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**4 September 2020**

## **All MPs**

Dear Colleague,

### **Immigration and Social Security Co-ordination (EU Withdrawal) Bill – draft illustrative statutory instruments**

The Immigration and Social Security Co-ordination (EU Withdrawal) Bill (“the Bill”) will end free movement and give the Government full control of UK borders for the first time in decades, delivering on our manifesto promise to the British people. It represents an important milestone in paving the way for the new UK points-based immigration system to operate from 1 January 2021.

As the Bill progresses to Lords Committee stage on 7 September, I am sharing illustrative drafts of the statutory instruments (SIs) to be made under the Bill’s delegated powers in order to assist Parliament’s ongoing scrutiny of the Bill. For clarity, I am also sharing the draft Citizens’ Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020 (“the grace period SI”), to be made under section 7 of the EU (Withdrawal Agreement) Act 2020, which provides related provisions in respect of the post-transition period “grace period”. Copies of these SIs will be placed in the libraries of both Houses along with this letter and accompanying factsheets.

There has been much focus on the Bill’s delegated powers relating to immigration and social security co-ordination during its passage to date, and indeed the Lords’ Delegated Powers and Regulatory Reform Committee’s (DPRRC) report on the Bill (published on 25 August) raised questions on the drafting of the powers and their intended use. The Government is grateful to the DPRRC for its views and is considering the recommendations carefully.

### Consequential amendments SI

Colleagues will be aware the Bill contains a power under clause 4 to make SIs to modify primary or secondary legislation in consequence of, or in connection with the ending of free movement and the new status for Irish citizens in clause 2 of the Bill.

This power is needed to align the immigration treatment of EEA<sup>1</sup> and non-EEA citizens under the future global points-based immigration system from January 2021.

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<sup>1</sup> EEA citizens includes for this purpose citizens of the EU and EFTA states.

The Government has no intention to use the powers to make wide-ranging changes to immigration policies or fees, as some reports have suggested.

To assist with further scrutiny of this power during the Bill's remaining stages, I am today sharing an illustrative draft of The Immigration and Social Security Co-ordination (EU Withdrawal) Act (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020 ("the consequential amendments SI") to be made under clause 4. I am also providing a short factsheet to help explain the technical changes in the SI.

### Citizens' rights protections under the Withdrawal Agreements<sup>2</sup>

The Government legislated through the EU (Withdrawal Agreement) Act 2020 to protect the residence rights of EEA citizens who are resident in the UK by the end of the transition period, and it has established the EU Settlement Scheme (EUSS) to enable them to apply for a UK immigration status. By the end of July, over 3.8 million applications had been received under the EUSS and over 3.5 million concluded, continuing to prove how successful the scheme is.

Colleagues may find it helpful to read the consequential amendments SI alongside the draft grace period SI, which sets the deadline for applications to the EUSS as 30 June 2021<sup>3</sup> and provides savings for those exercising free movement rights prior to the end of the transition period until then.

### Social security co-ordination

The Bill also contains a power under clause 5 for the Government, a Northern Ireland department or a Minister of the Crown acting jointly with a Northern Ireland department to modify retained direct EU legislation relating to social security co-ordination. My colleague, Justin Tomlinson MP, has been leading on this clause during the Bill's passage in the Commons.

The power under clause 5 is needed to enable the Government to respond to the outcome of negotiations on social security co-ordination with the EU. The Government has published the draft legal text for a future agreement with the EU in this area and negotiations are ongoing. The Government has also been clear there will be changes to existing coordination rules, including in relation to the export of benefits, in line with the rules the UK currently has with the rest of the world.

To assist with further scrutiny of this power during the Bill's remaining stages, I am today sharing the draft of The Social Security Coordination (Revocation of Retained Direct EU Legislation and Consequential Amendments) (EU Exit) Regulations 2020 ("the clause 5 SI") to be made under clause 5 and accompanying factsheet and will place copies of these in the libraries of both Houses. This draft is illustrative of the

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<sup>2</sup> 'Withdrawal Agreements' refers to the EU Withdrawal Agreement, the EEA EFTA Separation Agreement and the Citizens' Rights Agreement with Switzerland.

<sup>3</sup> The Immigration Rules for the EUSS will provide for applications after this deadline where, in line with the Withdrawal Agreements, there are reasonable grounds why the person missed it.

content of an SI needed in the event of a negotiated outcome on social security co-ordination with the EU. A negotiated outcome remains the Government's objective.

With my very best wishes.

Yours sincerely.

A handwritten signature in black ink, appearing to read 'Foster', with a large flourish at the end.

**Kevin Foster MP**

**Minister for Future Borders and Immigration**