

EUROPEAN UNION (CROATIAN ACCESSION AND IRISH PROTOCOL) ACT 2013

EXPLANATORY NOTES

COMMENTARY

Section 1: Approval of Croatian Accession Treaty

18. This section provides for approval of the Accession Treaty for the purposes of section 2 of the 2011 Act, under which primary legislation is required before a treaty amending the TEU or TFEU can be ratified by the UK.
19. [Section 1\(2\)](#) approves the Accession Treaty for the purposes of section 2(1)(b) of the 2011 Act.
20. [Section 1\(3\)](#) provides, as required by section 2(3) of the 2011 Act, that the Accession Treaty does not fall within section 4 of that Act (cases where treaty or Article 48(6) decision attracts a referendum).

Section 2: Approval of Irish Protocol

21. This section provides for the approval of the Irish Protocol for the purposes of section 2 of the European Union Act 2011, under which primary legislation is required before a treaty which amends or replaces TEU or TFEU can be ratified by the UK.
22. [Section 2\(2\)](#) approves the Irish Protocol for the purposes of section 2(1)(b) of the 2011 Act.
23. [Section 2\(3\)](#) provides, as required by section 2(3) of the 2011 Act, that the Protocol does not fall within section 4 of that Act (cases where treaty or Article 48(6) decision attracts a referendum).

Section 3: Addition of Croatian Accession Treaty and Irish Protocol to list of Treaties

24. [Section 3](#) amends section 1(2) of the 1972 Act, so as to include the Accession Treaty and the Irish Protocol within the list of treaties given effect in UK law by that Act.

Section 4: Freedom of movement for Croatian Nationals as workers

25. [Section 4](#) provides a power for the Secretary of State to make regulations implementing the transitional arrangements concerning the free movement of Croatian workers.
26. [Section 4\(1\)](#) allows for regulations to make provision concerning the entitlement of Croatian nationals to enter or reside in the UK as workers and any other matter ancillary to that entitlement.
27. [Section 4\(2\)](#) states that such regulations may provide that an enactment relating to the rights of nationals of the European Economic Area (EEA) to enter or reside in the UK in order to work (the “specified enactment”) applies (with or without

modifications) to nationals of Croatia. The general free movement rights of EEA nationals are implemented in the UK by the [Immigration \(European Economic Area\) Regulations 2006 \(SI 2006/1003\)](#) (as amended). The transitional provisions made in relation to workers from eight of the States that acceded to the EU in 2004 are set out in the [Accession \(Immigration and Worker Registration\) Regulations 2004 \(SI 2004/1219\)](#) (as amended). The transitional provisions for nationals of these States were applied for the full seven year period and have now been lifted. The transitional provisions made in relation to workers from the two States that acceded to the EU in 2007, Bulgaria and Romania, are set out in the [Accession \(Immigration and Worker Authorisation\) Regulations 2006 \(SI 2006/3317\)](#) (as amended). The transitional provisions for nationals of Bulgaria and Romania have also been applied for the full seven year period and will be lifted at the end of 2013.

28. [Section 4\(3\)\(a\)](#) provides that regulations under this section may, in particular, require Croatian workers to be authorised in order to work in the United Kingdom. Regulations made pursuant to these provisions will specify the circumstances in which Croatian nationals are subject to, or exempt from, such a requirement; the criteria which may be applied to an application for work authorisation, including the types of employment which qualify for such authorisation; the information which should be submitted in support of such an application; and the documentary form that such authorisation takes.
29. [Section 4\(3\)\(b\)](#) provides that such regulations may require a fee to be paid in relation to an application for such authorisation. The fees charged in respect of the Croatian authorisation scheme will be at a level that does no more than cover the expenses of administering the work authorisation requirements.
30. [Section 4\(3\)\(c\)-\(e\)](#) provide that regulations may make it an offence for:
 - a) a Croatian national to work unless authorised to do so under the regulations, (subsection (3)(c)).
 - b) an employer to employ a Croatian worker, whether knowingly or otherwise, unless the worker has been authorised to work under the regulations (subsection (3)(d)). This power encompasses more than one type of employer offence, for example, the Secretary of State could make a criminal offence under this subsection that is dependant on the employer's knowledge that the employee had not been properly authorised or the Secretary of State could make a criminal offence that does not require any specific knowledge. If the former approach was taken, this would mirror the scheme adopted by the relevant provisions of the Immigration, Asylum and Nationality Act 2006 ("the 2006 Act") in respect of illegal working offences for third country nationals. Section 21 of the 2006 Act provides that a person commits an offence if he employs another (the employee) knowing that the employee has not been granted leave to enter or that leave has expired.
 - c) deception to be used in connection with an application for authorisation to work under the regulations (subsection (3)(e)).
31. [Section 4\(3\)\(f\)-\(g\)](#) enable the Secretary of State to issue civil penalties in the following circumstances:
 - a) With regards to the liability of an employee, subsection (3)(f) provides that regulations made under this section may allow the liability of a person to conviction for the offence of working without authorisation to be dischargeable by payment of a penalty. This penalty needs to be a specified amount and paid in pursuance of a notice given to the person concerned.
 - b) With regards to the liability of the employer, subsection (3)(g) provides that such regulations may enable the Secretary of State to require a person who employs another person in contravention of a specified provision of the regulations to pay a penalty of an amount not exceeding a specified amount. This power is also mirrored in the scheme adopted by the relevant provisions of the 2006 Act in

respect of illegal working offences for third country nationals. Section 15 of the 2006 Act provides that the Secretary of State may issue a civil penalty if the employer employs an adult subject to immigration control who does not have leave (or his leave is invalid, has ceased to have effect or is subject to conditions preventing him accepting employment).

32. [Section 4\(3\)\(h\)](#) provides that regulations may include provision to treat an offence under the regulations as one to which any specified provision of section 28A to 28H of the Immigration Act 1971 (which relate to arrest, search and entry) applies.
33. [Section 4\(4\)](#) provides that an offence by virtue of these regulations will be a summary offence. If a fine is imposed, it will not be punishable by a fine exceeding level 5 on the standard scale. If a term of imprisonment is imposed, then this is not to be punishable by imprisonment for a term exceeding the applicable maximum.
34. [Section 4\(5\)](#) states that the applicable maximum for England and Wales is 51 weeks. The applicable maximum for Scotland and Northern Ireland is 3 months for an offence committed by the employee or a deception offence and 6 months for an offence committed by the employer. However, the maximum term of imprisonment of 51 weeks in England and Wales must be read in conjunction with subsection (6) which provides that, if the conviction occurs before the commencement of section 154(1) of the Criminal Justice Act 2003, the reference to 51 weeks imprisonment shall be read as 3 months for an offence committed by the employee or a deception offence and 6 months for an offence committed by the employer. Section 154(1) of the Criminal Justice Act 2003 has not yet been commenced at the time of writing so the applicable maximum for the whole of the UK is currently 3 months for an offence committed by the employee or a deception offence and 6 months for an offence committed by the employer.
35. [Section 4\(7\)](#) provides that the fixed fine for employee offences will be less than the maximum imposable fine under subsection (3)(c). This ensures that the amount of any civil penalty that could be imposed by the Regulations cannot exceed the maximum fine that can be imposed by a criminal offence created under the Regulations. This section also provides that a notice requiring payment of a civil penalty is to be given by a constable or an immigration officer and that this must include provision about the circumstances in which the notice is to be withdrawn.
36. [Section 4\(8\)](#) provides that the fixed fine for employer offences will be less than the maximum imposable fine under subsection (3)(d). This ensures that the amount of any civil penalty that could be imposed by the Regulations cannot exceed the maximum fine that can be imposed by a criminal offence created under the Regulations. Subject to any modification that the Secretary of State thinks appropriate, any civil penalty imposed under section 4(8) must include provision corresponding to section 16, 17 and 19 of the 2006 Act. These sections set out safeguards for employers, namely, section 16 of the 2006 Act sets out how an employer can object to a penalty notice, section 17 sets out how an employer can appeal any penalty notice to a court and section 19 sets out how the Secretary of State shall issue a code of practice specifying factors to be considered in determining the amount of a penalty imposed.
37. [Section 4\(9\)](#) allows the regulations made under section 4 to include incidental, supplementary, transitional or consequential provisions and to make different provisions for different cases; this would, for example, allow different provision to be made in relation to different economic sectors.
38. [Section 4\(10\)](#) states that regulations under this section are to be made by statutory instrument.

Section 5: Regulations under [section 4](#): Parliamentary Control

39. [Section 5\(1\)](#) requires the first set of regulations made under section 4 to follow the affirmative parliamentary procedure, which requires that a draft of the regulations be

These notes refer to the European Union (Croatian Accession and Irish Protocol) Act 2013 (c.5) which received Royal Assent on 31 January 2013

approved by both Houses of Parliament before they are made. Subsections (2) and (3) provide that any further regulations will be subject to either the negative or affirmative procedure.

Section 6: Extent and commencement

40. [Section 6\(1\)](#) makes provision for the territorial extent of the Act. The Act extends to the whole of the United Kingdom.
41. [Section 6\(2\)](#) makes provision about the Act's coming into force.