



HOUSE OF LORDS

European Union Committee

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19th Report of Session 2019–21

**Scrutiny of international  
agreements:  
Air Transport  
Agreement with the  
United States**

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### *The European Union Committee*

The European Union Select Committee and its five sub-committees are appointed each session to consider EU documents and draft laws; to consider other matters relating to the UK's relationship with the EU, including the implementation of the UK/EU Withdrawal Agreement, and the Government's conduct of negotiations on the United Kingdom's future relationship with the European Union; and to consider matters relating to the negotiation and conclusion of international agreements generally.

The five Sub-Committees are as follows:

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EU Goods Sub-Committee  
EU Security and Justice Sub-Committee  
EU Services Sub-Committee  
International Agreements Sub-Committee

### *Membership*

The Members of the European Union Select Committee are:

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<a href="#"><u>Lord Cavendish of Furness</u></a>	<a href="#"><u>Earl of Kinnoull (Chair)</u></a>	<a href="#"><u>Lord Teverson</u></a>
<a href="#"><u>Baroness Couttie</u></a>	<a href="#"><u>Lord Lamont of Lerwick</u></a>	<a href="#"><u>Lord Thomas of Cwmgiedd</u></a>
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<a href="#"><u>Baroness Hamwee</u></a>	<a href="#"><u>Lord Ricketts</u></a>	

The Members of the International Agreements Sub-Committee are:

<a href="#"><u>Lord Foster of Bath</u></a>	<a href="#"><u>Lord Lansley</u></a>	<a href="#"><u>Lord Risby</u></a>
<a href="#"><u>Lord Gold</u></a>	<a href="#"><u>Baroness Liddell of Coatdyke</u></a>	<a href="#"><u>Lord Robathan</u></a>
<a href="#"><u>Lord Goldsmith (Chair)</u></a>	<a href="#"><u>Lord Morris of Aberavon</u></a>	<a href="#"><u>The Earl of Sandwich</u></a>
<a href="#"><u>Lord Kerr of Kinlochard</u></a>	<a href="#"><u>Lord Oates</u></a>	<a href="#"><u>Lord Watts</u></a>

### *Further information*

Publications, press notices, details of membership, forthcoming meetings and other information is available at <http://www.parliament.uk/hleu>.

General information about the House of Lords and its Committees is available at <http://www.parliament.uk/business/lords>.

### *Sub-Committee staff*

The current staff of the Sub-Committee are Jennifer Martin-Kohlmorgen (Clerk), Andrea Ninomiya (Policy Analyst), Alexander Horne (Legal Adviser) and George Stafford (Committee Assistant).

### *Contact details*

Contact details for individual Sub-Committees are given on the website. General correspondence should be addressed to the Clerk of the European Union Committee, Committee Office, House of Lords, London, SW1A 0PW. Telephone 020 7219 5791. Email [HLIntlAgreements@parliament.uk](mailto:HLIntlAgreements@parliament.uk).

### *Twitter*

You can follow the Committee on Twitter: [@LordsEUCom](https://twitter.com/LordsEUCom).

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## SUMMARY

This is the European Union Committee's twenty-ninth report on treaties, or international agreements, laid before Parliament in accordance with section 20 of the Constitutional Reform and Governance Act 2010 (CRAG). It is the seventh such report prepared by the International Agreements Sub-Committee, which has taken on responsibility for scrutinising all international agreements laid before Parliament under CRAG.

This report addresses one Agreement, considered at the International Agreements Sub-Committee's meeting on 16 December 2020, on which we report for information:

- Air Transport Agreement, done at Washington on 10 November 2020 and at London on 17 November 2020, between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the United States of America (CP 336, 2020)

# Scrutiny of international agreements: Air Transport Agreement with the United States

## CHAPTER 1: AGREEMENT REPORTED FOR INFORMATION

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**Air Transport Agreement, done at Washington on 10 November 2020 and at London on 17 November 2020, between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the United States of America (CP 336, 2020)<sup>1</sup>**

1. The Air Transport Agreement between the UK and US (the Air Transport Agreement) was laid on 30 November 2020, and the scrutiny period is scheduled to end on 20 January 2021.<sup>2</sup> It was considered by the International Agreements Sub-Committee on 16 December 2020.
2. The Air Transport Agreement is designed to replace the UK's participation in several EU-US Air Transport Agreements at the end of the transition period.<sup>3</sup> Upon signature of the Agreement, the US State Department issued a press release which stated:

“The Agreement includes all of the essential elements of Open Skies, such as unrestricted capacity and frequency, open routes, open code-sharing opportunities, a liberal charter regime, and market-determined pricing. The Agreement also provides expanded ‘seventh-freedom’ traffic rights for all-cargo carriers and full market access to the UK’s overseas territories and crown dependencies.”<sup>4</sup>
3. The Government’s Explanatory Memorandum (EM) notes that the Agreement provides “continuity of rights available to airlines of both sides and ensures that air services between the UK and the USA can continue uninterrupted” when the underlying EU-US Air Transport Agreements cease to apply to the UK. It also allows all-cargo services to be operated by airlines of the two Parties and sets out terms and conditions relating to

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1 Air Transport Agreement, done at Washington on 10 November 2020 and at London on 17 November 2020, between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the United States of America, CP 336, 2020: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/939648/CS\\_USA\\_2.2020\\_UK\\_USA\\_Air\\_Transport\\_Agreement.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/939648/CS_USA_2.2020_UK_USA_Air_Transport_Agreement.pdf) [accessed 4 December 2020]

2 This date may change as it does not take account of any potential recall of Parliament or new sitting Fridays..

3 These are the Air Transport Agreement between the US and the EC of 2007; the Protocol to Amend the Air Transport Agreement between the US and the EC of 2010 and the Air Transport Agreement between the US and the EU and the Kingdom of Norway of 2011.

4 United States Department of State, ‘United States and United Kingdom Sign Civil Air Transport Agreement’, (17 November 2020): <https://www.state.gov/united-states-and-united-kingdom-sign-civil-air-transport-agreement/> [accessed 17 December 2020]. The “seventh freedom” refers to the right to fly between two foreign countries, where the flights do not touch one’s own country. See ICAO, ‘Freedoms of the Air’, : <https://www.icao.int/pages/freedomsair.aspx> [accessed 17 December 2020]

safety,<sup>5</sup> aviation security,<sup>6</sup> commercial opportunities<sup>7</sup>, customs duties,<sup>8</sup> user charges,<sup>9</sup> fair competition<sup>10</sup> and pricing.<sup>11</sup>

4. The fourth recital notes the Parties desire to “facilitate the expansion of international air transport opportunities”. Notably, airlines of both Parties would be able to operate unlimited services to and from the UK and USA and to and from intermediate points and points beyond (after securing the necessary authorisations and technical permissions and provided that they meet the relevant ownership criteria).<sup>12</sup>
5. In respect of the ownership criteria, Article 3 of the Agreement sets out that each Party “shall grant appropriate authorizations and permissions with minimum procedural delay”, provided that “(a) except as provided in Annex 1, substantial ownership and effective control of that airline are vested in the other Party, nationals of that Party, or both”.
6. Annex 1 provides a mechanism which would allow for the ‘grandfathering’ of rights of UK airlines that were authorised to operate to the USA as of 28 November 2018 (the date the Agreement was initialled by the Parties) where those airlines are not majority owned and effectively controlled by UK nationals. Such airlines would have the right to continue operating if substantial ownership remains vested in UK nationals and/or nationals of one or more EEA States,<sup>13</sup> provided that any such State is party to a modern liberal air services agreement with the USA and that changes in ownership or control do not result in significant third country ownership or control.<sup>14</sup>
7. The EM accompanying the Agreement notes that there are no express provisions for amendment of the Agreement; that it may be terminated by either side (termination to take effect “at the end of the International Air Transport Association (IATA) traffic season in effect one year following the date of written notification of termination”).<sup>15</sup> The Agreement includes a detailed framework for the settlement of disputes, including a mechanism for arbitration, under procedures specified in the Agreement.<sup>16</sup>

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5 Article 6

6 Article 7

7 Article 8

8 Article 9

9 Article 10

10 Article 11

11 Article 12

12 Article 2(1) grants airlines of each of the Parties the right to fly across the other Party’s territory, without landing; make stops in its territory for non-traffic purposes and perform international air transportation as described in paragraph 4. Article 2(2) also provides, inter alia, that each airline of a Party may: operate flights in either or both directions; combine different flight numbers within one aircraft operation; serve behind, intermediate, and beyond points and points in the territories of the Parties in any combination and in any order; omit stops at any point or points; transfer traffic from any of its aircraft to any of its other aircraft at any point; serve points behind any point in its territory with or without change of aircraft or flight number and hold out and advertise such services to the public as through services; make stopovers at any points whether within or outside the territory of either Party; carry transit traffic through the other Party’s territory; and combine traffic on the same aircraft regardless of where such traffic originates, provided that (in respect of all of these activities, but with the exception of all-cargo services) the transportation is part of a service that serves a point in the homeland of the airline.

13 Annex 1(A)

14 Annex 1(B) and (C)

15 Article 15

16 Article 14

8. The EM also indicates that no new legislation is required to implement the Agreement. It explains that if there is any delay to the completion of the Parties' respective internal procedures beyond the end of the transition period (which appears inevitable in the UK given the date that it was laid), both sides "intend to permit operations consistent with the Agreement on the basis of comity and reciprocity from the end of the transition period until the Agreement enters into force".
9. The Agreement extends to the Crown Dependencies and Overseas Territories and, insofar as the Agreement applies to them, it will replace the 1977 UK/US Air Services Agreement. The EM says that the Crown Dependencies and Overseas Territories are "supportive of its application to them". In relation to the Devolved Administrations in the UK, however, it says only that they "took part in the negotiations". We reiterate our view, expressed in many previous reports, that in order to demonstrate that it is taking full account of the interests of the Devolved Administrations, the Government must not only indicate whether the Devolved Administrations have been consulted, but also whether they have expressed any concerns and, if they have, what action has been taken to address them.
10. **We report the UK-US Air Transport Agreement to the House for information.**

## APPENDIX 1: LIST OF MEMBERS, DECLARATIONS OF INTEREST AND SUB-COMMITTEE STAFF

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### Members of the European Union Select Committee

The report was approved by the Chair of the EU Select Committee, Lord Kinnoull, as authorised under paragraph 11.55 of *The Companion to the Standing Orders and Guide to the Proceedings of the House of Lords*.

### Declarations of interest

The Earl of Kinnoull (Chair)

*Farming interests as principal and as charitable trustee, in receipt of agricultural subsidy*

*Chairman, Culture Perth and Kinross, in receipt of governmental subsidy*

*Chairman, United Kingdom Squirrel Accord, in receipt of governmental monies*

*Shareholdings as set out in the register*

### International Agreements Sub-Committee Members and staff

Lord Foster of Bath

*No relevant interests*

Lord Gold

*Director, Gold Collins Associates Ltd*

*Principal, David Gold & Associates LLP*

Lord Goldsmith (Chair)

*Partner, Debevoise & Plimpton LLP*

Lord Kerr of Kinlochard

*Chairman, Centre for European Reform*

*Deputy Chairman, Scottish Power plc*

*Member, Scottish Government's Standing Council on Europe*

Lord Lansley

*Director, LOW Associates Ltd*

*Chair, UK-Japan 21st Century Group*

*Trustee, Radix*

Baroness Liddell of Coatdyke

*Adviser, PricewaterhouseCoopers*

*Association Member, Bupa*

*Chair, Annington Ltd*

*Honorary Vice President, Britain-Australia Society Education Trust*

*Trustee, Northcote Educational Trust*

Lord Morris of Aberavon

*No relevant interests*

Lord Oates

*Chair, Advisory Committee, Weber Shandwick UK*

*Non-Executive Director, Centre for Countering Digital Hate*

*Director, H&O Communications Limited*

Lord Risby

*No relevant interests*

Lord Robathan

*No relevant interests*



Earl of Sandwich

*No relevant interests*

Lord Watts

*No relevant interests*

The Committee staff are Jennifer Martin-Kohlmorgen (Clerk), Alexander Horne (Legal Adviser), Andrea Ninomiya (Policy Analyst), and George Stafford (Committee Assistant).

A full list of Members' interests can be found in the Register of Lords' Interests: <http://www.parliament.uk/mps-lords-and-offices/standards-and-financial-interests/house-of-lords-commissioner-for-standards-/register-of-lords-interests/>