

STATES OF JERSEY



IMMIGRATION AND SOCIAL SECURITY CO-ORDINATION (EU WITHDRAWAL) ACT 2020: EXTENSION TO JERSEY BY ORDER IN COUNCIL

Lodged au Greffe on 21st October 2020
by the Chief Minister

STATES GREFFE

PROPOSITION

THE STATES are asked to decide whether they are of opinion –

to signify, pursuant to Article 31 of the States of Jersey Law 2005, that they agree that a request be made to Her Majesty in Council for the making of an Order in Council that would extend to Jersey, with appropriate modifications –

- (a) Part 1; and
- (b) sections 6 and 9,

of the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020, as summarised in the Chief Minister's Report attached to this Proposition.

CHIEF MINISTER

REPORT

Introduction

- (1) Following the decision of the United Kingdom to leave the European Union, the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 ("**the 2020 Act**"¹) makes provision in the United Kingdom –
 - (a) to end free movement of EEA nationals;
 - (b) to protect the status of Irish citizens; and
 - (c) to provide for consequential, transitional and savings provisions to be made.
- (2) It is proposed to make corresponding provision in Jersey, by extending the relevant provisions of the 2020 Act to the Island by Order in Council, in appropriately modified form.

Extension to Jersey of the UK Immigration Acts generally

- (3) On 22 September 2020 [P.119/2020](#)² was lodged *au Greffe* seeking the approval of the States to a draft Order in Council that would consolidate the extension to Jersey of all of the Immigration Acts. That draft Order in Council incorporated provision to extend the 2020 Act.
- (4) P.119/2020 was scheduled for debate by the States on 3rd November 2020. However, after consultation with members of the relevant Scrutiny Panels, concern was expressed about the large volume of the provisions to be considered. It was felt that the 6 week period from 22nd September to 3rd November afforded insufficient time to prepare for the debate.
- (5) But, at the same time, the extension of the 2020 Act needed to be done in time for the ending of free movement following the United Kingdom's withdrawal from the European Union. A separate draft Order in Council has therefore been prepared to extend (in suitably modified form) the 2020 Act alone, and to leave over P.119/2020 for debate when Members have had more time to consider its provisions.
- (6) The substance of this Proposition was already contained in P.119/2020 lodged on 22 September 2020. The same date of 03 November 2020 is therefore sought for the debate of this Proposition.
- (7) It is intended that the draft Order be submitted to Her Majesty in Council on 11th November 2020.

The 2020 Act as extended

- (8) The **Appendix** to this Report shows the 2020 Act as it would be extended to Jersey by the draft Order in Council which is the subject of this Proposition.

¹ At the time of lodging, the 2020 Act has yet to receive Royal Assent.

² <https://statesassembly.gov.je/AssemblyPropositions/2020/P.119-2020.pdf>

Effects of the draft Order in Council:

Ending free movement

- (9) The 2020 Act repeals section 7 of the Immigration Act 1988 (section 7) which exempts EU citizens from requiring leave to enter or remain in the United Kingdom. At the end of the transition period, 31st December 2020, citizens of the EU, the EEA and EFTA states of Iceland, Norway and Liechtenstein, and of Switzerland, and their family members, will require permission to enter and remain in the United Kingdom under the Immigration Act 1971 (“**the 1971 Act**”).
- (10) Section 7 was extended to Jersey by Order in Council so that a person does not require leave to enter or remain in Jersey in circumstances in which he or she would be entitled to enter or remain in the United Kingdom by virtue of an enforceable EU right or of any provision made under section 2(2) of the European Communities Act 1972.
- (11) Section 1 of the 2020 Act would be extended (in modified form) so as to repeal section 7 as extended to Jersey.

Status of Irish citizens

- (12) The 2020 Act clarifies the status of Irish citizens in the United Kingdom once their EU free movement rights end. Since the 1920s British and Irish citizens have enjoyed a unique status in each other’s State distinct from that later enjoyed as a consequence of EU citizenship. Under section 2(1) of the Ireland Act 1949, the Republic of Ireland was declared not to be a foreign country for the purposes of any law in force in any part of the United Kingdom.
- (13) The fundamental provisions for the immigration status of Irish citizens in the United Kingdom are contained in the 1971 Act. However, these provisions only cover Irish citizens who enter the United Kingdom from within the Common Travel Area (CTA). The 2020 Act confirms their right to enter and remain without permission when free movement rights end, irrespective of from where they entered the United Kingdom, unless they are subject to a deportation order, exclusion order or an international travel ban.

Consequential, transitional and savings provisions

- (14) The 2020 Act gives the Secretary of State power to make regulations in the United Kingdom as she considers appropriate in consequence of, or in connection with, the ending of free movement. This power includes power to modify primary legislation in some cases.
- (15) Section 4 of the 2020 Act would be extended (in modified form) so as to enable the Minister for Home Affairs to make similar provision by Order. This would include power to modify any provision previously made or extended to Jersey by Order in Council, and to make supplementary, incidental, transitional, transitory or saving provision.

- (16) An Order of the Minister under section 4 would have to be tabled in the States in the same way as any other Ministerial Order.

Commencement of the Order in Council

- (17) The Order in Council has been drafted so as to come into force on such day as the Minister for Home Affairs may by Order appoint, and so that different days may be appointed for different provisions and for different purposes.

Conclusion

- (18) This Order in Council will address the need to align local legislation with the ending of free movement; and will ensure that the traditional right of free movement of Irish citizens is respected in Jersey law in the same way as it is in the law of the United Kingdom.

Financial and manpower implications

There are no financial or manpower implications for the States arising from this Proposition.

APPENDIX

(Part 1 and sections 6 and 9 of the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 as extended to Jersey)

An Act to make provision to end rights to free movement of persons under retained EU law and to repeal other retained EU law relating to immigration; to confer power to modify retained direct EU legislation relating to social security coordination; and for connected purposes.

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART 1

MEASURES RELATING TO ENDING FREE MOVEMENT

1 Repeal of section 7 of the Immigration Act 1988

Section 7 of the Immigration Act 1988 is repealed.

2 Irish citizens: entitlement to enter or remain without leave

- (1) The Immigration Act 1971 is amended as follows.
- (2) After section 3 insert—

“3ZA Irish citizens

- (1) An Irish citizen does not require leave to enter or remain in the Bailiwick of Jersey, unless subsection (2), (3) or (4) applies to that citizen.
- (2) This subsection applies to an Irish citizen if the Irish citizen is subject to a deportation order made under section 5(1).
- (3) This subsection applies to an Irish citizen if —
 - (a) the Minister has issued directions for the Irish citizen not to be given entry to the Bailiwick of Jersey on the ground that the Irish citizen's exclusion is conducive to the public good,
 - (b) the Minister has given the Irish citizen notice of the directions, and
 - (c) the directions have not been withdrawn.
- (4) This subsection applies to an Irish citizen if the Irish citizen is an excluded person for the purposes of section 8B (persons excluded under certain instruments).

- (5) Where subsection (2), (3) or (4) applies to an Irish citizen, section 1(3) does not permit the Irish citizen to enter the Bailiwick of Jersey without leave on arriving in the Bailiwick of Jersey on a local journey from any place in the common travel area.”
- (3) In section 9 (further provisions about the common travel area)—
 - (a) in subsection (2), in the closing words, after “British citizens” insert “or Irish citizens”;
 - (b) in subsection (4), in the opening words, after “British citizen” insert “or an Irish citizen”.
- (4) In Schedule 4 (integration with Jersey law of immigration laws of the United Kingdom, Guernsey and the Isle of Man)—
 - (a) in paragraph 1, in sub-paragraphs (1) and (2), after “British citizen” insert “or an Irish citizen”;
 - (b) in paragraph 4, after “British citizen” insert “or an Irish citizen”.

3 Meaning of “the Immigration Acts” *etc.*

- (1) In section 33 of the Immigration Act 1971 (Interpretation) after subsection (1) insert the following subsection –

“(1A) A reference to “the Immigration Acts” in this Act or in any other provision having effect in the Bailiwick of Jersey is a reference to the Immigration Acts of the United Kingdom as they have effect for the time being as extended to Jersey.”
- (2) In section 167(1) of the Immigration and Asylum Act 1999, omit the definition of “the Immigration Acts”.

4 Consequential *etc.* provision

- (1) The Minister may by Order make such provision as the Minister considers appropriate in consequence of, or in connection with, any provision of this Part.
- (2) The power to make an Order under subsection (1) may (among other things) be exercised to modify any provision extended by, or made by or under, an Order in Council on or before the appointed day extending legislation of the United Kingdom to Jersey.
- (3) The power to make an Order under subsection (1) includes power—
 - (a) to make supplementary, incidental, transitional, transitory or saving provision;
 - (b) to make different provision for different purposes.

- (4) An Order under subsection (1) may (among other things) make provision applying to persons who, immediately before the appointed day, were not entitled by virtue of section 7(1) of the Immigration Act 1988 to enter or remain in Jersey without leave.
- (5) An Order under subsection (1) may (among other things) modify provision relating to the imposition of fees or charges which is made by or under the Immigration Acts having effect in Jersey on or before the appointed day.
- (6) The Subordinate Legislation (Jersey) Law 1960 shall apply to Orders made by the Minister under subsection (1).

*[PART 2 ***]*

PART 3

GENERAL

6 Interpretation

In this Act—

“appointed day” means the day on which article 2 of the Immigration (EU Withdrawal) (Jersey) Order 2020 comes into force;

“the Minister” means the Minister for Home Affairs;

“modify” includes amend, repeal or revoke (and related expressions are to be read accordingly);

*[7 Extent ***]*

*[8 Commencement ***]*

9 Short title

This Act may be cited as the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020.

*[SCHEDULES ***]*