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Public Bill Committee

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

Ninth Sitting

Tuesday 5 March 2019

(Morning)

CONTENTS

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Saturday 9 March 2019

The Committee consisted of the following Members:

Chairs: Sir David Amess, †Graham Stringer

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

Joanna Dodd, Michael Everett, *Committee Clerks*

† attended the Committee

Public Bill Committee

Tuesday 5 March 2019

(Morning)

[Graham Stringer *in the Chair*]

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

9.25 am

The Chair: I have some housekeeping announcements. Hon. Members should ensure that electronic devices are switched to silent or off. I remind them that tea and coffee are not allowed in the room during sittings.

We now resume line-by-line consideration of the Bill, starting with new clauses. Some new clauses have already been debated as part of earlier groups. There will be no debate on them, but Members will be able to move them formally at the appropriate point if they so wish. Members will need to indicate to me if they intend to move any of the new clauses.

New Clause 1

Time limit on detention for EEA and Swiss nationals

"(1) The Secretary of State may not detain any person ("P") who has had their right of free movement removed by the provisions of this Act under a relevant detention power for a period of more than 28 days from the relevant time.

(2) If "P" remains detained under a relevant detention power at the expiry of the period of 28 days then—

(a) the Secretary of State shall release P forthwith; and

(b) the Secretary of State may not re-detain P under a relevant detention power thereafter, unless the Secretary of State is satisfied that there has been a material change of circumstances since "P's" release and that the criteria in section [Initial detention for EEA and Swiss nationals: criteria and duration] are met.

(3) In this Act, "relevant detention power" means a power to detain under—

(a) paragraph 16(2) of Schedule 2 to the Immigration Act 1971 (detention of persons liable to examination or removal);

(b) paragraph 2(1), (2) or (3) of Schedule 3 to that Act (detention pending deportation);

(c) section 62 of the Nationality, Immigration and Asylum Act 2002 (detention of persons liable to examination or removal); or

(d) section 36(1) of UK Borders Act 2007 (detention pending deportation).

(4) In this Act, "relevant time" means the time at which "P" is first detained under a relevant detention power."—*(Afzal Khan.)*

Brought up, and read the First time.

Afzal Khan (Manchester, Gorton) (Lab): I beg to move, That the clause be read a Second time.

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

New clause 2—*Initial detention for EEA and Swiss nationals: criteria and duration—*

"(1) Any person ("P") who section [Time limit on detention for EEA and Swiss nationals] applies to may not be detained under a relevant detention power other than for the purposes of examination, unless the Secretary of State is satisfied that—

(a) the person can be shortly removed from the United Kingdom;

(b) detention is strictly necessary to affect the person's deportation or removal from the United Kingdom; and

(c) the detention of "P" is in all circumstances proportionate.

(2) The Secretary of State may not detain any person ("P") who section [Time limit on detention for EEA and Swiss nationals] applies to under a relevant detention power for a period of more than 96 hours from the relevant time, unless—

(a) "P" has been refused bail at an initial bail hearing in accordance with subsection (4)(b) of section [Bail hearings]; or

(b) the Secretary of State has arranged a reference to the Tribunal for consideration of whether to grant immigration bail to "P" in accordance with subsection (1)(c) of section [Bail hearings] and that hearing has not yet taken place.

(3) Nothing in subsection (2) shall authorise the Secretary of State to detain "P" under a relevant detention power if such detention would, apart from this section, be unlawful.

(4) In this section, "Tribunal" means the First-Tier Tribunal.

(5) In this section, "relevant detention power" has the meaning given in section [Time limit on detention for EEA and Swiss nationals]."

This new clause is consequential on NC1.

New clause 3—*Bail hearings for EEA and Swiss nationals—*

"(1) Before the expiry of a period of 96 hours from the relevant time, the Secretary of State must—

(a) release any person ("P") who section [Time limit on detention for EEA and Swiss nationals] applies to;

(b) grant immigration bail to "P" under paragraph 1 of Schedule 10 to the Immigration Act 2016; or

(c) arrange a reference to the Tribunal for consideration of whether to grant immigration bail to "P".

(2) Subject to subsection (3), when the Secretary of State arranges a reference to the Tribunal under subsection (1)(c), the Tribunal must hold an oral hearing ("an initial bail hearing") which must commence within 24 hours of the time at which the reference is made.

(3) If the period of 24 hours in subsection (2) ends on a Saturday, Sunday or Bank holiday, the Tribunal must hold an initial bail hearing on the next working day.

(4) At the initial bail hearing, the Tribunal must—

(a) grant immigration bail to "P" under paragraph 1 of Schedule 10 to the Immigration Act 2016; or

(b) refuse to grant immigration bail to "P".

(5) Subject to subsection (6), the Tribunal must grant immigration bail to "P" at a bail hearing unless it is satisfied that the Secretary of State has established that the criteria in subsection 1 of section [Initial detention for EEA and Swiss nationals: criteria and duration] are met and that, in addition—

(a) directions have been given for "P's" removal from the United Kingdom and such removal is to take place within 96 hours;

(b) a travel document is available for the purposes of "P's" removal or deportation; and

(c) there are no outstanding legal barriers to removal.

(6) Subsection (5) does not apply if the Tribunal is satisfied that the Secretary of State has established that the criteria in subsection 1 of section [Initial detention for EEA and Swiss nationals: criteria and duration] are met and that there are very exceptional circumstances which justify maintaining detention.

(7) In subsection (5) above, "a bail hearing" includes—

(a) an initial bail hearing under subsection (2) above; and

(b) the hearing of an application for immigration bail under paragraph 1(3) of Schedule 10 of the Immigration Act 2016.

(8) In this section, "Tribunal" means the First-Tier Tribunal.

(9) The Secretary of State shall provide to "P" or "P's" legal representative, not more than 24 hours after the relevant time, copies of all documents in the Secretary of State's possession which are relevant to the decision to detain.

(10) At the initial bail hearing, the Tribunal shall not consider any documents relied upon by the Secretary of State which were not provided to "P" or "P's" legal representative in accordance with subsection (8), unless—

(a) "P" consents to the documents being considered; or

(b) in the opinion of the Tribunal there is a good reason why the documents were not provided to "P" or to "P's" legal representative in accordance with subsection (8).

(11) The Immigration Act 2016 is amended as follows—

(a) After paragraph 12(4) of schedule 10 insert—

"(4A) Sub-paragraph (2) above does not apply if the refusal of bail by the First tier Tribunal took place at an initial bail hearing within the meaning of section [Bail hearings for EEA and Swiss nationals] of the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2019."."

This new clause is consequential on NC1.

New clause 4—*Commencement of provisions on detention of EEA nationals—*

"(1) Sections [*Time limit on detention for EEA and Swiss nationals*], [*Initial detention for EEA and Swiss nationals: criteria and duration*] and [*Bail hearings for EEA and Swiss nationals*] come into force three months after the day on which this Act is passed."

This new clause is consequential on NC1.

Afzal Khan: Good morning, Mr Stringer. The Bill has the far-reaching potential to make many more people liable to immigration detention. Despite estimating that 26,000 more people could be liable, the Government have carried out no assessment of the Bill's impact on the detention estate. Our detention system is broken. Its most glaring failure is the lack of a time limit on detention. We are the only country in Europe that detains people indefinitely.

The Minister has previously shown some openness on the issue. She will be well aware of the breadth of support for a time limit, including from members of her own party. Labour's new clauses have been signed by the SNP, the Green party, the Liberal Democrats and Conservative MPs. I am keen to work constructively with the Government. The new clauses set out the position that we want, whereby independent checks and balances ensure that immigration detainees do not have fewer rights than people in the criminal justice system.

As is clear from the new clauses that I have tabled, our preference is for a time limit on detention for everyone, no matter what country they are from, but to get the provision within the scope of the Bill, we have narrowed it to just those who lose their right to free movement as a result of the Bill. I will confine my remarks today to that group.

I am grateful to all the organisations that have been making the case for a time limit on immigration detention and, in particular, to Detention Action, Liberty and Refugee Tales for their help with the drafting of the provision.

Before getting into the detail of the new clauses, I will give some background to the arguments for a time limit on immigration detention. Labour has been making the case for a time limit for some time. We called for one in our 2017 manifesto. The argument can be made from multiple angles. This is a rule-of-law issue. The Immigration Law Practitioners' Association, the Bar Council and the Law Society all support a time limit. Wherever the state deprives someone of their liberty, as happens with immigration detention, there should in principle be independent judicial oversight and time limits at every stage. Detention is currently an administrative process whereby the Government are allowed to mark their own homework. The detention of Windrush people showed that current oversight is severely lacking.

This is a health issue. The British Medical Association supports Labour's proposal. Its report entitled "Locked up, locked out: health and human rights in immigration detention" states:

"Depression, anxiety, and post-traumatic stress disorder…are the most common mental health problems, and women, asylum seekers, and victims of torture are particularly vulnerable. Even if it does not reach a clinical threshold, all immigration detainees will face challenges to their wellbeing during their time in detention."

Those issues are worsened when detention is indefinite. There is a widespread crisis of self-harm in immigration detention. Stephen Shaw's report on the issue found that the current safeguards for vulnerable people were not working effectively enough.

This is an equalities and human rights issue. The Joint Committee on Human Rights has called for a 28-day time limit and recommends using the Bill to implement it. The Equality and Human Rights Commission and Liberty support our new clause. The EHRC's briefing for the debate points to various human rights articles violated by indefinite detention, including the European convention on human rights, the international covenant on civil and political rights and the United Nations convention against torture.

This is also a cost issue, as immigration detention simply does not work; the majority of people in immigration detention will later be released back into the community. That point was made by Her Majesty's inspectorate of prisons and the independent chief inspector of borders and immigration in their joint report, as well as by the all-party parliamentary groups on refugees and on migration. The detention estate costs £30,000 per person detained per year, and a 2015 estimate put the total annual cost at £164.4 million. In addition, the Home Office last year announced that it had paid out £21 million in just five years for wrongfully detaining 850 people in immigration removal centres.

So there is a wealth of evidence from a number of different angles on the need for a time limit on immigration detention. The next question is why Labour has tabled these new clauses in particular. There is a lot in this group of new clauses, so if the Committee will allow me, I will briefly go through what each one would do and why it is needed.

New clause 1 prescribes an overall time limit of 28 days for all immigration detention, after which a person must be released and cannot be re-detained

[Afzal Khan]

unless there is a material change of circumstances. We need this provision to avoid a cat-and-mouse situation in which the Government can detain someone for 28 days, release them and then immediately detain them for another 28 days.

The reason for 28 days, as opposed to some other time limit, came up in evidence sessions and has been questioned elsewhere. Home Office guidance says that detention should be used only when removal is imminent—defined as three to four weeks—which is a maximum of 28 days, so 28 days is really the Home Office's definition. Although, since 2015, the detention population and average length of detention have decreased, the number of people detained for longer than six months has increased. The new clause would put the commitment to detain only if removal is imminent on a statutory footing for the first time.

New clause 2 sets out the general criteria for detention, preventing detention unless a person can shortly be removed from the United Kingdom and their detention is strictly necessary to effect their deportation or removal from the United Kingdom, and stating that their detention must in all circumstances be proportionate. This is intended to ensure that detention will be used only when really necessary.

New clause 3 provides for a system of automatic bail hearings. There is currently an immigration bail provision at four months, and the Government are piloting a two-month timeframe. However, we believe that that should come in much sooner—after 96 hours—to bring immigration in line with the criminal justice system. Bail hearings after two or four months are often too little, too late. We also believe that bail hearings should allow for release; at the moment, a detainee may only be bailed or detained following a hearing. The president of the first-tier immigration appeal tribunal said in evidence to the JCHR that the tribunal would need few additional resources to review all immigration detention cases. He favoured such a review to limit the use of detention and ensure that it is used for the shortest time necessary.

Before I conclude, I will touch briefly on foreign national offenders, who also came up during our evidence sessions. Labour's view is that we should not have an immigration detention system that treats foreign national offenders differently from everybody else. First, many people detained as foreign national offenders will in fact be victims of trafficking and modern-day slavery who were coerced into criminality. The Government have made a lot of noise about their commitment to tackling modern-day slavery, but the fact is that victims are still routinely detained for extended periods, despite showing extreme signs of distress and vulnerability.

Secondly, to go back to the rule of law argument, people who have been convicted of a criminal offence will have served their sentence. Continued detention, and therefore punishment, cannot be justified by their initial trial and sentencing, unless otherwise specified by a judge or similar. Thirdly, in practical terms, the Government will have had ample time, while someone is serving their custodial sentence, to prepare for deportation upon their release.

There is a separate issue about people who are deemed to be a risk to national security. There currently exists a separate system for immigration detention cases that relate to national security. Bail applications are heard through the Special Immigration Appeals Commission, rather than the normal First-tier Tribunal, and separate law, regulations and case law govern the commission's operation. Although the SIAC system is in need of reform—we believe that indefinite detention is not justified in any circumstances—there is a case for this to be addressed and reformed separately. We would be happy to make that clear in our new clause on Report.

Stuart C. McDonald (Cumbernauld, Kilsyth and Kirkintilloch East) (SNP): It is good to see you in the Chair again, Mr Stringer. I have spoken many times about immigration detention. I will essentially echo all the shadow Minister's points, so I will be brief. As he said, there is cross-party support for these new clauses, and the Scottish National party is four square behind them.

Immigration detention for too long has become an accepted part of life, at least among politicians, but, for the reasons that the shadow Minister gave, I detect that that is changing, and not before time. Politicians have probably been out of step with the public in that regard. Every time I have a discussion with members of the public and explain to them the existing system of detention, they are actually quite horrified to hear what goes on out of sight and out of mind. Ultimately, we are talking about the indefinite deprivation of liberty in what are basically private prisons. There is little in the way of independent oversight, and all of this is done for administrative reasons. That is a huge invasion of fundamental rights.

We detain far too many people. The Minister will often say that the vast majority are not detained but are managed in the community. However, that is not the point. We are still talking about significant numbers of people—25,000 or so every year. That is a welcome improvement on previous years—let me put that on record—but there is a long way to go before we are anywhere near an acceptable position. We have a bloated immigration estate compared to many of our European neighbours, and we are still detaining far too many vulnerable people. The changes made in light of the first Shaw report have not made the difference that we would have expected or wanted so far.

As the shadow Minister said, half of all these people are released. Detention should be a matter of absolute last resort, but instead we are detaining so many people that we just release half of them again. That is completely unacceptable. The UK is an outlier in terms of international practice. This country has a long history of being very precious about the right to liberty, with severe and strict safeguards on the Government's power to interfere with that.

We all know—I think it is inarguable—that detention is harmful. One key harm inflicted on detainees is the uncertainty—as has been evidenced in all sort of reports—of not knowing when their detention will come to an end. For all the reasons that the shadow Minister has given, there are no excuses for applying different rules to different people, and foreign national offenders should be included in the regime that we are proposing. We also need greater scrutiny of who goes into detention. Safeguards in relation to vulnerable people are still not working. Gatekeeping is not working.

These new clauses achieve two goals. They put in place a time limit and significantly improve oversight of who is being detained. I want to put on record my

gratitude to all the organisations involved in drafting the new clauses, and to all sorts of organisations who, for many years, have documented the harm that is done by immigration detention and have kept it on the agenda, even when it was at severe risk of falling off.

There is a breadth of support for this new clause. The time limit is overdue. I think it will happen this time—I hope that is the case. Like the shadow Minister, I am keen to work with all parties, including the Government, to ensure that we put in place a system that is robust and fair but respects people's right to liberty rather than detaining them for administrative reasons.

Paul Blomfield (Sheffield Central) (Lab): I want to add my voice to support my colleagues on this, because in 2014 I was vice-chair of a cross-party inquiry into immigration detention. Although the focus of this Bill, and therefore of this new clause, is European economic area nationals, any decision that we make in relation to them should be seen as a stepping-stone to progress.

This is something on which I am confident we will make progress—I hope that we can make progress this morning—because there is not only strong cross-party support but very considerable support on the Conservative Benches, as the Minister knows, from the right hon. and learned Member for Beaconsfield (Mr Grieve) through to the right hon. Member for Haltemprice and Howden (Mr Davis); I do not think we could get much broader than that in the Conservative party at the moment.

On our inquiry team there were parliamentarians from both Houses and all the main parties, who brought in huge experience. They included a retired law lord and a former chief inspector of prisons. There were more Government Members among the inquiry team than those of us from the Opposition, including the right hon. Member for Meriden (Dame Caroline Spelman), with whom I have met the Minister to talk about these issues, as well as David Burrowes and Richard Fuller, who are no longer Members of the House, but to whose work I pay tribute.

The panel was brought together by the all-party parliamentary group on migration, which at that time I chaired, although it is now more ably chaired by my hon. Friend the Member for Stretford and Urmston, who is not in her place at the moment, and by the all-party parliamentary group on refugees, which is currently chaired by my hon. Friend the Member for Bristol West (Thangam Debbonaire), who I am pleased to see joining us in the gallery today. I also pay tribute to Sarah Teather, who chaired the inquiry throughout its eight-month period of evidence taking.

After that eight-month period, our recommendations, which included the limit on detention contained in new clause 1, were endorsed by the House of Commons on 10 September 2015. It is thus disappointing that, although there is growing recognition of the issue in the Home Office and there have been some welcome moves, we have not seen progress on the central recommendation of introducing a statutory time limit on detention. We are unusual in this country in not having one, and without it we have become increasingly dependent on detention.

Detention takes place within immigration removal centres—it is important that we listen to those words, because the clue is in the title. They are intended for short-term stays, but we have become increasingly reliant on them. I recognise that we have done so under successive Governments; I am not pinning the responsibility for it on the current Government. In 1993 we had 250 detention places in the UK. By 2009, it had risen to 2,665 and by 2014, when we conducted our inquiry, it was almost 4,000. The number of people entering detention in the latest year for which figures are available, through to June 2017, was 27,300. That is a slight drop from the previous high of 32,000, but by contrast, Sweden detains something like a 10th of that number and Germany around a fifth.

Home Office policy states:

"Detention must be used sparingly,"

but the reality is clearly very different. Hon. Members will be aware of a number of high-profile incidents in immigration removal centres, including deaths and allegations of sexual assault. That was reflected in the evidence that our joint inquiry heard over three oral evidence sessions and more than 200 written evidence submissions.

At our first oral evidence session, we heard from non-governmental organisations and medical experts, but we most powerfully heard from three people directly detained at that time. We questioned them over a phone link in their detention centres. One young man, who was from a disputed territory on the Cameroon-Nigeria border, told us that he had been trafficked to Hungary as a 16-year-old, where he had been beaten, raped and tortured. He had managed to escape and eventually made his way to Heathrow using a false passport, which was discovered on his arrival, and he was detained. We then asked him how long he had been detained and he told us three years—three years in an immigration removal centre. His detention conflicts with three stated aims of the Home Office: that those who have been trafficked should not be detained; that those who have been tortured should not be detained; and that detention should be for the shortest period possible.

Time and again, we were told that detention was worse than prison. Initially, that was puzzling, but it was explained to us that, in prison, people at least know when they are going to get out.

9.45 am

Nic Dakin (Scunthorpe) (Lab): At the British Film Institute last week, I saw a documentary called "Island of Hungry Ghosts", which I commend to all Committee members. It is about the Australian Government's approach to detention on Christmas Island. The big issues are indefinite detention, not knowing what has happened and the lack of control, which are exactly what my hon. Friend is pointing out.

Paul Blomfield: My hon. Friend makes a powerful point, and I will make sure to see the film.

The point was driven home by a detainee who said to us:

"The uncertainty is hard to bear. Your life is in limbo. No one tells you anything about how long you will stay or if you are going to get deported."

Medical experts told us that that sense of being in limbo—of hopelessness and despair—leads to deteriorating mental health. One expert from the Helen Bamber Foundation told us that those who are detained for

[Paul Blomfield]

more than 30 days, which is relevant to the limit we are looking for, had significantly higher levels of mental health problems.

New clause 1 would have an impact beyond those who are detained. A team leader from the prisons inspectorate told us that the lack of time limit encourages poor caseworking in the Home Office. He said that a quarter of the cases of prolonged detention it had considered were a result of inefficient caseworking.

Prolonged detention does not happen because it is inappropriate for people to be released. Despite these places being called immigration removal centres, we have found—everybody needs to focus on this fact—that most people are released from detention for reasons other than being removed from the UK. They are released back into the community.

The system is not only bad for those who are involved, but expensive, as my hon. Friend the Member for Manchester, Gorton pointed out. The recommendation in new clause 1 for a maximum time limit to be set in statute is about not simply righting the wrong of indefinite detention, but changing the culture that is endemic in the system.

Nick Thomas-Symonds (Torfaen) (Lab): I commend my hon. Friend on his speech; he is demolishing the case for indefinite detention. Does he agree that it is not just about the welfare of the individuals involved—although, clearly, the limbo they have been left in is unacceptable—but about improving the way that the Home Office works?

Paul Blomfield: I agree with my hon. Friend. Although that was not the reason why we conducted the inquiry, it became clear through the inquiry that there would be significant benefits in terms of the Home Office's operation, as well as cost and compliance, which I will come to. Those benefits underlined the recommendation, which had initially been driven by common humanity and the way the system operates.

In trying to change the culture that is endemic in the system, we are trying to meet the aims of the Home Office's own guidance, with detention used more sparingly and only as a genuine last resort. The proposed time limit is 28 days, which reflects best practice in other countries and is workable for the Home Office. Home Office guidance describes detention as being for imminent removal and defines "imminent" as four weeks—that is, 28 days. That is the recommendation of the report and the principle behind new clause 1.

Deprivation of liberty should not be a decision taken lightly or arbitrarily. Currently, decisions are taken by relatively junior Home Office officials, with no automatic judicial oversight. Without a time limit, it simply becomes too easy for people to be detained for months on end with no meaningful way of challenging continued detention.

The introduction of a time limit and the reduction in reliance on detention would be a significant change because, to detain fewer people for shorter periods, the Government would need to introduce a wider range of community-based alternatives. It was interesting to hear my hon. Friend the Member for Scunthorpe talk about Australia, which is often seen as a hard-line country on immigration. Some of the detention practices there are abhorrent, but there is wider use of community-based alternatives to detention than in the UK. I appreciate that the Home Office is running a pilot about that—as I said earlier, I met the right hon. Member for Meriden and the Minister, and we had a really useful discussion—and I am certainly convinced that it is putting genuine effort into developing community-based alternatives in a thoughtful way.

There is a precedent in the UK. When the coalition Government committed to reducing the number of children detained, they introduced a family returns process, which the House of Commons Library described as intended

"to encourage refused families to comply with instructions to depart from the UK at an earlier stage, such as by giving them more control over the circumstances of their departure."

It worked; there was a dramatic fall in the number of children detained, and the Home Office's own evaluation of the scheme found that most families complied with the process, with no increase in absconding.

In conclusion, I quote Nick Hardwick, who was Her Majesty's chief inspector of prisons at the time of our inquiry. After he made an unannounced inspection of Yarl's Wood, he said that

"well-respected bodies have recently called for time limits on administrative detention…In my view, the rigorously evidenced concerns we have identified in this inspection provide strong support for these calls, and a strict time limit must now be introduced on the length of time that anyone can be administratively detained."

In supporting new clause 1, we are not proposing to end indefinite administrative detention simply because that would be the just and humane thing to do—although, for goodness' sake, that is a good enough reason—but because it would be less expensive, improve procedures in the Home Office and be more effective in securing compliance.

Tracey Crouch (Chatham and Aylesford) (Con): I rise briefly to raise a specific issue that a constituent has brought to me, but also to recognise that the Home Office has done a significant amount of work to reduce the time people are in detention. I am sure members of the Committee are aware that 42% of detainees spend between one and 28 days in detention, which is much better than in 2017, when it was only 30%. However, the statistics show that 33% still spend one to three months in detention, and 13% still spend three to six months in detention. I have sympathy with a new clause that limits detention time, although I still need to be persuaded on the issue of excluding foreign national offenders.

From the evidence session and the questions that Tory colleagues asked, I recognise that there is a measure of sympathy on this issue. The hon. Member for Manchester, Gorton was correct when he talked about the impact on mental health, and there are colleagues who recognise that detention has a damaging impact on people's mental health. Whether there is indefinite detention or a specific time limit is something that still needs to be discussed, although I am aware that in the public health, counter-terrorism and criminal justice systems, where individuals face the possibility of detention without charge, 28 days or lower is considered sufficient time. There is further debate needed as to whether it has to be 28 days, or whether it could be 30 or 40 days. That is an issue we still need to consider carefully.

My constituent Dane Buckley is the support services co-ordinator for the UK Lesbian & Gay Immigration Group and specifically wanted me to raise the issue of detention of lesbian, gay, bisexual, transgender, queer, intersex + people. I am sure that the Minister is aware that in 2016 UKLGIG and Stonewall published research, called "No Safe Refuge", on the experiences of LGBTQI+ people seeking asylum while in detention. The report highlights the systemic discrimination, abuse and harassment that they face from staff and people who have been detained. It contains shocking examples of acts committed by fellow detainees and staff, and incidents where staff have failed to protect individuals.

In June 2016 the UN special rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, alongside the chair of the UN Committee against Torture and the chair of the board of trustees of the UN voluntary fund for victims of torture, called on member states to redouble their efforts to prevent ill treatment or torture of LGBTQI+ people in places of detention. The ninth annual report of the sub-committee on prevention of torture and other cruel, inhuman or degrading treatment or punishment raised similar concerns, stating that LGBTQI+ people were

"at the bottom of the hierarchy"

in detention. I think we are all acutely conscious of the vulnerability of LGB asylum seekers in detention, and recent court cases have asserted that.

My constituent suggests that detention has a direct impact on the prospects of LGBTQI+ people to claim asylum successfully. To convince the Home Office or a tribunal that they are LGBTQI+ as claimed, asylum seekers must be in a situation of trust and security, in which to consider and discuss their sexual orientation or gender identity. That can be extremely difficult if someone comes from a country where persecution has meant they have never spoken about their sexual orientation or gender identity, or if they have experienced trauma. It can be an impossible task in detention, where fear of discrimination or harassment requires them to conceal their identity as much as possible. In obtaining a legal aid lawyer, people are limited to the specific contractors for each detention centre. With the greatest respect, those advisers do not necessarily have the specialist knowledge required for asylum claims based on sexual orientation or gender identity.

Added to that is the difficulty in amassing the kind of corroborating evidence that decision makers routinely expect when someone is in detention, especially if the person is trying to avoid being outed to staff and other detainees. Home Office caseworkers and decision makers frequently ask, or indeed expect, LGBTQI+ asylum seekers to offer witnesses, including ex-lovers, who will attest to knowledge that the asylum seeker is LGBTQI+ as claimed. Clearly that can be incredibly difficult if the person does not live openly in their home country because of the fear of persecution. An additional issue is the fact that the Government do not keep statistics on the number of LGBTQI+ people who are detained. Perhaps the Minister could address that.

I wanted to raise that particularly sensitive issue of sexual or gender orientation of people in detention on behalf of my constituent and to offer sympathetic support to the idea of making sure there is a time limit on detention, for the mental health and wellbeing of those detained. Whether that is 28 days is a matter that still needs to be bolted down, but I do not personally support including foreign national offenders in that; we still need to consider that further.

The Minister for Immigration (Caroline Nokes): I am grateful to the hon. Member for Manchester, Gorton for tabling the new clauses. I note that they are supported by other right hon. and hon. Members, including other members of the Committee. I am grateful to those who have spoken.

The new clauses raise an incredibly important issue, and I am grateful for the opportunity to speak about immigration detention. We certainly do not take the issue lightly, and we recognise that the deprivation of liberty for immigration purposes is a significant use of state power, with potentially life-changing implications for those involved. It is vital to have a detention system that is fair to those who may be detained, that upholds our immigration policies, and that acts as a deterrent to those who might seek to frustrate those policies. At the same time, the welfare of detainees is a priority for us, and we believe that the use of detention should always be open to scrutiny and, indeed, reform.

10 am

Last July my right hon. Friend the Home Secretary set out to Parliament an ambitious programme of reform, based on four key areas. First, we are doing more on alternatives to detention, including piloting a scheme to manage vulnerable women in the community who would otherwise be detained at Yarl's Wood immigration removal centre. Secondly, we are working to ensure that the most vulnerable and complex detained cases get the attention they need. Last month, we launched a two-month auto-bail referral pilot, which builds on measures introduced in the Immigration Act 2016 to refer cases to tribunal at the four-month point of detention.

Thirdly, we are bringing greater transparency to immigration detention. As part of that, the independent chief inspector of borders and immigration will complete his first annual review of the operation of the adults at risk policy later this year. This might be an opportune moment for me briefly to refer to the comments made by my hon. Friend the Member for Chatham and Aylesford about LGBTQI+ individuals in the detention estate. I reassure her that transgender individuals are specifically covered by the adults at risk policy, and at-risk individuals will be detained only when immigration considerations outweigh the evidence of vulnerability. That follows recommendations made by Stephen Shaw in his first report. He did not, however, make a similar recommendation for LGBQI individuals, who do not fall specifically within the adults at risk policy. My hon. Friend made important points about mental health impacts and the ability of detainees freely to discuss their asylum claim and status. I would like to follow up some of those important points with her, and potentially with her constituent—I think it was Dane Buckley—if that would be helpful.

My fourth point regards our new drive for dignity in detention. We have made significant changes to detention in the UK in recent years. By this summer, the immigration detention estate will be almost 40% smaller than it was four years ago and of significantly higher quality. By December 2018, the number of individuals in detention had reduced by 30% compared with the previous year. At any one time, 95% of those who are liable for

removal are managed within the community. We are committed to going further and building on the significant recommendations made by Stephen Shaw.

Successive Governments have pursued a policy of seeking to enforce the return of individuals who have no right to remain and who have been through due process and refused to leave voluntarily. Successive Governments have also recognised the importance of detention in effecting return and maintaining the integrity of immigration law. In 2018, there were 9,474 enforced returns from the UK, and 8,578 of those individuals were in detention prior to their return, representing more than 90% of all enforced returns.

The Government's view remains that a time limit is not only unnecessary but would severely limit our ability to use detention as an effective means of enabling removal. It would encourage those who might seek to frustrate the removal process and run down the clock until the time limit is reached, with release therefore guaranteed, regardless of the merits of the case. The main rationale put forward in support of a time limit is that, in the absence of one, individuals are detained indefinitely, but that is simply not the case, as the law does not permit indefinite detention.

Stuart C. McDonald: That argument was made by successive Ministers, but the idea that there is no indefinite detention because Home Office guidance says somebody cannot be detained forever is nonsense. Folk do not know how long they are being detained for; that is what is harmful —indeed, it is harmful for everyone, whether or not they are detained for more or less than 28 days. There is indefinite detention—this is surely a matter of semantics.

Caroline Nokes: I do not think it is a matter of semantics. Since becoming Minister, I have been careful to ensure that, in cases when people have been in detention for a long time—there are some, and they are almost exclusively cases of foreign national offenders—we regularly review and carefully consider the circumstances of those whom we seek to remove from the country but whom, for reasons of public protection, we deem it would not be appropriate to manage in the community. Last year, 92% of those detained left detention within four months, and 69% in less than 29 days, which demonstrates our commitment in this regard.

Stuart C. McDonald: We are still talking about huge numbers of people—I think 10,000 or so were detained for over 28 days in 2017—but this is not just about those detained for more than 28 days. Whether people are detained for five, 10, 15 or 20 days, not know when they are getting out is harmful to their mental health, so this applies to everybody in detention.

Caroline Nokes: I thank the hon. Gentleman for making that point. I am conscious that there are strong feelings on this issue. I am also conscious that in this country we have an ability to remove that in some cases is significantly better than that of our European counterparts and that we do succeed in removing people directly from detention. However, there are a number of challenges, which I will come to.

One significant challenge, and why I have such grave concerns about 28 days, is the time that it often takes to document individuals who may not have evidence of their identity or a travel document from their home country. It would be ideal if we could document people easily without their needing to be present, but unfortunately the vast majority of cases will require a visit from a foreign consulate, which takes time to arrange. In many instances, foreign consulates will not consider a visit until they know the individual is in detention. Although these are only management statistics, it has been indicated to me that it takes in the region of 30 days for an individual to be documented. In those circumstances, when it takes in the region of 30 days to get somebody with the appropriate travel document to be able to return, a time limit of 28 days would simply be unworkable.

Nic Dakin: The Minister is making a good point in response to the hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East, but is she indicating that some sort of time limit that was practical would be helpful to everybody?

Caroline Nokes: I will come to time limits. We have seen from the amendments that have been tabled and from the commentary that there is no widespread agreement on what the time limit should be. If we look at countries around the European Union, there are differing time limits. One example that springs instantly to mind currently has a limit of 45 days, which is about to be doubled to 90 days.

Stephen Shaw looked at time limits in his re-review and made some comments about that, as Members will have seen. There is certainly scope, as I am sure my right hon. Friend the Home Secretary agrees, for us to look closely not only at different time limits around the world, useful though they are, but at some of the challenges we face in the UK with the documentation of individuals, so that we can best understand, were a time limit to be introduced, what the range might be.

Afzal Khan: The Minister referred to European countries. Is it not important to acknowledge the difference between two legal systems? The European system is more civil law-based, whereas others are more common law-based. They are not the same thing.

Caroline Nokes: The hon. Gentleman is absolutely right to point out that they are not the same thing. While we might draw on the experience and evidence from other countries, it is important that we have a system that works within our own legal system.

Paul Blomfield: The Minister was talking about expert evidence and the importance of the view of our legal system. Does she note that the Bar Council recommends a 28-day time limit?

Caroline Nokes: I certainly welcome the Bar Council's views feeding into this debate. However, very few countries have a time limit as short as those proposed in these new clauses. While some have time limits, recognising the practical challenges in effecting successful returns, some are looking at the issue again.

For example, the European Commission has recently proposed a new detention time limit of at least three months to give member states sufficient time to carry out return operations. In comparison with other countries, the UK performs well in achieving the removal of individuals who have no right to stay. I agree with Stephen Shaw when he said that he had yet to see a

coherent account of how a proposal for 28 days had been reached. That different time limits have been proposed in different amendments shows that identifying an appropriate time limit might not necessarily be a simple exercise.

Maria Caulfield (Lewes) (Con): My hon. Friend the Minister is saying that there seems to be a growing cross-party consensus on the issue of a time limit. Does she not agree, therefore, that it would be wise to take this back to the Floor of the House before making a final decision on a time limit that could be accepted?

Caroline Nokes: I thank my hon. Friend for that intervention. I suspect that she is correct that, ultimately, we might decide this matter on the Floor of the House. It is important that we reflect carefully on the evidence and weigh our own practical and legal considerations. While I am as one with Stephen Shaw when he makes his commentary on 28 days, I have heard representations from Members in this Committee and more widely as well. We have heard reference to my right hon. Friend the Member for Meriden, who has been forceful on this issue, and to the right hon. and learned Member for Camberwell and Peckham (Ms Harman), who had me before her Committee towards the tail end of last year. We had a useful and constructive conversation around detention.

It is well documented and reported in the media how much I enjoy a Select Committee appearance—that one I actually did. I felt it was constructive, Members had given the issue significant thought, and we had a constructive conversation. I am aware of the amendment tabled by the right hon. and learned Member for Camberwell and Peckham that has been supported by many Members from this side of the House with much enthusiasm and determination.

Nick Thomas-Symonds: The argument the Minister is using is about the length of time and the limit. Can we take it from her that she is not opposed to the principle of having a limit, even though there may be debate about its length?

Caroline Nokes: The debate is ongoing. Members have made some forceful arguments in favour of a limit and, in the Home Office, we have considered reflecting on those very carefully indeed.

Afzal Khan: Is the Minister aware that Parliament has considered this idea for the limitation? Recently, there was a discussion on 90 days, and then 42 days, and this was for terror suspects. Both were rejected by the House. Does she not think that if 42 days for terrorists was rejected, we should not have it for immigrants?

Caroline Nokes: Perhaps the hon. Gentleman has made the point that there is not yet any agreement on reasonable time limits, given that, with both 90 days and 42 days—in this new clause we are discussing 28 days—there is a wide range of opinion on what a reasonable time limit might look like.

I wish to address—as I am sure the Chairman wants me to—the individual elements of the new clauses. First, and this has already been referenced, they would apply only to EEA and Swiss nationals. The effect of these new clauses would be to introduce a system that imposed time limits on the detention of individuals of certain nationalities but not on others. As I have said in relation to other amendments and clauses limited to EEA nationals, this would clearly be discriminatory on nationality grounds, going against Parliament's proud history of promoting laws that protect human rights and protect individuals from discrimination. I cannot see any justification for Parliament to depart from those principles in the way proposed.

While new clause 1 would introduce a 28-day longstop time limit for exceptional cases, new clause 3 would provide for a 96-hour time limit. Both would have a major impact on our ability to remove and on the processes on which removal action is dependent. For example, in 2018, there were more than 8,500 removals directly from detention. More than 2,700 individuals were removed from the UK, having been detained for 29 days or more. We believe that introducing a 28-day longstop time limit would encourage people to change behaviours, so as to run down the clock to secure release. As it stands, a presumption of release after 96 hours, other than in the most restrictive of circumstances, would make it extremely difficult to remove any individuals from the UK.

Stuart C. McDonald: Surely it is unfair to characterise the 96 hours as a time limit. It is simply a deadline within which there should be a bail hearing. I do not see how anyone can argue, if they support strongly the presumption of liberty, that there should not be some sort of judicial oversight about whether or not someone is entered into detention in the first place.

10.15 am

Caroline Nokes: I will come to that point shortly. There was an example that I wanted to use to demonstrate to Members some of the challenges faced, including the many claims for asylum made by people who had opportunities to raise those issues earlier, with some even claiming asylum on the steps of a plane. I will illustrate our concerns with reference to a case study provided to the Joint Committee on Human Rights in December. In that case, a failed asylum seeker absconded for nine years before re-establishing contact with the Home Office and lodging a new claim. This was unsuccessful, as were all the subsequent appeals and further submissions. The individual was detained after having been encountered working illegally. He then disrupted attempts to effect removal by refusing to leave the centre until removal was eventually achieved. It took 54 days to remove the individual from the point of detention, which would not have been possible had the time limits enshrined in these new clauses been in place.

Moving on to the further details of the new clauses and the point raised by the hon. Member for Manchester, Gorton, the requirement for the judiciary to be involved in consideration of the case at or around the 96-hour point of detention would place significant additional burdens on the tribunal service. As it stands, bail cases are normally listed within three to six days. That means that a significant number of cases would fall outside the 96-hour period, and that is without taking into account the fact that there would be a dramatic increase in the number of cases being referred to the tribunal.

Such an increase would make the system unsustainable without significant reform, which could not be achieved within the three months before commencement proposed

[Caroline Nokes]

by new clause 4. However, the proposal would also require a different type of decision by judges, which would need careful consideration by the judiciary, given their independence.

We should not forget that detainees can apply for bail at any time of their choosing. Automatic referral for bail occurs at the four-month stage, and we are currently piloting automatic referral at two months. These bail hearings are supplemented by regular reviews and by case progression panels for those held in detention beyond three months. The new clauses would allow for an individual to be detained beyond the outcome of the initial bail hearing, though only for a maximum of 28 days in total, and only in very exceptional circumstances. These circumstances are not defined. I ask the hon. Member for Manchester, Gorton to consider whether he has in mind individuals seeking to frustrate the removals process. If so, what activity is regarded as frustrating the removal process, or does he have in mind individuals who are criminals? If so, how serious would the criminality have to be to justify continued detention? These matters are not clear, but they are fundamental to managing a detention system.

On the subject of criminality, let us assume that foreign criminals are intended to be included in the category of "very exceptional" circumstances, for the moment. The provision would allow the Government to detain such individuals for up to 28 days. At that point there would be no option other than release. No exceptions for dangerous criminals are built into the provision. If we could not deport individuals within 28 days, they would be released on to the streets, even if they presented a danger to the public.

The Government are under a statutory duty to deport foreign national criminals under the UK Borders Act 2007, and this duty would be seriously undermined if detention could not be used to effect removal. The same sort of issues would apply in respect of national security cases. The new clauses provide that an individual cannot be re-detained once the 28-day time limit has been reached unless there is a material change in their circumstances. What constitutes a material change is not defined. Again, these are serious matters on which the new clauses are not clear. For example, would it be possible to re-detain an individual who had been deported from the UK, but had re-entered in breach of the deportation order?

Would the failure of the person to comply with reporting requirements, or a breach of bail conditions, amount to "very exceptional' circumstances? Finally, the three-month implementation timescale enshrined in new clause 4 is likely to be unworkable given the extensive changes to the immigration and judicial systems necessary to implement the envisaged changes.

The Government are of the view that the new clauses would significantly impair the UK's ability to proportionately and efficiently remove from the UK individuals who have no right to be here and who, in some cases, represent a danger to the public.

Stuart C. McDonald: I suspect that the Minister anticipated lots of interest in these new clauses. I want to take her back to the issue of foreign national offenders, which she went through very quickly. She must agree that it is not acceptable to detain low-level foreign national offenders for months or years on end.

What exceptions does she think are necessary in order to make general inclusion of foreign national offenders in a time limit acceptable to the Government? We cannot detain everybody for ever simply because the Home Office fails to remove them by the end of their sentence.

Caroline Nokes: I thank the hon. Gentleman for that intervention. Of course it is not just unacceptable but not lawful, in the case of foreign national offenders, to detain people for very long periods with no realistic prospect of removal. The Home Office works incredibly hard, sometimes in difficult circumstances, to seek documentation from different Governments in order to be able to effect the removal of foreign national offenders.

I do not pretend that any of this is easy. However, an amendment to the Bill—tightly drawn as it is to end free movement—is perhaps the wrong place to seek to implement such a significant change. That does not mean that my mind is closed; far from it. From the views that have been expressed to me over the past 12 months and this morning, I appreciate that we certainly need to do more. That is why I welcome the proposals that Stephen Shaw put forward in his re-report last year. Indeed, the Home Secretary grasped those changes with enthusiasm. There will always be more to do on the issue of detention, and I am absolutely committed to doing it. As Stephen Shaw said in his recent report, the call for the 28-day time limit,

"has been articulated more as a slogan than as a fully developed policy proposal",

and I am inclined to agree with him. I therefore respectfully ask the hon. Member for Manchester, Gorton to withdraw his amendment.

Afzal Khan: I thank the Minister for putting forward the Government's position. We have had a good debate on the new clauses, but at this stage I am not minded to push for a vote. We will review the matter on Report. I beg to ask leave to withdraw the motion.

Clause, by leave, withdrawn.

New Clause 9

"SUPER-AFFIRMATIVE PROCEDURES FOR IMMIGRATION RULES

'(1) The Immigration Act 1971 is amended in accordance with subsection (2).

(2) After section 3(2) insert—

"(2A) Any statement of the rules, or of any changes to the rules, which affect the rights and obligations of persons who will lose their right of freedom of movement under the provisions of the Immigration and Social Security Co-Ordination (EU Withdrawal) Act may not be made or have effect unless the Secretary of State has complied with subsections (2B) to (2F) below.

(2B) If the Secretary of State proposes to make changes to the rules under section (2A) above, the Secretary of State must lay before parliament a document that—

(a) explains the proposal; and

(b) sets it out in the form of a draft order.

(2C) During the period of 60 days beginning with the day on which the document was laid under subsection (2B) (the "60-day period"), the Secretary of State may not lay before Parliament a draft order to give effect to the proposal (with or without modification).

(2D) In preparing a draft order under section (2A) above, the Secretary of State must have regard to any of the following that are made with regard to the draft order during the 60-day period—

(a) any representations; and

(b) any recommendations of a committee of either House of Parliament charged with reporting on the draft order.

(2E) When laying before Parliament a draft order to give effect to the proposal (with or without modifications), the Secretary of State must also lay a document that explains any changes made to the proposal contained in the document under subsection (2B).

(2F) In calculating the 60-day period, no account is to be taken of any time during which Parliament is dissolved or prorogued or during which either House is not adjourned for more than 4 days." *—(Afzal Khan.)*

This new clause would amend the Immigration Act 1971 to ensure that any changes to the UK's Immigration Rules which affect EEA or Swiss nationals must be made under the super affirmative procedure.

Brought up, and read the First time.

Afzal Khan: I beg to move, That the clause be read a Second time.

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

New clause 40—*Procedures before making and amending Immigration Rules*—

"(1) Prior to making any amendments to Immigration Rules or making new Immigration Rules that impact upon persons whose right of free movement is ended by section 1 and schedule 1, the Secretary of State must lay before the House—

(a) an assessment of the impact of the proposed amendments or Rules on modern slavery, and

(b) an assessment of the impact of the proposed amendments or Rules on children.

(2) Prior to any amendments to Immigration Rules or new Rules coming into force that impact upon persons whose right of free movement is ended by section 1 and schedule 1, the Secretary of State must—

(a) lay a draft of the amendments or Rules before the House of Commons

(b) table an amendable motion for debate in respect of the draft amendments or Rules.

(3) Amendments to the motion tabled under subsection (2)(b) may instruct the Secretary of State to change the proposed amendments to the Immigration Rules or new Rules."

This new clause would mean that changes to the Immigration Rules affecting people whose right of free movement is removed by the Bill were debated in Parliament, and that the Government could be instructed to amend the rules.

New clause 54—*Immigration Rules Advisory Committee for relevant Immigration Rules*—

"(1) Within 6 months of this Act coming into force, the Secretary of State must establish an Immigration Rules Advisory Committee to consider relevant Immigration Rules.

(2) In this section 'relevant Immigration Rules' mean Immigration Rules that apply to persons whose right of free movement is ended by section 1 and schedule 1 of this Act.

(3) The function of the Immigration Rules Advisory Committee shall be to give advice and assistance to the Secretary of State in connection with the discharge of his functions under this Act and in particular in relation to the making of relevant Immigration Rules.

(4) The constitution of the Immigration Rules Advisory Committee shall be set out in regulations.

(5) The Secretary of State shall furnish the Immigration Rules Advisory Committee with such information as the Committee may reasonably require for the proper discharge of its functions."

Afzal Khan: This new clause requires that any changes to the UK's immigration rules which affect EEA or Swiss nationals must be made under the super-affirmative procedure. As with many of our amendments, we would prefer the measure to be applied to rules affecting all migrants, but the scope of the Bill requires us to narrow it to EEA and Swiss nationals. The new clauses tabled by the SNP would similarly require a higher level of scrutiny for immigration rule changes, and, as such, we support them.

If the Secretary of State proposes to make changes to the rules, the super-affirmative procedure requires him or her to lay before Parliament a document that explains the proposal and sets it out in draft form. Over the years, immigration rules have become so long, complex and internally inconsistent that they are almost impossible for lawyers to understand, let alone for normal people who try to navigate them without legal aid or appeal rights. The new clause complements our efforts in amendments to clause 4, as well as in amendments 17 and 21 to clause 7 and in new clause 10, to make the immigration system intelligible and hold the Home Office sufficiently accountable for its decisions.

Not everything can be done through primary legislation, but since the Immigration Act 1971 almost everything has been done through secondary legislation. The negative procedure, whereby there is no discussion of the legislation unless parliamentarians kick up a fuss, has become the standard. Immigration rules are made very frequently, often in response to political scandals, without an eye on the long-term effects. Requiring rule changes to be subject to the super-affirmative procedure will give more time for scrutiny and encourage a more measured approach.

Stuart C. McDonald: I will speak to new clauses 40 and 54. I know that Members across the Committee will be enthralled by the prospect of an immigration rules advisory committee. Indeed, if new clause 54 is agreed to, I am sure that straight away, the Minister will be open to considering CVs from people who might serve on that committee.

As the shadow Minister said, the new clauses are all about increasing the level of scrutiny. New clause 40 would require an assessment of the impact of any changes to the immigration rules on modern slavery and on children to be laid before Parliament before the changes could be made. Just as significantly, it would give rise to the possibility of MPs actually being able to debate and amend proposed changes to the immigration rules. New clause 54 would put in place an immigration rules advisory committee.

The kernel of these ideas came from a recent report by British Future, which simply points out, as the shadow Minister has done, that changes to immigration rules have been rapid and incredibly complicated. The Home Office has made more than 5,700 changes since 2010, with the rules doubling in length over the same period. Little by way of explanation is provided to MPs when changes are proposed, and even less of scrutiny or debate. In such situations it is near impossible for most MPs to keep track of changes and to fulfil their role of scrutinising the Government's work.

Social security offers a comparison with our proposal for an immigration rules advisory committee. Like social security laws, immigration rules are constantly changed by secondary legislation. However, there has been a

[Stuart C. McDonald]

social security advisory committee since as long ago as 1980. It has an independent remit to scrutinise draft secondary legislation on social security, making advice available to both the Government and Parliament. It has 14 members, who come from a wide range of professional backgrounds, and Ministers are usually required to submit regulations in draft to that committee, which may decide to scrutinise them formally. New clause 54 essentially copies the language of the enabling legislation for that committee and applies it to immigration rules.

While I welcome what the Minister and the previous Home Secretary have said about the need to simplify the immigration rules, we need to improve our procedures for scrutinising changes. Our new clauses offer two reasonable and practical proposals for exactly how that could be done.

Caroline Nokes: I am grateful to the hon. Members for Manchester, Gorton and for Cumbernauld, Kilsyth and Kirkintilloch East for providing a further opportunity to discuss parliamentary scrutiny of immigration rules, which is raised in all three of these proposals. Parliamentary scrutiny is an important issue, and I am aware that Committee members are very interested in it. I will take each new clause in turn, but first I will briefly cover a few background points.

As Committee members will be aware, the detailed provisions on who is entitled to enter and remain in the UK, and on how to apply for such leave, are set out in the immigration rules. The rules are made under the power in section 3 of the Immigration Act 1971. This power to change immigration rules, and the procedure for scrutiny of any changes, are long established. I remind hon. Members that the immigration rules were used, back in 2008, to introduce the points-based system that we currently operate.

I reiterate that none of the changes that we are making through the Bill are intended to affect that power or procedure. We will use that well-established power to set up the future immigration system once we have ended free movement and left the EU. I am in favour of parliamentary scrutiny of changes to the immigration rules, but I am not persuaded that there is any reason to depart from the existing scrutiny mechanism, which has been used to scrutinise all Governments, whether they are making minor or significant changes, for more than 45 years.

In addition, the new clauses are framed as applying only to those who lose their right to freedom of movement under the Bill. However, the Government have been clear that, once free movement ends, EEA nationals will be subject to UK immigration law, including the immigration rules. That means that all subsequent changes to the rules will potentially affect EEA nationals, so the new clauses would alter the parliamentary procedure for changing the immigration rules while purporting to be more limited.

Stuart C. McDonald: The Minister skirted around the fact that she thinks the current levels of scrutiny are absolutely fine, but without really drilling down into why. I wonder how many people in this room have ever looked at draft immigration rules that have been laid before Parliament. If they have done, how many actually understood what the draft changes were supposed to do? On the very few occasions I have managed to look at them, that has been hellishly difficult. Will the Minister explain why that level of scrutiny is appropriate?

Caroline Nokes: The hon. Gentleman may not have noticed that I said right at the beginning that I would give some background before delving into further detail. He need not worry; there is plenty to come.

I am committed to delivering a future immigration system that is fit for purpose and I acknowledge that in order to do that, we must put people first and make it easier for them to navigate our complex system. That is why the Law Commission has begun a consultation on simplifying the immigration rules; I look forward to receiving its recommendations later this year and seeing what more we can do in this area.

10.30 am

I will now address each new clause in turn, starting with new clause 9, which was tabled by the hon. Member for Manchester, Gorton. The new clause is designed to ensure that before any changes are made to immigration rules that affect persons whose free movement rights are ended by part 1 of the Bill, there is a so-called super-affirmative procedure. I fully acknowledge the importance of parliamentary scrutiny, which he seeks to highlight through his new clause, but I cannot accept that the super-affirmative procedure is appropriate here.

Typically, that procedure is used only for deregulatory orders that amend or appeal primary legislation, such as legislative reform orders, public bodies orders, or remedial orders under the Human Rights Act. In those circumstances, it is right that the highest level of scrutiny should be applied, but it is not proportionate to apply the same standard in respect of changes to immigration rules, which obviously are not, and cannot amend, primary legislation. That is because of the effect that the super-affirmative procedure has both on the Government's ability to make changes to the rules, and on parliamentary time.

Under the current, well-established procedure, the Government can update immigration rules in a responsive way, allowing us to ensure that we have an immigration system that meets the UK's needs, commands the confidence of the public and reflects the wider economic, social and political context in the UK at any time. Requiring a minimum 60-day standstill period—it would be a minimum, because if, for example, changes were laid in late June, the period would not expire until late October—would severely hamper our ability to make timely and effective changes to the rules.

The impact on parliamentary time would be twofold. Not only would the new clause increase the amount of parliamentary time engaged—there are often multiple changes to immigration rules each year, many of which would be likely to be caught up by this new clause—but there is a broader principle. As I have previously explained, the super-affirmative procedure is typically used only for legislative reform orders and similar instruments. If we were to extend the procedure to immigration rules, it is hard to see a rational basis for stopping the principle applying in many other areas of secondary legislation. Parliament would simply be overwhelmed if that procedure became the new norm. For these reasons, I ask the hon. Gentleman to withdraw his new clause.

I turn to new clause 40. The hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East also raises concerns about scrutiny, and there are two elements to his proposal. The first imposes obligations on the Secretary of State to produce impact assessments relating to modern slavery and children. The second requires the Secretary of State to lay before Parliament drafts of any amendments to the immigration rules that have an impact on persons whose free movement rights are ended by this Bill, and sets out requirements for those drafts to be debated.

Regarding the first element, I reassure the hon. Gentleman that the Government take all impacts of legislative proposals seriously, including those related to vulnerable people, particularly children. As the Committee will be aware following our discussions on amendment 25, the UK takes its responsibilities to safeguard the welfare of all children in the UK very seriously. There are significant safeguards already in place that will apply to any future rule changes.

Further, as set out in the memorandum to the Joint Committee on Human Rights that accompanies this Bill, the Government are committed to ensuring that the convention rights of those affected by any future rule changes are respected. That is an important and integral part of the policy-making process. As we have publicly stated in our existing impact assessment for this Bill,

"future immigration arrangements that will apply to EEA nationals and their family members will be set out in Immigration Rules",

and will be supported by relevant impact assessments, as is usual practice in the policy-making process.

On the second element, I refer to the points that I made in relation to new clause 9. The hon. Gentleman's proposals would have a similar effect on the Government's ability to update the rules in a responsive manner and would have similar potential to set a precedent that would eat up parliamentary time.

Stuart C. McDonald: The Minister makes a fair point that it would not be realistic to apply that procedure to every single immigration rule change. One alternative would be to use the nice new committee that we are going to set up using new clause 54 to decide what form of parliamentary procedure would be necessary. For example, if a change to immigration rules was urgent, the committee could say that the Government could go ahead and make it, but if a change was more significant and not time-pressing, there could be a proper and full debate on the Floor of the House.

Caroline Nokes: I am just coming on to the hon. Gentleman's proposals for a sparkly new committee. New clause 54 would require the Secretary of State to establish an immigration rules advisory committee. I appreciate the concerns behind the new clause. Establishing a new set of immigration rules that will apply to all EEA and Swiss nationals is a big deal, and we need to get it right.

We have made a clear commitment that a wide range of stakeholders, including Parliament, will have an opportunity to contribute their views on the future system before the final policy decisions are made. That will help to ensure that the relevant immigration rules work for the whole United Kingdom. Clearly, Parliament will have the opportunity to scrutinise the rules throughout that process, using the well-established procedures that I have described. I note that we have never before had such an advisory committee for immigration rules. If the new clause were to be added to the Bill, we would not have a similar committee to scrutinise immigration rules that apply to persons who are not covered by the Bill.

As we have said, from 2021, the immigration rules will apply to EU and non-EU migrants alike in a single system that selects people on the basis of skill and talent, as opposed to nationality, so I regard such a committee as unnecessary. I hope that the hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East and the hon. Member for Paisley and Renfrewshire North see that their new clauses are unnecessary, and I invite the hon. Member for Manchester, Gorton to withdraw new clause 9.

Afzal Khan: We will not press new clause 9 to a vote, so I beg to ask leave to withdraw the clause.

Clause, by leave, withdrawn.

New Clause 10

SETTLED STATUS: RIGHT TO APPEAL

"(1) When a person whose right of free movement is removed by the provisions of this Act makes an application for settled or pre-settled status, that person may make an appeal to the First-tier Tribunal (Immigration and Asylum Chamber) if—

(a) the application is turned down, or

(b) the person is granted pre-settled status but there is evidence to show that the person should have been granted settled status.

(2) Subsection (1) applies if the United Kingdom leaves the European Union—

(a) following a negotiated withdrawal agreement, or

(b) without a negotiated withdrawal agreement."—*(Afzal Khan.)*

Brought up, and read the First time.

Afzal Khan: I beg to move, That the clause be read a Second time.

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

New clause 14—*Right of appeal against refusal of settled status—*

"(1) Any person who—

(a) loses the right of free movement under the provisions of this Act; and

(b) is refused settled status; or

(c) is refused settled status but granted pre-settled status;

has the right of appeal to the Tribunal.

(2) In this section, 'Tribunal' means the First-Tier Tribunal."

New clause 34—*Right of appeal—*

"(1) The Nationality, Immigration and Asylum Act 2002 is amended in accordance with subsections (2) and (3).

(2) After section 82, insert—

'82B Right of appeal for EEA and Swiss nationals

(1) This section applies where an EEA or Swiss national has applied for settled or pre-settled status under appendix EU of the Immigration Rules and a decision has been made to refuse the application.

(2) Any person who has had their application for settled or pre-settled status refused may appeal to the Tribunal against that decision.

(3) In subsection (1) above, a refusal of the application includes where an application for settled status is refused but pre-settled status is granted instead.

(4) The lodging of an appeal under subsection (2) against a refusal to grant settled status has no impact on the grant of pre-settled status.'

(3) After section 84(5) insert—

'(6) An appeal under section 82B may be brought on the grounds that the decision was not in accordance with the Immigration Rules.'"

This new clause would ensure a right of appeal for EEA and Swiss nationals refused status under appendix EU of the Immigration Rules.

Afzal Khan: My hon. Friend the Member for Sheffield Central, the shadow Minister, will speak to the new clause.

Paul Blomfield: New clause 10 is important because, as the Committee should be aware, the Bill removes the current right, under EU law, to appeal against decisions relating to settled status. The new clause seeks to fill that gap by giving the right to appeal to the immigration and asylum chamber of first-tier tribunal to those whose application is rejected and those who have been granted pre-settled status but there is evidence to show that they should have been granted settled status.

As discussed during the oral evidence sessions, as it stands the only right to appeal consists of an administrative review at a cost of £80 or a judicial review at a significantly greater cost and with a drawn-out, time-consuming process. Ms Blackstock from Justice told us that it

"seems to be the most bureaucratic and inappropriate method for what is…potentially a simple grey area that requires a simple review."—[*Official Report, Immigration and Social Security Co-ordination (EU Withdrawal) Public Bill Committee,* 12 February 2019; c. 62, Q162.]

This is a problematic issue.

We also heard from Professor Smismans, who represents the3million, that there had been "considerable problems" with past administrative reviews by the Home Office. I am sure the Minister is aware of that. An administrative review may be fine as a first access point, but it is not sufficient on its own.

The Government clearly recognise the need to make the right of appeal available, as they have agreed that with the EU as part of the draft withdrawal agreement. That right exists under the withdrawal agreement that the Government have signed up to; UK courts and tribunals are authorised to refer cases on citizens' rights to the European Court of Justice within eight years of the end of the transition period.

The withdrawal agreement also provides for an independent monitoring body to conduct inquiries into alleged breaches of part 2 of the withdrawal agreement. That body would also be able to receive complaints from EU nationals and bring legal action on their behalf.

So far so good, but both those mechanisms fall away in a no-deal situation. Following the delayed publication in December of the Government's paper on citizens' rights in the event of no deal, my hon. Friend the Member for Manchester, Gorton and I wrote to the Minister and the Under-Secretary of State for Exiting the European Union, the hon. Member for Worcester (Mr Walker) with our concerns. In reply, they stated their view that it is fair in a no-deal scenario to provide the remedies generally available to non-EU citizens refused leave to remain in the UK in other parts of the immigration system.

I ask the Minister: how is that fair? In the event of no deal, the Government are proposing to reduce the time that people have to apply for settled status. The process of registering 3 million people is already a challenge, and some people believe it might be beyond the Home Office. With less time comes greater risk of mistakes, so why are the Government reducing the means of appeal?

We are talking about a finite number of people who have already been subject to two and a half years of uncertainty. It is worth remembering that about 100 EEA citizens were erroneously threatened with deportation by the Home Office in 2017. Is it really fair to anybody that we are expected to trust the Home Office to mark its own homework? An accessible right of appeal under any terms on which we exit the European Union would provide much-needed reassurance to EU nationals.

Stuart C. McDonald: My original intention was to speak in support of new clause 34, but having considered the matter I have to say that new clause 10, which also covers family members of non-EEA nationals, is better drafted, so I will speak briefly in support of it instead. Hats off to the shadow Ministers for getting it right when I have not.

I echo everything said by the hon. Member for Sheffield Central. He is right to characterise this not just as a failure to grant the right to appeal, but as the taking away of the right to appeal currently available to EEA nationals under European law. I remind the Minister that the Home Office statement of intent, published in June last year, said:

"Primary legislation is required to establish a right of appeal for the scheme, but subject to Parliamentary approval, we intend that those applying under the scheme from 30 March 2019 will be given a statutory right of appeal if their application is refused. This will allow the UK courts to examine the decision to refuse status under the scheme and the facts or circumstances on which the decision was based."

The question is simple: why is that appropriate if there is a deal, but not appropriate if there is no deal? There should be a right of appeal regardless of whether a deal is reached. The distinction is absolutely unjustified.

From the point of view of principle and practice, appeal rights are hugely significant in immigration law. It is about the separation between those who review a decision and the decision makers themselves, and about not allowing the Home Office to mark its own homework, thereby ensuring a fair and independent hearing. It is also about the fact that the Home Office simply gets it wrong far too often. Before the current Prime Minister started her slash-and-burn approach to appeal rights, half of Home Office decisions were being overturned by the tribunal. Administrative reviews and judicial reviews are a sub-standard alternative.

Finally, we have to bear in mind that these decisions will have hugely significant consequences for those individuals affected. If the decisions are wrong, the consequences could be catastrophic. It is a small ask to ensure that they have appeal rights, regardless of whether a withdrawal agreement is reached.

Alison McGovern (Wirral South) (Lab): I want to add to what the shadow Minister, my hon. Friend the Member for Sheffield Central, and the hon. Member

for Cumbernauld, Kilsyth and Kirkintilloch East have said about the importance of appeal rights. All of the new clauses make the same point. We all have suspicions that if the question of appeal rights is left unanswered, the process for EU citizens who need to apply for settled status might go terribly wrong.

There are two facts at the heart of this argument: first, the quality of Home Office decisions and the magnitude of the impact of the policy decision to end free movement; and secondly, the impact on a large number of people—some 3 million people and their families—in this country. We should not proceed without ensuring that protection is put in place in case the process goes wrong.

It seems absurd to have to offer any evidence of the quality of decisions taken by the Home Office, because as constituency Members of Parliament we deal fairly regularly with their inadequacy. That is not a comment on the Minister, who I have no doubt does her best to exercise good judgment on the issues put before her, but she has to do that far too frequently because of the poor quality of decisions taken, by and large, by the Home Office. This is not to point out the failings of individuals, either. I simply think that, systemically, the Home Office is not able to cope with the job that we task it to do.

We know that from recent media reports. We have already heard that when the Home Office appeals against immigration court decisions on asylum, it loses 75% of the cases. Mr Justice McCloskey, former president of the upper tribunal, said that the Home Office had launched one appeal

"on a wing and a prayer…It was manifestly devoid of any substance or merit and should have been exposed accordingly."

The Law Society has described the Home Office processes as "seriously flawed", and 50% of all appeals are upheld across the wider immigration and asylum system. We all know this to be true; these facts barely need repeating.

10.45 am

We are adding to that possibly the biggest single influx of work for the Home Office in generations. It involves a huge number of people, and we cannot look away from the fact that the decision to remove rights from EU citizens in this country—to force them to go through a process to demonstrate their right to be here—is retrospective. Many EU nationals came to live in this country and were perfectly legally entitled to do so. They took a decision for their family and for their future in a way that they could rightly have expected to persist over time, but the facts changed underneath their feet. This is about how we treat people who moved here in good faith and their families, because it is also about families.

We in this room are all currently EU citizens. We all enjoy rights to meet, fall in love with, work with and start a family with other EU nationals. We do not know when the process that the Government are embarking on might affect any of us. There is often in our politics an othering of immigrants. We talk about these processes as though they were affecting someone else and their family, but if anything this should bring the matter close to home. We all know friends and family who are currently having to wrestle with the settled status issue; even if that is not the case, we have constituents who are affected, so we should understand the scale of the matter.

We are pulling the rug from under people when they have made perfectly reasonable and rational decisions about where to base their family, where to live, where to work and how to conduct their lives. The idea that we would allow the Home Office, with its poor record of decision making, to undertake this process, which is huge in scale and really significant in impact, without there being appeal rights seems to me to be a fundamental mistake. My hon. Friend the Member for Sheffield Central commented on the poor quality of casework. There is the Windrush situation. There are so many examples that it seems obvious to me that we cannot let this go by.

Finally, if appeal rights potentially insert more complexities into the system, it could be argued that the Home Office simply does not have the capacity to deliver a more complex system. It cannot be fair in the current circumstances, however, to expect the Home Office to get sufficient decisions correct—and for their quality to improve in the required time—such that we ought to remove people's rights without proper due process. People need to be empowered to enforce their rights in a meaningful way.

Caroline Nokes: Hon. Members have tabled three new clauses concerned with providing a right of appeal against refusals under the EU settlement scheme. I absolutely understand the sentiment behind the new clauses and would like to confirm that if there is a deal with the European Union, the Government will use the withdrawal agreement Bill to provide a right of appeal in respect of refusal of leave under the settlement scheme.

Unlike new clauses 10 and 14, under the withdrawal agreement Bill we plan to provide for an appeal right against refusal of settlement scheme leave even where the applicant continues to have a right of free movement in an implementation period. New clauses 10 and 14 are therefore less generous than the Government's planned provision for appeal rights in a deal scenario.

New clause 34 is also more limited than the appeal rights that we propose in a deal scenario. Under the new clause, non-EEA family members eligible to apply under the settlement scheme would, if refused, not get a right of appeal. The Government's intention is that, in the event of a deal with the EU, anyone refused leave under the settlement scheme will get a right of appeal.

I make those points not to pick holes in the new clauses but to demonstrate that appeal rights are complex and would require several consequential changes to legislation to ensure that they work effectively. However, I understand that hon. Members are concerned about what the Government intend on the issue, rather than about the wording of specific amendments, and I hope that I can provide some reassurance.

In setting up the EU settlement scheme, the Government have made a commitment to EU citizens, EEA and Swiss nationals, and their family members because we recognise that they make a huge contribution to our economy and our society. It is important to us that the settlement scheme works and that it works well. At the same time, in the event that we leave the EU without a deal and as we move towards a single immigration system, I believe that it is fair to provide consistency between the remedies available to those refused leave under the EU settlement scheme and the remedies generally available to non-EEA nationals.

Paul Blomfield: I am grateful to the Minister for taking an intervention on this point, because we have come to the nub of the debate. The Prime Minister and the Government have said consistently that EU and EEA nationals are our friends, our neighbours, valued members of our community and an important part of our workforce, and that they will not have diminished rights when we leave the European Union. What message does the Minister think is being sent to them by the proposal that in the event of no deal their right of appeal would be withdrawn?

Caroline Nokes: I was going to come on to talk about administrative review, which is available in the event of deal or no deal to those who are refused leave under the scheme on eligibility grounds. Under the settlement scheme, eligibility is focused primarily on how long an individual has been in the UK; it is not about demonstrating that individuals have been exercising free movement rights but simply about proving identity and that they are here. Administrative review will be able to correct any errors that might be made in calculating the time period, if necessary by considering new evidence. The hon. Gentleman will also be aware that application under the EU settlement scheme is free—I welcome the change that the Prime Minister made by removing the fee. It would be open to any individual simply to reapply, rather than go through an appeal or administrative review process, because there is no charge.

When an applicant is refused on suitability grounds, they will not have a right to administrative review. Refusals on suitability grounds will be made, in particular, if there is evidence of serious criminality. However, where people are refused on criminality grounds and subject to deportation, they can make a human rights or protection claim against their removal; they will have a right of appeal under existing legislation if that claim is refused. In addition, applicants who are refused leave under the settlement scheme have the right to apply for judicial review of the refusal, as we have heard. Such remedies exist now for those refused under the EU settlement scheme.

We are committed to protecting EU citizens, and I hope that what I have said provides reassurance to hon. Members that adequate remedies are already available to those refused leave under the settlement scheme.

Afzal Khan: Does the Minister not accept that judicial review or an internal review is no match for the right of appeal? Judicial review is narrow in how it is done, and internal review is marking one's own homework.

Caroline Nokes: The hon. Gentleman has referred again to judicial review. I absolutely accept that it can be time consuming, and I recognise Members' concerns about appeal rights in the event of no deal, but I sincerely hope that we will not be in that position and that we will be able to introduce appeal rights under the withdrawal Bill. However, it would be confusing to have different provisions on appeal rights in different legislation, which is why I think that the amendments are premature. Nevertheless, hon. Members in Committee and those outside this place, including at the evidence sessions, have made a number of points about further reassurance being required, so I will certainly reflect on that to see what more we can do.

Afzal Khan: The question was not just about judicial review being time consuming, which it is, but about the cost and how narrow it is in law.

Caroline Nokes: The point that I have to reflect back every single time is that the Government are working incredibly hard to ensure that we secure a deal with the EU. That is obviously the best way to avoid that scenario.

The Chair: Does the hon. Member for Sheffield Central wish to say anything before I ask the proposer of the new clause whether he wishes to withdraw it?

Paul Blomfield: I acknowledge that the Minister's wish to reflect on some of the issues raised is helpful, but there are still fundamental matters on which we have had insufficient reassurance.

Afzal Khan: I will press the new clause to a vote.

Question put, That the clause be read a Second time.

The Committee divided: Ayes 7, Noes 10.

Division No. 12]

AYES

Blomfield, Paul	McGovern, Alison
Dakin, Nic	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.

New Clause 11

HOSTILE ENVIRONMENT AND EEA NATIONALS

'(1) This section applies where EEA nationals and Swiss nationals, and their family members, are subject to legislation and regulations encompassing the "hostile environment".

(2) The Secretary of State must make provision to ensure that, under the hostile environment measures, EEA nationals and Swiss nationals and their family members are treated no less favourably than British citizens in an equivalent position, until the number of people registered for settled status reaches 3 million people or until 30 June 2021, whichever is later.

(3) For the purposes of this section, the "hostile environment" comprises the following measures, including all regulations, policies, and guidance issued pursuant or relating to them—

(a) sections 20 to 47 of the Immigration Act 2014;

(b) sections 34 to 45 of the Immigration Act 2016;

(c) sections 15 to 25 of the Immigration, Asylum and Nationality Act 2006;

(d) section 175 of the National Health Service Act 2006; and

(e) schedule 2, paragraph 4, of the Data Protection Act 2018.' *—(Afzal Khan.)*

This new clause would prevent the hostile environment from being applied to EEA nationals, Swiss nationals, or their family members until the number of people registered for settled status reaches 3 million or 30 June 2021, whichever is later.

Brought up, and read the First time.

Afzal Khan: I beg to move, That the clause be read a Second time.

The amendment would ensure that the hostile environment was not applied to EU citizens until 3 million people had been registered, or until the end of the grace period—30 June 2021—whichever was later. The Government have made it clear that their intention is for EEA nationals to stay in the UK after we leave the EU, and we have serious concerns about their ability to register 3 million EU citizens in time for the end of the transition period, and even more so if there is no deal and the deadline is sooner.

Even where we have a declarative settled status scheme—Labour's preference, as set out in new clause 15—it is vital that enough EU citizens have proof of their status in the UK before it is tested at every turn through the hostile environment. Under the hostile environment, a person's ability to prove their right to be here is almost as important as having the right itself.

As discussed under amendment 23, the Government have set no targets for the numbers of people they intend to register for settled status before the deadline. The 3 million would seem to be the bare minimum, and I would welcome the Minister setting a more ambitious target, to which we can hold her Department when the time comes.

The issue of data gaps was raised by Madeleine Sumption at the Home Affairs Committee, and it is reflected in the Migration Observatory's report, "Measuring Success". Based on current statistics, it will be difficult to work out how many people miss out on settled status unless the numbers are very big. We do not have the precise figures of EU citizens living in the UK who plan to stay, so it is possible that tens of thousands will miss out on settled status without our knowing. Those most likely to miss out and fall through the cracks will probably be the most vulnerable.

The Migration Observatory's report sets out steps that the Government could take to better evaluate the success of the settled status scheme and to estimate how many people have not registered, but, to my knowledge, they have not taken any of them. Windrush demonstrated the catastrophic and truly life-threatening consequences of the hostile environment.

This debate is all the more urgent in the light of Friday's High Court ruling that the Government's right to rent scheme causes racial discrimination, in breach of human rights. In a damning verdict, the judge found that the scheme causes landlords to discriminate where they otherwise would not. This is not the landlord's fault. This proven discrimination is a direct result of Government policy, which goes straight to the Prime Minister, who introduced and championed the hostile environment.

11 am

The judge also found that the Government had not come close to justifying the scheme. They have made no attempt to evaluate the effectiveness of right to rent, despite widespread warnings of its discriminatory effects. I hope that, in the light of that ruling, the Government will scrap right to rent and all other planks of the hostile environment, which cause discrimination in the same way.

Stuart C. McDonald: I will speak briefly in support of the broad thrust of the new clause—I might have suggested a slightly different approach—which effectively draws attention to the hostile environment, or compliant environment, as it is sometimes known now. Essentially, in the light of the court case that the shadow Minister referred to, it is now absolutely time that we have to roll back on the hostile environment altogether.

I stumbled across some of my notes from during the passage of the Immigration Act 2016, when the Government essentially ignored all sorts of warnings about the right to rent and various other hostile environment measures and decided to press ahead. Thanks to the independent chief inspector of borders and immigration, we have since found that the Government made next to no effort to monitor the impact of the measures they had introduced. That sequence of events is also exactly what happened with Windrush; warnings were ignored and the Government pressed ahead without looking at the consequences for the people they were warned might be adversely impacted. That is exactly the same as with the right to rent and other hostile environment measures.

I place on the record my congratulations and thanks to the Joint Council for the Welfare of Immigrants, the Residential Landlords Association and various others involved in that case, which they have been fighting for a long time. Their briefings in 2016 were absolutely clear: their testing found that people from black and minority ethnic backgrounds were being discriminated against when they approached landlords, as was anyone who was not able to produce a British passport.

In the light of that scathing judgment from last week, surely the Government cannot just press ahead with the extension of hostile environment measures to EU nationals. Surely they must now say that they accept that judgment and intend to roll back from the right to rent and other hostile environment policies.

Caroline Nokes: I am grateful to the hon. Member for Manchester, Gorton for tabling the new clause, and I welcome the opportunity to explain how statutory eligibility controls operate for EEA nationals. The Government have made clear our commitment to protect the right of EEA nationals living in the UK before the new skills-based immigration system is introduced. While I recognise the intention behind the new clause, it is unnecessary. In some important respects, it is also technically deficient.

EEA nationals are already subject to the universal eligibility checks carried out by employers, landlords and the NHS. Those checks apply to everyone, regardless of nationality. EEA nationals currently evidence their eligibility to employers and landlords simply by producing their national passport or identity card. When accessing benefits and health services, they also need to demonstrate that they are habitually or ordinarily resident in the UK. We made it clear in our White Paper that EEA nationals will not be subject to additional requirements to demonstrate their status in the UK until the future skills-based immigration system is introduced. We recognise the importance of having an implementation or transition period to allow EEA nationals living here to secure their status in UK law by applying to the EU settlement scheme.

Importantly, the White Paper on the UK's future skills-based immigration system also makes it clear that we will not require employers to undertake retrospective checks on existing employees when the new system is introduced in 2021. That is entirely consistent with the approach adopted by previous Governments when

[Caroline Nokes]

introducing changes to the checking arrangements. The new clause does not provide further meaningful safeguards to the commitments we have already given.

It is also important to highlight the fact that further secondary legislation would be required before EEA nationals could be compelled to produce evidence of UK immigration status in the same way that non-EEA migrants are currently required to do, to demonstrate their right to work or rent in the UK. Such legislation would be subject to parliamentary scrutiny in the usual way. I also reassure hon. Members that, in line with the draft withdrawal agreement, we will take a proportionate approach to those who for good reason miss the deadline to apply to the EU settlement scheme.

The new clause would also prevent NHS charges from applying to EEA nationals before 30 June 2021, or until 3 million people are granted settled status under the scheme. However, it makes reference to the National Health Service Act 2006, which applies only to NHS charges in England and Wales. The NHS in Scotland and Northern Ireland would be unaffected.

Charges have applied for NHS secondary care to people not ordinarily resident in the UK since 1982, except where an exemption from charge category applies. Entitlement to NHS-funded secondary care is based on ordinary residence in the UK, not nationality or payment of taxes. That means living in the UK on a lawful, properly settled basis, for the time being. EEA and Swiss nationals and their family members who are or become ordinarily resident in the UK are therefore fully entitled to free NHS care in the same way as a British citizen who is ordinarily resident.

In the event that the UK leaves the EU without a deal, the Government have made a unilateral offer on citizens' rights. It is not dependent on EEA member states making similar assurances for UK citizens resident in those countries. Should EEA member states make less generous provision for UK nationals living or moving there, the new clause would result in a less favourable offer to EEA nationals in the UK.

The immigration exemption in paragraph 4 of schedule 2 to the Data Protection Act 2018 is entirely separate from measures designed to deal with eligibility checks on immigrants. It is a necessary and proportionate measure that we believe is compliant with the General Data Protection Regulation. It can be applied only on a case-by-case basis, in limited circumstances, where complying with a certain data protection right would be likely to prejudice the maintenance of effective immigration control. It is misleading and unhelpful to frame the matter in such a way that it appears to be aimed at EU citizens. The exemption is a necessary measure, designed to protect our immigration system from those who seek to undermine and take advantage of it. New clause 11 does not provide any additional safeguards or assurances beyond those already planned or in place.

Finally, I want to respond to points made by hon. Members about the recent High Court judgment on the right to rent scheme. The scheme was introduced to defend an important principle. Those who have no right to be here should not be renting a property, and landlords should not be making profit renting to people without legal status here, which often happens in poor conditions. The Government consulted carefully on measures to require landlords to undertake right to rent checks. We developed the scheme in close collaboration with a consultative panel, which drew together experts from the sector. The scheme was trialled in the west midlands and rolled out to the rest of England only after a thorough evaluation, which was published in full in October 2015.

Stuart C. McDonald: My recollection is that originally there was supposed to be a detailed assessment of that pilot before it was rolled out, but that after the election of 2015 the Prime Minister said it would carry on regardless. Where is the evidence that it has had any positive impact, or that it has not had a discriminatory effect, as the High Court judge found last week?

Caroline Nokes: I am minded, given the High Court judgment of last week, to be careful what I say about the issue, and I hope that the hon. Gentleman will forgive me if I just go on to speak a little about the evaluation of October 2015, which included 550 responses to online surveys, 12 focus groups, 36 one-on-one interviews and a mystery shopping exercise involving 332 encounters. That evaluation found that there was no systemic discrimination on the basis of race. The law was, and remains, absolutely clear that discriminatory treatment on the part of anyone carrying out the checks is unlawful.

Despite that, as hon. Members have mentioned, on Friday last week the checks were declared incompatible with the European convention on human rights. We disagree with the finding and are appealing the judgment. We remain committed to the principle that if someone has no right to be in this country they should not be renting property. This country has a proud tradition of upholding and promoting human rights, and we have set the standard internationally for the strength of our legal protections against discrimination. The High Court decision is not something we should take lightly.

Afzal Khan: We hear what the Minister is saying about people who have no right to be here, but the fact is that people who have a right to be here can become a victim of the hostile environment. That is what happened with Windrush.

Caroline Nokes: As I was saying, the High Court decision is not something we take lightly, but we have been granted permission to appeal all aspects of the judgment. In the meantime, the provisions passed by this House in 2014 remain in force. Landlords and letting agents are still expected to conduct right-to-rent checks, as required in legislation, and they are still expected not to discriminate against anyone on the basis of their colour or where they come from.

As my right hon. Friend the Home Secretary has previously made clear, we are looking at options for evaluating the operation of the scheme, adding significantly to the evaluation that has previously been done. The Home Secretary has written to Wendy Williams to draw her attention to the High Court's findings. The lessons learned review is identifying the key legislative, policy and operational failures that resulted in members of the Windrush generation becoming entangled in measures designed for illegal immigrants.

I will continue to chair meetings of the right-to-rent consultative panel with Lord Best, to discuss this and other matters relating to the operation of the scheme. I reiterate my steadfast commitment to tackling

discrimination in all its forms, and I am committed to building an immigration system that provides control, but is also fair, humane and fully compliant with the law. I hope that in the light of these points the hon. Gentleman will withdraw his new clause.

Afzal Khan: I thank the Minister for what has been said this morning. However, we take the position that the hostile environment must be dismantled and we do not wish to see EU citizens going through what the Windrush generation has gone through.

Question put, That the clause be read a Second time.

The Committee divided: Ayes 7, Noes 10.

Division No. 13]

AYES

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

NOES

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

Question accordingly negatived.

New Clause 13

ANNUAL REVIEW OF THE ENDING OF FREE MOVEMENT IN THE UNITED KINGDOM

"(1) The Secretary of State must conduct an annual review of the impact of the ending of free movement of people in the United Kingdom.

(2) The annual review under subsection (1) must include, but is not limited to, consideration of the impact the ending of free movement has had on—

(a) the UK economy;

(b) the NHS and social care workforce; and

(c) opportunities for British citizens in the European Economic Area.

(3) When carrying out each an annual review under subsection (1) the Secretary of State must consult with UK businesses.

(4) The first annual review carried out under this section must be commenced within 12 months of this Act having received Royal Assent.

(5) Each subsequent annual review carried out under this section must be commenced within 12 months of the previous review.

(6) Each annual review carried out under this section must be laid before both Houses of Parliament within 3 months of it having been commenced."—*(Alison McGovern.)*

Brought up, and read the First time.

Alison McGovern: I beg to move, That the clause be read a Second time.

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

New clause 43—*Future immigration policy—*

"Within 12 months of this Act coming into force, and every 12 months thereafter, the Secretary of State must lay a report before Parliament setting out how any changes made to the Immigration Rules for EEA and Swiss nationals have affected the extent to which UK employers have adequate access to labour."

This new clause would mean the Secretary of State is accountable to Parliament for drafting Immigration Rule changes that ensure employers have adequate access to labour.

Alison McGovern: I wish to speak about proposed new clause 13. Often this discussion is focused on the procedural matters of immigration law, and rightly so; as we have discussed, these are important issues that affect the lives of many of our constituents and they should be scrutinised in detail. However, my proposed new clause is concerned not with the detail of immigration law but rather with economic analysis of the impact of free movement on our labour market. It seeks to require the Secretary of State to conduct

"an annual review of the impact of the ending of free movement of people in the United Kingdom",

specifically the impact on:

"(a) the UK economy;

(b) the NHS and social care workforce; and

(c) opportunities for British citizens in the European Economic Area."

The Secretary of State should also "consult with UK businesses" and, I would add by way of commentary, others in the UK, including civil society and trade unions, about the impact they have experienced, should free movement end in this country. Such a review is necessary for several reasons, which I will explain briefly.

11.15 am

When considering the impact of immigration in the labour market we tend to rely on emotional arguments and anecdote much more than we do on data. That is perfectly understandable—people tend to refer to their lived experience of economic matters, rather than on statistical analysis, and there is no reason why it should be otherwise. That is not always a good way to consider the labour market, however, because one person's experience might be quite different from another's, and we must look at the reality and consider the research.

However, there is a problem with that. Labour market data can tell us much to help us understand the impact of ending free movement on our economy, but there is much it cannot tell us and a lot we do not know about the way labour markets function in general. There is certainly much we do not know about the UK, and the driving reason behind the new clause is to suggest that the Government ought not to take decisions of this magnitude without having a much better understanding than we currently have about the way immigration impacts on our labour market.

Let us consider the data for local areas between 2008 and 2015, when there was a change in levels of EU migration. The change in employment rates for those born in the UK shows no statistically significant relationship, either negative or positive, between EU migration and employment rates for those born in the UK. That is what the data say, but unfortunately most people in politics would dismiss that fact almost immediately. Clearly, something has been going on, and in anecdotal discussion people will mention the way immigration has affected local labour markets.

Unfortunately, we are poor at analysing local labour market statistics, and we do not do a lot of research at sub-national level. Certainly, the analysis of such information for the formulation of Government policy

is very poor, and if the Government accept the new clause, that might provide an opportunity for us all to have a more in-depth, specific and reasonable debate on immigration, rather than the one that has characterised political discussion in recent years.

The same is true of wages. If we consider what the data tell us about the impact of EU immigration on local economies, there seems to be no apparent link or statistically significant relationship between EU immigration and changes to the real wages of UK nationals. We know, however, that the picture must be a lot more detailed than that, and if the Government want to get this issue right, they could do worse than accept this new clause, or that tabled by the Scottish National party, and take seriously the job of analysing local labour markets, working out what drives changes in wages—especially at the lower end of income distribution—and trying to put in place policies that will deliver.

We have gone through this terribly painful process for our country, and immigration has been treated as a kind of political cure-all by political parties that want to make hay in general elections. After all that, and after a Brexit vote in a referendum that was characterised by a terrible quality of political debate, if we find that restricting immigration does not raise the wages of those at the lower end of income distribution, what on earth will we say to people then?

We should do a little bit better than that in our policy making, and I encourage the Government to really investigate what could increase wages. I have my suspicions that if we perhaps allowed lower-paid women—I will come to them in a minute, in relation to the care sector—to work more flexibly and supported them with universal childcare, so that they could perhaps get training and increase their productivity, that might do a lot more to increase the wages of the low-paid in this country, who are by and large women, than the current policy on immigration does. But I do not know, and I simply encourage the Government to find out.

The NHS has an interesting place in our labour market. It is a huge employer and it has had centralised workforce planning almost since its inception. For the rest of the labour market, there is an element of market forces at work and the Government cannot be expected—I would think, anyway—to control the entirety of the labour market, but the Government have a huge input into the labour force for the NHS. We have rarely got it right in the history of the NHS; we have rarely managed to get the supply of good-quality staff for the NHS correct. The NHS has often run short and that is why it interacts with immigration in the way that it does; it has always done so. Many people came here from Commonwealth countries to work in the NHS, in just the same way as EU nationals have done recently.

We know from the evidence that we received as a Committee that this Bill will impact the NHS and—crucially—the social care system very significantly. Unfortunately, that negative impact on the NHS of immigration changes is not really helped by the Government at the moment. If the Government perhaps wanted to give the NHS a hand and do what I think a lot of British people would like to see—namely, train more qualified health staff—they could do a lot worse than reinstate nursing bursaries.

Maria Caulfield: On Friday, I went with the hon. Member for Hove (Peter Kyle) to Brighton University to see the new nursing apprenticeship schemes, which are enabling a new source of nurses—mature students—to train as student nurses, and earn while they learn. The students all said that that was better than the previous bursary scheme, as it provided them with better wages and more job security once they finished their training.

Alison McGovern: I thank the hon. Member for that intervention. I am perfectly happy for schemes to be called whatever they like; the fact is that we have to support nurses properly as they are training. The general point that I want to make, while accepting her experience of what sounds like a really good scheme, is that the general thrust of Government policy has not supported the training of staff for our national health service in recent times, and that has to change.

I will make one final specific point on this issue before I close, and it is about the social care sector. As the hon. Member has just mentioned, nurses are incredibly important and we have to get training and support for people coming into nursing, or back into nursing, correct, but social care is also important, and the pay in the social care sector is really dismal. It is a highly skilled job. If someone is working in a nursing home, they may have in their hands the care of the dying, and I do not think that there is a more important or dignified job in this country.

We have relied on EU nationals to a great extent and this Bill will have a huge impact on the social care sector. We have a massive staff shortage; there are hundreds of thousands of vacancies in the care sector. However, it is an interesting fact that that massive staff shortage has not increased pay in the care sector. If this was simply a matter of supply and demand, we might have expected wages in the care sector to rise quite rapidly over recent years, but the staff shortage has not increased pay, because in the end the funding for social care comes in large amount from the Government. That demonstrates the flaw in the argument that says, "Well, if we restrict immigration, that will necessarily put up pay". Well, if in the end the funding—

11.25 am

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

Adjourned till this day at Two o'clock.