



European Scrutiny Committee

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From: Sir William Cash MP

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Rt Hon Michael Gove MP
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Dear Michael

The European Scrutiny Committee's approach during the transition period

At its first meeting of the 2019–21 Parliament, the European Scrutiny Committee agreed on a new approach to its work for the remainder of the post-Brexit transition period. Given the Cabinet Office's role in coordinating the UK's relations with the EU during this period, I am writing to inform you of the nature of this approach and our expectations of Government Departments.

First, in light of the UK's formal withdrawal from the EU, the Committee will focus its scrutiny work on developments in EU law and policy that will, or are likely to, affect the UK under the terms of the Withdrawal Agreement (especially during the transition period or under the Northern Ireland Protocol), including the activities of the UK-EU Joint Committee, as well as those potentially relevant under the future UK-EU relationship. In this context, we and the EU Select Committee in the House of Lords are open to agreeing a more streamlined scrutiny system where fewer EU documents need to be deposited by the Government, as well as better-tailored Explanatory Memoranda. I will be writing to you separately in the near future about our decisions on outstanding scrutiny items which predate the UK's withdrawal.

Second, the Government's input will remain important for the EU scrutiny process. We welcome Departments' continued provision of Explanatory Memoranda on deposited EU documents, a practice which we expect to last until at least the end of the transition period. Given the new legal and political context, their substance should reflect the UK's withdrawal. Departmental Memoranda should therefore specifically include information on:

- whether a proposal for EU legislation is likely to take effect during the transitional period and, if so, what its impact would be in the UK;
- whether the proposal affects the substance of EU law that will remain in effect in Northern Ireland under the Protocol or is likely to be subject to a request by the EU to be added to the Protocol under Article 13(4) thereof;
- the policy implications, if any, of an EU proposal for the UK as a 'third country', and in particular – where relevant – the Government's assessment of the costs and benefits of continued (voluntary) alignment or divergence from the proposed new EU legislation; and
- the Government's approach to influencing discussions or negotiations in Brussels related to the EU proposal in question.

The Committee will continue its practice of engaging with the relevant Ministers in correspondence about developments in the discussions or negotiations on EU proposals or policy papers of particular interest, and is likely to invite them to give evidence in person more often in view of the lack of UK voting rights in the Council of Ministers and by extension the lack of Government accountability for the adoption of new EU laws which may apply in the UK during transition or under the Protocol.

Thirdly, the Committee discussed its new statutory function under Section 13A of the European Union (Withdrawal) Act 2018. As you will be aware, this allows the Committee to require the Government to schedule a debate on the floor of the House on any (draft) EU legislation which is "made, or [...] may be made" during the transition period and "raises a matter of vital national interest" to the UK. The Committee takes its responsibilities under Section 13A seriously, and will not hesitate to use its new statutory powers where appropriate. When making use of Section 13A, the Committee will also consider on a case-by-case basis whether it also wants the Government to raise the issue being debated within the UK-EU Joint Committee. The continued application of EU law during the transition period is after all an integral part of the Withdrawal Agreement, and Article 164 of the agreement gives the Government the right to refer to the Joint Committee any issue "relating to [its] implementation, application and interpretation".

Lastly, with respect to the need for scrutiny of EU developments beyond the end of the transition period, and the role this Committee might play, we expect to have further discussions over the course of the year. The Committee also agreed that it would welcome engagement from any interested parties with views on the potential implications of proposed EU legislation or policy for the UK, whether during transition; pursuant to the Northern Ireland Protocol; or under any aspect of the future UK-EU relationship.

I would welcome your confirmation that the Government is committed to providing the Committee with the information on developments in EU law and policy as requested above, and cooperate wherever necessary to enable the Committee to fulfil its scrutiny functions effectively. The Committee would be grateful if you could circulate this letter to the EU scrutiny coordinators of all Government departments.

I am copying this letter to Lord Kinnoull and Christopher Johnson in the Lords; and to Les Saunders at the Cabinet Office.

Yours,

Brian

CHAIR

