



House of Commons
European Scrutiny Committee

Thirteenth Report of Session 2019–21

Documents considered by the Committee on 18 June 2020,
including the following COVID-19 related documents:

EU Structural Funds
EU support to the fisheries sector
Flight and travel vouchers
Green lanes

Report, together with formal minutes

*Ordered by the House of Commons
to be printed 18 June 2020*

Notes

Numbering of documents

Three separate numbering systems are used in this Report for European Union documents:

Numbers in brackets are the Committee's own reference numbers.

Numbers in the form "5467/05" are Council of Ministers reference numbers. This system is also used by UK Government Departments, by the House of Commons Vote Office and for proceedings in the House.

Numbers preceded by the letters COM or SEC or JOIN are Commission reference numbers.

Where only a Committee number is given, this usually indicates that no official text is available and the Government has submitted an "unnumbered Explanatory Memorandum" discussing what is likely to be included in the document or covering an unofficial text.

Abbreviations used in the headnotes and footnotes

AFSJ	Area of Freedom Security and Justice
CFSP	Common Foreign and Security Policy
CSDP	Common Security and Defence Policy
ECA	European Court of Auditors
ECB	European Central Bank
EEAS	European External Action Service
EM	Explanatory Memorandum (submitted by the Government to the Committee) *
EP	European Parliament
EU	European Union
JHA	Justice and Home Affairs
OJ	Official Journal of the European Communities
QMV	Qualified majority voting
SEM	Supplementary Explanatory Memorandum
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union

Euros

Where figures in euros have been converted to pounds sterling, this is normally at the market rate for the last working day of the previous month.

Further information

Documents recommended by the Committee for debate, together with the times of forthcoming debates (where known), are listed in the European Union Documents list, which is published in the House of Commons Vote Bundle each Monday, and is also available on the parliamentary website. Documents awaiting consideration by the Committee are listed in "Remaining Business": www.parliament.uk/escom. The website also contains the Committee's Reports.

*Explanatory Memoranda (EMs) and letters issued by the Ministers can be downloaded from the Cabinet Office website: <http://europeanmemoranda.cabinetoffice.gov.uk/>.

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1 Priority EU energy projects¹

This EU document is politically important because:

- it will be applicable during the transition period; and
- is relevant to the future EU-UK relationship.

Action

- Report to the House.
- Draw to the attention of the Business, Energy and Industrial Strategy Committee and the Committee on the Future Relationship with the EU.

Overview

1.1 Projects of Common Interest (PCIs) are specific energy infrastructure projects that are deemed critical for completing the European internal energy market, achieving the EU's energy policy objective of affordable, secure and sustainable energy, and for attaining the Union's climate objectives. The document confers special status on 151 EU-wide energy geographical infrastructure projects, including 15 involving the UK (12 electricity interconnectors, two electricity storage projects and one carbon dioxide network transport project). The UK projects will continue to enjoy priority status during the transition period, but their future after that is uncertain.

1.2 We [wrote](#) to the Minister of State for Business, Energy and Clean Growth (Rt Hon. Kwasi Kwarteng MP) on 30 April 2020 pressing for further detail on future arrangements. The Minister [responded](#) on 18 May and, the following day, the Government published a series of proposed texts concerning the future EU-UK relationship. These included a [draft Energy Agreement](#).

1.3 On the future regulatory approach, the Minister noted that the Government was open to an agreement on energy but was clear that, in any event, trade of electricity over the interconnectors would continue. In the absence of an energy agreement, said the Minister, electricity interconnectors would use alternative trading arrangements put in place by interconnector operators. These would be based on existing fallback systems. Further information on the UK's default approach to the planning and operation of interconnectors is available in the Government [technical notice](#) concerning the trade of electricity from 1 January 2021.

1.4 Regarding future cooperation on energy projects, such as interconnectors, the Minister emphasised that the Government is open to an agreement which facilitates technical cooperation between electricity and gas network operators and organisations in the planning and use of energy infrastructure connecting their systems. He added that any decision on possible UK future participation in the Connecting Europe Fund (which

¹ Commission Delegated Regulation of 31.10.2019 amending Regulation (EU) No 347/2013 of the European Parliament and of the Council as regards the Union list of projects of common interest; Council document [10743/19](#) + ADDs 1–2, C(19) 7772; Legal base: Article 3(4) and 16 of Regulation (EU) No 347/2013; Department: Business, Energy and Industrial Strategy; Devolved Administrations: consulted; ESC number: 40937.

provides financial support to identified priority projects) would need to be taken in light of value for money considerations and the policy positions articulated in the Government's paper published in February 2020: [The Future Relationship with the EU](#).

1.5 Finally, the Minister confirmed that officials were engaging with interconnector projects and other affected stakeholders bilaterally and through dedicated industry forums to keep them updated on negotiations and aid preparations ahead of 1 January 2021.

Action

1.6 We take note of the Minister's response and raise no further queries. We will monitor with interest negotiations concerning the future UK-EU energy relationship. We draw the Minister's response to the attention of the Business, Energy and Industrial Strategy and the Committee on the Future Relationship with the EU.

2 EU Structural Funds: COVID-19 Response²

These EU documents are politically important because they:

- apply during the transition period; and
- propose investment funds that are available to the UK to respond to the coronavirus outbreak.

Action

- Write to the Minister seeking a further update.
- Draw to the attention of the Housing, Communities and Local Government Committee and the Business, Energy and Industrial Strategy Committee.

Overview

2.1 To help Member States and the UK respond to the coronavirus pandemic, the Commission proposed to mobilise available cash reserves under the EU Structural and Investment (ESI) Funds,³ amounting to around €37 billion (£31.5 billion) in total. This Coronavirus Response Investment Initiative (CRII) applies retrospectively in order to cover expenditure from 1 February 2020.

2.2 We [wrote](#) to the Minister for Climate Change and Corporate Responsibility (Lord Callanan) on 7 May 2020 asking for further information on the potential implications for the UK. The Minister [responded](#) on 22 May. He said that Managing Authorities across the UK were working rapidly to consider the opportunities that would be of most benefit for each programme, alongside the Government's economic support package and the EU's Temporary State Aid Framework.

2.3 The Minister explained that UK Managing Authorities were focusing on implementing measures to help existing projects get through this challenging period. Advice to grant recipients and project partners had been published and was updated regularly. UK Managing Authorities were also reviewing the potential to adjust some activities in line with the recovery needs of businesses as the current conditions subside. In all cases, said the Minister, UK Managing Authorities were ensuring that there was no duplication between their activities to meet COVID-19 challenges and the UK's latest business and health support measures.

2 (a) Proposal for a Regulation amending Regulation (EU) No 1303/2013, Regulation (EU) No 1301/2013 and Regulation (EU) No 508/2014 as regards specific measures to mobilise investments in the health care systems of the Member States and in other sectors of their economies in response to the COVID-19 outbreak, (b) Proposal for a Regulation amending Regulation (EU) No 1303/2013 and Regulation (EU) No 1301/2013 as regards specific measures to provide exceptional flexibility for the use of the European Structural and Investments Funds in response to the COVID-19 outbreak; (a) Council document [6816/20](#), COM(20) 113, (b) Council document [7154/20](#), COM(20) 138; Legal base: (a) Articles 43(2), 177 and 178 TFEU (b) Articles 177, 178 and 322(1)(a) TFEU, QMV, Ordinary Legislative Procedure; Department: Business, Energy and Industrial Strategy; Devolved Administrations: Consulted; ESC numbers: 41137, 41176.

3 The European Regional Development Fund (ERDF), the European Social Fund (ESF), the Cohesion Fund (CF), the European Agricultural Fund for Rural Development (EAFRD) and the European Maritime and Fisheries Fund (EMFF).

2.4 With regard to the European Agricultural Fund for Rural Development, the Managing Authority (Department for Environment, Food and Rural Affairs) had taken advantage of a number of the flexibilities announced by the European Commission, including extending the application and claim deadlines for agri-environment and woodland schemes, postponing inspections; and it had introduced new arrangements for paying claims on the basis of alternative evidence where an on-site visit is not possible.

2.5 The Minister concluded by noting that the EU Regulations were complex and that it had taken some time to clarify how these would work in practice in discussion with the European Commission. The UK Managing Authorities were considering how best to use these flexibilities for each ESI Funds Programme and determine what levels of funding would be available for projects to address the economic and health impacts of COVID-19. The Minister promised to update us later in the Summer.

Action

2.6 We have written to the Minister as set out below looking forward to his update. We are copying his letter to the Business, Energy and Industrial Strategy Committee and the Housing, Communities and Local Government Committee.

Letter from the Chair to the Minister for Climate Change and Corporate Responsibility (Lord Callanan)

We have considered your letter of 22 May, providing helpful information about the UK's approach to the Coronavirus Response Investment Initiative. We note interest in the Initiative among UK Managing Authorities and we look forward to a further update later in the Summer as you propose.

3 Contact tracing apps and data protection/privacy⁴

These EU documents are legally important because:

- they highlight the importance for the UK of EU fundamental rights and data protection law during the transition period when rolling out any contact tracing app to combat the spread of COVID-19 and to facilitate an exit from lockdown; and
- EU data protection and fundamental rights law may continue to remain relevant for the UK after transition, should data adequacy decisions (a) still need to be obtained; and (b) need to be maintained, in the light of the Commission's powers to review, amend, suspend or revoke data adequacy decision.

Action

- To keep the documents under scrutiny until further developments in the launch and operation of the UK tracing app.
- To draw this chapter, including the Government's EM and new letter, to the attention of the Digital Culture Media and Sport Committee, the Health and Social Care Committee, the Science and Technology Committee and the Joint Committee on Human Rights.

Overview

3.1 To combat and exit from the COVID-19 crisis, both EU Member States and the UK have been developing and launching contact tracing apps to be downloaded on mobile phones. In a Q&A [document](#) published on 13 May, the EU Commission provides its own explanation of a contract tracing app. This is an app: “voluntarily installed and used to warn users if they have been in proximity for a certain duration to a person who reported to have been tested positive of COVID-19”. If there is an alert, the app “may provide relevant information from health authorities such as advice to get tested or to self-isolate, and who to a contact”.

3.2 On 7 May, the Committee [reported](#) to the House on the issue of COVID-19 contact tracing apps and EU data protection and privacy law. This was against the backdrop of the Government's development of its own app, [NHSX](#) and the [launch](#) of the pilot of the app on the Isle of Wight on 5 May.

4 (a) Commission Recommendation on a common Union toolbox for the use of technology and data to combat and exit from the Covid-19 crisis, in particular concerning mobile applications and the use of anonymised mobility data; [C \(20\) 2296](#); Legal base:—; DCMS; Devolved Administrations:—; ESC number 41205; (b) Commission Communication: Guidance on Apps supporting the fight against COVID 19 in relation to data protection; [C\(20\) 2523](#); Legal base:—; Department: Digital, Culture, Media and Sport; Devolved Administrations:—; ESC number 41206.

3.3 Further information about this app is provided on this NHS COVID-19 [website](#). There is also a comprehensive description in the Government’s [Explanatory Memorandum](#) (EM) published on 5 May. We also highlight the key distinguishing features of the app in paragraph 0.6 below, which is based on information provided in the EM.

3.4 The two EU documents under scrutiny are a [Recommendation](#) and [Communication](#). These provide respectively a common approach for developing tracing apps and non-legally binding guidance applying relevant EU data protection and fundamental rights law to the apps. Key recommendations to ensure compliance with those laws were that apps should be voluntary, decentralised, interoperable and involve public health authorities during the development and implementation phases of the apps.

3.5 When we [reported](#) on 7 May, we did so as a matter of urgency given the topicality of the EU documents. This meant we were unable to take account of the Government’s EM when we wrote to the Secretary of State for Digital, Culture, Media and Sport (Rt Hon. Oliver Dowden CBE MP) on the same day. However, we do so now in this Report chapter. We also report the Government’s [letter](#) of 4 June written in response to our Report and letter.

3.6 Since our [Report](#) more details have emerged about the nature of the NHSX app:

- It is based on voluntary take-up, so users can choose whether to download the app or delete it later.
- Following deletion of the app, all corresponding data stored on the phone, and not shared with the NHS, would be deleted.
- If users do not opt to share their data it will be deleted, on a continuous 28-day cycle within the app, on the phone.
- It uses low energy Bluetooth (wireless) communication between phones to determine proximity and stores the log of pseudonymous⁵ proximity information on the user’s phone.
- It relies on self-reporting by users when they suffer symptoms of COVID-19 to the NHS (if the user so chooses) rather than confirmed diagnosis following testing.

5 Our note: Anonymised data and pseudonymous data are different and attract different legal treatment under the GDPR. Anonymisation refers to the use of a set of techniques in order to remove the ability to link the data with an identified or identifiable natural person against any “reasonable” effort. As such anonymised data falls outside the scope of the GDPR. [Source European Data Protection Board]. The [GDPR](#) defines pseudonymization in Article 3, as “the processing of personal data in such a way that the data can no longer be attributed to a specific data subject without the use of additional information.” To pseudonymise a data set, the “additional information” must be “kept separately and subject to technical and organisational measures to ensure non-attribution to an identified or identifiable person.” Pseudonymous data still allows for some form of re-identification (even indirect and remote), while anonymous data cannot be re-identified.

- It uses anonymised⁶ alerts via the NHS⁷ to all other apps users deemed at risk by notifications received.
- It can be used without users providing directly identifiable data or location data.⁸
- It follows a centralised model with data being stored on an NHS central database and not just limited to individual devices (a decentralised model).

3.7 Also, since our [Report](#), there have been other developments including:

- The [Data Protection Impact Assessment](#) (DPIA) for the Isle of Wight pilot was published by the Government and is now being reviewed by the Information Commissioner and Government has confirmed that further DPIAs⁹ will be published at each stage of a roll-out of the app.¹⁰
- The Joint Committee on Human Rights (JCHR) published their [Report](#) on the human rights implications of digital contact tracing, concluding that there will need to be: clear efficacy and proportionality of data collection; primary legislation providing specific human rights and data protection safeguards; oversight in the form of an independent Digital Contact Tracing Human Rights Commissioner; reviews at 21 day intervals of the app's efficacy and data security; and complete Government transparency on the operation and usage of the app.
- Business Minister Nadhim Zadawi MP [said](#) on 4 June that the app should be up and running in the rest of the UK by the end of June.¹¹ The Information Commissioner, Elizabeth Denham, is reported to have said that a COVID-19 app might need to become compulsory during a second wave of the virus.¹²

Government's initial view

- In his [Explanatory Memorandum](#) of 5 May the Minister of State for Digital, Culture, Media and Sport (Rt Hon. John Whittingdale MP) first provides a substantial summary of the two EU documents which we do not reproduce here. We provided an account of those documents in our last Report.

6 See footnote 3. The NHS itself does not know the real identifies of the senders or recipients of the alerts

7 From the Government's EM: "The decision of precisely which other app users are notified will be determined by a sophisticated 'contact risk model'. NHS doctors and scientists will continuously update this 'contact risk model' to make it as accurate as possible. The model will be based on scientific principles and it will be approved by the Chief Medical Officer. The technology is based on research evidence developed by epidemiologists, mathematical modellers and ethicists at Oxford University's Nuffield Departments of Medicine and Population Health."

8 See the Government's EM.

9 A DPIA sets out the legal basis for the collection of the data and specifies which data will be processed, how it will be stored securely and for what duration of time.

10 In both the EM and the Government's letter to the Chairman of the European Scrutiny Committee of 4 June.

11 BBC News Website, 5 June 2020 reporting on BBC Question Time on 4 June.

12 Comments reported by Mlex as made by the ICO during the webinar organised by Global Counsel on 4 June "What's next for UK and EU data protection? In conversation with Elizabeth Denham, UK Information Commissioner." "Mlex states "Use of the UK's Covid-19 contact-tracing app should be voluntary, but the government may decide to make it mandatory during a second wave of the pandemic, the country's top privacy regulator said today. Elizabeth Denham also said Brexit may give the UK an opportunity to revise its implementation of the EU's strict data-privacy rules, the General Data Protection Regulation, by removing prescriptive provisions."

- Given the importance of information about the tracing app and how it will process an individual's personal data, we now provide a detailed summary of the rest of Government's EM. The headings used are our own.

The reach of the UK app

- The UK app will be part of a wider approach including more traditional contact tracing measures—also protecting vulnerable groups and those who cannot or do not want to access digital tools.
- The app will work across the UK and is supported on both Android and Apple (iOS) phones.

Legal compliance and data protection

- Existing law and NHS standards set out a framework of protective measures to ensure the app is legally compliant and meets the standards expected to keep data secure and confidential. This includes the General Data Protection Regulation (GDPR) and the Data Protection Act 2018.
- If app users choose to submit their data to the NHS it will be held to the highest security standards. In addition to the continual monitoring, review and oversight undertaken by the NHS, the National Cyber Security Centre is reviewing and supplementing Government processes.
- Data that app users have chosen to share with the NHS may be retained for research in the public interest, or by the NHS for planning and delivering services—in line with the law and based on the necessary approvals required by law.

Security and privacy

3.8 The Minister reassures the Committee that:

“Security and privacy has (sic) been prioritised in all stages of the app development—starting with the initial design and user testing. The UK government has drawn on expertise from across government, civil society and industry to review the design and to help test the app. As part of our commitment to transparency, the UK will be publishing the key security and privacy designs alongside the source code—so privacy experts can “look under the bonnet” and help ensure the security is absolutely world class.”

Surveillance and discrimination

3.9 The Minister pledges that “The app will only ever be used for NHS care, public health management, or evaluation and research.”

3.10 He adds:

- To avoid discriminating between people who are digitally enabled and those who are not, the UK Government is supporting the DevicesDotNow campaign to provide internet-enabled devices and support to people who are digitally excluded and shielding or vulnerable due to age, disability, health conditions and social isolation.
- The UK has also carried out user research and testing throughout the development of the app, with people from a range of ages, socio-economic grade, digital skills, gender and ethnicity. As part of the planning for the national launch, a plan will be developed to ensure that the app has significant reach into minority communities.
- The UK Government will always comply with the Public Sector Equality Duty (PSED) which considers the impact of a policy or decision on groups with protected characteristics. An Equality and Health Impact Assessment before each iteration of the app is released will also be conducted.

Involvement of the Information Commissioner and others

- The Information Commissioner's Office has been working with NHSX to help ensure a high level of transparency and governance (see the ICO's statement referenced in our last Report).
- Additionally, the UK Government has consulted the Centre for Data Ethics and Innovation, as well as representatives from Understanding Patient Data and volunteers who provided a patient and public perspective.
- An ethics advisory board has been established for the app, chaired by Professor Sir Jonathan Montgomery from University College London who previously headed the Nuffield Council on Bioethics.
- The NHS is continuing to work constructively with Apple and Google along with many other organisations that are helping the NHS to develop and test this app including VMware /VMware Pivotal Labs, Zuhlke Engineering, Microsoft, Amazon Web Services, the University of Oxford, the BBC, the RAF, as well as partners in countries including Singapore, Norway, Ireland, Switzerland, New Zealand and Germany.

Interoperability

- The UK organised an initial meeting to explore the technical feasibility of different types of interoperability for contact tracing apps, which could be useful to enable cross-border contact tracing. This meeting took place on Friday 24 April with nine like-minded countries, including several European partners.
- Many countries are working to a solution that is best needed to the context of their local systems as well as an appreciation of cultural and societal differences. The UK is working with others to exchange information, learn lessons and ensure these lessons are being used to improve the NHS app development.

Government's view of the EU documents

- At this stage in the app's development, it is too early to review its functionality against all the suggestions contained in the EU guidance—and the Commission has acknowledged that "...the Toolbox should be developed progressively."
- However, the Government reiterates that the development of the app is taking place in accordance with necessary UK and EU legislation, including the GDPR.

Letter from the Government in response to our Report of 6 May

3.11 Following the receipt of the EM and our Report of 6 May, we received a [letter](#) of 4 June from the Secretary of State for Digital, Culture, Media and Sport (Rt Hon. Oliver Dowden CBE MP) and the Secretary of State for Health and Social Care (Rt Hon. Matt Hancock MP).

3.12 Much of the letter reiterates points made in the EM, but new points made by the Government are summarised and grouped together here under our own headings:

Data Protection Impact Assessment and Privacy Notice

- In line with the Government's commitment to transparency, a Privacy Notice¹³ was published on 4 May, before the DPIA and source code for the app were published on 7 May and the risk-scoring algorithm on 13 May.

Key features of the app: centralised v decentralised

- The app uses a centralised model because it provides the most flexibility from an epidemiological and disease management point of view.
- A centralised approach gives the NHS a clear picture of which anonymous app users have been in close contact with each other.
- This model gives the Government more flexibility in how it decides to notify users and will help it provide the most accurate advice to individuals.
- This flexibility will help to better spot false alarms and unnecessary alerts asking people to self-isolate.
- The privacy and security design of the app carefully balances supporting the needs of clinicians with the individual privacy needs of users. People will always have a choice of whether to provide this information and no individual can be identified through the central system.

Interoperability

- It may be necessary to make these apps interoperable in the future.

¹³ A privacy notice is a public document from an organization that explains clearly how that organisation processes personal data and how it applies data protection principles. Articles 12–14 GDPR specify how to create a privacy notice that is easy to understand and accessible. The notice must be provided before data is collected by that organisation.

- Currently, a UK citizen visiting Europe would have to install multiple apps (as is currently the case for other Europeans as well). The Government is investigating how it can create an open standard to facilitate interoperability.

Data adequacy

- The UK is seeking adequacy decisions from the EU and remains committed to achieving positive adequacy decisions.
- At a time like this, it is particularly important that the exchange of personal data between EU Member States and the UK continues for the best delivery of public services.
- Despite M. Barnier’s comments about the UK not seeking to maintain EU data protection standards, the UK remains committed to high data protection standards, based on the GDPR.

Action

3.13 The Government has responded to questions the Committee has raised so far. However, we may wish to pursue those questions or others that occur, once the app is launched and there are further developments. For example, there remains the question of interoperability of the UK app with other countries apps and whether in future a UK tracing app might become compulsory during a second wave of the virus. So we have written to the Government telling them that it is premature for us to finish scrutinising these EU documents now and that we would like a further update once the app has been launched and is operational.

3.14 In the meantime, we draw this Report chapter (including the Government’s EM and new letter) to the attention of the Digital Culture Media and Sport Committee, the Health and Social Care Committee, the Science and Technology Committee and the Joint Committee on Human Rights (in the light of its [Report](#) “Human Rights and the Government’s Response to COVID-19: Digital Contact Tracing” published on 6 May).

Letter from the Chairman to the Secretary of State for Digital, Culture, Media and Sport (Rt Hon. Oliver Dowden CBE MP) and the Secretary of State for Health and Social Care (Rt Hon. Matt Hancock MP)

3.15 On behalf of the Committee, I write to thank Government for its Explanatory Memorandum of 5 May and to thank you both for your joint letter of 4 June.

3.16 The Government’s tracing app has yet to be formally launched across the UK. As there are bound to be further developments which raise questions as to whether the app is being implemented and operated in a way which is consistent with EU data protection law, we think it is premature to complete our scrutiny of these EU documents yet.

3.17 We would be grateful then for a further update once the NHSX app has been launched and is fully operational.

4 COVID-19 Response: EU support to the fisheries sector¹⁴

This EU document is legally and politically important because:

- it applies during the transition period; and
- introduces flexibility that could be used by the UK.

Action

- Write to the Minister requesting an update in due course on spend in the UK.
- Draw to the attention of the Environment, Food and Rural Affairs Committee.

Overview

4.1 To help the fishery and aquaculture sectors respond to the impact of the COVID-19 pandemic, the EU agreed legislation allowing fisheries funding to be re-directed in order to support the temporary cessation of business activities and the storage of unsold products. While this flexibility is applicable to the UK during the transition period, we heard from the Parliamentary Under-Secretary of State (Victoria Prentis MP) that there was very little budget left in the European Maritime and Fisheries Fund (EMFF) programme in the UK for 2020 and so she considered that the impact was likely to be limited

4.2 We [wrote](#) to the Minister on 7 May requesting further information on any possible use of the funding flexibility in the UK following consultation with the devolved administrations. She [responded](#) on 2 June, noting that:

- Northern Ireland and Wales, who have a larger amount of EU funding remaining uncommitted, are considering the use of EMFF funding to run temporary suspension schemes for aquaculture;
- Marine Scotland officials are considering whether to use the storage aid provisions for aquaculture within the amended EMFF regulation, although there is a lack of available storage space;
- in England, the Marine Management Organisation (MMO) will assess all existing projects to consider if any might not complete as intended, for example as a result of COVID-19, and therefore allow a return of committed funds and potential re-direction of EMFF funding to COVID-19 recovery; and
- early discussions between the MMO and the European Commission about potential programme amendments have begun in case these are needed to implement aquaculture schemes in Wales and Northern Ireland, or storage aid schemes in Scotland.

¹⁴ Proposal for a Regulation amending Regulation amending Regulation (EU) No 1379/2013 and Regulation (EU) No 508/2014 as regards specific measures to mitigate the impact of the COVID-19 outbreak in the fishery and aquaculture sector; Council document [7153/20](#), COM(20) 142; Legal base: Articles 43(2), 175 TFEU, QMV, Ordinary Legislative Procedure; Department: Environment, Food and Rural Affairs; Devolved Administrations: Consulted; ESC number 41170.

4.3 We have written to the Minister thanking her for the information provided and requesting a further update in due course. We are drawing the Minister's letter to the attention of the Environment, Food and Rural Affairs Committee.

***Letter from the Chair to the Parliamentary Under-Secretary of State
(Victoria Prentis MP), Department for Environment, Food and Rural Affairs***

We have considered your letter of 2 June on the above proposal.

We welcome the information that you have provided and look forward to a further update in due course on use of this flexibility in the UK.

5 COVID-19: Flight and travel vouchers¹⁵

These EU documents are legally and politically important because:

- they concern guidance on the interpretation of EU law that is applicable to the UK during the transition period; and
- they outline measures that the Commission is recommending Member States take in order to ensure passenger rights—across multiple forms of transport—are protected during the current pandemic.

Action

- Write to the responsible Minister, Rachel Maclean MP, requesting further information on the Government's plans for making travel vouchers a more attractive alternative to cash refunds and details of any measures intended to improve consumer confidence that rights will be protected.
- Draw to the attention of the Transport Committee.

Overview

5.1 The documents under consideration—[document \(a\) \(Commission guidance on EU passenger rights\)](#); and document (b) (Commission Recommendation on the use of travel vouchers)—form part of the EU's ongoing response to the COVID-19 outbreak.¹⁶ Document (a) was considered by the Committee in its Seventh Report of Session 2019–21 whereas document (b) is considered in this Report chapter for the first time.¹⁷

5.2 The issue of airlines offering vouchers to passengers for cancelled flights when full cash refunds have been requested has garnered significant attention in the EU and UK. The relevant EU legislation covering flight refunds—the Air Passenger Rights Regulation—is clear: if a flight is cancelled by an airline, passengers have a right to choose between a full refund or re-routing.¹⁸ As per the terms of the UK/EU Withdrawal Agreement,¹⁹ the Air Passenger Rights Regulation continues to apply in the UK until the end of the transition period (31 December 2020).

15 Document (a): Communication from the Commission: Commission Notice Interpretative Guidelines on EU passenger rights regulations in the context of the developing situation with Covid-19; Council and COM number; 6913/20 and COM(20) 1830; Legal base; -; Dept; Transport; Devolved Administrations; consulted; ESC number; 41144. Document (b): Commission Recommendation (EU) 2020/648 of 13 May 2020 on vouchers offered to passengers and travellers as an alternative to reimbursement for cancelled package travel and transport services in the context of the COVID-19 pandemic; Council and COM number; COM(20) 3125; Legal base; 292 TFEU; Department: Transport; Devolved Administrations; Consulted; ESC number; 41255.

16 [Commission Recommendation \(EU\) 2020/648](#) of 13 May 2020 on vouchers offered to passengers and travellers as an alternative to reimbursement for cancelled package travel and transport services in the context of the COVID-19 pandemic.

17 Seventh Report HC 299–iv (2019–21), [Chapter 5](#) (14 May 2020).

18 [Regulation \(EC\) No 261/2004](#) of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 (Text with EEA relevance).

19 Article 127 of the EU-UK Withdrawal Agreement.

5.3 Recent reports, however, note significant delays in refunds being processed and, in some cases, vouchers being offered as an alternative to full cash refunds (when they have not been requested by passengers).²⁰

5.4 It goes without saying that the challenges facing the aviation industry are unprecedented and the Committee recognises the need for pragmatism and a balance to be struck between limiting the exposure of airlines—to incredibly challenging operating conditions—and upholding the rights of consumers.

5.5 The current situation has not been helped by indecision at EU-level; with Member States undecided on whether to introduce temporary legislation to relax relevant rules on the issuance of vouchers for cancelled trips or, alternatively, press for their strict enforcement. Document (b) can be viewed as a response to this legislative impasse but, as with previous EU guidance, is not binding and does not change the prevailing legal position: that, in accordance with the Air Passenger Rights Regulation, airlines are obliged to provide a full refund for cancelled flights within 7 days of a request being made. In the first instance, the enforcement of these rules falls to Member States and relevant regulators (being, in the UK, the Civil Aviation Authority).

5.6 The Government's response to our questions on the Commission's passenger rights guidance, in particular, covering aviation, is considered below. This is followed by our review of the Commission's recent Recommendation on travel vouchers (which as well as aviation, covers package travel, maritime, domestic rail, international rail, and bus and coach transport).

Document (a) (41144) (Commission guidance on EU passenger rights)

5.7 In our Report of 6 May 2020, we requested further information from the Government on the Commission's guidance, in particular, covering the following points:

- the Government's view of whether the Air Passenger Rights Regulation should be amended to allow airlines to issue vouchers rather than full refunds during the COVID-19 outbreak;
- details of the conversations the Government has had with industry and EU partners in this regard;
- whether the Government is investigating—or will investigate—the practice of airlines issuing vouchers when refunds have been requested by passengers;
- whether the Government will propose any legislative or administrative measures to support air passenger rights during the current crisis (as other European countries have); and
- how the suspension of the Air Passenger Rights Regulation in Gibraltar will affect passengers travelling through Gibraltar International Airport.

5.8 The Minister with responsibility for the guidance, Rachel Maclean MP, wrote in response to the Committee's questions on 1 June 2020.²¹ The Minister states that changes

20 See, as an example, The Guardian, [‘Trust in airlines and holiday firms plummets, says Which?’](#) (20 May 2020).

21 Letter from Rachel Maclean MP to Sir William Cash MP, 1 June 2020.

to EU law are a matter for the EU and later in her letter explains that the Government is not seeking any amendment to the Air Passenger Rights Regulation. Reading between the lines, the Committee is inclined to form the conclusion that the Government does not believe that legislative action is necessary at EU-level.

5.9 In this regard, the Minister argues that the Government has been clear that:

...industry [needs] to manage any risks and communicate those risk to passengers.... and the current regulations do not preclude industry from offering vouchers, providing they also offer a cash refund as an alternative option.

We agree that industry has a role to play in risk mitigation (both in terms of the economic feasibility of continuing to operate and the health and safety of passengers), however, it is for the Government, not business, to ensure that the current regulatory and administrative framework is operating effectively. The significant disquiet amongst passengers—whose flight refund requests appear as though they are not being processed in line with current rules—is strong evidence of the need for intervention by the Government or, alternatively, appropriate regulatory authorities.

5.10 Indeed, on this last point, the Minister explains that the Civil Aviation Authority (CAA)—as the independent regulator—is responsible for policing the application of the Air Passenger Rights Regulation in the UK. The Minister further notes that the CAA has been working with airlines to manage the impact of COVID-19 on the industry but “... has been clear that it should not be unduly difficult for consumers to receive a refund and this should be done in a timely manner”.

5.11 On this point, the Committee asked the Minister whether the Government would propose any legislative or administrative measures to support air passenger rights during the current crisis (as other European countries have). Disappointingly, the Minister does not directly answer this question; offering the somewhat perfunctory statement that “... any policy interventions [will] balance the needs of business with the need to ensure that consumer rights are protected”.

5.12 Although an EU law instrument, the Government is not prevented from taking domestic action to ensure that the terms of the Air Passenger Rights Regulation are met (nor does the Committee believe that the role performed by the CAA would stand in the way of such action). If the Government saw fit, there would also be no legal obstacle to it—as well as the CAA—formally investigating the issuance of vouchers under the Regulation (where cash refunds have been sought) or the significant delays that consumers are reporting in cash refunds being processed. In effect, not doing so would amount to a political decision on the part of the Government.

5.13 On the Committee’s questions regarding stakeholder and EU-level engagement, the Minister’s response is disappointing, rehearsing details of the regular meetings that her Department holds with industry, the CAA and consumer groups. She does not provide details of any specific meetings that her Department has convened covering air passenger rights nor does she mention, as requested, whether the Government or Departmental Officials have attended meetings with EU Member State counterparts or within the auspices of the EU’s institutions.

5.14 In light of the suspension of the Air Passenger Rights Regulation in Gibraltar, the Committee was interested in how passengers travelling through Gibraltar International Airport would be affected by the current situation. The Minister helpfully explains that, given the suspension of the Regulation in Gibraltar, flights from Member States and the UK would be covered based on the airport of departure.

Document (b) (41255) (Commission Recommendation on travel vouchers)

5.15 In addition to its guidance on flight vouchers, the Commission has recently published a Recommendation on travel vouchers. This Commission Recommendation is not legally binding and is directed at Member States.²² It covers aviation, package travel, maritime, domestic rail, international rail, and bus and coach transport. The Recommendation can be read as a response to requests from Member States, industry and consumers for greater clarity concerning the interpretation and application of relevant passenger rights rules.²³

5.16 In its Recommendation, the Commission reaffirms the rights of passengers—across all covered transport modalities—to a full refund either in cash/onto the original payment method or a credit voucher when a carrier cancels a journey. Required refund times vary across modes (seven days for air and maritime, 14 days for bus and coach operators, and up to a month for rail).

5.17 The Recommendation does not directly address the issue of Member States enforcing these rules rather it covers, at some length, the impact that COVID-19 has had on operators and the consequent cash flow problems the industry is experiencing. The Recommendation also highlights the difficulties that some operators are having in fulfilling their obligation to reimburse passengers in cash (when this is requested).

5.18 The Recommendation recognises that if, due to current difficulties, operators become insolvent, passengers and travellers may not receive refunds due to some vouchers not currently being protected. To ensure that passengers are not left out of pocket in the event that they have accepted a voucher from an operator that subsequently ceases trading, the Commission makes the following recommendations:

- vouchers should be valid for at least 12 months;
- where the passenger or traveller does not redeem the voucher within its validity, operators should reimburse the amount of the voucher in cash within 14 days of its expiry. This also applies where the voucher is partially redeemed;

22 The Recommendation does have legal relevance though; in that it explains the Commission's approach to the application of EU rules during the pandemic, in particular, where guarantees for vouchers may constitute state aid.

23 Relevant legislation includes: [Regulation \(EC\) No 261/2004](#) of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 (Text with EEA relevance) (aviation); [Regulation \(EC\) No 1371/2007](#) of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations (rail); As per [Regulation \(EU\) No 181/2011](#) of the European Parliament and of the Council of 16 February 2011 concerning the rights of passengers in bus and coach transport and amending Regulation (EC) No 2006/2004 Text with EEA relevance (bus and coach); and [Regulation \(EU\) No 1177/2010](#) of the European Parliament and of the Council of 24 November 2010 concerning the rights of passengers when travelling by sea and inland waterway and amending Regulation (EC) No 2006/2004 Text with EEA relevance (maritime).

- where the validity of the voucher exceeds 12 months, passengers and travellers should have the right to request reimbursement in cash within 12 months of issue.
- passengers and travellers should also be able to redeem the voucher against all new bookings with the validity period even where the service is after the expiry date;
- passengers and travellers should also be able to use their voucher for any transport services or package travel offered by the transport or tour operator;
- subject to availability and regardless of price changes, operators should allow passengers to travel on the same route and under similar conditions set out in their original booking. Travellers should also be able to book a package travel contract with the similar type and service as the cancelled package;
- transport and tour operators should also consider the possibility of the voucher being redeemed with other parties within the same group of companies;
- where the cancelled transport service or package travel was booked through an agency or an intermediary, transport and tour operators should allow new bookings to be made via the same agency or intermediary;
- vouchers should also be transferable to another passenger or traveller at no extra cost. In the case of travel package, transfer of vouchers is subject to the agreement of service providers within the package;
- to make vouchers even more attractive, the recommendation suggests that operators could issue vouchers with a higher value than the original payment for the service or package. The value could be boosted either with an extra lump sum or additional service element; and
- vouchers should include their validity period as well as their specified rights and conditions and must be issued via an email or paper.

5.19 Perhaps most importantly, the Commission raises the idea that Member States consider introducing guarantee schemes to reduce the financial risk for passengers and travellers if they opt to accept vouchers rather than cash refunds.

5.20 The Commission notes that such action would not be covered by the recently announced EU COVID state aid framework,²⁴ however, Member States could notify the Commission of the introduction of any such scheme under Article 107(3)(b) TFEU.

The Government's position

5.21 The Minister responsible for the Recommendation, Rachael Maclean MP, [wrote to the Committee by way of Explanatory Memorandum](#) (EM) on 1 June 2020.

24 See Communication from the Commission, [Temporary framework for State aid measures to support the economy in the current COVID-19 outbreak](#) COM(20) 1863; and Communication from the Commission, [Amendment to the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak](#) COM(20) 3156

5.22 The Minister's EM is very detailed and explains the current EU-level passenger rights framework and voucher entitlements for each form of transport covered by the Recommendation at considerable length. The Minister also provides additional information concerning the domestic measures that the Government has taken to support operators during the current pandemic.

5.23 The Minister directly addresses the issue of potential operator insolvencies, stating that her Department is working across Whitehall and with regulators to find a solution that keeps businesses afloat whilst also ensuring consumers are protected.

5.24 The Minister acknowledges that for cancelled flights, there is currently no insolvency protection in place for vouchers and, furthermore, that the Government does not have plans to introduce a guarantee scheme. The Minister's EM echoes her most recent letter on document (a), repeating that:

[The] Department has been clear with industry that it is the responsibility of the airlines to manage these risks and to communicate them to consumers.

Aside from mention of industry support schemes, the Minister does not provide details of any consumer-focussed measures that, as per the Commission's Recommendation, are aimed at making vouchers a more attractive alternative to cash refunds and, moreover, seek to improve consumer confidence that their rights will be protected.

Action

5.25 The Committee marks document (a) as having completed scrutiny.

5.26 On document (b), the Committee has written to the responsible Minister, Rachel Maclean MP, requesting further information on the Government's plans for making travel vouchers a more attractive alternative to cash refunds and requesting details of any measures intended to improve consumer confidence that rights will be protected.

5.27 This Report Chapter has been drawn to the attention of the Transport Committee.

Letter from the Chair to the Parliamentary Under Secretary of State (Rachel Maclean MP), Department of Transport

The Committee have asked me to thank you for your Explanatory Memorandum (EM) on the above listed document dated 1 June 2020.

As you will be aware, the Committee considered this document together with 6913/20 on EU passenger rights. Taken together, these documents speak to the seriousness with which the protection of consumer travel rights is being treated by EU Member States and the Commission during the current pandemic.

We thank you for the detailed information that you provide in your EM on the EU passenger rights framework and, in particular, the applicable rules governing voucher entitlements for each form of transport covered by the Commission's Recommendation. The additional information you provide concerning the domestic measures that the Government has taken to support operators during the current crisis is also welcome.

On the substance of the Commission's Recommendation, the Committee notes your acknowledgement that for cancelled flights, there is currently no insolvency protection in place for vouchers and, furthermore, that the Government does not have plans to introduce a guarantee scheme. We also draw attention to your statement that:

[The] Department has been clear with industry that it is the responsibility of the airlines to manage these risks and to communicate them to consumers.

The Committee agrees that industry has a role to play in risk mitigation, however, the Government has an equally important role to play in ensuring that the current regulatory and administrative framework is operating effectively. The significant disquiet amongst passengers—whose flight refund requests appear as though they are not being processed in line with current rules and who are concerned about the future value of accepted vouchers—is strong evidence of the need for intervention by the Government or, alternatively, the appropriate regulatory authorities.

5.28 Aside from mention in your EM of Government support schemes for industry, there is little information provided on consumer-focussed measures that, as per the Commission's Recommendation, are aimed at making vouchers a more attractive alternative to cash refunds and, moreover, seek to promote consumer confidence that rights will be protected. We therefore request further information on the Government's plans in this regard.

5.29 We request a response to this letter within 10 working days.

6 ASEAN comprehensive air transport agreement²⁵

This EU document is politically important because:

- in light of the UK's withdrawal from the EU, it raises questions regarding the Government's plans for striking a similar comprehensive air transport agreement with the Association of Southeast Asian Nations (ASEAN).

Action

- Draw to the attention of the Transport Committee and the International Trade Committee.

Overview

6.1 In its Seventh Report of Session 2019–21,²⁶ the Committee reported a [proposal for a Council Decision](#) on the opening of negotiations on a comprehensive air transport agreement between the EU and the Association of Southeast Asian Nations (ASEAN). This document was not considered by the Committee to be of sufficient legal and/or political importance to warrant a substantive Report to the House.

6.2 This having been said, in light of the UK's withdrawal from the EU, the Committee was interested in the Government's plans for the opening of negotiations with the ASEAN Member States on a UK/ASEAN comprehensive air transport agreement.

6.3 The Committee subsequently wrote to the responsible Minister, Parliamentary Under Secretary of State at the Department for Transport (Kelly Tolhurst MP) requesting further information on the Government's plans in this regard.

Letter from the Parliamentary Under Secretary of State

6.4 On 8 June 2020, the Minister responsible for the proposal (Kelly Tolhurst MP) wrote to the Committee providing further information on the Government's plans for negotiating a comprehensive air transport agreement with the ASEAN Member States.²⁷

6.5 The Minister states that such an agreement is not currently a Government priority and suggests that it is unclear whether the ASEAN Member States would want to negotiate such an agreement with the UK. Furthermore, the Minister questions whether the potential EU/ASEAN agreement would be more favourable than the extant bilateral air service agreements that the UK has with individual ASEAN nations.

25 Recommendation for a Council Decision amending the Council Decision of 7 June 2016 authorising the Commission to open negotiations on a comprehensive air transport agreement between the European Union and its Member States and the Association of Southeast Asian Nations (ASEAN) Member States as regards matters falling within the exclusive Union competence; Council and COM number; 6958/20 and COM(20) 106; Legal base; Article 218(3) TFEU, QMV; Department: Transport; Devolved Administrations; Consulted; ESC number; 41147.

26 Seventh Report HC 229–iv (2019–21), [Chapter 9](#) (14 May 2020).

27 [Letter from Kelly Tolhurst MP to Sir William Cash MP](#), 8 June 2020.

6.6 The Minister helpfully provides a table of UK/ASEAN Member State agreements. This is produced below for information purposes.

Air Services Agreements between the UK and ASEAN member states

ASEAN state	ASA entered into force	Additional arrangements if different
Brunei Darussalam	23 November 2007	2011 Confidential Memorandum of Understanding applies updated Article 9 (Aviation Security)
Cambodia	-	2013 Memorandum of Understanding applies draft ASA. 2018 Memorandum of Understanding applies updated criteria for the designation of UK airlines.
Indonesia	In progress	
Laos	-	-
Malaysia	24 May 1973	2013 Agreed Record applies new draft ASA. 2018 Memorandum of Understanding applies updated criteria for the designation of UK airlines.
Myanmar	25 October 1952	
Philippines	7 December 2013	
Singapore	21 November 2007	
Thailand	10 November 1950	
Vietnam	10 June 2013	

Action

6.7 The Committee draws this Report chapter to the attention of the Transport Committee and the International Trade Committee.

7 COVID-19: Green lanes²⁸

This EU document is politically important because:

- it relates to the EU's response to the COVID-19 outbreak.

Action

- No further action is deemed necessary.

Overview

7.1 The [document under scrutiny](#) concerns the European Commission's 'Green Lanes' initiative. During the early stages of the COVID-19 outbreak, the Commission sought to mitigate the negative effects on the free movement of freight caused by the imposition of emergency border controls by some Member States.

7.2 The Green Lanes initiative is intended to “engender a cooperative process across the EU to ensure all freight, including but not limited to essentials goods such as food and medical supplies, gets quickly to its destination without delays’ through the introduction of ‘Green Lane’ border crossings”.

7.3 At ‘Green Lane’ crossings, the Commission expects Member States to streamline relevant procedures so that crossings take no longer than 15 minutes. The Commission is especially keen for crossing restrictions to be lifted on the ‘Trans-European Transport Network’ (the EU’s demarcation for links of strategic importance).

7.4 The Communication lays out a number of recommendations aimed at easing pressure at border crossings and restoring freight movement across the EU. Examples include: temporarily suspending road access restrictions; waiving quarantine requirements for drivers not displaying COVID-19 symptoms; and relaxing domestic rules surrounding the recognition of professional competence certificates.

7.5 The Commission’s non-binding guidance has been in effect for a little over two months. As of yet, an assessment of the success of the measures that it suggests has not been undertaken (nor is one expected), however, as the pandemic has progressed, the initial problem of slow and/or restricted crossings appears to have eased.

The Government’s position

7.6 The Minister responsible for the document under scrutiny, Baroness Vere of Norbiton (Parliamentary Under Secretary of State at the Department for Transport), wrote to the Committee by way of [Explanatory Memorandum](#) on 27 April 2020.

7.7 Baroness Vere notes that the Government welcomes the Green Lanes initiative and that it has taken similar steps to ensure continued freight movements to and from the UK.

28 Communication from the Commission on the implementation of the Green Lanes under the Guidelines for border management measures to protect health and ensure the availability of goods and essential services; Council and COM number: N/A and C(20) 1897; Legal base: N/A; Department: Transport; Devolved Administrations; Consulted; ESC number: 41167.

The Minister states that the Government will take up the opportunity, as suggested under the Green Lanes initiative, to work with the EU's contact point network to better share information with Member States and industry.

Action

7.8 As the document under consideration is non-binding and has been superseded by more recent proposals for legislative action (which remain under scrutiny), the Committee does not deem any further action necessary.

8 EU Action Plan to combat money laundering²⁹

This EU document is legally and politically important because:

- it sets out how the EU may reform its legal framework to tackle money-laundering and terrorist financing in the coming years, which is likely to affect UK-EU trade in financial services, as well as cooperation between British and European law enforcement agencies on financial crime.

Action

- Report the EU's new anti-money laundering strategy and its potential implications for the UK to the attention of the House, and draw it to the particular attention of the Committee on the Future Relationship with the EU, the Home Affairs Committee and the Treasury Committee.

Overview

8.1 Since the early 1990s, EU countries have agreed to a joint set of rules governing financial transactions to tackle illicit transfers, principally by means of the [Anti-Money Laundering Directive](#) (AMLD).³⁰ This Directive was completely revised in 2015 and last updated in 2018 (introducing, among other things, [new rules](#) around the ultimate beneficial ownership of shell companies and trusts).³¹ In recent years however, a number of weaknesses and flaws in the practical implementation and enforcement of the EU's anti-money laundering and countering terrorist financing (AML/CTF) rules have become apparent, for example during the €200 billion [Danske Bank scandal](#) in 2018.

8.2 Based on an [initial evaluation](#) published in summer 2019, the European Commission in May 2020 published an “[Action Plan](#)” outlining—mostly without detail—significant planned reforms to the EU's legal and supervisory framework for money laundering, including amendments to the AMLD to make it “more granular, more precise and less subject to diverging implementation”. It also contains plans to improve cooperation for

29 Documents: (a) Action Plan for a comprehensive Union policy on preventing money laundering and terrorist financing; (b) COMMISSION STAFF WORKING DOCUMENT: Methodology for identifying high-risk third countries under Directive (EU) 2015/849; (c) COMMISSION DELEGATED REGULATION (EU) .../... of 7.5.2020 amending Delegated Regulation (EU) 2016/1675 supplementing Directive (EU) 2015/849 of the European Parliament and of the Council, as regards adding the Bahamas, Barbados, Botswana, Cambodia, Ghana, Jamaica, Mauritius, Mongolia, Myanmar/Burma, Nicaragua, Panama and Zimbabwe to the table in point I of the Annex and deleting Bosnia-Herzegovina, Ethiopia, Guyana, Lao People's Democratic Republic, Sri Lanka and Tunisia from this table; EU reference numbers: (a) Council document 7870/20, C(2020) 2800; (b) Council document 7869/20, SWD(2020) 99; (c) Council document 7844/20, C(2020) 2801; Legal base: -; Department: HM Treasury; Devolved Administrations: Not consulted; ESC numbers: 41240, 41239, 41241.

30 [Directive 2015/849/EU](#), as amended. Other relevant EU laws include the Cash Control Regulation, the Directive on Countering Money Laundering by Criminal Law, and the Regulation on the import of cultural goods.

31 In October 2018, the EU also agreed a [new Directive](#) on “combating money laundering by criminal law”, sometimes referred to as the “sixth AMLD”. This piece of EU legislation is due to be transposed into national law by 3 December 2020. The UK (alongside Ireland and Denmark) [opted out](#) of having to apply it.

cooperation between “Financial Intelligence Units” in different jurisdictions,³² and for the transfer of certain—undefined—responsibilities for enforcement of European AML/CTF rules from national regulators to an independent EU-level body.³³ The Commission has also raised concerns about the use of free ports, now a [central plank of the Government’s post-Brexit economic policy](#), warning they pose a risk of “counterfeiting, [...] infringing intellectual property rights, [...] VAT fraud, corruption and money laundering”.³⁴ The European Commission is due to publish draft legislation to amend the Anti-Money Laundering Directive in line with these priorities in 2021.³⁵

8.3 Separately, the Commission also [published](#) a new methodology for listing jurisdictions considered to have “strategic deficiencies in their national AML/CFT regimes that pose significant threats to the financial system of the [EU]”, as the AMLD requires banks and other companies to apply “enhanced due diligence”—i.e. stricter checks—to transactions which involve a financial institution in such “high-risk countries”.³⁶ At the same time, it also issued a [new list](#) of the 22 non-EU countries currently formally considered to pose such a risk, including the Bahamas, Jamaica, and Pakistan.

Relevance of the EU’s AML/CTF rules for the UK

8.4 The UK, of course, is not immune to money laundering and its status as a global financial hub means that it also a [major locus](#) for illicit transactions. Having left the European Union on 31 January 2020, the UK—under the terms of its Withdrawal Agreement—only remains bound by EU law, including the Anti-Money Laundering Directive, until the end of the post-Brexit transition period³⁷ on 31 January 2020.³⁸ However, the EU’s approach to AML/CTF—including the possible reforms to the Directive outlined by the Commission in May 2020—are likely to remain relevant for the British financial services industry even beyond then.

32 At the core of the AMLD sits a “reporting obligation” for companies including banks, law firms, auditors and tax advisors, which means that they must alert their national “Financial Intelligence Unit” (FIU) of any transfers of which it is aware which may be “the proceeds of criminal activity or [...] related to terrorist financing”. Using the information thus received, the FIUs in turn are required to produce analysis of these reports, which they then share with domestic law enforcement agencies, as well as with their counterparts in other Member States or further afield.

33 Concerns have been raised about the independence of the European Banking Authority (EBA), currently the lead EU body for AML/CTF issues, after the findings of a critical EBA probe into Danske Bank were shelved in April 2019. This highlighted the weaknesses of the Authority’s governance structures, where important decisions, even those censuring Member States, can only be taken with the agreement of the EU’s national banking regulators themselves.

34 EU free port operators have become “obliged entities” under the 2018 amendment to the AMLD, and therefore legally required to report suspicious transactions or trades to the relevant authorities. See for more information the [European Commission’s Report](#) on the “assessment of the risk of money laundering and terrorist financing affecting the internal market and relating to cross-border activities” (24 July 2019).

35 Any legislative proposals to amend EU law on money-laundering will be subject to the agreement of the European Parliament and the Council of Ministers, which can make changes to the European Commission’s proposals before they become EU law.

36 This new methodology is the product of a long-running tussle between the Commission and the European Parliament on the former’s approach to determining which countries should be classified as “high-risk”. Although the new methodology no longer simply relies on the “high-risk” AML/CTF listings made by the international [Financial Action Task Force](#) as was previously the case, it remains [controversial](#) because of the perceived politicisation of the EU’s list of countries with deficient anti-money laundering rules (allowing richer countries, including Saudi Arabia, to lobby for their exclusion from the list).

37 See Article 127 of the Withdrawal Agreement.

38 Article 132 of the Withdrawal Agreement foresees the possibility of an extension to the transition period until no later than 31 December 2022. Section 15A of the European Union (Withdrawal) Act 2018 expressly prohibits the Government from agreeing to any such extension as a matter of UK law.

8.5 First, as part of its “level playing field” (LPF) demands with respect to the UK’s domestic regulatory, tax and “State aid” rules, the EU is [seeking legal commitments](#)³⁹ from the Government to commit by means of a treaty to substantive anti-money laundering rules based on the AMLD with respect to customer due diligence by “obliged entities” like banks, accountants and art traders, as well as regards recording and exchange of information on beneficial ownership of both companies⁴⁰ and trusts.⁴¹ The EU has also explicitly linked the UK’s commitments on AML/CTF issues to whether it will grant “equivalence” for financial services,⁴² the mechanism by which the Government is seeking preferential market access for the British firms exporting such services to the EU.⁴³

8.6 The Government, however, has to date consistently rejected the EU’s demands in this area, having resisted the proposed LPF arrangements proposed more generally⁴⁴ (although we note the British financial services industry itself has already [made a commitment](#) to “demonstrate that [UK] anti money laundering processes [...] are functionally equivalent to the [AMLD]” in return for continued use of the Single Euro Payments Area systems).⁴⁵ On 19 May 2020, the UK Chief Negotiator (David Frost) [told the EU](#) that the EU’s “novel and unbalanced proposals [...] would bind this country to EU law or standards” which the UK “cannot accept”.

8.7 In an apparent bid to break this deadlock, the Government has [signalled its acceptance](#) of a free trade agreement with the EU that maintains tariffs imposed on certain goods if the latter’s current LPF demands are dropped.⁴⁶ However, it has not clarified how this would impact on the UK’s—not insubstantial—asks of the EU in the field of cross-border trade in services. For example, the EU has the legal flexibility, and likely the political

39 See [Part Three, Title I, Chapter 10](#) of the draft UK-EU Treaty produced by the European Commission in March 2020. This is the Commission’s translation into a draft treaty text of the [negotiating directives](#) it received from the EU’s 27 Member States on 25 February 2020.

40 Questions have been raised repeatedly about the accuracy of information on UK company ownership held by Companies House.

41 HM Revenue & Customs has established a [Register of Trusts](#) as a direct consequence of an legal obligation to do so under the AMLD. This Register is publicly accessible under certain conditions. It is unclear if the Government intends to maintain the Register in its current form after EU law ceases to apply in and to the UK.

42 In July 2019, the European Commission published a [policy paper on equivalence](#)—obliquely aimed at the UK—which states that “the Commission also needs to consider whether equivalence decisions would be compatible with EU policy priorities in areas such as [...] the fight against money laundering and terrorist financing [...]”. The European Parliament, in its [Resolution of 11 September 2018](#) on “relationships between the EU and third countries concerning financial services regulation and supervision”, also said that “equivalence decisions should be made dependent on satisfactory third-country rules on fighting [...] money laundering”.

43 See for more information our Reports of [26 March 2020](#) and [20 May 2020](#).

44 With respect to the potential inclusion of substantive anti-money laundering rules in a future UK-EU Treaty, the [draft legal texts](#) published by the UK Government on 19 May 2020 covers cooperation between law enforcement on matters including money-laundering, but—unlike the [EU’s proposals](#)—do not set out detailed rules on transparency of beneficial ownership of companies and trusts, or the specific obligations for those facilitating potentially illicit transactions like banks and law firms.

45 SEPA is an EU-wide initiative that facilitates rapid cross-border payments denominated in euro. Industry body UK Finance has successfully applied for continued UK access to SEPA beyond the end of the transition period, which requires certain commitments about “functional equivalence” with EU financial services rules, including the AMLD. This, however, does not constitute a legally binding obligation on the Government to continue applying the AMLD or accept the EU’s LPF demands. See for more information: “[Criteria for Participation in the SEPA Schemes for communities of banks or financial institutions outside the European Economic Area \(EEA\)](#)”, p. 3.

46 The imposition of tariffs on UK-EU trade in goods, of course, also the default outcome at the end of the post-Brexit transition period if no new Free Trade Agreement is in place at all. The EU has said that the detailed product-by-product negotiation required to establish an FTA with different applicable tariffs than under this World Trade Organization baseline is not possible by the scheduled end of the transition period on 31 December 2020.

will, to reject or restrict “equivalence” for the UK in specific financial sectors if there is disagreement between the two sides about how to cooperate to tackle money-laundering.⁴⁷ It is noteworthy in this respect that the European Commission on 14 May 2020 [said](#) the UK Government has to date yet to fully implement the 2018 Anti-Money Laundering Directive.⁴⁸ Michel Barnier, the EU’s Chief Negotiator for relations with the UK, has also twice referred explicitly to the “lack of ambition” from the Government with respect to how anti-money laundering issues should be addressed under the new UK-EU partnership.⁴⁹

8.8 As trade negotiations between the Government and the EU are on-going, the precise treatment of AML/CTF issues under the new, post-Brexit relationship is not yet known. However, even without a UK-EU treaty that covers money-laundering, the EU’s AMLD will in any event continue to apply to financial transactions between the UK, and affect how British law enforcement can cooperate and exchange information with the EU’s 27 national Financial Intelligence Units on money-laundering issues. The legislative proposals to amend the AMLD announced by the European Commission could significantly affect the impact the Directive has on such transactions and exchanges between the EU and the UK, and will therefore deserve further scrutiny when they are published in 2021.

The Government’s position

8.9 When the European Commission published its initial review of the EU’s AML/CTF legal framework in July 2019, the Economic Secretary to the Treasury (John Glen MP) provided an [Explanatory Memorandum](#) to Parliament which, with respect to the potential implications for the UK for the suggested changes to the Anti-Money Laundering Directive, stated simply that there were “none at this time”. The Minister submitted a [new Memorandum](#) on 3 June 2020, following the publication of the latest EU Action Plan. This repeats his earlier assessment that there are no policy implications arising from the Commission’s plans.

Action

8.10 As we have demonstrated above, we disagree with the Minister that there necessarily are no policy implications for the UK arising from the European Commission’s Money-Laundering Action Plan.⁵⁰ While it is true there are no formal legislative proposals to

47 While it will also theoretically possible for the EU to list the UK as a “high-risk” country for anti-money laundering purposes after the end of the transition period, there are no indications the European Commission is considering such an explosive step.

48 More concretely, the Commission sent the UK—and 8 EU Member States—a “letter of formal notice”, the first step in a potential infringement procedure before the EU Court of Justice for a failure to properly apply EU law. Under the terms of the Withdrawal Agreement, the European Commission can take the UK to the Court for any such infringements that occur before the end of the transition period.

49 On 15 May 2020, after the third round of UK-EU negotiations, Mr Barnier [said](#) that the EU “were also disappointed by the UK’s lack of ambition in a number of areas that may not be central to the negotiation, but which are nonetheless important and symbolic [including] for instance of the fight against money laundering”. On 5 June, following the fourth round of negotiations, he [said](#) the UK and EU were “very far from [the] objective” of the ambition in “paragraph 82 of the Political Declaration that our agreement should cover anti-money laundering and counter terrorism financing”.

50 We are also concerned more generally about the Government’s increasingly narrow interpretation of when announcements of future changes to EU law and policy can be said to have policy implications for the UK. See for example the chapter in this Report relating to the EU’s proposals for amendments to the Withdrawal Agreement.

amend the AMLD at this stage, the Commission's policy paper points to potentially significant reform of the substance of the Directive which, in due course, is likely to affect both UK-EU flows of financial services and cooperation between British law enforcement and their European counterparts.

8.11 With respect to financial flows in particular, the EU's internal legal framework to address AML/CTF issues is linked directly to the UK's requests for "equivalence" in financial services, an arrangement that would make it easier for British firms to sell such services into the EU after the UK leaves the Single Market. Reliance on equivalence to secure such preferential market access means the Government is likely to have to demonstrate, on a continuous basis, that the UK's own anti-money laundering framework still achieves the outcomes as the AMLD, as amended in the future. While the UK will of course be free to pursue a substantially different regulatory approach to the EU if it wanted to do so, for example with respect to an expansion of free ports while the European Parliament is [calling for their abolition](#), this could risk the EU withdrawing, refusing or restricting market access for British financial services providers as a consequence.

8.12 However, we accept that the latest Commission Action Plan only sets out an ambition for future legislative reform, and does not contain sufficient detail to necessitate further follow-up with the Economic Secretary at this stage. Any formal legislative proposals to amend the Anti-Money Laundering Directive should be assessed for their potential implications for the UK and its financial services industry in due course. We draw these developments to the attention of the Home Affairs Committee, the Treasury Committee and the Committee on the Future Relationship with the EU.

9 EU Fund for Aid to the Most Deprived⁵¹

These EU documents are politically important because:

- they concern a Government decision to withdraw from an EU Fund intended to alleviate “the worst forms of poverty”, with the allocation of £3.46 million in funding for the most vulnerable in the UK being returned to the EU budget.

Action

- Draw to the attention of the Education Committee, the Home Affairs Committee and the Work and Pensions Committee.

Overview

9.1 These documents concern the EU’s [Fund for European Aid to the Most Deprived](#) (“the Fund”).⁵² Established in 2014, the purpose of the Fund is to “alleviate the forms of extreme poverty with the greatest social exclusion impact, such as homelessness, child poverty and food deprivation” by providing a dedicated source of EU funding—a total of €3.4 billion for the period 2014–20—to support Member State’s poverty eradication and social inclusion policies, with each EU Member State receiving a minimum allocation of around €3.5 million to be distributed in annual instalments, according to local needs.⁵³

9.2 The first document is an [annual report](#) published by the European Commission describing how the Fund has been implemented in each Member State. The second document is a [proposal to amend the 2014 Regulation establishing the Fund](#). It seeks to mitigate the impact of COVID-19 on those administering and delivering the Fund at national level by making EU funding easier to access (temporarily increasing the co-financing rate from the EU budget from 85% to 100%), enhancing protection for those delivering assistance to the most vulnerable (by including the purchase of PPE—personal protective equipment—as an eligible cost), and allowing the use of vouchers for food or other basic material assistance to reduce the risk of spreading the virus.

UK withdrawal from the Fund

9.3 As chronicled in our earlier Reports, the then Permanent Secretary at the Home Office (Sir Philip Rutnam) wrote to inform us of the decision taken by Home Office Ministers to withdraw the UK from the Fund in his [letter of 18 February 2020](#). He explained that “due to European Commission accounting rules, the amount of funding the UK could access for a programme focused on social inclusion and mental health support would not

51 (a) European Commission report: *Summary of the annual implementation reports for the operational programmes co-financed by the Fund for European Aid to the Most Deprived in 2017*; Council document 10602/19 + ADD 1, COM(19) 259; Legal base—; Department: Home Office; Devolved Administrations: Consulted; ESC number 40692.

(b) Proposal for a Regulation amending Regulation (EU) No 223/2014 as regards the introduction of specific measures for addressing the COVID-19 crisis; Council document 7163/20, (20) 141; Legal base Article 175(3) TFEU, ordinary legislative procedure, QMV; Department: Home Office; Devolved Administrations: “Sighted”; ESC number 41175.

52 See [Regulation \(EU\) No 223/2014](#) on the Fund for European Aid to the Most Deprived.

53 Both figures—the total budget of €3.4 billion for 2014–20 and the minimum allocation of €3.5 million for each Member State—are expressed in 2011 prices.

allow us to deliver a comprehensive programme in the way it was originally envisaged”. We expressed concern at this decision and asked the Minister for Safeguarding (Victoria Atkins MP) for a more detailed explanation of the Government’s reasons.⁵⁴

9.4 In her [letter of 5 May 2020](#), the Minister set out the chronology of events which led to the Home Office taking over responsibility for the Fund in September 2018. At the time, the Home Office anticipated that around £2.9 million would be available to the UK and structured its operational programme on that basis. It transpired after discussions with the European Commission that “the funding would be substantially less than anticipated”—around £500,000 in total—because of “various accounting and administrative rules” and so would be insufficient to deliver the programme envisaged.

9.5 In [our response of 14 May 2020](#), we said we were “at a loss to understand how accounting rules and administrative or management costs alone could reduce the anticipated spend available to the UK from around £2.9 million to only £500,000—a funding gap of £2.4 million”. We asked why the UK, uniquely amongst the 28 Member States eligible for the Fund, had been unable to deliver a viable programme and (again) whether the Government intended to fill the gap left by the loss of EU funding by making available an equivalent sum to support the vulnerable groups targeted in the Home Office programme. We also asked the Minister to explain what would happen to the UK’s allocation of the Fund now that the UK’s funding application had been withdrawn.

The Minister’s response

9.6 The Minister explains in [her letter of 5 June 2020](#) how responsibility for submitting a proposal for the UK’s share of the Fund (“FEAD”) passed from the Department for Education to the Department for Work and Pensions before being taken up by the Home Office in September 2018. She confirms that “as of 1 January 2019, £2.9 million remained available to run the programme”. Whereas the proposal envisaged by the Department for Education (DfE) would have focussed on food and basic material assistance (an “OP1” programme) through an expansion of school breakfast club provision in deprived areas in England, the Home Office proposal focussed on social inclusion and the mental health needs of victims of modern slavery and refugees (an “OP2” programme). The Minister says that “multiple discussions” were held with the Commission before submitting the UK’s OP2 programme to the Commission in July 2019. She continues:

On 18 October 2019, the Commission wrote to the Home Office to provide feedback on the proposed programme. It was only at this point that the Commission informed Home Office officials that continuing the proposed OP II programme would result in a substantial reduction in funding because they considered it to be a material amendment to DfE’s OP I programme. This was the first time that Home Office officials were informed that there would be funding implications if the Department were to pursue an OP II, despite having shared a draft proposal with the Commission in March 2019. Home Office officials were notified that continuing with an OP II would mean only the equivalent of £1m would be available from the FEAD

54 See our Eighth Report HC 229–v (2019–21), [chapter 5](#) (14 May 2020); Third Report HC 229–i (2019–21), [chapter 11](#) (26 March 2020); Seventy-third Report HC 301–lxxi (2017–19), [chapter 7](#) (4 September 2019), Sixty-fifth Report HC 301–lxiii (2017–19), [chapter 1](#) (8 May 2019) and Fifty-third Report HC 301–lii (2017–19), [chapter 9](#) (30 January 2019).

and that this would only be available if the Department could secure agreement from the Commission and have the programme operational by 31 December 2019. Even if the Commission approved the programme by this deadline, any spend prior to the UK Withdrawal Agreement would have been at risk as funding through FEAD would not have continued in the event of Britain leaving the European Union without a deal.

This left two and a half months in which to revise the proposed programme in accordance with the more specific feedback from the Commission, secure their agreement and begin delivery before 31st December 2019. In that time, however, you will recall that a General Election was called which further compressed this timetable. Consequently, the annual de-commitment of approximately £500,000 for funds not spent in 2019 brought the total funding that the department could access from FEAD for an OP II programme to approximately £500,000.

9.7 The Minister adds that the Commission’s 5% cap on administrative and management costs would have restricted Home Office spending on setting up and managing the programme to £25,000 and that this would have been “unsustainable”.

9.8 Finally, following the UK’s withdrawal from the Fund, the Minister says that the UK’s allocation will be returned to the EU budget, adding:

Withdrawal from the Fund is regrettable but I would like to assure you that, having left the EU, the UK Government will continue to work diligently to help victims of trafficking, unaccompanied asylum-seeking children and refugees.

9.9 The Minister confirms in her [Explanatory Memorandum of 5 June 2020](#) that the second document under a scrutiny—a proposal to mitigate the effects of the COVID-19 pandemic on the most vulnerable by relaxing some of the rules set out in the 2014 Regulation establishing the Fund—will have no new legal, policy or financial implications for the UK following the Government’s notification of its decision formally to withdraw from the Fund in January 2020.

Action

9.10 We thank the Minister for providing further details on the reasons informing the Government’s decision to withdraw from the Fund in January 2020. We have no further questions to raise.

9.11 We reiterate our concern that the Government’s inability to submit a viable operational programme to deliver the UK’s allocation of the Fund means that organisations supporting some of the most vulnerable in the UK have lost out on a modest but valuable source of EU funding which will now be returned to the EU budget. The risk of a “no deal” exit from the EU at the end of 2019 and the timing of the December 2019 general election clearly played a part in the Government’s decision formally to withdraw from the Fund in January 2020. This could have been avoided if the Department for Education and the Department for

Work and Pensions, as the lead Departments from the inception of the Fund in 2014 until it was taken on by the Home Office in 2018, had developed and delivered a viable programme at an earlier stage, as all other eligible EU countries managed to do.

9.12 We welcome the Minister's assurance that the Government will continue to support victims of trafficking, unaccompanied asylum-seeking children and refugees but note the lack of a specific commitment to fill the gap left by the loss of this source of EU funding.

9.13 We draw our observations to the attention of the Education Committee, the Home Affairs Committee and the Work and Pensions Committee.

10 UK participation in the Schengen Information System⁵⁵

These EU documents are politically important because:

- they concern preparations for a phased “upgrade” of the Schengen Information System (SIS) to be completed by the end of 2021 and highlight “serious deficiencies” in the UK’s application of current SIS rules which may jeopardise UK participation in SIS, or in similar real-time data sharing systems, after transition.

Action

- Write to the Minister for Security (Rt Hon. James Brokenshire MP) asking him why the Home Office has not provided an Explanatory Memorandum on the documents, urging him to do so immediately, and outlining the issues he should address.
- Draw to the attention of the Home Affairs Committee, the Justice Committee and the Committee on the Future Relationship with the European Union.

Overview

10.1 The [Schengen Information System](#) (“SIS”) is the most widely used and largest information sharing system for security and border management in Europe. The UK cannot use SIS for the purpose of border control as it does not participate in the Schengen free movement area in which internal border controls have been lifted between Schengen countries. The UK has, however, been able to use SIS II (the ‘second generation’ Schengen Information System) for policing and criminal law purposes since April 2015, giving police real-time access to data (in the form of ‘alerts’) which can be vital in tackling crimes which have a cross-border dimension and in identifying and apprehending criminals seeking to evade justice in the border-free Schengen area. As a latecomer to SIS II, the UK must demonstrate that it meets the conditions for participation and applies the EU rules governing its use. A first evaluation of the UK’s implementation of the EU rule book on SIS II was carried out in June 2015, followed by a second in November 2017.

10.2 Shortly afterwards, in 2018, the EU (with UK participation) agreed a further upgrade of SIS II to enhance its functionality. The changes will allow more data to be shared through SIS II, improve the existing automated fingerprint recognition system, and

55 (a) Council Implementing Decision setting out a recommendation on addressing the serious deficiencies in the 2017 evaluation of the United Kingdom on the application of the Schengen acquis in the field of the Schengen Information System; Council document 6554/20; Legal base Articles 1(1)(a) and 15(3) of Council Regulation (EU) 1053/2013; Department—Home Office; Devolved Administrations—; ESC number 41120.

(b) European Commission report on the state of play of preparations for the full implementation of the new legal bases for the Schengen Information System (SIS) in accordance with Article 66(4) of Regulation (EU) 2018/1861 and Article 79(4) of Regulation (EU) 2018/1862; Council document 6463/20, COM(20) 72; Legal base—; Department—Home Office; Devolved Administrations—; ESC number 41107.

extend biometric searches using new categories of data, such as palm prints and facial images. The changes are being phased in and should all be completed and operational by the end of 2021.

10.3 The UK remains connected to SIS II during the post-exit transition period provided for in the EU/UK Withdrawal Agreement which is expected to end on 31 December 2020.⁵⁶ Two documents, one relating to UK implementation of the rules governing the existing SIS II, the second to preparations for implementing the upgrade to SIS II agreed in 2018, have been deposited for scrutiny.

10.4 The first document, a [Council Implementing Decision](#) (“the Council Decision”) adopted on 5 March 2020, follows the November 2017 on-site evaluation by a team of Commission and Member State experts which found serious deficiencies in the UK’s implementation of SIS II. The Council Decision makes a series of recommendations addressed to the UK to rectify these deficiencies—25 of the 34 recommendations concern (in the Council’s view) “very serious deficiencies” requiring immediate action. It says the UK should stop making illegal copies of SIS data, ensure that copies of SIS data are up to date by carrying out full data consistency checks, improve the functionality of the Police National Computer, and take appropriate action on the alerts issued by Schengen countries.

10.5 The Council Decision is based on a [2013 Regulation](#) establishing a mechanism for evaluating and monitoring Member States’ application of the Schengen rule book.⁵⁷ Under this mechanism, the UK must provide the Commission and Council with an action plan to remedy the deficiencies identified in the evaluation report within three months of the adoption of the Council Decision, or one month if the Council’s recommendations indicate that the UK is “seriously neglecting its obligations”. The Commission must share the action plan with the European Parliament and with Member States and has one month in which to present its assessment of the adequacy of the action plan. Once completed, the UK must report regularly to the Commission on the progress it is making in implementing its action plan. During this period, the Commission is required to provide regular updates to the European Parliament and the Council. It should also inform national parliaments of “the content and results” of the evaluations it has carried out.⁵⁸ The 2013 Regulation does not seek to prescribe how national Governments share information on the outcome of evaluations and any remedial action taken with their national parliaments.

10.6 The second document, a [Commission report](#) published in February 2020, examines the progress made by Member States in preparing for the phased upgrade of SIS II from the beginning of January to the end of September 2019. It describes the work undertaken by the Commission, the EU’s specialised IT Agency (eu-LISA), Member States (including the UK), Europol and the European Border and Coast Guard Agency (formerly Frontex). The information concerning Member State preparations is based on reports and responses

56 See Articles 127 and 132 of the EU/UK Withdrawal Agreement. The Joint Committee can agree before 1 July 2020 a one-off extension of the transition period “for up to 1 or 2 years”, but UK agreement to such an extension would require a statutory amendment. [Section 15A of the EU \(Withdrawal\) Act 2018](#) prohibits a Minister of the Crown from agreeing to an extension in the Joint Committee.

57 See Articles 15 and 16 of Regulation (EU) No 1053/2013 establishing an evaluation and monitoring mechanism to verify the application of the Schengen acquis.

58 See Article 19 of the 2013 Regulation.

to questionnaires. The Commission concludes that “significant progress” has been made in the phased implementation of the upgrade to SIS II, while noting that Member States are “at different stages of preparation”.

10.7 The documents provide important context for the negotiations underway between the EU and the UK to establish a new relationship after the post-exit transition period has ended, including a framework for continued law enforcement and criminal justice cooperation. The [Political Declaration](#) agreed by the EU and the UK in October 2019 sets out a common aspiration for “comprehensive, close, balanced and reciprocal law enforcement and judicial cooperation in criminal matters” with a view to delivering “strong operational capabilities” while also underlining that “the United Kingdom will be a non-Schengen third country that does not provide for the free movement of persons”.⁵⁹ It says that arrangements for the exchange of information should seek to deliver capabilities approximating those provided by existing EU systems (such as SIS II) “in so far as is technically and legally possible, and considered necessary and in both Parties’ interests”.⁶⁰

10.8 The [EU’s negotiating mandate](#) for a new partnership with the UK, published in February 2020, states that “a third country cannot enjoy the same rights and benefits as a Member State” and that alternative means of sharing criminal information and intelligence must therefore be found.⁶¹ The EU’s [draft legal text](#) includes provisions on the exchange of information to support criminal investigations but rules out sharing data with the UK that has been “processed in databases established on the basis of Union law”.⁶² This would preclude direct or indirect access by UK law enforcement authorities to SIS II data. It is consistent with Article 65 of the [SIS II Law Enforcement Regulation](#), adopted in 2018, which provides that data processed in SIS *and* related supplementary information exchanged between national law enforcement authorities “shall not be transferred or made available to third countries”.⁶³

10.9 The Government’s [Command Paper](#) setting out its approach to negotiations with the EU envisages a freestanding Agreement on Law Enforcement and Judicial Cooperation in Criminal Matters which would include “a mechanism for the UK and EU Member States to share and act on real-time data on persons and objects of interest including wanted persons and missing persons”, providing capabilities “similar to those delivered by SIS II”, but with no jurisdiction for the EU Court of Justice.⁶⁴ The UK’s [draft legal text](#) includes a place holder (in Part Ten of the agreement) for the insertion of “legal provisions on SIS II capability” following further discussions with the EU. Additional text (in square brackets) puts on record the Government’s view that there is a mutual interest in establishing capabilities similar to those provided by SIS II and that it is legally possible for the EU to do so.

10.10 The European Parliament will have to give its consent to any agreement on law enforcement and criminal justice cooperation which the EU proposes to conclude with

59 See para 80 of the Political Declaration.

60 See para 85 of the Political Declaration.

61 See paras 117b and 121 of the [Annex to Council Decision 2020/266](#) authorising the opening of negotiations with the United Kingdom of Great Britain and Northern Ireland for a new partnership agreement.

62 See Part Three of the draft legal text, chapter four concerning cooperation on operational information.

63 Regulation (EU) 2018/1862 on the establishment, operation and use of the Schengen Information System (SIS) in the field of police cooperation and judicial cooperation in criminal matters.

64 See Part Two, paras 43–45 of the Government’s [Command Paper](#) on The Future Relationship with the European Union (CP 211) published in February 2020.

the UK. Some MEPs have been highly critical of the UK's use of SIS II.⁶⁵ In a [Resolution](#) adopted in February 2020 ahead of negotiations on the future relationship between the EU and the UK, the European Parliament not only ruled out UK access to SIS II as a third country after transition, but also stated that arrangements for future cooperation between the EU and the UK in the area of law enforcement should only be discussed once the UK had remedied all the deficiencies identified in the Commission's evaluation and implemented the recommendations made in the Council Decision.⁶⁶

The Government's position

10.11 The Home Office is the lead Department for both documents deposited for scrutiny and for UK policy on the Schengen Information System. The deadline for submitting an Explanatory Memorandum on the documents expired in March. It is now three months overdue.

Action

10.12 Write to the Minister for Security (Rt Hon. James Brokenshire MP) requesting an explanation for the delay and outlining the questions we expect him to address, as a matter of urgency, in his Department's Explanatory Memorandum on these documents.

Letter to the Minister for Security (Rt Hon James Brokenshire MP), Home Office

10.13 I am writing in connection with two EU documents concerning the Schengen Information System (SIS II) which were deposited for scrutiny in early March and on which we have yet to receive an Explanatory Memorandum. I understand that you are the Minister responsible for Home Office policy during the transition period established by the EU/UK Withdrawal Agreement.

10.14 The first document, a [Council Implementing Decision](#) adopted on 5 March 2020, follows an on-site evaluation by a team of Commission and Member State experts in November 2017 which found serious deficiencies in the UK's implementation of SIS II. It makes a series of recommendations, addressed to the UK, to rectify these deficiencies, with 25 of the 34 recommendations described as "very serious deficiencies" which require immediate action.

10.15 The second document, a [Commission report](#) published in February 2020, examines the progress made by countries currently connected to SIS II (including the UK during the transition period) in preparing for its phased upgrade by the end of 2021.

10.16 Both documents provide important context for the negotiations underway between the EU and the UK to establish a new relationship post-transition, including a framework for continued law enforcement and criminal justice cooperation. As you know, the [Political Declaration](#) agreed by the EU and the UK in October 2019 says that arrangements for the exchange of information for law enforcement purposes should seek to deliver capabilities

65 See the [article](#) published in The Guardian on 9 January 2020, Dutch Liberal MEP Sophie in 't Veld says leaked report revealed 'violations and abuse'.

66 See para 94 of the EP Resolution on the proposed mandate for negotiations for a new partnership with the United Kingdom of Great Britain and Northern Ireland, P9_TA(2020)0033.

approximating those provided by existing EU systems (such as SIS II) “in so far as is technically and legally possible, and considered necessary and in both Parties’ interests”.⁶⁷ The EU’s [draft legal text](#) rules out sharing data with the UK that has been “processed in databases established on the basis of Union law.”⁶⁸ This would preclude direct or indirect access by UK law enforcement authorities to SIS II data. It is consistent with Article 65 of the [SIS II Law Enforcement Regulation](#), adopted in 2018, which provides that data processed in SIS *and* related supplementary information exchanged between national law enforcement authorities “shall not be transferred or made available to third countries”.⁶⁹

10.17 By contrast, the UK’s [draft legal text](#) includes a place holder for the insertion of “legal provisions on SIS II capability” and puts on record the Government’s view that there is a mutual interest in establishing capabilities similar to those provided by SIS II and that it is legally possible for the EU to do so.

10.18 We ask you to expand on the Government’s reasons for believing that it is legally possible for the EU to agree to the inclusion of “legal provisions on SIS II capability”, drawing on any relevant third country precedents. We also ask you to clarify whether the Government is seeking continued participation in and direct access to SIS II as a third country after transition, or rather a legally binding commitment by the EU to develop capabilities short of participation that replicate those of SIS II? If the latter, what type of model do you have in mind?

10.19 The documents under scrutiny indicate that, even if a legal solution can be found, the political obstacles may be far harder to surmount because of a perception that the UK is not adhering to the rules governing the use of SIS II. The Council Implementing Decision is part of a process set out in a [2013 Regulation](#) establishing a mechanism for evaluating and monitoring Member States’ application of the Schengen rule book.⁷⁰ We ask you to explain:

- whether the Government accepts the Council’s judgment that there are serious deficiencies in the UK’s implementation of SIS II;
- whether the UK has drawn up an action plan to remedy the deficiencies identified by the Council and, if so, what assessment the Commission has made of its adequacy;
- whether (and how frequently) the Government is reporting to the Commission on its progress in implementing the action plan; and
- what efforts the Government has made to inform Parliament of the concerns raised about UK implementation of SIS II, the steps being taken to address them, and any practical or operational implications for UK law enforcement authorities.

Turning to the Commission report on preparations for the SIS II upgrade, we ask you to explain:

67 See para 85 of the Political Declaration.

68 See Part Three of the draft legal text, chapter four concerning cooperation on operational information.

69 Regulation (EU) 2018/1862 on the establishment, operation and use of the Schengen Information System (SIS) in the field of police cooperation and judicial cooperation in criminal matters.

70 See Articles 15 and 16 of Regulation (EU) No 1053/2013 establishing an evaluation and monitoring mechanism to verify the application of the Schengen acquis.

- whether the UK is developing its national systems to prepare for full implementation of the SIS II upgrade by the end of 2021 (as foreseen in para 2.1 of the report);
- whether the UK is part of the network of experts (set up in January 2019) to coordinate the preparatory work (para 2.2.1 of the report);
- how much the UK has been allocated from the EU budget to fund a “quick and effective upgrade” of its national systems and how this funding has been used (para 2.4.2 of the report);
- whether the UK has submitted a “state of play” report on its preparations for deploying SIS II’s automated fingerprint identification system (AFIS) and is deploying the fingerprint search functionality (para 2.4.3 of the report); and
- whether the UK has responded to the Commission questionnaire on preparations for implementing the SIS II upgrade (para 2.4.4 of the report).

10.20 We look forward to receiving your Explanatory Memorandum—now three months overdue—as a matter of urgency. We seek an explanation of the reasons for the delay (one of many on Home Office documents) and an assurance that you and your Department are committed to fulfilling your scrutiny obligations to Parliament during the transition period.

11 Documents not considered to be legally and/or politically important

Department for International Development

- (41272) Report from the Commission to the European Parliament and the
8297/20 Council Annual Report on the Implementation of the EU Aid Volunteers
Initiative in 2019.
COM(20) 209

Department for Transport

- (41261) Proposal for a Council Decision on the position to be taken on behalf
7975/20 of the European Union in the Council of the International Civil Aviation
Organization in respect of the envisaged adoption of Amendment
COM(20) 218 91 to Annex 10, Volume III and on the notification of difference
from the date of application of Amendment 13 to Annex 14, Volume
1, Amendment 40C to Annex 6, Amendment 77B to Annex 3 and
Amendment 39 to Annex 15.
- (41265) Proposal for a Council Decision on the position to be taken on behalf
8162/20 of the European Union in the World Forum for Harmonisation of
Vehicle Regulations of the United Nations Economic Commission for
Europe as regards the proposals for modifications to UN Regulations
+ ADD 1 Nos 13, 14, 16, 22, 30, 41, 78, 79, 83, 94, 95, 101, 108, 109, 117, 129, 137,
COM(20) 216 138, 140 and 152, as regards the proposals for modifications to Global
Technical Regulations Nos 3, 6, 7, 16 and 19, as regards the proposal
for amendments to Consolidated Resolution R.E.3. and as regards the
proposals for five new UN Regulations in relation to safety, emissions
and automation in the area of motor vehicles.

Foreign and Commonwealth Office

- (41042) Council Decision (CFSP) 2019/... of xx/01/2019 amending Decision
— 2011/72/CFSP concerning restrictive measures directed against certain
— persons and entities in view of the situation in Tunisia.
- (41043) Council Implementing Regulation (EU) 2019/... of xx/01/2019
— implementing Regulation (EU) No.101/2011 concerning restrictive
— measures directed against certain persons, entities and bodies in view
of the situation in Tunisia.
- (41257) Council Decision (CFSP) 2020/651 of 14 May 2020 amending Decision
— (CFSP) 2019/797 concerning restrictive measures against cyber-attacks
— threatening the Union or its Member States.

HM Treasury

(41179) 7144/20 COM(20) 171	Proposal for a Decision of the European Parliament and of the Council amending Decision (EU) 2020/265 as regards adjustments to the amounts mobilised from the Flexibility Instrument for 2020 to be used for migration, refugee inflows and security threats, for immediate measures in the framework of the COVID-19 outbreak and for reinforcement of the European Public Prosecutor's Office.
(41250) — —	European Court of Auditors Special Report 12, 2020: The European Investment Advisory Hub Launched to boost investment in the EU, the Hub's impact remains limited.
(41263) — COM(20) 557	Report from the Commission United Kingdom Report prepared in accordance with Article 126(3) of the Treaty on the Functioning of the European Union.
(41268) 8201/20 COM(20) 528	Recommendation for a Council Recommendation on the 2020 National Reform Programme of the United Kingdom and delivering a Council opinion on the 2020 Convergence Programme of the United Kingdom.
(41269) 8171/20 COM(20) 500	Communication from the Commission 2020 European Semester: Country-specific recommendations.
(41274) 8249/20 + ADD1 COM(20) 533	Report from the Commission Austria Report prepared in accordance with Article 126(3) of the Treaty on the Functioning of the European Union.
(41275) 8215/20 + ADD1 COM(20) 534	Report from the Commission Belgium Report prepared in accordance with Article 126(3) of the Treaty on the Functioning of the European Union.
(41276) 8217/20 + ADD1 COM(20) 542	Report from the Commission Bulgaria Report prepared in accordance with Article 126(3) of the Treaty on the Functioning of the European Union.
(41277) 8218/20 + ADD1 COM(20) 544	Report from the Commission Denmark Report prepared in accordance with Article 126(3) of the Treaty on the Functioning of the European Union.

(41278)	Report from the Commission Czechia Report prepared in accordance with Article 126(3) of the Treaty on the Functioning of the European Union.
8221/20	
+ ADD1	
COM(20) 543	
(41279)	Report from the Commission Germany Report prepared in accordance with Article 126(3) of the Treaty on the Functioning of the European Union.
8222/20	
+ ADD1	
COM(20) 532	
(41280)	Report from the Commission Estonia Report prepared in accordance with Article 126(3) of the Treaty on the Functioning of the European Union.
8224/20	
+ ADD1	
COM(20) 545	
(41281)	Report from the Commission Ireland Report prepared in accordance with Article 126(3) of the Treaty on the Functioning of the European Union.
8226/20	
+ ADD1	
COM(20) 541	
(41282)	Report from the Commission Greece Report prepared in accordance with Article 126(3) of the Treaty on the Functioning of the European Union.
8232/20 +ADD1	
COM(20) 546	
(41283)	Report from the Commission pain Report prepared in accordance with Article 126(3) of the Treaty on the Functioning of the European Union.
8233/20	
+ ADD1	
COM(20) 536	
(41284)	Report from the Commission France Report prepared in accordance with Article 126(3) of the Treaty on the Functioning of the European Union.
8235/20	
+ ADD1	
COM(20) 538	
(41285)	Report from the Commission Croatia Report prepared in accordance with Article 126(3) of the Treaty on the Functioning of the European Union.
8237/20	
+ ADD1	
COM(20) 547	

(41286)	Report from the Commission Italy Report prepared in accordance with Article 126(3) of the Treaty on the Functioning of the European Union.
8239/20	
+ ADD1	
COM(20) 535	
(41287)	Report from the Commission Cyprus Report prepared in accordance with Article 126(3) of the Treaty on the Functioning of the European Union.
8240/20	
+ ADD1	
COM(20) 548	
(41288)	Report from the Commission Latvia Report prepared in accordance with Article 126(3) of the Treaty on the Functioning of the European Union.
8241/20	
+ ADD1	
COM(20) 549	
(41289)	Report from the Commission Lithuania Report prepared in accordance with Article 126(3) of the Treaty on the Functioning of the European Union.
8242/20	
+ ADD1	
COM(20) 551	
(41290)	Report from the Commission Luxembourg Report prepared in accordance with Article 126(3) of the Treaty on the Functioning of the European Union.
8243/20	
+ ADD1	
COM(20) 531	
(41291)	Report from the Commission Hungary Report prepared in accordance with Article 126(3) of the Treaty on the Functioning of the European Union.
8245/20	
+ ADD1	
COM(20) 552	
(41292)	Report from the Commission Malta Report prepared in accordance with Article 126(3) of the Treaty on the Functioning of the European Union.
8247/20	
+ ADD1	
COM(20) 553	
(41293)	Report from the Commission The Netherlands Report prepared in accordance with Article 126(3) of the Treaty on the Functioning of the European Union.
8248/20	
+ ADD1	
COM(20) 530	

(41294)	Report from the Commission Poland Report prepared in accordance with Article 126(3) of the Treaty on the Functioning of the European Union.
8252/20	
+ ADD1	
COM(20) 554	
(41295)	Report from the Commission Portugal Report prepared in accordance with Article 126(3) of the Treaty on the Functioning of the European Union.
8254/20	
+ ADD1	
COM(20) 537	
(41296)	Report from the Commission Slovenia Report prepared in accordance with Article 126(3) of the Treaty on the Functioning of the European Union.
8255/20	
+ ADD1	
COM(20) 555	
(41297)	Report from the Commission Slovakia Report prepared in accordance with Article 126(3) of the Treaty on the Functioning of the European Union.
8256/20	
+ ADD1	
COM(20) 556	
(41298)	Report from the Commission Finland Report prepared in accordance with Article 126(3) of the Treaty on the Functioning of the European Union.
8257/20	
+ ADD1	
COM(20) 540	
(41299)	Report from the Commission Sweden Report prepared in accordance with Article 126(3) of the Treaty on the Functioning of the European Union.
8258/20	
+ ADD1	
COM(20) 539	
(41300)	Recommendation for a Council Recommendation on the 2020 National Reform Programme of Romania and delivering a Council opinion on the 2020 Convergence Programme of Romania.
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COM(20) 523	

Annex

Documents drawn to the attention of select committees:

(‘SNC’ indicates that scrutiny (of the document) is not completed; ‘SC’ indicates that scrutiny of the document is completed)

Business, Energy and Industrial Strategy Committee: Priority EU energy projects [Commission Delegated Regulation (SNC)]; EU Structural Funds: COVID-19 Response [Proposed Regulations (SNC)]

Digital, Culture, Media and Sport Committee: Contact tracing apps and data protection/privacy [Commission (a) Recommendation; (b) Communication (SNC)]

Education Committee: EU Fund for Aid to the Most Deprived [(a) Commission Report; (b) Proposed Regulation (SNC)]

Environment, Food and Rural Affairs Committee: COVID-19 Response: EU support to the fisheries sector [Proposed Regulation (SNC)]

Foreign Affairs Committee: UK-EU Joint Committee: Decision of 12 June 2020 amending the Withdrawal Agreement [Proposed Council Decision (SNC)]

Committee on the Future of the European Union: Priority EU energy projects [Commission Delegated Regulation (SNC)]; EU Action Plan to combat money laundering [(a) Action Plan; (b) Commission Staff Working Document; (c) Commission Delegated Regulation (SNC)]; UK participation in the Schengen Information System [(a) Council Implementing Decision; (b) Commission Report (SNC)]; UK-EU Joint Committee: Decision of 12 June 2020 amending the Withdrawal Agreement [Proposed Council Decision (SNC)]

Health and Social Care Committee: Contact tracing apps and data protection/privacy [Commission (a) Recommendation; (b) Communication (SNC)]

Home Affairs Committee: EU Action Plan to combat money laundering [(a) Action Plan; (b) Commission Staff Working Document; (c) Commission Delegated Regulation (SNC)]; EU Fund for Aid to the Most Deprived [(a) Commission Report; (b) Proposed Regulation (SNC)] UK participation in the Schengen Information System [(a) Council Implementing Decision; (b) Commission Report (SNC)]; UK-EU Joint Committee: Decision of 12 June 2020 amending the Withdrawal Agreement [Proposed Council Decision (SNC)]

Housing, Communities and Local Government Committee: EU Structural Funds: COVID-19 Response [Proposed Regulations (SNC)]

Joint Committee on Human Rights: Contact tracing apps and data protection/privacy [Commission (a) Recommendation; (b) Communication (SNC)]

International Trade Committee: ASEAN comprehensive air transport agreement [Recommended Council Decision (SNC)]; UK-EU Joint Committee: Decision of 12 June 2020 amending the Withdrawal Agreement [Proposed Council Decision (SNC)]

Justice Committee: UK participation in the Schengen Information System [(a) Council Implementing Decision; (b) Commission Report (SNC)]; UK-EU Joint Committee: Decision of 12 June 2020 amending the Withdrawal Agreement [Proposed Council Decision (SNC)]

Northern Ireland Affairs Committee: UK-EU Joint Committee: Decision of 12 June 2020 amending the Withdrawal Agreement [Proposed Council Decision (SNC)]

Science and Technology Committee: Contact tracing apps and data protection/privacy [Commission (a) Recommendation; (b) Communication (SNC)]

Transport Committee: ASEAN comprehensive air transport agreement [Recommended Council Decision (SNC)]; COVID-19: Flight and travel vouchers [(a) Commission Communication; (b) Commission Recommendation (SNC)]

Treasury Committee: EU Action Plan to combat money laundering [(a) Action Plan; (b) Commission Staff Working Document; (c) Commission Delegated Regulation (SNC)]; UK-EU Joint Committee: Decision of 12 June 2020 amending the Withdrawal Agreement [Proposed Council Decision (SNC)]

Work and Pensions Committee: EU Fund for Aid to the Most Deprived [(a) Commission Report; (b) Proposed Regulation (SNC)]

Formal Minutes

Thursday 18 June 2020

After consulting all Members of the Committee, the Chair was satisfied that the Report represented a decision of the majority of the Committee and reported it to the House. (Order of the House of 24 March 2020).

Standing Order and membership

The European Scrutiny Committee is appointed under Standing Order No.143 to examine European Union documents and—

- a) to report its opinion on the legal and political importance of each such document and, where it considers appropriate, to report also on the reasons for its opinion and on any matters of principle, policy or law which may be affected;
- b) to make recommendations for the further consideration of any such document pursuant to Standing Order No. 119 (European Committees); and
- c) to consider any issue arising upon any such document or group of documents, or related matters.

The expression “European Union document” covers—

- i) any proposal under the Community Treaties for legislation by the Council or the Council acting jointly with the European Parliament;
- ii) any document which is published for submission to the European Council, the Council or the European Central Bank;
- iii) any proposal for a common strategy, a joint action or a common position under Title V of the Treaty on European Union which is prepared for submission to the Council or to the European Council;
- iv) any proposal for a common position, framework decision, decision or a convention under Title VI of the Treaty on European Union which is prepared for submission to the Council;
- v) any document (not falling within (ii), (iii) or (iv) above) which is published by one Union institution for or with a view to submission to another Union institution and which does not relate exclusively to consideration of any proposal for legislation;
- vi) any other document relating to European Union matters deposited in the House by a Minister of the Crown.

The Committee’s powers are set out in Standing Order No. 143.

The scrutiny reserve resolution, passed by the House, provides that Ministers should not give agreement to EU proposals which have not been cleared by the European Scrutiny Committee, or on which, when they have been recommended by the Committee for debate, the House has not yet agreed a resolution. The scrutiny reserve resolution is printed with the House’s Standing Orders, which are available at www.parliament.uk.

Current membership

[Sir William Cash MP](#) (*Conservative, Stone*) (Chair)

[Tahir Ali MP](#) (*Labour, Birmingham, Hall Green*)

[Jon Cruddas MP](#) (*Labour, Dagenham and Rainham*)

[Allan Dorans MP](#) (*Scottish National Party, Ayr Carrick and Cumnock*)

[Richard Drax MP](#) (*Conservative, South Dorset*)

[Margaret Ferrier MP](#) (*Scottish National Party, Rutherglen and Hamilton West*)

[Mr Marcus Fysh MP](#) (*Conservative, Yeovil*)

[Mrs Andrea Jenkyns MP](#) (*Conservative, Morley and Outwood*)

[Mr David Jones MP](#) (*Conservative, Clwyd West*)

[Stephen Kinnock MP](#) (*Labour, Aberavon*)

[Mr David Lammy MP](#) (*Labour, Tottenham*)

[Marco Longhi MP](#) (*Conservative, Dudley North*)

[Craig Mackinley MP](#) (*Conservative, South Thanet*)

[Ann Marie Morris MP](#) (*Conservative, Newton Abbot*)

[Charlotte Nichols MP](#) (*Labour, Warrington North*)

[Greg Smith MP](#) (*Conservative, Buckingham*)