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*Number 23 of 2020*

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**Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Act 2020**

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*Number 23 of 2020*

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**WITHDRAWAL OF THE UNITED KINGDOM FROM THE EUROPEAN UNION  
(CONSEQUENTIAL PROVISIONS) ACT 2020**

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Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Act  
2019 (No. 8)





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*Number 23 of 2020*

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**WITHDRAWAL OF THE UNITED KINGDOM FROM THE EUROPEAN UNION  
(CONSEQUENTIAL PROVISIONS) ACT 2020**

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An Act to make provision for certain matters consequent on the withdrawal of the United Kingdom from membership of the European Union; to make provision to protect and maintain the Common Travel Area between the State and the United Kingdom and the rights and privileges associated therewith; to make provision, in the public interest and having regard to the Common Travel Area, to reduce the possibility of a serious disturbance in the economy of the State and in the sound functioning of a number of markets, sectors and fields in the State as a result of that withdrawal and to mitigate, where practicable, the effects of such a disturbance should it occur in those circumstances; in the spirit of the State's commitment to the British-Irish Agreement done at Belfast on the 10th day of April, 1998, and having regard to the State's membership of the European Union, to make exceptional provision for the reimbursement by the Health Service Executive to eligible persons resident in Northern Ireland of certain medical expenses incurred in a Member State in respect of necessary medical treatment during their stay in that Member State; to make further provision for the operation of extradition arrangements between the State and other countries; to give further effect to Council Directive 2005/85/EC of 1 December 2005<sup>1</sup> on minimum standards on procedures in Member States for granting and withdrawing refugee status; to make provision in relation to persons whose applications for international protection are determined to be inadmissible; to make provision for the recognition of certain divorces, legal separations and marriage annulments granted in the United Kingdom or Gibraltar; to make provision for the defence of qualified privilege to a defamation action to continue to apply to the publication of certain statements concerning certain events in, or connected with, the United Kingdom; to give further effect to Regulation (EU) No. 305/2011 of the European Parliament and of the Council of 9 March 2011<sup>2</sup> laying down harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC; for those purposes to amend certain enactments; and to provide for related matters. [10th December, 2020]

**Be it enacted by the Oireachtas as follows:**

<sup>1</sup> OJ No. L 326, 13.12.2005, p. 13

<sup>2</sup> OJ No. L 88, 4.4.2011, p. 5

## PART 1

## PRELIMINARY AND GENERAL

**Short title, collective citations and construction**

1. (1) This Act may be cited as the Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Act 2020.
- (2) *Part 2* shall be included in the collective citation Health Acts 1947 to 2020.
- (3) The Employment Permits Acts 2003 to 2014 and *Part 5* may be cited together as the Employment Permits Acts 2003 to 2020.
- (4) The Customs Acts and *Part 11* shall be construed together as one Act.
- (5) The Social Welfare Acts and *Part 14* shall be construed together as one Act.
- (6) The Protection of Employees (Employers' Insolvency) Acts 1984 to 2019 and *Part 15* may be cited together as the Protection of Employees (Employers' Insolvency) Acts 1984 to 2020 and shall be construed together as one Act.
- (7) The Extradition Acts 1965 to 2019 and *Part 16* may be cited together as the Extradition Acts 1965 to 2020.

**Commencement**

2. (1) (a) *Part 1* shall come into operation on such day or days as the Minister for Foreign 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 and for the repeal of different enactments or provisions of enactments effected by *section 4*.
- (b) *Parts 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, 5* and *15* shall come into operation on such day or days as the Minister for Enterprise, Trade and Employment 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 the Environment, Climate and Communications 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 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) *Part 14* shall come into operation on such day or days as the Minister for 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, 18, 19 and 20* shall come into operation on such day or days as the Minister for Justice 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 21* shall come into operation on such day or days as the Minister for Children, Equality, Disability, Integration and Youth 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.
  - (k) *Part 22* shall come into operation on such day or days as the Minister for Housing, Local Government and Heritage 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.

### **Expenses**

3. The expenses incurred by the Minister for Foreign Affairs 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.

**Repeals**

4. The following are repealed:
- (a) Parts 2 and 4 to 13 of the Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Act 2019;
  - (b) the Health and Childcare Support (Miscellaneous Provisions) Act 2019;
  - (c) Part 3 of the Family Law Act 2019;
  - (d) section 12, subsections (2) and (3) of section 13, subsections (2) and (3) of section 15 and sections 23, 36, 58 and 59 of the Finance Act 2019.

**PART 2****ARRANGEMENTS IN RELATION TO HEALTH SERVICES****Arrangements in relation to health services**

5. The Health Act 1970 is amended by the insertion of the following Part after Part IV:

**“PART IVA****ARRANGEMENTS IN RELATION TO HEALTH SERVICES****Arrangements in relation to health services**

- 75A.** (1) The Minister may, with the consent of the Minister for Finance and the Minister for Public Expenditure and Reform, make such order or orders as he or she considers necessary to carry out any reciprocal or other arrangements made with, or under the proper authority of, the Government of the United Kingdom in respect of health services that will apply between the State and the United Kingdom after the end of the transition period.
- (2) Without prejudice to the generality of subsection (1), an order under that subsection may specify—
- (a) the category or categories of persons to whom the order applies, and
  - (b) the category or categories of health services to which the order applies.
- (3) When making an order under subsection (1), the Minister shall have regard to the following:
- (a) the policies and objectives of the Government regarding their shared commitment with the Government of the United Kingdom to the protection of the Common Travel Area and associated reciprocal rights and privileges as a legitimate and fundamental



- public policy, and recognising healthcare arrangements as a component of this;
- (b) the policies and objectives of the Government to reaffirm the Common Travel Area arrangements and the associated reciprocal rights and privileges enjoyed by Irish and British citizens in each other's state, in particular the right for citizens residing in either state to access emergency, routine and planned publicly funded health services in each other's state, on the same basis as citizens of that state;
  - (c) the policies and objectives of the Government regarding their shared commitment with the Government of the United Kingdom that residents of the State and the United Kingdom should enjoy ease of access to healthcare in the other state;
  - (d) the policies and objectives of the Government to enable arrangements in relation to health services to be implemented between the State and the United Kingdom after the end of the transition period;
  - (e) the desirability, in the public interest, of maintaining access to health services in the United Kingdom after the end of the transition period, in particular the desirability of maintaining access to medically necessary health services;
  - (f) the need to ensure the most beneficial, effective and efficient use of resources;
  - (g) the policies and objectives of the Government to protect and improve the health and welfare of the public.
- (4) In this section, 'transition period' means the transition period provided in Article 126 of the Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Agency Community<sup>3</sup>.

#### **Regulations to give full effect to this Part**

- 75B.** (1) The Minister may, with the consent of the Minister for Finance and the Minister for Public Expenditure and Reform, and having regard to the matters specified in section 75A(3), make regulations for the purposes of giving full effect to this Part and such regulations may, in particular, but without prejudice to the generality of the foregoing, provide for all or any of the following:
- (a) the arrangements that shall apply with regard to assessing such classes of persons, including persons residing outside the State, as may be specified, in relation to access to health services in the State;

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<sup>3</sup> OJ No. C1 384, 12.11.2019, p.1

- (b) the arrangements that shall apply with regard to assessing, where appropriate (including by reference to such qualifying criteria as may be specified) such classes of persons, as may be specified, in relation to access to planned health services in the United Kingdom;
- (c) the arrangements to be administered by the Health Service Executive to ensure access to planned health services in the United Kingdom;
- (d) the arrangements to be administered by the Health Service Executive to ensure access to health services in the State by persons from the United Kingdom;
- (e) the duties on healthcare providers and healthcare professionals to provide such information as may be prescribed in relation to the health services that they provide to persons from the United Kingdom;
- (f) the method by which payments in respect of health services provided in the United Kingdom are to be calculated and the manner in which such payments shall be made by the Health Service Executive to the United Kingdom;
- (g) the charging by the Health Service Executive for the provision of health services provided in the State to persons from the United Kingdom and the method in relation to which charges for such health services shall be calculated and levied;
- (h) the manner in which payments in respect of charges referred to in paragraph (g) shall be made to the State by individuals and by the United Kingdom;
- (i) the method by which payments are to be made by the State in respect of health services provided in the United Kingdom and the manner in which such payments shall be made by the State to the United Kingdom;
- (j) the method by which charges are to be levied by the State on the United Kingdom in respect of health services provided by or on behalf of the Health Service Executive in the State and the manner in which payments shall be made by the United Kingdom to the State;
- (k) the class or classes of persons in respect of whom payments shall be made by the State or the United Kingdom, including the methodology used to estimate the number of persons concerned;
- (l) the category or categories of health services in respect of which payments or provision may be made;

- (m) the arrangements that shall apply with regard to payments to be made by the State to the United Kingdom and with regard to payments to be made by the United Kingdom to the State, including the methodology for calculating costs and the levels of reimbursement;
  - (n) the basis on which the Health Service Executive may reimburse persons in respect of the cost of health services received and paid for by those persons in the United Kingdom;
  - (o) such forms as may be necessary for the purposes of paragraphs (a) to (n);
  - (p) such other related, ancillary, transitional or consequential matters as the Minister considers appropriate.
- (2) Without prejudice to the generality of subsection (1), regulations under that subsection may—
- (a) apply either generally or to a specified class or classes of persons, and
  - (b) apply either generally or to a specified class or classes of health services.
- (3) A person who contravenes a provision of regulations made under subsection (1) that is declared in the regulations to be a penal provision shall be guilty of an offence and shall be liable on summary conviction to a class A fine or to imprisonment for a term not exceeding 3 months or both.

### **Orders and regulations**

**75C.** Every order and regulation under this Part shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the order or regulation is passed by either such House within 21 days on which that House sits after the order or regulation is laid before it, the order or regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.”.

## PART 3

### REIMBURSEMENT OF MEDICAL EXPENSES

#### **Definitions and application (*Part 3*)**

**6.** (1) In this Part—

“British citizen” means a citizen of the United Kingdom of Great Britain and Northern Ireland;

“eligible person” means—

- (a) an Irish citizen who is ordinarily resident in Northern Ireland,
- (b) a British citizen who is ordinarily resident in Northern Ireland, or
- (c) a citizen of a Member State who is ordinarily resident in Northern Ireland,

but does not include a person who is ordinarily resident in Northern Ireland who—

- (i) holds, or is entitled to hold, a European Health Insurance Card or an equivalent document issued by a Member State, or
- (ii) holds, or is entitled to hold, a document equivalent to the European Health Insurance Card issued by the United Kingdom, or is otherwise entitled to reimbursement by the United Kingdom of medical expenses in respect of necessary medical treatment incurred in a Member State after the end of the transition period (whether in accordance with the Withdrawal Agreement or otherwise);

“European Health Insurance Card” means the card issued in the State by the Executive and known as the European Health Insurance Card;

“Executive” means the Health Service Executive;

“medical expenses” means the cost of medical care, and products and services ancillary to that care, that are incurred by an eligible person in respect of necessary medical treatment;

“Member State” means—

- (a) a Member State of the European Union, other than the State,
- (b) 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
- (c) Switzerland;

“Minister” means the Minister for Health;

“necessary medical treatment” means, in relation to an eligible person, the treatment that becomes medically necessary and which the person would be entitled to receive during a temporary stay in a Member State pursuant to a European Health Insurance Card were he or she the holder of, or entitled to, such card;

“prescribed” means prescribed by regulations under *section 8*;

“transition period” means the transition period provided in Article 126 of the Withdrawal Agreement;

“United Kingdom of Great Britain and Northern Ireland” includes the Channel Islands and the Isle of Man;

“Withdrawal Agreement” means the Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Agency Community<sup>4</sup>.

- (2) This Part applies to medical expenses incurred on or after the date on which *section 7* comes into operation.

### **Reimbursement of expenses incurred by eligible persons in respect of necessary medical treatment**

7. (1) Where an eligible person incurs medical expenses in a Member State, in respect of necessary medical treatment, he or she or a person acting on his or her behalf may apply to the Executive for reimbursement of those expenses.
- (2) An application under *subsection (1)* shall be made in the prescribed form and manner.
- (3) On receipt of an application under *subsection (1)*, the Executive shall reimburse the eligible person, or the person acting on his or her behalf, in the prescribed form and manner, where it is satisfied that—
- (a) the person in respect of whom the application is made is an eligible person,
  - (b) the treatment in respect of which reimbursement is sought is necessary medical treatment, and
  - (c) he or she, or a person acting on his or her behalf, has complied with this section and any regulations made under *section 8*.
- (4) When calculating the medical expenses to be reimbursed in accordance with this section, the Executive shall endeavour to ensure that, as far as practicable, it does not assess an application in respect of an eligible person less favourably or more favourably than it would assess an application in respect of a person who is entitled to and holds a European Health Insurance Card.
- (5) Where the Executive makes a reimbursement to a person in accordance with this section and it subsequently ascertains that the person was not entitled to that reimbursement, or part of that reimbursement, because—
- (a) the person was not an eligible person,
  - (b) the treatment in respect of which reimbursement was sought was not necessary medical treatment, or
  - (c) the person, or any person acting on his or her behalf, did not comply with this section or any regulations made under *section 8*,

the reimbursement, or that part of the reimbursement that the person was not entitled to, shall be recoverable by the Executive in any court of competent jurisdiction as a simple contract debt.

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<sup>4</sup> OJ No. C1 384, 12.11.2019, p.1

**Regulations**

8. (1) The Minister may, with the consent of the Minister for Finance and the Minister for Public Expenditure and Reform, following consultation with the Executive and having regard to the matters specified in *subsection (2)*, make regulations for the purposes of giving full effect to this Part and such regulations may, in particular, but without prejudice to the generality of the foregoing, provide for all or any of the following:
- (a) the form and manner in which, and the period during which, an application under *section 7* shall be made;
  - (b) the form and manner in which the Executive shall reimburse an eligible person, or a person acting on his or her behalf, for medical expenses incurred in respect of necessary medical treatment provided in a Member State;
  - (c) the documentation and certifications, including proof of citizenship and residence, required to accompany an application under *section 7*;
  - (d) the class or classes of persons who may, in respect of an eligible person, make an application under *section 7*;
  - (e) such forms as may be necessary for the purposes of *paragraphs (a) to (d)*;
  - (f) such additional, incidental, consequential or supplemental matters as the Minister considers necessary or expedient for the purposes of giving effect to this Part.
- (2) When making regulations under *subsection (1)*, the Minister shall have regard to the following:
- (a) the proper and efficient administration of the reimbursement under *section 7*, of medical expenses incurred by an eligible person;
  - (b) the need to ensure the most beneficial, effective and efficient use of resources when reimbursing the expenses referred to in *paragraph (a)*;
  - (c) the policies and objectives of the Government, having regard to the State's commitment to the British-Irish Agreement and the State's membership of the European Union, to enable certain arrangements in relation to health services in respect of eligible persons to be maintained after the end of the transition period.
- (3) Regulations under this section shall be laid before each House of the Oireachtas as soon as may be after they are made and, if a resolution annulling the regulations is passed by either such House within the next 21 days on which that House sits after the regulations are laid before it, the regulations shall be annulled accordingly, but without prejudice to the validity of anything previously done under the regulations.
- (4) In this section, "British-Irish Agreement" means the Agreement between the Government of Ireland and the Government of the United Kingdom of Great Britain and Northern Ireland done at Belfast on the 10th day of April, 1998.

**Administrative arrangements between Executive and competent institutions**

9. (1) The Executive may, for the purposes of this Part, enter into an administrative and technical arrangement with a competent institution of a Member State for the purposes of—
- (a) processing the reimbursement of medical expenses in respect of necessary medical treatment received by an eligible person during a temporary stay in the Member State concerned,
  - (b) calculating the total value of medical expenses to be reimbursed in respect of necessary medical treatment received by an eligible person in the Member State concerned,
  - (c) exchanging such information as may be necessary between the Executive and the competent institution to enable the processing of the reimbursement of medical expenses, and
  - (d) facilitating administrative and technical cooperation between the Executive and the competent institution in relation to the reimbursement of medical expenses in respect of necessary medical treatment received by an eligible person in the Member State concerned.
- (2) The parties to an arrangement under this section may vary the terms of the arrangement.
- (3) An arrangement under this section, or any variation of such an arrangement, shall be in writing.
- (4) The Executive shall provide the Minister with a copy of each arrangement under this section and any variation thereof.
- (5) In this section, “competent institution” means, in relation to a Member State, an institution designated by that Member State as responsible for the provision of healthcare and treatment to an eligible person during his or her stay in the Member State concerned.

**Executive may have regard to certain decisions of Administrative Commission**

10. (1) The Executive may have regard to decisions of the Administrative Commission in respect of administrative questions and questions of interpretation referred to in Article 72(a) of Regulation (EC) No. 883/2004 that the Executive considers may be relevant to the administration of this Part.
- (2) In this section—
- “Administrative Commission” means the Administrative Commission referred to in Article 71 of Regulation (EC) No. 883/2004;
- “Regulation (EC) No. 883/2004” means Regulation (EC) No. 883/2004 of the European Parliament and of the Council of 29 April 2004<sup>5</sup> on the coordination of social security systems.

<sup>5</sup> OJ No. L 166, 30.4.2004, p.1

**Review of operation of Part 3**

11. (1) The Executive shall carry out a review of the operation of this Part not later than two years after the commencement of this section.
- (2) The Executive shall submit a report to the Minister of the findings of a review carried out under *subsection (1)* and, not later than one month after such submission, the Minister shall cause copies of the report to be laid before each House of the Oireachtas.

## PART 4

## AMENDMENT OF COMPANIES ACT 2014

**Amendment of Companies Act 2014**

12. Part 17 of the Companies Act 2014 is amended by the insertion of the following Chapter after Chapter 7:

## “CHAPTER 7A

*Uncertificated securities of relevant issuers***Interpretation**

**1087A.**In this Chapter—

‘central securities depository’ means a central securities depository within the meaning of the CSD Regulation that is authorised to perform services in the State;

‘CSD Regulation’ means Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014<sup>6</sup> on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012;

‘relevant issuer’ means a public limited company that has issued securities that are relevant securities;

‘relevant securities’ means securities that are issued by a relevant issuer and registered in the name of a central securities depository;

‘securities settlement system’ has the meaning given to it by the CSD Regulation.

**Share certificates**

**1087B.**Notwithstanding section 99(2), a relevant issuer is not required to issue share certificates in respect of relevant securities that are registered in the name of a central securities depository (or, as the case may be, a body

<sup>6</sup> OJ No. L 257, 28.08.2014, p.1



nominated by that depository) and title of the central securities depository (or, as the case may be, a body nominated by that depository) to the relevant securities shall be evidenced by the recording of the name and address of that depository (or, as the case may be, its nominee) in the register of members of the relevant issuer.

#### **Written instrument of transfer**

**1087C.**Notwithstanding section 94(4), section 2(1) of the Stock Transfer Act 1963 or any other enactment, a written instrument of transfer shall not be necessary to transfer title (which transfer may occur more than once) to—

- (a) relevant securities from a central securities depository (or, as the case may be, a body nominated by that depository) to any holder of the rights or interests in those securities,
- (b) relevant securities from one central securities depository (or, as the case may be, a body nominated by that depository) to another central securities depository (or, as the case may be, a body nominated by that depository), or
- (c) securities in the relevant issuer to the central securities depository (or, as the case may be, a body nominated by that depository) from any holder of the rights or interests in those securities.

#### **Alternative special majority for Schemes of Arrangement**

**1087D.**(1) In section 449(1), ‘special majority’ insofar as it applies to members of a relevant issuer, means a majority representing at least 75 per cent in value of the members or class of members, as the case may be, present and voting either in person or by proxy at the scheme meeting.

- (2) Where any part of the issued shares of a relevant issuer is held outside of a central securities depository (or, as the case may be, a body nominated by that depository), and the special majority referred to in subsection (1) applies, the quorum for a scheme meeting referred to in subsection (1) shall be at least two persons holding or representing by proxy at least one-third in nominal value of the issued shares, or class of shares, as the case may be, in the relevant issuer and section 182 shall, in relation to that meeting, be construed accordingly.

#### **Disapplication of additional requirement**

**1087E.**(1) Where a relevant scheme, contract or offer under section 457 is made in the capital of a relevant issuer that is an offeree company, the additional requirement in section 458(3) does not have to be satisfied with regard to the offeror’s right of buy-out.

- (2) In subsection (1)—

‘offeree company’ and ‘offeror’ have the same meaning as they have respectively in section 457(1);

‘relevant scheme, contract or offer’ has the same meaning as it has in section 457(1).

### **Irrevocable power of attorney**

**1087F.**(1) An irrevocable power of attorney shall be granted where—

- (a) the terms of an offer by an offeror for any or all shares of a relevant issuer provide that a person accepting the offer creates an irrevocable power of attorney in favour of the offeror, and
- (b) acceptance of that offer is communicated by way of dematerialised instructions.

(2) In subsection (1)—

‘dematerialised instructions’ mean instructions that are sent or received by means of a securities settlement system of a central securities depository in accordance with the procedures of that settlement system;

‘offeror’ includes a person nominated by the offeror.

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

**1087G.**The provisions of section 1105 shall apply to general meetings held by a relevant issuer with the modification that ‘record date’ (as that expression is used in that section) in relation to a relevant issuer shall be close of business on the day before a date not more than 72 hours before the general meeting to which it relates.

### **Definition of subsidiary**

**1087H.**(1) For the purposes of section 7 (definition of subsidiary), in determining whether the lower company is a subsidiary of the superior company, any shares held or power exercisable by a central securities depository (or, as the case may be, a body nominated by that depository) in a relevant issuer for the purpose of the provision of a securities settlement system by that central securities depository (or, as the case may be, a body nominated by that depository) shall be treated as not held or exercisable by that depository (or, as the case may be, the body so nominated).

(2) In subsection (1)—

‘shares’ includes relevant securities;

‘lower company’ and ‘superior company’ have the same meaning as they have respectively in section 7.”

## PART 5

## AMENDMENT OF EMPLOYMENT PERMITS ACT 2006

**Amendment of section 10 of Employment Permits Act 2006**

**13.** Section 10 of the Employment Permits Act 2006 is amended—

(a) in subsection (2), by—

(i) the substitution of “are either—” for “are nationals of any of the following:”,

(ii) the substitution of the following for paragraph (i):

“(i) nationals of one or more Member States of the EEA,”,

(iii) the substitution of the following for paragraph (ii):

“(ii) nationals of the Swiss Confederation,”,

(iv) the insertion of the following paragraph after paragraph (ii):

“(iia) citizens of the United Kingdom of Great Britain and Northern Ireland, or”,

and

(v) the substitution of the following for paragraph (iii):

“(iii) a combination of any of the nationals or citizens referred to in paragraphs (i), (ii) and (iia).”,

and

(b) by the insertion of the following subsection after subsection (3):

“(4) In subsection (2)(iia), ‘United Kingdom of Great Britain and Northern Ireland’ includes the Channel Islands and the Isle of Man and ‘citizens of the United Kingdom of Great Britain and Northern Ireland’ shall be construed accordingly.”.

## PART 6

## QUALIFICATION TO CARRY OUT ACTIVITY RELATING TO FLUORINATED GREENHOUSE GASES

**Interpretation (Part 6)**

**14.** In this Part—

“Agency” means the Environmental Protection Agency;

“qualifying certificate” shall be construed in accordance with *section 15(1)*;

“qualifying training attestation” shall be construed in accordance with *section 15(2)*.

**Certification and training attestation relating to individuals**

15. (1) A valid certificate issued before the coming into operation of this Part by a certification body in the United Kingdom under—

- (a) Article 5 of Commission Regulation (EC) No 304/2008 of 2 April 2008<sup>7</sup> in respect of an activity referred to in Article 2(1) of that Commission Regulation,
- (b) Article 3 of Commission Regulation (EC) No 306/2008 of 2 April 2008<sup>8</sup> in respect of an activity referred to in Article 1 of that Commission Regulation,
- (c) Article 3 of Commission Implementing Regulation (EU) 2015/2066 of 17 November 2015<sup>9</sup> in respect of an activity referred to in Article 1 of that Commission Implementing Regulation, or
- (d) Article 4 of Commission Implementing Regulation (EU) 2015/2067 of 17 November 2015<sup>10</sup> in respect of an activity referred to in Article 2(1) of that Commission Implementing Regulation,

is a qualifying certificate for the purposes of this Part.

(2) A valid training attestation issued before the coming into operation of this Part by an attestation body in the United Kingdom under Article 3 of Commission Regulation (EC) No 307/2008 of 2 April 2008<sup>11</sup> in respect of an activity referred to in Article 1 of that Commission Regulation is a qualifying training attestation for the purposes of this Part.

(3) An individual who holds a qualifying certificate or a qualifying training attestation may carry out the activity to which the qualifying certificate or qualifying training attestation relates until the date that is six months after the coming into operation of this Part or the date on which a certificate or training attestation, as the case may be, is issued by the Agency in accordance with *subsection (4)*, whichever is earlier.

(4) (a) An individual who holds a qualifying certificate or qualifying training attestation shall apply to the Agency not later than four months after the coming into operation of this Part for the issue by it of a certificate or training attestation—

- (i) under the Article of the Commission Regulation or Commission Implementing Regulation referred to in *subsection (1)(a), (b), (c) or (d)*, as appropriate, or *subsection (2)*, as the case may be, to which the qualifying certificate or qualifying training attestation relates, and
- (ii) in respect of the activity to which the qualifying certificate or qualifying training attestation relates,

and such certificate or training attestation shall, subject to *subsection (5)*, be issued by the Agency not later than six months after the coming into operation of this Part.

7 OJ No. L 92, 3.4.2008, p.12

8 OJ No. L 92, 3.4.2008, p.21

9 OJ No. L 301, 18.11.2015, p.22

10 OJ No. L 301, 18.11.2015, p.28

11 OJ No. L 92, 3.4.2008, p.25

- (b) An application made to the Agency pursuant to Regulation 12B or 12J (inserted by Regulation 7 of the European Union (Fluorinated Greenhouse Gas) (Amendment) Regulations 2019 (S.I. No. 367 of 2019) and amended by Regulation 3 of the European Union (Fluorinated Greenhouse Gas) (Amendment) Regulations 2020 (S.I. No. 32 of 2020)) of the European Union (Fluorinated Greenhouse Gas) Regulations 2016 (S.I. No. 658 of 2016) by an individual who holds a qualifying certificate or a qualifying training attestation is deemed to be an application made for the purpose of *paragraph (a)* where the Agency has not determined before the time and date specified in Regulation 12B(3)(a) or 12J(3)(a), as the case may be, of those Regulations that the application has been made in accordance with the procedures established by the Agency in that behalf.
- (5) The Agency shall issue a certificate or training attestation where an application is made in accordance with this section and in accordance with the procedures established by the Agency in that behalf.
- (6) An individual to whom a certificate is issued in accordance with this section may carry out the activity in respect of which the certificate is issued subject to and in accordance with the procedures established by the Agency in relation to the suspension and withdrawal of any such certificate.

## PART 7

### AMENDMENT OF STUDENT SUPPORT ACT 2011

#### **Definition (*Part 7*)**

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

#### **Amendment of section 2 of Act of 2011**

- 17.** 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;”.

#### **Amendment of section 7 of Act of 2011**

- 18.** 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.”.

**Amendment of section 8 of Act of 2011****19.** 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)”.

**Amendment of section 14 of Act of 2011****20.** 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”.

**Operation of section 14 of Act of 2011 (prescribing of certain matters)**

**21.** 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.”.

## PART 8

### TAXATION

#### CHAPTER 1

##### *Definitions*

### **Definitions (*Part 8*)**

#### **22.** 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***Amendment of section 42 of Act of 1997**

23. Section 42(1) of the Act of 1997 is amended by the substitution of the following definition for the definition of “relevant State”:

“ ‘relevant State’ means—

- (a) a Member State of the European Union, or
- (b) 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 (a) and (b), shall be deemed to include the United Kingdom.”.

**Amendment of section 128D of Act of 1997**

24. 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”.

**Amendment of section 128F of Act of 1997**

25. 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”.

**Amendment of section 191 of Act of 1997**

26. 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)”.

**Amendment of section 192BA of Act of 1997**

27. Section 192BA(1) of the Act of 1997 is amended, in paragraph (b) of the definition of “qualifying payment”, by the insertion of “or of the United Kingdom” after “Member State”.

**Amendment of section 192F of Act of 1997**

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

**Amendment of section 195 of Act of 1997**

29. 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,”.

**Amendment of section 208A of Act of 1997**

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

**Amendment of section 208B of Act of 1997**

31. 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”.

**Amendment of section 244 of Act of 1997**

32. 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”.

**Amendment of section 244A of Act of 1997**

33. 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,”.

**Amendment of section 470 of Act of 1997**

34. 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”.

**Amendment of section 472B of Act of 1997**

35. 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.”.

#### **Amendment of section 472BA of Act of 1997**

36. 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”.

#### **Amendment of section 473A of Act of 1997**

37. 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”.

#### **Amendment of section 480A of Act of 1997**

38. 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,”.

#### **Amendment of section 489 of Act of 1997**

39. 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.”.

**Amendment of section 490 of Act of 1997**

**40.** 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.”.

**Amendment of section 770 of Act of 1997**

**41.** 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>12</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;”.

<sup>12</sup> OJ No. L 354, 23.12.2016, p.37

**Amendment of section 772 of Act of 1997**

42. 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”.

**Amendment of section 772A of Act of 1997**

43. 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”.

**Amendment of section 784 of Act of 1997**

44. 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”.

**Amendment of section 784A of Act of 1997**

45. 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 subparagraph 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” before “, who is carrying on the business of life assurance”,
    - (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)(I), by the insertion of “or in the United Kingdom” after “EEA state”.

**Amendment of section 785(1A) of Act of 1997**

46. 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”.

**Amendment of section 787M of Act of 1997**

47. 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 paragraph 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,”.

**Amendment of section 790B of Act of 1997**

48. 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;”.

**Amendment of section 806 of Act of 1997**

**49.** Section 806 of the Act of 1997 is amended 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;”.

**Amendment of section 1032 of Act of 1997**

**50.** Section 1032 of the Act of 1997 is amended—

- (a) in subsection (2)(c), by the insertion of “, or of the United Kingdom,” after “European Communities”, and
- (b) in subsection (3), by the insertion of “or of the United Kingdom” after “European Communities”.

CHAPTER 3

*Corporation Tax*

**Amendment of section 130 of Act of 1997**

**51.** Section 130 of the Act of 1997 is amended—

- (a) by the substitution of the following subsection for subsection (2B):

“(2B) Subsection (2)(d)(iv) shall not apply as respects interest, other than interest to which section 452 or 845A applies, paid to a company which is a resident of—

- (a) a Member State, other than the State, or
- (b) the United Kingdom,

and, for the purposes of this subsection—



- (i) a company is a resident of a Member State if the company is by virtue of the law of that Member State resident for the purposes of tax (being any tax imposed in the Member State which corresponds to corporation tax in the State) in such Member State, and
- (ii) a company is a resident of the United Kingdom if the company is by virtue of the law of the United Kingdom resident for the purposes of tax (being any tax imposed in the United Kingdom which corresponds to corporation tax in the State) in the United Kingdom.”,

and

- (b) in subsection (3)(d), in the definition of “relevant Member State”—
  - (i) in subparagraph (i), by deleting “or”,
  - (ii) in subparagraph (ii), by substituting “made, or” for “made.”, and
  - (iii) by inserting the following subparagraph after subparagraph (ii):
    - “(iii) the United Kingdom.”.

#### **Amendment of section 243 of Act of 1997**

- 52.** Section 243 of the Act of 1997 is amended, in subsection (4)(b), by the insertion, after “European Communities”, in each place where it occurs, of “or the United Kingdom”.

#### **Amendment of sections 410 and 411 of Act of 1997**

- 53.** (1) Section 410 of the Act of 1997 is amended by the substitution of the following definition for the definition of “relevant Member State” in subsection (1)(a):

“ ‘relevant Member 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 subparagraphs (i) and (ii), shall be deemed to include the United Kingdom;”.

- (2) Section 411 of the Act of 1997 is amended by the substitution of the following definition for the definition of “relevant Member State” in subsection (1)(a):

“ ‘relevant Member 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 subparagraphs (i) and (ii), shall be deemed to include the United Kingdom other than for the purposes of subsection (2A) and section 420C;”.

**Amendment of section 438 of Act of 1997**

54. Section 438 of the Act of 1997 is amended by the substitution of the following subsection for subsection (6):

“(6) In subsections (1) and (5)(b), the references to an individual shall apply also to a company receiving the loan or advance in a fiduciary or representative capacity and to a company that is resident in neither a Member State of the European Union nor the United Kingdom and, for the purposes of this subsection—

(a) a company is a resident of a Member State of the European Union if the company is by virtue of the law of that Member State resident for the purposes of tax (being, in the case of the State, corporation tax and, in any other case, being any tax imposed in the Member State which corresponds to corporation tax in the State) in such Member State, and

(b) a company is a resident of the United Kingdom if the company is by virtue of the law of the United Kingdom resident for the purposes of tax (being any tax imposed in the United Kingdom which corresponds to corporation tax in the State) in the United Kingdom.”.

**Amendment of section 486C of Act of 1997**

55. Section 486C of the Act of 1997 is amended, in the definition of “new company” in subsection (1)(a), by the substitution of “(other than the State) or in the United Kingdom” for “other than the State”.

**Amendment of section 615 of Act of 1997**

56. Section 615 of the Act of 1997 is amended, in subsection (2)(b), by the substitution of the following subparagraph for subparagraph (ii):

“(ii) a reference to a company shall apply only to a company which, by virtue of the law of a relevant Member State, is resident for the purposes of tax in such a Member State, and for this purpose—

‘relevant Member State’, in addition to the meaning assigned to that expression by section 616(7), shall be deemed to include the United Kingdom;

‘tax’, in relation to a relevant Member State other than the State, means any tax imposed in the Member State which corresponds to corporation tax in the State.”.

**Amendment of section 616 of Act of 1997**

57. Section 616 of the Act of 1997 is amended, in subsection (1), by the substitution of the following paragraph for paragraph (a):

“(a) subject to sections 617(5), 621(1) and 623(7), a reference to a company or companies shall apply only to a company or companies, as limited by subsection (2), being a company or, as the case may be, companies which, by virtue of the law of a relevant Member State, is or are resident for the purposes of tax in such a relevant Member State, and for this purpose—

‘relevant Member State’, in addition to the meaning assigned to that expression by subsection (7), shall be deemed to include the United Kingdom;

‘tax’, in relation to a relevant Member State other than the State, means any tax imposed in the relevant Member State which corresponds to corporation tax in the State;

and references to a member or members of a group of companies shall be construed accordingly;”.

**Amendment of section 766 of Act of 1997**

58. Section 766 of the Act of 1997 is amended by the substitution of the following definition for the definition of “relevant Member State” in subsection (1)(a):

“ ‘relevant Member State’ means—

(i) a 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 EEA Agreement,

and, in addition to what is specified in subparagraphs (i) and (ii), shall be deemed to include the United Kingdom but, for the purposes of the definition of ‘Member State’ in section 769G(1), the portion of this definition that extends to the United Kingdom shall not apply;”.

## CHAPTER 4

*Capital Gains Tax***Amendment of section 541C of Act of 1997**

59. Section 541C(1) of the Act of 1997 is amended, in the definition of “proportion of carried interest derived from the relevant investment”, by the substitution of “(including the State), or in the United Kingdom, of” for “(including the State) of”.

**Amendment of section 604A of Act of 1997**

60. Section 604A(2) of the Act of 1997 is amended by the substitution of “(including the State) or in the United Kingdom” for “(including the State)”.

## CHAPTER 5

*Value-Added Tax***Amendment of section 2 of Act of 2010**

61. Section 2 of the Act of 2010 is amended—
- (a) in subsection (1), in the definition of “Community”, by the insertion of “, subject to subsection (4A),” before “has the same meaning”,
  - (b) in subsection (4), by the insertion of “, subject to subsection (4A),” before “references to Member States”, and
  - (c) by the insertion of the following subsection after subsection (4):
    - “(4A) In this Act, each reference to—
      - (a) Community, and
      - (b) Member State,shall apply as if the reference included a reference to Northern Ireland, save—
      - (i) where the reference occurs in a provision specified in Part 1 of Schedule 9, and
      - (ii) in the case of a provision specified in Part 2 of Schedule 9, in so far as the provision applies to services.”.

**Amendment of section 53 of Act of 2010**

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

**Postponed accounting**

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

“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.”.

**Amendment of section 56 of Act of 2010**

64. 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.”.

#### **Amendment of section 58 of Act of 2010**

**65.** Section 58 of the Act of 2010 is amended—

- (a) in subsection (1), by the substitution of the following definition for the definition of “traveller”:

“ ‘traveller’ means a person whose domicile or habitual residence is not situated within the Community;”,

and

- (b) in subsection (2)—

- (i) 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 €75, and”,

and

(ii) 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.”.

### **Amendment of section 120 of Act of 2010**

**66.** 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)”.

### **Insertion of Schedule 9 in Act of 2010**

**67.** The Act of 2010 is amended by the insertion of the following Schedule after Schedule 8:

#### “SCHEDULE 9

*Section 2(4A)*

*Non-application of section 2(4A) to certain provisions of Act*

Part 1

Section 33

Section 34

Section 35

Section 56(1)

Section 83

Section 88(8)

Section 91

Section 91A

Section 91B

Section 91C

Section 91D

Section 91E

Part 2

Section 59

Section 101

Section 102(3)

Paragraph 5(1A) of Schedule 2

Paragraph 6(1)(c) of Schedule 2”.

CHAPTER 6

*Stamp Duties*

**Amendment of section 75 of Act of 1999**

**68.** Section 75(2A) of the Act of 1999 is amended by the insertion of the following after “requirement”:

“, or is required by the authority in the United Kingdom, designated as the competent authority before the coming into operation of *Chapter 6* of *Part 8* of the *Withdrawal of the United Kingdom from the European*

*Union (Consequential Provisions) Act 2020*, to be reported directly or indirectly to it and is so reported in accordance with that requirement”.

**Amendment of section 75A of Act of 1999**

69. Section 75A(1) of the Act of 1999 is amended, in the definition of “clearing house”, by the insertion of “or the United Kingdom” after “European Communities”.

**Amendment of section 80 of Act of 1999**

70. Section 80(10) of the Act of 1999 is amended by the substitution of the following paragraph for paragraph (a):

“(a) that the acquiring company referred to in this section is incorporated in—

- (i) another Member State of the European Union,
- (ii) an EEA State within the meaning of section 80A, or
- (iii) the United Kingdom,

or”.

**Amendment of section 80A of Act of 1999**

71. Section 80A(1) of the Act of 1999 is amended—

(a) in the definition of “acquiring company”, by the substitution of “, in an EEA State or in the United Kingdom” for “or in an EEA State”,

(b) in the definition of “assurance company”—

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

(ii) in paragraph (b), by the substitution of “(S.I. No. 360 of 1994), or” for “(S.I. No. 360 of 1994);”, and

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

“(c) a person that holds an authorisation to carry on insurance granted by the authority in the United Kingdom charged by law with the duty of supervising such persons;”,

and

(c) in the definition of “parent company”, by the substitution of “, in an EEA State or in the United Kingdom,” for “or in an EEA State,”.

**Amendment of section 124B of Act of 1999**

72. Section 124B(1) of the Act of 1999 is amended in the definition of “insurer”—

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

- (b) in paragraph (c), by the substitution of “in the State,” for “in the State;”, and
- (c) by the insertion of the following paragraphs after paragraph (c):

“(d) a person who is the holder of an authorisation to undertake insurance granted by the authority in the United Kingdom charged by law with the duty of supervising such persons, or

(e) a person who is the holder of an authorisation to undertake insurance granted by the authority in Gibraltar charged by law with the duty of supervising such persons;”.

#### **Amendment of section 125 of Act of 1999**

73. Section 125(1) of the Act of 1999 is amended, in the definition of “insurer”, by the insertion of the following after “1909”:

“; or who holds an authorisation to carry on insurance of a class listed in Schedule 1 to the European Union (Insurance and Reinsurance) Regulations 2015 (S.I. No. 485 of 2015) granted by the authority in the United Kingdom charged by law with the duty of supervising such persons, or who is the holder of an authorisation to carry on insurance of a class listed in Schedule 1 to the European Union (Insurance and Reinsurance) Regulations 2015 (S.I. No. 485 of 2015) granted by the authority in Gibraltar charged by law with the duty of supervising such persons”.

#### CHAPTER 7

##### *Capital Acquisitions Tax*

#### **Amendment of section 89 of Capital Acquisitions Tax Consolidation Act 2003**

74. Section 89(1) of the Capital Acquisitions Tax Consolidation Act 2003 is amended—

- (a) in paragraph (a) of the definition of “agricultural property”, by the insertion of “or in the United Kingdom” after “Member State”, and
- (b) in the definition of “farmer”, by the insertion of “or in the United Kingdom” after “Member State”.

#### CHAPTER 8

##### *Excise*

#### **Amendment of Finance Act 1999**

75. The Finance Act 1999 is amended—

- (a) in section 94—
- (i) in subsection (1), by the deletion of the definition of “Member State”,

- (ii) in subsection (3), by the substitution of “Subject to subsection (3A), a word” for “A word”,
- (iii) by the insertion of the following subsection after subsection (3):
  - “(3A) In this Chapter, each reference to Member State shall apply as if the reference included a reference to Northern Ireland, save where the reference occurs in subsections (1) and (5)(c) of section 99A.”,
  - and
- (iv) in subsection (4), by the substitution of “Subject to subsection (3A), a word” for “A word”,
- and
- (b) in section 101, in subsections (8)(a)(ii) and (9)(a)(ii), by the insertion of “or of the United Kingdom” after “Member State” in each place that it occurs.

**Amendment of Finance Act 2001****76.** The Finance Act 2001 is amended—

- (a) in section 96—
  - (i) in subsection (1)—
    - (I) in the definition of “European Union”—
      - (A) by the insertion of “, subject to subsection (3),” before “means”, and
      - (B) by the deletion of paragraph (c),
    - and
    - (II) in the definition of “Member State”, by the insertion of “, subject to subsection (3),” before “means”,
  - (ii) in subsection (2), by the substitution of “Subject to subsection (3), a word” for “A word”, and
  - (iii) by the insertion of the following subsection after subsection (2):
    - “(3) In this Part, each reference to—
      - (a) European Union, and
      - (b) Member State,shall apply as if the reference included a reference to Northern Ireland, save where either such reference occurs in section 104(4)(a), 109(7)(c) or 109A(8).”
- (b) in section 104(1)(e), by the insertion of “or port” after “airport”,
- (c) in section 109, in subsections (3)(c)(ii) and (12)(a)(ii), by the insertion of “or of the United Kingdom” after “Member State” in each place that it occurs,

- (d) in section 109A, in subsections (5)(a)(ii) and (13)(a)(ii), by the insertion of “or of the United Kingdom” after “Member State” in each place that it occurs,
- (e) in section 109D, by the deletion of paragraph (d),
- (f) in section 109IA, in subsections (7)(a)(ii) and (14)(a)(ii), by the insertion of “or of the United Kingdom” after “Member State” in each place that it occurs, and
- (g) in section 109S, by the deletion of paragraph (d).

**Amendment of Finance Act 2003**

77. The Finance Act 2003 is amended—

- (a) in section 73—
  - (i) in subsection (2), by the substitution of “Subject to subsection (2A), a word” for “A word”,
  - (ii) by the insertion of the following subsection after subsection (2):
 

“(2A) In this Chapter, each reference to—

    - (a) European Union, and
    - (b) Member State,

shall apply as if the reference included a reference to Northern Ireland.”,

and

  - (iii) in subsection (3), by the substitution of “Subject to subsection (2A), a word” for “A word”,

and
- (b) in section 78A(1), by the substitution of “European Union” for “European Community”.

**Amendment of section 71 of Finance Act 2005**

78. Section 71 of the Finance Act 2005 is amended—

- (a) in subsection (1), by the deletion of the definitions of “Community” and “Member State”,
- (b) in subsection (5), by the substitution of “Subject to subsection (5A), a word” for “A word”, and
- (c) by the insertion of the following subsection after subsection (5):
 

“(5A) In this Chapter, each reference to Member State shall apply as if the reference included a reference to Northern Ireland.”.

## PART 9

## FINANCIAL SERVICES: SETTLEMENT FINALITY

**Interpretation (*Part 9*)****79.** (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.

### **Temporary designation of relevant arrangement**

**80.** (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.

### **Designation of relevant arrangement**

- 81.** (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.

**Rules applicable to arrangement to which *section 80* or *81* applies**

- 82.** (1) The Regulations of 2010, as modified in accordance with *subsection (2)*, shall apply to a relevant arrangement to which *section 80* or *81* 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.”.

## PART 10

### FINANCIAL SERVICES: AMENDMENT OF EUROPEAN UNION (INSURANCE AND REINSURANCE) REGULATIONS 2015 AND EUROPEAN UNION (INSURANCE DISTRIBUTION) REGULATIONS 2018

#### **Interpretation (*Part 10*)**

**83.** 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).

#### **Amendment of Regulations of 2015**

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

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

**13A.** (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 10* 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**

- 13B.** (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, 14 and 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.”.

### **Amendment of Regulations of 2018**

**85.** 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 10* 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.”

### **Report to Minister for Finance**

- 86.** (1) The Central Bank of Ireland shall, during the 12 months commencing on the date that is 11 years from the date on which this Part comes into operation, submit to the Minister for Finance a report setting out the views of the Central Bank of Ireland in relation to the operation of the provisions inserted in the Regulations of 2015 and the Regulations of 2018 by this Part, including as to—
- (a) the continuing need to protect holders of insurance policies issued by active insurance run-off undertakings or administered or performed by active insurance distribution run-off undertakings,

(b) the number of active insurance run-off undertakings and active insurance distribution run-off undertakings,

(c) the classes of insurance to which the policies referred to in *paragraph (a)* relate.

(2) In this section—

“active insurance run-off undertaking” means a person who—

(a) satisfies the condition described in subparagraph (a) of paragraph (1) of Regulation 13A of the Regulations of 2015,

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

(c) has complied with Regulation 13A(5) of the Regulations of 2015, and

(d) has not permanently ceased to carry on insurance business in the State;

“active insurance distribution run-off undertaking” means a person who—

(a) satisfies the condition described in subparagraph (a) of paragraph (1) of Regulation 3A of the Regulations of 2018,

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

(c) has complied with Regulation 3A(5) of the Regulations of 2018, and

(d) has not permanently ceased to carry on insurance distribution business (within the meaning of the Regulations of 2018) in the State.

## PART 11

### CUSTOMS

#### **Definition (*Part 11*)**

**87.** In this Part, “Act of 2015” means the Customs Act 2015.

#### **Customs control at customs ports**

**88.** The Act of 2015 is amended by the insertion of the following section after section 12:

“**12A.**(1) The person in charge or taking charge of a vehicle containing goods which have been unloaded from a ferry at a place (at a customs port) approved under section 7(1)(c), being a vehicle that has entered the State from a place, other than a place situate in another Member State, shall—

(a) comply with such instructions, as are given to him or her electronically or by other means by the Commissioners, regarding the movement of the vehicle to a place designated by the Commissioners as an area of customs supervision, and

- (b) ensure that the vehicle remains at that place and shall comply with such further instructions as are given to him or her (by the foregoing means) by the Commissioners as the Commissioners consider appropriate, until clearance (by the foregoing means) to depart that place is given.
- (2) A person who fails, without lawful excuse, to—
- (a) comply with any instruction given to him or her under paragraph (a) or (b) of subsection (1), or
- (b) ensure that the vehicle referred to in subsection (1) remains, in accordance with paragraph (b) of that subsection, at the place there referred to,
- commits an offence.
- (3) A person who commits an offence under subsection (2) is liable, on summary conviction, to a fine of €5,000 or imprisonment for a term not exceeding 12 months or both.
- (4) In this section, ‘ferry’ means a vessel with facilities that enable vehicles to be driven on board the vessel and to be driven off it.”.

#### **Amendment of section 25 of Act of 2015**

89. Section 25 of the Act of 2015 is amended, in subsection (1), by the substitution of the following paragraph for paragraph (a)—

“(a) enter and inspect a customs port or customs airport or any place approved under the Customs Acts, or any conveyance within such port, airport or place.”.

#### **Procedures for goods entering or departing the State by ferry (from or to a place outside the customs territory of the Union)**

90. The Act of 2015 is amended by the insertion of the following section after section 12A (inserted by *section 88*):

“**12B.**(1) In this section—

‘carrier’ means a person who has assumed responsibility for carriage of a relevant shipment or an empty vehicle, or the effecting of a relevant movement in relation to goods, into or out of the State by ferry and includes a person who provides haulage services or logistical services in relation to any of the foregoing matters;

‘Council Regulation’ means Council Regulation (EC) No. 1186/2009 of 16 November 2009<sup>13</sup> setting up a Community system of reliefs from customs duty;

<sup>13</sup> OJ No. L 324, 10.12.2009, p.23

‘Delegated Regulation’ means Commission Delegated Regulation (EU) 2015/2446 of 28 July 2015<sup>14</sup> supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council as regards detailed rules concerning certain provisions of the Union Customs Code;

‘electronic data processing technique’ means such electronic data processing technique as stands specified by the Commissioners for the purposes of this section;

‘export’ means the exportation or removal from the State of any goods to a place outside the customs territory of the Union;

‘ferry’ means a vessel with facilities that enable vehicles to be driven on board the vessel and to be driven off it;

‘ferry operator’ means a person engaged in the provision of ferry services between a port outside the customs territory of the Union and the State;

‘import’ means the importation or bringing into the State of any goods from outside the customs territory of the Union;

‘master reference number’ has the same meaning as it has in the Delegated Regulation;

‘pre-boarding notification’ shall be construed in accordance with subsection (6);

‘relevant movement’ means each of the following cases where goods are to be imported or exported by ferry in accordance with the Customs Acts and for which a master reference number has not been allocated by the Commissioners, that is to say, a case where:

- (a) a customs declaration for goods being imported through postal consignment is to be lodged in accordance with Article 144 of the Delegated Regulation;
- (b) goods in postal consignment are being exported in accordance with Article 141(4) of the Delegated Regulation;
- (c) an oral customs declaration for temporary admission is intended to be made upon entry into the State in respect of goods being transported in the vehicle concerned in accordance with Articles 136, 163 and 165 of the Delegated Regulation;
- (d) goods for export are being moved in accordance with the ATA Convention (within the meaning of the Delegated Regulation) or the Istanbul Convention (within the meaning of the Delegated Regulation);

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14 OJ No. L 343, 29.12.2015, p.1

- (e) it is intended to apply for temporary admission relief in respect of imported goods using a valid ATA carnet (within the meaning of the Delegated Regulation);
- (f) a paper declaration is intended to be made upon entry into the State in respect of goods being transported in the vehicle concerned for relief from importation charges on the basis of transfer of residence under Chapter I of Title II of the Council Regulation;
- (g) a paper declaration is intended to be made upon entry into the State in respect of goods being transported in the vehicle concerned for relief from importation charges on the basis of transfer of business as provided for in Chapter VII of Title II of the Council Regulation;
- (h) it is intended to apply for relief from import duty upon entry into the State in respect of goods being transported in the vehicle concerned on the basis that it contains personal property acquired by inheritance as provided for in Chapter III of Title II of the Council Regulation;
- (i) relief applies in the case of the importation of a coffin containing a deceased person or an urn containing ashes of a deceased person as provided for in Chapter XXX of Title II of the Council Regulation;
- (j) a declaration commonly referred to as a ‘Dip 1 paper declaration’ is intended to be made upon entry into the State in respect of goods being imported by an Embassy or other recognised international institution under section 5 of the Diplomatic Relations and Immunities Act 1967;
- (k) any other circumstance arises in which the Customs Acts permits the making of a paper or oral customs declaration in respect of goods contained in the vehicle concerned,

and subsection (2) supplements this definition;

‘relevant shipment’ means all of the particular goods which are to be imported or exported by ferry in accordance with the Customs Acts, or all of the particular goods moved under the customs transit procedure into or out of the State, for which a master reference number has been allocated by the Commissioners.

- (2) For the purposes of this section, in addition to what is provided in subsection (1) respecting the expression ‘relevant movement’, a reference in any subsequent provision of this section to a ‘relevant movement’ shall be deemed to include, where the context admits and notwithstanding that there are no goods in the vehicle, a reference to a case of the carriage of an empty vehicle on a ferry.

- (3) The following provisions shall have effect in relation to a relevant shipment, or the effecting of a relevant movement in relation to goods, entering or departing the State.
- (4) A person who has made a declaration in accordance with the Customs Acts regarding a proposed relevant shipment or who has made or intends to make a paper or oral declaration in accordance with the Customs Acts regarding a proposed relevant movement shall—
  - (a) provide the master reference number or particulars of the relevant movement relating to the goods concerned to the carrier, where the identity of the carrier is known to him or her, for the purposes of the pre-boarding notification in relation to those goods being completed,
  - (b) provide the master reference number or particulars of the relevant movement relating to the goods concerned to any other person in the supply chain to whom the identity of the carrier is known, for the purposes of the pre-boarding notification in relation to those goods being completed, or
  - (c) if by reason of the particular different shipments or movements that will take place, by means of a particular vehicle, both of the preceding cases apply, do each of the things referred to in paragraphs (a) and (b) (for the purposes of the pre-boarding notification in relation to the goods concerned being completed).
- (5) Paragraph (a) or (b) (or both, as appropriate) of subsection (4) shall be complied with as soon as—
  - (a) in the case of that paragraph (a), the information referred to in that paragraph becomes available to the first-mentioned person in that subsection,
  - (b) in the case of that paragraph (b), the information referred to in that paragraph becomes available to the first-mentioned person in that subsection,and, in any event, in advance of the check in of the vehicle concerned by the ferry operator at the ferry port of departure.
- (6) A carrier shall, in accordance with subsection (7), provide to the Commissioners a statement (in this section referred to as a ‘pre-boarding notification’), that complies with subsection (8), in relation to, as appropriate—
  - (a) the relevant shipment or relevant shipments of goods contained in a vehicle, or
  - (b) the relevant movement or relevant movements being effected in relation to goods contained in a vehicle, or

- (c) if each of the preceding cases apply, the matters specified in both paragraphs (a) and (b), or
  - (d) an empty vehicle,  
the carriage of goods in which, or the effecting of the relevant movement or movements by which, the carrier has assumed responsibility for.
- (7) The pre-boarding notification shall be provided to the Commissioners—
- (a) prior to the departure of the vehicle concerned on a ferry bound for, or departing from, the State, and
  - (b) by means of an electronic data processing technique.
- (8) The pre-boarding notification shall—
- (a) in the case of subsection (6)(a), contain the master reference numbers of the one or more relevant shipments being carried on the vehicle,
  - (b) in the case of subsection (6)(b), specify the one or more relevant movements being effected in relation to goods contained in the vehicle,
  - (c) in the case of subsection (6)(c)—
    - (i) contain the master reference numbers of the one or more relevant shipments being carried on the vehicle, and
    - (ii) specify the one or more relevant movements being effected in relation to goods contained in the vehicle,
  - or
  - (d) in the case of subsection (6)(d), specify that the vehicle does not contain a relevant shipment and is not being used to effect a relevant movement in relation to goods.
- (9) A carrier may appoint a person as the carrier's agent to fulfil the obligations imposed on the carrier by subsections (6) to (8).
- (10) Notwithstanding the appointment of a person under subsection (9) by a carrier, the carrier shall not be relieved of the duty to comply with the foregoing obligations and, accordingly, subsection (9) does not prejudice the application of subsection (11) as it relates to a carrier.
- (11) A person who contravenes subsection (4), (5), (6), (7) or (8) commits an offence and is liable, on summary conviction, to a fine of €5,000 or imprisonment for a term not exceeding 12 months or both.”.

## PART 12

## AMENDMENT OF HARBOURS ACT 1996

**Definition (*Part 12*)**

**91.** In this Part, “Act of 1996” means the Harbours Act 1996.

**Amendment of section 72 of Act of 1996**

**92.** Section 72 of the Act of 1996 is amended—

(a) in subsection (1)—

(i) by the insertion of “the conditions specified in paragraph (a), either paragraph (b) or (c), and paragraph (d) are satisfied” after “grant to that person a certificate (in this Part referred to as ‘a pilotage exemption certificate’) if”,

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

“(b) the person is, at the time of the making of the application—

(i) the holder of a certificate of competency, issued pursuant to the European Union (Training, Certification and Watchkeeping for Seafarers) Regulations 2014 (S.I. No. 242 of 2014), in any of the following capacities:

(I) master;

(II) chief mate; or

(III) officer in charge of a navigational watch,

or

(ii) the holder of a document issued by another Member State or the Kingdom of Norway or the Republic of Iceland, certifying a level of competency which corresponds to a certificate of competency to which subparagraph (i) relates,”

(iii) in paragraph (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—”, and

(iv) by the deletion of “or” after paragraph (c),

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

(c) 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.”.

#### **Amendment of Sixth Schedule to Act of 1996**

93. 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).”.

### PART 13

#### THIRD COUNTRY BUS SERVICES

#### **Definition (*Part 13*)**

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

#### **Continuation of international carriage of passengers by road**

95. 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 provide by order for either or both of the following:

- (a) an exemption for 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;
- (b) a declaration 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’ means a country or territory other than the State or a Member State.”.

#### **Amendment of Dublin Transport Authority Act 2008**

96. 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;”,

#### **Amendment of section 2 of Act of 2009**

97. Section 2 of the Act of 2009 is amended in the definition of international service by the substitution of “Regulation (EC) No. 1073/2009 of the European Parliament and of the Council of 21 October 2009<sup>15</sup>” for “Council Regulation (EEC) No. 684/92 of 16 March 1992<sup>16</sup> on common rules for the international carriage of passengers by coach and bus”.

15 OJ No. L 300, 14.11.2009, p.88

16 OJ No. L 074, 20.03.1992, p. 1

**Insertion of Part 2A in Act of 2009**

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

‘international road passenger transport 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 declared by order of the Minister under section 5A(2) of the Road Transport Act 1978 for the purposes of this Part to be deemed 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;

‘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’ means a country or territory other than the State or a Member State;

‘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 which 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’ means international carriage of passengers by bus for hire or reward, including a regular service, special regular service, closed-door tour or occasional service;

‘third country journey form’ means a form granted by the Authority under this Part in respect of—

- (a) an occasional service, or
- (b) 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 third country bus service operating between the State and a third country which is—

- (a) provided under reciprocal or other arrangements between the State and a third country where the laws of the third country provide for a third country bus service in like manner to this Part and where such 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 and after that date, or

- (b) provided under a bilateral agreement between the State and a third country.

#### **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,
- (b) requirements under section 28G(6) for provision of third country bus services referred to in that subsection,
- (c) an authorisation, journey form or contract received by the third country body referred to in section 28F, or
- (d) an authorisation, journey form, requirements or contract of like effect to those referred to in paragraph (a), (b) or (c) granted by—
  - (i) the Authority, or
  - (ii) a third country body, under laws that provide for a third country bus service in like manner to this Part,

and which authorisation, journey form, requirements or contract is or are 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.

- (2) Subject to this Part, the Authority may grant a third country journey form in respect of a third country bus service.
- (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.
- (4) Subject to section 28G(9), 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 third country authorisation or third country 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 requested by the Authority or, as the case may be, prescribed under section 28M, together with the fee determined under section 12.
- (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 transport 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 appropriate third country body and request its observations.
- (4) 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.
- (5) If the third country body objects or otherwise provides a response to the Authority's request, the Authority shall consider that response in deciding whether to grant the third country authorisation or third country journey form.
- (6) The Authority shall grant the third country authorisation or third country journey form provided that—
- (a) the applicant complies with subsection (1),
  - (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, instruments made under the foregoing Acts and any other applicable enactment, within the meaning of the Interpretation Act 2005, 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 of 2008, and
- (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.
- (7) 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.
- (8) 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(6), 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 the 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 this Part.

- (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.

- (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.

- (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 a copy of the third country authorisation during the operation of said 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 transport operator's 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 third country 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 transport 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 or a third country body,
  - (b) fill out the third country journey form before each journey,
  - (c) carry the third country journey form during the operation of the occasional 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 the conditions to which the third country journey form is subject under section 13, and
  - (f) carry in the bus a copy of the carrier's international road passenger transport operator's licence.
- (6) A carrier operating a special regular service for which a contract has been concluded between the carrier and organiser shall—
- (a) prior to providing the service, furnish a copy of the contract to the Authority,
  - (b) carry a copy of the contract referred to in paragraph (a) in the bus during 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, and
  - (d) carry in the bus a copy of the carrier's international road passenger transport operator's licence.
- (7) A carrier operating a special regular service conducting a cabotage operation for which a contract has been concluded between the carrier and organiser shall comply with subsection (6) and shall provide a monthly statement to the Authority of a completed third country journey form 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 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 third country authorisation or third country journey form is subject, the third country bus service through a subcontractor.

- (10) Where subsection (9) applies—
- (a) the name and role of the subcontractor shall be specified in the third country authorisation or third country journey form,
  - (b) the subcontractor shall comply with the conditions to which the third country authorisation or third country journey form is subject under section 13, and
  - (c) in the case of persons associated for the purpose of operating a regular service, the third country 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 third country authorisation to the persons so associated.
- (11) A reference to a third country authorisation in subsections (3) and (4) shall be construed as including a reference to an authorisation of like effect granted by a third country body.
- (12) A reference to a third country journey form in subsection (5) (other than in paragraph (e) of that subsection) shall be construed as including a reference to a journey form of like effect granted by a third country body.

#### **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 authorised 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 from the date the carrier to whom the third country 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 appropriate 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 third country authorisation or third country journey form under section 13 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 an amendment or renewal of a third country authorisation or third country journey form under section 14 or 16, provides information to the Authority knowing it to be false or misleading shall be guilty of an offence.
  - (5) A person who contravenes subsection (3), (4), (5), (6), (7), (8) or (10) (b) 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 (1) 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 (3), (4), (5), (6), (8) or (10)(b) 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 provisions in Part 2 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) a 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) a reference in any of those sections to a public bus passenger service shall be construed as a reference to a 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 28E(6),
    - (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) a third country authorisation, and the pick-up points and set-down points which constitute a cabotage operation if permitted under the third country authorisation,
      - (k) 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 14 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(6), and
  - (ii) the reference in section 14(4)(b) to section 23 is a reference to section 23(6) 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(6),
- (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 between the State and a third country, by order—

- (a) designate a body or bodies to be 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 referred to in section 28G(6) to the Authority under that section, 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 on and from the date on which the Interbus Agreement comes into force, in respect of that class of third country bus service, in a third country referred to in section 28B.

- (b) Where the Minister is satisfied that an international agreement or protocol to an international agreement concerning the development and promotion of international passenger transport in Europe and to facilitate its organisation and operation is in force in a third country in respect of a class of third country bus service, other than a class of such service referred to in paragraph (a), he or she may declare by order that on and from the date specified in the order, no provision of this Part shall apply to that class of third country bus service.
- (c) Notwithstanding paragraph (a) or (b), a class of third country bus service provided under and in accordance with this Part may continue to be so provided—
  - (i) as regards a class of third country bus service referred to in the Interbus Agreement, for 14 days beginning on the day the Interbus Agreement comes into force in that third country in respect of that class of third country bus service, and

- (ii) as regards a class of third country bus service referred to in an order of the Minister under paragraph (b), for 2 weeks from the day the Minister makes the order.
- (2) Where a third country in section 28B(a) is the United Kingdom, sections 28B(a) and 28C(d) shall cease to have effect on 1 January 2022.
- (3) In subsection (1), ‘Interbus Agreement’ means the agreement on the international occasional carriage of passengers by coach and bus (Interbus Agreement) approved by Council Decision of 3 October 2002<sup>17</sup> and Decision No. 1/2011 of the Joint Committee established under the Interbus Agreement on the international occasional carriage of passengers by coach and bus of 11 November 2011 adopting its rules of procedure and adapting Annex 1 to the Agreement regarding the conditions applying to road passenger transport operators, Annex 2 to the Agreement concerning the technical standards applying to buses and coaches and the requirements concerning the social provisions referred to in Article 8 of the Agreement (2012/25/EU)<sup>18</sup>.

## PART 14

## AMENDMENT OF SOCIAL WELFARE CONSOLIDATION ACT 2005

**Definition (Part 14)**

99. In this Part, “Act of 2005” means the Social Welfare Consolidation Act 2005.

**Amendment of section 287 of Act of 2005**

100. 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 scheme, or 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—
  - (a) a reciprocal or other arrangement that is the subject of the order is to apply to persons, or different categories of persons, to whom a

<sup>17</sup> OJ L 321, 26.11.2002, p.11

<sup>18</sup> OJ L 8, 12.1.2020, p.38

different reciprocal or other arrangement, provided for in another order under this section, applies, and

- (b) the different reciprocal or other arrangement referred to in paragraph (a) is to apply to persons, or different categories of persons, to whom the reciprocal or other arrangement that is the subject of the order applies.
- (4) In this section, a reference to ‘reciprocal or other arrangement’ includes an agreement which is intended to be binding on the State, 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.”.

### **Transfer of personal data, under Part 11B, to compensator in United Kingdom**

**101.** The Act of 2005 is amended by the insertion of the following section after section 343PA:

“**343PB.**(1) Where—

- (a) a compensator is subject to the laws, regulations and administrative procedures of the United Kingdom, and
- (b) an injured person has received, is receiving, or may receive, a specified benefit,

the Minister shall, for the purposes of this Part and subsection (2), transfer to a compensator referred to in paragraph (a) personal data specified in subsection (3) in respect of an injured person referred to in paragraph (b) in all or any of the following:

- (i) a statement of recoverable benefits issued by the Minister under section 343P(3) or section 343PA(1);
  - (ii) a revised statement of recoverable benefits issued by the Minister under section 343PA(2);
  - (iii) a refund made by the Minister under section 343U.
- (2) The personal data referred to in subsection (1) in respect of an injured person referred to in subsection (1)(b), that are transferred in a statement, or refund, referred to in subsection (1), are necessary for the payment to the Minister, by a compensator referred to in subsection (1)(a), of any specified benefit received by, or which may be received by, an injured person referred to in subsection (1)(b) to whom, or in respect of whom, a compensation payment is made by that compensator.



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- (3) The personal data referred to in subsection (1) are personal data within the meaning of Article 4 of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016<sup>19</sup> on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC that are—
- (a) required for the purposes and effective operation of this Part and subsection (2), and
  - (b) held by the Minister for those purposes and that operation.”.

### **Consequential amendments of Act of 2005**

**102.** 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:

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<sup>19</sup> OJ No. L 119, 4.5.2016, p.1

“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”.

PART 15

AMENDMENT OF PROTECTION OF EMPLOYEES (EMPLOYERS’ INSOLVENCY) ACT 1984

**Definition (*Part 15*)**

**103.** In this Part, “Act of 1984” means the Protection of Employees (Employers’ Insolvency) Act 1984.

**Amendment of section 1 of Act of 1984**

**104.** 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,

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- (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 such 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>20</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

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20 OJ No. L 283, 28.10.2008, p.36

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.”.

#### **Amendment of section 4 of Act of 1984**

**105.** 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.”.

#### **Amendment of section 7 of Act of 1984**

**106.** 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.”.

### **Transfer of personal data in relation to employers insolvent in United Kingdom**

**107.** 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 (including special categories of personal data) of those employees, and documentation relevant to such 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 or documentation, as the case may be, are necessary to the performance of the functions of a relevant officer, an actuary or a person performing a similar task, or otherwise for the performance 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.

(3) In this section—

‘General Data Protection Regulation’ means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April

2016<sup>21</sup> on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC;

‘personal data’ has the same meaning as it has in Article 4 of the General Data Protection Regulation;

‘special categories of personal data’ means personal data referred to in Article 9(1) of the General Data Protection Regulation.”.

## PART 16

### AMENDMENT OF EXTRADITION ACT 1965

#### **Definition (*Part 16*)**

**108.** In this Part, “Act of 1965” means the Extradition Act 1965.

#### **Amendment of section 4 of Act of 1965**

**109.** Section 4 of the Act of 1965 is amended by the substitution of “or section 23(2) of this Act” for “of this Act”.

#### **Irish citizens**

**110.** 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.”.

#### **Amendment of section 23 of Act of 1965**

**111.** 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

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<sup>21</sup> OJ No. L 119, 4.5.2016, p.1

(c) by the insertion of the following subsections after subsection (1):

“(2) The Minister for Foreign Affairs 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.”.

## PART 17

### IMMIGRATION

#### **Definition (*Part 17*)**

**112.** In this Part, “Act of 2004” means the Immigration Act 2004.

#### **Amendment of section 2 of Act of 2004**

**113.** Section 2(2) of the Act of 2004 is amended—

- (a) in paragraph (d), by the substitution of “the European Communities (Aliens) Regulations 1977 (S.I. No. 393 of 1977),” for “the European Communities (Aliens) Regulations 1977 (S.I. No. 393 of 1977), or”,



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(b) in paragraph (e), by the substitution of “the European Communities (Right of Residence for Non-Economically Active Persons) Regulations 1997 (S.I. No. 57 of 1997), or” for “the European Communities (Right of Residence for Non-Economically Active Persons) Regulations 1997 (S.I. No. 57 of 1997).”, and

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

“(f) the European Communities (Free Movement of Persons) Regulations 2015 (S.I. No. 548 of 2015).”.

#### **Amendment of section 11 of Act of 2004**

**114.** Section 11 of the Act of 2004 is amended by the substitution of the following subsection for subsection (5):

“(5) In this section and section 12—

‘non-national’ means a person who is not—

- (a) an Irish citizen,
- (b) a citizen of the United Kingdom of Great Britain and Northern Ireland, or
- (c) 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);

‘United Kingdom of Great Britain and Northern Ireland’ includes the Channel Islands and the Isle of Man and ‘citizen of the United Kingdom of Great Britain and Northern Ireland’ shall be construed accordingly.”.

## PART 18

### INTERNATIONAL PROTECTION

#### **Definition (*Part 18*)**

**115.** In this Part, “Act of 2015” means the International Protection Act 2015.

#### **Application (*Part 18*)**

**116.** The amendments effected by this Part shall not apply in respect of a person whose application for international protection has been determined, on or before the coming into operation of this Part, under section 21(11) of the Act of 2015 to be inadmissible.

**Amendment of section 2 of Act of 2015**

**117.** Section 2(1) of the Act of 2015 is amended by the insertion of the following definitions:

- “ ‘return order’ has the meaning assigned to it by section 51A;
- ‘safe third country’ means a country that has been designated under section 72A as a safe third country;”.

**Amendment of section 19 of Act of 2015**

**118.** Section 19(1) of the Act of 2015 is amended—

- (a) in paragraph (a), by the substitution of “an applicant,” for “an applicant, or”,
- (b) in paragraph (b)(iii), by the substitution of “found in the State, or” for “found in the State.”, and
- (c) by the insertion of the following paragraph after paragraph (b):
  - “(c) for the purpose of establishing whether the circumstances referred to in section 21(2)(b) or (c) apply in relation to the person, take or cause to be taken the fingerprints of a person who is the subject of an application for international protection.”.

**Amendment of section 21 of Act of 2015**

**119.** Section 21 of the Act of 2015 is amended—

- (a) in subsection (1), by the substitution of “Subject to subsection (1A), a person” for “A person”,
- (b) by the insertion of the following subsection after subsection (1):
  - “(1A) Subsection (1) shall not apply to a person who is deemed under section 50A(4) or 51C(5), as the case may be, to have made an application for international protection in accordance with section 15.”,
- (c) 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
- (d) by the insertion of the following subsections after subsection (16):
  - “(17) For the purposes of this section, a safe third country is a safe country for a person if he or she—

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- (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 not be subjected in the country concerned to the death penalty, torture or other inhuman or degrading treatment or punishment, and
  - (c) will be re-admitted to the country concerned.
- (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.”.

**Prohibition of refoulement (application for international protection determined under section 21 to be inadmissible)**

**120.** The Act of 2015 is amended by the insertion of the following section after section 50:

- “**50A.**(1) A person shall not be expelled or returned in any manner whatsoever to the frontier of a territory where, in the opinion of the Minister—
- (a) the life or freedom of the person would be threatened for reasons of race, religion, nationality, membership of a particular social group or political opinion, or
  - (b) there is a serious risk that the person would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.
- (2) In forming his or her opinion of the matters referred to in subsection (1), the Minister shall have regard to—
- (a) the information (if any) submitted by the person under subsection (3), and
  - (b) any relevant information presented by the person, including any statement made by him or her at his or her preliminary interview and any information presented for the purpose of an appeal by the person under section 21(6).

- (3) A person shall, where he or she becomes aware of a change of circumstances that would be relevant to the formation of an opinion by the Minister under this section, inform the Minister forthwith of that change.
- (4) A person who, but for the operation of subsection (1), would be the subject of a return order under section 51A, shall, notwithstanding that his or her application for international protection has been determined under section 21(11) to be inadmissible, be deemed to have made, on the date on which the Minister forms the opinion that subsection (1) applies to the person, an application for international protection in accordance with section 15, and subject to this section, the provisions of this Act shall, with any necessary modifications, apply accordingly.
- (5) The Minister shall as soon as practicable after he or she forms the opinion that subsection (1) applies to a person—
  - (a) send the person, and his or her legal representative (if known), a notice in writing—
    - (i) informing him or her of the effect of subsection (4), and
    - (ii) inviting the person to complete, in respect of his or her application referred to in subsection (4), the form prescribed under section 15(5),and
  - (b) give or cause to be given to the person a statement under section 18(1).
- (6) In this section, ‘person’ means a person whose application for international protection has been determined under section 21(11) to be inadmissible.”.

**Amendment of Act of 2015 – insertion of sections 51A to 51C**

**121.** The Act of 2015 is amended by the insertion of the following sections after section 51—

**“Return order**

- 51A.** (1) Subject to section 50A, the Minister shall by order (in this Act referred to as a ‘return order’) require a person whose application for international protection has been determined under section 21(11) to be inadmissible to leave the State.
- (2) Where subsection (1) applies, the person specified in the return order may be returned:
    - (a) where the circumstances referred to in section 21(2)(a) apply in relation to him or her, to the Member State that has granted refugee status or subsidiary protection to the person;

- (b) where the circumstances referred to in section 21(2)(b) apply in relation to him or her, to the first country of asylum for the person;
  - (c) where the circumstances referred to in section 21(2)(c) apply in relation to him or her, to the safe third country that is a safe country for the person.
- (3) Where the Minister makes a return order, he or she shall notify the person specified in the order and his or her legal representative (if known) of the making of the order.
  - (4) A notification under subsection (3) shall be in a language that the person concerned may reasonably be supposed to understand, where—
    - (a) the person is not assisted or represented by a legal representative, and
    - (b) legal assistance is not available to the person.
  - (5) A return order shall be in the form prescribed or in a form to the like effect.

**Return of person subject of return order**

- 51B.** (1) An immigration officer or a member of the Garda Síochána may, for the purpose of facilitating the return of a person the subject of a return order, by notice in writing require the person to comply with one or more of the following conditions:
- (a) that he or she present himself or herself to such immigration officer or member of the Garda Síochána at such date, time and place as may be specified in the notice;
  - (b) where, and only for so long as, it is reasonably 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;
  - (c) 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;
  - (d) that he or she reside or remain in a particular place in the State pending his or her return.
- (2) A notice under subsection (1) shall be in a language that the person concerned may reasonably be supposed to understand.
  - (3) A person the subject of a return order shall comply with a requirement under subsection (1).
  - (4) Where an immigration officer or a member of the Garda Síochána considers that there is a significant risk of a person the subject of 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 of detention 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.
- (5) For the purpose of arresting a person under subsection (4), 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.
- (6) The matters to which an officer or member referred to in subsection (4) may have regard, in considering for the purposes of that subsection whether there is a significant risk of a person the subject of 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 (1);
  - (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 return;
  - (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.
- (7) Subject to subsection (8), subsections (4) and (5) shall not apply to a person the subject of a return order who is under the age of 18 years.

- (8) If and for so long as an immigration officer or member of the Garda Síochána concerned has reasonable grounds for believing that the person the subject of a return order is not under the age of 18 years, the provisions of subsections (4) and (5) shall apply as if the person had attained the age of 18 years.
- (9) The Minister may, in order to facilitate the return of a person the subject of a return order, issue to the person 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 the subject of 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 subsection, be detained—
  - (a) for a period not exceeding 7 days, in 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 (10) is due to leave the State, or
  - (c) for a period or periods each not exceeding 12 hours, within the port referred to in paragraph (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 the subject of a return order on board the vehicle and afford the person so received proper accommodation and maintenance during the journey concerned.
- (13) A reference in this section and section 51C to the return of a person is a reference to his or her return in accordance with section 51A(2).

#### **Period of validity of return order**

- 51C.** (1) A person the subject of a return order may, while the order is in effect, be returned in accordance with section 51A(2).
- (2) A return order shall, other than where subsection (3) or (4) applies, remain in effect for a period of 6 months from the date on which notification (referred to in section 51A(3)) of the return order is sent.
  - (3) Where a person the subject of the return order absconds in the period referred to in subsection (2), the order shall remain in effect for a period of 12 months from the date on which notification (referred to in section 51A(3)) of the return order is sent.
  - (4) Where a person the subject of the return order brings an application for judicial review under Order 84 of the Rules of the Superior Courts

(S.I. No. 15 of 1986) of the return order and the High Court suspends the operation of the order pending the determination of the application, the order shall remain in effect for a period of 6 months from the date of the final determination (including where notice of appeal is given, the final determination of the appeal or any further appeal therefrom or the withdrawal of the appeal) of the application concerned.

(5) Where—

- (a) a return order ceases in accordance with this section to have effect on a particular date (in this section referred to as the ‘relevant date’), and
- (b) by the relevant date the person the subject of the order has not been returned,

he or she shall, notwithstanding that his or her application for international protection has been determined under section 21(11) to be inadmissible, be deemed to have made, on the date immediately following the relevant date, an application for international protection in accordance with section 15, and subject to this section, the provisions of this Act shall, with any necessary modifications, apply accordingly.

(6) The Minister shall as soon as practicable on or after the date immediately following the relevant date—

- (a) send the person concerned, and his or her legal representative (if known), a notice in writing—
  - (i) informing him or her of the effect of subsection (5), and
  - (ii) inviting the person to complete, in respect of his or her application referred to in subsection (5), the form prescribed under section 15(5),

and

- (b) give or cause to be given to the person a statement under section 18(1).”.

### **Designation of safe third countries**

**122.** The Act of 2015 is amended by the insertion of the following section after section 72:

“**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—



[2020.]

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*European Union (Consequential Provisions) Act 2020.*

- (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 an EU Member State;
  - ‘refugee status’ means the recognition by the country concerned of a third country national or stateless person as a refugee.”.

### **Amendment of Illegal Immigrants (Trafficking) Act 2000**

**123.** Section 5(1) of the Illegal Immigrants (Trafficking) Act 2000 is amended—

- (a) in paragraph (oj), by the substitution of “the International Protection Act 2015,” for “the International Protection Act 2015, or”, and
- (b) by the insertion of the following paragraph after paragraph (oj):
  - “(ok) a return order under section 51A of the International Protection Act 2015, or”.

## PART 19

## RECOGNITION OF CERTAIN DIVORCES, LEGAL SEPARATIONS AND MARRIAGE ANNULMENTS

**Definitions and application (Part 19)**

**124.** (1) In this Part—

“Council Regulation” means Council Regulation (EC) No. 2201/2003 of 27 November 2003<sup>22</sup> concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No. 1347/2000, as amended by Council Regulation (EC) No. 2116/2004 of 2 December 2004<sup>23</sup> amending Regulation (EC) No. 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No. 1347/2000, as regards treaties with the Holy See;

“relevant jurisdiction” means—

- (a) England and Wales,
- (b) Scotland,
- (c) Northern Ireland, or
- (d) Gibraltar.

(2) Section 5 of the Domicile and Recognition of Foreign Divorces Act 1986 shall not apply to a divorce to which *section 125* or *126* applies.

**Recognition of certain divorces, legal separations and marriage annulments granted in United Kingdom or Gibraltar before coming into operation of section**

**125.** A divorce, legal separation or marriage annulment granted under the law of a relevant jurisdiction that, prior to the coming into operation of this section, was recognised under the Council Regulation shall continue to be recognised.

**Recognition of certain divorces, legal separations and marriage annulments granted in United Kingdom or Gibraltar on or after coming into operation of section**

**126.** (1) This section shall apply to a divorce, legal separation or marriage annulment granted under the law of a relevant jurisdiction on or after the coming into operation of this section.

(2) A divorce, legal separation or marriage annulment to which this section applies shall, subject to *subsection (3)*, be recognised if, at the date of the institution of the proceedings relating to the divorce, legal separation or marriage annulment concerned, at least one of the following requirements is satisfied:

- (a) the spouses were habitually resident in a relevant jurisdiction;

<sup>22</sup> OJ No. L 338, 23.12.2003, p.1

<sup>23</sup> OJ No. L 367, 14.12.2004, p.1

- (b) the spouses were last habitually resident in a relevant jurisdiction, insofar as one of them still resided there;
  - (c) the respondent was habitually resident in a relevant jurisdiction;
  - (d) the applicant—
    - (i) was habitually resident in a relevant jurisdiction, and
    - (ii) had resided there for at least a year immediately prior to that date;
  - (e) either of the spouses was domiciled in a relevant jurisdiction.
- (3) A divorce, legal separation or marriage annulment to which this section applies shall not be recognised—
- (a) if such recognition is manifestly contrary to public policy,
  - (b) where the judgment in the proceedings relating to the divorce, legal separation or marriage annulment concerned (“the relevant judgment”) was given in default of appearance, if the respondent was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable the respondent to arrange for his or her defence unless it is determined that the respondent has accepted the judgment unequivocally,
  - (c) if the relevant judgment is irreconcilable with a judgment given in proceedings between the same parties in the State, or
  - (d) if the relevant judgment is irreconcilable with an earlier judgment given in a state other than the State between the same parties, provided that the earlier judgment fulfils the conditions necessary for its recognition in the State.

## PART 20

## AMENDMENT OF DEFAMATION ACT 2009

**Amendment of Schedule 1 to Defamation Act 2009****127.** Schedule 1 to the Defamation Act 2009 is amended—

- (a) in Part 1—
  - (i) in paragraph (11), by the substitution of “under the law of a Member State or of the United Kingdom” for “under the law of a Member State of the European Union”,
  - (ii) in paragraph (12), by the substitution of “in a Member State or in the United Kingdom” for “in a Member State of the European Union”,
- and
- (b) in Part 2—

- (i) in paragraph (1), by the substitution of “in the State, in a Member State or in the United Kingdom” for “in the State or in a Member State of the European Union”,
- (ii) in paragraph (2), by the substitution of “in the State, in a Member State or in the United Kingdom” for “in the State or in a Member State of the European Union”,
- (iii) in paragraph (3), by the substitution of “in the State, in a Member State or in the United Kingdom” for “in the State or in a Member State of the European Union”, and
- (iv) in paragraph (4), by the substitution of “in a Member State or in the United Kingdom” for “in a Member State of the European Union”.

## PART 21

### AMENDMENT OF CHILDCARE SUPPORT ACT 2018

#### **Definition (*Part 21*)**

**128.** In this Part, “Act of 2018” means the Childcare Support Act 2018.

#### **Amendment of section 1 of Act of 2018**

**129.** Section 1(1) of the Act of 2018 is amended by the insertion of the following definition:

“ ‘United Kingdom of Great Britain and Northern Ireland’ includes the Channel Islands and the Isle of Man and ‘citizen of the United Kingdom of Great Britain and Northern Ireland’ shall be construed accordingly;”.

#### **Amendment of section 7 of Act of 2018**

**130.** Section 7(1)(b) of the Act of 2018 is amended by the insertion of the following subparagraph after subparagraph (iv):

“(iva) a citizen of the United Kingdom of Great Britain and Northern Ireland, or”.

#### **Amendment of section 15 of Act of 2018**

**131.** Section 15(2)(c) of the Act of 2018 is amended by the insertion of the following subparagraph after subparagraph (iv):

“(iva) a citizen of the United Kingdom of Great Britain and Northern Ireland, or”.

## PART 22

## CONSTRUCTION PRODUCTS – MARKET SURVEILLANCE AUTHORITY

**Construction products – market surveillance****132.** In this Part—

“administrative area” has the meaning assigned to it by the Local Government Act 2001;

“building control authority” has the meaning given to it by section 2 of the Building Control Act 1990;

“competent authority” means a person prescribed by the Minister under this Part and may include a local authority;

“Construction Products Regulation” means Regulation (EU) No. 305/2011 of the European Parliament and of the Council of 9 March 2011<sup>24</sup> laying down harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC;

“local authority” has the meaning assigned to it by the Local Government Act 2001;

“market surveillance” means the activities carried out and measures taken by a market surveillance authority to ensure that construction products comply with the requirements set out in the Construction Products Regulation and do not endanger health, safety or any other aspect of public interest protection;

“market surveillance authority” means—

- (a) a building control authority under Regulation 10(1)(a) of the Regulations of 2013,
- (b) a competent authority under Regulation 10(1)(b) of the Regulations of 2013, and
- (c) the Minister under Regulation 10(1)(d) of the Regulations of 2013,

which are responsible for carrying out market surveillance in the State;

“Market Surveillance Regulation” means Regulation (EU) No. 765/2008 of the European Parliament and of the Council of 9 July 2008<sup>25</sup> setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No. 339/93;

“Minister” means the Minister for Housing, Local Government and Heritage;

“prescribe” means prescribe by regulations made by the Minister under *section 133*;

“Regulations of 2013” means the European Union (Construction Products) Regulations 2013 (S.I. No. 225 of 2013).

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<sup>24</sup> OJ No. L 88, 4.4.2011, p.5

<sup>25</sup> OJ No. L 218, 13.8.2008, p.30

**Prescribing competent authority for purposes of Regulations of 2013**

- 133.** (1) The Minister may, where he or she considers it appropriate for the purposes of giving further effect to the Construction Products Regulation or the Market Surveillance Regulation, prescribe—
- (a) a person to be a competent authority for the purposes of carrying out the functions of a market surveillance authority under the Regulations of 2013, in respect of construction products to which the Construction Products Regulation applies, or such of those construction products as the Minister may prescribe under *paragraph (b)*, placed on the market or, as the case may be, made available on the market in the State, and
  - (b) one or more than one of the construction products referred to in *paragraph (a)* to be construction products in respect of which a competent authority prescribed under *paragraph (a)* shall carry out the functions referred to in that paragraph of a market surveillance authority.
- (2) The Minister shall, before prescribing one or more than one competent authority under *subsection (1)(a)*, be satisfied—
- (a) that the person has or has available to it, or where the person is an individual has, appropriate experience, expertise and knowledge of the rules, including the Construction Products Regulation and the Market Surveillance Regulation, for the marketing of, performance of, and harmonised technical specifications relating to, construction products to which the Construction Products Regulation applies or such of those construction products as the Minister may prescribe under *subsection (1)(b)*, in respect of which the person is to be prescribed as a competent authority, and
  - (b) that the person would carry out the functions of a market surveillance authority independently and impartially.
- (3) Where a competent authority prescribed by the Minister is a local authority, then notwithstanding section 11(6) of the Local Government Act 2001, the competent authority shall have jurisdiction throughout the administrative areas of all local authorities for the purposes of carrying out its functions with respect to market surveillance under the Regulations of 2013.
- (4) Where a competent authority prescribed by the Minister is a local authority, the competent authority may make and carry out an agreement with one or more building control authorities for sharing the cost of the performance by the competent authority of all or any of the functions of those building control authorities with respect to market surveillance that are otherwise performable by those authorities under the Regulations of 2013 and, where an agreement has been made under this subsection, that competent authority and the building control authority or authorities concerned may terminate such agreement at any time, if they so agree.

**Amendment of Regulations of 2013**

- 134.** The Regulations of 2013 are amended—

(a) in Regulation 3(1)—

(i) by the insertion of the following definitions:

“ ‘Act of 2020’ means the *Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Act 2020*;

‘competent authority’ means a competent authority prescribed by the Minister by regulations under *section 133* of the Act of 2020;”,

and

(ii) by the substitution of the following definitions for the definitions of “market surveillance” and “market surveillance authority”:

“ ‘market surveillance’ means the activities carried out and measures taken by a market surveillance authority to ensure that construction products comply with the requirements set out in the Construction Products Regulation and do not endanger health, safety or any other aspect of public interest protection;

‘market surveillance authority’ means—

(a) each of following, which are responsible for carrying out market surveillance in the State:

(i) a building control authority under Regulation 10(1)(a);

(ii) a competent authority under Regulation 10(1)(b);

(iii) the Minister under Regulation 10(1)(d),

and

(b) an authority of a Member State responsible for carrying out market surveillance on its territory;”,

(b) in Regulation 10—

(i) in paragraph (1)—

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

“(b) a competent authority, and”,

and

(II) by the deletion of subparagraph (c),

(ii) in paragraph (2)—

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

“(b) which is a competent authority, shall be responsible for the market surveillance of construction products, or such construction products as the Minister may prescribe under *section 133* of the Act of 2020, placed on the market, or as the case may be, made available on the

market, in the State and shall take such steps as are necessary for this purpose.”,

and

(II) by the deletion of subparagraph (c),

(c) in Regulation 11(1)—

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

“(b) a competent authority shall, other than where the competent authority is an individual, appoint officers to be authorised officers, and where the competent authority is an individual that person shall be an authorised officer, for the purposes of these Regulations.”,

and

(ii) by the deletion of subparagraph (c),

(d) by the substitution of the following Regulation for Regulation 19:

“19. An offence under these Regulations may be prosecuted by a market surveillance authority specified in paragraph (1)(a), (1)(b) or (1)(d) of Regulation 10.”,

and

(e) in Regulation 20(6), by the substitution of “specified in paragraph (1)(a), (1)(b) or (1)(d) of Regulation 10” for “specified under and in accordance with Regulation 10 of these Regulations”.