

**GENERAL SCHEME**  
**of the**  
**WITHDRAWAL OF THE UNITED KINGDOM FROM**  
**THE EUROPEAN UNION (CONSEQUENTIAL**  
**PROVISIONS) BILL 2020**

## Contents

INTRODUCTION.....	7
PART 1 - Preliminary and General.....	12
Head 1-1. Short title, collective citations and construction.....	12
Head 1-2. Commencement.....	12
Head 1-3. Expenses.....	14
Head 1-4. Repeals.....	14
PART 2 - Arrangements in Relation to Health Services PLACEHOLDER.....	15
PART 3 - Reimbursement of Medical Expenses.....	16
Head 3-1. Definitions.....	16
Head 3-2. Reimbursement of medical expenses incurred by eligible persons in respect of necessary medical treatment.....	16
Head 3-3. Regulations.....	16
Head 3-4. Administrative arrangements between Executive and competent institutions.....	16
Head 3-5. Review of operation of <i>Part 3</i> .....	17
PART 4 - Miscellaneous amendments to Companies Act 2014.....	18
Head 4-1. Interpretation, Application and Commencement.....	18
Head 4-2. Disapplication of requirement to issue share certificates.....	19
Head 4-3. Disapplication of requirement for a written instrument of transfer.....	19
Head 4-4. Amendment to definition of majority for schemes of arrangement.....	20
Head 4-5. Disapplying the requirement for 50% in number of assenting shareholders for takeover acceptance.....	21
Head 4-6. Disapplying the requirement for documentary evidence of power of attorney for takeovers.....	22
Head 4-7. Extending the record date for participation and voting in general meeting.....	23
Head 4-8. Power to make regulations for the uncertificated securities of relevant participating issuers necessary to enable the market migration.....	23
PART 5 - Amendment to Section 10(2) of the <i>Employment Permits Act 2006</i> .....	25
Head 5-1. Restriction on grant of employment permit.....	25
PART 6 - Arrangements in relation to Fluorinated Greenhouse Gases.....	26
Head 6-1. Interpretation.....	26
Head 6-2. Equivalent certification, equivalent training attestation relating to individuals.....	26
PART 7 - Amendment of Student Support Act 2011.....	29
Head 7-1. Definition.....	29
Head 7-2. Amendment of section 2 of Act of 2011.....	29

Head 7-3. Amendment of section 7 of Act of 2011 .....	29
Head 7-4. Amendment of section 8 of Act of 2011 .....	30
Head 7-5. Amendment of section 14 of Act of 2011 .....	31
Head 7-6. Operation of section 14 of Act of 2011 (prescribing of certain matters).....	33
PART 8 - Taxation .....	36
Chapter 1.....	36
<i>Definitions</i> .....	36
Head 8-1. Definitions .....	36
Chapter 2.....	36
<i>Income Tax</i> .....	36
Head 8-2 – Amendment to exemptions from tax for Government and other public securities ..	36
Head 8-3. Amendment of section 128D of Act of 1997 .....	37
Head 8-4. Amendment of section 128F of Act of 1997 .....	37
Head 8-5. Amendment of section 191 of Act of 1997 .....	37
Head 8-6. Amendment of section 192B of Act of 1997 .....	38
Head 8-7 Amendment of section 192F of Act of 1997 .....	38
Head 8-8. Amendment of section 195 of Act of 1997 .....	39
Head 8-9. Amendment of section 208A of Act of 1997 .....	39
Head 8-10. Amendment of section 208B of Act of 1997 .....	39
Head 8-11. Amendment of section 244 of Act of 1997 .....	40
Head 8-12. Amendment of section 244A of Act of 1997 .....	40
Head 8-13. Amendment of section 470 of Act of 1997 .....	40
Head 8-14. Amendment of section 472B of Act of 1997 .....	41
Head 8-15. Amendment of section 472BA of Act of 1997 .....	41
Head 8-16. Amendment of section 473A of Act of 1997 .....	42
Head 8-17. Amendment of section 480A of Act of 1997 .....	42
Head 8-18. Amendment of section 489 of Act of 1997 .....	43
Head 8-19. Amendment of section 490 of Act of 1997 .....	43
Head 8-20. Amendment of section 770 of Act of 1997 .....	44
Head 8-21. Amendment of section 772 of Act of 1997 .....	44
Head 8-22. Amendment of section 772A of Act of 1997 .....	45
Head 8-23. Amendment of section 784 of Act of 1997 .....	45
Head 8-24. Amendment of section 784A of Act of 1997 .....	45
Head 8-25. Amendment of section 785(1A) of Act of 1997.....	46
Head 8-26. Amendment of section 787M of Act of 1997 .....	46
Head 8-27. Amendment of section 790B of Act of 1997 .....	47

Head 8-28. Amendment of section 1032 of Act of 1997 .....	48
Head 8-29. Amendment to provisions dealing with Non-Resident Persons and Trusts.....	48
Chapter 3.....	49
<i>Corporation Tax</i> .....	49
Head 8-30. TCA Section 243(4) - Charges on income for corporation tax purposes .....	49
Head 8-31. Group provisions – TCA Sections 410 and 411 .....	50
Head 8-32. TCA Section 438 - Loans to participators .....	51
Head 8-33. TCA Section 486C – Relief from tax for certain start-up companies.....	52
Head 8-34. TCA Section 766 – Tax credit for research and development (R&D) expenditure .....	52
Head 8-35. TCA Section 615 – Company reconstruction or amalgamation: transfer of assets....	53
Head 8-36. TCA Section 616 – Groups of companies: interpretation.....	54
Head 8-37. TCA Section 130 – Matters to be treated as distributions .....	54
Chapter 4.....	55
<i>Capital Gains Tax</i> .....	55
Head 8-38. Amendment to tax treatment of certain venture fund managers.....	55
Head 8-39. Relief for certain disposals of land and property .....	56
Chapter 5.....	56
<i>Value-Added Tax</i> .....	56
Head 8-40. Amendment of section 53 of Act of 2010 .....	56
Head 8-41. Insertion of section 53A into Act of 2010.....	57
Head 8-42. Amendment of section 56 of Act of 2010 .....	58
Head 8-43. Amendment of section 58 of Act of 2010 .....	61
Head 8-44. Amendment of section 120 of Act of 2010 .....	61
Chapter 6.....	63
<i>Stamp Duties</i> .....	63
Head 8-45. Amendment of section 75 of Act of 1999 (Relief for Intermediaries) .....	63
Head 8-46. Amendment of section 75A of Act of 1999 (Relief for clearing houses) .....	64
Head 8-47. Amendment of section 80 of Act of 1999 (Reconstructions or amalgamations of companies).....	64
Head 8-48. Amendment of section 80A of Act of 1999 (Demutualisation of assurance companies).....	64
Head 8-49. Amendment of section 124B of Act of 1999 (Certain premiums of life assurance). 65	
Head 8-50. Amendment of section 125 of Act of 1999 (Certain premiums of insurance) .....	65
Chapter 7.....	66
<i>Capital Acquisitions Tax</i> .....	66
Head 8-51. Agricultural Relief .....	66

Chapter 8.....	66
<i>Excise</i> .....	66
Head 8-52. Amendment of section 104 of Finance Act 2001 .....	66
PART 9 - Financial Services: Settlement Finality .....	68
Head 9-1. Interpretation .....	68
Head 9-2. Temporary designation of relevant arrangement.....	70
Head 9-3. Designation of relevant arrangement .....	71
Head 9-4. Rules applicable to arrangement to which <i>section 69 or 70</i> applies.....	73
PART 10 - Financial Services: Amendment of European Union (Insurance and Reinsurance) Regulations 2015 and European Union (Insurance Distribution) Regulations 2018 .....	74
Head 10-1. Interpretation .....	74
Head 10-2. Amendment of Regulations of 2015 .....	74
Head 10-3. Amendment of Regulations of 2018 .....	77
Head 10-4. Requirement for Central Bank to make a report to Minister.....	80
PART 11 - Amendments to the Customs Act 2015 .....	81
Head 11-1. Customs Control at Customs ports.....	81
Head 11-2. Customs Control at Customs ports.....	81
Head 11-3 - Online Customs Roll on Roll off Service .....	81
PART 12 - Amendment of Harbours Act 1996 .....	83
Head 12-1. Definition .....	83
Head 12-2. Amendment of section 72 of Act of 1996 .....	83
Head 12-3. Amendment of Sixth Schedule to Act of 1996 .....	85
PART 13 - Third Country Bus Services .....	86
Head 13-1. Definition .....	86
Head 13-2. Continuation of international carriage of passengers by road .....	86
Head 13-3. Amendment of Dublin Transport Authority Act 2008.....	87
Head 13-4. Amendment of section 2 of Act of 2009 .....	88
Head 13-5. Part 2A of Act of 2009 .....	88
PART 14 - Amendment of Social Welfare Consolidation Act 2005 .....	103
Head 14-1. Definition .....	103
Head 14-2. Amendment of section 287 of Act of 2005 .....	103
Head 14-3. Consequential amendments to Act of 2005.....	105
Head 14-4. Provisions with regard to the Recovery of Benefits & Assistance and Measures regarding Fraud and Control.....	107
PART 15 - Amendment of Protection of Employees (Employers' Insolvency) Act 1984.....	109
Head 15-1. Definition .....	109

Head 15-2. Amendment of section 1 of Act of 1984 .....	109
Head 15-3. Amendment of section 4 of Act of 1984 .....	111
Head 15-4. Amendment of section 7 of Act of 1984 .....	112
Head 15-5. Transfer of personal data in relation to employers insolvent in United Kingdom...	113
PART 16 - Amendment of Extradition Act 1965.....	115
Head 16-1. Definition Provide that - .....	115
Head 16-2. Amendment of section 4 of Act of 1965 .....	115
Head 16-3. Irish citizens .....	115
Head 16-4. Amendment of section 23 of Act of 1965 .....	116
PART 17 - Amendment of the Immigration Act 2004– .....	119
Head 17.1 to amend section 11 of Immigration Act 2004.....	119
PART 18 - Amendment of the International Protection Act 2015 .....	121
Head 18.1 to amend section 21 of International Protection Act 2015.....	121
Head 18.2 To insert a new section 51A into International Protection Act 2015 .....	123
Head 18.3 to insert a new section 72A into International Protection Act 2015.....	125
PART 19 - Amendment of Childcare Support Act 2018 .....	128
Head 19-1. Definition.....	128
Head 19-2. Amendment of section 7 of Principal Act.....	128
Head 19-3. Amendment of section 15 of Principal Act.....	129

## INTRODUCTION

Following the conclusion of negotiations on a Withdrawal Agreement, including a Protocol on Ireland/Northern Ireland, on 17 October 2019, the UK left the EU on 31 January 2020. The Withdrawal Agreement provides for a transition period up to 31 December 2020 during which EU rules and regulations continue to apply to the UK. During this transition, the UK also continues to apply the rules of the EU's Single Market and Customs Union.

Negotiations on an EU-UK Future Partnership Agreement are ongoing. Regardless of the outcome of these negotiations, the Withdrawal Agreement and the Protocol on Ireland and Northern Ireland will remain in place.

The UK's decision to leave the EU will bring significant changes to the EU-UK relationship, irrespective of the outcome of the current negotiations. As Ireland will be one of the Member States most affected, substantial work has been undertaken to prepare for these changes. In 2019 much of this work focussed on a possible no deal scenario in which the EU and UK failed to conclude a Withdrawal Agreement. This included the enactment of the Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Act 2019 (Brexit Omnibus Act) on 17 March 2019. This Act consists of fifteen Parts under the remits of 9 Ministers. While Parts 1, 14, and 15 of the Act have been commenced (and Part 3 was repealed and its provisions commenced under the Industrial Development (Amendment) Act 2019), the remainder cannot be commenced as they could only apply in the event a Withdrawal Agreement was not concluded. The Health and Childcare Support (Miscellaneous Provisions) Act 2019 was prepared on a similar basis.

Part 15 of the Brexit Omnibus Act (which consisted only of S.98) was enacted to cover the duration of any transition period that might be agreed between the EU and the UK, in a withdrawal agreement, when it was not certain that such an agreement would be reached. It provides that any reference in an Irish enactment to 'member states' is to be interpreted as including the UK (and this was reflected in the long title of the Act). S.98 provides that this is to apply 'in so far as is necessary to give effect to the terms of a withdrawal agreement.' As the Withdrawal Agreement eventually concluded provides that - with certain exceptions - Union law shall be applicable to and in the United Kingdom during the transition period, S.98 will cease to apply from 1 January 2021.

Throughout 2020, departments and agencies have sought to enhance and refine their readiness work in preparation for the end of transition period. As part of this work, nine departments indicated they would require new legislation. On 29 May 2020, the Government approved the preparation of a scheme for a new Brexit Omnibus Bill to ensure the appropriate legislative underpinning of the required readiness measures at the end of the transition period.

The Bill is intended to be consistent with and complementary to the steps underway at EU level to prepare for the UK's withdrawal. The Bill and the Parts contained within it may be updated or adjusted further in light of ongoing developments, including in respect of developments in Future Partnership Negotiations, any EU legislative measures which may be agreed, and any additional measures taken collectively by the EU27 Member States, including Ireland.

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.

While this Bill will cover all of the legislative needs foreseen by Departments, it is possible that further legislation may be required in the future depending on the final outcome of the EU-UK Future Partnership negotiations. Many other issues are being addressed through policy and economic responses, on an administrative basis, and through targeted Brexit related resources. The Government has undertaken to publish an update of its Readiness and Contingency Action Plan in September 2020. In addition to this Bill, consideration is also being given to any secondary legislation required in place in advance of 1 January 2021.

The Bill, which focuses on the broad themes of protecting the citizen, and supporting the economy, enterprise and job, consists of the following parts:

<b>Part</b>	<b>Minister</b>	<b>Outline</b>
1	Minister for Foreign Affairs and Trade	Provides for the Short Title of the Bill and for the repeal of certain parts of the Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Act 2019, which have not been commenced.
2	Minister for Health	Provides that the Minister for Health will facilitate the provision of health services under the Common Travel Area through healthcare arrangements currently being negotiated between the Department of Health in Ireland, the Department of Health in Northern Ireland, and the UK Department of Health and Social Care. This is intended to replace the arrangements provided in Part 2 of the Brexit Omnibus Act.
3	Minister for Health	Provides for the introduction by the Minister of Health of a scheme where Ireland would reimburse expenses incurred by eligible persons resident in Northern Ireland in respect of necessary medical treatment while on a temporary stay in another EU Member State (other than Ireland). The scheme is being developed in recognition of the loss of European Health Insurance Cards by residents in Northern Ireland. This is intended to replicate the arrangements provided in the Health and Childcare Support (Miscellaneous Provisions) Act, 2019.
4	Tánaiste and Minister for Business, Enterprise and Innovation	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. This a new provision not included in the 2019 legislation
5	Tánaiste and Minister for Business, Enterprise and Innovation	Amends Section 10(2) of the Employment Permits Act 2006 in order to adapt the criterion to facilitate the inclusion of the UK so that employers would be required to have sourced at least 50% of their workforces from Ireland/EEA, Swiss Federation or the UK. Currently UK citizens are included under EEA figures but after the UK leaves the EU post transition, the UK would no longer be included which would be an issue for businesses. This is a new provision not included in the 2019 legislation
6	Minister for Communications, Climate Action and Environment	Arrangements to allow for the re-certifying of individuals who hold UK issued f-gas certificates / qualifications to continue after the transition period. This is intended to replace the arrangements provided in Part 4 of the Brexit Omnibus Ac
7	Minister for Further and Higher Education, Research, Innovation and Science.	Amendments to the Student Support Act 2011 to enable eligible students studying in the UK and UK nationals studying in the State, who previously qualified for Student Universal Support Ireland (SUSI) grants by virtue of the fact that the UK was a Member State of the EU, to continue to qualify for grant support after the transition period has ended. This is intended to replace the arrangements provided in Part 5 of the Brexit Omnibus Act.
8	Minister for Finance	Amendments in the areas of Income Tax, Capital Tax, Corporation Tax and Stamp Duty legislation to ensure continuity for business and citizens in relation to their current access to certain measures including reliefs and allowances, as well as the retention of a number of anti-avoidance provisions, in the immediate aftermath of the transition period. It includes proposals that cover the introduction of postponed accounting for VAT in order to alleviate cash flow impacts for business, and amendments to Section 56 VAT relief authorisations that seek to mitigate the potential for abuse. It also includes amendments which provide for the application of excise duty on excisable products for passengers going to the UK. This is intended to replace the arrangements provided in Part 6 of the Brexit Omnibus Act.
9	Minister for Finance	Amendments to support implementation, in the event of a Commission contingency measure, to adopt a temporary and conditional equivalence decision for UK based Central Securities Depository (CSD), and to extend the protections contained in the Settlement Finality Directive to Irish participants in relevant third country domiciled settlement systems. This is intended to replace the arrangements provided in Part 7 of the Brexit Omnibus Act.

10	Minister for Finance	Amendments to provide for a temporary run-off regime, which, subject to a number of conditions, is designed to enable insurance undertakings and intermediaries (i.e. brokers) operating in Ireland from the UK or Gibraltar, to continue to fulfil contractual obligations to their Irish customers for a period of fifteen years following the end of the transition period. This is intended to replace the arrangements provided in Part 8 of the Brexit Omnibus Act.
11	Minister for Finance	Amendments to the Customs Act 2015 in order to provide for a new customs offence to deal with truck drivers exiting the port without customs clearance, to provide additional powers for an officer of customs to enter upon and inspect a place approved under the Union customs code, and to provide legislative basis for the online Customs Roll on Roll off Service which provides online services for businesses carrying goods by ferry from the United Kingdom (excluding Northern Ireland) to Ireland. This is a new provision not included in the 2019 legislation
12	Minister for Transport, Tourism and Sport	Amendments to the Harbours Act 1996 relating to the provision of pilotage services in harbours. The amendments allow for time to provide for a permanent arrangement whereby the UK is a designated third country, by the EU, for the purposes of recognition of UK seafarer certificates. This is intended to replace the arrangements provided in Part 9 of the Brexit Omnibus Act.
13	Minister for Transport, Tourism and Sport	Allows the Minister for Transport to facilitate the continuation of cross-border bus services in the event that, post transition, the UK has not yet acceded to the Interbus Agreement, and the EU do not adopt a contingency regulation. This is intended to replace the arrangements provided in Part 10 of the Brexit Omnibus Act.
14	Minister for Employment Affairs and Social Protection	Provides for a number of technical amendments to the Social Welfare Consolidation Act 2005 (as amended) relating to the making of reciprocal arrangements, the operation of such arrangements, and the inclusion of references to the UK in a number of sections to ensure continuity with regard to the treatment of UK payments after the end of the transition period. This is intended to replace the arrangements provided in Part 11 of the Brexit Omnibus Act.
15	Minister for Employment Affairs and Social Protection	Amendments to the Protection of Employees (Employers' Insolvency) Act 1984 to ensure that employees who work and make their social insurance contributions in Ireland will continue to be covered by the insolvency payments scheme (which covers, for example, arrears of wages and holiday pay) if their employer becomes insolvent under the laws of the UK. This is intended to replace the arrangements provided in Part 12 of the Brexit Omnibus Act.

16	Minister for Justice and Equality	Amendments to the Extradition Act 1965 to provide for the extradition of Irish citizens to the UK, and to provide for an order making power to enable the Minister for Foreign Affairs, after consultation with the Minister for Justice and Equality, to provide by order (S.I.) for requests for extradition to be made directly to the Minister for Justice and Equality and to enable the transmission of such requests by electronic or other means. This is intended to replace the arrangements provided in Part 13 of the Brexit Omnibus Act.
17	Minister for Justice and Equality	Amendments to the International Protection Act 2015 to provide for the designation of safe third countries, only where satisfied that certain safeguards are in place, including that the principle of non-refoulement in accordance with the Geneva Convention is respected in the return country, and to introduce a mechanism to return applicants for international protection to the UK. This is a new provision not included in the 2019 legislation
18	Minister for Justice and Equality	Amendments to the Immigration Act 2004 to provide a clear legal basis for the exclusion of British Citizens from passport checks within the CTA, after the end of the transition period. The amendment will ensure that UK citizens do not come within the definition of “non-national” that applies to sections 11 and 12 of the Immigration Act 2004. This is a new provision not included in the 2019 legislation
19	Minister for Children and Youth Affairs	Amendments to the Childcare Support Act 2018 in order to make provision for British citizens to access the National Childcare Scheme on the same basis as Irish citizens. This is intended to replace the arrangements provided in the Health and Childcare Support (Miscellaneous Provisions) Act 2019.

The 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 Bill which ranges across so many sectors.

## PART 1 - Preliminary and General

### Minister for Foreign Affairs & Trade

#### Head 1-1. Short title, collective citations and construction

Provide for -

Short title, collective citations and construction

**Explanatory Note:** OPC to provide appropriate short title and any appropriate collective citations and construction as necessary in light of content of the Bill.

#### Head 1-2. Commencement

Provide for -

(1)

(a) *Part 1* shall come into operation on such day or days as the Minister for Foreign Affairs and Trade may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.

(b) *Part 2 and 3* shall come into operation on such day or days as the Minister for Health may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.

(c) *Parts 4 and 5* shall come into operation on such day or days as the Minister for Business, Enterprise and Innovation may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.

(d) *Part 6* shall come into operation on such day or days as the Minister for Communications, Climate Action and Environment may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.

(e) *Part 7* shall come into operation on such day or days as the Minister for Further and Higher Education, Research, Innovation and Science may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.

(f) *Parts 8, 9, 10, and 11* shall come into operation on such day or days as the Minister for Finance may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.

(g) *Parts 12 and 13* shall come into operation on such day or days as the Minister for Transport, Tourism and Sport may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.

(h) *Parts 14 and 15* shall come into operation on such day or days as the Minister for Employment Affairs and Social Protection may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.

(i) *Parts 16, 17 and 18* shall come into operation on such day or days as the Minister for Justice and Equality may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.

(j) *Part 19* shall come into operation on such day or days as the Minister for Children and Youth Affairs may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.

(2) A power under this section to appoint a day on which a Part (or a provision thereof) shall come into operation, whether generally or otherwise, includes a power to appoint a particular time, on a particular day, at which the Part (or provision thereof) shall come into operation, whether generally or otherwise, and, accordingly, where a time is so appointed, the Part concerned (or provision thereof) shall come into operation at that time, whether generally or otherwise.

### Head 1-3. Expenses

Provide that -

(1) The expenses incurred by the Minister for Foreign Affairs and Trade in the administration of this Act, and by any other Minister of the Government in the administration of any other Act in so far as that other Act is amended by this Act, shall, to such extent as may be sanctioned by the Minister for Public Expenditure and Reform, be paid out of monies provided by the Oireachtas.

**Explanatory Note:** This is a standard provision.

### Head 1-4. Repeals

Provide that -

The following enactments are repealed -

(a) The Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Act 2019 (No. 8 of 2019) - Parts 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, [and 15].

(b) Health and Childcare Support (Miscellaneous Provisions) Act 2019 (N0. 36 of 2019) - the entire Act

**Explanatory Note:** These parts of the Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Act 2019 are governed by Part A of its long title which provides for the event of the UK withdrawal occurring without an agreement between the UK and the EU under Article 50 of the TEU. Now that such an agreement has been made, these Parts of the 2019 Act could no longer apply and should be repealed. The Health and Childcare Support (Miscellaneous Provisions) Act 2019 has a similar long title and should also be repealed.

The essential substance of these enactments is replicated by the provisions of the instant scheme which is designed to apply to the circumstances obtaining at the end of the transition period.

OPC might consider whether any of the subparagraphs of section 2 (1) WUKEU Act 2019 should be repealed insofar as they relate to the commencement of Parts of the Act already repealed, or to be repealed.

## PART 2 - Arrangements in Relation to Health Services PLACEHOLDER

### **Minister for Health**

Part 2, which is intended to replace the arrangements provided in Part 2 of the 2019 Omnibus Act, provides that the Minister for Health will facilitate the provision of health services under the Common Travel Area Healthcare Arrangement currently being negotiated between the Department of Health in Ireland, the Department of Health in Northern Ireland and the UK Department of Health and Social Care. The shared objective is to have in place an enduring arrangement to provide reciprocal access to healthcare in the UK and Ireland, both on a planned basis and on an as-necessary basis (e.g. on a temporary visit in the other State). While the COVID 19 crisis has meant that face-to-face meetings have had to be suspended, negotiations via weekly videocalls have continued and concrete progress has been made in a number of key areas including in the area of planned treatment.

## PART 3 - Reimbursement of Medical Expenses

### Minister for Health

The purpose of the draft Heads is to make exceptional provision for the reimbursement of necessary medical expenses incurred by eligible residents of Northern Ireland during a temporary stay in an EU/EEA Member State (excluding Ireland).

#### Head 3-1. Definitions

##### **Explanatory Note:**

Definitions - sets out the definitions required for Part 3 of the Act.

#### Head 3-2. Reimbursement of medical expenses incurred by eligible persons in respect of necessary medical treatment

##### **Explanatory Note:**

This Head makes provision for the implementation of a scheme for the reimbursement of expenses incurred by eligible persons resident in Northern Ireland in respect of necessary medical treatment received in another EU/EEA Member State (excluding Ireland).

#### Head 3-3. Regulations

##### **Explanatory Note:**

This Head provides that the Minister may make, with the consent of the Minister for Public Expenditure & Reform, regulations to provide for the administrative arrangements to give full effect to the provision of the Bill. It also outlines the principles and policies which the Minister shall have regard to when drafting the regulations.

#### Head 3-4. Administrative arrangements between Executive and competent institutions

##### **Explanatory Note:**

This Head provides that the HSE may enter into arrangements with competent institutions in other EU/EEA Member States. Such arrangements may cover matters such as the processing of reimbursements, the calculation of the value of medical expenses to be reimbursed, the exchange of information between the two bodies and the facilitation of other administrative and technical cooperation in relation to the reimbursement of medical expenses.

#### Head 3-5. Review of operation of *Part 3*

**Explanatory Note:**

This provides for the HSE to be able to carry out a review of the operation of the Scheme no later than 2 years after its commencement and to submit a report to the Minister no later than one month after the report is conducted.

## PART 4 - Miscellaneous amendments to Companies Act 2014

### Minister for Business, Enterprise & Innovation

#### Head 4-1. Interpretation, Application and Commencement

Provide for the insertion of the following new section 1087A into the Companies Act 2014:

#### **1087A Interpretation, Application and Commencement:**

(1) In this Chapter -

“the 2019 Act” means the Migration of Participating Securities Act 2019;

“relevant participating issuer” means an issuer of participating securities that are registered in the name of a CSD Regulation-authorized or recognised central securities depository or its nominee.

(2) The definitions set out in the 2019 Act apply in this Chapter unless expressly stated otherwise or the context requires otherwise;

(3) The provisions of this Chapter apply only in respect of relevant participating issuers;

(4) This Chapter shall come into operation on such day as the Minister may appoint by order, on or after the live date as defined in the 2019 Act, as it applies in respect of a relevant participating issuer.

#### **Explanatory Note:**

This adds definitions for terms that are introduced to Part 17 Chapter 7A of the Companies Act 2014 in the subsequent Heads. Also provides for the application of terms defined in the Migration of Participating Securities Act 2019 to the Chapter; the application of the Chapter to relevant participating issuers only; and a commencement date for the Chapter.

## Head 4-2. Disapplication of requirement to issue share certificates

Provide for the insertion of the following new section 1087B into the Companies Act 2014:

### **1087B Share certificates**

Notwithstanding section 99(2), a relevant participating issuer is not required to issue share certificates registered in the name of a central securities depository (or, as the case may be, in the name of the body nominated by that depository) in respect of any transfer or issue of shares into a central securities depository at all times after the live date, and title of a central securities depository (or, as the case may be, of the body nominated by that depository) to the participating securities shall be evidenced by the recording of the name and address of that depository or body, as appropriate, in the register of members of the relevant participating issuer.

#### **Explanatory Note:**

This disapplies, for a relevant participating issuer, the requirement of section 99(2) of the Companies Act 2014 to issue certificates with respect to shares registered in the name of a central securities depository or its nominee.

Section 11(3)(b) and section 11(4) of the Migration of Participating Securities Act 2019 similarly disapplied section 99(2) of the Companies Act 2014 for a participating issuer, but only in respect of the tranche of shares that transferred to a depository on the live date for the migration and thereafter, i.e. new issues of shares by companies were not catered for.

However, transfer of shares to a central securities depository are likely to take place on a frequent basis. As the depository or its nominee may hold the legal title to all such securities, the issuing of share certificates for such a transfer is superfluous and may not be provided by a depository.

This Head therefore disapplies the section 99(2) requirement in respect of all shares registered in the name of a central securities depository or its nominee.

## Head 4-3. Disapplication of requirement for a written instrument of transfer

Provide for the insertion of the following new section 1097C into the Companies Act 2014:

### **1097C Transfer of shares**

(1) Notwithstanding section 94(4), section 2(1) of the Stock Transfer Act 1963 or any other enactment, with respect to securities held by a central securities depository (or, as the case may be, by the body nominated by that depository), a written instrument of transfer shall not be necessary to transfer title to -

(i) the relevant participating securities to a central securities depository (or, as the case may be, to the body nominated by that depository) from any holder of the rights or interests in those securities, or

(ii) any of the participating securities from the settlement system operated by a central securities depository (or, as the case may be, the body nominated by that depository) to any holder of the rights or interests in those securities.

(2) *Subsection (1)* shall also apply to transfer of title of participating securities between central securities depositories.

**Explanatory Note:**

This disapplies for a relevant participating issuer the requirement under Section 94(4) of the Companies Act 2014 for a written instrument of transfer to register a transfer of shares.

Section 11(3)(a) of the Migration of Participating Securities Act 2019 similarly disapplied section 94(4) of the Companies Act 2014, but only with respect to the tranche of shares that transferred to a depository on the live date for the migration and thereafter, i.e. new issues of shares by companies were not catered for.

This Head disapplies the section 94(4) requirement in respect of all shares registered in the name of a central securities depository or its nominee. A comparable disapplication of what is now section 94(4) of the Companies Act 2014 applies under the Uncertificated Securities Regulations 1996 (Regulations 4 and 5) for securities held and transferred in accordance with those Regulations in the CREST system.

Head 4-4. Amendment to definition of majority for schemes of arrangement

Provide for insertion of the following new term into Section 1087D of the Companies Act 2014:

**1087D                    Alternative special majority for Schemes of Arrangement**

(1) With respect to section 449(1), “special majority” for a relevant participating issuer company may, alternatively, mean a majority representing at least 75 per cent in value of the creditors or class of creditors or members or class of members, as the case may be, present and voting either in person or by proxy at the scheme meeting.

(2) In the circumstances where part of a participating issuer’s shareholding is held outside a central securities depository, in order for the definition of ‘special majority’ referred to in *subsection (1)* to apply, the quorum for a scheme meeting shall be at least 3 persons holding or representing by proxy

at least one-third in nominal value of the issued shares in the participating issuer and section 182 shall, in relation to that meeting, be construed accordingly.

**Explanatory Note:**

This provides that, for a relevant participating issuer, a scheme of arrangement may alternatively be approved by a special majority representing at least 75 per cent in value of creditors or members (or class thereof) present and voting, with an additional quorum requirement.

Special majority under Section 449(1) of the Companies Act for approval of a scheme is currently defined as a “majority in number representing at least 75 percent in value” of the creditors or members (or class thereof) present and voting at the scheme meeting.

A central securities (CSD) depository or its nominee may hold the legal title to 95% or more of the securities of a relevant participating issuer - with the balance being held by a number of other shareholders. With a CSD structure, a ‘majority in number’ requirement for approval by members of a scheme of arrangement would be disproportionate, as a central securities depository or its nominee would count as one shareholder. Such a threshold for approval of a scheme could be inoperable and accordingly this Head provides for an alternative threshold, with an accompanying quorum requirement, which could be availed of by a relevant participating issuer.

This accompanying quorum requirement provides that, where applicable, participation in a scheme meeting by members holding shares outside of a CSD structure (i.e. in certificated form) is required for approval of a scheme of arrangement. A comparable quorum requirement applies under section 88(6) of the 2014 Act in respect of the variation of rights attached to special classes of shares and under section 8 of the 2019 Act, for the consent of an issuer to the migration of participating securities. It should also be noted that a scheme of arrangement must also be sanctioned by an order of the court, under section 453(2)(c) of the Companies Act 2014.

Head 4-5. Disapplying the requirement for 50% in number of assenting shareholders for takeover acceptance

Provide for the insertion of the following new section 1087E into the Companies Act 2014:

**1087E                    Disapplication of additional requirement to be satisfied for right to buy out to apply**

The additional requirement of section 458 shall not apply in respect of a relevant participating issuer.

### **Explanatory Note:**

This disapplies the additional requirement of Section 458 of the Companies Act 2014 in respect of an offer to acquire all of the shares in the capital of a company, where the offeror (and its subsidiaries) hold(s) 20% or more of the shares, that the threshold for acceptance by assenting shareholders, besides holding not less than 80 per cent in value of the shares affected, is also not less than 50 per cent in number of the holders of those shares.

A central securities depository or its nominee may hold the legal title to 95% or more of the securities of a relevant participating issuer - with the balance being held by a number of other shareholders. With a CSD structure, a '50 per cent in number' additional requirement for acceptance of a buy-out offer would be disproportionate, as a central securities depository or its nominee would count as one shareholder and the threshold for approval would be unduly high. Such a threshold for approval could be inoperable and this Head accordingly disapplies the 'majority in number' additional requirement for a relevant participating issuer only.

### Head 4-6. Disapplying the requirement for documentary evidence of power of attorney for takeovers

Provide for the insertion of the following new section 1087F into the Companies Act 2014:

#### **1087F Irrevocable powers of attorney**

(1) Where the terms of an offer for any or all shares of a relevant participating issuer provide that a person accepting the offer creates an irrevocable power of attorney in favour of the offeror, or a person nominated by the offeror, in the terms set out in the offer, then acceptances communicated by properly authenticated dematerialised instructions within or from a central securities depository shall constitute a grant of an irrevocable power of attorney by the relevant participants in the depository accepting the offer in favour of the offeror, or person nominated by the offeror, in the terms set out in the offer.

(2) Where the contract constituted by an offer and acceptance as referred to in *subsection (1)* is governed by Irish law, section 20 of the Powers of Attorney Act 1996 shall apply to a power of attorney constituted in accordance with this subsection.

### **Explanatory Note:**

This disapplies the power of attorney requirements that would otherwise apply in law further to the Takeover Rules made under the Irish Takeover Panel Act 1997 (under Rule 10 of the 2013 Rules) such that the use of paper form of acceptances or powers of attorney for the transfer of any or all shares is not required in respect of the shares of a relevant participating issuer.

As shares in a CSD system are held and dealt in a paperless environment, a requirement for a documentary depository to execute takeover acceptances is anomalous and may not be accommodated.

A comparable provision is made under UK law in the Uncertificated Securities Regulations of 2001 (Regulation 43) but not previously in Irish law, in the Uncertificated Securities Regulations of 1996, or otherwise.

#### Head 4-7. Extending the record date for participation and voting in general meeting

Provide for insertion of new section 1087G into the Companies Act 2014:

##### **1087G Record date for participation and voting in general meeting**

(1) With respect to the section 1105(1), for a relevant participating issuer, “record date” means a date not more than 72 hours before the general meeting to which it relates.

##### **Explanatory Note:**

This provides for a 72-hour period of working days before a general meeting for a relevant participating issuer before which time a member shall be entered on the relevant register of securities in order to exercise the right to participate and vote at a general meeting.

A longer period is necessary to permit investors’ instructions to be provided through the chain of intermediation and taken account of by a CSD, or its nominee, which is the registered member.

#### Head 4-8. Power to make regulations for the uncertificated securities of relevant participating issuers necessary to enable the market migration

Provide for the insertion of the following new section 1087H in the Companies Act 2014:

##### **1087H Power to make regulations for the uncertificated securities of relevant participating issuers**

(1) The Minister may make regulations for the uncertificated securities of relevant participating issuers, where necessary to enable the effective introduction of a substitute securities settlement system, compatible with the law of the European Union, as provided for under the 2019 Act.

(2) A regulation made under this section shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either such House within the next 21 days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

**Explanatory Note:**

This provides a regulation making power for the Minister for the specific purpose of regulating where necessary and appropriate under the 2014 Act, to enable the effective introduction of a substitute securities settlement system, compatible with the law of the European Union, as provided for under the 2019 Act.

Specific necessary regulations are not identified at this stage, however, given that the market migration presents considerable operational and legal challenges and risks, and that it must be completed by 31 March 2021, a regulation making power to make limited, necessary further provision, consistent with the policy of the 2019 Act and the proposed insertion of Chapter 7A into Part 17 of the 2014 Act is considered prudent and necessary.

Section 1086 already provides a power to make regulations for the transfer of securities, however this is specifically with respect to enabling the evidencing and transferring of title to securities without a written instrument and therefore may not offer an appropriate legal base in this case.

Section 1086 appears more relevant for the introduction of regulations to provide for full dematerialisation of participating securities, as is now required under the CSD Regulation, from 1 January 2023.

## PART 5 - Amendment to Section 10(2) of the *Employment Permits Act 2006*

### Minister for Business, Enterprise & Innovation

#### Head 5-1. Restriction on grant of employment permit

10 (2) (Subject to subsections (2A) and (2B), an employment permit shall not be granted unless the Minister is satisfied that on the date the application for the employment permit was made 50 per cent or more of the employees of—

- (a) the person who has made the offer of employment,
- (b) in the case of an application referred to in section 4(2)(a), the contractor or the relevant person concerned,
- (c) in the case of an application referred to in section 4(2)(b), the connected person concerned, or
- (d) in the case of an application referred to in section 4(2)(c), the person party to the arrangement referred to in that section who made the offer of employment,

are nationals of any of the following:

- (i) one or more Member States of the EEA;
- (ii) the Swiss Confederation;
- (iii) the United Kingdom of Great Britain and Northern Ireland;
- (iv) a combination of any of the states referred to in paragraphs (i), (ii) and (iii).

#### **Explanatory Note:**

Under the CTA UK citizens will not, after the UK leaves the EU, be required to obtain an employment permit to work in Ireland. The same will apply to Irish citizens working in the UK.

The Employment Permit Regime contains a number of protections for the domestic/EEA labour markets and the foreign national employee as well as fulfilling our EU (Community Preference) obligations. Part 5 will amend Section 10(2) of the Employment Permits Act 2006 so that employers are now required to have sourced at least 50% of their workforce from Ireland/ EEA, Swiss Confederation, or the UK. Currently UK citizens are included under EEA figures but after the UK leaves the EU post transition, the UK would no longer be included which would be an issue for businesses. This would give rise to considerable disruption for companies who are applying for new employment permits and for companies applying for employment permit renewals.

## PART 6 - Arrangements in relation to Fluorinated Greenhouse Gases

### Minister for Communications, Climate Action & Environment

#### ***Qualification to carry out activity relating to fluorinated greenhouse gases***

##### Head 6-1. Interpretation

Provide that -

In this Chapter—

“Agency” means the Environmental Protection Agency;

“equivalent certificate” means an equivalent certificate referred to in *paragraph (a), (b), (c) or (d)* of Head 6.2 (1);

“equivalent training attestation” means an equivalent attestation referred to in *paragraph (e)* of Head 6.2 (1);

“relevant date” means the end of the transition period.

#### **Explanatory Note**

This head outlines definitions for the purpose of Head 6-2 by establishing what constitutes an equivalent certificate, equivalent training attestation and the relevant date.

##### Head 6-2. Equivalent certification, equivalent training attestation relating to individuals

Provide that -

(1) (a) An individual who, immediately before the relevant date holds a valid certificate issued by a certification body in the United Kingdom under Article 5 of Commission Regulation (EC) No 304/2008

of 2 April 2008<sup>1</sup> in respect of an activity referred to in Article 2(1) of that Commission Regulation is deemed, for the purpose of carrying out that activity, to hold an equivalent certificate.

(b) An individual who, immediately before the relevant date holds a valid certificate issued by a certification body in the United Kingdom under Article 3 of Commission Regulation (EC) No 306/2008 of 2 April 2008<sup>2</sup> in respect of an activity referred to in Article 1 of that Commission Regulation is deemed, for the purpose of carrying out that activity, to hold an equivalent certificate.

(c) An individual who, immediately before the relevant date holds a valid certificate issued by a certification body in the United Kingdom under Article 3 of Commission Implementing Regulation (EU) 2015/2066 of 17 November 2015<sup>3</sup> in respect of an activity referred to in Article 1 of that Commission Regulation is deemed, for the purpose of carrying out that activity, to hold an equivalent certificate.

(d) An individual who, immediately before the relevant date holds a valid certificate issued by a certification body in the United Kingdom under Article 4 of Commission Implementing Regulation (EU) 2015/2067 of 17 November 2015<sup>4</sup> in respect of an activity referred to in Article 2(1) of that Commission Regulation is deemed, for the purpose of carrying out that activity, to hold an equivalent certificate.

(e) An individual who, immediately before the relevant date holds a valid training attestation issued by an attestation body in the United Kingdom under Article 3 of Commission Regulation (EC) No 307/2008 of 2 April 2008<sup>5</sup> in respect of an activity referred to in Article 1 of that Commission Regulation is deemed, for the purpose of carrying out that activity, to hold an equivalent training attestation.

(2) An individual who holds an equivalent certificate or equivalent training attestation may carry out the activity to which the equivalent certificate or equivalent training attestation relates until the date that is 6 months from the relevant date or the date on which a certificate or training attestation is issued by the Agency under subsection (3), whichever is earlier.

(3) An individual who holds an equivalent certificate or equivalent training attestation shall apply to the Agency not later than 4 months after the relevant date for the issue by it of a certificate or training attestation in respect of the activity to which the equivalent certificate or training attestation relates and such certificate or training attestation shall, subject to subsection (4), be issued by the Agency not later than 6 months after the relevant date.

(4) The Agency shall issue a certificate or training attestation where an application is made in accordance with the procedures established by the Agency in that behalf.

**Explanatory note**

These provisions providing for an additional 6 month period of validity after the transition period for UK 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 6 month period by way of application to the Environmental Protection Agency within the first 4 months of the additional 6 month validity period.

## PART 7 - Amendment of Student Support Act 2011

### Minister for Further and Higher Education, Research, Innovation and Science

#### Head 7-1. Definition

Provide that -

In this Part, “Act of 2011” means the Student Support Act 2011.

#### **Explanatory Note:**

This Head defines the “Principal Act” i.e. the Student Support Act 2011.

#### Head 7-2. Amendment of section 2 of Act of 2011

Provide that -

Section 2 of the Act of 2011 is amended by the insertion of the following definition after the definition of “relevant Minister”:

“ ‘relevant specified jurisdiction’ means—

(a) a country that, as respects a class of person standing prescribed under section 14A(1) for the purposes of section 14(1)(aa), is specified in the regulations concerned under section 14A(1) prescribing that class, or

(b) where a class of person stands prescribed under section 14A(3) for the purposes of section 14(1)(aa), Northern Ireland;”.

#### **Explanatory Note:**

This Head defines what a “relevant specified jurisdiction” means.

#### Head 7-3. Amendment of section 7 of Act of 2011

Provide that -

Section 7 of the Act of 2011 is amended, in subsection (1), by—

- (a) the substitution, in paragraph (e), of “including the State,” for “including the State, or”,
- (b) the substitution, in paragraph (f), of “subsection (2), or” for “subsection (2).”, and
- (c) the insertion of the following paragraph after paragraph (f):

“(g) an educational institution that provides higher education and training and which—

(i) is situated in a relevant specified jurisdiction, and

(ii) is maintained or assisted by recurrent grants from public funds of that jurisdiction or of any Member State including the State.”.

#### **Explanatory Note:**

This Head defines what an approved institution is for the purposes of the scheme. Publicly funded higher education institutions in all EU Member States are recognised. The amendment allows for the recognition of institutions in the UK at the end of Transition Period.

#### Head 7-4. Amendment of section 8 of Act of 2011

Provide that -

Section 8 of the Act of 2011 is amended—

(a) in subsection (2)(k), by—

(i) the insertion, in each of subparagraphs (i) and (ii), of “or (g)” after “section 7(1)(e)”,

(ii) the substitution, in clause (II) of subparagraph (ii), of “Member State, or” for “Member State;”, and

(iii) the insertion of the following subparagraph after subparagraph (ii):

“(iii) in the case of a qualification awarded following the successful completion of a course at an institution mentioned at section 7(1)(g)—

(I) if such recognition is provided for by those laws in the following manner, in a manner provided for by the laws of a relevant specified jurisdiction that correspond to the arrangements, procedures and systems referred to in subparagraph (i), or

(II) if such recognition is not provided for by those laws in that manner, then otherwise in accordance with the laws of the relevant specified jurisdiction;”,

and

(b) in subsection (3)(c)(i), by the insertion of “or (iii)” after “paragraph (k)(ii)”.

**Explanatory Note:**

This Head 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 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 the UK from the end of the transition period.

Head 7-5. Amendment of section 14 of Act of 2011

Provide that -

Section 14 of the Act of 2011 is amended—

(a) in subsection (1)—

(i) by the insertion of the following paragraph after paragraph (a):

“(aa) a person, other than a person to whom paragraph (a)(i), (ii) or (iii) refers, who is a person of a class that stands prescribed under section 14A(1) or (3) for the purposes of this paragraph,”,

(ii) in paragraph (d), by the substitution of “paragraph (a) or (aa)” for “paragraph (a)”, and

(iii) in paragraph (e), by the substitution of “paragraph (a), (aa)” for “paragraph (a)”,

(b) in subsection (2), by the substitution, in each of paragraphs (a) to (c), of “subsection (1)(a) or (aa), as the case may be” for “subsection (1)(a)”,

(c) by the substitution, in subsection (4), of the following subparagraph for subparagraph (i) of paragraph (b):

“(i) 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—

(I) a Member State, or

(II) a relevant specified jurisdiction,

leading to a qualification that is recognised in accordance with the laws of the Member State or the relevant specified jurisdiction 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 for by those laws in that manner then otherwise in accordance with the laws of the Member State or the relevant specified jurisdiction, and”,

(d) in subsection (6)—

(i) by the deletion of “either”,

(ii) in paragraph (a), by the deletion of “or”,

(iii) in paragraph (b), by the substitution of “of 1997), or” for “of 1997).”, and

(iv) by the insertion of the following paragraph after paragraph (b):

“(c) a person who has a right to enter and be present in the State by reason of—

(i) an arrangement between the Government and the government of the United Kingdom relating to the lawful movement of persons between the State and the United Kingdom, or

(ii) an arrangement (other than that referred to in subparagraph (i)) between the State and a relevant specified jurisdiction.”,

(e) in subsection (7), by—

(i) the insertion of “or, where subsection (1)(aa) applies, in a relevant specified jurisdiction” after “subsection (1)(a)”, and

(ii) the substitution of “paragraph (a), (aa)” for “paragraph (a)”,

and

(f) in subsection (8), by—

(i) the insertion of “or, where subsection (1)(aa) applies, in a relevant specified jurisdiction” after “subsection (1)(a)”, and

(ii) the insertion of “or, as the case may be, the relevant specified jurisdiction” after “any of the states”.

**Explanatory Note:**

This Head defines what an approved student is for the purposes of the scheme. The amendment provides for the Minister to prescribe students in the UK from the end of the transition period.

Head 7-6. Operation of section 14 of Act of 2011 (prescribing of certain matters)

Provide that -

The Act of 2011 is amended by the insertion of the following section after section 14:

**“14A.** (1) Where the Minister is satisfied to do so, having—

(a) regard to any of the matters specified in subsection (2),

(b) consulted with the Higher Education Authority, and

(c) obtained the consent of the Minister for Public Expenditure and Reform,

he or she may prescribe a class of person, being a national of a country (not being the State or any other state referred to in section 14(1)(a)) specified in the regulations concerned prescribing that class, for the purposes of section 14(1)(aa).

(2) The following matters or any of them are the matters to which the Minister shall have regard for the purposes of prescribing a class of person pursuant to subsection (1):

(a) whether there are reciprocal arrangements in place with the country specified, as mentioned in subsection (1), in the regulations concerned (the 'specified country');

(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) the nature and level of the qualification to be awarded to a person, falling within the class proposed to be prescribed, on the successful completion by him or her of the course concerned;

(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 education, and the contribution that nationals of the specified country can make to higher education in the State.

(3) Notwithstanding subsection (1), 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 (4), he or she may prescribe a class of person, being a national of the United Kingdom, or an Irish citizen, for the purposes of section 14(1)(aa).

(4) The following are the relevant purposes to which the Minister shall have regard when prescribing a class of person pursuant to subsection (3):

(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.”.

**Explanatory Note:**

This Head 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

### Minister for Finance

## Chapter 1

### *Definitions*

#### Head 8-1. Definitions

Provide that -

In this Part -

“Act of 1997” means the [Taxes Consolidation Act 1997](#) ;

“Act of 1999” means the [Stamp Duties Consolidation Act 1999](#) ;

“Act of 2010” means the [Value-Added Tax Consolidation Act 2010](#) .

## Chapter 2

### *Income Tax*

#### Head 8-2 – Amendment to exemptions from tax for Government and other public securities

Provide that -

To amend section 42(1) Taxes Consolidation Act 1997 (income tax and corporation tax main provisions) by the substitution of the following definition for the definition of “relevant State”:

“ ‘relevant State’ means -

- (i) a Member State of the European Union, or
- (ii) not being such a Member State, an EEA State which is a territory with the government of which arrangements having the force of law by virtue of section 826(1) have been made, and, in addition to what is specified in paragraphs (i) and (ii), shall be deemed to include the United Kingdom.”.

#### **Explanatory Note:**

This Head 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.

#### Head 8-3. Amendment of section 128D of Act of 1997

Provide that -

Section 128D(1) of the Act of 1997 is amended, in the definition of “trust”, by the insertion, after “EEA State”, in each place where it occurs, of “or in the United Kingdom”.

#### **Explanatory Note:**

The Head seeks to add UK to the definition of a Member State/EEA.

#### Head 8-4. Amendment of section 128F of Act of 1997

Provide that -

Section 128F(1) of the Act of 1997 is amended, in the definition of “qualifying company”, by the insertion, after “EEA State other than the State”, in each place where it occurs, of “or in the United Kingdom”.

#### **Explanatory Note:**

The Head seeks to add UK to the definition of a Member State/EEA.

#### Head 8-5. Amendment of section 191 of Act of 1997

Provide that -

Section 191(1) of the Act of 1997 is amended, in the definition of “comparable overseas scheme”, by the insertion of “or in the United Kingdom” after “(other than the State)”.

**Explanatory Note:**

The Head seeks to add UK to the definition of a Member State/EEA.

Head 8-6. Amendment of section 192B of Act of 1997

Provide that -

Section 192BA of the Act of 1997 is amended, in subsection (1)(b)(a), by the insertion of “or of the United Kingdom” after “European Communities”.

Sections 13(2) and (3) of Finance Act 2019 to be repealed.

**Explanatory Note:**

The Head seeks to add UK to the definition of a Member State/EEA.

Head 8-7 Amendment of section 192F of Act of 1997

Provide that-

Section 192F of the Act of 1997 is amended, in subsection (2)(b)(i), by the insertion of “, or in the United Kingdom” after “(other than the State)”.

Section 15(2) and (3) of Finance Act 2019 to be repealed.

**Explanatory Note:**

Section 192F of the Taxes Consolidation Act 1997 provides an exemption from income tax for certain payments made on behalf of the Minister for Education and Skills in respect of student grants in accordance with the Student Support Act 2011.

This section is amended to provide for the extension of the exemption to UK student support payments in addition to EU member state payments in certain circumstances.

#### Head 8-8. Amendment of section 195 of Act of 1997

Provide that -

Section 195 of the Act of 1997 is amended, in subsection (2)(a)(i), by the insertion, after “another EEA State,”, in each place where it occurs, of “or in the United Kingdom,”.

**Explanatory Note:**

The Head seeks to add UK to the definition of a Member State/EEA.

#### Head 8-9. Amendment of section 208A of Act of 1997

Provide that -

Section 208A(2) of the Act of 1997 is amended by the insertion of “or in the United Kingdom” after “in an EFTA state”.

**Explanatory Note:**

The Head seeks to add UK to the definition of a Member State/EEA.

#### Head 8-10. Amendment of section 208B of Act of 1997

Provide that -

Section 208B(1) of the Act of 1997 is amended in the definition of “qualified person” —

- (a) in paragraph (b)(ii), by the insertion of “or in the United Kingdom” after “EFTA state”, and
- (b) by the insertion of “or the United Kingdom” after “that EFTA state”.

**Explanatory Note:**

The Head seeks to add UK to the definition of a Member State/EEA.

#### Head 8-11. Amendment of section 244 of Act of 1997

Provide that -

Section 244 of the Act of 1997 is amended, in the definition of “qualifying residence”, by the insertion of “or in the United Kingdom” after “in an EEA State”.

#### **Explanatory Note:**

The Head seeks to add UK to the definition of a Member State/EEA.

#### Head 8-12. Amendment of section 244A of Act of 1997

Provide that -

Section 244A of the Act of 1997 is amended, in subsection (3)(f)(i), by the insertion of “or of the United Kingdom,” after “other than the State,”.

#### **Explanatory Note:**

The Head seeks to add ‘or of the United Kingdom’ after ‘other than the State’ to the definition of a Member State/EEA.

#### Head 8-13. Amendment of section 470 of Act of 1997

Provide that -

Section 470(1) of the Act of 1997 is amended in the definition of “authorised insurer”—

(a) in paragraph (a)—

(i) by the insertion of “or authorised to carry on such business by the authority in the United Kingdom charged by law with the duty of supervising the activities of undertakings so authorised” after “18 June 1992”, and

(ii) by the insertion of “or in the United Kingdom, as the case may be” after “European Communities”,

and

(b) in paragraph (b)(ii), by the insertion of “, or authorised by the authority in the United Kingdom charged by law with the duty of supervising the activities of undertakings so authorised” after “18 June 1992”.

**Explanatory Note:**

The Head seeks to include UK alongside EU/EEA and seek to ensure that Irish taxpayers remain entitled to tax relief if the insurance policy is in the UK.

Head 8-14. Amendment of section 472B of Act of 1997

Provide that -

Section 472B(1) of the Act of 1997 is amended by the substitution of the following definition for the definition of “sea-going ship”:

“ ‘sea-going ship’ means a ship which—

(a) is registered—

(i) in a Member State’s Register, or

(ii) in a register, governed by the law of the United Kingdom, that, having regard to the purposes that a Member State’s Register serves, is at least equivalent to a Member State’s Register,

and

(b) is used solely for the trade of carrying by sea passengers or cargo for reward, but does not include a fishing vessel.”.

**Explanatory Note:**

The Head seeks to add UK to the definition of a Member State/EEA.

Head 8-15. Amendment of section 472BA of Act of 1997

Provide that -

Section 472BA(1) of the Act of 1997 is amended, in paragraph (a) of the definition of “fishing vessel”, by the insertion of “or on the register kept by the United Kingdom that is at least equivalent to the

national fishing fleet register that is required to be kept by each Member State” after “30 December 2003”.

**Explanatory Note:**

The Head seeks to add UK to the definition of a Member State/EEA.

Head 8-16. Amendment of section 473A of Act of 1997

Provide that -

Section 473A(1) of the Act of 1997 is amended in the definition of “approved college”—

(a) in paragraph (b), by the insertion of “or in the United Kingdom” after “(other than the State)”,

(b) in paragraph (b)(i), by the insertion of “or of the United Kingdom” after “(including the State)”,

(c) in paragraph (b)(ii), by the insertion of “or in the United Kingdom where it is situated in the United Kingdom” after “situated”,

(d) in paragraph (c), by the insertion of “or in the United Kingdom” after “European Union”, and

(e) in paragraph (d), by the insertion of “(including the United Kingdom)” after “any country”.

**Explanatory Note:**

The Head seeks to add UK to the definition of a Member State/EEA.

Head 8-17. Amendment of section 480A of Act of 1997

Provide that -

Section 480A(1) of the Act of 1997 is amended, in paragraph (c) of the definition of “relevant individual”, by the insertion of “the United Kingdom,” after “the State,”.

**Explanatory Note:**

The Head seeks to add UK to the definition of a Member State/EEA.

## Head 8-18. Amendment of section 489 of Act of 1997

Provide that -

Section 489 of the Act of 1997 is amended in paragraph (b) of the definition of “unlisted” —

- (a) in subparagraph (i), by the deletion of “or”,
- (b) in subparagraph (ii), by the substitution of “State, or” for “State.”, and
- (c) by the insertion of the following subparagraph after subparagraph (ii):
  - “(iii) in the United Kingdom.”.

### **Explanatory Note:**

The Head seeks to add UK to the definition of a Member State/EEA.

## Head 8-19. Amendment of section 490 of Act of 1997

Provide that -

Section 490 of the Act of 1997 is amended—

- (a) by the substitution of the following subsection for subsection (1):

“(1) In this Part, a company shall be a qualifying company if—

- (a) it is incorporated in the State, in another EEA State or in the United Kingdom, and
- (b) it complies with this section and section 491.”,

and

- (b) in subsection (3)(a)(i), by the insertion of “resident in the United Kingdom” after “resident in the State,”.

### **Explanatory Note:**

The Head seeks to add UK to the definition of a Member State/EEA.

## Head 8-20. Amendment of section 770 of Act of 1997

Provide that -

Section 770(1) of the Act of 1997 is amended—

(a) in the definition of “administrator”, by the insertion of “or in the United Kingdom” after “European Communities”, and

(b) by the substitution of the following definition for the definition of “overseas pension scheme”:

“‘overseas pension scheme’ means a retirement benefits scheme, other than a state social security scheme, which—

(a) is operated or managed by an institution for occupational retirement provision as defined by Article 6(1) of Directive (EU) 2016/2341 of the European Parliament and of the Council of 14 December 2016<sup>8</sup> (in this definition referred to as ‘the Directive’) and is established in a Member State of the European Union, other than the State, which has given effect to the Directive in its national law, or

(b) is established in the United Kingdom and is subject to supervisory and regulatory arrangements at least equivalent to those applied under the Directive;”.

### **Explanatory Note:**

The Head seeks to amend definition of “administrator” and “overseas pension scheme” to include persons and schemes established in the UK.

## Head 8-21. Amendment of section 772 of Act of 1997

Provide that -

Section 772 of the Act of 1997 is amended, in subsection (2)(c)(i), by the insertion of “or in the United Kingdom, as the case may be,” after “European Communities”.

### **Explanatory Note:**

The Head seeks to add UK to the definition of a Member State/EEA.

## Head 8-22. Amendment of section 772A of Act of 1997

Provide that -

Section 772A(1) of the Act of 1997 is amended, in the definition of “promoter”, by the insertion of “or, where that person is established in the United Kingdom, is authorised to transact insurance business by the authority in the United Kingdom charged by law with the duty of supervising such persons” after “5 November 2002”.

### **Explanatory Note:**

The Head seeks to add UK to the definition of a Member State/EEA.

## Head 8-23. Amendment of section 784 of Act of 1997

Provide that -

Section 784 of the Act of 1997 is amended—

(a) in subsection (2)(a)(i), by the insertion of “or, where that person is established in the United Kingdom, is authorised to transact insurance business by the authority in the United Kingdom charged by law with the duty of supervising such persons” after “5 November 2002”, and

(b) in subsection (4A)(i), by the insertion of “or in the United Kingdom, as the case may be,” after “European Communities”.

### **Explanatory Note:**

The Head seeks to add UK to the definition of a Member State/EEA.

## Head 8-24. Amendment of section 784A of Act of 1997

Provide that -

Section 784A of the Act of 1997 is amended—

(a) in subsection (1)(a), in the definition of “qualifying fund manager”—

(i) in subparagraph (a), by the insertion of “, or of the United Kingdom,” after “the State”,

(ii) by the substitution of the following for subparagraph (b):

“(b) a building society within the meaning of the Building Societies Act 1989, or a society established in accordance with the law of a Member State of the European Union, other than the State, or of the United Kingdom, which corresponds to that Act,”,

(iii) in subparagraph (j)(ii), by the insertion of “or an authorisation granted by the authority in the United Kingdom charged by law with the duty of supervising persons carrying on the business of insurance in the United Kingdom” after “Directive No. 79/267/EEC”,

(iv) in subparagraph (k)(i), by the insertion of “or the United Kingdom” after “European Communities”, and

(v) in subparagraph (l), by the insertion of “or the United Kingdom” after “European Communities”,

and

(b) in subsection (7)(a)(l), by the insertion of “or in the United Kingdom” after “EEA State”.

**Explanatory Note:**

The Head seeks to add UK to the definition of a Member State/EEA.

Head 8-25. Amendment of section 785(1A) of Act of 1997

Provide that -

Section 785(1A) of the Act of 1997 is amended by the insertion of “or to a person authorised to transact insurance business by the authority in the United Kingdom charged by law with the duty of supervising such persons” after “5 November 2002”.

**Explanatory Note:**

The Head seeks to add UK to the definition of a Member State/EEA.

Head 8-26. Amendment of section 787M of Act of 1997

Provide that -

Section 787M(1) of the Act of 1997 is amended—

(a) in the definition of “overseas pension plan”, by the insertion of “the United Kingdom or” after “under the law of,”,

(b) in paragraph (b) of the definition of “qualifying overseas pension plan”, by the insertion of “, or under the law of the United Kingdom where the plan is established in the United Kingdom,” after “established”,

(c) in the definition of “relevant migrant member” —

(i) by the substitution of the following for paragraph (a):

“(a) was, at the time the individual first became a member of the pension plan—

(i) a resident of a Member State of the European Union, other than the State, or

(ii) a resident of the United Kingdom,

and entitled to tax relief in respect of contributions paid under the plan under the law of that Member State of the European Union or the United Kingdom, as the case may be,”,

(ii) in paragraph (d)(i), by the insertion of “or a citizen of the United Kingdom” after “Communities”, and

(iii) in paragraph (d)(ii), by the insertion of “or a resident of the United Kingdom,” after “other than the State,”,

(d) in paragraph (a) of the definition of “resident”, by the insertion of “, or the United Kingdom,” after “Communities”, and

(e) in the definition of “tax reference number”, by the insertion of “or by the United Kingdom,” after “other than the State,”.

**Explanatory Note:**

The Head seeks to add UK to the definition of a Member State/EEA.

Head 8-27. Amendment of section 790B of Act of 1997

Provide that -

Section 790B(1) of the Act of 1997 is amended by the substitution of the following definition for the definition of “European State”:

“ ‘European State’ means—

(a) a Member State of the European Union, other than the State, or

(b) the United Kingdom;”.

**Explanatory Note:**

The Head seeks to add UK to the definition of a Member State/EEA.

Head 8-28. Amendment of section 1032 of Act of 1997

Provide that –

To amend Section 1032 of the Taxes Consolidation Act 1997, which provides that in certain circumstances, a non-resident individual subject to income tax on income arising in the State may be able to claim a proportion (or all) of the allowances or reliefs specified in section 458 TCA 1997. This is required in order to maintain the status quo for qualifying UK residents to allow them to retain entitlement to certain personal allowances, deductions and reliefs for the purposes of calculating their income tax liability.

This amendment is already contained in section 12 of the Finance Act 2019 which will need to be incorporated in the Bill. In addition, that section will need to be repealed in the Bill.

**Explanatory Note:**

The Head seeks to add UK to the definition of ‘European Communities’.

Head 8-29. Amendment to provisions dealing with Non-Resident Persons and Trusts

Provide that –

To amend Section 806 of the Act of 1997 by the substitution of the following definition for the definition of “relevant Member State” in subsection (11)(a):

“‘relevant Member State’ means—

- (i) a state, other than the State, which is a Member State of the European Union, or
- (ii) not being such a Member State, a state which is a contracting party to the Agreement on the European Economic Area signed at Oporto on 2 May 1992 as adjusted by the Protocol signed at Brussels on 17 March 1993,

and, in addition to what is specified in subparagraphs (i) and (ii), shall be deemed to include the United Kingdom;”.

**Explanatory Note:**

This Head amends section 806(11)(a) of the Taxes Consolidation Act 1997 similar to the amendment to that section in section 46 of the Withdrawal Act will need to be incorporated in the Bill. Section 806 is designed to counter individuals who are Irish resident or ordinarily resident in the State avoiding income tax by transferring assets abroad so that the income becomes payable to a person who is resident or domiciled outside Ireland.

The amendment to section 806 also affects sections 579, 579A and 590. 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.

None of the above anti-avoidance provisions apply where it is shown to the satisfaction of Revenue that at the time when the tax charge arises, the relevant non-resident person or settlement 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.

## Chapter 3

### *Corporation Tax*

#### Head 8-30. TCA Section 243(4) - Charges on income for corporation tax purposes

Provide that –

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 the 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.

After the transition period, 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 8-31. Group provisions – TCA Sections 410 and 411

Provide that –

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.

### ***Section 410 – Group Payments***

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.

After the transition period, intra-group payments – relief from withholding tax will no longer be available under section 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

### ***Section 411 – Surrender of Relief between members of Groups and Consortia***

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;

#### **After the transition period**

- (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, the UK's withdrawal from the EU 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 8-32. TCA Section 438 - Loans to participators

Provide that –

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].

After the transition period, 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 section 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 8-33. TCA Section 486C – Relief from tax for certain start-up companies

Provide that –

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.

After the transition period, if the UK ceases to belong to the European Economic Area, 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 8-34. TCA Section 766 – Tax credit for research and development (R&D) expenditure

Provide that –

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.

After the transition period, 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.

#### Head 8-35. TCA Section 615 – Company reconstruction or amalgamation: transfer of assets

Provide that –

To amend Taxes Consolidation Act 1997 Section 615(2)(b) to include the UK within the definition of relevant Member State.

#### **Explanatory Note:**

Section 615 provides relief from corporation tax on chargeable gains 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.

After the transition period, transfers of assets to or from a UK company would not meet the conditions of section 615 because it would not be resident in an EU/EEA Member State. It is proposed to extend the relevant definition to include the UK, to maintain the status quo in the immediate future.

## Head 8-36. TCA Section 616 – Groups of companies: interpretation

Provide that –

To amend Taxes Consolidation Act 1997 Section 616(1)(a) to include the UK within the definition of relevant Member State.

This amendment is already contained in section 36 of the Finance Act 2019 which will need to be incorporated in the Bill. In addition, that section will need to be repealed in the Bill.

### **Explanatory Note:**

Section 616 contains the interpretational rules for Part 20 Chapter 1 TCA 1997. It provides, inter alia, that any reference to a company in section 616 (which defines a group of companies) is a reference to a company which is resident in a relevant Member State for the purposes of a tax which corresponds to Irish corporation tax. A relevant Member State means a Member State of the European Communities, or if not a Member State, an EEA State whose government has made arrangements which have the force of law by virtue of section 826(1).

A number of group provisions rely on the definitions contained within the interpretation section 616, namely:

- Section 586 (company amalgamations by exchange of shares),
- Section 587 (company reconstructions and amalgamations),
- Section 618 (transfers of trading stock within a group),
- Section 620 (replacement of business assets by members of a group),
- Section 625 (Shares in subsidiary member of group).

After the Transition Period, the reliefs in sections 586, 587, 618 and 620 would not apply. In addition, an immediate tax charge under section 625 would arise solely as a result of the UK ceasing to be an EU Member State. It is proposed to extend the relevant definition to include the UK, to maintain the status quo in the immediate future.

## Head 8-37. TCA Section 130 – Matters to be treated as distributions

Provide that –

To amend Taxes Consolidation Act 1997 Section 130(2B) and section 130(3)(d) to include the UK within the definition of ‘relevant Member State’ where used.

This amendment is already contained in section 23 of the Finance Act 2019 which will need to be incorporated in the Bill. In addition, that section will need to be repealed in the Bill.

**Explanatory Note:**

Section 130(2)(d)(iv) is an anti-avoidance provision which acts to re-characterise interest as a distribution in certain circumstances.

***Section 130(2B) TCA – re-characterisation of interest as a distribution***

Section 130(2B) provides an exception from the re-characterisation of interest to a distribution where the payment is to a company which is a resident of another EU Member State.

After the transition period, this exemption would cease to apply in respect of interest payments from an Irish company to a UK company. It is proposed to extend the relevant definition to include the UK, to maintain the status quo in the immediate future.

***Section 130(3) - transfer of company assets or liabilities as a distribution***

Section 130(3) TCA 1997 provides that, where a company transfers assets or liabilities to its members or vice versa, the amount by which the market value of the amount or benefit received by the member exceeds the amount or value of any new consideration given by the member, is treated as a distribution.

However, such transfers between Irish resident companies are not treated as distributions where one company is a subsidiary of the other or both are subsidiaries of another company which is resident in a “relevant Member State”. “Relevant Member State” is defined for this purpose as an EU Member State or an EEA country with which Ireland has concluded a DTA.

After the transition period, this exemption would cease to apply in respect of transfers between Irish resident companies that are subsidiaries of a UK company. It is proposed to extend the relevant definition to include the UK, to maintain the status quo in the immediate future.

## Chapter 4

### *Capital Gains Tax*

#### Head 8-38. Amendment to tax treatment of certain venture fund managers

Provide that -

To amend the definition of “proportion 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:**

An amendment to section 541C of the Taxes Consolidation Act 1997 similar to the amendment in section 53 of the Withdrawal Act will need to be incorporated in the Bill. Section 541C 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.

## Head 8-39. Relief for certain disposals of land and property

Provide that –

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

### **Explanatory Note:**

An amendment to section 604A of the Taxes Consolidation Act 1997 similar to the amendment to that section in section 54 of the Withdrawal Act will need to be incorporated in the Bill. Section 604A 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. This will ensure that the current position, whereby the relief applies to the UK, will be maintained.

## Chapter 5

### *Value-Added Tax*

## Head 8-40. Amendment of section 53 of Act of 2010

Provide that -

Section 53(3) of the Act of 2010 is amended by the substitution of “and sections 53A and 54” for “and section 54”.

### **Explanatory Note:**

This amends Section 53 of the VAT Consolidation Act 2010. This is a referential amendment consequent to the introduction of postponed accounting in Section 51.

Provide that –

The Act of 2010 is amended by the insertion of the following section after section 53:

**“Postponed accounting**

**53A.** (1) Notwithstanding section 53(3) but subject to subsection (4), an accountable person may account for the tax chargeable under section 3(b) on goods imported into the State by the person in the return to be furnished by the person, under section 76 or 77, in respect of the taxable period in which the tax has become so chargeable.

(2) Where—

(a) in accordance with subsection (1), goods have been imported by an accountable person without payment of the tax chargeable on the importation of the goods, and

(b) the tax is not accounted for in a return furnished by the accountable person under section 76 or 77 in respect of the taxable period in which the tax has become so chargeable, the tax chargeable in respect of the importation of the goods shall become due as if this section did not apply.

(3) Where the Revenue Commissioners are satisfied that—

(a) an accountable person no longer complies with one or more of the requirements specified in regulations made under section 120(7)(aa)(i), or

(b) one or more conditions or restrictions, imposed by regulations made under section 120(7)(aa)(ii) as respects the accounting by an accountable person for tax by the means referred to in subsection (1), are no longer satisfied or are no longer being observed, then subsection (4) applies.

4) Where this subsection applies, the Revenue Commissioners shall serve a notice in writing (a ‘notice of exclusion’) on the accountable person stating that the person is, from a date specified in the notice, excluded from accounting for tax by the means referred to in subsection (1) and if such a notice is served on that person then the means referred to in subsection (1) for accounting for tax shall, from the date specified in the notice, not be available to that person.

(5) Where a notice of exclusion is served on a person under subsection (4), the person may appeal the notice to the Appeal Commissioners in accordance with section 949I of the Taxes Consolidation Act 1997 , within the period of 30 days after the date of the notice”.

**Explanatory Note:**

This Head 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 provides for a

modification of the postponed accounting scheme which will make authorisation for the scheme subject to criteria and conditions and will enable Revenue to exclude a person from the scheme.

#### Head 8-42. Amendment of section 56 of Act of 2010

Provide that -

Section 56 of the Act of 2010 is amended—

(a) in subsection (1), in the definition of “qualifying person”—

(i) by the deletion of “, or is likely to amount to,”, and

(ii) by the insertion of “for the period of 12 months immediately preceding the making of an application for authorisation under subsection (2)” after “services”,

(b) in subsection (2), by the insertion of the following paragraph after paragraph (a):

“(aa) provide in the application form the particulars specified in such regulations as may be made under section 120(7)(ab),”

(c) in subsection (3)—

(i) by the substitution of the following paragraph for paragraph (a):

“(a) The Revenue Commissioners shall, subject to paragraph (ab), issue to a person, who has made an application under subsection (2), an authorisation in writing where they are satisfied that—

(i) there is no risk to revenue, and

(ii) the person—

(I) is a qualifying person, and

(II) has furnished the particulars, duly certified, as required under subsection (2),

and if not so satisfied shall refuse to issue the authorisation.”

(ii) by the insertion of the following paragraphs after paragraph (a) (amended by *subparagraph (i)*):

“(aa) Where the Revenue Commissioners decide under paragraph (a) to refuse to issue an authorisation, they shall give notice in writing to the person concerned of the decision and the reasons for that decision.

(ab) An authorisation issued under paragraph (a) shall be subject to the conditions that the authorised person, during the period for which the authorisation is valid, shall—

(i) keep full and true records in accordance with section 84, and

(ii) comply with the provisions of—

(I) this Act,

(II) the Tax Acts (within the meaning of section 1 of the Taxes Consolidation Act 1997 ),

(III) the Capital Gains Tax Acts (within the meaning of section 1 of the Taxes Consolidation Act 1997 ),

(IV) the statutes relating to the duties of excise and to the management of those duties,

(V) the Customs Act 2015 , and

(VI) any instrument made under any of the enactments referred to in clauses (I) to (V).”,

(iii) by the insertion of the following paragraph after paragraph (c):

“(ca) An authorised person shall, by notice in writing, advise the Revenue Commissioners immediately of any change in the particulars referred to in subsection (2)(aa).”,

and

(iv) by the deletion of paragraph (d),

(d) by the insertion of the following subsections after subsection (3):

“(3A) (a) The Revenue Commissioners shall, by notice in writing, cancel an authorisation issued to a person in accordance with subsection (3) where they are satisfied that—

(i) the person is no longer a qualifying person,

(ii) the person has furnished, or there is furnished on his or her behalf, when making an application under subsection (2) for authorisation, particulars which are, in a material respect, false, incorrect or misleading, or

(iii) the person has failed or is failing to comply with all or any of the conditions set out in subsection (3)(ab).

(b) A cancellation under paragraph (a) shall take effect—

(i) if no appeal is brought under subsection (10), on the date specified in the notice given under paragraph (a), or

(ii) if an appeal is brought under subsection (10), on the date on which the appeal has been finally determined or is withdrawn or abandoned.

(3B) Where—

(a) a person’s authorisation is cancelled under subsection (3A), and

(b) it appears to be requisite to the Revenue Commissioners to do so for the protection of the revenue,

the Revenue Commissioners may, notwithstanding any obligations as to secrecy, or other restriction upon disclosure of information imposed on them by any enactment or otherwise—

(i) inform the suppliers to the person to whom the authorisation relates, in so far as is practicable, of—

(I) the cancellation of that person’s authorisation,

(II) the number of the authorisation so cancelled,

(III) the date from which the cancellation has effect, and

(IV) the name and address of the person to whom the authorisation issued,

(ii) publish in *Iris Oifigiúil* a notice stating—

(I) that the authorisation has been cancelled,

(II) the number of the authorisation so cancelled,

(III) the date from which the cancellation has effect, and

(IV) the name and address of the person to whom the authorisation issued,

and

(iii) make publicly available the information which has been published in accordance with subparagraph (ii) in any other publication and in any manner, form, format or media.”

and

(e) by the insertion of the following subsection after subsection (9):

“(10) Any person aggrieved by a decision of the Revenue Commissioners in relation to—

(a) the refusal under subsection (3)(a) to issue an authorisation, or

(b) the cancellation of an authorisation under subsection (3A),

may appeal the decision to the Appeal Commissioners, in accordance with section 949I of the Taxes Consolidation Act 1997 , within the period of 30 days after the date of the notice of that decision.”.

#### **Explanatory Note:**

This Head 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.

## Head 8-43. Amendment of section 58 of Act of 2010

Provide that -

Section 58(2) of the Act of 2010 is amended—

(a) by the substitution of the following paragraph for paragraph (a):

“(a) the supply of a traveller’s qualifying goods, where the total value of that supply of goods, including tax, is more than €175, and”,

and

(b) by the insertion of the following paragraph after paragraph (iii):

“(iiia) has, in respect of a traveller whose domicile or habitual residence is in the United Kingdom, proof that—

(I) the goods have been imported into the United Kingdom by or on behalf of the traveller, and

(II) value-added tax and duties of customs and excise, chargeable by virtue of the law of the United Kingdom, have been paid on the importation of those goods,”.

A provision is also required to amend section 58 of the VATCA to remove the possibility of ‘intending emigrants’ using the Scheme. This might necessitate an amendment to the definition of traveller or a new provision.

### **Explanatory Note:**

This Head amends Section 58 of the VAT Consolidation Act to allow for the restriction of the operation of the VAT Retail Export Scheme to allow for a minimum purchase of €175 in order to qualify for the Scheme and 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).

## Head 8-44. Amendment of section 120 of Act of 2010

Provide that –

Section 120 of the Act of 2010 is amended—

(a) in subsection (7)—

(i) by the deletion of “provide for”,

(ii) in paragraph (a), by the insertion of “provide for” before “the repayment”,

(iii) by the insertion of the following paragraphs after paragraph (a):

“(aa) as respects the accounting by an accountable person for tax by the means referred to in section 53A(1)—

(i) specify requirements to be complied with by an accountable person, and

(ii) impose conditions or restrictions that must be satisfied or observed in respect of all steps leading to the accounting for tax by the means so referred to (including conditions or restrictions the purpose of which is to secure that the necessary capacity and capability, on an on-going basis, exists on the part of the accountable person in order for him or her to account for tax by those means), and regulations under this paragraph may include provision for the furnishing to the Revenue Commissioners of documentation (including with respect to financial transactions entered into by the accountable person with other persons and accounts or facilities held by the accountable person with financial institutions) by the accountable person and provision the inclusion otherwise of which appears to the Revenue Commissioners to be requisite for the protection of the revenue,

(ab) as respects an application by a person for authorisation in accordance with subsection (2) of section 56, specify the particulars to be included in the application form referred to in that subsection by the person making the application, including, without prejudice to the generality of the foregoing—

(i) the following particulars:

(I) confirmation that full and true records are being kept by the person in accordance with section 84;

(II) confirmation that the person is complying with the provisions of—

(A) this Act,

(B) the Tax Acts (within the meaning of [section 1](#) of the [Taxes Consolidation Act 1997](#)),

(C) the Capital Gains Tax Acts (within the meaning of [section 1](#) of the [Taxes Consolidation Act 1997](#)),

(D) the statutes relating to the duties of excise and to the management of those duties,

(E) the [Customs Act 2015](#), and

(F) any instrument made under any of the enactments referred to in subclauses (A) to (E);

(III) a declaration that the person has not been convicted of any offence under any of the enactments or instruments referred to in clause (II),

and

(ii) the form and manner in which the particulars shall be provided, by the person, in the application form,”

(iv) in paragraph (b), by the insertion of “provide for” before “the enabling”, and

(v) in paragraph (c), by the insertion of “provide for” before “the tax”,

and

(b) in subsection (17)(b), by the substitution of “subsection (7)(aa), (b)” for “subsection (7)(b)”.

**Explanatory Note:**

This Head amends Section 120 of the VAT Consolidation Act to provide regulation making powers with regard to postponed accounting (Section 51) and Section 56 VAT Authorisations (Section 52).

## Chapter 6

### *Stamp Duties*

Head 8-45. Amendment of section 75 of Act of 1999 (Relief for Intermediaries)

Provide that -

That this section be amended so that UK based intermediaries dealing Irish stocks or marketable securities can avail of the relief.

**Explanatory Note:**

Section 75 of the Stamp Duties Consolidation Act 1999 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, and in the absence of any agreement on such matters, this relief would not apply for purchases made by UK based intermediaries on behalf of their clients once the UK’s post-Brexit equivalence period ends in March 2021. It is therefore proposed to extend the relief to maintain the status quo in the immediate future.

#### Head 8-46. Amendment of section 75A of Act of 1999 (Relief for clearing houses)

Provide that -

That this section be amended so that UK based clearing houses dealing Irish stocks or marketable securities can avail of the relief.

#### **Explanatory Note:**

Section 75A of the Stamp Duties Consolidation Act 1999 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, and in the absence of any agreement on such matters, all purchases in a chain of transactions by UK based counterparties would be subject to the 1% stamp duty once the UK's post-Brexit equivalence period ends in March 2021. It is therefore proposed to extend the relief to maintain the status quo in the immediate future.

#### Head 8-47. Amendment of section 80 of Act of 1999 (Reconstructions or amalgamations of companies)

Provide that -

That this section be amended so that UK based companies merging with or acquiring Irish based companies can avail of the relief.

#### **Explanatory Note:**

Section 80 of the Stamp Duties Consolidation Act 1999 concerns the reconstructions or amalgamations of companies to include UK based companies where they merge with or acquire Irish based companies. In the absence of an amendment, and where there is no agreement between the EU and UK on such matters, such activities could become subject to stamp duty, with an ensuing detrimental effect on the level of trade and commerce between Ireland and the UK, on the ending of the UK's transition period on 31 December 2020. It is therefore proposed to extend the relief to maintain the status quo in the immediate future.

#### Head 8-48. Amendment of section 80A of Act of 1999 (Demutualisation of assurance companies)

Provide that –

That this section be amended so that the Irish “members” of UK based assurance companies which are demutualising, or of Irish mutual which are being taken over by UK companies can avail of the relief.

**Explanatory Note:**

Section 80A of the Stamp Duties Consolidation Act 1999 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 here under such circumstances. In the absence of an amendment, and where there is no agreement between the EU and UK on such matters, shares acquired by Irish tax payers could become subject to stamp duty, on the ending of the UK’s transition period on 31 December 2020. It is therefore proposed to extend the relief to maintain the status quo in the immediate future.

Head 8-49. Amendment of section 124B of Act of 1999 (Certain premiums of life assurance)

Provide that -

That this section be amended so that UK and Gibraltar based assurers will be liable to the 1% levy on life assurance premiums on their Irish business.

**Explanatory Note:**

Section 124B of the Stamp Duties Consolidation Act 1999 concerns the charging of a stamp duty levy of 1% on certain premiums of life assurance. At present UK and Gibraltar based assurers are liable to that levy on business sold into Ireland. In the absence of an amendment, and where there is no agreement between the EU and UK on such matters, it will no longer be possible to require that such insurer’s collect and remit the levy. As no new business can be offered by such insurers after the end of the transition period, the applicability of this amendment will fade over time. It is therefore proposed to amend the scope of this section to maintain the status quo in the immediate future.

Head 8-50. Amendment of section 125 of Act of 1999 (Certain premiums of insurance)

Provide that –

That this section be amended so that UK and Gibraltar 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 Stamp Duties Consolidation Act 1999 concerns the charging of a 3% stamp duty levy on certain premiums of non-life insurance. At present UK and Gibraltar based assurers are liable to that levy on business sold into Ireland. In the absence of an amendment, and where there is no agreement between the EU and UK on such matters, it will no longer be possible to require that such insurer's collect the levy. As no new business can be offered by such insurers after the transition period, the applicability of this amendment will fade over time. It is therefore proposed to amend the scope of this section to maintain the status quo in the immediate future.

## Chapter 7

### *Capital Acquisitions Tax*

#### Head 8-51. Agricultural Relief

Provide that -

To amend section 89(1) CATCA 2003 by inserting "or in the United Kingdom" after "Member State" in the definitions of "agricultural property" and "farmer".

#### **Explanatory Note:**

Section 60 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 United Kingdom 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*

#### Head 8-52. Amendment of section 104 of Finance Act 2001

Provide that -

Section 104 of the Finance Act 2001 is amended –

(a) by the substitution of the following paragraph for paragraph (d):

*“(d) save for a delivery of excisable products occurring in the circumstances specified in paragraph (da), for export or re-export from the State to a place outside the European Union,”*

(b) by the insertion of the following paragraph after paragraph (d):

*“(da) by way of supply to a traveller in the following circumstances:*

*(i) the excisable products are purchased by the traveller on board an aircraft or ship during a flight or sea-crossing to a place, other than the United Kingdom, outside of the European Union (in subparagraph (ii) referred to as a ‘relevant place’); and*

*(ii) such purchase is for the purpose of the traveller's carrying away the excisable products in his or her personal luggage to a relevant place,*

*or”*

(c) by the substitution of the following paragraph for paragraph (e):

*“to a tax – free shop at an airport or port for supply to passengers travelling to a destination, other than the United Kingdom, outside of the European Union.”*

**Explanatory Note:**

This Head 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.

The section also provides that the existing full relief from excise duty which applies to excisable products that are sold in tax free shops to passengers travelling to a destination outside of the EU will not apply in the case of passengers travelling to the UK. The section also provides that the existing full relief from excise duty which applies in the case of excisable products purchased by a traveller on board an aircraft or ship during a flight or sea crossing to a place outside the EU will not apply in respect of purchases by a traveller who is going to the UK. (The commencement of the excise restriction provisions will be in response to UK policy in these areas.)

## PART 9 - Financial Services: Settlement Finality

### Minister for Finance

#### Head 9-1. Interpretation

Provide that -

(1) In this Part—

“central counterparty” means a person that is interposed between the institutions in a relevant arrangement and acts as the exclusive counterparty of those institutions with regard to their transfer orders;

“indirect participant” means—

- (a) an institution,
- (b) a central counterparty,
- (c) a settlement agent,
- (d) a clearing house, or
- (e) an operator,

with a contractual relationship with a participant in a relevant arrangement which enables the indirect participant to pass transfer orders through the relevant arrangement, provided that the indirect participant is known to the operator;

“Irish participant” means a participant—

- (a) resident in the State, or
- (b) having its registered office or principal place of business in the State;

“Minister” means Minister for Finance;

“operator” means the entity or entities legally responsible for the operation of a relevant arrangement;

“participant” means—

- (a) an institution,

- (b) a central counterparty,
- (c) a settlement agent,
- (d) a clearing house, or
- (e) an operator,

that is a participant in a relevant arrangement;

“Regulations of 2010” means the European Communities (Settlement Finality) Regulations 2010 ( S.I. No. 624 of 2010 ), as those Regulations stood amended immediately prior to the relevant date;

“relevant arrangement” means a formal arrangement—

- (a) between 3 or more participants (other than the operator, any settlement agent, any central counterparty, any clearing house or any indirect participant), and
- (b) with common rules and standardised arrangements for the clearing (whether or not through a central counterparty) or execution of transfer orders between the participants;

“relevant date” shall—

- (a) subject to *paragraph (b)*, be construed as a reference to the date on which this Part comes into operation, or
- (b) where a time on a particular date is appointed as the time (on that date) at which this Part shall come into operation, be deemed to be a reference to that time;

“settlement agent”, in relation to a relevant arrangement, means a person who provides settlement accounts through which transfer orders are settled (whether or not the person extends credit to participants for settlement purposes);

“transfer order” means—

- (a) an instruction by a participant to place an amount of money at the disposal of a recipient by means of a book entry on the accounts of a credit institution, a central bank, a central counterparty or a settlement agent,
- (b) an instruction that results in the assumption or discharge of a payment obligation as defined by the rules of a relevant arrangement, or
- (c) an instruction by a participant to transfer the title to, or an interest in, a security or securities by means of a book entry on a register or by any other means.

(2) A word or expression that is used in this Part and also used in the Regulations of 2010 has, in this Part, unless the contrary intention appears in this Part, the same meaning as it has in the Regulations of 2010.

**Explanatory Note:**

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

Head 9-2. Temporary designation of relevant arrangement

Provide that -

(1) This section applies to a relevant arrangement where—

(a) immediately before the relevant date, the relevant arrangement was an arrangement—

(i) designated for the purposes of the laws of the United Kingdom giving effect to the Settlement Finality Directive, and

(ii) in respect of which the notifications required to be made to the European Securities and Markets Authority pursuant to those laws have been made,

(b) one or more of the participants in the arrangement is an Irish participant,

(c) the arrangement is governed by the laws of the United Kingdom, and

(d) the rules of the arrangement would, if the arrangement were a system, comply with Regulation 7 of the Regulations of 2010.

(2) The operator of a relevant arrangement shall, not later than 3 months from the date on which the operator becomes aware that this section applies to the arrangement, notify the Bank and the Minister that this section so applies.

(3) Where the Minister receives a notification under subsection (2), he or she shall notify the European Securities and Markets Authority of—

(a) the receipt of the notification, and

(b) the name of the operator of the relevant arrangement concerned.

(4) The Minister may issue a notice (in this section referred to as a “withdrawal notice”) in respect of a relevant arrangement where the Bank has notified the Minister that the Bank is not satisfied that—

- (a) the rules of the arrangement would, if the arrangement were a system, comply with Regulation 7 of the Regulations of 2010, or
- (b) the laws of the United Kingdom applicable to the matters to which the Settlement Finality Directive applies are equivalent to the laws of the State applicable to those matters.

(5) This section shall cease to apply to a relevant arrangement on the date that is the earliest of—

- (a) the date on which the Bank issues a withdrawal notice in respect of the arrangement,
- (b) the date that is 9 months from the relevant date, and
- (c) the date on which there ceases to be an Irish participant in the arrangement.

**Explanatory Note:**

This head provides for the temporary designation of settlement systems already designated by the Bank of England under their Settlement Finality Regulations. Within three months of the end of the transition period, the operator of a relevant system 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 (S.I. No. 624 of 2010) to be extended to of Irish participants in these UK based systems on a temporary basis and avoid any cliff edge risk or market disruption at the end of the transition period.

Head 9-3. Designation of relevant arrangement

Provide that -

(1) This section applies to a relevant arrangement where—

- (a) the arrangement is governed by the laws of the United Kingdom,
- (b) there is a designation notice in effect in relation to that arrangement, and
- (c) one or more of the participants in the arrangement is an Irish participant.

(2) The Minister may issue a notice (in this section referred to as a “designation notice”) in respect of a relevant arrangement where the Bank has notified the Minister that the Bank is satisfied that—

- (a) the rules of the arrangement would, if the arrangement were a system, comply with Regulation 7 of the Regulations of 2010, and
- (b) the laws of the United Kingdom applicable to the matters to which the Settlement Finality Directive applies are equivalent to the laws of the State applicable to those matters.

(3) The Minister may issue a notice (in this section referred to as a “withdrawal notice”) in respect of a relevant arrangement where the Bank has notified the Minister that the Bank is no longer satisfied that—

(a) the rules of the arrangement would, if the arrangement were a system, comply with Regulation 7 of the Regulations of 2010, or

(b) the laws of the United Kingdom applicable to the matters to which the Settlement Finality Directive applies are equivalent to the laws of the State applicable to those matters.

(4) A designation notice shall—

(a) have effect in relation to a relevant arrangement from the date of issue of the notice, and

(b) cease to have effect in relation to a relevant arrangement on the date immediately following the date on which a withdrawal notice is issued in respect of the arrangement.

(5) Where the rules of a relevant arrangement in relation to which a designation notice has effect are amended or revoked, the operator of that arrangement shall, not later than 14 days from the date of that amendment or revocation, as the case may be, notify the Bank in writing that those rules have been amended or revoked, as the case may be.

(6) Where an operator of the relevant arrangement in relation to which a designation notice has effect becomes aware that the laws of the United Kingdom applicable to the matters to which the Settlement Finality Directive applies are not equivalent to the laws of the State applicable to those matters, the operator shall, not later than 14 days from the date on which it becomes so aware, notify the Bank in writing that it has become so aware.

(7) Where the Minister issues a designation or withdrawal notice he or she shall notify the European Securities and Markets Authority of—

(a) the issue of the notice, and

(b) the name of the operator of the relevant arrangement to which the notice relates.

#### **Explanatory Note:**

This head provides for ongoing and conditional designation by the Minister of Finance of a UK based system (“relevant arrangement”) 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 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 the CREST settlement system 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.

#### Head 9-4. Rules applicable to arrangement to which *section 69* or *70* applies

Provide that -

(1) The Regulations of 2010, as modified in accordance with *subsection (2)*, shall apply to a relevant arrangement to which *section 69* or *70* applies as if the arrangement were a system designated by the Minister under Regulation 4(1) of those Regulations.

(2) For the purposes of the application of the Regulations of 2010 in accordance with *subsection (1)*, those Regulations shall be modified as follows:

(a) the definition of “central bank” in Regulation 2(1) shall be construed as if “or the United Kingdom” were inserted after “of a Member State”;

(b) the definition of “system” in Regulation 2(1) shall be construed as if the following subparagraph were substituted for subparagraph (c) of that definition:

“(c) governed by the law of a country, chosen by the participants, that is a Member State or the United Kingdom (being a country in which at least one of those participants has its head office),”;

(c) Regulation 11 shall be construed as if the following paragraph were substituted for paragraph (3):

“(3) If—

(a) securities are provided as collateral security to any one or more of a participant, a system operator or a central bank, and

(b) the right of the participant, system operator or central bank with respect to the securities is legally recorded in a register, account or centralised deposit system located in a Member State or in the United Kingdom,

the law of that Member State or the United Kingdom, as the case may be, governs the determination of the rights of the participant or central bank as a holder of collateral security in relation to those securities.”.

#### **Explanatory Note:**

This head provides for the necessary amendment of certain definitions in the existing Irish Settlement Finality Regulations as and when these regulations are applied to a system designated under Head 9-2 or Head 9-3 of this Part.

## PART 10 - Financial Services: Amendment of European Union (Insurance and Reinsurance) Regulations 2015 and European Union (Insurance Distribution) Regulations 2018

### Minister for Finance

#### Head 10-1. Interpretation

Provide that -

In this Part—

“Regulations of 2015” means the European Union (Insurance and Reinsurance) Regulations 2015 ( S.I. No. 485 of 2015);

“Regulations of 2018” means the European Union (Insurance Distribution) Regulations 2018 ( S.I. No. 229 of 2018).

#### **Explanatory Note:**

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

#### Head 10-2. Amendment of Regulations of 2015

Provide that -

The Regulations of 2015 are amended by the insertion of the following regulations after Regulation 13:

#### **“Conditions for application of Regulation 13B**

(1) This Regulation applies to a person who satisfies the following conditions:

(a) the person was, immediately before the relevant date, authorised as an insurance undertaking, within the meaning of the Directive, under the law of the United Kingdom or Gibraltar giving effect to the Directive;

(b) the person has, before the relevant date—

(i) established a branch and started business in the State, or

(ii) pursued business in the State under the freedom to provide services,

in accordance with Chapter VIII of Title I of the Directive;

(c) the person—

- (i) on or before the relevant date, ceased to conduct new insurance contracts in the State, and
  - (ii) after that date, exclusively administers its existing portfolio in order to terminate its activity in the State;
- (d) the person complies with the general good requirements.

(2) This paragraph applies where the Bank has decided it is satisfied that a person—

- (a) satisfying the condition described in subparagraph (a) of paragraph (1), and
  - (b) satisfying either of the conditions described in subparagraph (b) of that paragraph,
- has, after the relevant date—

- (i) carried on any insurance business in the State, other than the administration of its existing portfolio in order to terminate its activity in the State,
- (ii) permanently ceased to carry on insurance business in the State, having completed the administration of its existing portfolio in order to terminate its activity in the State,
- (iii) failed to make sufficient progress towards permanently ceasing to carry on insurance business in the State by the date that is 15 years from the relevant date, or
- (iv) failed to comply with the general good requirements.

(3) Where paragraph (2) applies, the Bank may issue a notification (in this Regulation referred to as a 'withdrawal notification') to the person concerned stating that it is satisfied that subparagraph (i), (ii), (iii) or (iv), as the case may be, of that paragraph applies to that person.

(4) A decision of the Bank under paragraph (2) is an appealable decision for the purposes of Part VIIA of the Central Bank Act 1942.

(5) A person to whom this Regulation applies shall, not later than 3 months from the relevant date, notify the Bank of the application of this Regulation to that person.

(6) This Regulation shall cease to apply to a person on the date that is the earlier of—

- (a) the date on which the Bank issues a withdrawal notification to the person, and
- (b) the date that is 15 years from the relevant date.

(7) In this Regulation—

‘general good requirements’ means the conditions under which, in the interest of the general good, insurance business shall be carried on in the State, as published by EIOPA and the Bank from time to time;

‘relevant date’ shall—

(a) subject to subparagraph (b), be construed as a reference to the date on which *Part 11 of the Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Act 2020* comes into operation, or

(b) where a time on a particular date is appointed as the time (on that date) at which that Part shall come into operation, be deemed to be a reference to that time.

### **Regulations applicable to a person to whom Regulation 13A applies**

(1) These Regulations shall, subject to the modifications specified in paragraph (2), apply to a person to whom Regulation 13A applies as if the person were an insurance undertaking holding an authorisation under these Regulations, issued by the Bank, permitting the person to administer its existing portfolio in order to terminate its activity in the State, but not permitting the person to carry on any other insurance business in the State.

(2) The modifications referred to in paragraph (1) are as follows:

(a) the following provisions shall not apply:

- (i) Regulations 13 to 15;
- (ii) Regulation 17;
- (iii) Regulations 21 to 24;
- (iv) Regulation 33;
- (v) Regulations 35 to 42;
- (vi) Regulations 44 to 75;
- (vii) Regulations 78 to 143;
- (viii) Regulations 145 to 150;
- (ix) Regulation 152;
- (x) Regulations 154 to 163;
- (xi) Regulations 166 and 167;
- (xii) Regulation 169;
- (xiii) Regulations 171 to 173;

- (xiv) Regulations 175 to 188;
- (xv) Regulations 192 and 193;
- (xvi) Regulations 212 and 213;
- (xvii) Regulations 215 to 278;
- (xviii) Regulations 280 to 299;
- (xix) Parts 1 to 4 of Schedule 3;

(b) the Bank may, in writing, impose, on a person to whom these Regulations apply in accordance with paragraph (1), conditions in relation to the operation or termination, or both the operation and termination, of that person's insurance business and a condition so imposed shall be treated for the purposes of the application of these Regulations in accordance with that paragraph as if it were a condition imposed under Regulation 26."

#### **Explanatory Note:**

This Head 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 15 years following the relevant date for the purposes of running off their existing portfolio.

#### Head 10-3. Amendment of Regulations of 2018

Provide that -

The Regulations of 2018 are amended by the insertion of the following regulations after Regulation 3:

##### **"Conditions for application of Regulation 3B**

**3A.** (1) This Regulation applies to a person who satisfies the following conditions:

- (a) the person was, immediately before the relevant date, registered in the United Kingdom or Gibraltar under the law of the United Kingdom or Gibraltar, as the case may be, giving effect to the Directive of 2016;
- (b) the person has, before the relevant date—
  - (i) established a branch and commenced insurance distribution business in the State, or

(ii) commenced insurance distribution business in the State under the freedom to provide services,

in accordance with Chapter III of Title I of the Directive of 2016;

(c) the person does not, after the relevant date, carry on any insurance distribution business in the State, other than the administration of insurance contracts entered into on or before that date;

(d) the person complies with the general good rules.

(2) This paragraph applies where the Bank has decided it is satisfied that a person—

(a) satisfying the condition described in subparagraph (a) of paragraph (1), and

(b) satisfying either of the conditions described in subparagraph (b) of that paragraph,

has, after the relevant date—

(i) carried on any insurance distribution business in the State, other than the administration of insurance contracts entered into on or before that date,

(ii) permanently ceased to carry on insurance distribution business in the State, having completed the administration of insurance contracts entered into on or before that date,

(iii) failed to make sufficient progress towards permanently ceasing to carry on insurance distribution business in the State by the date that is 15 years from the relevant date, or

(iv) failed to comply with the general good rules.

(3) Where paragraph (2) applies, the Bank may issue a notification (in this Regulation referred to as a 'withdrawal notification') to the person concerned stating that it is satisfied that subparagraph (i), (ii), (iii) or (iv), as the case may be, of that paragraph applies to that person.

(4) A decision of the Bank under paragraph (2) shall be an appealable decision for the purpose of Part VIIA of the Central Bank Act 1942.

(5) A person to whom this Regulation applies shall, not later than 3 months from the relevant date, notify the Bank of the application of this Regulation to that person.

(6) This Regulation shall cease to apply to a person on the date that is the earlier of—

(a) the date on which the Bank issues a withdrawal notification to the person, and

(b) the date that is 15 years from the relevant date.

(7) In this Regulation and Regulation 3B, 'relevant date' shall—

(a) subject to subparagraph (b), be construed as a reference to the date on which *Part 11 of the Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Act 2020* comes into operation, or

(b) where a time on a particular date is appointed as the time (on that date) at which that Part shall come into operation, be deemed to be a reference to that time.

**Regulations applicable to a person to whom Regulation 3A applies**

**3B.** (1) These Regulations shall, subject to the modifications specified in paragraph (2), apply to a person to whom Regulation 3A applies as if the person were granted a registration by the Bank subject to the condition that the person shall not carry on any insurance distribution business in the State other than the administration of insurance contracts entered into on or before the relevant date.

(2) The modifications referred to in paragraph (1) are as follows:

(a) the following provisions shall not apply:

- (i) Regulations 8 to 12;
- (ii) Regulations 14 to 19;
- (iii) Regulations 25 to 28;
- (iv) Regulation 48;

(b) the Bank may, in writing—

- (i) impose, on a person to whom these Regulations apply in accordance with paragraph (1), conditions in relation to the operation or termination, or both the operation and termination, of that person's insurance distribution business, and
- (ii) vary or revoke such conditions.

(3) A decision of the Bank to impose, vary or revoke a condition pursuant to paragraph (2)(b) shall be an appealable decision for the purpose of Part VIIA of the Central Bank Act 1942 .”.

**Explanatory Note:**

This Head 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 15 years. In that respect, it provides that intermediaries which meet certain conditions shall be deemed to be authorised for 15 years following the relevant date for the purposes of running off their existing portfolio.

## Head 10-4. Requirement for Central Bank to make a report to Minister

Provide that:

- a review provision to require that the Central Bank make a report to the Minister at the end of 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.

### **Explanatory Note:**

This Head adds a review clause to require that the Central Bank make a report to the Minister at the end of 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 - Amendments to the Customs Act 2015

### Minister for Finance

#### Head 11-1. Customs Control at Customs ports.

Provide for –

a Revenue offence where a truck driver entering the State exits a customs port without obeying an instruction to call to Customs.

#### **Explanatory Note:**

This Head introduces a new Section 12A of the Customs Act, 2015. This section provides for a Revenue offence where a truck driver entering the State exits a customs port without obeying an instruction to call to Customs.

#### Head 11-2. Customs Control at Customs ports.

To provide -

Along with the powers currently provided for in subsection (1)(a), that an officer of customs, and any person assisting such officer, would additionally have the power, at any time and without warrant, to enter upon and inspect any place approved under the Union Customs Code.

#### **Explanatory Note:**

This Head amends Section 25 of the Customs Act, 2015 to provide additional powers for an officer of customs to enter upon and inspect a place approved under the Union Customs Code.

#### Head 11-3 - Online Customs Roll on Roll off Service

Provide that –

A new proposal to provide a legislative basis for the online Customs Roll on Roll off Service. In order to minimise the impact of complying with customs procedures required after the transition period, and in order to assist goods to move swiftly through any import controls required on arrival in the State, the online Customs Roll on Roll off Service has been developed. It will provide online services for businesses carrying goods by ferry from the United Kingdom (excluding Northern Ireland) to Ireland. Most trade flows arriving in the State by ferry operate on a just-in-time model. It is critical to

assist in maintaining these trade flows where possible to facilitate the ongoing viability of this business model and in order to minimise congestion and delays at Irish ferry ports.

**Explanatory Note:**

This Head introduces a new Section 12B of the Customs Act, 2015. This section provides for a legislative basis for the online Customs Roll on Roll off Service which provides online services for businesses carrying goods by ferry from the United Kingdom (excluding Northern Ireland) to Ireland.

## PART 12 - Amendment of Harbours Act 1996

### Minister for Transport, Tourism and Sport

#### Head 12-1. Definition

Provide that -

In this Part, “Act of 1996” means the [Harbours Act 1996](#) .

#### **Explanatory Note:**

This defines the “Act of 1996” as meaning the Harbours Act 1996 for the purposes of Part 12.

#### Head 12-2. Amendment of section 72 of Act of 1996

Provide that -

Section 72 of the Act of 1996 is amended—

(a) in subsection (1)(b)—

(i) by the substitution of “the person is, at the time of the making of the application—” for “the person is—”,

(ii) by the deletion, in subparagraph (i), of “subsisting”, and

(iii) by the deletion, in subparagraph (ii), of “subsisting”,

(b) in subsection (1)(c), by the substitution of “the person is, at the time of the making of the application, the holder of a certificate of competency which—” for “the person is the holder of a subsisting certificate of competency which—”,

(c) in subsection (3), by the substitution of “3 years” for “1 year”, and

(d) in subsection (4), by the substitution of the following paragraph for paragraph (a):

“(a) A company which has granted a pilotage exemption certificate under subsection (1) may, in accordance with any bye-laws made by it under section 71 relating to renewal of such certificates, renew it and, for this purpose—

- (i) a reference to an application under subsection (1) includes an application for renewal, and
- (ii) such an application may be made at any time prior to the expiration of the pilotage exemption certificate.”.

**Explanatory Note:**

Under Section 72 of the Harbours Act 1996 as amended, a Pilot Exemption Certificate (PEC) may currently be granted by a harbour company for a period of up to one year, where that person can show competency and sufficient knowledge of the port and its pilotage district to the port company and who hold a valid seafarer certificate.

Holders of seafarer certificates issued by EU Member States enjoy mutual recognition of these qualifications in other EU Member States.

The amendment to Section 72 of the 1996 Act makes it clear that in a Brexit context, a pilotage exemption certificate (PEC) does not become invalid simply because the issuer of the seafarers certificate of competence (the UK) is no longer treated as a member state (after the end of the UK's transition period). The fact is that the applicant had a relevant valid seafarers certificate at the point of application and therefore was entitled to the pilotage exemption certificate. The amendment to Section 72 makes this unequivocal. In addition, the amendment extends the period of validity of PECs to three years and provides that holders of existing PECS may apply for new certificates including in the period leading up to the end of the UK's transition period, notwithstanding the fact that their PECS may not have expired.

Subsection (a) of Head 12-2 sets out that in order for a pilot exemption certificate to be granted, it is a requirement to hold a relevant Irish seafarers' certificate of competency or to hold a seafarers' certificate of equivalent competence from another member state at the time of making the application for the pilot exemption certificate.

Subsection (b) of Head 12-2 sets out that in order for a pilot exemption certificate to be granted, it is a requirement to hold a relevant third country seafarers' certificate of competency at the time of making the application for the pilot exemption certificate.

Subsection (c) of Head 12-2 provides that the upper limit on the duration of a pilotage exemption certificate is altered from the current one year to three years. Pilotage exemption certificates are a matter of domestic law and domestic competence and there is no EU or international instrument which would preclude such a longer term for pilotage exemption certificates.

Subsection (d) of Head 12-2 provides that an application for renewal of a pilotage exemption certificate may be made 'at any time' prior to its expiry. This will, for example, allow a UK holder of a pilotage exemption certificate to apply, before the end of the UK's transition period, to a harbour authority for a new pilotage exemption certificate, even though the holder's existing pilotage exemption certificate has not yet expired. This part of the Bill, following enactment, will need to be commenced shortly before the end of the UK's transition period. New PEC applicants (following the end of the UK's transition period) who only hold UK Certificates of Competency are not provided for and will not be able to be granted PECs until such time as the UK may be formally recognised as a third country under Article 19 of Directive 2008/106 for the purposes of seafarer certification.

## Head 12-3. Amendment of Sixth Schedule to Act of 1996

Provide that -

Part 2 of the Sixth Schedule to the Act of 1996 is amended by the insertion of the following paragraph after paragraph 76:

“76A. Requiring the holder of a pilotage exemption certificate which has effect for more than 1 year to undergo periodic reviews for compliance with section 72(1)(a).”.

### **Explanatory Note:**

This Head amends Part 2 of the Sixth Schedule to the Act of 1996, which relates to pilotage bye-laws, to allow a harbour authority through its bye-laws to require the holder of a pilotage exemption certificate of more than one year duration to undergo periodic reviews to ensure that the holder continues to have compliance with the requirements of Section 72(1)(a) of the Harbours Act 1996.

These requirements are that the harbour company must be satisfied that the person has the skill, experience and local knowledge to enable him or her to pilot the ship of which he or she is in charge within the relevant parts of the harbour pilotage district as are specified in the certificate.

## PART 13 - Third Country Bus Services

### Minister for Transport, Tourism and Sport

#### Head 13-1. Definition

Provide that -

In this Part “Act of 2009” means the Public Transport Regulation Act 2009 .

#### **Explanatory Note:**

This Head provides a definition for the purposes of Part 13.

#### Head 13-2. Continuation of international carriage of passengers by road

Provide that -

The Road Transport Act 1978 is amended by the insertion of the following section after section 5:

**“5A.** (1) Where the Minister is of the opinion that there is a real risk of disruption to the international carriage of passengers by road, and that it is necessary in order to ensure the continuation of existing services in this regard, the Minister may grant an exemption or make a declaration in accordance with subsection (2).

(2) Subject to subsection (1), the Minister may, by order, do either or both of the following—

(a) exempt any specified class of international carriage, or any specified class of vehicle engaging in international carriage, from a requirement to comply with any provision in an enactment providing for the licensing of road passenger transport operators or services, or

(b) declare that a licence (howsoever called), or class of licence, granted by a body in a third country charged by the laws of the country to grant a licence relating to the carriage for hire or reward of bus passengers by road shall, for the purposes of Part 2A of the Public Transport Regulation Act 2009 , be deemed to be an international road passenger transport operator’s licence.

(3) In this section—

‘enactment’ means—

- (a) an Act of the Oireachtas,
- (b) a statute that was in force in Saorstát Éireann immediately before the date of the coming into operation of the Constitution and which continued in force by virtue of Article 50 of the Constitution, or
- (c) an instrument made under an Act of the Oireachtas or a statute referred to in paragraph (b);

‘international carriage’ has the same meaning as it has in Part 2A of the Public Transport Regulation Act 2009 ;

‘international road passenger transport operator’s licence’ means an international road passenger transport operator’s licence granted under section 2 of the Road Traffic and Transport Act 2006 ;

‘third country’ has the same meaning as it has in Part 2A of the Public Transport Regulation Act 2009 .”.

**Explanatory Note:**

This Head 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. In particular, it provides that the National Transport Authority can exempt or deem operating licences issued by another state to be international road passenger transport operator licences.

Head 13-3. Amendment of Dublin Transport Authority Act 2008

Provide that –

The Dublin Transport Authority Act 2008 is amended—

- (a) in section 2, by the insertion of the following definition:

“ ‘third country bus service’ has the meaning assigned to it by section 28A of the Act of 2009;”,

and

(b) in section 11(1), by the insertion of the following paragraph after paragraph (cb):

“(cc) regulate third country bus services,”.

**Explanatory Note:**

This Head is a standard provision to provide for additional definitions and to update existing definitions and terminology in the Dublin Transport Authority Act, 2008. It also provides that an additional function for the regulation of third country bus services will now be given to the National Transport Authority under the Dublin Transport Authority Act 2008.

Head 13-4. Amendment of section 2 of Act of 2009

Provide that –

Section 2 of the Act of 2009 is amended in the definition of international service by the substitution of “Regulation (EC) No. 1073/2009<sup>9</sup> of the European Parliament and of the Council of 21 October 2009” for “Council Regulation (EEC) No. 684/92 of 16 March 1992 on common rules for the international carriage of passengers by coach and bus”.

**Explanatory Note:**

This Head is a standard provision to provide for additional definitions and to update existing definitions and terminology in the Public Transport Regulation Act 2009.

Head 13-5. Part 2A of Act of 2009

Provide that –

The Act of 2009 is amended by the insertion of the following Part after Part 2:

“Part 2A

Third Country Bus Services

## Definitions

### 28A. In this Part—

‘cabotage operation’ means a bus service, other than—

- (a) a regular service which operates to meet the transport needs of an urban centre or conurbation or those needs between it and its surrounding areas, or
  - (b) a closed-door tour, where the carrier picks up passengers—
- (i) in the State where the journey commenced in a third country, or
  - (ii) in a third country where the journey commenced in the State;

‘carrier’ means a carrier for hire or reward of passengers travelling by bus;

‘closed-door tour’ means a bus passenger service whereby one bus is used to carry the same group of passengers throughout a journey where the point of departure and the point of arrival are the same and situated in the State or third country, as the case may be, where the carrier is established;

‘international carriage’, in relation to a carrier, means any of the following:

- (a) a journey undertaken by a bus the point of departure and the point of arrival of which are in the State, while the picking up or setting down of passengers is in a third country;
- (b) a journey undertaken by a bus of which the point of departure and the point of arrival are in a third country, while the picking up or setting down of passengers is in the State;
- (c) a journey undertaken by a bus from the State to another country or vice versa;

‘international road passenger operator’s licence’ means

- a) an international road passenger transport operator’s licence granted under section 2 of the Road Traffic and Transport Act 2006 , or
- (b) a licence deemed by the Minister under section 5A of the Road Transport Act 1978 for the purposes of this Part to be an international road passenger transport operator’s licence;

‘occasional service’ means a bus passenger service, other than a regular service or special regular service or closed-door tour, which provides for the carriage of groups of passengers constituted by either the carrier or a customer of the carrier and may include a cabotage operation;

‘prescribed’ means prescribed by the Minister by order under section 28M;

‘regular service’ means a regular bus passenger service which provides for the carriage of passengers at specified intervals where the passengers are picked up and set down at predetermined stopping points and may include a cabotage operation;

‘special regular service’ means a regular bus passenger service by whomsoever organised which provides for the carriage of a specified class of passengers to the exclusion of other passengers, and may include a cabotage operation;

‘third country’ has the meaning assigned to it by section 28B;

‘third country authorisation’ means an authorisation granted by the Authority under this Part in respect of a closed-door tour, a regular service or a special regular service for which a contract has not been concluded between the carrier and organiser;

‘third country body’ means the body in a third country charged by the laws of the country to provide for a third country bus service in like manner to this Part, to grant an authorisation or journey form of like effect to a third country authorisation or third country journey form;

‘third country bus service’ has the meaning given to it by section 28B;

‘third country journey form’ means a form granted by the Authority under this Part in respect of an occasional service or a special regular service which includes a cabotage operation and for which a contract has been concluded between the carrier and organiser.

### **Application of Part**

**28B.** This Part applies to a bus passenger service for hire or reward, including a regular service, special regular service, closed-door tour or occasional service which is

a) provided under a bilateral agreement between the State and another country, other than a Member State, (in this part referred to as a “third country”), concerning international carriage of passengers by bus in the State and the other country (in this Part referred to as a “third country bus service”), or

(b) provided under reciprocal or other arrangements, concerning third country bus services, between the State and a third country whose laws provide for a third country bus service in like manner to this Part and which arrangements were in operation between the State and the third

country immediately before the date of the coming into operation of this section and are required to be continued on that date.

### **Requirement to comply with Part**

**28C.** Subject to this Part, a third country bus service may only be provided in accordance with

a) a third country authorisation or a third country journey form granted under this Part or requirements under section 28G(6) for provision of third country bus services referred to in that subsection,

(b) an authorisation, journey form or contract for services received by the third country body referred to in section 28F, or

(c) an authorisation, journey form, requirements or contract for services of like effect to those referred to in paragraph (a) or (b) granted by the Authority or third country body, as the case may be, under laws that provided for a third country bus service in like manner to this Part and which authorisation or journey form is still in force immediately before the coming into operation of this section.

### **Grant of third country authorisation or third country journey form**

**28D.** (1) Subject to this Part, the Authority may grant a third country authorisation in respect of a third country bus service other than an occasional service or a special regular service for which a contract has been concluded between the carrier and organiser

(2) Subject to this Part, the Authority may grant a third country journey form in respect of an occasional service or a special regular service which includes a cabotage operation and for which a contract has been concluded between the carrier and organisation

(3) A third country authorisation or a third country journey form shall specify the conditions to which the third country authorisation or third country journey form is subject under section 13 applied in accordance with section

(4) Subject to section 28G(2), a third country authorisation or third country journey form granted under this Part or an authorisation or journey form referred to in section 28F(2) shall not be transferred by the carrier to whom it is granted and the Authority, on becoming aware of a transfer in contravention of this section shall, unless section 28G(9) applies, revoke the authorisation or journey form.

(5) A third country authorisation or third country journey form shall be valid for a period not exceeding 5 years or such lesser period as determined by the Authority.

### **Application to Authority and procedure**

**28E.** (1) An application for a grant of a third country authorisation or for a grant of a third country journey form shall be made to the Authority in such form and manner and be accompanied by documents and other supporting information as may be prescribed under section 28M, together with the fee determined under section 12 applied in accordance with section 28K

(2) An applicant under subsection (1) shall provide the following to the Authority:

- (a) a completed application form;
- (b) a copy of the applicant's international road passenger operator's licence;
- (c) any other information as may be requested by Authority.

(3) On receipt of an application for a third country authorisation or third country journey form the Authority shall forward it to the third country body and request its observations.

(4) (a) If the third country body does not respond to the Authority's request within 2 months, subject to this Part, the Authority may proceed to grant the third country authorisation or third country journey form.

(b) If the third country body objects or otherwise provides a reply to the Authority's request giving reasons the Authority shall consider those reasons in deciding whether to grant the third country authorisation or third country journey form.

(5) The Authority shall grant the third country authorisation or third country journey form provide that:

(a) the Authority is provided with a copy of the applicant's international road passenger operator's licence;

(b) in the view of the Authority—

(i) the applicant is able to provide the service which is the subject of the application with equipment directly available to the applicant, and

(ii) the applicant complies with the provisions of the Road Traffic Acts 1961 to 2018, the National Transport Authority Acts 2008 to 2016, statutory instruments made under the foregoing Acts and any other applicable statute related to Road Traffic or Road Transport, including regulations made under the European Communities Act 1972;

(c) in the view of the Authority the applicant complies with the requirements of the following:

(i) the European Communities (Installation and Use of Speed Limitation Devices in Motor Vehicles) Regulations 2005 (S.I. No. 831 of 2005);

(ii) the Road Traffic (Construction and Use of Vehicles) Regulations 2003 (S.I. No. 5 of 2003);

(iii) the European Communities (Vehicle Drivers Certificate of Professional Competence) (No. 2) Regulations 2008 (S.I. No. 359 of 2008);

(d) the Authority is not aware that the applicant has been convicted of an offence under the Road Traffic Acts 1961 to 2018, the National Transport Authority Acts 2008 to 2016, or statutory instruments made under the foregoing Acts relating to vehicles, or rest periods for drivers;

(e) the Authority determines (on the basis of a detailed analysis having considered criteria established by the Authority for the purpose of its making the determination) that the service concerned would not seriously affect the viability of a comparable service being provided pursuant to a public transport services contract, within the meaning of section 47 of the Act 2008;

(f) the Authority decides on the basis of a detailed analysis that the principal purpose of the service to which the application relates is to carry passengers between stops located in different countries.

(6) (a) The Authority shall grant or refuse to grant an application and shall give notice to the applicant concerned of its decision, the reasons for it and that the applicant may appeal the decision under section 22 applied in accordance with section 28K.

(b) The Authority shall give notice of its decision to the third country body and shall provide the body, if applicable, with a copy of the third country authorisation or third country journey form concerned.

#### **Procedure where Authority receives notice from third country body**

**28F.** (1) The Authority shall, having regard to the applicable matters referred to in section 28E(5), provide observations to a third country body within 2 months of receipt of a notice from the third country body of an application to the body for an authorisation or journey form that is, under that law of that country, of like effect to a third country authorisation or third country journey form.

(2) On and from the date of receipt by the Authority of a notice from the third country body of that body's decision concerning the application referred to in subsection (1) to grant that authorisation or journey form and a copy of the authorisation or journey form concerned, the carrier to whom the

authorisation or journey form was granted by the third country body may provide third country bus services under and in accordance with Part 13.

(3) Where the third country body has provided notice to the Authority of an application from a carrier to provide services similar to those referred to in section 28G(6) under the law of that country, the carrier may provide such third country bus services under and in accordance with this Part on and from the date of receipt by the Authority of said notice.

### **Obligations of carriers**

**28G.** (1) A carrier to whom a third country authorisation or third country journey form is granted under this Part shall comply with the conditions to which the third country authorisation or third country journey form is subject under section 13 applied in accordance with section 28K.

(2) Other than in circumstances beyond the control of the carrier, a carrier to whom a third country authorisation for a regular service has been granted shall take all measures to guarantee a service that fulfils the standards of continuity, regularity and capacity and complies with the other conditions to which the third country authorisation is subject under section 13 applied in accordance with section 28K.

(3) A carrier to whom a third country authorisation for a regular service has been granted shall—

(a) display in the bus the pick-up and set-down points of the service, the timetable, the fares and the conditions of carriage in such a way as to ensure that such information is readily available to all passengers,

(b) carry in the bus the third country authorisation during the operation of service,

(c) present for inspection to an authorised officer, at the request of the officer, a copy of the relevant third country authorisation, and

(d) carry in the bus a copy of the carrier's international road passenger operating licence.

(4) A carrier to whom a third country authorisation for a regular service has been granted shall only use vehicles additional to those to which the authorisation relates to deal with temporary or exceptional situations and shall carry the following documents on those vehicles:

(a) a copy of the carrier's third country authorisation for the regular service;

(b) a copy of the contract between the carrier of the regular service and the person providing the additional vehicles or a similar document;

(c) a copy of the carrier's international road passenger operator's licence.

(5) A carrier to whom a third country journey form for an occasional service has been granted shall—

(a) hold the book of third country journey forms provided to the carrier by the Authority,

(b) fill out the third country journey form before each journey,

(c) carry the third country journey form during the operation of the professional service,

(d) present for inspection to an authorised officer, at the request of the officer, a copy of the relevant third country journey form,

(e) return a third country journey form to the Authority in accordance with conditions to which the journey form is subject under section 13 applied in accordance with section 28K, and

(f) carry in the bus a copy of the carrier's international road passenger operator's licence.

(6) A carrier operating a special regular service for which a contract has been concluded between the carrier and the organiser shall—

(a) prior to providing the service, furnish a copy of the contract for service to the Authority,

(b) carry a copy of the contract for service referred to in paragraph (a) in the bus in the course of operation of the special regular service,

(c) present for inspection by an authorised officer, at the request of the officer, a copy of that contract for service, and

(d) carry in the bus a copy of the carrier's international road passenger operator's licence.

(7) A carrier operating a special regular service which includes a cabotage operation and for which a contract has been concluded between the carrier and organiser shall comply with paragraphs (a) to (d) of subsection (6) and shall provide a monthly statement to the Authority of completed third country journey forms filled out by the carrier.

(8) A carrier operating a regular service other than a special regular service shall issue to a passenger as appropriate, individual or collective transport tickets indicating:

- (a) the points of departure and arrival and, as appropriate, the return journey;
- (b) the period of validity of the ticket;
- (c) the fare payable by the passenger.

(9) (a) A carrier to whom a third country authorisation or third country journey form is granted may provide, with the written consent of the Authority and where the Authority is satisfied that a subcontractor shall satisfy the conditions to which the authorisation or journey form is subject, the third country bus service through a subcontractor.

(b) Where paragraph (a) applies—

- (i) the name and role of the subcontractor shall be specified in the authorisation or journey form,
- (ii) the subcontractor shall comply with the conditions to which the third country authorisation or third country journey form is subject under section 13 applied in accordance with section 28K, and
- (iii) in the case of persons associated for the purpose of operating a regular service, the authorisation shall be issued in the names of all the operators, shall state their names and shall be given to the person who manages the provision of the regular service who shall give copies of the authorisation to the persons so associated.

#### **Obligation of person to whom a transport ticket issues**

**28H.** (1) A person to whom a transport ticket is issued by a carrier shall at any time during the journey to which the ticket relates on a request in that behalf by an authorised officer present the ticket to the author officer for inspection.

(2) In subsection (1) 'ticket' means proof in any form of entitlement to travel.

#### **Lapse of a third country authorisation**

**28I.** (1) A third country authorisation shall lapse—

(a) at the end of its period of validity, or

(b) 3 months after the carrier to whom the authorisation is granted gives notice to the Authority of the carrier's intention to withdraw the service.

(2) A notice referred to in subsection (1)(b) shall contain a statement of reasons.

(3) Where the demand for a third country bus service has ceased to exist, the period of notice provided for in subsection (1)(b) shall be one month.

(4) The Authority shall give notice to the third country body that the third country authorisation has lapsed.

(5) The holder of the third country authorisation to which subsection (1)(b) applies shall give one month's prior notice to passengers of the service concerned of its intention to withdraw the service by means of appropriate publicity.

### **Offences and penalties**

**28J.** (1) A person who provides a third country bus service in contravention of section 28C shall be guilty of an offence.

(2) A person who transfers a third country authorisation or third country journey form in contravention of section 28D shall be guilty of an offence.

(3) A person to whom a third country authorisation or third country journey form is granted and who fails to comply with a condition attached to the licence under section 13 applied in accordance with section 28K shall be guilty of an offence.

(4) A person, who in an application for a grant of a third country authorisation or third country journey form under section 28E, or amendment or renewal of a third country authorisation or third country journey form under section 14 or section 16 applied in accordance with section 28K, provides information to the Authority knowing it to be false or misleading shall be guilty of an offence.

(5) A person who contravenes subsection (1), (3), (4), (5), (6), (7), (8) or (9)(b)(ii) of section 28G shall be guilty of an offence.

(6) A person who refuses to present a transport ticket to an authorised officer in contravention of section 28H shall be guilty of an offence.

(7) A person guilty of an offence under subsection or (2) shall be liable—

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

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

(8) A person guilty of an offence under subsection (3) or (4) or subsection (5), insofar as it relates to subsection (7) of section 28G, shall be liable on summary conviction to a class A fine.

(9) A person guilty of an offence under subsection (5), insofar as it relates to subsection (1), (3), (4), (5), (6), (8) or (9)(b)(ii) of section 28G shall be liable on summary conviction to a class B fine.

(10) A person guilty of an offence under subsection (6) shall be liable on summary conviction to a class D fine.

### **Application of sections for the purpose of this Part**

**28K.** (1) Section 12 shall apply to fees under this Part, section 13 shall apply to attachment of conditions to third country authorisations or third country journey forms under this Part, section 14 shall apply to the amendment of third country authorisations or third country journey forms under this Part, section 15 shall apply to the requirement to commence third country bus services under this Part, section 16 shall apply to the renewal of third country authorisations or third country journey forms under this Part, section 19 shall apply to revocation of third country authorisations or third country journey forms by the Authority under this Part, section 21 shall apply for the purpose of deciding officers under this Part, section 22 shall apply to appeals under this Part, section 23 applies to preparing and publishing guidelines under this Part, section 24(2) and (3) shall apply to offences under this Part and section 26 shall apply to notifications and notices under this Part as each section applies in Part 2 subject to the following and any other necessary modifications:

(a) any reference in any of those sections to a licence shall be construed as a reference to a third country authorisation or a third country journey form;

(b) any reference in any of those sections to a public bus passenger service shall be construed as a reference to third country bus service.

(2) Without prejudice to the generality of subsection (1), for the purposes of this Part—

(a) section 13 shall be construed as if—

(i) the reference in section 13(2)(a) to section 10(3) is a reference to section 23E(5),

(ii) section 13(2)(f) includes a reference to carriers as well as public transport service operators,

(iii) section 13(2) has the following paragraphs after paragraph (i):

“(j) in relation to a third country authorisation, and the pick-up points and set-down points which constitute a cabotage operation if permitted under the authorisation,

(k) in relation to a third country journey form, the type of occasional service to which it relates and the pick-up points and set-down points which constitute a cabotage operation if permitted under the third country journey form,”

(b) section shall be construed as if—

(i) the reference in section 14(3) to sections 10 to 13 is a reference to sections 12 and 13 applied in accordance with this section and section 28E(5), and

(ii) the reference in section 14(4)(b) to section 23 is a reference to section 23(5) applied in accordance with this section,

(c) section 16 shall be construed as if the reference in section 16(3)(b) to sections 10 to 13 is a reference to sections 12 and 13 applied in accordance with this section and section 28E(5),

(d) section 19 shall be construed as if—

(i) the reference in section 19(1)(c) to sections 15(4) and 18(4)(b) is a reference to section 15 applied in accordance with this section and section 28D(3), and

(ii) section 19 has the following subsection after subsection (1):

“(1A) The Authority shall immediately inform the third country body as soon as it revokes a third country authorisation or third country journey form under this section.”,

(e) section 21 shall be construed as if the reference in the section to a transfer is a reference to provision of third country services by a subcontractor, and

(f) section 23 shall be construed as if—

(i) a reference in section 23(1) to the licensing of public bus passenger services is a reference to the granting of a third country authorisation or a third country journey form for a third country bus service,

(ii) the reference in section 23(2)(a) to section 10 is a reference to section 28E,

(iii) the reference in section 23(2)(b) to section 14 is a reference to section 14 applied in accordance with this section, and

(iv) the reference in section 23(2)(c) to a transfer is a reference to provision of third country bus services by a subcontractor.

### **Authorised officers**

**28L.** (1) The Authority may appoint such and so many persons as it sees fit to be authorised officers for the purpose of obtaining such information or of carrying out such inspections or any other functions as the Authority may deem necessary for the performance by the Authority of its functions under this Part.

(2) For the purpose of subsection (1), subsections (2) to (5) of section 78 and section 79 of the Act of 2008 shall apply to an authorised officer appointed under section 78 subject to the modification that a reference to a public transport authority or public transport operator shall be read as a reference to a carrier who provides a third country bus service and any other necessary modifications.

### **Minister to make order**

**28M.** The Minister may, for the purposes of a bilateral agreement or other arrangement between State and another country, by order—

- (a) prescribe a third country body or third country bodies,
- (b) prescribe the form, manner, documents and other supporting information to be provided in an application to the Authority for a third country authorisation or a third country journey form or in furnishing a contract for service to the Authority under section 28G(6), and
- (c) prescribe the form of a third country authorisation or third country journey form.

### **Further provisions concerning operation of this Part**

**28N.** (1) (a) No provision of this Part shall apply to a class of third country bus service to which the Interbus Agreement applies where the Interbus Agreement comes into force in a third country referred to in section 28B.

(b) Notwithstanding paragraph (a), a third country bus service provided under section 28C may continue to be so provided for 2 weeks after the date that the Interbus Agreement concerned comes into force.

(2) Where a third country in section 28B(b) is the United Kingdom, sections 28B(b) and 28C(c) shall cease to have effect 24 weeks after the end of the transition period following the withdrawal of the United Kingdom from membership of the European Union.

(3) In subsection (1) 'Interbus Agreement' means the Agreement on the international occasional carriage of passengers by coach and bus (Interbus Agreement).”.

**Explanatory Note:**

This Head provides for the insertion of a new Part 2A of the Public Transport Regulation Act 2009.

*The provision at 28A* is a standard provision to provide for definitions and terminology relating to the provision of third country bus passenger services.

*The provision at 28B* will provide for bus services travelling to/from a third country; a transitional measure that will provide for the future continuation of bus services.

*The provision at 28C* sets out that a third country bus service may only be provided in accordance with the proper authorising documents granted by the National Transport Authority or the competent authority in the third country.

*The provision at 28D* provides that the National Transport Authority may grant third country authorisations and third country journey forms in respect of a third country bus service. Those authorisations are non-transferable.

*The provision at 28E* provides for the National Transport Authority to receive and consider and make decisions relating to applications for the grant, renewal or alteration of a third country authorisation or the grant of a third country journey form. It also deals with a number of administrative issues such as appeals and fees.

*The provision at 28F* provides for the consideration and administration of notices received from the competent authority in the third country by the National Transport Authority.

*The provision at 28G* sets out the obligations of carriers operating a third country bus passenger service. In particular, it provides for the subcontracting of services by a carrier. It also provides for the attachment of conditions to third country authorisations and third country journey forms including issuance of transport tickets.

*The provision at 28H* details the obligation of a person to whom a transport ticket issues.

*The provision at 28I* provides for the lapse of a third country authorisation.

*The provision at 28J* provides for offences relating to non-compliance with the provisions set out in Part 2A.

*The provision at 28K* sets out the sections of Part 2 of the Public Transport Regulation Act 2009 that shall apply to Part 2A. These include:

- Section 12 – Appeals
- Section 13 – Attachment of conditions to licences
- Section 14 – Amendment of licence
- Section 15 – Requirement to commence public bus passenger services
- Section 16 – Renewal of licences
- Section 19 – Revocation of licences

- Section 21 – Deciding officers
- Section 22 - Appeals
- Section 24 – Offences body corporate and proceedings for offences
- Section 26 – Notifications and notices

*The provision at 28L* provides for the appointment and powers of authorised officers.

*The provision at 28M* provides for the Minister to make an order prescribing the competent authority in the third country as well as the documents and application forms relating to the third country authorisation and third country journey form.

*The provision at 28N* sets out the situations in which elements of this Part may cease to have effect.

## PART 14 - Amendment of Social Welfare Consolidation Act 2005

### Minister for Employment Affairs and Social Protection

#### Head 14-1. Definition

Provide that -

In this Part, “Act of 2005” means the Social Welfare Consolidation Act 2005 .

#### **Explanatory Note:**

This is a definition provision.

This has already been drafted – section 83 of the 2019 Act refers.

#### Head 14-2. Amendment of section 287 of Act of 2005

Provide that -

Section 287 of the Act of 2005 is amended—

(a) in subsection (1), by the substitution of “social assistance under Part 3, child benefit under Part 4 or any other payment under this Act” for “State pension (non-contributory) and blind pensions, widow’s (non-contributory) pension, widower’s (non-contributory) pension, surviving civil partner’s (non-contributory) pension or guardian’s payment (non-contributory), jobseeker’s allowance and child benefit”, and

(b) by the insertion of the following subsections after subsection (2):

“(3) Without prejudice to the generality of subsections (1) and (2), the Minister, in an order under this section, may provide for the manner in which an arrangement that is the subject of the order is to apply to persons, or different categories of persons, to whom a different arrangement, provided for in another order under this section, applies and for the manner in which such different arrangement is to apply to persons, or different categories of persons, to whom the arrangement that is the subject of the order applies.

(4) In this section, a reference to ‘arrangement’ includes an agreement which is intended to be binding on the State or the Government or the Minister but which has not, at the time of the making of an order under this section, become binding and to which the Minister is satisfied the international organisation, any other state or government or the proper authority under any government, referred to in subsection (1), is giving effect.”.

### **Explanatory Note:**

The amendment at (a)

Section 287 of the 2005 Act is an enabling provision which provides that the Minister may make orders to carry out reciprocal agreements with other states or international organisations in respect of:

- matters relating to insurance or benefits under Part 2
- State pension (non-contributory) and blind pensions, widow's (non-contributory) pension, widower's (non-contributory) pension, surviving civil partner's (non-contributory) pension or guardian's payment (non-contributory), jobseeker's allowance; and
- child benefit

The proposed amendment is intended to ensure that reciprocal agreements could be carried out regarding any scheme provided for in the 2005 Act if the Minister wished to do so. It is also considered that the proposed amendment would be a neater construction than the provision which includes a list of some schemes only. On making the amendment the subsection would read 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 under Part 3; child benefit under Part 4, or any other payment under this Act and may by any such order make any adaptations of and modifications in respect of these matters that he or she considers necessary.

The Brexit Omnibus Act included a similar provision (section 287(a) refers) to include a reference to "social assistance under Part 3" but this is slightly broader in order to ensure that any scheme under the 2005 Act could be covered by a reciprocal agreement regardless of which Part of that Act sets out the provisions of the scheme.

The amendment at (b)

This amendment has already been drafted – section 84(b) of the Brexit Omnibus Act refers.

The new subsection (3) allows the Minister for Employment Affairs and Social Protection to make an order to provide for the manner in which an arrangement, made under the section, is to apply to persons to whom a different arrangement under this section applies. This provides for the interaction between the new agreement with the UK and the agreement in place since 2007 which will continue in operation.

The new subsection (4) provides that an arrangement under section 87 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 Areas social protection arrangements, signed on the 1st February 2019) if that is required before the process to bring the Convention into effect in international law has been completed. The Convention has passed through the Parliamentary ratification process in both Ireland and the UK. An exchange of letters between the two countries is required at the appropriate time in order to bring the Convention into effect (in Ireland this is also a requirement for the Minister to sign an S.I). It is intended that the Convention will be brought into effect immediately at the end of the transition period following the UK's exit from the EU. This is a contingency provision in case there is any delay with this exchange of letters at that stage.

#### Head 14-3. Consequential amendments to Act of 2005

Provide that -

The Act of 2005 is amended—

(a) in section 113A by—

(i) the insertion in subsection (3) of “, (4A), (4B)” after “subsections (4)”, and

(ii) the insertion of the following subsections after subsection (4):

“(4A) Where a person in receipt of invalidity pension under Chapter 17 of this Part attains pensionable age and becomes entitled to a pension under this section and to a pension from the United Kingdom, the weekly rate of pension payable shall be the greater of—

(a) the amount of pension payable, calculated in accordance with the arrangement made with the United Kingdom on 1 February 2019, or

(b) the rate of invalidity pension otherwise payable in accordance with Chapter 17 of this Part.

(4B) In the case of a person to whom both subsections (4) and (4A) applies, the weekly rate of pension payable shall be the greater of either of the amounts calculated under each such subsection.”,

(b) in section 205 by—

(i) the insertion in paragraph (a), of “or the United Kingdom” after “Member State (other than the State)”, and

(ii) the insertion in paragraph (c), of “or the United Kingdom” after “Member State”,

(c) by the insertion, after section 239, of the following Part:

“PART 8A

Certain Payments - Entitlement to Island Allowance

**Certain payments - entitlement to island allowance**

**239A.** Where a person is ordinarily resident on an island and is entitled to or in receipt of a payment from the United Kingdom corresponding to a payment under—

(a) section 81, 111, 113, 116, 126, 156, 164 or 174 and he or she has attained pensionable age, or

(b) section 77, 121 or 211,

he or she shall be entitled to a weekly allowance of €12.70 or any amount that may be prescribed.”,

and

(d) in Schedule 3, by the insertion, in Table 2 at reference 2, of “or the United Kingdom” after “another Member State”.

**Explanatory Note:**

These provisions have already been drafted – section 85 of the Brexit Omnibus Act refers.

These amendments provide the required technical amendments to include references to the United Kingdom as follows:

- section 113A - entitlement to invalidity pension in certain circumstances,
- section 205 - recoument of supplementary welfare allowance in certain circumstances,
- Table 2 of Schedule 3 - treatment of payments equivalent to child benefit in the means test, and
- inserts a new Part 8A - entitlement to island allowance

These amendments essentially replicate provisions referring to an EU Member State so that the same rules will be applied with regard to the treatment of the UK under these provisions after the end of the Brexit transition period.

#### Head 14-4. Provisions with regard to the Recovery of Benefits & Assistance and Measures regarding Fraud and Control

14-4(a). Provide that:

Subsection 261(2A) of the Act of 2005 is amended to include reference to ensuring the good administration of the social welfare system and the appropriate expenditure of funds in all cases, and any consequential amendments required.

14-4(b). Provide that:

Section 343P of the Act of 2005 is amended by the inclusion of a new subsection to ensure the avoidance of double compensation in respect of the same accident, injury or disease, and any consequential amendments required.

**Explanatory Note:**

These are additional provisions which do not have corresponding sections in the Brexit Omnibus Act.

These provisions are;

- (i) to ensure the Department can continue to operate fraud and control measures within the Common Travel Area, ensuring the good administration of the social welfare system, and
- (ii) to enable the Department to continue to operate the recovery of benefits and assistance arrangements in cases where the compensator is based outside of the EU. This is to ensure that a person is not compensated twice in respect of the same accident, injury or disease.

## PART 15 - Amendment of Protection of Employees (Employers' Insolvency) Act 1984

### Minister for Employment Affairs and Social Protection

#### Head 15-1. Definition

Provide that -

In this Part, "Act of 1984" means the Protection of Employees (Employers' Insolvency) Act 1984.

#### **Explanatory Notes:**

This is a definition provision.

This has already been drafted – section 86 of the Brexit Omnibus Act refers.

#### Head 15-2. Amendment of section 1 of Act of 1984

Provide that -

Section 1 of the Act of 1984 is amended—

(a) in subsection (1)—

(i) by the substitution of the following definition for the definition of "competent authority":

“ ‘competent authority’ means—

(a) the authority referred to in Article 2(1) of the Directive, or

(b) in the case of an employer taken to be, or to have become, insolvent under paragraph (f) of subsection (3), an authority that is competent, pursuant to the laws, regulations and administrative procedures of the United Kingdom, to—

(i) appoint a liquidator or a person performing a similar task,

(ii) open collective proceedings based on the insolvency of the employer, or

(iii) establish 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;"

(ii) by the substitution of the following definition for the definition of "relevant officer":

" 'relevant officer' means—

(a) where the employer is insolvent in the State and the employees concerned are employed or habitually employed in the State, 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,

(b) 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 the Directive, 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, or

(c) where the employer 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;"

and

(iii) by the insertion of the following definitions:

" 'Directive' means Directive 2008/94/EC of the European Parliament and of the Council of 22 October 2008<sup>10</sup> on the protection of employees in the event of the insolvency of their employer;

'United Kingdom' includes a territory or other place for whose external relations the United Kingdom is responsible and in which the law of the European Union applied while the United Kingdom was a Member State;"

and

(b) in subsection (3), by the substitution of the following paragraphs for paragraph (e):

“(e) 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 the Directive, and the employees concerned are employed or habitually employed in the State; or

(f) the employer 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.”.

**Explanatory Notes:**

This has already been drafted – section 87 of the Brexit Omnibus Act refers.

This amendment is to provide updates to existing definitions, extending them to include competent authorities and relevant officers in the UK, meaning 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.

Head 15-3. Amendment of section 4 of Act of 1984

Provide that -

Section 4 of the Act of 1984 is amended, in subsection (1) (amended by the European Communities (Protection of Employees (Employers’ Insolvency)) Regulations 2005 (S.I. No. 630 of 2005))—

(a) in paragraph (f), by the substitution of “having become insolvent,” for “having become insolvent, and”, and

(b) by the substitution of the following paragraphs for paragraph (g):

“(g) 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 the Directive, 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 that other Member State, and

(h) where the employer 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.”.

**Explanatory Note:**

This has already been drafted – section 88 of the Brexit Omnibus Act refers.

This amendment provides that employees who are employed or habitually employed in Ireland whose employers are made insolvent under the laws of the UK continued to be covered in Ireland, and also 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.

Head 15-4. Amendment of section 7 of Act of 1984

Provide that -

Section 7 of the Act of 1984 is amended, in subsection (3) (amended by the European Communities (Protection of Employees (Employers’ Insolvency)) Regulations 2005 (S.I. No. 630 of 2005)), by the substitution of the following paragraph for paragraph (b):

“(b) the amount certified by—

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

**Explanatory Note:**

This provision has already been drafted – section 89 of the Brexit Omnibus Act refers.

This 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.

Head 15-5. Transfer of personal data in relation to employers insolvent in United Kingdom

Provide that –

The Act of 1984 is amended by the insertion of the following section after section 8:

**“8A. (1) Where—**

(a) an employer is insolvent under the laws, regulations and administrative procedures of the United Kingdom, and

(b) the employees concerned are employed or habitually employed in the State,

the Minister may by regulations provide for the transfer of personal data to and from—

(i) a relevant officer, or

(ii) an actuary or a person performing a similar task,

to the extent that such personal data are necessary to carrying out the functions of a relevant officer, an actuary or a person performing a similar task, or otherwise for the carrying out of functions under this Act.

(2) In making regulations under subsection (1), the Minister shall have regard to the important public interest of—

(a) the protection of employees in the event of the insolvency of their employer,

(b) ensuring a minimum degree of protection, in particular in order to guarantee payment of employees' outstanding claims, and

(c) the need for balanced economic and social development.”.

**Explanatory Note:**

This has already been drafted – section 90 of the Brexit Omnibus Act refers.

This provides that the Minister may by regulations provide for the transfer of data to the UK for the purpose of carrying out the functions of the Act. The data to be exchanged will be with a relevant officer, actuary, or a person performing a similar task and appointed to an employer which is in a state of insolvency under the laws of the UK.

The associated Regulations have also been drafted and (subject to some minor amendments such as the date of effect) stand ready to be signed by the Minister at the appropriate time.

## PART 16 - Amendment of Extradition Act 1965

### Minister for Justice and Equality

Head 16-1. Definition Provide that -

In this Part, “Act of 1965” means the Extradition Act 1965.

#### **Explanatory Note:**

This is a standard provision

Head 16-2. Amendment of section 4 of Act of 1965

Provide that -

Section 4 of the Act of 1965 is amended by the substitution of “or section 23(2) of this Act” for “of this Act”.

#### **Explanatory Note:**

This amendment is a consequential provision following the insertion of a new section 23(2) into the Act.

Head 16-3. Irish citizens

Provide that -

The Act of 1965 is amended by the substitution of the following section for section 14:

**“14.** Extradition shall not be granted where a person claimed is a citizen of Ireland, unless—

(a) the relevant extradition provisions or this Act otherwise provide, or

(b) the law of the requesting country does not prohibit the surrender by the requesting country of a citizen of that country to the State for prosecution or punishment for an offence.”.

**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 16-4. Amendment of section 23 of Act of 1965

Provide that -

Section 23 of the Act of 1965 is amended—

(a) by the designation of the section as subsection (1),

(b) in subsection (1)—

(i) by the deletion of “or” in paragraph (a), and

(ii) by the insertion of the following paragraph after paragraph (a):

“(aa) the means specified in an order under subsection (2), or”,

and

(c) by the insertion of the following subsections after subsection (1):

“(2) The Minister for Foreign Affairs and Trade may, after consultation with the Minister, by order provide that a request for the extradition of any person by a country, being a country in relation to which this Part applies that is specified in the order, may be communicated—

(a) directly to the Minister, and

(b) by electronic or other methods, or both, or by such a combination of both, as may be specified in the order,

where such means of communication have been arranged with that country by direct agreement.

(3) An order under subsection (2), in addition to the matters referred to in that subsection and in relation to a country specified in the order—

(a) shall specify the authority of, or other person in, the country, by which or by whom a request for extradition may be made (in this section referred to as the 'sender'), and

(b) may provide for any other relevant or ancillary matters in relation to the means of communication of requests for extradition that have been arranged by direct agreement.

(4) An order under subsection (2) shall be evidence that the means of communication, and the sender, specified in it have been arranged by direct agreement with the country concerned.

(5) Where a request for extradition, communicated by the means provided in a relevant order under subsection (2), includes a document that is an electronic copy of a source document—

(a) the sender shall provide the Minister with an electronic copy of a certificate of the sender stating that the electronic copy of the source document corresponds to the source document (and in this subsection the electronic copy of the source document, so certified, shall be referred to as the 'corresponding electronic copy'),

(b) the corresponding electronic copy, and any reproduction by electronic means thereof in paper or similar format in legible form, shall, subject to subsection (6), be deemed to be the source document, and

(c) where the source document would be received in evidence without further proof in proceedings to which this Part applies, the corresponding electronic copy, or any reproduction thereof, that is deemed to be that source document in accordance with paragraph (b), shall, subject to subsection (6), be received in evidence without further proof and, where the source document has been sealed, judicial notice shall be taken of the image of that seal in that corresponding electronic copy or the said reproduction thereof.

(6) If the Minister is not satisfied that a corresponding electronic copy within the meaning of subsection (5), or any reproduction by electronic means thereof as referred to in subsection (5), corresponds to the source document concerned, he or she may require the sender to cause the source document, or a true copy thereof, to be provided directly to him or her within such period as he or she may specify.

(7) For the purposes of subsection (6), a true copy of a source document is a document that purports to be certified by—

(a) the judicial authority in the requesting country that issued the source document, or

(b) an officer of the requesting country duly authorised to so do,

to be a true copy of the source document and, where a source document would be received in evidence without further proof in proceedings to which this Part applies, the true copy thereof shall be received in evidence without further proof, and where the seal of the judicial authority or the officer concerned has been affixed to the true copy, judicial notice shall be taken of that seal.

(8) In this section, a reference to a request for extradition includes a reference to the documents referred to in paragraphs (a) to (e) of section 25(1) supporting the request.

(9) In this section, 'source document', in relation to an electronic copy, means the document, required by or under this Act to be provided in a request for extradition, of which the electronic copy is made.".

**Explanatory Note:**

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

## PART 17 - Amendment of the Immigration Act 2004–

### Minister for Justice and Equality

Head 17.1 to amend section 11 of Immigration Act 2004

Provide that:

Section 11 of the Immigration Act 2004 (as substituted by section 34(a) of the Civil Law (Miscellaneous Provisions) Act 2011) is amended by the substitution of the following for subsection (5):

“(5) In this section and section 12, ‘non-national’ means a person who is neither—

(a) an Irish citizen, nor

(b) a citizen of the United Kingdom of Great Britain and Northern Ireland, nor

(a) a person who has established a right to enter and be present in the State under the European Communities (Aliens) Regulations 1977 (S.I. No. 393 of 1977), the European Communities (Right of Residence for Non-Economically Active Persons) Regulations 1997 (S.I. No. 57 of 1997) or the European Communities (Free Movement of Persons) Regulations 2015 (S.I. No. 548 of 2015).”.

#### **Explanatory Note:**

The purpose of this head is to amend section 11 (Requirements as to documents of identity and supply of information) of the Immigration Act 2004.

Section 11 of the 2004 Act was substituted by section 34(a) of the Civil Law (Miscellaneous Provisions) Act 2011.

Section 11(5) of the 2004 Act contains the following definition of “non-national”, which applies for the purposes of sections 11 and 12 (Requirements as to production of documents) of the 2004 Act:

“(5) In this section and section 12, ‘non-national’ means a person who is neither—

(a) an Irish citizen, nor

(b) a person who has established a right to enter and be present in the State under the European Communities (Aliens) Regulations 1977 (S.I. No. 393 of 1977 ), the European Communities (Right of Residence for Non-Economically Active Persons) Regulations 1997 (S.I. No. 57 of 1997) or the European Communities (Free Movement of Persons) Regulations 2006 and 2008.”

The main purpose of the proposed amendment is to ensure that, following the end of the transition period, UK citizens do not come within the definition of “non-national” that applies to sections 11 and 12 of the Immigration Act 2004.

The proposed amendment will ensure that the legal basis is maintained for the exclusion of UK citizens from passport checks within the Common Travel Area after the expiry of the Brexit transition period.

It is also proposed to take the opportunity to update the reference in section 11(5) to the European Communities (Free Movement of Persons) Regulations. The European Communities (Free Movement of Persons) Regulations 2006 and 2008 comprise the European Communities (Free Movement of Persons) (No. 2) Regulations 2006 (S.I. No. 656 of 2006) and the European Communities (Free Movement of Persons) (Amendment) Regulations 2008 (S.I. No. 310 of 2008). The 2006 Regulations were revoked by Regulation 32 of the European Communities (Free Movement of Persons) Regulations 2015 (S.I. No. 548 of 2015).

## PART 18 - Amendment of the International Protection Act 2015

### Minister for Justice and Equality

Head 18.1 to amend section 21 of International Protection Act 2015

Provide that:

Section 21 of the Act of 2015 is amended -

(a) in subsection (2), -

(i) in paragraph (b), by the substitution of “person;” for “person.”, and

(ii) by the insertion of the following paragraph after paragraph (b):

“(c) the person arrived in the State from a safe third country that is, in accordance with subsection (17), a safe country for the person.”,

and

(b) by the insertion of the following subsections after subsection (16):

“(17) For the purposes of this section, a country is a safe country for a person if he or she -

(a) having regard to the matters referred to in subsection (18), has a sufficient connection with the country concerned on the basis of which it is reasonable for him or her to return there,

(b) will be re-admitted to the country concerned, and

- (c) will not be subjected in the country concerned to the death penalty, torture or other inhuman or degrading treatment or punishment.

(18) For the purposes of subsection (17)(a), the matters to which regard shall be had include (but are not limited to) the following:

- (a) the period the person concerned has spent, whether lawfully or unlawfully, in the country concerned;
- (b) any relationship between the person concerned and persons in the country concerned, including nationals and residents of that country and family members seeking to be recognised in that country as refugees;
- (c) the presence in the country concerned of any family members, relatives or other family relations of the person concerned;
- (d) the nature and extent of any cultural connections between the person concerned and the country concerned.”.

**Explanatory Note:**

This Head is based on draft Regulations under the European Communities Act, 1972 (draft stamped copy of the European Communities (International Protection Procedures) Regulations 2019) which it is now proposed to provide for by way of primary legislation in conjunction with Heads 18-2 and 18-3.

Head 18-1 amends section 21 of the International Protection 2015 Act (‘Inadmissible application’) by adding –

- a paragraph (c) to deem an application for international protection inadmissible where a person has arrived in the State from a country designated as a safe third country and that country is safe for the person concerned, in line with Article 25 of the Procedures Directive 2005/85/EC;
- a subsection (17) to set out the matters which will determine that the country is a safe country for the person;
- a subsection (18) to provide for a non-exhaustive list of matters to which regard will be had when considering whether the person has a sufficient connection to the safe third country concerned within the meaning of new head 21(17)(a).

## Head 18.2 To insert a new section 51A into International Protection Act 2015

Provide that:

The Act of 2015 is amended by the insertion of the following section after section 51:

“51A. (1) Where the Minister determines an application to be inadmissible pursuant to section 21(2), the Minister shall make an order requiring the persons to leave the State (a “return order”) and shall send the person and his or her legal representative (if known) a notification of the making of the return order.

(2) Where subsection (1) applies the person concerned may be returned to the safe third country in accordance with this section.

(3) An immigration officer or a member of the Garda Síochána may, for the purpose of facilitating the return of a person subject to a return order, by notice in writing require the person to comply with one or more of the following conditions:

- (a) where, and only for so long as, it is reasonable necessary to facilitate his or her return, that he or she surrender his or her passport and any other travel document that he or she holds; or
- (b) that he or she co-operate in any way necessary to enable an immigration officer or a member of the Garda Síochána to obtain a passport or other travel document, travel ticket or other document required for the purpose of such return.

(4) A person subject to a return order shall comply with a requirement under subsection (3).

(5) Where an immigration officer or a member of the Garda Síochána considers that there is a significant risk of a person subject to a return order absconding, the officer or member (“arresting officer or member”) may, for the purpose of facilitating the return of the person, arrest the person without warrant and a person so arrested may be taken by an immigration officer or a member of the Garda Síochána to a prescribed place (in this section referred to as a “place of detention”)

and detained –

- (a) in the place under warrant of the arresting officer or member and in the custody of the officer of the Minister or member of the Garda Síochána for the time being in charge of the place, and
- (b) for a period not exceeding 7 days.

(6) For the purpose of arresting a person under subsection (5), an immigration officer or member of the Garda Síochána may enter (if necessary by use of reasonable force) and search any premises (including a dwelling) where the person is or where the immigration officer or member, with reasonable cause, suspects the person to be and where the premises is a dwelling, the immigration officer or member shall not, unless acting with the consent of an occupier of the dwelling or other person who appears to the immigration officer or member to be in charge of the dwelling, enter that dwelling unless –

- (a) the person ordinarily resides at the dwelling, or

(b) he or she believes on reasonable grounds that the person is within the dwelling.

(7) The matters to which an officer or member referred to in subsection (5) may have regard, in considering for the purposes of that subsection whether there is a significant risk of a person subject to a return order absconding, include the following:

- (a) whether the person, in the purported discharge of his or her duty to establish his or her identity, has misrepresented or omitted facts, whether or not by the use of false documents;
- (b) whether the person has failed to comply with a requirement under subsection (3);
- (c) whether the person, having been informed of arrangements for his or her return, has failed to co-operate with those arrangements;
- (d) whether the person has explicitly expressed an intention not to comply with arrangements for his or her transfer; or
- (e) whether the person has previously failed to comply with the law of the State, or of another state, relating to the entry or presence of foreign nationals in the State or, as the case may be, that state.

(8)(a) Subject to subsection (b), subsections (5) and (6) shall not apply to a person subject to a return order who is under the age of 18 years.

(b) If and for so long as an immigration officer or member of the Garda Síochána concerned has reasonable grounds for believing that the person subject to a return order is not under the age of 18 years, the provisions of subsections (5) and (6) shall apply as if he or she had attained the age of 18 years.

(9) The Minister may, in order to facilitate the return of a person subject to a return order, issue to the person subject to the return order a *laissez passer* or such other travel document as the Minister considers appropriate.

(10) An immigration officer or member of the Garda Síochána may, for the purpose of the return, detain a person subject to a return order in accordance with subsection (11) and place him or her on a vehicle that is about to leave the State and the person shall be deemed to be in lawful custody while so detained and until the vehicle leaves the State.

(11) A person who is detained under subsection (10) may, for the purposes of that paragraph, be detained—

(a) for a period not exceeding 7 days, in a prescribed place (in this section referred to as a “place of detention”),

(b) for a period or periods each not exceeding 12 hours, in a vehicle, for the purpose of bringing the person to the port from which the vehicle referred to in subsection (9) is due to leave the State, or

(c) for a period or periods each not exceeding 12 hours, within the port referred to in subparagraph (b).

(12) The master or person in charge of a vehicle that is about to leave the State shall, if so directed by an immigration officer or member of the Garda Síochána, receive a person subject to a return order on board the vehicle and afford the person so received proper accommodation and maintenance during the journey concerned.”.

**Explanatory Note:**

This Head inserts a new section into the 2015 Act to provide for the making of a return order in respect of persons whose applications are considered as inadmissible on the basis that they have come from a country designated as a safe third country or another country that is considered a first country of asylum for the person. An immigration officer or member of the Garda Síochána may arrest without warrant and detain a person for the purpose of facilitating the person’s return. In this regard, the head mirrors Regulation 10(2) to 10(11) of the European Union (Dublin System) Regulations (S.I. no. 62/2018).

Section 21(2) of the 2015 Act as currently stands deems an application for international protection inadmissible where one or more of the situations set out in paragraphs a or b of that provision apply. Since there is the potential for the circumstances set out in paragraph a, b and new paragraph c to apply simultaneously, the proposed return order mechanism extends to all three paragraphs. This can be considered further at the drafting stage, however.

It is envisaged that provision may need to be made for measures comparable to the transfer and appeal provisions set out in Regulation 10(1) of the 2018 Regulations.

Head 18.3 to insert a new section 72A into International Protection Act 2015

Provide that:

The Act of 2015 is amended by the insertion of the following section after section 72:

**“Designation of safe third countries**

**72A.** (1) The Minister may by order designate a country as a safe third country.

(2) The Minister may make an order under subsection (1) only if he or she is satisfied that a person seeking to be recognised in the country concerned as a refugee will be treated in accordance with the following principles in that country -

- (a) life and liberty are not threatened on account of race, religion, nationality, membership of a particular social group or political opinion,

- (b) the principle of non-refoulement in accordance with the Geneva Convention is respected,
- (c) the prohibition of removal, in violation of the right to freedom from torture and cruel, inhuman or degrading treatment, as required by international law, is respected, and
- (d) the possibility exists to request refugee status and, if found to be a refugee, to receive protection in accordance with the Geneva Convention.

(3) The Minister shall base his or her assessment referred to in subsection (2) on a range of sources of information, including in particular information from -

- (a) other Member States of the European Union,
- (b) the European Asylum Support Office,
- (c) the High Commissioner,
- (d) the Council of Europe, and
- (e) such other international organisations as the Minister considers appropriate.

(4) The Minister shall, in accordance with subsections (2) and (3) and on a regular basis, review the situation in a country designated under subsection (1).

(5) The Minister shall notify the European Commission of the making, amendment or revocation of an order under subsection (1).

(6) In this section -

‘country’ means a country other than a Member State of the European Union;

‘refugee status’ means the recognition by the country concerned of a third country national or stateless person as a refugee”.

**Explanatory Note:**

This Head is also based on draft Regulations under the European Communities Act, 1972 (draft stamped copy of the European Communities (International Protection Procedures) Regulations 2019) which it is now proposed to provide for by way of primary legislation in conjunction with Heads 18-1 and 18-2.

Head 18-3 inserts a new section to enable the Minister to designate a country as a safe third country only where satisfied that certain safeguards are in place, including that the principle of non-refoulement in accordance with the Geneva Convention is respected in the return country.

The Minister shall inform the European Commission of the making of a designation under this head.

Head 18-3 accords with Article 27 of Council Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status.

## PART 19 - Amendment of Childcare Support Act 2018

### Minister for Children and Youth Affairs

#### Head 19-1. Definition

Provide that -

In this Part, “Principal Act” means the Childcare Support Act 2018.

#### **Explanatory Note:**

The purpose of this Head is to provide that in this Bill the term ‘Principal Act’ means the Childcare Support Act 2018.

#### Head 19-2. Amendment of section 7 of Principal Act

Provide that -

Section 7(1)(b) of the Principal Act is amended by the insertion of the following subparagraph after subparagraph (iv):

“(iva) a British citizen, or”.

#### **Explanatory Note:**

The purpose of this Head is to amend Section 7 of the Childcare Support Act 2018 to provide that UK citizens shall continue to be eligible to apply for financial support under the Childcare Support Act 2018 in the event of the withdrawal of the United Kingdom from the European Union without an agreement between the United Kingdom and the European Union.

### Head 19-3. Amendment of section 15 of Principal Act

Provide that -

Section 15(2)(c) of the Principal Act is amended by the insertion of the following subparagraph after subparagraph (iv):

“(iva) a British citizen, or”.

#### **Explanatory Note:**

The purpose of this Head is to amend Section 15 of the Childcare Support Act 2018 to provide that UK citizens shall continue to be eligible for financial support under the Childcare Support Act 2018 in the event of the withdrawal of the United Kingdom from the European Union without an agreement between the United Kingdom and the European Union.