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Public Bill Committee

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

Fifth Sitting

Tuesday 26 February 2019

(Morning)

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Saturday 2 March 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

Public Bill Committee

Tuesday 26 February 2019

(Morning)

[Graham Stringer *in the Chair*]

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

9.25 am

The Chair: Before we begin, will everyone ensure that electronic devices are turned off or switched to silent mode? I remind Members that tea and coffee are not allowed in the Committee Room.

We now begin line-by-line consideration of the Bill. The selection list for today is available in the room and on the Bill website. That shows how the selected amendments have been grouped for debate. Amendments grouped together are generally on the same or a similar issue. A Member who has put their name to the lead amendment in a group will be called first; other Members will then be free to catch my eye to speak on all or any of the amendments in that group. A Member may speak more than once in a single debate.

At the end of a debate on a group of amendments, I shall call the Member who moved the lead amendment again. Before that person sits down, they will need to indicate whether they wish to withdraw the amendment or seek a decision. If any Member wishes to press any other amendment or new clause in a group to a vote, they need to let me know. I shall work on the assumption that the Minister wishes the Committee to reach a decision on all Government amendments, if any are tabled.

Please note that decisions on amendments take place not in the order that amendments are debated, but in the order that they appear on the amendment paper. In other words, debate occurs according to the selection list; a decision is taken when we come to the clause that the amendment affects. I shall use my discretion to decide whether to allow a separate stand part debate on individual clauses and schedules following the debates on the relevant amendments. I hope that explanation is helpful.

The Committee agreed a programme order before the oral evidence sessions. That order, which is printed on the amendment paper, sets out the order in which we have to consider the Bill.

Clause 1

Repeal of the main retained EU law relating to free movement etc

Question proposed, That the clause stand part of the Bill.

The Chair: With this it will be convenient to discuss that schedule 1 be the First schedule to the Bill.

The Minister for Immigration (Caroline Nokes): It is a pleasure to serve under your chairmanship, Mr Stringer, and that of your co-Chair, Sir David Amess, who took us so ably through the evidence sessions the week before last.

At the outset, I would like to emphasise the importance of the Bill in delivering the future border and immigration system. It was clear from the EU referendum, from the many views shared on Second Reading and from the Committee's evidence sessions that people want a fair immigration system that works for the whole United Kingdom—a system that attracts talent from around the globe and allows individuals to access the UK based on what they have to offer, not where they come from.

We heard many important views about the current and future border and immigration systems from witnesses who gave evidence before the Committee two weeks ago, as well as from organisations that provided written evidence. I am grateful to everyone who took the time to provide their opinions. The views that were put forward demonstrated a strong interest in a wide range of immigration issues, as well as in the specific design of the future system. The evidence highlighted the importance of learning lessons from the past and ensuring we get things right.

A clear message emerged about the need to create a fair and simple system, and those are key priorities for me in the design of the future system. As I have said previously, I recognise that the immigration rules need to be made simpler. That is why we have asked the Law Commission to review how the rules could be simplified. I look forward to considering its findings when they are published.

Leaving the European Union means that, for the first time in more than 40 years, we can deliver control of immigration by ending free movement. In its place, we will introduce a new system, which will level the playing field by ending preferential treatment for EU citizens. It will mean that everyone has the same opportunity to come to the UK, regardless of where they are from.

Stuart C. McDonald (Cumbernauld, Kilsyth and Kirkintilloch East) (SNP): I am grateful to the Minister for giving way so early. She has asserted a couple of times that the new system will provide a level playing field for everybody, but the White Paper indicates that nationals of different countries will be treated in different ways. There will, I reckon, be preferential treatment for EU nationals with the one-year visa and for countries whose citizens are already non-visa nationals. Will she clarify that? Is she saying everybody is going to be treated exactly the same, or does she accept that the White Paper in fact does not set out such an arrangement?

Caroline Nokes: The Bill certainly does set out that people will be treated in the same way, because it is a Bill simply to end free movement. The White Paper, which was published on 18 December, gives us the opportunity to discuss the future system and how people from across the globe may be treated. It gives us the opportunity to discuss whether trade deals might include treatment within our immigration system. It is important that we have a system that reflects people's skills and what we need in our economy. This Bill, through which we are seeking to end free movement, is an opportunity to start to provide that level playing field.

Alison McGovern (Wirral South) (Lab): The Minister has just given the game away. The manner in which people will be treated will largely depend on what the Government see as their interest with regard to trade deals. They are telling people that there will be a level playing field, but that is a misnomer because people's rights will be highly dependent on the Government's whims relating to the incentives in future trade deals.

The Chair: Before I call the Minister, this is a good opportunity to remind members of the Committee that interventions should be short and to the point. There will be plenty of opportunities for Members to catch my eye if they want to make a longer contribution.

Caroline Nokes: This is an opportunity for Members to express their views about the future immigration system. Far from giving the game away, the White Paper is an opportunity, and we have said that there will be a year of engagement on it during which we will consider all views. We already have a system in which nationals from some countries require visas for visits and others do not, and we will be seeking to establish relationships. All such matters will be for future negotiation and discussion. It is absolutely right that, as a first step in the process, we listen to what we were told in the 2016 referendum and end free movement.

I want us to continue to be an open, outward-looking and welcoming country. I reiterate what I and my right hon. Friend the Home Secretary have said many times: we value immigration and the contribution that people have made to our society, our culture and our economy. There are many people, including hon. Members on this Committee, who are rightly interested in the design of the future system. That is why we are engaging on the proposals set out in the White Paper, "The UK's future skills-based immigration system". That will include sessions that are open to all MPs to discuss specific points of interest on the proposals. In the past few weeks, I have held engagement sessions with Members on students and workers, and in the coming days there will be another one on asylum.

The purpose of the Bill is clear: we are ending free movement and providing the legal framework for the future border and immigration system. Clause 1 introduces the first schedule, which contains a list of measures to be repealed in relation to the end of free movement and related issues. The clause fulfils a purely mechanistic function to introduce the schedule. It is the bare bones of the Bill. I look forward to debating it further with hon. Members, who may address certain aspects of it in amendments that undoubtedly will be tabled to other parts of the Bill. To get matters under way, I commend clause 1 to the Committee.

Afzal Khan (Manchester, Gorton) (Lab): It is a pleasure to serve under your chairmanship, Mr Stringer.

This clause—this entire Bill, for that matter—puts the cart before the horse. Labour has been clear that our immigration policy is subordinate to our economic and trade policy. The Government's position on Brexit, on the other hand, has been consistent in just one way: they insist on putting immigration ahead of our economic needs. We simply cannot support measures that would cause our country to be worse off.

It is a fact that freedom of movement ends when we leave the single market, but the Prime Minister herself has recognised the need for frictionless trade and has been told categorically by the EU that that cannot be maintained without a close relationship with the single market. If the Government cannot yet be clear about what the final agreement will be on our relationship with the single market, this makes no sense. Until the Government get their ducks in a row, we simply cannot vote for such a measure.

The Bill also fails to address two major questions facing Parliament. The first is how we will protect the rights of the 3.5 million people who have already moved to the UK and made their lives here. On Second Reading, the Home Secretary said,

"my message to the 3.5 million EU citizens already living here has also been very clear. I say, 'You are an incredibly valued and an important part of our society; we want you to stay. Deal or no deal, that view will not change.'"—[*Official Report*, 28 January 2019; Vol. 653, c. 507.]

Yet the Government have made no provisions in the Bill to protect those citizens.

Kate Green (Stretford and Urmston) (Lab): Does my hon. Friend agree that the Bill would be the ideal opportunity to offer statutory reassurance to those 3.5 million people by including the details of the Government's settled status scheme and their ongoing proposals for protecting those people's rights?

Afzal Khan: I agree wholeheartedly with my hon. Friend's comments. Labour has tabled a number of new clauses to the Bill that would put the rights of EU citizens into primary legislation. We hope that the Government accept those when we get to that point.

The second question is what our new immigration system should be doing in the future. The Bill is incredibly flimsy; it is only 16 pages long, which is extraordinary given that it will mean the biggest change to our immigration system in decades. Instead of putting forward a new immigration system that Parliament can discuss and debate, amend and improve, the Bill grants powers to Ministers to introduce whatever system they like through extensive Henry VIII powers. We were given an indication of what such a system might be like in the White Paper published by the Government in December. In fact, Ministers are under no obligation to use the powers to implement that system. If they implement the system described in the White Paper, it will spell disaster for our economy and our society.

We will go into these matters in more depth in subsequent debates, but expert witnesses at our evidence sessions criticised almost all aspects of the Government's plans. The £30,000 threshold would be a disaster for business and public services such as the NHS. The 12-month visa would lead to exploitation. Labour has no problem with immigration that would treat all migrants the same no matter where they came from, but that is not the system the Government propose. The White Paper is explicit that there will be certain visas and conditions that will apply only to people from "low-risk countries"—a categorisation that the Government are not at all transparent about. Apart from those two glaring absences, the Bill before us fails to address a litany of problems with our immigration system, some of which we seek to remedy through our amendments.

[Afzal Khan]

Before I conclude, I have two questions that I would like the Minister to address. First, under what circumstances would the Government use the powers in the Bill? We have heard that this is a contingency Bill, so if there is a withdrawal agreement and thus a withdrawal and implementation Bill, will the Government use powers in that Bill to repeal free movement? Secondly, could the provisions in this Bill lead to a change in immigration law that affects non-European economic area migrants? Could the Government use the powers in the Bill to amend immigration legislation that affects non-EU citizens?

As the Minister will know, the Government are asking for extensive Henry VIII powers. During our Committee sittings, Adrian Berry, Steve Valdez-Symonds and Martin Hoare, all experts in immigration law, confirmed to me that the powers in the Bill could be used to make legislation affecting non-EU citizens. Is the Minister willing to contradict the experts? Does she agree that, if it is indeed the case that the powers in the Bill could be used to make legislation that affects non-EU citizens, its scope is much wider than the end of free movement?

Stuart C. McDonald: It is a pleasure to serve under your chairmanship, Mr Stringer. I thank the Clerks for working their way through a mountain of amendments and making them presentable in the last few days. I thank the various organisations and individuals for their help and ideas for amendments, and I thank the shadow Minister for engaging with us over the last couple of days. Any flaws in the amendments we have tabled are my responsibility alone. Finally, I thank the Minister; she has been very open to discussion, approachable and good humoured, as ever. The fact that I can't stand the Bill and utterly oppose it should not be taken personally. Hopefully, we will still be able to have some useful and constructive debates.

I will not rehash all the points I made on Second Reading. I love free movement; my party fully supports it and I pretty much believe it is the best thing since sliced bread. I regret that it is in danger of coming to an end. It will leave the United Kingdom in an unusual position historically. This country has, for almost its entire history, allowed certain citizens to come and go, whether EU citizens, Commonwealth citizens or, before that, absolutely everybody. All the evidence is that free movement is beneficial to us, for growth, productivity and public finances. In Scotland, it has transformed our demographic outlook from a country of net immigration to a country of positive migration. The quid pro quo for all this is that we will lose our free movement rights. My family and I have benefited from free movement, as have many Members, including on this Committee. I regret that this Parliament will pull up the ladder behind it.

The challenges of free movement that are often cited will not be solved by ending free movement but by proper labour market standards and enforcement, by integration strategies and by investment in public services. Neither do the justifications for ending free movement stack up. Indeed, it was striking in the Minister's speech and in the speeches of some Government Members on Second Reading how little free movement and the supposed justifications for ending it were addressed.

It is wrong to say that people voted to end free movement, because it was not on the ballot paper. To argue the contrary is to argue that almost 100% of leave voters were motivated by that alone. That is not the case. This is the Prime Minister's red line, not the people's red line. Opinion polls and studies show that if it comes to a choice between a closer trading relationship with Europe and ending free movement, a closer trading relationship wins. Simply repeating ad nauseam that we are "taking back control of our borders" is not an argument.

Now is the most bizarre moment for MPs to consider voting to end free movement. Parliament hopefully is on the verge of taking control. Who knows what trading arrangements may be secured, perhaps involving free movement. A people's vote is even more on the cards than it was at the time of Second Reading. As the shadow Minister said, the Bill puts the cart before the horse. Let us sort out our negotiating position first, then we can decide what that means for free movement. If the public are happy enough to retain free movement for a closer trading arrangement, it is wrong for MPs to rule it out at this stage. There is no need to rush through the end of free movement, even if we do leave in a month's time. For those reasons, my party believes that the clause should not stand part of the Bill.

Kate Green: It is a pleasure to serve under your chairmanship, Mr Stringer. I echo the comments of the hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East in thanking the Minister for being so open to colleagues in preparing for consideration of the Bill over the next two weeks.

I, too, believe that freedom of movement has been good for our country and particularly for my constituency. We are a proud manufacturing constituency that offers many skilled jobs, and we have relied heavily over the years on the skills and talents of EEA nationals who come to work in our industries. It is clear that north-west England is destined to suffer most economically from loss of access to EEA labour under free movement rules.

I echo the hon. Gentleman's remarks about public opinion on freedom of movement. A couple of years ago I had the pleasure to participate in a citizens' assembly organised by the Constitution Unit of University College London. One of the questions that the participants were asked to address was what kind of immigration arrangements they wanted with the European Union after Brexit. This was a deliberative process carried out with a representative sample of over 100 individuals, exactly mirroring the demographic of the referendum electorate in terms of the vote—leave or remain—geography, ethnicity, age, background and so on.

9.45 am

After two weekends of extensive deliberation, the conclusion the assembly reached was that it was happy with the current free movement arrangements between EU countries, including the UK, but that it just wanted them to be properly enforced. As we heard in oral evidence a couple of weeks ago, the Government have had the opportunity over many decades to impose registration conditions, for example. We have never

used them, but they could have offered greater reassurance to the public that the country has a grip on the immigration system.

I want to express some concerns about the implications of endorsing clause 1 today without knowing what we will have in its place. The Government have announced a settlement scheme for EEA nationals already resident in the UK. They can either apply for settled status, if they can demonstrate five years' residence exercising treaty rights, or for pre-settled status, on the way to achieving that. It is good that EU nationals have already begun to register under that scheme, and many have managed to do that very straightforwardly. However, we know from the evidence we have heard and read that some have experienced difficulties. That is why I feel very strongly—we will debate this later in Committee—that if we are going to apply clause 1, we have to put something in the Bill that protects in statute the rights of all those people so that they are not left in some sort of limbo or black hole until we get to the new immigration system the Government negotiate, perhaps by 2021.

I have particular concerns about the implications of clause 1 in the event that we do not reach a deal for the transition phase; after all, we are only five weeks away from that and the situation it could leave European Union nationals in—in particular, those who arrive after Brexit day of 29 March but before we have the new immigration system in place.

We know, because the Government have announced this, that the intention is to introduce a model of European temporary leave to remain, which would be granted by way of a visa for up to 36 months from the date of application. It would apply to all EU nationals arriving after 29 March and staying for more than three months. However, the combination of clause 2 and the Government's announcements so far on that system means that there are a number of concerns, which leave us in a legal black hole. The Minister was good enough to answer a number of written questions I posed to her about the scheme, and I received her answers on 12 February.

First, I think I am right that the European temporary leave to remain visa is non-extendable, and anyone on it will need to transfer to a new visa category when the new UK immigration system comes into effect. Given the effect of clause 1, they will be left in a very uncertain position for now as to whether they will be able to stay longer than the 36 months under the European temporary leave to remain visa, with no guarantee that they will be able to switch to a new kind of visa under the new immigration regime.

Secondly, having looked carefully at the Minister's written answers, I am not clear whether time spent on a European temporary leave to remain visa, post clause 1 and before the new immigration system takes effect, would count towards an application for indefinite leave to remain in due course. If it does not, my understanding is that individuals working on a temporary leave to remain visa would have fewer rights than do non-EU nationals now on tier 2 visas. Will the Minister confirm my understanding and perhaps say more about the Government's intentions?

As we heard in oral evidence, there is a particular worry about students starting courses in 2019-20 or 2020-21 where those courses are longer than three years. If this clause is passed in the next few weeks, students starting this September will not have certainty about whether they will be able to complete their courses in some cases, because a 36-month visa may not be sufficient. As colleagues from the Scottish National party will know, that covers all undergraduate degrees in Scotland. It covers medicine and dentistry courses, nearly all engineering courses, any course with an integrated masters or placement period, and most PhD programmes—we are already seeing a fall in the number of students from the EU coming to study at PhD level at our Russell Group universities. Students on the European temporary leave to remain visa would not be entitled to a period of post-study work leave on this visa, and would therefore have fewer rights than non-EU nationals on a tier 4 visa, because undergraduates on such a visa for a three-year course are granted four additional months leave after the course end date.

From the Minister's written answer to me, we do not know exactly what fee will be charged. Most concerning of all perhaps is the position that this limbo will create for employers. It will not be possible for employers to check who is here as a European national with a right to settled status, although they have just not applied for it—after all, they have until 2021 to do so—who is here in the first three months of a visit, having arrived after 29 March; and who has been here for longer than three months and has not chosen—or not been aware that they need—to apply for a European temporary leave to remain visa. That puts employers in a difficult position.

While we have had good assurances from the Home Secretary that there is no expectation that employers should be checking EU nationals in this period, if they employ someone who is not entitled to work in this country, they would none the less potentially be at risk of committing an offence under criminal law. In oral evidence, we heard from Hilary Brown and James Porter that there is considerable confusion among employers about what they need to check, whether they will be checked and what will be looked for. Can the Minister say more about what support will be given to employers in this intervening period? In her written answer, she mentioned that guidance would be produced—I am grateful to hear that—but it would be helpful to the Committee and, more importantly, to employers and individuals if she could say more about what it will contain.

In the meantime, and in conclusion, it seems that the European temporary leave to remain visa, combined with clause 1, leaves us with a system that is not fit for purpose. It will create extra bureaucracy for the Home Office, without giving it any more grip on who is here legitimately if there is no mechanism by which employers or landlords, for example, are expected to check. It troubles me that the Home Office is adding another burden to its administration systems, which will not help it to process the settled status scheme, which we all welcome, as smoothly as possible. For that reason, I feel strongly that it would be premature to endorse clause 1 now. It causes me deep concern, and I hope the Minister will respond to the points I have raised.

Alison McGovern: I join colleagues in thanking the Clerks and the team for the work they have done. I will make a few remarks, particularly about the economic arguments sometimes made for clause 1. I have no doubt that we will spend much time debating some of these points, but let us start as we mean to go on.

[Alison McGovern]

On the timing of the Bill, I profoundly agree with my hon. Friend the Member for Stretford and Urmston. It seems bizarre that anyone would think it acceptable to remove, with one clause of this Bill, an entire set of rights that all citizens in this country enjoy by reciprocity with the European Union, and that European Union citizens enjoy in this country, and to replace them with nothing but the promise of a White Paper. There is no set timescale for the introduction of any new immigration system, so we are saying to people, "All your current rights will be removed and will be replaced at some point in the future. We don't know when, and we don't know what the new rights will be, but bear with us while we sort it out."

Nick Thomas-Symonds (Torfaen) (Lab): Can my hon. Friend think of any realistic argument why, given that the Government say they want to guarantee the rights of EU nationals, they would not simply do so now, in clause 1?

Alison McGovern: I can think of a reason: because they want to take decisions on these rights based on negotiating interests and the potential gain they might get for their agenda. It seems clear that that has always been the manner in which the rights of EU nationals would be treated. I am afraid warm words are not enough. It is perfectly reasonable—and something I would expect every member of the Committee to be able to do—to say that we personally feel no animus towards EU nationals and that people are welcome in this country. However, it is one thing to say those words and another to do what is necessary to guarantee that they are true. I can think of no reason why the Government would not do as my hon. Friend has suggested.

Nic Dakin (Scunthorpe) (Lab): Does my hon. Friend agree that the fact that this is not dealt with in the Bill as clearly as it could be is unsettling for not only EU nationals but businesses? It interrupts business continuity in a way that is not helpful to the UK economy.

Alison McGovern: I agree with my hon. Friend, who makes a good point. I never thought I would be in Committee lecturing the Conservative party on the needs of British business, but we are where we are. My hon. Friend the Member for Stretford and Urmston made the point very well that we are creating not simplicity but an extraordinarily high level of uncertainty, and uncertainty is costly to the British economy. I am sure we will discuss the costs of the Brexit process during the Bill, but the Government could be handling the Bill better. They could have come up with the immigration White Paper long before they did, and we could have spent time in the past two and a bit years since the referendum discussing that very thing, but they have held off and postponed—and here we are now. People have no real idea what situation EU nationals will be in after the end of March. That is utterly intolerable.

Kate Green: My hon. Friend makes an important point. Does she agree that the result is that businesses are already experiencing labour shortages, because the uncertainty means EU nationals are already choosing not to come to this country to work? I was told the other day by a food processor in my constituency that there is particular pressure now in the haulage sector.

Alison McGovern: I hear the same evidence that my hon. Friend does. We represent constituencies in the same region, so that is not unexpected. Many people will respond that it should be fine, as there are plenty of people in Britain, and plenty of British people can do those jobs. However, unfortunately, that is to misunderstand the labour market. We have an ageing population. What, as we heard in evidence to the Committee, is the answer, according to those who want to put up the border and stop people coming here to do the decent and dignified thing by working in our country? It is to raise the pension age and ask people to work into their 70s. That is all right for people who do a desk job that is not physically taxing, but I do not really want to ask nurses whom I represent to work until they are 71 or 72. I do not think that would be appropriate. My hon. Friend made a good point.

My hon. Friend also talked about lack of simplicity in the new system. The Minister mentioned simplicity several times and the Law Commission will look into it. That is a good thing—and it is not before time. However, the fact is that free movement, like it or not, provides people with rights that are simple to understand and exercise. If we are to replace that system with a new one we had better have a good idea now—today—how we will give people an equal, or hopefully better, level of simplicity. For all the reasons that my hon. Friend mentioned, making people's lives simpler in that way is vital. It is the best way to make sure that the economy can innovate and move forward. I find it hard to understand why the Government should move clause 1 at this point, without a guarantee of an equally simple, or even simpler and better understood system.

Kate Green: Again, my hon. Friend makes a powerful point. This is about simplicity not just for business and our economy, but for families who will now not be clear about the basis on which family members can come to this country to live with them.

10 am

Alison McGovern: I thank my hon. Friend for that intervention. She is right, and we have all spent time in our surgeries with distressed constituents who are dealing with complexities faced by their families. No doubt all that personal and human cost comes across the Minister's desk, and I know she treats such cases with empathy and kindness. If we are to replace a system that is simple and straightforward for people to understand, and means that they can plan family life and get on with the things they want to do without constant interference by the Government, a better option should be on the table than the one we currently have—I never thought I would have to lecture the Tory party about the perils of a Government interfering unnecessarily in people's personal lives, but there we are.

Some people talk about the economic impacts of immigration and say that ending free movement was what caused the referendum result. As has been said, however, that is questionable because free movement was not on the ballot paper, and we do not really know.

Gavin Newlands (Paisley and Renfrewshire North) (SNP): Does the hon. Lady agree that there is a huge degree of confusion about freedom of movement, and that it is conflated with the rest of immigration and asylum policy? That is not helped by a lack of knowledge in this country about how the European Union works and operates, and how we approach such issues with the EU. The direct impact on people in the UK, and on their ability to travel freely across the EU to work, travel and be educated, was not known, so we cannot possibly say that the UK voted to end freedom of movement.

Alison McGovern: I thank the hon. Gentleman for his intervention. It is entirely possible that people do not know all the ins and outs and details of the immigration system—I would not expect them to; it is quite complicated. Having stood in three general elections in a swing marginal seat, I suggest that anyone who thinks they can be involved in British politics and not get involved in conversations about immigration is kidding themselves. We must accept that immigration is an issue, and that people will seize on anecdotes and their own personal experience. That is not illegitimate either—people rely on their lived experiences, but when it comes to decisions that we take, it is a mistake to rely on anecdote and we must consider the actual evidence for what immigration has done in our labour market.

In 2015, one Bank of England study found that immigration had had a very small effect on the wages of those at the lower end of the earnings distribution, but that that effect was not significant. Often that study is seized on as evidence that immigration has somehow had this huge impact on people's earning potential, but I simply ask people to compare that with what we know has happened to wages since the financial crash of 2008. Compared with the trend of 2% annual growth in real wages from 1980 to the early 2000s, which was pretty regular, between 2008 and 2014 people's real wages fell significantly, with a shortfall of about 20% in what they would otherwise have expected had that real wage growth continued.

If we consider groups in our society, apart from pensioner households, no one is better off than they would have been in 2008. The significance of that impact while we have been in the European Union demonstrates that what has happened is a change in Government policy and the decisions that have been made to support people's incomes. Real wages have been weakened by rising inflation since the 2016 referendum, which has had a huge impact. Depreciation will lead to rising costs. In the end, when considering people's earnings potential, what matters is not the nominal figure of the amount they have coming in, but what they can buy with it.

I would say to people who worry about the impact of immigration on wages that we should definitely consider it. It is true that most of the studies that have investigated this matter have found that, at the local level, there is no statistically significant impact of immigration on the earnings of those in that local economy. However, if that is considered so important that it ignores the impact of prices and what has happened since the referendum, that is not being serious about dealing with poverty in this country. We need to understand that if we tell people that we will make the average British person better off by restricting immigration, we are offering a false promise.

Caroline Nokes: A good number of useful and interesting points were raised by hon. Members. I just want to start by correcting one point made by the hon. Member for Manchester, Gorton who said it was a fact that free movement would end when we leave the single market. Free movement, as hon. Members know, was frozen into UK law last year, which is why we need the Bill so that we can end free movement, which will not happen automatically when we leave the EU.

Hon. Members are right to point out that there may be a gap. There could be a gap either way. It is perfectly feasible that the Bill will not gain Royal Assent until after we leave the European Union and it is certainly possible to envisage the circumstances in which the Bill might gain Royal Assent before we leave the EU. It is an important Bill and, although I have been accused of putting the cart before the horse, that is not the case. It is not premature; it is something that we must do.

Several hon. Members raised the rights of the 3.5 million EU citizens living in the UK and were absolutely right to do so. They will also know that we hope very much to address that in the withdrawal agreement Bill in the event of a deal. I am probably one of the few in the room to have voted consistently for the deal every time it has come before the House *[Interruption.]* Okay, they are all raising their hands now. I certainly have done. It is really important that we secure a deal and, in so doing, have the withdrawal agreement. I will have the joy of also serving on that Bill Committee and will take through the citizens' rights principles that we are determined to secure.

I do not intend to bore hon. Members on this subject but it is one of my favourites. They will know that we opened the EU settled status scheme last year in its first trial phase. We are now into the third open beta testing phase. I am not in any way complacent about that. These large projects are opened in private beta testing first in order to iron out the bugs, problems and issues that may crop up. It is fair to say that there have been issues, but we have been able to learn from the process and react relatively quickly to iron them out. I am pleased that so far 100,000 people have gone through the process and more are applying every single day.

That does not mean that I am not alive to the challenges that are part of that. Obviously, 3.5 million is an enormous number and 100,000, although a good start when not even in the open phase of the scheme, is encouraging but I know there is a great deal more to do. I am sure hon. Members will be reassured by the fact that we will open the communications programmes very shortly.

Nic Dakin: We heard quite a lot of evidence from people concerned that, if we get this wrong at this point, we could create another Windrush situation further down the line. How will that be prevented?

Caroline Nokes: The hon. Gentleman raises an important point. If we have learned one thing from Windrush—and I sincerely hope we have learned many—it is that a declaratory system that does not give people the evidence they need to be able to affirm their right to be in the UK, to work and own property, does not work. That is why we have a scheme that I am confident will give people the evidence they need so that we can avoid a

[Caroline Nokes]

position whereby EU citizens who are here and settled are in the same situation in the future. I am conscious—Members may have heard me say this in Select Committees—that there will be children of EU citizens living in this country today who are well under the age of 16; some will be one or two years old. The hon. Member for Wirral South mentioned an ageing population and longevity, but while we in this room might be lucky to get to our late 80s, there are children who will live to 100 or 110. It is therefore important we have something that is enduring and enables them to evidence their right to be here for a century or more.

Stuart C. McDonald: A new argument appeared for the first time yesterday at Home Office questions, saying the problem was caused because Windrush was what Ministers describe as a declaratory system. That was not what caused the problem; the problem was the lack of evidence. In fact, if people did not have rights under statute—as we would like to see here—they could have been removed ages ago and could not have rectified the situation. It is not right to say that a declaratory system caused the problem to the Windrush generation.

Caroline Nokes: I disagree. If we look back to the Immigration Act 1971—I have become quite familiar with that Act over the past year in this job—it put the right of the people of the Windrush generation to be here in statute, but it did not provide them with the evidence they needed to demonstrate that. It is important we learn that lesson and make sure we do not repeat the mistake for our EU citizens.

Kate Green: Does the Minister agree that the conclusion is that we should do both? We should have a declaratory system so that people's legal rights are clear in statute and, at the same time, we should have a process of giving them reliable and sustainable evidence to demonstrate they have that right.

Caroline Nokes: Through the EU settled status scheme, we have provided people with the mechanism via which to demonstrate that. I have confidence in the mechanism. I recognise the challenges, some of which we heard in the evidence session two weeks ago. I am determined we get that right and make it a system that people will engage in, take part in and be able to evidence their status.

Afzal Khan: On the same point, one of the issues that came through during the evidence sessions was that it would also be helpful to have a hard copy of that evidence.

Caroline Nokes: The hon. Gentleman will be aware that the Home Office is seeking to move to digital by default in many of our processes. I recognise that this is the way forward. I spent a very happy six months at the Cabinet Office as the Minister for the Government Digital Service, recognising that the delivery of services digitally is the way forward. With the digital right-to-work checks and the roll-out of the digital right-to-rent checks, we already have a system that makes sure the individual employer or landlord can see only the evidence to which they are entitled, rather than having a biometric card that lays out all a person's details. It can be tailored so the potential employer gets to see only the evidence of the right to work. I believe that the system works well and when I showed it to the landlords' representative panel, they engaged with and were enthused by it. It has also worked well for employers. Digital status that is backed up and can be evidence going forward, simply and easily, is much better than a document that potentially contains the risk of fraud and that might need renewing every 10 years, in the same way we have to renew our passports.

This is the Bill that will end free movement. That is not the role of the withdrawal agreement Bill, which is where we will enshrine citizens' rights.

Paul Blomfield (Sheffield Central) (Lab): I share the comments made from this side of the Committee regarding the Minister's approach to the Bill and, indeed, to her brief. Can she explain what consideration the Government have given to one of the single biggest national groups affected by any freedom of movement—UK nationals: the 1.2 million Brits who live and work in the European Union. If we poll young people, we find that their biggest regret about our leaving is losing their right to freedom of movement within the European Union. What assessment has she made of that issue, because reciprocity is key?

Caroline Nokes: The hon. Gentleman is right to point out that reciprocity is key—it is crucial. Although we have it within our power to legislate to protect the rights of the 3.5 million here, we do not have the right to legislate in France, Germany or Spain. I am absolutely conscious of the very real concerns. We heard some of them in the evidence sessions, but I have also met repeatedly with representatives of those who live in EU member states, who are concerned.

10.15 am

We heard evidence from a lady whose name I forget about how important she felt it was to have citizens' rights enshrined in primary legislation. I give the same answer I have given previously: the withdrawal agreement Bill will be the place for those measures. I am looking forward to taking the citizens' rights elements through, but it is wrong to say that we have not enshrined them in legislation. We opened phases 1, 2 and 3 of the settled status scheme through the immigration rules, and it is my duty to lay the rules for opening the system fully by 30 March, so we have already enshrined those measures in legislation, albeit secondary legislation. We intend to do more through secondary legislation for when the scheme opens fully, and of course those rights will be enshrined in primary legislation through the withdrawal agreement Bill.

Kate Green: It will be welcome to have citizens' rights enshrined in primary legislation through the withdrawal agreement Bill, but of course if we do not have a withdrawal agreement, we will not have that legislation. Are there alternative plans to ensure that those rights are enshrined in primary legislation, rather than in

secondary legislation, which would be subject to future change and would not receive proper parliamentary scrutiny, in the event that there is no deal?

Caroline Nokes: Opposition Members never, I think, let me get away with anything without proper scrutiny. The hon. Lady knows that I want to see the withdrawal agreement Bill passed. That is an important step. I am most enthusiastic and keen—nay, desperate—for us to get a deal; it is crucial that we do so, but I still firmly hold that the withdrawal agreement Bill, rather than this Bill, which is a straightforward Bill to end free movement, is the place to enshrine those rights. This Bill's powers on free movement will of course be required both in the event of a deal and in a no-deal scenario, but they will be used differently if we have a deal, in which case the withdrawal agreement Bill will provide protections for the resident population.

The power in clause 4, which we shall probably come to later today, is similar to that found in other immigration legislation, and can be used only in consequence of or in connection with part 1 of this Bill, which is about ending free movement. I therefore do not believe there is a risk that it could be used to change immigration legislation for non-EEA nationals in ways unconnected to part 1 of the Bill.

Let me say in response to the hon. Member for Stretford and Urmston that we have been clear that, after our exit, there will be no change to the way that EU citizens prove their right to work. They will continue to use a passport or an ID card until the future system is in place.

I have been clear that we will engage widely on the future system, which will come in after 2021. It will be a skills-based immigration system, which enables us to move forward, absolutely accommodating the needs of our economy, I hope—I have been candid about this since my first day in the Home Office—in a much simpler way. We are confronted with 1,000 pages of immigration rules, so there is certainly the opportunity to simplify enormously. I do not pretend that I have it within my power to "do a Pickles" with the immigration rules by doing the equivalent of his tearing up 1,000 pages of planning guidance and reducing it to the national planning policy framework, but we have to move forward with a system that is far simpler and easier to understand than what we currently have.

Kate Green: Will the Minister take the opportunity to reassure employers that, in the period until 2021, provided they have looked at an individual's passport or identity document, they will not commit any criminal offence if it happens that that individual in practice does not have the right to work because they arrived after Brexit day and did not apply, as they needed to, for European temporary leave to remain?

Caroline Nokes: There is a terrible phrase, which I really dislike using: "statutory excuse". If an employer has seen evidence—an EU passport or ID card—that indicates that somebody has the right to work in the same way as they do now, that provides them with the protection that the hon. Lady seeks.

Afzal Khan: I ask the Minister again: could the Government use the powers in the Bill to amend immigration legislation affecting non-EU citizens?

Caroline Nokes: I think I responded to that point a few moments ago. We do not consider there to be a risk that the power could be used to change immigration legislation for non-EU nationals in ways that are unconnected to part 1 of the Bill. Part 1 is specifically about ending free movement.

Question put, That the clause stand part of the Bill.

The Committee divided: Ayes 10, Noes 9.

Division No. 1]

AYES

Badenoch, Mrs Kemi	Duguid, David
Brereton, Jack	Maclean, Rachel
Caulfield, Maria	Maynard, Paul
Crouch, Tracey	Nokes, rh Caroline
Davies, Glyn	Sharma, Alok

NOES

Blomfield, Paul	McGovern, Alison
Dakin, Nic	Newlands, Gavin
Green, Kate	Smith, Eleanor
Khan, Afzal	Thomas-Symonds, Nick
McDonald, Stuart C.	

Question accordingly agreed to.

Clause 1 ordered to stand part of the Bill.

Schedule 1 agreed to.

Clause 2

IRISH CITIZENS: ENTITLEMENT TO ENTER OR REMAIN WITHOUT LEAVE

Stuart C. McDonald: I beg to move amendment 29, in clause 2, page 1, line 11, at end insert—

"(1A) After section 2A insert—

'2B Family members of Irish citizens

Nothing in the Immigration Rules (within the meaning of this Act) shall lay down any practice that treats or provides for the family members of Irish citizens differently to the treatment or provision made for the family member of British citizens.'"

This amendment seeks to ensure that the family members of Irish citizens are treated in the same way as the family members of British citizens.

The Chair: With this it will be convenient to discuss amendment 28, in clause 2, page 2, line 13, at end insert—

"(6) The Secretary of State may not conclude that the deportation of an Irish citizen is conducive to the public good under section 3(5)(a) unless he concludes that a higher threshold is reached whereby deportation is in the public interest because there are exceptional circumstances.

(7) No person of any nationality is liable for deportation under section 3(5)(b) where he belongs to the family of an Irish citizen who is or has been ordered to be deported, unless subsection (6) is satisfied in respect of that Irish citizen.

(8) No Irish citizen is liable for deportation under section 3(6) where recommended for deportation by a court empowered under this Act to do so unless, thereafter, the Secretary concludes that his deportation is conducive to the public good in accordance with subsection (6).

(9) An Irish citizen may not be deported or excluded from the United Kingdom if they are among the 'people of Northern Ireland' entitled to identify as Irish citizens by virtue of Article 1(vi) of the British-Irish Agreement of 1998."

This amendment would provide additional safeguards against deportation for Irish citizens.

Stuart C. McDonald: Clause 2 concerns the special status of Irish citizens in the UK in immigration law. It is probably fair to say that although we often refer to the common travel area, and although we know how it works in practice and have a broad idea of the practical reasons why it exists, the actual law here is pretty obscure, vague and not very well understood. I apologise if I have maligned any Committee members who are in fact experts in this area of immigration law.

In recent years it probably has not been a concern, largely because free movement means that it has not really mattered. That now changes completely if free movement is stopped, and clause 2 is one of the steps that we need to take to ensure that the status of Irish citizens here is protected. Parts of clause 2 are welcome because, if clause 2 were not part of the law, although Irish citizens could still come to the UK without immigration control if they were coming from another part of the common travel area, if free movement ended they would have no such right if they arrived in the UK from outside the common travel area, whether on a plane from New York or a train from Paris. Clause 2 confirms the right of Irish citizens to enter and remain without permission—even if free movement rights end—irrespective of where they entered the UK from, unless they are subject to a deportation order, exclusion order or international travel ban.

The question is: does clause 2 go far enough? The evidence received in writing and heard at hearings suggests that it does not. There are other aspects of the special status that we need to have a look at as well. There is one sense in which clause 2 appears to undermine the special status afforded to Irish citizens, and that is in relation to deportation.

As Professor Ryan pointed out in his evidence, the clause provides that Irish citizens may be deported under the general deportation laws of this country—those that apply to everybody else—under the Immigration Act 1971. Those apply to: a person whose deportation the Secretary of State deems conducive to the public good, including under the controversial mandatory deportation provisions of the UK Borders Act 2007; a person whom a court recommends for deportation at the time of conviction for a criminal offence punishable by imprisonment; and a family member of a person who is or has been ordered to be deported.

The clause would also introduce a specific new power to exclude Irish citizens from the United Kingdom if the Secretary of State considers that to be conducive to the public good. However, in doing so the Bill does not imply any particular special protection regarding the threshold for the deportation or exclusion of Irish citizens. The stated policy of the Government in 2007, according to the then Immigration Minister, was:

> "Irish citizens will only be considered for deportation where a court has recommended deportation in sentencing or where the Secretary of State concludes, due to the exceptional circumstances of the case, the public interest requires deportation."—[*Official Report*, 19 February 2007; Vol. 457, c. 4WS.]

That is a higher test than would be applied by clause 2, and we heard evidence suggesting that the clause would water down the position of Irish citizens. In that regard, it might be useful to note that, by virtue of their exemption from Irish immigration law, British citizens are completely immune from deportation and exclusion under Irish law. Indeed, other evidence sent to us from a group of academics goes further, and asks why, if Irish citizens are "not foreign" according to the Ireland Act 1949, we need to retain the power to deport them at all. Ireland has not retained the equivalent power.

Professor Ryan raised a further important question about whether, to comply with the Belfast agreement, there should be an exemption from deportation and exclusion for Irish citizens who are from Northern Ireland. Under the Belfast agreement, both Governments recognised the birthright of all people of Northern Ireland to identify themselves as, and be accepted as, Irish, British or both, as they may so choose. As Professor Ryan puts it:

> "There is a risk that, as formulated, the deportation and exclusion clauses will fail to respect the right of a person from Northern Ireland who wishes to identify as an Irish citizen."

He questions whether it is compatible with the Belfast agreement to require a person from Northern Ireland to assert their British identity in order to resist deportation to Ireland. There might even be circumstances in which UK nationality had been renounced.

Those are the issues that amendment 28 is designed to address. It seeks to enshrine in law what is supposedly current Government practice, instead of watering down that standard on deportation. It also seeks to ensure that clause 2 does not in any way undermine the Belfast agreement. I am sure that everyone in this room today would agree that it is important that we get these things right. My final observation in that regard is that, according to Professor Ryan, as I have said, there is no provision in Irish law to deport UK nationals.

Amendment 29 probes the Government, seeking an explanation of what the exact position will be of Irish nationals who seek to have family members join them—if and when the normal family rules in the immigration rules are applied to them. As we will come to later—perhaps today, or on Thursday—I absolutely hate those draconian and restrictive rules, but at least they are there, allowing British citizens and settled persons to be joined by family members. As Professor Ryan points out, the immigration rules will allow for UK citizens returning to the UK to be accompanied by non-UK or Irish family, and for UK citizens and settled persons already here to be joined by non-UK or Irish family. That last bit should apply simply enough to Irish nationals as well, because clause 2, if passed, would appear to mean that Irish persons would be treated as settled persons for the purposes of the rules. I should be grateful for confirmation that that is the case.

The second problem is that it seems, from the clause's drafting, that Irish persons moving here with such family would not be able to use the rules in the way that a UK citizen could, because they would not yet be settled persons. The Irish person would need to come here first and become settled, and their family would join them later. Another issue is whether the rules in other respects will treat the family members of an Irish citizen in precisely the same way as they treat family members of UK citizens. In particular, if a UK national has a UK national child here, as we all know, the child would not cause the financial threshold to increase if any application was made by an overseas spouse to join them. Would the presence of an Irish citizen child of an Irish citizen result in the financial threshold being increased for any spouse coming to join that family?

Amendment 29 simply seeks to ensure that Irish citizens will be treated in the same way as UK nationals. I will not press it to a vote, however, because as the Committee on the Administration of Justice, a cross-community human rights organisation in Northern Ireland, rightly points out, it may need to be tweaked to ensure that it does not prevent Irish citizens from benefiting from the more favourable treatment that EU families may continue to enjoy for a period through retained EU law, in comparison with UK citizens and settled persons encumbered with the immigration rules. The amendment should probably preclude less favourable treatment rather than different treatment. The CAJ's submission goes further, supporting the view of the human rights commissions that the common travel area is "written in sand" and warning of "other gaps", including in relation to social rights.

10.30 am

I conclude with several questions for the Minister. Why do we seem to be watering down the rights of Irish nationals, including with respect to deportation? Are the provisions in danger of undermining the Belfast agreement in relation to people in Northern Ireland? Why not simply put current Government practice on deportation into statute? What provisions will there be for families of Irish nationals in future? Is the Minister willing to revisit the issue, so that we can ensure that the status of Irish citizens is properly and comprehensively protected, rather than being left to obscure practices and rules "written in sand"?

Afzal Khan: I echo the words of the hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East. In essence, we agree that clause 2 is necessary, but we believe that it requires some improvements.

I have some questions for the Minister. First, the Good Friday agreement grants people who were born in Northern Ireland the right to identify and be accepted as exclusively Irish, as exclusively British or as both Irish and British. Does the reference to Irish citizens in the Bill, and therefore the Immigration Act 1971, include Northern Ireland-born Irish citizens who do not identify as British? Secondly, clause 2 highlights the fact that many associated rights of the common travel area are provided for only by virtue of free movement. When, if not in the Bill, will common travel area rights be legislated for to ensure that they are maintained on a clear legal footing? Finally, will the Minister make it explicit in the Bill that people in Northern Ireland who identify exclusively as Irish, as is their right under the Belfast agreement, are exempt from deportation and exclusion?

Caroline Nokes: I thank hon. Members for raising important issues linked to Irish citizens. It is important to recognise that British and Irish citizens have enjoyed a particular status and specific rights in each other's countries since the 1920s as part of the common travel area arrangements.

Clause 2 will protect the status of Irish citizens. When free movement ends, it will allow them to continue to come to the UK without requiring permission and without any restrictions on how long they can stay. British citizens enjoy reciprocal rights in Ireland. The clause will provide legal certainty and clarity for Irish citizens by inserting new section 3ZA into the Immigration Act 1971 to ensure that they can enter and remain in the UK without requiring permission, regardless of where they have travelled from. That is already the position for those who enter the UK from within the common travel area, but Irish citizens who travel to the UK from outside the CTA currently enter under European economic area regulations. The clause will remove that distinction by giving Irish citizens a clear status.

I turn to the amendments tabled by the hon. Members for Cumbernauld, Kilsyth and Kirkintilloch East, and for Paisley and Renfrewshire North. Amendment 29 would establish in legislation that the immigration rules cannot treat family members of Irish citizens differently from family members of British citizens. The common travel area arrangements have never included rights for the family members of British and Irish citizens. That is an approach that we intend to maintain, but the unique status of Irish citizens means that they are considered settled from the day on which they arrive in the United Kingdom. Irish citizens in the UK can therefore sponsor family members, in the same way as British citizens can. That is the position for those of all nationalities within the UK who are settled.

I also note that Irish citizens, in line with other EU nationals, can be joined in the UK by family members under the terms of the EU settlement scheme, but the amendment would prevent that. To be clear, Irish citizens are not required to apply for status under the EU settlement scheme to benefit from the family member rights, but they may apply if they wish. Under the settlement scheme in a deal scenario, close family members who are not already resident in the UK will be able to join an EU citizen—that includes Irish citizens—under the same conditions as now, where the relationship pre-existed the end of the implementation period. I therefore ask the hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East to consider withdrawing his amendment for the reasons that I have outlined.

Amendment 28 would introduce additional provisions regarding the deportation and exclusion of Irish citizens and their family members. I will use this opportunity to reiterate our approach to deporting Irish citizens in light of the historical community and political ties between the UK and Ireland, along with the existence of the common travel area. Irish citizens are considered for deportation only if a court has recommended deportation following conviction or if the Secretary of State concludes that, because of the exceptional circumstances of a case, the public interest requires deportation. We carefully assess all deportation decisions on a case-by-case basis, taking into account all the facts of the case.

In response to questions asked on Second Reading, I confirmed that the Government are fully committed to maintaining this approach. In that regard, Committee members will have noted that we are making provision to ensure that once we leave the EU, Irish citizens will be exempt from the automatic deportation provisions for criminality in the UK Borders Act 2007. That exemption is contained in the Immigration, Nationality and Asylum (EU Exit) Regulations 2019, which were laid before the House on 11 February. Therefore, proposed new subsections (6) and (8) are not needed.

As I have outlined, the UK's approach is to deport Irish citizens only in exceptional circumstances or where the court has recommended it, which means that a family member of an Irish citizen would not be considered

[Caroline Nokes]

for deportation unless a deportation order was made in respect of that citizen in line with our approach. I also emphasise that the common travel area rights have always provided solely for British and Irish citizens. They have never specifically extended to the family members of British or Irish citizens, and we intend to maintain that approach.

With proposed new subsection (8) in mind, I must make it absolutely clear that the UK is fully committed to upholding the Belfast agreement and respects the right of the people of Northern Ireland to identify as Irish, British or both, and to hold both British and Irish citizenship as they choose. I recognise the centrality of those citizenship and identity provisions to the Belfast agreement. As I have said, deportation decisions are taken on a case-by-case basis, and we consider the seriousness of the criminality and whether it is in the public interest to require deportation.

Recognising the citizenship provisions in the Belfast agreement, we would consider any case extremely carefully and not seek to deport a person from Northern Ireland who is solely an Irish citizen. However, I recognise the hon. Gentleman's interest in this matter and will continue to keep it under consideration. I therefore respectfully ask him to consider withdrawing his amendment for the reasons outlined.

Stuart C. McDonald: I am grateful to the Minister for her detailed response. As I have accepted, amendment 29 is not perfect. I also accept her general reassurances about the treatment of Irish citizens' families in the United Kingdom, so I will withdraw the amendment and reflect further on our position.

In relation to what the Minister said about deportations and amendment 28, it seems to me that we are mostly saying the same things, but our statements are reflected better in my amendment than in the clause. We seem to be saying the same thing, but reaching different conclusions about how to enshrine it in law. I am simply asking the Government to put their current practice into statute. I will give further thought to that, but for now I beg to ask leave to withdraw amendment 29.

Amendment, by leave, withdrawn.

Amendment proposed: 28, in clause 2, page 2, line 13, at end insert—

"(6) The Secretary of State may not conclude that the deportation of an Irish citizen is conducive to the public good under section 3(5)(a) unless he concludes that a higher threshold is reached whereby deportation is in the public interest because there are exceptional circumstances.

(7) No person of any nationality is liable for deportation under section 3(5)(b) where he belongs to the family of an Irish citizen who is or has been ordered to be deported, unless subsection (6) is satisfied in respect of that Irish citizen.

(8) No Irish citizen is liable for deportation under section 3(6) where recommended for deportation by a court empowered under this Act to do so unless, thereafter, the Secretary concludes that his deportation is conducive to the public good in accordance with subsection (6).

(9) An Irish citizen may not be deported or excluded from the United Kingdom if they are among the 'people of Northern Ireland' entitled to identify as Irish citizens by virtue of Article 1(vi) of the British-Irish Agreement of 1998."—*(Stuart C. McDonald.)*

This amendment would provide additional safeguards against deportation for Irish citizens.

Question put, That the amendment be made.

The Committee divided: Ayes 9, Noes 10.

Division No. 2]

AYES

Blomfield, Paul	McGovern, Alison
Dakin, Nic	Newlands, Gavin
Green, Kate	Smith, Eleanor
Khan, Afzal	Thomas-Symonds, Nick
McDonald, Stuart C.	

NOES

Badenoch, Mrs Kemi	Duguid, David
Brereton, Jack	Maclean, Rachel
Caulfield, Maria	Maynard, Paul
Crouch, Tracey	Nokes, rh Caroline
Davies, Glyn	Sharma, Alok

Question accordingly negatived.

Question proposed, That the clause stand part of the Bill.

Caroline Nokes: As I said in response to the amendments tabled by the hon. Members for Cumbernauld, Kilsyth and Kirkintilloch East and for Paisley and Renfrewshire North, the clause will protect the status of Irish citizens in the UK when free movement ends. Without the clause, as Professor Ryan explained in evidence to the Committee, when freedom of movement ends, Irish citizens will need to seek permission to enter the UK when they arrive from outside the common travel area. I am sure all members of the Committee agree that that would be wholly unacceptable.

In addition to the evidence from Professor Ryan, I also welcome the written evidence from the Committee on the Administration of Justice, which notes that the clause is

"designed to remedy the gap for Irish citizens being able to enter and reside in the UK from outside the CTA".

Dr de Mars, Mr Murray, Professor O'Donoghue and Dr Warwick highlight that the clause will help to clarify and simplify travel rights under the common travel area.

The Government are clear that, as now, Irish citizens should not be subject to immigration control unless they are subject to a deportation or exclusion order, or to an international travel ban. Those exceptions are set out in the Bill, and they reflect current and long-standing practice. I confirm that our approach is to deport Irish citizens only if there are exceptional circumstances, or if a court has recommended deportation in a criminal case.

Stuart C. McDonald: This is the crux of the matter—the Minister is confirming an approach that appears to be different from the one set out in the clause. Why not just include the Government's approach to this issue in the Bill?

Caroline Nokes: The hon. Gentleman will be aware that he just lost a Division on that matter, but I am sure we will return to it on Report. He may consider his drafting to be better than that of my Home Office officials, but I must take a contrary view. I confirmed the Government's approach in response to questions

raised on Second Reading, and, as members of the Committee will have noted, once we leave the EU, Irish citizens will be exempt from the automatic deportation provisions for criminality in the UK Borders Act 2007.

The clause amends section 9 of the Immigration Act 1971 so that restrictions placed on those who enter the UK from the CTA by order under that section will not apply to Irish citizens. It also amends schedule 4 to that Act, which deals with the integration of UK law and the immigration law of the islands—Jersey, Guernsey and the Isle of Man. The schedule provides broadly that leave granted or refused in the islands has the same effect as leave granted or refused in the UK. The clause disapplies those provisions in relation to Irish citizens who do not require such leave under the Bill. They also make it lawful for an Irish citizen—unless they are subject to a deportation or exclusion order—to enter the UK from the islands, regardless of their status in them.

The clause aims to support the wider reciprocal rights enjoyed by British and Irish citizens in the other state. Citizens will continue to work, study, access healthcare and social security benefits, and vote in certain elections when they are in the other state. I reiterate that once free movement ends, Irish citizens in the UK will be able to bring family members to the UK on the same basis as British citizens, because they are considered to be settled from day one of their arrival in the UK.

10.45 am

Maria Caulfield (Lewes) (Con): Will the Minister confirm that that is also the case for Irish citizens in Northern Ireland, under the spirit of the Good Friday agreement?

Caroline Nokes: My hon. Friend is right to emphasise that point, and that is absolutely the case in Northern Ireland. We take the provisions of the Belfast agreement very seriously indeed.

This clause supports the citizenship provisions in the Belfast agreement that enable the people of Northern Ireland to identify and hold citizenship as British, Irish or both. The Bill makes no changes to the common travel area or to how people enter the UK from within it. Section 1(3) of the Immigration Act 1971 ensures there are no routine immigration controls on those routes. Given the unique and historic nature of our relationship with Ireland, and our long-standing common travel area arrangements, I am sure that Members will agree on the importance of the clause as we bring free movement to an end.

Question put and agreed to.

Clause 2 accordingly ordered to stand part of the Bill.

Clause 3

Meaning of "the Immigration Acts" etc

Question proposed, That the clause stand part of the Bill.

Caroline Nokes: Clause 3 is minor and technical in nature, but it is important for the implementation of the Bill and to ensure that we have a fully functioning statute book. Subsection (1) ensures that the Bill, when enacted, will be covered by any reference to "the Immigration Acts", which are the Acts of Parliament that govern the UK's immigration system. They enable, for example, grants of leave to enter and remain, and the deportation of individuals.

References to the Immigration Acts can be found across the statute book. For example, section 55 of the Borders, Citizenship and Immigration Act 2009 requires that functions conferred by virtue of the Immigration Acts are discharged having regard to the need to safeguard and promote the welfare of children in the UK. Clause 3 will ensure that functions conferred by regulations under the Bill must be discharged according to that duty in relation to the best interests of children. Such a provision is standard for an immigration Bill, and clauses that have the same purpose and effect are included in previous Immigration Acts. For example, section 73 of the Immigration Act 2014 and section 92 of the Immigration Act 2016 both provide that those Acts are included in the definition of Immigration Acts.

Subsection (2) clarifies that the Bill is not retained EU law. That means that it is not part of the body of law that will have been saved in UK law by the European Union (Withdrawal) Act 2018. It is important to make it clear that the Bill cannot be treated as retained EU law. For example, it cannot be amended by the deficiencies power under section 8 of the European Union (Withdrawal) Act or any other powers to deal with retained EU law.

Question put and agreed to.

Clause 3 accordingly ordered to stand part of the Bill.

Clause 4

Consequential etc provision

Stuart C. McDonald: I beg to move amendment 4, in clause 4, page 2, line 34, leave out "appropriate" and insert "necessary".

This amendment would ensure that the Secretary of State may only make regulations which are necessary rather than those which the Minister considers appropriate.

The Chair: With this it will be convenient to discuss the following:

Amendment 1, in clause 4, page 2, line 34, leave out ", or in connection with,".

This amendment would narrow the scope of the powers provided to the Secretary of State in Clause 4, as recommended by the House of Lords Delegated Powers and Regulatory Reform Committee.

Amendment 11, in clause 4, page 3, line 1, leave out "make provisions applying" and insert

"give leave to enter the United Kingdom".

Amendment 2, in clause 4, page 3, line 8, leave out subsection (5).

This amendment would narrow the scope of the powers provided to the Secretary of State in Clause 4, as recommended by the House of Lords Delegated Powers and Regulatory Reform Committee.

Amendment 3, in clause 4, page 3, line 11, leave out subsection (6).

This amendment would narrow the scope of the powers provided to the Secretary of State in Clause 4, as recommended by the House of Lords Delegated Powers and Regulatory Reform Committee.

[The Chair]

Amendment 5, in clause 4, page 3, line 17, leave out "other".

This amendment is consequential on Amendment 3.

Amendment 6, in clause 4, page 3, line 17, leave out from "subsection (1)" to "is" on line 19.

This amendment, along with Amendment 7, will ensure that all regulations made under Clause 4(1) are subject to the affirmative procedure.

Amendment 12, in clause 4, page 3, line 18, leave out

"that amend or repeal any provision of primary legislation (whether alone or with any other provision)".

This amendment would mean that all regulations made under Clause 4 would be subject to the affirmative procedure.

Amendment 7, in clause 4, page 3, line 21, leave out subsection (8).

This amendment, along with Amendment 6, will ensure that all regulations made under Clause 4(1) are subject to the affirmative procedure.

Amendment 10, in clause 7, page 5, line 44, at end insert—

"(10A) Section 4 and section 7(5) of this Act expire at the end of a period of one year beginning with the day on which this Act is passed."

This amendment would place a time limit on the Henry VIII powers contained in Clause 4.

Stuart C. McDonald: It was a little while after my first election in 2015 that I first heard the term "Henry VIII clause," but I have become very familiar with it since then. The clauses in the Immigration Act 2016 were outrageous enough, but they are small beer compared with the powers the Government have helped themselves to in the European Union (Withdrawal) Act and in this Bill. There is no need to take my word for it; we have ample evidence. The amendments are largely based on submissions from the Law Society of Scotland and the report of the House of Lords Delegated Powers and Regulatory Reform Committee. I am very grateful to both. It is unusual to have the benefit of the Lords Committee report for a Commons Bill, but it has certainly proved helpful. The Committee said:

"The combination of the subjective test of appropriateness, the words 'in connection with Part 1', the subject matter of Part 1 and the large number of persons who will be affected, make this a very significant delegation of power from Parliament to the Executive. The scope of this broad power is expanded even further by subsections (2) to (5)."

If we are serious about our role as legislators and about separating the Executive from the legislature, we must start putting our foot down and reining in these clauses. Otherwise, what on earth are we here for?

We can start that process through amendment 4, by replacing the subjective test of appropriateness. Through amendment 1 we can ditch the phrase "in connection with". The Committee was absolutely scathing here. It said:

"We are frankly disturbed that the Government should consider it appropriate to include the words 'in connection with'. This would confer permanent powers on Ministers to make whatever legislation they considered appropriate, provided there was at least some connection with Part 1, however tenuous; and to do so by negative procedure regulations (assuming no amendment was made to primary legislation)".

Amendment 2 is also from the House of Lords Committee's recommendations. It removes clause 4(5). It noted that subsection (5)

"confers broad discretion on Ministers to levy fees or charges on any person seeking leave to enter or remain in the UK who pre-exit would have had free movement rights under EU law".

It recommended removal

"unless the Government can provide a proper and explicit justification for its inclusion and explain how they intend to use the power".

That is the challenge for the Minister this morning.

As for the Government's justifications and the memorandum on delegated powers stating that the powers are needed to protect EEA citizens, it is fair to say that the Committee was not persuaded. It said:

"We believe that transitional arrangements to protect existing legal rights of EEA nationals should appear on the face of the Bill, and not simply left to regulations with no opportunity for parliamentary scrutiny until after they have been made and come into force."

That is exactly what Opposition MPs have sought to do with other amendments that we will come to later. The consequence of that for the Committee was that there would be no need to use made affirmative procedures set out in clause 4(6). It recommended removal of that subsection, which is what my amendments 3 and 5 seek to do. The very unusual made affirmative procedure means that the regulations are actually in force when they are tabled in the House of Commons before we have even voted on them. Our position is that the more common affirmative procedures should be followed, and instruments should be laid in draft and should not come into force until we examine and approve them—hence amendments 6 and 7.

I conclude with some comments by the Law Society of Scotland. It said:

"The abrogation of parliamentary scrutiny is deeply concerning and the cumulative effect of these provisions is to reduce the role of parliamentary scrutiny of legislation relating to immigration, both EU and non-EU".

For all these reasons, I hope that the Government will listen carefully and rein in their desires for extensive delegated powers under clause 4.

Afzal Khan: I wish to speak to amendments 11, 12 and 10. Throughout the Brexit process, the Government have been carrying out a power grab, acquiring powers to amend primary and secondary legislation with little parliamentary scrutiny. The debates on Brexit legislation have shown that there is cross-party support for limiting Henry VIII powers. Back Benchers on both sides of the House recognise that Parliament's role in making legislation is crucial and must be protected. We accept that there will be aspects of statutory legislation that the Government will need to adjust as a result of ending free movement; we need a functional statute book. However, there must be limits on these powers to ensure that Ministers cannot make significant policy changes, including to primary legislation through statutory instruments.

Currently, scrutiny of secondary legislation is weak. Statutory instruments are unamendable and the Government have a majority on all SI Committees—if the SI even gets a Committee. Those subject to the negative procedure may never even be discussed by parliamentarians, as Adrian Berry said in our evidence session. He said:

"It is true that you have the affirmative resolution procedure, but it is clearly a poor substitute for primary legislation and the scrutiny you get in Select Committees."—[*Official Report, Immigration and Social Security Co-ordination (EU Withdrawal) Public Bill Committee*, 14 February 2019; c. 90, Q221.]

He recommended the Henry VIII powers be radically redrawn. We know that the Government plan a major overhaul of our immigration system for EU and non-EU migrants set out in the White Paper. There is a risk that these powers could be used to bring in that entirely new system. Will the Minister confirm whether the Government would use the powers in the Bill to bring in the new system or if there would be a new immigration Bill? If there will be another Bill, when might it come? Would it be in addition to a withdrawal and implementation Bill, if we get a withdrawal agreement?

Immigration is already an area where the Government have extensive delegated powers. Since 1971, almost all major changes to our immigration system have been made through the immigration rules. We want to move to a situation in which there is more scrutiny of immigration changes, not less.

Labour has many issues with the proposed immigration system, but we broadly believe in the principle that certain major changes should have the chance to be fully discussed and debated before they are introduced. We are being asked to take it on trust that Ministers will not abuse the powers delegated to them in this clause. In the wake of Windrush, we should be particularly sceptical of this Government's promises. The Windrush scandal was the result of a long period of under-the-radar changes to immigration rules, which chipped away at the rights of Windrush migrants and plunged their status in the UK into uncertainty. In the aftermath of Windrush, we should be particularly attentive to the risks of allowing Ministers the power to amend people's rights after they have been debated and enshrined in primary legislation.

Clause 4 offers the Government a blank cheque to change our immigration laws and reduces the level of parliamentary scrutiny of immigration legislation. The Labour amendment and the SNP amendments, which we support, do four things.

First, they limit the scope of the powers. As currently drafted, changes to our immigration laws will be only in consequence of or in connection with the withdrawal of EU free movement legislation. We support the SNP's amendment 1, which would limit the scope here. We support amendment 4, which would allow the Secretary of State to make only changes that are necessary rather than those that the Minister considers appropriate. The House of Lords Delegated Powers and Regulatory Reform Committee recommended the amendments because it was disturbed by the use of "in connection with", as it would confer primary powers on Ministers to make whatever legislation they considered appropriate, provided that there was at least some connection with part 1, however tenuous, and to do so by negative procedure regulations.

Amendment 2 would prevent the Secretary of State making changes to fees and charges. Labour has tabled new clause 38, which states that visa fees should be set at cost price. The Delegated Powers and Regulatory Reform Committee raised significant concern about subsection (5) as it confers broad discretion on the Minister to levy fees or charges on any person seeking leave to enter or remain in the UK who would have had free movement rights under EU laws pre-exit. Fees are already so high that they are unaffordable. The Home Office makes enormous profits out of visa fees, and it is concerning that the Government are granting themselves the power to increase them even further.

Secondly, these amendments limit the nature of these powers. Amendment 11 in my name would allow Ministers to grant status to a group of EEA nationals but not allow them to remove any such rights without primary legislation. I am grateful to the Immigration Law Practitioners Association for its help in drafting it. We believe this is a vital safeguard and that right to remain should be set in stone, and not subject to amendment or to being removed by secondary legislation.

Thirdly, these amendments improve the scrutiny that changes to immigration rules will be subject to. Clause 4(6) sets out that some immigration rules may be made by the made affirmative procedure, which means that they will be assigned into law before being laid in Parliament. There is then a period of 40 days in which the House must approve them or they will cease to have effect. The House of Lords Committee recommended that this be removed, which is what amendment 3 does. Amendments 12, 13 and 7 will ensure that immigration rules are subject to the affirmative procedure. Labour has tabled new clause 9, which will subject them to super-affirmative procedure. Our immigration rules have an enormous impact on people's lives, but they often receive very little scrutiny. The made affirmative procedure means that they will receive no scrutiny before coming into effect and that scrutiny will only be retrospective.

Fourthly and finally, amendment 10 will place a time limit on the Henry VIII powers in clause 4. The Government have said that they will review the White Paper proposal for 12 months. The sunset clause should ensure that they can use the Henry VIII powers in clause 4 to make small amendments to the legislation, but that at the point at which they will make bigger changes, the Henry VIII powers will expire.

We have serious concerns about the extent of the delegated powers in clause 4. Our amendments and the amendments tabled by the SNP would go a long way to limit the powers and would ensure that changes to immigration policy are properly scrutinised.

11 am

Kate Green: Will the Minister place on the record more information about how the Government intend to use the scope of the legislation? As we heard from the hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East, the language of clause 4, such as "connected with" and "appropriate", means that the legislation could be used to make sweeping changes to immigration rules, not just in relation to EU nationals but across the whole immigration system.

The long title of the Bill says that its intention is to

"Make provision to end rights to free movement of persons under retained EU law and to repeal other retained EU law relating to immigration; to confer power to modify retained direct EU legislation relating to social security coordination",

but the devil is in the detail of "and for connected purposes." It would be reassuring for the Committee if the Minister could place on the record this morning exactly how widely the Government intend to make use of the legislation.

Tracey Crouch (Chatham and Aylesford) (Con): I want to speak sympathetically—although hon. Members should not get excited—to amendment 8 and the issue of the minimum threshold, if this is the appropriate time to do so.

The Chair: It is not.

Tracey Crouch: It has been a while since I have been on the Back Benches.

The Chair: I remind Committee members that we are debating amendments 4, 1, 11, 2, 3, 5, 6, 12, 7 and 10. We will discuss amendment 8 next.

Tracey Crouch: I shall contain myself.

Caroline Nokes: Notwithstanding the brief contribution from my hon. Friend the Member for Chatham and Aylesford, the hon. Member for Stretford and Urmston invites me to delve into the detail, which is what I plan to do. It is right that the Committee pays close attention to the delegated powers in the Bill, which are key to delivering the changes linked to the end of free movement. I am grateful to the Delegated Powers and Regulatory Reform Committee for its report and recommendations on the Bill, which I am carefully considering.

The power in the clause is similar to that found in many other immigration Acts. It is needed for the effective implementation of the Bill and the ending of free movement. A great deal has been said about the power granting Ministers a blank cheque—a slightly 20th century analogy, but one that I have used as well; perhaps I should talk about chip and PIN or contactless—so I want to explain exactly and in some detail how the power can and cannot be used.

I reassure the Committee that, with clause 4, the Government seek to ensure that we can manage the transition of EEA nationals, Swiss nationals and their family members from free movement to our domestic immigration system. For the sake of brevity, I will refer to that group collectively as EEA nationals.

First, the power will enable us to protect the status of EEA nationals and their family members who are resident in the UK before exit day and ensure that their residence rights are not affected by the UK's departure from the EU. It will enable us to save the operation of otherwise repealed legislation, such as section 7 of the Immigration Act 1988, which relates to the requirement to have leave to enter and remain in the UK, and the Immigration (European Economic Area) Regulations 2016, which implement the free movement directive. It will preserve the position of EEA nationals in the UK before exit day, or in any agreed implementation period, so they do not require leave to enter or remain until the deadline for obtaining leave under the EU settlement scheme passes in June 2021, or December 2020 in the sad event of no deal.

Secondly, in the unlikely event that we leave the EU without a deal, the power will enable us to make provision for EEA nationals who arrive after exit day but before the future border and immigration system is rolled out in January 2021. During the transition period the clause will enable us, for example, to ensure that EEA nationals need only provide their passport or other national identity document as evidence of their right to work or rent, as is currently the case. We need the power to ensure that, prior to implementation of the future system in 2021, EEA nationals can be treated as they are currently, in terms of checking for eligibility for benefits and public services and the right to work and rent property.

The clause is needed to enable us to meet the UK's obligation under the draft withdrawal agreement, if that is agreed. In the event of no deal, the clause will enable us to implement the Government's policy in the paper on citizens' rights in the event of a no-deal Brexit, which was published by the Department for Exiting the European Union on 6 December.

Thirdly, the power will enable us to align the immigration treatment of EEA and non-EEA nationals in the future, so that we can create a level playing field in terms of who can come to the UK. For example, the power will enable us to align the positions of EU nationals and non-EU nationals in relation to the deportation regime, where currently a different threshold applies to the deportation of criminals who are EU nationals.

As I have said previously, we are engaging extensively on the design of the future system, and our proposals were set out in the White Paper. The details of the future system will be set out in the immigration rules once they have been agreed, but without the power in the clause we cannot deliver the future system, and that is why it is crucial to the overall implementation of the Bill.

Fourthly, the power is important to ensure that our laws work coherently once we have left the EU. There are references across the statute book to EEA nationals, their free movement rights and their status under free movement law. The power needs to be wide enough to ensure that all such references can be adequately addressed as a consequence of ending free movement. By way of example, section 126 of the Nationality, Immigration and Asylum Act 2002 lists the documents that must be provided in support of various types of immigration application. One example relates to applications under the Immigration (European Economic Area) Regulations 2016. An amendment is needed to remove that reference, because in the future there will no longer be applications under the EEA regulations, as they are repealed by the Bill.

Amendments 1 to 5 were tabled by the hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East. As he explained, amendment 4 would limit the Secretary of State's power to make regulations to instances where it was "necessary" rather than "appropriate". I reassure the Committee that the clause is not a blank cheque. The regulations could be used only to make provision in consequence of or in connection with part 1 of the Bill. That means that they could be made only in connection with the end of free movement or the status of Irish citizens. They must be appropriate within that context, so the scope of the power is already limited, even without it being limited to what is necessary.

Not only is the test for what is necessary harder to meet; it is also harder to say whether it is met. To explain why I regard "necessary" as too high a bar, I refer to the courts, which have said that the nearest paraphrase is "really needed". Such a test would be too restrictive: one person's necessary amendment is another's "nice to have". Immigration is a litigious area and we do not want a provision that will lead to uncertainty

and challenge about whether an amendment is appropriate or necessary. The Committee may recall that that point was discussed at some length during the passage of the European Union (Withdrawal) Act 2018 and that Parliament agreed that "appropriate" was the correct formulation when dealing with amendments in relation to EU exit. It is the right test here also.

Amendment 1 would limit the changes made under the regulations to those that are "in consequence of" the ending of free movement, rather than "in connection with" or "in consequence of". I note that the amendment was recommended by the Delegated Powers and Regulatory Reform Committee. As I have explained, references to EEA nationals occur in numerous places across the entire statute book and in numerous different ways, not always by reference to free movement rights. The inclusion of "in connection with" is more appropriate to describe the provision that needs to be made for some of those cases. It is also better suited than the phrase "in consequence of" for the making of transitional provision for those who arrive in the UK after the commencement of the Bill.

The Lords Committee made the specific point that transitional and savings provisions for pre-exit day EEA nationals should be made on the face of the Bill. Hon. Members are interested in that and some witnesses discussed it in evidence sittings. We have committed to protecting the rights of EU citizens who are resident in the UK. That has been our priority, and we have delivered it through our negotiations with the EU to secure protections of citizens' rights, which are included in the draft withdrawal agreement. If that is agreed by Parliament, there will be legislation to implement it in UK law. The withdrawal agreement Bill will be the vehicle by which such protections are delivered. We have also opened the EU settlement scheme to allow EU nationals who are already living in the UK to obtain settled status or pre-settled status in the UK. That will provide them with a clear status once free movement ends and will ensure their rights are protected in UK law.

In addition, we have given unilateral assurances that EU nationals and their family members resident in the UK can stay if the UK leaves the EU without a deal, as set out in the no deal policy paper I previously mentioned. In the event of no deal, we will use the power in clause 4 to make provision to protect the status of EU nationals resident in the UK. One could speculate about whether such protections are necessary or merely appropriate, or whether they are in consequence of the end of free movement or only connected to the end of free movement, but I know that members of the Committee agree with me that it is important to be able to protect EU nationals, and I want to ensure that the clause is broad enough to enable us to do so.

I am grateful to the hon. Member for Manchester, Gorton for raising an important issue in amendment 11, which would replace part of the power in subsection (4) of clause 4. The power allows us to make provisions applying to persons not exercising free movement rights. The amendment appears to narrow, or perhaps clarify, the power by including reference to the grant of leave to enter.

It may be helpful if I first explain our intended use of the provision. I am aware that there is a perception that clause 4(4) would allow the Secretary of State to make sweeping changes to the immigration system in respect of non-EEA nationals, but I assure the Committee that that is not the case. Subsection (4) does not provide a standalone power; it is part and parcel of the power in subsection (1) which we have previously debated. That means that it can be used only in consequence of or in connection with part 1 of the Bill, which is about the repeal of free movement and the status of Irish nationals. There is no risk that the power could be used to change the immigration legislation for non-EEA nationals in ways unconnected with part 1 of the Bill.

Subsection (4) is needed because not every person who is an EEA national in the UK is exercising free movement rights. EU law sets out the conditions for the exercise of such rights: for example, a person who is not working, seeking work, self-employed or studying can exercise free movement rights only if they have adequate resources and comprehensive sickness insurance. Putting aside any rights as a family member, a German househusband or wife who does not have comprehensive sickness insurance is not exercising free movement rights. We have taken the decision to be generous in our treatment of EU nationals already in the UK and we have opened the EU settlement scheme to them all, regardless of whether they are exercising treaty rights or not. However, we need to ensure that we have the power to amend other legislation to facilitate that—for example, checks on rights to work or access to benefits and public services that might otherwise apply to them. The amendment could prevent us from making those changes, potentially meaning that that group could fall through the gaps.

I reiterate that the power is not the means by which the future border and immigration system will be delivered. That will be done through the immigration rules made under the Immigration Act 1971. I am sure that the hon. Gentleman does not intend that group to be denied protection. I hope I have provided sufficient reassurance on the need for and use of the subsection. I respectfully ask him not to press amendment 11.

Amendment 2, which stands in the name of the hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East, would narrow the scope of the power by omitting subsection (5). The House of Lords Committee recommended that the Government justify the need for subsection (5) and I am grateful for the opportunity to do so.

The purpose of subsection (5) is to enable changes to be made to legislation that imposes fees and charges. For example, under the EU-Turkey association agreement, Turkish nationals are currently exempt from the immigration health surcharge. The directly effective rights under the association agreement, which will form part of domestic law from exit day by virtue of section 4 of the European Union (Withdrawal) Act 2018, are disapplied by paragraph 9 of schedule 1 to the Bill. That would mean that Turkish nationals would become liable to pay the immigration health surcharge, but we think it appropriate to maintain that exemption for those already resident in the UK.

Another example of how we might rely on subsection (5) is in relation to persons granted limited leave to remain under the EU settlement scheme. As the law stands, they would be considered not ordinarily resident in the UK when their free movement rights end, and they would be liable for charges when accessing NHS treatment.

[Caroline Nokes]

We want to make it crystal clear that those EU nationals already in the UK should not be charged for NHS treatment. Without this provision, we could make such amendments to exempt people from charges that might otherwise apply. I hope that I have provided sufficient explanation of why subsection (5) is needed. I request that the amendments not be pressed.

11.15 am

We have heard from Members about the parliamentary procedure attached to the regulations made under clause 4. If I may, I will address amendments 3 and 5 together. They stand in the names of the hon. Members for Cumbernauld, Kilsyth and Kirkintilloch East and for Paisley and Renfrewshire North. The amendments would require the first set of regulations made under clause 4 to use the affirmative procedure, rather than the made affirmative procedure.

As Committee members will be aware, under the made affirmative procedure, regulations are made and come into force after being signed by the Secretary of State, and are then laid before Parliament. They cease to have effect if they are not then approved by both Houses of Parliament within 40 days of being made. Under the affirmative procedure, regulations cannot be made or come into force until they have been approved by both Houses.

Both procedures would provide a significant opportunity for Parliament to scrutinise regulations made under clause 4, but using the made affirmative option for the first set of regulations made under clause 4 will allow the Government to maintain the flexibility to deal with a range of potential EU exit scenarios. For example—I believe I mentioned this earlier—there could be a short period between the Bill receiving Royal Assent and the UK leaving the EU, at which point, in the event of no deal, we may want to end free movement. That would require regulations to be in place more quickly than could be achieved under the draft affirmative procedure.

The Government's view is that the use of the made affirmative procedure for the first set of regulations under clause 4 is therefore both necessary and proportionate. It is not the case that Parliament is being denied a proper opportunity to scrutinise the regulations. Any regulations made must be approved by both Houses within 40 days; otherwise they cease to have effect. For those reasons, I respectfully ask the hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East not to press amendments 3 and 5.

Amendments 6, 7 and 12, which stand in the names of the hon. Members for Cumbernauld, Kilsyth and Kirkintilloch East, for Paisley and Renfrewshire North and for Manchester, Gorton, would provide that all regulations made under clause 4 should be subject to the affirmative procedure. As it stands, regulations made under the clause will be subject to the affirmative procedure wherever they amend or repeal primary legislation. That will ensure appropriate scrutiny of the use of the power and is consistent with the usual approach to these type of powers.

Where regulations made under clause 4 do not amend or repeal primary legislation, they will be subject to the negative procedure. As Committee members will be aware, under the negative procedure, regulations are made and come into force after being signed by the Secretary of State and cease to have effect if either House passes a motion annulling the regulations within 40 days. That is in accordance with the principle maintained by successive Governments and is accepted by the Delegated Powers and Regulatory Reform Committee as appropriate for amendments to secondary legislation.

Using these powers does not mean avoiding parliamentary scrutiny—far from it. Secondary legislation made under clause 4 will be subject to full parliamentary oversight using well-established procedures. I therefore ask the hon. Members not to press their amendments.

Stuart C. McDonald: I am grateful to the Minister for her detailed response; she said she would go into the detail and she certainly did not disappoint. The one defence that does not really fly with me is that similar powers have been used in previous immigration Bills. I objected very strongly to some of the powers that appeared in previous immigration Bills, and certainly to those in the immigration Bill before this one. However, she gave useful examples of how the powers will have to be used. We will have to go away, think carefully about what she said and reflect on whether changes are needed.

The amendment about which I was not fully satisfied by the Minister's answer, and which I still wish to push to a vote, is amendment 1. In my view, tidying up the statute book and putting in place transitional provisions, as the Minister gave as examples, would surely meet the "in consequence" test, and so the very loose "in connection with" test would not be needed. I also agree with the Lords Committee that transitional arrangements should be in the Bill, first to cover a no-deal scenario, secondly because it would be useful for the UK in Europe in such a no-deal scenario when trying to push other Governments around the EU for reciprocal treatment, and finally because the Bill is a much safer place for it to be than in delegated legislation.

I also have some concerns about the response to amendments 3 and 5 on the different types of affirmative procedure. I still find it startling that we are even contemplating, in a no-deal scenario, an end to free movement within a few weeks' time. I do not think this country is remotely ready for any such prospect at all; a far more sensible option would be to put in place arrangements for free movement to continue even in a no-deal scenario until we are properly ready to make any changes that are agreed upon. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Amendment proposed: 1, in clause 4, page 2, line 34, leave out ", or in connection with,".—*(Stuart C. McDonald.)*

This amendment would narrow the scope of the powers provided to the Secretary of State in Clause 4, as recommended by the House of Lords Delegated Powers and Regulatory Reform Committee.

Question put, That the amendment be made.

The Committee divided: Ayes 9, Noes 10.

Division No. 3]

AYES

Blomfield, Paul	McGovern, Alison
Dakin, Nic	Newlands, Gavin
Green, Kate	Smith, Eleanor
Khan, Afzal	Thomas-Symonds, Nick
McDonald, Stuart C.	

NOES

Badenoch, Mrs Kemi	Duguid, David
Brereton, Jack	Maclean, Rachel
Caulfield, Maria	Maynard, Paul
Crouch, Tracey	Nokes, rh Caroline
Davies, Glyn	Sharma, Alok

Question accordingly negatived.

Amendment proposed: 11, in clause 4, page 3, line 1, leave out "make provisions applying" and insert

"give leave to enter the United Kingdom".—*(Afzal Khan.)*

Question put, That the amendment be made.

The Committee divided: Ayes 9, Noes 10.

Division No. 4]

AYES

Blomfield, Paul	McGovern, Alison
Dakin, Nic	Newlands, Gavin
Green, Kate	Smith, Eleanor
Khan, Afzal	Thomas-Symonds, Nick
McDonald, Stuart C.	

NOES

Badenoch, Mrs Kemi	Duguid, David
Brereton, Jack	Maclean, Rachel
Caulfield, Maria	Maynard, Paul
Crouch, Tracey	Nokes, rh Caroline
Davies, Glyn	Sharma, Alok

Question accordingly negatived.

Kate Green: I beg to move amendment 8, in clause 4, page 3, line 10, at end insert—

"(5A) Regulations under subsection (1) must provide that EEA nationals who are employed as personal assistants using funding from a personal budget are exempt from any minimum salary threshold that is set for work visa applications.

(5B) In this section, personal budget has the meaning set out in section 26 of the Care Act 2014."

I hope the amendment will attract at least some support from the hon. Member for Chatham and Aylesford, and that she will take the opportunity to offer her observations on it. The Minister will be pleased to hear that the amendment is probing; it is designed to enable us to explore some of the issues that might affect personal assistants employed by disabled people after Brexit, as some of those personal assistants will be EEA nationals and therefore affected by the freedom of movement provisions in the Bill.

Personal assistants are employed directly by disabled people to meet day-to-day needs for assistance, whether that be personal care or facilitating assistance—

11.25 am

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

Adjourned till this day at Two o'clock.