Scrubtny of international agreements

Treaties considered on 9 April 2019
**The European Union Committee**
The European Union Committee is appointed each session “to scrutinise documents deposited in the House by a Minister, and other matters relating to the European Union”.

In practice this means that the Select Committee, along with its Sub-Committees, scrutinises the UK Government’s policies and actions in respect of the EU; considers and seeks to influence the development of policies and draft laws proposed by the EU institutions; and more generally represents the House of Lords in its dealings with the EU institutions and other Member States.

On 14 January 2019 the Procedure Committee decided that the European Union Committee should, until the end of the 2017–19 session of Parliament, be responsible for scrutinising Brexit-related treaties or international agreements.

The six Sub-Committees are as follows:
- Energy and Environment Sub-Committee
- External Affairs Sub-Committee
- Financial Affairs Sub-Committee
- Home Affairs Sub-Committee
- Internal Market Sub-Committee
- Justice Sub-Committee

**Membership**
The Members of the European Union Select Committee are:

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<th>Baroness Armstrong of Hill Top</th>
<th>Earl of Kinnoull</th>
<th>Lord Ricketts</th>
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<td>Lord Boswell of Aynho (Chair)</td>
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<td>Lord Jay of Ewelme</td>
<td>Lord Polak</td>
<td>Lord Whitty</td>
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<td>Baroness Kennedy of the Shaws</td>
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**Further information**


**Committee staff**
The current staff of the Committee are Christopher Johnson (Principal Clerk), Stuart Stoner (Clerk), Roberto Robles (Policy Analyst), Tim Mitchell (Legal Adviser), Alex Horne (Legal Adviser), Samuel Lomas (Committee Assistant) and Alasdair Johnston (Committee Assistant).

**Contact details**
Contact details for individual Sub-Committees are given on the website. General correspondence should be addressed to the Clerk of the European Union Committee, Committee Office, House of Lords, London, SW1A 0PW. Telephone 020 7219 5791. Email euclords@parliament.uk.

**Twitter**
You can follow the Committee on Twitter: [@LordsEUCom](http://twitter.com/LordsEUCom).
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SUMMARY

This is the European Union Committee’s ninth report on Brexit-related treaties, or international agreements, laid before Parliament in accordance with section 20 of the Constitutional Reform and Governance Act 2010 (the CRAG Act).

This report addresses two agreements, considered at our meeting on 9 April, one of which we have drawn to the special attention of the House on the basis that it is politically important and gives rise to issues of public policy that the House may wish to debate prior to ratification:

- International Agreement on Taxation and the Protection of Financial Interests Between the United Kingdom of Great Britain and Northern Ireland and the Kingdom of Spain regarding Gibraltar [CP 72]

We have also reported the following treaty for information:

- Interim Economic Partnership Agreement between the United Kingdom of Great Britain and Northern Ireland, of the on part, and the Pacific States, of the other part [CP 76]
International Agreement on Taxation and the Protection of Financial Interests Between the United Kingdom of Great Britain and Northern Ireland and the Kingdom of Spain regarding Gibraltar (CP 72, 2019)¹

1. The International Agreement on Taxation and the Protection of Financial Interests regarding Gibraltar (‘the Agreement’) was laid on 15 March, and the scrutiny period is scheduled to end on 30 April.² It was considered by the EU Financial Affairs Sub-Committee at its meeting on 3 April.

2. The Agreement is the first international agreement signed by the UK and Spain over Gibraltar since the Treaty of Utrecht in 1713. It does not ‘roll over’ a prior EU international agreement. Instead, it is a new agreement that commits Gibraltar to align with EU law on matters related to transparency, administrative cooperation, harmful tax practices and Anti-Money Laundering after Brexit. It also provides rules for resolving conflicts over tax residency between Spain and Gibraltar. It is part of a package of agreements resulting from Brexit and is referred to in the Protocol on Gibraltar in the Withdrawal Agreement.³ While it has been negotiated by the Government of Gibraltar, the UK has signed the Agreement as the State responsible for Gibraltar’s international relations.⁴

3. In terms of individual tax residency, the Agreement states that, primarily, tax residency of individuals will be determined by the domestic law of Spain and Gibraltar. Where these laws lead to residency in both, individuals will be considered as Spanish tax residents if any of the following conditions apply: (i) they spend over 183 overnight stays in a calendar year in Spain; (ii) their spouse or dependent family members reside in Spain; (iii) their only permanent home is in Spain; or (iv) two thirds of their assets are located in

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² This date takes account of the fact that both Houses will sit from 8–11 April. It will change if further sitting days are scheduled.


Spain. Sporadic absences in neither Spain nor Gibraltar would be added to the time where the individual spends the majority of their time.5

4. The Agreement also includes “special rules for determining tax residency”, which are asymmetric and to the advantage of Spain. For example, Spanish nationals who move their residency to Gibraltar after 4 March 2019 “shall in all cases only be considered tax residents of Spain”. Non-Spanish nationals who move from Spain to Gibraltar would, with some exceptions, also be considered as Spanish tax residents for an additional four years. Such measures are sometimes introduced for jurisdictions that are considered to be tax havens, but these provisions will continue to apply to Gibraltar even when it has been removed from Spain’s blacklist of tax haven jurisdictions, as Spain has committed to doing (see paragraph 9).

5. This asymmetry and the nature of the measures under the Agreement could potentially have human rights implications for those affected, for example under Article 1 to the First Protocol to the European Convention on Human Rights (ECHR), and under equality laws.6 We do not seek to resolve the question of the Agreement’s compatibility with the ECHR here, but it is unfortunate that the Explanatory Memorandum provided by the Government did not include a section on human rights, so it is not possible to identify whether the UK Government has any concerns about this question.7

6. Under the Agreement, legal persons, entities and other legal structures established and managed in Gibraltar, or governed by its legislation, will also be considered Spanish tax residents exclusively if any of the following conditions apply: (i) the majority of its assets are located in Spain; (ii) the majority of its income is accrued in Spain; (iii) the majority of the natural persons in charge of effective management are tax resident in Spain; or (iv) the majority of the interests in the capital or equity, voting or profit-sharing rights are under the control of Spanish tax residents.8 Those moving from Spain to Gibraltar after the date of entry into force of this agreement would also in all cases maintain tax residency only in Spain.

7. Beyond rules for determining tax residency, the Agreement commits Gibraltar to a ‘static alignment’ with existing EU legislation on transparency, administrative cooperation, harmful tax practices and anti-money laundering. It also includes a commitment to ‘dynamic alignment’ with EU legislation on mutual administrative assistance now and into the future, as well as any OECD and G20 standards introduced in this area. The Agreement also

5 The Agreement provides that where these provisions are not conclusive, a natural person would be considered tax residents only in Spain, unless they are able to provide reliable evidence that they have a permanent home for their exclusive use in Gibraltar and that they remain in Gibraltar over 183 days.
6 Article 1 to the First Protocol of the European Convention on Human Rights provides: “Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.” Questions may also arise as to whether it is acceptable to discriminate against Spanish nationals moving to Gibraltar (as compared to Spanish nationals moving to other States); and the justification for taxing non-nationals who were resident in Spain in the past, but have since left.
7 We note the recommendation of the Joint Committee on Human Rights, in its report Human Rights Protections in International Agreements (17th Report, Session 2017–19, HC 1833, HL Paper 310), that a human rights memorandum should be provided with international agreements. At the very least, potential issues of this sort should be identified in the Government’s Explanatory Memorandum.
8 The second two conditions are subject to some exceptions.
provides for the automatic exchange of information on workers—which is standard in such a treaty—the automatic exchange of information on “vessels, aircraft and motor vehicles registered in Gibraltar relating to tax residents in Spain”, and enhanced access to beneficial ownership information for entities based in Gibraltar. Although the EM does not reference compliance with the General Data Protection Regulation (GDPR), following an exchange with officials, we were informed that any information exchanged under the Agreement would be subject to the rules provided by the Convention on Mutual Administrative Assistance in Tax Matters of the OECD and the Council of Europe, and therefore would not be affected by personal data transfer rules in the GDPR.

8. The Agreement would establish a Joint Coordination Committee, formed by the tax authorities of Spain and Gibraltar, to supervise and coordinate the cooperation activities set out in this agreement, seeking to resolve any disputes by mutual agreement. The Liaison Bodies would be responsible for directly undertaking the actions outlined in the agreement. Either side may terminate the agreement by giving notice of at least six months before the end of any calendar year.

9. The Agreement has proved controversial in Gibraltar. The main opposition party, the Gibraltar Social Democrats (GSD), has described the Agreement as “intrusive and harmful” to Gibraltar’s interests, arguing that the Agreement undermines Gibraltar’s fiscal sovereignty and could affect its ability to attract inward investment. On the other hand, the content of this treaty should not be considered in isolation. As a consequence of its signing, Spain has removed its veto over Gibraltar signing up to the OECD’s Base Erosion and Profits Shifting (BEPS) programme and has agreed to remove Gibraltar from Spain’s blacklist of tax haven jurisdictions, subject to effective implementation. This could deliver reputational benefits for Gibraltar. Through the Agreement, Spain also directly recognises the activities performed by Gibraltarian tax authorities, a recognition that is considered to be politically important by both sides. The Agreement is also mentioned in the Protocol on Gibraltar contained in the UK-EU Withdrawal Agreement. For these reasons, the Chief Minister of Gibraltar has described the Agreement as “massively significant”.

10. We draw special attention to the UK-Spain tax agreement regarding Gibraltar, on the grounds that

- It is politically important and gives rise to issues of public policy that the House may wish to debate prior to ratification.

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CHAPTER 2: AGREEMENT REPORTED FOR INFORMATION

Interim Economic Partnership Agreement between the United Kingdom of Great Britain and Northern Ireland, of the one part, and the Pacific States, of the other part (CP 76, 2019)\(^\text{11}\)

11. The UK-Pacific States\(^\text{12}\) Interim Economic Partnership Agreement was laid on 20 March 2019, and the scrutiny period is scheduled to end on 7 May.\(^\text{13}\) It was considered by the EU External Affairs Sub-Committee at its meeting on 4 April.

12. The precursor agreement to the UK-Pacific States Interim Economic Partnership Agreement is the EU-Pacific States Partnership Agreement, signed in 2009.\(^\text{14}\) It is development-focused and therefore asymmetrical—it opens the developed market more than the developing one. The UK-Pacific States Economic Partnership Agreement seeks to ensure continuity of effect with the EU Agreement and, consequently, largely replicates it. It provides duty-free and quota-free access to the UK market for goods originating from the Pacific States and provides for a gradual reduction of duties for goods imported into the Pacific States from the UK. The Agreement, like the precursor EU Agreement, also replicates the provision in the Cotonou Agreement\(^\text{15}\) that allows for “appropriate measures” to be taken if human rights, democratic principles, the rule of law and good governance are violated.\(^\text{16}\) It is envisaged that suspension of the Agreement would only be a last resort.

13. The UK’s combined trade with the Pacific States accounts for less than 0.1% of UK trade. In 2017, UK trade in services was worth £200 million and UK goods exports accounted for £21 million. Main UK exports include different types of machinery and mechanical equipment, articles of iron or steel, and vehicles. The main UK goods imports from the Pacific States were animal and vegetable oils, sugar, preparations of meat and fish, beverages and spirits, and coffee, tea, mate\(^\text{17}\) and spices.


\(^{12}\) The Pacific States who have signed the Agreement are the Republic of Fiji and the Independent State of Papua New Guinea.

\(^{13}\) This date takes account of the fact that both Houses will sit from 8–11 April. It will change if further sitting days are scheduled.

\(^{14}\) Council Decision (EU) of 13 July 2009 on the signature and provisional application of the Interim Partnership Agreement between the European Community, of the one part, and the Pacific States, of the other part, OJ L 272 (16 October 2009), p 1

\(^{15}\) The EU-Pacific States Agreement was established within the framework of the Cotonou Agreement, which contains a human rights clause. This clause was replicated in the EU-Pacific States Agreement. The Cotonou Partnership Agreement was signed in 2000 and is a legally binding agreement between the EU and 78 African, Caribbean and Pacific countries. It was designed to establish a comprehensive partnership with three pillars: development cooperation, political cooperation, and economic and trade cooperation. It is set to expire in February 2020. Subject to a transition period, the Cotonou Agreement will cease to apply to the UK on exiting the EU.

\(^{16}\) Annex IV, paragraphs 7, 11

\(^{17}\) Or mate: a traditional Pacific and South American drink.
14. The Agreement—like other trade agreements previously considered by the Committee—introduces an extended cumulation of origin.\textsuperscript{18} This allows both parties to recognise, under certain conditions, products as originating if they incorporate materials originating in any of the contracting parties, the EU, other African, Caribbean and Pacific Group of States,\textsuperscript{19} or in the Overseas Countries and Territories.\textsuperscript{20} Processing in these states can, under certain conditions, also be recognised as processing in the contracting parties.\textsuperscript{21} The Government sets out that, without these provisions, products from the UK or a Pacific State using EU content would no longer meet the origin requirements for preferential treatment by the other party.\textsuperscript{22}

15. In certain circumstances, and at the request of Fiji and Papua New Guinea, materials originating in a neighbouring developing country listed in an Annex to the Agreement can also be granted originating status if incorporated into a product. This list is currently blank.\textsuperscript{23} The report accompanying the Agreement makes no reference to these wider cumulation provisions and we would welcome an explanation of the legal basis for the extension of cumulation in this way.

16. While at present only Fiji and Papua New Guinea have signed the Agreement, other Pacific States may accede in future, and the EM and Parliamentary Report confirm that Samoa has recently acceded to the EU-Pacific States Agreement and started applying the Agreement provisionally on 31 December 2018. The Solomon Islands have submitted a formal accession request and Tonga has notified its intention to accede. Although Department for International Trade officials confirmed that the UK was awaiting a response from Samoa about possible accession to the UK Agreement, it would have been helpful if this information too had been covered in the explanatory materials.

17. The EU Agreement’s future amendment clause has been replicated in the UK Agreement. We reiterate the point made in our report \textit{Scrutiny of international agreements: Treaties considered on 26 February 2019,}\textsuperscript{24} that the Government should state clearly the circumstances in which, where significant amendments are made, they would be subject to the scrutiny processes provided for by the Constitutional Reform and Governance Act 2010.

18. Finally, the EM indicates that the Government is engaging with and has consulted those territories for whose international relations the UK is responsible and to which the Agreement will apply. It does not, however,

\textsuperscript{18} More detail on cumulation of origin is available in Box 2 of our report \textit{Scrutiny of international agreements: treaties considered on 26 February 2019} (31st Report, Session 2017–19, HL Paper 300)

\textsuperscript{19} The African, Caribbean and Pacific Group of States comprises 79 African, Caribbean and Pacific states, all of them, save Cuba, signatories to the Cotonou Agreement.

\textsuperscript{20} Annex VIII to Protocol II defines overseas countries and territories as those listed in the annex, namely listed territories of several EU Member States and of the United Kingdom.

\textsuperscript{21} More detail on cumulation of origin is available in Box 2 of our report \textit{Scrutiny of international agreements: treaties considered on 26 February 2019} (31st Report, Session 2017–19, HL Paper 300)


\textsuperscript{23} Annex VIII(a) to Protocol II

\textsuperscript{24} European Union Committee, \textit{Scrutiny of international agreements: Treaties considered on 26 February 2019} (31st Report, Session 2017–19, HL Paper 300)
provide any clear information on the extent of this consultation on the UK-Pacific States Agreement. It states that “the Government has regularly updated the Devolved Administrations and has shared the texts of parliamentary reports and explanatory memoranda with them”. This leaves it unclear whether the text of the UK-Pacific States Agreement has been shared with the devolved administrations, and if so, when. We reiterate the recommendation in our report Scrutiny of international agreements: Treaties considered on 12 February 2019, that the Government’s explanatory material should state clearly whether there has been consultation with the devolved administrations, industry or other stakeholders. In this context, we welcome the Department for International Trade’s assurance, in a letter from Baroness Fairhead dated 15 March 2019, that the Government will “now share text of agreements, once stable, with the DAs”—though this commitment may have come too late to have influenced the consultation process on this Agreement.

19. **We report the UK-Pacific States Economic Partnership Agreement to the House for information.**

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APPENDIX 1: LIST OF MEMBERS, DECLARATIONS OF INTEREST AND SUB-COMMITTEE STAFF

Members of the European Union Select Committee

Baroness Armstrong of Hill Top
Lord Boswell of Aynho (Chair)
Baroness Brown of Cambridge
Lord Cromwell
Baroness Falkner of Margravine
Lord Jay of Ewelme
Baroness Kennedy of The Shaws
The Earl of Kinnoull
Lord Liddle
The Earl of Lindsay
Baroness Neville-Rolfe
Baroness Noakes
Lord Polak
Lord Ricketts
Lord Soley
Baroness Suttie
Lord Teverson
Baroness Verma
Lord Whitty

Declarations of interest

Baroness Armstrong of Hill Top
Joint owner of a property in Spain

Lord Boswell of Aynho (Chair)
In receipt of salary as Principal Deputy Chairman of Committees, House of Lords
Shareholdings as set out in the Register of Lords’ Interests
Income is received as a Partner (with wife) from land and family farming business trading as EN & TE Boswell at Lower Aynho Grounds, Banbury, with separate rentals from cottage and grazing
Land at Great Leighs, Essex (one-eighth holding, with balance held by family interests), from which rental income is received
House in Banbury owned jointly with wife, from which rental income is received
Lower Aynho Grounds Farm, Northants/Oxon; this property is owned personally by the Member and not the Partnership

Baroness Brown of Cambridge
Vice Chair of the Committee on Climate Change
Chair of the Adaptation Sub-Committee of the Committee on Climate Change
Chair of the Henry Royce Institute for Advanced Materials
Chair of STEM Learning Ltd
Non-Executive Director of the Offshore Renewable Energy Catapult
Chair of The Carbon Trust
Council member of Innovate UK
Lord Cromwell

Employment, partnership, business interests and shareholdings as set out in the Register of Lords’ interests
Patron of Wildlife Vets International;
Partner (not Head of Holding) in a farming partnership in Leicestershire (including organic farming)

Baroness Falkner of Margravine

Member, British Steering Committee: Koenigswinter, The British-German Conference
Member, Advisory Board, Demos

Lord Jay of Ewelme

Trustee (Non-Executive Director), Thomson Reuters Founders Share Company
Vice Chairman, European Policy Forum Advisory Council
Member, Senior European Experts Group
Trustee, Magdalen College, Oxford Development Trust

Baroness Kennedy of The Shaws

President, Justice, UK arm of International Commission of Jurists
Chancellor, Sheffield Hallam University

The Earl of Kinnoull

Farming interests as principal and as charitable trustee, in receipt of agricultural subsidy
Chairman, Culture Perth and Kinross, in receipt of governmental subsidy
Chairman, United Kingdom Squirrel Accord, in receipt of governmental monies
Director, Horsecross Arts, in receipt of governmental subsidy
Shareholdings as set out in the register

Lord Liddle

Member, Cumbria County Council
Pro-Chancellor (Chair of Board), Lancaster University
Co-Chair, Policy Network

The Earl of Lindsay

Chairman, United Kingdom Accreditation Service (UKAS)
Chairman, BPI Pension Trustees Limited
Farmer, in receipt of CAP support

Baroness Neville-Rolfe

Former Commercial Secretary, HM Treasury
Former Minister of State for Energy and Intellectual Property
Chair, Assured Food Standards Ltd
Non-Executive Director, Capita Plc
Non-Executive Director, Secure Trust Bank
Governor, London Business School
Shareholdings as set out in the register
Trustee (Non-Executive Director), Thomson Reuters Founders Share Company

Baroness Noakes

Director, Royal Bank of Scotland Group plc
Interests in a wide range of listed companies as disclosed in the Register of Interests

Lord Polak

Employment and business as set out in the Register of Lords’ interests
Lord Ricketts  
Non-Executive Director, Group Engie, France  
Strategic Adviser, Lockheed Martin UK  
Charitable activities as set out in the Register of Interests

Lord Soley  
Member: International Institute for Strategic Studies, Royal College of Defence Studies, Chatham House

Baroness Suttie  
Associate with Global Partners Governance Limited  
Trustee, Institute for Public Policy Research (IPPR)

Lord Teverson  
Trustee, Regen SW  
In receipt of a pension from the European Parliament

Baroness Verma  
No relevant interests declared

Lord Whitty  
Vice President, Chartered Trading Standards Institute  
Chair, Road Safety Foundation  
Vice President, Local Government Association  
President, Environmental Protection UK  
Member, GMB  
Vice President, British Airline Pilots Association

Dr Holger Hestermeyer, Shell Reader in International Dispute Resolution at King’s College London, is acting as Specialist Adviser supporting the Committee’s scrutiny of international agreements, and has declared no relevant interests.

Sub-Committee Members and staff

EU Energy and Environment Sub-Committee

Lord Teverson (Chair)  
Lord Cameron of Dillington  
Viscount Hanworth  
Lord Krebs  
The Duke of Montrose  
Lord Rooker  
Lord Selkirk of Douglas  
Baroness Sheehan  
The Earl of Stair  
Viscount Ullswater  
Baroness Wilcox  
Lord Young of Norwood Green


The Sub-Committee staff are Alex McMillan (Clerk), Jennifer Mills (Clerk) and Sally Dray (Committee Assistant).
EU External Affairs Sub-Committee
Baroness Verma (Chair)
Baroness Armstrong of Hill Top
Baroness Brown of Cambridge
Baroness Chalker of Wallasey
Lord Dubs
Lord Horam
The Earl of Oxford and Asquith
Lord Risby
Lord Stirrup
Baroness Suttie
Baroness Symons of Vernham Dean
Lord Triesman

For relevant interests see: https://www.parliament.uk/documents/lords-committees/eu-external-affairs-subcommittee/members-interests-2019.pdf

The Sub-Committee staff are Jennifer Martin-Kohlmorgen (Clerk), Julia Ewert (Policy Analyst) and Mithula Parayoganathan (Committee Assistant).

EU Financial Affairs Sub-Committee
Baroness Falkner of Margravine (Chair)
Lord Bruce of Bennachie
Lord Butler of Brockwell
Lord Cavendish of Furness
Lord Desai
Lord Giddens
Baroness Liddell of Coatdyke
The Earl of Lindsay
Baroness Neville-Rolfe
Lord Thomas of Cwmgiedd
Viscount Trenchard
Lord Vaux of Harrowden


The Sub-Committee staff are Matthew Manning (Clerk), Erik Tate (Policy Analyst) and Hadia Garwell (Committee Assistant).

EU Home Affairs Sub-Committee
Lord Jay of Ewelme (Chair)
Lord Best
Lord Haselhurst
Baroness Janke
Lord Kirkhope of Harrogate
Baroness Massey of Darwen
Lord O’Neill of Clackmannan
Baroness Pinnock
Lord Ribeiro
Lord Ricketts
Lord Soley
Lord Watts
For relevant interests see: https://www.parliament.uk/documents/lords-committees/eu-home-affairs-subcommittee/scrutiny-work/Scrutiny-interests.pdf

The Sub-Committee staff are Pippa Patterson (Clerk), Megan Jones (Policy Analyst) and George Stafford (Committee Assistant).

EU Internal Market Sub-Committee

Lord Whitty (Chair)
Lord Aberdare
Baroness Donaghy
Lord German
Lord Lansley
Lord Liddle
Baroness McGregor-Smith
Baroness Noakes
Baroness Randerson
Lord Rees of Ludlow
Lord Robathan
Lord Russell of Liverpool
Lord Wigley


The Sub-Committee staff are Rosanna Barry (Clerk), Francesca D’Urzo (Policy Analyst) and Glenn Chapman (Committee Assistant).

EU Justice Sub-Committee

Baroness Kennedy of The Shaws (Chair)
Lord Anderson of Swansea
Lord Cashman
Lord Cromwell
Lord Dholakia
Lord Judd
The Earl of Kinnoull
Baroness Ludford
Baroness Neuberger
Lord Polak
Baroness Shackleton of Belgravia
Lord Wasserman


The Sub-Committee staff are Simon Cran-McGreehin (Clerk) and Amanda McGrath (Committee Assistant).

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-financial-interests/house-of-lords-commissioner-for-standards/register-of-lords-interests/