

Parliamentary Scrutiny of European Union Documents

September 2020

PARLIAMENTARY SCRUTINY OF EUROPEAN UNION DOCUMENTS

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SECTION 1: OVERVIEW

This section provides an overview of how the UK's Parliamentary EU scrutiny process operates up to the end of the transition period. It highlights the principles and key stages of the process and Government commitments to Parliamentary scrutiny during this period.

What is Parliamentary Scrutiny?

It is the process by which Parliament examines and expresses views on the impact of proposals for EU legislation and other EU documents during the transition period. The key focus of the Committees during this period is to consider EU legislation that may have an impact on the UK in future, particularly under the terms of the Northern Ireland Protocol to the UK/EU Withdrawal Agreement or as a consequence of negotiations of the UK's future relationship with the EU. The Committees also scrutinise issues concerning work of the Withdrawal Agreement Joint Committee which oversees UK and EU implementation, application and interpretation of the Withdrawal Agreement.

Submitting EU documents to Parliament

The Government is responsible for promptly depositing in Parliament all EU documents subject to scrutiny. The Cabinet Office is responsible for the day to day management of the Government's scrutiny procedures and for deciding, in consultation with Departments, and with the Committee Clerks where necessary, which EU documents should be deposited in Parliament. The Government provides Parliament with written information on a document's content and implications known as an Explanatory Memorandum (EM). An EM is a public document and summarises the deposited document, its legal, policy and financial implications, the likely timetable for implementation in the UK if appropriate, and the Government's view on the proposal.

SECTION 2: DEPOSIT OF DOCUMENTS IN PARLIAMENT

KEY COMMITMENTS AND POINTS TO NOTE

- Depositing Documents: The Government deposits – usually within 2 working days of publication by an EU institution – EU proposals and documents falling under the categories listed in section 2.1. The Cabinet Office is responsible for searching EU institutional websites for EU documents. Documents for deposit must be public documents. Departments also have a role in ensuring that nothing is missed; if in doubt the Cabinet Office advises on whether a document should be deposited.
- The Scrutiny Committees can request documents be deposited which do not fall within the normal description of a depositable document. Similarly, the Government can choose to deposit a document of interest to the Committees. These are case by case decisions but the key test is that the document is legally or politically significant and is in the public domain.
- The Terms of Reference (ToRs) of both Scrutiny Committees do not formally restrict the Committees to consideration of “published” documents, so inquiries/consideration may not be related solely – or indeed at all – to deposited documents.

2.1 DEPOSITABLE DOCUMENTS

The ToRs of the two Scrutiny Committees can be found here:

Commons:

<http://www.parliament.uk/documents/commons-committees/european-scrutiny/European-Scrutiny-Committee-Guide-May15.pdf>

Lords:

<https://www.parliament.uk/documents/lords-committees/eu-select/terms-of-reference.pdf/>

The UK scrutiny process is based on an examination of public EU documents.

‘European Union documents’ can be characterised by two types of document:

A document on which legislative or non-legislative decisions will be reached. These include proposals for adoption by the Council (acting alone or acting with the European Parliament) from the Commission, proposals arising jointly from the Commission and the European External Action Service High Representative, and other proposals from the Institutions including the Court of Justice, European Central Bank, and European Parliament. These can take the form of:

- Directives
- Regulations
- Decisions; including CFSP decisions under Title V of TEU, and decisions relating to the EU budget
- Recommendations
- Resolutions (where they are significant)

Other documents submitted to the Council for information or consultation

These are characterised as documents submitted by an Institution to the Council (and in some cases also to the EP) for information or endorsement – e.g. through Council

Conclusions – and include:

- Commission Communications, Reports, Green or White Papers
- Inter-institutional documents
- Action Plans
- European Court of Auditor opinions
- European Central Bank opinions

2.2 DOCUMENTS ON WHICH THE GOVERNMENT CONSULTS WITH THE CLERKS

In the course of formal reviews of the scrutiny arrangements and occasions when the Government has put forward proposals for streamlining scrutiny handling, the Committees have agreed certain categories of documents need not be systematically deposited for scrutiny. In July 2020, the Government agreed with the Committees to update deposit arrangements for the remainder of the transition period to ensure that the scrutiny process is better tailored to the priorities of the Committees. This agreement introduced new categories of EU documents which are automatically exempted from scrutiny and further categories of documents on which consultation is required before deposit. The correspondence between CDL and the Committee Chairs underpinning this agreement can be found at the links below.

- [CDL](#) (17 July 2020 letter from CDL to Committees)
- [Lords](#) (22 July 2020 Lord Kinnoull reply to CDL)
- [Commons](#) (23 July 2020 Sir Willam Cash MP letter to CDL)

The following categories of documents are automatically exempt from scrutiny:

- Community positions on rules of procedure for various Councils and Committees, including those established under Association Agreements.
- Proposals to extend Common Positions (now Council Decisions since the Lisbon Treaty) imposing sanctions (without making substantive changes) in pursuance of UN Security Council resolutions.
- Reappointment of members to EU organisations.
- ECB Recommendations to the Council on the external auditors of National Central Banks in the Eurozone.
- Technical adaptations to third country agreements and other existing EU legislation following the accession of Croatia.
- Non-UK indirect tax derogations (e.g. VAT & Excise).
- Proposals for codification of EU legislative acts with no changes of substance or important policy issues arising.
- Proposals for routine adaptation of EEA/EFTA Agreements to take account of new legislation and programmes.
- Reports/assessments on future accession and enlargement.

- European Neighbourhood Policy on condition that the document specifies that it relates to this policy.
- Macro-Regional strategies.
- Documents on the Mobilisation of the Globalisation Adjustment Fund and the Solidarity Fund.
- Commission SWDs reviewing Employment and Social Developments in Europe (ESDE).
- European Commission appointments.
- Composition of ECSC and Committee of Regions.
- EU ombudsman.
- Seats of bodies/agencies and the establishment of new bodies.
- Annual report on subsidiarity and proportionality.
- Staff Regulations and related documents (including on staff remuneration pensions).
- European Citizens' Initiative.
- Future EU electoral matters.
- Fishing matters in areas where the UK has no fishing interest.
- Documents related to the periodic implementation of the Stability & Growth Pact and the European Semester, including, country-specific recommendations, Commission opinions and recommendations on excessive deficits, Enhanced surveillance updates, Stability and growth pact reports, and Stability and Convergence Programme Reports.
- Tax matters relating to individual Member States.
- CFSP matters which by their nature do not raise any new policy issues:
 - Council Decisions appointing EU Special Representatives
 - Council Decisions extending existing EU CFSP/CSDP missions and operations without a change in mandate
 - Council Decisions altering the budget for existing EU CFSP/CSDP operations
 - Council Decisions providing EU financial support to international organisations
 (Note: New EU foreign policy sanctions and overseas operations continue to be automatically deposited).

The following categories of documents are subject to Government consultation with the Committee Clerks before a decision is taken on deposit:

- Proposals for making minor changes to lists of people or organisations subject to restrictive provisions in existing measures.
- Draft Council Decisions relating to decisions already made in Association Councils or Committees.
- Agreements emanating from pre-scrutinised Model and Framework Participation Agreements in respect of CSDP missions where the individual agreements do not depart from the structure of the Model Framework Agreement.
- Commission or European External Action Service Staff Working Documents which are free-standing and not part of a document submitted for scrutiny.
- Schengen-related matters.
- Matters affecting the eurozone.

- All reports or proposals concerning institutional matters that have not been exempted above.
- Proposals and Court of Auditor reports on legislation, programmes, funds or bodies in which the UK does not continue to participate.
- Proposals and reports on EU Funds and Programmes which do not apply to the UK.
- ECA Special Reports.

Commission Legislation

The Committees do not routinely scrutinise Commission measures but can consider particularly important pieces of legislation where implications arise for the UK. Departments should consult with Clerks to determine if the Committees would like to see proposals for (pre-Lisbon) Commission acts if deemed politically important or contentious.

For Delegated and Implementing Acts introduced by the Lisbon Treaty, Departments should follow the principles below:

- Any proposal to revoke a power for the Commission to adopt delegated legislation should be deposited if the legislation continues to impact on the UK following our exit. Delegated Acts are in principle depositable, but deposit may be dispensed with by agreement with the Clerks, subject to the exemption conditions set out above in terms of handling. Proposals for implementing Acts are brought to the attention of the Clerks if they are considered to be sensitive or have implications arising for the UK.

Commission Consultations

Other than those consultative documents deposited as e.g. Green or White papers or Commission Communications, these consultations can take various formats – e.g. online consultations. These early consultations may lead to further consultations or proposals emerging from the Commission and are announced and conducted through the Commission’s web-based consultation platform “Your voice in Europe” at: http://ec.europa.eu/yourvoice/consultations/index_en.htm. Departments should draw the Committees’ attention to consultations of particular interest to the Government (i.e. where the Government is expected to provide a response) by engaging with the Clerks of the Committees. The Clerks then work with Departments to decide whether the Committee would want to hear formally from the Minister.

2.3 PROCEDURE FOR DEPOSIT

Depositing a document subject to scrutiny

Once a document has been identified for scrutiny, the Cabinet Office should electronically deposit the document in Parliament. In cases of doubt Cabinet Office identifies the Department most likely to have the lead interest in the document and seeks a view on suitability for deposit. The Cabinet Office produces a ‘batch list’ each time a group of documents is deposited, which confirms the deposit of each document to Departments and Parliament.

Withdrawal of deposited documents

On occasion documents may need to be withdrawn from scrutiny (e.g. if withdrawn or replaced by the publisher, if it was deposited in error, or if the Clerks agree retrospectively the document need not require an EM). In such cases the Cabinet Office issues a withdrawal notice to all recipients of the deposited document.

Devolved Administrations

Documents deposited for scrutiny are sent to the devolved administrations (DAs) at the same time as they are sent to Parliament and the DAs see EM commissioning requests issued by the Cabinet Office. This provides the DAs with the opportunity to comment on the Government's EM before submission on any proposal which directly or indirectly impacts Scotland, Wales or Northern Ireland. All final signed EMs are copied to the DAs.

SECTION 3: EXPLANATORY MEMORANDA (EMs)

An EM is a formal Government communication to Parliament. This section describes the timetable for the production of EMs and other points to note. See Annexes A and B for the main EM template and templates for addenda and corrigenda. There are no set rules for the length of an EM but it needs to provide the Committees with sufficient information to carry out their scrutiny role. An EM may be relatively light-touch if it addresses proposals or other documents from which no significant implications arise for the UK. EMs are public documents and are published by the Cabinet Office (<http://europeanmemoranda.cabinetoffice.gov.uk/>) with the associated EU document(s) and related Ministerial letters to the Committees.

KEY COMMITMENTS

- EMs present a clear account of the principal issues from a UK viewpoint, taking account of the Commission's EM, but providing HMG's own analysis and position. The implications of policies may be different in Scotland, Wales and Northern Ireland to the UK as a whole, particularly in regard to the Northern Ireland Protocol. All implications should be considered as necessary, in consultation with officials from the devolved administrations.
- The Cabinet Office identifies the most likely lead Department. If there is disagreement, Departments should make urgent efforts to agree among themselves responsibility for the preparation of an EM, notifying the Cabinet Office once agreed. Exceptionally, EMs may be signed by more than one Minister but this is not needed as long as the EM is clear about Ministerial responsibility and content is agreed collectively. If Departments cannot reach agreement, they should inform the Cabinet Office urgently, setting out their views on responsibility for the proposal. The Cabinet Office then takes a decision consulting those with an interest. If it is later decided that the responsibility for the proposal lies with another Minister, the Cabinet Office should notify the Scrutiny Committees, and agree a new deadline for the submission of the EM.
- There are occasions when it may be appropriate to address more than one document in a single EM; an approach commonly used where there are e.g. separate instruments imposing CFSP restrictive measures on a country, entity or individuals. The Cabinet Office should be informed when a Department proposes this, and the lead Department should consult the staff of the Scrutiny Committees to agree an approach.
- The Committees expect the 10 working day deadline to be complied with but if there is sufficient reason to request an EM due date extension, such as where a proposal raises issues which requires extensive consultation with other Departments, the Clerks may be flexible and work with Departments to agree a new submission date. Where documents are deposited towards the end of Recess (i.e. within two weeks of the first day on which either House sits) the normal deadline for the submission of EMs applies, adjusted accordingly for JHA opt-in decisions.
- Article 127(5) of the UK/EU Withdrawal Agreement allows the UK during the transition period to opt into measures which amend, build upon or replace existing measures adopted pursuant to Title V of Part 3 of the TFEU and by which the UK

was bound before EU exit. In these circumstances, the Government has committed to allowing the Committees 8 weeks to conduct their scrutiny processes before a decision on opting into the measure is taken.

- EMs should not assume that the reader has existing knowledge of the subject covered and should not rely heavily on references to other documents.
- The DAs should be consulted on all EMs where they have a direct or indirect interest, and the DAs' interest should be clearly referenced in the EM. If an EM is likely to be delayed beyond the 10 day deadline, Departments should keep colleagues in the devolved administrations informed.
- If the UK policy has not been agreed or there are other areas of uncertainty, the EM should say so while giving as much information as is available at the time.
- Ambulatory References: Where amendments to existing EU directives are to be amended in domestic law without any further amendment of the Statutory Instrument (S.I.) implementing the original Directive – and therefore without recourse to any further UK parliamentary procedure (using ambulatory references) – it is important this is stated in the EM.
- Euros: Where figures are in euros in the EU document, they should also be shown in sterling. As a general rule the rate of exchange for the last working day of the month preceding submission of an EM should be used. This rate can either be obtained from Departmental Scrutiny Co-ordinators or Cabinet Office.
- When sending electronic copies of EMs to the Committees, covering emails should include contact details of an official in the Department who can answer any questions raised by the Clerks or legal advisers.

3.1. TIMETABLE

Whereas for most EMs the 10 working day deadline applies, the deadline is 8 working days for EMs on JHA proposals which are subject to the UK's opt-in decision. Here, the Committees have 8 weeks in which to complete scrutiny. (See the Code of Practice on the commitments the Government has made on scrutiny of JHA opt-in decisions; https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/206475/JHA_Code_of_Practice.pdf).

Where an Impact Assessment (IA) is relevant but has yet to be produced, an initial assessment of costs should be given and the IA should follow as soon as possible. .

If an EM needs to be considered urgently, Departments may send an advance copy to the Clerks. If the final version is to differ significantly, Departments should notify the Clerks as soon as possible.

3.2. UNNUMBERED EMs

An unnumbered EM is a memorandum which describes a proposal where the text has no identifiable unique reference number. This may, for example, be a published report where the document only has a title, or where an EM is being produced on a measure which has already been adopted (e.g. when a decision to impose sanctions has been adopted by the

Council and a text or EM could not be provided before adoption due to classification). These EMs are usually titled “Unnumbered Document”.

Addenda to Unnumbered Explanatory Memoranda and Corrections

If information needs to be added to an EM submitted or where minor errors need to be corrected, this can be addressed through the provision of an addendum or corrigendum. Usually these do not need to be signed by a Minister. An example of the format of an addendum/corrigendum is given in Annex B.

3.3. SUPPLEMENTARY EMs, AND UPDATING THE COMMITTEES

Supplementary (or updating) EMs can be prepared if further substantive information needs to be provided to the Committees. However, the usual approach is to provide this information or update through a Ministerial letter. Supplementary EMs follow the normal format and carry the reference number and title of the original EM, as well as the scrutiny history. Where a supplementary EM is to be submitted, it takes the form of a “cover note” making it clear why the further EM is being provided, stating clearly that all other information provided in the original EM remains unchanged.

3.4. CIRCULATION OF EMs

EMs are sent to the Scrutiny Committees, other Parliamentary offices, the DAs, Local Government associations in England and Scotland, UK Crown dependencies and Gibraltar. EMs submitted from 2012 can be found on the Government’s website at [european memoranda.cabinetoffice.gov.uk](http://european.memoranda.cabinetoffice.gov.uk). Earlier EMs going back to 2003-4 are stored by the Cabinet Office and can be obtained on request.

3.5. WITHDRAWAL OF EMs

EMs may occasionally need to be withdrawn, e.g. to correct a significant error or make some substantial changes where neither a corrigendum nor supplementary EM would be appropriate. Documents may also be withdrawn if they were deposited in error or if the Clerks subsequently agree that no EM is required. Depending on how soon the replacement EM becomes available, either a withdrawal notice is issued to all recipients of the original EM or the new EM submitted with a cover note drawing attention to the withdrawal of the original EM.

SECTION 4: THE SCRUTINY PROCESS

This section describes the composition and operation of the Committees and arrangements for liaison with the Government. It explains how the Committees consider and report on EU documents and defines what is meant by “completing scrutiny”, and also provides an overview of evidence sessions with the Committees.

In general the normal scrutiny rules apply during a Parliamentary Recess (i.e. deposit of documents, commissioning of EMs, responding the questions from the Committees and generally updating the Committees on negotiating developments), although there can be some relaxation in the timetable within which Cabinet Office and Departments operate subject to agreement with the Clerks.

4.1. THE COMMONS EUROPEAN SCRUTINY COMMITTEE (ESC)

<https://committees.parliament.uk/committee/69/european-scrutiny-committee>

The ESC comprises sixteen members. Details of the Committee’s membership can be found on the Committee’s website. It examines the EU documents deposited in Parliament and the associated EMs, and reports on them to the House with its assessment of the legal and political importance of each proposal, including action the Committee intends to take with the document e.g. in writing to the Government with further questions or observations or recommending debates where appropriate. The Committee’s Orders of Reference are contained in House of Commons Standing Order No.143. It meets weekly while the House is sitting. The Committee is supported by Clerks, lawyers and advisers who brief the Committee on deposited documents and HMG EMs. It may also conduct inquiries. The Committee may refer matters to other Departmental Select Committees for opinions.

4.2. THE LORDS EUROPEAN UNION COMMITTEE (EUC)

<https://committees.parliament.uk/committee/176/european-union-committee/>

The EUC consists of 19 members. Its Chairman, by convention the Principal Deputy Chairman of Committees, conducts an initial “sift” of all deposited documents (see Section 4.5), completing scrutiny on some and remitting others to one of 5 Sub-Committees, responsible for considering documents within particular policy areas. The Sub-Committees conduct scrutiny of documents by correspondence, by one-off hearings, and sometimes by full inquiry.

4.3. LIAISON WITH THE COMMITTEES

The Cabinet Office acts as the central link between the Committees and Departments on the day to day process, and leads on strategic scrutiny issues supporting the Chancellor of the Duchy of Lancaster who has overall responsibility for HMG’s relationship with the Scrutiny Committees. The Leaders of both Houses have overall responsibility for Parliamentary procedures.

4.4. PREPARATION FOR COMMITTEE MEETINGS

- Departments should consider and inform the Cabinet Office and the Clerks if there are any proposals on which urgent consideration is needed from the Committee, and which, in their view, should be included on the next agenda.
- It is important that signed EMs are received by the Clerk by midday on the Thursday preceding the next meeting; otherwise the document is likely to be deferred to the following meeting unless the Clerk has exceptionally agreed to retain the item on the agenda.
- Last minute items for the weekly Lords sift also need to be with the Lords Committee staff by midday on the Thursday preceding the weekly sift unless later submission is agreed by the Committee staff.
- The Lords Sub-Committees usually meet weekly when the House is sitting. Documents requiring urgent consideration need to be notified to the relevant Sub-Committee Clerk at the earliest possible date. At least 10 working days should be allowed in normal circumstances to ensure that an item is placed on the agenda of a Sub-Committee. Details of when the Sub-Committee meets can be found in the Lords Weekly Bulletin at <http://www.parliament.uk/business/committees/lordscommitteebulletin/>.

4.5. CONSIDERATION BY COMMITTEES AND RESPONDING TO REPORTS

Departmental scrutiny co-ordinators are informed by the Committee teams of the decisions taken, and are sent copies of reports and correspondence published by the Committees after each meeting so that Departments can begin follow-up action quickly.

Commons

The Committee reports after each meeting on documents that:

- Raise questions of legal and/or political importance and require further consideration by the House (i.e. debate further to [section 13\(A\) of the EU \(Withdrawal\) Act 2018](#) as inserted by [section 29 of the European Union \(Withdrawal Agreement\) Act 2020](#)).
- The Committee may alternatively recommend that a document be debated in a European Committee constituted under the terms of S.O.119. Scrutiny on these documents is not complete until the debate has been held.
- Raise questions of legal and/or political importance, but on which scrutiny has not been completed. In these cases the report states the action the Committee will be taking to request more information, or ask to be kept informed of developments.
- Raise questions of legal and/or political importance but have completed scrutiny. However, in some cases the Committee requests further information or asks to be kept informed of developments.
- Raise no such questions and scrutiny is completed.
- The Committee may also recommend that a particular document need not be debated in its own right but is “relevant” to a debate on a related topic (in which case it should be “tagged” – see Section 4.6).

Reports contain the Committee's decisions, analysis, requests for further information, and matters upon which the Committee suggests that a debate should focus. They are sent directly to the departments concerned immediately after each meeting. The Committee also circulates to Departmental Scrutiny Co-ordinators a weekly list of items (known as 'Remaining Business') which lists items not cleared from scrutiny, and also those items on which scrutiny has been completed but on which further information has been requested. Departments are responsible for keeping the Committee staff informed of progress towards responding to the Committee's Reports. The Remaining Business document can be consulted at

<https://www.parliament.uk/business/committees/committees-a-z/commons-select/european-scrutiny-committee/remaining-business/>.

Lords

EMs are sifted by the Chairman (normally each Tuesday morning whilst the House is sitting and occasionally during recesses) into those not requiring special attention (scrutiny completed) and those remitted to Sub-Committees either for their attention or for further consideration (retained under scrutiny). The results of the weekly sift are circulated to all Departments. Documents which are retained under scrutiny are then considered by the Sub-Committees, which meet weekly: when a Sub-Committee completes scrutiny, the Chairman normally informs the Minister by letter. The progress of documents can be monitored by reference to the Progress of Scrutiny document which is published regularly by the Lords Committee listing the decisions taken (see below). The Progress of Scrutiny document can be found at

<https://committees.parliament.uk/committee/176/european-union-committee/content/146475/progress-of-scrutiny/>

In the House of Lords, scrutiny on a document is complete when:

- it is released from scrutiny by the Chairman at the sift; or
- having been sifted to a Sub-Committee, they complete their scrutiny, possibly after correspondence; or
- the Sub-Committee having conducted an inquiry, it is reported for information only; or
- the Sub-Committee having reported on it "for debate", the debate has taken place.

The decisions of the Committee are included in its Progress of Scrutiny document. The document contains 4 sections and each lists matters in Departmental order. They are:

- Documents under scrutiny or awaiting correspondence from Ministers. The history of correspondence with Ministers is included with a description of information requested from Ministers.
- Inquiries and Reports with dates of when Committee reports were published and the dates of HMG responses submitted or due.
- Documents which have completed scrutiny since the last edition of the document was published.
- Details of Committee members and staff.

It is important that the list is regularly reviewed to ensure that responses to correspondence and Reports are not overlooked or submitted late.

The Government must reply formally in writing to Inquiry reports published by the Committee.

- Responses to reports that reach substantive conclusions or recommendations issue by no later than two months after publication or within six weeks where this is possible (i.e. where the reports are short and where the issues are not complex).
- Departments are responsible for consulting the Committee Clerks if a response is likely to take longer. If a new deadline is agreed with the Committee and the reply is submitted by that new deadline then the Committee will not record the reply as late.
- A written response should be available by no later than a week before a debate (this may not be possible if in response to a vital national interest debate recommendation as the debate must be held within 14 sitting days of the debate recommendation and is to be held within two months of publication. However, those reports prepared by the Committee that simply publish the transcript of evidence sessions would not require a reply.
- Written responses are normally submitted in the form of a Memorandum by the Department (which may be published as a Command Paper) accompanied by a Ministerial letter, or by Ministerial letter alone to the Chairman of the Select Committee copied to the Chairman of the Sub-Committee which conducted the inquiry and to the Clerks of the Select and Sub-Committee.
- The reply must in all circumstances be delivered to Parliament first. A written response is regarded as evidence submitted to the Committee, which the Committee may publish if it so decides, with its own further comments on HMG's reply.
- Ministerial correspondence with the Committee is published in compendium reports under the title "Correspondence with Ministers" on the Committee's website. Publicity is thus in the Committee's hands but the Committee may, on request, agree to earlier publication by a Department. This is usually done by the Department placing a copy in the House Library and drawing attention to it by means of a written Ministerial Statement. This procedure can, in particular, be followed in those cases when the Committee's report is to be debated, to ensure that all Peers wishing to take part in the debate are aware of HMG's response.
- Departments ensure, in advance of a debate on a Report, that where HMG's response has not been published by the Committee, copies are made available to the Printed Paper Office in the House of Lords so that it may be obtained by Peers who have an interest in the debate. Ideally copies should be made available a week before the date of the debate unless it is clear that the response is to be published by the Committee. The Clerk may advise if that is likely to be the case. Details of the options available and advice on possible responses can be found in the Government Guidance for Officials: Appearing before Select Committees:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/364600/Osmotherly_Rules_October_2014.pdf
- Response to Reports which are not focused on document scrutiny may be made by Command Paper or by letter or memorandum. If made by letter or memorandum they are sent to the Committee concerned, and not copied to other Members of either House (internal government circulation for the purposes of clearance and departmental coordination is acceptable). It is for the Committee concerned to decide on the publication of such reports.

4.6. CABINET OFFICE RECORDS

The Cabinet Office maintains a database of all deposited documents which details each document's progress through scrutiny. This can assist particularly with previous scrutiny history and handling precedent. Cabinet Office also uploads all Government EMs and correspondence from Ministers to the Committees onto the Government's EM website at: <http://europeanmemoranda.cabinetoffice.gov.uk/>.

4.7. GIVING EVIDENCE TO THE COMMITTEES

Both Committees take evidence in writing and orally from a variety of sources including Ministers and departmental officials, representatives of professional organisations, trade associations, pressure groups, academic experts and other individuals, the European Commission and MEPs following a written request from the Committees.

Written evidence

The Committees may request supplementary information on proposals under scrutiny. The Commons ESC generally makes such requests in its reports but also sometimes writes to Ministers alongside reports. Once information has been supplied to one of the Committees, even by means of information to the Clerk, it may become evidence and may be published. However, any documents which may have been attached to correspondence in confidence may not be published. Departments are responsible for making clear where information is provided to the Committees in confidence that should not be published. This must comply with FOI provisions.

Ministerial correspondence with the Lords

The Committee sends letters to Ministers to express their view on proposals under scrutiny; usually signed by the Chairman of the Select Committee but occasionally Sub-Committee Chairs write to follow up evidence sessions. All such letters require a substantive reply from the relevant Minister; the Chairman will make it clear when a reply is required urgently or will ask for an update in due course. The letters make it clear whether a document remains under scrutiny or if scrutiny has been completed. The Committee's Progress of Scrutiny document shows clearly where correspondence has been sent and where Ministers' responses are outstanding. See 4.8 for information on ministerial correspondence with the Committees. If there is any doubt about when a reply is expected by the Committee or if a Department needs to agree an extension to the deadline set by the Committee, the relevant Sub-Committee Clerk advises on handling. Where a deadline is changed, the Committee will amend their records so a response will not be recorded as late if the letter is submitted by the agreed revised deadline.

Oral evidence

The usual rules apply when Ministers and/or Officials are asked to appear before the Committees to give evidence. The Clerks usually give as much notice as they can of the need for oral evidence. Officials invited to give oral evidence can refer to the Guidance for Officials Appearing before Select Committees (see section 4.5 for more information). The Committees may, exceptionally, agree to treat information as confidential. The Lords Committee occasionally takes evidence in private at an early stage of an inquiry, or when considering whether to undertake an inquiry on a particular subject, or on more detailed technical aspects of a proposal or issue, as a means of avoiding lengthy exchanges of correspondence between the Committee and Ministers.

4.8. CORRESPONDENCE WITH THE COMMITTEES

- The Government must usually respond within 10 working days to Lords EUC Chairman's letters unless otherwise stated in the Chairman's letter. The Commons ESC also states in their letters when a response is required.
- The Government must respond within 2 months to the Lords EUC inquiry reports and Commons inquiry reports.
- All letters and reports from both Committees require a reply unless otherwise stated.
- If deadlines for response are likely to be missed the lead Department should consult the Clerks to agree when a response should be sent. If new deadlines are agreed and responses are received by the agreed dates the Committees will not treat the responses as late.
- Departments must have systems in place to regularly review the "Progress of Scrutiny" and "Remaining Business" documents. Departments are expected to pay particular attention to those outstanding items which may be the subject of progress over the long summer parliamentary recess when the Committees are not sitting.
- Correspondence with the Committees is sent electronically both in PDF and Word formats. Hard copies are not required.

Whenever a Minister writes to the Committee(s), the letter must state clearly:

- The subject matter and relevant Council document number in the title.
- Where appropriate, reference to correspondence or reports from either Committee being responded to; it is helpful to the ESC if the letter also refers to the Committee's agenda number (shown in brackets on their reports e.g. 12345).
- Where appropriate, the name of the EUC Sub-Committee that considered the proposal.
- Standard last paragraph: "I am writing in similar terms/copying this letter to [Name of ESC/EUC Chair]/ and am copying this letter to the Clerks of both Committees [Name of Clerk] (Commons)/[Name of Clerk] (Lords)], to Cabinet Office, and [name], departmental scrutiny co-ordinator."

Both Committees must be treated with equal importance when corresponding at both official and Ministerial level. Responses to correspondence from either Committee are copied to the other Committee. But when a Department takes the initiative to write on an issue relevant to both Committees, it is important that separate letters are sent to both Committees and not addressed to one and copied to the other. In cases where the issues relate to wider policy or

business management matters, it may occasionally be appropriate to copy the correspondence to other Ministers with an interest. Letters to the Chairs of both Committees are signed personally by a Minister. Addresses are:

Commons Sir William Cash MP Chair, European Scrutiny Committee House of Commons, London SW1A 0AA Email letters in PDF and Word to: escom@parliament.uk	Lord Kinnoull Chair, European Union Committee House of Lords London SW1A 0PW Email letters in PDF and Word format to: euclords@parliament.uk
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SECTION 5: SCRUTINY DEBATES

KEY COMMITMENTS

- The Government is committed to holding debates recommended by either Committee.
- Under new arrangements during the transition period which introduced provisions for both Committees to recommend a debate on matters of “vital national interest” arising from a proposal for EU legislation deposited for scrutiny, the debate must be held within 14 parliamentary sitting days within the date of recommendation (see also section 1.3 and 4.5).
- Where a debate has been recommended on a Title V opt-in proposal, the Government endeavours to ensure the debate can be held before it notifies the Council of its opt-in decision.
- Further guidance is provided to Departments on the procedure to be followed in response to a debate recommendation from the ESC. Departments should clear the text of the proposed motion for debate with the Committee’s second Clerk to ensure the motion includes accurate references to the documents listed in the motion.

5.1 VITAL NATIONAL INTEREST DEBATES

The Committees may recommend a debate on the Floor of the House if they consider that a proposal for EU legislation raises a matter of vital national interest to the UK. This is further to [section 13\(A\) of the EU \(Withdrawal\) Act 2018](#) as inserted by [section 29 of the European Union \(Withdrawal Agreement\) Act 2020](#). Under these arrangements the Government must hold the debate within 14 sitting days of the date of the recommendation. The Cabinet Office can advise on procedure.

5.2 OTHER DEBATES

The Commons ESC can also recommend documents for debate in a European Committee. The Lords EUC can also report on EU documents for debate by the House following an inquiry and these debates are held on the Floor of the House. The Cabinet Office can advise on the procedures to be followed to respond to debate recommendations.

ANNEX A

STANDARD EM TEMPLATE

STANDARD FORM OF EXPLANATORY MEMORANDUM FOR EUROPEAN UNION LEGISLATION AND DOCUMENTS

[Council number*]

[COM and/or SWD or SEC number]

[Title of document]

Submitted by [add Department] [date/month/year]

SUBJECT MATTER

SCRUTINY HISTORY

MINISTERIAL RESPONSIBILITY

INTEREST OF THE DEVOLVED ADMINISTRATIONS

(including if it covers any area subject to a common framework and whether the DAs have been consulted)

LEGAL AND PROCEDURAL ISSUES

- i. Legal Base
- ii. Voting Procedure
- iii. Timetable for adoption and implementation (or expected next steps for non-legislative documents)
- iv. Does the proposal affect the substance of EU law that will remain in effect under the Northern Ireland Protocol or is it likely to be the subject of a request by the EU to be added to the Protocol under Article 13(4) thereof?
- v. Do JHA opt-in, Schengen opt-out issues arise?

POLICY IMPLICATIONS

(including implications for the application of EU law during the TP and under the Northern Ireland Protocol, and possible relevance to the future relationship negotiations)

Also covering:

- Domestic approach to the policy and whether vital national interests are at stake^[1].
- Links to the UK's future relationship with the EU, where known.
- Implications of a proposal — or policy direction — on the UK as a “Third Country” and, where relevant, provide an indication of the Government's position on the merits of the policy changes proposed and the prospects for continued (voluntary) alignment with, or divergence from, the proposed or suggested EU rules.
- The Government's approach to engagement/influencing the proposal.
- Factors the Government will take into account when considering whether or not to opt-in to a proposal that triggers a JHA opt-in decision or to opt out of a proposal subject to the Schengen Protocol.

CONSULTATION

(to include consultation of external stakeholder and reference any impact assessment undertaken by the Government)

FINANCIAL IMPLICATIONS

MINISTERIAL NAME AND SIGNATURE

[Add Minister's name]

[Add Minister's Title]

[Add Department]

[1] [Section 13A of the EU \(Withdrawal\) Act 2018](#), as inserted by [section 29 of the European Union \(Withdrawal Agreement\) Act 2020](#).

**EXAMPLE FORMAT FOR A CORRIGENDUM/ADDENDUM TO
AN EXPLANATORY MEMORANDUM**

CORRIGENDUM/ADDENDUM*

[document reference]

**EXPLANATORY MEMORANDUM ON EUROPEAN UNION
DOCUMENTS/LEGISLATION***

[Title of document]

[EM submitted on date]

[Scrutiny history: add a passage about consideration of the original EM by both Committees
(if appropriate)]

[details of amendment]

[Department]

[Date]

* delete as appropriate

Note

It is important that all the information given above is included in each addendum or corrigendum submitted. The above is simply an example and need not be followed exactly; a number of Departments have developed different styles of Corrigenda/Addenda which are acceptable to the Scrutiny Committees.

EXAMPLE FORMAT FOR REFERENCE TO SCRUTINY HISTORY IN EMs

Explanatory Memorandum [number] of [date] was considered by the European Scrutiny Committee on [date] under Committee reference no [add ref]. The Committee recommended [eg legal and or political importance/cleared/further consideration by the House] [Report number and Session] [If debated refer to date and venue of debate].

The House of Lords European Union Committee [eg cleared the EM/ referred the EM to [Name of Sub-Committee] which subsequently cleared the EM/produced a report for information/debate [reference number of report]] the EM was debated on [date] [Progress of Scrutiny dated].

(If the proposal had been the subject of Correspondence with Ministers the appropriate details should be given).

Note

The history for principal legislation and other previous EU documents referenced in a new document on which an EM is being prepared should always be provided. The above format is simply an example and need not be followed exactly; this information is usually provided in the main body of the EM when only one previous document is being summarised. But different approaches are acceptable e.g. tabular form. If the scrutiny history is lengthy or involves more than one previous document it may be more appropriate to include it in an Annex to the EM. Format is not as important as ensuring the history is included to assist the Committees with their scrutiny.