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European Scrutiny Committee

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Documents considered by the Committee on 11 January 2023

Report, together with formal minutes

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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) can be downloaded from GOV.UK: <https://www.gov.uk/government/collections/explanatory-memoranda-on-eu-documents>. EMs can be searched by Council or Commission reference number. Letters from the Committee and those issued by Ministers can be found in the correspondence section of the Committee's website: <https://committees.parliament.uk/committee/69/european-scrutiny-committee/publications/3/correspondence/>.

Explanatory Memoranda and letters published before 31 March 2022 can be found on the National Archives website—<https://webarchive.nationalarchives.gov.uk/search/>—by restricting searches to <https://europeanmemoranda.cabinetoffice.gov.uk/>

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Contents

Documents to be reported to the House as legally and/or politically important

1	DfT	EU regulations for 'self-driving' vehicles: potential implications for the UK	3
2	DIT	Northern Ireland Protocol: stronger EU rules on the legal trade in firearms	20

Documents not considered to be legally and/or politically important

3		List of documents	29
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		Annex	30
--	--	--------------	-----------

		Formal Minutes	31
--	--	-----------------------	-----------

		Standing Order and membership	32
--	--	--------------------------------------	-----------

1 EU regulations for ‘self-driving’ vehicles: potential implications for the UK¹

This EU document is legally and politically important because:

- it sets safety requirements for advanced automated (‘self-driving’) vehicles (AVs) sold within the EU. These are likely to affect the UK’s regulatory approach to this technology, which is currently being prepared by the Department for Transport for entry into force by 2025. Not only do the EU rules still apply in Northern Ireland, but the Department has indicated its planned legislation for Great Britain will largely mirror what the EU has done in terms of AV technical safety; and
- the automotive industry has also expressed concern about the competitiveness impact of the UK being slower than the EU to adopt a legal framework for the manufacture of automated vehicles.

Action

- Write to the Parliamentary Under Secretary for Roads and Local Transport (Richard Holden MP) to clarify how the EU’s new regulatory requirements for automated vehicles interact with the Government’s proposals and how the UK is engaging with the EU to ensure coherent regulatory requirements across their respective markets.
- Draw these developments to the attention of the Business, Energy and Industrial Strategy Committee and the Transport Committee.

Overview

1.1 In July 2022, the European Commission [published new EU legislation](#) with detailed safety requirements for advanced self-driving vehicles, calling them the “first international rules of [their] kind”. More specifically, it set out mandatory technical rules for ‘type

1 (a) [Commission Implementing Regulation \(EU\) 2022/1426](#) of 5.8.2022 laying down rules for the application of Regulation (EU) 2019/2144 of the European Parliament and of the Council as regards uniform procedures and technical specifications for the type-approval of the automated driving system (ADS) of fully automated vehicles; COM number: C(2022) 5402; Legal base: Article 11 of Regulation (EU) 2019/2144; Department: Department for Transport; Devolved Administrations: Consulted; ESC number 42117.
 (b) [Commission Delegated Regulation \(EU\) 2022/2236](#) of 20 June 2022 amending Annexes I, II, IV and V to Regulation (EU) 2018/858 of the European Parliament and of the Council as regards the technical requirements for vehicles produced in unlimited series, vehicles produced in small series, fully automated vehicles produced in small series and special purpose vehicles, and as regards software update; COM number: C(2022) 3823; Legal base: Regulation (EU) 2018/858; Department: Department for Transport; Devolved Administrations: Consulted; ESC number: 42105.

approval² of so-called Level 4 automated vehicles (AVs):³ these can operate, under certain conditions, for the length of an entire journey without the need for a human driver to keep their hands on the wheel.⁴ EU vehicle safety rules apply across all 27 Member States, meaning AVs that have been approved under them in one Member State can be sold throughout the entire Single Market without further national approvals.⁵ However, whether an AV that meets European safety requirements can legally be *used* in a particular EU country depends also on its domestic legislation (for example, whether the developer of the self-driving software needs to hold a licence on an on-going basis).

1.2 The European Commission’s regulatory approach reflects policy-makers’ increased focus in recent years on the potential benefits and risks of AVs, as part of a broader debate around ‘connected and automated mobility’ (CAM). In August 2022, the Department for Transport also [committed](#) to new UK legislation on self-driving vehicles “by 2025”, not least to “[secure] the UK’s reputation as a leading destination to develop and deploy” this technology, which it says could be worth £750 billion globally by 2035.⁶ The precise timetable for the introduction of legislation to that effect is unclear at present; in the meantime, the UK has no equivalent to the EU’s new safety regulations for Level 4 AVs.⁷ While the UK was ranked 9th in KPMG’s [Autonomous Vehicles Readiness Index](#) in 2020,⁸ the Transport Committee [recently heard evidence](#) that without legislative steps during the current Parliament, investment in this field within the UK could “start to atrophy” and businesses might be “[dissuaded]... from staying here to test, develop and commercialise that technology”.⁹

1.3 In the context of the Government’s professed ambitions for the UK’s vehicle industry, we are concerned that the UK appears to have already fallen behind the EU and its Member States in providing the requisite legal certainty for the manufacture of advanced AVs. Five of the other top 10 countries in the KPMG’s AV index are members of the EU’s Single Market.¹⁰ Moreover, aside from the potential competitiveness impact, we conclude there are a number of *other* reasons that the EU’s regulatory approach to AV safety is still likely to be relevant for the UK:

2 As described by the Department for Transport, “type approval” is the “process whereby manufacturers of a new model of vehicle or engine are required to test it against international and domestic safety and environmental standards and obtain approval from a government body prior to placing it on sale”.

3 The common classification system of automated vehicles into six levels is summarised in paragraph 8. Separately, the European Commission also announced the EU would be following new international standards for less advanced Level 3 AVs, which can temporarily take over operation of a vehicle on highways. The European Commission is also looking at possible EU-wide changes related to AVs in areas such as roadworthiness checks (colloquially known as an ‘MOT’ in the UK), driving licences and vehicle insurance.

4 These conditions are known as the ‘operational design domain’ or ODD (which would include, for example, being limited to a particular geographic area). Level 4 AVs are ‘fully automated’ passenger and cargo vehicles that can operate autonomously within a designated area, such as the [robo-taxis](#) that operate in the U.S. city of Phoenix. See, Reuters, [‘Waymo opens driverless robo-taxi service to the public in Phoenix’](#) (8 October 2020).

5 EU legislation on vehicle safety also [applies](#) in the EEA-EFTA countries Norway, Liechtenstein and Iceland. References to the ‘EU’ and the ‘Single Market’ should therefore be taken to apply to the EEA as a whole where relevant.

6 Department for Transport, [‘Connected & Automated Mobility 2025: Realising the benefits of self-driving vehicles in the UK CP 719](#) (18 August 2022).

7 Department for Transport, [Explanatory Memorandum on Commission Implementing Regulation \(EU\) 2022/1426](#) (29 September 2022), para 12.

8 KPMG, ‘2020 Autonomous Vehicles Readiness Index’ (July 2020), page 3.

9 Transport Committee, [“Oral evidence: Self-driving vehicles”](#) (HC 519, 16 November 2022), Q152.

10 These are the Netherlands, Sweden, Finland, Denmark and Norway. Four are Member States of the EU while Norway applies EU vehicle safety legislation as part of the European Economic Area (EEA) Agreement.

- first, EU vehicle legislation—including in relation to automated vehicles—remains applicable in Northern Ireland (NI) under the terms of the [Northern Ireland Protocol](#);
- second, by the Department for Transport’s own admission, the EU has [significant influence](#) over international vehicle standards through the United Nations Economic Commission for Europe (UNECE), which the Government says will underpin technical UK legislation in this area;¹¹ and
- third, the UK and EU automotive industries [are closely interconnected](#) and the EU is the largest export market for British manufacturers of vehicles and their components.¹² The automotive sector itself has explicitly [expressed a preference](#) for the UK and EU rules to remain convergent, to avoid the need for separate manufacturing requirements when selling AVs in both Great Britain and the EU.¹³

1.4 The Department for Transport submitted an [Explanatory Memorandum](#) (EM) on the EU’s recent technical rules on self-driving vehicles in September 2022. However, this did not acknowledge the potential strategic implications for the UK’s ambitions as a centre for the development and production of self-driving vehicles. Instead, it focussed narrowly only on their implications for the development and sale of AVs in Northern Ireland under the Protocol. However, the Department’s EM appears to suggest the Government does not intend to legislate substantively differently on safety requirements for advanced AVs compared to the approach taken by the European Commission in its regulations of July 2022.¹⁴ We also note that a technical UK/EU working group on motor vehicles, where regulatory cooperation would be discussed, has not yet met despite being established in January 2021. The EU has not formally confirmed the reason that it will not agree to the working group being convened, but it may be linked to the separate disagreements with the Government over the Northern Ireland Protocol.

1.5 Against this background, we have provided more analysis of the EU rules for self-driving vehicles and their potential implications for the UK in the remainder of this chapter.

Commercialisation of automated vehicles

1.6 Rapid technological developments in the vehicle industry have in recent years allowed for the introduction of ‘automated’ or ‘self-driving’ vehicles (AVs). Naturally, vehicles that are designed to replace all or some operation by drivers could reduce the incidence of

11 Department for Transport, ‘[Connected & Automated Mobility 2025: Realising the benefits of self-driving vehicles in the UK](#)’ CP 719 (18 August 2022).

12 SMMT, ‘<https://www.smmt.co.uk/reports/uk-automotive-trade-report/>’ (12 October 2021), page 7.

13 [Written evidence](#) submitted by the SMMT to the Transport Committee inquiry on self-driving vehicles, August 2022.

14 As possible exceptions, it refers to (unspecified) areas “not addressed” by the forthcoming UNECE guidelines, or where necessary to “account for nuances for deployment in Great Britain”, presumably such as the layout of vehicles to account for left-hand side driving.

accidents caused by human error,¹⁵ and may also increase the efficiency of traffic systems. However, they also pose specific risks of their own. For example, they may not interact with other road users in the way the general public expect, potentially increasing the risk of accidents in certain cases. Due to their need for connectivity to external systems, such as location technology, these vehicles may also be more vulnerable to cyber-security issues and attacks.

1.7 In evidence submitted to the Transport Committee, the SMMT [explained](#) that automated vehicles fall into three broad categories by type of application: passenger cars fitted with automated driving systems, automated passenger services (for example, driverless public transport services), and logistics vehicles for the transport of goods. There is no formal definition of the various types of AVs but, broadly speaking, attention is focussed on the level of automation. For example, the UK Law Commissions, in discussing the required legal framework for AVs, [divided](#) such vehicles in two classifications depending on whether a human user is ultimately in charge of the vehicle or not.¹⁶ Often, AVs are categorised according to the extent to which they are truly ‘self-driving’ using a six-level taxonomy developed by the Society of Automotive Engineers International (SAE).

Level of automation	Description	Example
0—No automation	Manual control where a human drives the vehicle	Traditional vehicles
1—Driver assistance	The vehicle has a single automated system to assist the driver, such as cruise control where the car can accelerate and brake. The human driver has to remain in overall control	Modern vehicles with cruise control
2—Partial Driving Automation	The vehicle has advanced driver assistance systems (ADAS). The vehicle can control both steering and accelerating/braking. A human is in the driver’s seat and <i>can</i> take control of the car at any time	TESLA “Autopilot” system and Cadillac “Super Cruise” system

15 The Transport Committee was told on 16 November 2022 that “there is potential, although it has not yet been proven, that these vehicles could significantly reduce casualties on our roads”. See Transport Committee, [Inquiry: Self-Driving Vehicles](#), Q157. The Royal Society for the Prevention of Accidents made a similar point in its [written evidence](#) to the Transport Committee inquiry on self-driving vehicles in August 2022. See: RSPA ([SDV0021](#)) page 3.

16 Law Commission and Scottish Law Commission, [‘Automated Vehicles: joint report’](#) HC 1068 (25 January 2022).

Level of automation	Description	Example
3—Conditional Driving Automation	The vehicle has “environmental detection” capabilities and can make informed decisions for themselves, such as accelerating past a slow-moving vehicle. It can operate journeys partially by itself, but a human is in the driver’s seat and must remain alert in order to take control	Automated Lane Keeping System for passenger vehicles on highways, for example in the Audi (Volkswagen) A8L17
4—High Driving Automation	The vehicle can complete entire journeys in automated mode within the parameters of its Operational Design Domain, such a limited geographic area or a specific route	France’s NAVYA Self-Driving Shuttle and Alphabet’s “Waymo” self-driving taxi service in Arizona
5—Full Driving Automation	Level 5 vehicles do not require human attention. They are fully autonomous. The SMMT described Level 5 as a vehicle “capable of safely driving itself to deliver full end-to-end journeys anywhere in Britain, at any time of the day and in any weather conditions”.	Technology not currently available

1.8 The use of Level 2 technology is now fairly widespread internationally, for example in the Tesla ‘Autopilot’ system. As these vehicles do not foresee the human driver fully relinquishing control of the vehicle, they are typically covered by existing safety regulations and road traffic laws. The current focus of manufacturers, and therefore of regulators, is primarily on self-driving vehicles in Levels 3 and 4, where a vehicle can, under certain conditions, operate without a human driver in control (although for Level 3 this might remain possible, or indeed necessary, in certain circumstances).¹⁸ In Level 3, the only application currently commercially available in Europe is the “Automated Lane Keeping System” or ALKS. Level 4 technology—where a vehicle like a ‘robo-taxi’ can complete a full journey in its automated mode, but only within a designated area¹⁹—is in the early stages of development. The Transport Committee, which is [conducting an inquiry](#) into this topic, recently heard that this is the type of self-driving vehicle where “all of the interesting discussion happens”.²⁰

17 On release, this vehicle was Level 3 in Europe but Level 2 in the US because of regulatory differences. The A8L was imported into the US without the hardware and software required for Level 3.

18 This is known as a ‘transition demand’.

19 For example, an automated shuttle bus on a designated route.

20 Transport Committee, [“Oral evidence: Self-driving vehicles”](#) HC 519 (16 November 2022), Q164.

EU and UK regulation of self-driving vehicles

1.9 The extent of automation present in vehicles that fall within Level 3 and up does not neatly fit in with traditional regulatory approaches to vehicle safety, where the need for a human driver was explicitly or implicitly assumed. In recent years, the development of automated vehicles has drawn the attention of policy-makers not only in terms of vehicle and road safety, but also—given the potentially transformative nature of the technology—to the economic opportunities arising from their development and manufacture.

1.10 In the EU, policy-making in this area sits within the bloc’s wider regulatory system for road vehicles: EU law establishes the safety and environmental performance requirements for vehicles centrally for all 27 Member States.²¹ With respect to automated vehicles, a number of steps have been taken in recent years to coordinate policy and revise the EU regulatory framework. We do not provide a comprehensive overview of those here, but notably, in March 2017, 29 European countries—including all then-members of the EU except the UK—signed a [‘Letter of Intent’](#) on ‘Connected and Automated Driving’.²² This was followed in 2018 by a European Commission [policy paper](#) on self-driving vehicles (which explicitly referenced the EU’s competitiveness as a reason for updating the relevant legislation).²³ Subsequently, the EU’s [2019 Vehicle Safety Regulation](#) explicitly gave the Commission powers to establish technical safety requirements for AVs.²⁴ EU vehicle safety law in this area also still applies in Northern Ireland, as we discuss further below. The EU is currently [considering](#) the establishment of a dedicated forum for cross-border cooperation on automated mobility.²⁵

1.11 In the UK, developments in AV policy and regulation have also taken place, albeit with a different focus and speed. In particular, in 2018 Parliament passed the [Automated and Electric Vehicles Act](#) to ensure motor insurance covers accidents involving self-driving vehicles.²⁶ The Government in November 2022 [laid secondary legislation](#) to create an independent “GB type approval” system for vehicles, as the UK has since Brexit effectively continued to accept EU type approvals without reciprocation.²⁷ However, the Department have also [identified](#) areas where further legislation is necessary specifically to establish the required “high-level [of] safety” for self-driving vehicles and, by extension, give companies legal certainty to invest in the technology.²⁸ Based on joint recommendations made by the Law Commission and the Scottish Law Commission in January 2022,²⁹ these would cover:

21 Its approach is based on the “Whole Vehicle Type-Approval System” (WVTA), under which a manufacturer can obtain certification for a vehicle type in one EU country, provided it meets the relevant requirements, and then sell it EU-wide without further tests.

22 European Commission, [‘EU and EEA Member States sign up for cross border experiments on cooperative, connected and automated mobility’](#) (23 March 2017) [accessed 5 December 2022].

23 European Commission, [‘Communication on the road to automated mobility: An EU strategy for mobility of the future’](#) (COM(2018) 283, 17 May 2018).

24 See Regulation (EU) 2019/2144 on type-approval requirements for motor vehicles), in particular Article 11. In addition, the European Commission’s 2020 [‘Sustainable and Smart Mobility Strategy’](#) sets an objective of “automated mobility deployment at large scale”.

25 Other aspects of road safety within the EU are legislated for at both the European and national level (see paragraph 20 of this chapter).

26 The European Commission will consider whether similar requirements are made under EU law as part of the review of the Motor Insurance Directive in the coming years. Individual Member States can legislate domestically with respect to motor vehicle insurance and automated vehicles in the meantime.

27 The new system effectively copies the EU approach to type approvals but would phase out the validity of EU type approvals for vehicles sold in Great Britain. The EU system continues to apply in Northern Ireland under the Northern Ireland Protocol.

28 Department for Transport ([SDV0052](#)) para. 44.

29 Law Commission and Scottish Law Commission, [‘Automated Vehicles’](#) (26 January 2022).

- a power for the Secretary of State to establish a safety standard against which the safety of AVs can be measured, to ensure the vehicle is technically safe. This would be based around a two-stage approval and authorisation process: the first being the aforementioned type-approval process, and the second to authorise the specific vehicles that can be used as self-driving on British roads (and under which conditions);
- a safety assurance scheme to provide regulatory oversight of automated vehicles throughout their life, based on requirements for the continuous monitoring of AVs’ “in-use” operation after they are put to practical use (such as its ability for a vehicle to ‘explain’ why it behaved the way it did in specific situations);
- defining the legal responsibilities for users, manufacturers and service operators, with removal of criminal responsibility for the person in the passenger seat during automated driving. This would necessitate a new licensing requirement for the manufacturer or software developer to oversee the vehicle’s operation while it remains in service; and
- incident investigations, including measures to hold manufacturers and service operators criminally responsible for misrepresentation or non-disclosure of safety-relevant information. A regulator would have the power to recall a self-driving vehicle deemed dangerous, as is conventional in the product safety sphere, the ability to impose a range of sanctions, and to issue warrants in order to obtain information relevant to an investigation (including “in-use” data).

1.12 In both the UK and the EU, specific rules related to the automated driving systems of AVs would apply in addition to other generally applicable safety requirements, for example with respect to structural integrity or safety features like air bags.

Safety regulation for Level 3 automated vehicles: reliance on international standards

1.13 For Level 3 automated vehicles, both the EU and UK³⁰ have committed to relying on international technical standards which cover vehicle safety and in-use monitoring, set out in UNECE’s [ALKS Regulation](#) on automated lane-keeping systems (where the vehicle is operated in fully automated mode on highways).³¹ The initial version of these international standards was published in 2020 and applied to passenger vehicles only, limiting the permitted speed of the ALKS mode to 60 kilometres (37 miles) per hour. In 2021, the standards were extended to heavy vehicles like trucks and coaches, and in 2022 they were [updated](#) again to apply to ALKS systems that can operate at speeds of up to 130 kilometres (80 miles) per hour. The UNECE Regulation also covers matters such as the system safety, on-board displays, and cyber-security.

1.14 UNECE here refers to the United Nations Economic Commission for Europe, and this chapter more specifically concerns the work of its ‘World Forum for Harmonization of Vehicle Regulations’ (also known as Working Party 29 or WP.29). This body, which is

30 Department for Transport, [“Connected & Automated Mobility 2025: Realising the benefits of self-driving vehicles in the UK”](#) CP 719 (18 August 2022), page 42 “[AVs] must first meet appropriate technical safety standards, for example UNECE Regulations or GB vehicle type approval standards for automated vehicle technologies”.

31 UN Regulation 157.

made up of both EU and non-EU countries, including the UK, seeks to reduce international trade barriers for vehicles by harmonising technical requirements.³² UNECE regulations have no direct legal force: they are binding only for those countries that accept them as such on a case-by-case basis.³³ To be adopted, new regulations must have the support of at least a four-fifths majority of participating countries, although in practice consensus is usually sought. As such, UNECE’s regulatory output cannot be divorced from domestic policy developments within its membership, which feed into the formulation of harmonised rules. Given that the Government has confirmed that relevant UNECE regulations will be used to assess whether a self-driving vehicle should be permitted for sale in the UK, it is of particular relevance that the EU—by the Department for Transport’s own analysis³⁴—has significant influence over UNECE’s output and in some cases, particularly with respect to environmental standards, are “effectively copied” by the UN Working Party. Therefore, even where the EU says it will be relying on international standards—for example for Level 3 self-driving vehicles—these in practice may often reflect the EU’s regulatory approach.³⁵

1.15 UNECE has also adopted two regulations³⁶ relating to cyber-security which apply to vehicles more generally, including automated vehicles, and where the UK’s input—including via the British Standards Institution (BSI)—has been described as “instrumental”.³⁷

EU safety regulation for Level 4 automated vehicles

1.16 Given the rapidly evolving manufacturing landscape, there are not yet any UNECE regulations with technical requirements for Level 4 AVs. Instead, the Department for Transport has said, UNECE is developing “guidelines”.³⁸ This regulatory gap prompted the European Union to establish its own rules independently first: in April 2022 the European Commission [published](#) draft vehicle type approval rules with safety requirements for these advanced AVs. These were formally [adopted](#) in summer 2022, and took effect in September 2022.³⁹

1.17 The Commission described the new EU rules as a “comprehensive assessment of safety and maturity of [Level 4] vehicles” prior to them coming onto the EU market, and “the first international rules of [their] kind”. In particular, the EU rules set out the necessary technical requirements manufacturers must comply with to obtain EU ‘type approval’ for Level 4 automated cars, buses and trucks. These might be robo-taxis, automated shuttle

32 UNECE regulations are binding only for those participating countries that accept them as such on a case-by-case basis. They are not required to accept them.

33 See Article 1 of the 1958 [“Agreement Concerning the Adoption of Harmonized Technical United Nations Regulations for Wheeled Vehicles”](#). The EU typically incorporates UNECE regulations directly into its vehicle safety legislation by inserting a reference to them into its Vehicle Type Approval Regulation. The UK will do similarly under the DfT’s new GB type approval system, which will allow the Secretary of State to incorporate UNECE Regulations into UK law by means of regulations pursuant to the annulment procedure in Parliament. See Regulation 38 of the draft [Road Vehicles and Non-Road Mobile Machinery \(Type Approval\) \(Amendment and Transitional Provisions\) \(EU Exit\) Regulations 2022](#).

34 The Department for Transport told us in February 2018 that EU regulatory requirements for vehicles “are influential globally and [often] effectively copied by UNECE”. Letter from the Minister to the Chair of the European Scrutiny Committee, [6 February 2018](#). See also European Scrutiny Committee, HC 301–iv, Fourth Report of Session 2017–19, [chapter 7](#) (6 December 2017).

35 Department for Transport, [‘Connected & Automated Mobility 2025: Realising the benefits of self-driving vehicles in the UK’](#) CP719 (18 August 2022).

36 UNECE Regulation 155 (the Cybersecurity Regulation) and UNECE Regulation 156 (the Software Update Regulation).

37 Transport Committee, [“Oral evidence: Self-driving vehicles”](#) HC 519 (16 November 2022), Q147.

38 Department for Transport, [Explanatory Memorandum](#) (29 September 2022), para. 12.

39 Commission Delegated Regulation (EU) 2022/2236 and Commission Implementing Regulation (EU) 2022/1426.

vehicles that only operate between fixed start and end points, or ‘automated valet parking’, where a driver can leave a vehicle in a drop-off area, after which it manoeuvres itself to an available parking space. Among other things, the EU’s regulatory framework for such AVs covers elements also identified by the Department for Transport as necessary for the adequate regulation of self-driving vehicles (see above), in particular:

- performance requirements for the automated driving system and its safety management system;
- testing procedures to be undertaken by the independent vehicle type approval authority (in the UK, this would be the Vehicle Certification Agency);
- cybersecurity requirements, for example to prevent the software operating the vehicle from being altered surreptitiously or maliciously; and
- data recording rules, including incident reporting requirements that allow regulators to collect data.

1.18 As noted, if a Level 4 AV meets all relevant conditions under EU law, a type approval granted by a Member State would make the vehicle permitted for sale throughout the EU.⁴⁰ However, given the potential safety implications of allowing these new types of vehicles on the road, the rules only permit their production in a limited series of no more than 1,500 vehicles across the entire EU. This limit will be reviewed after two years, as the Commission has said it is aiming to introduce legislation allowing manufacturers to obtain type approval for Level 4 self-driving vehicles in “unlimited series” by July 2024. Individual EU countries can also continue to apply alternative approval schemes for small series of experimental AVs.⁴¹ It is likely the EU will also base its position in any relevant UNECE deliberations to establish international regulations for Level 4 vehicles on its own regulations.

Other areas of EU regulation relating to automated vehicles

1.19 The UNECE and EU Regulations covering Level 3 and 4 automated vehicles govern the technical safety requirements AVs need to meet to obtain vehicle type approval. However, they do not regulate under which conditions they are actually allowed, or able, to be *used*. For example, they do not set out licensing requirements for operators of self-driving vehicles or a system for authorising under which conditions a particular AV can be used on its roads. Rather, individual EU Member States retain control over many of the conditions that will govern their practical use, such as national road traffic legislation as well as digital and connectivity infrastructure. However, the European Commission

40 Post-Brexit, the UK’s Vehicle Certification Agency can no longer grant type approvals for vehicles valid for the EU market.

41 See Articles 42 and 45 of Regulation (EU) 2018/858.

is assessing the need for further EU-level regulation relating to the use of automated vehicles, in particular in the fields of roadworthiness testing,⁴² insurance and liability,⁴³ and drivers' licences.⁴⁴

Potential implications of EU regulation of automated vehicles for the UK

1.20 As noted, the UK Government is also taking a close interest in the development, and regulation, of automated vehicles. For a number of reasons, we consider that the EU's legislation in this field is likely to have implications for the UK sector and the Government's regulatory approach.

Competitiveness of the UK automotive industry

1.21 First, the different pace of regulation between the UK and EU has potential impacts on competitiveness of the UK AV sector. Unlike the EU, the UK does not yet have specific rules relating to the safety of Level 4 AVs or indeed any overarching statutory safety framework for self-driving vehicles. This is despite the Department for Transport having [said](#) that the UK's exit from the EU provided it with “the flexibility to set [its] own bold ambitions” for automated vehicles.⁴⁵ The Department itself says automated mobility technology could be worth £750 billion globally by 2035, so the potential industrial and economic benefits for the UK are significant.⁴⁶

1.22 The Department is planning for the UK regulatory regime to be in place by 2025, with legislation under preparation. While the UK was ranked 9th in KPMG's [Autonomous Vehicles Readiness Index 2020](#), the Transport Committee [recently heard evidence](#) that contrasted the state of affairs in the UK negatively compared to the EU,⁴⁷ which also warned that investment in this field within the UK could “start to atrophy” and businesses might be “[dissuaded]... from staying here to test, develop and commercialise that technology” if no regulation was forthcoming to provide legal certainty to investors.⁴⁸

42 The European Commission is preparing a revision of three EU “Roadworthiness Directives” for publication in 2023, as part of which it is “considering a series of possible measures to address the challenges related to testing new vehicle technologies”.

43 The current EU Motor Insurance Directive requires the European Commission to report on the need for changes to EU legislation in that area in the light of automated mobility by 2030.

44 The European Commission is planning a legislative proposal to amend the existing EU Drivers' Licence Directive for publication in 2023. This will reflect “technological progress in areas such as automated driving systems”.

45 Department for Transport, [‘Connected & Automated Mobility 2025: Realising the benefits of self-driving vehicles in the UK’](#) CP719 (18 August 2022). A 2021 DfT [market study](#) on AVs also noted a (Brexit) “opportunity for the UK to develop policy and regulation [...] at a faster pace than European counterparts”. See, CCAM, [‘International Perceptions of the UK's Connected and Automated Mobility Sector: Market Study Final Report’](#) (June 2021), para 2.8.1.

46 Department for Transport, [‘Connected & Automated Mobility 2025: Realising the benefits of self-driving vehicles in the UK’](#) CP 719 (18 August 2022), page 3.

47 Transport Committee, [“Oral evidence: Self-driving vehicles”](#) HC 519 (16 November 2022), Q133: “The EU began developing its regulatory framework in March 2021 and it concluded in September this year. That is a great pace. The reason why they were able to achieve that was because of a very consultative approach and lots of co-operation from industry. We are sat here, at the end of 2022, talking about 2025 deployment when we do not have a timeline for legislation for the industry to give the industry certainty”.

48 Transport Committee, ‘Oral evidence: Self-driving vehicles’ HC 519 (16 November 2022), Q152. Similarly, in [written evidence](#) submitted to the Transport Committee in August 2022, the SMMT also told the Transport Committee that the “pace of regulatory reform” should be expedited “as Great Britain is already behind key markets in Europe in regulatory reforms that enable full deployment”.

The Northern Ireland Protocol

1.23 Second, the EU’s Vehicle General Safety Regulation—and therefore the new rules on automated vehicles—remain applicable in Northern Ireland under the terms of the EU/UK Northern Ireland Protocol, superseding any UK legislation in that market.⁴⁹

1.24 In addition, under the Government’s ‘unfettered access’ policy, any automated vehicles made to EU requirements that are legally on the market in Northern Ireland can also lawfully be sold into Great Britain (GB) without requiring a GB type approval (although whether they can be *used* in England, Wales and Scotland will depend on compliance with future UK rules around AV use, such as operator licensing).⁵⁰ Of course, the operation of the Protocol more generally remains uncertain because of the Government’s opposition to some of its provisions, which it is seeking to address unilaterally in domestic law by means of the [Northern Ireland Protocol Bill](#). The EU has rejected that approach, and technical talks have been on-going since they were re-started in October 2022.

EU influence over international vehicle regulations

1.25 Third, by the Government’s own analysis the EU is very influential in shaping international harmonisation of vehicle standards through UNECE.⁵¹ The EU is likely to seek to shape any future UNECE output relating to AVs, in particular for Level 4 vehicles where none exist at present, after its own approach. This could mean the EU’s approach could *de facto* become the UNECE international standard, and it cannot necessarily be seen as distinct from it.

1.26 The Department for Transport’s August 2022 policy paper on self-driving technology identified UNECE as a key forum for international cooperation, noting that under the proposed UK legislative framework, self-driving vehicles would have to “meet appropriate technical safety standards, for example UNECE Regulations”.⁵² In practice, given the EU’s presence within UNECE, this means regulatory engagement with the EU is unavoidable, and something the UK in 2020 sought to institutionalise explicitly in the Trade and Cooperation Agreement (which we discuss further below). However, the Department’s recent paper itself makes no explicit reference to EU/UK collaboration in the field of AVs.

Interconnections between the UK and EU automotive markets

1.27 Fourth, the vehicle manufacturing industry has expressed an explicit preference for continued joined-up AV regulation between the UK and the EU. The UK automotive sector as a whole is reliant on international trade: road vehicles were the top UK goods export by value in 2020, and 80% of UK made vehicles were exported abroad in 2020. The EU is the

49 Department for Transport, [Explanatory Memorandum on Commission Implementing Regulation \(EU\) 2022/1426](#) (29 September 2022), para 12. While the Vehicle General Safety Regulation (VSGR) (Regulation 2019/2144) is not explicitly listed in the Northern Ireland Protocol, it replaced Regulations 78/2009, 79/2009 and 661/2009, which are listed. Under Article 13(3) of the Protocol, any new EU laws that replace those listed in the Protocol take effect in Northern Ireland automatically. Therefore, the VSGR applies in Northern Ireland. As a consequence, any Implementing and Delegated Acts adopted under the Regulation, including those on self-driving vehicles, also apply in Northern Ireland.

50 See Vehicle Certification Agency, [‘UK\(NI\) type approval scheme’](#) [accessed 24 August 2022].

51 Letter from the Minister of State at the Department for Transport to the Chair of the European Scrutiny Committee, [6 February 2018](#).

52 Department for Transport, [‘Connected & Automated Mobility 2025: Realising the benefits of self-driving vehicles in the UK’](#) CP719 (18 August 2022).

major export destination for the UK automotive sector, with 53.5% of UK exports going to the EU in 2020. This compares to 78.1% of cars imported to the UK coming from the EU.⁵³ Nevertheless, the UK has a deficit in its automotive trade balance, and 2019 saw the trade deficit grow once more, possibly linked to the uncertainty around the trade implications of the UK's departure from the European Union.⁵⁴

1.28 The SMMT has also emphasised the importance of the integrated supply chain for automotive between the UK and the EU—in 2020 the UK imported £7.5 billion worth of parts from the EU and sent £2.6 billion worth of parts to the EU.⁵⁵ However, the sector's overall output has decreased in recent years⁵⁶ and the SMMT in November 2022 warned that the US' Inflation Reduction Act, which provides subsidies for car manufacturers in America, could 'penalise' UK-based manufacturers and suppliers.⁵⁷

1.29 As a result of these trade links and dependencies, and economic headwinds, substantive differences between UK and EU technical rules for automated vehicles might therefore not be commercially advantageous for British companies (or their suppliers) who want to sell into both markets.⁵⁸ In August 2022, the SMMT [told the Transport Committee](#) that “regulatory harmonisation reduces cost, enhances speed to market and promotes cross-border trade”, and therefore it hoped that “the eventual regulatory framework for Great Britain” for AVs “will align as much as possible with the European regulation.”⁵⁹ The potential downsides associated with substantive divergence in this area were also flagged in the Government's own [market study on automated vehicles](#), published in June 2021.⁶⁰ Given the UK's geographic proximity to EU Member States, a coordinated approach to regulation might also benefit cross-border interoperability if, in the future, AVs might be operated between the UK, Ireland and the Continent.⁶¹

53 SMMT, '[UK Automotive Trade Report 2021](#)', page 7.

54 *ibid*, page 7.

55 *ibid*, page 15.

56 Automotive News Europe, 'The UK car industry's prospects go from bad to worse' (25 November 2022).

57 Politico.EU, 'Brexit Britain trapped in the middle as US and EU go to war on trade' (29 November 2022).

58 Transport Committee, '[Oral evidence: Self-driving vehicles](#)' (HC 519, 16 November 2022), Q109. “Now that the UK is outside the EU it is, to an extent, free to set its own regulatory agenda. However, the thing that we need to think about is that one of the UK's biggest export markets for automotive is Europe, so there is no point passing laws and developing vehicles and technologies that ultimately will not be legally compliant in one of our biggest export markets.” This risk was also flagged in the Government's own market study on AVs, published in June 2021: “A risk was raised that should the UK develop policy, regulation and/or standards that diverge from that of Europe and the international community, this could deter market sourcing from, and investment into, the UK [automated vehicles] sector.” (Department for Transport Centre for Connected & Autonomous Vehicles, '[International Perceptions of the UK's Connected and Automated Mobility Sector: Market Study: Final Report](#)' (June 2021), page 25).

59 Society of Motor Manufacturers and Traders ([SDV0023](#)). The SMMT has made this requested consistently since 2017, when it [argued](#) that after Brexit, “the Government must ensure that [...] consistency with EU regulation and standards is maintained”, calling it “essential if the UK is to be vehicle manufacturers' location of choice for the development, testing and deployment of [automated vehicles]”. See: SMMT, “Connected and Autonomous Vehicles Position Paper” (February 2017).

60 Department for Transport Centre for Connected & Autonomous Vehicles, '[International Perceptions of the UK's Connected and Automated Mobility Sector: Market Study: Final Report](#)' (June 2021), page 25: “A risk was raised that should the UK develop policy, regulation and/or standards that diverge from that of Europe and the international community, this could deter market sourcing from, and investment into, the UK [automated vehicles] sector.”

61 We note that the Government has [previously engaged](#) with the EU on the inclusion of Northern Irish traffic signs in EU-mandated “Intelligent Speed Assistance” systems for 'regular' passenger vehicles, which apply under the Northern Ireland Protocol. Prior to Brexit, the also participated in the “Intercor” project on interoperability for road-based “intelligent transport systems” in the UK, France, Belgium and the Netherlands.

1.30 Given these possible ‘spill-over’ effects of the EU’s regulatory approach for the UK, it is unclear to what extent the Government in practice wants to regulate substantively differently for the safety of automated vehicles. The then-Minister for Roads at the Department for Transport (Rt Hon Lucy Frazer KC MP) submitted an [Explanatory Memorandum](#) (EM) on the EU’s new rules for Level 4 AVs on 29 September 2022, because of their direct legal implications for the UK under the Northern Ireland Protocol. This focussed almost exclusively on the ramifications of the EU Regulation on the Northern Irish market for the manufacture and sale of self-driving vehicles, providing assurance that their direct impact is likely to be limited because of the absence of relevant manufacturers in Northern Ireland, and the small size of its market for such vehicles.

1.31 The EM did not substantively address the potential strategic implications of competition with the EU, and its head start in terms of regulation and legal certainty, for the UK’s ambitions as a centre for the development and production of self-driving vehicles. However, the Minister did appear to acknowledge, albeit implicitly, that the EU has taken the lead in regulation of AVs; she noted that “there is currently no equivalent regulation” in GB and the Department is still “in the process of producing a safety assurance and legal framework for self-driving vehicles”. Indeed, the Minister’s EM also appears to suggest the UK does *not* intend to legislate substantively differently from the EU. It states that “the approach taken by the European Commission... is the same as the planned GB equivalent”, noting that “the general concepts and a considerable number of requirements are likely to be similar or compatible”. As possible areas of divergence, it refers to (unspecified) areas “not addressed” by the forthcoming UNECE guidelines, or where necessary to “account for nuances for deployment in Great Britain”.

UK and EU cooperation on regulation of automated vehicles

1.32 Given the closeness of the UK and EU automotive sectors, and the potential impact of EU AV policy for the UK as described above, the Government has recognised the benefits of continued cooperation with the European Union in this field as a non-Member State. For example, while the UK—then still a Member State—did not sign the EU’s ‘Letter of Intent’ on the development of self-driving technology in March 2017, it told the House of Lords at the time that it “[continued] to prioritise cross-border testing projects [for automated vehicles] and will continue to working closely with our European counterparts on these issues”.⁶² Prior to Brexit, the Government also participated in the ‘Intercor’ project on interoperability for road-based ‘intelligent transport systems’ in the UK, France, Belgium and the Netherlands. As is to be expected, following Brexit, the UK no longer attends the EU Member States’ regular ‘High Level Meeting’ on connected and automated vehicles.

1.33 In the negotiations for a post-Brexit trade agreement with the EU, the UK Government also proposed significant bilateral commitments to cooperate with respect to regulations affecting vehicles (including AVs), and their impact on trade. The UK/EU Trade and Cooperation Agreement (TCA) as agreed in December 2020 does include—in Annex 11—provisions on motor vehicles beyond the zero-tariff treatment that applies to UK-EU trade in goods across the board. In particular, the TCA commits the UK and the EU to cooperation in the “development and establishment of technical regulations or related standards” for vehicles, as well as exchange of information (for example on safety

62 [Letter](#) from Lord Prior of Brampton, Parliamentary Under Secretary of State to the House of Lords EU Internal Market Sub-committee, 24 August 2017.

issues) and promotion of international regulatory harmonisation through UNECE. The Agreement also requires the UK and EU to “provide justification” for any divergence in their domestic laws from UNECE Regulations but does not prohibit them from legislating in a way that is different from those standards.⁶³

1.34 However, the TCA nevertheless does appear to fall some way short of the proposals made by the UK during the negotiations for regulatory equivalence in the automotive sector.⁶⁴ In particular, the UK had proposed that EU Member States should be able to have EU type approval activities carried out in the UK (and *vice versa*). The EU rejected that approach, although the TCA does require both sides to accept UN type approvals (which, for whole vehicles rather than individual components, have [limited value](#) at present).⁶⁵ The Department for Transport has [recently proposed legislation](#) for a new post-Brexit ‘GB type approval’ system for vehicles:⁶⁶ the EU does not plan to recognise these, so vehicle manufacturers are likely to face a duplication of regulatory approvals to sell their products into both the EU and British markets even if the underlying safety requirements are substantively the same.⁶⁷

1.35 The EU and UK’s ambitions with respect to regulatory cooperation on motor vehicle standards were not aligned. Under the Government’s proposals, a new UK/EU Working Group on vehicles would have met “at least annually”. It would have, among other things, acted as a forum for cooperation “to eliminate barriers to trade in areas not covered by UN Regulations”, as well as “assessing the need” for amendments to the relevant parts of the trade deal, and could establish *additional* “ad hoc working groups” related to trade in motor vehicles. Although the Working Group itself was indeed created by the TCA, none of these specific tasks were included in its remit in the final agreement (which is now focussed more narrowly on facilitating cooperation and exchange of information in line with the Agreement).⁶⁸ The Government had also envisaged that UK/EU cooperation on regulation of motor vehicles would be given more structure by means of a “joint regulatory cooperation work plan” centred on UNECE’s activities, with “short and medium-term priorities for regulatory cooperation”. The EU similarly did not agree to the inclusion of such a formal commitment in the TCA.

1.36 Nor does the trade deal contain the UK’s proposed stipulation that the Working Group should meet annually. Indeed, despite coming into existence on 1 January 2021, it has not yet met at all: although the UK has requested it be convened, to date, it has not (most likely as a result of the separate disagreement between the Government and the EU on the Northern Ireland Protocol). The UK/EU Trade Specialised Committee on Technical Barriers to Trade, to which the Working Group on motor vehicles would

63 See Article 5 of Annex 11 to the UK/EU Trade and Cooperation Agreement.

64 HM Government, ‘[The Future Relationship with the EU The UK’s Approach to Negotiations](#)’ CP 211 (February 2020) and HM Government, ‘https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/886008/DRAFT_UK-EU_CFTA_ANNEXES.pdf’ [accessed 29 November 2022].

65 Article 6 of Annex 11 to the TCA. Also see Vehicle Certification Agency, ‘[UNECE type approval](#)’ [accessed 29 November 2022].

66 See The Road Vehicles and Non-Road Mobile Machinery (Type-Approval) (Amendment and Transitional Provisions) (EU Exit) Regulations 2022.

67 See in particular Annex 11 to the Trade and Cooperation Agreement.

68 The Government’s proposals also underlined the central role played by UNECE as the coordinating forum for international vehicle regulations, suggesting that coordination meetings between the UK and the EU could take place in the margins of formal meetings of the UN Working Party 29. That reference also did not make it into the final trade agreement, and it is unclear to what extent the UK and EU in practice coordinate their approaches to UNECE matters (not least given that the Working Group has not yet met).

report, *has* however met twice (in October 2021 and October 2022). At the [first meeting](#) of that Specialised Committee, the Government updated the EU on its priorities in the area of motor vehicles, including “automated vehicle technology”. The second meeting of the Committee on 24 October 2022 included “Motor vehicles and equipment” on the agenda for discussion. However, the minutes of that meeting are not yet available as of 7 December 2022, so it is unclear if automated vehicles were discussed.

1.37 Nor does the trade deal contain the UK’s proposed stipulation that the Working Group should meet annually. Indeed, despite coming into existence on 1 January 2021, it has not yet met at all: although the UK has requested it be convened, to date, it has not (most likely as a result of the separate disagreement between the Government and the EU on the Northern Ireland Protocol). The UK/EU Trade Specialised Committee on Technical Barriers to Trade, to which the Working Group on motor vehicles would report, *has* however met twice (in October 2021 and October 2022). At the [first meeting](#) of that Specialised Committee, the Government updated the EU on its priorities in the area of motor vehicles, including “automated vehicle technology”. The second meeting of the Committee on 24 October 2022 included “Motor vehicles and equipment” on the agenda for discussion, but automation is not referenced in the [public minutes](#).

Conclusions and action

1.38 In light of the above, it is clear that the EU’s approach to the safety regulation of self-driving vehicles is likely to remain relevant to the UK because of a combination of factors. These include the potential impact on the UK AV sector’s competitiveness, Northern Ireland’s position straddling the UK and EU markets, the EU’s influence over relevant international standards, and the EU’s size as an export market for UK industry.

1.39 However, neither the Minister’s Explanatory Memorandum on the recent EU AV Regulations nor the Department’s own policy paper on self-driving vehicles address these strategic implications directly. There is no clear indication of how the Government has, to date, engaged with the EU on these matters, including in the absence of a functioning Motor Vehicles Working Group. As such, we have written to the Parliamentary Under Secretary for Roads and Local Transport (Richard Holden MP) to clarify the Government’s approach to regulatory cooperation with the EU in the area of automated vehicles, and to what extent the UK’s choices for its own statutory framework in this area will be affected by the EU legislation already in place.⁶⁹ In anticipation of the Minister’s reply, we draw our assessment of the EU’s regulation of self-driving vehicles to the attention of the Business, Energy and Industrial Strategy Committee and the Transport Committee.

69 As noted, the European Commission may propose further EU legislation relating to automated vehicles in terms of AV roadworthiness testing, insurance and liability, and drivers’ licences. Any legislative proposals, and their potential implications for the UK or for drivers of UK-registered AVs within the EU, would need to be assessed separately in due course.

Letter from the Chair to the Parliamentary Under Secretary for Roads and Local Transport, Richard Holden MP

I am writing to thank you for your predecessor’s Explanatory Memorandum (EM) of 29 September on the EU’s recent safety regulations for so-called ‘self-driving’ vehicles, in particular advanced ‘Level 4’ automated cars, buses and trucks.⁷⁰

From that EM, and our own analysis, we have concluded that the EU’s approach to the safety regulation of self-driving vehicles is likely to remain relevant to the UK because of a combination of factors. These include notably Northern Ireland’s position straddling the UK and EU markets, the EU’s influence over relevant international standards, and Europe’s size as an export market for UK manufacturers. Indeed, the EM appears to suggest the UK does *not* intend to legislate substantively differently from the EU, calling it “the same as the planned GB equivalent”. We have also taken note of evidence provided to the Transport Committee recently that the UK’s delay in introducing safety regulations for automated vehicles could have detrimental effects on the UK sector’s competitiveness.

In this context, we would be grateful if you could provide more information on the following points:

- What is the timetable for the introduction of UK legislation equivalent to the EU safety regulations for Level 4 automated vehicles? Why has there been a delay to the introduction of statutory safety requirements for such vehicles, especially given that it has described the EU Regulations as “the same” as those that are planned for the UK?
- Since the intention appears to be for the UK’s approach to AV safety requirements to be equivalent to the EU’s (and given the latter’s application in Northern Ireland under the Protocol), what input, if any, did the Government provide to the European Commission as it was drafting its Regulations on automated vehicles?
- More generally, how is the Government cooperating with the EU on technical regulation of motor vehicles, including automated vehicles, under the Trade and Cooperation Agreement and in UNECE? Why has the relevant EU/UK Working Group not yet met, and when is it expected to do so? What are the Government’s priorities for the activities of the Working Group?
- During the trade negotiations in 2020, the UK sought closer regulatory cooperation on motor vehicles with the EU than the EU would agree to. Is the Government intending to propose any changes to the provisions of the TCA relating to motor vehicles, in particular Annex 11, as part of the upcoming review of the Agreement?
- Is UNECE expected to produce safety regulations in due course in relation to Level 4 AVs, or guidelines only? What is the current status of its work in this area, and when is adoption of new guidelines and/or regulation expected?

70 [Commission Implementing Regulation \(EU\) 2022/1426](#) (C(2022) 5402, ESC number 42117) and [Commission Delegated Regulation \(EU\) 2022/2236](#) (C(2022) 3823, ESC number: 42105).

- If the UK’s safety rules for AVs are likely to be substantially similar to the EU’s, how does your Department intend to use what it has called our post-Brexit “flexibility to set our own bold ambitions” for automated vehicles? In which areas can we expect a different approach?

We look forward to receiving your reply by 13 January.

2 Northern Ireland Protocol: stronger EU rules on the legal trade in firearms⁷¹

The proposed Regulation is legally and politically important because:

- it seeks to strengthen EU rules governing the legal trade in firearms for civilian use to make them easier to trace and prevent them falling into the hands of criminals;
- if it becomes EU law, the Regulation would apply in Northern Ireland as it would repeal and replace a 2012 Regulation listed in Annex 2 of the Protocol on Ireland/Northern Ireland;
- the proposed Regulation would be affected by the dual regulatory regime envisaged in the Government’s Northern Ireland Protocol Bill;
- if agreed, the Regulation would result in regulatory divergence between Northern Ireland and the rest of the UK unless the Government makes the same changes to domestic legislation applicable in Great Britain;
- the 2012 Regulation (and a related EU firearms Directive) are part of the retained EU law that continues to apply in the UK under the EU (Withdrawal) Act 2018 and implement international obligations—the UN Firearms Protocol—which the UK has signed but not ratified; and
- retained EU firearms laws are likely to be within the scope of the Retained EU Law (Revocation and Reform) Bill sunset clause and so would be revoked at the end of 2023 unless expressly saved.

Action

- We have written to the Parliamentary Under Secretary at the Department for International Trade (Nigel Huddleston MP) requesting further information. We have also drawn our correspondence to the attention of the Minister for Crime, Policing and Fire at the Home Office (Rt Hon. Chris Philp MP).

Overview

2.1 Trade in illicit firearms underpins much organised crime activity. While most firearms are legally manufactured and sold, their long lifespan means that they can be lost, stolen, or diverted into a lucrative illegal market. The European Commission estimates that there are 35 million illicit firearms owned by civilians in the EU, outnumbering by

⁷¹ [Proposal for a Regulation on import, export and transit measures for firearms, their essential components and ammunition, implementing Article 10 of the UN Protocol against the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, supplementing the UN Convention against Transnational Organised Crime \(UN Firearms Protocol\) recast; 14244/22; COM\(22\) 480; Legal base—Articles 33 and 207 TFEU; ordinary legislative procedure, QMV; Department for International Trade; Devolved Administrations—the Northern Ireland Executive has been consulted; ESC number 42134.](#)

more than half legally held firearms.⁷² Tracking the movements of firearms when they enter and leave the EU is essential to prevent them being trafficked and posing a threat to safety, security and stability within and beyond the EU.

2.2 The [United Nations Convention against Transnational Organised Crime](#) establishes a framework for international cooperation in tackling serious cross-border crime involving organised crime groups. It is supplemented by three sector-specific Protocols on trafficking in human beings, the smuggling of migrants by land, sea and air, and the illicit manufacturing of and trafficking in firearms. The last of these—the [United Nations Firearms Protocol](#)—provides a framework for participating States to control and regulate the legal transfer of firearms (including their parts, components and ammunition) and prevent them being diverted into the hands of illicit traders linked with organised crime.⁷³ The EU is a party to the UN Firearms Protocol, as are 25 of its 27 Member States.⁷⁴

2.3 Article 10 of the UN Firearms Protocol requires Contracting Parties to “establish or maintain an effective system of export and import licensing or authorization, as well as measures on international transit, for the transfer of firearms, their parts and components and ammunition”. As it concerns aspects of trade policy for which the EU has exclusive competence, the EU adopted a Regulation in 2012 implementing the obligations set out in Article 10 on behalf of all EU Member States (including, at the time, the UK).⁷⁵ The 2012 Regulation focused mainly on establishing harmonised rules for the export of firearms. It applies exclusively to firearms for civilian use, not to firearms for use by the police and armed forces, nor to the export of arms and military technology to third (non-EU) countries.⁷⁶

2.4 The [EU Action Plan on Firearms Trafficking 2020–25](#) indicated that there were loopholes in the application of import and export controls because the 2012 Regulation was being implemented in different ways across the EU. It identified a need for stronger EU rules to improve the security of export and import control procedures, the traceability of firearms, and cooperation between the various national authorities involved in combating firearms trafficking.⁷⁷

2.5 In October 2022, the European Commission published a [proposal for a ‘recast’ Regulation](#) which builds on, updates and would replace the 2012 Regulation. It sets out more comprehensive rules on the import, export and transit of firearms for civilian use which are intended to ensure that EU law implementing the UN Firearms Protocol is applied in a uniform and coordinated way across the EU. Key features include:

- harmonised rules and procedures covering both imports and exports of firearms for civilian use, their essential components and ammunition which include

72 According to the European Commission, illicit firearms constitute 56% of the estimated total of firearms owned by civilians in the EU.

73 The Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition (the ‘Firearms Protocol’) is the only legally binding instrument to counter the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition at a global level. It entered into force on 3 July 2005.

74 The exceptions are Ireland and Malta.

75 [Regulation \(EU\) No 258/2012 implementing Article 10 of the United Nations’ Protocol against the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition.](#)

76 Exports of arms, military technology and equipment are governed by [EU Common Position 2008/944/CFSP defining common rules governing control of exports of military technology and equipment.](#)

77 European Commission, ‘2020–2025 EU action plan on firearms trafficking’ COM(2020) 608 (24 July 2020).

compulsory marking so that firearms can be traced more easily, and criminal record and other checks against national and international law enforcement databases;

- new rules on imports of alarm and signal weapons (designed to fire only blanks or irritants, such as tear gas) to ensure they comply with strict technical standards and cannot be converted into lethal firearms;
- stricter controls on trade in semi-finished firearms and components so that they can only be imported by licensed dealers and brokers, reducing the risk of home-assembled and unmarked firearms circulating in the EU;
- a new digital licensing system to apply for and record import and export authorisations which will connect to the proposed new EU Single Customs Window, streamlining customs controls and enhancing cooperation and information exchange between customs, licensing and law enforcement authorities at the EU's borders;
- a more secure, encrypted system to exchange information on decisions refusing an import or export authorisation, reducing the risk that an authorisation refused in one EU country may be granted in another;
- simplified administrative procedures for certain firearms users, such as sport shooters, hunters, collectors and exhibitors; and
- end-user certificates for the most lethal firearms, making it harder for them to be diverted into the illicit market after export, and provision for post-shipment checks in suspicious cases.⁷⁸

2.6 The European Commission anticipates that the proposed Regulation will ensure greater consistency with other EU legislation dealing with firearms, notably the Firearms Directive⁷⁹ (covering transfers of firearms for civilian use from one EU country to another) and an EU Common Position⁸⁰ (covering exports of military technology and equipment between States). It also envisages that stronger export controls will help to reduce the circumvention of arms embargos while stronger import controls will reduce the inflow of 'legacy' firearms from conflicts in neighbouring countries. Further EU implementing or delegated acts to flesh out some of the detailed requirements in the proposed Regulation will be necessary to ensure it is applied consistently throughout the EU once it has been formally adopted.

Analysis

2.7 Setting to one side the merits of the changes put forward by the European Commission, the proposed Regulation raises questions about the operation of the Protocol on Ireland/Northern Ireland, the UK's implementation of wider international obligations, the status

78 For further information on the proposed Regulation, see the European Commission's [Fact Sheet](#) and [Questions and Answers](#).

79 [Directive \(EU\) 2021/555 on control of the acquisition and possession of weapons](#).

80 [EU Common Position 2008/944/CFSP defining common rules governing control of exports of military technology and equipment](#).

of retained EU law under the [Retained EU Law \(Revocation and Reform\) Bill](#) (‘the REUL Bill’), and the legal and policy implications of regulatory divergence in the field of firearms controls.

The REUL Bill

2.8 Since leaving the EU, the UK is no longer bound by the 2012 Regulation as a matter of EU law but it continues to apply as part of the UK’s domestic law under the [European Union \(Withdrawal\) Act 2018](#) (‘EUWA 2018’) which created a special category of ‘retained EU law’.⁸¹ The 2012 Regulation is listed as “unchanged” in the Government’s [Dashboard of retained EU law](#) so continues to apply in the UK in the same way as it did when the UK was a member of the EU.⁸² As a type of ‘retained direct EU legislation’, the Regulation would be subject to the sunset provisions contained in the REUL Bill if it were to come into force as currently drafted, meaning that it would automatically fall away and cease to apply as domestic law in the UK “at the end of 2023”, unless the Government or other “relevant national authority” expressly saves it.⁸³

International obligations

2.9 The 2012 Regulation which forms part of retained EU law under the EUWA 2018 implements Article 10 of the UN Firearms Protocol. The UK has signed but not ratified the UN Firearms Protocol. While the UK is not therefore under an obligation to implement Article 10 of the Protocol in the same way as it was when a member of the EU, the UK’s signature places it under an obligation to refrain from any action that would defeat the object and purpose of the Protocol.

The Protocol on Ireland/Northern Ireland

2.10 The 2012 Regulation is one of the EU laws listed in Annex 2 to the Protocol on Ireland/Northern Ireland (the Northern Ireland Protocol) which Northern Ireland must continue to apply under the special arrangements put in place to avoid a hard border on the island of Ireland after the UK’s exit from the EU. This obligation extends to subsequent EU laws, such as the proposed Regulation described above, which amend or replace EU laws referred to in the Protocol and its Annexes.⁸⁴ The changes which the proposal would make to the 2012 Regulation would therefore apply automatically in Northern Ireland if agreed by the EU but would have no effect on the retained EU law applicable in the rest of the UK.

2.11 In practice, this would mean that the import and export controls and procedures set out in the proposed Regulation (if it becomes EU law) would apply to firearms imported into or exported from Northern Ireland to a country outside the EU, including Great Britain for the purposes of the Northern Ireland Protocol. Different requirements would apply to movements of firearms between Northern Ireland and the EU. These are set out

81 See legislation.gov.uk which includes the 2012 Regulation.

82 The Dashboard says that the 2012 Regulation is “EU direct legislation incorporated by section 3 EUWA”.

83 See Clause 1 of the REUL Bill.

84 Article 13(3) of the Northern Ireland Protocol.

in the EU Firearms Directive, also listed in Annex 2 of the Northern Ireland Protocol, which regulates the acquisition and possession of firearms as well as their transfer from one EU country to another and implements parts of the UN Firearms Protocol.⁸⁵

The REUL Bill and devolved competences

2.12 The regulation of firearms is devolved to Northern Ireland and the EU Firearms Directive is given effect by the [Firearms \(Northern Ireland\) Order 2004](#).⁸⁶ This Order, as far as we can tell, is within the scope of the sunset clause in the REUL Bill and (if the Bill comes into force as currently drafted) would therefore cease to apply as domestic law at the end of 2023 unless a “relevant national authority”—a Minister of the Crown and/or a devolved Northern Ireland authority acting alone or jointly—expressly saves it.⁸⁷ The domestic laws implementing the EU Firearms Directive in the rest of the UK are included in the Government’s Dashboard of retained EU law and listed as “unchanged”, save for adjustments made to correct deficiencies in the way they operate to reflect the UK’s exit from the EU.⁸⁸ At least some of these implementing laws would seem to be within the scope of the REUL Bill sunset clause.

2.13 By contrast, the 2012 Regulation concerns export controls which are a reserved matter.⁸⁹ The Regulation would be within the scope of the REUL Bill’s sunset clause but only a Minister of the Crown, not a devolved national authority, could take the necessary action to prevent it from being revoked at the end of 2023.

2.14 Understanding where the boundaries of devolved competence lie in relation to retained EU laws governing the acquisition, possession, import and export of firearms for civilian use is important in determining what would happen to them under the Bill and more specifically, which authority—a Minister of the Crown or a devolved authority—would have the power to decide which of these laws should be saved and whether they would be saved only in one part of the UK or for the entire territory. Depending on the policy choices made in the coming months, the laws relating to firearms for civilian use applicable in Northern Ireland could differ from those applicable in the rest of the UK.

The REUL Bill and international obligations

2.15 During the [Second Reading of the REUL Bill](#), the Government recognised that some of the retained EU law within the scope of the Bill would need to be kept “to continue to operate our international obligations, including [...] the Withdrawal Agreement and the Northern Ireland Protocol”. Accordingly, the Government gave a commitment to “take the necessary action to safeguard the substance of any retained EU law and legal effects

85 [Directive \(EU\) 2021/555 on control of the acquisition and possession of weapons](#). The Directive codifies the series of changes made to the earlier Firearms Directive (91/477/EEC).

86 See the [Explanatory Note](#) on Part 15 of the [Law Enforcement and Security \(Amendment\) \(EU Exit\) Regulations 2019](#).

87 See clause 1(5) of the Bill.

88 They are the Firearms (Amendment) Act 1998, the Firearms (Amendment) Act 1988 (Amendment) Regulations SI 2011/2175 and the Firearms Acts (Amendment) Regulations SI 1992/2823.

89 See paragraph 8 of the Explanatory Memorandum dated 17 November 2022 submitted by the Parliamentary Under-Secretary for International Trade (Nigel Huddleston MP).

required to operate international obligations within domestic law”, adding that it would “set out where retained EU law is required to maintain international obligations through the Dashboard, so that the public can scrutinise it”.⁹⁰

The Government’s position

2.16 In his [Explanatory Memorandum dated 17 November 2022](#) the Parliamentary Under Secretary at the Department for International Trade (Nigel Huddleston MP) says that strategic export controls are a reserved matter under the UK’s devolution settlements but adds that the Northern Ireland Executive has been made aware of the proposed Regulation and consulted on the Government’s Explanatory Memorandum.

2.17 The Minister confirms that the 2012 Regulation applies in Northern Ireland under the Northern Ireland Protocol and is part of the retained EU law that applies in the rest of the UK. He recognises that the application of the proposed Regulation in Northern Ireland (if adopted by the EU) would lead to regulatory divergence with Great Britain. As is currently the case under the 2012 Regulation, an export licence would be necessary to move firearms from Northern Ireland to Great Britain. However, under the proposed Regulation a wider range of firearms and weapons would require an import licence to be brought into Northern Ireland. While the proposal would also introduce some new exemptions from the requirement for an import authorisation (described in the text as “administrative simplifications”), the Minister says these “do not currently exist as far as UK firearms import licensing is concerned” and so would also lead to divergence in the licensing regimes applicable in Northern Ireland and in Great Britain.

2.18 The Minister does not consider the interaction between the proposed Regulation and the REUL Bill but says it would interact with the introduction of a dual regulatory regime as envisaged in the [Northern Ireland Protocol Bill](#). He adds:

The Government has been engaging with a wide range of stakeholders as we continue to develop the details of the regime. We want to design its implementation so it meets the overall objectives of providing greater choice for businesses, removing the future risks around regulatory divergence and preserving Northern Ireland-Great Britain economic ties. The Government will set out further details on the dual regulatory regime in due course.

2.19 Finally, the Minister says there have been “no specific discussions” on the proposed Regulation in the EU/UK Withdrawal Agreement Joint Committee or the Northern Ireland Specialised Committee.

Action

2.20 We have written to the Minister asking him:

- what assessment he has made of the likely impact of regulatory divergence for controls on the legal trade in firearms, given that the proposed Regulation would apply in Northern Ireland under the Northern Ireland Protocol but not in the rest of the UK;

- to explain the implications the REUL Bill might have for retained EU laws relating to firearms and how the Government intends to fulfil its commitment to “safeguard the substance of any retained EU law and legal effects required to operate international obligations within domestic law”;
- to seek further information on the views of the Northern Ireland Executive and other affected stakeholders in Northern Ireland and to clarify how the Northern Ireland Protocol Bill would affect the way the proposed Regulation (if it becomes EU law) would operate in Northern Ireland; and
- to indicate when and how the Government intends to discuss the proposed Regulation and its implications for Northern Ireland with the EU.

Letter to the Parliamentary Under Secretary at the Department for International Trade (Nigel Huddleston MP)

We have considered your Explanatory Memorandum dated 17 November 2022 concerning a proposed EU Regulation to update existing EU rules on the import and export of firearms (including their essential components and ammunition) intended for civilian use. The current EU rules, set out in a 2012 Regulation, continue to apply in the UK as retained EU law which now forms part of the UK’s domestic law under the EU (Withdrawal) Act 2018. The proposed Regulation, if it becomes EU law, would apply in Northern Ireland under the Protocol on Ireland/Northern Ireland (“the Northern Ireland Protocol”). As you acknowledge, this would lead to regulatory divergence between Northern Ireland and Great Britain.

Setting to one side the merits of the changes put forward by the European Commission, the proposed Regulation raises questions about the operation of the Northern Ireland Protocol, the UK’s implementation of wider international obligations, the revocation or preservation of retained EU law under the [Retained EU Law \(Revocation and Reform\) Bill](#) (‘the REUL Bill’) and the legal and policy implications of regulatory divergence in the field of firearms controls. It also raises questions about the Northern Ireland Protocol Bill as you note that the proposed Regulation would “interact with the introduction of a dual regulatory regime in Northern Ireland as proposed in the NI Protocol Bill”. We would therefore welcome your response to the following questions.

The implications of regulatory divergence

- Given that the proposed Regulation would apply in Northern Ireland under the terms of the existing Northern Ireland Protocol, meaning that relevant authorities operating in Northern Ireland and Great Britain would be subject to different firearms licensing requirements and import procedures, what assessment has the Government made of the likely impact of this regulatory divergence for controls on the legal trade in firearms across the UK?

The interaction with retained EU law

According to the European Commission, the proposed Regulation is intended to ensure greater consistency with other EU firearms laws, notably the EU Firearms Directive concerning the acquisition and possession of firearms.

- Can you confirm that the 2012 Regulation and the EU Firearms Directive continue to apply as part of the UK’s domestic law under the EU (Withdrawal) Act 2018?
- Can you also confirm that retained EU law relating to firearms is subject to the Clause 1 sunset in the REUL Bill?
- Retained EU law relating to firearms listed in the Government’s Retained EU Law Dashboard straddles different Government Departments. How do you intend to coordinate your approach, particularly with the Home Office, to ensure that the REUL Bill does not result in a fragmented or incomplete regulatory framework for firearms across the UK?
- How much retained EU law relating to firearms is devolved? Which “relevant national authority” under the REUL Bill would be responsible for determining how much of that law should be preserved, amended or replaced?
- What progress has been made within your Department in determining whether the 2012 Regulation should be revoked, amended or replaced? What is your current expectation?

The Northern Ireland Protocol and wider international obligations

The Government made a commitment during the Second Reading of the REUL Bill, “as a priority [to] take the necessary action to safeguard the substance of any retained EU law and legal effects required to operate international obligations within domestic law”, including obligations under the EU/UK Withdrawal Agreement and Protocol on Ireland/Northern Ireland.

- How do you intend to fulfil this commitment in relation to EU law which Northern Ireland is bound to apply under the Northern Ireland Protocol?
- The UK has signed but not ratified the United Nations Firearms Protocol. How will this influence the Government’s approach to retained EU law which was intended to implement the obligations set out in the UN Firearms Protocol? Does the Government have any plans to ratify the UN Protocol?

Consultation with the Northern Ireland Executive and stakeholders

- In your Explanatory Memorandum you state that the Northern Ireland Executive has “been made aware” of the proposed Regulation but provide no further information. Have you consulted the Department of Justice and the Police Service of Northern Ireland as the authority responsible for licensing firearms and have they expressed any concerns?
- You also note that the proposed Regulation would be affected by the introduction of a dual regulatory regime as proposed in the Northern Ireland Protocol Bill and that you are engaging with a wide range of stakeholders to develop the details. Does this include stakeholders who would be affected by the proposed Regulation? How have they responded?

Discussion with the European Union

- You say that there have been no specific discussions on the proposed Regulation in the EU/UK Withdrawal Agreement Joint Committee or in the Northern Ireland Specialised Committee. Has it been discussed in the Joint Consultative Working Group? How soon do you expect to engage with the EU on the proposed Regulation, given that it will apply in Northern Ireland under the Northern Ireland Protocol?

We look forward to receiving your response by 13 February 2023.

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

Department for Environment, Food and Rural Affairs

- (42127) Commission Implementing Regulation (EU) 2022/1322 of 25 July 2022 amending Implementing Regulation (EU) 2021/632 as regards the lists of products of animal origin, animal by-products and composite products subject to official controls at border control posts.
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COM(2022) 5124
- (42129) Commission Delegated Regulation (EU) 2022/2104 of 29 July 2022 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards marketing standards for olive oil, and repealing Commission Regulation (EEC) No 2568/91 and Commission Implementing Regulation (EU) No 29/2012.
11940/22
COM(2022) 4755
- (42131) Commission Delegated Regulation (EU) 2022/2291 of 8 September 2022 amending Annex I to Regulation (EU) 2019/1021 of the European Parliament and of the Council on persistent organic pollutants, as regards hexachlorobenzene.
12261/22
COM(2022) 6122
- (42137) Commission Delegated Regulation (EU) 2022/2292 of 6 September 2022 supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council with regard to requirements for the entry into the Union of consignments of food-producing animals and certain goods intended for human consumption.
12029/22
COM(2022) 6496

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: EU regulations for ‘self-driving’ vehicles: potential implications for the UK. [SNC]

Transport Committee: EU regulations for ‘self-driving’ vehicles: potential implications for the UK. [SNC]

Formal Minutes

Wednesday 11 January 2023

Members present:

Sir William Cash, in the Chair

Richard Drax

Margaret Ferrier

Mr Marcus Fysh

Mr David Jones

Craig Mackinlay

Gavin Robinson

Greg Smith

Document scrutiny

Draft Report, proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1.1 to 3 read and agreed to.

Annex agreed to.

Resolved, That the Report be the Twelfth Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

Adjournment

Adjourned till Wednesday 18 January 2023 at 1.30 pm

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.

Current membership

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

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

[John Baron MP](#) (Conservative, Basildon and Billericay)

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

[Geraint Davies MP](#) (Labour, Swansea West)

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

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

[Margaret Ferrier MP](#) (Independent, Rutherglen and Hamilton West)

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

[Dame Margaret Hodge MP](#) (Labour, Barking)

[Adam Holloway MP](#) (Conservative, Gravesham)

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

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

[Craig Mackinlay MP](#) (Conservative, South Thanet)

[Gavin Robinson MP](#) (Democratic Unionist Party, Belfast East)

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