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[Home](#) > [Immigration and Social Security Co-ordination \(EU Withdrawal\) Bill: factsheets](#)



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UK Visas and Immigration

Policy paper

Factsheet 3: consequential power (relating to ending free movement)

Published 5 March 2020

[Contents](#)

[Background](#)

[How will the power be used?](#)

The government introduced the Immigration and Social Security Co-ordination (EU Withdrawal) Bill to the House of Commons on 5 March 2020.

For an overview of what the bill does see factsheet 1.

Minister for Future Borders and Immigration:

“ We remain firmly committed to protecting the long-standing Common Travel Area arrangements, which predate our EU membership and reflect the close and historic ties between our two great nations.

“ This bill provides certainty and clarity for Irish citizens on their rights to enter and live in the UK, reflecting the reciprocal arrangements for British citizens in Ireland.”

Background

By ending free movement, the bill makes a substantial change to the UK's immigration laws. There are references to free movement and related matters across the statute book in both primary and secondary legislation, which will no longer make sense and/or be appropriate once free movement has ended. It is therefore necessary for the bill to contain a power to make regulations to amend primary and secondary legislation as well as EU legislation that is retained by the EU (Withdrawal) Act 2018, as amended by the EU (Withdrawal Agreement) Act 2020 at the end of the transition period.

This can also include supplementary, savings, transitory and transitional measures. For example, when the bill ends free movement and EEA citizens become subject to UK immigration control, there will no longer be a need to specifically exclude family members who are EEA citizens from being removed from the UK, as set out in section 10(5) of the Immigration and Asylum Act 1999. The consequential power will be used to repeal this provision so an EEA family member will be liable for removal along with the main family member being removed if they cannot demonstrate they are entitled to leave to enter or remain here in their own right.

The power in the bill to make consequential amendments to legislation should be seen alongside the power in clause 7 of the EU Withdrawal Agreement Act 2020 to make regulations to protect the existing rights of those individuals who are eligible to apply to the EU Settlement Scheme and do so after the end of the transition period, and before the deadline for applications of 30 June 2021 ('the grace period'). These rights will continue until the final determination of their application to the scheme, including the outcome of any appeal.

The regulations must be approved by both Houses of Parliament if they amend primary legislation, which is known as the affirmative procedure. To enable free movement law to be repealed by the end of the transition period (31 December 2020), the first set of regulations must be made when they are laid in Parliament and then subsequently approved within 40 sitting days by both Houses of Parliament. After this, if regulations do not amend primary legislation, they are subject to the negative procedure, which means they will be made and may then subsequently be annulled by resolution of either House of Parliament.

How will the power be used?

Some examples of how the power may be used are:

- to ensure people who have an EEA right of appeal pending when the bill repeals section 109 of the Nationality, Immigration and Asylum Act 2002 do not lose that right of appeal
- to remove the provision exempting EEA citizens from the Immigration Skills

Charge, so the position is aligned with non-EEA citizens as part of the future points-based immigration system

- to remove references to EU law, EU institutions, etc to ensure UK legislation is coherent once free movement ends

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