



House of Commons
European Scrutiny Committee

**Seventeenth Report of
Session 2021–22**

Documents considered by the Committee on 9 February 2022

Report, together with formal minutes

*Ordered by The House of Commons
to be printed 9 February 2022*

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/>.

Staff

The current staff of the Committee are Ravi Abhayaratne (Committee Operations Assistant), Joanne Dee (Deputy Counsel for European and International Law), Alistair Dillon and Leigh Gibson (Senior Committee Specialists), Nat Ireton (Committee Operations Officer), Daniel Moeller (Committee Operations Manager), Foeke Noppert (Senior Committee Specialist), Indira Rao MBE (Counsel for European and International Law), Emily Unwin (Deputy Counsel for European and International Law), Dr George Wilson (Clerk).

Contacts

All correspondence should be addressed to the Clerk of the European Scrutiny Committee, House of Commons, London SW1A 0AA. The telephone number for general enquiries is (020) 7219 3292/8185. The Committee's email address is escom@parliament.uk.

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1 EU Climate Change Policy¹

This EU document is politically important because:

- the EU’s revised Emissions Trading System (EU ETS) will apply, in part, to Northern Ireland;
- the Government does not consider, however, that the revenue derived from auctioning allowances under the EU ETS in Northern Ireland will have to be spent on climate-related measures;
- it links to mutual commitments in the area of climate change under the UK-EU Trade and Cooperation Agreement;
- the whole package of measures is strategically important for the UK both as holder of the Presidency of the COP26 international climate negotiations and with a view to informing the UK’s own policies; and
- the Government has identified a number of the related measures as particularly relevant to the UK, such as those concerning aviation and maritime emissions and renewable energy.

Action

- Write to the Minister.
- Draw to the attention of the Business, Energy and Industrial Strategy Committee, Environmental Audit Committee and the Northern Ireland Affairs Committee.

Overview

1.1 In November 2021, countries around the world stressed at the ‘COP26’ international climate summit the urgency of enhancing ambition and action in relation to climate change mitigation, adaptation and finance over the period to 2030 to address gaps between current efforts and pathways in pursuit of the ultimate goal of the UN Framework Convention on Climate Change. In particular, that is to hold the increase in the global average temperature to well below 2 degree Celsius above pre-industrial levels and to pursue efforts to limit the temperature increase to 1.5 degrees Celsius above pre-industrial levels.

1.2 The increased ambition applies to the UK and EU as well as others. In advance of COP26, the European Commission [published](#) a wide-ranging set of proposals fleshing out its policies on delivering a minimum 55% greenhouse gas emissions reduction by 2030

¹ Proposal for a Directive, amending Directive 2003/87/EC establishing a system for greenhouse gas emission allowance trading within the Union, Decision (EU) 2015/1814 concerning the establishment and operation of a market stability reserve for the Union greenhouse gas emission trading scheme and Regulation (EU) 2015/757 on the monitoring, reporting and verification of carbon dioxide emissions from maritime transport; Council and COM number: [10875/21](#) + ADDs 1–7, COM(21) 551; Legal base: Article 192 TFEU, QMV, ordinary legislative procedure; Department: Business, Energy and Industrial Strategy; Devolved Administrations: Consulted; ESC number: 41886.

compared to 1990 levels and with a view to achieving net zero emissions² by 2050. The package included a proposal to amend the EU’s Emissions Trading System (ETS), which applies to Northern Ireland to the extent that is necessary to maintain the Irish Single Energy Market (I-SEM).

1.3 We summarised the proposals in our [Report](#)³ of 20 October 2021 and [wrote](#)⁴ to the Minister of State for Energy, Clean Growth and Climate Change (Rt Hon. Greg Hands MP) with a series of queries. In his [reply](#)⁵ of 24 November 2021 (summarised below), the Minister disputes whether the requirement to spend 100% of revenues raised from auctioning EU ETS allowances for climate-related purposes should apply in respect of Northern Ireland as it does not affect maintenance of I-SEM.

1.4 In addition to the ETS proposal, the Minister identifies the proposals concerning aviation and maritime emissions and renewable energy as among those that are particularly relevant to the UK. The Government also welcomes the proposal for a de facto internal combustion engine (ICE) phase-out commitment by 2035. This proposal supports the UK’s COP26 Zero Emissions Vehicles campaign.

1.5 We are separately considering the Commission’s related proposals⁶ on energy taxation and for a Carbon Border Adjustment Mechanism.

UK Government position

1.6 Concerning the proposed duty to spend all EU ETS revenues on climate-related activities, the Minister explained the Government’s view that this would not apply to Northern Ireland because the obligation exceeds what is required to ensure the participation of Northern Ireland electricity generators in the EU ETS for the purposes of maintaining the Single Electricity Market.

1.7 The Minister adds that the Government and the Northern Ireland Department of Agriculture, Environment and Rural Affairs (DAERA) will continue to monitor the proposal to amend the EU ETS and shall keep electricity generators in Northern Ireland informed of key developments.

1.8 Turning to the Government’s carbon pricing leadership, the Minister said that the Government is exploring opportunities to expand and strengthen the UK ETS. In the coming months, he explained, the UK ETS Authority (UK Government and the Devolved Administrations) would consult on a trajectory for the scheme’s cap that is consistent with the UK’s emissions reduction commitments. Changes to the cap would be implemented in 2023, or 2024 at the latest, and the Government would communicate the specifics of policy changes to market participants well in advance of implementation.

2 The amount of greenhouse gases emitted is balanced out by removal of an equivalent amount.

3 Tenth Report HC 121–ix (2021–22), [chapter 1](#) (20 October 2021).

4 Letter from Sir William Cash MP to the Minister for Energy, Clean Growth and Climate Change (Rt Hon. Greg Hands MP), dated 20 October 2021.

5 Letter from the Minister for Energy, Clean Growth and Climate Change (Rt Hon. Greg Hands MP) to Sir William Cash MP, dated 24 November 2021.

6 COM(21) 563 Proposal for a Council Directive restructuring the Union framework for the taxation of energy products and electricity; COM(21) 564 Proposal for a Regulation of the European Parliament and of the Council establishing a carbon border adjustment mechanism.

1.9 As part of the consultation, the Government intends to continue its review of free allocation in the UK ETS, which it started with a call for evidence in spring 2021. The Government has also committed to launching a call for evidence in the coming months in partnership with the Devolved Administrations, exploring the role of the UK ETS as a potential long-term market for greenhouse gas removals.

1.10 In response to our observation that it will be interesting to see how far the UK's changes to the UK ETS differ from those being made to the EU ETS, the Minister confirms that the Government is monitoring developments being made to the EU ETS with interest.

1.11 Concerning EU-UK cooperation on carbon pricing, the Minister confirms that discussion about the EU and UK respective approaches took place during the Trade Specialised Committee meeting on the Level Playing Field for Open and Fair Competition and Sustainable Development under the EU-UK Trade and Cooperation Agreement on 12 October 2021. Both parties emphasised commitment and ambition in fighting climate change and the value in exchanging knowledge, expertise, and best practice. The Minister recognised that cooperation and dialogue between the respective ETS schemes would continue to be important as both the UK and EU strive to reach ambitious climate targets. He did not, however, clarify whether there has been any specific work on linking the EU and UK ETSs.

1.12 Regarding the relevance to the UK of the EU's wider 'Fit for 55' package, the Minister noted that the legislation remains in development. The Government recognises, though, that there will be implications for the UK and UK businesses and is therefore monitoring developments, notably concerning:

- the proposed expansion of the EU ETS to the maritime sector;
- the proposed interaction of the EU ETS with the global Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA) on intra-EEA flights; and
- the development of offshore renewable prioritisation due to the effects this may have on UK stakeholders through higher integration and competitiveness factors.

1.13 As COP26 Presidency, the UK welcomes the package as a first step towards implementing the EU's increased 2030 climate target. In addition to the increased ambition of the EU ETS and the package overall, the Government particularly welcomes the proposal for a de facto internal combustion engine (ICE) phase-out commitment by 2035. This proposal supports the UK's COP26 Zero Emissions Vehicles campaign.

Our assessment

1.14 The Minister contends that the proposed duty to spend all EU ETS revenues from Northern Ireland on climate-related activities does not apply. Over 1.1 million EU emissions allowances in respect of NI electricity generation for 2021 are scheduled to be

auctioned on 23 February 2022.⁷ Assuming a carbon price of €80 per allowance, which is close to where the price has been trading recently,⁸ the revenue derived from the auction could be around €88 million.

1.15 The Minister’s contention is based on Annex 4 of the Northern Ireland Protocol, which applies the EU ETS to Northern Ireland insofar as it applies “to the generation, transmission, distribution, and supply of electricity, trading in wholesale electricity or cross-border exchanges in electricity”. We will clarify with the Minister whether the Government has checked that the Commission shares the UK’s interpretation.

1.16 More generally on the ETS, it is welcome that the Government is monitoring developments, particularly in respect of Northern Ireland, and that it and the Northern Ireland Executive will bring relevant developments to the attention of affected Northern Irish stakeholders.

1.17 Concerning wider considerations about EU-UK cooperation on climate change, including possible linkage of the UK and EU ETS schemes, we note the Minister’s recognition that cooperation and dialogue between the respective schemes will continue to be important as both the UK and EU strive to reach ambitious climate targets. The Minister did not clarify whether there has been any specific work on ETS linkage. As the EU and UK’s plans concerning their respective schemes develop, we shall be interested to monitor the degree of cooperation with a view to assessing the continued viability of linkage.

1.18 We look forward to seeing the Government’s various consultations on different aspects of the UK ETS, although we note that it will clearly be important to ensure that the different strands of work mesh together.

1.19 We note that the Government is monitoring developments on the wider package of climate legislation proposed by the Commission in July 2021 and that it has identified some specific areas of interest.

Action

1.20 We have written to the Minister as set out below.

1.21 We report this document to the House as politically important and draw it to the attention of the Business, Energy and Industrial Strategy Committee, Environmental Audit Committee and the Northern Ireland Affairs Committee.

Letter from the Chair to the Minister for Energy, Clean Growth and Climate Change (Rt Hon. Greg Hands MP)

We considered your letter of 24 November on the above document at our meeting of 9 February 2022.

We note the Government’s view that the proposed duty to spend all EU ETS revenues on climate-related activities does not apply to Northern Ireland. This is based on Annex 4 of

7 [EEX Press Release—EEX publishes 2022 auction calendar for EUAA auctions and EUA auctions for the United Kingdom in respect of Northern Ireland](#), EEX Group, 15 December 2021.

8 [Daily carbon prices](#), Ember Climate. This shows both EU ETS prices and UK ETS prices.

the Northern Ireland Protocol, which applies the EU ETS to Northern Ireland insofar as it applies “to the generation, transmission, distribution, and supply of electricity, trading in wholesale electricity or cross-border exchanges in electricity”. When you next write to us on this proposal, could you clarify if the European Commission shares the UK’s interpretation?

We welcome the information that you are monitoring EU-level developments in negotiation this legislation, particularly in respect of Northern Ireland, and look forward to an update by the end of June on any relevant developments.

We note that you are also following developments in other areas of the EU’s climate policies, including: the proposed expansion of the EU ETS to the maritime sector; the proposed interaction of the EU ETS with the global Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA) on intra-EEA flights; and the development of offshore renewable prioritisation due to the effects this may have on UK stakeholders through higher integration and competitiveness factors. These are issues of interest to us and to other Select Committees.

2 Carbon Border Adjustment Mechanism⁹

This EU document is politically important because:

- the EU is likely to propose that its new Carbon Border Adjustment Mechanism—once adopted—applies to Northern Ireland;
- it has implications for trade between the EU and the UK, with a potential impact on the UK that is proportionate to the relevant industrial concentration within UK regions and nations; and
- it may spark a multilateral discussion on carbon pricing and measures to address carbon leakage.

Action

- Write to the Minister.
- Draw to the attention of the Business, Energy and Industrial Strategy Committee, the Environmental Audit Committee, the International Trade Committee, the Northern Ireland Affairs Committee, the Scottish Affairs Committee, the Treasury Committee and the Welsh Affairs Committee.

Overview

2.1 Despite the progress made at the recent climate change negotiations in Glasgow, including a continued commitment to pursue efforts to limit the global temperature increase to 1.5 degrees Celsius above pre-industrial levels,¹⁰ ambition remains variable across the world. As such, there is considered to be a risk of ‘carbon leakage’, either because production is transferred to countries with lower ambition for emission reduction, or because domestic products are replaced by more carbon-intensive imports. The EU’s response to this risk was to propose its Carbon Border Adjustment Mechanism (CBAM), under which certain high-carbon imports should face the same carbon price as those produced domestically.

2.2 We first considered the Commission’s proposal in our [Report](#) of 1 December 2021,¹¹ where we summarised the Commission’s proposal and some of the issues around the EU’s draft CBAM as well as CBAMs more generally. We found that the EU’s proposal is relevant to the UK under all scenarios unless the whole of the UK is exempted from it. As drafted, imports from the UK into the EU would be subjected to the Mechanism, and the EU has also signalled its view that the Mechanism falls within the scope of the Protocol on Ireland

9 Proposal for a Regulation establishing a carbon border adjustment mechanism; Council and COM number: [10871/21](#) + ADDs 1–6, COM(21) 564; Legal base: Article 192(1) TFEU, QMV, ordinary legislative procedure; Department: Business, Energy and Industrial Strategy; Devolved Administrations: Consulted; ESC number: 41916.

10 [Glasgow Climate Pact](#), UN Framework Convention on Climate Change.

11 [Thirteenth Report HC 121–xii \(2021–22\)](#), [chapter 2](#) (1 December 2021).

and Northern Ireland ('NI Protocol') annexed to the UK/EU Withdrawal Agreement. If the EU and UK agreed to add the CBAM Regulation to the NI Protocol, imports from Great Britain (GB) into NI would also be subjected to the Mechanism.

2.3 We [wrote](#) to the Minister of State for Energy, Clean Growth and Climate Change (Rt Hon. Greg Hands MP),¹² raising a series of questions and he has since responded as set out below. In summary, the Government agrees that a multilateral approach to tackling carbon leakage is the most desirable one but accepts that domestic measures may be required in the meantime. The Government is closely following discussions in Brussels on the EU's proposals and is assessing its implications for the UK, including Northern Ireland. The Minister provides no detail about the UK's dialogue with the EU in this area.

Letter from the Minister for Energy, Clean Growth and Climate Change (Rt Hon. Greg Hands MP)

2.4 The Minister [responded](#) to the Committee on 16 December 2021. On the Government's approach to tackling carbon leakage, the Government agrees that a multilateral approach is the most desirable one. Given that carbon leakage is not just a UK problem, the Minister considers it important that the Government works with its partners to ensure that collective efforts towards net zero are not undermined and that others are incentivised to take ambitious action too. This means concentrating efforts on a multilateral effort that is as inclusive as it can be, working together to tackle carbon leakage 'at the source'; that is, differences in climate ambition between jurisdictions.

2.5 While the Government has been pursuing various initiatives through its G7 Presidency, complemented by work at the WTO and within the G20, the Minister acknowledges the challenges in building an international consensus in this area and that domestic measures might be needed in the absence of a multilateral approach.

2.6 The Government is following developments on the EU Carbon Border Adjustment Mechanism (CBAM) closely. The Minister says that there was a positive exchange of information during the October meeting of the Trade Specialised Committee on Goods, and the Government will continue to build its understanding of the proposal and engage through the appropriate channels. He adds that the Government is working to build a full understanding of the implications of the proposal, as currently drafted, on the UK. This includes Northern Ireland.

Our assessment

2.7 Notable from the Minister's response is his acknowledgement of the relevance of the EU's proposal but his reluctance to explain how the UK is engaging with the EU and how the Government intends to share any information on that engagement. We will re-iterate our questions given the relevance of the proposal for the UK.

Action

2.8 We are reporting this document to the House as politically important and we have written to the Minister as set below.

¹² Letter from Sir William Cash MP to the Minister of State for Energy, Clean Growth and Climate Change (Rt Hon. Greg Hands MP), dated 1 December 2021.

2.9 We are drawing the document and our letter to the attention of the Business, Energy and Industrial Strategy Committee, the Environmental Audit Committee, the International Trade Committee, the Northern Ireland Affairs Committee, the Scottish Affairs Committee, the Treasury Committee and the Welsh Affairs Committee.

Letter from the Chair to the Minister of State for Energy, Clean Growth and Climate Change (Rt Hon. Greg Hands MP)

We considered your letter of 16 December 2021 on the above proposal at our meeting of 9 February 2022.

We note your agreement that a multilateral approach to tackling climate change is the most desirable but that such an approach could take some time to evolve and so domestic measures may be necessary in the meantime.

It is welcome that you are monitoring the progress of negotiations on EU CBAM and that you are assessing its implications for the UK. We look forward to further information on your assessment when you next write to us.

You did not address our questions about your direct engagement with the EU on the matter. We noted from the Minutes of the 4 October 2021 EU-UK Trade Specialised Committee on Goods that the UK and EU agreed to hold further informal technical discussions on EU CBAM. We therefore asked you to provide us with more detail on the timing and nature of those discussions and how you intend to communicate progress given the informal nature of the dialogue. We also asked if the Government has had any discussions with the Commission yet about any agreement on how CBAM's operation could take into account the UK ETS. Finally, we asked if any further EU-UK discussion on the possible application of the Regulation under the Northern Ireland Protocol was expected within the EU-UK Joint Consultative Working Group. As we have assessed this proposal to be directly relevant to the UK, we re-iterate our request for information on those points.

We would welcome a response within four weeks, including the emerging results of your analysis concerning the impact of this proposal on the UK.

3 Livestock movements to Northern Ireland¹³

This EU document is politically important because:

- it concerns contentious arrangements for the labelling of livestock in Northern Ireland and for the movement of livestock from Great Britain to Northern Ireland.

Action

- Report to the House.
- Draw to the attention of the Environment, Food and Rural Affairs Committee and the Northern Ireland Affairs Committee.

Overview

3.1 Livestock must be identified with a unique code, normally tagged to at least one ear. This EU [amending Regulation](#) requires that, with effect from 1 July 2021, Northern Ireland (NI) livestock must be identified with a NI-specific two letter country identification code XI or numeric equivalent (899), rather than a UK country identification code. The change was made in order to differentiate NI from Great Britain (GB) livestock because EU animal health law continues to apply to NI under the terms of the Northern Ireland Protocol to the UK/EU Withdrawal Agreement, whereas GB is treated as a third country. The XI code was allocated by the International Standards Organisation and has previously been used in other sectors to differentiate NI from GB.

3.2 We first considered the Regulation in our [Report](#) of 17 November 2021¹⁴ and [wrote](#)¹⁵ to the Minister for Rural Affairs and Biosecurity (Lord Benyon) seeking confirmation that the Government was raising its concerns about this Regulation in the current discussions with the European Union concerning the operation of the Northern Ireland Protocol.

3.3 The Minister has [responded](#),¹⁶ confirming that the Government has made its concerns clear to the EU.

13 Commission Implementing Regulation (EU) [2021/1064](#) of 28 June 2021 amending Implementing Regulation (EU) 2021/520 with regard to the configuration of the animal identification code for the traceability of certain kept terrestrial animals for the United Kingdom in respect of Northern Ireland; Legal base: Regulation (EU) 2016/429 ('Animal Health Law'); Department for Environment, Food and Rural Affairs; Devolved Administrations: Consulted; ESC number: 41921.

14 Twelfth Report HC 121–xi (2021–22), [chapter 2](#) (17 November 2021).

15 Letter from Sir William Cash MP to the Minister for Rural Affairs and Biosecurity (Lord Benyon) dated 17 November 2021.

16 Letter from the Minister for Rural Affairs and Biosecurity (Lord Benyon) to Sir William Cash MP dated 13 December 2021.

Action

3.4 We report the Minister's response to the House as politically important but require no further information. We shall monitor progress on this matter with interest, alongside other elements of the UK's negotiation with the EU on the operation of the Northern Ireland Protocol.

3.5 We are drawing the Minister's response to the attention of the Environment, Food and Rural Affairs Committee and the Northern Ireland Affairs Committee.

4 Northern Ireland Protocol: Persistent organic pollutants¹⁷

This EU document is politically important because:

- it applies to Northern Ireland under the terms of the Northern Ireland Protocol, and could have implications for specific waste streams in Northern Ireland, such as the separate collection of domestic ash; and
- the measure would also create divergence between the EU/NI and GB in relation to these substances, including substances recently identified in otters in England and Wales.

Action

- Report to the House.
- Draw to the attention of the Environmental Audit Committee and the Northern Ireland Affairs Committee.

Overview

4.1 Persistent Organic Pollutants (POPs) are substances that remain intact in the environment for long periods, become widely distributed geographically, bio-accumulate in the fatty tissue of humans and wildlife, and have harmful impacts on the environment or on human health because they increase in concentration as they travel up food chains.¹⁸ Due to these characteristics, they are sometimes known as ‘forever chemicals’.¹⁹ Examples of POPs include polychlorinated biphenyls (PCBs)²⁰ and pesticides such as Dichlorodiphenyltrichloroethane (DDT).

4.2 While generally no longer used in new products, POPs can still be found in waste coming from some consumer products such as waterproof textiles, furniture, plastics and electronic equipment. The European Commission is now [proposing](#) to tighten the limits for POPs in waste, preventing them from re-entering the economy. The Commission’s proposal is to amend the EU POPs Regulation ([Regulation \(EU\) 2019/1021](#)), which implements the Stockholm Convention²¹ to restrict the usage of POPs globally. The UK is also a party to the Convention.

4.3 Under the terms of the Northern Ireland Protocol, Northern Ireland (NI) must maintain alignment with the POPs Regulation, including any amendments made to

17 Proposal for a Regulation of the European Parliament and of the Council amending Annexes IV and V to Regulation (EU) 2019/1021 of the European Parliament and of the Council on persistent organic pollutants; COM number: [COM\(2021\) 656](#); Legal base: Article 192(1) TFEU, Ordinary legislative procedure. QMV; Department: Environment, Food and Rural Affairs; Devolved Administrations: Consulted; ESC number: 41941.

18 “[Persistent Chemical Pollutants](#)”, Parliamentary Office of Science and Technology, July 2018.

19 “Living healthily in a chemical world”, European Environment Agency, 2020.

20 Now largely banned, PCBs continue to occur in the environment through the disposal of old electrical equipment.

21 The Stockholm Convention on Persistent Organic Pollutants

it. Businesses and organisations in NI that handle wastes containing POPs will need to consider the new and revised limits when deciding whether those wastes must be destroyed, or whether they can be recycled or prepared for reuse.

4.4 The Government broadly agrees with the EU’s proposed approach but will need to consider additional evidence before determining what is most appropriate for Great Britain (GB).

4.5 A recent study²² identified high levels of some POPs in otters in England and Wales. Limits of some of these substances in waste are already set, but the Commission’s proposal would extend coverage to some of the other substances, notably perfluorooctanoic acid (PFOA), which has been commonly used as a waterproofing agent and as a fire retardant.

UK Government position

4.6 In her [Explanatory Memorandum \(EM\)](#), the Parliamentary Under Secretary of State (Jo Churchill MP) notes that the update brings Annexes IV and V of the EU POPs Regulation in line with the Stockholm Convention and with Annex I of the EU POPs Regulation (which limits the concentration of POPs permissible in new products) by aligning with the substances listed therein and introducing concentration limit values for them. It also adapts, to scientific and technical progress, the limit values for some substances that are already listed.

4.7 The Minister considers that the new limits proposed by the Commission for three new substances (PFOA, dicofol and pentachlorophenol) and another five already regulated substances or substance groups are stringent. The Commission, she says, considers that these are ambitious limits that are needed to foster high-quality, toxic-free secondary materials that can be safely used in a growing circular economy.

4.8 The EU has prepared an impact assessment on this proposal and concluded that the estimated benefits of reduced release of POPs clearly outweigh the costs, though it notes that there is uncertainty in these estimates. In a subsequent [letter](#)²³ to the Chair of the House of Lords Sub-Committee on the NI Protocol, the Minister used the EU impact assessment to extrapolate NI-specific impacts.

4.9 The most significant overall costs are thought to arise from the diversion of wastes containing two POPs (HBCDD and dioxins and furans) from recycling and non-hazardous landfill to more specialist hazardous waste disposal facilities. HBCDD is commonly found in construction insulation foam. For NI, the annual cost of diverting mixed demolition waste that contains insulation foam to hazardous waste landfill is estimated at around £540,000. Dioxins and furans are often produced through the burning of waste, including wood and coal. The Minister’s letter identifies the separate collection of domestic ash as a particular cost, with a one-off initial cost of around £5.4 million and then annual costs of between £160,000 and £636,000. The proportionality and practicality of this measure is, however, questioned by EU Member States.

22 [Anthropogenic Drivers of Variation in Concentrations of Perfluoroalkyl Substances in Otters \(*Lutra lutra*\) from England and Wales](#); Emily O’Rourke, Juliet Hynes, Sara Losada, Jonathan L. Barber, M. Glória Pereira, Eleanor F. Kean, Frank Hailer, and Elizabeth A. Chadwick; “Environmental Science & Technology”; January 2022.

23 Letter from Jo Churchill MP to Lord Jay of Ewelme, dated 17 January 2022.

4.10 The Minister notes that the proposal may result in an increase in the amount of waste that requires destruction by incineration and that, as there is limited incineration capacity in NI, it may be necessary to ship more waste to GB for destruction by incineration.

4.11 The Government, says the Minister, broadly agrees with the approach that the EU has taken to setting limits and the impact assessment, but would need to consider additional evidence to determine what is right for the UK. The POPs Regulation forms part of EU retained law in the UK and requires that the annexes be kept under review. The UK plans to consider the outcome of a meeting of the Stockholm Convention in June before bringing forward any proposals to amend the annexes, unless the need arises to make changes more urgently.

4.12 The Minister notes that implementation of the amended EU Regulation could create regulatory divergence between GB and NI. Elements of the legislation placing limits on the POP content of manufactured goods would potentially affect the UK internal market if they prevented non-compliant GB goods from being placed on the NI market. The Minister considers this risk to be minimal for two reasons. First, the level of trade in goods containing POPs is likely to be extremely low. Second, the UK is currently negotiating changes in how the Protocol operates, with a view to allowing goods manufactured in GB and destined for the NI market to circulate in NI as long as there is no risk of the goods entering the Single Market.

4.13 On timing, the Minister considers the EU legislative process is likely to be completed by the end of March 2022, although this seems optimistic given that adoption in the European Parliament plenary is not foreseen until early May.²⁴ As the legislation will apply six months after adoption. It seems most likely that the legislation will apply by the end of the year.

Our assessment

4.14 We note that the legislation, once adopted, will apply in Northern Ireland and that there are some specific implications that will need to be monitored. Of particular note is the potential need to introduce separate collection of domestic ash from the burning of wood and coal, although we acknowledge that the suggestion is questioned by Member States.

4.15 A further point of interest is that of policy divergence between the EU and NI on the one hand and GB on the other, noting recent evidence to suggest that there is a considerable impact on the English and Welsh environment from some POPs. The EU legislation is unlikely to apply until the end of the year, and so there is still time for the Government to consider similar changes to legislation in the rest of the UK. We will monitor progress with interest.

Action

4.16 We are reporting the document to the House as politically important, but we require no further information from the Minister.

24 European Parliament Environment Committee—[Work in Progress](#), accessed 27 January 2022.

4.17 We are drawing the document to the attention of the Environmental Audit Committee—given that Committee’s recent work on water quality—and to the attention of the Northern Ireland Affairs Committee due to its implications for Northern Ireland.

5 Social security coordination with the EU: access to benefits and healthcare under the Withdrawal Agreement (update)²⁵

This EU document is politically important because:

- it is a proposal to amend the EU’s legislation on access to the benefits system and public healthcare by people who have exercised their freedom of movement rights to move between EU countries. Despite Brexit, the Government may have to apply any amendments agreed at EU-level, without UK input, when determining whether the UK has an obligation to provide access to benefits and NHS care for those individuals in scope of the ‘Citizens’ Rights’ section of the Withdrawal Agreement; and
- prior to Brexit, the Government broadly supported the proposed changes to the EU rules. While the EU’s remaining Member States were close to a deal on the changes in December 2021, there were too many objections for them to formally agree to the amendments. It is currently unclear how the negotiations might now be taken forward, and, if so, on what timetable.

Action

- Write to the Minister for Welfare Delivery (David Rutley MP) seeking the Government’s view on the most recent iteration of the EU’s proposals, given their implications under the Withdrawal Agreement.
- Draw the latest developments in the EU’s process to amend its social security rules to the attention of the House, and to the Work and Pensions Committee in particular.

Overview

5.1 As part of its ‘freedom of movement’ for individuals, the EU aims to [coordinate access to social security](#) for people who move between EU Member States: in essence, European law sets out when an EU country must give residents who have moved there from another Member State access to their national benefits and public healthcare arrangements.²⁶ The UK has now of course now left the European Union. It ceased to be fully part of the EU’s

25 Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 883/2004 on the coordination of social security systems and regulation (EC) No 987/2009 laying down the procedure for implementing Regulation (EC) No 883/2004; Council and COM number: 15642/16 + ADDs 1–8, COM(16) 815; Article 113 TFEU; special legislative procedure; unanimity; Department: Work and Pensions; Devolved Administrations: not consulted; ESC number: 38400.

26 The EU does not set rules on the types of social security benefits its Member States have to offer, but it does require that access to such benefits must in principle also be open to nationals of other EU countries who have exercised their free movement rights. This system has also been extended to the four EFTA countries—Switzerland, Norway, Iceland and Liechtenstein—which also participate in the free movement of people.

system for coordinating such matters with the expiry of the post-Brexit transition period on 31 December 2020, when free movement of people between the UK and the EU came to an end.

5.2 However, under the [Withdrawal Agreement](#) governing the UK's exit from the EU, the Government has accepted that it will continue to apply the EU's social security rules indefinitely for a cohort of individuals in scope of the '[Citizens Rights](#)' section of that Agreement when determining their entitlements to benefits and NHS care in the UK.²⁷ This primarily covers EU nationals who moved to the UK, and vice versa, before the end of 2020; it is estimated that approximately 4 million people are in scope of the Agreement.²⁸ Their social security rights under EU law can still be enforced directly before UK courts.²⁹ Under the terms of the Withdrawal Agreement, the application of the EU rules is also 'dynamic': the Government is required to apply any *future* changes to the EU legislation on social security coordination, now to be agreed without UK input, when determining the entitlements of that group of people to social security and healthcare in the UK. By contrast, where people only moved between the UK and EU after 31 December 2020 and have no rights under the Withdrawal Agreement, their social security rights are different and more restricted (as set out separately in a [Protocol to the new Trade and Cooperation Agreement](#) with the EU).³⁰

5.3 It is in this context that we have closely followed talks in Brussels on a [proposed revision of the EU's Social Security Coordination Regulations](#), which started as long ago as December 2016. In late 2021, agreement on several of the most contentious issues—in particular access to unemployment benefit for people who work, or have worked, in more than one EU country—appeared to be in reach. However, political opposition from a number of Member States meant the draft legal text was narrowly rejected, at least for the time being. While the future of the proposals is now unclear, they may still be revived in the future. In light of these developments, and the continued partial applicability of EU social security rules to the UK under the terms of the Withdrawal Agreement, we have decided to make a further Report on this matter to the House and to the Work and Pensions Committee in particular.

The EU's Social Security Coordination Regulations

5.4 The EU does not decide the type or level of benefits that its Member States must provide to individuals. Such issues, for example the duration or amount of maternity pay or unemployment benefit, remains for each country to decide for itself. However, as part of the free movement of people, the EU's Member States have [put in place](#) a system for the *coordination* of social security benefits.⁴ The EU's detailed rules in this area are set out in the 'Social Security Coordination Regulations' (SSCRs)—currently [Regulation 883/2004](#) and [Regulation 987/2009](#).

5.5 The purpose of the SSCRs is to determine which national government within the EU is responsible for the payment of benefits, as defined under national legislation, for residents

27 See in particular Article 31 of the Withdrawal Agreement.

28 Department for Exiting the European Union, "Withdrawal Agreement Bill: Citizens' Rights [Factsheet](#)" (2019). The then Department for Exiting the European Union stated: "The Withdrawal Agreement protects the rights of more than three million EU citizens living in the UK and around one million UK nationals living in the EU".

29 See section 7A of the European Union (Withdrawal) Act 2018.

30 Unlike changes to the EU social security rules under the Withdrawal Agreement, any changes to the Protocol on Social Security in the TCA could only be made with UK consent.

who are in a “cross-border situation”, for example because they have moved between different Member States or commute across national borders.³¹ Generally speaking, the country where someone is (or was last) employed—and which therefore collects social security payments (such as national insurance in the UK)—is responsible for payments of any relevant benefits and the provision of public healthcare. Known as the principle of ‘Applicable Legislation’, this ensures that people who move around the EU only pay their national insurance contributions and receive benefits in one country, avoiding double taxation or duplicate social security entitlements. Although the legislation is very complex because it links numerous different national systems together, the practical effect of the Regulations is broadly speaking to:

- require national governments in the EU to provide benefits in cash and kind, such as child benefit, unemployment benefit and access to public healthcare, to residents who have moved there from another Member State on the same terms as they do to their own citizens (the ‘Equal Treatment’ principle). However, this right is qualified, not absolute. For example, the UK has required economically inactive EU nationals to prove a ‘[right to reside](#)’ before they can claim certain benefits, such as Universal Credit, a practice which has been considered compliant with EU law by the EU Court of Justice;³²
- protect people from losing out on access to certain benefits because they have previously worked and paid national insurance contributions elsewhere in the EU, by allowing individual workers to aggregate periods of employment in one Member State—expressed, for example, in time worked or national insurance contributions paid—to when claiming entitlement to benefits in another EU country (the ‘Aggregation’ principle); and
- allow individuals to “export” certain cash benefits such as unemployment or child benefit under certain conditions, allowing the beneficiary to continue to receive such benefits from one Member State while residing in another. This applies, for example, to child benefit for someone who has children who live elsewhere in the EU, or unemployment benefit if an unemployed person moves to another Member State in search of employment (the ‘Exportability’ principle).

5.6 This system of coordination covers a wide range of social security payments, including unemployment benefit, child benefit and state pensions, as well as rights with respect to short- and long-term healthcare for EU citizens who exercise their free movement rights.³³ Prior to Brexit, for example, these Regulations were the legal basis for British pensioners in countries like Ireland, Spain and France having access to healthcare free of charge locally, and to have the costs of that healthcare system paid for by the UK Government.⁵ It was also the legal basis for the European Health Insurance Card (EHIC) for medical

31 Broadly speaking, the coordination rules apply to EU nationals (and their families), but also to non-EU nationals and their family members who reside legally in the EU.

32 See judgements in the cases of *Dano* C333/13 (concerning the German social security system) and *C-308/14, Commission v United Kingdom*.

33 For example, Article 19 of the Basic Regulation is the basis for the European Health Insurance Card (EHIC) scheme, which entitles holders (when staying temporarily in another Member State than the one where they are insured) to emergency medical care on the same terms as residents of that Member State.

cover for UK residents during short-term visits to other EU countries, which has now been mostly replaced by the ‘[Global Health Insurance Card](#)’ under the UK/EU Trade and Cooperation Agreement.³⁴

EU social security rules under the Withdrawal Agreement

5.7 As noted above, the EU’s Social Security Coordination Regulations remain of importance to the UK despite it having left the European Union in 2020. This is because of the Withdrawal Agreement, which governs the terms of the UK’s exit. That treaty provides for the continued application of those Regulations—including any future amendments decided by the EU *without* the UK—to determine the social security rights of a large cohort of British and EU nationals³⁵ in scope of the ‘Citizens’ Rights’ section of the Withdrawal Agreement. This primarily covers EU nationals who moved to the UK, and vice versa, before the end of 2020; it is estimated that approximately 4 million people are in scope of the Agreement.³⁶ The Agreement provides, for example, a right of residence for EU nationals already living in the UK prior to the end of 2020. In addition, in the field of social security, Articles 30 to 36 of the Agreement stipulate that these individuals can [continue to rely](#) on the EU SSCRs.³⁷ Although the exact rights people can derive from the Withdrawal Agreement will vary depending on their personal circumstances, broadly speaking, this means that:

- The EU Regulations are still used to determine which country—the UK or an EU Member State—is responsible for the payment of benefits for people with rights under the Withdrawal Agreement, including the provision of public healthcare. Generally, EU nationals resident in the UK prior to Brexit will have a right to access the UK benefit system and free [NHS care](#) (although their right to certain benefits, in particular Universal Credit, may be [limited](#) if they have not yet lived in the UK for five years because of the aforementioned ‘[right to reside](#)’ test).³⁸
- Individuals covered by the Withdrawal Agreement can continue to use periods of national insurance contributions paid in an EU country prior to Brexit when applying for relevant entitlements in the UK if they became resident in the UK before the post-Brexit transition period ended on 31 December 2020, for example

34 Despite the change in name from ‘European’ to ‘Global’, the GHIC is currently valid only in EU countries and Switzerland. Individuals in the UK with rights under the Withdrawal Agreement can continue using the EHIC, which in addition to the EU and Switzerland is also valid in Norway, Iceland and Liechtenstein.

35 The Withdrawal Agreement under certain conditions also creates rights for their dependents. In addition, the EEA EFTA Separation Agreement and the Swiss Citizens’ Rights Agreement extend the citizens’ rights provisions of the Withdrawal Agreement to nationals of these states and UK nationals who have moved between the UK and these states before the end of the post-Brexit transition period. As such, any references in this chapter to EU citizens, or EU Member States should be read as including the citizens and states of the EEA EFTA countries (Norway, Liechtenstein and Iceland) and Switzerland.

36 Ibid, footnote 4.

37 HM Government, “Guidance relating to the UK’s operational implementation of the social security coordination provisions of Part 2 of the EU Withdrawal Agreement: Citizens’ Rights” (29 November 2021).

38 This is the result of the UK’s ‘[right to reside](#)’ test. Individuals with so-called ‘pre-settled status’, who moved to the UK prior to the end of the post-Brexit transition period but have not yet acquired settled status by providing evidence of five years’ continuous residence, who cannot prove their ‘right to reside’ have more limited access to UK social security benefits. The issue was at the heart of a case that reached the Supreme Court in 2021 (Fratila and another v Secretary of State for Work and Pensions) and another case referred by the NI courts to the CJEU (CG v Department for Communities in NI C709/20) but those cases related to circumstances that occurred prior to the end of the post-Brexit transition period during which the UK still applied EU law in full, and the Citizens’ Rights provision of the Withdrawal Agreement were not yet in effect. The Government won both cases.

when applying for a state pension. The same also applies in reverse to those who have periods of national insurance contributions in the UK but were resident in the EU at the end of 2020.

- EU nationals resident in the UK and covered by the Withdrawal Agreement can ‘export’ certain benefits if they are entitled to receive it, for example if they are eligible for child benefit in the UK for a child who lives in the EU. Similarly, UK pensioners already resident in an EU country like Spain and France remain able to access healthcare locally without needing to purchase private health insurance, and have their costs reimbursed by the UK Government.

5.8 As required by the Withdrawal Agreement, the UK established an ‘[Independent Monitoring Authority](#)’ (IMA). This is a statutory body that monitors the implementation of the Citizens’ Rights provisions of the Agreement by UK public bodies, including in the field of social security coordination, “to make sure they implement the rights of these citizens and by identifying any underlying issues”.³⁹ The IMA can [initiate judicial review proceedings](#) in respect of decisions by public authorities that it considers breach the terms of the Agreement. In addition, individuals themselves can seek to enforce their social security rights under the Withdrawal Agreement directly before the UK’s national courts.⁴⁰

Proposed amendments to the EU Social Security Coordination Regulations

5.9 In December 2016, after the Brexit referendum but before the Government’s formal notification of the UK’s withdrawal from the EU under Article 50 TEU, the European Commission tabled a [legislative proposal](#) to amend the EU’s Social Security Coordination Regulations. This draft legislation has remained relevant for the UK because of the continued application of those Regulations under the Withdrawal Agreement. As our predecessor Committees therefore discussed in some detail in a [number of Reports](#) from 2017 to 2019,⁴¹ the Commission’s proposal had several distinct objectives: to update the rules for determining which EU country is responsible for payment of benefits for individuals in cross-border situations, in particular unemployment benefit; to clarify under what conditions non-contributory benefits (such as Universal Credit) could be claimed by such individuals; and to make smaller changes to the provisions of the Regulations on access to “salary-related family benefits” and long-term care benefits.

5.10 Under EU law, any changes to Regulations 883/2004 and 987/2009 must be agreed by what is called the ‘ordinary legislative procedure’. This means that a Qualified Majority of the national governments of the Member States (in the EU’s Council of Ministers)⁴² have to agree on the legal changes, jointly with the European Parliament.⁸ Although the proposal to amend the Social Security Coordination Regulations was published in late 2016, as

39 Independent Monitoring Authority (2022) “About us”. Available at: <https://ima-citizensrights.org.uk> (Accessed: 3 February 2022).

40 Section 7A of the European Union (Withdrawal) Act 2018.

41 See in particular the European Scrutiny Committee’s following Reports: Thirty-first Report HC 71–xxix (2016–17), [chapter 8](#) (8 February 2017); First Report HC 301–i (2017–19), [chapter 15](#) (13 November 2017); Fourth Report HC 301–iv (2017–19), [chapter 8](#) (6 December 2017); Twenty-ninth Report HC 301–xxviii (2017–19), [chapter 6](#) (23 May 2018); Fifty-third Report HC 391–lii (2017–19), [chapter 6](#) (30 January 2019); and Sixty-second Report HC 301–lx (2017–19), [chapter 11](#) (3 April 2019).

42 Under the EU Treaties, a [Qualified Majority Vote](#) (QMV) means a proposal is adopted by the Member States in the Council if the countries voting in favour represent 55% of member states vote in favour (15 out of 27) and at least 65% of the total EU population.

of early 2022 no agreement on the legal text has been found. Indeed, the negotiations in Brussels have been complex. This is not surprising, given the political sensitivities around the issue of access to benefits.⁴³ One of the thorniest aspects has been the issue of which country is responsible for providing unemployment benefit for individuals who work in more than one EU country. A second relates to the social security rules applicable to workers who are temporarily ‘posted’ from one Member State to another. This is due to concerns over ‘[social dumping](#)’, where a local workforce could be undercut if the EU rules allow people to work in one of the EU’s higher-income Member States while paying their social security contributions in a lower-income Member State (making them cheaper to employ).

5.11 The UK participated actively in the negotiations on the revision of the social security rules from 2016 to 2019, when it was still a Member State. In March 2019, the then-Minister for Employment (Rt Hon. Alok Sharma MP) [announced](#) that the European Parliament and the Member States had reached a [compromise](#) agreement earlier that month (although even at that stage it was clear that six EU countries were opposed to the compromise). This agreement would have amended the rules on coordination of long-term care and “salary-related family benefits”, and changed the conditions for access to unemployment benefit,⁴⁴ especially for workers who live in one Member State and (seek) work in another.⁴⁵ In a bid to counter ‘social dumping’, there would also be a notification requirement alerting the authorities of one country about workers being temporarily sent to do work in another. A proposed codification of EU Court of Justice case-law relating to the ‘Right of Residence’ test, which can be used to restrict access by unemployed individuals from another EU country to certain non-contributory benefits (including child benefit and child tax credit in the UK), was ultimately not included in the compromise legal text because there was no agreement on the way of doing so.⁴⁶

43 The existing 2004 Regulation, which in turn replaced legislation dating in part from 1971, was first proposed in 1998 but did not take effect until 2010.

44 The compromise legal text would have changed how EU workers who find work in another Member State can, if necessary, access unemployment benefits in their new country of employment. There would be a one-month qualifying period of employment in the new country before a worker can use (‘aggregate’) periods of residence or insurance contributions accumulated in other EU countries towards the qualifying criteria for unemployment benefit (such as contributory Jobseeker’s Allowance (JSA) in the UK), compared to the current one-day qualifying period of employment in a new EU country before they can count employment elsewhere in the EU towards a JSA entitlement in that Member State.

45 Under the deal of March 2019, agreement workers would be able to continue drawing their unemployment benefit when moving to another Member State (‘exporting’ it) for a minimum of 6 months. In addition, frontier workers would have to claim unemployment benefit in the country where they work (rather than where they live, which is what Regulation 883/2004 dictates at present). Consequently, the complex frontier worker reimbursement system that operates currently—where the cost of unemployment benefit is paid by the Member State of residence, but recouped from the Member State of employment—would have been abolished.

46 See judgement in case C-308/14, *Commission v United Kingdom*. In that case, the European Court of Justice ruled in 2016 that the right to equal access to non-contributory benefits for mobile EU nationals can be made subject to ‘right of residence’ test. As a result, Member States can refuse to grant non-contributory cash benefits to resident EU citizens with the nationality of another EU country who are economically inactive, and who do not have a legal right of residence under the Free Movement Directive (although which specific non-contributory benefits are caught by this exemption is still a matter of contention, as the Court’s judgement is not explicit). The original proposal to amend the SSCRs would have codified this case law, as set out in more detail in our predecessors’ [Report of 13 November 2017](#). This proposed codification has since been dropped because of legal and political complexities, meaning the application of the judgement can vary between EU countries. However, 80% of non-economically active mobile EU citizens derive either residence rights or entitlements to social security through working family members with whom they reside. As such, they will continue to be entitled to equal treatment and access to non-contributory benefits irrespective of the Court’s judgement.

5.12 The Government had [expected](#) the new legal text of the SSCRs to be formally agreed in March 2019, because the countries known to oppose the deal would not stop the necessary Qualified Majority from being reached.⁴⁷ However, the EU’s Member States, by razor-thin majority, actually voted to reject the compromise text on 29 March 2019. The UK, then still represented in the Council of Ministers, voted in favour of the compromise—as we explore further below. The lack of a sufficient majority in favour appears to have been due primarily to reservations in a number of higher-income EU Member States in Western and Northern Europe about the social security rights of frontier workers and workers ‘posted’ from one EU country to another, especially in relation to access to national unemployment benefits (such as Jobseeker’s Allowance in the UK).⁴⁸ This mirrored similar protracted negotiations over the [Posted Workers Directive](#) from 2016 to 2018, where the issue of “social dumping” was also at the forefront of the talks. The European Parliament subsequently voted to delay its formal consideration of the draft legislation in light of the Council’s position.

5.13 After a number of months where both sides reflected on their positions and the reasons for the failure of the initial deal, negotiations between the Parliament and Council were re-started in autumn 2019.⁴⁹ The two institutions focussed in particular on access to unemployment benefit and social security for cross-border and frontier workers. These talks were again protracted, taking place throughout 2020 and 2021. In December 2021, there were again indications that an agreement on the outstanding issues was close. The Slovenian Government, which held the rotating presidency of the EU’s Council of Ministers in the second half of 2021, announced that it had brokered a [new compromise](#) with the European Parliament with the following elements:

- the sections of the March 2019 deal, relating to coordinating access to long-term care and salary-related family benefits (and the decision not to codify the ‘Right of Residence’ test when providing certain benefits for economically inactive residents), were maintained without further changes. That means there would be no obligation for the UK to change its current practice of requiring EU nationals with “pre-settled status”, namely those that moved here before 31 December 2020 but have not yet proven five years’ continuous residence, to prove a “right to reside” before they can access certain benefits such as Universal Credit;
- when determining which EU country is responsible for the payment of unemployment benefit to individuals, a particular Member State would assume such responsibility only after a person has paid into its social security system for at least a month (compared to the current situation, where a single day’s employment in a Member State suffices to make that country ‘competent’ to provide unemployment benefit if other relevant conditions for such an entitlement under its domestic law are met);⁵⁰
- however, a different arrangement would continue to apply for unemployed individuals who were previously frontier workers (i.e. living in one EU country, but working in another). Provided they had worked in a particular Member State

47 [Letter](#) from Alok Sharma, Minister for Employment, to Sir William Cash, Chair of the European Scrutiny Committee (16 March 2019).

48 Austria, Belgium, the Czech Republic, Denmark, Germany, Luxembourg, the Netherlands, and Sweden voted against, while Hungary, Malta and Poland abstained.

49 See [Council document 15068/21](#), p. 5.

50 Such [conditions](#) may relate, for example, to not being in full-time education or being actively looking for work.

for either three consecutive months, or six non-consecutive months in a two-year period, while living in another, they would have to claim unemployment benefit in the country where they work (rather than in the country where they live, which is what EU rules require at present).⁵¹ They would be able to draw unemployment benefit for fifteen months, if such an entitlement exists under the relevant domestic law;

- in addition, all “workers in cross border situations” that have at least 24 uninterrupted months of national insurance, employment or self-employment exclusively in a particular Member State would be entitled to unemployment benefits in that country for a period of 10 months if they lose their job (unless the period of entitlement under the relevant national legislation is shorter);
- individuals would be allowed to continue drawing (‘export’) unemployment benefit received in one EU country while having moved to another to look for work, for a maximum period of six months (compared to three under the current rules).⁵² However, this would only be the case where the individual had completed “either an uninterrupted three-month period, or an interrupted six-month period of insurance, employment or self-employment during a period of 24 months” exclusively under the legislation of the Member State paying the benefit; and
- at the European Parliament’s insistence, a ‘prior notification’ requirement would be introduced for ‘posted’ workers, namely those employed in one EU country but temporarily sent to another to perform work. This requirement means such postings would normally have to be notified to the relevant social security authorities in their ‘home’ EU country before the work commences, to introduce greater oversight of flows of posted workers in the context of continued concerns around ‘social dumping’. This is intended, for example, to help identify shell companies in lower-income Member States set up purely for the purpose of sending workers to another EU country, avoiding having to pay the latter’s higher national insurance contributions.⁵³

5.14 While the compromise deal came after two years of talks, a significant number of EU countries felt that the final stretch of talks was rushed; on 21 December, *Politico* reported that “around a dozen [EU] countries” wanted more time to consider the deal, and expressed

51 This is referred to as ‘lex loci laboris’, or the principle that the law of the country in which a worker performs his labour should apply. The Member States had initially pushed for the Member State of employment to become responsible for the payment of unemployment benefit to frontier workers after three months, rather than six. Conversely, the European Commission had proposed to make the Member State of residence responsible for unemployment benefit until a frontier worker had worked in another Member State for at least 12 months. Reimbursement mechanisms between the country of employment and the country of residence would be abolished. MEPs had wanted frontier workers to be able to choose in which country to claim unemployment benefit.

52 In order to be entitled to the ‘export’ of unemployment benefit, a person would have to have completed either an uninterrupted three-month period of employment or self-employment during a period of 24 months in the Member State paying the benefit, or a six-month period of employment or self-employed (with interruptions allowed) over 24 months.

53 Certain exemptions from the ‘prior notification’ would be included, in particular for business trips. For individuals who habitually work in more than one EU country, the European Parliament had suggested that the amount of time worked in each country should be used to determine where the employer should be considered ‘registered’ (and therefore where the national insurance contributions should be paid). The Council did not accept that proposal and it was not included in the compromise text.

concerns about its substance. Ultimately, many Member States felt that the Presidency had made too many concessions to the European Parliament, and the agreement again failed to secure the necessary Qualified Majority among EU countries when an informal vote was held on 22 December 2021.⁵⁴ Following this latest set-back, it is unclear when—indeed if—further negotiations will take place and, if so, on what timescale. Consequently, it is unknown if the EU will amend its Social Security Coordination Regulations at all (and, should agreement be found in the future, to what extent the proposed amendments described above would be maintained or altered). Any such discussions may also take place in the context of renewed calls for a ‘European Social Security Pass’ to allow an individual’s social security rights to be verified digitally when working across borders within the EU.

The Government’s position on the proposed amendments to the EU Social Security Coordination Regulation

5.15 As noted, the social security provisions of the Withdrawal Agreement are ‘dynamic’.⁵⁵ This means that UK is required to also apply any amendments to the Social Security Coordination Regulations agreed by the EU *after* the UK ceased to be a Member State to citizens within scope of the Agreement. That would include the changes described above, should they be formally adopted by the European Parliament and the Council in the future. Article 36(2) of the Agreement theoretically allows the UK not to apply such amendments if they extend the EU’s coordination rules to new types of benefits; make a non-exportable cash benefit exportable, or vice versa; or make changes to the time limits for such ‘exportability’. However, any disapplication by the UK in such cases could only take place with the EU’s consent (and therefore not unilaterally at the UK’s discretion).⁵⁶

5.16 It is in this context that we closely followed negotiations in Brussels on a revision of the EU’s Social Security Coordination Regulations. Indeed, when the draft new Social Security Coordination Regulation was initially put to the vote in the Council of Ministers on 29 March 2019, the UK was still a Member State of the European Union with full voting rights. At that point, the Government voted in favour (although the overall vote, as noted, led to the rejection of the draft legal text). The Department for Work and Pensions [told this Committee](#) that the UK was in favour of the compromise then on the table because it had “thus far secured many of its objectives for the package of reforms”, even if it did not support some elements.⁵⁷ In particular, in the view of the UK’s then imminent formal withdrawal from the EU.⁵⁸

54 According to Politico, “Thirteen countries voted in favour, five abstained and nine voted against”. Those voting against were Austria, Denmark, Finland, Luxembourg, Ireland, Greece, the Czech Republic, Malta and the Netherlands. Germany was among the countries that abstained.

55 [Article 36 of the Withdrawal Agreement](#). This requires the Joint UK-EU Joint Committee to revise the list of social security legislation in the Agreement “as soon as such an [amending] act is adopted by the [EU]”.

56 As the pending amending Regulation is yet to be finalised following negotiations between the Council and the European Parliament, it is still too early to say if any of the changes could fall within the scope of Article 36(2) of the Withdrawal Agreement.

57 [Letter](#) from Alok Sharma, Minister for Employment, to Sir William Cash, Chair of the European Scrutiny Committee (16 March 2019). In particular, the Government welcomed the proposed abolition of the reimbursement provisions for unemployment benefit for frontier workers (which the Government said “were cumbersome to administer and a source of disagreement between the UK and other Member States”). To secure agreement, the UK was also willing to accept certain changes which it did not substantively support, in particular the extended right to ‘export’ unemployment benefits and the new administrative formalities for workers being ‘posted’ to another Member State. At that point, in spring 2019, the DWP argued that the financial impact of extending access to unemployment benefit payments is expected to be “limited”.

58 At this stage, the UK’s formal date of exit from the EU had been [extended until 12 April 2019](#).

The Government considered that it was preferable for the file to be concluded whilst the UK retains a seat at the negotiating table and on a text which it had helped shape, the UK offered some flexibility.

5.17 It is notable that many of the elements of that initial deal in March 2019 were retained in the second compromise in December 2021, and may therefore survive into any future agreement. Should the EU formally adopt changes to the Social Security Coordination Regulations, this could have a direct impact on individuals within scope of the Withdrawal Agreement (and therefore the administration of the UK system of social security as it relates to them). The Government has not publicly communicated its views on the compromise deal of December 2021, given that it was not ultimately agreed by the Council of Ministers. What, if any, engagement it has sought to date with the EU institutions to influence the shape of the deal while the negotiations were on-going in 2020 and 2021 is also unclear. In any event, the determination of how any revised EU Social Security Coordination Regulation, if it were to be approved by the remaining Member States and the European Parliament, might impact on EU and UK nationals with rights under the Withdrawal Agreement would be complex:

- it would depend, first, on the final text of the Regulation once the negotiations between the Parliament and the Council had concluded. If the general thrust of the latest deal were to be maintained, it could mean that there would be changes to when the UK would have to provide benefits to resident EU nationals and allow them to ‘export’ unemployment benefit if they move back to the EU to find work for a longer period. It could also change the system of access to unemployment benefits for frontier and cross-border workers, which may be particularly relevant for people in Northern Ireland and Ireland; and
- a second consideration is the UK’s unique position: it no longer has free movement with the EU. The UK must apply the Social Security Coordination Regulations only to the cohort of individuals in scope of the Withdrawal Agreement, which is primarily those who moved to the UK from the EU before 31 December 2020. While this cohort is still subject to change,⁵⁹ it is no longer possible for an EU national to acquire rights under the SSCRs by virtue of the Withdrawal Agreement only by moving to the UK. By extension, any changes to the EU’s SSCRs will not be relevant for individuals in the UK who are out of scope of the Withdrawal Agreement.

5.18 By contrast, where people only moved between the UK and EU after 31 December 2020 and have no rights under the Withdrawal Agreement, their social security rights are different and more restricted. They are set out separately in a [Protocol to the new Trade and Cooperation Agreement](#) (TCA) with the EU, which came into effect on 1 January 2021. While the substance of people’s rights under the Withdrawal Agreement and the TCA may be similar in many cases,⁶⁰ one key difference is how future changes are agreed:

59 For example, in certain cases family members of individuals in the UK with rights under the Withdrawal Agreement can still move here and have social security rights under the Agreement. The same applies to future children, biological or adopted, of individuals in the UK with rights under the Withdrawal Agreement.

60 There are clear differences between the social security coordination rules under the Withdrawal Agreement and the Trade and Cooperation Agreement, and generally the latter are less generous for individuals (especially in relation to ‘export’ of benefits). See for more information the [Government’s guidance](#) “relating to the UK’s operational implementation of the social security coordination provisions of Part 2 of the EU Withdrawal Agreement: Citizens’ Rights”.

for those under the Withdrawal Agreement, the applicable social security coordination rules can be changed by the EU without UK input. For those governed by the Social Security Protocol in the TCA, any changes would have to be jointly approved by the EU and the UK.⁶¹

Conclusions and Action

5.19 As is clear from the above, the EU’s Social Security Coordination Regulations remain of direct relevance for the UK because of their continued applicability to millions of people under the Withdrawal Agreement. While the legislative proposal to amend the Regulations again failed to secure formal approval among the remaining 27 Member States in December 2021, it has not been formally withdrawn. Further talks to secure an agreement, for example on access to unemployment benefit and the social security rights of frontier workers, could be re-started in the future, although the timetable remains unclear. If the amendments are passed into law, the UK would have to apply the new rules to a large group of EU nationals and British citizens, without any ability to change or amend what was agreed by the EU.

5.20 Given that negotiations in Brussels have not been concluded, and indeed it is unclear how they may proceed at all, it is not yet possible to determine the final substance of the new Regulation and, consequently, the potential impact on the UK. Naturally, should the Regulation be approved, we would expect the Government to provide a detailed explanation to Parliament of how the new legislation impacts on the UK’s obligations, and the rights of individuals, under the Withdrawal Agreement. Given the above, the Committee has now written to the Department for Work and Pensions to reiterate its continued interest in the proposal to amend the EU’s Social Security Coordination Regulations, and to ask for the Government’s assessment of the December 2021 compromise text as a basis for further negotiations. A copy of that letter is included below. We also draw these developments to the attention of the Work and Pensions Committee.

Letter from the Chair to the Minister for Welfare Delivery (David Rutley MP)

The Committee today considered the state of play in the negotiations in Brussels on the revision of the EU’s Social Security Coordination Regulations. These of course remain binding on UK public authorities when determining the access of a large cohort of individuals mostly EU nationals living in the UK prior to Brexit—to our social security system and NHS care, as set out in the Citizens’ Rights provisions of the Withdrawal Agreement.⁶²

As you will be aware, a compromise legal text to amend the EU Regulations in relation to access to unemployment benefits, in particular for cross-border and frontier workers, was discussed by the remaining Member States in December last year. Although there was insufficient support in the Council of Ministers at this junction to formally adopt the

61 Depending on their substances, changes to the Social Security Protocol of the TCA could either be made via a Decision of the UK/EU Specialised Committee on Social Security Coordination, or require a formal amending treaty to be ratified by both sides.

62 Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 883/2004 on the coordination of social security systems and regulation (EC) No 987/2009 laying down the procedure for implementing Regulation (EC) No 883/2004; Council and COM number: 15642/16 + ADDs 1–8, COM(16) 815; ESC number: 38400.

amendments, it remains a possibility that the negotiations to amend the legislation could be revived in the future (as, indeed, they were after an earlier compromise was rejected by Member States in March 2019).

With that in mind, we wish to reiterate this Committee’s continued interest in these—and any future—proposals to amend the EU’s Social Security Coordination Regulations, in light of their continued direct applicability when deciding to grant access to UK social security and healthcare for a large cohort of UK and EU nationals under the terms of the Withdrawal Agreement. As an aid for any further parliamentary scrutiny work, it would be helpful if you could write to us:

- clarifying the Government’s views on the compromise legal text that emerged in late 2021 (since these are likely to form the basis for any further negotiations in Brussels, should they take place), in particular what their impact would have been for the UK’s obligations towards individuals covered by the Withdrawal Agreement; and
- setting out how the Government has engaged with the EU institutions on the amendments to the Social Security Coordination Regulations since the UK left the EU, precisely because changes to the EU legislation in this area are likely to affect the UK’s legal obligations under the Withdrawal Agreement.

Should there be any further developments towards formal adoption of the proposals by the EU in due course, we would of course expect the Government to provide a more detailed analysis of how the amendments might impact on the UK’s obligations under the Withdrawal Agreement with respect to the provision of social security entitlements to individuals covered by the ‘Citizens’ Rights’ provisions.

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: Carbon Border Adjustment Mechanism [Proposed Regulation]; EU Climate Change Policy [Proposed Directive]

Environmental Audit Committee: Carbon Border Adjustment Mechanism [Proposed Regulation]; EU Climate Change Policy [Proposed Directive]; Northern Ireland Protocol: Persistent organic pollutants [Proposed Regulation]

Environment, Food and Rural Affairs Committee: Livestock movements to Northern Ireland [Commission Implementing Regulation]

International Trade Committee: Carbon Border Adjustment Mechanism [Proposed Regulation]

Northern Ireland Affairs Committee: Carbon Border Adjustment Mechanism [Proposed Regulation]; EU Climate Change Policy [Proposed Directive]; Livestock movements to Northern Ireland [Commission Implementing Regulation]; Northern Ireland Protocol: Persistent organic pollutants [Proposed Regulation]

Scottish Affairs Committee: Carbon Border Adjustment Mechanism [Proposed Regulation]

Treasury Committee: Carbon Border Adjustment Mechanism [Proposed Regulation]

Welsh Affairs Committee: Carbon Border Adjustment Mechanism [Proposed Regulation]

Work and Pensions Committee: Social security coordination with the EU: access to benefits and healthcare under the Withdrawal Agreement (update) [Proposed Regulation]

Formal Minutes

Wednesday 9 February 2022

Members present:

Sir William Cash, in the Chair

Allan Dorans

Margaret Ferrier

Mr Marcus Fysh

Mr David Jones

Marco Longhi

Craig Mackinlay

Anne Marie Morris

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 5 agreed to.

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

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

Adjournment

Adjourned till Wednesday 23 February 2022 at 1.45 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.

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](#) (*Independent, Rutherglen and Hamilton West*)

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

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

[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](#) (*Independent, Newton Abbot*)

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