



House of Commons
European Scrutiny Committee

Revised EU Scrutiny Arrangements

**First Special Report of Session
2022–23**

*Ordered by the House of Commons
to be printed 12 October 2022*

European Scrutiny Committee

The European Scrutiny Committee is appointed under Standing Order No.143 to examine European Union documents.

Current membership

[Sir William Cash MP](#) (Conservative, Stone) (Chair)

[Tahir Ali MP](#) (Labour, Birmingham, Hall Green)

[Mr John Baron MP](#) (Conservative, Basildon and Billericay)

[Jon Cruddas MP](#) (Labour, Dagenham and Rainham)

[Geraint Davies MP](#) (Labour, Swansea West)

[Allan Dorans MP](#) (Scottish National Party, Ayr Carrick and Cumnock)

[Richard Drax MP](#) (Conservative, South Dorset)

[Margaret Ferrier MP](#) (Independent, Rutherglen and Hamilton West)

[Mr Marcus Fysh MP](#) (Conservative, Yeovil)

[Dame Margaret Hodge MP](#) (Labour, Barking)

[Adam Holloway MP](#) (Conservative, Gravesham)

[Mr David Jones MP](#) (Conservative, Clwyd West)

[Stephen Kinnock MP](#) (Labour, Aberavon)

[Craig Mackinlay MP](#) (Conservative, South Thanet)

[Gavin Robinson MP](#) (Democratic Unionist Party, Belfast East)

[Greg Smith MP](#) (Conservative, Buckingham)

Powers

The Committee's powers are set out in Standing Order No. 143. The scrutiny reserve resolution, passed by the House, provides that Ministers should not give agreement to EU proposals which have not been cleared by the European Scrutiny Committee, or on which, when they have been recommended by the Committee for debate, the House has not yet agreed a resolution. The scrutiny reserve resolution is printed with the House's Standing Orders, which are available at www.parliament.uk.

Publications

Committee reports are published on the [Committee's website](#) and in print by Order of the House. Evidence relating to this report is published on the [inquiry publications page](#) of the Committee's website

Staff

The staff of the Committee are Ravi Abhayaratne (Committee Operations Assistant), Hannah Barlow (Committee Specialist), Joanne Dee (Deputy Counsel for European and International Law), Alistair Dillon and Leigh Gibson (Senior Committee Specialists, European Affairs Unit), Nat Ireton (Committee Operations Officer), Daniel Moeller (Committee Operations Manager), Foeke Noppert (Senior Committee Specialist, European Affairs Unit), Indira Rao MBE (Counsel for European and International Law), Emily Unwin (Deputy Counsel for European and International Law), Dr George Wilson (Clerk).

Contacts

All correspondence should be addressed to the Clerk of the European Scrutiny Committee, House of Commons, London SW1A 0AA. The telephone number for general enquiries is (020) 7219 3292/8185. The Committee's email address is escom@parliament.uk

First Special Report

Background

1. On 8 July 2022, Rt Hon Elizabeth Truss MP, then Secretary of State for Foreign, Commonwealth and Development Affairs, wrote to us and the House of Lords European Affairs Committee seeking our collective agreement on revised arrangements for the scrutiny of UK/EU affairs.¹ New arrangements were considered necessary in light of the UK's withdrawal from the EU, and new obligations and methods of governance provided for in the UK/EU Withdrawal Agreement and the UK/EU Trade and Cooperation Agreement (TCA).
2. The Government's offer includes new document scrutiny commitments specific to the Withdrawal Agreement and TCA. It was preceded by lengthy and detailed discussions between the Committee and the House of Lords European Affairs Committee (EAC), and Government on the information the latter would provide to facilitate scrutiny of the UK's new relationship with the EU.
3. On 12 October 2022, we wrote to the Foreign Secretary, Rt Hon James Cleverly MP, to formally accept the Government's offer. Our letter also clarifies our expectations with regard to the areas of EU scrutiny the Government has committed to facilitate, and outlines how the Committee will undertake scrutiny moving forwards. Our response is annexed to this Special Report.
4. We believe these revised arrangements are appropriate to the UK's legal and political status outside of the EU and its institutions, and that they strike a balance between providing information on important matters—such as binding decisions taken in joint UK/EU bodies set up under the Withdrawal Agreement and TCA—and recognising the limited value of receiving information on EU actions that are no longer directly relevant to the UK after Brexit.
5. Our revised arrangements reinforce the Committee's position as the House's primary scrutineer of UK/EU relations and its central role in holding the Government to account in its dealings with the EU. This is reflected in the privileged access to information the Committee will continue to enjoy and the bespoke mechanisms for scrutiny the Government has committed to institute.
6. Working with the Lords EAC and the Government, we will undertake an initial review of these arrangements in nine months' time.

Current and future practice

7. The Committee is charged under Standing Order No. 143 with examining EU documents and the Government's policy towards them.
8. During the UK's EU membership, the Government would 'deposit' EU documents in Parliament and, within 10 working days, provide an 'Explanatory Memorandum' (EM) on their content. The Committee considered hundreds of documents each Session, which included proposals for EU legislation and major EU policy initiatives.

¹ A copy of this letter is appended to this Special Report.

9. The Committee would assess the legal and/or political importance of deposited documents and report its findings to the House.

10. In accordance with the ‘Scrutiny Reserve Resolution’ of November 1998, Ministers could not, subject to a limited number of exceptions, agree to EU legislation or major policies in the Council of Ministers or European Council if the corresponding EU document had not been considered or ‘cleared’ from scrutiny by the Committee.

11. If the Committee deemed a document to be of significant legal and/or political importance, it could recommend it for debate in European Committee or on the floor of the House.² The timing of debates was determined by the Government.

12. After the UK’s withdrawal from the EU, the Government stopped routinely depositing EU documents and, as a rule, only deposited those that engaged the Protocol on Ireland/Northern Ireland to the Withdrawal Agreement.

13. The Committee’s new scrutiny arrangements update this system and change the categories of EU documents the Government will deposit and provide EMs on.³

14. The Government has committed to deposit EU documents relating to:

- the Northern Ireland Protocol (including proposals for EU legislation that would potentially take effect in Northern Ireland);
- the Withdrawal Agreement (including EU Council Decisions establishing the EU’s position in the Withdrawal Agreement Joint Committee); and
- binding decisions of the TCA Partnership Council and Specialised Committees.

15. The Government’s offer also includes commitments away from EU document scrutiny, for example, covering regular Ministerial appearances and briefings from officials.

16. These changes will focus Committee document scrutiny on the Government’s dealings with the EU under the Withdrawal Agreement and TCA, and complement our inquiry-based work on wider UK/EU affairs and related issues.

17. All other aspects of the Committee’s document scrutiny will remain the same. The Government will continue to deposit EU documents with the Committee and in the Vote Office in the Commons, EMs will be expected within 10 working days, and we will liaise with Government Departments on the progress of files we hold under scrutiny. We will continue our recent practice of reporting on EU documents fortnightly.

18. We have written to the Procedure Committee to inform them of these changes.

2 As per Standing Order No. 119.

3 This amounts to a change in practice by the Government and does not necessitate amendment to the Committee’s Standing Order. The categories of EU document deposited by the Government during the UK’s EU membership were not exhaustively prescribed and the Committee had the power to ‘waive’ deposit if it thought appropriate.

Appendix: Letter from Rt Hon Elizabeth Truss MP of 9 July 2022

Dear Charles, Bill,

EU RELATED SCRUTINY ARRANGEMENTS

1. I am writing to seek your agreement on future scrutiny arrangements, following the conclusion of discussions between officials on a formal framework for scrutiny arrangements, which provides a balanced approach to parliamentary oversight of our new relationship with the European Union. I am grateful to the officials involved in these discussions for arriving at an agreed approach.

2. I agree with Lord Frost's position when he wrote to you on 23 September 2021, that we should be as open as possible in how we work with your committees, whilst noting that our new relationship with the EU requires a new approach to scrutiny and a move towards a more flexible approach.

3. The scrutiny offer enclosed in the Annex seeks to reflect this and takes into account the clear representations made by your officials, including some reasonable additional requests since Lord Frost wrote to enhance the commitments in several areas. I should note that the additional requests made by the Northern Ireland Protocol Sub-Committee in their report on scrutiny have been responded to separately through the Government's response to the Sub-Committee's report.

4. I am aware that the offer does not go as far as the European Affairs Committee in particular would have liked in terms of automatic deposit of EU documents on a broader range of issues. These arrangements are proportional to our new relationship with the EU, and are part of an evolving process to be kept under review. As set out in the offer, it is sensible to conduct an interim review of these arrangements in nine months' time, and then a full review after two years (or at the end of this Parliament, whichever is sooner), to ensure the process remains relevant and manageable for both sides.

5. I hope that the offer enclosed is acceptable to you, and I look forward to implementing it as quickly as possible. I am grateful to you both for your continued engagement and for the valuable role that your Committees play.

Yours Sincerely,

THE RT HON ELIZABETH TRUSS MP

Foreign, Commonwealth and Development Secretary

Annex

Final Government Offer on Scrutiny of EU-related Business by the EU Scrutiny Committees

1. Scrutiny of the Withdrawal Agreement (excluding the Northern Ireland Protocol)

We are committed to:

- Issuing WMSs before and after WA Joint Committee (WAJC) meetings.
- Providing EMs on European Council Decisions that establish the EU position for the WAJC, before meetings wherever possible.
- Providing official-level briefings to the Committee teams in advance of all Joint Committee meetings, setting out a more in-depth UK position on agenda items and our approach to the discussion. We can also provide a post-WAJC meeting read-out.
- Ministerial appearances before the Committee and ad hoc official-level briefing as required.
- Sharing provisional agendas of WA Specialised Committee meetings in advance (on a confidential basis, unless co-chairs agree to publish them).
- Sharing the WA Annual Report before publication, subject to co-chairs agreeing to publish. The first report was shared with both Committees on 18 June.
- Automatic deposit of EMs on new or amended EU law that has a direct effect on the UK under the WA.
- A Ministerial oral statement following publication of the two reports by the Commission and the Independent Monitoring Authority on the implementation of the citizens' rights chapter of the WA in mid-2022.
- Reporting on the UK's outstanding financial liabilities under the financial settlement and on payments to the EU each year through the annual European Union Finances Statement.
- Writing to the chairs in advance of requesting the establishment of an arbitration panel under the Agreement.
- Issuing WMSs following the establishment of an arbitration panel and after any CJEU rulings made under the WA, and issuing an annual report on disputes raised at the WAJC.
- Providing a quarterly summary of each Specialised Committee's activities, to the extent that there is agreement by both co-chairs of the Committee to make that activity public (for example through joint statements).

2. Scrutiny of the Northern Ireland Protocol

We are committed to:

- Continuing the submission of EMs on EU proposals which amend or replace existing proposals that fall under scope of the NI Protocol (including tertiary legislation).
- Automatic submission of EMs on new EU proposals falling under the scope of Protocol when agreed by the Joint Committee.
- Automatic submission of an EM when the UK is informed of any draft EU legislation through the JCWG which the EU have indicated they would like to add to the NIP Annexes under the Article 13(4) processes. Any agreement to share an EM is on the understanding that we would not be able to share anything that might reveal our negotiating position ahead of the relevant Joint Committee meeting.
- Officials will work with the Committees' Clerks on tailoring our EM guidance and template used by Departments to better reflect the information the Committees would find helpful to receive.
- We will share Ireland/Northern Ireland Specialised Committee (INISC) agendas, on the same basis as the approach to sharing provisional agendas of WA SC meetings in advance (on a confidential basis, unless co-chairs agree to publish them).

3. Scrutiny of the Trade and Cooperation Agreement

We are committed to:

- Issuing WMSs before and after TCA Partnership Council meetings, using best endeavours to do so seven days in advance for pre-meeting WMSs.
- Automatic submission of EMs on European Council Decisions that establish the EU position for the Partnership Council, before meetings where possible.
- Automatic submission of EMs on EU Council Decisions that establish the EU position for meetings of Specialised Committees; before meetings where possible. For the avoidance of doubt, not all Specialised Committees will require an EU Council Decision to establish the EU's position.
- Providing official-level briefings to your Clerks in advance of all TCA Partnership Council meetings and offering post-meeting readouts.
- Sharing provisional agendas of TCA Specialised Committee meetings in advance.
- FCDO Ministers will write to the Committees periodically with a summary of activity in the Specialised and other Committees established under the TCA.
- Writing to the chairs before requesting the establishment of an arbitration panel or if it is likely that the EU will initiate dispute settlement, adopt a remedial, safeguard, or other unilateral measure, or operate the TCA "rebalancing" clause.
- Ad hoc Ministerial appearances as appropriate.

4. **Miscellaneous**

We are committed to:

- Sending EMs on the EU's annual Work Programme as we recognise that the EU Select Committees retain an interest in the wider EU policy direction and potential implications on both agreements.
- Continuing the practice of writing to the EU Committees about incoming EU Presidency priorities every six months, before the start of each Presidency where possible.
- HMG will consider requests from the EAC, NIPC and ESC for the deposit of documents of direct relevance to the work of the Committees that might fall outside the WA and TCA agreements.
- There will be an interim review of arrangements after nine months and then a full review after two years or at the end of this Parliament (whichever is sooner).

5. **Ministerial appearance before the Committees**

- The Foreign Secretary will appear at least once a year before the ESC and EAC and the Minister for Europe and North America twice a year, with other ad hoc Ministerial appearances as appropriate. In respect of appearances before the Lords Committee and its sub-committee, Government officials and Committee clerks should work together to determine how appearances will best meet the needs of the main Committee and sub-committee according to the issues prevailing at the time. Parity in the number of appearances before each House should underpin this commitment.

Annex 1: Letter from Sir William Cash MP to Rt Hon James Cleverly MP of 12 October 2022

Dear James

As you will be aware, your predecessor, Rt Hon Elizabeth Truss MP, wrote to us on 9 July 2022 seeking our agreement on revised arrangements for the scrutiny of UK/EU affairs. This letter was preceded by over a year of discussions. We are grateful to all of those involved for their time, and determination to reach a settlement that facilitates parliamentary scrutiny of the Government's dealings with the EU whilst being appropriate to the new UK/EU relationship.

We believe the Government's offer strikes this balance and, as such, we formally accept. We have informed the House of these revised arrangements. My Clerk will be in contact with your officials shortly to discuss consequent changes to document handling practices, for example, concerning the information provided in Government Explanatory Memoranda on EU documents. As our revised arrangements relate mainly to the types of EU documents the Government will facilitate scrutiny of, our reporting practices will remain largely unchanged.

As suggested, we will review these arrangements with you in nine months' time. These revised arrangements are without prejudice to our powers to send for persons, papers and records, and our ability to consider all European matters. We must also make clear that we expect Ministers to appear before us when they are called, irrespective of how frequently this is or Government arrangements with the Lords Committees.

We look forward to continuing our work with you.

With kind regards

CHAIR

Annex 2: Letter from Sir William Cash MP to Rt Hon Karen Bradley MP of 12 October 2022

Dear Karen

I hope this letter finds you well.

I write to update you on recent changes to how my Committee undertakes EU document scrutiny.

As you will be aware, the European Scrutiny Committee is charged under Standing Order No. 143 with examining EU documents and the Government's policy towards them. During the UK's EU membership, we reported on a regular basis on the legal and/or political importance of EU legislative proposals and policy initiatives. The Government would 'deposit' these documents in the House and provide an Explanatory Memoranda detailing its views on the proposed EU law or policy under scrutiny.

On 8 July 2022, Rt Hon Elizabeth Truss MP, then Secretary of State for Foreign, Commonwealth and Development Affairs, wrote to us and the House of Lords European Affairs Committee seeking our collective agreement on revised arrangements for the scrutiny of UK/EU affairs. New arrangements were considered necessary in light of the UK's withdrawal from the EU, and new obligations and methods of governance provided for in the UK/EU Withdrawal Agreement and the UK/EU Trade and Cooperation Agreement.

We wrote to the Foreign Secretary, Rt Hon James Cleverly MP, on 12 October and accepted the Government's offer. I attach copies of these letters for your information. Moving forwards, the Government has committed to deposit EU documents relating to: the Northern Ireland Protocol; the Withdrawal Agreement; and the Trade and Cooperation Agreement. All other aspects of our document scrutiny will remain the same and we will continue to report our assessment of EU proposals and initiatives to the House on a regular basis. Our revised scrutiny arrangements also cover areas in addition to EU document scrutiny, such commitments on regular Ministerial appearances before the Committee and briefings from officials.

We believe these revised arrangements are appropriate to the UK's legal and political status outside of the EU and its institutions, and that they strike a balance between providing information on important matters—such as binding decisions taken in joint UK/EU bodies set up under the Withdrawal Agreement and TCA—and recognise the limited value of receiving information on EU actions that are no longer directly relevant to the UK after Brexit. They formalise ad hoc arrangements that have been in place since the UK's withdrawal from the EU and, in practical terms, will see the number of EU documents we consider each Session settle at around 100. The Committee's Standing Order is unaffected by these changes as they relate to the types of EU documents the Government will facilitate scrutiny of, not the power of the Committee to report on them.

I hope this update proves useful.

With kind regards

CHAIR

Formal Minutes

Wednesday 12 October 2022

Members present:

Sir William Cash, in the Chair

Mr John Baron

Jon Cruddas

Margaret Ferrier

Mr David Jones

Craig Mackinlay

Gavin Robinson

Greg Smith

Revised EU scrutiny arrangements

Draft Special Report (*Revised EU scrutiny arrangements*), proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 18 read and agreed to.

Annexes agreed to.

A Paper was appended to the Report as Appendix 1.

Resolved, That the Report be the First Special Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

Ordered, That embargoed copies of the Report be made available (Standing Order No. 134).

Adjournment

Adjourned till Wednesday 19 October 2022 at 1.45 p.m.