

**General Scheme of the Miscellaneous Provisions  
(Withdrawal of the United Kingdom from the  
European Union on 29 March 2019) Bill 2019**

24 January 2019

## Introduction

While the focus remains on securing an orderly and agreed Brexit, the Government's Contingency Action Plan recognises that a no deal Brexit would pose unique and unprecedented challenges for the UK, as well as for the EU, including Ireland. Brexit of any kind will mean change and managing a no deal Brexit would particularly be an exercise in damage limitation. It would be impossible in a no deal scenario to maintain the current seamless arrangements between the EU and UK across a full range of sectors, which is currently facilitated by our common EU membership.

As part of the overall no deal preparations, The Tánaiste and Minister for Foreign Affairs and Trade has obtained Government's approval to the preparation of the Miscellaneous Provisions (Withdrawal of the United Kingdom from the European Union on 29 March 2019) Bill 2019. This single omnibus Bill is made up of 17 parts prepared by 9 Ministers. Each part will be commenced by the individual Minister at the appropriate time.

The Bill is intended to be consistent with and complementary to the steps currently underway at EU level to prepare for the UK's withdrawal, notably as regards the implementation of the European Commission's Contingency Action Plan and the associated legislative measures. The Bill and the Parts contained within it may be updated or adjusted further in light of ongoing developments, including in respect of EU legislative measures currently under consideration and any additional measures taken collectively by the EU27 Member States, including Ireland.

A no deal Brexit would mean that the UK, in addition to being outside the Single Market and Customs Union, would no longer be part of the framework of EU law, becoming a 'third country'. A number of proposed measures are focused on the need to address this legal change in the UK's status.

Protecting and maintaining the Common Travel Area (CTA) and the associated rights and benefits is a key part of our planning and preparations. This is vital in the context of the Good Friday Agreement and the Northern Ireland Peace Process, as well as broader UK-Ireland relations. Both the Irish and British Governments are committed to maintaining the CTA in all circumstances, and have committed to undertaking all the work necessary, including through legislative provision to ensure that the CTA rights and privileges are protected. That commitment is reflected in measures proposed in the areas of Healthcare, Education, Justice and Social Protection in particular.

A number of measures, in particular in the areas of Healthcare, Transport, Energy and Education, will support North-South cooperation arrangements. This cooperation brings tangible benefits to the daily lives of people in the border region and contributes to economic opportunity and development. It is also a very practical outworking of the peace process which allows for the normalisation of relationships between people across the island, to mutual benefit.

The legislative proposals have prioritised those areas that need to be addressed urgently and immediately through legislation. Many other issues can and are being addressed through policy and economic responses, on an administrative basis and through targeted Brexit related resources. Ireland's Contingency Action Plan, published on 19 December, sets out the areas in which Ireland is

taking action, including as part of a co-ordinated response at EU level, to mitigate the risks associated with a no deal Brexit

The Bill focuses on the broad themes of protecting the citizen, and supporting the economy, enterprise and jobs.

- Part 1 of the Bill deals provides for the Short Title of the Bill.
- The Minister for Health prepared Part 2 of the Bill to enable necessary healthcare arrangements to be maintained between Ireland and the UK in a no deal Brexit.
- The Minister for Business, Enterprise and Innovation prepared Part 3 of the Bill that will enable Enterprise Ireland to further support businesses through investment, loans and RD&I grants is part of the response to assist Irish businesses to remain competitive and extend their global footprint.
- The Minister for Climate, Energy and Communications prepared Part 4 of the Bill that provides for the modification of Single Electricity Market licences to ensure that the Commission for the Regulation of Utilities (CRU) has sufficient powers to ensure Ireland's compliance with the EU energy regulatory framework and the ability to amend licences as is necessary.
- The Minister for Educations and Skills prepared Part 5 of the Bill that looks to clarify grant assistance for students who are studying in the UK and students studying in the State who are UK nationals in further and higher education.
- The Minister for Finance has prepared Parts 6 to 8 of the Bill in order to ensure continuity for business and citizens in relation to current access to certain taxation reliefs and allowances, and the retention of a number of anti-avoidance provisions. Legislative measures related to the Settlement Finality Directive are required to support implementation of the Commission CSD equivalence decision and to extend the protections contained in the Settlement Finality Directive to Irish participants in relevant third country domiciled settlement systems. Part 8 of the Bill will address the issue of Insurance Contract Continuity for Irish insurance policyholders through a temporary run off facility for up to three years.
- The Minister for Transport, Tourism and Sport prepared Parts 9-10 of the Bill to enable the future continuation of cross-border rail and bus services.
- The Minister for Employment Affairs and Social Protection has prepared Parts 11-12 of the Bill. Part 11 sets out proposed amendments to the Social Welfare (Consolidation) Act 2005 with regard to the continuation of a range of social welfare payments. These amendments are being made in line with the Government commitment to maintaining the Common Travel Area. Part 12 provides for amendments to the Protection of Employees (Employers' Insolvency) Act 1984 which governs the insolvency payments scheme to ensure that employees in Ireland whose employer becomes insolvent under the laws of the United Kingdom continue to be covered by the scheme.
- The Taoiseach has prepared Part 13 of the Bill to amend the definition of the term "Member State" as included in the Interpretation Act 2005, to address the position of the United Kingdom for the duration of the transition period set down in the Withdrawal Agreement. This is the only Part of the Bill which relates to an amendment required in the case of ratification of the Withdrawal Agreement.

- The Minister for Justice and Equality prepared Parts 14-17 of the Bill to deal with a number of issues including extradition and the immigration process. The aim of the amendments is to ensure that there would be workable extradition arrangements in place between ourselves and the UK and to manage aspects of the immigration process, particularly data-sharing on immigration in the context of the Common Travel Area.

Government will work very closely with all Opposition parties and Oireachtas members to seek their cooperation in ensuring that the necessary Brexit related legislation will pass through the Oireachtas in a timely manner. The Chief Whip will work with the Dáil Business Committee to agree the best procedural approach for progressing this unprecedented omnibus Bill which ranges across so many sectors.

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## **Part 1 – Preliminary and General**

### **Head 1 - Short title**

Provide that

**1.** (1) This Act may be cited as the Miscellaneous Provisions (Withdrawal of the United Kingdom from the European Union on 29 March 2019) Bill 2019

Note: The short title, and any other preliminary and general matters to be included in the Bill will be subject to change in light of the development of the overall Bill in accordance with the advice of Parliamentary and Advisory Counsel. Each Part is subject to its own commencement provision.

## **Part 2 – Healthcare Arrangements**

### *Department of Health*

#### Overview:

In the event that the United Kingdom leaves the European Union on 29 March 2019 without a withdrawal agreement in place it will be necessary to put in place legislative provisions to enable necessary healthcare arrangements, including reimbursement arrangements, to be maintained between Ireland and the United Kingdom.

The Irish and British Governments have committed to maintaining the Common Travel Area (CTA) and its associated rights and privileges. These arrangements facilitate access to health services in the UK and Ireland, including access to emergency, routine and planned healthcare.

The draft heads set out in Part 2 therefore seek to put in place an appropriate legal framework in Ireland to ensure the continuation of CTA arrangements.

### ***Section A – Provision of Healthcare***

#### **Head 1 - Provision of full Eligibility for Healthcare to Certain Categories of Person Who Are Ordinarily Resident in the State**

To amend section 45 of the Health Act 1970 (as amended) to provide full eligibility for healthcare for persons from each of the following categories who are ordinarily resident in the State:

- (1) Frontier workers, resident in the State and working in the UK– for so long as they continue to be employed or self-employed in the UK;
- (2) Workers posted to the State from the UK - for the duration of their posting in this State, or for a period not exceeding 24 months, whichever is the lesser;
- (3) Pensioners in receipt of a UK Contributory State Pension are who not in receipt of an Irish contributory State pension or who are not making social security contributions in Ireland;
- (4) Dependents of categories 1 – 3 above provided they are not employed in the State or in receipt of certain social security payments in the State;
- (5) Dependents resident in Ireland of a UK-resident worker, provided they are not employed in the State or in receipt of certain social security payments in the State.

*Explanatory Note:*

Currently persons who fall under the different categories above, have full eligibility for public healthcare provided in the State (i.e. medical cards) granted to them without means testing. This draft Head seeks to maintain this eligibility position post-Brexit.

## **Head 2 - Provision of full Eligibility for Healthcare to Certain Categories of Person Who Are Not Ordinarily Resident in the State**

To amend section 45 of the Health Act 1970 (as amended) to provide full eligibility for healthcare for persons in each of the following categories who are not ordinarily resident in the State:

- (1) UK residents who are on a temporary visit to the State have full eligibility for healthcare which becomes necessary on medical grounds during their stay, taking into account the nature of the healthcare required and the expected length of their stay.
- (2) UK students who are pursuing a course of study in the State have full eligibility for healthcare which becomes necessary on medical grounds during their stay, taking into account the nature of the healthcare required and the expected length of their stay
- (3) UK-resident Frontier Workers, working in the State - for so long as they continue to be employed or self-employed, in the State and the HSE has taken into account the overall financial situation of the frontier worker.

*Explanatory Note:*

Currently UK residents and UK Students are eligible for necessary healthcare if they become ill or have an accident during a temporary stay in this State (or for the duration of a course of education). The provision of access to healthcare is intended to enable the person to either continue their visit or be in a position to return home to continue their medical treatment. Currently charges do not apply at point of contact with the health service in Ireland for UK visitors or UK students. This draft head seeks to maintain this eligibility position post-Brexit.

Currently UK resident frontier workers who work in the State are entitled to access health services in this State on the basis of a means assessment. This amendment allows the HSE to continue to access the eligibility of these persons although they are not ordinarily resident in the State.

### **Head 3 - Provision of Limited Eligibility for Healthcare to Certain Categories of Person Who Are Not Ordinarily Resident in the State**

To amend section 46 of the Health Act 1970 (as amended) to provide for the following category of persons to be considered to have limited eligibility for healthcare services:

- (1) UK Resident Frontier Workers, working in Ireland - for so long as they continue to be employees, or be self-employed, in the UK and who have been determined as not having full eligibility for healthcare in this State

#### *Explanatory Note:*

Currently UK resident frontier workers who work in Ireland are entitled to access health services in this State on the basis of a means assessment. This amendment allows the HSE to give health services to this cohort on a limited eligibility basis should they not qualify for full eligibility following a means assessment.

### **Head 4 – To Enable the HSE to enter into reciprocal arrangements with the UK to provide access to healthcare in each other’s jurisdictions where such healthcare is not available in the other’s State:**

To amend the Health Act 2004 to enable the HSE to facilitate the provision of, and authorisation for, a person ordinarily resident in the State, to access necessary and appropriate public healthcare in the UK where such healthcare is not currently provided in the State and to facilitate reciprocal access for UK residents.

#### *Explanatory Note:*

The Treatment Abroad Scheme (which encompasses for example treatment(s) for persons with rare diseases and for persons who have requirement for certain organ transplants) enables Irish residents who are being treated as public patients to be referred, by an Irish based consultant, for treatment in an EU/EEA Member State/Switzerland in a public facility. The treatment must be medically necessary, non-experimental and unavailable in Ireland (or not available within a reasonable timeframe).

It is necessary for the HSE to have clear legal authority to access health services in the UK for Irish residents.

## **Head 5 – To enable the HSE to Reimburse a Person the cost of Healthcare provided in the UK where such Healthcare is among the Benefits provided in the State**

To amend the Health Act 2004 to provide that the HSE may reimburse a person who is ordinarily resident in the State for healthcare, which is among the benefits provided in the State, and which a person accesses and pays for, in the UK. This care may be accessed in both public and private facilities.

### *Explanatory Note:*

The EU Cross-Border Directive, as well as allowing for the reimbursement of the costs of treatment, prescribes how the rights of patients to access services in another EU/EEA State are applied in both the home Member State and ‘State of Treatment’. In the event of a no-deal Brexit, the UK would no longer be a part of the Cross-Border Directive and therefore will not have any legal obligation to facilitate Irish patients in accessing services in the UK under the EU Cross-Border Directive. Additionally, the HSE would not be required to facilitate and reimburse for health services accessed in the UK by Irish patients under this scheme post-Brexit.

To address this issue, the Department of Health considers that it would be desirable to operate an alternative analogous scheme to the Cross-Border Directive mechanism that may facilitate Irish patients to access health services in the UK. Should this prove possible the HSE would require the necessary legislative framework to establish and operate this alternative arrangement. The purpose of this Head therefore is to enable the HSE to reimburse Irish patients wishing to access such services in the UK post-Brexit in an analogous scheme to the EU Cross-Border Directive.

## ***Section B – Reimbursement Arrangements***

### **Head 6 – Power to make healthcare payments – temporary stay in the United Kingdom**

To enable the Minister to make payments and arrange for payments to be made in respect of costs associated with the provision of healthcare to Irish residents while on a temporary stay in the UK.

#### *Explanatory Note:*

Currently insured persons and their dependents, are eligible to receive necessary healthcare if they become ill or have an accident during a temporary stay in another member state. Currently the reimbursement between member states of costs arising from the provision of such healthcare, either through actual costs, fixed amounts, or other methods are agreed bilaterally between the member states. Ireland and the UK currently reimburse on a negotiated net lump-sum basis, calculated by reference to estimated costs and estimated visitor numbers. This provision seeks to provide for the continuation of the current reimbursement arrangements with the UK.

### **Head 7 - Power to reimburse individual healthcare costs – refund of costs when charged while on a temporary stay in the United Kingdom**

To enable the Health Service Executive to reimburse Irish residents who have paid charges, incorrectly levied, for healthcare accessed in the UK while on a temporary stay.

#### *Explanatory Note:*

Article 25 of EU Regulation 987/2009 allows for the reimbursement to a person who has paid healthcare costs, which would ordinarily be reimbursed between the member states, in another member state while on a temporary stay. While this circumstance does not normally occur in the case of a temporary stay in the United Kingdom this provision seeks to enable such reimbursement to be made in such circumstances.

### **Head 8 - Power to make healthcare payments – appropriate treatment**

To enable the Health Service Executive to make payment in respect of the cost of public healthcare provided in the UK to a person, ordinarily resident in this State, who accesses care under an analogous scheme to the EU Treatment Abroad Scheme.

*Explanatory Note:*

Currently member states can authorise patients to travel to another EU Member State to receive treatments which it does not provide in its own healthcare system. Currently there is reimbursement between member states of costs. Payment for such treatments is arranged by the authorised institutions of the two Member States. This provision seeks to provide for the continuation of the reimbursement arrangements with the UK.

**Head 9 - Power to make healthcare payments – dependents of workers**

To enable the Minister to make payments and arrange for payments to be made in respect of costs associated with the provision of healthcare in the UK to UK-resident dependents of persons who are employed, or self-employed, and resident in Ireland.

*Explanatory Note:*

Currently dependent family members, of persons working and residing in Ireland, residing in the UK but who are not either working themselves or in receipt of a UK social security payment, is eligible for full healthcare entitlements in the UK. Currently the reimbursement between member states of costs arising from the provision of such healthcare, either through actual costs, fixed amounts, or other methods are agreed bilaterally between the member states. Ireland and the UK currently reimburse on a negotiated net lump-sum basis, calculated by reference to estimated costs and estimated numbers. This provision seeks to provide for the continuation of the reimbursement arrangements with the UK

**Head 10 - Power to make healthcare payments – certain persons resident in the United Kingdom**

To enable the Minister to make payments and arrange for payments to be made in respect of costs associated with the provision of healthcare in the UK to UK-residents in receipt of an Irish contributory State pension who are not either employed, or self-employed, or in receipt of a UK social security payment or pension, and their dependents.

*Explanatory Note:*

Currently persons residing in the UK who are in receipt of an Irish contributory State pension, but who are not either working themselves or in receipt of a UK social security payment, and their dependents, are eligible for full healthcare entitlements in the UK. Currently the reimbursement between member states of costs arising from the provision of such healthcare, either through actual costs, fixed amounts, or other methods are agreed bilaterally between the member states. Ireland and the United Kingdom currently reimburse on a negotiated net lump-sum basis, calculated by

reference to estimated costs and estimated numbers. This provision seeks to provide for the continuation of the reimbursement arrangements with the UK

### **Head 11 - Power to raise healthcare charges – temporary stay in the State**

To enable the Minister to raise charges and receive payments in respect of costs associated with the provision of healthcare by the Health Service Executive, or other bodies, to persons ordinarily resident in the UK while on a temporary stay in this State.

#### *Explanatory Note:*

Currently insured persons, and their dependents, are eligible to receive necessary healthcare if they become ill or have an accident during a temporary stay in another member state. Currently the reimbursement between member states of costs arising from the provision of such healthcare, either through actual costs, fixed amounts, or other methods are agreed bilaterally between the member states. Ireland and the United Kingdom currently reimburse on a negotiated net lump-sum basis, calculated by reference to estimated costs and estimated visitor numbers. This provision seeks to provide for the continuation of the reimbursement arrangements with the UK

### **Head 12 - Power to raise healthcare charges – appropriate treatment**

To enable the Health Service Executive raise charges and receive payments in respect of the cost of healthcare provided by the Health Service Executive, or other bodies, to a person ordinarily resident in the UK who accesses care under an analogous scheme to the EU Treatment Abroad Scheme.

#### *Explanatory Note:*

Currently member states are permitted to authorise patients to travel to another EU Member State to receive treatments which it does not provide in its own healthcare system. Currently there is reimbursement between member states of costs. Payment for such treatments is arranged by the authorised institutions of the two Member States. This provision seeks to provide for the continuation of the reimbursement arrangements with the UK.

### **Head 13 - Power to raise healthcare charges – certain persons resident in the State**

To enable the Minister raise charges and receive payments in respect of costs associated with the provision of healthcare by the Health Service Executive, or other bodies, to residents who are in

receipt of a UK contributory State pension and who are not either employed, or self-employed, or in receipt of an Irish social security payment or pension, and their dependents.

*Explanatory Note:*

Currently persons residing in the State who are in receipt of a UK Contributory State pension, but who are not either employed, or self-employed, or in receipt of an Irish social security payment or pension, and their dependents, are eligible for full healthcare entitlements in the State. Currently the reimbursement between member states of costs arising from the provision of such healthcare, either through actual costs, fixed amounts, or other methods are agreed bilaterally between the member states. Ireland and the UK currently reimburse on a negotiated net lump-sum basis, calculated by reference to estimated costs and estimated numbers. This provision seeks to provide for the continuation of the reimbursement arrangements with the UK.

#### **Head 14 - Power to raise healthcare charges – dependents of workers**

To enable the Minister to raise charges and receive payments in respect of costs associated with the provision of healthcare by the Health Service Executive, or other bodies, to an Irish resident dependent of a person who is employed, or self-employed, and resident in the UK

*Explanatory Note:*

Irish-resident dependent family members, of a person working and residing in the UK but who are not either working themselves or in receipt of an Irish social security payment, are eligible for full healthcare entitlements in this State. Currently the reimbursement between member states of costs arising from the provision of such healthcare, either through actual costs, fixed amounts, or other methods are agreed bilaterally between the member states. Ireland and the UK currently reimburse on a negotiated net lump-sum basis, calculated by reference to estimated costs and estimated numbers. This provision seeks to provide for the continuation of the reimbursement arrangements with the UK.

#### **Head 15 - Power to enable the Minister for Health to make Regulations in relation to the reciprocal reimbursement of costs associated with the provision of healthcare to certain persons.**

To enable the Minister to make regulations to provide for the raising of charges, receipt of payments and the making of payments in respect of costs associated with the provision of healthcare. Such Regulations may, for example –

- specify or describe levels of payments and how they are to be calculated;
- specify or describe persons in respect of whom payments may be made;
- specify or describe the types of healthcare in respect of which payments and provision may be made;
- make provision about set-off arrangements between Ireland and the UK;
- make provision about reimbursement levels (which may include caps);
- specify or describe evidential or administrative requirements or processes;
- confer functions on the Health Service Executive or on any other body;

*Explanatory Note:*

Currently the reimbursement between member states of costs arising from the provision of healthcare benefits in kind are provided under EU Regulation. Chapter I Title IV of Implementing Regulation 987/2009 sets out procedures and methodologies to underpin such reimbursement. Currently the reimbursement through actual costs, fixed amounts or other methods are agreed bilaterally between member states. Ireland and the UK currently reimburse costs associated with certain categories of persons on a negotiated net lump-sum basis, calculated by reference to estimated costs and estimated numbers, others on an actual costs basis while some costs are mutually waived. The purpose of this Head is to allow for the continuation of existing, and the formulation of additional, administrative arrangements surrounding reciprocal reimbursement, including the categories of persons in respect of whom reimbursement may be made, the methodologies used to determine the numbers of person concerned and the basis of calculating costs and overall levels of reciprocal reimbursement.

**Head 16 - Data processing**

To enable the Health Service Executive, or other authorised body, to process personal data where it is considered necessary for the purposes of implementing, operating or facilitating the doing of anything under or by virtue of Part 2 of this Act.

*Explanatory Note:*

Currently, member state competence for the cost of healthcare benefits in kind provided under EU Regulations is informed by the person's link to the member state's social security systems. This provision is to allow for the Health Service Executive, or other bodies, to continue to process personal data which is necessary to establish entitlement to healthcare and the payment of costs associated with its provision.

## **Head 17 - Data exchange**

To enable the Health Service Executive, or other authorised body, to exchange personal data with other bodies, in Ireland and the UK, where it is considered necessary for the purposes of implementing, operating or facilitating the doing of anything under or by virtue of Part 2 of this Act.

### *Explanatory Note:*

Currently, member state competence for the cost of healthcare benefits in kind provided under EU Regulations is informed by the person's link to the member state's social security systems. Reciprocal reimbursement between Ireland and the UK is calculated on a lump-sum basis rather than an individual basis. Amounts payable are based on an estimate of the number of people falling within categories eligible for reimbursement and for whom each state is competent and an estimate of the average cost of providing healthcare treatment. Historically, periodic exchanges of data between Irish and UK bodies relating to pension recipients residing in the other State informed negotiations on reciprocal reimbursement between the two States. This provision is to allow for the exchange of personal data between the Health Service Executive, the Department of Employment and Social Protection, the National Health Service, the UK Department of Work and Pensions, and others, which is necessary to enable establish the country which has competency for the payment of costs associated with the provision of healthcare under this Act. This will be done in line with the provisions of the General Data Protection Regulation (GDPR).

## **Head - 18**

Provide for the commencement of the Part on the lines of the following -

This Part shall come into operation on such day or days as the Minister for Health may by order or orders appoint either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or provisions.

## **Part 3 – Industrial Development Miscellaneous Provisions**

*Department of Business, Enterprise and Innovation*

*Explanatory Note:*

These provisions will enable Enterprise Ireland to further support businesses through investment, loans and RD&I grants, therefore, limiting the negative effects Brexit could have on vulnerable enterprises. This will assist firms to remain competitive, to innovate in terms of new product and service development and to grow in existing and enter new markets.

To amend the Industrial Development Act 1995; to amend the Industrial Development Act 1986; to amend the Industrial Development (Enterprise Ireland) Act 1998, and to provide for related matters

### **Head 1 - Interpretation**

*Provide that*

In this Part—

“Minister” means the Minister for Business, Enterprise and Innovation;

“Act of 1986” means the Industrial Development Act 1986.

“Act of 1995” means the Industrial Development Act 1995.

“Act of 1998” means the Industrial Development (Enterprise Ireland) Act 1998

### **Head 2 - To facilitate research grants to the horticulture industry**

Section 29, 1986 Industrial Development Act – sub section 2, paragraph (a)

*Provide that*

Insertion of the words “or non-industrial” to the second line of paragraph (a) and “or horticultural” to the fourth line of paragraph (a) of sub-section (2) of section 29 of the 1986 Act.

*Explanatory Note:*

So as to facilitate grants to the horticulture sector, the insertion of the words “or non-industrial” and “or horticulture” in the relevant section is proposed. The insertion of these words will permit

Enterprise Ireland giving training and R&D grants to companies that are growing produce, i.e. in the horticultural sector. This will be particularly relevant in a no deal Brexit scenario.

### **Head 3 - To facilitate grants to support research activity overseas where those research needs cannot be met in Ireland**

Section 43, 1998 Industrial Development (Enterprise Ireland) Act

#### *Provide that*

Addition of Section (2) to include the words “Section 29 of the Act of 1986 is hereby amended (in so far as it relates to Enterprise Ireland only) by the substitution of new paragraph (b) for the existing paragraph (b) of sub-section (2) and the addition of new paragraphs (c) and (d) to sub-section (2) of section 29 of the 1986 Act as follows:-

(b) are wholly or mainly sponsored by one or more than one industrial undertaking in the State: and

(c) involve the payment of a grant towards the costs of the project incurred within the State; and

(d) in respect of any project where part of the approved costs are incurred in the State and part of the approved costs are also incurred outside the State, the Authority may apply a grant rate or rates (percentages of approved costs) for costs incurred in the State which is different from the grant rate or rates which it applies in respect of approved costs incurred outside the State, provided that the aggregate amount of the research grant or grants payable in respect of approved costs incurred outside the State for that project shall not exceed the aggregate amount of the research grant or grants payable in respect of approved costs incurred within the State for the same project.

#### *Explanatory Note:*

The current wording of paragraph (b) of sub section (2) of section 29 applies to R&D which “is carried out wholly or mainly in the State and wholly or mainly sponsored by one or more than one industrial undertaking in the State”.

The amendment facilitates provision of grant aid to the critical research needs of large indigenous companies who are leaders in important fields of veterinary and pharmaceutical industries. Brexit may create an additional need for such supports to be made available to these industries.

#### Head 4 - To permit research grants up to EU limits

Section 29, 1986 Industrial Development Act – sub section 4, paragraphs (a) & (b)

*Provide that*

Removal of the words “50 per cent of the approved costs of the research and development concerned or” and “whichever is the smaller sum” from paragraph (a) of sub section 4 of section 29 of the 1986 Act.

Removal of the words “provided that the percentage limit specified in paragraph (a) is not exceeded” from paragraph (b) of sub section 4 of section 29 of the 1986 Act.

*Explanatory Note:*

The statutory limit of 50% conflicts with the provisions in the General Block Exemption Regulation (GBER) on State Aid which allows for higher levels of support depending on the company size and the type of research and development.

General Block Exemption Regulation (GBER) on State Aid – maximum aid intensities for R&D projects

	Small enterprise	Medium-sized enterprise	Large enterprise
Industrial research	70%	60%	50%

Increasing the levels of these provided for in the GBER will level the playing field for Irish companies on a par with EU companies.

## **Head 5 - To permit advance partial payment of a R&D grant to companies regardless of size**

Section 29, 1986 Industrial Development Act – sub section 5

*Provide that*

Removal of the words “small” and “as defined from time to time by the Minister” from sub section 5 of section 29 of the 1986 Act.

*Explanatory Note:*

The need for advance payments in certain cases was identified by a significant number of Enterprise Ireland clients during consultations by the Agency in 2016. This need can arise for some companies with tight margins who are working on a new product, process or service and who wish to scale and move up the value chain.

The flexibility for Enterprise Ireland to make advance payments in cases where doing so will help the client company regardless of its size is being put in place under this Head. This could enhance the prospects of companies sustainability. This will be particularly relevant in a no deal Brexit scenario.

The [Industrial Development] Act of 1986 is amended by substituting the following for section 29 (as amended by the Act of 1998, the Act of 2003 and the Act of 2009):

“Research grants.

29.—(1) Following consultation with such bodies as may be specified by the Minister from time to time, the Authority may make a grant (in this section referred to as a research grant), subject to subsection (5), on such terms and conditions as it thinks proper towards the cost of research and development to which this section applies.

(2) This section applies to research and development which—

(a) has as its primary object the promotion or development of new or improved industrial or non-industrial processes, methods or products, and, in particular, such processes, methods or products as are likely either to involve the use or development of local materials, agricultural or horticultural products or other natural resources or to offer prospects of expansion in existing industry, promotion of new industry or to increase industrial employment or to enhance the viability, competitiveness or strategic importance of existing industry in the State, and

(b) is carried out wholly or mainly in the State wholly or mainly sponsored by one or more than one industrial undertaking in the State.

(3) For the purpose of a research grant the Authority may consult such adviser, consultant, institute or other organisation or person as it considers proper.

(4) (a) Subject to paragraph (b), the amount of a research grant shall not exceed 50 per cent of the approved costs of the research and development concerned or €7,500,000 whichever is the smaller sum.

(b) The amount of a research grant may, with the approval of the Government in a particular case, exceed €7,500,000 by such sum as the Government shall in that case specify.

(c) In this section 'approved costs' means in relation to a particular research grant, such expenditure by the industrial undertaking or undertakings concerned as the Authority is satisfied has been or will be incurred for the purpose of promoting the research and development concerned and has been or will be expended on—

(i) the provision of sites or premises (including the acquisition of land), the construction and adaptation of buildings, and the provision of services and other works;

(ii) the provision of plant, machinery, equipment and materials;

(iii) the payment of fees or other remuneration to technical advisers consulted in connection with the research and development;

(iv) the salaries and wages paid to and the travel and subsistence expenses of persons engaged on the research and development or in identifying product or process development prospects within the industrial undertaking; and

(v) overhead charges associated with the research and development concerned.

(5) The Authority may, in the case of industrial undertakings, make payment of up to one-third of a research grant prior to the approved costs being incurred on condition that the amount so paid shall be repaid to the Authority if the research or development project concerned has not been carried out to the satisfaction of the Authority.

(6) The Authority shall not make a payment under subsection (5) unless it is satisfied that the industrial undertaking has available to it sufficient assets to cover its liability under that subsection.

(7) The Authority shall not, without the prior permission of the Government, give in respect of a particular industrial undertaking, research grants exceeding in the aggregate the higher of—

(a) €7,500,000; or

(b) €7,500,000 in excess of the aggregate amount of research grants for which the permission of the Government has previously been obtained by the Authority."

Section 43 of the Industrial Development (Enterprise Ireland) Act, 1998 is amended as follows:

#### PART VII

Amendment of Industrial Development Acts, 1986 to 1995

Amendment of section 28 and 29 of Act of 1986.

43. (1) Section 28 of the Act of 1986 is hereby amended by the deletion in subsection (1) of “Following consultation with An Comhairle Oiliúna,”.

(2) Section 29 of the Act of 1986 is hereby amended (in so far as it relates to Enterprise Ireland only) by the substitution of new paragraph (b) for the existing paragraph (b) of sub-section (2) and the addition of new paragraphs (c) and (d) to sub-section (2) of section 29 of the Act of 1986, as follows:

(b) are wholly or mainly sponsored by one or more than one industrial undertaking in the State; and

(c) involve the payment of a grant towards the costs of the project incurred within the State; and

(d) in respect of any project where part of the approved costs are incurred in the State and part of the approved costs are also incurred outside the State, the Authority may apply a grant rate or rates (percentages of approved costs) for costs incurred in the State which is different from the grant rate or rates which it applies in respect of approved costs incurred outside the State, provided that the aggregate amount of the research grant or grants payable in respect of approved costs incurred outside the state for that project shall not exceed the aggregate amount of the research grant or grants payable in respect of approved costs incurred within the State for the same project.

#### **Head 6 - Non-Convertible Debt Instruments**

*Provide that*

A new section 7A is inserted, after section 7 of the Industrial Development (Enterprise Ireland) Act 1998, as follows:

##### Section 7A

- (1) Where, in the opinion of the Agency, an industrial undertaking conforms to the criteria set out in subsections (3) and (4) of section 21 of the Industrial Development Act 1986, the Agency may, out of funds at its disposal, lend money to a body corporate owning the undertaking on such terms as the Agency may determine.
- (2) The Agency shall not, without the prior permission of the Government, expend more than €7,500,000, whether by one loan or a series of loans, in providing loan finance to any one body corporate.
- (3) For the purpose of this section 7A, the terms “loan” and “lend” shall refer to the provision of non-convertible loans, which are, accordingly, not convertible into shares in a body corporate.

*Explanatory Note:*

It is proposed to amend the Industrial Development (Enterprise Ireland) Act 1998 to provide the power to Enterprise Ireland to provide loans to their client companies as an instrument of enterprise development support. There is likely to be an increased demand for such supports in a no deal Brexit scenario.

## **Head 7 - Convertible Loan Notes**

*Provide that*

A new section 7B is inserted, after section 7 of the Industrial Development (Enterprise Ireland) Act 1998, as follows:

### Section 7B

- (4) Where in the opinion of the Agency, an industrial undertaking conforms to the criteria set out in subsections (3) and (4) of section 21 of the Industrial Development Act 1986, the Agency may, out of funds at its disposal-
- purchase, or take shares, or convertible loan notes, to any extent it may consider desirable, in the body corporate owning, controlling or managing the undertaking or in a body corporate participating in the ownership, control or management of the undertaking,
  - form or take part with other persons in the formation of such bodies corporate,
  - but no shares or convertible loan notes shall be purchased, or taken by the Agency except after consultation with any body (in this subsection referred to as a State-sponsored body) specified for the purposes of this subsection by the Minister by order nor where, as a result, the Agency itself, or the Agency and any State-sponsored body or bodies together, would hold, or have the right to hold on conversion of a convertible loan note or notes, more than half in nominal value of the equity share capital (within the meaning of Section 7 (11) of the Companies Act 2014) or more than half in nominal value of shares carrying voting (other than voting rights which arise only in specified circumstances) in a body corporate, unless the Minister shall have approved of the proposed purchase, or taking of shares or convertible loan notes.
- (5) All shares purchased or taken by the Agency under this section and standing entered in the name of the Minister for Finance immediately before the commencement of the Industrial Development (Amendment) Act, 1991, in the registers of members maintained by the companies concerned shall, upon the request of the Agency, be entered therein in the name of the Agency.

- (6) Without the prior permission of the Government, the total amount of money expended in the purchase or taking of shares or convertible loan notes in a particular industrial undertaking under this section shall not exceed in the aggregate the higher of –
- (a) €7,500,000; or
  - (b) 7,500,000 in excess of the aggregate amount of such expenditure for which the prior permission of the Government has previously been obtained.
- (7) For the purposes of this section 7B, convertible loan notes shall mean loan note instruments or loan stock instruments issued by a body corporate to the Agency, which are convertible into shares in the Company and are redeemable on demand by the Agency or otherwise in accordance with the terms of the loan note instrument.
- (8) The Agency may, out of funds at its disposal, where it has already purchased or is purchasing shares in a body corporate pursuant to subsection (1) of this section 7B of this Act, and without necessarily ensuring compliance by that body corporate with the criteria of subsection (4) of section 21 of the Industrial Development Act 1986, purchase, take or receive further shares in the same body corporate in the exercise of pre-emption rights in relation to the transfer of shares or in relation to the issue of new shares, in each case in the same body corporate.
- (9) The Agency may, out of funds at its disposal, where it has already purchased or is purchasing shares in a body corporate pursuant to subsection (1) of this section 7B of this Act, purchase, take or receive shares in another body corporate which has the same shareholders and directors as the original body corporate, where the other body corporate has been or is being established to hold intellectual property rights created by the original body corporate, without necessarily ensuring compliance by that other body corporate with the criteria of subsection (4) of section 21 of the Industrial Development Act 1986.
- (10) The Agency may, where it has already purchased shares or convertible loan notes in a body corporate pursuant to subsection (1) of this section 7B of this Act, where it is proposing to sell its shares in that body corporate, without necessarily ensuring compliance by the other body corporate with the criteria set out in subsection (4) of section 21 of the Industrial Development Act 1986, accept shares in that other body corporate in full or part consideration for the shares in sale.
- (11) Where the Agency purchases or takes convertible shares or convertible loan notes in a body corporate in accordance with subsection (1) of this section 7B of this Act, and in that regard ensures compliance by the body corporate with subsections (3) and (4) of section 21 of the Industrial Development Act 1986 on such purchase or taking of those shares or convertible loan notes, the Agency shall not be obliged to again ensure compliance with the criteria of subsection (4) of section 21 of the Industrial Development Act 1986 on or immediately before the conversion of those convertible shares or convertible loan notes.

(c) Section 31 of the Industrial Development Act 1986 shall not apply to Enterprise Ireland.

*Explanatory Note:*

Enabling Enterprise Ireland to maintain the value of the State's investments through follow on share investment and convertible loan notes

It is proposed to add a new section to the Industrial Development (Enterprise Ireland) Act 1998 to

- create the power for Enterprise Ireland to subscribe for convertible loan notes.
- address a number of issues that need consideration to allow Enterprise Ireland to operate as a shareholder in the normal course of business after an investment has been made in a company based on the company's developmental agenda to sustain and create jobs.

The wording of sub-sections (1), (2) and (3) above are based on Section 31 of the Industrial Development Act 1986.

The functions specified in Section 31 of the Industrial Development Act 1986 were transferred to IDA Ireland and Enterprise Ireland by the Industrial Development (Forfas Dissolution) Act 2014. Sub-section **(b)** above is intended to remove these functions from Enterprise Ireland as they are replaced by this Section.

## **Head 8 - Aggregate limit on investment aid**

*Provide that*

A new section 7C is inserted, after section 7 of the Industrial Development (Enterprise Ireland) Act 1998, as follows:

### Section 7C

Without the prior permission of the Government, the total amount of money granted under sections 21 (as amended by the *Industrial Development (Science Foundation Ireland) Act 2003*), 22 or 25 (inserted by the *Industrial Development (Science Foundation Ireland) Act 2003*) of the Industrial Development Act 1986 to a particular undertaking or expended in the purchase or taking of shares or convertible loan notes in the same industrial undertaking under section 7B or non-convertible debt instrument under section 7A shall not exceed in the aggregate the higher of—

- (a) €7,500,000; or
- (b) €7,500,000 in excess of the aggregate amount of such grants for which the prior permission of the Government has previously been obtained.

(c) Section 34 of the Industrial Development Act 1986 shall not apply to Enterprise Ireland.

*Explanatory Note:*

It is proposed to move the provisions of Section 34, of the Industrial Development Act 1986 in so far as they apply to Enterprise Ireland, to the Industrial Development (Enterprise Ireland) Act 1998, to ensure that Enterprise Ireland must apply for Government approval for aggregate investment amounts in excess of €7.5 million when giving grants, taking shares, issuing convertible loan notes and lending in general.

**Head 9 - Commencement**

Provide for the commencement of the Part on the lines of the following -

This Part shall come into operation on such day or days as the Minister for Business, Enterprise and Innovation may by order or orders appoint either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or provisions.

## **Part 4 – Transitional power to modify licence conditions concerning the Commission for the Regulation of Utilities, Brexit and the Single Electricity Market, etc.**

*Department of Communications, Climate Action and Environment*

### **General Introduction**

This new section provides for the modification of electricity licences to ensure that, in the event that the United Kingdom leaves the European Union without a withdrawal agreement in place, the Commission for the Regulation of Utilities (CRU) has sufficient powers to facilitate Ireland's compliance with the EU energy acquis and the ability to amend licences as is necessary to ensure this compliance in a timely manner without leave for licencees to appeal the modifications by recourse to a Ministerial Appeal Panel.

This legislative change is precautionary, time-limited and would only be commenced in the event of a departure of the United Kingdom from the European Union without the Withdrawal Agreement in place.

### **Head 1:**

Head 1 will allow the Commission for the Regulation of Utilities (**CRU**) to amend the licences of electricity market participants without recourse to an appeal panel (as is the case in relation to licence modifications generally under the Electricity Regulation Act 1999) for the purpose of amending, or facilitating the operation of, the Single Electricity Market in a no deal scenario.

**Section 14B.** — (1) The Commission may, in accordance with this section, modify the conditions of a particular licence where the Commission considers it necessary or expedient to do so —

(a) for the purpose of amending, or facilitating the operation of, the Single Electricity Market in the context of the departure of the United Kingdom from the European Union

(2) The power to modify licence conditions under this section includes the power -

(a) to make modifications relating to the operation of the transmission system or the distribution system, and

(b) to make incidental, consequential or transitional modifications.

(3) Conditions included in a licence by virtue of the power conferred by this section —

(a) need not relate to the activity authorised by the licence,

(b) may require the holder of a licence under *section 14(1) ( e )* to carry out the responsibilities referred to in *section 14(15)* and to apply for or cause an affiliated company or a subsidiary company to apply for a licence under *section 14(1) ( j )* in such form as may be approved by the Commission,

(c) may do any of the things authorised by *section 14* ,

(d) may require the holder of a licence to enter into such new contracts or other arrangements, or new contracts or other arrangements for such purposes or of such description, as may be specified in or determined by or under the conditions,

(e) may include provision for determining the terms on which such new contracts or other arrangements are to be entered into, including terms for the contract or arrangement to be governed by a law other than the law of the State,

(f) may require the licence holder to amend or terminate, or agree to the amendment or termination of, such existing contracts or other arrangements, or existing contracts or other arrangements of such description, as may be specified in or determined by or under the conditions.

(4) Before making modifications under this section, the Commission shall consult —

(a) the holder of any licence being modified, and

(b) such other persons as the Commission considers appropriate.

(5) *Subsection (4)* may be satisfied by consultation before, or after or both, the coming into operation of this section.

(6) Notwithstanding *section 8A(4)* , consultation referred to in *subsections (4)* and *(5)* may be performed by the Commission otherwise than in accordance with *section 8A(4)* where such consultation is performed jointly with the Authority.

(7) Notwithstanding *section 8A*, modifications under this section may be made by the Commission otherwise than in accordance with *section 8A(4)*, but in any event it shall consult the Authority before making any such modification.

(8) The Commission shall publish any modifications under this section in such manner as it considers appropriate.

(9) The power of the Commission to modify a licence under this section may not be exercised after the end of the period of **X** years beginning with the day on which this section comes into operation.

(10) Subject to *subsection (11)* , nothing in this section prejudices the generality of any other power to modify a licence, and nothing in *subsection (2)* or *(3)* prejudices the generality of *subsection (1)* .

(11) Where a licence is modified under this section, *sections 19 to 22* and *sections 29 to 31* shall not apply in relation to any such modification.

*Explanatory Note:*

The new section, 14B will allow the CRU to modify the conditions of a particular licence where it considers it necessary for the operation of the SEM in the context of the departure of the United Kingdom from the European Union. The effect of this change is that, in the event of a no-deal Brexit, the CRU can modify licences in a transparent and prompt manner to ensure compliance with the EU acquis.

## **Head 2 - Commencement**

Provide for the commencement of the Part on the lines of the following -

This Part shall come into operation on such day or days as the Minister for Communications, Climate Action and Environment may by order or orders appoint either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or provisions.

## **Part 5 – Student Support**

### *Department of Education and Skills*

#### **General Introduction**

Part 5 of the Bill will address an issue which may arise in the event of a no-deal Brexit as the UK will no longer be a Member State of the EU. Currently eligible students studying in the UK and UK nationals studying in the State, currently qualify for SUSI grants by virtue of the fact that the UK is a Member State of the EU.

Consistent with our commitment to provide for the rights and privileges of the Common Travel Area, the purpose of this part is to make sure that, even after the UK leaves the EU, these arrangements can continue to apply to eligible Irish students studying in the UK, as well as the payment of SUSI grants to UK students in Irish higher education institutions.

Each year, circa 1,500 students studying in the UK and circa 200 UK citizens studying in the State, qualify for SUSI grant support. Without the proposed amendments, these students will not meet the current statutory based eligibility criteria. The provisions in Part 5 will address this problem by amending the Student Support Act 2011 to enable these students to continue to qualify for grant support post-Brexit.

Grant assistance for students participating in further and higher education is provided for under the Student Grant Scheme and Student Support Regulations which are published by the Minister under powers contained in the Student Support Act 2011. The student grant scheme administered by SUSI, provides grants to students who meet the prescribed conditions of funding, including those relating to nationality, residency, previous academic attainment and means. A number of provisions contained within the Act and associated secondary legislation, will be affected by a no deal Brexit.

#### **Amendment of Student Support Act 2011**

Head 1 - Amendment of Section 2 of the Principal Act (Interpretation)

Head 2 - Amendment of Section 7 of the Principal Act (Approved Institution)

Head 3 - Amendment of Section 8 of the Principal Act (Approved Course)

Head 4 - Amendment of Section 14 of the Principal Act (Student – Interpretation)

Head 5 – Commencement

## **Head 1 - Amendment of Section 2 (Interpretation)**

Section 2 of the Principal Act is amended by:

- (a) The insertion of the following definitions:

“Common Travel Area”...

- (b) the definition of “tuition student” is amended by replacing the reference to section “14(7)” with “14(11)”

### *Explanatory Note:*

Head 1 defines the key terms used in the General Scheme.

There are a number of definitions which reference other provisions that may be subject to amendment e.g. “approved course”, “approved institution”, “student” and “tuition student”. The references required will be kept under review.

## **Head 2 - Amendment of Section 7 (Approved institution)**

Section 7 of the Principal Act is amended by:

- a) the insertion of the following paragraph after subsection 7(f)

7(1)(g) an educational institution that provides higher education and training which is situated in a country prescribed by the Minister under Section 14 other than the State which is maintained or assisted by recurrent grants from public funds of that or any other Member State including the State.

### *Explanatory Note:*

Head 2 defines what an approved institution is for the purposes of the scheme.

Publicly funded higher education institutions in all extant Member States are recognised. Amendments are required so that the UK as a third country is captured in the definition.

The reference to a Member State in this context would cover the possibility of funding from this State for a college of course in a third country e.g. Northern Ireland.

### **Head 3 - Amendment of Section 8 (Approved course)**

Section 8 of the Principal Act is amended by:

- (a) the deletion of the word “or” at the end of subsection 8(2)(k)(ii)(I)
- (b) the insertion of the word “or” at the end of subsection 8(2)(k)(ii)(II)
- (c) the insertion of the following paragraph after subsection 8(2)(k)(ii)(II)

8(2)(k)(III) if such recognition is provided for by those laws in that manner, in a manner provided for by the laws of a state prescribed by the Minister under section 14 that corresponds to the arrangements, procedures and systems referred to in subparagraph (i),

*Explanatory Note:*

Head 3 defines what an approved course is for the purposes of the scheme.

The Principal Act allows the Minister to prescribe a course in accordance with certain policies and principles set out in the Act. With regard to the recognition of qualifications, these are limited to recognition within the State or another Member State. An amendment is required to cover arrangements, systems and procedures in the UK post-Brexit.

### **Head 4 - Amendment of Section 14 (Student – interpretation)**

(12) Section 14 of the Principal Act is amended by:

- (a) the insertion of the following paragraphs after subsection 14(1)(a)(iii)

14(1)(a)(iv) a person, other than a person to whom (i), (ii) or (iii) refers, who-

- (i) Is a national of country prescribed by the Minister, subject to subsection (5); or
- (ii) Is a UK or Irish national that is ordinarily resident in Northern Ireland, prescribed by the Minister, subject to subsections (6) and (7)

(13) Section 14 of the Principal Act is amended by:

- (a) the insertion of the following paragraphs after subsection 14(3)

14(4) Where the Minister is satisfied to do so, having—

- (i) regard to any of the matters specified in subsection (5),

- (ii) consulted with the Higher Education Authority, and
- (iii) obtained the consent of the Minister for Finance,

he or she may prescribe a national of a country as being an approved student for the purposes of this section.

14(5) The following matters or any of them are the matters to which the Minister shall have regard for the purposes of prescribing a national of a country pursuant to subsection (4):

- (a) whether there are reciprocal arrangements in place with the country of the nationals to be prescribed;
- (b) the requirement for the development of skills and knowledge in sectors of the economy or employment identified as requiring such development of skills and knowledge following advice received by the Minister from such person who has an interest or expertise in educational matters or the development of skills and knowledge as the Minister considers appropriate to consult for that advice;
- (c) whether the qualification awarded following the successful completion of a course in the country to be prescribed, is recognised in accordance with the arrangements, procedures and systems of the State;
- (d) resources available for the provision of student support;
- (e) any other matters which in the opinion of the Minister are proper matters to be taken into account having regard to the objective of enabling persons to attend courses of higher or further education, and the contribution that nationals of a country so prescribed can make to higher education in the State.

14(6) Notwithstanding subsection (4), where the Minister is satisfied to do so because he or she considers that it is necessary having regard to any of the relevant purposes mentioned in subsection (7), he or she may prescribe a UK or Irish national that is ordinarily resident in Northern Ireland as an approved student.

14(7) The following are the relevant purposes to which the Minister shall have regard when prescribing a UK or Irish national that is ordinarily resident in Northern Ireland as an approved student pursuant to subsection (6):

- (a) promoting greater tolerance and understanding between the people of the State and Northern Ireland;
- (b) promoting the exchange of ideas between the people of the State and Northern Ireland;
- (c) promoting a greater understanding of, and respect for, the diversity of cultures on the island of Ireland;
- (d) promoting greater integration and cooperation between the people of the State and Northern Ireland.

Subsection 14(4) is now subsection 14(8). This provision is amended as follows:

The text in subsection 14(8)(b)(ii) is replaced with the following text:

is temporarily resident outside of the State by reason of pursuing a course of study or post-graduate research at an educational institution outside of the State but within a Member State, a state prescribed by the Minister under section 14 or Northern Ireland prescribed by the Minister under section 14, leading to a qualification that is recognised in accordance with the laws of the Member State, a state prescribed or Northern Ireland, concerned for the recognition of qualifications that correspond to the arrangements, procedures and systems referred to in section 8(2)(k)(i), or if such recognition is not provided by those laws in that manner then otherwise in accordance with the laws of that Member State a state prescribed or Northern Ireland, and

Subsection 14(5) is now subsection 14(9). The references to subsections (4) and (6) now read as references to subsections (8) and (10).

Subsection 14(6) is now subsection 14(10). This provision is amended as follows:

- (e) the deletion of the word “or” at the end of subsection 14(10)(a)
- (f) the insertion of the word “or” at the end of subsection 14(10)(b)
- (g) the insertion of a new paragraph (14)(10)(c) after subsection (14)(10)(b) as follows:

a person who has established a right to enter and be present in the State under the Common Travel Area or agreements entered into by this State and a state prescribed under section 14

Subsection 14(7) is now subsection 14(11)

Subsection 14(8) is now subsection 14(12). The reference to subsection (7) now read as a reference to subsection (11).

Subsection 14(9) is now subsection 14(13). The reference to subsection (4) now read as a reference to subsection (8).

#### *Explanatory Notes:*

Head 4 defines what an approved student is for the purposes of the scheme.

Section 14 defines what a student is for the purposes of the student grant scheme. UK nationals meet the definition of a student under Section 14(1)(a)(i) of the Principal Act by virtue of its membership of the EU. Post-Brexit, an amendment is required to this provision so that the UK as a third country is captured in the definition.

The student grant scheme contains a residency criterion which requires students to be resident in the State for 3 out of 5 years prior to commencing studies. Section 14(4)(b) recognises temporary

residency in another Member State for study purposes. Post-Brexit, an amendment is required to section 14(4), so that the UK as a third country is captured in the residency criterion.

Under section 14(5), a person cannot “derive any benefit from a period of unlawful presence in the State”, when seeking to meet the residency criterion. Section 14(6) sets aside the question regarding unlawful presence if the person is an Irish citizen (section 14(6)(a)) or has benefits under the freedom of movement within the EU (section 14(6)(b)). Post-Brexit, an amendment is required to section 14(6) to cover the rights of UK nationals.

## **Head 5 - Commencement**

Provide for the commencement of the Part on the lines of the following -

This Part shall come into operation on such day or days as the Minister for Education and Skills may by order or orders appoint either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or provisions.

## **Part 6 – Taxation<sup>1</sup>**

**The purpose of this Part of the bill is to introduce legislative amendments for Taxation.**

Amendments are being proposed for Income Tax, Capital Tax, Corporation Tax and Stamp Duty legislation in order to ensure continuity for business and citizens in relation to their current access to certain taxation measures including, reliefs and allowances, and the retention of a number of anti-avoidance provisions in the event that the UK is no longer a member of the EU/EEA.

Legislative amendments to Indirect Taxation are being proposed to provide for business support and stability post Brexit when the UK will no longer be a member of the EU/EEA.

*Department of Finance*

### **Income Tax**

The purpose of these heads is to amend various sections of the Taxes Consolidation Act (TCA), 1997 to seek to ensure that income tax measures continue to apply to existing beneficiaries in the event that the UK is no longer an EU Member State or EEA State. The heads extend relevant legislative definitions to include the UK in order to maintain the status quo in the immediate future for Irish taxpayers.

#### **Head 1 - Abatement from income tax – restricted shares**

To amend section 128D TCA 1997 as appropriate.

*Explanatory note*

This measure currently has restrictions related to entities established in EEA states and it is proposed to extend the relevant definitions to ensure that entities established in the UK remain included.

#### **Head 2 - Key Employee Engagement Programme**

To amend section 128F TCA 1997 as appropriate.

*Explanatory note*

This measure currently has restrictions related to entities established in EEA states and it is proposed to extend the relevant definitions to ensure that entities established in the UK remain included.

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<sup>1</sup> Heads 24,25,26,32,33,34 and 35 of this Part were updated as of 12 February 2019.

### **Head 3 - Taxation treatment of Hepatitis C compensation payments**

To amend section 191 TCA 1997 as appropriate.

#### *Explanatory note*

It is proposed to extend the relevant definitions to ensure that recurring compensation payments from Hepatitis C/HIV public compensation schemes in the UK remain exempt from Irish income tax.

### **Head 4 – Foster Care**

To amend section 192B TCA 1997 as appropriate.

#### *Explanatory note*

It is proposed to extend the relevant definitions to ensure that payments made by UK authorities in respect of the fostering of children remain exempt from Irish income tax. This issue is likely to relate to a small number of cross-border fosterings.

### **Head 5 – Artists’ Exemption**

To amend section 195 TCA 1997 as appropriate.

#### *Explanatory note*

This measure is currently restricted to residents of EEA states and it is proposed to extend the relevant definitions to ensure that UK residents remain included.

### **Head 6 & 7 – Income from property in the State for charities and donations to approved bodies**

To amend sections 208A, 208B and 848B TCA 1997 as appropriate.

#### *Explanatory note*

These measures are currently restricted to entities established in EEA and EFTA states and it is proposed to extend the relevant definitions to ensure that those established in the UK remain included.

## **Head 8 – Mortgage Interest Relief**

To amend sections 244, 244A and 245 TCA 1997 as appropriate.

### *Explanatory note*

This measure is currently restricted to properties situated in EEA states and it is proposed to extend the relevant definitions to ensure that properties situated in the UK remain included.

## **Head 9 – Relief for Insurance against expenses of illness**

To amend sections 470 and 470B TCA 1997 as appropriate.

### *Explanatory note*

This measure is currently restricted to taxpayers who are covered by authorised insurers as defined in an EU Directive and it is proposed to extend the relevant definitions to ensure that insurers established in the UK remain included.

## **Head 10 – Seafarers' Allowance**

To amend section 472B TCA 1997 as appropriate.

### *Explanatory note*

This measure is currently restricted to sea-going ships that are registered in EU Member States and it is proposed to extend the relevant definitions to ensure that those on UK registers remain included.

## **Head 11 – Fishers' Allowance**

To amend section 472BA TCA 1997 as appropriate.

### *Explanatory note*

This measure is currently restricted to fishing vessels that are registered on the European Community Fishing Fleet Register and it is proposed to extend the relevant definitions to ensure that those on UK registers remain included.

## **Head 12 – Relief for fees paid for third level undergraduate education**

To amend section 473A TCA 1997 as appropriate.

### *Explanatory note*

This measure is currently restricted to undergraduate courses (including distance learning) provided by EU Member State institutions and it is proposed to extend the relevant definitions to ensure that UK-based institutions remain included.

## **Head 13 – Pensions Taxation**

To amend sections 770, 772A, 784, 784A, 787A, 787G, 787M, 787N, 790AA, and 790B TCA 1997 as appropriate.

### *Explanatory note*

There are a number of relevant restrictions on income tax relief for certain pension schemes, including conditions for approval of pension schemes, approved retirement funds, qualifying overseas pension plans, and the exemption of cross border schemes.

These will be amended as appropriate to seek to ensure that Irish taxpayers may continue to avail of the various pension related reliefs.

## **Head 14 – Sportspersons Relief**

To amend section 480A TCA 1997 as appropriate.

### *Explanatory note*

This measure is currently restricted to residents of EEA states and it is proposed to extend the relevant definitions to ensure that the UK remain included.

## **Head 15 – Relief for Investment in Corporate Trade**

To amend section 489 TCA 1997 as appropriate.

### *Explanatory note*

This measure currently has restrictions related to entities established in EEA states and it is proposed to extend the relevant definitions to ensure that entities established in the UK remain included.

## **Capital Taxes**

### **Head 16 – Amendment to exemptions from tax for Government and other public securities**

To amend section 42(1) Taxes Consolidation Act 1997 (income tax and corporation tax main provisions) and add under definition of “Relevant State” to insert new subsection “(iii) United Kingdom”

#### *Explanatory Note:*

At present, the legislation provides that an Irish taxpayer can get relief in respect of the interest in respect of any savings certificates issued by the Minister for Finance or savings certificates or similar securities issued by a relevant EU or EEA Member State.

It is proposed to continue the current treatment for UK in the event that the UK is no longer an EU Member State or within the EEA, by adding the UK to the territorial requirement of the legislation. This would allow continuity of current tax treatment for Irish investors in such securities.

## **Capital Gains Tax**

### **Head 17 – Amendment to tax treatment of certain venture fund managers**

To amend the definition of “proportions of carried interest derived from the relevant investment” in section 541C(1) TCA, 1997 to include “or in the United Kingdom” after “(including the State)”

#### *Explanatory Note:*

This section provides relief from the full rate of Capital Gains Tax (CGT) for fund managers in respect of total investments of a venture capital fund. The relief only applies to investments made in an EEA State. In the absence of a change, investments made in the UK could not be taken into account in the calculation of the amount of the relief - relevant investments made in the UK would no longer qualify for the relief. This would be to the disadvantage of fund managers operating in Ireland.

### **Head 18 and 19 – Amendment to provisions dealing with Non-Resident Persons and Trusts**

To amend section 806(11)(a) TCA, 1997 after “which is a Member State of the European Union, or not being such a Member State” to include “the United Kingdom or”.

Note: There is a cross reference to the definition of “relevant Member State” to section 806(11)(a) TCA, 1997 in sections 579(6), 579A (9A) and 590(7)(aa) TCA, 1997 so these sections will also be impacted by the proposed amendment.

*Explanatory Note:*

Section 806 is designed to counter individuals who are resident or ordinarily resident in the State avoiding income tax by means of a transfer of assets as a result of which income becomes payable to a person who is resident or domiciled outside this country. The income arising abroad is chargeable to income tax on the Irish-resident or ordinarily resident individual where he or she has power to enjoy any of the income or where the individual receives any capital sum which is in any way connected with the transfer or with any associated operation.

Sections 579 and 579A are designed to prevent the avoidance of CGT by a person who is either resident or ordinarily resident in the State on gains made by non-resident trusts.

Section 590 is designed to prevent the avoidance of CGT by transferring property to controlled companies abroad. It enables Revenue to look through a non-resident controlled company to its resident participators and, subject to certain exemptions, to assess them to CGT on their share of the chargeable gains made by the non-resident company.

None of the above anti-avoidance provisions apply where it is shown to the satisfaction of the Revenue Commissioners that at the time when the tax charge arises, the relevant non-resident person (or settlement in the case of sections 579 and 579A) is carrying on genuine economic activities in a relevant Member State (either EU or EEA).

In the absence of a change in the legislation, it would not be possible to make the case that the relevant person or settlement was carrying on a genuine economic activity in the UK.

## **Head 20 - Relief for certain disposals of land and property**

To amend 604A(2) TCA, 1997 after “in any EEA State” to include “or the United Kingdom”

*Explanatory Note:*

This section gives relief from CGT on property purchased in any State in the EEA between 7 December, 2011 and 31 December, 2014 on a disposal of such property where that property is held for more than seven years. Finance Act 2017 amended this section to provide that where the property is held for at least four years and less than seven years any gain is not liable to CGT where the disposal is made after 1 January 2018. In the absence of any change to the legislation, CGT would apply on a disposal of land or buildings in the United Kingdom to which this section was intended to apply. This would be to the disadvantage of Irish investors who had purchased property in the UK with the expectation of obtaining the relief.

## **Capital Acquisitions Tax**

### **Head 21 – Agricultural Relief**

To amend section 89(1)(a) CATCA 2003, in definition of “agricultural property and after “Member State” and to insert “or in the United Kingdom”

and

To amend section 89(1)(a) CATCA 2003, in definition of “farmer” and after “Member State” and to insert “or in the United Kingdom”

#### *Explanatory Note:*

This section is the main provision with respect to the provision of Capital Acquisitions Tax (CAT) Agricultural Relief. This relief allows for the value of inherited agricultural assets (including farmland, buildings, stock) to be reduced to some 90 per cent of its value in the calculation of any CAT liability where certain conditions are met. This would allow agricultural property in the UK to be included as agricultural property for the purpose of claiming agricultural relief and will see agricultural property in the UK being included in the market value of agricultural property for the purpose of the farmer test. Continuing this relief to include the UK will take account of the position of farmers in the State who may have holdings on either side of the border.

## **Corporation Tax**

### **Head 22 – Charges on income for corporation tax purposes**

To amend Taxes Consolidation Act 1997 Section 243(4) to include banks, stock exchanges and discount houses in the UK.

#### *Explanatory Note:*

Section 243 provides for relief from corporation tax in the form of charges on income in respect of annuities and other annual payments, patent royalties, rents and other similar payments, and, to a limited extent, interest, paid in connection with a trade. Charges on income paid by a company are deductible against its total profits.

Section 243(4) allows relief in form of a charge on income in respect of non-yearly interest paid by a company to recognised EU banks or EU stock exchange members and discount houses carrying on business in the EU, against its total profits. The charges must be paid in the accounting period out of the profits brought into the charge to Irish corporation tax for that accounting period.

If the UK ceases to belong to the EU, post-Brexit, then a company would not be able to avail of relief from corporation tax under section 243 in respect of non-yearly interest paid to recognised banks, stock exchange members or discount houses carrying on business in the UK.

It is proposed to extend the references to include the UK to maintain the status quo in the immediate future.

## **Head 23 – Group loss relief provisions**

To amend Taxes Consolidation Act 1997 Section 410 and 411 to include the UK within the definition of ‘relevant Member State’ where used.

### *Explanatory Note:*

Recognising that groups of companies usually comprise a single economic entity, legislation provides for the allowance of trading losses of a group member against the profits of other group members provided both the company surrendering the losses and the company claiming them satisfy certain relationship requirements and they are both resident in an EU Member State/EEA and are within the charge to Irish tax. In addition, the legislation provides that certain payments (primarily interest) between group members resident in Member States, which would normally be paid subject to deduction of withholding tax, may be made without such deductions, where certain minimum relationship requirements exist between the companies.

The companies must form part of a 75% group, and only shareholdings in companies resident or quoted in EU/EEA/tax treaty States are considered for this purpose.

**S410** - Section 410 deals with companies and their 51% subsidiaries. It provides that where a company which is resident in a “relevant Member State” makes a payment (primarily interest) to another qualifying group company resident in a relevant Member State that payment may be made without deduction of tax. "Relevant Member State" for this purpose includes EU Member States and EEA States with whom a tax treaty has been agreed.

Post Brexit, intra-group payments – relief from withholding tax will no longer be available under s.410 in respect of payments to UK resident companies. Other reliefs from withholding tax may continue to apply, subject to the relevant conditions. It is proposed to extend the relevant definition to include the UK, to maintain the status quo in the immediate future.

**S411** - The purpose of group relief provisions is to enable groups of companies to offset losses incurred by one or more of its members against profits of one or more of its other members. In order to claim such relief both the surrendering company and the claimant company must be resident in the EU/EEA and within the charge to Irish corporation tax. This will be the case in relation to Irish resident companies and EU/EEA resident companies that carry on a trade in the State through a branch or agency. In addition, the relevant companies must form a group. For these purposes, the relevant companies will form a group where one is a 75% subsidiary of the other or both companies are 75% subsidiaries of a third company. In determining whether the requisite relationship exists, only shareholdings held through companies resident in the EU/EEA and double tax treaty partner jurisdictions (or quoted in those territories) are considered. For the purposes of this section;

## **Post Brexit**

- (i) for the purpose of determining whether a group relationship exists, shareholdings held through UK resident companies will continue to be factored in because the UK is a tax treaty partner jurisdiction. Therefore a no deal Brexit would **not** give rise to a de-grouping of existing group relationships formed via UK companies, and future group loss relief claims can be made in respect of companies whose group relationship is formed or partly formed via a UK resident company.
- (ii) However, UK resident companies trading in Ireland through a branch or agency will no longer be able to surrender or claim group relief under s.411.

It is proposed to extend the relevant definition to include the UK, to maintain the status quo in the immediate future.

## **Head 24 – Loans to participators**

To amend Taxes Consolidation Act 1997 Section 438 to include the UK within the definition of Member State of the European Communities.

### *Explanatory Note:*

Section 438 is a provision applying to close companies, designed to prevent the avoidance of tax through the withdrawal of profits in the form of a loan. A close company is a company which is under the control of five or fewer participators or of participators who are directors. Section 438 provides for a charge to income tax on loans or advances provided by a close company to a participator in that close company.

In this section, the references to a “participator” may apply to an individual, a company receiving the loan or advance in a fiduciary or representative capacity, and to a company not resident in a Member State of the European Communities [EU].

Post Brexit, a company resident in the UK could potentially become a ‘participator’ for the purposes of this anti-avoidance provision, and loans/advances to a UK company that is a participator in the close company could become subject to a charge under s.438.

It is proposed to extend the definition in order to maintain the status quo in the short term, to allow time to examine any potential impact on bona-fide business transactions.

## **Head 25 – Relief from tax for certain start-up companies**

To amend Taxes Consolidation Act 1997 Section 486C to extend the provisions applying to EEA States to include the UK.

*Explanatory Note:*

Section 486C allows for relief from corporation tax for certain start-up companies in the first three years of trading, with the value of the relief being subject to an overall cap and linked to the amount of employers' PRSI paid by a company.

A 'new company' for the purposes of this section includes a company incorporated in an EEA State.

Post Brexit, if the UK ceases to belong to the European Economic Area post-Brexit, then a company incorporated in the UK will not be a "new company" for the purposes of this section and therefore will not qualify for the relief. It is proposed to extend the relevant definition to include the UK, to maintain the status quo in the immediate future, in view of potential relevance to small cross-border businesses.

## **Head 26 – Company restructure or amalgamation: Transfer of Assets**

To amend Taxes Consolidation Act 1997 Section 615 to extend the provisions currently applying to a relevant member state to include the UK.

*Explanatory Note:*

Section 615 of the TCA 1997 provides relief from Capital Gains Tax (CGT) on a transfer of assets under a scheme of reconstruction or amalgamation of companies.

This section operates in a situation where, on a reconstruction or amalgamation, one company takes over the whole or part of the business of another company, and that other company receives no consideration for the transfer of the business other than the taking over of its liabilities.

The relief provides that no corporation tax is to be charged in respect of chargeable gains accruing on the transfer – the transfer is treated as giving rise to no gain/no loss for the disposing company and the acquiring company assumes the original base cost of the assets.

The relief may apply in respect of transfers between two companies where:

- the company transferring the assets must be resident in an EU Member State or be resident in an EEA Member State with which Ireland has a tax treaty at the time of transferring them, or (where it is not so resident) the assets must be chargeable assets for capital gains tax purposes in relation to the company immediately before that time, and
- the company acquiring the assets must be resident in an EU Member State or be resident in an EEA Member State with which Ireland has a tax treaty at the time of acquisition, or the assets must become chargeable assets in relation to the company on acquisition.

Post- Brexit, transfers of assets to or from a UK company would not meet the conditions of s.615 because it would not be resident in an EU/EEA Member State. This could be relevant in respect of transfers to/from a UK resident company of chargeable assets (for example assets in use for the

purposes of a trade in Ireland). Gains accruing on such transfers could therefore become liable to corporation tax on chargeable gains.

It is proposed to extend the relevant definitions to include the UK, to maintain the status quo in the immediate future.

## **Head 27 – Tax credit for R&D expenditure**

To amend Taxes Consolidation Act 1997 Section 766 to include the UK within the definition of relevant Member State.

### *Explanatory Note:*

Qualifying R&D must be carried out in a relevant Member State – this is defined in section 766 as a Member State of the European Communities [the EU] or, if not a Member State, a State which is a contracting party of the European Economic Area (EEA) Agreement. Furthermore, the credit is only available if no tax deduction is claimed for the cost of R&D in that other State.

Post Brexit, if the UK ceases to belong to the EEA then research carried out in the UK will no longer qualify for the purpose of the relief. It is proposed to extend the relevant definitions to include the UK, to maintain the status quo in the immediate future, pending further research on the potential consequences for established R&D activities in the State.

## **Stamp Duty**

### **Head 28 – Relief for Intermediaries**

To amend the Stamp Duties Consolidation Act (1999) Section 75 to explicitly include UK based intermediaries where they deal with Irish stocks or marketable securities.

### *Explanatory Note:*

This section provides a relief from stamp duty for brokers purchasing stocks or marketable securities of Irish incorporated companies on behalf of clients. Without this relief such transactions would be subject to a 1% stamp duty.

Subsection 2A of this section provides that transfers of shares meeting the reporting requirements of the EU Markets in Financial Instruments Directive (MIFID) are deemed to satisfy the “effected on exchange” requirements for such transfers contained in subsection 2, subject to all other conditions of the “Relief for Intermediaries” being satisfied, and as such are able to avail of this relief.

Post Brexit, if the UK introduces its own domestic UK specific law which does not meet equivalence requirements under MIFID, UK based intermediaries may not be able to avail of the exemption as currently worded.

It is seen as appropriate to include an amendment continuing the relief for UK based brokers.

## **Head 29 – Relief for clearing houses**

To amend the Stamp Duties Consolidation Act (1999) Section 75A to explicitly include UK based clearing houses where they deal with Irish stocks or marketable securities.

### *Explanatory Note:*

This section provides counterparty relief for share transfers. This is in effect a stamp duty exemption for each transferee so long as that transferee transfers title to the securities concerned to another person under a matching contract. A 'clearing house' is a body or association which provides services related to the clearing and settlement of transactions and payments and the management of risks associated with the resulting contracts and which is regulated or supervised in the provision of those services by a regulatory body, or an agency of the government of a Member State.

This facilitates the process of shares moving between the seller and the purchaser in which clearing houses act as buffers between the two ends of each transaction.

Post Brexit, the UK clearing houses may not be deemed to be covered by an appropriate regulatory or supervisory agency for the purposes of the exemption.

It is seen as appropriate to include an amendment continuing the relief for UK based counterparties.

## **Head 30 – Reconstructions or amalgamations of companies**

To amend the Stamp Duties Consolidation Act (1999) Section 80 to include UK based companies where they merge with or acquire Irish based companies.

### *Explanatory Note:*

For various commercial reasons, a company may rearrange its business activities by:

- merging with another company;
- acquiring another company, or
- reorganising its corporate structure.

These transactions generally involve transfers of either shares or property. When shares are issued as consideration for the shares or property transferred the transaction may be classed as a "reconstruction" or "amalgamation".

Section 80 of the SDCA 1999 provides a full relief from stamp duty where a conveyance or transfer of stocks or marketable securities, insurance policies (where the risk is situated in the State), and property takes place as a result of such transactions.

An acquiring company that is not itself situate in the state can avail of this relief if it is incorporated in the EU/EEA.

Post Brexit as things stand, UK based acquiring companies will not be able to avail of the relief.

In order to comply with the overall imperative of seeking where possible to keep the status quo in place, an amendment to this section will be required to include UK based companies in the list of those that qualify for it.

### **Head 31 – Demutualisation of assurance companies**

To amend the Stamp Duties Consolidation Act (1999) Section 80A to include Irish based “members” of demutualising UK based assurance entities, or of mutual Irish assurance companies which are taken over by UK companies, can avail of this relief .

#### *Explanatory Note:*

This section of the SDCA 1999 provides a stamp duty exemption on certain instruments (shares, stock, etc.) issued to the members of an assurance company when it goes public or is taken over by a public company (de-mutualises).

This relief applies where an acquiring company is incorporated in the State or in the EU/EEA.

Post Brexit, where UK incorporated assurance companies demutualise and issue shares to their Irish “members” or a non-mutual UK assurance company takes over an Irish mutual and issues shares to its “members”, Revenue will have to charge those members with stamp duty on any instruments they receive as part of the demutualisation.

This section will be amended to allow that instruments issued by acquiring companies incorporated in the UK are covered by the exemption.

### **Head 32 – Certain premiums of life assurance**

To amend the Stamp Duties Consolidation Act (1999) Section 124B so that UK based assurers will be liable to the 1% levy on life assurance premiums on their Irish business.

#### *Explanatory Note:*

Section 124B of the SDCA provides for a levy/stamp duty of 1% on life assurance premiums. The levy applies to assurers which are:

- licensed in Ireland,
- holders of an authorisation within the meaning of the European Communities (Life Assurance) Framework Regulations 1994 (S.I. No. 360 of 1994), or

- holders of an official authorisation to undertake insurance in Iceland, Liechtenstein or Norway, pursuant to an agreement with the EEA.

Post Brexit, following a no deal Brexit, UK insurers with Irish business will fall outside these three categories, and therefore it will not be possible to collect the levy.

This section will be amended to include UK based insurers amongst those required to collect the levy and transfer it to Revenue/the Exchequer.

### **Head 33 – Certain premiums of insurance**

To amend the Stamp Duties Consolidation Act (1999) Section 125 so that UK based insurers will be liable to the 3% levy on certain non-life assurance premiums on their Irish business as described in the section.

#### *Explanatory Note:*

Section 125 of the SDCA imposes a stamp duty/levy of 3% on the gross amount received by an insurer in respect of certain non-life insurance premiums. The exceptions are re-insurance, voluntary health insurance, marine, aviation and transit insurance, export credit insurance and certain dental insurance contracts.

The definition of “insurer” set out in the section covers those licenced to provide insurance under Irish law or under EU regulations (S.I. 359 of 1994 - European Communities (Non-Life Insurance) Framework Regulations, 1994). Thus, UK-based insurers are currently within the charge to duty to the extent that they receive premiums in respect of risks located in the State.

Post Brexit, following a no deal Brexit however, and in the absence of amending legislation, such UK-based insurers may fall outside the charge to this stamp duty.

This section should be amended to include UK based insurers amongst those required to collect the levy and transfer it to Revenue/the Exchequer.

## **VAT**

### **Head 34 - Postponed Accounting for VAT**

To amend the VAT Consolidation Act (2010) to introduce postponed accounting for all importers registered for VAT in Ireland; and to introduce a modification of the postponed accounting scheme at a later date, to be agreed, which will make authorisation for the scheme subject to criteria and conditions.

#### *Explanatory Note:*

The introduction of postponed accounting for VAT is a measure introduced to alleviate the cash flow impact on business.

As a result of the UK's 'third country' status, post Brexit, VAT will be due at the point of import rather than at the time of filing bi-monthly VAT returns. The EU VAT Directive permits the introduction of postponed accounting. Under postponed accounting, importers are not obliged to pay import VAT at the point of entry but instead may account for import VAT through their VAT return.

Goods which are subject to excise duty are excluded from the scheme.

The introduction of the scheme will be provided to all traders for a period to alleviate the immediate cash flow issues arising from Brexit.

However, continued qualification for postponed accounting will depend on Revenue authorisation from a later date, to be agreed. The modification of the scheme will subject traders to certain conditions in order to avail of the scheme going forward. The purpose of the modification to the scheme is for a legislative basis to exclude non-compliant traders and mitigate the risk of abuse posed by the introduction of the scheme.

### **Head 35 – VAT Section 56 Authorisations**

To amend Section 56 of the VAT Consolidated Act 2010 to make participation in the scheme subject to a number of conditions including compliance with customs legislation and tax rules, trading record for a given period with evidence that the qualifying turnover threshold of 75% is met, tax clearance, etc.; and to give Revenue the power to cancel the authorisation where there are reasonable grounds to do so and to provide for a penalty for failure to adhere to conditions of the scheme.

#### *Explanatory Note:*

A Section 56 Authorisation Certificate entitles authorised taxable persons to receive qualifying goods and services at the zero rate of VAT, regardless of the actual rate of VAT applicable to the good or service in question. The businesses which qualify for the authorisation are those primarily engaged in a) making intra-Community supplies of goods to businesses, b) exporting goods outside the EU to both businesses and consumers, and c) making supplies of certain contract work.

The purpose of this head is to provide for the modification of the scheme post the UK changing to a third country for VAT purposes in order to mitigate the potential for abuse and retain the purpose of the relief.

## **Head 36 - Commencement**

Provide for the commencement of the Part on the lines of the following -

This Part shall come into operation on such day or days as the Minister for Finance may by order or orders appoint either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or provisions.

## **Part 7 – Financial Services: Settlement Finality (Third Country Provisions)**

### *Department of Finance*

Euronext Dublin, formally known as Irish Stock Exchange, uses a UK based CSD (CREST) operated by Euroclear UK and Ireland to settle trades in Irish equities and exchange traded funds. In a no-deal Brexit scenario, under the CSD Regulation, Euronext Dublin would not be able to continue using the CREST system as the UK would become a third country, outside the EU. The inability to continue settling trades through CREST may also impact on the collection of stamp duty on equity trades.

For the contingency of a no-deal Brexit, the EU Commission has adopted a temporary and conditional equivalence decision for UK based CSD services for a period of 2 years. This is to allow sufficient time to complete the transition of the Irish market to an EU based CSD.

The purpose of this Part of the bill is to introduce legislative amendments to support the implementation of the European Commission's equivalence decision under the Central Securities Depositories (CSD) Regulation and to extend the protections contained in the Settlement Finality Directive to Irish participants in relevant third country domiciled settlement systems.

### **Head 1 - Interpretation**

*To provide that:*

“Bank” has the same meaning as in Reg 2(1) of the Regulations

“designated system” has the same meaning as in Reg 2(1) of the Regulations

“Minister” has the same meaning as in Reg 2(1) of the Regulations

“Regulations” mean the European Communities (Settlement Finality) Regulations, 2010 [S.I. No. 624 of 2010]

“system” has the same meaning as in Reg 2(1) of the Regulations

“third country” has the same meaning as in Reg 2(1) of the Regulations

*Explanatory Note:*

This is a standard legislative provision to provide for the inclusion of additional definitions.

## **Head 2 - Settlement Finality (Third Country Provisions)**

*To provide that:*

For the purposes of the Settlement Finality Regulations, The Minister may designate a third country system as a designated system if -

- (h) the Bank is satisfied that the rules of the system comply with Regulation 7, and
- (i) the Bank has assessed that the system is governed by equivalent law to that of the State

If the Minister designates a third country system he or she -

- (j) shall so notify the European Securities and Markets Authority, and
- (k) shall notify the European Securities and Markets Authority of the system operator.

*Explanatory Note:*

This Head will provide for the Minister of Finance to designate a third country system for the purposes of the Settlement Finality Regulations. This will extend the protections of the Regulations to Irish firms using settlement or payments systems in a third country. The legislation protects payments and transfers of securities made by Irish participants into “third country designated systems” in case such participants become insolvent. This will be required for Irish firms to continue using systems in the UK if they become a third country.

It will require the Central Bank of Ireland to carry out a technical equivalence assessment of law governing the third country system for its equivalence with Irish Law and also an assessment as to its compliance with the Regulation 7.

## **Head 3 - Commencement**

Provide for the commencement of the Part on the lines of the following -

This Part shall come into operation on such day or days as the Minister for Finance may by order or orders appoint either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or provisions.

## **Part 8 – Financial Services: Amendment to the European Union (Insurance and Reinsurance) Regulations 2015 and the European Union (Insurance Distribution) Regulations 2018**

### *Department of Finance*

The European Commission has advised that Member States may take appropriate national measures in relation to the issues of insurance contract continuity in the context of Brexit, subject to appropriate engagement with the European Insurance and Occupational Pensions Authority (EIOPA).

Consequently, this Part of the Bill is designed to ensure that Irish policyholders that hold existing life and non-life insurance policies with insurance undertakings or through insurance intermediaries, operating in Ireland from the UK or Gibraltar, will not be affected by those undertakings losing their right to conduct business in EU Members States post Brexit. Its primary purpose is therefore to ensure the continuing ability of such firms to service insurance contracts written prior to any no-deal Brexit – such as paying out on claims or accepting premium payments.

This Part of the Bill provides for a temporary run-off regime, which, subject to a number of conditions, will enable insurance undertakings and intermediaries to continue to fulfil contractual obligations to their Irish customers for a period of three years after the date of the withdrawal of the UK from the EU. However those insurers/intermediaries will no longer be able to write new insurance contracts or continue insurance distribution in respect of new insurance contracts in Ireland until they obtain a relevant authorisation under the EU insurance supervisory regime.

Provisions in this Part of the Bill are consistent with Ireland’s full support for the agreed EU position in Gibraltar in the context of Brexit. They do not constitute a new agreement and are designed simply to provide a temporary run-off regime for contracts entered into in advance of the UK’s withdrawal.

### **Head 1 – Amendment to the European Union (Insurance and Reinsurance) Regulations 2015**

*To provide that:*

The 2015 Regulations be amended by the addition of the following Regulation 13A:

“Regulation 13(A)

- (1) A person who, immediately before the date of the withdrawal of the United Kingdom from the European Union -
  - a) is authorised in the United Kingdom or Gibraltar, pursuant to Directive 2009/138/EC, as an insurance undertaking;

- b) has, in the exercise of the right of establishment or the freedom to provide services pursuant to Chapter VIII of Directive 2009/138/EC carried on insurance business in the State;
- c) has ceased to enter into new insurance contracts in the State; and
- d) as regards those services specified at subparagraph (b), exclusively administers its existing portfolio of such insurance contracts,

shall, whilst the matters in this paragraph are satisfied, be deemed, for a period of three years from the date of the withdrawal of the United Kingdom from the European Union, to hold an authorisation, issued by the Bank, as an insurance undertaking under these Regulations, to run-off that existing portfolio.

(2) If a person is deemed to be authorised as an insurance undertaking under these Regulations, the Bank may impose on that person such conditions or requirements in relation to the operation or termination of its existing business in addition to those referred to in paragraph (1) and may, from time to time, remove or vary the conditions or requirements referred to in paragraph (2).

(3) Without prejudice to Regulation 153, the Bank may withdraw an authorisation deemed to be issued by the Bank to a person pursuant to paragraph (1):

- a) where, following the date of withdrawal of the United Kingdom from the European Union, the person does not continue to satisfy the requirements specified in paragraph (1); or
- b) where:
  - (i) the Bank is not satisfied with the progress made by the relevant person towards terminating its business within the three-year authorisation period, or
  - (ii) the Bank is satisfied that the relevant business in run-off has been terminated.

(4) A person who is deemed to hold an authorisation as an insurance undertaking under these Regulations pursuant to paragraph (1) shall not be subject to the following provisions of these Regulations –

<b>Subject matter</b>	<b>Provision disapplied</b>
Part 2 – Authorisation	Regulations 13 – 15, Regulation 17, Regulation 21, Regulation 22 and Regulation 24
Part 3 – Supervision	Regulation 33 and Regulations 35 - 42

Part 4 - Conditions governing business	Regulations 44 – 75
Part 6 - Duties of auditors	Regulation 78
Part 7 - Pursuit of life and non-life activity	Regulations 80 – 81
Part 8 - Valuation of assets and liabilities, technical provisions, own funds, solvency capital requirement, minimum capital requirement and investment rules	Regulations 82 – 140
Part 9 - Investments	Regulations 141 – 143
Part 10 - Undertakings in difficulty or in irregular situation	Regulations 145 – 149 and Regulation 152
Part 11 - Right of establishment and freedom to provide services	Regulations 154 – 163, Regulation 166 – 167, Regulation 169 and Regulation 175
Part 12 – Branches of undertakings established outside the European Union	Regulations 176 – 186 and Regulation 188
Part 13 – Applicable law and conditions of direct insurance contracts	Regulation 193
Part 15 – Provisions specific to life insurance	Regulation 212
Part 16 – Provisions specific to reinsurance	Regulation 213
Part 17 – Supervision of insurance and reinsurance undertakings in a group	Regulations 215 – 267
Part 18 – Reorganisation and winding-up of insurance undertakings	Regulations 269 - 299
Schedule 3	Parts 1 - 4

- (5) A person who is deemed to be authorised pursuant to paragraph (1) shall notify the Bank within 3 months of that deemed authorisation.”

*Explanatory Note:*

The purpose of this head is to add a new regulation to the European Union (Insurance and Reinsurance) Regulations 2015 that will establish a temporary domestic run-off regime for certain insurance undertakings for three years. The head sets out the undertakings to which the Regulation applies and these are described by reference to their meeting four criteria, namely that immediately before Brexit they:

- a. are authorised in the UK / Gibraltar;
- b. have exercised their right to carry on insurance business in Ireland through FOE / FOS;
- c. have ceased to write new business here; and
- d. exclusively administers its existing portfolio.

The head, in paragraph (2), provides for the Central Bank (referred to as ‘the Bank’) to impose and vary conditions on undertakings deemed authorised under Paragraph (1). Paragraph (3) provides for the Central Bank to withdraw such an authorisation where the undertaking no longer meets the criteria above or either is making insufficient progress to terminate its business with the three years; or has terminated its run-off. Paragraph (4) provides that an undertaking which is authorised under Paragraph (1) will not be subject to a number of the 2015 Regulations. Paragraph (5) provides for the requirement for undertakings deemed authorised under Paragraph (1) to notify the Central Bank of this within 3 months of the authorisation.

## **Head 2 – Amendment to the European Union (Insurance Distribution) Regulations 2018**

*To provide that:*

The 2018 Regulations be amended by the addition of the following Regulation 3A:

“Regulation 3(A)

- (1) A person who, immediately before the date of the withdrawal of the United Kingdom from the European Union -
- a) is registered in the United Kingdom or Gibraltar, pursuant to Directive (EU) 2016/97 as an insurance, reinsurance or ancillary insurance intermediary;
  - b) has, in the exercise of the right of establishment<sup>2</sup> or freedom to provide services pursuant to Chapter III of Directive (EU) 2016/97, carried on insurance distribution in the State;
  - c) has ceased to carry on insurance distribution in relation to any new insurance contracts in the State; and
  - d) as regards those services specified at subparagraph (b), exclusively administers its existing business of insurance contracts; and

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<sup>2</sup> Please note Article 1(6) of the Insurance Distribution Directive provides a legal basis in respect of insurance and reinsurance undertakings or intermediaries established in a third country and operating on its territory under the principle of freedom to provide services. The Bank has concluded its analysis in relation to firms operating on a FoE basis and confirms that should be captured by the run-off regime. Please note that run-off regimes in other EU MS (e.g. Germany) are quite broad and include both FoS and FoE intermediaries.

shall, whilst the matters in this paragraph are satisfied, be deemed, for a period of three years from the date of the withdrawal of the United Kingdom from the European Union, to hold a registration, issued by the Bank, as an insurance, reinsurance or ancillary insurance intermediary under these Regulations, to run-off that existing business.

- (2) If a person is deemed to be registered as an insurance, reinsurance or ancillary insurance intermediary under these Regulations, the Bank may impose on that person such conditions or requirements in relation to the operation or termination of its existing business in addition to those referred to in paragraph (1) and may, from time to time, remove or vary the conditions or requirements referred to in paragraph (2).
- (3) Without prejudice to Regulation 13, the Bank may withdraw a registration deemed to be issued by the Bank to a person pursuant to paragraph (1):
- a) where, following the date of withdrawal of the United Kingdom from the European Union, the person does not continue to satisfy the requirements specified in paragraph (1); or
  - b) where:
    - (iii) the Bank is not satisfied with the progress made by the relevant person towards terminating its business within the three-year registration period, or
    - (iv) the Bank is satisfied that the relevant business in run-off has been terminated.
- (4) A person who is deemed to hold a registration as an insurance, reinsurance or ancillary insurance intermediary under these Regulations pursuant to paragraph (1) shall not be subject to the following provisions of these Regulations –

<b>Subject matter</b>	<b>Provision disapplied</b>
Part 3 – Registration requirements	Regulations 8-12 and Regulation 14
Part 4 – Freedom to provide services and freedom of establishment	Regulations 15-19
Part 8 – Sanctions and other measures	Regulation 48

- (5) A person who is deemed to be registered pursuant to paragraph (1) shall notify the Bank within 3 months of that deemed registration.”

*Explanatory Note:*

The purpose of this head is to add a new regulation to the European Union (Insurance Distribution) Regulations 2018 that will establish a temporary domestic run-off regime for certain insurance intermediaries for three years. In that respect, it provides that intermediaries which meet certain conditions shall be deemed to be authorised for three years following the withdrawal of the UK for the purposes of running off their existing portfolio. The undertakings to which the Regulation applies are described by reference to their meeting four criteria, namely that immediately before Brexit they:

- a. are registered in the UK / Gibraltar;
- b. have exercised their right to carry on insurance business in Ireland through FOE / FOS;
- c. have ceased to carry on new business here; and
- d. exclusively administers its existing portfolio.

It provides, in paragraph (2) for the Central Bank to impose and vary conditions on intermediaries deemed to be registered under Paragraph (1). Paragraph (3) provides for the Central Bank to withdraw registration where the undertaking no longer meets the criteria above or either is making insufficient progress to terminate its business with the three years; or has terminated its run-off. Paragraph (4) provides that an undertaking which is registered under Paragraph (1) will not be subject to a number of the 2018 Regulations. Paragraph (5) provides for the requirement for undertakings deemed registered under Paragraph (1) to notify the Central Bank of this within 3 months of the registration.

### **Head 3 - Commencement**

Provide for the commencement of the Part on the lines of the following -

This Part shall come into operation on such day or days as the Minister for Finance may by order or orders appoint either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or provisions.

## Part 9 – Railway Services<sup>3</sup>

*Department of Transport, Tourism and Sport*

The purpose of this Part is to provide for cross border rail services moving between Ireland and a country which is not part of the European Union.

### **HEAD 1 Insertion of a new section 41A of the Railway Safety Act 2005 (International services – third country services)**

#### **Provide for-**

Provisions relating to third country rail services when operating in the State.

**41A** (1) Where a relevant bilateral agreement is in place, a railway organisation first established in a third country which operates or proposes to operate an international service, is deemed to have met the requirements of section 39 if a relevant bilateral agreement has been entered into.

(2) In this section, “third country” means a state which is not a Member State of the European Union.

#### **Explanatory note**

Section 41 of the Railway Safety Act 2005 already provides a statutory basis for the operation and management of cross-border rail services between Member States within the European Union. It is an important provision governing the regulation of such services, especially their safety regulation.

This new section, 41A, will complement section 41 by providing a legislative basis for appropriately similar arrangements in the case of rail services operating between Ireland and a country that is not a Member of the European Union, where a bilateral agreement has been entered into in this regard.

### **HEAD 2 - Insertion of a new section 41B of the Railway Safety Act 2005 (International services – regulations for third country rail services)**

#### **Provide for-**

The Minister to make regulations in relation to third country rail services when operating in the State.

**41B** (1) The Minister may, where a relevant bilateral agreement is in place, may make regulations in relation to the operation of third country rail services in the State. The regulations may provide for, but shall not be limited to:

- a) Regulation of railways, including matters relevant to operations, infrastructure and safety management systems;

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<sup>3</sup> Heads 1, 2, and 3 of this Part were updated as of 1 February 2019.

- b) Interoperability of the rail system;
- c) Train driver certification; and
- d) Transport of dangerous goods by rail.

(2) In this section, “third country” means a state which is not a Member State of the European Union.

#### **Explanatory note**

Existing legislation at EU level provides for detailed regulation in relation to a wide range of matters relevant to the operation of rail. Ireland has a range of statutory instruments which transpose into national law those aspects of the EU rules that are relevant to rail within the State and also to rail services between the State and another Member State.

This new section, 41B, will make appropriate provision to enable the Minister to make regulations, consistent with EU law, to regulate rail services between the State and a country that is not a Member of the European Union, provided an appropriate bilateral agreement is in place.

It is envisaged that the range of detailed regulatory provisions that will be needed will relate to the list outlined in the draft section above.

#### **HEAD 3 Insertion of a new section 41C of the Railway Safety Act 2005 (International services – bilateral agreement on rail services with a third country)**

##### **Provide for-**

This Head will provide for a bilateral agreement between the State and another state in relation to running rail services between the two jurisdictions.

**41C** (1) The Minister may enter a bilateral agreement with a third country for rail services between the State and a third country.

(2) In this section, “third country” means a state which is not a Member State of the European Union.

#### **Explanatory note**

This is a new provision to enable a bilateral agreement to be made with a third country in relation to rail services.

It will allow for a cross-border rail agreement in accordance with Article 14 of Directive 2012/34/EU which sets out the principles for cross-border rail agreements between EU Member States and third countries.

It will also allow for the recognition of train driver certification documents from third countries operating exclusively on cross-border rail sections in accordance with Article 8 of Directive

2007/59/EC which provides for the principles for cross-border rail agreements between EU Member States and third countries.

#### **Head 4 - Commencement**

Provide for the commencement of the Part on the lines of the following -

This Part shall come into operation on such day or days as the Minister for Transport, Tourism and Sport may by order or orders appoint either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or provisions.

## Part 10 – Bus and Coach Services

### *Department of Transport, Tourism and Sport*

The purpose of this Part, is to provide with regard to EU law where applicable, for a regulatory regime in relation to bus and coach passenger services which encompasses a situation whereby there are bus and coach services moving between Ireland and a country which is not part of the European Union.

After Brexit, Ireland, in accordance with EU law, could be in a position to enter into a bilateral with the UK for cross-border bus and coach services. Such an agreement would lay out the rules for a competent authority to regulate and this legislation will make the NTA that competent authority.

The National Transport Authority (NTA) is currently Ireland’s competent authority for regulating bus services with other Member States. These Heads will make the NTA the competent authority to similarly regulate bus services between Ireland and third countries, with enforcement by the Road Safety Authority, the NTA, and An Garda Síochána (as is the case with existing services and their existing regulatory rules).

### Head 1 - Amendment of section 2 of the Public Transport Regulation Act 2009 (Definitions)

*Provide for –*

It is suggested that the proposed insertions would be along the following lines:

#### **Section 2 is amended by the following:**

*“international service” means a service authorised under Regulation (EC) Council Regulation No. 684/92 of 16 March 1992 No. 1073/2009 of the European Parliament and of the Council of 21 October 2009 on common rules for **access to the international carriage of passengers***

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*~~by coach or bus~~ **market for coach and bus services**, or the Agreement on the International Carriage of Passengers by Road by means of Occasional Coach and Bus Services (ASOR), or the Agreement on the international occasional carriage of passengers by coach and bus (Interbus Agreement) ~~or any other International Agreement relating to bus passenger services between the State and other countries.~~*

#### **and inserting the following:**

*“carrier” means a carrier for hire or reward of passengers by coach or bus.*

*“third country service” means a coach or bus service, including private hires, as agreed for under a bilateral agreement between the State and a third country where no necessary agreement between the European Union and the third country concerned has been concluded.*

*Explanatory note:*

This is a standard provision to provide for additional definitions and to update existing definitions and terminology.

Insertion of a definition for “carrier”:

This definition is taken from S.I. No. 506 of 2013.

Insertion of a definition for “third country service”:

Given developments in the EU context, there may be a need for a new bilateral agreement to govern some international bus services to/from third countries.

## **Head 2 - Third Country Services - Insertion of new Section 47 in the Public Transport Regulation Act 2009 Definitions (Part 7))**

*Provide for –*

New definitions for this part.

The proposed text for this section would be along the following lines:

*In this Part –*

*“private hire” means a bus passenger service provided on a pre-arranged basis.*

*Explanatory note:*

The NTA is already the competent authority to issue authorisations and control documents and to authorise cabotage operations under S.I. No. 506 of 2013. This S.I. gave effect to Regulation (EC) No. 1073/2009 which provided the EU with common rules for access to the international market for coach and bus services. In relation to Brexit, this S.I. will no longer be relevant for services travelling to the United Kingdom as they will no longer be travelling to a Member State.

It is intended that the NTA would now have the same powers, as given to them in S.I. No. 506 of 2013 for coach and bus services travelling to Member States, in relation to third countries where bilateral agreements are in place.

Insertion of a definition for “private hire”:

Definition of “private hire” included so that it clearly falls under the term “third country service” – intention is that the NTA will have the power to issue such services with control documents (journey forms) when travelling to third countries.

### **Head 3 - Insertion of new section 48 in the Public Transport Regulation Act 2009 (Competent authority for third country services)**

*Provide for -*

A new section providing for the National Transport Authority to be the competent authority for authorising bus passenger services to third countries.

The proposed text for this section would be along the following lines:

- 1. The Authority is the competent authority to issue authorisations and control documents and to authorise cabotage operations for third country services, where a bilateral agreement is in effect and/or no necessary agreement between the European Union and the third country concerned has been concluded.*
- 2. The Authority, in its role as the competent authority under a bilateral agreement, shall adhere to any given criteria as specified in any such agreement.*
- 3. The Authority shall have power to make rules to give effect to its functions under this Part.*
- 4. The Authority shall have the power to enter memoranda of understanding with a third country so as to give effect to a bilateral agreement for third country services.*

*Explanatory note:*

The NTA is already the competent authority, under S.I. No. 506 of 2013, to issue authorisations and control documents and to authorise cabotage for bus and coach services to other Member States in accordance with EU law. This S.I. gave effect to Regulation (EC) No. 1073/2009 which provided the EU with common rules for access to the international market for coach and bus services.

It is intended that the NTA would now have the same powers in relation to third countries where bilateral agreements are in place. This will give the NTA the same powers as it has now for coach and bus services travelling to Member States under Regulation (EC) No.

1073/2009 and S.I. No. 506 of 2013.

The NTA, as the competent authority in this regard, will be obliged to fulfil any and all rules set out for a competent authority, under a bilateral agreement, for third country services – these may include, but not be limited to: criteria in relation to the granting of authorisations or control documents, terms and conditions which may be attached to an authorisation or control document, the fees which may be charged, any specified format mandated for authorisations or control documents, and adhering to timelines for processing authorisations or control documents.

It should be noted that “necessary agreement”, as referenced in this Head, means the Interbus Agreement.

#### **Head 4 - Insertion of new section 49 in the Public Transport Regulation Act 2009 (Authorisations - Obligations)**

*Provide for-*

Criteria to be fulfilled in relation to authorisations.

The proposed text would be along the following lines:

- 1. A person who in an application for the grant or renewal of an authorisation gives information or documentation knowing it to be false or misleading commits an offence and is liable on summary conviction to a class C fine.*
- 2. Save in the event of force majeure, the operator of a certain third country service shall, until authorisation expires, take all measures to guarantee a transport service that fulfils the standards of continuity, regularity and capacity and complies with the other conditions laid down by the competent authority in accordance with the relevant bilateral agreement.*
- 3. For certain third country services, as may be specified in the relevant bilateral agreement, the carrier shall display the route of the service, the bus stops, the timetable, the fares and the conditions of carriage in such a way as to ensure that such information is readily available to all users.*
- 4. It shall be possible for the Authority, by common agreement with a third country and in agreement with the holder of the authorisation, to make changes to the operating conditions governing a certain third country service.*

*5. A carrier who fails to comply with subsection (2) or (3) or (4) commits an offence and is liable on summary conviction to a class A fine.*

*6. A carrier who carries out a certain third country service, as may be specified in the relevant bilateral agreement, in the State without holding an authorisation in respect of the service commits an offence and is liable-*

*(a) on summary conviction, to a class A fine, or*

*(b) on conviction on indictment, to a fine not exceeding €200,000.*

*7. Where an authorisation issued to a carrier is not carried on a vehicle in the course of the operation of a certain third country service, as may be specified in the relevant bilateral agreement, the carrier commits an offence and is liable on summary conviction to a class A fine.*

*8. The driver of a vehicle or carrier who fails to present for inspection to an authorised officer at the request of the officer a certified true copy of the authorisation concerned commits an offence and is liable on summary conviction to a class C fine.*

*Explanatory note:*

This section will provide stipulations for holders of authorisations as well as setting down a number of offences.

Proposed subsection (1) modelled on Taxi Regulation Act 2013 sections 7(5) and 9(6).

Other proposed provisions mirror those provided for under Regulation (EC) No.1073/2009 and S.I. No. 506 of 2013.

Authorisations were provided for “regular services” under Regulation (EC) No. 1073/2009 and S.I. No. 506 of 2013 – “certain” has been used here so as to future proof this proposed primary legislation so that the requirement for specific services to have authorisations may be stipulated within the relevant bilateral agreement with a third country.

Class fines are those set under the Fines Act 2010.

## **Head 5 - Insertion of new section 50 in the Public Transport Regulation Act 2009 (Control documents - Obligations)**

Provide for-

A number of offences relating to incorrect usage of control documents.

The proposed text for this section would be along the following lines:

1. A person who in an application for a book of journey forms gives information or documentation knowing it to be false or misleading commits an offence and is liable on summary conviction to a class C fine.
2. Where a control document issued to a carrier is not carried on a vehicle in the course of the operation of a third country service, the carrier commits an offence and is liable on summary conviction to a class A fine.
3. The driver of a vehicle or carrier who fails to present for inspections to an authorised officer at the request of the officer a certified true copy of the control document concerned commits an offence and is liable on summary conviction to a class C fine.
4. A carrier who fails to comply with criteria as set out in the relevant bilateral agreement in relation to control documents commits an offence and is liable on summary conviction to a class A fine.

### *Explanatory note:*

The section will set out a number of offences relating to incorrect usage of control documents (e.g. journey forms).

Proposed subsection (1) modelled on section 7(5) Taxi Regulation Act 2013.

Other proposed provisions mirror those provided for under Regulation (EC) No. 1073/2009 and S.I. No. 506 of 2013.

Class fines are those set under the Fines Act 2010.

## **Head 6 - Insertion of new section 51 in the Public Transport Regulation Act 2009 (Cabotage)**

*Provide for -*

A new section to provide that the Minister may make provision relating to cabotage. The proposed text for this section would be along the following lines:

The Minister may make an order specifying relevant offences for cabotage operations in relation to third country services.

*Explanatory note:*

In this Head, “cabotage” refers to the transport of passengers between two places in the State by a transport operator from a third country.

This is an enabling provision only and is intended to provide that the Minister may make future regulations in relation to cabotage for third country services and, where applicable, exercised in accordance with EU law.

Under S.I. No. 506 of 2013, the NTA is the competent authority to authorise cabotage operations for Member States. However, no existing provisions or offences exist in Irish legislation, in this respect, for coach or bus services with Member States.

## **Head 7- Insertion of new section 52 in the Public Transport Regulation Act 2009 (Transport tickets)**

*Provide for-*

Obligations and offences for carriers in relation to transport tickets for certain coach and bus services travelling to/from a third country.

The proposed text for this section would be along the following lines:

- 1. A carrier who fails to ensure that the issuing of a transport ticket is in accordance with the relevant bilateral agreement commits an offence and is liable on summary conviction to a class A fine.*
- 2. A person who fails to present a transport ticket, provided under a relevant bilateral agreement to him or her, to an authorised officer, at the request of the officer, commits an offence and is liable on summary conviction to a class D fine.*

*Explanatory note:*

This section will include stipulations regarding transport tickets for certain services travelling to/from a third country. It will make it an obligation for these carriers to issue tickets in line with the criteria set out in the relevant bilateral agreement. It will also set out a number of offences in this regard including one relating to persons not presenting their transport ticket for inspection.

Proposed provisions mirror those provided for under Regulation (EC) No. 1073/2009 and S.I. No. 506 of 2013.

These mirrored provisions were relating “regular services” under Regulation (EC) No.

1073/2009 and S.I. No. 506 of 2013 – “certain” has been used here so as to future proof this proposed primary legislation so that rules pertaining to transport tickets may be stipulated within the relevant bilateral agreement with a third country.

Class fines are those set under the Fines Act 2010.

## **Head 8 - Insertion of new section 53 in the Public Transport Regulation Act 2009 (Authorised Officers)**

*Provide for -*

Who the authorised officers will be for the purposes of enforcing the provisions/rules relating to the operation of coach or bus services travelling to/from a third country.

The proposed text for this section would be along the following lines:

*1. The following are authorised officers for the purpose of enforcing any bilateral agreement relating to third country services and this Part:*

*(a) a transport officer (within the meaning of section 16 of the Road Transport Act 2011 (No. 31 of 2011)),*

*(b) an authorised officer of the National Transport Authority appointed under section 78 of the Dublin Transport Authority Act 2008 (No. 15 of 2008), and*

*(c) a member of An Garda Síochána.*

2. A person who –

*(a) obstructs or interferes with an authorised officer when exercising a power conferred on him or her under a relevant bilateral agreement, or*

*(b) fails to comply with a requirement, of such an officer, to produce any information contained in books, documentation or data bases,*

*commits an offence and is liable on summary conviction to a class A fine.*

3. A carrier who fails to allow, or obstructs, inspections to be carried out, in compliance with criteria for authorised officers as set out in the relevant bilateral agreement commits an offence and is liable on summary conviction to a class A fine.

*Explanatory note:*

This section will allow for RSA transport officers, NTA authorised officers and member of An Garda Síochána to be authorised officers for the purposes of enforcing rules/provisions relating to coach and bus services travelling to/from third countries.

Proposed provisions mirror those provided for under Regulation (EC) No. 1073/2009 and S.I. No. 506 of 2013.

Class fines are those set under the Fines Act 2010.

## **Head 9 - Insertion of new section 54 in the Public Transport Regulation Act 2009 (Summary proceedings)**

*Provide for-*

The person or body who may bring forward proceeding for an offence under this Part. The proposed text for this section would be along the following lines:

*1. Proceedings for an offence under this Part may be brought summarily by the Minister (other than an offence under section 49(6)), the Authority (NTA) or the Road Safety Authority.*

*Explanatory note:*

To stipulate the person/body who may bring forward proceedings for an offence under this Part. This is in line with proceedings in relation to EU coach and bus service offences (see S.I. No. 506 of 2013).

## **Head 10- Commencement**

Provide for the commencement of the Part on the lines of the following -

This Part shall come into operation on such day or days as the Minister for Transport, Tourism and Sport may by order or orders appoint either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or provisions.

## **Part 11 – Amendments to the Social Welfare (Consolidation) Act 2005**

### *Department of Employment Affairs and Social Protection*

#### Introduction

This Part sets out proposed amendments to the Social Welfare (Consolidation) Act 2005 with regard to the continuation of a range of social welfare payments. The amendments set out are intended to give the Minister for Employment Affairs and Social Protection powers to make regulations with regard to a number of issues such as the recognition of contributions paid in the UK. These amendments are being made in line with the Government commitment to maintaining the Common Travel Area.

#### **Head 1 - Amendment to Section 4 Regulations**

“Insert a new subsection after subsection (1):

(1A) Regulations may be made with regard to the treatment of benefits, facts, or events occurring in a specified third country as if they had occurred in a Member State or a country with which the Minister has made a reciprocal arrangement under the provisions of section 287.”

#### *Purpose of the Head*

The purpose of this amendment is to give the Minister power to make regulations to continue to treat benefits, facts and events related to the UK (which are pertinent to claims and payments) as they are treated at present.

## **Head 2 - Amendment to Part 2 (Social Insurance) Chapter 6 (General)**

“Insert the following new section after section 38A

38B. Regulations may provide for account to be taken of contributions paid in a third country when determining whether a person satisfies the contributions requirements for specified payments”

### *Purpose of Head:*

The purpose of this Head is to allow the Minister to make regulations to provide for social insurance contributions paid in a third country (specifically the UK) to count for eligibility for social insurance payments (including contributory pensions).

## **Head 3 - Amendment to s. 246 Habitual Residence Condition**

“Include the following new subsection after subsection 8:

8A: Regulations may provide for adaptations to the habitual residence condition as it applies to payments under the following sections: 168(5), 173(6), 186D(1), 220(3), and 238B(5).”

### *Purpose of Head*

Section 246 provides that eligibility for a range of payments is subject to the habitual residence condition.

In certain circumstances, the provisions of EU law override national legislation for example with regard to family benefits.

The purpose of this Head is to allow the Minister to make regulations to ensure that the provisions of the habitual residence condition allow for the continuation of these payments to people resident in the UK on the same basis as at present.

## **Head 4: Amendment to s.247 Avoidance of multiple payments**

“Insert the following new section as 247 (13)

“S.247 (13) Where, but for this subsection, more than one of the following would be payable to or in respect of a person in respect of the same period, only one shall be paid—

a) Jobseekers Benefit

Jobseeker's Allowance (contribution-based) payment from the UK”

#### *Purpose of Head*

Article 10 of EU Regulation 883/2004 deals with the possibility of a person qualifying for Benefits in more than one Member State based on the same period of social insurance and ensures only one benefit is payable at the same time.

The purpose of this Head is to avoid multiple payments to a person qualifying for Benefits in more than one Member State based on the same period of social insurance and ensures only one benefit is payable at the same time between UK and Ireland (rather than Ireland and another Member State).

Jobseekers Benefit (paid under the Social Welfare Consolidation Act) and Jobseeker's Allowance (contribution-based) payment from the UK are listed in the draft head by way of example.

#### **Head 5 - Amendment to s. 249 Absence from the State or imprisonment**

“Include the following new subsection after subsection 17

17A: Regulations may provide for adaptations to the absence from the State provisions where a person is present in a specified third country while they are absent from the State.”

#### *Purpose of Head*

Section 249 provides *inter alia* that a person shall be disqualified from receiving certain payments unless regulations provide otherwise.

The purpose of this Head is to allow the Minister to make regulations to ensure that the absence from the State provisions allow the continuation of certain payments to people living in the UK, i.e., to maintain the current arrangements.

## **Head 6 - Provisions relating to entitlement (Part 9, Chapter 1)**

Insert the following two new subsections after section 249

“249A Regulations may provide for the Minister to make arrangements with regard to eligibility for frontier workers where the frontier in question is that between Ireland and the UK.

249B Where a person is in receipt of any family benefits from a specified third country the Minister may by Regulations provide for partial payment to be made up to a maximum of the equivalent value of the corresponding payment or payments in Ireland.”

### *Purpose of the proposed new 249A*

The purpose of this Head is to allow the Minister to make regulations regarding frontier workers where the frontier crossed is that between Ireland and the UK in order to maintain the current arrangements in that regard.

### *Purpose of the proposed new 249B*

The purpose of this Head is to allow the Minister to make regulations to provide for the calculation of supplementary payments, where appropriate, where a person is in receipt of family benefits from both the UK and Ireland as happens at present.

## **Head 7 – Amendment to s. 261 Exchange of Information**

Insert the following new subsection after subsection (3)

(4) Regulations may provide for information to be exchanged with the proper authorities in the UK for the purposes of this Act or the control of schemes administered by or on behalf of the Minister or the Department.”

### *Purpose of Head*

Section 261(2A) provides that information held by the Minister for Employment Affairs and Social Protection for the purposes Act or the control of schemes administered by or on behalf of the Minister or the Department may be transferred to certain other states.

The purpose of this Head is to allow the Minister to make regulations to ensure that the UK can continue to be covered by existing data exchange provisions. This will be done in line with the provisions of the General Data Protection Regulation (GDPR).

## Head 8 Amendment to Section 287 Reciprocal Arrangements

(i) In subsection (1) to delete:

“State pension (non-contributory) and blind pensions, widow’s (non-contributory) pension, widower’s (non-contributory) pension, surviving civil partner’s (non-contributory) pension, guardian’s payment (non-contributory), jobseeker’s allowance and child benefit”

and replace this with:

“social assistance payments under Part 3 and child benefit”

So that the subsection reads as follows:

287.—(1) The Minister may make such orders as may be necessary to carry out any reciprocal or other arrangements made with any international organisation, any other state or government or the proper authority under any other government, in respect of matters relating to insurance and benefits under Part 2, **social assistance payments under Part 3 and child benefit** and may by any such order make any adaptations of and modifications in respect of these matters that he or she considers necessary.

(ii) To insert the following two new subsections after subsection (2)

(3) The Minister may make such orders as may appear to be desirable to enable coordination, whether on foot of an arrangement or not, between the social security systems of Ireland and any third country which is a former member of the EU, of a type similar to the coordination between those two social security systems which existed prior to the departure of that country from the EU or prior to the end of any transition period before such departure in respect of matters relating to insurance and benefits under Part 2, social assistance payments under Part 3 and child benefit and may by any such order make any adaptations of and modifications in respect of these matters that he or she considers necessary. Such orders may specify the categories of persons to whom the orders are applicable.

(4) Without prejudice to the generality of subsection (1), orders made under that subsection may, notwithstanding the absence of any arrangement made with the third country in question, amend orders made under this section to carry out any arrangements made with that country or its government or the proper authority under its government.

#### *Purpose of the Head*

It appears that an amendment along the lines of that set out at (ii) above is necessary in order to ensure maintenance of the current arrangements vis a vis the UK. A reference to allowing the regulations to specify the personal scope has also been included. The amendment at (i) is to ensure consistency with these two new proposed subsections.

#### **Head 9 - Commencement**

Provide for the commencement of the Part on the lines of the following -

This Part shall come into operation on such day or days as the Minister for Employment Affairs and Social Protection may by order or orders appoint either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or provisions.

## **Part 12 – Amendments to the Protection of Employees (Employers’ Insolvency) Act 1984**

*Department of Employment Affairs and Social Protection*

### **Introduction**

The purpose of the Insolvency Payments Scheme is to protect outstanding wage related entitlements owed to employees in the event of the insolvency of their employer. The scheme operates under the Protection of Employees (Employers’ Insolvency) Act 1984. The scheme covers employees who are employed in Ireland by an employer who has become insolvent under the laws, regulations and administrative procedures of another Member State.

The overall purpose of the amendments in this Part are to provide for employees who are employed or habitually employed in the State to continue to be covered by the scheme where their employer has been made insolvent under the laws of the United Kingdom.

### **Head 1: To amend definitions in Section 1(1) in the Act to ensure applications can be submitted by administrators of employers who have been made insolvent under the laws of the United Kingdom on behalf of employees employed or habitually employed in Ireland**

Section 1(1) of the Act is amended by the substitution of the following for the definition of ‘competent authority’ -

“ ‘competent authority’ means -

(a) the authority referred to in Article 2(1) of Council Directive 80/987/EEC of

20 October 1982 as amended by Article 1(2) of Directive 2002/74/EC of the European Parliament and of the Council of 23 September 2002 or

(b) in the case of an employer deemed to be in a state of insolvency where a request has been made for the opening of collective proceedings based on the insolvency of the employer as provided for under the laws, regulations and administrative procedures of the United Kingdom, and involving the partial or total divestment of the employers assets and the appointment of a liquidator, or a person performing a similar task and the authority which is competent pursuant to the said provisions has –

(i) either decided to open the proceedings, or

(ii) established that the employer’s undertaking or business has been definitively closed down and that the available assets are insufficient to warrant the opening of the proceedings.’ “.

Section 1(1) of the Act is amended by the substitution of the following for the definition of ‘relevant officer’-

“ ‘relevant officer’ means an executor, an administrator, the official assignee or a trustee in bankruptcy, a liquidator, a receiver or manager, a trustee under an arrangement between an employer and his creditors or under a trust deed for his creditors executed by an employer, or

(a) where the employer is an undertaking which is insolvent under the laws, regulations and administrative procedures of another Member State in accordance with Article 2(1) of Council Directive 80/987/EEC of 20 October 1980 as amended by Article 1(2) of Directive 2002/74/EC of the European Parliament and of the Council of 23 September 2002, or

(b) where the employer is an undertaking which is insolvent under the laws, regulations and administrative procedures of the United Kingdom,

and the employees concerned are employed or habitually employed in the State, the person appointed by the appropriate competent authority to perform the functions of a relevant officer.”.

*Purpose of Head:*

Article 2(1) of EU Directive 80/987/EEC as amended by Article 1(2) of Directive 2002/74/EEC provides the definition of competent authority under the Act. This definition currently covers the UK as a “Member State”. The first amendment in this head is to include an employer in a state of insolvency under the laws of the UK within the Definition of “competent authority”.

The second amendment in this head is to include in the definition of “relevant officer” the equivalent officer relating to an employer which has been made insolvent under the laws of the United Kingdom where the employees concerned are employed or habitually employed in the State. This will ensure that administrators of employers which have been made insolvent under the laws of the United Kingdom can submit applications on behalf of employees who are employed or habitually employed in the State.

**Head 2 - To amend Section 1 (3) to include circumstances where an employer has been made insolvent under the laws of the United Kingdom**

Section 1(3) of the Act is amended-

- (1) In paragraph (e) by the substitution of “in the State; or” for “in the State.” and
- (2) by the insertion of the following after paragraph (e)-

“(f) the employer is an undertaking which is insolvent under the laws, regulations and administrative procedures of the United Kingdom and the employees concerned are employed or habitually employed in the State”

*Purpose of Head:*

Section 1(3) defines the circumstances in which an employer can be taken to be insolvent for the purposes of the Act.

The purpose of this Head is to ensure that employees who are employed or habitually employed in Ireland and whose employers are made insolvent under the laws of the UK continue to be covered.

**Head 3 - To amend Section 4 (1) to include the date an employer becomes insolvent under the laws of the United Kingdom**

Section (4) (1) of the Act is amended-

(1) In paragraph (g) by the substitution of “other Member State, or” for “other Member State.” and

(2) by the insertion of the following after paragraph (g) -

“(h) where the employer is an undertaking which is insolvent under the laws, regulations and administrative procedures of the United Kingdom and the employees concerned are employed or habitually employed in the State, the date on which the insolvency was established under the laws, regulations and administrative procedures of the United Kingdom.”.

*Purpose of Head:*

Section 4 (1) specifies the date on which an employer will be regarded as having become insolvent. The purpose of this Head is to continue to include the date an employer is made insolvent under the laws of the UK.

**Head 4: To amend Section 7(3)(b) of the Act to include the amount certified by an actuary or a person performing a similar task where the employer is an undertaking which is insolvent under the laws of the United Kingdom**

Section 7(3)(b) of the Act is amended by the substitution of paragraph (b) with the following-

“(b) the amount certified by an actuary or,

(i) where the employer is an undertaking which is insolvent under the laws, regulations and administrative procedures of another Member State in accordance with Article 2(1) of Council Directive 80/987/EEC of 20 October 1980 as amended by Article 1(2) of Directive 2002/74/EC of the European Parliament and of the Council of 23 September 2002 and the employees concerned are employed or habitually employed in the State, an actuary or person performing a similar task or

(ii) where the employer is an undertaking which is insolvent under the laws, regulations and administrative procedures of the United Kingdom and the employees concerned are employed or habitually employed in the State, an actuary or person performing a similar task,

to be necessary for the purpose of meeting the liability of the scheme on dissolution to pay the benefits provided by the scheme or Personal Retirement Savings Account (within the meaning of the Pensions Act, 1990) to or in respect of the employees of the employer.”.

*Purpose of Head:*

Section 7 of the Act allows claims to be made where an employer has become insolvent and has failed to pay contributions in accordance with the occupational pension scheme or Personal Retirement Savings Accounts (PRSA). Section 7(3) of the Act sets out the maximum amount that can be paid out the case of employer contributions. Section 7(3)(b) covers amounts which have been certified by an actuary or a person performing a similar task in situations where employers are in insolvent under the laws of another Member State and the employees are employed or habitually employed in the State. The purpose of this Head is to ensure amounts certified by an actuary or a person performing a similar task in relation to employers made insolvent in the UK, and the employees are habitually employed in the State, continue to be covered by the scheme.

## **Head 5: To insert a section to allow the exchange of information with a relevant officer appointed to an employer which is in state of insolvency under the laws of the United Kingdom**

The Act is amended by the insertion of the new following section after Section 8 -

“8A. – regulations may provide for information to be exchanged with a relevant officer of an employer which is an undertaking which is insolvent under the laws, regulations and administrative procedures of the United Kingdom

### *Purpose of Head:*

The purpose of this Head is to to ensure information can be exchanged with a relevant officer appointed to an employer which is in a state of insolvency under the laws of the United Kingdom. This will be done in line with the provisions of the General Data Protection Regulation (GDPR).

## **Head 6 - Commencement**

Provide for the commencement of the Part on the lines of the following -

This Part shall come into operation on such day or days as the Minister for Employment Affairs and Social Protection may by order or orders appoint either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or provisions.

## **Part 13 – Amendments to the Interpretation Act 2005**

### *Department of the Taoiseach*

Unlike the other Parts of the Bill which relate to a no-deal Brexit, this Part provides for a scenario in which the UK enters a transition period before leaving the EU.

It is a very short Part of the Bill, consisting of only three Heads, and will amend the definition of “Member State” to include the UK for the duration of the transition period as set out in the Withdrawal Agreement. Under the Withdrawal Agreement the UK will remain subject to EU law for the transition period.

In the event that the UK leaves on 29 March without a deal, this part of the Bill will be removed before enactment, or if enacted, it will not be commenced.

### **Head 1 - Deletion of Definition**

Provide for:

The deletion of the definition of Member State in Part 2 of the Schedule to the Interpretation Act 2005

### **Head 2 - Insertion of Definition**

Provide for:

The insertion of the definition of the term Member State in Part 1 of the Schedule to the Interpretation Act 2005, in order to comprehend and include the UK for the duration of the transition/implementation period set down in the Withdrawal Agreement, wherever the term is found in the Statute Book.

Suggested text:

The insertion of the following "Member State" means, where the context so admits, a Member State of the European Communities or of the European Union; and during the transition period [as set out in the Withdrawal Agreement between the United Kingdom and the European Union] [subject to further discussion with OPC/AGO it may be necessary to provide for the transition period to be determined in an S.I.] when "Member State" means a Member State of the European Communities or of the European Union and the United Kingdom?

*Explanatory Note:*

The two-Part Schedule to the Interpretation Act 2005 lists the Interpretation of Particular Words and Expressions. The definition of the term "Member State" is in Part 2 of the schedule which only concerns enactments which come into effect after the commencement of the Interpretation Act 2005. As there are likely many references to "Member State" in legislation predating the Interpretation Act 2005 it is recommended that the definition of the term "Member State" should appear and be interpreted in Part 1 of the Schedule so as to ensure that the term (wherever it appears in the Statute Book) is properly understood to include the United Kingdom for the duration of the transition period as set out in the Withdrawal Agreement.

**Head 3 - Commencement**

Provide for the commencement of the Part on the lines of the following:

This Part shall come into operation on such day or days as the Taoiseach may by order or orders appoint either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or provisions.

## **Part 14 – Amendments to the Extradition Act 1965 to apply the provisions of the 1957 Council of Europe Convention on Extradition**

### *Department of Justice and Equality*

One of the key issues identified by the Department of Justice and Equality, in the context of a no-deal Brexit, is to ensure that effective extradition arrangements are maintained between Ireland and the UK. In that regard it is proposed to apply the provisions of the 1957 Council of Europe Convention on Extradition to extradition between Ireland and the UK by way of Statutory Instrument – a “Part II” Order made in accordance with section 8 of the Extradition Act 1965. This will necessitate an amendment to the Extradition Act 1965 to ensure that the current arrangement for extradition of citizens between Ireland and the UK, which exists under the European Arrest Warrant system, continues to apply.

### **Head 1 Amendment to section 14 (Irish citizens) of the Extradition Act 1965**

Provide for: an amendment to section 14 of the Extradition Act 1965 to enable extradition of Irish citizens on a reciprocal basis.

#### *Explanatory Note:*

It is proposed to apply the provisions of the 1957 Council of Europe Convention on Extradition to extradition between Ireland and the UK by way of Statutory Instrument – a “Part II” Order made in accordance with section 8 of the Extradition Act 1965.

The amendment to section 14 of the 1965 Act will ensure that the current reciprocal arrangement in relation to extradition of citizens continues as the UK already extradites, and proposes to continue to extradite, its citizens.

## Head 2 -

Provide for: the inclusion of a new provision (Electronic transmission of documents), along the lines of section 23A (Facsimile transmission of documents), to allow transmission of supporting documents for a request for extradition by electronic means.

### **“23B Electronic transmission of documents**

(1) For the purposes of a request for extradition from a Convention country, a copy of a document to which paragraph (a), (b), (c), (d) or (e) of section 25(1) applies may be transmitted by the Central Authority of the Convention country concerned to the Central Authority in the State by electronic means.

(2) The copy of a document transmitted in accordance with subsection (1) shall include a copy of a certificate of the Central Authority of the Convention country concerned stating that the copy of the document so transmitted corresponds to the original document.

(3) If the Central Authority in the State is not satisfied that the copy of a document transmitted to him in accordance with subsection (1) corresponds to the document of which it purports to be a copy, he may require the Central Authority of the requesting country to cause the original document or a true copy thereof to be provided to him by—

(a) a diplomatic agent of the requesting country, accredited to the State, or

(b) any other means agreed by the Central Authority in the State and the Central Authority of the Convention country concerned,

within such period as he may specify.”

#### *Explanatory Note:*

This Head provides for the transmission of documents supporting a request for extradition under the 1957 Convention by modern means of communication.

## Head 3 - Commencement

Provide for the commencement of the Part on the lines of the following -

This Part shall come into operation on such day or days as the Minister for Justice and Equality may by order or orders appoint either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or provisions.

## **Part 15 – Amendments to the Immigration Acts 1999 and 2003**

*Department of Justice and Equality*

### **Head 1 - Amendment of section 3 of the Immigration Act 1999 and section 5 of the Immigration Act 2003**

*Provide that:*

Section 3 of the Immigration Act 1999 is amended by (a) the substitution of “subsection 13” for “section 5 (prohibition of refoulement) of the Refugee Act, 1996”

And (b) by the insertion of the following after subsection 12:

(13) A person shall not be expelled or returned in any manner whatsoever to the frontier of a territory where, in the opinion of the Minister—

- (i) the life or freedom of the person would be threatened for reasons of race, religion, nationality, membership of a particular social group or political opinion, or
- (ii) there is a serious risk that the person would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.

The prohibition on refoulement also applies in respect of persons to whom section 3 of the Immigration Act 1999 apply after the commencement of the International Protection Act 2015 on 31 December 2016 and before the coming into force of the provisions of this Act.

Section 5 of the Immigration Act 2003 is amended by (a) the substitution of “subsection 15” in subsection (1) for “section 5 (prohibition of refoulement) of the Refugee Act, 1996”

And (b) by the insertion of the following after subsection (14):

(15) A person shall not be expelled or returned in any manner whatsoever to the frontier of a territory where, in the opinion of the Minister—

- (i) the life or freedom of the person would be threatened for reasons of race, religion, nationality, membership of a particular social group or political opinion, or
- (ii) there is a serious risk that the person would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.

The prohibition on refoulement also applies in respect of persons to whom section 5 of the Immigration Act 2003 apply after the commencement of the International Protection Act 2015 on 31 December 2016 and before the coming into force of the provisions of this Act.

*Explanatory Note:*

Section 3 of the Immigration Act 1999, which is the legislative basis for deporting illegal immigrants had the reference to refoulement struck down by the High Court in the SG (Albania) case in 2018. It is urgently necessary in the context of a no-deal Brexit to amend this legislative lacuna.

If a person who cannot lawfully enter Ireland raises a refoulement concern to an immigration officer, the officer has no legal power to undertake such an assessment as the provision that previously existed in Section 5 of the Immigration Act 2003 was also struck down in the same case. There is an international obligation to undertake a refoulement consideration.

## **Head 2 - Commencement**

Provide for the commencement of the Part on the lines of the following -

This Part shall come into operation on such day or days as the Minister for Justice and Equality may by order or orders appoint either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or provisions.

## Part 16 – Exchange of Immigration Data with the UK<sup>4</sup>

*Department of Justice and Equality*

### Head 1 - Providing for exchange of immigration data with the UK

Insert a new section (section 55A if new Part 3 not added – section 55AE if new Part 3 added)

- (1) The provisions equivalent to Articles 44 to 50 of the GDPR shall not apply to personal data, including special category personal data, processed in connection with the immigration system or the system for the acquisition by persons of Irish citizenship.

Alternative 1 - Common Travel Area version

- (2) The Minister may provide personal data, including special category personal data and personal data relating to criminal convictions and offences, to the relevant authorities of a territory of the Common Travel Area where the Minister is of the opinion that this will assist the effective operation of the immigration system and the system of acquisition by persons of Irish citizenship, including the prevention, detention and investigation of abuses to those systems or breaches of the law in relation to those systems.

- (3) The Minister may receive and process personal data, including special category personal data and personal data relating to criminal convictions and offences, from the relevant authorities of a territory of the Common Travel Area for the purposes of ensuring the effective operation of the immigration system and the system of acquisition by persons of Irish citizenship, including the prevention, detention and investigation of abuses to those systems or breaches of the law in relation to those systems.

- (4) [In order to give effect to subsections (2) the Minister may prescribe in regulations the categories of personal data that may be provided pursuant to subsection (2).]

Alternative 2 - GDPR-equivalent version – requiring other country to have same degree of protection etc. as Ireland

- (1) The Minister may provide personal data, including special category personal data and personal data relating to criminal convictions and offences to, and receive personal data including special category personal data and personal data relating to criminal convictions and offences from, the relevant authorities in a country designated under subsection (3) where the Minister is of the opinion that this will assist the effective operation of the immigration system and the system of acquisition by persons of Irish citizenship, including the prevention, detention and investigation of abuses to those systems or breaches of the law in relation to those systems.
- (2) [In order to give effect to subsection (2) the Minister may prescribe in regulations the categories of personal data that may be transferred pursuant to subsection (2).]

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<sup>4</sup> This Part has been updated as of 12 February 2019. This Part was listed as Part 17 in version of the General Scheme published on 24 January. The former Part 16 (as published on 24 January 2019) has been removed.

(l) The Minister may designate as a country to which [categories of] personal, including special category personal data and personal data relating to criminal convictions and offences data, may be provided and from which personal data may be received for the purposes of subsection (2) a country which,

(3)

(iv) following an analysis of the legal [system] [provisions] applicable to the protection of personal data and the rights of data subjects, the Minister determines provides an equivalent degree of protection and confers equivalent rights to data subjects of such personal data to the categories of personal data to which this section applies as is provided in the State, and

(v) whose laws do not permit the transmission of personal data revived from the State to another country [in the absence of the agreement of the State] [unless that country provides an equivalent degree of protection and confers equivalent rights to data subjects of the personal data to which this section applies].

The Minister shall monitor changes in the law in any country designated under this subsection and shall, where a relevant change is made in the law in the designated country, review the effect of the change.

If the change in the law of a designated country referred to in subparagraph (b) has the effect of

—

(vi) lessening the protection of personal data or the rights of data subjects so that the legal [system] [provisions] applicable to the protection of personal data or the rights of data subjects is not equivalent to that provided in relation to the categories of personal data to which this section applies as is provided in the State, or

would allow the transmission of personal data to which this section applies to another country [in the absence of the agreement of the State] unless that other country provides an equivalent degree of protection and confers equivalent rights to data subject of the personal data to which this section applies,

the Minister shall withdraw the designation of the country under this section.

*Explanatory Note:*

This provides for exchange of immigration data with the UK. Alternatives to this approach as set out above, reference the Common Travel Area or requiring other country to have same degree of protection etc. as Ireland

## **Head 2 - Commencement**

Provide for the commencement of the Part on the lines of the following -

This Part shall come into operation on such day or days as the Minister for Justice and Equality may by order or orders appoint either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or provisions.