



Rt Hon Michael Gove MP  
Chancellor of the Duchy of Lancaster  
Cabinet Office 70 Whitehall London  
SW1A 2AS

Lord Kinnoull  
Chairman  
European Union Committee  
House of Lords  
London  
SW1A 0PW

Our reference: MC2020/09632

17 July 2020

Dear Lord Kinnoull,

### **SCRUTINY OF EU LEGISLATION DURING THE TRANSITION PERIOD**

You will recall that I exchanged correspondence in March with the Chair of the Commons European Scrutiny Committee in which the Chair reflected the openness of both Scrutiny Committees to discussing how the EU scrutiny process might be better tailored to the Committees' priorities during the transition period. I confirmed the Government's readiness to consider with the Committees how the scrutiny process could be adapted during the transition period.

Following consultation with Whitehall departments, discussions between my officials and the Committee secretariat concluded on 1 July with a draft proposal to reduce the volume of documents which are automatically deposited for scrutiny and to use a revised template for Explanatory Memoranda for the remainder of the transition period. This proposal was generated with the shared aim and understanding that it would improve the quality of information provided by the Government to Parliament. It does not preempt future scrutiny arrangements. I am grateful to your clerks for their constructive approach during these discussions.

In summary, officials agreed, subject to confirmation by the two Scrutiny Committees, that:

- several types of documents currently subject to consultation with the Committee clerks would be exempted from deposit without consultation, as would some additional types of documents identified during discussions;
- several additional categories of documents would be recommended for exemption from automatic deposit subject to consultation with the clerks to determine whether your Committee requires deposit of the document;
- the Committee clerks would reserve the right to ask for deposit of any document which fell under a newly-constituted 'exemption' category if they considered the document to be of legal or political importance, as was the case for all documents currently exempted;
- given ongoing discussions on the Northern Ireland Protocol and the UK-EU future relationship, any categories of documents which are not included in Annex A would continue to be subject to existing scrutiny deposit arrangements; and
- the Explanatory Memorandum template would be modified to ensure providing information in a way that is complementary to the focus of the Committee.

Annex A to this letter sets out in detail the agreed categories of documents to which new arrangements would apply for the duration of the transition period. In all other cases, the status quo for document deposit will continue to apply in line with the Cabinet Office's existing scrutiny guidance. The revised Explanatory Memorandum template is at Annex B.

I seek the agreement of your Committee to these changes as facilitative of a better-tailored and proportionate approach to scrutiny for the remainder of the transition period. I believe that it would be sensible to keep the arrangements under review in the coming months, and adapt again if necessary when agreement on the UK's future relationship with the EU is finalised.

I have written in similar terms to Sir William Cash MP and Jessica Mulley, Chair and clerk of the House of Commons European Scrutiny Committee; and copied to the Paymaster General, Rt Hon Penny Mordaunt MP; and Lord True.

**With every good wish,**

A handwritten signature in black ink, appearing to read "Michael Gove". The signature is fluid and cursive, with a prominent flourish at the end.

**Rt Hon Michael Gove MP  
Chancellor of the Duchy of Lancaster  
and Minister for the Cabinet Office**

## **ANNEX A**

### **Scrutiny of EU documents during the transition period: exemption of documents from deposit.**

#### **New categories of documents to be automatically exempted from scrutiny (in addition to existing exemption categories):**

- Community positions on rules of procedure for various Councils and Committees, including those established under Association Agreements.
  - Proposals to extend Common Positions (now Council Decisions since the Lisbon Treaty) imposing sanctions (without making substantive changes) in pursuance of UN Security Council resolutions.
  - Reappointment of members to EU organisations.
  - ECB Recommendations to the Council on the external auditors of National Central Banks in the Eurozone.
  - Technical adaptations to third country agreements and other existing EU legislation following the accession of Croatia.
  - Non-UK indirect tax derogations (e.g. VAT & Excise).
  - Proposals for codification of EU legislative acts with no changes of substance or important policy issues arising.
  - Proposals for routine adaptation of EEA/EFTA Agreements to take account of new legislation and programmes.
  - Reports/assessments on future accession and enlargement
  - European Neighbourhood Policy on condition that the document specifies that it relates to this policy.
  - Macro-Regional strategies.
  - Documents on the Mobilisation of the Globalisation Adjustment Fund and the Solidarity Fund.
  - Commission SWDs reviewing Employment and Social Developments in Europe (ESDE).
  - European Commission appointments.
  - Composition of ECSC and Committee of Regions.
  - EU ombudsman.
  - Seats of bodies/agencies and the establishment of new bodies.
  - Annual report on subsidiarity and proportionality.
  - Staff Regulations and related documents (including on staff remuneration and pensions).
  - European Citizens' Initiative.
  - Future EU electoral matters.
  - Fishing matters in areas where the UK has no fishing interest.
  - Documents related to the periodic implementation of the Stability & Growth Pact and the European Semester, including, country-specific recommendations, Commission opinions and recommendations on excessive deficits, Enhanced surveillance updates, Stability and growth pact reports, and Stability and Convergence Programme Reports.
  - Tax matters relating to individual Member States.
  - CFSP matters which by their nature do not raise any new policy issues:
    - Council Decisions appointing EU Special Representatives
    - Council Decisions extending existing EU CFSP/CSDP missions and operations without a change in mandate
    - Council Decisions altering the budget for existing EU CFSP/CSDP operations
    - Council Decisions providing EU financial support to international organisations
- (*Note:* New EU foreign policy sanctions and overseas operations will continue to be automatically deposited).

#### **New categories of documents for consultation with the Clerks prior to deposit:**

- Proposals for making minor changes to lists of people or organisations subject to restrictive provisions in existing measures.

- Draft Council Decisions relating to decisions already made in Association Councils or Committees.
- Agreements emanating from pre-scrutinised Model and Framework Participation Agreements in respect of CSDP missions where the individual agreements do not depart from the structure of the Model Framework Agreement.
- Commission or European External Action Service Staff Working Documents which are free-standing and not part of a document submitted for scrutiny.
- Schengen-related matters.
- Matters affecting the eurozone.
- All reports or proposals concerning institutional matters that have not been exempted above.
- Proposals and Court of Auditor reports on legislation, programmes, funds or bodies in which the UK does not continue to participate.
- Proposals and reports on EU Funds and Programmes which do not apply to the UK.
- ECA Special Reports.

## **ANNEX B**

### **Scrutiny of EU documents during the transition period: Revised template for Explanatory Memoranda**

#### **STANDARD FORM OF EXPLANATORY MEMORANDUM FOR EUROPEAN UNION LEGISLATION AND DOCUMENTS**

[Council number\*]

[COM and/or SWD or SEC number]

[Title of document]

Submitted by [add Department] [date/month/year]

#### **SUBJECT MATTER**

#### **SCRUTINY HISTORY**

#### **MINISTERIAL RESPONSIBILITY**

#### **INTEREST OF THE DEVOLVED ADMINISTRATIONS**

(including if it covers any area subject to a common framework and whether the DAs have been consulted)

#### **LEGAL AND PROCEDURAL ISSUES**

- i. Legal Base
- ii. Voting Procedure
- iii.. Timetable for adoption and implementation (or expected next steps for non-legislative documents)
- iv. Does the proposal affect the substance of EU law that will remain in effect under the Northern Ireland Protocol or is it likely to be the subject of a request by the EU to be added to the Protocol under Article 13(4) thereof?
- v. Do JHA opt-in, Schengen opt-out issues arise?

## **POLICY IMPLICATIONS**

(including implications for the application of EU law during the TP and under the Northern Ireland Protocol, and possible relevance to the future relationship negotiations)

Also covering:

- Domestic approach to the policy and whether vital national interests are at stake<sup>[1]</sup>.
- Links to the UK's future relationship with the EU, where known.
- Implications of a proposal — or policy direction — on the UK as a “Third Country” and, where relevant, provide an indication of the Government's position on the merits of the policy changes proposed and the prospects for continued (voluntary) alignment with, or divergence from, the proposed or suggested EU rules.
- The Government's approach to engagement/influencing the proposal.
- Factors the Government will take into account when considering whether or not to opt-in to a proposal that triggers a JHA opt-in decision or to opt out of a proposal subject to the Schengen Protocol.

## **CONSULTATION**

(to include consultation of external stakeholder and reference any impact assessment undertaken by the Government)

## **FINANCIAL IMPLICATIONS**

## **MINISTERIAL NAME AND SIGNATURE**

[Add Minister's name]

[Add Minister's Title]

[Add Department]

---

[1] [Section 13A of the EU \(Withdrawal\) Act 2018](#), as inserted by [section 29 of the European Union \(Withdrawal Agreement\) Act 2020](#).