

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

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MARSHALLED  
LIST OF AMENDMENTS  
TO BE MOVED  
ON REPORT

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*[Amendments marked ★ are new or have been altered]*

Amendment  
No.

**Clause 1**

BARONESS NEVILLE-ROLFE  
LORD GREEN OF DEDDINGTON  
LORD HODGSON OF ASTLEY ABBOTTS

- 1 Page 1, line 9, at end insert –  
“(2) Within six months of this section coming into force, the Secretary of State must lay a report before Parliament on how the provisions under Schedule 1 are to be enforced.”

BARONESS BENNETT OF MANOR CASTLE

- 2 Leave out Clause 1

**After Clause 1**

LORD ROSSER  
LORD HUNT OF KINGS HEATH  
BARONESS HAMWEE  
LORD PATEL

- 3 Insert the following new Clause –  
**“Impact of section 1 on the social care sector**  
(1) The Secretary of State must commission and publish an independent assessment of the impact of section 1, and Schedule 1, on the social care sector within six months of this Act being passed.  
(2) The Secretary of State must appoint an independent Chair to conduct the assessment.  
(3) The assessment must consider the impact of provisions in section 1, and Schedule 1, on –  
(a) the social care workforce;

**After Clause 1 - continued**

- (b) available visa routes for social care workers;
  - (c) long-term consequences for workforce recruitment, training and employee terms and conditions; and
  - (d) such other relevant matters as the independent Chair deems appropriate.
- (4) A copy of the independent assessment must be laid before both Houses of Parliament within fourteen days of its publishing date.”

**Member’s explanatory statement**

*This new Clause would require the Secretary of State to commission and publish an independent report on the impact of ending free movement on the social care sector, including the impact on the workforce (such as skills shortages), visa options for social care workers, and long-term consequences for recruitment, training and terms and conditions for staff.*

**Clause 4**

BARONESS HAMWEE  
LORD ROSSER  
LORD PANNICK  
LORD ALTON OF LIVERPOOL

- 4 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 the making of unnecessary regulations.*

BARONESS HAMWEE  
LORD ROSSER  
LORD PANNICK

- 5 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 22nd Report of the Delegated Powers and Regulatory Reform Committee.*

LORD GREEN OF DEDDINGTON  
BARONESS NEVILLE-ROLFE  
LORD HORAM

- 6 Page 3, line 8, at end insert –

- “( ) Any regulations made under subsection (1) which make provision to permit EEA and Swiss nationals to enter the United Kingdom for the purpose of taking up employment must include a specified limit on the total number of such persons to be granted permission for that purpose each calendar year.”

**Member’s explanatory statement**

*This amendment would oblige the Secretary of State to place an annual limit on the number of EEA and Swiss nationals that may be granted permission to enter the UK to take up employment when making regulations under Clause 4(1).*

7 Page 3, line 8, at end insert –

- “( ) Regulations under subsection (1) must make provision for the Resident Labour Market Test (as set out in the Immigration Rules Appendix A: attributes) to apply to job offers where a job offer forms part of the application of EEA and Swiss nationals seeking to enter the United Kingdom for the purpose of taking up employment.”

***Member’s explanatory statement***

*This amendment would require that job offers made to EEA and Swiss nationals which form part of an application for that person to enter the United Kingdom should first be advertised in the domestic labour market in accordance with the Resident Labour Market Test.*

8 Page 3, line 8, at end insert –

- “(5A) Where regulations made under subsection (1) make provision for the minimum salary requirement for new entrants to be lower than the equivalent salary requirement for other migrants, the regulations may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

(5B) For the purposes of subsection (5A), “new entrant” means an EEA or Swiss migrant who meets one of the following criteria –

- (a) the migrant is switching from the Student or Graduate to the Skilled Worker route;
- (b) the migrant is under the age of 26 on the date of their application; or
- (c) the migrant is working towards a recognised professional qualification or moving directly into a postdoctoral position.”

***Member’s explanatory statement***

*This amendment would require parliamentary approval of regulations which would make provision for the recruitment of new entrants to the labour market at pay rates below the general salary requirement under the new Points Based System.*

LORD ROSSER

LORD KENNEDY OF SOUTHWARK

9 Page 3, line 8, at end insert –

- “( ) No regulations may be made under subsection (1) after the end of the period of six months beginning with IP completion day.

( ) In this section “IP completion day” has the meaning given in section 39 of the European Union (Withdrawal Agreement) Act 2020 (interpretation).”

***Member’s explanatory statement***

*This would sunset the powers in Clause 4. It provides that the regulation-making powers under this Clause expire within six months of the end of the transition period.*

10 Page 3, line 8, 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;

**Clause 4 - continued**

- (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 regulations being made under this Clause 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.*

BARONESS HAMWEE  
THE EARL OF CLANCARTY  
BARONESS BENNETT OF MANOR CASTLE  
LORD ROSSER

**11** 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 of the European Union (Withdrawal Agreement) Act 2020 (interpretation).”

BARONESS HAMWEE

**12★** Page 3, line 8, at end insert –

- “( ) 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 of the European Union (Withdrawal Agreement) Act 2020 (interpretation).”

***Member's explanatory statement***

*This amendment would ensure that the power created in subsection (1) can only be used in ways that are consistent with the UK's obligations under the EU Withdrawal Agreement.*

LORD ROSSER

LORD KENNEDY OF SOUTHWARK

13★

Page 3, line 8, at end insert –

- “( ) The Secretary of State may not make regulations under subsection (1) unless a Minister of the Crown has published –
- (a) draft regulations on the temporary protection of the rights of EEA nationals and their family members under section 7 of the European Union (Withdrawal Agreement) Act 2020 (rights related to residence: application deadline and temporary protection); and
  - (b) accompanying guidance to the draft regulations under paragraph (a) which sets out the rights of EEA nationals and their family members as protected by those regulations.”

***Member's explanatory statement***

*This amendment would prevent regulations being made under this clause until the Government has published a draft statutory instrument, and accompanying guidance, on the rights of EEA nationals and their families in the 'grace period' between the end of the transition period and the EU Settlement scheme deadline.*

**After Clause 4**

LORD DUBS

THE EARL OF DUNDEE

BARONESS HAMWEE

BARONESS MEACHER

14

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.

**After Clause 4 - continued**

- (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.
- (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  
LORD KERR OF KINLOCHARD  
THE LORD BISHOP OF DURHAM

15 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;
  - (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;

**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 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.”

***Member’s explanatory statement***

*This new Clause aims to ensure that rights under UK law to family reunion, at present covered by the Dublin III Treaty, will continue after the transition period and that unaccompanied child refugees in Europe will have a legal route to sanctuary in the UK.*

BARONESS LISTER OF BURTERSETT  
LORD ALTON OF LIVERPOOL  
BARONESS HAMWEE  
BARONESS ALTMANN

16

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—

**After Clause 4 - continued**

- (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;
  - (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;

**After Clause 4 - continued**

“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 –

- (a) 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
- (b) 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.).*

## THE EARL OF CLANCARTY

17 Insert the following new Clause –

**“Duty to report on the arrangements for visitors for business purposes**

- (1) The Secretary of State must, within six months of this Act coming into force, publish, and lay before each House of Parliament, a report evaluating the effects of this Act on the arrangements for temporary entry and stay of EEA and Swiss nationals for business purposes.
- (2) That report must include consideration of –
  - (a) the qualification requirements for a short-term business visitor;
  - (b) the activities that can be undertaken by a short-term business visitor; and
  - (c) for purposes of comparison, the reciprocal arrangements for UK nationals travelling to the EEA and Switzerland for business purposes.”

**Member’s explanatory statement**

*This new Clause would require the Government to consider the requirements of short-term EEA and Swiss national visitors for business purposes.*

LORD OATES  
LORD POLAK  
LORD KERSLAKE  
LORD MCNICOL OF WEST KILBRIDE

18 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 PRASHAR  
BARONESS FOOKES  
BARONESS GARDEN OF FROGNAL  
BARONESS MORRIS OF YARDLEY

19 Insert the following new Clause—

**“Entry of EEA and Swiss minors using national identity cards**

- (1) After 31 December 2020 the Secretary of State must allow minors who are nationals of any EEA State or Switzerland lacking settled or pre-settled status under the EU Settlement Scheme to enter the United Kingdom for a period not exceeding 30 days if they produce a valid national identity card issued by the relevant authority in their home country.
- (2) No minors entering the United Kingdom under subsection (1) may do so on more than one occasion in any calendar year.
- (3) After 31 December 2025 entry under subsection (1) may only be allowed on production by the minor of a valid national identity card which complies with the specifications and minimum security standards for machine readable travel documents as set out in Document 9303 of the International Civil Aviation Organization.
- (4) Nothing in this section prevents minors from entering the United Kingdom under another provision or scheme which is not subject to the restrictions set out in this section.
- (5) In this section—
  - “minors” means persons who are under the age of 18 on the date of their arrival in the United Kingdom;
  - “relevant authority” means the body within each EEA State or Switzerland designated as responsible for issuing valid national identity cards to the citizens of that country.”

**Member's explanatory statement**

*This new Clause narrows the ability to enter the UK of EEA citizens or Swiss nationals (specifically those who lack settled or pre-settled status under the EU Settlement Scheme) so as to only include persons under the age of 18 and for a stay not exceeding 30 days in any calendar year.*

BARONESS HAMWEE  
THE LORD BISHOP OF DURHAM  
LORD KENNEDY OF SOUTHWARK  
BARONESS BULL

20 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 (saving for rights etc. under section 2(1) of the ECA), 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
  - (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.*

BARONESS HAMWEE  
LORD KENNEDY OF SOUTHWARK  
BARONESS BULL  
BARONESS JONES OF MOULSECOOMB

**21** 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.
- (5) In this section, “relevant detention power” has the meaning given in section (*Time limit on immigration 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.*

**22** 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;

**After Clause 4 - continued**

- (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), “a bail hearing” includes—
  - (a) an initial bail hearing under subsection (2); 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—

**After Clause 4 - continued**

“(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.*

LORD RAMSBOTHAM  
BARONESS HAMWEE  
BARONESS JONES OF MOULSECOOMB  
BARONESS LISTER OF BURTERSETT

23 Insert the following new Clause –

**“Immigration detention: removal from association**

- (1) Any affected person detained in a removal centre must not be involuntarily removed from association unless it is –
  - (a) reasonably necessary to do so to protect that person or another person from immediate harm; and
  - (b) for no longer than is necessary for this purpose and, in any case, for no longer than 24 hours.
- (2) In this section –
 

“affected person” means any person whose rights are affected by repeal of legislation by virtue of this Act;

“removal from association” means any restriction on a person associating with others that is not common to all persons then detained at the same removal centre, including but not limited to removal from association under rule 40 of the Detention Centre Rules 2001 (S.I. 2001/238) or being put in temporary confinement under rule 42 of those rules.”

**Member’s explanatory statement**

*This amendment seeks to abolish the use of segregation – being detained apart from other immigration detainees – for immigration detainees affected by this bill, except in exceptional circumstances that are listed.*

BARONESS BENNETT OF MANOR CASTLE

24★ Insert the following new Clause –

**“Recourse to public funds**

- (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 (S.I. 2016/1052);
  - (b) residing in the United Kingdom in accordance with a right conferred by or under any of the other instruments repealed by Schedule 1; or

**After Clause 4 - continued**

- (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) Regulations under section 4(1) may not be made until the Government has brought forward legislative measures to ensure that P can access social security benefits, where P is habitually resident, including repealing or amending the following provisions insofar as they relate to P—
  - (a) section 3(1)(c)(ii) of the Immigration Act 1971;
  - (b) section 115 of the Immigration and Asylum Act 1999;
  - (c) any provision in subordinate legislation, which imposes a “no recourse to public funds” condition on grants of limited leave to enter or remain; and
  - (d) any other enactment or power exercised under any other enactment, which makes immigration status a condition to access social security benefits.”

***Member’s explanatory statement***

*This new Clause seeks to restrict measures prohibiting access to public funds.*

THE EARL OF CLANCARTY  
LORD PATEL  
BARONESS BULL  
BARONESS HAMWEE

25★

Insert the following new Clause—

**“Reports on recruitment of international research and innovation staff; and free movement in arts and entertainment activities**

- (1) The Secretary of State must, within one month of the passing of this Act, lay before Parliament impact assessments of the ending of rights to free movement of persons under retained EU law on—
  - (a) the recruitment of international research and innovation staff to the United Kingdom, and
  - (b) musicians, actors and others involved in arts and entertainment activities, including broadcasting.
- (2) A report laid under subsection (1)(b) must—
  - (a) set out the routes by which EEA and Swiss nationals who work as musicians or actors or in other arts and entertainment activities, including broadcasting, can obtain permission to work in the United Kingdom following the commencement of this Act; and
  - (b) detail any agreements made by the Secretary of State and the EU concerning the continued ability of British musicians, actors and others involved in arts and entertainment activities, including broadcasting, to work in EU member states, for purposes of comparison.”

**After Clause 4 - continued**

LORD PADDICK

26★ Insert the following new Clause—

**“Amendment to the Immigration (Leave to Enter and Remain) Order 2000**

- (1) The Immigration (Leave to Enter and Remain) Order 2000 (S.I. 2000/1161) is amended as follows.
- (2) In article 8B(2)(a), after the words “is a national of” insert the words “any EEA State, Switzerland,”.

***Member’s explanatory statement***

*This new Clause would ensure that EEA and Swiss nationals have the same right to obtain leave to enter the United Kingdom by passing through an automated gate as nationals of Australia, Canada, Japan, New Zealand, Singapore, South Korea or the US.*

LORD MCCOLL OF DULWICH  
LORD ALTON OF LIVERPOOL

27★ Insert the following new Clause—

**“Grant of leave to remain for confirmed victims of modern slavery who are EEA nationals**

- (1) Immigration rules must make provision for leave to remain in the United Kingdom to be granted to a person aged 18 years or over when—
  - (a) the person is either a Swiss national or an EEA national who is not also an Irish citizen; and
  - (b) there has been a conclusive determination that the person is a victim of slavery or human trafficking; and
  - (c) subsection (2) applies and subsection (8) does not.
- (2) This subsection applies if the person meets one or more of the following criteria—
  - (a) leave is necessary due to the person’s circumstances, including but not restricted to—
    - (i) the needs of that person for safety and protection from harm including protection from re-trafficking;
    - (ii) the needs of that person for medical and psychological treatment;
  - (b) the person is participating as a witness in criminal proceedings;
  - (c) the person is bringing any civil proceedings including pursuing compensation.
- (3) Where the person is receiving assistance from a support worker, the recommendations of the support worker must be considered in assessing that person’s circumstances under subsection (2)(a).
- (4) Immigration rules must provide for persons granted leave to remain in accordance with this section to have recourse to public funds for the duration of the period of leave.

**After Clause 4 - continued**

- (5) Immigration rules must provide for leave to remain to be granted from the day on which the conclusive determination is communicated to a person for at least 12 months.
- (6) Immigration rules must allow a grant of leave to remain under subsection (5) to be extended subject to the requirements of subsection (7).
- (7) In determining whether to extend a grant of leave to remain under subsection (6), and the period of time for which such extended leave should be provided, the person's individual circumstances must be considered, and whether that person meets one or more of the criteria in subsection (2).
- (8) A person may be refused leave to remain if –
  - (a) the person is a sexual or violent offender; and
  - (b) the Secretary of State considers that the person poses a genuine, present and serious risk to members of the public.
- (9) If subsection (8) applies, the Secretary State must ensure the person affected is given reasons for the refusal in writing.
- (10) In this section –
  - “competent authority” means a person who is a competent authority of the United Kingdom for the purposes of the Council of Europe Convention on Action against Trafficking in Human Beings;
  - “conclusive determination” means a determination that a person is, or is not, a victim of slavery or human trafficking when the identification process conducted by a competent authority concludes that the person is, or is not, such a victim;
  - “EEA national” means a national of a State which is a contracting party to the Agreement on the European Economic Area signed at Oporto on 2 May 1992 (as it has effect from time to time);
  - “immigration rules” in this section has the meaning given by section 33 of the Immigration Act 1971;
  - “sexual or violent offender” means a person falling within the definition of a “sexual or violent offender” in section 327 of the Criminal Justice Act 2003 (section 325: interpretation) or who has been convicted of an offence under the law of another country which would have constituted an offence falling within those subsections if it had been done in England and Wales;
  - “victim of slavery” and “victim of human trafficking” mean a person falling within the definition of a “victim of slavery” or “victim of human trafficking” in section 56 of the Modern Slavery Act 2015 (section 56: interpretation).”

**Clause 5**

LORD FLIGHT  
BARONESS HAMWEE

28 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 of the European Union (Withdrawal Agreement) Act 2020 (interpretation).”

***Member’s explanatory statement***

*This amendment would ensure that the power to make regulations under subsection (1) can only be used in ways consistent with the UK’s obligations under the EU Withdrawal Agreement.*

BARONESS SHERLOCK

29 Page 4, line 19, at end insert –

- “( ) No regulations may be made under subsection (1) after the end of the period of one year beginning with IP completion day.
- ( ) In this section “IP completion day” has the meaning given in section 39 of the European Union (Withdrawal Agreement) Act 2020 (interpretation).”

***Member’s explanatory statement***

*This would provide that the regulation making powers under this section expire within one year of the end of the transition period.*

**Before Clause 6**

BARONESS JONES OF MOULSECOOMB

30 Insert the following new Clause –

**“Duty to commission an independent evaluation: health and social care sectors**

- (1) The Secretary of State must commission an independent evaluation of the matters under subsection (5) and lay a report of the evaluation before Parliament within one year of this Part coming into force.
- (2) The Secretary of State must appoint an independent person to undertake the evaluation (“the independent evaluator”).
- (3) In this section, “independent person” means a person who is independent of Her Majesty’s Government.
- (4) No person may be appointed under subsection (2) unless their appointment has been approved by –
  - (a) the relevant Scottish Ministers;
  - (b) the relevant Welsh Ministers; and
  - (c) the relevant Northern Ireland Ministers.
- (5) The evaluation under subsection (1) must consider an assessment of the effects of this Act on –
  - (a) the health and social care workforce;
  - (b) the efficiency and effectiveness of the health and social care sectors;

**Before Clause 6 - continued**

- (c) the adequacy of public funding for the health and social care sectors; and
  - (d) such other relevant matters as the independent evaluator deems appropriate.
- (6) In undertaking the evaluation, the independent evaluator must consult—
- (a) the Secretary of State;
  - (b) the relevant Scottish Ministers;
  - (c) the relevant Welsh Ministers;
  - (d) the relevant Northern Ireland Ministers;
  - (e) providers of health and social care services;
  - (f) persons requiring health and social care services;
  - (g) representatives of persons requiring health and social care services; and
  - (h) such other relevant persons as the independent evaluator deems appropriate.
- (7) The independent evaluator must submit the report of the evaluation to the Secretary of State.
- (8) A Minister of the Crown must, within the period of six months beginning with the day on which the report is laid before Parliament, make arrangements for—
- (a) a motion relating to the report to be debated and voted upon by the House of Commons; and
  - (b) a motion relating to the report to be debated and voted upon by the House of Lords.”

***Member’s explanatory statement***

*This new Clause would require an independent evaluation of the impact of the Bill upon the health and social care sectors across the UK to be produced and laid before Parliament. It would require that the devolved nations are consulted as well as other interested parties.*

**Clause 8**

BARONESS HAMWEE  
LORD KENNEDY OF SOUTHWARK  
BARONESS MEACHER

**31**

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.*

**Schedule 1**

LORD PANNICK  
LORD ROSSER  
LORD BEITH  
BARONESS HAMWEE

**32** Page 7, line 26, leave out sub-paragraph (2)

**33** Page 8, line 16, leave out paragraph 6

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

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MARSHALLED  
LIST OF AMENDMENTS  
TO BE MOVED  
ON REPORT

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*25 September 2020*

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