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Select Committee on the Constitution

6th Report of Session 2019–21

Brexit legislation: constitutional issues

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Select Committee on the Constitution

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Committee staff

The current staff of the committee are Matt Korris (Clerk) and Dan Weedon (Committee Assistant). Professor Stephen Tierney and Professor Jeff King are the legal advisers to the Committee.

Contact details

All correspondence should be addressed to the Constitution Committee, Committee Office, House of Lords, London SW1A 0PW. Telephone 020 7219 5960. Email constitution@parliament.uk

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Brexit legislation: constitutional issues

CHAPTER 1: INTRODUCTION

A changed context

1. Since the referendum on the United Kingdom's membership of the European Union on 23 June 2016, the process of Brexit has been a national fixation. It was the cause of two general elections, the departure of two prime ministers, unprecedented rebellions and procedural innovations in Parliament, heated contention within political parties and the formation and breakup of new ones. The conclusion of the passage of the European Union (Withdrawal Agreement) Bill on 23 January 2020 has not brought those debates to an end, as the focus must turn to the significant implications of the UK's future relationship with the EU and the trade deals to be done with the rest of the world.
2. The COVID-19 pandemic has since monopolised national and international attention. The Government and Parliament have rightly been focused on the societal, economic and constitutional upheaval resulting from the response to the disease. But while the context has changed, the issues around Brexit have not. Attention must and will return to Brexit in the months leading up to the end of the transition period between full EU membership and independence on 31 December 2020.
3. Brexit has resulted in two new forms of EU-derived law operating in the UK, and a future relationship agreement with the EU could well add a third. This is not widely appreciated, but it is just one of the significant issues facing Parliament, the Government and the country in the months and years ahead. For those who were hoping, for whatever reason, that discussion of Brexit might cease, it may be disappointing to find that it is not yet at an end.
4. This will not be a period of business as usual and COVID-19 must not blind us to the challenges that Parliament will face in its scrutiny of Brexit. Indeed, Brexit and COVID-19 place into sharp focus the inadequacies of Parliament's capacity to hold the Government to account.
5. It is with this in mind that we reflect on the legislative challenges of delivering Brexit so far and look ahead to those to come. On many fronts the Government, Parliament and the country will all need to adapt to a new sense of what is normal.

Legislating for Brexit

6. The United Kingdom's decision to leave the European Union presented the Government and Parliament with an unprecedented legislative challenge. After decades of EU membership the task of transferring, preserving and amending the direct and indirect effects of EU law was substantial and complex. Post-withdrawal the challenge continues in legislating for new policies in areas previously within the competence of the EU, new arrangements with the devolved institutions, and new relationships and trade

deals with international partners. We recognised the scale of the challenge in our scrutiny of the first major Brexit bill:

“The task of adapting the body of EU law to fit the UK’s circumstances following Brexit is complicated not only by the scale and complexity of the task, but also by the fact that in many areas the final shape of that law will depend on the outcome of the UK’s negotiations with the EU. Yet preparations for the amendment of EU law need to be made before it comes into effect as UK law, in order that those changes will take effect on the day of Brexit ... These amendments will sometimes be minor, for example removing references to EU institutions, and sometimes substantial, such as where an EU regulatory regime needs to be replaced with a UK regime.”¹

7. This undertaking has proved more difficult still due to a range of factors, only some of which have been under the Government’s control. As the only country to have sought to leave the EU there was no model or precedent to follow, or lessons that could be learnt. The vicissitudes of the Government’s vision for Brexit during the negotiations, and the contingencies of the negotiations themselves, meant legislating for a clear end state was difficult. In 2017–19 a minority Government with a fragile confidence and supply agreement struggled to operate effectively in a hung parliament in which there was no clear majority for any model of Brexit and yet which was increasingly seeking to set the agenda. The working relationship between the Conservative Government at Westminster and the Scottish National Party Government in Holyrood, which was tense before Brexit, became increasingly fractious. The relationship with the Welsh Government, while better, was not always smooth. The lack of functioning devolved institutions in Northern Ireland in 2017–20 created a significant democratic deficit that could not easily be ameliorated, and the particular challenge of the border between Northern Ireland and Ireland further complicated matters.
8. In the process of delivering the UK’s departure from the EU on 31 January 2020 some, though not all, of these challenges were overcome, but the Government is still only a little past half-way through legislating for Brexit. Significant bills to deliver Brexit have received Royal Assent—the European Union (Withdrawal) Act 2018 (EUWA) and the European Union (Withdrawal Agreement) Act 2020 prime among them. However, a considerable amount of further legislation, both primary and secondary, is still needed. Bills on agriculture, fisheries, immigration and trade were introduced in the 2017–19 session and have been reintroduced in the current session. Bills will be needed to underpin some of the common frameworks for policies that are devolved to Scotland, Wales and Northern Ireland, and further legislation may be required to implement the future relationship the Government is seeking to negotiate with the EU.

Constitution Committee’s scrutiny of Brexit

9. The Constitution Committee is tasked by the House with scrutinising public bills for their constitutional implications and keeping the constitution under review. Our approach is to assess the legislation and policies of governments against constitutional principle and practice, where appropriate providing constructive criticism or recommending changes. The process of Brexit has

1 Constitution Committee, *European Union (Withdrawal) Bill* (9th Report, Session 2017–19, HL Paper 69), summary

inevitably resulted in many bills with constitutional implications, given the scale of the constitutional change that the UK's departure from the EU represents. It is regrettable that so many of the bills have required substantial improvement.

10. In this report we take stock of the constitutional issues and concerns arising from all the Brexit legislation. We hope this will help Parliament and the Government to reflect on the impact of the Brexit process on the constitution, with the aim of improving the content and scrutiny of future legislation. This must include consideration of the capacity of Parliament to conduct its scrutiny given the added pressures and impediments of the COVID-19 pandemic.

European Union (Withdrawal) Act 2018

11. The European Union (Withdrawal) Bill was introduced to “repeal the European Communities Act 1972 and make other provision in connection with the withdrawal of the United Kingdom from the EU.”² It was the centrepiece of the Government’s legislative programme for making the legal changes necessary to deliver Brexit. We published two reports on this Bill: an interim report³ in September 2017 after the Bill had been introduced to the House of Commons and a full report⁴ once the Bill was brought to the House of Lords in January 2018. These built on our report *The ‘Great Repeal Bill’ and delegated powers*, published shortly before the end of the previous parliament,⁵ which anticipated the issues that the Bill would need to address.
12. We concluded in our interim report that the Bill failed to address many of the points we made in *The ‘Great Repeal Bill’* report and that it raised several wide-ranging and interlocking constitutional concerns. Our final report explored these issues in detail, including the implications of the creation by the Bill of ‘retained EU law’, its status and interpretation, the delegated powers for ministers and the interaction of these powers with the devolved institutions and their competences. Members of the Committee and others in the House of Lords pressed the Government on these points during the committee stage of the Bill and, following negotiations with ministers, the Government brought forward amendments on a number of key issues. These included amendments to provide greater clarity on how UK courts should treat the case law of the Court of Justice of the European Union (CJEU); to define more clearly the status of retained EU law in relation to its future modification; and to impose greater requirements on ministers to justify and explain their use of the regulation-making powers in the Bill.⁶

European Union (Withdrawal Agreement) Act 2020

13. The European Union (Withdrawal Agreement) Bill was first introduced in October 2019 shortly before Parliament was dissolved ahead of the 2019

2 [European Union \(Withdrawal\) Bill](#) [Bill 5 (2017–19)]

3 Constitution Committee, [European Union \(Withdrawal\) Bill: interim report](#) (3rd Report, Session 2017–19, HL Paper 19)

4 Constitution Committee, [European Union \(Withdrawal\) Bill](#) (9th Report, Session 2017–19, HL Paper 69)

5 Constitution Committee, [The ‘Great Repeal Bill’ and delegated powers](#) (9th Report, Session 2016–17, HL Paper 123)

6 [European Union \(Withdrawal\) Bill](#) [Bill 5 (2017–19)], [Second Marshalled List of Amendments to be Moved on Report](#), HL Bill 79—R—II, amendments 23–25, 83C, 83F, 83H and 83.

general election. We produced an interim report⁷ before dissolution and a full report when the revised Bill was introduced in the new parliament.⁸

14. We raised concerns about clause 26, which empowered ministers to determine which courts could depart from CJEU case law and the applicable tests for such departures. We concluded that if “the meaning of UK law, as retained EU law will become after exit day, is to be altered, it should be for Parliament to change, not for ministerial guidelines to reinterpret.”⁹ We also said that allowing lower courts “to reinterpret EU case law risks causing significant legal uncertainty that would be damaging to individuals and companies. It would also increase court workloads as judgments involving departures are contested on appeal.”¹⁰
15. We expressed concern about other delegated powers in the Bill, including the extensive use of Henry VIII powers, and recommended a sifting mechanism for statutory instruments in line with the EUWA scrutiny procedures. The sifting process, undertaken by the European Scrutiny Committee in the Commons and the Secondary Legislation Scrutiny Committee in the Lords, was a valuable safeguard and a welcome innovation for considering delegated legislation. We also concluded that the Government needed to set out its process for consultation and engagement with the devolved authorities during the next phase of the Brexit process.¹¹
16. Unlike the discussions on the EUWA, where compromise positions were negotiated and agreed on some of the constitutional issues we identified, the Government was disinclined to accept any amendments to the Withdrawal Agreement Bill, or propose compromises in either House, and it was passed in its original form. We regret that the Government, bolstered by its recent election victory and large Commons majority, was unwilling to engage productively in addressing significant constitutional concerns with the Bill.

Other Brexit bills

17. In the 2017–19 session we scrutinised the bills which became the Sanctions and Anti-Money Laundering Act 2018, the Taxation (Cross-border Trade) Act 2018, the Haulage Permits and Trailer Registration Act 2018 and the Healthcare (European Economic Area and Switzerland) Act 2019. We also reported on the Trade Bill, which was introduced by the Government but did not complete its passage through Parliament before the end of the 2017–19 session. We draw on the lessons from our scrutiny of all of these bills in this report. In the 2019–21 session so far, we have reported on the Private International Law (Implementation of Agreements) Bill¹² and corresponded with the minister about the Direct Payments to Farmers (Legislative Continuity) Bill.¹³

7 Constitution Committee, *European Union (Withdrawal Agreement) Bill: interim report* (2nd Report, Session 2019, HL Paper 21)

8 Constitution Committee, *European Union (Withdrawal Agreement) Bill* (1st Report, Session 2019–21, HL Paper 5)

9 *Ibid.*, para 105

10 *Ibid.*, para 106

11 *Ibid.*, paras 32, 37 & 115

12 Constitution Committee, *Private International Law (Implementation of Agreements) Bill* (5th Report, Session 2019–21, HL Paper 55)

13 [Letter from the Chair to Lord Gardiner of Kimble Direct Payments to Farmers \(Legislative Continuity\) Bill, 5 February 2020](#); [Lord Gardiner of Kimble to the Chair, Direct Payments to Farmers \(Legislative Continuity\) Bill, 3 March 2020](#)

Delegated Powers and Regulatory Reform Committee

18. Many of the Brexit bills we scrutinised contained delegated powers which raised constitutional issues. In our work, and in this report, we refer to and rely on the work of the Delegated Powers and Regulatory Reform Committee (DPRRC), which assesses all bills for the appropriateness of delegated powers and the scrutiny procedures to which they are subject. The DPRRC reported on all the bills mentioned above and on other Brexit bills that were introduced to the House of Commons during 2017–19, such as the Agriculture Bill and the Fisheries Bill, but which did not pass before the end of that session.

Table 1: Brexit primary legislation

Name	Session	Status	Committee reports
Agriculture Bill	2017–19	Introduced but not passed	DPRRC: HL Paper 194
	2019–21	In progress	DPRRC: HL Paper 69
Direct Payments to Farmers (Legislative Continuity) Act 2020	2019–21	Royal Assent	DPRRC: HL Paper 2
Environment Bill	2019	Introduced but not passed	
	2019–21	In progress	
European Union (Withdrawal) Act 2018	2017–19	Royal Assent	CC interim: HL Paper 19 CC final: HL Paper 69 DPRRC interim: HL Paper 22 DPRRC final: HL Paper 73
European Union (Withdrawal) Act 2019 <i>Private Member's Bill</i>	2017–19	Royal Assent	CC: HL Paper 339 DPRRC: HL Paper 340
European Union (Withdrawal) (No. 2) Act 2019 <i>Private Member's Bill</i>	2017–19	Royal Assent	DPRRC: HL Paper 418
European Union (Withdrawal Agreement) Act 2020	2019	Introduced but not passed	CC: HL Paper 21
	2019–21	Royal Assent	CC: HL Paper 5 DPRRC: HL Paper 3
Extradition Bill	2019	Introduced but not passed	
	2019–21	In progress	DPRRC: HL Paper 8

Name	Session	Status	Committee reports
Fisheries Bill	2017–19	Introduced but not passed	DPRRC: HL Paper 226
	2019–21	In progress	DPRRC: HL Paper 27
Haulage Permits and Trailer Registration Act 2018	2017–19	Royal Assent	CC: HL Paper 90 DPRRC: HL Paper 84
Healthcare (European Economic Area and Switzerland Arrangements) Act 2019 <i>Originally introduced as Healthcare (International Arrangements) Bill</i>	2017–19	Royal Assent	CC: HL Paper 291 DPRRC: HL Paper 289
Immigration and Social Security Co-ordination (EU Withdrawal) Bill	2017–19	Introduced but not passed	DPRRC: HL Paper 275
	2019–21	In progress	
Medicines and Medical Devices Bill	2019–21	In progress	
Private International Law (Implementation of Agreements) Bill	2019–21	In progress	CC: HL Paper 55 DPRRC: HL Paper 40
Sanctions and Anti-Money Laundering Act 2018	2017–19	Royal Assent	CC: HL Paper 39 DPRRC: HL Paper 38
Taxation (Cross-border Trade) Act 2018	2017–19	Royal Assent	CC: HL Paper 80 DPRRC: HL Paper 65
Trade Bill	2017–19	Introduced but not passed	CC: HL Paper 193 DPRRC: HL Paper 186
	2019–21	In progress	

Note: The Constitution Committee (CC) and the Delegated Powers and Regulatory Reform Committee (DPRRC) usually report on bills only when they reach the House of Lords. Some of the Brexit bills introduced to the Commons were not (or have not yet been) brought to the Lords. This list does not include further reports on amendments to bills, nor reports reproducing Government responses or other correspondence with ministers.

CHAPTER 2: DELEGATED POWERS

Breadth

19. A distinguishing feature of the Brexit bills was the extent of the delegated powers they contained. Many were skeleton bills, providing broad powers to ministers to create new policy regimes and public bodies for the UK after Brexit with little or no detail as to what policy would be implemented or the nature of institutions which would be created. In most cases they included Henry VIII powers, allowing primary legislation to be amended by statutory instruments.
20. We recognised in our consideration of the European Union (Withdrawal) Bill that “the Government will require some Henry VIII powers in order to amend primary legislation to facilitate the UK’s withdrawal from the European Union, but they should not be granted lightly, and they must come with commensurate safeguards and levels of scrutiny.”¹⁴ However, we concluded that that Bill granted ministers “overly-broad powers to do whatever they think is ‘appropriate’ to correct ‘deficiencies’ in retained EU law”, giving them “far greater latitude than is constitutionally acceptable”.¹⁵
21. Many of the Brexit bills which followed the European Union (Withdrawal) Bill also included broad delegated powers. The DPRRC described the law-making powers in the Healthcare (International Arrangements) Bill¹⁶ as “inappropriately wide” and having “breath-taking scope”.¹⁷ On the Agriculture Bill 2017–19, the DPRRC was “dismayed at the Government’s approach to delegated powers” and concluded that “it cannot even be said that the devil is in the detail, because the Bill contains so little detail.”¹⁸ The DPRRC described the Haulage Permits and Trailer Registration Bill [HL] as “wholly skeletal, more of a mission statement than legislation.”¹⁹ In the Immigration and Social Security Co-ordination (EU Withdrawal) Bill, the DPRRC found that “Parliament is being asked to scrutinise a clause so lacking in any substance whatsoever that it cannot even be described as a skeleton.”²⁰
22. In our report *The Legislative Process: The Delegation of Powers* we described skeleton bills as “the extreme end of the spectrum of legislative uncertainty”:

“Skeleton bills inhibit parliamentary scrutiny and we find it difficult to envisage any circumstances in which their use is acceptable. The Government must provide an exceptional justification for them, as

14 Constitution Committee, *European Union (Withdrawal) Bill: interim report* (3rd Report, Session 2017–19, HL Paper 19), para 48

15 *Ibid.*, summary

16 The scope of this bill changed during its passage and it became the Healthcare (European Economic Area and Switzerland Arrangements) Act 2019

17 Delegated Powers and Regulatory Reform Committee, *Thirty Ninth Report* (Session 2017–19, HL Paper 226), paras 10 & 13

18 Delegated Powers and Regulatory Reform Committee, *Agriculture Bill* (34th Report, Session 2017–19, HL Paper 194), para 4

19 Delegated Powers and Regulatory Reform Committee, *Haulage Permits and Trailer Registration Bill [HL]* (15th Report, Session 2017–19, HL Paper 84), para 2

20 Delegated Powers and Regulatory Reform Committee, *Immigration and Social Security Co-ordination (EU Withdrawal) Bill* (46th Report, Session 2017–19, HL Paper 275), para 48

recommended by the DPRRC’s guidance for departments; it cannot rely on generalised assertions of the need for flexibility or futureproofing.”²¹

23. **Many of the powers in the Brexit bills were too broad and in many cases the Government provided too little clarity on the policies the powers would be used to implement.**

Inappropriate delegations of power

24. In our report on delegated powers we concluded that “delegating power to make provision for minor and technical matters is a necessary part of the legislative process” but that “it is essential that primary legislation is used to legislate for policy and other major objectives.”²² In a number of the Brexit bills delegated powers provided for matters of significant public policy, such as the creation of criminal offences and the establishment of new public bodies.
25. The most prominent example was the Trade Bill 2017–19, which provided powers to ministers to create a new Trade Remedies Authority (TRA) to take over the anti-dumping functions and other operations relating to subsidies currently performed at EU level, to protect UK businesses from unfair business practices. The Bill contained little detail on the functions and powers of the TRA. Instead the Secretary of State was given broad discretion as to the constitution of this body, and the appointment of its members and its operations, including the power to issue guidance which the TRA must have regard to when carrying out its functions. We concluded “While we recognise the pressing timescales and uncertainties concerning Brexit, in constitutional terms, creating and empowering an important public body in such a manner is inappropriate.”²³ The demise of the Trade Bill after a long period awaiting Commons consideration of Lords amendments suggests that the urgency to set up the TRA was not so great that it precluded time to develop a clear mandate and structure for the body and to provide for such specifics in primary legislation.
26. The Sanctions and Anti-Money Laundering Bill contained broad delegated powers for ministers to implement new sanctions regimes with limited parliamentary oversight. We concluded that it was “constitutionally inappropriate for ministers to have the power, by regulations, to create new forms of sanctions”.²⁴ The Delegated Powers and Regulatory Reform Committee similarly objected to these powers.²⁵ Following these reports the Government proposed amendments to the Bill such that ministers would have to provide a good reason for creating a new sanctions regulation and lay a report justifying their reasoning.
27. We expressed concerns about a separate power in that Bill that could be used to create an offence for which a sentence of imprisonment for up to 10 years could be imposed, as well as setting rules on the evidence to demonstrate

21 Constitution Committee, *The Legislative Process: The Delegation of Powers* (16th Report, Session 2017–19, HL Paper 225), paras 51 & 58

22 *Ibid.*, para 25

23 Constitution Committee, *Trade Bill* (13th Report, Session 2017–19, HL Paper 193), para 12

24 Constitution Committee, *Sanctions and Anti-Money Laundering Bill [HL]* (8th Report, Session 2017–19, HL Paper 39), para 11

25 Delegated Powers and Regulatory Reform Committee, *Seventh Report* (Session 2017–19, HL Paper 38)

that the case is proved and defences to such charges.²⁶ While the House of Lords agreed amendments to constrain these broad provisions, they were subsequently reinstated by the House of Commons.

28. The Haulage Permits and Trailer Registration Bill included powers to create criminal offences through regulations subject to the negative procedure. We concluded that “Although the proposed offences will be of a minor nature, given the lack of policy detail, it is difficult to assess the significance of these powers. If there are exceptional circumstances which require the creation of criminal offences by regulations, they should normally be subject to the affirmative procedure.”²⁷
29. In our previous work on the use of delegated powers, we considered the trend for Government bills to include powers for ministers to create or vary criminal offences and to establish public bodies. We concluded that this trend was “constitutionally unacceptable” where such powers involve matters of public policy which warrant the scrutiny afforded to primary legislation.²⁸ The process of the UK leaving the EU does not change this principle. Recent analysis suggests the creation of criminal offences using delegated powers with potentially significant penalties is neither a recent nor rare phenomenon.²⁹
30. **The creation of criminal offences and the establishment and empowerment of public bodies by delegated powers is in general constitutionally unacceptable. Nor should delegated powers be used to change in any significant way the category of a criminal offence or to increase the level of punishment applicable to any criminal offence beyond a maximum penalty, which should always be stated on the face of any bill.³⁰ If, in exceptional cases, minor criminal offences are to be created or changed by statutory instruments, these should be subject to the affirmative resolution procedure.**

Illustrative provisions and other drafting language

31. Another issue with the delegated powers in some Brexit bills was the use of illustrative language which sought to specify but not limit broad powers. The Healthcare (International Arrangements) Bill as brought to the Lords stated “Regulations under subsection (1) may, for example ...”, and went on to give a non-exhaustive list of uses to which the powers might be put. This was challenged by members of the House of Lords during debate as “unacceptable” on the basis that it meant that the power was effectively “unconstrained in relation to the type of healthcare which may be funded”.³¹ The words “for example” were replaced at report stage with “only do one or more of the following things ...”.

26 Constitution Committee, *Sanctions and Anti-Money Laundering Bill [HL]* (8th Report, Session 2017–19, HL Paper 39), para 21

27 Constitution Committee, *Haulage Permits and Trailer Registration Bill [HL]* (11th Report, Session 2017–19, HL Paper 90)

28 Constitution Committee, *The Legislative Process: The Delegation of Powers* (16th Report, Session 2017–19, HL Paper 225), para 50

29 J. Chalmers & F. Leverick, ‘Criminal law in the shadows: creating offences in delegated legislation’, *Legal Studies* (2018), vol. 38, pp. 221–241

30 See, Delegated Powers and Regulatory Reform Committee, *Guidance for Departments on the role and requirements of the Committee*, July 2014, para 38

31 See, for example, HL Deb 19 February 2019 [col 2170](#) and HL Deb 21 February 2019 [col 2382](#)

32. The Trade Bill introduced in the last parliament stated that “Regulations under subsection (1) may, among other things, make provision ...” in a number of different areas, including allowing the modification of retained EU law and the conferring and delegation of functions.³² The phrase “among other things” also appeared in relation to the powers in the Immigration and Social Security Co-ordination (EU Withdrawal) Bill.³³
33. The DPRRC drew attention to the use of the phrase “in connection with” a power in that Bill which made it effectively open-ended.³⁴ The phrase “in connection with” was also used in respect of the broad delegated power in the Private International Law (Implementation of Agreements) Bill [HL], which we and the DPRRC concluded was inappropriate.³⁵
34. Drafting techniques such as “for example” and “among other things” are not necessarily inappropriate. They become problematic when used in relation to broad delegated powers. Given the breadth of many of the powers sought in the Brexit bills, and the lack of policy to indicate how they might be used, such illustrative language emphasises the wide range of circumstances to which such powers might be applied. It is difficult for Parliament to predict how these powers might be used by a future government and where the line is to be drawn between their lawful and unlawful application. These concerns are compounded when the powers are not circumscribed by sunset clauses or other safeguards.
35. **Delegated powers should be sought only when their use can be clearly anticipated and defined. Illustrative language that does not meaningfully constrain broad powers is inappropriate and should not be used.**

Lack of safeguards

36. One way to make broad delegated powers more tolerable is by including additional safeguards for their use. For example, the European Union (Withdrawal) Act 2018 provides for a sifting mechanism in both Houses so that proposed statutory instruments that are intended to be subject to the negative procedure can be recommended for an upgrade to the affirmative procedure by select committees scrutinising their contents. A simpler form of safeguard is a sunset clause, whereby the powers expire after a defined period of time, such as section 9(4) of the EUWA which stated that no regulations under that section may be made after “exit day”. The expiry of a regulation-making power does not, however, mean that the regulations made under it cease to have effect, so it may be considered to be an incomplete safeguard, particularly in relation to broadly drawn powers.
37. A feature of many Brexit bills has been broad delegated powers without such safeguards. In its report on the European Union (Withdrawal Agreement) Bill 2019–21,³⁶ the DPRRC argued for a sifting mechanism equivalent

32 Trade Bill [Bill 122 (2017–19)], [clause 2\(5\)](#)

33 Immigration and Social Security Co-ordination (EU Withdrawal) Bill [Bill 309 (2017–19)], [clause 4\(1\)–\(5\)](#)

34 Delegated Powers and Regulatory Reform Committee, *Immigration and Social Security Co-ordination (EU Withdrawal) Bill* (46th Report, Session 2017–19, HL Paper 275), paras 14–16

35 Constitution Committee, *Private International Law (Implementation of Agreements) Bill [HL]* (5th Report, Session 2019–21, HL Paper 55), paras 25–27; Delegated Powers and Regulatory Reform Committee, *Eighth Report* (Session 2019–21, HL Paper 40), para 15

36 Delegated Powers and Regulatory Reform Committee, *European Union (Withdrawal Agreement) Bill* (1st Report, Session 2019–21, HL Paper 3)

to that in the EUWA for the instruments that would be made under the proposed new powers—a view we shared.³⁷ However, no such mechanism was provided for.

38. Other Brexit bills, such as the Haulage Permits and Trailer Registration Bill, lacked sunset clauses to put a time limit on the delegated powers they contained, despite recommendations from the DPRRC.³⁸ In its criticism of the “inappropriate” delegated powers in the Immigration and Social Security Co-ordination (EU Withdrawal) Bill to amend social security co-ordination legislation, the DPRRC noted that there was no explanation for the lack of a sunset clause nor a duty to consult before exercising the powers.³⁹ On the Healthcare (International Arrangements) Bill we recommended “that the broad powers in the Bill are subject to a sunset clause, so that Parliament can scrutinise the detail of the policy in future primary legislation.”⁴⁰
39. The explanatory notes to the Trade Bill 2017–19 set out a list of safeguards for the powers proposed in clause 2, but the Bill itself did not include those safeguards. We recommended that the restrictions were included in the Bill.⁴¹ It was subsequently amended to include a five-year sunset clause, renewable for a further five years (subsequently reduced to three years, extendable by another three).
40. **In exceptional circumstances when broad delegated powers are necessary, they should be constrained as far as is possible and subject to the affirmative resolution procedure. In most cases such powers should be limited by sunset clauses or other means.**⁴²
41. **We recognised that the Government would require some Henry VIII powers to deliver legal certainty and continuity after Brexit. The European Union (Withdrawal) Act 2018 provided these wide powers but made the most significant subject to a sifting mechanism to allow for additional scrutiny where appropriate. We are concerned that the subsequent Brexit bills, including the European Union (Withdrawal Agreement) Act 2020, contain further wide powers which are not subject to the same scrutiny process.**

Powers to amend retained EU law outside of EUWA scope and safeguards

42. The powers in the EUWA to amend ‘retained EU law’ were accompanied by safeguards, in recognition of their breadth and the fact that they involved changes to policy in areas that had previously been determined at EU level.

37 Constitution Committee, *European Union (Withdrawal Agreement) Bill* (1st Report, Session 2019–21, HL Paper 5)

38 Delegated Powers and Regulatory Reform Committee, *Haulage Permits and Trailer Registration Bill [HL]* (15th Report, Session 2017–19, HL Paper 84), para 2

39 Delegated Powers and Regulatory Reform Committee, *Immigration and Social Security Co-ordination (EU Withdrawal) Bill* (46th Report, Session 2017–19, HL Paper 275), paras 46–53

40 Constitution Committee, *Healthcare (International Arrangements) Bill* (18th Report, Session 2017–19, HL Paper 291)

41 Constitution Committee, *Trade Bill* (13th Report, Session 2017–19, HL Paper 193), para 12

42 Constitution Committee, *European Union (Withdrawal) Bill: interim report* (3rd Report, Session 2017–19, HL Paper 19), paras 49–50. See also a recent letter to the House of Lords Secondary Legislation Scrutiny Committee in which the Leader of the House of Commons suggested there were other methods to ensure that statutory instruments could be “time-limited and only in effect for as long as they need to be”. Secondary Legislation Scrutiny Committee, *Thirteenth Report* (Session 2019–21, HL Paper 57), Appendix 2

A feature of the Brexit bills that followed was powers to amend retained EU law without equivalent constraints and safeguards. For example, section 8 of the EUWA enables ministers by regulations to make such provision as they consider appropriate “to prevent, remedy or mitigate” deficiencies in retained EU law arising from withdrawal.

43. However, other bills contained powers that were just as broad, and in some cases broader, than those in the EUWA, but subject to weaker safeguards. For example, some of the powers in the Agriculture Bill 2017–19 were not limited to the correction of deficiencies; instead the test for their use was whether the Secretary of State considered that they would “simplify or improve” the operation of relevant retained EU law.⁴³ This allowed greater scope for policy changes than the powers in the EUWA, but without commensurate safeguards. The DPRRC concluded that the test was “inappropriate” and “highly subjective”.⁴⁴
44. Similarly, on the Healthcare (International Arrangements) Bill we expressed concern that
- “this Bill, as with other Brexit-related bills, provides for elements of retained EU law to be amended by new powers which are not subject to the scrutiny safeguards set out in the European Union (Withdrawal) Act 2018, the operation of which were the result of careful and detailed consideration. The House may wish to consider whether the powers to amend retained EU law in this Bill should be subject to the same scrutiny procedures as those in the European Union (Withdrawal) Act.”⁴⁵
45. In our report on what became the EUWA, we were concerned about the lack of clarity on the status of retained EU law. Following our report and discussions with ministers, the Bill was amended to differentiate between retained direct principal EU legislation and retained direct minor EU legislation, roughly corresponding to primary and secondary legislation in the domestic context. This distinction is particularly important in relation to delegated powers to amend the different types of retained EU law and the scrutiny process for the exercise of these powers. Some of the Brexit bills introduced subsequently in the 2017–19 session failed to reflect this conceptual differentiation in the powers they contained.⁴⁶
46. **The Government must ensure that all legislation that provides powers to amend retained EU law includes the distinction between principal and minor EU law.**

43 Agriculture Bill [Bill 266 (2017–19)], [clauses 6\(1\) & 11\(2\)](#)

44 Delegated Powers and Regulatory Reform Committee, [Agriculture Bill](#) (34th Report, Session 2017–19, HL Paper 226), para 16

45 Constitution Committee, [Healthcare \(International Arrangements\) Bill](#) (18th Report, Session 2017–19, HL Paper 291)

46 For example, the Healthcare (International Arrangements) Bill was introduced to the Commons on 26 October 2018, after the EUWA had received Royal Assent on 26 June 2018. While the Trade Bill had been introduced prior to the EUWA reaching the statute book, the Government missed the opportunity of Commons report stage on 17 July 2018 to amend the Bill to reflect this differentiation before it was brought to the Lords. Constitution Committee, [Trade Bill](#) (13th Report, Session 2017–19, HL Paper 193), paras 5–7; Constitution Committee, [Healthcare \(International Arrangements\) Bill](#) (18th Report, Session 2017–19, HL Paper 291), paras 8–10

Powers for convenience not necessity

47. Another feature of some of the powers in Brexit bills has been the Government seeking powers for convenience rather than necessity. For example, the Healthcare (International Arrangements) Bill provided ministers with powers to make arrangements for reciprocal healthcare with any country, not just with countries involved in the European Health Insurance Card scheme. We concluded:

“While the exceptional circumstances of the UK’s departure from the European Union might justify legislation containing broader powers than would otherwise be constitutionally acceptable, this does not extend to giving effect to new policy unrelated to Brexit. The Bill should be limited to the making of arrangements for future reciprocal healthcare arrangements with countries that participate in the existing European Health Insurance Card scheme.”⁴⁷

The Bill was subsequently amended such that the powers apply only to matters related to Brexit, and the legislation was subsequently renamed the Healthcare (European Economic Area and Switzerland Arrangements) Act 2019.

48. On the Taxation (Cross-border Trade) Bill we raised concern over the use of the made affirmative procedure which has also been a feature of other bills. The typical justification for this is that it allows ministers to respond to situations where legal provision is urgently required, delaying parliamentary scrutiny until after the instrument has entered into force. We concluded that the procedure was being sought for non-urgent reasons as a convenient means of executive law-making. We agreed with the DPRRC that this procedure “should be confined to urgent cases”.⁴⁸
49. **The task of delivering Brexit should not involve the creation of delegated powers for executive convenience—or for issues not related to Brexit. These powers should be strictly limited in scope to address specific policy challenges. There should also be no proliferation of the made-affirmative procedure, which should be used only for urgent matters related to the process and immediate effects of Brexit.**

Explanatory materials

50. The bills to facilitate Brexit propose significant changes to large areas of law and policy in the United Kingdom. It is a challenge for Parliament to scrutinise their implications fully, given their wide scope. This is compounded when bills include broad delegated powers instead of substantive policy detail. In such circumstances, the explanatory materials to accompany bills become even more important.⁴⁹
51. However, for the Agriculture Bill and the Fisheries Bill, the Government has not published an impact assessment setting out the expected effects of the

47 Constitution Committee, *Healthcare (International Arrangements) Bill* (18th Report, Session 2017–19, HL Paper 291)

48 Constitution Committee, *Taxation (Cross-border Trade) Bill* (10th Report, Session 2017–19, HL Paper 80)

49 For further consideration of issues relating to explanatory materials, see Constitution Committee, *The Legislative Process: The Passage of Bills through Parliament* (24th Report, Session 2017–19, HL Paper 393)

proposed policy changes.⁵⁰ The Regulatory Policy Committee (RPC), which assesses the quality of impact assessments, observed that this was contrary to the requirements of the Government’s Better Regulation Framework:

“The RPC has considered the proposals in the Bills and believe that in both cases these could have significant impacts on business when they come into effect ... and that therefore [impact assessments] should have been produced by the Department, submitted to the RPC for independent scrutiny, seen by ministers and presented to Parliament.”⁵¹

52. The Government’s Better Regulation Framework guidance states that a regulatory impact assessment (RIA) “should be prepared for all significant regulatory provisions as a standard of good policy making and where an appropriate RIA is expected by parliament and other stakeholders. In addition to good policy making, the [Small Business, Enterprise and Employment Act 2015] requires that qualifying measures which impact business are independently verified.”⁵²
53. **In line with the Government’s policy and statutory requirements, we recommend the Government publishes explanatory materials, including impact assessments, for Brexit-related bills and its other legislation. These documents are essential for Parliament to scrutinise the bills effectively.**

50 Regulatory Policy Committee, *Agriculture Bill and Fisheries Bill: Impact Assessments*, 20 February 2020: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/867347/Agriculture_Bill_and_Fisheries_Bill_-_RPC_Statement_Feb_2020_-_FINAL.pdf [accessed 8 June 2020]

51 *Ibid.*

52 Department for Business, Energy and Industrial Strategy, *Better Regulation Framework: Interim guidance*, March 2020: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/872342/better-regulation-guidance.pdf [accessed 28 May 2020]

CHAPTER 3: DEVOLUTION

Lack of legislative consent

54. The UK entered the European Union before devolution to Scotland, Wales and Northern Ireland. Powers that were given to the EU during the UK's membership are now returning to a fundamentally different governance structure. The UK's exit from the European Union, and in particular the transfer of powers back to Westminster and the devolved institutions, has strained the relationships between the UK Government and the governments of Scotland and Wales. This is evident in the reluctance and, in certain cases, the refusal, of the devolved legislatures to consent to some Brexit bills.
55. Consent was withheld by the Scottish Parliament to the European Union (Withdrawal) Bill. The Scottish Government has in general recommended against consent to the other Brexit bills, arguing that the Sewel convention—under which the UK Government does not normally legislate in areas of devolved competence without the consent of the devolved legislature—has broken down.⁵³ The Scottish Government did, however, consider that exceptional circumstances meant that it was appropriate to consent to the Healthcare (International Arrangements) Bill. The Welsh Government has been more willing to recommend consent to the Brexit bills and the National Assembly for Wales granted consent to the European Union (Withdrawal) Bill following significant amendments to its devolution provisions. While the Welsh Government did not initially recommend consent to the Healthcare (International Arrangements) Bill, subsequent negotiations and changes to the Bill resulted in a recommendation for consent that was passed by the Welsh Assembly. The lack of a power-sharing agreement in Northern Ireland prevented the Northern Ireland Assembly from considering whether to grant legislative consent to the Brexit bills, although one of its first acts after being re-established was to join its counterparts in Scotland and Wales in refusing consent to the European Union (Withdrawal Agreement) Bill.
56. Devolution and inter-governmental relations are at the heart of our remit. We have considered them regularly. We have emphasised the importance of effective inter-governmental relations, proposed reforms to the Joint Ministerial Committee structure⁵⁴ and made recommendations for practical measures to protect and strengthen the Union.⁵⁵ On what became the EUWA we expressed concern about the “significant potential consequences” for the devolution arrangements “if the transfer of powers and competences from the EU level to the devolved administrations does not take place swiftly and smoothly post-Brexit.”⁵⁶
57. **While we recognise the political tensions that have inevitably existed between the UK Government and devolved administrations, it is regrettable that legislative consent was not achieved for many of the Brexit bills. The UK and devolved governments should work to**

53 See, for example, Scottish Government, *Legislative Consent Memorandum: Immigration and Social Security Co-Ordination (EU Withdrawal) Bill*, LCM-S5-23, 8 March 2019; S. Nicholson, ‘Reality Check: Has the UK's devolution settlement been ripped up?’, *BBC News*, 14 June 2018: <https://www.bbc.co.uk/news/uk-scotland-scotland-politics-44470777> [accessed 14 May 2020]

54 Constitution Committee, *Inter-governmental relations in the United Kingdom* (11th Report, Session 2014–15, HL Paper 146)

55 Constitution Committee, *The Union and devolution* (10th Report, Session 2015–16, HL Paper 149)

56 Constitution Committee, *European Union (Withdrawal) Bill* (9th Report, Session 2017–19, HL Paper 69)

establish healthy cooperation and mutual respect in order to secure consent for the Brexit bills that are still to come.

58. The Government is reviewing the workings of the Joint Ministerial Committee and is considering the findings of a review of devolution arrangements by Lord Dunlop, a former Parliamentary Under-Secretary of State for Scotland and Northern Ireland and a current member of the Constitution Committee. We look forward to the outcomes of these reviews.
59. One issue that both Houses of Parliament might consider is the impact on the legislative process of consent being refused by one or more of the devolved legislatures. At present, the only impact is that an italic note appears on the list of public bills towards the end of the daily *House of Lords Business* paper to signify that consent has been granted or refused.
60. **We recommend that the Procedure Committee considers how legislative consent could be given greater prominence in the legislative process at Westminster. For example, when consent is granted to a bill, the Lord on the Woolsack could announce it at the next stage of the bill's consideration. When consent has been refused, or not yet granted by the time of third reading, the Government could make a statement to the House before third reading commences. This could set out the efforts that were made to secure consent and the reasons for the disagreement—and include any statement the devolved institution wished to make. These would be small steps towards greater transparency and recognition of the devolution arrangements. It would also help Parliament to determine if any refusal of consent is based upon justifiable concerns concerning the boundaries of devolved competence or has been motivated by other political concerns.**

Consent to the use of delegated powers

61. As well as legislative consent to bills, there has also been an issue with consent to the use of delegated powers. In some bills—Brexit-related and otherwise⁵⁷—powers were delegated to UK ministers to legislate in devolved areas without an explicit requirement to consult or have the consent of devolved ministers or legislatures.
62. The Sanctions and Anti-Money Laundering Bill included a power to amend the enactments of the devolved legislatures. It imposed no requirement to consult devolved institutions before this power was exercised. We concluded that if it was “the Government’s intention that it would, in practice, liaise with the devolved administrations prior to the exercise of this power, such a requirement could be written into the Bill.”⁵⁸ We were unpersuaded by the Government’s view that this power reflected “well-established reciprocal arrangements”. These arrangements are not fully reciprocal, as Welsh and Scottish legislation can authorise devolved ministers to amend UK legislation only within devolved competence, whereas UK legislation can authorise UK ministers to amend enactments of the devolved legislatures in ways that would trespass on devolved competence.⁵⁹

57 See, for example, the Space Industry Act 2017. Constitution Committee, *Space Industry Bill [HL]* (2nd Report, Session 2017–19, HL Paper 18)

58 Constitution Committee, *Sanctions and Anti-Money Laundering Bill [HL]* (8th Report, Session 2017–19, HL Paper 39), para 6

59 *Ibid.*, para 7

63. The Government has demonstrated that such consent requirements are feasible by including them in the Fisheries Bill. Regulations relating to the licensing of British or foreign fishing boats require the consent of ministers from the devolved administrations,⁶⁰ and powers relating to fisheries, aquacultures and aquatic animal diseases are subject to consult or consent requirements.⁶¹
64. **While the legislative consent convention—that the UK Parliament will not normally legislate in areas of devolved competence without consent—does not apply to delegated legislation, we believe formal engagement with the devolved institutions on the use of such powers should be a requirement.**
65. **We recommend that powers for UK ministers to make delegated legislation in devolved areas, including the power to supersede law made by devolved legislatures, should include a requirement either to consult devolved ministers or to seek their consent, depending on the significance of the power in question. The more significant the power, the greater the need for consent to be sought. We note that this approach has been adopted in the Fisheries Bill and we encourage the Government to follow this precedent in future legislation.**

60 Fisheries Bill [HL Bill 71 (2019–21)], [clauses 14\(4\) and 16\(4\)](#)

61 *Ibid.*, clauses 36–41

CHAPTER 4: IMPACT OF RETAINED EU LAW AND CASE LAW

Introduction

66. As well as considering the constitutional implications of the Brexit process so far, it is valuable to consider the challenges that lie ahead—some of which will become pressing as the transition period draws to an end. The United Kingdom’s departure from the EU will not restore the constitutional position that existed before membership. The transfer of EU law into UK law to maintain legal certainty and, for the moment, continuity, has resulted in a new and complex legal landscape.

Retained EU law

67. Lord Reed, then Deputy President of the Supreme Court, anticipated this in evidence to us in March 2019: “one of the principal challenges will arise simply from the complexity of what is involved. At the moment, we have EU law. In future, as far as I can see, we are going to have three different types of EU law, with different rules applying to each type.”⁶² He said there would be retained EU law created by the EUWA and ordinary EU law which would continue to be referred to within UK courts as foreign law. He also anticipated a third body of retained EU law that would apply by virtue of the draft withdrawal agreement, which was at that time the subject of negotiations between the UK and the EU.
68. This last concern has largely been alleviated by the final Withdrawal Agreement signed on 17 October 2019. The impact of this agreement, given effect by the European Union (Withdrawal Agreement) Act 2020, has been to ‘save’ the terms of the European Communities Act 1972 until the end of the transition period; as such no third category of retained EU law was created.
69. However, Lord Reed’s comments about the complexities of retained EU law and the use of EU law as foreign law should not be underestimated. It is not clear what legal arrangements will be put in place at the end of the transition period—at that point a third category of retained EU law could well emerge. There would also be different remedies available for each type of law. In evidence to us this year, he concluded:
- “There are going to be a lot of issues raised, but I think it is going to be ... difficult to predict what they are going to be in a way that could enable us to try to address them in advance. There are going to be a lot of detailed issues about the language used both in the domestic legislation and in the withdrawal agreement itself.”⁶³
70. We explored the implications of retained EU law in our report on the European Union (Withdrawal) Bill and raised concerns about its over-inclusiveness, ambiguity and status.⁶⁴ While some of these issues were addressed during the Bill’s passage through Parliament, the EUWA provisions on the meaning and status of retained EU law are still complex and replete with

62 Oral evidence from Baroness Hale of Richmond, President, and Lord Reed, Deputy President, Supreme Court, 21 March 2019, [QQ 1–15](#)

63 Oral evidence from Lord Reed of Allermuir, President, and Lord Hodge, Deputy President, Supreme Court, 4 March 2020, [QQ 1–12](#)

64 Constitution Committee, *European Union (Withdrawal) Bill* (9th Report, Session 2017–19, HL Paper 69)

interpretational difficulties—difficulties compounded by further legislation in this area. The European Union (Withdrawal Agreement) Act 2020 adds to these complexities, as well as the possibility that the Brexit bills passed since the EUWA, which themselves contain broad delegated powers, also affect which matters will or will not be treated as retained EU law.

71. **The complexity of retained EU law makes it all the more important that Parliament is given the ability to scrutinise closely the exercise of the delegated powers under the EUWA and other Brexit legislation, to avoid further complication of the legal landscape.**
72. **Scrutiny of delegated legislation is challenging in normal times, due to the volume of statutory instruments, their often technical content, and the number of different procedures to which they may be subject.⁶⁵ Retained EU law issues, and the volume of new instruments and operational challenges posed by COVID-19, add to the pressures on Parliament’s scrutiny while stretching its limited advisory capacity. We recommend the House reviews its processes and resources in light of this task.⁶⁶ As part of this work, the Liaison Committee should commission research on the adequacy of the resources available to the House and its committees.**

Departures from CJEU case law

73. The EUWA stated that retained EU law was to be interpreted in line with any “retained EU case law”—that is, those interpretations of the CJEU which were applicable on or before exit day. It followed that only the Supreme Court or the Scottish High Court of Justiciary would have jurisdiction to depart from CJEU interpretations of retained EU law. In so doing, those UK courts would apply the rules they exercise in departing from their own previous domestic case law.
74. However, the European Union (Withdrawal Agreement) Act 2020 amended the EUWA to allow the Government to make regulations setting the terms on which departures from retained EU law can be authorised. First, such regulations may give a court or tribunal other than the Supreme Court and High Court of Justiciary the power to depart from CJEU interpretations. Second, the minister may specify “the extent to which, or circumstances in which,” the court or tribunal “is not to be bound by retained EU law.” Third, the minister can set out the test which a relevant court or tribunal “must apply” in deciding whether to depart from any retained EU law. Fourth, he or she can specify considerations which “are to be relevant” to the courts in coming to such decisions.⁶⁷
75. In our report on the European Union (Withdrawal Agreement) Bill we said:

“Clause 26(1) raises substantial constitutional concerns. If the meaning of UK law, as retained EU law will become after exit day, is to be altered, it should be for Parliament to change, not for ministerial guidelines to reinterpret. We do not believe it is appropriate for courts other than the Supreme Court and the Scottish High Court of Justiciary to have power

65 Constitution Committee, *The Legislative Process: The Delegation of Powers* (16th Report, Session 2017–19, HL Paper 225)

66 We are considering the constitutional implications of the COVID-19 pandemic, including its impact on the ability of Parliament to hold the Government to account, as part of our [current inquiry](#).

67 European Union (Withdrawal Agreement) Act 2020, [section 26](#)

to depart from the interpretations of EU case law. Allowing lower courts to reinterpret EU case law risks causing significant legal uncertainty that would be damaging to individuals and companies. It would also increase court workloads as judgments involving departures are contested on appeal.”⁶⁸

76. During the debate on the Bill Lord Beith, a member of the Constitution Committee, explained that negotiations with the minister had resulted in the wording of an amendment that would allay these concerns. However, the Government subsequently did not bring forward the amendment and backbench efforts to achieve the same effect were unsuccessful.⁶⁹
77. **The granting of broad ministerial powers in the European Union (Withdrawal Agreement) Act 2020 to determine which courts may depart from CJEU case law and to give interpretive direction in relation to the meaning of retained EU law was—and remains—inappropriate. Each of these powers should remain the preserve of primary legislation.**
78. **There is a significant risk that the use of this ministerial power could undermine legal certainty and exacerbate the existing difficulties for the courts when dealing with retained EU law.** One concern is that it could lead to confusion if, for example, lower courts begin to depart from EU case law, challenging ‘settled’ interpretations of the law, and leading to appeals on this point.
79. If regulations are to be made under section 26 of the European Union (Withdrawal Agreement) Act 2020 they will require to be in place before the end of the transition period.⁷⁰ This means there is only a limited period of time during which effective consultation can take place. **Given the urgency, we recommend the Government now publish in draft any regulations it intends to make under this power and consults with a wide range of stakeholders on those draft regulations to ensure that they do not have a deleterious effect on the legal system or upon legal certainty in the interpretation of retained EU law.**

Future relationship agreement

80. A significant and increasingly pressing issue for the status and effect of retained EU law will be any future relationship agreement to be agreed between the UK and the EU. It is not known what such an arrangement will look like and whether it will require the amendment or replacement of the EUWA or the European Union (Withdrawal Agreement) Act 2020. It is possible that a regime, similar to that in the EUWA, will be needed to address the interaction between retained EU law and law to give effect to any future relationship agreement. **Any amendment to the current scheme for retained EU law should avoid adding further complexity. The Government and Parliament should use the opportunity of implementing any future relationship agreement to seek to simplify and improve the operation of retained EU law.**

68 Constitution Committee, *European Union (Withdrawal Agreement) Bill* (1st Report, Session 2019–21, HL Paper 5), paras 105–108

69 HL Deb 20 January 2020 cols 981–992

70 Referred to as “IP [implementation period] completion day” in the European Union (Withdrawal Agreement) Act 2020

APPENDIX 1: LIST OF MEMBERS AND DECLARATIONS OF INTEREST

Members

Lord Beith
 Baroness Corston
 Baroness Drake
 Lord Dunlop
 Lord Faulks
 Baroness Fookes
 Lord Hennessy of Nympsfield
 Lord Howarth of Newport
 Lord Howell of Guildford
 Lord Pannick
 Lord Sherbourne of Didsbury
 Baroness Taylor of Bolton (Chair)
 Lord Wallace of Tankerness

Declarations of interest

Lord Beith
Honorary Bencher of the Middle Temple
 Baroness Corston
No relevant interests
 Baroness Drake
No relevant interests
 Lord Dunlop
No relevant interests
 Lord Faulks
No relevant interests
 Baroness Fookes
No relevant interests
 Lord Hennessy of Nympsfield
No relevant interests
 Lord Howarth of Newport
No relevant interests
 Lord Howell of Guildford
No relevant interests
 Lord Pannick
Represented Ms Gina Miller, in R (Miller) v Secretary of State for Exiting the European Union [2017], and in R (Miller) (Appellant) v The Prime Minister (Respondent) & Cherry and others (Respondents) v Advocate General for Scotland (Appellant) (Scotland) [2019]
 Lord Sherbourne of Didsbury
No relevant interests
 Baroness Taylor of Bolton (Chair)
No relevant interests
 Lord Wallace of Tankerness
No relevant interests

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-interests/register-of-lords-interests/>

Professor Jeff King, University College London, and Professor Stephen Tierney, University of Edinburgh, acted as legal advisers to the Committee. They both declared no relevant interests.