

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

Home Office

RPC rating: not 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 and this opinion). The Government have committed to ending free movement of people into the UK once the UK leaves the EU, and this requires legislation to repeal related EU law saved under the European Union (Withdrawal) Act 2018.

The Bill provides for ending free movement of people between the EEA and the UK, which means EEA nationals and their families would be subject to UK immigration controls and would require permission to enter and remain in the UK under the Immigration Act 1971. The Bill also contains a power enabling the Government to amend the retained social security co-ordination regime and deliver policy changes post-EU exit.

Specifically, the Bill:

- repeals retained EU law relating to free movement and includes a power to make consequential changes;
- introduces provisions to protect rights of Irish citizens post-EU exit;
- includes a power enabling the Government (or, where appropriate, a devolved authority) to modify retained EU law relating to social security co-ordination.

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 people into the UK from the EEA, rather than to address a specific problem. As a result, the only policy option considered to end free movement is to introduce legislation.

Impacts of proposal

The impact assessment (IA) mentions the impact of only the primary legislation, and states that further impact assessments in relation to secondary legislation and immigration rules will be prepared. The department states that it has carried out an impact assessment in relation to just the primary legislation at this stage because it wishes to avoid pre-empting future government decisions on the immigration system. The IA, therefore, does not provide detail of the potential impacts of the proposals.

Quality of submission

Background

The IA was first published in December 2018 following the Government's white paper¹ but was not submitted for independent scrutiny by the RPC. 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. The IA does not state whether or not the impacts of the policy proposals fall below the *de minimis* threshold.

The department did not provide the RPC with the analysis supporting its *de minimis* assessment when requested to do so, but stated that further stakeholder engagement would be necessary before the overall impact of the proposals can be known. The IA should have been submitted for RPC scrutiny at this stage because of the consequent uncertainty as to whether the impacts of the proposals will fall under or over the *de minimis* threshold. Even if it is not possible to quantify the impacts at this stage, a proportionate analysis should have been carried out to show whether or not the impacts are within the *de minimis* threshold.

Red-rated points

Impacts of primary and secondary legislation

The RPC considers it insufficient for the IA to merely state that "*For measures to be introduced through secondary legislation which have an impact on business, they would also be accompanied by an IA*" (paragraph 26). To be fit for purpose, the IA must discuss the scale of the impacts of the whole policy, including impacts of related secondary legislation that will be used to meet the policy objectives. As

¹ The UK's future skills-based immigration system (December 2018)
<https://www.gov.uk/government/publications/the-uks-future-skills-based-immigration-system>

stated in the Better Regulation Framework², *“If the direct impacts on business of either the primary legislation itself, [and/]or the exercise of the secondary powers arising from it, are greater than ±£5m EANDCB, then the legislation is subject to the better regulation framework and may need independent scrutiny.”*

Additionally, the RPC’s case histories³ state that *“An IA supporting primary legislation/enabling powers must provide an assessment of the total expected overall impact of the measure (including both primary and secondary legislation), quantifying the costs and benefits of the policy as a whole or, where this is not possible, provide a clear explanation why and at least an indication of the likely scale of impacts arising from use of the powers.”*

Small and micro business assessment (SaMBA)

The SaMBA is insufficient for proposals that are likely to have significant impacts on business. Small and micro businesses may be disproportionately affected by the changes and so mitigation measures should be considered. The IA states that “official data” is not available, but the department should make efforts to collect data from a wider range of sources (for example by approaching relevant business groups) to improve their analysis for the SaMBA. Small-scale service sectors such as construction, repair, domestic work and horticulture may be particularly affected.

Other areas for improvement

As a general point, an IA should be a standalone document i.e. the reader should be able to gain a reasonable understanding of the impacts from the IA itself. This IA requires the reader to refer to several other documents to understand the impacts, but does not, itself, present any information on them.

The IA refers to other secondary documents, including the Migration Advisory Committee (MAC) report⁴ on the impact of EEA migration in the UK. Although the Government’s white paper accepts almost all of the MAC’s recommendations in their entirety, the RPC is concerned that the evidence on which those recommendations were based is inconclusive, as stated by the MAC itself in its report.

² Better regulation framework: guidance
<https://www.gov.uk/government/publications/better-regulation-framework>

³ RPC case histories — December 2016 volume
<https://www.gov.uk/government/publications/rpc-case-histories-december-2016-volume>

⁴ Migration Advisory Committee (MAC) report: EEA migration in the UK (September 2018)
<https://www.gov.uk/government/publications/migration-advisory-committee-mac-report-eea-migration>

Impacts on business

The RPC considers that at least one of the provisions of the primary legislation itself, the repeal of the retained EU law relating to free movement of people, will have large direct impacts on business and civil society organisations, as well as on individuals.

The economic appraisal in the Government's white paper does not reach a conclusion about the impacts of any of the proposals. The RPC believes that the following categories of impacts, which are not quantified in the IA, are likely to be substantial:

- a) **Labour market** – the department estimates that the ‘skilled workers route proposal’ will reduce the supply of labour coming from the EEA by between 10,000 and 25,000 per annum in the long term. However, the impact of this reduction on businesses, and the labour market in general, is not quantified.
- b) **Economic impact** – the department provides an estimated reduction in GDP but does not identify how this reduction is distributed across the economy. It is likely that a fall in the supply of labour would lead to businesses being forced to increase wages, which may affect the economic viability of impacted businesses.
- c) **Tourism** – the white paper lists several proposals that could deter foreign nationals from visiting the UK. The department's estimated value of tourist spending and business activity is £425 per visit by EEA nationals, but this is not translated into a quantified cost to business.
- d) **Administrative burden** – there are likely to be significant familiarisation costs associated with any change in rules regarding immigration. These costs would fall (albeit not exclusively) on businesses which currently hire EEA workers, businesses whose personnel travel to EU countries, carriers (e.g. airlines, ferry companies, etc.), and travel agencies.
- e) **Travel for business purposes** – currently, EU nationals can travel freely to the UK. The repeal of free movement could increase the cost of travel (including time costs) due to restrictions imposed by the Bill. The cost of travel related to business activity would be incurred by businesses, many of which could be based in the UK.
- f) **Training costs associated with hiring UK workers** – currently, UK businesses are free to hire EEA workers who are already trained in their home country. The potential cost incurred by UK businesses of having to train UK nationals has not been quantified.

This list is non-exhaustive, and the department must provide a more thorough appraisal of the costs and benefits of the proposals on business and the UK economy as a whole.

Impacts on civil society organisations (CSOs)

As noted above, the proposals are likely to have significant impacts on CSOs, which may be similar in some cases to the impacts on business but may differ in other respects. For such a significant measure as this, the department should prepare a robust analysis of the impacts on CSOs. Many CSOs are small or micro organisations. As with small and micro businesses, they may be disproportionately affected by the changes and mitigation measures should be considered.

Wider impacts

The proposals are likely to have significant, long-lasting and wide-reaching impacts, not just on the economy and business, but on society in the UK as a whole. These may include changes to the UK's culture, to national and regional demographics, opportunities for educational and scientific advancement and much more. To improve the analysis supporting the proposals, it would be appropriate to carry out a thorough assessment of the likely wider impacts arising from them.

Post-implementation review

While the Government's white paper states that some parts of the new measures will be reviewed, the department should make a commitment to conducting a full review of this policy. This is important for both the immigration measures and the social security measures.

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	Not validated
Business impact target score	Not validated
Small and micro business assessment	Insufficient
RPC rating	Not fit for purpose

Regulatory Policy Committee