

Inquiry on Post-Brexit Scrutiny of EU Law and Policy—Call for Evidence

The UK will leave the EU on 31 October 2019 unless a further extension of the Article 50 deadline is agreed, a Withdrawal Agreement ratified, or the UK's Article 50 notification revoked, before then. No matter how the UK leaves the EU — with or without an exit deal — the UK will no longer participate in the EU's institutions and decision-making structures. Nor will the EU Treaties and laws made under them apply directly in the UK as a matter of EU law, though some EU law would continue to apply and have the same legal effects in the UK under the draft EU/UK Withdrawal Agreement, but as a matter of international law.

The main elements of the current system of EU document scrutiny and the mechanisms enabling Parliament to hold the Government to account for its role in shaping EU laws and policies were put in place in the 1970s when the UK first joined what was then the European Economic Community. There have been incremental changes since then. The prospect of Brexit provides an opportunity both to review the current system and to consider what changes might be needed to reflect the UK's status outside the EU.

The starting point of the European Scrutiny Committee's inquiry on *Post-Brexit Scrutiny of EU Law and Policy* is the Government's commitment to "support and facilitate a strong parliamentary scrutiny process for as long as EU legislation will continue to affect the UK".¹ The inquiry will explore how EU laws and policies may continue to affect the UK if an EU/UK Withdrawal Agreement is ratified, after a post-exit transition period has ended, under one or more future EU/UK relationship agreements, or in the event of a no deal exit. It will consider what the purpose of scrutiny should be, what the Government should do to "support and facilitate a strong parliamentary scrutiny process", and what form scrutiny should take.

Key issues the European Scrutiny Committee will wish to address in the inquiry

How the UK's exit from the EU will affect the current system of EU document scrutiny and what changes might be needed

This might touch on:

- the deposit of documents in Parliament
- the provision of information by the Government
- the mechanisms for holding the Government to account—principally the European Scrutiny Committee's Standing Order and the Scrutiny Reserve Resolution
- the tools available to the European Scrutiny Committee to draw matters of legal or political importance to the attention of the House

¹ Letter dated 5 September 2018 from the former Secretary of State for Exiting the European Union (Rt Hon Dominic Raab MP) to the Chairs of the European Scrutiny Committee (Sir William Cash) and the European Union Select Committee (Lord Boswell).

What will need to happen on exit day

To include:

- how the European Scrutiny Committee should deal with EU documents held under scrutiny on exit day
- the criteria to apply to determine whether any of these legacy documents should continue to be retained under scrutiny

Whether and how EU laws and policies might continue to affect the UK after Brexit

To include:

- an analysis of the varying degrees to which EU laws and policies might affect the UK under all possible Brexit outcomes—a negotiated exit deal and post-exit transition period, the backstop, a future relationship agreement/s, a no deal exit—illustrated by case studies

What the purpose of scrutiny should be in a post-exit world

This might include an oversight role and an information and communication role.

Oversight might include:

- how EU laws and policies continue to influence or inform (directly or indirectly) domestic law and policy, or constrain (in law or in practice) what the Government does (or doesn't) do at domestic and international level
- how EU laws and policies developed post-exit will inform the EU's negotiating position on any future relationship agreement/s between the EU and the UK, ensuring that Parliament is properly equipped to hold the Government to account for the outcome of negotiations
- how other international obligations entered into by the UK, such as the Good Friday Agreement, may require continued alignment with EU law
- how effective the Government is in influencing EU policies and laws which may affect the UK, as well as exploring ways in which Parliament may be able to influence EU policy formation and law making

Information and communication might encompass:

- transparency—informing the House of what the EU is doing as well as how the Government is engaging with the EU/EU27 and representing UK interests
- better internal and external communication so that Parliament and the public are better informed about the interface between domestic and EU laws and policies, including any divergences which may affect stakeholders

What action the Government should take to “support and facilitate a strong parliamentary scrutiny process” post-exit

To include:

- the Government’s role in providing information and analysis and how this should be formalised, for example, through changes to Standing Orders, a framework agreement, published guidance, etc
- the possibility of bespoke scrutiny arrangements (including an adapted Scrutiny Reserve) for any new institutional arrangements, such as a Joint Committee, established under an EU/UK Withdrawal Agreement or Future Relationship Agreement/s
- commitments to make time available for debates, perhaps based on a threshold (for example, “particularly strong Parliamentary interest”)

What form scrutiny should take to maximise its effectiveness

This might focus on:

- the methods of scrutiny—whether scrutiny should remain primarily document-based or incorporate other approaches
- the outputs of scrutiny—what form they should take and how to ensure they are accessible, informative and reach the relevant stakeholders
- how to engage a wider range of stakeholders beyond Government in the scrutiny process
- how to increase the relevance and impact of scrutiny for Government, Parliament and interested stakeholders

The Committee invites written submissions on any of the key issues which the inquiry will address.

The Committee would especially welcome Case Studies illustrating whether and to what extent EU laws and policies might affect the UK under different possible Brexit outcomes—a negotiated exit deal and post-exit transition period; the Northern Ireland backstop; a future relationship agreement; a “no deal” exit.

It would be helpful to receive written evidence by Friday 19 July 2019 but later submissions are welcome. Please submit evidence through the Post-Brexit Scrutiny of EU Law and Policy inquiry page.