

# CONSTITUTION, EUROPE, EXTERNAL AFFAIRS AND CULTURE COMMITTEE

## 1st Meeting (Session 6)

Wednesday, 23 June 2021

### Legacy Papers

#### Purpose

1. The Committee is asked to consider the [Culture, Tourism, Europe and External Relations Legacy Paper](#) and the [Finance and Constitution Committee Legacy Paper](#).
2. At the end of a Parliamentary session Committees usually publish a Legacy Paper to pass on the knowledge and experience, both in terms of policy and Committee working practices. You can find the link to both papers above and a summary of the main issues provided by SPICe in Annexe A.

#### Action

3. The Committee is invited to have an initial discussion of the issues addressed in both legacy papers and to invite the clerking team to make arrangements for a business planning session (subject to COVID restrictions) to consider an initial work programme towards the end of Summer recess.

Clerk to the Committee  
17 June 2021

**CONSTITUTION, EUROPE, EXTERNAL AFFAIRS AND CULTURE, COMMITTEE**

**1<sup>st</sup> Meeting, 2021 (Session 6)**

**Tuesday, 22 June 2021**

**Summary of legacy paper issues**

**Background**

The remit of the new Constitution, Europe, External Affairs and Culture Committee will cover areas that two session five Committees (Finance and Constitution and Culture, Tourism, Europe and External Affairs) engaged with.

The session five Culture, Tourism, Europe and External Affairs Committee devoted much of its time to considering the implications of the UK's decision to leave the European Union. The Committee scrutinised the Withdrawal Agreement and the EU-UK Trade and Cooperation Agreement. The [Committee's Legacy Paper](#) focussed heavily on this issue.

The session five Finance and Constitution Committee was designated the lead committee for scrutiny of the UK Withdrawal from the European Union (Continuity) (Scotland) Bill and took the lead in coordinating the Parliament's response to the potential scrutiny challenge as a result of new constitutional arrangements. The Committee's [legacy expert panel report](#) highlighted some of the UK legislation and agreements which are important in understanding Scottish devolution now.

**Introduction to paper**

This paper provides a summary and explanation of the key ideas explored in the legacy reports of both session five committees which now fall within the remit of the Constitution, Europe, External Affairs and Culture Committee. Where applicable, details are given on the current position to aid members' understanding of the up-to-date position.

The context for both reports was an understanding that EU exit has re-shaped devolution and substantially increased its complexity.

Given the cross-cutting nature of many of the issues discussed in this paper, there remains a question over where lead responsibility will lie across session six committees.

**Part one** of this paper explains some of the areas considered by both the legacy reports. **Part two** considers issues raised by either of the reports. A **Glossary** is also provided to explain some of the technical terms necessary in this paper.

## Part one

### Constitutional impact of leaving the EU

Much of the Finance and Constitution Committee's legacy expert panel report (which was agreed by the Committee<sup>1</sup>) explored the changes to the devolution landscape as a result of the UK leaving the EU and the impact of those changes on the Parliament given the scrutiny challenge they present going forward.

The report noted that the Scottish Parliament's power to pass laws (legislative competence) has not changed significantly because of the UK's exit from the EU. There are, nevertheless, many practical and legal changes as a result of the UK leaving the EU that have the potential to constrain the Scottish Parliament and Scottish Government's ability to exercise their competence effectively because of the UK's post EU legislation and agreements.

The legacy expert panel report explained that, post exit, the devolution landscape is more complex to navigate. Rather than being able to understand devolution by reference to the Scotland Act 1998, it is now necessary to consider the Scotland Act 1998 as well as new legislation and agreements which affect areas previously governed by the EU including, for example, the withdrawal legislation; UK Internal Market Act 2020, common frameworks (see **Glossary**) and trade agreements (see **Glossary**).

The panel also noted section 12 of the European Union (Withdrawal) Act 2018 (see **Glossary**) which gives UK Ministers powers to freeze devolved competence in specific areas governed by retained EU law.

The legacy expert panel report noted the session five Finance and Constitution Committee had taken on a key role in scrutinising the UK Government and Scottish Government legislation relating to EU exit. It concluded, however, that "It is much less clear what the role of the successor Committee will be in scrutinising how or whether those powers are exercised" given that "This scrutiny function would primarily be carried out by the subject committees."<sup>2</sup>

The report suggested that a successor committee may wish to take on a monitoring and co-ordinating role, saying:

*"There could be a monitoring and co-ordinating function in relation to how devolution is working following Brexit. For example, in reviewing how the common frameworks process is operating and/or the operation of the UK internal market in consultation with the subject committees. The successor Committee is also likely to have the lead role in agreeing guidance with the Scottish Government on how the Parliament's scrutiny function will work in areas such as the keeping pace power and the operation of common frameworks."<sup>3</sup>*

---

<sup>1</sup> Finance and Constitution [Committee letter on the legacy expert group report](#) to the Presiding Officer, 23 February 2021

<sup>2</sup> [Legacy expert panel report to the Finance and Constitution Committee](#), February 2021, para 91-92

<sup>3</sup> [Legacy expert panel report to the Finance and Constitution Committee](#), February 2021, para 92

The Panel's view was that there was a need for the Parliament to consider the extent to which a monitoring and co-ordination function in relation to how devolution is working after Brexit is needed. The panel recommended this include giving thought to standard approaches to scrutiny of new arrangements such as common frameworks and oversight of how consent mechanisms are operating<sup>4</sup>.

The Session five Culture, Tourism, Europe and External Affairs Committee focused on the external impacts of the Brexit process in terms of EU-UK negotiations and the economic impacts of the new EU-UK relationship. However, the Committee recognised that as a result of Brexit, "responsibility in devolved policy spheres will be increasingly blurred and shared between the Scottish and UK Government"<sup>5</sup>.

#### Inter-governmental relations and inter-parliamentary working

The [Review of UK Government Union Capability](#) conducted by Lord Andrew Dunlop was completed in November 2019 but not published until 24 March 2021 (after both legacy reports were published). The report made a number of recommendations to the UK Government designed to improve the functioning of the Union from a UK Government perspective. Key recommendations made by the review include:

- A new Great Office of State in the Cabinet.
- A new structure supporting the separate offices of the Secretaries of State for Scotland, Wales and Northern Ireland with a single Permanent Secretary.
- A new fund for UK-wide projects, including joint projects with devolved governments.
- A new UK Intergovernmental Council (replacing the Joint Ministerial Committee), supported by an independent secretariat.

The review's recommendations have in some areas already been taken forward by the UK Government. The review recommended a new UK Intergovernmental Council with appropriate sub-committees to replace the Joint Ministerial Committee structure. Work has already begun on implementing some of the recommendations<sup>6</sup>.

The legacy expert report to the session five Finance and Constitution Committee emphasised the importance of inter-governmental relations to the efficacy of new constitutional arrangements. One of the challenges for the Parliament's capacity to carry out its scrutiny function which the report highlighted as likely to arise in session six was "the extent of inter-governmental disagreement both between the UK Government and EU and between the UK Government and the devolved governments"<sup>7</sup>.

The legacy expert report also concluded that there was a significant challenge for the Parliament in conducting meaningful scrutiny of inter-governmental working. It considered that this was a key area for scrutiny given the number and scope of new

<sup>4</sup> [Legacy expert panel report to the Finance and Constitution Committee](#), February 2021, para 97

<sup>5</sup> [Culture, Tourism, Europe and External Affairs Committee Legacy Paper](#). March 2021, para 25

<sup>6</sup> The latest progress update is available [here](#).

<sup>7</sup> [Legacy expert panel report to the Finance and Constitution Committee](#), February 2021, para 154

inter-governmental agreements such as common frameworks as well as the increased scope for policy-making on an informal inter-governmental basis. The report recommended that the Scottish Parliament work with the Scottish Government to clearly define its scrutiny role to ensure meaningful scrutiny of inter-governmental working.<sup>8</sup>

Given the complexity of the new constitutional framework following the UK's departure from the EU (in particular the interaction between the Internal Market Act, Common Frameworks and Scottish Ministers' keeping pace power), the report of the European, External Affairs and Culture Committee stressed the importance of inter-parliamentary working during session six. The Committee saw this as "as a key means of adding value to scrutiny of the EU-UK relationship in the next session of Parliament"<sup>9</sup> and recommended that its successor committee develop good relations with other legislatures across the UK and with ministers from other governments in the UK including UK Government ministers.

The value of inter-parliamentary working was also recognised by the legacy expert panel report to the Finance and Constitution Committee, which recommended "more effective inter-parliamentary working in response to the impact of Brexit on devolution. In particular, in developing inter-parliamentary working as a mechanism for improving the scrutiny of inter-governmental relations in areas such as common frameworks."<sup>10</sup>

#### Power of Scottish Ministers to keep pace with EU law

EU law ceased to apply in the UK at the end of 2020, and Scottish legislation no longer requires to be compatible with EU law. However, Scottish Ministers have indicated that, where appropriate, they would like to see Scots Law continue to align with EU law.

Part 1 (section 1(1)) of the [UK Withdrawal from the European Union \(Continuity\) \(Scotland\) Act 2021](#) confers a power on Scottish Ministers to allow them to make regulations (secondary legislation) with the effect of continuing to keep Scots law aligned with EU law in devolved areas (the "keeping pace" power).

The session five European, External Affairs and Culture Committee recommended that the extent to which there is alignment with or variation from the EU regulatory regime is likely to be a key scrutiny challenge in session six. The Committee felt that how decisions on the use of the "keeping pace" power are made and the impact on those decisions of the interaction with the UK Internal Market Act 2021 and common frameworks will be an area which a future committee will wish to monitor and consider<sup>11</sup>.

Similarly, the legacy expert report to the Finance and Constitution Committee highlighted the need for the Parliament to consider its scrutiny role in relation to the

---

<sup>8</sup> [Legacy expert panel report to the Finance and Constitution Committee](#), February 2021, para 114, 116 and 148

<sup>9</sup> [Culture, Tourism, Europe and External Affairs Committee Legacy Paper](#). March 2021, para 31

<sup>10</sup> [Legacy expert panel report to the Finance and Constitution Committee](#), February 2021, para 24

<sup>11</sup> [Culture, Tourism, Europe and External Affairs Committee Legacy Paper](#). March 2021, paras 26-28

keeping pace power and the interaction between the exercise of it by Scottish Ministers and other post EU exit UK legislation and constitutional arrangements. The legacy expert panel report recommended that the Scottish Parliament, in consultation with the Scottish Government, consider “the appropriate and proportionate level of scrutiny of the operation of the future relationship with the EU, the keeping pace power, common frameworks and the market access principles and how these interact”<sup>12</sup>.

The legacy expert panel also noted the Finance and Constitution Committee’s successor committee’s likely “lead role in agreeing guidance with the Scottish Government on how the Parliament’s scrutiny function will work in areas such as the keeping pace power and the operation of common frameworks.”<sup>13</sup> Work on this guidance has continued at an official level during the pre-election period.

### Keeping Pace with EU law

Following the UK’s departure from the EU, Scottish Ministers have indicated that, where appropriate, they would like to see Scots Law continue to align with EU law.

Part 1 (section 1(1)) of the [UK Withdrawal from the European Union \(Continuity\) \(Scotland\) Act 2021](#) confers a power on Scottish Ministers to allow them to make regulations (secondary legislation) with the effect of continuing to keep Scots law aligned with EU law in some areas of devolved policy (the “keeping pace” power).

In order to enable the Parliament to effectively hold the Scottish Government to account when using the keeping pace power, the Act requires Scottish Ministers to lay reports (first in draft form for consultation and then a final version) before Parliament on the intended and actual use of the power. There are two forms of reporting to Parliament, a Policy Statement and an Annual Report.

It is expected that the Scottish Government will lay the draft Policy Statement shortly after summer recess. Parliament officials began considering approaches to scrutiny of both the Policy Statement and the Annual Report during the election recess. It is anticipated that the Constitution, Culture, Tourism and Europe and External Affairs Committee will be the lead committee in considering the Policy Statement and the Annual Report.

### Trade

The regulation of international trade is reserved by Schedule 5 of the [Scotland Act 1998](#). However, implementing international obligations in relation to devolved matters is devolved.<sup>14</sup> The Act also enables the Scottish Government to assist the UK Government in relation to international relations, including the regulation of international trade, as it relates to devolved matters.<sup>15</sup>

---

<sup>12</sup> [Legacy expert panel report to the Finance and Constitution Committee](#), February 2021, para 22

<sup>13</sup> [Legacy expert panel report to the Finance and Constitution Committee](#), February 2021, para 92

<sup>14</sup> Schedule 5, paragraph 7(1) and 7(2)(a)

<sup>15</sup> Schedule 5, paragraph 7(2)(b)

Prior to UK exit from the European Union, responsibility for the negotiation and scrutiny of trade agreements rested primarily with the European Union. As such, trade policy represents a new area of policy-making for UK legislatures and governments.

Trade may fall within the remit of the Economy and Fair Work Committee. The Minister responsible is Ivan McKee MSP, Minister for Business, Trade, Tourism and Enterprise.

The legacy reports of both committees raised trade as an area which successor committees would need to be aware of given the potential for the [EU-UK Trade and Cooperation Agreement](#) (TCA – see **Glossary**) and future international trade agreements to impact on the scope and effectiveness of devolved legislation.

#### International trade agreements

As recent publicity surrounding the negotiations for a UK-Australia trade agreement demonstrates future bilateral trade agreements negotiated by the UK Government are also likely to include commitments in areas of devolved competence<sup>16</sup>. The commitments made as part of trade agreements may, therefore, present a constraint on the exercise of devolved competence.

Recognising this, the session five legacy reports of both the Culture, Tourism, Europe and External Affairs Committee and the Finance and Constitution Committee’s legacy expert panel raised scrutiny of new international trade agreements as an area of interest to successor committees.

The legacy expert panel report focused its attention on the impact of trade matters on the devolution settlement, choosing to highlight in particular the scrutiny challenge for the session six Parliament. The report concluded that:

*“While devolved administrations might have or be given powers to implement these agreements – as in the UK Trade Bill – there remain problems with parliamentary scrutiny of the content of these trade agreements and how they might impact on changes in domestic regulatory policy.”<sup>17</sup>*

The legacy expert panel report noted that the Finance and Constitution Committee had “consistently emphasised that it is essential that the devolved institutions are involved at all stages of the trade negotiation process<sup>18</sup>” and that it had recommended that “the Ministerial Forum for Trade provides for meaningful engagement between the UK Government and the devolved administrations and allows for the four nations of the UK to develop a consensual position before the beginning of trade negotiations.”

The view of the session five Finance and Constitution Committee legacy expert panel was that “it is essential that the Forum is accountable to the devolved legislatures to enable scrutiny of its decisions”<sup>19</sup>. It also believed that future trade agreements with

---

<sup>16</sup> SPICe spotlight, [A good deal: agriculture and the UK-Australian free trade agreement](#), June 2021

<sup>17</sup> [Legacy expert panel report to the Finance and Constitution Committee](#), February 2021, para 142

<sup>18</sup> *Ibid*, para 141

<sup>19</sup> *Ibid*, para 141

non-EU countries might have significant implications for the Scottish Government's regulatory autonomy.

#### The EU-UK Trade and Cooperation Agreement (TCA)

The TCA's governance arrangements provide wide-ranging powers for the European Commission and the UK Government in the management of the Agreement. It also provides a limited role for the UK Parliament in partnership with the European Parliament.

Despite the Agreement impacting on devolved matters, no role is set out for the devolved administrations or legislatures. Given the importance of the governance arrangements, devolved institutions may wish to explore ways to oversee and seek to influence the operation of the TCA<sup>20</sup>.

A 'Partnership Council', co-chaired by the European Commission and the UK Government, will oversee the implementation of the TCA. The Partnership Council will be supported by nineteen Specialised Committees and four working groups. The Specialised Committees will consider issues which are within devolved competence such as fisheries, law enforcement and judicial co-operation.

It is not yet clear what role the devolved administrations will play in the governance structures of the TCA. The governance structures will, however, be crucial to managing the relationship between the UK and the EU. As such, the Culture, Tourism, Europe and External Affairs Committee recommended that the Scottish Government, at Ministerial and official level as appropriate, should be present at meetings of the Partnership Council or its supporting committees and working groups where devolved policy areas are being discussed. The first meeting of the Partnership Council was held on 9 June 2021. According to the [agenda for the meeting](#), the devolved administrations were to be represented at the meeting.

The TCA governance structure also establishes a 'Parliamentary Partnership Assembly'. The Parliamentary Partnership Assembly (PPA) is proposed to consist of Members from the European Parliament and UK Parliament. The European Committee recommended that given the governance framework deals with devolved competences, that representation from the Scottish Parliament be included on the PPA.

The House of Commons Public Administration and Constitutional Affairs Committee is currently [undertaking an inquiry into "post-Brexit scrutiny of international treaties"](#). Included in the inquiry remit is consideration of the question:

What role should devolved governments and legislatures, Crown Dependencies and Overseas Territories have in relation to international treaties and arrangements?

The Committee is currently welcoming written evidence, the deadline for which is Wednesday 30 June 2021.

---

<sup>20</sup> SPICe Spotlight, [The governance and oversight of the EU-UK Trade and Cooperation Agreement – what role for the devolved institutions](#), March 2021

The session five Culture, Tourism, Europe and External Affairs Committee also recommended that its session six successor committee monitor the operation of the TCA, hearing from Scottish stakeholders that:

*“the new ‘trading relationship’ with the EU is having a significant impact on key sectors of the Scottish economy and this is likely to intensify in the coming months”<sup>21</sup>.*

Consideration of the operation of the Ireland and Northern Ireland Protocol was undertaken by the Culture, Tourism, Europe and External Affairs Committee. It was concerned by the implications of the Protocol for the trading relationship between Scotland and Northern Ireland and especially for the port of Cairnryan and the south west of Scotland. The effective operation of the Protocol is still subject to negotiations between the UK Government and the European Commission. It was a recommendation of the Committee that its successor monitor the operation of the Protocol as a matter of priority early in session six.

The report of the legacy expert panel to the Finance and Constitution Committee highlighted the impact of the TCA on future legislative scrutiny, stating that:

*“When scrutinising Scottish bills or subordinate legislation, the limits on regulatory autonomy will not always be clear, given the impacts of the UKIMA, common frameworks and the Trade and Cooperation Agreement (TCA)... Analysing such legislation presents a different challenge to the more familiar one of determining what the limits of legislative or executive competence are. Both exercises will be necessary to fully understand the policy approach being taken.”<sup>22</sup>*

The legacy expert panel report also raised the administrative changes linked to trade, highlighting new UK-wide bodies such as the Trade Remedies Authority and the Trade and Agriculture Commission, explaining that “While these bodies are often established to keep them at arm’s length from Ministers, their activities may involve policy choices and have real world impacts.”<sup>23</sup>

## **Part two**

### Legislative powers

The legacy expert panel report to the Finance and Constitution Committee highlighted the changing nature of legislative powers in the post EU era and the scrutiny challenge which this posed. It noted the need for scrutiny of the exercise within devolved competence of the legislative powers of both UK Government and Scottish Government Ministers in areas previously within the competence of the EU and the statutory and non-statutory constraints on the use of those powers<sup>24</sup>. Many of those statutory and non-statutory constraints are explored in this paper.

### United Kingdom Internal Market Act 2020

---

<sup>21</sup> [Culture, Tourism, Europe and External Affairs Committee Legacy Paper](#), March 2021, para 4

<sup>22</sup> [Legacy expert panel report to the Finance and Constitution Committee](#), February 2021, para 118

<sup>23</sup> *Ibid*, para 139

<sup>24</sup> *Ibid*, para 170-177

The [United Kingdom Internal Market Act 2020](#) establishes two market access principles to protect the flow of goods and services in the UK's internal market<sup>25</sup>:

- the principle of mutual recognition means goods and services which can be sold lawfully in one nation of the UK can be sold in any other nation of the UK
- the principle of non-discrimination means authorities across the UK cannot discriminate against goods and service providers from another part of the UK.

The market access principles in the Act have the potential to disapply devolved legislation and significantly reduce its impact. Before the Act came into force, Scottish legislation applied to all goods and services within Scotland.

The UK Internal Market Act 2020 means that goods and services produced in Scotland will be subject to Scottish legislation but those coming into Scotland from elsewhere in the UK will not be so long as they meet any regulatory standards in the place they originated.

Further, goods which originate in another country (i.e. outside the UK) but which meet the rules of the UK nation in which they arrive can then be sold across the UK. Accordingly, goods which are imported first into another UK nation and transported from there into Scotland do not need to meet different Scottish rules and standards. This means that trade agreements have the potential to increase the impact of the Internal Market Act.

UK Government Ministers do have the power to disapply the Act's market access principles where the UK Government has agreed with one or more of the devolved governments that divergence is acceptable through the common frameworks process, but they are not obliged to do so.

The Finance and Constitution Committee's legacy expert panel report stated that "as a minimum, the Parliament will need to be sighted on and understand the impact on its competences arising from the operation of the UK internal market and especially the level of policy divergence both within the UK and between the different parts of the UK and the EU."<sup>26</sup>

The [Scottish Government has also argued](#) that the UK Internal Market Act means that the UK Government can more readily disregard the views and policies of devolved administrations in trade negotiations, as any outcomes of negotiations can be imposed across the UK through the Act's provisions.

The [Scottish Government has stated](#) it believes that "while devolved legislatures will technically still be able to legislate as they currently do, laws that they pass will be fundamentally undermined by the Act's market access principles as well as being potentially open to legal challenge under the Act"<sup>27</sup>.

---

<sup>25</sup> Explored in more detail in detail in the [SPICe Briefing on the Internal Market Bill](#).

<sup>26</sup> **Ibid, para 23**

<sup>27</sup> [After Brexit: The UK Internal Market Act and devolution](#), Scottish Government, March 2021, para 109

The UK Internal Market Act also gives the UK Government a new power to spend in devolved policy areas such as economic development, culture, infrastructure (including health, education, housing and prisons), domestic educational and training activities and exchanges, and international educational and training activities and exchanges. The UK Shared Prosperity Fund will be run by the UK Government with potentially little involvement of the Scottish Government in which case it may be challenging for the Scottish Parliament to scrutinise this spending in devolved areas.

### Common Frameworks

During its membership of the European Union, the UK was required to comply with EU law. This meant that, in many policy areas, a consistent approach was often adopted across all four nations of the UK, even where those policy areas were devolved. With the requirement to comply with EU law now at an end, the UK and devolved governments have agreed that a number of common frameworks will be needed to avoid significant policy divergence between the nations of the UK, where that would be undesirable.

The Scottish Government and the Scottish Parliament have worked together to produce a protocol for the sharing of information on common frameworks. As part of its scrutiny role, the Scottish Parliament needs to be able to consider the Scottish Government's approach to the development of common frameworks. The committees of the Scottish Parliament will lead on common frameworks in their policy area, providing scrutiny of these when required.

The legacy expert panel noted in its report to the session five Finance and Constitution Committee that a successor committee could have "a monitoring and co-ordinating function in relation to how devolution is working following Brexit<sup>28</sup>", extending to reviewing how the common frameworks process is operating and agreeing guidance with the Scottish Government on how the Parliament's scrutiny function will work in areas such as the operation of common frameworks.

### External Affairs

Due to the work involved in scrutinising the implications of the UK's departure from the EU and the impact of the COVID-19 pandemic, the session five Culture, Tourism, Europe and External Affairs Committee had little time to consider external affairs matters.

Whilst the Committee launched an inquiry into the Scottish Government's external affairs policy in June 2019, other commitments meant it was unable to take the inquiry forward. As a result, the Committee recommended that "scrutiny of the Scottish Government's external affairs policy may be an area of scrutiny which a successor Committee may wish to undertake in the next session"<sup>29</sup>.

### Culture

In the area of culture policy, the session five Culture, Tourism, Europe and External Affairs Committee legacy report highlighted four areas of work it had considered:

---

<sup>28</sup> [Legacy expert panel report to the Finance and Constitution Committee](#), February 2021, para 92

<sup>29</sup> [Culture, Tourism, Europe and External Affairs Committee Legacy Paper](#). March 2021, para 38

- arts funding;
- support for the screen sector;
- Glasgow School of Art; and
- census 2022.

In relation to arts funding, the Committee concluded that “the impact of the Covid-19 pandemic has placed even greater pressure upon the arts, including funding”<sup>30</sup>. The Committee highlighted the findings of its arts funding inquiry and recommended that a successor Committee continue to monitor how funding is being used to support the arts including assessing whether “government portfolios are strategically aligned to fund the arts in a way that supports and delivers national outcomes”<sup>31</sup>.

In relation to the screen sector, the Committee recommended that the session six Committee should “scrutinise public sector broadcasters, and the broadcasting landscape generally, regarding commissioning of Scottish content and the role of commissioners based in Scotland”<sup>32</sup>.

The Committee also recommended that its successor Committee should “continue to monitor the progress of Screen Scotland in the next session of Parliament”<sup>33</sup>.

In relation to the Glasgow School of Art, the report recommended that at the conclusion of the Scottish Fire and Rescue Service investigation into the 2018 fire, the Scottish Government should establish a public inquiry with judicial powers into the 2014 and 2018 fires at the Glasgow School of Art.

The Culture, Tourism, Europe and External Affairs Committee was the lead Committee scrutinising the [Census \(Scotland\) Amendment Bill](#) and subsequently on associated secondary legislation required for the delivery of the census in 2021. As a result of the Covid-19 pandemic, the Scottish Government decided to postpone the census until March 2022.

The legacy report recommended that a successor Committee “continue to monitor progress in delivery of the Census in 2022 and, in particular, to scrutinise the cost of delivering the Census and how the data from the Scottish Census will be comparable to other census data in the UK”<sup>34</sup>.

#### Covid-19 and culture

In response to the Covid-19 pandemic, the Culture, Tourism, Europe and External Affairs Committee undertook a rolling programme of scrutiny to examine the impact of the virus on Scotland’s culture and tourism sectors in recognition of the fluid nature of the response to the pandemic.

---

<sup>30</sup> [Culture, Tourism, Europe and External Affairs Committee Legacy Paper](#). March 2021, para 62

<sup>31</sup> [Culture, Tourism, Europe and External Affairs Committee Legacy Paper](#). March 2021, para 62

<sup>32</sup> [Culture, Tourism, Europe and External Affairs Committee Legacy Paper](#). March 2021, para 68

<sup>33</sup> [Culture, Tourism, Europe and External Affairs Committee Legacy Paper](#). March 2021, para 71

<sup>34</sup> [Culture, Tourism, Europe and External Affairs Committee Legacy Paper](#). March 2021, para 79

The Committee used its Legacy Paper to recommend that a session six Committee should “take stock of the position of the culture and tourism sectors early in the next session of Parliament”<sup>35</sup>.

## Glossary

**Common framework:** an agreed approach to a particular policy, including the implementation and governance of it. Common frameworks are being developed to ensure that rules and regulations in certain policy areas remain consistent across the UK.

**Deficiency correction:** Changes required to be made to EU retained law to ensure it worked effectively in domestic law. Over 80,000 ‘deficiencies’ were corrected. Given the unprecedented scale of the exercise, UK and Scottish Government Ministers were given special powers under the [European Union Withdrawal Act 2018](#) (EUWA) to correct deficiencies through subordinate legislation.

**EU-UK Trade and Cooperation Agreement (TCA):** The TCA sets out preferential arrangements in areas such as trade in goods and services. It is underpinned by provisions ensuring a level playing field and respect for fundamental rights. The TCA does not match the level of economic integration that existed while the UK was an EU Member State, but it does go beyond traditional free trade agreements.

**Protocol 1:** Where Scottish Ministers allowed the UK Government to correct deficiencies within devolved competence on their behalf, rather than exercising their own equivalent powers in the EUWA, the Scottish Ministers notified the Scottish Parliament under this protocol which was agreed between the Scottish Government and the Scottish Parliament. The role of the Parliament was to scrutinise the proposal by Scottish Ministers to consent to the deficiency being corrected by UK statutory instrument laid in the UK Parliament (rather than in legislation laid in the Scottish Parliament). There may be some instruments containing provisions relating to devolved matters made under the EUWA to fix deficiencies in retained EU law in session six.

**Protocol 2:** A number of Brexit related UK Parliament Acts have conferred powers on UK Ministers to make regulations in areas of devolved competence. It is expected that the UK Government will make use of these powers to make instruments that would include provisions within the legislative competence of the Scottish Parliament. There are significant numbers of such powers which are far wider than deficiency correcting and will have an impact on policy. In most cases Scottish Ministers’ consent will be sought ahead of the exercise of these powers by UK Ministers. The Scottish

---

<sup>35</sup> [Culture, Tourism, Europe and External Affairs Committee Legacy Paper](#). March 2021, para 46

Parliament and the Scottish Government have agreed this protocol which will enable the Scottish Parliament to scrutinise the consent by Scottish Ministers to such provisions.

**Retained EU law:** a snapshot of the EU law which was in place in the UK on 31 December 2020. Created so that there was legislative continuity in the law which applied in the UK immediately prior to and immediately after leaving the EU.

**Section 12 powers:** the European Union (Withdrawal) Act 2018 gives UK Ministers powers to make freezing regulations for up to two years from 'exit day' (i.e., until 31 January 2022). The regulations themselves expire five years after they come into force. The power could be used to prevent the introduction of new regulatory measures by the Scottish Parliament and Scottish Government in policy areas which are currently devolved. To date the UK Government has made no such regulations. These powers are known, for short, as section 12 powers because the power to make freezing regulations in relation to the Scottish Parliament's competence is in section 12 of the Act; the equivalent power to freeze the Scottish Government's competence to make secondary legislation is in Schedule 13, paragraph 1 of the Act. Both these sections amended the Scotland Act 1998 (sections [30A](#) and 57(4) respectively).

**UK Internal Market Act 2020:** An Act of the UK Parliament, the [United Kingdom Internal Market Act 2020](#) establishes two market access principles to protect the flow of goods and services in the UK's internal market.

**Sarah Atherton (Constitution), Iain Mclver (Europe and External Affairs) and Ned Sharratt (Culture)**  
**SPICe research**  
**14 June 2021**