

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

The Immigration and Social Security Co-ordination (EU Withdrawal) Act (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020 (“the consequential amendments SI”).

The Government has shared with Parliamentarians draft illustrative Regulations it proposes to make under the power in Clause 4 of the Immigration and Social Security Co-ordination (EU Withdrawal) Bill (“the Bill”). The purpose is to support Parliament’s consideration of the Bill by showing how the Government intends to use this delegated power¹. Copies of the draft Regulations have been placed in the libraries of both Houses in Parliament.

For an overview of Clause 4, please refer to Bill Factsheet 3.

Overview of the Regulations

The end of free movement constitutes a significant change to UK immigration law. There are references to free movement and related matters across the UK statute book in both primary and secondary legislation, which will no longer make sense or be appropriate once free movement has ended.

Therefore, subject to Parliament’s approval of the Bill, these Regulations will be used to make changes to primary and secondary legislation as a consequence of, or in connection with the ending of free movement by Part 1 of the Bill and the arrangements in Part 1 for the status of Irish citizens . This includes EU-derived legislation that is retained by the EU (Withdrawal) Act 2018, as amended by the EU (Withdrawal Agreement) Act 2020) at the end of the transition period.

The Regulations amend legislation in the areas of immigration and nationality. They also amend legislation on access to benefits and services and devolved matters where changes are required for an immigration purpose to reflect the end of free movement.

The Regulations contain provisions to achieve the following main purposes:

1. to align the treatment of EEA citizens who are not protected by the withdrawal agreements with non-EEA citizens in the immigration system from January 2021;
2. to make some savings and transitional provisions (in addition to those made by and under the Withdrawal Agreement Act);
3. to amend provisions relating to retained EU law and institutions; and
4. to reflect the Bill’s provisions to protect the rights of Irish citizens.

Examples of these provisions in the draft Regulations:

- 1. To align EEA citizens, other than those protected by the withdrawal agreements with non-EEA citizens in the immigration system by:**
 - removing EEA citizens’ exemption from the Immigration Skills Charge;
 - specifying that EEA citizens will be subject to immigration control for the purpose of accessing benefits and services;

¹ The statutory instruments shared are drafts intended to assist Parliament with scrutiny of the Bill. They represent the regulations the Government intends to make, but changes may be made to the versions presented to Parliament for approval as the result of further review.

- permitting EEA citizens to be provided with assistance for voluntary removal from the UK in appropriate circumstances;
 - bringing newly arriving EEA citizens in scope of the sham marriage and civil partnership referral and investigation scheme;
 - permitting EEA citizens to apply to the Special Immigration Appeals Commission to set aside an exclusion direction in the same way as non-EEA citizens; and
 - applying the same civil service nationality rules to newly arriving EEA and Turkish citizens and their family members as to non-EEA citizens by amending the Aliens Employment Act 1955.
- 2. To make savings and transitional provisions by:**
- ensuring people who have a right of appeal under the Immigration (European Economic Area) Regulations 2016 pending when the Bill repeals section 109 of the Nationality, Immigration and Asylum Act 2002 do not lose that right of appeal.
- 3. To amend provisions relating to retained EU law and institutions by:**
- removing provisions setting out the requirements for the submission of biometrics for documentation evidencing an EU right of residence; and
 - stipulating that, once free movement to the UK has ended, citizenship, admission and residence under EU law will no longer be relevant matters for the purposes of providing immigration advice in the UK.
- 4. To reflect Bill provisions protecting the rights of Irish citizens by:**
- amending the meaning of being in breach of the immigration laws in the British Nationality Act 1981 to reflect protections for Irish citizens in the Bill, by confirming that for the purposes of specific elements of nationality law, an Irish citizen is not to be considered as being in the UK in breach of immigration law, but instead has qualifying immigration status, by virtue of their rights as set out in clause 3ZA of the Bill.

Subject to Parliament's approval of the Bill, the first set of Regulations will be made using the made-affirmative procedure following Royal Assent of the Bill. The provisions will come into force when free movement ends at 2300 on 31 December 2020, with the exception of a small number of measures that are specified in regulation (1). After being made they will be laid before Parliament and both Houses will be asked to debate and approve the Regulations within 40 days for them to remain in force.

Citizens' rights protections under the withdrawal agreements²

Colleagues might find it helpful to read the consequential amendments regulations alongside the **Citizens' Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020 ('the grace period SI')**. For this reason, the Government has also shared this statutory instrument in draft and placed copies in the libraries of both Houses.

² 'Withdrawal agreements' refer to the EU Withdrawal Agreement, the EEA EFTA Separation Agreement and the Citizens' Rights Agreement with Switzerland.

The Government will shortly lay this statutory instrument under section 7 of the EU (Withdrawal Agreement) Act 2020. It is subject to the draft affirmative procedure and, subject to Parliament's approval, the instrument will need to commence by 31 December 2020.

The grace period SI will set the deadline for applications to the EU Settlement Scheme as 30 June 2021³. It will also protect the existing rights of those individuals who are exercising free movement rights in the UK prior to the end of the transition period, have not yet applied to the EU Settlement Scheme and do so after the end of the transition period, and before the deadline for applications ('the grace period'). These rights will continue until the final determination of their application to the scheme, including the outcome of any appeal against a decision to refuse status.

³ 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.