

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

COMMONS DISAGREEMENT AND AMENDMENTS IN LIEU

[The clause, page and line references are to HL Bill 121, the bill as first printed for the Lords.]

After Clause 4

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during such time as the claim has been made to the Secretary of State and has not been granted, refused, abandoned or withdrawn.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 NON-INSISTENCE AND AMENDMENT IN LIEU

The Lords do not insist on their Amendment 4, to which the Commons have disagreed for their Reason 4A, but do propose Amendment 4B in lieu –

4B 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) The Secretary of State shall make arrangements to ensure that applicants receive a decision regarding their application under subsection (2)(b) 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 DISAGREEMENT AND AMENDMENTS IN LIEU

The Commons disagree to Lords Amendment 4B but propose Amendments 4C, 4D and 4E in lieu –

After Clause 2

4C Page 2, line 22, at end insert the following new Clause –

“Protection claimants: legal routes from the EU and family reunion

- (1) The Secretary of State must review, or arrange for a review of, the ways in which protection claimants who are in a member State are able to enter the United Kingdom lawfully.
- (2) For the purposes of this section a “protection claimant” is a person who –
 - (a) has made an application for international protection to a member State, or
 - (b) is not a national of a member State and is seeking to come to the United Kingdom from a member State for the purpose of making a protection claim.
- (3) The review under subsection (1) must, in particular –
 - (a) consider the position of unaccompanied children in member States who are protection claimants and are seeking to come to the United Kingdom to join relatives there, and
 - (b) include a public consultation on that aspect of the review.
- (4) The Secretary of State must, within the period of three months beginning with the day on which this Act is passed, lay before Parliament a statement providing further details about the review under subsection (1) and, in particular, about the aspect of the review described in subsection (3).
- (5) After the review, the Secretary of State must –
 - (a) prepare a report on the outcome of the review or arrange for such a report to be prepared, and
 - (b) publish the report and lay it before Parliament.

(6) In this section –

“application for international protection” has the meaning given by Article 2(h) of Directive 2011/95/EU of the European Parliament and of the Council on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted;

“protection claim” has the same meaning as in Part 5 of the Nationality, Immigration and Asylum Act 2002 (see section 82(2) of that Act);

“relative”, in relation to an unaccompanied child, means a parent, grandparent, uncle, aunt, brother or sister of the child;

“unaccompanied child” means a person under the age of 18 (“the child”) who is not in the care of a person who –

(a) is aged 18 or over, and

(b) by law or custom of the country or territory in which the child is present, has responsibility for caring for the child.”

4D Page 5, line 33, at beginning insert “Subject to subsection (1A),”

4E Page 5, line 34, at end insert –

“(1A) The following provisions of section (*Protection claimants: legal routes from the EU and family reunion*) come into force at the end of the period of two months beginning with the day on which this Act is passed –

(a) subsection (4);

(b) subsections (2) and (6) so far as relating to subsection (4).”

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