



HOUSE OF LORDS

SELECT COMMITTEE ON THE EUROPEAN UNION Justice, Institutions and Consumer Protection Sub-Committee

CALL FOR EVIDENCE

The UK's opt-in and International Agreements

The House of Lords European Union Committee, chaired by Lord Boswell of Aynho, is launching an inquiry into the UK's opt-in policy and its application to international agreements. We invite you to contribute evidence to this inquiry. Written evidence is sought by **Tuesday 30 September 2014**. The inquiry will be conducted by the Justice, Institutions and Consumer Protection Sub-Committee, chaired by Baroness Corston.

Background

Protocol (No.21) of the Treaties on the Functioning of the European Union (TFEU) allows for the United Kingdom and Ireland to opt into any measure under Title V (which is in relation to the area of freedom, security and justice) before or after the measure has been adopted.

The European Union Committee has considered a large number of EU international agreements over the last few years where the Government has asserted that the opt-in Protocol applies to certain provisions within those agreements, despite a legal base in Title V TFEU not being cited in the enabling legislation.

The Committee has repeatedly questioned this interpretation of the opt-in Protocol. The principles of conferral of power, and of legal certainty, require EU legislation to state the legal base on which the EU has power to act. Citing the legal base reflects what has been agreed between the EU institutions to be the scope of the legislation; without it Member States could decide the scope of a provision unilaterally, based on a subjective view of its content, as the Government contends. This would lead to uncertainty and inconsistency in the application of EU law.

The Government has responded by explaining that it considers the opt-in Protocol to be engaged wherever a measure covers a matter that falls within Title V, but that this is not dependent on the citation of a Title V legal base. In other words, it is the content that matters, subjectively assessed, rather than the legal base.

The Government has continued to assert its right not to opt into provisions of international agreements based on their content, including unsuccessfully challenging two agreements over the last 12 months where a Title V legal was not added - C-431/11 on the EEA Agreement and C-656/11 on the EC-Switzerland Agreement on the Free Movement of Persons - before the Court of Justice. This has led to confusion about the domestic effect of the agreement in the UK, and about whether the UK Parliament's enhanced opt-in procedures apply.

The Committee believes that this is a timely opportunity to assess the Government's policy, and to seek the views of others on a disagreement that has largely been limited to the UK Government and Parliament.

Particular questions raised to which we invite you to respond are as follows (there is no need for individual submissions to deal with all of these issues)

- **the consistency of the policy with Treaty provisions and general principles of EU law;**

Is the UK Government's opt-in policy, most recently reflected in its letter to Lord Boswell of 3 June, a correct interpretation of Protocol (No.21)? (The letter of 3 June is available on the inquiry page of the Sub-Committee's website.)

- **the view of the institutions and other Member States of the policy, particularly Ireland and Denmark;**

Is the opt-in policy similarly applied in Ireland, or does Ireland accept that a legal base in Title V is necessary?

How do other Member States and the EU institutions view the UK's assertion that its opt-in rights can apply in the absence of a Title V legal base?

- **the impact of the policy on other Member States;**

Does the Government's assertion that its opt-in rights apply in the absence of a Title V agreement have an impact on the UK's credibility in the negotiation of the draft legislation in question, or rather are Member States untroubled by it?

- **the consequences of the policy for legal certainty in international agreements;**

What has been the impact of this policy, in terms of legal certainty in international agreements, since the adoption of the Treaty of Lisbon?

- **the Government's litigation strategy;**

Is the Government's opt-in policy sustainable in the light of the decisions of the Court of Justice in C-137/12, C-431/11 and C-656/11?

- **the Court of Justice's interpretation of the scope of Title V TFEU; and**

In each of the cases above, and also in cases C-431/12 and C-377/12, has the Court of Justice correctly interpreted the scope of Title V, or has its interpretation of the scope been too restrictive?

- **lastly, on a question of procedure, if a Title V legal base is added in the course of negotiations, from when should the three-month period provided for in the opt-in Protocol run?**

ANNEX I: GUIDANCE FOR SUBMISSIONS

Written evidence should be submitted online using the written submission form available at <http://www.parliament.uk/the-uks-opt-in-and-international-agreements>. This page also provides guidance on submitting evidence.

The call for evidence deadline has now passed (30 September 2014). If you would still like to submit written evidence please contact Like Hussey, Clerk to the Committee at husseyl@parliament.uk or by telephoning 020 7219 5864.

Short submissions are preferred. A submission longer than six pages should include a one-page summary.

Paragraphs should be numbered. All submissions made through the written submission form will be acknowledged automatically by email.

Evidence which is accepted by the Committee may be published online at any stage; when it is so published it becomes subject to parliamentary copyright and is protected by parliamentary privilege. Submissions which have been previously published will not be accepted as evidence. Once you have received acknowledgement that the evidence has been accepted you will receive a further email, and at this point you may publicise or publish your evidence yourself. In doing so you must indicate that it was prepared for the Committee, and you should be aware that your publication or re-publication of your evidence may not be protected by parliamentary privilege.

Personal contact details will be removed from evidence before publication, but will be retained by the Committee Office and used for specific purposes relating to the Committee's work, for instance to seek additional information.

Persons who submit written evidence, and others, may be invited to give oral evidence. Oral evidence is usually given in public at Westminster and broadcast online; transcripts are also taken and published online. Persons invited to give oral evidence will be notified separately of the procedure to be followed and the topics likely to be discussed.

Substantive communications to the Committee about the inquiry should be addressed through the clerk of the Committee, whether or not they are intended to constitute formal evidence to the Committee.

This is a public call for evidence. Please bring it to the attention of other groups and individuals who may not have received a copy direct.

You may follow the progress of the inquiry at www.parliament.uk/the-uks-opt-in-and-international-agreements.