



Home Office

Rt Hon Sir Jeffrey Donaldson MP
House of Commons
London, SW1A 0AA

28 January 2024

Dear Sir Jeffrey,

SAFETY OF RWANDA (ASYLUM AND IMMIGRATION) BILL: HOUSE OF COMMONS COMMITTEE STAGE

I committed to writing to you to follow up on the point raised in the Commons on day two of Committee (Official Report, 17 January, column 933) in relation to Article 2 of the Windsor Framework and amendment new clause 3. I also want to put on record my thanks for the thoughtful contributions of the Honourable Member for Belfast East, in the debate.

As I set out in the debate, and at Second Reading (12 December) the Bill applies across the entire United Kingdom, and that neither the Withdrawal Agreement nor the Windsor Framework do anything to cut across that position. I do recognise, however, the concerns raised by your colleagues in Parliament as to whether the Bill may have specific interactions in that regard.

To provide further reassurance on these points, the [published factsheet](#) on this Bill has been updated to reflect our stance. I have also annexed to this letter the Government's analysis to provide a full account of our position. This is the longstanding Government position and is consistent with existing jurisprudence.

Thank you again for your engagement with the Government and bringing these issues to light. I hope the detailed account of our position provides the reassurance you were seeking about the application of this Bill in full in Northern Ireland.

I am copying this letter to the Honourable Member for Belfast East (Gavin Robinson). I will also place a copy of this letter in the library of the House.

Michael Tomlinson KC MP
Minister for Illegal Migration

ANNEX: SAFETY OF RWANDA (IMMIGRATION AND ASYLUM) BILL AND ARTICLE 2 WINDSOR FRAMEWORK

HM GOVERNMENT POSITION

1. The Safety of Rwanda (Immigration and Asylum) Bill does not engage Article 2 of the Windsor Framework. The Bill will apply in full in Northern Ireland in the same way as it does in the rest of the United Kingdom. This is clear on the face of the Bill, and reflects the longstanding approach whereby immigration policy and operations are reserved matters, dealt with consistently and uniformly on a UK-wide basis.
2. Article 2(1) provides that:

“The United Kingdom shall ensure that no diminution of rights, safeguards or equality of opportunity, as set out in that part of the 1998 Agreement entitled Rights, Safeguards and Equality of Opportunity results from its withdrawal from the Union, including in the area of protection against discrimination, as enshrined in the provisions of Union law listed in Annex 1 to this Protocol, and shall implement this paragraph through dedicated mechanisms.”
3. This “no diminution” guarantee is engaged when the following three conditions are satisfied:
 - a. the right, safeguard or equality of opportunity provision or protection is covered by the relevant chapter of the Belfast (Good Friday) Agreement;
 - b. it was given effect to in domestic law in Northern Ireland on or before the last day of the transition period; and
 - c. the alleged diminution occurred as a result of the UK’s withdrawal from the EU, or, in other words, that the alleged diminution would not have occurred had the UK remained in the EU.
4. It has been suggested that Article 2 of the Windsor Framework could mean that the Bill will apply differently in Northern Ireland compared to the rest of the UK. For example it has been suggested that the EU’s Procedures Directive¹ continues to have effect in Northern Ireland because of Article 2 and confers a right of asylum seekers to remain within an EU member state while their application for asylum is being assessed.
5. It is important to note that Article 2 of the Windsor Framework does not result in the application of EU law within the UK, including in Northern Ireland. As such, it is incorrect to claim that the Procedures Directive or any other EU law provisions relating to migration and asylum are applicable in Northern Ireland. Even if rights were underpinned by EU law before Brexit, they would be protected via Article 2, only if those rights are set out in the Rights, Safeguards and Equality of Opportunity chapter of the Belfast (Good Friday) Agreement. The rights in the Procedures Directive are not referenced in the Agreement.

¹ Council Directive 2005/85/EC

6. The suggestion that the rights that were underpinned by EU migration and asylum law are set out in the Belfast (Good Friday) Agreement misunderstands the origin and purpose of the relevant part of the Agreement which was included to address long standing and specific issues relating to Northern Ireland's divided past. That is why the provisions explicitly include issues of historical significance, such as the rights of victims of the troubles, social and cultural rights and the right to peacefully seek constitutional change.
7. The Rights, Safeguards and Equality of Opportunity part of the Agreement did not purport to cover matters such as procedural issues relating to asylum applications. Taking that case as an example, the rights that were underpinned by the Procedures Directive are not rights listed or referred to in paragraph 1 of that part of the Agreement, they are not rights related to reconciliation and victims of violence and they do not fall under the paragraphs on economic, social and cultural issues. Nor are any of the rights contained in EU Directives relevant to the treatment of migrants included in the list of directives in Annex 1 or any of the Annexes to the Windsor Framework. And as the Government has consistently underlined, the EU's Charter of Fundamental Rights does not apply in respect of any part of the United Kingdom, including Northern Ireland.
8. It has also been suggested by some that a claim could be engaged because the Belfast (Good Friday) Agreement requires the incorporation into Northern Ireland law of the European Convention on Human Rights (ECHR), with direct access to the courts, and remedies for breach of the Convention; and that the Bill would affect this, and therefore constitute a diminution of rights within scope of Article 2.
9. This again misunderstands the legal position. The Bill is consistent with that provision of the Agreement which was satisfied, in any event, by the enactment of the Human Rights Act 1998. The ECHR remains incorporated into domestic law in the UK, including in Northern Ireland, as required in the Agreement. Individual access to the court remains - both in the context of claims that do not rely on a claim that Rwanda is not a safe country, and in the context of specific, individual and exceptional circumstances set out at clause 4 of the Bill. Furthermore, the Bill does not disapply section 4 of the Human Rights Act 1998. That means that the domestic courts may consider whether to make a section 4 declaration of incompatibility. As set out in the Government's statement of legal position, and the ECHR memorandum submitted to Parliament, the Government believes that there is no basis for such a declaration and any such declaration would not affect the validity or application of the legislation.
10. Finally, it should also be noted that Northern Ireland has consistently been treated as part of the UK for the purposes of immigration and asylum policy by the Government. The Government has successfully resisted numerous challenges in the courts seeking to apply differential treatment to Northern Ireland on the basis of the Belfast (Good Friday) Agreement, often for reasons of national identity, in part due to the fact that applying a differential policy would be inconsistent with Northern Ireland's status. The Government's position on these issues remains entirely unchanged. The Safety of Rwanda (Immigration and Asylum) Bill is clear that its provisions extend to Northern Ireland.