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GENERAL COMMITTEES

Public Bill Committee

IMMIGRATION AND SOCIAL SECURITY CO-ORDINATION (EU WITHDRAWAL) BILL

Second Sitting

Tuesday 12 February 2019

(Afternoon)

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Saturday 16 February 2019

The Committee consisted of the following Members:

Chairs: †Sir David Amess, Graham Stringer

† Badenoch, Mrs Kemi *(Saffron Walden)* (Con)
† Blomfield, Paul *(Sheffield Central)* (Lab)
† Brereton, Jack *(Stoke-on-Trent South)* (Con)
† Caulfield, Maria *(Lewes)* (Con)
† Crouch, Tracey *(Chatham and Aylesford)* (Con)
† Dakin, Nic *(Scunthorpe)* (Lab)
† Davies, Glyn *(Montgomeryshire)* (Con)
† Duguid, David *(Banff and Buchan)* (Con)
† Green, Kate *(Stretford and Urmston)* (Lab)
† Khan, Afzal *(Manchester, Gorton)* (Lab)
† Maclean, Rachel *(Redditch)* (Con)
† McDonald, Stuart C. *(Cumbernauld, Kilsyth and Kirkintilloch East)* (SNP)
† McGovern, Alison *(Wirral South)* (Lab)
† Maynard, Paul *(Lord Commissioner of Her Majesty's Treasury)*
† Newlands, Gavin *(Paisley and Renfrewshire North)* (SNP)
† Nokes, Caroline *(Minister for Immigration)*
Sharma, Alok *(Minister for Employment)*
† Smith, Eleanor *(Wolverhampton South West)* (Lab)
† Thomas-Symonds, Nick *(Torfaen)* (Lab)

Joanna Dodd, Michael Everett, *Committee Clerks*

† attended the Committee

Witnesses

Vivienne Stern, Director, Universities UK

Rosa Crawford, Policy Officer, TUC

Professor Dame Donna Kinnair, Acting Chief Exec and General Secretary, Royal College of Nursing

Gracie Bradley, Policy and Campaigns Manager, Liberty

Jodie Blackstock, Legal Director, Justice

Matthew Fell, Chief UK Policy Director, CBI

Caroline Robinson, Chief Executive, Focus on Labour Exploitation

Meri Åhlberg, FLEX Research Officer, Focus on Labour Exploitation

Public Bill Committee

Tuesday 12 February 2019

(Afternoon)

[Sir David Amess *in the Chair*]

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

Examination of Witnesses

Vivienne Stern, Rosa Crawford and Professor Dame Donna Kinnair gave evidence.

2 pm

The Chair: Colleagues, before we continue to take oral evidence, could we turn our mobiles phones off? I think only one went off this morning. I have checked mine. Representations have been made to me about tea and coffee. Unfortunately, until the Panel of Chairs, under the excellent chairmanship of Sir Lindsay Hoyle, changes its view, I am afraid only water is allowed—and we are not even in lent.

We will now hear oral evidence from Universities UK, the Trades Union Congress and the Royal College of Nursing. We have until 3 o'clock to take evidence from these good people. Would the witnesses kindly introduce themselves?

Professor Dame Donna Kinnair: I am Dame Donna Kinnair, acting chief executive of the Royal College of Nursing.

Rosa Crawford: I am Rosa Crawford. I cover migration policy at the Trades Union Congress.

Vivienne Stern: I am Vivienne Stern, director of Universities UK International.

The Chair: Thank you very much. Professor, you may have to project your voice.

Professor Dame Donna Kinnair: I will try.

The Chair: That is better.

Q109 Afzal Khan (Manchester, Gorton) (Lab): I thank all three of you for coming today. I will start with the TUC, although I will probably bring all of you in later down the road. What in the Bill do you see as a threat to social security or as increasing the potential for exploitation?

Rosa Crawford: The TUC is very concerned that the Bill opens up a wide scope for increased exploitation and insecurity among not only European Union citizens in this country, but UK citizens abroad. To focus on the first part of your question, we are worried that the legislation, by removing EU rules on social security co-ordination, paves the way for the Government to bring in plans to restrict EU social security entitlements for EU citizens, such as jobseeker's allowance.

We have also seen in the White Paper plans to bring in an immigration health surcharge on EU citizens. From a welfare point of view, we are very concerned that that will mean 3.8 million citizens facing increased poverty and having to pay health charges. The TUC absolutely opposes the immigration health surcharge both for EU citizens and for all migrant workers.

Also, in the context of the Brexit negotiations, it seems reckless to suggest that we will introduce restrictions on EU citizens claiming social security entitlements here in the future when we know that more than 1 million British people live in the EU, many of whom now claim pensions, or will do soon. It is expected that EU countries may well reciprocate, with restrictions on British citizens abroad claiming sickness insurance and unemployment insurance and on claiming their pensions abroad, which is obviously a huge injustice. People have paid all their lives in one country and expect to be able to claim in another. We are very worried about the increasing social insecurity and the welfare repercussions for British people abroad.

On the second half of your question, on exploitation, we have said that the Bill will not only make life harder for EU citizens and workers in this country, but have the effect of making conditions worse for all workers. We say that because, by ending EU rules on free movement, and the right to change employers freely that comes with that, the Bill also paves the way for a more restrictive work visa regime, as the Government outlined in the immigration White Paper. What we have seen of those proposals is a recipe for increasing worker vulnerability.

We know that time-limited visas of the kind the Government have said they want to introduce—specifically the 12-month time-limited visa for low-skilled workers—would increase worker vulnerability exponentially by limiting people's legal status in a country to their employment. If workers have a limited time to move from one employer to another, we know that will be an incentive for them to stay in abusive forms of employment, because of the difficulty of getting another legal form of employment.

If workers leave an abusive employer and cannot find another, legal form of employment, they become undocumented workers and, under the terms of the Immigration Act 2016, they are committing a criminal offence by working. That means that if they are then abused in an undocumented form of employment and go to the authorities, they could face a jail term and deportation as a result of reporting abuse.

We at the TUC are absolutely opposed to those measures, because they just encourage exploitation. As I said, they make it easier for bad employers to use irregular migrants or those with question marks about their immigration status, who accept lower conditions and undercut UK workers on terms and conditions and on pay. We already see that happening in agriculture, distribution and some sections of cleaning and care. The Bill will make it easier for that exploitation to happen, which is why we are calling on MPs to oppose it.

Q110 Afzal Khan: What protections are needed to make sure that the Government's proposed seasonal agricultural workers scheme and temporary 12-month work visas do not lead to exploitation?

Rosa Crawford: The TUC has said that the Government should scrap all the proposals in the Bill and that we should instead continue to have the current system in place for EU workers to come here, work freely and have all the legal protections in place. For any temporary visa migration system, as I said, time-limited visas bring

the inherent risks that workers will face further exploitation because their condition of employment is linked to their legal status in the country.

An important change that would mean that all workers were less at risk of exploitation would be to make sure that workers, regardless of immigration status, could enforce their employment rights. That is in line with the International Labour Organisation's recommendations. Employment rights are human rights—it is not a crime to work and it should not be a crime to try to claim your right at work. An important step would be to roll back the provisions in the Immigration Act 2016 that criminalise undocumented working. As I said, we have grave concerns about the introduction of any temporary visa scheme for EU citizens, because it would just increase exploitation and make it easier for bad employers to commit undercutting.

Q111 Afzal Khan: The next question probably applies, in different parts, to all three of you. What experience do you have with the current system for non-EU migrants, and what do you make of the Government's proposals? I would particularly like for Universities UK and the Royal College of Nursing to comment on the current tier 2 route, and for the TUC to comment on the proposed 12-month temporary visas.

Vivienne Stern: Perhaps I could start with a comment on the tier 2 route? For a long period, we have had some concerns about the way that the visa regime is working for universities for non-EU nationals, particularly the compliance system, the burdens of the compliance system and the overall effect on the attractiveness of the UK as a place to come and work. The extension of that regime to European economic area nationals raises some significant challenges because of the dependence of universities on EEA workers in some areas; because of the really rather significant increase in the compliance burden that could result—although I understand that there may be opportunities to think about how that can be reduced—and because of the impact of the proposed salary threshold on universities' ability to recruit in some occupations where it has historically been quite difficult to fill roles with UK-domiciled workers.

Professor Dame Donna Kinnair: We would add to that. We think that we, as a country, are dependent on nurses coming from overseas, so we are absolutely dependent on overseas workers. We know that the impact of the threshold would damage our profession if it were applied to it, because its emphasis is on "Agenda for Change". The £30,000 is an arbitrary figure and we do not understand where it has come from. Most skilled nurses that come into the country from overseas are not getting that.

We know that there have been some exemptions, but the whole process is arbitrary and we think that it would impact negatively on the workforce on which we are highly reliant. The nursing workforce are one of the major planks that this Government are using to fill shortages in the nursing profession, particularly in social care. It is highly important that the unintended consequences do not apply to the profession, because otherwise we will not have the people to care for our patients.

Q112 Afzal Khan: Can I ask the other two witnesses to comment on the effect that the £30,000 minimum would have on their sectors and members?

Rosa Crawford: The TUC is very concerned about the impact of the £30,000 threshold. We are concerned about it now—it applies to non-EU workers—and applying it to EU workers would have a devastating impact on many sectors. The Government estimate that 80% of EU workers would fall below the threshold. It is not only nursing and other parts of the health service, but distribution, hospitality and many parts of industry, that are heavily dependent on EU workers. There would be a really negative impact on those workers if that threshold was introduced.

The TUC is saying that, in the long term, there needs to be action on pay so that more workers receive a better settlement. The Migration Advisory Committee has suggested that this threshold would be an incentive to improve pay, but unfortunately that is not what we have seen. The pay cap has been in place for seven years, and we are only just moving out of that. The TUC is still calling for a fully funded settlement to ensure that workers are decently paid and that their wages keep up where they have fallen behind for the last seven years. We have not yet seen that.

Unfortunately, there are not enough employers in the private sector paying workers decently, so many million workers are still in insecure contracts and are not being paid a living wage. We want action on pay alongside action to ensure that the workers we need now to fill the critical shortages that Donna has talked about can come in. We need not to have the £30,000 threshold, and we need serious action on pay in the public sector and key parts of the private sector to ensure that everybody is treated decently and that migrant workers and UK workers receive decent pay for their work.

Q113 Maria Caulfield (Lewes) (Con): Professor Kinnair, the chair of the Migration Advisory Committee gave evidence to us this morning, and he said that he did not feel that immigration should be used to deal with staff shortages. He argued that we should be paying people significantly higher wages. Is it not true that the RCN should be lobbying for nurses' pay, rather than trying to keep wages down by promoting immigration to fill the gaps?

Professor Dame Donna Kinnair: You will have seen that the RCN has been lobbying for an increase—we lobbied long and hard on "Scrap the Cap" for nurses—but we are where we are. We have a shortage of 42,000 nurses at the moment, and it is predicted that it will rise to about 100,000 in the next 10 years. Those are people who look after our patients. We are where we are.

Of course we need to increase the domestic supply of nurses, and that includes paying them appropriately. We fully support that, and we have been lobbying on that basis. However, the people who gave evidence to the Select Committee about the Government's plans talked about three areas: international recruitment, return to practice and retention. We know that you cannot have a nursing workforce fit for the needs of the population of this country unless you increase the domestic supply. As you will have heard, we have been lobbying up and down the country. Unless we get the right staff in the right organisations, we will also seek legislation on staffing. We know that if we do not have the right number of people, care falls, and that is damaging to our patients.

In summary, we are lobbying. We do not understand the proposal about low-skilled workers, because who in nursing is a low-skilled worker? What does that mean? The 12-month visa does not allow continuity of care, because by the time someone has got to grips with the culture of this country, they are ready to go. It is also contrary to people being able to bring their dependants into the country. Many nurses have families. Are we going to split up families? Are we asking them to leave their children while they come and provide care for the UK population?

Q114 Maria Caulfield: I have a follow-up question on that. This Bill is about ending freedom of movement for EU workers—EU nurses and midwives. The latest figures from the Nursing & Midwifery Council show that the greatest increase in the number of nurses registering with it has come from non-EU nurses—2,808—so there is clearly a group of nurses from outside the EU who want to register and work here, but it is difficult for them to do so because of the restrictions in place. Do you welcome the level playing field that would enable nurses from outside the EU to come and work in the NHS as easily as EU nurses and midwives can do currently?

Professor Dame Donna Kinnair: We welcome the fact that there is one system. The less complex a system is, the better it is, because people can navigate it. It has been a particular Government intention to turn to non-EU nurses, and once we knew that we were coming out of Europe, they sought to draw in nurses from outside the EU. We have concerns because we believe in ethical recruitment. We do not believe that we should be raiding countries that require their nurses, despite the risk of not increasing our domestic supply.

Q115 Afzal Khan: May I ask Universities UK to comment on the £30,000 minimum income threshold?

Vivienne Stern: For the university sector this is primarily a question of access to specific sorts of skills, and competitiveness. Overall, almost a quarter of academic staff in the university sector come from outside the UK, and in some disciplines and roles the reliance is much greater. EEA nationals make up 11% of all staff in universities, and they comprise 17% of academic staff. For staff on research-only contracts, that figure is 27%. In particular subject areas the concentration of EEA nationals can be even higher, particularly in science, technology, engineering and mathematics, as well as areas such as economics, where more than 30% of academic staff come from outside the UK.

Universities require specific skills, sometimes at relatively short notice, and the pool of talent is geographically distributed in some funny way. For example, the University of Cambridge has a world-leading strength in Arctic and Antarctic research, and it requires a pool of technicians who are able to analyse certain sorts of geological data. Quite often, those teams of individuals are deployed at relatively short notice when the climate conditions are right and boats are available, and it all comes together at the last minute. A group of individuals in Italy possess those skills, and historically Cambridge has called on them, and recruited from Italy to staff up those teams when they need those skills. That does not mean that over time we could not generate our own labour force with those specific skills, but in the short term if we moved from one regime to another, would institutions simply be unable to access the specific skillsets they need for one reason or another? Would they be less able to compete effectively and perform their research because they are constrained in that regard?

Overall, our particular concern relates to staff in technician roles, 63% of whom earn below the £30,000 threshold. That is why we propose that the Government should consider a lower threshold. We would like to suggest £21,000 as the level at which the majority of staff—particularly in those technician roles—will be able to continue to come to the UK. That would be a compromise. We also suggest that for staff whose jobs fall under the shortage occupation list there should be no salary threshold. As others have argued, a salary threshold is not a good proxy for skill level.

Q116 Afzal Khan: The NHS and universities were both part of the pilot for EU settled status. What feedback have you had from your members on issues with that system so far?

Vivienne Stern: My concern right now is the low level of take-up of that scheme. I think the last I heard was that the Department for Education estimated that something like 20% of the staff who should have gone through that process had done that, so for us right now, there is a communication effort to make sure that staff are aware of the scheme and how to apply. There were some early glitches. There was a bit of frustration about the app in the very early days, but I think those problems were pretty swiftly resolved, and I am not aware of any significant concerns about the operation of the scheme.

Q117 Jack Brereton (Stoke-on-Trent South) (Con): I have a few questions, which I want to put first to the TUC representative. You talked about having a system that would allow EU citizens similar access to the UK as they enjoy now. How do you think that that would square with the referendum result in 2016, and the clear indication that people wanted to end freedom of movement?

Rosa Crawford: I think you can take many things from the referendum result in 2016. What is clear is that we need working people to not suffer as a result of that referendum result. As I have outlined, the provisions of the Bill make it easier for bad employers to use one group of workers to undercut other groups of workers, at the cost of everybody's rights. We want a Brexit deal that ultimately delivers ongoing protections for UK workers at EU levels of rights, as well as tariff-free, barrier-free trade, and that ensures that there is no hard border between Northern Ireland and the Republic. For us, probably the best way to achieve that at this stage would be ongoing membership of the single market and a customs union.

Q118 Jack Brereton: So your view is that free movement should continue.

Rosa Crawford: We want the provisions in place to make sure that we get that kind of Brexit deal. To have the deal that we think would be the best for working people, we would need to follow the rules of the single market, which needs rules that are very close to, if not approximating to, free movement.

Q119 Jack Brereton: My second question is to the professor. We heard evidence this morning that there is on average a lower proportion of EU workers in the

NHS and the care sector than in other sectors, so do you think that ending free movement would have such a significant effect on the NHS and the care sector?

Professor Dame Donna Kinnair: We have a large proportion of EU workers; 10% to 11% of nursing workers are from the EU currently, and with a backdrop of 42,000 vacancies in nursing, losing any nurse is a problem, so this does have unintended consequences, but what is more, we would be quite concerned about some of the powers that the Bill gives to Ministers. What we want is somebody scrutinising the unintended consequences of the Bill.

Q120 Jack Brereton: The key point that I was trying to understand was: would changing the ability of new nurses to come here from the EU have an impact on the NHS? I was not talking about the ones who are already here.

Professor Dame Donna Kinnair: It has an impact, because actually that has been one of our policy planks, hasn't it? Instead of growing our own domestic supply, we have relied on international recruitment, so whether we are talking about people from the EU or outside the EU, anything that inhibits that will impact on our ability to deliver care to the people of this country. It has been a major plank of policy that instead of growing our domestic supply, there has been reliance on that by successive Governments, so of course there will be unintended consequences for the care we are able to deliver to meet the needs of our population.

Q121 Kate Green (Stretford and Urmston) (Lab): I have two or three questions, probably mainly for the TUC. Again, they are about the £30,000 threshold. In Greater Manchester, for which I am an MP, the average salary is quite a bit below £30,000, and that will be true in a number of other parts of the country, too. We also know that younger workers and women are likely to be on lower salaries. Does the TUC have a view on whether there should be different thresholds for different industry sectors, different workers or different geographies? Perhaps Vivienne and Donna would also like to reply.

Rosa Crawford: It is important to highlight the vulnerable groups that would be particularly negatively affected by the £30,000 threshold. Of course, women and other groups that are already marginalised are likely to become more marginalised by that threshold, and caught in it.

Regarding your question about the specific thresholds that we would want to set, as I hope my earlier question suggested, the TUC is calling for a future immigration policy that sits with an overall Brexit deal that delivers for working people. For us, that would mean a policy that does not introduce additional restrictions, but rather promotes the rights of all workers. It would have stronger domestic enforcement and stronger regulation of the labour market, which is an important point to highlight, because undercutting is taking place right now. We are well aware of that, and we feel it fuelled some of the insecurities that were taken advantage of during the Brexit referendum. However, it is about domestic labour market reforms and enforcing additional rights, rather than a differentiated migration regime.

We want to address the problems with the current regime, such as the thresholds that are limiting recruitment from outside the EU, and where there are insecurities or certain visas for non-EU workers, such as overseas domestic workers. We would not want anything that narrows down EU citizens' ability to come into the country, because of what that would mean for overall rights and our overall prospects for a Brexit deal.

Vivienne Stern: There is an argument for differentiating by occupation and by geography, but the problem is that if we introduce a system that is so nuanced, it becomes difficult to explain to people and operationalise. We are really quite concerned about the bureaucracy that will be associated with moving from a system in which, frankly, we do not have to worry about these individuals from a compliance point of view, and they do not have to worry too much about the requirements of applying for a visa, to one in which we have to explain to EU nationals what this all means and help them through the process, just as we do for non-EU nationals.

There is an argument for simplicity, which is why we decided that our position would be to suggest a lower threshold overall. However, the point you make about the potential for this system to be unintentionally discriminatory by gender is an important one. I imagine that we will come on to talk about the impact that this will have on students. One of the arguments we have made in relation to those students who want to stay and work in the UK on the tier 2 regime is that if you are in the north of England and you happen to be a woman, you quite often do not meet the minimum required salary threshold. It is not a policy that is intended to be discriminatory by gender, and you can say that it is not the Government's fault that there continues to be a gender pay gap—it is a wider issue—but none the less, if this policy does not address that issue, that is its effect.

Q122 Kate Green: And your suggestion for addressing it is to lower the threshold.

Vivienne Stern: Overall, yes.

Professor Dame Donna Kinnair: We would argue that it is probably not essential to use salary as a level of determining skill. It does not really work, because nurses will be highly skilled, but £30,000 is neither here nor there. The £30,000 level features too heavily in the debate, and there are better mechanisms for determining skill.

Q123 Kate Green: What would you suggest would be more useful in identifying the roles that need to be filled? How would we measure that?

Professor Dame Donna Kinnair: I think that we know what we need in this country. We know that we need nurses, so it might be that we are looking for that skill, as opposed to an arbitrary salary figure.

Q124 Tracey Crouch (Chatham and Aylesford) (Con): My colleague asked part of the question that I wanted to ask, regarding comments made this morning by the Migration Advisory Committee about EEA migrant workers making up a lower fraction of care assistants and NHS workers than the national average. Did you say that the percentage of nurses from the EEA is 10%?

Professor Dame Donna Kinnair: My understanding is that roughly 10% come from the EU.

Q125 Tracey Crouch: Is that 10% of the entire workforce?

Professor Dame Donna Kinnair: It is 10% of the Nursing and Midwifery Council's register. We would be using the NMC register. I think that is right.

Tracey Crouch: It would be helpful if we could have some clarification.

Professor Dame Donna Kinnair: We can write to you with that clarification, but my understanding is that 10% of people on the Nursing and Midwifery Council's register are from the EU.

Q126 Tracey Crouch: Do you know what percentage of your overall workforce is from overseas?

Professor Dame Donna Kinnair: I thought it was 17%, but I can write to you to clarify that.

Q127 Tracey Crouch: That would be enormously helpful. I have a very quick question for Universities UK. The Home Secretary said explicitly on Second Reading that there would be no cap on student numbers. Did that provide you with the reassurance you were looking for in terms of students?

Vivienne Stern: Up to a point. Ministers have been saying for many years that there is no cap on the number of students who can come to the UK under a tier 4 visa. That is not actually the problem. The things that have been standing in our way are features of the visa system that, frankly, make us uncompetitive compared with some of the other major destinations that international students choose to study in. A visa system that, for example, restricts the opportunity for international graduates to stay and work in the UK for a little bit post-graduation is, frankly, not that appealing when you compare it with the opportunities offered by Australia, Canada and the US.

There are other things the Government could do to make the system more welcoming. There have been some really quite positive signals in what Ministers have said recently about a willingness to look at the compliance system. We hear from prospective international students that they are put off by a feeling that the immigration system treats them with suspicion from the start, so we should look at things like credibility interviews and how they operate, decision making by entry clearance officers, and some of the compliance requirements on institutions, which require them to interact with international students in a way that can be rather off-putting.

All those things should be looked at, if for no other reason than that there are huge opportunities for the UK as one of the most popular destinations for international students. We are in a hugely privileged position, and at this particular moment in our national history we have the opportunity to open our doors to people at a very early stage in the development of their professional lives, to establish strong bonds and, in many cases, to leave a lasting legacy of affection for the UK. We could do with more of that, not less.

Education is also a hugely important source of export earnings for the UK. Although international students have value far beyond their financial or economic value to the UK, it is not trivial that this is an increasingly important export sector. The Government's figures point to quite significant growth in our export earnings from education, which are now around £19 billion a year. We should be pursuing that opportunity, rather than tripping over our own feet. The new international education strategy announced in January is a great opportunity for the Government to get their policy aligned with their international ambitions. The visa system has to be part of that. There are some modest steps in the right direction, including in the White Paper, but we really think the Government should go a bit further than that.

Q128 Paul Blomfield (Sheffield Central) (Lab): On that theme, I think I am right in saying there are around 450,000 international students in the UK. What proportion of those are from the EU?

Vivienne Stern: There are 442,000 students from all around the world, and just less than a third of those are from the EU. As a proportion of our total student population, that is around 6%. It is a source of significant concern that that enormous pool of talent will find it a bit more difficult to come to the UK after our departure from the European Union.

Q129 Paul Blomfield: Vice-chancellors I have talked to across the sector suggest that universities might be planning to lose up to 80% of EU students. Is that a figure that strikes a chord with you?

Vivienne Stern: It is hard to predict. We can see a certain pattern in the response by EU students to previous changes in the UK. For example, with the increase in the fee from £3,000 to just over £9,000, you saw the numbers of EU students decline, and they took quite a while to bounce back. That indicates that there is a certain price sensitivity among EU students. They also have a huge amount of choice in relatively close geographic terms in Europe—other high-quality destinations that they could choose over the UK if we seem to make it difficult for them to come.

My long-term prediction, which is not shared by all our university vice-chancellor members, is that because the UK remains a first or second-choice destination for students who are globally mobile in many countries around the world, over time, we will work back to a position where we are still a very attractive destination for EU students. My real concern is what happens in the short to medium term, where we go from being very attractive, and it is very easy to come to the UK, to putting in place higher barriers in the form of a new visa regime. We could see a significant decrease as a result of that, at least in the short to medium term.

The fundamentals are strong, however. We have a high-quality system, and we offer something that is valuable in the long term. That is what we have to work to communicate to international audiences.

Q130 Paul Blomfield: May I return to the question of academic staff? I asked vice-chancellors in Sheffield how many early career academics could not be here if they were subject to the non-EEA immigration rules. They said that something like 600 would have no right to be in the country under that regime. Does that reflect the picture across the country?

Vivienne Stern: To take one group as an example, if you look at staff who are on research-only contracts, 27% are from the European Union. About 8% of them earn less than £30,000. It is not a huge proportion—those are probably people who are very early in their research careers—but it would none the less be a loss to the UK, if you imagine that those people might otherwise have stayed and made their careers with us. Although numerically it may not seem a significant proportion compared with technicians where the proportion is 63%, it should still be a matter of concern.

The other thing, which is perhaps not a matter for this Committee, is that we do well in competitive grant competitions—for example, in competitions for European Research Council funds. I think more than half those awardees are not actually from the UK, but are European nationals who have decided either to bring their grant to the UK or apply from the UK for that grant. If we lost those individuals—if they decided to apply for those same grants from a German or French institution—it would diminish our research base. So it is not necessarily just a matter of the numbers of individuals who might not be able to get visas. There is a knock-on effect that is quite difficult to predict.

Q131 David Duguid (Banff and Buchan) (Con): There has been a great deal of comment about the inclusion of students in the net migration statistics. Does Universities UK have any evidence to illustrate the impact of overseas students on healthcare provision, public transport and that kind of thing?

Vivienne Stern: We have done a bit of analysis as Universities UK on the economic impact of international students. The headline figure is that those students contribute about £29 billion to the UK economy through various mechanisms and create 200,000 jobs—I will write to the Committee with the figures, because I am concerned that I will misquote them.

They have a significant effect not only directly on institutions but on the many parts of the UK economy that they touch, such as taxi drivers, corner shops, bars and restaurants. The university sector is distributed right across the UK. There is almost no part of the UK that does not have a university in some geographical proximity. If you think of it as an industry, it is not one that is concentrated in London and the south-east.

I was in Paisley recently and I went to visit the University of the West of Scotland. I got off the train and the thing that pottered through my mind was, "Why on earth would you not want international students coming to Paisley, spending money in the local economy, enjoying Scotland, going and spending money on the west coast—all the things that those individuals can do in terms of attracting their friends and family to come and spend some time with them?" I think there is really good reason to think that this is not just special pleading for universities; these are attractive individuals for a much broader range of reasons.

David Duguid: I thank you for your response; I am only sorry that Mr Newlands was not here to hear you refer to his hometown.

Q132 Alison McGovern (Wirral South) (Lab): Professor Kinnair, to begin with, this morning we heard from Migration Watch and I asked them what they thought the consequences might be of restricting immigration to this country in the way that they say they have ambitions to achieve, and what that would do to our labour market and the dependency ratio, which is the ratio between the number of people working and the number of retired people. The response was that, of course, the retirement age would need to rise in line with their proposals.

Professor Kinnair, could you just give us what you think the view would be from the nursing profession if the Government, in response to the policy choices we are making now, were required to raise the retirement age to, say, 70?

Professor Dame Donna Kinnair: I will just put in that 11% of our registered nurse workforce in the UK are non-EEA nationals and 5% are EEA nationals. So that is a combination of about 90,000 to 120,000 nurses.

On the impact of raising the retirement age for nurses, nursing is a very physically demanding job. There is an anticipation—people are already talking about this, but I suspect we will have nurses on zimmer frames pushing patients on zimmer frames if we continue to carry on in this manner. Nursing is a very physically demanding job and you also have to be mentally on the ball to give the drugs and the care; it is quite a high-pressured environment. So it sounds very easy—"Let's just raise the retirement age"—but people physically need to have the stamina to be able to deliver the care to patients, whether it is in their homes or in hospitals.

My view, and I have written about this, is that raising the retirement age is something we do with great caution for the nursing community. One plank is bringing back people who are retired to fill the gaps we currently have, but that can only suffice for a small percentage, because nurses, too, are subject to the long-term conditions and all the other things that the general population is prone to.

Alison McGovern: Probably more so, because they do a physical job.

Professor Dame Donna Kinnair: Yes.

Q133 Alison McGovern: Rosa, any thoughts on this particular subject?

Rosa Crawford: I think this just underlines the lunacy of a policy that is about making life harder for the people living here—the workers living here—by suggesting there are additional burdens that they will have to bear, such as working longer hours, or there is the suggestion that we are always presented with, "Oh, why don't local people want to be the ones living in caravans, five of them living in a caravan, going to pick strawberries from 5 am?" I wonder why people are not attracted to that.

As for the suggestion that there should be more burden on UK workers to do more undesirable work, working in worse conditions, rather than having an immigration policy that supports a joined-up economic and industrial strategy—that strategy is really, to us, what we need and the approach that we need to take. Anything else is essentially pitting worker against worker, saying, "UK workers should pick up the slack and we don't want the non-EU workers"—or the EU workers now—"to come here." To us, that is continuing the hostile environment.

What we actually need is a policy that promotes good jobs and good conditions for all workers, and a route to get the workers that we need from outside the country, when there are shortages. However, to build on the discussion earlier, the TUC is calling loudly for there to be an increase in training and in funding for that training. The cutting of the nursing bursaries and also bursaries to other allied health professions has had a really serious cost on the number of workers being trained for those professions. There is a shortfall of about 5,000 people taking up training places for nursing, and in education it has also had a big impact. In sectors such as agriculture, where employers say they face shortages,

we are having no increase in funding for skills and apprenticeship training. The onus is also on employers to increase the amount of training.

This all suggests that immigration policy cannot be considered in a vacuum. It needs to be connected with a skills policy, which unions are very keen to be involved in. You are probably aware of Unionlearn. Trade unions are involved with a number of employers across the country delivering courses for thousands of people and developing those skills, but it is not happening enough. Further restrictions on migration are just a form of economic self-harm and will impact on UK workers worse and increase the anxieties that they already have.

The Chair: Colleagues, we have under 15 minutes left and at least four more people wanting to ask questions and I want to allow time for the Minister.

Q134 Mrs Kemi Badenoch (Saffron Walden) (Con): I want to pick up on the point just made by Rosa Crawford about UK citizens not wanting to do undesirable work and the need for migrants to do it. Do you think that sort of rhetoric is appropriate—that certain types of job are not good for UK citizens and we need other people from elsewhere to come in and do them? Do you not think that creates a perception that dirty, tough and difficult jobs are for other people and not for us? I say this as an immigrant myself.

Rosa Crawford: We have always said as a union movement that we stand for workers from all countries. We do not believe any workers should be working in degrading or exploitative conditions. That is why I say it is very important that the law allows workers from all countries, regardless of immigration status, to claim those employment rights.

Unfortunately, we have seen the deregulation of the labour market. In agriculture, the example we have been talking about, there used to be an Agricultural Wages Board that provided a floor level of conditions and pay in that sector. That was abolished under the coalition Government and Unite, the union that represents workers in the agricultural sector, has said since that has been abolished, there has been a proliferation of precarious contracts, illegal forms of contract, people in very exploitative conditions, people not receiving the pay they should, and people often not being paid the minimum wage in certain cases.

That form of labour market regulation, the Agricultural Wages Board, is just one example of how the removal of domestic employment protection results in more exploitation and an increase in the number of migrant workers employed in that sector. We know migrant workers are particularly vulnerable to taking up those forms of employment, or ending up in them, often because they need to secure an income quickly, because they have paid money to come to this country. Unfortunately, precarious jobs are the most likely type of job they are going to get, because those are the sectors of the economy that are expanding.

On average, if you arrive in this country needing a job quickly, you are probably going to end up on a zero hours or temporary contract or in a job with an illegal contract. Unfortunately, migrant workers are particularly likely to work in that sector. We have said that is absolutely unacceptable. We want good conditions in those sectors, for the migrant workers who come and the UK workers who are here already. If you improve conditions and pay, restore things such as wages councils, not just in the agriculture sector, but across the private sector, in hotels where—

Q135 Mrs Badenoch: I am going to stop you because you are not answering the question that I asked. I hear you on the discussion on labour market regulation, but that is something completely different. It was about the rhetoric which you just used, and perhaps you did not hear yourself when you said it. I am going to assume that you did not quite mean what you said, that undesirable jobs are for people outside this country.

Rosa Crawford: I absolutely want to correct that if it was ever the perception. We would say undesirable jobs are undesirable for all workers. No worker should suffer them. All workers deserve to work in dignity.

Q136 Eleanor Smith (Wolverhampton South West) (Lab): Under the proposal in the White Paper, the UK will move to a system where every single migrant entering as a student or under the skilled route from any country will need to be sponsored. There have been concerns about this will raise an additional burden on businesses, universities, the NHS, schools and charities. What are your views on this?

Vivienne Stern: Perhaps I can start. The cost of managing the compliance requirements for non-EEA students and staff for universities is about £66 million a year—a huge cost. I want to make it clear that universities are one of the biggest users of the immigration system and there has never been any suggestion from us that they should not be responsible for working to make sure that the visa system is not abused, but the cost is huge.

If we increase the number of individuals coming through that sort of system by adding EEA workers to the group of people that universities have to manage through the compliance system, the cost will increase, at least in proportion, unless something has changed. We have got a piece of work going on at the moment about estimating the cost of compliance to improve on that £66 million figure. When we have got the results of that, I am quite happy to write to the Committee with a sense of what we think the cost might be.

As I understand it, there is an opportunity now to try and refine the compliance system to make it easier for those sponsors to discharge their responsibilities without it being a massively burdensome and costly exercise, but also make it more appealing for people who are coming into the UK and experiencing it from the other side. I would like to add that the Home Office has said repeatedly that universities are highly compliant. There is a genuine desire to make sure the system is not abused, so I hope we can get to a position where it is a little bit lighter touch.

Q137 Stuart C. McDonald (Cumbernauld, Kilsyth and Kirkintilloch East) (SNP): Ms Stern, may I ask you first about the £30,000 threshold? In particular, let me take technicians, who you mentioned earlier, as an example. When Professor Manning or the MAC are challenged on this, they will say it is not just a £30,000 threshold, because you have this new starter salary of £20,800. Why does that not help answer the problems that you would have in attracting technicians?

Vivienne Stern: This is about the criteria you have to meet to have access to the lower threshold. The individuals I mentioned—the population of technicians whose salaries generally fall below the £30,000—would not qualify for the lower threshold level, which would apply, for example, to international graduates who were staying on in the UK for some time post graduation. There is probably a group in the middle who would qualify under those criteria for the lower threshold, but it will not address the bulk of the problem, where we have a large population of workers who would not qualify and yet will not make the £30,000 threshold.

Q138 Stuart C. McDonald: Thank you. You mentioned concern with the low take-up in relation to the settled status scheme. Do you worry about the implications of that if staff members do not make the deadline put in place by the Government and would you support any moves to scrap that deadline or make the system a declaratory one?

Vivienne Stern: We have not called for the deadline to be extended or scrapped. We feel that there is time for us to get the message out that these individuals need to apply for settled status and we are certainly working on that front.

Our bigger concern is about the possible difficulties created by the no-deal Brexit scenario and by the regime that the Government have set out for an interim arrangement, between the point of a no-deal Brexit and the implementation of the new immigration system, which is currently being consulted on. There is a very significant concern about the time limits that will apply to those individuals who, having arrived in the UK after 29 March or whatever the date of Brexit is, have to apply for the European temporary leave to remain. That will only be valid for three years. A student who is planning to arrive in the UK after 29 March can come for three months—they don't need anything for that three-month period. After that, we need something that gives people certainty that, if they are embarking on a programme that lasts longer than three years, they will not find they get towards their final year and, somehow, are not able to switch into a category that would allow them to remain in the UK.

It is that inability to say with certainty "Don't worry, you come, you've got a status that will see you through this programme, you can stay to the end" that is tripping people up. Also, we need to be able to say to people "This is a registration scheme. It is not something you apply for and maybe you get and maybe you don't." If you have arrived in the UK, and you have started a programme—maybe a Scottish programme that lasts four years—you need to know that you are not going to be kicked out halfway through. If the Government could give some attention to that, we would be grateful. It's not that we don't appreciate that three years is longer than the period that would be covered by the withdrawal agreement—we do—but it is a kink and it could be ironed out.

Rosa Crawford: May I add a concern that we have about the settled status programme from those who have already been through the process? Some people are finding that they do not have sufficient evidence from their national insurance records to prove that they have had five years' continuous residence in the country. Rather than settled status, they are receiving pre-settled status. The Government said that the intention is for pre-settled status to lead to indefinite leave to remain, but it is not a legally watertight guarantee, and we know from the Windrush scandal that any time there is a question mark over immigration status, it can, in the hands of the wrong employer, be used as a means to threaten or dismiss workers.

That is already a problem in the university and health sectors, and now we know that the third phase of the pilot is being rolled out across the economy. As I said, in many parts of the private sector, in distribution and hospitality, people often do not receive any employment contracts at all, so they struggle to provide evidence that they have five years of continuous residence. We worry that they might fall into a legal limbo in which they are unable to demonstrate their legal status, and potentially cannot claim their employment rights and are subject to further exploitation. We want that entire scheme looked at, and for the burden of proof to be taken away from the worker having to prove their five years' continuous residence, in a more all-encompassing process.

Q139 Nick Thomas-Symonds (Torfaen) (Lab): Professor Kinnair, going back to the issue of the £30,000 threshold, I remember your "Scrap the cap" campaign very well, which I and many colleagues supported. You have done a great deal of work trying to raise nurses' salaries, and I would be fully in favour of that. Is not the reality that at the moment there are 90,000 to 120,000 nurses from overseas in our NHS?

Professor Dame Donna Kinnair: EU and EEA.

Nick Thomas-Symonds: Yes, collectively. But if there was ever a measure that restricted the number of nurses coming from overseas, such as the £30,000 threshold, clearly that would have a detrimental effect on the NHS. It is as simple as that.

Professor Dame Donna Kinnair: It is as simple as that, given that one of our major policies is that we recruit from overseas rather than growing our own.

Q140 The Minister for Immigration (Caroline Nokes): Professor Kinnair, I have a question on shortage occupation lists and the removal of doctors and nurses from the tier 2 cap. Notwithstanding the £30,000 threshold, do you see the shortage occupation list and a lower salary threshold as a potential solution to that?

Professor Dame Donna Kinnair: I think it possibly would be a solution to that; I think you are right. But we have "Agenda for Change" for a reason: so that we have a national approach to salaries. Why would we then treat people coming in from overseas differently? We know that our salaries are not high enough to live on in this country. Why would we be starting to think that it is okay to lower it to £20,000, £18,000 or some arbitrary sum that people cannot live on in this country?

Q141 Caroline Nokes: I have a question for Vivienne. We know that last year the number of applications from international students rose by 9%. I want to clarify your comment that EU students have a lot of choice. We will agree on that. They can go all over the continent for their university education. The phrase you used was, "We seem to make it difficult for them to come". But we have free movement, so is that us—the Government—making it difficult for them, or is it the universities?

Vivienne Stern: With free movement there is a distinction between EU nationals and non-EU nationals. The 9% increase is in visa applications.

Q142 Caroline Nokes: It is, but we know that the numbers are up. You specifically referred to EU students and said that we make it "difficult for them to come". How?

Vivienne Stern: My comment about making it "difficult" relates to non-EU students. It refers to the visa system.

Q143 Caroline Nokes: So you were not talking about it in the context of EU students having a lot of choice?

Vivienne Stern: What I am suggesting is that should EEA nationals find themselves in a system such as the one that currently applies to non-EU nationals, we would be making it less attractive compared with the many other high-quality destinations they could choose within Europe, where there would not be such a visa hurdle.

Q144 Caroline Nokes: Can I just clarify that Universities UK has long lobbied for more generous post-study work visas. Those proposals are included in the White Paper. What calculations have you made on how many more students you expect to see on top of the 9% increase in visa applications we saw last year?

Vivienne Stern: The White Paper proposals are really welcome. It is great that the Government have acknowledged that we need to create more generous post-study work opportunities, and not only for Masters and PhD students—as recommended by the MAC—but for undergraduates. It does not quite achieve what we suggested needed to be achieved. I may betray my age by saying that this is a Cuprinol test question. When you are a student and thinking, "Do I go to the US, or maybe Australia or the UK", we believe you ought to look at the visa regimes—

The Chair: Order. I really am sorry; we needed a lot more time. On behalf of the Committee, I thank our three witnesses. We are very grateful for the evidence you have presented to us today.

Examination of Witnesses

Gracie Bradley and Jodie Blackstock gave evidence.

3 pm

The Chair: We will now take evidence from Liberty and Justice. I welcome our witnesses. We have until 4 o'clock for this session. Please both introduce yourselves.

Gracie Bradley: I am Gracie Bradley, the policy and campaigns manager at Liberty.

Jodie Blackstock: I am Jodie Blackstock, the legal director at Justice.

Q145 Afzal Khan: What concerns do you have about the Henry VIII powers granted to Ministers by the Bill?

Jodie Blackstock: At Justice we have deep concerns about the potential reach of clause 4, which provides extremely broad delegated powers to the Minister of State in connection with repeal of the current free movement provisions relating to EEA nationals. Of course the provisions have to enable the repeal of those measures after we leave the EU, but it is not at all clear from the Bill what is intended to replace them. We consider that a number of changes are necessary, and we will provide separate detail on those subsequently in our written evidence—I apologise for not having that before you now, but we will provide the detail this afternoon.

First, the primary policy aims ought to be stated on the face of the Bill in primary legislation, so that Parliament has the opportunity to scrutinise those principles and amend them as appropriate. Those provisions would be to enable the accrued rights of EEA nationals who currently have settled status in this country to remain and for the transitional provisions surrounding those rights to be introduced in a clear way. Currently, the Government have proposals on both issues, and we see no reason why they could not put them on the face of the Bill. I can come back to that in more detail.

Secondly, we consider that the delegated powers set out in clause 4 should be substantially limited. The memorandum on delegated powers that the Government have provided seeks to explain that the two key aims of that clause are to deal with technical amendments to remove references that are no longer appropriate to the EU from legislation and also to protect the accrued rights of EU and EEA nationals. If that is the intended aim, those can be the powers as set out in the Bill, and we would propose that it be constrained in that way, through a provision relating to technical amendments and a power to provide consequential amendments that will give effect to accrued rights.

In our view, there are additional consequences from that relating to section 3 of the Immigration Act 1971, which provides for the immigration rules. In these circumstances, which to a certain extent are unique and will create the biggest change to immigration policy since the Maastricht treaty in 1992, we suggest that the power to make those changes ought not to be left simply to immigration rules but should be set out in the Bill, or the use of section 3 of Immigration Act to do so should be specifically constrained as an alternative to the Bill. If you would like me to go into any of those points in a bit more detail, I can do so, but I wanted to set out our primary concerns about the way the delegated power operates.

Gracie Bradley: Liberty would echo those concerns. We are really quite concerned about clause 4, and particularly the fact that the purpose of regulations under the clause may be not just in consequence of the repeal of retained EU legislation relating to free movement, but in connection with that purpose. In our view, essentially any change to the immigration system for the foreseeable future will be in connection with the end of free movement, and therefore we are delegating a huge amount of power to the Secretary of State, effectively sidelining Parliament in a really significant policy change.

Q146 Afzal Khan: The Bill would bring EEA citizens under UK immigration law and into the hostile environment. What do you think the impact has been of the hostile environment thus far? What would be the effect of extending it in the Bill?

Gracie Bradley: The impact of the hostile environment has really been laid bare by the Windrush scandal, and I would like to set Liberty's comments in that context. We

have seen people who had a right to be here made destitute, losing their livelihoods, and potentially being unable to come back into the country that they have called their home for decades. Some people have died as a result of the stress.

That is the impact of the Windrush scandal, but of course the effects of the hostile environment are not limited to Windrush citizens; it reverberates among undocumented people more generally. Those impacts are to do with children being afraid to go to school because of data sharing between the Home Office and the Department for Education, and people, some of whom are supposed to be receiving palliative care, being charged tens of thousands of pounds for medical treatment. We have seen victims and witnesses of serious crime deterred from reporting those crimes to the police. The impact is not just on the fundamental rights of undocumented people; the impact is to warp our public services and turn our teachers and doctors into border guards.

More generally, we see an environment of suspicion towards anybody who seems visibly foreign or who is black or minority ethnic. That discriminatory effect has been evidenced by the research of the Joint Council for the Welfare of Immigrants into landlord checks. We see that landlords are less likely to rent to BAME people without a passport as opposed to white people. We have seen incredibly broad and harmful effects of the hostile environment on the rights of undocumented people, people with a right to be here, British citizens and our public services.

Our concern is that the Bill essentially hands Ministers a blank cheque to bring millions more people into that system while doing nothing to remedy the injustices that have been exposed. We recommend that the hostile environment be repealed and that vital safeguards are restored to the immigration system, such as data protection rights and legal aid, and that there is also an end to indefinite immigration detention.

Q147 Afzal Khan: On the question of indefinite detention, why have you proposed a 28-day limit on immigration detention? Why is that particularly needed in the context of the Bill?

Gracie Bradley: It is important to say first that the 28-day time limit on immigration detention is not Liberty's proposal. The Joint Committee on Human Rights proposed that back in 2006 or 2007. A joint inquiry by the all-party parliamentary groups on migration and on refugees, which I know some of you were involved with, also recommended a 28-day time limit on detention. Why do we think the Bill is the place to implement that time limit? Put very simply, the Bill will most likely make tens of thousands more people liable to deportation, because EEA nationals will come under the automatic deportation provisions in the UK Borders Act 2007.

We know that the Ministry of Justice, in response to a freedom of information request, said that it expects that up to 26,000 people per year could be liable to detention as EU nationals come under domestic immigration law. At the same time, a parliamentary question revealed that there has been no assessment of the impact of the Bill on the detention estate. Of course, we know what the impact of indefinite detention is on people. They tell us that it is traumatic. They tell us that the lack of a time limit in itself is traumatic, because they do not know when their detention will end.

Liberty is not alone in advocating for a time limit. The lack of a time limit has been criticised by the United Nations High Commissioner for Refugees, the Bar Council and the British Medical Association, and on Second Reading parliamentarians from across the House stood up in support of a 28-day time limit. Given that the Bill is very likely to make more people vulnerable to detention, now is absolutely the time to implement a time limit on detention for everybody and, indeed, to begin looking at taking deprivation of liberty out of the immigration system more broadly.

Q148 David Duguid: Either or both of you can answer this question. Is there any justification for creating an immigration system post Brexit that treats EU nationals better than those from the rest of the world? If so, how do you imagine that would be best achieved? If you think there is no justification, that is a reasonable answer.

Jodie Blackstock: It is not something that we at Justice specifically have an opinion on, other than to say that the arrangements that are created must ensure that the acquired rights that people currently exercise as a consequence of their movement between the UK and the EU are protected, and that the process that is decided for those individuals post exit needs to be subject to the scrutiny of Parliament and not decided simply through a delegated power without sufficient scrutiny. That is why we say the procedure ought to be encapsulated in the Bill through a requirement that such a policy must be subject to the scrutiny of Parliament.

There are two schemes that the Government have already implemented and will come to fruition once we leave: the EU settlement scheme for those who are already in this country and are requesting settlement, if they do not already have that status; and the proposal for temporary leave to remain for people coming into the country who wish to remain and work here. Given that one of those schemes is already in the immigration rules and the other is well advanced, so there must be policy for it, it seems to us entirely appropriate that the procedure should be laid before Parliament in the Bill and be subject to scrutiny, rather than simply left to a delegated power that does not provide you with the opportunity to debate the important issues concerning what preferential treatment EU nationals should be given.

Q149 David Duguid: But is it your view that EU nationals, because they are moving from a position of having freedom of movement to a future immigration policy of a different kind, should retain some preferential treatment over non-EEA migrants?

Jodie Blackstock: It is not a position that Justice specifically holds. Our concern is ensuring that the procedures are fair and appropriate, and, if it is the view of the country that EU nationals should have preferential treatment, that there is a procedure in place to enable them to obtain it. That should include a right of appeal—one that is clear and open and that they are able to use—which currently is not provided for in the EU settlement scheme.

Q150 David Duguid: Ms Bradley, does Liberty have a different or a similar view?

Gracie Bradley: Liberty would not really have a view, because we do not take a view on the immigration system in general. Our view would be that there should be minimum rights standards below which nobody should

fall, related to convention rights, protection from indefinite detention, data protection, legal aid, etc., but on people coming in and out of the country, salary thresholds and things such as that, we do not take a view.

Jodie Blackstock: The frustration with this Bill is that the question you are asking is entirely the right one, but it does not give you the opportunity to debate it, because it leaves the power to the Government to decide.

Q151 Stuart C. McDonald: Could I turn to you first, Ms Blackstock? You were talking about improving the settled status scheme and putting it in the Bill. Do you think that scheme should be a declaratory scheme or the one that we have now, where essentially you do not have any rights until you have applied under the scheme? Do you understand the question I am getting at?

Jodie Blackstock: I think so, but do elaborate a bit more to ensure that I am answering correctly.

Q152 Stuart C. McDonald: Sure. In evidence this morning, we heard concerns raised about the risk that tens of thousands, probably hundreds of thousands, of people will miss the deadline and in doing so will end up with absolutely no status and subject to all the hostile environment measures that we heard about earlier. If you make the scheme declaratory—I think that is the word that the Joint Council for the Welfare of Immigrants used—you are essentially getting that document just as evidence of rights that you already have thanks to the Bill, rather than having to apply before you have any rights. It would be somewhat similar to the permanent resident scheme we have now. Does that make any sense to you at all?

Jodie Blackstock: It does. There is certainly some sense in that argument. What it demonstrates is the difficulty of the gap that will be created with the repeal of these measures. Having a scheme that someone has to apply for means that they have to make that effort, and while their application is being processed, their status is uncertain. Indeed, it may be processed in error, which requires an appeal right, during which their status is also uncertain. We suggest that the transitional arrangements for that group of people should also be in the Bill, with a policy requirement to extend those accrued rights for that group of people until such time as their settled status is determined by way of the scheme.

The reality is that this scheme is currently in a pilot state and only a certain group of people can apply for it until exit day, when it becomes live. At the moment, they have an entitlement to remain here anyway. Even if people were fully able to apply now, they might not realise that they have that right. We have to make provision for that group of people before their status is confirmed. That should be done by way of a transitional arrangement. It could be simply by declaration, but either way, that is a transitional provision that should be clear in the Bill.

Q153 Stuart C. McDonald: Any thoughts on that, Ms Bradley? Do you have concerns about how to fix or address this problem? Inevitably, even if the Home Office does a fantastic job and gets 90% or 95% of EU citizens through the process in time, we are still talking about tens of thousands, if not hundreds of thousands, of people who will miss the deadline. How do we prevent that from happening?

Gracie Bradley: I cannot say that Liberty has briefed on this, but I would reiterate that there are basic safeguards that should be reinstated to the immigration system. We should ensure that people have access to legal aid, we should ensure that people have access to data protection rights so that they know on what basis the Home Office is granting or refusing them status, thinking about the automated checks, and we should protect them from a hostile environment. At the minute, the system is not geared towards helping people retain or access regular status, and as such the price that people pay for not having regular status is far too high.

Q154 Stuart C. McDonald: In terms of decisions where people have been refused settled status so far, what is your understanding of how much information people are given about what the Home Office has learned about how long they have been here, or how long it considers them to have been here?

Gracie Bradley: I cannot say that I have looked into that in any detail.

Q155 Stuart C. McDonald: No worries at all. Jodie Blackstock, you spoke about the section 3 powers that Ministers have to make immigration rules and said that you wanted them limited in some way. Could you say a little more about that?

Jodie Blackstock: Section 3 of the Immigration Act 1971 creates the provision to amend immigration rules, to administer the immigration scheme that the country gives effect to. As with the powers in the Bill, our concern is that that creates a very broad provision for the Minister to amend the rules, to replace the free movement process with something that would not be subject to sufficient scrutiny by Parliament. Our proposal is for an amendment to limit the ability of the Government to use immigration rules to amend the law to give effect to post-Brexit arrangements.

Stuart C. McDonald: Any thoughts on that, Ms Bradley?

Gracie Bradley: Liberty has taken a slightly different approach, recognising that, as you will have seen, the Law Commission has said that the immigration rules are incredibly complex; I think there has been more than 5,000 changes to them since 2010. Liberty is increasingly concerned that the rules are being used to make changes to immigration policy that affect people's fundamental rights. We are looking at an amendment that stipulates that rules may not be made under that section of the Immigration Act where they risk a significant negative impact on human rights, and that Ministers should have to publish a human rights impact assessment when making changes to immigration rules.

Part of the reason why we are where we are is that we have had thousands of changes to the rules and significant policy changes that should have been set out in primary legislation. The Bill demonstrates a problem that has been running for years in immigration policy making.

Q156 Eleanor Smith: What impact will the Bill have on migration to the UK post Brexit?

Jodie Blackstock: It is very unclear, because the power to arrange the post-exit scheme is left to the Minister. That is our concern. Its impact could be profound or negligible, depending on what policy process the Government put in place.

The proposals for the temporary leave to remain scheme would enable someone to go through a process of application if they wanted to settle in this country, for work or otherwise. The proposals in that scheme, which I have not looked at so cannot assess, ought to be within the Bill, so that the Committee can scrutinise them properly. The problem is that by enabling everything to be done using such a broad delegated power, you are not in a position to know.

With the way we are going, this will be left until post exit to be scrutinised, with the Bill proposing using the affirmative process for the first set of regulations, which we think is wholly inadequate, for the reasons we have given. If the scheme is already proposed, in draft or otherwise, it should be in the Bill, not left until the last minute to be announced, at which point it will not be possible to propose amendments to it. Our view is that it is a very simple step for the Government to bring forward their proposals for scrutiny, and they ought to do so for something that will create such a significant change.

Q157 Kate Green: I would like to ask you about social security rights. To what extent does the Bill protect, or fail to protect, the existing social security rights of EU nationals in the UK? Given that those rights and the arrangements that apply are reciprocal, what are the implications of the legislation for UK citizens living elsewhere in the EU?

Jodie Blackstock: The Bill does not protect those rights, because it does not set out the principles by which it will do so. It simply provides the structure for the removal of all current reciprocal arrangements. As with the discussion we had on clause 4, it creates the power for not only a Minister but an appropriate authority to replace those current rights with an alternative arrangement.

For us, clause 5 is the most concerning clause in the Bill, as if clause 4 was not concerning enough. Our view is that the clause ought to be entirely deleted, and we say that for a few reasons—not just the extraordinary breadth of power that it creates, but the fact that the provision to remove the co-ordination regulations and replace them is already provided for by way of section 8 of the European Union (Withdrawal) Act 2018. Indeed, there are four regulations that have already been laid, pursuant to that Act, before Parliament and that comply with what are perhaps broad powers, but at least are curtailed far more than the power here; and, because they have been laid, it is possible for them to be scrutinised by Parliament.

Q158 Kate Green: Can you offer an explanation or a suggestion as to why, in addition to the powers that already exist in section 8 of the European Union (Withdrawal) Act, we need these provisions?

Jodie Blackstock: The memorandum suggests that Government require the ability to change policy on social security co-ordination, and that is the purpose of creating a power here. Policy change would arguably not be possible under section 8 of the withdrawal Act, so Government are intending to do something broader here. In our view, it is wholly inappropriate to be changing policy relating to really fundamental provision for people who cross borders. We are talking about pension rights, access to healthcare, maternity and paternity leave—provision that may have built up over a significant number of years while a UK national resides in another EU country. It is simply not appropriate to leave that to a policy change by way of delegated power, but it seems to us, from their memorandum, that Government are expressly intending to do that to get around the limitations in section 8.

Gracie Bradley: I do not have anything to add to that.

Q159 Afzal Khan: You spoke briefly about data protection and legal aid. Could you elaborate on that, and are there other safeguards that you would like to see?

Gracie Bradley: When it comes to data protection, many of you will be aware that the Data Protection Act 2018 includes a very broad exemption that allows a data controller to set aside somebody's data protection rights when their data is being processed for the purposes of immigration control, essentially. Liberty notes from the White Paper that automated data processing is likely to be used increasingly in the context of enforcing the hostile environment, and Liberty has, for the last couple of years, been scrutinising what have been relatively secret bulk data-sharing agreements between the Home Office and other Departments, such as the Department for Education, and NHS Digital, as well as ad hoc data-sharing practices between individual police forces and the Home Office.

Essentially, what Liberty is concerned about is the fact that the Home Office is really quite a poor data controller, and yet automated data processing is increasingly going to be the linchpin of implementing the hostile environment. We see, in the most recent independent chief inspector of borders and immigration report, that actually the Home Office is developing a status-checking project that would essentially enable multiple controllers, such as landlords, employers, health services and law enforcement, to check a person's immigration status in real time.

Liberty is concerned, first, that no mention was made of that project during the Data Protection Bill debates, despite Government being asked repeatedly what they wanted that exemption from data protection law for. Secondly, we are concerned, in the light of the Home Office's track record on data protection, that this system is going to be implemented in such a way as to leave people without redress and without remedy when the Home Office makes mistakes.

Some of you will remember that, in 2012, Capita was contracted to text almost 40,000 people suspected of being in the UK illegally, telling them to leave the country. Those 40,000 texts were sent, and many people received the texts in error. Veteran anti-racism campaigners who had lawful status in the UK were sent texts telling them to go home. It is one thing to send somebody a text in 2012—I appreciate that will have been distressing for people—but it is entirely another thing for an error on someone's record to mean that they cannot access housing, lawful work, free healthcare or education. The Data Protection Act immigration exemption stops people from being able to find out what information is held about them by a data processor, and stops them from having the right to know when information on them is shared between processors.

Our concern is that, in the context of the Home Office's relatively poor track record on data processing, this digitised hostile environment will be enacted and

people will be left without redress. Indeed, we see from the National Audit Office report on the Windrush scandal that the Home Office had been asked by the NAO and the independent chief inspector of borders and immigration to clean up its migrant refusal pool, and had resisted all requests to do so. We are concerned about the impact of error on people, but we are also concerned about the impact of being able, at the click of a button, to exclude people from essential goods and services that are necessary for the exercise of their fundamental rights. The hostile environment should be repealed, rather than entrenched using exemptions in data protection law.

You also asked me about legal aid. I do not have a huge amount to say about legal aid, except that for the most part, there is no legal aid for immigration claims. Again, we see from the Windrush scandal what happens when people do not have access to early, good-quality legal advice. There are people in the UK who are undocumented, not because they have intentionally tried to evade the rules, but because they have been unable to retain their status as a result of not being able to access good-quality legal advice—or, indeed, because they have been unable to make the necessary applications because they cannot afford to pay prohibitive application fees. Many of you will know that it costs more than £1,000 to register a child as a British citizen.

When it comes to safeguards, we would say: get rid of that exemption in the Data Protection Act—it is paragraph 4 of schedule 2—reinstate immigration legal aid, because it is a false economy not to give people access to it, and look again at your fees. It should not be the case that the Home Office is profiting from fees when people need to make applications to regularise their status in the UK, or to claim British citizenship—to which children should be entitled in any event. Those are the basic safeguards that need to be reinstated before millions more people are brought into the immigration system.

Q160 Afzal Khan: I have a question for Justice. In relation to the discussion we were having about the powers in clause 5, is there anything that Ministers would need those powers to do that is not already within their power and would not warrant primary legislation?

Jodie Blackstock: In principle, there will be. At the moment, we have complicated reciprocal arrangements that require member states to give effect to policy schemes across borders. Without an agreement in place, we could unilaterally make a decision to honour those schemes in this jurisdiction, and that might be seen as a policy change that it is not possible to make pursuant to section 8 of the withdrawal Act. That might be a positive way of protecting the rights of individuals who have access to such schemes at the moment in the UK, or indeed the rights of UK nationals who are living abroad.

If that is the intention of the legislation, there must be—as the Delegated Powers and Regulatory Reform Committee has said in the context of the made affirmative procedure—work that has been undertaken already, and proposals that Parliament can consider and scrutinise to ensure that they protect accrued rights. There may well be a policy decision to limit those rights, and for the same reasons we think it is appropriate that Parliament gets to see those proposals. At the moment, the provisions in this Bill, as opposed to the regulations that have been submitted under section 8 of the Act, are just too broad. We propose that there should be scrutiny of those regulations rather than having an unknown power here.

Q161 Afzal Khan: This is another question for Liberty. You talked about 5,000 changes since 2010. That is huge, and it is why people say that our immigration system is really complex. We have also had the Law Commission talking about trying to simplify it. Would you not expect the Government to look at that first, before they add in another 3 million or 4 million EU citizens who will be subject to these immigration laws?

Gracie Bradley: Absolutely. There are many things that I would have expected the Government to do before bringing forward this Bill, not least setting out the detail of the future immigration system, so that it could be appropriately scrutinised.

The Law Commission's proposals are another thing that we think the Government should have looked at, but they have not necessarily looked at. Although I appreciate that the Government have given themselves this very broad delegated power, through which they may be able to implement future changes to the immigration system that take those proposals into account, when it comes to policy making that affects people's lives, livelihoods and fundamental rights, that is not the right way to make policy.

The Chair: Before I bring the Minister in, does any other colleague want to ask anything?

Q162 Paul Blomfield: Can I pick up on a point that you touched on earlier, Ms Blackstock, and which we talked about with earlier witnesses—the right of appeal for settled status? The Government have previously suggested that the process would be a relatively straightforward one, with very few areas of discretion. There does, however, seem to be some grey area in relation to how the Home Office might be able to treat those who have not exercised treaty rights, and so there is a potential for refusals that might require challenge. If there is no formal process of appeal, how satisfactory do you both think that the remaining options provided for people—administrative review and judicial review—are in exercising rights?

Jodie Blackstock: The problem with simply relying on judicial review as a mechanism is the difficulty in mounting a judicial review now, as a result of the changes made to access to legal aid prior to permission for judicial review, and the fact that judicial review is not perfect. In order to be successful in a judicial review, you need to demonstrate that the process by which the decision was made was flawed. That does not remake the decision; it sends the decision back to be made again, according to whatever error needs to be addressed. That, in itself, seems to be the most bureaucratic and inappropriate method for what is, as you say, potentially a simple grey area that requires a simple review.

Internal administrative review might be a sensible solution if it was not set against the context of a Home Office that has been struggling, as we know, for the past few years to make decisions in a way that provides public confidence. Without an independent appeal right, we are concerned that that would be all that was available. We are talking about a significant number of people

who will apply to this scheme, with every potential for there to be inadequate administrative provision to deal with it, so an appeal right seems pretty important to us.

Gracie Bradley: I agree with that assessment, and I would add that up to half of appeals are successful, so it is all the more vital that people have an appeal right and that they have legal aid.

Q163 Caroline Nokes: I think you have both mentioned the Law Commission review and its publication of the consultation paper on how the immigration rules could be simplified. You will not get any argument from me about the idea that the rules could be simpler. I wondered whether you had both responded to that consultation, and whether—in as short a period as possible—you could set out any specific simplifications that you have asked for?

Jodie Blackstock: We did not respond to it, but we have spoken to the Law Commission in general about the need for simplification of procedural rules for people across the justice system. Our report "Understanding Courts", which we produced a couple of weeks ago, calls for simplification so that litigants in person—or anyone seeking to use our justice system—can understand the system. The fact that immigration rules can be amended so swiftly and there is no requirement for primary scrutiny of those changes is problematic, but at the same time we accept that the rules deal with an incredibly complex set of arrangements, so some careful thought will be required about how to simplify those rules.

Gracie Bradley: Liberty did not respond to that consultation.

Q164 Caroline Nokes: Simplification could be something along the lines of ending free movement and bringing EU citizens in line with the rest of the world. Do you think that is a welcome simplification?

Jodie Blackstock: As I said in response to a previous question, Justice would not take a view on whether it was appropriate simply to remove the free movement process entirely and have the scheme that applies to third countries. Our concern is to ensure that people who are caught in the gap between those two schemes have their rights protected, if they currently exercise such rights, and that they are able to access the replacement scheme, whatever it may be, in a way that is clear and fair, and is subject to appropriate appeal.

Gracie Bradley: In general, it is not in Liberty's remit to comment on people's ability to come in and out of the country. Our remit does not really touch on that, and we do not have a view on the end of freedom of movement per se, so I cannot really comment on that.

Q165 Caroline Nokes: I have a final question on data and data sharing. I am going to gently correct something Ms Blackstock said about the settled status scheme: it is now in its public testing phase, so it is open for anyone to apply—it is not limited cohorts any more. We know from phases 1 and 2 that in excess of 80% of the people who have been through the process and been granted settled status have achieved that without having to provide any additional information on top of their records with Her Majesty's Revenue and Customs or the Department for Work and Pensions. Is there a case to make that in some instances when Government share data across Departments, it can be a force for good?

Gracie Bradley: Yes. I really want to reiterate that Liberty is not opposed to data sharing per se, because that would be a somewhat luddite position. Where data sharing makes people afraid to access the central services that are necessary for the exercise of their fundamental rights, we would say that that is a problem, and that there should be a firewall between those essential services and Home Office immigration enforcement. However, the services that I have in mind are, of course, things such as education, healthcare and the ability to report crimes to the police. I am not really thinking about DWP or HMRC stuff, because I would not say that that is necessarily to do with essential services that relate to people's exercise of their fundamental rights. We are not against all data sharing, but we are very concerned about some data sharing, where it stops people from accessing their fundamental rights.

The Chair: If there are no other questions, I thank our two witnesses very much for the time they have spent with us and the evidence they have given. We can start our next session a little early.

Examination of Witness

Matthew Fell gave evidence.

3.44 pm

The Chair: Welcome Mr Fell. Would you introduce yourself?

Matthew Fell: Good afternoon. I am Matthew Fell. I am the chief policy director at the Confederation of British Industry.

Q166 Afzal Khan: The CBI has said that the Government White Paper fails to meet the needs of our economy. Can you expand on that? In what ways does it fail?

Matthew Fell: There are a number of areas where we think there is a challenge. Most specifically, we would be very concerned about the imposition of a salary threshold—£30,000 is most commonly talked about at the moment. When we look at the shape of the economy today, we see a number of sectors—construction, logistics, hospitality—and many regions and nations around the UK where that threshold is significantly out of kilter with median salaries. There are a number of areas where that threshold would lead to a dramatic shortage of skills and of labour availability to meet the needs of the economy today. Although you could envisage a world in which, over time, businesses and other parts of society could adapt, we are concerned about going from the situation in which we are today in a very short period, without knowing precisely the nature of the rules or of the negotiation about what we are going to jump into. That lack of time to adapt is also a source of concern.

Q167 Afzal Khan: What are your concerns about the Government's proposal for short 12-month visas?

Matthew Fell: There are a number of areas. First, we fear that that could significantly lead to an increase in the rate of churn of people, which clearly creates problems for business: it impacts on productivity, if you are constantly having to get new employees up to speed, for example, it adds to recruitment costs if you constantly

need to bring new people into the organisation, and it has impacts beyond business too. Thinking about societal impacts, it could undermine the integration of people into local communities, and so on.

The second bucket or basket of concerns is around the inability to then switch on to a more skilled visa route. For example, if you invest in the training and upskilling of an individual there is currently no proposed mechanism for them to transfer from a lower-skilled 12-month route to a proper skilled visa route, so there are a number of different concerns about that.

Q168 Afzal Khan: Do you have concerns about the settled status system and the requirement on employers to check the immigration status of their employees if the UK leaves the EU with or without a deal?

Matthew Fell: I think I am right in saying, but I am happy to take a little more detail on this, that the Government have confirmed that even in the event of a no-deal scenario there would be no, or no significant, changes to the administrative burdens on employers before the proposed new immigration system came into play. Clearly, if that situation changed, the administrative burden would be a bigger headache for business.

Q169 Jack Brereton: I recognise the views you have expressed about having a cap of about £30,000, but do you recognise the impact that immigration potentially has had on suppressing wage levels in certain sectors and certain parts of the country?

Matthew Fell: The Migration Advisory Committee looked at that heavily in terms of any potential impact on the rest of the economy, society and so on. I think the conclusion it drew was that there was no major evidence of an impact on either jobs availability or wages. I think it highlighted some impacts on public services, and a bit on house prices and so on in certain areas, but I do not think it identified any real evidence of that.

Q170 Jack Brereton: Conversely, would having a reduction of free movement see wage levels rise, or changes in the availability of lower-paid work?

Matthew Fell: This is not primarily an issue that we are looking at as an impact on wage levels; it is purely about skills availability. The issue for many sectors of the economy and for many parts of the country that are currently looking at a situation of at or close to full employment, even in parts of the country, is primarily about the availability of the skills and the talent that they need to fulfil orders and so on. It is not in any way, shape or form about wage levels or undercutting wages; it is about having the people to do a job.

Q171 Jack Brereton: In terms of productivity, do you think that immigration has any bearing on the levels of productivity in this country?

Matthew Fell: In the UK, there are quite clearly issues around needing to raise productivity. I do not think there is any evidence—I think the Migration Advisory Committee confirmed this too—that that is explained in any way by current approaches to immigration and levels of immigration in the country.

Q172 Nic Dakin (Scunthorpe) (Lab): We heard the argument this morning from the Migration Advisory Committee, which was supported to some extent by Migration Watch UK, that the threshold approach would encourage employers to push up wages and that would solve the problem. What is your response to that argument, which was consistently played back to us this morning?

Matthew Fell: I am not sure I agree with that. I will paint you a picture of the current situation in a number of sectors. If you take the construction industry, with two thirds of migrant workers, the median salary is currently under £30,000. If you look at the logistics sector, with about 10% or 20% of HGV drivers, or at the warehousing sector, with about a quarter of all fork-lift truck drivers, the wages for EU workers are quite significantly lower than that. I do not think that just changing a threshold level as a way of driving up wages is a helpful thing to happen in the economy.

Q173 Nic Dakin: That was very much the argument that we were being given—that if you have a higher threshold, employers will be obliged to pay more for those scarce skills.

Matthew Fell: We have a better set of ideas for how you have the right checks and controls in place. If your concern is around whether that is doing any potential damage to local labour markets and local people, first, I do not think the facts bear that out, but even if that was a concern, our suggestions are that there are examples around the world, including relatively close to home in other EEA states, of something akin to a local labour market test where you have to give an initial preference in a simple and quick way. If they were the sort of concerns that you were driving at, there are better ways of doing that than a crude, flat salary threshold.

My other thought on salary thresholds is that, even if they are part of the overall mix of a system design, I venture that, rather than just picking a pure number today that is fixed over time, it would be much better to look at the median salary in the country today or to pick something like the 25th percentile of a particular skill area or something like that, so it adjusts over time and adapts to how the economy evolves. That would feel like a slightly more sophisticated way of going about it than just picking a crude number.

Q174 Nic Dakin: What do you think about the argument that salary thresholds are a decent proxy for skill?

Matthew Fell: If the intention is to use a salary threshold, I think it is part of the answer, but I would not say it is the only thing you should look at. If it goes hand in glove with some other metrics, it is potentially part of a solution as a system design, but I would not have it as the sole arbiter.

Q175 Nic Dakin: What other matrix would you suggest?

Matthew Fell: As I have just said, we think there is something quite interesting to look at in a simple and quick local labour market test.

Q176 Nic Dakin: That is to do with shortages rather than skills, is it not?

Matthew Fell: Yes, but you would have a look at that, then skill levels alongside salary. Salary as a proxy in its own right is not helpful.

Q177 Nic Dakin: One of the arguments Migration Watch came up with was the idea, for a middle-area skill, to have a sliding scale: a three-year visa and then a sliding scale where the salary levels are going up. Is that the sort of thing that would be attractive to you?

Matthew Fell: I have not looked at the specific proposal. I am very happy to go away and have a look at exactly how that would work. The one thing that that would have in its favour is the point I made about time to adapt. Within reason, if you have time to adapt, you can say "Okay, how do I configure around a particular system?", if that has a combination of certainty to it and a length of time to adapt. As principles, those are helpful things to have.

Q178 Nic Dakin: Finally, what are your members' biggest worries at the moment in relation to this?

Matthew Fell: The single biggest area is time to adapt. It is not knowing exactly what new system they propose to jump into. They are completely crystal clear that free movement is coming to an end. The fear is whether a new system will be ready in time, with the promised reforms, streamlining and improvements. Will that be ready in time?

The vast majority of businesses in this country do not use the non-EU visa system at the moment. It is something in the order of only 30,000 firms in the country that currently use it and that tells me that it is a really quite restrictive, complex and burdensome system. If we are not ready with a new system that is ready to go from day one, without that clarity and without the time to transition into it, that, I think, is probably the biggest concern of all.

Q179 Tracey Crouch: You have spoken of the need to streamline and simplify the future immigration system. Following the question put by the Minister to the previous witnesses, did you manage to respond to the Law Commission's consultation?

Matthew Fell: Here are a couple of examples around the sorts of streamlining we have in mind for the non-EU system right now. One of the requirements is around asking sponsor employers to provide evidence of their employers' liability insurance. Nothing wrong with that per se, but you have to have a hard copy of that and today, most of those are issued digitally, so it is a headache. Another example of a day-to-day burden is that you are required to notify a change in salary for any individual. On those sorts of issues, for example, the check is required to make sure you clear the minimum salary threshold requirement, but there is still a requirement even if you raise an individual's salary. You still have to notify. Again, when we are talking about simplifying and streamlining a system on a non-EU basis, those sorts of administrative headaches are the things that firms find unnecessarily complex.

Q180 Tracey Crouch: Those are good points, but did you respond to the Law Commission's consultation, where you could make those points?

Matthew Fell: I would need to check, to be perfectly honest.

Q181 Tracey Crouch: The other thing you said in your evidence was around linking migration and labour market access to trade deal negotiations. Can you expand a little bit on that?

Matthew Fell: Many countries around the world have told us that that is quite important when they have negotiated trade agreements with other countries around the world. That is something they expect to be part of that overall trade negotiation. We have heard from India, Japan, Australia and New Zealand. They have all publicly said that if they are looking to strike trade agreements with the UK, ideally they would like to include migration as part of those talks on a future trade deal. When you look around the world and other trade agreements, it is frequently part of those discussions and part of the final deal and our sense was that, if, rightly, we want to seek to strike the most ambitious trade deals in many parts of the world, this is something that should be part of those conversations.

Q182 Stuart C. McDonald: Mr Fell, you have skirted round the issue a little bit. Putting aside the debate about the salary threshold, you spoke about how 30,000 firms are registered tier-2 sponsors. Is that right?

Matthew Fell: Correct, yes, it is of that order.

Q183 Stuart C. McDonald: Do you have a figure for how many businesses in the United Kingdom employ EU nationals?

Matthew Fell: I do not have that figure off the top of my head, no.

Q184 Stuart C. McDonald: Putting aside issues of salary threshold, could you talk us through what difference it would make to me as an employer if previously I have never been involved in the tier 2 system? From time to time I have employed chefs from Europe, for example, at £35,000. What difference will it make to me next year or in a couple of years' time when a new system comes into force if I want to employ this chef from Italy at £35,000?

Matthew Fell: I would make a couple of observations which may be helpful. Clearly, the example I am going to give is retrospective, which does not apply. My understanding is that the figures are something in the order of three quarters of all EU workers in the UK today. If these rules were enforced with the new system as envisaged, those would be out of scope for the new proposed system. That gives you a little about the order of magnitude of the volume and scope of workers currently here that would be caught by that—that is what we believe.

You ask what an employer would face additionally. Those 30,000 firms are principally focused around the largest businesses in the UK. We know that the non-EU approach is quite complex. You typically enlist significant legal advice—it is sensible to do so—or you develop in-house expertise. While it is an administrative headache for the largest businesses, they are employing a sufficient volume of people to make it sensible and worth their while to invest in expertise and legal advice and so on—at least it is feasible for them to do that. I think it would have a stark impact on small and medium-sized businesses that possibly do not use the system with sufficient frequency that they get familiar with it, and in which the resources would bite even more if they needed to take on outside expertise and advice.

Q185 Stuart C. McDonald: They would need legal advice and help, and there would be a cost as well, because you would have to register as a tier 2 sponsor,

[Stuart C. McDonald]

which is the first process. After that, you also have to get a certificate of sponsorship for each individual that you are recruiting. Is that correct?

Matthew Fell: That is correct. Some of the admittedly small administrative examples that I just referred to are the sorts of things that you would have to be familiar with and continue to do. While they might be a headache in larger firms with dedicated teams, HR functions, compliance and so on who are able to provide those facilities, they are an even bigger headache for smaller businesses.

Q186 Stuart C. McDonald: Small businesses that are becoming tier 2 sponsors for the first time would also have to start paying a skills charge and the health surcharge for employers.

Matthew Fell: That is correct. That is my understanding of it.

Q187 Stuart C. McDonald: I saw a report yesterday, I think from Global Future, which suggested that between now and 2025 it would add £1 billion of costs to businesses.

Matthew Fell: I have not seen that specific report so I would need to go away to confirm that.

Q188 Stuart C. McDonald: Sure. May I also ask about the settled status scheme and the checks on a person's right to work? Are you aware that there have been any difficulties because this is not in a hard document and is essentially a bit of code?

Matthew Fell: This is relatively new for many businesses. We have been working with the Government and businesses to help to inform the employer guide. We have been providing some guidance ourselves. We found that the level of interaction with businesses has been quite good, and there has been a spirit of helpfulness to be able to navigate that, recognising that it is a new approach. We are building up more familiarity with it.

Q189 Stuart C. McDonald: Do you have concerns that even if the Home Office puts everything it can into making this scheme as successful as it can be, we are going to end up with tens of thousands if not hundreds of thousands of people who will miss the cut-off date just because they did not understand that they had to apply, or maybe they were even born here?

Matthew Fell: There is a challenge of awareness. Organisations such as the CBI and other business organisations have a role to play in that, not just in raising awareness for their own employers, making sure they are properly informed about what they need to do and helping them through the process, but by encouraging them to do that with their friends, colleagues and contacts. There is a good role that business can play. That being said, however good the intent, awareness is clearly an issue. I do not have an exact feel for how many would or would not be aware. Ultimately, that is a bit of a judgment call, but that is the risk that would open up.

Q190 Stuart C. McDonald: We are looking at schemes that have been put in place internationally. On some of these schemes, even a 10% failure rate would be a magnificent achievement, but you are still talking about 400,000 people. Would you support, or have sympathy for, calls not to have a deadline at all? For example, if somebody is trying to switch jobs and their employer says, "You apparently haven't got your settled status and you need it," they could still go and put that right, even though they have missed the deadline by a couple of weeks.

Matthew Fell: We have not explicitly gone on the record and said that that is an approach we would advocate. My view is that you would hope that pragmatism would prevail. My feeling is that, if an individual and a business are coming forward with good intent and saying, "I am ready to do it and have everything I need," pragmatism ought to prevail in such situations.

Q191 Stuart C. McDonald: What is the significance of what the White Paper says or does not say on self-employed people?

Matthew Fell: The CBI's natural constituency, if you like, is typically employers as opposed to the self-employed. The self-employed population is a huge contributor and hugely important to the UK economy. It is not an area that we particularly speak about, though, or which I focus on.

Q192 Afzal Khan: You talked about a number of sectors such as hospitality, logistics and construction. Are there any other sectors that would be impacted by this £30,000 threshold? You talk about sectors, but can you also expand on the impact on different regions?

Matthew Fell: I would be happy to share with the Committee a significant piece of work that the CBI published in the summer of 2018, where we took an in-depth look at a number of business sectors around the economy. The key conclusion was that it is hard to identify any sectors that are not impacted in this way. The reason for that is the interconnected nature of business today.

To give you a small example, we have a huge challenge in this country around house building. In order to build the 300,000 homes a year that we need, we need everything from architects to electricians, bricklayers and on-site labourers. The conclusion we drew was that if you take one piece out of that, the whole project does not get done. Our findings were that you could almost extend that logic to any part of the economy. For example, take the retail sector and its dependence on the logistics sector for distribution, and so on. It is really quite hard to identify any part of the economy where, even if we think it is not directly impacted by these issues, indirectly they do have a consequence.

On the regional aspect, looking at the statistics, we have a piece of work out today that looks at analysis by region. Even if you take a really quick glance at the numbers, median wages today are somewhere between £21,000 to £24,000 in most regions of the UK outside London. That tells you that the impact is quite significant across the country.

Q193 Afzal Khan: On the question of impact, we know that there is inequality between different regions; do you feel that having the figure of £30,000 may further increase inequality?

Matthew Fell: I do not know whether it would further increase inequality. As part of my job I travel around the country quite extensively. I think it would create

huge headaches in parts of the UK, not least in respect of the time to adapt. I spend quite a lot of time in Belfast in Northern Ireland and in some of the northern regions in England, for example, where it is really quite significant and they are deeply concerned by it.

The Chair: If there are no other questions from colleagues, I will bring the Minister in next.

Q194 Caroline Nokes: Thank you very much, Sir David. At various points earlier today, we heard suggestions that short-term visas and short-term contracts were inevitably exploitative. Does the CBI have a view on that?

Matthew Fell: I do not believe that short-term visas and short-term contracts are linked to exploitation. I think it is more a recognition of the way the world works today. Many businesses are done on a contracting basis, as well as a longer-term basis, so I do not recognise the link between the two.

Q195 Caroline Nokes: Would the CBI therefore support a seasonal agricultural workers scheme, for example, and do you see any other sectors that might benefit from something similar?

Matthew Fell: Our starting approach on that has been to say, "Could we look to design a system that works for all parts of the country and for all business sectors?" Working towards that is our ideal goal. That would be our preference before reaching for carve-outs for different industry sectors.

If that aim cannot be achieved—we know that seasonal agricultural workers are very important for the sector—and if that is the best solution that we can arrive at, clearly it has a part to play alongside a reformed and simplified system. However, our preference is to get the overall system right in the first instance in a way that works for everyone.

Q196 Caroline Nokes: I am conscious that we invited the Scottish CBI to come and give evidence, but it deferred to you and said it was happy that you would be able to represent its views. Was there anything specific that you would like to say about either regionality more generally or Scotland in particular?

Matthew Fell: I have made remarks about recognising different wage levels in different parts of the country and so on. I refer people to my colleague who gave evidence in Holyrood earlier today. There will be quite a bit on the record from that evidence session if you would like to tap into the Scottish-specific dimensions to it.

Q197 Caroline Nokes: Fabulous. I am sure we will. I was interested in your comments on a local labour market test. You will be conscious that in the White Paper are proposals to remove the requirement for a resident labour market test. Do you not support that?

Matthew Fell: Overall, I think we do support the removal of the resident labour market test. I was just illustrating that, if there is a desire to provide a sense of greater control of migration, you can use different mechanisms to provide that control that we think would provide the right balance between openness and the public assurances that are sought on control. It was an example of another mechanism to achieve it, but we do support the removal.

Q198 Afzal Khan: In your evidence, and just now, you said that you do not think that the short-term, 12-month visas may lead to exploitation, but you gave a long list of concerns regarding training, recruitment, integration and switching between skills. Those were your concerns, so what is your solution? What do you think is better?

Matthew Fell: In the piece of work that we published in summer 2018 we asked, "How do you really build confidence and align that to control?" At the time, we proposed dropping the net migration target, because we felt that continually missing it was undermining confidence in the system. We said that there could be a number of different controls, such as registration on arrival. If you are not in work, in training or self-sufficient after three months, that would be a test of whether you can stay in the country.

We looked at other examples of labour market tests. The other issues that we identified at the time were the better and more rapid use of things such as the controlling migration fund, so that in areas of high immigration where there are clear impacts on public services we could better address and mitigate those concerns. Those were the clutch of proposals that we were talking about at the time.

The Chair: If there are no further questions, I thank Mr Fell very much indeed for his evidence to the Committee.

The final session starts at 4.30pm, so I suspend the sitting.

4.15 pm

Sitting suspended.

Examination of Witnesses

Caroline Robinson and Meri Åhlberg gave evidence.

4.21 pm

The Chair: Our next evidence session is with Focus on Labour Exploitation. Could our witnesses both introduce yourselves, please?

Caroline Robinson: Good afternoon. I am Caroline Robinson, the chief executive of Focus on Labour Exploitation.

Meri Åhlberg: Good afternoon. I am Meri Åhlberg, research officer for Focus on Labour Exploitation.

Q199 Afzal Khan: In your opinion, what risks does the Bill pose for exploitation and modern slavery?

Caroline Robinson: At Focus on Labour Exploitation, we have been looking for some time at the risks that immigration control measures, in particular, pose for modern slavery. Obviously, with this Bill—as with all measures regarding Brexit—we have a new risk that a much greater proportion of workers could be undocumented if they do not register under the EU settlement scheme, or because of the confusion that Brexit provides.

We think that there are particular risks arising from measures set out in the immigration White Paper, namely the temporary and migrant worker programmes and the short-term visas discussed in that paper. Our particular concerns are about barriers to the integration of the workers, which could mean that they have limited access

to their labour rights. That puts workers at real risk of not understanding their rights in the UK labour market, and at risk of exploitation. There is also the potential for things like debt bondage: if recruitment measures are taken overseas over which we do not have jurisdiction, and workers have to pay high fees in order to come to the UK—whether recruitment fees or just for work permits and travel—that could leave them open to a real risk of debt bondage.

Meri Åhlberg: There is a real risk, for instance, that the 12-month programme will mean a constant churn of vulnerable workers who are not aware of their rights and do not have the chance to build up social networks that could support them. Workers will not have recourse to public funds. Those coming here to work in precarious jobs—for instance, in the hospitality sector, in which they might be on a zero-hours contract and have 40 hours of work one week and two hours the next—will, if they have no recourse to public funds, be very vulnerable.

A lot of other specific migration policy issues make workers vulnerable. For instance, under the seasonal workers pilot, which is also in the immigration White Paper and is being brought in through secondary legislation, workers have no guaranteed hours or guaranteed earnings. If they come here to work in the agricultural sector and are on a zero-hours contract, they will not necessarily be earning enough to cover their flights or visa costs if there is a bad harvest, for instance. Those are the kinds of things that we need to think about.

Q200 Afzal Khan: Do you both feel that the Government have done enough to minimise exploitation or mitigate the risks?

Caroline Robinson: We have had some positive signs from the Home Secretary, who mentioned at a hearing of the Select Committee on Home Affairs that measures would be taken to evaluate the risk of exploitation that the seasonal workers pilot presents to workers. However, we are still quite anxious about the detail and about what it will mean in practice.

We look a lot at the role of labour inspectorates in preventing modern slavery, and we have a particular concern about the limited resources of agencies such as the Gangmasters and Labour Abuse Authority, which will need to license labour providers under the seasonal workers pilot, whatever country they may come from. Understanding the legislation of the countries concerned and identifying and engaging with prospective labour providers will obviously be a heavy drain on the agency's resources, but we have not heard that any extra resources will be provided to facilitate that role. We also welcome the Government's intention to create a single labour inspectorate, but the detail available at this stage is very limited.

It is positive that the Home Secretary has recognised that there is a risk. We look forward to engaging on the detail of how it will be addressed.

Meri Åhlberg: It is important to recognise that within the discussion about ending free movement and moving towards temporary migration schemes, we need to include labour market enforcement, as Caroline said. The UK has one of the least resourced labour inspectorates in Europe: the International Labour Organisation recommends that there should be one labour inspector per 10,000 workers, but the UK has 0.4 per 10,000. Per worker, half as much resourcing is put into labour inspection as in Ireland. There is a real need for proactive labour market enforcement, especially as more and more migrants are brought under immigration control, given fewer rights and made more vulnerable.

Q201 Afzal Khan: We have just heard evidence from the CBI, which claims that the temporary scheme does not lead to exploitation. What is the evidence that it would lead to exploitation?

Meri Åhlberg: I have already mentioned a few of the features of temporary schemes that make people vulnerable to exploitation. One of the main ones is that allowing people to stay for only six or 12 months means a constant churn of workers who are not necessarily aware of their labour rights, who do not have time to build networks and so on. There are often other restrictions, such as "no recourse to public funds", that come with temporary contracts and put people at risk of exploitation. Those are the key issues with temporary migration programmes—there is definitely a risk.

Q202 Afzal Khan: Clause 4(5) will grant the Government power to impose or change fees for visas. The Government have said that fees for 12-month visas will increase over time to prevent businesses from relying on them. FLEX has raised the question of the risk of debt bondage. Can you elaborate on that?

Caroline Robinson: To allow businesses?

Afzal Khan: To increase fees. You have said in the past that that might lead to debt bondage, so can you elaborate on how that would happen?

Caroline Robinson: Yes, certainly. We have looked quite extensively at other temporary migration programmes around the world and previous schemes in the UK, and we certainly see a risk in relation to recruitment fees. As I mentioned earlier, there is the possibility of elevated fees and also, as Members will be aware, the definition of debt bondage is an increased fee that is disproportionate to the initial fee paid, and using that fee to coerce an individual into an exploitative working condition.

We see that as a real risk in relation to overseas recruitment, but there are also the high fees that people will have to pay for their visa and for their travel to the UK. Obviously, because we know more of the detail on the seasonal workers pilot, we know that people will be coming for a short period of time—a six-month period—and, as Meri said, on zero-hours contracts, so there is no guarantee of a high rate of pay necessarily, and with potentially quite high up-front fees. So the risk is great there.

Also, we have looked at things like bilateral labour agreements. For example, Canada and Mexico have established an agreement on agricultural workers, where clear terms are established in terms of the minimum hours that workers will have, the minimum working week and the hours that people can be guaranteed, so that there are clear terms for workers, and so workers can budget accordingly and not face the risk of a huge debt that they cannot then repay, or, as I mentioned, a debt that increases disproportionately in relation to the initial debt, which is a risk.

Meri Åhlberg: For example, in Sweden they have migration from Thailand to pick berries, and what they were finding was that people would come, and they

would pay high costs for flights, and then they would pay visa costs, and then they would come to Sweden and the blueberry season would be poor and they would not be able to pick enough even to cover their flights. So they would come, work for the summer and then leave in debt.

What Sweden has done, for instance, is that there is a minimum guaranteed wage that employers in Sweden have to prove they can pay. It is a minimum of approximately £1,100 per month for these workers, to each worker that they are recruiting, to make sure that people are not coming and not earning enough to cover their visa costs or their flight costs. There are also important protections that could be put in place.

Q203 Kate Green: That is exactly my question. What could we put in place, or what could the Government put in place, to strengthen protections for workers in this situation? I wonder whether you might want to say a little more specifically about what you would look for in terms of a Government or legislative solution, and to what extent there might be other features or actors that might offer protections.

Caroline Robinson: As I said, we work a lot on the role of the labour inspectorates, particularly, while it still exists—as I said, there is a discussion about a single labour inspectorate and the Government have committed to that—at the Gangmasters and Labour Abuse Authority's licensing being expanded to high-risk sectors, particularly those that are likely to take on a number of short-term workers in the future. Those sectors are already high-risk and then they might have a high proportion of short-term migrant workers. We feel that there is a really strong case then for licensing those sectors—sectors discussed, such as care and construction—where there is a real risk to workers of exploitation.

We have also looked at the Agricultural Wages Board and the seasonal workers pilots, obviously in the agricultural sector. We are lucky that we still have an Agricultural Wages Board in Scotland and in Northern Ireland, but the absence of one in England and Wales is a real risk in terms of setting the standards for workers in the agriculture sector. So I think it would be useful to look at what kind of worker voice could be integrated in setting standards in the agriculture sector, again given the high risk of isolation and exploitation of workers.

Meri Åhlberg: Another important thing would be to grant people access to public funds. If people are coming here on work contracts they are paying taxes, so they are paying for their services. It seems counterintuitive to not allow people access to services they are already paying for, making them vulnerable in that process.

Caroline Robinson: I would mention again these bilateral labour agreements, to have some kind of engagement with sending categories. At the moment the Gangmasters and Labour Abuse Authority has to rapidly try to license labour providers in a range of countries outside the EEA. They have already found it quite hard within the EEA to license labour providers, understanding the different jurisdictions and engaging with workers' possible vulnerabilities. Having a structure and engagement on the basis of labour rights with a country that sends workers to our country and ensuring labour standards are upheld offers a framework, at least, for enforcing labour rights.

Q204 Mrs Badenoch: How much of your research is focused exclusively on agricultural workers as opposed to workers in other sectors? Do you have any information or data on other areas in terms of the percentage of people using these visa schemes who would be working outside agriculture?

Caroline Robinson: The visa scheme announced in that amount of detail—and for which we have pilot operators—is the seasonal workers pilot. That is in the agricultural sector. The short-term—as they have been termed—visas in the immigration White Paper, the temporary short-term workers schemes, are for all sectors as far as we can see.

We looked particularly at high-risk sectors in the UK. The most recent in-depth piece of research we did looked at the construction sector. We are also conducting work looking at the hospitality industry, particularly at hotels. Generally we look at sectors that we believe are at risk of exploitation. We are particularly interested in the functioning of the seasonal workers pilot because that is up and running, in so far as we are engaging with the pilot operators. We are talking to the Gangmasters and Labour Abuse Authority about how they will oversee that pilot.

Q205 Mrs Badenoch: So that is why the focus is there. Have you looked at any other historical or previous temporary visa schemes that have occurred in the UK to see what sort of issues came out of them? Do you have any research on that?

Meri Åhlberg: Specifically in the UK?

Mrs Badenoch: In the UK. There have been other temporary visa schemes, but I am not aware of high levels of exploitation around them. If there are lots of cases I would like to hear about them.

Meri Åhlberg: We have done research on the previous seasonal agricultural workers scheme, which ended in 2013, and we have also done research on the sector-based scheme, which brought workers into hospitality and food processing. That ended in 2013, but had been slowly being phased out.

In the sector-based scheme it was found that workers were paying up to £10,000 in recruitment fees to come to the UK. They were heavily in debt when they arrived in the UK, and were therefore unable to leave abusive or exploitative situations because they were afraid of not being able to pay back that debt.

In the seasonal agricultural workers scheme, there were a lot of issues around people being unable to change their employer. They had to have permission from the scheme operator to do so, but sometimes the scheme operator and the employer were the same person. In practice it was very difficult to change employers, meaning that if you were in an exploitative or abusive situation you had to either choose to leave the country and leave your source of income, or put up with it. There are a lot of cases of people not being paid the minimum wage, and of people not having guaranteed hours and so not earning enough. There was an over-supply of workers, meaning that employers did not have to provide enough work for people to earn money. There will be a similar problem in this scheme; there are not any guaranteed hours in the seasonal workers programme pilot.

Q206 Mrs Badenoch: If I were to look at this from the perspective of my constituents, I do not think that a lot of the suggestions around just not having the visas would fly. I think people would want to know what sort of things the Government could do on the employer side, to improve the situation. For example, do you think that instead of a 12 month on, 12 month off regime, being able to renew after the end of a 12-month visa would be helpful in providing some type of certainty?

Meri Åhlberg: That would definitely be better than having to bring in people who had no networks here or no idea about their labour rights. If you have people who can stay for longer periods, over time they learn about their rights, and have a better chance of unionising and, essentially, of gaining employment rights, or enforcing their employment rights.

Q207 Mrs Badenoch: Do you think that providing information about those rights on arrival, rather than by osmosis while they are here, would be a better way of ensuring that people were aware of what they could access and what their rights were?

Meri Åhlberg: Definitely. Pre-departure training and on-arrival training about people's rights is really important. Having a multilingual complaints hotline or a 24-hour hotline, on which workers can make complaints is also important, but the most important thing would be to have proactive well-resourced labour market enforcement, to ensure that people were not depending on migrant workers and vulnerable workers coming forward and enforcement being based on reaction to a worker making a complaint. There is a lot of evidence to show that vulnerable workers do not come forward, so what needs to be in place is really proactive enforcement.

Q208 Stuart C. McDonald: Quite a few of my questions have already been asked. Just to clarify, is FLEX saying that you would not want a seasonal agricultural workers scheme at all, or are you saying that if you are going to have one you have to ensure that you learn from the previous scheme and the experience of other countries, and that there are things you can do to try to clamp down on exploitation?

Caroline Robinson: We feel like many, I suppose, in the business of protecting workers' rights in a conflicted situation. We recognise that there will be a shortage of workers in this country after Brexit. Equally, looking at seasonal workers programmes, as we have done over the past year, in great detail, workers in those programmes are more vulnerable to abuse and exploitation. If we were asked to start from nothing, we would not be proposing seasonal temporary workers schemes, but we are trying to engage with the programmes that are being suggested, to advocate for strong protective mechanisms to be integrated into those programmes.

Q209 Stuart C. McDonald: It minimises those risks, yes. You have mentioned a couple of times the idea of bilateral agreements. How exactly do they work and how do they prevent some of these issues?

Caroline Robinson: The agreement I mentioned between Mexico and Canada has the function of establishing conditions that workers can expect, but also what employers can expect of workers on the scheme. It is an engagement on the standards that can be expected in relation to the agricultural workers programme in particular. I guess there is a whole range of bilateral labour agreements that are established between sending and receiving countries. We are particularly interested where there is a facility for them to establish terms and conditions for workers, and also where there is a facility to guarantee a set number of hours or a limit on what the payment for the travel to the destination country might be, and a facility for paying that back in instalments on arrival, which we think would provide less of a risk to the workers.

Q210 Stuart C. McDonald: Is there a history of the United Kingdom ever being involved in that type of relationship, perhaps in the previous SAWS scheme? Is there any discussion about it happening with this scheme, or is that not really on the agenda?

Caroline Robinson: In relation to the previous SAWS scheme, I am not sure, but we can certainly look into it and write to you if that is of interest.

Q211 Stuart C. McDonald: Yes, that would be very helpful. You were talking also about some previous schemes that had thrown up problems with exploitation. Is the overseas domestic worker visa an example of that?

Meri Åhlberg: That is an incredibly problematic visa and has been in the past. I don't know if Caroline wants to talk about that.

Caroline Robinson: The overseas domestic worker visa had problems, which led to the review by James Ewing, around the time of the Modern Slavery Act. Some measures were introduced by the Government to address the risk to workers on the overseas domestic worker visa. The interviews with workers to engage them on their rights have been introduced, which we have talked about in relation to this scheme as something we could learn from that visa—on the seasonal workers pilot, having an information session with workers when they arrive about their employment rights and entitlements in the UK, which is something to learn from the problems with the overseas domestic worker visa and the isolation that workers felt on that scheme.

Meri Åhlberg: With that scheme, workers were tied to their employer. That was then removed because it was recognised that it is incredibly problematic. If workers were tied to an employer and wanted to leave, they would lose their visa and have to return to their country of origin. Even after that provision was removed, workers could only come for six months, which then meant that if they only had two months left on their visa, it was very hard for them to find new work and to change employers. In practice it was very difficult. Similarly to the previous SAWS scheme, technically you could change employers, but in practice it was very difficult, and in practice is what matters.

Q212 Stuart C. McDonald: Okay, so learning from previous schemes, investing in labour market enforcement, bilateral agreements potentially—anything else we need to be thinking about in order to try to prevent any future system increasing the risk of exploitation?

Caroline Robinson: From the brief discussion with my colleague from the TUC, I believe she mentioned the illegal working offence, which I think we were talking about during the passage of the Immigration

Act 2016. We would certainly support a discussion of the repeal of that offence, which we raised at the time. It places workers at great risk of exploitation. It is recognised by the Government and by the International Labour Organisation that the threat of denunciation to the authorities, regardless of a worker's status, is a contributing factor to coercion and exploitation. As we mentioned at the beginning, the real risk to workers of the coercive power of an offence of illegal working is extremely dangerous in relation to modern slavery.

I raised at the time the fact that people would be fearful of coming forward to be referred to the UK national referral mechanism because of that offence, that traffickers would use the threat of the offence of illegal working to keep people in abusive and exploitative conditions, and that there is then the risk of criminalisation and detention of trafficked persons. The detention of trafficked persons is something that we have seen recently, and the difficulties of individuals being identified once they are in detention.

The Chair: I am bringing the Minister in earlier this time, in case we run out of time.

Q213 Caroline Nokes: Earlier today, we heard concerns about those employed in the agricultural sector, both from the Joint Council for the Welfare of Immigrants and the TUC. Would you say that agriculture is a more exploitative industry than others?

Meri Åhlberg: Part of the problem in agriculture is that people tend to be quite isolated in their working environment, because they are often employed on farms that are far from cities and they might not have transport options. That is definitely one of the contributing factors. There are also a lot of other factors. That was recognised in the past when there was the Agricultural Wages Board. In the '80s, when most of the wages boards were eliminated, the Agricultural Wages Board was kept, because it was recognised that there were specific vulnerabilities in agriculture, for instance the fact that crops can fail or there might be bad weather and workers needed to be protected against not being paid in those cases. So yes, I think there is.

Q214 Caroline Nokes: Do you think workers' protections are best secured through immigration policy or through a range of other Government Departments and tools? How could we better work with the Department for Business, Energy and Industrial Strategy, the Department for Work and Pensions and the Department for Environment, Food and Rural Affairs, for example, to secure that?

Caroline Robinson: Workers' protections are best secured through the promotion and protection of labour rights. Immigration policy can serve to undermine the rights of workers—for example, the absence of routes to access justice for undocumented workers, the limitations on undocumented workers coming forward to report abuses and exploitative practices against them for fear of immigration repercussions such as those I have just mentioned, and the offence of illegal working—and there can be an undermining influence from things such as short-term visa schemes. If protections are not put in place, there is a real risk of exploitation.

As I have mentioned, we advocate for the role of labour inspectorates and labour market enforcement in promoting, protecting and upholding labour rights, along with a number of other measures. For example, Meri mentioned access to a complaints line being crucial so that workers can report abuse against them, but we also need strong, proactive labour market enforcement. We have advocated for a 60% focus on proactive operations for labour market enforcement bodies, and a 40% focus on reactive operations. We are very grateful to the Government for recognising that in their response to the director of labour market enforcement's annual strategy last year.

Q215 Caroline Nokes: We have taken on board FLEX's position that there should not be a seasonal agricultural worker scheme. You will have heard about the pressures from organisations such as the National Farmers Union, and the comment this morning from Alan Manning, who I think pointed to parts of the agricultural sector being 100% reliant on labour that has come in from overseas. How can we best make a SAWS scheme that works to protect the rights of those individuals who are coming in through the scheme, and perhaps protects them from the burden of costs? You have been clear about the costs that might be imposed on workers, but the message I got from the NFU last Friday was that they are concerned about the burden of costs being shifted very heavily, not on to the labour providers but on to the farms themselves. Those farms might be in the position of paying up-front costs of £1,000 per worker, just to make sure that they come in and are part of the scheme.

Meri Åhlberg: As Caroline said earlier, we recognise that if these schemes are being brought in, they need to be made to work as well as possible for workers, and there are definitely protections that can be put in place. One of the key ones is that workers have to be able to change employers freely, under reasonable terms. Wages and standards should be set together in a tripartite way, together with trade unions, Government and employers, so that considerations that are particular to agricultural workers are taken into account.

There is already good work in the agricultural sector, such as the Gangmasters and Labour Abuse Authority licencing labour providers. Anyone who wants to bring workers into the UK, no matter whether they are in the UK or overseas, has to have a licence and to follow specific terms and conditions. Those conditions include, for instance, the fact that they are not allowed to charge recruitment fees. We need to make sure that the GLAA can properly licence overseas recruitment agencies, and that they have the resources and capacity to do so. Currently, for example, if the seasonal workers pilot is being opened to all countries outside the EU, that becomes a monumental task. Making sure that the GLAA is able to do that task, and has the resources and capacity to do so, is crucial.

Caroline Robinson: We also have to recognise the real risks to those workers. That is why I was talking about a complaints mechanism: establishing something like a 24-hour multilingual hotline for those workers, so that we can make sure that we get to those workers who are most vulnerable and in need of assistance, would really help.

Q216 Caroline Nokes: Do you think that is a protection that would be best put in place by the Home Office as part of immigration policy, or by some other organisation?

Caroline Robinson: The complaints mechanism, or the—

Caroline Nokes: The complaints mechanism, because this Bill is specifically about turning off free movement and the role that immigration policy has to play. Do you think the Home Office is best placed to do that?

Caroline Robinson: You are right that possibly the Home Office is not best placed to do that. It holds a twin role with BEIS hosting the director of labour market enforcement, so it has some engagement in labour market enforcement and oversight. You are right, there could be a BEIS role.

Q217 Nic Dakin: Are you saying it is more about enforcement than regulation? Are there flaws in the regulation that you are concerned about, or is it really about capacity around enforcement? We can have all the regulations in the world, but if the enforcement is not there, it doesn't help.

Meri Åhlberg: It is difficult to say, for instance, about the 12-month programme because there has not been a lot of information about it. We do not know which countries are lower risk; we do not have a lot of information about those programmes. There are definitely aspects of temporary migration programmes that put workers at risk. Anything that restricts workers' and migrants' rights is going to include some level of risk.

I feel as if the Brexit conversation and the immigration conversation has been focused very much on whether we should have more or less migration, rather than on how we make sure that we are providing decent and good work for everyone. Part of that discussion is around regulation. They are so intricately tied to each other that it is hard to separate them.

Q218 Nic Dakin: Are there good practices—you pointed to one or two things—in a seasonal workers' scheme that you would have confidence in if it were replicated in the UK?

Meri Åhlberg: I mentioned the scheme in Sweden for migrant berry pickers. They have extended a collective bargaining agreement. There is a trade union. They have collectively bargained with employers to decide what the labour conditions should be. The trade unions are allowed to access labour sites and inspect them and make sure that the terms in those collective agreements are being upheld. When an employer in Sweden employs a migrant worker from Thailand, they have to share the contract with the trade union to make sure that it fulfils those terms and they have to provide a baseline salary, which is approximately £1,100. Importantly, the recruitment agencies in Thailand have to have a presence in Sweden, so that they are under the jurisdiction of Sweden. If they are charging recruitment fees, they can be held accountable in Sweden for doing that. That is one example where there have been successes in dealing with the exploitation of workers.

Q219 Nic Dakin: The involvement of the trade union sounds very important in that.

Meri Åhlberg: I would say so, yes.

Afzal Khan: Thank you Chair. Let me say, first of all, that throughout this day your chairmanship has been excellent. We have got through a lot of evidence. My final question—

The Chair: Flattery will get you everywhere.

Q220 Afzal Khan: That will be the last question then. Earlier, we heard evidence in relation to the 12-month visa. The suggestion was that the period could be increased to two to three years, then loaded with the fees, which are increased for the second and third years? What are your opinions on both the time period—having longer than 12 months—and on increasing fees?

Meri Åhlberg: I'm sorry, the fees for the workers or fees—

Afzal Khan: Yes, for the employer. The suggestion was employers have to pay higher fees for the second year and higher even for the third.

Meri Åhlberg: I would have to think about that and get back to you. In terms of having longer than a 12-month period, I have already said that I think that would be important. The danger of these temporary migration programmes and of having temporary workers who are not integrated into UK society is that you are creating a two-tier employment system where you have migrant workers in low-wage jobs with poor protections and with fewer rights. They also do not have the right to vote and they do not have any say over the conditions or the laws governing them. Also, they are being changed every year, so they do not have a community, they do not necessarily unionise and so on. It is a dangerous system and I do not see why we would have to limit it to 12 months.

The Chair: I thank our two witnesses, who stepped in early and accommodated the Committee. Thank you very much for the time you spent with us.

5 pm

The Chair adjourned the Committee without Question put (Standing Order No. 88).

Adjourned till Thursday 14 February at half-past Eleven o'clock.

Written evidence reported to the House

ISSB01 Refugee Rights Europe

ISSB02 Dr Sylvia de Mars, Mr Colin Murray, Prof Aoife O'Donoghue and Dr Ben Warwick

ISSB03 Committee on the Administration of Justice (CAJ)

ISSB04 Convention of Scottish Local Authorities (COSLA)

ISSB05 Bernard Ryan, Professor of Migration Law, University of Leicester

ISSB06 British Medical Association