

# European Scrutiny Committee

House of Commons London SW1A 0AA

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From: Sir William Cash MP

10 June 2020

Rt Hon Michael Gove MP  
Chancellor of the Duchy of Lancaster  
Cabinet Office  
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London SW1A 2AS

## **Scrutiny during the transition period**

You will recall that I wrote to you on 11 March to set out the European Scrutiny Committee's approach to scrutiny during the post-exit transition period and the Committee's expectations of Government Departments in enabling it to perform its functions effectively.

I indicated that the Committee intended to focus its scrutiny work on developments in EU law and policy that would, or were likely to, affect the UK during the transition period and beyond under the terms of the Withdrawal Agreement (especially the Northern Ireland Protocol). I also highlighted our interest in the EU-UK Joint Committee. I explained that the Government's input into the scrutiny process, notably through the timely deposit of EU documents, provision of accurate and informative Explanatory Memoranda, and well-informed responses to questions raised in our Reports and correspondence with Ministers, would be crucial in ensuring effective scrutiny. I gave examples of the information to be included in Explanatory Memoranda to ensure that they addressed matters of concern to the Committee.

I was therefore heartened by your recognition of the Committee's "vital" work in opening the debate on the EU's negotiating mandate for a future partnership with the UK on 4 June. You also acknowledged that the Explanatory Memoranda provided by some Government Departmental "have not always been as diligent and detailed as they should have been in ensuring that the European Scrutiny Committee can do its valued work". Whilst I very much welcome your assurance that you and the Paymaster General have spoken to all Departments, these conversations do not appear to have had the desired effect. There are notable exceptions. Some Government Departments have maintained high standards of service throughout the transition period, despite the challenges presented by the COVID-19 pandemic. Regrettably, a significant

number has not. We have encountered unacceptable delays in the provision of Explanatory Memoranda and responses to Committee correspondence by some Government Departments, and the quality and accuracy of the information in some has been poor, with little attempt made in some cases to address the issues set out in my letter of 11 March or to respond to the questions specifically raised in our correspondence or Reports.

To cite a recent example, your [Explanatory Memorandum](#) on a proposed Council Decision setting out the EU's position on possible changes to the Withdrawal Agreement ("WA") and Northern Ireland Protocol states that the proposal "does not require any UK response" and that "the UK will formulate its own position in relation to the proposed amendments to the WA". You summarise the changes the EU is seeking without assessing their policy implications for the UK or the position the Government intends to take when they are discussed in the Joint Committee, even though its next meeting is on 12 June. The information on proposed additions to the Protocol on Ireland/Northern Ireland is particularly scant. You also indicate that there has been no impact assessment, that there will be no financial implications for the UK, and that there will be "no direct impact on UK law" even though the proposals, if agreed by the Joint Committee, clearly would have legal and financial implications. Since you do not state whether you accept the case made by the Commission for the changes it has proposed, we cannot know whether you intend to oppose all, some or none.

Your Explanatory Memorandum highlights a striking paradox: we are better able to examine the EU's position on possible changes to the Withdrawal Agreement than we are the Government's. This is because there is no system in place to ensure that Parliament is informed of the substance of the discussions to take place and decisions to be taken in the Joint Committee and carry out proper scrutiny beforehand. I trust you will recognise that this is an anomaly that cannot continue.

I consider that there is an urgent need to address the Committee's concerns about the Government's role in facilitating and informing scrutiny of EU laws and policies during the transition period and in considering how scrutiny of the Government's input into the work of the Joint Committee and Specialised Committees can be improved. I therefore invite you to give evidence to the Committee on the afternoon of Monday 29 June.

I am copying this letter to the Chair (the Earl of Kinnoull) and Clerk (Christopher Johnson) of the European Union Committee in the Lords; and to Les Saunders at the Cabinet Office.

**CHAIR**