CONSIDERATION OF BILL (REPORT STAGE)

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This document includes all amendments tabled to date and includes any withdrawn amendments at the end.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 the order in which they relate to the Bill.

Afzal Khan
Ms Diane Abbott
Mr David Davis
Stuart C. McDonald
Joanna Cherry
Gavin Newlands

Sir Edward Davey       Jonathan Edwards       Ben Lake
Liz Saville Roberts   Hywel Williams       Gavin Robinson
Mr Andrew Mitchell    Ms Harriet Harman   Paul Blomfield
Dame Caroline Spelman

To move the following Clause—

“Time limit on immigration detention
(1) For the purpose of this section, a person (“P”) is defined as—
2 Consideration of Bill (Report Stage): 18 March 2019

Immigration and Social Security Co-ordination (EU Withdrawal) Bill, continued

(a) any person who, immediately before the commencement of Schedule 1, was—

(i) residing in the United Kingdom in accordance with the Immigration (European Economic Area) Regulations 2016;

(ii) residing in the United Kingdom in accordance with a right conferred by or under any of the other instruments which is repealed by Schedule 1; or

(iii) otherwise residing in the United Kingdom in accordance with any right derived from European Union law which continues, by virtue of section 4 of the EU Withdrawal Act 2018, to be recognised and available in domestic law after exit day;

(b) and any other person.

(2) The Secretary of State may not detain any person (“P”) as defined in subsection (1) under a relevant detention power for a period of more than 28 days from the relevant time.

(3) 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.

(4) 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).

(5) In this Act, “relevant time” means the time at which “P” is first detained under a relevant detention power.

(6) This section does not apply to a person in respect of whom the Secretary of State has certified that the decision to detain is or was taken in the interests of national security.”
To move the following Clause—

“Initial detention: criteria and duration

(1) The Secretary of State may not detain any person (“P”) to whom section [Time limit on immigration detention] applies, under a relevant detention power other than for the purposes of examination, unless the Secretary of State is satisfied that—

(a) “P” can be shortly removed from the United Kingdom;

(b) detention is strictly necessary to affect the “P”’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 (5)(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 (2)(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].”
To move the following Clause—

“Bail hearings

(1) This section applies to any person ("P") to whom section [Time limit on immigration detention] applies and who is detained under a relevant detention power.

(2) 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”.

(3) Subject to subsection (4), when the Secretary of State arranges a reference to the Tribunal under subsection (2)(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.

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

(5) 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”.

(6) Subject to subsection (7), 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 14 days;
   (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.

(7) Subsection (6) 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.

(8) In subsection (6) 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.

(9) In this section, “Tribunal” means the First-Tier Tribunal.
(10) 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.

(11) 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 (10), 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 (10).

(12) 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.”.”

Afzal Khan
Ms Diane Abbott
Mr David Davis
Stuart C. McDonald
Joanna Cherry
Gavin Newlands

Sir Edward Davey  Jonathan Edwards  Ben Lake
Liz Saville Roberts  Hywel Williams  Gavin Robinson
Mr Andrew Mitchell  Ms Harriet Harman  Paul Blomfield

NC4

To move the following Clause—

“Commencement of detention provisions

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

(2) Subsection (1)(b) of section [Time limit on immigration detention] comes into force on such day as the Secretary of State may by order appoint.”
“Time limit on immigration detention for EEA and Swiss nationals

(1) For the purpose of this section, a person ("P") is defined as—
   (a) any person who, immediately before the commencement of Schedule 1, was—
      (i) residing in the United Kingdom in accordance with the Immigration (European Economic Area) Regulations 2016;
      (ii) residing in the United Kingdom in accordance with a right conferred by or under any of the other instruments which is repealed by Schedule 1; or
      (iii) otherwise residing in the United Kingdom in accordance with any right derived from European Union law which continues, by virtue of section 4 of the EU Withdrawal Act 2018, to be recognised and available in domestic law after exit day;

(2) The Secretary of State may not detain any person ("P") as defined in subsection (1) under a relevant detention power for a period of more than 28 days from the relevant time.

(3) 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 (No. 2)] are met.

(4) 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).

(5) In this Act, “relevant time” means the time at which “P” is first detained under a relevant detention power.

(6) This section does not apply to a person in respect of whom the Secretary of State has certified that the decision to detain is or was taken in the interests of national security.”
To move the following Clause—

**“Initial detention: criteria and duration (No. 2)***

(1) The Secretary of State may not detain any person (“P”) to whom section [*Time limit on immigration detention for EEA and Swiss nationals*](#) applies, under a relevant detention power other than for the purposes of examination, unless the Secretary of State is satisfied that—

(a) “P” can be shortly removed from the United Kingdom;

(b) detention is strictly necessary to affect “P”’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 detention for EEA and Swiss nationals*](#) 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 (5)(b) of section [*Bail hearings (No. 2)*](#); 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 (2)(c) of section [*Bail hearings (No. 2)*](#) 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 detention for EEA and Swiss nationals*].”
Immigration and Social Security Co-ordination (EU Withdrawal) Bill, continued

Afzal Khan
Ms Diane Abbott
Mr David Davis
Stuart C. McDonald
Joanna Cherry
Gavin Newlands

Sir Edward Davey
Liz Saville Roberts
Mr Andrew Mitchell
Jonathan Edwards
Hywel Williams
Ms Harriet Harman
Ben Lake
Gavin Robinson
Paul Blomfield
NC7

To move the following Clause—

“Bail hearings (No. 2)

(1) This section applies to any person (“P”) to whom section [Time limit on immigration detention for EEA and Swiss nationals] applies and who is detained under a relevant detention power.

(2) 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”.

(3) Subject to subsection (4), when the Secretary of State arranges a reference to the Tribunal under subsection (2)(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.

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

(5) 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”.

(6) Subject to subsection (7), 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 (No. 2)] 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 14 days;
   (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.

(7) Subsection (6) 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 (No. 2)] above are met and that there are very exceptional circumstances which justify maintaining detention.

(8) In subsection (6) 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.

(9) In this section, “Tribunal” means the First-Tier Tribunal.
Consideration of Bill (Report Stage): 18 March 2019

Immigration and Social Security Co-ordination (EU Withdrawal) Bill, continued

(10) 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.

(11) 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 (10), 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 (10).

(12) 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 (No. 2)] of the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2019.”.”

Afzal Khan
Ms Diane Abbott
Mr David Davis
Stuart C. McDonald
Joanna Cherry
Gavin Newlands

Sir Edward Davey
Liz Saville Roberts
Mr Andrew Mitchell
Jonathan Edwards
Hywel Williams
Ms Harriet Harman
Ben Lake
Gavin Robinson
Paul Blomfield

To move the following Clause—

“Commencement of detention provisions (No. 2)

(1) Sections [Time limit on immigration detention for EEA and Swiss Nationals], [Initial detention: criteria and duration (No. 2)] and [Bail hearings (No. 2)] come into force six months after the day on which this Act is passed.

Sir Edward Davey

☆ To move the following Clause—

“Data protection: immigration (EEA and Swiss nationals)

(1) The Data Protection Act 2018 is amended in accordance with subsection (2).
(2) In paragraph 4 of schedule 2, after sub-paragraph (4) insert—

“(5) This paragraph does not apply if the data subject is an EEA or Swiss national or a dependent of an EEA or Swiss national.”

Sir Edward Davey

☆ To move the following Clause—

“EU Settlement Scheme: removal of deadline

The Secretary of State must make provision to ensure that EEA and Swiss nationals, and their family members, who are resident in the United Kingdom on or prior to 31 December 2020 can apply for settled status at any time.”

Sir Edward Davey

☆ To move the following Clause—

“EU Settlement Scheme: physical documented proof

The Secretary of State must make provision to ensure that EEA and Swiss nationals and their family members who are granted settled or pre-settled status are provided with physical documented proof of that status.”

Sir Edward Davey

★ To move the following Clause—

“Right to rent (EEA and Swiss nationals)

The Secretary of State must make provision to ensure that EEA and Swiss nationals, and dependants of EEA and Swiss nationals, are not subjected to right to rent immigration checks.

Sir Edward Davey

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

“(5A) Regulations under subsection (1) must provide that EEA and Swiss nationals, and adult dependants of EEA and Swiss nationals, who are applying for asylum in the United Kingdom, may apply to the Secretary of State for permission to take up
employment if a decision at first instance has not been taken on the applicant’s asylum application within 3 months of the date on which it was recorded.”

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.”

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.”

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.
Immigration and Social Security Co-ordination (EU Withdrawal) Bill, continued

Other proceedings

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

NOTICES WITHDRAWN

The following Notices were withdrawn on 18 March 2019:

NC9