

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

COMMONS REASONS

[The page and line numbers refer to HL Bill 121, the bill as first printed for the Lords]

After Clause 1

LORDS AMENDMENT 1

1 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;
 - (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.”

COMMONS REASON

The Commons disagree to Lords Amendment 1 for the following Reason –

1A *Because Skills for Care and the Migration Advisory Committee already have the remit to report on matters relating to social care and the immigration system.*

Clause 4

LORDS AMENDMENT 2

2 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).”

COMMONS REASON

The Commons disagree to Lords Amendment 2 for the following Reason –

- 2A *Because the Commons consider it appropriate to ensure equal treatment of family members of all UK nationals under the immigration system.*

After Clause 4

LORDS AMENDMENT 3

3 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, on notification by the local authority to the Home Office that they are such a child, must 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.
- (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).”

COMMONS REASON

The Commons disagree to Lords Amendment 3 for the following Reason –

- 3A** *Because local authorities are supporting children in care and those entitled to care leaving support to obtain UK immigration status under the EU Settlement Scheme.*

LORDS AMENDMENT 4

- 4** 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;

“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.”

COMMONS REASON

The Commons disagree to Lords Amendment 4 for the following Reason –

- 4A** *Because it would involve a charge on public funds, and the Commons do not offer any further Reason, trusting that this Reason may be deemed sufficient.*

LORDS AMENDMENT 5

- 5** 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.”

COMMONS REASON

The Commons disagree to Lords Amendment 5 for the following Reason –

- 5A** *Because it would involve a charge on public funds, and the Commons do not offer any further Reason, trusting that this Reason may be deemed sufficient.*

LORDS AMENDMENT 6

6 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.”

COMMONS REASON

The Commons disagree to Lords Amendment 6 for the following Reason –

- 6A *Because procedural safeguards already exist to ensure the lawfulness of the period of any detention.*

LORDS AMENDMENT 7

7 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*).”

COMMONS REASON

The Commons disagree to Lords Amendment 7 for the following Reason –

7A *Because procedural safeguards already exist to ensure the lawfulness of the period of any detention.*

LORDS AMENDMENT 8

8 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.
- (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 –

“(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.””

COMMONS REASON

The Commons disagree to Lords Amendment 8 for the following Reason –

8A *Because a detained person can apply for immigration bail at any time.*

LORDS AMENDMENT 9

9 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.
- (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).”

COMMONS REASON

The Commons disagree to Lords Amendment 9 for the following Reason –

- 9A** *Because the Commons consider it appropriate, once free movement ends, for EEA or Swiss nationals who are confirmed victims of modern slavery to be considered for a grant of leave in the same way as such victims who are not EEA or Swiss nationals are considered currently.*

Clause 8

LORDS AMENDMENT 10

- 10** 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.”

COMMONS REASON

The Commons disagree to Lords Amendment 10 for the following Reason –

- 10A** *Because it is consequential on Lords Amendments 6 to 8 to which the Commons disagree.*

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19th October 2020

PUBLISHED BY AUTHORITY OF THE HOUSE OF LORDS