

European Scrutiny Committee

House of Commons London SW1A 0AA

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From: Sir William Cash MP

23 July 2020

Rt Hon. Michael Gove MP
Chancellor of the Duchy of Lancaster
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Scrutiny of EU documents during the transition period

Thank you for your letter of 17 July 2020, proposing revisions to scrutiny processes for the remainder of the transition period, covering:

- new categories of documents for i) exemption from deposit and ii) for consultation with the Clerks prior to deposit (in addition to existing categories); and
- a revised Explanatory Memorandum (EM) template.

As you will recall, my letter to you of [11 March 2020](#) set out ESC's approach to scrutiny during the post-exit transition period and its expectations of Government Departments in enabling it to perform its functions effectively. The Government's input into the scrutiny process, notably through the timely deposit of EU documents, provision of accurate and informative EMs, and well-informed responses to questions raised in our Reports and correspondence with Ministers, is crucial in enabling meaningful scrutiny.

In this context, the Committee indicated its willingness to consider options together with the Lords' European Union Committee (EUC) to streamline the document deposit system and for better-tailored EMs. This was on the understanding that the Government would facilitate the Committee's scrutiny work on whether and how developments in EU law and policy apply to or impact the UK during the transition period and beyond under the terms of the Withdrawal Agreement (especially the Northern Ireland Protocol), including the activities of the EU-UK Joint Committee.

We are grateful for the work that your officials have carried out in this regard and are content to agree the:

- additional categories of documents for exemption from deposit and for consultation (noting that we reserve the right to request deposit of any EU document if we consider it may be of political and/or legal importance); and
- revisions to the EM template, which provides more focus on the Government's position on the implications of EU documents for the UK during the transition period and beyond.

However, in the interests of transparency and accountability, it is vital that your Department publishes up-to-date guidance on parliamentary scrutiny of EU documents on its [webpage](#), which reflects the wider post-exit scrutiny context and specific changes to document scrutiny processes agreed jointly by my Committee and the EUC. The need for detailed and easily accessible Cabinet Office guidance is all the more pressing given consistent failings by certain Departments in facilitating and informing scrutiny of EU laws and policies during the transition period, as flagged in previous correspondence.¹

Finally, ESC fully concurs that EU scrutiny arrangements need to be kept under review. An integral part of this review will be monitoring the responsiveness, quality and accuracy of Government EMs and correspondence over the coming weeks, particularly in light of your recent statements and correspondence.² We look forward to discussing developments in scrutiny during the transition and other post-exit issues further with you when you give evidence to our Committee in September.

I am copying this letter to the Chair (Lord Kinnoull), Principal Clerk (Chris Johnson) and Clerk (Stuart Stoner) of the European Union Committee in the Lords; and Marzena Bujalska, Ross Turner and Les Saunders at the Cabinet Office.

CHAIR

¹ In my letter to you of [10 June 2020](#), the Committee flagged that it has encountered unacceptable delays in the provision of EMs and responses to Committee correspondence by some Government Departments, and the quality and accuracy of the information in some has been poor.

² In the [debate on 4 June 2020](#) on the EU's negotiating mandate for a future partnership with the UK, you acknowledged that the Explanatory Memoranda provided by some Government Departments "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". In your letter of [13 July 2020](#), you stated that "the Transition Task Force wrote to all government departments (8 June) setting out the need for high quality, prompt EM returns to Parliament and emphasising the importance [you] attach to the scrutiny of EU legislation".