

HOUSE OF LORDS

Select Committee on the Constitution

21st Report of Session 2019–21

European Union (Future Relationship) Bill

Ordered to be printed 29 December 2020 and published 29 December 2020

Published by the Authority of the House of Lords

HL Paper 205

Select Committee on the Constitution

The Constitution Committee is appointed by the House of Lords in each session “to examine the constitutional implications of public bills coming before the House; and to keep under review the operation of the constitution and constitutional aspects of devolution.”

Membership

The Members of the Constitution Committee are:

[Lord Beith](#)

[Baroness Corston](#)

[Baroness Drake](#)

[Lord Dunlop](#)

[Lord Faulks](#)

[Baroness Fookes](#)

[Lord Hennessy of Nympsfield](#)

[Lord Howarth of Newport](#)

[Lord Howell of Guildford](#)

[Lord Pannick](#)

[Lord Sherbourne of Didsbury](#)

[Baroness Taylor of Bolton](#) (Chair)

[Lord Wallace of Tankerness](#)

Declaration of interests

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-interests/register-of-lords-interests>

Publications

All publications of the Committee are available at:

<http://www.parliament.uk/hlconstitution>

Parliament Live

Live coverage of debates and public sessions of the Committee’s meetings are available at:

<http://www.parliamentlive.tv>

Further information

Further information about the House of Lords and its committees, including guidance to witnesses, details of current inquiries and forthcoming meetings is available at:

<http://www.parliament.uk/business/lords>

Committee staff

The current staff of the committee are Matt Korris (Clerk), Ava Mayer (Policy Analyst) and Dan Weedon (Committee Assistant). Professor Stephen Tierney and Professor Jeff King are the legal advisers to the Committee.

Contact details

All correspondence should be addressed to the Constitution Committee, Committee Office, House of Lords, London SW1A 0PW. Telephone 020 7219 5960. Email constitution@parliament.uk

European Union (Future Relationship) Bill

Introduction

1. The European Union (Future Relationship) Bill was published on 29 December 2020. It is expected to complete all its stages in both Houses and receive Royal Assent on 30 December.
2. The Bill gives effect to the Trade and Cooperation Agreement (TCA) between the United Kingdom and the European Union,¹ finalised on 24 December. The Bill makes provision in a range of subject areas, including security and trade policy. It disapplies section 20 of the Constitutional Reform and Governance Act 2010,² which provides for the laying of treaties before Parliament prior to ratification, such that the passage of the Bill constitutes the consent of Parliament to the TCA.

Parliamentary scrutiny

3. A prominent argument for the UK leaving the European Union was to “take back control”³ of our laws—for laws to be determined by the UK Parliament rather than the EU’s law-making bodies.⁴ Asserting the sovereignty of the UK Parliament was considered of such importance that it was included in the European Union (Withdrawal Agreement) Act 2020.⁵
4. It is regrettable that this Bill, which determines how the UK’s future relationship with the EU will be implemented in UK law, was published less than 24 hours before parliamentary scrutiny was due to begin. This does not allow Parliament much in the way of ‘control’. At the very least, it leaves open the question as to where, or to whom, the control taken back rests.

Fast-track legislation

5. The Bill is being fast-tracked through both Houses. We have previously examined the issues with fast-tracking legislation and found that it constrains parliamentary scrutiny, limits the opportunity for parliamentarians to table and debate amendments, restricts input from stakeholders and the public, and potentially leads to poor legislation.⁶ These problems all apply to this

1 HM Government, *Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part*, 24 December 2020: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/948104/EU-UK_Trade_and_Cooperation_Agreement_24.12.2020.pdf [accessed 29 December 2020]

2 Constitutional Reform and Governance Act 2010, [section 20](#)

3 HM Government, ‘Prime Minister’s statement on EU negotiations’, 24 December 2020: <https://www.gov.uk/government/speeches/prime-ministers-statement-on-eu-negotiations-24-december-2020> [accessed 29 December 2020]

4 HM Government, ‘Brexit Secretary signs order to scrap 1972 Brussels Act – ending all EU law in the UK’, 18 August 2019: <https://www.gov.uk/government/news/brexit-secretary-signs-order-to-scrap-1972-brussels-act-ending-all-eu-law-in-the-uk> [accessed 29 December 2020]

5 European Union (Withdrawal Agreement) Act 2020, [section 38](#). We observed in our report on the European Union (Withdrawal Agreement) Bill that this provision “has no legal effect”. Constitution Committee, *European Union (Withdrawal Agreement) Bill* (1st Report, Session 2019–21, HL Paper 5), para 126

6 Constitution Committee, *Fast-track Legislation: Constitutional Implications and Safeguards* (15th Report, Session 2008–09, HL Paper 116)

Bill. The opportunities for parliamentarians and committees in either House to scrutinise its provisions are severely constrained. **We have not been able to conduct our normal assessment of the constitutional implications of this Bill or examine the constitutional effects of the Agreement itself.**

6. We have concluded previously that fast-tracking is acceptable “only in exceptional circumstances and with the agreement of the usual channels.”⁷ **The end of the transition period on 31 December fulfils these criteria.** However, the European Union is giving provisional effect to the TCA until 28 February 2021 such that European Parliament has time to scrutinise and consent to the agreement.⁸ **The Government should explain its reasons for not seeking provisional application of the Trade and Cooperation Agreement in the UK, such that Parliament and the public would have had more time to scrutinise the agreement and the legislation giving effect to it.**
7. The Government said in the Explanatory Notes that it will seek legislative consent from the devolved nations for the Bill’s provisions.⁹ It is regrettable that the timetable for the Bill precludes any realistic opportunity for negotiating and securing the consent of the devolved legislatures.

Sunset provisions and post-legislative review

8. We have recommended previously that when a bill is fast-tracked the Government should include sunset clauses and review provisions.¹⁰
9. A sunset clause on the Bill as a whole might not be appropriate if the expiry of the measures (without replacement provision) put the UK in breach of its international obligations. However, **the House may wish to consider whether certain provisions of this Bill should have been subject to sunset provisions.**
10. The TCA determines the new relationship between the UK and the EU. The structures and processes for managing the relationship raise constitutional issues which need to be scrutinised, alongside important policy decisions. Given the profound significance of the TCA, and the limited time available to scrutinise the legislation to give it effect, Parliament will need to satisfy itself that the Bill’s provisions and its delegated powers are appropriate.
11. In the Explanatory Notes the Government said: “The Bill is not suitable for post legislative scrutiny as it implements an international treaty”.¹¹ **We disagree.** While the content of the TCA cannot be amended by Parliament,

7 Constitution Committee, *The Legislative Process: The Passage of Bills through Parliament* (24th Report, Session 2017–19, HL Paper 393), para 37

8 European Commission, ‘EU-UK Trade and Cooperation Agreement: protecting European interests, ensuring fair competition, and continued cooperation in areas of mutual interest’, 24 December 2020: https://ec.europa.eu/commission/presscorner/detail/en/IP_20_2531 [accessed 29 December 2020]

9 UK Government, *European Union (Future Relationship) Bill: Explanatory Notes*, 29 December 2020, para 92: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/948208/20201229_Draft_gov.uk_EU_Future_Relationship_Bill_Explanatory_Notes_.pdf [accessed 29 December 2020]

10 Constitution Committee, *Fast-track Legislation: Constitutional Implications and Safeguards* (15th Report, Session 2008–09, HL Paper 116)

11 UK Government, *European Union (Future Relationship) Bill: Explanatory Notes*, 29 December 2020, para 99: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/948208/20201229_Draft_gov.uk_EU_Future_Relationship_Bill_Explanatory_Notes_.pdf [accessed 29 December 2020]

the form in which it is given effect is of considerable significance and warrants careful scrutiny. The mechanisms used by the Bill to rewrite UK domestic law to implement the Agreement have significant and potentially long-lasting constitutional implications, particularly for the role of Parliament and the operation of the devolution arrangements. **We recommend the House considers how best to review the Trade and Cooperation Agreement, and conduct post-legislative scrutiny of the Bill to implement it, and to undertake such scrutiny at the earliest opportunity. The quality of such scrutiny will be an early and substantial test of a Parliament possessing a significant tranche of returned powers.**

12. As we noted above, due to the lack of time we have not been able to scrutinise the details of this Bill. **We will return to consider the constitutional implications of this Bill after it has received Royal Assent.**

APPENDIX 1: LIST OF MEMBERS AND DECLARATIONS OF INTEREST

Members

Lord Beith
Baroness Corston
Baroness Drake
Lord Dunlop
Lord Faulks
Baroness Fookes
Lord Hennessy of Nympsfield
Lord Howarth of Newport
Lord Howell of Guildford
Lord Pannick
Lord Sherbourne of Didsbury
Baroness Taylor of Bolton (Chair)
Lord Wallace of Tankerness

Declarations of interest

Lord Beith
Honorary Bencher of the Middle Temple

Baroness Corston
No relevant interests

Baroness Drake
No relevant interests

Lord Dunlop
No relevant interests

Lord Faulks
No relevant interests

Baroness Fookes
No relevant interests

Lord Hennessy of Nympsfield
No relevant interests

Lord Howarth of Newport
No relevant interests

Lord Howell of Guildford
No relevant interests

Lord Pannick
Represented Ms Gina Miller, in R (Miller) v Secretary of State for Exiting the European Union [2017], and in R (Miller) (Appellant) v The Prime Minister (Respondent) & Cherry and others (Respondents) v Advocate General for Scotland (Appellant) (Scotland) [2019]

Lord Sherbourne of Didsbury
No relevant interests

Baroness Taylor of Bolton (Chair)
No relevant interests

Lord Wallace of Tankerness
No relevant interests

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-interests/register-of-lords-interests/>

Professor Jeff King, University College London, and Professor Stephen Tierney, University of Edinburgh, acted as legal advisers to the Committee. They both declared no relevant interests.