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Public Bill Committee

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

Eighth Sitting

Thursday 28 February 2019

(Afternoon)

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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

(Afternoon)

[Sir David Amess *in the Chair*]

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

2 pm

The Chair: Welcome, everyone. Let me start with a few housekeeping rules. I am afraid the ban on coffee and tea remains—it is water only. The room is warm because it is marvellously close for this time of year, so gentlemen may certainly remove their jackets—but we will stop there—and ladies, if they have scarves, may remove those.

Clause 7

Extent, commencement and short title

Amendment proposed: 21, in clause 7, page 5, line 37, at end insert—

"(7A) Section 1 of this Act cannot come into force until the Secretary of State has ensured that legal aid is available to all EEA and Swiss nationals, and their family members, who are domiciled or habitually resident in the UK for Early Legal Help on immigration matters.*"—(Afzal Khan.)*

The Chair: With this it will be convenient to discuss new clause 36—*Legal Aid*—

"(1) The Legal Aid, Sentencing and Punishment of Offenders Act 2012 is amended in accordance with subsection 2.

(2) In Schedule 1, paragraph 30, after sub-paragraph (d), insert—

'(e) The Immigration and Social Security (EU Withdrawal) Act 2019.'"

This new clause would allow individuals to seek legal aid in order to obtain advice on right to enter and remain under this Act.

Nick Thomas-Symonds (Torfaen) (Lab): It is a pleasure, as always, to serve under your chairmanship, Sir David. I rise to speak to amendment 21 and to support new clause 36—after a brief difference of opinion this morning, it is nice to be back on the same side as the SNP.

Rights mean very little without the means to enforce them. The amendment would put in place a provision regarding legal aid, without which we say the repeal of the retained EU law relating to free movement should not happen. In other words, clause 1 would come into force only in the circumstances set out in the amendment.

Let me say briefly about the EU settlement scheme that the provision of a right to appeal and the legal aid necessary to enforce it would remove any uncertainty about whether there was scrutiny of those decisions. The complexity of the scheme means that errors may well be made, and a right of appeal is the optimum way to secure legal entitlements.

Returning specifically to the amendment, cuts to legal aid are a huge issue for enforcement, but they are also a potential problem with respect to the lawyer who eventually has a case. That is not to suggest that junior lawyers and fee earners in some lower categories do not do an excellent job. They do, but it obviously cannot be fair for a more junior lawyer, or a lawyer without the requisite expertise, to end up taking a case simply on the basis of the money available, without regard to the necessary experience and expertise.

Cost is a huge problem. The withdrawal of legal aid means that, to get before a tribunal with a robust bundle of evidence that gives them some chance of being granted an appeal, people often have to find thousands of pounds—£1,000, £2,000 or perhaps even £3,000. That is the cost simply for getting a bundle of evidence together to go before a tribunal, before even considering whether there is a remote chance of success. All too often, people just cannot afford that.

The amendment, which relates to new clause 36, specifically seeks the provision of legal aid to assist European economic area and Swiss nationals with immigration matters. The context for the amendment is the Legal Aid, Sentencing and Punishment of Offenders Act 2012, which, on the commencement of its civil legal aid provisions on 1 April 2013, largely removed non-asylum immigration advice and representation from the scope of legal aid in England and Wales. Clearly, the ending of rights by clause 1 and schedule 1 will significantly extend the impact of the legal aid cuts made by the 2012 Act by fully subjecting EEA and Swiss nationals and their family members to the immigration system and requiring them to have leave to enter or remain in the UK.

Complexity is not the only reason why the general removal of legal aid for immigration advice and representation is of profound concern. I am grateful to Amnesty International for its thorough briefing, which sets out its concerns. The reality is that substantial evidential hurdles exist for anyone who is seeking to establish rights to private and family life in the UK and measures for the best interests of children. Even if someone who is representing themselves—a litigant in person—understands relevant legal requirements and procedures, they will still have to assess, collect and present the evidence that is required to demonstrate that the rules and other requirements are met. The issue is not only that it is a daunting task and prohibitively expensive, but that the tribunal system is simply not set up to help someone in that situation. Worse still, it is a false economy, because there is no doubt whatever that the provision of a lawyer who is expert in the field will speed up the proceedings, as opposed to the proceedings being slowed down because a number of people have to represent themselves before the tribunal.

The Government have said that they wish to avoid another Windrush scandal. In that case, they would do well to accept this amendment. I should just draw attention to the fact that I was a practising barrister before I entered Parliament and I remain a non-practising barrister. For completeness, I refer to my entry in the Register of Members' Financial Interests in that regard. I urge the Minister to accept the amendment.

Stuart C. McDonald (Cumbernauld, Kilsyth and Kirkintilloch East) (SNP): I will speak to new clause 36, but I also fully support everything that the hon. Member for Torfaen has said about amendment 21. I can be very brief, given what he has said. As was revealed earlier, I used to practise as an immigration lawyer; this was a decade ago. Back then, the immigration rules were horrendously complex, but since then there have been hundreds of changes to the immigration rules and they have multiplied in size. I cannot remember what the

figure is, but the appendices have just about every letter of the alphabet in their title. The system is ludicrously complex. The issue is not just that the rules are complicated; as we have heard, the evidential requirements are also incredibly complicated.

It is easy enough to say that we hope the settled status scheme is not too complicated, but that is not an end to the matter. It will be complicated for many people to access. People also have to make decisions and understand whether they actually need to apply, and that could be hugely complicated for some people. Some people will not be sure whether they have British nationality. Some people will not understand whether their right to permanent residence under existing EU law means that they do or do not need to apply. There is the situation of Irish citizens, for example, in Northern Ireland. All sorts of people are already asking questions about how this system applies to them. It is not a straightforward matter.

David Duguid (Banff and Buchan) (Con): A number of constituents or residents in my constituency have come to me with the kinds of questions that the hon. Gentleman illustrates, and I, with my limited experience—certainly in comparison with his—have been able to clarify a lot of those cases as their Member of Parliament. Is that not something that we should all be doing as Members of Parliament?

Stuart C. McDonald: It is fair to say that MPs can provide some basic help, but they are not immigration lawyers. All hon. Members have to be cautious to ensure that they do not hand out legal advice. A Member might be approached, for example, by someone who is entitled to British citizenship or to register as a British citizen. To set them off down the route of applying for settled status would be to do them a disservice. We have to be very careful. Although the settled status scheme in itself might appear to be reasonably straightforward, that is not the end of the matter.

Nick Thomas-Symonds: I would make two points in response to the suggestion that has been made. First, no one should be giving uninsured legal opinions—obviously, that is what a lawyer would have—and, secondly, we are surely not saying that as a consequence of all the legal aid cuts that have been made, Members of Parliament should be picking up the slack when they are not trained to do so.

Stuart C. McDonald: Absolutely. Another thing that I will say to the hon. Member for Banff and Buchan is that, thankfully, one benefit of devolution—all those who were opposing devolution earlier should take note—is that people can choose a different path, and in Scotland we have not implemented LASPO. I think that LASPO is one of the most outrageous Acts of Parliament to have gone through this place. Thankfully, in Scotland, people will still be able to obtain immigration advice through legal aid. I strongly urge the hon. Gentleman to use that, rather than potentially getting himself into trouble if he makes mistakes with his immigration advice.

David Duguid: To clarify, I was advocating not that Members of Parliament should provide legal advice, but that they should signpost constituents to the relevant guidance on the Government website, for example.

Stuart C. McDonald: That is all fair enough but, ultimately, the point remains that all of this is incredibly difficult. Nationality and immigration law are complicated, and the settled status scheme, although it is straightforward in principle, has a number of complexities. Legal aid is essential.

We are talking about fundamental issues to do with human rights and citizenship—the hon. Member for Torfaen talked about Windrush earlier—and all the factors together make legal aid imperative. I am glad that we still have good legal aid coverage for immigration matters in Scotland, and I very much think that that should be the case throughout the United Kingdom.

Afzal Khan (Manchester, Gorton) (Lab): Briefly, in the light of the two earlier speakers declaring their interests, I declare that I am a solicitor and that I practised immigration law, although I do not do so currently.

The Minister for Immigration (Caroline Nokes): It is a pleasure to serve under your chairmanship, Sir David. I thank the Opposition Members for their contribution to this debate. I put the name of the hon. Member for Torfaen at the top of this sheet of paper, but then I had to add all the other hon. Members because of their detailed and learned comments on legal aid.

Amendment 21 and new clause 36 are grouped together because, in essence, they cover the same ground. I recognise the issues that have been raised by hon. Members. The EU settlement scheme has been designed to be streamlined and user-friendly, and the majority of applicants will be able to apply without the need for general advice from a lawyer or advice on rights to enter or remain required as a result of the Bill. Indeed, feedback from the testing phases of the EU settlement scheme showed that most applicants found the application easy to complete.

For the most part, feedback from applicants in the vulnerable cohort has been positive, noting the speed of decisions in many cases and that it was easy to provide evidence of residence. Supporting vulnerable individuals to obtain UK immigration status is a core element of the delivery of the scheme, and we recognise that we need to reach out and support a wide range of vulnerable groups whose needs will vary, including the elderly, those who cannot access or are not confident with technology, and of course non-English speakers.

We are therefore putting in place safeguards to ensure that the EU settlement scheme is accessible and capable of handling vulnerable individuals with flexibility and care. That will include a range of direct support offered by the Home Office, such as assisted digital support and indirect support through third parties. As a practical example, we are providing grant funding of up to £9 million for voluntary and community organisations throughout the UK to support EU citizens who might need additional help when applying for their immigration status through the EU settlement scheme. The grant funding will help those organisations to inform vulnerable individuals about the need to apply for status and to support them in completing their applications under the scheme.

As the Committee heard at the oral evidence sessions, voluntary and community organisations such as the Children's Society have been well engaged in the development of the settlement scheme. We are also

[Caroline Nokes]

working to ensure that local authorities have all the support that they need to ensure that looked-after children in their care will receive leave to remain under the EU settlement scheme. Caseworkers will provide support to ensure that applications are not turned down because of simple errors or omissions, and a principle of evidential flexibility will apply, enabling caseworkers to exercise discretion in favour of the applicant where appropriate. In short, the process has been designed with users in mind.

As an additional safeguard, legal aid will be available to some particularly vulnerable individuals. The Government have always been clear that publicly funded immigration legal advice is available for individuals identified as potential victims of human trafficking, modern slavery or domestic violence. We will also introduce legislation shortly to bring immigration matters for unaccompanied and separated migrant children into the scope of legal aid, meaning that that group will get support in securing their immigration rights.

In addition to that, legal aid may be available through the exceptional case funding scheme where the relevant criteria are met. As my right hon. Friend the Secretary of State for Justice announced in the House on 7 February, the Government will bring forward proposals to simplify the exceptional case funding application process and to improve the timeliness of funding determinations to ensure that those who need legal aid funding can access it when they need it.

The EU settlement scheme has been specifically designed to ensure that individuals can apply for settled status without the need for a lawyer. The Government have also committed to providing a range of safeguards to ensure that vulnerable individuals receive the assistance they need in securing their immigration rights. These safeguards will of course apply to vulnerable EEA and Swiss nationals. For those reasons, I hope that the hon. Member for Manchester, Gorton will withdraw amendment 21.

2.15 pm

Afzal Khan: I thank the Minister for her statement, but we are not satisfied. We will put the amendment to a vote.

Question put, That the amendment be made.

The Committee divided: Ayes 9, Noes 10.

Division No. 9]

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.

Afzal Khan: I beg to move amendment 32, in clause 7, page 5, line 37, at end insert—

"(7A) Section 1 of this Act cannot come into force until the Secretary of State has commissioned an independent review to examine whether the UK's existing immigration legislation, and any provisions or rules issued under existing legislation, require amending to deal with the ending of freedom of movement under the provisions of this Act.

(7B) The review under subsection 1 must consider, but is not limited to —

(a) an equality impact assessment evaluating whether any individuals subject to the Immigration Act 1971 are discriminated against on the basis of any of the protected characteristics defined in the Equality Act 2010;

(b) an assessment of whether the Immigration Act 1971 needs amending to ensure the human rights of persons who have their freedom of movement removed under the provisions of this Act are protected;

(c) whether sections 20 to 47 of the Immigration Act 2014, sections 34 to 45 of the Immigration Act 2016, and sections 15 to 25 of the Immigration, Asylum and Nationality Act 2006 require amending;

(d) whether schedule 2 of the Data Protection Act 2018 requires amending.

(7C) The review under subsection 1 must be laid before both Houses of Parliament.".

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

Amendment 17, in clause 7, page 5, line 39, at end insert—

"(8A) The Secretary of State must not issue any regulations under subsection 8 above until the Secretary of State has implemented any recommendations contained in the Law Commission's review of the UK's Immigration Rules which relate to or will relate to persons who, under the provisions of the Act, will lose their right of free movement.".

Amendment 38, in clause 7, page 5, line 39, at end insert—

"(8A) Regulations under subsection (8) may not be made until the Secretary of State has published a review of section 3 of the Immigration Act 1971, examining its impact on the human rights of people whose right of free movement is ended by section 1 and schedule 1 of this Act.".

Amendment 39, in clause 7, page 5, line 39, at end insert—

"(8A) Regulations under subsection (8) may not be made until the Government has repealed paragraph 4 of schedule 2 of the Data Protection Act 2018 in so far as it affects people whose right of free movement is ended by section 1 and schedule 1 of this Act.".

Afzal Khan: I will speak to amendments 17 and 32, which are in my name. I support amendments 38 and 39, which have been tabled by the hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East.

On amendment 32, the Bill and the White Paper do not address the many deep-seated problems in our broken immigration system, but instead subject a further 3 million people to it. The Windrush crisis laid bare the extent to which the hostile environment policy impacts on human rights; British citizens were detained and deported, and the Government have acknowledged that that was utterly wrong. I will return to the need for a full review of all Windrush cases, before the Bill is enacted, when we debate amendment 16.

We have heard the opinions of several experts on the danger of a repeat of Windrush for EU citizens, and we need a two-pronged approach to avoid that. First, we must ensure that the rights of EU citizens are enshrined

in primary legislation, and that there is no unnecessary cut-off for applications for settled status—an argument I will elaborate on when we discuss the new clauses. Secondly, we must address the root cause of the Windrush crisis: the hostile environment policy.

As the spokesperson for Liberty set out in our evidence session, the impact of the hostile environment goes beyond even the Windrush scandal; it reverberates throughout people's lives. Children are afraid to go to school, sick people are afraid to go to hospital and victims of serious crime are afraid to report them to the police. Our public services have been co-opted, with doctors, teachers and landlords turned into border guards.

The hostile environment does not only affect migrants. A report by the Joint Council for the Welfare of Immigrants shows that inquiries from British black and minority ethnic tenants without a passport were ignored or turned down by 58% of landlords in a mystery shopping exercise. I need not remind the Committee that a large number of BME British citizens will be caught in this policy. A number of independent bodies have recommended that the Government review the hostile environment. The Independent Chief Inspector of Borders and Immigration found:

"Concerns about right to rent's impact on racial and other forms of discrimination by landlords, exploitation of migrants and associated criminality, and homelessness, have been raised, repeatedly, by the Joint Council for the Welfare of Immigrants (JCWI), Crisis, Migrants' Rights Network and others",

but the Government did not complete an evaluation of the pilot before rolling it out, nor did they attempt to measure its impact once it was fully rolled out. The independent chief inspector found that overall,

"the RtR scheme had yet to demonstrate its worth as a tool to encourage immigration compliance."

Internally, the Home Office has failed to co-ordinate, maximise or even effectively measure the use of the scheme. Externally, meanwhile, the Home Office is doing little to address stakeholders' concerns. The National Audit Office found that the Government failed to fulfil their duty of care when introducing the hostile environment. Its report said:

"In its implementation of the policy with few checks and balances and targets for enforcement action, we do not consider, once again, that the Department adequately prioritised the protection of those who suffered distress and damage through being wrongly penalised, and to whom they owed a duty of care. Instead it operated a target-driven environment for its enforcement teams."

The Government have recognised the need for an extensive review. After one of my parliamentary questions exposed the scandal of the Home Office's requiring people who applied for visas to supply DNA evidence, the Home Secretary committed to a wide-ranging review of those "structures and processes" in the Home Office,

"to ensure they can deliver a system in a way which is fair and humane."

That was back in October 2018, and we have heard nothing more about it since then. The Labour party is clear that we cannot have a "fair and humane" immigration system that respects human rights until we have repealed the hostile environment in its entirety. The Windrush crisis was caused by systematic problems within the Home Office, and it will take root and branch reform to return us to an immigration system that respects human rights.

I turn briefly to the question of data protection, which is related but warrants special consideration. The Data Protection Act 2018 allows an entity that processes data for immigration control purposes to set aside a person's data protection rights in a broad range of circumstances. As I believe was said during the debate on that Bill, data protection rights help us to hold the Home Office to account. The White Paper indicates that the Government will be using data sharing more and more to enforce the hostile environment.

As Liberty set out, it is concerned that

"the Home Office is really quite a poor data controller, and yet automated data processing is increasingly going to be the linchpin of implementing the hostile environment."—[*Official Report, Immigration and Social Security Co-ordination (EU Withdrawal) Public Bill Committee,* 12 February 2019; c. 60, Q159.]

In that context, it is essential that people have some form of redress for data errors, and data protection rights are crucial. We believe that the hostile environment should be repealed, but if it is to be continued, we must at least have effective redress for errors.

The purpose of amendment 17 is to require the Secretary of State to implement the recommendations of the Law Commission's review of UK immigration rules. In her opening remarks on this Bill, the Minister mentioned the Law Commission, and I welcome that; I hope she will commit to adopting the measures it recommends before the Government make extensive changes to immigration rules as a consequence of this Bill. In that case, we would not press this amendment to a vote.

Many changes to immigration rules have been made in a piecemeal way, resulting in immigration laws being practically incomprehensible. The JCWI pointed out that Supreme Court judges, Court of Appeal judges, immigration experts and immigration lawyers have all said in public that it is almost impossible for anyone to navigate, let alone people who are expected to do so without necessarily having perfect English or legal aid. The Law Commission points out that, on 31 December 2018, the rules totalled 1,133 and are poorly drafted, which the Government recognised by commissioning the Law Commission review. It makes sense to implement the Law Commission's recommendations and clean up the statute book before making a whole raft of changes for EEA citizens.

The Law Commission's project of simplifying the immigration rules officially started on 13 December 2017. It held pre-consultation meetings with key stakeholders and other experts, and with the Home Office. The consultation paper was published on 21 January 2019 and the consultation period is open until 26 April 2019. Recommendations will be delivered in a final report "later in 2019".

Changes that the Law commission is considering as part of its review include: a less prescriptive approach to the rules; reforming the organisation and restructuring the immigration rules; removing overlapping provisions and resolving inconsistencies; improving the drafting style; and improving the way that immigration rules are updated. We support those changes, and we believe that it makes most sense for them to be incorporated before our immigration rules are overhauled as a consequence of enacting the Bill.

Stuart C. McDonald: I will speak to amendments 38 and 39, tabled in my name and that of my hon. Friend the Member for Paisley and Renfrewshire North, which

[Stuart C. McDonald]

are essentially subsections of the broader amendments that the shadow Minister spoke to. I absolutely endorse his comments, so I will be very brief indeed.

Essentially, the development of immigration policy has not been evidence-based or rights-based. My amendments pose a couple of questions. First, before we set out to apply the immigration rules to many thousands more people, why do we not review them and assess their impact on human rights? Secondly, my amendments ask us to revisit a pretty scandalous immigration exemption inserted into the recent Data Protection Act 2018.

On the first point, the Government tend to argue in their defence that the statutory duties that are in place are sufficient. However, we unfortunately all too often see statutory duties not properly discharged by the Home Office. For example, we heard in an earlier debate about the duty under section 55 of the Borders, Citizenship and Immigration Act 2009. Justice McCloskey said in 2016:

> "As in so many cases involving children, there is no evidence that the statutory duty imposed by section 55(2) to have regard to the Secretary of State's statutory guidance was discharged. I readily infer that it was not. This, sadly, seems to be the rule rather than the exception in cases of this kind."

Rather than leaving it to statutory duties and guidelines, we want a proper assessment, to make sure that those duties are complied with, and how they are complied with.

On the second point, that immigration exemption gives the Home Office sweeping powers to excuse itself or others from fundamental data protections, which are vital to ensuring that people are not subjected to wrong immigration decisions, and wrongly exercised functions and powers, as befell so many members of the Windrush generation. That exemption absolutely ought to be removed.

In particular, the sharing of migrants' data between public services and the Home Office, and the erosion of migrants' data protection rights, are some of the most controversial aspects of the hostile environment, turning traditionally safe spaces, such as hospitals and schools, into immigration surveillance services. The policy of sharing NHS patient data with the Home Office eroded the patient confidentiality rights of migrant patients, causing outrage among doctors, royal medical colleges and the British Medical Association. In the light of evidence that data sharing caused migrants to avoid healthcare services and presented a public health risk, the policy was suspended. We need to go further than that and row back on the immigration exemption altogether, which is why I ask hon. Members to support amendment 39.

2.30 pm

Caroline Nokes: I thank the hon. Members for Manchester, Gorton and for Cumbernauld, Kilsyth and Kirkintilloch East for tabling amendments to clause 7. Amendments 32, 17, 38 and 39 focus on the commencement of the Bill. Amendment 32 is designed to make commencement of section 1 dependent on the Secretary of State's commissioning an independent review of immigration legislation, with specific reference to the immigration rules, the public sector equality duty, certain provisions relating to the rights to work and rent, and data processing in the immigration arena.

When we voted to leave the European Union, the Government began a comprehensive review of legislation to identify issues that need addressing as a result of EU exit. I have worked with hon. Friends across the Government, including at the Ministry of Housing, Communities and Local Government and at the Department for Work and Pensions, to ensure that we are adequately prepared for the end of free movement.

The review required by amendment 32 is unnecessary, for several reasons. The Government take seriously their obligations under the public sector equality duty and the European convention on human rights and ensure that all elements of the immigration system comply with them. We will vigilantly monitor such requirements as we manage the transition of EEA nationals from free movement rights to having leave to remain under UK immigration law. In a deal scenario, the withdrawal agreement Bill will also deliver that.

In the unlikely event of no deal, the power in clause 4 of the Bill before us will be used to ensure that any issues arising from the ending of free movement can be adequately addressed, principally by making transitional and saving arrangements for existing EEA residents and those who arrive before the new system commences. For example, the process for EEA nationals to prove their right to work, and for employers to check that right, will not change until January 2021. The design of the future system will similarly comply with human rights and equalities duties.

The immigration exemption at paragraph 4 of schedule 2 to the Data Protection Act 2018 was subject to significant scrutiny in both Houses before it came into force in May 2018. It is a necessary and proportionate measure, which we believe is compliant with the general data protection regulation. It can be applied only on a case-by-case basis in limited circumstances in which complying with a certain data protection right would be likely to prejudice the maintenance of effective immigration control. It is also subject to oversight by the Information Commissioner.

I hope that hon. Members can see that we already take into account the relevant safeguards and human rights considerations, and that the amendment is therefore unnecessary.

Amendment 17 would make commencement of part 1 of the Bill dependent on the Secretary of State's implementing all recommendations in the Law Commission's review of the immigration rules that relate to persons losing their free movement rights—namely, EEA and Swiss nationals and their family members. As you may recall, Sir David, from the evidence sessions, when this cropped up, the Home Office worked closely with the Law Commission to discuss the remit of the project back in 2017. We all agreed that that was to be the simplification of the immigration rules. We agreed with the Law Commission that it would use the project to seek to identify the underlying causes of complexity in the rules, and that it would conclude with a report setting out recommendations to improve them for the future. My right hon. Friend the Home Secretary and I are pleased with that approach and look forward to reading the final report.

The Law Commission published on 21 January 2019 an initial consultation paper that seeks the views of consultees on preliminary proposals and asks consultees a number of open questions. The consultation is still

open; it will not close until 26 April 2019. After the period of consultation, the Law Commission will analyse the results, and it will not deliver its recommendations until its final report later this year.

I hugely appreciate the research that the Law Commission is doing. I agree, and I believe that I have said in this Committee previously, that the immigration rules, totalling more than 1,000 pages, are too long and can be difficult and complex to use. However, I cannot support an amendment that would commit both Parliament and the Home Office to implementing fully proposals that have not even been written yet. The Home Secretary and I want to simplify the immigration rules and we will consider the Law Commission's recommendations as part of that process. Also, we will not only consider recommendations that relate to those who, under the provisions of the Bill, will lose their right to free movement. We want to simplify the system for all who come into contact with the immigration rules, not just a specific cohort of people.

Furthermore, 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. That may require us to bring clauses in part 1 into force before the Law Commission has had a chance to deliver its final report. I ask the hon. Member for Manchester, Gorton not to press either of his amendments, for the reasons outlined.

Turning to amendments 38 and 39, I thank the hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East for giving me the opportunity to discuss these issues. While the Government's priority is to leave the EU with a deal, we must continue to prepare for all scenarios, including the possibility that we leave without any deal in March 2019. Amendment 38 would hinder our ability to prepare adequately for that. Conducting the review proposed in that amendment would be likely to take some time, and thus would very likely delay the end of free movement. We received a clear message in the referendum of 2016 that free movement should end, and this amendment would leave us unable to deliver promptly on that in a no-deal scenario.

Furthermore, the Government do not think that such a review is necessary. Under section 6 of the Human Rights Act 1998, the Secretary of State is under an obligation to comply with the European convention on human rights in exercising all his functions, including when making immigration policy, when making specific immigration decisions, and when making immigration rules under section 3 of the Immigration Act 1971. The convention rights are already taken into account each and every time we make or amend the immigration rules. I reassure hon. Members that ensuring the welfare of migrants is at the forefront of our thinking for the design of the new immigration system. As such, I hope hon. Members can see that we already take into account the relevant safeguards and human rights considerations, and that amendment 38 is not necessary.

Amendment 39 gives me the opportunity to restate the importance of the immigration exemption within the Data Protection Act 2018. The immigration exemption came into force in May 2018. It was widely debated in both Houses and reassurances were repeatedly given on the scope and potential use of the exemption. The UK generally processes immigration matters under the EU General Data Protection Regulation, commonly known as the GDPR, because the UK generally treats immigration as a civil administrative function, not a policing matter. We have made a deliberate choice to deal with many immigration offences under administrative rather than criminal sanctions.

If the exemption were repealed for EEA nationals who were exercising free movement rights on the date when part 1 of the Bill came into force, the consequence of this amendment, as drafted, would be to place us in a position where in theory EEA nationals, even though by then subject to domestic immigration law, would be treated more favourably than migrants coming from the rest of the world. I find that situation divisive and discriminatory.

Immigration is naturally a sensitive subject area and a topic of huge importance to the public, to the economic wellbeing of the country and to social cohesion. Being able to effectively control immigration is therefore, in the words of the GDPR,

"an important objective of general public interest".

The new data protection regime gives broader rights to data subjects, which this Government welcome, but it is also important that we make use of the limited exemptions available to us, so that we can continue to maintain effective control of the immigration system in the wider public interest. We have done that within the parameters set down in the GDPR.

Tracey Crouch (Chatham and Aylesford) (Con): My right hon. Friend is making an excellent speech. That is one of the challenges that we parliamentarians face. It is important to recognise that there are sensitivities around the issue of immigration, but in many respects we have reneged on some of our responsibilities by not having a sensible debate about having a country that is open and welcoming to those who wish to come and live and work here, while at the same time having an immigration system that works for everyone, including those who are here and those who want to come here in the future.

Caroline Nokes: My hon. Friend makes an important point. As with so much in immigration, it is important that we get the balance right. I have been concerned that there has been much scaremongering in recent months that the immigration exemption would be used by the Home Office to deny individuals rights in a sweeping way, or as an excuse for not providing reasons for the refusal of cases. That is simply not true.

The exemption as set out in the legislation is not a blanket exemption that can be used to deny rights in a sweeping way; it does not target any particular group or individual. There are very clear tests to be met. The immigration exemption is only applied on a case-by-case basis, and only where complying with certain rights would be likely to prejudice the maintenance of effective immigration control. We must be able to satisfy the prejudice test set out in the Data Protection Act before it can be used. The data subject may assert their rights through the Information Commissioner's office and the courts, if that individual believes that an exemption has been wrongly applied.

[Caroline Nokes]

The immigration exemption is entirely separate from measures designed to deal with ending the free movement of EEA nationals. It is a necessary and proportionate measure, which we believe is compliant with GDPR—a regulation introduced by the European Union that applies to all member states. I can categorically assure hon. Members that it is not aimed at EEA nationals and, in compliance with our public sector equality duty, it must be applied in a lawful and non-discriminatory manner. I hope that in the light of these points, the hon. Member for Manchester, Gorton will withdraw the amendment.

Afzal Khan: I thank the Minister for her assessment, but I am not totally satisfied, so I wish to press the amendment to a Division.

Question put, That the amendment be made.

The Committee divided: Ayes 9, Noes 10.

Division No. 10]

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

Question accordingly negatived.

Kate Green (Stretford and Urmston) (Lab): I beg to move amendment 9, in clause 7, page 5, line 39, at end insert—

"(8A) The Secretary of State must carry out a gender impact assessment of the Act and lay a report of that assessment before the House of Commons within six months of the passing of the Act."

It is a pleasure to see you in the Chair, Sir David. I am concerned that a number of provisions in the Bill and the immigration White Paper published just before Christmas, in which the Government gave a sense of the future immigration regime after the ending of freedom of movement, will discriminate against women, and that these concerns have not been adequately considered by the Government in their published policy equality statements.

I shall start with the proposed £30,000 minimum salary threshold, which in future will potentially apply to EU migrants. It is widely known that women are significantly more likely to work part time than men. Some 39% of women in employment in the UK work part time, compared with just 12% of men. The pay for part-time work is obviously prorated, so that employees are paid for only the amount of hours or days that they work. However, the minimum salary threshold of £30,000 proposed in the White Paper is not apparently prorated, meaning that a part-time worker will need to secure a job with a significantly higher rate of pay than a full-time worker in order to meet the visa criteria. An employee working three days a week, for example, would need a full-time equivalent salary of £50,000 in order to meet the threshold. That is significantly more than the average full-time salary of a woman in the UK, which stands at £26,103.

Even when prorating is accounted for, part-time workers are still paid less than full-time workers. The average hourly rate of a part-time worker is £9.36, compared with £14.31 for a full-time worker. For a part-time worker in the UK, male or female, the gross average annual salary is just over £10,000. Women who work part time often do so in order to provide care for young children or elderly relatives. Women from EEA countries seeking to come to the UK are therefore likely to be forced to work full time regardless of their caring responsibilities, unless they are earning a high salary.

Even when women are working full time they are still likely to earn less than men, thanks to the gender pay gap, which currently stands at 18%. Women account for 70% of all earners, calculated on the basis of jobs paid below the minimum wage. They also make up the majority of those in temporary employment, zero-hours contracts and part-time self-employment. That means that women will on average find it much more difficult to meet the £30,000 minimum salary threshold, and therefore to come to the UK.

2.45 pm

Similarly, as we heard on Tuesday, the application of the spousal visa eligibility criteria to EU citizens is likely to have a disproportionate effect on women. To secure a visa, non-EU citizen spouses of British citizens must currently satisfy various eligibility criteria, including a requirement that their British partner has an annual income of at least £18,600 or a certain amount in savings. The Bill and the White Paper will extend that requirement to EU citizens.

At the time of the introduction of the new family migration rules, including the spousal visa requirement, an inquiry by the all-party parliamentary group on migration, of which I am now the chair, but which was chaired at the time by my hon. Friend the Member for Birmingham, Erdington (Jack Dromey), highlighted the likelihood that the income requirement rule would disadvantage women. That has been borne out in practice.

The extension of the policy to migrants from the EU will discriminate against British women seeking to bring their EU spouses to the UK. It also means that if a woman who earns more than the £18,600 threshold decides to leave her job or reduce her hours to care for her child, her spouse is at risk of deportation. In 2013, the BBC reported a case of a woman forced to have an unwanted abortion in exactly those circumstances.

Those are two of the ways in which the Bill's provisions may have a disproportionately negative impact on women; there may well be others. The Government's analysis in their policy equality statements acknowledges that a future policy change to pension-age benefits is likely to affect women more than men, given that more women are in receipt of state pensions.

The Government's published policy equality statements fall far short, however, of fully identifying and analysing the ways in which the Bill will discriminate on grounds of gender, merely concluding that

"the estimated resident population of EU nationals is estimated to be roughly half male and half female"—

a profound insight—and:

"As a consequence, we estimate that ending free movement will not discriminate on grounds of sex, however, we cannot predict the volume and pattern of migration post EU Exit."

The UK Government have taken many laudable steps to promote gender equality in other areas, including the introduction of mandatory gender pay gap reporting. We must not allow that progress to be undermined through ill thought-through measures that will lead to significant numbers of women being denied the opportunity to come to the UK or to join their families here, despite the robust evidence of the barriers that women face in taking up full-time employment and achieving the same level of remuneration as men. For that reason, my amendment calls for a full gender impact assessment of the Act, and for that assessment to be laid before the House in a report within six months of its passing.

Afzal Khan: I thank my hon. Friend for tabling the amendment and I heartily support all that she has said about it. Last Tuesday, I also gave reasons why I feel that the Bill disproportionately affects women. Therefore, we will support the amendment.

Caroline Nokes: I, too, thank the hon. Member for Stretford and Urmston for tabling the amendment, because it gives me the opportunity to confirm that gender impact and gender equality are important issues that must be taken into account across Government policy. Of course, that applies to all protected characteristics under the Equality Act 2010.

The UK has a long-standing tradition of ensuring that our rights and liberties are protected domestically and of fulfilling our international human rights obligations. The Government are committed to complying with their public sector equality duty under section 149 of the 2010 Act. Furthermore, the Government have been clear that all protections in and under the Equality Acts 2010 and 2006, and the equivalent legislation in Northern Ireland, will continue to apply after we leave the EU. We will not renege on our strong equalities and workers' rights commitments.

As such, we published two policy equality statements alongside the introduction of the Bill, one on immigration and one on the social security aspects of the Bill. Both of those considered the potential gender impacts of the Bill. However, as the Committee is aware, the Bill is a framework Bill, and its core focus is to end free movement. As set out in the policy equality statement on the immigration measures in the Bill, the resident population of EU nationals is estimated to be roughly half male and half female, as the hon. Lady said. As a consequence, we do not think that ending free movement will discriminate on the grounds of sex, and there is nothing further to suggest that it will have a particular impact based on gender. However, we cannot predict the volume and pattern of migration post EU exit, because the future arrangements that will replace free movement have not yet been finalised.

Alison McGovern (Wirral South) (Lab): The Minister is repeating the Government's position that either the impact of the Bill will be split 50/50, just like the population, or we simply do not know because we have no idea what immigration will be like in the future. Is it not the case that on the whole, women are paid less by men—I meant to say paid less than men—and that we are moving into a situation in which the amount that a person gets paid has an important impact on their rights as a citizen?

Caroline Nokes: I thank the hon. Lady for her intervention. I fear she made a somewhat Freudian slip when she said that women are paid less by men, but I am inclined to agree with her on that point; it is what the gender pay gap tells us.

The hon. Lady makes an important point. When we are considering the future immigration system as part of our conversations about the White Paper and as the immigration rules come forward, we have to consider these issues. However, as I have repeatedly said, this is a framework Bill; its only purpose is to end free movement. As part of our engagement on the proposals in the White Paper, we will have to look seriously at the impact on all protected characteristics, not simply gender. As the hon. Lady has pointed out, it is difficult at this stage to assess the impacts of ending free movement. For that reason, as set out in our published policy equality statement on the immigration measures in this Bill, we have committed to consider all equalities issues carefully as the policies are being developed. The policies will receive equalities impact assessments, and those assessments will be published.

The Government are committed to implementing a fair and transparent immigration system that complies with the equality duty. The social security co-ordination clause is an enabling power, allowing changes to be made to the retained social security regime via secondary legislation. Details of policy changes will be set out in the regulations that will follow, and those regulations will also be scrutinised by Parliament via the affirmative procedure. The policy equality statement on that clause was also published when the Bill was introduced. It looked at the demographics and protected characteristics of those who currently export benefits in the EEA, including their gender. In the policy equality statement, we have committed to consider the impacts throughout the policy development process. The Government will consider the impacts of any future change on the retained social security co-ordination regime in line with the public sector equality duty.

I hope that I have addressed the concerns of the hon. Member for Stretford and Urmston. I ask her to withdraw her amendment, for the reasons I have outlined.

Kate Green: I am grateful to the Minister for her response, and I take some reassurance from her words. She has made it clear that over the rest of this year, as part of the engagement on the White Paper, particular attention will be paid to engaging on the equalities effect of its proposals, and that equality impact assessments will be produced, published and fully available as individual policies are developed. I also take some comfort from the Minister's words about her awareness of the need to consider the equality impact assessments, including the gender impact of the provisions of clause 5 if the delegated powers in that clause are used to make changes to the social security regulations. In those circumstances, knowing that the Minister takes these matters extremely seriously, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Afzal Khan: I beg to move amendment 16, in clause 7, page 5, line 39, at end insert—

"(8A) Regulations under subsection (8) above may not be made until—

(a) the Secretary of State has completed a review of all cases of deportation, detention, or refusal of status to individuals who entered the United Kingdom before 1973, and the children and descendants of those individuals; and

(b) the Secretary of State has considered the findings of that review and implemented any safeguards deemed necessary, following a public consultation, to ensure that those who lose their right of freedom of movement under the provisions of this Act are protected from any wrongful detention, deportation or denial of legal rights."

The Chair: With this it will be convenient to discuss amendment 23, in clause 7, page 5, line 39, at end insert—

"(8A) Regulations under subsections (7) and (8) relating to the coming into force of section 1 or section 5 may not be made until the number of people registered for settled status in the United Kingdom reaches 3 million."

This amendment would prevent the Bill from coming into force until the number of people registered for settled status reaches 3 million.

Afzal Khan: Amendment 16 will prevent schedule 1 from coming into force until the Home Office has completed a full review of how enforcement has been applied following the Windrush scandal.

The Windrush scandal exposed systematic issues in the Government. A year on, we still do not know how many people have been detained or deported, or have even died as a result of the hostile environment. The measures that the Government have taken so far to fix the Windrush scandal have been unsatisfactory.

The National Audit Office has criticised the narrow scope of the Government's review thus far, saying that the Home Office has shown a surprising

"lack of curiosity about individuals who may have been affected, and who are not of Caribbean heritage, on the basis that this would be a 'disproportionate effort'."

When the question is whether someone's fundamental rights have been grossly violated, no effort is disproportionate in identifying and compensating victims.

This situation comes about after the Government showed a lack of concern about the potential impact of the hostile environment when it was introduced, despite repeated warnings from organisations and Opposition Members.

The compensation scheme has yet to be set up. The Government only introduced an emergency hardship fund after months of lobbying by Labour, and shockingly, it only helped one person in 2018. Just this month, there was widespread outrage at the Government's decision to restart deportation flights to Jamaica, after they were suspended at the height of the Windrush scandal. The Government have not yet shown that they have learned the lessons of Windrush. The lessons learned review has not even reported yet, so those flights were entirely premature.

Amendment 16 would redress the Government's failure to fulfil their duty of care to members of the Windrush generation, and would ensure that 3 million more EU citizens were not subjected to an already broken immigration system. As it is, the Bill will subject millions more people to a detention and deportation system that we know is broken, as outlined by Liberty in our evidence session. It said that

"up to 26,000 people per year could be liable to detention as EU nationals come under domestic immigration law. At the same time, a parliamentary question revealed that there has been no assessment of the impact of the Bill on the detention estate."—[*Official Report, Immigration and Social Security Co-ordination (EU Withdrawal) Public Bill Committee,* 12 February 2019; c. 55, Q147.]

I entirely support the point that Amnesty made when it said:

"The dysfunction of the system can only be expected to get worse...given that it will be dealing with a much larger body of people—people already living here, and the European nationals who make future applications that the system will have to deal with."—[*Official Report, Immigration and Social Security Co-ordination (EU Withdrawal) Public Bill Committee,* 14 February 2019; c. 88, Q221.]

Another issue that we heard a lot about during our evidence sessions was the threat of a repeat of Windrush for EU citizens. Once we have fixed problems with our current detention and deportation systems, we must ensure that we are not creating new systematic issues that will cause a repeat of the Windrush tragedy. As long as the hostile environment exists, it is imperative that people have documentation to prove their right to be in the UK.

The Government have set up the settled status scheme, and I am glad that they have started registering people, but we heard during the evidence sessions that there are already some problems with it, and that is before we get to the difficult cases of people who do not know that they need to register, do not have access to a phone or computer, or do not speak English well enough to complete the application and understand their rights and obligations under the scheme. Those EEA nationals who are unable to obtain status are likely to be the most vulnerable and marginalised, such as victims of trafficking or domestic violence, and children in care.

The Government have no clear plans at the moment to demonstrate that they have successfully registered all eligible EEA nationals for settled status by the end of the implementation period, nor have they put any plans in place to attempt to measure the extent of their success in doing so, nor have they set any targets for numbers to be registered. If the Minister disagrees on this point, I would be happy for her to tell the Committee what her target is for registering EEA nationals for settled status.

3 pm

In amendment 16, I referenced the figure "3 million". That may seem simplistic, but unfortunately it was out of necessity. I have now asked the Minister twice, in written questions, how many people she expects will be registered for settled status by the end of the transitional period. I have received nothing but a stonewall in response. If anybody is interested, those were written questions 218366 and 221820.

Without an amendment such as this one or amendment 36, tabled by the Scottish National party, we risk a situation in which millions of EU citizens have the right to be here but cannot prove that right, and face being denied public services, detained and potentially deported. As outlined in new clause 15, tabled in my name, our

preference is for a declaratory system, which will avoid a cliff-edge, where potentially millions of people are in the UK illegally.

Even if there is such a scheme, our preference is for amendment 16 to be enacted, because it will ensure that the maximum number of people will have registered for proof of their right to be here before free movement is repealed, making it less likely that they will be denied services, housing or the right to vote, even though they were their right.

Caroline Nokes: I thank the hon. Member for Manchester, Gorton for his explanation of the amendments. I will take each one in turn.

Amendment 16 seeks a further debate on the issue of Windrush. It is absolutely right that we deliver on our promise to the people of the UK and legislate to end free movement. It is, further, right that in implementing a future system we must learn the lessons of Windrush. I agree with the hon. Gentleman that that is a crucial point, and that is why, as highlighted on Second Reading, the Government have put in place a number of measures to address it. However, as I have said, we have made a commitment to end free movement and the core purpose of the Bill is to deliver on that purpose. The amendment would put conditions on its implementation, and that is unacceptable. It would have the effect of hindering the Government in that objective, which stems from the EU referendum outcome.

It is essential that the Government can implement change as soon as is practically possible following the UK's exit from the EU. Part of that change is already in train through the EU settlement scheme. We have been clear that securing the rights of EEA citizens has always been our priority, and we have delivered on that commitment through the implementation of the scheme.

We know that some members of the Windrush generation became caught up in measures intended to tackle illegal migration, because they did not hold the documentation necessary to demonstrate that they could access the benefits and services to which they were entitled. To remedy that, a taskforce was established last April to provide support to members of the Windrush generation who needed documentation to prove their status. The taskforce has issued documentation to more than 2,400 people, who can now demonstrate their right to live in the UK. A further 610 people have subsequently been supported through the Windrush scheme application process. More than 3,400 people have successfully applied for British citizenship under the Windrush scheme.

The Home Office has taken a number of other significant steps to right the wrongs experienced by some members of the Windrush generation. Those steps include the compensation scheme, the details of which have been consulted upon; the result will be announced shortly. In addition, we have commissioned an independent lessons learned review, which has contacted a wide variety of religious and community groups for their input. The review will consider what were the key policy and operational decisions that led to members of the Windrush generation becoming entangled in measures designed for illegal immigrants; what other factors played a part; why the issues were not identified sooner; what lessons the organisation can learn to ensure that it does things differently in future; whether adequate corrective measures are now in place; and an assessment of the initial impact of those measures.

We are committed to taking into account the outcome of the review in designing the future borders and immigration system. The Department is also conducting a review of historical cases, and has therefore already committed significant resources to this work.

Stuart C. McDonald: The Minister will be aware that the National Audit Office has been critical of the scope of the review of historical cases and has, in particular, urged the Department to widen the scope of the review to include all individuals who could be in a similar situation to those from the Caribbean—so, people of other nationalities as well. Is the Home Office willing to consider that?

Caroline Nokes: Obviously, the Home Office is obliged to consider the comments of the National Audit Office, and it is doing so very carefully.

In addition to the resources committed to this work, the Government are also obliged to look to end free movement as soon as is practically possible. That is the first step in establishing a future border and immigration system that works for the whole United Kingdom. Amendment 23 would amend the commencement provisions in the Bill. The amendment would make the commencement of clause 1, which ends free movement, and clause 5—the social security provision—dependent on 3 million people having applied for, and been granted, status under the EU settlement scheme.

We are committed to securing the rights of resident EU citizens, and we have delivered that through the EU settlement scheme, which will enable us to grant settled or pre-settled status to European economic area nationals and their family members in the UK before EU exit, regardless of whether or not the UK leaves the EU with a deal.

I am pleased that the hon. Member for Manchester, Gorton supports the settlement scheme, and I hope that he and all other Members are encouraging EU nationals resident in their constituencies to apply. However, setting a target for the number of applications that must be reached before the Bill comes into force is not appropriate, for a number of reasons. First, we already have a generous deadline for applications to the scheme, which acts as an incentive for the resident population to apply. Using the power in clause 4, we will ensure that their status is protected before that deadline, so that their rights remain unchanged immediately after exit, avoiding any cliff edge.

Clearly, the EU and the UK commonly agreed that a deadline was the right approach when they provided for it in article 18 of the draft withdrawal agreement. We have been clear about what the deadline will be in both a deal and a no-deal scenario. According to the annual population survey, it is currently estimated that around 3 million EEA nationals are resident in the UK, but even that might well be an underestimate. It would be irresponsible to repeal free movement just because 3 million applications had been granted, which could easily happen before the proposed deadline. A date deadline is public and clearly understood. People can plan their affairs around it in a way that they cannot with an arbitrary figure such as the one proposed in the amendment.

Stuart C. McDonald: That is a slightly unfair characterisation of the amendment, which does not say that we would have to end free movement when the 3 million threshold had been met. We could still wait until the deadline that the Government have imposed. The amendment simply says that the Government should not implement the end of free movement until that number of people have been registered.

Caroline Nokes: It is still the Home Office's position that we regard that as an arbitrary figure. We believe that a deadline that is set as a date is much more easily understood by individuals.

We are running an extensive communications campaign to ensure that people are aware of the need to apply. We are using all available channels to reach our audience, and last year targeted online advertising alone reached more than 2 million people. Our communications activity will be even more visible in the coming months, and we will shortly launch a wide-ranging marketing campaign that will encourage EU citizens to apply when the scheme is fully open. Nobody will be left behind, however, and we are working in partnership with vulnerable group representatives to ensure that we reach everyone. We expect the large majority of EEA nationals to have been granted status by the deadline, but if a person has good reasons for missing the deadline, we will be able to protect their status and enable them to apply afterwards.

Secondly, by requiring 3 million EU citizens to be granted settled status before the Bill can come into force and lay the ground for the future immigration system, we are presupposing that all resident EU citizens will receive indefinite leave to remain, which is what settled status refers to. That does not take into account the fact that some resident EU citizens may not need to apply for settled status. Some may want to leave the UK before the deadline; some will have arrived pre-1973 and already have indefinite leave to remain; and some may want to apply for British citizenship instead.

A significant proportion of EEA nationals who are eligible to apply under the settlement scheme will not have been continuously resident in the UK for five years, so they will not be entitled to settled status. They will be issued with pre-settled status, which gives them limited leave to remain, rather than indefinite leave. Some may then leave the UK without staying to complete the five years continuous residence required for a grant of settled status.

The date on which free movement could be repealed, or retained social security co-ordination legislation amended, would therefore be highly uncertain and operationally unworkable as a result of the amendment. The decision about whether free movement ended would be left solely in the hands of those EEA nationals. To prevent free movement from coming to an end through the Bill, they could simply refuse to apply under the EU settlement scheme, knowing that, as a consequence, free movement would not end.

That would be the antithesis of taking back control. It would put the future immigration system in the hands not of the Government or the British people, but of EU nationals who had already exercised their free movement rights and whose rights were protected, but who could prevent us from ending free movement and delivering on the outcome of the referendum.

Finally, it makes no sense to restrict the commencement of the social security co-ordination provisions in clause 5 based on the number of people who are granted settled status. Rights under the social security co-ordination regulations—for example, the right to aggregate to meet domestic entitlement for specific benefits—are not connected to the grant of leave under the EU settlement scheme. I therefore ask the hon. Member for Manchester, Gorton to withdraw his amendment.

Afzal Khan: I thank the Minister for her statement. I am minded to press amendment 16 to a vote, but not amendment 23.

Question put, That the amendment be made.

The Committee divided: Ayes 9, Noes 10.

Division No. 11]

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.

Stuart C. McDonald: I beg to move amendment 37, in clause 7, page 5, line 39, at end insert—

'(8A) Regulations under subsection (8) may not be made until the Government has amended regulation 12 of the National Health Service (Charges to Overseas Visitors) Regulations 2015 to exempt EEA and Swiss nationals with immigration permission from being charged for NHS services.'

This amendment would prevent the Government from bringing into force those parts of the Bill that subject EEA nationals to the domestic immigration system until EEA and Swiss nationals with immigration permission are exempted from NHS overseas visitor charges.

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

New clause 12—*NHS Charges for EEA and Swiss nationals*—

'(1) Any EEA or Swiss national, or family member of an EEA or Swiss national, resident in the United Kingdom shall be deemed ordinarily resident for the purposes of section 175 of the National Health Service Act 2006.

(2) In this section, "family member" has the meaning given in Directive 2004/38/EC of the European Parliament and Council.'

This new clause would prevent EEA or Swiss nationals, and their family members, who do not have settled status in the UK from being charged for NHS services.

New clause 42—*Immigration health charge*—

'No immigration health charge introduced under section 38 of the Immigration Act 2014 may be imposed on an individual who is an EEA or Swiss national.'

This new clause would prevent EEA or Swiss nationals paying the immigration health charge.

New clause 46—*Payment for NHS services*—

'Regulation 4 of the National Health Service (Charges to Overseas Visitors) (Amendment) Regulations 2017 does not apply to EEA and Swiss nationals and their family members.'

This new clause would ensure NHS Trusts do not require payment from EEA and Swiss nationals and their family members before providing NHS services.

Stuart C. McDonald: With amendment 37 and new clauses 42 and 46, I seek to provoke a debate about a particularly important and challenging aspect of the trend towards the outsourcing of immigration control and enforcement, namely the role of our national health service. I am trying to push the Government to address certain challenges and problems that have been highlighted by several organisations. I am particularly grateful to Doctors of the World and the National AIDS Trust for supporting the amendment and new clauses.

3.15 pm

New clause 46 would remove the requirement on NHS trusts to secure payment from EU nationals and their family members before providing NHS services. It would mean that EU migrants and their family members would not need to undergo up-front assessment of chargeability and up-front charging in advance of accessing healthcare on the NHS.

That would ensure that possibly life-saving or essential treatment is not wrongfully denied or delayed, and it would prevent real harms and possibly even death, because even though in theory life-saving treatment should never be denied or delayed, in practice the up-front charging regime is resulting in confusion, misapplication of the rules and unlawful denial of healthcare. To extend the up-front charging system to EU nationals would be to multiply such injustices within a system that is already failing to cope.

During the transition period and post Brexit, EU nationals and their family members will be caught up in immigration checks in hospitals, of the kind that meant that life-saving healthcare for members of the Windrush generation and other migrants was delayed or withheld. A Global Future analysis of the White Paper warned that EU migrants are at risk of being subject to a Windrush-style scandal, but on a much larger scale, with people being wrongfully denied essential public services. Global Future said:

"EU nationals could have one of at least six different kinds of immigration status. They have different types of proof and periods of validity. It is inevitable that employers, landlords and others dealing with EU citizens will make mistakes in administering this system, with dire consequences for those affected…The settlement scheme creates an entirely new form of status, with which officials, employers and landlords will have no experience. And there are no plans to give EU nationals any hard-copy documentation of their status. This makes the risk of problems due to confusion and risk-aversion high."

It is well documented that NHS trusts struggle to implement the existing NHS charging regulations for migrants. Since the introduction of up-front charging, which was brought in by the National Health Service (Charges to Overseas Visitors) (Amendment) Regulations 2017, hospitals have incorrectly withheld life-saving care from undocumented migrants and migrants with regular status, resulting in serious harm and death.

Mistakes are made because hospitals, NHS administrations and clinical staff are generally not legal experts and so are unable to make an accurate assessment of a person's immigration status. The Windrush scandal and the case of Albert Thompson, who was unable to provide immigration paperwork and so had life-saving chemotherapy withheld, demonstrates that those without clear immigration status and papers are most vulnerable to having healthcare incorrectly withheld.

Brexit will introduce the biggest change to UK immigration policy in decades and it will present a huge challenge to an already struggling NHS, including the risk of NHS trusts incorrectly identifying EU nationals as being ineligible for NHS care and so withholding treatment from them. There has been no evaluation or consultation within the NHS on the impact that this change will have on already overstretched NHS staff and resources.

Maria Caulfield (Lewes) (Con): The hon. Gentleman makes a valid point. Having worked in the NHS, I know that such checks cause additional pressures. But how does he suggest that the NHS pays for treatment for non-UK citizens? It is a national health service, not an international health service.

Stuart C. McDonald: We could do what we did previously, which was to recover the costs after the event. However, as I say, I have tabled these amendments to spark debate. At the end of the day, if it is a choice between risking people's lives or even causing death, and risking losing out on certain funds after the event, the second of those is the lesser evil. However, it is a difficult issue; I do not have all the answers as to how we should approach it. As I say, that is why the new clauses and the amendment have been tabled.

Afzal Khan: What would be said if there was a contagious disease and people were not coming to get the help that they needed?

Stuart C. McDonald: The hon. Gentleman makes an absolutely valid point.

I turn to amendment 37, which would prevent the Government from bringing into force those parts of the Bill that subject EEA nationals to the domestic immigration system until EEA and Swiss nationals with immigration permission are exempted from the NHS's overseas visitors charges. This amendment would mean that all EU migrants with a visa, including temporary workers on short-term visas, are able to receive NHS services free at the point of care. That reflects the current situation of EU nationals living and working in the UK.

The White Paper indicates that EU migrants on short-term visas of 12 months will have no right to healthcare beyond emergency care, and skilled workers and their dependents will be required to pay the immigration health surcharge when making an immigration application to enter or remain in the UK. Good preventive healthcare plays a central role in maintaining a fit and healthy workforce, and the policy to exclude people on short-term visas from all healthcare beyond emergency care establishes a worrying precedent in excluding from NHS services migrants who are legally living and working in the UK.

Those on short-term visas are likely to be in lower-paid jobs and unable to pay for healthcare out of their own pockets. Requiring EU migrants on skilled worker visas and their dependants to pay the immigration health surcharge is unfair and will be cost-prohibitive for some. Payment of the surcharge, which is currently set

[Stuart C. McDonald]

at £400 per person per year with a discounted rate for students of £300 per year, must be made at the same time as an immigration application, and it has to cover the total cost for the duration of the visa and for all the people named on the application. A person applying for a two-and-a-half-year visa will incur a surcharge of £1,000, on top of any other immigration fees, and a family of four would be required to pay £8,100 for a visa for the same period.

For those on low incomes, the health surcharge will be cost-prohibitive. We are particularly concerned about the impact that the surcharge will have on EU migrants living in the UK when they come to renew their visa, and about the fact that large health surcharge payments will prevent those on low incomes from being able to renew their visa, causing them to lose their lawful stay in the UK. It is also of note that EU migrants who are employed—for example, those on short-term or skilled visas—will be contributing to the NHS through tax and national insurance payments and that, by being required to pay the health surcharge, they will in effect be being charged twice for healthcare.

For those reasons, I have also tabled new clause 42, which would remove the applicability of the health surcharge. The surcharge has doubled this year to what I regard as an unacceptably high level.

Eleanor Smith (Wolverhampton South West) (Lab): I wish to speak to new clause 12, which states:

"Any EEA or Swiss national, or family member of an EEA or Swiss national, resident in the United Kingdom shall be deemed ordinarily resident for the purposes of section 175 of the National Health Service Act 2006."

When charging for non-residents was first introduced under section 175, it was not meant to add excess costs for that group of people accessing our healthcare. In 2015, costs were introduced that started at £200 for most applicants and £150 for certain groups—for example, students. The fee has now doubled. That means that a family of four would have to pay about £1,000 each in IHS costs in addition to their visa costs.

I am pleased that the Minister confirmed in November that EU citizens who are resident in the UK before it leaves the European Union in March 2019 will not pay the charge, and that the Government have come to an agreement with Switzerland, Norway, Iceland and Liechtenstein that during the transition period their citizens' rights will be protected. However, it is still unclear what will happen after the transition period has come to an end in 2021 or, in the case of a no-deal scenario, December 2020. A new visa system will be in place that could mean that EEA citizens and Swiss nationals have to pay the immigration health charge.

It seems to be forgotten that most of the EEA citizens and Swiss nationals in the UK are currently employed and are already paying for the NHS through their taxes. Extending the immigration health surcharge to them would mean that they were being charged double for NHS care, which would seem to me an unfair contribution.

That leads me to the issue of the NHS. More than 60,000 NHS workers are EU nationals and, without settled status, they could face the possibility of paying the increased surcharge as well as for their tier 2 work visa. The new system could add further pressures for the NHS, which is currently struggling to recruit the number of healthcare professionals needed to meet the country's demand.

Labour's intention is to level rights up, not down. We hope that, after a new immigration system applying to nationals from across the world is introduced, none will be required to pay these charges.

Kate Green: I wish to speak to amendment 37, which has my support, as do the new clauses in this group. I would like to say a few words about one particular aspect of NHS charging, which is in relation to maternity care. Under the current charging rules, non-urgent care must be paid for in advance, but "urgent" or "immediately necessary" care must be provided whether or not a person can pay in advance. The guidance from the Department of Health and Social Care and the statutory regulations make it clear that maternity care is to be regarded as immediately necessary, so it must not be refused or delayed if a woman is unable to pay in advance, although she will still be charged for it. However, because of confusion about the charging regime and misapplication of the rules, pregnant women who are not UK nationals have already been denied maternity care, told that they must pay in advance of receiving treatment or told that their appointments may be cancelled if they fail to pay. Extending the charging regime to EU nationals, including pregnant women, would multiply such injustices in a system that is already making serious mistakes.

Charges for NHS maternity care start at approximately £4,000 and can rise into the tens of thousands for more complex care for women or additional care for new babies. Those charges are significantly higher than what NHS trusts would normally be paid for providing such care, because the regulations require them to charge 150% of the relevant NHS tariff. In practice, the rules mean that some hospitals have sent bills demanding immediate payment of thousands of pounds from vulnerable post-partum women. Women have received letters threatening referral to debt collectors, local counter-fraud specialists or the Home Office; in one appalling case, a woman was issued a bill of almost £5,000 for treatment following a miscarriage.

Research by the charity Maternity Action has found that the charging regime has resulted in women avoiding essential antenatal care and missing appointments because they fear incurring a debt that they cannot pay or being reported to the Home Office. That includes women with health conditions that require effective management to protect the health of both mother and baby. Antenatal care is intended to pick up and treat problems as early as possible, increasing the chances of a safe and healthy birth. Missing midwifery appointments means that high blood pressure and gestational diabetes are left untreated, the window for HIV prophylaxis is missed and minor infections are allowed to develop into serious health conditions.

Migrant women who are entitled to free NHS care are also affected by charging policies. Maternity Action regularly encounters women, including EEA citizens, who have been wrongly assessed as chargeable and have received bills for their care. In some cases, the women affected by the rules have children and spouses who are British citizens. Surely that was not the intention of the policy.

In December, the royal colleges issued a joint statement calling on the Department to suspend the charging regulations pending a full independent review of their impact on individual and public health. The Royal College of Midwives has expressed

"enormous concern…that vulnerable women are missing out on essential…care."

Given the harm that charging for NHS maternity care is already causing to women's physical and mental health, the fact that many women are simply unable to repay bills, the clear lack of regard being given to children's best interests, the risks to public health and the potential for the charging regime to be extended to all EEA nationals, is it not time to consider the arguments for immediately suspending all NHS charging for maternity care?

Maria Caulfield: Having had experience of looking after migrants in the health service, I have some sympathy with the hon. Lady's argument, but who will pay for their care? Will it be the UK taxpayer, or will migrants have to make some contribution to their own healthcare needs?

Kate Green: I very much respect the hon. Lady's expertise in these matters; I also appreciated her important comments during the Committee's oral evidence sessions. I echo the hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East. Clearly, there is a balance to be struck between the costs to the UK taxpayer and what is right for the health and wellbeing of anyone living in this country, in whatever circumstances. Like him, I would strike the balance on the side of health, wellbeing and the protection of life when we have to make those difficult choices.

As the hon. Gentleman said, there are things that we could do. One possibility, although personally I do not favour it, would be to apply the health surcharge in some circumstances in which it might not otherwise apply. However, the evidence is that because these women are unable to pay the debts anyway, most of the money will in fact go uncollected. The NHS is not really gaining financially. All the charges seem to do is deter women from seeking the care they need for themselves and their babies, and that is a false economy down the line. If the women are legitimately in this country, as they are, the need for further emergency care and primary care will pile up if they have not had the proper antenatal and maternity care that they should have had to meet their best interests and that of their children.

I know that the Minister takes these matters seriously. Will she use her good offices to ask her colleagues in the Department of Health and Social Care to publish the Department's 2017 review of the impact of amendments to the NHS charging regulations? I am told that it engaged with those involved in the maternity care of women, including the Royal College of Midwives, but the outcome of that review has not been published and placed in front of us. If the Minister can do anything to persuade her colleagues to make that information publicly available, it would be much appreciated.

3.30 pm

Afzal Khan: We support the proposals. Overall, the sweeping provisions in clause 4(5) provide limitless scope for the Government to change fees and charges. The immigration health surcharge was already doubled from £200 to £400 a year by the Immigration (Health Charge) (Amendment) Order 2018, which Labour voted against. There is nothing to stop the Government doubling it again. The whole idea of an immigration health surcharge is pretty dubious, because the migrants who are forced to pay the charges are already paying large sums of money in tax and national insurance contributions. Some of them may even be working in the NHS, so they are paying a double tax for a service that they are helping to deliver.

Caroline Nokes: I am grateful to the hon. Members for Cumbernauld, Kilsyth and Kirkintilloch East and for Paisley and Renfrewshire North for tabling these amendments on migrants' access to healthcare in the United Kingdom. I am also grateful to the hon. Member for Wolverhampton South West for tabling her new clause. Given their similar effects, I will consider them together.

The Government have been very clear in everything we have said since the referendum that, although the United Kingdom will be leaving the European Union, we are certainly not leaving Europe. Our relations with the European Union and the whole of the EEA will continue to be close and cordial. As part of that, immigration from the EEA will certainly continue. We want EEA citizens, who have contributed so much to our society, to continue living and working in the United Kingdom. While they are here, they will of course need access to healthcare. We are fortunate in this country to have a world-class health system, thanks to the NHS. The proposals, in different ways, would exempt EEA and Swiss citizens from the requirement to pay for healthcare in the UK. However, they are unnecessary.

Amendment 37 and new clause 12 are also technically deficient, because they do not reflect the nature of devolved health legislation. Entitlement to free-of-charge NHS care is not, and should not be, based on nationality. It is based on a concept of ordinary residence in the United Kingdom. For EEA nationals, that means living in the UK on a

"lawful…properly settled basis for the time being."

I thank hon. Members for their comments on specific proposals, and I will make a number of points. Operating fair and proportionate controls on access to the NHS is not about outsourcing immigration control; it is about protecting a vital taxpayer-funded service from potential misuse. The Department of Health and Social Care's policy of up-front NHS charging for non-urgent treatment for overseas visitors was upheld by the courts in a judicial review last year. Treatment for specified public health conditions, such as the infectious diseases mentioned earlier, is not subject to overseas visitor charges.

The hon. Member for Wolverhampton South West asked whether it was fair that EEA nationals should pay the health charge, given that they would pay for the NHS via taxes and national insurance contributions. Whether EEA nationals pay the health charge following the introduction of the new skills-based immigration may depend on the outcome of our negotiations with the EU about our future relationship. The health charge currently applies only to non-EEA temporary migrants. Although some non-EEA nationals will pay tax and national insurance contributions, they will not have made the same financial contribution to the NHS that most UK nationals and permanent residents have made

[Caroline Nokes]

or will continue to make over the course of their working lives. It is therefore fair to require them to make an up-front and proportionate contribution to the NHS.

When we debated this in Committee some months ago, the issue of the level of contribution was raised, and it has been again this afternoon. The Department of Health and Social Care undertook a careful study with NHS England of the NHS resources that temporary migrants to this country generally used over the course of a year. It came out in the region of £470 per individual. I hope that hon. Members will note that the immigration health charge is set below that level at £400 per person, or the reduced rate of £300 per year for students and those on youth mobility schemes.

The hon. Member for Stretford and Urmston raised maternity care. The Department of Health and Social Care is responsible for guidance on overseas visitor charges in England. Maternity care is always urgent and must never be withheld pending payment. That is clear in the Department of Health and Social Care's guidance. However, charges are applied to protect maternity services for those entitled to live in this country.

The hon. Lady asked whether I would speak to DHSC Ministers about the review of charges, which I understand has not yet been published. I am happy to make that representation to my fellow Ministers.

Maria Caulfield: I thank the Minister for giving way; I know I have made a number of interventions now. Does it sound fair that Opposition Members are asking low-paid UK taxpayers to underpin the NHS services for EEA migrants, given that they often struggle to pay their tax and national insurance? Does she agree that, given that the health service is struggling to pay for drugs such as Orkambi for cystic fibrosis patients, it cannot afford to take on free healthcare for EEA nationals too?

Caroline Nokes: My hon. Friend makes an important point, which underpins the immigration health surcharge. The Government took the view, and in successive general elections made it very clear, that we would continue to implement and, indeed, increase the immigration health surcharge. As I said, this is a matter for EEA nationals and is still for negotiation as part of our future relationship.

Afzal Khan: Does the Minister agree that it is also true that EU citizens are more likely to provide health services than receive them, and are more likely to be young and therefore need fewer NHS services?

Caroline Nokes: I thank the hon. Gentleman for his comments. I cannot comment on the demographics of EU citizens. We know that those who are the most mobile in the labour force tend to be the youngest. He is right to comment on the valuable contribution that many EEA citizens make to our national health service. It was argued with me in the Chamber some months ago that there was a Brexodus of EU nationals from our health service, and I was assured by the then Minister in the Department of Health and Social Care that there are now 4,000 more EU nationals working in our NHS than there were at the time of the referendum in 2016.

Gavin Newlands (Paisley and Renfrewshire North) (SNP): Just a small point on the statistics that the Minister cited. In the last year, there has been a 90% drop in the number of nurses coming from the EU to work in the UK.

Caroline Nokes: That gives me a marvellous opportunity—I might have to look at my hand to check the statistics—to say that the net migration statistics came out this morning; very hot off the press. Net migration of EU citizens to this country is still positive. The hon. Gentleman makes the point that there has been a drop-off, but we have seen—this gave me significant reassurance—that among the EU citizens who have been living and working here and exercising their right to free movement over the past year or so, the level of emigration is absolutely static. That gave me at least one statistic to cite, which is that 57,000 more EU citizens have come here over the past 12 months than have left.

Paul Blomfield (Sheffield Central) (Lab): The Minister is, of course, right about the number that she has read from her hand—I have it on my phone as well—but she will know that that number is a 10-year low, and that there has also been a 14-year high in non-EU net migration. Overall, net migration has changed very little, and I wonder where that fits into the Government's narrative of taking back control of our borders.

Caroline Nokes: I emphasise the points that I made following the publication of the net migration statistic. A significant proportion of the increase that we have seen is made up of students coming from outside the EU, including significant increases in the numbers of Indian and Chinese students coming to our world-class universities. The hon. Gentleman will know that there is no limit to the number of tier 4 visas that we are happy to issue to genuine students and, in the case of universities, there has been a 10% increase in the past year. That puts the figure in the region of 26% higher than in 2010-11.

In addition—this is very topical in the context of this amendment, since we are discussing health; I am sure this gets me back in order, Sir David—the hon. Gentleman will remember that in July of last year, we lifted the cap on doctors and nurses being able to come in under the tier 2 regulations. There has been a significant increase in the number of doctors and nurses—those working in the health sector—making applications under that system. While I acknowledge the importance of working hard to make sure that we have adequate numbers of UK-trained doctors and nurses, that was a very popular move. It was impressed on us, not only by many political parties but by those in the professions, that it was important that we lift the cap on tier 2 visas for those who work in the NHS.

EEA and Swiss nationals and their family members who are, or become, ordinarily resident in the UK are currently fully entitled to free NHS care, in the same way as a British citizen who is ordinarily resident. That position will not change, regardless of whether the UK leaves the EU with or without a deal. The Government are also currently working to reach agreement at EU level, or through agreements with relevant member states, to continue the reciprocal healthcare arrangements that are already in place and are so beneficial to UK and EU nationals alike while we negotiate our future relationship. We are making progress: we have already

agreed reciprocal arrangements with Switzerland, Iceland, Lichtenstein and Norway. Those arrangements safeguard healthcare for the hundreds of thousands of UK nationals who live and work in EU countries, or who require emergency medical treatment each year while on holiday in Europe. They also ensure that EU citizens who are not ordinarily resident in the UK—primarily those on holiday—can receive reciprocal healthcare here.

It is also worth reflecting on the fact that both health and charging for health services are devolved matters. With the exception of new clause 42, these amendments seek to amend devolved health policy. However, the health Ministries in Scotland, Wales and Northern Ireland and the Department of Health and Social Care in England are responsible for setting their own charging policy and making their own regulations.

Nick Thomas-Symonds: I am glad that the Minister has come to the topic of devolution of the health service in Wales. It was, of course, somebody Welsh who founded the National Health Service—Aneurin Bevan—and on the subject of health tourism, which has been raised by the hon. Member for Lewes, Aneurin Bevan said:

"One of the consequences of the universality of the British Health Service is the free treatment of foreign visitors. This has given rise to a great deal of criticism, most of it ill-informed and some of it deliberately mischievous…The fact is, of course, that visitors to Britain subscribe to the national revenues as soon as they start consuming".

This was, he said, an area in which

"generosity and convenience march together."

Is that not true?

Caroline Nokes: I am not going to criticise the founder of the national health service, who made a huge contribution to our national life in so doing, but it is important to reflect on the fact that in successive general elections people have supported the principle that those who are here on temporary visas should contribute. As I was saying, the devolved authorities do of course have the ability to set their own charging policies and make their own regulations.

3.45 pm

Amendment 37 and new clause 12 do not reflect the devolved nature of health legislation. Amendment 37 would amend the National Health Service (Charges To Overseas Visitors) Regulations 2015, which apply only to England—the NHS in the devolved health administrations would be unaffected. Similarly, new clause 12 would amend the National Health Service Act 2006, which applies only in England and Wales.

The immigration health surcharge ensures that temporary migrants who come to the UK for more than six months make a fair contribution to the comprehensive range of national health services available to them during their stay. EEA and Swiss nationals do not pay the charge and the Government are clear that any EEA national who is resident in the UK before we leave the European Union will not pay it.

We have also made it clear that in the event of the UK leaving the EU without a deal, applicants for European temporary leave to remain will also not be subject to the charge. Whether EEA nationals will pay the charge following the introduction of the future immigration system may, however, depend on the outcome of our negotiations with the EU regarding our future relationship. Negotiations include a range of matters, such as social security co-ordination and reciprocal healthcare agreements, including the European health insurance scheme. It would not therefore be appropriate to preclude or negate the outcome of those negotiations through the Bill.

We are taking clear steps to protect the position of the EEA and Swiss nationals in the UK. We must also act in line with the devolved nature of health policy and ensure that we have the flexibility to respect the outcome of ongoing negotiations with the EU. That is the correct approach, and I invite the hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East to withdraw the amendment.

Stuart C. McDonald: This has been a very helpful debate on whether and how we go about charging for NHS services. I am grateful to other hon. Members for their contributions. It is incumbent on all of us to take very seriously the concerns that have been raised by outside organisations that are experienced in the field of healthcare. It is incumbent on all of us as MPs, but also on the Minister and the Home Office, to make sure that the concerns are not just ignored and forgotten. I hope that we all treat them seriously going forward.

I am grateful to the Minister for undertaking to speak to the Department of Health and Social Care about the report that has been flagged up. I will take on board all the drafting tips that she helpfully provided. In the meantime, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 7 ordered to stand part of the Bill.

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

3.48 pm

Adjourned till Tuesday 5 March at twenty-five minutes past Nine o'clock.

Written evidence reported to the House

ISSB31 Joint evidence submitted by the3million and British in Europe. A note on the draft EU contingency Regulation COM(2019)53 on Social Security Co-ordination

ISSB32 City of London Corporation

ISSB33 Unicef UK