

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

AMENDMENTS
TO BE MOVED
IN COMMITTEE OF THE WHOLE HOUSE

After Clause 1

LORD HUNT OF KINGS HEATH
LORD ADONIS

Insert the following new Clause –

“Duty to commission an independent review of the social care sector in regard to the effects of section 1

- (1) The Secretary of State must commission an independent review of the matters under subsection (3) and lay the report of the review before each House of Parliament within six months of the day on which this Act is passed.
- (2) The Secretary of State must appoint an independent panel to undertake the review.
- (3) The review under subsection (1) must consider an assessment of the effects of section 1 on –
 - (a) the social care workforce;
 - (b) the adequacy of public funding for the social care sector;
 - (c) the ability of care sector employers to improve the pay and conditions of their employees; and
 - (d) such other relevant matters as the independent panel deems appropriate.
- (4) A Minister of the Crown must, no later than six months after the report has been laid before Parliament, make arrangements for a motion relating to the report to be debated and voted on by the House of Commons and the House of Lords.”

Member’s explanatory statement

This new Clause would require an independent review of the impact of section 1 of this Act on the social care sectors to be produced and laid before Parliament.

Clause 2

BARONESS HAMWEE
BARONESS LUDFORD

Page 2, line 13, at end insert –

- “(6) The Secretary of State may not conclude that the deportation of an Irish citizen is conducive to the public good under section 3(5)(a) unless he or she concludes that, due to the exceptional circumstances of the case, the public interest requires deportation.
- (7) No person of any nationality is liable for deportation under section 3(5)(b) on the ground that they belong to the family of an Irish citizen who is or has been ordered to be deported, unless subsection (3)(a) is satisfied in respect of that Irish citizen.
- (8) An Irish citizen may not be deported or excluded from the United Kingdom if –
- (a) the Irish citizen was born in Northern Ireland; and
 - (b) at the time of the Irish citizen’s birth, at least one of his or her parents was –
 - (i) a British citizen; or
 - (ii) an Irish citizen; or
 - (iii) a British citizen and an Irish citizen; or
 - (iv) otherwise entitled to reside in Northern Ireland without any restriction on their period of residence.”

Member’s explanatory statement

This amendment protects the threshold for deportation of Irish citizens and ensures that no-one born in Northern Ireland may be deported.

Clause 4

BARONESS HAMWEE
BARONESS LUDFORD
LORD ROSSER
LORD KENNEDY OF SOUTHWARK

Page 2, line 34, leave out “appropriate” and insert “necessary”

Member’s explanatory statement

This amendment would restrict the Secretary of State’s discretion and preclude her or him from making regulations which are not necessary.

Page 2, line 35, leave out “, or in connection with,”

Member’s explanatory statement

This amendment would narrow the scope of the Secretary of State’s powers as recommended by the Delegated Powers and Regulatory Reform Committee in its Forty Sixth Report.

BARONESS HAMWEE
BARONESS LUDFORD

Page 2, line 35, at end insert –

“(1A) The power to make regulations under subsection (1) may only be exercised to –

- (a) ensure coherence of legislation in consequence of the repeals specified in Schedule 1;
- (b) achieve consistency of treatment between people of differing nationality who are subject to immigration controls entering or applying to enter the United Kingdom on or after 1 January 2021; or
- (c) retain a right of any person who would otherwise lose that right by reason of any of the repeals specified in Schedule 1 and only where that person is present or has leave to enter or remain in the United Kingdom at the time of that repeal.”

Member’s explanatory statement

This amendment would limit the use of regulation-making powers to matters which HMG has indicated are intended.

BARONESS HAMWEE
BARONESS LUDFORD
LORD FLIGHT

Page 2, line 40, at end insert –

“(2A) The power to make regulations under subsection (1) does not include power to make provision inconsistent with the withdrawal agreement as defined by section 39 (interpretation) of the European Union (Withdrawal Agreement) Act 2020.”

Member’s explanatory statement

This amendment would ensure that the power cannot be used inconsistently with the Withdrawal Agreement.

BARONESS HAMWEE
BARONESS LUDFORD

Page 2, line 41, after “(1)” insert “only”

Member’s explanatory statement

This amendment would restrict the Secretary of State’s power to make regulations to the powers listed in clause 4(3).

Page 2, line 42, leave out “supplementary,”

Member’s explanatory statement

This amendment is to probe the need for supplementary in addition to incidental provision.

Page 2, line 42, leave out “transitory”

Member’s explanatory statement

This amendment is to probe the meaning of the word in the context.

Page 2, line 44, leave out paragraph (b)

Member's explanatory statement

This amendment is to probe the different purposes that may be required.

Page 3, line 1, leave out subsection (4)

Member's explanatory statement

To probe the need for a new power.

Page 3, line 2, leave out from “who” to end of line 5 and insert “may be granted leave to enter or remain in the United Kingdom by virtue of residence scheme immigration rules and who do not have such leave.”

Member's explanatory statement

To bring the Clause into line with the European Union (Withdrawal) Act 2018 and the European Union (Withdrawal Agreement) Act 2020.

Page 3, line 5, at end insert —

“(4A) “Residence scheme immigration rules” has the same meaning as in section 17(1) (interpretation: Part 3) of the European Union (Withdrawal Agreement) Act 2020.”

Member's explanatory statement

To bring the Clause into line with the European Union (Withdrawal) Act 2018 and the European Union (Withdrawal Agreement) Act 2020.

LORD ROSSER
LORD KENNEDY OF SOUTHWARK

Page 3, line 6, leave out subsection (5)

Member's explanatory statement

This removes the power for regulations under this clause to make changes to fees and charges currently provided for in other primary legislation.

BARONESS HAMWEE
BARONESS LUDFORD

Page 3, line 6, leave out from “things)” to “made” in line 7 and insert “reduce fees or charges”

Member's explanatory statement

This amendment probes the need for this power.

Page 3, line 8, at end insert –

“(5A) Regulations under subsection (1) must provide that any EEA or Swiss national, and any adult dependant of any EEA or Swiss national, who has applied for asylum in the United Kingdom may apply to the Secretary of State for permission to take up employment (without limitation as to the type of employment) if a decision at first instance has not been taken on the application within 3 months of the date on which it was recorded.”

Member’s explanatory statement

This amendment would require the Secretary of State to make regulations enabling asylum seekers to work once they have been waiting for a decision on their claim for 3 months or more.

LORD FLIGHT
BARONESS HAMWEE

Page 3, line 8, at end insert –

“(5A) Regulations made under subsection (1) must make provision to enable UK citizens falling within the personal scope of –

- (a) the Withdrawal Agreement,
- (b) the EEA EFTA separation agreement, or
- (c) the Swiss citizens’ rights agreement

to return to the United Kingdom accompanied by, or to be joined in the United Kingdom by, close family members.

(5B) Regulations under subsection (1) may not impose any conditions on the entry or residence of close family members of UK citizens which could not have been imposed under EU law relating to free movement, as on the day on which this Act comes into force.

(5C) For the purposes of subsection (5A) –

“close family members” means –

- (a) children (including adopted children), and
- (b) other close family members where that relation subsisted on or before 31 January 2020 and has continued to subsist;

“Withdrawal Agreement”, “EEA EFTA separation agreement” and “Swiss citizens’ rights agreement” have the meaning given in section 39 (interpretation) of the European Union (Withdrawal Agreement) Act 2020.”

BARONESS HAMWEE
BARONESS LUDFORD
LORD ROSSER
LORD KENNEDY OF SOUTHWARK

Page 3, line 9, leave out subsection (6)

Member’s explanatory statement

This amendment would require that the first instrument made under Clause 4(1) be an affirmative, not made affirmative, as recommended by the Delegated Powers and Regulatory Reform Committee in its Forty Sixth Report.

BARONESS HAMWEE
BARONESS LUDFORD

Page 3, line 14, leave out “Any other” and insert “A”

Member’s explanatory statement

This amendment would require that the first instrument made under Clause 4(1) be an affirmative, not made affirmative, as recommended by the Delegated Powers and Regulatory Reform Committee in its Forty Sixth Report

Page 3, line 19, leave out “(6) or”

Member’s explanatory statement

This amendment would require that the first instrument made under Clause 4(1) be an affirmative, not made affirmative, as recommended by the Delegated Powers and Regulatory Reform Committee in its Forty Sixth Report

Page 3, line 21, leave out subsections (9) and (10)

Member’s explanatory statement

This amendment would require that the first instrument made under Clause 4(1) be an affirmative, not made affirmative, as recommended by the Delegated Powers and Regulatory Reform Committee in its Forty Sixth Report

After Clause 4

BARONESS HAMWEE
BARONESS LUDFORD
LORD ROSSER
LORD KENNEDY OF SOUTHWARK

Insert the following new Clause—

“Time limit on immigration detention for EEA and Swiss nationals

- (1) For the purpose of this section, a person (“P”) is defined as any person who, immediately before the commencement of Schedule 1, was—
 - (a) residing in the United Kingdom in accordance with the Immigration (European Economic Area) Regulations 2016 (SI 2016/1052);
 - (b) 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
 - (c) 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 European Union (Withdrawal) Act 2018, to be recognised and available in domestic law after exit day.
- (2) The Secretary of State may not detain P 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 must release P forthwith; and

After Clause 4 - continued

- (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 the 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."

Member's explanatory statement

This new Clause places a limit on the length of time EEA or Swiss nationals may be held in immigration detention of 28 days.

Insert the following new 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 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 effect 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 P 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 section (*Bail hearings*) and that hearing has not yet taken place.
- (3) Nothing in subsection (2) authorises 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.

After Clause 4 - continued

- (5) In this section, “relevant detention power” has the meaning given in section (*Time limit on detention for EEA and Swiss nationals*).

Member’s explanatory statement

This new Clause is linked to new Clause “Time limit on immigration detention for EEA and Swiss nationals” by specifying certain criteria that must be met during the initial detention and that the initial detention period should be no longer than 96 hours.

Insert the following new Clause—

“Bail hearings

- (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*) 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.

After Clause 4 - continued

- (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 to 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) In the Immigration Act 2016, after paragraph 12(4) of Schedule 10 insert –

“(4A) Sub-paragraph (2) above does not apply to the refusal of bail within the meaning of section (*Bail hearings*) of the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020.””

Member’s explanatory statement

This new Clause is linked to new Clauses “Time limit on immigration detention for EEA and Swiss nationals” and “Initial detention: criteria and duration” by providing for bail hearings during the initial detention period of 96 hours.

BARONESS HAMWEE
BARONESS LUDFORD

Insert the following new Clause –

“Right to rent (EEA and Swiss nationals)

- (1) The following provisions of the Immigration Act 2014 shall cease to apply to EEA and Swiss nationals and their dependants.
- (2) The provisions are sections 20 to 37 and Schedule 3 (right to rent).”

Member’s explanatory statement

This new Clause would require the Secretary of State to ensure that landlords do not carry out immigration checks on EEA and Swiss nationals under the Right to Rent scheme.

Insert the following new 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.””

Member's explanatory statement

This new Clause would ensure that the immigration exemption in the Data Protection Act 2018 does not apply to EEA or Swiss nationals.

Insert the following new Clause—

“Late applications to EU Settlement Scheme

- (1) The Secretary of State must, before 30 June 2021, publish a report setting out proposals for dealing with late applications to the EU Settlement Scheme and a motion to approve the report must be debated by both Houses of Parliament.
- (2) Until the report has been debated and approved by both Houses of Parliament, the EU Settlement Scheme must remain open for applications and the Secretary of State must extend the deadline for applications accordingly.
- (3) “The EU Settlement Scheme” means the scheme for settled or pre-settled status under Appendix EU of the Immigration Rules.”

Member's explanatory statement

The new Clause will ensure that the EU Settlement Scheme will remain open until such time as the Minister has published proposals as to how to deal with late applications and that report has been approved by Parliament.

Insert the following new Clause—

“Notification to apply for settled status

- (1) The Secretary of State must notify any person granted pre-settled status under the EU Settlement Scheme of the requirement to apply for settled status.
- (2) The notifications must be given—
 - (a) in the case of a person granted pre-settled status before this Act is passed, immediately;
 - (b) in the case of a person granted pre-settled status after this Act is passed, within 28 days after the grant of pre-settled status; and
 - (c) not less than six months before the person's entitlement to enter and remain in the United Kingdom as a person with pre-settled status expires.
- (3) The Secretary of State must amend the EU Settlement Scheme to ensure that pre-settled status enables the grantee to use that status to demonstrate the right to reside in the United Kingdom for the purposes of accessing social assistance and housing.
- (4) Nothing in this section shall entitle a person to be granted settled status if that person was not entitled to it prior to the coming into force of this section.
- (5) “The EU Settlement Scheme” means the scheme for settled status or pre-settled status under Appendix EU of the Immigration Rules and the terms “settled status” and “pre-settled status” shall be interpreted accordingly.”

Member's explanatory statement

This new Clause would require that persons granted pre-settled status are reminded of the need to apply for settled status.

Insert the following new Clause—

“Applications for citizenship from people with settled status

- (1) In the event that a person with settled status granted pursuant to the EU Settlement Scheme applies for British Citizenship, the period of residence in the United Kingdom which was the qualification for settled status shall be treated as not in breach of any provisions, including the Immigration Acts and the Immigration Rules.
- (2) “The EU Settlement Scheme” means the scheme for settled status or pre-settled status under Appendix EU of the Immigration Rules and the term “settled status” shall be interpreted accordingly.”

Member’s explanatory statement

This new Clause would ensure that persons who qualified for settled status cannot then be refused citizenship on ground that their residence during the qualifying period for settled status was in breach of immigration laws (for example, because of a period without Comprehensive Sickness Insurance).

Insert the following new Clause—

“Health and social care visa

- (1) The Secretary of State must make provision by regulations for a visa for EEA and Swiss citizens applying for leave to enter and remain in the United Kingdom for the purposes of work in the health and social care sector and their dependants.
- (2) The regulations must provide for application fees to be at 50% of the rate from time to time payable by applicants for a Tier 2 (General) visa or dependants.
- (3) Applicants and their dependants may not be required to pay an immigration health charge.
- (4) No immigration skills charge may be payable in respect of such applicants pursuant to the Immigration Skills Charge Regulations 2017 (SI 2017/499).
- (5) In drafting the regulations, the Secretary of State must consult such persons as he or she considers appropriate.
- (6) Regulations under subsection (1) must be laid before Parliament.
- (7) The regulations must come into effect on 1 January 2021.”

Member’s explanatory statement

The new Clause requires the Secretary of State to make provisions for a visa for EEA and Swiss citizens applying for leave to enter and remain in the United Kingdom for the purpose of working in the health and social care sector.

LORD DUBS
BARONESS HAMWEE
LORD KERR OF KINLOCHARD

Insert the following new Clause—

“Leave to enter: family unity and claims for asylum

- (1) For at least such time as a relevant agreement has not been concluded and implemented, a person to whom this section applies shall be granted leave to enter the United Kingdom for the purpose of making a claim for asylum.
- (2) This section applies to a person who—
 - (a) is on the territory of any relevant Member State; and
 - (b) makes an application for leave to enter for the purpose of making a claim for asylum; and
 - (c) would, had that person made an application for international protection in that Member State, have been eligible for transfer to the United Kingdom under Regulation (EU) No. 604/2013 by reason of a relevant provision if the United Kingdom remained a party to that Regulation.
- (3) An application for leave to enter under subsection 2(c) shall be made in such manner as the Secretary of State may prescribe save that—
 - (a) there shall be no fee for the making of such an application and no requirements may be prescribed that are unreasonable having regard to the purposes of this section and the circumstances of persons to whom it applies;
 - (b) in relation to such applications, the Secretary of State shall make arrangements to ensure that applicants receive a decision regarding their application no later than two months from the date of submission of the application.
- (4) A claim for asylum made under subsection (2)(b) must remain pending throughout such time as no decision has been made on it or during which an appeal could be brought within such time as may be prescribed for the bringing of any appeal against a decision made on a claim or during which any such appeal remains pending for the purposes of section 104 of the Nationality, Immigration and Asylum Act 2002; and a claim for asylum remains one on which no decision has been made during such time as the claim has been made to the Secretary of State and has not been granted, refused, abandoned or withdrawn.
- (5) The Secretary of State must, within six months of the day on which this Act is passed, lay before both Houses of Parliament a strategy for ensuring that unaccompanied children on the territory of a relevant Member State continue to be relocated to the United Kingdom, if it is in the child's best interests.
- (6) For the purposes of this section—

“applicant” means a person who makes an application for leave to enter under this section;

“claim for asylum” means a claim for leave to enter or remain as a refugee or as a person eligible for a grant of humanitarian protection;

After Clause 4 - continued

“Regulation (EU) No. 604/2013” means Regulation (EU) No. 604/2013 of the European Parliament and of the Council including the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast);

“relevant agreement” means an agreement negotiated by a Minister of the Crown, on behalf of the United Kingdom, with the European Union in accordance with which there is provision for the transfer of a person who has made an application for asylum in a Member State of the European Union to the United Kingdom and that provision is no less extensive than Regulation (EU) No. 604/2013 insofar as that regulation operated to enable the transfer of a person to join a child, sibling, parent or other family member or relative in the United Kingdom before exit day;

“relevant Member State” means a Member State for the purposes of Regulation (EU) No. 604/2013;

“relevant provision” means any of the following articles of Regulation (EU) No. 604/2013—

- (a) Article 8,
- (b) Article 9,
- (c) Article 10,
- (d) Article 16,
- (e) Article 17.”

LORD OATES

LORD POLAK

LORD KERSLAKE

LORD MCNICOL OF WEST KILBRIDE

Insert the following new Clause—

“EU Settlement Scheme: physical documented proof

- (1) The Secretary of State must issue physical proof confirming pre-settled status or settled status to all EEA and Swiss nationals and their families who have been granted such status under the EU Settlement Scheme and who request such proof.
- (2) No fee may be charged for issuing physical proof under this section.”

Member’s explanatory statement

This new Clause seeks to provide physical proof of settled and pre-settled status to those who make a successful application through the scheme, providing physical evidence of their migration status.

BARONESS HAMWEE
BARONESS LUDFORD

Insert the following new Clause—

“Right to services (EEA and Swiss nationals)

- (1) The following provisions of the Immigration Act 2014 do not apply to EEA and Swiss nationals and their dependants.
- (2) The provisions are—
 - (a) sections 38 and 39 (immigration health charge);
 - (b) sections 40 to 43 (bank accounts);
 - (c) sections 46 and 47 (driving licences).
- (3) Sections 15 to 26 (employment) of the Immigration, Asylum and Nationality Act 2006 do not apply to EEA and Swiss nationals and their dependants.”

Member’s explanatory statement

This new Clause would exempt EEA and Swiss nationals from various provisions of the “hostile environment” / “compliant environment”.

LORD ROSSER
LORD KENNEDY OF SOUTHWARK

Insert the following new Clause—

“EU Settlement Scheme: physical documented proof

- (1) The Secretary of State must make provision to ensure that EEA and Swiss nationals and their family members who are granted settled status and pre-settled status receive a physical document as proof of that status.
- (2) No fee may be charged for issuing physical proof of status under this section.”

Member’s explanatory statement

This new Clause seeks to provide physical proof of settled and pre-settled status to those who make a successful application through the scheme and without any need to request this proof, providing physical evidence of their migration status.

Insert the following new Clause—

“Report on status of EEA and Swiss nationals after the transition period

- (1) Part 1 of this Act may not come into force until a Minister of the Crown has laid a report before Parliament setting out the impact of this Act on EEA and Swiss nationals in the United Kingdom.
- (2) A report under subsection (1) must clarify the position of EEA and Swiss nationals in the United Kingdom during the period between the end of the transition period and the deadline for applying to the EU Settlement Scheme.
- (3) A report under subsection (1) must include, but not be limited to, what rights EEA and Swiss nationals resident in the United Kingdom after 31 December 2020 have to—
 - (a) work in the United Kingdom;
 - (b) use the NHS without charge;
 - (c) enrol in education or continue studying;
 - (d) access public funds such as benefits and pensions; and

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- (e) travel into and out of the United Kingdom.”

Member’s explanatory statement

This new Clause would require Government to provide clarity on the rights of EU nationals who are entitled to apply for pre-settled or settled status but have not yet done so, in the grace period between the end of the transition period and the closure of the EU Settlement Scheme.

Insert the following new Clause –

“Exemption from no recourse to public funds

- (1) This section applies during the current Covid-19 pandemic, as defined by the World Health Organisation on 11 March 2020.
- (2) Section 3(1)(c)(i) and (ii) of the Immigration Act 1971 cannot be applied to persons who have lost rights because of section 1 of and Schedule 1 to this Act.
- (3) This section may not be disapplied unless a resolution is passed by each House of Parliament.”

Member’s explanatory statement

This new Clause would delay application of No Recourse to Public Funds rules during the current pandemic and until such time as Parliament decides.

Insert the following new Clause –

“Immigration health charge: exemption for EEA and Swiss citizens who are healthcare and social workers

- (1) The Immigration Act 2014 is amended as follows.
- (2) After section 38 (immigration health charge) insert –

“38A Health care workers and social workers from the EEA or Switzerland

- (1) Any person who would have had the right of free movement before section 1 of the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 came into force is exempt from the immigration health charge if that person is –
 - (a) a healthcare worker; or
 - (b) a social care worker.
- (2) The exemption applies to a person who is a family member or dependant of an EEA or Swiss national who meets the condition in section (1)(a) or (b).
- (3) In this section –
 - (a) “healthcare worker” means a worker who works in a healthcare setting within or outside the NHS who may come into contact with patients, including clinical administration staff and care home staff;
 - (b) “social care worker” means a worker as defined by section 55(2) of the Care Standards Act 2000.”

Member’s explanatory statement

This new Clause would ensure that EEA and Swiss nationals coming to the UK to work as a healthcare or social care worker would be exempt from the Immigration Health Charge.

Insert the following new Clause—

“Tier 2 Immigration skills charge

No Tier 2 Immigration skills charge is payable by an individual who is

- (a) an EEA or Swiss national, and
- (b) comes to the United Kingdom in order to work for the National Health Service.”

Member’s explanatory statement

This new Clause would exempt NHS employers from having to pay the immigration skills charge on members of staff who are EEA and Swiss nationals.

Clause 5

BARONESS HAMWEE
BARONESS LUDFORD
LORD FLIGHT

Page 4, line 2, at end insert—

“(2A) The power to make regulations under subsection (1) does not include power to make provision inconsistent with the withdrawal agreement as defined by section 39 (interpretation) of the European Union (Withdrawal Agreement) Act 2020.”

Member’s explanatory statement

This amendment would ensure that the power cannot be used inconsistently with the Withdrawal Agreement.

BARONESS HAMWEE
BARONESS LUDFORD

Page 4, line 3, after “(1)” insert “only”

Member’s explanatory statement

This amendment would restrict the Secretary of State’s power to make regulations to the powers listed in Clause 5(3).

Page 4, line 4, leave out paragraph (a)

Member’s explanatory statement

This amendment would preclude the power of the Secretary of State to distinguish between recipients of pensions and other benefits on the basis of their nationality or residence in a particular state.

Page 4, line 8, leave out paragraph (b)

Member’s explanatory statement

This amendment is to probe the different purposes that may be required.

Page 4, line 9, leave out “supplementary,”

Member's explanatory statement

This amendment is to probe the need for supplementary in addition to incidental provision.

Page 4, line 10, leave out "transitory"

Member's explanatory statement

This amendment is to probe the meaning of the word in the context.

Page 4, line 13, leave out subsection (4)

Member's explanatory statement

This amendment is to probe the need for a new power.

Page 4, line 22, leave out from "with" to "provision" in line 23

Member's explanatory statement

This amendment is to probe the extent of the cessation of EU-derived rights.

BARONESS HAMWEE
BARONESS LUDFORD
BARONESS SHERLOCK
LORD ROSSER

The above-named Lords give notice of their intention to oppose the Question that Clause 5 stand part of the Bill.

Member's explanatory statement

This would leave out the Clause as an inappropriate delegation of power, as recommended by the Delegated Powers and Regulatory Reform Committee in its Forty Sixth Report.

Clause 8

BARONESS HAMWEE
BARONESS LUDFORD
LORD ROSSER
LORD KENNEDY OF SOUTHWARK

Page 5, line 34, at end insert "except sections –

- (a) *(Time limit on immigration detention for EEA and Swiss nationals),*
- (b) *(Initial detention: criteria and duration), and*
- (c) *(Bail hearings)*

which come into force six months after the day on which this Act is passed."

Member's explanatory statement

This amendment provides that new Clauses "Time limit on immigration detention for EEA and Swiss Nationals", "Initial detention: criteria and duration" and "Bail hearings" come into force six months after the Act is passed.

BARONESS HAMWEE
BARONESS LUDFORD

Page 5, line 34, at end insert—

- “() The Secretary of State may not appoint a day pursuant to subsection (1) until—
- (a) the recommendations of the “Windrush Lessons Learned Review” (HC93 published in March 2020) which may affect EEA and Swiss nationals have been implemented in full in respect of such persons;
 - (b) the Secretary of State has laid before Parliament a report on their implementation in respect of such persons; and
 - (c) the report has been debated by both Houses of Parliament.”

Member’s explanatory statement

This amendment would prevent the Government from ending free movement until it has implemented in full the recommendations of the Windrush Lessons Learned Review so far as they may affect EEA and Swiss nationals.

LORD ROSSER
LORD KENNEDY OF SOUTHWARK

Page 5, line 34, at end insert—

- “() The Secretary of State may not make regulations under subsection (1) unless—
- (a) a Minister of the Crown has published guidance on the “reasonable grounds” for permitting applications to the EU Settlement Scheme on a date later than the deadline for application to the scheme;
 - (b) the guidance includes instruction on the immigration status of a person who is eligible to apply for the scheme in the period between the deadline for application and the date their application is made; and
 - (c) a copy of that guidance has been laid before Parliament.”

Member’s explanatory statement

This would prevent Part 1 of the Bill coming into force until the Government has published guidance on what ‘reasonable grounds’ will be accepted as a reason for making a late application to the EU settlement scheme and how a person will be affected in the gap between the deadline and the date they apply.

Page 5, line 41, at end insert—

- “() Section 4 and section 7(5) expire at the end of the period of one year beginning with the day on which this Act is passed.”

Member’s explanatory statement

This would put a sunset provision on Clause 4 so the delegated powers under that Clause would only be available for one year after the Act has been passed.

Schedule 1

BARONESS HAMWEE
BARONESS LUDFORD

Page 8, line 19, leave out from “with” to “any” in line 20

Member’s explanatory statement

This amendment would preclude the disapplication of provisions beyond those inconsistent with provision made by or under the Immigration Acts.

Page 8, line 23, leave out paragraph (b)

Member’s explanatory statement

This amendment would preclude the disapplication of provisions beyond those inconsistent with provision made by or under the Immigration Acts.

Page 8, line 31, at end insert –

“() do not arise under an EU directive as that term is defined in section 20(1) (interpretation) of the European Union (Withdrawal) Act 2018, and”

Member’s explanatory statement

This amendment would ensure that rights arising under EU directives are not affected.

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

AMENDMENTS
TO BE MOVED
IN COMMITTEE OF THE WHOLE HOUSE

23 July 2020
