House of Commons

NOTICES OF AMENDMENTS
given up to and including
Wednesday 20 February 2019

New Amendments handed in are marked thus ★
★ Amendments which will comply with the required notice period at their next appearance

Amendments tabled since the last publication: 21

PUBLIC BILL COMMITTEE

IMMIGRATION AND SOCIAL SECURITY
CO-ORDINATION (EU WITHDRAWAL) BILL

NOTE
This document includes all amendments tabled to date and includes any withdrawn amendments at the end. The amendments have been arranged in accordance with the Order of the Committee [12 February 2019].

Stuart C. McDonald
Gavin Newlands

Clause 4, page 2, line 34, leave out “appropriate” and insert “necessary”

Member’s explanatory statement
This amendment would ensure that the Secretary of State may only make regulations which are necessary rather than those which the Minister considers appropriate.

Stuart C. McDonald
Gavin Newlands

Clause 4, page 2, line 34, leave out “, or in connection with,”

Member’s explanatory statement
This amendment would narrow the scope of the powers provided to the Secretary of State in Clause 4, as recommended by the House of Lords Delegated Powers and Regulatory Reform Committee.
Clause 4, page 3, line 1, leave out “make provisions applying” and insert “give leave to enter the United Kingdom”

Member’s explanatory statement
This amendment would narrow the scope of the powers provided to the Secretary of State in Clause 4, as recommended by the House of Lords Delegated Powers and Regulatory Reform Committee.

Clause 4, page 3, line 8, leave out subsection (5)

Member’s explanatory statement
This amendment would narrow the scope of the powers provided to the Secretary of State in Clause 4, as recommended by the House of Lords Delegated Powers and Regulatory Reform Committee.

Clause 4, page 3, line 10, at end insert—

“(5A) Regulations under subsection (1) must provide that EEA nationals who are employed as personal assistants using funding from a personal budget are exempt from any minimum salary threshold that is set for work visa applications.

(5B) In this section, personal budget has the meaning set out in section 26 of the Care Act 2014.”

Member’s explanatory statement
This amendment would narrow the scope of the powers provided to the Secretary of State in Clause 4, as recommended by the House of Lords Delegated Powers and Regulatory Reform Committee.

Clause 4, page 3, line 11, leave out subsection (6)

Member’s explanatory statement
This amendment would narrow the scope of the powers provided to the Secretary of State in Clause 4, as recommended by the House of Lords Delegated Powers and Regulatory Reform Committee.
Immigration and Social Security Co-ordination (EU Withdrawal) Bill, continued

Stuart C. McDonald
Gavin Newlands

Clause 4, page 3, line 17, leave out “other”

Member’s explanatory statement
This amendment is consequential on Amendment 3.

Stuart C. McDonald
Gavin Newlands

Clause 4, page 3, line 17, leave out from “subsection (1)” to “is” on line 19

Member’s explanatory statement
This amendment, along with Amendment 7, will ensure that all regulations made under Clause 4(1) are subject to the affirmative procedure.

Afzal Khan

Clause 4, page 3, line 18, leave out “that amend or repeal any provision of primary legislation (whether alone or with any other provision)”

Member’s explanatory statement
This amendment would mean that all regulations made under Clause 4 would be subject to the affirmative procedure.

Stuart C. McDonald
Gavin Newlands

Clause 4, page 3, line 21, leave out subsection (8)

Member’s explanatory statement
This amendment, along with Amendment 6, will ensure that all regulations made under Clause 4(1) are subject to the affirmative procedure.

Afzal Khan

Page 3, line 34, leave out Clause 5

Afzal Khan

Clause 7, page 5, line 32, at end insert—

“(5A) This Act cannot come into force until the House of Commons has passed a motion in the form set out in subsection (5B).

(5B) The form of the motion for the purposes of subsection (5A) is—

“That the Immigration and Social Security Co-Ordination (EU Withdrawal Act) come into force”.”
Clause 7, page 5, line 33, leave out from “which” to end of line 34, and insert “the House of Commons has passed a motion in the form set out in subsection (5B) above.”

Member’s explanatory statement
This amendment is consequential on Amendment 14.

Afzal Khan
Ms Diane Abbott
Richard Burgon
Imran Hussain
Gloria De Piero
Yasmin Qureshi

★ Clause 7, page 5, line 37, at end insert—
“(7A) Section 1 of this Act cannot come into force until the Secretary of State has ensured that legal aid is available to all EEA and Swiss nationals, and their family members, who are domiciled or habitually resident in the UK for Early Legal Help on immigration matters.”

Kate Green

Clause 7, page 5, line 39, at end insert—
“(8A) The Secretary of State must carry out a gender impact assessment of the Act and lay a report of that assessment before the House of Commons within six months of the passing of the Act.”

Afzal Khan

Clause 7, page 5, line 39, at end insert—
“(8A) Regulations under subsection (8) above may not be made until—
(a) the Secretary of State has completed a review of all cases of deportation, detention, or refusal of status to individuals who entered the United Kingdom before 1973, and the children and descendants of those individuals; and
(b) the Secretary of State has considered the findings of that review and implemented any safeguards deemed necessary, following a public consultation, to ensure that those who lose their right of freedom of movement under the provisions of this Act are protected from any wrongful detention, deportation or denial of legal rights.”

Afzal Khan

Clause 7, page 5, line 39, at end insert—
“(8A) The Secretary of State must not issue any regulations under subsection 8 above until the Secretary of State has implemented any recommendations contained in the Law Commission’s review of the UK’s Immigration Rules which relate to or will relate to persons who, under the provisions of the Act, will lose their right of free movement.”
Afzal Khan

Clause 7, page 5, line 39, at end insert—
“(8A) Regulations under subsections (7) and (8) may not be made until the number of people registered for settled status in the United Kingdom reaches 3 million.”

**Member’s explanatory statement**
This amendment would prevent the Bill from coming into force until the number of people registered for settled status reaches 3 million.

Afzal Khan

Clause 7, page 5, line 44, at end insert—
“(10A) Section 4 and section 7(5) of this Act expire at the end of a period of one year beginning with the day on which this Act is passed.”

**Member’s explanatory statement**
This amendment would place a time limit on the Henry VIII powers contained in Clause 4.

Afzal Khan
Ms Diane Abbott
Nic Dakin
Stuart C. McDonald
Joanna Cherry
Gavin Newlands
Mr David Lammy  Caroline Lucas  Sir Edward Davey
Catherine West

To move the following Clause—

**“Time limit on detention for EEA and Swiss nationals**

(1) The Secretary of State may not detain any person ("P") who has had their right of free movement removed by the provisions of this Act under a relevant detention power for a period of more than 28 days from the relevant time.

(2) If “P” remains detained under a relevant detention power at the expiry of the period of 28 days then—

(a) the Secretary of State shall release P forthwith; and

(b) the Secretary of State may not re-detain P under a relevant detention power thereafter, unless the Secretary of State is satisfied that there has been a material change of circumstances since “P’s” release and that the criteria in section [Initial detention for EEA and Swiss nationals: criteria and duration] are met.

(3) In this Act, “relevant detention power” means a power to detain under—

(a) paragraph 16(2) of Schedule 2 to the Immigration Act 1971 (detention of persons liable to examination or removal);  
(b) paragraph 2(1), (2) or (3) of Schedule 3 to that Act (detention pending deportation);  
(c) section 62 of the Nationality, Immigration and Asylum Act 2002 (detention of persons liable to examination or removal); or  
(d) section 36(1) of UK Borders Act 2007 (detention pending deportation).
(4) In this Act, “relevant time” means the time at which “P” is first detained under a relevant detention power.”

Member’s explanatory statement
This new clause is consequential on NC1.
To move the following Clause—

**“Bail hearings for EEA and Swiss nationals**

1. Before the expiry of a period of 96 hours from the relevant time, the Secretary of State must—
   (a) release any person (“P”) who section [Time limit on detention for EEA and Swiss nationals] applies to;
   (b) grant immigration bail to “P” under paragraph 1 of Schedule 10 to the Immigration Act 2016; or
   (c) arrange a reference to the Tribunal for consideration of whether to grant immigration bail to “P”.

2. Subject to subsection (3), when the Secretary of State arranges a reference to the Tribunal under subsection (1)(c), the Tribunal must hold an oral hearing (“an initial bail hearing”) which must commence within 24 hours of the time at which the reference is made.

3. If the period of 24 hours in subsection (2) ends on a Saturday, Sunday or Bank holiday, the Tribunal must hold an initial bail hearing on the next working day.

4. At the initial bail hearing, the Tribunal must—
   (a) grant immigration bail to “P” under paragraph 1 of Schedule 10 to the Immigration Act 2016; or
   (b) refuse to grant immigration bail to “P”.

5. Subject to subsection (6), the Tribunal must grant immigration bail to “P” at a bail hearing unless it is satisfied that the Secretary of State has established that the criteria in subsection 1 of section [Initial detention for EEA and Swiss nationals: criteria and duration] are met and that, in addition—
   (a) directions have been given for “P’s” removal from the United Kingdom and such removal is to take place within 96 hours;
   (b) a travel document is available for the purposes of “P’s” removal or deportation; and
   (c) there are no outstanding legal barriers to removal.

6. Subsection (5) does not apply if the Tribunal is satisfied that the Secretary of State has established that the criteria in subsection 1 of section [Initial detention for EEA and Swiss nationals: criteria and duration] are met and that there are very exceptional circumstances which justify maintaining detention.

7. In subsection (5) above, “a bail hearing” includes—
   (a) an initial bail hearing under subsection (2) above; and
   (b) the hearing of an application for immigration bail under paragraph 1(3) of Schedule 10 of the Immigration Act 2016.

8. In this section, “Tribunal” means the First-Tier Tribunal.

9. The Secretary of State shall provide to “P” or “P’s” legal representative, not more than 24 hours after the relevant time, copies of all documents in the Secretary of State’s possession which are relevant to the decision to detain.
(10) At the initial bail hearing, the Tribunal shall not consider any documents relied upon by the Secretary of State which were not provided to “P” or “P’s” legal representative in accordance with subsection (8), unless—

(a) “P” consents to the documents being considered; or

(b) in the opinion of the Tribunal there is a good reason why the documents were not provided to “P” or to “P’s” legal representative in accordance with subsection (8).

(11) The Immigration Act 2016 is amended as follows—

(a) After paragraph 12(4) of schedule 10 insert—

“(4A) Sub-paragraph (2) above does not apply if the refusal of bail by the First tier Tribunal took place at an initial bail hearing within the meaning of section [Bail hearings for EEA and Swiss nationals] of the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2019.”

Member’s explanatory statement
This new clause is consequential on NC1.

Mr David Lammy    Caroline Lucas    Sir Edward Davey
Catherine West

NC4

To move the following Clause—

“Commencement of provisions on detention of EEA nationals

(1) Sections [Time limit on detention for EEA and Swiss nationals], [Initial detention for EEA and Swiss nationals: criteria and duration] and [Bail hearings for EEA and Swiss nationals] come into force three months after the day on which this Act is passed.”

Member’s explanatory statement
This new clause is consequential on NC1.
Immigration and Social Security Co-ordination (EU Withdrawal) Bill, continued

Afzal Khan
Ms Diane Abbott
Nic Dakin
Stuart C. McDonald
Joanna Cherry
Gavin Newlands

To move the following Clause—

“Time limit on immigration detention
(1) The Secretary of State may not detain any person (“P”) under a relevant detention power for a period of more than 28 days from the relevant time.
(2) If “P” remains detained under a relevant detention power at the expiry of the period of 28 days then—
   (a) the Secretary of State shall release “P” forthwith; and
   (b) the Secretary of State may not re-detain P under a relevant detention power thereafter, unless the Secretary of State is satisfied that there has been a material change of circumstances since “P’s” release and that the criteria in section [Initial detention: criteria and duration] are met.
(3) In this Act “relevant detention power” means a power to detain under—
   (a) paragraph 16(2) of Schedule 2 to the Immigration Act 1971 (detention of persons liable to examination or removal);
   (b) paragraph 2(1), (2) or (3) of Schedule 3 to that Act (detention pending deportation);
   (c) section 62 of the Nationality, Immigration and Asylum Act 2002 (detention of persons liable to examination or removal); or
   (d) section 36(1) of UK Borders Act 2007 (detention pending deportation).
(4) In this section, “relevant time” means the time at which “P” is first detained under a relevant detention power.”

Afzal Khan
Ms Diane Abbott
Nic Dakin
Stuart C. McDonald
Joanna Cherry
Gavin Newlands

To move the following Clause—

“Initial detention: criteria and duration
(1) Any person (“P”) who section [Time limit on immigration detention] applies to may not be detained under a relevant detention power other than for the purposes of examination, unless the Secretary of State is satisfied that—
   (a) the person can be shortly removed from the United Kingdom;
(b) detention is strictly necessary to affect the person’s deportation or removal from the United Kingdom; and

(c) the detention of “P” is in all circumstances proportionate.

(2) The Secretary of State may not detain any person (“P”) who section [Time limit on immigration detention] applies to under a relevant detention power for a period of more than 96 hours from the relevant time, unless—

(a) “P” has been refused bail at an initial bail hearing in accordance with subsection 3(4)(b) of section [Bail hearings]; or

(b) the Secretary of State has arranged a reference to the Tribunal for consideration of whether to grant immigration bail to “P” in accordance with subsection 3(1)(c) of clause [Bail hearings] and that hearing has not yet taken place.

(3) Nothing in subsection (2) shall authorise the Secretary of State to detain “P” under a relevant detention power if such detention would, apart from this section, be unlawful.

(4) In this section, “Tribunal” means the First-Tier Tribunal.

(5) In this section, “relevant detention power” has the meaning given in section [Time limit on immigration detention].”

**Member’s explanatory statement**

This new clause is consequential on NC1.

Afzal Khan
Ms Diane Abbott
Nic Dakin
Stuart C. McDonald
Joanna Cherry
Gavin Newlands

Mr David Lammy
Caroline Lucas
Sir Edward Davey
Catherine West

NC7

To move the following Clause—

“Bail hearings

(1) Before the expiry of a period of 96 hours from the relevant time, the Secretary of State must—

(a) release “P”;

(b) grant immigration bail to “P” under paragraph 1 of Schedule 10 to the Immigration Act 2016; or

(c) arrange a reference to the Tribunal for consideration of whether to grant immigration bail to “P”.

(2) Subject to subsection (3), when the Secretary of State arranges a reference to the Tribunal under subsection (1)(c), the Tribunal must hold an oral hearing (“an initial bail hearing”) which must commence within 24 hours of the time at which the reference is made.

(3) If the period of 24 hours in subsection (2) ends on a Saturday, Sunday or Bank holiday, the Tribunal must hold an initial bail hearing on the next working day.

(4) At the initial bail hearing, the Tribunal must—

(a) grant immigration bail to “P” under paragraph 1 of Schedule 10 to the Immigration Act 2016; or
Immigration and Social Security Co-ordination (EU Withdrawal) Bill, continued

(b) refuse to grant immigration bail to “P”.

(5) Subject to subsection (6), the Tribunal must grant immigration bail to “P” at a bail hearing unless it is satisfied that the Secretary of State has established that the criteria in subsection 1 of section [Initial detention: criteria and duration] are met and that, in addition—

(a) directions have been given for “P’s” removal from the United Kingdom and such removal is to take place within 96 hours;

(b) a travel document is available for the purposes of “P’s” removal or deportation; and

(c) there are no outstanding legal barriers to removal.

(6) Subsection (5) does not apply if the Tribunal is satisfied that the Secretary of State has established that the criteria in subsection 1 of section [Initial detention: criteria and duration] above are met and that there are very exceptional circumstances which justify maintaining detention.

(7) In subsection (5) above, “a bail hearing” includes—

(a) an initial bail hearing under subsection (2) above; and

(b) the hearing of an application for immigration bail under paragraph 1(3) of Schedule 10 of the Immigration Act 2016.

(8) In this section, “Tribunal” means the First-Tier Tribunal.

(9) The Secretary of State shall provide to “P” or “P’s” legal representative, not more than 24 hours after the relevant time, copies of all documents in the Secretary of State’s possession which are relevant to the decision to detain.

(10) At the initial bail hearing, the Tribunal shall not consider any documents relied upon by the Secretary of State which were not provided to “P” or “P’s” legal representative in accordance with subsection (8), unless—

(a) “P” consents to the documents being considered; or

(b) in the opinion of the Tribunal there is a good reason why the documents were not provided to “P” or to “P’s” legal representative in accordance with subsection (8).

(11) The Immigration Act 2016 is amended as follows—

(a) After paragraph 12(4) of schedule 10 insert—

“(4A) Sub-paragraph (2) above does not apply if the refusal of bail by the First tier Tribunal took place at an initial bail hearing within the meaning of section [Bail hearings for EEA and Swiss nationals] of the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2019.”.”

Member’s explanatory statement

This new clause is consequential on NC1.
To move the following Clause—

“Commencement of detention provisions

(1) Sections [Time limit on immigration detention], [Initial detention: criteria and duration] and [Bail hearings] come into force three months after the day on which this Act is passed.”

Member’s explanatory statement

This new clause is consequential on NC1.

NC8

To move the following Clause—

“Super-affirmative procedures for Immigration Rules

(1) The Immigration Act 1971 is amended in accordance with subsection (2).

(2) After section 3(2) insert—

“(2A) Any statement of the rules, or of any changes to the rules, which affect the rights and obligations of persons who will lose their right of freedom of movement under the provisions of the Immigration and Social Security Co-Ordination (EU Withdrawal) Act may not be made or have effect unless the Secretary of State has complied with subsections (2B) to (2F) below.

(2B) If the Secretary of State proposes to make changes to the rules under section (2A) above, the Secretary of State must lay before parliament a document that—

(a) explains the proposal; and

(b) sets it out in the form of a draft order.

(2C) During the period of 60 days beginning with the day on which the document was laid under subsection (2B) (the “60-day period”), the Secretary of State may not lay before Parliament a draft order to give effect to the proposal (with or without modification).

(2D) In preparing a draft order under section (2A) above, the Secretary of State must have regard to any of the following that are made with regard to the draft order during the 60-day period—

(a) any representations; and

(b) any recommendations of a committee of either House of Parliament charged with reporting on the draft order.

NC9
(2E) When laying before Parliament a draft order to give effect to the proposal (with or without modifications), the Secretary of State must also lay a document that explains any changes made to the proposal contained in the document under subsection (2B).

(2F) In calculating the 60-day period, no account is to be taken of any time during which Parliament is dissolved or prorogued or during which either House is not adjourned for more than 4 days.”

**Member’s explanatory statement**

This new clause would amend the Immigration Act 1971 to ensure that any changes to the UK’s Immigration Rules which affect EEA or Swiss nationals must be made under the super affirmative procedure.

Afzal Khan

To move the following Clause—

“Settled status: right to appeal

(1) When a person whose right of free movement is removed by the provisions of this Act makes an application for settled or pre-settled status, that person may make an appeal to the First-tier Tribunal (Immigration and Asylum Chamber) if—

(a) the application is turned down, or

(b) the person is granted pre-settled status but there is evidence to show that the person should have been granted settled status.

(2) Subsection (1) applies if the United Kingdom leaves the European Union—

(a) following a negotiated withdrawal agreement, or

(b) without a negotiated withdrawal agreement.”

Afzal Khan

To move the following Clause—

“Hostile environment and EEA nationals

(1) This section applies where EEA nationals and Swiss nationals, and their family members, are subject to legislation and regulations encompassing the “hostile environment”.

(2) The Secretary of State must make provision to ensure that, under the hostile environment measures, EEA nationals and Swiss nationals and their family members are treated no less favourably than British citizens in an equivalent position, until the number of people registered for settled status reaches 3 million people or until 30 June 2021, whichever is later.

(3) For the purposes of this section, the “hostile environment” comprises the following measures, including all regulations, policies, and guidance issued pursuant or relating to them—

(a) sections 20 to 47 of the Immigration Act 2014;

(b) sections 34 to 45 of the Immigration Act 2016;
ORDER OF THE HOUSE [28 JANUARY 2019]

That the following provisions shall apply to the Immigration and Social Security Co-ordination (EU Withdrawal) Bill:

Committal
1. The Bill shall be committed to a Public Bill Committee.

Proceedings in Public Bill Committee
2. Proceedings in the Public Bill Committee shall (so far as not previously concluded) be brought to a conclusion on Thursday 7 March.
3. The Public Bill Committee shall have leave to sit twice on the first day on which it meets.

Proceedings on Consideration and up to and including Third Reading
4. Proceedings on Consideration and any proceedings in legislative grand committee shall (so far as not previously concluded) be brought to a conclusion one hour before the moment of interruption on the day on which proceedings on Consideration are commenced.
5. Proceedings on Third Reading shall (so far as not previously concluded) be brought to a conclusion at the moment of interruption on that day.
6. Standing Order No. 83B (Programming committees) shall not apply to proceedings on Consideration and up to and including Third Reading.

Other proceedings
7. Any other proceedings on the Bill may be programmed.

ORDER OF THE COMMITTEE [12 FEBRUARY 2019]

That—
1. the Committee shall (in addition to its first meeting at 9.25 am on Tuesday 12 February) meet—
   (a) at 2.00 pm on Tuesday 12 February;
   (b) at 11.30 am and 2.00 pm on Thursday 14 February;
   (c) at 9.25 am and 2.00 pm on Tuesday 26 February;
   (d) at 11.30 am and 2.00 pm on Thursday 28 February;
   (e) at 9.25 am and 2.00 pm on Tuesday 5 March;
   (f) at 11.30 am and 2.00 pm on Thursday 7 March;
2. the Committee shall hear oral evidence in accordance with the following Table:
<table>
<thead>
<tr>
<th>Date</th>
<th>Time</th>
<th>Witness</th>
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<tbody>
<tr>
<td>Tuesday 12 February</td>
<td>Until no later than 10.30 am</td>
<td>Professor Bernard Ryan, Professor of Migration Law, University of Leicester; Professor Alan Manning, Chair Migration Advisory Committee</td>
</tr>
<tr>
<td>Tuesday 12 February</td>
<td>Until no later than 11.00 am</td>
<td>Migration Watch UK</td>
</tr>
<tr>
<td>Tuesday 12 February</td>
<td>Until no later than 11.25 am</td>
<td>Joint Council for the Welfare of Immigrants</td>
</tr>
<tr>
<td>Tuesday 12 February</td>
<td>Until no later than 3.00 pm</td>
<td>Universities UK; TUC; Royal College of Nursing;</td>
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<tr>
<td>Tuesday 12 February</td>
<td>Until no later than 4.00 pm</td>
<td>Liberty; Justice</td>
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<td>Tuesday 12 February</td>
<td>Until no later than 4.30 pm</td>
<td>CBI</td>
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<tr>
<td>Tuesday 12 February</td>
<td>Until no later than 5.00 pm</td>
<td>Focus on Labour Exploitation</td>
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<tr>
<td>Thursday 14 February</td>
<td>Until no later than 12.30 pm</td>
<td>Detention Action; The Children’s Society; Immigration Law Practitioners’ Association; Deloitte LLP; Amnesty International UK</td>
</tr>
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<td>Thursday 14 February</td>
<td>Until no later than 1.00 pm</td>
<td>Hilary Brown, Director, Virgo Consultancy Services; Martin Hoare, Senior Partner, H &amp; S Legal Solicitors</td>
</tr>
<tr>
<td>Thursday 14 February</td>
<td>Until no later than 2.30 pm</td>
<td>National Farmers Union Scotland</td>
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<tr>
<td>Thursday 14 February</td>
<td>Until no later than 3.00 pm</td>
<td>Professor Steven Peers, Professor of EU, Human Rights and World Trade Law, University of Essex</td>
</tr>
<tr>
<td>Thursday 14 February</td>
<td>Until no later than 3.30 pm</td>
<td>Professor Stijn Smismsans, Director of the Cardiff Centre for European Law and Governance; The 3 Million</td>
</tr>
<tr>
<td>Thursday 14 February</td>
<td>Until no later than 4.30 pm</td>
<td>Institute for Government</td>
</tr>
</tbody>
</table>
Immigration and Social Security Co-ordination (EU Withdrawal) Bill, continued

<table>
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<th>Witness</th>
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<tbody>
<tr>
<td>Thursday 14 February</td>
<td>Until no later than 5.00 pm</td>
<td>British in Europe</td>
</tr>
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</table>

(3) proceedings on consideration of the Bill in Committee shall be taken in the following order: Clause 1; Schedule 1; Clauses 2 to 5; Schedules 2 and 3; Clauses 6 and 7; new Clauses; new Schedules; remaining proceedings on the Bill;

(4) the proceedings shall (so far as not previously concluded) be brought to a conclusion at 5.00 pm on Thursday 7 March.