

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

AMENDMENTS
TO BE MOVED
ON REPORT

After Clause 4

LORD DUBS
THE EARL OF DUNDEE
BARONESS HAMWEE

Insert the following new Clause—

“Children in care and children entitled to care leaving support: entitlement to remain

- (1) Any child who has the right of free movement removed by the provisions contained in Part 1 of this Act, and who is in the care of a local authority or entitled to care leaving support, is deemed to have and be granted indefinite leave to remain within the United Kingdom under the EU Settlement Scheme (“the Scheme”).
- (2) The Secretary of State must, for the purposes of subsection (1), issue guidance to local authorities in England, Scotland, Wales and Northern Ireland setting out their duty to identify the children of EEA and Swiss nationals in their care or entitled to care leaving support.
- (3) Before issuing guidance under this section the Secretary of State must consult—
 - (a) the relevant Scottish Minister;
 - (b) the relevant Welsh Minister; and
 - (c) the relevant Northern Ireland Minister.
- (4) The Secretary of State must make arrangements to ensure that personal data relating to nationality processed by local authorities for purposes of identification under subsection (1) is used solely for this purpose.
- (5) Any child subject to subsection (1) who is identified and granted indefinite leave to remain status after the deadline for applications under the Scheme will be deemed to have had such status and all rights associated with that status from the time of the Scheme deadline.
- (6) This section comes into force on the day on which this Act is passed and remains in effect for 5 years from the day of the deadline of the Scheme.

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- (7) For the purposes of this section, children “in the care of a local authority” are defined as children receiving care under any of the following provisions –
- (a) section 20 of the Children Act 1989 (provision of accommodation for children: general);
 - (b) section 31 of the Children Act 1989 (care and supervision);
 - (c) section 75 of the Social Services and Well-being (Wales) Act 2014 (general duty of local authority to secure sufficient accommodation for looked after children);
 - (d) section 25 of the Children (Scotland) Act 1995 (provision of accommodation for children);
 - (e) Article 25 of the Children (Northern Ireland) Order 1995 (interpretation); and
 - (f) Article 50 of the Children (Northern Ireland) Order 1995 (care orders and supervision orders).
- (8) For the purposes of this section, a child “entitled to care leaving support” means a child receiving support under any of the following provisions –
- (a) paragraph 19B of Schedule 2 to the Children Act 1989 (preparation for ceasing to be looked after);
 - (b) section 23A(2) of the Children Act 1989 (the responsible authority and relevant children);
 - (c) section 23C(1) of the Children Act 1989 (continuing functions in respect of former relevant children);
 - (d) section 104 of the Social Services and Well-being (Wales) Act 2014 (young people entitled to support under sections 105 to 115);
 - (e) sections 29 and 30 of the Children (Scotland) Act 1995 (advice and assistance for young persons formerly looked after by local authorities); and
 - (f) Article 35(2) of the Children (Northern Ireland) Order 1995 (persons qualifying for advice and assistance).”

Member’s explanatory statement

This new Clause aims to ensure that the children of EEA and Swiss nationals who are in care, and those who are entitled to care leaving support, are granted automatic Indefinite Leave to Remain under the EU Settlement Scheme to ensure they do not become undocumented.

LORD DUBS
BARONESS HAMWEE

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 must 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;

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- (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 (pending appeal); 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;
 - “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);

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“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 which 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.”

BARONESS LISTER OF BURTERSETT
LORD ALTON OF LIVERPOOL
BARONESS HAMWEE

Insert the following new Clause –

“Report on awareness and exercise of rights to British citizenship

- (1) Within six months of the passing of this Act, the Secretary of State must lay before Parliament a report on the rights to British citizenship of relevant persons.
- (2) The report under subsection (1) must provide –
 - (a) an assessment of the level of awareness among relevant persons of their rights to British citizenship (“the level of awareness”) including the reasons for any lack of awareness among such persons;
 - (b) an assessment of the level of exercise by relevant persons of their rights to British citizenship (“the level of exercise”) including the reasons for any failure to exercise these rights by such persons;
 - (c) an assessment of the impact upon either the level of awareness or the level of exercise of each of the following –
 - (i) any fee imposed by the Secretary of State in relation to the exercise of rights to British citizenship;
 - (ii) the requirement of good character under section 41A of the British Nationality Act 1981 for registration as a British citizen;
 - (iii) any guidance or policy of the Secretary of State in relation to the exercise of rights to British citizenship;
 - (iv) the practice of the Secretary of State in relation to data held by or accessible to the Secretary of State that may confirm a person’s rights to British citizenship;
 - (v) the availability of legal aid in relation to rights to British citizenship;

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- (vi) the capacity or willingness of parents to assist relevant persons to exercise their rights to British citizenship;
 - (vii) the practice of local authorities in relation to rights to British citizenship; and
 - (viii) the practice of the family courts in relation to rights to British citizenship.
- (3) The assessments required by subsection (2) must include –
- (a) consideration of the circumstances of relevant persons who share a relevant protected characteristic for the purposes of section 149 of the Equality Act 2010; and
 - (b) comparison of the circumstances of relevant persons with other persons having the same rights to British citizenship.
- (4) In making the assessments required under subsection (2), the Secretary of State must consult such persons as the Secretary of State considers appropriate, which shall include children and young persons with rights to British citizenship and organisations with expertise and experience in assisting and representing those children and young persons in connection with those rights.
- (5) The report under subsection (1) shall include specific consideration of each of the following groups of relevant persons –
- (a) children and young persons who are or have been a looked after child;
 - (b) children and young persons who are or have been in the criminal justice system;
 - (c) children and young people who are or have been the subject of a mental health assessment or mental health order;
 - (d) children who are not living in a household with two parents;
 - (e) children and young persons in poverty; and
 - (f) children and young persons who are victims of domestic abuse.
- (6) For the purposes of this section –
- “children and young persons” includes any person under the age of 25 years;
 - “domestic abuse” has the same meaning as in the Domestic Abuse Act 2020;
 - “in poverty” means living in a household whose income is less than 60 per cent of the median United Kingdom household income;
 - “in the criminal justice system” means having received a conviction or caution for the purposes of the Rehabilitation of Offenders Act 1974 (whether or not that conviction or caution has been or can be spent);
 - “mental health assessment” means an assessment of the person’s mental health that was required by a court order or under legislation;
 - “mental health order” means an order of a court requiring a person’s admission to a hospital or other institution for the purpose of treatment or care on account of that person’s mental health;
 - “relevant persons” means persons who –

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- (i) immediately before the repeal of section 7 of the Immigration Act 1988 (exemption from requirement for leave to enter or remain for persons exercising EU rights etc.) under paragraph 1 of Schedule 1 to this Act, were entitled by virtue of that section to enter or remain in the United Kingdom without leave; and
- (ii) have at any time up to the passing of this Act had rights to British citizenship;

“rights to British citizenship” means rights of acquisition of British citizenship by birth, adoption or registration under the British Nationality Act 1981.”

Member’s explanatory statement

The amendment would require the Secretary of State to provide a report on factors affecting the awareness of and exercise of rights to British citizenship under the British Nationality Act 1981 by those affected by the repeal of section 7 of the Immigration Act 1988 (exemption from requirement for leave to enter or remain for persons exercising EU rights etc.).

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