disruption in the early days of the Protocol. You will recall that these included an extension to the supermarket Scheme for Temporary Agri-food Movements to Northern Ireland, further guidance on parcel movements from Great Britain to Northern Ireland, and guidance to help address practical problems on soil attached to the movement of plants, seeds, bulbs, vegetables and agricultural machinery.

This is not consistent with the need to manage problems in a way that respects the unique and sensitive context in Northern Ireland.

On a related note, we are also clear that we need to find ways of establishing more robust arrangements that ensure that the institutions representing the people of Northern Ireland can be more deeply involved in shaping the rules they live under. That is why, as part of the talks we have undertaken with the EU in recent months, the Government has repeatedly outlined the need to address the democratic deficit that has been established under the Protocol.

You will understand that as those talks continue, it would not be appropriate for me to give detailed commentary on the specific points raised in your letter, so as not to prejudice those discussions. However, please be reassured that my officials and I have engaged closely with the issues you have helpfully identified in your inquiry. As our discussions with the EU move forward, I will continue to reflect on the points you have raised.

As ever, I welcome any further engagement from your committee and will keep you informed as to the progress of our discussions with the EU as appropriate.

Yours ever,

A handwritten signature in blue ink, appearing to read 'James Cleverly', written in a cursive style.

The Rt Hon. James Cleverly MP
Minister of State for Europe and North America