

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

Home Office

RPC rating: **fit for purpose**

Background

The impact assessment (IA) relating to the Immigration and Social Security Co-ordination (EU Withdrawal) Bill was first published in December 2018¹ following the Government's white paper², which set out proposals for a future skills-based immigration system for the UK. The department did not submit the published IA to the RPC for independent scrutiny prior to publication.

Departments are required to submit final stage IAs to the RPC unless the impacts on business fall below the *de minimis* threshold for independent scrutiny of \pm £5 million – as assessed by the relevant department. Because the impacts described in the IA did not appear to be *de minimis*, the RPC decided to scrutinise it and issued a red-rated opinion to the Home Office on 7 May 2019 (annexed). The first version of the IA was considered by the RPC to be not fit for purpose because:

- it failed to assess adequately the impacts of the whole policy, merely stating that these would be analysed in IAs accompanying related secondary legislation – this was especially problematic because the primary legislation itself has the immediate and direct effect of ending free movement to the UK for EEA nationals, and hence will have an immediate economic impact; and
- the small and micro business assessment was insufficient because the proposals are likely to have significant impacts on small and micro businesses and it failed to discuss any potential mitigation measures for them.

¹ Impact Assessment for Immigration and Social Security Co-ordination (EU Withdrawal) Bill 2018
[https://publications.parliament.uk/pa/bills/cbill/2017-2019/0309/2018-12-18 Impact Assessment \(signed\) - Immigration Social Security Co-ordination Bill.pdf](https://publications.parliament.uk/pa/bills/cbill/2017-2019/0309/2018-12-18%20Impact%20Assessment%20(signed)%20-%20Immigration%20Social%20Security%20Co-ordination%20Bill.pdf)

² The UK's future skills-based immigration system (December 2018)
<https://www.gov.uk/government/publications/the-uks-future-skills-based-immigration-system>

The RPC's first opinion also raised a number of additional points for improvement, related to impacts on business, the wider economy and society as a whole, which would be reasonably expected to be analysed in a final stage IA.

The department submitted an updated IA to the RPC on 17 July 2019. This document sets out the RPC's opinion on the updated IA.

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 IA and this opinion). The Government have committed to ending free movement of EEA nationals into the UK once the UK leaves the EU, and this 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.

The Bill provides for ending free movement of people between the EEA and the UK, which means 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.

Specifically, the Bill:

- ends free movement and applies UK immigration laws to EEA nationals and their family members;
- 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 in the UK when free movement rights end, meaning that they will not need permission to enter and remain in the UK after EU exit; and
- provides a power to enable amendments to retained EU law and to make and amend primary and secondary legislation relating to social security co-ordination to deliver policy changes after leaving the EU.

Timing of implementation

The UK is currently expected to leave the EU on 31 October 2019. However, under proposed transition arrangements, the free movement of EEA nationals into the UK is likely to end on 31 December 2020 (regardless of whether the UK and the EU

enter into a withdrawal agreement prior to the UK's exit from the EU). The Government have stated that they intend to implement the future skills-based immigration system on 1 January 2021.

Rationale, objectives and policy options

The rationale for government intervention and the policy objective are the same, both being to meet the Government's commitment to end free movement of EEA nationals into the UK from the EEA, rather than to address a specific problem. As a result, the only policy options considered are the do-nothing option of retaining current law or to introduce legislation to end free movement of EEA nationals.

Impacts of proposal

The primary legislation has the immediate effect of ending free movement of EEA nationals into the UK, along with the enabling powers listed above. Following RPC advice, the updated IA now provides a predominantly qualitative assessment of these changes, and other secondary impacts, on various areas including migration flows, border crossings, tourism, labour markets, tax revenue and education.

The other proposals in the legislation 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 are likely to need to be addressed but does not address specific policy proposals or assess impacts (which will be addressed in future IAs as detailed policy proposals are made).

Quality of submission

Following further detailed advice from the RPC, the department has submitted an updated IA for independent scrutiny. As recommended in the previous RPC opinion, the IA has now been improved by drawing on relevant information from the white paper to create a more detailed and informative standalone document.

The department has stated that further IAs will be produced in respect of the secondary legislation setting out details of the proposed immigration system. The RPC expects to see much more detailed qualitative and quantitative cost-benefit analyses accompanying the IAs for all secondary legislation related to this policy.

Within the limitations noted by the department on currently available data, the uncertainties surrounding the detail of secondary legislation, and the commitment on further IAs, the IA is now fit for purpose.

Impacts of primary and secondary legislation

The RPC's opinion on the original IA stated that, to be fit for purpose, the IA must discuss the scale of the impacts of the whole policy, including impacts of related secondary legislation. The updated IA does now assess the impacts of the immigration policy as a whole, even though the details of measures to be implemented at the secondary legislation stage are subject to consultation and therefore are not yet known. The assessment is mainly in the form of a discussion, with the inclusion of some numerical values and, as there is considerable uncertainty, the RPC considers this approach to be proportionate. However, the IA could be improved further by providing an indicative quantification of the scale of the impacts on business and civil society organisations and by analysing a range of scenarios to demonstrate a set of potential outcomes.

Small and micro business assessment (SaMBA)

The department has expanded the SaMBA, which now addresses the issue of mitigation of the impacts on small and micro businesses. The IA describes the mitigation measures in place for small and micro businesses in the current sponsorship system and outlines plans for future streamlining of the system and assisting businesses with familiarisation, both of which should be particularly beneficial to small and micro businesses.

The department describes data limitations as a reason for its limited assessment of impacts on small and micro businesses and it appears that the breakdowns in the economic appraisal for the white paper did not include the size of business. The SaMBA is now sufficient but should be improved significantly, particularly in its assessment or discussion of the disproportionality of impacts on small and micro businesses.

The analysis in the SaMBA focuses mainly on employers and their employees, but it should also consider self-employed migrants and those operating as sole proprietorships. It should also analyse the impact on small-scale sectors that employ unskilled or semi-skilled migrants, such as building trades, agricultural workers, carers and cleaners.

The SaMBA could also address directly whether the existing mitigation measures described might be carried forward into the new system. The RPC would expect to see these improvements in the IAs for the secondary legislation, drawing upon data from a wider range of sources and the department's ongoing consultation.

Wider impacts

The IA now contains a discussion of the wider impacts of the policy. It also now shows that the impacts on tourism, and other short visits by EEA citizens to the UK, are likely to be minimal by clarifying that these visitors will be allowed to stay for up to six months with no additional visa requirements.

Although many specific impacts may not be known until decisions about related secondary legislation measures have been made, the IA could be improved by discussing other impacts that would arise irrespective of the detail of those measures.

Post-implementation review

Following RPC advice, the IA now states the Government's intentions for monitoring and evaluation of the measures. The IA states that "*Regarding the provision on Social Security and Coordination, the Department for Work and Pensions and HM Revenue and Customs are committed to monitoring the impacts of its policies and to establishing the extent to which they have met their objectives on Social Security Coordination*" (paragraph 163). The RPC welcomes the Government's commitment to review policy changes in this important area.

However, the IA does not provide a similar outright commitment to review policy changes made through the future skills-based immigration system. In relation to the immigration system, the department states that "*...data on its use will be collected and published as part of regular statistics to provide transparency and accountability...*" (paragraph 162) and that the Migration Advisory Committee will be commissioned to provide an annual report on key aspects of the UK's immigration policy "*...including their impact on the UK economy and the resident population and whether they were achieving the goals set for them*" (paragraph 162). However, the RPC reiterates here its previous opinion that the Government should make a commitment to conduct a full review of this major policy change.

Departmental assessment

Classification	Not applicable
Equivalent annual net direct cost to business (EANDCB)	Not provided
Business net present value	Not provided
Overall net present value	Not provided

RPC assessment

Classification	To be confirmed
EANDCB	Further IA(s) to be submitted at the secondary legislation stage for validation of an EANDCB figure
Small and micro business assessment	Sufficient
RPC rating	Fit for purpose

Regulatory Policy Committee