



## BRIEFING PAPER

Number 8928, 11 June 2020

# The UK-EU future relationship negotiations: social security co-ordination

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## Summary

The long-established [EU Social Security Co-ordination Regulations](#) provide a reciprocal framework to protect social security and healthcare rights for people moving between EEA states (and Switzerland). The regulations:

- clarify which state a person is insured in for contributions and benefits purposes;
- require equal treatment in access to certain benefits;
- allow periods of insurance in different countries to be aggregated; and
- enable certain benefits (including state pensions) to be 'exported'.

A well-established system of administrative co-operation underpins the rules.

The [Withdrawal Agreement](#) (WA) allows the existing co-ordination rules to continue to apply to people after the end of the transition period, if they come within the scope of the Agreement.

For those moving between the EU and the UK **after** the transition period (expected to end on 31 December 2020), the [Political Declaration](#) on the Future Relationship between the EU and the UK states that the parties will "agree to consider addressing social security coordination in the light of future movement of persons", as part of future mobility arrangements based on non-discrimination between the EU states and "full reciprocity."

The European Commission published a [draft treaty text](#) on 18 March covering all aspects of the EU's envisaged Future Relationship with the UK. The draft treaty includes a Protocol on Social Security Coordination. Legal texts published by the UK Government on 19 May included a [Draft Social Security Coordination Agreement](#) setting out the UK's proposals.

The two texts differ significantly. While the EU's proposals would broadly speaking mean the continuation of the existing coordination rules (though applying to certain limited groups only), the UK's draft agreement does not cover cash benefits beyond state pensions. The UK's draft text also does not include provisions on reimbursement of healthcare costs for pensioners receiving an exported State Pension.

This briefing gives background to the negotiations on social security co-ordination, and compares the legal texts submitted by the UK and by the EU on this topic.

# 1. Background

## 1.1 What is social security co-ordination?

The European Union [Social Security Co-ordination Regulations](#) do not establish a single, unified social security system across the EU, but instead provide a reciprocal framework to protect the social security rights of people moving between European Economic Area (EEA) states (and Switzerland). Their main purpose is to ensure that people exercising free movement rights do not find themselves at a disadvantage in respect of social security benefits – for example should they fall ill or become unemployed while working in another Member State. Member States however remain responsible for their social security systems and it is up to them to decide which benefits are granted, at what rate, and conditions for entitlement.

The main Regulations governing social security co-ordination are [Regulation 883/2004](#) on the co-ordination of social security systems, and its associated implementing regulation, [Regulation 987/2009](#).

The rules are complicated, but four key principles are at their core:<sup>1</sup>

- At any one time a person is covered by the social security system of one country and is only liable to make contributions in one country – the ‘**competent state**’ (the ‘**single state**’ principle);
- A person has the same rights and obligations as a national of the Member State where they are covered (‘**equal treatment**’);
- Periods of insurance, employment or residence in other Member States can be taken into account when determining a person’s eligibility for benefits (‘**aggregation**’); and
- A person can receive benefits from one Member State even if they are resident in another Member State (‘**exportability**’).

A well-established system of administrative co-operation between countries ensures the effective operation of the co-ordination rules, dispute resolution and secure data sharing.<sup>2</sup>

The co-ordination rules do not cover all benefits. Benefits are classed as ‘**social security**’ – and therefore come within the scope of the co-ordination rules – if they provide cover against certain categories of ‘risk’ (such as sickness, maternity/paternity, unemployment, or old age). Some benefits – ‘**special non-contributory benefits**’ – fall within the co-ordination rules but cannot be exported. Benefits which are neither social security benefits nor special non-contributory benefits fall into the category ‘**social and medical assistance**’ and are not covered by the co-ordination rules. The UK Government does not specify all the benefits it considers to be social assistance, but it considers Universal Credit to be a social assistance benefit and therefore outside the scope of social security co-ordination.<sup>3</sup>

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<sup>1</sup> For further background see TRESS network, [Short introduction to the European Coordination of social security schemes](#) [accessed 2 June 2020]

<sup>2</sup> European Commission, [Electronic Exchange of Social Security Information \(EESSI\)](#)

<sup>3</sup> Home Office and DWP, [Review of the Balance of Competences: Internal Market: Free Movement of Persons Call for evidence](#), May 2013, para 51

The box below gives examples of how the social security co-ordination rules apply in different scenarios. As this indicates, the Co-ordination Regulations cover not only social security but also reciprocal healthcare rights.<sup>4</sup>

### **Box 1: Social security co-ordination in action**

#### **Example 1: the competent state**

Albert lives in the UK and is sent by his employer to work in Germany temporarily for 18 months. As the posting is not expected to last more than 24 months, he can remain insured under the UK social security system. Albert continues to pay UK National Insurance contributions while abroad and doesn't have to pay social insurance contributions in Germany.

#### **Example 2: the competent state**

Magda is a Danish national in receipt of a Danish state pension. She moves to the UK and claims Attendance Allowance. As Denmark is responsible for reimbursing the cost of any NHS treatment she receives, it is also the competent state for cash sickness benefits. The DWP therefore decides that Magda is not entitled to Attendance Allowance, but forwards her claim to the Danish authorities for them to determine whether she is entitled to a Danish cash sickness benefit.

#### **Example 3: aggregation**

Barbara moves to the UK from Poland and starts work. After 12 months she is made redundant and makes a claim for contribution-based Jobseeker's Allowance. Barbara's UK NI contributions aren't sufficient for her to get New-Style JSA, but she can use periods of insurance from her previous work in Poland to help satisfy the conditions. The DWP contacts the Polish authorities to get details of Barbara's insurance record.

#### **Example 4: aggregation**

Jo worked in France after leaving university, before returning to the UK in 2008. He continued to work and pay UK NI contributions until reaching State Pension age in November 2018. Jo doesn't have to make separate claims to get his French and UK state pensions – he submits a single claim to the DWP. The International Pension Centre in Newcastle contacts the French pension authority, which calculates his entitlement to the French state pension and put this into payment. It also calculates Jo is entitled to 9/35ths of the full amount of the UK State Pension (on the basis that he had nine of the 35 'qualifying years' required) and puts this into payment. His period of insurance in France meant he satisfied the minimum qualifying condition (ten qualifying years), although his actual entitlement is based on nine.

#### **Example 5: exportability**

Ana, a UK national, retires to Spain, having worked in the UK for 30 years. Her UK State Pension is paid to her in Spain and uprated each year, on the same basis as in the UK. As Ana is in receipt of a UK State Pension, she can also obtain an S1 form from the Department of Health's Overseas Healthcare Service. This entitles her to healthcare in Spain, with the UK reimbursing the cost of any treatment she receives.

#### **Further information:**

European Commission, [EU social security coordination](#)

Child Poverty Action Group, [Welfare benefits and tax credits handbook 2020-2021](#), Chapter 70

TRESS network, [A-Z of coordination E-learning tool](#)

Without provisions on social security co-ordination, people moving between the UK and the EU could encounter various problems, such as:

- Being unable to aggregate contributions paid or periods of residence in the UK and the EU states to satisfy the conditions for benefits;

<sup>4</sup> Separate legislation – the [Healthcare \(European Economic Area and Switzerland Arrangements\) Act 2019](#) – provides a legal framework for implementing reciprocal healthcare arrangements with EEA states and with Switzerland, following the UK's exit from the EU. For further information see Commons Library briefing CBP-8435, [Healthcare \(International Arrangements\) Bill 2017-19](#), 9 November 2018

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- No clear rules about which country, if any, is responsible for paying a person's benefits where they have lived in more than one country, and no mechanism for resolving disputes;
- Posted workers – i.e. employees working in another country temporarily – finding themselves liable to pay social security contributions in both countries, instead of remaining insured only under the scheme of their home country.
- State Pensions for UK pensioners moving to EU countries after the end of the transition period being frozen at the rate payable when they moved abroad.<sup>5</sup>

Further information on social security co-ordination and the EU rules can be found in Commons Library briefing CBP-8706, [Immigration and Social Security Co-ordination \(EU Withdrawal\) Bill 2019-21](#), 12 May 2020.

### 1.2 Co-ordination and the Withdrawal Agreement

The United Kingdom's [Withdrawal Agreement](#) with the EU – given effect in the UK by Part 3 of the [European Union \(Withdrawal Agreement\) Act 2020](#) – sets out a framework for the continued legal residence (and associated rights, including social security and healthcare) of EU citizens living in the UK, and UK nationals living in the EU, at the end of the transition period (the 'protected cohort'). Equivalent [separation agreements](#) have been made with Switzerland and with the EEA EFTA states – Iceland, Liechtenstein and Norway. Individuals will be able to rely on the Withdrawal Agreement and separation agreements directly to assert their rights.

The Withdrawal Agreement allows social security co-ordination to continue to apply to people after the end of the transition period, for those coming within the scope of the Agreement.<sup>6</sup> The UK Government's Explainer for the previous Withdrawal Agreement said that this would ensure that people moving between the UK and the EU before the end of the transition period "are not disadvantaged in their access to pensions, benefits, and other forms of social security, including healthcare cover."<sup>7</sup> The Agreement also provides protections in other circumstances so that, for example, where a UK national has previously worked and paid social security contributions in a Member State, rights flowing from those contributions, such as benefits, pensions, and reciprocal healthcare rights, are protected.

For further background to the social security co-ordination provisions in the Withdrawal Agreement, see section 3 of Commons Library briefing CBP-8772, [Citizens' rights provisions in the European Union \(Withdrawal Agreement\) Bill 2019-20](#), 3 January 2020. A more detailed analysis of relevant Articles in the Agreement is given in Library briefing CBP-8453, [The UK's EU Withdrawal Agreement](#), 8 July 2019.

### 1.3 Co-ordination after the transition period

The Withdrawal Agreement protects the social security rights of the 'protected cohort' of people in a cross-border situation at the end of the transition period, and past rights accrued under the social security co-ordination regulations.

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<sup>5</sup> The UK State Pension is only updated annually abroad in countries with a reciprocal social security agreement with the UK requiring this – see Commons Library briefing SN01457, [Frozen Overseas Pensions](#), 12 May 2020

<sup>6</sup> For a summary of who comes within the personal scope of the Withdrawal Agreement see p12 of the European Commission factsheet [The revised EU-UK Withdrawal Agreement explained](#)

<sup>7</sup> HM Government, [Withdrawal agreement explainer](#), 14 November 2018, para 37. The citizens' rights provisions in the final Withdrawal Agreement were unchanged from the Withdrawal Agreement negotiated by the May Government

For United Kingdom and Irish nationals moving between the UK and Ireland after the end of the transition period, the [Convention on Social Security between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland](#), signed on 1 February 2019, broadly replicates the provisions in the EU social security co-ordination. The DWP's [Explanatory Memorandum](#) on the Convention notes that the two governments "recognise the special status that UK and Irish nationals have in each other's countries", stating that the Convention "upholds the principles of equal treatment and reciprocity created by the Common Travel Area in 1922." It adds:

The Convention demonstrates a continued commitment to the principles of the Common Travel Area and ensures that reciprocal benefit and social security rights for Irish and UK nationals and their family members continue to operate independently of those afforded to EU nationals from other Member States.

For people moving between the UK and other EU states after the end of the transition period, the situation will depend on whether a Future Relationship agreement covering social security co-ordination is agreed.

The October 2019 [Political Declaration](#) setting out the framework for the Future Relationship between the EU and the UK touched only briefly on social security co-ordination. For those moving between the EU and the UK after the end of the transition period, it stated that the EU and the UK would "agree to consider addressing social security coordination in the light of future movement of persons", as part of future mobility arrangements based on non-discrimination between EU Member States and "full reciprocity."<sup>8</sup>

A commentary published in December 2019 suggested that while EU negotiators would prefer future arrangements to mirror as closely as possible the existing social security co-ordination regulations, the UK Government's preference was for a much less comprehensive agreement covering only some contributory benefits.<sup>9</sup>

In its statement on 27 February 2020 on its approach to negotiations on the Future Relationship, the UK Government commented that social security co-ordination "can remove barriers and support mobility of labour between countries." It added:

Arrangements that provide healthcare cover for tourists, short-term business visitors and service providers, that allow workers to rely on contributions made in two or more countries for their state pension access, including uprating principles, and that prevent dual concurrent social security contribution liabilities, could be good for business and support trade. These arrangements could benefit UK nationals and EU citizens travelling or moving between the UK and the EU in future.<sup>10</sup>

It said that the UK was "ready to work to establish practical, reciprocal provisions on social security coordination" and that any agreement "should be similar in kind to agreements the UK already has with countries outside the EU and respect the UK's autonomy to set its own social security rules", adding:

These arrangements should support mobility by easing the process for those working across borders, including underpinning the reciprocal arrangements on the temporary entry and stay for business purposes ('Mode 4' provisions).<sup>11</sup>

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<sup>8</sup> Paras 52, 49

<sup>9</sup> Simon Roberts, '[Social security coordination after Brexit: trying to take an egg out of an omelette?](#)', ERA Forum (2019); doi:10.1007/s12027-019-00591-9

<sup>10</sup> HM Government, [The Future Relationship with the EU: The UK's Approach to Negotiations](#), CP211, 27 February 2020, p23

<sup>11</sup> Ibid

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The European Commission published a [draft treaty text](#) on 18 March covering all aspects of the EU's envisaged Future Relationship with the UK.<sup>12</sup> [Mobility of Natural Persons](#) is covered in Title XI (pp171-2). The draft treaty also includes a [Protocol on Social Security Coordination](#) (pp408-34).

On 19 May, the UK Government published [ten draft treaty texts](#) covering the suite of agreements it is proposing, including a [Draft Social Security Coordination Agreement](#) between the UK and the EU and its Member States.

Section 2 below compares the draft EU and UK texts on social security co-ordination.

Social security co-ordination and mobility were discussed at the third round of UK-EU Future Relationship negotiations – on 12 and 13 May respectively.<sup>13</sup> Social security co-ordination was also discussed at the fourth round of negotiations, which took place over 2-5 June.<sup>14</sup>

### 1.4 Implementing future co-ordination arrangements

Under powers in the [European Union \(Withdrawal\) Act 2018](#), the existing EU regulations on social security-coordination will be transposed into domestic UK law, with amendments to address 'deficiencies' as a result of the UK's withdrawal from the EU. These 'retained' regulations would come into force after the end of the transition period, if there is no Future Relationship agreement with the EU, or there is no agreement covering social security. This is intended to ensure that social security co-ordination can continue – but only to the extent that the UK can apply rules unilaterally. The UK would not, for example, be able to oblige EU states to share information on individuals' contribution records.

The [Immigration and Social Security Co-ordination \(EU Withdrawal\) Bill](#) currently before Parliament gives the Government (or where appropriate, a devolved authority) the power to modify the retained social security co-ordination regulations, and to make consequential amendments to other legislation. The Government states that the power is necessary to enable it to make changes to the retained legislation **whether or not the UK and EU reach agreement on the Future Relationship** at the end of the transition period.

Any changes to social security co-ordination made under these powers would not affect those in the 'protected cohort' covered by the Withdrawal Agreement (provided they remain in scope of the Agreement). Nor would they affect UK and Irish citizens moving between the UK and Ireland, for whom the Convention on Social Security with Ireland (section above) maintains the status quo.

Further background can be found in Commons Library briefing CBP-8706, [The Immigration and Social Security Co-ordination \(EU Withdrawal\) Bill 2019-21](#), 12 May 2020.

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<sup>12</sup> [Draft text of the Agreement on the New Partnership with the United Kingdom](#), 18 March 2020

<sup>13</sup> European Commission, [Agenda of the third round of UK-EU Future Relationship negotiations: 11 - 15 May 2020](#), 8 May 2020

<sup>14</sup> [Written Statement HCWS271](#), 8 June 2020

## 2. The EU and UK draft texts

The EU's [Draft Protocol on Social Security Coordination](#) and the UK's [Draft Social Security Coordination Agreement](#) differ significantly in terms of both the **matters covered** and the **persons covered**.

The [EU's Draft Protocol](#) follows closely the wording of the existing [Regulation 883/2004](#) on social security co-ordination and covers the same **range of benefits**, namely:<sup>15</sup>

- sickness benefits
- maternity and equivalent paternity benefits
- invalidity benefits
- old age benefits
- survivors' benefits
- benefits in respect of accidents at work and occupational diseases
- death grants
- unemployment benefits
- pre-retirement benefits
- family benefits

In respect of the above classes of benefit, the existing co-ordination rules would broadly continue to apply, e.g. on determination of the competent state, equal treatment, aggregation of periods of insurance, and exportability. The existing rules on reimbursement of health care costs for people during short stays abroad and for pensioners and others receiving other long-term exportable benefits would also continue to apply.

However, the EU's Draft Protocol **applies only to limited groups of persons**. Article MOBI.SSC.2 states that the Protocol only applies to:

- researchers, students, trainees, people on youth exchange programmes, and their family members;
- pensioners; and
- (for the purposes of reimbursement of costs incurred for necessary medical treatment during short stays), EU or UK citizens temporarily abroad

In a blog posted on 3 May, the barrister Adrian Berry described the 'personal scope' of the EU's Draft Protocol as "very small beer as compared to those who benefit from the current EU Co-ordination Regulations."<sup>16</sup> He added:

What is striking, as regards those moving from 2021 onwards is the absence of any provision to coordinate social security, pensions, and healthcare for any EU Citizens working in the UK, and vice versa for any British citizens working in an EU State, even where such persons receive their permission to work and reside under the law of the host State in question (i.e. under local immigration rules). Given that absence, such EU Citizens working in the UK for the first time will be subject to the vagaries of UK law as it applies, including any provision then applicable in UK law (including retained EU

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<sup>15</sup> Draft Protocol, Art MOBI.SSC.3

<sup>16</sup> [Unequal Treatment: Tracing Rights to Social Security through Brexit Legislation](#), Cosmopolis blog, 3 May 2020



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law) for co-ordination of social security, pensions, and healthcare, and including by operation of the 2019 Regulations [remedying 'deficiencies' in retained EU law on social security co-ordination], the absence of any protection against non-discrimination on grounds of nationality.<sup>17</sup>

The [UK's Draft Agreement](#) covers **three areas only**:

- rules to determine which state a person moving between the UK and EU is liable to pay social security contributions to;
- entitlement to "necessary healthcare" for UK and EU nationals during short stays abroad, and reimbursement of costs; and
- old age pensions

The UK's Draft Agreement does not cover any of the other benefit types listed above covered by the EU's Draft Protocol. Nor does it cover reimbursement of healthcare charges for pensioners and others receiving long-term exportable benefits.

The absence of co-ordination provisions for benefits other than old age pensions in the UK's Draft Agreement would mean that, for example, it would no longer be possible for someone to continue to receive UK benefits such as Attendance Allowance, Carer's Allowance or the Personal Independence Payment daily living component on moving to an EU country. Aggregating contributions or periods of residence for benefits purposes would also no longer be possible so that, for example, a person who worked in an EU country who moves to the UK and starts work, but then falls ill, would not be able to rely on the contributions they paid in the former country to help meet the National Insurance contribution conditions for New-style Employment and Support Allowance.

The **personal scope** of the UK's Draft Social Security Coordination Agreement also differs from that of the EU's Draft Protocol. The UK text states that the Agreement shall apply to people who are or have been in a cross-border situation who:

- are, or have been, subject to the legislation of one or more Party; and
- to the spouse, civil partner, or surviving spouse/civil partner of such a person (if the latter is entitled to a right under the provisions in the Agreement on old age pensions).<sup>18</sup>

'Subject to the legislation' means the legislation on payment of social security contributions, old age pensions, or healthcare.

Further information is given below on the provisions in the draft texts on State Pensions and on healthcare.

### 2.1 State Pensions

In relation to the pensions, the UK Government's proposal shares some common ground with the EU proposal and, therefore, existing social security co-ordination arrangements. This is in respect of:

- **Provision for equal treatment** on grounds of nationality (article 15);
- **Aggregation** - the ability for periods of insurance in the UK and EU Member States to be aggregated in deciding whether minimum qualifying conditions are met (article 16);
- **Provision for State Pensions to be exported and updated annually** (article 17);

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<sup>17</sup> Ibid.

<sup>18</sup> Article 2



- **Provisions for calculating State Pension entitlements where an individual has periods of insurance in the UK and EU Member States** (articles 18 to 19).

## 2.2 Healthcare

The UK Government's proposals for reciprocal healthcare cover are significantly more limited than the EU's proposals in terms of cover. While the EU proposal would replicate existing healthcare cover for pensioners and others receiving other long-term exportable benefits, and for temporary visitors, the UK proposal only provides for healthcare cover for visitors.

The EEA Member States and Switzerland co-ordinate the provision of social security, including healthcare, under EU Regulations (EC)883/2004 and (EC)987/2009. The Regulations include rules on the reimbursement of healthcare costs between Member States in the following circumstances:

- for visitors using the European Health Insurance Card (EHIC) for all necessary care during temporary stays in another Member State;
- for state pensioners and their dependants who have moved abroad, the state that pays their state pension is responsible for paying the costs of their healthcare – known as the S1 route;
- for a person undergoing planned medical treatment in another Member State, costs are paid by the Member State that has referred them – via either the S2 scheme or the Patients' Rights Directive.

There are currently no provisions under either the UK or EU proposal for continuation of planned cross-border healthcare between the UK and EU under either the S2 scheme or the Patients' Rights Directive.

On 26 March 2019 Government legislation to enable the implementation of new reciprocal healthcare arrangements received Royal Assent: the [Healthcare \(European Economic Area and Switzerland Arrangements\) Act 2019](#). The legislation was introduced as the Healthcare (International Arrangements) Bill on 26 October 2018. During the Lords stages there were significant changes to limit the global scope of regulations and to confine the Bill to replacing the arrangements with EEA countries and Switzerland which will end with Brexit. To reflect these changes at [Report stage on 12 March 2019](#), the Lords amended the title to the [Healthcare \(European Economic Area and Switzerland Arrangements\) Bill](#). The [Commons Library briefing for the Healthcare \(International Arrangements\) Bill](#) (17 January 2019) provides some further background, and brief summaries of the Commons Second Reading and Committee Stage debates. Further information on the [Healthcare \(European Economic Area and Switzerland Arrangements\) Act 2019](#), including Explanatory Notes and Impact Assessments, can be found on the Parliament website [here](#).

The [GOV.UK webpage, planning your healthcare abroad](#), explains that there will be no changes to healthcare access for UK nationals visiting or living in the EU, Iceland, Liechtenstein, Norway and Switzerland before 31 December 2020. Under the Withdrawal Agreement, those already living in an EU country, or moving there permanently before 31 December 2020, will retain life-long healthcare rights in that country, provided they remain legally resident. [GOV.UK EU/EEA country healthcare guides](#) provide more information on accessing healthcare in each country.

A PQ response in January 2020 ([PQ HL68, 7 January 2020](#)) noted that the UK Government wants to continue discussing the future of reciprocal healthcare arrangements with the EU

as part of the future relationship discussions.<sup>19</sup> However, a recent blog article from the barrister Adrian Berry noted that the UK position only seeks very limited arrangements for reciprocal healthcare:

...the UK draft agreement on social security co-ordination only contains cross-border healthcare provision for those who are staying temporarily (tourists, frontier workers, workers posted for up to 24 months). No provision for cross-border healthcare is made for UK pensioners moving to reside in the EU, for those planning to travel for planned treatment, or for matters covered by the *Cross-Border Healthcare Directive*. It is not clear that the EU will agree to the UK's draft but even if it does, British citizens will be worse off as compared to the situation under EU law.<sup>20</sup>

### Further reading

- Commons Library briefing paper, [NHS charges for overseas visitors](#) (CBP 3051, 4 May 2020)
- Commons Library briefing paper, [The Immigration Health Surcharge](#) (CBP 7274, 27 April 2020)
- Department of Health and Social Care's [Guidance on Implementing the Overseas visitors Hospital Charging Regulations](#) (updated February 2020)
- Fahy, N., Hervey, T., Dayan, M. et al., [Assessing the potential impact on health of the UK's future relationship agreement with the EU: Analysis of the negotiating positions](#). Health Economics, Policy and Law, 1-18 (3 June 2020)

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<sup>19</sup> See also [PO 52547, UK Relations With EU: Health Services, 9 June 2020](#)

<sup>20</sup> [Healthcare Arrangements after Brexit: What we are about to lose](#), Cosmopolis blog, 2 June 2020

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