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Public Bill Committee

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

Fifth Sitting

Tuesday 16 June 2020

(Morning)

CONTENTS

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Saturday 20 June 2020

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The Committee consisted of the following Members:

Chairs: † Sir Edward Leigh, Graham Stringer

† Davison, Dehenna *(Bishop Auckland)* (Con)
† Elmore, Chris *(Ogmore)* (Lab)
† Foster, Kevin *(Parliamentary Under-Secretary of State for the Home Department)*
† Goodwill, Mr Robert *(Scarborough and Whitby)* (Con)
† Green, Kate *(Stretford and Urmston)* (Lab)
† Holden, Mr Richard *(North West Durham)* (Con)
† Johnson, Dame Diana *(Kingston upon Hull North)* (Lab)
† Lewer, Andrew *(Northampton South)* (Con)
† Lynch, Holly *(Halifax)* (Lab)
† McDonald, Stuart C. *(Cumbernauld, Kilsyth and Kirkintilloch East)* (SNP)
† O'Hara, Brendan *(Argyll and Bute)* (SNP)
† Owatemi, Taiwo *(Coventry North West)* (Lab)
† Pursglove, Tom *(Corby)* (Con)
† Richardson, Angela *(Guildford)* (Con)
Roberts, Rob *(Delyn)* (Con)
† Ross, Douglas *(Moray)* (Con)
† Sambrook, Gary *(Birmingham, Northfield)* (Con)

Anwen Rees, *Committee Clerk*

† attended the Committee

Public Bill Committee

Tuesday 16 June 2020

(Morning)

[Sir Edward Leigh *in the Chair*]

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

9.25 am

The Chair: Obviously, we will maintain social distancing. Like last week, the *Hansard* reporters would be grateful if Members sent copies of their speeches to hansardnotes @parliament.uk. We will continue line-by-line consideration of the Bill—the selection list is available in the room.

Clause 5

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

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

The Parliamentary Under-Secretary of State for the Home Department (Kevin Foster): It is a pleasure to serve under your chairmanship, Sir Edward. Given the nature of the clause, I will spend a few minutes outlining its impact to the Committee. The clause and associated schedules 2 and 3 provide an essential legislative framework to ensure that the Government can make changes to our social security system when the transition period ends, alongside the launch of the future immigration system. The provisions will enable the Government to amend the retained European Union social security co-ordination rules and to deliver policy changes from the end of the transition period.

The clause provides a power to the Secretary of State, the Treasury or, where appropriate, a devolved authority to modify the social security co-ordination regulations. Those EU regulations provide for social security co-ordination across the European economic area, and will be incorporated into domestic law by the European Union (Withdrawal) Act 2018 at the end of the transition period. Clause 5(4) gives the Government the ability to make necessary consequential changes to other primary legislation and other retained EU law to ensure that the changes given effect by the main power are appropriately reflected. That power may be used, for example, to address technical matters, inoperabilities or inconsistencies. Schedule 2 sets out the power of the devolved authorities under clause 5.

This social security co-ordination clause confers powers on Scottish Ministers and the relevant Northern Ireland Department to amend the limited elements of the social security co-ordination regulations that fall within devolved competence. It is important that we provide the devolved Administrations with the powers that they need to amend the aspects of the regulations for which they are responsible, just as it is right for the UK Government to have the powers for the laws that affect the UK as a whole. The powers are equivalent to those conferred on UK Ministers and will allow the devolved Administrations to respond to the UK's withdrawal from the EU in areas of devolved competence, either to keep parity with Westminster or to deviate in line with their own policies.

Without the powers in the Bill, the devolved Administrations would need to bring forward their own parallel legislation to give them equivalent powers to amend the retained EU social security co-ordination regulations in areas of devolved competence. Before the Bill was introduced, letters were sent to the devolved Administrations to seek legislative consent in principle, in line with the Sewel convention.

Schedule 3 provides further detail on the form that regulations will take under the clause, whether as statutory instruments, statutory rules or Scottish statutory instruments. The schedule provides that the use of the power is subject to the affirmative procedure. It also gives clarity on the procedures that the devolved Administrations will need to follow. Paragraph 5 permits other regulations, subject to the negative procedure, to be included in an instrument made under the clause.

Without the clause and associated schedules 2 and 3, the Government and relevant devolved authorities will have only the power contained in the 2018 Act to fix deficiencies in the retained system of social security co-ordination, restricting our ability to make changes. I reassure the Committee that the power in the clause will not be exercised to remove or reduce commitments made either in relation to individuals within the scope of the withdrawal agreement, for as long as they remain in the scope of that agreement, or in relation to British and Irish nationals moving between the UK and Ireland.

We are currently in negotiations with the EU about possible new reciprocal arrangements on social security co-ordination, of the kind that the UK has with countries outside the EU. The clause will enable the UK to respond to a variety of outcomes in those negotiations, including when no agreement is achieved by the end of the transition period. The clause will be necessary to deliver policy changes to the retained regime that will cover individuals who fall outside the scope of the withdrawal agreement, to reflect the reality of our new relationship with the European Union.

The Government have been clear that there will be changes to future social security co-ordination arrangements, including, as announced at Budget 2020, stopping the export of child benefit. The social security co-ordination powers in the Bill will enable the Government to deliver on that commitment and to respond to the outcome of negotiations with the EU to deliver changes from the end of the transition period. I therefore beg to move that clause 5 stands part of the Bill and that schedules 2 and 3 are agreed to.

Kate Green (Stretford and Urmston) (Lab): Good morning, Sir Edward. It is a pleasure once again to serve under your chairmanship. Social security arrangements set out in EU regulation 883 of 2004 and elsewhere are currently directly applicable in the UK. They cover the co-ordination of social security, healthcare and pension provision for people who are publicly insured who move from one EU state to another.

The regulations ensure that individuals who move to another EEA are covered by the social security legislation of only one country at a time and are, therefore, liable only to make contributions in one country; that a person has the rights and obligations of the member state where they are covered; that periods of insurance, employment or residence in other member states can be taken into account when determining a person's eligibility

for benefits; and that a person can receive benefits that they are entitled to from one member state, even if they are resident in another.

The co-ordination regulations cover only those social security benefits that provide cover against certain categories of social risk, such as sickness, maternity, paternity, unemployment and old age. Some non-contributory benefits fall within the regulations but cannot be exported, and benefits that are social and medical assistance are not covered at all. Universal credit, for example, is excluded.

As we heard from Jeremy Morgan of British in Europe in his oral evidence to the Committee last week, most UK nationals resident in the EU are of working age. It is important to note that the number of people claiming the working-age benefits that are covered by the regulations—jobseeker's allowance or employment and support allowance—has declined sharply since the introduction of universal credit. We might therefore expect social security co-ordination arrangements to apply to a declining number of working-age adults. The regulations will, however, still be of importance for a sizeable number of individuals, and not least for pensioners.

The co-ordination regulations also confer a right on those with a European health insurance card to access medically necessary state-provided healthcare during a temporary state in another EEA state. The home member state is normally required to reimburse the host country for the cost of the treatment. Under the European Union (Withdrawal Agreement) Act 2020, protection of healthcare entitlements is linked to entitlement to cash benefits.

Clause 5(1) provides an appropriate authority with the power to modify the co-ordination regulations by secondary legislation. The power is very broad, placing no limits on the modifications that appropriate authorities are able to make to the co-ordination regulations. By virtue of subsection (3), the power explicitly

"includes power—

(a) to make different provision for different categories of person to whom they apply…

(b) otherwise to make different provision for different purposes;

(c) to make supplementary…consequential, transitional, transitory or saving provision;

(d) to provide for a person to exercise a discretion in dealing with any matter."

The power is further enhanced by subsection (4), which provides for the ability to amend or repeal

"primary legislation passed before, or in the same Session as, this Act"

and other retained direct EU legislation.

Since the UK left the EU at the end of January this year, the relevant EU regulations pertaining to social security, pensions and healthcare have been retained in UK law by section 3 of the European Union (Withdrawal) Act 2018. I accept that the Government need to be able to amend co-ordination regulations to remedy deficiencies in them resulting from the UK's exit from the EU, but the 2018 Act already contains a power in section 8 to modify direct retained EU law. Indeed, the Government have already exercised this power for four of the co-ordination regulations. Any changes that do not fall within the scope of the power in section 8 of the 2018 Act must necessarily, therefore, not relate to any ability for the law to operate efficiently or to remedy defects, but be intended to achieve wider policy objectives. I think the Minister acknowledged as much in his opening comments.

I was, however, surprised that the Minister said that only the European Union (Withdrawal) Act 2018 provided such powers. My reading of the legislation is that the Secretary of State has further powers as regards social security, healthcare and pension rights for those who are protected by the withdrawal agreement under the European Union (Withdrawal Agreement) Act 2020. Section 5 of that Act inserts new section 7A into the 2018 Act so as to secure withdrawal agreement rights in domestic law, and that protection is buttressed by section 13 of the 2020 Act, which confers a power to make regulations in respect of social security co-ordination rights protected by the withdrawal agreement. Given the powers that already exist under the European Union (Withdrawal) Act and the European Union (Withdrawal Agreement) Act, as well as the fact that those powers have already been used by the Government, why does the Minister feel they are inadequate?

Paragraph 30 of the delegated powers memorandum is instructive. It states that the Government want to use the power in clause 5 to

"respond flexibly to the outcome of negotiations on the future framework and make changes to the retained social security co-ordination rules."

Mr Robert Goodwill (Scarborough and Whitby) (Con): Does the hon. Lady agree that, given the proliferation of judicial reviews and the test cases that often come forward, it is better to adopt a belt-and-braces approach so that we underline the Government's intention in both the Bill and the withdrawal Act?

Kate Green: The issue is the mission creep and scope creep involved in using secondary legislation to amend primary legislation and retained EU rights, particularly a mission creep that now encompasses the ability to make significant policy changes.

As we heard in oral evidence from our witnesses last week, it is important to recognise the considerable importance of policy and legislation in relation to social security co-ordination. It is vital to labour mobility, and to protect the rights of EEA nationals who come to live in the UK and UK nationals who go to live in EEA member states. Policy in this area has the potential to impact the lives of millions, affecting their right to receive benefits to which they are entitled through national insurance contributions over periods of residency, and which they have a legitimate expectation that they will receive. Changes to policy in these important areas should, I submit, be given effect in primary legislation.

In response to the evidence that the Committee took from British in Europe last week, the Minister said that the Secretary of State could not make regulations that would breach an international treaty, and he offered some reassurances this morning to those who fall within the scope of the withdrawal agreement. However, as British in Europe pointed out last week, the powers in clause 5 mean that Parliament will not be able to properly scrutinise regulations that might breach our international treaty obligations—if not deliberately, then inadvertently.

The Minister also referred to the need to be able to reflect the ongoing negotiations with the European Union, and we heard from Adrian Berry of the Immigration

[Kate Green]

Law Practitioners Association last week about the UK's draft social security treaty, which is an annex to the Government's proposed future trade agreement. Mr Berry highlighted the Government's intention to continue the protection of the European health insurance card scheme for short-term travel and the uprating of old-age pensions, but noted that disability pensions and healthcare attached to pension rights are missing from the draft treaty. He also highlighted the limitations of the new EHIC, which would require those with long-term health needs to get prior authorisation from the UK Government, and that there would be no S2 cover, which enables people to obtain healthcare in the EU that they cannot get on the NHS in the UK. Will the Minister put on the record whether such changes could be introduced using clause 5, and can he confirm which classes of person they can be applied to?

The Government have argued that the use of the powers in clause 5 will be subject to parliamentary scrutiny, through the use of the affirmative procedure. Will the Social Security Advisory Committee have a role in scrutinising regulations introduced under this measure? Does he not in fact accept that changes in this important area require full debate and scrutiny in Parliament, and that the principles of any future policy should be set out in primary legislation?

Finally, clause 5(5) states that EU-derived rights cease to apply if they are "inconsistent" with any regulation made under the section, but the Government are under no obligation to specify where and when such inconsistencies arise. This creates considerable uncertainty for individuals who are affected, for their advisers, and indeed for politicians and the wider public. As we discussed last week on clause 4, such an approach is inimical to good lawmaking. The Government should spell out which parts of retained EU law might be affected by these provisions, and I hope that the Minister will do so in his response.

Stuart C. McDonald (Cumbernauld, Kilsyth and Kirkintilloch East) (SNP): It is a pleasure to serve under your chairmanship again, Sir Edward.

I am grateful to the Minister and to the hon. Member for Stretford and Urmston for setting out the nature of these regulations in quite some detail, and also for explaining why they are hugely significant for a large number of people.

We acknowledge that there is a need for the appropriate authorities to have some powers in this area, but those powers should be focused on making technical fixes rather than providing carte blanche. The powers in the clause are hugely broad. In fact, they are basically without any limit, either in terms of scope or time, and it is worth reflecting on what exactly clause 5(1) says:

"An appropriate authority may by regulations modify the retained direct EU legislation mentioned in subsection (2)."

There is no constraining test at all.

As Adrian Berry argued when he gave evidence last Tuesday, all these clauses should at least have the test of being "appropriate", if not being "necessary", as a qualification. Opposition MPs have been championing the "necessary" test, but the Government have always preferred the test of appropriateness. However, even that is absent from the clause. On paper, therefore, we are creating powers to make inappropriate regulations, which seems quite an unusual concept. More than ever, we need reassurance on what exactly the intended use of these regulations is, and we will look carefully at what the Minister said about that this morning.

I also want to raise an issue on schedule 2, which the Minister also referred to. Schedule 2 sets out who can make use of the powers in clause 5, and I want to flag up an issue in relation to devolution that needs to be addressed. It was flagged up by the Scottish Parliament's Delegated Powers and Law Reform Committee last year in relation to the predecessor Bill. The Committee reported on that Bill precisely because there are implications for some devolved competences around social security.

There are three routes by which the clause's powers could be used in relation to devolved social security competence. First, Scottish Ministers could exercise these powers, sometimes with the requirement to consult UK Ministers, if that were required where a different route was used to achieve the same means. The Committee found those powers acceptable.

There is also a route for joint exercise of the powers, which would be considered where a change is so significant that it would be appropriate for joint exercise and scrutiny. Again, while the Committee sought some clarity on precisely when that route would be used, it supported the idea in principle.

Thirdly, however, there is the route of UK Ministers acting alone, by laying regulations in the UK Parliament that could still relate to devolved competence. The Committee's report says:

"The Committee emphasises that as a matter of principle the Scottish Parliament should have the opportunity to scrutinise the exercise of legislative powers"

by the Executive. However, it notes that the Scottish Parliament has no formal role in relation to the scrutiny of secondary legislation passed by UK Ministers acting alone.

The Committee went on to note that there was silence in relation to the circumstances in which it would be appropriate for UK Ministers to exercise powers in relation to devolved social security acting on their own. It noted that there was nothing on the face of the Bill requiring UK Ministers to seek the consent of Scottish Ministers prior to the exercise of the powers in that way by relevant UK Ministers or the Treasury. It repeated the view that it had provided in relation to the Bill that went on to become the European Union (Withdrawal) Act—that UK Ministers should be able to legislate in devolved areas only with the consent of the devolved Administration, also advocating for a role for the Scottish Parliament in that process.

9.45 am

As far as I can see, the issue raised this time last year has not been addressed in the Bill, which has simply been reintroduced as before. Will the Government comment on that and consider committing to amending the Bill so that there is at least a duty on UK Ministers to consult Scottish Ministers before choosing to exercise the clause 5 powers in relation to devolved social security competencies? I look forward to hearing what the Minister has to say in that regard.

Kevin Foster: I thank hon. Members for their contributions. On the powers under clause 5, the Government have been given clear advice that they are necessary, particularly

when we look at the ongoing negotiations. There are two parties to the negotiations, and the purpose of having a wider scope is to reflect whatever the outcome of the negotiations is. Hopefully, we will quickly be able to implement an agreement, in the same way that we have an agreement with Ireland bilaterally in terms of the co-ordination of social security, given the unique position of Irish citizens in the UK and UK citizens in Ireland, who are considered settled from day one. That is where we are.

One of the examples Opposition Members gave was of those protected by the withdrawal agreement. It is worth noting that this measure looks towards those who arrive after the end of the transition period and starts to look towards changes there, rather than at those who specifically have their rights protected by the withdrawal agreement.

In terms of the scope and whether the powers would be used in a devolved area, the UK Government continue to respect the devolution settlement. We are in discussions —officials certainly are, and I and my colleague in the Department for Work and Pensions wrote to the relevant Scottish Minister last week to set out where we are. We hope to have a legislative consent motion from the Scottish Parliament, but we have also set out what the position is if we do not get an LCM—for the Committee's benefit, the Government would amend the Bill on Report to remove the powers in relation to devolved matters in Scotland.

Fundamentally, the clause is intended to ensure that we can implement powers and make the changes necessary, as outlined, to deliver the specific policy changes that we made clear in our manifesto, particularly around the export of child benefit, and also to ensure that we do not end up in a bizarre position where the UK is trying unilaterally to implement what is meant to be a reciprocal system, should we not be able to get a further agreement or if we have an agreement but are not able quickly and promptly to implement it.

Again, I would point out that using the affirmative procedure means that both Houses of Parliament will scrutinise any regulations and will have the opportunity to block them if they felt they were inappropriate. To be clear, if a Minister made wholly inappropriate regulations, such matters in secondary legislation, unlike primary legislation, can be reviewed in the courts as well.

It is therefore right that we stick with the clause as it is, certainly to ensure that we can implement whatever the outcome of the agreement is, including if we need to look at putting in place a system that reflects the fact that there has not been a further agreement.

Stuart C. McDonald: I just want to clarify whether the Minister would at least consider putting in a requirement that, before UK Ministers exercise these powers in relation to devolved competencies, they would consult Scottish Ministers. A cross-party Scottish Parliament Committee made that recommendation this time last year. It is surely at least worthy of consideration before Report.

Kevin Foster: To be clear, we will continue with our position of respecting devolution in areas of social security, hence the respect we have shown to the Scottish Government by consulting them about the Bill. We have also set out the Government's position, were there not a legislative consent motion from the Scottish Parliament, in the letter we sent last week to the relevant Scottish Ministers. Obviously, separate discussions are going on with the Executive in Northern Ireland.

This is the right process. Parliament still has the appropriate ability to scrutinise how the powers are used and, if it wishes, may block the use of those powers under the affirmative procedure. This is about ensuring clear certainty that we can deliver whatever we can agree with the European Union on, we hope, a continuation of a reciprocal arrangement, which we cannot do if we do not have the powers in the clause. In other areas, powers are more restricted.

These are wide powers, but that reflects the wide range of outcomes that are still possible in the next six months. It is right to have a functioning and effective social security system and co-ordination of it. That is why the Government have brought the power forward in this Bill, as in the previous one. We maintain that the clause and the attached schedules are appropriate to the Bill.

Kate Green: Does the Minister anticipate, in the event of an agreement and treaty before the end of this year, a further piece of primary legislation to give effect to that? If so, would it not be possible at least to encompass the principles agreed into that primary legislation?

Kevin Foster: A lot would depend on the nature of the agreement. If it is part of a wider treaty, we may well see further legislation. However, our understanding is that if we can achieve agreement on this area, we would look to implement it rapidly through regulation, which is why the power is in the Bill. Our priority would be to avoid a situation where something is agreed of benefit to both UK citizens going to live in the European Union and EEA citizens coming to live here, with which we and the European Union are happy, but we are unable to provide that benefit because we are still going through a parliamentary process to implement it. That is why we believe the clause to be appropriate. It allows us to react to circumstances as necessary.

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

The Committee divided: Ayes 8, Noes 5.

Division No. 9]

AYES

Davison, Dehenna	Lewer, Andrew
Foster, Kevin	Pursglove, Tom
Goodwill, rh Mr Robert	Ross, Douglas
Holden, Mr Richard	Sambrook, Gary

NOES

Elmore, Chris	Lynch, Holly
Green, Kate	
Johnson, Dame Diana	Owatemi, Taiwo

Question accordingly agreed to.

Clause 5 ordered to stand part of the Bill.

Schedules 2 and 3 agreed to.

Clause 6 ordered to stand part of Bill.

Clause 7

EXTENT

Stuart C. McDonald: I beg to move amendment 17, in clause 7, page 5, line 13, at end insert—

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

The Chair: With this it will be convenient to discuss new clause 33—*Differentiated immigration policies: review*—

"(1) The Secretary of State must publish and lay before Parliament a report on the implementation of a system of differentiated immigration rules for people whose right of free movement is ended by section 1 and schedule 1 of this Act within six months of the passing of this Act.

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

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

(b) the requirements that could be attached to the exercise of any such power including that the person lives and, where appropriate, works in Scotland, Wales or Northern Ireland and such other conditions as the Secretary of State believes necessary;

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

(i) not be in the public interest, or

(ii) not be in the interests of national security

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

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

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

(a) the Scottish Government;

(b) the Welsh Government;

(c) the Northern Ireland Executive; and

(d) individuals, businesses, and other organisations in the devolved nations."

Stuart C. McDonald: Clause 7 sets out the extent of the Bill, so here we come to how it impacts Scotland and the other devolved nations. Amendment 17 would disapply provisions ending free movement to Scotland. The new clause simply calls for the Government to consult on, and to review, establishing a differentiated set of immigration rules focused on Scotland, Northern Ireland and Wales, and lists a set of issues that we want the UK Government to consult upon. The Government would then report and lay that report before Parliament. There is little here that is too onerous. It is a perfectly reasonable request of the UK Government.

We heard plenty of concern about the implications of the Bill during evidence last Tuesday. It is fair to say that that concern is felt acutely in Scotland and Northern Ireland, but also in Wales and some regions of England. Scotland needs in-migration, and free movement of people has been a significant benefit to that country. The Government's own risk assessments indicate a huge impact on the number of EEA workers who would qualify under the proposed new salary and skills requirements of the new regime. That is before we take into account the visa fees and the red tape, which I regard as ludicrous, that businesses will be bound up in. That has profound implications for Scotland's economy, demographics, public finances and devolved public services.

Scotland's economy relies significantly on small and medium-sized enterprises, which, as we heard last Tuesday, will find the tier 2 system very difficult. Small tourism or food and drink businesses, for example, that have regularly relied on the EU labour market are finding it well-nigh impossible to fill posts domestically. Instead of being able to interview a Portuguese food-processing worker or a Polish hotel worker, there is a significant chance that they will not be able to employ them at all. If they are able to employ them somehow, processes will be very different indeed.

The worker will have to seek entry clearance from their home country, so recruitment practice will have to change. Business will have to shell out for a sponsor licence and possibly on legal advice on how to do all that. The worker will have to pay visa fees plus upfront NHS health surcharges, not just for the main applicant but for the whole family. A skills charge will also be levied. As we heard last week, that could take the costs to the applicant to many thousands of pounds.

Mr Goodwill: I understand the point the hon. Gentleman is trying to make, but would it not attract more people to stay and work in Scotland if it was not the highest-taxed part of the United Kingdom?

Stuart C. McDonald: That is factually not true, so that is the end to that point. If the right hon. Gentleman is referring to the changes to the rate of income tax that we have made in recent years, there is no evidence that they have made a blind bit of difference. In fact, there are more people in Scotland paying less income tax, and that is before taking into account council tax and various other matters, so that point does not arise at all.

It seems that a huge proportion of the burden of all these fees falls to be paid by the individual worker. Realistically, however, why would a Portuguese food-processing worker or a Polish hotel worker pay £10,000 for the privilege of working in Scotland when they face no charge to work anywhere else in the European Union? The lower income tax that we pay in Scotland would be attractive, but it does not outweigh the £10,000-plus they would have to pay just to turn up.

Scotland has become a country of regular net in-migration, largely thanks to the free movement of people. But for in-migration, our population would have again been in decline since 2015—something that is projected into the future, with more deaths than births. Ending free movement risks pushing Scotland back to a future of population decline. Like other countries, our population of older people is increasing. That is not unique to us, but unlike other countries, in the UK in particular, our working-age population will rise only fractionally in the years ahead, according to various projections.

That brings us to the issue of public finances and devolved public services. There has been a welcome devolution of tax-raising powers in recent years, to which the right hon. Member for Scarborough and Whitby referred. However, with those tax powers now in place, the problem is that we are suddenly seeing the tax base shrunk by immigration policies. That has a direct impact on income tax receipts and also on the economic growth and tax revenue that companies' VAT.

10 am

Decisions on immigration policy also have a profound impact on devolved public services, on international students, on international recruitment for the NHS and social care, on international recruitment of academic staff and on various other areas. All that is a potent combination of factors that deserves much more Government recognition than it has received up until now. In fact, if anything, Home Office engagement on these issues seems to have gone backwards rather than forwards. The former Home Secretary, the right hon. Member for Bromsgrove (Sajid Javid), was publicly very open to the idea of somehow recognising regional differences in the immigration system. The right hon. Member for Romsey and Southampton North (Caroline Nokes) at least kept things under review—although that phrase seems to have become almost meaningless in the Home Office in recent days. At least she worked closely with the devolved Governments and regularly met with them.

I am not sure what has driven it, whether it is the Home Office, the Scotland Office or No. 10, but engagement now seems to have been reduced to almost nothing. All we get back is a soundbite that the Government are building a system that works for all the UK. The question that nobody bothers to explain is, how is the immigration system working for Scotland? As I said the other day, nobody in their right mind would propose this system if they were designing an immigration system for Scotland alone.

The Scottish Government's expert advisory group on migration has produced a series of papers on this subject with a whole host of possible options. These are not made up on the back of an envelope. The group's members include experts in the field. Other experts have prepared similar papers independently. Last week, the Committee heard oral evidence from Ian Robinson of Fragomen, a leading international legal practice specialising in immigration law. As I said then, Mr Robinson had previously worked at a senior level developing Home Office policy. My colleagues and I asked him and his firm to look at international experience and to assess what options might be open to the UK to provide a degree of flexibility to Scotland. He prepared a report learning from Canada, Australia, Switzerland and New Zealand. Again, a whole host of options was put forward based on international experience. That report is publicly available.

Douglas Ross (Moray) (Con): Another report that is publicly available is the SNP's White Paper ahead of the 2014 independence referendum in Scotland. Will the hon. Gentleman outline the proposals for immigration in that policy?

Stuart C. McDonald: I have no problem in outlining the paper. This point was got up on Twitter, as if it was a gotcha for the SNP. In that White Paper we advocated a points-based immigration system for those coming from outside the EEA, but we also advocated for the free movement of people. *[Interruption.]* The Minister looks as if I have been caught in some sort of trap. I am perfectly happy to support a points-based system for Scotland for people coming from outside the EEA. That is not a problem at all. But there are points-based systems and there are points-based systems. *[Interruption.]* People are chuckling away as if I am talking nonsense, but the Canadian points-based system is significantly different from the points-based system in Australia. The system proposed by the UK Government is barely a points system, and if hon. Members speak to anyone who knows the first thing about immigration law policy, they will say that there is barely a resemblance. Despite all the rhetoric, there is a tiny resemblance between what the UK Government are proposing and what the Australian points-based system is proposing.

On the issue of flexibility and regionality, the Australian points system includes some variation to take account of the different needs of different provinces. If the Australian points-based system is so wonderful, why has it not been replicated in any meaningful sense by the UK Government, including in respect of regional flexibility? Yes, the 2014 White Paper did refer to a points-based system for people from outside the EU—one that would be tailored for Scotland's circumstances, not one that is completely inappropriate for it.

Ian Robinson and Fragomen, leading international practitioners, looked at the example of Canada, Australia, Switzerland and New Zealand and put forward a whole host of possible options. As they said last week, one of those options would be simply to allow the free movement rules to continue to apply in Scotland. If a hotel in the highlands of Perthshire is recruiting, it can continue to recruit from the EEA just as it does now.

However, there is a huge range of possibilities, from more radical suggestions, such as retaining free movement, all the way down to tailoring the points-based system to suit Scotland's needs. That brings me to a very modest suggestion that I am bound to bring up; it is a suggestion from my hon. Friend the Member for Na h-Eileanan an Iar (Angus Brendan MacNeil) that I think he may have raised directly with the Minister. It is simply to ensure that points are awarded in this system for Gaelic language skills as well as for English.

This is not just about Scotland, however. The challenges in Northern Ireland will also be unbelievably acute and perhaps even more so, given the land border that it shares with a country not only where businesses benefit from free movement of people, but that runs a completely independent immigration system, tailored to meet its own needs, while still being part of the common travel area. Business in Northern Ireland may face thousands of pounds in immigration fees just to try to attract the very same people who, a few miles down the road, could take up the position totally free of cost and bureaucracy. Merely saying that this system will work for all of the UK does nothing to address that problem.

Even if the Government do not want to properly engage in debate and discussion with SNP MPs or Ministers in the Scottish Government, I urge the Minister to listen to and engage with other voices who are speaking out on this issue. Businesses, business groups, think-tanks, civic society, universities and public sector organisations are all hugely concerned about it. The Minister just needs

[Stuart C. McDonald]

to do a Google search for commentary in Scotland and Northern Ireland in particular on their response to the Government's most recent proposals.

Mr Goodwill: Is the hon. Gentleman aware that figures released only this morning show that the unemployment rate in Scotland is now the highest in the United Kingdom, at 4.6%, compared with a UK rate of 3%? That means that unemployment has risen by 30,000 to 127,000. Does he not think that those are the sort of people we should be getting into jobs in Scotland and that we should not be looking to the EEA to provide the people?

Stuart C. McDonald: The economic impact of coronavirus is of course a tragedy, and every lost job is an absolute tragedy as well. Yes, of course we will focus our efforts on ensuring that people are back in work as soon as we can do that, but we cannot design our immigration system for the next decades based on this calamity. If the only reason Conservative Members can come up with to support this system being implemented in Scotland is that we are going through a pandemic, that is pretty farcical, given that these proposals have been in existence for the last few months, so no, I do not accept that it is any reason for shying away from the points that I am making. The system will cause huge long-term damage to Scotland's economy and Scotland's public finances. It is not just me saying that; a whole host of organisations have real concerns.

Again, I am not expecting the Government to do a 180-degree U-turn today, but I do want at least some recognition that there are genuine issues that require more than just our being told that this system will somehow work for Scotland, Northern Ireland or any other devolved nation.

Brendan O'Hara (Argyll and Bute) (SNP): It is a pleasure to serve under your chairmanship again, Sir Edward. Although the United Kingdom's population is projected to rise by about 15%, it is reckoned that the population of our rural areas, including my own constituency of Argyll and Bute, will fall by as much as 8%. The situation is absolutely unsustainable because, despite Argyll and Bute being an exceptionally beautiful part of the world, we have an ageing and non-economically active population and our young people leave to spend their economically productive years outside Argyll and Bute.

To give credit to the council and to the Scottish Government, they are doing what they can to make Argyll and Bute a place that young people do not feel that they have to leave before coming back to retire—many of them do—but before that long-term goal reaches fruition, a cornerstone of Argyll and Bute Council's plan for economic regeneration was predicated on continuing access to EU nationals and attracting them into the area. Regrettably, and through no fault of our own, that option has been taken from them; and the UK Government, having taken that option from them, now have a responsibility to provide a solution that will help those areas suffering from depopulation to recover. It is becoming increasingly clear that a major part of that would be the introduction of a regional immigration policy similar to that which works in Canada, Australia, Switzerland and other countries, and one that reflects the different needs of different parts of the country. There is no reason, other than political will, why that cannot happen here.

Douglas Ross: Does the hon. Gentleman therefore suggest that if we had an independent Scotland, with its own immigration system, there would be a regional variation between Argyll and Bute and Edinburgh?

Brendan O'Hara: Ultimately, that would be a decision for any incoming Scottish Government to make.

Douglas Ross: What does the hon. Gentleman think?

Brendan O'Hara: Personally, I think that the greater devolution of power, as widely as possible across any nation state, is an exceptionally good thing. Anything that can attract people to come, live, work, invest and raise families in our rural communities must be looked at and broadly welcomed. It was broadly welcomed in the recent Migration Advisory Committee report, which said:

> "The current migration system is not very effective in dealing with the particular problems remote communities experience. If these problems are to be addressed something more bespoke for these areas is needed…The only way to address this question in the UK context would be to pilot a scheme that facilitated migration to these areas, then monitor what happens over several years and evaluate the outcomes."

As my hon. Friend the Member for Cumbernauld, Kilsyth and Kirkintilloch East said, that idea was welcomed by the right hon. Member for Bromsgrove in a ministerial answer on 23 July 2019, where he accepted the need for the development of a pilot scheme. To date, there has been very little movement and we fear that there has been backtracking by the UK Government about what they plan to do next about setting it up.

The Minister knows that the Scottish Government stand ready to work with him to design and develop a solution that is tailored to meet Scotland's needs. I can tell him that if the MAC is willing to provide the advice, and the Scottish Government is minded to follow that advice, then Argyll and Bute is prepared to put it itself forward as a pilot area for such a scheme. I spoke yesterday to the chief executive of Argyll and Bute Council, Pippa Milne, who confirmed that the council would be happy to work with the UK Government and the MAC to see how a bespoke regional immigration system would work in practice. Will the Minister act on the MAC recommendation, which was supported by the former Home Secretary, and help Scotland to fight the curse of depopulation?

Holly Lynch (Halifax) (Lab): It is a pleasure to serve under your chairmanship once again, Sir Edward. I will briefly outline our position on amendment 17 and new clause 33. We are entirely sympathetic to amendment 17 for the reasons that have just been outlined, seeking to protect Scotland from the impact of this hard stop on free movement without a plan for mitigating the effects on key sectors. On more rural areas, our focus will continue to be on finding a solution for the whole of the UK rather than just Scotland. We understand that the Scottish National party has not given up on its aspiration of independence for Scotland, but I am afraid that that is where our parties diverge. To have an immigration

system for Scotland that is different from that of the rest of the UK without that broader sense of a more regional approach affecting every area of the UK would open a raft of further questions around the management of that system and the means of enforcing it geographically. We say this in the spirit of loving Scotland and wanting it to stay and prosper as part of the United Kingdom. On that basis, we cannot support amendment 17.

We welcome the approach behind new clause 33 in principle, but again feel that it misses the opportunity to consult with the English regions as part of the process. Richard Burge of the London chamber of commerce said in last week's evidence session that the MAC was slow and unwieldy. He said that it needs

"to involve business much more directly and that, it is hoped, will enable it to be much more responsive".—[*Official Report, Immigration and Social Security Co-ordination (EU Withdrawal) Public Bill Committee,* 9 June 2020; c. 12, Q18.]

Frustration with the MAC and a genuine and well-founded scepticism that, without radical reform, we would not be able to respond in anything like realtime to emerging workforce issues and skill shortages was a recurring theme in the evidence session and has been throughout our engagement with stakeholders ahead of the Committee. With this in mind, we are inclined to agree that one way of making immigration rules and shortage occupation lists more responsive would be to grant the devolved Administrations a greater say.

As I have already said, however, the glaring omission in new clause 33 is that it does not propose to consider the needs of the English regions in quite the same way. As a Yorkshire Member, it would be remiss of me not to reflect on the fact that the population of Yorkshire is comparable to, or greater than, those of the devolved nations. We hope that a report of the kind outlined in new clause 33 might take into account our needs and those of other regions, alongside those of the devolved Administrations. As a party, we will be looking to review the MAC and the shortage occupation list process in their entirety, shaping our own proposals for transformation in due course. On that basis, we broadly support new clause 33, but we will be shaping our own proposals in the coming months.

10.15 am

Kevin Foster: I am grateful to the hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East and his hon. Friends for tabling the amendment and new clause. Having said that, there was a certain predictability about them given the SNP's aim of separating our United Kingdom and wish for borders to be created across this island.

I turn to some of the more specific points. I have had direct contact with the hon. Member for Na h-Eileanan an Iar. He is very passionate about the Gaelic language and the role it plays in contemporary life. I have also had representations from Ministers and Members in Wales about the strong role that the Welsh language plays in our culture today, enriching our Union as a whole. Certainly, we will see what we can do to incorporate Welsh, Irish and Gaelic into our migration system. It is probably worth noting that the vast majority of fluent speakers of those three languages are either citizens of the United Kingdom or the Republic of Ireland, and therefore effectively not subject to migration control; they have rights to live and work within the United Kingdom and settle in any part of it they choose.

It was interesting to hear the comments of the hon. Member for Halifax, my Labour shadow, about how separate systems would be enforced. Like me, she does not want to see an economic version of Hadrian's Wall between England and Scotland, although I recognise that others on the Committee perhaps do.

We are looking at how to make the Migration Advisory Committee's role responsive and how it can choose some of its own reports—we will come on to that when we discuss some of the new clauses. The issue is not purely about a commission. I am thinking particularly about how the MAC can send out a more regular drumbeat of reviews, and commentary on reviews, for the shortage occupation list. That should fit in with our wider labour market policies rather than being considered apart from our skills and training policies. I hope we can find some sensible consensus on that.

The MAC has launched its call for evidence for the shortage occupation list and the advice that it is going to give Ministers about the new points-based system. I hope people will engage with that; there is certainly good strong engagement from many businesses. It would be good to see the Scottish Government promote the idea that businesses in Scotland should be getting involved and positively engage in the process—not least given that the MAC has indicated its intention for there to be shortage occupation lists for each of the four nations of the United Kingdom. It will probably not be a great surprise if many of those are very similar, given the similar types of skill shortages across the United Kingdom.

I was interested to hear the comments from the hon. Member for Argyll and Bute, in particular the idea that we could start having immigration policy for individual council areas. That is interesting. It is worth saying that the MAC suggestion was about remote areas. We both went to see the first HM naval base on the Clyde, in his constituency; as he knows, he is not exactly remote from the vibrant heart of culture and economy that is Glasgow—that is rather different from the concept of, let us say, eastern and western Australia in terms of distance.

I will be very clear: a range of powers is available to the Scottish Government. If the same pull factors that created the challenges today still exist, this look into the migration system is not going to provide a solution. With other Members from Scotland, including my hon. Friend the Member for Moray, we have looked at the fact that there is a determined drive—luckily, the Scottish Government have the powers around economic development—to create those strong opportunities in communities. Ultimately, if we create a migration opportunity but the pull factors are still there and have not been addressed, the situation will become a revolving door. That is why we have to look at those core issues first—why people are moving out—and not just look to a migration system as a magic bullet for those problems.

Brendan O'Hara: At the risk of giving a geography lesson, I point out that when the Minister visited Argyll and Bute he visited the easternmost tip of the constituency, nearest to Glasgow. The constituency spreads over 7,500 sq km, has 26 remote island communities and is not part of the vibrant central belt hub. That is why it and many other areas of the highlands and islands of Scotland need a bespoke solution. The problems we face in Argyll and Bute are not those that many large conurbations in the United Kingdom face. There is a need to recognise that.

Kevin Foster: Perhaps the point has been made, then, that this is not about having an immigration system based on a council area, but about having one for an area smaller than that of a council. I think that that would lead to confusion, with multiple areas.

There are many issues across large stretches of the highlands, and also rural parts of the rest of the United Kingdom. The fact that there are challenges in ensuring that younger people in particular have opportunities, and options to stay, is a facet of the issue that is not unique to parts of Scotland. However, if we do not deal with the core issues, most of which fall under the remit of the devolved Administration in Edinburgh, those pull factors will still exist, and the migration system is not a magic cure for them.

Stuart C. McDonald: It is a question of having strategies in place to address the challenges, but I want to pin the Minister down on the question of the remote areas pilot. That is a recommendation from the MAC. Can the Minister say categorically that this morning he is ditching it, and that there will not now be a remote areas pilot scheme? That would be really bad news.

Kevin Foster: We made it clear in the policy statement that we put out in February that we were not planning a remote areas pilot. Again, the thing that we must focus on is that many of the pull factors exist. It is within the competence of the Scottish Government to deal with those issues, and to create something and tackle them.

I have seen how Members of Parliament in the north-east of Scotland, including my hon. Friend the Member for Moray and my hon. Friend the Under-Secretary of State for Scotland, the Member for Banff and Buchan (David Duguid), are pushing for the creation of those economic opportunities that they want in parts of rural Scotland. Perhaps the one hope that we have on this point is that there is a Scottish Parliament election coming next year. I hope that there will be a more business-focused, opportunity-based Administration in Edinburgh, which will be focused on developing Scotland, not separating it.

Douglas Ross: I agree wholeheartedly with the Minister's point about the number of factors that are within the remit of the Scottish Parliament and on which the Scottish National party Government of Scotland have failed.

We have heard from SNP Members that they want their own immigration system. Indeed, the hon. Member for Argyll and Bute said that they would design and tailor one. Does the Minister share my concern that we heard similar reassurances from the SNP Scottish Government about social security—yet they had to tell the UK Government that they could not take those powers because they could not implement the changes quickly enough in Scotland?

Kevin Foster: My hon. Friend, as always, hits the nail straight on the head with his arguments. Yes, we had many demands for devolution of policy, but then the Scottish Government did not want to take them up. Suddenly there was a new group of Unionists wanting the United Kingdom Government to deal with something in Scotland.

Stuart C. McDonald: Will the Minister do us the favour of explaining how his immigration policies will make the challenges easier rather than harder for Scotland?

Kevin Foster: The first thing that our immigration policy will do is provide a points-based system on a global basis, based on RQF3 and on having a shortage occupation list. Businesses in Scotland can recruit globally on that basis. Also, we can look at the first reform, which we have already carried out—a route that I was pleased to launch in Glasgow. I have seen it at first hand—the best talent being brought into our universities, and particularly into the University of Glasgow. Under that system, on a global basis, teams can be recruited to tackle and research some of the most challenging questions that mankind faces. On the occasion in question the issue was tackling malaria, and the huge impact of that.

Those are the sorts of benefits we want: high value and high skill—the attractions are there. It is a vision for Scotland, whose natural beauty is second to none, based on skills and the attractiveness of a high-skill, high-value economy—not on saying that the main thing Scotland's economy needs is the ability to put more people on the minimum wage on a global basis.

Stuart C. McDonald: The Minister mentions his visit to Glasgow all the time. While he was there, did he speak with Universities Scotland, which is among the organisations that has spoken out in favour of a differentiated system? This is not just coming from the SNP. The Minister has also spoken about the benefits of his new system, but his own risk assessment says that it will cause levels of immigration to Scotland to fall. How is that in Scotland's interests?

Kevin Foster: We engage strongly with partners, particularly our high-compliance Scottish universities that are sponsors of tier 4 visas. We very much welcome the contributions they make, as well as those that they make as part of wider groups, such as the Russell Group, that operate on a UK-wide basis.

There are two visions, I suppose. There is one that my hon. Friend the Member for Moray and his colleagues from Scotland bring us: a high-productivity, high-value Scotland, an attractive place to live with a thriving economy, recruiting on a global basis. Then there is the Scotland that the Scottish National party brings us; the only reason someone would go there would be to pay low wages or recruit at, or near, the minimum wage on a global basis. That, to me, is not a particularly inspiring vision.

Many of the powers to deal with the pull factors that lead to depopulation in rural areas are already in the hands of the Edinburgh Administration. As with so many other things—this has been touched on in relation to social security—it is time to see the Scottish National party getting on with the job of governance, rather than the job of grieving or looking to separate the United Kingdom.

The hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East will not be surprised to hear that the Government's position has been made very clear on this issue, but I will briefly set it out again. Immigration and related matters, such as the free movement of persons from the EU, are reserved matters, and the immigration

aspects of the Bill will therefore apply to the whole United Kingdom. The Government are delivering an immigration system that takes into account the needs of the whole of our United Kingdom and works for the whole of it, not for the political needs of those whose goal is its separation.

We do not believe that it would be sensible, desirable or workable to apply different immigration systems in different parts of the United Kingdom, and the independent Migration Advisory Committee has repeatedly advised that the labour markets of the different nations of the United Kingdom are not sufficiently different to warrant different policies. That was an independent report—the type that people seem to want, but then do not seem to want to listen to.

Stuart C. McDonald: Will the Minister give way?

Kevin Foster: No, I have given way many times. As we heard in the evidence sessions, the simplistic argument saying that Scotland is different from England for political reasons ignores the variation within Scotland itself, given the strength of the economy in Edinburgh compared with the economies of more rural areas.

I do not propose to address new clause 33 in detail; as I say, we have seen the MAC's conclusions on this issue. The Government's objection is one of principle: immigration is, and will remain, a reserved matter. We will introduce an immigration system that works for the whole of our country and all the nations that make up our United Kingdom by respecting the democratically expressed view of the people in the December 2019 general election and the 2014 vote of the Scottish people, which rejected separation. Both Alex Salmond and Nicola Sturgeon used the phrase "once in a lifetime" or "once in a generation" about that vote; now, only six years later, we see how short a generation has become. Free movement will end on 31 December, and we will introduce a points-based immigration system that ensures we can attract the best talent from around the world to Scotland, based on the skills and attributes they have, not where their passport comes from.

It will come as no surprise that SNP Members and I will have to agree to differ, as we regularly do on issues that relate to the constitutional future of Scotland. I obviously hope that the hon. Members for Cumbernauld, Kilsyth and Kirkintilloch East and for Argyll and Bute and the hon. and learned Member for Edinburgh South West will withdraw their amendments—although I have a sneaky feeling that they may not—and I particularly hope that others on this Committee who have also voiced their opposition to separatist politics will join the Government in opposing these amendments if they are put to a vote.

Stuart C. McDonald: I sort of thank the Minister for at least making a contribution, but I have to say that, having shadowed about six or seven immigration Ministers for five years, I think that is probably the most regrettable speech I have heard from any of them at any time; the second most regrettable was the one the Minister made during the Opposition day debate a few months ago. It might play well with some MPs in this place, but I watched the faces of some Scottish Conservative MPs that night, and they were not impressed.

The Minister is speaking not just to the SNP, but to business groups and public service organisations—a whole host of concerned organisations in Scotland. He might get away with it in this Committee, but he cannot really get away with dismissing their concerns as "nationalist nonsense" or "separatist rubbish". These are very serious people with very serious concerns about the implications of his Government's migration system for Scotland. It seems to be not so much a case of, "We hope it will be all right on the night", but one of, "We don't care—stuff you!"

10.30 am

There was not a word about Northern Ireland, for example, where similar concerns are felt. There is the issue of a land border with a country that has free movement of people and a completely different immigration system. Employers on the other side of the border will have a huge advantage compared with employers in Northern Ireland.

I absolutely regret what we have just heard. We will have to go back to stakeholders in Scotland and say, "We have pushed for years on end, perfectly reasonably; we have prepared report after report, instructed experts, received expert advice and put out a range of options. All that has been rejected." They will know that the only way they will ever see immigration powers in Scotland is through independence.

The Minister may want to chastise the Scottish Government about whether they are governing well, but they are in fact doing a pretty good job—and that is reflected in the opinion polls, which last time had us at 52%. I am quite comfortable to go to the country in the Scottish Parliament elections next year on that platform.

As I say, I very much regret the debate we have had this morning, and will be putting amendment 17 to a vote.

Question put, That the amendment be made.

The Committee divided: Ayes 2, Noes 14.

Division No. 10]

AYES

McDonald, Stuart C.	O'Hara, Brendan

NOES

Davison, Dehenna	Lewer, Andrew
Elmore, Chris	Lynch, Holly
Foster, Kevin	Owatemi, Taiwo
Goodwill, rh Mr Robert	Pursglove, Tom
Green, Kate	Richardson, Angela
Holden, Mr Richard	Ross, Douglas
Johnson, Dame Diana	Sambrook, Gary

Question accordingly negatived.

Clause 7 ordered to stand part of the Bill.

Clause 8

COMMENCEMENT

Amendment proposed: 12, in clause 8, page 5, line 40, at end insert—

'(4A) Section 4 and section 7(5) expire on the day after the day specified as the deadline under section 7(1)(a) of the European Union (Withdrawal Agreement) Act 2020."—*(Holly Lynch.)*

Question put, That the amendment be made.

The Committee divided: Ayes 7, Noes 9.

Division No. 11]

AYES

Elmore, Chris	McDonald, Stuart C.
Green, Kate	O'Hara, Brendan
Johnson, Dame Diana	Owatemi, Taiwo
Lynch, Holly	

NOES

Davison, Dehenna	Pursglove, Tom
Foster, Kevin	Richardson, Angela
Goodwill, rh Mr Robert	Ross, Douglas
Holden, Mr Richard	Sambrook, Gary
Lewer, Andrew	

Question accordingly negatived.

Stuart C. McDonald: I beg to move amendment 11, in clause 8, page 5, line 41, leave out subsection (5) and insert—

'(5) This Part of the Act shall not come into effect until a Minister of the Crown has laid a report before each House of Parliament setting out the impact of this Act on faith communities in the UK.

(6) A report under subsection (5) must consider in particular the ability of members and representatives of faith communities from the EEA and Switzerland to enter the UK for purposes related to their faith.

(7) A Minister of the Crown must, not later than six months after the report has been laid before Parliament, make a motion in the House of Commons in relation to the report.

(8) In this section,

"faith communities" means a group of individuals united by a clear structure and system of religious or spiritual beliefs."

This amendment requires the government to report to Parliament on the implications of this Bill for faith communities, including the ability of members of faith communities to come to the UK for reasons connected with their faith.

Some 18 months or so ago, the then Minister of State for Immigration issued a written statement announcing changes to immigration rules. Apparently, those changes were to ensure that ministers of religion could no longer apply for a tier 5 religious worker visa; instead, they would have to apply for a tier 2 minister of religion visa. As I understand it, that was done because of a fear at the Home Office that people were coming in under the tier 5 visa route and leading worship while not having the level of English that the Home Office decided would be necessary to perform such a function. The explanatory memorandum said:

"The Immigration Rules currently permit Tier 5 Religious Workers to fill roles which 'may include preaching, pastoral work and non-pastoral work'. This allows a migrant to come to the UK and fill a role as a Minister of Religion without demonstrating an ability to speak English."

For some reason, the Home Office also decided to introduce a cooling-off period. The explanatory memorandum said:

"The 'cooling off' period will ensure Tier 5 Religious workers and Charity Workers spend a minimum of 12 months outside the UK before returning in either category. This will prevent migrants from applying for consecutive visas, thereby using the routes to live in the UK for extended periods, so as to reflect the temporary purpose of the routes better."

I have been in discussions with representatives of the Catholic Bishops' Conference about migration to both Scotland and England. They tell me that most Catholic dioceses previously used tier 5 religious worker visas for priests to come here on supply placements while parish priests were away for short periods because of sickness, training or annual leave. Those supply placements were essential, as they allow Catholics to continue attending mass while keeping parish activities running smoothly. That allows the parish to continue to function while the parish priest is off through illness, going on a retreat or accompanying parish groups on outings, or even just taking a holiday.

A supply placement priest will lead the celebration of holy mass, including the celebration of the sacrament of marriage. He will lead funerals, including supporting bereaved family members, and visit the sick and elderly of the local community. In an age when social isolation and loneliness are increasing, the parish is a place where people can gather as a community to support one another and engage in friendship. It is not just about worship, but about the community hub that the church provides by offering spiritual and practical help and supporting the sick, the elderly, the needy and the vulnerable.

Mr Goodwill: In my own constituency there is a Coptic Christian community; it is a closed order, so they do not preach. The system already works very well for non-EEA residents. Is the hon. Gentleman suggesting that, if we do not extend the scheme to the EEA, there will be barriers for people coming to the UK in the way that he describes?

Stuart C. McDonald: I will come to that point in a minute. In short, the point made to me by the Catholic Church and other faith groups—we had a debate on this issue in Westminster Hall around the time of the changes—is that, actually, the system for non-EEA nationals used to work but does not work now, precisely because of the changes that the Home Office made 18 months or so ago.

The system is much more expensive now, and it is beyond most parishes' ability to pay the fees for ministers to come in and lead worship. If they come in under tier 5, which is the much cheaper option, they are no longer allowed to lead worship or whatever else. They can perform a range of functions, but not the ones that are really needed, including leading worship.

The issue is already a problem now and it will be made infinitely worse, because at the moment parishes can still rely on priests or other leaders coming from the EEA. They do not have to pay for the expensive tier 2 visa; they can just come in under the free movement of people. When free movement comes to an end, the same regime will apply and parishes will have to pay all sorts of fees, even to have priests come in from France, Italy, Poland or wherever else. They are not looking forward to that prospect at all.

As I was saying, visiting clergy not only allow the local community to continue to function, but benefit and enrich the whole community, as the community gains from cultural exchange and from sharing the knowledge and experience of priests from other parts of the world. They educate new communities about life in their country, and they open up avenues for local parishes to support communities in need. What was most surprising about the changes was that, as far as the SNP was

aware, there had been no problems with visas for the Catholic Church or any of the other faith organisations that made use of the tier 5 route. The new requirement introduced in 2019 for anyone preaching to use tier 2 minister of religion visas has instead more than doubled the costs incurred by parishes arranging supply cover. For some parishes that is unsustainable, compromising people's opportunity to practise their faith.

Furthermore, they point out that seminaries conducting formation in English are not necessarily recognised by the Home Office as meeting the English requirement under the tier 2 route, meaning that many priests educated to postgraduate level in English are nevertheless required to take a language test, with the extra logistical and cost implications. The new arrangements more than double the costs, making supply cover essentially unaffordable. I have heard directly from religious leaders in my constituency that that is the impact of those arrangements. Unless reforms are made, the situation will be worsened by the end of free movement, as I said in response to the intervention from the right hon. Member for Scarborough and Whitby (Robert Goodwill). I simply ask the Government to engage with faith communities about the challenges that this is causing them to face, and to see if we might be able to come to a solution that makes these sorts of arrangements continue to function in the years ahead.

Brendan O'Hara: As my hon. Friend said, the tier 5 religious visas were operating perfectly smoothly for the many Churches and religious organisations that relied on them until these unexpected changes were made. Catholic parishes throughout the UK—including my own in the Archdiocese of Glasgow—regularly used these visas as routes for priests to come to the UK on supply placements.

The changes that came into force in January are already causing something of a headache for a whole host of religious organisations that require clergy to visit to cover for periods of illness, holiday, religious retreat, or when priests or other clergy are away on pilgrimage. This is a time of a crisis in vocation, clergy are becoming increasingly elderly, and more and more parishes and dioceses are turning to priests from outside the UK to cover such absences, sicknesses and holidays, so it beggars belief that the measure would have been introduced in this way.

It is important that the Minister realises that the tasks of a parish do not stop when the existing or resident priest falls ill, or goes on a well-earned holiday or retreat. As pointed out by my hon. Friend the Member for Cumbernauld, Kilsyth and Kirkintilloch East, the church is more than just a place of worship, it is also a community hub providing both spiritual and practical support to the sick, elderly and vulnerable, as demonstrated by the great work of a number of organisations including the Society of Saint Vincent de Paul. The Bishops' Conference of Scotland has been clear in saying that much of the positive work done in and around Catholic parishes which engenders that sense of community is being seriously undermined and compromised by these changes. The Home Office has to understand and recognise the benefits of allowing priests from other parts of the world to come in on a tier 5 visa. They enrich the whole community. It is a cultural exchange, it is a share of knowledge, a share of experience by priests and clergy from other parts of the world.

It is not just the Catholic church. Indeed, the Church of Scotland is on record as saying that it opposes the measure. Many of us are confused as to why these changes were deemed necessary. What grave issue has arisen that needed to be addressed in such a draconian fashion? The Scottish bishops said that for years they had sponsored priests through the tier 5 process, and they are completely unaware of any abuse of the system whatever. For years, priests came here, they worked and preached in Scotland and across the UK, and then returned home. Indeed, 25 years ago this summer at St Helen's church in Shawlands in Glasgow, Father Stephens from Malawi was the celebrant who married me and my wife, rather successfully I am happy to report. But the question remains: why did this have to happen? What was the motivation behind it? Can the Government not see the harm they are doing to our religious communities, and can they not act to stop it?

Finally, exactly a year ago in a debate on that in Westminster Hall, my hon. Friend the Member for Glasgow North (Patrick Grady) invited UK Ministers to meet the Bishops' Conference of Scotland. Did Ministers take up that invitation? Did that meeting ever take place and, if it did, what was discussed and what outcomes were agreed? If it never took place, why not?

10.45 am

Kate Green: I support the sentiments expressed by the hon. Members for Argyle and Bute and for Cumbernauld, Kilsyth and Kirkintilloch East. There have been considerable benefits to our faith communities from their ability to take advantage of freedom of movement and welcome EEA nationals into their communities. Faith communities, especially Churches of all denominations, have congregations with many EEA nationals among their membership and they are also often individuals who act as pastors, counsellors, youth workers and musicians.

As we have heard, many faith organisations have needed EEA nationals to cover short-term or sometimes longer-term appointments into leadership positions. That is especially true in areas where it has been hard to recruit. Free movement has also allowed faith communities some flexibility in terms of shared mission work, with UK nationals working overseas, undertaking mission trips, musicians performing in Europe at faith-based events or running camps and youth conferences. Faith communities have been able to bring EEA speakers and volunteers to help communities and to run events without the associated costs and rules around visitor visas and the tier system.

There will be a number of consequences for those communities as a result of the loss of free movement. First, while many faith groups have been effective in pointing their members to the EU settlement scheme where that is relevant, uncertainty remains about the scheme, what it means for families, for continuity of residence and for faith communities who are trying to keep people in their communities.

Faith communities looking to employ or to bring in volunteers from the EEA will now have to navigate the tier system, as they would for non-EEA nationals. As we heard, that brings complexity. With the greatest of respect to the right hon. Member for Scarborough and Whitby, I do not think it is the case that all faith

[Kate Green]

communities have found that an easy system to navigate or to get the relevant approvals. There are also significant additional costs for sponsorship licences and visas. Indeed, it will not be cheap, especially when we include the additional NHS surcharge. A religious worker will be able to stay for up to two years. The cost for a one-year visa before administration costs is around £244, plus the NHS surcharge of £624, added to that the sponsorship licence fee and associated costs. On top of that, the community will have to fund any dependant costs and may also be providing the cost of flights, accommodation and training for the religious workers, and sometimes a small stipend. For smaller faith communities, that starts to become a very significant expense.

Many faith communities that rely on overseas workers tend to be found in the poorer parts of the UK. Poorer communities and poorer congregations are part of a poorer overall landscape and so the faith organisation itself will be less well resourced. It cannot draw on a wealthy congregation. That has a particular impact on smaller denominations and diaspora Churches, which will find that the loss of free movement will mean that poorer communities, who could benefit most from additional pastoral support, will feel the impact the harshest.

Proof of savings is difficult for some orders, which have vows of poverty, making it difficult for individuals to prove they can sustain themselves even if the order will cover all their living arrangements. If a person is needed quickly to cover a gap—the hon. Members for Argyle and Bute and for Cumbernauld, Kilsyth and Kirkintilloch East talked about the potential absence of a priest for a range of personal reasons—the procedure will now mean that there will be delay in bringing in that cover. I am not talking here about roles that fall short of being a full minister of religion, but there are roles that will still involve some level of religious duty. For example, there continues to be uncertainty about those coming in to work with children, and about pastoral work and preaching, and an understanding of the definitions of what those roles encompass, which is a particular issue with some particular faiths of particular traditions.

There is also a concern, as I have said, among faith communities that bring in musicians who may be self-employed and who may work in multiple settings. As the hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East pointed out, seminaries that conduct formation in English are not necessarily regarded as meeting the English language requirement.

I hope the whole Committee will agree about the benefits of facilitating religious workers to come in to support our faith communities. In that spirit, I will ask the Minister a number of questions. What assessment have the Government made of the level of upscaling needed in the Home Office to process additional sponsorship licences for the purposes of ministers of religion or religious workers, or charity workers and faith communities, due to the removal of free movement?

Echoing the hon. Member for Argyll and Bute, what conversations are the Home Office having with faith groups regarding preparation for the immigration system that will affect them post-December? What help will be provided with regard to navigating sponsorship licences and understanding the costs that faith communities will have to meet?

At times, non-EEA nationals who have wanted to come to the UK for a short-term conference or to speak at an event have been denied visas; I have seen that in my own constituency. What assurance can the Minister give to faith communities that EEA nationals entering the UK for a conference or event for short-term study will not be restricted from doing so, and that appropriate decision-making will take place?

Will the Minister commit to reviewing the definitions of "minister of religion" and "religious worker", and actively consult a wide variety of denominations and faith communities? What will the Home Office do to improve faith literacy among decision makers? I have to say that the asylum system has not given me much confidence that religious literacy in decision-making is where it needs to be.

What assessment have the Government made of the impact on creatives, such as musicians used by faith communities? Will they still be able to come to the UK? Will those in a different visa route be able to transfer if they take on a role in a faith community? For example, could someone who has arrived in the UK as a student transfer routes if they become a religious worker? Will it be possible for individuals to come to the UK as volunteers in faith communities and, if so, what restrictions will be applied to their activities? What discussions have the Government had with faith communities about their responsibility to carry out right-to-work checks?

This is an important issue for an important element of all our communities. I do not think the Government intend the impact of the removal of free movement to harm the operation of our faith communities, but the changes will cause real difficulties across a range of faiths, and particularly in those communities that most need the support that visiting religious workers can provide. I hope the Minister will be able to reassure the Committee.

Kevin Foster: I genuinely thank the hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East for tabling this amendment. He always speaks with real passion, even when we disagree, as we did in the last debate, and his comments on this amendment have been no exception. We can perhaps be slightly more consensual now, even if the Government do not agree with the amendment.

I will deal briefly with a couple of points that have just been raised. First, in relation to decisions that would be taken on visitor visas for EEA nationals visiting faith groups, we have already made it very clear that EEA nationals will be non-visa nationals. Therefore, those looking to make visits to the United Kingdom would not be required to apply for a visa. They would be able to come through the e-gates and their visiting experience would be very similar, for example, to that of a New Zealander, a Canadian or a Japanese citizen at the moment, who can come through the e-gates and be granted visit leave. In a moment, I will come on to speak in a little more detail about the range of activities that a visitor can perform.

As a constituency MP, I have similarly sometimes been involved in decisions about faith communities, particularly a couple of years ago, when there needed to be some representations about how the income of Paignton

parish church was considered, and whether a medieval church was an established organisation. I was only too happy to vouch that a church built in the 13th century is an established organisation, and that it was not set up for an immigration purpose, for pretty obvious reasons. I am genuinely always happy to hear representations from particular communities about that, as I did in that instance as a constituency MP.

We published the impact assessment for the Bill. I am clear that a lot of the Churches' right-to-work checks will be the same as now anyway, because they have to do that for EEA citizens and UK nationals. When there is a right-to-work check, every one of us should be asked to present evidence that shows our right to work, as with right-to-rent checks; I recently had to show my passport to comply with those requirements, and rightly so. We are clear that there should be no discrimination there; those checks should be applied irrespective.

On the other points made, similarly, many faith communities, and certainly the larger faith communities present in the United Kingdom, are already sponsors. Much of that will transfer into the new system, so in many ways the experience of non-EEA nationals—non-visa nationals, to be absolutely clear—will be transferred over with the various concessions and opportunities, such as pay, performance, engagement and other items.

On the specific point made by the hon. Member for Argyll and Bute, I do not have officials' or my predecessors' diaries to hand, in terms of meetings, but as I met other faith communities at the invitation of Members of Parliament, I am certainly more than happy to meet the Scottish Catholic bishops representatives and to engage and have a conversation with them. They are a key partner. I certainly recognise the valuable social role that many Catholic churches play in communities across the United Kingdom. I am always happy to have a conversation about some of the definitions, particularly around visitor, tier 5 and tier 2. Some things, as I will come on to in a minute, will actually be covered by our visitor provisions, as well as under tier 5. Again, I am happy to have a conversation with them on those points.

I am genuinely grateful to the SNP for initiating this debate, because it gives me the opportunity to put on the record how the Government value the role faith communities play in this country, and more importantly, the contribution that many people who have migrated here have made and are making to the functioning and wellbeing of our faith communities. Faith communities enhance our national life, and they are stronger because people from around the world come and contribute to every aspect of their work, not least in bringing their skills to leadership in communities across the UK, hence why, in our future points-based immigration system, there will continue to be routes for those connected with faith and religion to come to the UK. Within the current immigration system, there are two routes specially designed for them, and this will continue in the future, to assist with consistency.

As referred to already, the tier 2 route for ministers of religion—effectively a skilled worker route—is for religious leaders such as priests, imams and rabbis, as well as missionaries and members of religious orders, taking employment or a role in a faith-based community. They can come for up to three years initially, which they can extend to six years, and they may qualify for settlement—indefinite leave to remain—after five years. Again, those who receive indefinite leave to remain are then exempted from the immigration health surcharge and will also have a permanent unlimited status within the United Kingdom.

Additionally, we have the tier 5 religious workers' route. It should be clear to the Committee that this was designed with a very different purpose in mind. It permits stays of up to two years and caters for those wishing to undertake supportive, largely non-pastoral roles. In common with all tier 5 categories, as it is temporary at core, there is no English language requirement.

That last point is crucial. As I indicated, we welcome faith leaders from around the world, and in many communities regular conversations and events bring faith communities together in opposition to those who wish to sow the seeds of division between them. It is therefore right that those who want to lead a faith community, which involves both preaching and helping the faith community to interact with the wider community in their leadership role, should have a proper command of English to enable this—especially the valuable inter-faith work that goes on in so many communities.

I think of what happens locally in Torbay, and of the type of exchanges facilitated in the midlands, particularly by Coventry cathedral, given its background in different faiths. Those exchanges really cannot be facilitated if there is not a good command of a working language within the local community.

11 am

Last year, we changed the rules to provide that those who come as ministers of religion should be required to use the tier 2 route. I accept that the fees are higher for tier 2 than for tier 5; that is because tier 2 migrants can stay for longer, with the potential eventually to settle here, as many inspiring faith leaders have done and as I hope they will continue to do. I am sure we can all think of examples in our own constituencies.

Mr Goodwill: Will the Minister pay tribute to John Sentamu, the recently retired Archbishop of York, who came from Uganda during the time of Idi Amin and has made a fantastic contribution to religious and general life in our country?

Kevin Foster: I am only too happy to do so and to put the Government's thanks to him on the record. He provided an inspiration and a ministry that will be remembered for a very long time, and he broke the mould of what people expect from someone in such a senior position in the Anglican communion. Such contributions are very welcome and we want them to continue. We want to see that sort of person, particularly from the worldwide Anglican communion, as well as from the See of Rome—we have seen some amazing people come and be part of that community here in the United Kingdom. It is well worth paying tribute to such an example of someone who has achieved amazing things and revealed what he saw as God's purpose for him as Archbishop of York. I am sure that we all wish him a very long retirement—not from holy orders, of course, which are a calling for life, but from his duties as archbishop.

I have heard the concerns expressed today about those who come to the UK for a very short term to provide cover while the incumbent minister is on holiday. It is worth pointing out our visitor rules, which will

[Kevin Foster]

extend to EEA nationals as they currently extend to non-visa nationals, as I indicated earlier. In the immigration rules, the list of permitted activities specifically states that visitors may

"preach or do pastoral work."

That allows many faith communities to hear inspiring preachers or hear about their faith's work in other countries, especially in support of overseas aid and development work. Visitors are permitted to lead services on an ad hoc basis, which may provide a solution for communities that wish to invite visiting clergy to cover short-term absences, although they may not be paid for it—in many religious communities, that would not necessarily be a bar to providing a period of short-term cover.

It is worth my reminding the Committee that we have confirmed that EU citizens, who are the focus of the Bill, and EEA citizens more widely can continue to come to the UK as visitors without a visa, without prior approval, and use e-gates, where available, on arrival in the United Kingdom.

I hope that the SNP will consider its position on amendment 11. I say gently that we all need to reflect on whether it is appropriate to have faith communities led by those without a command of English adequate for the task—not least at a time when we need to come together more, not be separated by barriers of language. I therefore believe that the review that the amendment would put in place is not necessary. I invite the hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East to withdraw the amendment, but I am always more than happy to discuss further how we can ensure that our faith communities are supported and that there is clarity on the three routes that I have outlined for ministers and those involved in faith communities to come to the United Kingdom and play the role that many have done in an inspiring way over many years.

Stuart C. McDonald: I am grateful to my hon. Friend the Member for Argyll and Bute and the hon. Member for Stretford and Urmston for their detailed contributions to the debate, and to the Minister for his response. We are back in much more convivial and consensual territory, and I much prefer it; I feel much more comfortable there. I am particularly grateful for the Minister's offer to meet the Bishops' Conference, which I am sure will be very welcome. This debate has helped us clarify how close we are to making sure the system works for all interested parties.

I scribbled down the fact that the Minister highlighted two routes, but of course there are three. Tier 2 is much more about the longer term, and affects ministers who want to come and settle, and the tier 5 route is not for people who will lead worship. Then there is the visitor category, but, as the Minister said, it does not allow for payment to be made, and the organisations that I have spoken to say that if somebody is here for a couple of months, there are challenges if they cannot offer to pay.

We are close, but those three routes do not quite resolve the difficulties that we have highlighted. If the Minister is able to engage with the bishops' conferences and other religious organisations, we may be able to tweak one of the three existing routes or come up with another one. It is probably better to fix the three than to come up with a fourth. I hope we will find a resolution, and I am glad that the Minister is engaging positively. For that reason, I see no reason to press for a vote, so I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

The Chair: I have to be entirely neutral, of course, but it would be nice if the Government allowed us to have our religious services again, as has happened in the rest of Europe.

Clause 8 ordered to stand part of the Bill.

Clause 9 ordered to stand part of the Bill.

New Clause 9

REPORT ON THE IMPACT TO EEA AND SWISS NATIONALS

"(1) This Act shall not come into effect until a Minister of the Crown has laid a report before each House of Parliament setting out the impact of the Act on EEA and Swiss nationals in the UK.

(2) A report under subsection (1) must consider—

(a) the impact on EEA and Swiss nationals of having no recourse to public funds under Immigration Rules;

(b) the impact of NHS charging for EEA and Swiss nationals;

(c) the impact of granting citizenship to all EEA and Swiss health and social care workers working in the UK during the Covid-19 pandemic;

(d) the impact of amending the Immigration and Nationality (Fees) Regulations 2018 to remove all fees for applications, processes and services for EEA and Swiss nationals; and

(e) the merits of the devolution of powers over immigration from the EEA area and Switzerland to (i) Senedd Cymru; (ii) the Scottish Parliament; and (iii) the Northern Ireland Assembly.

(3) A Minister of the Crown must, not later than six months after the report has been laid before Parliament, make a motion in the House of Commons in relation to the report.

(4) In this section, 'health and social care workers' includes doctors, nurses, midwives, paramedics, social workers, care workers, and other frontline health and social care staff required to maintain the UK's health and social care sector."—*(Stuart C. McDonald.)*

This new clause would ensure that before this Act coming into force, Parliament would have a chance to discuss how EEA and Swiss nationals will be affected by its provisions, including no recourse to public funds conditions, NHS charging, the possibility of granting British citizenship to non-British health and social care workers, removing citizenship application fees and the potential devolution of immigration policy of EEA and Swiss nationals to Wales, Scotland and Northern Ireland.

Brought up, and read the First time.

Stuart C. McDonald: 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 10—*Extension of registration for EU Settlement Scheme*—

"(1) The EU Settlement Scheme deadline shall be extended by a period of six months unless a motion not to extend the deadline is debated and approved by both Houses of Parliament.

(2) Any motion not to extend, referred to in subsection (1), must be debated and approved no later than three months before the deadline.

(3) In this section, 'the EU Settlement Scheme Deadline' means the deadline for applying for settled or pre-settled status under the Immigration Rules."

This new clause would ensure the EU settlement scheme was not closed to new applications until Parliament has approved its closure.

New clause 11—*Application after the EU Settlement Scheme deadline—*

"(1) An application to the EU Settlement Scheme after the EU settlement scheme deadline must still be decided in accordance with appendix EU of the Immigration Rules, unless reasons of public policy, public security, or public health apply in accordance with Regulation 27 of the Immigration (European Economic Area) Regulations 2016 (as they have effect at the date of application or as they had effect immediately before they were revoked).

(2) In this section—

'an application to the EU Settlement Scheme' means an application for pre-settled or settled status under appendix EU of the Immigration Rules;

'the EU Settlement Scheme Deadline' means the deadline for applying for settled or pre-settled status under appendix EU of the Immigration Rules."

This new clause would ensure that late applications to the EU settlement scheme will still be considered, unless reasons of public policy, public security or public health apply.

New clause 25—*Report on status of EEA and Swiss nationals after the transition—*

"(1) This Act shall not come into effect until a Minister of the Crown has laid a report before each House of Parliament setting out the impact of the Act on EEA and Swiss nationals in the UK.

(2) A report under subsection (1) must clarify the position of EEA and Swiss nationals in the UK during the period between the end of the transition period and the deadline for applying to the EU Settlement Scheme.

(3) A report under subsection (1) must include, but not be limited to, what rights EEA and Swiss nationals resident in the UK on 31 December 2020 have to—

(a) work in the UK;

(b) use the NHS for free;

(c) enrol in education or continue studying;

(d) access public funds such as benefits and pensions; and

(e) travel in and out of the UK."

This new clause would require Government to provide clarity on the rights of EU nationals in the EU in the grace period between the end of the transition period, and the closure of the EU Settlement Scheme.

Stuart C. McDonald: With new clause 9, which stands principally in the names of my hon. Friends in Plaid Cymru, we turn to the central matter of the Bill: what will happen to EEA and Swiss nationals who are already here? The new clause simply calls on the Government to report on what the implications for EEA and Swiss nationals will be. That includes reporting on the impact of no recourse to public funds, NHS charging, the granting of citizenship to all EEA and Swiss health and social care workers working in the UK during covid-19, and certain fees. It also includes—we will probably not discuss this in great detail—the merits of the devolution of powers over immigration from the EEA and Switzerland to different parts of the United Kingdom. Those are all perfectly reasonable requests.

I want to focus on new clauses 10 and 11, which bring us back to the settlement scheme. We touched on that on Thursday, when Opposition Members made the case for a declaratory system, meaning that people would have their rights automatically enshrined in law. It would still apply to the settlement scheme so that they could prove their status and navigate employment, social security and other rights. I regret that the Government and the Committee rejected that proposal, but I have taken that on the chin and moved on. However, that puts the Government under a greater obligation to spell out what should happen to eligible individuals who do not apply for the settlement scheme by 30 June 2021. I have tried on a huge number of occasions to get them to reveal what work they have done to estimate how many people might not apply, even in broad-brush terms, and how they would respond.

As we heard in evidence, it is blindingly obvious that, even with all the good work that is going on, the Government will struggle to get above 90% of the target population. Getting above 90% would be a great success, given the international comparison. If the Government fall just 5%, 6% or 7% short of the target, hundreds of thousands of people will suddenly be without status and will lose any right to be in this country on 1 July 2021. By all accounts, this is a huge issue and we need to push the Home Office further to set out how it will address it. So far, all we have been told is that it will take a reasonable approach. That is fine, but it is not enough. We need much more detail, and new clauses 10 and 11 are designed to push the Government on that.

Mr Goodwill: Does the hon. Gentleman share my concern that extending the deadline by six months would encourage those who have been putting it off to put it off for another six months?

Stuart C. McDonald: Not really. People still have every incentive to apply for the scheme. On 1 July next year the deadline will have passed. People might put it off for six months, but I would far rather that than subject tens and probably hundreds of thousands of people to not having any rights at all. It is much the lesser of two evils. As I say, there are different ways in which we can do this. New clause 11 would allow people to apply after the deadline. I will turn to that in a moment. I want to set out exactly what new clauses 10 and 11 are designed to do.

New clause 10 would ensure that the EU settlement scheme was not closed to new applications until Parliament had approved its closure. We want to see what the plans are and scrutinise how the situation will be handled. Until we are satisfied, we will keep extending the scheme in order to protect people from the loss of their rights and from the hostile environment and the threat of removal. Why on earth should MPs give the Home Office a blank cheque to deal with this as it pleases? We will have that debate and the right hon. Member for Scarborough and Whitby can make his point that it will lead to a delay in people making applications, but I am firmly of the view that that is much the lesser of two evils.

On the closure of the settlement scheme, people who have not applied for a status will have no legal basis to remain in the UK after the grace period, no matter how long they have lived in the UK. They will be liable to removal and will face the hostile environment. After the grace period, a huge group of people will still not have applied. No similar scheme has ever reached 100% of its target audience. New clause 11 would bring back control of the situation to Parliament and allow us to be fully informed as to where the settlement scheme has got and what the Government's plans are for dealing with this huge issue before we sign off on closure of the scheme. It is a modest proposal, but hugely important.

New clause 11 would ensure that late applications to the EU settlement scheme would still be considered unless reasons of public policy, public security or public

[Stuart C. McDonald]

health apply. In tabling the new clause, we are asking the Minister who he thinks does not deserve a second chance after 30 June next year. Who does not deserve the reasonable response that he has spoken about in the past? Under the new clause, applications made after the deadline could be ignored for restricted reasons relating to public policy, public security or public health. However, we want to know who, on top of that, the Minister thinks should be deprived of their rights and the ability to remedy the situation in which they find themselves. People will be unable to live in this country and they will be liable to removal. We need to know much more about the grounds on which people will be able to make a late application. What are the reasonable grounds that the Home Office will accept? They have yet to be defined. As far as we can tell, they will comprise only a very narrow list of exemptions, including, for example, for those with a physical or mental incapacity, and for children whose parents have failed to apply on their behalf.

As I have said many times, the deadline will be missed by many people for good reasons beyond those that I have just outlined. People will simply not be aware of the need to apply, and people with pre-settled status might forget to reapply for full settled status. I have set out a million times why people will not understand that the settlement scheme applies to them. Rules on nationality and immigration status in this country are hugely complicated. There will undoubtedly be people from all walks of life who think that they are British citizens and who already have a right of residence in this country. They will not appreciate that, in fact, they need to apply to the scheme. The consequences of making such a mistake can be dreadful. If we simply leave the Bill as it is, people will lose the right to be in this country and will be removed and subject to the hostile environment. Alternatively, we could at least leave open to them the option of being able to apply to the scheme after the deadline has passed. They would still have every incentive to apply, because they would need to evidence the rights that they access through the settled status process.

I ask the Government to look positively on these new clauses, and at the very least to provide much more information and assurance about how they are going to approach this issue. Up to this point, there has been barely a flicker of recognition that this is something that needs to be addressed, but we are talking about tens, possibly hundreds, of thousands of people being left in an appalling situation.

11.15 am

Holly Lynch: I believe that it is appropriate to speak to new clause 25 as part of this grouping. The hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East has already explained his commitment to and passion for new clauses 10 and 11. Our new clause 25 is not dissimilar to new clause 9. New clause 25 is tabled in the name of my hon. Friend the Member for Torfaen (Nick Thomas-Symonds), who is the shadow Home Secretary, and myself and my hon. Friends.

New clause 25 focuses on the need to put to bed some of the anxieties of those who will not have had their status confirmed by the time the transition period ends at the end of this year. When free movement ends, eligible EEA and Swiss nationals will still have until the end of the grace period to apply for status through the EU settlement scheme, which does not close until the end June 2021. With this in mind, all the conversations we have had with those European citizens who have either applied or are planning on applying to the settlement scheme have centred on what their status will be between the end of free movement and their status being granted, which could happen up until the end of June 2021 and, in some cases, beyond that.

The new clause asks the Government to put together a report on the status and rights of people during that window and to lay it before both Houses for consideration. We are calling on the Government to recognise the genuine sense of vulnerability felt by people who may fall into that category and to provide some assurance, in a report to Parliament, guaranteeing that those people, who are eligible, will have a lawful status and not be disadvantaged during those six months.

I asked Luke Piper, immigration lawyer and head of policy at the3million, about this issue in last week's evidence session. It is a top priority for him and his group. He told the Committee:

> "The Bill brings freedom of movement to an end at the end of this year, but it is not clear what legal status people will have between the end of the transition period, which is at the end of the year, and the end of June—the end of the grace period. There has been no clarity about, or understanding of, what legal rights people will have. We have simply been told that certain checks, such as on the right to work, will not be undertaken, but it is not clear to us or our members how people will be distinguished, both in practice and in law."—[*Official Report, Immigration and Social Security Co-ordination (EU Withdrawal) Public Bill Committee,* 9 June 2020; c. 61, Q125.]

EU citizens in the UK have already endured a lot of uncertainty about their futures and are now also facing insecurity on their lawful status. The suggestion that employers or landlords should not be checking to confirm their personal status during this grace period seems to be an approach fraught with potential problems. I am keen to hear what engagement Ministers have with employers and landlords on this issue, and how any suspension of the hostile environment will be managed. Last December, the3million commissioned a survey on EU citizens' experience of the settlement scheme. It was the largest survey of its kind and indicated that they are already facing barriers, with 10.9% of respondents saying they have already been asked for proof of settled status, even though it is not yet a requirement.

Although this new clause focuses on the rights of those who apply after the transition ends and who get their status before the EUSS deadline, there will presumably then be a group of particularly vulnerable people who apply before the deadline ends but who do not get their status until after the end of June 2021. What happens, for example, if they apply on 20 June 2021, which is before the deadline, but do not get confirmation of their status until 20 July, which is after the end the transition period and the closure of the EUSS? What are the rights and status of that cohort of people?

Although the numbers coming through are good, we know that lots of people are still yet to apply. As we have heard, we will never know exactly how many people are in that category. We will never know whether there is going to be a surge towards the end of the scheme, which will make this a bigger problem than many of us

would like. When asked about the numbers and types of people who will struggle to apply on time, Luke Piper said:

"Much as with the number of people due to apply for the scheme, we do not know. We have no idea of the exact number of EU citizens who need to apply under the EU settlement scheme, so we will not have an understanding of the number of people who miss the deadline."—[*Official Report, Immigration and Social Security Co-ordination (EU Withdrawal) Public Bill Committee,* 9 June 2020; c. 62, Q126.]

Coronavirus has resulted in dedicated Home Office phone lines being closed, an inability to receive hard copies of documentation and specialist support services being stopped, impacting on the progress being made. The BMA has said that some doctors working tirelessly on the frontline may be in that cohort of people who have to leave things until next year, simply because they will be working flat out for the foreseeable future. After the transition period comes to an end, thousands of people might not have confirmation of their status.

Recent research by the3million on young Europeans living in London made some concerning findings. The focus group was the first time that some participants had heard about the EU settlement scheme, and a majority had not applied to it, despite being viewed as an easy to reach group because of their education and digital literacy. The new clause's proposed report on that group's rights between the end of the transition period and the EU exit deadline would be of great assistance in clarifying the status and rights of those harder-to-reach groups. It would also assist in getting them to submit their applications towards the end of the scheme.

It is important to note that, after the deadline, the EU settlement scheme will not close in practice, because people with pre-settled status will need to apply for settled status, and it will also be used by people will be joining family members in the UK after the deadline. Moreover, we will still be processing those applications that arrive on time but that will have to wait until the other side of the deadline for a decision to be issued.

Inevitably, the problem is the hostile environment and the long, dark shadow of the Windrush scandal. The fear brought about by the absence of a clear framework of rights and migration status for EEA and Swiss nationals between September 2020 and June 2021 is all too real. We therefore ask the Government to provide clarity on the rights of EU nationals in the UK during the grace period. EU citizens who have contributed and given so much to our society and country deserve to have security and confidence in their status.

Mr Goodwill: I very much sympathise with what the hon. Member for Halifax has just said. There is real concern that EEA nationals who have been working here, contributing not least to our health service, may find themselves missing the deadline. However, I do not agree that the way to address that is through new clause 10, as I made clear to the hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East. Some like myself would always wait until the deadline before submitting an essay or article. By extending the period by six months, we might well just encourage people to put off the chore—as they see it—of applying.

I ask the Minister to reassure us that, as we approach the deadline, the Government will engage in a communications exercise and advertising campaign, particularly in some of the main EU languages, so that people are aware of the deadline and can submit their applications in good time for them to be processed.

Kate Green: That is an important point, in particular in relation to those communities, such as the Roma community, that have been hard to reach with information about the scheme. The Government have made some funding available for community organisations to reach such communities, but it would be extremely welcome to follow the suggestion that a particular push be made to communicate with those more remote communities as the deadline approaches

Mr Goodwill: The hon. Lady is absolutely right. Indeed, while many EU migrants have made a real effort to integrate and to speak English in their homes, encouraging their children to speak English, others have not assimilated as well and are still speaking their native language, as is their right. It is important that we communicate in those languages.

Perhaps we should also look at how we communicate through schools, because the children of some families who have come from the EU speak very good English, although their parents struggle with it. The children's secondary schools may be another good way to get through to such families. I hope that the Minister will pick up that point and reassure us that the Government will be making the effort to communicate with the general population, to ensure that we can help our work mates and so on.

11.24 am

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

Adjourned till this day at Two o'clock.