



HOUSE OF LORDS

European Union Committee

3rd Report of Session 2019–21

Scrutiny of international agreements

Treaties considered on 29 January 2020

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The European Union Committee

The European Union Committee is appointed each session “to scrutinise documents deposited in the House by a Minister, and other matters related to the European Union”.

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

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The Members of the European Union Select Committee are:

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<u>Lord Cavendish of Furness</u>	<u>Earl of Kinnoull (Chair)</u>	<u>Lord Sharkey</u>
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Committee Staff

The current staff of the Committee are Christopher Johnson (Principal Clerk), Stuart Stoner (Clerk), George Webber (Second Clerk), Tim Mitchell (Legal Adviser), Alex Horne (Legal Adviser) and Samuel Lomas (Committee Assistant).

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SUMMARY

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

The report addresses two agreements, which we have reported for information:

- Transitional Agreement on Social Security between the United Kingdom of Great Britain and Northern Ireland and the Swiss Confederation for a Temporary Period following the Withdrawal of the United Kingdom from the European Union and the Free Movement of Persons Agreement (CP 199)
- Partnership, Trade and Cooperation Agreement between the United Kingdom of Great Britain and Northern Island and the Republic of Kosovo (CP 201)

Scrutiny of international agreements: treaties considered on 29 January 2020

CHAPTER 1: AGREEMENTS REPORTED FOR INFORMATION

Transitional Agreement on Social Security between the United Kingdom of Great Britain and Northern Ireland and the Swiss Confederation for a Temporary Period following the Withdrawal of the United Kingdom from the European Union and the Free Movement of Persons Agreement (CP199)¹

Introduction

1. The Agreement between the UK and the Swiss Confederation on Social Security between the United Kingdom of Great Britain and Northern Ireland and the Swiss Confederation for a Temporary Period following the Withdrawal of the United Kingdom from the European Union and the Free Movement of Persons Agreement ('the Agreement') was laid on 20 December 2019, and the scrutiny period is scheduled to end on 12 February 2020. It was considered by the EU Internal Market Sub-Committee on 21 January 2020.
2. EU rules on social security coordination protect the social security rights of EU nationals who move or travel within the EU. Underpinning these rules are four key principles:
 - Individuals may only be subject to the social security legislation of one Member State at a time;
 - There may be no discrimination on grounds of nationality between a Member State's own nationals and those of other EU Member States (referred to as 'equal treatment');
 - Periods of insurance, employment or residence in different Member States can be aggregated when determining an entitlement to a contributory benefit;
 - Generally, benefits can also be accessed from, or sent to, another Member State (known as 'exportability').

1 Transitional Agreement on Social Security between the United Kingdom of Great Britain and Northern Ireland and the Swiss Confederation for a Temporary Period following the Withdrawal of the United Kingdom from the European Union and the Free Movement of Persons Agreement, CP 199, 2019: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/854406/CS_Switzerland_7.2019_UK_Switzerland_Transitional_Agreement_on_Social_Security_for_a_Temporary_Period_following_the_Withdrawal_of_the_UK_from_the_European_Union_and_the_Free_Movement_of_Persons_Agreement.pdf [accessed 23 January 2020]

3. The EU-Swiss Free Movement of Persons Agreement (FMOPA) provides for the application of EU social security coordination rules, including reciprocal healthcare, between Member States and Switzerland.²
4. The UK and Switzerland have concluded a suite of bilateral arrangements to prepare for UK withdrawal from the EU. Among them is the UK-Swiss Citizens' Rights Agreement, which we reported on in March 2019.³ This will ensure the continued protection of certain rights of UK nationals living in Switzerland, and *vice versa*, once the FMOPA ceases to apply to the UK. Those covered by the Citizens' Rights Agreement will continue to benefit from the EU social security coordination framework. In addition, an Agreement on Admission to the Labour Market would have required Switzerland, in the event of 'no deal', to reserve a quota of permits for UK nationals wishing to take up employment or self-employment in Switzerland up until December 2020; the UK committed to treating Swiss workers coming to the UK at least as favourably. This arrangement would not have covered social security coordination.⁴

The Agreement

5. This latest Agreement was drawn up with a view to protecting the social security rights of UK, Swiss and EU nationals who moved to, travelled to or worked in Switzerland between the date of a 'no deal' exit and December 2020—for example, UK and Swiss nationals benefiting from the Agreement on Admission to the Labour Market. Notably, the Agreement would have ensured that those in scope could continue to have their contribution periods aggregated (including towards a UK State Pension), to access and export benefits, and to enjoy the benefit of reciprocal healthcare cover—including under the S1 and S2 schemes⁵ and the European Health Insurance Card. The Agreement also upheld the principle that nationals may only be subject to one set of social security rules at a time.
6. The accompanying explanatory memorandum (EM) states that the Agreement would not have superseded or replaced the UK-Swiss Citizens' Rights Agreement but would have operated alongside it. But it would have

2 Decision of the Council, and of the Commission as regards the Agreement on Scientific and Technological Cooperation, of 4 April 2002 on the conclusion of seven Agreements with the Swiss Confederation [OJ L 114](#) (30 April 2002)

3 Agreement on Citizens' Rights following Withdrawal of UK from the EU and Free Movement of Persons Agreement, CP 64, 2019: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/782490/CS_Swiss_5.2019_Citizens.pdf [accessed 16 January 2020]. In March 2019, we drew the UK-Swiss Citizens' Rights Agreement to the special attention of the House: see European Union Committee, *Scrutiny of international agreements: treaties considered on 19 March 2019* (34th Report, Session 2017–19, HL Paper 321).

4 Agreement between the United Kingdom of Great Britain and Northern Ireland and the Swiss Confederation on Admission to the Labour Market for a Temporary Transitional Period following the withdrawal of the United Kingdom from the European Union and the Free Movement of Persons Agreement, CP 152, 2019: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/818453/CS_Switzerland_6.2019_Agreement_Admission_Labour_Market_Temporary_Transitional_Free_Movement_Persons.pdf [accessed 16 January 2020]. In September 2019, we drew the UK-Swiss Agreement on Admission to the Labour Market to the special attention of the House: see European Union Committee, *Scrutiny of international agreements: treaties considered on 9 September 2019* (46th Report, Session 2017–19, HL Paper 421)

5 The S1 scheme allows individuals from any EU/EEA country and Switzerland to receive ongoing health and social care in another country. It is aimed at individuals temporarily posted to another country and those receiving an exportable benefit, for example a pension. The S2 scheme enables individuals to travel to any EU/EEA country or Switzerland to receive medical treatment, funded by their country of residence, at certain conditions.

provided “additional entitlements ... to those who cease to have or never had full rights” under the Citizens’ Rights Agreement. The EM does not describe these additional entitlements in more detail.

Entry into force and amendments

7. The Agreement was designed only to enter into force in the absence of a “relevant UK-EU Withdrawal Agreement”—defined in Article 1(1)(d) as an agreement on UK withdrawal from the Union that “has the effect of creating appropriate provision in relation to social security coordination between the UK and Switzerland”. The likely ratification of the UK-EU Withdrawal Agreement, ahead of withdrawal on 31 January, has removed the conditions under which the Agreement would have taken effect.
8. Article 14 provides for the Agreement to be amended through an exchange of notes between the Parties. The EM indicates that, since any such exchange would set the date of application of the amendment, it would not engage parliamentary scrutiny under the Constitutional Reform and Governance Act 2010.

Territorial application

9. In line with the FMOPA, the Agreement would have also applied to Gibraltar. Other Overseas Territories and the Crown Dependencies would not have participated in the Agreement, as they have separate social security coordination arrangements.

Consultation

10. The EM states that, since the Agreement touches on areas of devolved competence, such as devolved social security benefits, the Government alerted the devolved administrations of the Agreement and shared the draft text with them, as well as with Gibraltar. It is unclear whether the devolved administrations or Gibraltar submitted any comments in relation to the Agreement.

Future UK-Swiss arrangements

11. The EM does not discuss the Government’s plans for a future UK-Swiss arrangement on social security coordination, covering individuals moving to, travelling to or working in the UK or Switzerland after December 2020.

Government engagement

12. Unlike with previous international agreements scrutinised by this Committee, Government officials felt unable to provide more detail on the issues raised in this report, including on:
 - the nature and scope of the “additional entitlements” provided by the Agreement;
 - what views (if any) have been expressed from the devolved administrations and the Government of Gibraltar; and
 - the Government’s plans for social security coordination with Switzerland beyond December 2020.

13. Good cooperation between officials and committee staff has significantly facilitated our scrutiny of treaties thus far, and is indeed a prerequisite for effective committee scrutiny, given the time constraints imposed by the Constitutional Reform and Governance Act 2010. We trust that such cooperation will resume in the future, and in the meantime invite the Government to respond in writing on the issues identified in the bullet points above.

Conclusion

14. **We report the UK-Swiss Social Security Agreement for information.**

Partnership, Trade and Cooperation Agreement between the United Kingdom of Great Britain and Northern Ireland and the Republic of Kosovo (CP 201)⁶

Background

15. The Partnership, Trade and Cooperation Agreement ('PTCA') between the UK and the Republic of Kosovo was laid on 20 December 2019, and the scrutiny period is scheduled to end on 11 February 2020. It was considered by the EU Internal Market Sub-Committee on 21 January 2020.
16. Kosovo is a prospective candidate EU country. As an EU Member State, the UK is party to the existing EU-Kosovo Stabilisation and Association Agreement ('SAA'), which entered into force in April 2016.⁷ The SAA was preceded by EU-Kosovo dialogues on issues such as visa liberalisation and rule of law.
17. Trade in goods between the UK and Kosovo is small in volume, and is almost entirely made up of UK goods exports to Kosovo, which were estimated by ONS to amount to £1 million in 2018.⁸ Trade in services between Kosovo and the UK is negligible, according to the parliamentary report accompanying the PTCA.⁹

The new Agreement

18. The PTCA intends to maintain the effects of the EU-Kosovo agreement in a bilateral context from the point at which the EU-Kosovo agreement ceases to apply to the UK. It covers trade in goods and services, as well as commitments in other areas such as intellectual property and government procurement, respect for the rule of law and human rights.
19. These latter commitments are especially important given the close political relationship between the UK and Kosovo. The Government's EM notes the UK's continued commitment to Kosovo's progress towards EU and NATO membership as a "stable, prosperous and multi-ethnic" country. The PTCA

6 Partnership, Trade and Cooperation Agreement between the United Kingdom of Great Britain and Northern Ireland and the Republic of Kosovo, CP 201, 2019: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/854384/CS_Kosovo_1.2019_UK_Kosovo_Partnership_Trade_and_Cooperation_Agreement.pdf [accessed 23 January 2020]

7 Stabilisation and Association Agreement between the European Union and the European Atomic Energy Community, of the one part, and Kosovo, of the other part, [OJ L 71](#) (16 March 2016)

8 Office for National Statistics, 'UK total trade: all countries, non-seasonally adjusted' (22 October 2019): <https://www.ons.gov.uk/businessindustryandtrade/internationaltrade/datasets/uktotaltradeallcountriesnonseasonallyadjusted> [accessed 21 January 2020]

9 Foreign and Commonwealth Office, *Continuing the United Kingdom's Trade Relationship with the Republic of Kosovo*, December 2019: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/856045/UK_Kosovo_trade_parliamentary_report.pdf [accessed 23 January 2020]

also provides for the UK to continue to fulfil its financial commitments to Kosovo and emphasises that normalisation of relations between Kosovo and Serbia is central to the UK-Kosovo bilateral relationship.

20. It is notable that the PTCA amends the SAA to remove the requirement in the EU agreement for Kosovo to sustain its “continued engagement towards a visible and sustainable improvement in relations with Serbia” (Article 5, SAA). The parliamentary report expresses this as a way of “equalis[ing] the treatment of normalisation in the UK’s relationship with both Kosovo and Serbia”, noting that the EU-Serbia agreement was concluded before the EU-facilitated Kosovo-Serbia dialogue began.¹⁰ This change prevents the UK, unlike the EU, from unilaterally terminating the agreement if Kosovo does not continue to work towards normalisation of relations with Serbia.
21. We reiterate the point made in earlier reports on treaties, that the way in which EMs phrase the Government’s consultation with the devolved administrations and the Crown Dependencies is unhelpful.¹¹ We urge the Government to revise the ‘Consultations’ section of EMs, so that they state explicitly whether and when the specific agreement was shared with the devolved administrations and what their responses (if any) have been, and whether briefings were requested and held for the devolved administrations, the Crown Dependencies or the Overseas Territories. We note that consultation with the devolved administrations will be even more important when the United Kingdom starts to negotiate new international agreements after Brexit.
22. We note that the PTCA does not automatically establish a bilateral channel for parliamentary dialogue and communication comparable to the Stabilisation and Association Parliamentary Committee (‘SAPC’) established in Article 132 of the SAA. Rather, the PTCA leaves it open to the parties to establish such a committee, should they choose. Officials confirmed that this reflected the Government’s general policy of seeking not to bind the UK Parliament without consultation. We have questioned this approach in relation to other agreements, such as the Association Agreement with Chile (CP 35, 2019).¹²
23. Finally, we reiterate our earlier recommendation that, where the Government uses ‘short-form’ agreements, the original EU agreement, relevant decisions by the Joint Committee, and other documents being incorporated by reference should be published online alongside the new agreement.¹³ Those seeking to gain a clear view of this particular agreement and its effects would need to consult at least three separate pages on the Government’s website to access the information needed, and these pages lack adequate direct cross-referencing. We encourage the Government to think again about how it organises such information so as to make new agreements as easy to follow as possible.

Conclusion

24. **We report the Partnership, Trade and Cooperation Agreement between the UK and Kosovo to the House for information.**

10 Foreign and Commonwealth Office, *Continuing the United Kingdom’s Trade Relationship with the Republic of Kosovo*, December 2019, para 54: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/856045/UK_Kosovo_trade_parliamentary_report.pdf [accessed 23 January 2020]

11 European Union Committee, *Scrutiny of international agreements: treaties considered on 9 July 2019* (44th Report, Session 2017–19, HL Paper 402) para 13

12 European Union Committee, *Scrutiny of International Agreements: Treaties considered on 26 February 2019* (31st Report, Session 2017–19, HL Paper 300) para 45

13 European Union Committee, *Scrutiny of International Agreements: Treaties considered on 26 February 2019* (31st Report, Session 2017–19, HL Paper 300) para 10

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

Members of the European Union Select Committee

The Earl of Kinnoull (Chair)
Baroness Brown of Cambridge
Lord Cavendish of Furness
Baroness Couttie
Baroness Donaghy
Lord Faulkner of Worcester
Baroness Hamwee
Lord Jay of Ewelme
Lord Kerr of Kinlochard
Lord Lamont of Lerwick
Lord Morris of Aberavon
Baroness Neville-Rolfe
Lord Oates
Baroness Primarolo
Lord Ricketts
Lord Sharkey
Lord Teverson
Baroness Verma
Lord Wood of Anfield

Declarations of interest

The Earl of Kinnoull (Chair)
Farming interests as principal and as charitable trustee, in receipt of agricultural subsidy
Chairman, Culture Perth and Kinross, in receipt of governmental subsidy
Chairman, United Kingdom Squirrel Accord, in receipt of governmental monies
Shareholdings as set out in the register

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

Lord Cavendish of Furness
Director, Burlington Slate Limited
Shareholder, Holker Holdings Limited
Shareholder, Cartmel Steeplechases (Holker) Limited
Shareholder, Holker Estates Co Limited
Shareholder, Holker Homes Limited
Shareholder, Burlington Slate Limited
Roose and Walney Sand and Gravel Company Limited (The) (Dormant)
Holker Estates Co Limited

Holker Holdings Limited

Cartmel Steeplechases (Holker) Limited

Corrie and Co Limited

Guides over the Kent and Levens Sands Limited

Beneficiary of a Family Trust which owns land in South Cumbria, including residential and business property

Owner of a flat in London SW1 from which rental income is received

Owner of woodlands based in South Cumbria

Baroness Couttie

Non-Executive Director, Mitie

Commissioner, Guernsey Financial Services Commission

Baroness Donaghy

Former President of the Trades Union Congress

Former member of the European Trades Union Congress

Lord Faulkner of Worcester

Chairman, Great Western Railway Advisory Board

Chairman, Alderney Gambling Control Commission

Her Majesty's Government's Trade Envoy to Taiwan

Baroness Hamwee

Liberal Democrat Lords Spokesperson on Immigration

Lord Jay of Ewelme

Trustee (Non-Executive Director), Thomson Reuters Founders Share Company

Vice Chairman, European Policy Forum Advisory Council

Member, Senior European Experts Group

Trustee, Magdalen College, Oxford Development Trust

Lord Kerr of Kinlochard

Chairman, Centre for European Reform

Deputy Chairman, Scottish Power PLC

Member, Scottish Government's advisory Standing Council on Europe

Lord Lamont of Lerwick

Director, Jupiter European Opportunities Trust

Director, Compagnie Internationale de Participations Bancaires et Financieres (CIPAF)

Director, Chelverton UK Dividend Trust

Adviser, Halkin Investments

Adviser, Official Monetary and Financial Institutions Forum (OMFIF)

Adviser, Meinhardt Engineering Group, Singapore

Adviser, Stanhope Capital LLP

Lord Morris of Aberavon

No relevant interests declared

Baroness Neville-Rolfe

Former Commercial Secretary, HM Treasury

Former Minister of State for Energy and Intellectual Property

Chair, UK ASEAN Business Council

Non-Executive Director, Capita Plc

Non-Executive Director, Secure Trust Bank Plc

Non-Executive Director, Health Data Research UK

Trustee (Non-Executive Director), Thomson Reuters Founders Share Company

Shareholdings as set out in the register

Lord Oates

*Director, Centre for Countering Digital Hate
Chairman, Advisory Board, Weber Shandwick UK
Non-Executive Director, NHSBT*

Baroness Primarolo

*Non-executive director and chair, Thompson's Solicitors
Chair, Remuneration Board, National Assembly for Wales*

Lord Ricketts

*Non-Executive Director, Group Engie, France
Strategic Adviser, Lockheed Martin UK
Charitable activities as set out in the Register of Interests*

Lord Sharkey

No relevant interests declared

Lord Teverson

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

Baroness Verma

No relevant interests declared

Lord Wood of Anfield

*Chair of the United Nations Association (UNA-UK)
Director, Good Law Project*

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

Sub-Committee Members and staff

EU Energy and Environment Sub-Committee

Lord Teverson (Chair)
Lord Addington
Lord Arbuthnot of Edrom
Baroness Bryan of Partick
Baroness Byford
Lord Cameron of Dillington
Lord Kerr of Kinlochard
Baroness McIntosh of Pickering
Lord Maxton
The Duke of Montrose
The Earl of Stair
Lord Young of Norwood Green

For relevant interests see: https://www.parliament.uk/documents/lords-committees/eu-energy-environment-subcommittee/scrutiny-2017-19/DoI_Scrutiny_2017-19.pdf

The Sub-Committee staff are Jennifer Mills (Clerk) Oliver Rix (Policy Analyst) and Jodie Evans (Committee Assistant).

EU External Affairs Sub-Committee

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 Baroness Chalker of Wallasey
 Lord Davies of Stamford
 Lord Faulkner of Worcester
 Baroness Finn
 Lord Fraser of Corriegarth
 Lord Oates
 The Earl of Sandwich
 Baroness Symons of Vernham Dean
 Lord Wood of Anfield

For relevant interests see: <https://www.parliament.uk/documents/lords-committees/eu-external-affairs-subcommittee/members-interests-2-2019.pdf>

The Sub-Committee staff are Jennifer Martin-Kohlmorgen (Clerk) and Laura Ayres (Committee Assistant).

EU Financial Affairs Sub-Committee

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 Lord Cavendish of Furness
 Baroness Couttie
 Lord Desai
 Lord Giddens
 Baroness Liddell of Coatdyke
 Baroness Neville-Rolfe
 Lord Thomas of Cwmgiedd
 Viscount Trenchard
 Lord Turnbull
 Lord Vaux of Harrowden

For relevant interests see: <https://www.parliament.uk/documents/lords-committees/eu-financial-affairs-subcommittee/declarations-of-interests-session-2017-19/Interests-2017-19.pdf>

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

EU Home Affairs Sub-Committee

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 Baroness Jolly
 Lord Kirkhope of Harrogate
 Lord Lexden
 Lord McNally
 Lord O'Neill of Clackmannan
 Baroness Primarolo
 Lord Ricketts
 Baroness Scott of Bybrook
 Lord Soley
 Lord Watts

For relevant interests see: <https://www.parliament.uk/documents/lords-committees/eu-home-affairs-subcommittee/scrutiny-work/Scrutiny-interests.pdf>

The Sub-Committee staff are Simon Pook (Clerk), Genevieve Richardson (Policy Analyst) and George Stafford (Committee Assistant).

EU Internal Market Sub-Committee

Baroness Donaghy (Chair)
Lord Berkeley
Lord Carter of Coles
Baroness Kramer
Lord Lamont of Lerwick
Lord Lansley
Lord Lilley
Lord Mountevans
Baroness Prashar
Lord Robathan
Lord Russell of Liverpool
Lord Shipley
Lord Wigley

For relevant interests see: <https://www.parliament.uk/documents/lords-committees/eu-internal-market-subcommittee/Declarations-of-Interests-for-Scrutiny-work-2017-19.pdf>

The Sub-Committee staff are Dominique Gracia (Clerk), Francesca D'Urzo (Policy Analyst) and Glenn Chapman (Committee Assistant).

EU Justice Sub-Committee

Lord Morris of Aberavon (Chair)
Lord Anderson of Ipswich
Lord Anderson of Swansea
Baroness Deech
Lord Dholakia
Lord Gold
Baroness Goudie
Baroness Hamwee
Lord Polak
Lord Rowlands

For relevant interests see: <https://www.parliament.uk/documents/lords-committees/eu-justice-subcommittee/Scrutiny-Interests/declarations-of-interest-for-scrutiny-work-2017-19.pdf>

The Sub-Committee staff are Alex McMillan (Clerk) and Amanda McGrath (Committee Assistant).

A full list of Members' interests can be found in the Register of Lords' Interests: <http://www.parliament.uk/mps-lords-and-offices/standards-and-financial-interests/house-of-lords-commissioner-for-standards-/register-of-lords-interests/>