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**An Bille um Tharraingt Siar na Ríochta Aontaithe as an  
Aontas Eorpach (Forálacha Iarmhartacha), 2020**  
**Withdrawal of the United Kingdom from the  
European Union (Consequential Provisions) Bill 2020**

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*Meabhrán Mínitheach*  
*Explanatory Memorandum*

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**AN BILLE UM THARRAINGT SIAR NA RÍOCHTA AONTAITHE  
AS AN AONTAS EORPACH (FORÁLACHA IARMHARTACHA),  
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**EXPLANATORY MEMORANDUM**

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**Introduction**

The United Kingdom (the “UK”) left the European Union on 31 January 2020 under the terms set out in the Agreement on the Withdrawal of the United Kingdom from the European Union (the “Withdrawal Agreement”) which includes the Protocol on Ireland/Northern Ireland (the “Protocol”). The Protocol protects the peace process and avoids a hard border on the island of Ireland, while preserving the integrity of the European Union Single Market and Customs Union and Ireland’s place therein.

The Withdrawal Agreement provides for a transition period up to 31 December 2020 (the “transition period”). During the transition period, the UK remains part of the EU Single Market and Customs Union, and EU rules and regulations continue to apply to, and in respect of, the UK. Negotiations on a Future Partnership Agreement between the EU and the UK are ongoing but, regardless of their outcome, the provisions of the Withdrawal Agreement, including the Protocol, will apply.

The Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Act 2019 was enacted on 17 March 2019 as part of the Government’s preparations for a possible no deal Brexit in 2019. The Act consisted of 15 Parts under the remits of nine Ministers. Parts 1, 14 and 15 were subsequently commenced while Part 3 was repealed and its provisions addressed in the Industrial Development (Amendment) Act 2019. The remaining Parts of the 2019 Act were not commenced because the Withdrawal Agreement was concluded and entered into force.

While the Government supports the closest possible future partnership between the European Union and the UK, significant changes will arise at the end of the transition period, regardless of the outcome of the future relationship negotiations.

The Government has used the transition period to enhance and refine its readiness work. As part of this work, primary legislation is again required to support measures that address a number of the complex issues that could arise for citizens and businesses post transition. An omnibus Bill is considered the most effective way to address this broad range of issues.

On 20 October 2020, the Government approved the publication of the Withdrawal of the United Kingdom from the European (Consequential Provisions) Bill 2020. This Bill is made up of 21 Parts relating to matters

within the remits of 11 Ministers. Each Part will be commenced by the individual Minister at the appropriate time.

A key difference between the 2019 Act and 2020 Bill is that the 2019 Act sought to address issues arising in a no deal scenario while the 2020 Bill has been prepared in light of the conclusion of the Withdrawal Agreement and to deal with permanent change that will take place at the end of the transition period.

The overarching aim of the Bill is to address the wide range of complex issues that could arise for citizens and businesses post transition. It will seek to protect citizens and consumers, to reduce the possibility of a serious disturbance in the economy of the State and facilitate the sound functioning of a number of key markets, sectors and fields, and ensure our businesses are not disadvantaged.

Protecting the Good Friday Agreement in all its parts, supporting North-South cooperation and the all island economy, are key underpinnings to the Government's approach in a number of provisions of this Bill. The North-South cooperation arrangements bring tangible benefits to the daily lives of people in the border region on the island of Ireland, and contribute to economic opportunity and development. They are also a very practical outworking of the peace process and of the Good Friday Agreement, which allows for the normalisation of relationships between people across the island, to mutual benefit.

In addition, a key part of Ireland's planning and preparations is protecting and maintaining the Common Travel Area (the "CTA") and the associated rights and privileges. Both the Irish and British Governments are committed to maintaining the CTA, and have committed to undertaking all the work necessary, including through legislative provision, to ensure that the CTA rights and privileges are protected.

The Bill prioritises those issues that need to be addressed urgently and immediately through primary legislation at national level. Many other issues continue to be addressed at a national level as part of the implementation of the Government's Brexit Readiness Action Plan, through secondary legislation, policy and economic responses, on an administrative basis and through targeted Brexit related resources, as well as at EU level.

In recognition of the importance, breadth and scope of the Bill, the Government will work closely with all Members of the Oireachtas to ensure the Bill will pass through the Houses of the Oireachtas in a timely fashion and be ready for commencement before 31 December 2020. The draft General Scheme of the Bill was published on 9 September 2020 along with the Government's Brexit Readiness Action Plan. As requested by the Business Committee of the Oireachtas, arrangements were made to brief the relevant Houses of the Oireachtas Committees on the contents of the Bill.

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

*Section 1* provides in standard form for the short title and collective citation and construction of the Bill.

*Section 2* provides for the Minister for Foreign Affairs to commence the Bill and for other Ministers to commence their Part or Parts of the Bill, as appropriate.

*Section 3* is a standard provision that provides the authority for any expenses incurred by the Minister in the administration of the Act to be met out of funds provided by the Oireachtas.

*Section 4* repeals those Parts of the Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Act 2019 which are either spent or which, following the entry into force of the Withdrawal Agreement, can no longer be commenced, as well as provisions in other legislation superseded by provisions in this Bill.

## **Part 2 – Arrangements in relation to Health Services**

*Section 5*, in order to support the maintenance of Common Travel Area arrangements, gives the Minister for Health the power to make an Order, or Orders, and Regulations to give effect to the healthcare and reimbursement arrangements provided for in the enduring Memorandum of Understanding between Ireland and the UK that will apply between the States after the end of the transition period. An Order made under this Part may specify the category or categories of persons and services to whom the Order applies. Regulations made under this Part will set out the detailed operational and administrative arrangements necessary to operationalise the healthcare arrangements between the State and the UK.

## **Part 3 – Reimbursement of Health Expenses**

The purpose of this Part of the Bill is to make provision for a scheme to enable the reimbursement of necessary medical expenses incurred by eligible residents of Northern Ireland during a temporary stay in a Member State of the European Union, other than the State, a member of the European Economic Area and Switzerland.

*Section 6* defines terms and provides the power to set the date the scheme applies from and to whom the scheme shall apply.

*Section 7* provides for the implementation of a scheme for the reimbursement of expenses in respect of necessary medical treatment incurred while on a temporary visit to an eligible EU Member State, EEA Member or Switzerland where it is satisfied that such a claim complies with the terms of the scheme.

*Section 8* provides regulation making powers for the Minister for the administrative arrangements to give full effect to the provisions of Part 3 of the Bill. It also outlines the principles and policies which the Minister shall have regard to when drafting the regulations.

*Section 9* provides that the Health Service Executive (the “HSE”) may enter into arrangements with competent institutions in other EU Member States, in an EEA Member or in Switzerland to facilitate the operation of the scheme.

*Section 10* provides that the HSE may have regard to the decisions of the EU Administrative Commission for the Coordination of Social Security Systems in relation to the operation and administration of the European Health Insurance Card scheme that may be relevant to the administration of this scheme.

*Section 11* requires the HSE to carry out a review of the operation of the Act not later than two years after its commencement and that such a Report should be submitted to the Minister.

## **Part 4 – Amendment of Companies Act 2014**

*Section 12* provides for miscellaneous amendments to the Companies Act 2014 to facilitate the operation of a substitute securities settlement system, compatible with the law of the European Union after the transition period.

## **Part 5 - Amendment of the Employment Permits Act 2006**

*Section 13* provides for an amendment to Section 10(2) of the Employment Permit Acts 2006 to facilitate the continued inclusion of UK citizens, including UK citizens from the Channel Islands and the Isle of Man, in the EEA employee count for the purposes of the 50/50 rule which requires employers to ensure at least 50% of their workforce are from Ireland/EEA or the Swiss Confederation. The 50/50 rule is a measure which underpins the Government's employment creation objectives by requiring employers in the State to hire in a balanced manner from the domestic labour market.

## **Part 6 - Qualification to carry out activity relating to Fluorinated Greenhouse Gases**

*Section 14* defines terms.

*Section 15* provides for an additional six-month period of validity after the transition period for UK issued F-Gas certificates held by persons immediately prior to the end of the transition period. They also provide for recertification of these individuals during that six-month period by way of application to the Environmental Protection Agency (the "EPA") within the first four months of the additional four month validity period. This section also permits the EPA to process an application received in advance of the end of the transition period, made under the European Union (Fluorinated Greenhouse Gas) Regulations 2016, after the end of the transition period.

## **Part 7 – Amendment of the Student Support Act 2011**

*Section 16* provides a definition for the purposes of this Part.

*Section 17* defines what a "relevant specified jurisdiction" means.

*Section 18* defines what an approved institution is for the purposes of the scheme. Publicly funded higher education institutions in all extant Member States are recognised. The amendment allows for the recognition of institutions in a prescribed third country such as the UK after the transition period ends.

*Section 19* 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 2011 Act. With regard to the recognition of qualifications awarded following the successful completion of an approved course, these are limited to recognition within the State or another Member State. An amendment is included to cover arrangements, systems and procedures in a prescribed third country such as the UK after the transition period ends.

*Section 20* defines what an approved student is for the purposes of the scheme. The amendment provides for the Minister to prescribe students in a third country such as the UK after the transition period ends.

*Section 21* defines the policies and principles that the Minister shall have regard to when prescribing a class of person as an approved class for student grant purposes.

## **Part 8 - Taxation**

### **Chapter 1 – Definitions**

*Section 22* is a standard legislative provision to provide for the inclusion of additional definitions.

## **Chapter 2 – Income Tax**

The purpose of this chapter is to amend various sections of the Taxes Consolidation Act 1997, to seek to ensure that income tax measures continue to apply to Irish taxpayers as appropriate after the end of the transition period. This includes changes to measures dealing with: income tax exemption for interest payable on savings certificates or similar securities issued by the UK Government; abatement from income tax on restricted shares; the Key Employee Engagement Programme; taxation treatment of Hepatitis C compensation payments; Foster Care; exemption of certain earnings of writers, composers and artists; tax exemptions for charities; mortgage interest relief; relief for insurance against expenses of illness; Seafarer Allowance; Fishers Tax Credit; relief for fees paid for third level undergraduate education; sportspersons' relief; relief for investments in corporate trades; pension-related income tax reliefs; and, anti-avoidance provisions. The sections extend relevant legislative definitions to include the UK in order to allow for the continuation of existing arrangements in the immediate future for beneficiaries of the measures.

*Section 23* amends section 42 of the Taxes Consolidation Act 1997. That section provides an exemption from income tax for interest payable on savings certificates issued by the Minister for Finance, or savings certificates or similar securities issued by the government of an EU or EEA Member State. The amendment allows retention of the exemption for savings certificates or other similar securities issued by the government of the UK.

*Section 24* amends section 128D of the Taxes Consolidation Act 1997 which provides for an abatement from the charge to income tax if certain shares are held in trust for a period of more than five years. 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.

*Section 25* amends section 128F of the Taxes Consolidation Act 1997 which provides for the Key Employee Engagement Programme. This measure extends the relevant definitions to ensure that entities established in the UK remain included.

*Section 26* amends section 191 of the Taxes Consolidation Act 1997 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.

*Section 27* amends section 192BA of the Taxes Consolidation Act 1997 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.

*Section 28* amends Section 192F of the Taxes Consolidation Act 1997 to provide for the extension of the exemption to UK student support payments in addition to EU member state payments in certain circumstances.

*Section 29* amends section 195 of the Taxes Consolidation Act 1997 which provides for the exemption of certain earnings of writers, composers and artists from income tax. This measure is currently restricted to certain residents of EEA states and it is proposed to extend the relevant definitions to ensure that UK residents remain included.

*Sections 30 and 31* amend sections 208A and 208B of the Taxes Consolidation Act 1997 to ensure that certain tax exemptions continue to apply to charities and donations established in the UK.

*Sections 32 and 33* amend sections 244 and 244A of the Taxes Consolidation Act 1997 to ensure that certain properties situated in the UK remain eligible for mortgage interest relief.

*Section 34* amends section 470 of the Taxes Consolidation Act 1997 to ensure that income tax relief remains available for certain health insurance policies granted by insurers established in the UK.

*Section 35* amends section 472B of the Taxes Consolidation Act 1997 to ensure that the Seafarer Allowance remains available for work undertaken on certain sea-going ships that are registered on UK registers.

*Section 36* amends section 472BA of the Taxes Consolidation Act 1997 to ensure that the Fisher Tax Credit remains available for work undertaken on certain fishing vessels that are registered on UK registers.

*Section 37* amends section 473A of the Taxes Consolidation Act 1997 to ensure that tax relief for fees paid for third level undergraduate education continues to apply in respect of UK-based institutions.

*Section 38* amends section 480A of the Taxes Consolidation Act 1997 to ensure that sportspersons relief may continue to apply in respect of certain UK residents.

*Sections 39 and 40* amend sections 489 and 490 of the Taxes Consolidation Act 1997 which provide relief for investments in corporate trades. 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.

*Sections 41 to 48* amend sections 770, 772, 772A, 784, 784A, 785(1A), 787M, and 790B of the Taxes Consolidation Act 1997 to ensure that Irish taxpayers may continue to avail of the various pension-related income tax reliefs. The amendments also ensure that UK occupational pension schemes and other retirement plans may continue to operate in the State and avail of the appropriate tax reliefs.

*Sections 41 and 42* provide that UK occupational pension schemes may continue to obtain “exempt approved” status under the Taxes Consolidation Act 1997. This is required for the purposes of tax relief on contributions to schemes and the exemption of scheme income.

*Sections 43, 44 and 46* provide that UK annuity providers may continue to obtain tax approval under the Taxes Consolidation Act 1997 for their retirement products. Policyholders can avail of tax relief for premiums paid in respect of approved policies.

*Section 45* provides that UK entities can continue to act as qualifying fund managers for the purposes of the Approved Retirement Fund regime.

*Section 47* provides that UK employees or self-employed individuals who come, or return, to Ireland may continue to obtain tax relief for contributions to pension plans with UK pension or EU (excluding Ireland) providers.

*Section 48* provides that an Irish pension scheme may accept contributions from a UK undertaking and obtain tax exemptions in respect of scheme income.

*Section 49* amends section 806(11)(a) of the Taxes Consolidation Act 1997 to include reference to the UK to maintain the existing position for anti-avoidance provisions relating to income tax in section 806 and specific capital gains tax anti-avoidance provisions in sections 579, 579A and 590 of the Act.

*Section 50* amends section 1032 of the Taxes Consolidation Act 1997 to allow qualifying UK residents retain entitlement to certain personal allowances, deductions and reliefs for the purposes of calculating their Irish income tax liability, in recognition of the close economic links between our two States.

### **Chapter 3 – Corporation Tax**

*Section 51* amends subsections (2B) and (3)(d) of section 130 of the Taxes Consolidation Act 1997. Section 130 of the Taxes Consolidation Act 1997 is an anti-avoidance provision which acts to re-characterise interest as a distribution in certain circumstances. Section 130(2B) provides an exception from this treatment where the payment is to a company which is a resident of another EU Member State. Section 130(3) provides in certain circumstances, that transfers between two Irish resident companies are not treated as distributions where they are part of an Irish or EU corporate group. The amendment will ensure that the current treatment continues to apply to Irish subsidiaries of UK-resident companies, following the end of the transition period.

*Section 52* concerns charges on income for corporation tax purposes and will amend Taxes Consolidation Act 1997 Section 243(4) to include banks, stock exchanges and discount houses in the UK. If the UK leaves the EU without a trade deal, 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 allow for the continuation of existing arrangements in the immediate future.

*Section 53* concerns group loss relief provisions and will amend Taxes Consolidation Act 1997 Sections 410 and 411 to include the UK within the definition of “relevant Member State” where used, other than for the purposes of Section 411(2A) and Section 420C.

*Section 54* concerns loans to participators and will amend Taxes Consolidation Act 1997 Section 438 to include the UK within the tax treatment applicable to Member States of the European Communities. This will allow for the continuation of existing arrangements in the short term and allow time to examine any potential impact on bona-fide business transactions.

*Section 55* concerns relief from tax for certain start-up companies and will amend Taxes Consolidation Act 1997 Section 486C to extend the provisions applying to EEA States to include the UK.

*Section 56* concerns relief from Capital Gains Tax on a transfer of assets under a scheme of reconstruction or amalgamation of companies. It will amend Taxes Consolidation Act 1997 Section 615 to extend the provisions currently applying to a relevant Member State to include the UK.

*Section 57* amends section 616(1) of the Taxes Consolidation Act 1997 which provides interpretations for the purposes of Chapter 1 of Part 20 of the Act. The amendment will ensure that companies which are resident in the UK will continue to be regarded as being in a group of companies following the end of the transition period, so that the reliefs in sections 586 (company amalgamations by exchange of shares), 587 (company reconstructions and amalgamations), 618 (transfers of trading stock within a group) and 620 (replacement of business assets by members of a group) of the Act will continue to apply in the case of such companies. In addition, it will ensure that an immediate tax charge under section 625 of the Act will not arise solely as a result of the UK ceasing to be an EU Member State.

*Section 58* concerns tax credit for R&D expenditure and will amend Taxes Consolidation Act 1997 Section 766 to include the UK within the definition of relevant Member State. This will allow for the continuation of existing arrangements in the immediate future, pending further research on the potential consequences for established R&D activities in the State.

#### **Chapter 4 - Capital Gains Tax**

*Section 59* amends section 541C of the Taxes Consolidation Act 1997. That section provides relief from capital gains tax for fund managers in respect of investments of a venture capital fund. The section is amended so that investments made in the UK can be taken into account in the calculation of the amount of the relief.

*Section 60* amends section 604A of the Taxes Consolidation Act 1997. That section gives relief from capital gains tax in respect of 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 a minimum period of time. The current position, whereby the relief applies to the UK, is being maintained.

#### **Chapter 5 – Value-Added Tax**

*Section 61* amends Section 53 of the VAT Consolidation Act 2010. This is a referential amendment consequent to the introduction of postponed accounting in Section 62.

*Section 62* introduces a new Section 53A of the VAT Consolidation Act. This change introduces postponed accounting for VAT for all importers registered for VAT in Ireland. It also introduces a modification of the postponed accounting scheme which will make authorisation for the scheme subject to criteria and conditions and will enable the Revenue Commissioners to exclude a person from the scheme.

*Section 63* amends Section 56 of the VAT Consolidation Act. This concerns Section 56 VAT Authorisations, which entitles authorised taxable persons to receive qualifying goods and services at the zero rate of VAT. This amendment makes participation in the scheme subject to a number of conditions, including compliance with customs legislation and tax rules. The amendment also gives the Revenue Commissioners the power to cancel an authorisation where there are reasonable grounds to do so, and to provide for a penalty for failure to adhere to conditions of the scheme.

*Section 64* amends Section 58 of the VAT Consolidation Act to allow for the restriction of the operation of the VAT Retail Export Scheme in two ways. It provides that the value of qualifying goods must exceed €175 for third country residents in order to qualify for the Scheme. It also requires UK citizens to show proof that VAT and customs and excise duties have been paid. In addition, provision is made for the deletion of the reference to intended emigrants in the definition of “traveller” in section 58(1).

*Section 65* amends Section 120 of the VAT Consolidation Act to provide regulation making powers with regard to postponed accounting (Section 62) and Section 56 VAT Authorisations (Section 63).

#### **Chapter 6 – Stamp Duties**

*Section 66* amends section 75 of the Stamp Duties Consolidation Act 1999 which 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. If this section is not amended, this relief would not apply for purchases made by UK-based intermediaries on behalf of their clients.

*Section 67* amends section 75A of the Stamp Duties Consolidation Act 1999 which provides counterparty relief for share transfers. This is 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. Without amendment, all purchases in a chain of transactions by UK-based counterparties would be subject to the 1% stamp duty.

*Section 68* amends section 80 of the Stamp Duties Consolidation Act 1999, which grants a relief from stamp duty in the case of certain company reconstructions and amalgamations, to include UK-based companies where they merge with or acquire Irish-based companies.

*Section 69* amends section 80A of the Stamp Duties Consolidation Act 1999 which concerns the demutualisation of assurance companies to allow that instruments (shares, stock, etc.) issued by acquiring companies incorporated in the UK are covered by the stamp duty exemption currently available under such circumstances.

*Section 70* amends section 124B of the Stamp Duties Consolidation Act 1999 which concerns certain premiums of life assurance so that UK and Gibraltar-based assurers will be liable to the current 1% levy on life assurance premiums on their Irish business.

*Section 71* amends section 125 of the Stamp Duties Consolidation Act 1999 which concerns certain premiums of non-life insurance so that UK and Gibraltar-based insurers will be liable to the current 3% levy on certain non-life insurance premiums on their Irish business.

#### **Chapter 7 – Capital Acquisitions Tax**

*Section 72* amends section 89 of the Capital Acquisitions Tax Consolidation Act 2003 which provides for a reduction in the inheritance tax or gift tax to be paid in respect of agricultural property. The existing arrangements are being retained to enable the relief to continue to apply to agricultural property situated in the UK and so that such property is to be taken into account in calculating the value of agricultural property owned by a farmer for the purposes of establishing entitlement to this relief.

#### **Chapter 8 – Excise**

*Section 73* amends Section 104 of the Finance Act 2001 to extend the full relief from excise duty for excisable products delivered to a tax-free shop at an airport to include a tax-free shop at a port.

#### **Part 9 - Financial Services: Settlement Finality**

In 2018 the European Commission adopted temporary and conditional equivalence decisions for UK-based market infrastructure covering Central Counter-Parties (CCPs) and Central Securities Depositories (CSDs) to minimise market disruption in the event of a disorderly UK withdrawal from the EU. The conclusion and entry into force of the Withdrawal Agreement means that these decisions no longer apply. On 21 September, the Commission adopted a time limited equivalence decision in order to give market participants 18 months to reduce their exposure to UK CCPs. A further equivalence decision for CSDs is also being progressed to allow the Irish market migrate to the new settlement system by the end of March 2021. In order to support the full implementation of the Commission equivalence decisions in this area, legislation is required to address the fact that the relevant EU law will no longer apply to or in respect of the UK from the end of the transition period and to ensure the protections provided under the EU Settlement Finality Directive (98/26/EC) and the Irish Settlement Finality Regulations (SI 624 of 2010) continue to apply to Irish market participants in UK based settlement systems.

*Section 74* is a standard legislative provision to provide for the inclusion of additional definitions.

*Section 75* provides for the temporary designation of settlement systems already designated by the Bank of England under their domestic Settlement Finality legislation. Within three months of the end of the transition period, the operator of a relevant arrangement must notify the Minister and Central Bank of Ireland of its intention to avail of temporary designation up to a maximum period of nine months after that date. This will allow the protection of the Settlement Finality Regulations (SI 624/2010) to be extended to Irish participants of UK systems for the time period specified or until they have acquired designation under Section 76.

*Section 76* provides for the Minister of Finance to designate a UK-based system (“relevant arrangement”) for the purposes of the Settlement Finality Regulations (SI 624/2010). This will extend the protections of the regulations to Irish firms in the UK. The legislation protects payments and transfers of securities made by Irish participants by ensuring that trades entered into a system fully settle even if one of the participants attempts to revoke the trade or becomes insolvent. This will be required for Irish firms to continue using systems in the UK when it becomes a third country. The Central Bank of Ireland is required to carry out a technical equivalence assessment of the UK national laws governing the system for its equivalence with relevant Irish laws and an assessment of the rules of the system itself to ensure its compliance with the conditions set out in Regulation 7 of the Irish Settlement Finality Regulations (SI 624/2010).

*Section 77* provides for the necessary amendment of certain definitions in the existing Irish Settlement Finality Regulations (SI 624/2010) when those regulations are applied to a system designated under Section 75 or 76.

#### **Part 10 – Financial Services: Amendment to the European Union (Insurance and Reinsurance) Regulations 2015 and the European Union (Insurance Distribution) Regulations 2018**

*Section 78* is a standard legislative provision to provide for the inclusion of additional definitions.

*Section 79* adds a new regulation to the European Union (Insurance and Reinsurance) Regulations 2015 that will establish a temporary domestic runoff regime for certain insurance undertakings for 15 years. In that respect, it provides that insurance undertakings which meet certain conditions shall be deemed to be authorised for fifteen years following the end of the transition period for the purposes of running off their existing portfolio.

*Section 80* adds a new regulation to the European Union (Insurance Distribution) Regulations 2018 that will establish a temporary domestic runoff regime for certain insurance intermediaries for fifteen years. In that respect, it provides that intermediaries which meet certain conditions shall be deemed to be registered for 15 years following the end of the transition period for the purposes of running off their existing portfolio.

*Section 81* requires that the Central Bank make a report to the Minister in year 12 setting out its view on the run-off regime covering both insurance undertakings and persons carrying on insurance distribution business. This report should consider a number of principles and policies, including the need to protect policyholders, the number of firms remaining in run-off, and the nature of the policies in question.

## **Part 11 - Customs**

The purpose of this Part is to cater for the substantial increase in customs controls required at ports and at traders' premises as a result of the end of the transition period.

*Section 82* provides a definition for the purposes of this Part.

*Section 83* inserts a new section 12A in the Customs Act, 2015. This amendment provides for an offence for a driver of a vehicle entering the State at a customs port who fails to comply with an instruction from Customs to bring the vehicle to a place designated by Customs for customs control, to obey any other instructions from Customs or who removes the vehicle from that place without appropriate clearance from Customs.

*Section 84* amends Section 25 of the Customs Act, 2015 which provides for the power of Customs officers to enter, inspect and patrol certain places at any time and without warrant. The amendment extends these powers to apply to places for which an authorisation has been granted under the Union Customs Code.

*Section 85* inserts a new section 12B in the Customs Act, 2015. This amendment provides for a requirement for a carrier to complete a pre-boarding notification with the Revenue Commissioners by means of the online Customs Roll-on-Roll-off Service in respect of a vehicle arriving in or departing from the State by ferry from or to a place outside the customs territory of the European Union. The pre-boarding notification must be provided prior to the departure of a vehicle on a ferry bound for, or departing from, the State so that as many vehicles as possible can exit the port without the need for additional customs controls. The amendment also introduces two offences for non-compliance. The first offence relates to the failure of a carrier to complete a pre-boarding notification. The second offence relates to the failure of persons in the supply chain to communicate certain information (and which is necessary so that a pre-boarding notification can be completed) to the carrier and to any other person in the supply chain to whom the identity of the carrier is known.

## **Part 12 – Amendment of Harbours Act 1996**

*Section 86* provides a definition for the purposes of this Part.

*Section 87* provides for an extension of the period of validity of Pilot Exemption Certificates issued by harbour companies from the existing maximum one-year period to a maximum of three years. It will also provide that existing holders of Pilot Exemption Certificates may apply for new certificates in the period leading up to the end of the transition period, notwithstanding the fact that their existing Pilot Exemption Certificates may not have expired.

*Section 88* provides for an amendment of the Pilotage Bye-Laws powers of harbour companies to enable the relevant harbour company to require the holder of a Pilotage exemption certificate of more than one year's duration to undergo a periodic review to ensure that they continue to have the skills, experience, and local knowledge of the relevant harbour pilotage district to enable the holder to pilot the ship within that pilotage district.

## **Part 13 – Third Country Bus Services**

*Section 89* provides a definition for the purposes of this Part.

*Section 90* gives a new power to the Minister to make regulations under the Road Transport Act 1978 with new provisions related to bus operator licensing documentation issued in a third country, should this be necessary.

*Section 91* is a standard provision to provide for additional definitions and to update existing definitions and terminology in the Dublin Transport Authority Act 2008. An additional function for the regulation of third country bus services will now also be given to the National Transport Authority under that Act.

*Section 92* is a standard provision to amend the definition of international service in the Public Transport Regulation Act 2009.

*Section 93* provides for the insertion of a new Part 2A of the Public Transport Regulation Act 2009. The new provisions will allow for the licensing by the National Transport Authority of third country bus services, and provide for offences where an operator provides services which do not comply with those provisions. Administrative arrangements are set out for different categories of bus services, including regular scheduled services, special regular services (e.g. school bus services which occur regularly Monday to Friday), occasional services (e.g. a bus hired to travel to Armagh for a once-off sporting event) and closed-door tours (tour buses). The licences will be known as third country authorisations or as third country journey forms. In the context of a bilateral arrangement with a third country, the section also provides for the Minister to make an order in relation to third country bus services. These provisions were developed as a precautionary measure and may not need to be activated, depending on alternative measures which may be agreed at EU level or in another international context.

#### **Part 14 – Amendments to the Social Welfare Consolidation Act 2005**

*Section 94* is a definition provision.

*Section 95* amends section 287 of the Social Welfare Consolidation Act 2005 with regard to reciprocal arrangements with other States. The amendments provide for the Minister for Employment Affairs and Social Protection to make an order with regard to the way in which arrangements under this section interact. Such arrangements may cover a number of issues such as the recognition of contributions paid in other countries such as the UK. This section further provides that an arrangement under section 287 includes an agreement, in certain circumstances, which is intended to be binding on the Minister, the State or the Government, where it has not yet become binding. This allows the Minister to make an order to provide for the implementation of an agreement (such as the Convention on Social Security between the Government of Ireland and the Government of the United Kingdom of Great Britain and Northern Ireland, which ensures continuity of Common Travel Area social protection arrangements, signed on 1 February 2019) if that is required before the ratification process has been fully completed.

*Section 96* amends Part 11B concerning the recovery of benefits and assistance. The amendment provides for the continued transfer of personal data to UK based compensators of injured persons involved in non-fatal accidents, in order for the recovery of certain specified benefits and assistance to continue. This provision ensures the continued avoidance of double compensation in such cases.

*Section 97* amends sections 113A, 205 and Table 2 of Schedule 3 and inserts a new Part 8A to provide for references to the UK, to ensure the continuation of existing arrangements in respect of invalidity pensions, recoupment of supplementary welfare allowance, the treatment of child benefit from the UK in means tests, and preserves the entitlement to the island allowance, for persons who are in receipt of UK payments that are equivalent to Irish payments, which support their entitlement.

## **Part 15 – Amendments to the Protection of Employees (Employers’ Insolvency) Act 1984**

*Section 98* provides a definition for the purposes of this Part.

*Section 99* amends section 1 of the Protection of Employees (Employers’ Insolvency) Act 1984 to update existing definitions.

*Section 100* provides that the date an employer is made insolvent under the laws of the UK will continue to be the date an employer will be regarded as having become insolvent.

*Section 101* provides that amounts certified by an actuary or a person performing a similar task in relation to employers made insolvent in the UK, where the employees are employed or habitually employed in Ireland, continue to be covered by the scheme.

*Section 102* provides that information can be exchanged, in line with the provisions of the General Data Protection Regulation, with a relevant officer appointed to an employer which is in a state of insolvency under the laws of the UK.

## **Part 16 – Extradition Act 1965**

Part 16 of the Act provides for amendments to the Extradition Act 1965 in the context of the application of the provisions of the Council of Europe Convention on Extradition 1957 to extradition arrangements between Ireland and the UK when the provisions of the European Arrest Warrant no longer apply.

*Section 103* is a definition provision.

*Section 104* provides for a technical amendment.

*Section 105* amends section 14 of the Extradition Act 1965 to allow for the extradition of Irish citizens to another state where that state would extradite its own citizens to the State.

*Section 106* allows the direct transmission of extradition requests to the Minister for Justice and Equality and for the transmission of such requests by modern means of communication.

## **Part 17 – Immigration**

*Section 107* provides a definition for the purposes of this Part.

*Section 108* amends section 2(2) of the Immigration Act 2004 to add a reference to the European Communities (Free Movement of Persons) Regulations 2015 (S.I. 548 of 2015) to ensure that nothing in the 2004 Act shall derogate from the provisions of those Regulations.

*Section 109* replaces subsection (5) of section 11 of the Immigration Act 2004 with a new provision that revises the definition of “non-national” to ensure that a citizen of the United Kingdom of Great Britain and Northern Ireland does not come within that definition. Section 11 of the 2004 Act was substituted by section 34(a) of the Civil Law (Miscellaneous Provisions) Act 2011. Its definition of non-national applies for the purposes of sections 11 and 12 of the Immigration Act 2004 which concern requirements as to documents of identity, supply of information and production of documents, and the creation of related offences. The revised definition ensures retention of the current legal basis for the exemption of citizens of the United Kingdom of Great Britain and Northern Ireland from passport checks within the Common Travel Area pursuant to sections 11 and 12 of the 2004 Act. The new subsection (5) contains a definition of “United Kingdom of Great Britain and Northern Ireland” as including the Channel

Islands and the Isle of Man, which are part of the Common Travel Area, and provides that the term “citizen of the United Kingdom of Great Britain and Northern Ireland” shall be construed accordingly. The revised definition also contains an updated reference to the European Communities (Free Movement of Persons) Regulations 2015 (S.I. No. 548 of 2015) which replaced the previous Free Movement Regulations (S.I. No. 656 of 2006 and S.I. 310 of 2008).

### **Part 18 – International Protection**

*Section 110* defines the Act of 2015 as the International Protection Act 2015.

*Section 111* provides a definition for the purposes of this Part.

*Section 112* amends section 2(1) of the 2015 Act to take account of the new sections to be inserted into that Act by section 116 of the Bill. The amendment provides for the definition of “return order” by reference to section 51A of the 2015 Act and “safe third country” by reference to section 72A of that Act.

*Section 113* amends section 19(1) of the 2015 Act by adding a new paragraph (c) to provide for the taking of fingerprints for the purpose of checking if a country other than an EU Member State is a first country of asylum for a person in accordance with paragraph (b) of section 21(2), or if a person has arrived in the State from a safe third country in the circumstances set out in the new paragraph (c) of section 21(2).

*Section 114* amends section 21 of the 2015 Act. Section 21 (Inadmissible application) provides that an application for international protection is inadmissible where (a) another EU Member State has granted international protection to the person or (b) a country other than an EU Member State is a first country of asylum for the person. The section adds a third circumstance, a new paragraph (c) in section 21(2), to provide that an application is inadmissible where a person has arrived in the State from a designated safe third country that is safe for the person concerned. The addition of the safe third country concept gives further effect to the EU Asylum Procedures Directive 2005/85/EC. This section also inserts two new subsections into section 21 of the 2015 Act to elaborate the safe third country concept. Subsection (17) sets out the matters which will determine if a safe third country is a safe country for the person concerned. Subsection (18) sets out, in its paragraphs (a) to (d), a non-exhaustive list of matters to which regard will be had when considering if the person has a sufficient connection with the safe country concerned such that it is reasonable to return there.

*Section 115* inserts a new section 50A into the 2015 Act to provide for the application of the non-refoulement principle to persons whose applications for international protection are determined under section 21 to be inadmissible. Provision is made for a person the subject of a return order, notwithstanding that his or her application is inadmissible, to be deemed an applicant within the meaning of the 2015 Act, i.e. someone who has made an application in accordance with section 15 of the 2015 Act, where a non-refoulement consideration applies. The person will be invited to complete a substantive application for international protection in the prescribed form under section 15(5).

*Section 116* inserts three new sections, sections 51A to 51C, into the 2015 Act. Section 51A provides for the making of a “return order” in respect of a person whose application is, after any unsuccessful appeal to the International Protection Appeals Tribunal, determined under section 21(11) to be inadmissible. The return order requires the person concerned

to leave the State. Section 51B deals with the removal from the State of a person specified in a return order. Section 51C deals with the operation of a return order including the relevant time periods for effecting the order.

*Section 117* inserts a new section 72A into the 2015 Act to enable the designation of a country as a safe third country provided that certain safeguards are in place, including that the non-refoulement principle is respected in the third country. The European Commission will be notified of the making or revocation of an order to designate a country as a safe third country.

*Section 118* concerns judicial review of return orders. The section amends section 5(1) of the Illegal Immigrants (Trafficking) Act 2000 to add a return order under section 51A of the International Protection Act 2015 to the list of matters to which section 5(1) of the 2000 Act applies.

### **Part 19 - Recognition of Certain Divorces, Legal Separations and Marriage Annulments**

The purpose of Part 19 is to ensure that, after the transition period ends, the recognition in Ireland of divorces granted in the UK or Gibraltar will continue to be on the basis of habitual residence, as is the case under EU legislation, rather than the domicile rules which apply to the recognition of divorces granted in non-EU States. Part 19 restates the provisions of Part 3 of the Family Law Act 2019, which will be repealed.

*Section 119* provides definitions for the purposes of the part. “Relevant jurisdiction” is defined as meaning England and Wales, Scotland, Northern Ireland or Gibraltar. The section also provides that section 5 of the Domicile and Recognition of Foreign Divorces Act 1986 shall not apply to a divorce to which *section 120* or *121* applies.

*Section 120* provides that a divorce, legal separation or marriage annulment granted under the law of a relevant jurisdiction that, prior to the coming into operation of the section, was recognised under the Brussels IIa Regulation shall continue to be recognised.

*Section 121* provides for recognition of divorces, legal separations or marriage annulments granted under the law of a relevant jurisdiction on or after the coming into operation of the section. This section sets out the jurisdictional criteria for recognition of a divorce, legal separation or marriage annulment granted under the law of a relevant jurisdiction. The criteria, which are based on habitual residence, correspond with the jurisdiction requirements of the Brussels IIa Regulation. The section further sets out the grounds for refusal of recognition of a divorce, legal separation or marriage annulment granted under the law of a relevant jurisdiction. The grounds of refusal correspond with the grounds of refusal of recognition set out in the Brussels IIa Regulation.

### **Part 20 – Amendment of the Childcare Support Act 2020**

Part 20 amends the Childcare Support Act 2018 and makes provision for citizens of the United Kingdom of Great Britain and Northern Ireland to access the National Childcare Scheme on the same basis as Irish citizens.

*Section 122* provides a definition for the purposes of this Part.

*Section 123* amends section 1 of the Childcare Support Act 2018 to include citizens of the Channel Islands and the Isle of Man in the definition of a “citizen of the United Kingdom of Great Britain and Northern Ireland”.

*Section 124* amends section 7 of the Childcare Support Act 2018 to make specific reference to the eligibility of citizens of the United Kingdom

of Great Britain and Northern Ireland to apply for financial support under the 2018 Act.

*Section 125* amends section 15 of the Childcare Support Act 2018 to provide that payment will not be made where the person does not satisfy the eligibility criteria in section 7 of the 2018 Act (as amended by section 124 of this Bill).

#### **Part 21 – Construction Products – Market Surveillance Authority**

Part 21 facilitates the strengthening of market surveillance of construction products within the scope of the Construction Products Regulation (Regulation (EU) No. 305/2011).

*Section 126* is a standard legislative provision to provide for the inclusion of additional definitions.

*Section 127* provides the Minister for Housing, Local Government and Heritage with regulation making powers to prescribe a person (including a body corporate, an unincorporated body of persons as well as an individual) to be a competent authority to carry out market surveillance of construction products, within the scope of the Construction Products Regulation (Regulation (EU) No. 305/2011), throughout the State. It provides that a local authority may be a competent authority and where a local authority is designated as a competent authority, it shall have jurisdiction throughout the administrative areas of all local authorities.

*Section 128* amends the European Union (Construction Products) Regulation 2013 (S.I. No. 225 of 2013).

*An Roinn Gnóthai Eachtracha*  
*October, 2020.*