

Immigration and Social Security Co-ordination (EU Withdrawal) Bill

EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Home Office, have been ordered to be published as HL Bill 121 – EN.

EUROPEAN CONVENTION ON HUMAN RIGHTS

Baroness Williams of Trafford has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the Immigration and Social Security Co-ordination (EU Withdrawal) Bill are compatible with the Convention rights.

Immigration and Social Security Co-ordination (EU Withdrawal) Bill

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Make provision to end rights to free movement of persons under retained EU law and to repeal other retained EU law relating to immigration; to confer power to modify retained direct EU legislation relating to social security co-ordination; and for connected purposes.

BE IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows: –

PART 1

MEASURES RELATING TO ENDING FREE MOVEMENT

1 Repeal of the main retained EU law relating to free movement etc.

Schedule 1 makes provision to –

- (a) end rights to free movement of persons under retained EU law, including by repealing the main provisions of retained EU law relating to free movement, and 5
- (b) end other EU-derived rights, and repeal other retained EU law, relating to immigration.

2 Irish citizens: entitlement to enter or remain without leave 10

(1) The Immigration Act 1971 is amended as follows.

(2) After section 3 insert –

“3ZA Irish citizens

- (1) An Irish citizen does not require leave to enter or remain in the United Kingdom, unless subsection (2), (3) or (4) applies to that citizen. 15
- (2) This subsection applies to an Irish citizen if the Irish citizen is subject to a deportation order made under section 5(1).
- (3) This subsection applies to an Irish citizen if –

- (a) the Secretary of State has issued directions for the Irish citizen not to be given entry to the United Kingdom on the ground that the Irish citizen’s exclusion is conducive to the public good,
- (b) the Secretary of State has given the Irish citizen notice of the directions, and 5
- (c) the directions have not been withdrawn.
- (4) This subsection applies to an Irish citizen if the Irish citizen is an excluded person for the purposes of section 8B (persons excluded under certain instruments).
- (5) Where subsection (2), (3) or (4) applies to an Irish citizen, section 1(3) does not permit the Irish citizen to enter the United Kingdom without leave on arriving in the United Kingdom on a local journey from any place in the common travel area.” 10
- (3) In section 9 (further provisions about the common travel area) –
 - (a) in subsection (2), in the closing words, after “British citizens” insert “or Irish citizens”; 15
 - (b) in subsection (4), in the opening words, after “British citizen” insert “or an Irish citizen”.
- (4) In Schedule 4 (integration with UK law of immigration law of the Islands) –
 - (a) in paragraph 1, in sub-paragraphs (1) and (2), after “British citizen” insert “or an Irish citizen”; 20
 - (b) in paragraph 4, after “British citizen” insert “or an Irish citizen”.
- 3 Meaning of “the Immigration Acts” etc.**
- (1) In section 61 of the UK Borders Act 2007, in subsection (2) (which defines “the Immigration Acts”) – 25
 - (a) omit the “and” at the end of paragraph (j);
 - (b) after paragraph (k) insert “, and
 - (l) Part 1 of the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (and Part 3 so far as relating to that Part).” 30
- (2) This Part is not retained EU law.
- 4 Consequential etc. provision**
- (1) The Secretary of State may by regulations made by statutory instrument make such provision as the Secretary of State considers appropriate in consequence of, or in connection with, any provision of this Part. 35
- (2) The power to make regulations under subsection (1) may (among other things) be exercised by modifying –
 - (a) any provision made by or under primary legislation passed before, or in the same Session as, this Act;
 - (b) retained direct EU legislation. 40
- (3) The power to make regulations under subsection (1) includes power –
 - (a) to make supplementary, incidental, transitional, transitory or saving provision;
 - (b) to make different provision for different purposes.

- (4) Regulations under subsection (1) may (among other things) make provision applying to persons who, immediately before the coming into force of the repeal of section 7(1) of the Immigration Act 1988 by paragraph 1 of Schedule 1, were not entitled by virtue of section 7(1) of that Act to enter or remain in the United Kingdom without leave. 5
- (5) Regulations under subsection (1) may (among other things) modify provision relating to the imposition of fees or charges which is made by or under primary legislation passed before, or in the same Session as, this Act.
- (6) The first statutory instrument containing regulations under subsection (1) – 10
- (a) must be laid before Parliament after being made, and
 - (b) ceases to have effect at the end of the period of 40 days beginning with the day on which the instrument is made unless, during that period, the instrument is approved by a resolution of each House of Parliament.
- (7) Any other statutory instrument containing regulations under subsection (1) that amend or repeal any provision of primary legislation (whether alone or with other provision) is not to be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament. 15
- (8) A statutory instrument containing regulations under subsection (1), other than a statutory instrument to which subsection (6) or (7) applies, is subject to annulment in pursuance of a resolution of either House of Parliament. 20
- (9) In calculating the period of 40 days for the purposes of subsection (6), no account is to be taken of any time during which –
- (a) Parliament is dissolved or prorogued, or
 - (b) either House of Parliament is adjourned for more than 4 days.
- (10) If regulations cease to have effect as a result of subsection (6), that – 25
- (a) does not affect the validity of anything previously done under the regulations, and
 - (b) does not prevent the making of new regulations.

PART 2

SOCIAL SECURITY CO-ORDINATION 30

5 Power to modify retained direct EU legislation relating to social security co-ordination

- (1) An appropriate authority may by regulations modify the retained direct EU legislation mentioned in subsection (2).
- (2) The retained direct EU legislation is – 35
- (a) Regulation (EC) No 883/2004 of the European Parliament and of the Council on the co-ordination of social security systems;
 - (b) Regulation (EC) No 987/2009 of the European Parliament and of the Council laying down the procedure for implementing Regulation (EC) No 883/2004; 40
 - (c) Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community;
 - (d) Regulation (EEC) No 574/72 fixing the procedure for implementing Regulation (EEC) No 1408/71; 45

- (e) Regulation (EC) No 859/2003 extending Regulation (EEC) No 1408/71 to nationals of non-EU Member Countries.
- (3) The power to make regulations under subsection (1) includes power –
- (a) to make different provision for different categories of person to whom they apply (and the categories may be defined by reference to a person’s date of arrival in the United Kingdom, their immigration status, their nationality or otherwise); 5
 - (b) otherwise to make different provision for different purposes;
 - (c) to make supplementary, incidental, consequential, transitional, transitory or saving provision; 10
 - (d) to provide for a person to exercise a discretion in dealing with any matter.
- (4) The power to make provision mentioned in subsection (3)(c) includes power to modify –
- (a) any provision made by primary legislation passed before, or in the same Session as, this Act; 15
 - (b) any provision made under primary legislation before, or in the same Session as, this Act is passed;
 - (c) retained direct EU legislation which is not mentioned in subsection (2).
- (5) EU-derived rights, powers, liabilities, obligations, restrictions, remedies and procedures cease to be recognised and available in domestic law so far as they are inconsistent with, or are otherwise capable of affecting the interpretation, application or operation of, provision made by regulations under this section. 20
- (6) “EU-derived rights, powers, liabilities, obligations, restrictions, remedies and procedures” means any rights, powers, liabilities, obligations, restrictions, remedies and procedures which continue to be recognised and available in domestic law by virtue of section 4 of the European Union (Withdrawal) Act 2018 (including as they are modified by domestic law from time to time). 25
- (7) In this section, “appropriate authority” means –
- (a) the Secretary of State or the Treasury, 30
 - (b) a Northern Ireland department, or
 - (c) a Minister of the Crown acting jointly with a Northern Ireland department.
- (8) Schedule 2 contains further provision about the power to make regulations under this section. 35
- (9) Schedule 3 contains provision about the making of regulations under this section.

PART 3

GENERAL

6 Interpretation 40

In this Act –

“domestic law” means the law of England and Wales, Scotland or Northern Ireland;

“Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975 and also includes the Commissioners for Her Majesty’s Revenue and Customs;

“modify” includes amend, repeal or revoke (and related expressions are to be read accordingly);

“primary legislation” means –

- (a) an Act of Parliament;
- (b) an Act of the Scottish Parliament;
- (c) an Act or Measure of Senedd Cymru;
- (d) Northern Ireland legislation.

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7 Extent

(1) Subject to subsections (2) to (5), this Act extends to England and Wales, Scotland and Northern Ireland.

(2) Her Majesty may by Order in Council provide for any of the provisions of Part 1 of this Act, and of sections 6 and 9 (so far as relating to that Part), to extend, with or without modifications, to –

- (a) any of the Channel Islands;
- (b) the Isle of Man;
- (c) any of the British overseas territories.

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(3) A power listed in subsection (4) may be exercised so as to extend, with or without modifications, to any of the Channel Islands or the Isle of Man any repeal or other amendment, made by Part 1, of legislation to which the power relates.

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(4) The powers are the powers under any of the following provisions –

- (a) section 36 of the Immigration Act 1971;
- (b) section 163(4) of the Nationality, Immigration and Asylum Act 2002;
- (c) section 60(4) of the UK Borders Act 2007.

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(5) Regulations under section 4 may provide that an amendment, repeal or revocation made by those regulations has the same extent as the provision amended, repealed or revoked (ignoring extent by virtue of an Order in Council under any of the Immigration Acts).

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8 Commencement

(1) Part 1 comes into force on such day as the Secretary of State may by regulations made by statutory instrument appoint.

(2) Regulations under subsection (1) may make different provision for different purposes.

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(3) Part 2 comes into force on such day as the Secretary of State or the Treasury may by regulations made by statutory instrument appoint.

(4) Regulations under subsection (3) may make different provision for different purposes or areas.

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(5) This Part comes into force on the day on which this Act is passed.

- (6) The power of the Secretary of State or the Treasury to appoint a day under subsection (1) or (3) includes a power to appoint a time on a day if the Secretary of State or, as the case may be, the Treasury considers it appropriate to do so.

9 Short title

This Act may be cited as the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020.

SCHEDULES

SCHEDULE 1

Section 1

REPEAL OF THE MAIN RETAINED EU LAW RELATING TO FREE MOVEMENT ETC.

PART 1

EU-DERIVED DOMESTIC LEGISLATION

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- 1 Section 7 of the Immigration Act 1988 (exemption from requirement for leave to enter or remain for persons exercising EU rights etc.) is omitted.
- 2 (1) Section 109 of the Nationality, Immigration and Asylum Act 2002 (power to make regulations about appeals against immigration decisions in respect of persons having, or claiming to have, EU rights) is omitted. 10
- (2) The Immigration (European Economic Area) Regulations 2016 (S.I. 2016/1052), made under section 2(2) of the European Communities Act 1972 as well as under section 109 of the 2002 Act, are revoked.
- (3) In consequence of the repeal made by sub-paragraph (1), in the following provisions of the 2002 Act, omit “or by virtue of section 109” – 15
 - (a) section 106(3) and (4);
 - (b) section 107(3).
- 3 In the Provision of Services Regulations 2009 (S.I. 2009/2999), in regulation 5 (general exclusions and savings), after paragraph (2) insert – 20
 - “(2A) Nothing in these Regulations affects the interpretation, application or operation of any provision made by or under the Immigration Acts.”

PART 2

RETAINED DIRECT EU LEGISLATION

- 4 (1) Article 1 of the Workers Regulation is omitted. 25
- (2) The other provisions of the Workers Regulation cease to apply so far as –
 - (a) they are inconsistent with any provision made by or under the Immigration Acts (including, and as amended by, this Act), or
 - (b) they are otherwise capable of affecting the interpretation, application or operation of any such provision. 30
- (3) In this paragraph, “the Workers Regulation” means Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union.

PART 3

EU-DERIVED RIGHTS ETC.

- 5 (1) Any rights, powers, liabilities, obligations, restrictions, remedies and procedures which –
- (a) continue to be recognised and available in domestic law by virtue of section 4 of the European Union (Withdrawal) Act 2018, and 5
 - (b) are derived from Articles 1, 2, 3(1) to (4), 4, 6, 7, 12, 13, 17(b), 20, 23 or 24 of Annex 1 of the Swiss free movement agreement (or, so far as relating to any of those Articles of that Annex, Articles 3 to 6 of the agreement), 10
- cease to be recognised and available in domestic law.
- (2) In sub-paragraph (1), “the Swiss free movement agreement” means the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons (done at Luxembourg on 21 June 1999). 15
- 6 (1) Any other EU-derived rights, powers, liabilities, obligations, restrictions, remedies and procedures cease to be recognised and available in domestic law so far as –
- (a) they are inconsistent with, or are otherwise capable of affecting the interpretation, application or operation of, any provision made by or under the Immigration Acts (including, and as amended by, this Act), or 20
 - (b) they are otherwise capable of affecting the exercise of functions in connection with immigration.
- (2) The reference in sub-paragraph (1) to any other EU-derived rights, powers, liabilities, obligations, restrictions, remedies and procedures is a reference to any rights, powers, liabilities, obligations, restrictions, remedies and procedures which – 25
- (a) continue to be recognised and available in domestic law by virtue of section 4 of the European Union (Withdrawal) Act 2018 (including as they are modified by domestic law from time to time), and 30
 - (b) are not those described in paragraph 5 of this Schedule.
- (3) The reference in sub-paragraph (1) to provision made by or under the Immigration Acts includes provision made after that sub-paragraph comes into force. 35

SCHEDULE 2

Section 5(8)

FURTHER PROVISION ABOUT THE SCOPE OF THE POWER UNDER SECTION 5

PART 1

SCOPE OF THE POWER OF A MINISTER OF THE CROWN ACTING ALONE OR JOINTLY

- 1 No provision that would be within the legislative competence of the Scottish Parliament if it were contained in an Act of that Parliament may be made – 40
- (a) by the Secretary of State or the Treasury acting alone, or

- (b) by a Minister of the Crown acting jointly with a Northern Ireland department,
in regulations under section 5, unless that provision is merely incidental to, or consequential on, provision that would be outside that legislative competence. 5
- 2 In considering, for the purposes of paragraph 1, whether a provision would be within the legislative competence of the Scottish Parliament if it were contained in an Act of that Parliament, no account is to be taken of section 29(2)(d) of the Scotland Act 1998 so far as relating to EU law.

PART 2 10

SCOPE OF THE POWER OF A NORTHERN IRELAND DEPARTMENT ACTING ALONE

No power to make provision outside devolved competence

- 3 No provision may be made by a Northern Ireland department acting alone in regulations under section 5 unless the provision is within the devolved competence of the Northern Ireland department. 15
- 4 A provision is within the devolved competence of a Northern Ireland department for the purposes of this Schedule if—
- (a) the provision, if it were contained in an Act of the Northern Ireland Assembly—
 - (i) would be within the legislative competence of the Assembly (ignoring section 6(2)(d) of the Northern Ireland Act 1998 so far as relating to EU law), and 20
 - (ii) would not require the consent of the Secretary of State,
 - (b) the provision—
 - (i) amends or repeals Northern Ireland legislation, and 25
 - (ii) would, if it were contained in an Act of the Northern Ireland Assembly, be within the legislative competence of the Assembly (ignoring section 6(2)(d) of the Northern Ireland Act 1998 so far as relating to EU law) and require the consent of the Secretary of State, or 30
 - (c) the provision is provision which could be made in other subordinate legislation by any Northern Ireland devolved authority acting alone (ignoring section 24(1)(b) of the Northern Ireland Act 1998).

Requirement for consent where it would otherwise be required

- 5 (1) The consent of the Secretary of State is required before any provision is made by a Northern Ireland department acting alone in regulations under section 5 so far as that provision, if contained in an Act of the Northern Ireland Assembly, would require the consent of the Secretary of State. 35
- (2) Sub-paragraph (1) does not apply if—
- (a) the provision could be contained in subordinate legislation made otherwise than under this Act by a Northern Ireland devolved authority acting alone, and 40
 - (b) no such consent would be required in that case.

- (3) The consent of a Minister of the Crown is required before any provision is made by a Northern Ireland department acting alone in regulations under section 5 so far as that provision, if contained in –
- (a) subordinate legislation made otherwise than under this Act by the Northern Ireland department, or 5
 - (b) subordinate legislation not falling within paragraph (a) and made otherwise than under this Act by a Northern Ireland devolved authority acting alone,
- would require the consent of a Minister of the Crown.
- (4) Sub-paragraph (3) does not apply if – 10
- (a) the provision could be contained in –
 - (i) an Act of the Northern Ireland Assembly, or
 - (ii) different subordinate legislation of the kind mentioned in sub-paragraph (3)(a) or (b) and of a Northern Ireland department acting alone or, as the case may be, a Northern Ireland devolved authority acting alone, and 15
 - (b) no such consent would be required in that case.

Requirement for joint exercise where it would otherwise be required

- 6 (1) No regulations may be made under section 5 by a Northern Ireland department, so far as they contain provision which relates to a matter in respect of which a power to make subordinate legislation otherwise than under this Act is exercisable by – 20
- (a) a Northern Ireland department acting jointly with a Minister of the Crown, or
 - (b) another Northern Ireland devolved authority acting jointly with a Minister of the Crown, 25
- unless the regulations are, to that extent, made jointly with the Minister of the Crown.
- (2) Sub-paragraph (1) does not apply if the provision could be contained in –
- (a) an Act of the Northern Ireland Assembly without the need for the consent of a Minister of the Crown, or 30
 - (b) different subordinate legislation made otherwise than under this Act by a Northern Ireland devolved authority acting alone.

Requirement for consultation where it would otherwise be required

- 7 (1) No regulations may be made under section 5 by a Northern Ireland department acting alone, so far as they contain provision which relates to a matter in respect of which a power to make subordinate legislation otherwise than under this Act is exercisable by a Northern Ireland department after consulting with a Minister of the Crown, unless the regulations are, to that extent, made after consulting with the Minister of the Crown. 35 40
- (2) Sub-paragraph (1) does not apply if –
- (a) the provision could be contained in an Act of the Northern Ireland Assembly, and
 - (b) there would be no requirement for the consent of a Minister of the Crown, or for consultation with a Minister of the Crown, in that case. 45

- (3) Sub-paragraph (1) does not apply if –
- (a) the provision could be contained in different subordinate legislation made otherwise than under this Act by a Northern Ireland devolved authority acting alone, and
 - (b) there would be no requirement for the consent of a Minister of the Crown, or for consultation with a Minister of the Crown, in that case. 5

Interpretation

- 8 In this Part of this Schedule –
- “Northern Ireland devolved authority” means –
- (a) the First Minister and deputy First Minister in Northern Ireland acting jointly, 10
 - (b) a Northern Ireland Minister, or
 - (c) a Northern Ireland department;
- “subordinate legislation” means any instrument made under primary legislation. 15

PART 3

TRANSITIONAL PROVISION

Transitional exception

- 9 Section 24(1)(b) of the Northern Ireland Act 1998 (restriction on acting incompatibly with EU law) does not apply to the making of regulations under section 5. 20

SCHEDULE 3

Section 5(9)

REGULATIONS UNDER SECTION 5

PART 1

STATUTORY INSTRUMENTS 25

- 1 Any power to make regulations under section 5 –
- (a) so far as exercisable by the Secretary of State or the Treasury, or by a Minister of the Crown acting jointly with a Northern Ireland department, is exercisable by statutory instrument, and
 - (b) so far as exercisable by a Northern Ireland department (other than when acting jointly with a Minister of the Crown), is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (SI 1979/1573 (NI 12)) (and not by statutory instrument). 30

PART 2

SCRUTINY OF REGULATIONS UNDER SECTION 5

Scrutiny where sole exercise

- | | | |
|---|---|----|
| 2 | (1) A statutory instrument containing regulations of the Secretary of State or the Treasury under section 5 may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament. | 5 |
| | (2) Regulations of a Northern Ireland department under section 5 may not be made unless a draft of the regulations has been laid before, and approved by a resolution of, the Northern Ireland Assembly. | 10 |
| | (3) This paragraph does not apply to regulations to which paragraph 3 applies (Minister of the Crown and a Northern Ireland department acting jointly). | |

Scrutiny where joint exercise

- | | | |
|---|---|----|
| 3 | Regulations under section 5 of a Minister of the Crown acting jointly with a Northern Ireland department may not be made unless – | 15 |
| | (a) a draft of the statutory instrument containing those regulations has been laid before, and approved by a resolution of, each House of Parliament, and | |
| | (b) a draft of the regulations has been laid before, and approved by a resolution of, the Northern Ireland Assembly. | 20 |

Combination of instruments

- | | | |
|---|---|----|
| 4 | (1) Sub-paragraph (2) applies to a statutory instrument containing regulations under section 5 which is subject to a procedure before Parliament for the approval of the instrument in draft before it is made. | |
| | (2) The statutory instrument may also include regulations under another Act which are made by statutory instrument which is subject to a procedure before Parliament that provides for the annulment of the instrument after it has been made. | 25 |
| | (3) Where regulations are included as mentioned in sub-paragraph (2), the procedure applicable to the statutory instrument – | 30 |
| | (a) is the procedure mentioned in sub-paragraph (1), and | |
| | (b) is not the procedure mentioned in sub-paragraph (2). | |
| | (4) Sub-paragraphs (1) to (3) apply in relation to a statutory rule as they apply in relation to a statutory instrument but as if – | |
| | (a) the references to Parliament were references to the Northern Ireland Assembly, and | 35 |
| | (b) the reference to another Act in sub-paragraph (2) included Northern Ireland legislation. | |
| | (5) Sub-paragraphs (1) to (3) apply in relation to a statutory instrument containing regulations under section 5 which is subject to a procedure before the Northern Ireland Assembly as well as a procedure before Parliament as they apply to a statutory instrument containing regulations under section 5 which is subject to a procedure before Parliament but as if the references to | 40 |

Parliament were references to Parliament and the Northern Ireland Assembly.

- (6) This paragraph does not prevent the inclusion of other regulations in a statutory instrument or statutory rule which contains regulations under section 5 (and, accordingly, references in this Schedule to an instrument containing regulations are to be read as references to an instrument containing (whether alone or with other provision) regulations).

Immigration and Social Security Co-ordination (EU Withdrawal) Bill

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To make provision to end rights to free movement of persons under retained EU law and to repeal other retained EU law relating to immigration; to confer power to modify retained direct EU legislation relating to social security co-ordination; and for connected purposes.

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