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GENERAL COMMITTEES

Public Bill Committee

IMMIGRATION AND SOCIAL SECURITY COORDINATION (EU WITHDRAWAL) BILL

Seventh Sitting

Thursday 28 February 2019

(Morning)

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Monday 4 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

Thursday 28 February 2019

(Morning)

[Graham Stringer *in the Chair*]

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

11.30 am

The Chair: Good morning. Just a reminder of housekeeping rules: no tea or coffee, and Members should switch their electronic devices off or to silent.

We left off after considering amendments 3, 5, 6, 12 and 7, which have been debated. I understand that the only amendment that hon. Members wish to press to a Division is amendment 12.

Clause 4

Consequential etc provision

Amendment proposed: 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)".—*(Afzal Khan.)*

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

The Committee divided: Ayes 8, Noes 10.

Division No. 6]

AYES

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

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.

The Chair: We have had a full debate on clause 4 through the various amendments on Tuesday, so I am not minded to allow a separate stand part debate.

Clause 4 ordered to stand part of the Bill.

Clause 5

Power to modify retained direct EU legislation relating to social security co-ordination

Kate Green (Stretford and Urmston) (Lab): I beg to move amendment 26, in clause 5, page 4, line 21, at end insert—

"(11) The power to make regulations under subsection (1) may not be used to make regulations removing Title I, Title II or Chapter 1 of Title III of Regulation (EC) No 883/2004."

This amendment would prevent the Secretary of State from making regulations which might remove the ability of British citizens and EEA nationals to aggregate pension rights and social security benefits.

Good morning, Mr Stringer. It is a pleasure to see you in the Chair again.

The amendment is intended to limit the extent to which the Government can make changes to social security provision by delegated legislation after Brexit. I place on the record my thanks to the Immigration Law Practitioners' Association, to British in Europe and to Justice, whose evidence I drew on heavily for this amendment.

By virtue of the European Union (Withdrawal) Act 2018, EU regulations relating to social security co-ordination —the so-called co-ordination regulations—will be converted into domestic law on exit day. The co-ordination regulations provide a reciprocal framework to protect the social security rights of people moving between European economic area states.

The co-ordination regulations do not create a single, harmonised system of social security benefits, nor do they guarantee a general right to such benefits. Instead, they ensure that individuals who move to another EEA state are covered by the social security legislation of only one country at a time and are therefore liable to make contributions only in one country; that a person will have the same rights and obligations of the member state in which they are covered, under the equality principle in social security co-ordination; that periods of insurance, employment or residence in other member states can be taken into account when determining a person's eligibility for benefits, under the concept of aggregation; and that a person can receive benefits to which they are entitled from one member state even if they are resident in another. Those features are important for labour mobility and as a simple matter of equity, because people who have worked and contributed have a reasonable expectation of entitlement to the social security benefits that they have paid in for. I am concerned that clause 5 could be used to undermine those legitimate expectations.

The co-ordination regulations cover only social security benefits that provide cover against certain categories of social risk, such as sickness, maternity, paternity, unemployment and old age. Some non-contributory benefits fall within the regulations, but cannot be exported. Benefits that are categorised as social and medical assistance are not covered at all; my understanding is that they include universal credit, even though universal credit contains some contributory elements, so I ask the Minister in passing whether he might like to use clause 5 to address that apparent injustice.

The co-ordination regulations also confer on those who have a European health insurance card a right to access medically necessary state-provided healthcare during a temporary stay in any other EEA state. The home member state is normally required to reimburse the host country for the cost of the treatment. Will the Minister place on the record the Government's intentions in relation to the European health insurance card, both in the event of no deal and in the post-transition period if a Brexit deal is negotiated?

Nick Thomas-Symonds (Torfaen) (Lab): The issue of European health insurance is one that many people have raised concerns about. Does my hon. Friend agree that it would be good to hear something very definitive from the Minister today to put those concerns about uncertainty at rest?

Kate Green: It absolutely would. People will be planning their summer holidays now, and there is every possibility that they will be making those trips without the security of the European health insurance card that they have enjoyed for many decades. I ask the Minister to be crystal clear, if he can, about the coverage that will or will not be available to those families after Brexit day. I also ask him to say a little about how the Government intend to communicate any changes to the public. This is one of the mainstream consumer consequences of Brexit, not simply an esoteric technical point that affects only a minority of expert specialists.

Clause 5(1) provides for an "appropriate authority" to modify the co-ordination regulations by secondary legislation. I have to say that I find that power incredibly broad, because it provides absolutely no limit to the modifications that appropriate authorities can make. In addition, subsection (3) explicitly states that that power

"includes power…to make different provision for different categories of person to whom they apply".

We took oral evidence on the point a couple of weeks ago, but I wonder whether the Minister will say a little more about what the Government have in mind. Subsection (3) also provides for the Government

"otherwise to make different provision for different purposes…to make supplementary, incidental, consequential, transitional, transitory or saving provision…to provide for a person to exercise a discretion in dealing with any matter."

The power is further extended by subsection (4), which provides for the ability to amend or repeal primary legislation and

"retained direct EU legislation which is not mentioned in subsection (2)."

I understand that the Government need to be able to amend the co-ordination regulations to remedy deficiencies resulting from the UK's exit from the European Union. I also appreciate that difficulties arise as a result of the reciprocal nature of the retained co-ordination regulations and the fact that after exit day, in a no-deal scenario, the UK cannot unilaterally impose reciprocal obligations on the European Union.

However, the power to make such amendments is already provided for under section 8 of the European Union (Withdrawal) Act 2018. Indeed, the Government have already laid four draft statutory instruments that relate to social security co-ordination pursuant to that section. The explanatory memorandum for those regulations states that they aim to

"address deficiencies in retained law caused by the UK withdrawing from the EU, which would impact the operation of the retained Coordination Regulations in a no-deal scenario"

and

"ensure that citizens' rights are protected as far as possible in a no-deal scenario. As per the intent of the EU (Withdrawal) Act 2018, these instruments aim to maintain the status quo."

Concerns have already been expressed about the regulations, however, which have a fairly drastic effect on individuals when the evidence of their contribution in another member state cannot be obtained in the United Kingdom. Could the powers in clause 5 be used to extend the provisions set out in those statutory instruments or, for that matter, constrain them? Are there any circumstances in which those regulations could apply in the event that a deal is agreed, or are they limited to covering a no-deal scenario? Since the regulations suggest that the Government are taking a hard-line view of evidence of entitlement, should people continue to obtain A1 forms post Brexit, if they will have a future connection with more than one EU country through their employment or self-employment?

To turn to the provisions of clause 5 in more detail, the Government are explicit in their desire to use the power in clause 5 to implement policy changes to the social security co-ordination rules that will have been retained in domestic law, which I accept that they could not do with delegated legislation under the 2018 Act. In the delegated powers memorandum to the Bill, the Government state:

"This power will provide the appropriate authorities with the ability to deliver a range of policy options from exit day in any or all of these areas",

which include,

"what access EU nationals will have in the future to certain UK benefits and pensions; the extent to which UK nationals can export certain benefits and pensions if they move to an EU Member State; and the administration and rules which govern entitlement and obligations when people live and work in more than one country".

Social security co-ordination is vital to protect the rights of EEA nationals who come to live in the UK, and UK nationals who go to live in EEA member states. Policy in the area could have a great impact on the lives of millions of people and affect their ability to receive the benefits that they are entitled to through national insurance contributions or periods of residency.

Do the Government's stated policy objectives for clause 5 fundamentally seek to achieve the same effect stated for the draft statutory instruments tabled under the 2018 Act? Alternatively, is the Government's intention to use the provisions in clause 5 to mirror the EU's draft contingency regulations, COM(2019) 53, which limit the ability of individuals to aggregate contribution periods and contributions made in multiple jurisdictions after Brexit?

As we heard in the oral evidence sessions from British in Europe, if people can no longer aggregate their contributions, they may have no choice but to return to the UK. Has the Minister made any assessment of the potential impact, scale and cost to the public purse of that happening, as a result of possible demands on UK public services, such as the NHS and social care services? Can he say whether people coming back to the UK in such circumstances, who might struggle to demonstrate that they are ordinarily resident in the UK, will have access to means-tested benefits?

My understanding is that the Government have committed to continuing to uprate pensions until 2020 for UK nationals living in other EU countries, but can the Minister confirm that that will be the case whether or not a deal is agreed, and will he now commit to maintaining pensions uprating for UK nationals living in the EU post 2020? Finally, can he reassure the Committee that he does not intend to use clause 5 to curtail protection for posted and frontier workers, or those who regularly transit across borders, especially as UK nationals will lose their right to intra-EU freedom of movement in the event of no deal or post the end of the transition period.

11.45 am

I appreciate that I have asked some very technical questions, but fundamentally underlying my remarks are my concerns about the wide powers that clause 5 gives to Ministers. The explanatory memorandum to the Bill states:

"To ensure the use of the power by the Secretary of State or the Treasury is subject to full Parliamentary scrutiny, it is proposed that the exercise of the power is subject to the affirmative procedure".

However, as we heard earlier in this Committee, there are limitations to the level of scrutiny that even the affirmative procedure provides. This area of policy, in my view, requires full debate and scrutiny from Parliament and the principles of any future policy in relation to it should be set out in primary legislation.

Gavin Newlands (Paisley and Renfrewshire North) (SNP): That is an important point: this is too important an area to rely on secondary legislation. Incidentally, the hon. Lady is making a fantastic speech; the detail she is giving makes any speech that I might make thereafter totally redundant, but I reassure the Committee that the Scottish National party stands in support of this amendment. More power to her elbow.

Kate Green: I am grateful for the hon. Gentleman's support, and I agree with him about the huge significance for individuals and families of the way in which social security co-ordination regulations are adopted and adapted in future. It is about how much money people have to live on, to support their families or in their retirement. They have every expectation of a right to the support, because they have paid in and contributed to social insurance systems, and it would be frankly unethical of any Government to damage those legitimate expectations.

In conclusion, through my amendment I seek to curtail Ministers' delegated powers in relation to social security co-ordination. The Government have stated that the anticipated policy changes, both in a no-deal scenario and in certain deal scenarios, could not otherwise be delivered by existing powers such as the European Union withdrawal agreement powers. However, in my view, such policy changes, or at least the principles of the policy, should be set out in primary legislation. That will be the case in a deal scenario, as the withdrawal agreement and its implementing primary legislation will address future policy on social security co-ordination. In a no-deal scenario, the European Union (Withdrawal) Act 2018 provides sufficient powers to make regulations—indeed, the Government have already drafted them—to maintain the status quo as far as possible until an agreement on social security co-ordination is reached with the EU for the future, at which point further primary legislation will be needed.

It is for those reasons that I commend my amendment to the Committee. It is important that we have parliamentary oversight and parliamentary scrutiny of Ministers' powers in the area of any future decisions that will have an impact on social security entitlements.

Afzal Khan (Manchester, Gorton) (Lab): Once again, it is a pleasure to serve under your chairmanship, Mr Stringer. I start by thanking my hon. Friend the Member for Stretford and Urmston for laying out this amendment.

The Henry VIII powers would allow the Government to remove rights to aggregate pensions and disability entitlements that EU citizens in the UK and UK citizens in the EU have built their lives around. It is vital that the Government do not make regulations that might remove the ability of British citizens and European economic area nationals to aggregate pension rights and social security benefits without proper scrutiny by Parliament, so we support this amendment. These social security rights are vital for EU citizens in the UK as well as UK citizens in the EU.

People will have moved back and forth between the UK and the EU on the assumption that they will be able to bring their pension entitlements with them. For example, a German national might move to the UK midway through their career, work here for 10 years, and then go back to Germany to retire. The current EU regulations allow them to receive a pension based on their contributions both in Germany and in the UK. The same is true for a UK national who moves to work in Germany.

If we have a withdrawal agreement, those rights will be guaranteed, but if we do not have a withdrawal agreement we do not know what will happen. Perhaps the Minister can help us with that.

In an evidence session, it was pointed out by British in Europe witnesses that 80% of the British people living in Europe are of working age or below, and more than 1 million people are affected by social security implications. Removing the ability to aggregate social security benefits will deter EU citizens from coming to work in the UK, because they will not be able to export social security from the UK, despite having paid into the system. The same would apply for UK citizens moving into the EU.

There is a particular concern among UK citizens living in the EU about the uprating of pensions. The percentage increases can accumulate to be very significant for pensioners living in the EU, particularly in the context of the declining value of the pound.

The UK state pension is already the lowest in all the OECD countries, and a refusal to uprate would cause significant hardship for many UK citizens. At the moment, the Government have committed to continue the uprating of pensions until April 2020, but not beyond. Can the Minister provide some much-needed clarity for the UK citizens living in the EU about the position of pensions beyond 2020?

If the UK introduces restrictions on social security, it is to be expected that the EU will respond in kind. We heard during our evidence session from the TUC that it is

"very worried about the increasing social insecurity and the welfare repercussions for British people abroad."—[*Official Report, Immigration and Social Security Co-ordination (EU Withdrawal) Public Bill Committee,* 12 February 2019; c.38.]

We heard from the British in Europe witnesses during our evidence session that the Bill has had a negative effect on discussions with EU Governments. Kalba Meadows was clear that

"national Governments across the EU27 are reticent in coming forward with their own legislation, because they are concerned that the rights of their nationals living in the UK will not be equally protected."—[*Official Report, Immigration and Social Security Co-ordination (EU Withdrawal) Public Bill Committee,* 14 February 2019; c. 146, Q364.]

The Minister for Employment (Alok Sharma): It is an absolute pleasure to serve under your chairmanship today, Mr Stringer. I start by thanking the hon. Member for Stretford and Urmston for her amendment to clause 5. She made a wide-ranging speech, which covered many of the points that might be raised when we consider

clause 5 stand part, and I will try to address some of the points that she made. I put it on record that whatever our political differences, I have always thought of the hon. Lady as one of the most courteous and considered Members in the House, and for that we should all be grateful.

The hon. Member for Manchester, Gorton made some interesting remarks. Before I discuss amendment 26, I say generally that if colleagues want to give citizens certainty, the best way of doing so is to support the withdrawal agreement and the deal that will be returning to the House. Many sincere views are expressed, and people are concerned for citizens—I completely get that—but the best way of providing certainty is to support the deal.

Kate Green: I am grateful to the Minister for giving way, and I particularly thank him for his remarks a few moments ago. There would be certainty during the transition period, but that would not really give certainty beyond 2020, would it? As I have already pointed out, for example, we do not know the Government's intentions in relation to pensions uprating, whether or not there is a deal after 2020.

Alok Sharma: Let me come on to those points. I am sure that we will have a chance to discuss them further.

On amendment 26, I note the hon. Lady's assertion that the provisions in clause 5 could be used to remove the ability of UK and EU nationals to aggregate periods of work, insurance or residence in other member states, in order to meet domestic entitlements for contributory benefits and pensions. I reassure her that although future policy on social security co-ordination is subject to further consideration, the Government are committed to exploring options to protect past social security contributions made in the EU and the UK as part of our ongoing discussions with the EU and member states.

The Government have always been clear that protecting the rights of citizens is a priority. It is important that UK and EEA nationals in the EU who are currently receiving aggregated pensions and benefits have those payments protected. I therefore make it clear that the Government will not retrospectively remove the entitlements of UK and EU nationals living in the UK to UK contributory benefits.

I further reassure the hon. Lady that, in a deal scenario, the power in clause 5 will not be exercised to remove or reduce commitments made in relation to the individuals within the scope of the withdrawal agreement. The withdrawal agreement protects rights and entitlements, including aggregation and uprating, in accordance with EU legislation for those EU and UK nationals covered by the withdrawal agreement. The exercise of the power will be subject to further discussion with the EU—for example, in relation to a future agreement. However, it is important that the Government have the provisions in the clause to reflect the UK's new relationship with the European Union, either if we are in a no-deal scenario or if we do not have a future agreement.

As the hon. Lady acknowledged in her remarks, the nature of the current social security co-ordination framework means that a multilateral partnership must be in place in order for it to function effectively. Aspects of the current system, including aggregation, rely on reciprocity from the EU27 and are underpinned by data sharing between the member states. I fully understand her position, which is that it would be preferable for a system of aggregation of contributions to continue. Indeed, in the UK Government's publication on our proposal for the future relationship between the UK and the European Union, we set out exactly that ambition. We explained that we will seek reciprocal arrangements around some defined elements of social security co-ordination. That could cover aggregation rules.

However, without reciprocity, there are limits to what the UK Government can do by ourselves. Although the UK has powers in domestic legislation to pay state pensions and benefits, if the UK leaves the European Union without a deal, we could not bind other member states to recognise contributions made in the UK. Accepting this amendment could prevent the UK Government from responding effectively to certain scenarios following our exit from the European Union.

Kate Green: I accept what the Minister says about the nature of reciprocity, but it is within the Government's power to make a unilateral commitment to the ongoing uprating of pensions beyond 2020. That has been clear since at least 1996, in relation to a memorandum issued by the then Department for Social Security.

Alok Sharma: I thank the hon. Lady for her comments, and I will come on to the point about pensions shortly.

The titles of regulation 883 cited in amendment 26 cover a broader range of issues than just aggregation rights. They cover a wide range of social security co-ordination provisions, ranging from definitions of key concepts, the scope of the regime, prohibition of residence requirements for certain benefits and the export of cash sickness benefits. Accepting an amendment that prevented the Government from removing those provisions would go much further than the hon. Lady's stated intention of preventing the Government from making changes to aggregation policy. Doing so could remove the Government's ability to reflect our future relationship with the EU on a wide range of policy issues. Furthermore, the amendment would prevent the removal of the listed titles, but it would not prevent their modification or amendment. With respect, therefore, it does not achieve its purported objective.

Let me address some of the issues that the hon. Lady raised, which were all perfectly valid. She made a point about the inclusion of universal credit in the social security co-ordination system, and she said that it was not currently part of that system. She will know that that is because universal credit is treated as social assistance, and therefore will not be affected by the clause.

The hon. Lady made a point about healthcare. It is not our intention to use this clause to make changes to healthcare policy. Any such changes are a matter for the Department of Health and Social Care, and they will be dealt with in the Healthcare (International Arrangements) Bill.

12 noon

The hon. Lady mentioned the fixing SIs, and I want to be clear about what they will do. The Department has prepared four sets of regulations, under the European Union (Withdrawal) Act, to fix deficiencies in social

security co-ordination to ensure that the UK statute book will continue to work after exit day. However, as I have mentioned, maintaining the current system unilaterally can only take us so far, especially for areas that rely on reciprocity and data sharing. Separate legislation, such as the Bill, is necessary to enable the Government to make changes to retained EU law as appropriate, so that it will operate effectively in every EU exit scenario.

The hon. Lady raised the uprating of pensions. We have announced that the state pension for pensioners currently living in the EU will be uprated for 2019-20. We wish to continue uprating pensions beyond that, but we will have to take those decisions in the light of whether, as we hope and expect, reciprocal arrangements with the EU are in place.

The hon. Lady asked why future policy was not set out in the clause. She knows that the clause provides the legislative framework to deliver the future policy at the appropriate time. Future policy changes will be set out in regulations and will be subject, as she pointed out, to the affirmative procedure. If Opposition Members do not agree with any such regulations, they will have the opportunity to vote against them. Further impact assessments and appropriate consultation will follow those proposed changes.

Finally, the hon. Lady mentioned the Commission's proposed no-deal regulation, which is actually more limited in scope than the UK Government's proposal. The Government have expressed to the EU our concern that the coverage of its regulation is minimal, and we are doing what we can in that space to persuade the EU. In the light of the points that I have made, I respectfully ask her to withdraw the amendment.

Kate Green: I appreciate the Minister's careful response and the positive words that he offered. However, I am still not clear why my amendment, which would curtail powers that Ministers do not need—because they can make use of the EU withdrawal Act, as they are doing already, or because they will bring forward primary legislation relating to a withdrawal agreement—is a problem. I do not think that we can simply rely on the good will of the Minister, although it is greatly appreciated; changes of this magnitude should be made in primary legislation.

Question put, That the amendment be made.

The Committee divided: Ayes 9, Noes 10.

Division No. 7]

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.

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

That schedule 2 be the Second schedule to the Bill.

That schedule 3 be the Third schedule to the Bill.

Alok Sharma: Clause 5 provides an essential legislative framework to ensure that the Government can reflect their preferred social security co-ordination policy outcomes after the UK has left the European Union, responding to the outcome of negotiations. It will enable the Government to deliver policy changes post exit both in the event of no agreement being reached on future social security co-ordination matters and to support deal scenarios in which a UK-EU agreement differs from current social security co-ordination measures.

The clause provides a power for the Secretary of State or Her Majesty's Treasury to modify the current social security co-ordination regulations. The regulations provide for social security co-ordination across the EEA and will be incorporated into domestic law by the European Union (Withdrawal) Act when the UK leaves the EU. Clause 5(3) sets out some examples of the manner in which the power may be used. One such example is that regulations may make different provision for different cohorts, and some reference points for differentiation are suggested. This is particularly relevant in a no-deal scenario, as the regulations could, for example, provide protection to those who would otherwise have been in the scope of the withdrawal agreement in line with a unilateral offer. Very importantly, regulations made using powers in this clause will be subject to the affirmative procedure, so they will be scrutinised and must obtain the approval of both Houses.

In subsection (4), the clause also gives the Government the ability to make consequential changes to other primary legislation and other retained EU law to ensure that the changes to which the main power gives effect can be appropriately reflected. It may, for example, be used to address technical matters, inoperabilities and inconsistencies.

In subsections (5) and (6), the clause makes it clear that any directly affected rights that will have been saved by the European Union (Withdrawal) Act shall cease to be recognised to the extent that they are inconsistent or capable of affecting the changes made using the powers in the clause. This is necessary to address inoperabilities and conflicts of law that might arise as a result of regulations made under this clause. It will ensure that any policy changes are able to be delivered effectively.

It is vital that, across all EU exit legislation, the UK Government continue to honour any commitments that they have made in the devolution settlements. Therefore, subsections (1) and (7) of the clause confer powers on the devolved Administrations to legislate in areas for which they have competence. Officials in the UK Government and devolved Administrations have worked together on the correct approach for this clause, and legislative consent motions will be sought from the devolved legislatures in relation to this approach. Subsection (7) defines an appropriate authority, clarifying that the power is exercisable by the Secretary of State or the Treasury, a devolved authority, or jointly.

It is reasonable to assume that, in a deal scenario, if a withdrawal agreement is reached, the implementing vehicle for the withdrawal agreement will provide the necessary protections for those who fall within its scope, and

Parliament has the power to ensure that that is the case. I want to reassure colleagues that the power in this clause will not be exercised to remove or reduce commitments made in relation to those individuals within the scope of the withdrawal agreement. The exercise of any powers within this clause will also be subject to the outcome of further negotiations with the EU on a future agreement. In a deal scenario, the clause will be necessary to deliver policy changes to the retained regime that will cover individuals who fall outside the scope of the deal, to reflect the reality of our new relationship with the EU.

In addition, this clause is essential to ensure that the UK Government are able to provide appropriate protections and make appropriate policy changes in a no-deal scenario. Without the clause, the Government have only the power contained in the European Union (Withdrawal) Act to fix deficiencies within the retained system of social security co-ordination. The current social security co-ordination regime operates on the basis of reciprocity. The European Union (Withdrawal) Act power allows us to ensure that the regime will operate on day one of exit, but does not enable us to deliver policy changes, including those that would help us to deliver effective support for UK nationals in the EU. This clause allows us to amend the rules in an appropriate and manageable way if the Government need to operate the system unilaterally, and to deliver changes to the retained regime.

As a responsible Government, we are preparing for all eventualities, and the power in this clause is necessary to provide the Government with the flexibility required to respond to a range of scenarios.

The aim of schedule 2 is straightforward. It sets out the power of the devolved authorities under the social security co-ordination clause—clause 5. The clause confers new powers on Scottish Ministers and, indeed, the Northern Ireland department, to amend the limited elements of the social security co-ordination regulations that fall within devolved competence. We are thus providing the devolved Administrations with the powers that they need to amend aspects of the regulations in areas of social security that are devolved—in the same way as, rightly, the UK Government have powers with respect to laws affecting the UK as a whole.

It is important that the powers in the Bill should not be so narrow as to hamper the devolved Administrations' ability to amend the elements of the regulations that are within their competence. It is also important to set out, as the schedule does, the parameters for the powers. They should not be wider than is necessary to achieve their purpose. For example, the schedule ensures that the same rules on consent and consultation that the devolved authorities must follow when making provisions in their own legislation apply for regulations made under clause 5. We sought that balance by focusing on the specific aims and applying safeguards to ensure, for instance, that the powers will not be used in ways that might be outside devolved competence.

Schedule 3 simply gives further detail about the making of regulations under the social security co-ordination clause. It provides further detail about the form that regulations will take under the clause, whether they are statutory instruments, Northern Ireland statutory rules or Scottish statutory instruments. The schedule also provides that the use of the power is subject to full parliamentary scrutiny. Its exercise will be subject to the affirmative procedure, which means that regulations made using the power must obtain the approval of each House. It also gives clarity to the procedures that the devolved authorities will need to follow.

Paragraph 4 provides that where the UK Government and a devolved authority exercise the powers under clause 5 jointly, the affirmative procedure applies in both the UK Parliament and the devolved Parliaments or Assemblies. Paragraph 5 permits other regulations, subject to the negative procedure, to be included in an instrument made under clause 5. That means that even where a regulation would be subject to a lower level of scrutiny, if it is combined with regulations under clause 5 a higher level of scrutiny—the affirmative procedure—will apply.

Afzal Khan: Labour believes that if the Government want to make far-reaching changes to social security, they should be subject to scrutiny, in primary legislation. As we discussed in the clause 4 debate, secondary legislation does not provide Parliament with an opportunity for adequate scrutiny and oversight of major policy changes. The rights in question were brought in by primary legislation, and it is only right that their removal should be possible only with the same level of scrutiny.

The powers in the clause are not necessary. If the Government really want to tidy up the statute book or make other, minor, changes to legislation, section 8 of the European Union (Withdrawal) Act 2018 already gives them the power to remove the co-ordination regulations and replace them. In fact, they have already laid four regulations under the Act. We feel that the power in the clause would enable the Government to set out global changes to social security, which should rightly be done through primary, not secondary, legislation.

That position was set out by Justice during our evidence sittings. It was concerned about

"the extraordinary breadth of power that it creates".—[*Official Report, Immigration and Social Security Co-ordination (EU Withdrawal) Public Bill Committee,* 12 February 2019; c. 59, Q157.]

The witness set out clearly:

"It is simply not appropriate to leave that to a policy change by way of delegated power, but it seems to us, from their memorandum, that Government are expressly intending to do that to get around the limitations in section 8."—[*Official Report, Immigration and Social Security Co-ordination (EU Withdrawal) Public Bill Committee,* 12 February 2019; c. 60, Q158.]

Similarly, Professor Steve Peers was clear that

"the Government should not have unlimited powers and some constraints should be set by primary legislation."—[*Official Report, Immigration and Social Security Co-ordination (EU Withdrawal) Public Bill Committee,* 14 February 2019; c. 123, Q308.]

Urgent, widespread changes to social security co-ordination are not needed in a rush. Thanks to the 2018 Act, there is law in place. The statutory instrument amendments are in place and there is no urgent need for an overhaul of social security co-ordination that would justify such a lack of scrutiny.

The House of Lords Delegated Powers and Regulatory Reform Committee is clear that the Government have provided an inadequate justification for the transfer of power from Parliament to the Government in the clause. It recommended the removal of clause 5 in its entirety.

[Afzal Khan]

It refers to a requirement to provide an "exceptional justification" for a skeleton Bill, which has not happened in this case. As the Committee puts it,

"Parliament is being asked to scrutinise a clause so lacking in any substance whatsoever that it cannot even be described as a skeleton."

12.15 pm

Gavin Newlands: It is a pleasure to serve under your chairmanship, Mr Stringer, and to rise to speak for the first time in the Committee—potentially the last time, as the Leader of the House has announced that the Northern Ireland Budget (Anticipation and Adjustment) (No. 2) Bill will be debated on Tuesday. I apologise in advance for my absence on Tuesday.

I cannot match the almost giddy levels of excitement displayed my hon. Friend the Member for Cumbernauld, Kilsyth and Kirkintilloch East in approaching matters of immigration law in the previous session—only an immigration lawyer could generate that kind of excitement—especially because I detest the Bill. It brings into effect one of the worst repercussions of the Government's approach to Brexit, namely the ending of free movement. It is an act of sheer folly and economic vandalism, combined with the fact that the Government, as in almost all Brexit-related legislation, have granted themselves huge discretionary powers.

With that off my chest, I will move on to clause 5, which is no different. It gives broad and powerful Henry VIII powers to Ministers to make changes to social security co-ordination post Brexit—a move that the3million and British in Europe would describe as moving the goalposts. I feel deeply uncomfortable about approving the clause and giving the Government that agency for many reasons, not least because of the history of "Go home" vans and the creation of the hostile environment, although I happily concede that they predate the current ministerial team.

As was referenced a moment ago, in response to the question that the hon. Member for Stretford and Urmston asked about existing social security rights, Jodie Blackstock, the legal director of Justice, said:

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

For us, clause 5 is the most concerning clause in the Bill, as if clause 4 was not concerning enough. Our view is that the clause ought to be entirely deleted, and we say that for a few reasons—not just the extraordinary breadth of power that it creates, but the fact that the provision to remove the co-ordination regulations and replace them is already provided for by way of section 8 of the European Union (Withdrawal) Act 2018. Indeed, there are four regulations that have already been laid, pursuant to that Act, before Parliament and that comply with what are perhaps broad powers, but at least are curtailed far more than the power here; and, because they have been laid, it is possible for them to be scrutinised by Parliament."—[*Official Report, Immigration and Social Security Co-ordination (EU Withdrawal) Public Bill Committee,* 12 February 2019; c. 59, Q157.]

As Jodie said, it appears to many—outside the Home Office, at least—that the powers are entirely unnecessary. Section 8 of the European Union (Withdrawal) Act 2018 does provide the scope to replace the current arrangements on co-ordination and the EU has not agreed or announced changes to those arrangements. In the modern world, more people, certainly in the EU, are living lives between different states and cherish the right to chase the opportunity to work where they please. That is an opportunity that many in the next generation will not be afforded in the manner to which we have been accustomed.

Despite being vastly inferior to freedom of movement, there will still be various routes open to EU citizens post Brexit, including the tier 2 and the 11-month low-skilled worker visa options. That makes social security co-ordination a hugely important issue for many more people in the future, in addition to the 3.5 million EU citizens in the UK and the 800,000 UK nationals in the EU. It is not justifiable, therefore, for future policy changes in the area to be made through delegated powers.

I am sure that the Minister will insist that the Government do not plan to remove benefits or further co-ordination—in fact, he addressed that in response to the previous amendment and in his opening remarks in support of the clause—but even if we take him at his word, that is not good enough, because the EU and UK citizens affected by the issue want to be assured and to have certainty. If they cannot have certainty, they want to ensure that any changes in the area have the rigorous scrutiny of primary legislation.

As it stands, clause 5 also risks politicising social security co-ordination and leaves us with the real prospect of losing reciprocation from the European Union's 27 member states in addition to EFTA's four member states. Without that co-ordination, there is no guarantee that rights such as pensions and others that hon. Members have spoken about at length will continue to accrue for British citizens in the EU. That risks deterring people from moving abroad.

The Government have already awarded themselves too many broad Henry VIII powers. All too often, the Government's answers to the question of why they need those broad powers are wholly insufficient. We firmly believe that the Bill should not be legislation at all. In the context of this debate, we firmly believe that clause 5 should not stand part of this regrettable Bill.

Alok Sharma: Perhaps I can respond to some of the points raised by the hon. Member for Manchester, Gorton and the hon. Member for Paisley and Renfrewshire North.

The hon. Member for Manchester, Gorton asked whether the powers would be too broad. I want to be absolutely clear that the power can be used only to make changes to specified retained EU social security co-ordination regulations that are listed in the clause, and to make consequential changes to primary legislation or other retained direct EU legislation that is not listed in the clause. The power is broad, because it provides the Government with the flexibility to respond to a range of scenarios. I repeat for the third time that regulations made using this power will be subject to the affirmative procedure, so they will be scrutinised and voted on by both Houses.

Both hon. Gentlemen called for the clause to be removed from the Bill. We believe that it is very important that the clause remains part of the Bill, so that the

Government can respond at pace to the outcomes of negotiations and the scenarios that we find ourselves in. Without the clause, the Government would not be able to deliver policy changes to the retained social security co-ordination system, including those that could help us to deliver effective support for UK nationals abroad.

The current rules around aggregating and paying benefits pro rata and paying pensions based on contributions across member states depend on reciprocity. I have made that point a number of times. The power allows us to amend the rules in an appropriate and manageable way if the Government need to operate the system unilaterally and deliver changes beyond the scope of the deficiency fixes. Taking this enabling power is the most appropriate option, because it provides us with the flexibility that is required.

The hon. Member for Manchester, Gorton spoke about the fixing SIs. I think I responded to that point earlier, in the debate on amendment 26.

I know that Members on both sides of the Committee have raised these points with a great deal of interest in making sure that we get the matter right for citizens. The hon. Member for Paisley and Renfrewshire North has just said that he wants to give citizens certainty. That is what I and Conservative colleagues want, and the best way of doing that is for all of us to support the deal and the withdrawal agreement that are on the table.

Question put and agreed to.

Clause 5 accordingly ordered to stand part of the Bill.

Schedules 2 and 3 agreed to.

Clause 6

INTERPRETATION

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

The Minister for Immigration (Caroline Nokes): The clause is minor and technical in nature. It simply clarifies how certain terms within the Bill should be interpreted—for example, "devolved authority" and "domestic law". In doing so, the clause helps us to ensure the clarity and coherence of the legislation.

Question put and agreed to.

Clause 6 accordingly ordered to stand part of the Bill.

Clause 7

EXTENT, COMMENCEMENT AND SHORT TITLE.

Stuart C. McDonald (Cumbernauld, Kilsyth and Kirkintilloch East) (SNP): I beg to move amendment 34, in clause 7, page 5, line 15, leave out "Scotland".

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

Amendment 35, in clause 7, page 5, line 15, at end insert—

"(1A) Section 1 and Schedule 1 of this Act do not extend to Scotland.".

New clause 55—*Scottish visas: review*—

(1) The Secretary of State must carry out a review of how to implement a system of Scottish visas for people whose right of free movement is ended by section 1 and schedule 1 of this Act, and lay a report of that review before the House of Commons within six months of the passing of this Act.

(2) The review in subsection (1) must consider the following—

(a) whether Scottish Ministers should be able to nominate a specified number of EEA and Swiss nationals for leave to enter or remain each year;

(b) the requirements that could be taken into account when exercising any such power including that the person lives and, where appropriate, works in Scotland and such other conditions as the Secretary of State believes necessary;

(c) the means by which the Secretary of State could retain the power to refuse to grant leave to enter or remain on the grounds that such a grant would—

(i) not be in the public interest, or

(ii) not be in the interests of national security;

(d) how the number of eligible individuals allowed to enter or remain each year under such a scheme could be agreed annually by Scottish Ministers and the Secretary of State;

(e) whether Scottish Ministers should be able to issue Scottish Immigration Rules setting out the criteria by which they will select eligible individuals for nomination, including salary thresholds and financial eligibility.

(3) As part of the review in subsection (1), the Secretary of State must consult the Scottish Government.

This new clause would require the Secretary of State to carry out a review of how a system of Scottish visas could be implemented for EEA and Swiss nationals.

Stuart C. McDonald: We now come to the debate that I think everyone in the Committee has been waiting for—a debate about Scotland and immigration policy. Half the room has left, including my hon. Friend the Member for Paisley and Renfrewshire North—I am not taking it personally.

I am not aiming to persuade the whole Committee about the merits of full devolution of immigration powers, because I am not a miracle worker. I want simply to see if we can have a sensible, civilised discussion about the huge challenge on population and migration that Scotland already faces, and how we can best address it—something that will hopefully go beyond a commitment to an immigration system that works for the whole of the United Kingdom. I want such a system as well, but the question is whether that involves applying exactly the same rules to every part of the UK, which has not always been the approach that Governments have taken. We have had a sector shortage occupation list for Scotland. We had a Fresh Talent visa for a period. Even Tech Nation visas gave some preferential treatment to different parts of the United Kingdom.

Scotland's migration challenge is that we risk seeing too little of it. Scotland needs migration, and probably more of it. To start with some similarities with the UK as a whole, migration helps fuel our economy by creating jobs, bringing expertise, filling roles that cannot otherwise be filled, and generating wealth for all. New arrivals not only make a hugely positive contribution to our public finances but fill many vital public sector roles in the health service and in social care, education and elsewhere. They also enrich our communities and culture, bringing new ideas and ways of doing things.

Scotland's particular challenge is that, without migration, our population will stagnate and age very rapidly, creating huge difficulties for future generations. Projections from the National Statistics of Scotland suggest that our population will increase only by a measly 7% over 25 years, with net inward migration accounting for

[Stuart C. McDonald]

90% of this growth. The working-age population will grow only slightly—a pitiful 1%—while the proportion of the population above state pension age will increase by 25% in the coming years, as the baby boomer generation reaches retirement. That is before we even take account of the end of free movement.

We need a migration system that sustains or even increases migration in order to support Scotland's population growth, which is the opposite of the goal that the UK Government are pursuing. We must remember and remind ourselves that Scotland has institutions that can help play a part in operating a different system. We have a Scottish Government and our own Parliament, and there is Skills Development Scotland. There is now an expert advisory group on migration and population, which hon. Members will be aware has published its first report this morning—everyone can rush home at lunchtime to read the results of the group's analysis of the Government's White Paper.

Free movement of people has been economically and socially beneficial to Scotland. The benefits include access to labour. On average, an EU citizen working in Scotland contributes over £34,400 in GDP and more than £10,400 in Government revenue. EU migrants take up jobs that are difficult to fill—for example, in social care and food processing—and start businesses of their own. Small and medium-sized enterprises, which dominate in Scotland, are largely locked out of recruiting from beyond the EU via the tier 2 system, so an end to free movement will hit them particularly hard.

The benefits of free movement also include benefits to our demographics and tax base. ONS forward projections predict that if there is no net migration from the EU, population growth will be around only 3% over 25 years, and the number of people aged 16 to 64 in Scotland will fall by 9%, compared with a rise of 53% in the number of people over 65.

The amendments that I have tabled offer two broad alternatives. The first is essentially to keep free movement operating in Scotland as it does now, even if it comes to an end in the rest of the United Kingdom. Perhaps there could be some sort of variation on that, if the Home Office prefers. I am doing the Home Office a favour by offering that suggestion, because it will obviously lead to fewer applications to consider. There would be very few enforcement issues, because the Government are proposing that—even after Brexit—EU nationals will be able to come to the United Kingdom without a visa. There is no notion of Scotland operating some sort of back door for people to sneak into England, Wales or elsewhere. In terms of people, it would be no more difficult to enforce than the open border between Northern Ireland and the Republic of Ireland.

I have offered an alternative to that, which is simply to ask the Government to consult stakeholders, the Scottish Government and so forth on specific Scottish visas. We could perhaps make it a specific condition of the visa that migrants have to live and/or work in Scotland. Again, there does not even need to be a loss of control for the Home Office; it can engage with the Scottish Government to agree rules and to agree the number of these visas that would be allowed, and can have ultimate oversight of who is allowed in. It could be limited to non-visa nationals, so there will be very limited enforcement issues. I also want to see it done in a way that avoids complexity and is additional to the systems available in the UK as a whole, rather than being an alternative.

12.30 pm

A growing number of think-tanks, committee reports and commentators have all provided support for these ideas, and a lot of work and research has gone in to considering how this could operate. The Scottish Government have produced numerous reports. However, I am still not convinced and I want reassurance that the Government are engaging and are prepared to listen during their White Paper consultation. Even a couple of weeks ago, during the Scottish Affairs Committee's inquiry into migration, numerous stakeholders in Scotland suggested that this is something that will have to happen if the Government do not change their approach, as indicated in the White Paper. For example, the Federation of Small Businesses in Scotland put it quite succinctly:

"There are differentiated immigration systems across the globe that function effectively at regional levels. They work. I don't see any reason why it could not work in Scotland."

Those are the two options I put before the Committee for debate today, and I look forward to hearing the Minister's response.

Afzal Khan: As demonstrated by our voting on both Second Reading and the clauses that have been voted on so far, we do not agree with what the Government are doing in this Bill. However, we do not support the view that there should be a different immigration system for different parts of the country. We need a flexible immigration system that will allow businesses and public services to access the workers they need, but one that applies to the whole of the UK, not just Scotland.

I understand that there are issues with regional variation in salary levels, and that different areas of the UK have different needs in terms of migration. However, that is not an issue that affects only Scotland. My own region, and yours too, Chairman, the north-west, has very different salary levels and economic needs from London and the south-east, so it will have different migration needs.

Without a border between Scotland and the rest of the UK, we do not see how a different immigration system could work. How could we ensure that someone with the right to work in Scotland was not working in England or Wales? We fear that that might lead to a further reliance on the hostile environment, as we would be relying on employers and landlords to enforce the border between Scotland and the rest of the UK. In view of that, we do not support the amendment.

Caroline Nokes: I thank the hon. Members for Cumbernauld, Kilsyth and Kirkintilloch East and for Paisley and Renfrewshire North for tabling these amendments. The hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East said when he started to speak that he looked forward to a sensible and civilised conversation on this matter; across the whole of this Bill Committee, I think we are not doing badly on that front and I certainly hope we can continue in that vein.

These amendments cover topics that I have discussed with the hon. Members and their colleagues on a number of occasions. I fear they might find my response to be

fairly predictable, but I make no apology for that. I remain to be convinced that introducing geographical variation into the immigration system is either practical or desirable.

Amendments 34 and 35 seek to change the extent of the Bill so that it does not apply to Scotland. However, the whole of the United Kingdom is leaving the European Union: England, Wales, Scotland and Northern Ireland are leaving the EU. I believe it is our duty as a responsible Government to fully deliver on the result of the EU referendum and to end free movement. It is also important to remind the Committee that this Bill legislates for the end of free movement from the EU. It provides the legislative framework to simplify the UK immigration system by bringing EEA nationals and non-EEA nationals under one system.

Meanwhile, proposed new clause 55 would commit the Secretary of State to reviewing whether or not Scotland should have its own immigration system and its own Scottish visas, but only for EEA nationals. I am not sure how such a proposal, limited to EEA nationals, would be justified on equality grounds. Such a review would not be the first time that the question of whether or not Scotland should have more independence from the UK has been considered, including decisively in a referendum in 2014. With particular reference to immigration, we are not reopening the work of the Smith commission. Immigration needs to be a reserved matter.

I remind the Committee that, in designing the new system, we commissioned the Migration Advisory Committee to consider the best immigration policies for the UK. MAC undertook a comprehensive engagement and evidence-gathering exercise across the whole of the country over a 12-month period and produced an authoritative report that gives the Government a clear direction of travel for the UK's future skills-based immigration system.

As part of that exercise, MAC considered whether there was an economic need for regional differentiation in the immigration system, and not for the first time concluded that there was no case for it. To quote from its final report:

> "Overall, we were not of the view that Scotland's economic situation is sufficiently different from that of the rest of the UK to justify a very different migration policy."

MAC went on to note that Scotland already has a separate shortage occupation list. The Committee will note that the composition of that list, as well as the UK-wide one—

Stuart C. McDonald: I am always perplexed by the facing-two-ways approach that the Government sometimes take on this. On the one hand, they say that they are totally against any sort of differentiation, and then on the other they flag up the shortage occupation list. If there is no economic justification for the shortage occupation list, is it the Conservative position that it should be abolished?

Caroline Nokes: I do not accept for one moment that we look both ways. Evidence from MAC suggests that there should not be a separate system, but that our policies should be able to reflect the different shortages in different parts of the United Kingdom. The hon. Gentleman will know that we have asked MAC to consider whether there should also be a different needs list for Northern Ireland, and we are consulting on that for Wales as well. There would be formidable problems with trying to implement a system that could in effect tie a worker to a specific geographical area. Business no longer happens in a single postcode.

Stuart C. McDonald: The key visa for workers in this country is the tier 2 visa, which requires someone to work for a particular employer in a particular place. A Scottish visa would not need to be any different. Why would it be incredibly difficult to do that in Scotland when it happens day in, day out all across the United Kingdom?

Caroline Nokes: I thank the hon. Gentleman for that contribution. I do not accept that that is what happens at the moment. The tier 2 visa ties somebody to a specific employer. It does not determine that they can work only in a single location. I am conscious that he said that a separate system operating in Scotland would be no different from the current situation that we have with the soft border between Northern Ireland and the Republic of Ireland. I am sure that he, like me, wishes to see that situation continue, with a border that is straightforward and simple. However, he knows, from our current discussions regarding our withdrawal from the European Union, that it is proving to be far from simple to come to a solution to the matter that works for us all.

We have already undertaken engagement in all parts of the UK and will continue to do so; all sectors, nations and regions will be part of our planned 12-month engagement. However, our arguments against a regional immigration policy remain strong, for reasons of both principle and practicality. I therefore ask the hon. Members for Cumbernauld, Kilsyth and Kirkintilloch East and for Paisley and Renfrewshire North to withdraw their amendments.

Stuart C. McDonald: I am hugely disappointed by the response from both Front Bench spokespeople, and their degree of engagement on this will be a disappointment to their party colleagues in the Scottish Parliament. There has been no recognition or engagement with the challenges that Scotland faces. This issue is absolutely pivotal to our economy, tax base and public finances, and their not even recognising that as a problem, never mind offering a single solution, is hugely frustrating.

I recognise that the MAC report was not exactly wonderful for my argument, but it did not say that there should not be a differentiated policy for Scotland; it said that that would be a political decision. I acknowledge that other parts of the United Kingdom also have economic challenges, but my answer to that is to explore options to help them. I pointed to the Tech Nation visa, which has slightly different rules for one or two cities in England, so it is not as if the UK Government do not differentiate for certain parts of England.

The difference is that Scotland already has institutions that could help to operate such a policy, such as a Government and a Parliament, none of which exist in England. I will be happy to table amendments on Report that include Northern Ireland and Wales, if Members wish.

[Stuart C. McDonald]

As the Minister said, the Smith commission looked at the issue, but that was long before there were any proposals to end free movement and implement the drastic new system, which has pretty much united Scotland's businesses, trade unions and third sector organisations in opposition. She must be aware that if she does not think again about the proposals, the already increasing demand for some sort of differentiation will only grow. We have not even started to look at how things work in Canada, Australia or other places, but this does not need to be difficult; it could be simply a small additional means for Scotland to support its population and its economy.

I repeat that I am hugely frustrated by the response that we have been given this morning. I hope that we can get something better on Report, but in the meantime, there is no point in my dividing the Committee. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Afzal Khan: I beg to move amendment 14, in clause 7, page 5, line 32, at end insert—

"(5A) This Act cannot come into force until the House of Commons has passed a motion in the form set out in subsection (5B).

(5B) The form of the motion for the purposes of subsection (5A) is—

'That the Immigration and Social Security Co-Ordination (EU Withdrawal Act) come into force'."

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

Amendment 36, in clause 7, page 5, line 32, at end insert—

"(5A) Section 1 must not be brought into force before 30 June 2021."

This amendment would prevent the repeal of free movement until after the 30 June 2021.

Amendment 15, in clause 7, page 5, line 33, leave out from "which" to end of line 34, and insert

"the House of Commons has passed a motion in the form set out in subsection (5B) above."

This amendment is consequential on Amendment 14.

Afzal Khan: The Bill is not explicit about when clause 1, on the repeal of free movement, will come into force. Under Clause 7(8), it may

"come into force on such day as the Secretary of State may by regulations made by statutory instrument appoint."

For reasons outlined in our debates on clause 1, ending free movement prematurely will have the effect of plunging millions of EU citizens in this country into legal limbo and may mean that they are here illegally. If we end free movement too soon, it will be impossible to distinguish those EU citizens who have just arrived in the UK from those who have lived here for decades but not yet registered for settled status. There is therefore a risk that people will be denied their rights to work, rent, use the NHS and so on because they are unable to prove that they have those rights.

If there is a withdrawal agreement, free movement will be repealed at the end of the transition period. Our amendments would ensure that if there is no deal, and therefore no transition period, the Secretary of State will not be able to repeal free movement until EU citizens have been given sufficient time to register for settled status. They would offer safeguards, protect citizens' rights and secure their status.

Stuart C. McDonald: I am pleased to be back on the same side as the hon. Member for Manchester, Gorton; I need not say much more than he did. The amendments would address the problems that will arise in a no-deal situation if the Government introduce their proposals. For example, how will employers and landlords go about distinguishing those who arrive before and after Brexit day? The Minister reassures us that employers need make no checks on prospective employees except whether they are EEA nationals, but the problem is that they will want to know how long those people can work for them; will they be entitled to stay in the UK for three years, or will they end up being entitled to settled status? Likewise, landlords will want to know how long tenancies can last.

Some EU nationals may have the right to be in the UK indefinitely through the settled status scheme, while others may be restricted to three years. This is not the Minister's fault, but there is no indication how the three-year visa will feed into the future immigration system. There is a huge danger that there will be discrimination, and that the system just will not work. The very simple answer in amendment 36, proposed by the3million, is not to end free movement, either in a deal or no-deal situation, until after the settled status scheme has run its course. Only then can we be absolutely sure that different categories of EEA nationals can be distinguished.

Caroline Nokes: I thank the hon. Members for Manchester, Gorton and for Cumbernauld, Kilsyth and Kirkintilloch East for tabling amendments to clause 7, which sets out how and when the provisions of the Bill will commence. Let me briefly outline how the clause operates.

Like clause 6, which deals with interpretation, clause 7 will come into force on the day that the Bill receives Royal Assent. That is common for such provisions.

12.45 pm

The other provisions in the Bill, which relate to the ending of free movement, to the protection of Irish citizens and to social security co-ordination, will be brought into force on a day specified by commencement regulations, as is usual practice. It is important for the Secretary of State to be able to determine when certain clauses commence, so that we can cater for specific scenarios linked to our departure from the European Union. For example, we may need to bring these provisions into force at the end of an agreed implementation period, in a deal scenario, or sooner, in the event of no deal.

The Government's priority is to leave the EU with a deal, but we must continue to prepare for all scenarios, including the possibility that we leave without any deal in March 2019. These amendments would hinder our ability to prepare for that adequately.

Turning specifically to amendment 36, the ability to control immigration and secure our border was part of why many people voted to leave the EU. Therefore, delaying the end of free movement to 30 June 2021 would not be acceptable.

Stuart C. McDonald: That is acceptable if there is a deal, so I do not understand why it is completely unacceptable if there is no deal.

Caroline Nokes: As the hon. Gentleman will be aware, the Government are working hard to secure a deal, but there will need to be a reasonable transition period in the event of deal or no deal. Indeed, in no deal we will have to have an element of control and transition, and there will be no case where we shall be able to implement a new system and switch off the old system overnight. Transition is important, and it is important that we retain the tools that enable us to do that.

We have been clear that we aim for the future skills-based immigration system to be in place from January 2021. This amendment would prevent us from doing that, as it would effectively extend the implementation period for a further six months. That would leave us unable to deliver on our commitments to end free movement and to introduce the new system on time. We received a clear message in the referendum that free movement should end. Delaying it further beyond the agreed implementation period would clearly be ignoring that message.

Even in a no-deal scenario, there will need to be a transition period before the future skills-based immigration system begins. That period should reassure Members that there will be no cliff-edge. The Government announced their proposals for ending a free movement in a no-deal scenario in the policy paper published on 28 January 2019. This Bill, not least the measures in part 1, is needed now to enable us to deliver the result of the referendum.

We have also been clear that we will ensure the immigration status of the resident population is protected before the deadline for the EU settlement scheme, through appropriate savings made under clause 4. That will ensure that their rights remain unchanged immediately after exit, avoiding any cliff-edge. That means it is not necessary to delay the repeal of the free movement law in the way proposed to protect the resident population.

By delaying the end of free movement in a no-deal scenario, the amendment creates a group of EU nationals who arrive under free movement, after EU exit but before the end of the implementation period, who will face uncertainty in June 2021, when those free-movement rights end. They are not eligible to apply under the EU settlement scheme and would be in the UK unlawfully, unless they obtain leave under the immigration rules. The Government's planned transition of a dedicated EU leave to remain route, to bridge the transition from the end of free movement to the introduction of the future system, is both pragmatic and fair, and avoids the cliff-edge I have described. I believe it is preferable to amendment 36, which seeks to prolong free movement unilaterally.

Amendments 14 and 15 seek to prevent the Bill, once enacted, from coming into force until after a motion in a specific form is passed by the House of Commons. While I recognise the importance of facilitating extensive debate on this Bill, I am of the view that legislating for a further motion after enactment is neither an effective nor appropriate use of parliamentary time. There is ample opportunity for Members on both sides of the House to have their views heard and to subject the Bill to scrutiny as it progresses through Parliament. We have already heard valuable and thought-provoking views from both sides of the Committee, and Members will continue to debate and vote on the Bill on Report and Third Reading, before it passes to the other place for further scrutiny.

Furthermore, when the Bill receives Royal Assent, Parliament will clearly have made the decision that it should become law and that free movement should end. The Government have been clear, both publicly and in the House, when they plan to commence the provisions in the Bill. There is no good reason to continue free movement unilaterally in a no-deal scenario, and these amendments, which seek to do so, seek to deny the result of the referendum. That is not acceptable. I therefore ask the hon. Members for Manchester, Gorton and for Cumbernauld, Kilsyth and Kirkintilloch East to withdraw their amendments.

Afzal Khan: I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Amendment proposed: 36, in clause 7, page 5, line 32, at end insert—

"(5A) Section 1 must not be brought into force before 30 June 2021."—*(Stuart C. McDonald.)*

This amendment would prevent the repeal of free movement until after the 30 June 2021.

Question put, That the amendment be made.

The Committee divided: Ayes 8, Noes 10.

Division No. 8]

AYES

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

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.

Ordered, That further consideration be now adjourned. —*(Paul Maynard.)*

12.52 pm

Adjourned till this day at Two o'clock.