
Immigration and Social Security Co-ordination (EU Withdrawal) Bill 2020

Home Office

RPC rating: fit for purpose

Description of proposal

EU law currently provides free movement to the UK for EU, EEA and Swiss nationals – referred to collectively as “EEA nationals” in the impact assessment (IA) and this opinion. The Government has committed to ending free movement of EEA nationals into the UK and introducing a new points-based immigration system from 2021; this change requires legislation to repeal related EU law retained under the European Union (Withdrawal) Act 2018 and certain treaty rights relating to immigration of EEA nationals, which are set out in international agreements.

This Bill provides for ending the free movement of people between the EEA and the UK (“free movement”), which means that, from 1 January 2021, EEA nationals and their families would become subject to UK immigration controls and would require permission to enter and remain in the UK under the Immigration Act 1971.

Although the proposed Immigration and Social Security Co-ordination Bill would effect the removal of free movement for EEA nationals, it would do so following up the EU Withdrawal Agreement Act and as a necessary step of delivering the overall policy intent of replacing the previous immigration regime with a new points-based system.

Specifically, the Bill:

- ends free movement and applies UK immigration laws to EEA nationals and their family members from 1 January 2021;
- provides consequential powers that allow the Government to modify primary or secondary legislation in consequence of, or in connection with, the ending of free movement;
- protects the status of Irish citizens when free movement rights end, meaning that they will not need permission to enter and remain in the UK following the end of free movement; and
- provides a power to enable amendments to retained EU law relating to social security co-ordination.

Impacts of proposal

The primary legislation has the immediate effect of enacting the end of free movement of EEA nationals into the UK (from 1 January 2021), along with the enabling powers included in the list above.

Direct costs to business of the proposals include fees, familiarisation and administration, for example where employers continue employing EEA nationals, while indirect costs are expected to relate to adjusting to the changes where sponsors choose to do so.

Direct benefits to business may include administrative savings and the reduction in time taken to bring non-EEA migrant workers into the country, and indirect benefits may include wider availability of skilled migrant labour.

The other proposals in the Bill are for enabling powers that do not have an immediate effect and, therefore, carry far more uncertainty regarding their impacts. The IA outlines the main policy areas that need to be developed but does not address specific policy proposals or assess impacts (which will be addressed in future IAs as detailed proposals for secondary legislation are made).

Quality of submission

The IA is now fit for purpose as a result of the Home Office's response to the RPC's initial review notice (IRN). As first submitted, the IA was not fit for purpose.

The RPC recognises the large amount of detail provided in this complex primary legislation IA, following feedback on earlier iterations of the document. While the IA does not assess separately the impact of the immediate end of free movement at this stage, the RPC believes this should have been analysed as part of the IA for the EU Withdrawal Agreement Act. **The RPC expects that further assessment of the impacts of changes to the entire immigration system, including quantification, is made at the secondary legislation stage.**

Following the RPC's IRN, the Home Office has now addressed the following points satisfactorily.

1. Small and micro business assessment (SaMBA)

The IRN stated that the IA did not explain how the department intended to mitigate the impacts on small and charitable sponsors, including reforms to streamline their application processes and provide support for them with transition to the new system.

The revised IA now explains that the department:

- "...runs advisory groups... with each group designed to bring together stakeholders from across the UK, including civil society groups";
- "...will be forming a new advisory group in the near future to support Small and Medium Enterprises;

- will tailor its “communications approach to the channels, messages and devices that work for businesses of different sizes”; and
- will make specific changes to reduce the number of required steps in the application, bring payment methods up to date and reduce record-keeping burdens on employers.

Within the limitations noted by the department on currently available data and the uncertainties surrounding the detail of secondary legislation, the SaMBA is now considered sufficient at this stage. However, the SaMBA only refers to “small” businesses. The department should clarify that micro businesses will also benefit from the above actions.

2. Other impacts on business

The IRN stated that the IA must be updated to include a discussion of the impacts on business, in line with the expected level of detail at the primary legislation stage. The department has now added a sufficient qualitative discussion, with some estimates of the direct and indirect costs and benefits to business. Although there is less information about the numbers of businesses and employees affected by the policy, the IA provides appropriate caveats about the uncertainties involved at this stage, including why it is not possible to state whether the policy will be net beneficial overall. However, the RPC expects to see a much more detailed breakdown (including quantification) of the impacts on business, as well as due consideration of structural shifts at the secondary legislation stage. This includes the impacts on self-employed and ‘gig economy’ workers.

3. Analysis against baseline

The IRN stated that the baseline against which the preferred option was analysed needed clarification. The department has updated the IA to clarify how it has appropriately considered different scenarios in its econometric model. These scenarios have been helpfully illustrated as uncertainty ranges in the revised charts. However, neither this IA nor the IA produced in relation to the EU Withdrawal Agreement Act fully analyse the impacts of the loss of free movement. The associated secondary legislation IAs should therefore be assessed *post hoc* against a baseline in which free movement continues.

4. Post-implementation review

Following RPC advice, the IA has been updated to explain that primary research and secondary data analysis of the new immigration system will be conducted over a period of five years post-implementation to evaluate the policy.

The Department for Work and Pensions and HM Revenue & Customs are committed to monitoring and evaluating the extent to which the objectives of the policies on Social Security and Co-ordination have been met, including the regular production of statistical series and publications.

However, it is not clear whether these are statutory commitments and the IA would benefit from a statement clarifying this

5. Wider impacts

The RPC is pleased to note that the IA is greatly improved from earlier iterations and now contains a detailed assessment of many wider impacts of the policy on various areas, including migration flows, border crossings, tourism, labour markets, tax revenue and education. The IA now monetises some major wider impacts such as the “cumulative fiscal cost of between £1 billion and £3 billion over the first five years” caused by the reduction in long-term EEA migrants.

The RPC is aware that we are currently in an exceptional situation with the Coronavirus pandemic, which is likely to have significant long-lasting effects on the UK economy and the impacts of many new regulations. The RPC would therefore expect that future IAs, including those supporting the secondary legislation that will follow this Bill, will start to consider the impacts of any absolute and structural changes to the economy when updating or setting out regulatory policy proposals.

Department assessment

Classification	Qualifying regulatory provision
Equivalent annual net direct cost to business (EANDCB)	Not provided at this stage
Business net present value	Not provided at this stage
Overall net present value	Not provided at this stage

RPC assessment

Classification	Under the framework rules for the 2017-19 parliament: Qualifying regulatory provision To be determined – when the framework rules for the current parliament are set.
Small and micro business assessment	Fit for purpose
RPC rating (of initial submission)	Not fit for purpose

REGULATORY POLICY COMMITTEE