Statement by Minister Helen McEntee T.D., Minister for Justice and Equality on Withdrawal of the UK from EU (consequential provisions) Bill 2020
Joint Oireachtas Committee on Justice Tuesday, 6 October 2020

Chair, I would like to thank the Committee for the invitation to discuss the justice elements of the withdrawal legislation.

It is timely to consider these provisions - with less than 100 days to the end of the UK's transition period. As you are aware, the Government remains focused on delivering its Brexit readiness programme. Indeed, this work on Brexit has been supported by all parties in the Oireachtas. An important part of this work involves the introduction of this new legislation.

As Committee Members may recall, last year legislation was enacted to provide contingency measures to address issues arising in a no deal cliff-edge scenario. In other words, in a situation where the UK left the EU without a Withdrawal Agreement. However, because the UK Withdrawal Agreement was concluded, the majority of the provisions in the 2019 Act cannot be commenced.

By contrast, this proposed 2020 Bill is intended to deal with permanent change that will arise at the end of the Brexit transition period. It forms a vital part of our national Brexit readiness preparations.

The General Scheme of the Bill was approved by Government on the 4th of August. The Bill includes provisions in areas falling under the remit of eleven Ministers and is being coordinated by the Minister for Foreign Affairs.

If there is no agreement on a future relationship between the UK and the EU or if any such UK-EU future partnership agreement does not encompass Justice and Home Affairs matters, then a wide range of EU legislation in relation to justice and home affairs will no longer apply to the UK.

While there are a number of Brexit implications for the justice sector, key risks have been identified in three specific areas. These are Extradition, Immigration and Family Law. To address these areas requires new primary legislation. These issues are dealt with in Parts 16, 17, 18 and 20 of the Bill.

Firstly, Part 16 of the Bill provides for two amendments to the Extradition Act 1965. These amendments were previously included in the 2019 Act, but as mentioned earlier, with the Withdrawal Agreement concluded, these provisions could not be commenced.

A key issue identified by my Department is to ensure that effective extradition arrangements are maintained between Ireland and the UK. In the event of a no-deal Brexit, the provisions of the European Arrest Warrant would no longer apply to the UK. The optimal solution identified by my Department is to apply the 1957 Council of Europe Convention on Extradition. Both Ireland and the UK are parties to this Convention.

While the extradition procedure under the 1957 Convention is not as effective or as efficient as that of the EAW, in the event of a no-deal Brexit it will provide a workable solution.

To facilitate this, two legislative items require to be addressed. Firstly, the 1965 Act does not permit extradition of own nationals unless explicitly provided for, and secondly, transmission of extradition requests is via the diplomatic channel and in hard copy. The Bill will address both of these issues.

I next turn to Part 17 of the Bill which deals with an issue relating to the application of the Immigration Act 2004. British citizens are currently exempt from most of the provisions of the Act, reflecting our long standing Common Travel Area arrangements.

However, an anomalous situation has been identified in the definition of "non-national" under some sections of the Act. Unless amended this would bring British citizens within that definition.

The amendment in Part 17 will correct this. It will provide a clear legal basis for the exclusion of British citizens from passport checks within the Common Travel Area.

Part 18 of the Bill deals with a number of amendments to the International Protection Act 2015.

If the transition period expires without a relevant agreement between the UK and the EU, the Dublin Regulation will no longer apply to the UK.

The Dublin Regulation provides that the country that played the primary part in a person's entry into the Union is responsible for examining an application for protection. It also provides for the applicant to be transferred to that EU Member State.

Two concepts in EU law allow for applicants for international protection to be transferred to a third country. The first is the safe third country concept and the second is the first country of asylum concept.

The first country of asylum concept is already transposed into Irish law. This allows applications for asylum made here to be determined as inadmissible where the person has already been granted asylum in the UK.

The amendment in Part 18 of this Bill will address the safe third country concept. It enables the Minister to designate a country as a safe third country, where certain criteria are met in accordance with EU law. This means an application for international protection can be deemed inadmissible where an applicant has arrived here from a country designated as a safe third country. It is intended that the United Kingdom will be designated as a safe third country.

Part 18 also introduces a mechanism to return applicants for international protection to the UK. This will provide for the return of a person to the UK where their application had been determined as inadmissible on the basis that that they have

arrived here from a safe third country or another country is considered a first country of asylum for the person.

Finally, I turn to Part 20, which sets out arrangements for the recognition of divorces, legal separations and marriage annulments granted under the law of the United Kingdom.

At present, the recognition in Ireland of a divorce, legal separation or marriage annulment obtained in the United Kingdom is governed by an EU Council Regulation known as the Brussels 2A Regulation. Under this Regulation, divorces, legal separations and marriage annulments granted in all EU member states except for Denmark are entitled to recognition in other member states if granted in accordance with the jurisdictional criteria specified in the regulation. Habitual residence is the key governing criterion for recognition.

This is a more objective and easier to understand criterion than the domicile criterion which applies to the recognition in Ireland of a divorce granted in a country outside of the European Union. Reverting to the domicile rule as a basis for recognition of UK divorces would be a regressive step given that habitual residence has been the primary basis for UK divorce recognition in Ireland for nearly 20 years.

The Government wishes to ensure that following the end of the transition period, the arrangements for recognition in Ireland of divorces granted in the UK will continue to be on the basis of habitual residence rather than the domicile provisions in the Act of 1986.

I expect that the final version of the Bill will be brought before the Oireachtas next month. I look forward to working with members in progressing this legislation and minimising uncertainty for business and citizens.

I would like to thank you for your attention and I am happy to respond to any questions that Members may have.

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