



Policy Equality Impact Assessment (PEIA)

This PEIA sets out an analysis of the equalities considerations in relation to the Immigration and Social Security Co-ordination (EU Withdrawal) Bill that was introduced in the House of Commons on 5 March.

1. Policy Background

The European Union (Withdrawal Agreement) Act 2020 (“EUWAA 2020”) gained Royal Assent on 23 January 2020 and provides for the implementation of the Withdrawal Agreement agreed between the UK and the EU pertaining to the UK’s withdrawal from the EU. The United Kingdom subsequently exited the European Union on 31 January 2020.

Subject to parliamentary approval of the Immigration and Social Security Co-ordination (EU Withdrawal) Bill, free movement will end on 31 December 2020 at the end of the transition period, and the Government plans to introduce a points-based immigration system that is firmer, fairer and will enable people to come to the UK on the basis of the skills and talent they have and the contribution they will make to the UK, rather than where they came from. Currently, free movement of people continues to apply in UK law by virtue of the EUWA 2018, as amended by the EUWAA 2020, until the end of the transition period. The Immigration and Social Security Co-ordination (EU Withdrawal) Bill is the legislation that will end the EU’s rules on free movement and paves the way for the Government to deliver the planned points-based immigration system from January 2021. The future arrangements that will apply to EEA and non-EEA citizens will be set out in Immigration Rules and other secondary legislation, as is usual practice, and are not included in the Bill.

Protecting resident EEA citizens in the UK

The Government has always been committed to guaranteeing the existing rights of EU, EEA EFTA and Swiss nationals (referred collectively in this document as “EEA citizens” for brevity) who are resident in the UK before 31 December 2020; this has been delivered through the EUWAA 2020 as well as the EU Settlement Scheme. The Act implements three agreements to provide rights for EU, EEA EFTA and Swiss citizens and their family members; the EU Withdrawal Agreement 2019¹; the EEA EFTA Separation Agreement²; and the Swiss Citizens’ Rights Agreement³ (collectively referred to as the Agreements).

The Agreements mean that EEA citizens resident here before the end of the transition period, and their family members, are able to continue to live and work in the UK. Their rights to healthcare, work arrangements and access to benefits continue, and their existing close family members currently living outside the UK will be able to join them in the future. Their future children are also generally able to join them.

¹https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/840655/Agreement_on_the_withdrawal_of_the_United_Kingdom_of_Great_Britain_and_Northern_Ireland_from_the_European_Union_and_the_European_Atomic_Energy_Community.pdf

² <https://www.gov.uk/government/publications/eea-efta-separation-agreement-and-explainer>

³ <https://www.gov.uk/government/publications/swiss-citizens-rights-agreement-and-explainer>

The Agreements also cover what happens during the current 'transition period'. This period runs to 31 December 2020. The Agreements extend the same citizens' rights to those EEA citizens and their family members arriving in the UK during the transition period.

The Government fully opened the EU Settlement Scheme (EUSS) on 30 March 2019 and the scheme enables EEA citizens resident in the UK by the end of the transition period and their family members to apply for leave under the Immigration Act 1971 in order to protect their rights in UK law, to enable them to remain in the UK, and to ensure their status is clear when the new global points-based immigration system begins from January 2021.

The EUSS ensures that individuals have sufficient time to apply for their new immigration status under UK law. As confirmed in the Agreements, those who are resident here by 31 December 2020 will have until 30 June 2021 to make an application for status under it. Close family members joining an EEA citizen here after 31 December 2020 will have three months from their arrival in which to make an application for status under the scheme (or until 30 June 2021 if they arrive before 1 April 2021). Where a person has reasonable grounds for missing the deadline to apply, they will be given a reasonable further period in which to make an application.

The EU Settlement Scheme has been designed in such a way as to be accessible to all resident EEA citizens and their family members, including those with particular protected characteristics. There is a wide range of support available at every stage of the application process via phone, email and in person. Some examples include a dedicated EU Settlement Resolution Centre, open seven days a week, through which EEA citizens, and their family members, or persons assisting them with their application, can discuss any aspect of it with a trained caseworker; voluntary and community sector organisations across the UK to help vulnerable or at-risk EEA citizens to apply; and an assisted digital service, for those who need assistance with Information Technology, in over 300 locations across the UK. There is also a paper application form for those whose specific individual needs require it. The Home Office also works closely with other Government departments, including DfE, MHCLG, HMRC and DWP, as well as engaging with Local Authorities and Devolved Administrations, to support and promote the EU Settlement Scheme⁴.

The EUWAA 2020 provides for regulations to be made to provide a right of appeal for EEA citizens and their family members against decisions affecting their entitlement to enter and remain in the UK under the EU Settlement Scheme ("EUSS") or decisions in relation to EUSS family permits or travel permits. The Immigration Citizens' Rights Appeals (EU Exit) Regulations 2020 have now been made. A right of appeal is available for anyone who makes a valid application under the scheme. The right of appeal will be to a specialist immigration Tribunal and appeals will be heard by independent judges. Since April 2015, rights of appeal for non-free movement related decisions are only available against decisions which engage fundamental freedoms, such as human rights or refusal/revocation of protection status. By providing more generous appeal rights against refusals of EUSS leave we are treating them more favourably than those who do not come within the EU Settlement Scheme. However, they would currently generally have a right of appeal against decision under the Immigration (European Economic Area) Regulations 2016 which govern free movement and so are already in a different position. In addition, the requirement to implement the UK's international obligations in the Agreements means this differential treatment is necessary and proportionate.

To date the EU Settlement Scheme is working well and as announced last month, over 3.2 million people have applied and almost 2.9 million people have been granted status⁵.

⁴ Further information can be found at: <https://www.gov.uk/government/publications/eu-settlement-scheme-community-support-for-vulnerable-citizens/list-of-organisations> and <https://www.gov.uk/government/publications/eu-settlement-scheme-community-leaders-toolkit/toolkit-introduction-how-to-use-the-local-authorities-toolkit-in-your-community-or-network#information-for-local-authorities>

⁵ <https://www.gov.uk/government/statistics/eu-settlement-scheme-statistics-january-2020>

Future Points-Based Immigration System

The Government set out in its manifesto in 2019 that once free movement ends, it will deliver a new points-based immigration system that is open to the world and welcomes talented and hardworking people to study, work, visit and do business in the UK.

The Bill ends free movement and paves the way for a points-based immigration system to be rolled out from January 2021. The future arrangements that will apply to EEA and non-EEA citizens will be set out in Immigration Rules and other secondary legislation, as is usual practice.

The Government commissioned advice from the Migration Advisory Committee (MAC) on a points-based immigration system as well as on salary thresholds in the immigration system. The MAC published its report on both issues on 28 January 2020. The Government aim is to deliver on the promise of a global points-based system once the Government has had the opportunity to consider the MAC's advice in detail. Once the policies for the future immigration system are finalised, the requirements that will apply to EEA citizens and their family members wishing to come to the UK from January 2021 (and who were not resident in the UK prior to that) will be set out in UK Immigration Rules as is the case now for non-EEA citizens.

Bill Clauses

The Immigration and Social Security Co-ordination (EU Withdrawal) Bill is the legislation that will repeal the free movement of persons, including the Immigration (European Economic Area) Regulations 2016 which implemented the Free Movement Directive. The Bill ends the EU's rules on free movement in the UK and retained EU law on immigration that is retained in UK law by the European Union (Withdrawal) Act 2018 ("EUWA 2018") (as amended by the EUWAA 2020). The Bill also repeals section 7 of the Immigration Act 1988. This means that when free movement ends, EEA citizens and their family members will require permission to enter and remain in the UK under the Immigration Act 1971. This is subject to a saving made by regulations under the EUWAA 2020 which will provide that those resident by 31 December 2020 will not require leave until the end of the grace period – 30 June 2021 – mandated by Article 18(2) of the EU Withdrawal Agreement. The Bill makes provision for the status of Irish citizens. It also contains provision for the Government (and/or, where appropriate, a devolved authority) to amend retained direct EU legislation relating to the social security co-ordination regime, which is retained in UK law by the EUWA 2018.

The main measures in the Immigration and Social Security Co-ordination (EU Withdrawal) Bill include:

- repealing the main retained EU law relating to free movement and bringing EEA citizens and their family members under UK immigration control to enable the introduction of the global points-based immigration system;
- protecting the status of Irish citizens in UK immigration law once their EU free movement rights end;
- a power to amend, by regulations, legislation in consequence of, or in connection with the ending of free movement. This will enable the alignment of treatment for EEA and non-EEA citizens as part of the future immigration system, subject to saving certain provisions where appropriate; and
- powers to amend, by regulations, retained EU law governing social security co-ordination, enabling policy changes to be delivered following the end of the transition period, and depending on the outcome of negotiations with the EU on the future relationship.

1.1 Repeal of main retained EU law relating to free movement

The EUWA 2018 maintains EU law relating to free movement as UK law following the UK's withdrawal from the EU on 31 January 2020 and incorporates it in retained EU law from that date. The

Bill will repeal the key free movement provisions and end the operation of EU rules (as given effect in domestic legislation) on free movement of persons in the UK. This means that the UK Government will be able to align Immigration Rules for EEA citizens and their family members with the wider migrant population. The Bill removes the exemption from UK immigration control which currently applies to EEA citizens and their family members and requires them to apply for permission to enter and remain under the Immigration Act 1971.

Through the Bill's provisions, certain directly effective EU rights, for example, those relating to the EU/Swiss free movement of persons agreement, cease to be recognised in domestic law. Directly effective EU rights are disapplied insofar as they are inconsistent with the UK's immigration law.

1.2 Irish citizens: entitlement to enter or remain without leave

The Bill protects the status of Irish citizens in the UK when free movement rights end, a status which existed prior to the UK's membership of the EU. Since the 1920s British and Irish citizens have enjoyed a status in each other's State, distinct from that later enjoyed as a consequence of EU citizenship. Section 2(1) of the Ireland Act 1949 declares that "...notwithstanding that the Republic of Ireland is not part of [Her] Majesty's dominions, the Republic of Ireland is not a foreign country for the purposes of any law in force in any part of the UK...". The fundamental provisions for the immigration status of Irish citizens in UK domestic law are provided for in the Immigration Act 1971, however these provisions only cover Irish citizens who enter the UK from within the Common Travel Area (CTA); Irish citizens travelling from outside the CTA currently enter the UK under the Free Movement Directive 4004/38/EC. The Bill will address this disparity and protect the status of Irish citizens; confirming their right to enter and remain in the UK without permission when free movement rights end, irrespective of from where they have entered the UK, unless they are subject to a deportation order, exclusion order or international travel ban. This status is consistent with the commitments in the Belfast ('Good Friday') Agreement.

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¹⁰ <https://www.gov.uk/government/statistics/eu-settlement-scheme-statistics-january-2020>

- a power to amend, by regulations, legislation in consequence of, or in connection with the ending of free movement. This will enable the alignment of treatment for EEA and non-EEA citizens as part of the future immigration system, subject to saving certain provisions where appropriate; and
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1.3 Consequential, transitional and savings provisions

The Bill includes powers to enable the Secretary of State to make consequential, transitional, incidental, transitory and savings provisions in respect of ending free movement.

1.4 Social Security Co-ordination

The Bill provides a power to modify, by regulations, retained EU law in relation to social security co-ordination. It allows the Government (and/or, where appropriate, a devolved authority) to modify the retained rules, as appropriate, and allows the Government (and/or, where appropriate, a devolved authority) to make regulations to implement any new policies regarding co-ordination of social security. This clause also provides for the disapplication of directly effective rights, which have been saved by section 4 of the EUWA 2018, to the extent that they conflict with the exercise of this power. The retained law governs the co-ordination of social security between Member States and contains rules relating to individuals whose social security situation is not confined to a single Member State. This includes rules relating to the payment of social security contributions and access to benefits (including export and aggregation) across the EU by EEA citizens, and in some cases non-EEA citizens. The power in this Bill will allow policy changes to be made to the social security co-ordination regime which has been retained, and fixed, under the EUWA 2018, enabling the Government to

reflect its preferred policy. Detailed policy arrangements are yet to be determined, therefore it is difficult to assess the impacts of provisions in the Bill in a meaningful way. Equality considerations, including the public-sector equality duty, have been considered and any policy changes which may be considered under secondary legislation will result in updated equalities analysis.

1.5 Consequential, transitional and savings provisions (in relation to social security co-ordination)

The Bill provides a power to enable the Government (and/or a devolved authority where appropriate) to make consequential, transitional and savings provisions to primary legislation and other retained direct EU legislation. This will allow the Government (and/or, where appropriate, a devolved authority) to ensure that changes made to the retained social security co-ordination regime can be reflected across the complex range of domestic primary and secondary legislation which governs this area.

2. Summary of the evidence considered in demonstrating due regard to the Public-Sector Equality Duty.

Available data relating to specific clauses is listed below:

2.1 Repeal of principal retained EU law relating to free movement

Consideration has been given to the following:

- September 2018 Migration Advisory Committee report on EEA Migration in the UK: <https://www.gov.uk/government/publications/migration-advisory-committee-mac-report-eea-migration>
- Commons Briefing Papers: Citizens' rights provisions in the European Union (Withdrawal Agreement) Bill 2019-20 (3 Jan 2020): <https://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-8772>.
- EU Settlement Scheme statistics: <https://www.gov.uk/government/collections/eu-settlement-scheme-statistics>

The impact of the EU Settlement Scheme on people with protected characteristics has been evaluated in line with the public-sector equality duty and remains under consideration throughout the scheme's implementation. There is a separate policy equality statement covering the EU Settlement Scheme.

2.2 Irish citizens: entitlement to enter or remain without leave

Consideration has been given to the following reports and research papers:

- Commons Briefing Papers: The Common Travel Area, and the special status of Irish nationals in UK law: 16 Oct 2019: <https://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-7661#fullreport>.
- British-Irish Parliamentary Assembly: Inquiry into Brexit and the future of British-Irish relations: October 2017: <http://www.britishirish.org/assets/Final-BIPA-Brexit-conclusions-October-2017.pdf>
- Written evidence-Professor Bernard Ryan (BUI0008): Submission to House of Lords European Union Committee Inquiry on *Brexit: UK-Irish Relations*: September 2016: <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/european-union-committee/brexit-ukirish-relations/written/39488.pdf>
- ILPA EU Referendum Position paper 8: The implications of UK withdrawal for immigration policy and nationality law: Irish aspects: <http://www.ilpa.org.uk/resource/32154/>
- British and Irish citizens: how to safeguard the rights of Irish citizens in an uncertain future: December 2017: <http://travellermovement.org.uk/brexitireland/>
- Additional Data Paper: Common Travel Area Data and Statistics: August 2017: <http://travellermovement.org.uk/brexitireland/>

The views of a range of internal Government and external stakeholders have been sought as these proposals have been developed and no adverse impacts on particular groups have been identified. In particular, there have been regular bilateral discussions with Ireland's Department of Justice and Equality and the Department of Foreign Affairs, with particular focus on the reciprocal nature of these rights.

Available data relating to specific clauses is listed below:

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- Commons Briefing Papers: Citizens' rights provisions in the European Union (Withdrawal Agreement) Bill 2019-20 (3 Jan 2020): <https://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-8772>.
- EU Settlement Scheme statistics: <https://www.gov.uk/government/collections/eu-settlement-scheme-statistics>

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- Commons Briefing Papers: The Common Travel Area, and the special status of Irish nationals in UK law: 16 Oct 2019: <https://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-7661#fullreport>.
- British-Irish Parliamentary Assembly: Inquiry into Brexit and the future of British-Irish relations: October 2017: <http://www.britishirish.org/assets/Final-BIPA-Brexit-conclusions-October-2017.pdf>
- Written evidence-Professor Bernard Ryan (BUI0008): Submission to House of Lords European Union Committee Inquiry on *Brexit: UK-Irish Relations*: September 2016: <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/european-union-committee/brexit-ukirish-relations/written/39488.pdf>
- ILPA EU Referendum Position paper 8: The implications of UK withdrawal for immigration policy and nationality law: Irish aspects: <http://www.ilpa.org.uk/resource/32154/>
- British and Irish citizens: how to safeguard the rights of Irish citizens in an uncertain future: December 2017: <http://travellermovement.org.uk/brexitireland/>
- Additional Data Paper: Common Travel Area Data and Statistics: August 2017: <http://travellermovement.org.uk/brexitireland/>

The views of a range of internal Government and external stakeholders have been sought as these proposals have been developed and no adverse impacts on particular groups have been identified. In particular, there have been regular bilateral discussions with Ireland's Department of Justice and Equality and the Department of Foreign Affairs, with particular focus on the reciprocal nature of these rights.

2.3 Social Security Co-ordination

A separate equalities impact assessment has been completed which analyses the equalities impacts of the social security co-ordination provisions in the Bill. As further data becomes available, we will amend the policy equalities impact assessment to reflect any equalities impacts.

Government statements and commissions relating to the end of free movement:

- a) Government's EU Settlement Scheme statement of intent, 21 June 2018:
<https://www.gov.uk/government/publications/eu-settlement-scheme-statement-of-intent>
- b) Prime Minister's Statement to the House of Commons on the Priorities for Government; 25 July 2019:
<https://www.gov.uk/government/speeches/pm-statement-on-priorities-for-the-government-25-july-2019>
- c) Home Secretary's Commission to the Migration Advisory Committee 4 September 2019
<https://www.gov.uk/government/publications/commissioning-letter-to-the-mac-on-a-points-based-system-for-migration>
- d) Migration Advisory Committee call for evidence, 10 September 2019:
<https://www.gov.uk/government/consultations/salary-threshold-and-points-based-system-pbs-commission-call-for-evidence>
- e) October 2019 EU (Withdrawal Agreement) Bill Impact Assessment:
<https://www.gov.uk/government/publications/eu-withdrawal-agreement-bill>
- f) January 2020 Migration Advisory Committee report on salary thresholds and points-based system:
<https://www.gov.uk/government/publications/migration-advisory-committee-mac-report-points-based-system-and-salary-thresholds>

3. The public sector equality duty under s149 of the Equality Act 2010 requires that in exercising their functions public authorities must have due regard to the need to:

- a. Eliminate discrimination, harassment, victimisation and any other conduct prohibited by the Act;
- b. Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- c. Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

Under s149 the *specified protected characteristics* are age; disability; gender reassignment; pregnancy and maternity; race (including ethnic or national origins, colour or nationality); religion or belief; sex; sexual orientation; and marriage and civil partnership.

Separate policy equality impact assessments have been completed which analyse the equalities impacts of the social security co-ordination provisions in the Bill and the EU Settlement Scheme.

We have considered equalities impacts of the points-based immigration system in line with our public sector equality duties. Impacts will continue to be considered as policies are developed.

3A. Consideration of limb 1 of the duty: Eliminate unlawful discrimination, harassment, victimisation and any other conduct prohibited by the Equality Act

3a.1 Repeal of retained EU law relating to free movement

The repeal of retained EU law relating to the free movement of persons will apply to all EEA citizens (and their non-EEA citizen family members). The Bill will make particular provision for Irish citizens, as considered below.

The rationale for the policy approach is set out below. To the extent that the policy may result in discrimination, we have considered how this can be minimised and/or mitigated. Where we have been able to put measures in place to mitigate discrimination, we have set these out below.

The Bill will align the treatment of EEA citizens and their family members and non-EEA citizens insofar as they will need permission to enter and remain in the UK under the future immigration system. This will have a disproportionate impact on EEA citizens, as they are the majority of those exercising EU free movement rights. However, free movement rights are conferred on non-EEA citizen family members, as well as those with derivative rights of residence who can be of any nationality. We do not therefore consider it clear that there is direct discrimination on the grounds of race by ending free movement. As the Bill ends free movement and enables the Government to align the treatment of EEA and non-EEA citizens, it reduces discrimination on grounds of race. However, the policies that have been introduced to protect resident EEA citizens and their family members under the EUSS have sought to mitigate the impacts of the end of free movement on them.

The estimated resident population of EEA citizens is estimated to be roughly half male and half female.¹¹ As a consequence, we estimate that ending free movement will not discriminate on grounds of sex, however, we cannot predict the volume and pattern of migration after 31 December 2020.

Currently, EEA citizens in the UK tend to be young or of working age. Home Office estimates based on the Annual Population Survey (APS October 2018 – September 2019) suggest that just under 20% of the resident population of EEA nationals (excluding Irish citizens) are aged under 16, just under 80% are aged 16-64 and the remainder are aged 65 or over.¹² Ending free movement may therefore be more likely to impact young people or people of a working age, however, the EU Settlement Scheme will ensure that those resident before the end of the transition period will be able to continue residing in the UK on the same basis as now.

There is nothing, at the present time, to indicate that those falling within the protected characteristics of disability, gender reassignment, pregnancy and maternity, religion or belief and sexual orientation will be particularly affected by the end of free movement. In regard to those applying to the EU Settlement Scheme, ways in which vulnerable groups are being supported have been outlined above. A separate policy equality impact assessment has been completed which analyses the equalities impacts of the EU Settlement Scheme.

The repeal of retained EU law relating to free movement will affect inflows of EEA migrants who will have to qualify to come to the UK under the Immigration Rules in the future immigration system. The impact on protected characteristics of the Rules in future immigration system will depend on the policy design and will be considered when developing Immigration Rules and secondary legislation on the future arrangements. We continue to fulfil our public sector equality duties under s149 of the Equality Act 2010. We have considered equalities impacts of the points-based immigration system in line with our public sector equality duties. Impacts will continue to be considered as policies are developed.

¹¹ Home Office analysis of Annual Population Survey October 2018 – September 2019. Data is rounded to nearest 0.1m. EEA nationals include Swiss nationals and exclude Irish nationals.

¹² Home Office analysis of Annual Population Survey October 2018 – September 2019.

3a.2 Protecting the status of Irish citizens in immigration law

The number of Irish citizens residing in the UK is estimated at around 300,000¹³. The proposals on the status of Irish citizens will consolidate the existing legal position of Irish citizens by means of legislation that would positively discriminate in their favour by reason of their nationality. Direct discrimination on grounds of nationality does not contravene the Equality Act 2010 for equality purposes if it is set out in legislation (paragraph 18 of Schedule 3 to the Equality Act 2010).

Once the EEA Regulations are revoked some Irish citizens in the UK will no longer have any lawful immigration status (i.e. those whose most recent arrival was after 1973 and from outside the Common Travel Area (“CTA”). The purpose of this provision in the Bill is to protect the rights of Irish citizens upon the cessation of EEA free movement by aligning the rights of Irish citizens in the UK irrespective of where they have travelled from.

The Irish rights provisions in the Bill specify that an Irish citizen does not require leave to enter or remain in the United Kingdom, unless that person falls within one of three categories: (1) they are subject to a deportation order, (2) have had exclusion directions issued against them by the Secretary of State, or (3) are subject to an international travel ban. If any of these categories apply, then the Irish citizen will need leave to enter or remain in the United Kingdom, even if they are travelling within the CTA.

These are the primary provisions relating to Irish rights. Clause 2 makes further consequential provisions aimed at harmonising the position of all Irish citizens.

The Irish rights provisions treat Irish citizens more favourably than other EEA citizens.

In order for there to be discrimination, there must be a difference in the treatment of persons in analogous, or relevantly similar situations. Other EEA citizens would theoretically be the comparators who under the provisions in the Bill are treated in a less favourable way than Irish citizens. However, the Department’s view is that Irish citizens have a long-held unique status in UK law and are not therefore analogous to other non-British citizens, or to non-Irish EEA citizens.

This is because, first, since 1948 the UK government has been required by law to treat Irish citizens as if they are not ‘aliens’, that is, not British but not foreign. Section 2 of the Ireland Act 1949 also provides that Ireland is not to be treated as a foreign country for the purposes of UK law. Second, and perhaps more importantly, the maintenance of the CTA supports the provisions of the Belfast (‘Good Friday’) Agreement. The CTA is relevant to north/south co-operation and also the identity and citizenship provisions of the Belfast (‘Good Friday’) Agreement. The Belfast (‘Good Friday’) Agreement puts Irish citizens in a different position to non-Irish EEA citizens. For these reasons the Department does not consider Irish citizens to be a direct comparator to other EEA citizens for the purposes of travel to and stay in the United Kingdom, notwithstanding that Irish citizens may at present rely on rights under the EU Treaties as the basis of their stay in the UK. Accordingly, the Department’s view is that there is no discrimination.

Justification

Notwithstanding the Department’s view that there is no discrimination, consideration has been given to whether the measures could be justified. The provisions in the Bill are intended to:

- a) support the historic and current treatment of Irish citizens in the UK as ‘not alien’ or ‘not foreign’, as per section 2 of the Ireland Act 1949;
- b) support the terms of the Belfast (‘Good Friday’) Agreement and the peace process by maintaining close links between the UK and Ireland; and

¹³ Home Office analysis of Annual Population Survey October 2018 – September 2019. Data is rounded to nearest 0.1m.

c) support the continued functioning of the CTA. They avoid Irish citizens being subject to differential treatment based on where they travel from, which could undermine the ongoing co-operation and arrangements made between Ireland and the UK.

The unique and particularly close political, economic and cultural ties between the UK and Ireland provide sufficient justification for treating Irish citizens more favourably than other nationalities, including other EEA citizens. The historical relationship between the UK and Ireland goes back many centuries and has created a relationship between the UK and Ireland which is different to other EEA states. The legitimate aim being pursued is to maintain political stability and economic prosperity across the island of Ireland, and the policy of continuing the status quo for Irish citizens is a proportionate way of achieving this. The Department considers that these provisions are necessary and proportionate.

There is nothing to indicate that those falling within the protected characteristics of age, disability, pregnancy and maternity, sex, religion or sexual orientation will be significantly affected by the proposals on the status of Irish citizens, because the Bill protects their current immigration status.

3a.3 Consequential, transitional and savings provisions (relating to free movement)

Clause 4 of the Bill enables the making of consequential, incidental, transitional, transitory and saving provision to be made by secondary legislation. Subsection (4) of this clause expressly provides that regulations made under this section may include provision in respect of persons who were not entitled to be in the UK under the Immigration (European Economic Area) Regulations 2016 or under enforceable EU rights. For example, the provision could be used to protect the position of EEA citizens who were in the UK before 31 December 2020 and who were, before the UK end of the transition period, treated for most purposes as though they were exercising Treaty rights, although they are not actually doing so. This subsection does, on the face of it, enable regulations to be made that would indirectly discriminate in favour of EEA citizens resident before the end of the transition period compared to those who arrive after. However, it is considered necessary to include such a provision in the Bill to provide for those covered by the UK's domestic implementation of the Agreements and to affect a smooth transition to the future immigration system. Full consideration of the equalities impacts of the use of the regulation making power, including consideration of the public-sector equality duty, will be given throughout the development of the policy in this regard.

3B. Consideration of limb 2: Advance equality of opportunity between people who share a protected characteristic and people who do not share it

Schedule 18 to the 2010 Act sets out exceptions to the public-sector equality duty. In relation to the exercise of immigration and nationality functions, s149(1)(b) – advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it – does not apply to the protected characteristics of age, race (insofar as it relates to nationality or ethnic or national origins) or religion or belief.

The repeal of retained EU law on the free movement of persons will, with the exception of Irish citizens, align the position of EEA citizens (and their non-EEA citizen family members) with non-EEA citizens, insofar as they will require permission to enter and remain in the UK under the Immigration Act 1971. The future immigration arrangements for EEA citizens and their family members will be set out in Immigration Rules; we have considered equalities impacts of the points-based immigration system in line with our public sector equality duties. Impacts will continue to be considered as policies are developed.

3C. Consideration of limb 3: Foster good relations between people who share a protected characteristic

The repeal of retained EU law on the free movement of persons will, with the exception of Irish citizens, align the position of EEA citizens (and their non-EEA citizens family members) with non-EEA citizens, insofar as they will require permission to enter and remain in the UK under the Immigration Act 1971. The future immigration arrangements for EEA citizens and their family members will be set out in Immigration Rules. As this Bill does not set out the detailed future immigration arrangements it is difficult to identify how the Bill could foster good relations between persons who share a protected characteristic and those who do not share it; this will be considered as the future immigration system is developed.

The EU Settlement Scheme is intended to support the transition of resident EEA citizens and their family members to UK immigration status as smoothly and easily as is practicable. The intention of the scheme is to provide certainty as soon as possible, enabling them to continue their established lives here with minimal disruption, and helping, among other things, to maintain and foster good relations between resident EEA citizens and their family members and others living in the UK. In respect of Irish citizens, these proposals support the Belfast (“Good Friday”) Agreement in respect of identity and citizenship, fostering good relations between communities in Northern Ireland and between Irish citizens and British citizens.

On 4. Foreseeable impacts of policy proposal on people who share protected characteristics

Separate policy equality statements have been completed which analyse the equalities impacts of the social security co-ordination provisions in the Bill and the EU Settlement Scheme.

The specific requirements that EEA and non-EEA citizens will need to meet under the future immigration system will be set out in Immigration Rules. We continue to fulfil our public sector equality duties under s149 of the Equality Act 2010. We have considered equalities impacts of the points-based immigration system in line with our public sector equality duties. Impacts will continue to be considered as policies are developed.

5. In light of the overall policy objective, are there any ways to avoid or mitigate any of the negative impacts that you have identified above?

The Immigration and Social Security Co-ordination (EU Withdrawal) Bill is not expected to unfairly disadvantage those who share a protected characteristic.

We are committed to implementing a fair and transparent immigration system which complies with the equality duty.

Review Date

I have read the available evidence and I am satisfied that this demonstrates compliance, where relevant, with Section 149 of the Equality Act and that due regard has been made to the need to: eliminate unlawful discrimination; advance equality of opportunity; and foster good relations.

SCS sign off

Name/Title

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Date 03/02/2020

All completed PESes **must** be sent to the [Talent and Inclusion team](#) 05/02/2020

Date sent to Talent and Inclusion Team? 05/02/2020