



The Scottish Parliament  
Pàrlamaid na h-Alba

## **CULTURE, TOURISM, EUROPE AND EXTERNAL AFFAIRS COMMITTEE**

Cabinet Secretary for the Constitution, Europe  
and External Affairs, and  
Chancellor of the Duchy of Lancaster

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### **BY E-MAIL**

30 December 2020

### **European Union (Future Relationship) Bill and Legislative Consent Memorandum**

Dear Cabinet Secretary and Chancellor of the Duchy of Lancaster,

1. As lead Committee we are required under Rule 9B.3.5 of Standing Orders to report on the European Union (Future Relationship) Bill and this letter fulfils that requirement.<sup>1</sup>
2. The European Commission and UK Government reached an agreement on a 'future relationship' on 24 December 2020 with one week remaining until the end of the transition period. The [future relationship agreement](#) consists of three agreements as follows—
  - EU-UK Trade and Co-operation agreement;
  - EU-UK Security of Information agreement; and
  - EU-UK Civil Nuclear agreement.
3. In addition, a series of non-binding EU-UK declarations accompany the agreement covering matters such as regulation of financial services, State Aid, road hauliers, law enforcement and judicial co-operation. In order to enable the

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<sup>1</sup> Dean Lockhart MSP and Jamie Halcro Johnston MSP are not signatories to this letter.

provisions of the agreement to apply within the UK on 1 January 2021, the UK Government published a draft [European Union \(Future Relationship\) Bill](#) on 29 December 2020. The Explanatory Notes to the draft Bill summarise the purpose of the Bill in the following terms—

“The Bill provides for the application of the Agreements in domestic law where relevant. The Bill also creates powers to make secondary legislation, where appropriate, to enable the Agreements to be implemented domestically or for domestic law to be interpreted in light of the Agreement. These measures provide for the implementation of the Agreements agreed between the UK and the EU”<sup>2</sup>.

4. It is accepted by both the Scottish and UK governments that the Bill impacts upon devolved competences. The Explanatory Notes to the Bill consider the territorial extent and application of the Bill in the UK<sup>3</sup>. Of the thirty-six Clauses in the Bill, twenty-four engage the legislative competence of the Scottish Parliament. The Scottish Government largely concurs with the UK Government on the Clauses of the Bill that engage devolved competence with the exception of Clause 30 (Interpretation of Agreements) which the Scottish Government considers also engages devolved competence<sup>4</sup>.
5. The Scottish Government lodged a [Legislative Consent Memorandum](#) on 29 December 2020. The Committee took evidence from the Cabinet Secretary for the Constitution, Europe and External Affairs, Michael Russell MSP, on 30 December 2020. The Committee has taken extensive evidence on the future relationship negotiations during 2020. Most recently, on 11 December 2020, the Committee published a [report](#) highlighting the impacts that will inevitably result at the end of the transition period. The Committee reasserts the conclusions and recommendations made in that report in the context of the agreement which has been reached. The Committee highlights the conclusion in the report that—

“The Committee regrets that the Scottish, UK and European Parliaments will not have the opportunity to adequately scrutinise any agreement before the end of the transition period”<sup>5</sup>.

6. The Committee notes that the European Parliament considers that the timescale for consideration of the agreement prior to the end of the transition period is untenable and will instead scrutinise the agreement in the first couple of months of 2021. It is simply not possible to adequately scrutinise the consequences of this agreement and the content of a legislative consent memorandum in less than a day. **To scrutinise the implications of the**

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<sup>2</sup> UK Government, Draft European Union (Future Relationship) Bill Explanatory Notes, p.6. Accessible at—

<https://www.gov.uk/government/publications/eu-future-relationship-bill>

<sup>3</sup> UK Government, 'Draft EU (Future Relationship) Bill Explanatory Notes, p.72-76.

<sup>4</sup> Scottish Government, Legislative Consent Memorandum – European Union (Future Relationship) Bill, p.7. Accessible at—

[https://www.parliament.scot/S5\\_Bills/SPLCM-S05-50.pdf](https://www.parliament.scot/S5_Bills/SPLCM-S05-50.pdf)

<sup>5</sup> CTEEA Committee, 'EU-UK Future Relationship Negotiations: The impact of the end of the transition period', p.3.

agreement reached in less than a week and to consider legislation and the content of a legislative consent memorandum in less than a day is clearly inadequate. The approach taken to legislating for the consequences of the agreement of the importance and significance of this agreement represents a thorough disregard for parliamentary scrutiny and the role of all legislatures across the UK. The Committee welcomes the scrutiny approach taken by the European Parliament and this Committee also intends to continue scrutiny of the agreement in the new year.

7. The Committee recognises that the Scottish Government has also only recently obtained sight of the legislation despite the impact of the Bill upon devolved competences. **Clearly this legislative timetable is unacceptable and does not allow for sufficient time for an accurate assessment to be made of the impact of the Bill upon the devolution settlement.**
8. The Committee in its recent report on the impact of the end of the transition period emphasised that whatever the outcome from the future relationship negotiations, it would “result in a significantly negative economic impact to both the Scottish and UK economy”<sup>6</sup>. It is clear that the agreement reached will result in an end to frictionless trade in goods and services as well as ending the free movement of people. Instead, the relationship between the EU and UK will involve the re-introduction of customs procedures, border checks, sanitary and phytosanitary checks. Varying procedures will apply to individuals wishing to work in EU countries whilst the mutual recognition of professional qualifications will end. It is worth emphasising that the agreement does not cover services, including financial services, albeit there is a joint declaration accompanying the agreement to develop a Memorandum of Understanding by March 2021 on financial regulatory co-operation.
9. **The Committee considers that the agreement reached between the EU and UK is unique in re-establishing rather than removing trade barriers. The process of putting in place trade barriers between the EU and UK will inevitably result in a direct economic cost to the Scottish and UK economies with small and medium sized enterprise particularly impacted. The Committee recommends that the UK Government should undertake an economic impact assessment of the agreement it has reached as a matter of urgency. The Committee also recommends that the Scottish Government should update the economic modelling it has undertaken based on the agreement reached in order to assess the impact on the Scottish economy, local economies and individuals.**
10. Alignment with the level-playing field provisions underpinning the Single Market and Customs Union was a critical issue during the negotiations. Given that the level-playing field provisions cover standards with regard to the environment, labour rights and social protection they are therefore of direct relevance to devolved competences. The agreement reached provides for non-regression, i.e. maintaining standards, in some areas of existing level-playing field

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<sup>6</sup> Ibid, p.6.

provisions but not dynamically aligning with changing standards. Were either the EU or UK to lower standards, in the areas identified in the agreement, then a range of measures would be open to either party including ultimately the re-introduction of tariffs.

11. **The Committee notes the provision on non-regression with regard to some aspects of the level-playing field. The Committee re-iterates its recommendation that to ease trading relationships for Scottish companies, the Scottish Government should maintain alignment with EU rules and regulations wherever possible. The Committee notes the European Union (Continuity) (Scotland) Bill contains a ‘keeping pace’ power.**
  
12. The agreement covers areas beyond a basic free trade agreement, such as transport, energy, fisheries and law enforcement. As a result, the agreement reached includes a framework to oversee governance of the arrangements. The governance framework is similar to the frameworks which oversee the EU’s other Association Agreements with third countries. The governance framework is headed by a ‘Partnership Council’ which will be co-chaired by a representative from the European Commission and a UK Government Minister. Beneath the Partnership Council, the agreement establishes 19 specialised committees and 4 working groups to deal with specific aspects of the EU-UK trading relationship. The Committee notes that some of the subject matter which will be considered within the governance framework deal with devolved competences such as law enforcement, judicial cooperation and fisheries. The Committee is not aware of any provision within the agreement for Scottish Government participation within the governance framework. **The Committee recommends that the Scottish Government, at Ministerial and official level as appropriate, should be present at meetings taking place under the governance framework that deal with devolved policy areas.**
  
13. The Committee notes that the governance framework also establishes a ‘Parliamentary Partnership Assembly’ and a ‘Civil Society Forum’. The Parliamentary Partnership Assembly is proposed to consist of Members from the European Parliament and UK Parliament. **The Committee recommends that given the governance framework deals with devolved competences that representation from the Scottish Parliament be included on the Parliamentary Partnership Assembly.**
  
14. The agreement reached between the European Commission and UK Government includes provisions dealing with law enforcement and judicial co-operation. In particular, the agreement provides for the exchange of information and data. However, all future co-operation in this sphere will be based upon the UK’s status as third country. Accordingly, the UK will not be able to participate in the European Arrest Warrant scheme or the Schengen Information System. **The Committee has not had the opportunity to examine the law enforcement or judicial components of the agreement in sufficient detail and notes the provisions in the agreement dealing with law enforcement and judicial co-operation. The Committee is very**

**concerned that the UK will not be party to the European Arrest Warrant scheme and the Schengen Information System.**

15. The Committee has a long-standing interest in the Erasmus+ programme. It is worth repeating the Committee's conclusions in our 2018 report on the value of participation in the Erasmus programme. The Committee concluded that—

“The Committee welcomes Scotland's success in obtaining its highest-ever allocation of Erasmus+ funding in the past year. We also recognise the excellent work being done by Scottish institutions and organisations to use Erasmus+ funding to raise attainment. In particular, we were impressed by the experience of some disadvantaged young people who have been motivated by their Erasmus+ experience to “look beyond Friday and consider what they might be doing next year or in their future lives”.

“Erasmus+ is the most significant source of funding in Scotland for providing opportunities for cultural exchange and embedding an international outlook in our young people. The Committee recognises in this regard that Erasmus+ is playing an important role in developing the skills and experience of volunteers and professionals who support young people, such as youth workers, teachers and staff in further and higher education”<sup>7</sup>.

16. The Committee recognises that participation in Erasmus+ has been of huge value to young people across Scotland. Furthermore, participation in the programme is not limited to students in higher education but rather is open to a wide range of community and youth work organisations. In this regard, Erasmus+ has been of significant importance in providing opportunities to young people resident in disadvantaged communities across Scotland. The UK Government has not sought to participate in the Erasmus+ programme as part of the agreement reached with the European Commission. Instead, the UK Government has announced that it intends to establish a replacement scheme the details of which are not available. The Committee notes recent evidence from Universities Scotland, that universities in Scotland currently have—

“we have 100 different Erasmus agreements operating with different institutions, which puts in perspective the idea that, in the next 18 months, we can come up with bilateral arrangements with all those institutions”<sup>8</sup>.

**However, the Committee considers it a matter of extreme regret that the UK will no longer participate in Erasmus+. The Committee recommends that the Scottish Government explore all possible avenues to enable young people in Scotland to participate in Erasmus+. The Committee notes the offer from the Republic of Ireland Government that young people in Northern Ireland will continue to be able to access the programme. The Committee**

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<sup>7</sup> CTEER Committee, 2018, '[Erasmus+](#)', para.3-4.

<sup>8</sup> CTEEA Committee, Official Report, 12 November 2020, Col.39.

**recommends that the UK Government review its decision not to participate in the Erasmus+ programme at the earliest possible opportunity.**

17. The Committee notes that agreement allows for continued participation in the Horizon 2020 programme. **The Committee welcomes that the UK will continue to participate in the Horizon 2020 programme** subject to financial agreement.
18. In terms of fisheries, the change in quota is to be phased in over a five-year period to 2026. After 2026, there will be annual consultations on quota shares although this would not appear to suggest that these quota shares would change. The Committee is aware from the evidence we have taken from the Scottish fishing sector that the proportion of quota increase proposed in the agreement will fall short of the expectations of the sector. **The Committee is aware of the concern being expressed by a range of Scottish fisheries sector stakeholders in response to the agreement and recognises that further analysis and scrutiny of the agreement is required in order to fully understand the implications for the sector.**

## **Conclusion**

19. **The European Union (Future Relationship) Bill seeks to implement, within the UK, the agreement reached between the European Commission and the UK Government prior to the end of the transition period. The Bill clearly engages devolved competences and will have profound implications for the devolution settlement.**
20. **The process of seeking to scrutinise the Bill and future relationship agreement has been severely impaired by a timetable for consideration of the Bill which can only be characterised as unacceptable. The Committee intends to undertake further scrutiny in due course.**
21. **The Committee has previously made clear that the arrangements being sought by the UK Government will have significantly negative impacts upon the economy, society and culture in Scotland and the Committee has called for mitigation from the UK and Scottish governments.**
22. **The agreement reached ensures that negotiations between the EU and UK government will be an on-going feature of the future relationship. This process will continue to impact upon the devolution settlement for the foreseeable future. The Committee is unaware of any input the Scottish Government or Scottish Parliament has had to influence the Bill despite the impacts upon devolved competences. The Committee considers this to be unacceptable. In future, the Committee considers it imperative that the Scottish Government is fully engaged within the proposed governance framework where devolved competences are being considered. Similarly, the Committee considers it to be essential that the Scottish Parliament is represented on the Parliamentary Partnership Assembly and Scottish representation on the Civil Society Forum.**

**23. The Committee recommends that the Scottish Parliament does not provide legislative consent to the European Union (Future Relationship) Bill.**

Yours Sincerely,

A handwritten signature in black ink, appearing to read 'Joan McAlpine', followed by a horizontal line extending to the right.

Joan McAlpine MSP  
**Convener, Culture, Tourism, Europe and External Affairs Committee**