Scrutiny of international agreements

Treaties considered on 5 March 2019

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

On 14 January 2019 the Procedure Committee decided that the European Union Committee should, until the end of the 2017–19 session of Parliament, be responsible for scrutinising Brexit-related treaties or international agreements.

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Lord Boswell of Aynho (Chairman)
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Lord Soley
Baroness Sutte
Lord Teverson
Baroness Verma
Lord Whitty

Further information


Committee staff
The current staff of the Committee are Christopher Johnson (Principal Clerk), Stuart Stoner (Clerk), Roberto Robles (Policy Analyst), Tim Mitchell (Legal Adviser), Alex Horne (Legal Adviser), Samuel Lomas (Committee Assistant) and Alasdair Johnston (Committee Assistant).

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SUMMARY

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

This report addresses one agreement, which we considered at our meeting on 5 March, the Convention on Social Security between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland [CP 49].

We draw special attention to this Convention, on the grounds that:

- It is politically important, and gives rise to issues of public policy that the House may wish to debate prior to ratification; and

- The explanatory material laid in support provides insufficient information on the agreement’s policy objective and on how it will be implemented.
Scrutiny of international agreements: treaties considered on 5 March 2019

CHAPTER 1: AGREEMENT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE


1. The UK-Ireland Convention on Social Security (‘the Convention’) was laid on 12 February 2019, and the scrutiny period is scheduled to end on 19 March. It was considered by the EU Home Affairs Sub-Committee at its meeting on 27 February.

2. The Convention differs from the other Brexit-related treaties we have scrutinised, in that it does not ‘roll over’ a prior EU international agreement. Instead, it seeks to roll over certain rights hitherto enjoyed by UK and Irish citizens in respect of each other’s countries under various provisions of EU law. In other words, it rolls over certain rights that support ‘free movement’, while limiting the enjoyment of those rights (so far as the UK is concerned) to Irish citizens. In most cases, the Government has used powers delegated to Ministers under the European Union (Withdrawal) Act 2018 to roll over “retained EU law”; it could not use those powers in this case, because the rights concerned are reciprocal—the Republic of Ireland will grant the same rights to UK citizens as the UK will grant to Irish citizens.

3. These reciprocal rights, currently guaranteed by EU law, are also inherent to the ‘Common Travel Area’ (CTA). Since 1924 a series of CTA arrangements have offered a unique range of reciprocal rights, including social security rights, to British and Irish citizens moving between the two countries. The CTA is recognised in Protocol 20 annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union. Preserving the CTA was also one of the key undertakings made by both sides in the negotiations that led to completion of the UK-EU Withdrawal Agreement in November 2018. In the December 2017 Joint Report, the two sides recognised that “the United Kingdom and Ireland may continue to make arrangements between themselves relating to the movement of persons between their territories (Common Travel Area), while fully respecting the rights of natural persons conferred by Union law”. In the Withdrawal Agreement itself, the CTA features prominently in the Protocol on Ireland/Northern Ireland, Article 5 of which essentially replicates the wording of

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the Joint Report.\(^3\) It follows therefore that the Convention is unusual both in carrying over certain rights provided under EU law by means of a bilateral treaty, and also in that it is explicitly anticipated in the terms of the UK-EU Withdrawal Agreement.

4. A brief overview of the history and basic principles of the CTA is given in Box 1.

**Box 1: Common Travel Area**

The Common Travel Area between the UK and Ireland (as well as the Crown Dependencies of Jersey, Guernsey and the Isle of Man) is a distinct aspect of the border arrangements established after the development of the Irish Free State in 1922.

The current reciprocal rights for UK and Irish citizens to live and work in each other’s countries are underpinned in domestic law by the treatment of Irish nationals as non-foreigners under the Ireland Act 1949.

The Ireland Act 1949 states that “Ireland is not a foreign country for the purposes of any law in force in the UK” and the British Nationality Act 1981 further excludes people with a “qualifying CTA entitlement” from UK immigration law. Irish law reciprocally exempts British citizens from Irish immigration laws. Exemption from immigration law permits CTA nationals to remain in each other’s country without the need for a visa, residence permit or proof of resources.


5. The purpose of this Convention is to preserve the social security rights of UK and Irish nationals, which support the right of UK and Irish citizens to move between and reside in each other’s countries. These rights were formerly embodied in the CTA itself, but in the years following the accession of the UK and Ireland to the then European Economic Community in 1973, were consolidated and extended under EU free movement laws.

6. This has given rise to a complex interaction between CTA rights and EU law. The Convention presently under scrutiny will operate in parallel to the Convention on Social Security between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland, which was signed in 2004 but did not come into force until 2007 (hereafter ‘the 2004 Convention’).\(^4\) That Convention co-ordinates social security rights of migrants moving between the UK, Ireland and the Crown Dependencies. It was a consolidating measure: the first agreement on reciprocity in the field

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4 After the signature of the Convention provisions in the Civil Partnership Act 2004 took effect which affected the benefit entitlement of spouses and civil partners. At approximately the same time, the Government of Jersey changed its sickness and invalidity benefit regime. As the text of the Convention did not reflect either of these changes and it had not yet come into force, it was decided to make amendments to the text to reflect the changes by means of the exchange of notes which is set out in Schedule 2 to the Convention. That exchange was completed in July 2007, after which the UK and Ireland exchanged instruments of ratification which enabled the Convention to be given legal effect and come into force on 1 October 2007.
of social security between the UK and Ireland was signed in 1960 (although at that stage the agreement did not include Northern Ireland).  

7. The 2004 Convention extended the scope of coverage, on the part of the UK, to include Jersey and Guernsey for the first time. At the same time, it excluded from its scope those whose social security rights were subject to EU Regulations. It thus covered neither UK nor Irish citizens—but did cover those people moving between the UK and Ireland who were not covered by EU social security coordination laws, including citizens of the Crown Dependencies (which, though part of the CTA, are not part of the EU, and whose citizens do not enjoy free movement rights under EU law). In practice, the 2004 Convention will continue to apply to persons moving between the Crown Dependencies and Ireland.

8. The rights conferred under the EU Regulations, which apply to EU citizens exercising the right of free movement, are significantly broader than those conferred under the 2004 Convention. They include social security contributions and pensions, as well as family benefits and benefits in respect of sickness and invalidity, maternity and paternity, unemployment, accidents at work and occupational disease and bereavement. The Convention broadly replicates these provisions, and in so doing, should not impose additional costs upon the UK Government.

9. As noted above, the Convention will not apply to persons moving between Ireland and Jersey, Guernsey and the Isle of Man, who will continue to enjoy more limited protection under the 2004 Convention.

10. Article 66 of the Convention (‘Duration of the Convention’) provides that while it would have indefinite effect, it would nonetheless be possible for either Government to terminate the agreement by giving six months’ notice in writing. Given the long history of the Common Travel Area, and the ongoing controversy over the duration of the Protocol on Ireland/Northern Ireland, it is striking that so little notice is required for termination of one of the key building blocks of UK-Irish relations (and the simple process for doing so). However, a partial safeguard is provided by Article 67, which provides for the maintenance of the right to any benefit already acquired by a person in accordance with the Convention, alongside a requirement for negotiations to take place “for the settlement of any other right then in the course of acquisition” by virtue of the Convention. We note also that

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5 Agreement between the Republic of Ireland and United Kingdom on Social Security, Cmnd 1020 (29 March 1960)
7 The formal relationship between the Channel Islands and the EU is enshrined in Protocol 3 of the UK's 1972 Accession Treaty and confirmed in Article 355(5)(c) of the TFEU. Protocol 3 excludes “Channel Islanders” from the provisions of the Treaty relating to the free movement of persons. However, for Protocol 3 purposes, a person who was born in the UK, or who has at least one parent or grandparent who was born in the UK, or who has resided in the UK for 5 years is not a “Channel Islander”. Such people do enjoy full free movement rights throughout the EU (including the right to work and reside).
the termination provision replicates the wording of Article 38 of the 2004 Convention, as amended.9

11. This Convention appears to be the first in a series of what could be several CTA-related agreements between the UK and Ireland required as a result of Brexit. On 22 February 2019 the Government published guidance on the CTA after the UK leaves the EU, noting that both the Irish and UK Governments “have committed to taking steps” to ensure that the longstanding “special status” UK and Irish citizens enjoy in each other’s countries can continue.10 It is unclear, however, whether a series of patchwork CTA agreements will provide the assurances that are needed on such a sensitive matter. The Government, in its Explanatory Memorandum, does not address the question of whether an overarching framework agreement on the CTA might not be more suitable and provide greater certainty to citizens.

12. In our report Scrutiny of international agreements: treaties considered on 26 February 2019,11 we noted that the Government had not shared drafts texts of roll-over trade agreements with the devolved administrations prior to signature. We recommended that the Government should do so in future. In that context, we note that the devolved administrations were shown the draft text of this Convention prior to its being agreed, and that operational discussions with Scotland took place to ensure continuity of delivery. This highlights the complex interaction between reserved and devolved powers that will be a feature of UK governance post-Brexit: though negotiations with a third country (in this case Ireland) are a reserved matter, social security has been in part a matter for devolved administrations, under the umbrella of EU law. In effect, the Convention shows that ‘shared competence’ is already becoming a political reality.

13. Finally, we note that, of the criteria against which we decide whether to draw a treaty to the special attention of the House, criterion (e) is “that the explanatory material laid in support provides insufficient information on the agreement’s policy objective and how it will be implemented”. While the Department for Work and Pensions has been prompt and helpful in answering questions about this agreement, the explanatory memorandum (EM) provided with the Convention contained little detailed information that would be necessary to inform readers who might be interested in how this agreement interacts with the other complex legislation that governs social security arrangements. Given the sensitivities involved we recommend that, if further CTA related agreements are required, more comprehensive information is provided in the accompanying EM.

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11 European Union Committee Scrutiny of international agreements: treaties considered on 26 February 2019 (31st Report, Session 2017–19, HL Paper 300)
14. We draw special attention to the Convention on Social Security between the United Kingdom and Ireland, on the grounds that:

- It is politically important, and gives rise to issues of public policy that the House may wish to debate prior to ratification; and

- The explanatory material laid in support provides insufficient information on the agreement’s policy objective and on how it will be implemented.
APPENDIX 1: LIST OF MEMBERS, DECLARATIONS OF INTEREST AND SUB-COMMITTEE STAFF

Members of European Union Select Committee

Baroness Armstrong of Hill Top
Lord Boswell of Aynho (Chair)
Baroness Brown of Cambridge
Lord Cromwell
Baroness Falkner of Margravine
Lord Jay of Ewelme
Baroness Kennedy of The Shaws
The Earl of Kinnoull
Lord Liddle
The Earl of Lindsay
Baroness Neville-Rolfe
Baroness Noakes
Lord Polak
Lord Ricketts
Lord Soley
Baroness Suttie
Lord Teverson
Baroness Verma
Lord Whitty

Declarations of interest

Baroness Armstrong of Hill Top
Joint owner of a property in Spain

Lord Boswell of Aynho (Chair)
In receipt of salary as Principal Deputy Chairman of Committees, House of Lords
Shareholdings as set out in the Register of Lords’ Interests
Income is received as a Partner (with wife) from land and family farming business trading as EN & TE Boswell at Lower Aynho Grounds, Banbury, with separate rentals from cottage and grazing
Land at Great Leighs, Essex (one-eighth holding, with balance held by family interests), from which rental income is received
House in Banbury owned jointly with wife, from which rental income is received
Lower Aynho Grounds Farm, Northants/Oxon; this property is owned personally by the Member and not the Partnership

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

Employment, partnership, business interests and shareholdings as set out in the Register of Lords’ interests
Patron of Wildlife Vets International;

Baroness Falkner of Margravine

Member, British Steering Committee: Koenigswinter, The British-German Conference
Member, Advisory Board, Demos

Lord Jay of Ewelme

Trustee (Non-Executive Director), Thomson Reuters Founders Share Company
Vice Chairman, European Policy Forum Advisory Council
Member, Senior European Experts Group
Trustee, Magdalen College, Oxford Development Trust

Baroness Kennedy of The Shaws

President, Justice, UK arm of International Commission of Jurists
Chancellor, Sheffield Hallam University

The Earl of Kinnoull

Farming interests as principal and as charitable trustee, in receipt of agricultural subsidy
Chairman, Culture Perth and Kinross, in receipt of governmental subsidy
Chairman, United Kingdom Squirrel Accord, in receipt of governmental moneys
Director, Horsecross Arts, in receipt of governmental subsidy
Shareholdings as set out in the register

Lord Liddle

Member, Cumbria Country Council
Pro-Chancellor (Chair of Board), Lancaster University
Co-Chair, Policy Network

The Earl of Lindsay

Chairman, United Kingdom Accreditation Service (UKAS)
Chairman, BPI Pension Trustees Limited
Farmer, in receipt of CAP support

Baroness Neville-Rolfe

Former Commercial Secretary, HM Treasury
Former Minister of State for Energy and Intellectual Property
Chair, Assured Food Standards Ltd
Non-Executive Director, Capita Plc
Non-Executive Director, Secure Trust Bank
Governor, London Business School
Shareholdings as set out in the register
Trustee (Non-Executive Director), Thomson Reuters Founders Share Company

Baroness Noakes

Director, Royal Bank of Scotland Group plc
Interests in a wide range of listed companies as disclosed in the Register of Interests

Lord Polak

Employment and business as set out in the Register of Lords’ interests
Lord Ricketts
Non-Executive Director, Group Engie, France
Strategic Adviser, Lockheed Martin UK
Charitable activities as set out in the Register of Interests

Lord Soley
Member: International Institute for Strategic Studies, Royal College of Defence Studies, Chatham House

Baroness Suttie
Associate with Global Partners Governance Limited
Trustee, Institute for Public Policy Research (IPPR)

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

Baroness Verma
No relevant interests declared

Lord Whitty
Vice President, Chartered Trading Standards Institute
Chair, Road Safety Foundation
Vice President, Local Government Association
President, Environmental Protection UK
Member, GMB
Vice President, British Airline Pilots Association

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

Sub-Committee Members and staff

EU Energy and Environment Sub-Committee

Lord Teverson (Chair)
Lord Cameron of Dillington
Viscount Hanworth
Lord Krebs
The Duke of Montrose
Lord Rooker
Lord Selkirk of Douglas
Baroness Sheehan
The Earl of Stair
Viscount Ullswater
Baroness Wilcox
Lord Young of Norwood Green


The Sub-Committee staff are Alex McMillan (Clerk), Jennifer Mills (Policy Analyst) and Sally Dray (Committee Assistant).
EU External Affairs Sub-Committee

Baroness Verma (Chair)
Baroness Armstrong of Hill Top
Baroness Brown of Cambridge
Baroness Chalker of Wallasey
Lord Dubs
Lord Horam
The Earl of Oxford and Asquith
Lord Risby
Lord Stirrup
Baroness Suttie
Baroness Symons of Vernham Dean
Lord Triesman

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

The Sub-Committee staff are Jennifer Martin-Kohlmorgen (Clerk), Julia Ewert (Policy Analyst) and Mithula Parayoganathan (Committee Assistant).

EU Financial Affairs Sub-Committee

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Lord Bruce of Bennachie
Lord Butler of Brockwell
Lord Cavendish of Furness
Lord Desai
Lord Giddens
Baroness Liddell of Coatdyke
The Earl of Lindsay
Baroness Neville-Rolfe
Lord Thomas of Cwmgiedd
Viscount Trenchard
Lord Vaux of Harrowden


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EU Home Affairs Sub-Committee

Lord Jay of Ewelme (Chair)
Lord Best
Lord Haselhurst
Baroness Janke
Lord Kirkhope of Harrogate
Baroness Massey of Darwen
Lord O’Neill of Clakmannan
Baroness Pinnock
Lord Ribeiro
Lord Ricketts
Lord Soley
Lord Watts
For relevant interests see: https://www.parliament.uk/documents/lords-committees/eu-home-affairs-subcommittee/scrutiny-work/Scrutiny-interests.pdf

The Sub-Committee staff are Pippa Patterson (Clerk), Megan Jones (Policy Analyst) and George Stafford (Committee Assistant).

EU Internal Market Sub-Committee

Lord Whitty (Chair)
Lord Aberdare
Baroness Donaghy
Lord German
Lord Lansley
Lord Liddle
Baroness McGregor-Smith
Baroness Noakes
Baroness Randerson
Lord Rees of Ludlow
Lord Robathan
Lord Russell of Liverpool
Lord Wigley


The Sub-Committee staff are Rosanna Barry (Clerk), Francesca D’Urzo (Policy Analyst) and Glenn Chapman (Committee Assistant).

EU Justice Sub-Committee

Baroness Kennedy of The Shaws (Chair)
Lord Anderson of Swansea
Lord Cashman
Lord Cromwell
Lord Dholakia
Lord Judd
The Earl of Kinnoull
Baroness Ludford
Baroness Neuberger
Lord Polak
Baroness Shackleton of Belgravia
Lord Wasserman


The Sub-Committee staff are Simon Cran-Mcreehin (Clerk) and Amanda McGrath (Committee Assistant).

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