

# **EXPLANATORY MEMORANDUM FOR EUROPEAN UNION LEGISLATION AND DOCUMENTS WITHIN THE SCOPE OF THE UK-EU WITHDRAWAL AGREEMENT**

10449/23, COM(23)322

Proposal for a Council Decision on the position to be taken on behalf of the European Union in the Joint Committee established by the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community as regards the adoption of a decision to amend Part I of Annex I of the Agreement

Submitted by the Foreign, Commonwealth & Development Office

26 June 2023

## **SUBJECT MATTER**

1. The European Commission is proposing the adoption of a Council Decision approving the EU's position in regard to a Withdrawal Agreement Joint Committee Decision to amend Part I of Annex I of the Withdrawal Agreement by amending the list of recommendations and decisions.
2. The proposal does not require a UK response. Once the Council of the European Union has adopted the position, the Decision will be agreed jointly, at a political level, by the UK and the EU in the Joint Committee and will be binding. The Government agrees with the proposal and has reviewed the amendments.
3. The Withdrawal Agreement entered into force at 11 p.m. GMT on 31 January 2020 and sets out the arrangements for the orderly withdrawal of the UK from the European Union and European Atomic Energy Community. The Joint Committee was established under Article 164(1) of the Withdrawal Agreement and is composed of representatives of both the UK and the EU. The mandate of the Joint Committee is set out in Article 164 of the Withdrawal Agreement, and includes:
  - supervising and facilitating the implementation and application of the Withdrawal Agreement;
  - deciding on the tasks of the specialised committees and supervising their work;
  - seeking appropriate ways and methods of preventing problems that might arise in areas covered by the Withdrawal Agreement or of resolving disputes that may arise regarding the interpretation and application of this Agreement;
  - considering any matter of interest relating to an area covered by the Withdrawal Agreement;
  - adopting decisions and making recommendations by mutual consent in respect of all matters for which the Withdrawal Agreement so provides and to make appropriate recommendations to the UK and the EU; and

- adopting amendments to the Withdrawal Agreement in the cases provided for in this Agreement.

4. EU proposal 10449/23 proposes that, in the interest of legal certainty, Part I of Annex I of the Withdrawal Agreement should be amended by adding two decisions of the Administrative Commission for the Coordination of Social Security Systems which are not listed in Part I of Annex I of the Withdrawal Agreement and by removing three decisions which have been replaced by the two new decisions.

5. The Administrative Commission for the Coordination of Social Security Systems is the body responsible for dealing with administrative matters and questions of interpretation arising from the social security coordination regulations. Pursuant to Article 34 of the Withdrawal Agreement, the UK continues to attend the Administrative Commission in an advisory capacity.

6. Part I of Annex I of the Withdrawal Agreement lists the decisions and recommendations of the Administrative Commission for the Coordination of Social Security Systems, which under Article 31 of the Withdrawal Agreement, the UK and the EU shall take due account of.

7. Under Article 164(5)(d) of the Withdrawal Agreement, the Joint Committee can adopt a decision amending the Withdrawal Agreement, to correct errors, to address omissions or other deficiencies, or to address situations unforeseen when the Withdrawal Agreement was signed, provided that the modifications do not amend the essential elements of the Withdrawal Agreement.

## **SCRUTINY HISTORY**

8. The most recent Withdrawal Agreement Joint Committee decision to amend the UK/EU Withdrawal Agreement was scrutinised as EU proposal 12271/21, COM(21)593. FCDO submitted an EM dated 19 October 2021. The House of Commons European Scrutiny Committee considered that the document raised issues of legal and political importance ([Report 13, 21/22](#)). Following the Committee's examination of the Government's EM the Committee corresponded with Ministers on matters relating to the establishment of arbitration tribunals under the UK/EU Trade and Cooperation Agreement. The Government's EM was considered by the House of Lords European Affairs Committee who corresponded with FCDO Ministers seeking more detail about the amendments and the process for scrutiny of proposals to amend the Withdrawal Agreement.

## **MINISTERIAL RESPONSIBILITY**

9. The Parliamentary Under Secretary of State for Europe leads on citizens' rights within the Withdrawal Agreement as the alternate UK co-chair of the Withdrawal Agreement Joint Committee. The Secretary of State for Foreign, Commonwealth and Development Affairs as the UK co-chair of the Withdrawal Agreement Joint Committee, has overall responsibility for citizens' rights and the Withdrawal Agreement Joint Committee.

## **INTEREST OF THE DEVOLVED ADMINISTRATIONS**

10. The proposal relates to Social Security Coordination as set out in Article 31 of the Withdrawal Agreement and detailed in Part I of Annex I of the Withdrawal Agreement.

11. This EM has been shared with the devolved administrations for information.

## **LEGAL AND PROCEDURAL ISSUES**

### *I. Legal basis.*

The legal bases for the proposal are Article 50(2) of the Treaty on European Union; Article 218(9) of the Treaty on the Functioning of the European Union; and Articles 164(5)(d) and 166 of the Withdrawal Agreement.

### *II. Voting procedure.*

A qualified majority is required for the adoption of the proposal.

### *III. Timetable for adoption and implementation.*

Part I of Annex I of the Withdrawal Agreement will be amended following the adoption of the proposed Decision at the 3 July Joint Committee.

## **POLICY IMPLICATIONS**

12. The decisions and recommendations of the Administrative Commission for the Coordination of Social Security Systems relate to the technical implementation of the Social Security Coordination provisions, which apply to individuals in scope of Title III of the Withdrawal Agreement

13. The proposed decisions and recommendations for adoption in Part I of Annex I of the Withdrawal Agreement are technical adjustments to ensure the proper functioning of the Social Security Coordination rules.

14. There are no policy implications or changes to the social security entitlements for those covered by the Withdrawal Agreement. Specifically, the decisions relate to:

- clarifying the obligation of the Audit Board to present a working programme to facilitate the settlement of accounts in relation to reimbursement for benefits in kind. It also sets out how the Audit Board may investigate and opine on disputed claims and to refer to the Administrative Commission where decisions are not unanimous. The Decision also clarifies the rules for the adoption of decision by the Audit Board including through written procedures.
- determining currency conversion rates for the purposes of calculating social security contributions, benefits and related reimbursements, offsetting and recovery amounts.

## **CONSULTATION**

15. The Department for Work and Pensions (DWP), His Majesty's Revenue and Customs (HMRC) and the Department of Health and Social Care (DHSC) have consulted with their delivery and operational partners and units.

## **FINANCIAL IMPLICATIONS**

16. There are no financial implications as a result of the proposed Decision.

A handwritten signature in blue ink, appearing to read 'Leo Docherty', is centered on the page. The signature is fluid and cursive, with a prominent initial 'L' and a long, sweeping underline.

Leo Docherty MP Parliamentary Under Secretary of State for Europe, Foreign, Commonwealth and Development Office