

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

[AS AMENDED ON REPORT]

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B I L L

[AS AMENDED ON REPORT]

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.

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 Impact of section 1 on the social care sector 10

- (1) The Secretary of State must commission and publish an independent assessment of the impact of section 1, and Schedule 1, on the social care sector within six months of this Act being passed.
- (2) The Secretary of State must appoint an independent Chair to conduct the assessment. 15
- (3) The assessment must consider the impact of provisions in section 1, and Schedule 1, on –

- (a) the social care workforce;
 - (b) available visa routes for social care workers;
 - (c) long-term consequences for workforce recruitment, training and employee terms and conditions; and
 - (d) such other relevant matters as the independent Chair deems appropriate. 5
- (4) A copy of the independent assessment must be laid before both Houses of Parliament within fourteen days of its publishing date.
- 3 Irish citizens: entitlement to enter or remain without leave**
- (1) The Immigration Act 1971 is amended as follows. 10
- (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.
 - (2) This subsection applies to an Irish citizen if the Irish citizen is subject to a deportation order made under section 5(1). 15
 - (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, 20
 - (b) the Secretary of State has given the Irish citizen notice of the directions, and
 - (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). 25
 - (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.” 30
- (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”;
 - (b) in subsection (4), in the opening words, after “British citizen” insert “or an Irish citizen”. 35
- (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”;
 - (b) in paragraph 4, after “British citizen” insert “or an Irish citizen”.
- 4 Meaning of “the Immigration Acts” etc.** 40
- (1) In section 61 of the UK Borders Act 2007, in subsection (2) (which defines “the Immigration Acts”) –

- (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).”

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- (2) This Part is not retained EU law.

5 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. 10
- (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. 15
- (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. 20
- (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. 25
- (6) Regulations made under subsection (1) must make provision to enable UK citizens falling within the personal scope of –
 - (a) the Withdrawal Agreement,
 - (b) the EEA EFTA separation agreement, or
 - (c) the Swiss citizens’ rights agreement,to return to the United Kingdom accompanied by, or to be joined in the United Kingdom by, close family members. 30
- (7) Regulations under subsection (1) may not impose any conditions on the entry or residence of close family members of UK citizens which could not have been imposed under EU law relating to free movement, as on the day on which this Act comes into force. 35
- (8) For the purposes of subsection (6) –
 - “close family members” means – 40
 - (a) children (including adopted children), and
 - (b) other close family members where that relation subsisted on or before 31 January 2020 and has continued to subsist;

- “Withdrawal Agreement”, “EEA EFTA separation agreement” and “Swiss citizens’ rights agreement” have the meaning given in section 39 of the European Union (Withdrawal Agreement) Act 2020 (interpretation).
- (9) The first statutory instrument containing regulations under subsection (1) –
- (a) must be laid before Parliament after being made, and 5
 - (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.
- (10) 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. 10
- (11) A statutory instrument containing regulations under subsection (1), other than a statutory instrument to which subsection (9) or (10) applies, is subject to annulment in pursuance of a resolution of either House of Parliament. 15
- (12) In calculating the period of 40 days for the purposes of subsection (9), 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.
- (13) If regulations cease to have effect as a result of subsection (9), that – 20
- (a) does not affect the validity of anything previously done under the regulations, and
 - (b) does not prevent the making of new regulations.
- 6 Children in care and children entitled to care leaving support: entitlement to remain 25**
- (1) Any child who has the right of free movement removed by the provisions contained in Part 1 of this Act, and who is in the care of a local authority or entitled to care leaving support, is deemed to have and be granted indefinite leave to remain within the United Kingdom under the EU Settlement Scheme (“the Scheme”). 30
- (2) The Secretary of State must, for the purposes of subsection (1), issue guidance to local authorities in England, Scotland, Wales and Northern Ireland setting out their duty to identify the children of EEA and Swiss nationals in their care or entitled to care leaving support.
- (3) Before issuing guidance under this section the Secretary of State must consult – 35
- (a) the relevant Scottish Minister;
 - (b) the relevant Welsh Minister; and
 - (c) the relevant Northern Ireland Minister.
- (4) The Secretary of State must make arrangements to ensure that personal data relating to nationality processed by local authorities for purposes of identification under subsection (1) is used solely for this purpose. 40
- (5) Any child subject to subsection (1) who is identified and granted indefinite leave to remain status after the deadline for applications under the Scheme will

be deemed to have had such status and all rights associated with that status from the time of the Scheme deadline.

- (6) This section comes into force on the day on which this Act is passed and remains in effect for 5 years from the day of the deadline of the Scheme.
- (7) For the purposes of this section, children “in the care of a local authority” are defined as children receiving care under any of the following provisions—
- (a) section 20 of the Children Act 1989 (provision of accommodation for children: general);
 - (b) section 31 of the Children Act 1989 (care and supervision);
 - (c) section 75 of the Social Services and Well-being (Wales) Act 2014 (general duty of local authority to secure sufficient accommodation for looked after children);
 - (d) section 25 of the Children (Scotland) Act 1995 (provision of accommodation for children);
 - (e) Article 25 of the Children (Northern Ireland) Order 1995 (interpretation); and
 - (f) Article 50 of the Children (Northern Ireland) Order 1995 (care orders and supervision orders).
- (8) For the purposes of this section, a child “entitled to care leaving support” means a child receiving support under any of the following provisions—
- (a) paragraph 19B of Schedule 2 to the Children Act 1989 (preparation for ceasing to be looked after);
 - (b) section 23A(2) of the Children Act 1989 (the responsible authority and relevant children);
 - (c) section 23C(1) of the Children Act 1989 (continuing functions in respect of former relevant children);
 - (d) section 104 of the Social Services and Well-being (Wales) Act 2014 (young people entitled to support under sections 105 to 115);
 - (e) sections 29 and 30 of the Children (Scotland) Act 1995 (advice and assistance for young persons formerly looked after by local authorities); and
 - (f) Article 35(2) of the Children (Northern Ireland) Order 1995 (persons qualifying for advice and assistance).

7 Leave to enter: family unity and claims for asylum

- (1) For at least such time as a relevant agreement has not been concluded and implemented, a person to whom this section applies must be granted leave to enter the United Kingdom for the purpose of making a claim for asylum.
- (2) This section applies to a person who—
- (a) is on the territory of any relevant Member State;
 - (b) makes an application for leave to enter for the purpose of making a claim for asylum; and
 - (c) would, had that person made an application for international protection in that Member State, have been eligible for transfer to the United Kingdom under Regulation (EU) No. 604/2013 by reason of a relevant provision if the United Kingdom remained a party to that Regulation.

- (3) An application for leave to enter under subsection (2)(c) shall be made in such manner as the Secretary of State may prescribe save that –
- (a) there shall be no fee for the making of such an application and no requirements may be prescribed that are unreasonable having regard to the purposes of this section and the circumstances of persons to whom it applies; 5
 - (b) in relation to such applications, the Secretary of State shall make arrangements to ensure that applicants receive a decision regarding their application no later than two months from the date of submission of the application. 10
- (4) A claim for asylum made under subsection (2)(b) must remain pending throughout such time as no decision has been made on it or during which an appeal could be brought within such time as may be prescribed for the bringing of any appeal against a decision made on a claim or during which any such appeal remains pending for the purposes of section 104 of the Nationality, Immigration and Asylum Act 2002 (pending appeal); and a claim for asylum remains one on which no decision has been made during such time as the claim has been made to the Secretary of State and has not been granted, refused, abandoned or withdrawn. 15
- (5) The Secretary of State must, within six months of the day on which this Act is passed, lay before both Houses of Parliament a strategy for ensuring that unaccompanied children on the territory of a relevant Member State continue to be relocated to the United Kingdom, if it is in the child’s best interests. 20
- (6) For the purposes of this section –
- “applicant” means a person who makes an application for leave to enter under this section; 25
 - “claim for asylum” means a claim for leave to enter or remain as a refugee or as a person eligible for a grant of humanitarian protection;
 - “Regulation (EU) No. 604/2013” means Regulation (EU) No. 604/2013 of the European Parliament and of the Council including the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast); 30
 - “relevant agreement” means an agreement negotiated by a Minister of the Crown, on behalf of the United Kingdom, with the European Union in accordance with which there is provision for the transfer of a person who has made an application for asylum in a Member State of the European Union to the United Kingdom which is no less extensive than Regulation (EU) No. 604/2013 insofar as that regulation operated to enable the transfer of a person to join a child, sibling, parent or other family member or relative in the United Kingdom before exit day; 35
 - “relevant Member State” means a Member State for the purposes of Regulation (EU) No. 604/2013; 40
 - “relevant provision” means any of the following articles of Regulation (EU) No. 604/2013 – 45
 - (a) Article 8,
 - (b) Article 9,
 - (c) Article 10,
 - (d) Article 16,
 - (e) Article 17. 50

8 EU Settlement Scheme: physical documented proof

- (1) The Secretary of State must issue physical proof confirming pre-settled status or settled status to all EEA and Swiss nationals and their families who have been granted such status under the EU Settlement Scheme and who request such proof. 5
- (2) No fee may be charged for issuing physical proof under this section.

9 Time limit on immigration detention for EEA and Swiss nationals

- (1) For the purpose of this section, a person (“P”) is defined as any person who, immediately before the commencement of Schedule 1, was –
 - (a) residing in the United Kingdom in accordance with the Immigration (European Economic Area) Regulations 2016 (SI 2016/1052); 10
 - (b) residing in the United Kingdom in accordance with a right conferred by or under any of the other instruments which is repealed by Schedule 1; or
 - (c) otherwise residing in the United Kingdom in accordance with any right derived from European Union law which continues, by virtue of section 4 of the European Union (Withdrawal) Act 2018 (saving for rights etc. under section 2(1) of the ECA), to be recognised and available in domestic law after exit day. 15
- (2) The Secretary of State may not detain P under a relevant detention power for a period of more than 28 days from the relevant time. 20
- (3) If P remains detained under a relevant detention power at the expiry of the period of 28 days then –
 - (a) the Secretary of State must release P forthwith; and
 - (b) the Secretary of State may not re-detain P under a relevant detention power thereafter, unless the Secretary of State is satisfied that there has been a material change of circumstances since P’s release and that the criteria in section 10 are met. 25
- (4) In this Act, “relevant detention power” means a power to detain under –
 - (a) paragraph 16(2) of Schedule 2 to the Immigration Act 1971 (detention of persons liable to examination or removal); 30
 - (b) paragraph 2(1), (2) or (3) of Schedule 3 to that Act (detention pending deportation);
 - (c) section 62 of the Nationality, Immigration and Asylum Act 2002 (detention of persons liable to examination or removal); or 35
 - (d) section 36(1) of the UK Borders Act 2007 (detention pending deportation).
- (5) In this Act, “relevant time” means the time at which P is first detained under a relevant detention power.
- (6) This section does not apply to a person in respect of whom the Secretary of State has certified that the decision to detain is or was taken in the interests of national security. 40

10 Initial detention: criteria and duration

- (1) The Secretary of State may not detain any person (“P”) to whom section 9 applies under a relevant detention power, other than for the purposes of examination, unless the Secretary of State is satisfied that –
- (a) P can be shortly removed from the United Kingdom; 5
 - (b) detention is strictly necessary to effect P’s deportation or removal from the United Kingdom; and
 - (c) the detention of P is in all circumstances proportionate.
- (2) The Secretary of State may not detain P under a relevant detention power for a period of more than 96 hours from the relevant time, unless – 10
- (a) P has been refused bail at an initial bail hearing in accordance with subsection (5)(b) of section 11; or
 - (b) the Secretary of State has arranged a reference to the Tribunal for consideration of whether to grant immigration bail to P in accordance with subsection (2)(c) of section 11 and that hearing has not yet taken place. 15
- (3) Nothing in subsection (2) authorises the Secretary of State to detain P under a relevant detention power if such detention would, apart from this section, be unlawful.
- (4) In this section, “Tribunal” means the First-Tier Tribunal. 20
- (5) In this section, “relevant detention power” has the meaning given in section 9.

11 Bail hearings

- (1) This section applies to any person (“P”) to whom section 9 applies and who is detained under a relevant detention power.
- (2) Before the expiry of a period of 96 hours from the relevant time, the Secretary of State must – 25
- (a) release P;
 - (b) grant immigration bail to P under paragraph 1 of Schedule 10 to the Immigration Act 2016; or
 - (c) arrange a reference to the Tribunal for consideration of whether to grant immigration bail to P. 30
- (3) Subject to subsection (4), when the Secretary of State arranges a reference to the Tribunal under subsection (2)(c), the Tribunal must hold an oral hearing (“an initial bail hearing”) which must commence within 24 hours of the time at which the reference is made. 35
- (4) If the period of 24 hours in subsection (3) ends on a Saturday, Sunday or bank holiday, the Tribunal must hold an initial bail hearing on the next working day.
- (5) At the initial bail hearing, the Tribunal must –
- (a) grant immigration bail to P under paragraph 1 of Schedule 10 to the Immigration Act 2016; or
 - (b) refuse to grant immigration bail to P. 40
- (6) Subject to subsection (7), the Tribunal must grant immigration bail to P at a bail hearing unless it is satisfied that the Secretary of State has established that the criteria in subsection (1) of section 10 are met and that, in addition –

- (a) directions have been given for P’s removal from the United Kingdom and such removal is to take place within 14 days;
 - (b) a travel document is available for the purposes of P’s removal or deportation; and
 - (c) there are no outstanding legal barriers to removal. 5
- (7) Subsection (6) does not apply if the Tribunal is satisfied that the Secretary of State has established that the criteria in subsection (1) of section 10 above are met and that there are very exceptional circumstances which justify maintaining detention.
- (8) In subsection (6), “a bail hearing” includes – 10
 - (a) an initial bail hearing under subsection (2); and
 - (b) the hearing of an application for immigration bail under paragraph 1(3) of Schedule 10 to the Immigration Act 2016.
- (9) In this section, “Tribunal” means the First-Tier Tribunal.
- (10) The Secretary of State shall provide to P or P’s legal representative, not more than 24 hours after the relevant time, copies of all documents in the Secretary of State’s possession which are relevant to the decision to detain. 15
- (11) At the initial bail hearing, the Tribunal shall not consider any documents relied upon by the Secretary of State which were not provided to P or P’s legal representative in accordance with subsection (10), unless – 20
 - (a) P consents to the documents being considered; or
 - (b) in the opinion of the Tribunal there is a good reason why the documents were not provided to P or to P’s legal representative in accordance with subsection (10).
- (12) In the Immigration Act 2016, after paragraph 12(4) of Schedule 10 insert – 25
 - “(4A) Sub-paragraph (2) above does not apply to the refusal of bail within the meaning of section 11 of the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020.”
- 12 Grant of leave to remain for confirmed victims of modern slavery who are EEA nationals 30**
- (1) Immigration rules must make provision for leave to remain in the United Kingdom to be granted to a person aged 18 years or over when –
 - (a) the person is either a Swiss national or an EEA national who is not also an Irish citizen; and
 - (b) there has been a conclusive determination that the person is a victim of slavery or human trafficking; and 35
 - (c) subsection (2) applies and subsection (8) does not.
- (2) This subsection applies if the person meets one or more of the following criteria –
 - (a) leave is necessary due to the person’s circumstances, including but not restricted to – 40
 - (i) the needs of that person for safety and protection from harm including protection from re-trafficking;
 - (ii) the needs of that person for medical and psychological treatment; 45

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- (b) the person is participating as a witness in criminal proceedings;
- (c) the person is bringing any civil proceedings including pursuing compensation.
- (3) Where the person is receiving assistance from a support worker, the recommendations of the support worker must be considered in assessing that person’s circumstances under subsection (2)(a). 5
- (4) Immigration rules must provide for persons granted leave to remain in accordance with this section to have recourse to public funds for the duration of the period of leave.
- (5) Immigration rules must provide for leave to remain to be granted from the day on which the conclusive determination is communicated to a person for at least 12 months. 10
- (6) Immigration rules must allow a grant of leave to remain under subsection (5) to be extended subject to the requirements of subsection (7).
- (7) In determining whether to extend a grant of leave to remain under subsection (6), and the period of time for which such extended leave should be provided, the person’s individual circumstances must be considered, and whether that person meets one or more of the criteria in subsection (2). 15
- (8) A person may be refused leave to remain if – 20
- (a) the person is a sexual or violent offender; and
- (b) the Secretary of State considers that the person poses a genuine, present and serious risk to members of the public.
- (9) If subsection (8) applies, the Secretary State must ensure the person affected is given reasons for the refusal in writing.
- (10) In this section – 25
- “competent authority” means a person who is a competent authority of the United Kingdom for the purposes of the Council of Europe Convention on Action against Trafficking in Human Beings;
- “conclusive determination” means a determination that a person is, or is not, a victim of slavery or human trafficking when the identification process conducted by a competent authority concludes that the person is, or is not, such a victim; 30
- “EEA national” means a national of a State which is a contracting party to the Agreement on the European Economic Area signed at Oporto on 2 May 1992 (as it has effect from time to time); 35
- “immigration rules” has the meaning given by section 33 of the Immigration Act 1971;
- “sexual or violent offender” means a person falling within the definition of a “sexual or violent offender” in section 327 of the Criminal Justice Act 2003 (section 325: interpretation) or who has been convicted of an offence under the law of another country which would have constituted an offence falling within those subsections if it had been done in England and Wales; 40
- “victim of slavery” and “victim of human trafficking” mean a person falling within the definition of a “victim of slavery” or “victim of human trafficking” in section 56 of the Modern Slavery Act 2015 (section 56: interpretation). 45

PART 2

SOCIAL SECURITY CO-ORDINATION

- 13 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). 5
 - (2) The retained direct EU legislation is –
 - (a) Regulation (EC) No 883/2004 of the European Parliament and of the Council on the co-ordination of social security systems; 5
 - (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; 10
 - (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; 15
 - (d) Regulation (EEC) No 574/72 fixing the procedure for implementing Regulation (EEC) No 1408/71; 15
 - (e) Regulation (EC) No 859/2003 extending Regulation (EEC) No 1408/71 to nationals of non-EU Member Countries. 15
 - (3) The power to make regulations under subsection (1) includes power – 20
 - (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); 20
 - (b) otherwise to make different provision for different purposes; 25
 - (c) to make supplementary, incidental, consequential, transitional, transitory or saving provision; 25
 - (d) to provide for a person to exercise a discretion in dealing with any matter. 25
 - (4) The power to make provision mentioned in subsection (3)(c) includes power to modify – 30
 - (a) any provision made by primary legislation passed before, or in the same Session as, this Act; 30
 - (b) any provision made under primary legislation before, or in the same Session as, this Act is passed; 35
 - (c) retained direct EU legislation which is not mentioned in subsection (2). 35
 - (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. 40
 - (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). 45
 - (7) In this section, “appropriate authority” means – 45

- (a) the Secretary of State or the Treasury,
 - (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. 5
- (9) Schedule 3 contains provision about the making of regulations under this section.

PART 3

GENERAL 10

14 Interpretation

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; 15
- “modify” includes amend, repeal or revoke (and related expressions are to be read accordingly);
- “primary legislation” means – 20
 - (a) an Act of Parliament;
 - (b) an Act of the Scottish Parliament;
 - (c) an Act or Measure of Senedd Cymru;
 - (d) Northern Ireland legislation.

15 Extent 25

- (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 14 and 17 (so far as relating to that Part), to extend, with or without modifications, to – 30
- (a) any of the Channel Islands;
 - (b) the Isle of Man;
 - (c) any of the British overseas territories.
- (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. 35
- (4) The powers are the powers under any of the following provisions – 40
- (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.

- (5) Regulations under section 5 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).

16 Commencement

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- (1) Part 1 comes into force on such day as the Secretary of State may by regulations made by statutory instrument appoint except sections –
- (a) 9,
 - (b) 10, and
 - (c) 11

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which come into force six months after the day on which this Act is passed.

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

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17 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

- | | | |
|---|--|----|
| | | 5 |
| 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 – | |
| | “(2A) Nothing in these Regulations affects the interpretation, application or operation of any provision made by or under the Immigration Acts.” | 20 |

PART 2

RETAINED DIRECT EU LEGISLATION

- | | | |
|---|--|----|
| 4 | (1) Article 1 of the Workers Regulation is omitted. | 25 |
| | (2) Articles 2 to 10 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 –
- (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 13(8)

FURTHER PROVISION ABOUT THE SCOPE OF THE POWER UNDER SECTION 13

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 13, 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 13 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 13 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 13 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 13 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 13 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 13. 20

SCHEDULE 3

Section 13(9)

REGULATIONS UNDER SECTION 13

PART 1

STATUTORY INSTRUMENTS 25

- 1 Any power to make regulations under section 13 –
- (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 13

Scrutiny where sole exercise

- 2 (1) A statutory instrument containing regulations of the Secretary of State or the Treasury under section 13 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 13 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 13 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 13 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 – 35
- (a) the references to Parliament were references to the Northern Ireland Assembly, and
- (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 13 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 13 which is subject to a procedure before Parliament but as if 40

the references to 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 13 (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

A

B I L L

[AS AMENDED ON REPORT]

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.

Brought from the Commons on 1st July 2020

Ordered to be Printed, 6th October 2020

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