



**Baroness Williams of
Trafford
Minister of State**

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01 April 2022

Dear Michael,

Thank you for your letter of 3 March 2022 about the Nationality and Borders Bill and, in particular, the Government's plans to introduce an Electronic Travel Authorisation (ETA) scheme.

You have asked for further details about the cost, processing times and the criteria against which an ETA application will be assessed. Whilst the final charge for an ETA has yet to be finalised, I can assure you that the cost of an ETA will be competitive with that of equivalent systems run by other countries, and we expect the processing times to be very quick for the vast majority of applicants where no concerns are detected. Once the Nationality and Borders Bill receives Royal Assent, the Government will lay immigration rules setting out the criteria against which an ETA application will be assessed. While at this point, I cannot provide the exact details of the criteria, I can assure you that they will be based around the grounds for refusal in Part 9 of the Immigration Rules. [Immigration Rules part 9: grounds for refusal - Immigration Rules - Guidance - GOV.UK \(www.gov.uk\)](#)

You have also asked about the operation of the ETA scheme within the Common Travel Area. The Nationality and Borders Bill respects the longstanding reciprocal rights and entitlements that benefit British and Irish citizens under the Common Travel Area. That is precisely why the Bill excludes British and Irish citizens from the ETA requirement. Moreover, as now, 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 land border.

However, under the CTA, the UK along with all other members of the CTA, remains entitled to operate its own immigration framework. When that framework is extended to include ETAs, the ETA requirement will apply for travel into the UK, including therefore travel into Northern Ireland. (This principle is already applied to those requiring a visa for the UK when they cross the border into Northern Ireland).

In regard to the impact on supply chains and tourism in Northern Ireland, for those who need an ETA, the process for obtaining one will be quick and light touch. The ETA will be valid for multiple trips over an extended period so that this is not disruptive to daily lives or livelihoods. I can also assure you that the UK Government intends to work with a wide range of stakeholders to ensure our ETA requirement is

communicated effectively through targeted messaging and a variety of channels and that any risk of increased barriers to cross-border tourism is mitigated. This will, of course, include Tourism Ireland, as a crucial body established under the North-South provisions of the Belfast (Good Friday) Agreement, and Tourism Northern Ireland.

You have asked for a response to each of the recommendations made by the Northern Ireland Human Rights Commission (NIHRC) and the Equality Commission for Northern Ireland (ECNI), I set out below the Government's response:

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 Home Office does not share your view that Directive 2011/36/EU (“The Anti-Trafficking Directive”) falls within the scope of Article 2 of the Protocol on Ireland/Northern Ireland. You correctly state that the relevant chapter of the Belfast (Good Friday) Agreement (“the Agreement”) recognises the right of victims to remember as well as to contribute to a changed society. The reference to this right appears in a section titled “Reconciliation and Victims of Violence”. It is clear from the language used in this section, from the object and purpose of the Agreement and from its overall context, that the drafters had in mind the victims of violence relating to the conflict in Northern Ireland as opposed to all victims in a broad, general sense.

As you explain in your letter, Directive 2012/29/EU (“the Victims’ Directive”) lays down certain minimum standards on the rights, support and protection of victims of all crime, and is therefore of general application. Given this general application the Directive is relevant for the purposes of Article 2, but clearly only so far as it gives effect to the right of victims of conflict-related violence in Northern Ireland to remember and to contribute to post-conflict Northern Ireland society. As a matter of logic it does not follow that because the Anti-Trafficking Directive relates to human trafficking and the protection of victims of human trafficking, and human trafficking offences are also crimes within the scope of the Victims’ Directive, that the Anti-Trafficking Directive is itself within the scope of Article 2. Put simply there is no overlap between the personal scope of the Anti-Trafficking Directive and rights found in the relevant chapter of the Belfast (Good Friday) Agreement.

Even if the rights of the victims of human trafficking to “remember and contribute to a changed society” were within the scope of Article 2, the Bill if enacted will not result in a diminution below the standards laid down in the Anti-Trafficking Directive. Indeed, the Nationality and Borders Bill provides legislative clarity to victims and decision makers on victims’ rights, including the entitlement to a recovery period and the circumstances in which confirmed victims may be granted temporary leave to remain. It further supports the early identification of possible victims through the one stop process which is underpinned by the provision of legal aid. These measures are crucial to ensuring that our generous support is provided to those who truly need it.

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.

You recommend limiting the extent of certain provisions to Northern Ireland.

To do so would exclude Clauses 57, 58, 60, 61, 62 and 67 of the Bill's modern slavery provisions from extending to Northern Ireland. This approach would create disparities across the UK and in turn create a damaging lack of certainty for potential victims of modern slavery and decision-makers. This also conflicts with the UK wide approach of these measures. Namely:

- **Clauses 57 and 58** relate to immigration, including asylum and the status and capacity of persons in the United Kingdom who are not British citizens and are therefore reserved.
- **Clause 60** will apply to all potential victims across the UK as protection from removal is a reserved matter, though the provision of support for potential victims is a devolved matter (and is set out in a different clause - 63).
- **Clauses 61 and 62** extend UK-wide. A decision that someone comes under the "additional recovery periods" or "public order" disqualification means that any prohibition from removal ceases to apply, as do any prohibition on requiring them to leave the UK or any requirement to grant Temporary Leave to Remain under Clause 64. These matters are reserved.. However, support is devolved and applies according to the relevant legislation in Northern Ireland and Scotland. As such, Scotland and Northern Ireland can provide support to whoever they wish.
- **Clause 67** applies UK-wide insofar as any incompatibility is between the European Union Trafficking Directive and a provision that is reserved across the UK. It does not apply in Scotland and Northern Ireland to provisions that do not extend to Scotland and Northern Ireland.

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.

You asked about how these provisions would impact children, and whether this has been considered.

The Government recognises the particular vulnerabilities of child victims of modern slavery and trafficking. We will continue to make clear in guidance how children, or those who were children at the time of their exploitation, should be considered, taking into account their particular vulnerabilities and specific needs.

The Government recognises its duty to safeguard the welfare of children and has assessed that this should not be impacted by these legislative changes.

As we proceed to operationalise the measures in the Bill, we will speak with stakeholders to ensure the specific vulnerabilities and needs of children are understood and taken into account throughout our process.

The NIHRC recommends that Clause 71 (Electronic Travel Authorisation) is amended to provide a mechanism for timely review and/or appeal.

Those deemed unsuitable for an ETA will be able to apply for a visit visa, if they still wish to travel to the UK. The visa process provides an opportunity for a thorough consideration of an applicant's suitability to travel to the UK.

The NIHRC recommends that that all journeys into Northern Ireland, that originate from Ireland, should be exempt from ETA requirements.

As the Government has made clear, such an exemption would allow persons of interest or risk, who would otherwise be refused an ETA, to enter the UK legally. This undermines our efforts to strengthen UK border control and the very purpose of the ETA scheme which is to prevent the travel of those who pose a threat to the UK. This is an unacceptable risk to UK border control.

As now, individuals arriving in the UK, including those crossing the land border into Northern Ireland, need to continue to enter in line with the UK's immigration framework, including the requirement to obtain an ETA when it is introduced. This is to protect both the Common Travel Area and the UK's Immigration framework from abuse. For example, visa nationals are required to obtain a visa for the UK, when travelling via Ireland, in order to lawfully enter the UK. This is a well-established requirement and we are simply extending this same principle to individuals requiring an Electronic Travel Authorisation.

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 Bill is compliant with all of our international obligations, including the Protocol.

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.

I hope that this letter has provided you with the assurances you seek in respect of compliance with the Protocol.

I hope the Committee finds this information useful.

Yours ever,

A handwritten signature in black ink, appearing to read "Susan". The signature is fluid and cursive, with a large initial 'S'.

Baroness Williams of Trafford

Minister of State